

**MARTINSBURG BOARD OF ZONING APPEALS**

**April 07, 2015 6:30pm**

**232 N. Queen Street**

**J. Oakley Seibert Council Chambers**

**Regular Meeting Minutes**

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With a quorum present, Legal Counsel, Catie Delligatti called the regular scheduled meeting of the City of Martinsburg Board of Zoning Appeals to order at 6:30 pm. The following Boardmembers were present: Mary Dulyea, Bridget Cohee, Shelly Schoppert, Doreane Mosser, Brenda Casabona, Bill Blackburn and Martin Bales. Also in attendance were City Planner Tracy Smith, Legal Counsel Catie Delligatti and Planning Secretary Holly Hartman.

**APPROVAL OF March 03, 2015 MEETING MINUTES**

The minutes were approved by unanimous consent.

**OLD BUSINESS**

None

**UNFINISHED BUSINESS**

None

**NEW BUSINESS**

- 1. CASE #SE 15-010. 109 N. Alabama Avenue. Public Hearing.** Application requesting a Special Exception according to 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 constructing a deck. Michael Grimes, Appellant.

After being sworn in by Legal Counsel, Michael Grimes, 109 N. Alabama Avenue, introduced himself and stated he is asking for a special exception to add a deck to the back of his house. Due to the shape of the lot, the deck will be too close to the lot lines.

City Planner, Tracy Smith asked if there would be 5-feet between the deck and the garage. Mr. Grimes answered yes.

Chairperson Dulyea opened the Public Hearing at 6:33 p.m. As no one came forward to speak for or against the case, public hearing was closed at 6:33 p.m.

Ms. Smith provided a staff report, stating that the reason for the Special exception is because the appellant has a legally non-conforming lot, and that it has two frontages. That when you have two frontages you have two front yard setbacks of 25-feet, however the structure is already legally non-conforming because the house was situated in the side yard setback. She stated that staff has no concerns with this project as it will not obstruct visibility for traffic and it does not exceed lot coverage. Ms. Smith advised the Board will be looking at section 702.3, Special Exceptions.

Chairperson Dulyea read aloud for discussion the special conditions for the special exception in the Martinsburg Zoning Ordinance (MZO) section of 702.3. All Boardmembers agreed the application has met the requirements for the special exception.

Boardmember Casabona made the motion to approve the application requesting a special exception according to 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 constructing a deck. The motion was seconded by Boardmember Cohee and followed by a unanimous vote of "aye". Motion carried.

2. **CASE #SE 15-012. 126 E. Burke Street. Public Hearing.** Application requesting a Special Exception pursuant to Martinsburg Zoning Ordinance 7-0-78 Section 523.2 to regulate the sale of alcoholic beverages. Robert Andrew Johnson/The Hub, Appellant.

After being sworn in by Legal Counsel, Robert A. Johnson, 2646 Welltown Road, introduced himself and stated he represents The Hub and that they have a café on site that serves sandwiches and non-intoxicating alcohol, which is beer according to the Alcoholic Beverage Commission. Mr. Johnson stated that they were asking for the Special Exception to be able to serve beer.

Chairperson Dulyea asked Mr. Johnson to explain how the sale of alcohol would be distributed. Mr. Johnson stated that the alcohol would be ordered through the café and paid for through a point of sale system. City Planner, Tracy Smith asked where in the building the café was located. Mr. Johnson answered that the café would be on the main level. Ms. Smith asked about it being in the basement, to which Mr. Johnson responded no, it wasn't going to be in the basement, a beer cooler would be located in the basement. Ms. Smith then asked if people would be able to access the beer cooler themselves. Mr. Johnson answered yes, both locations with have beer. Chairperson Dulyea asked if distribution would be regulated. Mr. Johnson stated that the beer cooler in the basement would not be regulated as it is an event center, where you would rent that location to use. Boardmember Casabona inquired if there was an age limit. Mr. Johnson stated that no one under the age of twenty-one can be downstairs and that no one under that age of twenty-one can be a member. He went on to say that it doesn't mean that a person under twenty-one years old couldn't be in the building because it is a business center where people bring clients and attorneys could have a client under twenty-one, but that those people would not be down in the event center.

Boardmember Casabona inquired as to how the entrance to the event center would be separated, for example - a door that they would be buzzed in and out of. Mr. Johnson stated that everything is card and key coded which allows members to get in and out of the building since the tenants have 24-hour access. Boardmember Casabona then asked how consumption by minors would be monitored. Mr. Johnson responded that ID's will be checked and ages would be known through the application process of becoming a member. He also noted that the location would be fully staffed at all times. Ms. Smith asked if a member has a minor child and that person is doing business in the office, how they would keep a minor from knowing the passcode and gaining access to the event center. Mr. Johnson replied that with it being a member only facility and reception in the front knowing the age of members that would be how they prevent underage drinking but that it would be hard to keep members from sharing the code. He further stated that there are monitored security cameras throughout the location that would help prevent any underage drinking.

Boardmember Mosser asked if members had access to the building after normal business hours. Mr. Johnson answered that they would only have access to their specific office facility after hours.

Ms. Smith asked Mr. Johnson to explain the renting of the event center. He stated that it was a rental for events such as Super Bowl or a Saturday night fight. Ms. Smith asked if it could be rented outside of the proposed business hours noted in the application. Legal Counsel, Catie Delligatti, noted that the application says "by reservation only" for the event center. Mr. Johnson added that even during reserved events the event center would still be fully staffed. Ms. Delligatti mentioned that the application included the normal business hours and then the event center by reservation, and asked if there were any time restrictions for

the reservations. Mr. Johnson stated that the reservation would only be made for times that they were able to staff the facility and that the times for the reservation would be determined by the time of the event and the person making the reservation. He further mentioned that they had to follow the ABC rules as well so the reservation would never extend past the ABC regulated hours.

Boardmember Casabona asked for the occupancy of the event center. Mr. Johnson stated that he didn't have the occupancy, it hasn't been provided by the Fire Marshall at this point, but he would estimate that thirty to forty people would be the maximum. He also stated that the Fire Marshal and Building Inspector have both been to the location on several occasions. The location has twenty-one offices total, seventeen are rentable on a long term lease and three of the offices are daily rentals.

Boardmember Bales voiced his concerns in regards to the path the ABC commissioner took from the front door of The Hub to the front door of the church. Ms. Delligatti advised that the decision of the path taken is entirely up to the ABC officials.

Boardmember Casabona asked if members have access to all of the amenities, such as the event center and office space. Mr. Johnson responded that they will have access to the three daily use offices, three conference rooms and about forty individual work stations, including the access to the event center. He stated that there will be both members and tenants, for working, networking, meeting other professionals and having lunch. Boardmember Casabona asked if he thought there would be people wanting to be members for reasons other than the professional services, such as having a beer and watching the big screen in the event center. Mr. Johnson explained that they have no interest in that type of situation. It's a center to network and do business, not to watch the game. Ms. Smith asked how people would be kept from just coming in for lunch or excessive drinking and not doing business. Mr. Johnson said that The Hub is clearly looking for a certain sense of professionalism and clientele. He further stated that the employees will take a training class so they can identify someone who has drunk too much alcohol and other standards in place. Membership can also be revoked if professionalism is not maintained.

Chairperson Dulyea opened the Public Hearing at 6:59 p.m. As no one came forward to speak for or against the case, public hearing was closed at 6:59 p.m.

Chairperson Dulyea read aloud for discussion the criteria for the variance in the Martinsburg Zoning Ordinance (MZO) section of 702.31. Discussion included: other neighboring businesses that sell alcohol, occupancy not being large enough to have major problems, no plans for outdoor events, the ability to bring the business back before the Board if the applicant doesn't follow the proposed guidelines, facility hours, ABC permissible hours for the sale of alcohol, proximity to the neighboring church, and number of bathrooms. All Boardmembers agreed the application has met the requirements for the special exception.

Boardmember Schoppert made the motion to approve the application requesting a Special Exception pursuant to Martinsburg Zoning Ordinance 7-0-78 Section 523.2 to regulate the sale of alcoholic beverages, with the approval being for the current owner only, for the proposed hours made in the application only, that the rules of the ABC be strictly followed, that the location be staffed during all business hours and with the knowledge that the applicant can be brought back before the Board if the location is deemed to be in violation of Section 702.31, the motion was seconded by Boardmember Blackburn and followed by a unanimous roll call vote of "aye". Motion carried.

- 3. CASE #SE 15-014. 1111 N. Queen Street. Public Hearing.** Application requesting a Special Exception according to the requirements of Section 560 "Table of Zoning District Uses," to use structure as an automobile sales, repair and service shop. Hole in the Wall New and Used Tires, LLC., Appellant.

After being sworn in by Legal Counsel, Guy & Sheila Ridler, PO Box 16, Ranson, introduced themselves and stated that currently the business sells and installs new and used tires, they would like to add vehicle inspections, alignments, maintenance repairs and the occasional sale of a privately owned vehicle.

Chairperson Dulyea asked how many vehicles were planned to be sold on the lot. Mrs. Ridler responded that at this point they didn't plan on selling any vehicles, but they wanted to include it on the application in case they decided to sell a vehicle at a later point. She stated that on occasion there might be a vehicle to sell, if only one a month. Chairperson Dulyea confirmed with the appellant that there wouldn't be more than one car for sale at a time. Ms. Smith clarified that the one vehicle a month is not cumulative – that only one vehicle shall be for sale at any one time. The appellant agreed. Chairperson Dulyea also asked of Ms. Smith if a site plan was needed. Ms. Smith responded that only a drawing of the parking layout turned into the engineer for approval would be required.

Chairperson Dulyea asked how the appellant plans to store the used tires. Mrs. Ridler answered that they have contracted with a company from Baltimore that delivers a trailer for the disposed tires, once that trailer is full, the company picks it up and disposes of the tires. Ms. Smith asked where the trailer would be parked. Mr. Ridler responded that the trailer could be stored at a mini-storage in the county. Chairperson Dulyea asked how long the tires would be stored on the Queen Street location. Mr. Ridler stated that the tires would be removed on a daily basis and taken to the trailer; he also stated that cars shouldn't sit on the property for more than that specific day. It was inquired as to the number of parking spots; Ms. Smith mentioned that the last time the site was visited they counted twelve parking spots. She also asked if the outdoor lift from the previous location was still going to be used. Mr. Ridler stated that he would like to continue to use the lift at the new location and that he had planned to put the lift at the back of the building, where it wouldn't impact the driveway or parking lot.

Chairperson Dulyea stated that the previous location did good work, but was an eyesore, basically that it looked like a junkyard. She does not want the appearance to be the same at the new location on Queen Street where so many people drive past. Mrs. Ridler responded that their plan is to have a much neater and professional appearance, without the cars sitting around and the pile of used tires. Mr. Ridler stated that the business closes at 6:00 p.m. daily and they plan to have all waste disposed of at that time. Ms. Delligatti stated that the application specifically asks for the Special Exception for repairs or body shop, and also that the city does have a junk vehicle ordinance, so they can come in and remove anything deemed to be a junk vehicle that might be stored for a specific amount of time on the property. Ms. Smith explained the sign/banner ordinance and the Use & Occupancy procedure.

Boardmember Dulyea opened the Public Hearing at 7:35 p.m. As no one came forward to speak for or against the case, public hearing was closed at 7:35 p.m.

City Planner, Tracy Smith, provided a staff report, stating that staff's concerns mirror the Board's concerns, as far as the appearance of the business on a main thoroughfare. She inquired as to the location of the dumpster and the lift at the back of the building. Mr. Ridler stated that the mobile lift in the rear of the building doesn't affect traffic or parking because of the location and the dumpster is mobile so it stays behind the building until trash pickup day when it's moved into the driveway. Ms. Smith was satisfied with these answers. Ms. Smith stated that with the abilities staff has to control the appearance and waste at this new location staff is satisfied. The applicant must meet all of the State required criteria in section 702.3.

Chairperson Dulyea read aloud for discussion the special conditions for the variance in the Martinsburg Zoning Ordinance (MZO) section of 702.3. Discussion included: the fence separating the back of the business from the surrounding residential area, Sunday business hours by appointment only, disposal of used tires, and no washing of vehicles on site. All Boardmembers agreed the application has met the

requirements for the special exception.

Boardmember Casabona made the motion to approve the application requesting a variance from Section 560 "Table of Zoning District Uses," to use structure as an automobile sales, repair and service shop with the approval being for the current owner only, no external overnight storage of tires on site, the business maintaining a professional appearance, a site plan be presented to staff for the parking area and the Fire Marshal and Building Inspector complete an expanded Use & Occupancy inspection, the motion was seconded by Boardmember Blackburn and followed by a unanimous roll call vote of "aye". Motion carried.

4. **CASE #SE 15-016. 101 Medical Court. Public Hearing.** Application for a Special Exception in accordance with Section 624.2 "Multiple-Family Dwelling Units in Combination with Business Use". 200 Clifton Square, LLC appellant.

No representative was present for this case. Ms. Delligatti stated that the plan couldn't be heard again until the June meeting to allow for the 30-day advertisement.

#### **DISCUSSION**

None

#### **OTHER BUSINESS**

- Next scheduled meeting: May 5, 2014
- Open Governmental Proceedings Act - postponed for next meeting.
- AED Training - No fire department employee available, postponed as well.

#### **ADJOURNMENT**

The meeting was adjourned at approximately 7:55 pm by unanimous consent.

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Mary Dulyea, Chairperson

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Holly Hartman, Planning Secretary