

MINUTES
JEFFERSON COUNTY ZONING BOARD OF APPEALS
DECEMBER 18, 2003

The Jefferson County Zoning Board of Appeals met on Thursday, December 18, 2003 at 3:00 p.m., in the Jefferson County Meeting Room. Members present were Stephen Groh, Tiffany Hine, Thomas Trumble and Jeff Bresee. Douglas Rockwell was absent with notification. 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 November 20, 2003 meeting. Mr. Bresee seconded the motion which carried with a vote of 3 for and 1 abstention (Mr. Groh because he was not present at this meeting).

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

NEW BUSINESS

1. Discussion and/or action by the Board and Staff on the Order of the Circuit Court of Jefferson County for Brownshop Road LLC (Case No. 03-C-111). Mr. Cassell gave a history of the project and referred to the Kletter and Corliss decisions. James Campbell spoke on behalf of Brownshop Road LLC and asked that the Board either decide the matter or send it back to the Staff. The Board took no action on the matter.

2. Request by Aubrey E. and Debora Henry for a variance from the nonconforming use requirements to re-establish a previous nonconforming use restaurant destroyed by fire (Article 4, Section 4.3h). John Kusner and Aubrey Henry were present to represent the request. Mr. Kusner stated they would like to rebuild the restaurant the exact same size as the previous structure in the same location with the same number of signs. Mr. Henry stated that he was not sure if the townhouse project would ever develop. Mr. Henry stated the restaurant would seat at lease 200 people and that they would offer seafood, a buffet and catering and possibly beer and wine.

Braun Hamstead spoke on behalf of the Shepherdstown Men's Club; William and Joyce Lewandowski; Marianne Wilson; and, Richard Super. Mr. Hamstead stated the property is already the subject of a pending Conditional Use Permit for townhouses. Mr. Hamstead stated he did not believe the Board had jurisdiction because of the Planning Commission's approval of the CUP. Mr. Hamstead asked that the request be denied in accordance with the spirit and intent of the Ordinance.

Mr. Raco stated the Circuit Court has vacated the CUP for the townhouses and has instructed the Planning Commission to conduct a new public hearing to determine whether or not the CUP will be re-issued. Mr. Raco stated that in Section 4.3h of the Zoning Ordinance there is no time frame for re-establishment of a nonconforming use which has been destroyed by fire. Mr. Raco noted the Board has the ability to issue the variance conditioned on the CUP file being closed then it would be up to Mr. Henry to choose.

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Paul Burke stated he did not have anything substantive but procedurally questioned whether or not Mr. Raco should be sworn in to testify since he arrived late to the meeting. Mr. Cassell stated he did not believe it was necessary.

3. Request by Todd A. and Brenda M.. Basore for a variance from the rear setback requirements from 12' to 6' for a proposed attached garage (Article 9, Section 9.7). Hank Jovanelly presented the request on behalf of the Basores. Mr. Jovanelly stated they have a signed petition from adjoining property owners in support of the request. There was no public comment. Mr. Raco noted that this is a pre-existing community pre-dating zoning and subdivision regulations which is close-nit as far as structures are concerned. There was no public comment.

4. Request by Jeffrey Steplowski for a variance from the side setback requirements from 12' to 6' for a proposed 2-car garage (Article 5, Section 5). Mr. Steplowski presented the request noting the lots are 1 acre or larger in size. Mr. Steplowski stated he has a letter from the adjoining property owner supporting the request. Mr. Steplowski stated they currently have a 3-car garage but they have 5 cars some of which are antiques. Mr. Raco stated a hardship has not been shown and noted that this is a new subdivision and granting this variance would set a new standard if approved. There was no public comment.

5. There was no correspondence.

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

2. Mr. Trumble motioned to deny the variance to Aubrey E. and Deborah Henry from the nonconforming use requirements to re-establish a previous nonconforming use restaurant destroyed by fire based on Section 7.8.b.3 of the Zoning Ordinance, the enforcement of the Ordinance will not lead to an unnecessary hardship; the approval will not accomplish the intent of the Zoning Ordinance because the approval will allow the applicant to bypass the requirements of the Conditional Use Permit process; and, the Board prefers to see one proposal for the property. Ms. Hine seconded the motion which carried unanimously.

3. Ms. Hine motioned to grant the variance to Todd and Brenda Basore from the rear setback requirements from 12' to 6' for a proposed garage on the basis the request is not contrary to the public interest; it is within the spirit of the Ordinance; and, the lots pre-existed all County regulations. Mr. Bresee seconded the motion which carried unanimously.

4. Mr. Bresee motioned to deny the variance by Jeffrey Steplowski from the side setback requirements from 12' to 6' for a proposed 2-car garage on the basis the garage could be constructed on the lot without the need for a variance without sacrificing any of the desired

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features and access ways. Ms. Hine seconded the motion which carried unanimously.

Mr. Trumble motioned to adjourn the meeting at 4:38 p.m. Mr. Bresee seconded the motion which carried unanimously.

A detailed transcript of this meeting can be found on Tape(s) #127. These Minutes were prepared by Rebecca F. Burns.