

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
APRIL 12, 2011

The Jefferson County Planning Commission met on Tuesday, April 12, 2011, with the following Commission members present: Daniel Hayes, President; Arnold Dailey, Vice-President; Morgan Eppers, Secretary; Gene Taylor, Kelly Baty, Paul Taylor, Ed Burns and Walt Pellish. Staff members present included Seth Rivard, Planner; Steve Barney, Zoning Administrator; Jonathon Saunders, County Engineer; Stephen Groh, Assistant Prosecuting Attorney; and Amy Puetz, Planning Clerk.

Mr. Eric Smith was absent without notification.

Mr. Hayes called the meeting to order at 7:03 PM.

Mr. Hayes welcomed the new Planning Commissioners, Mr. Burns and Mr. P. Taylor, and requested that all Planning Commissioners and staff introduce themselves.

1. Election of President, and if necessary, Other Officers.

Mr. Baty nominated Mr. Hayes. Mr. Pellish seconded the nomination. There were no other nominations. Mr. Hayes assumed the position of President by unanimous vote.

Mr. Baty nominated Ms. Eppers who respectfully declined. Mr. Hayes nominated Mr. Dailey. Mr. Baty seconded the nomination. Mr. Dailey assumed the position of Vice-President by unanimous vote.

Ms. Eppers retained the position of Secretary.

2. Approval of minutes for the March 8, 2011 meeting.

Mr. Baty moved to approve the minutes of the March 8, 2011 Planning Commission meeting as written. Mr. Dailey seconded the motion which carried 7 for and 1 abstention (Mr. Burns).

Approval of minutes for the March 22, 2011 special meeting.

Mr. G. Taylor moved to approve the minutes for the March 22, 2011 Special Planning Commission meeting as written. Mr. Baty seconded the motion which carried 7 for and 1 abstention (Mr. Burns).

3. Citizens Communication: None.

4. Request for postponement: None.

5. Request by Bettye K. Mason for a waiver from Subdivision Regulations Section 20.201 A.2, Section 21.103 D and Appendix B, Section 2.2 H to allow access for a proposed lot with an existing residence on an existing 20 foot access easement. This property is located on the north side of Summit Point Road at the intersection with Hardesty Road and is designated as Tax District: Kabletown, Map: 16, Parcel: 3.

Mr. Rivard reviewed the requested waiver and the location of the property. He stated that staff recommended that the Planning Commission request clarity regarding the waiver

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request from Section 21.103 D as the applicant would meet those requirements without needing a waiver, and clarity regarding the waiver request from Appendix B, Section 2.2 which required the road right-of-way to be a minimum of 50' in width. Mr. Rivard explained that for the property to meet that condition, the applicant would need to provide a dedication of 20' along Summit Point Road. Mr. Saunders read from his staff report and recommended denial of the waiver from Section 20.201.A.2 since the request does not meet the four criteria necessary noting that granting the waiver affects public safety by constricting traffic to a 20' easement. He explained that if the Planning Commission were to grant the waiver, the Engineering Department would recommend that the width of the access road be no less than 40' wide as that was the minimum width in the 1978 Jefferson County Subdivision Regulation. Mr. Saunders stated that the waiver requests from Section 21.103.D and Appendix B, Section 2.2 H exempts minor subdivisions and therefore, no recommendation, other than to gain clarification, was given.

Mr. Groh reminded that Planning Commission to consider that, although all lots impacted by the waiver requests were currently owned by family members who support the requests, the lots may be sold to non-family members in the future.

Ms. Bettye Mason, applicant, asked if this subdivision had been placed in her will would the process be the same. She explained that she did not want the access road to be widened since it had functioned well for the last 40 years. Mr. Hayes asked how following the requirements as written in the Subdivision Regulations would be a hardship for her. She answered that it would not be a hardship; however, she felt that she should not have to lose useable land that was being used for a play area for her grandchildren. Mr. Hayes stated that the widening of the access easement would only be required on paper and that no actual widening of the access would need to take place at that time.

Mr. Ed Johnson, Surveyor for the subdivision, stated that if the property were left to the estate in the event of Ms. Mason's passing, the subdivision could occur by way of a petition suit without permission from the Planning and Zoning Department. Discussion regarding whether the regulations would need to be met ensued. Mr. Burns asked Legal Counsel for clarification. Mr. Groh stated that he did not want to give advice that Ms. Mason could use in court although he reported that undergoing the Planning and Zoning process would be simpler than the process of a petition suit. Mr. Johnson explained that widening the access easement may cause setback issues with future home additions. He also clarified that, since the applicant did not want the internal subdivision road to access the residue, the waiver requests from Section 21.103.D and Appendix B, Section 2.2.H were to allow a second entrance to the subdivision and yet to waive the requirement of a 20' roadway improvement dedication along Summit Point Road.

Mr. Andy Noland, grandson of the applicant, reasoned that the waiver is of benefit to the public since the family, not the County, would maintain the driveway. He also stated that the waiver would not adversely affect the public given that the access drive had been in the same status for the past 30 years and had never been a problem. He reiterated that adding 30' to the access easement would take away from lot size and may impose setback issues on any future home additions.

Mr. Hayes asked the applicant if she would be willing to provide a 40' access easement instead of a 50' access easement. Ms. Roxanne Noland, granddaughter of the applicant, stated that she felt that was still too extreme. Mr. Hayes asked if the applicant would be willing to provide a 30' access easement (an additional 10' to the existing access easement). Ms. Noland stated she would be agreeable to granting an additional 10' to create a 30' access easement.

Mr. Hayes opened the public hearing. There was no public comment. Mr. Burns moved to close the public hearing. Mr. G. Taylor seconded the motion which carried unanimously.

Mr. Burns questioned whether the applicant could dedicate 10' of easement along Summit Point Road if the land owner across the road would also dedicate 10' of easement. Mr. Rivard explained that the second entrance to a subdivision was required to be on a 50' right-of-way and since the applicant could not control land on the opposite side of the road, she would need to dedicate 20' in order to bring the second entrance into compliance with the regulations.

Mr. Baty moved to deny the waiver request for Section 20.201.A.2 because it does not meet the four criteria:

- 1) The waiver does not reduce County maintenance costs.
- 2) It will adversely affect public health and safety if the properties are ever sold or if for any reason traffic is increased and therefore sight visibility is decreased.
- 3) It does not in keeping with the intent and purpose of the ordinance.

Motioned failed for a lack of a second.

Mr. Burns moved to grant the waiver request for Section 20.201.A.2 because it does meet all four criteria primarily that it is in keeping with the intent and purpose of the ordinance which is to provide for the usability of property for land owner and that it provides for a project of better quality in keeping the family together and a rural character. Mr. Pellish seconded the motion. Mr. Hayes offered a friendly amendment to require the applicant to provide a 30' right-of-way by adding a 10' easement to the existing 20' access drive. Mr. Pellish and Mr. Burns accepted the friendly amendment. The motion carried 7 for and 1 opposed (Mr. Baty).

Mr. Saunders again stated that Section 21.103.D did not apply to this project and therefore, no waiver was needed. He explained that two entrances to a subdivision in a rural district are permitted as long as the entrance is along a 50' road right-of-way. There was discussion for purposes of clarifying how this section of the Subdivision Regulations affects the project. It was determined that no waiver was needed as the applicant already had the right to have two entrances.

Mr. Burns moved to deny the request for a waiver from Appendix B, Section 2.2.H. Mr. Pellish seconded the motion. Mr. Hayes stated that he felt a compromise of 10' dedication would be sufficient since it could be assumed that if the State were to widen the roadway, an equal amount of land would be taken from either side of the road. There was discussion on the reason that the dedication was a requirement for the project. Mr. Saunders clarified that, in the 1978 Subdivision Ordinance, two entrances to a subdivision were not permitted

without a variance. He explained that allowing the second entrance with a land dedication was a way of compromise for the updated Subdivision Regulations. Mr. Hayes called to question. The motion carried 4 for, 3 opposed (Mr. Hayes, Mr. G. Taylor, Ms. Etters), and 1 abstention (Mr. P. Taylor).

6. Public Hearing for Draft Policy Neutral Zoning Ordinance Amendments.

Mr. Barney explained that, if the Planning Commission were to approve the draft amendments, the next step would be to present the amendments to County Commission. He presented an email from Mr. Paul Petony, attorney, suggesting an amendment to the definition of a preschool adding, "If the West Virginia Department of Education establishes requirements for a preschool, the land use shall meet these requirements".

Mr. Hayes opened the public hearing. Ms. Gaye Snyder, Shepherdstown resident, commented on the preschool definition amendment. She stated that she was in support of the amendment and expressed gratitude that preschools will be recognized.

Mr. G. Taylor moved to close the public hearing. Mr. Burns seconded the motion which carried unanimously.

Mr. Barney reviewed the purpose of the amendments and gave an overview of the proposed changes.

Mr. Burns commented on the importance of allowing the public enough time to have the proper amount of input on any amendment. He questioned the amount of time the draft amendments had been available to the public. Mr. Barney answered that a draft document had been posted to the County website for one week. Mr. Burns suggested that any changes should be separated into categories and a note added to detail the reason the change was made. He explained that doing so would allow for easier comprehension for the public review and expressed that these clarifications should be made before the document is presented to the County Commission. There was a short discussion regarding ways to make the changes clear. Mr. Pellish suggested providing two versions of the Zoning Ordinance: one as the amended document to allow for a smaller version, and one with the tracked changes and comments. Mr. Barney agreed to take the suggestions of the Planning Commission and provide a more expanded summary of the amendments.

Ms. Etters moved to forward the draft Zoning Ordinance amendments to the County Commission as the document is written with the amendment suggested by Mr. Peter Petony via email regarding preschools. Mr. G. Taylor seconded the motion which carried unanimously.

Mr. Hayes stated that he would discuss item # 8 and item # 9 before item # 7.

8. Reports from Legal Counsel and legal advice to PC.

Mr. Groh presented an appeal of Henry v. Jefferson County Planning and Zoning Commission (Case Number: 3:06-cv-00033-JPB). He reported that he would attend a meeting on Thursday to discuss the James Gibson, et al v. The Jefferson County Planning

Commission (Case Number: 09-C-364) and requested to have his report placed at the end of the May 10th agenda in case an Executive Session would be necessary.

Mr. Groh asked, when the County Commission questioned him on discussions of the Planning Commission, if the Planning Commissioners felt comfortable with him addressing those questions. Mr. Pellish stated that the relationship between the County Commission and the Planning Commission had overcome any conflicts that had occurred in the past and that the Planning Commission acts as an advisory board to the County Commission and therefore should have an open, candid communications between them. Mr. Burns expressed that Mr. Hayes, as President, should carry the role of relaying discussions to the County Commission. Mr. Groh explained that this question could be decided on a case-by-case basis and that he would like clarification regarding if he could speak to the Zoning Ordinance Amendments specifically. Mr. Barney stated that, since he had been working on the document for the last several months, he or staff would like the opportunity to answer any questions about the rationale on the changes made to the Zoning Ordinance. Mr. Hayes clarified that Mr. Groh was asking to be allowed to answer questions that he is directly asked.

Mr. Burns moved that Mr. Groh be allowed to discuss the legal issues of the Zoning Ordinance Policy Neutral Amendments with the County Commission. Mr. G. Taylor seconded the motion which carried 7 for and 1 abstention (Mr. Baty).

9. Director's Report.

Mr. Rivard explained the proposed special meeting for mandatory Planning Commission training. Mr. Hayes called a special meeting on April 26, 2011 at 7pm for a 2 hour training workshop.

Mr. Rivard reported on the US 340 Corridor Study Kick-Off Meeting that was held March 26, 2011.

He reviewed upcoming Planning Commission and County Commission agenda items.

7. Discussion regarding Planning Commission Bylaws.

Mr. Hayes stated that he would like to review and potentially revise the Planning Commission Bylaws and would like for that discussion to take place at a meeting in the near future.

10. County Commission Liaison Report.

Mr. Pellish stated that he expected for there to be more interaction in the future between the Planning Commission and the Development Authority. He clarified that he would like for business development in the county to become easier.

11. Planning Commission Exchange.

Mr. Rivard explained the need to enlist the help of Planning Commissioners to act as liaisons to the below listed agencies. Mr. Hayes asked for volunteers.

- **Report from the Health Department Meeting Liaison.** Mr. Burns volunteered to attend Health Department Meetings.

- **Report from the Public Service District Meeting Liaison.** Mr. Hayes will retain the position of liaison to the Public Service District.
- **Report from the Jefferson County Development Authority Meeting Liaison.** Mr. Burns volunteered to attend the Development Authority Meeting.
- **Report from the Water Advisory Committee Meeting Liaison.** There were no volunteers.

12. President's Report.

Mr. Hayes reported that his purpose on the board is to make sure that regulations are followed. He also stated that he would like to see the meetings move a little faster so that focus is not lost by deviated conversation and that Robert's Rules of Order are followed during the meetings.

13. Actionable Correspondence. None.

14. Non-Actionable Correspondence. None.

Mr. G. Taylor moved to adjourn the meeting at 10:03 PM. Ms. Eters seconded the motion which carried unanimously. A detailed transcript of the meeting may be found on our website. These minutes were prepared by Amy Puetz, Planning Clerk.