

## Board of Zoning Appeals

April 24, 2019

### Meeting Minutes – Administrative Meeting to Discuss Expertise/Consultants Needed for a Hotel Application

The meeting was called to order at 7:08 pm. In attendance were Board of Zoning Appeals members: Chris Craig, Mike Buscher (Chairman), David Simmons (Secretary) and alternate Hap Becker.

Minutes from the 1/10/19 and 4/15/19 meetings were approved.

BZA members discussed addressing variance requests ahead of the full application and site plan review. Members discussed a “variance” from the conditional use conditions in Article 1313. BZA members disagreed where the variance process is contained within Article 1313 or is as described in Article 1326. A question regarding this issue will be included in the questions to Mark Sadd. Members also reviewed the variances that are contained in the Planning Commission’s report (Statement of Conformity). BZA members questioned whether or not the realignment of Columbia Street is a variance under the Town’s ordinances as described in the Statement of Conformity.

Shaun Amos arrived at 7:42 pm.

BZA members discussed the process and timeframes associated with the application process (receipt of application through the approval of a conditional use permit). Mr. Amos expressed concern over the level of effort and detail to identify expertise with no application being presented to the BZA. Members discussed the need to have expertise ready once the permit application arrives instead of attempting to identify expertise once the application is submitted. Members discussed David Hammer’s memorandum that describes the duties of the BZA when an application is received primarily to determine the timing of hearings, deliberations, and BZA decisions, Mr. Craig agreed to develop a flow chart based on Article 1324.02 that will help the BZA better understand the time allowed to review and approve an application (including hearing requirements), which will be reviewed/confirmed by Mark Sadd. Mr. Buscher agreed to search for a Hill Top House Concept Plan and Conditional Use Permit review process chart that was developed by the previous Mayor and Town Council.

Two (2) questions have been added to the list of Questions for Attorney that are attached to these minutes. No changes were made to the List of Expertise/Consultants that is also attached to these minutes.

Next meeting is scheduled for May 15, 2019 at 7 pm.

Recording stopped at 8:31 pm. Ms. Becker left meeting at 8:34 pm.

The meeting adjourned at 8:45 pm.

Continued with two attachments –1) Proposed Questions for Attorney and 2) List of Expertise/Consultants

**Preliminary list of questions for land-use attorney (Mark Sadd)**

1. Do we put requests out to bid for expert opinions on facets of the project, and if so, at what point? We have contemplated the following options. Option a. is recommended by the Town Planner (hired) due to the need to obtain costs that will support the applicant's fee while Option b. allows for a more defined scope for each review (i.e., more refined costs), but may result in a slower process as we await approval for monies from the Town.
  - a. Prior to receiving application so that Town Council can approve expenditures before work is needed
  - b. Upon receipt of application so that BZA can determine more definitively the scopes of work for each consultant/expert
2. If Council approves a set amount for experts/consultants in Option a. or b. above and we find that we need more money during our review, how do we proceed?
3. Would you advise us to have an attorney present at BZA meetings? If so, a land-use attorney? Or other? As an alternative, are we allowed to inform the applicant that we will need an attorney present, at their cost, if they have an attorney present at any meeting?
4. If the streets in the overlay district are sold by the town and are not used as streets:
  - a. how are they zoned? If a street is not a street any longer, what is it? What is the lot identification?
  - b. who does this?
  - c. does this constitute a variance? Is rezoning required?What if they are leased?
5. What is the role of the Planner hired by the Town as a project facilitator in regard to the work of the BZA? Can the BZA appoint the Town Planner as the Proper Authority for determining that a Zoning Compliance Permit is complete?
6. Who can determine if Historic Resources Plan is complete? HLC, SHPO, other?
7. Who is responsible for construction/demolition oversight (i.e., who is Proper Authority)? If BZA, a) can BZA hire an inspector? b) can BZA charge the hotel developer for those costs? c) can ONLY the Proper Authority or it's designee shut down the job or order a change? If not, then who else (i.e., Mayor, Town Council, police, others)?
8. What exactly is "public lighting" as referenced in your 9/7/18 letter to town?
9. Who would you recommend as BZA counsel at hearings/meetings to assist in writing findings?
10. In your 9/7/18 Letter to Town, you mention that three (3) affirmative votes are needed regardless of the number present. Can you confirm that this is true for just this project and/or all projects?

11. If street ownership is transferred to SWaN, will that action trigger the Article 17 Subdivision rules? If so, please explain.

12. How do the mechanics of contracting consultants work? Who is contracting – Town or BZA directly? Who processes/pays invoices (i.e., does the BZA need a bank account)?

13. We have developed a list of consultants/experts that we intend to engage for application review. Can we engage on certain experts to assist with a variance request review prior to our review of a conditional use permit (i.e., can we separate the variance request review/decision from the conditional use permit application review/decision)?

14. The Planning Commission identified four (4) variances that are needed for the hotel project to move forward (in their Statement of Conformity). Must all variances follow the approval process that is established in Article 1326? Please explain if any of these variances do not follow Article 1326.

15. If we elect to have more than one (1) public hearing, must all public hearings be held within 75 days of the receipt of an application [Article 1324.02(a)]? If findings during a public hearing lead to the need for additional public hearings, is it possible extend the 75 day requirement?

POSSIBLY FOR M. SADD, AFTER OUR REVIEW OF STATE CODE/HF ORDINANCES

When we do solicit bids for consultants/experts, are we required to advertise and/or receive a certain number of bids? Do the projected costs trigger advertising or other solicitation requirements?

**EXPERTISE IDENTIFIED BY BZA FOR HOTEL APPLICATION REVIEW SUPPORT**

<b>TOPIC</b>	<b>HF ORDINANCE ARTICLE/SOURCE</b>	<b>PROPOSED EXPERTS/PROCESS</b>	<b>NOTES</b>	<b>ACTION ITEMS</b>
Storm Water Management (SWM)	1713.03	Region 9 (Matt Pennock), County, others	Responsibility of PC (not BZA); BZA forwards relevant application docs to PC	
Grading Plan	1303.04(d)(1)	NONE	Part of PC review of SWM via 1713.03	
Historic Resources Plan	1303.04(d)(2)	WV Historic Preservation Office (SHPO), Mills Group	Confirm extent to which HLC reviewed HRP with SHPO during Concept Design process	See also question on completeness to M. Sadd
Construction Plan	1303.04(d)(3)	County, Region 9, others	Appendix B of HF Ordinances includes requirements	Mike to call Region 9 to determine their capabilities (with Hap and/or Dave)
Landscape Plan	1303.04(d)(4)	Request PC to manage, Professional Landscaper, Tree Committee		
Scale Model	1303.04(d)(5)	Planner (Ball, others) to help craft request	Much discussion about including night views with light impacts from various points in town and across the river	
Performance Bond	1303.04(d)(6)	Town Insurance Company to help establish	May need legal advice? Need to ensure this covers “substantial risk to publicly owned infrastructure”	
Lighting Plan	1303.04(d)(7)	Rob Case	includes env impact statement on effect to flora, fauna, and night sky	
Traffic Study	1313.04(f)(7)	Wells & Associates, HEPMPO (Matt Mullenax), WV DOH	WV DOH may not study local/neighborhood traffic issues, should also include parking plan review	
Land Use Attorney	per 9/7/18 M. Sadd Letter recommendation		1) At each hotel hearing 2) Assist writing findings 3) Advise on Article 17 (subdivision) applicability	

Environmental Project Manager	per 9/7/18 M. Sadd Letter recommendation		Demolition/material handling issues;	
Construction Oversight	per enforcement comment in 9/7/18 M. Sadd Letter		May be combined with demolition/Environmental Project Manager duties	
Hearing/Meeting Recorder	BZA Secretary Request			
Geotechnical Engineer		Terracon, State Agencies	Geological, Blasting, Vibration	Hap to contact Patrick Tierney as he may have relevant information (blasting); Dave to identify more firms
Civil Engineer		G,D & F Engineers, KTA	Water/Wastewater Estimates	
Electrical				
Other Topics/Needs				BZA members to review list of topics/experts from Town (Ball) and SWaN for other potential needs

