

MINUTES  
JEFFERSON COUNTY ZONING BOARD OF APPEALS  
AUGUST 19, 2004

The Jefferson County Zoning Board of Appeals met on Thursday, August 19, 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. Michael Cassell, Assistant Prosecuting Attorney and Rebecca Burns, Executive Secretary were also present.

The meeting was called to order by Ms. Hine at 3:05 p.m.

Ms. Burns noted that the Minutes of the July 15, 2004; July 29, 2004; and, August 11, 2004 meeting had not been prepared in time for this meeting.

4. Mr. Bresee motioned to defer action on items 1-3 until a later meeting agenda and act on the Minutes of the June 17, 2004 meeting once the Board comes to item 8 on the agenda. Mr. Trumble seconded the motion which failed with a vote of 1 for (Mr. Bresee) and 4 opposed. Mr. Rockwell motioned to accept the Minutes of the June 17, 2004 meeting for all items except the portion pertaining to the Thorn Hill Appeal (#AP04-02/#Z03-04). Mr. Trumble seconded the motion which carried with a vote of 3 for, 1 opposed (Mr. Bresee) and 1 abstention (Ms. Hine due to her recusal from the matter).

Mr. Rockwell motioned for the purpose of facilitating the upcoming meetings the Board adopt the procedures set forth in Article 7, Section 7.8 and Article 8 of the Zoning & Development Review Ordinance on an interim basis. Mr. Wiegand seconded the motion. Mr. Bresee motioned to amend the motion to state it would only pertain to items 5, 6, 7, 9, 10, 11, 12 and 13 of the current agenda. Mr. Trumble seconded the amendment to the motion which failed with a vote of 1 for (Mr. Bresee) and 4 opposed. Mr. Trumble motioned to amend the motion to strike the work interim and to state they would run until the close of business at the September 16, 2004 meeting. Mr. Bresee seconded the amendment to the motion which failed with a vote of 2 for (Mr. Trumble and Mr. Bresee) and 3 opposed. The original motion passed with a vote of 3 for and 2 opposed (Mr. Bresee and Mr. Trumble).

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

OLD BUSINESS

5. Request by Di Gennaro Electric Contractors for a variance to allow greater than 35% expansion of an existing nonconforming use (Article 4, Section 4.3d).

6. Request by Di Gennaro Electric Contractors for a variance from the 25' front setback requirements to 12' for a proposed business expansion (Article 5, Section 5.10).

7. Request by Di Gennaro Electric Contractors for a variance from the 75' distance requirements from all residential uses (Article 4, Section 4.16). Mike Shepp introduce Sam Byrer and Nick Di Gennaro. Mr. Shepp stated the business has been in this location since 1984

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and that they utilize 2 trailers for storage of supplies. They would like to remove the trailers and replace them with a new building. Mr. Shepp presented photographs and letters and petitions signed by confronting property owners in support of the variances. There were no comments from the public.

Mr. Rockwell motioned to proceed to item 9 through 13 on the agenda. Mr. Bresee seconded the motion which carried unanimously.

9. Request by Grace Episcopal Church for a variance from the side setback requirements from 50' to 4' for a proposed handicapped ramp (Article 4, Section 4.16). Peter Fricke introduced Victor Lawson and William Chapel. Mr. Fricke stated the ramp will bring them into compliance with current ADA regulations. Mr. Chapel stated he owns the land adjacent to the church and he is in support of the request.

10. Request by Sandra Armstrong for a variance from the principal permitted uses to allow various commercial uses in addition to the existing two 1-bedroom apartments (Article 5, Section 5.10). Ms. Armstrong presented the request stating she purchased the business and apartments 3 months ago for retirement income. Ms. Armstrong stated that at the time she purchased the property the business portion of the building was vacant but the apartments have been rented continuously. Winston Dailey an adjoining property owner stated he is not opposed to a clothing, grocery or retail store.

11. Request by Michael Brian McGuinn for a variance from the rear setback requirements from 50' to 15' for a proposed deck (Article 9, Section 9.7). Michael Patrick McGuinn represented the request noting they would actually need a 3' variance to build the deck but would need a variance for a proposed pool in the future. Mr. McGuinn stated they realized they would have to come back before the Board for a variance for the pool. There was no public comment.

12. Request by PNGI Charles Town Gaming LLC for a variance from the 40' height requirement to 75' for a proposed parking garage (Article 5, Section 5.4b).

13. Request by PNGI Charles Town Gaming LLC for a variance from the 40' height requirement to 75' for a proposed entertainment center (Article 5, Section 5.4b). Ms. Hine excused herself from the meeting room for items 12 and 13 because her husband is employed by PNGI. Mr. Wiegand stated his firm has performed work on the property which was minor in nature. Mr. Wiegand stated he would have no trouble being fair and objective in hearing the variances. Mr. Trumble chaired this portion of the meeting.

Peter Chakmakian and James Buchanan presented the requests. Mr. Buchanan stated they are working on a 6 year building program and that they will be working in stages to meet the demand. There was no public comment.

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Mr. Bresee motioned to adjourn for deliberations on items 12 and 13 prior to Ms. Hine returning to the meeting room. Mr. Rockwell seconded the motion which carried unanimously. Mr. Bresee motioned to return to regular session. Mr. Wiegand seconded the motion which carried unanimously. Mr. Bresee motioned to grant the variances to PNGI Charles Town Gaming from 40' height requirements to 75' for both the parking garage and entertainment center complex based on the Board's authority to grant variances, the request is not contrary to the public interest, literal enforcement would result in unnecessary hardship and the purpose and intent of the Ordinance is accomplished. Mr. Wiegand seconded the motion which carried unanimously.

Ms. Hine returned to the meeting room and sat as chair after the Charles Town Races variances were decided. Mr. Trumble motioned to adjourn for deliberations on the remaining agenda items heard by the Board. Mr. Rockwell seconded the motion which carried unanimously. Mr. Rockwell motioned to return to regular session and reopen the hearing for item 10. Mr. Bresee seconded the motion which carried unanimously. Mr. Rockwell asked the previous owner, Butch Walker, how long it had been since a business had operated from this location. Mr. Walker stated to the best of his recollection February or March of this year. Mr. Rockwell motioned to re-adjourn for deliberations. Mr. Wiegand seconded the motion which carried unanimously. Mr. Trumble motioned to return to regular session. Mr. Bresee seconded the motion which carried unanimously.

5. Mr. Bresee motioned to grant the variance to Di Gennaro Electric Contractors to allow up to a 64% expansion of the existing nonconforming use. Mr. Wiegand seconded motion which carried unanimously.

6. Mr. Bresee motioned to grant the variance to Di Gennaro Electric Contractors from the 25' front setback to 12' for a proposed business expansion. Mr. Wiegand seconded motion which carried unanimously.

7. Mr. Bresee motioned to grant the variance to Di Gennaro Electric Contractors from the 75' distance requirement to 42' on the and to 60' on the side from all residential uses for the proposed expansion. Mr. Wiegand seconded motion which carried unanimously.

9. Mr. Rockwell motioned to grant the variance to Grace Episcopal Church for a variance from the side setback requirements to 4' for the proposed handicapped ramp. Mr. Trumble seconded the motion which carried unanimously.

10. Mr. Rockwell motioned to grant the change in nonconforming use go Sandra Armstrong for a clothing retail store based on Section 4.3 of the Ordinance which allows a substitution of use. Mr. Trumble seconded the motion which carried unanimously.

11. Mr. Rockwell motioned to grant the rear setback variance from 50' to 45' for the proposed deck. Mr. Wiegand seconded the motion which carried unanimously.

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Ms. Hine excused herself from the meeting room for the Board to consider item 8. Mr. Trumble chaired this portion of the meeting.

8. Mr. Rockwell motioned that the Board conduct a Special Meeting to be scheduled for Wednesday, September 1, 2004 beginning at 1:00 p.m., to consider the Findings of Fact and Conclusions of Law for the Thorn Hill Appeal once they have been redrafted by counsel and that at that time the Board will also consider all other procedural motions on behalf of Thorn Hill. Mr. Rockwell added the notice of the Special Meeting would be advertised, placed on-line and the doors posted accordingly. Mr. Bresee seconded the motion which carried unanimously.

Ms. Hine returned to the meeting room to chair the remainder of the meeting.

14. Rules and Regulations of Procedures. Mr. Rockwell motioned that the draft be transcribed and retyped into one document in Word format for the Board's review. Mr. Trumble seconded the motion which carried unanimously.

Mr. Rockwell motioned that on Wednesday, September 1, 2004 as part of the Special Meeting beginning at 3:00 p.m. or as soon thereafter as possible the Board will take up the matter of Rules and Regulations of Procedures. Mr. Wiegand seconded the motion which carried unanimously.

15. Discussion of the new Planning & Zoning statues (SB454). Mr. Rockwell motioned that the chair/vice chair approach the County Commission for sufficient funds for a full time secretary to the Board with a fully equipped office and facilities to keep and maintain the files of the Board. Mr. Trumble seconded the motion which carried unanimously.

Mr. Rockwell motioned to instruct legal counsel to appeal the Jan Cary Kletter, et al vs. Jefferson County Zoning Board of Appeals (CA#02-C0217) and Jefferson Utilities, Inc. vs. Jefferson County Zoning Board of Appeals (CA#03-C-278) decisions handed down by the Circuit Court to the next level. Mr. Wiegand seconded the motion which carried with a vote of 3 for and 2 opposed (Mr. Bresee and Mr. Trumble).

Mr. Rockwell motioned to adjourn the meeting at 6:45 p.m. Mr. Bresee seconded the motion which carried unanimously.