

Draft Minutes  
Jefferson County Zoning Board of Appeals

1 Meeting Date: March 26, 2015  
2 Meeting Location: Conference Room, Old Charles Town Library  
3 200 East Washington Street, Charles Town, West Virginia  
4

5 Board members present: Tyler Quynn, Chair; Jeffrey Bannon, Vice Chair;  
6 Christy Huddle, Ted Schiltz and Matt Knott

7 Staff members present: Jennifer Brockman, Acting Zoning Administrator/Director of  
8 Planning and Zoning; Steve Groh, Assistant Prosecuting Attorney;  
9 Jennilee Hartman, Zoning Clerk  
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11 All requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.  
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13 Mr. Bannon moved to start the meeting at 2:00 p.m. Mr. Quynn called for a vote, which carried  
14 unanimously.  
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16 1) Approval of the minutes from the January 22, 2015 meeting.

17 Ms. Huddle moved to approve the minutes with the following edits:

18 a) Page 3, Item 7, change all semicolons to commas.

19 b) Page 3, line 11, change to the following, “was rescheduled ~~until~~ to February 2, 2015.”

20 Mr. Quynn called for a vote, which carried unanimously.  
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22 2) Swearing in of members of the public intending to provide testimony.

23 Ms. Hartman swore in members of the public who indicated they would be providing testimony.  
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25 3) Variance request by Peter Corum, applicant, from Section 3.2G for an eighteen (18) month  
26 extension for the Morgan’s Grove Market Conditional Use Permit #CP12-01, which expires  
27 on June 28, 2015. The CUP was approved for an agricultural-based market. Intended uses are  
28 to consist of, but are not limited to, a Food Hub, General Merchandise (retail), Professional/  
29 Business Offices, Community Amenities, and other associated uses. Owner: Twin Oaks S/D,  
30 LLC. Location: 3988 Kearneysville Pk, Shepherdstown, WV. District: Shepherdstown 09;  
31 Map: 13; Parcels: 26.1, 26.2, 26.3, 26.4; Zone: R; Size: 13.68 (combined total); File: ZV15-02.  
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33 Mr. Cochran recused himself from participating in this item as he had previously represented  
34 the applicant specifically on this project. Mr. Cochran left the meeting room.  
35

36 Ms. Brockman presented her staff report to the Board. Ms. Brockman stated the expiration date  
37 of the Morgan’s Grove Market Conditional Use Permit (CUP) was June 28, 2015 and that the  
38 applicant’s request, if approved, would extend the expiration date until December 28, 2016.  
39

40 Mr. Fred Blackmer, representative for Morgan’s Grove Market (MGM), explained the nature of  
41 the request to the Board. Mr. Blackmer highlighted the agricultural uses that have been in  
42 operation on the property since the approval of the CUP in an attempt to keep the property  
43 viable and explained that the current uses are consistent with the CUP’s overall concept. Mr.  
44 Blackmer explained that the project could not commence due to the condition imposed on the

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1 CUP, which requires the project to hook up to water and sewer. Mr. Blacker further explained  
2 that there are no water and sewer lines within a quarter mile of the site. Mr. Blackmer  
3 informed the Board that negotiations with a private property owner for an easement to said  
4 lines had been underway; however, the ownership of the property had changed and the  
5 negotiations ceased. Mr. Blackmer conceded that should the Board grant the request for an 18-  
6 month extension and the project not be underway by the end of the requested timeframe that  
7 MGM would not request another extension but would rather be requesting to amend the  
8 conditions of the CUP or its business model. Mr. Blackmer addressed questions from the  
9 Board.

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11 Mr. Bannon called for public comment. Mr. Joe Spurges, neighboring property owner, stated  
12 he was not in objection to the request; however, had questions regarding the current site  
13 conditions and approvals. Ms. Brockman explained the property had an approved grading  
14 permit, which did not vest the CUP; an approved zoning certificate to continue the farmer's  
15 market, which had operated seasonally since 2011; and, an approved zoning certificate to  
16 continue operating the current school for the following school year. Mr. Bannon closed the  
17 public hearing.

18  
19 Mr. Cochran returned to the meeting room.

- 20  
21 4) Application withdrawn; deemed unnecessary. Variance request from Section 5.4B to reduce  
22 the rear setback from 20' to 10' for a deck with stairs. Owner: Thomas Marshall. Location:  
23 Colonial Hills, 75 Swearingen Way, Shepherdstown, WV. District: Shepherdstown 09; Map:  
24 8E; Parcel: 18; Zone: RG; File: ZV15-03.

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26 No action was taken on this item.

- 27  
28 5) Request for a change in nonconforming use by Carl Webster & Connie Kitts, applicants, per  
29 Section 4.3C to allow for the reconfiguration of an approved Outdoor Flea Market (#ZC13-34).  
30 Owner: Gilbert Mobley. Location: 6468 Charles Town Rd, Kearneysville, WV. District:  
31 Middleway 07; Map: 4; Parcel: 8; Zone: R; Size: 5 ac; File: ZV15-04.

32  
33 Ms. Brockman presented her staff report to the Board, explaining the nonconforming land use  
34 would remain the same. Ms. Brockman stated the request was to reconfigure the previously  
35 approved outdoor flea market layout.

36  
37 Mr. Webster briefly described the nature of his request to the Board stating that the purpose in  
38 relocating the tables was to create a more attractive store front. Mr. Webster agreed to the  
39 conditions listed in the staff report after Ms. Brockman read them into the record.

40  
41 Mr. Bannon called for public comment. Mr. Bradley Pear, friend of the applicant, spoke in  
42 support of the request stating that Mr. Webster had already substantially cleaned up the  
43 property. Tamm Turner, neighboring property owner, spoke in opposition to the request. Ms.  
44 Turner stated that she called various offices 22 times to file a complaint against the previous  
45 tenants that operated the flea market. Ms. Turner explained that the property was a continual  
46 eyesore and had attracted rats. Ms. Turner claimed that there was no action taken as a result of  
47 the numerous complaint she had attempted to file with the County.

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2 Mr. Webster agreed that the previous tenants had left the property in disrepair and that there  
3 was a substantial amount of garbage on the property when he first leased the property;  
4 however, since that time he has clean up the property. Mr. Webster reiterated that the purpose  
5 of the request is to have the outdoor portion of the business located behind the existing store to  
6 reduce the visibility of the business from the neighbors. Mr. Webster stated that only parking  
7 would be permitted in the front of the property. Further, Mr. Webster stated that only crafts  
8 and antiques would be sold inside the building and that it would not be used as an indoor flea  
9 market.

10  
11 6) Variance request by Josh Allen, consultant with Cross Development LLC, from the following  
12 requirements:

13 a) Section 11A to reduce the required parking from 40 to 30 spaces for a 9,100 sq. ft.  
14 dollar store (ZV15-06).

15 b) Section 10.4E to allow a proposed freestanding sign, approved under the Development  
16 Review System, to be located less than the required 1000' from the existing signs along  
17 Middleway Pike (ZV15-07).

18 Owner: Wilbur A. Alger & Middle of the Way Real Estate. Location: Corner of Middleway Pk  
19 (Rt 51) & Leetown Rd, (Rt 1) Kearneysville, WV. District: Middleway 07; Map: 19; Parcels:  
20 16.6, 16.7; Zone: R; Size: 1.69 ac.

21  
22 Ms. Brockman presented her staff report to the Board. Ms. Brockman stated that staff's  
23 concern regarding request #ZV15-06 is that if a different land use were to occupy the building,  
24 the requested number of parking spaces may be insufficient. Mr. Josh Allen, representative for  
25 Dollar General, provided documentation from a study conducted by Dollar General supporting  
26 the request. Mr. Allen further reasoned that the request would reduce the impervious area and  
27 stormwater runoff. (ZV15-06) Regarding the signage, Mr. Allen explained that a business sign  
28 helps increase visibility for the store from a distance, alerting drivers to the store and its  
29 entrance in advance. Further, street signage allows for drivers to reduce their speed earlier,  
30 thus reducing traffic safety concerns. (ZV15-07)

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32 Mr. Bannon called for public comment; hearing none, Mr. Bannon closed the public hearing.  
33

34 7) An appeal of an Administrative Decision by Kenneth Barton, Jr. and Kelsey Swaim, attorneys  
35 with Steptoe & Johnson PLLC, regarding the interpretation of 'Signs, Animated' in Section 2.2  
36 pertaining to the Shenandoah Air Conditioning & Heating, Inc Animated Sign Conditional Use  
37 Permit #CP15-01. Owner: James Young, Sr. Location: 351 Edmond Rd, Kearneysville, WV.  
38 District: Charles Town 02; Map: 1; Parcel: 79; Zone: IC; Size: 1.768 ac; File: AP15-01.

39  
40 Ms. Brockman provided a detailed account from her staff report to the Board. Ms. Brockman  
41 explained that animated signs had been previously approved by the Board through the variance  
42 request process; however, a change in West Virginia State law and a subsequent zoning  
43 ordinance text amendment, revised the definition of Variance. In 2012, due to the revised  
44 definition, Ms. Brockman determined that an animated sign would have to process as a  
45 conditional use permit (CUP), as it was commonly understood that the CUP process allowed  
46 for greater latitude for land uses not permitted in the zoning ordinance. Ms. Brockman stated

1 that it wasn't until the first CUP application for an animated sign was submitted to the office in  
2 January 2015 that it was discovered that Section 4.1 states, "All other uses, except prohibited  
3 uses, may receive a conditional use permit upon completion of the Conditional Use Permit  
4 process...". [emphasis added] Ms. Brockman explained that she had determined that Section  
5 10.2I, which reads, "No animated signs, as defined by Section 2.2 are allowed." was intended  
6 to prohibit animated signs. Therefore, prohibited uses, such as animated signs, could not utilize  
7 the CUP process.

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9 Mr. Kenneth Barton, Jr. and Kelsey Swaim, attorneys with Steptoe & Johnson PLLC,  
10 represented the applicant. Mr. Barton introduced Bill Hynosky with W.J. Strickler Signs and  
11 stated he would be questioning Mr. Hynosky as an expert in the sign business. Mr. Barton  
12 provided the Board a handout depicting images of the proposed signage. Mr. Barton asked Mr.  
13 Hynosky to give a description of the what an animated sign was by industry standards. Mr.  
14 Hynosky described an animated sign in addition to other business signs commonly sold by his  
15 company. Mr. Hynosky also described how each of the signs functioned. For clarification Mr.  
16 Hynosky explained that the sign chosen by the applicant would be a set of motionless images  
17 that would be displayed on the screen for a set period of time and then would change to the  
18 next panel. The process was likened to a slideshow presentation. Mr. Hynosky stated there  
19 would be color displayed in the images and panels would display the business name and  
20 advertisement information for the products sold. Mr. Hynosky declared there would be no  
21 flashing lights, fading imagery or movement within the panel. Mr. Hynosky explained that the  
22 color displayed in one panel, which then changes to a different color in another is considered  
23 'static' by industry standards and not 'color changing', as seen in a moving panel.

24  
25 Mr. Cochran asked Mr. Hynosky to confirm if the sign would, in fact, be displaying color that  
26 requiring electrical energy. Mr. Hynosky confirmed the sign would display color and would do  
27 so with electricity.

28  
29 In an effort to establish that the requested sign was a Business Sign, Mr. Barton questioned Jim  
30 Young, property owner and owner of Shenandoah Air Conditioning & Heating, Inc., Mr.  
31 Young confirmed the purpose of the sign was to direct people to his business, to advertise  
32 products and services that he would be selling and that both of these matters would be done on  
33 his property.

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35 Ms. Huddle moved to go into deliberative session at 3:43 p.m. Mr. Schiltz seconded the motion  
36 which carried unanimously.

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38 Ms. Huddle moved to come back into regular session at 4:08 p.m. Mr. Schiltz seconded the motion  
39 which carried unanimously.

#### 40 **Board of Zoning Appeals Rulings**

- 41  
42  
43 3) Variance request by Peter Corum, applicant, from Section 3.2G for an eighteen (18) month  
44 extension for the Morgan's Grove Market Conditional Use Permit #CP12-01, which  
45 expires on June 28, 2015.

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1 Ms. Huddle moved to approve the above referenced request. Mr. Bannon called for a  
2 vote, which carried unanimously.

3

4 4) Request for a change in nonconforming use by Carl Webster & Connie Kitts, applicants,  
5 per Section 4.3C to allow for the reconfiguration of an approved Outdoor Flea Market  
6 (#ZC13-34).

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8 Mr. Schiltz moved to approve the above referenced request with the following conditions:

9 a) The owner of the property must seek a Zoning Certificate for each change in  
10 nonconforming use or change in tenant to ensure that the nonconformity of the subject  
11 parcel and structure is not abandoned.

12 b) The approved uses are limited to the area depicted in the sketch plan or the previously  
13 established area occupied by the former nonconforming use.

14 c) No access is permitted to occur other than that permitted by the West Virginia  
15 Department of Highways. Any additional entrances approved by the WV DOH, other  
16 than the currently permitted access off Old Charles Town Road, shall require an updated  
17 Zoning Certificate.

18 d) The existing substandard mobile homes shall be removed within 90 days of approval of  
19 this change in nonconforming use.

20 e) All setbacks for commercial uses shall be met.

21 f) Outside display is permitted while the flea market is open; however no other outdoor  
22 storage is permitted.

23 g) If the primary use of the property becomes a principle permitted use, the nonconforming  
24 use shall cease to exist.

25 h) Applicant is bound by their application and testimony presented to the Board.

26 Mr. Bannon called for a vote, which carried unanimously.

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28 5) Application withdrawn; deemed unnecessary. Variance request from Section 5.4B to  
29 reduce the rear setback from 20' to 10' for a deck with stairs.

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31 No action was taken on this item.

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33 6) Variance request by Josh Allen, consultant with Cross Development LLC, from the following  
34 requirements:

35 a) Section 11A to reduce the required parking from 40 to 30 spaces for a 9,100 sq. ft.  
36 dollar store (ZV15-06).

37 Ms. Huddle moved to approve the above referenced request. Mr. Mr. Bannon called for a  
38 vote, which carried unanimously.

39 b) Section 10.4E to allow a proposed freestanding sign, approved under the Development  
40 Review System, to be located less than the required 1000' from the existing signs along  
41 Middleway Pike (ZV15-07).

42 Ms. Huddle moved to approve the above referenced request. Mr. Mr. Bannon called for a vote,  
43 which carried unanimously.

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7) An appeal of an Administrative Decision by Kenneth Barton, Jr. and Kelsey Swaim, attorneys with Steptoe & Johnson PLLC, regarding the interpretation of ‘Sign, Animated’ in Section 2.2 pertaining to the Shenandoah Air Conditioning & Heating, Inc Animated Sign Conditional Use Permit #CP15-01.

Ms. Huddle moved to deny the appeal regarding the interpretation of ‘Sign, Animated’ in Section 2.2 pertaining to the Shenandoah Air Conditioning & Heating, Inc Animated Sign Conditional Use Permit on the basis that the zoning ordinance defines ‘Sign, Animated’ as “...color change requiring electrical energy, electronic, or manufactured sources of supply...”, which the applicant stated the panels would change color; thus meeting the Ordinance’s definition of an animated sign. Mr. Bannon added that to anyone observing the sign it would be perceived as motion and flashing of light as the panels change, which would meet three of the four noted elements within the definition of ‘Sign, Animated’. Mr. called for a vote, which carried unanimously.

8) Director’s Report.

a) Monthly Activity Report. No action taken.

Ms. Brockman informed the Board that a zoning administrator candidate had been selected and that an agenda request form had been forwarded to the County Commission for final approval. Ms. Brockman reiterated that signage, lighting and parking continue to be at the forefront of staff’s desired zoning text amendments. Ms. Brockman explained the process of the campground amendments to the Board and updated them on the status of the Impact Fees. Ms. Brockman told the Board that the County Commission recently approved a rezoning request to one of the newly adopted zoning districts, although the property was less than an acre in size. Ms. Brockman addressed other items from the Director’s Report with the Board.

9) Legal Update.

a) All Good Music Festival Pending Litigation. Mr. Cochran recused himself from this item as he had a client who was in opposition to the case. Ms. Lehman provided an update to the Board informing them that a Respondent’s Brief had been filed with the Circuit Court on March 25, 2015. Ms. Lehman stated she would have more information for the Board at the next meeting.

Mr. Cochran returned to the meeting.

b) William Neufeld Pending Litigation. Mr. Cochran and Ms. Lehman informed the Board that the Legal Department had recently received an Order Staying Proceeding and Granting in Part and Denying In Part Respondents’ Motion to Dismiss. Mr. Cochran and Ms. Lehman informed the Board that a briefing schedule had not been established at this time and that they would update the Board at the next meeting.

10) Signing of written decisions from prior Board of Zoning Appeals meetings. None.

Ms. Huddle moved to adjourn the meeting at 4:34 p.m. Mr. Bannon called for a vote, which carried unanimously.