

Harpers Ferry Board of Zoning Appeals

November 13, 2020

Hearing Minutes – Variance on two sheds at 1090 Putnam Street (2020-20) and Variance for use of an accessory building at 1090 Putnam Street for short-term rentals (2020-21)

Call to order and attendees - The meeting was called to order by Chair David Simmons at 6:30 pm. Mr. Simmons noted that relevant documents were available for public review on the town website and that, due to legal counsel, there would be no BZA review of a third application for a variance of usage of 1090 Putnam Street for special events.

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

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

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): VACANT

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

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

Non-BZA members present: Pat Morse (technical assistance), Juan Velez (applicant), and several individuals on Facebook unidentified to applicant or BZA members.

Application for Variance for New Construction at 1090 Putnam Street Reviewed – Mr. Velez gave the background and rationale for his application. He has already replaced two sheds that were previously on his property and in poor condition. After the Town’s Ordinance Compliance Officer told him the new sheds needed town approval and are a violation of the ordinances, Mr. Velez applied for the variance. He said the replacements are temporary structures and can be taken out. His intent is to use them both for tool storage and farming use for his lavender crop. He noted the buildings’ small footprint on the ten lots he owns.

Mr. Simmons noted the sheds’ combined footprint is 240 sq. feet. The buildings were not taken into account in a March 2019 variance that granted oversized structure footprint for a new garage. Mr. Velez noted that while his garage and house are on six lots on which he lives, the sheds are on four additional lots that are owned by his retirement trust. There was further discussion as to whether (and which) lots might have been combined into one large lot at the time of the garage application.

Asked about the removal of the old sheds, Mr. Velez said both had been on concrete pads and that he also removed the pads.

Mr. Craig asked if the old sheds had been contributing structures in the historic district. Although Mr. Velez did not know, Ms. Rago said they were not.

An unidentified observer on Facebook asked if Mr. Velez intended to use the sheds as living space. He replied that his intent was to use them for storage.

Mr. Simmons noted that the application only had a photo of one of the old sheds. Mr. Velez noted the second shed had been removed soon after his purchase of the land and was surprised to learn that the application had no aerial photo that showed both of the old sheds. An attempt to electronically retrieve this aerial photo was unsuccessful during the meeting.

Mr. Craig asked for clarification of the description of the new sheds as temporary, and asked if there is an intent to replace them at a future time with permanent structure(s). Mr. Velez said they are temporary in the sense that they are free-standing and can easily be removed. He said it is possible that he'll replace them in the future with a permanent house, and that is why he chose to bring in temporary sheds.

Application for a Variance for Use of an Accessory Structure at 1090 Putnam as a Short-term Rental –

Mr. Simmons explained that a variance was needed because town ordinances do not currently allow for use of accessory structures as short-term rentals. Such variances are not clearly addressed in the ordinances.

Mr. Velez explained the background and need for his variance. The structure in question is a detached garage on a pre-existing pad. Mr. Velez originally wanted a studio on the second floor, but there is a need for income from the property during the present pandemic. Currently there is great demand for short-term rentals in non-resident buildings, and this demand is expected to continue long-term.

Mr. Simmons enquired about whether Mr. Velez had operated the rental without a business license and whether he had been paying taxes on the rentals. Mr. Velez said taxes had been paid to the town and the state by AirB&B. He confirmed that he had continued renting the space after a July 24 town letter stated that he needed a business license to operate.

Mr. Velez sought clarification on the differences between B&Bs and short-term rentals, and he asked if rentals other accessory buildings are currently used in the town as short-term rentals. Some discussion on those topics followed.

Adjournment – Mr. Simmons shared that the BZA is awaiting legal counsel on its deliberation methods and expects to receive word on that soon. He moved that the BZA adjourn; Mr. Craig seconded. Discussion on scheduling deliberation followed, during which Ms. Rago revealed she would be resigning from the BZA effective Dec. 1. It was decided deliberation would be scheduled at 6:30 pm on either Nov. 23 or Nov. 30, depending on when the attorney responds. The motion to adjourn passed unanimously.

Minutes submitted by Chris Craig