

Minutes
Jefferson County Board of Zoning Appeals
Thursday, August 28, 2014

1 The Jefferson County Board of Zoning Appeals met on Thursday, August 28, 2014 at 2:00 p.m..
2 The meeting was at 200 East Washington Street, Charles Town, West Virginia, in the Conference
3 Room of the Old Charles Town Library. Unless otherwise noted, all requests are pursuant to the
4 Jefferson County Zoning and Land Development Ordinance.

5

6 Board members present: Tyler Quynn, Chair, Jeffrey Bannon, Vice Chair; Christy Huddle,
7 Matt Knott, Ted Schiltz. Staff present: Jennifer M. Brockman, Acting Zoning Administrator/Director
8 of Planning and Zoning, Steve Groh, Assistant Prosecuting Attorney, Jennilee Hartman, Zoning Clerk.

9

10 The meeting commenced at 2:00 p.m.

11

12 Mr. Quynn explained the proceedings of the meeting to those in attendance.

13

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

15

16 1. Approval of the minutes from the July 24, 2014 meeting. Ms. Huddle motioned to approve
17 the minutes. Mr. Bannon seconded the motion for discussion. Mr. Quynn requested the
18 following edits:

19

20 a) Page 2, line 7, add a d after the word decided.

21 b) Page 3, line 20, add the word sign after animated.

22 c) Page 4, correct who signed the Findings from Mr. Quynn to Mr. Bannon.

23

24 Ms. Huddle amended her motion to approve the minutes as corrected. Mr. Bannon seconded
25 the amendment. Mr. Quynn called for a vote to approve the minutes as corrected, which
26 carried unanimously.

27

28 2. Swearing in of the public intending to provide testimony. Ms. Hartman swore in the
29 individuals who indicated they would be giving testimony at the beginning of the meeting.

30

31 3. Request postponed from July 24, 2014. Variance request by Jose I. Osorio, owner,
32 from Section 4.10A to waive the requirement of a site plan to operate a monthly rodeo
33 event with food vendors and grass parking for 100 vehicles on an active farm. Location:
34 1196 Van Cleavesville Rd, Kearneysville, WV. Shepherdstown (09); Map 15; Parcel: 1.7;
35 Size: 80.15 ac; Zone: Rural; File: ZV14-11.

36 Ms. Brockman stated that the applicant had contacted the office in the morning and informed
37 them of a personal emergency necessitating a postponement. This item was postponed until
38 September 25, 2014 at 2:00 p.m.

39 4. Request postponed from July 24, 2014. Variance request by Sara Lambert, Consultant, on
40 behalf of Childs Road Church of God, owner, from Sections 4.11A.1 & 4.11J to reduce the
41 landscaping buffer from 15' to 11'6" and Section 5.7B.2 & Appendix B to reduce the side
42 setback from 50' to 11'6" to construct a 40' x 35' addition. Contact: Harold Newsome.
43 Location: 3066 South Childs Rd, Kearneysville, WV. District: Middleway (07); Map 21;
44 Parcel: 5.14; Size: 1.61 ac; Zone: Rural; File: ZV14-12.

1 Ms. Sara Lambert, South Child Road Church of God, was present to address the Board.
2 Ms. Brockman presented her staff report to the Board explaining that the original part of
3 the Church is considered a legal nonconforming use due to its location on the property.
4 Ms. Brockman further explained that in 2003, the Church utilized the Section 4.3H of the
5 Zoning Ordinance, which permitted them to expand up to 35%; provided the structure did not
6 increase said nonconformity. Ms. Lambert described the nature of the request and the rationale
7 for siting the addition in the proposed location. When questioned by the Board, Ms. Lambert
8 agreed to abide by staff's suggested conditions as outlined in the staff report. Mr. Quynn
9 called for public comment. There was no public comment.

10
11 5. Request postponed from July 24, 2014. Request for a Special Exception by owners,
12 Jacob and Tia Collis, under Section 10.5B.3 for a Rural Reception/Event Facility to host
13 farm weddings between March and October for Deerfield Farm Weddings. The applicant is
14 seeking permission to operate the venue outdoors with rental tents during the event only;
15 field parking would be provided for up to 75 cars, with an optional 10 handicap spaces in
16 existing gravel lot; each event will cease by 11:00 p.m. Location: 6732 Scrabble Rd.,
17 Shepherdstown, WV. Shepherdstown (09); Map 3; Parcel: 8; Size: 10 ac; Zone: Rural;
18 File: SE14-01.

19 Ms. Tia Collis, owner, was present to address the Board. Ms. Brockman presented her staff
20 report to the Board. Ms. Brockman explained that this would be the first Special Exception
21 application for a Rural Reception/Event Facility that the Board would be reviewing since its
22 adoption into the Ordinance. Ms. Brockman explained that Section 10.5 refers to Section 4A.3,
23 which requires staff to schedule a Compatibility Assessment Meeting (CAM) should a
24 shared access easement be made part of the application. Ms. Brockman stated that Ms. Collis'
25 access easement was for family members only, and as they had provided letters of support,
26 the CAM was waived. Ms. Collis provided a detailed description of her proposal including
27 statistics regarding average wedding costs, popular wedding themes, and neighboring
28 jurisdiction's provisions.

29
30 Mr. Quynn called for public comment. Barbara Burden addressed the Board citing the
31 following concerns: the increased traffic on Scrabble Road due to its rural design; the
32 possibility of intoxicated drivers entering onto Scrabble Road; what traffic measures would be
33 in place to ensure the required 75 car maximum is enforced; 11:00 p.m. is too late for loud
34 music in their rural area; and, how the sound/music will be controlled. Ms. Huddle added that
35 she had attended outdoor weddings in the past and regarding the traffic concerns, generally the
36 attendees do not arrive nor depart all at once. Ms. Huddle also pointed out that the subject
37 property was a 10 acre farm centrally located within a 160 acre family farm and that the
38 decibel level is to be measured from the Ms. Collis' property line. Ms. Collis followed with a
39 rebuttal arguing that the Freshwater Institute generated significantly more traffic than her
40 largest projected reception; yet, this had not become an issue to date. Ms. Collis stated that the
41 DJ hired for the reception will be required to monitor the decibel levels. Ms. Collis stated that
42 they have held private parties on the farm in the past with a DJ and there had been no
43 complaints that she was aware of. Finally, Ms. Collis explained that each client would sign a
44 contract understanding the 75 car restrictions and there would be car counters on site. The
45 conditions in the staff report were briefly discussed. Mr. Quynn closed the public hearing.

1 6. Request postponed until September 25, 2014. Variance request by Mark Dyck, Consultant,
2 on behalf of Tim Walther and Junipa Contento, Developers, from Section 2.2 to extend the
3 time permitted for a Seasonal Use, which limits an event to not more than three consecutive
4 days in each of the four solar systems. The applicant is requesting to hold a 5-day music
5 festival and camp out during the June/August 2015 summer season. Property Owner: Nancy
6 & Douglas Stolipher and Mark Stolipher. Location: 261 Berry Hill Farm Ln., Summit Point,
7 WV. District: Kabletown (06); Map: 19; Parcels: 7, 16, & 8.4; Size: 347.15 ac (total); Zoned:
8 Rural; File: ZV14-14.
9

10 See Item 7.
11

12 7. Request postponed until September 25, 2014. Request by Mark Dyck, Consultant, on behalf
13 of Tim Walther & Junipa Contento, Developers, to conduct a Seasonal Use event per
14 Section 9.8 by hosting a 5 day musical festival and camp out, provided the previous
15 variance request (ZV14-14) is approved, during the June/August 2015 summer season.
16 Property Owner: Nancy & Douglas Stolipher and Mark Stolipher. Location: 261 Berry Hill
17 Farm Ln., Summit Point, WV. District: Kabletown (06); Map: 19; Parcels: 7, 16, & 8.4;
18 Size: 347.15 ac (total); Zoned: Rural; File: ZV14-15.
19

20 Mr. Qyunn stated that the Board would not be taking any public comment on Items #6 or 7;
21 however, they wished to discuss them with legal counsel in deliberative session.
22

23 8. Variance request by Doug Propst, applicant, from Appendix A, Residential Design Standards,
24 to reduce the side setback from 12' to 6' to construct a new home. Property owner: Kenneth
25 Lowe III and Andrew Lowe. Location: Maddex Farm Subdivision, Section I, Phase III,
26 Hensel Dr., Lot 19, Shepherdstown, WV. District: Shepherdstown (09); Map 8C; Parcel: 114;
27 Size: 7,700 sq. ft.; Zoned: Residential-Light Industrial -Commercial; File: ZV14-16.
28

29 Mr. Charles Shultz, Consultant, on behalf of Mr. Doug Propst, owner, was present to address
30 the Board. Ms. Brockman presented her staff report to the Board. Mr. Shultz read the first
31 page of the variance application to the Board. Mr. Quynn opened the public hearing.

32 Mr. John Burns expressed his concern regarding the request stating he did not wish to see it
33 set a precedent for the development and requested that the variance be limited to the side for
34 which the request was sought. Mr. Quynn closed the public hearing.
35

36 9. Correspondence from Peter S. Corum, owner/applicant, on behalf of Morgan's Grove Market
37 (#S12-06) requesting the Board to clarify the available uses for the existing residential rental
38 property located at 3988 Kearneysville Pk., Shepherdstown, WV 25443, without changing the
39 Conditional Use Permit (#CP12-01). The applicant is requesting to temporarily change the use
40 of the residence to a nonresidential, private K-8 school (Morgan Academy) and seeks the
41 Board's determination on the following issues:

42 a) Under the current CUP, can Morgan Academy use the house as a nonresidential use
43 K-8 school?

44 b) If yes, can Morgan Academy use the existing well and septic for this use?

45 District: Shepherdstown (09); Map 13; Parcels: 26.1, 26.2, 26.3, 26.4; Size: 13.69 ac (combined);
46 Zoned: Rural; File: ZC14-37.

1 Ms. Brockman explained to the Board that she believed Morgan's Grove Market request for
2 clarification of the BZA's intent needed to be heard before the Board because the use of the
3 existing residential structure, which is on well and septic, as a proposed school could be
4 construed to be in conflict with C.U.P. Provision #18 which requires that "the development
5 shall be served by public water and sewer". She noted that there was no discussion at the time
6 the CUP was issued about reuse of the existing residential structures for any of the permitted
7 Conditional Uses and, in particular, whether that use could occur on the existing approved well
8 and septic system as a transitional use until the project is completed. Ms. Brockman stated that
9 while a school is a principal permitted use in the Rural zone, the CUP (CUP) restricted all
10 development to connect to public water and sewer. The proposed school would be on the
11 existing well and septic. Ms. Brockman added that the approved site plan, which went through
12 a public process, stated that the home was to be removed. Ms. Brockman felt that issuing a
13 zoning certificate for a school would be contrary to the approved site plan. Ms. Brockman
14 reiterated that a school would have been permitted except for the CUP conditions and approved
15 site plan which appeared to limit the site. Ms. Brockman felt she did not have the discretion to
16 vary from the conditions. Ms. Brockman added that should the Board approve the temporary
17 use of the school, that they require the applicant to file an amendment to the CUP to address
18 any other transitional uses while the project is being built.

19
20 Mr. Fred Blackmer was present to address the Board. Mr. Blackmer stated that a zoning
21 certificate for the school has been submitted to the Zoning Department, that no construction
22 has commenced concerning the CUP and that he believes the water and sewer restriction
23 applies to the 13-acre approved CUP development. Mr. Blackmer continued by stating what
24 he believed would be their projected construction timeframe. Mr. Blackmer also believed a
25 meeting with the Board was necessary to discuss interim uses for the site during construction.

26
27 Mr. Quynn called for public comment. Ms. Ann Spurgas provided testimony expressing her
28 dismay with the process. Ms. Spurgas stated that she felt the proposal should be required to
29 hook up to water and sewer, be required to meet the setbacks as outlined in the CUP, and that
30 the house be required to process a site plan because it was being converted to a nonresidential
31 use. Mr. Joe Spurgas stated that he felt transitional uses were not acceptable and did not
32 meet the intent of the CUP. Mr. Spurgas questioned the adequacy of the water and sewer
33 systems for the proposed 40 children school, in addition to the fact that blasting and
34 construction are occurring adjacent to the school. In closing, Mr. Spurgas stated that the
35 traffic at this location was dangerous.

36
37 Mr. Blackmer stated that the Health Department and Highway Department approvals were in
38 place and that that the building permit application was under review. Mr. Blackmer added
39 that they had paid to test everyone's well, which all proved to be fine. Mr. Quynn closed the
40 public hearing.

41
42 Ms. Huddle motioned to go into deliberative session at 3:30 p.m. Mr. Knott seconded the
43 motion, which carried unanimously. Ms. Huddle motioned to come out of deliberative
44 session at 4:30 p.m. Mr. Knott seconded the motion, which carried unanimously.

1 **Board of Zoning Appeals Rulings**

2

3 3. Request postponed from July 24, 2014. Variance request by Jose I. Osorio, owner, from
4 Section 4.10A to waive the requirement of a site plan to operate a monthly rodeo event with
5 food vendors and grass parking for 100 vehicles on an active farm.

6 This item was postponed until September 25, 2014 at 2:00 p.m.

7

8 4. Request postponed from July 24, 2014. Variance request by Sara Lambert, Consultant, on
9 behalf of Childs Road Church of God, owner, from Sections 4.11A.1 & 4.11J to reduce the
10 landscaping buffer from 15' to 11'6" and Section 5.7B.2 & Appendix B to reduce the side
11 setback from 50' to 11'6" to construct a 40' x 35' addition. Contact: Harold Newsome.

12 Ms. Huddle motioned approve the above referenced request with the follow conditions:

- 13 a) The variance is limited to the proposed 1,400 square foot addition;
- 14 b) The applicant shall retain as much of the existing treed buffer as possible and replace
15 as much of the impacted screened buffer as possible.

16 Mr. Schiltz seconded the motion, which carried unanimously.

17

18 5. Request postponed from July 24, 2014. Request for a Special Exception by owners,
19 Jacob and Tia Collis, under Section 10.5B.3 for a Rural Reception/Event Facility to host
20 farm weddings between March and October for Deerfield Farm Weddings. The applicant is
21 seeking permission to operate the venue outdoors with rental tents during the event only;
22 field parking would be provided for up to 75 cars, with an optional 10 handicap spaces in
23 existing gravel lot; each event will cease by 11:00 p.m.

24 Mr. Knott motioned to approve the above reference request with the follow conditions:

- 25 a) The use shall be limited to weddings and wedding receptions utilizing outdoor areas
26 only and/or rented tent structures.
- 27 b) Attendance at the events is limited to 75 cars per event. If attendance at any event
28 is expected to exceed 300 persons, applicants shall provide a traffic control plan.
- 29 c) The events may occur on all weekends from March through October.
- 30 d) Noise at the property line shall conform to Section 8.9A.1 of the Ordinance and
31 shall apply the Residential Growth District Standard to all adjacent lots containing
32 a residence as well as adjacent lots in the Rural District.
- 33 e) The applicant is bound by their testimony.

34 Mr. Bannon seconded the motion, which carried unanimously.

35

36 6. Request postponed until September 25, 2014. Variance request by Mark Dyck, Consultant,
37 on behalf of Tim Walther and Junipa Contento, Developers, from Section 2.2 to extend the
38 time permitted for a Seasonal Use, which limits an event to not more than three consecutive
39 days in each of the four solar systems. The applicant is requesting to hold a 5-day music
40 festival and camp out during the June/August 2015 summer season. Property Owners:
41 Nancy & Douglas Stolipher and Mark Stolipher.

42

43 This item was postponed until September 25, 2014 at 2:00 p.m.

- 1 7. Request postponed until September 25, 2014. Request by Mark Dyck, Consultant, on behalf
2 of Tim Walther & Junipa Contento, Developers, to conduct a Seasonal Use event per Section
3 9.8 by hosting a 5 day musical festival and camp out, provided the previous variance request
4 (ZV14-14) is approved, during the June/August 2015 summer season. Property Owners:
5 Nancy & Douglas Stolipher and Mark Stolipher.

6
7 This item was postponed until September 25, 2014 at 2:00 p.m.

- 8
9 8. Variance request by Doug Propst, applicant, from Appendix A, Residential Design Standards,
10 to reduce the side setback from 12' to 6' to construct a new home. Property owner:
11 Kenneth Lowe III and Andrew Lowe.

12 Mr. Schiltz motioned to approve the aforementioned variance request with the following
13 conditions:

- 14 a) This variance shall be limited to the setback along the landscape buffer edge of the
15 property.
16 b) The applicant is bound by their testimony.

17 Ms. Huddle seconded the motion, which carried unanimously.

- 18
19 9. Correspondence from Peter S. Corum, owner/applicant, on behalf of Morgan's Grove Market
20 (#S12-06) requesting the Board to clarify the available uses for the existing residential rental
21 property located at 3988 Kearneysville Pk., Shepherdstown, WV 25443, without changing the
22 Conditional Use Permit (#CP12-01). The applicant is requesting to temporarily change the
23 use of the residence to a nonresidential, private K-8 school (Morgan Academy) and seeks the
24 Board's determination on the following issues:

- 25 a) Under the current CUP, can Morgan Academy use the house as a nonresidential use
26 K-8 school?
27 b) If yes, can Morgan Academy use the existing well and septic for this use?

28

29 Mr. Bannon motioned to approve request with the following conditions:

- 30 a) Morgan Grove Academy is permitted to occupy the single family residential
31 structure, on well and septic, for the 2014 - 2015 school year, until June 15, 2015
32 or until occupancy is permitted on the first building under construction, whichever
33 comes first;
34 b) All other permits which are required shall be approved, including Division of Highways,
35 Board of Health, Building Permits;
36 c) The applicants are bound by their testimony.

37 Ms. Huddle seconded the motion, which carried unanimously.

38

- 39 10. Director's Report.

40

41 Ms. Brockman updated the Board on the following items (see packet for details):

- 42 1. The County Commission approved the Planning Commission recommended "SB 595"
43 Vested Development Time Extensions Proposal until July 1, 2017;

Minutes

Board of Zoning Appeals

August 28, 2014

Page 7 of 7

- 1 2. The County Commission approved the landowner-initiated petition to amend the County
2 Zoning Map for two parcels owned by Hoy Shingleton, Trustee for Pearl Perkins,
3 Beneficiary; and Eric and Stacy Lindberg located on the north side of Route 115
4 (Old Route 9/Charles Town Road), along the Berkeley/Jefferson County line from Rural
5 to Residential-Light Industrial-Commercial;
- 6 3. The Planning Commission held a Public Hearing on the Envision Jefferson 2035
7 Comprehensive Plan and held a special meeting to review comments and provide input on
8 8/26/14; the Planning Commission should take action on this at their next meeting 9/9/14;
- 9 4. The Planning Commission held a Public Hearing on proposed Mass Events text
10 amendment File #ZTA14-02 on August 12, 2014; follow up to occur 9/9/14 tentatively;
- 11 5. County Commission agreed to advertise the Zoning Administrator position.
12
- 13 11. Legal Update. None.
14
- 15 12. Signing of written decisions from prior Board of Zoning Appeals meetings.
16 The Board members were provided copies of the revised Rules of Procedure, which
17 incorporated the approved changes from the June 26, 2014 meeting. Mr. Quynn said he
18 would review the changes and come to the office to sign the document at a later date.
19
- 20 Ms. Huddle motioned to adjourn the meeting at 4:47 p.m. Mr. Schiltz seconded the motion, which
21 carried unanimously.
22
- 23 An audio transcript of this meeting can be found at the Department of Zoning and on the Department's
24 website at www.jeffersoncountywv.org. These minutes were prepared by Jennilee Hartman,
25 Zoning Clerk.