

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
NOVEMBER 18, 2004

The Jefferson County Zoning Board of Appeals met on Thursday, November 18, 2004 at 3:00 p.m., in the Jefferson County Meeting Room. Members present were Tiffany Hine, Thomas Trumble, David Wiegand, Jeff Bresee and Douglas Rockwell. Michael Cassell, Assistant Prosecuting Attorney, 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. Mr. Bresee motioned to accept the Minutes of the September 16, 2004 meeting with the correction that both Mr. Wiegand and Mr. Trumble had informed Mr. Cassell that they would not be present at the meeting. Mr. Wiegand seconded the motion which carried with a vote of 4 for and 1 abstention (Mr. Rockwell because he was not present at the meeting).

Mr. Bresee motioned to accept the Minutes of the October 6, 2004 Special Meeting by adding to item #2 after Mr. Bresee the following "after noting that the numerous problems he saw were amply noted in the record for this case". Mr. Trumble seconded the motion which carried with a vote of 4 for and 1 abstention (Mr. Wiegand because he was not present at the meeting). Mr. Bresee motioned to accept the Minutes of the October 21, 2004 Meeting. Mr. Rockwell seconded the motion which carried unanimously.

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

Mr. Rockwell motioned that the Rules and Procedure of the Board to become effective November 1, 2004 have been suspended by the Chair due to difficulties and will now go into effect on January 1, 2005. Mr. Wiegand seconded the motion which carried unanimously.

Mr. Rockwell motioned to adopt the rules set forth in Article 7 of the Zoning and Development Review Ordinance and rules previously adopted by the Board on September 18, 2003 addressing the submission of documents before the Board in the interim. Mr. Wiegand seconded the motion which carried unanimously.

2. Request by Harry E. Martin, Jr., and Tina M. Martin for a variance from the front setback requirements from 40' to 24' for an existing garage (Article 5, Section 5.7b). Annette van Hilst stated the Martins would like to subdivide a lot to the rear of their property and in doing so it creates a setback violation due to the location of the right-of-way. There was no public comment.

3. Request by Elizabeth Stagner for a variance from the front setback requirements from 40' to 22' for an existing storage building (Article 5, Section 5.7b). Annette van Hilst stated Ms. Stagner would like to create a lot for her daughter and in doing so it creates a setback violation due to the location of the right-of-way. There was no public comment.

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4. Request by Karen Starry Manuel-Gregoryk for a variance from the rear setback requirements from 12' to 3' for an existing garage (Article 9, Section 9.7). Braun Hamstead and Karen Gregoryk presented the request. Mr. Hamstead stated as of 1970 their was and is currently an encroachment of the foundation and prior to the new storage building being constructed there was a storage building on the foundation which also encroached into the adjoining property. Mr. Raco noted if the variance is granted they will have to meet all applicable building code requirements for fire rating.

Stephen Smith the adjoining property owner spoke in opposition to the variance request and presented photographs of the structure in question. Mr. Smith stated he believes the building to be 17" from the property line not 3'. William Culley a neighbor across the street spoke in support of the variance noting the vast improvement of the property.

Mr. Hamstead stated in rebuttal that if the variance is granted they will remove the foundation to the point of the building so that it no longer encroaches into the Smiths property

5. Request by Sheridan LLC c/o Washington Homes Inc. of WV for an extension of time of the variance previously granted by the Board (10/16/03) to allow a temporary sales trailer on Lot 63 of the Sheridan Subdivision (Article 4, Section 4.18). Mark Dyck stated that due to the sewer moratorium they have been unable to build the model home and would like to request another year extension for the sales trailer. There was no public comment.

6. Request by Sheridan LLC c/o Washington Homes Inc. of WV to allow a model home with staffed sales office on Lot 65 of the Sheridan Subdivision (Article 4, Section 4.18). Mark Dyck stated that the plats for Sheridan did not identify a model home on this lot and that if it is staffed it has to be with BZA approval. There was no public comment.

7. Request by John W. Hendricks for a variance from the rear setback requirements from 6' to 4' for a proposed storage building (Article 9, Section 9.7). Mr. Hendricks stated in the 1970's he built a mini barn and he would like to build a new one adjacent to it at the same rear setback. There was not public comment.

8. Request by Melanie S. Nehls for a variance from the rear setback requirements from 6' to 2' for an existing garage (Article 9, Section 9.7). Ms. Nehls stated that the garage is at an angle and the rear corner is in violation. There was no public comment.

9. Request by John Selby for a variance from the front setback requirements from 25' to 7' for an existing storage building (Article 9, Section 9.7). Mr. Selby stated he would like the building closer to his pool for maintenance reasons. There was no public comment.

10. Request by Hawthorn Associates, Ltd., for a variance from the principal permitted uses to allow special events, weddings and parties within a bed and breakfast (Article 5, Section 5.7).

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Annette van Hilst presented the request reminding the Board they had appeared before them in October and were granted permission to do the bed and breakfast. Ms. van Hilst stated they would like to hold special events that would be by invitation only. Mr. Trumble asked if they had a business model to present to the Board. The Board was told that Ms. Gregson had that information and she was unable to attend the meeting due to an injury. Mr. Rockwell motioned to continue the request until the December 16, 2004 meeting to allow the applicant the ability to provide the business model. Mr. Bresee seconded the motion which carried unanimously.

11. Request by Bryan and Dawn Ridgeway for a variance from the front setback requirements from 40' to 12' for an existing house (Article 5, Section 5.7). Brian and Randolph Ridgeway presented the request. Mr. Ridgeway stated they hit rock during excavation and they shifted the location of the house. Mr. Ridgeway noted that all of the surrounding property is owned by family members. Mr. Ridgeway stated they are working with their surveyor to shift the right-of-way to lessen the encroachment. There was no public comment.

12. Request by KIMCO Realty Corp/Permelynn of Westchester, Inc., for a variance from the 60' access road requirements for a proposed Long John Silvers & A&W Root Beer Restaurant (Article 5, Section 5.8.b.9).

13. Request by KIMCO Realty Corp/Permelynn of Westchester, Inc., for a variance from the 10' landscape buffer requirements for a proposed Long John Silvers & A&W Root Beer Restaurant (Article 5, Section 5.8.b.9).

14. Request by KIMCO Realty Corp/Permelynn of Westchester, Inc., for a variance from the 4' driveway access setback for a proposed Long John Silvers & A&W Root Beer Restaurant (Article 5, Section 5.6.d.5).

Mark Morelock presented the requests on behalf of Long John Silvers noting they would be demolishing the existing structure and updating it with a new building to current standards. Mr. Morelock stated that with the exception of these variances all other County standards would be met and they have been granted a Conditional Use Permit. There was no public comment.

Mr. Wiegand motioned to go into deliberations for items 2 through 14. Mr. Trumble seconded the motion which carried unanimously. Mr. Rockwell motioned to return to regular session. Mr. Bresee seconded the motion which carried unanimously.

2. Mr. Bresee motioned to grant the variance to Harry E. Martin, Jr., and Tina M. Martin from the front setback requirements from 40' to 24' for an existing garage. Mr. Trumble seconded the motion. Mr. Rockwell stated that for the purposes of today's hearings the Board is taking the definition of variance found in the State Code but applying the criteria found in the Zoning Ordinance which is not as stringent as the State Code. The motion passed unanimously.

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3. Mr. Bresee motion to grant the variance to Elizabeth Stagner from the front setback requirements from 40' to 22' for an existing storage building on the same basis as the previous request. Mr. Trumble seconded the motion which carried unanimously.
4. Mr. Trumble motioned to deny the request by Karen Starry Manuel-Gregoryk for a variance from the rear setback requirements from 12' to 3' for an existing garage. Mr. Rockwell seconded the motion and stated that it does not appear from the evidence presented there were any special conditions prohibiting the building from being constructed to meet setbacks. The motion passed unanimously.
5. Mr. Trumble motioned to grant the request by Sheridan LLC c/o Washington Homes Inc. of WV for an extension of time of the variance previously granted by the Board (10/16/03) to allow a temporary sales trailer on Lot 63 of the Sheridan Subdivision for an additional one year period. Mr. Wiegand seconded the motion which carried unanimously.
6. Mr. Trumble motioned to grant the request by Sheridan LLC c/o Washington Homes Inc. of WV to allow a model home with staffed sales office on Lot 65 of the Sheridan Subdivision. Mr. Bresee seconded the motion which carried unanimously.
7. Mr. Bresee motioned to grant the request by John W. Hendricks for a variance from the rear setback requirements from 6' to 4.4' for a proposed storage building. Mr. Rockwell seconded the motion which carried unanimously.
8. Mr Trumble motioned to grant the request by Melanie S. Nehls for a variance from the rear setback requirements from 6' to 2' for an existing garage. Mr. Wiegand seconded the motion which carried unanimously.
9. Mr. Rockwell motioned to continue the request by John Selby for a variance from the front setback requirements from 25' to 7' for an existing storage building to allow additional testimony and reopen the hearing. Mr. Bresee seconded the motion which carried unanimously.
11. Mr. Rockwell motioned to grant the request by Bryan and Dawn Ridgeway for a variance from the front setback requirements from 40' to 12' for an existing house based on the evidence presented there are special conditions to warrant this variance, noting the applicants has other legal issues that he must address regarding the easement. Mr. Wiegand seconded the motion which carried unanimously.
12. Mr. Trumble motioned to grant the request by KIMCO Realty Corp/Permelynn of Westchester, Inc., for a variance from the 60' access road requirements for a proposed Long John Silvers & A&W Root Beer Restaurant. Mr. Bresee seconded the motion. Mr. Rockwell noted the existing parcel predated all county ordinances and if the variances are not granted it would render the property unuseable. The motion passed unanimously.

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13. Mr. Bresee motioned to grant the request by KIMCO Realty Corp/Permelynn of Westchester, Inc., for a variance from the 10' landscape buffer requirements for a proposed Long John Silvers & A&W Root Beer Restaurant on the same basis as the previous request. Mr. Rockwell seconded the motion which carried unanimously.

14. Mr. Wiegand motioned to grant the request by KIMCO Realty Corp/Permelynn of Westchester, Inc., for a variance from the 4' driveway access setback for a proposed Long John Silvers & A&W Root Beer Restaurant on the same basis as the previous requests. Mr. Trumble seconded the motion which carried unanimously.

15. Findings of Fact and Conclusions of Law for the Appeal by Uniwest Sanitary Systems of the Planning Commission's denial of the Conditional Use Permit for a 75,000 gallon per day wastewater treatment plant (AP04-01). This was moved to the end of the agenda since Mr. Wiegand has to recuse himself from this matter.

16. Discussion and/or action by the Board on the variance by Alice J. Rissler (ZV03-31) pertaining to the Order by the Circuit Court of Jefferson County. Mr. Rockwell motioned to reschedule and readvertise for a special seasonal use once the application has been refiled by the applicant. The application shall be in compliance with the Ordinance and that the applicant shall provide materials addressing road adequacy and traffic, and if there is to be a specific user the Board would like to see something in concrete evidencing the intent of the user if a seasonal use exception is granted. Mr. Wiegand seconded the motion which carried unanimously. Mr. Trumble amended the motion to ask that the applicant provide documentation as to how long it will take the applicant to realize his investment and to provide a business model. Mr. Bresee seconded the amendment to the motion which passed with a vote of 4 for and 1 opposed (Mr. Wiegand). The amended motion passed unanimously.

17. Board of Zoning Appeals forms for variances and appeals, etc. The Board recommended changes to the various forms and asked that they be drafted for the December meeting. Mr. Rockwell stated the variance request form should comply with State Code 8A-7-11(b) and the four subcategories and any other changes recommended by staff.

18. Rules of Procedure before the Jefferson County Board of Zoning Appeals.

15. Findings of Fact and Conclusions of Law for the Appeal by Uniwest Sanitary Systems of the Planning Commission's denial of the Conditional Use Permit for a 75,000 gallon per day wastewater treatment plant (AP04-01). Mr. Wiegand excused himself from the meeting room for the remainder of the meeting. Mr. Rockwell motioned to accept the Findings as written (copy attached) and authorize the chair to sign the same. Mr. Trumble seconded the motion which carried unanimously.

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19. Correspondence. There was no correspondence.

Mr. Trumble motioned to adjourn the meeting at 7:25 p.m. Mr. Rockwell seconded the motion which carried unanimously.

A transcript of this meeting can be found on CD #95, #96, #97 and #98. These Minutes were prepared by Rebecca F. Burns.