

Minutes
Jefferson County Board of Zoning Appeals

- 1 Meeting Date: May 23, 2019
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, Matthew McKinney
5 and Leeds Corbin
6 Members absent: Deirdre Catterton with notification
7 Staff members present: Alexandra Beaulieu, Zoning Administrator; Nathan Cochran, Assistant
8 Prosecuting Attorney; and Rachael Burke, Planning Clerk.

9 All requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.

10 Mr. Bannon moved to call the meeting to order at 2:00 pm, which carried unanimously. Mr. Quynn
11 explained to the public how the meeting would be conducted.

12 **Approval of Minutes: April 25, 2019**

13 Mr. Bannon moved to approve the minutes as presented. Mr. Quynn called for a vote, which carried
14 unanimously.

15 Mr. Quynn stated that the agenda would be reorganized to hear the variances first, then the CUP, and
16 lastly the appeal.

17 **Public Hearing – Administer Oath**

18 Ms. Burke swore in members of the public who indicated they would be providing testimony.

19 ITEM #1 FILE #: 19-8-ZV

20 Request: Variance from Section 5.7(b) to reduce the rear setback from 50' to 18' to install a
21 54' x 22' inground pool with surrounding concrete patio.

22 Applicant: Same as Owner

23 Parcel Info: R.L. Jenkins

24 Barleywood Subdivision, Lot 9, 146 Inaugural Way, Charles Town, WV

25 Parcel ID: 02006A00090000; Size: 3.08 ac; Zone: Rural

26 Mr. R.L. Jenkins, property owner, and Ms. Heather Mann, representative, were present to address
27 the Board. Ms. Beaulieu provided an overview of her staff report to the Board. Ms. Mann explained
28 the nature of the request noting that the property contains significant rock outcroppings which limits
29 where they can locate the proposed pool. Mr. Quynn opened the public hearing. There was no
30 public comment. Mr. Quynn closed the public hearing.

31

32 Mr. Corbin moved to approve the variance as requested. Mr. McKinney seconded the motion,
33 which carried unanimously.

34

35 ITEM #2 FILE #: 19-9-ZV

36 Request: Variance request per Section 4.3H to allow for the reconstruction of a nonconforming
37 28' x 32' garage to be located 3' from the side property line.

38 Applicant: Same as Owner

39 Parcel Info: Michael G. Kelly and Michael G. Kelly Jr.

40 Glen Haven Subdivision, Lots 10, 11 and part of 12, 129 Mason Drive, Harpers Ferry

41 Parcel ID: 04003C00110001, 04003C00120000, 04003C00130001;

42 Subject parcel size: .56 ac; Zone: Rural

1 Mr. Gregory Kennedy, Esq., attorney representing the property owners, was present to address the
2 Board. Ms. Beaulieu provided an overview of her staff report to the Board noting that the original
3 structure was nonconforming as it was built prior to the adoption of zoning. She noted that the
4 property owners removed and attempted to rebuild the structure in the same location prior to
5 obtaining a building permit. Mr. Kennedy provided the Board with a brief history of the property
6 noting that the current property owners have owned the subject property since the home was built in
7 the early sixties and can attest to its existence as a nonconforming structure. Mr. Kennedy stated the
8 structure was removed due to rot and decay and requested the Board grant the request based on its
9 meeting the four criteria outlined in Section 6.2A of the Zoning Ordinance. Mr. Quynn opened the
10 public hearing. There was no public comment. Mr. Quynn closed the public hearing.

11

12 Mr. Bannon moved to approve the variance as requested. Mr. Quynn called for a vote, which
13 carried unanimously.

14

15 ITEM #3 FILE #: 19-10-ZV

16 Request: Variance from Section 5.4(b) to reduce the front setback from 25' to 20'; the side
17 setback from 12' to 10'; and the rear setback from 20' to 15' for Lots 68-72, 78, 106-
18 108, 118, 121-124, & 129.

19 Applicant: P.J. Raco Consulting

20 Parcel Info: Beallair Homes LLC; Beallair Subdivision:

21 Lot 68 Claymont Hill St.; Parcel ID: 04010A00680000; Size: 9,429 sf;

22 Lot 69 Claymont Hill St.; Parcel ID: 04010A00690000; Size: 8,000 sf;

23 Lot 70 Claymont Hill St.; Parcel ID: 04010A00700000; Size: 8,000 sf;

24 Lot 71 Claymont Hill St.; Parcel ID: 04010A00710000; Size: 8,000 sf;

25 Lot 72 Claymont Hill St.; Parcel ID: 04010A00720000; Size: 11,246 sf;

26 Lot 78 Lewis Washington Dr.; Parcel ID: 04010A00780000; Size: 9,880 sf;

27 Lot 106 Robinson Way; Parcel ID: 04010A01060000; Size: 11,284 sf;

28 Lot 107 Robinson Way; Parcel ID: 04010A01070000; Size: 11,158 sf;

29 Lot 108 Robinson Way; Parcel ID: 04010A01080000; Size: 10,327 sf;

30 Lot 118 Robinson Way; Parcel ID: 04010A01180000; Size: 8,353 sf;

31 Lot 121 Potomac Crossing St.; Parcel ID: 04010A01210000; Size: 10,457 sf;

32 Lot 122 Potomac Crossing St.; Parcel ID: 04010A01220000; Size: 9,467 sf;

33 Lot 123 Potomac Crossing St.; Parcel ID: 04010A01230000; Size: 8,511 sf;

34 Lot 124 Potomac Crossing St.; Parcel ID: 04010A01240000; Size: 8,185 sf; to

35 Lot 129 Colonel Black Way; Parcel ID: 04010A01290000; Size: 9,215 sf;

36 Zone: Residential Growth

37 Mr. Paul Raco, land use consultant representing the property owner, and Mr. Michael Wiley,
38 Professional Engineer for Wormald, were present to address the Board. Ms. Beaulieu provided an
39 overview of her staff report to the Board, noting that Lot 129 was a vacant lot between two
40 developed lots and contained a 25' landscape buffer along the rear of the property. She stated that if
41 a setback reduction was granted, the applicant should be aware that a structure could not be placed
42 within the landscape buffer. Mr. Raco spoke in depth to the nature of the request, acknowledging
43 staff's concern regarding the landscape buffer, and addressed the Board's questions. Mr. Wiley also
44 commented on the request. Mr. Quynn opened the public hearing.

45

1 Dale Adams, owner of Lot 112, spoke in support of the application stating that he would like to see
2 the remaining lots developed.

3

4 Paul Mattocks, owner of Lot 120; Korey Hopkins, owner of Lot 109; and Michael Hamilton owner
5 of Lot 110, spoke in opposition to the request. Mr. Quynn closed the public hearing.

6

7 Mr. Raco provided a rebuttal. He stated that in response to the concerns expressed by the property
8 owners of Lots 120 and 109, his client would retain the 12' side setback along the shared property
9 lines for Lots 121 and 108. Mr. Wiley addressed remaining concerns made during the public
10 comment period.

11

12 Mr. Bannon moved to go into deliberative session at 3:20 pm. Mr. McKinney seconded the motion,
13 which carried unanimously.

14

15 Mr. Bannon moved to come out of deliberative session at 3:46 pm. Mr. Corbin seconded the
16 motion, which carried unanimously.

17

18 Mr. Quynn moved to approve the variance as requested with the condition that the applicants were
19 bound by their testimony. Mr. Leeds seconded the motion, which carried unanimously.

20

21 ITEM #5 FILE #: 19-1-CUP – Postponed From February 28, March 28 and April 25, 2019

22 Request: Request for a Conditional Use Permit for an existing Drive-Through, Fast Food
23 Restaurant (McDonald's) to replace and upgrade the exterior menu boards with
24 digital menu boards.

25 Applicant: Tracey Diehl, Expedite The Diehl

26 Parcel Info: McDonald's Corporation

27 31 Maddex Square Dr, Shepherdstown, WV

28 Parcel ID: 09008C00680000; Size: 0.88 ac; Zone: Residential-Light Industrial-Commercial

29 Ms. Tara Puntasecca, with Expedite The Diehl, and Mr. Tim O'Brien, District Manager of
30 McDonald's, were present to address the Board. Ms. Beaulieu provided an overview of her staff
31 report to the Board. Ms. Beaulieu also reviewed a memorandum she prepared regarding the required
32 landscape buffer. Ms. Puntasecca explained the nature of the request and addressed the Board's
33 questions. Mr. Quynn opened the public hearing.

34

35 Mark Everhart, Council Member and Member of the Planning Commission from the Corporation of
36 Shepherdstown, spoke in opposition to the request.

37

38 Ms. Burke swore in Ms. Wood.

39

40 Angela Wood, local resident, spoke in support of the request, noting that Jefferson Security Bank,
41 which is located across the street from McDonald's, and the nearby Shepherdstown Fire Department
42 both have electronic signs. Mr. Quynn closed the public hearing.

43

44 Ms. Puntasecca stated in her rebuttal that Route 45 is elevated approximately four to five feet above
45 the McDonald's drive-through area which would likely create a visual barrier from the road. Mr.
46 O'Brien reiterated that McDonald's is willing to re-install a landscape buffer along the front of the
47 property. Ms. Puntasecca confirmed that the lumens would be reduced in the evening, that the menu

1 boards would rotate three times a day (once each for breakfast, lunch, and dinner), and that there
2 would be no animation to the signs, as typically seen on indoor menu boards.

3

4 Mr. Bannon moved to go into deliberative session at 4:25 pm. Mr. McKinney seconded the motion,
5 which carried unanimously.

6

7 Mr. Corbin moved to come out of deliberative session at 4:46 pm. Mr. McKinney seconded the
8 motion, which carried unanimously.

9

10 Mr. Bannon moved to approve the request for a Conditional Use Permit (19-1-CUP) for an existing
11 Drive-Through, Fast Food Restaurant (McDonald's) to replace and upgrade the exterior menu
12 boards with digital menu boards with the following conditions:

- 13 1. The menu boards shall be limited to 100 nits at sundown (per Section 10.7E).
- 14 2. The menu boards shall be turned off at the close of business (12:00 pm Sunday – Thursday
15 and 1:00 am on Friday and Saturday).
- 16 3. The landscape buffer be restored; in particular, that a four (4) foot tall evergreen hedge be
17 installed along the frontage (Route 45).
- 18 4. The applicants are bound by their testimony.

19 Mr. Corbin seconded the motion, which carried unanimously.

20

21 Item #6 FILE #: 19-1-AP

22 Request: Appeal of the Zoning Administrator's determination that "tiny homes" are permitted
23 Camping Units as it related to the proposed campground associated with 19-3-ZV.

24 Appellants: Wayne and Ann Bavry and Neal and Alice Barkus

25 Parcel Info: Danielle LaRock and Jonathan Carnill, property owners.

26 Vacant parcel on the northwest corner of River Rd and Cedar Ridge Ln in

27 Shepherdstown

28 Parcel ID: 09001000070000; Size: 6.06 ac.; Zone: Rural.

29 Mr. Christopher Stroech, Esq., with Arnold and Bailey, PLLC, was present to represent the
30 appellants, Mr. Wayne and Ms. Ann Bavry and Mr. Neal and Ms. Alice Barkus. Ms. Beaulieu
31 presented a staff report which provided a brief overview of the property and a chronology of the
32 events leading up to the appeal.

33

34 Mr. Stroech presented his appeal to the Board. He provided additional background on the events
35 leading up to the appeal, including a summary of the transcript from the March BZA meeting and
36 an overview of subsequent social media posts by the property owners, Danielle LaRock and
37 Jonathan Carnill, in which they stated they would be using the tiny homes as a primary residence.
38 Mr. Stroech contended that the Zoning Administrator erred in her determination that the tiny homes
39 were permitted Camping Units for the subject location because the property owners had stated a
40 clear intent to use them as a primary residence. The Board inquired if the property owners were
41 using the tiny homes as a primary residence. Mr. Stroech stated they were not. The Board noted that
42 if the campground was not operating and if the tiny homes were not being used as a primary
43 residence then the property owners were not in violation of the campground regulations.

44

1 Ms. Beaulieu provided the Board with a summary of her response to the appeal. She stated that the
2 basis of the written appeal was that the tiny homes were not permitted camping units. Ms. Beaulieu
3 noted the relevant definitions of Camping Unit, Camping Cabin, and Cabin which allows for
4 various types of temporary or permanent structures. Ms. Beaulieu stated that the written appeal was
5 based on her email dated April 2, 2019 in which she stated that the tiny homes were permitted
6 camping units. She noted that the written appeal did not include Mr. Stroeck's argument pertaining
7 to the use of the tiny homes as a primary residence. Ms. Beaulieu stated that the property owners
8 had not obtained a building permit for a primary residence at the subject parcel and to her
9 knowledge, no one was residing in the tiny homes. She also explained that building code currently
10 does not allow a recreational vehicle to be permitted as a primary residence and since the tiny
11 homes were registered as recreational vehicles, they could not be permitted as a primary residence.
12 Ms. Beaulieu stated for the record that if the tiny homes are occupied for a period of more than 180
13 days, then a complaint may be filed with the County at which point Staff will pursue the violation.

14
15 Mr. Quynn opened the public hearing. There were no public comments. Mr. Quynn closed the
16 public hearing.

17
18 Mr. Stroeck did not wish to provide a rebuttal.

19
20 Mr. Bannon moved to deny the appeal of the Zoning Administrator's determination and stated that
21 she was correct in her determination that the tiny home structures would be permitted within the
22 campground. Mr. Bannon clarified that the structures would only be in violation if they were
23 occupied longer than 180 days. Mr. Corbin seconded the motion, which carried unanimously.

24
25 **Zoning Administrator Report**

26 a. Request for Clarification regarding the Blossman Gas Conditional Use Permit (CUP17-05)
27 Ms. Beaulieu reviewed a memo which summarized her request for clarification stating that
28 the applicant had recently submitted a site plan and that the proposed building is
29 approximately 1,000 sf larger than what was originally proposed as part of the 2017 CUP.
30 Ms. Beaulieu stated that while the propane storage tanks were subject to the conditional use
31 permit process, it was her opinion that the office/warehouse building was a principal
32 permitted use and therefore, not subject to the requirement of a conditional use permit. Ms.
33 Beaulieu explained that while the building would typically be permitted in this zoning
34 district, because the building was included in the applicant's testimony, she felt she did not
35 have the discretion to approve a larger building size. The Board discussed the various
36 aspects of the public hearing and the conditions imposed on the CUP. Ms. Beaulieu
37 confirmed that the building and storage tanks would still comply with site development
38 standards. Mr. Bannon moved to agree with the Zoning Administrator in that the additional
39 square footage in the Blossman Gas Conditional Use Permit (CUP17-05) is appropriate and
40 does not need further processing by the Board. Mr. Quynn second the motion, which carried
41 unanimously.

42 b. Monthly Zoning Certificate Activity Report. The Report was included in the mailed packet.

43 Ms. Beaulieu informed the Board that their next meeting would be June 27, 2019.

44 **Legal Update**

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

- 1 Discussion with possible deliberative session and sign of draft Findings/Decisions
- 2 Meeting: April 25, 2019
- 3 1. Variance from Sec. 4.18. Owner: Beallair Homes, LLC. File: 19-7-ZV
- 4 Mr. Quynn signed the above referenced Findings.
- 5 Mr. Corbin moved to adjourn the meeting at 5:39 pm. Mr. Quynn called for a vote, which carried
- 6 unanimously.