

**Board of Zoning Appeals  
City of Martinsburg  
232 N. Queen Street  
July 10, 2012  
Regular Meeting Minutes  
6:30 pm**

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With a quorum present, Chairperson Coffey 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: Brenda Casabona, Matthew Coffey, Bill Blackburn, and Frank Bradley. Not present was April King. Also in attendance were City Planner Tracy Smith, Legal Counsel Kin Sayre and Planning Secretary Windy Miller.

**APPROVAL OF June 05, 2012 MEETING MINUTES.**

The minutes were approved as presented by unanimous consent.

**OLD BUSINESS**

None

**UNFINISHED BUSINESS**

None

**NEW BUSINESS**

**1. CASE # V12-047. 221 Station Terrace, West. Public Hearing.** Application requesting a variance from minimum setback requirements of Sections 420 "Lot Area, Yard, & Building Requirements" to construct an addition that will extend into the minimum required rear yard setback.. Ameribuilt, LLC, appellant.

Legal Counsel Kin Sayre swore in Connie Kraft, appellant.

Connie Kraft, with Ameribuilt, presented the request to construct a deck that will extend ten (10) feet into the building restriction line. Ms. Kraft stated there are other decks that have been constructed in the same area of the neighborhood. She went on to say that the deck is to remain open without stairs, and would allow the homeowners to enjoy their property.

Chairman Coffey asked staff for their report.

City Planner Tracy Smith stated that Martinsburg Station is a planned residential community that does not adhere to the regular setbacks by design; she noted that the required side yard setbacks at this location are seven (7) foot not the standard ten (10) foot, for example. The design was done intentionally to give the ability for flexibility in design. Ms. Smith stated that there is not an alternate location to construct the deck because the HOA only allows a deck to be constructed in the rear of the property. Ms. Smith went on to say that the common area in the rear will not be interfered with, and there will not be any additional impact on the neighborhood. Staff feels the property meets the criteria to qualify for a variance.

Discussions included, but were not limited to, the shape of the property and the fact the builder placed the structure right on the rear setback line.

The public hearing was opened at 6:38 pm. As no one came forward to speak for or against the request, the public hearing was closed at 6:38 pm.

Boardmember Blackburn made the motion in CASE # V12-047. 221 Station Terrace, West. Application requesting a variance from minimum setback requirements of Sections 420 "Lot Area, Yard, & Building Requirements" to construct an addition that will extend into the minimum required rear yard setback, to approve the application as presented. Boardmember Bradley seconded the motion, which was followed by a unanimous vote of "aye." Motion carried.

**2. CASE # SE 12-049. 646 South Queen Street. Public Hearing.** Application requesting a special exception according to the requirements of Sections 560 "Table of Zoning District Uses," to use structure as an automobile repair and service shop. Hole in the Wall Quality Used Cars Automotive Specialties, Appellant.

Legal Counsel Kin Sayre swore in Sheila Ridler, appellant.

Sheila Ridler, 461 Cranes Lane Ranson WV, presented the request to use the current business location to service and sell vehicles, as well as open the services they would offer to the general public. Ms. Ridler stated they would service the vehicles that they sell under warranty, operate a used car lot and do small repairs such as a brake and oil change.

Chairman Coffey asked staff for their report.

City Planner Tracy Smith gave the Board a brief history of the property, which included the Ridders inquiring about the above mentioned property several months ago being used as a used car lot, which is allowed by right in a Community Business district. Ms. Smith stated that instead, cars are being repaired at this location then taken to their other Ranson location for resale. The Ridders would like to offer a hand full of cars for sale in Martinsburg as well as general servicing of vehicles, and open their doors to the public for a full repair service station and potentially as an annual auto inspection location. Ms. Smith went on to say that using the property to service vehicles requires a Special Exception. Due to personal tragedies, the process has taken longer than anticipated and business license is being withheld until the case is brought before the Board. Ms. Smith stated that the applicants are working with the Building Inspectors and Fire Marshal to make sure they are all satisfied with making the building suitable for the requested use. The applicants provided a parking plan of the how they would like property set up if the approval is made. They are required to provide seven (7) parking spaces for customer parking, which include one (1) for handicap parking to be put in front of the business, there will be a ten foot side yard set back that cannot be used, the employee parking will be located in the rear. Ms. Smith concurred that, after pacing it off on-site, she feels it will work nicely, providing adequate parking for customers and keeping the right-of-way clear at all times if the plans are followed. Ms. Smith stated the Fire Marshal had concerns with the tire storage and oil container that is located in the rear. Ms. Smith noted that substantial improvements have been made to remove junk and trash and excess vehicles sitting around the property. Ms. Smith went on to say that the right-of-way must remain clear at all times of parked vehicles including tow trucks. Ms. Smith asked the Board that if there is an approval there be conditions such as it must be completely in compliance with the building, life, fire and safety codes, and that the Fire Marshal and Building Inspectors are satisfied with all conditions.

Discussions included, but were not limited to, the current length of lease, parking plan, type of work that will be done in the building, hours of operation, where the overflow of tires will be stored, location of the right-of-way, how oil will be disposed of, and services that will be offered.

The public hearing was opened at 7:17 pm. As no one came forward to speak for or against the request, the public hearing was closed at 7:17 pm.

Boardmember Blackburn made the motion in CASE # SE 12-049. 646 South Queen Street. Application requesting a special exception according to the requirements of Sections 560 "Table of Zoning District Uses," to use structure as an automobile repair and service shop, to approve the application with the stipulation that any changes to the parking plan must be approved by the Planning Department and adherence to the building, fire, life and safety codes. Boardmember Casabona seconded the motion, which was followed by a unanimous vote of, "aye." Motion carried.

**3. CASE # SE 12-050. 732 West King Street. Public Hearing.** Application requesting a special exception according to the requirements of Section 652.3 "Medical or Philanthropic Institutions" to use the structure as a "Outreach and Christian Counseling" location. Our Daily Bread Outreach and Christian Counseling, Appellant.

Legal Counsel Kin Sayre swore in Tenna Strozier, appellant.

Tenna Strozier, 102 Ellis Street, Martinsburg WV, presented the request to operate a Christian Counseling and Outreach Ministry program for the community without being in a church setting. Ms. Strozier stated she is a Christian counselor, has previously worked with women ministries but is looking to expand out into the community. Ms. Strozier feels the selected location will serve the purpose of the request; the building has offices that would be used for different programs and things that will be taking place. Programs would be offered to adults in the community, but would not allow children. Ms. Strozier went on to say that the families with children involved would be directed to other churches in the community. Some of the programs offered would be Christian Counseling, writing classes, what might be available from other businesses that could help, and just to provide basic information to people who may not know how to go about finding it.

Chairman Coffey asked staff for their report.

City Planner Tracy Smith noted that the application says that women would be served in the program but asked if Ms. Strozier would be branching out to men as well. Ms. Smith went on to say she would like some clarification to some missing information from the application. Who will be served in the programs, hours of operation, will food or coffee be served, are there any plans to feed the clients, plans to do laundry, what does "security" mean, who is providing this and what background do they have to make them qualified to do this, and why is there a need for security? Ms. Smith went on to ask that, with the nice overhang, are there plans to put out seating, as it could lead to a loitering problem.

Ms. Strozier explained to the Board the layout of the building and how she would utilize the space if approved.

Legal Counsel Kin Sayre stated that there isn't a license specifically for Christian Counseling but Ms. Strozier stated that she does have the needed certifications and training to be a Christian counselor.

Ms. Strozier stated that the hours of operation would be Monday thru Friday 8:00 am to 5:00 pm, and Saturdays may have scheduled special events that would be by invitation only, so there could be more control of the environment. Mr. Strozier went on to say that during the Saturday events, snacks and refreshments may be served and the events will take place inside the building.

Discussions included, but were not limited to, who would qualify for the programs, the programs that would be offered, layout of the property, if food and drinks would be served, security, hours of operation, how the program would run on a daily basis, source of funding, if the entity Our Daily Bread and Outreach Christian Counseling is legally a non-profit, if a board exists, and the credentials of counselors.

The public hearing was opened at 7:57 pm. The following people came forward to speak in favor of the request:

- Minister John Barton, 151 Augustine Avenue, Apt. #2K Charles Town WV, stated he was previously a resident of Martinsburg for twenty(20) years, and as a representative for the New Beginnings Church would like to speak in favor of the request, and support Ms. Strozier in what she is doing. Mr. Barton went on to say the church he attends will refer people to her organization.
- Julie Ross, 1100 Prentiss Point Parkway, Martinsburg WV, is speaking in favor of the request and asked the board to grant the request so the applicant can move forward and help the community.
- John Kerry, 204 West Martin Street, Martinsburg WV, creative writer and author would like to speak in favor of the request and stated that he would come to the location to help by talking to participants about creative writing, loves to help people just like Ms. Strozier is trying to do.

The following were present that were opposed to the request:

- Donna Zeck, 126 South Kentucky Avenue, Martinsburg WV, is opposed to the request. Ms. Zeck, who is a close neighbor, is concerned about the type of counseling being offered for drug addiction will bring more unwanted trouble to the property, and the traffic in and out. Ms. Zeck went on to say that it is a residential community and people are trying to clean up the neighborhood and feels that the applicant is going to bring a negative element into the community.
- Theodore Good, 707 West King Street, Martinsburg WV, lives directly across from the location, is opposed to the request and is concerned about what might come along with the program.
- Cynthia Baynham, 1225 West King Street, Martinsburg WV, owning houses close to the property is opposed to the request. Ms. Baynham stated she feels like weekend

events would be a disruption and security should be provided during all hours of operation.

- Randy Barrat, 717 West King Street, Martinsburg WV, has concerns about the safety and what elements might be brought into the neighborhood. Mr. Barrat is opposed to the request.

As no one else came forward to speak against the request, the public hearing was closed at 8:27 pm.

Chairman Coffey asked the applicant about, "Our Daily Bread Outreach and Christian Counseling," existing as an entity.

Mr. Sayre asked the applicant if she had incorporated, "Our Daily Bread Outreach and Christian Counseling" and if she had made application with the IRS for recognition as a non-profit?

Ms. Strozier stated that she had made application with the IRS, but at this time she is an unincorporated association.

Chairman Coffey stated for the record that there is not a non-profit organization established or business entity at this time and feels the case should be tabled until the business entity or non-profit is formed. The board cannot grant a special exception to an organization that doesn't have any legal frame work to exist.

Mr. Sayre also stated that there needs to be clarification on how the program will run.

Boardmember Casabona made the motion in CASE # SE 12-050. 732 West King Street. Application requesting a special exception according to the requirements of Section 652.3 "Medical or Philanthropic Institutions" to use the structure as a "Outreach and Christian Counseling" location, to table the application until additional information is presented that allows Boardmembers to make an informed decision on granting the request. Boardmember Blackburn seconded the motion, which was followed by a unanimous vote of "aye." Motion carried. Case tabled until additional information is submitted.

**4. CASE # V 12-051. 732 West King Street. Public Hearing.** Application requesting a Variance from Section 430.4 "Schedule of Off-Street Parking Requirements". Our Daily Bread Outreach and Christian Counseling Appellant.

Case tabled until additional information is presented so that it would allow all Boardmembers to make an informed decision on granting the request.

**5. CASE # SE 12-052. 732 West King Street. Public Hearing.** Application requesting a Special Exception according to the requirements of Table 560 "Table of Zoning District Uses" to use premises as a Boarding House on the second floor. 732 W. King Street LLC., Appellant.

Legal Counsel Kin Sayre swore in Jason Baker, appellant.

Jason Baker, 809 North High Street Martinsburg WV, presented the request to use the second floor of the property located at 732 West King Street as a boarding house.

Mr. Baker: I am asking for a Special Exception for 732 King Street due to the undo hardship that this building has. Before I had an ownership of this property the upstairs was converted to eight (8) rooms for rent, this has gone on for over five (5) years and is one of the safest buildings in Martinsburg. The building has sprinklers upstairs throughout, and has been inspected on a regular basis every since its approval. I have met all requirements the City Inspectors have asked of me. I plan to install surveillance cameras on the outside of the building, and in common areas if approved. I did have an issue of violence in the building, I reacted by doing an immediate eviction of both people involved and they are no longer living in the building. I have also had an issue with another tenant while I have had it, and she has been evicted. It does not do me any good to have a building with a lot of issues financially or publicly. I try to keep as close of an eye as I possible can on the building and hoping with surveillance cameras that it will improve. With technology I can look at the building on my phone and be in Florida. If approved I will use one of the rooms, discount the rent and use that person as a night manager for the upstairs. This person would be my voice, and address problems that may arise, if it's something I need to be involved in I will immediately come and take care of the problem. I didn't cause the issue on this building. When it was approved for the Men of Vision and Valor, the building was retrofitted to accommodate their use. It meets all criteria, two exits both are well done, sprinklers, fire alarms, and the doors meet all fire regulations. So, the building has already been there. The person who has partial ownership of the building was part of the deal before, but due to laws I have to come back before you all [the board] to ask for permission once again.

Chairman Coffey asked City Planner Tracy Smith for staff report.

City Planner Tracy Smith: This property is zoned local business; therefore residential use requires the special exception to have the combination with a business. The upper level to the best of my knowledge has always been occupied as a single-family dwelling unit, allowing up to four (4) unrelated people to live there. When the Men of Vision and Valor applied and their request approved, it was at that time that the renovations were done to accommodate their needs. They created eight (8) bedrooms and installed a fire sprinkler system. What I don't know is if Men of Vision and Valor footed the bill for that or if Mr. Quemseya who is still part owner of the property footed the bill. Unfortunately, the duration of the Men of Vision and Valor didn't last as long as everybody hoped. The Building Inspector and Fire Marshall are satisfied that the building is a safe building for this particular use. Under our current zoning ordinance a boarding house can have up to eight (8) people living in it, under our rental housing code there are eight(8) bedrooms in this structure that are sized for single occupancy, that would be a concern if a tenant moved in a girlfriend/ boyfriend or children. The occupancy of this building, if approved, the residential portion must not exceed eight (8) people under our current zoning ordinance, and that is based on fire safety codes. When the Men of Vision of Valor moved out, I did notify the property owner that it could not continue as a boarding house it could only revert back to its single occupancy of four (4) people unrelated. On a routine inspection our Rental Housing Inspector discovered that the property had continued to be used as a boarding house. I contacted the number on the banner hanging on the building and spoke to Mr. Baker. He then informed me he was just entering partnership with Mr. Quemseya, and since speaking with Mr. Baker he has been most obliging in coming forward with these applications and trying to get things straightened out the way things are suppose to be. The only difference with the previous use and Mr. Bakers request is under the Men of Vision and Valor they were operating transitional housing, they had staff that would over see any medication programs that the residents were in need of or assist in any way. They had a full

time overnight volunteer that helped through this. This would differ if this use was a legitimate boarding house that under our zoning ordinance does not require full time monitoring or security. The vision of the Men of Vision of Valor was to get people back on their feet, back into regular life and into a house or apartment of their own. For the people in a boarding house this is a similar situation but could also be their permanent residence.

Ms. Smith read the definition of a boarding house from the zoning ordinance. Boarding House: A residence in which for compensation lodging or meals or both are furnished to not more than eight guests who board or stay for a period of at least twenty (20) days. A boarding house shall not be deemed a home occupation. So, with that being said, the tenants cannot be on week-to-week leases. The landlord would be required to have a lease that extended beyond the twenty (20) day mark.

Chairman Coffey: When did the Men of Vision and Valor cease to be operating?

Ms. Smith: I do not have that exact record.

Mr. Baker: A couple things that I have already done, there are no children under the age of eighteen (18) allowed upstairs at all. When I took over the management side of this building I came up to people sleeping in hallways, bathrooms, and not paying rent. That was due to the person having ownership was living out of town. I think with me being within six or seven blocks away when there is an emergency I tell my tenants to call the police and then call me. I'm there. If it's not severe I ask that they don't bring me into it. The other things I am doing in the building is there are no drugs allowed, if I see any evidence of it I give notices that I'll be in for a thorough inspection of the room and if I find drug paraphernalia you [the tenant] will be gone. Of course, I have to live under the West Virginia laws for the eviction process. These were some concerns I thought I should address before the Board asks me other questions.

Boardmember Blackburn: Is the eviction process for a rooming house the same as standard rental property?

Legal Council Kin Sayre: If he has month-to-month renters, it is. I am assuming that's basically what you have in your units.

Mr. Baker: Yes it is.

Mr. Sayre: So he would be required to follow the statute.

Chairman Coffey: The owner, your partner, I assume it's an LLC?

Mr. Baker: 732 West King Street LLC.

Chairman Coffey: He was the owner in the original case, I can't remember if he spoke?

Ms. Smith: Mr. Quemseya. He did.

Chairman Coffey: Do you know when Men of Vision Valor vacated?

Mr. Baker: I can give you an approximate date but I am not one hundred percent sure, I think it was sometime in 2010 when they finally finished up. I actually still have one tenant from them.

Chairman Coffey: When did you [Mr. Baker] come into the picture?

Mr. Baker: I came into the picture sometime in December 2011. I actually got brought in by the bank due to the financial hardship of this building, it was bought for over two hundred forty thousand dollars (\$240,000) and it's very sizable. Due to that, without using it the way the bank thought it was always going to be used [like that of the Men of Vision and Valor] which you get a little more premium than if you have one house for six hundred (600) dollars, due to that fact it is the only way the note will last. Without the approval the building is vacant, it is an empty building.

Chairman Coffey: Do you have ownership in the building?

Mr. Baker: I have an ownership stake, yes.

Chairman Coffey: Are there eight (8) bedrooms? I have never been in that building.

Mr. Baker: There are eight (8) bedrooms, two (2) bathrooms that are approximately 20x20; one has a shower in it, sink, toilet, hot water heater for that bathroom and kitchen. The other bathroom is 20x20 and it has a tub, toilet, sink, laundry room off the side that will be coin operated if approved. There is a kitchen equipped with a standup refrigerator/freezer, stove, microwave, dishwasher, and approximately seventeen (17) feet of cabinet space with an island and table. One of the things I did when I became part owner of the building is I took out, when the Men of Vision of Valor were there, they had like a living room in the back that I actually added that into another room. There were eight (8) rooms, there are only eight rooms but I put an addition on the other room to make it bigger, for my use I did not want a living room.

Ms. Smith: Did you move a wall to do that?

Mr. Baker: I did not move a wall, there was a doorway there and I put a door there. Nothing has changed other than a door.

Ms. Smith: So, is there still a community living room?

Mr. Baker: No.

Ms. Smith: Ah, okay.

Mr. Baker: The only community area would be the kitchen and balcony that oversees King Street.

Chairman Coffey: Does that balcony open up to individual rooms?

Mr. Baker: No, it used to open up to one of the rooms, it was closed for safety concerns. I did not feel comfortable with a balcony going to a private room. That door has been closed and I had asked Residential Housing Inspector John Skinner about it when he was up doing an inspection and he said, "I think they have done that before, you could see the nail holes in the door where it was nailed shut." I have also done some other things with the balcony, as Tracy said, my phone number was on a banner on the side of the building and I never got any concerns or calls from the neighborhood. If I would have been notified, I would have addressed



the issues. I heard a couple complaints that came through Tracy such as smoking and throwing cigarette butts. I immediately went to the building, had a building meeting and I now ban smoking from the balcony and any common areas. I am very cautious about the impact on the community and trying to do a good balance between finances of the building, keeping the bills paid, keeping the note good and not being a nuisance for the neighborhood itself.

Ms. Smith: One more question please, who maintains and cleans the community areas, the kitchen and bathrooms?

Mr. Baker: I have a volunteer, her name is Barbara, she actually cleans all common areas. She is a tenant of mine, as soon as I came in the building she asked if she could do this and I supply her with cleaning supplies.

Chairman Coffey: Does anyone have any initial questions?

Boardmember Casabona: What is the square footage?

Mr. Baker: Roughly upstairs is twenty seven hundred (2,700) square feet.

Ms. Smith: What is each unit size [bedroom]?

Mr. Baker: There is one room that is sixteen by ten (16x10) but all the other rooms are twenty by sixteen (20x16).

Ms. Smith: So they are all greater than one hundred and sixty square feet.

Mr. Baker: Yes ma'am.

Chairman Coffey: The question was asked earlier but I am assuming the original owner did most of the conversion?

Mr. Baker: Yes, I think there was some volunteer labor but a lot of the cost came on the burden of the owner himself.

Chairman Coffey: Tracy, I am assuming a sprinkler system would not be required in a single-family apartment on the second floor.

Ms. Smith: No, it would not, it is overly designed for a regular single-family unit. They also built a rear entrance emergency stairwell that would not be needed in a regular second story single family home.

Chairman Coffey: As of what is allowed there by right, is four (4)?

Ms. Smith: [indicates assent] That zoning code is based on the life, safety and fire codes. Four (4) unrelated people, understood to be on the same lease, is the requirements for a single-family dwelling unit. The difference is Mr. Baker's tenants would be on individual leases with a boarding house status.

Chairman Coffey: If I understand, if there is no special exception he can't then revert to having then four apartments?

Ms. Smith: To the best of our knowledge it has not been vacant residentially for a period of one (1) year or more so by right he can go back to a single-family dwelling unit having four (4) unrelated people. So, yes he can go back to that.

Chairman Coffey: That would be one unit?

Ms. Smith: Yes

Chairman Coffey: Basically now it's a boarding house with eight (8) rooms, so denial wouldn't automatically turn it into a boarding house with four (4) rooms?

Ms. Smith: No, it would be a single-family dwelling unit.

Chairman Coffey: A denial then would basically turn it from eight (8) units to one (1) unit.

Ms. Smith: Yes

Chairman Coffey: Ok.

The public hearing was opened at 8:53 pm. There was no one present to speak in favor of the request.

The following people were present to speak against the request..

- Lynn Gibson, 101 Meadowbrook Drive, Martinsburg WV, has concerns with the request, stated her elderly mother lives directly across the street and is afraid to sit on the porch anymore. She went on to say that, she is over to the property several times a week to visit and you can see people drinking, hear the cussing and there have been children around while all this is taking place. The tenants make comments to having only one working bathroom and could no longer live in these conditions. Police are at the property constantly. Ms. Gibson went on to say that she thinks it is not fair in a residential district to have these problems. Since spring of this year, the problems have gotten worse and Ms. Gibson stated that she is opposed to the request and feels it is not suitable for a residential neighborhood.
- Theodore Good, 717 West King Street, Martinsburg WV, stated he is concerned of what all comes along with this type of request. Mr. Good went on to say that, the current problems did not exist when the Men of Vision and Valor were occupying the building. He is here tonight to speak against to the request.
- Donna Zeck, 126 South Kentucky Avenue, Martinsburg WV, spoke in opposition of the request. Ms. Zeck stated she is a stone throw away from the property and the police activity already taking place is concerning to her. The recent violence is a concern, and is wondering if the applicant does any kind of background check on his tenants, or makes sure they are not violent offenders. Ms. Zeck went on to say that she is concerned of what violence might take place if you [the board] allow this to operate as a boarding house. She felt the Men of Vision and Valor was something that was for the greater community, for the greater good and was part of a larger public policy initiative that helped service men who served our country and this request is only a boarding

house for profit, that's all this is. It is a completely different thing and needs to be treated differently. This is a residential area and she wants to continue increasing the value of the properties. There are people renovating their homes and cleaning up the neighborhood and this element there will hamper that. If it gets bad enough and if there is enough violence, people will move away, and will destabilize the community. If it continues to have the criminal element there, stealing and vandalism would also be a concern.

- Cynthia Baynham, 1225 West King Street, Martinsburg WV, spoke against the request. Ms. Baynham stated she has some of the same concerns as Ms. Zeck, she feels the trash and debris that is laying around the property needs to be cleaned up. Ms. Baynham went on to say that she feels better security is needed instead of a person who gets discounted rent.
- Randy Barrat, 717 West King Street Martinsburg WV, stated that if this operation had been in place he never would have moved to the neighborhood and feels this establishment has brought the area down. Mr. Barrat does not think the surveillance cameras will stop the problems and stated that if you continue to rent out the property to people who do not have morals the property will continue to go down hill. Mr. Barrat went on to say that he has been told that there is only one working bathroom, and thinks there is a lot of issues at the property, and is very disappointed to live across from it and is opposed to the request.

As there was no one else present to speak against the request, the public hearing was closed at 9:07 pm.

Chairman Coffey: In this case, we are being asked to do a special exception, I think this is an unfortunate case. The very existence of the boarding house did result [from] a decision of this board, which Bill and I were on at the time when we approved Men of Vision and Valor. Men of Vision and Valor were a very different animal than what exists there today. I was very nervous about it, but from what we are hearing it functioned as it was supposed to while it was in existence.

Boardmember Blackburn: It wasn't so much a boarding house, it was a controlled living environment.

Chairman Coffey: It was more of a half-way house, there was supervision but the upstairs and downstairs was intertwined and there were support programs. I say this is unfortunate because I believe Mr. Baker did not create the problem he was brought into it or bought into it, the LLC he is a part of. The current living situation was created for a specific entity, a holistic entity, the residents that lived there were part of the program, they were supervised. I am completely sympathetic to the fact that there is no way a single-family apartment and a small business rental is going to support the note on that property, the note will fail or it will have to be restructured. At the same time there is no way I would want to live next to that property with my family. It is a residential neighborhood and I believe he can improve the situation but it's always going to be a boarding house that is going to have issues from time to time. It's not what that property was originally intended for and it really bears no resemblance to what the original approval was.

Boardmember Blackburn: No.

Boardmember Casabona: I agree. The uses under 521.3 Special Exception uses; "In granting a special exception the Board of Zoning Appeals shall determine that such a use is compatible with the overall development of the BL district and with the surrounding area." That is not a compatible use. That building is a spot zoned building, but that is clearly in a residential area. A boarding house has no business in a stable residential area. The City of Martinsburg Comprehensive Plan states, "one of the goals is to rehabilitate and improve the downtown," adding a boarding house does not do that. A boarding house has no place in a stable residential neighborhood and what we are trying to create is a stable residential neighborhood.

Ms. Smith: Do you all have you ordinances with you? If you do, could you turn to 702.32. A special exception may be granted when the board finds "that," [indicates pages] and it has several points so if we could use those perhaps as talking points. 702.32 The location, size and the use the nature and intensity of the operations involved in, or conducted in connection with, the size of the site in relation to it, and the location of the site with respect to streets given access to it are such they would be in harmony with the appropriate and orderly development of the district in which it is located. There are points further down that if we discuss them individually might help you clarify the situation.

Chairman Coffey: 702.31. Purposed use is in harmony with the purpose and intent. 702.32 The location size of use nature and intensity of the operations involved in, or conducted in connection with the size and the site in relation to it, and the location of the site with respect to the streets given access to it, are in harmony with the appropriate and orderly development of the district in which it is located. 702.33 The location, nature, and height of the buildings, walls, fences.

Ms. Smith: If we could slow up a bit and get some substantial answers as to why this is or not within the parameters of that previous point.

Chairman Coffey: Okay.

Ms. Smith: That would be great.

Chairman Coffey: Ok, from my reasoning this was originally a single-family residence, the only reason it's not now is because of the proposed use and [pre]existing use of Men of Vision and Valor. I would say from the testimony of the neighborhood, I don't know what more they can say as far as how conducive it is to the neighborhood and the district. I think that speaks for itself. I will say, I can't vilify Jason as the manager, as part owner because he came into this situation at the request of the existing owner, and its financial institution to try to straighten that out. I think listening to people in the neighborhood, there's probably very little that can be done to truly make it compatible with the residential neighborhood.

Mr. Sayre: I think Ms. Smith is correct; we have got these requirements and the Board needs to express their opinion dealing with the first one being consider the relationship with the proposed use and existing future. The code says special exception which is different from the variance that has the four (4) strict criteria. The special exception deals with developmental policies, and so, this board needs to determine:

1. The relationship of the proposed use to the existing and future development. So, is the proposed use of a boarding house inconsistent with the existing and future development of the area? I think the Board needs to make findings of this. All decisions of the Board of Zoning

Appeals are based upon the findings that you [the board] make. Depending upon whatever happens here the party that is not successful has the right to appeal it to the Circuit Court of Berkeley County. We need to establish the reasons upon either the approval or denial of this application. As far as the granting of the special exception, is it compatible with the existing and future development of the area?

Boardmember Blackburn: I would say that it is not compatible with the present or future development of the area, in that it was never approved as a boarding house, and its previous use was not as a boarding house and I don't think there are any future plans to by the city. I think in fact it would be just the opposite direction of the city's plans for the neighborhood.

Chairman Coffey: The neighborhood is a residential neighborhood. If you go up the street you have the Mission but again that is about a block and a half.

Mr. Sayre: Now do remember this actual location is not zoned residential. I think everything surrounding it is.

Chairman Coffey: It's spot zoned.

Ms. Smith: Yes, today that would be frowned upon because of the impact on the neighborhood, it could become potentially detrimental.

Chairman Coffey: But the zoning is? What is it zoned as?

Ms. Smith: Local business.

Boardmember Blackburn: Even as a local business the boarding house would not be compatible with that use.

Mr. Sayre: I think it's not spot zoned, it was zoned that way based upon the Comprehensive Plan at the time it was adopted in the Zoning Ordinance.

Ms. Smith: This was a "grandfathered location." Under today's standards if they were applying for a map amendment it would be considered "spot zoning."

Mr. Sayre: Its not spot zoning, it is local business so you have to take into account the whole general area not just this one location. It is business commercially zoned and as you said certain areas are residential.

Ms. Smith: RUB. When I moved here it was a woodworking shop, I heard it was a piano store at one point and a grocery store and another time all kinds of things.

Chairman Coffey: I think if you're going to listen to what the development policy is you need to listen to the people that actually live in the neighborhood because to a large extent the residents are going to determine what the development policy of the neighborhood is. What they're saying is, that they don't want to see, is not necessarily a rental but they don't want to see that kind of density. They're concerned about the density, the quality of people that are living there enmass. I have heard two (2) people say they wouldn't have bought residences in the neighborhood had they been aware that was in existence.

Boardmember Blackburn: I think any reasonable person would say that it's not a present or future compatible use for that area.

Boardmember Casabona: Now.

Chairman Coffey: Jason is standing up and we're not quit done yet.

Mr. Baker: Well, I would like to be part of this discussion.

Chairman Coffey: I will give you a chance to address everything but we are finishing going through the points and then we can hear your comments.

Boardmember Casabona: I don't see how we could possible find that proposed use is in harmony with the purpose and intent of the Martinsburg Comprehensive Development Plan. That area was zoned in the Comprehensive Plan.

Chairman Coffey: It was not grandfathered, it was.

Mr. Sayre: Let's get the terminology, it's not grandfathered, it is zoned commercial. The reason it was zoned commercial was at the time of the Comprehensive Plan there was a commercial location in there and so it's not grandfathered.

Ms. Smith: They gave it the designation because there was a pre existing business there.

Boardmember Casabona: They did not, the Comprehensive Plan then does not rezone that entire area. It zones that area, it's zoned residential.

Chairman Coffey: The surrounding properties are zoned residential, that one is zoned business. I don't think that people are objecting to the upstairs being a rental, I think they're objecting to the intensity of the use.

Boardmembers: [assent indicated by all members]

Chairman Coffey: 702.33: "The location, nature and height of the building 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 the adjacent land and buildings." I don't know how applicable that is because its an existing building, were not proposing physical changes to the building. I don't really think 702.33 is an issue.

702.34: "Operations in connection with any special use will not be more objectionable to the near by properties by reasons of noise, fumes, vibration and other characteristics that would be to the operations of any permitted use not required a special permit." Well, that's kind of the crux. I don't think there are any particular fumes but obviously the resident are finding it more objectable than the previous use of when Men of Vision and Valor. Again, that was not a use of a boarding house that was philanthropic organization.

Boardmember Casabona: That was a structured program.

Boardmember Blackburn: And noise is an issue and fumes are an issue; smoking out on the patio and the loud noise, people arguing. That is an issue.

Chairman Coffey: 702.35: "Parking areas will be adequate size for the particular use, property located in suitable screen from the adjoining residential uses and the entrance and exit drives shall be laid out to achieve maximum safety." Again, 702.35, there is no parking for this and there never has been, this is a street parking neighborhood. I'm probably assuming that a fair amount of residents don't have cars but they obviously will have guests that will have cars. Parking probably is an issue if you had eight (8) people there with eight cars because that would put a higher number of vehicles for any similar size structure. Typically if it's going to be in a residence you may, Tracy, under this zoning what's required as parking, two (2) spaces per?

Ms. Smith: It's different for a boarding house.

Boardmember Casabona: Its two (2) spaces per three (3) guests so they would require six (6) spaces.

Ms. Smith: And that's the reason for the variance request.

Boardmember Casabona: The parking is very tough, very tight in that area as it is.

Chairman Coffey: 702.36: "Public utility services are adequately served."

Ms. Smith: Water and sewer and all of that are included in the rent.

Chairman Coffey: Yes. So, I don't think there's anytime you have eight (8) people using the bathroom it will get clogged up, but it will get clogged up in regular apartments as well so that is something that can be addressed by maintenance; I don't think that's a major concern for us. Specific requirements for granting the special exception, in addition to the general requirements listed above uses require a special exception shall be subject to the specific requirements for use in article six (6). Should I read article six (6)?

Boardmember Casabona: Its 627.2. Boarding house permitted as a special exception would determine to be compatible with surrounding development. A rooming or boarding house will almost always be developed through conversion of an existing dwelling, the board shall determine if the house and lot size is suitable for such use including space for additional off street parking.

Chairman Coffey: Obviously this place has been converted, again not with the specific use of a boarding house in mind. Um, off street parking, again parking really it's going to be tight, but I don't feel that is the major concern.

702.5: "Additional provisions a special exception permit may be granted in accordance with the general and specific requirements enumerated in the proceeding sections. The board may, and is here by authorized, to add specific requirements and additional conditions that may deem necessary to protect adjacent properties, the general neighborhood, and the residents or workers therein. Violation of such additional conditions when made a part of the terms under which the special exception permit is granted, shall be deemed a violation of this ordinance and may be grounds for termination [ of the special exception permit]." That's general. What [about] an approval tack on that says if we put special conditions that if they are not adhered to we can bring it back for review and it may be grounds to revoke the special exception? I don't

really know what's special, the requirements we would put on here, it's a straight up or down kind of thing, but we've gone through basically all of the sections. I want to give Jason a chance to come up and comment, the sections we just discussed are highlighted, at this point if you want to comment on some of the testimony that you heard from the neighbors.

[Chairman Coffey gave Mr. Baker a copy of the sections previously discussed]

Mr. Baker: My name is Jason Baker, I live at 809 High Street I have an ownership stake in the building. A couple things, number one (1) the residents that are complaining they bought, when this building and the building has been used as the same use. I know Mr. Blackburn made the comment that it's not quite the same but the Men of Vision and Valor the people who were in the rooms paid rent, very close to the same amount of rent that I am charging today. They got it a different way through the V.A. but they got it the same way. So, it hasn't changed, it just happens to be it's not a nonprofit but they're still getting profit from the building to maintain the utilities, pay the mortgage payment, it wasn't like they were forgiving of any of the rent, so that hasn't changed. Two of the people who were here, one bought her house in 2011, while the building was being used in the same way, so her issues then she would have had a discounted price on the house so she knew what was there. I grew up with in a block of this building, this building has always been similar to this, before Men of Vision and Valor and after Dave they rented it to four or five people that always lived up there. It has always been the same thing they just always lived under the circumstance that it was four different people on one lease. So it has always been the same thing, and I know parking comes up and I know we're not asking right now. Since I have been in the building there's never, I had one person who had a car for a week and then it got popped because she was struggling, which is what this ends up being. This ends up being inexpensive housing for people in Martinsburg.

Chairman Coffey: What exactly is "popped?" Repossessed?

Mr. Baker: Yes, repossessed. Since I have been here that is the only person who has had a car in the building, period. Nine times out of ten I park right on the front of the building when I pull up. I'm there normally [at] eight in the morning, I come in there on a regular basis. I go there in the evenings, after council meetings I stop in the building and I have done that and I normally park in the front. So, there is parking concerns but it's not because of my building. It's because King Street only has parking on one side of the road and everybody is trying to park there, but when I go to the alleys that another person who came up here [to speak in opposition] owned three or four of the row houses, they're not even parking in the garages in the back but yet they want to complain to you all [the board] about my parking situation. As far as walking in the alley when I'm in that building the people I see walking in the alley are off Valley Street. Valley Street has become one of those streets that have lower income people and there has been more walking traffic. Just because people walk doesn't make them shady, doesn't make them have any issues, and it doesn't make them bad people. People need inexpensive housing, and there is a majority of the people, if you all [the board] deny this tonight, that will live on the streets because they can't afford anywhere else. You know and it goes by, I know you guys kind of got it clarified, this building isn't residential, this building is business so the reason I'm asking for a special exception is because I'm changing that to residential and you know the other gentleman he moved here three years ago, this thing has been in operation for over five years. It was there right in front of you, so you can't tell me you didn't have a concern you didn't ask your real estate agent "hey, what's this?" Or in the banking world, the bank is going to be concerned and will be very cautious about what's going on. The bank's not going to give a loan on something they don't know about, they already were



there. This building supersedes them and the use supersedes both of those people. What I would ask and obviously I know where a lot of you sit, give me six months, let me come back in front of the board, and if there's any issues, have another hearing, let's talk about it and if there are issues, shut it down, but give me six more months to evaluate. As you heard the neighbors, it's getting better, I'm learning things that the building needs and what it doesn't need. Walking into the building I had some experience with regular residential three bedroom houses and that's a totally different world. I would have never thought of putting a surveillance camera in that building, today I think that it's maybe a good idea so I know what's going on. So, I would ask for a little more time, give me six months to prove to you [the board] that the building can be viable and to the neighbors themselves, and lets bring it back across just give me a chance, give me a chance for six months and let's see if it can go. If it can't then the bank can have the property, but give me six months to try. That's all I have.

Boardmember Casabona: I still do not believe that a boarding house is in harmony with the purpose and intent of the Martinsburg Comprehensive Development Plan and of the Zoning Ordinance.

Mr. Baker: The Comprehensive Plan, that was in 1970 something when it was approved?

Boardmember Casabona: They should have made it a lot more stringent than it is now.

Ms. Smith: It is currently about seven years old, our current Comprehensive Plan.

Boardmember Casabona: I'm in sympathy with the residents of the neighborhood. I would not move in to a neighborhood with this, a boarding house. I'm not being snooty, I'm not being illeltist, I'm being honest and realistic. There are many problems in this city, we do not need to increase the density in residential areas. We have parking problems, we have problems with crime and we should not close our eyes to those problems. A boarding house is not in harmony with the appropriate and orderly development of the district in which it is located. It is also the surrounding district is RUB, a boarding house in that would also require a special exception and would require the same consideration and same judgments.

Chairman Coffey: In your mind six months or a year?

Boardmember Casabona: I think it is not an appropriate use. The Men of Vision and Valor was a structured program, it was not a boarding house. Yes, men lived there and there were eight rooms, and they paid rent but the nature of the beast is entirely different. That is my opinion.

Mr. Sayre: I just want to address one of the things Mr. Baker brought up. I'm not sure we can grant a six month, but any time when granted the special exception, what he's asking is what we do anyhow, we grant a special exception if there's a problem then we are able to bring it back. We don't really have a provision to say we'll give you a conditional six month special exception, however it's within this Board's power that if a special exception is granted then if two months or eight months or fourteen months have passed and there's problems with the neighborhood, we can bring it back to us for review. So, I don't think we have the six month ability but we have that continuing ability to monitor special exceptions.

Boardmember Blackburn: The information we have received tonight indicates that it is a problem, it has been a problem.

Chairman Coffey: The previous case was tabled because it was a proposed use, this is an existing use and essentially and again I think it morphed into what it is now, it currently needs the exception to keep operating, it's not operating but within compliance without the exception. Jason made several points. The previous people paid rent, it is a very similar use, but I think the key is that it was similar but it was different in the fact that it was part of a program. Yes their rent was paid by the V.A., which I assume creates some stability to/with who lives there and cuts down on turn over, but it's a different animal all together, and I think like Brenda is saying six months isn't going to make it any different.

Boardmember Blackburn: Well, we had a similar problem like this in my block for years it was a single-family house and let her son take care of it. He made it into four apartments, then it was made into multiple of that, and there were multiple drug busts there, you couldn't sit on my front porch without someone stopping and asking if they could buy something. It wasn't solved until a church bought the house and tore it down. It went on for years, it's difficult to enforce and monitor these situations where you have multiple people living in these houses. Even if you did background checks how much of a back ground check can you do, what are you going to do, have the police there every night. I understand what they're saying they can't even sit out on their porch without hearing people yell and curse and you see the little kids in that environment and that takes it out of you, you don't want to see that.

Chairman Coffey: And again, I think he said kids aren't allowed but that doesn't mean people didn't bring them up and have them living there, but I think he's very clear on the policy is that kids are not supposed to be there. I think it may be difficult to enforce these policies.

Boardmember Casabona: It's not to say that his intentions are not good, I would not say that at all. I would say the experience is the enforcement.

Chairperson Coffey: I don't think we can hold him responsible for people using the alley which is a public thorough-through.

Boardmember Blackburn: I am not talking about the enforcement of the code enforcement; I am talking about the civil enforcement, just to have people living together in a community where people do not have to be accosted [by] drunkenness, yelling, shouting and cursing.

Chairman Coffey: To me, I agree that there are more folks who have bought in the neighborhood while this had been in a similar use. What really affected me was the elderly lady who is no longer comfortable sitting on her front porch, that is a sickening feeling.

Boardmember Blackburn: I can identify with her because it has happened to me and I don't want to foist that on to anyone else.

Boardmember Casabona made the motion in CASE # SE 12-052. 732 West King Street. Application requesting a Special Exception according to the requirements of Table 560 "Table of Zoning District Uses" to use premises as a Boarding House on the second floor, to approve the application as presented. Boardmember Bradley seconded the motion, which was followed by a unanimous roll call vote of 'nay.' Motion denied.

Chairman Coffey stated the request was not approved; therefore CASE # V 12-053 will not be taken into consideration. He informed the applicant that he has the right to appeal the decision

of the Board before the Circuit Court of Berkeley County within thirty day of receipt of decision letter.

**6. CASE # V 12-053. 732 West King Street. Public Hearing.** Application requesting a Variance from Section 430.4 "Schedule of Off-Street Parking Requirements". 732 W. King Street LLC., Appellant.

Due to CASE # SE-12-052 being denied, there was no need for the Variance request.

**7. CASE # SE 12-054. 409 South Queen Street. Public Hearing.** Application requesting a special exception according to the 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 enclosing an existing canopied porch that extends into the minimum side-yard setback. The Historic McFarland House, Appellant

Michael McCarty, 102 South Louisiana Avenue, presented the request to enclose an existing outside covered area at the McFarland House.

Chairman Coffey asked for a staff report.

City Planner Tracy Smith stated there was a permit issued and inspections completed for the work that was done. Ms. Smith went on to say that the district the property is located in allows a wall to be constructed at the zero (0) or five (5) foot mark, and the wall was constructed at a distance of three (3) feet from the property line. The request is for distance from the property line; if they had built the wall on the property line of five (5) feet inside there wouldn't have been a need for a Variance request. Ms. Smith stated staff is in favor of the request.

The public hearing was opened at 9:54 pm. As no one came forward to speak for or against the request, the public hearing was closed at 9:54 pm.


Boardmember Blackburn made the motion in CASE # SE 12-054. 409 South Queen Street. Application requesting a special exception according to the 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 enclosing an existing canopied porch that extends into the minimum side-yard setback, to approve the application as presented. Boardmember Bradley seconded the motion, which was followed by a unanimous vote of "aye." Motion carried.


## **DISCUSSION**

All Board members were notified of the August meeting date and stated they would be in attendance.

## **ADJOURNMENT**

The meeting was adjourned at 10:00 pm by unanimous consent.

  
Matthew Coffey, Chairperson

  
Windy Miller, Planning Secretary

