

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
OCTOBER 20, 2005

The Jefferson County Zoning Board of Appeals met on Thursday, October 20, 2005 at 3:00 p.m., in the Jefferson County Meeting Room. Members present were Tiffany Hine, Thomas Trumble, Jeff Bresee and David Wiegand. Alternate members Edwin Kelly and Frances Morgan were also present. Douglas Rockwell was absent with notification. Stephen Groh and Stephanie Grove, Assistant Prosecuting Attorneys, Paul Raco, Zoning Administrator 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. Bresee motioned to accept the minutes of the September 15, 2005 meeting. Mr. Wiegand seconded the motion which carried unanimously.

Ms. Hine introduced Frances Morgan as the most recent appointee by the County Commission as the second alternate to the Board. Ms. Morgan sat in the audience for the meeting as an observer. Ms. Hine also welcomed Steve Groh, Assistant Prosecuting Attorney, who introduced Stephanie Grove as the newest Assistant Prosecuting Attorney, noting she would be staff to the Board.

Mr. Raco stated that in Mr. Rockwell's absence that one of the alternates should sit, however, the rules of the board does not specify who should sit first, therefore, he suggested the Board adopts rules pertaining to the alternate members. Mr. Wiegand motioned that the first alternate appointed to the Board will serve for that days agenda items if needed. The motion died for lack of a second. Mr. Trumble motioned that the most senior alternate will sit first and then they will rotate thereafter if a member is out for the entire meeting. Mr. Wiegand seconded the motion which carried unanimously.

Mr. Trumble motioned that if a member of the Board has to recuse themselves for one or more agenda items the next available alternate will hear those cases. Mr. Wiegand seconded the motion which carried unanimously.

Mr. Trumble motioned that once an alternate is seated that alternate will sit and hear a particular case until its conclusion. Mr. Wiegand seconded the motion which carried unanimously.

In Mr. Rockwell's absence Mr. Kelly sat in his stead for the entire meeting.

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

2. Request by Carl Taylor for a variance from the front setback requirements from 40' to 14' for an existing building (Article 5, Section 5.7a). Mr. Taylor stated he is creating a lot for sale and there is an existing building which is too close to the edge of the right-of-way. Mr. Taylor stated he has a letter from the adjoining property owner, Mr. England, who is in support of the request. There was no public comment.

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3. Request by Word of Faith Tabernacle for a variance from the side setback requirements from 50' to 32' for a proposed church addition (Article 4, Section 4.16). Pastor C.D. Coley presented the request noting the building materials have been on the site since December 2004 while they have been working on their site plan. Pastor Coley stated this is an addition to the existing church building which has been on the property since before zoning. Bruce Morgan who is the most directly affected neighbor spoke in support of the variance request.
4. Request by Nicholas S. Frobouck for a variance from the front setback requirements from 20' to 12' to rebuild an addition to an existing home (Article 9, Section 9.7). Mr. Frobouck stated he would like to rebuild an existing kitchen addition to the home. Mr. Frobouck stated the structure is old but is not on the historic list. Mr. Raco stated that Middleway itself is a historic district and that any permits may require approval from the State Fire Marshal's office and the State Historic Preservation office. Mr. Raco also noted any nonconforming use setback may expand linearly up to 35%, which in this case, based on the dimensions provided by the sketch, is 17.5'. There was no public comment.
5. Request by Jeffery and Dorothy Vance for a variance from the side setback requirements from 15' to 13.5' for a proposed storage shed (Article 9, Section 9.7). Ms. Vance presented the request noting they began construction on the slab unaware that a permit was required. She stated they chose that location because they did not want flammable materials stored that close to their home and well. There was no public comment.
6. Request by RAI Properties, LLC for a variance from the screening and buffering requirements for a proposed flex office building on Lot 43B of the Burr Industrial Park (Article 4, Section 4.11(d)(1)). Dan Douridas presented the request with photographs of the existing buffer, elevations and the railroad. The Board questioned if the approved site plan depicted the screening/buffer as required by Ordinance. Mr. Douridas stated it did. There was no public comment.
7. Request by RAI Properties, LLC for a variance from the left lot line screening and buffering requirements for a proposed State DMV building on Lot 44 of the Burr Industrial Park (Article 4, Section 4.11(d)(1)).
8. Request by RAI Properties, LLC for a variance from the rear lot line screening and buffering requirements for a proposed State DMV building on Lot 44 of the Burr Industrial Park (Article 4, Section 4.11(d)(1)).
9. Request by RAI Properties, LLC for a variance from the right lot line screening and buffering requirements for a proposed State DMV building on Lot 44 of the Burr Industrial Park (Article 4, Section 4.11(d)(1)).

Dan Douridas represented the requests noting they are in the process of preparing the site plan at

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this time. Mr. Douridas presented photographs of the property and noting they own the land to the rear of Lot 44 and Allegheny Power is on the side of their lot. Mr. Douridas stated Allegheny Power has planted an evergreen buffer on their lot which totally blocks the view from one lot to the next. There was no public comment on any of the three requests for Lot 44.

10. Request for Universal Forest Products Eastern Division for a variance from the screening and buffering requirements for a proposed expansion/addition (Article 4, Section 4.11). Mark Thomas, Mark Jerussi, Mark Smith and John Stenke were present on behalf of the request. Mr. Jerussi stated the facility is not open to the public; the majority of the land is used for yard operations; they cannot screen the railroad because they need to be able to load/unload the rail cars; and, they are surrounded by Industrial/Commercial land. Mr. Raco stated the regulations require screening of the entire perimeter of the property. There was no public comment.

11. Employee of the Board of Zoning Appeals. Ms. Hine stated the second candidate selected by the Board has declined the position. Mr. Wiegand motioned to table the subject of the employee for the Board of Zoning Appeals until the November meeting in hopes the Supreme Court's decision may come down in the meantime in the Kletter v. Jefferson Utilities case.

12. Correspondence.

- 1) 10/17/05 letter from Johnna Wilson re: CA#05-C-332 (Faraway Farms)
- 2) 10/17/04 letter Johnna Wilson re: CA#04-C-432 (Jefferson Orchards)
- 3) 10/13/05 Hawthorn Ltd. v. BZA CA#05-C-52
- 4) 10/18/05 Emergency Motion CA#02-C-40 (Thorn Hill)
- 5) 10/17/05 CA#05-C-332 (Faraway Farms) presented by Ms. Hine

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

2. Mr. Bresee motioned to grant the variance from the front setback requirements from 40' to 14' for an existing building for Carl Taylor. Mr. Kelly seconded the motion which carried unanimously. Mr. Taylor thanked the Board and commended the staff on their helpfulness.

3. Mr. Bresee motioned to grant the variance to Word of Faith Tabernacle from the side setback requirements from 50' to 32' for a proposed church addition. Mr. Wiegand seconded the motion which carried unanimously.

4. Mr. Bresee motioned to grant the variance to Nicholas S. Frobouck from the front setback from 20' to 12' to rebuild an addition to an existing home conditioned on Mr. Frobouck meeting any requirements of the Historic District of Middleway pertaining to the construction of the addition. Mr. Trumble seconded the motion which carried unanimously.

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5. Mr. Bresee motioned to grant the variance to Jeffrey and Dorothy Vance from the side setback from 15' to 13.5' for the proposed storage shed conditioned on acquiring Health Department approval with respect to the location of the existing well. Mr. Wiegand seconded the motion which carried with a vote of 4 for and 1 opposed (Mr. Trumble).

6. Mr. Bresee motioned to deny the request by RAI Properties, LLC for a variance from the screening and buffering requirements for a proposed flex office building on Lot 43B of the Burr Industrial Park (Article 4, Section 4.11(d)(1)). Mr. Trumble seconded the motion which carried unanimously.

7. Mr. Bresee motioned to deny the request by RAI Properties, LLC for a variance from the left lot line screening and buffering requirements for a proposed State DMV building on Lot 44 of the Burr Industrial Park (Article 4, Section 4.11(d)(1)). Mr. Kelly seconded the motion which carried unanimously.

8. Mr. Bresee motioned to grant the request by RAI Properties, LLC for a variance from the rear lot line screening and buffering requirements for a proposed State DMV building on Lot 44 of the Burr Industrial Park (Article 4, Section 4.11(d)(1)). Mr. Trumble seconded the motion which failed with a vote of 1 for (Mr. Bresee) and 4 opposed.

Mr. Wiegand motioned to deny the request by RAI Properties, LLC for a variance from the rear lot line screening and buffering requirements for a proposed State DMV building on Lot 44 of the Burr Industrial Park (Article 4, Section 4.11(d)(1)). Mr. Trumble seconded the motion which carried with a vote of 4 for and 1 opposed (Mr. Bresee).

9. Mr. Bresee motioned to deny the request by RAI Properties, LLC for a variance from the right lot line screening and buffering requirements for a proposed State DMV building on Lot 44 of the Burr Industrial Park (Article 4, Section 4.11(d)(1)). Mr. Trumble seconded the motion which failed with a vote of 2 for (Mr. Trumble and Ms. Hine) and 3 opposed.

Mr. Bresee motioned to grant the request by RAI Properties, LLC for a variance from the right lot line screening and buffering requirements for a proposed State DMV building on Lot 44 of the Burr Industrial Park (Article 4, Section 4.11(d)(1)). Mr. Trumble seconded the motion which passed with a vote of 3 for and 2 opposed (Mr. Trumble and Ms. Hine).

10. Mr. Bresee motioned to grant the request for Universal Forest Products Eastern Division for a variance from the screening and buffering requirements for a proposed expansion/addition (Article 4, Section 4.11) based on the significant size of the site which is beyond the area of the construction and the hardship on the overall operation of the facility. Mr. Wiegand seconded the motion which carried unanimously.

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Mr. Trumble motioned to go into Executive Session to discuss pending litigation with the Board's counsel. Mr. Bresee seconded the motion which carried unanimously. Mr. Trumble left the meeting room at 6:13 p.m. during the Executive Session due to a prior commitment. Mr. Bresee motioned to return to regular session. Mr. Kelly seconded the motion which carried unanimously. There was no action as a result of the Executive Session.

Mr. Wiegand motioned to adjourn the meeting at 6:15 p.m. Mr. Bresee seconded the motion which carried unanimously.

A transcript of this meeting can be found on a CD #141 and #141B. These Minutes were prepared by Rebecca F. Burns.