

Minutes  
Jefferson County Zoning Board of Appeals

1 Meeting Date: July 16, 2015  
2 Meeting Location: Maintenance Conference Room  
3 128 Industrial Blvd., Kearneysville, West Virginia  
4  
5 Board members present: Tyler Quynn, Chair; Jeffrey Bannon, Vice Chair, Ted Schiltz,  
6 Matt Knott (arrived at 2:22 p.m.) and Jeff Bresee, Alternate  
7 Board members absent: Christy Huddle (with notification)  
8 Staff members present: Jennifer M. Brockman, Director of Planning and Zoning/Acting  
9 Zoning Administrator; David Simon, County Planner; Lydia Lehman,  
10 Assistant Prosecuting Attorney; Jennilee Hartman, Zoning Clerk  
11

12 All requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.  
13

14 Mr. Bresee filled Ms. Huddle's vacancy as the Alternate Board Member.  
15

16 Mr. Schiltz moved to start the meeting at 2:08 p.m. Mr. Quynn called for a vote, which carried  
17 unanimously.  
18

19 Mr. Quynn explained how the meeting would be conducted to the public.  
20

21 Ms. Hartman swore in members of the public who indicated they would be providing testimony.  
22

23 1) Approval of the minutes from the June 25, 2015 meeting.  
24

25 Mr. Quynn noted the following correction:  
26

27 a) Page 2, line 31, change Bannon to the correct Board member.  
28

29 Mr. Bresee moved to approve the minutes as amended. Mr. Quynn called for a vote, which  
30 carried four (4) in support and one (1) abstention (Mr. Bannon, as he was not in attendance).  
31

32 2) Swearing in of members of the public intending to provide testimony.  
33

34 Ms. Hartman swore in members of the public who indicated they would be providing testimony  
35 at the beginning of the meeting  
36

37 Mr. Quynn revised the order of the Agenda to hear Items # 6 and # 7 to the beginning of the  
38 Agenda to allow the applicants a prompt decision.  
39

40 6) Variance request from Section 4.11A.1 and Appendix B to waive the front, side and rear landscaping/  
41 buffer that is required for the addition of a Fellowship Hall and associated parking. Owner: Uvilla  
42 United Methodist Church. Applicant: Ted Schiltz. Location:4179 Shepherdstown Pk., Shepherdstown,  
43 WV. District: Shepherdstown-09; Map: 20; Parcel: 13; Size: 2.023 ac; Zone: Rural; File: ZV15-15.  
44

45 Ted Schiltz recused himself as a member of the Board and addressed the Board from the podium  
46 stating that he would be representing the church as a Trustee. Ms. Brockman briefly presented her  
47 staff report to the Board. Mr. Schiltz explained the purpose of his request. Mr. Quynn opened

1 the public hearing. There was no public comment. Mr. Quynn closed the public hearing.  
2 The Board determined a deliberative session was not necessary. Mr. Bannon moved to approve  
3 the variance as requested. Mr. Quynn offered a friendly amendment to include the following  
4 conditions: the applicant is bound by their testimony; the waiver of the buffer applies only to  
5 the requested addition; and, the applicant must return to the Board if there is any other request  
6 to expand. Mr. Bannon accepted the friendly amendment. Mr. Quynn called for a vote, which  
7 carried three (3) in support (Mr. Knott was not yet present at the meeting).

8  
9 Mr. Schiltz returned to the table as a member of the Board.

10  
11 7) Variance request from Section 5.4B to reduce the side setback from 12' to 3' and the rear setback  
12 from 20' to 10' for a 12' x 20' accessory structure. Owner: Bryan & Kelli LaBombard. Location:  
13 60 General Kershaw Ct., Harpers Ferry, WV. District: Harpers Ferry-04; Map: 5D; Parcel: 129;  
14 Zone: Rural; Size: .75 ac; File: ZV15-16.

15  
16 Bryan LaBombard was present to address the Board. Mr. Simon briefly presented his staff report  
17 to the Board. Mr. Labombard explained the purpose of his request. Mr. Quynn opened the public  
18 hearing. There was no public comment. Mr. Quynn closed the public hearing. The Board  
19 determined a deliberative session was not necessary. Mr. Schiltz moved to approve the variance,  
20 limiting the approval to the request as presented. Mr. Quynn called for a vote, which carried four  
21 (4) in support and one (1) recusal (Mr. Knott as he arrived toward the end of the presentation).

22  
23 Mr. Quynn returned to Item # 4 on the Agenda.

24  
25 4) Acceptance of the Compatibility Assessment Meeting Staff Report for the Whistling Wind Farm  
26 Bed and Breakfast Conditional Use Permit Application (CP15-02). The meeting was held on  
27 May 22, 2015 at 10:00 a.m., which resulted in two (2) unresolved issues; therefore, an additional  
28 public hearing to discuss only the unresolved issues, is required. Details regarding the CUP  
29 application are listed in Item #5.

30  
31 Ms. Brockman briefly spoke about the Compatibility Assessment Meeting verifying that the  
32 information presented in the Staff Report was an accurate reflection of the resolved and  
33 unresolved issues discussed during the meeting. Mr. Schiltz moved to accept the Whistling  
34 Wind Farm Compatibility Assessment Meeting Staff Report. Mr. Quynn called for a vote,  
35 which carried unanimously.

36  
37 5) Discussion and action on the Whistling Wind Farm Bed and Breakfast Conditional Use Permit  
38 (CP15-02). The applicant is proposing a 3-unit (5 bedrooms) bed & breakfast with no changes  
39 to the existing structure. The proposal includes 5 parking spaces, which will utilize the existing  
40 driveway area. A dawn to dusk lit sign will be located at the entrance of property. Owners:  
41 David & Laura Humphreys Location: 290 Falling Springs Rd, Shepherdstown, WV 25443.  
42 District: Shepherdstown-09; Map: 13; Parcel: 29.41; Size: 20.21 ac; Zone: Residential Growth.

43  
44 Mr. Quynn began the Item by explaining the purpose of the public hearing, that anyone offering  
45 testimony must limit their discussion to the unresolved issues only, and reiterated that the Planning  
46 and Zoning Department does not enforce covenants. Mr. Paul Raco, Consultant, was present to  
47 address the Board. Ms. Brockman provided the Board with a detailed summary of the request.

1 Ms. Brockman listed the two unresolved issues resulting from the May 22, 2015 Compatibility  
2 Assessment Meeting (CAM):  
3

- 4 1. Request for a 75 foot fast growing hedge row to be planted along 67 Falling Spring Rd.
- 5 2. Requested that applicant widen the road (to 20 feet) the entire length without negatively  
6 impacting the historic oak trees.  
7

8 Ms. Brockman reiterated Mr. Quynn's previous statement, that public comment should be limited  
9 to the unresolved issues and its compatibility with the neighborhood.  
10

11 Mr. Raco requested that the CAM Staff Report be amended to state, "dusk to dawn". The Board  
12 agreed. Mr. Raco identified the property on an exhibit plat and explained that the majority lots  
13 subdivided from the parent parcel were created through the exemption process; therefore, it is not  
14 considered a conventional subdivision. Mr. Raco informed the Board that the Humphreys had met  
15 with Staff, who had provided the Humphreys various suggestions regarding their proposal, which  
16 ultimately led to the submission and approval of the original Conditional Use Permit. Mr. Raco  
17 further explained that the Humphreys met with the neighboring property owners in an attempt to  
18 resolve any outstanding issues prior to the scheduled CAM and from that meeting the Humphreys  
19 agreed to the following:  
20

- 21 a) Agreed to reduce the sign from 16' to 8' sq. ft. using a solar powered dusk to dawn  
22 light directed towards the sign.
- 23 b) Applicant requests that the CUP not run with the land but that the CUP be terminated  
24 if and when the Humphries sell the land.
- 25 c) Agreed to pay double HOA dues to cover any additional impact on the HOA  
26 maintained road.  
27

28 Mr. Raco explained that at the CAM the Humphreys agreed to the above noted issues, and to four  
29 other issues listed in the CAM Staff Report. Mr. Raco stated that the Humphreys did not agree on  
30 two conditions, one of which was the requested 75 foot fast growing hedge row to be planted along  
31 Falling Springs Road (Ms. Sutenfield's property). Mr. Bannon asked for clarification regarding  
32 the location of the requested buffer. Mr. Raco drew the Board's attention to Ms. Sutenfield's  
33 parcel, which was depicted on an Exhibit plat, and Mr. Raco referenced page 6 of the BZA Staff  
34 Report. Mr. Raco explained that the planting of the additional buffer would require removal of  
35 the natural vegetation to be replaced with an indigenous species, and that the majority of the  
36 business conducted by the bed and breakfast would be in the spring & summer months when the  
37 natural buffer has full foliage.  
38

39 Mr. Raco stated that the applicant was unsure how to respond to the second unresolved issue,  
40 as it was requesting that the existing road be widened to 20 feet without damaging the existing  
41 trees. Mr. Raco explained that the road is generally 18' wide in multiple places, thus capable of  
42 accommodating two cars. Mr. Raco also explained that a wider road makes it appear less rural,  
43 allows for vehicles to increase their speed and creates the potential for thru traffic as people may  
44 misinterpret the wider road as public access.  
45

1 When speaking about the compatibility of the proposal's overall location, Mr. Raco referenced the  
2 2014 Comprehensive Plan, which he claimed promoted low impact development outside the urban  
3 growth boundary.

4  
5 Mr. Raco stated that he was unable to locate any traffic data regarding traffic generated by a 3-unit  
6 bed and breakfast. Mr. Raco that he was able to locate a 20 page report that was done by the City of  
7 Portland (Oregon) which specifically dealt with a 3-unit bed and breakfast and its trip generation vs.  
8 that of a single family home. Mr. Raco read an excerpt from the report, which read, "The Bureau of  
9 Transportation's Trip Generation Manual from the Institute of Transportation Engineers (ITE) does  
10 not have any comparable trip generation data for the proposed use. The ITE trip generation manual  
11 only includes data as it pertains to larger and more traditional motels and hotels and resorts. The  
12 proposed B&B will have 3 bedrooms with the fourth bedroom being occupied by the manager or  
13 resident. There will be no other outside employees or commercial events associated with the  
14 proposed use. Given the nature of the proposed use the number of vehicle likely to access the  
15 proposed facility at any given time especially during morning and evening residential peak hours  
16 will be minimal. ...Any services for bed and breakfast such as the landscaping, regular maintenance  
17 or even cleaning that may be associated with it, will be consistent with a typical single family home."  
18 Mr. Raco stated the report was dated December 2014. Mr. Raco provided the Board with pictures  
19 pertaining to the orientation of the Humphrey property, the entrance and width of the road and the  
20 existing natural buffer along Ms. Suttentfield's property. Mr. Raco concluded by reiterating that the  
21 Humphreys have agreed to seven (7) conditions, that a buffer already exists along Ms. Suttentfield's  
22 property, that the widening of the existing road is unnecessary and the there is no evidence that a  
23 3-unit bed and breakfast generates more traffic than the current use of the structure as a six bedroom  
24 single family home.

25  
26 The Board did not have any comments for Mr. Raco. Mr. Quynn opened the public hearing.

27  
28 Ms. Jan Hafer, neighboring property owner, spoke in support of the request. Ms. Hafer added  
29 that she did not wish for the road to be widened. Ms. Hafer explained that in the 5 years she  
30 has lived on the premises the road had not been a safety issue. Ms. Hafer also did not agree  
31 with the 75' buffer stating that natural buffer already exists.

32  
33 Nance Briscoe, resident of the Cloverdale Subdivision, spoke in opposition to the request; being  
34 primarily concerned about the lack of consideration for the subdivision's residents' property  
35 rights. Ms. Briscoe questioned the cost of the road widening and the subsequent maintenance.  
36 Mr. Quynn stated that neither the County or the Board enforces HOA covenants. Ms. Briscoe  
37 requested specific language be added to all applications filed with the Planning and Zoning  
38 Department. (See Ms. Briscoe's written testimony in PC File #CP15-02)

39  
40 Gale Brown, neighboring property owner, spoke in opposition to the request. Ms. Brown  
41 believed the purpose of the request was to widen the road and obtain permission to have people  
42 stay in their home in order to make their home more marketable. Ms. Brown believed that if  
43 people could try out the accommodations first they may be more willing to make an offer to  
44 purchase the home. Ms. Brown was also concerned about widening the road due to the narrow  
45 entrance and did not want the stone wall damaged.

1 John Barrat, neighboring property owner, spoke in opposition to the request. Mr. Barrat stated  
2 the applicant would not be able to meet one of the conditions of the CUP, which required them  
3 to pay for the upgraded insurance. Mr. Barrat informed the Board that their insurance provider  
4 would be dropping their coverage should a commercial operation be added to subdivision.  
5 Mr. Barrat consulted other companies, whose quotes far exceeded their existing rate. Mr. Barrat  
6 clarified that his testimony at the CAM was not recorded correctly. Mr. Barrat stated that he  
7 believed the road was not wide enough to accommodate the B&B; yet, he did not want the  
8 road widened. Mr. Barrat further cited various sections of the Subdivision Regulations which  
9 referenced road widths within subdivisions, attempting to prove that Falling Springs Road was  
10 inadequate for the requested use.

11  
12 Diana Suttentfield, neighboring property owner, read her testimony to the Board (see copy in  
13 PC File #CP15-02). Ms. Suttentfield was in objection to the proposed bed and breakfast.  
14 Ms. Suttentfield explained how her parcel was created and when her home and art studio  
15 were built. Ms. Suttentfield explained to the Board that she had invested a great deal of time  
16 into researching the historic relevance of the area so that it could be added to the Historic  
17 Register and was concerned that the proposed Bed and Breakfast would attract tourists to their  
18 community. Further, Ms. Suttentfield expressed concern that they would have no control over  
19 the people utilizing the road.

20  
21 Braun Hamstead, Attorney representing John Barrat and Diana Suttentfield, began to address  
22 the Board. Mr. Racó stated his objection for the record citing Section 7.7C of the Zoning  
23 Ordinance, which states that a speaker may have 5 minutes to testify or a representative of a  
24 group may have 15 minutes. As Ms. Suttentfield and Mr. Barrat had already spoken, they  
25 cannot have a representative now speak on their behalf. Mr. Quynn agreed with Mr. Racó's  
26 objection and stated the Board would not hear testimony from Mr. Hamstead. Mr. Hamstead  
27 objected to Mr. Racó's request and Mr. Quynn's decision. Mr. Hamstead requested that the  
28 Board consult with legal counsel and not a member of the public. Mr. Quynn reaffirmed his  
29 decision.

30  
31 As no other members of the public wish to provide testimony, Mr. Racó returned to the  
32 podium for rebuttal. Mr. Racó stated for the record, the insurance issues have been addressed;  
33 however, the Ordinance prohibits discussion of the resolved issues. Mr. Racó pointed out that  
34 there were only two unresolved issues that were for consideration, 1) The 75' plantings along  
35 Ms. Suttentfield's property line, which she did not elaborate on during her testimony; and,  
36 2) The widening of Falling Springs Road, of which everyone who offered testimony was  
37 opposed to widening the road. To address Ms. Suttentfield's testimony, Mr. Racó briefly  
38 explained that the purpose in adding the historical information in the CUP application was  
39 because the application requires it.

40  
41 The Board had no questions for Mr. Racó. Mr. Bresee moved to go into deliberative session at  
42 3:31 p.m. Mr. Quynn called for a vote, which carried unanimously. Mr. Schiltz moved to come  
43 out of deliberative session at 4:00 p.m. Mr. Quynn called for a vote, which carried unanimously.  
44

1 Mr. Knott moved to approve the Whistling Wind Farm Bed and Breakfast Conditional Use Permit  
2 (CP15-02) for a 3-unit (5 bedrooms) bed & breakfast with no changes to the existing structure. The  
3 proposal includes 5 parking spaces, which will utilize the existing driveway area. An 8 square foot,  
4 dusk to dawn lit sign will be located at the entrance of property. Mr. Knott added that the application  
5 was approved with all the conditions as noted in the CAM Staff Report and that the applicant would  
6 not be required to widen the road and would not be required to plant the 75' hedgerow along the  
7 property line. Further, the Board finds the use compatible with the neighborhood and the applicant is  
8 bound by their testimony. Mr. Quynn called for a vote, which carried four (4) in support and one (1)  
9 opposed (Mr. Schiltz).

10  
11 6) Variance request from Section 4.11A.1 and Appendix B to waive the front, side and rear landscaping/  
12 buffer that is required for the addition of a Fellowship Hall and associated parking. Owner: Uvilla  
13 United Methodist Church. Applicant: Ted Schiltz. Location: 4179 Shepherdstown Pk., Shepherdstown,  
14 WV. District: Shepherdstown-09; Map: 20; Parcel: 13; Size: 2.023 ac; Zone: Rural; File: ZV15-15.  
15

16 This item was addressed at the beginning of the meeting. This item was approved.  
17

18 7) Variance request from Section 5.4B to reduce the side setback from 12' to 3' and the rear setback  
19 from 20' to 10' for a 12' x 20' accessory structure. Owner: Bryan & Kelli LaBombard. Location:  
20 60 General Kershaw Ct., Harpers Ferry, WV. District: Harpers Ferry-04; Map: 5D; Parcel: 129;  
21 Zone: Rural; Size: .75 ac; File: ZV15-16.  
22

23 This item was addressed at the beginning of the meeting. This item was approved.  
24

25 8) Request by The Middleway Conservancy Association Inc., applicant, for a Seasonal Use Permit  
26 for 'The Battle of Smithfield Anniversary Re-enactment' to operate from August 28-30, 2015.  
27 The event is to consist of a re-enactment of civil war camp life, drills and other educational  
28 activities. Re-enactment Activities: Carmen Quinones, 7513 Queen St (D: 07/M: 22A/P: 18/  
29 Z: Village); William & Linda Chappell, 175 East St (D: 07/M: 22B/P: 28/Z: Rural & Village);  
30 Jeffrey & Dorothea Dehart, 207 East St, (D: 07/M: 22B/P: 29/Z: Rural & Village); Withdrawn:  
31 Cecil White, et al, 99 Old Middleway Rd (D: 07/M: 22/P: 25); Public Parking: Dan & Anne  
32 Bowers, 272 Mason Farm Dr (D: 07/M: 22/P: 12.9 Z: Rural); Middleway United Methodist  
33 Church, Withdrawn: 328 King St (D: 07/22A/ P: 19) Middleway United Methodist Church,  
34 7437 Queen St (D: 07/M: 22A/P: 43, 44Z: Village); (Grace Church Parish Hall, 112 East St,  
35 (D: 07/22A/ P: 70Z: Village) Withdrawn: Triluminar Masonic Hall, 105 East St (D: 07/  
36 M: 22A/P: 72); Cecil White, et al, 99 Old Middleway Rd (D: 07/M: 22/P: 25).  
37

38 Ms. Brockman presented information about the request from her staff report to the Board.  
39 Peter Fricke, representative with the Middleway Conservancy Association, Inc., provided  
40 the Board with a brief presentation, explaining the date and time of the event, encampment  
41 location, parking sites, etc. Mr. Fricke also informed the Board that he has contacted the  
42 Department of Highway's, the Sheriff's Department and Department of Health and has  
43 received information from them. Mr. Fricke added that the Middleway Conservancy  
44 Assoc. also carries liability insurance and will ensure the coverage is adequate for the event.  
45

46 Mr. Quynn opened the public hearing.

1  
2 Tom Aitcheson, neighboring property owner, spoke in support of the request. Janet Aitcheson,  
3 neighboring property owner and secretary of the Middleway Conservancy Assoc., spoke in  
4 favor of the request.

5  
6 Mr. Fricke drew the Board's attention to the numerous letters of support, submitted by adjacent  
7 property owners, that were included in the meeting packet. Mr. Fricke informed the Board that  
8 the residents of Middleway were notified by mail of the event and most had replied in support  
9 of the event.

10  
11 The Board felt that a deliberative session was unnecessary.

12  
13 Mr. Knott moved to approve the Seasonal Use Permit as requested with the following conditions:

- 14 a) The applicant must have an approved Zoning Certificate.  
15 b) The applicant must obtain either approval by, or documentation stating services are not  
16 required by, the Health Department, the Department of Highways, and the Sheriff's  
17 Department.  
18 c) Provide a copy of the Proof of Liability Insurance.  
19 d) The applicant is bound by their testimony.

20  
21 Mr. Quynn called for a vote, which carried unanimously.

22  
23 8) Director's Report.

- 24  
25 a) Monthly Activity Report. No action taken.  
26 b) Ms. Brockman updated the Board on the following items:  
27 i) Regarding the Bolivar Urban Growth Boundary, the Planning Commission had  
28 determined that it was not specifically defined in the Comprehensive Plan. The  
29 PC's recommendation has been forwarded to the CC and is awaiting action.  
30 ii) The Planning Commission is aware of the fact that the Mass Gathering text  
31 amendment is still pending. The PC has determined that it would be better to  
32 wait on an After Action Report from the Department of Homeland Security and  
33 Emergency Management regarding the All Good Festival before drafting any  
34 additional language.  
35 iii) Morgan's Grove Market is requesting a Rezoning. The Public Hearing is  
36 scheduled for 08/11/15.

37  
38 9) Legal Update.

39  
40 Mr. Bannon moved to go into deliberative session at 4:31 p.m. to discuss pending litigation  
41 with Attorney Lehman. Mr. Schiltz moved to come out of deliberative session at 4:46 p.m.

42

- 1 a) All Good Music Festival Pending Litigation CA #14-C-390. None.  
2 b) William Neufeld Pending Litigation CA #14-C-394. None.  
3 c) Shenandoah Air Conditioning & Heating Inc. Pending Litigation CA #15-P-73  
4  
5 10) Signing of Findings of Fact and Conclusions of Law/written decisions from prior Board of  
6 Zoning Appeals meetings.

7  
8 Meeting Date: June 25, 2015  
9

- 10 a) Variance request from Section 9.7 to reduce the side setback from 15' to 5' for an existing  
11 deck that was constructed without a building permit. Owner: Laurice Berry. Location: 155  
12 Hollow Tree Ln, Kearneysville, WV. District: Kabletown 06; Map: 19A; Parcel: 1.1; Zone:  
13 Rural; File: ZV15-09.
- 14 b) Variance request from Sections 4.11.B.2, 4.11.B.3, 4.11.E and Appendix B to remove the  
15 front, side and rear buffers/screening for an industrial development. Owner: Delaware Corp  
16 dba Kent Cartridge of America, Owners, Panhandle Builders & Excavating, Applicant.  
17 Location: 795 Hite Rd, Kearneysville, WV. District: Middleway 07; Map: 8; Parcel: 4; Zone:  
18 Rural; File: ZV15-12.
- 19 c) Variance request from Table 5.4-1 to reduce the side setback from 12' to 8' and rear setback  
20 from 20' to 5' to allow for the installation of an irregularly shaped in-ground pool. Owner: Roy  
21 Jr. & Kristin Vella. Location: Breckenridge Subdivision, 47 Shire Ct, Charles Town, WV.  
22 District: Charles Town 02; Map: 4F; Parcel: 190; Zone: Residential Growth; File: ZV15-13.
- 23 d) Variance request from Table 5.4-1 to reduce the side setback from 12' to 6' for the attached  
24 garage of a townhouse unit. Owner/Developer: Pete Kubic. PFK, LLC. Location: Locust Hill  
25 Subdivision, Lot TH73, Baltustrol Dr, Charles Town, WV. District: Charles Town 02; Map:  
26 13A; Parcel: 555; Zone: Rural; File: ZV15-14.  
27
- 28 Mr. Knott moved to adjourn the meeting at 4:46 p.m. Mr. Quynn called for a vote, which carried  
29 unanimously.