

Minutes
Jefferson County Board of Zoning Appeals
Thursday, May 19, 2011

The Jefferson County Board of Zoning Appeals met on Thursday, May 19, 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, Tiffany Hine, 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.

Ed Kelly and Jon Brusco were absent with notification.

Ms. Huddle motioned to commence the meeting. Ms. Hine seconded the motion, which carried unanimously. Mr. Bresee called the meeting to order at 3:07 p.m.

1. Approval of Minutes from the April 21, 2011 meeting.

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

- a. Page 2, Item #4, second paragraph, change the word "*building*" to "*installing*."
- b. Page 3, Item #5, second paragraph, add an "s" to the word "*client*".
- c. Page 3, Item #5, seventh paragraph, change the word "*swelling*" to "*dwelling*."
- d. Page 6, Item #2, third paragraph, change the designation "*i*" to "*l*."

Ms. Hine seconded the motion, which carried unanimously.

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

2. Postponed from the April 21, 2011 meeting. 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. Property location: 9 Hawthorn Avenue, Summit Point, West Virginia. District: Kabletown; Map: 16; Parcel: 13; Size: 230.7 acres; Zoned: Rural; File: ZV11-07.

Theresa Thomson Gregson addressed the Board on behalf of Hawthorn Associates, LLC. Ms. Gregson provided the Board letters of support from surrounding property owners in addition to before and after photos of the restoration of Hawthorn. Ms. Gregson stated that the applicants' current variance request is to permit up to 3 tents per reception and up to 30 receptions per year. Ms. Gregson explained that the additional tents were necessary to accommodate various receptions needs. Mr. Barney referenced facts from his staff report and suggested a possible condition of approval to require a site plan for the proposed use demonstrating where the parking and access would be. Mr. Bresee called for public comment. Richard Crim spoke in favor of the request.

3. On behalf of Lowe Products, Inc., variance request by property owner, John D. Lowe, III ET AL, from Sections 4.6(a) and 4.11(b) for a reduction of the distance and buffer yard requirements of an Industrial Use and from Section 9.5(b) to locate a fence taller than 6' within the required yard.

Property location: 777 Potomac Farms Drive (alt. Rte. 45 Connector) in Shepherdstown, West Virginia. District: Shepherdstown; Map: 8; Parcels: 5 & 6.20; Size: 50 (+/-) acres; Zoned: R-G; File: ZV11-10.

Michael Scales, attorney, spoke on behalf of his client Lowe Products, Inc. Mr. Scales detailed the history of the industrial use and provided aerial photographs of the site dated February 28, 1985, November 18, 1988 and November 30, 1999. Mr. Scales informed the Board of the West Virginia Code §8-24-50 and §8A-7-10(c) which prevents an ordinance, adopted after the inception of a use, to prohibit such use from continuing development or expansion. Mr. Scales and John D. Lowe, applicant, answered questions from the BZA.

Mr. Bresee called for public comment. The Board received public comment from supporters Walter Pellish and Thomas Bayuzik, Director of the Jefferson County Economic Development Authority. Judy Moore, Nannette Jenkins, Leslie Williams (who read a letter by Patrick Coskey), Ryan Hagerty, Diana Wesley, Jane Vanderhook, Michael Glenn and Russell Harp spoke in opposition to the request citing the following concerns: offensive and disruptive sound, air quality, pollution, and risk to personal safety and property.

Mr. Barney clarified that West Virginia Code §8A-7-10(c) states the County cannot prohibit an industrial use and not that the County could not regulate such use. Mr. Barney stated that enforcing setback and distance requirements does not prohibit the use. Mason Carter, Ordinance Compliance Officer, answered the Board's questions regarding complaints made by Ms. Moore in past years.

Mr. Scales rebutted the objections stated by those speaking in opposition.

Ms. Hine motioned to adjourn for a brief recess at 5:00 p.m. Ms. Huddle seconded the motion, which carried unanimously.

Ms. Huddle motioned to reconvene at 5:08 p.m. Ms. Hine seconded the motion, which carried unanimously.

4. Appeal of the Administrative Decision of Zoning Certificate #ZC11-04 by Appellants, Joseph and Nancy Hoffman. The Zoning Certificate, issued on February 16, 2011, approves a Home Occupation, Level II - Pet Sitting / Doggie Daycare and Internet Pet Supply Business. The Appeal requests revocation of #ZC11-04 and any permits previously issued for the establishment/operation of this Business. Property location: 31 Black Bear Trail, Harpers Ferry, West Virginia. District: Charles Town; Map: 23G; Parcel: 7; Size: 20,000⁺ sq. ft.; Zoned: Rural; File: #AP11-02.

Joseph Hoffman presented the appeal to the Board. Mr. Hoffman asserted that the issuance of Zoning Certificate ZC11-04 which permitted Michelle Krassowski of 31 Black Bear Trail in Harpers Ferry, West Virginia to operate Miss Booger's Pet Service & Supplies, was issued in error. Mr. Hoffman went on to explain the Jefferson County Zoning Ordinance (Ordinance) did not define a "kennel" and therefore the County should use the State of West Virginia's

definition. Mr. Hoffman provided the Board with that definition and argued that Ms. Krassowski's business would be defined as a kennel by the State of West Virginia. Mr. Hoffman argued that the Ordinance restricts kennels in the Rural zoning district to a 500' buffer from residential uses and that Ms. Krassowski's business is approximately 54' from his bedroom window. Mr. Hoffman went on to further expound on how the current business does not conform to other restrictions of a Home Occupation Level 2 as defined in Article 4A of the Ordinance.

Mr. Bresee called for public comment. Ms. Krassowski, owner of Miss Booger's Pet Service & Supplies, spoke in opposition to the appeal arguing that she has abided by all the restrictions applied as part of the Zoning Certificate. Ms. Krassowski informed the Board that by granting the appeal she would have to move from her home and relocate her business because she would not have enough clients to sustain her livelihood.

Mr. Barney clarified that his role was not to evaluate whether or not the land use was permissible as the previous Zoning Administrator had already made that interpretation by issuing zoning certificate #ZC10-08. Mr. Barney informed the Board that State law prohibits staff from rescinding approved zoning certificates. Mr. Barney explained his role is to ensure the intent of the Ordinance is upheld. Mr. Barney stated Ms. Krassowski demonstrated a willingness to abide by the inclusion of additional restrictions and therefore granted the zoning certificate for 2 additional dogs. Mr. Barney justified his determination by arguing that the Ordinance did not define kennel as a use and therefore interpreted the term "kennel", as applied in Zoning Certificate #ZC10-08, to be a structure. As a result, he restricted Ms. Krassowski's business from installing kennels because she would not be able to comply with the 500' buffer requirement established in Article 5.7(a) of the Ordinance.

Mr. Hoffman rebutted staff's report.

5. **Request Withdrawn by Applicant** - Special exceptions request by applicant Scott Kegerreis, per Section 10.5 to allow for the installation of a 600 sq. ft. double-sided, off premise Billboard sign. Property location: 147 Edmond Road, Kearneysville, West Virginia. Property owner: Cindi L. Hertelendy. District: Charles Town; Map: 1; Parcel: 84; Size: 1.47 acres; Zoned: Industrial-Commercial; File: #ZV11-11.

Request withdrawn by Applicant.

6. Variance request by property owner, Daniel Anders, from Section 5.4(b) for a reduction of the rear setback distance from 20' to 14' to allow for the construction of a 10' x 16' deck. Property location: Colonial Hills Subdivision, 380 Starkeys Landing, Shepherdstown, West Virginia. District: Shepherdstown; Map: 8E; Parcel: 39; Size: 2000 sq. ft.; Zoned: Residential-Growth; File: #ZV11-12.

Daniel Anders presented the Board with his request. Mr. Bresee called for public comment. There was no public comment. Mr. Barney informed the Board of a 100' power easement along

the rear of the applicant's property thus alleviating any burden on an adjoining rear property owner.

7. Variance request by property owner, Jane Mc Swain, from Section 5.7(b) for a reduction of the rear setback distance from 20' to 14' to allow for expansion of an existing deck. Property location: Deerfield Village Subdivision, 49 Rolling Green Court; Shepherdstown, West Virginia. District: Shepherdstown; Map: 14B; Parcel: 38; Size: .329 acres; Zoned: Rural; File #ZV11-13.

Jane Mc Swain presented the Board her request. Mr. Bresee called for public comment. There was no public comment. Mr. Barney informed the Board of a 75' easement along the rear of the applicant's property thus alleviating any burden from an adjoining property owner.

8. Variance request by property owner, Suzanne Walls, from Sections 4.11 and 4.16 from the required yard screening and buffer requirements to remove 159 shrubs from the approved Walls Nursery Site Plan (S04-16). Property location: 4274 Charles Town Road, Kearneysville, West Virginia. District: Middleway; Map: 2; Parcel: 2.6; Size: 3.91 acres; Zoned: Rural; File #ZV11-14.

Suzanne Walls and Jerry Walls presented the Board with the request. Mr. Bresee called for public comment. There was no public comment. Mr. Barney pointed out that the property is long and narrow in shape and that the 50' unscreened buffer provision could not be utilized at the time when the site plan was approved due to an existing drive. Mr. Walls described other characteristics of the property such as a reduction in traffic flow since the new Route 9 opened.

9. On behalf of KNR Investments, LLC, request for a Change in Non-Conforming Use by Manager, Kay Smoker, of the former Millville Post Office from a one-unit residential rental to a two-unit residential rental. Property location: 481 Millville Road, Millville, West Virginia. District: Harpers Ferry; Map: 11A; Parcel: 34; Size: 0.1 acres; Zoned: Industrial-Commercial; File #ZC11-13.

Ronald Smoker, applicant, presented the Board with the request. Mr. Smoker stated the main level of the building had previously been used as a post office; however, after the post office closed, he has been unable to rent the space for a non-residential use. The upper level is currently an apartment and thus the applicants would like to renovate the main floor to install a second apartment. Mr. Quynn inquired about the septic system. Mr. Smoker stated he had been informed by a contractor that the Health Department would not have an issue with the proposed apartment. Mr. Barney referred to facts from the staff report. Mr. Bresee called for public comment. There was no public comment.

10. **Request Withdrawn by Applicant** - Variance request by applicants, Chad and Tabitha Armentrout, from Section 4.16 for a reduction of a side setback distance from 25' to 5' to allow for the construction of an addition to an existing building. Property location: 798 Jefferson Avenue, Charles Town, West Virginia. Property owners: Becton and Traci Davis. District:

Charles Town; Map: 10A; Parcel: 58; Size: 15,000 sq. ft.; Zoned: Residential-Growth; File #ZV11-15.

Request withdrawn by Applicant.

Ms. Huddle motioned to go into deliberative session at 6:01 p.m. Ms. Hine seconded the motion, which carried unanimously.

Ms. Huddle motioned to come out of deliberative session 7:19 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

2. Postponed from the April 21, 2011 meeting. Variance request by property owner, Hawthorn Associates, LLC, c/o Harry F. Byrd III, from Section 5.7(a)17 to increase the number of permitted receptions from 4 to 30 and to increase the permitted tents from 1 to 2 per reception.

Ms. Hine motioned to approve the above referenced request contingent upon the staff approving a parking plan. Ms. Hine seconded the motion, which carried unanimously. Mr. Quynn noted that the rationale for the approval of the increases is the very large acreage of the property.

3. On behalf of Lowe Products, Inc., variance request by property owner, John D. Lowe, III ET AL, from Sections 4.6(a) and 4.11(b) for a reduction of the distance and buffer yard requirements of an Industrial Use and from Section 9.5(b) to locate a fence taller than 6' within the required yard.

Ms. Hine motioned to approve the above referenced requests provided that the fence be not more than 12 feet in height; the fence shall be no closer to the property line than the height of the fence; the fence shall be made of a solid material (such as wood or concrete); the fence shall not be topped with barbed or razor wire. The purpose of the conditions is to abate the noise, light and dust concerns of the neighbors. Ms. Huddle seconded the motion and offered an amendment to approve the requests, including the conditions made by Ms. Hine and to make the erection of the fence a requirement. Ms. Huddle's amendment failed for the lack of a second. Ms. Huddle withdrew her second for the original motion. Mr. Quynn seconded the original motion made by Ms. Hine with all conditions. Mr. Bresee called for a vote. The motion passed with 4 in support and one opposed (Ms. Huddle).

4. Appeal of the Administrative Decision of Zoning Certificate #ZC11-04 by Appellants, Joseph and Nancy Hoffman. The Zoning Certificate, issued on February 16, 2011, approves a Home Occupation, Level II - Pet Sitting / Doggie Daycare and Internet Pet Supply Business. The Appeal requests revocation of #ZC11-04 and any permits previously issued for the establishment/operation of this Business.

Ms. Huddle stated it is the Board's opinion that Zoning Certificates ZC10-08 and ZC11-04 were issued in error, specifically because the Home Occupation, Level II requires that the use be conducted wholly within the dwelling unit and that it is clear that the use does not comply with

this requirement. Ms. Huddle motioned that the appeal by Joseph and Nancy Hoffman be upheld and that ZC11-04 be revoked. Regarding the revocation request of ZC10-08, the Board finds that because an appeal was not filed within the time frame established in the Ordinance, ZC10-08 remains in effect as issued. Ms. Hine seconded the motion, which carried unanimously.

5. **Request Withdrawn by Applicant** - Special exceptions request by applicant Scott Kegerreis, per Section 10.5 to allow for the installation of a 600 sq. ft. double-sided, off premise Billboard sign.

Request withdrawn by Applicant.

6. Variance request by property owner, Daniel Anders, from Section 5.4(b) for a reduction of the rear setback distance from 20' to 14' to allow for the construction of a 10'x16' deck.

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

7. Variance request by property owner, Jane Mc Swain, from Section 5.7(b) for a reduction of the rear setback distance from 20' to 14' to allow for expansion of an existing deck.

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

8. Variance request by property owner, Suzanne Walls, from Section 4.11 and 4.16 from the required yard screening and buffer requirements to remove 159 shrubs from the approved Walls Nursery Site Plan (S04-16).

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

9. On behalf of KNR Investments, LLC, request for a Change in Non-Conforming Use by Manager, Kay Smoker, of the former Millville Post Office from a one-unit residential rental to a two-unit residential rental.

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

10. **Request Withdrawn by Applicant** - Variance request by applicants, Chad and Tabitha Armentrout, from Section 4.16 for a reduction of a side setback distance from 25' to 5' to allow for the construction of an addition to an existing building.

Request withdrawn by Applicant.

11. Monthly Address by Director Jennifer M. Brockman. Mr. Barney informed the Board of the upcoming public hearing on June 9, 2011 regarding the policy neutral zoning ordinance

amendments. Mr. Barney also apprised the Board of the progress made on the proposed home business zoning ordinance amendments and the US 340 Corridor planning process.

12. Legal Update. None.

13. Vote on written decisions from prior Board of Zoning Appeals meetings.

- a. Findings of Fact and Conclusion of Law: 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. No action taken.
- b. Findings of Fact and Conclusion of Law: Variance request by property owner, Victory Freewill Baptist Church, from Section 10.2(i) to allow for an animated sign. No action taken.
- c. Findings of Fact and Conclusion of Law: Appeal of an Administrative Decision of Zoning Certificate (ZC11-04) by Michelle Krassowski on behalf of Miss. Booger's Pet Services & Supplies. The Board requested that the name Joe be changed to Joseph and that the word 'swelling' be changed to 'dwelling.' Ms. Hine motioned to sign the Findings effective immediately. Ms. Huddle seconded the motion, which carried unanimously.

Ms. Huddle informed the Board that she would be absent from the July and August meetings. Ms. Hine stated she would also not be in attendance at the August meeting.

Ms. Hine motioned to adjourn the meeting at 7:44 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 our website at www.jeffersoncountywv.org. These minutes were prepared by Jennilee Hartman, Zoning Clerk.