

Meeting Minutes
Jefferson County Planning Commission
April 12, 2022

The Jefferson County Planning Commission met on April 12, 2022 at 7:00 pm with the following Planning Commission members present: Mike Shepp, President; Matt Knott, Vice President; Wade Louthan, Secretary; Steve Stolipher County Commission Liaison (Late with Notice); Jack Hefestay, Donnie Fisher, J. Ware, and Shane Roper (via ZOOM). Ron Thomas was absent with notice.

Staff members present included Jennifer Brockman, County Planner; Alexandra Beaulieu, Zoning; Tanya Lyons Planning Clerk; Jonathan Saunders County Engineer; Nathan Cochran, County Attorney; and Via Zoom-Will Rohrbaugh, County's legal representative.

The Planning Commission meeting was held as a hybrid meeting. The Hybrid 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. and confirmed that a quorum was present.

1. Approval of the meeting minutes:

Hearing no objection, Mr. Shepp approved the March 08, 2022 minutes as presented.

2. Request for postponement. None.

Mr. Shepp recused himself from agenda items 3 & 4 and left the room. Mr. Knott ran the meeting as Vice President.

3. Public Workshop: Sleepy Hollow Wireless Telecommunications Facility Concept Plan. The purpose of this plan is to construct a 150' telecommunication monopole tower within an existing substation compound Applicant: Richard Marquiss/First Energy. Property Owner: The Potomac Edison Company. Property Location: 1320 Old Country Club Road, Charles Town, WV. Parcel ID: 04001000030005; Size: 3.6692 acres; Zoning District: Residential Growth. File: 22-1-SP.

Ms. Jennifer Brockman presented the staff report describing the location of the property and providing an overview of the requirements of the Zoning Ordinance and Subdivision Regulations. The required balloon tests have been done and the applicants have documented the needs for coverage in this area.

Mr. Richard Marquiss, the applicant with First Energy, stated that their request is to install a 150' telecommunications monopole inside their existing substation in Sleepy Hollow. This monopole is being installed for company use only and it will not be provided for use by other cell providers.

Mr. Knott opened the Public Hearing. No comments were received. The Public Hearing was closed.

Jack Hefestay made a motion to accept the Concept Plan as submitted. Matt Knott amended the motion to state the request complies with Article 4B of the Zoning Ordinance and *Envision Jefferson 2035 Comprehensive Plan*. Mr. Hefestay accepted the amendment. Donnie Fisher seconded the motion, which was approved unanimously.

4. Public Hearing: Request for waiver of Section 11.1.B. which requires a site plan for all new telecommunication towers (Sleepy Hollow Wireless Telecommunications Facility). Applicant: Richard Marquiss/First Energy Property Owner: The Potomac Edison Company. Property

Location: 1320 Old Country Club Road, Charles Town, WV. Parcel ID: 04001000030005; Size: 3.6692 acres; Zoning District: Residential Growth. File: 22-8-PCW.

Ms. Jennifer Brockman presented the staff report and stated that the Subdivision Regulations and Zoning Ordinance require both a site plan and a concept plan. A site plan is administratively approved. The applicant is requesting a waiver of site plan because the proposed tower is on a developed site with no new disturbed area and no additional parking. Staff notes that the uniqueness of the installation within a previously developed electrical substation makes the requested no site plan a reasonable request.

Mr. Marquiss, the applicant, asked John Mellham, their engineer, to speak. Mr. Mellham said that there will be no extra disturbance and the little excavation they need to do from the concrete and will be hauled offsite.

Mr. Knott opened the Public Hearing. No public comment was received. The Public Hearing was closed.

Mr. Donnie Fisher made a motion to grant the request to waive section 11.1.B with requirements that they submit a sketch to document they meet the no site plan criteria. Mr. Jack Hefestay seconded the motion, which was approved unanimously.

Mr. Shepp returned to the meeting.

5. **Public Hearing:** Final Plat Amendment to allow a 22' x 44' inground pool with surrounding concrete to be located within a platted 10' drainage/utility easement. See Note #15 on Final Plat / PC File 05-26. Property Owner/Applicant: Melissa & Lucas Palmer; Property Location: Sheridan Subdivision, Phase II, Lot 160, 68 Wilderness Court, Harpers Ferry, WV. Parcel ID: 04009D01600000; Size: 0.388 ac; Zoning District: Residential Growth; File: 22-1-FPA.

Ms. Jennifer Brockman presented the staff report describing the location of the property and providing an overview of the requirements of the Regulations. She explained that the Sheridan plat included a note providing a 10ft wide utility easement for every lot. Because of this, Planning Commission action is required to amend the plat. Ms. Brockman noted that there is no storm water management on this particular lot and that approval should include the condition that if there is any negative effect on the drainage in that area, the project is undertaken at the homeowner's risk and the homeowner will need to work with the HOA and impacted properties to resolve the issue. .

The applicant, Ms. Palmer, commented that the staff presentation addressed all of their concerns. Ms. Palmer also stated that they also applied for a Zoning Variance to the BZA to reduce the setbacks to 5' on the back and side yards, which was approved.

Mr. Shepp opened the Public Hearing. There were no public comments and Mr. Shepp closed the Public Hearing.

Mr. Louthan asked Mr. Jonathan Saunders why he had no comments about the drainage. Mr. Saunders explained if the construction resulted in an issue with drainage, it would be their responsibility to fix it at the owner's expense.

Mr. Donnie Fisher motioned to approve the Final Plat Amendment with Ms. Brockman's recommendation that the project is undertaken at the homeowner's risk and the homeowner will need to work with the HOA and impacted properties to resolve the any negative drainage issue.

Jack Hefestay seconded the motion, which passed unanimously.

Mr. Matt Knott recused himself and left the room from Agenda Item #6.

6. **Public Hearing:** Final Plat Amendment to allow a 12' x 5.5' deck to be located within a platted 12' drainage/utility easement. Property Owner/Applicant: John & Melissa Knott; Property Location: Aspen Green Subdivision, Phase 1A, Lot 20, 80 Quaking Aspen Way, Charles Town, WV. Parcel ID: 02004G00200000; Size: .3179 acre; Zone: Rural. File: 22-2-FPA.

Ms. Jennifer Brockman presented the staff report explaining that this lot in the first phase of Aspen Green. The side property line property abuts the major drainage way serving the entire subdivision. The proposal is to construct a deck that crosses 4' into the 12' platted drainage easement. There is a provision in the Zoning Ordinance that says a structure can go 4' into that setback as long as the deck is no longer than 10'; however, this deck is proposed to be 12' long.

The applicant, Mr. John Knott, requests approval of the requested 4' intrusion into the utility/drainage easement as it will not negatively affect the neighbors or the drainage as the deck will be 24' off the ground. He stated that they are going to reduce the size of the deck to a 10'x5' so the BZA Variance will not be required.

Mr. Shepp opened the Public Hearing. There was no public comment. Mr. Shepp closed the Public Hearing.

Mr. Jack Hefestay made a motion to approve the waiver request with staff contingencies Mr. Knott acknowledged that they fully understand that if there is a negative effect of drainage in that area he will be responsible and will have to work with the HOA to resolve any issues. Mr. J. Ware seconded the motion; which was approved unanimously.

Matt Knott returned to the meeting.

7. **Public Hearing:** Final Plat Amendment to allow the construction of a detached accessory dwelling unit for a family member. See Note #4 on Final Plat / PC File 01-17. Property Owner/Applicant: John Rolfe; Property Location: Wright's Field Subdivision, Lot 14, 708 Rudder Road Shepherdstown, WV. Parcel ID: 09013A00140000; Size: 4.07 ac; Zoning District: Rural; File: 22-3-FPA.

Ms. Jennifer Brockman described the location of this property and provided an overview of the staff report, stating that this is an older development and that all older subdivisions included a note that each parcel is restricted to one single family residence unless otherwise approved by the planning commission. The applicants are proposing an accessory dwelling unit for a family member, attached to a detached garage. Because this is a note on the final plat previously approved by the Planning Commission, a Final Plat Amendment is required to be approved by the Planning commission to allow this change. The applicant, Mr. John Rolfe, agreed with Ms. Jennifer Brockman's presentation regarding his application.

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

Mr. Donnie Fisher motioned to approve the Final Plat Amendment to allow the in-law suite. Mr. J. Ware seconded the motion, which carried unanimously.

8. **Public Hearing:** Request for waiver of Section 20.201A.2.b to reduce the required road frontage from 200' to 161' for a proposed two lot minor subdivision consisting of one 3-acre lot for a

proposed gas station and convenience store (zoned Highway Commercial) and a vacant 1.4 acre lot (zoned Rural). Applicant: Bob Franks, Sheetz, Inc. Property Owner: Guy Chicchirichi; Property Location: NE of US 340 & Augustine AVE. Intersection, Charles Town, WV Parcel ID: 02001600010000; Size: 4.41 ac; Zoning District: Highway Commercial/Rural; File: 22-6-PCW.

Ms. Jennifer Brockman reviewed the staff report, reminding the Planning Commission that this property had been before them for rezoning to Highway Commercial. The applicants are now processing a Major Site Plan for the commercial portion of the property but need to subdivide along the zoning line. The request is to process this as a Minor Residential Subdivision, which would require 200' of road frontage. Staff noted that even if this waiver is approved, the applicant will be required to receive WV DOH approval which will be impacted by the relationship to the Huntfield subdivision entrance, the Washington High School entrance, and the new proposed Sheetz entrance.

The applicant's representative, Chad Wallen, said that they have been working with WV DOH for the Sheetz entrances and have made modifications to the design as required by WV DOH.

Mr. Shepp opened the Public Hearing.

Ms. Marcus spoke as a public citizen. She asked the Planning Commission to enforce the requirements of the Subdivision Regulations. Ms. Marcus has been concerned about the location of this project from the start. She is concerned about the potential trip generation and the relationship to the safety of the trips coming in and out of the High School. She also noted that there have been multiple deaths at the traffic light intersection of Augustine Avenue and US 340. She believes that adults' and kids' safety is at risk.

There was no other public comment.

Mr. Shepp closed the public Hearing.

Mr. Knott made a motion to approve the request to waive Section 20.201A.2.b. of the Subdivision Regulations to reduce the required road frontage from 200' to 161' for a proposed two lot minor subdivision consisting of one 3-acre lot for a proposed gas station and convenience store and a vacant 1.4 acre lot. Mr. Jack Hefestay seconded the motion for discussion purposes.

Mr. Knott asked if the second lot could have a building in the future. Mr. Wade Louthan asked if the location of another entrance will be WV DOH's decision. Ms. Brockman said that applicant will be required to have WV DOH approval for a second entrance.

Mr. Shepp called the question. The vote was 5 in favor; 1 abstained (Steve Stolipher); and 2 opposed (Wade Louthan and Donnie Fisher). Steve Stolipher noted that he had entered the meeting during this agenda item and would have recused himself if he had known which item was being heard. The waiver request was approved.

Mr. Steve Stolipher recused himself for item #9 and left the room.

9. **Public Hearing:** Request for waiver of Section 20.201A.3 to waive the requirement related to the extension of off-site utilities to allow for a proposed two lot minor subdivision. Applicant: Bob Franks, Sheetz, Inc. Property Owner: Guy Chicchirichi; Property Location: NE of US 340 & Augustine AVE. Intersection, Charles Town, WV Parcel ID: 02001600010000; Size: 4.41 ac; Zoning District: Highway Commercial/Rural; File: 22-7-PCW.

Ms. Jennifer Brockman provided an overview of the staff report and stated this is the same

property as agenda item #8. She noted that there are two main criteria differentiating a minor subdivision and a major subdivision: one is the number of lots and how they access the property; the other is whether the lot requires the extension of offsite infrastructure. In this case, the applicants are requesting that the 1.4 acre division be permitted to process as a minor subdivision without getting health department approval. She stated that Sheetz is processing as a Major Site Plan that is requiring the extension of utilities and the waterline coming from Huntfield subdivision and sewer from the apartments running alongside Route 340. The applicant is requesting that this be taken into consideration for the remaining Rural lot.

Mr. Shepp asked the applicant for more information about access to the Sheetz sanitary sewer line. Mr. Chad Wallen, with Integrity Federal Services, representing the applicant, stated that the sewer will run thru the other properties as a force main they will not have direct access to it. The owner of the rural property would have to install a pump station in order to access the sewer line. He also explained that if the utilities could be extended to the Sheetz property before the subdivision was processed, this waiver would not be required; however, the site plan cannot be approved until the subdivision is approved. Mr Saunders noted that the bonding related to the off-site improvements is also tied to the Site Plan approval.

Mr. Shepp opened the Public Hearing. No public comments. Mr. Shepp closed the public hearing.

Planning Commission members discussed the issues regarding this waiver request. Mr. Shepp asked if there were any more comments or questions. Jack Hefestay made a motion to deny the requested waiver. Mr. Shepp noted that a second was not actually required for a small commission and called the question, reminding that a yes vote is in favor of the denial. The vote was taken and was unanimously denied.

There is no public comment for the following items.

- 10. Discussion and Action:** For the Planning Commission to vote to approve or deny the King's Crossing Preliminary Plat Application as complete in accordance with Sections 24.113 and 24.114 of the Subdivision Regulation, for the purpose of scheduling a Public Hearing for this application. Property Owner: DR Acquisitions LLC. Property Location: Parcel ID: 0200170022; Size: 86 acre; Zone: Residential Growth. File: 21-8-SD.

Ms. Jennifer Brockman explained that staff had deemed the King's Crossing Preliminary Plat as complete last week. She stated that Section 24.113 I of the Subdivision Regulations requires staff to place the Preliminary Plat on the next regularly scheduled Planning Commission agenda for a vote to accept or deny the application as complete. If the application is found complete or essentially complete, the Planning Commission shall schedule a public hearing within 45 days in accordance with Section 24.114, Major Subdivision Preliminary Plat - Public Hearing. Ms. Brockman noted that the only outstanding issues staff has noted were approval of the required Traffic Impact Study, WV DOH entrance permit and final approval from the Charles Town Utility Board for water and sewer connection. Action at this meeting would allow the Public Hearing to be placed on the May 17th Planning Commission agenda.

Mr. Mike Shepp asked if the questions and the comments can be taken care of by May 17th. Ms. Brockman said that the staff comments are minor, other than WV DOH and CTUB approval, and should be able to be resolved. Final approval can be conditioned on these other agency approvals.

Mr. Steve Stolipher made a motion to find the King's Crossing Preliminary Plat file as complete and to schedule the Public Hearing for May 17, 2022. Donnie Fisher seconded the motion, which carried unanimously.

11. Review, discussion and possible action related to the County Commission's amended version of the PC proposed *Envision Jefferson 2035 Comprehensive Plan* Amendment (1/6/22).

Mr. Stolipher recused himself from agenda items #11 and #12 and left the room. Mr. Shane Roper also recused himself from item #11 and 12.

Mr. Nathan Cochran explained that on May 5, 2022, the County Commission adopted an order that reflected a series of discussions, mostly settlement discussions related to the lawsuit related to the amendment to the Comprehensive Plan. He stated that he would like to give them some legal advice regarding this on-going legal action (JCC Civil Action 22-C-6).

Mike Shepp made a motion to go into Executive Session to discuss legal advice on the proposed settlement and to find out what next steps were required; Matt Knott seconded the motion, which carried unanimously. The Planning Commission members were reminded to turn off their sound /video in ZOOM and to phone into the Executive Session if they were on ZOOM.

At 8:26 pm, Jack Hefestay made a motion of come out of executive Session; Matt Knott seconded it, which carried unanimously.

Mr. Cochran informed the Planning Commission (PC) that the County Commission (CC) reviewed the PC's proposed amendment to the *Envision Jefferson 2035 Comprehensive Plan* and determined that they wanted to amend the proposed amendment in accordance with WV Code 8A-3-10 and related statutes and read the new proposed language for page 93 of the *Envision Jefferson 2035 Comprehensive Plan*. Mr. Cochran also explained the court case related to this amendment and the relationship of the settlement to the CC's order related to the Comprehensive Plan amendment. Mr. Cochran explained that WV Code states that if the PC agrees with the CC's recommendation, it resolves the Plan Amendment and discussed other provisions of the state law.

Mr. Mike Shepp made a statement that while he didn't agree with making solar panels a conditional use, he made a motion to agree to the County Commission's amendment to the *Comprehensive Plan* dated their 4-5-22 and to the proposed settlement to Case Number 22-C-6. Donnie Fisher seconded, which carried unanimously.

12. Discussion and possible action related to the County Commission's direction to the Planning Commission to initiate a revised amendment to the Zoning Ordinance related to Solar Energy Facilities in conformance with the County Commission's amended *2035 Comprehensive Plan Amendment*.

Mr. Cochran noted that Mr. Will Rohrbaugh, the Commission's outside counsel had written and letter to the Planning Commission on April 11, 2022 regarding the County Commission's request that the Planning Commission draft an amendment to the Zoning Ordinance that confirms with the newly revised amendment to the *Comprehensive Plan*.

Mr. Shepp initiated a discussion with the Planning commission and staff regarding the shortest time frame required to draft the revised text and the earliest date that a Planning Commission Public Hearing can be held, including a special meeting, if required. He recommended starting with the previous draft of the Zoning Ordinance amendment and adding the CUP process. He recommended that a Concept Plan be required even if a CUP is required. Ms. Alex Beaulieu

asked for some clarification of the direction being provided and the possible relation between the sketch required for a CUP and a Concept plan as required in the Subdivision Regulations. Ms. Brockman asked about projects that cross the UGB boundary and Mr. Shepp asked for staff direction in the draft text amendment. Ms. Beaulieu summarized the direction from Mr. Shepp for the Commission's agreement.

Mr. Shepp made a motion to have the Zoning Administrator to work expeditiously on a revised solar text amendment to the Zoning Ordinance in accordance with the Comp Plan Amendment and to schedule a Public Hearing and planning commission action on the Amendment, and to schedule a special meeting, if needed. Mr. Jack Hefestay seconded the motion. Discussion related to the possible need for a special meeting to review the draft, which requires 2-day notice. The special meeting would be for the purpose of reviewing the draft for readiness for the Public Hearing. The Public Hearing requires 15 days' notice in the paper. The motion passed unanimously.

Mr. Stolipher re-entered the room at the conclusion of this agenda item and Mr. Roper re-entered on ZOOM.

13. Discussion and possible action related to proposal for update to Subdivision Regulation and Zoning Ordinance updates..

Mr. Shepp reported that three years ago Greenway Engineering had been hired to re-write the Subdivision Regulations and portions of the Zoning Ordinance, which ended unsuccessfully about a year ago. The Planning Commission Committee requested another proposal from the #2 party, which occurred and is in process with Legal's input. Mr. Shepp is requesting a motion from the Planning Commission allowing the Committee to move forward with the "contract under negotiation" with a new consultant.

Mr. Steven Stolipher made a motion to have the Committee meet with Legal Counsel to address any final comments and then to take the proposed contract to the County Commission for their approval. Mr. Wade Louthan seconded the motion, which was approved unanimously.

14. Discussion and Approval: Planning and Zoning Quarterly Report for FY 2021-2022 3rd Quarter for the County Commission

Ms. Jennifer Brockman summarized the 3rd Quarter quarterly report for the Planning Commission, Board of Zoning Appeals, and the Office of Planning and Zoning; and asked if the Planning Commission had any questions. A motion is required to send the report to the County Commission.

Mr. Donnie Fisher motioned to approve the Quarterly Report to send on to the County Commission; Jack Hefestay seconded the motion, which carried unanimously.

15. 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. Report by counsel regarding Comprehensive Plan Amendment and related issues.

Mr. Nathan Cochran stated that he had no comments related to Items b and c; and that there has been a disagreement on discovery on item #a, so that is on hold at this time.

16. Planner's Memo

Ms. Brockman provided an update to the Planning Commission noting that the County Commission had approved the Green Hill Zoning Map Amendment (22-1-Z) and the Guy Chicchirichi/Sheetz Zoning Map Amendment (22-2-Z).

Ms. Brockman also reminded the Planning Commission that due to Primary Election day on May 10, 2022, the May Planning commission meeting is scheduled for May 17, 2022. That meeting currently includes a Concept Plan Public Workshop for Sam Michaels Park and a Preliminary Plat Public Hearing for Kings Crossing Subdivision.

17. President's Report

- Mr. Shepp requested input from the Planning Commission members regarding the format of upcoming meetings. Staff noted that the County no longer hosts the old webcasting format, so the Planning Commission will need to continue to offer the ZOOM option.
- The Planning Commission agreed to meet in person and open the meeting to those who would like to attend in person and noted that people can still participate via ZOOM.

18. Actionable Correspondence. None.

19. Non-Actionable Correspondence

Mr. Matt Knott motioned to adjourn the meeting; Mr. Jack Hefestay seconded the motion, which carried unanimously. The meeting was adjourned at 8:55 pm.

These minutes were prepared by Tanya Lyons, Planning Clerk.