

Meeting Minutes  
Jefferson County Planning Commission  
November 15, 2022

The Jefferson County Planning Commission met on November 15, 2022 at 7:00 pm with the following Planning Commission members present: Mike Shepp, President; Matt Knott, Vice President; Wade Louthan, Secretary; J. Ware, Jack Hefestay, and Donnie Fisher were present in-person. Ron Thomas and Shane Roper were present via ZOOM. Steve Stolipher, County Commission Liaison, was absent with notice.

Staff members present included Jennifer Brockman, County Planner; Jonathan Saunders, County Engineer; Alexandra Beaulieu, Deputy Director and Zoning Administrator; Luke Seigfried, County Planner, and Stephen Groh, Assistant Prosecuting Attorney.

Pursuant to Planning Commission action on October 11, 2022, public participation via ZOOM is no longer permitted. The Planning Commission meeting was broadcast via ZOOM.

Mr. Shepp called the meeting to order at 7:00 pm. and confirmed that a quorum was present.

1. **Approval of Meeting Minutes:** October 11, 2022

Mr. Shepp stated that the minutes stand approved without objection.

2. **Request for postponement.** None.

3. **Public Hearing:** Country Club Commons Waiver from Appendix B, Table 2.2-1, “Roadway Design Standards” of the Subdivision Regulations, which requires a 35’ Minimum Turning Flare Radius at pavement edge; the applicant is requesting a 20’ turning radii for the entrance drives. Property Owner: B.C. Partners, Inc. Property Location: Located at the NE corner of Route 340 and Route 24 (Country Club Road), Harpers Ferry, WV. Parcel ID: 04001100110000; Size: 9.54 acres; Zone: Residential-Light Industrial-Commercial; PC File #22-25-PCW.

Ms. Brockman provided an overview of the staff report.

Mr. Dan Snyder, property owner; and Mr. Paul Raco, land use consultant, explained the nature of the request. Mr. Raco noted that the waiver justification addendum had been submitted to Staff late after the applicants met with the County Engineer to discuss the requirements and the applicant’s justification. Mr. Snyder distributed a handout to the Planning Commission which included a graphic showing the proposed movement of traffic if the waiver is approved. Mr. Snyder stated that the applicant was willing to proffer that if the request were approved, use of the space would be limited to retail uses with low truck traffic and would exclude any light industrial uses that would generate higher truck traffic.

Mr. Saunders provided an overview of his recommendation noting that since meeting with the applicants, his recommendation was modified from what he included in the agenda packet. Mr. Saunders referred to the AASHTO exhibits in the agenda packet and noted that engineering recommended approval of the request based on the justifications provided by the applicant.

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

Mr. Hefestay motioned to approve the request; Mr. Louthan seconded the motion, which carried unanimously.

4. **Public Hearing (Postponed from 9/13/22 & 10/11/22):** Country Club Commons Preliminary Plat to create four (4) non-residential lots and a public street for future commercial pad-users. Property Owner: B.C. Partners, Inc. Property Location: Located at the NE corner of Route 340 and Route 24 (Country Club Road), Harpers Ferry, WV. Parcel ID: 04001100110000; Size: 9.54 acres; Zone: Residential-Light Industrial-Commercial; PC File #19-17-SD.

Ms. Brockman provided an overview of the staff report and presented staff's recommendations.

Mr. Dan Snyder, property owner; and Mr. Paul Raco, consultant, explained the nature of the project to the Commission. Mr. Raco noted that utilities had been approved and that the Division of Highways approval was still pending. Mr. Raco noted that DOH approval off of US 340 necessitated both state and federal review.

Mr. Shepp asked if the National Geodetic Survey (NGS) monument on the property corner would be preserved.

Mr. Snyder confirmed that the monument would be preserved.

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

Mr. Fisher motioned to approve the Concept Plan conditioned upon DOH approval and stormwater management approval. Mr. Hefestay seconded the motion, which carried unanimously.

5. **Public Hearing (Continued from 10/11/22):** Final Plat Amendment to lift the single family restriction (Note #1 on Final Plat DB 721 / PG 310) to allow for the construction of a detached accessory dwelling unit for a family member. Property Owner: Bobby and Nancy Jones. Property Location: 208 Turn One Drive, Summit Point, WV; Parcel ID: 06001700060006; Size: 16.26 ac; Zone: Rural; PC File #22-5-FPA.

Ms. Brockman provided an overview of the staff report. Ms. Brockman noted that the applicant was not present in person but was online.

Ms. Beaulieu confirmed that Ms. Nancy Jones, property owner, was present via ZOOM and requested that Ms. Jones unmute her microphone. Ms. Jones was unable to participate in the meeting due to technical difficulties on her end.

Mr. Shepp made a motion to grant special dispensation due to technical difficulties and the nature of the request being relatively straight forward.

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

Mr. Fisher motioned to approve the Final Plat Amendment as presented. Mr. Knott seconded the motion, which carried unanimously.

6. **Public Workshop:** Concept Plan for the Rippon Solar Energy Facility. The applicant, Torch Clean Energy, is proposing a 99 MWac solar electric generating facility on approximately 878-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 #22-15-SP.

**Property Owners/Location/ID/Size/Zoning District**

- Stiles Family Partnership LLC; Vacant parcel located north of 1337 Roper North Fork Rd, Charles Town, WV; Parcel ID 06001100060001; Lot Size: 25.14 ac; Zone: Rural
- Stiles Family Partnership LLC; Vacant parcel located north of 1337 Roper North Fork Rd, Charles Town, WV; Parcel ID 06001100060000; Lot Size: 115.8 ac; Zone: Rural
- Bullsken LLC, Property Owner; 673 Old Shennandale Rd, Charles Town WV; Parcel ID: 06001100090000; Lot Size: 133.75 / Project Size: 106.52 ac; Zone: Rural
- Clarence E Hough Et Al; Vacant parcel located west of 957 Myerstown Rd, Charles Town, WV; Parcel ID: 06001000030001; Lot Size: 108.66 ac/Project Size: 99.84 ac; Zone: Rural
- View Mountain Farm LLC; 28 Dutch Hill Rd, Charles Town, WV; Parcel ID: 06002100060000; Lot Size: 101.6 ac / Project Size: 97.01 ac; Zone: Rural
- Stanley W Jr & Katherine B Dunn; 2646 Kabletown Rd, Charles Town, WV; Parcel ID: 06002100050000; Lot Size: 174.6 ac / Project Size: 165.52 ac; Zone: Rural
- Stanley W Jr & Katherine B Dunn; Vacant parcel located east of 28 Dutch Hill Rd, Charles Town, WV; Parcel ID: 06002100070000; Lot Size: 89.39 ac / Project Size: 86.07 ac; Zone: Rural
- Stanley W Jr & Katherine B Dunn; Vacant parcel located east of 2646 Kabletown Rd, Charles Town, WV; Parcel ID: 06002200050001; Lot Size: 232 ac / Project Size: 169.15 ac; Zone: Rural
- Stanley W Jr & Katherine B Dunn; 1371 Myerstown Rd, Charles Town, WV; Parcel ID: 06001000050000; Lot Size: 366 ac / Project Size: 12.27 ac; Zone: Rural

Mr. Roper recused himself from this agenda item at 7:27 p.m.

Ms. Brockman provided an overview of the staff report and presented staff's recommendations.

Mr. Sam Gulland and Mr. Brian Kusiak with Torch Clean Energy provided an overview of the project. Mr. Gulland stated that the vast majority of the site would not necessitate mass grading and that while approximately 850 acres were represented on the plan, they anticipated the actual acreage occupied by panels would be around 700 acres. Mr. Gulland noted that all of the panels would meet or exceed the 100' setback from the project boundaries. Mr. Gulland noted that the project included additional buffers beyond what was required by the Ordinance and they were working with adjoining neighbors to address the best locations for landscaping. Mr. Gulland noted that a decommissioning bond would be posted with the State and that state permits are required related to historic resources.

Mr. Shepp opened the public hearing.

Mr. Joseph Cepelka, Mr. Richard Farley, and Ms. Robin Huyett Thomas provided testimony indicating that they generally are not opposed to the project but expressed some concerns and had some questions for the applicant.

Mr. Shepp closed the public hearing.

Mr. Gulland provided the following comments in rebuttal:

- He stated that Torch Clean Energy was agreeable to discussing landscaping preferences with adjoining property owners.
- Mr. Gulland stated that pesticides and herbicides were not typically utilized in the maintenance of a solar energy site and stated that any use would be less than used in a typical agricultural operation.
- Mr. Gulland stated that First Energy would own the switchyard and that electrical capacity is regulated and determined by the utility provider. He stated that if any upgrades would be required to increase capacity, the developer would be responsible for the cost and not the utility provider. Mr. Gulland noted that the cost for such upgrades would be around fifty million dollars and not economical for a project. Mr. Gulland stated that the final location of the substation was still be determined with First Energy and confirmed that there would only be one substation.
- Mr. Gulland concluded that thermal heat generated by solar panels would be negligible and not noticeable to surrounding properties.

Mr. Knott motioned to approve the Concept Plan conditioned upon the Board of Zoning Appeals conditions of approval for the Conditional Use Permit [noted below]; that the technical comments noted by staff on the Concept Plan review be addressed; and that the tolling agreement with the County for Avalon Hills be released and consolidation of the lots into the original configuration be approved.

**Board of Zoning Appeals Conditions of Approval:**

1. Floodplain; Conserved Trees. The Facility or any part thereof shall not be located within 500 feet of the bank of the Shenandoah River, or in the 100 Year Flood Zone associated with the Shenandoah River at the time of the Building Permit issuance. Other 100 Year Flood Zones shall only be disturbed for access roads and electrical crossings where necessary.
2. Conserved Trees. Existing vegetation shall be used for screening where practicable. Additionally, Operator shall not cut, prune, or remove trees identified in the Concept Plan as the “Preserved Existing Treeline Adjacent to Shenandoah River”.
3. Panel Information. Operator will provide technical specification sheets and information on panel components for the specific model selected to the County prior to the issuance of the Building Permit.
4. Panel Height. Installed solar modules, shall not exceed fifteen (15) feet in height, measured from grade to the top of the panel when at maximum tilt.
5. Insurance. From and after the start of commercial operations, the Operator shall secure and maintain during the Project’s Operational Phase Commercial General Liability for personal injuries, death and property damage, and umbrella insurance coverage for the duration of the Conditional Use Permit in the minimum amounts set forth below:
  - a. Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence / \$2,000,000 aggregate;
  - b. Automobile Coverage: \$1,000,000 per occurrence;
  - c. Excess Liability: \$4,000,000;

- d. Workers' Compensation and Employers Liability Insurance in accordance with applicable statutory amounts.
6. Insurance Certificates. The Operator's insurance policies shall be issued by an insurance company licensed to do business in the State and with an AM Best's rating of at least 'A'. Prior to the commencement of construction and annually afterwards, Applicant shall provide the Zoning Administrator certificates of insurance that document the levels of insurance.
7. Sewage Sludge. The Applicant shall not use or distribute sewage sludge on the Property during construction or operation of the Project.
8. Change in Ownership. If any change of ownership of the Operator causes a change in contact information for the Project, Owner shall update the Zoning Administrator within 60 days.
9. Storage of Panels. A sealed construction trailer, ConEx, storage container, or enclosed building shall be maintained on the Site for the storage of damaged solar panels prior to removal from the Site.
10. Use of Blasting in Construction. Good faith efforts shall be used to avoid blasting on the Site. If blasting is necessary, Owner shall consult with a qualified geotechnical engineering firm to develop best practices to be followed.
11. Construction Access. Construction and operational traffic for the portion of the Project located east of Kabletown Road and south of Dutch Hill Lane shall be limited to entrances from Kabletown Road.
12. Construction Hours. All construction that produces noise beyond the Facility shall be limited to between the hours of 7:00am and 6:00pm Monday through Friday and between 8:00am and 2:00pm on Saturday. The driving of piles shall only occur between 7:00am and 5:00pm Monday through Friday and between 8:00am to 1:00pm on Saturday.
13. Inverters and Transformers. Inverters and transformers shall be setback at least four hundred (400) feet from any residence that exists at the time of the Conditional Use Permit approval.
14. Collector Lines. All three-phase medium-voltage collector electrical lines connecting the Project's photovoltaic arrays to the Project Substation shall be installed underground.
15. Invasive Species. On all leased and owned properties, the Operator shall use best management practices to control or manage any invasive plant species as defined by the West Virginia Department of Agriculture.
16. Rating. Operator will procure solar panels from a manufacturer receiving a Tier 1 rating from Bloomberg New Energy Finance or a top performer in the then current PV Module Reliability Scorecard Report by PVEL.

Mr. Louthan seconded the motion, which carried unanimously with a vote of 7-0 (Mr. Shane Roper recused himself at the onset of this agenda item).

7. **Public Workshop**: Concept Plan for Sunnyside Major Residential Subdivision consisting resubdividing nine (9) existing commercial lots into 29 Single Family. Property Owner:

Sunnyside Investment LLC. Property Location: Sunnyside Industrial Park, Lots 1-5, Vacant parcels located on Kanawha Lane, Charles Town, WV; Tax District: Kabletown (06); Map: 12; Parcels: 12, 12.2, 12.3, 12.4, 12.5; Lots size: 33 (combined acreage); and, Property Owner: Thomas Management Group Inc. Property Location: Sunnyside Industrial Park, Lots 8-11, Vacant parcels located on Kanawha Lane, Charles Town, WV; Tax District: Kabletown (06); Map: 12; Parcels: 12.8, 12.9, 12.10, 12.11; Lot size: ~20 (combined acreage); Zone: Residential-Light Industrial-Commercial. PC File # 22-27-SD.

Ms. Brockman provided an overview of the staff report and presented staff's recommendations.

Mr. Mike Roberts, surveyor, and Mr. John Thomas, property owner, explained the nature of the project to the Commission. Mr. Roberts stated there would be a maximum of 29 lots and noted that the final number of lots may vary based on Health Department approvals for well and septic. Mr. Thomas noted that the request to resubdivide the lots came about as a result of the lack of infrastructure in this area, including no natural gas and no water or sewer availability. Mr. Thomas stated that the new design could allow for a combination of residential and commercial uses, such as a home and a workshop.

Mr. Shepp asked what size the lots would be.

Mr. Roberts said the lots would be between 1.4 acres and 2.2 acres. He stated the minimum lot size would be 60,000 square feet.

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

Mr. Fisher motioned to approve the Concept Plan as presented. Mr. Louthan seconded the motion, which carried unanimously.

8. **Public Hearing:** Julie Evans (Easement) Waiver from Section 21.402.D and 21.401 of the Subdivision Regulations to move the electric line into the easement. Property Owner: Julie Evans and Preston Gillmore. Property Location: 774 Bunkhouse Road, Kearneysville, WV; Parcel ID: 07000900010006; Size: 12 acres; Zone: Rural; PC File #22-24-PCW.

Ms. Brockman provided an overview of the staff report and presented staff's recommendations.

Ms. Julie Evans and Mr. Preston Gillmore, property owners, explained the nature of the request to the Commission.

Mr. Shepp opened the public hearing.

Ms. Loretta Wells requested clarification of the location of the proposed poles and stated she did not want the poles located on her property.

Mr. Shepp closed the public hearing.

Ms. Brockman clarified the location of the proposed poles. Ms. Beaulieu provided Ms. Wells with a copy of the applicant's sketch.

Mr. Shepp motioned to approve the waiver request as presented. Mr. Fisher seconded the motion, which carried unanimously.

9. **Public Hearing** Performance Auto Works, LLC Waiver from Sections 20.203.B.2 "Limited Site Plan" and 20.203.B.3 "Full Site Plan" of the Subdivision Regulations to allow for the

construction of a 2,400 sq ft storage building and 3,700 sq ft of gravel area (6,100 sq ft disturbed area) without processing a Site Plan. Property Owner: Performance Auto Works, LLC. Property Location: 8063 Leetown Rd., Kearneysville, WV. Parcel ID: 07001900190018; Size: 2.11 acres; Zone: Rural; PC File # 22-26-PCW.

Ms. Brockman provided an overview of the staff report and presented staff's recommendations.

Mr. Billy Ring, property owner, explained the nature of the request to the Commission.

Ms. Saunders provided an overview of his recommendations.

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

Mr. Fisher motioned to approve the waiver request as presented. Mr. Hefestay seconded the motion, which carried unanimously.

#### 10. 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. Groh provided a legal update for item d and informed the Planning Commission that this will be on an upcoming agenda for additional Planning Commission action.

11. **Planner's Memo.** Ms. Brockman introduced Luke Seigfried as the new County Planner. Ms. Brockman explained that Mr. Seigfried would be assisting with the required 10-year update to the *Envision Jefferson 2035 Comprehensive Plan*.

12. **President's Report.** Mr. Shepp requested that the Planning Commission clarify their previous action related to public participation via ZOOM and whether the Planning Commission would allow applicants to participate in meetings via ZOOM. The consensus was that all members of the public, including applicants, would be required to attend meetings in person.

13. **Actionable Correspondence.** None.

14. **Non-Actionable Correspondence.** None.

Mr. Louthan made a motion to adjourn the meeting at 8:33 p.m.. Mr. Fisher seconded the motion, which carried unanimously.

These minutes were prepared by Alexandra Beaulieu and Jennifer Brockman.