

## Minutes

### Jefferson County Board of Zoning Appeals

- 1 Meeting Date: January 23, 2020  
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 Deirdre Catterton and Leeds Corbin  
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 Mr. Bannon moved to call the meeting to order at 2:00 pm. Mr. Quynn called for a vote, which  
10 carried unanimously. Mr. Quynn explained to the public how the meeting would be conducted.

#### 11 Election of Officers

12 Mr. Corbin nominated Mr. Bannon for Chair. Mr. Quynn seconded the nomination. Mr. Quynn  
13 called for a vote, which carried unanimously.

14 Mr. McKinney nominated Mr. Quynn for Vice Chair. Ms. Catterton seconded the nomination.  
15 Mr. Quynn called for a vote, which carried unanimously.

16 Mr. Bannon presided as Chair.

#### 17 Approval of Minutes: December 12, 2019

18 Mr. McKinney moved to approve the minutes. Mr. Corbin seconded the motion, which carried  
19 unanimously.

#### 20 Presentation by Roger Goodwin, Director of Engineering, Planning and Zoning, providing an 21 overview of the purpose a site plan.

22 Mr. Roger Goodwin, Director of Engineering Planning and Zoning, and Mr. Joe Kent, Land  
23 Development Inspector, presented a PowerPoint presentation to the Board in response to a request  
24 made by the Board in October 2019. The presentation outlined the role of the Department as well as  
25 the purpose of a site plan. Mr. Goodwin addressed the Board's questions.

#### 26 Public Hearing – Administer Oath

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

28 ITEM #1      FILE #: 19-33-ZV - Postponed From November 14, 2019 and December 12, 2019

29 Request: Variance from Section 5.4B.1 and Appendix A to reduce the rear setbacks from 20'  
30 to 15'; the front setbacks from 25' to 20'; and the side setback from 12' to 10' for  
31 the proposed Phase 3A, Lots 134-159.

32 Parcel Info: Beallair Homes LLC, Unplatted section of Beallair Subdivision along Beallair  
33 Manor Drive, proposed Phase 3A, Lots 134-159, Parcel ID: 04010ARESA0000;  
34 Lot Sizes Average: 8,500-13,000 sf; Zoning District: Residential Growth

35 Mr. Paul Raco a consultant with P.J. Raco Consulting, LLC was present to represent the request on  
36 behalf of the owner. Ms. Beaulieu provided an overview of her staff report explaining that this  
37 section of Beallair was not yet platted; therefore, the developer had some flexibility with the design  
38 of the lots. Ms. Beaulieu also noted that this section would be labelled as 4A as opposed to 3A.  
39 Mr. Raco explained the nature of the request to the Board and pointed out that should the Board  
40 grant the request that the applicant would still like to reserve the right to utilize Section 9.5  
41 Projections into the Yard. Mr. Raco argued that Section 9.7 would permit lesser setbacks than the

1 setbacks the applicant was currently requesting. In response to Mr. Corbin's inquiry, Mr. Raco  
2 confirmed that even with the reduced setbacks the houses would be able to meet building code  
3 requirements for separation related to fire safety. Mr. Bannon asked why the lots were not designed  
4 to accommodate the houses. Mr. Raco explained that the proposed lot and house layouts offered are  
5 current with market demands. Mr. Bannon opened the public hearing. There was no public  
6 comment. Mr. Bannon closed the public hearing.

7 Mr. Quynn moved to go into deliberative session at 2:34 pm. Mr. Bannon called for a vote, which  
8 carried unanimously.

9 Mr. Quynn moved to go back into session at 2:48 pm. Mr. Bannon called for a vote, which carried  
10 unanimously.

11 Mr. McKinney moved to approve the variance as requested. Mr. Quynn seconded the motion.

12 Mr. Bannon called for a vote, which carried four (4) in support and one (1) objection (Mr. Bannon).

13 ITEM #2      FILE #: 19-37-ZV

14 Request:      Variance from Sections 4.11A, 5.8C.2 and Appendix B to eliminate the landscaping  
15 and buffer requirements and parking/drive aisle and building setbacks for internal  
16 lot lines only for the purpose of constructing the proposed ROCS gas station and  
17 convenience store. A Concept Plan for the proposed project was approved by the  
18 Planning Commission on 11-13-18 (File #S18-06).

19 Owner:      SAB Real Estate 2

20 Parcel Info:   Martinsburg Pike (WV45), Lots west of Sheetz, Shepherdstown, WV  
21 8272 Martinsburg Pike, Shepherdstown, WV (former address-currently vacant parcel)  
22 Parcel ID: 09008A00190000; 09008A00210000; 09008A00230000; Size: 3.56 acres  
23 combined; Zoning District: Residential- Light Industrial- Commercial

24 Mr. Ryan Perks with Gordon and Mr. Greg Kennedy, Attorney with Franklin & Prokopik, were  
25 present to represent the request on behalf of the owner. Ms. Beaulieu provided an overview of her  
26 staff report confirming that no structures would be crossing the internal property lines. Mr. Perks  
27 explained the nature of the request to the Board and Mr. Kennedy briefly explained that financing  
28 issues hindered the property owner from merging the properties together. Mr. Bannon opened the  
29 public hearing. There was no public comment. Mr. Bannon closed the public hearing.

30 Mr. Corbin moved to approve the variance. Mr. Quynn seconded the motion and requested to amend  
31 the motion to include the following conditions:

- 32 1. The applicants are bound by their testimony.
- 33 2. No buildings shall cross lot lines.
- 34 3. Add a note to the site plan stating, "The owner/developer agrees that if any of the individual  
35 lots are conveyed to an outside party, all appropriate or necessary road and/or parking  
36 easements will be conveyed to the grantee if appropriate at the time of such transfer."

37 Mr. Corbin accepted the amended motion. Mr. Bannon called for a vote, which carried unanimously.

1 ITEM #3      FILE #: 19-38-ZV

2 Request:      Variance from Section 4B.7.J.2.a to increase the height restriction from 100' to 199'  
3                      for a wireless telecommunications facility, in order to meet its coverage objectives.

4 Owner:        Richard Childs

5 Applicant:    New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, LLC Attn: Joseph Prieto

6 Parcel Info:   Located on the corner of Leetown Road and South Childs Road in Summit Point

7                      Parcel ID: 07002500110002; Size: 17 acres; Zoning District: Rural

8 Mr. Christopher Burns with SmartLink was present to represent the request on behalf of the owner.  
9 Ms. Beaulieu provided an overview of her staff report. Ms. Beaulieu stated that staff had been  
10 informed just prior to the meeting that the Historic Landmarks Commission had not been notified of  
11 the balloon test and that the Board could require the applicant to conduct another balloon test for  
12 the Concept Plan as a condition of approval if they were inclined to grant the request. Ms. Beaulieu  
13 also noted that the balloon test was not required for the variance request, but was conducted to  
14 provide exhibits for the Board's consideration. Mr. Burns explained the nature of the request to the  
15 Board. Mr. Burns stated that the tower could accommodate at least three (3) providers and that the  
16 tower would assist emergency service providers. Mr. Burns provided the Board with a copy of the  
17 National Environmental Policy Act (NEPA) report, which detailed the potential environmental  
18 impacts of the tower. Mr. Burns acknowledged that they had erroneously sent a letter to the wrong  
19 historic agency and stated that they would be willing to redo the balloon test to properly notice the  
20 Historic Landmarks Commission. Mr. Burns offered to show the Board and interested members of  
21 the public the additional 40 pictures taken during the first balloon test. Mr. Bannon opened the  
22 public hearing.

23 Mr. Martin Burke, Chair of the Historic Landmarks Commission, spoke in opposition to the request  
24 stating that the proposed cell tower would be visible from various Category II historic resources.  
25 Mr. Burke explained that these resources are eligible for the National Registry. Mr. Corbin asked if  
26 the property owners of these resources objected to the proposed tower. Mr. Burke stated he had not  
27 spoken with the individual property owners. Mr. Burke also expressed concern that the Historic  
28 Landmarks Commission had not received notice of the balloon test.

29 Ms. Carmen Creamer entered the meeting during the public hearing. Ms. Hartman swore in  
30 Ms. Creamer and provided her with a copy of the staff report. Ms. Creamer spoke in opposition to  
31 the request expressing concerns that this request would allow for similar requests to be approved  
32 in the future. Ms. Creamer was also concerned about the negative impacts the tower may have on  
33 her property.

34 Mr. Bannon closed the public hearing.

35 Mr. Burns reiterated that his firm had notified the wrong historic agency and would conduct the  
36 balloon test again. Mr. Steve Hathaway, Project Engineer, explained in detail how the increased  
37 height of the tower would improve coverage in this specific area of the County. Mr. Burns noted  
38 that the balloon test was advertised in the Spirit of Jefferson.

39 Mr. Quynn moved to go into deliberative session at 3:57 pm. Mr. Bannon called for a vote, which  
40 carried unanimously. Ms. Catterton left the meeting stating she had a prior engagement to attend to  
41 and did not return for the duration of the meeting.

42 Mr. Quynn moved to come out of deliberative session at 4:37 pm. Mr. Bannon called for a vote,  
43 which carried unanimously.

1 Mr. McKinney moved to approve the variance as requested with the condition that the applicant  
2 conduct another balloon test for the Concept Plan ensuring that all required parties are notified and  
3 that the applicants were bound by their testimony. Mr. Quynn seconded the motion, which carried  
4 unanimously.

5 **Zoning Administrator Report**

- 6 a. Monthly Zoning Certificate Activity Report. The Report was included in the mailed packet.  
7 Ms. Beaulieu updated the Board on the status of text amendment ZTA19-03 regarding Solar  
8 Energy Facilities. Ms. Beaulieu also stated that the upcoming public meetings related to  
9 reorganization of the Subdivision Regulations and Zoning Ordinance had been cancelled  
10 and will be rescheduled to a date to be determined.  
11 Ms. Beaulieu informed the Board that their next meeting would be February 27, 2020.

12 **Legal Update**

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

15 **Meeting: December 12, 2019**

- 16 1. Variance from Sec. 10.4B.3. Owner: I & K Farms, LLC. Applicant: C. Haymaker.  
17 File: 19-35-ZV.  
18 2. Variance from Sec. 5.7B and 9.6C. Owner: Joseph Costello. File: 19-36-ZV.  
19 Mr. Cochran provided the Findings for Mr. Quynn to review and sign.  
20 Mr. Quynn moved to adjourn the meeting at 4:49 pm, which carried unanimously.