

**Board of Zoning Appeals
City of Martinsburg
232 N. Queen Street
April 05, 2011
Regular Meeting Minutes
6:30PM**

With a quorum present, Chairman Coffey called the regular scheduled meeting of the City of Martinsburg Board of Zoning Appeals to order at 6:32 PM. The following Boardmembers were present: Matthew Coffey, Brenda Casabona, Kevin Knowles, Bill Blackburn, Donald Anderson and Jim Castleman. Not present was Lane McIntosh. Also in attendance were City Planner Tracy Smith, Planning Secretary Windy Miller and Legal Counsel Kin Sayre.

Chairman Coffey reminded the alternates that they are welcome to ask questions, but are not always required to vote. Due to the absence of Boardmember McIntosh, Boardmember Castleman was asked to participate as a voting member.

APPROVAL OF January 04, 2011 MEETING MINUTES.

The minutes were approved as presented by unanimous consent.

OLD BUSINESS

None

UNFINISHED BUSINESS

None

NEW BUSINESS

- 1. CASE # V 11-007. 431 – 435 Virginia Avenue. Public Hearing.** Application requesting a variance from Sections 420 "Lot Area, Yard and Building Requirements" and Section 514.21 "Conversions of Existing Structures to Apartment Use" to increase existing structure from four (4) dwelling units to seven (7) dwelling units. Douglas Snowden, appellant.

Chairman Coffey asks City Planner Tracy Smith to present the board with a staff report.

Ms. Smith: This property has... as you all know with rental property that you have to re-register every three years to be in compliance, and get your inspection. When this property came up for its compliance and re-evaluation, the property owner did register it as seven units. We noticed at that point it had been previously listed as four units. We went in and took a look around. I've got some photos of the inside that were not in your packet to protect the privacy of the tenants. If you wish to see them today I can pass them around to you. Mr. Snowden has been very obliging in letting us go in and take a look and discussing with us how it became seven units, and what was not done. For example, building permits had not been done, and if this board approves it tonight the building permits will be caught up on.

The land itself will support five units legally, and all Mr. Snowden is asking for tonight is a variance for relief to add two more units. There is no developed parking currently, but he does have enough lot in the back yard to easily put in how many ever parking areas you all require. The structure has eight mail boxes, and eight electrical meters, if you all saw that on site. There are only seven units, I've been in and confirmed that. It is up to date with our fire and garbage collections and with the assessors office as being seven units. When informed he needed to apply to the Board of Zoning Appeals for this relief, Mr. Snowden was nothing but compliant. He was very willing to take these steps and get us to this point. If you have any questions, I will be more than happy to answer the process in which we do that. If we could contain all comments, and discussion tonight to the variance request, which is the increase of units, not code enforcement action needed to be taken, because this has already been done, I would appreciate that. Our Code Enforcement Officer, and City Engineer/Planning Director Mike Covell have already got that in hand.

Chairman Coffey: My only question is with Mike, and whoever inspects them they would, once the building permits have been pulled are they essentially, I realize they're occupied they would be considered under code seven existing viable units.

Ms. Smith: Actually that's a good point, the Rental Housing Inspector has done an inspection, there has already been an inspection with the Fire Marshal, and there was not one thing out of place.

Chairman Coffey: They've been increased from four to seven but they have been inspected and there are no code issues or fire issues?

Ms. Smith: Now, we will have to catch up on building permits after this has been approved; if you approve it this evening we will have to do that. That might require taking a portion of the drywall out to inspect some electrical work, it might not, I can't speak for the inspectors. The Fire Marshal needs nothing more, he is satisfied. The rental housing inspector is satisfied. These apartments, if I'm remembering correctly, one of the units is up in the attic space. I'll just leave him to explain where they are when he gets up here. I tried to draw you all a layout, and the inspector was laughing at me at the time. The house is so old and windy, it has little alcoves and beautiful fireplaces, I couldn't keep one floor straight from the other.

Chairman Coffey: Does anybody have any immediate questions for Tracy?

Boardmember Blackburn: That eighth-meter, do you know what that is for.

Ms. Smith: There are shared areas, the hallway for example, Mr. Snowden is required to keep a light on for his tenants at all times.

Mr. Snowden: Hi, I'm Douglas Snowden, 916 South Raleigh Street, Martinsburg. I'm requesting this to be changed to seven units. It appeals to a lot of people because this is a downtown location. Several tenants don't have cars, so they can walk where they want to go. It's close to the mall, it works out quite nicely. The building will handle these units, because they are in existence, and I don't have any problem with parking. I

could always put additional parking in the backyard if need be. I do own the building next door to it and a large row of garages, they can actually use the garages if they so need to. There is not a problem with parking. The eighth-meter is the house meter. I have an oil-burning furnace so it controls that, common hallway lights and outside lights. The eighth box is just an extra one, it does not have a use. It could possibly be used as an outgoing mailbox, but that would be more confusing for the mailman.

Chairman Coffey: How long has this building been seven units?

Mr. Snowden: Two and a half years.

Boardmember Blackburn: How long have you owned it?

Mr. Snowden: About eight, but I've been in this area, and run rental properties in this district for over thirty-four years. So I'm not looking to hurt the area in any way.

Boardmember Blackburn: I noticed you got here that it's not a great place to raise kids.

Mr. Snowden: It's truly not, it's not a great place for kids to go out and play where I'm at. It's not that you couldn't raise a child there, but just to turn a child loose with all that traffic wouldn't be what I want to do. These were two-bedroom units, and they're no longer two-bedroom units. When you have a two-bedroom listed they want to put too many people in them. This one, I have nine people in this total building. I'm sure there are single family houses in that same district that have at least that many people in them.

Boardmember Blackburn: So, you're looking for essentially first time renters, just married, or single.

Mr. Snowden: I have two veterans in there from the VA. They work out nicely, because they can catch the bus at the VA.

Chairman Coffey: That's not really what we're here to discuss. When you converted them from four to seven were you aware that you needed to apply for exemptions or building permits?

Mr. Snowden: Not so much, because I had someone working on them and he would talk to me about doing it, but he is no longer with us. He died during the project, right as soon as he completed it. He is quite a contractor, does nice work. We talked about it, but he never got around to getting a permit.

Boardmember Casabona: Where are these units located?

Mr. Snowden: It's all within the same building. They are on the first and second floor, there is no attic or unsafe areas for apartments.

Boardmember Casabona: Okay, approximately what's the size?

Mr. Snowden: The two that we're questioning would be about a three-hundred square foot unit. Living room, kitchenette, small bedroom and bath. The second one is a studio, there again, that one would be about two-hundred square feet.

Chairman Coffey: Any other questions?

Mr. Snowden: The building is structurally sound. I have not changed any of the exterior, it all looks as it did. That house is actually known as "The Bailey's." We always considered it the Bailey house, because Norma Bailey lived there until 2003. She died at one-hundred years old, and I rented those apartments for her in her later years just because she was just great.

Chairman Coffey: How long did you manage the building then?

Mr. Snowden: Probably several years before I purchased it from her. It wasn't that I managed it, I just helped her get her tenants, because of her age, and the type of person she was.

Chairman Coffey: If we don't have any other questions, we'll move to the public portion.

Chairman Coffey opened the public hearing at 6:42 pm.

One person came forward to speak in opposition of the request.

- Tammy McWilliams, attorney with Trump & Trump located in Martinsburg. I'm here tonight on behalf of Steven Snowden who was unable to be here in person, to oppose the request for a variance in this matter.

While I hear it has been in existence, and hear some of the tenants are very lovely people. I believe for legal reasons, and the very contents of the requirements of your zoning ordinance in the variance there are four very basic reasons why a variance cannot be granted in this instance. The first is under regulation 903.23. The Board of Appeals shall make findings only if the requirements, all of the requirements of sections 903.21, have been fully met by the applicant. Those requirements are four in number, and they're actually contained within your application that you may have been given a copy of. I obtained a copy from Tracy and I've thanked her for giving me that in advance. The requirements are four fold and the first is: the applicant is required to identify special conditions or circumstance that exist peculiar to this land or structure that would not be applicable to other buildings: I would suggest to you that the fact it's located in town is not special or different in any regards from any other property located here in this district, and likewise, the fact that there is off street parking is also nothing significant or different from other structures. So I believe we fail entirely to satisfy requirement one. Number two is that a literal interpretation of the provision of the ordinance would deprive him of a right commonly enjoyed by others in the same district. Your enforcement of the regulation limiting him to the five units that he would otherwise be allowed to do, is in no way giving him, or taking away from him, something that anyone else would be entitled to. It's holding him to the same standard you would require of anyone else coming in before you. The third provision is that special conditions or circumstances that have arisen do not arise from an action of the applicant. I would suggest

to you that although you have referred to perhaps as ironies', an operator of rental properties in this district, for over thirty-four years knows very well the requirements of the zoning ordinance, and a building permit, and inspections. There's a reason, in our opinion this was not done two years ago, because there would have been no reason or basis to grant the variance. He would have been held to the same standard of the ordinance as anyone else. To be able to come in, whether it be six months, six years, or six days after you've been caught, without complying with those regulations cannot serve as a justification for a variance. If it does, then that's what everyone will do. They'll go out do what they want to do, and then come before you and ask for a variance. The ordinance would have no meaning and no purpose. So I don't think they come before you with clean hands, and therefore, they can't satisfy the requirements. The last requirement that must be satisfied, is that the granting of the variance will not confer on the applicant any special privilege that would be denied by the ordinance to others in the district, and certainly that is what would occur here. If he is granted the variance he would be given, the opportunity or the right, a special condition to have seven units in a building that anyone else of that size would be told they could have five. In addition to not being able to fulfill requirements of 903.23, he also fails to satisfy 903.24. That requirement says that, this Board of Appeals must first make a further finding that the reason set forth in the application justifies the granting of a variance, and that it is a minimum variance, that will make possible reasonable use of the building or structure. I believe that you all would find that your Zoning Ordinance, as written, and adopted is certainly reasonable. Its size requirements are reasonable, and you've put to use a reasonable set of standards for people to make the proper use of a property that gives not only the tenant reasonable space, but protects others in areas of parking, water consumption, all kinds of things. While we say, "yes" this is only one person, it's one now, one tomorrow, and will be one the next day; all of the sudden you have no ordinance. So again there is no possible way of saying without this variance, he can't make a reasonable use of his property. Under 903.25 the Board must also first make a finding that the granting of a variance will be in harmony with the general purpose, and intent of the ordinance, and not otherwise detrimental to the public welfare. I would suggest to you that, the general purpose of ordinance was not only to allow landlords to maximize the profitability, or the income that can generate from the building, but to protect those residents, and future residents of Martinsburg who would be looking for a reasonable size space at a reasonable price. Perhaps families who do need to live in downtown Martinsburg, who need to have a two-bedroom unit, because they have children, and they can't drive. Not to pigeonhole, or tailor the situation to only accommodate one-person apartments of any size or nature. The detriment to the public welfare is also not only in the parking. I want you to remember that you have other tenants such as, Steve Snowden, other landlords in the area who are also operating, and trying to maintain full rental units, and there is a supply and demand out there. If you allow certain landowners to expand to have seven-units, and he's full, he's taking away good paying tenants from other good landlords who are also trying to re-furbish, and have apartments in the Martinsburg area that they can operate. By doing that, you are then depleting their ability to make a financial go of their place, to have their funds, to restore their property, keep them up to code, and to help beautify the area. You are allowing certain or other properties to perhaps diminish and fall by the wayside, because they can't keep full occupancy anymore, because those few that are being granted to have seven, eight, nine, above the ordinance are taking the majority of the tenants. They can charge a little bit less, because the space is smaller, it's such an unfair

playing field that ultimately does detrimentally impact the entire city. The fourth reason is under 903.27. There's is an absolute prohibition written into your ordinance. That under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of the ordinance in the zone involved, or in any use expressly or by implications prohibited by the terms of the ordinance. You have recognized yourself that people may, try the back door. We'll put it in place, and we'll do it, and then we'll go in and ask for,"please forgive me, and give me the variance." Your very rules say, you may not use a variance to excuse or allow something that has already happened simply because, they have chosen that route or method. So for those reasons, all of which we believe prohibit the issuance of a variance, we would ask this body to please hold this landlord as others in the district to the ordinance that much thought and process went in to. We believe any one of those reasons alone of course, is enough from a legal standpoint to refuse the variance regardless of how great any landlord is that comes before you, or how wonderful his tenants are. That's not the standard. A standard that has to be applied equally across the board. We ask for you to please abide by the ordinance that has been in place, and continues to be in place, so that we all know the rules, and all operate on a playing field that will further the community as a whole, those standards as a whole. That will compel people to come in here, and get their building permits, and get approval in advance. Thank you.

Boardmember Blackburn: I have one question, who is Steven Snowden, is he a relative, or does he just have the same last name?

Ms. McWilliams: I believe there is a relation, he is also a landlord in the Martinsburg area. He lives on West Burke Street with his family, and has other rental houses. He is a landlord as well.

Chairman Coffey: [to Boardmember Blackburn] His twin brother.

Ms. McWilliams: I would like to also point out this would not be the first time that a unit was put into multiple service. I believe the one I'm familiar with is at 435 Faulkner, which is close to this. There was a two unit property, sold at an auction, and after that auction the new owner was advised by the city that it was not approved, did not meet the guidelines, and they were forced to take it back to a one-unit structure. This would not be the first time, nor will I assume it would be the last, that those consequences may hit for the failure to abide by zoning ordinance before the work is undertaken.

Legal Counsel Kin Sayre: Mr. Chairman, I just want to point out that if we have to make findings that it does comply, which requirements of the variance, whatever this board does, they need to make that determination if this request does comply with the finding in the variance. I think under 903.27 where it says a use not approved, I believe that actually refers to, not necessarily seven units verses five units, but a use that is not allowed in that zone cannot be allowed by variance.

Boardmember Blackburn: Does it "say shall not be", or may not be"?

Mr. Sayre: ... shall the Board grant a variance to allow a use that is not permitted.

Ms. Smith: As far as the size of these units, we do have a Rental Housing Code that has been adopted statewide. The Housing Inspector does insure the units are of the appropriate size, there's enough room for every tenant in the building, enough potable water, etc. As we always do, we'll go through section 903.21 for our discussion, and take each criteria individually until we can reach a conclusion. Standard practice for us.

Chairman Coffey: Is there anybody else wishing to speak for, or against the applicant?

As no one else came forward, the public hearing portion was closed at 6:59 pm.

Chairman Coffey: I think the best place to start is to go through each section, and discuss.

Ms. Smith: Criteria "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."

Chairman Coffey: Does everybody have that copy of the application?

Boardmembers: [assentation]

Ms. Smith: We have to remember that we have to satisfy all four criteria are being met, even if one is not met we have no choice but to deny the application.

Chairman Coffey: I'm going to go ahead and read on the application, and this is from Mr. Doug Snowden, who is the appellant, "To add three additional units to a four unit building, this in town location better adapts to single life style, with plenty of off street parking, and outdoor space, no changes to the outside appearance or streetscape." Do special conditions or circumstances exist which are peculiar to the land, structure or building?

Boardmember Casabona: I would say no, the building is allowed to be multi-family, he has the space for five. There is nothing special to me that would make it necessary to be seven units, or deny any rights if it were but the five that he is legally allowed to have. I can't see any special condition or circumstance.

Chairman Coffey: I think there are several cases where we have denied similar requests. There is also a case where we have granted it on Burke Street.

Ms. Smith: Remember we have the ability to take every case on an individual case-by-case basis, and we don't make precedent by it. Allowing one does not mean you have to allow another one.

Boardmember Blackburn: On this unit, are there special circumstances?

Boardmember Casabona: I don't see where there are.

Boardmember Castleman: I don't either.

Boardmember Blackburn: We have to make a finding. Tracy, are there any circumstances that caused this to happen?

Ms. Smith: This is where we've reached that point where, this is the government working the whole people for the people.... This is your decision.

Boardmember Blackburn: We're asking to make findings, so we need something. We need to have objective finding here. What is that special circumstance to allow this.

Boardmember Casabona: There is nothing peculiar to the land.

Boardmember Blackburn: The only circumstance that I see is, it is already converted.

Boardmember Castleman: That leaves me with a bigger problem. Why should we do this if the deed has been done, asking someone to grant a variance that they've already taken.

Chairman Coffey: That jumps down to section "c" that the special conditions and circumstances do not result from the actions taken of the applicant. If Mr. Snowden relied on his contractor, and he failed to get the proper permits then you could say it wasn't his responsibility. He owned the project so the responsibility rests with the owner. I could stomach the explanation that he assumed that the proper steps had been taken and discovered later. I don't believe that when he went to register them, that he tried to hide the fact that it was seven units. He did register them as seven units. I don't think there was a cover-up there, but obviously it was done incorrectly. I do have an issue with it, it does raise a question, are there special circumstances. If we do not grant the exception what then happens is a whole other legal matter.

Mr. Sayre: There would be two-units that would have to be vacated. If this board denies the variance, Planning would issue a "Cease and Desist" order to Mr. Snowden, saying he cannot operate seven units. Then it would be up to Mr. Snowden to correct that issue of going to five units. If he fails to correct that issue, the city does not evict people. We would just be saying Mr. Snowden, you have to get rid of two people and you have this amount of time to do it. He would have to go through a process of evicting. That would be mechanically how that would take place.

Chairman Coffey: I think that would be considered a special circumstance for the individuals living in those units.

Boardmember Casabona: That's not a special circumstance to us. To me we have a zoning code and that code sets certain standards and it is written for the purpose of protecting the entire city. We are allowed to grant variances under certain circumstances only, if these conditions are met. If we do not meet these standards, what is the purpose of the zoning code? There is no purpose. Yes, we want to protect property owners, we want to protect tenants. The city is in the situation it's in, because we have ignored the zoning, because

things were done years ago, perhaps before the city adopted the zoning code. It seems totally convoluted to argue, "it's a rental neighborhood", "it's not a very good place to raise kids," but let's put more rental units in. Why don't we just carve every house in the city up into ten-units?

Boardmember Blackburn: We have identified a special circumstance here in part —"a." We have to look at the circumstances for the land, structure, building involved which are not applicable to other land, structures, and buildings in the same area.

Boardmember Casabona: What is different about it? I don't see what is special about it. He is allowed to have five-units, personally I think the zoning code is really liberal with respect to that. Five-unit's, fine, he is allowed to have that, but what makes this property special that it should be allowed to have seven-units? I don't see it.

Chairman Coffey: I don't have an answer for it, I don't see anything truly unique about the property. There is nothing truly unique about the structure or lot for it to be seven-units.

Boardmember Blackburn: I can see the financial need, but that's not what we're talking about here. We are talking about the building, the land or the buildings involved on that land.

Boardmember Casabona: Five-units fine, I don't see seven. I see nothing that would allow us to justify the variance.

Boardmember Blackburn: I agree, I see no special circumstances here.

Boardmember Castleman: One of the things that we've had in our neighborhood these kind of things that have come before the commission, where you end up with eleven-unrelated people in a two-story home with one-bathroom. This is happening all over our neighborhood, and one of the reasons its become a neighborhood. In some peoples opinion which is not a good place to raise a family. Where my family was raised, and my wife's family was raised there was indeed a number of single-family homes in the neighborhood, and there are lots of kids walking up and down in front of my house on Faulkner Avenue. I'm not against apartments. I don't see anything very special about this what so ever.

Chairman Coffey: I think it's fair to say it's a good looking unit and has certainly not been a problem for the neighborhood over the past three- years. I think what the applicant is arguing is that he has better tenants than he did previously by having smaller units. In the interpretation of the ordinance, there is nothing that truly makes this a unique situation that many of the duplexes' in town have had. They may have eight, nine, twelve-hundred square foot on each side which is good size houses. It is hard to rent two, three-bedroom apartments, and not have them fill up with a lot of unrelated people. I think what he's trying to do is prevent that and I'm very sympathetic to that. Brenda's correct, there is nothing truly unique as far as the structure. It's a large building, it has a large lot. I don't think there isn't anything I don't think you would find in some other part of the zone. I am very concerned two people would be forced to vacate.

Boardmember Blackburn: Are all seven occupied?

Boardmembers: [Confirmation given]

Boardmember Casabona: It is unfortunate that two people would have to move, but if we use that rationality everybody will just convert.

Chairman Coffey: I agree with the back door policy. I can say in this case, I don't see that intent.

Boardmember Casabona: I agree. I agree.

Boardmember Blackburn: I don't see bad intent, I see a building this would work well in. Living in that area I would vote for this, but given that we can find no reason to justify the finding for "a", and that's what we have to do. If we can't find one special condition, and the code says "shall," then we're locked in there.

Mr. Sayre: You have to find a special circumstance, if you can't get past -"a," then there's no "b", "c", or "d."

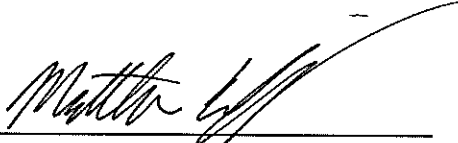
Boardmember Blackburn moved, in CASE #V 11-007 to approve the variance, and accept the application as presented, and was seconded by Boardmember Anderson. Boardmember Anderson and Chairman Coffey voted, "aye." Boardmembers Castleman, Casabona, Blackburn voted no. Motion denied.

Mr. Sayre: Mr. Chairman, is it a finding of this board that the applicant fails to establish that there is a special condition existed on the property?

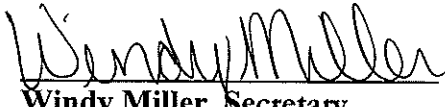
Chairman: It is the finding of the board.

ADJOURNMENT

The meeting was adjourned at 7:28 PM by unanimous consent.



Matthew Coffey, Chairperson



Windy Miller, Secretary