

**AGENDA**  
**BOARD OF ZONING APPEALS**  
**BOARD ROOM**  
**SHENANDOAH COUNTY GOVERNMENT CENTER**  
**Wednesday, May 16, 2012, 6:00 p.m.**

**Site Tour**

Site Tour will take place at 3:00 p.m. on May 16<sup>th</sup>. Please meet at the Planning & Zoning Office.

**Call to Order**

Approval of Agenda – May 2012  
Approval of Minutes – October 19, 2011

**Public Hearing**

[#12-05] A variance request from Jason and Penny Knight to Article III, Section 165-12E(2), Yard Regulations of the Shenandoah County Zoning Ordinance in order to obtain a variance to the left side yard setback to construct a single family residence at 2179 Jiggady Road, New Market, Virginia 22844. The applicant is requesting a side yard variance of 25' for a setback of 15' from the side property line. The property consists of .856 acre and is zoned Agriculture (A-1); Tax Map ID# 98-A-97A.

**Other Business**

**Adjournment**

**“Draft”**  
**BOARD OF ZONING APPEALS MINUTES**  
**October 19, 2011**

The Shenandoah County Board of Zoning Appeals held its regularly scheduled meeting on Wednesday, October 19, 2011 in the board room of the Shenandoah County Government Center in Woodstock, Virginia. Chairman Sonny Tamkin called the meeting to order at 6:00 p.m. with the following members present: Robert Fadely, Gary Kibler and Peter Shoemaker. Joyce Fadeley, Zoning & Subdivision Administrator was also present.

**Chairman Tamkin** explained that the Board consists of five county citizens who are appointed by the Circuit Court. Three affirmative votes are required for the Board to approve any variance or grant any application or appeal. Any appeal from a decision of this Board may be made only to the Circuit Court in accordance with the state law.

**APPROVAL OF AGENDA**

**Robert Fadeley** moved to approve the agenda, and **Peter Shoemaker** seconded the motion.

**The October 19, 2011 agenda was approved on a 4-0 vote (Funkhouser absent) as presented.**

**APPROVAL OF MINUTES**

**Peter Shoemaker** moved to approve the minutes as presented and **Robert Fadeley** seconded the motion.

**The July 20, 2011 minutes were approved on a 4-0 vote (Funkhouser absent) as presented.**

**Chairman Tamkin** said, [#11-10] A variance request from Madison Development Associates, LLC to Article III, Section 165-14C(1), Area Regulations of the Shenandoah County Zoning Ordinance in order to obtain a variance to the minimum lot area of 20,000 square feet for 3 lots in the Madison Estates Subdivision, specifically, Lot 1 of Section 1, known as Tax Map ID# 33A-08-001, a request to reduce the lot to 16,902 square feet; Lot 15 of Section 1, known as Tax Map ID# 33A-08-015, a request to reduce the lot to 15,178 square feet; and Lot 16 of Section 1, known as Tax Map ID# 33A-08-016, a request to reduce the lot to 15,034 square feet. Lot 1 is located on Fehr Lane near the railroad track crossing. Lots 15 and 16 are located at the end of Silver Court off Fehr Lane.

**Joyce Fadeley** informed the board that attorney Jay Neal was representing Madison Development Associates with this request. The applicant is requesting a variance to Article III, Section 165-14C(1), Area Regulations of the Shenandoah County Zoning Ordinance in order to reduce the size of three lots located in the Madison Estates subdivision. The property

is currently zoned Medium Density Residential (R-2). When this subdivision was created, R-2 zoning allowed lots to be created at a minimum of 15,000 square feet if the lots had access to public water and sewer. The hardship in the case that comes before you tonight is that there is currently a 50' right-of-way that belongs to the adjoining industrial property, crossing the back of the three properties in question. Most of the property in the vicinity is zoned residential until you get to the right-of-way which is zoned industrial. If the variance request is granted to reduce the lot size, it will allow the entire right-of-way to be on the industrial zoned parcel; therefore, properly separating the residential property from the industrial property.

**Chairman Tamkin** stated that the developer purchased this pre-approved subdivision.

**Ms. Fadeley** explained that when the subdivision was approved, the county was unaware of the 50' right-of-way. This issue has just recently surfaced in the last couple of years. The prior developer and the county tried to come up with a reasonable resolution but were unsuccessful. The new developer/owner wants to correct the issue.

**Chairman Tamkin** asked if anyone was here to represent the application.

**Jay Neal** explained that he was representing Madison Development and that in the many years of being an attorney and seeing right-of-way issues in the past, this issue is a much cleaner variance request. The case law in Virginia states that if the right-of-way is 50' then that is the entire right-of-way that can be used, even though vehicular traffic may only use 12' or 15' of the right-of-way for access to their property. Mr. Neal explained that there was a case law where a neighbor had placed a beautiful brick wall and gate at the end of his driveway. Most the homeowners in that subdivision and today, think that their property goes to the end of their driveway, where the driveway meets the road, but that is not always the case. So in this particular case, the neighbors started to feud and the neighbor decided to take him to court because he was building in the right-of-way. The case was dismissed at the local level, but the neighbor took his case to the Supreme Court where they ruled that nothing can be built in the right-of-way, even if the entire right-of-way is not being used. Therefore, the brick wall and gate had to be removed. This variance, right-of-way case, is much cleaner than some Mr. Neal has dealt with in the past. By removing this right-of-way it actually enlarges the usefulness of the property. Otherwise, the lot would be just big enough for a house and if the property owner wanted to build a shed or other structures, they wouldn't be able, due to the right-of-way.

**Chairman Tamkin** asked if there was anyone else here to speak in favor or opposition of the request.

**Hearing none, the public hearing closed at 6:12p.m.**

**Mr. Fadely** appreciated the explanation by Mr. Neal. **Mr. Fadely** motioned for approval and **Mr. Shoemaker** seconded the motion to approve the variance as presented.

**The variance was approved on a 4-0 vote as follows:**

**Mr. Shoemaker – Aye**

**Mr. Fadely – Aye**

**Mr. Kibler – Aye**

**Mr. Tamkin – Aye**

**Mr. Funkhouser – Absent**

**Mr. Tamkin** said the agenda also calls for other business. Tonight we have a new member with us, Gary Kibler, and we welcome you to the Board.

**Mr. Kibler** said I look forward to working with you.

**Chairman Tamkin** asked if there was any other business to come before the meeting.

**Mr. Shoemaker** said we need to recognize someone on the Board.

**Chairman Tamkin** said Joyce was recently recognized as the number one Zoning Administrator of the Year for the state of Virginia. I think it is very commendable and we are very encouraged with her working with us.

Hearing no other business, the meeting was adjourned at 6:15p.m.

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

**SHENANDOAH COUNTY  
BOARD OF ZONING APPEALS  
BZA CASE No. 12-05**

**Applicant/  
Property Owner:** Jason & Penny Knight

**Mailing Address:** P.O. Box 112  
Quicksburg, VA 22847

**Site Location:** 2179 Jiggady Road  
New Market, VA 22844

**Tax Map Parcel No.:** 98-A-97A

**Zoning:** Agriculture (A-1)

**Current Land Use:** Residential

**Proposed Land Use:** Residential

**Existing Parcel Size:** .856 Acre

**Adjacent Zoning:** Agriculture (A-1)

**Adjacent Land Use:** Residential, Agriculture

**Magisterial District:** Lee District

**Floodplain District:** Flood Zone X

**Previous Applications:** No

**Date Received:** April 23, 2012

**Date of Staff Report:** May 10, 2012

**STAFF REPORT**  
**BZA CASE No. 12-05**  
**Jason & Penny Knight**

**APPEAL:**

The applicants, Jason & Penny Knight are requesting a variance to the following section:

*Article III, Section 165-12E.(2)Yard Regulations*

of the *Shenandoah County Zoning Ordinance* in order to construct a single family residence. The applicants are asking for a left side yard variance of 25' for a setback of 15' for the residence. The property consists of .856 acre and is zoned Agriculture (A-1).

**DISCUSSION AND ANALYSIS:**

The applicants are requesting a variance to the Shenandoah County Zoning Ordinance, Agriculture Zoned District, side yard setbacks, in order to construct a single family residence. The property is located at 2179 Jiggady Road, New Market, Virginia, and comprises .856 acre. A mobile home was located on the property but was removed after a fire. The right to replace a legal non-conforming structure after fire is two years; the two years have elapsed and Mr. & Mrs. Knight are the new owners of the land as of 4/2012. The owners are restricted in the placement of a single family residence because of the size of the parcel, the location of the former house site and the location of the septic drainfield. The applicants are proposing to install a modular home in the same footprint as the former dwelling. A neighbor called and was concerned about the location of the proposed modular home but once it was explained that the new owners of the property wanted to place the modular replacement in the same footprint as the mobile home the neighbor was fine with the plan.

For a variance to be granted, the applicant must prove unnecessary hardship. Unnecessary hardships have been defined by the courts as cases where application of zoning restrictions would appear to be constitutionally impermissible (a situation which amounts to the taking of an owner's property). To prove unnecessary hardship, the property owner has the burden of showing:

1. That the property was acquired in good faith.  
    .... A self-imposed hardship, whether knowingly acquired or not, provides no reason for the granting of a variance.
2. That one or both of the following conditions are met:
  - (a) Strict compliance with the zoning ordinance would effectively prohibit or unreasonably restrict the use of the property because of the property's:
    - (1) Exceptional narrowness, shallowness, size or shape;
    - (2) Exceptional topographic conditions or other extraordinary situation or condition; or
    - (3) Extraordinary situation or condition of the property immediately adjacent.
  - (b) The granting of this variance will alleviate a clearly demonstrable hardship

approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.

3. That the variance is in harmony with the intended spirit and purpose of the ordinance.
4. That all of the following three conditions have been met:
  - (a) The strict application of the ordinance would produce undue hardship; and
  - (b) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
  - (c) The approval of such a variance will not be of substantial detriment to adjacent property, and the character of the district will not be changed by granting of the variance.
5. That 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.

**APPLICATION FOR VARIANCE or APPEAL to the BOARD OF ZONING APPEALS - SHENANDOAH COUNTY, VIRGINIA**

*This form must be typed or filled out in ink - (please print)*

I (we) Jason & Penny Knight  
(Property Owner/Applicant)

respectively request that a determination be made by the Shenandoah County Board of Zoning Appeals on the following appeal which was denied by the Zoning Administrator on \_\_\_\_\_ 20\_\_\_\_ for the reason that it was a matter which, in the opinion of the Zoning Administrator, should properly come before the Board of Zoning Appeals.

This application for a variance or an interpretation is required by Section 165-12 E (2) of the *Shenandoah County Zoning Ordinance* for the reason that:

- It is a request for a **Variance** relating to the following provision(s) of the Ordinance:
  - Area
  - Frontage
  - Yard: ( ) Front (X) Side ( ) Rear
  - Other

\_\_\_\_\_ It is an **Appeal** for the interpretation of the Zoning Ordinance or Zoning Map or a Appeal of a decision by the Zoning Administrator.

1. The applicant is the property owner  occupant \_\_\_\_\_ other \_\_\_\_\_. (Check one)

OWNER: Jason or Penny Knight OCCUPANT: \_\_\_\_\_

ADDRESS: PO Box 112 ADDRESS: \_\_\_\_\_  
Quicksteurg VA 22847

PHONE (H): 540 335 8325 Penny PHONE (H): \_\_\_\_\_

PHONE (O): 540 325 1072 Jason PHONE (O): \_\_\_\_\_

*Preferred Contact*

sinfullyme73@gmail.com

2. The property is located at: (give exact directions and include applicable E-911 street address and State Route numbers)

2179 Jiggady Road, Newmarket, approximately 620' SE of the intersection of River Road and Jiggady Rd.

3. Tax Map Reference Number 98-A-97A

VARIANCE/APPEAL APPLICATION (continued)

4. The property is owned by Jason or Penny Knight (present owner)  
as evidenced by deed from Stanley or Shirley Shifflett (previous owner)  
recorded in Deed Book Number 1558 on page 0428 of the  
deed books of the Clerk of the Court for Shenandoah County. (please attach a copy  
of the deed).

5. The property has a road frontage of 301 feet and depth of 235 feet  
and consists of .856 acres. at widest

6. The existing 'Zoning' of the property is: A-1

7. The existing 'Use' of the property is: Formerly Residential Use  
mobile home was removed

8. Adjoining property 'uses' in each direction are: (residential, commercial, agriculture, etc)

North: agriculture  
East: residential, agriculture  
South: agriculture  
West: residential

9. Has any previous application or appeal been filed in connection with this property?  
If yes, give date and please explain.

No

10. What is the applicant's interest in seeking this variance?

To install a modular home on a residential  
lot with an existing septic system. A mobile  
home was removed because of condition.

11. What purpose will the property be served by granting this variance?

The residential lot will continue to be a  
residential lot as intended.

**VARIANCE/APPEAL APPLICATION (continued)**

12. Describe the variance in terms of type and distance. (For example: "A rear yard variance of 3 feet for an attached garage.")

A left side yard variance of 25' for a setback  
of 15' from the left side property line and the  
residential structure

13. Describe below the specific reason(s) why the variance is being sought in terms of:

- Exceptional narrowness, shallowness, size or shape of property, or
- Exceptional topographic conditions or other extraordinary situation or condition of property, or
- The use or development of property immediately adjacent thereto.

The pie shaped lot and the location of the  
septic create an odd shaped area for a  
residential structure and an area has already  
been established when the <sup>flat</sup> former home was installed

14. Additional comments, if any, may be described on separate paper.

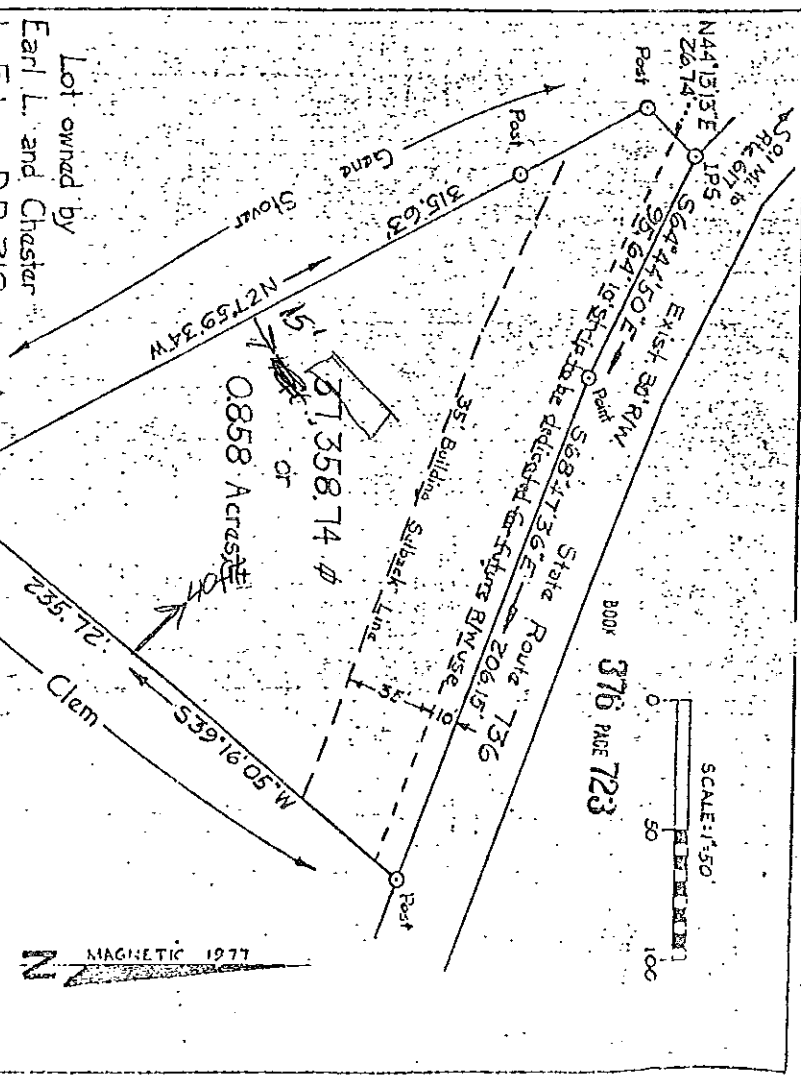
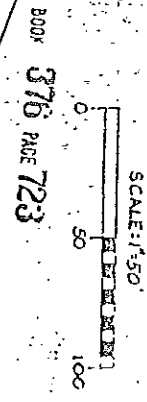
I (we) agree to comply with any conditions for the variance required by the BZA. I authorize the members of the BZA and Shenandoah County officials to go upon the property for site inspection purposes. I hereby certify that all of the statements and information contained herein are, to the best of my knowledge, true.

SIGNATURE OF APPLICANT X Penny Oknight DATE 4/25/12

SIGNATURE OF OWNER \_\_\_\_\_ DATE \_\_\_\_\_  
(if other than applicant)

<b>OFFICE USE ONLY</b>	
Appeal No: <u>12-05</u>	Date Received: <u>4/23/12</u>
Appeal to Ordinance Section: <u>165-13 E(2)</u>	
Date Hearing Advertised: _____	
Decision of the Board of Appeals: _____	
_____	
_____	

DBA-97A 723



Lot owned by  
Earl L. and Chastar  
L. Estap. DB 210,  
Pg. 560.

Plat showing a survey of a lot located about 1.3 miles south of the Village of Quicksburg on the south side of State Route # 736 in the Lee Magisterial District, Shenandoah County, Virginia and its described by meets and bounds as follows:  
Beginning at a post in the southern boundary line of State Route # 736, corner to Clem; thence leaving said boundary line and running with Clem, S39-16-05W - 235.72 feet to a post, corner to Gene Stover; thence running with Stover, N27-59-34W - 315.63 feet to a post; thence N44-13-13E - 26.74 feet to an iron pipe set in the southern boundary line of said Route # 736; thence running with said boundary line, S64-41-50E - 125.26 feet to a point; thence S58-47-36E - 206.15 feet to the point of beginning.  
Containing..... 0.858 acre, more or less.

HEALTH OFFICER R. K. ... DATE 3 Nov 77  
CERTIFICATE OF APPROVALS

HIGHWAY OFFICER [Signature] DATE 11-1-77  
REP. FOR SHENANDOAH COUNTY PLANNING COMMISSION. DATE 11/14/77  
SURVEYED BY: [Signature]

CERTIFIED LAND SURVEYOR # 1075  
MT. JACKSON, VIRGINIA  
OCTOBER 25, 1977



Prepared By/Return To: James P. Weissenborn, Esquire  
P. O. Box 329 New Market, VA 22844

Grantees Address: P. O. Box 112, Quicksburg, VA 22847

Consideration: \$21,000.00 Assessed Value: \$41,600.00

Tax Map #: 098-A-097A HUD \$21,000.00

THE EXISTENCE OF TITLE INSURANCE IS UNKNOWN.

THIS DEED, Made this 4<sup>th</sup> day of April, 2012, by and between **Stanley L. SHIFFLETT**, widower, party of the first part, **GRANTOR**, and **Jason R. KNIGHT** and **Penny D. KNIGHT**, husband and wife, parties of the second part, **GRANTEES**,

**WITNESSETH:**

That for and in consideration of the sum of TEN DOLLARS (\$10.00), cash in hand paid, receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey with GENERAL WARRANTY AND ENGLISH COVENANTS OF TITLE, together with all rights, privileges, appurtenances and easements thereunto belonging or in anywise appertaining, to the Grantees, **Jason R. Knight and Penny D. Knight, husband and wife**, as tenants by the entirety with right of survivorship as at common law, and not as tenants in common, all of that certain piece or tract of real estate about 1.3 miles South of the Village of Quicksburg, Shenandoah County, Virginia, and described by metes and bounds according to plat of same made by R. J. Morris, C.L.S., dated October 25, 1977, as follows:

"BEGINNING at a post in the southern boundary line of State Route #736, corner to Clem; thence leaving said boundary line and running with Clem, S 39-16-05 W 235.72 feet to a post, corner to Gene Stover; thence running with Stover, N 27-59-34 W 315.63 feet to a post; thence N 44-13-13 E 26.74 feet to an iron pipe set in the southern boundary line of said Route #736; thence running with said boundary line S 64-44-50 E 95.64 feet to a point; thence S 68-47-36 E 206.15 feet to the point of beginning, containing 0.858 acre, more or less."

Being the identical real estate which was conveyed to Stanley L. Shifflett and Shirley F. Shifflett, husband and wife, as tenants by the entireties with rights of survivorship by Deed dated December 6, 1977, from Earl L. and Lelia S. Estep, husband and wife, and Chester L. and Vada L. Estep, husband and wife, which Deed is recorded in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 376, page 721. The said Shirley F. Shifflett died on 7/2/07 survived by her husband, Stanley L. Shifflett. Title to said real estate vested in Stanley L. Shifflett by operation of law. A List of Heirs for Shirley F. Shifflett is recorded contemporaneously with but just prior to the recordation of this instrument.

This conveyance is made together with and subject to any rights-of-way, easements, restrictions or covenants of record if any, contained in the instruments constituting the chain of title to the property conveyed herein, and to matters visible upon inspection.

Reference is hereby made to the aforementioned deed, plats and records for a more complete description of the real estate herein conveyed and for further derivation of title.

WITNESS the following signatures and seals:

Stanley Shifflett (SEAL)  
STANLEY L. SHIFFLETT

STATE OF VIRGINIA AT LARGE

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of April, 2012, in Shenandoah County, Virginia, by Stanley L. Shifflett, widower.

My commission expires May 31, 2016

Marilyn G. Gledhill  
Notary Public Notary Registration # 168150

Commonwealth of Virginia  
Marilyn Gledhill - Notary Public  
Commission ID: 168150  
My Commission Expires 05/31/20 16

SHIFFLETT.KNIGHT.DEED

INSTRUMENT #120002243  
RECORDED IN THE CLERK'S OFFICE OF  
SHENANDOAH COUNTY ON  
APRIL 17, 2012 AT 10:05AM  
\$21.00 GRANTOR TAX WAS PAID AS  
REQUIRED BY SEC 58.1-802 OF THE VA. CODE  
STATE: \$10.50 LOCAL: \$10.50

DENISE B. ESTEP, CLERK  
RECORDED BY: DEB