

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
FEBRUARY 19, 2009

The Jefferson County Board of Zoning Appeals met on Thursday, February 19, 2009 at 3:00 p.m., at the Charles Town Library Meeting Room. Members present were as follows: Chairman, Tom Trumble, Vice Chair, Christy Huddle, Edwin Kelly, and Alternate Member, Jon Brusco. Tiffany Hine and Jeff Bresee were absent with notification. Staff members present were Acting Director, Kirk Davis; Acting Zoning Administrator, Jennifer Snyder; Assistant Prosecuting Attorney, James Casimiro, and Zoning Secretary, Christine Chalmers.

The Meeting was called to order by Chairman, Tom Trumble, at 3:00 p.m.

1. Election of Officers.

Ed Kelly motioned to nominate Tom Trumble for a third term in the position of Chairperson. Christy Huddle seconded the motion, which carried with a unanimous vote. Ed Kelly also motioned to nominate Christy Huddle for a third term in the position of Vice-Chairperson; Tom Trumble seconded the motion, which also carried unanimously.

2. Minutes.

Christy Huddle motioned to approve the Minutes from the December 18, 2008 meeting, without correction. Ed Kelly seconded the motion which carried with a unanimous vote.

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

3. POSTPONED FROM THE DECEMBER 18, 2008 MEETING:

Variance Request by Rattling Springs Associates from Article 4, Section 4.14 of the Jefferson County Zoning Ordinance, which requires a 500' buffer from the Potomac and Shenandoah Rivers for all commercial projects. Property description: near the intersection of Bakerton Road and Potomac Street – adjacent to Potomac River. (Harpers Ferry District – Map 6.1 / Parcel 4 / Lot Size: 30.2 +/- acres) #ZV08-30

Pursuant to a December 10, 2008 correspondence from William H. Gordon, Associates, Inc. (included within the December BZA review packets), it was requested that the above referenced Variance be postponed, due to the unforeseen absence of Gerald T. Halpin, Ownership Group Member for Rattling Springs, LLC at the December Meeting. Since Gordon Representative, Mark Dyck, advised that Mr. Halpin's testimony was critical for presentation, it was determined that the February 19, 2009 meeting would be better suited to address this matter. Although Mr. Halpin was, once again, absent from the Hearing, speaking on his behalf, were both Mark Dyck and Attorney Peter Chakmakian, who reminded attendees that the Variance under consideration related only to a reduction of the required buffer, and was not to be confused with a Compatibility Assessment Hearing for a Conditional Use Permit. Mr. Dyck's presentation opened with a brief Biography, affording members with an overview of Mr. Halpin's Personal, Educational, Professional and Community Affiliations, and outlined his responsibilities as Founder, President and Chief Executive Officer of WEST*GROUP MANAGEMENT LLC. During his address, Mr. Dyck also made visual reference to Diagram Exhibits of Cross Sections, Best Management Practices, and Preservation & Open Space Plans, to assist in his discussion. Because the vast majority of the Applicant's proposed thirty (30) acre development is situated within the required buffer, a reduction in distance from 500 to 100 foot, would be necessary to build the commercial ECO-RESORT. Consisting of a Hotel and forty (40) rental cottages, the Resort would offer some recreation, including a hiking trail with activity points, and possible dock for Potomac River access. Mr. Dyck suggested that a possible donation to the National Park, of a 1 ½ acre section of land located near Elks Run, was also under consideration by the Applicant. He further advised that a sewer treatment facility would be

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constructed onsite, but was unable to provide specific details, as plans for said facility were incomplete.

A brief 10 minute break was taken at 4:05 p.m.

Prior to allowing public comment, Mr. Trumble asked that professionalism and respect be demonstrated towards Attorney Chakmakian and Mr. Dyck, especially, during the open session.

Expressing concern about flood risk and related stormwater management, impacts on steep slopes adjacent to the River, riparian habitat, wastewater issues, increased safety risk resulting from additional traffic in the Bakerton Road / (one-lane) Historic Underpass area, visual obstruction to the scenic viewshed, and preservation of natural resources, comment against the Variance was voiced by:

Dennis Frye, Chief of Resources with the Harpers Ferry National Historic Park, who offered that the Park might entertain the possibility of an acquisition of the property, and proposed further discussion of the matter; Scot Faulkner, also with the Harpers Ferry National Historic Park; Paul Rosa, who afforded a presentation on behalf of the Harpers Ferry Conservancy; Martin Davis, Mechanical Engineer; Dr. D. C. Master, adjacent property owner; and area residents, Tom Cummings and Rebecca Sullivan. Hand-outs for review, requesting a denial of the Variance, were received from the National Parks Conservation Association; the United States Department of Interior – National Park Service; and the Harpers Ferry Conservancy. Copies of a signed petition, circulated by Barbara Humes, were also distributed to members of the Board.

Favorable comment was presented by both Michael Reardon and Paul Hammer, who addressed the benefits of prospective job and service opportunities generated from the project. Mr. Hammer did also suggest that a final approval of the plan be conditioned upon improvements to the Bakerton Road / Historic Underpass area.

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

- 4. Monthly Address by Acting Director, Kirk Davis, and Report by Acting Zoning Administrator, Jennifer Snyder.**
- 5. Legal Update.**
- 6. Correspondence.**

Ed Kelly motioned to go into Deliberative Session at 5:20 p.m. Christy Huddle seconded the motion, which carried with a unanimous vote. Ed Kelly motioned to return to Regular Session; Jon Brusco seconded the motion, which carried unanimously. The meeting commenced again at 5:50 p.m.

- 3. Variance Request by Rattling Springs Associates from Article 4, Section 4.14 of the Jefferson County Zoning Ordinance, which requires a 500' buffer from the Potomac and Shenandoah Rivers for all commercial projects.**

Christy Huddle motioned to deny the above referenced Variance, because the Applicant failed to satisfy the four (4) required factors for granting a Request, as follows:

- 1.** As the proposed resort has portions of the project situated in an established flood plain with only one entrance and a relatively narrow roadway, access by emergency vehicles and the potential risk factor of stranding occupants on the premises, is a major concern. Further, because the exact location of the water treatment facility, specific to the relationship of the Harpers Ferry intake area, is currently

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undecided, the public health, safety or welfare, or the rights of adjacent property owners or residents will be adversely affected due to issues resulting from water quality.

2. Because there are literally miles of area in the County which are similarly restricted, the required 500 foot buffer from the Potomac and Shenandoah Rivers, stipulated for all commercial projects (Article 4, Section 4.14), does not arise from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance.
3. As a reasonable use of the land is still available to the Applicant, illustrated by Permitted Use in the Rural Zone (Article 5, Section 5.7), granting the Variance would not eliminate an unnecessary hardship and permit a reasonable use of the land.
4. Given that the required buffer affords preservation of open space and the natural condition of the land and encourages conservation, granting the Variance would not allow for the intent of the Ordinance to be observed and substantial justice done, instead, would endanger the natural resources of the area.

Jon Brusco seconded the motion, which carried with a unanimous vote of 4-0.

4. Monthly Address from Acting Director, Kirk Davis and Status Report by Acting Zoning Administrator, Jennifer Snyder:

Acting Director, Kirk Davis, informed the Board that the Planning Commission recently approved his recommendation that Jennifer Snyder, who is presently performing in an acting capacity, be permanently appointed as the Zoning Administrator. Ms. Snyder, who worked closely with former Director, Tony Redman, assisting in the creation of the revised Zoning Ordinance, has competently fulfilled the responsibilities of this currently vacant position. Accordingly, Mr. Davis' subsequent intent is to present said recommendation to the County Commission for consideration.

Mr. Davis further stated that the old Zoning Ordinance, now in effect, has been improved by the incorporation of all successive amendments. Asked if decisions regarding Conditional Use Permits were still tasked to the Board of Zoning Appeals, Mr. Davis advised that said determinations were currently delegated to the Planning Commission. Additional discussion included a request by Mr. Trumble to include, within the Legal Ads, a notice to the Public that submissions for review by the Board of Zoning Appeals must be received no later than one week prior to the date of Hearing, for the purpose of inclusion into the monthly packets.

Acting Zoning Administrator, Jennifer Snyder, presented members with a brief status update, to include an outline of the Zoning Certificates, recently processed and issued through the office.

5. Legal Update.

Review and discussion of the "Finding of Facts and Conclusions of Law" regarding the Variance Request by Debra K. Longerbeam (#ZV08-29) to reduce the rear setback distance from 6' 5o 2' to allow for an addition to the existing shed. Variance Request was unanimously approved.

(Property Description: Charles Town District/Map 8B / Parcel 22 / Lot Size: 105' x 96.50' – 75 Fulton Avenue, Charles Town, West Virginia)

Assistant Prosecuting Attorney, James Casimiro, presented the above-referenced document for review. Upon completion, Ed Kelly motioned to approve the Finding of Facts and Conclusions of Law, for signature by Mr. Trumble, as submitted. Christy Huddle seconded the motion, which carried with a unanimous vote.

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6. Correspondence. None.

Christy Huddle motioned to adjourn the meeting at 6:20 p.m. Jon Brusco seconded the motion, which carried unanimously.

An Audio Transcript of this meeting can be found on CD's #7, #8 and #9.
Zoning Secretary, Christine Chalmers, prepared these Minutes.