

Minutes

Jefferson County Board of Zoning Appeals
Wednesday, December 29, 2010

The Jefferson County Board of Zoning Appeals met on Wednesday, December 29, 2010 at 3:00 pm. The meeting was held in the Charles Town Library meeting room located at 200 East Washington Street, at the side entrance on Samuel Street in Charles Town, West Virginia. Board members Christy Huddle, Vice Chairman, Ed Kelly, Jon Brusco and Tyler Quynn, Alternate, were present. Staff members Jennifer Brockman, Director; Steve Barney, Zoning Administrator; Stephen Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk, were present.

Board Chair, Jeff Bresee, and member Tiffany Hine were absent with notification.

Mr. Kelly motioned to commence the meeting. Mr. Quynn seconded the motion, which carried unanimously. Ms. Huddle 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 November 18, 2010 meeting.

Mr. Brusco motioned to approve the minutes with no corrections. Mr. Kelly seconded the motion, which carried unanimously.

Mr. Barney brought to the Board's attention an email submitted by Christopher Zanella on behalf of Hillbrook Inn requesting Item # 3 be postponed due to a family emergency. Mr. Brusco motioned to move Item # 3 to the beginning of the agenda and to postpone the request until the next regularly scheduled meeting in January. Mr. Quynn seconded the motion, which carried unanimously.

2. Variance request by property owner, Herb Jonkers, Highland Farms, LLC from Section 5.7(d)2.b.7 to modify the maximum lot size for two lots: #19 and #21. The property is located on Charles Town Road approximately 300' west of John Rissler Road in Charles Town, West Virginia. (District: Charles Town; Map: 19; Parcels: 33, 38, 39 & 41; Size: 270 acres; Zoned: Rural, File: #ZV10-24)

Mr. Barney provided a copy of a Certificate of Fact to the Board indicating that the Highland Farm LLC was revoked on November 1, 2010. Mr. Groh confirmed that as of this morning the LLC was still revoked. Mr. Groh read from State Code the following, "*A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs...*" Mr. Groh advised the Board to postpone the Item until the January meeting to allow the applicant time to get the LLC in good standing with the State. Mr. Groh stated the applicant's LLC was valid at the time the variance request was filed.

John Sekerak with Greenhorne & O'Mara Consulting Engineers was present on behalf of the applicant to address the Board. Mr. Sekerak stated he is not an attorney; however, Highland Farms LLC is still the property owner. Regardless of the standing of the LLC the ownership of the property stays the same. Mr. Quynn suggested the Board deliberate to discuss property ownership with legal counsel. The Board chose not to go into deliberative session.

Mr. Groh stated that in light of the new testimony given that he still advises the Board to postpone. Mr. Groh stated that while there is no case law on the subject and that he did not know the effects of allowing the applicant to carry on business.

Mr. Sekerak argued that a variance request runs with the land and not the property owner and is therefore transferable.

Mr. Jonkers stated to the Board that he did not wish to reinstate the LLC. Mr. Jonkers discussed the implications of dissolving the LLC arguing that he would remain the legal property owner.

Mr. Kelly motioned to table this Item until the regularly scheduled meeting in January. Mr. Brusco seconded the motion, which carried 3 for and 1 opposed (Mr. Quynn).

3. Variance Request by owner, Christopher Zanella, Hillbrook Inn from Section 4.3(d) to permit additional expansion (over 35%) of the existing nonconforming use to allow for the construction of a 3,600 sq. ft. deck and from Section 4.10 to waive the requirement for a Site Plan. The property is located at 4490 Summit Point Road in Charles Town, West Virginia. (District: Kabletown; Map: 14; Parcel: 10; Size: 17.010 acres; Zoned: Rural; File: #ZV10-25)

The Board acted on this request at the beginning of the meeting and postponed this item until the January meeting.

4. Variance Request by property owner, Antonio Colandrea, Jefferson Reality, LLC from Section 4.3(i) to re-establish/continue the operation of a previously existing nonconforming use that was destroyed by fire and Sections 4.16 and 5.6(d) to allow existing 0' front setbacks for a parking area. The subject property is located at 4843 Middleway Pike in Kearneysville, West Virginia. (District: Middleway, Map: 19A, Parcel: 14; Size: 1.1 acres; Zoned: Rural, File: #ZV10-26)

Antonio Colandrea, applicant, presented the request. The Board asked why Mr. Colandrea was going to locate the new structure in the same place as the old structure. Ms. Brockman explained there is an existing 2-story structure that the applicant is hoping to salvage. Mr. Colandrea stated he plans to expand the proposed building to be in line with the existing structure.

Mr. Barney directed the Board's attention to the list of land uses on page two of the staff report of which the applicant wished to reestablish.

Ms. Huddle called for public comment. There was no public comment.

5. Request by Southern States Cooperative to extend the time frame to temporarily occupy the building located at 1453 North Mildred Street in Ranson, West Virginia as conditioned by the Board of Zoning Appeals at the February 18, 2010 meeting. (District: Charles Town, Map: 7, Parcel: 9.2; Size: 8.61 acres; Zoned: Residential-Light Industrial-Commercial, File: #ZV09-19)

Matt Rehberg, Assistant Manager at Southern States, was present to address the Board. Mr. Rehberg explained the project completion date had been delayed and that Southern States is on a month-to-month lease with the property owner of their current location. Mr. Rehberg stated Southern States anticipates occupying the new building in January or February and will begin restoring the previous site once they have moved.

Ms. Huddle called for public comment. There was no public comment.

The Board asked Mr. Rehberg if he could foresee an issue with extending the deadline to restore the site until June 2011. Mr. Rehberg believed June would be sufficient.

Mr. Brusco motioned to go into deliberative session. Mr. Quynn seconded the motion, which carried unanimously.

Mr. Quynn motioned to come out of deliberative session. Mr. Kelly seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

1. Variance request by property owner, Herb Jonkers, Highland Farms, LLC from Section 5.7(d)2.b.7 to modify the maximum lot size for two lots: #19 and #21.

The Board acted on this request at the beginning of the meeting and postponed this item until the January meeting.

2. Variance Request by owner, Christopher Zanella, Hillbrook Inn from Section 4.3(d) to permit additional expansion (over 35%) of the existing nonconforming use to allow for the construction of a 3,600 sq. ft. deck and from Section 4.10 to waive the requirement for a Site Plan.

The Board acted on this request at the beginning of the meeting and postponed this item until the January meeting.

3. Variance Request by property owner, Antonio Colandrea, Jefferson Reality, LLC from Section 4.3(i) to re-establish/continue the operation of a previously existing nonconforming use that was destroyed by fire and Sections 4.16 and 5.6(d) to allow existing 0' front setbacks for a parking area.

Mr. Quynn motioned to approve the above referenced request with all previously approved conditions in addition to the following:

- a. Restricting the area in which alcohol could be served to the game room.
- b. Restricting the buildable area to the square footage approved by the Planning, Zoning and Engineering Department on June 4, 2002 (4,841.75 square feet).
- c. Clarification that a front setback variance applies only to the existing parking area, and does not apply to any future parking developed for the site.

Mr. Brusco seconded the motion, which carried unanimously.

4. Request by Southern States Cooperative to extend the time frame to temporarily occupy the building located at 1453 North Mildred Street in Ranson, West Virginia as conditioned by the Board of Zoning Appeals at the February 18, 2010 meeting.

Mr. Kelly motioned to approve the above referenced extension request until June 30, 2011 provided all previous conditions remain in effect, including the \$25,000 bond. Mr. Brusco seconded the motion, which carried unanimously.

5. Monthly Address by Director Jennifer Brockman.

Ms. Brockman informed the Board of the following:

- The County Commission has requested that each Department draft a Work Plan.
- The Planning Commission has formed a subcommittee to discuss the Department's 2012 Work Plan & 2012 Budget. Jeff Bresee, BZA Chair, was invited to attend their first work session on January 5, 2011.
- At the January 18, 2011 Special Meeting of the Planning Commission the Staff will be releasing the draft, policy neutral zoning text amendments. Ms. Huddle stated she would like to see more focus on economic tourism, home occupations and provisions for existing small commercial nodes.

Mr. Quynn stated he would like Staff to include information from the Comprehensive Plan summarized in the Staff reports. Ms. Brockman stated the current Comprehensive Plan did not include land use maps.

The Board discussed Mr. Brusco's expiring term. Mr. Brusco stated there may be a few meetings he will miss due to other obligations. The Board agreed that this would not be a problem. The Board requested that Staff ask the County Commission to advertise for the second alternate position.

Mr. Brusco requested that Staff investigate an electronic sign posted on the Victory Freewill Baptist Church site located on Route 230.

6. Legal Update. Mr. Groh stated he would like to add the discussion of a contingency plan to the Board's next meeting. The purpose of the contingency plan is to have a procedure in place for when a legal document needs to be signed prior to the next regularly scheduled BZA meeting.
7. Vote on written decisions from prior Board of Zoning Appeal meetings. Mr. Groh presented Ms. Huddle with a draft of the Finds of Fact and Conclusions of Law for Barbara Feldman's previous variance request (ZV10-23). Ms. Huddle suggested minor edits to the document and signed the Findings.
8. Correspondence. None.

Minutes
Board of Zoning Appeals
December 29, 2010
Page 5 of 5

Mr. Brusco motioned to adjourn the meeting at 4:20 p.m. Mr. Kelly seconded the motion, which carried unanimously.

An audio transcript of this meeting can be found at the Department of Zoning. These minutes were prepared by Jennilee Hartman, Zoning Clerk.