

Meeting Minutes  
Jefferson County Planning Commission  
October 12, 2021

The Jefferson County Planning Commission met on October 12, 2021 at 7:00 pm with the following Planning Commission members present in person: Donnie Fisher, Vice President; Jack Hefestay, Shane Roper, and Matt Knott. The following members were present via ZOOM: Ron Thomas and Steve Stolipher (late arrival 7:05 pm). Wade Louthan, Secretary (late arrival 7:17 pm).

Mike Shepp, President, was absent with notice. J. Ware was absent without notice.

\*Note, due to technical difficulties, Mr. Stolipher's connection via ZOOM was intermittent.

Staff members present included Jennifer Brockman, County Planner; Alexandra Beaulieu, Zoning Administrator; Nathan Cochran, County Attorney; Will Rohrbaugh, County's legal representative; 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.

In Mr. Shepp's absence, Mr. Fisher presided over the meeting. Mr. Fisher called the meeting to order at 7:00 pm. Ms. Brockman conducted a roll call.

1. Approval of the following meeting minutes:

Mr. Hefestay moved to approve the September 14, 2021, September 28, 2021, and October 5, 2021 minutes as presented, which carried unanimously.

2. Request for postponement. None.

3. **Public Hearing:** Request for a Final Plat Amendment for Lot 21 of the Sheridan Subdivision, Phase II to allow an in-ground pool and fence to be located within a platted drainage easement (see Note #15 on Final Plat / PC File 05-26). Property Owner: Kara and Matthew Durrschmidt; Property Location: Sheridan Subdivision, Lot 21, 441 Chickamauga Dr., Harpers Ferry, WV. Parcel ID: 04009D00210000; Size: 0.83 ac; Zoning District: Residential Growth; File: 21-19-Q.

Ms. Brockman provided an overview of her staff report and described the topography of the subject parcel. Ms. Brockman noted that on September 23, 2021, the Board of Zoning Appeals had approved a setback variance for the proposed pool. Mr. Matthew Durrschmidt, property owner, briefly explained the nature of the request and answered questions from the Commission regarding drainage. Mr. Durrschmidt agreed to accept liability should the pool negatively affect drainage.

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

Mr. Hefestay moved to approve the request for a final plat amendment with the condition that the homeowner accept liability if any issues arise from the installation of the pool. Mr. Thomas seconded the motion, which carried unanimously.

4. **Public Workshop:** Concept Plan for Colonial Hills Subdivision, Phase 3B (Major Residential Subdivision), which will consist of 20 townhome units with associated parking spaces. Owner/Applicant: KE Colonial Hills, LLC; Property Location: Colonial Hills Subdivision, Lots C1 and C2, vacant parcels; eastern side of Potomac Farms Drive approximately 0.25 miles north of the intersection of Rte. 480 and Potomac Farms Dr. Shepherdstown, WV; Parcel ID: 09000800100000; Size: 2.54 ac; Zoning District: Residential Growth; File: 21-26-SD.

Ms. Brockman provided an overview of her staff report noting that the proposed subdivision was a continuation of the existing Colonial Hills Subdivision. Ms. Brockman explained that the property was comprised of two lots that had been previously platted for commercial development and that the current proposal would dissolve the commercial lots.

Mr. Wade Louthan, Planning Commission member, joined the meeting via ZOOM at 7:17 pm.

Mr. Ryan Perks with Integrity Federal Services and Rick Fink with KE Colonial were present to address the Commission. Addressing the Commission inquiry, Mr. Fink stated that he did not have an estimated timeline for the project build-out. Mr. Fink clarified that build-out of the project is dependent on receiving a commitment from a builder/developer. The Commission also discussed the status of using Lowe Drive as a connector road with Staff and the project representatives.

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

Mr. Thomas moved to accept the concept plan as presented noting that the applicant may move forward with processing a preliminary plat. Mr. Knott seconded the motion, which carried unanimously.

5. **Public Hearing:** Waiver request from Section 20.203B.1 of the Subdivision Regulations, which requires a Site Plan for any building and/or parking lot greater than 1,200 square feet. The applicant is requesting to waive the requirement of a site plan for a 1,500 square foot building, plus a 960 square foot of parking lot. Owner/Applicant: Chris Livingston, Dead Rock Contractor Services. Property Location: Vacant parcels located off Shipley School Road / located between Shipley School and Meadows Farm Nursery, Harpers Ferry, WV. Parcel IDs: 04000900230000 and 04000900270000; Combined Size: .86 ac; Zoning District: General Commercial; File: 21-19-PCW.

Ms. Brockman provided an overview of her staff report noting that the applicant had previously received approval to rezone the property and had obtained approval from the Board of Zoning Appeals to reduce the distance and buffering requirements for the project. Ms. Brockman highlighted some of the basic criteria that a site plan would typically address.

Mr. Chris Livingston, owner of Dead Rock Services, LLC, briefly explained the nature of the request. Mr. Livingston argued that because the proposed parking area was only for staff, that a site plan did not appear necessary. Ms. Brockman clarified that any land use that requires parking spaces in accordance with the Zoning Ordinance is required to process a site plan.

Mr. Fisher opened the public hearing. Ms. Anastasya Tabb, resident, questioned where the entrance to the property would be located. Mr. Livingston addressed Ms. Tabb's question. Mr. Fisher closed the public hearing.

Ms. Brockman clarified that should the Planning Commission grant the request that neither sidewalks or stormwater management would be addressed.

Mr. Thomas moved to approve the waiver request as presented. Mr. Hefestay seconded the motion. Mr. Fisher called for a vote, which carried four (4) in support and two (2) opposed (Mr. Fisher and Mr. Knott). Note: Mr. Stolipher no longer appeared to be connected via ZOOM.

6. **Public Hearing:** Proposed text amendment to the Jefferson County Zoning and Land Development Ordinance to create provisions to allow Short Term Rentals to process as a Principal Permitted Use in any zoning district that allows a single family dwelling including the following zoning districts: Planned Neighborhood Development (PND), Rural (R), Residential Growth (RG), Residential-Light Industrial-Commercial (RLIC), and Village (V). The draft text amendment includes revisions to Article 2, Section 2.2 Definitions; Article 8 Supplemental Use Regulations (creation of Section 8.16 Short Term Rentals); and Appendix C Principal Permitted and Conditional Uses Table. PC File #ZTA21-01.

Ms. Beaulieu provided an overview of the proposed text amendment. Ms. Gillian Beach, sanitarian with the Jefferson County Health Department, briefly explained their process for short term rental facilities.

Mr. Fisher opened the public hearing and noted that members of the public would be allotted three (3) minutes to provide testimony.

The following members of the public provided testimony:

- Lauren McInnes, McShane's Landing, Shepherdstown (ZOOM): requested that the amendment include density caps on number of units permissible in a given area as a means to address affordable housing issues; and recommended adding occupancy limits. Ms. McInnes requested that if there is a clear violation with a short term rental that the County consider creating a clear process for neighbors to express concerns.
- Lynn Pechuekonis, Fillmore Street, Harpers Ferry, (ZOOM): Jefferson County Convention and Visitors Bureau Board member, and recently designated as the bnb representative. Ms. Pechuekonis expressed concerns regarding the potential conflict created between the existing definition of dwelling unit and the proposed definition of Short Term Rental. Ms. Pechuekonis stated that it may be confusing as to how to address parking standards and Health Department approvals when operating a short term rental that provides options between 7-30 consecutive days. Ms. Pechuekonis stated that the definition in state code applies to rentals less than 30 consecutive days. Ms. Pechuekonis also inquired about the office's stance regarding enforcement of the proposed regulations on existing operations (grandfathered properties).

- Chris Rife, Knott Road, Shepherdstown, (in-person): agreed that there should be a grace period for properties to come into compliance. Ms. Rife expressed concerns regarding the County's enforcement provisions and inquired about enforcement of the proposed regulations.

Ms. Beaulieu noted that the following individuals submitted public comment after the packet had been posted (10/08/21): Eddie Love, Josh Nimetz, Robert Blanck, Rockhaven B&B, Jamie Wilkie, and Samantha Nimetz. Copies of these comments were provided to the Commission.

Ms. Beaulieu explained that any land use that legally operated under the current Zoning Ordinance would be considered a legal nonconforming use (grandfathered), and as such, may continue to operate as it had been. Ms. Beaulieu added that any land use that was not operating in conformance with the definition of a *Dwelling Unit* or *Bed and Breakfast* would not be considered a legal nonconforming use and would be considered to be in violation of the County's regulations. Ms. Beaulieu noted that other governing agencies, such as the Health Department, may have different regulations pertaining to grandfathered land uses and that property owners should contact individual governing agencies to ensure compliance.

Mr. Fisher closed the public hearing.

The Commission unanimously agreed to the following revisions to the proposed text amendment:

1. Change Bed and Breakfast in the Planned Neighborhood Development zoning district from Not Permitted to Permitted;
2. Correct a typo in the last paragraph under Section 8.16 (*enforces* to *enforced*);
3. Revise the text to allow parking in other designated parking areas; and
4. To allow properties in the Residential-Light Industrial-Commercial zoning districts to comply with the commercial sign provisions in Article 10.

Mr. Fisher made a motion that the Planning Commission finds that the revised text amendment is in conformance with the *Jefferson County Envision Jefferson 2035 Comprehensive Plan* and recommended forwarding the revised text amendment to the County Commission. Mr. Thomas seconded the motion, which carried unanimously. The Commission agreed that they did not need to see the final revisions before forwarding the text to the County Commission.

7. Discussion and Possible Action: Review and recommendation of proposed text amendment to the *Jefferson County Envision Jefferson 2035 Comprehensive Plan* (Plan) to clarify and/or state that solar facilities are principal permitted uses in the rural and residential zoning districts in preparation for the 12/07/21 Public Hearing.

Ms. Brockman provided a brief overview of the proposed text amendment to the Plan and the changes since the October 5<sup>th</sup> version. The Commission agreed that Ms. Brockman did not have to review the amendment in its entirety. Mr. Fisher noted that Mr. Roper and Mr. Stolipher were not in attendance (via ZOOM) for this item. [Note: Mr. Roper and Mr. Stolipher were not in attendance for the remainder of the meeting.]

Mr. Cochran suggested the Commission go into an executive session to receive counsel concerning the comprehensive plan amendment process.

Mr. Hefestay moved to go into executive session at 8:51 pm. Mr. Fisher seconded the motion and stated that the Planning Commission would go into executive session to receive legal counsel concerning the comprehensive plan amendment process.

Mr. Hefestay moved to come out of executive session at 9:34 pm. Mr. Thomas seconded the motion, which carried unanimously.

Mr. Thomas moved to accept the edits presented by staff and to move forward with the public hearing scheduled for December 7, 2021. Mr. Hefestay seconded the motion, which carried unanimously.

8. Discussion and Approval: Planning and Zoning Quarterly Report for FY 2021-2022 1<sup>st</sup> Quarter

Mr. Fisher moved to accept the Report as presented and to forward it to the County Commission, which carried unanimously.

9. 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 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.

Mr. Cochran provided an update to the Commission. No additional action was taken.

10. Planner's Memo. Ms. Brockman noted that the next regularly scheduled meeting would be November 9, 2021 and a Special Meeting on December 7, 2021.

11. President's Report. None.

12. Actionable Correspondence. None.

13. Non-Actionable Correspondence . None.

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

These minutes were prepared by Jennilee Hartman, Zoning Clerk.