

## Minutes

### Jefferson County Board of Zoning Appeals

- 1 Meeting Date: May 27, 2021
- 2 Meeting Location: By order of the Chair, the Board of Zoning Appeals meeting was held  
3 in-person in the Charles Town Library Conference Room; and virtually  
4 via ZOOM.
- 5 Board Members Present: Tyler Quynn, Chair; Steve Guier, Matt McKinney, Mikala Shremshock,  
6 Alternate; and Leeds Corbin (late arrival), attended in person. Deirdre  
7 Catterton, Vice Chair attended virtually.
- 8 Board Members Absent: None
- 9 Staff Members Present: Alexandra Beaulieu, Zoning Administrator; Nathan Cochran, Assistant  
10 Prosecuting Attorney; Mason Carter, Ordinance Compliance Officer;  
11 and Jennilee Hartman, Zoning Clerk

12 All requests were pursuant to the Jefferson County Zoning and Land Development Ordinance.

13 Due to technical difficulties, Mr. McKinney moved to call the meeting to order at 2:17 pm.

14 Mr. Quynn called for a vote, which carried unanimously.

15 Mr. Quynn reviewed meeting protocol for those in attendance.

#### 16 **Approval of Minutes: April 22, 2021**

17 Mr. McKinney moved to approve the minutes, which carried unanimously.

#### 18 **ITEM #1 FILE #: 21-6-ZV - POSTPONED FROM 03/25/21 and 04/22/21**

19 Request: Variance request from Section 10.4B.3 to reduce the front setback from 25' to 1'  
20 for an 8.5' x 3' (25.5 square feet) Freestanding Electronic Business Sign; and  
21 Section 10.7G to reduce the distance requirement of an Electronic Sign from a  
22 traffic light from 300' to approximately 190'.

23 Owner: Steve Petropouleas

24 Applicant: Mountain View Diner

25 Parcel Info: 811 Willow Spring Drive, Charles Town, WV, Parcel ID: 02001000090004;  
26 Size: 1.21 ac; Zoning District: Residential-Light Industrial-Commercial

27 Mr. Quynn stated that because the placard had been properly posted for the April 22, 2021 meeting,  
28 a new placard advertising the May meeting was not required by the Ordinance. The Board agreed to  
29 proceed with the request.

30 Mr. Steve Petropouleas, owner, was present to address the Board. Ms. Beaulieu provided an  
31 overview of her staff report, noting that the Division of Highways did not object to the location of  
32 the sign. Ms. Beaulieu noted that to date, the applicant had not provided the required documentation  
33 reflecting compliance with the electronic sign provisions of Section 10.7. Mr. Petropouleas  
34 explained that the subject sign replaced an old sign in the same location and that he was unaware  
35 that a building permit was required. Ms. Beaulieu addressed comments from the Board.

36 Mr. Quynn confirmed there were no members of the public signed up to speak for this item.

37 Mr. McKinney moved to approve the variance with the condition that the applicant be bound by  
38 their testimony and that the applicant obtain a building permit and submit the required certifications  
39 for an electronic sign. Mr. Quynn called for a vote, which carried unanimously.

#### 40 **ITEM #2 FILE #: 21-16-ZV - POSTPONED UNTIL 06/24/21**

41 Request: Variance request from Section 9.6C to allow an accessory structure in the required  
42 front yard; and Section 9.7 to reduce the front setback from 25' to 2' for a 10' x 20'  
43 accessory structure (shed).

1 Owner: Chad and Kimberly McGarrah

2 Parcel Info: Stone Brook Subdivision, Lot 16, 711 Apple Cross Dr., Harpers Ferry, WV

3 Parcel ID: 04005A00160000; Size: 1.04 ac; Zoning District: Rural

4 As the placard was not adequately posted, this Item was postponed until the June 24, 2021 meeting.

5 **ITEM #3 FILE #: 21-17-ZV**

6 Request: Variance request from Appendix A to reduce the minimum lot size from 40,000 sf to

7 16,800 sf to allow for the creation of a lot to be donated to the Mission Tabernacle

8 Holiness Church for the purpose of creating an overflow parking area.

9 Owner: Charlotte Beahn

10 Applicant: Mission Tabernacle Holiness Church

11 Parcel Info: 382 Mission Rd., Harpers Ferry, WV.

12 Parcel ID: 02021A00140000; Size: 1.37 ac; Zoning District: Rural

13 Mr. Sam Snow, Pastor of Mission Tabernacle Holiness Church, was present to address the Board.

14 Ms. Beaulieu provided an overview of her staff report. Ms. Beaulieu suggested that a possible

15 condition of approval be that the 16,800 sf area is prohibited from constructing a residence or any

16 non-residential structures for public use, such as a fellowship hall, unless further evaluated by the

17 Board. She further stated that this condition could exclude picnic tables, storage sheds, or pavilions.

18 Mr. Snow explained the nature of the request. Ms. Beaulieu addressed questions from the Board.

19 Mr. Quynn confirmed there were no members of the public signed up to speak for this item.

20 Mr. McKinney moved to approve the variance with the condition that the applicant be bound by

21 their testimony and that there will be no residential structures on the property. Mr. Quynn called for

22 a vote, which carried unanimously.

23 **ITEM #4 FILE #: 21-18-ZV**

24 Request: Variance request from Section 5.4B of the Zoning Ordinance, as amended 07/15/93 to

25 reduce the rear setback from 20' to 10' for a 12' x 16' accessory structure (shed).

26 Owner: Francis Sutton

27 Parcel Info: Eastland Subdivision, Lot 59, 178 Devonshire Dr., Charles Town, WV

28 Parcel ID: 02001600810000; Size: 1 ac; Zoning District: Residential Growth

29 Mr. Francis Sutton, owner, was present to address the Board. Ms. Beaulieu provided an overview

30 of her staff report. Mr. Sutton explained the nature of the request and addressed comments from

31 the Board. Ms. Catterton stated she was familiar with the lot layout and concurred that the

32 proposed location for the shed was optimal.

33 Mr. Quynn confirmed there were no members of the public signed up to speak for this item.

34 Mr. McKinney moved to approve the variance. Mr. Quynn called for a vote, which carried

35 unanimously.

36 Mr. Leeds Corbin, Board member, arrived late at 2:58 pm during the Board's discussion for Item

37 #4. Mr. Corbin did not participate in the Board's discussion or their final vote for Item #4. At the

38 conclusion of the Board's discussion surrounding Item #4, Mr. Corbin participated as a voting

39 member for the remainder of the meeting and Ms. Shremshock remained in attendance as a non-

40 voting alternate member.

1 **DITEM #5 FILE #: 21-19-ZV**

2 Request: Variance request from Section 5.4B of the Zoning Ordinance, as amended on 05/01/03,  
3 to reduce the rear setback from 20' to 5' for a 12' x 24' in-ground pool.

4 Owner: Herman and Robin Bounds

5 Parcel Info: Demory Farm Subdivision, Lot 16, 43 Killian Ln., Charles Town, WV

6 Parcel ID: 02009B00160000; Size: .24 ac; Zoning District: Residential Growth

7 Ms. Robin Bounds, owner, was present to address the Board. Ms. Beaulieu provided an overview of  
8 her staff report.

9 Noting that the public had not been previously sworn in, Ms. Beaulieu swore in the applicant and  
10 members of the public who indicated they would be providing testimony.

11 Ms. Bounds explained the nature of the request and addressed questions from the Board.

12 Mr. Quynn confirmed there were no members of the public signed up to speak for this item.

13 Mr. Corbin moved to approve the variance with the condition that the applicant be bound by their  
14 testimony. Mr. Quynn called for a vote, which carried unanimously.

15 **ITEM #6 FILE #: 21-20-ZV**

16 Request: Variance request from Section 9.6C to allow an accessory structure (barn) in the  
17 required front yard; Section 8.2 to reduce the distance requirement from 50' to 10';  
18 and Appendix A to reduce the front setback from 40' to 10' for a 64' x 40' barn.

19 Owner: Canton Whisner

20 Parcel Info: Elizabeth Stagner Minor Subdivision, Lot 3, 1491 Shirley Rd., Summit Point, WV

21 Parcel ID: 06001500030043; Size: 20 ac; Zoning District: Rural

22 Mr. Canton Whisner, owner, was present to address the Board. Ms. Beaulieu provided an overview  
23 of her staff report noting that the owner intends to process a minor plat change through the office  
24 to re-locate the existing access easement along the property line as opposed to the current location  
25 of 50' off of the property line. Ms. Beaulieu clarified that the requested front setback reduction  
26 would be measured from the edge of the relocated access easement. Mr. Whisner explained the  
27 nature of the request noting that rock outcroppings and existing topography limited buildable area.  
28 Mr. Whisner presented photos of his property for the record. Mr. Whisner addressed questions from  
29 the Board.

30 Mr. Quynn confirmed there were no members of the public signed up to speak for this item.

31 Mr. McKinney moved to approve the variance with the condition that the applicant be bound by  
32 their testimony. Mr. Quynn called for a vote, which carried unanimously.

33 **ITEM #7 FILE #: 21-21-ZV**

34 Request: Variance request from Section 9.6C to allow an accessory structure in the required  
35 front yard; and Section 9.7 to reduce the front setback from 20' to 10' for a 30' x 50'  
36 accessory structure.

37 Owner: Randolph and Melinda Davis

38 Parcel Info: Blue Ridge Acres Subdivision, Lot 604, vacant parcel on Sydney Cir., Harpers Ferry,

39 WV. Parcel ID: 04012A01900000; Size: .23 ac; Zoning District: Rural

40 The applicant was not present for the request. Mr. Quynn moved to the next Item to allow sufficient  
41 time for the applicant to attend.

1 **ITEM #8 FILE #: 21-22-ZV**

2 Request: Variance request from Section 8.9A.9 to eliminate the requirement to provide a 60'  
3 easement along a limited access highway; and, Section 8.9A.10 to eliminate the  
4 landscape buffer requirement along a limited access highway for a proposed Large  
5 Gas Station (Sheetz).

6 Owner: Guy Chicchirichi

7 Applicant: Sheetz Inc. / c/o Bob Franks

8 Parcel Info: Vacant parcel at the intersection of Route 340 and Augustine Ave., Charles Town, WV  
9 Parcel ID: 02001600010000; Proposed Size: 2.5 ac; Zoning District: Highway  
10 Commercial

11 Mr. Jason Gerhart with GORDON, representative for the applicant, was present to address the  
12 Board. Ms. Beaulieu provided an overview of her staff report. Mr. Gerhart explained that the nature  
13 of the request. Mr. Gerhart noted that the WV Division of Highways was not in favor of creating  
14 a new access road specifically for this site due to its close proximity to an existing traffic signal.  
15 Mr. Gerhart also stated that, as no additional development was proposed for the adjacent property,  
16 the access road would not be serving another land use. Mr. Gerhart further explained that additional  
17 buffer standards are not optimal along a highway for land uses that require greater visibility to  
18 motorists. Ms. Beaulieu and Mr. Gerhart addressed questions from the Board.

19 Mr. Quynn opened the public hearing.

20 Mr. Gary Davis, local resident, spoke in opposition to the request and expressed concerns regarding  
21 traffic safety.

22 Mr. Gerhart provided a rebuttal to public comment, noting that the project would comply with any  
23 direction provided by the Division of Highways.

24 Mr. McKinney moved to approve the variance with the condition that the applicant be bound by  
25 their testimony. Mr. Quynn called for a vote, which carried four (4) in support and one (1) in  
26 opposition (Mr. Corbin).

27 Mr. Quynn continued with Item #7 as the applicant was in attendance. Ms. Beaulieu swore in  
28 Mr. Davis.

29 **ITEM #7 FILE #: 21-21-ZV**

30 Request: Variance request from Section 9.6C to allow an accessory structure in the required  
31 front yard; and Section 9.7 to reduce the front setback from 20' to 10' for a 30' x 50'  
32 accessory structure.

33 Owner: Randolph and Melinda Davis

34 Parcel Info: Blue Ridge Acres Subdivision, Lot 604, vacant parcel on Sydney Cir., Harpers Ferry,  
35 WV. Parcel ID: 04012A01900000; Size: .23 ac; Zoning District: Rural

36 Mr. Randolph Davis, owner, was present to address the Board. Ms. Beaulieu provided an overview  
37 of her staff report. Ms. Beaulieu suggested that a condition of approval could be that the subject  
38 garage is limited to personal/residential purposes. Mr. Davis explained the nature of the request.  
39 Mr. Davis addressed questions from the Board.

40 Mr. Quynn confirmed there were no members of the public signed up to speak for this item.

41 Ms. Catterton moved to approve the variance with the condition that the applicant be bound by their  
42 testimony and that that the subject garage is limited to personal/residential purposes. Mr. Quynn  
43 called for a vote, which carried unanimously.

1 **ITEM #9 FILE #: 21-23-ZV**

2 Request: Variance request from Section 9.7 to reduce the side setback from 6' to 2' for a 12' x  
3 16' accessory structure.

4 Owner: Doreen Schaffner

5 Applicant: Earl Wilk

6 Parcel Info: Opeqoun Forest Park, Lot 20, vacant parcel on the north side of Bowers Road,  
7 Kearneysville, WV. Parcel ID: 07007A00360000; Size: .51 acre; Zoning District: Rural

8 Mr. Earl Wilk, applicant, was present to address the Board. Ms. Beaulieu swore in Mr. Wilk as he  
9 joined the meeting late. Ms. Beaulieu provided an overview of her staff report. Mr. Wilk explained  
10 the nature of the request. Mr. Wilk addressed questions from the Board.

11 Mr. Quynn confirmed there were no members of the public signed up to speak for this item.

12 Ms. Catterton moved to approve the variance with the condition that the applicant be bound by their  
13 testimony. Mr. Quynn called for a vote, which carried three (3) in support and two (2) in opposition  
14 (Mr. Quynn and Mr. Guier).

15 **ITEM #10 FILE #: 21-24-ZV**

16 Request: Variance request from Appendix A to reduce the side setback from 12' to 10' for all  
17 single family lots in the proposed King's Crossing subdivision (approximately 175  
18 single family lots).

19 Owner: DR Acquisitions LLC

20 Parcel Info: Vacant lot adjacent to the St. James church on Charles Town Road (Rt. 115)  
21 Parcel ID: 02001700220000; Size: 86 ac; Zoning District: Residential Growth

22 Mr. Chad Wallen and Mr. Jason Gerhart with GORDON, representatives for the applicant, were  
23 present to address the Board. Ms. Beaulieu provided an overview of her staff report to the Board  
24 explaining that the subject request would apply to the proposed single family lots. Mr. Wallen  
25 explained the nature of the request and noted that the request did not change the permitted density.  
26 Mr. Wallen further explained that the design of the proposed development, including the grading  
27 and drainage plans, were dependent on the size of the building envelop of each lot.

28 Noting that the application did not appear to answer all of the variance criteria questions, Mr. Quynn  
29 asked the applicant to specifically address the required criteria. Mr. Wallen argued that the intent of  
30 the request was to satisfy market demand by designing lots that contained larger backyards as  
31 opposed to a wider side yard that is generally unused.

32 The Board expressed a general concern that applying for a variance for lots that do not exist seemed  
33 premature and inappropriate. The Board further noted that they felt it was not within their purview to  
34 grant a blanket variance and that a text amendment may be more appropriate.

35 Mr. Quynn confirmed there were no members of the public signed up to speak for this item.

36 Mr. Jason Gerhart requested permission to speak as the applicant's representative. The Board  
37 granted Mr. Gerhart permission to speak to this item. Mr. Gerhart noted that the proposed design and  
38 modified lot width had been approved by the Planning Commission during the Concept Plan phase.  
39 Mr. Gerhart stated that the Planning Commission was aware of the applicant's intent to seek a  
40 setback variance for the proposed lots and did not object.

41 Mr. Quynn reiterated that the proposed request did not meet the criteria for a variance and stated that  
42 a text amendment to modify the setbacks in the Residential Growth district would be more  
43 appropriate.

1 Ms. Catterton moved to deny the variance. Mr. Quynn called for a vote, which carried four (4) in  
2 support and one (1) in opposition (Mr. McKinney).

3 Mr. Guier moved to direct staff to submit a letter to the Planning Commission on behalf of the  
4 Board requesting that the Planning Commission consider amending the required setbacks for lots in  
5 the Residential Growth zoning district. Mr. Quynn called for a vote, which carried four (4) in  
6 support and one (1) in opposition (Mr. Corbin).

7 **ITEM #11 FILE #: 21-25-ZV**

8 Request: Variance request from Section 9.7 to reduce the side setback from 6' to 1' for a 12' x 32'  
9 accessory structure.

10 Owner: Tyler and Bobbi Phelps

11 Parcel Info: Security Hills, Lot 32, 109 Johns Court, Charles Town, WV

12 Parcel ID: 02004D00430000; Size: .32 ac; Zoning District: Rural

13 Ms. Beaulieu swore in members of the public who indicated they would be providing testimony.

14 Mr. Tyler Phelps, owner, was present to address the Board. Ms. Beaulieu provided an overview of  
15 her staff report. Mr. Phelps explained that the intent of the request would be to construct a larger  
16 structure to store personal items. Mr. Phelps addressed questions from the Board. Mr. Phelps  
17 confirmed that he is not operating a business from his home. Mr. Phelps stated that he has received  
18 verbal confirmation of support from the neighbor to the north (Jacqueline Craig).

19 Mr. Quynn opened the public hearing.

20 Mr. Rick McIntyre, neighbor, spoke in opposition to the request arguing that the subject parcel  
21 contained a significant amount of debris and lawn mowing equipment. Mr. McIntyre expressed  
22 concern that a larger storage structure would result in more items being stored on the property.

23 Mr. Phelps spoke in rebuttal noting that the intent of the larger accessory structure was to store the  
24 extra household items that were currently outside.

25 Mr. Quynn closed the public hearing.

26 Mr. McKinney moved to approve the variance with the condition that the applicant be bound by  
27 their testimony. Mr. Quynn called for a vote, which carried unanimously.

28 Ms. Shremshock left the meeting after Item #11.

29 **Zoning Administrator's Report**

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

31 Ms. Beaulieu stated that the next Board meeting would be on Jun 24, 2021.

32 Ms. Catterton announced that she needed to leave the meeting at 5:44 PM.

33 **Legal Update**

34 a) Discussion of the following pending lawsuits: None.

35 1. Discussion/Action: Neighbors Against River Chase Event Center v BZA re: 20-8-CUP  
36 (Civil Action No.: CC-2021-C-22.

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

38 **Meeting: April 22, 2021**

39 1. Variance from Sec. 5.7D.2.b.iii(b). Owner: Norman and Lora Corbin. File: 21-10-ZV.

40 2. Variance from Sec. 9.7 Owner: William Jenkins. File: 21-12-ZV.

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- 1           3. Variance from Appendix A. Owner: DR Acquisitions. File: 21-13-ZV.
- 2           4. Variance from Sec. 4.11.E.1 and App. B. Owner: James Van Evera, et al. Applicant:
- 3           Sheetz, Inc. File: 21-14-ZV.
- 4           5. Variance from Sec. 4.11 and App. B. Owner: St. James Lutheran Church at Uvilla.
- 5           File: 21-15-ZV.
- 6           Mr. Cochran provided Mr. Quynn a copy of the draft Findings for his review and signature.
- 7 Mr. McKinney moved to adjourn the meeting at 5:47 pm. Mr. Quynn called for a vote, which carried
- 8 unanimously.