

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
JUNE 17, 2010

The Jefferson County Board of Zoning Appeals met on Thursday, June 17, 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; Jon Brusco and Alternate, Tyler Quynn. Vice Chairman, Christy Huddle; Tiffany Hine and Ed Kelly were all absent with notification. Assistant Prosecuting Attorney, Stephen Groh, was also absent with notification. Staff members present were Director, Jennifer Brockman; Zoning Administrator, Jennifer Snyder; and Zoning Secretary, Christine Chalmers.

Jon Brusco motioned to commence the meeting; Tyler Quynn seconded the motion. Chairman, Jeff Bresee, called the Meeting to order at 3:00 p.m.

1. Approval of Minutes from the May 20, 2010 Meeting.

Chairman Bresee requested a motion for approval of the May Minutes. Jon Brusco motioned to approve the Minutes from the May 20, 2010 Meeting, with the following correction: Page One, Item #1 / Approval of the Minutes was not by unanimous vote as stated; Jon Brusco abstained from voting, due to his absence at the April Meeting. Tyler Quynn seconded the motion with correction, which carried with a unanimous vote.

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

- 2. Variance Request by property Trustee, Curtis T. Bell, from Section 5.7(b) which would allow for a lot size that is less than the minimum lot size requirements stipulate. Property location: Cavalier Heights; Charles Town, West Virginia. (Harpers Ferry District / Map 7A / Parcel 50.2) #ZV10-05**
- 3. Variance Request by property Trustee, Curtis T. Bell, from Section 9.7 which would allow for the encroachment of existing deck stairs into the setback area. Property location: Cavalier Heights; Charles Town, West Virginia. (Harpers Ferry District / Map 7A / Parcel 50.2) #ZC10-06**

It was recommended that Items #2 and #3 be addressed in conjunction, as both Requests related to the same subject matter.

RELEVANT INFORMATION (per corresponding Staff Report):

Cavalier Subdivision was established prior to the adoption of Zoning. Lots within the development are currently considered grandfathered and non-conforming.

It is Staff's understanding that Mr. Bell obtained ownership of the Parcel 50.2 in 2005. At the time that he acquired the property, the staircase that straddles his parcel and Parcel 50.1 was already present. During a resurveying of the property, the encroachment into the side yard was discovered. A use easement was granted by the owner of Parcel 50.1 to Mr. Bell. However, since that time, the applicant and the owner of Parcel 50.1 have agreed to an adjustment of the boundary line in an effort to correct the encroachment.

In the Subdivision Regulations, Section 20.106, *Adjustment of Lot Boundaries*, regulates how lot boundary adjustments are to be processed. The initial criteria that creates a conflict for Mr. Bell's proposal is stated as follows, "The adjustment of boundary lines...shall be approved, provided that... the remaining area of the lot from which the land is *taken* satisfies requirements for minimum lot size in the zone district in which it is located." (*Emphasis added.*) When the Zoning Ordinance was adopted, the minimum lot size in the Rural District was established as 40,000 sq. ft. After the merger, Parcel 50.1 will decrease from approximately 16,988.40 sq. ft. to 16,574.58 sq. ft. causing the lot to become a greater non-conformity. Parcel 50.2 will

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increase in size from approximately 25,700.40 sq. ft to 26,114.22 sq. ft; thus, decreasing the non-conformity. If the Board varies the minimum lot size for these two specific parcels, the processing through the Subdivision Regulations may continue.

Even if the Board approves the varying of the minimum lot size for these two specific parcels, the existing staircase will still be within the side yard setback. In the Zoning Ordinance, Section 9.7, *Other Exceptions*, governs setbacks for single family residences in the Rural District in subdivisions established prior to September 1, 1989. The staircase is required to be 8 feet from the side property line.

Speaking on behalf of the Applicant, Attorney James B. Crawford, III advised that due to the fact that the referenced Lot and adjoining parcels were created prior to the Zoning Ordinance, the adjustment merely formalizes what has existed for years. Moreover, said 0.0115 acre conveyance was afforded by consent of adjacent property owner/Trustee, Mary A. Albertson.

With regard to Item #3, Attorney Crawford advised that the referenced stairs existed prior to the Applicant's purchase of the home, and are the only rear access from the home. He further stated that said boundary line adjustment doesn't consider a setback modification, thus giving reason for addressing the matter separately.

In a show of support, Ms. Albertson also attended the meeting. There was no public comment.

4. Re: OBF Property, LLC. Change in Non-Conforming Use from a Saw Mill, Shipping and Pallet Manufacturing Business to Commercial Warehousing, Public Storage, Secure Document Shredding and General Business. Property location: Box Factory Road; Summit Point, West Virginia.

(Middleway District / Map 27 & 28 / Parcels 11 & 4.1)

#ZC10-06

Speaking on behalf of the Applicant/Owner, Christopher Hansen, Attorney Mike Cassell, advised that Mr. Hansen's Company purchases and reconditions equipment for sale on the internet. Said equipment is stored on the premises until the refurbishing process is complete.

RELEVANT INFORMATION (per corresponding Staff Report)

Prior to 2006, Burch Manufacturing established a non-conforming use on Parcels 4.1 and 11 that included a commercial sawmill and shipping container and pallet manufacturing business. In February 2006, the Board of Zoning Appeals (BZA) heard a request by the owners for a change in non-conforming use from the sawmill/pallet business to a "general business, commercial warehousing, public storage and a secure document shredding business." The owner stated during the hearing that there would not be any storage or warehousing of toxic or hazardous materials and outdoor storage would be limited to the areas where lumber and outside equipment had been located previously. Additionally, the owner proposed to fence the property and provide additional lighting. The approval of the change in non-conforming use was unanimous. While a zoning certificate was never issued for the use approved by the Board, previous departmental practice appears to have established the Board's minutes as a stand in for the zoning certificate.

In October 2006, a zoning certificate was issued. The use approved in the zoning certificate was for "manufacturing and reconditioning wooden pallets, boxes and wood products;" essentially, "to continue the pre-existing non-conforming use." There is no documentation in the department files detailing the reasoning behind the difference in how the zoning certificate was issued and the Board's action. Approval of a continued use

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would not have required Board action, but would have been approved by the Zoning Administrator. It is unclear whether or not the intent was to “abandon” the Board approved change in use.

The Jefferson County Real Property Tax tickets issued by the Assessor’s Office in 2007 show that OBF Properties, LLC was added to the ticket as an “In Care Of” and that the outstanding 2006 and 2007 tax tickets were paid for in March 2008, the same month OBF took possession of the two parcels. Attorney Mike Cassell, representative for OBF, states in his Zoning Certificate Application, “The property has been in use as a commercial warehousing operation and general business location since 2006.” Furthermore, current property owner and applicant, Christopher Hansen, has submitted a notarized affidavit regarding the activities that occurred on the subject parcels that he is aware of. He is now requesting that the Board’s stated approval from February 2006 be established in a newly issued Zoning Certificate.

A site visit was conducted on April 30, 2010. During this visit, Staff evaluated the current state of the site and considered the proposed change in use. The Zoning Ordinance assumes that a commercial sawmill is only appropriate in the Industrial/Commercial District after processing through the conditional use permit process. The subject parcels are located in the Rural District. General business and warehousing uses are more commercial than industrial uses, such as manufacturing businesses, and less intense than a commercial sawmill business. Establishing a less intense use on this parcel would provide greater compatibility for the surrounding area and provide the potential to improve some of the buildings located on the site, which appear to need repair and possibly securing. Permitting the change in use would give the owner the ability to make the changes necessary to reuse a viable location.

There was no public comment.

5. Variance Request by Owners, Ty and Brandy Allinger, to reduce the rear setback distance from 12’ to 9’ to allow for a 3’ walkway around the back side of a proposed inground swimming pool. Property location: 41 Louise Court; Charles Town, West Virginia. Section 9.7 (Harpers Ferry District / Map 11C / Parcels 17) #ZV10-07

Owner/Applicant, Ty Allinger provided, within the monthly packets, a letter advising that he would be unable to attend the Meeting or provide representation on his behalf. Despite that fact, he asked that the Board not postpone this matter, but make a determination based on their review of his submitted information instead.

Accordingly, Staff presented a brief overview of the Request, advising that generally setback restrictions don’t apply to sidewalks, but because the walkway is located adjacent to the pool it is considered part of the accessory structure and thus must adhere to established setbacks requirements. Since the Allinger’s have young children, moving the pool 3’ closer to the house would unsafely position it too near the rear deck steps, which is a concern. There was no public comment.

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

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

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Tyler Quynn motioned to go into Deliberative Session at 3:30 p.m. Jon Brusco seconded the motion, which carried with a unanimous vote. Jon Brusco motioned to return from Deliberative Session; Tyler Quynn seconded the motion. The meeting commenced again at 3:45 p.m.

2. Variance Request by property Trustee, Curtis T. Bell, from Section 5.7(b) which would allow for a lot size that is less than the minimum lot size requirements stipulate. Property location: Cavalier Heights Charles Town, West Virginia. (Harpers Ferry District / Map 7A / Parcel 50.2) #ZV10-05

Jon Brusco motioned to approve the above referenced Variance, to include that any reduction to the current 16,988.40 sq. ft. lot will render it no less than 16,000 sq. ft. Tyler Quynn seconded the motion which carried with a unanimous vote.

3. Variance Request by property Trustee, Curtis T. Bell, from Section 9.7 which would allow for the encroachment of existing deck stairs into the setback area. Property location: Cavalier Heights; Charles Town, West Virginia. (Harpers Ferry District / Map 7A / Parcel 50.2) #ZV10-06

Jon Brusco motioned to approve the above referenced Variance Request to include that the rear setback distance will be reduced from 12' to 2'. Tyler Quynn seconded the motion which carried with a unanimous vote.

4. Re: OBF Property, LLC. Change in Non-Conforming Use from a Saw Mill, Shipping and Pallet Manufacturing Business to Commercial Warehousing, Public Storage, Secure Document Shredding and General Business. Property location: Box Factory Road; Summit Point, West Virginia. (Middleway District / Map 27 & 28 / Parcels 11 & 4.1) #ZC10-06

Tyler Quynn motioned to approve the above referenced Variance, amended to include that "Public Storage" be removed as an available use and that a Zoning Certificate, defining all approved uses, be issued to the Applicant. Jon Brusco seconded the motion which carried with a unanimous vote.

5. Variance Request by Owners, Ty and Brandy Allinger, to reduce the rear setback distance from 12' to 9' to allow for a 3' walkway around the back side of a proposed inground swimming pool. Property location: 41 Louise Court; Charles Town, West Virginia. Section 9.7 (Harpers Ferry District / Map 11C / Parcels 17) #ZV10-07

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

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

Director, Jennifer Brockman, advised that the Subdivision Regulations have gone to the County Commission, who have scheduled a workshop at the end of the month. She further advised that the impending Subdivision amendments will include input by the Board of Zoning Appeals. The County Commission will also be holding a Roundtable Discussion in July to address the proposed Fee revisions, which is an ongoing topic of debate.

Regarding the Monthly Activity Report, Zoning Administrator, Jennifer Snyder, stated that no Zoning Certificates were issued this month; however, the pending Conditional Use Permit is still being processed.

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In response to Jon Brusco's inquiry about light level (which he noted is excessive) regulation for the Asbury United Methodist Church sign, Ms. Snyder informed the Board that a site visit had been made several weeks ago; resolution of the matter is currently pending. Moreover, the Thorn Hill case, which will not be heard at the July Meeting, is also pending.

On a more affecting note, Ms. Snyder advised that she recently tendered her Resignation and would officially relinquish her position as Zoning Administrator on June 30th. She expressed her appreciation to the Board for their support during her tenure. On behalf of the Board, Chairman Bresee, extended Best Wishes stating that she would be missed. Sixty-seven applications are under review for the open position of Zoning Administrator.

7. Legal Update. NONE

8. Vote on written decisions from prior Board of Zoning Appeals Meetings. NONE

9. Correspondence. NONE

Jon Brusco motioned to adjourn the meeting at 4:00 p.m. Tyler Quynn 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.

