

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
JULY 15, 2010

The Jefferson County Board of Zoning Appeals met on Thursday, July 15, 2010 at 3:00 p.m., in the upper level Conference Room of the Departments of Planning & Zoning. Members Jeff Bresee, Chairman; Christy Huddle, Vice Chairman; Tiffany Hine and Ed Kelly were present. Jon Brusco and Tyler Quynn, Alternate, were absent with notification. Assistant Prosecuting Attorney, Stephen Groh, was also absent with notification. Staff members present were Director, Jennifer Brockman; Zoning Administrator, Steven Barney; and Zoning Clerk, Jennilee Hartman.

Ms. Huddle motioned to commence the meeting. Ms. Hine seconded the motion, which carried unanimously. Chairman Bresee called the meeting to order at 3:00 p.m.

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

1. Approval of Minutes from the June 17, 2010 Meeting.

Ms. Hine motioned to approve the June minutes. Mr. Bresee seconded the motion. Due to a lack of a quorum of those in attendance at the June 17, 2010 meeting, Ms. Hine amended her motion to postpone approval of the June minutes until August 19, 2010. Mr. Bresee seconded the motion and requested that an “s” be added in all places where “*Board of Zoning Appeal*” is used to read “*Board of Zoning Appeals*”. The motion to postpone the June minutes until August passed unanimously.

2. Variance Request by property owners, Andrew (Jr.) and Miya Brown from Article 9, Section 9.5 which would afford a reduction of the rear setback distance by 4’ to allow for the construction of a 12’ x 20’ deck. Property location: 36 Monte Carlo Way; Charles Town, West Virginia. (Charles Town District / Map 9C / Parcel 62) #ZV10-08

Ms. Miya Brown, applicant, presented the request. Ms. Brown provided the Board with pictures of the neighborhood. Mr. Kelly inquired as to whether any future development was planned for the property behind Ms. Brown’s. Ms. Brockman stated the land had been annexed into the City of Charles Town. Ms. Brown stated there was no additional land for development behind her property. Mr. Bresee called for public comment. There was no public comment.

3. Variance Request by property owner, Eli F. Sizemore, Jr., from Article 9, Section 9.7, to reduce the side setback distance from 8’ to 3’ to allow for the encroachment of an existing shed into the setback area. Property location: 364 Mt. Top Trail, Westridge Hills Subdivision, Harpers Ferry, WV. (Harpers Ferry District / Map 13K / Parcel 641) #ZV10-09

Mr. Eli Sizemore, applicant, presented the request. Mr. Sizemore provided the Board with pictures of the house and the existing shed in question. Mr. Sizemore stated he thought the shed was included in the original permit for the house. The original permit was issued for the home and a shed. Mr. Sizemore added to the shed without obtaining a new building permit. Ms. Brockman asked Mr. Sizemore how he became aware of the violation. Mr. Sizemore stated he received a letter from Mason Carter the County’s Ordinance Compliance Officer informing him of the violation. The Board discussed the size of the existing shed and the square footage that

was added in 1992. Mr. Sizemore stated the structure crosses over the rear property line; however he also owns the rear adjacent lot. Ms. Huddle expressed concern over the inaccurate distances shown on Mr. Sizemore's sketch sheet.

Mr. Bresee called for public comment. Maurice Lynch, adjoining property owner, addressed the Board. Mr. Lynch presented the Board with pictures of Mr. Sizemore's property. Mr. Lynch contests that the shed in question was built on the property line, not 3 feet from it. Mr. Lynch stated that Mr. Sizemore moved a 5' x 8' shed from one location to another on his property. Ms. Huddled questioned if the Board was allowed to require a survey. Ms. Hine asked that they discuss this question in deliberative session. Ms. Huddle stated if Mr. Lynch's statement is accurate then the variance request would not provide relief. Mr. Sizemore rebutted Mr. Lynch's statements.

4. Variance Request by property owners, William and Kelley Brown, from Article 5, Section 5.4(b) to reduce the side setback distance from 6' to 2' to allow for placement of a shed. Property location: 156 Butcher Court, Shepherdstown, West Virginia. (Shepherdstown District / Map 8C / Parcel 214) #ZV10-10

Mr. William Brown, applicant, presented the request. Mr. Brown provided the Board with pictures of his property. Mr. Brown explained the location of existing structures and features of the home that he believed would be obstructed by the placement of the shed if it were located within the setback limits. Ms. Huddle asked what the height of the shed would be. Mr. Brown stated he had not decided on a specific shed however he anticipated purchasing an 8' x 8' shed with the height being possibly 7' or 8'. Ms. Hine stated the letter signed by the neighbor giving permission for the placement of shed indicated the shed would be 3' from the property line. Ms. Hine expressed concern that the neighbor believed the shed would be 3' from the property line, not the 2' the applicant is requesting. Ms. Hine asked if they approved the variance for only 3' if the applicant could fit the shed in the approximate location. Mr. Brown stated he could. Ms. Huddle was concerned that 2' would not be sufficient space for maintenance of the shed.

Ms. Huddle motioned to go into deliberative session. Mr. Kelly seconded the motion, which carried unanimously. The Board went into deliberative session at 3:48 p.m.

During deliberative session the Board requested that the Ordinance Compliance Officer, Mason Carter, provide the Board with details regarding the violation complaint for Item #3.

Mr. Kelly motioned to come out of deliberative session. Ms. Hine seconded the motion, which carried unanimously. The Board resumed the regular meeting at 4:24 p.m.

Board of Zoning Appeals Rulings

2. Variance Request by property owners, Andrew (Jr.) and Miya Brown from Article 9, Section 9.5 which would afford a reduction of the rear setback distance by 4' to allow for the construction of a 12' x 20' deck. Property location: 36 Monte Carlo Way; Charles Town, West Virginia. (Charles Town District / Map 9C / Parcel 62) #ZV10-08

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

3. Variance Request by property owner, Eli F. Sizemore, Jr., from Article 9, Section 9.7, to reduce the side setback distance from 8' to 3' to allow for the encroachment of an existing shed into the setback area. Property location: 364 Mt. Top Trail, Westridge Hills Subdivision, Harpers Ferry, WV. (Harpers Ferry District / Map 13K / Parcel 641) #ZV10-09

Ms. Huddle motioned to continue the above referenced variance request until the September 16, 2010 meeting for the purpose of allowing the applicant time to provide an accurate map of what is being proposed. Ms. Huddle suggested that Mr. Sizemore include all of the lots that he owns, the location of all structures and to include the location of Mr. Lynch's property. Ms. Hine seconded the motion, which carried unanimously.

4. Variance Request by property owners, William and Kelley Brown, from Article 5, Section 5.4(b) to reduce the side setback distance from 6' to 2' to allow for placement of a shed. Property location: 156 Butcher Court, Shepherdstown, West Virginia. (Shepherdstown District / Map 8C / Parcel 214) #ZV10-10

Ms. Hine motioned to approve the above referenced variance with the modification of a 3' side setback as opposed to the 2' requested and to restrict the height of the shed to 7'. Ms. Huddle seconded the motion, which carried unanimously. Mr. Brown asked the purpose behind the modification. Ms. Hine made the motion because that was what was documented to the neighbor. Mr. Brown stated he did not research the average height of a shed prior to submitting the variance request and was concerned that 7' may be too restrictive. Discussion regarding the height of the shed ensued. Ms. Hine motioned to amend her original motion that restricted the shed to 7' in height to allow for 8' instead; keeping the 3' side setback restriction. Ms. Huddle seconded the motion, which carried unanimously.

Mr. Sizemore asked the Board what the distance requirements were prior to 1992. He was informed that the Zoning Ordinance went into effect in 1988. Mr. Sizemore also asked what the smallest distance requirement was that he could ask for. Mr. Kelly stated they could not answer the question directly however informed him that the Board generally considers maintenance of the structure when reviewing a variance request. Mr. Sizemore was further advised of the level of detail they would like to see on the new sketch sheet. Ms. Huddle suggested the possibility of a lot line adjustment between Mr. Sizemore and Mr. Lynch's properties. Mr. Sizemore stated Mr. Lynch would not consider that option.

The Board requested that Steve Groh, Assistant Prosecuting Attorney, be prepared to answer questions related to "squatter's rights" by the August meeting.

5. Monthly Address by Director, Jennifer Brockman.

Ms. Brockman informed the Board of the following:

- a. Two Conditional Use Permit requests have neighborhood compatibility meetings scheduled for July 16, 2010.
- b. The purpose for the shift in staffing of the Planning and Zoning Department.
- c. Provided a copy of the Old Standard Quarry final plat that had been recorded without staff review. Ms. Brockman explained that state law had changed to allow properties defined as Brownfield Economic Development sites to be exempt from processing under 8A. Ms. Brockman went on to further explain that the Planning Commission submitted a FOIA request to the state and were awaiting a response.

- d. A hand delivered letter by Herb Jonkers regarding scheduling a public hearing for Thorn Hill. Ms. Brockman stated we have not been given direction by legal counsel as to what type of hearing needs to be scheduled.
6. Legal Update. None.
7. Vote on written decisions from prior Board of Zoning Appeal Meetings. None.
8. Correspondence. No action.

Formal Withdrawal of Special Exceptions Request by Applicant, PNGI – Charles Town Gaming, LLC, to allow for the installation of a sign which would direct traffic traveling north/southbound on Route 9 to the Facility. (May 20, 2010 Meeting) Article 10, Section 10.5 (Charles Town District / Map 8 / Parcel 3 / 0.6 acre) #ZC10-05

Ms. Huddle motioned to adjourn the meeting 5:05 p.m. Mr. Kelly seconded the motion, which carried unanimously.

An audio transcript of this meeting can be found on CD #__ & __. These minutes were prepared by Jennilee Hartman, Planning Clerk.