

Draft Minutes
Regular Meeting – June 18, 2012

Present:

Commission Members: Josh Stella – President, Jim Auxer – Mayor, Bane Schill – Council Representative, Karene Motivans; David Rosen, David Springer, Kathryn Bragg-Stella, and Theresa Trainor (arrived 2 minutes late).

Zoning Officer: Harvey Heyser

Visitors: *(All listed in sign-in sheet order, from the Z.O.'s notes, or from the recording.)* David McMillion, Gail McMillion, Hali Taylor, Patrinka Kelch, Tripp Lowe, Michelle Carter, Cynthia Curtis, William Struna, Paul Davis, Jay Hurley, Lillian Potter-Saum, Dan Saum, Borys Tkacz, Frank Hill, Eric Lewis, David Ransom, and Zenia Kuzma.

A. Call to Order: The Meeting was called to order at **7:00 p.m.**

B. Approval of Minutes: Minutes for the **May 21, 2012** Planning Commission Regular Meeting: The PC made two changes to the draft minutes:

- Page 3 (Application #12-23) – Delete the highlighted request by the President to append supporting information. (The President indicated he had the opportunity to review and refine the wording of the Notice of Decision.)
- Page 6 (Item J-1 – Temporary Fencing) – Note that D. Rosen had voted against the motion made by J. Auxer not to take any enforcement action until the June meeting.

Motion by D. Springer to approve the minutes with two changes; second D. Rosen; passed with 5 votes for and 2 abstentions (K. Motivans and K. Bragg-Stella).

C. Conflicts of Interest:

- #12-26: D. Springer – No specific reason given.
- #12-32: B. Schill – He is one of the Applicants.

D. Visitors: *All were present for specific applications, agenda items, or to observe.*

E. Applications for Consideration: *Listed here by numerical order – The PC may have discussed them in a rearranged order so they could their handle business in a more efficient manner. (The numbers in parentheses following the introductory information are approximate discussion start times on the recording of the meeting for reference.)*

#10-32: *Jim Knode for W. H. Knode's Sons; 202 E Washington St.; Application for an extension of the Building Permit – Project finished except for surfacing (3:40):* The Applicant was not present.

Original Motion by J. Auxer to grant the requested extension; second D. Rosen; not voted on because amended.

D. Springer raised the issue of the duration of the extension.

Amended Motion by J. Auxer to grant the requested extension for one year from this date; second D. Rosen; passed unanimously.

#12-06: *Betty & Jenn Chung Wang; 312 W. German St.; Modified – Repair existing wood windows. Replicate missing and rotted sashes and parts (4:50):* The Applicant was not present.

Motion by D. Springer to approve repair of the windows; seconded; motion withdrawn after the following discussion.

The Z.O. pointed out that the PC had already approved the repair of the windows, and the Mayor reported that the Notice of Decision had not gone out because the Town could not examine the windows until the Applicant had the boards removed. The Z.O. indicated that the matter was on the agenda to confirm the PC was comfortable issuing the Notice of Decision after the windows have been uncovered.

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The PC inquired about the status of the existing storm windows. The Z.O. responded that the Applicant has not stated plans for the storm windows.

[Having made a previous motion at their February 2012 meeting,] the PC took no formal action on this application.

#12-07: *Paul and Laura Davis; 111 N. Mill St.; Various modifications and supplements to a previously reviewed and approved application to restore and renovate an historic house (7:20):* The Applicant was present to explain the requested modifications (esp. the siding much of which was “moth-eaten”). He indicated that the mill can replicate the existing beaded clapboard siding (from 19th century – on the front of the house) easily. He clarified that the existing siding on the north side of the house also had to be replaced (with wood siding milled to match the 20th century German siding on that side of the house). The PC noted the HLC had reviewed the modifications at length.

Motion by J. Auxer to approve the requested modifications; second D. Rosen; passed unanimously.

The PC thanked the Applicant for the thorough and detailed application and request for modification.

#12-24: *NEK EWOL LLC; 117 E. German St.; Change use of upstairs from commercial to residential (11:05):* The Applicant was present and explained that the recent commercial/office tenant had moved and that the Owners wish to convert the space back to residential (as it was before the recent tenant). The Applicant indicated there is ample parking behind the building.

Motion by D. Rosen to approve the requested change of use; second D. Springer; passed unanimously.

The PC expressed appreciation for the application, which was for a change of use without other building permit related changes. The Z.O. pointed out the change is consistent with the goals of the Comprehensive Plan.

#12-25: *Shepherdstown Public Library; 100 E. German St.; Construct and display an 8ft. by 3ft. banner mounted to the wall (12:45):* The Applicant was present and displayed the requested banner. She indicated it will be hung covering the main library sign over the front doors (to keep the total amount of signage under the allowable limit of 25 sq. ft.). She stated that the purpose of the banner will be to combat the mis-information that the Library is moving from the center of Town. The Z.O. indicated that he had encouraged the application because the banner will be displayed for a period of time greater than what the PC regards as “temporary.” (The PC stated 30 days, although the Ordinance’s only mention is for temporary event signs.)

Section 9-210-I (d): “A temporary sign noting an event of general interest such as a locally sponsored carnival, such signs to be removed within ten (10) days after the event. The date of the event must be noted upon the sign.”

Banner as Temporary Sign: The PC observed that the proposed material is not suitable for permanent signs and stated that approving the banner as requested as a permanent sign would be saying that type of sign is suitable for business signs in Town. They suggested modification of the application to a request for a temporary sign (to be displayed for 30 days) with a succession of re-applications. The Applicant inquired whether she could modify to a temporary sign for display for a year long period and whether re-application will require additional fees at \$20,00 each. The Z.O. indicated there are no Ordinance provisions to answer those questions. (There appear to be only a few provisions related to temporary signs and none related to applications for temporary signs.) The PC encouraged the Applicant to request a temporary sign for the next 30 days during which time this complex issue can be investigated (to see if there are other options).

§ 9-210 Provisions for Other Types of Signs: The PC noted requirements for other non-business signs (esp. informational and institutional).

Covering the Existing Main Library Sign: The PC expressed concerns. The Applicant was amenable to locating the banner on the rear of the building facing where the Farmers Market is held.

Attachment: The Applicant will investigate the possibility of hanging the banner from downspouts to minimize the need for nails into the mortar/grout between bricks [the location recommended by the Guidelines].

Modification to the Application: The Applicant made three verbal modifications:

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- 1) Change the request to a temporary sign for thirty (30) days,
- 2) Change the location to the rear of the building, and
- 3) Change the method of attachment to hanging from the downspouts (if possible).

Motion by D. Rosen to approve the application with modifications; second T. Trainor; passed unanimously.

#12-26: *Shepherdstown Presbyterian Church; 100 W. Washington St.; Remove existing deteriorated historic brick sidewalk and replace with similar color new brick sidewalk (20:15):* The Applicant was not represented.

D. Springer recused himself and left the room.

Old Brick: The Z.O. reported that the Applicant is of the opinion that much of the old brick will be unusable after it is lifted [for the necessary re-grading]. The Z.O. asked if there was a place where the usable brick could be stockpiled for reuse. The PC suggested the Sewer Plant (Town yard). The Mayor indicated that the Town did stockpile some brick during the streetscape project and pointed out missing bricks in the sidewalk across from the Church. He will investigate the situation further.

Concrete ADA Ramp at the Corner: The Z.O. reported that the Applicant had mentioned this possibility at the HLC meeting (6-11-12) but had not submitted explanation or drawings detailing that plan. (The brick sidewalk currently runs all the way to the corner.) The PC noted that the HLC minutes indicated this plan was “in the future” and that the application does not mention the ramp. The PC inquired about how this would affect the corner curb. (There was no answer.)

Original Motion by D. Rosen to approve the sidewalk; second J. Auxer; Motion **not voted on** in its original form because it was amended per the following.

Amended Motion by D. Rosen to approve with only the items specified in the application [not the ADA ramp]; second J. Auxer; passed unanimously.

The PC asked if the Town has standards for sidewalks. The Mayor answered “yes” for repairs, and the Z.O. indicated that the HLC had put discussion of sidewalk guidelines on its list of items to take up when agendas permit.

D. Springer returned to the room.

#12-27: *Jay Hurley for O’Hurley’s General Store; 205 E. Washington St.; Replace existing rusted sign lights with porcelain upgrades (27:25):* The Applicant was present and explained that the old home-made lights (from tin cans and funnels) had rusted out. (The replacement porcelain fixtures are antique of a style dating from the 1920’s he estimated.) He referred to the photos and sketch in the packets.

Motion by D. Springer to approve the lights; second D. Rosen; passed unanimously.

#12-28: *Jay Hurley; 203 S. Mill St.; Construct various improvements to the mobile home park: a deck, a screened porch, (2) garden sheds, and (1) material shed combined with a tractor garage (29:35):* The Applicant was present and explained the various components of the project (including the intended reuse of some of the components).

Motion by D. Rosen to approve the application; second B. Schill; passed unanimously.

#12-29: *Dave McMillion; 206 W. High St.; Construct screen sided chicken coop in rear yard (31:35):* The Applicant was present to explain the application. He described the other accessory buildings on the site and referred the PC to the materials in the packet. The PC also examined the color photo of the coop the project will be modeled on and reviewed the color chips submitted.

Motion by D. Springer to approve the application as submitted; second B. Schill; passed unanimously.

#12-30: *Lillian Potter-Saum for Source; 108 S. Princess St.; Construct and display a hanging business sign (from a new bracket) and a moveable sign; (34:20):* The Applicant was present. She displayed a sample bracket (to be locally crafted) and the proposed hanging sign. She explained the proposed sign graphics and colors. (The background will be natural wood with a urethane finish.) The PC examined the color chips submitted.

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“Open” Sign: The Z.O. indicated that, because the sign (used by the business’s previous owner) had never been reviewed and permitted, he had encouraged the Applicant to add it to her application. The PC noted that the application did not mention the “open” sign. The Applicant confirmed that the application included the “open” sign, which will lean against the building when the shop is open. The Z.O. directed the PC’s attention to photos of the sign (submitted by the Applicant) in the packets.

Motion by D. Springer to approve the application [for both signs and bracket]; second J. Auxer; passed unanimously.

#12-31: *Patrinka Kelch; 207 E. High St.; Construct reed barrier fencing supported by poles between the front yard of the property and the rear yard of the neighboring property (37:30):* The Applicant was present and clarified that this application was made to make the temporary fence/screening discussed at the PC’s May meeting permanent. She summarized the HLC’s discussion and the opinion expressed that there is no requirement to permit temporary fences. She also brought up the HLC’s recommendation that the temporary fence be allowed to remain until a permanent fence can be installed. The PC responded by pointing out that it is the PC’s responsibility to decide which projects require permits and whether temporary fences can remain or not. The PC indicated that their May discussion had found the requested screening/barrier to be a fence [and that an application was required.]

HLC Review/Recommendation Process: The Applicant expressed confusion about that process. The PC summarized the process and emphasized their general acceptance of HLC guidance when it pertains to matters related to the Guidelines and the fact that the PC almost always respects the HLC’s recommendations on those aspects of applications. The PC stated that the HLC does not grant permission for fences. [The HLC does not approve fence permits.]

Possible Modification of Application #12-31: The Applicant indicated that, before the HLC, she had offered to modify her application to a material the Commissions could find more suitable: She indicated an interest in stone but was uncertain how to configure a stone “fence” to comply with the openness requirements of the Ordinance. The PC responded that modifications [of a more complicated nature such as a change of design and materials] customarily include drawings and specifications. They recommended that the Applicant draw up where the fence will be, chose materials, and submit drawings that show what the (possibly) modified fence will look like. They then tried to clarify that application #12-31 was to construct as permanent the reed screening that was previously put up as temporary.

Keeping the Temporary Fencing: The Applicant requested permission to keep it up for an event scheduled for July (date not finalized). The PC responded that there is no such thing as temporary fencing in the current Ordinance. (The suggestions from the Fence Committee – agenda item #G-1 below – are not part of the Ordinance.)

Options: The PC outlined two options:

- 1) Withdraw the application and modify it to a whole new fence design based on the Guidelines or
- 2) Proceed with the application (as submitted) and, if refused, appeal to the BZA for a variance to make the reed fence permanent.

The Applicant requested clarification of the two options and what effect each would have on retaining the temporary fence. The PC expressed an opinion that, by law, the temporary fencing should not be there now because it has not been approved and mentioned the possibility of enforcement action. (They repeated the fact that temporary fencing is not mentioned in the current Ordinance.) The Mayor remarked that the current fence is illegal now that the event is over. (The PC briefly discussed temporary fencing as part of the function for events approved by Town Council.)

Option Chosen: The Applicant decided to continue the application and to go to the BZA (if denied) to see if she can keep the reed fencing. She requested a vote on the application as submitted.

Screening: The Applicant referred to the requirements in § 9-803 and contended that the location requested is in the side yard (per b):

IV. Screening General Requirements

- a) The planning commission shall consider screening permits for the following two purposes:
 1. To minimize the impact of adverse visual effects on your own or on an adjacent property; or

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2. To establish a modest privacy area in rear or side yard that is unusually exposed to adjacent properties and not remedied by allowable fencing. The intent of this purpose is to allow the minimal linear amount of screening necessary.
 - b) Screening is allowed in a side or rear yard.
 - c) Screening may be accomplished by fencing or barrier consisting of vegetation, or a combination of both.
 - d) No screening fence will be greater than 6-feet in height.

Location: The PC referred to the definitions in Chapter 13 and found that the proposed fence is in the front yard of 207 E. High St.:

Yard, front - Open space extending across the full width of lot between the front lot line or the proposed front street line and nearest line of the building or any enclosed portion thereof.

Yard, side - Open space between the side lot line and the nearest line of the foundation of the building, porch or projection thereof, extending from the front yard to the rear yard, or, in the absence of either such yards, to the front lot line and/or rear lot line.

Borys Tkacz, who lives in the adjacent property at 211 E. High St., reminded the PC of his wife's and his concerns and of their opinion that the requested fence is not a valid, legal fence: materials not considered to be permanent and placement in the front yard where it does not conform to the height and open/closed requirements. He pointed out that the HLC expressed their opinion that the materials are not considered permanent. He brought up "spite fence" ordinances adopted by other communities (to which point the PC responded that Shepherdstown's Ordinance does not include such provisions). He distributed photos of 211 E. High St. from 2004 and 2012 and of the reed fence. He invited PC Members to view the fence from his property.

The Applicant also invited PC Members to view the fence from the 207 E. High St. side and stated that she is not required to provide views of the Mill (restored with private funds). The PC responded that their considerations ought not include that issue.

PC Discussion: At this time, the PC closed the visitor comment portion of this matter.

Motion by D. Rosen to deny the application for a front yard fence based on the materials and the height of the fence (per § 9-803 – chart and diagram VI-(c)); second T. Trainor; passed unanimously after the following discussion of screening.

Side Yard Screening: In reaction to the Applicant's reference to the requirements for screening, the PC discussed the possibility that, because of the unusual configuration of the lot, it might be construed that the fence is side yard screening. They referred to § 9-803-IV (a) 2: "To establish a modest privacy area in rear or side yard that is unusually exposed to adjacent properties and not remedied by allowable fencing." They also referred to the definitions of front and side yards (cited above) and applied them to the specific circumstances of 207 E. High St. [That investigation supported the PC's earlier finding that the fence applied for is in the front yard.]

Enforcement: The PC noted § 9-1006 and expressed their opinion that an appeal stays further action:

An appeal stays all proceedings in furtherance of the action appealed from, unless the Planning Commission certifies to the Board of Appeals after notice of appeal shall have been filed, that by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of by a Court of Record with notice to the Planning Commission.

The Mayor pointed out that the Ordinance is being broken now and stated his opinion that the fence should be taken down. There were no further motions.

The PC noted that both property owners have tried to work within the process and that the PC had gone on record with their motion. In response to a question from the Applicant regarding retaining the temporary fence, the PC indicated

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that there is no allowance in the Ordinance for keeping a fence that is not approved. They repeated their suggestion that no one needs a permit to plant vegetation or to use that as a barrier [screening]. The PC directed future questions to the Z.O. and to the President.

#12-32: *William B. Schill and Deborah Hodge; 134 W. German St.; Construct new carport with attached storage building to replace former demolished under permit #12-18 (1:21:10):* Before recusing himself, the Applicant was present at the PC's request during the first part of the discussion to explain the application and to answer questions:

- The existing metal shed will be removed. It is not an historic structure (confirmed from the Inventory).
- The footprint of the new carport will be the same as the existing. The new shed will be slightly larger than the existing [and in a different position].
- The shed will include an upper level storage area over the carport.
- Existing fencing will be removed at the location of the new structure.
- The steps will be reconstructed on the east (opposite) side of the lot.

B. Schill, the Applicant, recused himself and left the room.

The PC reviewed photos of the proposed window units, material samples, and color chips.

Motion by K. Bragg-Stella to approve the application; second D. Springer; passed unanimously.

B. Schill returned to the room.

E-1 Application #12-15: *Welcome Sign Project Team (Rotary) for the Corporation of Shepherdstown; West side of N. Duke St. at the Bavarian Inn property, close to the bridge; application to construct and display a welcome sign:* Not discussed.

F. Historic Landmarks Commission:

F-1 Draft Minutes of the HLC's 6-11-12 meeting were e-mailed 6-17-12. Not discussed.

G. Committee Reports: *Items of committee business that were not listed on the agenda and were not discussed during the meeting are not included in these minutes.*

G-1 Fence Committee: *Report on their recommendations regarding temporary fencing/screening (1:43:25):*

1. The Committee reported they had examined ordinances from other communities, that they had concluded that purpose is critical for temporary fences, and, therefore, that they had listed purposes in their recommended language:
 - Construction activity,
 - Barricades for special events,
 - Temporary protection for plants (i.e. to stop people from cutting through a newly planted area), and
 - Barriers for public safety.
2. The Committee recommended that temporary fences not require permits but meet certain standards:
 - a. Time limit: 45 days maximum (Any longer and a permit application would be required.) The Committee expressed its opinion that fences for protection of planting (esp. during cold weather) were likely to be the type most likely to be needed for more than 45 days.
 - b. Materials appropriate for the purpose (i.e. bright color flagging for construction or chain link fencing for construction security). (A 6 ft. plywood barrier would be overkill for temporary protection of plants, for instance. The Z.O. would have to work with the people needing the temporary fence to find something appropriate.)
 - c. Maximum height – 6 ft.

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3. The PC observed that most construction activity requiring temporary fences would be part of permitted projects. The Committee agreed but pointed out there are exceptions (such as interior projects or long term repair work requiring scaffolds).
4. The Committee observed that, for temporary fences that could not meet the standards, the people needing them would have to come in and make application. The Z.O. inquired if it was the PC's intention that there be some sort of permit for temporary installations. (Both temporary fences and signs had been discussed in recent meetings.) There was no specific response.
5. The PC brought up the possible situation of multiple events. The Committee indicated the temporary fence would have to be taken down and put up in order to meet the standard (each for single event).
6. Reinstallation every 46th day: The PC expressed concern about this possibility leading to temporary fences essentially becoming permanent and suggested having some limit to the percentage of a year that temporary fences could be up.
7. The PC suggested more specificity about materials because of the concern for appearance in the Historic District. The Committee responded that temporary fences are intended to be temporary, not historic. They referred the PC to the explanation in the packet materials. They also made a distinction between temporary and materials as listed in § 9-803 as suitable for permanent fences.
8. "Properly Installed:" The PC had reservations about this language. The Committee responded there are "industry standards" for installation. The Mayor pointed out that enforcement is his office's responsibility.
9. The PC expressed skepticism about the subjectivity of language related to materials "appropriate for the purpose" and installation ("properly installed"). They urged the Committee to give those phrases additional consideration.
10. The Committee suggested PC Members review the recommendations by running scenarios based on recent applications through the suggested requirements. The Committee will give additional thought to the issues raised during the PC's discussion and will report back at a future meeting.
11. Zenia Kuzma pointed out that proper installation of a reed fence should raise it 6 inches above grade to minimize rot. (If the fence material is 6 ft. tall, the height of the fence will then be greater than the 6 ft. allowed.) She also cautioned about allowing temporary fences made of highly flammable materials near historic structures.

H. Continuing Business: *Items of continuing business that were not listed on the agenda and those that were not discussed during the meeting are not mentioned in these minutes. The Zoning Office maintains a list of items of continuing business. Discussion of items of continuing business will customarily be scheduled for the special meetings.*

H-5. Proposed Annexation West of Town – Rumsey Green (1:27:40): The Petitioner was present. The Mayor reported that PlaceMakers has been working with Sheetz (a long process) and that PlaceMakers would prefer to make a complete report with explanation to PC Members in small groups before distributing any graphic information. The Mayor suggested having the public presentation at a Special Meeting with only Rumsey Green on the agenda and having PlaceMakers come the day before the public presentation for small group get-togethers with PC Members. He indicated that the public presentation would not be the required PC public hearing.

The PC recalled that options were presented at the earlier public presentation and requested an opportunity to view the material in advance of the proposed presentation.

The PC consulted the July calendar. The petitioner requested that the Special Meeting not be held between July 10th and 17th when he will be on vacation. After discussion, the PC tentatively scheduled the Special meeting for Wednesday, July 18th and the small group get-togethers for Tuesday, July 17th.

The Petitioner complimented PlaceMakers (and the Town for hiring them) on coming up with a concept much improved over the initial concept plan submitted with the petition. (The collaboration has made the project much better.)

H-20. Proposed Annexation East of Town (Kalathas Property) (1:37:30): The Petitioner's Attorney was present. The Mayor indicated the request will be discussed at the PC's July meeting.

Neighbors expressed some concerns about traffic and possible widening of E. High St. The PC inquired whether the right-of-way was public or private. The Mayor responded that, within the Town limits, it is a Town street.

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The President summarized the known facts at this time:

- The Petitioner has requested annexation of the parcels as three lots with no special zoning. (That means it would be annexed as R-1 under the Town's Annexation Policy.)
- That would bring the parcels under the Town's review process. If the parcels are not annexed, the Town has no say.
- The Petitioner is not requesting any special exceptions form Title 9 as part of the annexation.

The PC shared a copy of the packet materials with the neighbors.

I. New Business: No items on agenda.

J. Administrative Matters: No items on agenda.

K. Non-Agenda Items: No items brought up.

L. Adjournment: 8:31 p.m.

Submitted by,

Harvey Heyser, Zoning Officer