

Minutes

Jefferson County Board of Zoning Appeals

1 Meeting Date: July 28, 2022
2 Meeting Location: By order of the Chair, the Board of Zoning Appeals meeting was held
3 in-person in the County Commission Meeting Room located in the
4 lower level of the Charles Town Library; and virtually via ZOOM.
5 Board Members Present: Tyler Quynn, Chair; Deirdre Catterton, Vice Chair; Leeds Corbin, Steve
6 Guier, Matthew McKinney, and Mikala Shremshock, alternate member.
7 Board Members Absent: None
8 Staff Members Present: Alexandra Beaulieu, Zoning Administrator; Stephen Groh and Nathan
9 Cochran, Assistant Prosecuting Attorneys; and Jennilee Hartman,
10 Zoning Clerk (ZOOM)

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

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

14 Mr. Quynn reviewed meeting protocol for those in attendance. Ms. Beaulieu swore in members of
15 the public who indicated they would be providing testimony.

16 **Approval of Minutes: June 23, 2022**

17 Mr. McKinney moved to approve the minutes as presented. Mr. Quynn called for a vote, which
18 carried unanimously.

19 Mr. Quynn called on the applicant for Item #4.

20 **AGENDA ITEM #4 FILE #: 22-26-ZV**

21 Request: Variance from Section 5.7B of the Zoning Ordinance (as amended 07/15/93) to reduce
22 the side setback from 15' to 5' and the rear setback from 50' to 5' for a 30' x 24'
23 accessory structure.

24 Parcel Info: Brian and Vanessa McGuigan, Owner
25 William Martin MSD, Lot 2, 59 Flat Earth Ln, Harpers Ferry, WV
26 Parcel ID: 04000300010011; Size: 1 acres; Zoning District: Rural

27 Brian and Vanessa McGuigan, property owners, were present via ZOOM to address the Board.

28 Ms. Beaulieu provided an overview of her staff report noting that the applicant provided a letter of
29 support from the adjacent property owner. Ms. Beaulieu explained that the applicants were aware
30 that no business could be operated from the structure without further processing.

31 Mr. and Ms. McGuigan explained the nature of the request to the Board stating that the front of the
32 property contained the septic reserve area and that a utility line ran along the western corner of the
33 rear property line. Additionally, Ms. McGuigan noted that the adjacent property affected by the
34 requested was owned by family member who did not object to the proposed location.

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

37 Mr. Guier moved to approve the variance with the condition that the applicant was bound by their
38 testimony. Mr. Quynn called for a vote, which carried unanimously.

39 Mr. Quynn called on the applicant for Item #3.

1 AGENDA ITEM #3 FILE #: 22-25-ZV

2 Request: Variance from Section 5.7B of the Zoning Ordinance (as amended 06/28/06) to reduce
3 the rear setback from 50' to 15' for a 20' x 30' accessory structure (detached garage).

4 Parcel Info: Chad Dinges, Owner

5 Michael & Malisa Pindell Pindell MSD, Lot 1, 87 Broadview Ct., Charles Town, WV
6 Parcel ID: 06000900040005; Size: 3 acres; Zoning District: Rural

7 Mr. Chad Dinges, property owner, was present via ZOOM to address the Board. Ms. Beaulieu
8 provided an overview of her staff report. Ms. Beaulieu clarified an inaccuracy in the application
9 regarding the platted setbacks and confirmed that the subject property line was correctly platted as a
10 front. Ms. Beaulieu added that the applicant was aware that no business could be operated from the
11 structure without further processing.

12 Mr. Dinges explained the nature of the request to the Board noting that the septic reserve area is
13 located towards the front of the property. Mr. Dinges stated that he would like the garage to be in
14 close proximity to the existing house.

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

17 Ms. Shremshock moved to approve the variance with the condition that the applicant was bound by
18 their testimony. Mr. Quynn called for a vote, which carried unanimously.

19 Mr. Quynn called on the applicant for Item #1.

20 AGENDA ITEM #1 FILE #: 22-4-CUP

21 Request: Request for a Conditional Use Permit to operate a Solar Energy Facility, as defined in
22 Article 2 of the Zoning Ordinance. Project Name: Blake Solar Project. The subject
23 request is for the 270 acre portion of the proposed 516 acre project, which is located
24 outside of the Charles Town Urban Growth Boundary, on the east side of Kabletown
25 Road. The Blake Solar Project capacity at point of interconnection is 80MWac and
26 consists of single-axis trackers, 535W modules, and 3.38MW inverters. The project
27 site contains existing high voltage power lines running through the property and a new
28 substation will be constructed to connect the solar facility with the electric grid.

29 Applicant: Horus West Virginia 1

30 Parcel Info: Thorn Hill LLC, Owner

31 Vacant parcel on east side of Kabletown Road, located .1 mile south from the
32 intersection of Charles Town Road and Kabletown Road, Charles Town, WV;
33 Parcel ID: 02001900140000; Lot Size: 171.59; Zoning District: Rural

34 Parcel Info: Peel Properties WVA LLC, Owner

35 Vacant parcels on the south side of Charles Town Road, located .2 miles east from the
36 intersection of Charles Town and Kabletown Road, Charles Town, WV.;;
37 Parcel ID: 02001900150003; Lot Size: 51.19; and, Parcel ID: 02001900150002;
38 Lot Size: 46.24; Zoning District: Rural

1 Mr. Mark Dyck with Integrity Federal Services and Mr. Braden Houston with Horus West Virginia 1
2 were present to address the Board. Ms. Beaulieu provided an overview of her staff report to the
3 Board and reviewed the required criteria for a Solar Energy Facility.

4 Mr. Dyck and Mr. Houston presented a detailed PowerPoint presentation of the proposed land use.
5 A printed version of the presentation has been included in the project file. The presentation outlined
6 the project details, which included the overall size of the project in relation to the property's
7 acreage. Mr. Dyck noted that the proposal would be replacing a previously approved subdivision
8 that had been platted for 179 single family homes. Mr. Dyck highlighted the fact that the applicant
9 would be voluntarily providing a supplemental buffer in addition to the required buffer. Mr. Dyck
10 explained that the decommissioning plan and associated bond would be in accordance with the WV
11 Department of Environmental Protection's (DEP) requirements. Mr. Dyck outlined how the
12 proposal was consistent with the County's Comprehensive Plan and reviewed how the proposal met
13 the Conditional Use Permit criteria noted in the Zoning Ordinance.

14 Mr. Quynn opened the public hearing.

15 The following members of the public provided public comment: Alan Dattelbaum, David Yates Sr.,
16 Chris Bearup, Justin and Abigail Stone, Paula Salva, Keith and Mindy DeCarlo, Alan Engelberg,
17 Philip Fanelli, Anastasya Tabb, William Kelly Baty, and Michael Hamilton. Comments included,
18 but were not limited to the following topics: environmental impacts, health impacts, effect on
19 property values, project design (setbacks, landscaping and buffers, etc.), and property maintenance.
20 Members of the public were also concerned with where the panels would be manufactured, the
21 physical location of the applicant's company headquarters, and questioned who would benefit from
22 the energy produced by the facility.

23 Mr. Quynn closed the public hearing.

24 Mr. Dyck and Mr. Houston provided a rebuttal and addressed concerns expressed by the public
25 including the following:

- 26 • Erosion and sediment control will follow NPDES permitting requirements, which is regulated
27 by the WV Department of Environmental Protection. The intent is to disturb as little ground
28 as possible so as to minimize the amount of reseeded that will be required.
- 29 • The required infrastructure from the northern portion of the project would require boring
30 under Kabletown road.
- 31 • The inverters will be shielded to reduce the negative impact of any noise/heat produced by the
32 panels.
- 33 • Acknowledging that the Ordinance does not require buffering from a Category II historic
34 structure, the applicant is willing to meet with the Stone family to discuss placement of the
35 buffer to make sure their concerns are met.
- 36 • Mr. Dyck explained that the applicant has the option to apply for a Letter of Map Amendment
37 from FEMA, which serves to correct the current FEMA mapping of the property. Mr. Dyck
38 clarified that the project's design would not physically alter the floodplain.
- 39 • It was clarified that the proposed six (6) foot fence would not include barbed wire so as to not
40 deter local wildlife.

- 1 • Mr. Houston argued that the grass planted between the panels necessitated less fertilizer than a
2 typical agricultural land use and stated that no pesticides would be used in the maintenance
3 after the grass has been established.
- 4 • Mr. Houston stated that solar energy facilities have been found to be environmentally safe and
5 encouraged the public to contact the DEP for information regarding their concerns on
6 hazardous waste and pollutants.
- 7 • With respect to the decommissioning of the project, the applicant must submit a
8 Decommissioning Plan and post a bond with the DEP to ensure that the property is returned to
9 its original condition.
- 10 • The power generated by the facility is directed to FirstEnergy. FirstEnergy determines where
11 the power supply is routed based on their customers' current needs.
- 12 • Mr. Houston explained that the company's US headquarters are physically located in Florida
13 and noted that the company is owned by a Spanish firm, whose stock is publicly traded.

14 Mr. Dyck and Mr. Houston addressed questions from the Board.

15 Ms. Catterton moved to go into deliberative session at 4:11 pm. Mr. Quynn called for a vote, which
16 carried unanimously.

17 Mr. McKinney moved to go back into regular session at 5:09 pm. Mr. Quynn called for a vote, which
18 carried unanimously.

19 The Board reviewed each of the General Standards outlined in Section 6.3A.1-8 of the Ordinance.

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

- 21 1. That the applicant be bound by their testimony, including the supplemental buffer of at least
22 150' from the existing residences.
- 23 2. The applicant shall obtain all necessary licenses and permits before moving forward with
24 the project.
- 25 3. The owner is required to consolidate the previously recorded Thorn Hill subdivision plat.

26 Mr. Quynn offered a friendly amendment to include that the proposal will comply with all State and
27 Federal regulations. Mr. McKinney accepted the friendly amendment.

28 Mr. Guier seconded the motion, which carried four (4) in support and one in opposition (1)
29 (Ms. Catterton).

30 Mr. Quynn called on the applicant for Item #2.

31 **AGENDA ITEM #2 FILE #: 22-23-ZV AND 22-24-ZV**

- 32 Request 1: Variance from Section 4.12B to increase the maximum impervious surface limit from
33 50% to 60% for the proposed Miller Station Apartment complex.
- 34 Request 2: Variance from Section 4.11C to eliminate a portion of the required landscape buffer
35 along the southern property line (approximately 475 feet) for the proposed Miller Station
36 Apartment complex.
- 37 Applicant: Keane Enterprises

1 Parcel Info: Miller Gerald A Estate, Owner
2 Miller Station Nonresidential Subdivision, Lots 1 – 8,
3 Vacant lots located on Captain Chews Trace, Charles Town, WV
4 Parcel ID: Tax District: 02, Map: 8C, Parcels: 1 – 8. Size: 10 acres (combined);
5 Zoning District: Residential-Light Industrial-Commercial

6 Mr. Todd Heck with Morris & Richie Associates was present to address the Board. Ms. Beaulieu
7 provided an overview of her staff report for Request #1. Ms. Beaulieu explained that the proposal
8 would be replacing a previously approved subdivision of eight (8) nonresidential lots. Ms. Beaulieu
9 explained the purpose of maximum impervious surface limitations.

10 Mr. Heck explained the nature of the request to the Board stating that the developer of the project
11 was interested in providing additional parking spaces, sidewalks, and a community building for the
12 apartment complex and noted that the additional amenities would result in a greater impervious area
13 calculation.

14 Mr. Quynn opened the public hearing. No members of the public provided testimony.

15 Mr. Guier moved to go into deliberative session at 5:33 pm. Mr. Quynn called for a vote, which
16 carried unanimously.

17 Mr. McKinney moved to go back into regular session 5:43 pm. Mr. Quynn called for a vote, which
18 carried unanimously.

19 Mr. Quynn closed the public hearing.

20 Mr. Guier moved to approve the variance for Request #1 with the condition that the applicant was
21 bound by their testimony. Mr. Quynn called for a vote, which carried unanimously.

22 Ms. Beaulieu provided an overview of her staff report for Request #2.

23 Mr. Heck explained the nature of the request to the Board stating that the utility company will not
24 allow landscaping to be installed within the existing power line easement. Mr. Heck added that
25 impact on the adjacent apartment complex would be minimal as the topography of the site would
26 provide a natural buffer to prevent glare from headlights, etc. Mr. Heck explained that common
27 engineering practices discourage the installation of landscaping near a stormwater management
28 pond as it can lead to erosion.

29 Mr. Quynn opened the public hearing. No members of the public provided testimony. Mr. Quynn
30 closed the public hearing.

31 Mr. McKinney moved to approve the variance for Request #2 with the condition that the applicant
32 was bound by their testimony. Mr. Quynn called for a vote, which carried unanimously.

33 **Zoning Administrator's Report**

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

35 Ms. Beaulieu noted that the next meeting was scheduled for August 25, 2022.

36 **Legal Update**

37 a. Discussion of the following pending lawsuit:

- 1 1. Jefferson County Circuit Court Case #CC-19-2022-C-81 (RE: ZTA22-01 Solar Energy
- 2 Facilities). No discussion.
- 3 b. Discussion with possible deliberative session and signing of draft Findings/Decisions.
- 4 **Meeting: June 23, 2022**
- 5 1. Variance from Section 4B.7(J)(2)(a). Owner: Michael Owens. Applicant:
- 6 SmartLink Group / Bijan Olexo File: 22-21-ZV.
- 7 2. Variance from Section 5.4B.1. Owner: Beallair Homes, LLC. File: 22-22-ZV.
- 8 Ms. Catterton was provided a copy of the draft Findings for review.
- 9 Mr. McKinney moved to adjourn the meeting at 5:47pm. Mr. Quynn called for a vote, which carried
- 10 unanimously.