

Minutes
Jefferson County Board of Zoning Appeals
Thursday, November 14, 2013

The Jefferson County Board of Zoning Appeals met on Thursday, November 14, 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 Christy Huddle, Vice Chair; Tyler Quynn, Jeffrey Bannon, and Matt Knott were present. Staff members present were: Jennie Brockman, Director of Planning and Zoning; Stephen Groh, Assistant Prosecuting Attorney; and Jennilee Hartman, Zoning Clerk.

Edwin Kelly was absent with notification.

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

Mr. Quynn motioned to commence the meeting. Mr. Bannon seconded the motion, which carried unanimously. Ms. Huddle called the meeting to order at 2:00 p.m.

1. Approval of the minutes from the September 19, 2013 and October 10, 2013 meetings.

The minutes were not available therefore they were deferred until the next meeting.

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

Ms. Hartman swore in the public prior to the meeting.

Ms. Huddle explained to the public how the meeting would be conducted.

3. Variance request by owner, Susan Powell, from Section 9.7 for a reduction of the rear setback distance from 12' to 6' to allow for the construction of an 8' x 12' deck to be used for wheelchair access. Location: Shannondale, Section 5F, Lot 40, 480 Rolling Lane, Harpers Ferry, WV. District: Kabletown (06); Map: 6B; Parcel: 67; Zoned: Rural; Size 0.25 acres; File: #ZV13-30.

No one was available to present the request. The Board moved to the next item to allow the applicant additional time to arrive, if necessary.

4. Variance request by owners, James M. and Bonnie K. Pretre, from Section 9.7 for a reduction of the rear and side setback distances from 6' to less than 1' to allow for an existing 12' x 18' shed to remain placed on current site. Location: 297 Euclid Ave, Charles Town, WV. District: Charles Town (02); Map: 10A; Parcels: 86 & 87; Zone: Residential-Growth; Size 18,750 sq. ft.; File: #ZV13-31.

Mr. James Pretre presented the request to the Board stating he was not aware of the permitting process. Mr. Pretre explained that the shed was located at the intersection of two alleys that were rarely travelled and that there were other sheds built along the alley. Mr. Knott asked if the shed was located in a utility easement. Mr. Pretre and Staff were unable to answer Mr. Knott's question.

Ms. Huddle called for public comment. There was no public comment.

5. Variance request by applicant, John Fridley, from Section 9.6C & 9.7 for a reduction of the front setback distance from 20' to 8' to allow for the construction of a 20' x 25' detached garage. Owner: William C. Palmer, Sr. Location: Shannondale, Sec. 1L, 1623 Lakeside Dr, Harpers Ferry, WV. District: Kabletown (06); Map: 6C; Parcel: 292; Zone: Rural; Size: 25,000 sq. ft.; File: #ZV13-32.

Mr. John Fridley represented the request to the Board explaining how the proposed variance differed from the previous request that he had represented to the Board in July. Mr. Fridley stated that moving the garage closer to the home would assist in reducing the sight-distance concerns expressed by the neighbors at the previous meetings. Mr. Fridley reviewed the pictures that had been submitted in the application with the Board and explained that the well cap would be protected by situating it between the two garage doors. Ms. Brockman's staff report had not been included in the mailed packet; therefore, Ms. Hartman went to the Office to obtain copies of the report for the Board. Ms. Brockman answered questions the Board had concerning measurement from the right-of-way.

6. Variance request by Kristen Stolipher, Consultant, on behalf of, Junipa Contento, Developer, from Section 2.2 to extend the time permitted for a Seasonal Use, which limits an event to not more than 3 consecutive days. The applicant is requesting to hold a 5-day music festival and camp out during the July/August 2014 summer season. Property Owner: Stiles Partnership 3 and 4. Location: 118 Goshen Arrabon Ln, Charles Town, WV. District: Kabletown (06); Maps: 20 & 21; Parcels: 13 & 4.1; Zone: Rural; Size: 271 ac (proposed use); File: ZV13-33.

See Item #7.

7. Request by Kristen Stolipher, Consultant, on behalf of, Junipa Contento, Developer, to conduct a Seasonal Use event per Section 9.8 by hosting a 5-day musical festival and camp out, provided the previous variance request (ZV13-22) is approved, during the 2014 summer season. Property Owner: Stiles Partnership 3 and 4. Location: 118 Goshen Arrabon Ln, Charles Town, WV. District: Kabletown (06); Maps: 20 & 21; Parcels: 13 & 4.1; Zoned: Rural; Size: 271 (proposed use); File: ZV13-34.

Ms. Brockman suggested that the Board allow the applicant and the public the ability to speak on both items at one time.

Mr. Robert Aitcheson interjected with a Dispositive Motion to Dismiss stating that he questioned the applicant's right to sign as owner of the property. Ms. Huddle asked Mr. Groh if they were permitted to entertain the Motion. Mr. Groh stated that since it was questioning the ownership of the property and not the merits of the variance the Motion seemed appropriate. Mr. Dyck requested a five minute recess for the applicant's counsel to review the Motion. Ms. Huddle announced that the Board would review Item 5 now that they had the Fridley Staff Report in hand, which would allow them time to review the Motion.

5. Continued... Variance request by applicant, John Fridley, from Section 9.6C & 9.7 for a reduction of the front setback distance from 20' to 8' to allow for the construction of a 20' x 25' detached garage.

Ms. Brockman reviewed the staff report with the Board highlighting the portion that included why she determined the applicant did not have "three fronts". Ms. Brockman explained how the Ordinance defined a front and side line, and due to the curvature of Lakeshore Road she had determined that the property had a continual frontage.

Upon completing Ms. Brockman's review of her staff report for the Fridley variance request, Ms. Huddle asked Counsel how the Board should proceed with Items 6 and 7 in response to Mr. Aitcheson's Motion to Dismiss. Mr. Groh advised the Board to allow Mr. Aitcheson to argue the Motion to Dismiss. Bob Martin, attorney for the applicant of said Items, argued that property ownership would be part of their presentation and that the public would have an opportunity to rebut during the public hearing portion of the meeting. Ms. Huddle stated the Board would be hearing Mr. Aitcheson's Motion to Dismiss.

Items #6 and #7 continued

Mr. Aitcheson stated he was a former lawyer; however, was not representing any interested party other than speaking as an adjacent landowner. Mr. Aitcheson stated his basis for the Motion is that Christopher Stiles, the individual who signed the variance request, did not have the legal authority to sign the application. Mr. Stiles was not a general partner of the Stiles Family Partnership 3, LLC. Mr. Aitcheson directed the Board's attention to Exhibit 1, which was an affidavit within the Motion signed by Joyce Rawn the controlling partner of the Stiles Family Partnership 3, LLC (hereinafter known as the Partnership), that states Ms. Rawn did not give permission for the requested activity and desires the Board to deny said request. Mr. Aitcheson stated for the record that he did not represent Ms. Rawn. Mr. Aitcheson proceeded to address each Exhibit within the packet attached to the Motion to Dismiss: Exhibit 1: Letter of objection from Joyce Stiles Rawn dated 11/13/13; Exhibit 1a: Stiles Property after Merger & Conveyance Plat, dated 01/08/92; Exhibit 2: Deed from Stanley and Barbara Stiles, Grantees to The Stiles Family Partnership Number Three, a West Virginia Partnership; Exhibit 3: West Virginia Certificate of Registry as a Limited Liability Partnership for the Stiles Family Partnership Number Three, LLP; Exhibit 4: Certification of ownership signed by Terrence Rawn and Joyce Rawn as Partners recorded on 04/23/2010; Exhibit 4a: Certification of ownership signed by Stanley Stiles and Barbara Stiles as Partners and Joyce Rawn as Witness recording date 03/10/2010; and, Exhibit 5: Notice of Public Hearing advertising the 11/14/13 BZA meeting for the Stiles' requests (see file for copies).

Mr. Martin addressed the Board stating that his clients are not contesting the ownership of the property; however, as Ms. Rawn's letter indicates a lease agreement exists between the Partnership and Riggs & Stiles, Inc., of which Chris, Stanley, and Barbara Stiles were the managing partners. Mr. Martin stated that C. Stiles signed the variance and seasonal use applications in his capacity as the lessee of the property. Mr. Aitcheson argued the lease agreement restricted the land to agricultural endeavors and submitted a copy of the lease as Exhibit 9 (see file for a copy). Ms. Huddle stated the Board did not enforce deed or lease agreements.

Mr. Quynn motioned to go into deliberative session at 2:55 p.m. Mr. Knott seconded the motion, which carried unanimously.

Mr. Quynn motioned to come out of deliberative session at 3:54 p.m. Mr. Knott seconded the motion, which carried unanimously.

Items #6 and #7 continued

The Board discussed various motions and agreed that the purpose of this motion was to act on Mr. Aitcheson's request. Ms. Huddle turned the Chair over to Mr. Quynn to make a motion. Ms. Huddle motioned to grant the Motion to Dismiss the applications as they have not been signed by the legal property owner or the legal owner's authorized representative. Mr. Quynn asked for a second. Mr. Bannon seconded the motion for discussion. Mr. Quynn called for discussion. Hearing none Mr. Quynn called for a vote, which failed one in favor (Ms. Huddle), two opposed (Mr. Quynn and Mr. Bannon) and one abstention (Mr. Knott).

Mr. Bannon motioned that the applicant be given an opportunity to address the issue of ownership before the item is dismissed. Ms. Huddle seconded the motion. Mr. Knott asked to amend the motion to state if the applicant did not own the property that they demonstrate how they are legally allowed to proceed. Mr. Bannon accepted the amendment. Mr. Quynn called for a vote, which carried unanimously. Mr. Quynn returned the Chair to Ms. Huddle.

Mr. Chris Stiles addressed the Board explaining that the purpose of the Partnerships was for estate planning purposes with the understanding that the father could use the property as he saw fit until his death. Mr. C. Stiles stated the continued longevity of the lease was evidence of that fact. Mr. C. Stiles stated he was assured by his attorney that he had the right to sign the applications as President of Riggs & Stiles, Inc.

Mr. Martin stated he did not create the lease; however, he received a letter of intent from Mr. C. Stiles as the controlling partner and President of Riggs & Stiles, Inc. and the one authorized to conduct business on the property pursuant to the lease. Mr. Groh asked how the festival was meeting the criteria of the lease. Mr. C. Stiles stated the land would be in hay/ farming activities the other 360 days of the year. Mr. Martin stated it was not the Board's position to be arguing the contents of the lease. Mr. Martin also stated that Ms. Rawn has not terminated the lease but had only written a letter to the Board.

Ms. Huddle asked staff what the procedure was for having a lessee sign an application. Mr. Groh deferred to staff. Ms. Brockman stated the owner of the property typically signs the application as well as the lessee or interested applicant.

Mr. Bannon motioned to deny the request based on the fact that the application was not signed by the property owner. Ms. Brockman stated the application should not be denied but withdrawn due to improper filing. Mr. Bannon motioned to dismiss the request with the option for the applicant to reapply with the property owner's signature. Ms. Huddle turned the chair over to Mr. Quynn and seconded the motion. Mr. Quynn called for a vote, which failed two in support (Mr. Bannon and Ms. Huddle) and two opposed (Mr. Quynn and Mr. Knott). Mr. Quynn returned the chair to Ms. Huddle.

Mr. Groh stated that Robert's Rules of Order would dictate that since the Board cannot come to a consensus that status quo must be maintained and in this case that would be to allow the application to be heard. Ms. Huddle announced she had a more pressing engagement and left the meeting at 4:09 p.m. Ms. Huddle turned the Chair over to Mr. Quynn for the duration of the meeting.

Mr. Aitcheson stood to address the Board presenting a second point of order with a Motion to Continue. Mr. Quynn asked Mr. Aitcheson to wait until the Board addressed him. Mr. Aitcheson explained his Motion was to continue the public hearing to a later time to give Ms. Rawn time to attend. Mr. Quynn asked Mr. Aitcheson again to return to the audience stating he was out of order. Mr. Quynn explained to the audience that the Board would be deliberating on the first three variance requests and when they returned would continue the public hearing for the Stiles requests.

[Note: The use of the names *Stiles Family Partnership*³ and *Stiles Family Partnership 3 LLC*, were incorrectly used interchangeably throughout the meeting by all parties.]

Mr. Bannon motioned to go into deliberative session at 4:19 p.m. Mr. Knott seconded the motion, which carried unanimously.

Mr. Quynn motioned to come out of deliberative session at 4:28 p.m. Mr. Knott seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

3. Variance request by property owner, Susan Powell, from Section 9.7 for a reduction of the rear setback distance from 12' to 6' to allow for the construction of an 8' x 12' deck to be used for wheelchair access.

Mr. Bannon motioned to defer this item until the next available Board meeting until the applicant can be present. Mr. Knott seconded the motion, which carried unanimously.

4. Variance request by property owners, James M. and Bonnie K. Pretre, from Section 9.7 for a reduction of the rear and side setback distances from 6' to less than 1' to allow for an existing 12' x 18' shed to remain placed on current site.

Mr. Quynn motioned to approve the above referenced request contingent upon the structure not being located in a power line right of way or easement and the applicant obtaining a building permit. Mr. Knott seconded the motion, which carried unanimously.

5. Variance request by applicant, John Fridley, from Section 9.6C & 9.7 for a reduction of the front setback distance from 20' to 8' to allow for the construction of a 20' x 25' detached garage.

Mr. Knott motioned to approve the above referenced request contingent upon the applicant installing a permanent protective device around the well cap. Mr. Bannon seconded the motion, which carried unanimously.

Items #6 and #7 continued

Mr. Martin introduced himself and stated that he is the Assistant Prosecuting Attorney for Pocahontas County; however, he was not speaking in that capacity. Mr. Martin stated he met Mr. Walther and Ms. Conteno when having to represent the County and in doing so found them to be fine people who obeyed all the regulations. He has attended each All Good Festival since that time. Mr. Martin confessed that he had asked them to return to Pocahontas County but they did not have an adequate

road system. Mr. Martin suggested Jefferson County, due to its proximity to airports and interstates. Mr. Martin explained that in his capacity as a County official he is asked to assess situations that may impact his county, for example whether the project would be a cost or a benefit to the County. Mr. Aitcheson called for a point of order and objected to how Mr. Martin is using his official position to sway the Board and believes it is unethical. Mr. Martin argued that Mr. Aitcheson is out of line. Mr. Aitcheson stated that he wished a ruling on his objection for the record. Mr. Quynn asked Mr. Aitcheson to return to his seat. Mr. Martin stated that when presented with a proposal one should determine if it is more beneficial to the County than costly, and if so then it is good for the County. Mr. Martin brought out that West Virginia is primarily a tourism state and that this proposal would enhance that market. Mr. Martin added that the festival would hire hundreds of people, utilize an additional one hundred volunteers, and would work with law enforcement and sanitary officials to ensure the site is compliant. Mr. Martin agreed that the traffic would be a drawback. Mr. Martin concluded by stating that this festival is run by a highly organized company that has been doing this same festival for many years.

Tim Walther, owner and manager of the All Good Festival, provided the Board a brief history of the All Good Festival and listed their previous locations. Mr. Walther described the growth of the company and how they have tightened up their operations as they have grown over the last 20 years. Mr. Walther informed the Board that, as an example of their work, they had been nominated as *2012 Festival of the Year* by Pollstar Magazine.

Junipa Contento, owner and manager of the All Good Festival, explained that they have been doing festivals for approximately 20 years and that aside from their annual festival their group assists in organizing other well-known events throughout the year. Ms. Contento stated that they researched a number of properties before settling on the Stiles property. Ms. Contento explained to the Board that a site must meet many of the criteria necessary for a successful event. Ms. Contento stated they had met with Sheriff Dougherty prior to submitting the application. Further, Ms. Contento specified that they would be hiring Craig Manning to do a traffic control plan so that the event would be well organized.

Mark Dyck, consultant with Gordon, informed the Board that through many meetings with his clients that they are familiar with all the steps necessary to run a large scale event. Mr. Dyck stated the expected attendance is approximately 15 – 20,000 people. Mr. Dyck clarified that this is a 5-day event and that there would be performances on Thursday night in order to keep the arriving guests onsite to reduce traffic flow. There would be a two week set up period prior to the event and a 10-day period to clean on and off the site after the event. Mr. Dyck stated that there would be approximately 1,000 hired staff and 300 volunteers. Mr. Dyck explained the positive economic impact the event would have for the County. Mr. Dyck described the large scale exhibits which were displayed in the meeting room; Mr. Dyck provided and reviewed the following handouts with the Board (copies in the file):

- 1) Vicinity Map outlining the property owned by the Stiles family;
- 2) Site Aerial Map outlining the proposed event site and depicts the ridgeline;
- 3) A letter acknowledging an established working relationship with the representatives of the All Good Music Festival, dated 11/07/13.

Mr. Dyck stated that, in addition to working with local law enforcement, the applicant would be drafting an action plan with Fire and Emergency Management Services. Mr. Groh asked the applicants if they would be willing to reimburse the Sheriff's office for services rendered. Mr. Walther stated they would reimburse the County for any additional costs. Mr. Dyck informed the Board that Sheriff Dougherty offered to provide the Reserves which are their volunteer force. Mr. Dyck stated they would have a neighborhood plan which would include providing each surrounding neighbor with a direct telephone number to site security in the event they need assistance. Also, if requested, security can be posted on the neighboring properties. The site will be secured with a 6' chain link fence around the perimeter of the camping/event area with controlled access points to and from the site.

Kenneth Wersted, traffic consultant with Creighton Manning, provided the Board with an Event Transportation Sketch Plan and proceeded to review a PowerPoint presentation which addressed gates, access, parking availability, an arrival and exit plan, dissemination of traveler information, and the development of a plan to address emergency services, traffic management and other traffic control provisions such as barricades, signage, law enforcement and staffing (copy of handout and PowerPoint in file). Mr. Walther stated their company relied on social media to inform their customers of travel routes and greatly encouraged them to follow them. In addition, Mr. Walther informed the Board that they would have traffic control measures to prevent customers from attempting to take back roads to access the event. Ms. Contento stated she designed an application that could be downloaded to a Smart Phone which could alert the customer of alternate routes should traffic become too congested at one point of entry. Ms. Contento explained that during the initial check-in period customers are discouraged from leaving the site to allow the staff to concentrate on the influx of customers arriving. Mr. Walther stated that one measure of discouraging the customers from leaving is warning them that they will have to park in the day parking site upon re-entry and not their original campsite.

Mr. Dyck presented a large scale exhibit, as provided in the packet, which was a schematic plan of the proposed locations for the camping/parking areas, RV/day parking, 2 ticketing/security check points with queuing stations, event area, spectator area, production area and 2 performance stages. Mr. Dyck stated that the way the stages and sound systems was situated were to allow the sound to be projected toward the Stiles property, crowd, and the existing ridgeline. Mr. Dyck contended that the ridgeline would absorb the majority of the sound projected towards the west and that there would not be a substantial amount of noise to the rear of the property. Mr. Groh asked what time the music would end. Mr. Walther stated approximately 2:00 am. Mr. Groh asked the applicant if they were aware of the noise restrictions in the Ordinance, citing that noise cannot exceed 50 decibels at the property line. Mr. Dyck stated they were aware of that section of the Ordinance. Mr. Groh asked if they could meet that standard. Mr. Dyck stated that Staff has stated that the noise requirements do not apply to commercial developments and that the festival would fall under that. Ms. Brockman did not concur. Mr. Walther stated they would meet noise requirements. Mr. Groh had additional questions for the applicants. Mr. Dyck, Mr. Walther and Ms. Contento responded to Mr. Groh's questions. Mr. Dyck explained there would be 250 security personnel on site at all times. Mr. Walther stated that by their calculations \$2.3 million in revenue would be brought into the County by means of the event. Approximately \$1.1 million would relate to gas and convenience items in the County with \$300,000 of the same to other areas of the State. Mr. Walther added that 1,200 staff members would be utilizing the hotels in the area and projected another 2,200 guests would also accommodate the hotels. Mr. Walther's estimated \$150,000 – \$200,000 in sales tax from the onsite vendors would go to the State. In addition, the festival hires local people and solicits local charities by allowing them to staff

beverage or ice stands, which help them raise money for their cause. Mr. Walther explained a promotion which encourages people to donate 10 pounds of food to receive a free poster, which has successfully raised up to 5,000 lbs in food for local charities. Mr. Walther stated that the festival will encourage and promote return visitors. Mr. Groh asked what assurances the County had that the festival would not exceed the allowable noise decibel. Mr. Dyck responded by saying that the festival wished to return the following year and that they would only be able to do that by proving themselves to County officials and the public. Mr. Dyck responded to Mr. Groh's concerns regarding a letter received from Preston County's County Commissioner by stating that Jefferson County is accustomed to dealing with large crowds relating to tourism and that in speaking with Sheriff Dougherty that he feels confident the event will succeed. Mr. Dyck stated there are arrests, as an example, during Redskin events; however, that did not make the event a bad event. Mr. Walther answered Mr. Groh's questions regarding illegal drug use by stating they prohibit its use using multiple avenues in addition to restricting any items that could be used as weapons.

Mr. Quynn opened the public hearing stating it would be for both Items #6 and #7. Mr. Quynn asked for a show of hands for those in support and then for those in opposition. Mr. Quynn then set a three minutes time limit on individuals wishing to provide testimony and 5 minutes for those who would be representing a group. Mr. Quynn asked that anyone giving testimony not duplicate information. The applicant would have an opportunity to rebut after public comment.

John Reisenweber, Director of the JCDA, stated for the record that they were not aware of the ownership issues regarding the property and it is not their policy to weigh in on those matters. Mr. Reisenweber stated his comments are limited strictly to the land use in question. Mr. Reisenweber read a letter of support into the record and added that the festival had a professional history and is successful (copy of letter in the file).

Annette Gavin, representative with the Jefferson County Visitor Bureau, read a letter of support into the record. Ms. Gavin stated the applicants have been open, honest, and proactive regarding their proposal. Ms. Gavin stated they were not aware of the current property owner issues but were only relating to the positive economic impact the proposal would have to Jefferson County (copy of letter in the file).

Mr. Steve Stolipher stated he was not present as a member of the Planning Commission but as a local property owner. Mr. Stolipher expressed his support of the project by explaining that tourism dollars were essential to Jefferson County. While acknowledging the festival would create temporary traffic issues, Mr. Stolipher stated that this type of revenue did not require the County to build housing and road systems; and therefore the County should embrace any tourism endeavors.

Chris Stray, attorney in Charles Town and resident in Shepherdstown, stated he has produced the one-day Shepherdstown festival for the past several years. Mr. Stray spoke in support of the request stating that he saw the impact the festival had not only during the festival but from the repeat visitors who took an interest in Shepherdstown because of the festival. Mr. Stray stated he has attended more than half of the events hosted by Mr. Walther and Ms. Contento and has been impressed at how well they manage and operate events.

Ron Rissler, local resident, stated that this is a property rights issue and therefore the owner should be permitted to what they want to do on their land. Mr. Rissler also believed that the land is primarily used for agriculture and that the event would only disturb the farming aspect for the requested 5 days.

Doug Rockwell, neighboring property owner, was concerned about the traffic generated by the event and stated that the width of Ward Clipp Road is 15' and that the feeder roads do not have a centerline. Mr. Rockwell listed other road safety concerns and asked how emergency services would be able to reach neighboring properties due to the stacking of traffic.

Mary Goodson, neighboring property owner, spoke in opposition to the request stating she was concerned about the excess noise, the additional traffic on substandard roads, and the lack of willingness of the applicant to pay \$250,000 for police presence.

Angus Goodson, neighboring property owner, informed the Board that he commuted for 6 years and stated that there was a fair amount of traffic on Kabletown road early in the morning from people going to Virginia. Mr. Goodson was concerned that the added traffic from the event would create a hardship for those commuting.

Bill Napalie, neighboring property owner, questioned how the event will bring in additional revenue to the County if the event will be self-contained onsite, such as providing their own alcohol and food. Mr. Napalie expressed concern of how the festival will devalue his property as they have expressed a desire to continue the festival annually. Mr. Napalie stated the Nissan Pavilion does not stay open until 2:00 a.m. Mr. Groh asked what time would be more appropriate. Mr. Napalie stated, out of respect for a rock concert, he believed 12:00 a.m. would be a fair time although he'd prefer 11:00 p.m. Mr. Napalie expressed his hesitation in responding to Mr. Groh's question as he felt it was lending his support to the festival. Mr. Groh assured Mr. Napalie his response was not meant to insinuate his support of the request.

Kenny Nicewarner, neighboring property owner, stated his opposition to the request was not a personal affront to the property owner or the applicants. Mr. Nicewarner had concerns regarding the substandard roads that would access the property.

Robert Aitcheson, neighboring property owner, drew two ovals on Mr. Dyck's large exhibit plat and informed the Board that the property owners allow septic companies to spread treated sewage on their adjacent farms in the specified locations. Mr. Aitcheson was concerned that the applicant was asking to hold the event without providing the Board a site plan for review. Mr. Aitcheson stated Mr. Stolipher would be gaining a commission should the request be granted. Mr. Aitcheson asked the Board members to confirm for the record if any of them had ex parte communications with any of the applicants or their representatives. Mr. Groh stated the Board did not have to address Mr. Aitcheson's question. Mr. Quynn explained to Mr. Aitcheson that he was permitted to have an additional three minutes and was advised not to duplicate any of the testimony that had been given by previous individuals. Mr. Aitcheson argued the fact that the applicant and their representatives had a one and half hour presentation; however, the public was being restricted to three minutes. Mr. Aitcheson also contested that the applicant had submitted new material at the meeting; therefore, they [the public] have not been given the opportunity to review the record in order to comment accordingly. Mr. Aitcheson argued that because he could not review the record which would then allow him to 'make a record' when he took the matter to court, he claimed the judge would send the matter back to the Board to allow him the right

to 'make a record'. Mr. Aitcheson's three minutes had ended and Mr. Quynn allowed Mr. Aitcheson to have an additional minute but advised Mr. Aitcheson to provide testimony that was relevant to Jefferson County. Mr. Aitcheson argued that the experiences of past locations were relevant. Mr. Aitcheson asked that the Board continue the meeting for the following reasons: to provide Ms. Rawn an opportunity to attend the meeting because he was claiming that Ms. Rawn had terminated the lease agreement with Mr. Stiles; and because Craig Jennings, President of the Preston County Commission, expressed an interest in attending the meeting but could not adjust his schedule to attend this meeting on short notice. Mr. Aitcheson asked that Dallas Wolfe's testimony be added into the record,

[the following excerpt is from page two of the Motion to Continue.]

The problem that the promoter can't control is the undesirable clientele that are attracted to these festivals. They are "the worst of the worst from everywhere", California, Colorado, Georgia, Canada, etc. Very few are from West Virginia. "You don't want those kinds of people in your County."

The Preston County festivals were "a big drugfest, like an open air drug market. The drug of choice from every part of the country. heroin, cocaine, molly, etc., was there. Traffic was bumper-to-bumper for three days". Over 30,000 people attended. Sheriff Wolfe had to hire over 100 police officers and State Troopers...

Mr. Quynn informed Mr. Aitcheson that his time had ended. Mr. Aitcheson argued that he should be given the opportunity to make a record. Mr. Aitcheson asked the Board if they would be ruling on his Motion to Continue. Mr. Quynn again informed Mr. Aitcheson that his time had ended. Mr. Aitcheson asked the Board if they would rule on his Motion to require a detailed site plan in compliance with permitting procedures before considering or granting the application. Mr. Quynn gave Mr. Aitcheson a final opportunity to return to his seat. Mr. Aitcheson again asked if the Board would rule on the Motion to Continue. Mr. Quynn stated that the outcome of the meeting would be determined after the continuance of the hearing. Mr. Aitcheson stated he wished to preserve his objection to the Board's failure to allow him to present evidence.

Mr. Quynn invited Mr. Rockwell up should he have additional testimony. Mr. Rockwell stated he did and addressed the Board. Mr. Rockwell noted that the Ordinance does not specify what standards apply to a Seasonal Use and how the Board should approve or disapprove one. Mr. Rockwell stated that in absence of any standards the Board should consider the other provisions of the Ordinance, "Section 1.1 *Purpose* A) Protect and encourage the health, safety and general welfare of the present and future population of Jefferson County." Mr. Rockwell added it may also be their purpose to protect those coming to the event. Mr. Rockwell questioned if an applicant could ask for a variance from the Section 2 Definitions, as he believed it to be a legislative decision and wished to note his objection for the record. Mr. Rockwell asked that should the Board grant the request that they put any exceptions and conditions in writing. Mr. Rockwell also asked the Board to consider the lighting and noise issues that would come from having 20,000 people on site, not just the music venue itself.

Ms. Hartman swore in Donna Gwine as she arrived late yet wished to provide testimony. Ms. Gwine stated she had concerns regarding the noise and sanitary conditions on site. Mr. Quynn informed

Ms. Gwine that these issues had been addressed during the applicant's presentation and that she could review the video and audio record the following day. Ms. Gwine asked how the site was selected and asked if other sites could have been chosen. Ms. Brockman stated the purpose of this meeting is to review the specific application and not to discuss if an alternative site would be more suitable. Ms. Gwine also had traffic safety concerns.

Mr. Dyck rebutted the opposing testimony by addressing the following: the roads currently have semi-trailers and milk trucks safely traveling the road; if there are sight distance issues they will have a flag person stationed at those designated areas to slow traffic; he anticipated slow traffic due to the heavy volume of traffic; the traffic plans must be reviewed and approved by the Department of Highways; the event must have Health Department approvals; the applicant will cooperate with the local Sheriff's Department; he confirmed that while the event is self-contained the estimated amount of revenue to the County remains the same and all local hotels will be occupied; Mr. Dyck believes the variance is valid and that the Board has the authority to grant it as the use is permitted, only the days are limited.

Mr. Bannon motioned to go into deliberative session at 6:37 p.m. Mr. Knott seconded the motion, which carried unanimously.

Mr. Knott motioned to come out of deliberative session at 8:05 p.m. Mr. Bannon seconded the motion, which carried unanimously.

Mr. Bannon motioned to approve Items# 6 and #7 with the following conditions:

- 1) The Applicants are bound by their testimony regarding the event.
- 2) Further, the applicants shall abide by the following conditions:
 - a. Comply with all governmental regulations.
 - b. Musical performance shall cease by 2:00 am Thursday, Friday and Saturday and by midnight Sunday. Musical performances shall not begin before 9:00 am on Friday, Saturday and Sunday.
 - c. No performance before 4:00 pm on Thursday. No performance on Monday.
 - d. Obtain an alcohol license, West Virginia Department of Highways permit, Health Department approval, state tax and business license and all other governmental approvals and provide written copies of same 90 days in advance to Planning Staff (only for the record/file).
 - e. Meet with Jefferson County Sheriff's Department, Jefferson County Emergency Services Agency, Jefferson Medical Center, and Jefferson County Homeland Security and provide each entity with anticipated attendance numbers. Obtain written requirements from the Police and EMS/Fire services and develop a public safety plan to meet public safety concerns; comply with all reasonable requests. The Applicants shall be responsible for the reasonable costs associated with the public safety plan. The Applicants shall provide written proof of public safety plan and cost recovery arrangements to Planning Staff 90 days in advance of the concert.

- f. Provide public legal advertisement of performance dates and times 60 days in advance of the concert in Spirit of Jefferson.
- g. Post the property continuously for 30 days in advance of concert with event dates and time.
- h. Provide a Sketch Plan (Not To Scale) to the Planning Staff 120 days in advance of the concert addressing the locations of proposed stages, sound systems, bathroom facilities, parking areas, concessions, fencing and access points. The Sketch Plan shall substantially match presentation provided to Board of Zoning Appeals.

Mr. Knott seconded the approval, which carried unanimously.

- 8. Director's Report. Ms. Brockman informed the Board there was a Director's Report in the packet if they wished to know of any prior or upcoming events.
- 9. Legal Update. None.
- 10. Signing of written decisions from prior Board of Zoning Appeals meetings. None.
- 11. Correspondence. None.

Ms. Brockman stated she would check the availability of the meeting room for the January meeting and will contact the Board with possible meeting dates.

Mr. Bannon motioned to adjourn the meeting at 8:09 p.m. Mr. Knott 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.