

Minutes

Jefferson County Board of Zoning Appeals

- 1 Meeting Date: April 27, 2023
- 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; Matthew McKinney, Vice Chair; Steve Guier,
6 Secretary; Jacob Harris, David Wiegand, and Mikala Shremshock,
7 Alternate, were present in person.
- 8 Board Members Absent: None
- 9 Staff Members Present: Alexandra Beaulieu, Zoning Administrator; Steve Groh, Assistant
10 Prosecuting Attorney; Jennilee Hartman, Zoning Clerk; and Michelle
11 Evers, Planning Clerk.
- 12 All requests were pursuant to the Jefferson County Zoning and Land Development Ordinance.
- 13 Mr. Guier moved to call the meeting to order at 2:00 pm. Mr. Quynn called for a vote, which
14 carried unanimously.
- 15 Mr. Quynn reviewed meeting protocol for those in attendance and noted that Item #1 on the Agenda
16 would be moved to the end of the Agenda.
- 17 **Approval of Minutes: March 23, 2023**
- 18 Mr. McKinney moved to approve the minutes as presented. Mr. Quynn called for a vote, which
19 carried unanimously.
- 20 Ms. Hartman swore in members of the public who indicated they would be providing testimony.
- 21 **AGENDA ITEM #2 FILE #: 23-1-SE and 23-15-ZV**
- 22 Request 1: Request for a Special Exception Permit to allow a 100 square foot Off-Premises sign
23 for Auto Depot (File 23-1-SE).
- 24 Request 2: Variance from Section 10.5A.1 to increase the maximum size of an Off-Premises Sign
25 from 60 sq ft to 100 sq ft.; Section 10.5A.2 to allow an Off-Premise Sign to be located
26 closer than 300' to an existing sign; and Section 10.5A.5 to allow an Off-Premises
27 Sign to be located closer than 300' to an intersection on a dual highway.
28 (File 23-15-ZV).
- 29 Owner: Jackson Kiley
- 30 Parcel Info: 107 Kerns Drive, Harpers Ferry, WV 25425
31 Parcel ID: 04000900110000; Size: 2.25 acres; Zoning District: Industrial Commercial
- 32 Mr. Jackson Kiley, property owner, was present to address the Board. Ms. Beaulieu provided an
33 overview of her staff report that referenced both requests. Ms. Beaulieu explained it was the
34 applicant's intent to relocate their auto sales and service business to the subject parcel at a future
35 date. She stated that in the meantime, the applicant would like to erect a business sign on the subject
36 property to advertise their existing auto business (currently located off of Berryville Pike).
- 37 Ms. Beaulieu stated that the proposed sign is classified as an off-premises sign because it is not
38 located on the same property as the business. Ms. Beaulieu summarized the variance request from
39 Section 10.5A to increase the maximum size of the sign and reduce the required distance between
40 the proposed sign and an existing sign.
- 41 Mr. Kiley concurred with staff's summary of the two requests.

1 Mr. Quynn opened the public hearing. Mr. Geremey Engle spoke in support of the request. Mr. Quynn
2 closed the public hearing.

3 Mr. McKinney moved to approve the Special Exception Permit request #23-1-SE and zoning
4 variance request #23-15-ZV with the condition that the applicant is bound by their testimony.

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

6 **AGENDA ITEM #3 FILE #: 23-3-CUP - WITHDRAWN**

7 Request: Request for a Conditional Use Permit to operate a homebased federal firearms business
8 from a portion of a new 40' x 80' detached residential storage structure (currently under
9 construction). The use will be primarily conducted online and does not include a readily
10 available inventory. Business hours are by appointment only, with occasional customer
11 visits (1-2 per month) to complete the firearm transfer. No employees other than the
12 property owner. No signs are proposed. The proposed land use designation as listed in
13 Appendix C is Retail Sales and Service, General, as defined in Article 2.

14 Owner: Patrick Kiser

15 Parcel Info: Shirley Estates, Lot 6, 135 Breeze Knoll Way, Charles Town, WV

16 Parcel ID: 06000100010006; Parcel Size: 3 acres; Project Size: 1 acre;

17 Zoning District: Rural

18 This request had been withdrawn by the property owner.

19 **AGENDA ITEM #4 FILE #: 23-13-ZV**

20 Request: Variance from Section 9.7 to reduce the side setback along the northern property line
21 from 12' to 2' for an opaque fence varying in height from 20' to 30'.

22 Owner: Tim Williamson

23 Parcel Info: Shannondale, Section 21J, Lots 29, 30, 76, 525 Wren Lane, Harpers Ferry, WV

24 Parcel ID: 02023L00070000; Size: 1.6 acres; Zoning District: Rural

25 Mr. Tim Williamson, property owner, was present to address the Board. Ms. Beaulieu provided an
26 overview of her staff report. Ms. Beaulieu explained that the Board's role was to evaluate the
27 requested setback reduction as it relates to the proposed fence.

28 Mr. Williamson explained the nature of the request to the Board noting that the adjacent property
29 owner had erected cameras along the property line that are aimed at his backyard. Mr. Williamson
30 stated that the purpose of the fence is to protect the privacy of his property. Mr. Williamson also
31 explained that he is unable to accommodate the required 12' side setback due to the location of his
32 existing pool.

33 Mr. Quynn opened the public hearing.

34 Mr. Richard Rothman, adjacent property owner, donated his allotted three (3) minutes to Ms.
35 Gallagher.

36 Ms. Susan Gallagher, adjacent property owner, spoke in opposition to the request. Ms. Gallagher
37 provided the Board with two handouts for their consideration. A copy of the handouts have been
38 included in the project file.

39 Ms. Barbara Durant, neighboring property owner, spoke in opposition to the request (via ZOOM).

40 Mr. Christopher Stroech, attorney for Mr. Rothman and Ms. Gallagher, spoke in opposition to the
41 request.

42 Ms. Christine McCarthy, tenant of the property owner, spoke in support of the request.

1 Mr. Quynn closed the public hearing.

2 In rebuttal, Mr. Williamson acknowledged the existence of the court ordered plat and agreed to use
3 the court ordered survey markers placed by Mr. Ed Johnson (surveyor). Mr. Williamson stated that
4 he would be using a bosun chair to assist in maintaining the opposite side of the fence to avoid
5 trespassing on the adjacent parcel.

6 Mr. Groh clarified that while the Board is not evaluating the height of the fence they are permitted
7 to consider the height as it relates to the requested setback reduction.

8 Mr. McKinney moved to approve zoning variance request #23-13-ZV with the condition that the
9 applicant is bound by their testimony. Mr. Quynn offered a friendly amendment to modify the
10 setback reduction from 2' to 3'. Mr. McKinney accepted the friendly amendment. Mr. Quynn called
11 for a vote on the amended motion, which carried four in support and one opposed (Jacob Harris).

12 **AGENDA ITEM #1 FILE #: 23-1-AP**

13 Request: Appeal of the Zoning Administrator's determination that any nonconforming use that
14 may have existed on the subject parcel when the Zoning Ordinance became effective
15 has been abandoned by virtue of the recordation of the final plat for the Beacon Hill /
16 Waterside Reserve Subdivision.

17 Owner: Whisper Ridge LLC / Attn: Patricia Sanderson

18 Applicant: Panhandle Legal / Attn: Christopher Stroech, Esq.

19 Parcel Info: Waterside Reserve Subdivision, Open Space Parcel

20 Vacant parcel located off Wilt Rd., Charles Town, WV

21 Parcel ID: 02020B00S10000; Size: 6 acres; Zoning District: Rural

22 Ms. Patricia Sanderson, Mr. David Leonard and Attorney Christopher Stroech were present on
23 behalf of Whisper Ridge LLC. Ms. Beaulieu provided an overview of her staff report highlighting
24 the history of the subject parcel and the Waterside Reserve Subdivision. Ms. Beaulieu provided an
25 overview of her determination.

26 Mr. Stroech explained the history of the subject parcel and noted that the campground had not
27 ceased operation. Mr. Stroech argued that Staff's determination was based on the applicant's "intent
28 to abandon" and not the physical act of abandonment. Mr. Stroech noted that the applicant provided
29 documentation to support that the campground had been in continued use since prior to the adoption
30 of Zoning. Mr. Stroech acknowledged that while the processing of the subdivision showed the
31 intent to utilize the subject parcel as Open Space, this intent was never realized. Mr. Stroech added
32 that the subdivision covenants and restrictions were amended in 2009 to exclude the Open Space lot
33 from the subdivision and that a Quit Claim Deed in 2011 formally removed the Open Space from
34 the subdivision. Mr. Stroech pointed out that the lots that were subsequently sold within the
35 development were done so with the buyers' understanding that the subject Open Space parcel was
36 not included in the subdivision. Mr. Stroech acknowledged that there may have been a procedural
37 error in not updating/amending the prior approvals to the Community Impact Statement and the
38 Final Plats.

39 Ms. Sanderson addressed the Board's questions regarding the subdivision process and the continued
40 use of the campground.

41 Mr. Quynn opened the public hearing.

42 Jeremy Engle, Scott Beveridge, Karla Hanes, Hazel Myers, Sean Brinkmyer, Jean Cross, Carla
43 Champlain, Laurie Cook and Wade Sanderson spoke in support of the appeal and addressed the
44 continued use of the campground.

1 Mr. Quynn closed the public hearing.

2 Ms. Beaulieu provided a response to the appeal. Ms. Beaulieu stated that determinations related to
3 nonconforming uses require substantial research are not made in haste. She stated that the definition
4 of Abandoned in Article 2 of the Zoning Ordinance specifically refers to the “intent” to continue a
5 nonconforming use. Ms. Beaulieu stated that her determination was based on the fact that the
6 applicant had repeatedly represented to Staff as well as to the Planning Commission in Public
7 Hearings their intent to dedicate the subject parcel as Open Space for the residential subdivision.
8 Ms. Beaulieu stated that describing the subject parcel as open space in the Community Impact
9 Statement and delineating the parcel as Open Space on the Final Plat were proffered by the
10 developer and were the basis of her determination that *if* a campground existed in 2002, the *intent* to
11 continue operating a campground was not represented and thereby, the use was abandoned by virtue
12 of the approved residential subdivision.

13 Mr. Stroech stated that should the Board uphold Ms. Beaulieu’s determination, the applicant would
14 be required to comply with the current standards for a campground. Mr. Stroech noted that the
15 current campground requirements were onerous and that the subject parcel would not be able to
16 adhere to the requirements without numerous variances and waivers. Mr. Stroech explained that
17 should the Board overturn Ms. Beaulieu’s determination that the campground would be permitted to
18 continue as a nonconforming use. Mr. Stroech acknowledged that should the Board overturn the
19 Zoning Administrator’s decision, the applicant may have to process through the Planning
20 Commission to amend the previously approved final plat.

21 Mr. Wiegand moved to go into deliberative session at 4:22 pm. Mr. Quynn called for a vote, which
22 carried unanimously.

23 Mr. Wiegand moved to come out of deliberative session at 5:31 pm. Mr. Quynn called for a vote,
24 which carried unanimously.

25 Mr. McKinney moved to grant the appeal with the following conditions:

- 26 1. The applicants are bound by their testimony; and
- 27 2. The applicants will amend the final plat.

28 Mr. Harris seconded the motion. Mr. Quynn called for a vote which carried three (3) in support and
29 two (2) in opposition (Mr. Quynn and Mr. Wiegand).

30 **Zoning Administrator’s Report**

31 Ms. Beaulieu noted the next meeting date was May 25, 2023.

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

33 **Legal Update**

- 34 a. Discussion of the following pending lawsuit(s):

- 35 1. Jefferson County Circuit Court Case #CC-19-2022-C-81 (RE: ZTA22-01 Solar Energy
36 Facilities) Rockwell v. JCPC, JCBZA and JCCC.
- 37 2. Jefferson County Circuit Court Case #CC-19-2022-C-141 (RE: Rippon Solar Energy
38 Facility / File 22-9-CUP) Rockwell v. JCBZA.

39 No legal update was provided.

- 40 b. Discussion with possible deliberative session and signing of draft Findings/Decisions.

1 **Meeting: March 23, 2023**

2 1. Variances from Section. 5.7B. Owner: Bernard and Pamela Kershes. File 23-8-ZV.

3 2. Variance from Section 9.7. Owner: Karen and Glenn Frail. File: 23-9-ZV.

4 3. Variance from Appendix A. Owner: Travis and Emily Warner. File: 23-10-ZV.

5 4. Variance from Appendix A. Owner: Kanette Petry. File: 23-11-ZV and 23-12-ZV

6 5. Request for a Conditional Use Permit to establish a federal firearms business.

7 Owner: 375 Dorland LLC / Attn: Mark Lazar. File: 23-2-CUP.

8 Mr. Quynn was provided a copy of the draft Findings for review.

9 Mr. Wiegand moved to adjourn the meeting at 6:02 pm. Mr. Quynn called for a vote, which carried
10 unanimously.