

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
MARCH 15, 2007

The Jefferson County Zoning Board of Appeals met on Thursday, March 15, 2007 at 3:00 p.m., in the Charles Town Library Meeting Room. Members present were as follows: Tom Trumble, Christy Huddle, Tiffany Hine, Jeff Bresee, Edwin Kelly and Alternate Member, Mary Sue Jedele. Staff members present were Assistant Prosecuting Attorney James Casimiro and Recording Secretaries, Christine Chalmers and Rebecca Burns. Prosecuting Attorney Stephanie Grove was absent with notification.

Due to a video operation delay, Mr. Trumble called the meeting to order at 3:13 p.m.

1. Minutes. Ms. Huddle motioned to approve the Minutes from the February 15, 2007 meeting subject to the following correction: Page Three, Item #5 / Change first line to “Due to the possibility of seriously impacting traffic safety in this heavily traveled area,” Mr. Kelly seconded the motion, which carried 4 for and 2 abstentions (Ms. Hine and Mr. Bresee).

Ms. Chalmers swore in individuals who indicated they would be giving testimony. Mr. Trumble then advised that before offering testimony, they would be required to sign the sign-up sheet.

2. Request by The Marty Mart Group, LLC for a Variance to allow the existing drive area to remain “as is” for proposed Car Wash and existing Gas Station. Property description: Intersection of Route 340 and Route 23 / Blair Road.

(Harpers Ferry District – Map 11 / Parcel 21.1 / 1.585 Acres. Ordinance Section 11.2 (a))

3. Request by The Marty Mart Group, LLC for a Variance to waive the Landscape Buffer Requirement for the proposed Car Wash and existing Gas Station. Property description: Intersection of Route 340 and Route 23 / Blair Road.

(Harpers Ferry District – Map 11 / Parcel 21.1 / 1.585 Acres. Ordinance Section 4.11(d))

It was determined that Items #2 and #3 would be addressed in combination, as both Variance Requests pertained to the same property. Mr. Tom Meinert, representing The Marty Mart Group, LLC stated that with regard to Item #2, the property was developed prior to 1988, in accordance with the requirements at the time of construction when drive restrictions and setbacks were not common. The current traffic flow is well established and familiar to the customers who frequent the store, and it is the best location layout for the pump island and canopy, as the heavy trucks are separated from the regular gasoline vehicles while those fueling avoid customers walking into the store, providing a measure of safety. Additionally, to adhere to Section 11.2(a) for internal circulation, entrance and parking requirements for the existing gas station and convenience mart would create an extreme hardship due to the cost of relocating the fuel islands, tanks and building. Concerning Item #3, Mr. Meinert advised that when the property was developed it met the applicable building and design standards of that time, and has been without the landscaping and buffer for over twenty years. Additionally, the neighboring properties are unoccupied in the area of the existing building and pumps and there is no knowledge of complaints pertaining to the site in general. Mr. Meinert also informed that significant landscaping along the property lines except where it will interfere with the use of the current building would be provided. Public comment was voiced by an email from Barbara A. Humes.

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4. Request by the The Mark Colonial Hills, LLC for a Variance from the Side Setback of 15' to 12' for Duplex Lots. Property description: Colonial Hills Subdivision, Lots D1-D20. Approximately 0.5 miles from the Route 45 Bypass and Morgan Grove Road. (Shepherdstown District – Map 8 / Parcel 7.1 & 10. Ordinance Section 5.4B)

Mr. Trumble read a letter (attached) from William H. Gordon Associates, Inc. advising that the Applicant of the above referenced matter is no longer seeking a Side Setback Variance, and requests that the item be withdrawn. There was no public comment.

5. Postponed from February 15, 2007 Meeting:
Appeal filed by Phillip and Gaye Snyder that deals with an Administrative decision pertaining to the operation of the Shenandoah School within the Kristie A. George Subdivision and a need for the processing of a Conditional Use Permit to do so. Property description: 1115 Gardners Lane, Shepherdstown, West Virginia. (Shepherdstown District – Map 17 / Parcel 9.6 / 8.87 acres)

Representing Attorney, Mr. J. Michael Cassell, stated that the above referenced property was already in compliance with Subdivision Ordinance provision 5.1(a)4, whereby Minor Subdivisions are limited to one single family residence, negating the need for the processing of a Conditional Use Permit. Instead, he alleged that it was a Zoning matter, since it related to property usage, and that a “school” was not defined in the Zoning Ordinances. Accordingly, in an effort to establish classification of the Shenandoah School as an Educational Facility he shared a visual slide presentation of the property in question, offered the Blacks Law Dictionary’s definition of a “school”, and also advised that on two previous occasions, the Shenandoah School had been recognized as a school by the Planning Commission, though one instance was at a different property location. Ms. Gaye Snyder, Owner/Director/Resident stated that her school caters to Pre-K3 through Kindergarten-age children (three to six years old), all of whom must be potty trained prior to acceptance. There are currently twenty (20) Pre-School children and five (5) Kindergartens enrolled at the school, which encompasses an area of approximately 4000 sq. ft. In addition to structured play, the school also affords a well organized, child focused curriculum that teaches life skills and provides an introduction to language arts, math and social sciences, by a dedicated staff of very motivated, highly respected teachers who present parents with regular educational assessments/written evaluations of student progress. Inasmuch as the Shenandoah School adheres to the same calendar as the Jefferson County School System, months of operation are September through June, with no before/after school care or summer programs available to students. Moreover, the school is open Monday through Friday, from 9:30 am to 1:30 pm; however, due to the under seven age restriction and four hour daily schedule, it does not qualify for State Accreditation. Ms. Jennifer Crank, who enthusiastically supports the Shenandoah School where her daughter currently attends, also presented testimony. Additionally, Mr. Paul Raco, representing the Department of Planning, Zoning and Engineering explained the DPZA’s position concerning the Appeal and also stated that, pursuant to Zoning Ordinance 3.2(c), the Snyders had been requested to submit the case in

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written form so that based on their evidence, a decision could be made whether to grant or deny a Zoning Certificate; but, they have failed to comply with the request. Since this is an instance in which the Board's decisions concerning clarification of an undefined area would set a precedent for future requests, should it be determined that this facility is a school (as defined in the Zoning Ordinance) then all future facilities with similar attributes must also be deemed schools, as well.

Mr. Trumble advised that a five-minute break would be included within the deliberation time. Mr. Bresee motioned to go into deliberations, at 4:27 pm. Ms. Huddle seconded the motion, which carried unanimously. Mr. Bresee motioned to return to open session. Mr. Kelly seconded the motion, which carried unanimously. The meeting commenced again at 5:07 pm.

2. Ms. Huddle motioned to grant the Variance requested by The Marty Mart Group, LLC to allow the existing drive area to remain "as is" for the proposed Car Wash and existing Gas Station, with the requirement that a Driveway Curbing Plan for the existing part of the gas station, as depicted on the attached sketch, be submitted to the County Engineer for approval. Mr. Bresee seconded the motion, which carried unanimously.

3. Ms. Huddle motioned to grant the Variance requested by The Marty Mart Group, LLC to waive the Landscape Buffer Requirement for the proposed Car Wash and existing Gas Station, with the requirement that a Landscape Plan be submitted to Staff for their approval, to include low landscaping in the Northern corner of the property between the sign and building, along the Eastern side silt fence and in front of the Car Wash (Rte. 23/2 frontage), as depicted on the attached sketch. Mr. Bresee seconded the motion, which carried unanimously.

5. Mr. Bresee motioned that the Appeal filed by Phillip and Gaye Snyder that deals with an Administrative decision pertaining to the operation of the Shenandoah School within the Kristie A. George Minor Subdivision and the need for the processing of a Conditional Use Permit to do so was: (#1) not ripe for an Appeal at this time. It was further determined that: (#2) the Appellant be required to apply for a Zoning Certificate. (#3) the County Staff work on the Zoning Certificate and also provide an appropriate definition for "school". (#4) with regard to this case, it be established whether the County is addressing a "school" or "daycare" matter. (#5) the Zoning Board believes that there has been no Violation of the Subdivision Ordinance in this instance. (#6) the Applicant has sixty (60) days from this Meeting date to submit information for the Certificate. Mr. Kelly seconded the motion, which carried unanimously.

6. DPZE Reorganization Report.

Mr. Trumble gave an informative summary about the first Transition Team for the Reorganization of the Department of Planning, Zoning and Engineering Meeting, held on March 14th and expressed his confidence in the successful separation and restructuring of those Departments. Mr. Bresee was also in agreement that reorganization can work. Transition Team members include Mr. Tom Trumble, Mr. Paul Burke, Mr. Roger Goodwin, Ms. Rebecca Burns, Ms. Sherry Kelly and Recording Secretary, Christine Chalmers. Pursuant to the removal of

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Executive Director Paul Raco and Administrative Assistant, Rebecca Burns from the DPZE, the purpose of the meetings will be to discuss all aspects of the reorganization and begin to make or recommend decisions, as appropriate. Mr. Trumble made reference to Transition Agenda Items concerning Budget, Inter-Office Relationships, Space Issues (staff, files, public), Daily Work and the following Proposed Schedule of upcoming meetings dates: March 16th at 1:00 pm, March 19th at 1:00 pm, and March 23rd at 1:00 pm. Additionally, Mr. Trumble will regularly report to the County Commission with updates of the Team's reorganization efforts. These Meetings are open to the Public with audio recordings available for review upon request.

7. Rules of Procedure before the Jefferson County Board of Zoning Appeals.
As Prosecuting Attorney Stephanie Grove was not in attendance, the matter of presenting a restructured Draft will be postponed until the April Meeting.

8. Legal Update.
Mr. Casimiro advised that there was nothing to report at this time.

9. Correspondence
No additional correspondence was submitted for review.

Mr. Bresee motioned to adjourn the meeting at 5:42 pm. Ms. Huddle seconded the motion, which carried unanimously.

A transcript of this meeting can be found on CD's #28 and #29.
These Minutes were prepared by Christine Chalmers.

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