

TOWN OF ABINGDON
PLANNING COMMISSION
REGULAR MEETING
MARCH 22, 2010 - 5:30 P.M.

The regular meeting of the Abingdon Planning Commission was held Monday, March 22, 2010, at 5:30 P.M. The meeting was held in the Municipal Building, downstairs meeting room.

Mr. Matthew T. Bundy, Chairman, called the meeting to order. Mr. Garrett Jackson called the roll.

ROLL CALL

Members Present: Mr. Matthew T. Bundy, Chairman
Dr. H. Ramsey White, Jr., Vice-Chairman
Mrs. Cathy Lowe (Late)
Mr. Gregory W. Kelly
Mr. Kenneth Shuman
Mr. Gary Kimbrell
Ms. Francine Ivery

Comprising a quorum of the Commission

Members Absent: None

Administrative Staff: Mr. W. Garrett Jackson, Director of Planning/Zoning
Mr. Sean Taylor, Assistant Director of Planning/Zoning
Mrs. Deborah Icenhour, Town Attorney
Mr. Jim C. Smith, Director of Wastewater Operations/Town Engineer

Visitors: Mr. Jay Porterfield
Mr. Charles Meade

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(2) Approval of Minutes: Regular Meeting, February 22, 2010
Special Meeting, March 5, 2010

Approval of February 22, 2010 Minutes

Mr. Kimbrell made a motion that the minutes of the regular meeting, February 22, 2010, be approved, with the following corrections:

Page 10-13, Item 5, second discussion item

FROM: Invitation to Washington County Planning **omission** to attend Abingdon Planning Commission work session.

TO: Invitation to Washington County Planning **Commission** to attend Abingdon Planning Commission work session.

AND

Page 10-14, last paragraph

FROM: There being no further business, Mr. Shuman made a motion that the meeting be adjourned. **Mr. Lowe** seconded the motion, with unanimous approval.

TO: There being no further business, Mr. Shuman made a motion that the meeting be adjourned.
Mrs. Lowe seconded the motion, with unanimous approval.

Mr. Shuman seconded the motion.

VOTE:

Mr. Kimbrell Aye
Mr. Shuman Aye
Mrs. Lowe Aye
Mr. Kelly Aye
Dr. White Aye
Mrs. Ivery Aye
Mr. Bundy Aye

The motion passed.

Approval of March 5, 2010 Minutes

Mr. Kelly made a motion that the minutes of the special meeting, March 5, 2010, be approved, with the following correction:

Page 10-15, first paragraph

FROM: VOTE:
Mr. **Kimbress** Aye
Mr. Shuman Aye
Dr. White Aye
Mr. Kelly Aye
Mr. Bundy Aye

TO: VOTE:
Mr. **Kimbrell** Aye
Mr. Shuman Aye
Dr. White Aye
Mr. Kelly Aye
Mr. Bundy Aye

Mr. Shuman seconded the motion.

VOTE:

Mr. Kelly Aye
Mr. Shuman Aye
Mr. Kimbrell Aye
Dr. White Aye
Mrs. Ivery Abstained
Mrs. Lowe Abstained
Mr. Bundy Aye

The motion passed.

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- (3) **CONSIDERATION OF PRELIMINARY PLAT FOR PROPOSED SUBDIVISION - Proposed subdivision of property, a three-story frame dwelling (Cave House), a two-story brick dwelling (Little Cave House), and a stone/wood frame building (Building) over an existing cave entrance, owned by Mary Dudley Porterfield located at 279 East Main Street. Tax Map No. 13 (1) 69.**

Mr. Jackson explained that on July 1, 2009, the Town’s Board of Architectural Review denied the approval of a Certificate of Appropriateness for the brick structure located at 279 East Main Street in Abingdon. This structure,

owned by Ms. Mary Dudley Porterfield, has suffered from a weak foundation and is threatening to collapse into the "Cave House Craft Shop".

The Board of Architectural Review asked the Porterfield family to have a structural engineer examine the structure and offer a report on its condition and the financial cost. Stephen Browning of the Browning Group, LLC, provided such services and deems the cost of saving the structure to be roughly \$137,340.00.

The property owner expressed to the Board of Architectural Review that the structure was not financially feasible to restore and therefore, permission was requested to demolish the structure for public safety and to preserve the more important “Cave House Craft Shop”.

The structure is a pre-1945 structure, dating back to the mid 1800s. It is shown on the 1880 Grey’s Map of Abingdon and it is believed to have been constructed from leftover brick that James Fields used in other construction projects. The original structure was log.

In order to sell this structure separately from the Cave House property, the owners are forced to subdivide a portion of the property on which the brick structure is located. Due to the historic nature of the early development of towns, there are ZERO setbacks within the Old & Historic District. Setbacks were not formally adopted by most towns and cities until the 1940s. As such, the applicant is seeking waivers for sidewalks and road improvements, as there is only an 18 ft. right-of-way on White’s Alley.

The decision of the Board of Architectural Review was made on the premise that not all of the efforts to save the structure had been exhausted. The appeal of the Board of Architectural Review’s decision to Town Council resulted in Town council acting on the following section of the Old & Historic District, Article 8 of the Zoning Ordinance, which allows for the sale of property within one (1) year, as follows:

Section 8-13 – Demolition and moving of historic landmarks, buildings or structures.

8-13-1 Requirement for Board approval. In accordance with Section 15.2-2306, Code of Virginia, 1950, as amended, no historic landmark, building or structure within the Old and Historic District shall be razed, demolished or moved until the razing, demolition or moving thereof is either (i) approved by the Board or (ii) approved on appeal by the Town Council after consultation with the Board; provided, the owner shall have the rights specified in Section 8-13-3 in the addition to the right to appeal.

8-13-2 Permissible action by the Board. Pursuant to section 8-4-1, the owner of a landmark, building or structure within the Old and Historic District who wishes to demolish or move the same must first apply to the Board for a certificate of appropriateness permitting demolition or moving, as to which the Board may approve, modify or deny the application. In reaching its decision on that or any other application to demolish or move, the Board may require the applicant to provide post-demolition or moving plans for the affected site and consider whether such plans would be appropriate to the historic and architectural character of the adjoining properties and the district as a whole. The Board shall also consider the criteria listed in the Design Review Guidelines described in Section 8-9-1 of this ordinance, the criteria listed in Section 8-9-3 and any other available information pertinent to its deliberations.

8-13-3 Procedure to demolish or move by following sale procedure. If the Board disapproves any application to demolish or move as provided in Section 8-13-2, the owner may appeal the Board’s decision as specified above in Section 8-12. However, in addition to such right of appeal, the owner of a historic landmark, building or structure, the razing or demolition of which is subject to the provisions of Section 8-4 of this Article 8, shall, as a matter of right, be entitled to raze or demolish such landmark, building or structure, provided (i) the owner has applied to the Town Council for such right; and, (ii) the owner has, for the period of time set forth below, made and continuously maintained in effect at a price reasonably related to its fair market value, a bona fide offer to sell the landmark, building or structure and the land pertaining thereto to the Town or to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof, which give

reasonable assurance that it is willing to preserve and restore the landmark, building or structure and the land pertaining thereto; and, (iii) no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of such landmark, building or structure and the land pertaining thereto prior to the expiration of the applicable time period set forth in Item c, below. Provided:

a. Notwithstanding the provisions of Section 8-12-3 that stay decisions of the Town Council pending appeal, no appeal to the Circuit Court of Washington County, Virginia by the owner or any other property party shall affect the owner's right to make a bona fide offer under Section 8-13-3.

b. Any offer to sell must be made within one (1) year after the date the Town Council renders its final decision as provided in Section 8-13-4 below, but thereafter the owner may renew his request to such governing body to approve the razing or demolition of the historic landmark, building or structure.

c. The time schedule for offers to sell shall be as set forth in Section 15.2-2306, Code of Virginia, 1950, as such provision may from time to time be amended.

8-13-4 Action required by the Town Council on application to sell under Section 8-13-3. Before making a bona fide effort to sell as provided in Section 8-13-3, the owner shall first file an application with the Town Council that contains a statement identifying the property and stating (i) the source and amount of the proposed offering price; (ii) the date the offer of sale is proposed to begin; (iii) the name and address of any real estate agents or brokers listing or the list the property; (iv) the exact terms and provisions of the deed to be used in the sale, including a legally sufficient description of the land to be offered and the covenants relating to renovation and restoration of the building or structure situated on the property; and, (v) the proposed advertising measures and measures to assure preservation and renovation by a buyer. Provided,

a. The proposed offering price shall be established by an appraisal prepared at the owner's expense by a licensed real estate appraiser. If the Town Council is uncertain that such price accurately reflects fair market value of the property, the Town may, at its sole expense, hire another licensed real estate appraiser within five (5) working days after receipt of the owner's statement. Within the 30-day period commencing on the date the Town hires the second appraiser, (i) the appraiser selected by the owner and the appraiser selected by the Town shall select a third licensed real estate appraiser, whose services shall be paid in equal shares by the owner and the Town; and, (ii) a majority of two of the three appraisers shall establish a price to be recommended to the owner.

b. If in the Town Council's judgment the advertising measures proposed by the owner are inadequate to assure that the offering will reach the maximum possible number of qualified buyers and provide them with a reasonable opportunity to examine the property, the Town Council shall provide the owner with a written response that specifically describes the deficiencies and suggests means whereby they may be corrected. Similarly, if in its judgment the proposed deed fails to comply with the requirements of Section 8-13-3, the Town Council may provide the owner with a written response which specifically describes the deficiencies and suggests means whereby they can be corrected.

Upon receipt of the owner's application the Town Council shall place the matter on the agenda for its next regularly scheduled meeting, at which it will conduct a full and impartial hearing and permit testimony from not only the owner-applicant but interested members of the public. The Town Council may, in its discretion, continue the matter from time to time pending a showing to the satisfaction of the Town Council that the application complies with the requirements of Section 8-13-3 for a bona fide offer to sell, at which time the application shall be approved. Upon such approval the time period specified in Section 8-13-3c as applicable to the particular offering price shall commence.

8-13-5 Action required of the owner and Town Council after approval of application to sell under Section 8-13-3. Within one (1) year following the date the Town Council approves the application to sell under Section 8-13-3, the owner shall cause the property concerned to be advertised for sale in accordance with the plan,

specifications and procedures specified in the application (as it may have been revised by reason of suggestions under Section 8-13-4b, above) and thereafter continue the advertising in the same manner and to the same extent, with no interruption, until the sooner occurring of the signing of a bona fide contract binding on all parties thereto or expiration of the appropriate time period. If a bona fide contract binding on all parties is signed and closed in accordance with the original application as approved by the Town council, no further action under this Section 8-13 will be require.

a. If the appropriate time period expires without the signing of a binding contract, the owner shall file with the Board an application for certificate of appropriateness which includes full and complete documentation of the unsuccessful sale effort, including but not limited to (i) formats of all advertisements, (ii) schedules showing when, where and how the advertisements were employed; (iii) any listings with real estate agents or brokers and offers received; and, (iv) any fliers or other descriptions of the property prepared pursuant to such listings.

b. Upon receipt of the owner's application the Board shall place the matter on the agenda for its next regularly scheduled meeting and thereafter approve the application if in its judgment the requirements of Section 8-13-3 for a bona fide offer and sale have been met. Otherwise, the Board shall follow the procedure for a rehearing set out in Section 8-8-4 of this ordinance pending such approval. In any event, the owner shall, by following the filing procedure specified in Section 8-12-1, have a right of appeal to the Town Council and from the Town Council to the Circuit Court.

At the January 25, 2010 meeting, a motion was made that the request for approval of the Preliminary Plat for this property be tabled, allowing Mr. Meade and Mr. Rasnake, Representatives, to further discuss with Mr. Porterfield, the concerns of the parking and easements utilities to the property. Since then, Mr. Smith received a new plat of the property indicating the needed water, gas and sanitary sewer easements required by the Subdivision Ordinance. Also, there is now a 14 ft. wide parking space on the south side of the structure, to allow for one parking place, meeting Town requirements.

After discussion, Mr. Kelly made a motion that recommendation be made to Town Council to approve the Preliminary Plat to grant the waivers requested on right of way width, curb and guttering and sidewalk along the alley way. Mr. Kimbrell seconded the motion.

VOTE:
Mr. Kelly Aye
Mr. Kimbrell Aye
Dr. White Aye
Mrs. Lowe Aye
Mrs. Ivery Aye
Mr. Shuman Aye
Mr. Bundy Aye

The motion passed.

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(4) DISCUSSION

- Mr. Shuman stated that he has concerns regarding the deteriorating conditions of the Hutton properties located on East Main Street and East Valley Street; it is not the desire to have any historic building destroyed but these two properties continue to deteriorate. Mr. Jackson explained that the property

owner was mailed a compliance letter regarding the condition of the property located on East Valley Street. The East Main Street property is not located in the Old & Historic District and other measures will need to be taken in contacting the property owner.

- Mr. Kelly distributed a copy of reading material entitled “How To Deal With A Contentious Public Hearing”, stating that it was good reading material and recommended that the Planning Commission members read it.

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There being no further business, Mrs. Lowe made a motion that the meeting be adjourned. Mr. Kimbrell seconded the motion, with unanimous approval.

Matthew T. Bundy, Chairman

Gregory W. Kelly, Secretary