

## Minutes

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

The Jefferson County Board of Zoning Appeals met on Thursday, July 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. Unless otherwise noted, all requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.

Board members Jeff Bresee, Chairman; Tyler Quynn and Ed Kelly were present. Staff members present were: Jennifer Brockman, Director of Planning and Zoning; Steve Barney, Zoning Administrator; Seth Rivard, County Planner; Stephen Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk.

Christy Huddle, Vice Chair was absent with notification.

Mr. Kelly 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.

Mr. Bresee requested that the Board take a moment to pay respect to Edward Burns who passed away on Monday, July 16, 2012. Mr. Burns was an active member of the community who served on the Jefferson County Planning Commission.

Mr. Bresee stated that the Board would be listening to the testimony of the applicants and any public comments for Items #3 and #4 and would then deliberate on these items, which would require everyone to vacate the room. Afterwards the Board would vote on Items #3 and #4 and then continue with the rest of the agenda. Mr. Bresee apologized for any inconvenience this may cause for the public.

1. Approval of the minutes from the June 21, 2012 meeting.

Mr. Quynn motioned to approve the minutes. Mr. Kelly seconded the motion, 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, Donald and Tina Lemon, from Section 5.4(B) for a reduction of the rear setback from 20' to 12' to allow for the construction of a 16' x 21' 10" deck with stairs. Property location: Locust Hill Subdivision (Lot 373), 88 Avenel Court, Charles Town, WV. District: Charles Town (02); Map: 13A; Parcel: 464; Size: .325 acres; Zoned: Rural; File: #ZV12-23.

Mr. Lemon, applicant, presented his request to the Board. Mr. Kelly asked what was in the rear of the applicant's property. Mr. Lemon stated there was a vacant, marshy lot towards the rear of his property. Mr. Barney confirmed the applicant's statement regarding the vacant lot and called attention to the diagram in the staff report depicting the unusually long front yard setback for the cul-de-sac lots. Mr. Bresee called for public comment. There was no public comment.

4. Variance request by Mike Wiley on behalf of property owner, Beallair Homes, LLC, from Section 5.4(B) for a reduction of the rear setback distance from 20' to 17' to allow for the construction of a 12' x 16' screened porch. Property location: Beallair Subdivision, Lot 27, Lewis Washington Drive, Charles Town, WV. District: Harpers Ferry (04); Map: 10A; Parcel: 27; Size: 0.229 acres; Zoned: Residential Growth; File: #ZV12-24.

Mr. Wiley, Vice President of Beallair Homes, LLC, presented his request to the Board, explaining that the potential home buyer has requested this particular house model with the screened porch. Mr. Wiley explained that if the buyer cannot acquire the home design they are seeking Beallair Homes will lose the contract on the home. Mr. Kelly asked what was in the rear of the applicant's property. Mr. Wiley stated there was a 3 acre stormwater management pond toward the rear of the lot. Mr. Barney had no additional comments. Mr. Bresee called for public comment. There was no public comment.

Mr. Kelly motioned to go into deliberative session at 3:21 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Mr. Quynn motioned to come out of deliberative session at 3:26 p.m. Mr. Kelly seconded the motion, which carried unanimously.

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

3. Variance request by property owners, Donald and Tina Lemon, from Section 5.4(B) for a reduction of the rear setback from 20' to 12' to allow for the construction of a 16' x 21' 10" deck with stairs.

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

4. Variance request by Mike Wiley on behalf of property owner, Beallair Homes, LLC, from Section 5.4(B) for a reduction of the rear setback distance from 20' to 17' to allow for the construction of a 12' x 16' screened porch.

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

### **Conditional Use Permit Public Hearings**

5. Public hearing and action on the Conditional Use Permit application submitted by Wayne and Renee Moore, Developer, for the River Country Store and Deli to establish a general store, restaurant and space for recreational use. Intended uses are to consist of a country store providing general items, a restaurant serving hot and cold food with an ABC license, multiple recreational spaces for game and party rentals, children's play area, seasonal activities (i.e. volley ball, basketball and mini golf), and other associated uses as further described in the application. Property location: 2142 Mission Road, Harpers Ferry, WV. District: Kabletown (06); Map: 6; Parcel: 13; Zoned: Rural; Size: 2.002 acres; File: #CP12-03.

Mr. Bresee explained 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 Permit process. Mr. Barney provided a short Powerpoint presentation which outlined the additional steps the applicant may be required to take should the Conditional Use Permit be approved. Mr. Barney concluded his overview by showing pictures of the site which illustrated the location of the building, floodplain and intersection of Mission Road and Lower Clubhouse Road.

Ms. Moore, developer, provided the Board with an overview of the project by delivering a Powerpoint presentation (a copy of this presentation may be found in PC File #CP12-03).

Ms. Moore's presentation outlined the following: the Concept; the Opportunity; Phase I: General Store; Phase II: Deli; Phase III: Restaurant to include a patio and extension of the parking lot; Phase IV: Recreation Area to include mini putt, basketball and kids play area; Areas 1a: layout of the building; Area 1b: overview of the property and location of the recreation area and parking.

Ms. Moore's visual presentation addressed the unresolved issues from the May 30, 2012 Compatibility Assessment Meeting in the following ways:

- Traffic Study: per state standards, to be required only once the use exceeds 100 trips at peak hour.
- Shared Easement: is willing to have a shared pedestrian access; however, does not want a vehicular access drive.
- Scope of Uses: list of uses has not changed from those listed on the application; general store as defined in the Webster's Dictionary.
- Parking: does not intend to add additional parking spaces until the use expands (i.e. the restaurant); there are currently 12 parking spaces.
- Alcohol Sales: will follow all ABC regulations and no underage or over serving sales.
- Impact on Wildlife Management Area: will preserve the look of a rural country store and maintain groomed landscaping.
- Visual Impact of Lighted Signage: will abide by County regulations; sign will be backlit but not animated; proposed sign will be 6' tall and cabin shaped; it will be located next to the well.
- Littering: feels that many people add to the collection of trash by the river and that it would be unfair to be singled out.
- Furnace Run, Dam Breach: the subject property does not border Furnace Run and therefore would not be impacted by the dam; furthermore the previous use was a daycare and patrons have their own vehicles to vacate the property.
- Bus Stop: contacted Larry Willingham with the Jefferson County school bus garage and was informed that this bus stop location never officially closed; however, it has become inactive.
- Hours of operation: proposes hours of operation to be from 6:30 am to 10:00 pm to facilitate early morning commuters.
- Lighting: provided a handout depicting the type of lighting that would be installed when required (a copy of this handout may be found in PC File #CP12-03).
- Deed restrictions: not aware of any deed restrictions that would prevent this land use other than what is standard.
- Need for another store: Federal antitrust laws are in effect to prevent businesses from establishing a monopoly over a particular enterprise, and to promote competition.

Ms. Moore submitted for the record a petition that included 200 signatures in support of the request. In conclusion, Ms. Moore stated that the property has been vacant and overgrown for over one year and that establishing this use would be beneficial.

Mr. Bresee called for public comment from those in support of the project.

Neal Nilsen, Glen Moore, John Maxey, Maureen Sisley, Noah Neef, Kam Flynn spoke in support of the project, explaining that a store would be convenient to those living on the mountain. Mr. Nilsen expressed concern regarding offsite alcohol sales and backlit signage, and objected to Ms. Moore's argument regarding dam safety. Mr. Maxey stated the store was in line with the Planning Commission's Blue Ridge Mountain Study adopted in 2010. Mr. Maxey requested that if video lottery were being requested as part of this application that it be brought back to the Board under a separate application to allow for a more thorough public hearing process. Mr. Maxey added that he would like to see Ms. Moore participate in efforts to receive grant funding for litter bags and assist in education efforts regarding litter clean up rather than marking her products.

Mr. Bresee called for public comment from those in opposition to the project.

Randy Creller, resident, and Greg Hall, representing the Citizens of MOO, spoke in opposition to the request, citing concerns regarding alcohol sales, litter, traffic, the negative impact to the adjacent WMA property, the close proximity to the floodplain and septic issues.

Ms. Moore provided a rebuttal to comments made by the opposition, stating the littering issue is already bad and that if the surrounding properties would join together, they could come up with a way to combat the issue. Ms. Moore stated that a small business is not very profitable and therefore her intent is to help the community and have a good place to raise her 2 children. Ms. Moore also argued that the alcohol sales would not become a problem.

Mr. Bresee called for a break at 5:00 p.m. Mr. Quynn votes to return to regular session. Mr. Kelly seconded the motion, which carried unanimously.

6. Public hearing and action on the Conditional Use Permit application submitted by property owners, Scott Bearup and Carroll Rice, for the Black Bear Camp and RV to establish a primitive campground serving 50 campsites. Intended uses are to consist of primitive camping, hiking, horseback riding and stables, biking, fishing, hunting, tubing, canoeing, rafting, historic tourism, and other associated uses as further described in the application. Property location: 2128 Mission Road, Harpers Ferry, WV. District: Kabletown (06); Map: 6; Parcel: 4; Zoned: Rural; Size: 15.47 acres; File: #CP12-02.

Mr. Barney supplied a Powerpoint presentation that included an aerial of the subject property and pointed out the location of the surrounding properties, the location of the existing building, the floodplain and intersection of Mission Road and Lower Clubhouse Road. Mr. Barney demonstrated where the proposed campsites would be in relation to the property. Mr. Barney explained that

testimony is limited to the validity of the May 30, 2012 Compatibility Assessment Meeting staff report and the unresolved issues.

Mr. Bearup, applicant, provided the Board with an overview of the project. Mr. Bearup provided pictures of the site via a Powerpoint presentation that demonstrated condition of the property both before and after the improvements he has made to the existing home, the Iron Furnace and general maintenance of the property (a copy of this presentation may be found in PC File #CP12-02).

Mr. Bearup addressed each of the unresolved issues from the May 30, 2012 Compatibility Assessment Meeting, focusing on key issues such as site clearing, amphitheater capacity, location and noise levels, parking, traffic concerns, access to and use of the Department of Natural Resources property, the scope of uses proposed and water and wastewater usage.

Mr. Bresee called for public comments from those in support of the project. There was no public comment.

Mr. Bresee called for public comment from those in opposition to the project. Randy Creller, park manager for the Riverview Subdivision, explained that homeowners within their community had organized their presentation and requested that they be allowed to speak in the order in which they had prepared. Mr. Bresee stated he would attempt to respect the request; however, he would like take the comments of those who are not part to the group first.

John Maxey, Jack Hon, Carl Trumble and Randy Creller expressed concerns regarding the lack of trails on the DNR property for the proposed horseback riding; the lack of river frontage to provide for the proposed uses listed within the application related to water activities; the possibility that the lack of river frontage would entice campers to trespass over adjoining property to access the river; clearing within the 500' Shenandoah River buffer; safety concerns regarding traffic and fire, and sanitary issues.

Mr. Bresee requested a short break at 6:15 p.m. and the meeting commenced again at 6:20 p.m.

The public hearing continued with Steve Sheard, Kam Flynn, Neal Nilsen, Sissy Carrol, M. J. Firestone and Joan O'dell speaking in opposition. Additional concerns were raised regarding the location of the property lines; how the applicant would prevent campers from becoming long-term residents of the campground; environmental impact the campers may have on Furnace Run; impact on property values and taxes, and the possible increase in crime. Though not an unresolved issue, Ms. O'dell questioned the adequacy of notice for the public hearing.

Mr. Bresee requested a short break at 6:54 p.m. and the meeting commenced again at 7:05 p.m.

Larry Haines, representing the DNR, stated for the record that horseback riding and cycling are not permitted on the WMA parcel in question because it does not have dedicated trails and has been deemed "too small." The DNR permits pedestrian access to the DNR road (Shannondale Springs Road) only and prohibits vehicular access. Horses would not be permitted on the DNR road.

Shannondale Springs Road is not owned by or affiliated with the Department of Highways. Only licensed motor vehicles are permitted on their road.

Mr. Bearup provided a rebuttal to comments made by the opposition by stating that property line issues are a civil matter which will be addressed by a licensed surveyor. Mr. Bearup stated that he will no longer offer horseback riding on the WMA property now that it is known that it is a prohibited use. Mr. Bearup addressed the safety concerns by saying that fires would be contained within pits and that he would abide by any DOH and Health Department regulations. Mr. Bearup acknowledged that campers may attempt to trespass and agreed to implement measures to reduce the frequency of trespassing. Mr. Bearup argued that the property had been used as a commercial site since 1953, and that the proposed use would increase the tax base in Jefferson County and would provide seasonal jobs for local residents. Carroll Rice, partner to the project, expressed his opposition to erecting a fence on the property, stating that it would prevent the wildlife from accessing the property.

Mr. Quynn had questions regarding access to the DNR road and the types of trees Mr. Bearup cleared from the property.

Mr. Groh advised the Board that they should not visit the site as a group.

Mr. Kelly motioned to go into deliberative session at 7:37 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Mr. Quynn motioned to come out of deliberative session. Mr. Kelly seconded the motion, which carried unanimously.

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

The Board agreed to first vote on Item #6 and then then take up the remainder of the items in sequential order.

6. Public hearing and action on the Conditional Use Permit application submitted by property owners, Scott Bearup and Carroll Rice, for the Black Bear Camp and RV to establish a primitive campground serving 50 campsites. Intended uses are to consist of primitive camping, hiking, horseback riding and stables, biking, fishing, hunting, tubing, canoeing, rafting, historic tourism, and other associated uses as further described in the application.

Mr. Kelly motioned to deny the above referenced request based on the following: that the testimony of the parties establishes that the unresolved issues are so significant that they cannot be resolved; that the applicant did not meet the criteria for approval; that the application was too vague, lacked specifics and that the land use – as presented to the Board – was open to a wide variety of interpretations; that the proposed intensity of use is not compatible with the surrounding neighborhood; and, that some of the proposed uses are not feasible because the property does not have direct access to river frontage. In a concluding statement Mr. Kelly added that, were the applicant to in some way have obtained direct access to river frontage, the Board may have looked at

the request differently. Mr. Bresee seconded the motion. Mr. Bresee called for a vote which passed two in support and one in opposition (Mr. Quynn).

5. Public hearing and action on the Conditional Use Permit application submitted by Wayne and Renee Moore, Developer, for the River Country Store and Deli to establish a general store, restaurant and space for recreational use.

Mr. Quynn motioned to approve the Conditional Use Permit application submitted by Wayne and Renee Moore, Developer, for the River Country Store and Deli to establish a general store, restaurant and space for recreational use. Intended uses are to consist of a country store providing general items, a restaurant serving hot and cold food with an ABC license, multiple recreational spaces for game and party rentals, children's play area, seasonal activities (i.e. volley ball, basketball and mini golf), and other associated uses as further described in the application based on the following conditions:

For the record, Mr. Quynn stated that the property does not appear to be prime agricultural land; that the request appears compatible with the neighborhood; the approval is based on site plan approval as required by regulations; and that the applicants are bound by their oral and written testimony in their applications. Mr. Quynn stated that the unresolved issues not addressed in his motion are considered by the Board to be non-applicable or to have already been addressed. Mr. Quynn stated that approval of the application shall be based on the following conditions:

1. Sales of adult magazines shall not be permitted on this site.
2. Principal land uses are limited to a country store providing general items, a restaurant serving hot and cold food with an ABC on/off sale license and seating for a maximum of 85 persons. Accessory uses include recreational spaces for game and party rentals, children's play area, seasonal activities (i.e. volley ball, basketball and mini golf) and other uses that are clearly incidental to the principal land uses. No adult magazine sales will be permitted.
3. Sale of alcohol is limited to beer and wine. At least 50% of restaurant sales must be food-related. No liquor sales shall be permitted.
4. Lighted signage must be turned off when the business is not in operation. No animated signs are permitted. Any sign triggers a separate approval. Lighting that is available will be full cutoff.
5. Hours of operation shall be as follows: The business shall open no earlier than 5:30 AM and close no later than 10:00 PM.

The conditions listed below, previously identified at the May 30, 2012 Compatibility Assessment Meeting were not included in the Conditional Use Permit:

6. A traffic study performed by a traffic engineering consultant is required prior to initiation of the land use. *The Board finds that a study would be triggered by site plan regulations.*
7. A vehicular and pedestrian access easement must be established between the subject property and the property designated as District: 6; Map: 6; Parcel: 4. *The Board finds this item to be non-applicable.*

8. Prior to initiation of the land use, the Planning and Zoning Department shall evaluate existing parking. *That Board finds that as necessary a plan will be submitted when required through the site plan regulations.*
9. Property owner to mark all wrappers / containers for all convenience items to enable identification of source. *The Board finds this item to be non-applicable.*
10. The applicant shall be required to develop an emergency plan regarding the safety of staff and customers in the event of a dam breach at the nearby lake. *The Board finds this item to be non-applicable.*
11. The applicant shall provide documentation that a school bus stop is not located in the vicinity of the subject property. *The Board finds this item to be non-applicable.*
12. Lighting for existing or future structures or parking areas shall 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. *The Board finds that lighting will be triggered by a site plan and a condition noted above will require the lighting to be full cutoff.*

Mr. Kelly seconded the motion, which carried unanimously.

7. Director's Report. Ms. Brockman directed the Board's attention to the quarterly/annual report that was included in their packet.
8. Legal Update. None.
9. Signing of written decisions from prior Board of Zoning Appeals meetings. None.
10. Correspondence. None.

Mr. Kelly motioned to adjourn the meeting at 8:57 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](http://www.jeffersoncountywv.org). These minutes were prepared by Jennilee Hartman, Zoning Clerk.