

MINUTES  
JEFFERSON COUNTY BOARD OF ZONING APPEALS  
AUGUST 19, 2010

The Jefferson County Board of Zoning Appeals met on Thursday, August 19, 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, Jon Brusco, Ed Kelly and Alternate, Tyler Quynn were present. Staff members present were Zoning Administrator, Steve Barney; Assistant Prosecuting Attorney, Stephen Groh; Prosecuting Attorney, Ralph Lorenzetti and Zoning Clerk, Jennilee Hartman.

Ms. Huddle motioned to commence the meeting. Mr. Brusco seconded the motion. Chairman Bresee called the meeting to order at 3:02 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 and the July 15, 2010 meeting.

Mr. Brusco motioned to approve the June 17, 2010 minutes. Mr. Quynn seconded the motion. Ms. Huddle, Ms. Hine and Mr. Kelly recused themselves from voting because they were not present at the June 17, 2010 meeting. The motion carried unanimously.

Ms. Hine motioned to approve the July 15, 2010 minutes. Ms. Huddle seconded the motion. The Board requested two changes:

- a. Page 2, sixth paragraph, deliberative session comment, "During deliberative session the Board requested that the Ordinance Compliance Officer, Mason Carter, provide the Board with details regarding the violation *complaint regarding Item #3.*"
- b. Page 2, sixth paragraph, capitalize the name *Mason*.
- c. Page 3, fifth paragraph, change the term *merger* to *lot line adjustment*.

Mr. Brusco abstained from voting because he was not present at the July 15, 2010 meeting. The Board unanimously approved the July 15, 2010 minutes with the stated changes.

2. Variance Request by property owners, Donald E. Jr. and Misty N. Harder from Article 9, Section 9.5a which would afford a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 10' x 24' deck. Property location: Robelei Subdivision, 30 Stiles Way, Ranson, West Virginia. (District: Charles Town, Map: 7, Parcel: 78, Zoned: Residential Light-Industrial Commercial, File: #ZV10-11)

Mr. Harder, applicant, presented the request. Mr. Harder stated the stormwater management pond is located behind his property. Mr. Harder explained that because the water main is located in the front yard that the house had to be built further back into the property. Mr. Barney stated that due to the location of the water main and the home that there is no suitable buildable area for a deck.

Mr. Bresee called for public comment. There was no public comment.

3. Variance Request by property owner, Charles J. Brown from Article 9, Section 9.7 to reduce the side setback distance from 12' to 8' to allow for the construction of a 3-car garage. Property location: 15949 Charles Town Road, Charles Town, West Virginia. (District: Charles Town, Map: 19A-1, Parcel: 2, Zoned: Rural, File: #ZV10-12)

Mr. Lewis Lancaster, contractor, presented the request. Mr. Lancaster stated the applicant wished to place the proposed 3-car garage on an existing slab in order to store a race car, motor home and boat that are presently parked on the property. Mr. Lancaster provided the Board with a revised drawing. The Board discovered the back page of the variance request was missing. Staff left the room at 3:15 p.m. to make copies for the Board.

At this time an error with the audio recording occurred and the CD was changed.

Mr. Lancaster stated the neighbors had signed a document in support of the variance request. Mr. Barney stated the structure is a residential accessory use and as such a 12 foot setback would apply. Mr. Bresee called for public comment. There was no public comment.

4. Variance Request by property owners, Joseph and Melissa Pfaltzgraff from Article 5, Section 5.4b to reduce both of the side setback distances from 12' to 7' to allow for the construction of an inground pool & concrete slab. Property location: Windmill Crossing Subdivision, 171 Pommel Lane, Charles Town, West Virginia. (District: Charles Town, Map: 4F, Parcel: 221, Zoned: Residential Growth, File: #ZV10-13)

A correction to the agenda was mentioned regarding the property location. The property is located in the Breckenridge Subdivision.

Mr. Pfaltzgraff, applicant, presented the request. Mr. Pfaltzgraff provided the Board a revised letter from the neighbors in which they expressed their support of the variance request. Mr. Groh discussed whether or not a pool slab would be considered an encroachment. Mr. Barney stated the lot was tapered and that the structure is a residential accessory use. Mr. Bresee called for public comment. There was no public comment.

5. Variance Request by property owner, Hospice of the Panhandle, Inc. from Article 5, Section 5.7b to reduce the southern side setback distance from 100' to 54' to allow for the construction of a Hospital-type Facility. Property location: Northeast side of Route 9 at the Jefferson/Berkeley County line, West Virginia. (District: Middleway, Map: 1, Parcel: p/o 1.2, Zoned: Rural, File #ZV10-14)

Margaret Cogswell, CEO of Hospice of the Panhandle, Inc. presented the request. Ms. Cogswell explained a reimbursement program in which the reimbursement rate for care is 12% higher in Jefferson County as opposed to Berkeley County and therefore all the rooms must be located wholly within Jefferson County. The facility is located close to Berkeley County because it has the largest population. Rob Eckels, architect, explained the design of the project. The intent of the design is to provide the patients with a homelike setting. Mr. Barney had no additional comments other than what was presented in the staff report. Mr. Bresee called for public comment. Mr. Lorenzetti spoke in favor of the request.

6. Request by Michael Cassell, Attorney, on behalf of property owner OBF Properties, LLC for a change in non-conforming use to allow for the addition of a recovery and recycling of copper cable for baling and resale business to the existing approved zoning certificate (#ZC10-06). Property location: Box Factory Road (Route 13/1), Summit Point, West Virginia. (District: Middleway, Map: 27 & 28, Parcels: 11 & 4.1, Zoned: Rural, File: #ZC10-10)

Christopher Hansen, owner, presented the request. Discussion ensued regarding the outside storage of the roll-off units and how much area they would encompass. Mr. Hansen explained the nature of the business and how the copper would be processed, stored and shipped. Mr. Groh explained to the Board why this request did not meet the definition of a salvage yard. Mr. Barney stated that provided no exposed copper is to be stored outside the use would not be in violation of the Salvage Yard Ordinance. Mr. Bresee called for public comment. There was no public comment.

7. Special Exceptions Request by Christopher Zanella on behalf of the Hillbrook Inn to convert an existing 63' x 25' gate house into a 2 guest room bed and breakfast with staff accommodations and spa services pursuant to Article 9, Section 9.8. Article 5, Section 5.7(a)17 lists this proposal as a principal permitted use. The property is located on Summit Point Road, Charles Town, West Virginia in front of the Hillbrook Inn property. Caz Associates, Inc. is the owner/developer. (District: Kabletown, Map: 14, Parcel: 10.1, Zoned: Rural, File: #ZC10-11)

Mr. Zanella, applicant, presented the request. Mr. Zanella explained the existing structure had been used for staff accommodation in the past and that they now wished to include a small bed and breakfast with spa services. Mr. Barney stated that although the proposed use is permitted, Article 9.8 of the Zoning Ordinance required a public hearing. Mr. Bresee called for public comment. There was no public comment.

8. Issuance of the Conditional Use Permit (CUP) for Tropical Tanning and Gifts LLC to relocate the business into the property/business owner's basement. The property is located at 7357 Martinsburg Pike (Route 45), Shepherdstown, West Virginia in the Mecklenburg Heights Subdivision. Brenda Staubs is the owner/developer. (District: Shepherdstown, Map: 7A, Parcel: 51, Zoned: Residential Growth, File: #Z10-01)

Ms. Staubs, applicant, presented the request. Ms. Staubs explained the nature of the business. Mr. Brusco questioned the shared driveway with the neighbor. Ms. Staubs stated the driveway could be moved to another location on her property. Ms. Huddle expressed her concern regarding paving the parking area. Mr. Barney stated there was no public comment at the neighborhood compatibility meeting that was held on July 16, 2010. Mr. Bresee called for public comment. There was no public comment.

9. Issuance of the Conditional Use Permit (CUP) for Good Shepherd Caregivers to allow a non-profit volunteer organization to operate a non-medical care giving business within a unit of a duplex. The remaining unit would be occupied by a residential tenant. The property is located at 7311 Martinsburg Pike (Route 45), Shepherdstown, West Virginia in the Mecklenburg Heights Subdivision. John and Joan Sheridan are the owners. Dan Rowzie with Good Shepherd Interfaith Caregivers LLC is the developer. (District: Shepherdstown, Map: 7A, Parcel: 51.3, Zoned: Residential Growth, File: #Z10-02)

Mr. Rowzie, applicant, presented the request. Mr. Rowzie explained the nature of the business. Mr. Rowzie stated the second half of the duplex will continue to be used as an apartment. Mr. Quynn stated the star on the staff report needed to be moved over two lots. Mr. Barney explained that the staff report stated that the original rezoning request was denied; however this

statement is incorrect. The rezoning request was withdrawn by the applicant at the direction of the Planning Commission. Mr. Bresee called for public comment. There was no public comment.

Mr. Brusco motioned to go into deliberative session. Ms. Huddle seconded the motion, which carried unanimously. The Board went into deliberative session at 4:11 p.m.

Ms. Hine motioned to come out of deliberative session. Mr. Kelly seconded the motion, which carried unanimously. The Board resumed the regular meeting at 4:19 p.m.

### **Board of Zoning Appeals Rulings**

2. Variance Request by property owners, Donald E. Jr. and Misty N. Harder from Article 9, Section 9.5a which would afford a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 10' x 24' deck.

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

3. Variance Request by property owner, Charles J. Brown from Article 9, Section 9.7 to reduce the side setback distance from 12' to 8' to allow for the construction of a 3-car garage.

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

4. Variance Request by property owners, Joseph and Melissa Pfaltzgraff from Article 5, Section 5.4b to reduce both of the side setback distances from 12' to 7' to allow for the construction of an inground pool & concrete slab.

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

5. Variance Request by property owner, Hospice of the Panhandle, Inc. from Article 5, Section 5.7b to reduce the southern side setback distance from 100' to 54' to allow for the construction of a Hospital-type Facility.

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

6. Request by Michael Cassell, Attorney, on behalf of property owner OBF Properties, LLC for a change in non-conforming use to allow for the addition of a recovery and recycling of copper cable for baling and resale business to the existing approved zoning certificate (#ZC10-06).

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

7. Special Exceptions Request by Christopher Zanella on behalf of the Hillbrook Inn to convert an existing 63' x 25' gate house into a 2 guest room bed and breakfast with staff accommodations and spa services pursuant to Article 9, Section 9.8. Article 5, Section 5.7(a)17 lists this proposal as a principal permitted use.

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

8. Issuance of the Conditional Use Permit (CUP) for Tropical Tanning and Gifts LLC to relocate the business into the property/business owner's basement.

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

9. Issuance of the Conditional Use Permit (CUP) for Good Shepherd Caregivers to allow a non-profit volunteer organization to operate a non-medical care giving business within a unit of a duplex at 101 South Princess Street. The remaining unit would be occupied by a residential tenant.

Mr. Kelly motioned to approve the issuance of the Conditional Use Permit for Good Shepherd Caregivers to allow a non-profit volunteer organization to operate a non-medical care giving business within a unit of a duplex at 101 South Princess Street in Shepherdstown, WV. Ms. Huddle seconded the motion, which carried unanimously. Mr. Groh asked if the Board wished to allow the entire structure to be used as the business. Mr. Kelly amended his original motion to correct the stated location of the use to 7311 Martinsburg Pike in Shepherdstown, West Virginia and to allow the entire duplex to be converted to the stated use. Ms. Huddle seconded the amendment, which carried unanimously.

10. Monthly Address by Director Jennifer Brockman. Due to the fact that Ms. Brockman was not in attendance Mr. Barney updated the Board regarding the Zoning Ordinance amendments. Mr. Groh discussed the Board's role in amending the Zoning Ordinance.

11. Legal Update. Mr. Kelly asked Mr. Groh who has the burden of proof when the Board is considering a variance request and someone is contesting the facts provided. Mr. Groh stated the burden of proof is on the applicant. Mr. Groh stated the Board could approve a variance, and if it were proven the applicant's testimony was not accurate, that the variance would no longer be valid. The Board could also request more evidence from the applicant in order for them to make its findings.

Mr. Bresee stated he would not be in attendance at the September 16, 2010 meeting.

12. Vote on written decisions from prior Board of Zoning Appeal meetings. None.

13. Correspondence. None.

Minutes  
Board of Zoning Appeals  
August 19, 2010  
Page 6 of 6

Ms. Hine motioned to adjourn the meeting 4:44 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, Zoning Clerk.