

## Minutes

Jefferson County Board of Zoning Appeals  
Thursday, September 20, 2012

The Jefferson County Board of Zoning Appeals met on Thursday, September 20, 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; 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; Stephen 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 3:04 p.m.

1. Approval of the minutes from the August 16, 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 owner, Vanette Jackson, from Section 5.4(B) for a reduction of the rear setback distance from 20' to 14' to allow for the construction of an 18' x 14' deck with stairs to also include an 18' x 10' stone patio situated underneath. Property location: Windmill Crossing Subdivision, 104 Monte Carlo Way, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 47; Zoned: Residential-Light Industrial-Commercial; Size: 2,000 sq. ft.; File: #ZV12-26.

Ms. Jackson presented her request to the Board, explaining that her deck would include steps to provide a second exit from her home. Staff did not have additional comments. Mr. Bresee called for public comment. There was no public comment.

4. Variance request by applicant, CTI Towers, Inc., from Section 5.6D for a reduction of the front setback distance from 25' to 6' to allow for the installation of a 7' privacy fence enclosure to be attached to an existing 11' x 15' telecommunications building and the construction of a 28<sup>+</sup> square foot concrete pad within the enclosure. Property location: 121 Ashland Woods Drive, Harpers Ferry, West Virginia. District: Charles Town (02); Map: 21; Parcel: 35; Zoned: Rural; Parcel Size: 2 acres; Leased Area: .035 acres; File: #ZV12-27.

William Jenkins, Applicant Representative, presented the request to the Board. Mr. Jenkins explained that due to the remote location of the site considerable time is lost and vehicular trips are made by Comcast employees when there is a power outage in order to bring in a generator to the existing facility. Mr. Jenkins stated that the proposed permanent generator would reduce the amount of traffic to the site. Mr. Kelly asked why the proposed fence was 7' in height. Mr. Jenkins explained that Comcast has found that a 7' tall fence is a greater deterrent to theft than a 6' tall fence. Ms. Huddle asked what the fence would be constructed of. Mr. Jenkins answered that it would be a chain link fence with green vinyl slats for screening. Ms. Huddle expressed concern regarding the maintenance of the slats, as they tend to degrade over time. John Nichols, also

speaking on behalf of the applicant, addressed Ms. Huddle's questions regarding the maintenance issue. Ms. Huddle asked whether noise standards would apply to the use. Mr. Barney confirmed that the requirements of section 8.9A1C for a commercial use would apply. Mr. Kelly asked whether the variance was solely for the fence or also for the pad. Mr. Barney confirmed that the variance was for both the fence and the pad. Mr. Bresee called for public comment. There was no public comment.

5. Appeal by property owner, Clinton Blevins, of the Zoning Administrator's decision to deny Zoning Certificate Application #ZC12-08 for a Home Occupation Level I involving internet sales of self-defense items including firearms, knives, and tactical clothing, in addition to firearm transfer, gun cleaning/repair, and off-site training services. Property location: 805 Leetown Road, Summit Point, West Virginia. District: Kabletown (6); Map: 17; Parcel: 8.22; Zoned: Rural; Size: 1.85 acres; File: #AP12-02.

Mr. Blevins was present to represent his appeal. Mr. Blevins explained the need for conducting a business from his home. Mr. Blevins stated that the majority of his business would be internet sales. Mr. Blevins further stated that he had recently obtained a Federal Firearms License (FFL) to sell firearms from the State of Virginia that would allow him to store the firearms at a location outside of his home. Mr. Blevins went on to outline the regulatory process required to transfer the guns from one location to another, indicating that each transfer was recorded in an Acquisition and Transition Book. Mr. Groh asked why the applicant was seeking a FFL in West Virginia. Mr. Blevins responded that the purpose was to sell firearms at gun shows. Ms. Huddle questioned why staff was enforcing Federal regulations. Mr. Barney and Ms. Brockman explained that through conversations with the Bureau of Alcohol, Tobacco and Firearms (ATF), it was stated that Mr. Blevins would have to sell the firearms from the address shown on the license application. This would also mean that the firearms could be shipped to Mr. Blevins' home which would constitute 'storage' of a firearm, which is prohibited by Article 4A of the local Zoning Ordinance. The Board discussed the possible definition of the term "weapon". Mr. Barney presented his position to the Board, explaining the facts provided to him at the time of submission in addition to information given to him by the ATF. Mr. Barney concluded that while it was not Mr. Blevins' intent to store the firearms at his home, there was still the possibility of the firearms being shipped to his home because of his address being listed on the license application, and due to this possibility he had to deny the request. Mr. Barney stated for the record that he was not aware of the applicant's ability to obtain a FFL from Virginia by listing the Virginia storage location on the application. Mr. Barney distributed Section 478.50 of Title 27 of the Code of Federal Regulations to the Board. Mr. Bresee called for public comment. There was no public comment.

Ms. Huddle motioned to go into deliberative session at 4:10 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Ms. Huddle motioned to come out of deliberative session at 4:34 p.m. Mr. Kelly seconded the motion, which carried unanimously.

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3. Variance request by property owner, Vanette Jackson, from Section 5.4(B) for a reduction of the rear setback distance from 20' to 14' to allow for the construction of an 18' x 14' deck with stairs to also include an 18' x 10' stone patio situated underneath.

Mr. Kelly noted that the applicant has met all of the criteria for approval of a variance and motioned to approve the above referenced request. Mr. Quynn seconded the motion, which carried unanimously.

4. Variance request by applicant, CTI Towers, Inc., from Section 5.6D for a reduction of the front setback distance from 25' to 6' to allow for the installation of a 7' privacy fence enclosure to be attached to an existing 11' x 15' telecommunications building and the construction of a 28<sup>+</sup> square foot concrete pad within the enclosure.

Mr. Quynn motioned to approve the above referenced request and noted that the applicant has met all the criteria for approval of a variance. Mr. Kelly seconded the motion, which carried unanimously.

5. Appeal by property owner, Clinton Blevins, of the Zoning Administrator's decision to deny Zoning Certificate Application #ZC12-08 for a Home Occupation Level I involving internet sales of self-defense items including firearms, knives, and tactical clothing, in addition to firearm transfer, gun cleaning/repair, and off-site training services.

Ms. Huddle stated that under the powers and duties under Article 8 of the State Code the Board is allowed to reverse, affirm or modify the order, requirement, decision or determination of appeals from, and have all the powers and authority of the official Board from which the appeal was taken, and motioned as follows:

The Board reverses and modifies the decision made by the Zoning Administrator in part because the Board has received further clarification of the proposed use beyond what was originally written on the zoning certificate application. The Board further would add the wording to what is currently written on the zoning certificate so that it would read under the proposed use, "Internet sales of self-defense items to include firearms, knives and tactical clothing. Limited amount of non-restrictive inventory stored on property, with no storage of weapons (such as firearms) covered by the Federal Firearms License that would be allowed as a Home Occupation use on this site." The Board finds that the Zoning Administrator was correct in that storage of firearms is not permitted under the Ordinance; however, based on new information provided, it is apparent the applicant will not be storing firearms on the premises. The definition of the term "weapons" related to this case is not precedent setting.

Mr. Kelly seconded the motion, which carried unanimously.

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6. Director's Report. Ms. Brockman informed the Board that the office is currently advertising for a 2-year Comprehensive Planner position and is in the process of preparing a public notice for the appointment of a 2014 Comprehensive Plan Steering Committee that would primarily be citizen based.
7. Legal Update. Mr. Groh informed the Board that Mr. Crawford of the Prosecutor's office would be retiring and that Mr. Groh would be reassigned to another division of the office. Mr. Groh stated that a new attorney would be hired to represent the Board.
8. Signing of written decisions from prior Board of Zoning Appeals meetings. None.
9. Correspondence. None.

Ms. Huddle motioned to adjourn the meeting at 4:55 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.