

MINUTES  
JEFFERSON COUNTY BOARD OF ZONING APPEALS  
NOVEMBER 18, 2010

The Jefferson County Board of Zoning Appeals met on Thursday, November 18, 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 Director of Zoning, Jennifer Brockman; Zoning Administrator, Steve Barney; Assistant Prosecuting Attorney, Stephen Groh and Zoning Clerk, Jennilee Hartman.

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

1. Approval of Minutes from the September 16, 2010 meeting.

Ms. Huddle motioned to approve the minutes with the following change:

- a. Page 2, Item #7, eighth paragraph, move the apostrophe to after the "s" in *Homeowners'*.

Ms. Hine seconded the motion, which carried unanimously.

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

2. Variance Request by property owner, Sheryl White from Article 9, Section 9.7 to reduce the front setback distance from 25' to 0' to allow for the construction of a garage. Property location: 15939 Charles Town Road, Charles Town, West Virginia. (District: Charles Town, Map: 19A-1, Parcel: 2, Zoned: Rural, File: #ZV10-21)

Applicant, Sheryl White, informed the Board that her name was spelled incorrectly on the agenda. Ms. White presented the request. Mr. Barney directed the Board's attention to a memorandum that was included in their packets regarding draft policies regarding clarification of setbacks for corner lots and lots adjacent to alleys. Mr. Barney briefly explained that if the policies were in effect that Ms. White's variance request would change from a front yard setback to a side yard setback. Charles Brown and Scott Gray addressed the Board on behalf of the applicant. Mr. Bresee called for public comment. There was no public comment.

3. Variance Request by Fred Gates on behalf of property owner, Roderick Planes, LLC from Article 3, Section 3.2(g) to allow for a second extension request for the Aspen Greens Subdivision Conditional Use Permit (Z02-06). The applicant is requesting an extension from December 20, 2010, until July 1, 2012. The property is located northeasterly of the intersection of Old Country Club Road with Flowing Springs Road.(District: Charles Town, Map: 4, Parcel: 19, Zoned: Rural, File: #ZV10-22)

Fred Gates, consultant, gave a presentation on behalf of the property owner. Patrick Henry, the applicant's attorney, and Maurice Gladhill, property owner, also addressed the Board. Sue Lawton, General Manager for the Public Service District, spoke in favor of the request. Mr. Bresee called for public comment. There was no public comment.

4. Variance Request by property owners, Barbara Feldman and Barry Whitebook, from the following:

- a. Article 4, Sections 4.A3(e); to allow parking in the required front yard setback for a proposed cottage industry.
- b. Article 4, Sections 4.A3(k); to allow a proposed cottage industry within an existing residential subdivision.
- c. Article 4, Sections 4.A3(j); to allow the existing structure for a proposed cottage industry to be closer than 25' to the property line.
- d. Article 5, Sections 5.7(b); to reduce the front setback for an existing structure from 40' to 15' due to a building permit that was issued in error.
- e. Article 9, Sections 9.6(c); to allow an accessory structure to be located within the required front yard due to a building permit that was issued in error.

The subject property is located at 448 Southerly Lane in Charles Town, West Virginia.  
(District: Charles Town, Map: 9, Parcel: 4.17, Zoned: Rural, File: #ZV10-23)

Barbara Feldman, applicant, presented the request. Mr. Barney explained again that if the draft policies were in effect that requests (a), (d) and (e) would be unnecessary. Ms. Huddle referenced an email dated October 28, 2010, from the applicant's neighbor Tena Mills. Ms. Feldman explained how she was going to address Ms. Mills' concerns regarding the traffic flow on the shared access easement. Barry Whitebook, applicant, also addressed the Board. John Swift, Ms. Feldman's attorney, stated that while there are alternatives that would solve the parking dilemma that the alternatives would create more impervious area which would diminish the rural character of the property. Ms. Huddle stated that the applicant should encourage the students to be mindful of potential bottlenecks as a result of their patronage. Mr. Bresee called for public comment. Ms. Feldman's students Elizabeth Blake, Erika Weshinsky, Christine Starkey, Justin Starkey, Steffanie Simpson, Linda Lotze and Fred Ethan Fischer spoke in favor of the request. Each student highlighted the benefits they have received from attending Ms. Feldman's classes. In addition they explained how Ms. Feldman's current teaching location allowed for her to maintain reasonable prices.

Mr. Brusco motioned to have a short recess and then to go into deliberative session. Ms. Huddle seconded the motion, which carried unanimously. The Board went into deliberative session at 4:08 p.m.

Ms. Huddle motioned to come out of deliberative session. Ms. Hine seconded the motion, which carried unanimously. The Board resumed the regular meeting at 4:30 p.m.

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

Mr. Barney stated the Department has adopted the aforementioned draft policies regarding clarification of setbacks for corner lots and lots adjacent to alleys.

2. Variance Request by property owner, Sheryl White from Article 9, Section 9.7 to reduce the front setback distance from 25' to 0' to allow for the construction of a garage.

Due to the Department's new policy regarding corner lots, Mr. Brusco motioned to approve a variance to reduce the newly determined side setback of 12' to 0'. Ms. Huddle seconded the motion, which carried unanimously.

3. Variance Request by Fred Gates on behalf of property owner, Roderick Planes, LLC from Article 3, Section 3.2(g) to allow for a second extension request for the Aspen Greens Subdivision Conditional Use Permit (Z02-06). The applicant is requesting an extension from December 20, 2010, until July 1, 2012.

Mr. Kelly motioned to approve the above referenced variance request. Ms. Hine seconded the motion, which carried unanimously. Ms. Huddle stated for the record that she was happy the applicant was going to adhere to the new Flood Plain Ordinance requirements.

4. Variance Request by property owners, Barbara Feldman and Barry Whitebook, from the following:
  - a. Article 4, Sections 4.A3(e); to allow parking in the required front yard setback for a proposed cottage industry.
  - b. Article 4, Sections 4.A3(k); to allow a proposed cottage industry within an existing residential subdivision.
  - c. Article 4, Sections 4.A3(j); to allow the existing structure for a proposed cottage industry to be closer than 25' to the property line.
  - d. Article 5, Sections 5.7(b); to reduce the front setback for an existing structure from 40' to 15' due to a building permit that was issued in error.
  - e. Article 9, Sections 9.6(c); to allow an accessory structure to be located within the required front yard due to a building permit that was issued in error.

Ms. Huddle motioned to approve variance requests (b) and (c); finding that requests (a), (d) and (e) are no longer required due to the Department's new policy regarding corner lots. Ms. Huddle also stated that the motion to approve was made with the understanding that the applicant's business will not impede traffic flow along the shared access easement. Mr. Kelly seconded the motion, which carried unanimously.

5. Discussion of Seasonal Uses. Mr. Barney read the definition of Seasonal Use from the current Zoning Ordinance and discussed various revisions to the text. The Board discussed the possibility of administrative approval of seasonal uses of an incidental nature, while continuing to require Board approval of seasonal uses of more significant impact, such as those uses with high traffic generation. Ms. Huddle was in support of such changes.
6. Monthly Address by Director Jennifer Brockman. Ms. Brockman informed the Board of the following:
  - Discussed the proposed amendments to the Zoning Ordinance which included clean up of the document related to formatting and text errors, revising definitions that may be considered 'policy neutral' and shifting the reference to the powers and duties of the Board of Zoning appeals to a more appropriate location.
  - Staff will begin to scan the BZA packet for posting to Jefferson County's webpage.
  - Discussion regarding notification and posting deadlines for variances.

- Informed the Board of correspondence pertaining to a Community Impact Statement extension request to be heard by the Planning Commission on December 14, 2010. The applicant for this extension may also seek a Conditional Use Permit extension from the Board at a future meeting.

7. Legal Update. None.

8. Vote on written decisions from prior Board of Zoning Appeal meetings. The Board requested Mr. Groh have the draft Findings of Fact and Conclusions of Law for Barbara Feldman's variance requests prepared by the next regular meeting.

9. Correspondence.

Ms. Huddle motioned to adjourn the meeting 5:10 p.m. Mr. Brusco 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.