

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
NOVEMBER 19, 2009

Due to the County Commission's use of the Charles Town Library Conference Room, the Jefferson County Board of Zoning Appeals met on Thursday, November 19, 2009 at 3:00 p.m., in the upper level Conference Room of the Departments of Planning & Zoning. Members present were as follows: Chairman, Jeff Bresee; Vice Chairman, Christy Huddle, Tiffany Hine, Ed Kelly, and Jon Brusco. Alternate, Tyler Quynn, was absent with notification. Staff members present were Director, Jennifer Brockman; Zoning Administrator, Jennifer Snyder; County Planner, Seth Rivard; Assistant Prosecuting Attorney, Stephen Groh, and Zoning Secretary, Christine Chalmers.

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

1. Approval of Minutes from the October 15, 2009 Meeting.

Chairman Bresee requested a Motion for approval of the October Minutes. Christy Huddle motioned to approve the Minutes from the October 15, 2009 meeting, with the following revisions: Page 2, third sentence from the bottom, change the word "usual" to "typical". Jon Brusco noted that his name appeared incorrectly on Page 4, Item #5 (inclusion of an "h"). Additionally, Ed Kelly stated that the vote on the deferred Minutes from the August 20, 2009 Meeting did not carry with a unanimous vote, as noted, due to the fact that he was absent at the August Meeting and did not vote. Moreover, Zoning Secretary, Christine Chalmers advised that the October Meeting was actually held in the Conference Room of the Charles Town Library, not the Jefferson County Court House, and that newly hired County Planner, Seth Rivard, was also in attendance. Lastly, Zoning Administrator, Jennifer Snyder, requested clarification of a condition (Page 4, Item #7) that was set by the Board regarding the Ashbury United Methodist Church sign. As it was determined that only a portion of the sign would be restricted, the sentence was revised from "hours of signage display to be designated between the hours of 6:00 a.m. to 10:00 p.m." to "hours of animated signage display to be designated between the hours of 6:00 a.m. to 10:00 p.m." Jon Brusco seconded the motion, as corrected, which carried with a vote of four (4) in favor. Tiffany Hine abstained from voting due to her absence at the October Meeting.

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

Since matters of Appeal usually encompass a greater amount of time than the usual topics of discussion, Chairman Jeff Bresee motioned that all regular items be disposed of first, before addressing the Appeal referenced in Item #5. Jon Brusco seconded the motion, which carried with a unanimous vote.

2. Request by Roger Peterson, CEO, Peterson Enterprises (D&D, L.C.) for an eighteen-month extension of the Conditional Use Permit (issued on July 11, 2008) for a 2,400 sq. ft. Dairy Queen with a 2,400 sq. ft. second story for supply storage. Property description: Route 45 in the Maddox Square Shopping Center, Lot #5; Shepherdstown, WV. (Shepherdstown District / Map #8C / Parcel #67 / 0.63 acres)
(#Z08-01)

Speaking on behalf of her brother (Business Owner), Roger Peterson, Vicky Dockeney advised that he is requesting an eighteen-month extension of a Conditional Use Permit that was issued to the above referenced project on July 11, 2008. Due to an unanticipated financial hardship created by the current economic recession, in an effort to lower expenses and stabilize budgets, Mr. Peterson was forced to shift focus away from the project this past year. During that time period, he took the opportunity to analyze the site, rework the plans and make revisions that he expects will ultimately provide the community with a "fantastic Dairy Queen with ample parking." Although the current economic climate is still difficult, he is preparing to move forward with the Shepherdstown project and asks that the Board grant his Request for said extension. His intent is to break ground in March 2011. Staff comment was offered by Zoning Administrator, Jennifer Snyder, who advised that

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the project Site Plan is currently processing, without issue, through the Departments of Planning and Zoning. There was no public comment.

3. Variance Request by property Owner, Kathy Hamer, for a reduction to the Setback from 12' to 1' to allow for the installation of a shed. Property description: 60 Saint Andrews Drive; Charles Town, West Virginia. Article 9, Section 9.7 (Charles Town District / Map #13A / Parcel: #47/ 0.37 acres) **(#ZV09-17)**

Owner, Kathy Hamer, is requesting a reduction to both the Side and Rear Setbacks of her property to allow for the installation of a shed. Due to the fact that her backyard (which is less than ½ acre) already has a pool and fence, the current 12' setback would require the removal of an existing tree, would necessitate a sideways positioning to allow for delivery and would place the shed directly in the middle of an open area within full view of the adjacent homeowner. The rear of her property adjoins a common area owned by the Locust Hill Homeowners which borders the Golf Course. Ms. Hamer, who has maintained this area for the last eighteen (18) years, will continue to do so. In an effort to reduce visibility from the Golf Course, she also intends to add shrubbery to the side of the shed. Consent by signature was provided by adjacent property owner, Jill Hoyt, in a letter to the Covenants Committee, dated July 29, 2009. Additionally, permission to situate the shed as referenced, was also granted by the Locust Hill Homeowners, per email correspondence from Community Manager, Valerie Hockensmith on September 22, 2009 (information included in monthly packets) Staff had no objections with the Request. There was no public comment.

4. Variance Request by property Owners, Jack L. Kidwell, Jr. and Patricia Humphreys, for a reduction to the Side Setback distance from 8' to 4' to allow for an existing attached shed. Property description: 377 Pointfield Drive Harpers Ferry, West Virginia. Article 9, Section 9.7 (Harpers Ferry District / Map #7A / Parcel #45 / Lot Size:120' x 80') **(#ZV09-18)**

Owner, Jack Kidwell, Jr. is requesting that a reduction to the Side Setback distance from 8' to 4' be granted to allow for an existing attached shed that was built to replace a corroded metal shed, originally constructed in 1959. The current masonry structure, with concrete foundation and the same 11'4" x 13' dimensions as the previous shed, is situated approximately 4' from the property line. It is used for storage of lawn equipment and garden tools. Mr. Kidwell provided Members with a visual presentation through use of both poster and standard size photo copies of the current structure arrangement. Public support was voiced by adjacent property owner, Andrew T. Gleeson, who approves of his neighbor's request. Staff expressed no objections.

6. Request by William H. Scott, Inter Vivos Trust for a Seasonal Use Permit to hold World Karting Association events on the Washington Circuit at the Summit Point Raceway. Property description: 201 Motor Sports Park Circle; Summit Point, West Virginia. Article 9, Section 9.8 (Kabletown District / Map #17 / Parcel #3 / 93.95 acres) **(#ZC09-08)**

Applicant Barbara L. Scott, Manager of Summit Point Automotive Research Center, Inc. (Trustee for William H. Scott Inter Vivos Trust) advised that the proposed Seasonal Use Permit is requested to hold World Karting Association (WKA) events on the Washington Circuit at the Summit Point Raceway. As the Washington Circuit is limited in use to training and education activities, no automotive racing occurs on this track. Accordingly, the surface is more level and better suited for karts and the younger participants, which is preferable to the WKA. These events, which are family-oriented with children as young as five years old participating, use karts that are smaller vehicles, weighing only 150 pounds and measuring about 72" long and 50" wide. This type of activity is often an introduction to the motorsports that take place on the adjoining racing tracks at the Summit Point Raceway. There will be two Regional Meets, held during the Spring and Summer months respectively, and one National Meet in the Fall (none lasting more than three days).

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Approximately 140 participants are expected to participate in each Regional Meet and 250 at the National Meet. Ms. Scott's son, William Henry Scott V, interjected that these are not big spectator events and are probably 25% smaller in comparison to typical on-site racing activities. He also stated that the main entrance will be used during all competitions. Staff voiced no objection to the Request. There was no public comment.

Tiffany Hine motioned to go into Deliberative Session at 3:26 p.m. Christy Huddle seconded the motion, which carried with a unanimous vote. Tiffany Hine motioned to return from Deliberative Session; Christy Huddle seconded the motion which carried with a unanimous vote. The meeting commenced again at 3:39 p.m.

2. Request by Roger Peterson, CEO, Peterson Enterprises (D&D, L.C.) for an eighteen-month extension of the Conditional Use Permit (issued on July 11, 2008) for a 2,400 sq. ft. Dairy Queen with a 2,400 sq. ft. second story for supply storage.

Ed Kelly motioned to approve the above-referenced Extension Request, without condition. Christy Huddle seconded the motion, which carried with a unanimous vote.

3. Variance Request by property Owner, Kathy Hamer, for a reduction to the Setback from 12' to 1' to allow for the installation of a shed.

Jon Brusco motioned to approve the above-referenced Variance Request, without condition. Tiffany Hine seconded the motion, which carried with a unanimous vote.

4. Variance Request by property Owners, Jack L. Kidwell, Jr. and Patricia Humphreys, for a reduction to the Side Setback distance from 8' to 4' to allow for an existing attached shed.

Tiffany Hine motioned to approve the above-referenced Variance Request, without condition. Jon Brusco seconded the motion which carried with a unanimous vote.

6. Request by William H. Scott, Inter Vivos Trust for a Seasonal Use Permit to hold World Karting Association events on the Washington Circuit at the Summit Point Raceway.

Jon Brusco motioned to approve the above-referenced Seasonal Use Permit Request, without condition. Tiffany Hine seconded the motion which carried with a unanimous vote.

5. Appeal by William H. Leedy, of the determination by the Zoning Administrator that the "340 Defense Shooting Range" is a Permitted Use in the Industrial-Commercial District. Property description: 263 Berryville Pike; Rippon, WV. Article 8, Section 8.1 (Kabletown District / Map #29 / Parcel #5 / 89.98 acres) (#AP09-01)

With regard to Appeal Hearings: "The Chairperson shall preside at the hearing and shall make such Rulings as may be necessary to conduct a hearing in an efficient and orderly manner including, but not limited to, the imposition of time limitations and the exclusion of irrelevant, repetitive, or cumulative evidence or testimony. A member may question the rulings of the Chairperson, and such questions may be decided by a motion and subsequent majority vote of the Board." Accordingly, in an effort to insure consistency with the aforementioned stipulations (which are also referenced in the last paragraph of the Rules of Procedure of the Jefferson County Board of Zoning Appeals / Section 5.7 – Procedure for Hearings), Chairman Bresee implemented a timeline for participants of said Appeal which allotted up to twenty minutes for each initial presentation by the Appellee, Appellant and the Intervenor; up to fifteen minutes for subsequent Rebuttals, and five minutes speaking time for

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those individuals from the Public requesting to speak. He further cautioned that, although opinions regarding the actual Determination are contrasting, the Zoning Administrator must not be incriminated for her decision.

Appeal related matters for consideration by the Board also included both a Motion to Intervene and to Dismiss. Accordingly, the Attorneys' was afforded five minutes of discussion time for each of the referenced Motions.

Motion to Intervene

Stating that said Appeal directly affects his Client's interest (since he owns the land in question), Attorney J. Michael Cassell, Legal Counsel for property owner, Mark O'Dell, moved that the Board grant leave for him to Intervene as a party in these proceedings. In response, Attorney Georgiana M. Pardo, Counsel to the Appellant, stated that there was no objection to said Motion to Intervene.

Accordingly, Tiffany Hine motioned to grant the request as presented. Ed Kelly seconded the motion, which carried with a unanimous vote.

Motion to Dismiss

Attorney J. Michael Cassell advised that the Appeal in this case seeks a review of an "Administrative Decision", issued on or about September 16, 2009. The purported Administrative Decision is a document dated September 21, 2009, entitled Pre-Proposal Conference Memorandum/Violation Meeting. Forwarded after the conclusion of each Pre-Proposal Conference, it is a signed account of the discussions between Staff and others in attendance at the meeting. As the document is no where authorized or required by either the Zoning Ordinance or West Virginia Law, it cannot be regarded as an Official Decision made by the Zoning Administrator as contemplated by 8A-8-9, WV Code. He further noted that the Statute does not refer to any Determination made, and that is a crucial distinction.

Attorney Cassell also expressed concern regarding the Site Plan Review process. Because most of the arguments in the Appeal pertain to details which will be addressed by Staff during said Review, it is premature for the Board to consider matters until Staff has had the opportunity to do so. This is especially true since the Appeal has resulted in an automatic stay all other procedures (8A-8-12, WV Code) which allows the Appellant to file serial Appeals without limitation (in an effort to prolong the process unnecessarily), if he so desires.

Presenting Members with a large booklet of supporting Statutes, Rules and Regulations, opposing Attorney Georgiana Pardo made specific reference to Zoning Ordinance Sections 3.1, 3.2(a), 3.3 and 4.10 and Subdivision Regulations 23.202(a) which provided confirmation that the County Commission authorizes the Zoning Administrator to enforce the Zoning Ordinance, but stipulates no specific means of doing so. Accordingly, Attorney Pardo requested that the Motion to Dismiss be denied.

In his Rebuttal, Attorney Cassell, reminded the Board that the only matter under Appeal was whether a shooting range is considered a Principal Permitted Use in the Industrial-Commercial Zoning District.

In her Rebuttal, Attorney Pardo stated that a shooting range is not a Principal Permitted Use in the Industrial-Commercial Zoning District and the Zoning Administrator's decision to that effect is erroneous and unlawful. Referencing the Pre-Proposal Memorandum, she further advised that the Zoning Administrator was aware that the project is currently in violation, due to operation without benefit of a Zoning Certificate or Site Plan. Moreover, even though the Owner was advised that he could bring the violation into compliance by either submitting and processing a Limited Site Plan or by providing a letter with compliance time-frames (within fifteen days of the Memorandum date), Staff received no response by the October 6, 2009 deadline.

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Christy Huddle motioned to go into Deliberative Session at 3:55 p.m. Jon Brusco seconded the motion, which carried with a unanimous vote. Christy Huddle motioned to return from Deliberative Session; Jon Brusco seconded the motion which carried with a unanimous vote. The meeting commenced again at 4:07 p.m.

With regard to the Motion to Dismiss, Ed Kelly moved to deny the request as presented. Jon Brusco seconded the motion, which carried with a unanimous vote.

STAFF SUMMARY

Zoning Administrator, Jennifer Snyder expressed to the Board her belief that a shooting range is a Commercial Use in the Industrial-Commercial District. In an abbreviated account of her Staff Report, which was forwarded to Members prior to the Meeting, Ms. Snyder outlined the four main reasons for her decision.

Directly quoted as follows:

1. The opening paragraph of the Industrial-Commercial District clearly states that it is NOT the purpose of this district to encourage retail services. This leads me to believe that commercial in this district MUST include other types of activity.
2. The Industrial-Commercial District allows for heavy, intense and objectionable uses “by-right” – uses that are prohibited everywhere else.
3. The Industrial-Commercial District allows for explosives storage once processed through the Development Review System (DRS). It appears illogical to permit storage of explosives, but prohibit the use of firearms in the same district.
And finally,
4. During the 2008 Zoning Ordinance’s drafting period, the County Commission did several things:
 - They – held extensive workshops discussing the content of the Ordinance.
 - They – incorporated new definitions (such as outdoor recreation) and refined old ones (such as commercial).
 - They – rezoned parcels, such as this one and those surrounding it, to Business Park.
 - In this Business Park Zone, the County Commission approved shooting ranges as a Principal Permitted Use, confirming for me, the intent of the governing body to retain the possibility of this use in this area.

Ms. Snyder further offered to answer any questions about the above-referenced points of those contained within her Staff Report.

As the property under Appeal is immediately surrounded by/adjacent to Rural District Zoning, Assistant Prosecuting Attorney, Stephen Groh inquired whether shooting ranges were permitted in those areas. In response, Ms. Snyder advised that Hunting Clubs and Shooting Ranges were “by-right” Principal Permitted Uses in the Rural District, with very specific conditions.

APPELLANT

Attorney Pardo introduced the Appellant, William H. Leedy, who has regarded his adjoining property - Balclutha Farm - a principal home since 1982. Stating that he harbored no hostility in this matter, having young grandchildren, dogs and livestock, Mr. Leedy did express great concern over the safety issue presented by the shooting range, which is surrounded on three sides by his farm. He has already had to close the pasture to the north, a field formerly grazed by cattle and sheep, to protect them from stray gunfire. Mr. Leedy further advised that the noise factor is also very distracting, especially when automatic firearms are being discharged.

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Speaking on his behalf, Attorney Pardo, provided the Board with a visual presentation that included the use of maps and an aerial depiction of the sites. She also frequently referenced Rathcopf's Law of Zoning & Planning during her Address. Attorney Pardo advised that at some time prior to September 2009 the Jefferson County Compliance Officer observed that a shooting range had been instituted in an area south of Rippon, on the west side of Route 340. Said "340 Defense Training and Shooting Range" was being advertised with flags and signs, and was also accessible through website posting, which stated that it was "an outdoor shooting range serving northern Virginia and the eastern panhandle of West Virginia." Among other things, it offered "night shooting", "tactical training", "advanced rifle" and "sniper". Additionally, "three-gun competitions" and "full-auto day" were advertised, as well. Receiving one or more calls from concerned area residents/neighbors, who reported a great deal of gunfire, Staff subsequently contacted Mark O'Dell, owner of the property on which the shooting range had been observed. For a number of years, Mr. O'Dell, through Tyson's Tree Service, Inc., DBA Tyson's Tree Wood Recycler, has operated a mulching business, and more recently a shooting range, on portions of his 89.98 acre property. The site is designated an Industrial-Commercial Zoning District. The Sketch Plan shows that said shooting range, constructed and operating without benefit of any permits, includes ranges for high-powered rifles as well as pistols. It is configured with gunfire pointing to the north and northwest, away from the mulching operation and into bordering woodland, such that stray or ricocheting bullets are most likely to fly through and onto Balclutha Farm or other surrounding areas. Attorney Pardo noted that John's Diner is also located in close proximity of the shooting range, to the north.

Attorney Mike Cassell objected, stating that those were Site Plan matters which have yet to be addressed, and should not be considered as a basis for the Appeal. Chairman Bresee duly noted the objection.

During the aforementioned Pre-Proposal Conference that was held on September 16, 2009, Zoning Staff decided that, while the existing "340 Defense Training and Shooting Range" was operating in violation of the Jefferson County Zoning Ordinance (because it had never been reviewed or permitted), a shooting range, by definition of "Commercial" is a Principal Permitted Use in the Industrial-Commercial Zoning District. Disputing that decision, Attorney Pardo referenced Zoning Ordinance Section 5.6, which sets forth the regulations pertaining to the Industrial-Commercial District; Section 5.6(a), listing the Principal Permitted Uses in the Industrial-Commercial District; Section 5.6(b), containing a list of uses which may not be permitted in the Industrial-Commercial District unless they are evaluated by the DRS and obtain a Conditional Use Permit, with conditions; Section 2.2, which defines the term "Commercial"; and Section 1.3(d) stating "if a proposed use is not one in the list of those permitted in each zoning district, it shall be prohibited as though it was included in the list of prohibitions." Neither shooting ranges nor outdoor recreational uses appears in the list of Principal Permitted Uses for the Industrial-Commercial Zoning District. She further stated that if shooting ranges were to be considered permissible as "Commercial Uses" then they would also have to be permitted "by-right" in the Residential-Light Industrial-Commercial Zoning Districts, since "Commercial Uses" are included among the list of Principal Permitted Uses for that Zoning District, as well. Those areas encompass (as example) the Spruce Hill Development and a large region to the south of it; the Carriage Park Development; many unincorporated areas inside the town section of Ranson; both sides of Flowing Springs Road near the Race Track; the area surrounding Halltown; and both the Mecklenburg Heights and Maddex Farm Developments in Shepherdstown. An interpretation of the Zoning Ordinance, as such, would lead to an absurd result.

INTERVENOR

In response, Attorney J. Michael Cassell, Counsel for the Intervenor, stated that there is one basic question involved in this Appeal: Is a shooting range a "Commercial" activity? Section 2.2, Zoning Ordinance, defines "Commercial Use" as follows: "Any wholesale, retail, or service business activity established to carry on trade whether or not for profit." - the terms "Commercial Uses" and "service activities" are used in the Ordinance without further definition or limitations. As the Ordinance also provides that all "Commercial Uses" are

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Principal Permitted Uses within the Industrial-Commercial Zoning District, the answer must be “yes”. It is clear that the “340 Defense Training and Shooting Range” is a business service activity, providing a service to its patrons in exchange for a monetary fee, which is within the context of the definition of “Commercial Use” as described. As such, it affords a safe and supervised environment for target shooting and firearms qualification of Municipal, County and Federal Law Enforcement Officers. A significant part of Mr. O’Dell’s shooting range operations is supervised, with safety and protection of all concerned as the first consideration. It invites the lawful exercise of the rights of all citizens to bear firearms and to become safe and proficient users of said firearms, in exchange for the payment of a fee. This is a “Commercial Use” as contemplated by 5.6(a)(2) of the Zoning Ordinance. No ammunition or other explosive material is being stored at the “340 Defense Training and Shooting Range”, nor is it Mr. O’Dell’s intent to sell ammunition on the premises. Other, more specific, uses are described in Subsection 5.6(b). These uses are exceptions from the general Principal Permitted Uses described in Section 5.6(a) – no where in Section 5.6(b) is the Zoning Administrator or Board of Zoning Appeals given discretion to expand, modify, amplify, or change the specific uses set forth in 5.6(b) to include others not expressly mentioned. Shooting Ranges are not listed in Section 5.6(b).

Attorney Cassell suggested that the Board should take judicial notice of the Zoning Map to understand that the Industrial-Commercial Zoning District is a very small percentage of the entire area of Jefferson County. As it is only within these small, well-defined areas that the rules of the Industrial-Commercial Zoning District actually apply, the broad and flexible terminology of the Principal Permitted Uses are further evidenced as appropriate, within this District. He further advised that shooting ranges were also permitted in the Rural District, most of which surrounds Mr. O’Dell’s property, with very specific conditions. As the Zoning Administrator is the designated professional staff person with an obligation to administer and enforce the Zoning Ordinance, he stated that Ms. Snyder’s interpretation of the Permitted Uses in the Industrial-Commercial District should be afforded great weight and deference by the Board (pursuant to West Virginia Law), and requested that they confirm said interpretation of the Permitted Uses in the Industrial-Commercial District, as applied to this case.

Based on her foregoing information, in her Rebuttal, Attorney Pardo respectfully requested that the Board of Zoning Appeals (1) reverse the Administrative Decision that the “340 Defense Shooting Range” is a Principal Permitted Use in the Industrial-Commercial Zoning District, and (2) direct the Zoning Administrator to immediately issue a Notice of Violation and Cease and Desist Order to the owner of said “Shooting Range” directing him to cease the operation, to include all means of advertisement.

In his Rebuttal, Attorney Cassell informed the Board that Mr. O’Dell had consulted with former Director of Planning and Zoning, Tony Redman, prior to opening the “340 Defense Training and Shooting Range.” During their conversation, Mr. Redman indicated to Mr. O’Dell that no permit was necessary because the shooting range was a Principal Permitted Use on the property. Relying on Mr. Redman’s advice, Mr. O’Dell denies that there is any violation resulting from the operation of his shooting range (no verifying documentation of said consultation with Mr. Redman has been provided). Mr. O’Dell has been accommodating with Staff in his compliance efforts.

In her Rebuttal, Zoning Administrator, Jennifer Snyder informed the Board that even if her decision was confirmed, approval of the Site Plan with adherence to all associated conditions, would still be required before the “340 Defense Training and Shooting Range” is allowed to commence operation.

Public comment in favor of the Determination was received by Charles Town Chief of Police, Barry Subelsky, (former FBI Firearms Instructor) who advised that members of the Police Force frequent the Range for shooting practice, which he regarded as more than adequately safe for use.

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Opposing comment was voiced by neighboring resident, Rusty Morgan, who expressed concern with both safety and (especially) noise issues, making particular reference to the fully automatic weapons being used. He further stated that he would not object to the shooting range if it was properly redesigned to correct these problems and would have more reasonable hours of operation established. He was also willing to assist in addressing these matters with the Owner. Additional opposition to the decision came from Carolyn Zakle, Owner of John's Family Restaurant, who advised that the noise from the gunfire is very disturbing and frightens both her family and customers.

Chairman Jeff Bresee thanked all parties for the level of professionalism they demonstrated and offered his compliments for an "excellent" presentation. He then recommended that a five-minute break be taken prior to going into Deliberative Session. Christy Huddle motioned to go into Deliberative Session at 5:26 p.m. Jon Brusco seconded the motion, which carried with a unanimous vote. Jon Brusco motioned to return from Deliberative Session; Tiffany Hine seconded the motion which carried with a unanimous vote. The meeting commenced again at 6:03 p.m.

5. Appeal by William H. Leedy, of the determination by the Zoning Administrator that the "340 Defense Shooting Range" is a Permitted Use in the Industrial-Commercial District.

Tiffany Hine motioned that the above-referenced Determination rendered by Zoning Administrator, Jennifer Snyder, was correct. Ed Kelly seconded the motion, which carried with a vote of three (3) in support of Ms. Snyder's decision, two (2) opposed (Jeff Bresee and Christy Huddle).

Jon Brusco proposed that another motion be presented, which highly encouraged the Zoning Administrator to execute due diligence in implementing appropriate measures when addressing the safety and noise issues. Jeff Bresee seconded the motion. Tiffany Hine objected to the motion as it implied that the Zoning Administrator was incapable of effectively accomplishing the job, which she believed was an erroneous perception. Stating that there was no disrespect intended, Mr. Brusco withdrew said motion.

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

Zoning Administrator, Jennifer Snyder, advised the Board that the Referendum Vote for a Traditional Zoning Ordinance was defeated at the polls on Saturday, November 7th. Accordingly, the Non-Traditional Ordinance, currently in use, will remain in effect. For the purpose of Public clarification, she further advised that Staff would continue their efforts to resolve existing Subdivision Regulation issues.

8. Legal Update. None.

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

Assistant Prosecuting Attorney, Stephen Groh, expressed his desire to moderate monthly written submissions of the Finding of Facts and Conclusions of Law to matters that are Controversial, Conditional or under Appeal. Accordingly, the only Findings of Facts and Conclusions of Law from the October 15, 2009 Meeting that was approved by signature of Chairman Bresee was the Item #3 Variance Request, identified as follows:

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- 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)**

Christy Huddle motioned to approve the Finding of Facts and Conclusions of Law for the above referenced Variance Request, without correction. Jon Brusco seconded the motion which carried with a unanimous vote. Due to her absence at the October Meeting, Member Tiffany Hine, abstained from voting on this matter.

10. Correspondence. None.

Christy Huddle motioned to adjourn the meeting at 6:10 p.m. Tiffany Hine seconded the motion, which carried with a unanimous vote.

Due to the County Commission's use of the Webcam it was unavailable for this meeting. However, an Audio Transcript of this meeting can be found on CD #'s _____. Zoning Secretary, Christine Chalmers, prepared these Minutes.