

MINUTES
JEFFERSON COUNTY ZONING BOARD OF APPEALS
OCTOBER 16, 2003

The Jefferson County Zoning Board of Appeals met on Thursday, October 16, 2003 at 3:00 p.m., in the Jefferson County Meeting Room. Members present were Tiffany Hine, Douglas Rockwell, Thomas Trumble, Jeff Bresee and Stephen Groh. Paul Raco, Executive Director, Michael Cassell, Assistant Prosecuting Attorney and Rebecca Burns, Executive Secretary were also present.

The meeting was called to order by Mr. Groh at 3:00 p.m. Mr. Trumble motioned to accept the Minutes of the September 18, 2003 meeting. Ms. Hine seconded the motion which carried with a vote of 4 for and 1 abstention (Mr. Bresee because he was not present).

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

Mr. Bresee asked that the agenda order be changed to allow item #11 to be heard prior to the variances by Mr. Henry.

OLD BUSINESS

1. Postponed from the September 18, 2003 meeting. Request by the Estate of Thelma M. Koontz, Larry D. Turner and/or the Mecklenburg Heights Recreation Association, Inc., for a variance from the front setback requirements from 20' to 0' for an existing garage (Article 5, Section 5.4b).
2. Postponed from the September 18, 2003 meeting. Request by the Estate of Thelma M. Koontz, Larry D. Turner and/or the Mecklenburg Heights Recreation Association, Inc., for a variance from the side setback requirements from 10' to 0' for an existing garage (Article 5, Section 5.4b). Mr. Dorsey stated an agreement has been reached between all parties and with the Board's approval the garage will be allowed to remain in the right-of-way.

NEW BUSINESS

3. Request by Alice J. Rissler for a variance from the seasonal use provisions to allow the Mountain Heritage Arts and Crafts Festival to be conducted on her property twice annually for three consecutive days perpetually (Article 9, Section 9.8). Mr. Rockwell stated he is a member of the Chamber of Commerce and Ms. Hine stated her employer is a member of the Chamber. Mr. Rockwell and Ms. Hine stated they both felt they could hear the variance without prejudice if all parties involved were agreeable. There was no objection by the requestor or the public.

Ron Rissler represented the request on behalf of his mother, Alice Rissler. Mr. Rissler stated if granted this will help them to maintain the farm and keep it from possible subdivision in the future. Pat Dockney a member of the Chamber of Commerce stated the event would be conducted in June and September as it is currently for three days. Mr. Dockney further noted they were first seeking approval of the Zoning Board of Appeals before presenting it to the

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Chamber Board for their consideration and action. Mary Via, Executive Director of the Jefferson County Chamber of Commerce stated there is a large expense associated with relocating the festival because underground water and electric lines would have to be installed, fencing erected and storage buildings constructed for starters. Ms. Via stated the current location is excellent but there have been problems between the Parks and Recreation Commission and Chamber in the past.

The following people addressed concerns about the variance as requested: Robert Burgess; Helen Burgess; Todd Kable; Frank Surdu, President of the Eastland Home Owner's Association; Marty Kable; Lynn Applegate; and, Kelly Beatty.

The concerns addressed were as follows: traffic and safety issues on Route 9, Cave Road and Kabletown Road; flooding on Cave Road; noise; environmental impacts; frequency of event and actual time frame property would be occupied; past dumping of sewage on property; and, parking issues.

Mr. Rissler in rebuttal stated they thought this would be a way of preserving the farm from development. Mr. Rissler stated that as far as the dumping of sewage they complied with all State and Federal regulations regarding this issue.

Mr. Raco stated in the past the Board has only allowed a seasonal use for a limited period of time to allow the public the opportunity to realize the full impact of the proposal. Mr. Raco stated he has concerns about the adequacy of the sketch plat and the unanswered questions about parking; location and number of entrances; the actual number of days the property will be occupied for the event; and, traffic on Route 9 during Friday rush hour just to name a few.

4. Request by THZ Enterprises LLC/Ryan Homes for a variance to allow a temporary sales trailer on Lot 4 of the Maddex Farm Subdivision (Article 4, Section 4.18). Linda Lowe represented the request noting they have addressed all concerns raised by the home owners during their first request. Ms. Lowe stated the trailer would be there no more than six (6) months and would be removed as soon as the model home is completed. There was no public comment.

5. Request by Sheridan LLC/Washington Homes for a variance to allow a temporary sales trailer on Lot 63 of the Sheridan Subdivision (Article 4, Section 4.18). Chris Smith and Mark Dyck of Gordon Associates represented the request. Mr. Dyck indicated the trailer would be needed for a twelve (12) month period and that they have acquired Department of Highway's approval for the temporary entrance. Mr. Raco noted for the record that the temporary entrance was not approved by the Planning Commission and would require a resubdivision if it is intended for use. There was no public comment.

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11. Motion for continuance by Braun Hamstead on the variance requests by Aubrey E. and Debora Henry (items 6, 7 and 8 of the agenda). Mr. Trumble and Mr. Bresee both stated they are members of the Shepherdstown Men's Club, that they have no information beyond what is before the Zoning Board at this time, and that they can be fair and objective in hearing and deciding the issues before them pertaining to Mr. Henry's requests and the motion for continuance. Mr. Rockwell recused himself from this item on the agenda and the variances proposed by Mr. Henry. Mr. Rockwell left the meeting room. Mr. Henry objected to Mr. Trumble and Mr. Bresee's hearing the motion for continuance the variances. Mr. Cassell stated it is up to the individual members to decide whether or not they can sit objectively and fairly on a particular item. Mr. Hamstead stated he has no objection to Mr. Trumble and Mr. Bresee sitting in on these matters.

Mr. Hamstead stated the Circuit Court has remanded the Conditional Use Permit issued to Mr. Henry for Town Run Commons back to the Planning Commission for further action. Mr. Hamstead stated Mr. Henry and his attorney agreed to a continuance on the townhouse issues. Mr. Hamstead stated that in light of the civil suit brought by Mr. Henry the Men's Club would like a continuance on the variances before the Board at this time. Mr. Hamstead stated that if the Board is inclined to move forward he is prepared to speak to the variance requests.

Mr. Kusner on behalf of Mr. Henry stated they are not discussing the townhouse proposal today but the re-establishment of the restaurant. Mr. Henry stated he objects to any continuance of the variance requests before the Board today on his behalf. Mr. Cassell asked how the Board can hear his requests when he has asked that Mr. Bresee and Mr. Trumble not hear his variance requests. Mr. Henry stated he has no problem with them making a decision if they can be fair and impartial.

Mr. Raco stated the Board has not been asked to re-establish the nonconforming use. Mr. Cassell asked Mr. Henry if he agreed the restaurant had been destroyed by fire approximately 11 years ago; that the restaurant was a nonconforming use; and, that he has not asked at this point to re-establish the nonconforming use restaurant which had been destroyed by fire. Mr. Henry stated he agreed with Mr. Cassell's statements.

Mr. Trumble motioned to go into deliberations on item 11 only. Mr. Bresee seconded the motion which carried unanimously. Ms. Hine motioned to return to regular session. Mr. Trumble seconded the motion which carried unanimously.

Mr. Trumble motioned to deny the continuance on the three variances pending by Aubrey E. and Debora Henry (items 6, 7 and 8 on the current agenda). Ms. Hine seconded the motion which carried unanimously.

6. Mr. Trumble motioned to reject the variance by Aubrey E. and Debora Henry for a variance from the side setback requirements from 50' to 44' for a proposed restaurant on the basis there

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has yet to be a request for approval of re-establishment of a nonconforming use for the previous restaurant destroyed by fire. Ms. Hine seconded the motioned which carried unanimously.

7. Mr. Trumble motioned to reject the variance by Aubrey E. and Debora Henry for a variance from the sign provisions to allow an 80 square foot sign for a proposed restaurant on the basis there has yet to be a request for approval of re-establishment of a nonconforming use for the previous restaurant destroyed by fire. Ms. Hine seconded the motioned which carried unanimously.

8. Mr. Trumble motioned to reject the variance by Aubrey E. and Debora Henry for a variance from the sign provisions to allow a 100 square foot sign for a proposed restaurant on the basis there has yet to be a request for approval of re-establishment of a nonconforming use for the previous restaurant destroyed by fire. Ms. Hine seconded the motioned which carried unanimously. Mr. Rockwell returned to the meeting room.

9. Request by ABS LC/Eric Cox for a variance from the home occupation standards to allow gun sales from his home. Eric and Belinda Cox represented the request. Mr. and Mrs. Cox presented a letter from a neighbor in support of the request, photographs of the property, business license and the rationale for their request. Mr. Cox stated the ATF is ready to grant approval if they can receive approval from the Zoning Board of Appeals. Mr. and Mrs. Cox stated this would be temporary until they can raise the capital to move to a store front. David Phillips spoke in support of the request.

Mr. Raco stated the burden is high with regard to this issue in that both the Planning Commission and County Commission have specifically spelled out in the Ordinance that this type of use is not permitted as a home occupation or cottage industry.

10. Request by Steven L. Bittinger & Associates for a change in nonconforming use from a construction/development office with warehouse storage to include storage of small medical devices for wholesale via the telephone and internet. John Dorsey and David Phillips represented the request. Mr. Dorsey stated Mr. Bittinger is phasing out his construction business and is attempting to transition into other areas. Mr. Phillips stated the business would have two key employees, there are no hazardous materials stored on site, no manufacturing on site and no adult type uses. Eric and Belinda Cox spoke in support of the request.

12. Mr. Rockwell motioned to accept the Findings of Fact and Conclusions of Law for the request by Timothy Baxter for a variance from the side setback requirements from 15' to 6' for an existing pole barn and authorize Ms. Hine to sign the same (copy attached). Mr. Trumble seconded the motion which carried with a vote of 3 for and 2 abstentions (Mr. Bresee and Mr. Groh because they were not present at the meeting).

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13. Mr. Rockwell motioned to accept the Findings of Fact and Conclusions of Law for the request by Doug and Aundrea Humphreys for a variance from the side distance requirements from 15' to 6' for an existing pole barn. Mr. Trumble seconded the motion which carried with a vote of 3 for and 2 abstentions (Mr. Bresee and Mr. Groh because they were not present at the meeting).

Mr. Rockwell motioned to go into deliberations on items 4 and 5 only. Mr. Trumble seconded the motion which carried unanimously. Mr. Trumble motioned to return to regular session. Mr. Rockwell seconded the motion which carried unanimously.

4. Mr. Rockwell motioned to allow the temporary sales trailer on Lot 4 of the Maddex Farm Subdivision for no more than six (6) months (April 16, 2004) by which time it must be removed and contingent upon all necessary permits being acquired prior to placement. Mr. Trumble seconded the motion which carried unanimously.

5. Mr. Trumble motioned to allow a temporary sales trailer/model home with a sales office on Lot 63 of the Sheridan Subdivision for no more than 12 (twelve) months (October 16, 2004) by which time it must be removed and contingent upon all necessary permits being acquired prior to placement. Mr. Rockwell seconded the motion which carried unanimously.

Mr. Rockwell motioned to go into deliberations on the remainder of the items on the agenda. Mr. Trumble seconded the motion which carried unanimously. Mr. Trumble motioned to return to regular session. Mr. Bresee seconded the motion which carried unanimously.

1. & 2. Mr. Rockwell motioned to grant the variances for the Estate of Thelma M. Koontz, Larry D. Turner and/or the Mechlenburg Recreation Association, Inc., for the existing garage in conjunction with the plat attached to the variance requests as follows: (1) for the southern limits of the lot that the southeastern corner of the garage is 14.1 feet more or less from the southern limits of the Grosbeake Drive 30' wide right of way; (2) for the northeastern corner of the garage the variance be allowed so that the corner of the garage is 2.5 feet more or less from the curved portion from the boundary of lot 51; and, (3) with respect to the northwestern corner of the property so that that point is 10 feet more less from the southern boundary of lot 51. Mr. Trumble seconded the motion which carried unanimously.

3. Mr. Trumble motioned to deny the variance to Alice J. Rissler from the seasonal use provisions to allow the Mountain Heritage Arts and Crafts Festival to be conducted on her property twice annually for three consecutive days perpetually on the basis the request is in perpetuity, lack of detail which frames the nature of the request and the apparent unsolvable traffic problems. Mr. Bresee seconded the motion which carried unanimously.

9. Mr. Bresee motioned to deny the request by ABS, LC/Eric Cox from the home occupation standards to allow gun sales from his home on the basis the Ordinance specifically states in

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various locations that the storage of firearms is not permitted. Mr. Rockwell seconded the motion adding that the home occupation regulations require that the items being sold be crafted on the premises. The motion passed unanimously.

10. Ms. Hine motioned to grant the change in nonconforming use to Steven L. Bittinger & Associates to include the storage of small medical devices for wholesale via the telephone and internet. Mr. Rockwell seconded the motion which carried unanimously.

14. Correspondence. There was no correspondence.

Mr. Rockwell motioned to adjourn the meeting at 7:05 p.m. Mr. Bresee seconded the motion which carried unanimously.

A detailed transcript of this meeting can be found on Tape(s) #103, #104 and #105. These Minutes were prepared by Rebecca F. Burns.