

MARTINSBURG BOARD OF ZONING APPEALS
February 7, 2017 6:30pm
232 N. Queen Street
J. Oakley Seibert Council Chambers
Regular Meeting Minutes

With a quorum present, Chairperson Schoppert called the regular scheduled meeting of the City of Martinsburg Board of Zoning Appeals to order at 6:30 pm. The following Boardmembers were present: Mary Dulyea, Shelly Schoppert, Doreane Mosser and Tom Johnson. Absent were: Brenda Casabona and Martin Bales. Also in attendance were City Planner Tracy Smith, Legal Counsel Kin Sayre and Planning Secretary Holly Hartman.

APPROVAL OF January 3, 2017 MEETING MINUTES

Boardmember Dulyea made the motion to approve the January 3, 2017 minutes. Boardmember Mosser seconded the motion that was followed by a unanimous vote of “aye”. Motion carried.

OLD BUSINESS

None

UNFINISHED BUSINESS

None

NEW BUSINESS

1. **CASE # V 17-006. 431/435 Virginia Avenue. Public Hearing.** Application requesting a variance from Sections 420 “Lot Area, Yard and Building Requirements” and Section 514.21 “Conversions of Existing Structures to Apartment Use” to increase existing structure from five (5) dwelling units to seven (7) dwelling units. Stetson Snowden, appellant.

After being sworn in by Legal Counsel, Stetson Snowden, 3637 Kabletown Road, Charlestown, WV, stated that he is a lifelong resident of the Eastern Panhandle. Mr. Snowden provided a history of growing up in the area of Virginia Avenue. Mr. Snowden stated that this house has seven units, five of which are occupied and two that are vacant. He added that he prides himself on having great tenants and that in eight years he has only had one eviction. The reason he is here tonight is to ask for relief from the square footage of the property to allow the two empty units to be rented out. He stated that five of the units are being rented and are registered and the two remaining units are finished, heated and metered. In regards to the special conditions for a Variance, he feels there are several other properties in the neighborhood that would have needed a Variance due to being multifamily units with no off-street parking and small lot sizes.

Legal Counsel, Kin Sayre verified with the applicant that this is the third application submitted for this property: once in 2011 with the previous owner; one in 2014 from the current owner and; again in 2017. Mr. Sayre asked if anything has changed in the application from 2014 and today. Mr. Snowden replied that he now owns the adjoining lots surrounding the property which gives

him more square footage, but there have not been any boundary line adjustments or mergers. Mr. Sayre then asked how the property was purchased. Mr. Snowden replied that it was purchased from a public sale against other bidders and that he was not aware of the full extent of the issues with the two additional units. He was not aware the property was under foreclosure until about two weeks prior to the sale. Mr. Snowden stated that this was not an inside deal with family; he read the notice in the paper because family was embarrassed and did not want to tell him about it. He was under the impression that the units had all been inspected by the building inspectors. He further stated that he has done no work in these units.

City Planner, Tracy Smith, provided a staff report, stating that the appellant is asking to increase from five to seven units. Ms. Smith stated that the previous owner was supposed to return the seven units back into five units as they were constructed without a building permit. That was never done. The matter of the apartments next door, which were converted from a duplex into four units, was allowed because of the size of the lot and they caught up on the building permit. Ms. Smith stated that the adjacent lot is only able to support four units, so none of that land could be merged over to the lot in question. Discussion included a boundary line adjustment that could be reviewed by the Planning Commission but the numbers are absolute and if the numbers do not work, they cannot approve a request. Ms. Smith added that this has been discussed with Mr. Snowden prior to the meeting. Mr. Snowden agreed, adding that he did not want to go in that direction. It was his understanding that the building inspector did go back through the property to make sure the two units were not rented but it was not terminated as requested because they were told they could come back before the board after one year. Ms. Smith added that there is enough room in the back to create off street parking if needed. She went on to note Section 903.21 is the criteria that must be met.

Chairperson Schoppert opened the Public Hearing at 6:47 p.m.

- Edward Trout, 320 W. King Street, spoke in favor of the project. Mr. Trout stated that he owns property adjacent to Mr. Snowden and that the quality of these properties goes above and beyond what he has seen in a lot of the City. Since being owned by Mr. Snowden, the condition of the property as well as the quality of tenants has gone up dramatically. He feels use of the additional units should be granted.
- Harold Slaughter, 431 S. Raleigh Street, spoke in favor of the project. Mr. Slaughter has been at this location for twenty-seven years and the transformation of the property next door owned by Mr. Snowden has been amazing. The property is clean and well taken care of. He asked that Mr. Snowden be given approval to use the units.
- Kayla Cook, 431 Virginia Avenue, spoke in favor of the project. She is a current tenant of Mr. Snowden. Ms. Cook stated that Mr. Snowden is a great landlord, very thorough and helpful. She would like to show her support.

As no one else came forward to speak for or against the request, the public hearing was closed at 6:53 p.m.

Ms. Smith agreed that Mr. Snowden is one of the better landlords in town, stating we have no problems with him, he follows all of the rules and requirements and we never have complaints from his tenants.

Legal Counsel led the discussion on Section 903.21. A written application for a Variance is submitted demonstrating all of the following points:

- a. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district. Discussion included other lands and structures in the same area that face the same problems. All Boardmembers agreed the application has not met this requirement for the Variance.
- b. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance. Discussion included neighboring properties and lot coverage. All Boardmembers agreed the application has not met this requirement for the Variance.
- c. That the special conditions and circumstances do not result from the actions of the applicant. Discussion included Mr. Snowden's father being the previous owner causing the current situation. All Boardmembers agreed the application has met this requirement for the Variance.
- d. That granting the Variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same zone. No nonconforming use of neighboring lands, structures, or buildings in the same zone, and no permitted use of lands, structures, or buildings in other zones shall be considered grounds for the issuance of a Variance. All Boardmembers agreed the application has not met this requirement for the Variance.

All Boardmembers agreed the application has not met the requirements for the Variance.

Boardmember Dulyea made the motion to approve the application requesting a Variance from Sections 420 "Lot Area, Yard and Building Requirements" and Section 514.21 "Conversions of Existing Structures to Apartment Use" to increase existing structure from five (5) dwelling units to seven (7) dwelling units. Stetson Snowden, appellant. The motion was seconded by Boardmember Mosser and followed by a vote of "aye" from Boardmember Mosser and a vote of "nay" from Boardmember Dulyea, Boardmember Johnson and Boardmember Schoppert. Motion denied.

Mr. Sayre advised the applicant that he has the right to appeal the decision to the Circuit Court of Berkeley County within thirty days of receipt of the decision letter.

DISCUSSION/ACTION ITEMS

None

ELECTION OF OFFICERS

None

OTHER BUSINESS

None

ADJOURNMENT

The meeting was adjourned at 7:00 pm.

Shelly Schoppert, Chairperson

Holly Hartman, Planning Secretary