

Minutes

Jefferson County Board of Zoning Appeals
Thursday, April 21, 2011

The Jefferson County Board of Zoning Appeals met on Thursday, April 21, 2011. 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 Chairman, Ed Kelly, Tiffany Hine, Jon Brusco and Tyler Quynn, Alternate, were present. Staff members present were: Jennifer Brockman, Director; Steve Barney, Zoning Administrator; Stephen Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk.

Ms. Huddle motioned to commence the meeting. Mr. Brusco seconded the motion, which carried unanimously. Mr. Bresee called the meeting to order at 3:06 p.m.

1. Approval of Minutes from the March 17, 2011 meeting.

Ms. Hine abstained from voting on the minutes because she was absent from the March meeting.

Ms. Huddle motioned to approve the minutes with the following correction:

- a. Page 2, Item #4 second paragraph, change the word “*until*” to “*for*.”

Mr. Kelly seconded the motion, which carried unanimously with one abstention.

Christine Chalmers, Office Assistant, swore in individuals who indicated they would be giving testimony.

Mr. Harry Byrd requested a postponement until May 19, 2011, on behalf of Item #6, ZV11-07. Ms. Huddle motioned to postpone Item #6 until May 19, 2011. Mr. Kelly seconded the motion, which carried unanimously.

2. Public hearing and action on the Conditional Use Permit application submitted by A.M.S. Morgan III on behalf of Rippon Brewery, LLC as a result of the Compatibility Assessment meeting held on February 25, 2011. This project is to consist of a micro-brewery with a tasting room, a future pub/restaurant, a store, a country inn and an office to be situated on 2 acres. The property is located at the intersection of Route 340 and Withers Larue Road in Rippon, West Virginia. (District: Kabletown; Map: 10A; Parcel 24; Size: 2 acres; Zoned: Village; File: Z11-01)

Mr. Barney briefly explained the conditional use permit application and process to the Board. Mr. Barney reviewed the staff report and discussed both the resolved and unresolved issues from the Compatibility Assessment Meeting.

Mr. Morgan gave a presentation to the Board, providing a detailed overview of the project. Ms. Huddle asked questions regarding lighting, the speed limit along US 340 and the visibility at the intersection of US 340 and Withers Larue Road in Rippon.

Mr. Bresee called for public comment.

R. M. Anders, nearby property owner, expressed his concern regarding noise, pollution, odor, traffic, excessive water usage and the potential for his well to dry up as a result of the operation of the proposed brewery.

Mr. Jesse Morgan addressed the Board's concerns regarding water usage, stating that most of the water would be used for cleaning the brewery equipment. This water would be collected, neutralized and spread over the owner's adjacent agricultural fields. Any solid wastes produced during the brewing process would be safe and would be fed to livestock. Any odor from the brewing process would be a light yeast smell similar to bread baking. Mr. Jesse Morgan also explained that well water would slowly be collected in tanks in order to avoid a sudden, heavy draw on the groundwater source.

Mr. Kelly asked whether Mr. Rusty Morgan were satisfied with the proposed conditions set forth in the staff report. Discussion ensued regarding the number of seats in the restaurant that would trigger a requirement for a second entrance onto US 340.

The public hearing was closed.

3. Variance request by property owner, A.M.S. Morgan III on behalf of Rippon Brewery, LLC, from Sections 4.16, 5.6(d) and 5.7(b) to reduce the front setback to 8' for a proposed addition to an existing structure for a commercial use. The property is located at the intersection of Route 340 and Withers Larue Road in Rippon, West Virginia. (District: Kabletown; Map: 12; Parcel: 17; Size: 194.39; Zoned: Rural; File:ZV11-06)

Mr. Morgan was present to address the Board. The Board had no questions for Mr. Morgan. Mr. Bresee called for public comment. There was no public comment.

Ms. Chalmers swore in additional members of the public that arrived late and who had indicated they wished to give testimony.

4. Variance request by property owner, Victory Freewill Baptist Church, from Section 10.2(i) to allow for an animated sign. The property is located at 76 Amanda Court in Halltown, West Virginia, 25423. (District: Harpers Ferry; Map: 10; Parcel: 11.18; Size: 5 acres; Zoned: Residential-Light Industrial-Commercial; File: ZV11-05)

Pastor Richard Nethercutt was present to address the Board. Pastor Nethercutt apologized for unknowingly installing the sign without a permit. Pastor Nethercutt stated the previous sign had been repeatedly vandalized so the church decided to replace it with an electronic sign that they could control. Ms. Huddle requested that the Applicant provide direct contact information, such as a telephone number, for a representative that staff would be able to get in touch with if concerns regarding the sign were to arise. Mr. Barney explained to Pastor Nethercutt the brightness of the sign intensifies in the evenings and that the settings will need to be adjusted to the lowest possible setting. Pastor Nethercutt agreed. Mr. Bresee called for public comment. There was no public comment.

5. Appeal of an Administrative Decision of Zoning Certificate (ZC11-04) by Michelle Krassowski on behalf of Miss. Booger's Pet Services & Supplies. The Zoning Certificate, approved on February 16, 2011, restricts the pet sitting/doggie daycare to a total of 8 dogs. The appeal is to request that the applicant be permitted to increase the number of dogs. The property is located at 31 Black Bear Trail in Harpers Ferry, West Virginia. (District: Charles Town; Map: 23G; Parcel: 7; Size: 20,000⁺ sq. ft.; Zoned: Rural; File: AP11-01)

The Appellant, Ms. Krassowski, presented her case to the Board. Ms. Krassowski argued that the restriction of eight (8) dogs does not allow for the occasional overlap between her boarding clients and her day care clients and therefore has had to turn away clients. In addition, said restriction severely limits her income potential. Ms. Krassowski clarified that an increased number of dogs would not be an everyday occurrence. Ms. Krassowski explained that her boarding clients are present during less than 50% of the year, and that the day care clients are present only during the work week, with the latest pick up time having been 8:00 p.m. She further explained that clients would be primarily boarded during peak vacation times and holidays. Ms. Krassowski offered a compromise in the event that the number of dogs could be increased. This compromise would allow for an overlap in boarding clients and day care clients with a restriction including the proposed language, "...is allowed no more than X number of dogs on the property for no more than X amount of consecutive hours per day between the house of X and Y." Ms. Krassowski asked the Board to read Exhibit C, page 4 of the agenda packet for this meeting, and she addressed each of the five points Mr. Barney referenced in his staff report.

1. The size of the property. Ms. Krassowski argued that the backyard is approximately 11,000 square feet and that it is of ample size for the dogs to run and play fetch yet still allow her to maintain control over them.
2. The property's location in a residential neighborhood. Ms. Krassowski stated that she has an organized method of play in which she plays between each dog alternately so as to keep the barking to a minimum. The dogs tend to bark more when people are walking in the neighborhood or if someone is at the door; however Ms. Krassowski contested that this barking should be a welcome alert to the neighborhood of the presence of strangers, considering the recent number of daytime break ins.
3. Section 4A.2(b) of the Ordinance states that a Home Occupation Level II shall not exceed one third (1/3) of the floor area of the dwelling unit. Ms. Krassowski stated that all of her dogs can fit in her master bedroom which is only 1/12th of her existing floor space.
4. Section 4A.2(e) of the Ordinance states that for a Home Occupation Level II, no more than three business-related vehicle trips per day nor more than fifteen per week are permitted at the premises. Ms. Krassowski stated that the vehicle trip limitation is a non-issue, as she picks up and drops off most of her day care dogs. As for the boarder dogs, vehicular trips can be controlled by arranging for pickups and drop offs based on the trip limitations.
5. Section 4A.2(f) of the Ordinance states that a Home Occupation Level II shall be "clearly incidental and subordinate to the use of the dwelling unit as a residence." Ms. Krassowski argued that a specific number of dogs does not indicate a business any more than a number of children would indicate a day care.

Ms. Krassowski read aloud a letter from Mr. Ronald Moyer in support of her business.

Attorney Stephen Groh asked the appellant how many dogs she would like her zoning certificate to be increased to allow. Ms. Krassowski stated that a number in the range of 12 to 14 dogs would be sufficient. Of this number, 6 would be day-care dogs who would go home each evening.

Mr. Bresee called for public comment.

Ronald Moyer, Charles Keon, Sarah Brantley, Jim Creswell, John Sigmon and Sue Bubel spoke in support of Ms. Krassowski's appeal, detailing her professionalism and noting her control over the dogs. Joe Hoffman spoke in opposition to Ms. Krassowski's appeal, arguing that her business meets the State's definition of a kennel and that the business does not meet the standards of a Home Occupation Level II.

Mr. Barney presented his staff report to the Board. Mr. Barney explained that the Ordinance does not have a definition of a kennel; however, staff would not interpret a kennel as a home based business, and therefore does not find Ms. Krassowski's business to be considered a kennel. Mr. Barney reviewed the restrictions on the zoning certificate with the Board.

Ms. Krassowski provided a short rebuttal.

The public hearing was closed.

6. Variance request by property owner, Hawthorn Associates, LLC, c/o Harry F. Byrd III, from Section 5.7(a)17 to increase number of the permitted receptions from 4 to 30 and to increase the permitted tents from 1 to 2 per reception. The property is located at 9 Hawthorn Avenue in Summit Point, West Virginia. (District: Kabletown; Map: 16; Parcel: 13; Size: 230.7 acres; Zoned: Rural; File: ZV11-07)

This item was postponed until May 19, 2011.

Mr. Kelly motioned to break for a 5 minute recess. Mr. Brusco seconded the motion, which carried unanimously.

Following the resumption of the meeting, Mr. Hoffman requested to address the Board again regarding agenda item #5, for the purpose of clarifying that he did not trespass on Ms. Krassowski's property.

7. Variance request by property owner, Brian and Ashlee Muniz, from Section 5.4(b) to reduce the rear setback from 20' to 14' for a proposed deck and stairs. The property is located in the Windmill Crossing Subdivision at 53 Don Quixote Drive in Charles Town, West Virginia. (District: Charles Town; Map: 9C; Parcel: 139; Size: .0459 acres; Zoned: Residential-Light Industrial-Commercial; File: ZV11-08)

Mr. Muniz was present to address the Board. There were no questions from the Board. Mr. Bresee called for public comment. There was no public comment.

8. Variance request by property owner, Grace Baptist Church, from Section 4.16 to reduce the front parking setback from 15' to 0' from the alley Parrish Way. The property is located at 321 Potomac Street in Shenandoah Junction, West Virginia. (District: Charles Town; Map:1A; Parcel: 66; Size: .289 acres; Zoned: Village; File: ZV11-09)

Janice Myers was present on behalf of Grace Baptist Church to address the Board. Ms. Myers explained that the septic field is located on the other side of the property and therefore the additional parking spaces cannot be located there. Ms. Myers presented the Board with a copy of an approved Department of Highways permit. Mr. Barney explained that Jonathon Saunders, County Engineer, would require a sketch of the parking area as part of the permitting process. Mr. Bresee called for public comment. There was no public comment.

Mr. Brusco motioned to go into deliberative session. Ms. Hine seconded the motion, which carried unanimously.

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

Board of Zoning Appeals Rulings

2. Public hearing and action on the Conditional Use Permit application submitted by A.M.S. Morgan III on behalf of Rippon Brewery, LLC as a result of the Compatibility Assessment meeting held on February 25, 2011. This project is to consist of a micro-brewery with a tasting room, a future pub/restaurant, a store, a country inn and an office to be situated on 2 acres.

Ms. Huddle motioned to approve the above referenced request with the following conditions:

- a. All conditions for "resolved" issues agreed upon during the Neighborhood Compatibility Meeting:
 1. No customer or employee parking (excluding delivery vehicles) will be located adjacent to Withers Larue Road.
 2. Any entrances from Withers Larue Road will be located west of the brewery building.
 3. At the time when seating capacity for the restaurant exceeds 100 seats staff will review to determine if an additional entrance from US 340 (to be located to the north of the property for which the Conditional Use Permit application was submitted), is required.
 4. Prior to site plan approval, the Applicant will submit documentation from the applicable state agency or agencies certifying that the proposed brewery wastewater discharge is permitted.
 5. The hours of operation are limited to 8:00 AM to 12:00 midnight.
- b. Conditions to address "unresolved" issues discussed at the Neighborhood Compatibility Meeting:
 1. The number of restaurant seats is limited to 200.

2. All employee and customer parking for all land uses shall be located on the interior of the property.
 3. All lights shall be of a full cut off (downward facing) design and there shall be no light spillover onto adjacent properties.
- c. Condition to address consistency with application:
1. The land uses shall be developed and operated in a manner consistent with the limitations described in the application submitted to the Board, as amended.

Mr. Kelly seconded the motion, which carried unanimously.

3. Variance request by property owner, A.M.S. Morgan III on behalf of Rippon Brewery, LLC, from Sections 4.16, 5.6(d) and 5.7(b) to reduce the front setback to 8' for a proposed addition to an existing structure for a commercial use.

Mr. Brusco motioned to approve the above referenced request with the condition that the new structure shall not be built closer to the property line than the existing mill building. Ms. Hine seconded the motion, which carried unanimously.

4. Variance request by property owner, Victory Freewill Baptist Church, from Section 10.2(i) to allow for an animated sign.

Ms. Hine motioned to approve the above referenced request with the following conditions:

- a. No more than eight (8) messages per day.
- b. Each message to be contained on one screen only, meaning no overlapping into next frame.
- c. Each message to be held a minimum of five (5) seconds between intervals.
- d. Messages to be comprised of text content only—no animated figures, flashing actions, color changes, etc.
- e. Standard signage color will be restricted to a dark background with contrasting light lettering and color change application limited to seasonal background imagery only.
- f. No motion during message change.
- g. Hours of animated signage display to be designated between the hours of 6:00 a.m. and 10:00 p.m.
- h. Signage Light Level to be adjusted to the lowest visibility, legible from the street. Applicant to demonstrate said Level Intensity Number to the Planning and Zoning Departments for approval prior to the issuance of the zoning certificate.
- i. Applicant to provide contact information, such as a telephone number, for operator of sign to the Planning and Zoning Departments.

Mr. Brusco seconded the motion and requested an amendment to the motion to allow the sign to remain in operation after 10:00 PM during special events such as Midnight Mass (Christmas), during hours of church operation. Ms. Huddle seconded the motion to amend the original motion. The vote to amend the motion passed four in favor and 1 opposed (Mr. Kelly). The vote on the original motion, including the amendment, four in favor and 1 opposed (Mr. Kelly).

5. Appeal of an Administrative Decision of Zoning Certificate (ZC11-04) by Michelle Krassowski on behalf of Miss. Booger's Pet Services & Supplies. The Zoning Certificate, approved on February 16, 2011, restricts the pet sitting/doggie daycare to a total of 8 dogs. The appeal is to request that the applicant be permitted to increase the number of dogs.

Mr. Brusco motioned to deny the above referenced request because the applicant did not meet the burden of proof. Ms. Hine seconded the motion, which carried unanimously.

6. Variance request by property owner, Hawthorn Associates, LLC, c/o Harry F. Byrd III, from Section 5.7(a)17 to increase number of the permitted receptions from 4 to 30 and to increase the permitted tents from 1 to 2 per reception.

This item was postponed until May 19, 2011.

7. Variance request by property owner, Brian and Ashlee Muniz, from Section 5.4(b) to reduce the rear setback from 20' to 14' for a proposed deck and stairs.

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

8. Variance request by property owner, Grace Baptist Church, from Section 4.16 to reduce the front parking setback from 15' to 0' from the alley Parrish Way.

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

9. Monthly Address by Director Jennifer M. Brockman. Mr. Barney provided the Board with copies of the proposed text amendments to Section 3.4 of the Zoning Ordinance.

10. Legal Update. None.

11. Vote on written decisions from prior Board of Zoning Appeals meetings. None.

12. Correspondence. None.

Ms. Huddle motioned to adjourn the meeting at 6:30 p.m. Mr. Brusco seconded the motion, which carried unanimously.

An audio transcript of this meeting can be found at the Department of Zoning and on our website at www.jeffersoncountywv.org. These minutes were prepared by Jennilee Hartman, Zoning Clerk.