

**PLANNING COMMISSION  
CITY OF MARTINSBURG  
232 N. QUEEN STREET  
Regular Meeting Minutes  
October 7, 2015  
J. Oakley Seibert Council Chambers**

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With a quorum present, President Jim Rodgers called the regular meeting of the Martinsburg Planning Commission to order at 6:03 p.m. The following Commissioners were present: Mark Palmer, Matt Coffey, Jeffrey Molenda, George Reichard, Greg Wachtel, Jim Rodgers, Chris Ross, Yvonne Jenkins and Reenie Raines. Not present was: Scott Hamilton. Also in attendance were Legal Counsel Catie Delligatti, City Engineer/Planning Director Michael Covell, City Planner Tracy Smith and Planning Secretary Holly Hartman.

**ROLL CALL (and microphone check)**

**APPROVAL OF September 2, 2015 MEETING MINUTES**

Commissioner Palmer made the motion to approve the September minutes as submitted. Commissioner Raines seconded the motion followed by a unanimous vote of “aye”. Motion carried.

It was decided by unanimous consent of the commission to amend the agenda, switching item numbers three and four.

**UNFINISHED BUSINESS**

None

**NEW BUSINESS:**

- 1. SP #15-048. East of WV Route 45/7 (Delmar Orchard Road).** Site Plan application requesting review of proposed electrical substation and associated right-of-way. Potomac Edison, A FirstEnergy Company, applicant.

Gordon Poffenberger with Fox & Associates presented this request for Site Plan review asking for an approval contingent upon addressing the storm water comments from Chester Engineering.

City Engineer/Planning Director Mike Covell stated that the application and plan were both simple and routine. Staff has no concerns and will continue to review the storm water management.

Commissioner Coffey made the motion to approve the Site Plan application. Commissioner Molenda seconded the motion followed by a unanimous vote of “aye”. Motion carried.

- 2. SP # 15-053 1117 N. Queen Street.** Site Plan application requesting review of a 672-square-foot addition and associated parking for an existing restaurant. Golden China/Ya Fang Lin, applicant.

Ya Fang Lin and her son Mike presented this request for Site Plan review explaining that they would like to expand the building.

President Rodgers asked if the addition would increase the storm water management. Mr. Covell stated that the building area is already impervious and no additional storm water requirements were necessary. The applicants explained to staff how parking would be handled.

City Engineer/Planning Director Mike Covell stated that the application and plan were both simple and routine. Staff has no concerns and will continue to review the storm water management.

Commissioner Coffey made the motion to approve the Site Plan application. Commissioner Jenkins seconded the motion followed by a unanimous vote of "aye". Motion carried.

- 3. SSP #15-060. Destiny Point.** Sketch Site Plan application requesting review of proposed 2,100-square-foot building with associated parking and right-of-way. Destiny Baptist Church, applicant.

Dirk Stansbury with D.A. Stansbury Engineering presented this request for Sketch Site Plan review giving an introduction of the project. Mr. Stansbury explained that this is the first of many projects on the property.

Mr. Covell explained that this is an opportunity for informal comments and questions from the commission.

Mr. Stansbury mentioned that the wetlands had been taken into consideration and there are plans to put in a buffer area to separate any activity and a setback from the railroad tracks as well. Commissioner Coffey asked if the plans for the classroom were scalable, or would the church be on another parcel. Mr. Stansbury replied that this building would remain as a classroom even after the church is built and the church will be located on the other side of the wetlands. Commissioner Coffey stated that the lot size seemed ample and asked about an elevation study. Mr. Stansbury agreed and noted that FEMA had established a base flood elevation, which they will reference for the floor elevation of any structures.

Commissioner Palmer asked for clarification on the size of the proposed building. Mr. Stansbury responded that the building would potentially be 2,200 square feet.

Mr. Covell stated that currently the project is small and routine. Land disturbance permits will be needed but nothing with the project causes concern for staff. Destiny Point has shown their concept plan and this building goes right along with the plan. He further mentioned that they are using an existing entrance to the property.

Commissioner Raines made the motion to approve the Sketch Site Plan application. Commissioner Reichard seconded the motion followed by a unanimous vote of “aye”. Motion carried.

**4. MA #015-055. 750 Baltimore Street. Public Hearing.** Map Amendment application requesting a change of zoning classification of an improved parcel representing approximately 8.40 acres from IG (General Industrial) to BC (Community Business). Berkeley County Council, applicant.

President Rodgers reminded the commissioners that tonight is only a recommendation to City Council, not an approval of the zoning request.

Legal Counsel Kin Sayre stated that Commissioner Ross would be recusing himself due to an appearance at a County Council meeting where he spoke in regards to the use of the property.

Commissioner Ross requested to be recused from case MA#15-055. Commissioner Coffey made the motion to approve the recusal. Commissioner Palmer seconded the motion followed by a unanimous vote of “aye”. Motion carried. Commissioner Ross left the room for the duration of this case.

Mr. Sayre advised the commission that the case was only on for a recommendation to City Council who will then make the final determination. In addition, if the zoning change is approved, there will still need to be an application for a Special Exception before the Board of Zoning Appeals. Mr. Sayre then read aloud the criteria for a zoning change from the Martinsburg Zoning Ordinance (MZO) Section 103.

Alan Davis, Berkeley County Administrator, stated that he was appearing before the board to discuss the requested zoning map amendment. Mr. Davis introduced the county representatives who will also answer questions as needed: Council President Doug Copenhaver, Councilman Dan Dulyea and Berkeley County Legal Counsel Norwood Bentley.

Mr. Davis gave an overview and history of the building, stating that the building has been vacant for at least ten years. Mr. Davis stated that the property is listed as two different parcels. The first parcel being 5.49 acres with a 75,000 square-foot building, which is in need of substantial repair, and the second parcel is 2.59 acres with no structure. He further stated that on June 25, 2015 Berkeley County Council unanimously voted to authorize a signed agreement with Four Winds, LLC to purchase 750 Baltimore Street, giving the County ninety days to investigate and evaluate the property. Upon conclusion of the evaluation, it was decided to purchase the property, with the understanding that the legal property transfer takes place no later than November 15, 2015. Mr. Davis read the definition of the current zoning of the property from MZO Section 532 and stated that Berkeley County does not intend to repurpose 750 Baltimore Street for any type of general industrial use.

President Rodgers opened the Public Hearing at 6:32 pm. The following members of public spoke against the proposal:

- Martin Bales, 412 Randolph Street, presented the commission with a petition containing 267 signatures; all but twelve of the signatures are city residents, and photos of recent flooding at the proposed area. Mr. Bales summarized the petition, saying that the residents are not against a rehabilitation program, but that Baltimore Street is not an appropriate location. He feels that people need to be removed from their familiar location and friends to receive proper help. Mr. Bales read the purpose of the comprehensive plan, explaining that this location was inappropriate due to the surrounding residences, elementary school and little league fields. Mr. Bales also pointed out that the proposed use is not allowed in a floodplain.
- Denny Martin, 420 Sycamore Lane, stated he is in agreement that a treatment facility is needed, but not at 750 Baltimore Street. He feels that the cost involved with building renovations is a burden on taxpayers and that they should have been able to vote on the issue. Mr. Martin is concerned with the ability to guarantee only Berkeley County residents be treated when State and Federal funding is involved and with the ability to treat addicts without the use of methadone. Mr. Martin mentioned the house on Overlook Drive that was not allowed to become a rehabilitation house due to concerns of neighboring residents. He is concerned that property values will drastically decrease and concerned about the extra burden the facility would place on the police department and for the children in the area and at Oatesdale Park.
- Larry Smith, 565 Duchess Way, owns two duplexes on Overlook Drive, a total of four units that he and his wife have been renting for over thirty years, so he feels very much a part of the community. Mr. Smith stated that this is the second time that a rehabilitation center has been proposed in this neighborhood, which is not an appropriate location due to the surrounding homes and children.
- Kathy Shifflett, 905 Talisman Drive, stated that she does not live downtown, but she works downtown. Ms. Shifflett feels that people have a negative perception of Martinsburg; she tries to change that perception while networking, but the proposed center will only make her job more difficult. The center will devalue homes and businesses and is not good for the city.
- Barbara Bratina, 116 N. Tennessee Avenue, and her husband own LA Roberts Jewelers on Queen Street and have a lot invested in this town. She stated that we have zoning in the city for a reason, so centers like this do not happen in residential areas. Ms. Bratina stated that the purpose of the zoning ordinance is to maintain and protect residential areas from encroachment of incompatible uses; a rehab center is not compatible. She fears that if the zoning change is approved and the county decides not to turn it into a rehab center, it could then be sold with the new zoning uses and bring a different incompatible business. Ms. Bratina also mentioned the comprehensive plan and the floodplain, both of which suggest this proposal is not permitted.

President Rodgers asked Ms. Bratina if she would like the letter she sent to the Commissioners to be added to the minutes. Ms. Bratina answered yes.

- Mary Lewis, 518 W. Burke Street, considers herself an active member of the community and has lived in Martinsburg for the last 18 years. Ms. Lewis acknowledges that there is a drug epidemic in our nation and locally, but feels that in her experience, people are better rehabilitated when they are removed from their familiar setting. She feels that 750 Baltimore Street is too close to homes, businesses and children and there are much more suitable locations. Ms. Lewis mentioned that the county has no zoning and that according to the comprehensive plan a rehab center would not be conducive to the wellbeing of our businesses and residences.

The following members of public spoke in favor of the proposal:

- James Jordan, 602 Lincoln Drive, stated that he lives very close to the location. Mr. Jordan stated that he was originally opposed to the project, but read an article in The Journal recently that was embarrassing for him and the community. He feels that the police department would be capable of handling any issues brought forth by a rehabilitation center. Mr. Jordan went on to say Martinsburg has an abundance of sick people who need help and sending them to jail does not help them at all. He wants to see our city cleaned up and help has to start somewhere regardless of location. Mr. Jordan expressed the building at 750 Baltimore Street is an eyesore and the improvements would fix that. Mr. Jordan stated that it would be important to have proper exit strategies for people leaving the center so they are able to be productive citizens of our community.
- Sylvia Himmelright, 607 Cheshire Road, stated that on May 9, 2014 her son overdosed on heroin. She said she did not know he had a problem or she would have reached out to help. Ms. Himmelright feels that this center is necessary to help our citizens and so no other parent has to go through the agony of losing a child.
- Doug Copenhaver, President of the Berkeley County Council, 282 Simply Ashley Court, stated that he lived in Martinsburg until he was twelve years old, and is very glad his parents moved him out of town because it is very easy to head down the wrong path living in town. Mr. Copenhaver mentioned the building is not new in the floodplain; it has been there since 1965. He stated that this project is needed because the heroin problem here is equal to the heroin problem in Baltimore. The area on Baltimore Street was chosen because it is not in downtown Martinsburg and it is in close proximity to the hospital and the jail. Mr. Copenhaver went on to say the hospital and jail are not prepared or equipped to handle patients that are drunk and high. In his opinion, the methadone clinic is being run incorrectly, so himself and other council members visited a recover center in Alexandria, which seemed very well ran and gave lots of input as to what should happen and the proper processes. Mr. Copenhaver stated he spoke to local residents who all felt that there is not adequate help for addiction problems.

- Philip Garvey, 56 Pfizers Lane, stated that 29 days ago his stepson overdosed and died. He stated that we cannot let our children die and suggested the project move forward.
- Samuel Tryon, 517 Virginia Avenue, is a lifetime resident of Martinsburg. He suggested that we move this project forward so our community can get the needed help, and that the location is appropriate because it is easily accessible.
- Loretta Rodgers, Second Street, stated that she is in favor of the zoning change because she is a recovering addict. The program she was involved in saved her life. Ms. Rodgers went on to say our citizens need a program like this, instead of just getting their medicine and being sent out the door.
- Joan Roach, 110 N. Rosemont Avenue, suggested that employees visit other successful rehabilitation facilities so we are able to work from knowledge, not fear. Ms. Roach also mentioned that the facility in Jefferson County has had no police calls or complaints and has been open for a year. Ms. Roach asked that we work from knowledge and positivity to help our local families and not act out of fear.
- Tisha Owens, 991 Aspen Drive, asked that the board recommend the zoning change. She is aware that this does not match everyone's lifestyle, but is very much needed. Ms. Owens spent twenty years working for the Eastern Panhandle Drug and Violent Crimes Taskforce. She feels with her experience on the job that incarceration does not help, offenders are released, and end up right back in jail for the same thing. It is a bad cycle. Ms. Owens stated this program is completely necessary, as the hospital and Eastridge do not work. The floodplain is just one obstacle that is easily overcome.
- Dan Dulyea, Berkeley County Councilman, 140 Fuji Court, handed out two floodplain maps for the commissioners; explaining the difference between the floodplain and the floodway and further explaining that the floodway cannot be built in. Mr. Dulyea explained on the map where it shows the highest peak of water would be one-foot in the parking lot and the building is three feet above that point. People would be safe inside the building if there were a flood as the owners said there has never been floodwater inside of the building. Mr. Dulyea stated that this is a blighted building and recommending the zoning change would allow this building to be repaired and upgraded making it more of a compliment to the city instead of an eyesore. He pointed out that the current facilities and group homes are not successful, residents still end up incarcerated, which cost the county and city a significant amount of money. Mr. Dulyea feels if we can figure out why people are failing then we are more able to help them. In addition, the proposed facility is for medical use, not just a handout for addicts. Keep in mind; all types of people are easily addicted to illegal substances. Mr. Dulyea stated that the solution to the problem has to start somewhere. He further noted that the project would not affect the Comprehensive Plan or the ideas for a park area, adding that the County would gladly work with the City to add the park area.

- Norwood Bentley, County Attorney, 120 N. Louisiana Avenue, stated he is very happy to be a part of the effort to make a bad situation better for the county and the city. Mr. Bentley asked that the zoning be changed to improve a blighted property. He stated that any use for the property would make it better, more attractive and safer. He further stated the county has made a large investment in the property, which they got for a minimum price of \$3.00 per square foot. Mr. Bentley is asking the city to take a risk with the county in order to improve Martinsburg and Berkeley County.
- Cathy Stevens-Butts stated she lost her daughter to a heroin overdose on November 7, 2014. She felt that she might have been able to help her daughter had there been more resources in Martinsburg. Mr. Butts asked the city to be a part of the solution so no other parents have to lose their children.
- Dawn Hockenberry, 301 Terrace Street, stated that out of a county population of 117,000, only approximately 255 people have opposed the building. Ms. Hockenberry stated that the addicts in a rehab center are not the ones we should be worried about; it is the addicts on the street that should be our main concern, which is why the commission should consider the change.
- Laurie Stewart, 816 W. John Street, stated that she is a mother of two drug addicts. Ms. Stewart explained the process of trying to get her daughter help, how there are no resources locally that her daughter could get help from. She feels the skills learned in the center are what matter, not the location of the center. The proposed location makes it easily accessible. Ms. Stewart stated that it is not her children's goal to be an addict, it is a choice, but drugs are a huge problem here.
- PJ Orsini, 823 Winchester Avenue, stated that his business has been open on the next block for seven years. Mr. Orsini recognizes this is a polarizing topic, but more people are basing thoughts off opinions, not information. He understands why the city was the chosen location, due to access to local resources such as police, fire, transportation and proximity of the hospital. Mr. Orsini added that 750 Baltimore Street is not easily used for industrial purposes, which he found out through his personal research.
- Tina Roach, 595 Castaneda Drive, stated that people are afraid of the unknown. Ms. Roach feels that the public needs more information such as how the facilities will affect surrounding residences and property values.
- Dan Dulyea came forward to speak again. Mr. Dulyea wanted to acknowledge that if the rehabilitation center decreased jail costs, it would also decrease police and court costs as well.
- Elaine Mauck, County Council, 1000 N. High Street, stated she would like to see this center help people become more productive members of society. Ms. Mauck also stated that the park is a great idea and asked why it has not been done already. She mentioned that there is a methadone clinic in Hagerstown, MD and three-quarters of their clients are from Berkeley County.

As no one else came forward to speak for or against this request, President Rodgers closed the Public Hearing at 7:57 pm.

Commissioner Molenda asked if the center would be residential or outpatient. Mr. Copenhaver replied that it could be both. Medical staff will determine the level and type of treatment necessary.

Commissioner Raines asked if the center would be an alternative to jail. Mr. Copenhaver answered that yes, it could be an alternative, similar to how Berkeley County citizens are sent to Jefferson County to the day report center.

Commissioner Molenda inquired as to the reason Baltimore Street was the chosen location rather than an area administered by the county; right next to the professional office building on the far side of Tennessee Avenue. Mr. Dulyea responded price was the main factor; they got an exceptional deal on the building, the second reason being that it is an industrial area that is a blight to the community. Also, the size of the building is appropriate as well as the proximity to facilities and public transportation.

President Rodgers asked about substantial improvement to the building in the floodplain and asked who our floodplain administrator is. He asked Ms. Smith if she could see any possible issues with the project or in the case of a 500-year flood. Ms. Smith replied that there is not enough information at this time to answer the question. Commissioner Coffey stated that floodplain and elevation studies would be done later on to determine any issues. Mr. Dulyea stated that the building is easily elevated if necessary, but that most of the improvements are cosmetic, not structural.

Mr. Copenhaver pointed out that the request tonight was only for the rezoning of the property and that if the rezoning is not approved, he feels it will make it more difficult in the future for possible building projects.

Commissioner Raines asked if the purchase was final or if it was just an option to purchase at this time. Mr. Copenhaver responded they have a signed contract to purchase the building before November 15<sup>th</sup>.

Commissioner Raines then asked if there were any other plans for the building if the rehabilitation center does not work out. Mr. Copenhaver answered that the current plan is for the center, but if it falls through, the county would make an informed decision as to a new use.

Commissioner Coffey mentioned that zoning was the focus of the request, but the application does state the intended use as a treatment facility with a possible day report center, outpatient treatment, and residential care. He asked what other specific uses are envisioned. Mr. Copenhaver stated they have had a meeting with the federal government, who are very excited about the direction the Council is trying to take. Currently what is envisioned is a day report center, possible detox center, counseling and judges or case managers to make a decision on what level of care is needed. Mr. Copenhaver said the goal is to help citizens transition into a

better life and with job placement, he went on to say he lost his son in 2011 due to drugs and he wants to prevent other parents from going through the same thing.

Commissioner Coffey asked if this would be a lock down center where people are not free to leave at any time or more like a day report center. Mr. Dulyea answered that much like the center in Alexandria; ours would have different levels of treatment and programs.

Ex-Officio Member, Councilman Wachtel stated that everyone wants something done about the drug problem, but he would like to know the plans for the building if it is not turned into a rehabilitation center. Mr. Copenhagen responded that there were no other definite plans.

President Rodgers reminded the Commission that they are only recommending the change in zoning, not approving the use.

Commissioner Reichard made the motion to recommend forwarding the change in zoning request to City Council for consideration. Commissioner Molenda seconded the motion.

Commissioner Raines asked if staff had any input. Mr. Covell stated that staff tried to show pertinent information from multiple resources such as the zoning ordinance and comprehensive plan. He asked that long range planning be kept in mind, as this is a long process considering if the location is suitable and complimentary to adjacent zoning districts. Furthermore considering the table of uses for particular zoning and how compatible a project would be with the neighborhood.

Mr. Sayre read aloud WV Code Section 8A-7-8 that explained that before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.

Mr. Bentley stated that the building has been empty and unused for eleven years. He does not feel that any other major business will move into the building for manufacturing/industrial purposes as it is zoned. The neighborhood has changed in the area, and no longer has any industrial property, which is a perfect reason to change the zoning to community business to allow for other potential uses. Mr. Bentley stated that the upgrade to the building would also raise property values.

Commissioner Palmer asked about the 60-foot right-of-way, who owns that. Mr. Dulyea answered it is only a proposed right-of-way that leads to property the City owns. Mr. Dulyea further stated that they have been in contact with the Tuscarora Creek Project in regards to improving the green space.

Commissioner Raines asked if services would be limited to Berkeley County residents only. Mr. Dulyea responded the center could include Jefferson and Morgan County also because we are all in the same judicial circuit, but it is not definite at this point. Mr. Copenhaver added that federal funding does not mean the center would have to take just anyone. Other participating counties would have to provide funding as well.

Commissioner Raines stated that people not being committed to change is concerning. Mr. Copenhaver stated it would be a heavily monitored and would not affect local crime rates.

Commissioner Jenkins asked if a person from out of state were arrested here, would they have to option to attend our facility. Mr. Copenhaver stated he did not know at this point. Mr. Dulyea stated that the idea was to restrict use to citizens of Berkeley County.

President Rodgers requested a roll call vote.

Commissioners Palmer, Molenda and Reichard voted "aye", Commissioners Coffey, Raines and Jenkins voted "nay", resulting in a tie vote. President Rodgers broke the tie by voting "aye" resulting in a 4-3 vote. Motion carried.

#### **DISCUSSION/ACTION ITEMS:**

Commissioner Molenda made a motion to table the discussion items. Commissioner Reichard seconded the motion. Motion carried.

#### **OTHER BUSINESS:**

- Next regular meeting scheduled for November 4, 2015 at 6:00 p.m.

#### **ADJOURNMENT**

Commissioner Raines made the motion to adjourn. Commissioner Molenda seconded the motion followed by a unanimous vote of "aye". Motion carried.

The meeting was adjourned at 8:44 pm.

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Jim Rodgers, President

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Holly Hartman, Planning Secretary