

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
APRIL 17, 2008

The Jefferson County Board of Zoning Appeals met on Thursday, April 17, 2008 at 3:00 p.m., in the Charles Town Library Meeting Room. Members present were as follows: Chairman, Tom Trumble, Vice Chair Christy Huddle, Tiffany Hine, Jeff Bresee, Edwin Kelly, and Alternate Member, Jon Brusco. Staff members present were Zoning Administrator, Sherry Kelly, Prosecuting Attorney James Casimiro and Recording Secretary, Christine Chalmers.

Mr. Trumble called the meeting to order at 3:00 p.m.

1. Minutes.

Jeff Bresee motioned to approve the Minutes from the March 20, 2008 meeting. Christy Huddle seconded the motion to include a correction to Page Five, Fourth Line from the bottom: change the name Christy Hine to Christy Huddle. Mr. Bresee seconded the motion and requested additional revisions to the Minutes, as follows: Page Three, Sixth Line from the top / change the words “acknowledges” to “acknowledged” and “recognizes” to “recognized”. Also, on Page Four, Ninth Line from the top (Item #5) / start the sentence with the word “This” instead of “Having been properly established...” Ms. Hine seconded the amended Minutes, which carried with a unanimous vote.

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

2. Monthly Address from Zoning Administrator, Sherry Kelly.

Ms. Kelly requested that Item #2 be addressed after deliberations.

3. Variance Request by William C. and Andrea W. Noble for a reduction of the Front Setback from 40’ to 32’ to insure that construction of an addition will not be situated in an existing Floodplain area. Property description: 159 Country Road, Harpers Ferry, West Virginia. Zoning Ordinance: Article 9, Section 9.7.

(Kabletown District - Map 26 / Parcel 14 / 2.232 acres)

#ZV08-08

Applicant, William C. Noble, advised that in December 2006, his mother moved into their three-bedroom ranch style home, with all of her furniture and belongings. The move has resulted in an overcrowded living arrangement for the family. In an effort to alleviate the current conditions, Mr. Noble has considered expanding the home by 1000 sq. ft. on the North side, which would afford a more private and comfortable space for his mother. Accordingly, to insure that construction of an addition to the home would not be situated in an existing Floodplain area, Mr. Noble is requesting that the Front Setback be reduced from 40’ to 32’. There was no public comment.

4. Variance Request by Sharon L. Kircher for reduction of the Front Setback distance from 20’ to 10’ to allow for the replacement of a previously existing mobile home that was destroyed by fire. Property description: 99 Prospect Avenue, Charles Town, West Virginia. Zoning Ordinance: Article 9, Section 9.7.

(Charles Town District – Map 10A / Parcel 122 / Lot Size: 100’ x 150’)

#ZV08-09

This is the second submission of the above referenced Variance Request. The property currently consists of the Owner’s residence and had also included three (3) mobile homes, one of which was destroyed by fire. As these mobile homes, which have been situated on the property for

over twenty years, generate income that provides the Owner, Ms. Kircher, with monetary support during her retirement, the subsequent reduction of revenue resulting from the loss of one has created a hardship on her finances. Accordingly, her intent is to replace the ruined mobile home with a new one, to be positioned in the existing area that is located 10' from the public alleyway. Per unanimous decision from the Board of Zoning Appeals at the February 21, 2008 meeting, reapplication of the Variance was conditioned upon written confirmation that the Owner had presented evidence of the site having been cleared of the mobile home wreckage and removal of the related debris had sufficiently satisfied compliance with appropriate County requirements. Verification of these requirements was included within the Variance resubmission package. Public comment was voiced by neighbor, Karlton French, who expressed his concern about the lack of space available for tenant parking, which results in blockage of a public rear alleyway that is adjacent to the property. In rebuttal, the Owner's son, William Shiflett stated that he spoke with the tenant whose vehicle is known to block the alleyway, and anticipates his cooperation.

5. Variance Request by Deanne A. Torlone for a reduction of the Rear Setback distance from 20' to 15' to allow for the installation of an inground pool. Property description: 217 Pebble Beach Drive, Charles Town, West Virginia. Zoning Ordinance: Article 5, Section 5.4b. (Charles Town District – Map 13A / Parcel 296 / Lot Size: .39871 acres). **#ZV08-10**

Mr. Thomas Friedman, fiancé of property owner, Deanne A. Torlone, advised that she is considering the installation of an inground pool, which will be flush with the ground. As the current 20' Rear Setback would place the structure very close to the existing deck, she is requesting that the Setback be reduced by 5' to allow for extra space. Since her neighbors' fencing surrounds the property on two of three sides, owners or residents of adjacent properties would not be adversely affected by the Request. The pool will be "L" shaped with the following dimensions: 18' (back) x 38' x 24' (front) x 12' x 24' and will include a 3' concrete walkway around the structure with a 5' concreted diving board area. Public comment was expressed by neighbor, David Snavelly, who stated that he was in agreement with the Request.

6. Variance Request by David C. and Cynthia A. Snavelly for a reduction of the 20' Rear Setback distance to allow for placement of an 8'x 8' shed just inside the property line within a fenced yard. Property description: 371 Pebble Beach Drive, Charles Town, West Virginia. Zoning Ordinance: Article 5, Section 5.4b.

(Charles Town District – Map 13A / Parcel 291 / .44599 acres)

#ZV08-11

The Applicant, David Snavelly, advised that the placement of their home on a corner lot affords a larger front and side yard, but effectively reduces the amount of back yard space. Due to this smaller rear area, placement of the above referenced shed against the property line (within six inches of the picket fence) will allow better use and will offer a more aesthetically pleasing, "finished" appearance. Further, due to the slope of the property, the requested location will be substantially shielded from the street view and will also be masked from neighboring properties by an existing five-foot fence. If required to maintain the setback provisions without the Variance, the shed will be too close to the deck and steps, essentially placing it in the middle of the back yard, which would increase the view from both the street and neighboring properties. The structure to be erected, an 8' x 8' non-permanent storage shed with T111 siding painted to match the house and architectural grade shingles, is in compliance with the Community HOA guidelines. Public comment was offered by neighboring residents, Thomas Friedman, and fiancé, Dianne A. Torlene, who were agreeable to the Request.

- 7. Variance Request by Angela M. O’Hara for approval to operate a Beauty Salon in a garage that is attached to the house by a covered walkway. Property description: 10101 Leetown Road, Kearneysville, West Virginia. Zoning Ordinance: Article 4, Section 4.A.2. (Middleway District – Map 14 / Parcel 7 / 24.25 Acres) #ZV08-14**

Ms. Delia M. Garza spoke for Owner/Applicant Angela M. O’Hara, who suffers with Alzheimer’s. Ms. Garza is requesting a Zoning approval to operate a Beauty Salon at the residence. Her daughter, Alicia, a licensed Beautician, would operate the Salon, which would be located in a building/garage that is attached to the main house by a covered porch type walkway. As Alicia currently resides with and cares for Ms. O’Hara, who is in the late stages of the disease, approval of the Request is necessary because it is a means by which she can support herself financially, continue to provide the required physical care of Ms. O’Hara, and also maintain the property. Since this will be a modest business with only 3-4 clients scheduled by daily appointment, the one adjacent property owner will not be adversely affected by this operation. Additionally, there is ample area available for parking. There was no public comment.

- 8. Variance Request by Wayne E. Skinner, Jr. and Timothy G. Gerhard from Section 4.16 (Table) to allow reduction of the required Side Setback; to allow reduction of the required buffer between a commercial lot and a lot with a residence; to allow reduction of the distance requirement for a commercial use and a lot with a residence upon it; and to allow reduction of the Side Setback for the access drive for a commercial use next to a lot with a residence. Property description: Shepherdstown Pike, approximately ½ mile North of Engle Molers Road. (Shepherdstown District – Map 8B / Parcel 127 / Lot Size: 100’ x 190’(+) #ZV08-12**

- 9. Variance Request by Wayne E. Skinner, Jr. and Timothy G. Gerhard from Section 5.7 Rural District (b) minimum lot area.; lot width and yard requirement to allow for the lot area to be reduced; to allow for reduction of the Southern side yard requirements; and to allow reduction of the front yard requirement. Property description: Shepherdstown Pike, approximately ½ mile North of Engle Molers Road. (Shepherdstown District – Map 8B / Parcel 127 / Lot Size: 100’ x 190’(+) #ZV08-13**

Speaking on behalf of Wayne Skinner, Jr. and Timothy G. Gerhard, Applicants/Owners of the property in question and Mr. and Mrs. B. Hockman, Owners of the adjoining property, Ms. Annette van Hilst with Dewberry requested that Items #8 and #9 be addressed in combination, as both Variance Requests pertain to the same property. Representing all parties, Ms. van Hilst advised that the Hockman’s are the Owners of Parcel 128, to include a single-family dwelling on .22 acres that adjoins the subject parcel to the south/southwest. Moreover, Owners Wayne E. Skinner, Jr. and Timothy G. Gerard obtained Parcel 127 in 1995, which presently consists of .44 acres and contains a concrete block building constructed prior to 1967. The property has been in commercial use since its inception, and was the subject of a Conditional Use Permit shortly after their purchase, to allow for operation of an Art gallery (AIIA) in the existing building. The Request being presented is the result of a Mediation Settlement Agreement between both Owners, as part of an agreement and settlement of Civil Action 05-C-35 in the Circuit Court of Jefferson County. This settlement agreement requires that the Applicants convey a strip of land to the Hockmans’. In order to implement the agreement, a merger deed needs to be recorded in the Land Records of the County. Prior to such a deed being recorded, it must first be signed off by the Planning Director, confirming compliance with necessary requirements, to include the above referenced Variances from the

MINUTES – JEFFERSON COUNTY BOARD OF ZONING APPEALS

APRIL 17, 2008

PAGE FOUR

Zoning Ordinance, as follows: Section 4.16 (Table) and Section 5.7 Rural District (b) Minimum lot area, lot width and yard requirement. By allowing the Variances, the terms of the Mediation Settlement Agreement will be implemented and substantial justice will be done. A written correspondence submitted by Wayne E. Skinner, Jr. advised that this Variance Request is a result of an Adverse Possession claim filed by Mr. and Mrs. B. Hockman, concerning the property in question. Accordingly, the Jefferson County Court ordered mediation before a trial was conducted on the merits of said Civil Lawsuit. As Mr. Skinner's intent in writing the letter was to clarify to the Board that the subject of the Court Order mentioned in the Variance Requests was to declare that an agreement had been reached during the Court Ordered mediation, and was not a command or directive to this Board to grant the Variance Requests, he asked that the Board of Zoning Appeals consider these Requests based upon the same criteria used in determining the validity of other Variances. Further, Mr. Skinner also stated (verbally) for the record that the signatures on said Variances were not made by his hand, but were entered by John Dorsey, Special Commissioner who was empowered to sign if the Defendants were not compliant. Opposing public comment was expressed by Realtor Nancy McBride and Artists: Don Rees, James Kline, Paul Welch, Patrinka Keller and Dianna Suttentfield, who voiced their concern about the resulting vehicle space limitations and traffic safety issues encountered upon entering/ exiting the parking lot due to a reduction to the area. Attorneys Nancy Dalby and Marshall Enos also spoke on behalf of the Defendants. Mr. and Mrs. Hockman shared photos with the Board that they believed evidenced a less exaggerated hardship than was indicated by the Defendants.

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

- 2. Monthly address by Zoning Administrator, Sherry Kelly.**
- 10. Discussion and vote on Board of Zoning Appeals Rules of Procedure.**
- 11. Legal Update.**
- 12. Correspondence.**

Jeff Bresee motioned that the Board take a five-minute break, to be followed by deliberations, at 4:27 p.m. Ms. Huddle seconded the motion, which carried unanimously. Ms. Huddle motioned to return to regular session. Ms. Hine seconded the motion, which carried unanimously. The meeting commenced again at 4:55 p.m.

- 3. Variance Request by William C. and Andrea W. Noble for a reduction of the Front Setback distance from 40' to 32' to insure that construction of an addition will not be situated in an existing Floodplain area.**

Ms. Huddle motioned to approve the above referenced request without condition. Mr. Kelly seconded the motion, which carried unanimously.

- 4. Variance Request by Sharon L. Kircher for a reduction of the Front Setback distance from 20' to 10' to allow for the replacement of a previously existing mobile home that was destroyed by fire.**

Ms. Huddle motioned to approve the above referenced request with the condition that the property Owner erect a sign, on her property, stating that residents and/or guests shall not park in the alleyway. Ms. Hine seconded the motion, which carried unanimously. Further, in an effort to provide permanent resolution to the alleyway blockage issue, Ms. Huddle motioned that a letter be

generated by Zoning Administrator, Sherry Kelly, to be forwarded to the Department of Highways requesting that a sign be erected prohibiting parking in said alleyway, which is located at the rear of the residence on 99 Prospect Avenue in Charles Town, West Virginia. Mr. Bresee seconded the motion, which carried with a vote of four in favor and one opposed (Tiffany Hine).

5. Variance Request by Deanne A. Torlone for a reduction of the Rear Setback distance to allow for the installation of an inground pool.

Mr. Kelly motioned to approve the Request without condition. Ms. Hine seconded the motion, which carried unanimously.

6. Variance Request by David C. and Cynthia A. Snavelly for a reduction of the 20' Rear Seback distance to allow for placement of an 8' x 8' shed just inside the property line within a fenced yard.

Ms. Hine motioned to approve the Request without condition. Mr. Bresee seconded the motion, which carried unanimously.

7. Variance Request by Angela M. O'Hara for approval to operate a Beauty Salon in a garage that is attached to the house by a covered walkway.

Ms. Hine motioned to approve the Request without condition. Mr. Bresee seconded the motion, which carried unanimously.

8. Variance Request by Wayne E. Skinner, Jr. and Timothy G. Gerhard from Section 4.16 (Table) to allow reduction of the required Side Setback; to allow reduction of the required buffer between a commercial lot and a lot with a residence; to allow reduction of the distance requirement for a commercial use and a lot with a residence upon it; and to allow reduction of the Side Setback for the access drive for a commercial use next to a lot with a residence.

9. Variance Request by Wayne E. Skinner, Jr. and Timothy G. Gerhard from Section 5.7 Rural District (b) minimum lot area, lot width and yard requirement to allow for the lot Area to be reduced; to allow for reduction of the Southern side yard requirements; and to allow reduction of the front yard requirement.

For the purpose of perpetuating the agreement and settlement that was ordered by the Circuit Court of Jefferson County (Civil Action #05-C-35), so that no Party is in breach of same, Jeff Bresee motioned to approve both of the Variance Requests as referenced in Agenda Items #8 and #9 without condition. Ms. Huddle seconded the motion, which carried unanimously.

10. Discussion and vote on the Board of Zoning Appeals Rules of Procedure.

Assistant Prosecuting Attorney, James Casimiro, provided Board Members with an outline of revisions he has made and a copy of the corresponding amended Jefferson County Board of Zoning Appeals Rules of Procedures, which was unanimously approved. Additionally, Chairman Thomas Trumble expressed his appreciation to Mr. Casimiro for a job well done.

2. Monthly address by Zoning Administrator, Sherry Kelly.

Pursuant to a request by Chairman, Tom Trumble at the March 20, 2008 Meeting, Zoning Administrator Sherry Kelly shared information with the Board regarding proposed Electronic Message Center Sign provisions for Jefferson County, West Virginia. Included were suggested Code/Language Guidelines for animated signs, which was made available by Matthew Snyder, Representative from W.J. Strickler Signs, Inc. and material obtained from the American Planning Association, referenced as “Digital Signs-Context Matters”. Upon review and cross-debate of the information provided, Jeff Bresee presented a final motion maintaining that, for the purpose of insertion into the Zoning Ordinance, clarification of Sign usage be established by Ms. Kelly that would incorporate Items #1 - #9, amended to include a 10-second message hold time, of the above referenced Code/Language Guidelines for animated signs. Further, that a more specific definition of animated signage be submitted at the May Meeting, for consideration of adoption. Ms. Huddle seconded the motion, which carried with a vote of four (4) in favor, one (1) opposed (Christy Huddle). Mr. Trumble also advised that the matter of traffic safety concerns, to be incorporated into the Ordinance as well, would be discussed in greater depth at the May Meeting.

Additional subjects of discussion included an email correspondence distributed prior to commencement of the Meeting, advising that Compliance Officer Mason Carter, had contacted Terry Marcus with the Cliffside Inn, via a March 31, 2008 violation letter, and informed the Owner that he had fifteen days to disconnect or remove the sign. Accordingly, the sign was disconnected, pending their Appeal of the Board of Zoning Appeals decision on this matter.

Ms. Huddle also advised that Shenandoah Lanes, Inc. is in violation of sign usage again, and was assured by Ms. Kelly that Mason Carter would be informed of said violation.

11. Legal Update.

With regard to the Hamstead case, Assistant Prosecuting Attorney, James Casimiro advised that both he and Compliance Officer, Mason Carter, have filed a Complaint with the Jefferson County Magistrate Court that is currently pending. Originally submitted on January 19, 2006, the Variance concerning this matter requested a reduction from a side setback of 12’ to 1’ to allow for an existing trellis/fence exceeding 6’ in height (Article 9, Section 9.7). During that Meeting, the Board of Zoning Appeals denied the Request, which resulted in the submission of an Appeal by the Applicant. Judge Steptoe ultimately denied that Appeal, as well. To date, the Applicants continue to reject Judge Steptoe’s determination and remain in noncompliance.

Assistant Prosecuting Attorney, Stephanie Grove provided copies for distribution of a Court Order regarding the FARAWAY FARMS case. Should there be any questions, she is available for comment if contacted, and will also offer clarification about this matter at the May Meeting.

12. Correspondence. None

Christy Huddle motioned to adjourn the meeting at 5:50 p.m. Mr. Kelly seconded the motion, which carried unanimously.

The CD# where the transcript of this meeting can be found has not been determined. Recording Secretary, Christine Chalmers, prepared these Minutes.