

Harpers Ferry Board of Zoning Appeals

Hearing, August 7, 2023

Meeting Minutes

Location: Town Hall

Call to order and attendees - The meeting was called to order by Chair Dave Simmons at 7 pm.

SEAT 1 (term ends January 1, 2024): David Simmons, Chair – PRESENT

SEAT 2 (term ends January 1, 2025): VACANT

SEAT 3 (term ends January 1, 2025): Lynn Pechuekonis, Secretary – PRESENT, recording minutes

SEAT 4 (term ends January 1, 2026): Ed Wheelless, Vice Chair – PRESENT

SEAT 5 (term ends January 1, 2023): VACANT

ALTERNATE 1 (term ends March 1, 2024): Chad Gauthier – ABSENT

ALTERNATE 2 (term ends March 1, 2025): VACANT

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

GUESTS: Kevin Hamilton, Ordinance Compliance Officer
Juan Velez and Christy May, Applicants
Roberta Meade-Curry, Planning Commission
George Owens, Town Council
Bart Wheatley

Administrative Meeting

Approval of Minutes – Ed Wheelless moved to approve minutes of the administrative meeting on June 15, 2023; Lynn Pechuekonis seconded; unanimously approved.

Hearing

Variance Request for Zoning Compliance Permit Application located within the setback areas [Article 1304.02(a)]:

1090 Putnam Street, Harpers Ferry, WV

Applicants described their project and its history to date. The plans currently under consideration show the home addition that is already under construction under a permit issued by the Town in December 2021, as well as the location of a proposed deck and stairs that was revised as the result of a June 20, 2023 meeting with the Planning Commission. Construction on the addition began in spring 2023. In May 2023, it was discovered that the certified survey submitted by Mr. Velez was inaccurate and did not show the proper location of the undeveloped Van Wert paper street, which is public property. A stop work order was issued on June 1, 2023. The 2021 plans for the as-yet unconstructed deck and stairs were revised because the original design would have them encroaching on Van Wert. Mr. Velez sought a variance for the existing addition, which has a setback of approximately six feet from the property line, and for the redesigned deck and stairs, which when constructed would have a setback of three feet from the property line. He addressed questions regarding the four conditions listed by the Town ordinances as requirements for a variance to be granted.

Roberta Meade-Curry presented to the Board regarding concerns of the Planning Commission. She submitted draft minutes from June 20, 2023, Planning Commission meeting, at which the applicants were in attendance. The motion made at that time requested the OCO to obtain updated project drawings to scale to ensure that there would be no intrusion onto Van Wert paper street. Those drawings to scale have not been submitted by the applicant. Ms. Meade-Curry stated that a new survey has not been commissioned, and the Planning Commission was concerned a revised survey may show that the Velez project will still encroach on Van Wert.

At 7:50 p.m. Lynn made a motion to end the hearing. David Simmons seconded; approved unanimously. Lynn then made a motion to go into private deliberations; Ed seconded; approved unanimously.

At 8:20 pm, David called the public BZA meeting to order.

David Simmons made the following two motions:

Motion 1: Approve the setback for the addition, as built, which is approximately six feet from the property line. (Lynn seconded; approved unanimously)

Motion 2: Deny the variance for setback of the deck and stairs for the deck. (Ed seconded; approved unanimously)

Clarifications:

If the applicants want to build the deck, they should resubmit an application with a survey showing the accurate property lines, a drawing to scale showing both the addition and the deck in relation to the property line, and a minimum setback for the deck and steps of no less than the setback of the existing addition. If the Ordinance Compliance Officer deems these conditions have been met, no additional variance shall be required.

Justification:

Applicants provided a certified survey at the time of initial application for a ZCPA and received approval from the Town on December 15, 2021. Construction on the addition did not begin until spring 2023. After the commencement of the construction, the property line error was discovered, and a stop work order was issued. All walls, windows, and roof of the addition had been constructed at the time of the stop work order.

The variance request was necessary due to errors in a certified survey that was submitted by the applicants in good faith and accepted by the Town as part of the project permit approval process two years ago. The OCO during deliberations assured the BZA that the addition is not constructed on the Van Wert Street right of way. The BZA denied the request for a variance from the setback requirements for the deck and steps because this construction stage has not yet begun. The applicant has the opportunity to make the necessary adjustments to the design that ensures all structures are no closer to the property line than the addition already constructed.

The BZA determined that the variance for the addition would not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or resident, as the applicant owns the adjacent property to either side, and the Town owns the paper Van Wert Street.

Granting this variance on the addition will eliminate an unnecessary hardship to applicant of tearing down construction that was built in good faith upon the issuance of a project permit.

The BZA determined that with these two motions the Project and Zoning Code ordinance will be observed and substantial justice will be done. The Town's interest in the paper street property boundaries is maintained, as determined by the OCO's measurements from the National Park Service boundary markers, and the homeowner may proceed with finishing the previously approved addition, already under construction.

Adjournment – At 8:25 pm David moved to adjourn, seconded by Ed; approved unanimously.

Minutes submitted by Lynn Pechuekonis.