CITY OF CHARLES TOWN
BOARD OF ZONING APPEALS
AGENDA • DECEMBER 17, 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 September 17, 2024
DRAFT September minutes.pdf

IV. APPROVAL OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW

IV.1 : *BA2024-05* - Special Exception for 210 W. North St - **Findings of Fact**
BA-2024-05.pdf

IV.2 : *BA2024-06* - Variances for Weirick Row - **Findings of Fact**
BA-2024-06.pdf

IV.3 : *BA2024-07* - Variance for 111,113 W. North St - **Findings of Fact**
BA- 2024-07.pdf

V. PUBLIC HEARINGS

V.1 : **Public Hearing**: *BA2024-08* - George Street Lots
1. Staff Report.pdf
2. Application.pdf
3. Signed Survey.pdf
4. Proposal.pdf

V.2 : **Public Hearing**: *BA2024-09* - 114 Augustine Avenue
1. Staff Report.pdf
2. Application.pdf
3. Plat.pdf

VI. CONTINUED CASES

VII. OTHER BUSINESS

VII.1 : DRAFT 2025 Meeting Calendar
2025-Board-of-Zoning-Appeals-DRAFT.pdf

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: 12/17/24
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

DRAFT Minutes of September 17, 2024

ATTACHMENTS:

- DRAFT September minutes.pdf

CITY OF CHARLES TOWN

BOARD OF ZONING APPEALS

MINUTES • SEPTEMBER 17, 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
Stephanie Grove, Attorney
Kim Crosson, Building Permit Technician, Attended Virtually

2. DETERMINATION OF QUORUM

3. APPROVAL OF MINUTES

3.1: Minutes – July 16, 2024

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

4. APPROVAL OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW

No Findings of Fact presented.

5. PUBLIC HEARINGS

5.1: BA2024-07: Variance request for 111 & 113 W. North St.

Staff presentation

Property Owner Crystal Yoder sworn in. Declared that division of the lot will ease sale of individual duplex units and will ensure no future ownership issues arise as occurred when she inherited the property through tenancy in common with her siblings.

Cox: What is the size of the new duplex?

Applicant David Leonard sworn in. Stated that the left side unit is the same as the previous unit. The right unit was extended to match the left side unit in length. The height of the units is the same as before.

Cox: What is the space in the rear of the property used for?

Leonard: Parking.

Chair Wysong opened the meeting to public comment. There was no public comment

Motion to enter deliberation at 7:10 pm

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

Motion to resume at 7:15 pm

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

Motion to approve the variance request as presented:

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

6. CONTINUED CASES

None.

7. OTHER BUSINESS

None.

8. ADJOURNMENT

Adjournment at 7:17 pm

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

DRAFT

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

Meeting: 12/17/24
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

BA2024-05 - Special Exception for 210 W. North St - Findings of Fact

ATTACHMENTS:

- BA-2024-05.pdf

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

In re: Docket No. BA 2024-0 – Application for Special Exception by Mark Roper

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

This matter came before the Board of Zoning Appeals at its general meeting held on the 16th day of July, 2024, for public hearing upon the application for a special exception filed by Mark Roper, (hereinafter 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 a Special Exception Use Permit pursuant to **Sections 1323(L) and 1322.04 of the Zoning Ordinance** to allow multi-family housing on the lot. The subject real property consists of a parcel with three (3) existing legally non-conforming units, located in the Old Town Residential (OT-R) District, designated as Tax Parcel 1 1 on Tax Map 2 in Charles Town Corporation having a street address of 210 W. North 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 recommendation of appeal with conditions. Mr. Newman noted

that the special exception that the Applicant seeks would allow for multi-family housing on the lot, which currently consists of three (3) legally non-conforming units. Additionally, the Permit would allow for the expansion of additional units with no cap on density and that the proposed use would be consistent with the surrounding neighborhood and the current uses in the zoning district. Mr. Newman recommended approval with the condition that the Applicant provide enough off-street parking for all units going forward.

The Board had no questions for Mr. Newman.

The Applicant's representative, Seth Rivard, next was sworn and testified. Mr. Rivard stated that the permit would bring the exiting units into conformity as opposed to maintain a long-term non-conforming use and would not result in the addition of dwelling units.. Mr. Rivard indicated that the Applicant would accept the condition to provide adequate off-street parking

The Board did not have any questions for the Applicant

The Board next opened the hearing for public comment. No members of the public appeared or submitted comment to staff.

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, application for Special Use Exception Permit for a multifamily use be approved with the condition that on-site parking will be provided for new units based on the requirements of the Subdivision and Land Development Ordinance.

FINDINGS OF FACT

The Board hereby finds as follows:

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. The current structure on the property is a legally non-conforming use with three dwelling units. The proposed use is residential, and as such, wil not negatively impact the adjacent properties in the neighborhood.

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

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. As set forth in **Section 1322.11, Old Town Residential (OT-R) District, of the Zoning Ordinance**, "[t]he 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.[and is] 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 request conforms with intent of the Zoning ordinance by providing development that is of a residential character.

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

CONCLUSIONS OF LAW

Based upon the foregoing findings and for the reasons stated herein and based upon staff's recommendations, testimony presented, information contained in the Agenda Packet, and the discussion on the record, the Board, by a vote of four (4) in favor and zero (0) opposed determines that the Applicant's requested Special Use Exception Permit satisfies the requirements of Section 1321.11(D)(3) of the Zoning Ordinance and should be granted, with the condition that the Applicant provide on-site parking for any additional future units, in conformance with the requirements of the City of Charles Town Subdivision and Land Development Ordinance.

WHEREFORE, the Board hereby GRANTS the Special Use Exception Permit to allow for a multi-family ise at 210 W. North St. 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: 12/17/24
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

BA2024-06 - Variances for Weirick Row - Findings of Fact

ATTACHMENTS:

- BA-2024-06.pdf

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

In re: Docket No. BA 2024-06 – Application for Variance by Mark Roper

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

This matter came before the Board of Zoning Appeals at its general meeting held on the 16th day of July 2024, for public hearing upon the application for a Variance filed by Mark Roper (hereinafter 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, the City's Permit Technician, Kim Crosson and the City's legal counsel, Michael Funk.

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

The Applicant, Mark Roper, came before the Board requesting a Variance pursuant to **Sections 1321.10(D)(4) and 1321.11(E) of the Zoning Ordinance** with respect to 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, and 3) Reduce the minimum building height from 24 ft/1.5 stories to 14 ft **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 one (1) vacant parcel and one (1) parcel which contains a single family house, located in the Old Town Residential (OT-R) District , Tax Parcels 70 and 71 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 allow development of the parcels with single family detached homes and that the existing house will be demolished. He advised the Board that the Applicant is requesting variances to reduce the minimum lot size, reduce the minimum lot width and reduce the minimum building height. The requested variances will allow the applicant to provide two dwelling units in conformance with the residential character of the neighborhood.

The Board then asked questions of Mr. Newman. Board Member Kratovil asked if the resulting lots would be identical in size to which staff responded in the affirmative.

The Applicant's representative, Seth Rivard, next was sworn and testified. Mr. Rivard stated that the adjoining neighbors would not be adversely affected by the requested variances and the balancing the size of the two lots would eliminate the hardship of having an unusable lot.

The Board next presented questions to Mr. Rivard. Board Member Thomas asked whether the intent was to build 2 houses standing at 30 feet wide on the two lots to allow for require side space wo which Mr. Rivard answered in the affirmative.

The Board then opened up the hearing for public Comment. One member of the public presented testimony. Mr. Frederick Eoey asked for clarification on the project as his property is across the street from the subject property and he expressed concern about utility land damage during construction and liability for any potential damage. Chairman Wysong indicated that any contractor would be responsible for any error that occurred during construction but noted that the

request only pertained to lot size, width, and building height. The Staff further recommended that Mr. Eoey contact the Community Development Department for further information if building permits are issued. Mr. Rivard stated that the homes would be connected to existing utility 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 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 Variance should be granted, as presented, for the reasons set forth below.

FINDINGS OF FACT

The Board hereby finds as follows:

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

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. 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. Additionally, there are only three homes out of 12 existing homes in the neighborhood that have a second story. The neighborhood pattern is mainly one-story homes, and it benefits the neighborhood to grant the variance to provide a reduction in the house height to conform with the existing homes. The layout and the existing patterns in this neighborhood provides justification for a variance from the building height.

3. The Variance will eliminate an unnecessary hardship and permit a reasonable use of the land. 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.

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 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 Variance is in accordance with the intent of the Zoning Ordinance to provide sensitively designed infill in a residential neighborhood.

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 four (4) 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 10,000 sq. ft. to 6,392 square feet.; reduce the minimum lot width from 70 feet. to 49.75 feet; and reduce the minimum building height from 24 ft/1.5 stories to 14 ft. reduce the Minimum Building Height of 24 feet or 1.5 stories to 14 feet.[1]

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

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: 12/17/24
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

BA2024-07 - Variance for 111,113 W. North St - Findings of Fact

ATTACHMENTS:

- BA- 2024-07.pdf

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

In re: Docket No. BA 2024-07 – Application for Variance by David Leonard

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

This matter came before the Board of Zoning Appeals at its general meeting held on the 17th day of September , 2024, for public hearing upon the application for a Variance filed by David Leonard (the "Applicant"). The subject real property is owned by Crystal Yoder 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, the City's Permit Technician, 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, David Leonard came before the Board requesting a Variance pursuant to **Sections 1321.10(D)(4) and 1321.11(E) of the Zoning Ordinance** with respect to lot size and minimum lot width. The permitted depth for the proposed lot is 28.8 feet, and requested depth is 72 feet. The permitted depth for modified existing lot is 25.3 feet, and requested depth is 72 feet. The required lot width is 20 feet, and the lot width for proposed new parcel is 19.21 feet, with the existing lot width to be 16.89 feet., specified in **Section 1322.12, Mixed Use Commerical (OT-RMUC District**, and **Table 1322.12, OT-MUC District Bulk and Area Regulations, of the Zoning Ordinance**. The subject real property consists of one parcel which historically contained

a dilapidated duplex structure. The Historic Landmarks Commission approved demolition of that structure and construction of a new duplex following a public hearing on August 14, 2023. The property is located in the Charles Town Corporation District on Tax Map 2A, Parcel 14.

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 requested variances for lot size and width with the intent of bringing a new-build duplex into conformance with the Zoning Ordinance, which requires that each dwelling unit be placed on a separate lot. Mr. Newman also reviewed the purposes of the Old Town Mixed Use Commercial District. Staff recommended approval of the requested variances.

The Board had no questions for Mr. Newman.

The Property Owner, Crystal Yoder was next sworn in and testified. She provided the board with a history of the property and the difficulties in quieting the title of the property following her mother's passing in 2022. Ms. Yoder testified that she intended each dwelling unit to be sold separately.

The Applicant David Leonard was next sworn in and testified in response to questions of the Board concerning the size of the duplex units and whether the new units were the same size of the prior units. Mr. Leonard testified that there was an attempt to keep the units as close in size to the original units. The Board also questioned the applicant concerning the existing parking.

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

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

After completing its deliberation and returning to open session, by motion duly made by Board member Cox and seconded by Board member Kratovil, the Board determined, by a vote of four (4) 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 property was the site of a duplex which fell into disrepair and needed to be demolished. The applicant is in the process of a building a new duplex. The applicant seeks to make the site more conforming to its use by dividing it into two lots, with the lots split down the party wall line of the duplex structure. The proposed lot size and width changes will not impact adjacent property owners as there are no changes to the required setbacks.

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 property previously had a duplex on it, though it was on one lot. The applicant seeks to build a new duplex and bring the property into conformance with the overall requirement that each unit be on its own parcel

3. The Variance will eliminate an unnecessary hardship and permit a reasonable use of the land. Having a duplex on one lot leads to issues with selling and purchasing the units, which are separate from each other. The variances will allow each unit to

be on their own lot.

4. The Variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done. The variances would eliminate a hardship by allowing for a duplex to exist on two lots as opposed to one, meeting the intent of the Zoning Ordinance.

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 four (4) 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 allow for a lot depth of 72 feet and reduce the lot width from 20 feet to 19.21 feet.

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

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: 12/17/24
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

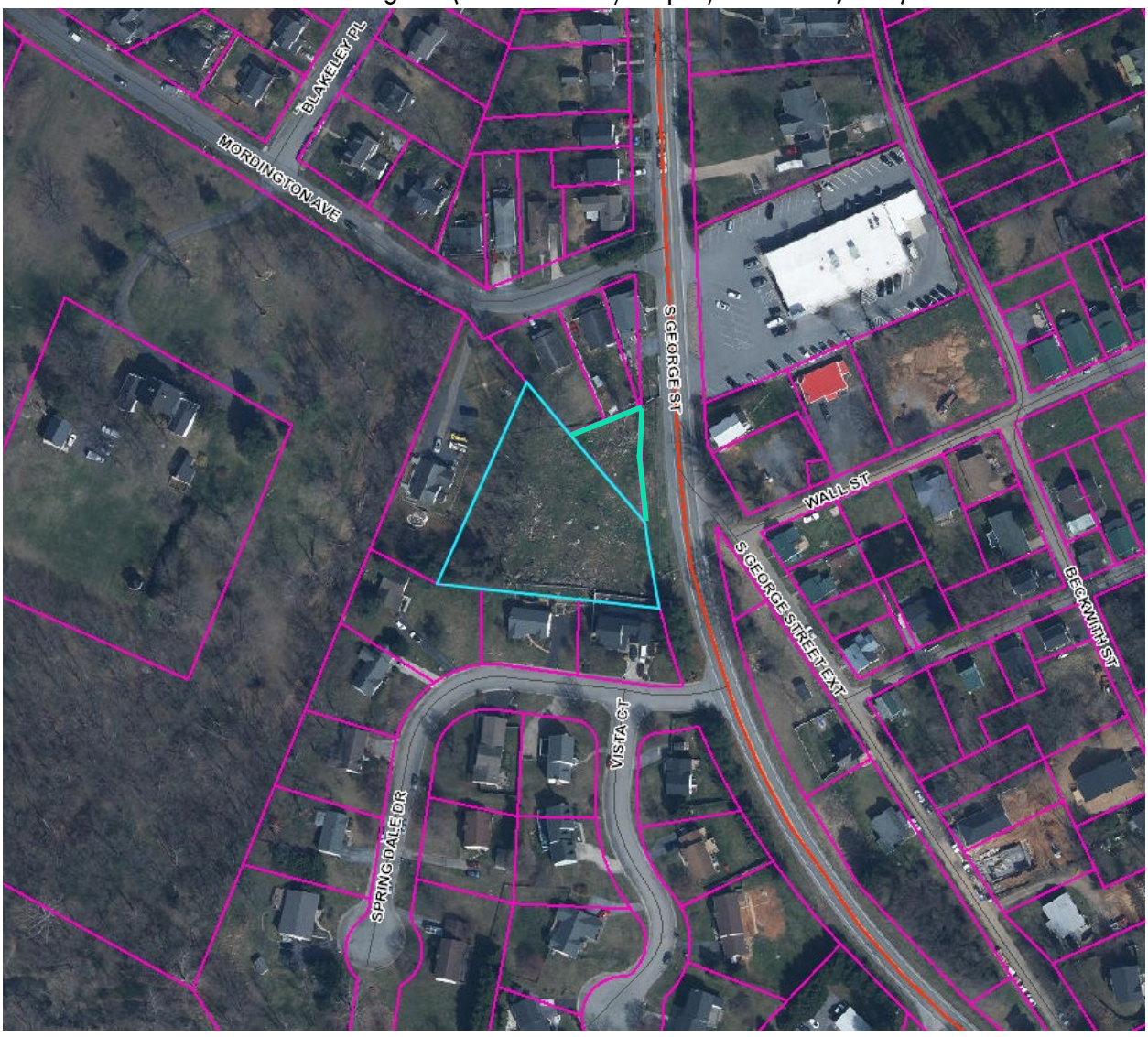
Public Hearing: *BA2024-08* - George Street Lots

ATTACHMENTS:

- 1. Staff Report.pdf
- 2. Application.pdf
- 3. Signed Survey.pdf
- 4. Proposal.pdf

Variance Request
BA-2024-08

Date: For the December 17, 2024 Board of Zoning Appeals meeting
Applicant: David Acly
Property Owner: Zales Construction LLC.
Report by: James Newman, City Planner, Zoning/Subdivision Administrator.
Location: Vacant lots on S. George St (Tax District 3/Map 6/ Parcels 4, 147)



OVERVIEW

The applicant is requesting variances for lot size. The applicant proposes to subdivide two lots into four for the development of housing.

OLD TOWN MIXED USE COMMERCIAL ZONING DISTRICT

The Zoning Ordinance describes the Old Town Mixed Use Commercial (OT-MUS) District as:

Purpose: The purpose of the OT-MUC District is to recognize the diversity of existing Uses and provide for a wide range of Uses in a manner that strengthens Charles Town's urban core, contributes to its historic character, minimizes impacts on adjacent land Uses, and provides connections to annexed properties. The OT-MUC District shall include the areas formerly consisting of NC, OR, GC, CBD, and I Districts. The OT-MUC District will accommodate the Uses previously allowed in the individual districts because the OT-MUC District is designed to provide the flexibility and variety in one Zoning District that was previously provided by five districts.

The OT-MUC District ***furthermore 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 intent is also to encourage interaction among activities located within the OT-MUC District, to 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*** *with each of the Commercial and residential* ***Uses****, ensure that the appearance and effects of Buildings and Uses are harmonious with the character of the area in which they are located by:*

1. ***Allowing a diversity of Uses*** *in close proximity in the OT-MUC District within a limited area,* ***including residential****, retail, office, and industrial;*

2. Preserving and restoring the overall character of the OT-MUC District;

3. Promoting a balance of land Uses;

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

5. Providing opportunities for the development of affordable housing;

6. Providing opportunities for a mixture of Uses in the same Building;

7. Promoting a positive pedestrian environment in the OT-MUC District;

8. Facilitating integrated physical design;

9. Promoting a high level of design quality;

10. Encouraging the development of flexible space for small and emerging businesses;

11. Facilitating development proposals responsive to current and future market conditions; and

12. Encouraging the development of Open Spaces and Parks within the OT-MUC District to accommodate workers, residents, pedestrians and shoppers

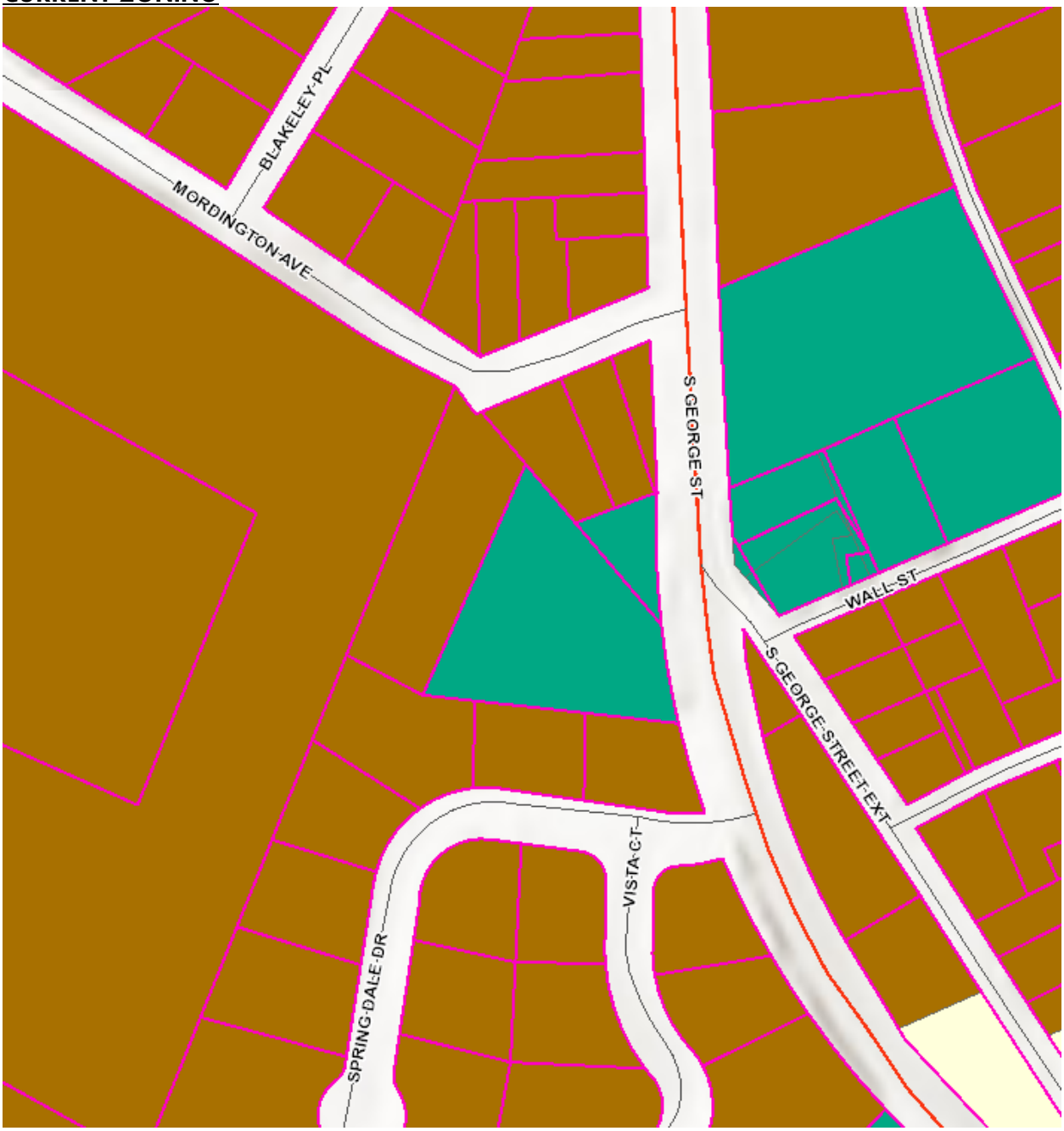
Table 1322.12, OT-MUC District Bulk and Area Regulations

Maximum Density	No Requirement
Minimum Lot Size	2' width to 3' depth Ratio
Minimum Lot Width	20 feet
Minimum Front Yard Setback	0 feet or Front Setbacks shall be more than the average Setbacks of three Adjacent Properties to each side.[2]
Minimum Side Yard Setback	0 fee (20 feet where adjoining a residential district)
Minimum Rear Yard Setback	No Requirement
Maximum Lot Coverage	90 percent
Minimum Required Open Space	No Requirement
Maximum Building Height	55 feet
Maximum Stories	4 stories

(1) Legal Non-conforming Structures that are destroyed by fire and/or natural disaster are permitted to be rebuilt in their previous area and bulk configuration.

(2) In situations where there are not three (3) contiguous properties to either side of the subject property, where possible, reviewing the front setbacks in the next block on the same side of the street shall be considered. In locations where there are no structures in the contiguous block or if the block pattern changes significantly, the intent and spirit of the Zoning Ordinance is to maintain consistency and compatibility within the block where the structure is to be located. Examining the front setbacks across the street from the subject parcel is a reasonable alternative in so much that compatibility within the block is maintained. Discretion in determining the front setback to achieve the character and compatibility resides within the duties of the Zoning Administrator.

CURRENT ZONING



Key:
Brown – Old Town Residential
Green – Old Town Mixed Use Commercial

TOPOGRPAHY

The property plateaus near George Street and then drops off in the middle and rear:

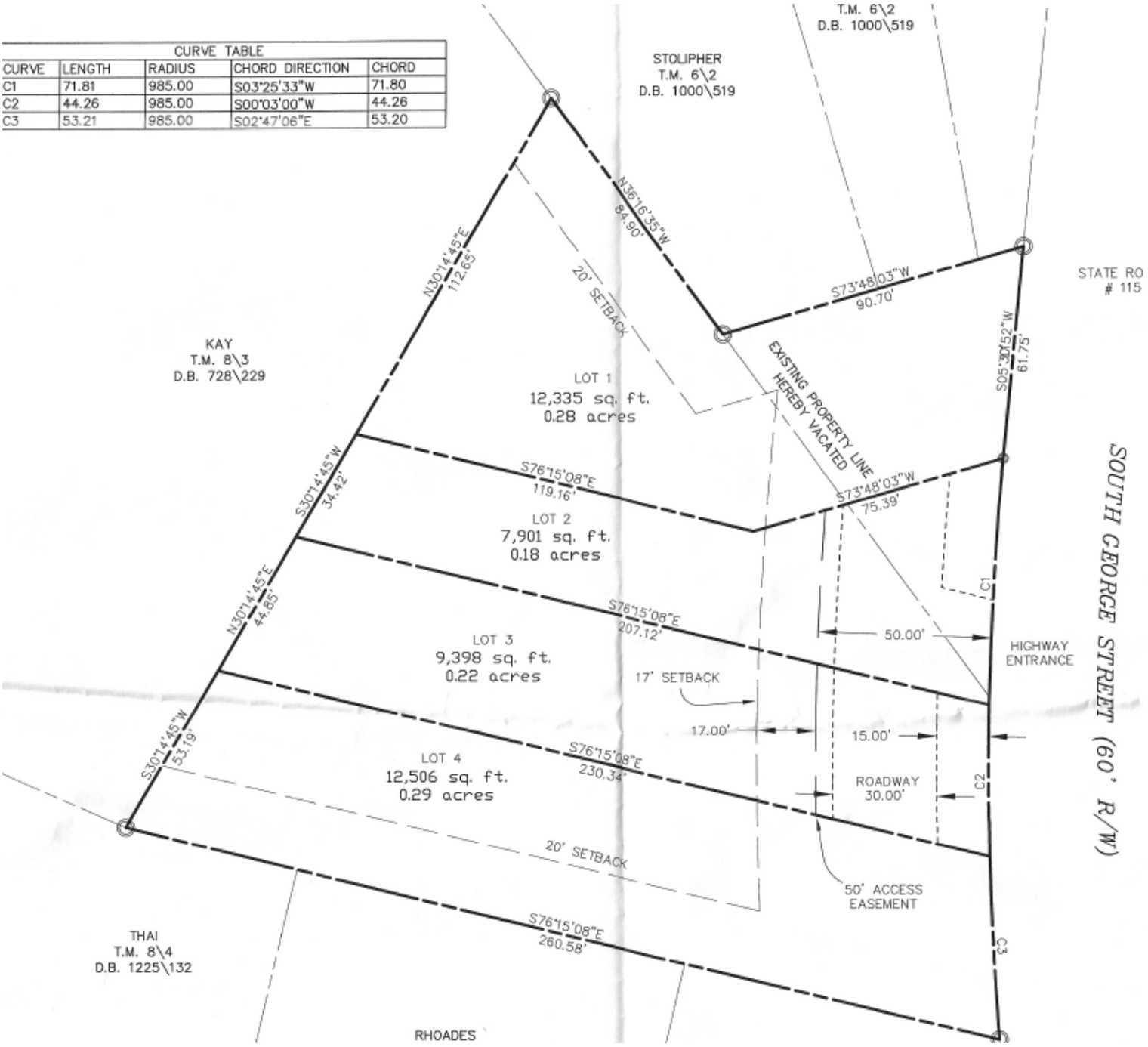





2023/10/16 03:27:27


2023/10/16 03:27:31

PROPOSED LOT DIMENSIONS



REQUESTED VARIANCES:
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

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;*

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."

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;*

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.

C. *Would 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.

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

The property is just under an acre in size, at .97 acres. There is no maximum density limit in this zoning district, and the intent of the district is to foster creative infill development and provide housing, among other uses.

CONCLUSION

The applicant is seeking the following variance:

	Required	**Proposed**
Minimum lot size	2:3 ratio	Lot 1 – 2:6 Lot 2 – 2:6 Lot 3 – 2:10.5 Lot 4 – 2:10

The applicant may, by-right, build a dwelling unit on each of the lots. Due to the topography of the site, the need for additional fill dirt and grading, and the addition of impervious surface in the form of housing, access-drive, and driveways, approval should be conditioned on the following:

1. 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.

RECOMMENDATION

Approval subject to a condition.

BZA Variance No. _____

RECEIVED
NOV 01 2024
BY: VR

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 11-1, 2024

2. APPLICANT'S NAME* David Acly

Address: 1213 Mare St Ranson WV 25438

Telephone Number (304) 886-1449 Fax Number ( )

Email Address davidacly@gmail.com

3. PROPERTY OWNER'S NAME Zales Construction LLC

Address: 659 Waterside Dr Harpers Ferry 25425

Telephone Number (703) 675-6193 Fax Number ( )

Email Address Alexsalgato@gmail.com

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

Property Address: Approx 750 S. George St Charles Town WV 25414

Tax Map # and Parcel(s): T.M 6\147, 6\4 parcel 03 6014000000000, 03 6004 0000 00

Deed Book and Page #: 1307\21

Property Area in Square Feet or Acres: Total Sq.FT 42,140

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

Currently a vacant lot. Both parcels Zoned Old Town Mixed use Commercial

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.)

Proposed purpose is to Build 4 Single Family houses Sharing a common entrance. N/A hours of operations

*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.)

First step lot line Adjustment Followed by two Minor Subdivisions

8. DESCRIPTION OF THE VARIANCE REQUEST:

The lot width Requirement is unreasonable with the lot shape. Requirement is a 2' to 3' Ratio

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

Section 1322.12 under Letter D

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

Yes The three surrounding sides of property are all Residential

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

would have zero Affect

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:

Both lot are zoned MUC. In which Both lots are weirdly shaped

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

Granting the variance would Allow 4 single family house to be built. without the variance would likely Turn into a Major subdivision to Maximize homes place there

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

I Believe the variance would allow for This. In the sense Still adding a good amount of homes to Smaller spaces

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

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

☒ No

BZA Variance No. _____

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

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
Kirsten Roberson	101 Springdale Dr	Charles Town WV 25414
Robin Rhoads	111 Springdale Dr	
Hung Thai	121 Springdale Dr	
Jason Rankin	620 Mordington AVE	
STOLipher Mordington LLC	624 Mordington Ave	
11 11	626 Mordington Ave	
Susana Hernandez	650 S. George St	
Lutman Properties	~~Appx~~ 67 Lutmans CNSTE 100	Shenandoah Junction WV 25442

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 11-1-2024

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

_____ Date 10-31-24

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:_____

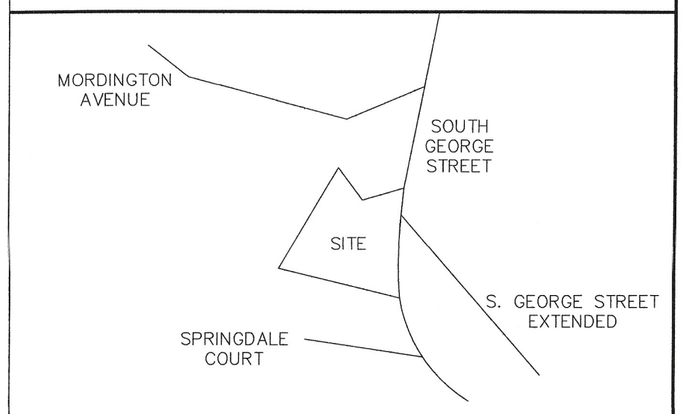
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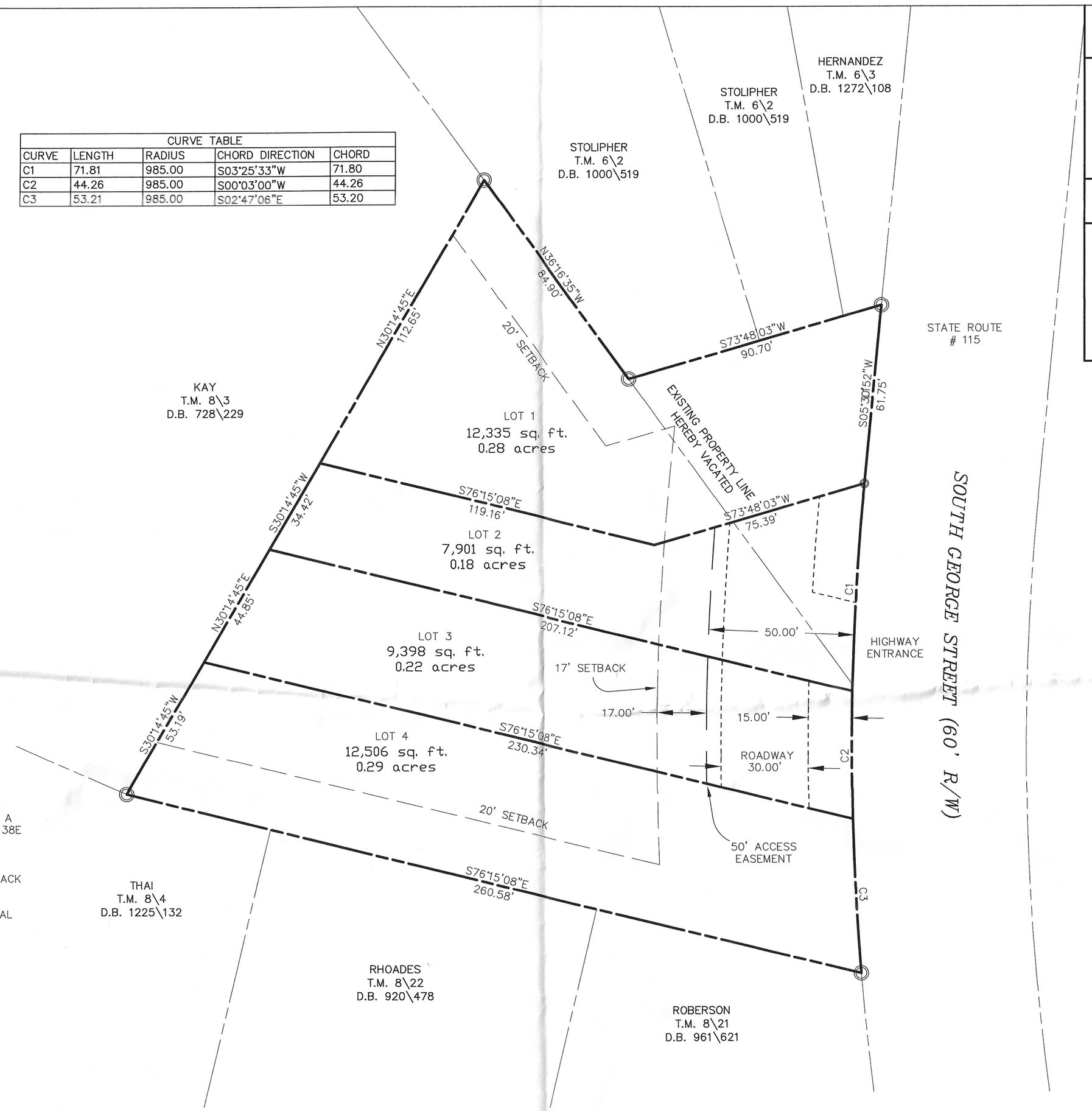
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VICINITY MAP 1" = 300'



CURVE TABLE				
CURVE	LENGTH	RADIUS	CHORD DIRECTION	CHORD
C1	71.81	985.00	S03°25'33"W	71.80
C2	44.26	985.00	S00°03'00"W	44.26
C3	53.21	985.00	S02°47'06"E	53.20





LEGEND

O = SET 5\8" REBAR

◎ = FOUND 5\8" REBAR

ACREAGE TABLE

LOT 1	0.28 acres
LOT 2	0.18 acres
LOT 3	0.22 acres
LOT 4	0.29 acres
TOTAL AREA	0.97 acres

THE PLATTING OR DEDICATION OF THE FOLLOWING DESCRIBED LAND (T.M. 6 PARCELS 147 & 4) IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS. PROPRIETORS, AND TRUSTEES, IF ANY.

ZALES CONSTRUCTION LLC.

NOTES:

THIS PROPERTY IS NOT MAPPED IN AN AREA DESIGNATED AS A SPECIAL FLOOD AREA AS SHOWN ON FEMA PANEL 540037C0138E DATED 12\18\2009.

THE CHANGE TO THESE LINES DOES NOT CREATE A SETBACK VIOLATION OR INCREASE THE NON-CONFORMITY OF ANY SETBACK VIOLATION.

THIS PROPERTY IS CURRENTLY ZONED : OLD TOWN RESIDENTIAL

THIS PLAT WAS APPROVED FOR RECORDATION BY THE CITY OF CHARLES TOWN

ZONING ADMINISTRATOR

SURVEYOR'S CERTIFICATE

THIS IS TO CERTIFY THAT ALL THE MONUMENTATION AS SHOWN ON THIS PLAT HAS BEEN FOUND OR SET BY ME AND THAT IT HAS AN ACCURACY OF CLOSURE THAT IS EQUAL TO OR GREATER THAN 1 PART IN 7,500.

PETER H. LORENZEN P.S.

PETER H LORENZEN LICENSED No. 948 STATE OF WEST VIRGINIA PROFESSIONAL SURVEYOR

GRAPHIC SCALE

30 0 15 30 60 120

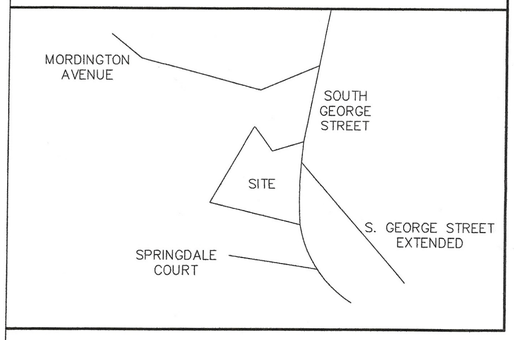
(IN FEET)
1 inch = 30 ft.

ZALES MINOR SUBDIVISION

PLAT SHOWING MINOR SUBDIVISION OF TAX MAP 6 PARCELS 4 & 147. STANDING IN THE NAME OF ZALES CONSTRUCTION, LLC, AS RECORDED IN THE OFFICE OF THE COUNTY CLERK OF JEFFERSON COUNTY IN DEED BOOK 1307\21 LOCATED IN CHARLES TOWN CORPORATION, JEFFERSON COUNTY, WEST VIRGINIA.

DWG # ZALES DATE-11/27/24

VICINITY MAP 1" = 300'

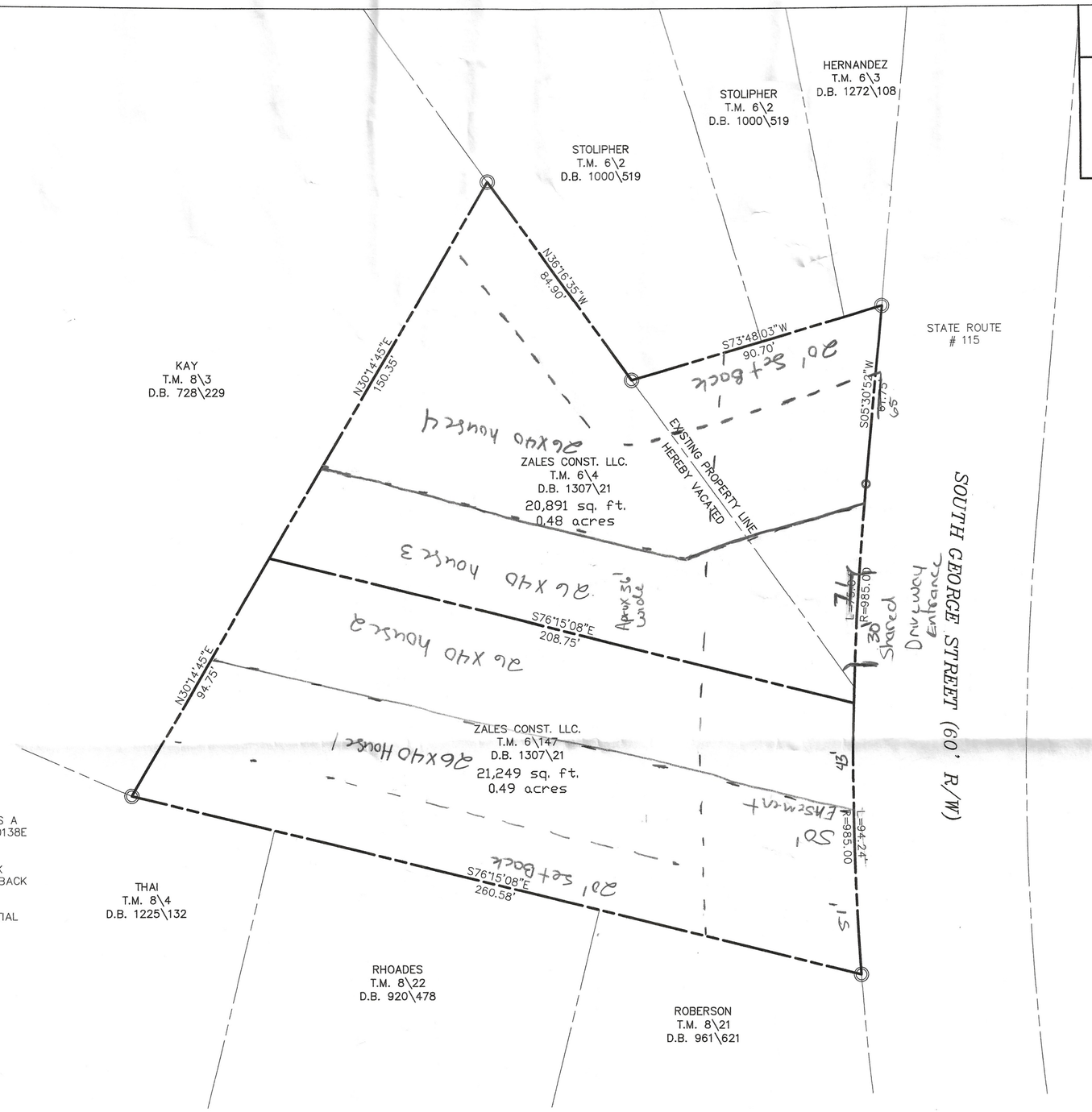


MAGNETIC

LEGEND

○ = SET 5\8" REBAR

◎ = FOUND 5\8" REBAR



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ZALES CONSTRUCTION LLC.

THIS PLAT WAS APPROVED FOR RECORDATION BY THE CITY OF CHARLES TOWN

ZONING ADMINISTRATOR

NOTES:

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PETER H. LORENZEN P.S.

GRAPHIC SCALE

30 0 15 30 60 120

(IN FEET)

1 inch = 30 ft.

ZALES LOT LINE ADJUSTMENT

PLAT SHOWING LOTLOT LINE ADJUSTMENT TAX MAP 6 PARCELS 4 & 147. STANDING IN THE NAME OF ZALES CONSTRUCTION, LLC, AS RECORDED IN THE OFFICE OF THE COUNTY CLERK OF JEFFERSON COUNTY IN DEED BOOK 1307\21 LOCATED IN CHARLES TOWN CORPORATION, JEFFERSON COUNTY, WEST VIRGINIA.

DWG # ZALES DATE-9/15/24

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

Meeting: 12/17/24
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

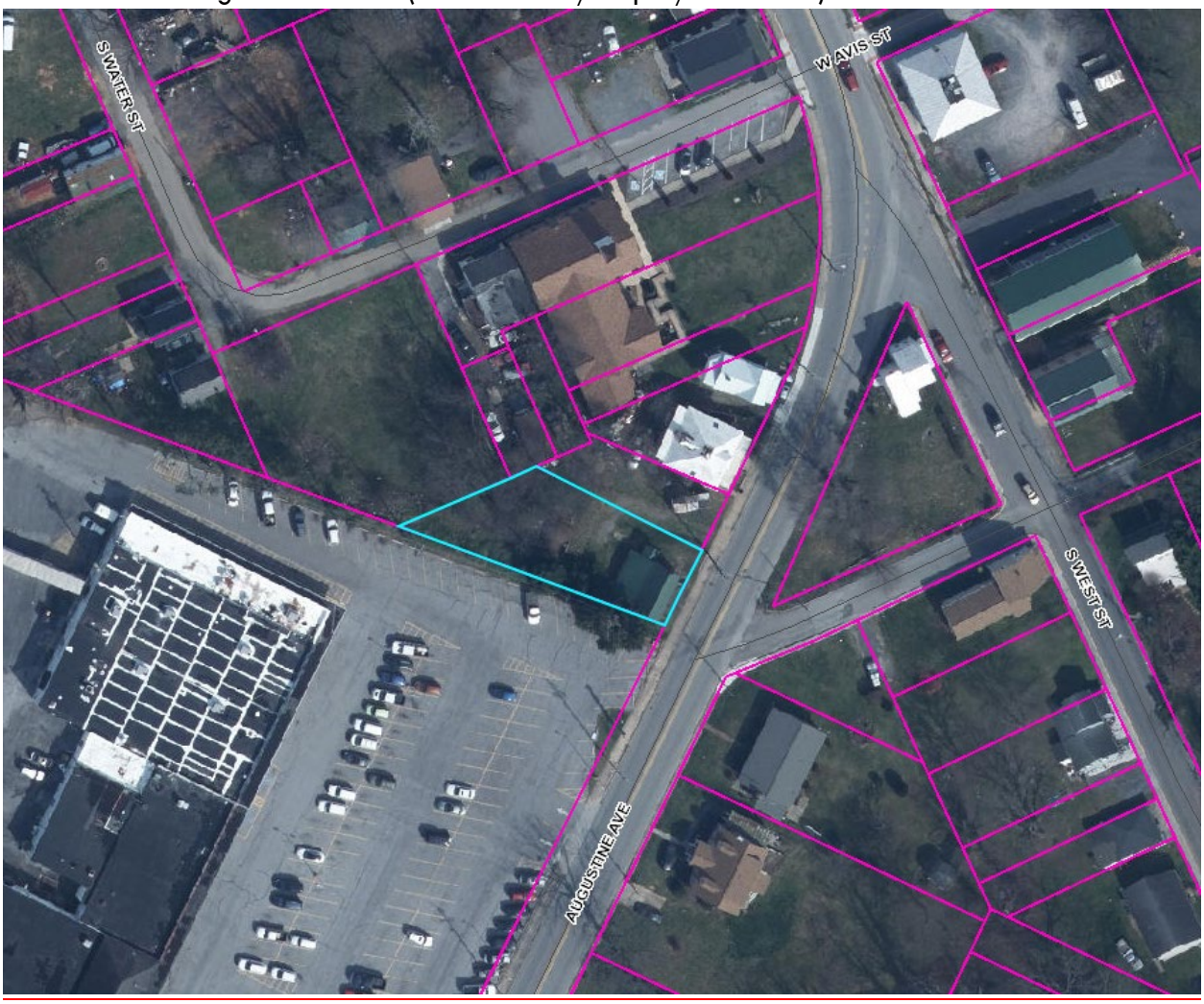
Public Hearing: *BA2024-09* - 114 Augustine Avenue

ATTACHMENTS:

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

Variance Request
BA-2024-09

Date: For the December 17, 2024 Board of Zoning Appeals meeting
Applicant: Paul Raco
Property Owner: Niederhauser Limited Partnership
Report by: James Newman, City Planner, Zoning/Subdivision Administrator.
Location: 114 Augustine Avenue (Tax District 3/Map 4/ Parcel 15)



OVERVIEW

The applicant is requesting variances for lot size. The applicant proposes to adjust the property line between 114 and 110 Augustine Avenue; additional land would be granted from 114 to 110, resulting in 114 not meeting the lot size requirements.

Applicant requests a variance for:

1. **Lot size.** 2' width to 3' depth ratio required. Current lot width is 80.12 ft and depth is 147.93 ft, a ratio slightly in excess of 2:3 ½ . The proposed new lot width would be 58.27 ft, with the depth remaining the same at 147.93, which would be a ratio of 2:5.

OLD TOWN MIXED USE COMMERCIAL ZONING DISTRICT

The Zoning Ordinance describes the Old Town Mixed Use Commercial (OT-MUS) District as:

Purpose: The purpose of the OT-MUC District is to recognize the diversity of existing Uses and provide for a wide range of Uses in a manner that strengthens Charles Town's urban core, contributes to its historic character, minimizes impacts on adjacent land Uses, and provides connections to annexed properties. The OT-MUC District shall include the areas formerly consisting of NC, OR, GC, CBD, and I Districts. The OT-MUC District will accommodate the Uses previously allowed in the individual districts because the OT-MUC District is designed to provide the flexibility and variety in one Zoning District that was previously provided by five districts.

*The OT-MUC District **furthermore 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 intent is also to encourage interaction among activities located within the OT-MUC District, to 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** with each of the Commercial and residential **Uses**, ensure that the appearance and effects of Buildings and Uses are harmonious with the character of the area in which they are located by:*

*1. **Allowing a diversity of Uses** in close proximity in the OT-MUC District within a limited area, **including residential**, retail, office, and industrial;*

2. Preserving and restoring the overall character of the OT-MUC District;

3. Promoting a balance of land Uses;

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

5. Providing opportunities for the development of affordable housing;

6. Providing opportunities for a mixture of Uses in the same Building;

7. Promoting a positive pedestrian environment in the OT-MUC District;

8. Facilitating integrated physical design;

9. Promoting a high level of design quality;

10. Encouraging the development of flexible space for small and emerging businesses;

11. Facilitating development proposals responsive to current and future market conditions; and

12. Encouraging the development of Open Spaces and Parks within the OT-MUC District to accommodate workers, residents, pedestrians and shoppers

Table 1322.12, OT-MUC District Bulk and Area Regulations

Maximum Density	No Requirement
Minimum Lot Size	2' width to 3' depth Ratio
Minimum Lot Width	20 feet
Minimum Front Yard Setback	0 feet or Front Setbacks shall be more than the average Setbacks of three Adjacent Properties to each side.[2]
Minimum Side Yard Setback	0 fee (20 feet where adjoining a residential district)
Minimum Rear Yard Setback	No Requirement
Maximum Lot Coverage	90 percent
Minimum Required Open Space	No Requirement
Maximum Building Height	55 feet
Maximum Stories	4 stories

(1) Legal Non-conforming Structures that are destroyed by fire and/or natural disaster are permitted to be rebuilt in their previous area and bulk configuration.

(2) In situations where there are not three (3) contiguous properties to either side of the subject property, where possible, reviewing the front setbacks in the next block on the same side of the street shall be considered. In locations where there are no structures in the contiguous block or if the block pattern changes significantly, the intent and spirit of the Zoning Ordinance is to maintain consistency and compatibility within the block where the structure is to be located. Examining the front setbacks across the street from the subject parcel is a reasonable alternative in so much that compatibility within the block is maintained. Discretion in determining the front setback to achieve the character and compatibility resides within the duties of the Zoning Administrator.

PROPOSED LOT DIMENSIONS



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;*

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.

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;*

The current lot boundaries were not created by the applicant; the applicant did not cause a hardship or special conditions.

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

This boundary line adjustment will grant additional side yard space to 110 Augustine Avenue while preserving ample side yard space for 114 Augustine Avenue.

D. *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.

CONCLUSION

The applicant is seeking the following variance:

	Required	**Proposed**
Minimum lot size	2:3 ratio	2:5

RECOMMENDATION

Approval.

BZA Variance No. _____

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.

BZA Variance No. _____

Plat Requirements

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

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

BZA Variance No. _____

1. DATE November 1, 2024, 20____

2. APPLICANT'S NAME* P.J. Raco, P.J. Raco Consulting, LLC., Consultant

   Address: P.O. Box 548, Charles Town, WV 25414

   Telephone Number (304)676-8256 Fax Number (___)

   Email Address pjraco.consulting@gmail.com

3. PROPERTY OWNER'S NAME Niederhauser Limited Partnership

   Address: P.O. Box 1084, Shepherdstown, WV 25443

   Telephone Number (304)283-0983 Fax Number (___)

   Email Address carlos8service@gmail.com

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

   Property Address: 114 Augustine Avenue

   Tax Map # and Parcel(s): Map 4, Parcel 15 and Parcel 16

   Deed Book and Page #: Deed Book 1320, Page 60 and Deed Book 1220, Page 411

   Property Area in Square Feet or Acres: Total of 2 Parcels are 0.295 Acres (

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

   Each of the two parcels have a house. Some of the one lot will be merged to the second to provide more equal side yards. Zoning is Old Town Mixed Use Commercial

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.)

   Proposed Use remains the same as the Existing Use. There are two houses and will continue to have two houses with similar side yards instead of no side yard on one.

*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.)

Currently none is planned other than two lots will do a minor boundary adjustment between them.

8. DESCRIPTION OF THE VARIANCE REQUEST:

In this district, the required width to depth ration is 2' width to 3' depth. After the merger, the larger lot will have a slightly smaller width to depth. However, nothing will change on the lots. After the merger, the new depth will be 96.7' instead of the permitted 87.4 depth.

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

Table 1322.12

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

Yes. Purpose of a Width to Depth Ratio is to make sure that newly created lots can sustain new house construction. In this case the lots and dwelling exist. The existence of the houses demonstrates that this intent is met. Plus it fixes a substandard side yard on one.

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

Nothing will change and the boundary adjustment will allow one house to have a side yard that doesn't currently exist. This allows the two lots each to have about an equal side yard. The boundary adjustment is between them and has no effect on adjacent parcels.

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:

Both lots and the existing property lines existed for many years prior to the Subdivision Ord. The houses were constructed without need of width to depth or side setbacks. This variance will actually allow the newly adjusted lots to be in more conformance with the overall goals.

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

This will first help correct the tax map that shows some disparity from the old deeds new Survey. Also, it will allow a lot with very little side yard about half of the larger side yard from the adjacent lot, that are now owned by the same property owner.

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

Yes, since the existence of the two houses on the two lots already demonstrate that the purpose of a width to depth ratio (ability to be utilized for construction) has been met. Plus, it will allow the equalization of a substandard side yard with area from the other lot.

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.)

Not to the Applicant's knowledge.

☐ 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

X _____ Date 11/01/2024

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

_____ Date 11/01/2024

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:_____

Adjoining Properties
Niederhauser Limited Partnership Variance
Charles Town Board of Zoning Appeals
Table 1322.12 Zoning Ordinance
November 1, 2024

Tax Year: 2025
Parcel: 03 4002300000000
Deeded Owner: ROPER MARK E
Parcel ID: 03 4002300000000
Tax Year: 2025
Deeded Owner: ROPER MARK E
C/O:
Owner Address: 418S SAMUEL ST
City: CHARLES TOWN
State: WV
Zip: 25414

Tax Year: 2025
Parcel: 03 4002200000000
Deeded Owner: JOHNSON GREGORY D
Parcel ID: 03 4002200000000
Tax Year: 2025
Deeded Owner: JOHNSON GREGORY D
C/O:
Owner Address: 415W AVIS ST
City: CHARLES TOWN
State: WV
Zip: 25414

Tax Year: 2025 Owners of Four Parcels
Parcel: 03 4001800000000; 03 4001900000000; 03 4002000000000; and, 03 400210000000
Deeded Owner: WAINWRIGHT BAPTIST CHURCH TRUSTEES
Parcel ID: 03 4001800000000
Tax Year: 2025
Deeded Owner: WAINWRIGHT BAPTIST CHURCH TRUSTEES
C/O:
Owner Address: 0 PO BOX 674
City: CHARLES TOWN
State: WV
Zip: 25414

Tax Year: 2025
Parcel: 03 4001700000000
Deeded Owner: PURVIS AMANDA K
Parcel ID: 03 4001700000000
Tax Year: 2025
Deeded Owner: PURVIS AMANDA K
C/O:
Owner Address: 104 AUGUSTINE AVE
City: CHARLES TOWN
State: WV
Zip: 25414

Tax Year: 2025
Parcel: 03 4005600000000
Deeded Owner: KR MANAGEMENT LLC
Parcel ID: 03 4005600000000
Tax Year: 2025
Deeded Owner: KR MANAGEMENT LLC
C/O:
Owner Address: 316S WEST ST
City: CHARLES TOWN
State: WV
Zip: 25414

Tax Year: 2025 Owners of Two Parcels
Parcel: 03 4005700000000; and, 03 005800000000
Deeded Owner: CLAY MELVIN M & THELMA B
Parcel ID: 03 4005700000000
Tax Year: 2025
Deeded Owner: CLAY MELVIN M & THELMA B
C/O:
Owner Address: 123 AUGUSTINE AVE
City: CHARLES TOWN
State: WV
Zip: 25414

Tax Year: 2025
Parcel: 03 4001400000000
Deeded Owner: GHUMAN PROPERTIES LLC
Parcel ID: 03 4001400000000
Tax Year: 2025
Deeded Owner: GHUMAN PROPERTIES LLC
C/O:
Owner Address: 145 AUGUSTINE AVE
City: CHARLES TOWN
State: WV
Zip: 25414



LOCATION MAP 1"=2000'

FINAL PLAT

SHOWING BOUNDARY LINE ADJUSTMENT BY MERGER
FROM NIEDERHAUSER LIMITED PARTNERSHIP
MAP 04 PARCEL 15
DEED BOOK 1320 PAGE 60
TO NIEDERHAUSER LIMITED PARTNERSHIP
MAP 04 PARCEL 16
DEED BOOK 1220 PAGE 411
CHARLES TOWN CORPORATION
JEFFERSON COUNTY, WEST VIRGINIA

GENERAL NOTES:

1. Property corners are set 5/8" rebars with ID caps unless noted otherwise on the plat.
2. This survey has been prepared without the benefit of a title report and may be subject to easements and encumbrances which a title report would reveal. This described parcel is subject to all easements, restrictions, rights-of-way, utilities of record and agreements, if any, as the same may appear in the public records in the office of the Clerk of the Jefferson County Commission
3. The FEMA flood insurance rate map for Jefferson County, Panel 136 of 245, map number 54037C0136E shows that the no portion of the subject property is within an identified flood hazard area.
4. According to the National Wetlands Inventory Map, there is a no wetlands on the subject property.
5. Zoning District: Old Town Mixed Use Commercial.
6. Setback limits for the subject lots are 0 feet Front, 0 feet Side, and 0 feet Rear.
7. This change to the lot line does not create a setback violation or increase the non-conformity of any existing setback violation.

NAD '83 WV NORTH BASED ON GNSS OBSERVATIONS

SHEET INDEX:
SHEET 1: COVER SHEET
SHEET 2: BOUNDARY INFORMATION

Approved

Corporation of Charles Town

Date

Owner/Developer'S Statement of Acceptance:

"The developer, in signing this plat, agrees to abide by all conditions, terms and specifications provided hereon."

NIEDERHAUSER LIMITED PARTNERSHIP

REV	DATE	DESCRIPTION	APP'D

Surveyor's Certification

This is to certify that all the monumentation as shown on this plat has been found or set by me.

R Michael Shepp

R. Michael Shepp, PS

10/15/2024

Date

R. MICHAEL SHEPP LICENSED No. 641 STATE OF WEST VIRGINIA PROFESSIONAL SURVEYOR

OWNER:
NIEDERHAUSER LIMITED PARTNERSHIP
P. O. BOX 1084
SHEPHERDSTOWN, WV 25443

FINAL PLAT

BOUNDARY LINE ADJUSTMENT
BY MERGER
FROM
NIEDHAUSER LIMITED PARTNERSHIP
TO
NIEDHAUSER LIMITED PARTNERSHIP

304-283-0983

PO BOX 1084, SHEPHERDSTOWN, WV 25443

CHARLES TOWN CORPORATION MAP 04 PARCEL 15

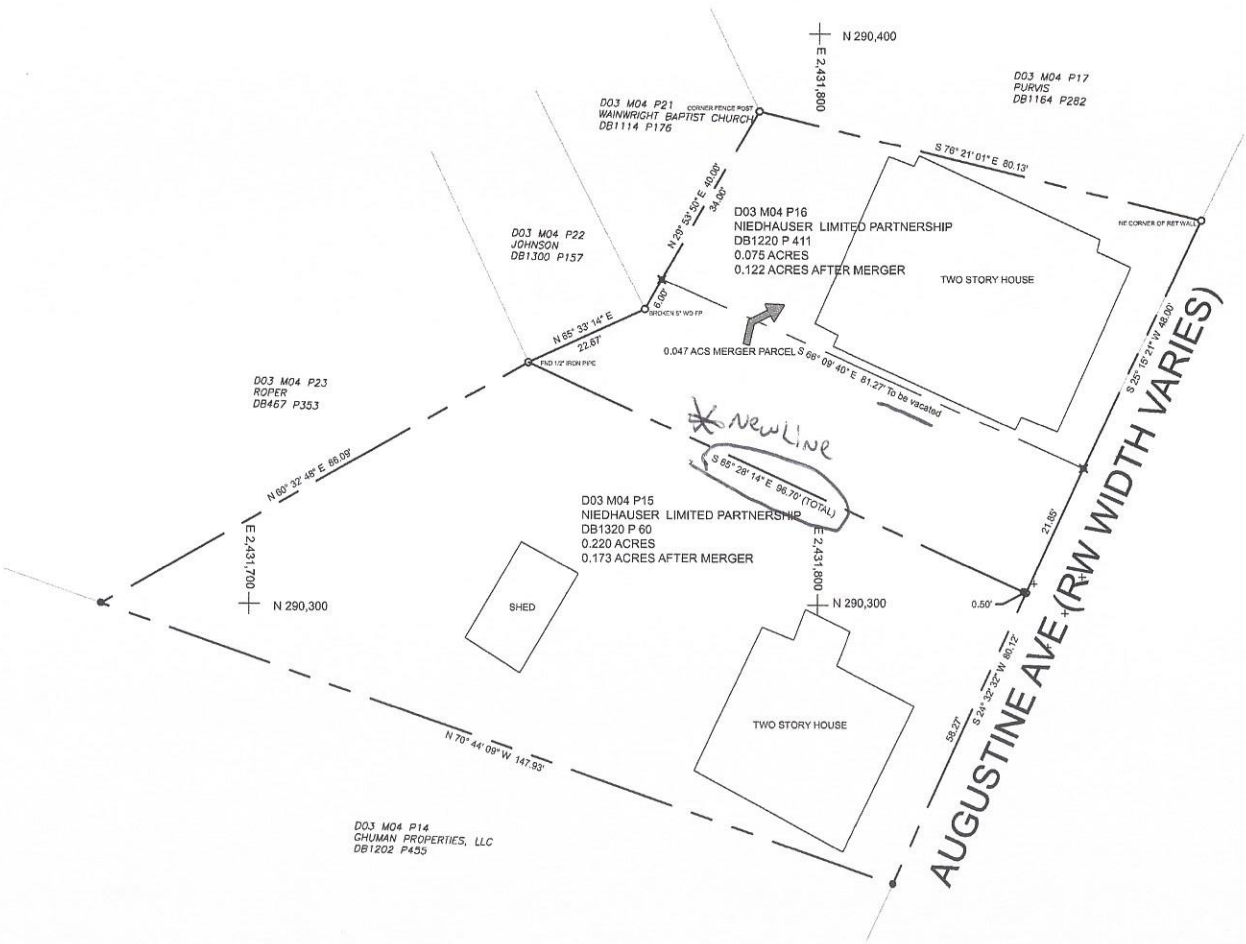
DEED BOOK 1220 PAGE 411

JEFFERSON COUNTY, WV

SHEPP SURVEYING & MAPPING, PLLC
R. MICHAEL SHEPP, PS
PO BOX 1162
SHEPHERDSTOWN, WV 25443-1162
304.433.5000
sheppsurveying@outlook.com

SCALE: 1"=15'
DATE: September 3, 2024
JOB No: 24016

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LEGEND

- UNMARKED POINT
- UTILITY POLE
- FND #5 REBAR NO CAP
- SET #5 REBAR SHEPP CAP
- EXISTING BOUNDARY
- OH — OH — OH WIRES
- SETBACK LIMIT
- ADJOINER DEPARTING LINE
- SEPTIC RESERVE AREA
- ACCESS EASEMENT
- OPEN SPACE
- E 2,451,000 / N 307,000 — MAPPING COORDINATE GRID TICK

REV	DATE	DESCRIPTION	APP'D

15' 0 15' 30'
(SCALE IN FEET)

FINAL PLAT

BOUNDARY LINE ADJUSTMENT
BY MERGER
FROM
NIEDHAUSER LIMITED PARTNERSHIP
TO
NIEDHAUSER LIMITED PARTNERSHIP

PO BOX 1084, SHEPHERDSTOWN, WV 25443
CHARLES TOWN CORPORATION MAP 04 PARCEL 15
DEED BOOK 1220 PAGE 411
JEFFERSON COUNTY, WV

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SHEET 2 OF 2

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

Meeting: 12/17/24
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

DRAFT 2025 Meeting Calendar

ATTACHMENTS:

- 2025-Board-of-Zoning-Appeals-DRAFT.pdf

CITY OF CHARLES TOWN

Department of Community Development
Division of Planning & Zoning

101 East Washington Street, P.O. Box 14, Charles Town, WV 25414
Phone: (304) 724-3248 ♦ Fax: (304) 725-1014 ♦ Web: www.charlestownwv.us

2025 MEETING SCHEDULE OF THE CITY OF CHARLES TOWN BOARD OF ZONING APPEALS

Meetings are held in the Council Chambers at City Hall, at 101 East Washington Street, at 7pm., on the 3rd Tuesday of every month unless otherwise specified.

Scheduled Meetings	**Submission Deadline**
Wednesday, January 22, 2025	Monday, December 2, 2024
Wednesday, February 19, 2025	Thursday, January 2, 2025
Tuesday, March 18, 2025	Monday, February 3, 2025
Tuesday, April 15, 2025	Monday, March 3, 2025
Tuesday, May 20, 2025	Tuesday, April 1, 2025
Tuesday, June 17, 2025	Thursday, May 1, 2025
Tuesday, July 15, 2025	Monday, June 2, 2025
Tuesday, August 19, 2025	Tuesday, July 1, 2025
Tuesday, September 16, 2025	Friday, August 1, 2025
Tuesday, October 21, 2025	Tuesday, September 2, 2025
Tuesday, November 18, 2025	Wednesday, October 1, 2025
Tuesday, December 16, 2025	Monday, November 3, 2025
Tuesday, January 20, 2026	Monday, December 1, 2025

Bold dates - These are the BZA's minimum quarterly meeting dates. If additional business is required to be conducted, the other dates are available.

Italicized date - Indicates this meeting is not on the regularly scheduled meeting date.

Legal ads are published in the newspaper *Spirit of Jefferson.*