

Meeting Minutes
Jefferson County Planning Commission
September 14, 2021

The Jefferson County Planning Commission met on September 14, 2021 at 7:00 pm with the following Planning Commission members present in person: Mike Shepp, President; Donnie Fisher, Vice President; Wade Louthan, Secretary; Shane Roper, Jack Hefestay, and Steve Stolipher. The following members were present via ZOOM: Ron Thomas and Matt Knott (late arrival 7:03 pm). J. Ware was absent without notice.

Staff members present included Jennifer Brockman, County Planner; Jonathan Saunders, County Engineer (ZOOM); Nathan Cochran, County Attorney; Alexandra Beaulieu, Zoning Administrator; and, Jennilee Hartman, Zoning Clerk.

By order of the President, the Planning Commission meeting was held in person for Commissioners and applicants and virtually via ZOOM for the public. ZOOM meeting information was made available on the agenda and packet, which were posted to the County website.

Mr. Shepp called the meeting to order at 7:00 pm.

1. Approval of the following meeting minutes:
 - August 10, 2021: Mr. Shepp called for a vote on the minutes as presented, which carried unanimously.
 - August 31, 2021: Mr. Shepp called for a vote on the minutes as presented, which carried unanimously.
 - May 11, 2021 (as revised): Mr. Shepp called for a motion on the minutes as revised. Mr. Hefestay moved to approve the minutes as revised. Mr. Stolipher seconded the motion, which carried unanimously.
2. Request for postponement. None.
3. **Public Hearing:** Postponed from 08/10/21 meeting. Request to lift the single family restriction from Lot 1 of the John Orndorff Minor Subdivision (PC File 94-11: Note #3), to allow for the construction of a 3 bedroom/2 bath house with 1 bedroom/1 bath in-law suite. Owner: Nicole Picciotto. Property Location: John Orndorff Minor Subdivision, Lot 1 (Elmwood Farm), vacant parcel on Peaceful Breeze Ln, Shepherdstown, WV. Tax District: Shepherdstown (09); Tax Map: 12; Parcel: 8; Size: 12.99 ac; Zoning District: Rural; File: 21-12-Q.

Ms. Brockman provided an overview of her staff report to the Commission. Ms. Nicole Picciotto, property owner, briefly explained the nature of the request.

Mr. Shepp opened the public hearing. There were no members of the public signed up to speak. Mr. Shepp closed the public hearing.

Mr. Hefestay moved to approve the request for a final plat amendment. Mr. Fisher seconded the motion, which carried unanimously.
4. **Public Workshop:** Concept Plan for Rexroat Agriculture Special Event Facility (weddings and group gatherings); Farm vacation Enterprises (lodging for guests); Pick your own crop, Bed and Breakfast (possible future expansion). Owner: Russel and Cyndi Rexroat; Property Location: 191 Myerstown Rd., Charles Town, WV. Tax District: Kabletown (06); Tax Map: 10; Parcel: 3.2; Size: 15.78 acres; Zoning District: Rural; File: 21-6-SP.

Ms. Brockman provided an overview of her staff report to the Commission noting that the proposal was consistent with the goals of the comprehensive plan. Ms. Cyndi Rexroat, property owner, explained the nature of the request. Addressing the written comments from concerned neighbors, Ms. Rexroat stated that all of the proposed parking would be located towards the rear of the subject parcel. Ms. Rexroat also noted that it was her intent to eventually construct a building, which will help mitigate the noise concerns.

Mr. Shepp opened the public hearing. There were no members of the public signed up to speak. Mr. Shepp closed the public hearing.

Mr. Hefestay moved to accept the concept plan as presented. Mr. Roper seconded the motion, which carried unanimously.

5. **Public Workshop:** Concept Plan for Shepherd View Apartment Complex (Minor Site Plan). The proposal consists of 40 2-bedroom apartments in five (5) buildings with associated open space and infrastructure. Owner: AAL, LLC; Property Location: 8285 Martinsburg Pk, Shepherdstown, WV. Tax District: Shepherdstown (09); Tax Map: 08; Parcels: 17.2 & 17.3; Size: 3.77 acres (2.21 & 1.56 acres); Zoning District: Residential Growth (eastern half) and Residential-Light Industrial-Commercial (western half); File: 21-9-SP.

Ms. Brockman provided an overview of her staff report to the Commission noting that the subject property had previously recorded a final plat for the development of 25 townhomes. Ms. Brockman explained that the applicant would need to process a boundary line adjustment plat that vacated the existing townhome development plat for Seneca Crossing North in order to allow for the development of the apartments on a single parcel.

Mr. Paul Raco, consultant, was present to address the Commission. Mr. Raco noted that Mr. Eric Lewis, project applicant; and, Mr. Joe Knechtel, project engineer with Potesta, were available to answer any Commissioner questions. Mr. Raco explained the nature of the project. Mr. Raco argued that the impact of the proposed apartment complex was only slightly greater than that of the previously approved townhome development. Mr. Raco noted that Seneca Crossing North had the potential to offer approximately 75 bedrooms verses the current apartment proposal consisting of 80 bedrooms.

Mr. Shepp opened the public hearing. Mr. David Pugh, Shepherdstown resident, explained that he was generally opposed to the project and requested that the applicant retain the existing tree line along the front of the property, that the design of the apartment buildings be in keeping with Shepherdstown architecture, and that some form of access be provided between the apartments and the adjoining university property. Mr. Shepp closed the public hearing.

Mr. Raco spoke in rebuttal noting that the project's applicants have retained a local architect to ensure the project design is in keeping with the local architecture. Mr. Raco also noted that while the apartments are not necessarily marketed towards university students that they are in discussions with Shepherd University regarding a proposed pedestrian access. Mr. Lewis noted that Christian Asam, owner of the Bavarian, is also a partner in the project. Mr. Lewis emphasized that their goal was to design a project that would be an asset to the Shepherdstown area. Mr. Raco also confirmed that he was aware of the City of Shepherdstown's interest in stormwater management.

Mr. Fisher moved to accept the concept plan as presented. Mr. Hefestay seconded the motion, which carried unanimously.

6. **Public Hearing:** Waiver from Section 21.401D to allow a 24 ft. pool to be 8 ft. into a platted access easement. Owner: Kimberly and Paul Taulton. Property Location: 355 Patriots Way, Harpers Ferry, WV; Tax District: Kabletown (06); Tax Map: 26; Parcel: 1.3; Parcel Size: 3.03 acres; Zoning District: Rural; File: 21-14-PCW.

Ms. Brockman provided an overview of her staff report to the Commission noting that while two other lots had the right to use the subject access easement, that it appears the easement has not historically been used. Kimberly and Paul Taulton, owners, briefly explained the nature of the request. The applicants noted that their neighbors did not object to the request.

Mr. Shepp opened the public hearing. There were no members of the public signed up to speak. Mr. Shepp closed the public hearing.

Mr. Louthan moved to approve the waiver request as presented. Mr. Roper seconded the motion, which carried unanimously.

7. **Public Hearing:** Waiver from Section 20.201 to allow the subject parcels to process as Minor Subdivision after the applicant processes a transfer of development rights under Section 5.7D.1.b from Parcel 8 to Parcel 12.9. Owner: BML LLC; Property Location: 1963 Kearneysville Pike, Shepherdstown, WV; Tax District: Shepherdstown (09); Tax Map: 15; Parcel 8 (88.205 acres per PB26/PG250) and Parcel 12.9 (3.478 acres per PB26/PG209); Zoning District: Rural; File: 21-15-PCW.

Ms. Brockman provided a detailed overview of her staff report to the Commission. Ms. Brockman explained the development rights of each parcel and noted that transferring development rights from one adjoining parcel to another had historically been utilized to conserve open space while ensuring adequate infrastructure for the proposed subdivision. Ms. Brockman informed the Commission that the end-result of granting the request would allow the applicant to process two minor subdivisions with two entrances as opposed to a single subdivision that would necessitate, at minimum, a County grade gravel road and supporting stormwater management. Ms. Brockman expressed concern that the proposed access easements would be inefficient for the intended development of the site.

Mr. Brant Lowe with BML, LLC; property owner, explained the nature of the request to the Commission. Mr. Lowe argued that the proposed development of the two subject parcels did not increase the overall development rights in the area. Mr. Lowe added that the entrances would require the approval of the West Virginia Division of Highways. Mr. Lowe addressed questions from the Commission.

Mr. Shepp opened the public hearing. There were no members of the public signed up to speak. Mr. Shepp closed the public hearing.

Mr. Stolipher moved to approve the waiver request as presented. Mr. Louthan seconded the motion, which carried unanimously.

8. **Public Hearing:** Waiver from Appendix B, Section 10.5 to allow an approved fitness center to utilize an existing gravel storage lot for approximately 20 additional parking spaces as opposed to a paved surface.. Owner: JD Land Holdings Inc. Applicant: True Performance Fitness LLC; Property Location: 362 W. Burr Blvd. Kearneysville, WV; Tax District: Charles Town (02); Tax Map: 1; Parcel: 74; Size: 3.65 acres; Zoning District: Industrial-Commercial; File: 21-16-PCW.

Ms. Brockman provided an overview of her staff report to the Commission. Mr. Paul Holtzberger, with True Performance Fitness, applicant, explained the nature of the request noting that there is generally a faster turn-over in customer parking for this particular type of land use. Mr. Holzberger argued that all of the required parking spaces would not be utilized at any given time.

Mr. Shepp opened the public hearing. There were no members of the public signed up to speak. Mr. Shepp closed the public hearing.

Mr. Hefestay moved to approve the waiver request. Mr. Fisher seconded the motion, which carried unanimously.

9. **Public Hearing:** Waiver from Section 24.113.B.10 to waive the Preliminary Plat requirement for an Archaeological Study for the Hunter Hills Subdivision. Owner: Ernest Hunter, et.al. Applicant: Joshbeen Grewal, ILA Properties; Property Location: 4469 Charles Town Road, Kearneysville, WV; Tax District: Middleway (07); Tax Map: 1; Parcel: 2; Size: ~107 acres; Zoning District: Residential-Light Industrial-Commercial; File: 21-17-PCW.

Mr. Stolipher recused himself from this item and vacated the meeting room.

Ms. Brockman provided an overview of her staff report to the Commission noting that the Commission had typically approved this type of a request as the Subdivision Regulations did not adequately define the type of information required in the Archaeological Study. Mr. Paul Raco, consultant, briefly explained the nature of the request. Mr. Raco argued that due to the ambiguity of the Subdivision Regulations, the applicant would not be able to provide the necessary information. Mr. Raco noted for the record that during the concept plan public workshop, that the applicant had proffered to walk the property and should any relevant findings be discovered during construction that they would be provided to the appropriate agency. Mr. Raco added that since the subject parcel had been an active farm, that any relevant archaeological discoveries would most likely have been unearthed at that time.

Mr. Shepp opened the public hearing. Ms. Anastasia Tabb, Shepherdstown resident, spoke in opposition to the request. Ms. Tabb argued that a lack of clarity within the Regulations was not a substantial reason to waive the requirement of an Archaeological Study. Ms. Tabb added that staff had the discretion to request the type of information they deemed necessary for such a study. Mr. Shepp closed the public hearing.

Mr. Raco spoke in rebuttal noting that an applicant had to the right to a clear process. Mr. Raco explained that vague text, such as the Archaeological Study requirement, leaves room for a differing interpretation between staff and proposed projects. Mr. Raco noted that this type of discretion is ultimately unfair to applicant.

Mr. Fisher moved to approve the waiver as presented. Mr. Thomas seconded the motion, which carried six (6) in support, one (1) recusal (Mr. Stolipher), and one (1) abstention (Mr. Hefestay).

Mr. Stolipher returned to the meeting room.

10. **Public Hearing:** Waiver from Section 24.113.B.10 to waive the Preliminary Plat requirement for an Archaeological Study for the Milton's Landing Subdivision. Owner/Applicant: Lutman Land Development; Property Location: 8554 Summit Point Road, Charles Town, WV; Tax District: Charles Town (02); Tax Map: 11; Parcel: 30 and 30.2; Size: 67.6+- acres; Zoning District: Residential Growth; File: 21-18-PCW.

Ms. Brockman provided an overview of her staff report to the Commission reiterating that the Commission had typically approved this type of a request as the Subdivision Regulations did not adequately define the type of information required in the Archaeological Study. Mr. Paul Raco, consultant, briefly explained the nature of the request. Mr. Raco argued that due to the ambiguity of the Subdivision Regulations, the applicant would not be able to provide the necessary information. Mr. Raco explained that vague text, such as the Archaeological Study requirement, leaves room for a differing interpretation between staff and proposed projects. Mr. Raco noted that this type of discretion is ultimately unfair to applicant. Mr. Raco added that since the subject parcel had been an active farm, that any relevant archaeological discoveries would most likely have been unearthed at that time.

Mr. Shepp opened the public hearing. There were no members of the public signed up to speak. Mr. Shepp closed the public hearing.

Mr. Fisher moved to approve the waiver as presented. Mr. Stolipher seconded the motion, which carried unanimously.

11. **Review and Discuss:** First draft of proposed zoning text amendment to create provisions to allow short term rentals to process in Jefferson County (PC File #ZTA21-01). The proposed text amendment to the Zoning and Land Development Ordinance includes revisions to Article 2, Section 2.2 “Definitions”; Article 8, Supplemental Use Requirements (proposed Section 8.16 Short Term Rentals); and Appendix C, Principal Permitted and Conditional Uses Table.

Ms. Beaulieu provided an overview of the proposed text amendment. After a brief discussion of its purpose and some minor edits suggested by staff, Mr. Stolipher moved to schedule a public hearing for October 12, 2021. Mr. Hefestay seconded the motion, which carried unanimously.

Mr. Stolipher and Mr. Roper recused themselves from the following Item (12) and vacated the meeting room.

Mr. Cochran suggested the Commission go into an executive session to receive counsel for Agenda Items 12 and 13. Mr. Shepp moved to go into executive session to receive legal counsel on potential and pending litigation at 8:38 pm. Mr. Hefestay seconded the motion, which carried unanimously.

Mr. Hefestay moved to come out of executive session at 9:20 pm, which carried unanimously.

12. Review and Discuss the County Commission’s directive from 09/02/21 regarding an amendment to the Comprehensive Plan to identify and secure the role of solar facilities throughout the rural and residential zoning districts in Jefferson County, including consideration of an amendment to the Jefferson County Comprehensive Plan in accordance with WV Code 8A-3-11, 8A-3-6, and related statutes to clarify and/or state that solar facilities are principal permitted uses in the rural and residential zoning districts.

- a. Discussion and Possible Action to establish a schedule for the amendment process.

In order to meet the processing timeframe outlines in WV State Code, Mr. Hefestay moved to call the following special meetings:

- September 28, 2021: a workshop to receive public input for writing the draft amendment.
- October 5, 2021: for Staff to review and discuss the proposed amendment with the Planning Commission.
- November 16, 2021: a Public Hearing on the proposed draft amendment.

Mr. Shepp offered an amendment to the motion to include providing staff direction to draft the amendment at the September 28, 2021 meeting. Mr. Hefestay accepted the amendment.

Mr. Fisher seconded the motion, which carried unanimously.

Mr. Shepp noted he would be unable to attend at the October 5, 2021 meeting due to a scheduling conflict.

13. Reports from Legal Counsel

- a. Discuss and review Jefferson County Circuit Court Civil Action No. 2021-C-109. Due to a legal technicality in processing, Mr. Cochran informed the Commission that his office had filed motion to dismiss. The case is still pending.
- b. Review of Zoning Text Amendment File #ZTA19-03 related to solar energy facilities, including review of Jefferson County Circuit Court Civil Action No. 2021-C-33. Mr. Cochran informed the Commission that his office had filed motion to appeal. The case is still pending.

No additional action was taken.

14. Planner's Report

Ms. Brockman noted that the next regularly scheduled meeting would be October 12, 2021.

15. President's Report. None.

16. Actionable Correspondence. None.

17. Non-Actionable Correspondence.

- a. Ruthlee Holler Email – Short Term Rentals. Ms. Hollar's email was included in the packet.

Mr. Hefestay moved to adjourn the meeting at 9:40 pm. Mr. Louthan seconded the motion, which carried unanimously.

These minutes were prepared by Jennilee Hartman, Zoning Clerk.