

Draft Minutes

Shepherdstown Planning Commission

Monday, September 28, 2009

Town Hall, 7 p.m

1. **Call to order** 7:03, Pam Berry, David Rosen, Bane Schill, Karene Motivans, Lori Robertson; Harvey Heyser. Mayor Jim Auxer arrived at 7:27.
2. **Approval of meeting minutes** of August 17, 2009; K. Motivans, who was absent from that meeting, was bothered by a phrase in discussion of application #09-27 that read “whether or not sign fits mood of the town is not the PC’s business.” P. Berry explained the phrase and requested it be modified or removed as others may not understand. P. Berry added in response that if the PC becomes too regimented the Town will look like Colonial Williamsburg. H. Heyser, item #10 concerning HLC-PC right to enter an applicant’s property, requested a change to read “permission for” entry into property. H. Heyser questioned if application #09-28 was now a maintenance issue. M. Abshire responded yes; the contractor withdrew the application after the Historic Landmarks Commission denied to recommend removing the rock steps and landing, and replacing it with a composite or “plastic” deck. P. Berry felt there should be an application as new materials were put in; M. Abshire maintained that he was told by the contractor that to perform the maintenance, he would have to remove the rock and strengthen its foundation; the soil had caused the structure to sink unevenly causing the steps and landing to become a safety hazard; on two separate occasions the contractor was questioned about replacement of the original rock and the new rock; the contractor said that in the process of dismantling the structure, some rock would be damaged or deteriorated and be replaced, but the contractor assured M. Abshire that they would use as much of the old rock as possible. P. Berry asked that it be checked out. [Note, 9/28/09: M. Abshire contacted the contractor who stated: “We used as much of the old stone as was possible. The majority was deteriorated and had a crumbling face, thus was not suitable for being installed. We did, however, use approximately 80 percent of the stone in the foundation and as a sub-base.”]

As amended, H. Heyser moved to approve the minutes, L. Robertson seconded; approved unanimously.

3. **Conflicts of Interest;** None known, none reported.
4. **Visitors:** Michael Cassell, Frank Bielicki, Tripp Lowe, Frank Hill.
5. **Mayor's and Town Council's Report:** none
6. **Shepherdstown Historic Landmarks Commission Report:** none
7. **Zoning Officer's Report:** none
8. **Applications for consideration:**

#09-25, William Struna, 107 West New Street, replace all window units in house. Represented by attorney Michael Cassell.

M. Cassell presentation: Owner of 107 New Street desires to install 32 premium quality double-sash windows; white in color. The double-pane glass has inert gas between; distance between is scientifically proven to be most efficient. Replacement windows would be Andersen windows. Current condition pointed out on exhibited photos: M. Cassell didn't think HLC believed him when he said these are not original windows; HLC asked if an historic survey had been done; M. Cassell said they are just trying to replace windows not argue over historic accuracy. These are concrete sills; they are not original; 20th century. No question they have been replaced within the last 100 years. Applicant thinks originals are 6-over-6, not 9-over-6. M. Cassell described the current condition of the windows: paint's gone; frames and sills are rotten; sashes and rails should be replaced; water is coming inside the house; windows not operationally sound. When looking at replacement windows, M. Cassell pointed to the factors in [Department of Interior] Preservation Brief #9 (PB#9) [attached]: opening same size, same places, proportions of sash and frames same; the panes are not same, but same appearance of 6-over-6; profile same, hardwood, paint color same, glass upgraded to high performance low-e glass. There is a need to reduce the UV rates of sun coming in. All decorative details, solid brass fittings; they will retain the character of the windows as now. Aesthetics will be balanced with efficiency. This is where M. Cassell and HLC disagree as he stated HLC had no concern whatever for efficiency. [J. Auxer arrived, 7:27 p.m.] Applicant would like to see the balance between aesthetics and efficiency. Andersen cost, \$35,000 to do the replacement rather than the

reconstruction price of new duplicate windows \$95,000. Applicant asks that PC add balance to process; PB#9 tells us, energy efficiency should not be the dominate issue; the highest efficiency would be fiberglass window which looks very modern; needs to be a balance between efficiency and aesthetics and preservation. The HLC maintained: R-1 issues, value of modern windows. The R-values are not used to measure window efficiency. Windows have a much more complicated measure. M. Cassell stated that a better measure was the U-factor: with single pane, with a storm, is about 26; with a modern window it's about 25. Applicant said the values are like golf scores, the lower the better.

It is very hard for scientists doing these studies to isolate the window values. Air leakage is number one culprit; condensation, rotting around windows in places you cannot see. Five ways modern windows evaluated windows as per web site (National Fenestration Rating Council, www.nfrc.org); not really the r-factor but u-factor, the solar heat coefficient, visible transmission, air leakage, and condensation resistance. Applicant feels it was misleading for HLC to say the math has already been done, HLC believes a single pane with a storm is adequate, M.Cassell said that it isn't. Ask you to consider efficiency as well as aesthetics.

When asked by PC how long applicant lived there: applicant lives in three places New York, Shepherdstown, and Florida, but estimated it had been 20 to 25 years.

What maintenance has been done? M. Cassell said it was his understanding a new metal roof had been put on in recent years; rebuilt one chimney on Church Street side; eaves and soffits painting; front door undergoing paint right now; new guttering and downspouts.

Why didn't he do something about the windows before now? He has been trying to get the windows replaced for two years; I don't know what he could have been done before. P. Berry pointed out the applicant wanted to replace them with a Home Depot stock item. M. Cassell said the current 9-over-6 windows would become 6-over-6. When asked if it was the owner's intention to sell the property, M. Cassell said he did not know the owner's intention, but that a prospective buyer would look at the window situation. PC countered saying that was not necessarily true in a historic district; especially when the replacement is not even a good mock-up of the current

windows; HLC recommended other window makers who produced a truer likeness. M. Cassell said Andersen was chosen as a quality replacement and that it was not the lowest-end window in price. H. Heyser said Andersen is not regarded as a high-end window manufacturer.

P. Berry expressed concern that when replacement of this nature is done to an historic property it impacts properties around it: Taking a grand old building and putting a “Dan Ryan façade” in there—that is not what we are trying to do in Shepherdstown; replacing does not enhance value for resale. P. Berry stated the HLC and PC are trying to come to a balance as well, to keep the integrity of the neighborhood, but also a workable solution for the owner.

H. Heyser explained that when looking at a building like this, he is looking for sag between the rails; he didn’t see a lot of that; he expressed that he has trouble accepting that these windows are not restorable, and added that he could accept that the applicant feels they are not restorable.

K. Motivans commented on M. Cassell’s presentation: first, there is no evidence that the 9-over-6 windows are not original to the house, and there is no evidence, such as photos, of older windows; further, the efficiency of historic features is not in the purview of HLC; and the efficiency is not necessarily a selling point of these old houses.

H. Heyser pointed out that u-value is the reciprocal of r-value, u-value is used more frequently for windows, r-values are used for wall construction; they are the same thing, measure the heat through a window. H. Heyser agreed with the HLC—a good storm window and good seals, the r-value could be improved.

K. Motivans felt the weather (water) coming into the house could be the result of the gutters need cleaning. Suggested the applicant make a good faith effort such as putting Andersen wooden windows on the back of the house, out of public view. Concrete sills are evidence that someone tried to repair rotting. Rest of property there has not been a good-faith effort to keep up the sidewalk, the porch, the front door, the landscaping.

M. Cassell said there is no evidence that with window replacement that the value of the property across the street will go down; that is the opinion of the HLC and PC, but there is no evidence.

H. Heyser stated that counsel was representing an application which is not backed up with anything, except for some handouts from a retailer, and claims that these windows are not a hundred years old. PC does not know what it is dealing with, there is no evidence. H. Heyser said PC might be more sympathetic if there had been a good faith effort. Referring to PB#9, there are three classes of repair, and replacement is not one of them. Routine maintenance, which has not been done; stabilization, such as adding epoxy to rotted material; third class is splices and parts replacement. What PB#9 is trying to make happen is to maintain as much of the historic structure as possible, to restore as much of the historic fabric as possible. Counsel does not even have a sample window here. H. Heyser said the PC still does not know what it is looking at in terms of replacement windows.

K. Motivans pointed out that there are two pieces of evidence the PC needs to make a decision: the recommendation of the HLC along with the Comprehensive Plan, which is clearly in favor of preservation, and Town ordinances.

P. Berry stated that §9-902 IV (a), architectural values, allows PC a degree of subjectivity, allows PC to work with an owner for the preservation of these structures—technically and economically. M. Cassell said his response to the PC had to do with (r- and u-) values, and that connecting the dots there is difficult; when you're talking about (dollar) values of property it's hard. PC stated that rather than monetary value, it is an intrinsic value; that there are buyers for this kind of home in its present condition.

H. Heyser pointed out that PB#9 has gone through several manifestations and one of its earlier ones it was basically a how-to repair your windows. He felt that if the owner of the house cared about preservation, he would install storm windows and weatherization seals around the frames. He concluded that he saw no sagging nor pulling apart of the windows, which indicates there is something to work with, something to restore, and this is the evidence PC has before it.

P. Berry asked: Mr. Cassell is there anything PC can do to work with Mr. Struna?

M. Cassell responded: I'm not sure...I don't know. We filed the application because Mr. Struna believed the windows needed to be replaced.

H. Heyser pointed out there are three ways to deal with an application other than approval: reject, applicant can request it be withdrawn and put on hold, and an incomplete application.

M. Cassell requested PC proceed with a decision on this application as a new one can be filed in a different form for a different remedy.

H. Heyser: moved to reject the application based on §9-902 IV(a)(b), V(a)(c)(d) and in keeping with recommendation of HLC. L. Robertson seconded; all in favor except for J. Auxer who abstained.

#09-31, *Yellow Brick Bank (Ken and Tripp Lowe), 201 East German Street.* Fence and gate on Princess Street side to shield view of trash area. Enclose a wood storage area in rear. Install six (6) electric/gas lights on the exterior the building.

HLC considered the applications in two forms—wood and gas/electric fixtures: approved the shed; approve the gate if applicant agreed to lower it to six (6) feet, which the applicant agreed to do; the gas fixtures were approved in concept, but not in design.

The shed has been in existence prior to the current owner purchasing the property; the applicant wants to enclose it with a roof and sides instead of the current blue tarp. An open shed is considered a structure.

H. Heyser said he preferred the gate run from side of elevator shaft, they dealing with two ends that don't meet. D. Rosen questioned whether this was a fence or a gate. PC suggested a barn door gate rather than fence and gate.

K. Motivans listed the need more information: SHED: dimensions, roof material and color, hardware, size; GATE: gate design, size of picket, color, hardware. PC agreed this was a perfect case for a stockade fence, but added PC can't make up ordinances as they go along. Applicant and PC agreed that the zoning officer would meet with the designer/builder to get more information. Application put on hold with consent of applicant and requesting additional information.

H. Heyser moved that with the applicant's consent the application is put on hold pending more information; D. Rosen seconded; approved unanimously.

K. Motivans requested the zoning officer look at § 9-208 to see if a shed is an accessory building. Zoning officer pointed out it was a structure, an existing structure that was going to be enclosed, and since it was keeping the same footprint, it is considered a Category I change.

#09-32, Lucas Pierce, 141 West German Street, business sign update.

J. Auxer made a motion to approve, K. Motivans seconded; approved unanimously 9-210 II (a)(c).

#09-34, St. Agnes Parrish Center (Mathew Rowgh), 106 South Duke Street.

Fence along three sides of the yard at the rear of the St. Agnes Rectory.

Frank Bielicki represented the church. Question focused on the width of the pickets and space between each, which did not meet the requirements of a side yard facing the street. F. Bielicki pointed out that according to the plat and the Town ordinance it was a rear yard; in addition the fence would have a 22-foot setback from the street. K. Motivans moved to approve; D. Rosen seconded; unanimous to approve the application based on §9-802 (d).

9. Continued Business

a. Review of Revised Blasting Ordinance

P. Berry suggested it was time to pass the ordinance on to council at this point, reminded PC that the final version needed to reflect in the first paragraph that it is §8A-1-1 of the West Virginia state code. Mayor Auxer agreed that if PC had any more questions or concerns with the ordinance, submit that to the zoning officer prior to 9 a.m., October 9, 2009. M. Abshire is to poll PC by email for any questions; results go to the Town Clerk and Mayor. H. Heyser moved to hand over the ordinance to Town Council with corrections; L. Robertson seconded; approved unanimously.

b. Memorandum of PC Decision Form (Heyser design; Printz revision)

P. Berry explained that parliamentary procedure gets complex as in what to do with a motion; the form gives the PC guidance, and can be handed to directly to an attending applicant at the hearing. Insert it in the application packet. L. Robertson moved to approve; D. Rosen seconded; unanimous approval to adopt the form which will be given out with building permit application forms. Approved unanimously.

c. *Formation of Sign Ordinance Revision Committee, no action.*

New Business:

Annexation—Portion of Shepherd University campus.

PC considered the Annexation Petition to ensure it complied with Shepherdstown's Annexation Policy and met all the evaluation criteria: planning and zoning which takes into account the comprehensive plan, urban zoning, contiguous location of proposed annexation with existing town boundary, transportation planning; ability of annexation to increase economic growth; provides component of low and moderate-income affordable housing; protection of resources; zero-negative impact on municipal infrastructure or services; and expectation of a positive fiscal impact.

PC considered Annexation Petition Section III Projected Impact on Shepherdstown, which included sections on utilities, proffers, financial impact, traffic study, adequate public facilities, and police protection; all were found to result in either no impact or change, and only in one area—financial impact—was any change expected and that change is projected as a positive with sustained or increased revenue coming to the Town via video lottery shares, utility excise taxes, and contracted amounts for cable services.

Concern was expressed by one member about lack of green space in the annexation area and the focus on financial gain. K. Motivans believed the jig-jog line of the annexed area was poor planning and of low quality, and felt the Town was placing all of its eggs in one basket. J. Auxer said that he suggested the university include a larger area for annexation, but university representatives declined to expand on annexation area at this time. D. Rosen responded that the Town is not just reaching out to grab land, but is attempting to increase and improve its relationship with the college, which has historically been in short supply. J. Auxer expressed his belief that the college is trying to do something positive for the town. H. Heyser added that the Town does not have an incredible amount of say in what the university does as it is exempted from Town ordinances;

and that Shepherd University is making a gesture to help the Town get on better financial footing.

K. Motivans expressed concern that the students could take over the Town. H. Heyser pointed out that several years ago when a student was elected to Town Council, he was happy for about 10 seconds and then wondered what he had gotten himself into.

H. Heyser stated the petition meets criteria of the evaluation. P. Berry pointed out that the PC had to state if there were any objections to criteria/contents of the petition. No objections. D. Rosen made motion to accept the petition; H. Heyser seconded; approved unanimously.

Commission membership vacancies: Filled on Town Council's approval by Bane Schill and David Rosen.

Board of Appeals:

Yellow Brick Bank—Parking

Corporation of Shepherdstown—Town Hall

Corporation of Shepherdstown—Gate

Meeting adjourned, 9:30 p.m.