

Minutes
Jefferson County Board of Zoning Appeals

1 Meeting Date: February 27, 2020
2 Meeting Location: Charles Town Library Conference Room
3 200 East Washington Street, Charles Town, West Virginia
4 Board Members Present: Jeffrey Bannon, Chair; Tyler Quynn, Vice Chair; Matthew McKinney;
5 and Leeds Corbin
6 Board Members Absent: Deirdre Catterton
7 Staff members present: Alexandra Beaulieu, Zoning Administrator; and Jennilee Hartman,
8 Zoning Clerk.

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

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

12 **Approval of Minutes: January 23, 2020**

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

15 **Public Hearing – Administer Oath**

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

17 **ITEM #1 FILE #: 20-1-ZV**

18 Request: Variance from Section 9.7 to reduce the side setback from 15' to 0' to convert an
19 accessory structure into a residential dwelling unit; and, to reduce the rear setback
20 from 50' to 28' to allow for a 36' x 44' attached garage.

21 Owner: Newman Sisk, Jr.

22 Parcel Info: Border Road and Southard Lane, Kearneysville, WV

23 Parcel ID: 07000500120004; Size: 6.18 acres; Zoning District: Rural

24 Mr. Newman Sisk, Jr. was present to represent the request. Ms. Beaulieu provided an overview of
25 her staff report explaining that a boundary line adjustment was processed in 2013; however, the
26 boundary line adjustment did not create any setback violations because the property lines which
27 were subject to the merger did not include the subject side property line. Ms. Beaulieu further
28 explained that the existing structure appeared to pre-date zoning requirements and appeared to have
29 been constructed on the property line. Mr. Sisk explained the nature of the request. The Board
30 inquired as to whether or not the proposed addition could be shifted forward to comply with the rear
31 setback requirement. Mr. Sisk stated that he would prefer to align the proposed addition with the
32 front of the existing structure for aesthetics. The Board discussed the request.

33

34 Mr. Bannon opened the public hearing. There was no public comment. Mr. Bannon closed the
35 public hearing.

36 Mr. Quynn moved to go into deliberative session at 2:16 pm. Mr. Bannon called for a vote, which
37 carried unanimously.

38 Mr. Quynn moved to go back into session at 2:31 pm. Mr. Bannon called for a vote, which carried
39 unanimously.

40 Mr. McKinney moved to approve the variance as requested, noting that the applicant was bound by
41 his testimony. Mr. Quynn seconded the motion. Mr. Bannon called for a vote, which carried
42 unanimously.

1 **ITEM #2 FILE #: 20-2-ZV**

2 Request: Variance from Appendix A to reduce the two front setbacks from 20' to 19' (Lace
3 Leaf Way) and from 20' to 13' (unnamed right-of-way); and the side setback from 8'
4 to 7' to complete the construction of a home with an attached garage.

5 Owner: Michael and Peggy Julian

6 Parcel Info: 27 Lace Leaf Way, Charles Town, WV

7 Parcel ID: 02010D00270000; Size: .50 acres; Zoning District: Residential-Light
8 Industrial-Commercial

9 Mr. Michael and Ms. Peggy Julian were present to represent the request. Ms. Beaulieu provided an
10 overview of her staff report clarifying that the existing structure was only 4" into the side setback.
11 Ms. Beaulieu explained that the property was not considered a corner lot as the adjacent unnamed
12 road is identified as a right-of-way as opposed to an easement. Mr. Julian explained the nature of
13 the request to the Board stating that the contractor had erroneously identified the boundary lines,
14 which created the current setback violation.

15 Mr. Bannon opened the public hearing. There was no public comment. Mr. Bannon closed the
16 public hearing.

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

19 **ITEM #3 FILE #: 20-3-ZV**

20 Request: Variance from Section 9.7 to reduce the side setback from 8' to 4' for a 24' x 24'
21 attached garage.

22 Owner: Robert Graham

23 Parcel Info: 1191 Tusawilla Dr., Charles Town, WV

24 Parcel ID: 02011A00290000; Size: .37 acres; Zoning District: Residential Growth

25 Mr. Robert Graham was present to address the Board. Ms. Beaulieu provided an overview of her
26 staff report to the Board, noting that the proposed garage would be erected where the existing
27 driveway was located. Ms. Beaulieu also noted that the applicant had provided letters of support
28 from the neighboring property owners. Mr. Graham explained the nature of the request, stating that
29 the primary reason for the request was for safety reasons. He explained that a neighbor had recently
30 slipped on ice in their own driveway and that they hoped to alleviate this concern on their own
31 property.

32 Mr. Bannon opened the public hearing. There was no public comment. Mr. Bannon closed the
33 public hearing.

34 Mr. Corbin moved to approve the variance as requested. Mr. Bannon called for a vote, which
35 carried unanimously.

36 **ITEM #4 FILE #: 20-4-ZV**

37 Request: Variance from Section 5.7D.2.b.i(b) to allow the required 50% green space to be
38 allocated on each of the individual lots within the cluster.

39 Owner: Lutman Land Development, LLC

40 Parcel Info: Vacant. Old Cave Road, East of Cave Quarter Estates Subdivision

41 Parcel ID: 02001600120000; Size: 23.47 acres; Zoning District: Rural

42 Mr. David Lutman, property owner, and Mr. Paul Raco, consultant with P.J. Raco Consulting, LLC,
43 were present to address the Board. Ms. Beaulieu provided an overview of her staff report to the
44 Board by explaining the cluster requirement for green space acreage. Ms. Beaulieu stated that the

1 applicant was proposing to allocate the required green space acreage on each of the proposed lots in
2 the form of a conservation easement. Mr. Raco and Mr. Lutman explained the nature of the request
3 to the Board, stating that the intent of the Ordinance would be upheld as the required green space
4 acreage would be protected by the conservation easements on each lot. Mr. Raco stated that the
5 current Ordinance allows for the green space parcel to be further subdivided through the Family
6 Transfer process. He also noted that structures are permitted on the green space parcel; however,
7 structures would not be permitted within the conservation easement area. Mr. Lutman clarified that
8 while structures would not be permitted in the proposed conservation area that fencing would be
9 permitted to allow the property owner to operate a farmette if desired.

10 Mr. Bannon opened the public hearing. There was no public comment. Mr. Bannon closed the
11 public hearing.

12 Mr. McKinney moved to approve the variance as requested conditioned upon the applicant platting
13 the conservation easement as proposed and that the applicants were bound by their testimony. Mr.
14 Bannon called for a vote, which carried unanimously.

15 **ITEM #5 FILE #: 20-1-CUP**

16 Request: Request by Potomac Crossroads Counseling for a Conditional Use Permit to operate a
17 Medical/Dental/Optical Office and/or Professional Office as defined in Article 2. The
18 proposal consists of operating a counseling facility with approximately eight therapists
19 that meet with not more than eight clients during one appointment time. Parking
20 requirements will be met on-site.

21 Applicant: Kathleen Morotti, Potomac Crossroads Counseling, LLC

22 Owner: Kenneth F. Lowe Jr., Rev Trust

23 Parcel Info: 4781 Kearneysville Pike, Shepherdstown, WV

24 Parcel ID: 09000800230007; Size: .71 acres; Zoning District: Residential Growth

25 Ms. Kathleen Morotti, contract purchaser, and Mr. Paul Raco, consultant with P.J. Raco Consulting,
26 LLC, were present to represent the request. Ms. Beaulieu provided an overview of her staff report to
27 the Board outlining how the applicant was proposing to address the conditional use permit criteria.
28 Ms. Beaulieu noted that the Ordinance would have allowed for this proposal to operate as a
29 permitted Cottage Industry (Article 4A); however, Ms. Morotti did not intend to reside in the home.

30 Ms. Morotti explained in detail the nature of the services to be offered at the proposed location.
31 Ms. Morotti noted that all of the staff would not typically be on site at the same time. She stated
32 that there would be a few sessions held in the evening. Ms. Morotti stated that she believed this
33 location was ideal because Shepherd students and local residents could potentially walk or bike
34 ride to the property.

35 Mr. Raco provided a brief history of the conditional use process. Mr. Raco argued how the proposed
36 land use was compatible with the Comprehensive Plan and noted that the subject parcel is located
37 within the Shepherdstown Growth Management Boundary. Mr. Raco entered into the record five (5)
38 letters of support from the following residents: Eileen Elliott, Margaret Cogswell, Paul Kradel, Sybil
39 Shiffman, and Melissa Crawford. Mr. Raco also provided pictures of the existing buffer along the
40 property lines. Mr. Raco addressed questions from the Board regarding parking.

41 Mr. Bannon opened the public hearing. Ms. Sue DeVall and Mr. Kenneth Lowe were in support of
42 the request. Mr. Lowe, current property owner, explained that the home had been used for a variety
43 of nonresidential uses in the past and that parking and traffic had not been an issue. Mr. Sam Fink
44 and Mr. Rob Smith, residents of Hartzell Gardens, spoke in opposition to the request stating that

1 they were not opposed to the specific land use; however, they were more concerned about the
2 general commercialization of the area. Additionally, the residents expressed concerns regarding
3 parking and traffic safety. Ms. Diana Eldridge spoke in support of the request noting that she
4 frequently drives along Lowe Drive and Route 480 and has not experienced any traffic issues. Mr.
5 Bannon closed the public hearing.

6 Mr. Peter Chakmakian, attorney for the applicant, spoke in rebuttal to the opposing comments. Mr.
7 Chakmakian argued that a conditional use is a land use that is permitted, provided that it meets
8 certain conditions. Mr. Chakmakian also stated that concerns regarding traffic should be considered
9 a matter of opinion.

10 Mr. Raco concluded the presentation by arguing that a conditional use permit is more preferable to a
11 rezoning as it restricts the property to the use specifically identified in the application. Mr. Raco
12 reiterated the fact that the subject parcel has a history of commercial land uses.

13 Mr. Quynn moved to go into deliberative session at 4:13 pm. Mr. Bannon called for a vote, which
14 carried unanimously.

15 Mr. Quynn moved to go back into regular session at 4:23 pm. Mr. Bannon called for a vote, which
16 carried unanimously.

17 Mr. McKinney moved to approve the Conditional Use Permit as requested with the following
18 conditions:

- 19 1. Any sign proposed for the land use shall be brought back to the Board for review.
- 20 2. All renovations shall follow all applicable rules and regulations of the Ordinance.
- 21 3. The applicants are bound by their testimony.
- 22 4. The proposed use shall adhere to all other applicable ordinances and/or regulations.

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

24 **Zoning Administrator Report**

25 a. Monthly Zoning Certificate Activity Report. The Report was included in the mailed packet.
26 Ms. Beaulieu updated the Board on the status of text amendment ZTA19-03 regarding Solar
27 Energy Facilities stating that on February 11, 2020 the Planning Commission formed a
28 committee to draft the amendment. Ms. Beaulieu also stated that a public hearing on the
29 reorganization of the Subdivision Regulations and Zoning Ordinance (Phase 1) has not yet
30 been scheduled.

31 Ms. Beaulieu informed the Board that their next meeting would be March 26, 2020.

32 **Legal Update**

- 33 a. Possible executive session on the following pending lawsuits. None
- 34 b. Discussion with possible deliberative session and signing of draft Findings/Decisions

35 **Meeting: January 23, 2020**

- 36 1. Variance from Sec. 5.4B.1 and App. A. Owner: Beallair Homes LLC. File: 19-33-ZV.
- 37 2. Variance from Sec. 4.11A, 5.8C.2 and App. B. Owner: SAB Real Estate 2. File: 19-37-ZV.
- 38 3. Variance from Sec. 4B.7.J.2.a. Owner: Richard Childs. Applicant: New Cingular Wireless
39 PCS, LLC d/b/a AT&T Mobility, LLC Attn: Joseph Prieto. File: 19-38-ZV.

- 1 Mr. Cochran provided the Findings for Mr. Bannon to review and sign.
- 2 Mr. Quynn moved to adjourn the meeting at 4:29 pm, which carried unanimously.