

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
MARCH 17, 2005

The Jefferson County Zoning Board of Appeals met on Thursday, March 17, 2005 at 3:00 p.m., in the Jefferson County Meeting Room. Members present were David Wiegand, Thomas Trumble, Jeff Bresee and Douglas Rockwell. Tiffany Hine was absent with notification. Gregory Jones, Assistant Prosecuting Attorney, Paul Raco, Zoning Administrator and Rebecca Burns, Executive Secretary were also present.

The meeting was called to order by Mr. Trumble at 3:00 p.m.

Mr. Jones gave each member present a copy of the County's Comprehensive Liability Insurance. Mr. Jones stated that as long as a public official is acting within the scope of their authority under the Ordinance the member is covered.

Minutes of the February 17, 2005 meeting. Mr. Trumble stated under item #3 he was opposed and not Ms. Hine. Mr. Bresee asked that his concerns about water and sewer (particularly sewer) LESA scoring be added to the action on the Findings of Fact and Conclusions of Law for the Faraway Farms appeal. Mr. Wiegand motioned to accept the Minutes of the February 17, 2005 Minutes with the noted corrections/amendments. Mr. Bresee seconded the motion which carried with a vote of 3 for and 1 abstention (Mr. Rockwell because he was not present at this meeting).

Mr. Trumble questioned missing minutes for special and regular meetings and asked for dates of missing minutes at their next meeting. Mr. Raco stated the Minutes will be provided to the Board in their next meeting packet.

Ms. Burns swore in individuals who indicated they would be speaking.

2. Request by Donald Lane for a variance from the side setback requirements from 10' to 2' for an existing fence which is over 6' in height (Article 9, Section 9.7). Mr. Lane stated that he erected the fence due to continual harassment and assault by his neighbors to both his family and property. There was no public comment.

3. Request by Brookfield Deerfield Village LLC to allow a model home with a staffed sales office on Lot 7 of the Deerfield Village Subdivision (Article 4, Section 4.18). Alison Grant, Sales Manager for Brookfield Homes presented the request. Ms. Grant stated the variance is needed because the model home was not shown on the approved preliminary and final plats. There was no public comment.

4. Request by Edwin B. and Sarah E. Naylor for a variance from the rear setback requirements from 20' to 6' for an existing garage/carport (Article 5, Section 5.4b). Frank Hill presented the request on behalf of the Naylor's. There was no public comment.

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5. Tabled from the February 17, 2005 meeting. Request by Peter Chakmakian for clarification of the motion pertaining to Hawthorn Associates, Ltd., variance from the principal permitted uses to allow special events, weddings and parties within a bed and breakfast (Article 5, Section 5.7). Mr. Jones stated there has to be a quorum on any matter it decides. Mr. Jones and Mrs. Burns both stated the Minutes and the Findings of Facts and Conclusions of Law pertaining to this matter are diametrically opposed to one another. Ms. Burns stated that she took Mr. Rockwell's motion verbatim from the CD recording of the meeting for the December 16, 2004 minutes. Mr. Rockwell motioned to amend the Minutes of the December 16, 2004 meeting on page 3 paragraph 3 next to the last sentence be amended to read: The Board believes individuals who are renting, as guests staying overnight, will be entitled to use the facilities for weddings, birthdays and anniversaries, but if none of those parties in attendance at said functions were overnight guests at the bed and breakfast then it would not be an accessory use and would fall more under the definition of banquet hall. Mr. Wiegand seconded the motion. Mr. Trumble he was concerned about changing the recording of the meeting. The motion carried with a vote of 3 for and 1 opposed (Mr. Trumble).

6. Discussion by the Board on how to deal with matters such as the following Conditional Use Permits (CUP) issued by the Jefferson County Planning Commission:

- 1) Town Run Commons Subdivision; and,
- 2) Edgewood at Cress Creek Subdivision.

Mr. Rockwell stated he is excusing himself from any discussion pertaining specifically to Town Run Commons but will discuss how the Board deals with handling such matters pending before them. Mr. Jones stated the Board needs to decide if they have the authority to issue CUP. Mr. Raco stated that the Planning Commission issued the CUP in both instances with one of the conditions being that it be brought back to this Board. Mr. Rockwell motioned the Board not entertain any CUP forwarded to the Board by the Planning Commission until the 30 day appeal period has expired, at which time the Board will then grant the issuance of the CUP subject to the terms and conditions stipulated by the Planning Commission. Mr. Bresee seconded the motion which carried unanimously.

7. Request by Paul Raco, Zoning Administrator for the Board to hold a new hearing on the sewer portion of Thorn Hill's (DPZE File #Z03-05 and #AP04-02) LESA score. Mr. Raco noted that he noticed both Mr. Hammer and Mr. Campbell the two parties of interest in this matter. Mr. Raco stated this is on remand back to him to get an update on sewer conditions. Mr. Rockwell questioned why he has not reassigned points on this matter. Mr. Raco stated because of the conflict between the administrative law judge's decision and whether or not they are able to provide sewer is in conflict with their letter that says they will provide sewer when there is capacity. Mr. Raco stated he is simply asking for a rehearing so that both parties can be heard. Mr. Rockwell motioned to direct the Zoning Administrator to assign the points. Mr. Wiegand seconded the motion. Mr. Trumble questioned if his reservations to reassign the

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points are due there being no clear cut guidance and that this is not an administrative decision but a quasi judicial one. Mr. Raco stated that he thinks this requires more discretion than he has and he believes the Board should hear from each of the attorney's representing this matter.

Mr. Campbell on behalf of Highland Farm stated the issue here is whether 3 (three) points are appropriate or 0 (zero) points are appropriate because the Jefferson County Public Service District has committed to provide service. The Board previously decided that it is not 11 points and that is done. Mr. Campbell pleaded with the Board that they brings this matter to an end.

Mr. Hammer on behalf of appellants stated they believe you start on the presumption of 11 points for sewer and the applicant must show that there is available and existing sewer service. Mr. Hammer stated Mr. Raco was misled by the PSD when they stated they were willing to provide sewer service and the PSC has denounced what the PSD has done and is contemplating taking over the PSD.

Mr. Raco withdrew his request for rehearing and stated he will follow the remand. Mr. Rockwell withdrew his motion based on Mr. Raco's request to withdraw.

Mr. Bresee motioned that based on the letter of the administrative law judge's decision in this case that Mr. Raco score the sewer 11 points and let matters proceed as they may. Mr. Trumble seconded the motion which failed with a vote of 2 for and 2 opposed (Mr. Rockwell and Mr. Wiegand). Mr. Rockwell believes it is best for Mr. Raco to make a decision and then if it is back before the Board we will then decide.

8. Presentation by Robert Moshier on behalf of Smith-Nadenbousch on the current County's insurance and applicability to the Board. Mr. Moshier introduced his associate Kevin Robinson. Mr. Moshier gave each member present a copies of pages from the AIG Comprehensive Liability Policy highlighting several items. Mr. Moshier entertained the Board's questions pertaining to the policy.

Mr. Rockwell motioned to go into deliberations. Mr. Wiegand seconded the motion which carried unanimously. Mr. Rockwell motioned to return to regular session. Mr. Wiegand seconded the motion which carried unanimously.

2. Mr. Bresee motioned to grant the variance to Donald Lane for a side setback variance from 10' to 2' for an existing fence which is over 6' in height based on Article 9, Section 9.7. Mr. Wiegand seconded the motion which carried unanimously.

3. Mr. Bresee motioned to grant the variance to Brookfield Deerfield Village LLC to allow a model home with a staffed sales office on Lot 7 of the Deerfield Village Subdivision for sales exclusively within the Deerfield Subdivision for an eighteen month time frame (September 17,

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2006) based on Article 4, Section 4.18. Mr. Rockwell seconded the motion which carried unanimously.

4. Mr. Bresee motioned to grant the variance to Edwin B. and Sarah E. Naylor from the rear setback requirements from 20' to 6' for an existing garage/carport based on the consent forms from the adjoining neighbors and Article 5, Section 5.4b. Mr. Wiegand seconded the motion which carried unanimously.

Mr. Wiegand motioned to adjourn the meeting at 5:34 p.m. Mr. Bresee seconded the motion which carried unanimously.

A transcript of this meeting can be found on CD #42, #43 and #44. These Minutes were prepared by Rebecca F. Burns.