

**Minutes**  
**Jefferson County Board of Zoning Appeals**

1 Meeting Date: May 28, 2020  
2 Meeting Location: By order of the Chair, the Board of Zoning Appeals Meeting was held  
3 virtually via ZOOM.  
4 Board Members Present: Jeffrey Bannon, Chair; Tyler Quynn, Vice Chair; Leeds Corbin; and  
5 Matt McKinney  
6 Board Members Absent: Deirdre Catterton (absent with notification)  
7 Staff Members Present: Alexandra Beaulieu, Zoning Administrator; Nathan Cochran,  
8 Assistant Prosecuting Attorney; and, Rachael Burke, Planning Clerk  
9 All requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.

10 Mr. Corbin called the meeting to order at 2:00 pm. Mr. Bannon called for a vote, which carried  
11 unanimously.

12 **Approval of Minutes: April 23, 2020 and April 24, 2020**

13 Mr. Quynn moved to approve the April 23, 2020 minutes with no corrections. Mr. Bannon recused  
14 himself from voting as he was not present for the meeting. Mr. Bannon called for a vote, which  
15 carried three in support and one recusal (Mr. Bannon).

16 Mr. Bannon requested the following edit to the April 24, 2020 Special Meeting minutes:

17 a) Page 3, Line 40: change *Mr.* to *Ms.*

18 Mr. McKinney moved to accept the minutes with Mr. Bannon's edit. Mr. Bannon called for a vote,  
19 which carried unanimously.

20 Ms. Beaulieu swore in members of the public who indicated they would be providing testimony.  
21 Ms. Beaulieu explained how the Zoom meeting would be conducted.

22 **ITEM #1 FILE #: 20-11-ZV**

23 Request: Variance from Section 5.7b to reduce the front setback from 40' to 34.8' for an  
24 existing house that was built within the setback area.

25 Owner: Matthew Gorsuch and Anna Kent

26 Applicant: Charlie Hogendorp, Bristol Springs Custom Homes

27 Parcel Info: Springs at Shepherdstown, Lot #25, 901 Marsh Hawk Way, Shepherdstown, WV  
28 Parcel ID: 09007D00250000; Size: 6.69 acres; Zoning District: Rural

29 Mr. Charlie Hogendorp with Bristol Springs Custom Homes was present to address the Board. Ms.  
30 Beaulieu provided an overview of her staff report noting that the subject parcel had a reduced  
31 buildable area due to the floodplain and wetlands. Ms. Beaulieu explained that a small portion of  
32 the home was inadvertently constructed within the 40' front setback. Mr. Hogendorp explained that  
33 he adjusted the location of the home in order to avoid a rock bed, which resulted in the violation.

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

36 Mr. McKinney moved to approve the variance as requested. Mr. Corbin seconded the motion. Mr.  
37 Bannon called for a vote, which carried unanimously.

38 **ITEM #2 FILE #: 20-12-ZV**

39 Request: Variance from Section 4.10 to waive the requirement to process a Site Plan for a  
40 proposed educational retreat facility (China Folk House / Proposed Land Use: Nature  
41 Center and Preserve). The proposed use will host educational groups by invitation

1 only (i.e. not open to the public). Proposed project entails construction of a ~1,026  
2 square foot bathhouse, an ~824 square foot kitchen with Tibetan stove room, and  
3 associated parking.

4 Owner: Rolling Ridge Foundation

5 Applicant: John Flower, China Folk House Retreat

6 Parcel Info: 305 Friends Way, Harpers Ferry, WV Parcel ID: 06002400090000; Size: 20 acres;  
7 Zoning District: Rural

8 Mr. John Flower with China Folk House Retreat was present to address the Board. Ms. Beaulieu  
9 provided an overview of her staff report and explained the purpose of a site plan. Mr. Bannon  
10 inquired about the Engineering staff's opinion of the request. Ms. Beaulieu stated that the  
11 Engineering Office stated that they do not support any request to waive a site plan. Ms. Beaulieu  
12 noted that this was a general position and not specific to this request. Mr. Flower explained the  
13 nature of the request and answered the Board's questions regarding well and septic services. Mr.  
14 Flower stated that the structure would not have heat; therefore, the retreat would not be open year-  
15 round and that they anticipated having approximately 12 students on-site during overnight stays.  
16 Mr. Flower noted that day trips could have a larger group. Mr. Flower stated that his organization  
17 had invested \$20,000 in an engineering feasibility study that determined that the structure and site  
18 were compatible with the proposed project.

19 Mr. Bannon opened the public hearing. There was no public comment. Mr. Bannon closed the  
20 public hearing.

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

23 Mr. Quynn moved to come out of deliberative session at 2:52 pm. Mr. Bannon called for a vote,  
24 which carried unanimously.

25 Mr. Corbin moved to approve the variance as requested. Mr. Quynn requested to add a condition of  
26 approval that the applicant is bound by his testimony. Mr. Corbin agreed to the condition of  
27 approval to the original motion. Mr. Bannon called for a vote, which carried unanimously.

28 **ITEM #3 FILE #: 20-13-ZV**

29 Request: Variance from Section 5.4b [ZO in effect in 1990] to reduce the side setback from  
30 12' to 10' for a 10' x 22' deck.

31 Owner: Jocelyn Stokes and Ezra Hall

32 Parcel Info: Lot 6, Maddex Farm Subdivision; 170 Hensel Drive, Shepherdstown, WV Parcel ID:  
33 09008C01080000; Size: .17 acres; Zoning District: Residential-Light Industrial-  
34 Commercial

35 Ms. Jocelyn Stokes and Mr. Ezra Hall, property owners; and Mr. Brian Miller with Miller  
36 Residential were present to address the Board. Ms. Beaulieu provided an overview of her staff  
37 report noting that the adjacent property owner submitted a letter of support for this request. Mr.  
38 Miller explained the nature of the request. Ms. Stokes noted that the property owner that would be  
39 impacted by this request does not have any windows facing the subject property line.

40 Mr. Bannon opened the public hearing. There was no public comment. Mr. Bannon closed the  
41 public hearing.

1 Mr. McKinney moved to approve the variance as requested with the condition that the applicants  
2 were bound by their testimony. Mr. Corbin seconded the motion. Mr. Bannon called for a vote,  
3 which carried unanimously.

4 **ITEM #4 FILE #: 20-3-CUP**

5 Request: Request for a Conditional Use Permit to operate a homebased federal firearms  
6 business, to include limited gunsmithing, from an existing detached garage  
7 (proposed land use as listed in Appendix C: Custom Manufacturing). The business is  
8 primarily internet based and does not include a readily available inventory. No  
9 employees other than the residents of the property. Business hours are by  
10 appointment only, with limited customer visits (1-2 per month). No signs are  
11 proposed.  
12 Applicant: Efstathia Fragogiannis and Jamie Schatteman  
13 Owner: Gary Eisner, Et Al  
14 Parcel Info: 76 Belleview Lane, Charles Town, WV Parcel ID: 06002800110002; Size: 3 acres;  
15 Zoning District: Rural

16 Ms. Efstathia Fragogiannis was present to address the Board. Ms. Beaulieu provided an overview of  
17 her staff report explaining that the applicant would be utilizing an existing garage and that the  
18 proposed business would be primarily internet-based. Ms. Beaulieu noted that three of the  
19 neighboring parcels were owned by the current property owner of the subject request. Ms. Beaulieu  
20 reviewed the criteria for processing a conditional use permit. As the applications were related, Ms.  
21 Beaulieu also addressed Agenda Item 4, File #20-19-ZV. Ms. Beaulieu again noted that the  
22 proposed land use would be conducted from the existing garage and that no new structures were  
23 being proposed. Ms. Fragogiannis explained the nature of the request, proffering that they would  
24 only have up to two customers per month and that the CUP could become void should they vacate  
25 the premises. Ms. Fragogiannis also explained the Federal Firearms License (FFL) application  
26 process noting that it cannot transfer between property owners or locations without additional  
27 processing.

28 Mr. Bannon opened the public hearing. Mr. Kenny Nicewarner spoke in opposition to the request  
29 and expressed concerns that granting the subject CUP would set a precedent for future commercial  
30 uses in their residential neighborhood as well as concerns related to the proposed use and the ability  
31 to limit walk-in customers. Mr. Nicewarner also expressed concerns related to the fact that the  
32 applicants were not the property owners. Mr. Bannon stated that any decision of the Board does not  
33 set a precedent for future applications. Mr. Bannon closed the public hearing. In response to Mr.  
34 Nicewarner's concerns, Ms. Fragogiannis reiterated that they would only be an internet-based  
35 business and would not facilitate walk-in customers. Ms. Fragogiannis also stated that the Bureau of  
36 Alcohol, Tobacco, Firearms and Explosives (ATF) requires a customer log to be kept by the person  
37 operating the Federal Firearms License. She also stated that they would be willing to accept a  
38 condition of approval that the permit expire when they vacate the premises. Mr. Quynn inquired as  
39 to whether it would be appropriate to limit the CUP to the present applicants. Mr. Cochran  
40 acknowledged that while CUP applications typically run with the land, that the Board could add a  
41 condition of approval to require the permit to become void if the applicants were to vacate the  
42 premises.

43 Mr. Quynn moved to go into deliberative session at 3:35 pm. Mr. Bannon called for a vote, which  
44 carried unanimously.

1 Mr. Quynn moved to come out of deliberative session at 4:03 pm. Mr. Bannon called for a vote,  
2 which carried unanimously.

3 Mr. McKinney moved to approve the conditional use permit with the condition that the applicant is  
4 bound by their verbal and written testimony. Mr. Bannon called for a vote, which carried  
5 unanimously.

6 **ITEM #5 FILE #: 20-19-ZV**

7 Request: Variance from Section 4.6B to reduce the 75' distance requirement to 50' along the  
8 rear property line for the purpose of operating a homebased federal firearms business  
9 from an existing detached garage (see Conditional Use Permit File#20-3-CUP).

10 Applicant: Efstathia Fragogiannis and Jamie Schatteman

11 Owner: Gary Eisner, Et Al

12 Parcel Info: 76 Belleview Lane, Charles Town, WV Parcel ID: 06002800110002; Size: 3 acres;

13 Zoning District: Rural

14 Ms. Efstathia Fragogiannis was present to address the Board. Ms. Beaulieu's staff report and further  
15 discussion of this item was addressed during Agenda item # 4, File 20-19-ZV.

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

18 **ITEM #6 FILE #: 20-14-ZV - Withdrawn**

19 Request: Variance from Section 9.7 to reduce the side setback from 8' to 6' for a 24' x 36'  
20 detached garage.

21 Owner: Patrick Shunney

22 Parcel Info: 11426 Leetown Road, Kearneysville, WV Parcel ID: 07011A00110000; Size: .34

23 acres; Zoning District: Village

24 This item was withdrawn by the applicant.

25 **ITEM #7 FILE #: 20-15-ZV**

26 Request: Variance from Sections 4.6B and Appendix B for the following: to reduce the  
27 distance requirement from 75' to 32' on the eastern boundary line and to reduce the  
28 side setback from 25' to 6.5' on the western boundary line. The requested variance is  
29 to allow an existing residential dwelling unit to be converted to a Professional Office  
30 for use as a satellite law office. No new buildings or additions are proposed.

31 Owner: Mohammad Murtaza

32 Applicant: Tasha Catrow (Catrow Law, PLLC)

33 Parcel Info: 14840 Charles Town Road, Charles Town, WV Parcel ID: 02001700120003; Size:

34 .39 acres; Zoning District: Residential-Light Industrial-Commercial

35 Ms. Tasha Catrow with Catrow Law, PLLC was present to address the Board. Ms. Beaulieu  
36 provided an overview of her staff report noting that the proposed land use would operate from the  
37 existing dwelling unit and that no new structures were being proposed. Ms. Beaulieu explained that  
38 the subject property consists of two legal lots. As the existing home is located on the internal  
39 property line, Ms. Beaulieu recommended that a condition of approval could be to require the  
40 applicant to legally merge the two parcels into one single lot. Ms. Catrow stated that a 1987 deed  
41 appears to have already merged the property. Ms. Beaulieu advised that Ms. Catrow submit the  
42 relevant deed book and page number reference for staff to confirm this information. Ms. Catrow

1 added that the residential neighbor has dogs and that she plans to install a fence or shrubbery along  
2 the property line for separation.

3 Mr. Bannon opened the public hearing. Ms. Megan Curfman, the neighboring property owner,  
4 stated she would prefer a fence along the property line as opposed to shrubs. Ms. Catrow stated she  
5 did not object to installing a fence; however, requested that a specific type of fence not be required.  
6 Mr. Bannon closed the public hearing.

7 Mr. Quynn moved to approve the variance as requested with the condition that the applicant is  
8 bound by her testimony. Mr. Bannon called for a vote, which carried unanimously.

9 **ITEM #8 FILE #: 20-17-ZV**

10 Request: Variance from Sections 4.6B, 8.9A.8, and Appendix B to reduce the distance  
11 requirement from 75' to 20' and the side setback from 25' to 20' along the eastern  
12 boundary line to expand existing fuel station (fuel tanks and fuel pumps).  
13 Owner: 270 LLC  
14 Parcel Info: Lot 16, Bardane (Burr Industrial Park); 270 Industrial Blvd, Kearneysville, WV  
15 Parcel ID: 02000200010021; Size: 5.43 acres; Zoning District: Industrial  
16 Commercial

17 Mr. Michael Shepp was present to address the Board. Ms. Beaulieu provided an overview of her  
18 staff report. Ms. Beaulieu explained that the subject parcel has an approved site plan and that as part  
19 of that approval the site was permitted to utilize the 20' setback as listed in the private covenants  
20 recorded in Plat Book 4 at Page 85. Ms. Beaulieu stated that the Office does not enforce private  
21 covenants and restrictions. She also noted that while she understood the justification for the original  
22 determination and found the request to be reasonable, she did not identify any provisions in the  
23 Ordinance which would allow administrative approval for the proposed expansion. Mr. Shepp  
24 explained the nature of the request and provided background on the original site plan approval. Mr.  
25 Shepp cited Section 9.7 of the Zoning Ordinance in which parcels that predate zoning may utilize  
26 setbacks approved by the Planning Commission. It was Mr. Shepp's opinion that since the Burr  
27 Industrial Park was a County subdivision and approved by the Planning Commission, the subject  
28 request to utilize the 20' setback met the intent of Section 9.7.

29 Mr. Bannon opened the public hearing. There were no public comments. Mr. Bannon closed the  
30 public hearing.

31 Mr. Quynn moved to approve the variance as requested. Mr. Corbin seconded the motion. Mr.  
32 Bannon called for a vote, which carried unanimously.

33 **ITEM #9 FILE #: 20-18-ZV**

34 Request: Variance from Section 9.7 to reduce the Rear setback from 50' to 15' for the  
35 construction of a 3,400 square foot new home and a 45' x 16' foot in-ground  
36 swimming pool with surrounding concrete area.  
37 Applicant: Vincent and Kelli Tiong  
38 Owner: Rodney Smith  
39 Parcel Info: Lot 1C Grainlands Vacant parcel located on Earle Road approximately 680' from the  
40 intersection of Earle Road and Undergrace Road, Charles Town, WV Parcel ID:  
41 06000200020010; Size: 3 acres; Zoning District: Rural

42 Ms. Kelli Tiong was present to address the Board. Ms. Beaulieu provided an overview of her staff  
43 report noting that the property had been platted with a storm drainage easement that bisected the

1 parcel. Ms. Beaulieu stated that on April 14, 2020 the Planning Commission approved a request to  
2 vacate the easement. Ms. Tiong explained the nature of the request stating that they were requesting  
3 the variance to avoid existing trees and a rock outcropping. Ms. Diana Thorsell, the applicant's real  
4 estate agent, concurred with Ms. Tiong's assessment of the parcels terrain.

5 Mr. Bannon opened the public hearing. There were no public comments.

6 Mr. Bannon closed the public hearing. Mr. Corbin moved to approve the variance as requested. Mr.  
7 Bannon called for a vote, which carried unanimously.

#### 8 **Zoning Administrator's Report**

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

10 Ms. Beaulieu informed the Board that the Planning Commission would be holding a public hearing  
11 to review the proposed solar energy facilities text amendment on June 2, 2020. Ms. Beaulieu  
12 provided a status update on the proposed reorganization of the Zoning Ordinance and the  
13 Subdivision Regulations that is being drafted by Greenway Engineering. Ms. Beaulieu also noted  
14 that a petition for a new text amendment pertaining to commercial cemeteries would also be on the  
15 June 2, 2020 Planning Commission agenda. Ms. Beaulieu stated that the next Board meeting would  
16 be June 25, 2020.

#### 17 **Legal Update**

18 a) Possible executive session on the following pending lawsuits.

19 b) Discussion with possible deliberative session and signing of draft Findings/Decisions

#### 20 **Meeting: April 23, 2020**

21 1. Revision to Rules of Procedures to allow virtual meetings to be held.

#### 22 **Meeting: April 24, 2020 – Special Meeting**

23 1. Variance from Section 9.7. Owner: Terry and Margaret Walker, Jr.. File: 20-6-ZV.

24 2. Request by Church Without Walls Ministries of Jefferson County for a Conditional Use  
25 Permit to operate a Nonprofit Commercial Use. Owner: Charles & Virgie Moore. File:  
26 20-2-CUP.

27 3. Variance from Section 4.6B and Appendix B. Charles & Virgie Moore. File: 20-9-ZV.

28 4. Variance from Section 4.11 and Appendix B. Owner: Shepherdstown Public Library.  
29 File: 20-7-ZV 5.

30 5. Variance from Section 4.6B and Appendix B. Owner: Kenneth Lowe. File: 20-8-ZV 6.

31 6. Variance from Section 9.7. Owner: William Hoak. File #20-10-ZV.

32 Mr. Quynn moved to adjourn the meeting at 4:50 pm. Mr. Bannon called for a vote, which carried  
33 unanimously.