

Minutes

Jefferson County Board of Zoning Appeals
Thursday, February 16, 2012

The Jefferson County Board of Zoning Appeals met on Thursday, February 16, 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, Jeff Bresee, Chairman; 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.

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

1. Postponed from the January 19, 2012 meeting. Election of Officers.

Mr. Kelly motioned to keep the Officers as seated with Mr. Bresee as Chair and Ms. Huddle as Vice Chair. Mr. Quynn seconded the motion, which carried unanimously. Mr. Bresee and Ms. Huddle accepted the positions.

2. Approval of the minutes from the January 19, 2012 meeting.

Ms. Huddle motioned to approve the minutes, however, she had a few corrections to note for the record. Mr. Quynn seconded the motion for discussion. The following corrections were requested:

- a) Page 1, Item #4, line 2, change "trees" to "tree".
- b) Page 2, paragraph 1, line 1, insert "*site plan*" before the word scaling.
- c) Page 2, Item #5, paragraph 2, third line, remove "a" before the number 19.
- d) Page 3, Item #8, third bulleted item, change "*restrict*" to "*restrictions on the...*".
- e) Page 6, seventh line, change the word "*motioned*" to "*motion*".

Mr. Bresee called for a vote which carried by 3, with one abstention due to Mr. Bresee's absence from January's meeting.

At this time Mr. Bresee announced the Board would be rearranging the items on the agenda because Mr. Groh would be unable to stay for the duration of the meeting and his presence would be necessary for the Appeal (Item #6). Mr. Quynn motioned to hear Items #6 and #7 first on the agenda. Mr. Kelly seconded the motion, which carried unanimously.

Mr. Bresee explained to the applicant of Items #6 and #7 that he may proceed with his argument and may combine the two items within his argument or may argue them individually.

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

6. Appeal by property owner, Roderick Planes, LLC, of the Zoning Administrator's decision regarding the interpretation of Condition #6, Aspen Greens Conditional Use Permit #Z02-06. Condition #6 states, "Provide a note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Old Country Club Road (Route 24) for the potential location of sidewalks and trails." Property location: Aspen Greens Subdivision, northeast intersection of Flowing Springs and Old Country

Club Roads in Charles Town, West Virginia. District: Charles Town (02); Map: 4; Parcel: 19; Size: 110 acres; Zoned: Rural; File: #AP12-01.

See Item #7 for testimony.

7. Request by property owner, Roderick Planes, LLC, to amend Condition #6, Aspen Greens Conditional Use Permit #Z02-06 regarding a 50' sidewalk/trail easement along Flowing Springs and Old Country Club Roads. Condition #6 states, "Provide a note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Old Country Club Road (Route 24) for the potential location of sidewalks and trails." Property location: Aspen Greens Subdivision, northeast intersection of Flowing Springs and Old Country Club Roads in Charles Town, West Virginia. District: Charles Town (02); Map: 4; Parcel: 19; Size: 110 acres; Zoned: Rural; File: #Z02-06.

Fred Gates, surveyor with Gates Associated Inc., addressed the Board. Mr. Gates gave a presentation to the Board, providing a detailed overview of the project. Mr. Gates referenced emails from the West Virginia Department of Highways (WVDOH) regarding approval of the proposed layout of the easement in question. Mr. Gates referenced Exhibit H as the proposed layout the WVDOH had been provided. Mr. Gates went on to reference other exhibits and discussed the use of walking areas adjacent to roadways as common practice. Ms. Huddle stated she had concerns regarding the close proximity of the walking areas to the road and the slope of the berms.

Patrick Henry, Attorney for the applicant, explained that the issue was with the word "along" within Condition #6 and how one would interpret its meaning. Mr. Henry further went on to explain that the property in question extends to the centerline of the road and therefore the engineer placed the 50' easement from the beginning of the applicant's property line *along* the required roadways.

Maurice Gladhill, owner, stated both the public and staff agree that a 50' wide easement is excessive. Mr. Gladhill also stated that what was needed was a new width that could be located on the site. Mr. Gladhill referenced the 16' dimension that is currently being proposed on Exhibit H, arguing that it seems sufficient for its intended use.

Mr. Barney gave a detailed PowerPoint presentation which addressed both Items #6 and #7 to the Board. Mr. Barney informed the Board that he had contacted the WVDOH and found out that the Department, in nearly all cases, would not allow sidewalks to be placed within their dedicated easements. Mr. Barney also mentioned that if a sidewalk were to be installed that it would have to meet ADA standards while a trail would not. Mr. Barney agreed that a 50' wide sidewalk easement seemed excessive and that recent approvals had been granted for easements as wide as 10-15', however, the land the easement is to be located on would need to be flat, not within a dedicated WVDOH area and not included in a landscaping area. Mr. Barney suggested possible conditions of approval as listed within the staff report.

Mr. Bresee called for public comment. Pat Masters stated he was not in opposition to the request with regard to the dimension of the sidewalk; however, it was imperative to him that a sidewalk be located somewhere on the property.

Ms. Huddle motioned to go into deliberative session at 4:25 p.m. Mr. Kelly seconded the motion, which carried unanimously.

Mr. Kelly motioned to come out of deliberative session at 4:33 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

6. Appeal by property owner, Roderick Planes, LLC, of the Zoning Administrator's decision regarding the interpretation of Condition #6, Aspen Greens Conditional Use Permit #Z02-06. Condition #6 states, "Provide a note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Old Country Club Road (Route 24) for the potential location of sidewalks and trails."

Ms. Huddle motioned to deny the aforementioned appeal and deferred to the Zoning Administrator's interpretation. Mr. Kelly seconded the motion, which carried unanimously.

7. Request by property owner, Roderick Planes, LLC, to amend Condition #6, Aspen Greens Conditional Use Permit #Z02-06 regarding a 50' sidewalk/trail easement along Flowing Springs and Old Country Club Roads. Condition #6 states, "Provide a note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Old Country Club Road (Route 24) for the potential location of sidewalks and trails."

Ms. Huddle motioned to modify the existing conditional use permit to add the following condition, "Revise the plat to show two points of pedestrian and vehicular access that would allow future connections between Aspen Greens Subdivision and the property located to the north of the subdivision." (Possible locations would be near the intersection of Ladythumb Circle and Scented Spruce Way and also Rushpink Circle and Springbeauty Lane.) Ms. Huddle continued by stating that condition #6 of the existing conditional use permit be provided as follows, "A note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Country Club (Route 24) starting at the centerline of the road for the potential location of sidewalks and trails." Mr. Barney stated for the record that the motion on the table satisfied Staff's concern with the Applicant's proposed design in meeting the intent of the original Conditional Use Permit Condition. Mr. Kelly seconded the motion, which carried unanimously.

3. Postponed from the January 19, 2012 meeting. 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'x16' 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.

The applicant was not present to address this Item. The Board proceeded to Item #4.

4. Variance request by property owner, James E. G. Grantham, from Section 9.7 of the Zoning and Land Development Ordinance for a reduction of the front setback distance from 20' to 1' to allow for the construction of a 10' x 20' living space and a 20' x 24-30' garage. Property location:

98 King Street, Middleway, West Virginia 25430. District: Middleway (07); Map: 22B; Parcel: 25; Size: 0.362 acres; Zoned: Village; File: #ZV12-07.

James Grantham, applicant, presented his request to the Board. Mr. Grantham stated he has an application pending with the West Virginia Department of Highways for an entrance permit. Mr. Bresee called for public comment. There was no public comment.

5. Variance request by property owners, Mark and Jessica Howard, from Section 8.2 of the Zoning and Land Development Ordinance for a setback distance reduction from 75' to 58' to allow for the replacement of an existing 30' x 36' barn that will be constructed on the same footprint as the original structure. Property location: Wide Horizon Subdivision, 541 Hillcrest Drive, Kearneysville, West Virginia 25430. District: Middleway (07); Map: 13; Parcel(s): 136 & 137; Size: 1.821 acres; Zoned: Rural; File: #ZV12-08.

Jessica Howard, applicant, presented her request to the Board. Mr. Bresee called for public comment. There was no public comment.

Ms. Huddle motioned to go back into deliberative session at 4:48 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Ms. Huddle motioned to come out of deliberative session at 5:00 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

3. Postponed from the January 19, 2012 meeting. 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 deny the above referenced request noting for the record that the property is 3 acres in size and appears to have enough room to place a building within regular setbacks. Mr. Kelly seconded the motion, which carried unanimously.

4. Variance request by property owner, James E. G. Grantham, from Section 9.7 of the Zoning and Land Development Ordinance for a reduction of the front setback distance from 20' to 1' to allow for the construction of a 10' x 20' living space and a 20' x 24-30' garage.

Mr. Quynn motioned to approve the above referenced request. Ms. Huddle seconded the motion, which carried unanimously.

5. Variance request by property owners, Mark and Jessica Howard, from Section 8.2 of the Zoning and Land Development Ordinance for a setback distance reduction from 75' to 58' to allow for the replacement of an existing 30' x 36' barn that will be constructed on the same footprint as the original structure.

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

8. Director's Report. Mr. Barney updated the Board on the proposed new commercial zoning districts, stating there are currently 8 districts being proposed. Mr. Barney also mentioned the joint meeting between the County Commission and the Planning Commission regarding the US 340 Plan on March 8, 2012.
9. Legal Update. None.
10. Vote on written decisions from prior Board of Zoning Appeals meetings.
 - a. 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. Heard on January 19, 2012. Ms. Huddle, acting as Vice Chair of the January meeting, signed the Findings.
11. Correspondence. None.

Mr. Kelly motioned to adjourn the meeting at 5:13 p.m. Ms. Huddle 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.