

**PLANNING COMMISSION  
CITY OF MARTINSBURG  
232 N. QUEEN STREET  
Regular Meeting Minutes  
January 6, 2016  
J. Oakley Seibert Council Chambers**

---

With a quorum present, Vice-President Jeff Molenda called the regular meeting of the Martinsburg Planning Commission to order at 6:00 p.m. The following Commissioners were present: Mark Palmer, George Reichard, Chris Ross, Scott Hamilton, Jeffrey Molenda, Reenie Raines and ex-officio member Councilman Greg Wachtel. The following Commissioners were not present: Matt Coffey, Yvonne Jenkins and Jim Rodgers. Also in attendance were Legal Counsel Kin Sayre, City Engineer/Planning Director Michael Covell, City Planner Tracy Smith and Planning Secretary Holly Hartman.

**ROLL CALL (and microphone check)**

**APPROVAL OF December 2, 2015 MEETING MINUTES**

Commissioner Palmer noted that Kin Sayre was the attorney present for the December meeting. Minutes to be amended to show Kin Sayre as Legal Counsel.

Commissioner Palmer made the motion to approve the December minutes with the amendment. Commissioner Raines seconded the motion followed by a unanimous vote of "aye". Motion carried.

**UNFINISHED BUSINESS:** None

**NEW BUSINESS:**

- 1. CASE # TA 16-003. Article VI: "Design Regulations." Public Hearing.** Text Amendment application requesting clarifying language and regulations for storage buildings, storage shipping-bins, donation drop-off bins, and temporary structures. City of Martinsburg, applicant.

City Engineer/Planning Director, Michael Covell, explained the proposed Text Amendment. He stated that this has been months in the making. The amendment proposes changes that have been suggested in work sessions with the Planning Commission to develop guidance that addresses accessory structures, their dimensional requirements, as well as the ability to use pre-fabricated shipping containers. Donation drop boxes are also addressed, such as where they are allowed on commercial properties of at least a half-acre in size or larger, and placing limitations as to what can be done on those properties. Smaller things like corrective language and terminology are address as well.

Vice-President Molenda opened the Public Hearing at 6:06 pm. As no one came forward to speak for or against this project, Vice-President Molenda closed the Public Hearing at 6:06 pm.

Legal Counsel, Kin Sayre, explained to the Commissioners that they are to vote whether or not to forward the proposed amendment to City Council, they are recommending approval or denial.

Commissioner Hamilton made the motion to recommend the text amendment for approval by the Martinsburg City Council. Commissioner Ross seconded the motion followed by a unanimous vote of “aye”. Motion carried.

**2. CASE # TA 16-004. Article V: Section 522.3 (a) “Design Limitations.” Public Hearing.** Text Amendment application requesting an increase to the maximum signage allowance for business signs in the BS (Service Business) district. City of Martinsburg, applicant.

City Engineer/Planning Director, Michael Covell, explained the proposed Text Amendment. He explained that this request comes from actions taken by the Board of Zoning Appeals to grant relief in allowing signage in this amount. This would allow the Planning Department to continue approving signs, with two square-feet being allowed without coming before the Board. Mr. Covell stated that these types of applications are routinely approved by the Board and staff recommends that the Planning Commission act favorably on this.

Vice-President Molenda opened the Public Hearing at 6:08 pm.

- Barbara Bratina, 116 N. Tennessee Avenue, asked if the requested change referenced the entire area in the BS zone meaning an area of more than one building or does it include any single building anywhere else in the city zoned BS. Mr. Sayre stated that it implies any parcel that is zoned BS. Ms. Bratina asked that the Planning Commission vote against the Text Amendment. She referenced five locations within the city currently zoned BS, noting that the other properties are spot zoned located within residential areas. She feels that larger signs will not be compatible with surrounding residences. Ms. Bratina mentioned businesses with several tenants, which could mean several different signs for each professional on the outside of the building. She asked that the homeowners be respected and considered.

As no one else came forward to speak for or against this project, Vice-President Molenda closed the Public Hearing at 6:13 pm.

Commissioner Palmer asked for any staff concerns.

City Planner, Tracy Smith, stated this application came from the Board of Zoning Appeals. As there is more car traffic and less foot traffic, a larger size is easier to see when driving by. Ms. Smith mentioned that the allowable size of a sign in a residential area with a home occupation is currently two square-feet. The change will only bring the sign area to the same size already allowed in residential areas.

Commissioner Ross verified that in a residential area, the current sign allowance is two square-feet. Ms. Smith replied yes, for a home occupation in a residential area.

Commissioner Raines asked for clarification. Legal Counsel, Kin Sayre, explained that the BS district currently only allows a one square-foot sign but the residential district is allowed two square-feet.

Mr. Sayre explained to the Commissioners that they are to vote whether or not to forward the proposed amendment to City Council with their recommendation for approval or denial.

Commissioner Reichard made the motion to recommend the text amendment for approval by the City Council. Commissioner Palmer seconded the motion followed by a 3-2 vote of “aye”. Motion carried.

**3. CASE #TA 16-005. Article X, Section 1003: “Plan Review Requirements.” Public Hearing.**

Text Amendment application requesting to change plan review requirements regarding paint in the Historic Preservation (HP) Overlay District.

City Planner, Tracy Smith, explained that this application has been brought forward by the Historic Preservation Review Commission. They have requested that color be removed from their plan review requirements. Ms. Smith noted that in the last twelve years, only one paint color has been denied, which was regretted after the denial. Over the past few years three State Historic Preservation officers have been by and all three have recommended this be removed from the review requirements, as this is the only entity that still reviews paint colors. Ms. Smith stated that this change would bring us up to current review standards, also noting that only change of paint color would be removed, not the initial painting of a structure such as unadorned brick.

Vice-President Molenda opened the Public Hearing at 6:20 pm.

- Barbara Bratina, 116 N. Tennessee Avenue, spoke against the proposed text amendment. Ms. Bratina quoted section 1003 of the ordinance, where it says that all work shall be designed to be compatible, harmonious and consistent with the structure. Ms. Bratina’s concern is poor color choices that are not harmonious with surrounding historic structures. She named other towns that still require paint review and brands of paint that have historic color palates and described the process of choosing colors for her property.
- David Anderson, 104 Music Court, spoke against the proposed text amendment. Mr. Anderson stated that people purchase homes in the historic district because they want to keep the historic look alive. He feels that other historic towns would not allow this change and is concerned that people will choose non-aesthetically pleasing colors.

As no one else came forward to speak for or against this project, Vice-President Molenda closed the Public Hearing at 6:28 pm.

Commissioner Raines asked who recommended the paint requirements be dropped. Ms. Smith replied that the HPRC has been encouraged by the WV State Historic Preservation office. Three different state employees feel by not having color review it encourages more people to improve their properties and change colors as the thought of coming before a review board can be overwhelming. As it is not a structural change and easy to change again, the WV State Historic Preservation office does not concern themselves with color choice.

Commissioner Hamilton stated that with the minimal amount of paint review applications, it does not seem like much of a burden on staff to have to continue reviewing paint. He feels that color is important and one of the first things noticed about a property.

Commissioner Palmer made the motion to recommend the text amendment for approval by the City Council. Commissioner Raines seconded the motion, followed by a unanimous vote of "Nay". Motion denied.

**4. CASE TA 16-009. Article II: Section 200 "Definitions." Public Hearing.** Text Amendment application to codify the federal definition of public building. Martinsburg Planning Department, applicant.

City Engineer/Planning Director, Michael Covell, explained the action before the Commission is to take a piece of United States code that clarifies what a public building is and place it into the Martinsburg Zoning Ordinance. The matter came up on how to create or establish a public building and determining that we did not have a specific definition for it. The text amendment would alleviate that problem. Mr. Covell stated that when there are instances that a term is not specifically clarified, staff looks to a traditional published definition and even more helpful when a higher level of government authority can be referenced. It was researched by the City Attorney to see if the definition existed at a state level, and it does not.

Legal Counsel, Kin Sayre, stated there is no definition of a public building in municipal code, nor in the state code, but there is a federal definition of a public building and this federal definition has been referenced in prior public building discussions. Mr. Sayre stated the purpose of the text amendment is to codify the definition that the Planning Department has used in the past, which is the federal definition.

Vice-president Molenda asked what effect this definition has in respect to the current dispute with the county in regards to the taxation of city property. Mr. Sayre replied that it would have no impact on that situation. It is a property tax issue that is currently in dispute, the definition used by the county states a property owned exclusively by a municipality and used for public purpose.

Vice-president Molenda disagrees with the wording in the definition that says a building which is generally suitable for use as office or storage space or both by agencies, but it does not say it has to be used by particular agencies. He feels this is an error in the definition because any building could potentially fit the definition of a public building. Mr. Sayre stated that this is the federal definition that staff has used in the past. Mr. Covell stated that we have federal entities that tenant within a retail building. Vice-president Molenda stated that the definition does not

require any of the entities to actually occupy the building, only a building suitable for use by them, which could leave something like a storage shed considered suitable for use and be a public building. He feels our definition needs to specify that the building be occupied or used by a public entity because no structures are excluded. Vice-president Molenda suggested that the definition read “a building generally suitable for use as an office or storage space, or both, and owned or occupied by one or more Federal, State, County and Municipal Agencies”. Mr. Sayre advised that the Planning Commission could amend the proposed text amendment to include the suggested language.

Commissioner Raines asked if it were up to the Commission to define what a public building is. Mr. Sayre responded that the Planning Department has previously used the federal definition of a public building, and the purpose of the text amendment is to codify that definition.

Vice-President Molenda opened the Public Hearing at 6:46 pm.

- Martin Bales, 412 Randolph Street, spoke in favor of the proposed text amendment. Mr. Bales stated that as a member of the Board of Zoning Appeals he welcomes any text amendment that helps clarify the ordinances dealt with at the BZA meetings.
- Helen Henderson, 211 W. Burke Street, spoke in favor of the proposed text amendment. Mr. Henderson stated that she is in favor of the text amendment because due diligence was not done in the choosing of the Baltimore Street location for a rehab facility.
- Barbara Bratina, 116 N. Tennessee Avenue, spoke in favor of the proposed text amendment. Ms. Bratina stated that we need a specific definition of a public building. She feels that if we do not have a definition we are potentially allowing unsuitable buildings to show up in residential areas. Ms. Bratina further mentioned that without a definition, it makes the city vulnerable to lawsuits because of improper interpretations of a public building.

As no one else came forward to speak for or against this project, Vice-President Molenda closed the Public Hearing at 6:49 pm.

Commissioner Palmer asked if the definition stated the building must be owned by federal, state, county or municipality. Mr. Sayre answered that the acting chairman would like to see that specific language in the definition. Commissioner Palmer then asked if the building was owned by one of the listed bodies, could they rent it to another organization as a public building. Mr. Sayre responded that with the recommended added language the definition would specify what a building could be used as.

Commissioner Reichard asked who decides what is generally suitable. Mr. Sayre replied that the Planning Department decides but if the entity disagrees with staff’s decision, it can be appealed. Mr. Covell added that it would be an administrative appeal and he can only recall one in the last twelve to fifteen years. He stated that staff is very cautious and diligent in how they administer the zoning ordinance.

Commissioner Ross asked if this has been standard practice. Mr. Covell responded yes, and if the language in the ordinance does not have a specific definition, we would refer to a published definition in a dictionary or refer to another political subdivision.

Commissioner Reichard asked if other municipalities in West Virginia have their definition of a public building codified. Mr. Covell answered that he would not be surprised if many do not because our ordinances tend to be similar, but the terminology can differ, which is why staff looked to a national standard for a definition.

Mr. Sayre stated that if the Planning Commission wants to add the words “owned or occupied” there needs to be a motion to amend the text amendment before it goes any further to determine a final recommendation to the City Council. Commissioner Hamilton asked if that would require another public hearing. Mr. Sayre answered no.

Commissioner Palmer asked if the text amendment were approved, could the government buy a piece of property in a residential area and use it for any purpose. Mr. Covell replied that he would have to do research before he could answer that question.

Commissioner Ross made the motion to amend the language of the text amendment to add the words, “owned or occupied”. Commissioner Hamilton seconded the motion followed by a unanimous vote of “Aye”. Motion approved.

Commissioner Palmer made the motion to recommend the text amendment for approval by City Council. Commissioner Raines seconded the motion, followed by a unanimous vote of “Aye”. Motion passed.

#### **DISCUSSION/ACTION ITEMS:**

- a. Discussion/action: review draft of proposed amendments to Martinsburg Zoning Ordinance Article IV: Section 440 “Signs” for authorization to proceed as text amendment case or return for further revisions.

City Engineer/Planning Director, Michael Covell, stated that an initial draft was shown at last month’s meeting, but wanted to get input from Main Street Martinsburg, as they are the ones who brought it up for discussion by asking the City Council to look into it again. Council directed the Planning Department to come up with guidance. Therefore, Staff looked at model language from surrounding areas and have a fairly easy to understand template of where this can be applied in the downtown district.

Vice-President Molenda asked if there could be one more draft at the next meeting before proceeding with the text amendment.

Randy Lewis, of Main Street Martinsburg, stated that they did request the Council allow the overhanging signs. Mr. Lewis stated that a poll was taken in the downtown district and the majority of the businesses would like this change to go through. The idea was discussed with staff and Main Street has been trying on and off for years to make this change. He feels this option would enhance the downtown district and would attract more traffic through the downtown district.

Commissioner Ross asked Mr. Lewis the reason that some of the business owners downtown disagreed with the proposed change. Mr. Lewis answered that a few did not care and a few were concerned about the expense of changing a sign.

Ex-Officio Member, Councilman Wachtel asked if the individual merchants would have to change their signs. Mr. Covell stated no, that it was optional.

Commissioner Raines noted an observation that years ago, the overhanging signs were taken down to modernize downtown, and now we want to put them back up to bring back that historic look.

Commissioner Reichard asked about section 440.53 referring to maintenance, and if there are provisions to keep signs safe and in compliance. Mr. Covell stated that an unsafe sign would be a property maintenance code violation and they could be taken care of that way or if it were an immediate danger staff could be justified to take action. He stated that staff has the means to address any safety issues with the signs.

b. Election of Officers.

Vice-President Molenda opened the floor for nominations for President at 7:10 p.m.

Commissioner Raines nominated Commissioner Rodgers as president. Commissioner Reichard seconded the nomination. With no other nominations, Vice-President Molenda closed the floor for nominations. Vice-President Molenda asked Commissioners to vote on the nomination of Jim Rodgers as President of the Planning Commission.

Nomination passed by a unanimous vote of "aye," Commissioner Rodgers was re-elected as President.

Vice-President Molenda opened the floor for nominations for Vice-President at 7:12 p.m.

Commissioner Reichard nominated Commissioner Molenda as Vice-President. Commissioner Ross seconded the nomination. With no other nominations, Vice-President Molenda closed the floor for nominations. Vice-President Molenda asked Commissioners to vote on the nomination of Jeff Molenda as Vice-President of the Planning Commission.

Nomination passed by a unanimous vote of "aye." Commissioner Molenda was re-elected as Vice- President.

**OTHER BUSINESS: None**

**ADJOURNMENT**

Commissioner Raines made the motion to adjourn. Commissioner Reichard seconded the motion followed by a unanimous vote of “aye”. Motion carried.

The meeting was adjourned at 7:14 p.m.

---

Jim Rodgers, President

---

Holly Hartman, Planning Secretary