

MARTINSBURG BOARD OF ZONING APPEALS

November 05, 2013, 6:30pm

232 N. Queen Street

J. Oakley Seibert Council Chambers

Regular Meeting Minutes

With a quorum present, Chairperson Casabona called the regular scheduled meeting of the City of Martinsburg Board of Zoning Appeals to order at 6:30 pm. The following Board members were present: Brenda Casabona, April King, Mary Dulyea, Bill Blackburn, Bridget Cohee (7:20pm), and Frank Bradley. Not present was Matthew Coffey. Also in attendance were City Planner Tracy Smith and Legal Counsel Kin Sayre.

APPROVAL OF October 1, 2013 MEETING MINUTES.

The minutes were approved by unanimous consent.

OLD BUSINESS

None

UNFINISHED BUSINESS

None

NEW BUSINESS

- 1. CASE V13-051. 412 S. Georgia Avenue. Public Hearing.** Application requesting a variance from parking requirements in accordance with Sections 430.4 "Schedule of Off-Street Parking Requirements". Bonnie Schultz, appellant.

Bonnie Schulz, after being sworn in by legal counsel, presented this request to convert an existing basement apartment into a legal separate unit for rental purposes. Ms. Shultz explained that she had been informed by the Planning Department that as long as she had a large enough lot size and could provide an off-street parking space, this would be possible. She went on to say that as she cannot place that parking pad in a setback or in the front yard, she was requesting a Variance. It was noted that she could put a parking pad in the rear yard but that the driveway would only be 8-ft 9-inches wide due to the existing house wall. Ms. Shultz mentioned her application proposed several options that would allow for parking in the side-yard, in the front-yard, to the side of the house, or simply on the street. The Board was provided with one week's worth of photographs showing the availability of street parking in the morning, afternoon and evening hours, and photographs of the house as it appears today. Ms. Shultz stated she wants to make the unit a legal unit in part so that the number of tenants can be controlled by the city code, as one of the problems she's been having, is that tenants move friends or associates in without her approval in her properties that have a finished basement.

City Planner Tracy Smith provided a staff report. Ms. Smith noted that the City Engineer/Planning Director Mike Covell has been the primary contact person for this application. She provided a brief history of this application noting that all conditions are present that allow for this conversion under the requirements of the current Martinsburg Zoning Ordinance citing Mr. Covell's written checklist/staff report (see Case File for details). It was noted that the structure is considered "legally non-conforming" as the connected garage is situated approximately a foot and a quarter into the required side-yard setback. Ms. Smith stated that to the best of her knowledge the basement had been converted into a "mother-in-law" suite a long time ago although stairs connected the two levels. It was also noted that, after confirming with the City Engineer and Building Code Official, there is no minimum required width for a driveway, therefore, Ms. Shultz could develop an 8-ft driveway alongside the existing garage and provide a parking pad in the rear that would satisfy the requirements of the zoning ordinance. Ms. Smith went on to note that creation of an 8-ft wide drive would not be wise as it would open up the risk of hitting the structure or the fence. Ms. Smith confirmed that the actual use of this existing structure as a two-family dwelling in a permitted use in the RUA (Urban Residential Class A) districts and that the only item under review here today is to determine whether or not a parking variance can

be granted for relief from a single off-street parking space. It was noted that if this application is not approved, Ms. Schultz can still convert her house into two units and create an 8-foot wide driveway with parking pad, and comply with all of the requirements (as shown in "option 3"), but she is applying for this Variance because that 8-foot driveway is not wise or desirable. Ms. Smith stated that first the Board needs to be satisfied that this is actually a viable variance request by reviewing Section 903.21 to establish that all criteria can be met and secondly, weighing the consequences of not approving the request knowing that the applicant can still move forward with the conversion.

The Public Hearing was opened at 6:51pm. Two people came forward to speak regarding this request:

- Dennis Etherington, Ward One Councilman – 501 S. Georgia Avenue. Mr. Etherington stated he's not sure if he's in favor of this request or not. After hearing the Staff Report, the majority of his questions have been addressed, the only thing he really wants to say is, if the Board grants the application and allows the driveway to the back of the house, and if we can control what type of driveway it is, that it not be gravel and that it be the same as the existing driveway which is concrete. He noted that gravel could potentially be spun out under the tires causing damage to houses and fences in close proximity.
- Rebecca Gamble – 413 S. Georgia Avenue. Provided an overview of the growth of the neighborhood noting that her daughter and family live across the street and directly next door to Ms. Schultz's house; a history of the tenancy of 412 S. Georgia from the date she and her family moved in across the street; the deteriorating level of maintenance under Ms. Schultz's ownership including a dead tree; construction work that began without a building permit; construction work taking place at night and on the weekends resulting in a "stop work order" and; vulgar and volatile construction workers resulting in Police action. Ms. Gamble expressed objects to the conversion to a two-family dwelling stating that all the homes in that neighborhood are single-family. She went on to review the criteria for allowing a Variance expressing her opinion that the applicant does not meet the requirements of our zoning ordinance.

Chairperson Casabona asked if we know when the "mother-in-law suite" was created. Ms. Smith replied that we do not have that information, but that according to the inspectors, the house has been set up that way throughout its rental history. She went on to reaffirm that just because a second separate living space exists in one structure, it does not constitute a second rental unit.

The Public Hearing was closed at 7:02pm as no one else came forward to speak for or against this request.

Discussions included but were not limited to: "Mother-in-law-suites"; non-conversion agreements; second units in single-family districts; "grandfathered" units; permitted two-unit uses; lot size and coverage size; parking requirements; the design criteria for two-family dwellings; multi-family units; parking in setback; lack of requirements for the required width of a driveway and; the application for a parking variance not for the property use.

Boardmember Blackburn made the motion to approve the request for parking for one parking space. The motion was seconded by Frank Bradley and followed by discussion as follows and as laid out in MZO Section 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;

Chairperson Casabona stated her inability to find compliance with Criteria A. Discussions included neighboring properties that have enlarged parking pads either legally or illegally and parking requirements for single and two-family dwellings. Legal Counsel Kin Sayre noted that the applicant has enough area in the rear yard to support another off-street parking space without the need for this Variance approval and the question for the Board is, are we going to require she put in that second space or allow its creation in the front yard. Chairperson Casabona noted the Board must find this criterion has been met to continue. Boardmember Blackburn stated that in his opinion there is no special condition or circumstance peculiar to that property.

It was noted that structure is legally non-conforming with a side yard setback of eight-feet. Mr. Sayre noted that the Board has no obligation to approve a request simply because a neighbor already has it. Boardmember Bradley stated that the other structures in the neighborhood have undersized setbacks. Chairperson Casabona restated her opinion that there is no special condition. Boardmember Blackburn concurred. Mr. Sayre stated, for the record, that no member found any special condition or circumstance and four members did not; he went on to ask for confirmation. All Board members agreed.

- 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;

Boardmember's Bradley and Dulyea stated a belief that this criterion has been met. Members were split three-to-one on this criterion.

- c. That the special conditions and circumstances do not result from the actions of the applicant;

No Boardmember could find cause to say this criterion was met.

- 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.

All Boardmembers agreed with this statement.

Discussions were followed by a roll call vote as follows: Boardmembers Bradley and Dulyea: yes; Boardmember Blackburn and Casabona: No. Motion failed as approvals require a majority vote. Legal Counsel noted that this denial does not prevent the conversion with the creation of the rear yard parking space and stated that we do not have the ability to control construction materials used in the construction of the driveway.

2. CASE SE13-052. 127 E. King 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. Lesco Beverage, LLC., appellant.

Leslie Hill presented this request for the ability to serve alcohol for on-site consumption. Mr. Hill stated he is reopening the old Station Grill location. He provided a brief description of remodeling plans, exterior changes, lighting improvements, and menu.

Ms. Smith confirmed this is a previous restaurant/bar location that will be reopened under new ownership. In accordance with Regulation 7-0-78 to regulate the sale of alcoholic beverages on-site, the business must make application to the Board of Zoning Appeals when located in the Downtown Business district. Ms. Smith directed the members to the requirement page in the Martinsburg Zoning Ordinance for review.

Chairperson Casabona asked about the hours of operation. Mr. Hill noted his hours are in the application but cannot provide a comparison. Boardmember Dulyea noted, and Mr. Sayre confirmed, that State Law requires bars to close at 3:30am and all employees must be out by 4am.

Chairperson Casabona also noted the application is for the same type of business as previously in that structure.

Chairperson Casabona opened the public hearing at 7:37pm. Two people came forward to speak in favor of this request:

- Drew Dickson, the restaurant manager, stated this would be an asset to the downtown business district.
- Richard Kline, with Alpha Associates, supports any business wanting to come downtown especially restaurants.

As no one else came forward to speak for or against this request, the public hearing was closed at 7:39pm.

Discussions included the application process to the ABC Commission via City Council, development policy, impact on the surrounding neighborhood, location and intensity of use, access and parking availability, and the fact that this has been an existing restaurant/bar location for many years.

Boardmember Dulyea made the motion to approve this request. Boardmember Blackburn seconded the motion that was followed by a unanimous vote of "aye".

3. CASE SE13-054. East side of 500 block of Spring Street, to the south of the 300 block of E. Stephen Street. Public Hearing. Application requesting a special exception according to the requirements of Sections 560 "Table of Zoning District Uses," to construct a building for use as a "Private Club, Social." American Legion Berkeley Post 14, appellant.

Richard Klein with Alpha Associates presented this request to allow a private social club to be constructed in an RUA zone. Mr. Klein noted that the original Special Exception was granted in 2008 but then the economy failed and the Legion was unable to get funding for the project. They are ready to get back on track but the Special Exception approval has expired and so they are back hoping for reapproval. He went on to note that nothing about the plan has changed and that the Site Plan, approved in 2009, is still in effect.

Chairperson Casabona asked staff if she could confirm there are no changes. Ms. Smith confirmed this. She went to on ask that the 6-inch waterline be ductile iron as requested by the water department. Mr. Klein noted that would be no problem.

Chairperson Casabona opened the public hearing at 7:50pm. Three people spoke in favor of this request:

- Brian Tolstyka, 71 Pimlico Path, Martinsburg. Mr. Tolstyka is the current Post Commander and had five others with him who were also in favor of this request. He noted they have approximately 530 members and have been a part of Martinsburg since 1919. They would like to expand and obtain a building permit as soon as possible.
- Mike Raffety, 5 Colarado Court, Falling Waters. Noted condition of the older building they're currently in and would like to be able to build a facility worthy of veterans and bring honor and integrity to the Legion.
- Mike Weisel, 16 Longbranch Drive, Martinsburg. New member who states that the current building is unsafe especially for members like him who are in their seventies. The new building will be senior friendly.

As no one else came forward to speak for or against this request, the public hearing was closed at 7:54pm.

After discussions including, but not limited to: Development policy, impact on the surrounding neighborhood, location and intensity of use, access and parking availability, Boardmember Bradley made the motion to approve this request with the stipulation that the 6-inch water line be ductile iron pipe. Boardmember Dulyea seconded the motion that was followed by a unanimous vote of "aye". Motion carried.

4. CASE SE13-055. 300 N. Delaware Avenue. 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 enclosing an existing porch that extends into the minimum side-yard setback and for relief from section 422.6 "Projections into Yard Spaces." Charles T. Sowers, appellant.

Charles Sowers presented this request to enclose an existing porch to expand the kitchen. It was noted that the home owner's parents will be living in the house and one of them is in a wheelchair. Mr. Sowers stated the porch is structurally sound and is located on a structurally sound concrete slab over an existing basement. They will not be enlarging the structure in any way and will only require two walls be constructed. At Ms. Smith's request, Mr. Sowers confirmed this is not rental property.

Boardmember Bradley noted that the house is square and that this enclosure will create a wall that will be flush with the rest of the exterior wall.

Ms. Smith mentioned that the building inspector and fire marshal have no concerns. The structure is considered legally non-conforming as it extends into the side yard setback.

Chairperson Casabona opened the public hearing at 8:03pm. Ms. Smith read one letter from a neighbor who is in favor of this request:

- Wilco Fultz, 302 N. Delaware Avenue. Direct neighbor who has no problem with the request.

As no one else came forward to speak for or against this request, the public hearing was closed at 8:05pm.

After discussions that included the extent of the remodeling and proposed use, harmony of the neighborhood, existing size of porch and structure, and the residential nature of neighborhood and property, Boardmember Dulyea made the motion to approve this request. Boardmember Cohee seconded the motion that was followed by a unanimous vote of "aye". Motion carried.

DISCUSSION:

- Next scheduled meeting: December 3, 2013: Meeting cancelled as there are no applications.

ADJOURNMENT

The meeting was adjourned at approximately 8:28 pm by unanimous consent.



Brenda Casabona, Chairperson



Tracy A. Smith, City Planner