

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

1 The Jefferson County Board of Zoning Appeals met on Thursday, October 23, 2014 at 2:00 p.m.
2 The meeting was held in the Maintenance Department Conference Room located at 128 Industrial
3 Boulevard in Kearneysville, WV. Unless otherwise noted, all requests are pursuant to the Jefferson
4 County Zoning and Land Development Ordinance.

5

6 Board members present: Tyler Quynn, Chair, Jeffrey Bannon, Vice Chair; Christy Huddle,
7 Ted Schiltz, Matt Knott. 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 Ms. Huddle motioned to commence the meeting at 2:03 p.m. Mr. Bannon seconded the motion, which
11 carried unanimously.

12

13 1. Approval of the minutes from the September 25, 2014 and October 2, 2014 meetings.

14 Mr. Bannon motioned to approve the September 25, 2014 minutes. Ms. Huddle seconded the
15 motion. The following edits were suggested:

16

17 Page 5, line 34, change *Mr.* to *Ms.* Brockman.

18 Page 7, line 27, remove the name ~~Doug Rockwell~~; move it to the end of the same paragraph
19 and add the sentence, "*Doug Rockwell also spoke in opposition to the request.*"

20

21 Mr. Quynn called for a vote to approve the minutes as corrected, which carried unanimously.

22

23 Ms. Huddle motioned to approve the October 2, 2014 minutes. Mr. Bannon seconded the
24 motion, which carried unanimously.

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26 Mr. Quynn listed the items that were on the agenda noting that he did not think it was appropriate
27 for the Board to address Item #5 and that it was an inappropriate duty at this time. Mr. Quynn
28 stated the Board would hear Item #3.

29

30 2. Swearing in of members of the public intending to provide testimony. Ms. Hartman swore in
31 the individuals who indicated they would be giving testimony.

32

33 3. Request postponed from September 25, 2014. Appeal by Appellant William Neufeld of the
34 Acting Zoning Administrator's decision that the Appellant's 15' right-of-way adjoining the
35 Stonebrook Subdivision is not a road, which would require a front yard setback.

36

37 Ms. Brockman directed the Board to an aerial photo within the staff report that displayed the
38 entire Stonebrook Subdivision and the 15' right-of-way in question. Ms. Brockman stated
39 that the access was shown for the exclusive use of the Appellant, as noted on the Stonebrook
40 Subdivision final plat (see PC file #87-23). Ms. Brockman explained that she was asked to
41 make a determination regarding what building setback should apply along the rear of lots on the
42 western edge of the Stonebrook Subdivision when a building permit is required. Ms. Brockman
43 explained that she determined the private driveway inside of the 15' right-of-way along the
44 rear of these lots did not meet the definition of a Road and therefore, the rear yard setback
45 would apply. Consequently, the Appellant appealed Ms. Brockman's determination that the
46 15' right-of-way was not a Road, which is defined as, "A prepared surface within a right-of-way
47 which is intended for vehicular use. Road does not include shoulders." Ms. Brockman argued

1 the 15' right-of-way, which contained a gravel single lane driveway, did not meet the
2 definition of road because it was a driveway that served one home, it was one lane, it did not
3 have a prepared surface in the traditional sense of the word, and it was not open to the general
4 driving public. Therefore, this driveway would not trigger the need for a front yard setback.
5 Ms. Brockman pointed out that the access was platted over the lots in the Stonebrook
6 Subdivision. Ms. Brockman stated that setbacks are measured from the edge of access
7 easement. Ms. Brockman answered questions from Mr. Groh and the Board.

8
9 Mr. William Neufeld, appellant, and Mr. Michael Scales, attorney representing Mr. Neufeld,
10 presented the request to the Board. Mr. Scales referred to the permit history of the lots that abut
11 the 15' right-of-way by arguing that since 2000, a previous Zoning Administrator determined
12 that a front setback applied. Mr. Scales explained that the definitions, the application, and the
13 location had not changed since the previous determination had been made and therefore, the
14 determination should remain consistent, as this is the same determination that Mr. Neufeld and
15 the abutting lot owners had relied on since that time. Mr. Scales further argued that when a
16 zoning variance for a setback reduction for a pool was heard by the Board in 2001, they
17 concurred with the determination that it was a front by acting on the request and granting the
18 reduction. Mr. Bannon asked why Mr. Neufeld was arguing this determination. Mr. Neufeld
19 responded by stating he did not want his sole access to be diminished in some way by not being
20 considered a road, that he wanted consistency in the determination being made, and that he had a
21 concern for where the pool fence would be placed should it be permitted closer than the required
22 front setback. Mr. Neufeld explained that a fence along the 15' right-of-way would create a
23 hindrance when plowing the snow from his driveway. Mr. Groh clarified that a 6' privacy fence
24 could be placed along the property line without a building permit.

25
26 Mr. Quynn opened the public hearing. Ms. Rachael Sharp and Mr. Matt Steele, owners of lot 14,
27 spoke in opposition to the appeal. Ms. Sharp provided a survey of her property, which depicted a
28 portion of Mr. Neufeld's gravel driveway crossing over onto her property outside of the platted
29 15' right-of-way. Ms. Crystal Hahn spoke in opposition to the appeal explaining that reversal
30 of the determination would present a hardship to the lot owners along the 15' right-of-way. It
31 was stated that Mr. Neufeld allegedly pays homeowners association dues to the Stonebrook
32 Subdivision because he is permitted to use a platted 40' right-of-way within the development;
33 however, he continues to use the 15' right-of-way for his exclusive use.

34
35 Ms. Brockman reiterated that the approval of a variance does not set precedent. Ms. Brockman
36 also pointed out that the other permit applications in the packet provided by Mr. Scales indicate
37 various setbacks greater than 40'; however, this does not prove that it was required.

38
39 Mr. Neufeld addressed the comments regarding the shifted driveway. Mr. Neufeld reiterated his
40 concern regarding 15' right-of-way being relabeled over time. Mr. Neufeld explained that he had
41 exclusive rights to use the entire access; however, each lot owner could only traverse their own lot
42 and not the entire access without first getting permission from all the lot owners along the access.

1 4. Applicant has withdrawn the request. Request postponed from September 25, 2014. Request by
2 Harold Barlow, owner, from Section 8.2 to reduce the 75' distance requirement to 20' for Barn #1
3 and 33' for Barn #2 to accommodate a proposed minor subdivision. Location: 779 Persimmon Ln,
4 Shepherdstown, WV. District: Shepherdstown (09); Map: 15; Parcels: 10; Size: 5 ac; Zoned: Rural;
5 File: ZV14-17.

6

7 This item was withdrawn by the applicant.

8

9 5. Request for clarification by Christopher P. Stroeck, Esq., Attorney with Arnold & Bailey,
10 regarding the BZA approval of the seasonal use permit for the All Good Music Festival (ZV14-15).
11 The applicant is seeking clarification on the following:

12 a) Is the event approved for a 72-hour time period or for three (3) distinct days of the week?

13 b) Does the event begin when the site gates open or when the music begins/main
14 concert and vendor area opens to the public?

15

16 Mr. Quynn stated that this was not an appropriate duty for the Board to address at this time.

17 Mr. Bannon disagreed with Mr. Quynn's statement and motioned to hear the applicant's request
18 for clarification. Mr. Knott seconded the motion, which carried three in support and two in
19 opposition (Mr. Quynn and Ms. Huddle). Mr. Quynn explained the purpose of his statement.

20 Mr. Groh stated there was no provision in the ordinance to hear the request. Ms. Huddle asked
21 if the application would be subject to legal challenge if the Board heard the request. Mr. Groh
22 suggested they discuss the issue in deliberative session. Mr. Bannon and Mr. Knott stated they
23 had misunderstood Mr. Quynn's intent.

24

25 Ms. Huddle motioned to go into deliberative session to discuss all items on the agenda at 3:04 p.m.

26 Mr. Knott seconded the motion, which carried unanimously. Ms. Huddle motioned to come out of
27 deliberative session at 4:14 p.m. Mr. Bannon seconded the motion, which carried unanimously.

28

29 **Board of Zoning Appeals Rulings**

30

31 3. Request postponed from September 25, 2014. Appeal by Appellant William Neufeld of the
32 Acting Zoning Administrator's decision that the Appellant's 15' right-of-way adjoining the
33 Stonebrook Subdivision is not a road, which would require a front yard setback.

34

35 Ms. Huddle motioned to deny the appeal and find that the Board agrees with the action of the
36 Acting Zoning Administrator. Mr. Bannon seconded the motion, which carried unanimously.

37

38 4. Applicant has withdrawn the request. Request postponed from September 25, 2014. Request
39 by Harold Barlow, owner, from Section 8.2 to reduce the 75' distance requirement to 20' for
40 Barn #1 and 33' for Barn #2 to accommodate a proposed minor subdivision.

41

42 This item was withdrawn by the applicant.

- 1 5. Request for clarification by Christopher P. Stroech, Esq., Attorney with Arnold & Bailey,
2 regarding the BZA approval of the seasonal use permit for the All Good Music Festival (ZV14-15).
3 The applicant is seeking clarification on the following:
- 4 a) Is the event approved for a 72-hour time period or for three (3) distinct days of the week?
 - 5 b) Does the event begin when the site gates open or when the music begins/main
6 concert and vendor area opens to the public?
- 7
8 Mr. Quynn stated that the Board agreed that this item was not an appropriate duty for the
9 Board to address.
10
- 11 6. Discussion and possible action on the Draft Rules of Procedure, revised June 26, 2014.
12 Mr. Knott requested Sections 5.5 and 6.3 be changed to include “as determined by the Zoning
13 Administrator”. Ms. Huddle motioned to approve the Draft Rules of Procedure, revised
14 June 26, 2014 as amended. Mr. Bannon seconded the motion, which carried unanimously.
15
- 16 7. Director’s Report. Monthly Activity Report (in the packet). Ms. Brockman gave a status
17 update on the Comprehensive Plan noting a joint workshop between the County Commission
18 and the Planning Commission on October 30, 2014 and then a Public Hearing on November
19 6, 2014; the Mass Events amendments were proceeding; reminder of the Ethics Training on
20 November 5, 2014; and a reminder that the November and December meetings are held on
21 different days due to the holiday season.
22
- 23 8. Legal Update. None.
24
- 25 9. Signing of written decisions from prior Board of Zoning Appeals meetings.
- 26 a) Request postponed from July 24, 2014. Request for a Special Exception by Jacob and
27 Tia Collis, owners, under Section 10.5B.3 for a Rural Reception/Event Facility to host
28 farm weddings between March & October for Deerfield Farm Weddings. The applicant
29 is seeking permission to operate the venue outdoors with rental tents during the event
30 only; field parking would be provided for up to 75 cars, with an optional 10 handicap
31 spaces in existing gravel lot; each event will cease by 11:00 p.m. Location: 6732
32 Scrabble Rd, Shepherdstown, WV. Shepherdstown (09); Map 3; Parcel: 8; Size: 10 ac;
33 Zone: Rural; File: SE14-01. *Findings were not available for signature.*
 - 34 b) Correspondence from Peter S. Corum, owner/applicant, on behalf of Morgan’s Grove
35 Market (#S12-06) requesting the Board to clarify the available uses for the existing
36 residential rental property located at 3988 Kearneysville Pk., Shepherdstown, WV 25443,
37 without changing the Conditional Use Permit (#CP12-01). The applicant is requesting to
38 temporarily change the use of the residence to a nonresidential, private K-8 school
39 (Morgan Academy) and seeks the Board’s determination on the following issues:
40 (a) Under the current CUP, can Morgan Academy use the house as a nonresidential use
41 K-8 school? (b) If yes, can Morgan Academy use the existing well and septic for this
42 use? District: Shepherdstown (09); Map 13; Parcels: 26.1, 26.2, 26.3, 26.4; Size: 13.69 ac
43 (combined); Zoned: Rural; File: ZC14-37. *Findings were not available for signature.*
44

- 1 c) Request postponed from August 28, 2014. Variance request by Mark Dyck, Consultant,
2 on behalf of Tim Walther and Junipa Contento, Developers, from Section 2.2 to extend
3 the time permitted for a Seasonal Use, which limits an event to not more than three
4 consecutive days in each of the four solar systems. The applicant is requesting to hold a
5 5-day music festival and camp out during the June/August 2015 summer season.
6 Property Owner: Nancy & Douglas Stolipher and Mark Stolipher. Location: 261 Berry
7 Hill Farm Ln., Summit Point, WV. District: Kabletown (06); Map: 19; Parcels: 7, 16, &
8 8.4; Size: 347.15 ac (total); Zoned: Rural; File: ZV14-14. *Revisions to the Findings were*
9 *necessary. Mr. Quynn will sign the final version when available.*
- 10 d) Request postponed from August 28, 2014. Request by Mark Dyck, Consultant, on behalf
11 of Tim Walther & Junipa Contento, Developers, to conduct a Seasonal Use event per
12 Section 9.8 by hosting a 5 day musical festival and camp out, provided the previous
13 variance request (ZV14-14) is approved, during the June/August 2015 summer season.
14 Property Owner: Nancy & Douglas Stolipher and Mark Stolipher. Location: 261 Berry
15 Hill Farm Ln., Summit Point, WV. District: Kabletown (06); Map: 19; Parcels: 7, 16, &
16 8.4; Size: 347.15 ac (total); Zoned: Rural; File: ZV14-15. *Revisions to the Findings were*
17 *necessary. Mr. Quynn will sign the final version when available.*

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19 Ms. Huddle motioned to adjourn the meeting at 4:35 p.m. Mr. Schiltz seconded the motion,
20 which carried unanimously.

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