

MARTINSBURG BOARD OF ZONING APPEALS

January 5, 2016 6:30pm

232 N. Queen Street

J. Oakley Seibert Council Chambers

Regular Meeting Minutes

With a quorum present, Chairperson Dulyea 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, Bridget Cohee, Brenda Casabona, Shelly Schoppert, Doreane Mosser, Martin Bales and Tom Johnson. Also in attendance were City Planner Tracy Smith, Legal Counsel Catie Delligatti and Planning Secretary Holly Hartman.

APPROVAL OF November 3, 2015 MEETING MINUTES

Boardmember Bales made the motion to approve the November 3, 2015 minutes. Boardmember Casabona seconded the motion that was followed by a unanimous vote of "aye". Motion carried.

OLD BUSINESS

None

UNFINISHED BUSINESS

None

NEW BUSINESS

- 1. CASE # SE16-001. 155 Waverly Court. Public Hearing.** Special Exception application to use existing structure as a "Child Care Development Center" with cross-parking agreement. Tree House Child Development Facility 2, appellant.

After being sworn in by Legal Counsel, Tonya Rivera, 503 Denali Drive, stated that she is the owner of Tree House Child Development 24/7 Facility. Ms. Rivera stated that her current location has been open for six months, and that she wishes to open the second facility due to the wait list consisting of seventy-two children. She included that she has serviced forty-two families and employed seven local employees. Ms. Rivera described the atmosphere of her facility and explained that if the facilities are side by side they would be much easier to manage. She stated that employees will park at the existing location and walk over to the second location; also, due only having twelve children at a time, there is not a need for a large parking area at the second facility. Ms. Rivera stated that the Fire Marshal and Building Inspector both came out and inspected the location and both were satisfied.

Boardmember Casabona asked how many children were being cared for at the first location. Ms. Rivera answered twelve children and two staff per shift.

City Planner, Tracy Smith, provided a staff report, stating that the previous approval came before the BZA. Ms. Smith stated that everything Ms. Rivera said she would do with the first location has been done and maintained very well. Ms. Smith then asked about the State Fire Marshal losing Ms. Rivera's paperwork and if they were on location as well. Ms. Rivera confirmed that they had lost her check, but still came to do their inspection along with the other inspectors. Ms. Smith

stated that staff has no worries with the new facility, there are no code issues or parking concerns, but asked that any approval be contingent upon the final approval from the State Fire Marshal, DHHR and Health Department.

Chairperson Dulyea opened the Public Hearing at 6:38 p.m.

- Jessica Royer spoke in favor of the project. Ms. Royer stated that Tonya has been watching her child for over a year. Her previous daycare was not a good situation, but since being at Tonya's facility there have been no issues and her daughter has thrived.
- Lisa Hott spoke in favor of the project. Ms. Hott stated that her daughter Addison has been in Ms. Rivera's care for six years. Ms. Hott explained that her daughter excels academically because of Ms. Rivera's preschool program.

As no one else came forward to speak for or against the case, public hearing was closed at 6:40 p.m.

Chairperson Dulyea read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.31: The proposed use is in harmony with the purpose and intent of the Martinsburg Comprehensive Development Plan and of this zoning ordinance. There was general agreement for no concern.

Chairperson Dulyea 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.

Chairperson Dulyea 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. Discussion included fencing. There was general agreement for no concern.

Chairperson Dulyea 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.

Chairperson Dulyea 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. Discussion included surrounding residential properties. Ms. Rivera explained that there is an elderly lady

living in-between the two facilities, and that this lady prefers the staff and children there in the late evenings because she doesn't feel alone. There was general agreement for no concern.

Chairperson Dulyea 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 Casabona made the motion to approve the application requesting a Special Exception in accordance with narrative and requirements of Section 702; Special Exception application to use existing structure as a "Child Care Development Center" with cross-parking agreement contingent upon final approval of the State Fire Marshal, DHHR and Health Department. The motion was seconded by Boardmember Cohee and followed by a unanimous vote of "aye". Motion approved.

- 2. CASE # V16-002. 1003 Sushruta Drive. Public Hearing.** Application requesting a Variance from minimum required setbacks to extend existing parking area. DiMagno Consulting, LLC., appellant.

After being sworn in by Legal Counsel, Andy DiMagno, 61 Eagle School Road, explained that this is an existing dental facility wishing to expand due to increased clientele and employees. Mr. DiMagno stated the owner is building a thirty-foot addition which is taking away a few parking spaces, which he would like to add back in. Also mentioning that either way the building meets the parking requirements.

Boardmember Cohee asked if the current construction at the location was the addition Mr. DiMagno spoke of. Mr. DiMagno answered yes. City Planner, Tracy Smith advised that parking area is not counted towards lot coverage counts, so the conversation should center on the actual number of parking spaces.

Boardmember Johnson asked if the location was currently set up for proper storm water management. Mr. DiMagno answered yes, with a regional facility that was put in for the subdivision. He explained that through his research there will be no additional impact on the pond.

Ms. Smith provided a staff report, stating the side-yard setback is a requirement of five-foot or zero and the rear-yard setback would be twenty feet. Her concern is the criteria that has to be met for a variance, starting at Section 902.31. Ms. Smith stated that it is a State requirement that all criteria be met and her concern is this appellant cannot justify criteria "c". Ms. Smith encouraged strong dialog from the committee for everyone to come to an agreement. Ms. Smith

stated that without the Variance, the site still meets parking requirements. The additional parking would be optimal, but not necessary as there does not seem to be a hardship.

Boardmember Casabona asked about the current side-yard setbacks. Ms. Smith stated that staff cannot explain existing conditions or why the neighbor is sitting in the setback as well. All of that was done when the development was created and there is no record as to why it was situated the way it was.

There was discussion with regard to alternate layouts of the parking area without having to increase the size of the parking lot, such as angled parking, having the driveway only in the setback, cross parking agreements and one-way versus two-way drives. Ms. Smith stated that there are many variables, but that the final approval of the design of the project would ultimately be up to the site plan and the Planning Commission. The Board tonight is to determine if the Variance can be allowed.

Chairperson Dulyea opened the Public Hearing at 6:58 p.m. As no one came forward to speak for or against the case, public hearing was closed at 6:58 p.m.

Chairperson Dulyea read aloud for discussion the special conditions for the Variance in the Martinsburg Zoning Ordinance (MZO) section of 903.21-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.

Boardmember Casabona stated that she cannot figure out what the special condition is; possibly that there is not room to add on in the back due to the location of the property line. Ms. Smith asked Mr. DiMagno to explain the special condition. Mr. DiMagno responded that the owner has a need to expand in order to care for his patients. The owner feels he may need to move to another facility if he is not able to expand his parking. Boardmember Casabona stated that she is unable to find something physically different or some particular characteristic that is peculiar to this property that sets it apart from the other adjoining properties which would give reason for the Variance. If there is not something to meet the criteria, and the Variance is allowed, it would defeat the entire purpose of zoning.

Boardmember Cohee asked if the structure was built according to the front-yard setback requirements. Mr. DiMagno stated that the building could have possibly been set more forward, but they wanted to allow for handicap parking near the front entrance. Ms. Smith asked when the structure was first built. Mr. DiMagno answered at least fifteen to twenty years ago. Ms. Smith noted that the zoning regulations have been in effect since 1970 so the location of the existing structure does not predate the current ordinance.

Boardmember Bales stated that he does not see any special conditions or circumstances that would allow the Board to move past criteria "a". There was general consent by the Board that the applicant does not pass the required criteria for a Variance.

Chairperson Dulyea read aloud for discussion the special conditions for the Variance in the Martinsburg Zoning Ordinance (MZO) section of 903.21-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 other surrounding buildings built in the setback that were not allowed by right or by Variance approval and it was mentioned that if anyone else came before the board with this request the Board would have the same problem.

Chairperson Dulyea read aloud for discussion the special conditions for the Variance in the Martinsburg Zoning Ordinance (MZO) section of 903.21-c: That the special conditions and circumstances do not result from the actions of the applicant. Discussion included the fact that there were not wrongful actions on behalf of the applicant, but they were still his actions.

Chairperson Dulyea read aloud for discussion the special conditions for the Variance in the Martinsburg Zoning Ordinance (MZO) section of 903.21-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. There was general agreement for no concern as they were not approving the application.

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

Boardmember Casabona made the motion to approve the application requesting a Variance from minimum required setbacks to extend existing parking area. The motion was seconded by Boardmember Bales and followed by a unanimous vote of “nay”. Motion denied.

DISCUSSION/ACTION ITEMS

ELECTION OF OFFICERS

Boardmember Dulyea opened the floor for nominations for Chairperson.

Boardmember Bales nominated Boardmember Johnson for Chairperson. Ms. Smith advised that Mr. Johnson cannot be Chairperson as he is an alternate.

Boardmember Schoppert nominated Boardmember Cohee as Chairperson. Boardmember Cohee respectfully declined. Boardmember Cohee nominated Boardmember Schoppert as Chairperson.

Boardmember Bales seconded the nomination. With no other nominations, Boardmember Dulyea moved to close the floor for nominations. Nomination passed by a unanimous vote of “aye.” Boardmember Schoppert was elected as Chairperson.

Boardmember Dulyea opened the floor for nominations for Vice-Chairperson.

Boardmember Bales nominated Boardmember Casabona as Vice-Chairperson. Boardmember Cohee seconded the nomination. With no other nominations, Boardmember Dulyea moved to close the floor for nominations. Nomination passed by a unanimous vote of “aye.” Boardmember Casabona was elected as Vice-Chairperson.

OTHER BUSINESS

None

ADJOURNMENT

The meeting was adjourned at approximately 7:24 pm by unanimous consent.

Mary Dulyea, Chairperson

Holly Hartman, Planning Secretary