

Minutes

Jefferson County Board of Zoning Appeals
Thursday, January 19, 2012

The Jefferson County Board of Zoning Appeals met on Thursday, January 19, 2012. The meeting was held in the Charles Town Library meeting room located at 200 East Washington Street, at the side entrance on Samuel Street in Charles Town, West Virginia. Board members, Christy Huddle, Vice Chair; Tyler Quynn and Ed Kelly were present. Staff members present were: Jennifer Brockman, Director of Planning and Zoning; Steve Barney, Zoning Administrator; Steve Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk.

Jeff Bresee, Chairman, was absent with notification.

Mr. Kelly motioned to commence the meeting. Mr. Quynn seconded the motion, which carried unanimously. Ms. Huddle called the meeting to order at 3:04 p.m.

1. Election of Officers.
2. Approval of the minutes from the December 15, 2011 meeting.

Mr. Kelly motioned to approve the December 15, 2011 minutes. Mr. Quynn seconded the motion. Ms. Huddle requested the following corrections: page 1, Item 1, paragraph 2, change the semicolon to a colon; page 1, paragraph 2, last sentence, change the sentence to read, "did not appear to adversely..."; and on page 2, change the last line to add a period after the word "*barn.*" Ms. Huddle called for a vote which carried unanimously.

3. Variance request by property owner, Brandon French, from Section 9.7 of the Zoning and Land Development Ordinance for a reduction of the rear setback from 50' to 20' to allow for the placement of a 50' x 16' storage building. Property location: 47 Harrow Place, Charles Town, West Virginia. District: Charles Town (02); Map: 8-1; Parcel: 32.9; Size: 3 acres; Zoned: Rural; File: #ZV12-01.

Mr. Barney explained that there was an issue regarding posting with this property and as such the Board could not take action although the members could vote to postpone the Item. Ms. Huddle asked if there were any members of the public in attendance interested in this Item. There were no members of the public present. Mr. Quynn motioned to postpone this Item until the February 16, 2012 meeting. Mr. Kelly seconded the motion which carried unanimously.

4. Variance request by property owner, Federal Group, Inc., Kenneth F. Lowe, Jr. (President) from Section 4.11(D) 1 & 3 of the Zoning and Land Development Ordinance to utilize the existing tree line as the required landscape buffer. Property location: Clarion Hotel, 233 Lowe Drive, Shepherdstown, West Virginia. District: Shepherdstown (09); Map: 8; Parcel: 10.9; Size: 30.01 acres; Zoned: Residential Growth; File: #ZV12-02.

Tripp Lowe was present to address the Board. Mr. Lowe gave a brief history of the property. Mr. Quynn questioned if the existing tree line met the intent of the Ordinance. Mr. Barney explained the 1996 site plan required a limited amount of landscaping for the entire hotel project. In 2007 the applicant processed a small addition that required the additional landscaping buffer to be installed. Mr. Barney stated it is not entirely clear to Staff why the additional landscape buffer was required

other than a potential site plan scaling issue may have been raised. Mr. Barney pointed out that a visit to the site revealed that maintenance is lacking along the existing tree line. Ms. Huddle called for public comment. There was no public comment.

5. Variance request by property owner, Dean Stine, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 12' x 19' deck with 3' wide steps and the addition of a concrete slab under the entire deck for future a hot tub installation. Property location: Windmill Crossing Subdivision, 9 Don Quixote Drive, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 149; Size: .0758 acre; Zoned: Residential-Light Industrial-Commercial; File: #ZV12-03.

Dean Stine, owner, was present to address the Board. Mr. Stine described the nature of his request to the Board. Mr. Barney asked for clarification on the size of the requested deck. Mr. Stine explained that 19' is the actual size of the deck permitted by building code though most people fill out 20' on an application. The concrete slab request is for a future date to allow for the installation of a hot tub. Ms. Huddle called for public comment. There was no public comment.

6. Variance request by property owner, David Kimmel, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 12' x 20' deck with no steps. Property location: Windmill Crossing Subdivision, 16 Don Quixote Drive, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 115; Size: 2,000 sq. ft.; Zoned: Residential-Light Industrial-Commercial; File: #ZV12-04.

David Kimmel, owner, was present to address the Board. Mr. Kimmel described the nature of his request to the Board. Mr. Groh suggested the applicant include the addition of the concrete slab as part of the applicant's request while they are processing this request as well. Mr. Kimmel agreed. Mr. Kimmel also revised his request to reduce the size of his deck from 20' to 19' to meet building code requirements. Mr. Barney had no additional comments. Ms. Huddle called for public comment. There was no public comment.

7. Variance request by property owner, Mark M. Franz, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 12' x 20' deck with no steps. Property location: Windmill Crossing Subdivision, 25 Don Quixote Drive, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 145; Size: 2,000 sq. ft.; Zoned: Residential-Light Industrial-Commercial; File: #ZV12-05.

Dean Stine, representative of the property owner, was present to address the Board. Mr. Stine stated Mr. Franz was held up in traffic and asked for Mr. Stine to speak on his behalf. Mr. Stine described the nature of his request to the Board. Mr. Groh suggested the applicant include the addition of the concrete slab as part of the applicant's request while they are processing this request as well. Mr. Stine agreed. Mr. Stine also revised the request to reduce the size of the deck from 20' to 19' to meet building code requirements. Mr. Barney had no additional comments. Ms. Huddle called for public comment. There was no public comment.

8. Public hearing and action on the Conditional Use Permit request by Always LTD, LLC d/b/a The Bakerton Market, Wanda Mason-Ballenger, for a community Laundromat to be located in an existing structure. Property location: 834 Carter Avenue at the intersection of Rte. 30 (Carter Road) and Rte. 30/1 (Maple Avenue) in Harpers Ferry, West Virginia 25425. District: Harpers Ferry (04); Map 3A; Parcels: 23 and 26; Size: .95589 acres; Zoned: Village; File #Z09-01.

Mr. Barney briefly explained the conditional use permit application and process to the Board. Mr. Barney reviewed the staff report and discussed both the resolved and unresolved issues from the Compatibility Assessment Meeting.

Wanda Mason-Ballenger, owner, gave a presentation to the Board, providing a detailed overview of the project. Ms. Mason-Ballenger discussed the following key points:

- Described the type of machines and how much water each cycle would use and how much water each load would retain.
- Described the recirculation system she wished to purchase and how it would recycle the water.
- Regarding the concerns of water supply: there are two well sites to draw from and the owner is completely willing to put restrictions on the laundry in the event of a drought.
- WV Health Department and WV Department of Environmental Protection each have regulations that must be followed.
- Currently the water used in the store is tested regularly for contaminants.
- The old underground gas tanks previously located at the rear of the property were properly removed and inspections were performed by the West Virginia Department of Environmental Protection (documentation submitted).
- Stated her child got on the school bus that stops in front of the property and the additional traffic wouldn't be putting him in jeopardy; the drivers are trained; the buses are equipped with safety features.
- To address crime and safety she will be installing a surveillance camera.

Ms. Huddle called for public comment stating that a representative of a group may have 15 minutes to speak and an individual may have 5 minutes.

Carol Mathers representing Potomac Farms Water Company submitted a report prepared in November, 2003 by the WV Department of Health and Human Resources Bureau for Public Health. Ms. Mathers referenced facts from the report regarding the Bakerton Market. Ms. Mathers stated there was cause for concern because the application did not mention the karst topography of the area. Ms. Mathers also voiced her concern regarding the preexisting sinkhole on the property and possible contamination issues from the former tanks. Mr. Quynn asked questions regarding the number of connections, the location, depth, and gallon per minute of the wells of the Potomac Farms Water Company's system. William Larry Mathers assisted Ms. Mathers in answering Mr. Quynn's questions. Georgia Cullum, Treasurer with Potomac Farms Water Company, was concerned about the cost of the recirculation system and whether it would be inspected. Ms. Huddle referenced the applicant's previous testimony in which she stated there would be inspections.

Kathy O'Connell stated the backup well, owned by Potomac Farms Water Company, is located on her property and has not been used for 15 – 20 years. Ms. O'Connell further explained that it would take a significant amount of money in order to bring the well into compliance. Ms. O'Connell stated for the record that while she is on the Potomac Farms Water system she is not opposed to the project.

Karen Furr raised concerns regarding the safety of children getting off the bus in front of the store and the gas tanks.

Dorinda Franzen had a concern regarding the potential for further sink holes on the property.

Ms. Mason-Ballenger provided a brief rebuttal to the statements made by members of the public. A discussion with the Board ensued regarding the filled sinkhole, the removed gas tanks and remediation process and the existing wells on the property.

Mr. Kelly motioned to close the public hearing and to go into deliberative session at 4:52 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Ms. Huddle motioned to come out of deliberative session at 5:27 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

2. Variance request by property owner, Brandon French, from Section 9.7 of the Zoning and Land Development Ordinance for a reduction of the rear setback from 50' to 20' to allow for the placement of a 50' x 16' storage building.

Mr. Quynn motioned to postpone this Item until the February 16, 2012 meeting. Mr. Kelly seconded the motion which carried unanimously.

3. Variance request by property owner, Federal Group, Inc., Kenneth F. Lowe, Jr. (President) from Section 4.11(D) 1 & 3 of the Zoning and Land Development Ordinance to utilize the existing trees line as the required landscape buffer.

Mr. Quynn motioned to approve the above referenced request. Mr. Kelly seconded the request which carried unanimously.

4. Variance request by property owner, Dean Stine, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 12' x 19' deck with 3' wide steps and the addition of a concrete slab under the entire deck for future a hot tub installation.

Mr. Kelly motioned to approve the above referenced request. Mr. Quynn seconded the request which carried unanimously.

5. Variance request by property owner, David Kimmel, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 12' x 20' deck with no steps.

Mr. Kelly motioned to approve a variance request from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 12' x 19' deck with no steps and the addition of a concrete slab under the entire deck. Mr. Quynn seconded the request which carried unanimously.

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Mr. Kelly motioned to approve a variance request from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 12' x 19' deck with no steps and the addition of a concrete slab under the entire deck. Mr. Quynn seconded the request which carried unanimously.

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Mr. Quynn motioned to issue the Conditional Use Permit and noted that many of the concerns raised during the meeting were environmental and therefore not under the Board's purview and were that of the Department of Environmental Protection and the Health Department. The Board has considered the unresolved and resolved issues and the unresolved issues have been addressed and that the proposed use is compatible with the neighborhood. The Board finds the applicant bound by her testimony in this case. Mr. Kelly seconded the motion and amended the motion to include the following conditions:

1. Number of machines is limited to 5 washers and 5 dryers. Front loading machines are required.
2. Prior to issuance of a Zoning Certificate for the use, approval by the Jefferson County Health Department (or other applicable agency) for water and wastewater is required.
3. The owner shall provide documentation from the West Virginia Department of Environmental Protection regarding completion of removal of underground gasoline storage tanks.
4. The owner shall send a letter to the Jefferson County Health Department and the West Virginia Department of Environmental Protection documenting the location of the previous sinkhole.
5. The owner shall install a handicapped accessible parking space if required by the Engineering Department.
6. Prior to issuance of a Zoning Certificate for the use, the owner shall send a letter to the school district stating that traffic may increase as a result of the laundry.

Mr. Quynn seconded the amendment to the motion. Mr. Kelly motioned to amend the amended motion to include the following additional conditions:

7. Laundry will be open and unlocked only during hours when the store is open. All machines will be located within the building.
8. Bathrooms in the Bakerton Market will be available to laundry customers.

Mr. Quynn seconded the amendment to the amendment. Ms. Huddle called for a vote on the amended motion to include the aforementioned eight (8) conditions. The motion carried unanimously.

1. Election of Officer's. Postponed until the February meeting.
8. Director's Report. Ms. Brockman updated the Board on the status on the US 340 Study.
9. Legal Update. None.
10. Vote on written decisions from prior Board of Zoning Appeals meetings. None.
11. Correspondence. None.

Mr. Kelly motioned to adjourn the meeting at 5:45 p.m. Mr. Quynn 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.