

## Minutes

### Jefferson County Board of Zoning Appeals

- 1 Meeting Date: April 28, 2022  
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; Leeds Corbin, Steve Guier, and Matthew McKinney  
6 Board Members Absent: Deirdre Catterton, Vice Chair; and Mikala Shremshock, alternate  
7 member, were absent with notice.  
8 Staff Members Present: Alexandra Beaulieu, Zoning Administrator; Stephen Groh, Assistant  
9 Prosecuting Attorney; and Jennilee Hartman, Zoning Clerk

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

11 Mr. Guier moved to call the meeting to order at 2:00 pm. Mr. Quynn called for a vote, which  
12 carried unanimously.

13 Mr. Quynn noted that Mr. McKinney was running late. Mr. Quynn reviewed meeting protocol for  
14 those in attendance.

#### 15 **Approval of Minutes: March 24, 2022**

16 Mr. Corbin moved to approve the minutes. Mr. Quynn called for a vote, which carried unanimously.

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

#### 18 **AGENDA ITEM #1 FILE #: 22-11-ZV**

- 19 Request: Variance from Section 9.6C to allow an accessory structure within the required front  
20 yard; and Section 9.7 to reduce the front setback from 20' to 5' for a proposed 36' x  
21 26' detached three-car garage.  
22 Owner: Tommy & Kimberlin Staubs  
23 Parcel Info: Cavalier Subdivision, Lot 5, 88 Cavalier Dr., Harpers Ferry, WV  
24 Parcel ID: 04007A00200000; Size: .41 ac; Zoning District: Rural

25 Mr. Tommy Staubs, property owner, was present to address the Board. Ms. Beaulieu provided an  
26 overview of her staff report noting that the applicant had previously been granted a variance to  
27 reduce the front setback for a detached 30' x 28' two-car garage but during the building permit  
28 application process determined that he would like to increase the size of the detached garage to allow  
29 for three bays as opposed to the previous design with two bays. Ms. Beaulieu noted that in addition  
30 to increasing the size of the proposed garage that the applicant was also intending to re-orient the  
31 entrance of the garage to be parallel with Cavalier Drive. Mr. Staubs explained the nature of the  
32 request to the Board noting that the modified design eliminated the need to relocate an existing  
33 waterline to the home.

34 Mr. Quynn opened the public hearing. No members of the public provided testimony. Mr. Quynn  
35 closed the public hearing.

36 Mr. Guier moved to approve the variance with the following conditions:

- 37 1. That the applicant be bound by their testimony.

38 Mr. Corbin seconded the motion, which carried unanimously

39 Mr. McKinney arrived at 2:10 p.m. He did not vote on Item #1 as he was not present for the  
40 discussion.

**1 AGENDA ITEM #2 FILE #: 22-12-ZV**

2 Request: Variance from Section 9.7 to reduce the front setback from 40' to 18' for a proposed  
3 7' x 23' two-story addition to the front of an existing home.

4 Owner: Brian King

5 Parcel Info: 76 Brierly Spring Lane, Shepherdstown, WV

6 Parcel ID: 09001000060000; Size: 4.07 ac; Zoning District: Rural

7 Mr. Brian King, property owner, was present to address the Board. Ms. Beaulieu provided an  
8 overview of her staff report, noting that the home was erected prior to the adoption of Zoning and  
9 that the proposed addition would be replacing an existing covered porch. Ms. Beaulieu noted the  
10 applicant had provided letters of support from two neighbors. Mr. King explained the nature of the  
11 request to the Board, stating that the home was in need of repair and that the proposed addition  
12 would not create a greater setback issue than the existing covered porch. Mr. Corbin inquired as to  
13 whether or not a new porch or stoop would be constructed at the front of the proposed addition. Mr.  
14 King stated that he did not intend to construct a new porch or stoop.

15 Mr. Quynn opened the public hearing. No members of the public provided testimony. Mr. Quynn  
16 closed the public hearing.

17 Mr. McKinney moved to approve the variance with the following conditions:

18 1. That the applicant be bound by their testimony.

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

20 Mr. Quynn moved Item #3 (File: 22-13-ZV) to the end of the agenda.

**21 AGENDA ITEM #4 FILE #: 22-2-CUP**

22 Request: Request for a Conditional Use Permit to operate a *Restaurant, Fast Food, Limited*, as  
23 defined in Article 2. The applicant is proposing to operate as a food vendor offering  
24 menu items such as ice cream, hot hogs, sandwiches, drinks, etc. The operation will be  
25 conducted from a stationary food truck and a 10' x 10' tent with a bench and two picnic  
26 tables will be provided for customer seating. Dates/Hours of Operation: April 1 through  
27 October 31: Wednesday through Sunday from 1:00 pm until dark. Plus Monday and/or  
28 Tuesday depending on various Holidays (ex: Memorial Day Weekend). Temporary  
29 signage as depicted in the application will be displayed.

30 Owner: John Staubs

31 Applicant: D and E Novelties / David and Evelyn Naille

32 Parcel Info: 3807 Chestnut Hill Road, Harpers Ferry, WV

33 Parcel ID: 04000800120000; Size: 1.9 ac; Zoning District: Rural

34 Mr. David and Evelyn Naille, applicants, were present to address the Board. Ms. Beaulieu provided  
35 an overview of her staff report to the Board. Mr. Naille explained the nature of the request to the  
36 Board and submitted a petition with approximately 80 signatures in support of the request along with  
37 two letters of support from the adjoining neighbors. Mr. McKinney questioned the safety of the  
38 entrance off Chestnut Hill Road and asked if the truck was titled, tagged, and insured in the event the  
39 truck had to be moved. Mr. Naille stated that there did not appear to be any visibility issues with  
40 regard to the entrance. Mr. Naille confirmed that the truck was registered through the DMV and  
41 added that the truck would be removed from the site during the off-season.

42 Mr. Quynn opened the public hearing.

1 Ms. Donna Rinker, adjacent property owner; and Mr. John Staubs, property owner, spoke in support of  
2 the request.

3 Mr. Quynn closed the public hearing.

4 Mr. Guier moved to approve the Conditional Use Permit with the following conditions:

5 1. That the applicant be bound by their testimony.

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

7 **AGENDA ITEM #5 FILE #: 22-3-CUP**

8 Request: Request for a Conditional Use Permit to operate a Day Care Center, Large, as defined  
9 in Article 2. The applicant is proposing to operate a daycare center from an existing  
10 residence to provide child-care for up to twelve (12) children. Hours of Operation:  
11 Monday through Friday from 6:00 am to 5:00 pm. Onsite parking and an attached  
12 business sign are proposed.

13 Owner: Tiffanie and Aaron Fridley

14 Applicant: Tiff's Tiny Tots

15 Parcel Info: 2235 Old Cave Rd., Charles Town, WV

16 Parcel ID: 02001700030000; Size: 1.95 ac; Zoning District: Rural

17 Tiffanie and Aaron Fridley, property owners, were present to address the Board. Ms. Beaulieu  
18 provided an overview of her staff report to the Board. Ms. Fridley explained the nature of the request  
19 to the Board explaining that the day care would be operated from the basement of the home and had  
20 a fenced area. Mr. Fridley explained that the basement had four (4) points of ingress/egress. Ms.  
21 Fridley explained that in accordance with State law, the day care would initially offer services for  
22 four (4) children and would then expand in the event additional staff are hired. Mr. Fridley explained  
23 that the property has an existing circular drive, which will alleviate the need to back out onto Old  
24 Cave Road. Mr. Quynn inquired about the traffic data for Old Cave Road. Ms. Beaulieu stated she  
25 did not obtain traffic data for Old Cave Road as it was not required by the Ordinance.

26 Mr. Quynn opened the public hearing.

27 Donald Vyzy adjacent property owner, expressed concern regarding an increase in traffic.

28 Mr. Quynn closed the public hearing.

29 In rebuttal, Ms. Fridley explained the drop-off and pick-up schedule for the day care, noting that day  
30 care traffic does not generally conflict with the school's drop-off and pick-up schedule.

31 Mr. McKinney moved to approve the Conditional Use Permit with the following conditions:

32 1. That the applicant be bound by their testimony.

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

34 **AGENDA ITEM #6 FILE #: 22-14-ZV**

35 Request: Variance from Section 9.7 to reduce the rear setback from 50' to 20' for a 40' x 100'  
36 accessory structure.

37 Owner: Clifford Ramey

38 Parcel Info: Hidden River Farm, Wide Horizon, Pt 1, Lots 9-11

39 1079 Archer Road, Kearneysville, WV

40 Parcel ID: 07001300560000; Size: 3.3 ac (total); Zoning District: Rural

1 Mr. Clifford Ramey, property owner, was present to address the Board. Ms. Beaulieu provided an  
2 overview of her staff report to the Board. Ms. Beaulieu noted that in accordance with Section 9.4B,  
3 the greater setbacks noted in Section 9.7 would apply as the proposed structure would be constructed  
4 across internal lot lines. Mr. Ramey explained the nature of the request to the Board and confirmed  
5 that he would retain the existing tree line.

6 Mr. Quynn opened the public hearing. No members of the public provided testimony. Mr. Quynn  
7 closed the public hearing.

8 Mr. McKinney moved to approve the variance with the following conditions:

9 1. That the applicant be bound by their testimony.

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

11 The applicant for Item #7 (File: 22-15-ZV) was not in attendance. To afford Staff time to contact  
12 this applicant, Mr. Quynn moved on to Item #8 (File 22-16-ZV).

13 **AGENDA ITEM #8 FILE #: 22-16-ZV**

14 Request: Variance from Section 4.11E to allow a modified landscape buffer along the eastern  
15 property line for a proposed Large Gas Station (Sheetz).

16 Owner: Guy Chicchirichi

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

18 Parcel Info: Vacant parcel at the intersection of Route 340 & Augustine Ave., Charles Town, WV

19 Parcel ID: 02001600010000; Proposed Size: 4.4 ac; Zoning District: Highway

20 Commercial

21 Mr. Jason Gerhart, representative with Integrity Federal Services, was present to address the Board.  
22 Ms. Beaulieu provided an overview of her staff report noting that the applicant's request was to  
23 allow a 100' section of the required landscape buffer to remain unscreened. Ms. Beaulieu explained  
24 that this portion of the required buffer was located along a proposed stormwater management feature  
25 and utility easement and that other County regulations prohibit the location of landscaping within  
26 stormwater management and easement areas.

27 Mr. Gerhart explained the nature of the request to the Board, noting that a proposed stormwater  
28 management (SWM) facility and a utility easement existed in the subject location. Mr. Gerhart  
29 explained that the subject location was ideal for SWM due to the natural topography of the property.  
30 Mr. Gerhart clarified that in addition to the requested 100' section in the landscape buffer that there  
31 would also be another unscreened section for a proposed access easement that would be platted as  
32 part of the division of the property to allow for future connectivity. Mr. Gerhart stated that they  
33 would still provide the total number of trees and shrubs (as calculated for the full property line);  
34 however, the planting would not be installed the full length of the property line but would be  
35 condensed along the remaining property line that excluded the subject SWM area and proposed  
36 access easement area.

37 Mr. Quynn opened the public hearing. No members of the public provided testimony. Mr. Quynn  
38 closed the public hearing.

39 Mr. Guier moved to approve the variance with the following conditions:

40 1. That the applicant be bound by their testimony.

1 Mr. Quynn called into question the acreage of the property. Ms. Beaulieu clarified that the request  
2 applied to the acreage of the proposed gas station after the proposed subdivision, but that the property  
3 had not yet been divided; therefore, the legal property description had been listed on the agenda.

4 Mr. McKinney suggested a friendly amendment to note the request was subject to the acreage  
5 specific to the proposed gas station lot. Mr. Guier accepted the friendly amendment.

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

7 Ms. Beaulieu stated that the applicant for Item #7 had joined the ZOOM meeting.

8 **AGENDA ITEM #7 FILE #: 22-15-ZV**

9 Request: Variance from Appendix A to reduce the front setback from 40' to 3'; the side  
10 setback from 15' to 3'; and the rear setback from 50' to 3' for an 8' tall block and  
11 stone fence/wall to be constructed along the eastern property line.

12 Owner: Kanette Petry

13 Applicant: John Petry

14 Parcel Info: French Road Minor Subdivision, Lot 4,

15 245 Summerfield Way, Shenandoah Junction, WV

16 Parcel ID: 09002000110004; Size: 5 ac; Zoning District: Rural

17 Ms. Kanette Petry, property owner, was present via ZOOM to address the Board. Ms. Beaulieu  
18 provided an overview of her staff report and clarified that the proposed wall would be erected along  
19 the eastern property line only and that it would be located approximately 3' from three property  
20 lines. Ms. Petry explained the nature of the request to the Board, noting that they were requesting a  
21 taller fence/wall in order to screen their property from the neighbor's property.

22 Mr. Quynn opened the public hearing. No members of the public provided testimony. Mr. Quynn  
23 closed the public hearing.

24 Mr. McKinney moved to approve the variance with the following conditions:

25 1. That the applicant be bound by their testimony.

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

27 **AGENDA ITEM #3 FILE #: 22-13-ZV**

28 Request: Variance from Section 9.7 to reduce the side setback along the southern property line  
29 from 15' to 3' for a 12' long deck; and to reduce the side setback along the northern  
30 property line from 15' to 6-inches for a 12' long deck with 8' long stairs.

31 Owner: Potomac Cottage / Robert Starkey

32 Parcel Info: 1523 Knott Road, Shepherdstown, WV,

33 Parcel ID: 09011A00360000; Size: 2.3 ac; Zoning District: Rural

34 Due to a conflict of interest, Mr. Guier recused himself for this item and left the meeting room.

35 Mr. Robert Starkey, property owner, was present to address the Board. Ms. Beaulieu provided an  
36 overview of her staff report and clarified that the legal acreage of the property is 2.3 acres due to a  
37 previously approved boundary line adjustment. Ms. Beaulieu explain that the sketch included in the  
38 building permit application incorrectly listed a side setback of six feet (6') from each side property  
39 line. Ms. Beaulieu stated that the building permit sketch did not reflect the additional landing and  
40 stairway along the side of the deck. The additional landing and stairway are approximately six  
41 inches (6") from the side (northern) property line. Mr. Starkey explained the nature of the request to

1 the Board stating that the building plans for the deck included the additional landing and stairway  
2 and that he was unaware of the sketch sheet submitted with the building permit. Mr. Starkey  
3 argued that the sketch reflecting the 6' side setback was most likely submitted by the contractor.  
4 Mr. Mason Carter, Ordinance Compliance Officer, inquired if Mr. Starkey had signed the  
5 application. Mr. Starkey confirmed that he had signed the application. Mr. Carter noted that the  
6 property owner is responsible for the information provided in the building permit application.  
7 Mr. Carter clarified that he reviews the sketch submitted with the application for compliance with  
8 setbacks and that he does not review the building plans.

9 Mr. Quynn opened the public hearing.

10 Ms. Amy Bowman, adjacent property owner, spoke in opposition to the request. Ms. Bowman  
11 objected to the close proximity of the deck stating that it impacted her right to privacy and that she  
12 cannot access the side of her home for routine maintenance. Ms. Bowman provided pictures taken  
13 from the window of her rental home. Ms. Bowman also provided a letter from a real estate agent,  
14 Paula Miller, stating that the subject deck devalues Ms. Bowman's property.

15 Mr. Quynn closed the public hearing.

16 The Board discussed the possibility of continuing the item for the purpose of gathering additional  
17 information. Mr. Quynn expressed a desire for the Board to meet onsite to evaluate the site  
18 conditions. Mr. Beaulieu and Mr. Groh noted that should the majority Board members meet onsite  
19 that it would constitute a quorum in violation of the Open Meetings Act. Mr. Quynn requested case  
20 law from legal counsel to determine whether or not the Board could conduct a site visit. Mr. Groh  
21 stated he would research the subject and provide case law to the Board members.

22 Mr. Quynn inquired if the Board would like to continue the subject request until the May 26, 2022  
23 meeting for the purpose of obtaining additional information.

24 Further discussion ensued.

25 Mr. McKinney moved to go into deliberative session at 4:33 pm. Mr. Quynn called for a vote,  
26 which carried unanimously.

27 Mr. McKinney moved to come out of deliberative session at 4:57 pm. Mr. Quynn called for a vote,  
28 which carried unanimously.

29 Mr. McKinney moved to continue the request until the May 26, 2022 meeting and instructed the  
30 Ordinance Compliance Officer to obtain additional site photos. Mr. McKinney added that the  
31 property owner, Mr. Starkey, and the adjacent neighbor, Ms. Bowman, would be allotted three (3)  
32 minutes to provide a rebuttal based on new information. Mr. Corbin seconded the motion, which  
33 carried unanimously.

34 Mr. Guier returned to the meeting room and stated that he needed to leave.

### 35 **Zoning Administrator's Report**

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

37 Ms. Beaulieu provided the Board an update on the proposed text amendment regarding Solar  
38 Energy Facilities (ZTA22-01). Ms. Beaulieu noted that the next meeting was scheduled for  
39 May 26, 2022.

### 40 **Legal Update**

41 a) Discussion of the following pending lawsuit: None.

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

2 **Meeting: March 24, 2022**

3 1. Variance from Section 5.7B. Owner: Melissa and Lucas Palmer. File: 22-9-ZV.

4 2. Variance from Section 8.9A.10. Owner: BC Partners. File: 22-10-ZV.

5 Mr. Quynn was provided a copy of the draft Findings for review. Mr. Quynn stated he  
6 would return the signed findings to the office.

7 Mr. McKinney moved to adjourn the meeting at 5:02 pm. Mr. Quynn called for a vote, which carried  
8 unanimously.