

SHEPHERDSTOWN PLANNING COMMISSION AGENDA
REGULAR MEETING AND PUBLIC HEARING

Monday, June 15, 2026
6:00 p.m.
TOWN HALL
104 NORTH KING STREET, SHEPHERDSTOWN

Zoom Information:

<https://us06web.zoom.us/j/86067120451?pwd=fWNLscmYpiOmof8Pknlig4oZKNXa8i.1>

1. Call to Order:

2. Approval of Previous Months' Minutes:

- a. May 18, 2026, Meeting

3. Visitors:

4. Conflicts of Interest:

5. Applications:

26-07 101 N. Browns Alley

Installation of wooden storage shed.

6. Continuing Business:

- a. 26-09 200 E. High Street – Board of Zoning Appeals has granted an appeal and issued a decision order which needs to be approved in order for a project permit to be issued.
- b. Town Council update

7. New Business:

- a. None

8. Adjournment:

SHEPHERDSTOWN PLANNING COMMISSION EXECUTIVE SUMMARY

REGULAR MEETING AND PUBLIC HEARING

Monday, May 18, 2026

6:00 p.m. TOWN HALL

104 NORTH KING STREET, SHEPHERDSTOWN

Applications – all approved

26-08 314 W. German Street: Project Permit Application – railing replacement and addition of stairs to the side yard.

26-10 105 W. Washington Street: Project Permit Application – fence replacement

26-11 113 E. German Street: Sign Application – new business sign

26-12 200 block of S. Mill Street: Project Permit Application – fence replacement

26-13 110 Ray Street: Project Permit Application – house addition

26-14 312 W. German Street: Project Permit Application – installation of pergola, shelter, and fencing to the back yard.

Continuing Business

The Commission received updates on the path Morgan's Grove Park, the Market Building Plaza demonstration project, and the first reading of the Planned Unit Development (PUD) ordinance revision.

SHEPHERDSTOWN PLANNING COMMISSION MINUTES

REGULAR MEETING AND PUBLIC HEARING

Monday, May 18, 2026

6:00 p.m.

TOWN HALL

104 NORTH KING STREET, SHEPHERDSTOWN

DRAFT

1. Call to Order:

Time: 6:04 pm

Commissioners Present: R. Parmesano, M. Morningstar, L. Bicker, L. Chapalee, J. Gatz, E. Helmick

Commissioners Absent:

Staff: K. Musser

2. Approval of Previous Months' Minutes:

a. April 20, 2026, Meeting

Motion to approve: L. Chapalee, 2nd L. Bicker, all ayes

3. Visitors:

M. Fortuna, T. Price, G. O'Loughlin, M. Kenny, C. Hill, T. Porter, D. Valentine, J. Auxer

4. Conflicts of Interest:

E. Helmick is one of the applicants and recuses herself from her application 26-08.

5. Public Comment:

None.

6. Applications:

a. 26-08 314 W. German Street

Project Permit Application – replacement of railing and installation of steps from the side porch to the side yard.

E. Helmick gives a summary of the project, stating that all materials will match the existing porch. R. Parmesano notes that the railing replacement doesn't need a permit, so permit is just for the stairs.

Application meets guidelines.

Motion to approve: M. Morningstar, 2nd L. Bicker, all ayes except E. Helmick abstains – application approved.

b. 26-10 105 W. Washington Street

Project Permit Application – replacement of a picket fence on the side yard with a 6 ft. privacy fence matching the other side yard,

M. Fortuna gives a summary of the project, replacing a decaying section of fence with fence matching the rest of the yard – excepting a small section that matches the neighbors fence which will remain. The commission discusses fence height requirements and where exactly the step down requirement from 6 ft to 4 ft takes effect. Proposed fence is found to be in compliance since it is located behind the house.

Application meets guidelines.

Motion to approve: E. Helmick, 2nd L. Bicker, all ayes – application approved.

c. 26-11 113 E. German Street

Sign Application – installation of a wood business sign for Luminary Tax & Accounting and Acoustic Research Systems with a metal bracket

T. Price gives a summary of the project, stating that the entrance to 113 E. German is on the rear of the building. The sign is to direct customers down the walkway adjacent to Panagiotas to the business entrance. Placement would be on the corner of the building adjacent to the walkway.

Application meets guidelines.

Motion to approve: L. Bicker, 2nd L. Chapalee, all ayes – application approved.

d. 26-12 200 block of S. Mill Street (property across Mill St. from O’Hurley’s General Store)

Project Permit Application – installation of a 4 foot high, 4-board oak fence around the perimeter of the property.

G. O’Loughlin gives a summary of the project and the state of the property and possible future plans. There are remnants of old fencing that would come down. Commissioners note this is outside of the historic district so did not need HLC approval and discuss the general state of the property.

Application meets guidelines.

Motion to approve: E. Helmick, 2nd L. Bicker, all ayes – application approved.

e. 26-13 110 Ray Street

Project Permit Application – A 21’ x21’ house addition in front of a single-family home.

C. Hill, contractor for the project, gives a summary, noting the addition is going on a portion of the existing driveway. The driveway is large, so there is still parking. Commissioners note the setback is the same as other houses on the street and that the green space will remain the same and HLC approval, though this is a new home.

Application meets guidelines.

Motion to approve: L. Chapalee, 2nd M. Morningstar, all ayes – application approved.

f. 26-14 312 W. German Street

Project Permit Application – installation of a pergola, lean-to shelter, and fencing to the back yard.

T. Porter gives a summary of the project, describing the new yard features and relationship to neighboring properties. D. Valentine, contractor, gives additional background information. Fencing would match existing, per the HLC recommendation, and be below 4 feet. Shelter materials would match the house. These items received HLC approval, original application also included a car port which did not pass HLC and so is not being included here.

Application meets guidelines.

Motion to approve: E. Helmick, 2nd L. Bicker, all ayes except E. Helmick abstains – application approved.

7. Continuing Business:

Town Council Update: L. Bicker shared updates on the proposed Market square plaza pilot project and an upcoming informational meeting to gather public input and Council's first reading of the Planned Unit Development (PUD) ordinance revision.

The commissioners have a brief discussion of recruiting new commissioners and how their roles will change with expected personnel changes.

8. New Business:

None

9. Adjournment:

Motion to adjourn: R. Parmesano, 2nd E. Helmick, all ayes

Time: 6:43 pm

SHEPHERDSTOWN HISTORIC LANDMARKS COMMISSION

Monday, June 1, 2026

6:00 p.m.,

TOWN HALL

104 NORTH KING STREET

In attendance: Commissioner Chair Keith Alexander (KA), Tom Mayes (TM), Ashley Reynolds (AR), Rebecca Bicker (RB), Cheryl Brown (CB), Jim King (JK), Karl Musser (KM)

In absentia: None noted.

In audience: Jim Auxer (JA), Susan Berry (SB), Edith Thompson (ET), Dominic Valentine (DV), Tracey Porter (TP), Sean Porter (SP), Bo Morgan (BM), Annette Gloomis (AG), Lorenzo Dow Benedict (LB), Tabatha Delphi (TD)

1. **Call to Order:** KA called the meeting to order at 6:30 p.m., made introductions of commissioners and support staff, and explained Roberts Rules Simplified.
2. **Approval of Minutes:** Fixed typos. TM moved to approve as corrected. RB seconded.
3. **Visitors:** Jim Auxer (JA), Susan Berry (SB), Edith Thompson (ET), Dominic Valentine (DV), Tracey Porter (TP), Sean Porter (SP), Bo Morgan (BM), Annette Gloomis (AG), Lorenzo Dow Benedict (LB), Tabatha Delphi (TD)
4. **Conflicts of Interest:** A conflict of interest was declared by CB regarding application 26-16. CB noted that she is the owner of the building in question. In accordance with HLC policy, CB recused herself from discussion and voting, apart from initial discussion of plan and later round of clarifying questions.
5. **Applications**

26-07 – 101 N. Brown Alley

Installation of wooden storage shed on a pre-existing concrete pad. SB, homeowner, discussed plan.

- o TM asked if outbuilding would be setback in accordance with guidelines. KM said that the ordinances did not address this specific situation, as it was set between two alleys. CB asked if the concrete pad would be grandfathered in. TM and KA disagreed with grandfathering it in. Commissioners discussed wording of Guidelines to decide if the shed would match character of existing building. Commissioners agreed that design of shed is appropriate. KM noted that the shed would be closer to the street than the main house is. Commission agreed that the shed should be moved back from street, to meet both HLC and Planning Commission guidelines. KM said that the lot shape and size might make this change impractical, suggested that German Street be considered front of building rather than Brown Alley. TM said that if considering Brown Alley as the front, the shed must be moved behind plane of the house. JA asked how far back the shed should be. TM said 10ft would be appropriate, pending Planning Commission requirements. TM moved to approve application as being consistent with Guidelines on PG 56 "New

Construction," A-C, on the condition that it be moved at least 10 ft behind the plane of the house facing Brown Alley. RB seconded. All in favor. None opposed. Passed. Homeowner to meet with planning commission for further approval.

26-15 – 407 E. German Street

Installation of gutter and downspout. ET, homeowner, discussed plan.

- o ET confirmed that planned gutter and downspouts were at least four to six feet away from building, half-round, and a flat black or green metal gutter. RB moved to approve application in accordance with Guidelines PG 50 "Gutters and Downspouts," A-D. TM seconded. All in favor. None opposed. Passed.

26-16 – 106 W. New Street

Roof replacement. CB, property owner, and BM, project manager, discussed plan.

- o CB excused herself after initial plan discussion and later round of clarifying questions. TM said he would prefer if the gutters were half-round instead. KA asked if there are other examples in town of standing seam roofs with the existing gutter type, noted that Guidelines specified that replacement gutters within public view should be half-round. CB agreed to this change. BM said that with change, downspouts would be changed to rounds. TM moved to approve application as being consistent with Guidelines on PG 49 "Roofs," and 50, "Gutters and Downspouts," on the condition that the gutters be half-rounds. RB seconded. All in favor. None opposed.

6. Workshop Sessions:

- Tracey Porter—Follow-up from application 26-14, for garage/carport. TP, homeowner, and DV, contractor, discussed plan. TP proposed fixing symmetry obstacle by adding a storage component on the side closest to house. After discussion, Commission recommended that TP and DV come back with prepared materials for formal approval.
- Lorenzo Dow Benedict—Construction of a new house in the historic district. AG and LB discussed plan. LB and AG asked what the HLC would approve and restrict. TM asked if existing materials would be used in new construction. AG said that most materials have termite damage, but that original materials would be preserved when possible and that efforts would be taken to preserve building form. Commission asked that AG and LB view

Guidelines to check requirements for new construction, construction of decks and staircases, and demolition of the existing modular home. TM recommended they come back for another workshop as they continue to plan.

7. Ongoing Business

- Historical Markers Program- No update. Discussion tabled.
- Welcome Center Sign and German St Bollards- KM said that the next Town Council meeting will discuss the both sign and bollards.
- Distribution of HLC brochures- KA, TM, and TD expressed willingness to table at Shepherdstown Street Fest.

8. New Business

- KA said that Tomeez Pizza signs are not in compliance with town requirements. KM said that they had not applied for permits for signs. Commission agreed that they should come before both HLC and Planning Commission. KM said that enforcement procedures should be decided by mayor. TM moved that the commission request the town provide at the next meeting a report on the current violations and enforcement actions to correct the current violations. RB seconded. Passed unam.

9. Adjournment: TM moved to adjourn at 8:17 p.m. Passed unam.

Corporation of Shepherdstown

Staff Input Form

For the Historic Landmarks and Planning Commissions

1. Applicant Name and Number: 26-07
2. Project Address: 101 North Browns Alley
3. Project Description: Installation of a 64 sq. ft. wooden storage shed on an existing concrete slab on corner of lot.
4. Issues Identified: Lot faces alley making setback requirements open to interpretation.
5. Recommended Action: Staff has determined that the proposed location does not meet the Section 9-508 setback requirements, however neither does the pre-existing slab or the primary house. Meeting the setback requirements would be impossible on this property and was not done with the construction of the primary house. The proposed shed does not go closer to any lot lines than the slab does. Staff recommends considering the pre-existing slab a grandfathered in exception to the setback requirements and approving the applicant's proposal. In light of the HLC's decision staff recommends that the primary house be considered the grandfathered in exception rather than the slab and the shed location be moved behind their suggested line.
6. HLC Decision: The HLC approved the shed design, but disapproved of the proposed location. HLC rejected the idea of using the pre-existing slab as a grandfathered in exception and cited its location forward of the primary house as a violation of the historic guidelines. The HLC agreed with interpreting Browns Alley as the front lot line. The HLC issued a COA conditioned on the location being changed to be at least 10 feet behind the front plane of the house.
7. Staff Analysis for HLC: Project is located on a residential lot in the historic district facing Browns Alley. The primary residence is a non-contributing structure (built in 1991) as are the immediately adjacent properties. The shed would be made out of wood and appears to meet the historic guidelines.
8. Staff Analysis for PC: The proposed shed location is near the corner of Browns Alley and Newton Alley to the side of the primary residence and on a pre-existing concrete slab. Relevant ordinances include:

Section 9-209 requires a 10 foot arc of clear visibility at all intersections measured from the edge of the street. While the proposed location is close to the corner it is clear of this 10 foot requirement.

Section 9-508 setback requirements are based upon there being a clear front to the lot which is not the case here. I believe the most intuitive interpretation to be that the front yard is the yard facing the front of the house along Browns Alley in which case the required setbacks are:

front = no closer than existing structures, both the pre-existing slab and the front porch and stairs/railing of the primary residence count as structures so the proposed site meets this requirement

rear = 40 feet from rear lot line, the proposed site would be 36 feet from the rear line so does not meet this requirement. The primary house itself is 10 feet from the rear line so also does not meet this requirement. If the primary house is considered a grandfathered in exception, it's 10 foot set back would become the de facto set back requirement. Note that the entire lot is only 51 feet deep and so meeting both the front and rear setback requirements would be impossible.

side = 12 feet, but only needed on one side of the property and so is met by the other side.



An alternative interpretation would count German St. rather than Browns Alley as the front line, which would require the 40' rear setback to be measured from Newton Alley and render the proposed site and pre-existing pad unusable, unless it is considered a grandfathered in exception. However the rest of the yard that is more than 40 feet from Newton would then become an eligible building location. The HLC agreed this interpretation was not intuitive and supported Browns Alley being considered the front line.

Section 9-208 also restricts the placement of accessory buildings and may apply depending on interpretation. It states that accessory buildings in the rear yard can be no closer than 12 feet to an alley line, the slab is approximately 5 ft from both alley lines, but assuming Browns Alley is the front line the proposed area would be a side yard rather than a rear yard. It also specifies that on corner lots accessory buildings can't be closer to the side streets than the primary building, but our definition of streets specifically excludes alleys, so this does not count as a corner lot.

Staff also noted that adjacent properties are in a similar situation and that both 100 and 105 N. Browns Alley have sheds that do not meet the setback requirements.

9. To Be Reviewed By ☒ Historic Landmarks Commission
☒ Planning Commission

Completed By: Karl Musser

Date: 4/23/2026, updated based on HLC decision 6/4/2026



Application Number 28 - 07

Application for Certificate of Appropriateness & Project Permit

Corporation of Shepherdstown, West Virginia

Should you have any questions regarding this application, please contact:
Andy Beall (Phone 304-876-6858, E-Mail abeall@shepherdstown.us)

PLEASE PRINT OR TYPE CLEARLY

Applicant's Name: SUSAN BERRY
(Must be Property Owner)

Mailing Address: P.O. BOX 1291
SHEPHERDSTOWN WV 25443

Day Time Telephone Number: (304) 876-1234

E-Mail Address: sberry@shepherdstown.us

Street Address of Proposed Work: 101 N. Browns Alley

Lot Number/Legal Description:
(If no address exists)

Current Zoning: _____ **Current Land Use:** _____
Note: See zoning maps at Town Hall for correct zoning classification

Description of Work: WOOD STORAGE SHED AT REAR LOT

Cost Estimate: \$2,000 **Project Category** (Descriptions on Next Page): 1

Contractor performing work: LOWE'S INSTALLATION

Contractor's Business License #: _____

A copy of the contractor's Shepherdstown business license or license application **MUST** be attached. The applicant is responsible for making sure all contractors working on this project have a Shepherdstown business license (which can be applied for at town hall). Work started without a business license could result in a stop work order on the project.



Application Number 248 - 07

Application for Project Permit

(Checklist of Required Information for Applications)

Provide information required for appropriate category of work. Staff will ensure completion of checklist material prior to applications' inclusion on meeting agenda.

Category I- Minor Projects such as awnings, porch railings, window boxes, satellite dishes, solar panels, signs, fences, non-permanent storage sheds and other minor changes.

☒ PHOTOGRAPHS OR DRAWN ELEVATION VIEWS OF THE PROPOSED WORK SITES (clearly labeled), at reasonable scales, of the parts of the structure to be altered (again, clearly labeled in terms of which side of the structure, etc.) are needed.

☒ MATERIAL AND COLOR SAMPLES for exterior finishes

Category II- Driveways, decks, carports, porch enclosures and window, roof or siding replacement.

Category III- New construction of and/or additions to residential, commercial, and industrial structures.

Category IV- Demolition or Relocation of a Structure

(Categories II and III):

SITE PLAN is required at common engineering (1" = 10' or 1" = 20', etc.) or architectural scales (1/4" = 1' or 1/8" = 1'). Specifically, these drawings shall include: North point, scale, date, property boundaries (lot lines), existing trees and/or significant planting (if work will disturb surroundings), street & parking lighting. (SAMPLE ATTACHED)

Gross & net land area of property

Setback from property boundaries

Existing & proposed topography (only if regrading of the property is required)

Existing & proposed accessory structures.

Existing & proposed street right-of-way & entrance

Sidewalk, handicap access, Category IV only

MATERIAL AND COLOR SAMPLES for exterior finishes

ELEVATIONS, drawings indicating height of proposed structures, materials, and window and door arrangements

ZONING INFORMATION shall be defined in the application as required:

Dwelling density- net (residential application only)

Flood plain designation if any (mapping available in Town Hall)

Cost estimates and property appraisals for applications seeking exemptions from Chapter 12- Floodplain provisions

Category IV- Demolitions:

Historic designation of structures to be demolished (documents available in Town Hall)

Complete description of structure(s) or part(s) of structure(s) to be demolished.

At least one (1) structural report by a certified structural engineer. Applies to demolition requests for structures fifty (50) years or older.



Application Number 28 - 07

Checklist of Required Information for Applications Continued

All Categories:

_____ Copy of general contractor's Shepherdstown business license or license application.

Section 9-905 Remedies and penalties

The owner or agent of a building or premises in or upon which a violation of any provision of the Planning and Zoning Title has been committed or shall exist, or the leasee or tenant of an entire building or entire premise in or upon which violation has been committed or shall exist, or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building or premises in or upon which such violation shall exist, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed one hundred (100) dollars. Each and every day that such violation continues may constitute a separate offense.

Please read the following paragraph carefully and sign.

Attach documents specified in the checklist on the back of this application. I hereby certify that all information herein provided is true and accurate. I hereby authorize the inspection of the above premises by authorized agents of the Shepherdstown Planning Commission at any reasonable time in order to determine compliance with the Commission's approval. I understand that my presence at the assigned application review meeting is required. Application must be signed by owner or his/her agent.

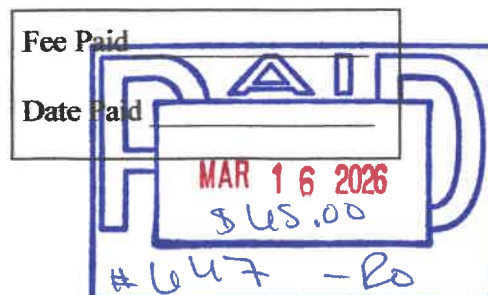
Date: 3-16-24

Owner's Signature: Susan Berry

Print Name: SUSAN BERRY

Fees shall be paid to the Town Treasurer/Clerk and must accompany the application. If work begins without the required permit, double the cost of said permit will be applied.

Zoning Officer Comments:





Application Number 26 - 07

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Section 9-902 of Chapter 8 paragraph XIV be amended as follows:

Please check all boxes that may apply (Application Fees Due Upon Submittal):

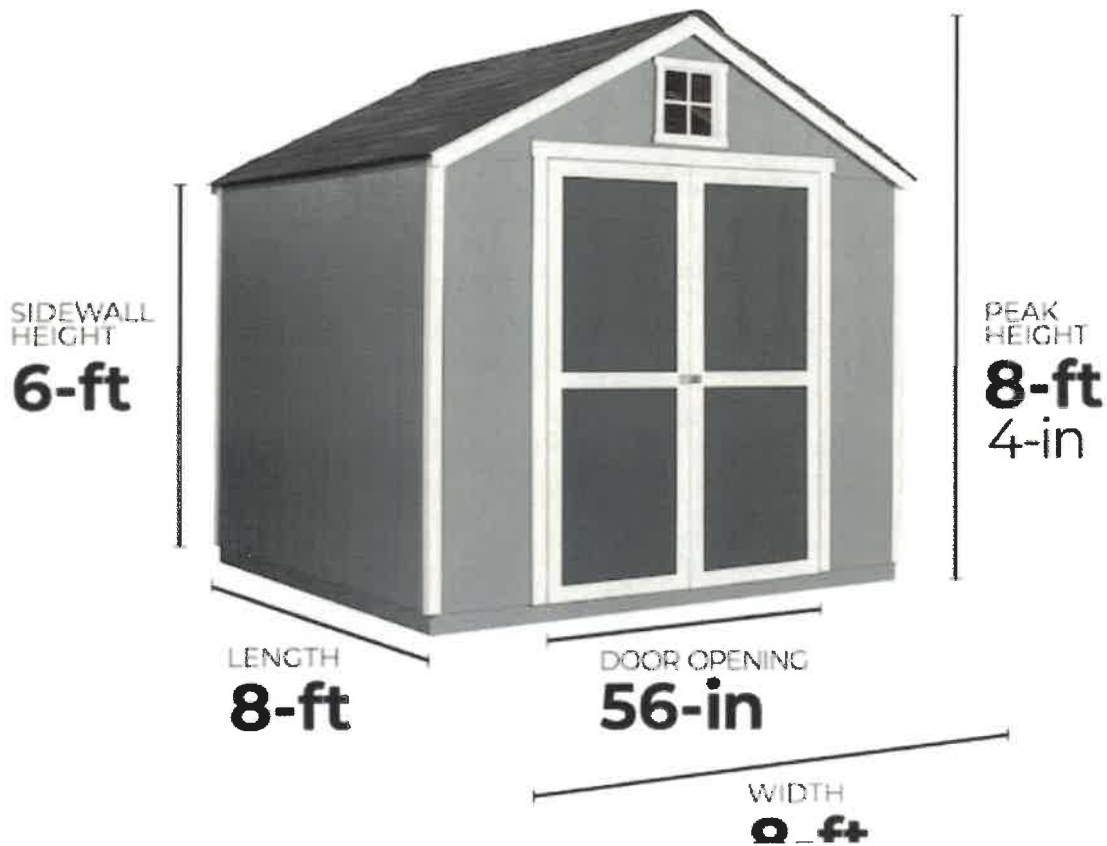
✓	<u>Category I:</u> Minor projects such as murals, awnings, porch railings, window boxes, satellite dishes, solar panels, gutters & downspouts, patios, sidewalks, hardscaping, signs, fences, storage sheds (not attached to the ground) and other minor changes and permit extensions. \$50.00
	<u>Category II:</u> Window replacement, roof replacement, siding replacement, porch enclosure, driveways, carports, and decks. \$100.00
	<u>Category III:</u> New construction of and/or additions to residential, commercial, and industrial structures. \$300 + \$0.50 per sq. ft. New construction of garages & other accessory buildings (permanently attached to the ground). \$50 + \$0.10 per sq. ft.
	<u>Category IV:</u> Demolition or Relocation of a Structure: Removal of any building feature(s) or razing of any structure(s) or relocation of a structure to new location. For either project, the applicant must submit the following in writing (in addition to an application): 1. Reason for the demolition/relocation (including historic documentation). 2. Describe the structure's condition in detail. 3. Describe the proposed reuse of the site, including full drawings of new structure & landscaping. 4. Evidence of relevant funding or financial concerns, 5. Timeframe for project \$50.00 Accessory Buildings \$150.00 Non-Contributing Structures (< 50 years old) \$500.00 Contributing Structures (≥ 50 years old)
Certificate of Appropriateness Advertisement Fee: \$15	

Shed Location & Sample Photo



Shed Location & Sample Photo

64 SQ. FT. OF SPACE



26-07



**BEFORE THE BOARD OF ZONING APPEALS
OF THE TOWN OF SHEPHERDSTOWN**

RE: The Appeal of Blue Moon Cafe
200 East High Street
Shepherdstown, West Virginia

DECISION AND ORDER

This matter came before the Board of Zoning Appeals at a public hearing on May 22, 2026 at Town Hall, 104 King Street, Shepherdstown, West Virginia. Notice of the hearing was duly published and a copy was read into the record.

This was a first hearing and an appeal from the Planning Commission. The applicants sought a variance to Section 9-207, Off-Street Parking Requirements. The bond for the appeal has been paid by the Appellant.

The Planning Commission considered the Appellant's application (Project Permit No. 26-09) on April 20, 2026 and voted to deny the Appellant's request for a project permit to construct a seasonal pergola-covered outdoor seating area located on a portion of the parking lot. The adverse action of the Planning Commission was based upon its finding that the application failed to comply with Section 9-207 of the Ordinance that commercial properties provide one space for each three hundred (300) square feet of floor area and one (1) space for each two (2) employees.

The Appellants are Gregory King, owner of the Blue Moon Café, and Tabitha Dolan, General Manager of the Blue Moon Café. The notice of appeal to the Board and the decisions of the Planning Commission were shared with the Board and are incorporated herein, along with all exhibits and other documents filed with the Board in support of the appeal.

Present and participating were the following Board members:

- Jonathan Wertman, Chairperson
- Nancy Stewart
- Jack Childers
- Ashleigh Sanders

A quorum being present, the Board of Zoning Appeals proceeded to make inquiry into whether the Appellant is an aggrieved person or persons entitled to pursue the appeal in accord with the Rules of the Board of Zoning Appeals. Upon inquiry, and there being no objection, the Board determined that the Appellant has standing to proceed with the appeal.

Upon inquiry by the Chairperson, and the polling of all present Board members, no Board member has any known conflict of interest. Upon inquiry by the Chairperson, and the polling of Board members, all Board members have visited the site in question.

The Board then proceeded to public hearing. Joseph Dolan was duly sworn. Mr. Dolan represented Gregory King, per an e-mail sent by Mr. King to the Town Clerk on May 3, 2026.

Joseph Dolan testified that the Blue Moon Café was seeking to add seasonal outdoor seating by installing two 10'x14' cedar pergolas in the front of the building, taking up two of the existing eight parking spaces. Mr. Dolan testified that the planned outdoor seating space would be surrounded by a new wooden fence, and that the seating area would not block the sidewalk Mr. Dolan showed photographs of the current building, parking lot and planned pergolas. Mr. Dolan noted that Shepherd University has a parking lot across the intersection from the Café, and that it would be available for parking during peak summer hours. He also noted the availability of street parking on both Princess and High Streets.

The Board made multiple inquiries to further understand the planned seating area and its intended use. Mr. Dolan shared that the plan includes removing an existing iron fence and vines to allow access from the restaurant to the new seating area. He testified that the new outdoor seating area would only be erected during the spring and summer, thereby returning the two parking spots for customer use during colder months. Mr. Dolan clarified that none of the current Café parking spaces are marked for handicap use and acknowledged that the asphalt for the current parking spaces has been damaged by tree roots.

Nancy Stewart asked Mr. Dolan about the impacts of the new seating area on emergency evacuation and access. Mr. Dolan testified that there are numerous exits around the building and that he didn't think the new seating area would impede emergency egress or first responder access. He agreed to add a gate to the fence around the seating area to allow for rapid evacuation and access.

Ashleigh Sanders asked if community members had commented on the planned outdoor seating. Mr. Dolan testified that he had only heard positive feedback from community members.

Thereupon a motion was made and seconded to close the public hearing. The motion passed unanimously. A further motion was made to deliberate in closed session. That motion was not seconded. The Board then proceeded to deliberate and to discuss Findings of Fact and Conclusions of Law in open session.

After consideration of the foregoing, the Board makes the following Findings of Fact:

I. FINDINGS OF FACT

1. The Appellants have standing and their request was denied by the Shepherdstown Planning Commission.
2. Blue Moon Café is a commercial property within the R-1 Residential zone and is located within the historic district.
3. Blue Moon Café currently has 8 (eight) paved off-street parking spots and would be removing 2 (two) of these spots to establish a 392 sq ft seasonal seating area.

4. Blue Moon Café is currently 2,615 sq ft and would be 3,007 sq ft if a 392 sq ft seasonal seating area is added.
5. A commercial property that is 2,615 sq ft would require 9 (nine) off street parking spaces per Section 9-207 of the Ordinance; a commercial property that is 3,007 sq ft would require 10 (ten) off street parking spaces.
6. The Planning Commission only denied Project Permit No. 26-09 due to specific off-street parking requirements as found in Section 9-207 of the Ordinance.
7. Blue Moon Café has existing outdoor seating enjoyed by community members and visitors.
8. Most restaurants in the historic district do not have off-street parking.

The requirements for granting a variance are set out in Section 9-1008 of the Ordinance. The Board reviewed the requirements, and after consideration, found that the appeal meets those requirements beyond a reasonable doubt. Specifically:

- There is an exceptional circumstance due to the seasonal and temporary nature of the structure.
- The variance is necessary for the preservation of substantial property rights possessed by other commercial properties in the R-1 Residential District.
- Authorizing a variance will not be of substantial detriment to adjacent property and will not materially impair the public interest.
- The specific circumstances of this variance are not of a general and recurrent nature.

II. CONCLUSIONS OF LAW

1. An "Aggrieved" or "Aggrieved Person" means a person who:
 - i. Is denied by the planning commission, in whole or in part, the relief sought in any application or appeal; or
 - ii. Has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience beyond that which other residents of the municipality may suffer. Article VII (B) Board of Zoning Appeals Rules.
2. There being no opposition and it appearing that the Appellant is an aggrieved person, the Appellant has standing to proceed with the Appellants' appeal.
3. The applicable standard of proof is beyond a reasonable doubt as per the Ordinance.
4. The Ordinance Sections involved in this appeal are Sections 9-207, 9-1008 and 9-1009. These sections have been reviewed and considered in their entirety by the Board in reaching its decision.

5. The Board finds that the Appellants, Gregory King and Tabitha Dolan, have demonstrated beyond a reasonable doubt that the requirements of the Shepherdstown Ordinance pertaining to variances have been met, and that the appeal of the Appellant should be granted.

III. RULING

The appeal for a variance is granted with the following conditions:

1. The outdoor seating area will be erected for no more than 6 (six) months in a single calendar year.
2. The Appellants have agreed to install a gate in the fence around the outdoor seating area to allow for emergency evacuation and access.
3. The Appellants commit to updating their evacuation plan to account for the new seating, and to train staff on the new plan.
4. The Appellants consider repairing the asphalt in their off-street parking area.

The Appellant shall be immediately given notice of this decision and shall be provided with a copy thereof.

Enter: 6/8/20



Board of Zoning Appeals Chair