

Berryville – Clarke County
Government Center
101 Chalmers Court, Suite A
Berryville, VA 22611



**TOWN OF
BERRYVILLE
VIRGINIA**

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**BERRYVILLE BOARD OF ZONING APPEALS
CALLED MEETING**
Thursday, May 23, 2024 – 1:00 p.m.
Berryville-Clarke County Government Center
101 Chalmers Court – **Main Meeting Room** – Second Floor
Berryville, Virginia

AGENDA

1. Call to Order – Christy Dunkle, Zoning Administrator
2. Election of Officers – Chair, Vice Chair
3. Approval of Agenda
4. Approval of Minutes – January 19, 2023
5. Public Hearing – Variance
Bradley J. Gable and Melinda D. Gable, Owners, are requesting a variance from Section 604.5(b)(1), minimum lot width for an interior lot, of the Town of Berryville Zoning Ordinance in order to allow a minor subdivision of the property located at 512 and 516 South Church Street, identified as Tax Map Parcel number 14-((A))-43 zoned DR-4 Detached Residential-4. VR 01-24
6. Other
7. Adjourn

Harry Lee Arnold, Jr.
Mayor

Erecka L. Gibson
Vice Mayor

Council Members

William Steinmetz
Ward 1

Diane Harrison
Ward 2

Grant Mazzarino
Ward 3

Ryan Tibbens
Ward 4

Keith R. Dalton
Town Manager

**BOARD OF ZONING APPEALS
TOWN OF BERRYVILLE
DRAFT MINUTES OF ORGANIZATIONAL MEETING
Thursday, January 19, 2023**

The organizational meeting of the Berryville Board of Zoning Appeals was held on Thursday, January 19, 2023. The meeting was called to order by Christy Dunkle, Town Planner, at 7:00 p.m. in the Berryville – Clarke County Council Chambers located at 101 Chalmers Court in Berryville, Virginia.

ATTENDANCE

The members of the Board present were: Dandridge Allen, Jay Briggs, Gerald Dodson (remote), Gwen Malone, Allen McWilliams

Absent: None

The following staff member was present: Christy Dunkle, Community Development Director

Press: None

Ms. Dunkle called the meeting to order at 7:08 p.m.

ELECTION OF OFFICERS

Mr. McWilliams nominated Ms. Gwen Malone as Chair, seconded by Dr. Allen, the motion passed unanimously by voice vote.

Mr. McWilliams nominated Mr. Dodson for Vice Chair, seconded by Chair Malone, the motion passed unanimously by voice vote.

APPROVAL OF AGENDA

Chair Malone moved, seconded by Mr. McWilliams, to approve the agenda as written. The motion passed unanimously by voice vote.

APPROVAL OF MINUTES

Dr. Allen moved, seconded by Chair Malone, to approve the minutes of August 16, 2018 meeting as written. The motion passed unanimously by voice vote.

DISCUSSION – Section 505 Board of Zoning Appeals of the Berryville Zoning Ordinance

Ms. Dunkle said that she would like to discuss Section 505 as it relates to Board of Zoning Appeals responsibilities and tasks. She said the ordinance was updated in 2016 in order to conform to changes made in the Code of Virginia. She identified Section 505.1(n) Hearings – Procedures, which states that non-legal staff of the Town Council may have ex parte communications with a member of the Board prior to the hearing but may not discuss the facts or law relative to the case before the Board of Zoning Appeals.

Ms. Dunkle discussed Section 506 Modifications, which allows for administrative determinations for modifications as long as all of the items required in the zoning ordinance are met. She added that this was a significant change from the previous iteration of the ordinance.

Mr. Briggs asked if any other changes need to be made. Ms. Dunkle said there were not.

DISCUSSION – Certified Board of Zoning Appeals Training Opportunities

Ms. Dunkle said that the VCU Land Use Education Program is offering a virtual Certified Board of Zoning Appeals Training in February. Mr. Briggs and Chair Malone said they would like to take the class. Mr. Dodson said he may be interested and would let staff know by the registration deadline.

OTHER

Mr. Briggs requested that each member introduce themselves and tell members about themselves.

ADJOURNMENT

There being no further business to come before the Board, on motion by Mr. McWilliams, seconded by Mr. Briggs, the meeting was adjourned at 7:28p.m.

Gwen Malone, Chair

Christy Dunkle, Recording Secretary

Bradley J. Gable and Melinda D. Gable, Owners, are requesting a variance from Section 604.5(b)(1), minimum lot width for an interior lot, of the Town of Berryville Zoning Ordinance in order to allow a minor subdivision of the property located at 512 and 516 South Church Street, identified as Tax Map Parcel number 14-((A))-43 zoned DR-4 Detached Residential-4. VR 01-24

The request before you is for a variance from front lot width requirements for a parcel in the DR-4 Residential zoning district.

The Code of Virginia identifies powers and duties of Boards of Zoning Appeals as follows:

§ 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.
2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § [15.2-2201](#), provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § [15.2-2201](#) and the criteria set out in this section.

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii)

the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § [15.2-2309](#) or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § [15.2-2286](#) at the time of the filing of the variance application. Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals under this section is required in order for such request to be granted.

No variance shall be considered except after notice and hearing as required by § [15.2-2204](#). However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § [15.2-2204](#). However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.
4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § [15.2-2204](#), the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.
6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § [15.2-2204](#). However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § [15.2-2204](#). However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § [15.2-2286](#), and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.
8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § [15.2-2312](#) shall be conducted at the continued meeting and no further advertisement is required.

Code 1950, §§ 15-831, 15-850, 15-968.9; 1950, p. 176; 1962, c. 407, § 15.1-495; 1964, c. 535; 1972, c. 695; 1975, cc. 521, 641; 1987, c. 8; 1991, c. 513; 1996, c. [555](#); 1997, c. [587](#); 2000, c. [1050](#); 2002, c. [546](#); 2003, c. [403](#); 2006, c. [264](#); 2008, c. [318](#); 2009, c. [206](#); 2015, c. [597](#); 2018, c. [757](#).

VA Code § 15.2-2201. Definitions.

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

Requested Action

The applicants are requesting a variance from Section 604.5(b)(1) of the Berryville Zoning Ordinance which establishes a minimum lot width for an interior lot of 75 feet.

There are two existing buildings on the property, 512 and 516 South Church Street. 512 South Church Street was a former store which will not be permitted under DR-4 zoning. 516 South Church is a single-family house. The applicants would like to create a second parcel with a lot width of 65.73 feet which would not conform to regulations established in Section 604 of the Zoning Ordinance. The minor subdivision will also need to be approved by the Berryville Area Development Authority who is the administrative body within the annexation area.

Existing Conditions

This parcel and all adjacent properties are zoned DR-4 Detached Residential.

Utility Information

512 South Church Street will be required to pay availability fees for both water and sewer. 516 South Church Street is already on public utilities.

Advertisement

The public hearing notice was published in the Winchester Star on Thursday, May 14 and Thursday, May 21, 2024. Adjacent property owners were notified via first class mail on May 10, 2024. Staff has not received any comments.

Staff Comments

The total property area is 27,469 square feet with the proposed lots for parcels 1-1 and lot 1-2 are 14,286 square feet and 13,813 square feet, respectively. Both conform to the minimum lot size established in the zoning ordinance of 10,000 square feet.

No additional non-conformance would be created by allowing the variance for the subdivision to occur.

The following materials are included in this packet

1. Land Development Application;
2. Application for Zoning Variance;
3. Vicinity map;
4. Subdivision plat;
5. Photographs of the property;
6. Public hearing notice published on May 9 and May 16, 2024 in the Winchester Star;
7. Adjacent property owners' notice mailed on May 10, 2024;

8. Section 604 DR-4 Residential from the Berryville Zoning Ordinance;
9. Section 505 Board of Zoning Appeals of the Berryville Zoning Ordinance; and
10. Motions for approval and denial of the request.

*In granting this variance, a precedent for future requests may be set.
It would be appropriate for the BZA to make a decision at this meeting.*

PLEASE NOTE:

Please note that State Code requires that a majority vote of the Board (three) is necessary to grant a variance. If there are only three members present, all three would have to vote in the affirmative to grant the variance.

LAND DEVELOPMENT APPLICATION TOWN OF BERRYVILLE

(Please print or type)

Current Property Owner Bradley J. Gable Melinda D. Gable

Owner's Address 20744 AIRMONT Rd, Bluemont, VA 20135

Phone (703) 928-5715

Agent (Contact Person) Bradley Gable

Agent's Address 20744 AIRMONT Rd, Bluemont VA 20135

Phone (703) 928-5715 bradleyjgable@gmail.com

Check Appropriate Request:

- Subdivision - creating more than 2 lots
- Minor Subdivision - single lot divided into 2 lots
- Boundary Line Adjustment
- Site Plan
- Rezoning
- Text Amendment: _____ Zoning or _____ Subdivision Ordinance
- ARB Certificate of Appropriateness
- Town of Berryville Utilities
- Other: VARIANCE

Complete As Applicable:

Nature of Request/Proposal: sub division of 512 and 514 S. Church St

Tax Map & Parcel Number(s): 14-A--43

Size of Project Site: 27,469 SF

Proposed # of Lots: 2 Existing Zoning DR-4

Owner or Agent: The information provided is accurate to the best of my knowledge. I understand that the Town may deny, approve, or conditionally approve the request for which I am applying. I certify that all property corners have been clearly staked and flagged.

Signature: _____ Date: 4/16/24

Owner: I have read this completed application, understand its intent, and freely consent to its filing. Furthermore, I grant permission to the Town Planning Department and other government agents to enter the property and make such investigations and tests, as they deem necessary. I acknowledge that in accordance with Article X of the Subdivision Ordinance I am responsible for costs incurred for review of subdivision and/or development plans by the Town's engineer and that any other required tests or studies will be carried out at owner/agent expense

Signature: _____ Date: 4/16/24

OFFICE USE ONLY

Public Hearing Required? Y Dates Advertised May 9 & May 16, 2024

Adjoining Property Owners Notified? sent 5-10-24 Sign posted May 8

Action Taken: _____

APPLICATION FOR A ZONING VARIANCE

Applicant's Name Bradley J. Gable Melinda D. Gable

Address 20744 Airmont Rd, Bluemont VA 20135 Phone # 703) 928-5715

Description of variance requested:
Divide 516 South Church Street from old
Peffer store 512, South Church St. 512 S
church will have 75' of road frontage. 516
south church will only have 65.73'

For property located at 516 S. Church St Map # 14-A--43
Berryville VA 22611

Property Owner's Name Bradley J. Gable Melinda D. Gable

(1) Please state how the strict application of the zoning ordinance creates an undue hardship for you. (Note: Financial loss, standing alone, does not establish an extraordinary or exceptional situation or hardship to justify granting a variance.)

The two standing, existing structures 512 and 516 should be separate physical lots. with two structures it is atypical and difficult to finance.

(2) Please state how your hardship is not shared generally by other properties in the same zoning district and the same vicinity.

Most properties do not have two full structures.

(3) Please state why the granting of a variance will not be of substantial detriment to adjacent property, and why the variance will not change the character of the district:

The properties already exist.

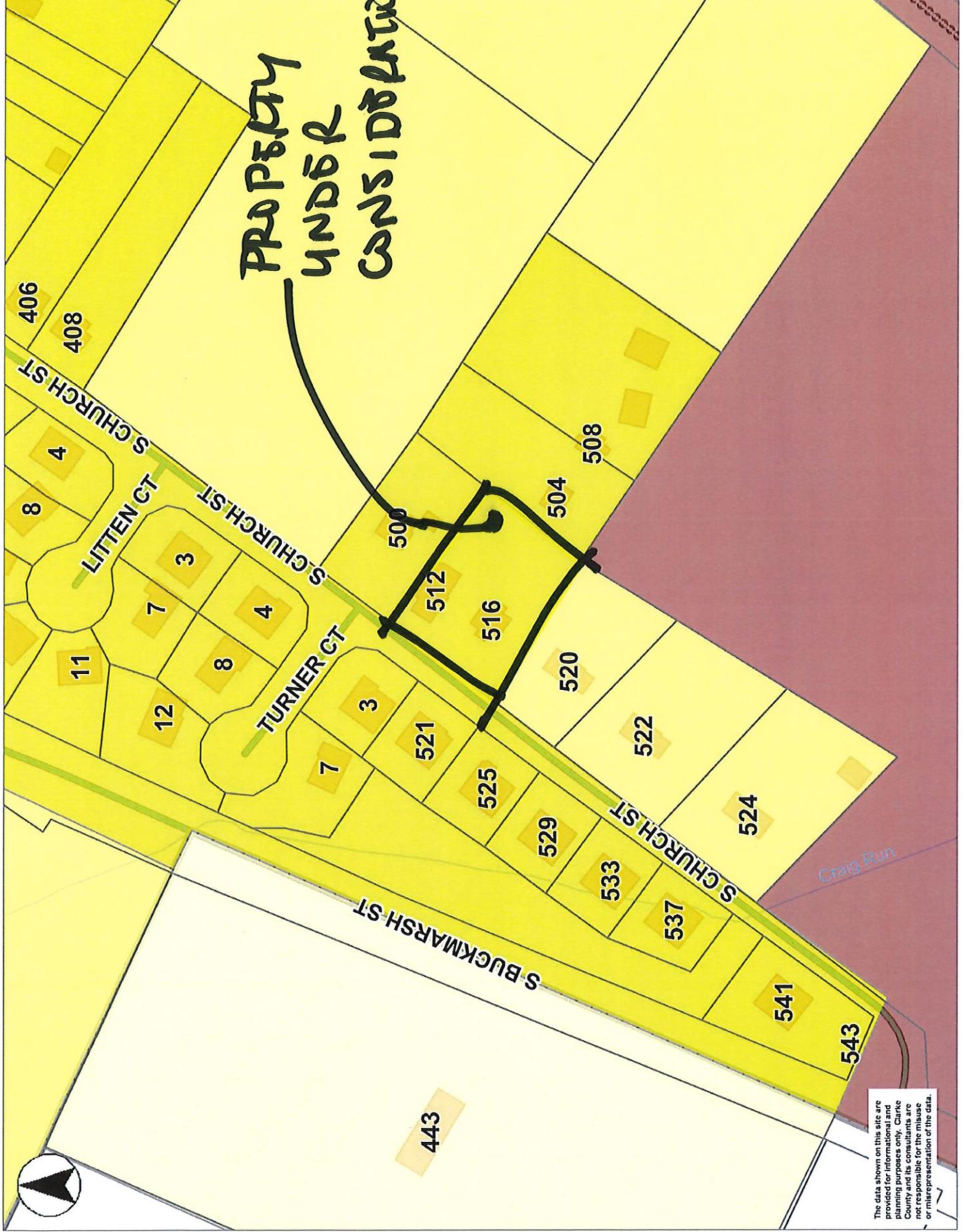
(4) To your knowledge, is the condition or situation of your property so general or recurring that the Zoning Ordinance ought to be changed so as to eliminate the need for other property owners with the same condition or situation to apply for a variance? NO If yes, please explain:

Very unique situation

Signed [Signature] Date 4/16/24



- Public
- Parcels
- Berryville Zoning
- Detached Res-1 (DR)
- Detached Res-2 (DR)
- Detached Res-4 (DR)
- Residential-1 (R-1)
- Residential-2 (R-2)
- Residential-3 (R-3)
- Attached Res (AR)
- Older Persons Res (OP)
- Open Space Res (OS)
- Business (B)
- Business Park (BP)
- Bus Commercial (BC)
- Light Commercial (LC)
- Downtown Commercial (DC)
- Light Industrial (L-1)
- Institutional (ITL)
- Clarke County Boundary
- Major Roads
- Interstate
- US Highway
- State Highway
- County Planning Committee Open
- Clarke County Roads
- Private Roads
- Roads
- Rail
- Buildings
- Appalachian Trail
- Streams
- Perennial Streams
- Intermittent Streams
- Ponds
- Rivers



The data shown on this site are provided for informational and planning purposes only. Clarke County and its consultants are not responsible for the misuse or misrepresentation of the data.



SUBDIVISION PLAT

LOT 1

TOWN OF BERRYVILLE, CLARKE COUNTY, VIRGINIA

April 21, 2024

OWNER'S CERTIFICATE

The above and foregoing subdivision of the land conveyed to Bradley and Melinda Gable, as appears on the accompanying plat, along with dedication of easements is with the free consent and in accordance with the desires of the undersigned owners, proprietors and trustees, if any.

Melinda Gable Bradley J Gable



STATE /COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF LOUDOUN, to wit:

The foregoing Owner's Certificate was acknowledged before me this 24th day of APR, 2024.

by Kimbely Lynn Jarrett

My commission expires 9/30/25

Notary Public Registration Number 7559341

SURVEYOR'S CERTIFICATE

I, Mostafa Pourkiani, a duly Licensed Professional Engineer & Land Surveyor in the Commonwealth of Virginia, do hereby certify that the land contained in this boundary line adjustment survey is all of the land conveyed to "Melinda D & Bradley J Gable" by a deed dated November 7th, 2022, to be found among the records of Clarke County in Deed Book 652 Page 586.

Mostafa Pourkiani
Mostafa Pourkiani, P.E., L.S.

PARENT TAX PARCEL IDENTIFICATION

MAP NUMBER 14-A- -43

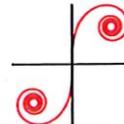


APPROVAL:

TOWN OF BERRYVILLE SUBDIVISION AGENDT

DATE

InfraTech



46950 Jennings Farm Dr
Suite 230
Sterling, VA 20164
571-437-3362

Construction Engineering Surveying

mo@infraconstruction.com

SHEET 1 OF 4

SCALE: ---

NOTES :

1. THESE PROPERTIES DELINEATED HEREON ARE SHOWN WITH THE TAX MAP NUMBER 14 - A - - 43 & 14 - A -- 42 IN CLARKE COUNTY'S REAL PROPERTY TAX DATA BASE .
2. THESE PROPERTIES ARE NOW IN THE NAME of "BRADLEY J & MELINDA D GABLE" AS RECORDED IN DEED BOOK 652 PAGE 586 AND DEED BOOK 707 PAGE 374 AMONG THE OFFICIAL RECORDS OF CLARKE COUNTY, VIRGINIA.
3. PLAT NORTH, METES AND BOUNDS DESCRIPTION AS PER RECORDED PLAT IN DEED BOOK 136 PAGE 657.
4. THIS PROPERTY IS SUBJECT TO RESTRICTIONS OF RECORD.
5. THIS PLAT HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT.
6. THE BOUNDARY INFORMATION SHOWN HEREON IS BASED ON A RECORDED PLAT IN DEED BOOK 136 PAGE 657 AND A FIELD SURVEY ON MARCH 17, 2023 BY INFRA TECH.
7. THE PROPERTY SHOWN HEREON LIES ENTIRELY WITHIN FLOOD ZONE X, AREAS OUTSIDE OF 0.2% OF ANNUAL CHANCE FLOOD PLAIN PER N.F.I.P FLOOD INSURANCE RATE MAP NO. 51043C0063D, EFFECTIVE SEPTEMBER 9, 2007.

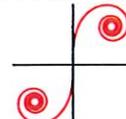
LEGEND

- IPF: IRON PIPE FOUND
- IRF: IRON ROD FOUND
- P/M: POWER METER
- SAN: SANITARY
- W/M: WATER METER
- W/V: WATER VALVE
- C/O: CLEAN OUT
- HYD: HYDRANT
- EP: EDGE OF PAVEMENT
- OE: OVERHEAD ELECTRIC
-  POWER POLE
- T.M. : TAX MAP NUMBER
- PRN: PARCEL RECORD NUMBER



SUBDIVISION PLAT
LOT A - 1
 TOWN OF BERRYVILLE, CLARKE COUNTY, VIRGINIA
 APRIL 21, 2024

InfraTech



46950 Jennings Farm Dr
 Suite 230
 Sterling, VA 20164
 571-437-3362

Construction Engineering Surveying mo@infraconstruction.com

512 S. CHURCH



516 S. GURON



**TOWN OF BERRYVILLE
BOARD OF ZONING APPEALS
PUBLIC HEARING NOTICE**

The Berryville Board of Zoning Appeals will hold a public hearing at 1:00 p.m., or as soon after as this matter may be heard, on Thursday, May 23, 2024, in the Main Meeting Room, Second Floor, of the Berryville/Clarke County Government Center, 101 Chalmers Court, Berryville, Virginia to consider the following:

Bradley J. Gable and Melinda D. Gable, Owners, are requesting a variance from Section 604.5(b)(1), minimum lot width for an interior lot, of the Town of Berryville Zoning Ordinance in order to allow a minor subdivision of the property located at 512 and 516 South Church Street, identified as Tax Map Parcel number 14-((A))-43 zoned DR-4 Detached Residential-4. VR 01-24

Copies of the variance application and related documents may be examined at the Town Business Office, Berryville/Clarke County Government Center (101 Chalmers Court), First Floor, Berryville, Virginia during regular business hours. Additional information may be obtained by calling Community Development Director Christy Dunkle at 540/955-4081. Any person desiring to be heard on this matter should appear at the appointed time and place.

The Town of Berryville does not discriminate against disabled persons in admission or access to its programs and activities. Accommodations will be made for disabled persons upon prior request.

Christy N. Dunkle, Zoning Administrator

published 5.9.24
5.16.24
Winchester Star

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**TOWN OF
BERRYVILLE
VIRGINIA**

**NOTICE TO ADJACENT PROPERTY OWNERS
BERRYVILLE BOARD OF ZONING APPEALS
PUBLIC HEARING NOTICE**

The Berryville Board of Zoning Appeals will hold the following public hearing at 1:00 p.m., or as soon after as this matter may be heard, on **Thursday, May 23, 2024**, in the Main Meeting Room, Second Floor, of the Berryville/Clarke County Government Center, 101 Chalmers Court, Berryville, Virginia to consider the following:

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Copies of the applications, amendments, and maps may be examined at the Town Business Office, Berryville/Clarke County Government Center (101 Chalmers Court), First Floor, Berryville, Virginia during regular business hours. Additional information may be obtained by calling Community Development Director Christy Dunkle at 540 955-4081. Any person desiring to be heard on this matter should appear at the appointed time and place.

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Christy N. Dunkle, Zoning Administrator

Harry Lee Arnold, Jr.
Mayor

Erecka L. Gibson
Vice Mayor

Council Members

William Steinmetz
Ward 1

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Ward 2

Grant Mazzarino
Ward 3

Ryan Tibbens
Ward 4

Keith R. Dalton
Town Manager

(4/92) **SECTION 604 - DETACHED RESIDENTIAL-4 (DR-4) DISTRICT**

604.1 PURPOSE AND INTENT

The Detached Residential-4 District is created to provide for single-family detached residences at higher densities than other single-family detached districts. A maximum of four (4.0) units per net developable acre establishes a medium- to low-density district for detached residences. The application of this district shall be to undeveloped tracts lying within the Town of Berryville and within the precincts of the Berryville Plan, as well as to “infill” lots within the existing stable neighborhoods, with the intent of preserving existing natural features and vegetation, promoting excellence in site planning and landscape design, and encouraging housing of compatible scale and architectural character. Cluster residential development shall be encouraged and permitted, by right, so that specific environmental preservation and land-use goals may be promoted.

604.2 PERMITTED USES

- (a) Single-family detached dwellings, either a conventional “dispersed” layout or a clustered layout subdivision--a clustered subdivision requiring site plan approval.
- (b) Accessory uses, to include detached carports and garages, tool sheds, children’s playhouses, doghouses, private swimming pools and Temporary Family Health Care Structures as established in Section 323. **(11/10)**
- (c) Municipal utilities.

604.3 SPECIAL PERMIT USES

- (a) Bed and breakfast lodging occupying more than 300 square feet of residence.
- (b) Cemeteries.
- (c) Churches and shrines.
- (d) Community buildings, public and private.
- (e) Day care centers and nursery schools. **(10/94)**
- (f) Fire stations.
- (g) Home occupations as defined in Section 315. **(12/93)**
- (h) Libraries, museums, and historic markers.
- (i) Plant nurseries with no sale of nursery products permitted on premises.
- (j) Public utility uses (sub-stations, pump stations, storage tanks, etc.) and related easements, except for municipal utilities.
- (k) Recreational uses such as public swimming pools, tennis courts, and golf courses.
- (l) Public schools, parks, playgrounds and related uses. **(3/09)**
- (m) Short-term rentals **(10/23)**

604.4 MAXIMUM DENSITY

- (a) Four (4.0) dwelling units per net developable acre.
- (b) A maximum floor area ratio of 0:15 shall apply to uses other than residential.

604.5 LOT SIZE, YARD, AND BULK REQUIREMENTS FOR CONVENTIONAL LOTS

- (1/93) (a) Lot area: Minimum--10,000 square feet; maximum - 30,000 square feet **(7/04)**.
(Refer to Section 614 regarding the impact of critical environmental areas on lot Size requirements.

Section 604 Detached Residential-4 (DR-4)

- (b) Minimum lot width
 - (1) Interior lot: 75 feet
 - (2) Corner lot: 90 feet
- (c) Minimum yard requirements
 - (1) Front yard: 20 feet for primary structures;
25 feet for garages, carports or other
structures used to house vehicles (7/04)
 - (2) Side yard: 10 feet
 - (3) Rear yard: 30 feet (residences)
 - (4) Accessory structure: 5 feet (rear and side setbacks)
- (5/94) (d) Maximum building height: 35 feet

604.6 MINIMUM DISTRICT SIZE FOR CLUSTER SUBDIVISIONS

Minimum district size for cluster subdivision: two (2) acres.

604.7 LOT SIZE, YARD, AND BULK REQUIREMENTS FOR CLUSTERED LOTS

- (a) Minimum lot area: 7,500 square feet.
Maximum lot area: 20,000 square feet (7/04)
(Refer to Section 614 regarding the impact of critical environmental areas on lot size requirements.)
- (b) Minimum lot width
 - (1) Interior lot: 60 feet
 - (2) Corner lot: 75 feet
- (c) Minimum yard requirements
 - (1) Front yard: 15 feet for primary structures;
25 feet for garages, carports, or other
structures used to house vehicles (7/04)
 - (2) Side yard: 10 feet
 - (3) Rear yard: 25 feet (residences)
 - (4) Accessory structure: 5 feet (rear and side setback)
- (5/94) (d) Maximum building height: 35 feet

604.8 OPEN SPACE REQUIREMENTS FOR DETACHED RESIDENTIAL SUBDIVISIONS

- (a) In subdivisions approved for cluster development, twenty (20) percent of the net site area which excludes 100-year floodplain, sinkholes, and slopes exceeding twenty-five (25) percent and fifty (50) percent of land with slopes between fifteen (15) and twenty-five (25) percent shall be open space, dedicated to common usage and ownership.
- (b) In cluster subdivisions, at least one-fourth (1/4) of the required open space (five {5} percent of the net site area) shall be developed and designed for recreational and active community open space.

Section 604 Detached Residential-4 (DR-4)

604.9 ADDITIONAL REGULATIONS

- (a) Refer to Article III for general regulations and other provisions which may supplement those cited herein.
- (b) Refer to Section 305 for off-street parking requirements.
- (c) Refer to specific Overlay Zoning Districts, where applicable.
- (d) Refer to Section 615 for special regulations relating to cluster subdivisions, critical environmental areas, and open space.
- (e) Refer to Section 317 Karst Features for additional requirements. (7/04)
- (f) The lot size, yard, and bulk requirements in effect at the time of subdivision plat approval prior to January 1, 2011 shall remain applicable to such subdivisions until July 1, 2017. The foregoing shall not be effective unless any unreleased performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the subdivision are continued in force. (12/14)

Section 504 – Schedule of Fees, Charges, and Expenses

SECTION 504 - SCHEDULE OF FEES, CHARGES, AND EXPENSES

- 504.1** The Town Council shall establish, by resolution, a schedule of fees, charges, and expenses and collection procedures for zoning permits, certificates of use and occupancy, special permits, variances, appeals, amendments, and other matters pertaining to this Ordinance.
- 504.2** The schedule of fees shall be available for inspection in the office of the Zoning Administrator and may be altered or amended by the Governing Body by resolutions. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

(02/16) **SECTION 505 - BOARD OF ZONING APPEALS**

There shall be established a Board of Zoning Appeals (Board) that shall consider appeals, variances, and zoning map interpretations.

505.1 ORGANIZATION AND PROCEDURES

- (a) **Membership**
The Board shall consist of five residents of the Town of Berryville, appointed by the Circuit Court of Clarke County. Members of the Board shall hold no other public office in the locality except that one may be a member of the Berryville Planning Commission.
- (b) **Alternate Members**
The Town Council may request the Circuit Court of Clarke County to appoint not more than three alternates to the Board of Zoning Appeals, pursuant to the provisions of Virginia Code § 15.2-2308(A).
- (c) **Terms of Office**
The terms of office for members of the Board shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The Secretary of the Board shall notify the court at least thirty (30) days in advance of the expiration of any term of office, and shall also notify the Court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until his/her successor is appointed and qualifies.
- (d) **Officers**
With the exception of its Secretary and the alternates, the Board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The Board may elect as its Secretary either one of its members or a qualified individual who is not a member of the Board, excluding alternate members. A Secretary who is not a member of the Board shall not be entitled to vote on matters before the Board.
- (e) **Quorum**
For the conduct of any hearing, a quorum shall be not less than a majority of all the members of the Board.

Section 505 – Board of Zoning Appeals

- (f) Procedures
The Board may make, alter, and rescind rules and forms for its procedures, consistent with Town ordinances and general laws of the Commonwealth.
- (g) Records
The Board shall keep minutes and a full record of its proceedings and other official actions, which shall be filed in the office of the Board and shall be public records.
- (h) Report
The Board shall submit a report of its activities to the governing body at least once each year.
- (i) Witnesses
The Chairman of the Board, or the acting Chairman in the Chairman's absence, may compel attendance of witnesses and administer oaths of witnesses.
- (j) Employees
Within the limits of funds appropriated by the Town Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services.
- (k) Compensation
Members of the Board may receive such compensation as may be authorized by the Town Council.
- (l) Removal
Any Board member or alternate may be removed for malfeasance, misfeasance, or nonfeasance in office, or for other just cause, by the Court that appointed the member or alternate, after a hearing held after at least fifteen (15) days notice.
- (m) Meetings
The Board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the Chairman, or Vice Chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such findings shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with Virginia Code § 15.2-2312 shall be conducted at the continued meeting and no further advertisement shall be required.
- (n) Hearings – Procedures
 1. The non-legal staff of the Town Council may have ex parte communications with a member of the Board prior to the hearing but may not discuss the facts or law relative to the case before the Board. The applicant, landowner, or their agent or attorney may have ex parte communications with a member of the Board prior to the hearing but may not discuss the facts or law relative to the case before the Board. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussion prior to a public meeting to which staff of the governing body, the applicant, landowner, or their agent or attorney are all invited. For purposes of this section, “non-legal staff of the Town Council”

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shall mean any staff who is not in the office of the attorney for the Town, or for the Town Council, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the Board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or protection of confidentiality.

2. Any materials relating to the case before the Board, including a staff recommendation or report furnished to a member of the Board, shall be made available without cost to an applicant, appellant, or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event less than three business days providing such materials to a member of the Board. If the applicant, appellant, or other person aggrieved under § 15.2-2314 requests additional documents or materials to be provided by the locality other than those materials provided to the Board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the Board shall also be made available for public inspection pursuant to Subsection F of § 2.2-3707.
3. At a hearing the Board shall offer an equal amount of time to the applicant, appellant, or any other person aggrieved under § 15.2-2314, and the Town staff.

505.2 APPEAL OF DECISION OF BOARD

Any person or persons jointly or severally aggrieved by any decision of the Board, or any aggrieved taxpayer, or any officer, department, board, or bureau of the locality, may file with the Clerk of the Clarke County Circuit Court a petition specifying the grounds on which aggrieved within 30 days after the final decision of the Board.

505.3 APPEALS OF ADMINISTRATIVE DETERMINATIONS

- (a) The Board shall hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of the Zoning Ordinance. The decision on such appeal shall be based on the Board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for their determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The Board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, "determination" means any order, requirement, decision, or determination made by an administrative officer. Any appeal of a determination to the Board shall be in compliance with this section, notwithstanding any other provision of law, general or special.
- (b) An appeal to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the Town affected by any decision of the Zoning Administrator, or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of the Zoning Ordinance, or any modification of zoning requirements pursuant to Virginia Code § 15.2-2286.

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- (c) Any written notice of a zoning violation of any written order or administrative determination of the Zoning Administrator shall include a statement informing the recipient of the of the recipient's right to appeal the notice of zoning violation or the written order or administrative determination within 30 days, and that the decision shall be final and unappealable if not appealed within 30 days. The appeal period shall not commence until the statement is given. The appeal shall be taken within 30 days after the decision appealed from by filing with the Zoning Administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record based upon which the action appealed from was taken.
- (d) An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board that by reason of facts stated in the certificate a stay would in his/her opinion cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order granted by the Board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.
- (e) The Board shall fix a reasonable time for hearing an appeal, and shall give public notice and hold a public hearing as provided by Virginia Code § 15.2-2204. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail.
- (f) The Board shall make its decision within 90 days of the filing of the appeal, unless the appellant and the Board mutually agree upon an extended period.
- (g) In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision, or determination appealed from.
- (h) The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer.

505.4 VARIANCES

The Board shall hear upon appeal or original application in specific cases requests for variances, as defined in Virginia Code § 15.2-2201, from the terms of this ordinance. A variance shall not include a change in use.

- (a) Any property owner, tenant (with the written consent of the property owner), government official, department, board or bureau may make application for a variance. Applications shall be made to the Zoning Administrator in accordance with rules adopted by the Board. The application and accompanying maps, plans, or other information shall be transmitted promptly to the Secretary of the Board, who shall place the matter on the docket to be acted upon by the Board.
- (b) The Zoning Administrator shall also transmit a copy of the application to the Planning Commission, which may send a recommendation to the Board or appear as a party at the hearing.
- (c) No variance shall be considered except after public notice and hearing as required by Virginia Code § 15.2-2204. However, when giving any required notice to the

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owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first class mail rather than by registered or certified mail.

(d) Action on Variance Application

1. The burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that the application meets the standards for a variance as defined in Virginia Code § 15.2-2201 and the criteria set out in this section.
2. Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and;
 - (a) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
 - (b) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
 - (c) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
 - (d) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
 - (e) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process of modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.
 - (f) The concurring vote of a majority of the membership of the Board shall be necessary to approve a variance.
 - (g) In granting a variance the Board shall tailor the variance to provide the minimum variance necessary to alleviate the hardship, and the Board may impose such conditions regarding the location, character, and other features of the proposed structure or use, as it may deem necessary in the public interest. The Board may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
 - (h) The Board will not consider substantially the same application within one (1) year of previous Board action.

505.5 ZONING MAP INTERPRETATIONS

The Board shall hear and decide applications for interpretations of the zoning district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by Virginia Code § 15.2-2204, the Board may interpret the map in such way as to

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carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail. The Board shall not have the power to change substantially the locations of district boundaries as established by ordinance. The concerning vote of a majority of the membership of the Board shall be necessary to decide in favor of the applicant.

505.6 LIMITATIONS ON POWERS OF BOARD

The Board shall not have the power to rezone property or to base Board decisions on the merits of the purpose and intent of Town ordinances duly adopted by the Town Council.

506 MODIFICATIONS

- (a) The Zoning Administrator may grant a modification from any provision contained in the Zoning Ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements if the Administrator finds in writing that:
 - 1. the strict application of the ordinance would produce undue hardship;
 - 2. such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
 - 3. the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification.
- (b) The Zoning Administrator may not grant a modification that is more than 10% of a regulation standards.
- (c) Before the granting of a modification, the Zoning Administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. Before the granting of a modification, the Zoning Administrator shall consult with the Chair and Vice Chair of the Board of Zoning Appeals.
- (d) The Zoning Administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The Zoning Administrator shall provide a copy of a written decision to the Board of Zoning Appeals within five working days from making the decision.
- (e) The decision of the Zoning Administrator may be appealed to the Board of Zoning Appeals as provided in Section 505.3 of this Ordinance.

SECTION 507 - VIOLATION AND PENALTY

- 507.1** All departments, officials, and public employees of this jurisdiction who are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Ordinance. They shall issue permits for uses, buildings, or purposes only when they are in

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harmony with the provisions of this Ordinance. Any such permit, if issued in conflict with the provisions of this Ordinance, shall be null or void.

- 507.2** Any person, firm, or corporation, whether as principal, agent, employee, or otherwise, violating, causing, or permitting the violation of any of the provisions of this Ordinance, shall be guilty of a misdemeanor and, upon conviction thereof, may be fined up to one thousand dollars (\$1,000). Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every day during which any portion of any violation of this Ordinance is committed, continued, or permitted by such person, firm, or corporation, and shall be punishable as herein provided.

**BERRYVILLE BOARD OF ZONING APPEALS
MOTION FOR APPROVAL
OF VARIANCE VR 01-24**

Date: May 23, 2024

Motion By:

Second By:

I move that the Berryville Board of Zoning Appeals **APPROVE** the request for a Variance from the minimum lot width requirement under Section 604.5(b)(1) of the Berryville Zoning Ordinance for the property located at 512 and 516 South Church Street, identified as Tax Map Parcel number 14-((A))-43 zoned DR-4 Detached Residential.

VOTE:

Aye:

Nay:

Absent:

ATTEST:

Christy N. Dunkle, Recording Secretary

**BERRYVILLE BOARD OF ZONING APPEALS
MOTION FOR APPROVAL
OF VARIANCE VR 01-24**

Date: May 23, 2024

Motion By:

Second By:

I move that the Berryville Board of Zoning Appeals **DENY** the request for a Variance from the minimum lot width requirement under Section 604.5(b)(1) of the Berryville Zoning Ordinance for the property located at 512 and 516 South Church Street, identified as Tax Map Parcel number 14-((A))-43 zoned DR-4 Detached Residential.

VOTE:

Aye:

Nay:

Absent:

ATTEST:

Christy N. Dunkle, Recording Secretary