CITY OF CHARLES TOWN
BOARD OF ZONING APPEALS
AGENDA • NOVEMBER 18, 2025

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

1. CALL TO ORDER

2. DETERMINATION OF QUORUM

3. APPROVAL OF MINUTES

: DRAFT August 19, 2025 minutes
2025_August_19_DRAFT_BZA_minutes.pdf

4. APPROVAL OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW

: **BA2025-03** - 1 Onyx Lane - *Variance*
BA 2025-03.pdf

5. PUBLIC HEARINGS

6. CONTINUED CASES

7. OTHER BUSINESS

: 2026 Calendar
2026 DRAFT Calendar.pdf

8. ADJOURNMENT

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

https://www.charlestownwv.us/government/agendas_minutes.php

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

Meeting: 11/18/25
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

DRAFT August 19, 2025 minutes

ATTACHMENTS:

- 2025_August_19_DRAFT_BZA_minutes.pdf

CITY OF CHARLES TOWN

BOARD OF ZONING APPEALS

MINUTES • August 19, 2025

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

101 East Washington Street, Charles Town, WV 25414

1. CALL TO ORDER

Present: Jim Thomas, Vice Chair
Christopher Cox
Anita Finkelstein

Locke Wysong - Absent

Staff: James Newman, Zoning Administrator

2. DETERMINATION OF QUORUM

3. APPROVAL OF MINUTES

3.1: Minutes – July 15, 2025

RESULT:	**Approved**
MOVER:	Finklestein
SECONDER:	Cox
AYES:	Cox, Thomas, Finkelstein

4. APPROVAL OF FINDINGS OF FACTS AND CONCLUSTIONS OF LAW

4.1: BA2025-02 – 525 S Samuel St - Variance

Motion to approve the findings of facts and conclusions of law:

RESULT:	**Approved**
MOVER:	Cox
SECONDER:	Finklestein
AYES:	Cox, Thomas, Finkelstein

5. PUBLIC HEARINGS

5.1: BA2025-03 – 1 Onyx Lane - Variance

Staff presentation.

DRAFT

The applicant David Acly representing Zales Construction stated that they measured the front and the back setbacks using a fence from the neighbor's property; the fence was not placed directly on the property line thus causing the issue. It was brought to their attention by their surveyor when he completed the as-built.

Board discussion.

Motion to enter deliberation at 7:13 pm

RESULT:	**Approved**
MOVER:	Cox
SECONDER:	Finklestein
AYES:	Cox, Thomas, Finkelstein

Motion to resume at 7:16 pm

RESULT:	**Approved**
MOVER:	Cox
SECONDER:	Finklestein
AYES:	Cox, Thomas, Finkelstein

Motion to approve BA2025-03 variance as presented by staff and represented by the applicant:

RESULT:	**Approved**
MOVER:	Cox
SECONDER:	Finklestein
AYES:	Cox, Thomas, Finkelstein

6. CONTINUED CASES

None.

7. OTHER BUSINESS

None.

8. ADJOURNMENT

Adjournment at 7:22 pm

RESULT:	**Approved**
MOVER:	Cox
SECONDER:	Finkelstein
AYES:	Cox, Thomas, Finkelstein

DRAFT

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

Meeting: 11/18/25
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

BA2025-03 - 1 Onyx Lane - *Variance*

ATTACHMENTS:
- BA 2025-03.pdf

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

In re: Docket No. BA 2025-03 – Application for Variance by David Acly

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

This matter came before the Board of Zoning Appeals at regular meeting held on the 19th day of August 2025, for public hearing upon the application for a Variance filed by David Acly (the "Applicant"), who also owns the property. Board members present were Vice Chair, James Thomas, Jr., Christopher Cox, and Anita Finkelstein, being a quorum. Also present was the City's Zoning/Subdivision Administrator, James Newman.

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 1321.11 (E) and 1322.11 OT-R of the Zoning Ordinance** with respect to the minimum sideyard setback of 20 feet to 18.82 feet, as specified in **Section 1322.12, Old Town Mixed Use Commercial (OT-MUC) District**, and **Table 1322.12, OT-MUC District Bulk and Area Regulations, of the City of Charles Town Zoning Ordinance**. The subject real property consists of a partially constructed single family home on a lot and is located in the Charles Town Corporation District on Tax Map 6, Parcel 147.

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. Mr. Newman 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 stated that the Applicant requested the variance due to an error in construction that resulted in a side setback that was 1.18 feet less than the required 20 feet and noted that the purpose of the OT-MUC district is to provide a greater opportunity for creative infill development and diverse range of uses. Staff recommended approval of the requested variances.

The Board had no questions for Mr. Newman.

The Applicant, David Acly, was next sworn in and testified. The Applicant stated that during construction, the construction crew measured the side setback from an existing fence that encroached into the intended twenty foot side setback. As a result, the structure was constructed 1.18 feet short of the required twenty foot setback.

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 Finkelstein, the Board determined, by a vote of three (3) in favor and zero (0) opposed, that, in accordance with Section 1321.11(E)(3) of the Zoning Ordinance, the requested Variance should be granted, as presented, for the reasons set forth below.

FINDINGS OF FACT

The Board hereby finds as follows:

1. The Variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents. The structure in question was constructed and, as it currently stands, does not conform to the applicable zoning setback requirements. Despite this state of non-conformity, the Board finds that the presence of the structure does not cause harm to neighboring property owners. There is no evidence or indication that the reduced

side setback has resulted in any adverse impact on adjacent properties or that it has impaired the use or enjoyment of those properties. Accordingly, the Board concludes that the requested Variance will not be detrimental to the surrounding neighborhood.

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 hardship in this matter arose due to an error made by the construction crew during the building process. Specifically, the crew placed the structure 1.18 feet closer to the side yard setback line than permitted by the zoning requirements. This unintended deviation from the required setback resulted in the need for the requested variance.

3. The Variance will eliminate an unnecessary hardship and permit a reasonable use of the land. The property in question is permitted, by right, to be used for a single family detached home under current zoning regulations, and as such, the current constructed use fully complies with the existing zoning designation. Should the requested variance be denied, the Applicant would be required to demolish and rebuild the side wall of the structure to meet the prescribed setback distance. Given the advanced stage of construction, undertaking such demolition and reconstruction could pose risks to the overall structural integrity of the building.

4. The Variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done. The small distance involved in this request (1.18 ft.) is not noticeable at the property line, and does not pose a threat to fire-distance or passage of light and air around the property. As previously noted, the current and intended use of the property is a permitted use in the OT-MUC zoning district.

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[1], 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 allow for a reduction of the side setback requirements from 20 feet to 18.82 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: 11/18/25
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

2026 Calendar

ATTACHMENTS:

- 2026 DRAFT Calendar.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

2026 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**
Tuesday January 20, 2026	Monday, December 1, 2025
Wednesday, February 18, 2026	Friday, January 2, 2026
Tuesday, March 17, 2026	Monday, February 2, 2026
Tuesday, April 21, 2026	Monday, March 2, 2026
Tuesday, May 19, 2026	Wednesday, April 1, 2026
Tuesday, June 16, 2026	Friday, May 1, 2026
Tuesday, July 21, 2026	Monday, June 1, 2026
Tuesday, August 18, 2026	Wednesday, July 1, 2026
Tuesday, September 15, 2026	Monday, August 3, 2026
Tuesday, October 20, 2026	Tuesday, September 1, 2026
Tuesday, November 17, 2026	Thursday, October 1, 2026
Tuesday, December 15, 2026	Monday, November 2, 2026
Tuesday, January 19, 2027	Tuesday, December 1, 2026

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.*