

**BOA Meeting  
March 9, 2015**

**Members Present:**

Beth Walker  
David Rader  
Bryant Lindsey  
George Baily

**Members Absent:**

None

Also present from the City staff were Russ Cochran ,Senior Planner, and Crystal Reed, Administrative Assistant.

**I. Old Business**

**Item 1: Call to Order**

Ms. Williams, Chairman called Board of Adjustment meeting to order.

**Item 2: Review and approval of the August, 11th 2014 Minutes.**

Mr. Baily made motion to approve the minutes and Mr. Rader seconded the motion.

**II. New Business:**

**Item 1: A variance request from Irvin Enterprises LLC to separate two single family dwellings into two non-conforming parcels of land.**

Mrs. Walker read the factors relevant to the issuance of a variance.

Mr. Cochran explained why the request for the variance. He said the request is to split two single family dwellings that are currently on one lot into two separate lots. They are located at 206 and 208 Vine Arden Road. He said it is currently zoned LID. He said there is a shared sewer tap that both properties currently use but each has a separate water tap. He added the property across the street is zoned MID therefore if this property existed across the street then the splitting of this property would be allowed without any board action.

Mr. Rader verified with Mr. Cochran that the water and sewer is not an issue.

Mr. Cochran said no. He said the only thing that would need to be done is that it be noted on the plat of an easement in case repairs are needed.

Mr. Baily asked if the owners of the property/properties would be willing to install a separate sewer tap for each residence.

Mr. Cochran said he has not asked that question but the board could make that a condition.

Mr. Rader said it's not an issue.

Mr. Baily said since they are rental properties and one tenant isn't paying more than the other.

Mr. Cochran said if the board decides to approve the variance then they could make that a condition.

Mr. Baily said that would also depend upon the property owner and whether he would be willing to do that because if they put a condition and he doesn't want to then it's null and void.

Mr. Cochran said that is correct and variance wouldn't occur.

Mr. Lindsey said to Mr. Cochran, if the current owner chose to separate the properties in the future for whatever reason, at that time the owner could make arrangements to install a separate tap if that were necessary. He added if he is understanding correctly, the board doesn't need to make that a condition if they take positive action.

Mr. Cochran said if there are conditions it can be noted on the plat and should take care of the issue.

Mr. Lindsey said for all he knows, it's fairly expensive to do a sewer tap so he'd be reluctant to say that there would have to be another sewer tap before the variance was granted.

Mr. Rader said if a person was buying both houses it wouldn't be an issue.

Mr. Baily agreed as long as they stay under one owner and rentals.

Mr. Rader agreed.

Mr. Cochran explained that he believes everything has been functioning for some period of time so he doesn't know if it would even be necessary to require much more than it be noted on the plat. He said it's not uncommon to note an easement.

Mr. Lindsey said he thinks the only way anyone could get into trouble would be if someone sold one of the properties and didn't indicate there was a sewer easement and found out they couldn't access the sewer.

Mr. Baily said he agrees.

Mr. Cochran said the board can make it a condition that a notation be made on the plat and all other necessary documents that there is a sewer easement that serves both houses even though it's combined at this time.

Mr. Lindsey said he is just trying to make certain that 10 years down the road that someone isn't getting into trouble.

Mrs. Walker asked if it would be on the deed.

Mr. Cochran answered it could be on the plat.

Mrs. Walker asked Mr. Cochran if the property was sold that a notation could be on the plat.

Mr. Cochran answered yes.

Mr. Lindsey asked if there is any difficulties with electrical or water connections and access.

Mr. Cochran said water and electricity are accessible almost everywhere. The water and electric departments are very good about making it possible to provide water and electricity.

Mr. Bryant asked about Compas cable and telephone.

Mr. Cochran said he would make an assumption to say yes they would both be available.

Mr. Lindsey asked if it was likely there was natural gas in the neighborhood.

Mr. Cochran said he didn't know.

Mr. Baily asked if the present land owner pays the water and sewer bill and divides it among the two tenants or is it included in their rent.

Mr. Cochran said the property owner can answer some of these questions.

Mr. Mike Irvin of 402 Winding Creek Dr. Morganton is owner of the two properties. He said each house has its own water bill from the City of Morganton and the sewer bill is based on the consumption of water. He said there is no meter for the sewer and he had just found out from Mr. Cochran that there was only one sewer tap. He added that he thinks a sewer easement could be noted on the property that doesn't have the tap in case repairs would need to be made. He said he doesn't pay the utility bills, each tenant is responsible for their own but he doesn't see that the sewer tap issue would be a make or break issue.

Mr. Baily said so now the water bill includes the sewer bill so each is automatically charged to each house.

Mr. Irvin said there is nothing that states that one house would have to pay the sewer bill for the other house because it's based on the amount of water that is used.

Mrs. Walker asked Mr. Irvin if he could explain the reason for wanting to separate the properties.

Mr. Irvin responded that it's time to be moving on in the rental/real estate business. He said he and his wife are in the process of liquidating some of their things. He said it's difficult to find financing and sell property that has two houses on one piece of land. He also said some insurance companies are reluctant to want to insure both houses. He said currently he is grandfathered in but sooner or later it will be an issue. He said he would just like to clean up this issue for what might happen in the future.

Mr. Baily asked how far apart the two houses are from each other.

Mr. Irvin asked Mr. Cochran what he thought.

Mr. Cochran said he thinks they would both have the 10 foot required set back.

Mr. Irvin said he would put an easement to where there couldn't be any kind of access denied. He said he feels that's the appropriate way to deal with it.

Mr. Lindsey asked if there was just one water tap.

Mr. Irvin answered no, there are two separate water taps to each house.

Mr. Irvin explained that the sewer tap is just for the discharge. He said there is no meter or no way to evaluate the use.

Mr. Rader asked Mr. Cochran about an easement versus the notation on the plat and which way would be best.

Mr. Cochran said it would be a physical notation on the map showing the area and the easement. He said there would also be a statement on the plat saying the area is designated for common use in the event the sewer failure occurs.

Mr. Rader said so the easement would be on the plat.

Mr. Cochran said it would be drawn on the plat and in a written block on the plat. He said this would insure that the easement is understood. He said the surveyor would make some type of notation.

Mrs. Walker said the notations would be referenced on the deed .

Mr. Cochran said that is correct.

Mr. Lindsey asked if the board has appropriate wording for the motion.

Mr. Cochran answered he can get some appropriate wording.

Mr. Baily asked that since there is no charge for sewer beyond the use of water would it even be necessary to have an easement forcing another sewer tap.

Mr. Lindsey stated that you don't need a tap, you just need access to the existing in case repairs are needed.

Mr. Rader explained to Mr. Baily that if sewer repairs are needed the easement would allow both properties access to work on it.

Mr. Baily said good point.

Mr. Cochran said he can get the appropriate language.

Mr. Lindsey said we need that before we can make a motion.

Mr. Cochran said he doesn't have that with him.

Mr. Rader made a motion that the board approve this variance request to split two single family dwellings at 206 & 208 Vine Arden Road that currently exists as one lot into two separate lots with a house on each lot with the condition that an easement be made on the plat that the sewer tap be accessible by both property owners in the event repairs are needed.

Mr. Baily seconded the motion.

1. Board found there was unnecessary hardships.
2. Board found that it did meet the intent of the ordinance.
3. Board found that it did secure public safety and public welfare.

All in favor of the motion. Passed

**Item 2: Appeal of interpretation for the use of car detailing as an allowed use in the Medium Intensity District.**

Mr. Cochran explained that a request for an interpretation has been made that a detail shop is an allowed use in an MID zoning district located at 510 N. Green St.

He said this use was not considered a use allowed by the new zoning ordinance for the MID district. This determination was made by the fact that motor vehicle, boat services (with or without outdoor storage, includes gas stations and car washes) as defined, included car washes and that this use was *not* allowed in the MID district.

Mr. Cochran added that he was approached by two gentlemen a few weeks ago who were interested in having a car wash at 510 N. Green St. He said after speaking with the owners it was later clarified that the location was previously a detail shop instead of car wash. Once he looked at the application and realized that detail shop was not listed in the permitted uses. He said the board is being requested to decide if his interpretation is correct or incorrect.

Mr. Lindsey asked if there are findings they need to meet.

Mr. Cochran said no, there are no findings.

Mr. Lindsey said whether or not it were to be a hardship wouldn't come into play.

Mr. Cochran said no. He said this is just an interpretation of staff.

Mr. Lindsey asked if there was someone who has requested the interpretation.

Mr. Cochran said yes, Mull Inc.

Mr. Raymond Moses, 201 Mulholland Blvd., Morganton is representing Mull Inc.

Mr. Moses said he agrees with everything Mr. Cochran just said 100%. He said there is no argument. He said Mull Inc. is just wanting an interpretation of car wash and detail shop and he understands everything that Mr. Cochran found lists them as the same thing. He said it also lists it as a service station which is what the building was originally built as. He added it would be a hardship to change it from what it was originally built as. He said that is their confusion, is if it were approved at one time to be used as a service station then why can they not use it as such now.

Mr. Lindsey stated the only issue before the board tonight is whether or not Mr. Cochran's interpretation is correct. He said to Mr. Moses that he may have other recourse as to what could be used at that location but that's not what's before them tonight. He also stated that he doesn't think this board has the authority to grant a variance tonight. Mr. Lindsey said if Mr. Moses just stated that he agreed with the interpretation so if he has other requests then he needs to go through the process with those requests.

Mr. Moses said he understood.

Mr. Louis Vinay, City Attorney said so there is no misunderstanding, this is not a variance request. He said you can't use a variance to change the use of the building.

Mr. Cochran said he could request a rezoning but tonight the only request is for the board to decide whether they agree or disagree with Mr. Cochran's interpretation.

Mr. Cochran explained to the board that Mull Inc. challenged his interpretation of a detail shop, and by association, a car wash, so that's why they are meeting tonight.

Mr. Lindsey asked Mr. Cochran who made the challenge.

Mr. Cochran answered Mull Inc.

Mr. Lindsey said Mr. Moses is representing them and he is saying he no longer challenges it.

Mr. Moses said yes, he agrees with what Mr. Cochran just showed him but he had never seen that before.

Mr. Lindsey said ok.

Mr. Moses said there is no reason to argue with it now that he sees it on paper.

Mr. Baily said he is saying that he is agreeing against his own request.

Mr. Cochran and Mr. Lindsey agreed.

Mr. Rader said when he was doing research on this with Mr. Cochran in his office, they discussed this at length and it was his understanding that if it didn't have outside storage in the MID then it could be used as a detail shop.

Mr. Cochran said yes, if it was determined that this was the use.

Mr. Rader said if you keep on reading one of the interpretations is a service with no outside storage.

Mr. Cochran said that is correct.

Mr. Rader explained there was a list of things that it could be used for and he thought it would be ok. Mr. Rader asked Mr. Lindsey why he didn't agree with that.

Mr. Lindsey said he thinks it's a straight forward reading and interpretation.

Mr. Rader said he doesn't agree with that.

Mrs. Walker stated it says car washes, it doesn't mention detail shops and they are not the same.

Mr. Baily asked about outside storage. He asked if there are four cars waiting to be detailed, is that outside storage. He added if a car is left overnight to be detailed the next day is that considered outside storage.

Mrs. Walker answered if that was considered storage then every body shop would be in question.

Mr. Lindsey said detailing is an extension of car washing.

Mr. Baily asked who has control of the property.

Mr. Lindsey said he agrees with Mr. Baily and he thinks Mr. Cochran's interpretation is straight forward. He said that's not to say there isn't other relief available but he thinks it's safe to say that detailing would fall under car washing.

Mr. Moses said he checked with city inspectors to ask if they could do this at this location and he understands everything has to be done inside and the city inspectors told him that it was ok and the building was set up for it.

Mr. Baily said to Mr. Moses that he believes that building is equipped to wash cars inside because it has a drainage system.

Mr. Moses said that's exactly right.

Mr. Rader said there are other detail shops in the city that doesn't have that drainage system.

Mr. Moses said there is a sand filter drain.

Mr. Baily explained that's not the question. He said the question is storage.

Mr. Lindsey said storage is one question.

Mr. Baily said yes but that's the question he raised.

Mr. Cochran said one thing that might add a little insight to this is the way it was previously zoned under the zoning ordinance, he added there is a new zoning ordinance as of the first of the year. *He said previously it was zoned NB and car washes were allowed.* He said there used to be a small engine repair located there but that's been gone for at least two years. He explained that the new zoning ordinance does not allow car washes in the MID district and his interpretation is that detail shops or car washes would not be allowed. They are not allowed in any MID district in the city.

Mrs. Walker said if there are other car washes/detail shops located in the MID, if they closed they would not be allowed to reopen as such.

Mr. Cochran said that's correct and there is usually a 6 month period.

Mr. Baily asked if they would be grandfathered if they were in existence prior to the new zoning ordinance.

Mr. Cochran and Mr. Lindsey said yes as long as they keep operating.

Mr. Lindsey stated that still doesn't clarify Mr. Cochran's interpretation. He said his personal feeling is that Mr. Cochran has made a very good interpretation and it would be good to start with that in determining what further course should be taken.

Mr. Baily said they could come back later and ask for an exception.

Mr. Lindsey said there are a number of different ways they could go.

Mr. Cochran said the two ways you get a use of a location is either by permitted use or it's interpreted as some type of permitted use. He said this particular interpretation will not only effect this location but every other MID area in the city.

Mr. Lindsey said Mr. Cochran may have raised an issue that needs to be addressed by a number of other people.

Mrs. Walker said there job tonight is to vote whether they agree with Mr. Cochran's interpretation or not. She said she doesn't see that a motion is needed just a simple vote.

Mr. Cochran said that's correct.

Mr. Lindsey asked if it's a majority vote or does it need to be unanimous.

Mr. Cochran said majority.

Mr. Vinay stated a simple majority vote is fine.

Mr. Cochran said another way of doing it would be to go back to city council and ask that detail shops and car washes should be allowed in the MID district.

Mr. Lindsey agreed and stated the current zoning is too restrictive in the new ordinance.

Mr. Baily said everything else that's already operating is grandfathered.

Mr. Cochran said that is correct.

Mr. Baily said it will only affect the ones in the future.

Mr. Cochran said yes as long as it's in MID.

Mr. Rader said they would go to Planning & Zoning for that.

Mr. Cochran answered yes, Planning & Zoning then to City Council.

Mr. Lindsey said he thinks they would sit down with staff and try to figure out an appropriate way to go forward.

Mr. Moses asked if he could find out other locations that are in MID area.

Mr. Cochran said yes.

Mr. Lindsey said he feels those businesses would want to know if they ceased operation then they would not be allowed to reopen.

Mr. Moses said he just wants to find out.

Mrs. Walker asked if everyone agrees with Mr. Cochran's interpretation.

Unanimous vote, they all agree with the interpretation.