

**Shelby County Plan Commission
Meeting Minutes
Tuesday
February 27, 2024**

Members Present:

Jason Abel
Mike McCain
Terry Smith
Scott Gabbard – via Zoom
Kevin Carson
Charity Mohr – via Zoom
David Lawson
Megan Hart
Taylor Sumerford

Members Absent:

None

Staff Present:

Desiree Calderella – Planning Director
Jason Clark – Plan Commission Attorney

Call to Order and Roll Call:

Terry Smith called the February 27, 2024, meeting to order at 7:00 pm in Room 208 A at the Court House Annex.

PC Appointment to the BZA:

Charity Mohr nominated Megan Hart. Kevin Carson seconded the motion. Megan Hart was appointed to the BZA for a one-year term 9-0.

Approval of Minutes:

Jason Abel made a motion to approve the minutes from January 23, 2024. Kevin Carson seconded the motion. The minutes were approved 9-0.

New Business:

RZ 24-01 – BURTON & NOBBE REZONING: 2-acres from the A2 (Agricultural) District to the RE (Residential Estate) District to allow for a one-lot Simple Subdivision. Located north of and adjoining 10903 S 400 W, Edinburgh, Jackson Township.

Desiree Calderella read the petition into the record and stated that Staff recommends approval.

Jeff Powell represented the petitioner. He indicated that the petitioner's grandmother currently owns the property. He explained that the petitioner had commissioned soil borings and had determined that the site can accommodate a septic system.

The Board opened the hearing for public comment. There was none. The Board closed the public comment portion of the hearing.

Jason Abel inquired about drainage for the septic system.

Jeff Powell explained that the septic system would not need a drainage outlet.

Kevin Carson made a motion of vote on the petition and Jason Abel seconded that motion. **The petition was APPROVED 9-0.**

Kevin Carson made a motion to adopt the Findings of Fact as stated in the Staff Report. Jason Abel seconded the motion. The Findings of Fact as stated in the Staff Report were adopted 9-0.

SD 24-02 – BURTON & NOBBE SIMPLE SUBDIVISION: Simple Subdivision of 2-acres from a 9.24-acre parent tract. Located north of and adjoining 10903 S 400 W, Edinburgh, Jackson Township.

Desiree Calderella read the petition into the record and stated that Staff recommends approval.

Jeff Powell represented the petitioner and had no comment.

The Board opened the hearing for public comment. There was none. The Board closed the public comment portion of the hearing.

Kevin Carson made a motion of vote on the petition and Mike McCain seconded that motion. **The petition was APPROVED 9-0.**

Old Business:

VAC 24-01 / SD 24-01 – VACATION OF LOT 1 IN BURTON SIMPLE SUBDIVISION / DILLON RIDGE SIMPLE SUBDIVISION: Amendment of Stipulation of Rezoning to allow subdivision of property subject to a rezoning stipulation prohibiting re-subdivision of the property, vacation of Lot 1 in Burton Simple Subdivision, Simple Subdivision of 19.646 acres into three residential building lots (15.388 acres, 2.256 acres, 2.002 acres), and waiver of subdivision design standards to

allow residential lots without frontage on a public street built to the County street standards. Located south of and adjoining 7354 S Edinburgh Rd, Edinburgh, Jackson Township.

Desiree Calderella read the petition into the record and stated that Staff recommends denial.

Jason Clark provided an explanation of the criteria that the Plan Commission should consider when deciding whether to reverse or remove a stipulation (see email attached to minutes). He explained that the Board should consider the prior record and place the burden of proof on the petitioner.

Mike Burton expressed his sentimental value of the property, summarized the history of his ownership of the property, and indicated that he and his family intend to build houses on the property. He indicated that Mr. Wheatly had submitted a letter to the Board in 2010 asking for a rezoning stipulation that would prevent re-subdivision of the property. He explained that he had agreed to stipulations imposed by the BZA regarding construction of the driveway (BZA 23-23, approved 6/13/23) and therefore he did not perceive any issues with access to the lots by emergency vehicles.

The Board opened the hearing for public comment.

James Wheatley, who owns property at 7354 S Edinburgh Rd, asked about the process for approval of the petition.

The Board closed the public comment portion of the hearing.

Kevin Carson explained that the BZA was unaware of the rezoning stipulation prohibiting re-subdivision of the property when they approved the variance allowing the lots to utilize a shared driveway (BZA 23-23, approved 6/13/23). He indicated that the stipulations imposed by the BZA represented the best possible compromise at that time.

Jason Abel asked for clarification on ‘material change in circumstances’ referenced in the criteria for consideration of removal of a rezoning stipulation outlined by Jason Clark.

Jason Clark explained that a change in the character of the property or area could qualify as a material change in circumstances.

Terry Smith indicated that the 2010 minutes indicated that the Plan Commission implemented the stipulation due to a request for the stipulation by a neighbor, and not necessarily due to the conditions of the property or the surrounding area. He indicated that implementation of a stipulation not related to the criteria for approval of a rezoning may warrant a reversal of the stipulation.

From: [Jason.D.Clark](#)
To: [Desiree Calderella](#)
Subject: Removal/reversal of prior stipulation
Date: Tuesday, February 27, 2024 5:59:15 PM
Attachments: [image001.png](#)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Desiree,

After having some time to look into the unique issue presented by the Burton petition, I think I have come up with a standard that the plan commission could use. I would phrase it as:

A condition/stipulation may be removed by the plan commission if there has been a material change in circumstances. A material change in circumstances has occurred if the facts and circumstances that induced the commission to place the condition/stipulation have changed and the original purpose of the condition is no longer intact. A condition should not be removed if it does violence to the zone plan or disrupts the balance of equities.

This comes from looking at the case law in Indiana (which isn't squarely on point—as usual) as well as some out of jurisdiction cases.

The court in *Elkhart Cnty. Bd. of Zoning Appeals v. Earthmovers, Inc.*, 631 N.E.2d 927 (Ind. Ct. App. 1994) dealt with a BZA's denial of a request to remove a condition from a special use permit. The board stated that a petitioner must show "changed circumstances" in order to successfully petition for the removal of a condition. *Id.* The court and the parties all agreed that "changed circumstances" on its own is an insufficient standard. *Id.* Unfortunately, instead of articulating a standard, the court reversed and remanded with the instruction to the board to define a clear standard. So, this case gives us a start, but not the whole standard.

In *Metro. Dev. Comm'n v. Schroeder*, 727 N.E.2d 742, 754 (Ind. Ct. App. 2000), the court held that an unreasonable condition can be excised so long as use without the condition does not alter the character of the neighborhood or do violence to the zoning plan. A condition should not be removed if a balance of equities favors protection of property development patterns that rely on the existence of the condition.

The courts more frequently address situations where a BZA previously denied a variance and then subsequently revisits the matter and grants a variance. To do this, the facts and circumstances that activated the order or decision have to materially change. *Schleuser v. City of Seymour*, 674 N.E.2d 1009 (Ind. Ct. App. 1996). So, for it to be reasonable and appropriate for the BZA/PC to revisit a past decision, the facts and circumstances that went into the past decision have to have so materially changed as to affect the reasons which produced and supported the initial decision. *Id.*

Outside of Indiana, a New Jersey court articulated a standard for removing a condition to a variance in this way:

In entertaining an application to strike a variance condition, a board of adjustment should consider all of the criteria ordinarily relevant to a variance application. Among other things, it should sympathetically consider reliant patterns of existing neighborhood use and development, and should be aware of the danger of violence to the zone plan. It should also consider whether the original purpose of the variance condition remains intact, and whether the interests it protects still exist.

Aldrich v. Schwartz, 258 N.J. Super. 300 (N.J. Super. Ct. App. Div. 1992).

Thanks,

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