

Minutes
Jefferson County Board of Zoning Appeals

- 1 Meeting Date: October 24, 2019
2 Meeting Location: Charles Town Library Conference Room
3 200 East Washington Street, Charles Town, West Virginia
4 Board Members Present: Jeffrey Bannon, Vice Chair; Matthew McKinney; Deirdre Catterton and
5 Leeds Corbin
6 Members absent: Tyler Quynn, Chair (with notice)
7 Staff members present: Alexandra Beaulieu, Zoning Administrator; Nathan Cochran, Assistant
8 Prosecuting Attorney; and Jennilee Hartman, Zoning Clerk.
9 All requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.

10 Mr. Bannon presided as Vice Chair in Mr. Quynn's absence.

11 Ms. Catterton moved to call the meeting to order at 2:01 pm. Mr. Bannon called for a vote, which
12 carried unanimously.

13 Approval of Minutes: September 26, 2019

14 Mr. McKinney moved to approve the minutes. Ms. Beaulieu noted a correction on page 3, line 10,
15 to revise the file number from 19-30-ZV to 19-25-ZV. Mr. McKinney accepted the correction.
16 Mr. Bannon called for a vote, which carried unanimously.

17 Public Hearing – Administer Oath

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

19 ITEM #1 FILE #: 19-26-ZV

20 Request: Variance from Section 9.6B to reduce the rear setback from 24' to 12' for an existing
21 24' x 12' accessory structure.
22 Owner: Preston Barger
23 Parcel Info: Preston Barger Minor Subdivision, Lot 1,
24 188 Wide Horizon Blvd., Kearneysville, WV
25 Parcel ID: 07001802550001; Size: 1.5ac; Zoning District: Rural

26 Mr. Preston Barger was present to address the Board. Ms. Beaulieu provided an overview of her
27 staff report noting that the subject structure had been issued a building permit in error and that the
28 applicant was seeking a variance in order to keep the shed in its present location. Mr. Barger
29 explained the nature of the request reiterating that the shed had received a building permit and was
30 built according to the approved plans. Mr. Barger noted that he would like the shed to be located
31 adjacent to the proposed pool. Mr. Bannon opened the public hearing. Ms. Morgan Spielman stated
32 she was not in opposition to the proposed shed; however, expressed concern that the requested
33 reduction was incorrect based on an alternate survey that was in her possession, which showed the
34 right-of-way in a different location. Ms. Spielman argued that in the event that her survey overrides
35 Mr. Barger's survey, the requested reduction would be insufficient. Ms. Spielman noted that the
36 exact location of the subject property line has been debated for a number of years. Ms. Spielman
37 also explained that the Division of Highways was attempting to widen the right-of-way in question
38 and expressed concern that the proposed shed may create further issues in doing so. Mr. Bannon
39 inquired if Ms. Spielman's survey would reflect that the shed was still located on Mr. Barger's
40 property if the setback were reduced to 12'. Ms. Spielman stated that she believed it would still be
41 on Mr. Barger's property, it would just be closer than the requested 12'. Mr. Bannon closed the
42 public hearing.

1 Mr. Barger provided a rebuttal and stated that the property had been surveyed in 2017 as part of an
2 approved minor subdivision. Mr. Barger also stated that the existing fence line has always been his
3 property line.

4 Ms. Catterton moved to approve the variance with the condition that the applicant is bound by his
5 testimony. Mr. Bannon called for a vote, which carried unanimously.

6 ITEM #2 FILE #: 19-27-ZV

7 Request: Variance from Section 9.6B to reduce the rear setback from 45' to 12' for a 45' x 40' in-
8 ground swimming pool including the surrounding concrete.

9 Owner: Preston Barger

10 Parcel Info: Preston Barger Minor Subdivision, Lot 1,

11 188 Wide Horizon Blvd., Kearneysville, WV

12 Parcel ID: 07001802550001; Size: 1.5ac; Zoning District: Rural

13 Mr. Preston Barger was present to address the Board. Ms. Beaulieu provided an overview of her
14 staff report noting that the request appears to have a minimal impact due to its proximity to a right-
15 of-way. Mr. Barger explained the nature of the request noting that he would like the pool next to the
16 existing shed. Mr. Barger argued that there wasn't another suitable location on the property to site
17 the proposed pool. Mr. Barger stated that he installs pools for a living and would like to install an in-
18 ground pool with surrounding concrete to show to potential clients. Mr. Bannon opened the public
19 hearing. Ms. Morgan Spielman, Mr. Ken Spielman, and Ms. Holly Spielman, neighbors, all stated
20 they were not in opposition to the proposed pool; however, as previously expressed for File #19-26-
21 ZV, were concerned that the requested reduction was incorrect based on an alternate survey that
22 showed the right-of-way in a different location. The Spielmans agreed that the requested reduction
23 for the pool was not the issue. Ms. Morgan Spielman noted that the right-of-way discrepancy
24 worsens towards the proposed location of the pool. Mr. Bannon closed the public hearing.

25 Mr. Barger argued that the 2017 survey depicts the fence to be located 6" on his own property.

26 Mr. Barger stated that there are survey markers in the ground and existing utility poles that also
27 assist in marking the property. Mr. Barger stated he would be agreeable to removing the pool if it
28 were proven that his property line was not in the location shown in his 2017 survey.

29 Mr. Corbin moved to go into deliberative session at 2:53 pm. Mr. Bannon called for a vote, which
30 carried unanimously. Ms. Catterton moved to come out of deliberative session at 3:05 pm.

31 Mr. Bannon called for a vote, which carried unanimously.

32 Mr. McKinney moved to approve the variance with the condition that the applicant is bound by his
33 testimony. Mr. Bannon called for a vote, which carried unanimously.

34 ITEM #3 FILE #: 19-2-CUP

35 Request: Request for a Conditional Use Permit to operate a Church that includes office space,
36 meeting rooms and services for approximately 120 attendees. Applicant will utilize the
37 existing parking and signage on site.

38 Owner: Burr Park, LLC

39 Applicant: Tanie Guy, Ascension Church

40 Parcel Info: Burr Industrial Park, Lot 34,

41 73 Edmond Rd., Suites 2 and 3, Kearneysville, WV

42 Parcel ID: 02000100860000; Size: 1.52 ac; Zoning District: Industrial Commercial

1 Mr. Darryl Fitzwater, representative for Ascension Church, was present to address the Board.
2 Ms. Beaulieu provided an overview of her staff report explaining that the Church had located in the
3 subject building without realizing a Zoning Certificate was required for occupancy. Ms. Beaulieu
4 further explained that when the Church attempted to come into compliance it was noted that a
5 Church was not a permitted land use in the Industrial Commercial zoning district. Since that time
6 Staff worked with the applicant to process a text amendment, which was approved by the County
7 Commission on September 19, 2019. Referencing the current application, Ms. Beaulieu stated that
8 the proposed Church appeared to be in an appropriate location despite its zoning designation as it
9 was located adjacent to similar land uses, such as a day care, martial arts and dance studios, and
10 Flip N' Cheer. Ms. Beaulieu noted that the applicant is aware that due to being located in this
11 zone there is the potential for a heavier land use to locate in the vicinity as a by-right land use.
12 Mr. Fitzwater explained the nature of the request, acknowledging that the Church was unaware that
13 they were not permitted to operate from this location. Mr. Fitzwater stated their days and hours of
14 operation, noting that their busier time did not typically coincide with the activities of the other
15 tenants. Mr. Fitzwater stated that their lease allowed them to utilize 10 parking spaces during
16 normal business hours for their office operations. Mr. Bannon opened the public hearing. There
17 was no public comment. Mr. Bannon closed the public hearing.

18 Mr. McKinney moved to approve the Conditional Use Permit for a Church. Mr. Bannon called for a
19 vote, which carried unanimously.

20 ITEM #4 FILE #: 19-28-ZV

21 Request: Variance from Section 4.11A.2 & 4.11E.1 and Appendix B to reduce the landscaping
22 buffer from 10' to 0' along the shared property line between Lots 27 and 28 in the
23 Burr Industrial Park; and to allow for a 50' unscreened buffer instead of a 10'
24 screened buffer along the rear property line of both lots.
25 Owner: Jefferson County Development Authority
26 Applicant: McGee Civil Construction, LLC
27 Parcel Info: Burr Business Park, Lots 27 and 28 Steeley Way
28 Parcel ID: 02000101270000 and 02000101280000; Size: 1.93 and 1.49 ac;
29 Zoning District: Industrial Commercial

30 Mr. Jason Gerhart with Gordon was present to address the Board. Ms. Beaulieu provided an
31 overview of her staff report explaining that the rear of the properties was encumbered by a large
32 stormwater management pond and easement, which greatly reduced the buildable area of Lots 27
33 and 28. Ms. Beaulieu further relayed that landscaping could not be planted in this area. Mr. Gerhart
34 stated that at the time the Development Authority created the business park, there was no required
35 landscape buffer between the uses on the side or rear property lines. Mr. Gerhart stated that when
36 the stormwater management pond and easement were placed on the properties, it was not intended
37 that the developable area would be further reduced by landscaping. Mr. Gerhart stated that granting
38 an unscreened buffer in lieu of the required planting would meet the intent of the Ordinance.
39 Mr. Bannon opened the public hearing. There was no public comment. Mr. Bannon closed the
40 public hearing.

41 Ms. Catterton moved to approve the variance as requested. Mr. Bannon called for a vote, which
42 carried unanimously.

1 ITEM #5 FILE #: 19-29-ZV

2 Request: Variance from Appendix A to reduce the side setback from 8' to 4' for an existing 40'
3 x 44' garage to be converted into a house.

4 Owner: Keith Cranford

5 Parcel Info: Block 1, Lots 22 & 23. Northeast corner of Euclid Ave and First St. (undeveloped
6 road), Parcel ID: 02010A01020001; Size: .31 ac; Zoning District: Residential Growth

7 Mr. Keith Cranford was present to address the Board. Ms. Beaulieu provided an overview of her
8 staff report, explaining that the applicant had previously received a variance from 8' to 4' to allow
9 for a proposed merger; however, at that time the request stated the structure would remain a garage.
10 Ms. Beaulieu further explained that the applicant is now requesting to convert the garage into a
11 dwelling unit, which necessitates a new variance before the Board. Ms. Beaulieu noted that only the
12 front, left corner of the existing structure requires a setback reduction. Mr. Cranford concurred with
13 Ms. Beaulieu's explanation of the request. Mr. Bannon opened the public hearing. Mr. Don Watson,
14 neighbor, stated he did not object to converting the garage into a dwelling unit; however, was
15 concerned about how this would impact their shared driveway access. Ms. Beaulieu noted that
16 entrance permits fell under the purview of the Division of Highways (DOH). Mr. Bannon closed the
17 public hearing.

18 Mr. Cranford stated that he was currently working with the DOH to receive an approved entrance
19 permit for his proposed home. Mr. Cranford stated he did not object to a shared driveway as long as
20 he could get in and out of his garage.

21 Ms. Catterton moved to approve the variance as requested. Mr. Bannon called for a vote, which
22 carried unanimously.

23 ITEM #6 FILE #: 19-30-ZV

24 Request: Variance from Section 9.7 to reduce the side setback from 12' to 1' for a 24' x 30'
25 accessory structure.

26 Owner: Thomas Custer

27 Parcel Info: 1906 Kabletown Rd., Charles Town, WV
28 Parcel ID: 06002200010002; Size: 1 ac; Zoning District: Rural

29 Mr. Thomas Custer was present to address the Board. Ms. Beaulieu provided an overview of her
30 staff report, noting that the applicant had already commenced construction believing that a permit
31 would not be necessary as the foundation was existing. Ms. Beaulieu noted she did not confirm the
32 date the foundation had been established. Ms. Beaulieu noted that the affected neighbor provided a
33 letter of support. Mr. Custer explained the nature of the request confirming that the foundation
34 existed from a previous structure. Mr. Custer stated he provided a letter from his neighbor stating
35 that they did not object to the shed. Mr. Bannon opened the public hearing. There was no public
36 comment. Mr. Bannon closed the public hearing.

37 Ms. Catterton moved to approve the variance as requested. Mr. Bannon called for a vote, which
38 carried unanimously.

39 ITEM #7 FILE #: 19-3-CUP

40 Request: Request for a Conditional Use Permit to operate a Restaurant associated with the
41 existing farm brewery. The applicant is proposing to construct an addition to the
42 existing structure and a 35 space parking lot. The applicant is also requesting a
43 deviation from the following sign provisions: Sec. 10.4A.1 to allow an 8' x 24'

1 attached sign and a 2' x 2' attached sign affixed to the former mill structure; and to
2 allow a 2' x 2' attached sign affixed to the principal structure; and Sec. 10.4A.2 to
3 allow the proposed signs to face a residence.
4 Owner: Jesse Morgan, Wheatlands Property Management
5 Parcel Info: 2153 Berryville Pike, Rippon, WV
6 Parcel ID: 06010A00240000; Size: 1.64 ac; Zoning District: Split Zoned Village &
7 Rural

8 Mr. Jesse Morgan was present to address the Board. Ms. Beaulieu provided an overview of her
9 staff report noting that the applicant currently operates a farm brewery on the subject parcel.
10 Ms. Beaulieu explained that the Zoning Ordinance requires that a Conditional Use Permit be
11 obtained to operate a Restaurant as an accessory use to a farm brewery, which is the purpose of the
12 applicant's request. Ms. Beaulieu explained that the subject parcel had previously received approval
13 for a Restaurant; however, that approval has expired. Mr. Morgan explained the nature of the
14 request stating that this land use would provide his family the means to sustain the farm operations.
15 Mr. Corbin expressed concerns about traffic exiting from Withers LaRue onto Route 340.
16 Mr. Morgan stated that was the approved configuration by the Division of Highways. Mr. Bannon
17 opened the public hearing. Mr. Andy Anders, neighbor, stated he had no objection to the request;
18 however, requested that any proposed signage that was illuminated be shielded. Mr. Bannon closed
19 the public hearing.

20 Mr. Morgan stated that the signs would not be objectionable and would not be on 24-hours per day.

21 Ms. Catterton moved to approve the Conditional Use Permit for the Restaurant and the requested
22 sign deviations with the condition that the applicant was bound by his testimony. Mr. Bannon called
23 for a vote, which carried unanimously.

24 ITEM #8 FILE #: 19-31-ZV

25 Request: Variance from Section 4.10A to waive the requirement of processing a site plan.
26 A Site Plan is required to construct a 35 space parking lot with drive aisles and
27 sidewalks which will support a proposed Restaurant (File 19-3-CUP).
28 Owner: Jesse Morgan, Wheatlands Property Management
29 Parcel Info: 2153 Berryville Pike, Rippon, WV
30 Parcel ID: 06010A00240000; Size: 1.64 ac; Zoning District: Split Zoned Village
31 & Rural

32 Mr. Jesse Morgan was present to address the Board. Ms. Beaulieu provided an overview of her
33 staff report explaining that the purpose of a site plan was to protect adjacent property owners.
34 Ms. Beaulieu noted that Mr. Morgan owned both of the properties immediately adjacent the subject
35 parcel. Mr. Morgan explained the nature of the request stating that over the years he has removed
36 multiple structures from his properties, thereby reducing his net impervious surface impact on the
37 area. Mr. Morgan explained that his company, A-Zone Environmental, dealt with stormwater
38 runoff and that he would install the parking lot correctly. Mr. Bannon opened the public hearing.
39 Mr. Rusty Morgan, co-owner of the adjacent farm associated with the proposed Restaurant, stated
40 that the request would help preserve farm by making it more profitable. Mr. Bannon closed the
41 public hearing.

42 Ms. Catterton moved to approve the variance as requested. Mr. McKinney suggested the following
43 conditions of approval:

1 1. That a 50' unscreened buffer be maintained along the side and rear property lines with the
2 condition that no structures, materials, equipment, etc. be permitted within the unscreened
3 buffer area.

4 2. Accessible parking space(s) shall be installed in accordance with ADA standards.

5 3. Sidewalks, as reflected on applicant's sketch, shall be installed.

6 Ms. Catterton accepted the amendment.

7 Mr. Jesse Morgan questioned if the existing mill, located along the road frontage, would be inside
8 the required 50' unscreened buffer. Ms. Beaulieu stated the buffer would only apply to the side and
9 rear of the property. Mr. Bannon questioned if a buffer would be necessary as the applicant owned
10 the adjacent property.

11 Ms. Catterton withdrew her motion.

12 Mr. McKinney moved to approve the variance as requested with the following conditions:

13 1. Accessible parking space(s) shall be installed in accordance with ADA standards.

14 2. Sidewalks, as reflected on applicant's sketch, shall be installed.

15 3. Applicant is bound by his testimony.

16 Mr. Bannon called for a vote, which carried unanimously.

17 Ms. Catterton left the meeting at 4:22 pm due to an appointment.

18 **Zoning Administrator Report**

19 a. Monthly Zoning Certificate Activity Report. The Report was included in the mailed packet.

20 Ms. Beaulieu informed the Board of a recent roundtable discussion with local stakeholders
21 regarding possible revisions to the Zoning Ordinance and Subdivision Regulations to
22 improve the development review process. She stated that Greenway Engineering was hired
23 to take the lead on the amendment process. Ms. Beaulieu stated that the text amendment
24 ZTA19-01 was revised by the County Commission and would be reviewed at their
25 October 31, 2019 meeting. Ms. Beaulieu informed the Board that their next meeting would
26 be November 14, 2019.

27 **Legal Update**

28 a. Possible executive session on the following pending lawsuits.

29 1. Report on Civil Action No. 19-2019-C-135. Mr. Cochran provided the Board with a
30 copy of A Notice of Voluntary Dismissal by the Petitioners of the case. Mr. Cochran
31 noted that the case can no longer be brought before the courts as various deadlines had
32 lapsed.

33 b. Discussion with possible deliberative session and sign of draft Findings/Decisions

34 Meeting: September 26, 2019

35 1. Variance from Sec. 10.4B.3. Owner: SPARC, LLC. File: 19-22-ZV.

36 2. Variance from Sec. 10.2C. Owner: SPARC, LLC. File: 19-23-ZV.

37 3. Variance from Sec. 4.10A and Sec. 11.1B. Owner: Jennifer Hillmann. File: 19-24-ZV.

38 4. Request for a Special Exception Permit for an electronic sign. Owner: Leetown United
39 Methodist Church. File: 19-1-SE.

40 5. Variance from Sec. 9.6C and Sec. 9.7. Owner: Leroy Delauder. File: 19-25-ZV.

1 Mr. Cochran provided the Findings to Staff to forward to Mr. Quynn for his review and
2 signature.

3 Mr. Bannon asked Staff if Mr. Roger Goodwin, the Director and Chief County Engineer of the
4 Department of Engineering, Planning and Zoning, would be willing to attend a meeting to speak to
5 them about site plans. Due to the number of requests to waive a site plan that the Board has recently
6 received they would like a clearer understanding of the intent of a site plan. Ms. Beaulieu stated she
7 would inform Mr. Goodwin of the Board's request.

8 Mr. Corbin moved to adjourn the meeting at 4:32 pm, which carried unanimously.