

**THE BERKELEY COUNTY BOARD OF ZONING APPEALS MINUTES**

The Berkeley County Board of Zoning Appeals met in a regular session on January 19, 2022 in the Council Chambers at 400 W. Stephen Street, Martinsburg, West Virginia.

**1. CALL TO ORDER**

- a. The meeting was called to order at 6:00 p.m. by John Buschman

**2. ROLL CALL**

- a. BZA MEMBERS PRESENT: John Buschman, Jeffery Campbell, Jeffrey Smith, and Dan Shergy
- b. MEMBERS ABSENT: Cory Rodriguez
- c. STAFF: Laura Hoffmaster, Senior Planner  
          Brian Ross, Director of Community Development  
          Jeff Mauzy, Assistant Legal Director  
          Sarah Sandri, Administrative Assistant

**3. APPROVAL OF THE AGENDA**

**ACTION TAKEN:** The motion was made by Jeffrey Smith and seconded by Jeffery Campbell to approve the agenda. Call for question. The motion carried unanimously.

**4. APPROVAL OF MEETING MINUTES**

**ACTION TAKEN:** The motion was made by Jeffrey Smith and seconded by Dan Shergy to approve the November 30, 2021 meeting minutes. Call for question. The motion carried unanimously.

**5. PUBLIC HEARINGS**

**REQUEST FOR SPECIAL EXCEPTION**

**a. 54 Showers Lane, File# 2112-438**

The property is located at the intersection of Showers Lane (WV Rt. 15/1) and Tuscarora Pike (WV Rt. 15).

The applicant is requesting a special exception, in accordance with Section 610, of Tuscarora Community Zoning Ordinance (1975), to use the existing structure as a real estate office.

Laura Hoffmaster read the description and project notes.

Donya and Rick Gamache were present representing the project.

Donya Gamache, owner of 54 Showers Lane, stated that she is a resident of Berkeley County and this will be their second residence. She stated that she is a real estate agent, President of the Eastern Panhandle Board of Realtors, voice for Property Rights for buyers and sellers for the entire state, and she stated that she serves as a state director for the West Virginia Association of Realtors. She stated that when she purchased the property the deed and Zoning Ordinance stated that they were allowed to have a real estate office, accounting office and other types of businesses that are already located next door to the property. She stated there are 11 that she can see within a half mile of her location. She stated she did not think she

would have issues with the property. She stated that she has a very small firm and decided to open their own office. She stated she works for a larger franchise that is only a half mile down the road right across the street and she has been there for 5 years. She stated that when COVID started she stated that she wanted to be able to have an office where her children could learn remotely, bring her dogs and make themselves at home while working and being able to separate their home from their office. She stated the location was ideal and she can get anywhere easily versus where they live in Back Creek Valley. They wanted a central location that that could make ADA compliant because she represents clients with all types of handicaps. She stated that she did traffic data and pulled the Bureau for Transportation statistics that was published in 2018 at it states that a standard four person household with four licensed drivers in a 3 bedroom home take 4-5 trips on a daily basis. She stated that they are a three licensed real estate firm. She stated they would create the same amount of traffic as if it was a residential home. She stated the may be less of an impact than if renters lived in that house. She stated she would just like a blessing of what the Zoning Ordinance states and allows for a real estate business.

Jeffery Campbell asked if they were planning to live in the home.

Donya Gamache answered that they were not going to live in the house and they do not want it to be a home based business. She stated that it states in the Zoning Ordinance that is cannot be a commercial space and someone live there. She stated that she knows of a business in the area that does have a livable apartment above in the Tuscarora Zoning. She stated that they are not asking for that. They just want a straight business.

Dan Shergy asked if she ever anticipated having clients come to her office.

Donya Gamache answered yes and she pulled that data. She stated that she did over 12 million dollars in volume last year, which was 36 clients. She stated of those 36 only 3 came to her office last year.

Mr. Shergy asked if there would be any time that her, her husband, and a staff member all be there at the same time.

Donya Gamache answered that would always be a chance.

Mr. Shergy asked if there would always be three cars there.

Donya Gamache answered that if that house was sold to a family with four licensed drivers.

Mr. Shergy stated that would be a permitted use and a commercial business is under a different set of standards, in reference to parking.

Donya Gamache stated in reference to parking they already had estimates come out and was informed that if they applied for the special exception and it is granted they cannot add more gravel or paved area so they could only pave what is already graveled. She stated that currently there is a one car attached garage that you can fit two cars behind and two car capacity behind the property where she plans to add handicap parking to an ADA entrance in the back of the property.

Jeffery Smith asked what the square footage of the property was.

Donya Gamache answered 1,550 square foot not including the garage. She stated 600 of that is probably just the kitchen. She stated it is a 3 bedroom/ 2 bath smaller home, which is why it struggled to sell. She stated it was listed at \$430,000. She

stated that the previous owner was going to rent it out, but she thought a much better use of that property would be to bring another business to Berkeley County. Jeffery Smith stated that per the ordinance you would need about 200 sq. ft. per parking space making her need about 7 spaces not including the employees. He asked if she was going to be able to have 8 parking spots there.

Donya Gamache stated that would depend on what was allowed.

Laura Hoffmaster stated that the property, per the planning commission, Stormwater Ordinance, and building code, they would not be required to have any type of parking because they would not be altering anything outside of the footprint of the home. She stated that if they were going to add any type of impervious surface they would need to come into compliance with the Subdivision Ordinance and the Stormwater Ordinance. She stated that since they are not proposing anything the Planning Department would not enforce those regulations for parking.

John Buschman asked if they would have to follow the Tuscarora Zoning Ordinance.

Laura Hoffmaster stated that they would comply with the Tuscarora Zoning, but there is no parking regulations.

John Buschman stated that there are parking regulations in Section 4 that states there should be one space for every 200 sq.ft. for a professional office.

Laura Hoffmaster stated that would be the requirement for a site plan starting from scratch, from raw land to building for a new structure. She stated in Berkeley County a site plan cannot be enforced on a structure that is not being altered in any way.

Jeffery Campbell stated that the property is changing use.

Laura Hoffmaster stated that she cannot speak to the permit process, but Brian Ross is in attendance. She stated that this project is different than any other special exceptions because it is not being altered in any way. She stated that usually the special exceptions start from raw land and go through the site plan process. She stated those parking standards do not pertain to something that is not being altered.

John Buschman asked if he was to open a business in his house that is 4,000 square feet, would he not have to have parking.

Ms. Hoffmaster answered from a planning perspective he would not have to add parking and he could operate. She stated in this case the applicant is asking for a special exception for the use to be permitted for a home office. She stated that they cannot force someone into a site plan if nothing is being proposed to change and it has not in this case.

Brian Ross stated anything that was done interior was nonstructural and would not require any permit. He stated for change of use she would be required to make the office space ADA compliant which would constitute handicapped parking, ramping, and hallway width. He stated any access to the office to be or restroom facilities would have to be ADA complaint/accessible.

Jeffery Smith asked how many handicap parking spots there would have to be.

Brian Ross answered there would have to be one spot that is van accessible. He stated that regulations for parking cannot be enforced. He stated in West Virginia, in a residential development, the HOA's Covenants and Restrictions supersede any County or State regulations.

Jeffery Smith asked about setbacks pertaining to the Zoning Ordinance with the property.

Laura Hoffmaster answered that setbacks are determined at the time of creation of the lot. She stated unless a site plan would be required, that would be the only time that the County could request the setbacks to be changed. She stated that existing structures are grandfathered. She stated that she is not sure what the residential setbacks are, but the county would not require them to be changed unless a site plan is needed.

Dan Shergy asked if Section 6.10, Professional Business offices, pertained at all Laura Hoffmaster answered that she believes it is pertaining to the alteration for signage and the exterior. She stated that she interprets that Section to mean alteration to the existing building period. If the building is existing and is altered that's when a site plan would be required with all the items from the Subdivision Ordinance and the Tuscarora Ordinance. She stated that 6.10 does pertain to this project, but is not being proposed to change or altered. She stated that if they were proposing to expand the existing building or parking everything would have to come into compliance. She stated that since nothing is being proposed to change the Planning Commission cannot force them into a site plan.

Dan Shergy asked who can make them do a site plan.

Laura Hoffmaster answered that a site plan is required anytime there is a 5,000 square foot impervious coverage or land disturbance of 1 acre. She stated that is usually triggered by the Stormwater District and Engineering with land disturbances or building permits. She stated that anything that is a brand new residential subdivision or commercial property will come through for a site plan, usually the trigger of Stormwater Management that requires a site plan.

Jeffery Campbell stated that the way he read the Zoning Ordinance shows that if something that was existing would be grandfathered in, but if it is changing use that project would have to comply with the setbacks and parking requirements.

Jeff Mauzy stated that the document is difficult to understand and there is not one clear meaning. He stated that the Board has to decide how they want to interpret the document. He stated that the county is there to let the Board know what they can enforce. He stated that the Board can vote to grant or deny the special exception. He stated that if they vote to deny they have to determine what are the factors against it, or if they do not find any the special exception is usually granted.

John Buschman asked if the special exception was granted for the real estate office the way it is will the exception carry with the property forever

Jeff Mauzy answered yes.

John Buschman asked if they decided to sell the office that has more people in and out there would be no way to enforce more parking to accommodate that amount of people.

Jeff Mauzy answered that unless that is violated it would make the special exception invalid. He stated that it is within the Board's authority to say "x number of parking spaces/ for use of Real Estate office for x number of employees"

John Buschman asked if it can only be carried by the current owner and if it is sold the special exception goes away.

Jeff Mauzy answered generally it would stay with the property.

Jeffery Campbell asked that if after the property is changed to commercial would the state road have any criteria for how they have the entrance on the road.

Laura Hoffmaster answered that it would be on the homeowner to notify Department of Highways for the change of use. She stated that the DOH might say it is fine since it is existing or they may have to make updates to the road.

Donya Gamache stated that the home is 1,550 square feet with 3 small bedrooms. She stated that the franchise she is a part of now that has 6-7 agents their office is 3,000 square feet. She stated there would be no other type of real estate company other than someone like herself, mom and pop type, because a big real estate company would not work for such a small square foot area. She stated that most real estate offices are going to run from 2,500 – almost 8,000 square feet. She stated that if they needed something bigger they would move and not try to make changes to the property. She stated that the deed restrictions state that the property state that there is limited business use and states it can be a real estate office, medical facility, or accountant type businesses. She stated that the traffic that comes in would be no different from what a homeowner and 3-4 license drivers would be.

Jeffery Smith stated that from aside from the setbacks and the parking, his biggest concern is the property is located on a crest and you never know what will be on the other side. He stated that the people who live back there know how to drive back there and the people who come to her business may not know that. He stated another concern would be people trying to back out. He stated if she sold the property to another business they might have more traffic than a real estate business. He stated as a Board they have to understand the possibilities of what the property could be in the future.

Donya Gamache stated that she understands their concerns, but she also has to be the voice for property rights. She stated that there's other businesses right next door in the zoned area that are large facilities. She stated that she doesn't think another business would ever want to come in there unless it was someone like herself. She stated that the previous owner took a huge loss on the property because of the very old outdated ordinance that is vague and limiting. She stated the house was there before the ordinance and stated that the roads are not good. She asked if it was a concern when it was rented for 10years with 4 drivers why wasn't anything done before. She also asked when the other projects around her were granted. She stated that the offices are also off of side streets like herself. She stated her house is the very first house on the corner of Showers and people coming to the office pull into the very first property on the right.

Brian Ross stated that it will be up to the Board to make a decision. He stated in an area that is not zoned in the County for a Change of Use permit, the finished area of the office square footage is the only factor for parking, which has to be ADA compliant.

#### Public Comment:

Scott Mcaboy, resident for 30 years on Showers Lane, stated that although the use is permitted by special exception, because of its locations and configuration it does not meet the requirements. He stated that there is not sufficient buffering or separation from existing residential properties. He stated just because the use is permitted, it does not mean it meets the intent of the ordinance. He stated other

businesses in the area all have access from King Street, he stated that he does not believe that WVDOH will give them access off of King Street. He stated that Showers Lane is narrow. He stated according to 6.10 that a real estate business would be permitted, by special exception, he asked how the items are being interpreted for surrounding residential properties. He suggest in inquiring how it meets the requirements in Article VI, Sections 601-602.2, minimum yard requirements. He stated in his opinion, the property is non-conforming and it does not meet side or rear minimum setback requirements and he would like to see a plan showing how it meets the criteria. He asked if staff review the request against the criteria. He asked about the parking requirements- how many additional parking spaces are required. He asked if there was a traffic analysis completed on what the average trips per day would be. He also asked what signage would be installed and if any signage has been reviewed or permitted. He stated the pervious sign that was on the property that has been removed, was 32 square feet. He stated the house that is right behind that was built 45-50 years ago the owner still lives there today. The next home belongs to the Pearrells moved the house from King Street so they could move into a great neighborhood on Showers Lane. He stated the next house belongs to the Frankenberry's and the 4<sup>th</sup> generation is growing up in the house that was built in the 70's. He stated that most of the residents have lived on the Lane for 25 + years and they bought in the area because it was zoned residential that they paid a premium for. He stated that someone buys a house and they want to change their way of life and he stated they can go anywhere else in the county, but to please leave their residential zoned area alone. He stated they do not want any businesses or the traffic and headaches that come with them. He asked the BZA that they keep Showers Lane residential.

Nicholas Antonetti, Mill Point HOA President, stated that his family moved here in 2016 from Woodridge, VA where they had a 5,000 house HOA. He stated they liked the small town when they moved here. He stated that it is no hard to see that Showers Lane is a residential area. He stated that when the sign went up there was a lot of flak in Mill Point. He stated that the road does not have lines on it and it is one of the last to get plowed and it is a nightmare when there is any type of weather, and that it is almost impossible to pass if there is a car sticking out into the road. He stated that in May/ June Mill Point, Mountain View and Chateau Guai HOA got together and signed a resolution that they would all be against businesses coming into the area and deny any exceptions to proposed zoning applications. He stated that Mill Point does oppose the exception and asked that it be denied.

Amanda Fink, previous property owner, stated that when she purchased the home it was falling apart and it required a tremendous amount of time, energy and money to make it what it is now. She stated that the improvements were huge, inside and outside. She stated that she sold the home as residential and the deed stated that it can be subdivided for commercial. She stated she never went that route because a sign was put on an adjacent parcel that she believes prevented anyone from buying her home for seven months. She stated that the amount of money that the house was sold for was nowhere close to how much was put into the home. She stated the new owners are just trying to establish a small at home business with very little traffic.

She stated that she took a loss on the property because she didn't want to live there anymore because of the noise from Interstate 81. She stated that the business would add the community and not be a distraction. She stated that that the home was being used for 10 years as a rental and it was run down and not taken care of.

Jeffery Smith stated that he drives past that home every day and it looks a lot better than it did, but does not believe that as a business it will not add values to the surrounding homes.

Amanda Fink stated that if the property is being rented than it counts as a business because they are collecting rent. She stated that the current owner is not trying to bring a bunch of people there and many people work from home.

Jeffery Campbell stated that it would not be a home business because they would not be living there. He stated the problem occurs down the road if it is sold to a dentist or a doctor then a lot of people would be in and out.

Steven Mathias, resident on Showers Lane, stated that he moved from downtown Martinsburg to get out of the city, but to be close to everything. He stated that he agrees with the other comments that that they need to preserve their neighborhood. He stated that 703.1 of the Ordinance and allowing the special exception would be the beginning of the end to Showers Lane. He stated that he wants to keep Showers Lane residential. He states that he feels sorry for the petitioner because they can't use the house for what they want to use it for, but regulations are there for a reason. He stated that traffic gets worse and worse every year and it is a nightmare in the morning and evening when he is trying to get home. He stated he checked the deeds and there were no restrictions for Showers Lane. He stated that there's nothing that says it can or cannot be done. He stated that he hopes the Board can protect his and other property owner's rights too.

James White, resident in Mill Point for 34 years, he stated he is a commercial property owner in the City of Martinsburg. He stated that his property required a lot of changes to comply with ADA and parking. He stated that was something he understood before he signed the papers. He stated that his parents owned the house originally that he lives in now after they retired from DC. They wanted a residential area that was secure. He stated that the problem is that once you take the lid off of the box you cannot put it back on. He stated that the properties are investments that they agreed to. He stated he doesn't want to see the area turn into a multi-use that he saw in DC because those residential areas are getting destroyed every day. He stated Showers Lane is already a challenging intersection. He stated in his opinion that if they take the lid off there will be no end and the property owners will suffer. He stated that there is a lot of commercial property available in Berkeley County and asked why don't we just use that and stop taking away from the residential areas.

Quentin Gaynor, local real estate agent, stated that in his time in real estate most contracts are done electronically or out in the field. He stated that meeting clients at the office does not happen as often as it used to and it is usually over email. He stated as a full time student it is hard to find time to go home and focus on school

and real estate and it would give him a personal touch to be able to focus and not be at home with a work space that clients can come to if needed.

Wayne Palkovic asked why do they need an office if they are not going to use it. He also stated that the intersection is impossible to turn right out of in the mornings.

Donya Gamache stated that the reason for the office was to have a place in town and to have a place to store signs. She stated that she wanted a place locally so she wouldn't have to drive 45 minutes from home. She stated that there are other commercial properties for sale but she loved the home and stated that she read through the ordinances and deed and it stated that her business was allowed. She stated it's a central stop if she wants to make a cup of coffee, use the restroom or change if she falls in the mud. She stated that if for some reason the Board does not read through and see that it does allow for a business and they deny based on personal preference that they should look into revamping the Zoning Ordinance. She stated that they should consider purchasing the property and doing something about the road because the one property is not the issue and it is an ongoing issue with traffic.

Janet White, resident on Showers Lane, asked since they have to make the office ADA compliant they would have to make changes to the outside. She stated that she does not know if there would be enough room to make the parking spot ADA compliant. She asked since they have to make changes will they evoke other parts of the ordinance.

Laura Hoffmaster stated that if there is no increase in imperious coverage there would be no need for a site plan as long as the parking spot is van accessible and the handicap sign is posted.

Brian Ross stated that it would be a standard door and they would not be changing the structure. He stated that they would be considered minor modifications that would be considered interior.

**ACTION TAKEN:** The motion was made by Jeffery Campbell and seconded by Dan Shergy to close the Public Hearing. Call for question. The motion carried unanimously.

Jeff Mauzy stated that all comments can be used as evidence and they can make a motion to add the documents as well.

Jeffery Smith asked if they can table the decision for 30 days in order to make a decision because they had a lot of information thrown at them.

Mr. Mauzy answered that they can make a motion to vote one way or another or to table and the body can decide what they want to do.

Jeffery Campbell asked what they Board is able to do between now and the next meeting in terms of communication.

Mr. Mauzy answered that they cannot communicate until the next meeting about the decision because it has to be in open meeting. He stated that they can think about their personal vote and look at the ordinance more.

Jeffery Campbell asked if the person missing will be able to vote.

Jeff Mauzy answered that they abstain because they were not here at the time the evidence was entered.

Jeffery Campbell asked how many votes are required.

Laura Hoffmaster stated they would need quorum of 3 people to vote and the majority of the 3. She asked that if they decided to table the decision to give a meeting date that would work for all the members.

**ACTION TAKEN:** The motion was made by Jeffrey Smith and seconded by Dan Shergy to table the project until January 25, 2022. Call for question. The motion carried unanimously.

**6. STAFF UPDATES AND DISCUSSION**

None

**7. ADJOURNMENT**

**ACTION TAKEN:** The motion was made by Jeffery Smith and seconded by Jeffery Campbell to adjourn the meeting at 7:47 PM. Call for question. The motion carried unanimously.

Respectfully Submitted,  
Sarah Sandri  
Administrative Assistant