

Minutes
Jefferson County Board of Zoning Appeals
Thursday, January 23, 2014

The Jefferson County Board of Zoning Appeals met on Thursday, January 23, 2014. The meeting was held in the Charles Library Conference Room, located at 200 East Washington Street, in the City of Charles Town, West Virginia. Unless otherwise noted, all requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.

Board members present: Tyler Quynn, Jeffrey Bannon, Matt Knott and Ted Schiltz, Alternate
Board members absent with notification: Christy Huddle, Vice President and Ed Kelly
Staff present: Jennifer M. Brockman, Acting Zoning Administrator/Director of Planning and Zoning; Stephen Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk

Mr. Bannon motioned to elect commence the meeting at 2:13 p.m. Mr. Knott seconded the motion, which carried unanimously.

Mr. Bannon elected Mr. Quynn to Chair the meeting in Ms. Huddle's absence. Mr. Knott seconded the election, which carried unanimously.

Mr. Quynn explained the proceedings of the meetings to those in attendance.

Ms. Hartman swore in the individuals who indicated they would be giving testimony.

1. Election of Officers. The Board discussed whether they should take action on this item in the absence of the other BZA members. Mr. Knott motioned to continue with the election of officers. Mr. Knott's motion died for a lack of a second. The Board deferred action on this item until the next meeting.
2. Approval of the minutes from the November 14, 2013 and December 18, 2013 meetings. The minutes were addressed after Item #8. The minutes were deferred until the next meeting.
3. Swearing in of the public intending to provide testimony. Ms. Hartman swore in the public prior to Item #1.
4. Deferred from the 10/10/13 and 11/14/13 meetings. Variance request by property owner, Susan Powell, from Section 9.7 for a reduction of the rear setback distance from 12' to 6' to allow for the construction of an 8' x 12' deck to be used for wheelchair access. Location: Shannondale, Sec 5F, Lot 40, 480 Rolling Ln., Harpers Ferry. District: Kabletown (06); Map: 6B; Parcel: 67; Zone: Rural; Size 0.25 ac; File: #ZV13-30.

Ms. Brockman reviewed her staff report with the Board. Susan Powell outlined the nature of her request to the Board and explained she owned the surrounding parcels except for those located towards the rear of her parcel. Ms. Powell stated the neighbor to the rear was on a steep rising slope. Ms. Powell added that a handicapped person would not be able to access the home unless the proposed deck was constructed. Ms. Brockman stated that she did not believe there would be a negative impact on the neighbor to the rear of the subject parcel. Mr. Quynn called for public comment. There was no public comment.

5. Variance request by applicant/owner, Vince Petti, Burr Park, LLC, from the following sections:
 - a) Section 5.6D.5: a reduction of the required parking and access drive setbacks from 10' to 0';
 - b) Section 4.11A: a reduction of the required landscape buffer between two commercial uses from 10' to 0' for two newly created parcels; and,

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- c) Section 5.6D.2: a reduction of the required setback distance between existing buildings from 25' to 4.25' on one lot and 25' to 5.25' on the other lot, for the purpose of subdividing Parcel 86 (referred to as Lot 34) to create two individual commercial lots (Lots 34A and 34B).

Location: Burr Industrial Park, Phase I: Lot 34, 71 and 73 Edmond Rd., Kearneysville.

District: Charles Town (02); Map: 1; Parcel: 86; Size: 1.53 ac; Zone: Industrial-Commercial; File: #ZV13-38.

Ms. Brockman provided a detailed accounting of the requests before the Board in addition to informing the Board of some potential concerns regarding a past violation on the site issues that were found during a site inspection. R. Michael Shepp, consultant with Appalachian Surveys, and Vince Petti, property owner, were present to address the Board. Mr. Shepp explained the nature of the request and its purpose. Mr. Shepp stated that Staff presented the merits of the request succinctly; however, wanted to address the matter of the supposed site violation. Mr. Shepp presented an email, dated January 22, 2014, that was addressed to him, written by Roger Goodwin, Director of Engineering and County Engineer, which stated that his office would consider the past site violations rectified since a Redline Revision was approved on April 24, 2009 and subsequently a lot line adjustment was processed (approved on April 30, 2009) to correct the parking setback violation (copy of email submitted for the record). Mr. Shepp further stated that he could not comment on any possible property line encroachments that may currently exist on the property since his company has not conducted a survey to create the Final Plat at this time. Mr. Schiltz asked how the potential violations impacted the variance requests. Ms. Brockman stated the potential site violations did not have an impact on the variance requests; they were only an observation of Staff during the site visit and that Staff wanted to make the Board aware of their findings. Mr. Quynn called for public comment. John Reisenweber, Executive Director of the Jefferson County Development Authority, spoke with his Executive Committee regarding this variance request(s), of which they voted unanimously to have the item brought to their full Board for review. Mr. Reisenweber stated that he was unable to bring the item to their Board's attention prior to the BZA meeting; however, wish to convey that the Executive Committee is a 1/3 of the full Board and they were unanimously in support of the applicant's request. Mr. Bannon asked Mr. Reisenweber if he believed they should defer action on the item until his Board could meet to discuss the item. Mr. Reisenweber stated he did not believe it was necessary and felt that the full Board would be in support of the request as they have been presented with similar requests in the past in which they have voted unanimously before.

6. Variance request by applicants, Susan and Woody Sechrist, from Section 4.3H to re-establish a non-conforming single family dwelling in the Industrial-Commercial zoning district, which is intended to be demolished. The applicants are proposing to demolish an existing 1,392 sq. ft. single family dwelling and replace it with a 1,950 sq. ft. single family dwelling to be situated on the same footprint as the previous residence; however, the additional square footage shall not exceed the required setbacks for that zone. Property owner: Mary K. Carper. Location: 9107 Charles Town Rd., Charles Town. District: Charles Town (02); Map: 1; Parcel: 19.2; Size .25 ac; Zone: Industrial-Commercial; File: #ZV14-01.

Mr. Woody Sechrist was present to address the Board. Ms. Brockman explained the request and briefed the Board on highlights from her staff report. Mr. Sechrist explained that his mother-in-law's physical needs require upgrades to the entire home and that it would be more cost effective, considering the age of the home, to have it demolished and rebuilt. Mr. Quynn called for public comment. There was no public comment.

Mr. Bannon motioned to go into deliberation session at 2:51 p.m. Mr. Schiltz seconded the motion, which carried unanimously.

Mr. Bannon motioned to come out of deliberative session at 3:09. Mr. Knott seconded the motion, which carried unanimously.

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4. Deferred from the 10/10/13 and 11/14/13 meeting. Variance request by property owner, Susan Powell, from Section 9.7 for a reduction of the rear setback distance from 12' to 6' to allow for the construction of an 8' x 12' deck to be used for wheelchair access.

Mr. Knott motioned to approve the above referenced request. Mr. Bannon seconded the request, which carried unanimously.

5. Variance request by applicant/owner, Vince Petti, Burr Park, LLC, from the following sections:
 - a) Section 5.6D.5: a reduction of the required parking and access drive setbacks from 10' to 0';
 - b) Section 4.11A: a reduction of the required landscape buffer between two commercial uses from 10' to 0' for two newly created parcels; and,
 - c) Section 5.6D.2: a reduction of the required setback distance between existing buildings from 25' to 4.25' on one lot and 25' to 5.25' on the other lot, for the purpose of subdividing Parcel 86 (referred to as Lot 34) to create two individual commercial lots (Lots 34A and 34B).

Mr. Bannon motioned to approve the above referenced requests (a, b and c) provided that the variances for the reduced parking and access drive setbacks, reduced landscape buffer between two commercial uses, and reduced building setbacks as described above apply only to the internal lot lines between the existing buildings; and, that the Board's approval does not have any effect on the required Planning Commission and Building Code requirements. Mr. Knott seconded the motion. Mr. Quynn suggested a friendly amendment to include a condition that the applicants are bound by their testimony. Mr. Bannon accepted the amendment. Mr. Knott concurred. The Board voted unanimously to accept the motion as amended.

6. Variance request by applicants, Susan and Woody Sechrist, from Section 4.3H to re-establish a non-conforming single family dwelling in the Industrial-Commercial zoning district, which is intended to be demolished. The applicants are proposing to demolish an existing 1,392 sq. ft. single family dwelling and replace it with a 1,950 sq. ft. single family dwelling to be situated on the same footprint as the previous residence; however, the additional square footage shall not exceed the required setbacks for that zone.

Mr. Schiltz motioned to approve the above referenced request. Mr. Knott seconded the motion, which carried unanimously.

7. Action on proposed amendments to the Board of Zoning Appeals Rules of Procedure, Effective July 21, 2011.

Ms. Brockman reviewed the amendments with the Board. Mr. Groh explained who an "Intervenor" could be in an appeal. Discussion ensued regarding the process of designating such a person. It was the consensus of the Board to postpone action on the majority of the amendments until the full Board was present to vote on the document. Ms. Brockman requested the Board consider voting on the amendment regarding the date and time of the meetings as this subject had been previously vetted with the Board.

Mr. Knott motioned to approve the amendment made to Section 4.1 so that it will read as follows,

Article IV – Meetings

Section 4.1 – Regular Meetings

The Board shall hold regular meetings on the fourth (4th) Thursday of each month at 2:00 p.m. in the ground floor meeting room of the Old Charles Town Library, at 200 East Washington Street, Charles Town, West Virginia. Prior notice shall be provided in the event that any regular meeting is held at a different location or at a different time. A regular meeting may be postponed, cancelled or rescheduled for appropriate reasons such as inclement weather or conflict with a holiday, and in such case prior notice of said postponement or cancellation shall be provided if possible.

Mr. Bannon seconded the motion, which carried unanimously. Board meetings will now be held on the fourth Thursday of each month at 2:00 p.m. and the Board has the authority to reschedule regular meetings due to inclement weather or conflict with holidays.

8. Approval of the 2014 Meeting Schedule of the Board of Zoning Appeals.

Mr. Bannon motioned to approve the schedule as drafted. Mr. Schiltz seconded the motion, which carried unanimously.

9. Director's Report. Ms. Brockman updated the Board on the following items from her staff report:

1) **Envision Jefferson 2035 Update**

See Updated Timeline Attached (revised in January 2014)

2) **Recent/Upcoming CC Actions relevant to Planning:**

- a) ZTA13-01 - Minor Amendments to the Jefferson County Zoning and Land Development Ordinance Sections 2.2, 4.10, 4A.5, 5.7, 5.8, 8.5, 8.14(new), 8.15 (new), 9.5, 10.5, 11.1, 12.2 and Appendix C (Agricultural Use and Other Amendments) (Public Hearing held 10/10/13; follow up CC workshop 11/21/13, continued to 12/05/13; CC Approved 01/02/14)

These amendments include provisions related to:

- Agricultural Accessory Units (requires BZA approval for more than one)
 - Farm Winery, Distillery, Brewery
 - Rural Reception Event Facility (some of which require BZA approval as a special exception)
 - Removed requirement for CUP for take-out and drive through restaurants and convenience stores if located within a shopping center with an approved site plan
 - Changed the setbacks for decks and related projections for townhouse lots in R-LI-C and RG zones with a lot depth of 110 linear feet or less and/or a lot area of 3,500 square feet or less to 10' if the adjacent property located to the rear of the subject lot is a dedicated easement or common area and is not a lot that includes a residence
 - Allows Zoning Administrator to administratively waive permanent off-street automobile parking and loading requirements for seasonal or temporary uses under certain circumstances
- b) ZTA12-01 - Request by the Planning Commission that the County Commission Reconsider their Motion of 10/25/12 regarding the Proposed Zoning Ordinance Text Amendment Related to New Commercial and Industrial Zoning Categories (Public Hearing held 11/21/13; follow up workshop with CC continued to 01/23/14)

- c) Zoning Map Amendment request by the Hunter Family c/o Ann Hunter to rezone property located on the north side of Old Route 9 (Route 115) approximately 700 feet southeast of Berkeley/Jefferson County Line from Rural to Residential-Light Industrial-Commercial zoning (CC Public Hearing set PH 01/23/14, 6:00 pm)

10. Legal Update

11. Signing of written decisions from prior Board of Zoning Appeals meetings. Mr. Groh provided draft Findings to the Board for the items below. The Board agreed that after Ms. Brockman had completed her review of the draft versions that Mr. Quynn had the authority to sign them when available.

- a) Continued from the 07/18/13 & 08/15/13 meetings. The variance request by applicant, John Fridley, was from Section 9.6(C) & 9.7 for a reduction of the front setback distance from 20' to 5' to construct a 20' x 22' detached garage. At the 08/15/13 meeting, the applicant indicated that the required setback from the DOH ROW was actually 12"; therefore, the applicant was advised to amend their application or reapply for a new variance. The applicant has not resubmitted and Board action is required on this outstanding request. Owner: William C. Palmer, Sr. File: ZV13-19. Meeting Date: 09/19/13
- b) Appeal of an Administrative Decision made by Jennifer Brockman, Acting Zoning Administrator, of the interpretation of Section 5.7D(3) regarding *Maximum Number of Lots Allowed* in the Rural zoning district. Appellants: Katherine B. Dunn & Sara V. Lowery, c/o Stanley Dunn. Appellant's Rep: J. Michael Cassell, Esq., Cassell & Prinz, PLLC. File: AP13-01. Meeting Date: 09/19/13
- c) Appeal of the Administrative Decision to issue Zoning Certificate #ZC13-23 for a Home Occupation Level 2 that allows a home-based asphalt repair business. The business includes a 16' trailer with seal coating & lawn equipment, to be enclosed in an outbuilding/garage, pending Building Permit approval. Appellants: R.K. & Marianne Hedrick; Wayne & Gloria Chastain; Scott & Alice Dillow; Mike & Pam Hinkle; and Chris & Christy Swisher. Owners: Robert & Donna Edwards. File: AP13-02. Meeting Date: 09/19/13
- d) Appeal of an Administrative Decision made by Jennifer Brockman, Acting Zoning Administrator, to deny the use of the St. John's Episcopal Church's facility as an overnight cold-weather shelter in the Rural Zoning District. Appellants: The Rev. Georgia DuBose; The Episcopal Diocese of WV / The Rt. Rev. W. Michie Klusmeyer & William F. Berry, VP of the JC Homeless Coalition. File: AP13-03. Meeting Date: 10/10/13
- e) Variance request by Kristen Stolipher, Consultant, on behalf of, Junipa Contento, Developer, from Section 2.2 to extend the time permitted for a Seasonal Use, which limits an event to not more than 3 consecutive days. The applicant is requesting to hold a 5-day music festival and camp out during the July/August 2014 summer season. Owner: Stiles Partnership 3 and 4. File: ZV13-33. Meeting Date: 11/14/13
- f) Request by Kristen Stolipher, Consultant, on behalf of, Junipa Contento, Developer to conduct a Seasonal Use event per Section 9.8 by hosting a 5-day musical festival and camp out, provided the previous variance request (ZV13-22) is approved, during the 2014 summer season. Owner: Stiles Partnership 3 and 4. File: ZV13-34. Meeting Date: 11/14/13

Mr. Knott motioned to adjourn the meeting at 4:17 p.m. Mr. Bannon seconded the motion, which carried unanimously.

An audio transcript of this meeting can be found at the Department of Zoning and on the Department's website at www.jeffersoncountywv.org. These minutes were prepared by Jennilee Hartman, Zoning Clerk.