

BOARD OF ZONING APPEALS

The regular meeting of the Board of Zoning Appeals was held on May 3, 2018 at 7:00 p.m. in the Public Safety Building located at 500 Quincy Street.

Board Member Manchin called the meeting to order at 7:00 p.m.

ROLL CALL OF MEMBERS

Present

Board Member Manchin
Board Member Deasy
Board Member Shultz

Absent

President Majic
Board Member Ragen

Board Member Shultz motioned to excuse Board Member Ragen and President Majic from tonight’s meeting.
Board Member Deasy seconded the motion.
Motion carried 3-0

City Staff Present

City Planner, Sandra Scaffidi
Senior Staff Assistant, Maria Cipolla

APPROVAL OF MINUTES

Board Member Manchin asked for a motion to approve the minutes from April 5, 2017.
Board Member Deasy motioned to approve the minutes.
Board Member Shultz seconded the motion.
Motion carried 3-0.

PUBLIC HEARINGS FOR March 1, 2018

1. Quinten Turner is requesting a conditional use permit to operate an automobile service operation at 1130 Fairmont Avenue. The zoning is Main Corridor Commercial and the property is identified as 3-6-13.

Board Member Manchin: Is there anyone to speak in favor of this request?

Quinten Turner: I want to open it [the business and building] back up to what it was. It was a body shop. The previous owner had been there for about 30 years.

Shawn Linger: My property adjoins the property in question. I would love to see anybody do anything with this property. I own another property down at the Belmont Motel. We had a serious drug problem down there. What we learned was when you create traffic, the drugs go away. I don’t think we have a huge drug problem at that corner, but I do find a lot of vandalism and people I had to run off the property. I hope that somebody will do anything next to me to create some traffic.

Board Member Manchin: Is there anyone against this request?
There were none.

Board Member Manchin asked for the staff report.

Sandra Scaffidi: The proposed request to continue to utilize a building to provide automobile service would not be in conflict with other uses in the area. Staff understands that the applicant is only utilizing the area for automobile service and not sales. The applicant does not have enough outdoor property to conduct automobile sales on the site. Due to the fact that the site has been an active business for many years and that no significant changes have been proposed by

the applicant, staff supports the Conditional Use request to allow the property to be used as an automobile service center, as long as the applicant meets the requirements as identified in Section 4.3.2 and 4.16.

Board Member Manchin: Do I have a motion to close the public hearing?

Board Member Shultz motioned to close the public hearing.

Board Member Deasy seconded the motion.

Motion carried 3-0

Board Member Manchin asked if the Board Member had any questions.

There were none

Board Member Manchin: If there are no questions, I will accept a motion.

Board Member Shultz motioned to approve the proposed use for this property.

Board Member Deasy seconded the motion.

Motion carried 3-0

2. Caleb J. Wilson of 510 Fulton Street is requesting a review of an administrative decision of the City Planner regarding the denial of a windmill installation. The property is zoned neighborhood residential and is identified as 3-40-246 and 3-40-245.

Board Member Manchin: Is there anyone here to speak in favor of this request?

Caleb Wilson: I am here to present my case as to why I should be allowed to install a personal wind turbine. Many of you may ask why I am here knowing that last month you passed; that it is included in your Comprehensive Plan that was passed last month. I am not here merely for my own personal benefit, but rather to bring your attention to growing movements of green energy consumers here in our town of Fairmont. This is a petition which surveyed the people in all areas of Fairmont on their interests of green energy. I have personally gone around to each of the homeowners and asked their opinions on both wind turbines and of green energy homes. Many were in support of green energy and just as many expressed their own personal desire to purchase and install their own wind or solar on their own homes. I am not here merely to address their concerns, but to represent those interested homeowners that wish to incorporate green technologies into their own homes. As for any issues regarding noise or sound levels emitted by the wind turbine, functioning at its top efficiency of over 110 mph, it would sound no louder than a common running refrigerator. Any effects on wildlife, will pose little to no threat of both birds and bats as cited by the Pennsylvania Department of Conservation of Natural Resources on page eleven of the Distributed Wind Energy Zoning and Permitting tool kit that you should have received. The location of the electrical wiring would be placed one meter below the ground. At which point, the utilities would be contacted per regulations. The turbine, for which I have been denied, would only consist of twenty foot in height, because the turbine kits available for purchase can only be comprised in standard heights of 10, 20, or 30 foot sections. The height is determined by the measurement from natural grade to the tip of the rotor blade at its highest point, which in my case, would be 24 foot including the diameter of the rotating blades. As for building code compliance, I have had code enforcement to my home to visit prior to having my application denied. I had received clearance to proceed. However, wind turbines can emit electromagnetic interference which can affect satellite television or radio reception. However, they are infrequent and typically straight forward as sited by windexchange.energy.gov. Finally, as for abandonment issues, it shall be removed within a six month period after it has been inoperable for 12 consecutive months, cited by the Distributed Wind Energy Association page four Section 4.15 labeled decommission. In closing, I stress, that I am not here merely for singular purpose to construct my turbine, but rather to spear-head green energy so that all the citizens of Fairmont will have the opportunity for a green energy option, if so desired. Advantages for the City; it can be a pioneer city. As of now, there are no regulations governing what fees that the City could include when approving applications submitted by residents to install their own personal wind turbines. If the City were to grant my request and others, the fees would be at your discretion. However, if the necessity presents itself to go before Marion County Circuit Court, I am sure that idea, not only enlists us as being a leader in a fast growing market would be very appealing, but it presents the opportunity to dramatically increase

property values. By doing this, it is a win-win situation. It benefits the residents in an obvious way and creates a much needed influx of money by upgrading property taxes. Regardless of your decision, I am open to the idea of having a joint discussion with the committee to work out any details or concerns that you may have regarding green energy or (inaudible word). Thank you for taking the time to hear my case.

Board Member Manchin: Is there anyone else to speak in favor of this request?

There were none

Board Member Manchin: Is there anyone to speak against this request?

There were none

Board Member Manchin asked for the staff report.

Sandra Scaffidi: While the City encourages sustainable practices, the regulations for a wind turbine are not yet developed in our City code. The City needs to explore the effects of a turbine in residential areas to ensure the safety of our citizens. Other issues which need to be resolved may include noise levels, vibration levels, its effect on wildlife, the location of electrical wires, tower height, tower construction, minimum height of blades above the ground, placement/setbacks, minimum lot size, fall zone area, building code compliance, notice to the utility, interference with cellular operations, insurance requirements, abandonment procedures, visual appearance, etc. There are many issues to be considered and the City of Fairmont must research and codify the best practices prior to allowing wind turbines within residential areas of the City. The proposed draft Comprehensive Plan does identify updating our code to incorporate green infrastructure, however, we must follow the process of approving the Plan and then updating our code to support it. Article 4.36 of the City's Planning and Zoning Code examines uses not expressly permitted or conditional which states: It is recognized that new types or forms of land use will develop within the City of Fairmont that are not anticipated by this Zoning Ordinance. In order to provide for such changes and contingencies, the classification of any new or unlisted land use shall be made by the Planning Commission to determine if the use can reasonably be interpreted to fit into a similar use category described in the ordinance. The Planning Commission may make such a determination after conducting a public hearing. It is also recognized that certain allowed uses of land may pose significant impacts to adjacent properties, surrounding neighborhoods, and regional infrastructure. In order to provide for the appropriate review and approval of such uses, the Planning Director may designate, at her discretion, that any such uses be processed as conditional uses in accordance with the provisions set forth in Article 4 of this Code, upon a determination of their potential for adverse impact. Unless a use is allowed as a "permitted use by right," "use permitted with conditions," "conditional use," "nonconforming use," or "temporary use," then such use is prohibited. It is my recommendation that the denial be upheld until such time as the City can determine the proper regulations to incorporate sustainable energy and, more specifically, wind turbines into the City code. Should the BZA disagree with my findings, they must state specific findings of fact and conclusions of law on which the Board based its opinions on. So, just to reiterate, I am not against it.

Board Member Manchin: So you are not against it, there just isn't anything on the books (in the City's ordinances) yet?

Sandra Scaffidi: Right.

Board Member Manchin: Is there a timeline that can give Mr. Wilson that will address this? And as far as findings, what about the states that do have wind turbines? I am sure there is information out there like you were outlining in your statements, where we could go to review the regulations on the noise, the vibration, etc. I think there has to be a reasonable timeline to where Mr. Wilson will have the opportunity to come back. Maybe, after six months, he could come back and say 'you guys haven't even started this yet.'

Sandra Scaffidi: Last week, the Planning Commission did approve to present the Comprehensive Plan to City Council. That is happening this coming Wednesday, May 9th. Fairmont City Council has to go through the public hearing process; that is going to take at least two months. I would say by the end of the summer, unless there are issues that need to be

addressed with the Comprehensive Plan, it should be adopted by the end of the summer. Then, we need to go back and make our code compatible with our Comprehensive Plan. That is going to take some time. I have talked with some folks about helping us research sustainable energy to codify it. Most of the information that Mr. Wilson had provided is great information, but I would like to see information on residential areas. That is my major concern.

Board Member Manchin: Right now, people can put solar panels on their roof without any hearing or application, right?

Sandra Scaffidi: Yes.

Board Member Manchin: It just needs to be addressed.

Sandra Scaffidi: It does, absolutely. But, I feel we need to codify it first before we can allow it to proceed.

Board Member Manchin: Do I have a motion to close the public hearing?

Board Member Deasy motioned to close the public hearing.

Board Member Shultz seconded that motion.

Motion carried 3-0.

Board Member Deasy: I do want to applaud you Mr. Wilson. This is probably one of the most professional applications and researched hearings that I have heard. I do want to recognize you as a spear-head, using your term; a spear-head for green energy. Thank you for all your time. I am still concerned and respectful of **Sandra's [Scaffidi]** comments that you are probably ahead of the pack and we need to catch up. So, as you mentioned **Board Member Manchin**, we need to look at this in a timely fashion. It is just, this group that you are appealing to, although respectful and supportive of your venture, I don't feel we are the panel that can make it happen, but we are going to do what we can to perpetuate thoughtfulness of this type of thing. I thank you for bringing this to our attention. I am impressed. I am more than impressed.

Board Member Manchin: I don't know how much weight it would carry, but I would like to propose a motion that we give Board support and recognition of this case for Sandra [Scaffidi] to take to City Council.

Board Member Deasy: I am sure we will be talking about this more. We certainly want it addressed.

Sandra Scaffidi: I think you do have to determine if I was appropriate in my decision to deny the request at this time.

Board Member Shultz: I have to agree what all of you have said (the other Board members). I think it is great. I would encourage you to work with the City's Planning Commission to get the ordinances in place, the codes in place, so that it can be done. At this time, I feel like, without having ordinances in place to guide, we don't have any choice but to make a motion to uphold the decision that was made. I am making that motion the City Planner's decision to deny the request.

Board Member Shultz motioned to uphold the City Planner's decision.

Board Member Deasy seconded the motion.

Motion carried 3-0

Board Member Manchin: We heard Mr. Wilson's petition. He is very prepared, professional and ready to bring us information. The support of our Board is with you. This needs to be tackled. If you go on NPR.org last week, they had the first city in Texas to go completely green. It is a republican city. It was voted on overwhelmingly. This is a decision the mayor had been working on for the last six years. They have people moving in from all over the country. From the car you are allowed to own in this community to the types of energy sources are laid out. It is working great. It would be wrong for us to just put our heads in the sand. I know we are a coal state. Don't get me wrong, coal employs a lot of people. I have always felt we should have all of the above, but that is not very popular. I think you shouldn't hinder

creativity and technology just because of a traditional power source; best of luck to you. Please keep us informed. If you (the City) are doing a work session, he said he would be willing to help.

Sandra Scaffidi: I mentioned to Mr. Wilson that we would be willing to work with him to try come up with the code.

Board Member Manchin: I am wondering if Mr. Wilson could be the Guinea pig on noise, etc. It seems like he is ready to go faster than anyone else. Maybe at this point, if the Board says, we have a person that is ready right now and we can do things; if you can't find the proper studies elsewhere in other cities.

Sandra Scaffidi: And don't forget, any changes to our code have to go before the Planning Commission first and then it has to go before City Council. It is a process; we are committed to incorporating green energy. I don't know the results of what is going to come out of our research, but I am hopeful.

Board Member Shultz: I think it would be in direct conflict with anything that goes before the Planning Commission being on this Board, but if there is some other way I can help support you, I would be happy to because I am very interested in this, as well. I just can't help you with the Planning Commission.

DISPOSITION OF PAST CASES

None

NEW BUSINESS

Board Member Manchin: This was my first time hearing **Jesse Richardson**. I thought it was fantastic. Jesse Richardson, from the WVU Law Clinic, conducted a work shop regarding the best practices for the Board of Zoning Appeals; that took place at 5:30 p.m. He knew his stuff.

OTHER BUSINESS

Election of Officers:

Board Member Manchin asked for a motion to table the elections until next month.

Board Member Shultz motioned to table the elections.

Board Member Deasy seconded the motion.

Motion carried 3-0

ADJOURNMENT

Board Member Manchin asked for a motion to adjourn.

Board Member Deasy motioned to adjourn.

Board Member Shultz seconded the motion.

Motion carried 3-0.