

**MINUTES**  
**JEFFERSON COUNTY BOARD OF ZONING APPEALS**  
**MAY 15, 2008**

The Jefferson County Board of Zoning Appeals met on Thursday, May 15, 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 and Edwin Kelly. Alternate Member, Jon Brusco, was absent with notification. 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.**

Mr. Bresee motioned to approve the Minutes from the April 17, 2008 meeting. Mr. Kelly seconded the motion with the following corrections: Page One / Item #3, Line Four (4) ~ Change 1000' figure to 1000 sq. ft. (per verification by Zoning Administrator). Additionally, on Page Three / reposition the paragraph currently situated before Items #8 and #9 and locate it immediately after those Agenda Items instead. The motion 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 this Agenda Item be addressed after deliberations.

**3. Variance Request by Donald W. Painter, Jr. to reduce the Side Setback distance from 8' to 4' to allow construction of a new home. Property description: 116 McShane's Landing Road, Shepherdstown, West Virginia. Zoning Ordinance: Article 9, Section 9.7. (Shepherdstown District - Map 11A-2 / Parcel 62 / 0.33 acres) #ZV08-15**

Owner, Donald Painter, Jr. advised that he purchased the property approximately six (6) months ago and would like to have a new home constructed on it. However, as the property is only 50.9' in width, plan selections for a more narrow home style that would still satisfy the family's needs are limited. Accordingly, he is requesting that a reduction of the Side Setback distances be approved to afford him a less restrictive area to situate the home on. Currently, an uninhabitable mobile home is located on the lot, which will eventually be removed. That structure is already positioned with a 4' Side Setback distance on one side. Public comment was expressed by neighboring resident, Adam C. Brastow, who voiced his concern that the property, which is located in a Floodplain area, would necessitate specific construction requirements that were not compatible with the existing homes of the community.

**4. Variance Request by Rocky Marsh, L.L.C. from Zoning Ordinance Section 5.7(b), to allow the existing structures on Lot 1 and Lot 2 (residue parcel) to increase their encroachment into the 40' Front Setback by 10'. Property description: North side of Turner Road (CR14); approximately 1/2 mile West of its intersection with Scrabble Road (CR5). (Shepherdstown District - Map 3 / Parcel 1 / Lot Size: 102.49 acres) #ZV08-16**

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Representing Agent, Richard Klein, with Alpha Associates, Inc. advised that the proposal for this property included the subdivision of one lot from the larger parent parcel. Currently, four (4) structures along Turner Road, consisting of a garage, a springhouse, a barn and a silo are encroaching on the forty (40') setback from the road easement. As a result of the subdivision, the encroachment into the setback is increased because a 10' road improvement easement is required to be added to the existing road easement, to ensure compliance with Subdivision Ordinance Section 8.1.b.11. As the buildings had already existed long before the current owner purchased the property, the conditions for which the Variance is requested were not self-imposed. Accordingly, the literal enforcement of the Ordinance would result in a substantial cost to the applicant, as all of the structures that are encroaching in the setback would have to be demolished in order to proceed with the subdivision. Moreover, granting the Variance would not change existing conditions or have an adverse affect on the public or adjoining property owners/residents. Instead, an approval would be in accordance with the intent of the Zoning Ordinance. There was no public comment.

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

- 2. Monthly address by Zoning Administrator, Sherry Kelly.**
- 5. Rules of Procedure by the Jefferson County Board of Zoning Appeals.**
- 6. Legal Update.**
- 7. Correspondence.**

Jeff Bresee motioned to go into deliberations at 3:18 p.m. Christy Huddle seconded the motion, which carried unanimously. Mr. Bresee motioned to return to regular session. Ms. Huddle seconded the motion, which carried unanimously. The meeting commenced again at 3:22 p.m.

- 3. Variance Request by Donald W. Painter, Jr. to reduce the Side Setback Distances from 8' to 4' to allow for construction of a new home.**

Mr. Bresee motioned to approve the above referenced Request without condition. Ms. Hine seconded the motion, which carried with a vote of 4 in favor and 1 opposed (Christy Huddle).

- 4. Variance Request by Rocky Marsh, L.L.C. from Zoning Ordinance Section 5.7(b), to allow the existing structures on Lot 1 and Lot 2 (residue parcel) to increase their encroachment into the 40' Front Setback by 10'.**

Mr. Kelly motioned to approve the above referenced Variance without condition. Mr. Bresee seconded the motion, which carried with a unanimous vote.

- 2. Monthly address by Zoning Administrator, Sherry Kelly.**

For the purpose of granting adoption into the proposed Ordinance, Zoning Administrator, Sherry Kelly, provided Members with another draft of ARTICLE 9.300 / PROVISIONS FOR SIGNS that was revised to include recommendations from the Board during their April 17, 2008 meeting. Tiffany Hine motioned to approve the document as submitted. Ed Kelly seconded the

motion which carried with a vote of 4 in favor and 1 opposed (Christy Huddle). Ms. Huddle motioned that the amendments referenced below also be included. Mr. Trumble decided that each would be addressed individually, as follows:

**1. The content of each Electronic Message Center message must be contained within one frame that does not blend into another frame.**

Tiffany Hine seconded the motion, which carried unanimously.

**2. The County would reserve the right to decrease the brightness of any sign that was determined to be excessive.**

Tiffany Hine seconded the motion, with a vote of 1 in favor and 4 opposed (Tom Trumble, Tiffany Hine, Jeff Bresee and Ed Kelly).

**3. The installation of an Electronic Message Center sign would only be allowed in General Commercial, Business Park and Townscape (mixed use) Districts.**

Tiffany Hine seconded the motion, with a vote of 2 in favor and 3 opposed (Tom Trumble, Tiffany Hine and Jeff Bresee).

**4. The installation of Electronic Message Center sign would not be allowed within 200' of a school or residential area.**

Tiffany Hine seconded the motion, with a vote of 3 in favor and 2 opposed (Tiffany Hine and Ed Kelly).

**5. The installation of an Electronic Message Center sign would not be allowed in a designated Scenic Corridor, as defined by the Jefferson County Comprehensive Plan.**

Ed Kelly seconded the motion, with a vote of 4 in favor. Due to the pending Court Case, Ms. Hine abstained from voting.

**6. The installation of an Electronic Message Center sign would not be allowed within 400' of an intersection with a rating of "D" or less or on any roadway that exceeds the designed traffic limits.**

Mr. Kelly seconded the motion, with a vote of 1 in favor and 4 opposed (Tom Trumble, Tiffany Hine, Jeff Bresee and Ed Kelly).

In an effort to accumulate the data necessary to provide clarification of which roadways currently exceed the designed traffic limits referenced above, the motion was amended to include that Staff determine whether this data is actually available and could be presented for consideration prior to the next meeting. If so, Mr. Trumble recommended that a Special Meeting be scheduled for review and discussion of said information; otherwise, the original motion would remain in effect, as stated above. Accordingly, Zoning Administrator, Sherry Kelly, advised that she will have to coordinate with the Engineering Department to research this matter and would notify the Board if obtaining said data in a timely manner is not feasible.

Ed Kelly seconded the amended motion which carried with a vote of 4 in favor and 1 opposed (Tiffany Hine).

**5. Rules of Procedure before the Jefferson County Board of Zoning Appeals.**

Prosecuting Attorney, James Casimiro, stated that the only issue that still need to be addressed regarding the Rules of Procedure was obtaining a signature of approval from Mr. Trumble.

**6. Legal Update.**

Report from Assistant Prosecuting Attorney, Stephanie Grove, regarding the Supreme Court of Appeals of West Virginia's Ruling in the Faraway Farms, LLC matter.

Mr. Bresee motioned that the Board take a ten-minute break, at 4:10 p.m., to be followed by an Executive Session to discuss the above referenced Faraway Farms, LLC matter. Ms. Huddle seconded the motion, which carried unanimously. The meeting commenced again at 4:50 p.m.

As a matter of Public Record: In an effort to communicate the Board of Zoning Appeals dissatisfaction with the recent Supreme Court Ruling of the Faraway Farms, LLC case, Jeff Bresee motioned that Assistant Prosecuting Attorney, Stephanie Grove, file a separate brief to the Supreme Court for the purpose of requesting a Motion to Reconsider. Ed Kelly seconded the motion, which carried unanimously.

Additionally, Assistant Prosecuting Attorney, James Casimiro, advised that he would prepare the Findings of Fact and Conclusions of Law regarding the BZA's denial of the Cliffside Inn Variance Request for an Electronic Reader Board Sign and present the document to the Board for review at the June Meeting.

**7. Correspondence.**

None

Christy Huddle motioned to adjourn the meeting at 4:55 p.m. Mr. Bresee 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.