

**MARTINSBURG BOARD OF ZONING APPEALS**

July 07, 2015 6:30pm

232 N. Queen Street

J. Oakley Seibert Council Chambers

Regular Meeting Minutes

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With a quorum present, Chairperson Dulyea 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, Brenda Casabona, Doreane Mosser, Bill Blackburn and Martin Bales. Also in attendance were City Engineer/Planning Director Michael Covell, Legal Counsel Catie Delligatti and Planning Secretary Holly Hartman.

**APPROVAL OF May 05, 2015 MEETING MINUTES**

The minutes were approved by unanimous consent.

**OLD BUSINESS**

None

**UNFINISHED BUSINESS**

None

**NEW BUSINESS**

1. **CASE #SE 15-016. 101 Medical Court. Public Hearing.** Application requesting a Special Exception according to requirements of Section 624.2 "Multiple-Family Dwelling Units in Combination with Business Use". 200 Clifton Square, LLC., Appellant.

After being sworn in by Legal Counsel, Charles Engle, of 454 Halltown Road, introduced himself as a manager for Clifton Square, LLC. Mr. Engle explained that there are commercial spots in the building that they would like to turn into residential spaces because there isn't enough commercial business. Mr. Engle further explained that he was only made aware of the basic information of the project today after the owner called him and asked him to represent the project at the meeting as he was unable to make it. He stated that he didn't know much about it and was unable to make any decisions regarding the project.

City Engineer/Planning Director, Mr. Covell provided a staff report, stating that the ability to do the project is there, and the site is adequately parked. He noted that the site is located on one large parcel which is allowed to have a mixed use by Special Exception.

Boardmember Casabona asked for the net square footage of the units because they appear to be a very small size compared to average sizes. Mr. Engle agreed that fourteen residential units will not fit the space; the units will have to be larger than proposed to accommodate residential use. Mr. Engle stated that the current size of the proposed residential units is 20x25 feet.

Chairperson Dulyea stated she is concerned with the attached floor plan. It does not give enough information; there are no indications of individual room sizes, bathrooms or even windows. Mr. Engle stated that the owner wants the building to be half commercial and half residential. He stated that the side of the building with the windows would be residential and the other half would be the offices. Chairperson Dulyea clarified that commercial offices would be across the hall from residential units. Mr. Engle agreed.

Boardmember Bales asked the size of the current bathrooms. Mr. Engle replied that they are only half bathrooms right now, and that they will have to be upgraded with showers.

Chairperson Dulyea asked if the building was handicap accessible. Mr. Engle answered that it is handicap accessible.

Boardmember Casabona stated that the board does not have enough information to make a decision. Chairperson Dulyea agreed and asked Mr. Engle if he was able to make decisions regarding this application. Mr. Engle replied that he is not able to make decisions.

Legal Counsel, Catie Delligatti, asked for the number of residential units proposed for the location. Mr. Engle stated that he is not sure. Ms. Delligatti explained what a decision could be based on per the ordinance. Mr. Covell stated that Mr. Engle has been placed in a tough situation because he does not have full comprehension of the request.

Chairperson Dulyea asked if the request could be tabled until the next meeting. Ms. Delligatti asked if staff has a specific timeline in which a new application needs to be submitted. Boardmember Blackburn stated that he remembers in a similar situation, the project stayed tabled until they were able to move forward with it. Mr. Covell stated that in his experience a case like this has gone so far as to open and close the public hearing in case anyone came for the advertised public hearing, which satisfies the public hearing requirements, which also allows you to bring the case back at a future meeting without the advertising requirement for public hearing. He further noted that it is up to the interpretation of legal counsel.

Ms. Delligatti responded that it can be handled that way, but she is uneasy with it because a decision is supposed to be made within fifteen days of the public hearing. If the public hearing is held but a decision is not made until the next meeting, that goes well past the fifteen day requirement. Mr. Covell stated that he would hate to default and lose the chance to have control over a development review, and that the case could be brought to a motion depending on representation of the case.

Boardmember Schoppert noted that this is the second time the applicant has not shown for the public hearing. Boardmember Casabona stated she feels this is not a good use for the property and that two no-shows is potentially a sign of a bad landlord. Ms. Delligatti stated that her advice is to consider the information brought forth and make a decision based on it.

Chairperson Dulyea opened the Public Hearing at 6:46 p.m. As no one came forward to speak for or against the case, public hearing was closed at 6:46 p.m.

Chairperson Dulyea read aloud for discussion the special conditions for the special exception in the Martinsburg Zoning Ordinance (MZO) section of 702.31: The proposed use is in harmony with the purpose and intent of the Martinsburg Comprehensive Development Plan and of this zoning ordinance. Discussions included, but were not limited to, the items noted and not having enough information to make a decision, units being too small for a residence, and mixed use zoning being allowed at location only after board approval.

Chairperson Dulyea 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. Discussions included, but were not limited to, the items noted and surrounding apartments and townhouses and the possibility of units being monthly rentals or a boarding house.

Chairperson Dulyea 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. Discussions included, but were not limited to, the items noted and the surrounding area being fully developed.

Chairperson Dulyea read aloud for discussion the special conditions for the special exception in the Martinsburg Zoning Ordinance (MZO) section of 702.34: Operations in connection with any special use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or other characteristics, than would be the operations of any permitted use not requiring a special permit. There was general agreement for no concern.

Chairperson Dulyea read aloud for discussion the special conditions for the special exception in the Martinsburg Zoning Ordinance (MZO) section of 702.35. Discussions included, but were not limited to, the items noted and the location being a multi-use building, mixed use of parcel not being good for businesses, and where the children would play if there were no yard area.

Chairperson Dulyea read aloud for discussion the special conditions for the special exception in the Martinsburg Zoning Ordinance (MZO) section of 702.36: Public utility service (electricity, sewerage, storm drainage and water) will be adequate to service the proposed use and will have suitable access thereto, and the proposal will not overburden existing facilities; or, any onsite water supply, sewage treatment, or storm drainage disposal system will be adequate to service the proposed use. There was general agreement for no concern.

All Boardmembers agreed the application has not 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 624.2 "Multiple-Family Dwelling Units in

Combination with Business Use". The motion was seconded by Boardmember Blackburn and followed by a unanimous vote of "nay". Motion denied.

Mr. Engle was informed that there was not enough information to make a decision, and that the applicant can address any issues with the city and the appeal process will be explained in the decision letter that will be mailed out.

- 2. CASE #V 15-033. 212 W. Burke Street. Public Hearing.** Application requesting a variance according to the requirements of Sections 430.4 "Schedule of Off-Street Parking Requirements" for relief from minimum required off-street parking spaces and Section 522.3 "Design Limitations" under Section 522 "Service Business District" to exceed maximum size requirements for business sign. Caledonia Investments, Appellant.

After being sworn in by Legal Counsel, Glenn Barnes, Jr, 619 Idyllwood Drive, Inwood, introduced himself and stated that he is a manager and estimator for JC Smith. Mr. Barnes explained that the building has been vacant for over twenty years and they would like to take the vacant building and have office space on the first floor and 2 apartments on the second floor. He stated that all three units will be rented out and that they are trying to clean up the neighborhood. This is one of the last eyesores on the block.

Mr. Covell provided a staff report, stating that the request is for a variance from parking, the pictures show that the back of the property is unable to be developed into off street parking, it's not impossible, but there it would be very difficult and they would gain maybe two or three parking spots at the most. It may be better to save the backyard space and grant the variance. Mr. Covell stated that the zoning is appropriate for the mixed used. He further mentioned that parking is generally controversial but the applicant could compete for the on street parking or get permission from adjacent parking lot owners. Parking may or may not be satisfied with strictly on street parking. Mr. Covell stated that the owner has been making effort on getting parking relief with adjacent owners, but has been unsuccessful thus far. He stated that through staff's research they are fairly satisfied with the redevelopment. It makes sense, and the request is not without merit, but deserves questioning to be sure to give a justified amount of relief. In regards to the sign, they are asking for a similar sign to what is next door at the JC Smith office and it has to be approved by the HPRC as well. Mr. Covell stated that staff has no issues with the sign request as long as it is appropriately sized and reflective of the neighborhood.

Boardmember Casabona gave her interpretation of the sign requirement, stating that it looks to mean one square foot per occupant or professional not to exceed four square feet. Boardmember Blackburn asked the size of the current sign. Mr. Barnes replied that it is approximately three square feet. Ms. Delligatti advised that if the request is granted be specific with the size of the sign.

Boardmember Blackburn asked how many spots were needed for the three units. Boardmember Casabona answered that a total of nine spaces are required. Mr. Barnes mentioned that JC Smith owns five parking spaces behind their office space next door. Boardmember Casabona asked if the five spaces were legally needed by 210 W. Burke Street or if they could be considered as parking for 212 W. Burke Street, or if a cross parking agreement was possible due to low demand for the parking spaces at the same time. She further mentioned that there are twenty-two on street

parking spaces locally and asked about section 436.1 regarding a modified parking plan for hardship in special cases.

Ms. Delligatti responded that she was looking at this case under the variance criteria, not the hardship criteria. Also, the board could take into consideration the lot structure. Mr. Covell stated the hardship section is not used very often. The request is specifically based on parking and the inability to develop parking. In this case, the applicant cannot develop parking. Mr. Covell stated that this property has to be thought of on its own, not that the owner is the neighbor, and that the parking is not a condition created by the applicant. He went on to say the back yard is inaccessible, and the variance can stand on its own merit instead of pushing the cross parking agreement if the board chooses to do so.

Boardmember Cohee asked historically, how the property line was created. Mr. Covell responded that the problem was not created intentionally, and that the research dates well prior to the property being purchased by JC Smith. Ms. Delligatti stated the current lots lines were in place prior to the creation of the current zoning ordinance.

Chairperson Dulyea opened the Public Hearing at 7:28 p.m.

- Helen Henderson, 211 W. Burke Street, spoke in favor of the request. She is delighted that the house is being renovated. Ms. Henderson stated that there are not normally any issues with parking, so she does not believe this will cause a problem and that the sign request is for a reasonably sized sign.
- David Anderson, 104 Music Court, spoke in favor of the request. Mr. Anderson stated that the parking is a very minor issue. Especially in the evening once the local offices are closed. He feels people expect to look for parking in town.

As no one else came forward to speak, public hearing was closed at 7:30 p.m.

Chairperson Dulyea started to read aloud for discussion the criteria for the variance in the Martinsburg Zoning Ordinance (MZO) section of 903.21. Ms. Delligatti asked if both the sign and parking were being addressed. The board agreed to discuss the issues separately. Parking will be addressed first, then the sign.

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. Discussions included, but were not limited to, the items noted; there was general agreement for no concern.
- 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. Discussions included, but were not limited to, the items noted; there was general agreement for no concern.

c. That the special conditions and circumstances do not result from the actions of the applicant. Discussions included, but were not limited to, the items noted; 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. Discussions included, but were not limited to, the items noted; there was general agreement for no concern.

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

Boardmember Cohee made the motion to approve the application requesting a variance according to the requirements of Sections 430.4 "Schedule of Off-Street Parking Requirements" for relief from minimum required off-street parking spaces. The motion was seconded by Boardmember Schoppert and followed by a unanimous vote of "aye". Motion carried.

And

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. Discussions included, but were not limited to, the items noted; there was general agreement for no concern.

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. Discussions included, but were not limited to, the items noted; there was general agreement for no concern.

c. That the special conditions and circumstances do not result from the actions of the applicant. Discussions included, but were not limited to, the items noted; 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. Discussions included, but were not limited to, the items noted; there was general agreement for no concern.

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

Boardmember Cohee made the motion to approve the application requesting a Variance according to the requirements of Section 522.3 "Design Limitations" under Section 522 "Service Business District" to exceed maximum size requirements for business sign with the stipulation that the sign not exceed three square feet. The motion was seconded by Boardmember Blackburn and followed by a unanimous vote of "aye". Motion carried.

**DISCUSSION**

None

**OTHER BUSINESS**

- Next scheduled meeting: August 4, 2015

**ADJOURNMENT**

The meeting was adjourned at approximately 7:38 pm by unanimous consent.

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Mary Dulyea, Chairperson

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Holly Hartman, Planning Secretary