

Minutes
Jefferson County Board of Zoning Appeals
Wednesday December 18, 2013

The Jefferson County Board of Zoning Appeals met on Wednesday, December 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 Christy Huddle, Vice Chair; Edwin Kelly, Tyler Quynn Matt Knott and Jeffrey Bannon were present. Staff members present were: Jennie Brockman, Director of Planning and Zoning and Jennilee Hartman, Zoning Clerk.

Mr. Quynn motioned to commence the meeting. Mr. Kelly seconded the motion, which carried unanimously. Ms. Huddle called the meeting to order at 3:14 p.m.

1. Election of Officers – Deferred until the January 2014 meeting.
2. Approval of the minutes from the September 19, 2013, October 10, 2013 and November 14, 2013 meeting.

Ms. Huddle called for action on the September 19, 2013 minutes.

Ms. Huddle suggested the following edits:

- 1) Page 1, Item 1b, insert *word* before *represented* and italicize the words *represented* and *presented*.
- 2) Page 3, first paragraph, fourth line down, insert *to* after *according*.
- 3) General comment: all references to *Boards'* change to *Board's*.
- 4) Page 3, second paragraph, second line up, change the semicolon to a comma.
- 5) Page 3, last paragraph, sixth line up, insert *in* after *approved*.
- 6) Page 4, first paragraph, last sentence, confusing language within the quote cited. Confirm direct quote and correct accordingly.
- 7) Page 4, third paragraph, third line, change the comma to a colon.
- 8) Page 4, third paragraph, add comma after the word *amendment*.
- 9) Page 4, fourth paragraph, third line up, change *the created* to *they created*.
- 10) Page 5, eighth paragraph, second line down, add *As an example*, before *Mr. Raco* and replace *gave an example of* with *said* (within the same sentence).
- 11) Page 5, last paragraph & line, add parentheses around the words *the Appellant* and remove commas.
- 12) Page 6, second paragraph, fifth line down, reword the sentence which references *text highlighted* so that it reads clearer.
- 13) Page 7, Item 7, second paragraph, fifth line down, change *neighboring* to *neighborhood*.
- 14) Page 7, Item 7, second paragraph, eleventh line up, pluralize *meetings*.
- 15) Page 7, Item 7, second paragraph, seventh line up, pluralize *sites*.
- 16) Page 8, second paragraph, third line down, remove the second *not*.
- 17) Page 8, second paragraph, fourth line down, insert *above* after *from*.
- 18) Page 8, second paragraph, sixth line up, pluralize *meetings*.
- 19) Page 8, second paragraph, fourth line up, change *were* to *was*.
- 20) Page 8, third paragraph, change reference from *Mr.* to *Ms.* Brockman.
- 21) Page 9, second paragraph, third line down, capitalize *Consulting*.
- 22) Page 9, third paragraph, fourth line down, change “on *the*” to “on *to*”.
- 23) Page 9, third paragraph, fifth line up, change *aide* to *aid*.
- 24) Page 10, second paragraph, second line down, add comma after *Bernazzoli*.
- 25) Page 11, last paragraph, seventh line up, change *affect* to *affected*.

- 26) Page 12, first paragraph, sixth line, add comma after *rent*.
- 27) Page 13, first paragraph, third line up, insert *he* after *however*.
- 28) Page 13, fifth paragraph, reword sentence to read, "...13 trees as depicted in dark green on..".
- 29) Page 13, last paragraph, second line down, insert the phrase *as it could be*, after *worded*.
- 30) Page 13, last paragraph, third line up, remove the word *was*.

Mr. Kelly motioned to approve the September 19, 2013 minutes as corrected. Mr. Bannon seconded the motion, which carried unanimously.

Ms. Huddle called for action on the October 10, 2013 minutes.

- 1) Page 1, Item 3, third paragraph, change *requested* to *request*.
- 2) General comment: all references to *Boards'* change to *Board's*.
- 3) Page 2, third paragraph, last line, insert *be* after *permitted*.
- 4) General comment: replace and/or correct all references to read **Rev. Georgia Du**Bose.
- 5) General comment: replace and/or correct all references to read *St. John's Episcopal Church*.
- 6) Page 4, sixth paragraph, seventh line up, insert a comma after *dissolved*.
- 7) Page 4, sixth paragraph, fifth line up, change *applicant* to *application*.
- 8) Page 5, second paragraph, fourth line down, insert an *a* before *petition*.
- 9) Page 5, second paragraph, sixth line down, insert *from* before *which*.
- 10) Page 5, third paragraph, third line down, change *heat* to *heating*.
- 11) Page 5, sixth paragraph, third line down, insert *he* after *however*.
- 12) Page 5, sixth paragraph, last line, remove "*Mr. Quynn asked why the...*".
- 13) Page 5, last paragraph, second line down, clarify where Ms. Dunn presently works.
- 14) Page 6, second paragraph, third line down, insert *they* after *constraints*.
- 15) Page 6, second paragraph, third line up, change *license* to *licensed*.
- 16) Page 6, fourth paragraph, only sentence, change *JC* to *JCHC*.
- 17) Page 6, last paragraph, third line down, change text as follows: '...exempt, ~~that~~ the...'
- 18) Page 6, last paragraph, fourth line down, insert *active* before *church*.
- 19) Page 6, last paragraph, eighth line down, remove comma after *Applicant*.
- 20) Page 6, last paragraph, ninth line down, change *is* to *if*.
- 21) Page 6, last paragraph, last line, add a comma after *at*.
- 22) General comment: correct spacing issues between words.

Mr. Kelly motioned to approve the October 10, 2013 minutes as corrected. Mr. Bannon seconded the motion, which carried unanimously.

Ms. Huddle called for action on the November 14, 2013 minutes.

Mr. Quynn motioned to defer action on the November 14, 2013 minutes until the next meeting. Mr. Kelly seconded the motion, which carried three (3) in support and one (1) abstention (Mr. Knott). Ms. Huddle stated that the Board would defer action on the November 14, 2013 minutes because the Board members did not have time to review the draft version of the minutes.

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

Ms. Hartman swore in the individuals who indicated they would be giving testimony prior to the meeting being recorded.

4. Deferred from the November 14, 2013 meeting. 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. Location: Shannondale, Section 5F, Lot 40, 480 Rolling Ln, Harpers Ferry, WV. District: Kabletown (06); Map: 6B; Parcel: 67; Zoned: Rural; Size 0.25 acres; File: #ZV13-30.

Susan Powell was not in attendance. The Board asked if Staff had called the Applicant to remind her of the meeting. Ms. Brockman stated Staff had not; however, they had notified Ms. Powell of the new date and time for her deferred request. The Board postponed Ms. Powell's request until the end of the meeting in the event she was running late.

5. Variance request by applicants, Bill and Belinda Lewis, from Section 4.3B to re-establish an expired nonconforming commercial use in the Rural Zoning District. The applicants intend to establish an open air flea market consisting of 15 rental spaces totaling 6,000 sq. ft., a 2,000 sq. ft. wholesale parking area for the sale of RVs, boats, etc., and to utilize an existing building as indoor retail and storage space and public restrooms. The site was previously Eastern Homes Inc.; a mobile home sales and restoration operation. Property owner: Gilbert A. Mobley, Sr. Location: 6468 Charles Town Road, Kearneysville, WV. District: Middleway (07); Map: 4; Parcel: 8; Size 5 acres; Zoned: Rural; File: #ZV13-35.

Bill and Belinda Lewis presented the request to the Board. Ms. Lewis stated they wished to open a thrift store with an outdoor flea market that would be open Friday, Saturday, Sundays and on holidays during the summer. Mr. Lewis added that he felt the use would be an economic benefit to the community. Ms. Brockman explained that since the property owner was trying to sell the parcel privately that he could not produce a sales listing for the record and therefore required BZA action to reestablish a nonconforming use. Ms. Brockman stated that in 1994 the subject parcel was approved to have an 8,000 square foot area to sell motor vehicles, which encompasses the approximate location of the proposed wholesale area for RVs, boats, etc. Ms. Brockman informed the Board that the Department of Highways issued a permit for the proposed thrift shop and flea market contingent upon the Applicant closing the east and west entrances along Old Charles Town Road. Ms. Brockman reviewed the possible conditions of approval listed in the staff report.

Ms. Huddle called for public comment.

Tammy Turner and Butch McKinney, adjacent property owners, spoke in opposition to the request. Ms. Turner expressed concern regarding the way the site was maintained while the outdoor flea market was in operation the previous summer. Ms. Turner also referenced the onsite port-a-potties as potentially being a problem. Mr. McKinney stated that any vehicles sold at a commercial location must require a dealer license. Ms. Huddle confirmed with Mr. McKinney that this was a state law. Mr. McKinney asked why the Applicant was not utilizing the vacant commercial site located in close proximity to this parcel. Ms. Huddle addressed Ms. Turner's concerns by stating that the conditions listed by Staff included restricting outdoor storage. Ms. Turner also asked if the Applicant would be permitted to live on the property in addition to having the commercial venture approved. Ms. Brockman stated that a residential use is a principal permitted use on the subject parcel. Ms. Huddle explained that the request would not be changing the zoning of the property but would allow the Applicant to reestablish the nonconforming use on the property. Ms. Turner stated they were not against businesses; however, they were concerned about their property value and that of their rental property located across the street.

The Applicants addressed their history with the property beginning with the violation notice in August 2013, which notified them that the open air flea market they were operating was not in compliance with the County's Zoning Ordinance. The Lewises informed the Board that they immediately closed the business and have been working with Mason Carter, the Ordinance Compliance Officer and Steven Barney, the previous Zoning Administrator, to rectify the situation since that time. The Lewises asserted they were in business with a third party who was not as cooperative in seeking compliance with the County's regulations. The Lewises explained that they are legally free to lease the subject parcel exclusively. Ms. Lewis stated the individual who would be selling wholesale vehicles has a dealer's license to sell vehicles. Mr. Lewis assured the Board that the property would not operate as it had the previous summer and that they would follow all of the County's regulations.

6. Variance request by applicant, Duane Dunn with Dunn's Contracting, LLC., from Section 5.10C.1(a) for a reduction of the front setback from 20' to 12' to attach a 12' x 18' shed-roof to an existing log building; and, from Section 9.6C to permit a structure within the required front yard. Property owner: Bernard Heiler. Location: 7198 Queen St., Kearneysville, WV. District: Middleway (07); Map: 22B; Parcel: 27; Size .83 acres; Zoned: Village; File: #ZV13-36.

Duane Dunn, applicant, and Bernard Heiler, owner, were present to address the Board. Mr. Dunn concisely explained the request to the Board. Mr. Heiler stated various lawn care items would be stored inside the log structure. Mr. Heiler explained that the log structure had been neglected over time and the intent of the proposed shed-roof would be to protect the logs from further weather damage. Mr. Heiler stated the logs, from the structure in question, came from a historical structure that was previously dismantled and then reassembled on the subject property; however, it is not on the historical register. Mr. Quynn had questions for Mr. Heiler regarding the structure's history.

Ms. Huddle called for public comment.

Ms. Dolores Milstead and Carol Pitts, local residents, spoke in opposition to the request. Ms. Milstead read a petition into the record, which was signed by five (5) adjacent property owners, requesting that the Board deny the applicant's request for the reasons stated within. Ms. Milstead submitted the petition for the record. Ms. Milstead argued that the application uses the term structure; however, the agenda incorrectly stated a shed-roof. Ms. Huddle explained that they consider the term structure to mean any form of building or construction. Ms. Milstead pointed out that the 6' fence referenced in the application does not extend along the entire length of the property line in question, and therefore would not block the view of the structure. Ms. Milstead stated they have had conversations with the applicant regarding the renovation or replacement of the damaged logs, and therefore do not believe the shed-roof is necessary to cover damage to two logs. Ms. Milstead argued that the shed-roof would not keep the visual integrity of the historic district because neighboring roofs are gables. Ms. Milstead also stated that they are concerned about the size of the proposed structure and that water and sewer has been recently connected to the structure. Ms. Pitts stated she was present to support Ms. Milstead's comments. Ms. Huddle stated that [West Virginia] state law requires a historical district to have standards/guidelines so that a homeowner knows what they are permitted to do with their property. Ms. Huddle asked if Middleway had such standards. Ms. Milstead stated Middleway was unincorporated. Ms. Huddle stated that was not a necessary criterion.

Mr. Heiler responded to Ms. Milstead's remarks regarding the water and sewer connections. Mr. Heiler explained he hired an excavator to remove two tree stumps in the general location where Ms. Milstead was referencing. Mr. Heiler had Mr. Dunn install three (3) PVC pipes of varying diameter to be buried between the house and the log structure. Mr. Heiler will be putting electric into the log structure via the pipes and reserving the other two (2) pipes for a future use; however, they will not and cannot contain water. In addition, the Health Department did not have any documentation for the location of the septic lines.

7. Variance request by applicant, Jim Ruland, from Section 4.11A for a reduction of the required parking and access drive setbacks from 10' to 0'; and, from Section 5.6D.5 for a reduction of the required landscape buffer between two commercial uses from 10' to 0', for the purpose of subdividing Parcel 93 to create two individual commercial lots. Property owner: RAI GROUP 41, LLC/RAI Properties, LLC. Location: Burr Industrial Park, Phase I: Lots 40 & 41, 130 and 150 E. Burr Blvd., Kearneysville, WV. District: Charles Town (02); Map: 1; Parcel: 93; Size: 2.32 acres; Zoned: Industrial-Commercial; File: #ZV13-37.

Mike Shepp, consultant, present, stating that Jim Ruland was unable to attend. Mr. Shepp provided the Board with a brief history of the property and then explained the purpose of the request. Mr. Shepp addressed Staff's proposed conditions stating that the smoking shelter would be removed by the current tenants when they vacant the building and that the applicant will replace the dead trees in the existing landscape buffer.

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

Mr. Knott motioned to go into deliberative session at 4:52 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Mr. Quynn motioned to come out of deliberative session at 5:31 p.m. Mr. Bannon seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

4. Deferred from the November 14, 2013 meeting. 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. Quynn motioned to defer the above referenced variance request until the next BZA meeting. Mr. Kelly seconded the motion, which carried unanimously.

5. Variance request by applicants, Bill and Belinda Lewis, from Section 4.3B to re-establish an expired nonconforming commercial use in the Rural Zoning District. The applicants intend to establish an open air flea market consisting of 15 rental spaces totaling 6,000 sq. ft., a 2,000 sq. ft. wholesale parking area for the sale of RVs, boats, etc. and to utilize an existing building as indoor retail and storage space and public restrooms. The site was previously Eastern Homes Inc.; a mobile home sales and restoration operation.

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

- 1) The applicants are bound by their testimony.
- 2) The uses are restricted to the areas depicted on the sketch submitted by the applicant.
- 3) No access is permitted other than what is approved by the Department of Highways.
- 4) All commercial setbacks shall be met.

- 5) Outdoor display shall be permitted while the flea market is open; however, no outdoor storage is permitted other than inside the wholesale area.
- 6) Clean up must be conducted after every week's session and the lot must be maintained in a clean and sanitary condition.

Mr. Knott seconded the motion, which carried unanimously.

6. Variance request by applicant, Duane Dunn with Dunn's Contracting, LLC., from Section 5.10C.1(a) for a reduction of the front setback from 20' to 12' to attach a 12' x 18' shed-roof to an existing log building; and, from Section 9.6C to permit a structure within the required front yard.

Mr. Bannon motioned to approve the above referenced request with the condition that the structure may not exceed 12' x 18', as represented. Mr. Kelly seconded the motion, which carried unanimously.

7. Variance request by applicant, Jim Ruland, from Section 4.11A for a reduction of the required parking and access drive setbacks from 10' to 0'; and, from Section 5.6D.5 for a reduction of the required landscape buffer between two commercial uses from 10' to 0', for the purpose of subdividing Parcel 93 to create two individual commercial lots.

Mr. Knott motioned to approve the above referenced requests conditioned upon the smoking shelter being removed from the property. Mr. Bannon seconded the motion, which carried unanimously.

9. Proposed Amendments to the Board of Zoning Appeals Rules of Procedure, Effective July 21, 2011. Ms. Brockman alerted the Board that Mr. Quynn and Mr. Knott's terms were expiring in January of 2014. Ms. Brockman directed the Board's attention to the draft 2014 Board of Zoning Appeals Meeting Schedule which would change their meeting to the fourth Thursdays at 2:00 p.m. (except for the November and December meetings due to the holidays). A copy was provided to the Board. Ms. Brockman stated this schedule was drafted based on the proposed amendments outlined in the Board of Zoning Appeals Rules of Procedure, Effective July 21, 2011, which the Board had asked Staff to revise. Ms. Brockman explained to the Board that both the Schedule and the Amendments were informational items and that action on these items would be scheduled for their January meeting.
10. Director's Report. See the packet for a copy of the Director's Report. Ms. Brockman did not review the report with the Board.
11. Legal Update. None.
12. Signing of written decisions from prior Board of Zoning Appeals meetings. No action was taken.
 - a) Continued from the 07/18/13 & 08/15/13 meetings. The variance request by applicant, John Fridley, was from Section 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. At the 08/15/13 meeting, the applicant indicated that the required setback from the DOH ROW was actually 12"; therefore, the applicant was advised to amend their application or reapply for a new variance. The applicant has not resubmitted and Board action is required on this outstanding request. Owner: William C. Palmer, Sr. File: ZV13-19. Meeting Date: 09/19/13

- b) Appeal of an Administrative Decision made by Jennifer Brockman, Acting Zoning Administrator, of the interpretation of Section 5.7D(3) regarding *Maximum Number of Lots Allowed* in the Rural zoning district. Appellants: Katherine B. Dunn & Sara V. Lowery, c/o Stanley Dunn. Appellant's Rep: J. Michael Cassell, Esq., Cassell & Prinz, PLLC. File: AP13-01. Meeting Date: 09/19/13
- c) Appeal of the Administrative Decision to issue Zoning Certificate #ZC13-23 for a Home Occupation Level 2 that allows a home-based asphalt repair business. The business includes a 16' trailer with seal coating & lawn equipment, to be enclosed in an outbuilding/garage, pending Building Permit approval. Appellants: R.K. & Marianne Hedrick; Wayne & Gloria Chastain; Scott & Alice Dillow; Mike & Pam Hinkle; and Chris & Christy Swisher. Owners: Robert & Donna Edwards. File: AP13-02. Meeting Date: 09/19/13
- d) Appeal of an Administrative Decision made by Jennifer Brockman, Acting Zoning Administrator, to deny the use of the St. John's Episcopal Church's facility as an overnight cold-weather shelter in the Rural Zoning District. Appellants: The Rev. Georgia DuBose; The Episcopal Diocese of WV / The Rt. Rev. W. Michie Klusmeyer & William F. Berry, VP of the JC Homeless Coalition. File: AP13-03. Meeting Date: 10/10/13
- e) 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. Owner: Stiles Partnership 3 and 4. File: ZV13-33. Meeting Date: 11/14/13
- f) 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. Owner: Stiles Partnership 3 and 4. File: ZV13-34. Meeting Date: 11/14/13

13. Correspondence

- a) Letter from Joyce Rawn terminating lease agreement.
- b) Letter from Junipa Contento withdrawing Seasonal Use Application ZV13-34.

Mr. Knott motioned to adjourn the meeting at 5:36 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.