

Minutes
Jefferson County Board of Zoning Appeals
Thursday, July 18, 2013

The Jefferson County Board of Zoning Appeals met on Thursday, July 18, 2013. The meeting was held in the Charles Town Library Conference Room, located at 200 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; Tyler Quynn, Ed Kelly and Jeffrey Bannon were present. Staff members present were: Jennie Brockman, Director of Planning and Zoning and Jennilee Hartman, Zoning Clerk.

Christy Huddle, Vice Chair; was absent with notification.

Mr. Quynn motioned to commence the meeting. Mr. Kelly 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 May 16, 2013 meeting.

Mr. Kelly motioned to approve the minutes Mr. Quynn seconded the motion, 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. Request by owners/applicants, Peter S. Corum and J. Edward Slonaker, pursuant to Section 3.2.G for an eighteen-month extension of the Morgan's Grove Market Conditional Use Permit which was issued on June 28, 2012 and will expire on December 28, 2013. The applicant is requesting an extension until August 28, 2015. Property location: 3988 Kearneysville Pike, Shepherdstown, WV. District: Shepherdstown (09); Map: 13; Parcels: 26.1, 26.2, 26.3 and 26.4; Zoned: Rural; File #CP12-01.

Mr. Fred Blackmer presented the request to the Board by providing them a brief overview of the project with dates related to meetings, submittals and various approvals. Mr. Blackmer stated he Mr. Kelly asked for clarification on the date listed in the Agenda. Mr. Blackmer stated he did not list a date in his application. Mr. Quynn asked where they were in the process. Mr. Blackmer stated a letter from the Department of Highway with a permit # on a letterhead; recordation of easements; and bonding.

Mr. Bannon questioned why the applicant needed the full 18-months when it appeared that their project was almost complete. Mr. Bannon stated that the Ordinance gave them the authority to grant up to 18-months but did not see the need to postpone building for almost 2 years. Mr. Blackmer stated they did not have approved construction documents and that the request for the full 18-months was to accommodate any unforeseen occurrences that may happen within that timeframe. Ms. Brockman stated that in order for a conditional use permit to be valid the use must commence within 18 months and that depending on the type of use the term 'commencement' may take place at a different time during processing. For this project it is issuance of a building permit and it is possible that may take a few months depending on architect schedules, etc for this to occur. Ms. Brockman stated she believed the applicant had a legitimate concern regarding the potential for the deadline to expire if they did not seek the full 18-months as provided for in the Ordinance. Ms. Brockman stated the accurate date for extension is June 28, 2015. Mr. Quynn asked why the early grading permit was not considered commencement. Ms. Brockman stated the County does not have early grading permits and that they received it as a waiver and that a condition of approval is that it did not commence construction.

Mr. Blackmer stated another reason they were requesting 18-months is to prevent changes in interpretations if there is a change in staff.

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

Ms. Brockman stated that the applicant has obtained the necessary water, sewer and highway entrance permits and that the site plan is almost ready to be signed. Ms. Brockman informed the Board that the applicant has been actively processing their site plan.

4. Variance request by property owner, Michael Shveda, from Section 5.4-1 for a reduction of the rear setback distance from 20' to 15' to allow for a lower deck (constructed 7" off the ground) to extend 5' into setback. Property location: Colonial Hills Subdivision; 326 Starkey's Landing; Shepherdstown, West Virginia. District: Shepherdstown (09); Map: 8E; Parcel: 48; Zoned: Residential-Growth; Size: 2,000 sq. ft.; File: #ZV13-18.

Mr. Mike Shveda represented the request stating that he was requesting the deck be extended for the purposes of a rear egress and additional outdoor living area. Mr. Shevda explained that the upper portion of the deck would be smaller than existing decks in the neighborhood; however, he is proposing an additional lower deck which would encroach into the setback. This deck would be constructed below existing fence lines.

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

Ms. Brockman pointed out to the Board that should the proposed zoning text amendments be adopted by the County Commission, a provision has been modified that would allow requests, such as Mr. Shveda's, to be processed administratively.

5. Variance request by applicant, John Fridley, from Section 9.6(C) & 9.7 for a reduction of the front setback distance from 20' to 5' to allow for the construction of a 20' x 22' detached garage. Property Owner: William C. Palmer, Sr. Property location: Shannondale, (Section 1L), 1623 Lakeside Drive, Harpers Ferry, WV. District: Kabletown (06); Map: 6C; Parcel: 292; Zoned: Rural; Size: 25,000 sq. ft.; File: #ZV13-19.

Mr. John Fridley, contractor for Mr. William Palmer, property owner, represented the request. Mr. Palmer explained that due to the close proximity of a well cap the garage could not be built closer to the home. Mr. Fridley stated he designed the site with the necessary space allowances to accommodate the well cap in order to prevent the property owner from inadvertently driving over the well cap. Other factors in the proposed placement included the sloping property, streambed, wooded yard and size limitations of the lot (25,000 sq ft). Mr. Kelly read the from the Staff Report paragraph (e) Feasibility to comply...and asked Mr. Fridley if he would be able to build the suggested smaller garage configuration in order to reduce the setback request from 5' to 13'. Mr. Fridley stated he could build the smaller garage; however, the added depth, as suggested, would place the structure closer to the creek which would create additional problems for the homeowner which would increase the cost of the project. Mr. Breese asked the applicant if he had seen the opposition's submitted comments regarding the measurement of the right of way. As Mr. Fridley had not, he was provided a copy. Discussion ensued regarding the possibility of continuing the item until the Board had clarification on the right of way issue.

Mr. Bresee called for public comment. Joan O'Dell, resident of area, stated she was also Dan Alexander who is a neighbor of the applicant. Ms. O'Dell presented a copy of the email from Zane Paitzel, Right of Way (ROW) Manager for the WV Department of Highways, in which he states that a right of way is measured from the centerline of the road (see file #ZV13-19 for copy). Ms. O'Dell expressed concern regarding the fact that Lakeside Drive is heavily traveled by vehicles and pedestrians as it is the only road around lake. Ms. O'Dell further explained that the road is 17' wide where the applicant plans on building the garage; that a damaged culvert leaks water across road & onto applicant's property. Ms. O'Dell stated that an interested party are attempting to have the DOH make road improvements and that is why the ROW is important.

6. Variance request by property owners, Darrell B. and Melica D. Propst, from Section 9.7 for a reduction of the side setback distance from 12' to 4' to allow for the placement of a 14' x 40' portable shed at the end of a driveway to avoid the removal/destruction of a large tree. Property location: Hidden River Farm, Wide Horizon Section, Part Four 1788 Wide Horizon Boulevard; Kearneysville, West Virginia. District: Middleway (07); Map: 13; Parcel: 142; Zoned: Rural; Size: 1.514 acres; File: #ZV13-20.

Mr. Darrell Propst presented his request to the Board explaining the nature of the request stating that it was explained to him by his contractor that should he put the shed in his originally planned location that it would damage possibly kill a large tree on his property. By moving the shed to a safer distance to protect the tree it will be encroaching on the side setback. Mr. Propst stated that he spoke with his neighbor and that they were in support of the request. Mr. Quynn asked questions regarding what type of tree was at risk, would Mr. Propst be willing to shorten the length of the shed; and, would Mr. Propst be agreeable to a condition that requires the removal of the shed should a new adjacent property owner have an issue with the shed in the future? Mr. Propst responded to Mr. Quynn's questions by stating he believed the tree to be a Locust; he would be agreeable to a smaller shed if it were necessary; however Ms. Brockman pointed out the side setback was in question and that reducing the shed in this situation may not be beneficial; and, Mr. Propst stated he would remove the shed if it became an issue for anyone since it was not going to be placed on a permanent foundation. Mr. Brannon wanted confirmation that the property was not visible due to the dense tree line along the property line. Ms. Brockman confirmed that when Staff performed an onsite inspection that the adjacent property was barely viable through the foliage.

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

Ms. Brockman wanted to bring out that the property had a fairly significant slope that could not be adequately represented in the pictures in the staff report. This slope would prevent the applicant from placing the shed in alternative locations on the property. Mr. Quynn asked Ms. Brockman what the intent of the side setback was to which she responded.

Mr. Quynn motioned to go into deliberative session at 3:56 p.m. Mr. Kelly seconded the motion, which carried unanimously.

Mr. Quynn motioned to come out of deliberative session at 4:14 p.m. Mr. Kelly seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

3. Request by owners/applicants, Peter S. Corum and J. Edward Slonaker, pursuant to Section 3.2.G for an eighteen-month extension of the Morgan's Grove Market Conditional Use Permit which was issued on June 28, 2012 and will expire on December 28, 2013.

Mr. Kelly motioned to approve the above referenced request for a period of 18-months from December 28, 2013 until June 28, 2015. Mr. Quynn seconded the motion, which carried unanimously.

4. Variance request by property owner, Michael Shveda, from Section 5.4-1 for a reduction of the rear setback distance from 20' to 15' to allow for a lower deck (constructed 7" off the ground) to extend 5' into setback.

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

5. Variance request by applicant, John Fridley, from Section 9.6(C) & 9.7 for a reduction of the front setback distance from 20' to 5' to allow for the construction of a 20' x 22' detached garage.

Mr. Kelly motioned to continue the above referenced request stating that the public hearing is to remain open and that the basis for the continuation is to allow the applicant the opportunity to contact the West Virginia Department of Highways to get more specific information concerning the setback and how it is measured from the roadway; to keep in contact with Staff regarding their findings and to stake out the property once they have accurately measured the necessary setback. Mr. Quynn seconded the motion, which carried unanimously.

6. Variance request by property owners, Darrell B. and Melica D. Propst, from Section 9.7 for a reduction of the side setback distance from 12' to 4' to allow for the placement of a 14' x 40' portable shed at the end of a driveway to avoid the removal/destruction of a large tree.

Mr. Quynn motioned to approve the above referenced request based on the following conditions:

- a. The variance is limited to a shed of the dimensions described in the application and is not to exceed the height as represented on the request.
- b. The variance is limited to a prefabricated or custom built shed constructed of materials that are typically found in residential neighborhoods. This would exclude the use of a shipping/sea container. Mr. Bannon seconded the motion, which carried unanimously.

7. Director's Report.

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

- Fourth Quarterly Report & Annual Report FY 2013
 - Projects Undertaken in 4th Quarter (New)
 - Projects Completed (for entire FY '13)
 - Proposed Projects/Underway (during the 4th Quarter)
 - Items Requiring Commission Attention
- Envision Jefferson 2035 (2014 Comprehensive Plan) Update on upcoming meetings
 - Steering Committee
 - Public Input Meeting – Members Encouraged to Attend
 - Booth at County Fair *volunteers needed
 - Next Steps – Goals & Objectives
- Hiring Freeze due to funding complications – zoning administrator candidates on hold.

8. Legal Update. None.

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

10. Correspondence. None.

Mr. Quynn motioned to adjourn the meeting at 4:31 p.m. Mr. Kelly 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.