

MARTINSBURG BOARD OF ZONING APPEALS

August 18, 2016 6:30pm

232 N. Queen Street

J. Oakley Seibert Council Chambers

Regular Meeting Minutes

With a quorum present, Chairperson Schoppert 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, Brenda Casabona, Bridget Cohee, Shelly Schoppert, Martin Bales and Tom Johnson. Absent was Doreane Mosser. Also in attendance were City Planner Tracy Smith and Legal Counsel Tyler Mayhew.

APPROVAL OF June 7, 2016 MEETING MINUTES

Boardmember Bales made the motion to approve the June 7, 2016 minutes. Boardmember Cohee seconded the motion that was followed by a unanimous vote of "aye". Motion carried.

OLD BUSINESS

None

UNFINISHED BUSINESS

None

NEW BUSINESS

- 1. CASE # SE 16-044. 719 W. King Street. Public Hearing.** Special Exception to expand a legally non-conforming structure for the purposes of extending an existing rear deck/porch into a minimum required side-yard setback. Matthew Staubs, appellant.

After being sworn in by Legal Counsel, Matthew Staubs, 719 W. King Street, explained that he would like to extend the deck to eight feet, allowing him to move the steps over giving egress room from the basement.

City Planner, Tracy Smith, provided a staff report stating that the request is for a Special Exception. Ms. Smith advised that the previous location of the back porch stopped the bilco door from working. Ms. Smith stated that the building inspector has already reviewed the building permit and the HPRC has approved the change contingent upon BZA approval. She noted the porch expansion would be in-line with the existing legally non-conforming structure and not extend further than the original porch width.

Chairperson Schoppert opened the Public Hearing at 6:34 p.m. As no one came forward to speak for or against the case, public hearing was closed at 6:34 p.m.

Ms. Smith read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.32: The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it, are such that it will be in harmony with the appropriate and orderly development of the district in which it is located. There was general agreement for no concern.

Ms. Smith referred to the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) sections of 702.33, 702.34, 702.35 and 702.36: There was general agreement that these sections do not apply.

Ms. Smith read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.5 Additional Provisions: A Special Exception permit may be granted in accordance with the general and specific requirements enumerated in the preceding sections The Board may, and is hereby authorized, to add the specific requirements any additional conditions that it may deem necessary to protect adjacent properties, the general neighborhood, and the residents and/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. There was general agreement for no additional conditions.

All Boardmembers agreed the application has met the requirements for the Special Exception.

Boardmember Dulyea made the motion to approve the application requesting a Special Exception as presented. Motion was seconded by Boardmember Cohee and followed by a unanimous vote of "aye". Motion approved.

2. **CASE # V 16-047. 239 S. Illinois Avenue. Public Hearing.** Variance request to construct an addition that will exceed maximum allowed lot coverage. D. Vass Construction, appellant; and
3. **CASE # SE 16-048. 239 S. Illinois Avenue. Public Hearing.** Special Exception request to construct an addition that will expand a legally non-conforming structure by extending into a minimum required side-yard setback. D. Vass Construction, appellant.

Ms. Smith stated that double cases like this are not common, but when they are reviewed the cases are usually discussed together and the motions are separated. Chairperson Schoppert asked if a motion to this effect was needed. Legal Counsel, Tyler Mayhew advised that a motion was not necessary as long as the board was in agreeance. The Boardmembers agreed to review the cases together and make two separate motions.

After being sworn in by Legal Counsel, Dennis G. Vass, 363 Swan Pond Road, and Beverly F. VanMeter, 239 S. Illinois Avenue, gave an explanation of the project. Mr. Vass explained that the house already sits in the setback. There is a deck on the rear of the house that they would like to remove and replace with an addition to the home that is slightly larger than the deck.

Boardmember Dulyea asked if a new deck would be built. Mr. Vass answered no; there will be the addition with a cover porch and side landing with a roof. Ms. Smith asked if porches were combined in the 20x24 space. Mr. Vass stated everything was included in that space except for the 4x4 landing. Boardmember Dulyea asked if the landing was located on the side. Mr. Vass replied yes, it would be on the North side with steps going down. Boardmember Dulyea asked if the landing counted towards lot coverage if it has a roof over top. Mr. Vass stated that the landing is to be covered. Ms. Smith asked for the square footage of the landing. Mr. Vass stated sixteen square-feet adding that he has to have the landing to satisfy building codes. Ms. Smith stated that the addition of the roof makes the landing count towards lot coverage and after doing the math, the proposed lot coverage with the addition of the landing increases the lot coverage. Ms. Smith advised that the legal ads do not include numbers for this exact reason, as they are negotiated and often changed during the meeting, so this does not change any aspect of the application. Legal Counsel concurred.

City Planner, Tracy Smith, provided a staff report stating the Variance takes them up to approximately 36% lot coverage. This is a pre-existing corner lot and they will need to start with Section 903.21 criteria for the variance.

903.21 A written application for a Variance is submitted demonstrating all of the following points:

- 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; Ms. Smith stated this is a narrow corner lot that would not be allowed to exist under today's ordinance. There was general agreement from the board.
- b. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance. There was general agreement for no concern.
- c. That the special conditions and circumstances do not result from the actions of the applicant. There was general agreement for no concern.
- d. That granting the Variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same zone. No nonconforming use of neighboring lands, structures, or buildings in the same zone, and no permitted use of lands, structures, or buildings in other zones shall be considered grounds for the issuance of a Variance. There was general agreement for no concern.

All Boardmembers agreed the application has met the requirements for the Variance.

Ms. Smith advised that this is a corner lot and provided an explanation of double frontage setback requirements. She stated that under today's ordinance, the setback is supposed to be 25-feet. Ms. Smith added that a retaining wall in the back yard is starting to give and needs to be replaced, but the addition will take care of that repair as well. Ms. Smith advised that several neighbors were in agreement and wrote letters which will be read into the record.

Chairperson Schoppert opened the Public Hearing at 6:41 p.m.

Ms. Smith read into the record three letters in favor of the change all coming from the direct neighbors who would be impacted by any changes. These letters were from:

- Ronald Whetzel, Sr of 236 S. Illinois Avenue
- Jessica and Ronald Whetzel, Jr of 231 S. Illinois Avenue
- Janice and Denver Dehaven of 217 Georgia Avenue

As no one came forward to speak for or against the case, public hearing was closed at 6:43 p.m.

Ms. Smith read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.32: The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it, are such that it will be in harmony with the appropriate and orderly development of the district in which it is located. There was general agreement for no concern.

Ms. Smith read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.33: The location, nature and height of buildings, walls, and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings. There was general agreement for no concern.

Ms. Smith referred to the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) sections of 702.34, 702.35 and 702.36: There was general agreement that these sections do not apply.

All Boardmembers agreed the application has met the requirements for the Special Exception.

Boardmember Bales made the motion to approve the application requesting a Variance as presented. The motion was seconded by Boardmember Dulyea and followed by a unanimous vote of "aye". Motion approved.

Boardmember Dulyea made the motion to approve the application requesting a Special Exception as presented. The motion was seconded by Boardmember Bales and followed by a unanimous vote of "aye". Motion approved.

DISCUSSION/ACTION ITEMS

None

OTHER BUSINESS

None

ADJOURNMENT

The meeting was adjourned at approximately 7:00 pm by unanimous consent.

Shelly Schoppert, Chairperson

Holly Hartman, Planning Secretary