

## Draft Minutes

### Shepherdstown Planning Commission

#### Town Hall

April 20, 2009

**Agenda item 1, call meeting to order 7:00 p.m.** Members present: Mayor Jim Auxer (arrived at 7:07 pm), President Pam Berry, Harvey Heyser, Karene Motivans, Josh Stella, Paul Welch, and Catharine Wilson. Zoning officer Michael Abshire

**Agenda item 2, approval of minutes.** Regular session, March 16, 2009, P. Welch, motion to approve; H. Heyser, seconded; approved unanimously. Minutes of April 6, 2009, work session; H. Heyser motion to approve; C. Wilson seconded; approved unanimously.

**Agenda item 3, conflicts of interest:** None known, none reported.

**Agenda item 4, visitors:** John Phillips, Bain Schill, John Griffith, Dale Walter, Cari and David Rosen, Lori Robertson, and Lara Liptak.

**Agenda item 6, Mayor's and Town Council Report:** Town Council approved the placement of handrail (Building Permit application 09-07) on public right-of-way outside 300 W. High Street.

**Agenda item 7, Shepherdstown Historic Landmarks Commission (SHLC) Report:** The historic survey update request for bids will go to the WV State Historic Preservation Office within 10 days.

**Agenda item 8, Zoning Officer's Report:** Nothing reported.

**Agenda item 9, applications for consideration:**

**09-10, Cari Rosen, 133 W. German Street, business sign.** Zoning Officer's SHLC summary reported that applicant will install a bracket with bolts going into mortar; bracket will resemble the other bracket on the building (the fly fishing operation). P. Welch made a motion to approve based on §9-210; H. Heyser seconded; passed unanimously.

**09-11, Dale Walter/Day Care Center, 531 E. German Street, re-grade and pave parking lot, with rain garden around parking lot.** ZO's SHLC summary reported that this application was approved in August 2007 and the project never completed; the new Day Care board members were unaware they needed to seek extension of the permit when the one-year time limit passed and the permit expired. [Zoning officer M. Abshire had construction engineer John Brady look at the project and the parking lot. Brady concluded that paving the parking lot would not result in any additional run-off than already occurs with current hard-packed unpaved lot.] PC discussed paving surfaces and agreed that current permeable surface coatings are expensive and in the end may not be right for this situation. H. Heyser made a motion to approve based on §9-207; K. Motivans seconded; motion approved with no dissensions; C. Wilson abstained.

**09-12, Roxana Fogleberg, 102 E. German, business sign.** The application contained a letter from Mike Austin (representing the Shepherdstown Men's Club) that requested the applicant be granted, in addition to the hanging sign, a sandwich board sign. As the applicant did not apply for a sandwich board sign, C. Wilson made a motion to accept the application based on §9-210 II with the stipulation that approval of a sandwich board sign was not sought nor given; P. Welch seconded; approved unanimously.

**09-14, Historic Shepherdstown Commission, 129 E. German Street, replace hanging Entler Hotel sign and add a sign which would be attached, in relief, to building at the left of the museum door.** J. Stella made a motion to approve the application based on §9-210 II; P. Welch seconded; approved unanimously.

**09-15, David Rosen, 102 N. Duke Street, fence.** The proposed fence is a four-foot open picket fence in the front, and a six-foot privacy gothic fence on the rear and one side. PC questioned a stockade-style fence on the side and rear as per §9-802(d). Applicants amended the portion of the application related to the side boundary; applicants will install an open six-foot fence with a six-foot setback from the property line; in the rear, a six-foot stockade style fence; and in front a four-foot open picket. P. Welch made a motion to approve the amended application based on §9-802(d); H. Heyser seconded; approved unanimously.

**09-16, John Phillips, 104 S. Duke Street, replace current four-foot wooden picket fence.** Zoning Officer's summary stated that excluding the front iron fence, the remainder of the wooden fence on the lot has been attacked by cars driven by the inebriated; in addition the fence received additional wear through construction of the new Catholic church. Applicant attempted to find an iron fence matching the front yard portion, but was unable to locate it. The proposed fence, applicant explained, is made of the same material as high-end cookware; it has no seams; and it is similar in style to the iron fence in front, which will be retained. H. Heyser made a motion to approve the application based on §9-802(d); P. Welch seconded; application approved unanimously.

**Agenda item 9, continued business.** Review of the revised blasting ordinance. P. Berry read from the rationale memo, dated April 1, 2009, used in responding to Bowles Rice recommended changes a blasting ordinance:

Re: Changes to the Blasting Ordinance recommended by Bowles Rice in their letter of January 14, 2009 to Mayor Auxer.

Following are my comments/suggestions regarding the Blasting Ordinance and Bowles Rice's response to our last draft. I have also created a fresh draft built on BR's redlined version submitted on Jan 14. This is the one I would like to use for our discussion at our [next work session].

I have used the following abbreviations in these comments:

ZO = Zoning Officer

PC = Planning Commission

BZA = Board of Zoning Appeals

BR = Bowles Rice

**Section 9-1501** - Original version was drafted to provide for the Zoning Officer to administer and enforce the provisions of the ordinance. The new ordinance refers to the PC for administering the provisions.

Our Title 9 Chapter 9 section §9-901 provides that the ZO's duty is to administer and cause enforcement of the provisions of Title 9. However, nothing is specified

as to who performs these functions in the absence of a ZO. Under Shepherdstown's Title 9 the ZO is hired by the Mayor and Council and is on equal footing with the PC which also reports to the Council and Mayor. In the absence of a ZO do his/her duties fall back to the Council and Mayor?

Therefore, and based on past experience with the ZO working without guidance or concurrence from the PC, we want to limit the scope of duties of the ZO such that only the PC has the power to approve or disapprove an application for blasting. The role of the ZO however, still is to do the preliminary review of an application, make recommendations to the PC, and implement the PC's decisions.

Our reference to a blasting permit as a Building Permit was to ensure that the two activities are brought to the table at the same time. For example, if a contractor requests a blasting permit to remove some trees or rocks, we want to know the ultimate reason for the action; is it to make a garden or make way for a house addition? We want to prevent parsing of a project in order to obtain permits that might otherwise be denied.

But, in reviewing our current Building Permit, I feel that it needs to be thoroughly reviewed and rewritten, so I recommend we continue with the Blasting Permit as a separate entity and ensure it is tied to other permits by specific reference.

**Section 9-1505 A** - After much research by members of the PC, our decision to *prohibit blasting in the historic district* was unanimous. Such a prohibition may seem too restrictive, but the possibility of damage to any part of the historic district is unacceptable. Should a party feel aggrieved by this restriction, they have the option of the appeal process.

**Subsection B(4)** – we eliminated reference to the pre-blast and post-blast surveys because we couldn't determine a meaningful set of criteria that would apply to all situations. Surveys would still be required but would be part of the "additional information" requested once the initial application is reviewed, so that they could be tailored to the specific set of conditions.

**Subsection D** – application fees are used to help offset the cost of processing the application. As we would always have to scrutinize these requests thoroughly and

possibly require the aid of legal counsel, we feel that setting a higher minimum and tying the fee to the scale of the project is appropriate.

**Subsection E** – our Building Permits are valid for one year, so to shorten the permit period to 6 months would indicate a separate Blasting Permit to prevent conflict. I think a six month expiration period is okay.

**Section 9-1508** – I have changed the time periods as such: the PC shall act within a reasonable period *not to exceed 90 calendar days*. Applicant must be notified in writing *within 14 business days* of the date the PC makes a decision.

We are required by Title 9 to meet no less than once each calendar quarter. As the PC is comprised of volunteers and needs 5 members to make a quorum, it is possible that we could not get a quorum and thus hold a meeting within a 30-day period from receipt of an application. Also, as the ZO is tasked with making sure an application is complete enough to be reviewed by the PC, the *acceptance* of an application may be much later than the original receive (submit) date. Because we are required to meet each quarter, the 90-day period is a guarantee. Also, it is very likely that review of a blasting application will take more than one meeting.

Considering staffing levels, holidays and vacations, etc., processing of routine paperwork through Town Hall is more realistically a 14-day business day turnaround than 5 days.

**Section 9-1510 Pre-blast Notification** – I recommend changing this section to read as follows:

“The applicant must provide written notification at least thirty (30) days prior to the commencement of blasting operations to the Corporation of Shepherdstown and local utilities, via first class mail or hand delivery. The written notification shall include, at minimum, the name of the applicant, the name of the blaster, the location of the property upon which the blasting shall occur and the blasting schedule.

“At least thirty (30) days prior to the commencement of blasting operations, the same written notification shall be sent via US Mail to every property owner in the Corporation of Shepherdstown.

“At least thirty (30) days prior to the commencement of blasting operations, a public notice shall be published in a local newspaper of general circulation, which notice shall include, at a minimum, the name of the applicant, the name of the blaster, the location of the property upon which the blasting shall occur and the blasting schedule.”

Shepherdstown is located in a karst area, our limestone bedrock constantly changing as it dissolves and develops caves, sinkholes, etc. In a karst area, the effects of blasting can be totally unpredictable and may have effect in unexpected areas and at great distances. Because of this we feel that limiting the notice of blasting to the abutting properties is insufficient.

The number of property owners within the corporate limits is not a burdensome quantity, and as part of the PC’s requirement to notify all owners, we would advocate aiding the applicant by providing electronic copies of the Town’s current mailing list of property owners.

**Section 9-1516 – Enforcement...** - I agree with BR’s assessment of this section, i.e., that the Town Magistrate cannot initiate a cease and desist or issue an injunction. Per Section §9-902 the ZO is the enforcer and the appeal process goes to the PC and then the BZA. (Again, in the absence of a ZO who is the enforcer?)

(In reviewing the state code 8A-10-1, the processes of enforcing penalties, declaring common nuisances, seeking injunctions is not linear but “splattered” among Town Council/Mayor, the PC, the ZO and the BZA. We may need the assistance of counsel to extract a process and incorporate it in our Title 9.)

I recommend we use the redlined version of this section with the change of the word “call” to “calls” in A(2).

[end of memo]

Meeting adjourned at 8:50 p.m.