

Town of Lovettsville

Planning Commission Minutes of Public Hearing and Regular Meeting, May 16, 2012

PUBLIC HEARING

The Public Hearing of the Lovettsville Planning Commission on LVCU 2012-0002 34 East Broad Way was called to order by Chairwoman Mari Bushway on Wednesday, May 16, 2012 at 7:29 PM at the Lovettsville Town Hall, 6 East Pennsylvania Avenue, Lovettsville, VA 20180.

Chairman Bushway explained the Notice for Public Hearing for 31 East Broad Way was not advertized correctly. She stated the Planning Commission would be taking comments tonight and that the Public Hearing for 31 East Broad Way would be held on Wednesday, June 6, 2012.

Explanation of Procedures and Opening of the Hearing

Chairwoman Bushway read the Public Notice for LVCU 2012-0002 34 East Broad Way as it appeared in the *Purcellville Gazette* (Attachment I: Public Notice).

Present at Meeting

- Chairwoman Mari Bushway
- Vice Chair Deborah Summitt
- Commissioner Lorraine Bauer
- Commissioner Jennifer Jones
- Commissioner Rodney Gray
- Commissioner Tony Quintana
- Town Manager Keith Markel
- Zoning Administrator Melissa Hynes
- Town Clerk Harriet West

Absent

- Commissioner Elaine Fischer

Presentation

Zoning Administrator Hynes presented this item. The Planning Commission is being asked to consider a request by Timothy Keena for a Conditional Use Permit to section 3-12 (c)(ix) of the Lovettsville Zoning Ordinance to allow the operation of a microbrewery as a conditionally permitted use; and to section 4-3 (a) to allow for a reduction in the required minimum off-street parking.

She stated 34 East Broad Way is located in the C-1 Community Commercial Zoning District and the existing space is 1,950 square feet. The applicant received a Conversion of Use permit on April 30, 2012 for 1,250 square feet to be used as a restaurant. The request before the Planning Commission is for the remaining space to be used as a microbrewery.

She noted that, according to the Town Zoning Ordinance, the proposed facility will need nine spaces for the restaurant and two parking spaces for the microbrewery, for a total of 11 parking spaces required. There are currently eight off-street parking spaces available at 34 East Broad Way.

She discussed the zoning of adjacent properties which includes R-2 Residential, Planned Infill Development District, and C-1 Community Commercial currently being used as residential.

She stated there is only one water meter serving the two structures on this parcel.

Zoning Administrator Hynes reviewed the following proposed conditions:

1. Any exterior improvements that will expand the building's footprint shall comply with the Town's Zoning Ordinance.
2. The total number of on-site parking spaces shall not be less than eight (8) spaces, one of which shall be a handicapped space.
3. A six foot high board-on-board fence, finished on both sides, shall be installed along the property boundary between 34 East Broad Way and 36 East Broad Way.
4. A continuous row of evergreen shrubs and landscaping shall be planted and maintained along the border, at least two (2) feet in height at time of planting and the planting area width shall be five (5) feet in front of the new fence, along the property boundary between 34 East Broad Way and 36 East Broad Way.
5. The applicant shall install and maintain four (4) large (36" minimum diameter) planters with evergreen plantings at least two feet in height or flowers in front of 34 East Broad Way.
6. Per Section 3-11(c), hours of operation shall be between 7:00 am to 10:00 pm Sunday through Thursday and 7:00 am to 11:00 pm Fridays and Saturdays.
7. Outdoor lighting shall comply with ordinance requirements to prevent off-site spillage and glare, in consideration of the residential neighbors.
8. Per Section 6-5 (h), all loading areas, dumpsters, maintenance areas and equipment and similar areas are to be screened from all public streets and adjoining properties, with board-on-board fencing or landscaped buffers, six feet in height.
9. The entrance width shall conform to VDOT requirements for a commercial entrance. (Mr. Keena stated this was approved by VDOT when it was put in.)
10. Parking spaces and walkways on asphalt shall be marked by painted white lines; gravel parking spaces shall be marked by wheel stops.
11. All plantings described in these conditions shall be installed before the conditionally permitted use is open to the public.
12. As stated in Section 6-3 (b) the applicant shall maintain all existing and new landscape material in good condition.
13. All deliveries shall be made on site. Delivery vehicles shall not park on the public street for this purpose.
14. Five Employee Parking Spaces shall be created off-site through a Shared Parking Agreement with a property owner within 500 feet of the property. Zoning Administrator Hynes noted the applicant cannot agree to today because it would have to go through a parking lot agreement process.
15. A new 5/8 inch water meter shall be installed before the conditionally permitted use is open to the public.
16. After one year of opening the microbrewery, if the Town finds that the water consumption is on average over 500 gallons per day, the Town shall require a larger meter to be installed, to match the new water consumption per Town Ordinance.
17. This conditional use permit shall be administratively renewed every three years, at which time the Zoning Administrator shall conduct a detailed review of the property and use for zoning compliance.

Public Speakers

Chairwoman Bushway introduced the speakers in the order in which they had signed up to speak.

Mary Mitchell Armstrong, 29 East Broad Way, stated she lives directly across the street from 34 (East Broad Way) and next to 31 (East Broad Way). She is in support of this; it has been a limited commercial use before. It would be nice to encourage businesses and this type of commercial activity to come to Lovettsville. As she understood, it would be basically be a microbrewery which would be more like a tasting room. As one of the primarily affected neighbors she would encourage the Commission to consider granting the application. As far as parking, she does not park on the street in front of her own house because horse trailers cannot make that turn with the telephone pole in place.

Chairwoman Bushway asked if there were any additional comments.

Patsy Frye, 31 East Broad Way, stated they have always shared parking in front of the house with the funeral home. They have never had a problem with people parking in front of the house as long as they do not block the driveway.

Oliver Fry, 31 East Broad Way, stated that sometimes there are as many as 15 kids sitting on the funeral home steps and inside the building when the doors have been left open. They also hide in the alleyway between the two buildings. He is hoping the new business will help stop some of that.

Mary Mitchell Armstrong stated she wanted to clarify she does not object to anyone parking in front of her house.

Chairwoman Bushway asked if there were any questions from the Planning Commission.

Commissioner Jones asked the applicant what his plan was for overflow parking. Mr. Keena stated he owns everything in that block except for one house so in the short-term, parking is not a problem. He is not sure what they will do in the future but they will come up with a solution. She also asked about the potential impact on the residential area if people are outside smoking and talking loudly. Mr. Keena stated he would be the first to hear about it since he owns the neighboring residential properties. Mr. Young stated the goal is to be more like a winery, not a bar.

Commissioner Summitt asked why the parking for the house was not included in the calculations. Mr. Keena stated there are two spots in front of the house and former funeral home.

Declaration to Close the Public Hearing

Chairwoman Bushway declared the public hearing closed at 7:57 PM.

REGULAR MEETING

Chairwoman Bushway called the Regular Meeting of the Lovettsville Planning Commission to order at 7:57 PM on Thursday, May 16, 2012.

Present at Meeting

- Chairwoman Mari Bushway
- Vice Chair Deborah Summitt
- Commissioner Lorraine Bauer
- Commissioner Jennifer Jones
- Commissioner Rodney Gray
- Commissioner Tony Quintana
- Town Manager Keith Markel
- Zoning Administrator Melissa Hynes
- Town Clerk Harriet West

Absent

- Commissioner Elaine Fischer

Public Comment

Chairwoman Bushway stated the Planning Commission would be accepting comments for 31 East Broad Way at tonight's meeting and that the official Public Hearing will be held on Wednesday, June 6, 2012.

Mary Mitchell Armstrong, 29 East Broad Way, stated she lives next door to 31 (East Broad Way). She asked that her comments be included in the formal record for the hearing on June 6th. She stated she supports the Fries in their efforts to renovate their house and the enclosure they have made in front. She stated Mr. and Mrs. Frye had taken steps to try to accommodate the Town by moving the front entrance of their house to the side since their side of the street will have the sidewalk. She added the enclosure is safer for them exiting their house and is not in conflict with the aesthetics of the house or the street. She is supportive of letting the Fries be able to complete their renovations which, in her view, have been too long delayed.

Tim Keena, 9351 Old Courthouse Road, Vienna, Virginia stated he owns several properties directly across from 31 East Broad Way, including 34, 36, 36A, 38, 40 and 42. He stated if you go up and down Broad Way there a number of porches that have been enclosed over the years. He understands the permitting process but he does not understand why the Fries cannot just fill out the permits and get it done since it was probably an oversight on their part.

Scott Young, 37269 Koerner Lane, Purcellville, Virginia stated he shares the same sentiments as Mr. Keena.

Additions/Deletions/Modifications to the Agenda

Chairwoman Bushway called for changes to the agenda. There were none.

Approval of Planning Commission Minutes

No minutes were presented.

Staff Reports

Administrator Hynes presented her written report for April 2012. She noted there are two new home occupations in Town – a mobile motorcycle repair business and a landscaping design company. She is working on a study comparing the Town's fees with other towns in Loudoun County.

Action Items

A. LVCU 2012-0002 34 East Broad Way Microbrewery

Chairwoman Bushway called for discussion. Commissioner Gray asked where the dumpster would be placed. Zoning Administrator Hynes showed a photograph of the location for the dumpster at the rear of the building. Commissioner Bauer asked how the trash dumpster would be accessed by the waste hauler. Mr. Young stated that would be worked out with the hauler.

Motion: I move that the Lovettsville Planning Commission vote to recommend approval of the Conditional Use Permit with the conditions as recommended.

By: Chairwoman Bushway

Second: Commissioner Quintana

Chairwoman Bushway called for discussion. Commissioner Jones noted one of the conditions includes a three-year review and asked if there is a way to address any problems that might arise before then to protect the residents. Mr. Keena stated he has been there a long time and if there is a problem, he will handle it. Manager Markel noted the Zoning Administrator will follow up on any concerns that may be brought up. There will be a full review in three years and if they are not acting in accordance with the conditions it would be reported back to the Planning Commission and Town Council and the Conditional Use Permit could be revoked at that time. He added that they must adhere to all conditions as established; otherwise, they are in breach of the agreement with the Town. Commissioner Summitt asked if there was any consideration accessing the lot from the proposed Pennsylvania Avenue. Mr. Keena stated they may be able to arrange access so people are not pulling out into Locust.

Aye: Commissioners Bauer, Bushway, Gray, Jones, Quintana, and Summitt
Nay: None
Abstain: None
Absent: Commissioner Fischer

Discussion Items

A. LVCU 2012-0001 31 East Broad Building Setback

Administrator Hynes presented this item. The Commission is being asked to consider a request for a Conditional Use Permit to allow the newly created front room of the principle structure located at 31 East Broad Way to remain in the required front yard setback after it was converted from an unenclosed porch.

She summarized the background of this case. On October 1, 2010 it came to the attention of the Town that the owners of 31 East Broad Way were enclosing their front porch without a building permit or a zoning permit. In November 2010, the former Zoning Administrator sent a letter to Mr. and Mrs. Frye notifying them of the violation and advising them of their options to correct the situation – to either dismantle what had been built or to appeal to the Board of Zoning Appeals for relief. Mr. and Mrs. Frye appealed the Zoning Administrator’s decision to the Board of Zoning Appeals in September 2011.

The Board of Zoning Appeals ruled that the porch was now a room and is considered part of the house. The zoning district for the property located at 31 East Broad Way is R-2 Residential and the front yard setback is 20 to 40 feet for that zone. The house at 31 East Broad Way was construction approximately 14 feet from the property line so it was a non-conforming structure when the zoning district was created. The porch, which is now considered an addition to the house, is approximately 6.2 feet from the property line. She noted there are several other homes in the neighborhood that also encroach into the front yard setback and that have enclosed porches. She stated the house at 31 East Broad Way was built in 1900 before the Town’s zoning was created. She added there are six other properties within 400 feet of 31 East Broad Way that are zoned C-1, with a setback of five feet.

Zoning Administrator Hynes stated Mr. and Ms. Frye violated the Zoning Ordinance by not applying for a zoning permit from the Town. She referenced a similar case, LVCU-2008-0002, where a property owner voluntarily reported to the Zoning Administrator that he constructed his house 1.5 feet into the required front yard setback. The Town Council approved the property owner’s Conditional Use Permit and imposed a \$1,500 fine. She noted that 31 East Broad Way will be impacted by the Town’s East Broad Way Streetscape project and that all of the houses along East Broad Way will be subject to a number of easements. Staff’s recommendation is to allow Mr. and Mrs. Frye to keep the enclosed room. In addition, rather than imposing a fine up to \$5,000, staff’s recommendation is to work with the Frye’s to obtain the needed easements for the Town’s Streetscape Project.

Commissioner Summitt asked for clarification about the property lines. Zoning Administrator Hynes explained the minimum setback should 20 feet; however, the house was built 13.3 feet from the property line, and the porch itself is 6.3 feet from the property line.

Public Comments

Chairwoman Bushway called for comments from the applicant and the public.

Daniel Travostino, 20 West Market Street, Leesburg, Virginia stated he is the attorney representing Patsy and Oliver Frye, the homeowners. He stated the house Mr. and Mrs. Frye live in at 31 East Broad Way has been there for more than 100 years and they have lived there for more than 50 years. He stated they were here before the Board of Zoning Appeals in November trying to get the Zoning Administrator’s initial determination that this was a violation reversed. In 2002, a tree fell on the Fryes’ unenclosed porch and damaged the roof and electrical wiring. They determined at that time they may need to do something about the porch. A few years later, improvements were made to East Broad Way and the elevation of the road was raised up. He stated that because Mr. and Mrs. Frye’s house is so close to the road, they had issues with water splashing on their porch, snow being plowed up onto the porch when there was a big

snow fall, and salt trucks blowing salt onto their porch. He stated they also had problems with teenagers hanging out on the porch and tampering with the electric box. There were other enclosed porches in the area. They were not expanding the porch or making it closer to the road. They were actually making the porch further from the road because they took the front entry steps and put them on the side. They started the project in the summer of 2010. At some point in mid-August 2010, they were visited by Mr. McGregor, the Zoning Administrator. At the Board of Zoning Appeals, testimony was presented that Mr. McGregor looked around, saw what the Fries were doing, and told them they were in compliance. Mr. and Mrs. Frye continued to do work on the porch, including modifying and installing new windows. In October, Mr. and Mrs. Frye were notified by a County building inspector that they needed a building permit, which they were unaware of. That was the first notice they got that there was a problem. Then Mr. McGregor told them to stop. At that point, Mr. and Mrs. Frye stopped all work in early October 2010 and they have not done any work since then. The Fries filed their appeal to the Board of Zoning Appeals. Mr. Travostino stated there is a provision in Section 4.9 of the ordinance that specifically talks about covered entry porches, which the Fries had even before 2010 when they started to enclose it. He read this section of the ordinance, which states:

"Covered entry porches, enclosed or unenclosed, may project into any required yard provided that no such porch shall project more than three feet into such yard or may be closer than three feet to any lot line."

He stated the Fries' covered entry porch, which is a non-conforming use, was unenclosed at the time. The porch did project more than three into the yard from the house, but it was not closer than three feet from any lot line. They argued before the Board of Zoning Appeals that since the ordinance appeared to treat enclosed and unenclosed covered entry porches the same, the Zoning Administrator was wrong when he said a zoning permit was needed and that Section 4.9 (b) was the controlling section that the Board of Zoning Appeals should look to that. The Board of Zoning Appeals ruled against them two to one. The next step was to try to get the Planning Commission and Town Council to vote on this Conditional Use Permit. The surrounding area includes commercial zoning on the same street that would allow this porch to be a permitted use and there are a number of houses on the same side of the street that 31 (East Broad Way) is on that all have non-conforming uses. He stated the Fries acted in good faith throughout the whole process. They relied on what the Zoning Administrator told them in August that they were in compliance and they took that to mean they did not need a permit. As soon as they found out there was an issue they stopped work on this project. It is their position that this project adds to the aesthetic value of the house and that it is consistent with public health, convenience, safety, and welfare of the surrounding community. It does not expand the footprint of the non-conforming use and it protects Mr. and Mrs. Frye from people coming onto their porch and interfering with their electric meter and the problems they have had with water coming off the road onto the porch. They did not intend to have this as an expansion of their house; rather, their intent was to keep this as a porch because it is only six feet wide. Another goal was to have this enclosed area that would more easily allow them to bring large pieces of furniture through the front door. He stated he was glad to hear there was an alternative to the fine. The Fries have expended a lot of money in dealing with these issues in addition to the construction costs. He stated the other case that was pointed out is different because it involved a builder who could pass on the fine to whoever purchased the house he was building. He stated he would ask the Planning Commission not to recommend a fine in this case. He received a memorandum and plat from Karin Fellers, Project Manager, showing some easements that may be required for the sidewalk project. He showed them to his clients and there is some confusion as to what is expected of them. They would like to get more information from the Town as to where the easements would be located. In addition, he has two letters from neighbors who could not be here tonight but wanted to make a comment (Written Submission 1 and 2). Manager Markel stated the letters would be entered as comments for the public hearing.

Patsy Frye stated she worked for the Federal Government for years and if one of her employees made a mistake and actually lied to someone she would do everything in her power to correct whatever the employee had lied about. She stated Mr. McGregor came to her house in August 2010 and told them everything was in compliance. They then worked for two months before they got the letter from Mr.

McGregor stating it was not in compliance and to take the porch down. The building inspector came out on October 8th or 9th and asked them to stop work and come to Leesburg and get a permit. Mrs. Frye stated they stopped work and never did any work after the building inspector asked them not to work. When they got the information for the Board of Zoning Appeals, it stated Mr. McGregor was at their house in early October and told Mr. Frye to discontinue work but that he did not comply. Mrs. Frye stated those were outright lies and Lovettsville should be responsible for their employees, and the lie Mr. McGregor actually told them.

Oliver Frye stated he had a witness there, his grandson who was working with him, when Mr. McGregor was at their house. Mr. Oliver stated he had done everything he could to have everything approved. When he had the problem with the tree he contacted the Town and VDOT. When the first storm hit, it tore the end out of his house and the whole porch. Since the work was done to East Broad Way, water now runs down the street and under his house. He has lost a furnace, duct pipe, and insulation, and he has had to remove 28 tons of dirt to get a sump pump installed. The only thing the Mayor has done is to have two test holes dug and he was told the water was not that deep. Mr. Frye stated they have constantly had problems with different things.

Mrs. Frye stated what they would like to ask is that the Planning Commission please consider passing a Conditional Use Permit with no penalties because they were lied to by a Town employee and the Town should feel responsible for their employees. Mr. Frye stated they have spent over \$60,000. He added they would be glad to leave if the Town would buy them out.

Commissioner Summitt asked if their initial encounter with Mr. McGregor was related to the emergency repair for the tree damage to the porch. Mrs. Frye stated it was for the enclosed porch, which was almost fully enclosed, the walls were up, the roof was on but not shingled, the windows were framed out, and there was an opening at the steps. She stated Mr. McGregor looked inside and said everything was in compliance. Commissioner Summitt asked if there was a permit involved with Mr. McGregor's inspection. Mr. Travostino stated apparently Mr. McGregor was down the street. Manager Markel stated he spoke with Mr. McGregor and that Mr. McGregor recalls the events and conversations differently.

Chairwoman Bushway stated the Public Hearing on this case would be held on Wednesday, June 6th.

Information Items

Zoning Administrator Hynes reminded the Planning Commission about the upcoming Small Business Forum.

Comments from the Commissioners

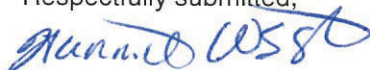
Chairwoman Bushway called for comments from the Commissioners. There were none.

Adjournment

- Motion:** To adjourn the Planning Commission meeting of May 16, 2012.
- By:** Chairwoman Bushway
- Second:** Commissioner Summitt
- Aye:** Commissioners Bauer, Bushway, Gray, Jones, Quintana, and Summitt
- Nay:** None
- Abstain:** None
- Absent:** Commissioner Fischer

The meeting was adjourned at 8:51 PM.

Respectfully submitted,



Harriet West, Town Clerk

Date Approved: September 9, 2012

Attachment I: *Purcellville Gazette* Ad
Attachment II: Speaker Sign Up sheet

Written Submissions to Commission:

1. Herb and Linda Russell
2. Robert and Courtney Merhaut

**Notice of Public Hearing
Town of Lovettsville Planning Commission**

The Lovettsville Planning Commission will hold a public hearing on the following item at their meeting on May 16, 2012 at 7:30pm at the Lovettsville Town Hall, 6 East Pennsylvania Avenue:

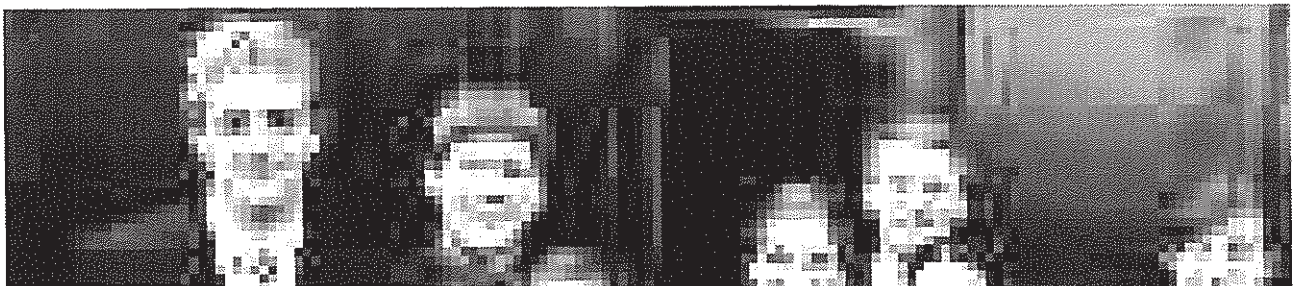
LVCU 2012-0002 34 East Broad W

Consider a request by Timothy Keena for a Conditional Use Permit to section 3-12 (c)(ix) of the Lovettsville Zoning Ordinance to allow the operation of a microbrewery as a conditionally permitted use; and to section 4-3 (a) to allow for a reduction in the required minimum off-street parking. The parcel is located at 34 East Broad Way and is identified as Loudoun County PIN 334-45-5460.

The application and related documents being considered are available for review at the Town Hall between the hours of 8:30am and 4:30pm weekdays or by special appointment. Call 540-822-5788 for more information or visit www.lovettsvilleva.gov.

Chamber and Bode Win Mock Trial

Contributed Photo



Town of Lovettsville

Speaker Sign - Up Sheet

Planning Commission Public Hearing and Regular Meeting - May 16, 2012

Please Print.

Name and Association	Address	Topic
Mary Armstrong	29 E Broad Way	34 E Broad way
Tim Hecser	3351 Quince Orchard Rd Farmingdale VA 22135	31 E Broad way
Scott Young	37269 Keener	34 Broad 31 Broad

Each speaker will be limited to no more than three (3) minutes.

May 14, 2012

To whom it may concern,

We live at 36A East Broad Way across the street from Robert and Patsy Frye. We have no problem in the least with the enclosed front porch they are putting on their house. As a matter of fact I feel it is making a big improvement to their home. They did not enlarge it all they did was enclose it.

Thank you,

Hub Russell
Judith Russell



To whom it may concern,

5/15/12

We are the Frye's neighbors - 33 East Broad way and are unable to attend the meeting regarding their front porch. We support the Frye's keeping the addition they have built on their home as it looks appropriate on the home and benefits their family.

Sincerely,
Cathy Merchant
Paul M. What

