

MARTINSBURG BOARD OF ZONING APPEALS

June 6, 2017 6:30pm

232 N. Queen Street

J. Oakley Seibert Council Chambers

Regular Meeting Minutes

With a quorum present, Vice-Chairperson Casabona 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, Brenda Casabona, Martin Bales, Doreane Mosser and Tom Johnson. Absent was: Shelly Schoppert. Also in attendance were City Planner Tracy Sherman, Legal Counsel Chris Peterson and Planning Secretary Holly Hartman.

APPROVAL OF February 7, 2017 MEETING MINUTES

Boardmember Bales made the motion to approve the February 7, 2017 minutes. The minutes were approved by acclamation.

OLD BUSINESS

None

UNFINISHED BUSINESS

None

NEW BUSINESS

1. **CASE # V 17-030. 121 N. Rosemont Avenue. Public Hearing.** Application requesting a variance from Sections 420 "Lot Area, Yard and Building Requirements" to construct a single family home that will extend into the minimum required setbacks. Sam Collins/Collins Homes, appellant.

After being sworn in by Legal Counsel, Sam Collins, 20 Pedal Car Drive, Inwood, WV, stated that he and his wife would like to build a single family home to live and retire in. Mr. Collins stated that they have wanted to live near the park for some time now.

City Planner, Tracy Sherman, provided a staff report, stating that this is a legally non-conforming lot, predating our current zoning ordinance, in which a lot this size would not be allowed to be created. Ms. Sherman advised that the board will review section 903.2 for the Variance. Ms. Sherman added that the math presented for the lot coverage was approximate, as she estimated the size of the shed, but the proposal is an estimated twenty-five percent lot coverage.

Vice-Chairperson Casabona asked if the house would stay in a similar plane to the property next door. Mr. Collins replied yes. Ms. Sherman added that there is a twenty-six front yard setback and that according to the plans the exterior project looks to meet building code requirements on openings.

Vice-Chairperson Casabona opened the Public Hearing at 6:38 p.m.

- Sid Pitzer, Winchester, VA, spoke in favor of the project. After being sworn in by legal counsel, Mr. Pitzer stated that he was born and raised in Martinsburg, WV. He and his wife have owned the lot being discussed since the 1960's. They had planned to build their dream home on it but that ended up not happening. Mr. Collins has expressed interest in purchasing the lot for the same purpose, building his dream home. He feels the neighborhood would be encouraged to see a new home on the lot as it is currently used for dumping brush and trash.
- David Anderson, 104 Music Court, spoke in favor of the project. After being sworn in by legal counsel, Mr. Anderson stated that he lives nearby in the same neighborhood. He feels that this is encouraging growth for the City. We should encourage the building of an undeveloped lot. Mr. Anderson stated that as long as he has lived in the area that the lot has never been properly maintained and doing so would increase the value of the neighborhood.
- Barbara Bratina, 116 N. Tennessee Avenue, spoke against the project. After being sworn in by legal counsel, Ms. Bratina asked that the Variance be denied as the decrease in setbacks is too large. Ms. Bratina gave her calculation for the percentages of the decreased setbacks and referenced table 420 of the zoning ordinance. She disagrees with the applicant's justification for the Variance stating that the lot is not too small, but that the house is too large.
- Sam Salgado, 117 N. Rosemont Avenue, spoke against the project. After being sworn in by legal counsel, Mr. Salgado expressed concern that the lot was not intended to be built upon for a long term home, but for the purpose of establishing residency. Mr. Salgado stated that the size of the home is his main concern, as he lives adjacent to the property, that the dimensions of the home do not fit in with the neighborhood and that the request does not meet setback requirements. He added that he enjoys the scenery of the empty lot and that he had once offered to purchase the lot for a more than fair price which was declined by the owner as he felt it was worth much more than the offered amount.
- Henry Kayes, 1200 W. King Street, spoke against the project. After being sworn in by legal counsel, Mr. Kayes stated that his concern was the size of the home on a smaller lot and that a home considerably smaller than the surrounding homes would bring down their property values. Mr. Kayes expressed concern with the space for additional parking. He feels that the proposed home is not keeping the integrity of the neighborhood.
- Sharon McGee, 201 N. Rosemont Avenue, spoke against the project. After being sworn in by legal counsel, Ms. McGee stated that the proposed house was cute but it should go elsewhere. She spent a lot of money renovating her house and her main concern is the affect this home will have on their appraisal value as it is so small.

As no one else came forward to speak for or against the request, the public hearing was closed at 6:50 p.m.

Vice-Chairperson Casabona addressed the issue of the property not being buildable. She stated that this is a legally non-conforming lot, referencing section 410 of the zoning ordinance, and can be built upon. It is subject to the same requirements of the surrounding homes, except for the setbacks, which can be altered through the approval of a Variance. She asked Ms. Sherman to explain the lot coverage and setbacks. Ms. Sherman stated that the applicant is within the allowable lot coverage with the home and shed. The seven foot setback on the side adjacent to the neighbor is a reduction of three-feet down from ten. The Race Street side of the property is required to be a twenty-five foot setback as it is a corner lot with two street frontages. The applicant is asking that side to be reduced to seven-feet and four inches. Ms. Sherman added that criteria 903.21 C. is already met as this is a lot pre-existing the current zoning ordinance. She further stated that the reason there are no numbers listed in the legal ad is so the board has the ability to tweak the numbers and compromise with the owner as they see fit.

Vice-Chairperson Casabona 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 this being a pre-existing lot and that it can be built upon. All Boardmembers agreed the application has 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 the lot being buildable, that requiring a twenty-five foot setback on the Race Street side would leave only five-feet of land to build a home and that a possible redesign of the house plans may make the setback possible on the neighboring side of the lot. All Boardmembers agreed the application has met this requirement for the Variance except for Boardmember Bales.
- c. That the special conditions and circumstances do not result from the actions of the applicant. This criterion was previously discussed during this meeting. 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. Discussion included this not being a special privilege, that the lot meets visibility requirements and the size of the proposed home. Vice-Chairperson Casabona asked if the applicant could decrease the size of the home on the side next to 117 S. Rosemont Avenue by three-feet to meet the ten foot setback on that side. Mr. Collins agreed

that he would be able to make the requested change. All Boardmembers agreed the application has met this requirement for the Variance.

903.25 The Board shall further make a finding that the granting of the Variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare. Discussion included the proposal not affecting the neighboring property values and that it improves the neighborhood. Boardmember Johnson disagrees with the “grandfathered status” of the lot. He feels that the board should maintain a minimum of ten-feet on either side of the lot. Ms. Sherman suggested the board ask the applicant if he would object to building only a twenty foot wide home to maintain ten-feet on each side. Mr. Collins agreed that he could reduce his home to twenty-feet wide to meet the requested setbacks. All Boardmembers agreed the application has met this requirement for the Variance except for Boardmember Johnson.

All Boardmembers agreed the application has 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” to construct a single family home that will extend into the minimum required setbacks. Sam Collins/Collins Homes, appellant. With the change that the owner will increase both side yard setbacks to ten-feet. The motion was seconded by Boardmember Mosser and followed by a roll call vote of “aye” from each Boardmember with the exception of Boardmember Johnson with a vote of “nay”. Motion approved.

Legal Counsel, Chris Peterson advised that anyone wishing to appeal would need to look into the matter to see if they do in fact have the right to appeal the decision.

2. **CASE # SE 17-032. 329 S. Raleigh Street. Public Hearing.** Application requesting a Special Exception according to the requirements of Sections 560 “Table of Zoning District Uses,” and 632.2 “Professional Offices” to use structure for professional office purposes. Wm. Richard McCune, Jr., appellant.

After being sworn in by Legal Counsel, Richard McCune, Jr., 128 Eden Court, stated that he is the property owner. Mr. McCune handed out several photos and statements that were added to the file in support of his request. Mr. McCune gave a very detailed description on the history of the property showing that the first floor of the building has always been used as a commercial property. The tenants on the second floor have no objections to the commercial use downstairs and letters stating such were provided as well.

Paul Pennington, owner of Elite Bail Bonds, after being sworn in by legal counsel stated that his main office is in Winchester, VA and he will split his time between the two offices. He will have an office assistant to answer the phones and does not expect to have many customers in at any given time as most of the process happens outside of his office. Mr. Pennington leased the property with the understanding that it was commercially zoned. After realizing that the previous

office had been gone for eighteen months he has applied for the Special Exception and Variance to use the office for his bonding business.

Vice-Chairperson Casabona asked if clients would be at the office during normal business hours. Mr. Pennington stated that in WV bonding processes only take place during normal business hours when the courthouse is open. Only occasionally do they have to use an on-call Magistrate which does not occur in his office either. Vice-Chairperson Casabona then asked how long a client will typically be in the office and if they go to the courthouse first. Mr. Pennington explained that they will normally be in and out of his office in fifteen minutes. Most of the process happens in the courthouse and in the jail.

Ms. Sherman provided a staff report stating that the building operated for numerous years as commercial on the first level. Unfortunately there is no written record of this in City records. As the previous tenant had been gone for more than one year, a Special Exception was required to continue with commercial use. Ms. Sherman stated that staff has no issues with this request and that the request for the parking Variance would improve the lot as onsite parking would remove the entire rear yard.

Vice-Chairperson Casabona opened the Public Hearing at 7:38 p.m. As no one came forward to speak for or against the request, the public hearing was closed at 7:38 p.m.

Ms. Sherman read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.32: The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it, are such that it will be in harmony with the appropriate and orderly development of the district in which it is located. There was general agreement for no concern.

Ms. Sherman read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.33: The location, nature and height of buildings, walls, and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings. There was general agreement for no concern.

Ms. Sherman read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.34: Operations in connection with any special use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or other characteristics, than would be the operations of any permitted use not requiring a special permit. There was general agreement for no concern.

Ms. Sherman read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.35: Parking areas will be of adequate size for the particular use, properly located and suitable screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety. This condition is not applicable and will be discussed in the next case.

Ms. Sherman read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.36: Public utility service (electricity, sewerage, storm drainage and water) will be adequate to service the proposed use and will have suitable access thereto, and the proposal will not overburden existing facilities; or, any onsite water supply, sewage treatment, or storm drainage disposal system will be adequate to service the proposed use. There was general agreement for no concern.

All Boardmembers agreed the application has met the requirements for the Special Exception.

Boardmember Bales made the motion to approve the application requesting a Special Exception according to the requirements of Sections 560 "Table of Zoning District Uses," and 632.2 "Professional Offices" to use structure for professional office purposes. Wm. Richard McCune, Jr., appellant. The motion was seconded by Boardmember Johnson and followed by a unanimous roll call vote of "aye". Motion approved.

3. **CASE #V 17-033. 329 S. Raleigh Street. Public Hearing.** Application requesting a variance from parking requirements in accordance with Sections 430.4 "Schedule of Off-Street Parking Requirements". Wm. Richard McCune, Jr., appellant.

After being sworn in by Legal Counsel, Richard McCune, Jr., 128 Eden Court, stated that there is a designated thirty minute parking spot on the front and side of the building and that there is adequate on-street parking.

Vice-Chairperson Casabona stated that she feels the on-street parking causes no undue burden as many people will most likely be parked at the courthouse and just walk over to the office and because the office is only open normal business hours it will not affect residential parking in the evening.

Ms. Sherman informed the applicant that the thirty minute parking spaces are not specifically designated for use of their office. Anyone can utilize the spots.

Vice-Chairperson Casabona opened the Public Hearing at 7:49 p.m. As no one came forward to speak for or against the request, the public hearing was closed at 7:49 p.m.

Vice-Chairperson Casabona 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 there being no previous parking requirements and that making a parking lot on the property is not possible. All Boardmembers agreed the application has 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. All Boardmembers agreed the application has met this requirement for the Variance.

c. That the special conditions and circumstances do not result from the actions of the applicant. 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 met this requirement for the Variance.

All Boardmembers agreed the application has met the requirements for the Variance.

Boardmember Dulyea made the motion to approve the application requesting a Variance from parking requirements in accordance with Sections 430.4 "Schedule of Off-Street Parking Requirements". Wm. Richard McCune, Jr., appellant. The motion was seconded by Boardmember Bales and followed by a unanimous roll call vote of "aye". Motion approved.

4. **CASE # SE 17-036. 127 E. King Street. Public Hearing.** Application requesting a special exception pursuant to Martinsburg Zoning Ordinance 7-0-78 Section 523.2 to regulate the sale of alcoholic beverages. Puller Enterprises, LLC., appellant.

After being sworn in by Legal Counsel, Devin Walker, 345 Nottingham Boulevard, stated that he and his partners are seeking the opportunity to open and upscale restaurant and lounge with entertainment and food from a professional chef.

Vice-Chairperson Casabona verified that the hours listed in the application were correct. Mr. Walker stated that the only change made to the listed hours was a request to stay open until 3:00 a.m. which coincides with the ABC regulations. She then asked what kind of live entertainment and if the entertainment would be inside or out. Mr. Walker replied that there would be themed nights, DJ's, local talent and possibly company events, all of which will be located inside the building.

Ms. Sherman provided a staff report stating that this application is the same as several other applications. There is very little impact on the neighborhood and a parking area is available. She added that if the property is a nuisance that the board has the right to bring them back to address any issues.

Vice-Chairperson Casabona opened the Public Hearing at 7:58 p.m. As no one came forward to speak for or against the request, the public hearing was closed at 7:58 p.m.

Ms. Sherman read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.32: The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it, are such that it will be in harmony with the appropriate and orderly development of the district in which it is located. There was general agreement for no concern.

Ms. Sherman read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.33: The location, nature and height of buildings, walls, and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings. There was general agreement for no concern.

Ms. Sherman read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.34: Operations in connection with any special use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or other characteristics, than would be the operations of any permitted use not requiring a special permit. There was general agreement for no concern.

Ms. Sherman read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.35: Parking areas will be of adequate size for the particular use, properly located and suitable screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety. There was general agreement for no concern.

Ms. Sherman read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.36: Public utility service (electricity, sewerage, storm drainage and water) will be adequate to service the proposed use and will have suitable access thereto, and the proposal will not overburden existing facilities; or, any onsite water supply, sewage treatment, or storm drainage disposal system will be adequate to service the proposed use. There was general agreement for no concern.

All Boardmembers agreed the application has met the requirements for the Special Exception.

Boardmember Dulyea made the motion to approve the application requesting a Special Exception pursuant to Martinsburg Zoning Ordinance 7-0-78 Section 523.2 to regulate the sale of alcoholic beverages. Puller Enterprises, LLC., appellant, with the addition that this case can be brought back before the board if it is deemed a nuisance. The motion was seconded by Boardmember Bales and followed by a unanimous roll call vote of "aye". Motion approved.

5. **CASE #SE 17-038. 234 S. Water Street. Public Hearing.** Application requesting a Special Exception in accordance with Section 621.1 “Single-Family Detached Dwelling” for the purpose of residential use as a Single-Family Dwelling unit. Wayne Dalton, appellant.

After being sworn in by Legal Counsel, Wayne Dalton, 234 S. Water Street, stated that he and his wife purchased this home to live in now that they are retired as it is close to their children and family. They love the house and the city, but there was an issue trying to get a mortgage on a home zoned commercially. They were able to buy the home and have put a lot of work into it and would like to have it zoned residentially.

Ms. Sherman provided a staff report stating that she had discussed the difference between a Special Exception for the use of the property which allows residential use in a business district, which is what was applied for, and a Map Amendment for the Planning Commission to change the zoning. Mr. Dalton stated that he wanted the Special Exception for the use of the property. Ms. Sherman reminded him that this request will leave the zoning BL, but will allow for residential use. Mr. Dalton advised that he will proceed with the current request for the time being and will come back for a Map Amendment at a later date if needed.

Vice-Chairperson Casabona opened the Public Hearing at 8:07 p.m. As no one came forward to speak for or against the request, the public hearing was closed at 8:07 p.m.

Boardmember Dulyea made the motion to approve the application requesting a Special Exception in accordance with Section 621.1 “Single-Family Detached Dwelling” for the purpose of residential use as a Single-Family Dwelling unit. Wayne Dalton, appellant. The motion was seconded by Boardmember Bales and followed by a unanimous roll call vote of “aye”. Motion approved.

DISCUSSION/ACTION ITEMS

None

OTHER BUSINESS

None

ADJOURNMENT

The meeting was adjourned at 8:08 pm.

Brenda Casabona, Vice-Chairperson

Holly Hartman, Planning Secretary