

Town of Berryville
Berryville-Clarke County
Government Center
101 Chalmers Court Suite A
Berryville, VA 22611



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**BERRYVILLE BOARD OF ZONING APPEALS
CALLED MEETING**

Thursday, August 16, 2018 - 7:00 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 – February 5, 2016
5. Public Hearing – Variance
Kurt Leta, Owner, is requesting a variance from Section 202.1(l), Uses Permitted by Right (accessory structure setback requirement), of the Town of Berryville Zoning Ordinance in order to allow three accessory structures to be installed on the property line on the parcel located at 217 West Main Street, identified as Tax Map Parcel number 14A4-((A))-36 zoned R-2 Residential. VR 02-18
6. Other
7. Adjourn

Patricia Dickinson
Mayor

Harry Lee Arnold, Jr.
Recorder

Council Members

Donna Marie McDonald
Ward 1

Diane Harrison
Ward 2

Erecka L. Gibson
Ward 3

Kara C. Rodriguez
Ward 4

Keith R. Dalton
Town Manager

**BOARD OF ZONING APPEALS
TOWN OF BERRYVILLE
MINUTES OF CALLED MEETING
Friday, February 5, 2016**

A called meeting of the Berryville Board of Zoning Appeals was held on Friday, February 5, 2016. The meeting was called to order by Christy Dunkle, Town Planner, at 10:00a.m. in the AB Meeting Room at the Berryville – Clarke County Government Center located at 101 Chalmers Court in Berryville, Virginia.

ATTENDANCE

The members of the Board present were: Margaret Barthel, Gwen Malone, Krish Mather, Kara Rodriguez.

Absent: Dandridge Allen

The following staff members were present: Christy Dunkle, Town Planner

Others in attendance: Robert T. Mitchell

Press: None

Ms. Dunkle called the meeting to order at 10:00 a.m.

A special meeting was called to review state mandated changes to Article V of the Berryville Zoning Ordinance. Mr. Mitchell reviewed Article V, Section 505 and answered several questions from members.

There being no further business to come before the Board, the meeting was adjourned at 10:55a.m.

Margaret Barthel, Chair

Christy Dunkle, Recording Secretary

Kurt Leta, Owner, is requesting a variance from Section 202.1(l), Uses Permitted by Right (accessory structure setback requirement), of the Town of Berryville Zoning Ordinance in order to allow three accessory structures to be installed on the property line on the parcel located at 217 West Main Street, identified as Tax Map Parcel number 14A4-((A))-36 zoned R-2 Residential. VR 02-18

The request before you is for a variance from setback requirements for accessory structures in the R-2 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 applicant is requesting a variance from Section 202.1(l) of the Berryville Zoning Ordinance which establishes a five (5) foot setback from the property line for accessory structures. "Setback" is defined as the minimum distance by which any structure or building must be separated from a right-of-way or property line or from other structures or buildings. This five foot setback for accessory structures is required in other residential zoning districts as follows:

- R-1 Residential – Section 201.1(f);
- R-3 Residential – Section 203.1(i);
- 602 Detached Residential – 1 – Section 602.5(c)(4);
- 603 Detached Residential-2 – Section 603.5(c)(4);
- 604 Detached Residential-4 – Section 604.5(c)(4)

An accessory building is defined by the Town of Berryville Zoning Ordinance (Article I) as "a building subordinate to, and located on the same lot with a main building, the use of which is clearly incidental to that of the main building or to the use of the land, and which is not attached by any part of a common wall or roof to the main building. One accessory building of 150 square feet or less may be erected on a lot without the existence of a main building on the lot."

Existing Conditions

The parcel is zoned R-2 Residential. All adjacent parcels are also zoned R-2 Residential.

General Information

This property is located on West Main Street and is part of both the national and local historic districts. The property owner has erected three (3) storage sheds on the property line of the parcel to the east. No zoning permits were obtained prior to the installation of these facilities. The applicant was sent an enforcement letter on these structures and a fourth structure that was covering a vehicle being repaired which has been removed.

Utility Information

The principal structure is on Town water and sewer.

Advertisement

The public hearing notice was published in the Winchester Star on Thursday, August 2 and Thursday, August 9, 2018. Adjacent property owners were notified via first class mail on July 30, 2018. Staff received 3 calls requesting general information about the action.

Staff Comments

The property is a total of 16,963 square feet with the portion of the parcel located within the floodplain area. A floodplain map is included in this packet. Staff believes that locating the shed the required amount from the property line (five feet) would not unreasonably restrict the utilization of the applicant's property.

The applicant must obtain a zoning permit for the accessory structures if they remain on the parcel whether or not the variance request is approved.

Included in this packet are the following materials pertaining to this public hearing:

1. Land Development Application;
2. Application for Zoning Variance;
3. Plan view of the location of the sheds;
4. Photographs of the property submitted by the applicant;
5. Petition submitted by the applicant;
6. Public hearing notice published on August 2 and August 9, 2018 in the Winchester Star;
7. Adjacent property owner's notice mailed on July 30, 2018;
8. Floodplain map identifying 10- and 100-year Special Flood Hazard Area;
9. Section 202 R-2 Residential from the Berryville Zoning Ordinance;
10. Section 505 of the Berryville Zoning Ordinance;
11. Current Town Zoning Map; and
12. 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

RECEIVED

JUL 27 2018
Town of Berryville, VA

(Please print or type)

Current Property Owner: Kurt Leta

Owner's Address: 217 West Main Street Berryville, VA 22611

Phone: 540-336-9652

Agent (Contact Person): _____

Agent's Address: _____

Phone: _____

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: Zoning variance for section 202.1 (l)

Tax Map & Parcel Number(s): 14A4-((A))-36

Size of Project Site: 16,963 sq ft

Proposed # of Lots: 1 Existing Zoning: R-2

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: [Signature] Date: 8/27/18 7/07/18

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: [Signature] Date: 7/07/18

OFFICE USE ONLY

Public Hearing Required? Yes B21 Dates Advertised 8/2/18 8/9/18

Adjoining Property Owners Notified? first class mail 7/30/18

Action Taken: _____

RECEIVED

APPLICATION FOR A ZONING VARIANCE

JUL 27 2018

Town of Berryville, VA

Applicant's Name Kurt Leta

Address 217 West Main Street Berryville, VA 22611

Phone # 5403369652

Description of variance requested:

I am requesting a variance for the 5 foot property line restriction in section 202.1 (l) in the zoning ordinance of the Town of Berryville, Virginia for my property under section 505.4 (d) of the zoning ordinance of the Town of Berryville, Virginia.

Please reference the included plot, pictures, and other supporting materials.

For property located at 217 West Main Street Berryville, VA 22611

Map # 14A4-((A))-36

Property Owner's Name Kurt Leta

- (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 language in this question does not reflect any requirements in Article V of the zoning ordinance of the Town of Berryville, Virginia or requirements in 505.4 titled "Variances". Please see attached information sheet for the justification for my request based on the preponderance of evidence requirement under section 505.4 (d)1 and that strict adherence would unreasonably restrict the use of my property reasoning under section 505.4 (d) 2.

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

The language in this question does not reflect any requirements in Article V of the zoning ordinance of the Town of Berryville, Virginia or requirements in 505.4 titled "Variances". However, other properties in my zone do not have tall privacy fences bordering their properties and a significant portion of their property in a designated flood zone similar to my property.

- (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:

I do not believe the granting of this variance will be a detriment to the adjacent property as their tall privacy fence blocks almost all of the view from their property. The street view is also significantly limited by the location of my house, the privacy fence, and trees. In addition, the adjacent property owners, save the vacant house owners, signed a petition saying that granting the variance is preferable to them. Please reference the provided pictures and additional documentation.

- (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? ^{Yes} If yes, please explain:

I believe property owners should be able to place small structures on or near the property line where their neighbor has placed a tall privacy fence. The property line is already closed off and adding a structure does not change that fact.

Signed



Date 7/27/18

Variance Request – Additional Information and Answers to Questions

Background:

In an effort to make our property nicer to look at and make my wife a little happier I purchased sheds to put our trash cans in, gardening supplies, and unsightly auto-parts. I looked at multiple options and thought the sheds really went well with the house.

Section of the zoning ordinance I am asking that you consider:

505.4 (d) 2

Excerpt: "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"

Placement:

My wife and I looked at places on our property to put sheds and concluded that placing them anywhere else on the property did not make any reasonable sense. We could try to place them in the middle of the property that is not in the flood zone but it would make the yard really unusable for our grandchildren. We could place them at the end of the drive way but that would make them super visible to the street. Adding on the restrictions of the 30 foot setback, 5 ft boarder around every structure, 5ft boarder around the property line, and almost half our property is restricted by the flood zone we are left with ~less than a quarter of the property where something can even be placed. Given almost all of the space left of the remainder is driveway we almost have no legal place to put anything. Based on that, the only reasonable place to put them is backed up to my neighbor's tall privacy fence, adjacent to my driveway. Not being able to place anything next to the tall privacy fence I put forth unreasonably restricts the use of our property in our specific use case.

Personal cost:

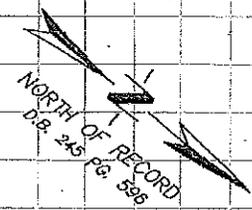
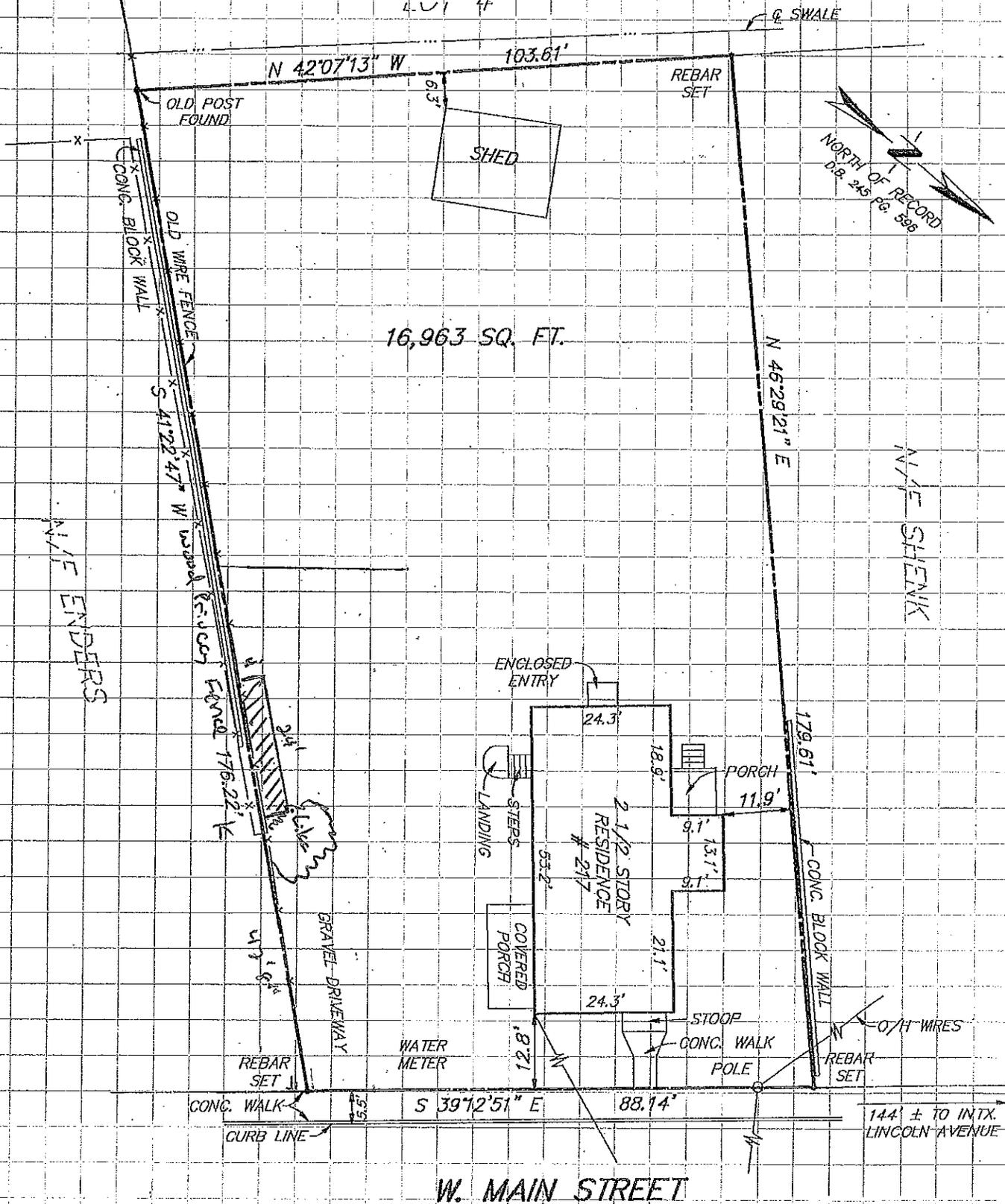
If this variance is not approved, we will lose ~\$2000 (\$1500 sheds, \$500 town fees) as the town will force us to remove them. We will also not be able hide our trash cans and other unsightly items.

Summation:

We are all property owners and hopefully have compassion and understanding for our neighbors to use their properties in their pursuit of life, liberty, and happiness. I am asking that you consider our variance request as if you were the property owner, in light of the petition, and if you believe the current placement of the sheds to be reasonable. If you believe the placement to be reasonable, then I hope you believe by extension and preponderance of the evidence that strict adherence to the zoning ordinance in this case would unreasonably restrict the use of our property.

Pictures are included.

LINCOLN LOTS SUBDIVISION
LOT 4



HOUSE LOCATION SURVEY

ON THE PROPERTY OF

ELINOR JEAN BOYCE, MARGARET
L. SNYDER, ROGER L. DEAL,

GLENN W. DEAL & PATRICIA BAKER

THIS IS TO CERTIFY THAT ON AUGUST 5, 1996
I MADE AN ACCURATE SURVEY OF THE PREMISES
SHOWN HEREON, AND THAT THERE ARE NO EASE-
MENTS OR ENCROACHMENTS VISIBLE ON THE
GROUND OTHER THAN THOSE SHOWN HEREON.



Note: View is from the sidewalk.



Note: View is from the sidewalk.

NOTE: The fence belongs to my neighbor.



Note: View is from the sidewalk.

NOTE: The fences belongs to my neighbor.

211 West Main



Note: View is from the sidewalk.

217 West Main

Petition

As a signor, I believe granting a variance to allow the current placement of the three sheds on 217 West Main Street Berryville, VA 22611 to be preferable to me. I also believe it looks better than it did before and thus everyone benefits.

Name	Address	Phone	Adjacent Property Owner	Signature
<i>Clifford Smith</i>	<i>211 W. Main St</i>	<i>540-538-1572</i>		
<i>Donna Reddick</i>	<i>12 Lincoln Ave</i>	<i>540-955-1233</i>	<input checked="" type="radio"/> Yes/No	<i>Clifford Smith</i>
<i>GARY Beathwaite</i>	<i>12 LINCOLN AVE</i>	<i>540-955-1233</i>	<input checked="" type="radio"/> Yes/No	<i>Donna Reddick</i>
<i>Wendy Smith</i>	<i>7 LINCOLN AVE</i>	<i>540-659-3626</i>	<input checked="" type="radio"/> Yes/No	<i>Gary Beathwaite</i>
			Yes/No	
			Yes/No	
			Yes/No	

PUBLIC HEARING NOTICE
WINCHESTER STAR
PUBLISHED AUGUST 2
AND AUGUST 9, 2018

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

The Berryville Board of Zoning Appeals will hold a public hearing at 7:00 p.m., or as soon after as this matter may be heard, on **Thursday, August 16, 2018**, in the Main Meeting Room, Second Floor, of the Berryville/Clarke County Government Center, 101 Chalmers Court, Berryville, Virginia to consider the following:

Kurt Leta, Owner, is requesting a variance from Section 202.1(l), Uses Permitted by Right (accessory structure setback requirement), of the Town of Berryville Zoning Ordinance in order to allow three accessory structures to be installed on the property line on the parcel located at 217 West Main Street, identified as Tax Map Parcel number 14A4-((A))-36 zoned R-2. Residential. VR 02-18

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 Assistant Town Manager Christy Dunkle at 540/955-4081. Any person desiring to be heard on these matters 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

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



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NOTICE TO ADJACENT AND AFFECTED PROPERTY OWNERS

PUBLIC HEARING

BOARD OF ZONING APPEALS

The Berryville Board of Zoning Appeals will hold a public hearing at 7:00 p.m., or as soon after as this matter may be heard, on **Thursday, August 16, 2018**, 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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Christy N. Dunkle, Zoning Administrator

Patricia Dickinson
Mayor

Harry Lee Arnold, Jr.
Recorder

Council Members

Donna Marie McDonald
Ward 1

Diane Harrison
Ward 2

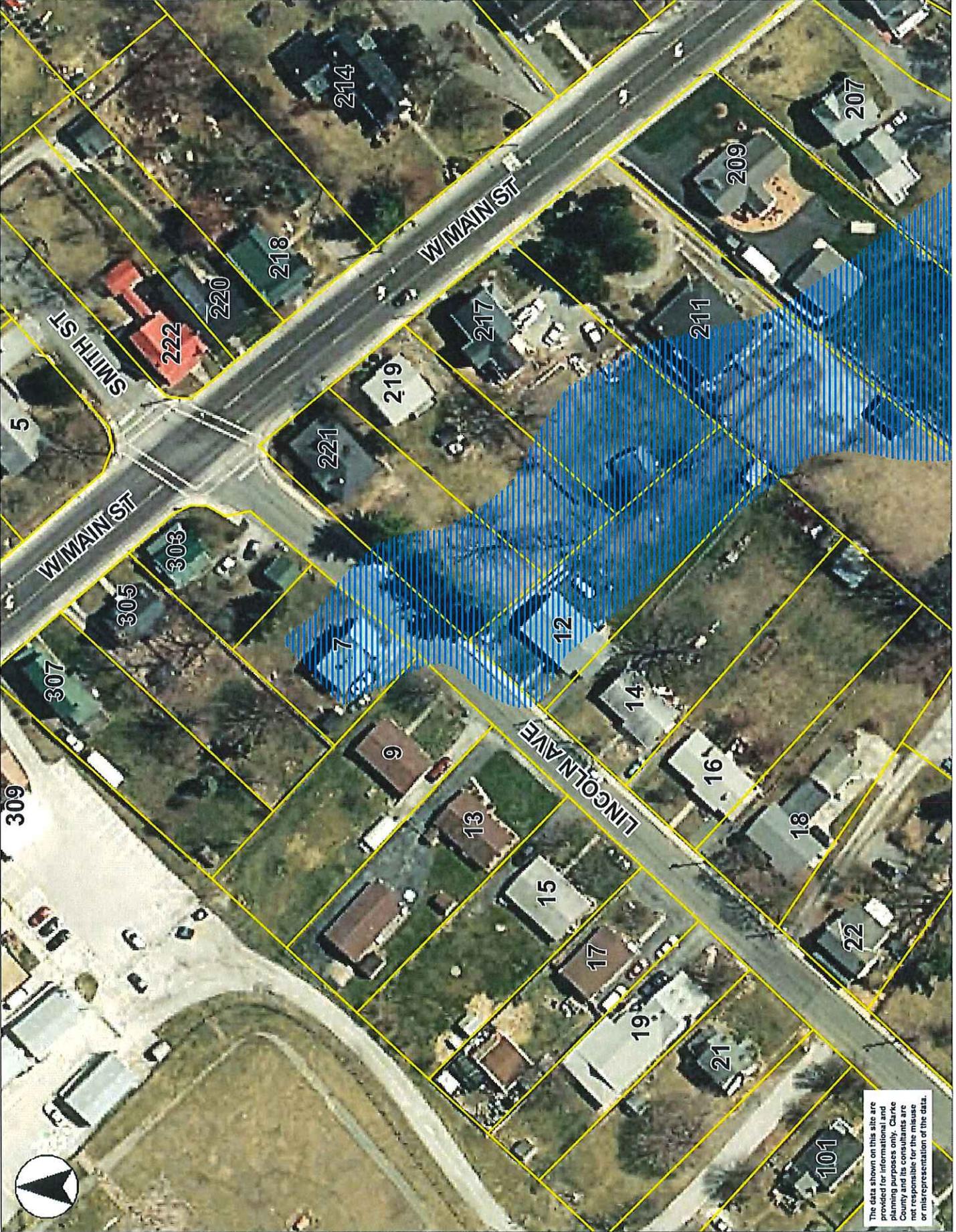
Erecka L. Gibson
Ward 3

Kara C. Rodriguez
Ward 4

Keith R. Dalton
Town Manager



- Points of Interest
- Floodplain-10Yr
- Floodplain-100Yr
- Parcels With Orths
- Clarke County Boundary
- Major Roads
- Interstate
- US Highway
- State Highway
- Surrounding Counties Op
- Surrounding Counties Non



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.



SECTION 202 - R-2 RESIDENTIAL DISTRICT

202 STATEMENT OF INTENT

The R-2 District is composed of medium density residential uses and open areas where similar development appears likely to occur. The standards for this district are designed to stabilize and protect the essential character of the area so designated, to promote and encourage, insofar as compatible with the intensity of land use, a suitable environment for family life. Development is, therefore, limited to low-to-medium density, and permitted uses are limited to single- and two-family dwellings plus selected additional uses, such as schools, parks, churches, and certain public facilities that serve the residents of the district.

202.1 USES PERMITTED BY RIGHT

Only one use and its accessory buildings and/or uses may be erected on any lot or parcel of land in the Residential R-2 District.

- (a) Single-family dwellings.
- (b) Two-family dwellings.
- (c) Rooming houses.
- (d) Tourist homes.
- (e) Boarding houses.
- (f) Schools.
- (g) Churches.
- (h) Playgrounds
- (i) Home occupations.
- (j) Public, semi-public, or governmental buildings.
- (k) Off-street parking for permitted uses in the district as set forth in Section 305.
- (l) Accessory buildings and Temporary Family Health Care Structures permitted as defined; however, garages and other accessory structures, such as carports, porches, and stoops attached to the main building shall be considered part of the main building. Accessory buildings shall not be located closer than five (5) feet from any property line or to any other structure. **(11/10)**
- (m) Public utilities: poles, lines, distribution transformers, booster and relay stations, pipes, meters, and other facilities necessary for the provision and maintenance of public utilities, including water and sewage systems.
- (n) Signs as set forth in Section 307.
- (o) Travel trailers, which shall not be stored within the front setback area, and which shall be prohibited from occupancy.
- (p) Fences as set forth in Section 303.

202.2 USES PERMITTED BY SPECIAL PERMIT

- (a) Nursing, convalescent, or rest homes, pursuant to Section 311.
- (b) Professional offices as set forth in Section 312. **(10/94)**
- (c) Day care centers, barber, and beauty shops. **(5/95)**

Section 202 Residential (R-2) District

202.3 AREA REGULATIONS

- (a) The minimum lot area shall be eight thousand (8,000) square feet for all permitted uses.
- (b) Each unit in a two-family structure arranged side by side shall be given four thousand (4,000) square feet of lot area.

202.4 SETBACK REGULATIONS

Structures shall be located thirty (30) feet or more from any street right-of-way fifty (50) feet or greater in width (**5/94**), or forty-five (45) feet or more from the center of any street right-of-way less than fifty (50) feet in width. This shall be known as the "setback line." (**10/00**)

202.5 FRONTAGE REGULATIONS

The minimum lot width at the setback line shall be eighty (80) feet.

202.6 YARD REGULATIONS

- (a) Side - Each side yard for structures less than three (3) stories shall be at least ten (10) feet. Each side yard for three-story buildings shall be at least fifteen (15) feet.
- (b) Rear - The minimum rear yard shall be twenty-five (25) feet.

202.7 LOT COVERAGE

Any structure, or structures, shall not occupy more than thirty-five (35) percent of the total area of the lot.

202.8 HEIGHT REGULATIONS

- (a) Buildings may be erected up to three (3) stories, but not exceed thirty-five (35) feet in height.
- (b) A public or semi-public building such as a school, church, or library may be erected to a height of sixty (60) feet from grade, provided that required front, side, and rear yards shall be increased one (1) foot for each foot in height over thirty-five (35) feet.
- (c) Church spires, belfries, cupolas, municipal water towers, chimneys, flues, flagpoles, television antennae, and radio aeriels are exempt. Parapet walls may be up to four (4) feet above the height of the building on which the walls rest.
- (d) Accessory buildings over one story in height shall be at least ten (10) feet from any lot line. All accessory buildings shall be less than the main building in height.

202.9 SPECIAL PROVISIONS FOR CORNER LOTS

- (a) Of the two sides of a corner lot fronting on streets, the shortest shall be deemed to be the front.
- (b) Each corner lot shall have a minimum width at the setback line of ninety (90) feet.

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"

Section 505 – Board of Zoning Appeals

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

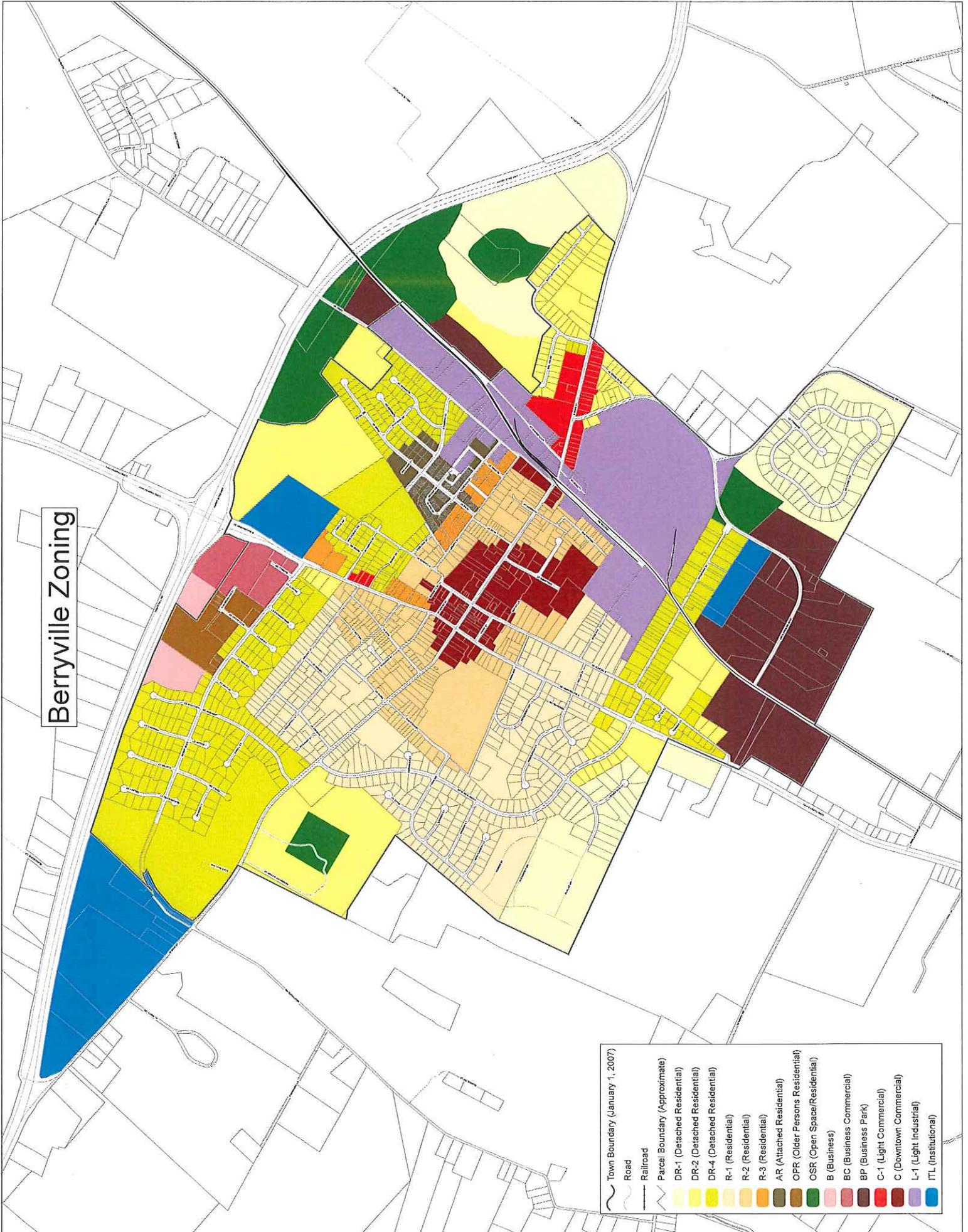
- 507.1** All departments, officials, and public employees of this jurisdiction who are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Ordinance. They shall issue permits for uses, buildings, or purposes only when they are in

Section 505 – Board of Zoning Appeals

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 Zoning



- ~ Town Boundary (January 1, 2007)
- Road
- Railroad
- Parcel Boundary (Approximate)
- DR-1 (Detached Residential)
- DR-2 (Detached Residential)
- DR-4 (Detached Residential)
- R-1 (Residential)
- R-2 (Residential)
- R-3 (Residential)
- AR (Attached Residential)
- OPR (Older Persons Residential)
- OSR (Open Space/Residential)
- B (Business)
- BC (Business Commercial)
- BP (Business Park)
- C-1 (Light Commercial)
- C (Downtown Commercial)
- L-1 (Light Industrial)
- ITL (Institutional)

**BERRYVILLE BOARD OF ZONING APPEALS
MOTION FOR APPROVAL
OF VARIANCE 02-18**

Date: August 16, 2018

Motion By:

Second By:

I move that the Berryville Board of Zoning Appeals **APPROVE** the request for a Variance to the accessory structure setback requirement under Section 202.1(l) of the Berryville Zoning Ordinance for the property located at 217 West Main Street, identified as Tax Map Parcel number 14A4-((A))-36 zoned R-2 Residential.

VOTE:

Aye:

Nay:

Absent:

ATTEST:

Christy N. Dunkle, Recording Secretary

**BERRYVILLE BOARD OF ZONING APPEALS
MOTION FOR DENIAL
OF VARIANCE 02-18**

Date: August 16, 2018

Motion By:

Second By:

I move that the Berryville Board of Zoning Appeals **DENY** the request for a Variance to the accessory structure setback requirement under Section 202.1(l) of the Berryville Zoning Ordinance for the property located at 217 West Main Street, identified as Tax Map Parcel number 14A4-((A))-36 zoned R-2 Residential.

VOTE:

Aye:

Nay:

Absent:

ATTEST:

Christy N. Dunkle, Recording Secretary