

Minutes

Jefferson County Board of Zoning Appeals
Thursday, May 17, 2012

The Jefferson County Board of Zoning Appeals met on Thursday, May 17, 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; Stephanie Grove and Steve Groh, Assistant Prosecuting Attorneys 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 3:10 p.m.

1. Approval of the minutes from the April 19, 2012 meeting.

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

- a) Page 2, Item #7, paragraph 2, line 9, delete *due to*.
- b) Page 2, Item #7, paragraph 2, line 10, change *videotaping, the photography, filming* to *recording* and add a comma after *meetings*.
- c) Page 6, condition #16, insert a period after the word *Regulations* and capitalize the word *The*.
- d) Page 6, condition #19, rewrite the sentence to state, "*Drive-through restaurants and regular gas stations are prohibited.*"
- e) Page 6, condition #21, exchange the word *inside* with *within*.
- f) Page 6, condition #22, rewrite the sentence to state, "*Business hours are limited to 6:00 a.m. to 10:00 p.m.*"
- g) Page 7, condition #36, insert *an onsite supervising* after the word *finds*.

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 owners, Monique Gonzalez and Manuel Mercado, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 16' to allow for the construction of a 12' x 18' deck. Property location: Windmill Crossing Subdivision, 86 Don Quixote Drive, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 101; Zoned: Residential-Light Industrial-Commercial; Size: 2,000 sq. ft.; File: #ZV12-15.

The applicant was not present to represent the request. Mr. Barney provided the Board with a brief summary of the request. Mr. Bresee called for public comment. There was no public comment.

4. Variance request by property owners, James and Lindsay Gahagan, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from

20' to 16' to allow for the construction of a 12' x 20' deck. Property location: Windmill Crossing Subdivision, 37 Don Quixote Drive, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 142; Zoned: Residential-Light Industrial-Commercial; Size: 3,200 sq. ft.; File: #ZV12-16.

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

5. Variance request by property owner, Margaret Kubitschek, from Section 5.4-1 of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 17' to allow for the construction of a proposed covered porch. Property location: 75 Pathfinder Court, Shepherdstown, WV. District: Shepherdstown (09); Map: 14B; Parcel: 11; Zoned: Rural; Size: .257 acres; File: #ZV12-17.

Mark Doody, contractor for the project, spoke on behalf of the applicant and presented the request to the Board. Mr. Bresee called for public comment. There was no public comment.

5. Variance request by property owner, Barbara Devolites, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 19' to allow for the construction of a 10' x 18' deck. Property location: Windmill Crossing Subdivision, 240 Monte Carlo Way, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 17; Zoned: Residential-Light Industrial-Commercial; Size: 2,343 sq. ft.; File: #ZV12-18.

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

6. Variance request by property owner, Kevin Cox, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 12' to allow for the construction of a 12' x 19' deck with 4' bump-out for steps. Property location: Windmill Crossing Subdivision, 22 Monte Carlo Way, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 63; Zoned: Residential-Light Industrial-Commercial; Size: 3,500 sq. ft.; File: #ZV12-19.

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

7. Request by Linda M. Gutsell to reopen a hearing pursuant to Section 5.8 of the Board of Zoning Appeals (BZA) Rules of Procedure, regarding the April 19, 2012 BZA approval of a Conditional Use Permit application submitted by Twin Oaks Subdivision, LLC for the Morgan's Grove Market, File #CP12-01.

Ms. Gutsell, attorney, represented the request on behalf of her client, Twin Oaks Subdivision, LLC. Ms. Gutsell explained that while the City of Shepherdstown had both water and sewer capacity, the lines themselves did not extend to the applicant's property. She stated that the requirement to hook up to the public water and sewer lines would require the line to run over private property, which the

applicant has no control over, or the Town must exercise eminent domain, which is also a process the applicant has no control. Ms. Gutsell questioned whether installation of utility lines crossing private property was the Board's intent when Condition #18 was placed on the proposed project. Ms. Gutsell also offered that the Board may choose to reopen the public hearing because other nearby property owners may not support the Condition if they became aware that they may have to connect to public utilities once the public water and sewer lines are installed. In addition, Ms. Gutsell argued that Condition #26, which restricts the size of the buildings, may have unintended consequences. By limiting the size of all structures on the property the Board has also limited buildings intended for uses that are considered principal permitted uses within this zoning district.

Ms. Huddle questioned if the acreage was large enough to accommodate an onsite alternative system for water and sewer considering the size of the development and the karst geology. Mr. Groh stated that the property was large enough to accommodate a residential system but was unsure of the size requirements for a commercial system.

Peter Corum explained that he believed the size restrictions imposed on the project would hinder the design potential of the proposed structures.

Mr. Barney brought to the Board's attention that Condition #20 regarding the pedestrian access points within the 10 foot landscape buffer would require a variance from Section 4.11 of the Jefferson County Zoning and Land Development Ordinance because the Section requires a continuous buffer.

Mike Austin representing the Shepherdstown Community Club stated he was not opposed to reopening the public hearing.

Mr. Barney provided the Board a copy of an email submitted to the office on April 10, 2012, by Joe and Ann Spurgas which requested that the applicant provide a 2 or 3 tier natural opaque vegetative buffer at least 8' high. Mr. Barney explained that while the Board did not receive the email in the agenda packet for the April 19, 2012 meeting Mr. Spurgas made the request at the March 2, 2012 compatibility assessment meeting and during the subsequent Board of Zoning Appeals public hearing.

Ms. Huddle motioned to go into deliberative session at 3:48 p.m. Mr. Kelly seconded the motion, which carried unanimously. Staff members Jennilee Hartman and Steve Barney left the meeting room.

Ms. Huddle motioned to come out of deliberative session at 4:40 p.m. Mr. Quynn seconded the motion, which carried unanimously.

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3. Variance request by property owners, Monique Gonzalez and Manuel Mercado, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 16' to allow for the construction of a 12' x 18' deck.

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

4. Variance request by property owners, James and Lindsay Gahagan, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 16' to allow for the construction of a 12' x 20' deck.

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

5. Variance request by property owner, Margaret Kubitschek, from Section 5.4-1 of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 17' to allow for the construction of a proposed covered porch.

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

6. Variance request by property owner, Barbara Devolites, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 19' to allow for the construction of a 10' x 18' deck.

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

7. Variance request by property owner, Kevin Cox, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 12' to allow for the construction of a 12' x 19' deck with 4' bump-out for steps.

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

8. Request by Linda M. Gutsell to reopen a hearing pursuant to Section 5.8 of the Board of Zoning Appeals (BZA) Rules of Procedure, regarding the April 19, 2012 BZA approval of a Conditional Use Permit application submitted by Twin Oaks Subdivision, LLC for the Morgan's Grove Market, file #CP12-01.

Ms. Huddle motioned in consideration of the request and the statements of the applicant that the Board finds the following and concludes that the party making the request has not adequately explained why the evidence he or she seeks to present was not presented at the prior meeting. Mr. Kelly seconded the motion, which carried 3 for and 1 opposed (Mr. Quynn).

9. Director's Report. Mr. Barney informed the Board of the June Planning Commission meeting in which the Commercial Zoning Districts amendment may be voted on and then sent to the County Commission for consideration and possible action in July.

10. Legal Update. Ms. Grove informed the Board that she would be completing the draft of the Findings of Fact and Conclusions of Law for the Morgan's Grove Market Conditional Use Permit for signature.
11. 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) Signed.
 - b. 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. (BZA meeting date 04/19/12). Not available for signature.
 - c. 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. (BZA meeting date 02/16/12) Signed.
12. Correspondence. None.

Ms. Huddle motioned to adjourn the meeting at 4:56 p.m. Mr. Kelly seconded the motion, which carried unanimously.

An audio recording 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.