

MARTINSBURG BOARD OF ZONING APPEALS
May 3, 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, Shelly Schoppert, Doreane Mosser, Martin Bales and Tom Johnson. Absent was: Bridget Cohee. Also in attendance were City Planner Tracy Smith, Legal Counsel Catie Delligatti and Planning Secretary Holly Hartman.

It was determined that Boardmember Mosser would be a voting member during this meeting due to Boardmember Cohee's absence.

APPROVAL OF April 5, 2016 MEETING MINUTES

Boardmember Dulyea made the motion to approve the April 5, 2016 minutes. Boardmember Bales 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 16-022. 1604 W. King Street. Public Hearing.** Special Exception request to use existing structure for professional office purposes. Christopher Stewart/Stewart Financial Advisors, LLC., appellant.

After being sworn in by Legal Counsel, Christopher Stewart, 1604 W. King Street, explained that he is requesting a Special Exception because his family is planning to move to another residence in the next few months and they desire to keep their current house as strictly business use. Mr. Stewart stated that he was not asking for a zoning change.

Boardmember Bales asked for the intended use of the second floor as only the first floor can be used for business purposes and asked for the square footage of the first floor. Mr. Stewart replied that the second floor would only be used as storage space. Boardmember Bales then asked about the parking area. Mr. Stewart answered that the plan is to remove the garage and use that as a parking area which will give him seven parking spots.

City Planner, Tracy Smith, provided a staff report, stating that the request is for a Special Exception, not a change in zoning; the difference being that a Special Exception to have a professional office located in a residential district has been allowed in the ordinance since 1970. Ms. Smith referenced Section 732.2 from the Martinsburg Zoning Ordinance, advising that the professional office has not been an issue at this location as it is an allowed home occupation of the people living in the home and that the second floor of the home will not be used for professional purposes. Ms. Smith asked that the Special Exception, if granted, is only for the current owner; if the owner changes, the property would revert back to residential use.

Chairperson Schoppert opened the Public Hearing at 6:40 p.m.

- Barbara Bratina, 116 N. Tennessee Avenue, spoke against the request. Ms. Bratina feels that King Street is the gateway, and only attractive entrance, to downtown Martinsburg and residents have been fighting the encroachment of businesses in the area for over twenty-five years. She stated that the business would be welcomed downtown, but not in a residential area, and that extra parking spaces are not harmonious with surrounding residences. Ms. Bratina referenced the purpose of the Martinsburg Zoning Ordinance as listed on the city website.
- Cynthia Baynam, 1225 W. King Street, spoke against the request. Ms. Baynam referenced a home on King Street that was denied for a State Farm office previously. She stated that her husband works from home with no signage and that Howard Mann works from home also with no signage.
- John Tavener, 105 S. Vista Lane, spoke against the request. Mr. Tavener is concerned that Mr. Stewart may plan to request rezoning of the property at a later date.

As no one else came forward to speak for or against the case, public hearing was closed at 6:47 p.m.

Chairperson Schoppert 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. There was general agreement for no concern.

Chairperson Schoppert 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. Discussion included where to draw the line between business and residential, the small scale professional use of the location not detracting from the greater residential area and parking.

Chairperson Schoppert 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. Discussion included screening between the current location of the garage and surrounding properties, fencing and that there were no plans for any structural changes.

Chairperson Schoppert 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. Discussion included the length of time the business has been at the current location, that clients are by appointment only and there would be no increase in traffic.

Chairperson Schoppert read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.35: Parking areas will be of adequate size for the particular use, properly located and suitable screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety. Discussion included the existing layout with no entrance or exit ways and not disturbing the back yard area.

Chairperson Schoppert 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.

Chairperson Schoppert read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 632.2 Professional Offices: The Board may permit limited professional office use in residential districts as a Special Exception, subject to the following requirements.

- a. Such uses shall be confined to the offices of doctors, dentists, lawyers, accountants, and similar professional persons, who need not have living quarters in the building. There was general agreement for no concern.
- b. Such uses shall not be located above the ground-level floor and shall be so located, constructed and sound-controlled as to protect tenants of the building from noise, odor, and office traffic. The exterior of the premises shall not be changed or altered, nor shall any name plate or other sign exceeding two (2) square feet in area be displayed on the premises. There was general agreement for no concern.
- c. There shall be provided sufficient "reserved" parking spaces during hours of operation to accommodate patients, clients, and visitors. There was general agreement for no concern.

Legal Counsel, Catie Delligatti, asked that any approval be made subject to the requirements set forth in 632.2 and specific to Mr. Stewart only. Ms. Smith added that non-conformance can bring the case back before the Board of Zoning Appeals.

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 request to use existing structure for professional office purposes contingent upon Christopher Stewart being the owner and conforming with Section 632.2. The motion was seconded by Boardmember Mosser and followed by a split vote of Boardmembers Dulyea, Casabona, Schoppert and Mosser voting "aye" and Boardmember Bales voting "nay". Motion approved.

Ms. Delligatti stated that two anonymous letters sent in to staff will be added to the record and stay on file.

- 2. CASE # V16-023. 1604 W. King Street. Public Hearing.** Variance request for signage for a non-conforming business. Christopher Stewart/Stewart Financial Advisors, LLC., appellant.

Christopher Stewart requested to withdraw this application.

- 3. CASE #V16-024. 101 Mahogany Court. Public Hearing.** Variance request from minimum front yard setback requirements to construct an attached garage on a corner lot. Clifford Boyles, appellant.

After being sworn in by Legal Counsel, Clifford Boyles, 101 Mahogany Court, stated he would like to add an attached garage to his house but because of the setback requirements due to his property being a corner lot, a garage would not be allowed. Mr. Clifford added a signed letter from surrounding homeowners to the case file.

City Planner, Tracy Smith, provided a staff report stating that she visited the property with the building inspector and it was determined that there is not anywhere else an attached garage could be located. There is no room on the other side of the house and if it were a center lot instead of a corner lot the applicant would meet the setback requirements. Ms. Smith stated that the proposed location of the garage would not protrude out any further than the recently cut down trees and would not interfere with the line of sight. Ms. Smith advised that it was not reasonable to build the garage on the back of the house because of the topography.

Boardmember Casabona asked if the elevation of the land was peculiar to this property. Ms. Smith responded yes. Also adding that the original building permit for the home included the garage and did not predate the Zoning Ordinance.

Ms. Smith advised that the addition of the garage took the lot coverage up to twenty-nine percent which means this would be the last addition to the structure and no more out-buildings would be allowed.

Boardmember Bales asked about the basement entrance. Mr. Boyles explained that the entrance to the basement and side deck will be removed and the garage will come down beside that and be attached to the house. You will be able to enter the garage through the house and there will be a back door out of the garage.

Chairperson Schoppert opened the Public Hearing at 7:10 p.m. Ms. Smith noted that the five signatures on the letter added to the file were in favor of the request. As no one came forward to speak against the case, public hearing was closed at 7:11 p.m.

Chairperson Schoppert read aloud for discussion the special conditions for the Variance in the Martinsburg Zoning Ordinance (MZO) section of 903.21 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. There was general agreement for no concern.

Chairperson Schoppert read aloud for discussion the special conditions for the Variance in the Martinsburg Zoning Ordinance (MZO) section of 903.21 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.

Chairperson Schoppert read aloud for discussion the special conditions for the Variance in the Martinsburg Zoning Ordinance (MZO) section of 903.21 c. That the special conditions and circumstances do not result from the actions of the applicant. There was general agreement for no concern.

Chairperson Schoppert read aloud for discussion the special conditions for the Variance in the Martinsburg Zoning Ordinance (MZO) section of 903.21 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.

Ms. Delligatti added that a finding must be made that the reasons set forth in the application justify the granting of the Variance and that the Variance is the minimum Variance that will make possible the reasonable use of land, building or structure and; a finding that granting of the Variance will be in harmony with the general purpose and intent of the ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. There was general agreement for no concern.

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

Boardmember Casabona made the motion to approve the application requesting a Variance from minimum front yard setback requirements to construct an attached garage on a corner lot. The motion was seconded by Boardmember Dulyea and followed by a unanimous vote of “aye”. Motion approved.

DISCUSSION/ACTION ITEMS

None

OTHER BUSINESS

None

ADJOURNMENT

The meeting was adjourned at approximately 7:14 pm by unanimous consent.

Shelly Schoppert, Chairperson

Holly Hartman, Planning Secretary