

**BEFORE THE BOARD OF ZONING APPEALS  
OF THE TOWN OF SHEPHERDSTOWN**

**RE:** Alice Chakmakian and Peter Chakmakian  
200 & 202 East German Street  
Shepherdstown, West Virginia

**DECISION AND ORDER**

This matter came before the Board of Zoning Appeals at a public hearing on February 16, 2021 at Town Hall, 104 North King Street, Shepherdstown, West Virginia. This was a first hearing and an appeal from the Planning Commission. Notice of the hearing was duly published. The Appellants stipulated as to the adequacy of notice of the hearing. The type of relief sought as identified on the application for appeal is a request for a variance so as to merge 247 square feet from 202 East German Street to 200 East German Street. The bond for the appeal has been paid by the Appellant.

The address of the property in question is 200 East German Street, Shepherdstown, West Virginia. The Appellant is Alice Chakmakian who is the current owner of the 200 East German Street property. The Appellant appeals a decision of the Shepherdstown Planning Commission on December 14, 2020 as reflected in the Notice of Decision of January 6, 2021. Peter Chakmakian is the owner of 202 East German Street.

Present and participating were the following Board members:

Dawn Fye, Chair  
Julia Springer  
Francine Phillips

Whereupon, a quorum being present, the Board of Zoning Appeals did proceed to make inquiry in regard to whether or not the Appellants are an aggrieved person or persons entitled to pursue the appeal in accord with the Rules of the Board of Zoning Appeals. Upon inquiry, and there being no opposition, and it appearing that the Appellant is an aggrieved person, by unanimous consent, the Board determined that the Appellants have standing to proceed with the Appellants' appeal.

Upon inquiry by the Chairperson, and the polling of all present Board members, no Board member has any known conflict of interest. Upon inquiry by the Chairperson, and the polling of all present Board members, all participating Board members have visited the site in question.

The Appellant in this case is the owner of the property and the person whose request before the Planning Commission was denied.

The Board then proceeded to public hearing. All witnesses were duly sworn. The Appellant appeared by telephone to provide testimony and respond to any inquiries by the Board as to the merits of the request for a variance. The Board agreed to this arrangement due to the uncomplicated nature of the appeal as the Appellant's employment required her to be in Charleston for a period that would have exceeded the legal time to hold a hearing. Peter Chakmakian provided testimony and responded to any inquiries by the Board as to the transfer of his property to the Appellant..

Prior to the hearing, the Appellant filed with the Board an Attachment (Exhibit B)Hearing Request thoroughly addressing in detail the merits of the proposed variance. In relevant part, the Appellants' Memorandum states that;

*When the applicant purchased 200 East German Street, it was 7416 square feet. In 2009, the square footage was increased to 7619 square feet by a boundary line adjustment on its western boundary. 200 East German Street has been smaller than the required square footage since the adoption of zoning in Shepherdstown.*

*The applicant's variance request is to authorize a boundary line adjustment on the eastern boundary of 200 East German Street, pursuant to the plat contained in the application, increasing the square footage of 200 East German Street to 7866 square feet after boundary line adjustment. The boundary line adjustment proposed will set the boundary line along a fence line that has separated the parcels for well over 15 years, the legal requisite to successfully assert adverse possession in defense of a boundary line dispute. This request will establish legally that the status quo experienced by the two parcels will remain as it has been.*

*Facts and conditions supporting applicant's variance request:*

- 1) 200 East German Street has been smaller than the required square footage of 11,000 square feet since the adoption of zoning in Shepherdstown – this fact is exceptional in that other lots in the same zone are not as small.*
- 2) There has been a fence separating the properties for some time. The owners of the parcels for at least as long as the applicant has lived there (16 years) have acknowledged the fence line as the boundary between the two parcels. The fence was old when the applicant purchased the property in 2004. A variance is necessary for the preservation and enjoyment of substantial property rights.*
- 3) The authorization of the variance will not be of substantial detriment to the adjacent property since it is legally memorializing what has long been the understanding of the owners of the property. 202 East German Street will be reduced to 13,349 square feet which is well within the 11,000 square feet requirement.*
- 4) The situation is not practicable to the formulation of a general regulation because not all lots are as small as 200 East German Street and do not have a boundary defined by a fence for as long as a fence has existed in this location.*

*Further considerations – 9-1009*

- *Granting the variance will affect positively upon the “peace of people in their homes” by authorizing legally what has been the understanding of the people living in the properties for some time.*

*Granting the variance will conserve the property values of the properties in question because there will no longer be an encroachment of the fence.*

At hearing, Ms. Chakmakian, under oath, testified to the accuracy and truthfulness of the statements and representations in the Appellants’ Memoranda, addressing in detail the requirements of Section 9-1008 and Section 9-1009. The testimony of Ms. Chakmakian established that the requirements of both Ordinance sections are satisfied.

There has been no written opposition to the request for variance of the Appellant. No one has appeared at the hearing in opposition to the request for variance.

Otherwise, there were no further questions addressed to the Appellant.

Thereupon, a motion was made and seconded to close the public hearing. The motion passed unanimously, and the Board proceeded to deliberate and to discuss findings of Fact and Conclusions of Law, in open session.

And in consideration of such inquiry the Board makes the following findings of fact.

**I. FINDINGS OF FACT**

1. The Appellant has standing as her request was denied by the Shepherdstown Planning Commission.
2. The lots located at 200 & 202 E. German Street are zoned R-1 (Low Density Residential).
3. The request is to adjust the boundary line between the two parcels eastward so as to merge 247 square feet (0.0057 acres) with the parcel known as Deed Book 1070, Page 255, Tax Map # 3, Tract 31
4. Pursuant to Title 9, §9-508, Required lot area, lot width, and yards \* in residential districts (Amended February 13, 2007), the minimum lot area per family unit within the R-1 District for single-family dwellings is eleven thousand (11,000) square feet.
5. The parcel known as Deed Book 1070, Page 255, Tax Map # 3, Tract 31 contains seven thousand six hundred nineteen (7,619) square feet.

6. The addition of two hundred forty-seven (247) square feet to the parcel known as Deed Book 1070, Page 255, Tax Map # 3, Tract 31, brings the total square footage after merger to seven thousand eight hundred sixty-six (7,866).
7. The lot created by the proposed boundary line adjustment (Deed Book 1070, Page 255, Tax Map # 3, Tract 31) is less than the minimum lot area requirement of eleven thousand (11,000) square feet for single-family dwelling units in the R-1 (Low Density Residential) zoning district as set forth in §9-508 of the Title 9 Planning and Zoning Ordinance.
8. Tract 32, 202 East German Street would decrease by 247 square feet to approximate 13,349 square feet. This reduction does not adversely affect the lot size as it exceeds the minimum lot size requirement of 11,000 square feet.
9. The 247 square feet is being transferred free and unencumbered by Peter L. Chakmakian and Barbara W. Chakmakian as provided by testimony by Peter Chakmakian.
10. There has been no opposition in writing or by way of testimony.
11. Incorporate by reference Exhibit B
12. Granting the variance for the boundary line adjustment would not result in a tangible change for any other residents of Shepherdstown as a practical matter.
13. Based upon the evidence before the Board, the requirements of Section 9-1008(a) and (b) of the Ordinance have been satisfied.
14. Based upon the evidence before the Board, the requirements of Section 9-1009 of the Ordinance have been satisfied.

## II. CONCLUSIONS OF LAW

1. An "Aggrieved" or "Aggrieved Person" means a person who:
  - (a) Is denied by the planning commission, in whole or in part, the relief sought in any application or appeal; or

(b) Has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience beyond that which other residents of the municipality may suffer. Article VII (B) Board of Zoning Appeals Rules.

2. There being no opposition and it appearing that the Appellant is an aggrieved person, the Appellant has standing to proceed with the Appellants' appeal.
3. The applicable standard of proof is beyond a reasonable doubt, (Section 91008(b)), which the Board has applied.
4. The following Ordinance Sections involved in this appeal are Sections 9-508, 9-1008 and 9-1009.
5. When applied to the appeal of the Appellant, the Board finds that the Appellant is entitled to a variance with regard to her property located at 200 East German Street Shepherdstown, West Virginia.

### III. RULING

The appeal for a variance as requested is granted, without restrictions or conditions.

The Appellant shall be immediately given notice of this Decision and shall be provided with a copy thereof.

Enter: 2/20/2021

  
DAWN FYE, CHAIRPERSON

LEGAL NOTICE

Shepherdstown Board of Appeals

Re: Alice Chakmakian and Peter Chakmakian

200 and 202 East German Street Shepherdstown, WV 25443

Please take notice that the Shepherdstown Board of Appeals will hold a Hearing on February 16, 2021 at Town Hall, 104 North King Street, Shepherdstown, West Virginia 25443 at 5:45 p.m. to determine the appeal by Alice Chakmakian and Peter Chakmakian to consider a variance so as to adjust the boundary between 200 and 202 East German Street. The boundary line adjustment would merge 247 square feet from 202 East German Street to 200 East German Street. The Shepherdstown Planning Commission considered the request on December 14, 2020 and provided their findings in its Notice of Decision dated January 6, 2021. It is from the finding #3 that states the requirements of Code Section 9-508, specifically “the minimum lot area per family unit within the R-1 District for single-family dwellings is eleven thousand (11,000) square feet”, as it pertains to the lot of 200 East German Street that the appellant (Alice Chakmakian) seeks relief.

For the Board of Appeals

Dawn M. Fye, Chair

**AGENDA**  
**February 16, 2021**  
**RE: Alice Chakmakian and Peter Chakmakian**  
**Planning Commission Notice of Decision**  
**Dated January 6, 2021 regarding**  
**200 & 202 East German Street**  
**BOARD OF APPEALS HEARING**  
**5:45 p.m.**

1. The hearing is called to order. We request all present for this hearing to sign in. Please indicate place of residence (street address, etc.) and interest.
2. The chair will note, for the record, members of the Board present and establish that a quorum is present. Members who have not been previously sworn in will be sworn in.
3. The Board will establish the standing of the appellant for the record.
4. Members of the audience who wish to testify are sworn in and interest in the matter is established for the record.
5. CONFLICT OF INTEREST: The chair will inquire, for the record, whether any board member has a conflict of interest in any of the matters before it.
6. THE NOTICE OF PUBLIC HEARING will be read into the record.
7. The appeal by Alice Chakmakian regarding the Planning Commission's decision of December 14, 2020 as provided in the Notice of Decision dated January 6, 2020 regarding 200 and 202 East German Street to adjust the boundary between 200 and 202 East German Street. The boundary line adjustment would merge 247 square feet from 202 East German Street to 200 East German Street. The chair will note, for the record, whether the bond has been paid.
8. The chair will note for the record, whether the board members have visited the site.
9. GROUND RULES:
  - A. *The Board of Appeal's rules are standardized by Robert's Rules of Order.*
  - B. *The Appeals Board is guided by Title 9, Chapters 1-12 of the Town Code—the Zoning Ordinance – and the requirements and standard of Title 9 are the requirements and standards we abide by in making decisions. Most importantly, we are guided by Chapter 10, Section 9-1009. .*

- C. *The Chair will monitor the recording device.*
- D. *The Board of Appeals may set time limits, as it deems necessary, for the applicant's responses, the responses of bona fide groups and of individuals.*
- E. *The Board of Appeals will question applicants on proposed use, proposed additions, proposed building or structures, or proposed subdivisions.*
- F. *The Board of Appeals will determine if and for what sections of the Zoning Ordinance a waiver is required.*
- G. *Each person recognized by the chair will approach the table; give his or her name and street address, be sworn in if not previously sworn in, and present questions, comments or petitions loudly enough to be picked up by the tape recorder.*
- H. *Actions, votes, findings of facts and conclusions of law shall not become final rulings until the minutes and/or the Decision and Order of the public hearing, or of the subsequent continued public hearing (s), are approved at a continued or adjourned meeting, called for the purpose of approving these documents by the Board of Appeals.*

## 10. PRESENTATION OF EVIDENCE AND ARGUMENT

The appellant presents evidence and arguments regarding: The variance request from section 9-508 "Min. Lot Area Per Family Unit" of the Shepherdstown Planning and Zoning Ordinances and how Section 9-1008 and Section 9-1009 (attached) are met. The proposed merger of 247 square feet from the lot of 202 East German Street to the lot of 200 East German Street does not meet the requirements of Section 9-508 within the R-1 District for single-family dwellings of eleven thousand (11,000) square feet, as it pertains to the lot of 200 East German Street.

### **Section 9-1008      Variances**

(a) Where by reason of the exceptional narrowness, shallowness or unusual shape of a specific piece of property when zoning was adopted in Shepherdstown or by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, the literal enforcement of the requirements of this ordinance would involve practical difficulty or would cause unnecessary hardship to carry out the spirit and purpose of this ordinance, the Board shall have power, upon appeal in specific cases, to authorize a variance from the terms of this ordinance so as to relieve such hardship, and so that the spirit and purpose of this title shall be observed and justice done. In authorizing a variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed structure' or use as it may deem necessary in the public interest. In

authorizing a variance, with attached conditions, the Board may require such guarantee as it may deem necessary that the conditions attached are being and will be complied with.

(b) No such variance in the provisions or requirements of this ordinance shall be authorized by the Board unless it finds, beyond reasonable doubt, that all the following facts and conditions exist:

(1) That there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or classes of uses in the same zoning district.

(2) That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity.

(3) That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this title or the public interest.

(4) That the condition or situation of the specific piece of property or the intended use of such property, for which variance is sought, is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation.

- B. Interested parties present questions regarding the applicant’s evidence and argument.
- C. The appellant responds.
- D. The Board questions the appellant.
- E. Interested parties present evidence and argument.
- F. The appellant presents questions regarding the interested parties’ evidence and argument.
- G. The interested parties respond.
- H. The Board questions the interested parties.

11. Deliberations, Board of Appeals Members

- A. MOTION to close the public hearing                      SECOND    VOTE
- B. MOTION to deliberate in closed session                      SECOND    VOTE
- C. MOTION to come out of closed session                      SECOND    VOTE
- D. Continuation of hearing, if any

- |  |        |      |
|--|--------|------|
| 1. MOTION to continue  | SECOND | VOTE |
| 2. Set date for continued hearing  |        |      |
| 3. State reason for continued hearing  |        |      |
| <br>   |        |      |
| E. MOTION(S) on Finding of Facts and<br>Conclusions of Law   | SECOND | VOTE |
| <br>   |        |      |
| F. MOTION on Sections 9-1008<br>(discussion on possible conditions)  | SECOND | VOTE |
| <br>   |        |      |
| G. MOTION on Sections 9-1009<br>(discussion on possible conditions)  | SECOND | VOTE |
| <br>   |        |      |
| H. MOTION to grant a variance from<br>Section 9-508 "Min. Lot Per Family Unit"                               | SECOND | VOTE |
| <br>   |        |      |
| I. MOTION to grant the merger of 247 square<br>Feet from 202 East German Street to<br>200 East German Street | SECOND | VOTE |
| <br>   |        |      |
| 11. MOTION to reconvene for the purpose of reading<br>and approving the Decision and Order for this hearing. | SECOND | VOTE |
| <br>   |        |      |
| <i>Set date, time and place</i>  |        |      |
| <br>   |        |      |
| 12. MOTION to conclude the hearing of Alice<br>Alice Chakmakian  | SECOND | VOTE |
| <br>   |        |      |
| 13. Old Business   |        |      |
| <br>   |        |      |
| 14. MOTION to adjourn  | SECOND | VOTE |

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**Section 9-1009      Limitations, guides, and standards (Amended 02/11/14)**

Where, in this title, certain powers are conferred upon the Board it shall study the specific property involved and the neighborhood, cause the property to be posted in a conspicuous place, hold a public hearing, consider all testimony and data submitted, and hear any person for or against the issuance of the permit. However, the application shall not be approved where the Board finds the proposal would adversely affect the public health, safety, security, morals or general welfare or would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood. In deciding such matters, the Board shall give consideration, among other things, to the following:

- (a) Decisions of the Circuit Court and the Supreme Court of Appeals.
- (b) The orderly growth of the neighborhood and community.
- (c) The most appropriate use of land and structure.
- (d) Facilities for sewers, water, trash and garbage collection and disposal and the ability of the Town or County to supply such services.
- (e) Availability of firefighting equipment.
- (f) The effect of such use upon the peace of people in their homes.
- (g) The number of people residing, working or studying in the immediate area.
- (h) The type and kind of structures in the vicinity where people are apt to gather in large numbers such as schools, churches, theatres, hospitals and the like.
- (i) Traffic conditions, including facilities for pedestrians, such as sidewalks and safety zones and parking facilities available and the access of cars off highways.
- (j) The preservation of cultural and historic landmarks.
- (k) The conservation of property values.
- (l) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the uses of surrounding properties.

- (m) The contribution, if any, such proposed use, building or addition would make toward the deterioration of areas and neighborhoods.
- (n) Any findings and recommendations of the Historic Landmark Commission.



Corporation of Shepherdstown | Post Office Box 248 | Shepherdstown, West Virginia 25443-0248 | (304)876-2398

### Board of Appeals Hearing Request

To be completed by applicant and/or his/her legal agent. Town Staff and Board of Appeals Members cannot give advice on the substance of your appeal. You may review the Planning and Zoning Ordinance for assistance. Only aggrieved persons may file an appeal.

1. Applicant's Name\*: Alice Chakmakian  
 Applicant's Mailing Address: ; PO Bx 3614  
 Phone # 304-876-6150 E-Mail: alice@chakmakianlawwv.com
2. Property Address for Which Appeal Is Being Made: 200 E German St
3. Specifically State Your Request: boundary line adjustment  
(Supplemental information may be attached)
4. Type of Appeal (see reverse side for explanation)
 

a. <input checked="" type="checkbox"/> Variance	b. <input type="checkbox"/> Special Exception
c. <input type="checkbox"/> Continuation of Non-Conforming Use	d. <input type="checkbox"/> Decision of Planning Commission
5. Aggrieved Person Status
 

a. <input checked="" type="checkbox"/> a person who has been denied by the Planning Commission in whole or in part, the relief sought in any application or appeal
b. <input type="checkbox"/> a person who will suffer peculiar injury, prejudice or inconvenience beyond that which other residents of the municipality may suffer
6. Bond Paid: 100.<sup>00</sup> Date 1-6-21 Method of Payment CHK# 4289

If in violation you must apply within thirty (30) day following Notice of Decision of the Planning Commission to avoid possible fines and penalties.

Alice Anne Chakmakian      1-6-21  
 Applicant's Signature      Date Filed

Ket P. Chakmakian      1-6-21  
 Owner's Signature      Date

\*If the owner is not the applicant, the owner's name and mailing address must be provided on the reverse side.



Corporation of Shepherdstown | Post Office Box 248 | Shepherdstown, West Virginia 25443-0248 | (304)876-2398

- a. **Variance**: The Planning Commission correctly applied the ordinance requirements to your request; however, you request a variance from the requirement(s) of the ordinance(s).
- b. **Special Exception**: The Planning Commission correctly applied the ordinance requirements to your request; however, the ordinance allows for a special exception in R-1 and R-2 Districts. They are listed in Section 9-505 of the Planning and Zoning Ordinance.
- c. **Continuation of Non-Conforming Use**: Any lawful use of land or structures existing at the time of the adoption of Planning and Zoning Ordinance or subsequent amendment to the ordinances may be continued with limitations.
- d. **Appeal of Decision of Planning Commission**: You disagree with the Planning Commission's decision. You feel the Planning Commission erred in applying the ordinance to your request(s).

This application must be accompanied by a copy of the Planning Commission's Notice of Decision.

\*Owner's Name: Alice Chakmakian  
Owner's Mailing Address: PO Box 3614, Shepherdstown, WV 25443

\*If the owner is not the applicant, the owner's name and mailing address must be provided on the reverse side.



## CORPORATION OF SHEPHERDSTOWN

104 NORTH KING STREET  
P.O. Box 248  
SHEPHERDSTOWN, WEST VIRGINIA 25443-0248  
TEL: (304)876-2312  
FAX: (304) 876-1473

### NOTICE OF DECISION

Date: January 6, 2021

Re: Request for a Boundary Line Adjustment  
200-202 E. German Street  
Deed Book 1070, Page 255, Tax Map # 3, Tract 31  
Deed Book 1142, Page 396, Tax Map # 3, Tract 32

Alice A. Chakmakian  
Attorney at Law  
P.O. Box 3614  
200 E. German Street  
Shepherdstown, WV 25443

Dear Ms. Chakmakian:

Please be advised that the Shepherdstown Planning Commission meeting in regular session on Monday, December 14, 2020, voted to:

- 1) Pursuant to Section 9-904A Adjustment of Boundary Lines: Consolidation of Lots Required (amended June 8, 1999) of the Title 9 Planning & Zoning Ordinance as it pertains to §9-508 "Min. Lot Area Per Family Unit" in the R-1 District, the commission motioned to deny the adjustment of boundary lines between 200 & 202 E. German Street.

The Commission based its decision upon the following:

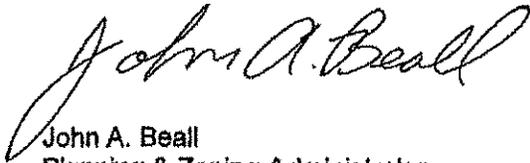
#### Finding of Facts and Conclusions of Law:

1. The lots located at 200 & 202 E. German Street are zoned R-1 (Low Density Residential).
2. The request is to adjust the boundary line between the two parcels eastward so as to merge 247 square feet (0.0057 acres) with the parcel known as Deed Book 1070, Page 255, Tax Map # 3, Tract 31
3. Pursuant to Title 9, §9-508, Required lot area, lot width, and yards \* in residential districts (Amended February 13, 2007), the minimum lot area per family unit within the R-1 District for single-family dwellings is eleven thousand (11,000) square feet.
4. The parcel known as Deed Book 1070, Page 255, Tax Map # 3, Tract 31 contains seven thousand six hundred nineteen (7,619) square feet.
5. The addition of two hundred forty-seven (247) square feet to the parcel known as Deed Book 1070, Page 255, Tax Map # 3, Tract 31, brings the total square footage after merger to seven thousand eight hundred sixty-six (7,866).
6. The lot created by the proposed boundary line adjustment (Deed Book 1070, Page 255, Tax Map # 3, Tract 31) is less than the minimum lot area requirement of eleven thousand (11,000) square feet for single-family dwelling units in the R-1 (Low Density Residential) zoning district as set forth in §9-508 of the Title 9 Planning and Zoning Ordinance.

*In accordance with Title 9, §9-1006, the applicant has the right to appeal this determination with the Board of Zoning Appeals.*

Should you have any questions regarding this decision, please feel free to contact me at 304-876-6858.

Respectfully,



John A. Beall  
Planning & Zoning Administrator

Enclosures: Title 9 - §9-508, §9-904A; §9-1006

**Section 9-508 Required lot area, lot width, and yards \* in residential districts (Amended February 13, 2007)**

	Min. Lot Area Per Family Unit (square feet)	Min. Lot Width (feet)	One Front Yard Depth (feet)	Side Yard (feet)	One Rear Yard (feet)	Green Space
PR District.....	22,000	100	*	2-20	***	****
<b>R-1 District</b>						
Single-family dwelling.....	11,000	60	*	**	***	****
Duplex dwellings.....	11,000	30 per unit	*	2-12 end units only	***	****
Town- houses.....	5,000	25 per unit	*	2-12 end units only	***	****
<b>R-2 District</b>						
Single-family dwelling.....	11,000	60	*	**	***	****
Duplex dwellings.....	5,500	30	*	2-10 end units only	***	****
Two-family dwellings.....	5,500	30	*	**	***	****
Town- houses.....	3,000	25 per unit	*	2-10 end units only	***	****
Multi-family dwelling.....	2,000	100	25	12	30	****
Schools and churches.....			*	10	30	****
*Front yard	No closer than established building line on adjacent lots. If no buildings exist then no closer than a building within two hundred (200) feet on the same side of the street.					
**Side yard	One side yard of at least twelve (12) feet unless the lot is accessible from the rear via a public alley. If such access exists then the side yard may be a minimum of eight (8) feet.					
***Rear yard	Not less than 40 feet.					
**** Green Space	Footprint of house (primary structure) and any accessory buildings cannot exceed 50% of lot					

**Section 9-903 Occupancy permit (Amended April 12, 2005)**

**Required** – An occupancy permit shall be required before any building may be occupied or used, wholly or partially, or changed in use from residential to commercial or commercial to residential. Applications for such permits shall be made, in duplicate, by the owner of the premises or his authorized agent, to the Planning Commission. Such permits shall be granted or refused within sixty (60) days from the date of application.

**Section 9-904 Subdivision (Repealed and replaced with Chapter 14 Subdivision and Development Regulations February 14, 2006)**

**Required** - Any individual, firm, association, partnership, corporation, joint-venture, or other business entities, who subdivide any lot or parcel of real estate situate within the corporate limits, before selling, leasing or assigning any lots therefrom, shall submit to the Planning Commission a copy of a plat of the proposed subdivision for approval. Approval will be given, once it has been established that:

(a) All such plans and designs of the subdivision are consistent with the need to minimize flood damage.

(b) All public utilities and facilities therein, such as sewer, gas, electrical and water systems, are located, elevated, and constructed to minimize or eliminate flood damage.

(c) Adequate drainage is provided therein so as to reduce exposure to flood hazards.

(d) Compliance with the chapters of this title pertaining to the zoning district in which the lot or parcel to be subdivided is situated, is assured.

**Section 9-904A Adjustment of Boundary Lines: Consolidation of Lots Required (amended June 8, 1999)**

Any individual, firm, association, partnership, corporation, joint-venture, or other business entity, who seeks the adjustment of boundary lines or the consolidation or merger of lots or portions of lots shall submit to the Planning Commission a copy of a plat of the proposed adjustment of boundary lines or the consolidation or merger of lots or portions of lots for approval. Approval will be given once it has been established that compliance with the chapters of this Title pertaining to the zoning district in which the boundary line adjustment or the lots or portions of lots to be merged are situated, is assured. The adjustment of boundary lines and/or consolidation of lots shall not be utilized to effect changes in development, density or other matters elsewhere regulated in this Title.

**Section 9-905 Remedies and penalties (amended October 10, 2006)**

**Section 9-1003 Rules, meetings, oaths, witnesses, records**

As provided in Chapter 8A-8-3 of the West Virginia State Code, the Board of Appeals shall adopt rules in accordance with the provisions of this chapter. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall make a transcript of all proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, which shall be immediately filed in the office of the Board and shall be a public record.

**Section 9-1004 Chairman and other officers**

The members of the Board shall elect a chairman and such officers in addition as they determine. Such officers shall serve one (1) year and until their successors have been selected and qualified.

**Section 9-1005 Bond (Amended 02/11/14)**

In order to defray the costs, a fee of \$100.00 shall be paid by each applicant or person who files a notice of appeal to the Board of Appeals, which includes, but is not limited to, special exceptions including flood plain, variances including flood plain, and continuations of non-conforming use. Such fee will go in the general revenue fund and will not be refunded.

**Section 9-1006 Appeals to the Board of Appeals (Amended 02/11/14)**

As provided in Chapter 8A-8-10 of the West Virginia Code, appeals to the Board of Appeals may be made by any person, board, association, corporation, or official allegedly aggrieved by the grant or refusal of a building or use or occupancy permit, or by any other administrative decision based or claimed to be based, in whole or in part, upon any of these zoning ordinances or rules and regulations adopted pursuant thereto, as set forth in Title 9 of the Town Code, or the Zoning Map.

An appeal relating to a Variance shall be filed with the board only after refusal of issuance of a permit by an enforcement official or after the issuance of a permit in cases where it is alleged that said permit has been issued erroneously.

An application for a Special Exception may be made only by a person or persons with a financial, contractual basis, or proprietary interest in the property for which a Special Exception is requested.

An appeal may be taken only by filing a notice of appeal with the Town Clerk within 30 days of the date appearing on the written order, requirement, decision, notice of decision, or determination. An appellant's failure to take any step other than the timely filing of a

notice of appeal does not affect the validity of the appeal, but is ground only for the Board of Appeals to act as it considers appropriate, including, but not limited to, requesting additional information or dismissing the appeal.

The notice of appeal must: (1) provide the names, addresses, and telephone numbers of each party taking the appeal, (2) have attached to it a copy of the order, requirement, decision, notice of decision, or determination being appealed, and (3) contain a statement of the grounds for the appeal. The appealing party shall submit the notice of appeal on the application form obtained from the Town Clerk, attaching additional pages as necessary to complete the application.

Upon filing a notice of appeal, the appellant must pay the Town Clerk all required fees. The Town Clerk shall forward the completed notice of appeal and all attachments to the officer from which the appeal is taken, and the Board of Appeals. Upon receiving the notice of appeal, the officer from which the appeal is taken shall forthwith transmit to the Board all papers constitute the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from which the appeal is taken certifies to the Board of Appeals after notice of appeal shall have been filed, that by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board or by a Court of Record with notice to the officer from which the appeal is taken

Once a completed notice of appeal has been filed and all applicable fees have been paid, the Board of Appeals shall fix a reasonable time, not to exceed forty-five (45) days, for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person, or be represented by agent or attorney.

**Section 9-1007      General powers of Board of Appeals (Amended 02/11/14)**

The Board shall have the following powers:

- (a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the by the officer in the enforcement of zoning ordinances or rules and regulations adopted pursuant thereto, or of the provisions of The West Virginia Code.

Shepherdstown Planning Commission December 14, 2020 – Regular Meeting & Public Hearing



Draft Minutes

**Present:**

Commission Members Present: Jim Auxer, Mayor; Chris Cafiero – Vice Chair; Terry Fulton; Abby Streu; Lori Robertson; Dr. Hani Al-Saleh

Commission Members Absent:

Planning & Zoning Staff: Andy Beall

Visitors: Alice Chakmakian; Carmen Slater; Sonya Evanisko; James Turner; Kristin Turner

**Call to Order:** 6:00 p.m.

**Approval of Minutes:** Minutes for Regular Meeting- 11/16/2020

**Motion:** Motion to approve; No objections; passes unanimously approved

**Discussion:** None

**Conflicts of Interest:** None

<b>Previous Applications:</b>		
<b>20-58</b>	Sonya Evanisko & Jerry Lebo	Remove existing wooden retaining wall between the 2 properties in lower half of the rear yard, replacing with a stone wall and replacing chain-link fence with wood picket fence identical to that currently in the upper, rear yard.
	103 & 105 W. High Street	
<i>The applicant is present and describes the proposed project. The commission feels this will be an improvement over what is currently in place. They confirm with staff that all Title 9 requirements have been met.</i>		
<b>HLC Decision:</b>	Approved COA.	
<b>Motion:</b>	<i>J. Auxer motions to approve application #20-58 as submitted; no objections and motion passed unanimously.</i>	
<b>New Applications:</b>		
<b>20-60</b>	James & Kristin Turner	Display a two (2) square foot oval hanging business sign from existing bracket.
	133 W. German Street	
<i>The applicants are present and describe the proposed signage. The commission confirms with staff that the title 9 sign requirements have been met.</i>		
<b>HLC Decision:</b>	N/A	

Shepherdstown Planning Commission December 14, 2020 – Regular Meeting & Public Hearing



Draft Minutes

<b>Motion:</b>		<i>H. Al-Saleh motions to approve application 20-60 as submitted; no objections and motion passes.</i>
<b>New Applications:</b>		
<b>BLA</b>	<b>Romine-Chakmakian</b>	Adjustment of side yard lot line between 202 & 200 E. German Street to the east. Total acreage to be transferred from 202 E. German to 200 E. German is 0.0057 (247 square feet).
	<b>202 &amp; 200 E. German St.</b>	
<i>Alice Chakmakian is present to represent the parties effected by the proposed boundary line adjustment. C. Cafiero sites §9-508 of the Planning &amp; Zoning ordinance which requires lots in the R-1 zoning district contain a minimum of 11,000 square feet. The parcel to which the 247 sq. ft. would be merged is currently 7,619 sq. ft. and would not be brought into conformance with the merger.</i>		
<b>HLC Decision:</b>	N/A	
<b>Motion:</b>		
<i>L. Robertson motions to deny the proposed boundary line adjustment per the requirements set forth in §9-508 of the Planning &amp; Zoning Ordinance and the proposal's non-conformance with those requirements; no objections and motion passed unanimously.</i>		
<b>Previous Applications:</b>		
<b>BLA</b>	<b>Christman-Meske</b>	Adjustment of rear yard lot line between 203 E. German Street and 206 E. High Street to the south. Total acreage to be transferred from 203 E. German to 206 E. High is 0.1243 (5,413 square feet).
	<b>203 E. German &amp; 206 E. High</b>	
<i>Alice Chakmakian is present to represent the parties effected by the proposed boundary line adjustment. The commission confirms with staff that the Title 9 lot requirements will be met as a result of the proposed boundary line adjustment.</i>		
<b>HLC Decision:</b>	N/A	
<b>Motion:</b>		
<i>L. Robertson motions to approve the proposed boundary line adjustment; no objections and motion passes.</i>		

Shepherdstown Planning Commission December 14, 2020 – Regular Meeting & Public Hearing



**Draft Minutes**

- Continuing Business:** C. Cafiero updates commission on County Commission meeting as it relates to the proposed Sheetz to be constructed on the south side of state route 45, across from the Maddex Square shopping center. There was concern from citizens that the proposal would include the demolition of two historic homes on the site.
- New Business:** N/A
- Administrative Matters:** J. Auxer motions to approve the recommendation of Carmen Slater (for PC) to Town Council; no objections and the motion passes.
- Adjournment:** Motion to adjourn at 6:47 p.m.; No objections and passed unanimously.





