

Minutes

Jefferson County Board of Zoning Appeals

- 1 Meeting Date: June 28, 2018
- 2 Meeting Location: Charles Town Library Conference Room
3 200 East Washington Street, Charles Town, West Virginia
- 4 Board Members Present: Tyler Quynn, Chair, Jeffrey Bannon, Vice Chair and Matt Knott
- 5 Members absent: Deirdre Catterton and Jeff Bresee (with notification)
- 6 Staff members present: Alexandra Beaulieu, Zoning Administrator; Nathan Cochran, Assistant
7 Prosecuting Attorney; and, Jennilee Hartman, Zoning Clerk
- 8 All requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.
- 9 Matt Knott moved to call the meeting to order at 2:00 pm, which carried unanimously. Mr. Quynn
10 explained to the public how the meeting would be conducted.
- 11 1. Approval of Minutes – May 24, 2018. Mr. Knott moved to approve the minutes. Mr. Bannon
12 abstained from voting on the minutes as he was absent from the May meeting. Mr. Quynn
13 called for vote which carried 2 in support and 1 abstention.
- 14 2. Ms. Hartman swore in members of the public who indicated they would be providing testimony.
15 In the interest of time, the Board agreed to rearrange the agenda items to hear the Special Exception
16 application prior to the Appeal.
- 17 3. Public Hearing. Request for a Special Exception Permit for a 6' W x 10' L Electronic Sign,
18 which is to replace an existing 6' x 10' sign, to be affixed to an existing supporting structure
19 approximately 25' in height. Property Owner: Bolivar International Pentecostal Church of
20 Christ. Applicant: B.G. Turner, Pastor. Church address: 87 Old Taylor Ln., Harpers Ferry, WV.
21 Sign located parallel to US 340 adjacent to church parking lot. Tax District: Harpers Ferry (04);
22 Tax Map: 7; Parcel: 18.3; Size: .75 ac; Zone: Residential Growth. File: SE18-01.
- 23 Pastor B.G. Turner, representative for Bolivar International Pentecostal Church of Christ, was
24 present to address the Board. Ms. Beaulieu presented her staff report to the Board noting that
25 since the church owned multiple properties that a possible condition of approval could be that
26 only one electronic sign be permitted for the land use. Pastor Turner explained the nature of the
27 request to the Board reiterating that it would be replacing an existing sign; however, the
28 supporting structure would remain the same. Pastor Turner stated that the new sign would be an
29 improvement to the old sign. Mr. Bannon asked if the church was agreeable to the requirement
30 that the sign had to be turned off by 10:00 pm. Pastor Turner agreed to the requirement.
- 31 Mr. Quynn opened the public hearing. There was no public comment. Mr. Quynn closed the
32 public hearing. Mr. Knott moved to approve the Special Exception as requested with the
33 condition that the applicant was bound by their testimony. Mr. Quynn called for a vote, which
34 carried unanimously.
- 35 4. Public Hearing. Appeal of the Zoning Administrator's Determination regarding the applicability
36 of Section 4.4C pertaining to the proposed Magnolia Springs Subdivision and the Belvedere
37 House which is listed on the National Register of Historic Places. The development consists of
38 301 single family homes. Appellant: Jefferson County Historic Landmark's Commission.
39 Subject Parcel: 76 Belvedere Farm Ln. Charles Town, WV. Tax District: Charles Town (02);
40 Tax Map: 10; Parcels: 8 & 8.6; Size: 124 ac combined; Zone: Residential Growth. Property
41 Owner: Walter J. Truettner, III & William K. Truettner. Developer: NLP Finance, LLC c/o
42 Hunter Wilson. File: AP18-01.

1 Prior to beginning the public hearing for the appeal Mr. Nathan Cochran, Assistant Prosecuting
2 Attorney for the Board of Zoning Appeals, went on record to disclose the following:

3 Mr. Cochran explained that in his role as the Assistant Prosecuting Attorney he operates as
4 counsel for the County Commission, the Planning Commission, and the Board of Zoning
5 Appeals. When an appeal is brought forth he is required to counsel the higher authority, meaning
6 he cannot be counsel to the Zoning Administrator or the Historic Landmarks Commission.

7 Mr. Cochran stated for the record that he did not assist or advise Ms. Beaulieu on her
8 determination. Ms. Beaulieu confirmed that he had not.

9 Mr. Cochran stated for the record that he did not assist or advise Ms. Beaulieu in her response to
10 the appeal. Ms. Beaulieu confirmed that he had not.

11 Mr. Cochran stated for the record that he had previously worked for Mr. Richard Gay, attorney
12 for the Magnolia Springs developer Mr. Hunter Wilson, but had not worked for him for
13 approximately 3 years.

14 Mr. Cochran stated for the record that he had previously represented Mr. Hunter Wilson on a
15 personal, family matter unrelated to business and/or the Magnolia Springs development.

16 Mr. Cochran stated he had never represented Mr. Wilson or Mr. Gay concerning Magnolia
17 Springs and was unaware of the project until it came before the Planning Commission. He also
18 stated for the record that he accompanied Ms. Beaulieu, Zoning Administrator and Ms. Brockman,
19 County Planner, on a site visit to the Belvedere property.

20 Mr. Cochran stated for the record that he did not believe he had any kind of conflict for this case.

21 Mr. Bannon inquired as to whether Mr. Cochran was counsel to the Planning Commission for
22 this project. Mr. Cochran confirmed that he had served as counsel to the Planning Commission.

23 Mr. Jared Adams, attorney for the Jefferson County Historic Landmarks Commission, and
24 Mr. Martin Burke, Chair of the Jefferson County Historic Landmarks Commission, were present
25 to represent the appeal before the Board. Ms. Beaulieu presented a staff report which provided a
26 brief overview of the property and the chronology of the Magnolia Springs Subdivision file.

27 Mr. Adams presented the Historic Landmarks Commission's appeal. He stated that the issue on
28 appeal was narrow and pertained to the Zoning Administrator's failure to conduct an analysis
29 under Section 4.4C. Mr. Adams stated that the Historic Landmarks Commission had concern
30 that the Zoning Administrator's determination would set a precedent for future projects.

31 Ms. Beaulieu provided a response to the appeal. She stated that the Zoning Ordinance did not
32 require that she conduct an analysis and that it did not provide criteria for reviewing a project on
33 a historic property. Ms. Beaulieu noted that her determination was in response to the April 12
34 letter from the Historic Landmarks Commission which stated that the project was in violation of
35 Section 4.4C but did not state how or why the project was in violation. She clarified for the record
36 that each project is reviewed and considered on its own merit; therefore, determining that Section
37 4.4C did not apply to the proposed project did not invalidate the provision for future projects.

38 Mr. Richard Gay, attorney for Mr. Hunter Wilson, and Mr. Hunter Wilson, representative with
39 NLP Finance, LLC, addressed the Board as Respondents in opposition to the appeal.

40 Ms. Sara Lambert, member of the Historic Landmarks Commission and local architect, spoke
41 during public comment. Ms. Lambert stated that the purpose of the appeal was to provide a

1 public forum to discuss the Ordinance and that the Historic Landmarks Commission did not
2 want parts of the Ordinance summarily nullified.

3 Mr. Adams provided a rebuttal in response to the Zoning Administrator's comments. He stated
4 that regardless of what the Historic Landmarks Commission submits in their report, the Zoning
5 Administrator is required to conduct an analysis. Mr. Adams stated that the Zoning Administrator
6 failed to conduct an analysis when she wrote her determination and that it appeared she had
7 conducted an analysis after the project was challenged.

8 Ms. Beaulieu provided a rebuttal. She stated for the record that an analysis was conducted prior
9 to the memo being drafted as is evidenced by the documentation included in the Planning
10 Commission packet which included dated emails between her and the State Historic Preservation
11 Office, as well as the sections of State Code and the National Register Nomination Form. She
12 stated that her determination was written in direct response to the Historic Landmarks
13 Commission's letter and specifically addressed the applicability of Section 4.4C to the proposed
14 Magnolia Springs project and not the applicability of Section 4.4C to all future development.

15 Mr. Bannon asked Ms. Beaulieu if when she wrote her determination that Section 4.4C did not
16 apply, she meant that the Ordinance applies to every proposal but that as a matter of fact, the
17 subject proposal could not destroy the historic character. Ms. Beaulieu replied yes and
18 referenced her memo.

19 Mr. Gay provided a rebuttal and stated that the appellant did not meet the burden of proof and
20 the Board should give deference to the Zoning Administrator's determination.

21 Mr. Bannon moved to go into deliberative session at 3:32 pm, which carried unanimously.

22 Mr. Knott moved to come out of deliberative session at 3:44 pm, which carried unanimously.

23 Mr. Cochran stated for the record that the Board removed him from deliberation to avoid any
24 appearance of conflict.

25 Mr. Bannon moved to deny the appeal having concluded that the Zoning Administrator in fact
26 did apply Section 4.4C and determined as a matter of fact that the proposed development did not
27 destroy the historic character of the property and on that basis she concluded that Section 4.4C
28 did not apply but what she meant was that on a matter of fact there was no basis in finding that it
29 did apply. Mr. Knott seconded the motion, which carried unanimously.

30 5. Zoning Administrator's Report

31 a. Monthly Zoning Certificate Activity Report. This report was provided to the Board in their
32 mailed packet.

33 Ms. Beaulieu informed the Board that the County Commission had appointed Jennifer Brockman
34 as the Acting Zoning Administrator during her maternity leave and that she anticipated being
35 absent for the Board's July meeting, and through early October. Ms. Beaulieu stated the next
36 meeting would be July 26, 2018.

37 6. Legal Update

38 a. Possible executive session on the following pending lawsuits. None.

39 b. Discussion with possible deliberative session and signing of draft findings/decisions.

40 Meeting: May 24, 2018

41 i. Variance from Sec. 9.7. Owners: Michael and Whitney Spry. File: ZV18-06.

- 1 ii. Request for a CUP for Imam Abdel Salam, applicant, to reestablish an automobile sales
2 and repair shop utilizing the existing buildings and parking areas. Signage is addressed
3 in the application. Owner: Willard A. & Dorothy Daniels (c/o Pricilla Cameron). File:
4 CUP18-01
- 5 iii. Variance from Sec. 11.1A (ZV18-07) and Sec. 4.11. (ZV18-08). Owner Kentland
6 Foundation, Inc. Applicant: Starbucks (CUP17-06).
- 7 Mr. Cochran provided the draft Findings to Mr. Quynn to review and sign.
- 8 Mr. Knott moved to adjourn the meeting at 3:49 pm. Mr. Quynn called for a vote, which carried
9 unanimously.