

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
OCTOBER 15, 2009

The Jefferson County Board of Zoning Appeals met on Thursday, October 15, 2009 at 3:00 p.m., in the Conference Room of the Charles Town Library. Members present were as follows: Chairman, Jeff Bresee; Vice Chairman, Christy Huddle, Ed Kelly, Jon Brusco, and Alternate Member, Tyler Guynn. Tiffany Hine was absent with notification. Staff members present were Director, Jennifer Brockman; Zoning Administrator, Jennifer Snyder; County Planner, Seth Rivard, and Zoning Secretary, Christine Chalmers. Assistant Prosecuting Attorney, Stephen Groh, was also absent with notification.

Chairman, Jeff Bresee, called the Meeting to order at 3:00 p.m.

1. Approval of deferred Minutes from the August 20, 2009 Meeting.

Chairman Bresee motioned to approve the Minutes from the August 20, 2009 meeting, without correction. Christy Huddle seconded the motion, which carried with a vote of three (3) in Favor. Members Ed Kelly and Tiffany Hine abstained from voting due to their absence at the August Meeting.

2. Approval of Minutes from the September 17, 2009 Meeting.

Christy Huddle motioned to approve the Minutes from the September 17, 2009 meeting, with the following amendments: Page #1, last paragraph, third sentence from bottom – delete the word “would”. Ed Kelly also asked that the word “upset”, found in the same paragraph, third sentence from the top, be changed to “concern.” Zoning Secretary, Christine Chalmers recommended that the fourth sentence on Page #3, be revised from the current “allow for a 6’8” height increase to the existing fence, as constructed.” to “allow for a height increase to the existing fence, from 6’ to 6’8”, as constructed.” Moreover, Zoning Administrator, Jennifer Snyder advised that, due to Building Code requirements which the Board has no authority over, the third sentence on Page 3: “She further stated that said approval of this Variance would negate the necessity for a building permit.” should be deleted, as said fence actually does require a Building Permit. Christy Huddle motioned to approve the Minutes with the stated corrections. Ed Kelly seconded the motion, which carried with a vote of three (3) in Favor. Member, Jon Brusco, abstained from voting due to his absence during the September Meeting.

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

3. Variance Request by the Board of Trustees of Asbury United Methodist Church, Pastor Kelly Green, to allow for the installation of a full-color, double-faced, LED electronic sign which will replace the current Church sign. Property description: 4257 Kearneysville Pike; Shepherdstown, West Virginia. Article 10, Section 10.2(i) (Shepherdstown District / Map #8 / Parcel: #7.2/ 4.98 acres) (#ZV09-13)

Speaking on behalf of the Board of Trustees of Asbury United Methodist Church, Pastor Kelly Green, requests that the Board grant approval for the installation of a LED sign which the Church could use to advertise various ministries/events that are designed to enhance the Community, such as “Wednesday Night Fun Night”; “Children’s Church”; and the “School Sharpener Program”, all intended to promote the safety of the children and protect the Community. Pastor Green explained that, due to the size of the congregation and continued growth of said ministries/events, flexibility of advertisement is becoming more crucial. The proposed new sign, which will not exceed the display area of the existing sign it is replacing, will have only one section that will be “animated” with text and non-invasive pictures and will afford the ability to change messages through use of a computer instead of by the current manual method. As the existing sign is now situated probably 60’ – 65’ from the edge of the road, the new sign will be positioned in a more visibly prominent area. Pastor Green indicated that the proposed sign location will be within an allowable distance, per Zoning Ordinance regulations and will not adversely affect the public health, safety, welfare, or rights of adjacent property owners/residents.

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Adverse public comment was voiced by John Amos, who spoke on behalf of (wife) Amy Mathews Amos and other neighbors/residents who were unable to attend the meeting, and instead submitted a letter of confirmation. Mr. Amos expressed concern about the impact such a sign would have at the intersection of Kearneysville Pike and Morgan Grove Road, and believes the intentional distraction of a LED Electronic Sign will significantly increase the hazard at this already dangerous intersection (especially at night), and ultimately compromise the traffic safety in an area frequented by children. Further, as the Church is situated in a fully residential area, directly across Kearneysville Pike from the playground and picnic area of the Federally recognized Morgan's Grove National Historic District Park, Mr. Amos deemed that this style of sign was inappropriate and should be restricted to high-density commercial areas only, where retail establishments compete for motorist's attention. Additional comment was offered by area resident, Dianna Suttentfield, who agreed with Mr. Amos, and advised that one must also be mindful of the issue of light pollution, especially during months of decreased foliage.

In response, Pastor Green, stated that the proposed sign was equipped to allow for light level adjustments, which the Church intended to make use of.

In closing, Chairman Bresee instructed the applicants of the deliberation process, advising that the final determination did not take into account personal issues, but is based solely on factual consideration.

- 4. Variance Request by property Owners, Barbara Feldman and Barry Whitebook, for a waiver from Site Plan requirements. Property description: 448 Southerly Lane; Charles Town, West Virginia. Article 4, Section 4.10 and 4A.3i (Charles Town District / Map #9 / Parcel #4.17 / 2.6937 acres) (#ZV09-14)**
- 5. Variance Request by property Owners, Barbara Feldman and Barry Whitebook, for an increase to the size of an existing one-story accessory structure from the allowable 1,000 sq.ft. to the current building size of 1,232 sq. ft. Property description: 448 Southerly Lane; Charles Town, West Virginia. Article 4, Section 4A.3b (Charles Town District / Map #9 / Parcel #4.17 / 2.2637 acres) (#ZV09-15)**

It was recommended that items #4 and #5 be addressed in conjunction, as both Requests related to the same subject matter.

Barbara Feldman, Owner of "Blue Heron Martial Arts" advised that for nine (9) years she operated her Business from a Dance Studio space situated within the former Bardane Community Center. However, when the Bardane property was sold, approximately four years ago, it necessitated relocating her Business. She began using an enclosed deck in her backyard, not realizing that she was in violation of any Zoning Regulations. However, upon receipt of a Notice of Violation, from Mason Carter, dated April 16, 2009, which cited Article 3, Section 3.2 of the Zoning Ordinance, Ms. Feldman recognized that she was not in compliance in several matters, and has since proceeded to bring her Business into conformity, to include applying for the above referenced Variances. Having been classified as a Cottage Industry, the footprint of the accessory structure that currently houses her classes may not exceed 1,000 sq. ft. as stated; however, the building in use is larger, at 1,232 sq. ft. Accordingly, she is requesting that the Board grant an increase to the size of the existing building to compensate for this difference. Additionally, due to Applicant expenses (estimated at \$3,000.00), incurred by the Site Plan submission process, Ms. Feldman is also asking for a waiver from said Site Plan requirements.

Ms. Feldman informed the Board that she generally has 2-4 classes per day, with class sizes averaging between 2-6 students in each, and there are no classes on Friday. Occasionally she hosts a Guest instructor, during which time her class size does increase; however, typical daily traffic does not exceed the allowable number stipulated in Section 4A.3 of the Cottage Industry requirements. Additionally, there is already a parking area at the rear of her property that is screened from the road which is currently used by her students. Should there ever

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be a reason for concern, she advised that she would require her students to carpool from the nearby Food Lion.

Favorable public comment was received from Student Ursula Nottnagel, who verified that the number of students in most Blue Heron Martial Arts classes was minimal; sometimes totaling only 2-4 attendees.

Adverse public comment was voiced by neighbor, Frederick Roll, who has lived at 344 Southerly Lane for thirty (30) years. Mr. Roll expressed his concern regarding the increase in traffic that could potentially be generated by a larger Business, advising that vehicles have previously been known to park along the roadway.

6. Variance Request by property Owner, Richard D. Carper, Jr., for a revision to #ZV96-18, changing the length of an existing carport from 32' to 40' to allow for construction of a garage enclosure. Property description: 64 Peachtree Drive; Ranson, West Virginia.

(Charles Town District / Map #7A / Parcel #122 / Lot Size: 80' x 125')

(#ZV09-16)

Property Owner, Richard D. Carper, Jr. is requesting that he be granted an eight (8) foot extension to the length of an existing carport which was originally built in 1996, per the Board of Zoning Appeal's approval of Variance Request #ZV96-18. Apparently, said structure was unsuitably constructed, resulting in the unprotected exposure of one vehicle, when both were parked within. Mr. Carper's intent is to demolish the existing carport and rebuild an enclosed, attached garage using the original footprint, but to also include an additional four foot extension to both the front and rear of the new structure. This eight-foot total lengthening will insure complete coverage of both vehicles and will also afford more safety than an open carport area, which is of concern to Mr. Carper and his wife who both work odd, nightshift type hours. The construction plans also include the addition of an 8' x 20' covered front porch, which will be directly in line with the edge of the four-foot expanded area to the front of the garage. Mr. Carper provided Members with a visual presentation of photographs depicting the current carport arrangement and also had his Contractor, James Weddle, provide the Board with a more detailed account of the proposed project. There was no public comment.

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

- 7. Monthly Address presented by Director, Jennifer Brockman, and Status Report by Zoning Administrator, Jennifer Snyder.**
- 8. Legal Update.**
- 9. Vote on written decisions from prior Board of Zoning Appeal Meetings.**
- 10. Correspondence.**

Jon Brusco motioned to go into Deliberative Session at 4:00 p.m. Christy Huddle seconded the motion, which carried with a unanimous vote. Christy Huddle motioned to return from Deliberative Session; Jon Brusco seconded the motion. The meeting commenced again at 4:40 p.m.

3. Variance Request by the Board of Trustees of Asbury United Methodist Church, Pastor Kelly Green, to allow for the installation of a full-color, double-faced, LED electronic sign which will replace the current Church sign.

(#ZV09-13)

Jon Brusco motioned to approve the above referenced Request with the following conditions:

1. No more than eight (8) messages per day.
2. Each message to be contained on one screen only--no overlapping into next frame.

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3. Each message to be held a minimum of five (5) seconds between intervals.
4. Messages to be comprised of text content only—no animated figures, flashing actions, color changes, etc.
5. No motion during message change.
6. Seasonal Background Imagery is permitted.
7. Excluding Holidays and expressed Church related affairs, hours of animated signage display to be designated between the hours of 6:00 a.m. and 10:00 p.m.
8. Signage Light Level to be adjusted to the lowest visibility, legible from the street. (Applicant to provide said Level Intensity Number).

Alternate, Tyler Guynn seconded the motion, which carried with a vote of four (4) in favor and one (1) opposed (Ed Kelly).

4. Variance Request by property Owners, Barbara Feldman and Barry Whitebook, for a waiver from Site Plan requirements. (#ZV09-14)

Jon Brusco motioned to deny the Request, as referenced. Ed Kelly seconded the motion. Christy Huddle amended the motion to include that the required submission be either a Limited Site Plan or one stipulated by the County for projects of up to 1,600 sq. ft. – whichever is the lesser / least expensive of the two Site Plans. The amended motion carried with a vote of three (3) in favor and two (2) opposed (Jeff Bresee, Tyler Guynn), who expressed their concern that the Applicants' must incur the expense of said Site Plan.

5. Variance Request by property Owners, Barbara Feldman and Barry Whitebook, for an increase to the size of an existing one-story accessory structure from the allowable 1,000 sq.ft. to the current building size of 1,232 sq. ft.

John Brusco motioned to approve the Request as referenced. Ed Kelly seconded the motion, which carried with a vote of four (4) in favor, one (1) opposed (Ed Kelly).

6. Variance Request by property Owner, Richard D. Carper, Jr., for a revision to #ZV96-18, changing the length of an existing carport from 32' to 40' to allow for construction of a garage enclosure. (#ZV09-16)

Ed Kelly motioned to approve the above referenced Variance without condition. Tyler Guynn seconded the motion which carried with a unanimous vote.

Chairman, Jeff Bresee, complimented Owner, Richard Carper, Jr. and the Contractor for the project, James Weddle, for addressing all matters of the Request so completely.

7. Monthly Address presented by Director, Jennifer Brockman, and Status Report by Acting Zoning Administrator, Jennifer Snyder.

Director, Jennifer Brockman formally introduced newly hired Planner, Seth Rivard, who provided Members with a brief personal profile. It was also announced that Jennifer Snyder had been officially approved by the Jefferson County Commission for the position of Zoning Administrator. The Board extended a Warm Welcome to Mr. Rivard and enthusiastically Congratulated Ms. Snyder on her recent appointment.

In response to inquiries regarding the upcoming Zoning Ordinance Referendum Vote, scheduled to take place on Saturday, November 7th, Ms. Brockman advised that early voting opportunity is available to the Public from Friday, October 16th until Wednesday, November 4th (9:00 a.m. until 5:00 p.m.), at the County Courthouse. She

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also stated that The League of Women's Voters and The Shepherdstown Men's Club would be holding meetings on Monday, October 19th at 7:00 p.m. and Wednesday, October 21st (respectively), during which zoning matters would be discussed. Additionally, the Departments of Planning and Zoning will host an "Open House Forum" on Tuesday, October 27th from 4:30 p.m. – 6:30 p.m., in the Library Conference Room. Staff will be present at this Forum to address more specific zoning questions and concerns expressed by the Public.

Zoning Administrator, Jennifer Snyder, advised the Board that an Appeal of an Administrative decision was scheduled to be heard at the November Meeting. As such, Ms. Snyder asked Members by what means they would prefer she provide information regarding this matter – oral presentation or by published report? It was recommended that she include a written summation of her decision in the monthly packets for their review. Ms. Snyder further advised that, per State Law mandate, a stay was in effect on the Business operation currently under Appeal.

7. Legal Update. None.

8. Vote on written decisions from prior Board of Zoning Appeal Meetings.

The Finding of Facts and Conclusions of Law from the September 17, 2009 Variance Request Rulings were approved by signature, as follows:

- 3. Variance Request by property owners, John and Kimberly Mollahan, to reduce the side setback distance from 10' to 3' to allow for a portion of an existing fence that exceeds the 6' height restriction. Property description: 98 Basset Lane; Ranson, West Virginia. Article 9, Section 9.7**
(Charles Town District / Map #2 / Parcel: #18.11/ 1.0002 acres) (#ZV09-10)

Ed Kelly motioned to approve the Finding of Facts and Conclusions of Law for the above referenced Variance Request, with the following amendment: Delete Item #6 on Page 2. Christy Huddle seconded the motion which carried with a vote of three (3) in favor. Due to their absence at the September Meeting, Member Jon Brusco, and Alternate Tyler Guynn, abstained from voting on this matter.

- 4. Variance Request by property owners, David and Kate Didden, to reduce the access easement Front Setback distance from 40' to 21.97' to allow for the construction of a passive solar home and shared garage. Property description: 6279 Scrabble Road; Shepherdstown, West Virginia. Article 9, Section 9.7**
(Shepherdstown District / Map #3 / Parcel #11.4 / 1.239 acres) (#ZV09-11)

- 5. Variance Request by property owners, David and Kate Didden, to reduce the Rear Setback distance from 50' to 12' to allow for the construction of a passive solar home and shared garage. Property description: 6279 Scrabble Road; Shepherdstown, West Virginia. Article 9, Section 9.7**
(Shepherdstown District / Map #3 / Parcel #11.4 / 1.239 acres) (#ZV09-12)

Ed Kelly motioned to approve the Finding of Facts and Conclusions of Law for two Variances (#ZV09-11 & #ZV09-12), related to the same Request, with the following corrections: Page 1, paragraph two, line three – change the spelling of "set-back" to "setback". Page 2, Item 2 – change the spelling of "set back" to "setback". Christy Huddle seconded the motion, which carried with a vote of three (3) in favor. Due to their absence at the September Meeting, Member Jon Brusco, and Alternate Tyler Guynn, abstained from voting on these matters.

9. Correspondence. None.

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Christy Huddle motioned to adjourn the meeting at 5:03 p.m. Jon Brusco seconded the motion, which carried with a unanimous vote.

Due to technical difficulty, the Webcam was inoperable and unavailable for use. An Audio Transcript of this meeting can be found on CD # _____. Zoning Secretary, Christine Chalmers, prepared these Minutes.