

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
DECEMBER 16, 2004

The Jefferson County Zoning Board of Appeals met on Thursday, December 16, 2004 at 3:00 p.m., in the Jefferson County Meeting Room. Members present were Tiffany Hine, David Wiegand and Douglas Rockwell. Thomas Trumble and Jeff Bresee were absent with notification. 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. Rockwell motioned to accept the Minutes of the November 18, 2004 meeting with the correction on page 5, item 16, second sentence being amended as follows: "... has been refiled" and third sentence to read "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. Bresee seconded the motion which carried unanimously.

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

2. Postponed from the November 18, 2004 meeting. 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 by letter to the Board asked that his request be postponed until the January 20, 2005 meeting. Mr. Rockwell motioned the same. Mr. Wiegand seconded the motion which passed unanimously.

3. Postponed from the November 18, 2004 meeting. 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). Annette van Hilst asked that the request be postponed until the January 20, 2005 meeting. Ms. Hine asked if they were prepared to go forward if the postponement was denied. Ms. van Hilst stated they were. Ms. Hine as Chair denied the request for postponement.

Ms. van Hilst gave each Board member present a copy of the exhibits shown on the board (copy attached). Teresa Gregson presented the request noting that according to their study 53% of bed and breakfasts hold weddings and other similar events. Ms. Gregson stated the events held would not be open to the public and would be private and by invitation only and there would be no more than 300 people at any one event.

Mr. Rockwell stated with the change in legislation the Board does not have the authority to grant a variance from the principal permitted uses and to do so would be a violation of the State Code. Mike Shepp stated that this would be increasing the intensity of the use rather than a different use and that nationwide this is a standard practice for bed and breakfasts.

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Mr. Raco presented definitions from the American Planning Association (APA) for banquet halls; bed and breakfast; and, bed and breakfast inn (copy attached).

Paul Burke addressed concerns about the validation of the Zoning Ordinance. Bill Culley spoke in support of the variance.

4. Request to intervene by Faraway Farms, LLC in the Appeal of the LESA Point Assessment, Support Data and Administrative Decision for the Faraway Farms Subdivision by Edward E. Dunleavy and Edward R. Moore, et al (AP04-05 and Z04-04).

5. Request for postponement of the Appeal of the LESA Point Assessment, Support Data and Administrative Decision for the Faraway Farms Subdivision by Edward E. Dunleavy and Edward R. Moore, et al (AP04-05 and Z04-04).

6. Appeal of the LESA Point Assessment, Support Data and Administrative Decision for the Faraway Farms Subdivision by Edward E. Dunleavy and Edward R. Moore, et al (AP04-05 and Z04-04).

Mr. Wiegand excused himself for items 4 through 6. There was no quorum on items 4 through 6 with Mr. Wiegand's recusal. Ms. Hine as chaired stated items 4 through 6 on today's agenda would be postponed until the January 20, 2005 agenda.

7. Request by Mark Alexander Smith for a variance from the 75' distance requirements to 50' for the proposed Old Route 340 Business Center (Article 4, Section 4.6b and 4.16).

8. Request by Mark Alexander Smith for a variance from the frontage road dedication requirements for the proposed Old Route 340 Business Center (Article 5, Section 5.8b9).

Mark Dyck was present on behalf of each of the requests. Mr. Dyck handed out a smaller version of the map that was submitted with the original variance packet. Mr. Dyck stated the Planning Commission has accepted the Community Impact Statement and they were aware that variances were being sought of the Board of Zoning Appeals. Mr. Dyck noted they would be relocating the frontage road right of way to accommodate a road if and when it is required. Mr. Raco stated they propose to meet the 75' distance requirement from all residential uses but not the golf course. There was no public comment.

9. Request by Donald and Sandra Thomas for a variance from the rear setback requirements from 50' to 15' for an existing shed (Article 9, Section 9.7). Ms. Thomas represented the variance noting they were unaware a permit was needed for the shed until they were informed by a building inspector of such and construction ceased immediately at that point. Ms. Thomas stated they did speak with the homeowners association and they were told by them that the setbacks for the subdivision on the rear of the property was 15'. Mr. Raco stated that at the time

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this subdivision processed through the office the acceptable setbacks were 25' front and 12' on the sides and rear, the developer when platting the subdivision opted for greater setbacks. There was no public comment.

10. Request by Premier Bank, Inc., for a variance to reduce the number of reservoir parking spaces from 20 to 15 spaces (Article 11, Section 11.1a). Annette van Hilst and Meryl Kiser represented the request. Ms. van Hilst stated this actually deals with stacking spaces, 3 for the lane closest to the building and the other 3 would have 4 for a total of 15. Mr. Kiser noted the first three drive through lanes would be manned and the fourth lane is for ATM use only. There was no public comment.

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.

3. Mr. Rockwell motioned to deny the variance to Hawthorn Associates, Ltd., as presented be denied. Mr. Wiegand seconded the motion. Mr. Rockwell stated that with the State law which came into effect in June the request results in a land use which is prohibited under 5.7 of the Zoning Ordinance. Mr. Rockwell further stated the proposal falls in line with a banquet hall as defined in the American Planning Association book submitted by Staff. This is a bed and breakfast and under Section 5.7a.15 the Ordinance speaks of accessory buildings and uses customarily incident to any principal permitted uses. The Board believes individuals who are renting, by guests staying overnight, would be entitled to use the facilities for weddings, birthdays and anniversaries, but, if some of those parties in attendance at such functions were not overnight guests at the bed and breakfast then it would not be an accessory use and would fall more under the definition of a banquet hall. The motion carried unanimously.

7. Mr. Rockwell motioned to deny the variance to Mark Alexander Smith from the 75' distance requirement to 50' for the Old Route 340 Business Park based on there being no special condition to warrant the variance. Mr. Wiegand seconded the motion which failed with a vote of 1 for and 2 opposed (Ms. Hine and Mr. Wiegand).

Mr. Wiegand motioned to grant the variance as requested to Old Route 340 Business Park on the basis it does not compromise the development or impact the adjoining property owners and there are two power line easements that they have tried to structure the development around so that it will be safe to operate and work around them. And with the landscape buffer in place there is no reason to deny the request. Mr. Rockwell seconded the motion which carried unanimously.

8. Mr. Rockwell motioned to grant the variance to Mark Alexander Smith from the frontage road dedication requirements for Old Route 340 Business Park. Mr. Wiegand seconded the motion which carried unanimously.

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9. Mr. Wiegand motioned to grant the variance to Donald and Sandra Thomas for a variance from the rear setback requirements from 50' to 15' for an existing shed. Mr. Rockwell seconded the motion which carried unanimously.

10. Mr. Rockwell motioned to grant the variance to Premier Bank, Inc., for a variance to reduce the number of reservoir parking spaces from 20 to 15 spaces due to the special conditions and a literal enforcement of the Ordinance would be unjust and would impose an unnecessary hardship. Mr. Wiegand seconded the motion which carried with a vote of 2 for and 1 abstention (Mr. Wiegand).

11. Findings of Fact and Conclusions of Law for Karen Starry Manuel-Gregoryk for a variance from the rear setback requirements from 12' to 3' for an existing storage building. Mr. Rockwell motioned to adopt the findings and authorize the Chair to sign upon correction as follows: page 2 paragraph 7 typographical error; deletion of paragraph nine on page 2; and, page 3 delete the last sentence in paragraph 4. Mr. Wiegand seconded the motion which carried unanimously.

12. Mr. Rockwell motioned that a Special Meeting be set for January 4, 2005 at 4:00 p.m. to discuss items 12 and 13 on today's agenda as well as staffing. Mr. Wiegand seconded the motion which carried unanimously.

13. Correspondence. There was no correspondence.

Mr. Wiegand motioned to adjourn the meeting at 5:28 p.m. Mr. Rockwell seconded the motion which carried unanimously.

A transcript of this meeting can be found on CD #108 and #109. These Minutes were prepared by Rebecca F. Burns.