

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
NOVEMBER 20, 2008

The Jefferson County Board of Zoning Appeals met on Thursday, November 20, 2008 at 3:10 p.m., at 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. Staff members present were Acting Director, Kirk Davis, newly appointed Acting Zoning Administrator, Jennifer Snyder, Assistant Prosecuting Attorney, James Casimiro, and Zoning Secretary, Christine Chalmers.

The Meeting start, which was slightly delayed due to Conference Room unavailability, was called to order by Mr. Trumble, at 3:10 p.m.

1. Minutes.

Jeff Bresee motioned to approve the Minutes from the September 18, 2008 meeting without correction. Christy Huddle seconded the motion which carried with a unanimous vote.

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

- 2. Variance Request by property Owners, Joseph and Patricia S. Greene to reduce the Rear Yard Depth distance from 50' to 42' to allow for an existing deck to extend into said Rear Yard Depth. Property description: 119 Avon Bend Road, Charles Town, WV. Zoning Ordinance: Article 5, Section 5.7b. (Kabletown District - Map 9 / Parcel 19.18 / Lot Size: 1.0095 acres)**
#ZV08-24

Property owner, Joseph Greene advised that the deck in question was built in 1992, over seven years prior to his purchasing the property, yet it has only recently been brought to his attention that the 42' rear yard distance was not in compliance with Article 5, Section 5.7b of the Zoning Ordinance. Even though at least two independent surveys have been completed on the property during his ownership, each report indicates an erroneous setback distance figure. Further, Mr. Greene also stated that both the Realtor and previous owner failed to disclose the nonconformity when he purchased the property in December, 1999. Due to circumstances beyond their control, the Greene's now need to sell their home and move closer to family. As the deck has been in place for over sixteen years and is a beautiful, well constructed, much enjoyed addition to the home, Mr. Greene asks that a final approval be granted by the Board. There was no public comment.

- 3. Variance Request by property Owners, Larry Barkdoll and Naomi Rohrer to reduce the Front Setback distance from 40' to 12' to allow for the construction of a second story addition to an existing one-story structure. Property description: 13927 Leetown Road Kearneysville, West Virginia. Zoning Ordinance: Article 5, Section 5.7b.**
(Middleway District - Map 5 / Parcel 4 / Lot Size: 2.151 acres)
#ZV08-25

MINUTES – JEFFERSON COUNTY BOARD OF ZONING APPEALS
NOVEMBER 20, 2008
PAGE TWO

Property owner, Larry Barkdoll advised that they want to enlarge the existing 12'x14' one-story addition on their home to 16'x16' and add a second story, matching the siding and roofline to the original house, circa 1900. This addition would afford the most economical means of providing a third bedroom in the upper level, which would better serve the family's needs. Since the home is currently situated at a 12' distance from the front property line, the requested modification would actually be an extension to the existing structure, and would not adversely affect the public health, safety, welfare or rights of the adjacent property owners or residents. There was no public comment.

4. Variance Request by property Owners, S. Andrew Arnold and Carmela Cesare to reduce the Side Setback distance from 8' to 0' to allow for construction of a two-story addition to existing (1895) house, which was originally built on the lot line. Property description: 68 Fairmont Avenue, Shepherdstown, West Virginia. Zoning Ordinance: Article 9, Section 9.7. (Shepherdstown District – Map 8B / Parcel 50.1 / Lot Size: 172' x 120') #ZV08-26

Representing Attorney, Frank Hill, advised that the Applicants seek permission to build a 1400 sq. ft., two-story addition that is architecturally consistent with their existing 1895 house, originally built on the lot line. The current 1800 sq. ft., two-bedroom home, is considerably undersized for a growing family with three children, and affords an unnecessary hardship, due to the lack of space. Accordingly, the added (lower level) living space and two extra (upper level) bedrooms would create a house that will accommodate the reasonable expectations of daily use. Further, as the house is situated just one block outside the corporate limits of Shepherdstown, the Applicants believe that this enhancement will help to maintain the street as a permanent family residence neighborhood, rather than a rental market for student housing, thus increasing adjacent property owners' home values. Architect Rosalind Welsh also provided Board Members with a design concept of the proposed addition; copies of which were included with the submitted Variance. Attorney Peter Chakmakian presented opposing comment on behalf of Joseph Talago, owner of the property situated to the west of the Applicants. Stating that Mr. Talago's concerns included storm water run-off from the roof overhang into his side yard, property accessibility for maintenance purposes, elimination of trees necessitated by construction, and visual obstruction, Mr. Chakmakian advised that, in an effort to reach an amicable compromise, his client had met previously with Mr. Arnold and the Architect, to no avail. Additionally, Mr. Chakmakian provided that, per Article 4, Section 4.3 of the Zoning Ordinance, non-conforming expansions are limited to an area of 35%, while the proposed enlargement exceeds a 78% unauthorized increase of volume. Moreover, said increase had not been properly noticed, as the submitted Variance exclusively addressed the setback distance reduction. As such, approval of the Request would adversely affect the public health, safety, welfare, and rights of the adjacent property owners, and would not allow the intent of the Zoning Ordinance to be observed and substantial justice done. In response, Attorney Hill requested that the Board consider "tabling" the matter until the excessive volume issue was properly noticed and the Variance could be readdressed at a later date. On that assumption, he also asked that his right of Rebuttal be delayed, as well.

5. Variance Request by property Owner, Linda Wolf, to reduce the Rear Setback distance from 30' to 18' to allow for the construction of a deck with adjoining stairs. Property description: 165 Starkeys Landing, Shepherdstown, West Virginia.

(Shepherdstown District – Map 8D / Parcel D15 / Lot Size: .24 acres)

#ZV08-27

Property owner, Linda Wolf, is requesting that she be afforded the above-referenced reduction, so that she can commence with the construction of a second-story deck with adjoining stairs that would allow her use of an elevated rear kitchen door, thus alleviating the associated fire safety potential, and also provide added outdoor space for recreational use and relaxation. Having acquired the property earlier this year, Ms. Wolf had no knowledge of issue in obtaining permission to build a deck, as she was not informed, otherwise, prior to the purchase. Though sympathetic to Ms. Wolf's regrettable dilemma, opposing comment was offered by both Stanley and Beverly Belchik, adjacent property owners, who were upset that their privacy would be adversely affected by the erection of the proposed deck, in such close proximity to their home. Copies of a written correspondence expressing their concern, and related photographs, were also made available to Board Members for review. Additional testimony was presented by Denise Kupiszewski and Realtor Judith Moore, who concurred with the Belchik's appeal to the Board.

6. Variance Request by property Owners, Marcos and Guadalupe Jimenez, to reduce the Rear Setback distance from 20' to 6' to allow for the construction of a two-car detached garage. Property description: 600 Jefferson Avenue, Charles Town, WV.

(Charles Town District – Map 10B / Parcel 60.1 / Lot Size: 7,500 sq. ft.)

#ZV08-28

Property owner, Marcos Jimenez, wishes to construct a 24' x 24', two-car, detached garage on his property, but the 20' setback distance requirement that is imposed, due to the location of an (unused) grass alley, would situate the garage too closely to the house. Accordingly, adhering to said 20' setback wastes valuable backyard space, limits area usage, and renders proper vehicle maneuverability, difficult to impossible. Mr. Jimenez further stated that placement of the garage would not adversely affect the rights of adjacent property owners or residents, as it does not present an issue of encroachment. Public comment was offered by neighbor, Mr. Lonnie Wood, who favorably endorsed the Request.

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

- 7. Monthly Address from Acting Director / Zoning Administrator, Kirk Davis.**
- 8. Legal Update – James Casimiro to present Board Members with an overview of the newly adopted Jefferson County Zoning Ordinance (effective date: November 1, 2008), to include clarification of responsibilities specific to the Board of Zoning Appeals.**
- 9. Correspondence.**

MINUTES – JEFFERSON COUNTY BOARD OF ZONING APPEALS
NOVEMBER 20, 2008
PAGE FOUR

Tiffany Hine motioned to go into Deliberative Session at 4:25 p.m. Jeff Bresee seconded the motion, which carried with a unanimous vote. Jeff Bresee motioned to return to Regular Session; Christy Huddle seconded the motion, which carried unanimously. The meeting commenced again at 4:47 p.m.

2. Variance Request by property Owners, Joseph and Patricia S. Greene to reduce the rear yard depth distance from 50' to 42' to allow for an existing deck to extend into said rear yard depth.

Tiffany Hine motioned to approve the above referenced Request without condition. Jeff Bresee seconded the motion, which carried with a unanimous vote.

3. Variance Request by property Owners, Larry Barkdoll and Naomi Rohrer to reduce front setback distance from 40' to 12' to allow for the construction of a second story addition to an existing one-story structure.

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

4. Variance Request by property Owners, S. Andrew Arnold and Carmela Cesare to reduce the side setback from 8' to 0' to allow for construction of a two-story addition to the existing (1895) house, which was originally built on the lot line.

Christy Huddle motioned to deny the above referenced Variance Request due to the negative impact that would be created by the storm water run-off onto the adjacent owners property, the burden associated with accessing the property to address maintenance issues, the potential elimination of trees and overall visual obstruction resulting from the proposed two-story addition. Further, Mr. Trumble also voiced his concern regarding proper notification of the 78% volume increase that would be incurred by the existing property, due to said construction. Ed Kelly seconded the motion, which carried with a vote of a vote of 3 in favor, 2 against (Tom Trumble and Jeff Bresee). Attorney Hill expressed his frustration that the matter had not been “tabled” as he had requested prior to Deliberations, until the excessive volume issue could be properly noticed and the Variance could be readdressed at a later date, and that his opportunity for Rebuttal had been sacrificed. Mr. Trumble reminded Mr. Hill that he had not been influenced into relinquishing his opportunity for Rebuttal.

5. Variance Request by property Owner, Linda Wolf, to reduce the rear setback distance from 30' to 18' to allow for the construction of a deck with adjoining stairs.

Ed Kelly motioned to deny the above referenced Variance due to the adverse affect a reduction of the setback distance would have on the privacy of the adjacent property owners. Ms. Huddle seconded the motion, which carried with a vote of 4 in favor, 1 against (Tiffany Hine).

6. Variance Request by property Owners, Marcos and Guadalupe Jimenez, to reduce the rear setback distance from 20' to 6' to allow for the construction of a 24' x 24' two-car detached garage.

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

7. Monthly address by Acting Director, Kirk Davis.

Introductions were made and both the newly appointed Acting Director, Kirk Davis, and Jennifer Snyder, who is presently in the position of Acting Zoning Administrator, were Welcomed by the Board. Mr. Davis discussed office procedures currently in effect, and projected changes in the future, for the Departments of Planning and Zoning. Ms. Snyder gave a brief overview of the recently adopted Jefferson County Zoning Ordinance, with reference to the responsibilities specific to the Board, and advised that she would forward information regarding the application process regarding Conditional Use and Variance Requests, for discussion at the next meeting. Mr. Davis expressed his appreciation to the Board, for their assistance.

Additional topics included a mention of the Director Search Committee, of which Mr. Trumble is a member. Mr. Davis advised that Mr. Trumble would be informed when a meeting was scheduled for review and discussion of the Finalist's Applications.

8. Legal Update – James Casimiro to present Board Members with an overview of the newly adopted Jefferson County Zoning Ordinance (effective date: November 1, 2008), to include clarification of responsibilities specific to the Board of Zoning Appeals.

As this subject had already been addressed in Item #7, Assistant Prosecuting Attorney James Casimiro, provided the Board with the "Finding of Facts and Conclusions of Law" from the previous Variance Request Rulings for approval, as follows:

#ZV08-21 / Matthew Bernazolli (August 21, 2008 Meeting).

#ZV08-22 / Mat and Tina Nace (September 18, 2008 Meeting).

Jeff Bresee motioned to adopt said "Finding of Facts and Conclusions of Law" for each Variance, as submitted. Ms. Hine seconded the motion, which carried unanimously.

9. Correspondence. None.

Christy Huddle motioned to adjourn the meeting at 5:20 p.m. Ed Kelly seconded the motion, which carried unanimously.

Due to equipment malfunction, a Video Recording of this meeting is unavailable. Audio Transcript can be found on CD's #123 and #124.

Zoning Secretary, Christine Chalmers, prepared these Minutes.