



Charleston Board of Zoning Appeals

AGENDA

8:30 a.m., Thursday, September 23, 2021

Join via internet at:

<https://us02web.zoom.us/j/82700034553?pwd=akl1S1RxMnVveEkxbUhURDZlMENJdz09>

Or call: 312-626-6799 or 929-436-2866 or 346-248-7799

Webinar ID: 827 0003 4553

Password: 828009

I. Items for Review

VAR-21-2996

Application of Dennise Smith requesting a fence height variance in order bring into compliance a privacy fence installed on the property located at **931 Churchill Circle**.

VAR-21-2997

Application of Larry Estep requesting a variance of the accessory structure regulations in order to construct a garage in the front yard of the property located at **104 Ashby Avenue**.

II. Approval of minutes for the August 26, 2021 hearing.



**Board of Zoning Appeals
PUBLIC HEARING NOTICE**

Until further notice, BZA hearings will be accessible via Zoom.

Case Descriptions

VAR-21-2996: Application of Dennise Smith requesting a fence height variance in order bring into compliance a privacy fence installed on the property located at **931 Churchill Circle**.

The file (including the application, site plan and other supporting documentation) is available for your inspection online at <https://charlestonwv.civicclerk.com/>. If you have questions, email lori.brannon@cityofcharleston.org or call 304-348-8105.

Hearing Details

WHEN: 8:30 a.m.
Thursday, September 23, 2021

WHERE: Join via internet at:
<https://us02web.zoom.us/j/82700034553?pwd=akl1S1RxMnVveEkxbUhURDZlMENJdz09>
Or call: 312-626-6799 or 929-436-2866 or 346-248-7799
Webinar ID: 827 0003 4553
Password: 828009

Public Participation

Anyone who wishes to comment on the case described above is encouraged to do so in one of the following ways:

1. Send a written statement to lori.brannon@cityofcharleston.org. These statements will become a part of the record and will be shared with members of the Board prior to the hearing.
2. Speak directly to the Board by joining the meeting via Zoom using the details listed above. ***Please provide your name and the phone number or e-mail address you'll be using to join the hearing to lori.brannon@cityofcharleston.org by 5 pm on Tuesday, September 22, 2021.***

As a matter of general policy these proceedings will not be transcribed by the Board. Anyone wishing a legal transcript must provide a court reporter at his/her own expense.

Board of Zoning Appeals
Application for Variance

BZA # _____

Hearing Date: _____

Applicant Information	Property Information
Name: <u>Dennise R. Smith</u>	Address: <u>931 Churchill Cir., Chas. 25314</u>
Address: <u>931 Churchill Cir., Chas. 25314</u>	Tax Map and Parcel: <u>13 83.2</u>
Phone: <u>304-881-3242</u>	Zoning District: <u>09-South Annex</u>
Agent Name, Address and Phone Number: (if other than applicant)	Property Owner and Mailing Address: (if other than applicant) <u>(Applicant)</u>

INSTRUCTIONS: This application must be typed or legibly printed and filed with the Planning Department in person or by mail to 915 Quarrier Street, Suite 1 Charleston, WV 25301. The following items must accompany this application:

1. a site plan drawn to scale;
2. a list of the owners, with their mailing addresses, of the properties within a 100 foot radius of the property for which the variance is being sought; and
3. \$125.00 filing fee in the form of cash, personal check or money order made payable to the City of Charleston.

You are also encouraged to submit any additional information, including photographs, elevations, testimonials or other documentation which may support your application. You or your representative must be present at the scheduled public hearing in order to present your request and answer questions.

THE PLANNING DEPARTMENT WILL NOT ACCEPT INCOMPLETE APPLICATIONS.

A variance is a method by which a property owner receives permission to vary from the development standards established in the Zoning Ordinance governing such matters as building location, building dimensions, setback requirements, placement and quantity of parking, landscaping, signage, and other features included in site design. Please describe your variance request.

I require a variance to install a 6 foot tall privacy/divider fence between my property & my neighbors at 929 Churchill Drive. The fence is approx 20 ft long & would be on side of house to parking pad (graveled). This will replace wooden fence erected by neighbors before I moved onto property in 2012.

Applicable Section(s) of the Zoning Ordinance Sec. 3-080

vinyl

Please describe the proposed work to be done on the property. 6 feet tall / 20 feet in length white vinyl fence secured with cement footers. See pictures attached

IMPORTANT: According to Section 8A of the Code of the State of West Virginia and Section 29-040 of the City of Charleston's Zoning Ordinance, the Board of Zoning Appeals may grant a variance if and only if **ALL** of the following four criteria can be satisfied:

- 1.) The variance, if granted, will not adversely affect the public health, safety and welfare or the rights of adjacent property owners or residents; and,
- 2.) The variance arises from special conditions or attributes which pertain to the property for which a variance is being sought and which were not created by the person or entity seeking the variance; and,
- 3.) The variance, if granted, would eliminate an unnecessary hardship and permit a reasonable use of the land; and,
- 4.) The variance, if granted, will allow the intent of the Zoning Ordinance to be observed and substantial justice done.

1.) If granted, your variance must not adversely affect the public health, safety and welfare or the rights of adjacent property owners or residents. For example, public safety cannot be compromised by limiting access for emergency vehicles, and neighboring property owners must not be hindered in the use their properties in any manner permitted in the Zoning Ordinance. If your variance request is granted, how will others in the area be affected? None of my neighbors for others traveling through the neighborhood will be affected. It does not block/obstruct view of road or otherwise affect public safety. The fence would be behind tall shrubbery & does not exceed height of shrubbery. My neighbors view will not be altered. My neighbors also gave me permission to build.

2.) Your request must arise from special conditions or attributes which pertain to the subject property and which you did not create. The size, shape and topography of your lot are examples of the physical conditions which may satisfy this criterion. In comparison with other properties in the vicinity and under the same zoning regulations, what is unusual or different about the subject property? See attached

3.) An unnecessary hardship is neither personal nor financial in nature. In this application, an unnecessary hardship is a problem created by some feature of the land which prevents the owner from making reasonable use of the property as permitted by the Zoning Ordinance. The following three questions help to determine if there is an unnecessary hardship with regard to your property.

Without a variance, are you deprived of all beneficial use of your land? Yes. See attached

Is your situation due to unique circumstances that are not shared by other land in the district? Yes. See attached

Would approval of your variance request alter the essential character of the surrounding neighborhood or community? No. It will not alter the essential character and in fact, would be an improvement to prior fencing & fence to be installed by neighbors - pictures provided

4.) The general purpose and intent of the Zoning Ordinance of the City of Charleston is to protect and promote the public health, safety, convenience, morals and general welfare. For more specific information in regard to the scope and intent of the Zoning Ordinance, please see Section 1-020 as well as the section from which you are requesting this variance. Will approval of the variance allow the intent of the Zoning Ordinance to be observed?

Yes. See attached

Substantial justice is the idea that a standard of fairness has been satisfied according to the substance of the law. Does your variance request represent the least deviation from the Zoning Ordinance necessary to achieve an outcome that is fair to both you and to your community?

Yes. There are 3 other properties with fences of 6 feet in height on Churchill - one very similar to mine.

I hereby affirm that all of the statements and information contained in or filed with this application are true and correct to the best of my knowledge.

Signature

Date

8/2/2021

Planning Department Use Only

The following is a list of related cases:

The following is a list of zoning ordinance violations, building code violations and enforcement actions relating to the subject property:

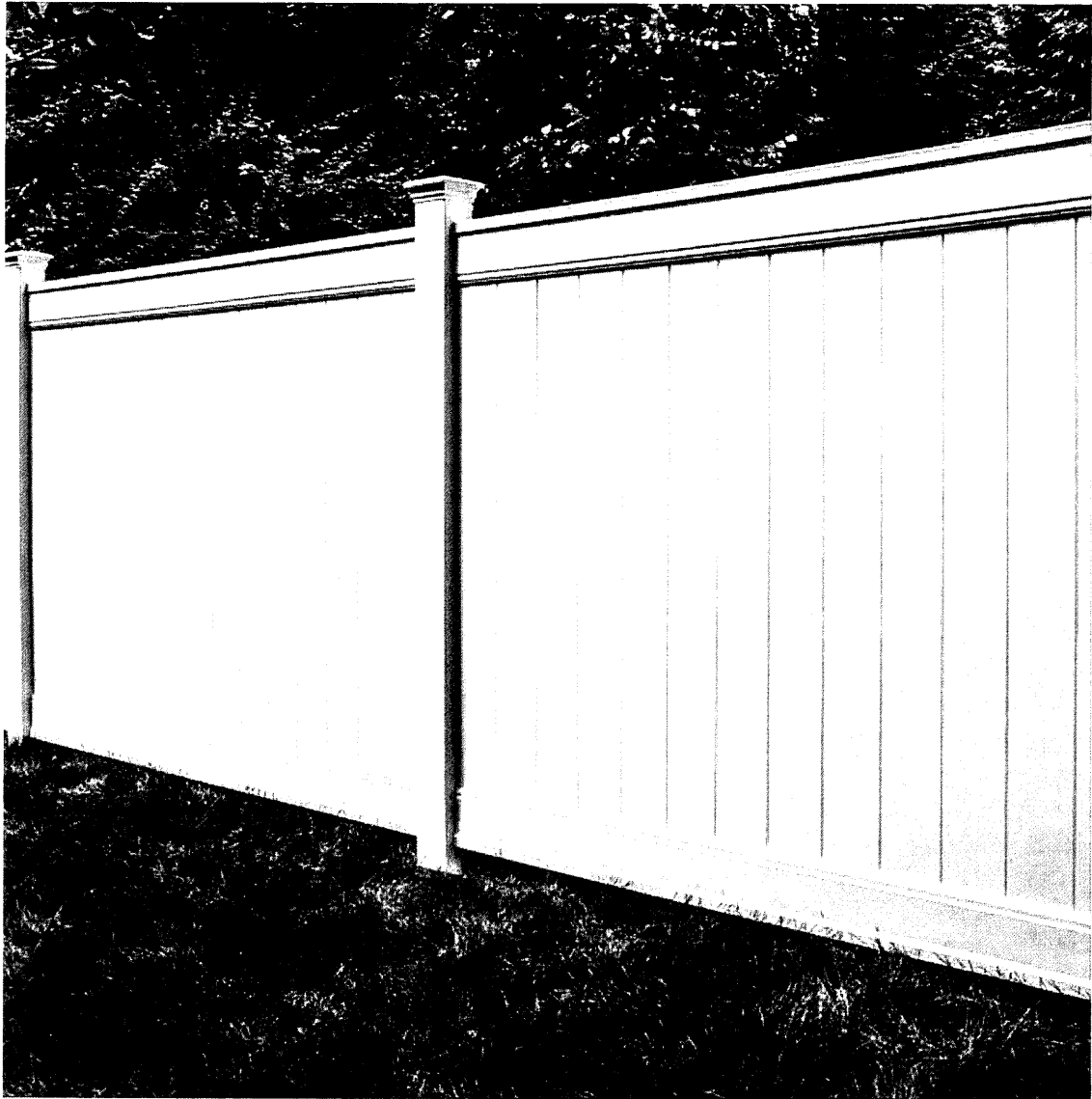
Application reviewed by:

Action: ☐ Approved ☐ Rejected

If approved, were there any specific conditions or limitations imposed by the BZA?

Planning Official Signature and Title

Date



DENNISE R. SMITH APPLICATION FOR VARIANCE - RESPONSES

2. No others in the area will be affected. My neighbor at 929 Churchill Circle granted me permission to install the fence.¹ The lot and house I own is unique and that my home has a deck that is connected to the porch and decks of my neighbors home (928 Churchill Cir.), which were both build in the mid-1960s. See Exhibit A. Those decks are divided by a fence. When I moved on the property, there was a large red wooden fence demarking our properties that was ugly and worn. It started from the face of their deck and extended to the parking place. Luckily there were tall bushes which partially covered it, but it was trashy looking and did not fit in with our neighborhood. I did not say anything because without the fence, however, it is hard to separate my property from my neighbors. Moreover, my neighbors had several dogs at that time, including a German Shepard and Pitbull, that I did not want in my yard because I have cats.

That fence fell into disrepair a few months ago and my neighbor was temporarily removed it along with fencing at the front of her property. During that time, I frequently received her mail because the new mailman did not know or understand my house is separate from hers. My neighbor put up the front fence and was about to replace the fence dividing our property with another ugly red one, which was also same height of the fence I wish to install (i.e. 6 feet tall). See Exhibit B. I was also concerned because they were doing the job themselves and the fencing appears to be unstable and not properly secured. I did not want the side panel to be similarly constructed and fall onto my property and possibly injuring my pets. I asked if she would be okay with me installing a white vinyl one and she agreed. See Exhibit C.²

3. The owners of 929 Churchill Cir. do not keep their property in good repair and frequently leave trash and boxes of food³ on their porch. Due to the shape of the lot and closeness of our homes, trash, debris, and smells would travel into my yard without this fence. During the time the red fence was down, I had to frequently clean up trash from my front yard and the stench from the trash was sometimes so overwhelming I could not be outside in my front lawn (the trash cans are routinely left 10-15 feet away from my property overflowing with trash). Because of the closeness of our homes built together, the shape, curvature and location of my property, a fence is needed protect my property against unsanitary and unsightly conditions which significantly affect my quality of living.

Also, 928 Churchill Circle is an eyesore. Until recently, there was an above-ground pool which became home to many frogs and a beat-up camper parked in front of their home with tags that had expired several years ago⁴. Instead of mowing the lawn, my neighbors decked over most of their front yard. Old furniture, used TVs, and other trash is often left in the front yard despite it not being trash day. This has been going on since I bought the house in 2012. Because of the shape, curvature and location of my property, a fence is needed because I should not be forced to see this property when I am outside.

¹ I have since learned that she is the one who complained about the fence – after giving me permission – because she believed I had reported her to the Zoning Commission for the state of her property and for her above ground pool. I did not, but I understand several of my other neighbors did.

² I was unable to retrieve the first part of the message as I obtained a new phone and all my information, including the initial text, did not transfer.

³ The owner advised me that she runs a food pantry and so stores or receives donations at her home.

⁴ These items have been removed very recently due to action the Zoning Board took to remove these items (thankfully).

909
Indeed, other neighbors in my direct vicinity (and those walking by from streets adjacent to Churchill) have complained to me about 928 Churchill Circle – many have done so repeatedly as I guess they think I can do something about it - and it seems to be getting worse each year. We are all concerned that our property values have been damaged by 928 Churchill Circle and will lead to further blight in our neighborhood. However, my property value is most at risk because of the way our homes were built, which makes it difficult to see that our lots and houses are separate. A fence is needed to help protect the value of my property (and also to protect me from being liable for whatever harm or risk 928 Churchill Circle causes my own property). 929

559
The fence will not alter the essential surrounding character of the neighborhood. The fence for which I am requesting a variance will improve the area as it replaces the ugly red wooden one and fits better into the neighborhood. Moreover, there are 3 other dividing fences on Churchill that I believe to be 6 feet tall, but are over 4 feet, and all of them extend from the front of their homes to the parking pavement/street. See Exhibit D (598, 708 and 715 Churchill.) Two of these fences block the view of driveways. *Id.* As such, I **respectfully ask** that you afford me the same variance granted to these individuals.

4. Permitting the dividing fence will not hinder or undermine the general purpose and intent of the Zoning Ordinance. Approval of the variance will continue to allow the Zoning Ordinance to protect and promote public health, safety, convenience and the morals and general welfare of the community.

Dennise R. Smith /s/

08/2/2021

EXHIBIT A



EXHIBIT B

929
Churchill
Cir.
fence
she
was
to
live





EXHIBIT C



7:50



+1 (304) 946-7292 >

Thu, May 13, 5:00 PM

That's fine.
Thanks for letting
me know before I
put those pieces
up.

Thank you! Yeah
that job looked
like a pain in the
rear to do. Hope
You feel better
soon



7:50



+1 (304) 946-7292 >

Thu, Jun 3, 2:57 PM

Okay so they
aren't coming to-
day bc weather.
Ugh. Hopefully
tomorrow. Thank
you for your pa-
tience and coop-
eration thus far.

Its ok whenever

EXHIBIT D









Brannon, Lori

From: ericmedsrg@aol.com
Sent: Tuesday, September 14, 2021 2:42 PM
To: Brannon, Lori
Subject: VAR-21-2996 Denise Smith 931 Churchill Circle

This email originated from an outside source: Do not open attachments or links unless you know the content is safe. Forward suspicious emails as an attachment to: helpdesk@cityofcharleston.org

I live at 933 Churchill Circle and am Denise Smith's Neighbor. Both my wife and I consider the aforementioned fence to be a much welcomed addition to the neighborhood. Eric & Denise Schwarz



**Board of Zoning Appeals
PUBLIC HEARING NOTICE**

Until further notice, BZA hearings will be accessible via Zoom.

Case Descriptions

VAR-21-2997: Application of Larry Estep requesting a variance of the accessory structure regulations in order to construct a garage in the front yard of the property located at **104 Ashby Avenue**.

The file (including the application, site plan and other supporting documentation) is available for your inspection online at <https://charlestonwv.civicclerk.com/>. If you have questions, email lori.brannon@cityofcharleston.org or call 304-348-8105.

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1. Send a written statement to lori.brannon@cityofcharleston.org. These statements will become a part of the record and will be shared with members of the Board prior to the hearing.
2. Speak directly to the Board by joining the meeting via Zoom using the details listed above. ***Please provide your name and the phone number or e-mail address you'll be using to join the hearing to lori.brannon@cityofcharleston.org by 5 pm on Tuesday, September 22, 2021.***

As a matter of general policy these proceedings will not be transcribed by the Board. Anyone wishing a legal transcript must provide a court reporter at his/her own expense.

Board of Zoning Appeals
Application for Variance

BZA # _____

Hearing Date: _____

Applicant Information	Property Information
Name: <u>Larry Estep</u>	Address: <u>104 Ashby Ave. Chas. WV 25314</u>
Address: <u>104 Ashby Ave Chas. W.V. 25314</u>	Tax Map and Parcel:
Phone: <u>(304) 543-8810</u>	Zoning District:
Agent Name, Address and Phone Number: (if other than applicant)	Property Owner and Mailing Address: (if other than applicant) <u>(SAME)</u>

INSTRUCTIONS: This application must be typed or legibly printed and filed with the Planning Department in person or by mail to 915 Quarrier Street, Suite 1 Charleston, WV 25301. The following items must accompany this application:

1. a site plan drawn to scale;
2. a list of the owners, with their mailing addresses, of the properties within a 100 foot radius of the property for which the variance is being sought; and
3. \$125.00 filing fee in the form of cash, personal check or money order made payable to the City of Charleston.

You are also encouraged to submit any additional information, including photographs, elevations, testimonials or other documentation which may support your application. You or your representative must be present at the scheduled public hearing in order to present your request and answer questions.

THE PLANNING DEPARTMENT WILL NOT ACCEPT INCOMPLETE APPLICATIONS.

A variance is a method by which a property owner receives permission to vary from the development standards established in the Zoning Ordinance governing such matters as building location, building dimensions, setback requirements, placement and quantity of parking, landscaping, signage, and other features included in site design. Please describe your variance request. To have the front yard Set back Line moved closer to the front of my property line,

Applicable Section(s) of the Zoning Ordinance _____

Please describe the proposed work to be done on the property. I wish to have a 2-car garage + workshop, storage area built there, by the same builder that built my house on this same property 3 years ago.

IMPORTANT: According to Section 8A of the Code of the State of West Virginia and Section 29-040 of the City of Charleston's Zoning Ordinance, the Board of Zoning Appeals may grant a variance if and only if **ALL** of the following four criteria can be satisfied:

- 1.) The variance, if granted, will not adversely affect the public health, safety and welfare or the rights of adjacent property owners or residents; and,
- 2.) The variance arises from special conditions or attributes which pertain to the property for which a variance is being sought and which were not created by the person or entity seeking the variance; and,
- 3.) The variance, if granted, would eliminate an unnecessary hardship and permit a reasonable use of the land; and,
- 4.) The variance, if granted, will allow the intent of the Zoning Ordinance to be observed and substantial justice done.

1.) If granted, your variance must not adversely affect the public health, safety and welfare or the rights of adjacent property owners or residents. For example, public safety cannot be compromised by limiting access for emergency vehicles, and neighboring property owners must not be hindered in the use their properties in any manner permitted in the Zoning Ordinance. If your variance request is granted, how will others in the area be affected?

It will not affect neighbors in any way, other than
improving their view in my properties direction. It will not adversely
affect public health, safety, & welfare or rights of anyone,

2.) Your request must arise from special conditions or attributes which pertain to the subject property and which you did not create. The size, shape and topography of your lot are examples of the physical conditions which may satisfy this criterion. In comparison with other properties in the vicinity and under the same zoning regulations, what is unusual or different about the subject property?

My property is kind of alone (with
no neighbor adjoining property behind, or to one side) in a kind of
triangle shape, near the end of a dead end street.

3.) **An unnecessary hardship is neither personal nor financial in nature.** In this application, an unnecessary hardship is a problem created by some feature of the land which prevents the owner from making reasonable use of the property as permitted by the Zoning Ordinance. The following three questions help to determine if there is an unnecessary hardship with regard to your property.

Without a variance, are you deprived of all beneficial use of your land? Yes. If deprived I
would have to build the garage too close to my house

Is your situation due to unique circumstances that are not shared by other land in the district? Yes. My
property lines is more triangular, instead of rectangular, like
most of my neighbors.

Would approval of your variance request alter the essential character of the surrounding neighborhood or community? No. Not in any way.

4.) The general purpose and intent of the Zoning Ordinance of the City of Charleston is to protect and promote the public health, safety, convenience, morals and general welfare. For more specific information in regard to the scope and intent of the Zoning Ordinance, please see Section 1-020 as well as the section from which you are requesting this variance. Will approval of the variance allow the intent of the Zoning Ordinance to be observed?

Yes, most certainly, Like my new house that was built on this property 3 years ago, it will add to & improve the neighborhood property.

Substantial justice is the idea that a standard of fairness has been satisfied according to the substance of the law. Does your variance request represent the least deviation from the Zoning Ordinance necessary to achieve an outcome that is fair to both you and to your community? _____

Granting my Variance request would only improve the looks of my neighborhood, & the beauty & owners value of their properties on my end of a dead end street in Fort Hill.

I hereby affirm that all of the statements and information contained in or filed with this application are true and correct to the best of my knowledge.

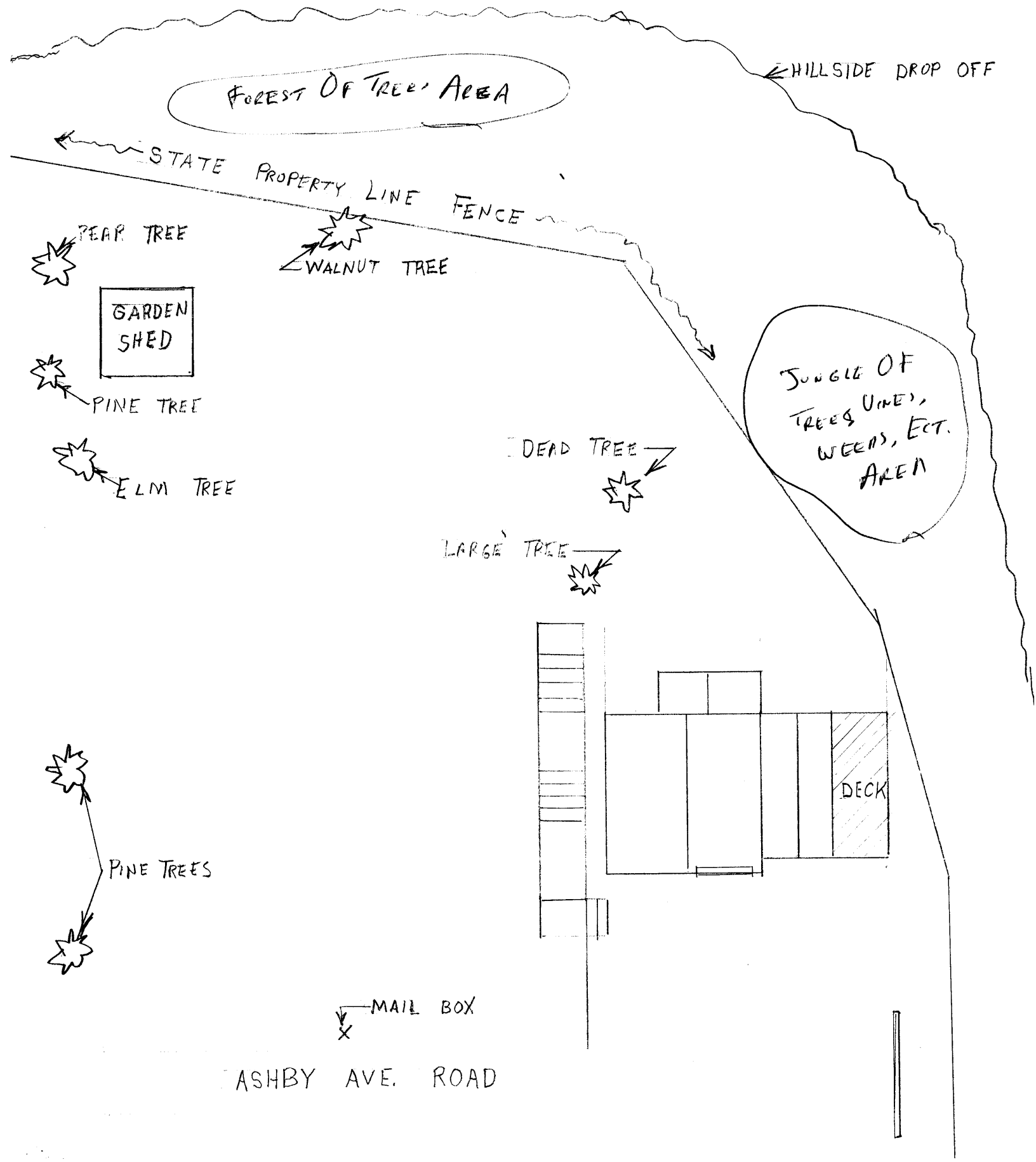
Signature Larry Estep

Date 8/5/21

Planning Department Use Only	
The following is a list of related cases:	
The following is a list of zoning ordinance violations, building code violations and enforcement actions relating to the subject property:	
Application reviewed by:	
Action: ☐ Approved ☐ Rejected	
If approved, were there any specific conditions or limitations imposed by the BZA?	
Planning Official Signature and Title	
Date	

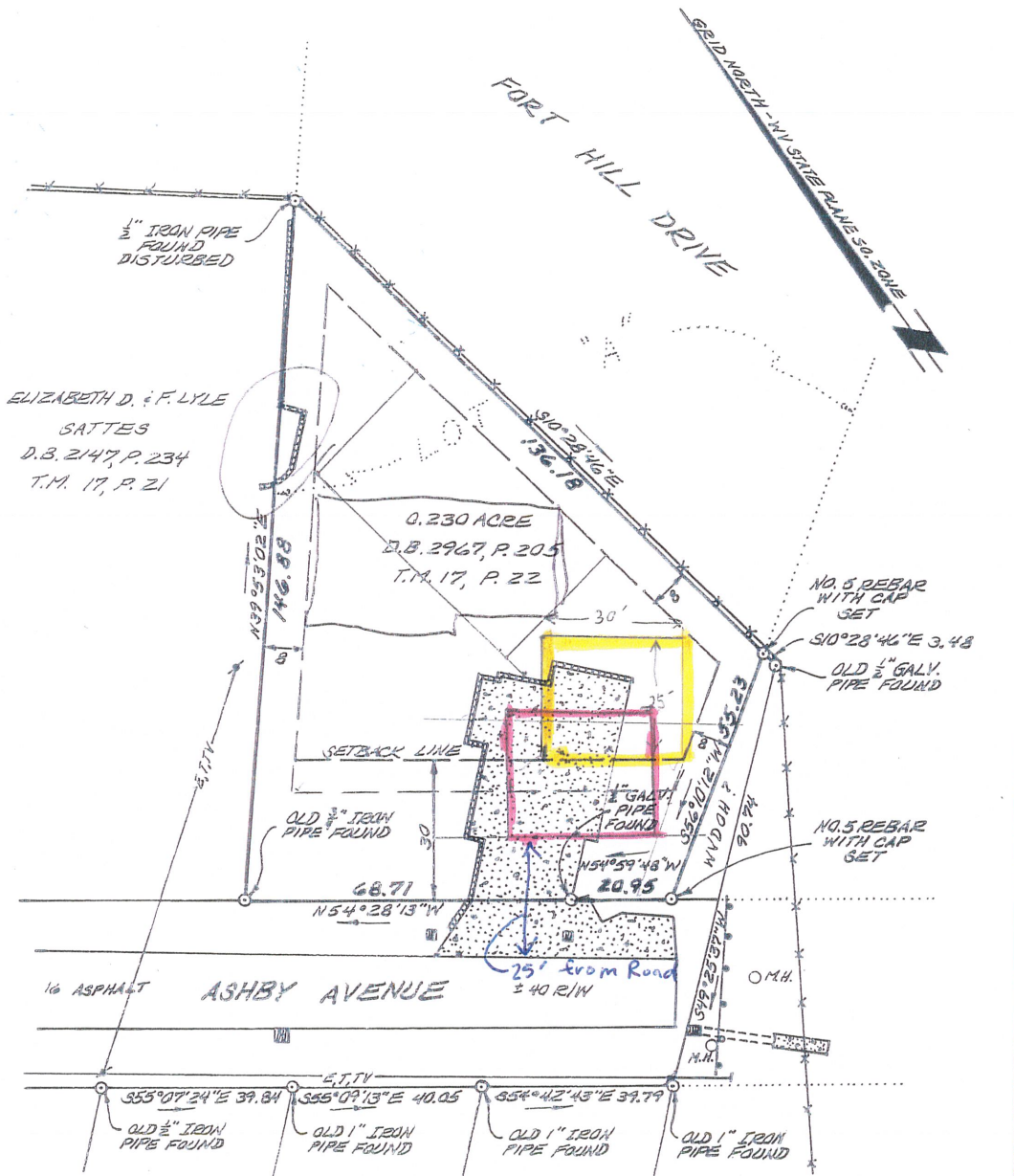
(How Proprietor Locked, When I Bought It, for \$150,000)

SKY LINE VIEW OF CHARLESTON



SEPTEMBER 7 2017
WILLIAM R. GUNNOE
LICENSED
No. 801
STATE OF
REGISTERED PROFESSIONAL SURVEYOR NO. 801
CLANDENIN, WV
PROFESIONAL SURVEYOR

NOTES: SEE MAP BOOK 9, PAGE 37, MAP IN D.B. 887, P. 324-A AND TAX MAP 17, CHARLESTON SOUTH ANNEX.



PLAT SHOWING
 PART OF LOT "A",
 TUCKAWAY PLACE
 IN THE CITY OF CHARLESTON
 KANAWHA COUNTY, WEST VIRGINIA
 SURVEYED FOR
 LARRY B. ESTEP
 SCALE: 1" = 30' SEPTEMBER 1, 2017

WILLIAM E. GUNNOE
 LICENSED
 STATE OF
 REGISTERED PROFESSIONAL SURVEYOR NO. 801
 CLENDENIN, WV





9/21/21

To: Lori Brannon & the City of Charleston Board of Zoning Appeals Committee.

From: Close by "neighbors" of Larry Estep on the Ashby Ave. dead end street.

Concerning: His variance request for building a garage.

We, "fellow near by neighbors" of Larry Estep, on the end of the dead end street of Ashby Ave. would like to notify you of our support of him obtaining a zoning request to build a garage in the front of his property @ 104 Ashby Ave. Larry has been a new neighbor, that built a new home on this property, for over the past 3 years. He takes good care & maintenance of the end of this dead end street, by maintaining both his, & the surrounding dept. of highways property as far as grass cutting, keeping clean of debris, etc.

#105 Ashby Ave. - Kathy Kanico ^{CANONICO} Kathleen Canonico

#107 Ashby Ave. - Robin Pauley ⁹¹⁴⁻⁴⁷¹⁻⁶⁴³⁵ Robin Pauley ^{(304) 342-8675} ^{(304) 590-38}

#109 Ashby Ave. - Steve Slater & Wife Steve Slater

#110 Beth & Lyle Sattes Beth & Lyle Sattes ^{(304) 610-5944}

#111 Matt & Jenni Minardi Jenna Minardi ³⁰⁴⁻⁹⁴¹⁻⁷⁶⁹⁹