

Minutes

Jefferson County Board of Zoning Appeals

1 Meeting Date: October 27, 2022
2 Meeting Location: By order of the Chair, the Board of Zoning Appeals meeting was held
3 in-person in the County Commission Meeting Room located in the
4 lower level of the Charles Town Library; and virtually via ZOOM.
5 Board Members Present: Tyler Quynn, Chair; and Matthew McKinney (in person).
6 Steve Guier (via ZOOM).
7 Board Members Absent: Deirdre Catterton, Vice Chair; Leeds Corbin, and Mikala Shremshock,
8 alternate member (with notification)
9 Staff Members Present: Alexandra Beaulieu, Zoning Administrator; Steve Groh and Nathan
10 Cochran, Assistant Prosecuting Attorneys; and Jennilee Hartman,
11 Zoning Clerk

12 All requests were pursuant to the Jefferson County Zoning and Land Development Ordinance.

13 Mr. McKinney moved to call the meeting to order at 2:00 pm. Mr. Quynn called for a vote, which
14 carried unanimously.

15 Mr. Quynn reviewed meeting protocol for those in attendance.

16 **Approval of Minutes: September 22, 2022**

17 Mr. McKinney moved to approve the minutes as presented. Mr. Quynn called for a vote, which
18 carried unanimously.

19 Ms. Hartman swore in members of the public who indicated they would be providing testimony.

20 Mr. Quynn made a motion to amend Section 3.4 of the Rules of Procedure to add the position of
21 Board secretary and to include language that would allow the Board Secretary to preside over a
22 meeting in the absence of both the Chair or the Vice Chair. Mr. Quynn called for a vote, which
23 carried unanimously.

24 Mr. Quynn moved to nominate Mr. Matt McKinney as Secretary. Mr. Guier seconded the motion,
25 which carried unanimously.

26 **ITEM #1 FILE #: 22-32-ZV, 22-33-ZV, and 22-34-ZV**

27 The following three requests pertain to a proposed 10,542 square foot retail store (Dollar General)
28 and associated parking lot.

29 Request 1: Variance from Section 4.11E to eliminate a portion of the landscape buffer along the
30 southern and western property lines; and Section 4.11I.1 to eliminate the streets trees
31 along Amanda Court and Shepherdstown Pike.

32 Request 2: Variance from Section 11.1A to reduce the number of required parking spaces from
33 47 to 31; and Appendix B to reduce the front parking setback along Amanda Court
34 from 15' to 8'.

35 Request 3: Variance from Section 10.4B to reduce the front setback along Amanda Court from
36 25' to 19' and along Shepherdstown Pike from 25' to 17' for a freestanding sign.

37 Applicant: A & R Development (Dollar General)

38 Parcel Info: Iris Wood, Property Owner

39 Mark Kramer Subdivision, Lot 2, Vacant parcel on the southwest corner of Amanda Ct.
40 and Shepherdstown Pk., Harpers Ferry, WV; Parcel ID: 04001000110005; Size: 2.26
41 acres; Zoning District: Residential-Light Industrial-Commercial

1 Robert Milne, consultant with The Thrasher Group, and Richard Wright with A & R Development
2 were present to address the Board. Ms. Beaulieu provided an overview of each staff report.
3 Ms. Beaulieu noted that in 1997, the site had been platted with a stormwater management easement
4 and road improvement easement as part of the Mark Kramer commercial subdivision. Ms. Beaulieu
5 explained that the proposed drive aisle width exceeded the width requirement in the Subdivision
6 Regulations to accommodate Dollar General's specific design criteria for truck movement. She
7 noted that as a result of the wider drive aisle, the proposed parking area would be shifted into the
8 parking setback along Amanda Court, which would eliminate the planting area for street trees. With
9 regard to the parking variance, Ms. Beaulieu stated that the applicant represented the proposed
10 number of spaces was sufficient for their daily customer visits. With regard to the reduced setbacks
11 for the proposed freestanding sign, Ms. Beaulieu stated that expansion of Amanda Court was
12 unlikely since it was platted as a sixty foot right of way. She also noted that there was a platted road
13 improvement easement along Shepherdstown Pike to accommodate any future expansions.

14 Mr. Milne explained the nature of the request to the Board stating that the site's building area was
15 impacted by an existing stormwater management easement and a road improvement easement.

16 Mr. Wright confirmed that there would be additional landscaping planted along the eastern and
17 southern portions of the parking lot. Mr. Wright explained that Dollar General's traffic count did
18 not necessitate as many parking spaces as the Zoning Ordinance required, noting that during peak
19 hours, the average trip generation was approximately 12-15 cars.

20 Mr. Quynn argued that the requests appeared to be self-imposed and that the subject lot may not be
21 suitable for this particular development.

22 In response to the Board's questions regarding alternative sites, Mr. Wright stated that they had
23 researched other properties in the target area; however, the subject parcel was the most cost
24 effective parcel that was commercially zoned.

25 Mr. Quynn opened the public hearing. No members of the public provided testimony. Mr. Quynn
26 closed the public hearing.

27 Mr. McKinney moved to approve the variance from Section 4.11E to eliminate a portion of the land-
28 scape buffer along the southern and western property lines; and Section 4.11I.1 to eliminate the
29 streets trees along Amanda Court and Shepherdstown Pike with the condition that the applicants
30 were bound by their testimony and that all other permits will be obtained for the proposed land use.

31 Mr. Quynn called for a vote, which carried two (2) in support and one (1) in opposition (Mr. Quynn).

32 Mr. McKinney moved to approve the variance from Section 11.1A to reduce the number of required
33 parking spaces from 47 to 31; and, Appendix B to reduce the front parking setback along Amanda
34 Court from 15' to 8' with the condition that the applicants were bound by their testimony and that all
35 other permits will be obtained for the proposed land use. Mr. Quynn called for a vote, which carried
36 two (2) in support and one (1) in opposition (Mr. Quynn).

37 Mr. McKinney moved to approve the variance from Section 10.4B to reduce the front setback along
38 Amanda Court from 25' to 19' and along Shepherdstown Pike from 25' to 17' for a freestanding
39 sign with the condition that the applicants were bound by their testimony and that all other permits
40 will be obtained for the proposed land use. Mr. Quynn called for a vote, which carried two (2) in
41 support and one (1) in opposition (Mr. Quynn).

1 **ITEM #2 FILE #: 22-35-ZV**

2 Request 1: Variance from Section 9.7 to reduce the side setback along the northern property line
3 from 15' to 6' for a 12' x 32' deck.

4 Parcel Info: Potomac Cottages, LLC / Attn: Robert and Julie Starkey, Property Owner
5 1523 Knott Road, Shepherdstown, WV;
6 Parcel ID: 09011A00360000; Size: 2.3 ac; Zoning District: Rural

7 Robert Starkey, property owner, was present to address the Board. Ms. Beaulieu provided an over-
8 view of her staff report explaining the Board's action on a previous variance for the subject parcel
9 and highlighted the difference between the two requests.

10 Mr. Starkey explained the nature of the request to the Board stating that the landing and stairway
11 from the previous variance request had been removed and that this request was solely to retain the
12 deck along the front of the house.

13 Mr. Quynn opened the public hearing. No members of the public provided testimony. Mr. Quynn
14 closed the public hearing.

15 Mr. McKinney moved to approve the variance with the condition that the applicant was bound by
16 their testimony. Mr. Quynn called for a vote, which carried unanimously.

17 **ITEM #3 FILE #: 22-36-ZV**

18 Request 1: Variance from Appendix B to reduce the front setback from 25' to 0' along a platted
19 interior access easement for a proposed fueling island and canopy.

20 Parcel Info: Sheetz, Inc., Property Owner
21 Vacant parcel at the intersection of Route 340 and Augustine Avenue
22 Parcel ID: 02001600010000; Size: 2.5 ac; Zoning District: Highway Commercial

23 Chad Wallen, consultant with Integrity Federal Services; and Bob Franks with Sheetz (via ZOOM),
24 were present to address the Board. Ms. Beaulieu provided an overview of her staff report noting
25 that the subject parcel was platted with a 50' wide access easement that runs through the interior of
26 the proposed Sheetz project for the benefit of one residential lot.

27 Mr. Wallen explained the nature of the request to the Board arguing that the Ordinance was unclear
28 that a setback is measured from an access easement. Mr. Wallen noted that the property owner for
29 the residential lot provided a letter of support.

30 Mr. Quynn opened the public hearing. Greg Helfebower, resident, spoke in opposition to the
31 request and expressed his concern regarding the traffic on Augustine Avenue. Mr. Quynn explained
32 that the variance request did not impact the traffic on Augustine Avenue and that the site plan for
33 the proposed Sheetz had already been approved by the Planning Commission. Mr. Helfebower
34 apologized, noting he did not realize his concerns were not germane to the subject request.

35 Mr. Quynn closed the public hearing.

36 Mr. McKinney moved to approve the variance with the condition that the applicants were bound by
37 their testimony. Mr. Quynn called for a vote, which carried unanimously.

38 **ITEM #4 FILE #: 22-38-ZV**

39 Request 1: Variance from Section 4.3D to expand a nonconforming use (auto repair shop) beyond
40 35% of the existing square footage of its operation. The request includes construction
41 of a 2,400 sq. ft. storage building to store vehicles for an auto repair business that
42 specializes in repairing vintage sports cars.

1 Parcel Info: Performance Auto Works, LLC / Attn: Billy Ring, Property Owner

2 8063 Leetown Rd, Kearneysville, WV,

3 Parcel ID: 07001900190018; Size: 2.11 ac; Zoning District: Rural

4 Billy Ring, property owner, was present to address the Board. Ms. Beaulieu provided an overview
5 of her staff report noting that the existing business was a legal nonconforming use. Ms. Beaulieu
6 explained that in 2003 the previous property owner had requested a similar variance, which allowed
7 for the construction of a 1,600 square foot structure that was never constructed. She noted that the
8 2003 variance carried with the land but the proposed expansion was larger than what had previously
9 been approved. Ms. Beaulieu noted that letters of support had been provided from each of the
10 adjoining property owners.

11 Mr. Ring explained the nature of the request to the Board stating that the proposed garage would be
12 used to store the cars associated with his business. Mr. Ring stated that he currently stores cars at a
13 rental facility located at Summit Point Raceway. Mr. Ring explained that the new owners of the
14 Raceway were doubling the monthly rental fees and that a new structure would be more cost
15 effective. Mr. Ring stated that a portion of the proposed garage would be located over an existing
16 gravel area.

17 Mr. Quynn opened the public hearing. No members of the public provided testimony. Mr. Quynn
18 closed the public hearing.

19 Mr. Guier moved to approve the variance with the condition that the applicant was bound by their
20 testimony and will follow all permitting requirements. Mr. Quynn called for a vote, which carried
21 unanimously.

22 **ITEM #5 FILE #: 22-8-CUP**

23 Request: Request for a Conditional Use Permit to operate a *Day Care Center, Large*, as defined
24 in Article 2. The applicant is proposing to convert an existing residence into a day care
25 center to provide care for up to 32 children (maximum). Hours of Operation: Monday
26 through Friday from 6:00 am to 5:30 pm. Proposal includes a fenced play area, onsite
27 parking, and a business sign.

28 Applicant: Pathway Childcare Center

29 Parcel Info: Alice Chapman, Owner

30 15943 Charles Town Rd., Charles Town, WV

31 Parcel ID: 02019A00020004; Lot Size: 1.7 ac; Zoning District: Rural

32 Ms. Alice Chapman, property owner, was present to address the Board. Ms. Beaulieu provided an
33 overview of her staff report to the Board and reviewed the required criteria for a Conditional Use
34 Permit. Ms. Beaulieu stated that as presented, the proposal would not necessitate a site plan.

35 Ms. Beaulieu noted that the applicant had been informed that they would need an updated Division
36 of Highways entrance permit and that they were advised to contact the property owner of Charlie
37 Brown's store to determine if they had the legal right to utilize the existing 40' wide right-of-way
38 for commercial purposes.

39 Ms. Chapman explained the nature of the request to the Board stating that the initial facility would
40 accommodate up to 12 children with three employees and that she would eventually have up to 32
41 children once she is financially able to bring the site into compliance with all other applicable
42 requirements.

43 Mr. McKinney inquired about Ms. Chapman's response to question number two on the application
44 regarding public health, safety, and welfare. Ms. Chapman stated the proposed business would not
45 have any negative impact on public health, safety, and welfare.

1 Mr. Quynn opened the public hearing. No members of the public provided testimony. Mr. Quynn
2 closed the public hearing.

3 The Board reviewed each of the General Standards outlined in Section 6.3A.1-8 of the Ordinance.

4 Mr. McKinney moved to approve the Conditional Use Permit with the following conditions:

5 1. The applicant was bound by their testimony.

6 2. The project shall obtain necessary permits.

7 Mr. Quynn called for a vote, which carried unanimously.

8 Mr. McKinney moved for a recess at 3:33 pm. Mr. Quynn called for a vote, which carried
9 unanimously.

10 Mr. McKinney moved to go back into regular session at 3:42 pm. Mr. Quynn called for a vote,
11 which carried unanimously.

12 **ITEM #6 FILE #: 22-9-CUP**

13 Request: Request for a Conditional Use Permit to operate a Solar Energy Facility, as defined in
14 Article 2 of the Zoning Ordinance. This application pertains to approximately 737 acres
15 of the 878-acre Rippon Energy Facility, a 99 MWac solar electric generating facility.
16 The project consists of solar modules and a new substation to connect the solar facility
17 with the electric grid. The project site has existing high voltage power lines running
18 through the property.

19 Applicant: Rippon Energy Facility, LLC

20 Project Parcel Info:

21 Bullskin LLC, Property Owner

22 673 Old Shennandale Rd, Charles Town, WV

23 Parcel ID: 06001100090000; Lot Size: 133.75 / Project Size: 106.52 ac; Zoning District: Rural

24 Clarence E Hough Et Al, Property Owner

25 Vacant parcel located west of the property addressed as 957 Myerstown Rd, Charles Town, WV;

26 Parcel ID: 06001000030001; Lot Size: 108.66 ac / Project Size: 99.84 ac; Zoning District: Rural

27 View Mountain Farm LLC, Property Owner

28 28 Dutch Hill Rd, Charles Town, WV;

29 Parcel ID: 06002100060000; Lot Size: 101.6 ac / Project Size: 97.01 ac; Zoning District: Rural

30 Stanley W Jr & Katherine B Dunn, Property Owner

31 2646 Kabletown Rd, Charles Town, WV;

32 Parcel ID: 06002100050000; Lot Size: 174.6 ac / Project Size: 165.52 ac; Zoning District: Rural

33 Stanley W Jr & Katherine B Dunn, Property Owner

34 Vacant parcel located east of the property addressed as 28 Dutch Hill Rd, Charles Town, WV;

35 Parcel ID: 06002100070000; Lot Size: 89.39 ac / Project Size: 86.07 ac; Zoning District: Rural

36 Stanley W Jr & Katherine B Dunn, Property Owner

37 Vacant parcel located east of the property addressed as 2646 Kabletown Rd, Charles Town, WV;

38 Parcel ID: 06002200050001; Lot Size: 232 ac / Project Size: 169.15 ac; Zoning District: Rural

39 Stanley W Jr & Katherine B Dunn, Property Owner

40 1371 Myerstown Rd, Charles Town, WV;

41 Parcel ID: 06001000050000; Lot Size: 366 ac / Project Size: 12.27 ac; Zoning District: Rural

1 Mr. Sam Gulland and Mr. Scott Leach, representatives with Torch Clean Energy, were present to
2 address the Board. Ms. Beaulieu provided an overview of her staff report to the Board and reviewed
3 the required criteria for a Conditional Use Permit.

4 Mr. Gulland and Mr. Leach presented a PowerPoint presentation of the proposed project, which was
5 incorporated into the record. The presentation outlined the project details, the operation and
6 maintenance procedures, and provided an overview as to how the proposal complied with the
7 Zoning Ordinance and Comprehensive Plan. Mr. Gulland submitted to the Board an addendum to
8 their application entitled *Supplemental Conditions* and provided an overview of the document.
9 Mr. Gulland and Mr. Leach answered questions from the Board.

10 Mr. Quynn opened the public hearing.

11 The following members of the public provided public comment:

12 Rodney Rice and Stanley Dunn spoke in support of the request.

13 Betsy Smith, Sue Keiper, Zachary Curry, Jeanine Jalil, Greg Helebower, Robert Walls, Bob
14 Aitcheson, Deana Thorsell, Stacey Tabb, and Doug Rockwell spoke in opposition to the report. A
15 copy of Mr. Aitcheson's written comments and Ms. Jalil's PowerPoint presentation were
16 incorporated into the record.

17 Mr. Quynn closed the public hearing by virtue of inviting the applicant to provide a rebuttal.

18 Mr. Gulland and Mr. Leach provided a rebuttal addressing the concerns expressed by the public.

19 Mr. Gulland and Mr. Leach addressed questions from the Board.

20 Mr. McKinney moved to go into deliberative session at 5:53 pm. Mr. Quynn called for a vote,
21 which carried unanimously.

22 Mr. Aitcheson objected to the Board's motion to go into deliberative session. The Board continued
23 with their unanimous vote to go into deliberative session.

24 Mr. McKinney moved to come out of deliberative session at 6:07 pm. Mr. Quynn called for a vote,
25 which carried unanimously.

26 The Board reviewed each of the General Standards outlined in Section 6.3A.1-8 of the Ordinance.

27 Noting that the application met the required criteria, Mr. McKinney moved to approve the
28 Conditional Use Permit with the following conditions:

29 1. That the applicant be bound by their testimony and the following 'Supplemental Conditions'
30 presented by the applicants during the meeting:

31 1. Floodplain; Conserved Trees. The Facility or any part thereof shall not be located within
32 500 feet of the bank of the Shenandoah River, or in the 100 Year Flood Zone associated
33 with the Shenandoah River at the time of the Building Permit issuance. Other 100 Year
34 Flood Zones shall only be disturbed for access roads and electrical crossings where
35 necessary.

36 2. Conserved Trees. Existing vegetation shall be used for screening where practicable.
37 Additionally, Operator shall not cut, prune, or remove trees identified in the Concept
38 Plan as the "Preserved Existing Treeline Adjacent to Shenandoah River".

39 3. Panel Information. Operator will provide technical specification sheets and information
40 on panel components for the specific model selected to the County prior to the issuance
41 of the Building Permit.

- 1 4. Panel Height. Installed solar modules, shall not exceed fifteen (15) feet in height,
2 measured from grade to the top of the panel when at maximum tilt.
- 3 5. Insurance. From and after the start of commercial operations, the Operator shall secure
4 and maintain during the Project's Operational Phase Commercial General Liability for
5 personal injuries, death and property damage, and umbrella insurance coverage for the
6 duration of the Conditional Use Permit in the minimum amounts set forth below:
 - 7 a. Commercial General Liability covering personal injuries, death and property
8 damage: \$1,000,000 per occurrence / \$2,000,000 aggregate;
 - 9 b. Automobile Coverage: \$1,000,000 per occurrence;
 - 10 c. Excess Liability: \$4,000,000;
 - 11 d. Workers' Compensation and Employers Liability Insurance in accordance with
12 applicable statutory amounts.
- 13 6. Insurance Certificates. The Operator's insurance policies shall be issued by an insurance
14 company licensed to do business in the State and with an AM Best's rating of at least 'A'.
15 Prior to the commencement of construction and annually afterwards, Applicant shall
16 provide the Zoning Administrator certificates of insurance that document the levels of
17 insurance.
- 18 7. Sewage Sludge. The Applicant shall not use or distribute sewage sludge on the Property
19 during construction or operation of the Project.
- 20 8. Change in Ownership. If any change of ownership of the Operator causes a change in
21 contact information for the Project, Owner shall update the Zoning Administrator within
22 60 days.
- 23 9. Storage of Panels. A sealed construction trailer, ConEx, storage container, or enclosed
24 building shall be maintained on the Site for the storage of damaged solar panels prior to
25 removal from the Site.
- 26 10. Use of Blasting in Construction. Good faith efforts shall be used to avoid blasting on the
27 Site. If blasting is necessary, Owner shall consult with a qualified geotechnical
28 engineering firm to develop best practices to be followed.
- 29 11. Construction Access. Construction and operational traffic for the portion of the Project
30 located east of Kabletown Road and south of Dutch Hill Lane shall be limited to
31 entrances from Kabletown Road.
- 32 12. Construction Hours. All construction that produces noise beyond the Facility shall be
33 limited to between the hours of 7:00am and 6:00pm Monday through Friday and between
34 8:00am and 5:00pm on Saturday. The driving of piles shall only occur between 7:00am
35 and 5:00pm Monday through Friday and between 8:00am to 1:00pm on Saturday.
- 36 13. Inverters and Transformers. Inverters and transformers shall be setback at least four
37 hundred (400) feet from any residence that exists at the time of the Conditional Use
38 Permit approval.
- 39 14. Collector Lines. All three-phase medium-voltage collector electrical lines connecting the
40 Project's photovoltaic arrays to the Project Substation shall be installed underground.
- 41 15. Invasive Species. On all leased and owned properties, the Operator shall use best
42 management practices to control or manage any invasive plant species as defined by the
43 West Virginia Department of Agriculture.

1 16. Rating. Operator will procure solar panels from a manufacturer receiving a Tier 1 rating
2 from Bloomberg New Energy Finance or a top performer in the then current PV Module
3 Reliability Scorecard Report by PVEL.

4 Mr. Quynn proposed the following friendly amendment to the conditions of approval:

- 5 1. To revise Supplemental Conditions #12 Construction Hours to restrict construction hours on
6 Saturdays from 8:00 am to 2:00 pm; and
- 7 2. The applicant will use Best Management Practices (BMP) while onsite.

8 Mr. McKinney accepted Mr. Quynn's friendly amendment.

9 Mr. Quynn called for a vote, which carried unanimously.

10 **Zoning Administrator's Report**

11 a. Monthly Zoning Certificate Activity Report. The Report was included in the mailed packet.

12 Ms. Beaulieu noted the following meeting dates: November 10, 2022 and December 8, 2022.

13 **Legal Update**

14 a. Discussion of the following pending lawsuit:

- 15 1. Jefferson County Circuit Court Case #CC-19-2022-C-81 (RE: ZTA22-01 Solar Energy
16 Facilities) Rockwell v. JCPC, JCBZA and JCCC. No discussion.
- 17 2. Jefferson County Circuit Court Case #CC-19-2022-C-103 (RE: ZTA22-01 Solar Energy
18 Facilities) Stone v. JCBZA. No discussion.

19 b. Discussion with possible deliberative session and signing of draft Findings/Decisions.

20 Meeting: September 22, 2022

- 21 1. Request for a Conditional Use Permit to operate a Retail Sales and Service, General
22 business. Applicant: Mission Critical Defense Solutions, LLC. Owners: Elliott Kletter,
23 Jan Kletter, and Marguerite Kletter. File: 22-6-CUP.
- 24 2. Request for a Conditional Use Permit to operate a Medical/Dental/Optical Office
25 business. Applicant: Dr. Kolawale Oshiyoye, Kingdom Ventures, LLC. Owners:
26 Crossroads Church Trustees, File: 22-7-CUP.
- 27 3. Variance from Sec. 5.7B. Owner: Stephanie Hazelton & Dale Sanauskas. File: 22-30-ZV.

28 Mr. Quynn was provided a copy of the draft Findings for review.

29 Mr. McKinney moved to adjourn the meeting at 6:25 pm. Mr. Quynn called for a vote, which carried
30 unanimously.