

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
JANUARY 21, 2010

The Jefferson County Board of Zoning Appeals met on Thursday, January 21, 2010 at 3:00 p.m., in the Charles Town Library Meeting Room. Members present were as follows: Chairman, Jeff Bresee; Vice Chairman, Christy Huddle, Tiffany Hine, Ed Kelly, Jon Brusco and Alternate, Tyler Quynn. Staff members present were Director, Jennifer Brockman; Zoning Administrator, Jennifer Snyder; County Planner, Seth Rivard; Assistant Prosecuting Attorney, Stephen Groh, and Zoning Secretary, Christine Chalmers.

Chairman, Jeff Bresee, called the Meeting to order at 3:00 p.m.

1. Election of Officers

Christy Huddle nominated Jeff Bresee for a second term in the position of Chairperson. Tiffany Hine seconded the nomination, which carried unanimously. Ed Kelly then nominated Christy Huddle for a third term in the position of Vice Chair. Jon Brusco seconded the nomination, which also carried unanimously.

2. Approval of Minutes from the December 17, 2009 Meeting.

Chairman Bresee requested a motion for approval of the December Minutes. Christy Huddle motioned to approve the Minutes from the December 17, 2009 meeting, without correction. Jon Brusco seconded the motion, which carried with a vote of four (4) in favor. Due to her absence at the December Meeting, Member Tiffany Hine abstained from voting on all matters pertaining to said Meeting.

Ms. Chalmers swore in individuals who indicated they would be giving testimony.

3. Variance Request by DDS, LLP from Section 4.10 – Site Plan Requirements. Project Name: Southern States. Property Location: West of State Route 2 / North of State Route 15; Ranson, West Virginia.
(Charles Town District / Map 7 / Parcel 9.2 / 8.61 acres) **#ZV09-19**

No Applicant representation. To allow for the possibility of a late arrival, the Board recommended that this matter be passed over and readdressed after Agenda Item #6.

4. Request by HJE Group, LC for a Change in Non-Conforming Use to allow for Vehicle Auto Repair and Sales. Property Location: 15 Willingham Road; Charles Town, West Virginia.
(Middleway District / Map 20 / Parcel 9.2 / 1.78 acres) **#ZC09-12**

Pursuant to instruction received from Zoning Administrator, Jennifer Snyder, a Zoning Certificate Application was submitted to the Departments of Planning & Zoning on November 5, 2009, requesting consideration for a Change in Non-Conforming Use of the above-referenced property. Upon review of same, Ms. Snyder subsequently determined that said request should be heard by the Board of Zoning Appeals.

Representing Attorney, Peter Chakmakian, advised that his Client, William Shirley, is the owner of Smiley's Auto & Truck Sales & Service (WV License #55-067-3081). Due to unanticipated events, it was necessary for Mr. Shirley to relocate his Business from Congress Street in Charles Town, where it had operated for twenty-two (22) years, to outside City limits, specifically located at the intersection of Willingham Road & Route 51. Said property, designated as "Commercial" on the tax map, has been leased to multiple commercial tenants and sub-tenants during the past twenty years, to include Abbott and Fry Excavating and Trucking Company, Heartbeat Tour Buses and Abbott Well Drilling. In an attempt to prove commercial activity, comprised mostly of repair, maintenance and selling of equipment, trucks and machinery has been uninterrupted and has never

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been abandoned, Mr. Chakmakian provided a brief history of ownership and activity conducted on the subject property (from the year 2004 to the present), with corresponding affidavits and real property tax tickets from the Jefferson County Tax Office (2005-2009). Closing remarks included the following:

1. Can the Business continue to operate as a Non-Conforming Use with “conditions”?
2. Is the current use “more intense” than previous uses?
3. If necessary, what type of “conditions” will be mandated to insure continuation of the current Business?

Public comment was voiced by longtime Willingham Road resident, Stephanie Loptosh, who advised that, except for storage of derelict vehicles, the property has appeared deserted for several years. To that regard, Ms. Loptosh presented the Board with an array of (8 ½” x 11”) photographs that revealed the neglected vehicles and also depicted a general appearance of abandonment. Because Willingham is a dead-end road and is the only access to her Subdivision, Ms. Loptosh further expressed concern about the negative impact on the neighborhood property values consequential to this issue. She respectfully requested that the Board address the matter of aesthetics in their consideration; and, if granted, “condition” the determination accordingly.

Additional testimony was received from Mr. Frank Bredicerus, also representing the Owner, who confirmed that commercial activity has been uninterrupted and has never been abandoned on the subject property. He also provided reassurance that landscaping would be added to enhance aesthetics, regardless of the Board’s decision.

5. Variance Request from Daniels Forest, LLC, for a second, six-month extension of a Conditional Use Permit that will expire on January 29, 2010. Property Location: on both the East and West sides of Route 17 (Flowing Springs Road); just South of Route 22 (Job Corps Road).

(Charles Town District / Map 3 / Parcel 9.2 / 101.85 acres)

#ZV09-20

Representing Attorney, Peter Chakmakian, advised that the Conditional Use Permit (CUP) for the Daniel’s Forest Subdivision was issued with an original expiration date of July 29, 2008. Pursuant to Article 3, Section 3.2(g), a one-time extension of time was granted by the Planning Commission on June 10, 2008, which extended the CUP through January 29, 2010. However, there are extenuating circumstances involving this project - most notably, wastewater disposal plans - which have prevented it from being completed through the subdivision process within the allotted (36 month total) time frame. The project has been forced to switch back and forth between the Jefferson County Public Service District’s (PSD) proposed Flowing Springs Treatment Plant and the Charles Town (CT) Treatment Plant. Although the sewer plans were initially designed (and redesigned) based on utilizing the CT Treatment Plant, when said Plant reached capacity, it was necessary to redesign, again; this time, utilizing the proposed PSD Treatment Plant. Unfortunately, plans and funding pertaining to the PSD Treatment Plant were delayed, as well. Although the Applicant has not been inactive in his pursuit and is, at last, in a position to obtain the final Health Department and PSD approvals for the intended sewer disposal plan, there is now not enough time to receive approval from the Planning Commission, by January 29, 2010. Accordingly, the Applicant is respectfully asking the Board for a Variance from Article 3, Section 3.2(g), thus affording the Daniels Forest project an additional six-month extension of time on the CUP, for the purpose of completing the subdivision process.

Susanne Lawton, General Manager of the Jefferson County Public Service District, shared information regarding unit capacity calculations.

Public comment was received from Harpers Ferry resident, Barbara Humes, who wrote expressing concern regarding the adverse environmental impact that the Daniels Forest Subdivision would have on the County’s water resources, especially since it lies within the Elks Run watershed. In their decision, she urged the Board to

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stipulate that the Developers reconsider the design of the project to ensure Low Impact Development before granting an extension of the Condition Use Permit.

- 6. Request by Far Away Farms, LLC for an eighteen-month extension of the Conditional Use Permit, issued on October 6, 2008, that will expire on April 6, 2010. The proposed Subdivision, which consists of 152 single family homes, is a cluster development that “preserves open space, minimizes the impact on the land, improves the Trough Road alignment and creates the potential for a singular residential community.”** (Shepherdstown District / Map #9 / Parcel #7.2 = 1.25 acres and Parcel #8 =120.63 acres) **#Z04-04**

Representing Attorney, Peter Chakmakian advised that, per Section 3.2(g) of the Zoning Ordinance, “A zoning certificate and/or conditional use permit shall become void eighteen (18) months after the date of issuance if the construction or use for which the permit was issued has not commenced. A one-time extension of this time frame may be granted by the Board of Zoning Appeals after the evaluation of the hardship involved with noncompliance of this regulation. The length of time extended shall be at the discretion of the Board of Zoning Appeals and shall not exceed eighteen (18) months.” Although not a matter of entitlement, he further stated that upon a satisfactory explanation of any hardship experienced by the applicant, requests of this nature have been routinely granted by the Board of Zoning Appeals as a matter of right. Making reference to exhibits and an outline of the project’s history, Mr. Chakmakian provided that (in this case) justification for the initial eighteen-month extension is the lack of resolution by the Court system, which without accomplishing, would render continuation of the process a complete waste of time and resources. Accordingly, as significant and extenuating circumstances clearly exist with this project, future requests by the applicant for additional extensions of time will be necessary. Member Jon Brusco asked whether the Board of Zoning Appeals could Rule on a matter that was still under judicial review. In response, Mr. Chakmakian assured the Board that Faraway Farms, LLC is not involved in current litigation.

Pursuant to an approval of the currently requested extension, it was determined that the matter of requesting additional time could be readdressed by the Board at a future date, should Attorney Chakmakian’s client submit application for a Variance from Section 3.2(g).

The following Agenda Items will be addressed upon return from Deliberations:

- 7. Monthly Address presented by Director, Jennifer Brockman, and Status Report by Zoning Administrator, Jennifer Snyder.**
- 8. Legal Update.**
- 9. Vote on written decisions from prior Board of Zoning Appeal Meetings.**
- 10. Correspondence.**

Jon Brusco motioned to go into Deliberative Session at 4:20 p.m. Christy Huddle seconded the motion, which carried with a unanimous vote. Tiffany Hine motioned to return from Deliberative Session; Jon Brusco seconded the motion. The meeting commenced again at 5:00 p.m.

- 3. Variance Request by DDS, LLP from Section 4.10 – Site Plan Requirements.**
Project Name: Southern States.

#ZV09-19

Due to an absence of Applicant representation, Tiffany Hine motioned that the Ruling of Variance Request #ZV09-19 be “tabled” until the next scheduled meeting on Thursday, February 18th, at 3:00 p.m. At that time, Members of the Board of Zoning Appeals will consider said Variance from Article 4, Section 4.10 – Site Plan Requirements, and make a final determination regarding same. Ed Kelly seconded the motion which carried with a unanimous vote.

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Staff assured the Board that the Applicant would be notified and advised that a Denial of the Variance may be rendered by the Board, if the matter is not properly represented at the upcoming meeting.

4. Request by HJE Group, LC for a Change in Non-Conforming Use to allow for Vehicle Auto Repair and Sales. #ZC09-12

Ed Kelly motioned to approve the above referenced Variance with the condition that a solid vegetative screening in a 15' buffer with a minimum height of 6' be positioned adjacent to Willingham Road and also along the rear of the property, on the north side (area highlighted on corresponding aerial photograph). Tiffany Hine seconded the motion which carried with a unanimous vote.

5. Variance Request from Daniels Forest, LLC, for a second, six-month extension of a Conditional Use Permit that will expire on January 29, 2010. #ZV09-20

Jon Brusco motioned to approve the above referenced Variance without condition. Ed Kelly seconded the motion which carried with a unanimous vote.

6. Request by Far Away Farms, LLC for an eighteen-month extension of the Conditional Use Permit, issued on October 6, 2008, which will expire on April 6, 2010.

Jon Brusco motioned to approve the above referenced Request without condition. Tiffany Hine seconded the motion which carried with a unanimous vote.

7. Monthly Address presented by Director, Jennifer Brockman, and Status Report by Zoning Administrator, Jennifer Snyder.

Director, Jennifer Brockman advised that the County Commission had just approved Julia Quodala as the newly hired Office Manager for the Departments of Planning and Zoning; both she and Planning Clerk, Jennilee Hartman (who has been out on maternity leave), will commence work on Monday, January 25th. On that date, the Departments will finally be fully staffed. Ms. Brockman further advised that she, County Planner, Seth Rivard; and Zoning Administrator, Jennifer Snyder continue to diligently work on clarification of the Subdivision Regulations. Additionally, they are also working in conjunction with the Planning Commission on an Annual Report, to be presented to the County Commission, and the yearly Budget/Workplan. Any input from the Board of Zoning Appeals is greatly appreciated.

Zoning Administrator, Jennifer Snyder, asked Members how Staff could better serve the Board of Zoning Appeals, and offered to provide a Staff Report – a more factual presentation - of Agenda item information. The Board expressed their appreciation for the proposal, and requested that the Report be included in the monthly packets for their review prior to the Meeting.

8. Legal Update.

Assistant Prosecuting Attorney, James Casimiro, provided the Board with copies of the Order requesting an award of Attorney's fees and costs, brought by Peter L. Chakmakian, L.C. (Counsel for the Petitioner), in the following matter:

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Circuit Court of Jefferson County, West Virginia
Civil Action No. 08-C-167

Cliffside Inn, LLC (Petitioner)

v.

Jefferson County Board of Zoning Appeals et al.,

Whereby:

“It is accordingly Adjudged and Ordered that the Respondents pay unto the applicant, Peter L. Chakmakian, L.C., the sum of \$1,000.00 that sum representing attorney’s fees and costs granted by a previous order of this Court entered July 16, 2008.”

The ensuing discussion resulted in a decision from the Board to render payment as ordered.

9. Vote on written decisions from prior Board of Zoning Appeal Meetings. None

10. Correspondence. None.

Christy Huddle motioned to adjourn the meeting at 5:27 p.m. Ed Kelly seconded the motion, which carried with a unanimous vote.

An Audio Transcript of this meeting can be found on CD #____ and # _____. Zoning Secretary, Christine Chalmers, prepared these Minutes.

