

MINUTES  
JEFFERSON COUNTY BOARD OF ZONING APPEALS  
JANUARY 19, 2006

The Jefferson County Zoning Board of Appeals met on Thursday, January 19, 2006 at 3:00 p.m., in the Charles Town Library Meeting Room. Members present were Tiffany Hine, Thomas Trumble, Christy Huddle and Edwin Kelly. Alternate member Frances Morgan was also present. Jim Bresee was absent with notification. Stephanie Grove, Assistant Prosecuting Attorney, and Sherry Cole, Secretary were also present.

The meeting was called to order by Ms. Hine at 3:08 p.m.

Ms. Hine introduced Christy Huddle and Edwin Kelly as the two new Board of Zoning Appeals members.

1. Election of Officers. Ms. Huddle motioned to keep the existing officers as follows: Tiffany Hine as Chair and Tom Trumble as Vice Chair. Mr. Kelly seconded the motion which carried unanimously.

2. Ms. Hine stated that she spoke with Becky Burns today and the Department is going to hire someone to help with the minutes to get caught up. Mr. Trumble motioned to accept the minutes of the November 17, 2005 meeting. Ms. Huddle seconded the motion with a vote of 2 for (Ms. Hine and Mr. Trumble) and 3 abstentions (Ms. Huddle, Mr. Kelly and Ms. Morgan). Ms. Hine stated to redocket the November 17, 2005 minutes for the February 16, 2006 meeting.

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

3. Action on the Staff Report for Jersey Mike's Sub Shop/Lot 4 Jefferson Crossing II Shopping Center (Z05-02). Sherry Kelly, Planner, read the Staff Report. Mike Shepp stated that he has no comments on the Staff Report. Mr. Trumble had questions regarding the traffic analysis. Mr. Trumble motioned to postpone consideration of the Staff Report until Staff has had time to adequately review the traffic study. Ms. Morgan seconded the motion. Staff stated that traffic is addressed at Preliminary Plat. Annette van Hilst answered questions from the Board. The motion failed with a vote of 2 for (Ms. Morgan and Mr. Trumble) and 3 opposed (Ms. Hine, Ms. Huddle and Mr. Kelly).

4. Action on the Conditional Use Permit for Jersey Mike's Sub Shop/Lot 4 Jefferson Crossing II Shopping Center (Z05-02). Mr. Kelly motioned to approve the Conditional Use Permit. Ms. Huddle seconded the motion which passed with a vote of 3 for and 2 opposed (Ms. Morgan and Mr. Trumble).

5. Request by Paul L. and Donna K. Ashbaugh for a variance from the minimum lot size requirements from 40,000 square feet for a proposed 2 lot subdivision (Article 5, Section 5.7b & Article 7, Section 7.8(b)3). Attorney Braun Hamstead presented the variance. Paul Ashbaugh

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and John Kusner answered questions from the Zoning Board. There was no public comment.

6. Request by Manny Desair/Weber's Market for a change in nonconforming use to allow the addition of a restaurant and bar with video lottery terminals within the existing facility (Article 4, Section 4.3). Stephanie Grove, Assistant Prosecuting Attorney, stated that a decision came down from Judge Sanders and she recommended postponing this item on the agenda until the February 16, 2006 meeting. Mr. Trumble motioned to postpone the request until the February 16, 2006 meeting with no advertising. Ms. Huddle seconded the motion which carried unanimously.

8. Request by Kery Fries for a change in nonconforming use from a restaurant/pizza shop to a grocery store with 5 video lottery terminals (Article 4, Section 4.3). Mr. Trumble motioned to postpone this item on the agenda until the February 16, 2006 meeting with no advertising. Ms. Huddle seconded the motion which carried unanimously.

7. Request by the Trustees of Rock Spring Church for a variance from the height requirements from 35' to 46' for an existing building to be converted into a church (Article 5, Section 5.7c). Mike Lowery presented the request. There was no public comment.

9. Request by Duane M. and Susan M. Burch for a variance from the front setback requirements from 40' to 29' for an existing house (Article 5, Section 5.7b). Susan Burch presented the request. There was no public comment.

10. Request by Brian Erickson for a variance from the front setback requirements from 25' to 5' for a proposed sign (Article 10). Mr. Erickson presented the request. There was no public comment.

11. Request by PNGI Charles Town Gaming, LLC, for a variance from the sign provisions to allow a sign on an adjoining parcel (Article 10, Section 10.4(c)).

12. Request by PNGI Charles Town Gaming, LLC, for a variance from the sign provisions to allow a sign greater than 600 square feet (Article 10, Section 10.1).

13. Request by PNGI Charles Town Gaming, LLC, for a seasonal use/special exceptions for an outdoor advertising sign (Article 10, Section 10.5). Ms. Hine recused herself from Item #11, #12 and #13, because her husband is an employee. Attorney Peter Chakmakian presented the request. Mr. Trumble called for a brief recess. Ms. Morgan motioned to go back into session. Ms. Huddle seconded the motion which carried unanimously. The meeting reconvened. Mr. Chakmakian finished his presentation. There was no public comment.

14. Request by New Vision Properties, LLC, for a variance from the side and rear landscape buffer from 10' to 4' for a proposed medical office building (Article 4, Section 4.11(a)). Don Bailey with Resource International presented the request. There was no public comment.

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15. Request by Richard E. and Donna M. Hamstead for a variance from side setback from 12' to 1' for an existing trellis/fence exceeding 6' in height (Article 9, Section 9.7). Richard Hamstead and Donna Hamstead made a presented the request. There was public comment from Tami Bellotti, Nance Briscoe and David Barrick. Mr. Hamstead spoke again. There was additional public comment from Rob Roshay.

16. Discussion and/or action on a written request by Douglas Rockwell for the Board to docket a Motion to Dismiss by Attorney Hammer (File #Z03-05 & AP04-02). Ms. Hine read the letter from Douglas Rockwell dated December 12, 2005. Ms. Hine stated that this would not be set for a hearing today and that the only issue would be to let the Board be made aware of the letter. Ms. Hine stated that there has never been a request to her knowledge as of today, by the individuals names in this letter to have a re-hearing. Ms. Hine further stated that her purpose of Item #16, is to first of all include all Board Members of what is going on; (1) Mr. Rockwell is no long a member of this Board, therefore, if he would like to address these issues he would need to do so as a member of the public from this moment on. Ms. Hine stated unless there is further discussion from the Board members on Item #16 that she will continue down to Item #17. Mr. Trumble asked what that means in English? Ms. Hine stated she received this letter and she took great offense to it because of the following: (1) Mr. Rockwell as an individual of this Board does not have the right to send correspondence to any interveners, appellants, whatever, telling them to appear at a hearing. Ms. Hine stated that is not our individual purpose on this Board. Ms. Hine further stated that as Chair Person she decided that she is not going to have it as an agenda item today for a hearing because she cannot verify that everyone had proper notice. There was no action taken by the Board.

17. Discussion and/or action on a written request by Linda Gutsell to correct the Minutes of April 21, 2005 meeting. Mr. Trumble motioned to postpone action on this item until the February 16, 2006 meeting requiring a verbatim transcript of the tape of the meeting. Ms. Morgan seconded the motion which carried unanimously with 1 abstention (Ms. Huddle).

18. Employee of the Board of Zoning Appeals. Stephanie Grove, Prosecuting Attorney referred to the Kletter/Jefferson Utilities Decision. Ms. Grove stated that the decision does not require a separate employee given the fact that it allows the Board to defer to the Findings of the Zoning Administrator in his capacity. Ms. Grove stated that she does not think there is a need for an additional employee. Ms. Grove stated that she would like to schedule an Executive Session to discussion this further with the Board. Ms. Grove further stated that Mr. Paul Raco has expertise in this area. Ms. Grove stated that she will discuss the following at the February meeting (1) Discussion of the legal implications for an employee of the Zoning Board of Appeals and (2) The Kletter/Jefferson Utilities decision that came down in November. Mr. Trumble stated that he does not want to surrender the money allocated for an employee as the minutes are behind.

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19. Rules of Procedure Before the Jefferson County Board of Zoning Appeals. Mr. Trumble motioned to permit the alternate members to participate in deliberations and that they be allowed to speak and participate fully except the vote. Mr. Kelly seconded the motion. Ms. Morgan made an amendment to the motion stating that alternates would be permitted to remain during deliberative/executive sessions of the Board of Zoning Appeals, but not to participate unless they've been called to serve on a particular matter as a full member. Mr. Kelly seconded the amendment to the motion. The amendment passed with a vote of 4 for and 1 opposed (Ms. Hine).

20. Correspondence. Ms. Hine stated that she received a letter from the County Commission stating the budget needs to be turned in by February 10, 2006. Ms. Hine suggested turning in the same budget as last year. Mr. Trumble suggested going up by 10% on the employee salary which includes a full or part-time employee. Ms. Hine stated that she would write the letter to the County Commission.

Mr. Trumble motioned to adjourn for deliberations. Ms. Huddle seconded the motion which carried unanimously. Mr. Trumble motioned to return to regular session. Ms. Huddle seconded the motion which carried unanimously. Ms. Cole left the meeting room during deliberations and returned during the regular session.

5. Mr. Trumble motioned to grant the variance from the minimum lot size requirements from 40,000 square feet for a proposed 2 lot subdivision for Paul L. and Donna K. Ashbaugh. Mr. Kelly seconded the motion which passed with a vote of 3 for and 2 opposed (Ms. Huddle and Ms. Morgan).

7. Ms. Morgan motioned to grant the variance to the Trustees of Rock Spring Church from the height requirements from 35' to 46' for an existing building to be converted into a church. Mr. Trumble seconded the motion which carried unanimously.

9. Ms. Huddle motioned to grant the variance from the front setback requirements from 40' to 20' for an existing house for Duane M. and Susan M. Burch. Mr. Trumble seconded the motion which carried unanimously.

10. Mr. Trumble motioned to grant the variance from the front setback requirements from 25' to 5' for a proposed sign for Brian Erickson.

11. Ms. Huddle motioned to deny the request by PNGI Charles Town Gaming, LLC, for a variance from the sign provisions to allow a sign on an adjoining parcel. Mr. Trumble seconded the motion which carried with a vote of 4 for and 2 abstention (Ms. Hine).

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12. Mr. Trumble motioned to deny the request by PNGI Charles Town Gaming, LLC, for a variance from the sign provisions to allow a sign greater than 600 square feet. Ms. Huddle seconded the motion which carried with a vote of 4 for and 1 abstention (Ms. Hine).

13. Mr. Kelly motioned to approve the request for a seasonal use/special exceptions for an outdoor advertising sign for PNGI Charles Town Gaming, LLC. Mr. Trumble seconded the motion which carried with a vote of 4 for and 1 abstention (Ms. Hine).

14. Mr. Trumble motioned to deny the request by New Vision Properties, LLC, for a variance from the side and rear landscape buffer from 10' to 4' for a proposed medical office building. Mr. Kelly seconded the motion which carried unanimously.

15. Mr. Trumble motioned to deny the request by Richard E. and Donna M. Hamstead for a variance from the side setback from 12' to 1' for an existing trellis/fence exceeding 6' in height. Ms. Huddle seconded the motion which carried unanimously.

Ms. Huddle motioned to adjourn the meeting at 7:37 p.m. Mr. Trumble seconded the motion which carried unanimously. A transcript of this meeting can be found on CD #5, #6, #7, and #8. These Minutes were prepared by Sherry Cole.