



***LEESBURG BOARD OF ARCHITECTURAL REVIEW
WORK SESSION MINUTES***

Monday, 7 March 2011
Town Hall, 25 West Market Street
Lower Level Conference Room 3

MEMBERS PRESENT: Dieter Meyer, Chair; Jim Sisley, Vice-Chair; Richard Koochagian, Parliamentarian; Teresa Minchew; Tracy Coffing; Edward Kiley; Mary Harper, Planning Commission Representative; Marty Martinez, Town Council Representative

MEMBERS ABSENT: Paul Reimers

STAFF: Annie McDonald, Preservation Planner; Jeanette Irby, Town Attorney

Call to Order and Roll Call

Mr. Meyer called the meeting to order at 7:00pm, noted attendance and determined that a quorum was present.

BAR Member Disclosure

Mr. Kiley recused himself on any discussion of Dodona Manor on the basis that his wife's company is working for the foundation.

Administrative Agenda

a. Appeal of TLHP-2006-0109 (Dodona Manor Fence)

In advance of the Town Council's consideration of the appeal on Tuesday, March 8th, the BAR discussed the protocol and procedures for the hearing. Preservation Planner Annie McDonald stated that the BAR will need representation at the appeal hearing. She explained that those who were on the Board during the original COA application are board members Dieter Meyer, Ned Kiley, Tracy Coffing, and Teresa Minchew. Mr. Meyer expressed his opinion that the BAR should be represented at the appeal hearing by someone who was on the Board at the time the COA was approved. Ms. Minchew and Mr. Kiley both stated that they would not be able to attend—Ms. Minchew because she had a prior commitment and Mr. Kiley because of his previously stated recusal. Mr. Meyer reminded the Board that he had recused himself from discussion during the original application and asked if Ms. Coffing would be able to represent the BAR at the appeal hearing. Ms. Coffing replied that she has another commitment and would not be able to attend. Mr. Meyer then agreed to attend the appeal hearing on behalf of the BAR.

Ms. McDonald asked Town Attorney Jeanette Irby if she had any advice for the BAR in advance of the appeal hearing. Ms. Irby responded that the BAR should be familiar with the staff report, which provides the necessary information. Any statements made by the representative must represent the entire Board, and it is important to mention that the BAR based its decision on the information given at the time of the original hearing two-and-a-half years ago. She went on to say that she has reviewed the information in the staff report. She explained that Brian Boucher, the Deputy Director of Planning & Zoning, will provide a brief timeline of events for the Town Council, at which point each of the two appellants will then make their cases individually.

Ms. McDonald then reminded the BAR that the original approval occurred using the 1994 design

guidelines. Ms. Irby stated that those are the guidelines that will be used during the Council's review of the appeal and that the previous appeal standard is also in place. The appeal standard is that the appellant has to demonstrate and the Council has to decide that the BAR acted in a manner that was contrary to the law or was arbitrary and constituted an abuse of discretion. With sufficient evidence and discussion to that point, the Council can then uphold the decision of the BAR if it finds that it was not contrary to the law or arbitrary in an abusive discretion. Mr. Meyer asked if the Council could return the case to the BAR. Ms. Irby replied in the negative and added that the Council could modify the original decision, which could create a problem. Mr. Meyer explained that two different preservation planners and two different boards that determined the fence to be in compliance with the design guidelines. He added that it is reasonable to determine that the application was not haphazardly approved. Ms. McDonald clarified the difference between the two approvals and explained that the second approval was for a design that was slightly modified from the original approval. The second time the BAR reviewed the application, the members were concerned that the solid stockade fence for the entire length of the East Market Street frontage was not appropriate and asked the applicant to look at a modified design. The applicant returned with a design that the BAR ultimately approved. The amended application incorporated the loop-wire fence for the eastern third of the East Market Street frontage, which replicated the transparency of the chain link fence that was there during the Marshall's ownership of the property. Mr. Meyer asked Ms. McDonald if she would provide him with a copy of the statement that was given at the appeal hearing for the Loudoun Street Fire Station, to which she replied in the affirmative.

Mr. Meyer said that, upon reading the minutes, one could find a few comments to be somewhat questionable but that the decision was not unreasonable. Mr. Martinez explained that this case was the first item under Public Hearings on the Town Council's agenda after approval of the consent agenda which would be around 8pm and an hour is allotted.

There was further discussion on the individuals who would be involved in the appeal hearing, with attorney Ben Leigh representing Ron Rust and Judy Kocazik and Chuck Shotton representing himself. Ms. McDonald said she would prepare a statement for Mr. Meyer. Mr. Meyer asked if the errors cited in the appeal letter were ever evaluated by staff. Ms. McDonald replied that this had not happened. Mr. Meyer asked who addresses the merit of the appeal. Ms. McDonald explained that the merit of the appeal is left for the members of Town Council to determine. Mr. Meyer asked, if the Council affirms the BAR's decision and the appellants take it to circuit court, is there an assumption that the Town Attorney would defend the town? Ms. McDonald responded that that would be the case since it would be an appeal of the Town Council's decision. Mr. Meyer asked who denied the BAR's request for outside counsel, to which Ms. McDonald replied it was the Town Attorney's decision. There was further discussion on the entire process and how it would proceed.

b. Budget update

Ms. McDonald explained that the Town Council will be voting on the FY 2012 budget in April, and that preliminary discussion will take place tomorrow evening. She said that there are several reductions in force proposed. Mr. Meyer asked if the reductions will be up for public comment prior to a vote on the budget and stated that there needs to be better enforcement. He added that the development community would like to see more staff. Ms. McDonald said that workloads are being adjusted to pick up the added responsibilities. Mr. Meyer said that the number of applications will increase and then the process will slow down again. In response to a question about how the decisions were made on what positions were eliminated, Ms. McDonald said it was the Town Manager's decision with input from department heads.

c. JARB Update

Ms. McDonald said she would have JARB information for the BAR at their next meeting. She also reported that the joint Annual Report to Council will not be going out this year, so she will

need to revise the previously approved BAR Annual Report for CY 2010 since it did not include information on administrative approvals.

ADJOURNMENT: The meeting adjourned at 7:44pm

NEXT REGULAR BUSINESS MEETING:

Monday, 18 April 2011 at 7pm
Council Chamber
25 West Market Street
Leesburg, Virginia

Dieter Meyer, Chair

Annie McDonald, Preservation Planner