

Minutes
Jefferson County Board of Zoning Appeals
Thursday, August 15, 2013

The Jefferson County Board of Zoning Appeals met on Thursday, August 15, 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; and Jeffrey Bannon were present. Staff members present were: Jennie Brockman, Director of Planning and Zoning/Acting Zoning Administrator; Stephen Groh, Assistant Prosecuting Attorney; and Alexandra Beaulieu, Planning Clerk. Edwin Kelly was absent with notice and Tyler Quynn was absent without notice.

Ms. Huddle motioned to commence the meeting. Mr. Bannon seconded the motion. Mr. Bresee called the meeting to order at 3:03 PM.

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

Ms. Hartman, in her absence, provided a memo to the Board of Zoning Appeals which stated that due to staffing conflicts, the minutes would not be available.

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

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

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

3. Continued from the July 18, 2013 meeting. Variance request by applicant, John Fridley, from Sections 9.6(C) & 9.7 for a reduction of the front setback distance from 20' to 5' to construct a 20' x 22' detached garage. Owner: William C. Palmer, Sr. Location: Shannondale (Section 1L), 1623 Lakeside Drive, Harpers Ferry, WV. District: Kabletown (06); Map: 22; Parcel: 6.2; Zoned: Rural; Size: 1 acre; File: #ZV13-21.

Ms. Brockman provided a report on the research conducted by staff confirming that the Department of Highways measured the 30' Right of Way off Lakeside Drive 15' feet from each side of the center line. Ms. Brockman also reported that the Health Department confirmed the location of the septic reserve area on the Shore Lane side of the house; therefore, the proposed location of the garage could not be changed to that side of the house.

Mr. John Fridley presented the request to the Board stating that he adjusted the size of the garage to 20' x 20'. Mr. Fridley stated that as requested at the previous meeting, he re-staked the garage with the new dimensions and stated that the adjusted front setback distance measured 12" from the ROW and 10' from the well cap.

Mr. Bresee called for public comment. Ms. Joan O'Dell, a Shannondale resident, expressed concern regarding the fact that Lakeside Drive is heavily traveled by vehicles and pedestrians. Ms. O'Dell reiterated the fact that the road is 17' wide where the applicant plans to build the garage. Ms. O'Dell stated she had additional comments but wanted confirmation as to whether the Board would require Mr. Fridley to re-advertise the property with the adjusted setback information. Mr. Jack Hahn, a Shannondale resident, spoke in opposition to the request and stated that he was concerned for safety with regard to the fact that Lakeside Drive is heavily traveled by vehicles and pedestrians.

The board members discussed the need to re-advertise the variance request with the requested setback variance changed from 5' to 12". It was also noted that the applicant had presented new dimensions of 20' x 20' as opposed to the original 20' x 22'. Mr. Groh advised that the site would need to be re-advertised to inform adjacent property owners of the new size of the garage and adjusted setback distances.

Ms. Brockman informed the applicant that he could modify his current application and submit by August 30 to be placed on the September 19, 2013 meeting. Ms. Brockman stated that the applicant would not need to submit an additional application fee.

Ms. Huddle motioned to continue review of this request upon receipt of the modified request. Mr. Bannon seconded the motion, which carried unanimously.

The meeting relocated to the downstairs conference room to accommodate a request by a member of the public unable to access the stairs.

4. Variance request by applicant, Jason Shelton, from Section 5.7(B) for a reduction of the rear setback distance from 50' to 8' for an approximate 16' x 32' existing building, which the applicant renovated and expanded prior to the issuance of a building permit. Location: 651 Ann Lewis Road, Charles Town, WV. District: Kabletown (06); Map: 22; Parcel 6; Zoned: Rural; Size: 1 acre; File: #ZV13-21.

Mr. Jason Shelton presented his request stating that the existing 16' x 32' structure replaced a previous structure that was there when he moved to the property in 1996. Mr. Shelton stated that the existing structure was built almost 12 years ago in 2001.

Ms. Brockman stated that the structure was reported as a setback violation. Ms. Brockman stated that staff visited the site to verify setbacks of existing structures and in the process confirmed that the structures were in violation of setback regulations as well as for not having applied for a building permit. Ms. Brockman added that a number of the structures housed animals and required a 75' rear setback. Ms. Brockman stated that staff was uncertain of the exact location of the property line.

Mr. Shelton stated that all of the structures housing animals, as well as the animals they contained, had been removed. Mr. Shelton stated that the structure was approximately 9' – 10' from the property line.

Ms. Susan Rissler Sheely, adjoining property owner, spoke in opposition to the request. Ms. Sheely stated that recent construction on Mr. Shelton's property spurred her calling the building permits office. Ms. Sheely stated she was concerned for the number of animal cages and a small structure that appeared to be on her property. Ms. Sheely stated that in 2008, a building permit application was submitted along with a sketch detailing the existing house, showing where the proposed addition would be located, and an existing 12' x 30' structure. Ms. Sheely pointed out that the sketch shows the 12' x 30' structure has a 13' setback and noted that there is no record of a building permit being issued for the 12' x 30' structure. Ms. Sheely noted that the current request is for a structure that is 16' x 32', which encroaches further on her property. Ms. Sheely expressed concern for the number of animals being housed on Mr. Shelton's property, including what she surmised to be fighting roosters. Ms. Sheely stated that a trench had been dug along the property line but did not have any downspouts or pipes to carry water out. Ms. Sheely stated that she believed the survey pins had been moved and that she hired Ed Johnson to re-survey her lot.

Mr. Shelton stated that the original structure was 13' x 32' and the existing structure is 16' x 32'. Mr. Shelton stated he was unaware that since the structure was mobile (no foundation) that it required a building permit. Mr. Shelton stated that he dug a trench one (1) foot wide with black perforated pipe to drain water from Sheely's property that had been flooding his storage sheds.

Mr. Robert Sheely, adjoining property owner, spoke in opposition to the variance request. Mr. Jeffrey McDonough, adjoining property owner, spoke in opposition to the variance request.

Members of the BZA stated that a number of Mr. and Ms. Sheely's concerns could not be addressed by the BZA and advised contacting the county's Compliance Officer.

Board members relocated to the second floor conference room for the remainder of the meeting.

5. Variance request by applicant, John Orem, from Section 4.3(B) to re-establish a nonconforming commercial use. Applicant representative: Christopher Luttrell, Esq. with Luttrell & Prezioso PLLC. Location: 7330 Martinsburg Pike, Shepherdstown, WV. District: Shepherdstown (09); Map: 7B; Parcel: 95; Zoned: Residential-Growth; Size: .36 acres; File: #ZV13-22.

Mr. Christopher Luttrell, lawyer for Mr. John Orem, presented the request. Mr. Luttrell stated that historically the building had been utilized for commercial business. Mr. Luttrell stated the previous lessee was a church and that they defaulted on the note at which point Mr. Orem began marketing the building as commercial. Mr. Luttrell stated that an insurance agency is currently interested in leasing the building. Mr. Luttrell stated that Mr. Orem may apply to have the property rezoned to allow for commercial business.

Mr. Bannon stated that the building should continue as a nonconforming commercial use but that he did not think a variance request was the appropriate avenue. Mr. Bannon recommended a Conditional Use Permit (CUP) or a Zoning Map Amendment. Ms. Brockman stated that it would be a difficult argument for the applicant to make in order to have the property rezoned from Residential Growth given the number of residential homes surrounding the building. Ms. Brockman advised that a CUP would be more appropriate so as to restrict the types of commercial use permitted.

6. Variance request by applicant, Kevin R. Blundon, from Section 5.4(B) for a reduction of the rear setback distance from 20' to 16' to construct a 20' x 12' deck and corresponding stone patio situated underneath. Location: Windmill Crossing Subdivision, 6 Monte Carlo Way, Charles Town, WV. District: Charles Town (02); Tax Map: 9C; Parcel: 67; Zoned: Residential-Light Industrial-Commercial; Size: 3,350 square feet; File: #ZV13-23.

Mr. Kevin R. Blundon presented his request to the Board stating that he was requesting a reduction of the rear setback to allow construction of a deck and noted that his property backed up to a utility easement where the Windmill Crossing entrance monument is located. Mr. Blundon stated that a majority of his neighbors have received variances for similar projects.

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

7. Variance request by applicant, David Poyser with D & D, L.C., from Section 5.6(D) 1 & 2 for a reduction of the front and side setback distances from 25' to 15' for the placement of a 12' x 13' temporary storage shed. Applicant representative: Craig Jenkins. Location: Dairy Queen, 45 Maddex Square Drive, Shepherdstown, WV. District: Shepherdstown (09); Tax Map: 8C; Parcel: 67; Zoned: Residential-Light Industrial-Commercial; Size 0.63 acres; File: #ZV13-24.

Mr. Craig Jenkins, applicant representative, presented his request stating the storage shed would be a temporary structure (no footers).

Mr. David Poyser, applicant, stated that the application reflected an incorrect size for the shed. Mr. Poyser stated the correct size of the shed would be 12' x 16' and would not change the current request for a reduction of front and side setback distances.

Ms. Huddle motioned to go into deliberative session at 4:50 PM. Mr. Bannon seconded the motion, which carried unanimously.

Ms. Huddle motioned to come out of deliberative session at 5:05 PM. Mr. Bannon seconded the motion, which carried unanimously.

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4. Variance request by applicant, Jason Shelton, from Section 5.7(B) for a reduction of the rear setback distance from 50' to 8' for an approximate 16' x 32' existing building, which the applicant renovated and expanded prior to the issuance of a building permit.

Mr. Bannon motioned to deny the variance request by Jason Shelton, from Section 5.7(B) for a reduction of the rear setback distance from 50' to 8' for an approximate 16' x 32' existing building on the basis of the testimony given by adjacent property owners. Ms. Huddle seconded the motion, which carried unanimously.

5. Variance request by applicant, John Orem, from Section 4.3(B) to re-establish a nonconforming commercial use.

Ms. Huddle motioned that a variance request was not necessary for the applicant to continue as a non-conforming use because the intent to continue as a non-conforming commercial use was maintained, as specified by the applicant's statement. The Board requested that the applicant submit supporting documentation to department staff for administrative approval to allow continuation of a non-conforming commercial use. Mr. Bannon seconded the motion, which carried unanimously.

6. Variance request by applicant, Kevin R. Blundon, from Section 5.4(B) for a reduction of the rear setback distance from 20' to 16' to construct a 20' x 12' deck and corresponding stone patio situated underneath.

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

7. Variance request by applicant, David Poyser with D & D, L.C., from Section 5.6(D) 1 & 2 for a reduction of the front and side setback distances from 25' to 15' for the placement of a 12' x 16' temporary storage shed.

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

8. Director's Report. None.

9. Legal Update. None.

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

11. Correspondence. None.

Ms. Huddle motioned to adjourn the meeting at 5:35 PM. Mr. Bannon 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 Alexandra Beaulieu, Planning Clerk.