

MARTINSBURG BOARD OF ZONING APPEALS
January 07, 2014 6:30pm
232 N. Queen Street
J. Oakley Seibert Council Chambers
Regular Meeting Minutes

With a quorum present, Chairperson Casabona called the regular scheduled meeting of the City of Martinsburg Board of Zoning Appeals to order at 6:31 pm. The following Board members were present: Brenda Casabona, April King, Mary Dulyea, Bill Blackburn, Bridget Cohee, and Frank Bradley. Also in attendance were City Planner Tracy Smith, Legal Counsel Kin Sayre and Planning Secretary Linda Fitzgerald

APPROVAL OF November 05, 2013 MEETING MINUTES.

The minutes were approved by unanimous consent.

OLD BUSINESS

None

UNFINISHED BUSINESS

None

NEW BUSINESS

1. **CASE SE-14-001. 103 S. Tennessee Avenue. Public Hearing.** Application requesting a special exception according to requirements of section 410.6 "Special Exception to Enlarge a Non-conforming Use or Structure" to expand a legally non-conforming structure for the purposes of constructing an addition. Patricia M. Hartman, DDS, Appellant

Richard Klein with Alpha Associates representing Patricia Hartman, presented this request on behalf of Dr. Hartman. He stated Dr. Hartman will also make a presentation and Contractor Craig Collis is available to answer any specific questions regarding the building.

Mr. Klein stated Dr. Hartman is requesting an expansion of a non-conforming use in the amount of 245 square feet to add a dental chair and a small lab and office to the building at 103 S. Tennessee Avenue. He went on to say Dr. Leonard was the most recent dentist in this office.

Dr. Patricia Hartman, after being sworn in by legal counsel, introduced herself and gave a brief biography of herself stating she was born and raised in Martinsburg, attended Shepherd College and then went on to West Virginia University for her Doctorate in Dental Surgery. She stated she currently has a practice located at 50 Street of Dreams and wishes to move her current practice to 103 S. Tennessee Avenue. She went on to explain she is planning to paint the outside brick veneer white to match the existing structure. She referred to and explained drawings of the current and proposed layout of the office (see case file for details). She went on to say she is requesting to construct a 10 foot addition at the north end of the building so she could rearrange the office and add a 2nd dental chair. She stated she is not planning to change the previous use by profession or business size and she will be the sole practitioner. She passed out her normal schedule showing she usually has one patient in her chair as well as one patient in her hygiene chair and even when patients are overlapping, she does not have more than four cars on the street.

City Planner Tracy Smith provided a staff report and a provided a brief history noting that the location is operating as a legally non-conforming professional medical dental office that predates the current Martinsburg Zoning Ordinance (MZO) that was adopted in 1970. It was considered "Grandfathered" and that when the

current zoning ordinance was adopted, it required the grandfathered use to be discontinued after 25 years. Ms. Smith added the City has never enforced this requirement and, to the best of her knowledge, does not intend to. The professional office use was established in 1991 by Special Exception, and tonight's purpose is to determine whether the structure can be increased. She went on to say the zoning ordinance allows a one-time structural increase up to 35% of what is already existing in the building size and added this addition is less than 35% and conforms to the requirements of this one-time expansion of the structure. She added Dr. Hartman stated this 2nd chair and improved lab space is intended for her solo dental practice. She continued to say the property is zoned residential, the maximum amount of lot coverage in RUB district is 30%, and according to the Engineering Site Plan, this structure will only cover 16% of the lot. So, if for any reason this use is ever abandoned and reverts to residential use, it still meets requirements of a non-conforming lot.

Chairperson Casabona opened the Public Hearing 6:46pm.

- Twelve letters from immediate neighboring properties in support of this request were handed in to the commission for the record.

Three people came forward to speak against this request:

- Barbara Bratina – 116 N. Tennessee Avenue. Ms. Bratina asked for clarification on legality of the application since the request application had a change in the square footage on the site plan. Legal Counsel confirmed legality.

Ms. Bratina then handed in a petition signed by the neighboring properties requesting the BZA to deny this special exception because it is felt to be detrimental to the neighborhood and they have a problem with an addition being added to the non-conforming structure. Ms. Bratina read and quoted Sections and Articles: Section 410.60 "Special Exception to Enlarge a Non-conforming Use or Structure"; 103.4 Article 2 "Definition of Special Exception"; Article 7 "Development of Review of Special Exception"; She noted she feels this district is already developed as residential with no room for further development and an addition will make the area less harmonious. She then quoted Sections 702.1; 702.3 and 901.

- Bill Hiatt - 1010 W. King Street – Mr. Hiatt spoke against this request. He stated he feels this enlargement will make the area more of a commercial establishment and feels the use does not conform with anything else in the neighborhood.
- Peter Hartmann – 111 N. Tennessee Avenue. He stated he lived at his home since 1987 directly across from the applicant. He gave a brief history of the property, that over time, there were three separate parcels and three separate owners. He stated over time, owners have come and gone. He went on to note that last year, a wheel chair ramp was constructed making the property obviously a commercial structure that does not blend well with the surrounding residential neighborhood especially since the shrubbery that screened the building that made it more acceptable, was removed.

Mr. Hartmann requested from the board if they approve the special exception of the building expansion to consider three conditions: 1) Off-street parking shall be provided for and used by every worker including the professional in charge. 2) Landscaping shall be restored to at least the 1991 condition, including: a) 3'x4' shrubs to screen wheelchair ramp; b) similar shrubs along the north side of the approved building expansion be planted; c) larger trees and shrubs that exist shall be protected, relocated or replaced as needed to facilitate the approved building expansion. d) any additional planning desired by the owner to bring property back into harmony with the surrounding district. 3) Building expansion shall not be more than 200 square feet in area to limit future impact on on-street parking.

Mr. Hartmann concluded that the business and professional use of this property has continued for approximately 50 years and is a fact that must be lived with. His main concern is to have the parking issue be addressed and the landscaping be restored so the building will be in harmony with its surroundings to avoid further detrimental effects on the community.

One person came forward to speak for this request:

- Nettie Atkinson – 407 Edgemont Terrace. Ms. Atkinson spoke in favor of the request. She mentioned she has lived in the area since 1993 and has never seen an issue with cars parked along the Tennessee Avenue. She feels allowing this expansion will not be harmful to the neighborhood.

Chairperson Casabona closed the Public Hearing at 7:17pm as no one else came forward to speak for or against this request.

Discussions included but were not limited to: The special exception use has been granted in 1991 and has been there for 43 years; the application is only for an expansion to the building; the MZO allows a one-time expansion of a maximum of 35% of the structure; the requested expansion is within the legal requirements; requirements for exam rooms; requirements for the disabilities act; and office hours as follows: Monday through Wednesday 8-5, Thursday 8-2:30 and closed on Friday or special appointments.

City Planner, Tracy Smith added if Dr. Hartman happens to move, any new, different use tenant will have to ask for approval from the Board of Zoning Appeals for use. She added the BZA has the ability to revoke the special exception and confirmed a revocation has happened in the past.

Mr. Klein from Alpha Associates reiterated the MZO states you can expand to 35%. He went on to say the objective comments are about feel and not about facts and the building expansion.

Chairperson Casabona outlined the conditions for the special exception and mentioned she could not find where the expansion is not in harmony or compliance. The expansion is the same level of use and merely only a physical change. All Boardmembers agreed this expansion is in compliance. Chairperson Casabona then read MZO section 702.3 through 702.5 "General requirements for Granting a Special Exception". The Board discussed all sections before coming to a consensus.

Further discussion included clarification from Legal Counsel to confirm the definition of harmony, and if landscaping is something to be considered in part of the decision making process from the BZA.

Boardmember Blackburn made the motion to approve the application requesting a special exception according to requirements of section 410.6 "Special Exception to Enlarge a Non-conforming Use or Structure" to expand a legally non-conforming structure for the purposes of constructing an addition. The motion was seconded by Boardmember Bradley and followed by a unanimous a roll call vote of "aye". Motion carried.

2. **CASE V14-002. 103 S. Tennessee Avenue. Public Hearing.** Application requesting a variance from parking requirements in accordance with Sections 430.4 "Schedule of Off-Street Parking Requirements" and for relief from Section 701.81 "Setbacks". Patricia M. Hartman, DDS, Appellant.

Richard Klein with Alpha Associates representing Patricia Hartman, presented this request on behalf of Dr. Hartman. He stated this variance is a request from the off-street parking requirements and gave reasons to not expand: Removal and replacement of a utility pole is costly; There is already on-street parking available; It is safer to not have additional people backing out into the street; and parking at the site has worked for over forty years. He went on to say there is adequate parking for the Dr. and staff as there are already four parking spaces, therefore feels it is best to not expand the parking requirements.

Chairperson Casabona opened the public hearing at 7:44pm. One person came forward to speak against this request:

- Peter Hartmann – 111 N. Tennessee Avenue. Mr. Hartmann asked how many employees Dr. Hartman currently has and requested from the BZA, if approved, a condition be placed that the employees be required to use the existing parking spaces already available.

Dr. Patricia Hartman, after being sworn in by legal counsel, stated she currently has one full-time employee and three part-time employees and they are not all there on the same days. Typically, she will have three employees at one time. She went on to say the provided parking is ample and is not a problem to have her staff park there.

As no one else came forward to speak for or against this request, the public hearing was closed at 7:47pm.

City Planner Tracy Smith provided a staff report that the applicant is requesting relief from one space since the criteria of a variance is five parking spaces and the request is only for four. She confirmed the existing parking is in a set-back and a new creation in a set-back is generally not allowed; She also confirmed the zoning of the three properties as RUB.

The Board proceeded to evaluate the request for a Variance according to the four criteria found in the MZO Section 903.21 and referenced within the official application (criteria generally include: existence of special existing conditions/ circumstances; ordinance deprives rights commonly enjoyed by others; special conditions/ circumstances are not a result of the applicant; granting a Variance does not confer special privilege otherwise denied to others). All Boardmembers agreed that all conditions for granting a variance are met. Discussions included but were not limited to: existing conditions; number of employees; setbacks in corner lots; parking in setbacks; hours of operation and zoning district requirements.

Boardmember Dulyea made the motion to approve this application requesting a variance from parking requirements in accordance with Sections 430.4 "Schedule of Off-Street Parking Requirements" and for relief from Section 701.81 "Setbacks". Boardmember King seconded the motion.

Further discussions included and were not limited to: Requirements for handicapped parking and adding an amendment to include the provision for staff to utilize off-street parking.

Boardmember Dulyea made the motion to accept the amendment to approve this application requesting a variance from parking requirements in accordance with Sections 430.4 "Schedule of Off-Street Parking Requirements" and for relief from Section 701.81 "Setbacks" with the stipulation that the off-street parking be used by the professional and staff of the Dentist." Boardmember King seconded the motion that was followed by a unanimous roll call vote. Motion carried.

ACTION ITEMS:

- Election of Officers

Boardmember Casabona opened the floor for nominations for Chairman.

Boardmember Blackburn nominated Boardmember Casabona for Chairperson for another year; Boardmember Bradley seconded the motion. Boardmember Casabona closed the floor for nominations. Motion passed by unanimous vote of "aye".

Boardmember Casabona opened the floor for nominations for Vice Chairman.

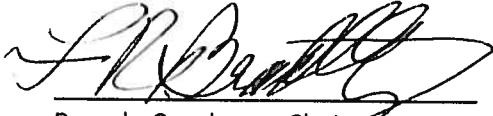
Boardmember Blackburn nominated Boardmember Bradley for Vice-Chairperson for another year; Boardmember Dulyea seconded the motion. Boardmember Casabona closed the floor for nominations. Motion passed by unanimous vote of "aye".

DISCUSSION:

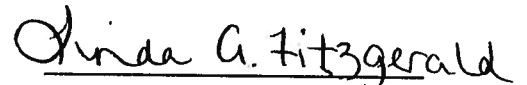
Next scheduled meeting: February 2, 2014

ADJOURNMENT

The meeting was adjourned at approximately 8:06 pm by unanimous consent.



Brenda Casabona, Chairperson



Linda A. Fitzgerald, Planning Secretary