

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
MAY 17, 2007

The Jefferson County Board of Zoning Appeals met on Thursday, May 17, 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 Acting Zoning Administrator, Sherry Kelly, Prosecuting Attorney Stephanie Grove, Rebecca Burns and Recording Secretary Christine Chalmers.

Mr. Trumble called the meeting to order at 3:05 p.m.

1. **Minutes.** Mr. Bresee motioned to approve the Minutes from the April 19, 2007 meeting; Ms. Huddled seconded the motion. Mr. Kelly motioned to amend the minutes, as follows: Page One, Item #2, second word in sentence of second paragraph to be changed from “she” to Ms. Busch. Ms. Huddle motioned to approve the minutes subject to the change noted above. Mr. Bresee seconded the motion, which carried unanimously with a 4 for vote. Mr. Trumble refrained from voting due to his absence at the April Meeting.

Ms. Chalmers swore in individuals who indicated they would be offering testimony, and maintained the sign-up sheets.

2. **Request by Dan Ryan Builders, Inc. for a Variance from having to provide a jogging trail as a condition of approval for the Conditional Use Permit. Property description: Meadowbrook Subdivision – Route 230 / Shepherdstown Pike.**
(Harpers Ferry District – Map 5C / Parcel PB14P85)

Ms. Annette G. van Hilst from Dewberry and Mr. Dan de Ojeda, Director of Land for Dan Ryan Builders, Inc., advised that the jogging trail is actually part of Section 1 but also abuts Section 3, consisting of a strip of land generally 20 ft. in width. The developer desires to remove the jogging trail from the subdivision, which is otherwise physically complete. The Homeowners Association (HOA), which includes the lot owners of both Sections 1 and 3, also prefers that the trail not be constructed, but that the land be left as open space dedicated to the HOA, instead. Accordingly, they have requested that Dan Ryan be relieved of the responsibility to complete the trail and that the remaining bond be released. Attorney Andrew Skinner from the Law Office of Steptoe and Johnson, who represents the Meadowbrook Homeowners Association, made reference to included signed Petitions, which indicated that a majority of the Community was not in favor of the proposed jogging trail. With regard to those homeowners who did not respond to the Petition, Mr. Skinner noted that he is unaware of anyone who is an advocate of the trail. Mr. Bill Gillette, who is a homeowner in the Community and is also married to the Secretary of the Homeowners Association, offered public comment. He advised that the trail, which consists of rough gravel on grass, is an unattractive eyesore that the homeowners do not want to spend HOA funds to maintain, and is a nuisance that nobody uses. Moreover, the trail way under consideration would border the road, which homeowners consider to be a potential safety issue.

3. Actionable Item / Town Run Commons.

Mr. Trumble advised that although he has worked with Peter Corum, Managing Partner for Town Run Commons, on previous projects involving the Rotary Club, he is certain that he can remain impartial with his decision. Representing Agents from William H. Gordon Associates, Chad Wallen and Mark Dyck, presented the Board with an enhanced layout plan that was designed to reduce impact to the land by affording more appropriately scaled and functional open/green spaces, further creating environmentally sensitive and responsive development and augmenting the approved vehicular access to and through the site. As there would be no change in use with the project, the revision does not increase the percentage of residential and/or commercial space and would continue to be in conformance with the approved Conditional Use Permit Sketch Plat regarding matters of square footage, programmatic use, densities, open/green space, setbacks, parking requirements, defined project goals and other agreed upon terms. Public comment was offered by Attorney Braun A. Hamstead, who expressed his concern on behalf of the Shepherdstown Men's Club and questioned whether the Board of Zoning Appeals had the jurisdiction to make a decision, with regard to this matter.

4. Abelow Farms and Cameron Run Subdivision / RE: Order Vacating Transfer and Reassigning Development Rights.

Mr. Eugene Abelow and his representing Attorney, Mr. Braun A. Hamstead both offered testimony with regard to the above referenced matter. The Abelows are owners of two separate parcels of real estate situated in the rural zone, totaling approximately 448 acres. One lot is comprised of 246.5 acres, with the second lot being previously comprised of 201.3 acres. Although forty-five (45) lots and a residue lot were permitted for development from the two parcels, only forty-two (42) lots plus the residue, have been platted from one of the two tracts, leaving four (4) lots in developmental rights. The Abelows seek to transfer these four (4) lots to the 246.5-acre parcel currently owned by them, with the understanding that they will lose the previously created residue lot because it will count as one of the build able lots. Accordingly, consideration by the Board of Zoning Appeals will be directed to three (3) lots in developmental rights, which are available for assignment. There was no public comment.

5. Findings of Fact and Conclusions of Law for BZA's Denial of Variance Request by Shenandoah Lanes, Inc. for an Electronic Reader Board Sign with Color Message Display.

It was decided that this matter would be considered under Legal Update, Agenda Item #11.

Mr. Trumble called for a ten-minute break from 4:17 p.m. – 4:27 p.m. for the purpose of changing the CD.

6. Staff Report / Deerfield Village Two Lot Subdivision (Z07-01).

Acting Zoning Administrator, Sherry Kelly, read the Staff Report from the Neighborhood Compatibility Meeting for the Deerfield Village Two Lot Subdivision that was held on May 15, 2007 at 10:00 a.m., to the Members of the Board of Zoning Appeals. There was no public comment.

7. Action on Conditional Use Permit / Deerfield Village Two Lot Subdivision (Z07-01).

(Shepherdstown District-Map 14 / Parcel 9.3 / 4.3 Acres)

The applicants (Land Owner and the Developer of Deerfield Subdivision) propose to subdivide a 4.3(+) acre lot situated within the Deerfield Subdivision, into two lots and convert the existing building into a related use, from a Maintenance Facility to a General Construction Company. The original uses were approved as part of the Conditional Use Permit for the Deerfield Subdivision and included the pre-existing building, which was formerly a temporary sales office and the water treatment plant, both situated on a single lot. Proposed uses for Lot No. 1, on which the existing building is situated, include general office space for the operation of the business and meeting with clients and interior space for a machine/carpentry shop with interior/exterior storage for vehicles, tools and building materials. With the exception of new signage, the exterior of this building will remain virtually unchanged. Moreover, Lot No. 2, containing the existing water treatment plant, will be transferred to Jefferson Utilities, who is the operator of the system for Deerfield Village. This water treatment plant does not require a sewer disposal system. Eric Lewis, representative for Wilmoth Construction Company, Inc. and Annette van Hilst from Dewberry presented a proposed site plan depiction that Board Members highlighted for the purpose of defining restrictive areas whereby construction equipment storage is sufficiently screened and aesthetically buffered from Route 480 and the established neighborhood residences.

The following Agenda Items will be addressed upon return to regular session after deliberations:

8. **Monthly Report from Zoning Administrator.**
9. **DPZE Reorganization Report.**
10. **Rules of Procedure before the Jefferson County Board of Zoning Appeals.**
11. **Legal Update.**
12. **Correspondence.**

Mr. Bresee motioned to go into deliberations at 5:02 p.m. Ms. Hine seconded the motion, which carried unanimously. Mr. Kelly motioned to return to regular session. Ms. Huddle seconded the motion, which carried unanimously. The meeting commenced again at 5:32 p.m.

2. Request by Dan Ryan Builders, Inc. for a Variance from having to provide a jogging trail as a condition of approval for the Conditional Use Permit.

Ms. Huddle motioned to grant the Variance requested by Dan Ryan Builders, Inc. from having to provide a jogging trail as a condition of approval of the Conditional Use Permit, with the provision that the designated space be kept cleared of trees and brush for the purpose of those desiring to use it as a walkway, and that the Staff be arbitrators of this provision. Mr. Bresee seconded the motion with condition, which carried unanimously. Mr. Trumble also noted for the record that this is not considered a precedence setting matter, as every Variance is determined as an individual case.

3. Actionable Item / RE: Town Run Commons.

(Shepherdstown District / Map 9 / Parcels 26.1, 26.2, 26.3 and 26.4 / 13.69 (+/-) Acres)

Ms. Huddle motioned to approve the determination from the Board of Zoning Appeals that this is not an Actionable Item and that Staff has the authority to make review decisions regarding Town Run Commons, with the full support from the Board. Mr. Kelly seconded the motion, which carried unanimously.

4. Abelow Farms and Cameron Run Subdivision / RE: Order Vacating Transfer and Reassigning Development Rights.

Ms. Hine motioned to approve as confirmed, by signature of Mr. Trumble, the above-referenced Order that was included in the packets provided to the Board of Zoning Appeals Members, with the following correction: Page One, Item #3: change the word “reside” to “residue”. Ms. Huddle seconded the motion, which carried unanimously.

6. Staff Report / Deerfield Village Two Lot Subdivision (Z07-01).

Mr. Bresee motioned to accept the conveyance of the Staff Report as complete and accurate. Mr. Kelly seconded the motion, which carried unanimously.

7. Action on Conditional Use Permit / Deerfield Village Two Lot Subdivision (Z07-01).

With consideration that there are no unresolved issues, Mr. Bresee motioned to approve the Conditional Use Permit with the stipulation that the restricted area, designated for construction equipment storage, is properly screened from Route 480 and the established neighborhood residences. Mr. Kelly seconded that motion and amended it to include that the map, with the aforementioned restricted areas highlighted by the Board of Zoning Appeal Members, be incorporated into the motion. Mr. Bresee motioned that the map presented to and highlighted by the Board Members be incorporated into the original motion. Ms. Hine seconded the amended motion, which carried unanimously.

8. Monthly Report from Zoning Administrator.

Acting Zoning Administrator, Sherry Kelly, advised that the proposed start date for the newly hired Long Range Planner was June 1, 2007. Additionally, Ms. Kelly also informed the Board that she was in receipt of Resumes regarding the Second Level Planner position and would begin conducting interviews with those candidates after the Memorial Day Holiday weekend.

9. DPZA Reorganization Report.

Prosecuting Attorney Stephanie Grove advised that the previously expressed concerns about possible Legal Liability issues regarding the Board of Zoning Appeal’s management of Zoning Department employees are unfounded, as said employees are ultimately under the direct authority of the County Commission.

10. Rules of Procedure before the Jefferson County Board of Zoning Appeals.

Prosecuting Attorney, Stephanie Grove requested that this Item be postponed.

11. Legal Update.

Findings of Fact and Conclusions of Law for the Board of Zoning Appeals Denial of the Variance Request by Shenandoah Lanes, Inc. for an Electronic Reader Board Sign with Color Message Display.

Mr. Bresee and Ms. Hine recused themselves and left the Meeting, as both were absent during the February Meeting when the matter was initially presented. Prior to her departure, Ms. Hine advised that she would not be in attendance at the June Meeting. Ms. Grove submitted a revised copy of the Decision of the Board of Zoning Appeals Findings of Fact and Conclusions of Law to the Board Members. Upon review, Mr. Trumble made the following correction: Page Three, Item #3, first sentence, second line: delete “a lecture in the”. Ms. Huddle motioned to approve the Decision of the Board of Zoning Appeals Findings of Fact and Conclusions of Law with correction and to grant authorization for Mr. Trumble’s signature on the document. Mr. Kelly seconded the motion, which carried unanimously with four votes.

12. Correspondence.

Members were reminded of the upcoming Audio Conference, entitled Inclusionary Housing, to presented on Wednesday, May 23, 2007 at 4:00 p.m.–5:30 p.m. in the Charles Town Library Conference Room located at 200 East Washington Street at the side entrance on Samuel Street in Charles Town, West Virginia.

Ms. Huddle motioned to adjourn the meeting at 5:40 p.m. Mr. Kelly seconded the motion, which carried unanimously, with four members voting.

A transcript of this meeting can be found on CD’s #50, and #51.

The Minutes from this meeting were prepared by Recording Secretary, Christine Chalmers.

