

Harpers Ferry Board of Zoning Appeals

August 6, 2020

Meeting Minutes – Administrative Meeting (Via Zoom and Livestreamed on Facebook)

Call to order and attendees - The meeting was called to order by Chair Dave Simmons at 5:30 pm.

SEAT 1 (term ends January 1, 2021): David Simmons – PRESENT and leading meeting

SEAT 2 (term ends January 1, 2022): Shaun Amos – PRESENT

SEAT 3 (term ends January 1, 2022): Linda Rago – PRESENT

SEAT 4 (term ends January 1, 2023): Mike Buscher – PRESENT

SEAT 5 (term ends January 1, 2023): Chris Craig – PRESENT and recording minutes

ALTERNATE 1 (term ends March 1, 2021): Hap Becker – ABSENT (non-voting)

ALTERNATE 2 (term ends March 1, 2022): Rob Case – PRESENT (non-voting)

ALTERNATE 3 (term ends March 1, 2023): VACANT

Others attending included Deb Kelly (assisting with technology) and Councilmember Nancy Singleton Case

Minutes Reviewed – Minutes of the June 2 hearing on the Harpers Cemetery Entrance structure were reviewed. Linda Rago moved to approve the minutes as presented. Shaun Amos seconded; passed unanimously.

Review of BZA Chairman Activities and Recent Meetings – Chair David Simmons submitted a report on his recent activities and meetings on the following:

1. Town Project Permit Process – A document was submitted showing results of Mr. Simmons' recent meetings with the Town Administrator and the Ordinance Compliance Officer. Chris Craig noted his disagreement with the document's indication that much or most new construction could be permitted by the OCO. Prior meetings of the BZA resulted in consensus that all or nearly all new construction would require review by the BZA. The document also indicated all demolition would need to be reviewed by the BZA, and Mr. Craig expressed his opinion that town ordinances only required BZA approval of demolition of contributing structures within the historic district. [NOTE: Requirements related to "Relocation and Demolition" in Appendix A clearly state that a Demolition Review Permit is only required for contributing structures.] There was also discussion about the need for review of permit application forms after the permit process is reviewed and finalized.
2. Site plans and special studies that may be needed for some building permit applications – Mr. Simmons noted that future applications are likely to need special documentation for review, for example grading plans that might be required for stormwater management under Ordinance 1713.01(d)(3). He requested guidance on who should request these studies and who should review site plans for missing documentation needed. Linda Rago expressed the view that any BZA member, in addition to the Chair or the OCO, should be able to request materials. Mr. Craig cautioned that the Chair and the OCO should be able to expedite requests for applicant materials prior to applications going to the entire BZA. There appeared to be agreement on both Ms. Rago's and Mr. Craig's opinions. Additional questions remain on who would be paying for studies and their technical review. This remained unresolved and will likely need guidance and perhaps action from the town council.
3. Ethics Questions on Hearings – Mr. Simmons reported on his recent communication with Kimberley Weber of the WV Ethics Commission about BZA private deliberations during hearings. Ms. Weber advised him that private deliberation is acceptable, but that final votes must be in public. During the meeting, a comment received from Nancy Case contained a recommendation to obtain a legal opinion about the private deliberations.
4. Comments and Communication related to Hearings – The town has received anonymous written comments on hearings. The Town attorney has stated that there is no law banning such comments, but that the BZA could refuse to receive them due to good government practices. Chris Craig expressed his strong opinion that

anonymous comments should play no part in the permit review process. Any formal decision on anonymous comments was delayed to a future meeting. The Town attorney also has cautioned BZA members to avoid chatting or emailing among themselves about specific issues prior to hearings, though she did say outside individuals may communicate with members directly. Mr. Craig expressed his view that private communication with those outside the BZA about specific opinions on pending applications could have the same ethical issues as anonymous comments and should be avoided.

5. Prior notice of BZA special (administrative) meetings – Mr. Simmons noted that town ordinances do not specify the timeframe of public notice for BZA’s administrative meetings besides two days advance notice on the door of Town Hall. Mr. Simmons stated his belief that we should provide earlier and more public notice of these meetings. No action was taken on this, however.

Applications Schedule – The first pending application was the Harpers Ferry-Bolivar Historic Town Foundation’s application for chimney removal of the First Zion Baptist Church building. There was discussion about whether the chimney is original to the building and whether BZA approval was needed. A date of August 28 was finally set for a hearing, but review by the Historic Landmarks Commission will be requested. The second pending hearing is for the McIntyre property, which may require a grading plan and may have special engineering considerations. Three applications are in the pipeline for the Velez property as well. There was discussion on date and time availability of members, but no dates were set for the McIntyre or Velez applications. Mr. Simmons also noted that he will be recusing himself from the hearing on the Adagio House Vacation Rental due to a possible renting agreement with the applicants. Linda Rago will be chairing that meeting (to take place immediately after this meeting).

Adjournment – At 6:25 Dave Simmons moved to adjourn. Linda Rago seconded; passed unanimously.

Minutes recorded by Chris Craig