

**MINUTES**  
**JEFFERSON COUNTY BOARD OF ZONING APPEALS**  
**SEPTEMBER 20, 2007**

The Jefferson County Board of Zoning Appeals met on Thursday, September 20, 2007 at 3:00 p.m., in the Charles Town Library Meeting Room. Members present were as follows: Tom Trumble, Tiffany Hine, Jeff Bresee, Edwin Kelly and Alternate Member Mary Sue Jedele. Vice Chair, Christy Huddle, arrived late with notification, at 3:30 p.m. Staff members present were Director of Zoning, Tony Redman, Deputy Director of Zoning, Sherry Kelly, Prosecuting Attorney Stephanie Grove and Recording Secretary, Christine Chalmers.

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

**1. Minutes.**

Mr. Bresee motioned to approve the Minutes from the August 16, 2007 meeting without correction. Ms. Hine seconded the motion, which carried unanimously.

**RE: Address proposed revision to the approved Minutes from the July 19<sup>th</sup> Meeting: Page #2 / First paragraph / next to last sentence – change to: “During her presentation, Ms. Simpson provided both photographs of her property and an approval letter from the Deerfield Village Property Owners Association, to support her case.”**

Ms. Hine motioned to approve the revised Minutes from the July 19, 2007 meeting, as noted above. Mr. Kelly seconded the motion, which carried unanimously.

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

**2. Monthly Address from Director of Zoning, Tony Redman.**

Mr. Redman stated that he is currently working on the content of the Ordinance and estimates distribution of a preliminary Draft, for review, by November 1<sup>st</sup>. Additionally, the newly appointed Planner/Landscape Architect, Mr. Tom Hall, is providing assistance by addressing the County Zoning maps. Mr. Redman also advised that he will participate in a 5-6 hour work session with the Planning Commission on November 14<sup>th</sup>, and is awaiting a response from the County Commission regarding the scheduling of work sessions with them, as well. Mr. Redman expects that the document will be available by January 2008 for Public input and is anticipating a February 1<sup>st</sup> timeframe for the adoption of the Ordinance by the County Commission.

In an effort to reduce the potential for unforeseen damage to files, Mr. Trumble introduced the subject of organizing a committee that will meet to coordinate the implementation of Web and Information Technology approaches with specific reference to File System Security and will include discussions regarding scanning procedures and file storage alternatives. Attendance will be comprised of Staff from the Planning and Zoning Departments, members of the Board of Zoning Appeals, the Planning Commission and also from the Department of Capital Planning and Management. Christine will make arrangements for this meeting.

Mr. Trumble also expressed his intent for the Board to take a greater interest in the Zoning Department Budget and requested that a monthly update be provided in the packets for review.

It was decided that Items #8 and #9 would be repositioned and considered first, as follows:

**8. Action on the Staff Report regarding the Shepherdstown Professional Center / Rankin Properties, LLC** (Shepherdstown District / Map 8 / Parcel 8.1 / 3.56 Acres)

Deputy Director of Zoning, Sherry Kelly, presented the Staff Report regarding the above-referenced project, and outlined the unresolved issues stated within.

Mr. Bresee motioned to accept the Staff Report without issue. Mr. Kelly seconded the motion, which carried unanimously.

**9. Public Hearing on the unresolved issues resulting from the Compatibility Assessment Hearing held on July 18, 2007 regarding the Shepherdstown Professional Center / Rankin Properties, LLC.**

Speaking on behalf of the Owner, Mr. Richard Klein with Alpha Associates, Inc., summarized and responded to the unresolved issues outlined on the Staff Report from the Compatibility Assessment Hearing held on July 18, 2007, referenced above:

1. Elimination of blasting. The Developer has confirmed that he will adhere to acknowledged State Regulations regarding blasting and also agrees to notify adjacent property owners of scheduled blasting times.
2. Provide additional landscaping to include a (minimum) 75'-100' buffer along Route 480 consisting of newly planted trees and bushes, incorporated with the existing mature trees. The Developer advises that his current Landscape Plan is already reasonably enhanced.
3. Regarding Public concern over Environmental issues, rather than asphalt, the Developer has agreed to consider any alternative material available for use in parking lot surfacing, provided that it is both cost effective with his construction budget and in compliance with current Ordinance requirements. Additionally, the possibility of a reduction to the number of parking spaces currently proposed was also a subject of discussion.

Opposing testimony was offered by Shepherdstown residents Mr. Davitt McAteer, Mr. Marshall Enos, Mr. Conrad C. Hammann, Mr. Lawrence Cumbs and Mr. John Amos. Concern was expressed regarding the project's relationship to surrounding residences and the adjacent Morgan Park public area, with particular emphasis on the negative impact of blasting, safety issues affiliated with increased vehicle traffic, aesthetic appeal, and the propensity for harmful effects to the Environment. Mr. Tim Pownell, also of Shepherdstown, provided testimony on behalf of the project and reminded those in opposition that the Builder was a hometown resident and a reasonable man. He also noted that if this project were denied and resulted in the sale of the property, future plans for development of the site might not be as compatible with the Community as the current project. Moreover, Mr. Christopher Rankin, Owner, articulated that he readily endorses a cooperative resolution.

Christine interrupted the Meeting at 4:15 p.m. for the purpose of installing a new CD.

Ms. Hine motioned to go into a closed session to decide on the Conditional Use Permit for the above referenced matter at 4:30 p.m. Mr. Bresee seconded the motion, with a vote of four (4) in favor and one (1) abstention. Due to her late arrival, which resulted in a limited understanding of this matter, it was deemed improper for Ms. Huddle to make comment or vote.

Ms. Huddle departed from the Meeting at 4:40 p.m.

Ms. Hine motioned to return to regular session. Ms. Jedele seconded the motion. The meeting commenced again at 4:50 p.m.

**9. Public Hearing on the unresolved issues resulting from the Compatibility Assessment Hearing held on July 18, 2007 regarding the Shepherdstown Professional Center / Rankin Properties, LLC.**

Mr. Bresee motioned to approve the Conditional Use Permit for the Shepherdstown Professional Center / Rankin Properties, LLC with the following conditions:

- a. That the number of parking spaces be reduced to ninety-eight (98) which will require the removal of the parking area currently proposed in the Northern location of the lot.
- b. That the Developer furnish adjacent property owners with a projected schedule one month prior to blasting, and that he also provide a two-day advance notice before the actual blasting date.
- c. That the width of the proposed Landscape Buffer at the intersection of Rte. 480 and the Rte. 45 Bypass be increased by 15' along the Rte. 480 corridor, which will require the removal of six (6) pre-determined parking spaces.

Mr. Kelly seconded the motion, which carried a vote of four (4) in favor, one (1) abstention (Christy Huddle).

Additionally, Director Tony Redman suggested that more amenities be included in the project proposal, since the Owner will be afforded a substantial savings due to the decreased parking space requirement.

**4. Request by Jeffrey and Pamala White for a Variance to reduce the Rear Setback requirement from 50' to 15' to allow for the construction of a 30' x 40' Garage. Property description: 719 Bunny Lane, Harpers Ferry, WV / "Shannondale".**  
(Charles Town District – Map 21 / Parcel 68 / Lot Size: 2.84 Acres)

Mr. White was not in attendance to speak at the meeting. There was no public comment.

**5. Request by Frank Chow for a Variance to reduce the Side Setback requirement from 12' to 7' to allow for construction of a proposed two-story addition. Property description: 1057 Jefferson Avenue, Charles Town, WV. Zoning Ordinance: Article 5, Section 5.4b** (Charles Town District – Map 10A / Parcel 37 / Lot Size: 5,000 sf)

Speaking on behalf of the Owner, Mr. Daniel Hayes of Huntley, Nyce & Associates, LTD. advised that the existing structure, which was grand-fathered in "as is", already encroaches upon

the 12' Side Setback by the requested 5' allowance. Currently maintained as a rental property, the Owner's intent for this structure is to enhance the quality of the neighborhood by enlarging the size of each of the two (2) units by 90%, hence attracting better tenants. He has no plans to increase the actual number of rental units. Included with the Variance Request was a letter of consent from the neighboring property owner, who resides closest to the proposed addition. There was no public comment.

**6. Request by PNGI – Charles Town Gaming, LLC for a Variance to remove the Landscaping Buffer and Screening requirements between two adjoining lots, which are owned by the same entity.** (Charles Town District – Map 8 / Parcel 11.1 / 6.4639 Acres)

Based on her husband's employment and not her employer, Ms. Hine recused herself from Items #5 and #6 and asked that it be noted on the record as such; she returned at 5:10 p.m. Speaking on behalf of the Owner, Mr. Chris Weddell with Greenway Engineering and PNGI advised that PNGI-Charles Town Gaming, LLC, owns all of the properties pertaining to this Variance Request. The parcel on which the proposed INN at CHARLES TOWN will be situated is located adjacent to the Sheetz Store/Gas Station on one side; the buffer and screening positioned along the this property line will remain intact. The adjoining property on the opposite side is less than ideal for screening, as it consists of a horse track that is higher than the buffer. All of the adjoining non-PNGI-Charles Town Gaming, LLC property owners will be screened, per the approved site plan. There was no public comment.

**6. Request by PNGI – Charles Town Gaming, LLC for a Variance to eliminate the requirement for Landscaping/Street trees in an area where existing utility lines may be adversely impacted by the root systems.** (Charles Town District – Map 8 / Parcel 11 / 114.1071 Acres)

Continuing on behalf of the Owner, Mr. Weddell also stated that, as indicated on the "Layout A" copy included with the Variance package, the referenced area has multiple underground utilities. Additionally, as the section between the property line and the existing underground water and sewer is less than 10', there is an insufficient amount of space to plant Landscaping/Street trees without adversely impacting those utility lines, though lower bushes may be a viable alternative. Since said existing water and sewer lines provide service to area property owners, granting the Variance would minimize the negative impact resulting from this concern. Mr. Weddell is aware that a red-line revision to the original site plan will be required. There was no public comment.

**7. Request by Shenandoah Lanes, Inc. for reconsideration of the Variance denial for the Proposed Electronic Reader Board Sign entered into record on May 17, 2007.**  
(Charles Town District / Map 9 / Parcel 8.1 / 4.59 Acres)

Due to the presentation of new and/or more complete information, Representing Agent, Mr. Matt Snyder with W.J. Strickler Signs, Inc. asked that the Board reconsider its denial of the above referenced Variance, after review of the following attachments that were included within the monthly package:

1. A complete copy of the June 1980 FHA Report with Summary and Report number.
2. A complete copy of the September 2001 FHA Report which supports the above-mentioned June 1980 findings regarding traffic safety and Electronic Reader Board.

3. A copy of the SBA Report outlining lighting/changing aspects and Court cases involving Electronic Reader Boards.

Prosecuting Attorney, Stephanie Grove advised that reconsideration is not permissible after a case has been recorded. Accordingly, due to regrettable confusion, it was decided that the submitted information referenced above and the previously collected fee could be applied to a new Variance Request to be addressed by the Board at the November 15<sup>th</sup> meeting. Mr. Bresee apologized to the Applicant for any inconvenience resulting from this misunderstanding.

Ms. Jedele motioned to proceed with aforementioned decision. Mr. Bresee seconded the motion, which carried unanimously.

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

- 10. Monthly Report from Deputy Director of Zoning, Sherry Kelly.**
- 11. Rules of Procedure before the Jefferson County Board of Zoning Appeals.**
- 12. Legal Update.**
- 13. Correspondence.**

Ms. Hine motioned to go into deliberations, at 5:27 p.m. Ms. Jedele seconded the motion, which carried unanimously.

Ms. Hine motioned to return to regular session. Ms. Jedele seconded the motion, which carried unanimously. The meeting commenced again at 5:40 p.m.

- 3. Request by Jeffrey and Pamala White for a Variance to reduce the Rear Setback requirement from 50' to 15' to allow for the construction of a 30' x 40' Garage.**

Ms. Hine motioned to grant the Variance without issue. Ms. Jedele seconded the motion, which carried unanimously.

- 4. Request by Frank Chow for a Variance to reduce the Side Setback requirement from 12' to 7' to allow for the construction of a proposed two-story addition.**

Mr. Edwin Kelly motioned to grant the Variance with the condition that the current number of tenants remains the same. Mr. Bresee seconded the motion, which carried unanimously.

- 5. Request by PNGI – Charles Town Gaming, LLC for a Variance to remove the Landscaping Buffer and Screening requirements between two adjoining lots, which are owned by the same entity.**

Mr. Bresee motioned to grant the Variance without condition. Mr. Kelly seconded the motion, which carried with a vote of 4 in favor. Ms. Hine did not vote due to her recusal.

**6. Request by PNGI – Charles Town Gaming, LLC for a Variance to eliminate the requirement for Landscaping/Street trees in an area where existing utility lines may be adversely impacted by the root systems.**

Mr. Bresee motioned to grant the Variance without condition. Mr. Kelly seconded the motion, which carried with a vote of three (3) in favor and one opposed (Mary Sue Jedele). Again, due to her recusal, Ms. Hine did not vote.

**10. Monthly report from Deputy Director of Zoning, Sherry Kelly.**

Ms. Kelly advised that there were no additional matters to be discussed at this time.

**11. Rules of Procedure before the Jefferson County Board of Zoning Appeals.**

Prosecuting Attorney, Stephanie Grove, advised that a rewrite of the revised Procedure was still pending.

**12. Legal Update.**

Regarding the Faraway Farms case, Ms. Grove advised that it had been addressed on today's Court Docket and that she had just received a Rebuttal to the Reply that she had directed to their Brief. Additionally, Oral Arguments concerning the Motion to Disqualify in the Highland Farms / Thorn Hill matter will be heard by the Supreme Court on October 23, 2007. Legal Counsel representation for the County will include both Stephanie Grove and Brandon Sims. Ms. Grove requested an Executive Session to continue with discussion of another matter.

**13. Correspondence.**

None

Mr. Bresee motioned to go into Executive session at 5:55 p.m. Mr. Kelly seconded the motion, which carried unanimously.

Mr. Bresee motioned to return from executive session at 6:05. Ms. Hine seconded the motion, which carried unanimously.

Ms. Jedele motioned to adjourn the meeting at 6:05 p.m. Ms. Hine seconded the motion, which carried unanimously.

The CD# where a transcript of this meeting can be found has not yet been determined. Recording Secretary, Christine Chalmers, prepared these Minutes.

