

MARTINSBURG BOARD OF ZONING APPEALS
September 1, 2015 6:30pm
232 N. Queen Street
J. Oakley Seibert Council Chambers
Regular Meeting Minutes

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, Brenda Casabona, Bridget Cohee, Shelly Schoppert, Doreane Mosser and Martin Bales. Also in attendance were City Planner Tracy Smith, Legal Counsel Catie Delligatti and Planning Secretary Holly Hartman.

APPROVAL OF August 04, 2015 MEETING MINUTES

The minutes were approved by unanimous consent.

OLD BUSINESS

None

UNFINISHED BUSINESS

None

NEW BUSINESS

- 1. CASE #SE 15-044. 529½ W. King Street. Public Hearing.** Application requesting a Special Exception according to requirements of Section 410.6 "Special Exception to Enlarge a Non-conforming Use or Structure" and for relief from section 422.6 "Projections into Yard Spaces" to expand a legally non-conforming structure for the purposes of enclosing the existing deck which already extends into the minimum side-yard setback. Doyle B. Garvin, Appellant.

After being sworn in by Legal Counsel, Doyle B. Garvin and his wife Julie Garvin, of 529 ½ West King Street, gave a brief background and description of the project. Ms. Garvin explained that she has been an architectural draftsman for over thirty years and that the previous structure was falling apart which is why she chose to upgrade the porch to its current enclosed status. She stated that she did not realize that by doing so she was breaking any rules.

City Planner, Tracy Smith, provided a staff report, stating that the property is a legally non-conforming structure. She stated that under the current ordinance a residential structure cannot be built up to the property line, it has to have a ten foot side yard setback. The property is unique as it is zoned community business so it could be built to the property line, but it is not used as community business, it is used as residential, therefore the setback requirement is still necessary. Ms. Smith stated that the Fire Marshal and Building Inspector have concerns due to the windows not being fire rated, so any approval given needs to be contingent upon Fire Marshal and Building Inspector life safety codes.

Chairperson Dulyea opened the Public Hearing at 6:37 p.m. As no one came forward to speak for or against the case, public hearing was closed at 6:37 p.m.

Chairperson Dulyea asked if the structure went all the way to the property line. Ms. Garvin answered that it does. The structure is not against the house, it is adjoining the flower bed.

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. 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 702.33: 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.

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: 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 location of additional parking. Ms. Smith advised that the parking and fence were both acceptable; only the addition to the building is in need of approval.

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.

Ms. Smith summarized the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 400.2(a), stating that alteration or extension of the same non-conforming use is restricted to an additional area not to exceed thirty-five percent of those existing buildings. The Board of Zoning Appeals has the ability to do this one time for any applicant, not to be an accumulative thirty-five percent, so it needs to be stated that if the

request is approved tonight that the applicant will not have the opportunity to apply for a Special Exception to expand the non-conforming structure. There was general agreement for no concern.

All Boardmembers agreed the application has 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 410.6 "Special Exception to Enlarge a Non-conforming Use or Structure" and for relief from section 422.6 "Projections into Yard Spaces" to expand a legally non-conforming structure for the purposes of enclosing the existing deck which already extends into the minimum side-yard setback, with the notation that this be a one-time only expansion of the structure and upon the approval of the Fire Marshal and Building Inspector. The motion was seconded by Boardmember Schoppert and followed by a unanimous vote of "aye". Motion approved.

- 2. CASE #SE 15-045. 409 S. Queen Street. Public Hearing.** Application requesting a Special Exception according to the requirements of Sections 560 "Table of Zoning District uses" to operate a restaurant. Historic McFarland House, Appellant.

After being sworn in by Legal Counsel, Michael McCarty, of 409 S. Queen Street, provided a description of the project stating that for the last 5 years the McFarland House has been a special event venue and that he is asking for approval to open a restaurant with an approximate forty-person capacity.

City Planner, Tracy Smith, provided a staff report stating in January of 2010 the McFarland House was granted a Special Exception to enlarge the non-conforming use to bring back the special events banquet facility. The Special Exception was approved with a cross parking agreement with the church across the street. Ms. Smith noted the difference between the two applications, pointing out that the previous approval will still be in effect, the current request is only for the restaurant use. She stated that the parking agreements with St. Joseph School and with Laura Faircloth's office more than cover the parking requirements, also noting that preventing the use of available on-street parking cannot be enforced by the City of Martinsburg or by the McFarland House. Ms. Smith stated that there are no concerns from the Building Inspector or Fire Marshal but that they will do a final inspection prior to the opening of the restaurant.

Chairperson Dulyea opened the Public Hearing at 6:49 p.m.

- Peter Miller, 417 S. Queen Street, spoke against the request. Mr. Miller stated that he attended the original meeting in 2010 and it was stated that neighborhood parking would not be impacted. He says this is not true, all street parking is affected. Mr. Miller feels that the noise from the events at the McFarland House is bad for his health and his piece of mind in his home. Mr. Miller voiced concerns with the handicap accessibility and with patrons urinating on his property. He is asking that the request not be granted as his health is in danger.

As no one else came forward to speak, the Public Hearing was closed at 6:54 p.m.

Boardmember Bales asked if there was any justification to the public urination or disorderly conduct claims. Ms. Smith stated that she spoke with the Chief of Police and that a report would not be accurate due to reports containing information for the entire block, not just one specific address, but in his experience he has not been made aware of any legitimate problems, mentioning that the neighbors to both immediate sides have no issues either.

Boardmember Casabona asked if the maximum occupancy covered both the restaurant and the special events. Mr. McCarty stated that the occupancy was set at 275 by the Fire Marshal. Boardmember Casabona asked if the restaurant would be open at the same time a special event was being held. Mr. McCarty stated that having dual functions was not practical. They would not be able to accommodate such a large number of people. Boardmember Casabona then asked for the average occupancy for an event. Mr. McCarty responded that the average wedding size is between 125 and 160 guests. He stated that this amount is easily accommodated. On very few special occasions they have had around 225 but that is not a normal size event. Boardmember Casabona then inquired to the number of events per week. Mr. McCarty answered that every day would be ideal, but currently there will be a wedding on the weekend and the restaurant would be open from Wednesday to Sunday, and nothing on Monday and Tuesday. Chairperson Dulyea asked for the hours. Mr. McCarty stated that right now the hours will be from 4-10 pm daily, which may be adjusted to meet their needs and demand.

Boardmember Schoppert asked if an approval would be limited to the current owners. Ms. Smith stated that the original approval was limited to the current owners and that the new decision would be limited to the current owners as well.

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. 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 702.32: 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 as the McFarland House technically will not have any more people than they are currently allowed to have.

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. There was general agreement for no concern as no changes are being made in that area.

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 as there will not be any more vehicles than what is currently allowed.

Chairperson Dulyea 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. There was general agreement for no concern as no additional parking is needed.

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 as the McFarland House is not adding more occupants than what is currently allowed.

Boardmember Cohee made the motion to approve the application requesting a Special Exception according to the requirements of Sections 560 "Table of Zoning District uses" to operate a restaurant. The motion was seconded by Boardmember Schoppert and followed by a unanimous vote of "aye". Motion approved.

DISCUSSION

None

OTHER BUSINESS

- Next scheduled meeting: October 6, 2015

ADJOURNMENT

The meeting was adjourned at approximately 7:08 pm by unanimous consent.

Mary Dulyea, Chairperson

Holly Hartman, Planning Secretary