

MARTINSBURG BOARD OF ZONING APPEALS

March 03, 2015 6:30pm

232 N. Queen Street

J. Oakley Seibert Council Chambers

Regular Meeting Minutes

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, and Martin Bales. Absent were Brenda Casabona and Bill Blackburn. Also in attendance were City Planner Tracy Smith, Legal Counsel Catie Delligatti and Planning Secretary Holly Hartman.

Mary Dulyea was elected by the Board to serve as Chairperson for this meeting only as the Chairperson and Vice-chairperson were both absent.

APPROVAL OF December 02, 2014 MEETING MINUTES

Boardmember Bales made the motion to approve the December 2, 2014 minutes with the amendment of the word "non-conforming" is case 2. 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 15-004. 1105 S. Raleigh 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 constructing an addition. Russell Brown, appellant.

After being sworn in by Legal Counsel, Russell Brown, 178 Quartz Road, Martinsburg, introduced himself and stated he is asking for a special exception to construct an addition with a six foot setback instead of the required ten feet. He stated that the surrounding lots are wooded and vacant so there will be no disruption and they have a six foot privacy fence.

City Planner, Tracy Smith, provided a staff report, stating that in 2006 there was a variance requesting relief for placing the structure in the ten foot setback. That variance was granted and a legally non-conforming structure was created. Now Mr. Brown would like to put an addition on the back of the house. Ms. Smith advised the Board will be looking at section 702.32, Special Exceptions.

Boardmember Dulyea opened the Public Hearing at 6:38 p.m. As no one came forward to speak for or against the case, public hearing was closed at 6:39 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. Discussion included the height of the building, the privacy fence, off-street parking and the one time only allowance of the expansion of the structure. All Boardmembers agreed the application has met the requirements for the special exception.

Boardmember Cohee 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 an addition, the motion was seconded by Boardmember Mosser and followed by a unanimous roll call vote of "aye". Motion carried.

2. **CASE # V 15-007. 201 N. Kentucky Avenue. Public Hearing.** Application requesting a variance from Section 422.2 "Fences, Wall and Hedges" for construction of a six foot high privacy fence within a front yard area. Long Fence, appellant.

Ms. Smith mentioned that Cathy Dodson with the Housing Authority for Case #V 15-007 was not present yet and asked that we move this case to the end of the agenda. Case #SE 15-009 will be heard prior to Case# V 15-007. The Board had no objections moving the case and it was approved by acclamation.

3. **CASE # V 15-009. 718 Morgan Street. Public Hearing.** Application requesting a variance from minimum setback requirements of Section 420 "Lot Area, Yard & Building Requirements" to construct a single-family dwelling that will extend into a minimum required side yard setback. Joseph Potter, appellant.

After being sworn in by Legal Counsel, Joseph Potter, 489 Torytown Road, Bunker Hill, introduced himself and stated he is asking for a variance to build a house on Morgan Street. He mentioned that the lot has been empty for at least fifteen to twenty years.

City Planner, Tracy Smith, provided a staff report, stating that it is a vacant lot and that essentially if Mr. Potter is to put in a single-family dwelling and have the amenity of a carport, the lot is not wide enough. With his current house design concept the home is narrow enough to fit on the lot but this does not include the carport. Ms. Smith went on to say that what is being asked for with this variance is a shift in where a house would traditionally be with a ten foot side yard setback to have five feet on either side to accommodate a carport.

Legal Counsel, Catie Delligatti, asked if the lot was created before the adoption of the current ordinance. Ms. Smith responded that the lot was created well before the adoption of the ordinance.

Boardmember Dulyea asked if there would be off street parking. Ms. Smith responded no, but that would be taken into consideration. Without the carport, the applicant will be forced to drive to the rear of the property and park in the center of the property. She further stated that you cannot park in the side yard, front yard or rear yard setback, so in order to accommodate parking without a carport Mr. Potter would have to essentially create a parking pad in the middle of his back yard.

Boardmember Dulyea opened the Public Hearing at 6:52 p.m. As no one came forward to speak for or against the case, public hearing was closed at 6:52 p.m.

Ms. Smith read aloud for discussion the criteria for the variance in the Martinsburg Zoning Ordinance (MZO) section of 903.21. Mrs. Delligatti noted that the Board was only discussing the carport for this project because the house is able to be built on the lot due to the lot being created prior to the ordinance being adopted. Discussion included: the property owner not having a yard if the carport is not allowed; that the request was not a result of the appellant's actions; that no special circumstance would be conveyed and that others in the same zoning district enjoy the use of a carport or garage. All Boardmembers agreed the application has met the requirements for the variance.

Boardmember Dulyea read section 903.24 and 903.25 to the Board and asked for thoughts or agreement. The Board concurred.

Boardmember Cohee made the motion to approve the application requesting a variance from minimum setback requirements of Sections 420 “Lot Area, Yard, & Building Requirements” to construct a single-family dwelling that will extend into a minimum required side yard setbacks., the motion was seconded by Boardmember Bales and followed by a unanimous roll call vote of “aye”. Motion carried.

2. **CASE # V 15-007. 201 N. Kentucky Avenue. Public Hearing.** Application requesting a variance from Section 422.2 “Fences, Wall and Hedges” for construction of a six foot high privacy fence within a front yard area. Long Fence, appellant.

Mrs. Dodson arrived prior to the start of her case being heard.

After being sworn in by Legal Counsel, Wes Jenkins with Long Fence, 1352 Steed Street, Ranson, introduced himself and stated he is asking for a variance to construct a six foot high privacy fence. Mr. Jenkins mentioned that it was his fault that the fence was installed without prior approval from the Board.

City Planner, Tracy Smith, provided a staff report, stating that the fence is currently installed and that the Planning Department has pursued the applicant to obtain a building permit at which time the inspector reported that it was a corner lot. Corner lots are considered to have two frontages and that the current ordinance allows a front yard to have a maximum fence height of four feet, the fence installed is six feet. The applicant is here requesting a variance in order to keep the installed fence. She further stated that the fact that the fence is already installed should not affect deliberations. The applicant must meet all of the State required criteria in section 903.21.

Legal Counsel swore in Katherine Dodson, Executive Director of the Martinsburg Housing Authority, who explained that there was a 4 foot chain-link fence that separated the apartments from the adjoining city park that was falling down and they wanted to install something nicer that was consistent with the rest of the neighborhood. She went on to explain that the Housing Authority was trying to keep the children from jumping the fence to go to the playground. The fence was installed to increase security for the children.

Boardmember Dulyea opened the Public Hearing at 7:06 p.m. As no one came forward to speak for or against the case, public hearing was closed at 7:06 p.m.

Ms. Smith read aloud for discussion the special conditions for the variance in the Martinsburg Zoning Ordinance (MZO) section of 903.21. Discussion included: the safety of the children; requirements of RML districts; the frontage of the lot; the need for fencing for security reasons; that no special privilege would be conferred; special conditions have been established for security reasons and that others in the same zoning district enjoy security fences. All Boardmembers agreed the application has met the requirements for the variance.

Boardmember Bales made the motion to approve the application requesting a variance from Section 422.2 “Fences, Walls, and Hedges” for construction of a 6-foot high privacy fence within a front yard area, the motion was seconded by Boardmember Cohee and followed by a unanimous roll call vote of “aye”. Motion carried.

DISCUSSION

None

ELECTION OF OFFICERS

Boardmember Dulyea opened the floor for nominations for Chairperson at 7:23 p.m.

Boardmember Schoppert nominated Boardmember Dulyea as Chairperson. Boardmember Bales seconded the motion. With no other nominations, Boardmember Dulyea moved to close the floor for nominations by acclamation. By acclamation Boardmember Dulyea was elected as Chairperson.

Boardmember Dulyea opened the floor for nominations for Vice-Chairperson at 7:24 p.m.

Boardmember Dulyea nominated Boardmember Cohee as Vice-Chairperson. Boardmember Schoppert seconded the motion. With no other nominations, Boardmember Dulyea moved to close the floor for nominations by acclamation. By acclamation Boardmember Cohee was elected as Vice-Chairperson.

ADJOURNMENT

The meeting was adjourned at approximately 7:27 pm by unanimous consent.

Mary Dulyea, Chairperson

Holly Hartman, Planning Secretary