

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
JUNE 15, 2006

The Jefferson County Board of Zoning Appeals met on Thursday, June 15, 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. Jennilee De Pottie, Clerical Support and Paul Raco, Zoning Administrator was also present.

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

1. Minutes. Mr. Bresee motioned to amend and approve the minutes from May 18, 2006 with the following change: (1) last paragraph on page one, first sentence should be corrected from "Mr. Knott motioned..." to "Mr. Bresee motioned..." Mr. Kelly seconded the motion which passed unanimously. Regarding the minutes from the June 1, 2006 meeting Mr. Trumble motioned to approve the minutes. Ms. Huddle seconded the motion which passed with a vote 3 for an 2 abstentions (Ms. Hine and Mr. Bresee).

2. Discussion and/or action by the Board on scheduling of Paynesford Station public hearing on unresolved issues (#Z02-02). Mr. Bresee recused himself and Ms. Morgan took a seat for this agenda item. Mr. Trumble questioned Mr. Raco whether or not Ms. Morgan, Ms. Huddle or Mr. Kelly could hear this item due to the fact that they had not reviewed the original material. Mr. Raco stated he would yield to council on this matter. Mr. Trumble stated he felt that the Board would need an opinion from council before they could continue with this item. Mr. Trumble motioned to postpone this item until the next meeting. Mr. Raco stated he would write a letter to the Attorney regarding members of the Board who were not present during the original submittal of Paynesford Station and whether or not simply reviewing the tapes from any previous meetings would suffice. Mr. Raco also stated that if the 30-60 days issue came up that would advise the Board to schedule a Special Meeting. Mr. Bresee returned to the meeting room.

3. Action on the Staff Report for the Aspen Green Subdivision (#Z02-06). Mr. Raco read the Staff Report dated May 24, 2006. Ms. Hine opened for public comment. There was no comment. Mr. Bresee motioned to amend and accept the Staff Report of the Aspen Green Subdivision (#Z02-06) May 24, 2006 with the following change: (1) "Daniels Road" to "Daniel Road." Mr. Kelly seconded the motion which passed unanimously.

4. Action on the Conditional Use Permit for the Aspen Green Subdivision (#Z02-06). Ms. Hine asked Mr. Raco for direction on this item. Mr. Raco stated that once the Staff Report is approve he must step back as Zoning Administrator because now the decision is strictly left up the Board of Zoning Appeal. Mr. Raco did advise the Board to review Section 7.6(f) of the Zoning Ordinance. Ms. Hine opened the meeting up for discussion. Ms. Huddle expressed concerns regarding infrastructure being built by the developer. Ms. Hine swore in individuals who indicated they would be giving testimony.

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Fred Gates with Gates and Associates was present to answer any question the Board may have. Mr. Gates agreed with Ms. Huddle's assessment and stated the build out of the project would be done by the developer on the basis that it would be turned over to the Public Service District (PSD). Mr. Trumble also expressed his concerns regarding the 2002 traffic data stating it was not current or adequate. Mr. Gates stated that when this project went to the Supreme Court a stay was in place, thereby making the data submitted in 2002 relevant to the present. Patrick Henry, council for the developer, made a presentation to clarify the purpose of a stay from the Supreme Court. Mr. Henry stated the developer has attempted to create a subdivision that would be built to current needs of water and sewer and traffic issues.

5. Request by Dennis Barron on behalf of Jefferson Security Bank for a variance to change the spacing and configuration of the property boundary vegetative screening (Article 4, Section 4.11 and Standard Detail - 54). Mr. Dick Klein with Alpha and Associates made a presentation. Mr. Bresee asked whether or not the new trees planted would be taller initially. Mr. Klein stated from his understanding most evergreens are harvested at roughly 8 foot tall. Ms. Hine opened for public comment. Mr. Pete Kelly representing the Shepherdstown Fire Department spoke in favor of the variance. Mr. Raco voiced a legal concern regarding the fact that this project originally processed under a Conditional Use Permit (CUP) and a plat. Mr. Raco also mentioned that street trees were to be reviewed under subdivision regulations and therefore were out of this Board's jurisdiction. Mr. Trumble asked Mr. Raco a technical question as to where in the ordinance he should be reviewing variances for CUP's. Mr. Raco stated Article 7.4, Filing the Application. Ms. Huddle reference Article 7.8(b)3 which allows the Board to grants variances from terms of the Ordinance. Mr. Klein stated the street trees had not been changed. Mr. Klein also stated that during the CUP process the developer agreed to provide screening, which they are doing.

Ms. Hine asked Annette van Hilst with Dewberry if she wished to combine Items #6-8. Ms. Van Hilst agreed.

6. Request by WLN, Inc., c/o Jim Nichols for a variance from the side setback requirements from 25' to 10' (Article 5, Section 5.6(d) and the parking, driveway and internal access drive front setbacks from 15' to 10' (Article 5, Section 5.6d). 7. Request by WLN, Inc., c/o Jim Nichols for a variance from the side yard buffers and distance requirements from 15' to 5'; and, to allow the reduction of the distance requirement of 75' to less than 75' from an existing lot in the Residential/Light Industrial District and to less than 75' from an existing lot in the Residential Growth District (Article 4, Section 4.16). 8. Request by WLN, Inc., c/o Jim Nichols for a variance to allow use of nonstandard details as opposed to requiring use of the County's standard details (Article 4, Section 4.11(d)1); and, to allow the reduction of the screen planting from 10' to 5' wide. Ms. Huddle stated she believed all three variance applications were not complete due to the fact that the setbacks were not indicated.

Ms. Hine called for a break at 4:25 p.m. while the CD was being changed.

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Ms. Hine resumed the meeting at 4:30 p.m.

Ms. Huddle motioned to continue Items #6-8 to the July meeting predicated on the numbers being on the map. Mr. Trumble seconded the motion which passed with a vote 4 for and 1 opposed (Ms. Hine). Ms. Huddle also asked Ms. Van Hilst to clarify Item #7.

9. Findings of Facts and Conclusions of Law for the Change in Nonconforming Use by Manish Desai dba Foodway Supermarket. Mr. Bresee motioned to send the mark ups to legal for correction and to take action on it at the next meeting. Mr. Trumble seconded the motion which passed unanimously.

10. Rules of Procedure Before the Jefferson County Board of Zoning Appeals. Mr. Trumble motioned for the Board add to the regulations that they will not conduct a hearing without legal council present. Ms. Huddle seconded the motion. Ms. Hine voiced concerns about the advertisement of projects without a clause about the possibility of a continuance. Ms. Huddle motioned to amend the original motion to include having the option to continue the item if legal council were not present. Ms. Huddle withdrew her amendment. Mr. Bresee motioned to reinstate Ms. Huddle's amendment. Ms. Huddle seconded the motion which passed with a vote of 4 for and 1 opposed (Mr. Trumble). Ms. Hine clarified this motion to be a change to the Board's Rules of Procedure. Mr. Raco stated the new amended motion is to add to the Board's Rules of Procedure the option of continuing any decision if council isn't present. The Board voted 3 for and 2 opposed (Mr. Kelly and Mr. Trumble).

Ms. Huddle motioned to not accept any application that is incomplete and that the determination of incompleteness is made by the staff. Mr. Bresee seconded the motion. After discussion with staff, Ms. Huddle withdrew her motion. Ms. Huddle motioned to send a letter to council requesting that DPZE staff review variance applications before they are started in the process. Mr. Bresee seconded the motion which passed unanimously. Mr. Trumble suggested that the letter also include an invitation to meeting with legal council to discuss various issues.

11. No correspondence.

Mr. Bresee motioned to go into deliberations. Mr. Trumble seconded the motion which passed unanimously. Mr. Trumble motioned to return to regular session. Ms. Huddle seconded the motion which passed unanimously.

4. Mr. Trumble motioned to table this item until the Board could discuss the age of the traffic data with legal council. Mr. Bresee seconded the motion which passed with a vote 1 for and 4 opposed (Mr. Bresee, Ms. Huddle, Ms. Hine, Mr. Kelly). Mr. Bresee motioned to approve the Conditional Use Permit for the Aspen Green Subdivision with all resolved staff issues. Mr. Kelly seconded the motion which passed with a vote of 4 for and 1 opposed (Mr. Trumble).

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5. Ms. Huddle motioned to approve the variance for Jefferson Security Bank to change the spacing and configuration of the property boundary vegetative screening. Mr. Kelly seconded the motion which passed unanimously.

Ms. Huddle motioned to adjourn the meeting at 5:42 p.m. Mr. Trumble seconded the motion which passed unanimously.

A transcript of this meeting can be found on CD #82 and #83. These Minutes were prepared by Jennilee De Pottie.