

**MINUTES**  
**JEFFERSON COUNTY BOARD OF ZONING APPEALS**  
**APRIL 15, 2010**

The Jefferson County Board of Zoning Appeals met on Thursday, April 15, 2010 at 3:00 p.m., in the upper level Conference Room of the Departments of Planning & Zoning. Members present were as follows: Chairman, Jeff Bresee; Vice Chairman, Christy Huddle; Tiffany Hine, Ed Kelly and Alternate, Tyler Quynn. Jon Brusco was absent with notification. Staff members present were Director, Jennifer Brockman; Zoning Administrator, Jennifer Snyder; Assistant Prosecuting Attorneys, Stephanie Grove and Stephen Groh and Zoning Secretary, Christine Chalmers

Christy Huddle motioned to commence the meeting; Tiffany Hine seconded the motion. Chairman, Jeff Bresee, called the Meeting to order at 3:00 p.m.

**1. Approval of Minutes from the March 18, 2010 Meeting.**

Chairman Bresee requested a motion for approval of the March Minutes. Christy Huddle motioned to approve the Minutes from the March 18, 2010 Meeting, with the following corrections:

Page One, Item #1 / Line Three – change “without correction” to “as written”.

Page Three, Item #3 / Line Five – change the word “direction” to “suggestion”.

Page Three, Item #3 / Line Twenty – change “Financial Institutes” to “Financial Institutions”.

Additionally, per Ed Kelly:

Page Three / Item #2 (Bottom of Page) – Revise motion, as follows:

“Noting that all four (4) stated Variance criteria have been met, Ed Kelly motioned to approve the above referenced Variance Request without condition. Tiffany Hine seconded the motion, which carried with a unanimous vote.”

Ed Kelly seconded the motion with duly noted corrections, which carried with a unanimous vote.

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

**2. Variance Request from Section 4.11 (a) which would allow for the removal of the required 15’ Landscape Side Buffer from the approved Site Plan. Property location: Bakerton Fire Department; 891 Carter Avenue; Harpers Ferry, West Virginia. (Harpers Ferry District / Map 3A / Parcel 32). #ZV10-01**

“Section 4.11 Landscaping, Screening and Buffer Yard Requirements

- (a) All commercial development adjacent to any Residential district, or any lot with a residence, school, church or institution of human care shall have a fifty (50) foot or greater unscreened green space buffer or a fifteen (15) foot screened green space buffer along common property lines. The screening may be either vegetative or opaque fencing and may be placed anywhere within the buffer. No structures, materials, or vehicular parking shall be permitted within the side and rear yard buffers. All commercial development adjacent to all other uses must maintain ten (10) foot side and rear yard landscape buffers. (AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990)”

Speaking on behalf of the Bakerton Fire Department, Wanda Mason-Ballenger, stated that they are asking that a Variance from the above referenced Buffer Yard Requirements be granted, due mainly to the fact that the adjacent property owner does not wish to have a buffer planted. As such, obliging his request would clearly not adversely affect the public health, safety, or welfare of said adjacent property owner’s rights, and would

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afford the Fire Department an opportunity to exercise “good neighboring” practices. Moreover, waiving the requirements would allow the Fire Department to be unencumbered by the expense of materials or the cost of labor for installation, both of which can be “phenomenal”. Since the Fire Department personnel are unpaid volunteers, continued maintenance of large scale landscaping must also be taken into consideration. Ms. Mason-Ballenger further advised that by granting the Variance Request, the intent of the Ordinance is not forfeited as the land will remain green space, and the adjacent property owner’s desire will be respected.

Public comment was voiced by neighbor, George Stebbins, Jr. Residing at a location to the west of the Fire Department, Mr. Stebbins expressed his concern about removing the buffer due to aesthetic reasons. Additional comment to that effect was also expressed by Susan Rissler-Sheeley.

In response, Ms. Mason-Ballenger advised that it is the intent of the Fire Department to install a Flag Pole and plant flowers/greenery to improve the site after they receive a full Occupancy Permit.

Although initial consideration began without benefit of a Deliberative Session, Members then decided to discuss the matter privately. Accordingly, Christy Huddle motioned to go into Deliberative Session at 3:25 p.m. Tiffany Hine seconded the motion, which carried with a unanimous vote. Tiffany Hine motioned to return from Deliberative Session; Christy Huddle seconded the motion. The meeting commenced again at 3:45 p.m.

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

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

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- 2. Variance Request from Section 4.11 (a) which would allow for the removal of the required 15’ Landscape Side Buffer from the approved Site Plan. Property location: Bakerton Fire Department; 891 Carter Avenue; Harpers Ferry, West Virginia #ZV10-01**

Christy Huddle motioned to approve the above referenced Variance Request with the condition that the 15’ Landscape Side Buffer be replaced by a 30’ Unscreened Buffer, to ensure that the space remains open and unimproved. Additionally, in an effort to both conceal the exposed portion of the building and generally enhance the area, aesthetically, the Board further expressed their desire that the Bakerton Fire Department accomplish their verbal commitment to plant greenery and flowers, as declared. Ed Kelly seconded the motion which carried with a vote of three in favor, two against (Tiffany Hine and Tyler Quynn).

- 4. Monthly Address presented by Director, Jennifer Brockman, and Status Report by Zoning Administrator, Jennifer Snyder.**

Director, Jennifer Brockman advised that the matter of Subdivision Regulation Amendments remains a major Department focus. Although the four (4) Public Outreach Meetings were successfully concluded as scheduled below, further changes are still required to said Subdivision Regulations.

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1. Friday, March 26, 2010 @ 10 am – Noon (Location: Planning & Zoning Conference Room).
2. Monday, March 29, 2010 @ 6 pm – 9 pm (Location: Shepherdstown Men’s Club).
3. Wednesday, March 31, 2010 @ 1:30 pm – 3:30 pm (Location: Planning & Zoning Conference Room).
4. Thursday, April 1, 2010 @ 6 pm – 9 pm (Location: Charles Town Library Conference Room)

Additionally, Ms. Brockman also informed the Board that the County Commission has scheduled a Workshop to discuss Land Development Fee updates, which will require an estimate of incurred Staff time, per process.

Zoning Administrator, Jennifer Snyder, confirmed that both she and Secretary, Christine Chalmers, visited the site of Ashbury United Methodist Church Site, located on Rte. 480 near Shepherdstown, on Wednesday, April 14, 2010. Due to several expressed complaints regarding the Variance (referenced below) which was previously approved by the Board of Zoning Appeals with conditions at their October 15, 2009 meeting, Ms. Snyder advised that Compliance Officer, Mason Carter, had spoken with Pastor Kelly Green who agreed to make “appropriate adjustments”. Said site inspection was a follow-up to ensure conformity to those conditions. Ms. Snyder further advised that her intent is to schedule an appointment with both Mr. Carter and Pastor Green to determine whether the Signage Light Level has been adjusted to the lowest visibility legible from the street. As stipulated, “Applicant to provide said Level Intensity Number.”

**Variance Request by the Board of Trustees of Asbury United Methodist Church, Pastor Kelly Green, to allow for the installation of a full-color, double-faced, LED electronic sign which will replace the current Church sign. Property description: 4257 Kearneysville Pike; Shepherdstown, West Virginia. Article 10, Section 10.2(i) (Shepherdstown District / Map #8 / Parcel: #7.2/ 4.98 acres ) #ZV09-13**

With regard to the Southern States Bonding matter which was addressed by the Board at their February 18, 2010 Meeting (#ZV09-19), per the Department of Engineering, said process is nearing completion. Accordingly, full implementation of the required Bond is anticipated without issue.

## 8. Legal Update.

**RE: Appeal by William H. Leedy, of the determination by the Zoning Administrator that the “340 Defense Shooting Range” is a Permitted Use in the Industrial-Commercial District. Property description: 263 Berryville Pike; Rippon, WV. Article 8, Section 8.1 (Kabletown District / Map #29 / Parcel #5 / 89.98 acres ) (#AP09-01)**

Assistant Prosecuting Attorney, Stephen Groh, advised that he attended a Hearing on the above-referenced matter in March, at which time he was instructed to submit a Brief which is due next week. Upon receipt of the requested Briefs, the Judge will make a Ruling in the Case.

Assistant Prosecuting Attorney, Stephanie Grove also attended the Board of Zoning Appeals Meeting for the purpose of assessment of recent Rulings in the matters referenced below. These Cases were recently heard IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA. Copies are available for Public review.

Regarding Ruling #26: It was noted that no action can be taken until another Hearing has been scheduled. Accordingly, Staff will contact Petitioners to ascertain their position in this matter.

Regarding Ruling #36: Other than determining when the Conditional Use Permit actually expired, it is not necessary for Staff to act on this matter.

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2010 Term

No. 35274

Jane Rissler, Patricia Rissler, Susan Rissler-Sheeley, Mary Macelwee, Richard Latterell & Sherry Craig  
Petitioners Below, Appellants,

v.

The Jefferson County Board of Zoning Appeals,  
Respondent Below, Appellee,

and

THORNHILL, LLC  
Intervenor Below, Appellee

Appeal from the Circuit Court of Jefferson County

Honorable Christopher C. Wilkes, Judge

Civil Action No. 05-C-316

REVERSED AND REMANDED

Submitted: March 3, 2010

Filed: April 1, 2010

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#36

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2010 Term

No. 35129

JEFFERSON ORCHARDS, INC.,

Petitioner below, Appellant

v.

Jefferson County Board of Zoning Appeals, a Public Body;  
Paul Raco, Zoning Administrator; Thomas Trumble, Member; Edwin T. Kelly, II, Member;  
Tiffany Hine, Chairperson; Christy Huddle, Member; and Frances Morgan, Member  
Respondents below, Appellees

Appeal from the Circuit Court of Jefferson County

The Honorable Thomas W. Steptoe, Jr., Judge

Civil Action No. 06-C-388

AFFIRMED

Submitted: March 2, 2010

Filed: April 5, 2010

ATTORNEYS FOR THE APPELLEES:

Ancil G. Ramey, Esq.  
Steptoe & Johnson; Charleston, WV

Peter L. Chakmakian, Esq.; Charles Town, WV

ATTORNEYS FOR THE INTERVENORS:

Stephanie F. Grove, Esq. / Assistant Prosecuting Attorney  
Jefferson County Prosecutor's Office; Charles Town, WV

Gregory A. Bailey, Esq. / Arnold & Bailey  
Shepherdstown, WV

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**9. Vote on written decisions from prior Board of Zoning Appeal Meetings.**

As requested, Assistant Prosecuting Attorney, Stephen Groh provided a Findings of Fact and Conclusions of Law, stating conditions, for the following determination that was made by the Board at their February 18, 2010 meeting. Said document was approved by signature of Chairman, Jeff Bresee.

**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, WV.**

(Charles Town District / Map 7 / Parcel 9.2 / 8.61 acres)

**#ZV09-19**

**10. Correspondence.** None.

Tiffany Hine motioned to adjourn the meeting at 4:27 p.m. Christy Huddle seconded the motion, which carried with a unanimous vote.

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

