

## Minutes

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

The Jefferson County Board of Zoning Appeals met on Thursday, April 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, 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; Stephanie Grove, 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 3:05 p.m.

1. Approval of the minutes from the March 15, 2012 meeting.

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

- a) Page 1, Item #4, paragraph 2, line 3, change *place* to *placed*.
- b) Page 3, Item #4, line 5, insert a comma after the word *granted* and remove the word *that* so the sentence reads, "...that if the variance were *granted*, it would not...".

Mr. Bresee called for a vote which carried unanimously.

2. Swearing in of members of the public intending to provide testimony.

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

3. Variance request by property owner, Wanderson Silva, 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. Property location: Windmill Crossing Subdivision, 21 Don Quixote Drive, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 146; Size: 2,000 sq. ft.; Zoned: Residential-Light Industrial-Commercial; Size: 2,000 square feet; File: #ZV12-11.

Wanderson Silva, applicant, presented his request to the Board. Mr. Bresee called for public comment. There was no public comment.

4. Variance request by property owners, David and Tammy Everhart, from Section 5.7(B) of the Zoning and Land Development Ordinance for a reduction of both the side setback distance from 15' to 5' and the rear setback distance from 50' to 35' to allow for the construction of a 34' x 50' storage building/garage. Property location: 193 Mason Farm Drive, Kearneysville, West Virginia. District: Middleway (07); Map: 22; Parcel: 61; Zoned: Rural; Size: 2.333 acres; File: #ZV12-12.

Larry Everhart, Father of the applicant, presented the request to the Board on behalf of David Everhart who could not attend the meeting. Mr. Bresee called for public comment. There was no public comment.

5. Variance request by property owner, Fellowship Bible Church from Section 4.10 of the Zoning and Land Development Ordinance to allow installation of a 30' x 60' modular classroom without the requirement of site plan submittal and to amend the conditions of approval for case #ZV10-18. Property location: 160 Daniel Road, Shenandoah Junction, West Virginia. District: Charles Town (02); Map: 3; Parcel: 4.5; Zoned: Rural; Size: 50.768 acres; File: #ZV12-13.

Richard Beddow, property manager, presented the request to the Board. Mr. Beddow stated the modular unit was a 36' x 60' classroom and not 30' x 60' as described in the agenda. Mr. Bresee called for public comment. There was no public comment.

6. Variance request by property owners, Patrick A. & Jennifer J. McMillan from Section 4.3(H) of the Zoning and Land Development Ordinance to re-establish a barn with nonconforming setbacks that was destroyed by fire and replace it with a 40'x 60'x 12' pole barn in approximately the same location. Property location: 1952 Meyerstown Road, Charles Town, West Virginia. District: Kabletown (06); Map: 20; Parcel: 12.2; Zoned: Rural; Size: 5 acres; File: #ZV12-14.

Jennifer McMillan, applicant, presented the request to the Board explaining that if the variance were granted the barn would be built 25' from the property line. Mr. Barney stated that had this structure not been a barn it would have complied with the setbacks established for this zone. Mr. Bresee called for public comment. There was no public comment.

7. Public hearing and action on the Conditional Use Permit application submitted by Twin Oaks Subdivision, LLC for the Morgan's Grove Market to establish "an agricultural based economic empowerment zone." Intended uses are to consist of, but are not limited to, a Food Hub, General Merchandise (retail), Professional/Business Offices, Community Amenities, and other associated uses. Property location: 3988 Kearneysville Pike, Shepherdstown, West Virginia. District: Shepherdstown (09); Map: 13; Parcels: 26.1, 26.2, 26.3, 26.4; Zoned: Rural; Size: 13.69 acres; File: #CP12-01.

Mr. Bresee outlined the public hearing process as described in Section 7.7(C) of the Jefferson County Zoning and Land Development Ordinance and then deferred to staff. Mr. Barney delivered a short summary of the conditional use process. Ms. Brockman explained there had been an active farmer's market on the property the previous summer and the applicant had sought a rezoning before the County Commission to expand their operations, however were told to apply for a conditional use permit. Ms. Grove clarified the difference between a rezoning request versus a conditional use permit. Ms. Grove informed the Board that prior to the commencement of the meeting, members of the public had objected to being recorded by anyone other than government officials; however the Open Governmental Proceedings Act (§6-9A-9) does provide for the recording of meetings, and states that the public body must accommodate that equipment. Ms. Grove stated that she believed there may be a legal authority that would govern the use of the video or pictures so they are not used for a commercial purpose without the consent of the individual. Mr. Bresee called for the applicant to present.

Fred Blackmer referenced an email he sent to the offices of the Planning and Zoning Department on April 12, 2012, to request text changes to the list of resolved issues in the Compatibility

Assessment Meeting staff report dated March 30, 2012. Mr. Blackmer explained his reason for wanting each text change.

Linda Gutsell addressed items 2, 5, 7, 8, 10, 11, 12 and 17 from the Compatibility Assessment Meeting staff report, stating these items are not compatibility issues. Ms. Gutsell submitted for the record an *Order Granting the Conditional Use Permit Application* for File No. Z06-01 in which the Board defines the term "Compatibility." Ms. Gutsell went on to explain how the above-referenced numbered items were not compatibility issues.

Mr. Blackmer read from pages 3 – 7 of a document titled, *Staff Report – Compatibility Assessment Meeting Jefferson County Department of Planning and Zoning Morgan's Grove Market Conditional Use Permit File #CP12-01*, which addressed each of the unresolved issues. A copy of this document was submitted for the record and can be found in File #CP12-01.

Peter Corum gave a PowerPoint presentation outlining the proposed development. Mr. Corum explained that the project began as a small farmer's market with the concept of a community kitchen being introduced as well. Mr. Corum described how these types of agricultural operations go hand-in-hand with healthy lifestyle-related activities. A printed copy of the presentation can be found in File #CP12-01.

Mr. Bresee called for public comment in support of the project. David Didden, Mathew Ridgeway, Bill Tchakirides who read a letter on behalf of his wife Ellen Smith, Nick Kercheval, John Reisenweber, Tracy Moody, Todd Coyle and Linda Keren spoke in support of the project. Supporters expressed interest in the project because of the positive agricultural preservation, educational and health benefits they believed would result from Morgan's Grove Market.

Mr. Kelly motioned for a break at 4:54 p.m. Ms. Huddle seconded the motion, which carried unanimously. Ms. Huddle motioned to resume the meeting at 5:03 p.m. Mr. Kelly seconded the motion, which carried unanimously.

Noted for the record, letters of support were received from Kate Didden, Dr. Mark Cuccuzzella, Judy Gubinski, Tom Conant, Sara Carley-Pena, and Sara Wimer.

Jennifer Myers of the Jefferson County Parks and Recreation Commission read a written statement for the record that the Commission was neither for nor against the application. The Commission expressed concerns regarding the establishment of substantial buffers and plans for connectivity between the proposed development and the park. A copy of this statement can be found in File #CP12-01.

Mr. Bresee called for public comment in opposition of the project. Mike Austin, Miriam Wilson, Patricia A. Kelch, Joe Spurgas, Ann Spurgas, John Amos and Austin Porter spoke in opposition to the project. Concerns were expressed regarding the addition of a school to the proposed uses, the potential loss of the historical character of the site and surrounding properties, potential pollution of Town Run, the necessity to connect to Shepherdstown water and sewer systems, the definition of *local* and other issues.

Mr. Corum and Mr. Blackmer offered a rebuttal of comments made in opposition to the project. The applicant's statements in the rebuttal included the following points:

- They had worked with the West Virginia Department of Highways (WVDOH) to have the speed limit lowered on Route 480 because of previous traffic safety concerns.
- During the farmer's market they put cones out to promote road safety.
- While unnecessary, a passing *draft* LESA score showed the site to be compatible for development.
- Road concerns will be addressed by the WVDOH
- Stormwater management is designed by engineers to be reviewed by County, State and Federal Officials.

Mr. Bresee closed the public hearing.

At 6:40 p.m. Mr. Quynn motioned to take a 5 minute break and to then go into deliberative session. Ms. Huddle seconded the motion, which carried unanimously.

Ms. Huddle motioned to come out of deliberative session at 8:22 p.m. Mr. Kelly seconded the motion, which carried unanimously.

### **Board of Zoning Appeals Rulings**

3. Variance request by property owner, Wanderson Silva, 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.

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

4. Variance request by property owners, David and Tammy Everhart, from Section 5.7(B) of the Zoning and Land Development Ordinance for a reduction of both the side setback distance from 15' to 5' and the rear setback distance from 50' to 35' to allow for the construction of a 34' x 50' storage building/garage.

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

5. Variance request by property owner, Fellowship Bible Church from Section 4.10 of the Zoning and Land Development Ordinance to allow installation of a 30' x 60' modular classroom without the requirement of site plan submittal and to amend the condition of approval for case #ZV10-18.

Mr. Quynn motioned to approve the variance request by Fellowship Bible Church from Section 4.10 of the Zoning and Land Development Ordinance to allow installation of a 36' x 60' modular classroom without the requirement of site plan and to amend the condition of approval for case

#ZV10-18 to extend the expiration date on all the modular classrooms for a period of 2 years from April 19, 2012. Mr. Quynn also added a requirement that all modular buildings have access via an accessible route meeting the standards of the Americans with Disabilities Act. Mr. Quynn stated this approval was based on the fact that the applicant had a previously approved site plan. Mr. Kelly seconded the motion, which carried unanimously.

6. Variance request by property owners, Patrick A. & Jennifer J. McMillan from Section 4.3(H) of the Zoning and Land Development Ordinance to re-establish a barn with nonconforming setbacks that was destroyed by fire and replace it with a 40'x 60'x 12' pole barn in approximately the same location.

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

7. Public hearing and action on the Conditional Use Permit application submitted by Twin Oaks Subdivision, LLC for the Morgan's Grove Market to establish "an agricultural based economic empowerment zone." Intended uses are to consist of, but are not limited to, a Food Hub, General Merchandise (retail), Professional/Business Offices, Community Amenities, and other associated uses.

Ms. Huddle motioned to issue the Conditional Use Permit for the Morgan's Grove Market with the following conditions:

1. Provide a pre- and post-blast survey within five hundred feet of the construction site prepared by a geological engineer or certified company that is agreed upon by both the Developer and the neighbors. The inspections will be limited to buildings, wells and other structures as recommended by the geological engineer. The surveys are to be paid for by the Developer.
2. The Developer will be responsible for ensuring that the blasting contractor/subcontractor has insurance for all work. Further, it will be a condition of the contract that should damage be caused offsite, including damage to wells, by onsite blasting, the contractor/subcontractor will be responsible for all damages caused by the blasting activity. Liability will be limited to those homes on which a pre-blast survey was taken; homeowners who refuse a pre-blast survey will not be covered.
3. The Developer will provide all adjacent properties and those included in the pre-blast survey 24 hours' notice for any blasting. The general blasting schedule will be provided in this notice. For blasting activities that occur on consecutive days a single notice identifying the time period shall be provided to the adjacent neighbors.
4. All contractors and subcontractors are to be insured.
5. The Town Run and the immediately adjacent area shall be buffered with native vegetation and natural materials. Recreational use of Town Run shall be prohibited, with the exception of an adjacent walking trail.
6. All signage will be low and mounted on brick or stone monuments. No pole signs or other strip mall type signage is permitted. No animated signs shall be permitted. Full cutoff lighting shall be used to facilitate "dark sky" practices.

7. The Developer shall partner with the Shepherdstown Men's Club to ensure that perpetual water testing of the Town Run before, during, and after construction is done with tests sites at Morgan's Grove Park, the Spring House (Wilson's property) and the greenhouses (Corum property).
8. Exterior lighting will meet or exceed the Illuminating Engineering Society of North America (IESNA) standards for Lighting for Exterior Environments for achieving "Full Cutoff" of light pollution above the horizontal plane with little or no light at angles typically associated with glare.
9. No new residential living quarters are permitted except for the two (2) existing single family residences.
10. The Developer will offer to have a well test performed on the Nuttall's, Belchik's and Spurgas' properties, to be done before construction begins and again after the project has been completed, not to exceed one (1) year from the date of completion of the project, at the Developer's expense.
11. Provide a traffic study in accordance with West Virginia Division of Highways (WVDOH) requirements and address all traffic study and WVDOH requirements.
12. Address risks identified in the traffic study as warranted by the WVDOH as follows:
  - a. Ensure sight distance requirements are met.
  - b. Allow for safe access and egress to the property through the construction of turning lanes.
13. A right hand turn lane will be installed if required by the WVDOH. The Developer will provide an area of right-of-way from the Developer's property to accommodate a left-turn lane, if required by the WVDOH. Both turn lanes will be paid for by the Developer.
14. No stoplight will be installed, except as required by the WVDOH.
15. No land from the Spurgas property shall be used for a turn lane, with the exception of the land that is already within the WVDOH right-of-way.
16. Parking areas adjacent to neighboring properties will be properly sloped to protect landowner from potential storm runoff. All parking areas will be in compliance with Jefferson County Subdivision Regulations. (The site plan will address storm drainage.)
17. The Developer will remove the existing sign advertising Town Run Commons.
18. The development shall be served by public water and sewer systems.
19. Drive-through restaurants and regular gas stations are prohibited.
20. The site plan for the Morgan's Grove Market development will include a ten (10) foot landscape buffer along the property line between the subject property and Morgan's Grove Park. The buffer shall have defined access points to allow potential pedestrian access from the subject property to Morgan's Grove Park. No solid fencing is required.
21. A ten (10) foot landscape buffer is required between the subject property and the Wilson property. Existing trees inside this buffer will be preserved. Construction of a temporary fence outside the drip line of the existing trees inside the buffer area during the grading of the site will be required, in order to preserve the existing trees. No solid fencing is required.
22. Business hours are limited to 6:00 a.m. to 10:00 p.m.
23. Provide a 50 foot front setback and 75 foot side setback for proposed buildings and a 35 foot side setback for parking. No parking shall be located along Route 480; parking shall be located behind any buildings along Route 480. Proposed buildings and parking are to be located between the power line and Route 480 as shown on the sketch plan submitted with the application.
24. The site plan shall show an adequate number and location of trash receptacles.
25. The applicant will install a kiosk on the site to provide historical information related to this property and the surrounding properties.

26. The maximum gross floor area is restricted to 60,000 square feet; the maximum building footprint area is 30,000 square feet. No more than 20% of the 60,000 square foot gross floor area can be designated for any one use (i.e. 12,000 square feet).
27. All signage, lighting and building design must be rural in character.
28. The following proposed uses are revised as follows:
  - The use “Hardware Store” is replaced with “Hardware Store/Garden Center”
  - The use “Medical, Dental, Optical, Health Clinic (small)” is replaced with “Family Health Clinic”
  - The use “Banking, Accounting, Insurance” is amended to add the provision “only as accessory uses”
  - The use “Other types of professional/business offices” is amended to add the provision “(small scale)”
  - The use “Public/Private Access Swimming Pool” is amended to add the condition, “The pool may not be emptied into Town Run.”
29. The current parking lot must be removed after the first building is constructed.

The conditions listed below, previously identified at the March 2, 2012 Compatibility Assessment Meeting were not included in the Conditional Use Permit as follows:

30. Improve the existing State roads to meet Jefferson County standards. *The Board finds that Jefferson County does not have road standards, and finds that the issue of road improvements is addressed by conditions for resolved issues related to West Virginia Division of Highways requirements.*
31. Provide the full scope of the project listing the type of businesses proposed. *The Board finds the proposed uses are listed within the application.*
32. Provide a timeline for the phasing of the project. *The Board finds a timeline is provide within the application.*
33. No blasting of any kind permitted on site. *The Board finds the issue of blasting to be adequately addressed by conditions for resolved issues.*
34. Concerns regarding the increased noise pollution caused by the proposed uses. *The Board finds this item unnecessary as Section 8.9 of the Jefferson County Zoning and Land Development Ordinance addresses this issue.*
35. Concerns regarding the increased danger to the children frequenting Morgan’s Grove Park. *The Board finds the proposed use does not present a hazard for children using Morgan’s Grove Park.*
36. A geological engineer shall be on site to supervise any blasting or breaking of rock. *The Board finds an onsite supervising geological engineer is not required, and finds the issue of blasting to be adequately addressed by conditions for resolved issues.*
37. Stormwater management ponds shall be lined with a synthetic liner to protect the karst topography. *The Board finds this item to be unnecessary as the West Virginia Department of Environmental Protection regulates the design of stormwater management ponds.*
38. Of the business located on the site, at least 75% must be of an agriculturally-related industry. *The Board does not agree with this requirement.*
39. Limit construction hours from Monday to Friday from 7:00 a.m. to 4:00 p.m. *The Board finds this item unnecessary as the Jefferson County Zoning and Land Development Ordinance addresses this issue.*

40. Bond the project to ensure structures and all site amenities will be removed if project does not go forward or is unsuccessful. *The Board finds this item to not be an appropriate condition.*
41. Restrict proposed buildings to a maximum of 30 feet in height. *The Board finds the maximum height restriction of 35' in the Rural zoning district to be reasonable.*

Mr. Kelly seconded the motion. Ms. Huddle requested to amend her motion to include under the conditions of approval for the CUP that all four sides of the buildings must be rural in character with proper screening of the utility equipment. Mr. Kelly agreed to the amendment. Mr. Bresee called for a vote, which carried unanimously.

8. Director's Report. Ms. Brockman informed the Board of the quarterly report that she would be submitting to the County Commission on their behalf.
9. Legal Update. Ms. Grove informed the Board of a pending lawsuit regarding a property owned by Matt Knott.
10. Signing of written decisions from prior Board of Zoning Appeals meetings.
  - a. 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. (BZA meeting date 03/15/12)  
Not available for signature.
11. Correspondence. None.

Mr. Kelly motioned to adjourn the meeting at 8:45 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](http://www.jeffersoncountywv.org). These minutes were prepared by Jennilee Hartman, Zoning Clerk.