

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
JUNE 21, 2007

The Jefferson County Board of Zoning Appeals met on Thursday, June 21, 2007 at 3:00 p.m., in the Charles Town Library Meeting Room, with the following members present: Tom Trumble, Christy Huddle and Edwin Kelly. Jeff Bresee arrived late with notification, at 3:27 p.m. Board Members Tiffany Hine and Alternate Member, Mary Sue Jedele, Acting Zoning Administrator, Sherry Kelly, and Prosecuting Attorney, Stephanie Grove, were all absent with notification. Also in attendance from the Staff, were Rebecca Burns, Recording Secretary, Christine Chalmers and Long Range Planner, Anthony Redman

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

1. **Minutes.** Ms. Huddle motioned to approve the Minutes from the May 17, 2007 meeting as submitted. Mr. Kelly seconded the motion, which carried unanimously with three (3) votes.

Mr. Trumble extended a Welcome to Mr. Redman, the newly hired Long Range Planner.

Ms. Chalmers swore in individuals who indicated they would be giving testimony, and maintained the Sign-Up Sheets.

2. **Request by Rocky Marsh, LLC / Kenneth F. Lowe, Jr. for a Variance from Zoning Ordinance Section 4.6(b), to reduce the distance requirement from 75' to 10', for any agricultural building in which farm animals are kept, from any lot with a dwelling. Property description: Rocky Marsh proposed 3 lot Subdivision / Scrabble Road (County Rt. 5) at the intersection with Shepherd Grade Road (County Rt. 5/2) / roughly .4 miles East of the Berkeley County line.**
(Shepherdstown District – Map 2 / Parcel 9 / 122.35 Acres)
3. **Request by Rocky Marsh, LLC / Kenneth F. Lowe, Jr. for a Variance from Zoning Ordinance Section 5.7(b), to allow the existing agricultural structures on Lot 3 (Residue Parcel) to encroach into the 40' Front Setback and Road Easement. Property description: Same as above.** (Shepherdstown District – Map 2 / Parcel 9 / 122.35 Acres)

It was determined that Items #2 and #3 would be addressed in combination, as both variance requests pertain to the same property. Mr. Richard Klein, with Alpha Associates, spoke on behalf of the Applicant, and advised that the proposed subdivision of this property is the creation of two small lots, located north of Scrabble Road, from the larger parent parcel that is situated south of Scrabble Road. Currently, there are five (5) existing agricultural structures, to include a milk barn, pump house and lean-to, that would violate distant requirements referenced in Item #2. These structures, indicated on a deed of the property from 1932, are located near the intersection of Scrabble and Shepherd Grade Roads. Although the owner does not intend to keep animals in any of these structures, he would like to reserve the right in the future, if he so desires. The only residential lots affected by granting the variance would be the two created lots, with one lot being vacant and the second lot containing the property's farm house, which is currently uninhabited. Regarding Item #3, the buildings are also encroaching on the 40' setback from the road easement. As a result of the proposed subdivision, the encroachment distance will increase, due to the addition of a 10' road improvement easement that is required on each side of the existing road easements, per Subdivision Ordinance Section 8.1b.11. Mr. Klein also advised that,

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as the buildings were placed on the property long before the current owner purchased the property, granting the variance for Item #3 will have no effect on the public or neighbors and will not change any existing conditions. Mr. Roger Lemaster, who believed that the structures were in dangerous condition and asked if the owner had plans to either repair or demolish them, offered public comment. Mr. Klein stated that he was unaware of any plans of that nature. Additional comment was offered by Mr. John Allen, with the Jefferson County Landmark Commission, who advised that the structures were eligible for the National Register for Historic Buildings and should be preserved if possible, but the owner was not obligated to restore them.

4. **Request by Ronald L. (Jr.) and Robin A. Breeden for a Variance from a Side Setback of 15’ to 10’ to allow for an existing garage, due to a proposed merger which will increase the current Setback from 8’ to 15’. Property description: 4827 Bowers Road, Kearneysville, West Virginia. Travelers Rest Subdivision / Lot #9.**
(Shepherdstown District – Map 3 / Parcel 43 / Lot size: 100’ x 218’)

Mr. Breeden (Jr.) advised that although an 8’ setback was required when the existing garage was constructed over seven (7) years ago, he instructed his contractor to provide a 10’ setback instead, as a precautionary measure. However, due to a proposed merger, the Side Setback distance requirement will be increased to 15’ with the existing garage situated at 10.61’. The area in question is located adjacent to the Applicant’s brother, Todd Breeden’s, property and presents no issue, per written authorization obtained from his brother. There was no public comment.

5. **Request by Twin Oaks Subdivision, LLC / RE: Town Run Commons, for a Variance from procedural requirements of a Neighborhood Compatibility Hearing, to modify a CUP. Property description: Eastbound side of Kearneysville Pike (Route 480); adjacent to Morgan’s Grove Park 1.3 (+/-) miles Southwest of the Shepherdstown Business District.** (Shepherdstown District - Map 9 / Parcels: 26.1, 26.2, 26.3 and 26.4 / 13.69 (+/-) Acres)

A written correspondence requesting removal of this Item from the Agenda was received from William H. Gordon Associates representative, Chad Wallen, after the posting of the Ad in the “Spirit of Jefferson Advocate”. There was no public comment.

6. **Request by Ron Meadows / Meadows Nursery for a Variance to allow a gravel pad, which will be used to store nursery stock and products, to be placed within the 75’ Use Setback, as defined in Zoning Ordinance Article 4, Section 4.6. Property description: approximately 3.5 miles East of Charles Town, at the intersection of Old Rider and Shipley School Roads.** (Harpers Ferry District – Map 9 / Parcel 34.1 / 4.4 (+/-) Acres)

Representing agents, Mr. Mark Dyck and Mr. Jason Gerhart, from William H. Gordon, Associates, advised that the proposed Meadows Nursery Site Plan shows a gravel storage pad to be placed on the majority of the Northern half of the site. This pad would be used for nursery stock such as potted trees and shrubs. As the property has a limited width, requiring 75’ Setbacks on both sides of the property would divide the usable area in half, resulting in unnecessary hardship on the ability of the Nursery to conduct business. Based on sound engineering and in accordance with the standards required by Jefferson County, it was

determined that the proposed solution offered by William H. Gordon Associates, allowing plant material within 75' of the adjacent Use Setback, would not be detrimental to the neighboring properties and the request would not be contrary to public interest. Nursery owner, Ron Meadows, also commented by confirming his intent for usage of this area,

7. Request by David A. and Kathryn B. Cox for a Variance from the Rear Setback requirement of 50' to 12' to allow for the construction of a 20' x 30' storage shed. Property description: Western side of WV County Route 13/1 (Box Factory Road). Zoning Ordinance Article 5, Section 5.7(b). (Harpers Ferry District – Map 28 / Parcel 3 / 1.804 Acres)

Mr. David Cox advised that his intent is to construct a storage shed on a concrete slab having the dimensions of 20' x 30' x 12', and requests that the 50' Rear Setback distant requirement be decreased to 12' to allow for the shed to be positioned in what he considers to be the most aesthetically suitable location on his property. Evidently, the current 50' setback requirement would align the shed with the side of his house, in full view of the roadway, and would block the scenic view of the adjoining pasture. Additionally, since his property is situated on a former crop field of approximately twenty (20) acres that is now encompassed by a minor subdivision of four (4) additional homes, with one belonging to his son, he is especially conscientious that the shed's location does not restrict or impair the view or appeal of any of the current properties. There was no public comment.

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

8. **Monthly Report from Zoning Administrator.**
Introduction of the newly hired Long Range Planner, Mr. Anthony Redman.
9. **DPZE Reorganization Report.**
10. **Rules of Procedure before the Jefferson County Board of Zoning Appeals.**
11. **Legal Update.**
12. **Correspondence.**

Ms. Huddle motioned to go into deliberations, at 3:50 p.m. Mr. Kelly seconded the motion, which carried unanimously.

Mr. Bresee motioned to return to regular session. Mr. Kelly seconded the motion, which carried unanimously. The meeting commenced again at 4:17 p.m.

2. **Request by Rocky Marsh, LLC / Kenneth F. Lowe, Jr. for a Variance from Zoning Ordinance Section 4.6(b) to reduce the distance requirement from 75' to 10', for any agricultural building in which farm animals are kept, from any lot with a dwelling.**

Ms. Huddle motioned to approve the Variance request without condition. Mr. Kelly seconded the motion, which carried unanimously with three (3) votes. Mr. Bresee abstained from voting due to his absence during the initial discussion of this matter.

3. Request by Rocky Marsh, LLC / Kenneth F. Lowe, Jr. for a Variance from Zoning Ordinance Section 5.7(b), to allow the existing Agricultural Structures on Lot 3 (residue parcel) to encroach into the 40' Front Setback and Road Easement.

Ms. Huddle motioned to grant the Variance referenced above. Mr. Kelly seconded the motion, with the following amendment: that there be written notification contained within the Deed and also stated on the Plat that will inform the current and all future owners of the possibility of demolition of the structures, should the Department of Highways ever decide to widen the road. The approval carried unanimously with three (3) votes. Mr. Bresee abstained from voting due to his absence during the initial discussion of this matter.

4. Request by Ronald L. (Jr.) and Robin A. Breeden for a Variance from a Side Setback of 15' to 10' to allow for an existing garage, due to a proposed merger which will increase the current setback from 8' to 15'.

Ms. Huddle motioned to grant the Variance without condition. Mr. Kelly seconded the motion, which carried unanimously, with three (3) votes. Mr. Bresee abstained from voting due to his absence during the initial discussion of this matter. Ms. Chalmers noted that Mr. Breeden's first name required a correction, from Ronald to Donald.

6. Request by Ron Meadows / Meadows Nursery for a Variance to allow a gravel pad, which will be used to store nursery stock and products, to be placed within the 75' Use Setback.

Mr. Bresee motioned to grant the Variance with the following condition: that the area is NOT graveled, that it is used only for storage of plants with no customer access to the area, and that the site plan be amended to show the storage areas. Additionally, any buffers required by the Ordinance must also be provided. Ms. Huddle seconded the motion, which carried unanimously.

7. Request by David A. and Kathryn B. Cox for a Variance from the Rear Setback requirement of 50' to 12', to allow for the construction of a 20' x 30' storage shed. Mr. Kelly seconded the motion, which carried unanimously with four (4) votes.

Mr. Bresee motioned to deny the Variance, as it was determined that there are other areas on the lot where the shed could be placed that would meet Setback distance requirements. Mr. Kelly seconded the motion, which carried unanimously.

8. Monthly report from Zoning Administrator.

In her absence, Ms. Kelly provided the Board with a written Report that outlined Staff recommendations for the Agenda Items under consideration, and also welcomed newly hired Long Range Planner, Mr. Anthony Redman to the County and Staff.

9. DPZA Reorganization Report.

Transition Team Report matters addressed by Mr. Trumble included a review of the Proposed 2007-2008 Organizational Chart, with specific reference to the established “chain of command” for DPZA Staff members, a discussion focusing on the 2008 BZA Budget and his expressed concerns regarding the Department’s current Filing System, with particular emphasis on the unresolved storage and security issues.

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

Postponed until the July meeting.

11. Legal Update.

RE: Shepherdstown Men’s Club v. BZA (Town Run Commons)

Pursuant to an email correspondence from Assistant Prosecuting Attorney, James Casimiro, requesting that the above referenced matter be placed on the Agenda and that the BZA vote on whether he is to file a Petition for a Writ of Prohibition with the Supreme Court to reverse Judge Wilkes decision and dismiss the case, Mr. Bresee motioned to direct Mr. Casimiro to move forward with filing said petition. Ms. Huddle seconded the motion, which carried unanimously.

12. Correspondence.

None.

Mr. Kelly motioned to adjourn the meeting at 5:08 p.m. Mr. Bresee seconded the motion, which carried unanimously.

A transcript of this meeting can be found on CD’s #64 and #65.

Recording Secretary, Christine Chalmers, prepared the Minutes from this meeting.

