

**PUTNAM COUNTY
BOARD OF ZONING APPEALS
PUTNAM COUNTY COURTHOUSE, ROOM 202
Thursday, August 14, 2008**

MINUTES

The Putnam County Board of Zoning Appeals held its regular monthly meeting on Thursday, August 14, 2008 at 7:00 p.m. in the Putnam County Courthouse, Room 202.

Steve Sluss, president, called the meeting to order.

Roll call was taken and a quorum was present.

Members present included: Daniel Holstein, Tom Reishman, Al Ruebush, and Steve Sluss.

Members absent included: Patrick Donovan

Staff present included: Sandy Mellert, Melissa Sargent, and Linda Bess. Also present was Luanne Jividen, C.C.R.

Others present who signed in were: Doug Kincaid.

Daniel Holstein, the new board member, was introduced and welcomed.

MINUTES

The minutes of the July 10, 2008 meeting were reviewed. Motion was made by Tom Reishman and seconded by Al Ruebush to approve the minutes as presented. Motion carried unanimously.

**REMOVE FROM THE TABLE DELIBERATION and ACTION for
VARIANCE REQUEST BY DON LAYMAN FOR TIM HORTON'S RESTAURANT
for Stabilization Fabric**

Deliberation and Action

Motion was made by Tom Reishman and seconded by Al Ruebush to take from the table the request by Don Layman, Interstate Construction, for Tim Horton's Restaurant for stabilization fabric that was not placed under the pavement as indicated on the approved September 10, 2007 site plan and as required in the zoning ordinance. Interstate Construction (Don Layman) is requesting a variance for the lack of fabric. The property is located off State Route 34, Teays Valley Road, Hurricane (tax map 223, parcel 69).

The public hearing was closed at the July 10, 2008 meeting.

Staff presented the revised findings of fact, a copy of which is attached and made a part of these minutes, and presented the documents submitted by Interstate Construction that were requested by the board members when this issue was tabled at the July 10, 2008 BZA meeting.

In order to receive the additional information requested when this issue was tabled at the July 10, 2008 BZA meeting, Steve Sluss granted the applicant's representative request to give further verbal testimony.

Applicant comments:

Doug Kincaid, Interstate Construction, explained in detail the documentation which was submitted and why it is adequate. The documentation consisted of letter correspondence and pictures. Mr. Kincaid also apologized for not being aware that the fabric was required by the Putnam County Zoning Ordinance and further stated that Tim Horton's meant no wrong when the decision was made to place an additional inch of asphalt in place of the stabilization fabric. Tim Horton's Restaurant would like to settle this issue as soon as possible.

Discussion ensued with a question and answer session. The Board discussed the following:

1. A public hearing was held by the BZA and a Special Permit with conditions was granted to Tim Horton's Restaurant. A "restaurant" is not a permitted principal use in the C1 zoning district.
2. Multiple correspondence letters were sent to Tim Horton's Restaurant from November 15, 2007 through May 15, 2008 regarding violation(s).
3. Drainage for this site was also not constructed as approved. This issue was remedied in April 2008.
4. The approved site plans states, "Geotextile fabric underlayment is required for all paving on site in accordance with Article 1200 – 1200.03."
5. The lack of fabric is non-compliant and is a direct violation of the Zoning Ordinance and the approved permit conditions.
6. Approval of this variance would negate the integrity of the Zoning Ordinance and set a precedent for future variance requests. The integrity of the ordinance must be upheld.
7. Tim Horton's Restaurant seemed to show a lack of attentiveness toward this project during the construction process and regarding permit requirements.
8. The hardship of this request has been created by the person/business seeking the variance.
9. The applicant did not submit the information which was requested by the BZA at their July 2008 meeting.
10. It would be unreasonable to require the parking lot be torn up in order to lay stabilization fabric.

Facts determined during deliberation:

1. The intent of *Article 1200.03 Detailed Standards for Internal Roadways, Off-Street Parking and Loading Areas in the Zoning Ordinance for the Zoned Unincorporated Areas of Putnam County, West Virginia* is to require paving standards for commercial parking lots. Those standards require base filter fabric conforming to WVDOH requirements to be installed under the base aggregate for an asphalt parking lot.
2. Stabilization fabric is shown under the asphalt on the approved site plan dated September 10, 2007, and Tim Horton's and Interstate Construction stated they were aware of that fact.

3. Special Permit #7497 states, “Tim Horton’s Restaurant shall be constructed and the site developed as shown on the approved site plans which carry the September 10, 2007 approval date.”
4. Special Permit #7497 also states a Certificate of Compliance issued by the Office of Planning and Infrastructure when the site meets the requirements of the approved permit and the *Zoning Ordinance for the Zoned Unincorporated Areas of Putnam County, West Virginia* is required prior to the building being occupied.
5. An inspection by Office of Planning and Infrastructure staff found Tim Horton’s Restaurant open on December 3, 2007, prior to meeting the requirements of the approved permit and the zoning ordinance and prior to receiving a Certificate of Compliance.
6. A variance request was submitted on May 28, 2008, after the parking lot was paved without the stabilization fabric and 177 days after the restaurant was found to be open. Granting the variance would set a precedent for other developers to not comply with requirements of the zoning ordinance and request a variance after the fact.
7. No special conditions or attributes which pertain to the property were found to justify granting a variance. Lack of stabilization fabric under the asphalt in the parking lot of Tim Horton’s is a self-created hardship.
8. The applicant did not submit soils studies and engineer reports by a licensed professional engineer to demonstrate and state stabilization fabric is not necessary for the site.
9. It would be unrealistic to expect the parking lot to be torn up for the stabilization fabric to be added.

The Board also determined that there were three options to be considered:

1. to approve the variance with no conditions or stipulations, which will set a precedent for similar future construction violations;
2. to deny the variance and forward this violation to the County Commission with a recommendation that a fine be assessed for noncompliance; or
3. to deny the variance.

Extensive discussion ensued.

Motion was made by Al Ruebush and seconded by Tom Reishman to 1) deny the variance request by Don Layman with Interstate Construction for lack of stabilization fabric under the pavement at Tim Horton’s Restaurant as indicated on the September 10, 2007 approved site plan and as required in the Zoning Ordinance, 2) not require the parking lot to be torn up for stabilization fabric to be placed under the pavement, and 3) forward this violation to County Commission with a recommendation that a fine in the amount of fifteen dollars (\$15) per day for 177 days for a total of \$2,655.00 be levied for noncompliance with requirements of the Zoning Ordinance from December 3, 2007 to May 28, 2008.

Discussion followed. Doug Kincaid with Interstate Construction stated Tim Horton's and Interstate Construction desire to try to resolve this matter with the Board of Zoning Appeals and asked if the Board could suggest a fine instead of the matter being forwarded to the County Commission.

The motion was amended and seconded that the applicant shall be given a choice to pay a fee in the amount of \$2,655.00 instead of having the matter forwarded to the County Commission for action.

The amended motion carried unanimously.

CITIZEN COMMENTS

There were no citizen comments.

STAFF REPORT

Staff reported that there is one item on the September 11, 2008 agenda.

OLD BUSINESS

Staff presented copies of the results of the circuit court appeals by Frank McCallister, which was dismissed by Judge Eagloski, and Rodney Campbell, that was upheld.

NEW BUSINESS

There was no further new business to discuss.

ADJOURNMENT

There being no further business, motion was made and seconded to adjourn. The meeting was adjourned at 7:55 p.m.

Respectfully submitted: _____
Al Ruebush, Secretary

Minutes were approved: _____

Attested by: _____
Presiding Officer