

**HISTORIC PRESERVATION COMMISSION
HEARING MINUTES
JUNE 28, 2012**

Commissioners

Scott Winnette, Chairman
Robert Jones, Vice Chairman
Gary Baker
Shawn Burns
Stephen Parnes
Tim Wesolek
Michael Simons
Brian Dylus, Alternate

Aldermanic Representative

Michael O'Connor

Staff

Lisa Mroszczyk Murphy, Historic Preservation Planner
Christina Martinkosky, Historic Preservation Planner
Scott Waxter, Assistant City Attorney
Matt Davis, Manager of Comprehensive Planning (not present)
Shannon Pyles, HPC Administrative Assistant

I. Call to Order

Mr. Winnette called the meeting to order at 6:00 P.M. He stated that the technical qualifications of the Commission and the staff are on file with the City of Frederick and are made a part of each and every case before the Commission. He also noted that the Frederick City Historic Preservation Commission uses the Guidelines adopted by the Mayor and Board of Aldermen and the Secretary of the Interior's Standards for Rehabilitation published by the U. S. Department of the Interior, National Park Service, and these Guidelines are made a part of each and every case. All cases were duly advertised in the Frederick News Post in accordance with Section 301 of the Land Management Code.

Announcements

There were no announcements.

II. Approval of Minutes

1. June 14, 2012 Hearing/Workshop Minutes

Motion: Shawn Burns moved to approve the June 14, 2012 hearing/workshop minutes as written.
Second: Timothy Wesolek
Vote: 7 - 0

III. HPC Business

2. Code Enforcement Report Letter

Mr. Winnette shared the following letter with the Commission and asked for any Commissioner comments:

City of Frederick Historic Preservation Commission, Mayor and Board, Planning Department
140 West Patrick Street
Frederick, MD

Scott Winnette
Historic Preservation Commission, Chair
9 East South Street
Frederick, MD

June 22, 2012

Dear Fellow Commissioners, Mayor and Board of Aldermen, Planning Department:

After pondering the lack of a fruitful relationship between the Historic Preservation Commission (HPC) and the Code Enforcement Department over the years, I propose an amendment to our Rules of Procedure and Regulations. By declaring our relationship unfruitful, I am not declaring ill will. I am only declaring that our processes lack avenues for communication between the two bodies. Our City and State laws require HPCs to “request” enforcement authorities act upon their decisions. Our unfruitful relationship is evidenced in the lack of enforcement in Frederick City regarding the business of the HPC.

This amendment is informed by the Laws and Procedures Class provided by the Maryland Association of Historic District Commissions on May 31, 2012. Within the class, the educator referenced on numerous occasions the need of HPCs to have strong relationships with the Code Enforcement arms of their local government.

Whereas many fully adjudicated past cases of the HPC have not been brought into compliance after sitting on the books for years;

(NOTE: I have observed 16 past cases that have not been brought into compliance)

Whereas the HPC has not received any regular reporting of violations or outstanding decisions and resolutions of HPC applications, and no written rationale has been presented to the HPC as to why Code Enforcement does not require compliance;

Whereas the HPC and the population of Frederick can easily observe from our City’s sidewalks numerous properties that are out of compliance or remaining in violation of HPC decisions;

Whereas there does not seem to be an established tracking mechanism to pursue violations of City Historic District Overlay (HDO) laws to their lawful compliance, nor does there seem to be a tracking mechanism to pursue decisions and resolutions of the HPC regarding applications;

Whereas the Mayor and Board of Aldermen have budgeted for one half of a Code Enforcer’s time to be devoted to HDO and HPC enforcement;

Whereas the Annotated Code of Maryland, Article 66B Section 8.14 states: *A historic district*

commission or historic preservation commission may request that the enforcing authority institute any of the remedies and penalties provided by law for any violation of an ordinance or resolution adopted under this subtitle.

(NOTE: It is obvious that the current process by which the HPC **requests** the enforcing authority to institute remedies is not working)

Whereas the City of Frederick Land Management Code (LMC) Section 423 (f) states: *Demolition by Neglect – In the event of demolition by neglect (as defined in Article 10), the Historic Preservation Commission may request that the appropriate department of The City of Frederick initiate enforcement action against the appropriate defendant(s) in accordance with the Property Maintenance Code or other applicable law of the City of Frederick.*

Whereas the LMC Section 423 (h) states: *Violations – Any person(s) who performs or allows to be performed any work without first obtaining a certificate of approval, fails to comply with any final notice issued pursuant to this article, or disregards a decision of the Historic Preservation Commission will be in violation of the provisions of this article [emphasis added]. Any violation of this article is hereby deemed a municipal infraction punishable by a fine not to exceed five-hundred dollars (\$500). Each and every day that the violation continues shall be deemed a separate offense. In addition to the foregoing penalty where there is a violation of this article, The City of Frederick may institute permitted action to prevent, enjoin, abate or remove the violation;*

(NOTE: The practice of Code Enforcement's lack of enforcement is an egregious injustice particularly to the property owners who follow the City laws and keep or bring their properties into compliance with the Frederick Town Historic District Design Guidelines. Any lack of enforcement and/or selective enforcement without a clear and defensible rationale is an arbitrary and capricious enforcement of the law)

Whereas the only action provided by the LMC other than compliance is contained in LMC Section 423 (i) which states: *Appeals – Any person aggrieved by a decision of the Historic Preservation Commission may file a petition in the Circuit Court for Frederick County for judicial review of said decision, pursuant to the Maryland Rules of Procedure provided for judicial review of administrative agency decisions;*

(NOTE: The practice of Code Enforcement's lack of enforcement provides another illegal course of action, the property owner simply ignores the law and nothing ever happens. This is an egregious injustice particularly to the property owners who follow the appeal provided by the LMC in Section 423 (i). These property owners expend personal finances for legal fees. The lack of enforcement of some is an injustice to all)

Whereas the City of Frederick Charter Section 2-42 states: *Duties and Powers. (a) Duties. The Commission shall: (1) Prescribe appropriate rules and regulations for the transaction of its business; and... (b) Powers. The Commission may: (3) Request that the City of Frederick institute any of the available remedies for violations associated with the discharge of the commission's duties; ... (5) Undertake any other action or activity necessary or appropriate to the implementation of its powers and duties or the implementation of the purpose of this article;*

Whereas the HPC of Annapolis, Maryland maintains a VIOLATIONS section on the agendas of Annapolis HPC Hearings;

I move that the City of Frederick Historic Preservation Commission amend its Rules of Procedure and Regulations Section 4.11, adding (Violations and Code Enforcement Report) as follows:

- 4.11 **Order of Hearing.** The suggested order of a regular hearing is as follows:
- (1) Call to order;
 - (2) Statement of purpose and statement of eligibility to vote;
 - (3) Summary of ex parte communications and conflicts of interest, if any;
 - (4) Announcements;
 - (5) Approval of meeting minutes;
 - (6) Administrative approval reports;
 - (7) Violations and Code Enforcement Report;*
 - ~~(7)(8)~~ Vote on Consent agenda;
 - ~~(8)(9)~~ Presentation of applications;
 - ~~(9)(10)~~ Items added to the agenda;
 - ~~(10)(11)~~ Administrative business;
 - ~~(11)(12)~~ Commission business;
 - ~~(12)(13)~~ Citizen comments;
 - (14)* Adjournment.

I realize that the HPC, as noted above, can only request action from the Code Enforcement Department. I believe the HPC and the City had assumed that the cases adjudicated by the HPC were to be brought into compliance eventually. The language of the letter of the laws stated above presumes that violations will be resolved. The HPC met with Director of Code Enforcement a couple of years ago and we were assured that the outstanding cases would be brought into compliance. Little seems to have happened.

By adding the above-referenced section, “Violations and Code Enforcement Report,” I propose the following actions occur at each HPC meeting:

1. A Code Enforcement Officer will be present to offer a report including: new violations in the Historic Overlay, efforts to bring cases to legal completion; and clear rationales for the occasions in which Code Enforcement refuses our request that decisions be enforced.
2. The Commission, Staff and Public state perceived violations, so that they can be acted upon by Planning and Enforcement Staff.
3. A log be created and maintained as a part of the HPC minutes of violations and outstanding cases. This can serve as a public record and tracking mechanism.

The HPC has the means to alter its Rules of Procedures and Regulations, and I will ask that we discuss and potentially vote on this at the next scheduled meeting. I am copying the City Planning and Enforcement Staff and the Mayor and Board of Alderman hoping that we will indeed be able to create a working relationship between the Code Enforcement Staff and the HPC, so that our City will be able to equally and justly apply the law.

Sincerely,

Scott Winnette
HPC Chair

Discussion

Mr. Winnette stated that the intent is to add into the Rules of Procedure the review of the Violations in Code Enforcement Report onto the hearing order to follow the Administrative Approval Report. Mr. Winnette stated that they would vote on this at the next scheduled hearing and asked if Commissioners had any comments. Mr. Parnes stated that he felt like this was more out of his purview and it seems possibly more of an issue within the internal workings of the City than something they should be drawing attention to. He went on to say that he had concerns with bringing possible violations to the public record as opposed to going directly to Code Enforcement because he felt it could bring their professionalism into question due to potentially arbitrary “Perceived Violations.” Mr. Winnette stated that he was not asking the Commission to sign onto the letter in agreement but he was asking the Commission to consider the amendment. He added that he proposed these actions to occur and the Annapolis Commission actually asks the Commissioners if they had viewed any violations at every meeting.

Mr. Dylus asked if they would be asking a City employee to cover these meetings. Mr. Winnette answered yes and added that they would only be asking since they cannot dictate that. He went on to say that fortunately the City has approved a budget for another Code Enforcement officer and half of that Inspector’s time would be to service the HPC cases and Joe Adkins, Deputy Director of Planning, has offered that he would ask that person to come to at least one meeting a month.

IV. Consent Items

a. Cases to be Approved

b. Cases to be Continued

V. Cases to be Heard

3. HPC12-357	409 S. Market Street	Jan Delap
Replace pressed metal shingles with standing seam roof		
<i>Lisa Mroszczyk Murphy</i>		

Ms. Murphy entered the entire staff report into the record.

Motion: Robert Jones moved to approve the replacement of the deteriorated metal shingles in-kind because a change to standing seam metal will detract from the unique character of the building as stated in the Guidelines, Page 54, Section G.

Second: Gary Baker

Vote: 5 – 2, Timothy Wesolek and Shawn Burns opposed

4. HPC12-287	56 S. Market Street	6601 Suitland, LLC
Demolish rear wing		
<i>Lisa Mroszczyk Murphy</i>		

Ms. Murphy entered the entire staff report into the record.

Public Comment

Maggie Kline, previous owner of 56 S. Market Street, stated that they have followed everything the City

submitted for staff approval. Any panels that would be visible will need to be reoriented, relocated, or eliminated.

- **The high end of the roof mounted solar panels on the historic warehouse shall be no more than 17” off the roof unless submitted for staff approval.**
- **The structure for the ground mount solar array shall be steel with the pier before the elevator being made of concrete with reference to drawing 3**

A2.1.

Second: Gary Baker

Vote: 7 - 0

The meeting was adjourned at approximately 7:50 PM.

Respectfully Submitted,

Shannon Pyles,
Administrative Assistant