

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
AUGUST 16, 2007

The Jefferson County Board of Zoning Appeals met on Thursday, August 16, 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 Director of Zoning, Tony Redman, Prosecuting Attorney Stephanie Grove and Recording Secretary, Christine Chalmers. Deputy Director of Zoning, Sherry Kelly was absent with notification.

Mr. Trumble called the meeting to order at 3:00 p.m.

1. **Minutes.**

Mr. Bresee motioned to approve the Minutes from the July 19, 2007 as submitted. Mr. Kelly motioned to amend the minutes with the following revisions: Page #1, next to last sentence – change “Mr.” Akinson to “Ms.” Akinson; additionally, Page #2, first paragraph, next to last sentence - delete portion of sentence that makes reference to a letter of approval from the HOA. Ms. Hine seconded the amended motion, which carried with a vote of 4 in favor. Mr. Trumble abstained from voting due to his absence at the July meeting. Additionally, Ms. Huddle motioned to approve the Minutes from the meeting on June 21, 2007, as submitted. Mr. Kelly seconded the motion, which carried with a 4 in favor vote. Ms. Hine abstained from voting, due to her absence at the June meeting.

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

2. **Request by John and Deborah Crouse for a Variance to reduce the Rear Setback requirement from 20’ to 14’ to allow for the construction of a Rear Deck.**

Property description: 37 Mossy Oak Court, Shepherdstown, WV / Lot #25 – “Deerfield Village”. Zoning Ordinance Article 5, Section 5.4b.
(Shepherdstown District – Map 3 / Parcel 0025 / Lot Size: .2979 Acres)

Ms. Crouse advised that their home is built on a hill that slopes both front to back, and from left to right, when looking out from the house. Additionally, the majority of the yard behind the house slopes from the rear lot line toward the house, stopping about seven feet from the back of the house in a drainage swale. Accordingly, there are three doors off the first floor rear of the house that they are unable to use because the doors are suspended ten (10) feet off the ground, with no safe escape from the rear first floor in an emergency situation. The construction of a deck will provide usable space over an unusable area, allow both access and egress from the house and would be an aesthetically pleasing, bringing value to the house and the neighborhood. The approval of an additional six-foot expanse afforded for deck construction would comfortably satisfy their usage request. Ms. Crouse stated that, as there is a ¼ acre common area located immediately behind their lot that will never be developed, construction of an extended deck would not adversely affect the rights of adjacent property owners or residents. Also included with the Variance application were letters of approval from property owners situated adjacent to their property and a copy of the Deerfield Village Property Improvement/Landscaping Approval Form submitted to their neighborhood Streets and Grounds Committee, authorizing construction. Additionally, during her presentation, Ms. Crouse distributed a copy of an approval letter from her HOA to the Board Members for review. There was no public comment.

3. Request by Daniels Forest, LLLC for a Variance for an eighteen (18) month extension of the Conditional Use Permit. Property description: East side of Route 17 (Flowing Springs Road), just South of Route 22 (Job Corps Road). Zoning Ordinance: Article 3, Section 3.2g. (Charles Town District – Map 3 / Parcel 9.2 / 101.85 Acres)

Representing Attorney, Peter Chakmakian advised that according to the Conditional Use Permit currently in effect, if construction or use has not commenced by August 27, 2007, the permit will expire unless an extension is granted. Although the original Conditional Use Permit was granted on December 11, 2001, based on actions outside the control of the Owner and Applicant, the granting of the Conditional Use Permit was subject to court actions that lasted from December 2001 to March 2006. Thus the Applicant could not further process the subdivision for over four (4) years. Upon resolution of the court cases, the Conditional Use Permit was reinstated, and the processing times were tolled for a period of 1,538 days, during which the Applicant could not proceed due to said litigation. As a measure of caution, the Applicant requested, through their Attorney, that the Department of Planning, Zoning and Engineering staff and the Zoning Board of Appeals counsel review the time frames outlined in letters to them. With those discussions lasting from May 2006 through October 2006, the matter was finally resolved ten months after the court actions were concluded, and the FIRST official Conditional Use Permit on this project was signed on January 29, 2007. Of particular concern to the Applicant was that the permit's August 27, 2007 expiration date was only seven (7) months from the date of issuance of said Conditional Use Permit. Although the Applicant has been diligent in processing subdivision application for this development through the Planning Commission and its staff and has completed the Community Impact Statement process and three (3) separate submissions of the Preliminary Plat, the project is currently in the process of obtaining the necessary Health Department and Highway Department approvals. After issuance of the State permits a Final Preliminary Plat will be resubmitted, followed by the Final Plat which will be subject to a new Public Hearing and posting of the Bond, before actual construction commences. Granting the extension will enable the Applicant to complete the Preliminary Plat approval process. At the very least, due to the fact that the actual Conditional Use Permit wasn't signed until January 29, 2007, the Applicant asks that the Board entertains a ruling which would allow the Permit to be in effect through July 29, 2008, thus recognizing an eighteen (18) month time period from the initial issuance of said Permit, as referenced above. Although there was no public comment, Zoning Director, Tony Redman, did address the Board and asked that they reconcile the time frame matter during deliberations to provide a better understanding of the commencement of the eighteen-month period. He also requested that it be clearly defined whether the recognized effective date was when the Board made their Ruling and provided a written decision or at the actual date of Permit issuance, by the Director. This Ruling would be consistent for all Conditional Use Permits, excluding those matters involved in Litigation.

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

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Due to her absence during the June meeting, when the above referenced matter was originally addressed, Prosecuting Attorney, Stephanie Grove, provided the Board Members with a copy of the Findings of Fact and Conclusions of Law that was based on evidence presented and her assessment of the Minutes from said meeting. Upon review, Ms. Huddle noted the following changes: Page #2, Item 3 – delete the word “year”; additionally, Page #2, Item 5 – delete the apostrophe from the word “applicants”. Mr. Bresee motioned to accept the Findings with the noted corrections. Ms. Huddle seconded the motion, which carried with a 4 in favor vote. Ms. Hine abstained from voting due to her absence at that meeting, as well. Mr. Trumble advised that he would put his signature to the Document after completion of revisions.

5. Meeting to be addressed by the newly appointed Director of Zoning, Tony Redman.

Mr. Redman was pleased to announce that Mr. Tom Hall has been hired as the new County Planner/Landscape Architect. Mr. Hall, who will work closely with the Deputy Director of Planning, Sherry Kelly, is scheduled to commence his employment with the Department after the Labor Day Holiday. Mr. Redman also discussed the necessity of additional Clerical support and advised that, as the funds were available in the current Budget to authorize another new hire, his intent was to post an advertisement for that position without delay.

An overview, pertaining to the status of both the Zoning and Subdivision Ordinances and Map/District revisions, was also shared with Board Members during his discussion.

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

- 6. Rules of Procedure before the Jefferson County Board of Zoning Appeals.**
- 7. Legal Update.**
- 8. Correspondence.**

Mr. Kelly motioned to go into deliberations, at 3:37 p.m. Mr. Bresee seconded the motion, which carried unanimously.

Ms. Huddle motioned to return to regular session. Ms. Hine seconded the motion, which carried unanimously. The meeting commenced again at 3:47 p.m.

- 2. Request by John and Deborah Crouse for a Variance to reduce the Rear Setback requirement from 20’ to 14’ to allow for the construction of a Rear Deck.
Zoning Ordinance: Article 5, Section 5.4b.**

In consideration of the evidence presented, Mr. Bresee motioned to grant the Variance noted above, without condition. Ms. Huddle seconded the motion, which carried unanimously.

3. Request from Daniels Forest, LLLC for a Variance for an Eighteen (18) month extension of the Conditional Use Permit. Zoning Ordinance: Article 3, Section 3.2g.

Ms. Hine motioned that, as it is the belief of the Board that the date of effect regarding the above referenced Conditional Use Permit was at its issuance on January 29, 2007 (per Ordinance 3.2G), Daniels Forest, LLLC would be afforded eighteen (18) months for process completion, to conclude on July 29, 2008. At that date, should additional time be deemed necessary to finish the Project, the Applicant would then be eligible to request a one-time eighteen (18) month extension from the Board of Zoning Appeals, as provided by the Ordinance. Ms. Huddle seconded the motion, which carried unanimously.

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

With regard to a clarification of the time frame matter concerning Conditional Use Permits, Mr. Bresee motioned that, given the fact that there is a certain delay from the date of approval by the Board of Zoning Appeals to the actual issuance of the Conditional Use Permit, the start-time should begin within sixty (60) days after the Board of Zoning Appeals has granted a Conditional Use Permit. Ms. Huddle seconded the motion but amended it to state, “up to sixty (60) days”, instead. Prosecuting Attorney, Stephanie Grove, suggested that the Procedure be revised to stipulate that upon approval from the Board of Zoning Appeals, the Zoning Administrator has up to sixty (60) days to sign the permit, at which date it would become effective. Accordingly, Mr. Trumble recommended that the Procedure be amended to reflect the fact that a Conditional Use Permit will become effective not later than sixty (60) days after it is granted by the Board of Zoning Appeals, and that the limitation is on the Zoning Administrator to insure issuance within that time frame. He also added that it would not be necessary to submit a Findings of Fact and Conclusions of Law with an approved Conditional Use Permit, unless it includes restrictions from the Board of Zoning Appeals. Both Mr. Bresee and Ms. Huddle were in agreement with the above-mentioned amendments. The vote carried unanimously.

7. Legal Update.

Prosecuting Attorney, Ms. Stephanie Grove, advised that her Brief, regarding the Faraway Farms matter, is due on Monday. Additionally, she also informed the Board that the Ruling on the Hamstead case was favorable to the BZA. Mr. Bresee inquired whether the Paynes Ford Station matter was before the Supreme Court yet, upon which Ms. Grove responded that she was currently awaiting word about the case.

8. Correspondence.

None.

Ms. Hine motioned to adjourn the meeting at 4:13 p.m. Mr. Kelly seconded the motion, which carried unanimously.

A The CD # where a transcript of this meeting can be found remains to be determined.
Recording Secretary, Christine Chalmers, prepared these Minutes.

