

Meeting Minutes
Jefferson County Planning Commission
May 9, 2023

The Jefferson County Planning Commission met on May 9, 2023 at 7:00 pm with the following Planning Commission members present: Mike Shepp, President; Wade Louthan, Secretary; Jack Hefestay; J. Ware; Tim Smith; Aaron Howell; Donnie Fisher were present in person.

Steve Stolipher, County Commission Liaison and Matt Knott, Vice President were absent with notice.

Staff members present included: Jennifer Brockman, Chief County Planner; Luke Seigfried, County Planner; Alexandra Beaulieu, Deputy Director and Zoning Administrator; Jonathan Saunders, County Engineer; Nathan Cochran, Prosecuting Attorney; and Michelle Evers, Planning Clerk.

Mr. Shepp called the meeting to order at 7:02 pm. and confirmed a quorum was present. Mr. Shepp reviewed meeting protocol for those in attendance and noted that Item #3 on the Agenda would be moved to the end of the Agenda.

1. **Approval of Meeting Minutes:** March 14, 2023 (corrected), March 28, 2023, and April 11, 2023.

Mr. Shepp made a motion to approve the Meeting Minutes as presented, Mr. Fisher seconded the motion, which carried unanimously.

2. **Request for postponement.**

3. **Public Workshop:** Solar Energy Facility Concept Plan for the Flowing Springs Farm Solar moved to later in the agenda.

4. **Public Hearing:** Request for a waiver from Appendix B, Section 2.3.B.6 of the Subdivision Regulations to reduce the radius from 35 ft. to 15 ft. for the entrance to the proposed Aspen Hill Apartments (File: 23-2-SP). Property Owner: L & C Horning LLC. Applicant: Tri-State Improvements, LLC; Property Location: Maddex Dr, Shepherdstown WV; Parcel ID: 09000800170001; Size: ~0.43 acres; Zoning District: Residential Growth (File: 23-8-PCW).

Ms. Brockman provided an overview of the staff report.

The applicant's engineer, Richard Klein with Alpha Associates, Inc. explained the nature of the request to the Planning Commission.

Mr. Shepp opened the public hearing. There was no public comment. Mr. Shepp closed the public hearing.

Mr. Louthan made a motion to approve the waiver as presented. Mr. Fisher seconded the motion, which carried unanimously.

5. **Public Hearing:** Request for a waiver from Section 20.203B of the Subdivision Regulations, which requires a Full Site Plan for any development that does not meet the Limited Site Plan Standards. The applicant is requesting to waive the requirement of a Full Site Plan for up to two 2,500 sq. ft. octagonal dog kennels and a 480 sq. ft. shed roof overhang on one existing building. Property Owner/Applicant: National Humane Education Society; Property Location:

3731 Berryville Pike, Charles Town, WV; Parcel ID: 06001100010000; Size: ~23.36+ acres; Zoning District: Industrial-Commercial (File: 23-9-PCW).

Ms. Brockman provided an overview of the staff report.

The applicant's consultant, Paul Raco with P.J. Raco Consulting, explained the nature of the request to the Planning Commission.

Mr. Shepp opened the public hearing. There was no public comment. Mr. Shepp closed the public hearing.

Mr. Louthan made a motion to approve the waiver as presented. Mr. Fisher seconded the motion, which carried unanimously.

6. **Public Hearing:** Request for a variance from Section 2.1B of the 1979 Subdivision Ordinance (parent to child exemption) to lift the single family restriction to allow for a detached Accessory Dwelling Unit (In-Law Suite). Property Owner/Applicant: Jake Lavoie; Property Location: 1196 Ward Clipp; Parcel ID: 06002800110000; Size: ~17.36 acres; Zoning District: Rural (File: 23-1-PCV).

Ms. Brockman provided an overview of the staff report.

Jake Lavoie, the applicant, explained the nature of the request.

Mr. Shepp opened the public hearing. There was no public comment. Mr. Shepp closed the public hearing.

Mr. Hefestay made a motion to approve the variance as presented. Mr. Fisher seconded the motion, which carried unanimously.

- Agenda Item #3 Public Workshop:** Solar Energy Facility Concept Plan for the Flowing Springs Farm Solar project for a proposed 125 MWac solar electric generating facility and associated battery energy storage system on approximately 660-acres. The project will consist of solar modules, a new substation to connect the solar facility with the electric grid, and underground utilities. The project site has existing high voltage power lines running through the property. (PC File #23-4-SP).

Property Owners/Location/ID/Size/Zoning District

B C Partners, Inc., Property Owner:

Vacant parcel south of Job Corps Road/south of Driswood Elementary School, Shenandoah Junction, WV; Parcel ID: 02000300130000; Lot Size: 104.7 acres; Zoning District: Rural

Butler Family Limited Partnership, Property Owner

Vacant parcel northeast of Old Country Club Rd / east of Aspen Greens Subdivision, Charles Town, WV; Parcel ID: 04001000010000; Lot Size: 133.9 acres; Project Area: 93.8 acres; Zoning District: Residential Growth & Rural

B C Partners, Inc., Property Owner

Vacant parcels east of Old Country Club Road / north of Beallair Subdivision, Charles Town, WV; Parcel ID: 04001000020000; Lot Size: 99.5 acres; Zoning District: Residential Growth & Parcel ID: 04001000030000; Lot Size: 233.5 acres; Zoning District: Residential Growth

Potomac Edison Company, Property Owner

1320 Old Country Club Road (Substation), Charles Town, WV; Parcel ID: 04001000030005; Lot Size: 3.67 acres; Zoning District: Residential Growth

B C Partners, Inc., Property Owner

Vacant parcel west of Shepherdstown Pike, Harpers Ferry, WV; Parcel ID: 04001000100000; Lot Size: 141.1 acres; Zoning District: Residential Growth & Residential-Light Industrial-Commercial

Ms. Brockman provided an overview of the staff report. Ms. Brockman also stated to the Planning Commission that as a result of the court order related to the Zoning Ordinance text amendment, Solar Energy Facilities were listed as a Principal Permitted Use in the areas located within the Preferred Growth Areas and Urban Growth Areas as delineated on the Future Land Use Guide in the Comprehensive Plan. Ms. Brockman stated that the Flowing Springs Farm Solar project is located entirely within the Residential Preferred Growth Area.

Applicants Sam Judd and John Crosby with Enel Green Power, and Kyle Spayd, Civil Engineer with WSP provided an overview of the project. Mr. Judd and Mr. Crosby noted that the proposed design included voluntary vegetative buffers that exceeded the County's requirements and would be placed along the exterior of the project fence to mitigate visual impact. *The PowerPoint presentation was incorporated into the record and is available on the County's website.*

Ms. Brockman reiterated that the project is a Principal Permitted Use and provided an overview of the Public Workshop process. Ms. Brockman noted that the Applicant submitted a list of proffers which were placed on the dais at the start of the meeting..

Mr. Shepp opened the Public Workshop.

- Mr. Kirk Hanneman, Ms. Margaret Sanders, Mr. Mike Hanscom, Mr. Robert Cooper, Mr. Marc Mayrand, Mr. Stephen Welsh, Mr. Pat Masters, and Ms. Melissa Glassock provided public comment.

Mr. Shepp confirmed that no one else in the room wanted to provide comment. Mr. Shepp closed the Public Workshop.

The applicants provided a rebuttal and responded to questions and concerns presented by the public.

The Planning Commission asked the applicant several questions.

Mr. Fisher made a motion to approve the Concept Plan with the Proffers submitted by the applicant and that any outstanding comments from staff be addressed. Mr. Smith seconded the motion, which carried unanimously.

List of Proffers submitted by applicant are attached to the meeting minutes for the record.

7. **Discussion and Action:** Review final approved amendments to WV Code 8A (effective 5/31/23) which will now allow the Planning Commission to authorize staff to have certain rights not previously permitted. This item is for discussion and direction as to whether amendments to the Subdivision Regulations, Bylaws, and/or Zoning Ordinance should be drafted.

Ms. Brockman provided an overview of the final approved amendments to WV Code 8A.

Mr. Shepp suggested that the Planning Commission implement the changes from state law as a policy and to incorporate the changes into the Subdivision Regulations as part of the ordinance rewrite project. Mr. Shepp requested that Ms. Beaulieu forward the information to Mr. Raco (consultant working on ordinance rewrite). Mr. Fisher made a motion to this effect; Mr. Shepp seconded the motion, which carried unanimously.

8. Reports from Legal Counsel

- a. Discuss and review Jefferson County Circuit Court Civil Action No. 2021-C-109.
- b. Review of Zoning Text Amendment File #ZTA19-03 related to solar energy facilities, including discussion of Jefferson County Circuit Court Civil Action No.'s 2021-C- 33 through 37 and Jefferson County Circuit Court Civil Action No.'s 2021- C-46 through 50, and WV Supreme Court No.'s 21-0727, 21-0728, and 21-0731.
- c. Jefferson County Circuit Court Case #CC-19-2022-C-81 (RE: ZTA22-01 Solar Energy Facilities).
- d. Discuss and review for possible action Jefferson County Circuit Court Civil Action No. 2022-C-85.

Mr. Cochran discussed the previous cancelled Special Meeting regarding the scheduled depositions.

9. Planner's Memo.

Ms. Brockman informed the Planning Commission about the upcoming Comprehensive Plan Public Input Work Session taking place on June 5, 2023.

The Planning Commission discussed changing the Comprehensive Plan Work Session start time from 5:00. By unanimous consensus, the start time for comprehensive plan work session meetings was changed to 5:30.

10. President's Report. None.

11. Actionable Correspondence.

12. Non-Actionable Correspondence.

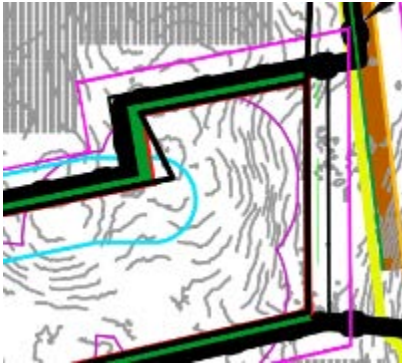
- Email from Alan Dattelbaum and Mary Edwards Re: Dust Control for Large Scale Projects.
- Invitation to Blake Solar Project Re: Ground Breaking Ceremony

Mr. Hefestay made a motion to adjourn the meeting at 8:45 pm. Mr. Fisher seconded the motion, which carried unanimously.

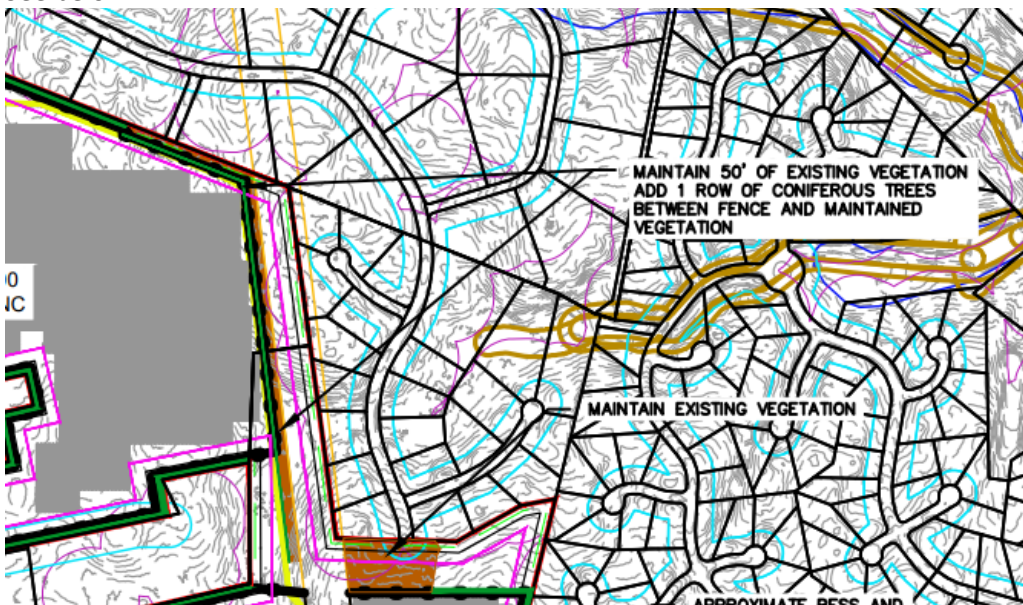
These minutes were prepared by Michelle Evers, Planning Clerk.

Proffers as of May 5, 2023

1. Flowing Springs Farm, LLC will remove red clover from all seed mixes. There was some concern that red clover can carry a fungus that's toxic for horses.
2. Flowing Springs Farm, LLC will push back the proposed project boundary roughly 50 feet near the northwest corner of horse farm, per landowner's request. See below:



3. Flowing Springs Farm, LLC will restrict grass height within the proposed project boundary to 12 inches based on a concern from an adjoining landowner regarding tick habitat.
4. Flowing Springs Farm, LLC will utilize a black chain link fence absent of barbed wire adjacent to all exterior, non-participating property boundaries. This is intended to soften the appearance and enhance the voluntary screening. Interior fencing may be the original galvanized steel and may contain barbed wire.
5. For the homes in the northern area of the project along Breckenridge Road, Flowing Springs Farm, LLC will substitute the planted buffer by keeping intact 50-feet of existing vegetation plus a single row of newly planted evergreen trees. Additionally, Flowing Springs farm, LLC will move the fence to the west side of the transmission easement and behind the aforementioned buffer. See below:



6. For the homes along Girth Lane, Flowing Springs Farm, LLC will remove a small area of panels near the easternmost home and relocate the fence, along with the voluntary buffer, off the property line and further south closer to the panels. Flowing Springs Farm, LLC will also be leaving the existing trees from the non-participating property boundaries to the project fence at the end of Breckenridge Road and on some of Girth Lane to the maximum extent practicable. See below:

