

**PLANNING COMMISSION
CITY OF MARTINSBURG
232 N. QUEEN STREET
Regular Meeting Minutes
May 6, 2015
J. Oakley Seibert Council Chambers**

With a quorum present, President Jim Rodgers called the regular meeting of the Martinsburg Planning Commission to order at 6:01 p.m. The following Commissioners were present: Mark Palmer, Matt Coffey, Scott Hamilton, Yvonne Jenkins, George Reichard, Jeffrey Molenda, Greg Wachtel, Jim Rodgers and Reenie Raines. Not present was: Chris Ross. Also in attendance were Legal Counsel Kin Sayre, City Planner Tracy Smith and Planning Secretary Holly Hartman.

ROLL CALL (and microphone check)

APPROVAL OF April 1, 2015 MEETING MINUTES

Commissioner Coffey made the motion to approve the March minutes as submitted. Commissioner Raines seconded the motion followed by a unanimous vote of “aye”. Motion carried.

UNFINISHED BUSINESS

None

NEW BUSINESS:

1. **CASE #SP 15-018. 100 Forbes Drive.** Site Plan application requesting review of grade adjustment to existing loading dock area sized approximately 507-square-feet with associated 2-foot retaining wall and pavement. Pennoni Associates, Inc., Applicant.

Mr. Ron Mislowsky with Pennoni Associates, Inc. presented this request.

City Engineer/Planning Director, Mike Covell stated that it is a simple site plan, but a significant feature to serve the building. It is too small of an area to need any storm water reviews and none of the other departments had any comments.

Commissioner Palmer asked about the proposed trench drain attached to the roof drain and where they drain. Mr. Mislowsky stated that they would continue to drain into the same storm water area as it always has.

Commissioner Molenda made the motion to approve the site plan. Commissioner Hamilton seconded the motion followed by a unanimous vote of “aye”. Motion carried.

2. **CASE #TA 15-028. Restaurant Use Text Amendment. Public Hearing.** Application for text amendment to “Section 560: Table of District Zoning Uses” to read that restaurants shall, in the BS (Service Business) zoned district, be permitted, subject to Special Exception review. Historic McFarland House, Applicant.

Dr. Michael McCarty, with the Historic McFarland House, presented this request. Dr. McCarty provided an overview of the text amendment application. He stated they are requesting to add restaurant use to the Service Business district using the special exception process made available through the BZA.

President Rodgers opened the Public Hearing at 6:09 pm.

- Mary Dulyea, Martinsburg Board of Zoning Appeals Chairperson, 707 Second Street, came to speak in favor of the text amendment. She stated that this would open the opportunity for business growth in these districts; currently we allow beauty shops, dance studios, and private clubs and taverns. All of those types only require a site plan; the restaurant is more suitable for the area and will have to come before the strict rules of the BZA to gain approval. Ms. Dulyea feels that a restaurant would not be a disturbance compared to some of the other businesses allowed in the area. Ms. Dulyea then explained the process of gaining a BZA approval and section 702.31. She stated that this would not hurt our community because it will be strongly regulated.
- Kevin Knowles, councilman – Ward 2, 1205 West Virginia Avenue, stated that he was in favor of the text amendment for many reasons. The business has been good to the community, done all it can to enhance the area and bring people into the downtown district, and held events regularly without any issues or problems. He also mentioned that we are only recommending a text amendment, applicants would still have to get approval to open up a bar or nightclub and such.

As no one else came forward to speak for or against this project, President Rodgers closed the Public Hearing at 6:17 pm.

Commissioner Molenda stated that he could not imagine a restaurant being harmful in any of the Service Business district. It also would not be any more disruptive than a tavern or private club, both of which are permitted under the current text. He agrees with the amendment.

Commissioner Coffey asked the commission to keep in mind that this not only would give the opportunity for the McFarland House to open a restaurant, but other businesses to do the same. He mentioned that an approval tonight does not mean anyone can open a restaurant; it just makes it eligible to go before the BZA for approval.

Commissioner Raines asked if the McFarland House would be open like a normal restaurant and if there was adequate parking. Dr. McCarty answered yes; there will be normal daily business hours and that there is street parking and several cross parking agreements.

Commissioner Jenkins inquired as to whether special events will still be held along with the restaurant use. Mr. McCarty answered that there will be both, they are expanding because of the chef and the interest in his food.

Commissioner Molenda made the motion to recommend approval of the text amendment. Commissioner Jenkins seconded the motion followed by a unanimous vote of “aye”. Motion carried.

DISCUSSION/ACTION ITEMS:

- Continuation of review for guiding criteria to regulate shipping containers used for storage

Mr. Covell stated that the edits were based on the previous discussion. There is no time crunch on this, so we can discuss all subsections of the ordinance and be better prepared. He mentioned that the accommodation of an accessory structure in a townhouse development was not discussed.

Ms. Smith advised that she sent an email to legal counsel to get an answer for President Rodgers question to get the appropriate language to put it in the first paragraph, which will clarify the terms “building” and “structure” throughout the document. She mentioned to Commissioner Coffey that she was unable to find any examples during her research of screening required around a shipping container as requested.

Commissioner Palmer pointed out the second paragraph on page one where it says accessory structures are not intended as residential and asked what that meant. Mr. Covell responded that this is to regulate how a two-story garage can be used. Ms. Smith mentioned that this was not intended to be meant only for shipping containers, but for all detached structures.

Commissioner Palmer asked in the next paragraph where it says the Board of Appeals may allow construction of a garage in the front yard space. Ms. Smith stated that if there were reasons such as topography, or large rocks, in the back yard and they could not build in there, that the BZA could allow them to put a shed in the front yard. Commissioner Coffey asked if setbacks would still be considered. Ms. Smith stated that they would consider that and that the applicant would have to prove that there is a hardship that they did not create. Commissioner Palmer asked if these guidelines were already part of the ordinance. Mr. Covell stated that all of the guidelines have to be met, not some, but every one, and that the BZA has high standards when reviewing a case.

President Rodgers asked about the location paragraph, section 601.22, where it says “...no accessory building shall be erected in any required yard other than as defined below and except that...” In his opinion this sentence is hard to follow. Mr. Covell and Commissioner Coffey explained that it meant the building would have to be in the allowable space as defined by code. Mr. Covell and Ms. Smith stated that this could be edited to be more clearly understood.

Commissioner Palmer asked on page two, second paragraph where it says “land with an existing dwelling in residential districts,” what if the house isn’t in compliance now, would it still

be allowed as long as it met the setbacks; what is the intent of this paragraph. Mr. Covell gave an example of the older city lots with a house that has maybe two or three feet on each side and they want to put a small accessory structure in the back, if they line it up with the edge of the house, it will be the same two or three feet from the property line of the house and we are saying that will be ok. Commissioner Coffey stated that this is a common case to come before the BZA, especially for the back of a townhouse, they prefer to put a shed on the property line as opposed to the center as required.

Commissioner Coffey mentioned section 602.1, which specifies that the Planner may issue temporary permits. He asked if this was too narrow. What if there was a vacancy in the Planner position, would it prevent another staff member from being able to do this. Mr. Covell stated that this was a preferred edit. The previous text was specific to the building inspector and this is the opportunity to update that text. He went on to say "Planner" is a better use because there will always be someone of that capacity even if they do not specifically have the position.

Commissioner Palmer asked about section 601-31 (h) where it discusses off street parking, do we have anything that covers campers, boats, utility trailers and things of that nature. Mr. Covell responded that zoning could address that. For example, you cannot park your tractor-trailer in the front yard of your residential home. Commissioner Palmer asked about junked vehicles. Ms. Smith stated that there are still some industrial districts where it cannot be denied, it would be possible to have a salvage yard if someone chose to. Mr. Covell stated that this could be done for business use only, not junked cars parked at a house. Commissioner Wachtel asked if provisions for this could be added to the city code for enforcement. Legal Counsel, Kin Sayre, stated that it did come before City Counsel and they were not interested in moving forward with it. Commissioner Wachtel feels that this is a safety hazard, making it hard to see other vehicles. Mr. Covell noted that this could be readdressed.

Commissioner Palmer asked if it is standard that "Temporary Special Exception Permits" shall not be valid for longer than two years. Mr. Covell stated that not many things use this approval, a good example is a temporary fireworks stand or a contractor's temporary building. This is to keep them from having to come back over and over again. Mr. Covell mentioned that this permit is hardly ever used.

OTHER BUSINESS:

- Next regular meeting scheduled for June 3, 2015 at 6:00 p.m.

ADJOURNMENT

Motion to adjourn by Commissioner Raines, seconded by Commissioner Reichard, at 6:45 p.m. and approved by unanimous consent. Motion carried.

Jim Rodgers, President

Holly Hartman, Planning Secretary