

**MINUTES**  
**JEFFERSON COUNTY BOARD OF ZONING APPEALS**  
**DECEMBER 21, 2006**

The Jefferson County Zoning Board of Appeals met on Thursday, December 21, 2006 at 3:00 p.m., in the Charles Town Library Meeting Room. Members present were as follows: Tiffany Hines, Jeff Bresee, Christy Huddle, Tom Trumble, Edwin Kelly and Alternate Member, Frances Morgan. Staff members present were Executive Director Paul Raco, Prosecuting Attorney Stephanie Grove and Recording Secretaries, Jennilee Hartman and Christine Chalmers.

Ms. Hine called the meeting to order at 3:03 p.m.

1. Minutes. Mr. Bresee motioned to approve the Minutes from the November 16, 2006 meeting. Ms. Huddle seconded the motion for approval, subject to the following changes/corrections: With regard to Page #1, Item 3, Mr. Bresee questioned the inclusion of the last sentence whereby Mr. Raco stated that Ms. Black would need to contact the Planning Commission to seek a variance from the re-subdivision process. Mr. Raco established that the matter had been discussed, due to the fact that the Blacks currently live in an approved subdivision that is limited to single family residences. However, there was some indecision over when the conversation had actually occurred. Ms. Chalmers advised that, while the statement had been dictated from her notes taken at the November meeting, she would review the CD again for confirmation. Ms. Huddle affirmed that she had recalled the discussion in question. Mr. Raco then noted that his name, incorrectly spelled in that same sentence, needed to be addressed as well. Additionally, the next to last paragraph on page two should be changed to reflect that Mr. Trumble had motioned to go into deliberations, instead of Ms. Hine. Ms. Huddle proposed that the names of those members with an "against" vote during the count be acknowledged; accordingly, she will be recognized as the "against" vote on Page #3, Items 4 and 5. Modifications made to Page #4 will include Ms. Hine's "suggestion" to adjourn the meeting at 4:30 pm, Mr. Trumble's subsequent motion to adjourn at that time and Mr. Bresee's seconding of his motion. Mr. Bresee again motioned to accept the November 16, 2006 Minutes, with the abovementioned corrections. Ms. Huddle seconded the motion, which carried unanimously. As Mr. Kelly did not attend the November meeting, he abstained from voting.

With regard to the subject of Minutes, Mr. Trumble asked Mr. Raco if the unapproved portion of the Minutes from the June 17, 2004 meeting, which pertained to the "Thorn Hill" issue, were available for review. Mr. Raco advised that Ms. Rebecca Burns was addressing that matter, at present, and would be delivering the requested information prior to the adjournment of today's Meeting. Ms. Hine suggested that the subject be referenced under Item #7: Correspondence.

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

Mr. Peter Kubic, representing Shepherd's Retreat, LLC, asked that the following Items #2 and #3 be addressed in combination, as both variance requests pertained to the same property.

2. Request by Shepherd's Retreat, LLC, for a variance from Front Building Setback of 25' to 7' for the existing Milk Barn Apartment House to the proposed property line of the 40' right of way (Article 5, Section 5.4B; Shepherdstown District – Map 12 / Parcel 3.16; 10.0884 Acres).

MINUTES – JEFFERSON COUNTY BOARD OF ZONING APPEALS  
DECEMBER 21, 2006  
PAGE TWO

3. Request by Shepherd's Retreat, LLC, for a variance for Zero Front Parking Setback to allow for continued parking next to the existing Milk Barn Apartment House and directly off the proposed 40' right of way (Article 5, Section 5.4B; Shepherdstown District – Map 12 / Parcel 3.16; 10.0884 Acres). Mr. Kubic submitted a sketch plat with his request packet that was relevant to both Items #2 and #3, detailing the existing parking area of the Milk Barn Apartment House and the resulting impact from the proposed 40' right of way encroachment issue. The variance would allow for the parking spaces to remain conveniently and safely bordering the (currently accepted) front of this building. The structure, built in the 1940's, provides rental housing as a seven-unit apartment complex. There was no public comment.

4. Request by property owners, John H. Corbin, Jr. and Brenda D. Corbin for a variance from Rear Setback of 50' to 15' for a proposed 2-car garage (Article 9, Section 9.7; Charles Town District – Map 7 / Parcel 53.18; 1.25 Acres). Upon stating his name, Mr. Corbin reported that his middle initial, appearing as "H" on the Advanced Agenda and Agenda, is actually "R". He then expressed concern regarding the placement of his proposed garage, and provided a rough illustration for review. As the current setback stipulations would position the new garage parallel to his existing home with attached garage, the consequential obstruction would make front entry into the proposed building virtually impossible. Mr. Corbin also advised that the three homes immediately surrounding his home are all situated on three (+) acre sites and would not be adversely affected by a setback modification. There was no public comment.

5. Request by property owner, M.M.D., LLC, to extend the Conditional Use Permit (CUP) for Edgewood at Cress Creek Subdivision – North Hills (BZA File #Z04-05; Shepherdstown District). Attorney John K. Dorsey represented the property owner in the above stated matter, with supplemental substantiating submissions from Dewberry, who are the Surveyors and Engineers of the project. Mr. Hank Walter, Project Manager (MMD, LLC), also expressed his concern that an extension denial would necessitate the process to be started all over again, with ensuing hardships to the owner that would include enormous time delays and major added cost. Additional time and funds would also be expended by the County should the entire review/approval process for another CUP be required. There was no public comment.

6. Rules of Procedure before the Jefferson County Board of Zoning Appeals. Ms. Hine suggested that they go into deliberations, during which time Items #6 and #7 could be discussed.

7. Correspondence.

Mr. Trumble motioned to go into deliberations, at 4:03 pm. Mr. Kelly seconded the motion, which carried unanimously. Mr. Trumble motioned to return to regular session. Mr. Bresee seconded the motion, which carried unanimously. The meeting commenced again at 4:19 pm.

2. Ms. Huddle moved to approve the request by Shepherd's Retreat, LLC for a variance from the Front Building Setback of 25' to 7' for the existing Milk Barn Apartment House to the proposed property line of the 40' right of way. Mr. Kelly seconded the motion, which carried unanimously.

MINUTES – JEFFERSON COUNTY BOARD OF ZONING APPEALS  
DECEMBER 21, 2006  
PAGE THREE

3. Ms. Huddle moved to approve the request by Shepherd's Retreat, LLC, for a variance for Zero Front Parking Setback to allow for continued parking next to the existing Milk Barn Apartment House and directly off the proposed 40' right of way. Mr. Bresee seconded the motion, which carried unanimously.

4. Ms. Huddle motioned to approve the request by homeowners, John R. and Brenda D. Corbin for a variance from the Rear Setback of 50' to 15' for a proposed 2-car garage, with an amendment to change Mr. Corbin's middle initial to "R". Mr. Bresee seconded the motion, which carried unanimously.

5. Mr. Bresee motioned that, upon consideration of all evidence and testimony, and treating item #5 as an exceptional case, the Conditional Use Permit (CUP) be found valid and in effect as of this date, December 21, 2006 and that the CUP for Edgewood at Cress Creek Subdivision – North Hills (BZA File #Z04-05) be extended for an additional eighteen months beyond said date. He also amended the motion to include an apology for any uncertainties that had been created in the minds of the individuals who had invested large amounts of money in the project. Ms. Huddle seconded the motion, which carried unanimously.

6. Rules of Procedure before the Jefferson County Board of Zoning Appeals. Prosecuting Attorney, Stephanie Grove, addressed tabbed items for possible revision of the existing Rules of Procedure and offered to forward a Draft before the next meeting, based on decisions made by the Members today. She stated that there was confusion with the current vocabulary, especially with regard to the usage of the term Appellant and suggested that it be changed to reflect that an Applicant vs. a Member of the Public instead, and proposed that there be (perhaps) two sections, with one focusing specifically on Appeals. It was decided that a separate sign-in sheet for each item on the Agenda be provided that required each person offering testimony to list their name and address, as stipulated on Page #7. Completed sheets would be attached to the Official Record. Ms. Hine asked that the information recently addressed at the Emergency Meeting on November 15, 2006 regarding the adoption of suitable procedure guidelines for the checkout of DPZE documents, to include security measures, return time restrictions and storage solutions for additional copy requirements, also be put into the Draft. Noted deletions were as follows: Page #8, Item (6) – entire sentence. Page #11, Item (1) – the first word: Appeal., Page #14, Item (1) – entire second sentence. Also on Page #11, Item (2) delete last section of first sentence: “ if all issues raised at the Compatibility Meeting.”; also, the issue of a “no public hearing” requirement with regard to the Development Review System will be revised and the word without (at the bottom of the page) will be changed to with. The word aggrieved, on Page #9 will remain as stated. In keeping with the tradition of a non-judicial, “citizen-friendly” representation, time limits on testimony, cross-examination restrictions and consideration of evidence will continue to be determined at the discretion of the Board. Additional recommendations included, that a letter signed by the Members of the Board, be sent to the Web Administrator, requesting that a schedule of all meetings and the beforehand documents be listed on the County Website; and, that there be clarification of the Procedure for Reopening a Hearing, Page #12, Item (n) that would stipulate exactly when consideration for reopening a hearing would be determined and the ensuing notification. Ms. Grove suggested that

MINUTES – JEFFERSON COUNTY BOARD OF ZONING APPEALS  
DECEMBER 21, 2006  
PAGE FOUR

Ex Parte Communication, Page #14, Item (1) always be revealed and that Members practice caution when conversing with the public by simply stating “no comment” or instructing them to refer to the Ordinances. Lastly, the subject of the usage of outside recording equipment at Board Meetings, specifically, the disruptions/distractions with set-up and removal and concern over the possibility of a breach in confidentiality during deliberations, should equipment inadvertently be left in operation was revisited. Ms. Grove advised that due to Open Rule Book provisions, unless an official court reporter is provided during the meetings, use of outside recording equipment could not legally be excluded. It was agreed upon to adopt rules and parameters that set time restrictions during the set-up and removal process and established designated usage areas. Ms. Grove will address these subjects in her Draft.

Ms. Jennilee Hartman, Recording Secretary, took leave from the meeting at 5:06 pm. Her replacement, Ms. Sherry Cole, Recording Secretary, also arrived at 5:06 pm.

7. Correspondence - Handouts:

Submitted by Ms. Frances Morgan: Letter of Resignation, effective December 31, 2006. The newly approved Alternate, Ms. Mary Sue Jedele (pronounced: Yedlee) will begin in January.

Submitted by Ms. Rebecca Burns: Minutes from the Jefferson County Zoning Board of Appeals Meetings, taken on: June 17, 2004; July 15, 2004 and July 29, 2004; RE: “Thorn Hill”.

Mr. Trumble asked Ms. Grove for an update on the Campbell, Miller, Zimmerman case, with reference to Highland Farm/Thorn Hill. She responded that the Orders, which are basically a Brief making an Argument in Order form, were due last Monday and she was currently waiting on the Judge’s decision. Mr. Trumble then requested that Ms. Grove give a brief summary of the case, at which time Ms. Hine advised that if the case was to be discussed she would need to recuse herself. She asked that Mr. Trumble preside over the matter, provided him with the Thorn Hill Minutes and reminded him that after review, a decision regarding their approval would be necessary. Ms. Grove advised that she would appreciate being informed should anyone be served on this case.

Both Ms. Hine and Ms. Morgan recused themselves from the meeting at 5:32 pm, due to impending discussion pertaining to the Highland Farm/Thorn Hill case.

As neither Ms. Huddle or Mr. Kelly had attended the abovementioned meetings or were familiar with the matter being addressed, there was some uncertainty about their presence being permitted during the discussion. Mr. Trumble offered a brief explanation of the case, which pertained to the questionable issue of whether or not Attorney Mike Cassell had used “privileged” information. Of additional concern was a last moment discovery that the Minutes regarding the “Thorn Hill” issue had not been summarized and approved. Mr. Trumble asked that the subject of Minutes be brought up again during the January meeting.

Ms. Huddle motioned to adjourn the meeting at 5:45 pm. Mr. Bresee seconded the motion, which carried unanimously.

MINUTES – JEFFERSON COUNTY BOARD OF ZONING APPEALS  
DECEMBER 21, 2006  
PAGE FIVE

A transcript of this meeting can be found on CD's #161, #162 and #163.  
These Minutes were prepared by Christine Chalmers.