

Minutes
Jefferson County Board of Zoning Appeals
Thursday, March 15, 2012

The Jefferson County Board of Zoning Appeals met on Thursday, March 15, 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: Steve Barney, Zoning Administrator; Steve Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk.

Ms. Huddle motioned to commence the meeting. Mr. Quynn seconded the motion, which carried unanimously. Mr. Bresee called the meeting to order at 3:03 p.m.

1. Approval of the minutes from the February 16, 2012 meeting.

Ms. Huddle motioned to approve the minutes. Mr. Kelly seconded the motion. Mr. Quynn suggested the following corrections:

- a) Page 1, Item #2, line 2, insert “*she*” after the word “*however*”.
- b) Page 1, Item #2, line 9, change sentence so that it reads, “*Mr. Bresee called for a vote which carried by 3, with one...*”.

Mr. Bresee called for a vote which carried unanimously.

2. Swearing in public.
3. Variance request by property owners, Elaina & Reuben McFadden, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20’ to 15’ to allow for a 5’ expansion of the existing deck. Property location: Windmill Crossing Subdivision, 44 Monte Carlo Way, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 60; Size: 2,000 sq. ft.; Zoned: Residential-Light Industrial-Commercial; File: #ZV12-09.

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

4. Variance request by property owners, Frank and Tammy Spiker, from Section 9.7 of the Zoning and Land Development Ordinance, for a reduction of the side setback distance from 12’ to 5’ to allow for the expansion of the existing residence. Property location: 7678 Leetown Road, Kearneysville, West Virginia. District: Middleway (07); Map: 22; Parcel: 15; Zoned: Rural; File: #ZV12-10.

Tammy Spiker, applicant, represented the request. Ms. Spiker stated the original plan was to have the addition to be in line with the existing home, however, due to a large rock that extended underneath the home the addition had to be placed a few feet back. The applicant explained they had not thought about the rear corner of the building going into the side setback. Mr. Quynn questioned how the structure would be attached. Ms. Spiker explained there would be a breezeway connecting the addition to the house. Mr. Bresee asked what rooms would be in the addition.

Mr. Barney passed the building permit application around to the Board which depicted the layout of the addition which included a bathroom, office space, living room and wet bar area. Ms. Spiker indicated that she would be homeschooling her children from the addition. Ms. Spiker spoke to the accusations in the letters submitted by Ms. Joy stating that on occasion her mother would stay with them from time to time though would not be living with them on a permanent basis. Ms. Spiker stated her mother had her own residence in Middleway and would continue to reside there. Kevin Jenkins, contractor, answered the Board questions regarding the placement of the addition. Mr. Jenkins stated his crew spent 4 days attempting to remove the rock to locate the structure in the front of the property as originally planned. Mr. Jenkins explained when the rock could not be removed they had to redesign the location of the structure. Mr. Jenkins stated that even in its present location he had to pour the footers twice as thick because he could not get the proper depth. Mr. Jenkins mentioned that he strung lined the structure to the property line and got 9' 11".

Mr. Bresee called for public comment. Donna Joy spoke in opposition to the request. Ms. Joy questioned the conflict of the setback drawn on the building permit application of 15' and the actual setback that contractor states he found of 9' 11". Ms. Joy went on to state that Mr. Spiker removed the fence to build the structure and that he told her it was being built so that his mother-in-law could live with them. Ms. Joy went on to address the four criteria of a variance request. Ms. Joy explained that she believed the public health, safety and welfare were at risk because having this addition so close to their shared property line with her home being 7 feet from the property line posed a fire risk and that it would take too long for the fire department to respond in the event a fire were to occur. Ms. Joy argued that her home was built 200 years ago and that her home is grandfather to be located where it is. Ms. Spiker stated Mr. Spiker knew where the property line was and built the structure anyway therefore the hardship was created by Mr. Spiker. Ms. Joy stated that Mr. Spiker has the option to locate the structure elsewhere on the property thus he does not have a hardship. Ms. Joy stated this structure would devalue her property and cause a disruption to her. Ms. Joy continued her argument by stating the addition would hinder the sale of her property.

Ms. Huddle asked if the structure was intended to be used by the handicapped children as represented in the application. Ms. Spiker stated 4 of the 11 children were under the age of 18 and that currently 3 of them would be homeschooled in the addition. Ms. Spiker stated 10 of the children were adopted and they were working towards getting the last child adopted. Ms. Spiker stated they are not a group home as Ms. Joy is claiming. They are a family.

Mr. Barney clarified that the structure was built after issuance of a building permit and that this was not a situation in which the applicant had built prior to receiving approval by the Building Permit Department.

Mr. Kelly motioned to go into deliberative session at 4:04 p.m. Ms. Huddle seconded the motion, which carried unanimously.

Ms. Huddle motioned to come out of deliberative session at 4:20 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

3. Variance request by property owners, Elaina & Reuben McFadden, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 15' to allow for a 5' expansion of the existing deck.

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

4. Variance request by property owners, Frank and Tammy Spiker, from Section 9.7 of the Zoning and Land Development Ordinance, for a reduction of the side setback distance from 12' to 5' to allow for the expansion of the existing residence.

Mr. Quynn motioned to deny the variance request by property owners, Frank and Tammy Spiker, from Section 9.7 of the Zoning and Land Development Ordinance, for a reduction of the side setback distance from 12' to 5' to allow for the expansion of the existing residence because he believed it did not meet the four criteria necessary for approving a variance in the following ways: because the welfare of the adjacent property owner would be adversely affected; that if the variance were granted, it would not alleviate an unnecessary hardship; that the Spiker's already have reasonable use of their land because of a previously built addition; that accommodations can be made within the normal setbacks for an addition; and that granting the variance would not create substantial justice. Mr. Kelly seconded the motion, which carried unanimously.

5. Director's Report. Mr. Barney reported on the status of the upcoming ordinance amendments and the US 340 Corridor Study.
6. Legal Update. Ralph Lorenzetti, Prosecuting Attorney, requested the Board estimate the number of hours they anticipate needing legal representation for the following year.
7. Signing of written decisions from the February 16, 2012 Board of Zoning Appeals meeting:
 - a) 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. District: Charles Town (02); Map: 8-1; Parcel: 32.9; Size: 3 acres; Zoned: Rural; File: #ZV12-01.
 - b) 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." District: Charles Town (02); Map: 4; Parcel: 19; Size: 110 acres; Zoned: Rural; File: #AP12-01.
 - c) 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.” District: Charles Town (02);
Map: 4; Parcel: 19; Size: 110 acres; Zoned: Rural; File: #Z02-06.

8. 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.