

BOARD OF ZONING APPEALS

MEETING MINUTES

January 30, 2023

7:00 PM

Members Present: Buddy Albro, David Atwood, Doug Carpenter, John Coleman

Members Absent: N/A

Also Present: Susan Coleman, Town Council Member, Town of Damascus
Jesse Kokotek – Town Council Member, Town of Damascus
Elizabeth Mccartin, Future BZA, and Planning Commission Member

Applicant Absent: Kevin Forrester, Megan Forrester

Call to Order:

David Atwood called the meeting to order at 7:00 PM — a quorum was present.

Approval of Minutes:

1. Mr. Atwood presented November 28, 2022, meeting minutes provided by Mr. Coleman and asked if everyone had a chance to read them.

Mr. Carpenter stated that the Vice-Chairman should be recorded as Buddy Albro. This change is noted.

Mr. Albro motioned to approve the minutes of November 28, 2022, with the noted change to reflect Buddy Albro as the Vice-Chairman; 2nd by Mr. Carpenter –no further discussion, motion passed (4-0).

New Business:

1. New Member to the Board of Zoning Appeals

Elizabeth Mccartin has been appointed as our new member of the Board of Zoning Appeals, but she has yet to be sworn in by the Court in Washington County. She is present at tonight's meeting as an observer but cannot participate.

2. Kevin Forrester; Property address: 501 Appalachian Trail Drive, Damascus; Washington County Tax Map parcel ID # 172B1-A-144

The Board presented and reviewed the CUP Application for Mr. Kevin Forrester.

Mr. and Mrs. Forrester were present and available to answer any questions.

Mr. Atwood stated that the Forrester's application came in on October the 25th, and per our Damascus code, the BZA has 60 days to meet and make a ruling on the request. He apologized in advance for taking this long to present the Application to the BZA.

Mr. Atwood also noted that there are some questions from the Planning Commission about parking on the property. He believed that those questions had been addressed, and he invited Mr. Forrester to speak about these concerns. Mr. Atwood visited the property and reviewed the town codes in preparation for tonight's meeting. He noted that the codes are often cryptic and confusing on who does what first as far as the Planning Commission and the BZA go. Regarding Transient/semi-transient habitation Mr. Atwood specifically highlighted the following Articles from the Zoning Codes for the Town of Damascus.

- **16.5-3. Transient/semi-transient habitation in the R-1, R-2, and R-3 district.**

Transient and semi-transient habitation may be permitted only as conditional use in accordance with Article 8, Use Regulations.

- a. No adverse effect. The location, size, and design of such facilities shall be in keeping with the character of the surrounding area and shall not have an adverse effect on properties within the surrounding area. The activity shall not create any additional noise, vibration, dust, fumes, odors, glare, other than those normally expected in a residential district.
- b. Planning commission review. The planning commission shall review and may approve site plans for any new facility to be constructed or any existing facility to be converted for this conditional use prior to the issuance of a conditional use permit.
- c. Off-street parking. One space for each unit in a building serving transient guests.
- d. General conditions. Proposed uses shall conform to the general bulk, yard, and site requirements.

Mr. Atwood commented that the article does not speak to the point of what must occur before the BZA votes on the issuance of the Conditional Use Permit. Later from the Code, Mr. Atwood referenced Section 17:10 concerning the Appeal procedure and the Role of the Zoning Administrator, who is the Town Manager. The Zoning Administrator refers the case to the Board of Zoning Appeals, which is us, then the Board of Zoning appeals publishes notices of the public hearing and holds a hearing and decides the case. This has been done, and that is what we're here to do tonight. Then after the verdict is done, the Zoning Administrator takes appropriate action on the outcome of the case. And that steps one through whatever there are for there. Nothing mentions the application going to the Planning Commission. Mr. Atwood said, "I'm just laying this

out here because, honestly, this is my first night as Chairman, and I've been doing a lot of reading through this and just know where we all stand and where we're coming from with whatever decision we come to tonight.”

Continuing with the Code, Mr. Atwood noted the rules and proceedings of the Board.

- **Sec. 18.7. Rules and proceedings of the board.**

- k. The Damascus Planning Commission shall be permitted to submit an advisory opinion on any matter before the board, and such opinion shall be made part of the record of the public hearing.

Mr. Atwood stated, “If the Planning Commission wants to, they can voice their opinion on the application and the property and what is being asked to allow it to be done. To my knowledge, there's no one or no opinion has been made to be presented here tonight by the Planning Commission. So that leaves us to decide what we do about this property and how we proceed, whether we wait until the Planning Commission meets again and when we meet again, or we go ahead and review the application and pass it or vote it down. Whichever way we go, pass it, and then they can work out what they need to work out on their end.”

Mr. Atwood introduced Mr. Forrester and invited him to address the Board members noting that the biggest question was about the parking lot and if the intent was to rent the whole house as a vacation rental and not room by room.

Mr. Forrester distributed copies of an overhead view of the property of 501 Appalachian Trail Drive to the Board members. He mentioned that he had discussed his intent to use the property for vacation rentals with his neighbors, including Mr. Tony Beber, who is the Chairman of the Planning Commission. Mr. Beber was not in favor of short-term rentals, but the immediate neighbors to the left and right of the property were not opposed. Mr. Forrester mentioned that the only issue brought up was that of parking and the proximity to the property line.

Mr. Coleman asked for clarification about the property line, and it was noted that the property line on the left side of the property ran right down the middle of the driveway. The photo clearly shows that the property line does take out most of the left-hand side of the driveway.

Mr. Forrester agreed that the driveway deviated from the property line. At the closest point, it is 7 feet 6 inches in the area next to the porch. The area in the front of the house is outlined as 9 feet by 21 feet. Mr. Forrest mentioned that the current driveway had been used in the current location for at least 28 years.

In a conversation with the Town Manager, Mr. Forrester was advised that he need one parking spot to be within the town code and it had to be 8 feet wide by 18 feet long. Only one parking spot was needed because the house was to be rented as a single unit.

Mr. Atwood affirmed that this was the section of the Damascus Town code in Article 16:5-3c he mentioned earlier regarding one parking spot for each unit in a building serving transient guests. Mr. Forrester noted that if at some point somebody wants to say that because there are three bedrooms in there, it is a three-unit house at some point, then there is also additional parking in the rear of the house. These spaces are accessible from parking in the back.

Mr. Coleman asked how Mr. Forrester acquired the house. Mr. Forrester stated that it was a family property that he purchased after his uncle passed away. His desire is for the house to stay in the family.

Mr. Coleman also noted that the Town Manager, Gavin Blevins, had called him earlier to say that there was a question about the parking and whether a plan had been submitted to the Planning Commission. If that was the case that we needed to hear what Mr. Forrester had to say tonight and then recess to make sure that the other part had been taken care of. He asked if the other Board Members knew about the Planning Commission's request.

Mr. Albro stated that he was at the Planning Commission meeting and that they haven't ruled on it. He said that Elizabeth McCartin, who is on the Planning Commission, could tell us about the issue. He mentioned that the Planning Commission met in December and tabled the issue until the January meeting. At this meeting, there was some confusion over the request for whether the Forresters were supposed to get a survey or not. Mr. Forrester said that he had never known that there was a meeting scheduled. He "understood that the concern was where the state right of way runs and not how far into the yard to state right away runs and whether that would allow us enough room to put a parking space there. And the question was whether the state right-of-way ran 50 feet from the center of the line, which it's actually a, he said the surveyor that did this said generally it's a 50-foot right away, which usually means about 25 feet from the center line in residential areas. It is not always that way."

Mr. Albro, Mr. Coleman, and Mr. Forrester discussed whether the request of the Planning Commission involved the parking space on the left side of the house, which is too narrow to give access to the rear of the house, or for the 50-foot right-of-way of the way from the center of the roadway. Mr. Albro related a discussion with Mr. Tony Beber about if the property required three parking spaces. If the request only required one space, then one was available.

Mr. Albro also noted that there was an alley behind the property from Beaver Dam Road to the parking behind the house. To access this would require gravel from Beaver Dam Road to the 501 Appalachian Drive Property.

Mr. Atwood stated that “we would be satisfied if, since, since it basically has had to shift over a little bit because of the driveway, not all of it's on your property. If that whole section here that's outlined, if that were gravel, then that would be your parking spot, and that would be sufficient to meet what's in the code. Mr. Atwood referred to a pad area on the property map provided by Mr. Forrester and said, “That whole area would have to be gravel, which that would be on you, but that, in my mind that, would be the only requirement needed to approve your conditional use permit.”

Mr. Carpenter noted that the use of that space should be communicated to your renters and outlined to the neighbors.

Mr. Forrester stated, “Just so I'm clear, I would need to mark this somehow so that people weren't using the existing left lane of the driveway, put in some gravel in this pad, and make it known that that's the parking space.”

Mr. Albro “is willing to make the motion to grant the conditional use permit under the contingent upon getting an agreement from Gavin Blevins that only one parking place is required. Because if only one parking spot is required, and that was Tony's only objection too, he agreed that that that meets the requirement if that's what we grant the conditional use on the contingent upon.”

Mr. Coleman noted that we need to have clarity on the Planning Commission's agreement and Gavin's agreement. In his call from Mr. Blevins, he felt like there were “decisions that were made that we didn't get enough information about until a few minutes before the meeting.” Mr. Albro stated that we “didn't get them at all.” Mr. Atwood affirmed that there is not a lot of clarity in the code, and we have to do our best with what we've got.

Mr. Atwood asked for public comments before we consider a motion.

Susan Coleman asked Mr. Forrester if the house would stay within the family and if they would use it as a family vacation home. Mr. Forrester replied that he was going to rent it out as an Airbnb or as a long-term rental. In the future, he wants to keep the property in the family. He doesn't intend ever to sell it.

Mrs. Coleman's second question was to see if Mr. Forrester had considered renting the house as a month-to-month rental so that somebody could actually move into the area and contribute to the community. Mr. Forrester and his wife agree with that type of rental. They actually have another property in Hollyfield that is currently being used as a month-to-month rental. His family enjoys Damascus, and even his son cares for the property by mowing the lawn. The house and Damascus mean a lot to his family.

Mr. Atwood called for additional public comments. No other comments were made.

Mr. Coleman stated that we could only, with full clarity of the contingencies requested by the Planning Commission, grant a conditional use permit. Mr. Atwood said that we could table the request and continue after the Planning Commission has a chance to meet again. Mr. Coleman related what Gavin Blevins said in his phone conversation before this meeting that we could recess and decide after the Planning Commission meeting.

Mr. Albro asked: "Have they given you a have they come up with a date yet for the Planning Commission meeting?" "And this is a problem I have that we're already in that by law, we are supposed to meet within 60 days on this, and that was that long past that time."

Mr. Coleman said that we have a lot more fog on this CUP that we didn't expect before we had the telephone conversation before the meeting.

Mr. Forrester acknowledged the lack of clarity in the whole process. He understands and has no problem with staying within the law and making sure everything is in compliance.

Mr. Albro feels that "they received a survey, and that's what the Planning Commission asked for, and it was the parking issue. I have never heard any other complaints."

Mr. Forrester said: "I'm told that the Council, that's the Planning Commission meeting when you get the survey, they send it to Gavin, and that's it's a done deal."

Mr. Coleman noted that it is a matter of how the motion is worded with respect to the requirements of the Planning Commission for the parking issue.

Mr. Atwood conveyed that we go through our steps as we published in the notice, we have the hearing, which is tonight, and we decide the case, and then the verdict is done. Gavin would then take the verdict and take appropriate action for the case outcome.

Mr. Albro motioned to approve the CUP to Kevin Forrester for the property at 501 Appalachian Trail Drive, contingent upon the approval of Gavin Blevins, the Town Manager, that the owner meets the parking requirement of an 8-foot by 18-foot spot at the house. 2nd by Mr. Carpenter – no further discussion, motion passed (4-0)

3. Request for Council Member Jack McCrady concerning CUP Permits since 2019

John Coleman received an email from Tuesday Pope with a request from Jack McCrady asking how many Conditional Use Permits the BZA had denied since 2019.

Mr. Coleman asked Gavin on the phone and said that he did not know of any since 2019.

The BZA members did not know of any CUP requests that had been denied. They mentioned two variance request denials but not CUP.

A discussion was made about the purpose of the request.

Mr. Coleman will check the previous minutes to note any denials of CUP and respond to the request from Mr. McCrady.

Old Business:

None

Adjournment:

With no other items on the agenda, Mr. Albro made a motion to adjourn at 7:37 PM; 2nd by Mr. Atwood – no further discussion, motion passed (4-0).

Chairman

Secretary