

Minutes
Jefferson County Board of Zoning Appeals
Thursday, May 16, 2013

The Jefferson County Board of Zoning Appeals met on Thursday, May 16, 2013. The meeting was held in the 2nd Floor Conference Room, located at 116 East Washington Street, in the City of Charles Town, West Virginia. Unless otherwise noted, all requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.

Board members Jeff Bresee, Chairman; Christy Huddle, Vice Chair; Tyler Quynn and Ed Kelly were present. Staff members present were: Jennie Brockman, Director of Planning and Zoning; Steve Barney, Zoning Administrator; Stephen Groh, Assistant Prosecuting Attorney; Jennilee Hartman, Zoning Clerk; and Alex Beaulieu, Planning Clerk.

Ms. Huddle motioned to commence the meeting. Mr. Quynn seconded the motion, which carried unanimously. Mr. Bresee called the meeting to order at 3:00 p.m.

1. Approval of the minutes from the April 18, 2013 meeting.

Ms. Huddle motioned to approve the minutes. Mr. Quynn seconded the motion. The following edits were requested:

- a) Page 2, Item #3, last paragraph, at the end of the third sentence, replace the word *sign* with *size* so it reads, “*that the size of the sign...*”.
- b) Page 2, Item #3, last paragraph, fourth sentence, insert the foot symbol after 4’ and 8’.
- c) Page 2, Item #3, last paragraph, fourth sentence, change the last part of the sentence to read, “eight feet, and *that...*”.

Mr. Bresee called for a vote which carried unanimously.

2. Swearing in of members of the public intending to provide testimony.

Ms. Hartman swore in the individuals who indicated they would be giving testimony.

Mr. Bresee explained to the public how the meeting would be conducted.

3. Variance request by applicant, Paul Rosner, from Section 5.4(B) for a reduction of the rear setback distance from 20’ to 12’ to allow for the construction of a 12’ x 23’ upper level deck with steps. Property location: Crosswinds Subdivision, 478 Crosswinds Drive; Charles Town, WV. District: Charles Town (02); Map: 18A; Parcel: 36; Zoned: Residential-Growth; Size: .66 ac; File: #ZV13-15.

Mr. Paul Rosner presented his request to the Board and handed out letters of support by two adjacent property owners, Nancy Carolyn Cope and Tamara Thompson. Mr. Rosner explained that his home was a split level design and the proposed second story deck with stairs would allow them access to the backyard from the rear of the home.

Mr. Bresee called for public comment. There was no public comment.

4. Variance request by applicant, Stephanie F. Grove, from Section 9.6(A) for a reduction of the rear and side setback distances from 5’ to 6” to allow for the construction of an 8’ x 12’ shed on a 40’ x 90’ lot. Property location: Tusawilla Subdivision, 28 Standish Court, Charles Town, WV. District: Charles Town (02); Map: 11B; Parcel: 136; Zoned: Residential-Growth; Size: 3,600 sq. ft.; File: #ZV13-16.

Ms. Stephanie Grove stated for the record that she was acting as an individual and was not representing the County in her capacity as Assistant Prosecuting Attorney. Ms. Grove presented her request to the Board explaining that out of the 30 homes within the neighborhood approximately 15 of them have sheds located in the same general area as the proposed shed. Ms. Grove stated she was defining “neighborhood” as the surrounding townhomes.

Mr. Bresee called for public comment. There was no public comment.

5. Variance request by applicant, Frank E. Hardy, Sr., from Section 4.3(B) to extend the period of abandonment of a nonconforming use, and to change a nonconforming use from a landscaping business to an Auto Body Repair Shop. Property owner: Wesley M. Smoot. Property location: 164 Tel Farm Lane; Kearneysville, WV. District: Middleway (07); Map: 19; Parcel: 26.10; Zoned: Rural; Size: 10 acres; File: #ZV13-17.

Mr. Frank Hardy represented the request stating that he has run a business for the last 25 years. Mr. Hardy explained that he had received a conditional use permit from the Board to operate a business from his son's property which is where his previous garage had been located. Mr. Hardy stated that to his knowledge no one had made any complaints against his business. Mr. Hardy explained that due to his son's recent divorce he was forced to close his garage and that finding an alternative location that was convenient and reasonably priced was challenging. Mr. Kelly asked if vehicles would be stored outside. Mr. Hardy responded by stating that occasionally cars would be stored outside; however, he plans to erect a fence if permitted. Ms. Huddle asked Mr. Hardy if he had reviewed Staff's list of conditions and read them. Ms. Huddle and Mr. Kelly asked if Mr. Hardy could abide by the conditions to which Mr. Hardy responded in the affirmative.

Mr. Barney explained that Staff initially reviewed the zoning certificate as a change in nonconforming use as it was Staff's assumption that a commercial use had existed on the property continuously since 1988. Mr. Barney went on to review the property's history with the Board (see the Frank Hardy and Wesley Smoot Request (#ZV13-17) Staff Report for the full background of the property). Mr. Barney stated that Mr. Smoot, the current property owner, opened a landscaping business which is a principle permitted use in the Rural Zoning District. Mr. Barney explained to the Board that Staff advised the applicant to seek a variance to extend the period of abandonment of a nonconforming use. Mr. Quynn asked if there was a way to bridge the similarities between a landscaping business and an auto body shop stating that landscaping businesses have trucks, do repair on the trucks and oil changes; they also have heavy equipment and tractors. Mr. Groh stated that while the uses may appear similar in nature, a landscaping business is considered agricultural. Mr. Groh argued that once a principle permitted use is established on the property that a nonconforming use ceases to exist. Mr. Groh also stated that because the Board had previously denied the original request to extend the period of abandonment, the nonconforming use status ceased to exist. Mr. Groh agreed with Staff in stating that a Conditional Use Permit may be a viable option for the applicant.

John McKee, neighbor adjoining three sides of the subject parcel, spoke in opposition to the request. Mr. McKee presented the history of the property. Mr. McKee expressed concern over increased traffic and stated that he had a survey done when he purchased the property and that the easement was only 16' wide; which was also confirmed during a second survey he had completed when installing a fence. Mr. McKee pointed out that while the easement in front of the Smoot property may be 20', the entrance to the property is 16'. Mr. McKee presented pictures of the subject property, examples of local auto body shops and of various improvements he made to his own property. Mr. McKee stated he has owned the property for five years.

Ms. Huddle asked if the State or County had any licensing or taxing which could assist in proving a timeframe of operation.

Mr. McKee expressed concern that, with the installation of a fence, it may be difficult to get a tow truck into the access.

Charles Lee, neighbor, spoke in opposition to the request. Mr. Lee stated that Mr. McKee's property and the subject parcel were originally part of his wife's family farm and that the original access easement agreement stated it was to be used for farm combines, etc. Mr. Lee stated that he had spent 30 years in court arguing whether an adjacent property had the legal right to operate a salvage yard and was concerned that the applicant's request would propagate another salvage yard. Ms. Huddle clarified that the applicant's request was for an auto body shop and not a salvage yard. Ms. Huddle asked staff if the referenced salvage yard predated the zoning ordinance and if so, would it have to comply with current salvage yard requirements? Ms. Brockman stated that the Salvage Yard Ordinance addresses how to establish a salvage yard and not the maintenance of one. Mr. Groh stated the purpose of the Salvage Yard Ordinance is to stop new salvage yards from being created. Ms. Brockman asked Mr. Lee if Mr. Boyce, the previous occupant of the subject building, took over the landscaping business. Mr. Lee confirmed that he had and that the business had been unoccupied for approximately 2 years.

Mr. Hardy briefly spoke in rebuttal stating that the easement is wide enough to accommodate farm trailers and recently a tow truck to a neighboring house, therefore a tow truck to his proposed use should not pose a problem. Mr. McKee stated this would not be the case if he installed a fence along the either side of the 16' wide easement, as his survey indicates is his property line.

Mr. Kelly motioned to go into deliberative session at 3:58 p.m. Ms. Huddle seconded the motion, which carried unanimously.

Mr. Groh left the room while the Board deliberated on Ms. Grove's variance request because of their employment with the Prosecuting Attorney's Office. Mr. Groh returned to the room when the Board had finished discussing Ms. Grove's request.

Ms. Huddle motioned to come out of deliberative session at 4:10 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

3. Variance request by applicant, Paul Rosner, from Section 5.4(B) for a reduction of the rear setback distance from 20' to 12' to allow for the construction of a 12' x 23' upper level deck with steps.

Mr. Quynn motioned to approve the above referenced request. Ms. Huddle seconded the motion, which carried unanimously.

4. Variance request by applicant, Stephanie F. Grove, from Section 9.6(A) for a reduction of the rear and side setback distances from 5' to 6" to allow for the construction of an 8' x 12' shed on a 40' x 90' lot.

Mr. Quynn motioned to approve the above referenced request. Ms. Huddle seconded the motion, which carried unanimously.

5. Variance request by applicant, Frank E. Hardy, Sr., from Section 4.3(B) to extend the period of abandonment of a nonconforming use, and to change a nonconforming use from a landscaping business to an Auto Body Repair Shop.

Mr. Kelly motioned to deny the variance request by Frank E. Hardy, Sr., from Section 4.3(B) to extend the period of abandonment of a nonconforming use, and to change a nonconforming use from a landscaping business to an Auto Body Repair Shop. Ms. Huddle seconded the motion. Ms. Huddle offered an amendment to include that the motion is based on the fact that the landscaping business was a conforming use, not a nonconforming use, and that the access easement is not adequate for the type of business that is being proposed. Mr. Kelly agreed to the amendment. Mr. Bresee called for a vote on the amended motion, which carried 3 for and 1 opposed (Mr. Quynn).

6. Director's Report.

Ms. Brockman updated the Board on the following items (see packet for details):

- Invite to the Ethics Training to be held on June 25, 2013
- Planning and Zoning Department Goals replaces the previous year's 'Work Plan'
- Draft Quarterly Report
- Envision Jefferson 2035 (2014 Comprehensive Plan) Update on upcoming meetings
- Recent County Commission Meetings relevant to Planning
- Upcoming County Commission Actions

Mr. Barney reviewed proposed text amendments to the Zoning Ordinance with the Board and answered any questions they had.

7. Legal Update. None.

8. Signing of written decisions from prior Board of Zoning Appeals meetings. None.

9. Correspondence. None.

Ms. Huddle stated she would not be attending the July meeting.

Ms. Huddle motioned to adjourn the meeting at 4:55 p.m. Mr. Quynn seconded the motion, which carried unanimously.

An audio transcript of this meeting can be found at the Department of Zoning and on the Department's website at www.jeffersoncountywv.org. These minutes were prepared by Jennilee Hartman, Zoning Clerk.