

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
FEBRUARY 16, 2006

The Jefferson County Zoning Board of Appeals met on Thursday, February 16, 2006 at 3:00 p.m., in the Charles Town Library Meeting Room. Members present were Tiffany Hine, Thomas Trumble, Jeff Bresee, Edwin Kelly and Christy Huddle. Alternate member Frances Morgan was also present. Stephanie Grove, Assistant Prosecuting Attorney, and Rebecca Burns, Executive Secretary were also present.

The meeting was called to order by Ms. Hine at 3:00 p.m.

1. Minutes. Mr. Trumble motioned to accept the minutes of the November 17, 2005 meeting. Mr. Bresee seconded the motion which carried with a vote of 3 for and 2 abstentions (Mr. Kelly and Ms. Huddle since they were not present at the meeting).

Mr. Trumble motioned to accept the minutes of the January 19, 2006 meeting with the following corrections: spelling of Christie to Christy; and, page 1, item 2 Ms. Hine "swore". Ms. Huddle seconded the motion which carried with a vote of 4 for and 1 abstention (Mr. Bresee because he was not present at the meeting).

Mrs. Burns swore in individuals who indicated they would be giving testimony.

3. Postponed from the January 19, 2006 meeting. Request by Manny Desai/Weber's Market for a change in nonconforming use to allow the addition of a restaurant and bar with video lottery terminals within the facility (Article 4, Section 4.3). Mr. Cassell represented the request with a video slide presentation. Mr. Cassell stated the restaurant/tavern portion of the business with 5 video lottery terminals will occupy approximately 40% of the square footage of the existing structure and they will be open until 11:00 p.m./midnight. Mr. Cassell stated they currently have 33 parking spaces with the potential of adding more.

Nancy Scripture; Jack Hahn; Karen Stegal, owner of Grammy's Place; Tom Ellis; Denise Holmes; Erik Morris; Kathy Crabtree; Carol Grant-Nelson; Josh Stillwell; John Maxie; and, Harold Jones spoke in opposition to the request as proposed. Paul Stern; Rebecca Lashberg; and, Mary Hoffman spoke in support of the request as proposed.

Mr. Cassell in rebuttal stated they respect individuals views but believe they must demonstrate injury beyond what the general public might suffer.

4. Postponed from the January 19, 2006 meeting. 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. Fries presented the request and introduced his partner, Stacy Whitmore, and Mack Hooe who would be renting the facility from them for the proposed use. Mr. Fries stated their request is similar in nature to the previous request in that the area for video lottery terminals would occupy approximately 40% of the floor area of the existing structure.

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Michael Dick, Ed Hannon, Lynn Welsh, Earl Wilborne, Diana Dick, Kelly Hale, Debbie Royalty, Julia Sincala, Karen Stegall, Richard Henry, Diana Meyers, Cathy Manning, Richard Crim and Steve Eisner spoke in opposition to the request as proposed.

Marie Nicewarner and Nancy Lutz spoke in support of the request.

Mr. Fries stated he believes the fears of the naysayers will not come to pass because he will not allow it. Mr. Hooe stated he runs a clean operation and the machines will be separate from the grocery store and will not be accessible to minors.

5. Request by Craig W. and Annette M. Abshire for variance from the front setback requirements from 25' to 4' for an existing house (platted setbacks). Ms. Abshire presented the request. There was no public comment.

6. Request by Four Points Construction, Inc., for a variance from the front setback requirements from 20' to 8' for a proposed house (Article 9, Section 9.7).

7. Request by Four Points Construction, Inc., for a variance from the rear setback requirements from 12' to 8' for a proposed house (Article 9, Section 9.7). Sol Trotter presented the requests noting the home once located on the property was destroyed by fire. There was no public comment.

8. Request by Henry M. Snyder for a variance to allow transfer of development rights to a non adjacent lot (Article 5, Section 5.7(d)2(b)6. Mike Cassell and Mike Shepp presented the request. Mr. Shepp noted it is 140 acres bisected by the railroad (fee simple) making it two parcels, which by zoning allows 7 lots and a residue lot on each parcel. Mr. Cassell stated for safety reasons they would like to locate all of the development rights to the parcel adjacent to Ridge Road and Gardners Lane. There was no public comment.

9. Request by Burch Manufacturing for a change in nonconforming use from a saw mill, shipping and pallet manufacturing business to a general business, commercial warehousing, public storage and a secure document shredding business (Article 4, Section 4.3). David Rea represented the request. Robert Burch one of the owners of the property was also present. Mr. Rea stated the property has been a commercial sawmill and shipping container/pallet business for over 50 years. Mr. Rea stated they will not store or warehouse any toxic or hazardous material. Mr. Rea indicated they would be partitioning the inside of the buildings; outside storage will be in the area where lumber and outside equipment has been located; they will fence the property; and, will provide additional lighting.

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Maria Winklepleck addressed concerns about the limited site distance on Box Factory Road and the potential increased truck traffic. Donnie Virts spoke in support of the request and the need for commercial storage and the limitations of grand-fathered businesses to diversify.

10. Request by Sandra Armstrong for a change in nonconforming use from a clothing store to S&A Carry-out Store. Ms. Armstrong addressed her needs to be able to conduct multiple businesses from this location without having to come before the Board of Appeals each time the business changes. There was no public comment.

11. Request by Richard E. and Donna M. Hamstead to reconsider a variance from the side setback requirements from 12' to 1' for an existing trellis/fence exceeding 6' in height (Article 9, Section 9.7). No one indicated they were present on behalf of the request nor was there any public comment on the request.

12. Postponed from the January 19, 2006 meeting. Discussion and/or action on a written request by Linda Gutsell to correct the Minutes of the April 21, 2005 meeting. Ms. Burns indicated that Ms. Cole was working on transcribing this portion of the meeting. By consensus the Board agreed to postpone this until the March 16, 2006 meeting.

13. Employee of the Board of Zoning Appeals. Ms. Hine indicated that she would speak with legal counsel about this at some point.

14. Rules of Procedure Before the Jefferson County Board of Zoning Appeals. The Board asked that the changes be retrofitted into the rules as stated at the January 19, 2006 meeting.

15. Correspondence: None at this time.

16. Executive Session for Pending Litigation. Mr. Trumble motioned to adjourn to go into executive session. Ms. Huddle seconded the motion which carried unanimously. Ms. Burns left the meeting room during the executive session and returned during regular session. Mr. Trumble motioned to return to regular session. Mr. Bresee seconded the motion which carried unanimously. No action was taken as a result of the Executive Session. Mr. Bresee motioned to adjourn for deliberations. Mr. Trumble seconded the motion which carried unanimously. Ms. Burns left the meeting room during the deliberative process and returned during the regular session. Mr. Trumble motioned to return to regular session. Mr. Bresee seconded the motion which carried unanimously.

3. Mr. Bresee motioned to deny the request by Manny Desai/Weber's Market to change the use to allow a restaurant/bar with video lottery terminals on the basis that it is expressly prohibited by the Zoning Ordinance. Mr. Trumble seconded the motion which carried with a vote of 4 for and 1 opposed (Ms. Hine).

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4. Mr. Bresee motioned to deny the request by Kery Fries to change the use to allow a grocery store with 5 video lottery terminals on the basis that it is expressly prohibited by the Zoning Ordinance. Mr. Trumble seconded the motion which carried with a vote of 4 for and 1 opposed (Ms. Hine).

5. Mr. Trumble motioned to grant the request by Craig W. and Annette M. Abshire from the front setback from 25' to 4' for an existing home. Ms. Huddle seconded the motion which carried unanimously.

6. Mr. Trumble motioned to grant the request by Four Points Construction, Inc., for a variance from the front setback from 20' to 8' for a proposed house. Mr. Kelly seconded the motion which carried unanimously.

7. Mr. Trumble motioned to grant the request by Four Points Construction, Inc., for a variance from the rear setback from 12' to 8' for a proposed house. Mr. Kelly seconded the motion which carried unanimously.

8. Mr. Bresee motioned to grant the request by Henry M. Snyder for a variance to allow transfer of development rights to a non-adjacent on the basis that this approval is not precedent setting due to the uniqueness of the request (the property being divided by the railroad right-of-way); only one single family dwelling can ever be located on the 74 acres on the east side of the railroad right-of-way, otherwise the lot must remain undeveloped in perpetuity; and, a buffer must be established between the Snyder house and the proposed lots 1 and 14 as presented in Exhibit No. 2-Overall Layout. Mr. Trumble seconded the motion which carried unanimously.

9. Mr. Trumble motioned to grant the request by Burch Manufacturing for a change in nonconforming use from a saw mill, shipping and pallet manufacturing business to a general business, commercial warehousing, public storage and a secure document shredding business Ms. Huddle seconded the motion which carried unanimously.

10. Mr. Bresee motioned to grant the request by Sandra Armstrong for a change in nonconforming use from a clothing store to S&A Carry-out and convenience store and that all future changes in use may be granted by the Zoning Administrator provided they are not adult uses or expressly prohibited. Mr. Trumble seconded the motion which carried unanimously.

11. Mr. Trumble motioned to deny the request by Richard E. and Donna M. Hamstead to reconsider a variance from the side setback requirements from 12' to 1' for an existing trellis/fence exceeding 6' in height noting no one was present to represent the request. Ms. Huddle seconded the motion which carried unanimously. Ms. Morgan sat in on this request since Mr. Bresee was not present at the January 19, 2006 meeting.

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Mr. Trumble motioned to adjourn the meeting at 8:40 p.m. Mr. Hine seconded the motion which carried unanimously.

A transcript of this meeting can be found on a CD #26, #27, #28 and #29. These Minutes were prepared by Rebecca F. Burns.