

MINUTES
JEFFERSON COUNTY ZONING BOARD OF APPEALS
MAY 20, 2004

The Jefferson County Zoning Board of Appeals met on Thursday, May 20, 2004 at 3:00 p.m., in the Jefferson County Meeting Room. Members present were Tiffany Hine, Thomas Trumble, Douglas Rockwell, David Wiegand and Jeff Bresee. Paul Raco, Executive Director, Michael Cassell, Assistant Prosecuting Attorney and Rebecca Burns, Executive Secretary were also present.

The meeting was called to order by Ms. Hine at 3:07 p.m.

Ms. Hine stated that the agenda order would be as follows: first item 10 would be heard; then items 5, 6, 7, 8 and 9; followed by item 1; and, lastly items 2, 3 and 4 would then be heard.

Mr. Rockwell motioned to accept the Minutes of the April 15, 2004 meeting. Mr. Bresee seconded the motion which carried unanimously.

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

NEW BUSINESS

10. Motion for Ruling on Appeal by S. Andrew Arnold on the Paynes Ford Station Subdivision (DPZE File #Z02-02). Ms. Hine excused herself from the meeting room for this item. Mr. Trumble sat as chair for this portion of the meeting. Mr. Bresee recused himself from this matter as well since he was a party to the appeal. Mr. Wiegand stated he was not a member when this matter first appeared before the Board and he has no knowledge of the issues at hand. Mr. Rockwell stated that he did not participate the first time this matter appeared before the Board. Mr. Cassell stated he would prepare an order that the ZBOA could not muster a quorum on this issue for Mr. Trumble's signature.

5. Request by Word of Faith Tabernacle for a variance from the principal permitted uses to allow a day care facility for up to 40 children within the existing church facility (Article 5, Section 5.7). Ms. Hine returned to chair the meeting. Pastor C.D. Coley represented the request. Mr. Coley stated there is a need in this area of the County for affordable child care. Mr. Coley stated they currently have approval for 12 children and they are working with the Fire Marshal to be able to have more children. There was no public comment.

6. Request by Charles S. and Laveania M. Hamilton for a variance from the side setback requirements from 8' to 2' for a proposed carport (Article 9, Section 9.7). Ms. Hamilton presented photographs and a letter from the adjacent neighbor in support of the request. Mr. Raco stated that carports are open, the driveway is existing and this subdivision predated the zoning laws. There was no public comment.

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7. Request by E. Sara Kane/Mack L. Hooe, Jr., for a variance from the principal permitted uses to allow a self service food establishment with liquor, beer and video lottery (Article 5, Section 5.8(b)11). Mr. Hooe presented the request noting the building has been used commercial for well over 20 years. Mr. Raco stated the property is zoned mixed use but does not allow for fast food restaurant by definition. There was no public comment.

8. Request by Wilbur A. Alger, Jr., for a variance from the sign provisions to allow a directional sign for Tri-County Automotive (Article 10). David Croushorn of Tri-County Automotive represented the request noting the sign for Breckenbriar Kennels was previously in this location and that it was needed to help customers find his business. Mr. Trumble addressed concerns about sight distance and traffic in this location. Mr. Raco stated there is no uniqueness to the variance and a precedent would be set by granting the same. Mr. Raco further noted that Mr. Croushorn was before the Board about a year ago to expand because his business was doing so well.

9. Request by Shepherdstown Special Storage, LLC for additional time to process a site plan for a nonconforming use change granted by the Board. Donnie Hockman stated the Board granted the change in May of 2003 and since that time he has been diligently trying to get a design consultant to prepare the necessary site plan documents. Mr. Raco stated under the new State code a use does not have to be established within 18 months. There was no public comment.

1. Motion for Recusal by James Campbell that Thomas Trumble recuse himself from the appeal pertaining to the Thorn Hill Subdivision (Appeal File #AP04-02). Ms. Hine stated that the Board is not in a position to ask a member to recuse themselves from a particular matter. Mr. Trumble addressed the matter by stating he received a legal opinion from the Ethics Board in Charleston stating he does not have to recuse himself from matters pending before the Board because he was running for a County Commission seat. Mr. Rockwell stated the Board has no jurisdiction in this matter.

Mr. Bresee motioned to go into deliberations on items 5 through 9. Mr. Wiegand seconded the motion which carried unanimously. Mr. Trumble motioned to return to regular session. Mr. Rockwell seconded the motion which carried unanimously.

5. Mr. Trumble motioned to allow a child care facility for Word of Faith Tabernacle for up to 12 children. Mr. Rockwell seconded the motion which carried unanimously.

6. Mr. Rockwell motioned to grant a variance to Charles S. and Laveania M. Hamilton from the side setback requirements from 8' to 2' for a proposed carport. Mr. Bresee seconded the motion which carried unanimously.

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7. Mr. Bresee motioned to table the request by E. Sara Kane and Mack Hooe, Jr., for a variance from the principal permitted uses to allow a self service food establishment with liquor, beer and video lottery until the next meeting for clarification by Mr. Hooe. Mr. Trumble seconded the motion which carried unanimously.

8. Mr. Trumble motioned to deny the sign variance request by Wilbur A. Alger, Jr., for a variance from the sign provisions to allow a directional sign for Tri-County Automotive for failure to satisfy the requirements of the Ordinance. Mr. Wiegand seconded the motion which carried unanimously.

9. Mr. Bresee motioned to grant an 18 month extension of time as allowed by Ordinance to process the site plan for Shepherdstown Specialty Storage, LLC nonconforming use which was previously granted by the Board. Mr. Trumble seconded the motion which carried unanimously.

Ms. Hine excused herself from the meeting room for the remainder of the meeting (items 2 through 4). Mr. Trumble chaired the meeting for these items.

2. Motion for Dismissal by James Campbell of the appeal by Richard Latterell, et al, of the LESA Point Assessment, Support Data and Administrative Decision for the Thorn Hill Subdivision (DPZE File Z03-05/Appeal File #AP04-02). Mr. Rockwell stated that he practiced law with both Mr. Campbell and Mr. Hammer and represented Thorn Hill on an adverse possession case and that he drives past the property in question daily. Mr. Rockwell stated that he could be fair and impartial in hearing the appeal. Mr. Wiegand stated that several years ago his firm worked for Mr. Capriotti and that he had no financial interest in the matter pending before the Board and that he too could be fair and impartial. Mr. Bresee and Mr. Trumble both stated that they as well could be fair and impartial.

Mr. Hammer stated that he is withdrawing the request to postpone the appeal and that he represents all the appellants.

Mr. Campbell submitted a mailing from Mr. Trumble's campaign for County Commissioner for the record and the reason for asking for Mr. Trumble's dismissal from the appeal is more complex than him running for political office.

Mr. Campbell stated he believes the appeal itself is actually the voluminous filing that was submitted after the appeal itself. Mr. Campbell's arguments for dismissal are attached.

David Hammer on behalf of the appellants stated there have been multiple applications and fees and threats of lawsuits against the appellants by the developer if they move forward with the appeal. Mr. Hammer stated they believe their appeal has been timely filed and asked that the Board hear the appeal.

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Mr. Raco noted that some individuals have withdrawn from the appeal. Mr. Raco stated the Thorn Hill Support Data meets the order set forth in the Corliss lawsuit. Mr. Raco noted the court lists things to address and does not explain what is acceptable. Mr. Raco asked that the appeal be dismissed (written record attached).

Mr. Campbell believes they should be allowed to move forward with the neighborhood compatibility hearing process and that this appeal is not timely filed. He asked that the Board dismiss the appeal and allow the process to move forward.

Mr. Rockwell motioned to adjourn for Ms. Burns to confirm the date the neighborhood compatibility hearing was advertised for this project of Thorn Hill. Mr. Bresee seconded the motion which carried unanimously. Mr. Rockwell motioned to return from recess. Mr. Bresee seconded the motion which carried unanimously. Ms. Burns stated the dates of the legal advertisement were March 11, 2004 and March 18, 2004.

Mr. Rockwell motioned to adjourn for deliberations on the motion to dismiss the appeal. Mr. Wiegand seconded the motion which carried unanimously. Mr. Rockwell motioned to return to regular session. Mr. Bresee seconded the motion which carried unanimously.

Mr. Bresee motioned to deny the Motion for Dismissal by James Campbell of the appeal by Richard Latterel, et al, of the LESA Point Assessment, Support Data and Administrative Decision for the Thorn Hill Subdivision. Mr. Wiegand seconded the motion which carried unanimously.

Mr. Trumble motioned to continue the Appeal of the LESA Point Assessment, Support Data and Administrative Decision for the Thorn Hill Subdivision (DPZE File #Z03-05/Appeal File #AP04-02) until the June 17, 2004 meeting beginning at 2:00 p.m. with this being the first item of business that the Board will consider. Mr. Bresee seconded the motion which carried unanimously.

Mr. Rockwell motioned to adjourn the meeting at 6:18 p.m. Mr. Bresee seconded the motion which carried unanimously.

A detailed transcript of this meeting can be found on Tape(s) #43 and #44. These Minutes were prepared by Rebecca F. Burns.

