

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

January 15, 2014

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Leanne Cardoso, Bill Burton, George Papandreas, and Jim Shaffer

MEMBERS ABSENT: None

STAFF: Christopher Fletcher, AICP

- I. **CALL TO ORDER AND ROLL CALL:** Bossio called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.
- II. **2014 LEADERSHIP ELECTION** – Papandreas nominated for Bossio to serve as President; seconded by Shaffer. Motion carried unanimously. Shaffer nominated for Cardoso to serve as Vice President; seconded by Papandreas. Motion carried unanimously.
- III. **MATTERS OF BUSINESS:**
 - A. **Minutes for the December 18, 2013 Hearing.** POSTPONED
- IV. **OLD BUSINESS:**
 - A. **BA13-01 / Gary Walden / 645 Pennsylvania Avenue:** Request by Edward R. Kohout, on behalf of Gary Walden, for an Administrative Appeal from Article 1373.02(B) as it relates to nonconforming structures at 645 Pennsylvania Avenue; Tax Map 30, Parcel 46; B-2, Service Business District. **TABLED**

Papandreas moved to remove BA13-01 from the table and remove matter from the Board's Docket as requested by the petitioner; seconded by Burton. Motion carried unanimously.

- V. **NEW BUSINESS:**
 - A. **V14-01 / BB&T Corporation / 493 Spruce Street:** Request by Pam Sullivan, on behalf of BB&T Corporation, for variance relief from Article 1369 as it relates to signage at 493 Spruce Street; Tax Map 26, Parcels 105-107 and 113-116; B-4, General Business District.

Fletcher read the Staff Report.

Bossio introduced the petitioner's representative Rudy Hoffert of City Neon, Inc. who stated he concurred with the Staff Report and had no further information.

There being no comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request.

James Giuliani of 256 Prairie Avenue if the proposed sign illustrations were available for the public to view. Fletcher stated that hard copies of updated signage plans were not available. Giuliani asked for V14-01 to be tabled until the public has the opportunity to see the updated plans.

There being no further public comments, Bossio declared the public hearing closed.

Fletcher stated that for clarification purposes, hard copies of the signage plan and variance petition have been available for public review in the Planning Office since the petition was advertised in the newspaper. Additionally, the Staff Report, updated signage plan, and variance petition have been posted on the City's website and available to the public and the Board since Friday, January 10, 2014.

Fletcher read the Staff Recommendations.

Cardoso asked why the logo "24 Hour Banking" was necessary and felt the logo 'BB&T' is sufficient and a variance was not needed.

Papandreas felt the "24 Hour Banking" logo is more directional rather than information and is necessary. Bossio agreed.

Shaffer made a motion to find in the affirmative for all the Findings of Facts for V14-01 as revised by Staff; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The development of a new branch bank and resultant changes in access to and delivering of existing retail banking services to the new building appears to merit reasonable relief to maximum area, sign copy, and directional sign material standards to aid in communicating with existing and new BB&T customers.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

There appears to be other signs within the immediate B-4 District area that exceed signage performance standards and similar variance relief has been granted by the Board for Panera Bread on 21 AUG 2013 under Case No. V13-35 and CVS on 18 DEC 2013 under Case No. V13-63.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The proposed master sign plan is based on reverse channel, halo-lit letters on the building, which will not allow direct illumination, but only halo reflective light off of building facade and background materials. The requested signage should enhance visibility and thereby promote safer traffic conditions, increase property values due to the new and vibrant business atmosphere, and the halo-lit letters with soft reflective lighting should promote the peaceful enjoyment of people in adjacent properties. The use of aluminum materials is preferred for all sign types in the B-4 District except directional signs.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

Granting of the variance should allow for sufficient and necessary advertising for BB&T to communicate legible signage while keeping the specifications and intent of the Zoning District with halo-lit letters and only reflective lighting and 24-hour ATM banking services. The market values of adjacent properties should be improved due to the development of a new BB&T branch bank facility. Clearly identifying the new bank branch building with sufficient signage, given the change in access and delivery of BB&T's retail banking services from previous site logistics, should enhance the smooth flow of traffic and should give customers plenty of time to make safe driving decisions.

Papandreas moved to approve V14-01 as requested with Staff recommended conditions; seconded by Burton. Motion carried unanimously.

NOTE: The following conditions were included in the motion.

1. Wall Signage. That illumination of the two (2) "BB&T" wall signs on the north and east elevations is restricted to the reverse (back-lit) halo or similar technique as illustrated in the sign plan reviewed herein.
2. Monument Signage. That the illumination of the monument sign is restricted to external up-lighting technique as illustrated in the sign plan reviewed herein.
3. Monument Signage. That the copy on each side of the monument sign must be identical in design and content.
4. That the copy on the ATM machine may not be legible from the public right-of-way or from other property.
5. That all traffic control regulatory signs and informational parking signs must be reviewed and approved as a part of the building permit application for the development of the site.

Bossio reminded Mr. Hoffert that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- B. V14-02 / Allan Feldman / 441 Brockway Avenue:** Request by Allan Feldman, for variance relief as it relates to rear setbacks at 441 Brockway Avenue; Tax Map 29, Parcels 217.1 and 218; B-2, Service Business District.

Fletcher read the Staff Report.

Bossio introduced Allan Feldman of 1309 Mineral Avenue who stated he concurred with the Staff Report and had no further information.

There being no comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed.

Fletcher read the Staff Recommendations.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for V14-02 as revised by Staff; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The building is located on a site which originally sloped steeply from front to rear. The rear of the property has been filled (presumably with soil) and paved to elevate the parking and access areas about eight feet above the adjoining property in the rear. There is a concrete retaining wall which extends from one side of the property to the other to maintain the fill material and create parking and access for this property. The retaining wall is located about ten feet inside of the rear lot line and appears to provide a barrier and buffer between this commercial property and adjoining residential properties at the rear of this property, which the minimum setback standard is intended to achieve. Additionally, the property depth at the proposed addition is approximately 77.25 feet. The minimum front setback standard of 15 feet and minimum rear setback standard of 40 feet for the B-2 District leaves an approximate 22.25 feet depth of buildable area.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The intended use of the addition at the rear of the existing structure is for a mechanical utility room. The utility room will house a hot water boiler, a furnace, and the necessary electrical service entrance and breaker boxes needed to operate a modern laundry mat. In order to install a sufficient number of washers and dryers, according to the petitioner, the existing structure does not have adequate room for the utilities to be located within the current building footprint. Additionally, the principal buildings at the following addresses, which are located around the petitioner's subject property, do not appear to comply with the B-2 District's minimum forty-foot rear setback standard: 429, 451 and 440 Brockway Avenue; 90 Kingwood Street; and, 412, 420, 428, 436 and 440 Pennsylvania Avenue.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The construction of an eight foot by twenty foot addition to the rear of the existing structure will not be visible from the street and will be located well within the paved area previously used as parking by the former owner. The proposed addition will not obstruct the existing vehicular movement way from one side of the building to the other thereby promoting best access management and internal circulation practices. Additionally, it appears that the granting of the variance as requested may aid in promoting the elimination of the previous nonconforming "Video Gaming/Lottery Establishment" use.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The land use will remain light commercial with, according to the petitioner, approximately the same number of clients using the laundry mat as were using the structure as a bar and gambling establishment. The market value of the adjacent properties should remain constant or be improved given the petitioner's façade renovations currently underway that is a part of the development. The difference in trip generation during AM and PM peak periods between a "Video Gaming/Lottery Establishment" use and a "Coin-operated Cleaning/Laundry Service" use should be negligible given existing traffic volumes along Brockway Avenue.

Shaffer moved to approve V14-02 by granting a variance of fifteen (15) feet from the minimum rear setback standard as requested; seconded by Papandreas. Motion carried unanimously.

Bossio reminded Mr. Feldman that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Department and that any work

related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- C. **V14-03 / Sheetz, Inc. / 1012 University Avenue:** Request by Robert Franks, on behalf of Sheetz, Inc., for variance relief from Article 1369 as it relates to signage at 1012 University Avenue; Tax Map 28A, Parcels 6-11; B-4, General Business District.

Fletcher read the Staff Report and Staff Report Supplement.

Bossio introduced Aaron Henley of Altoona, PA who stated he concurred with the Staff Report and had no further information.

There being no comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request.

Bossio introduced James Giuliani of 256 Prairie Avenue who stated the area computation of the proposed signage should include the brick structure that holds the sign. In addition, he referred to the Downtown Strategic Plan that shows the proposed area for the sign is planned to be an enhanced area crosswalk and the sign would be an obstruction for visibility. Giuliani suggested to table the request.

There being no further comments, Bossio declared the public hearing closed.

Bossio introduced Aaron Hensley of Altoona, PA for rebuttal. Hensley declined.

Cardoso asked if the area would include a sidewalk around the sign. Fletcher confirmed and stated the final location of the sign will have to be reviewed by the Engineering Department to ensure clear site visibility.

Fletcher referred to Article 1369.04 to explain area computations on signs in the B-4 District.

Fletcher read the Staff Recommendations.

Bossio asked if there is a limitation on the speed of the scrolling. Fletcher stated nothing was listed in the ordinance on the speed of scrolling and he did not know what the speed would be for the proposed sign. Bossio asked Hensley what the speed of the scrolling would be. Hensley was not sure of exact speed but stated it would not be very fast.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for V14-03 as submitted by the petitioner; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

There are exceptional circumstances applicable to the physical layout of the property in that the property is surrounded by streets on all sides, the property adjoins roads that are at a significant grade compared to the building and property, the building sits back from the main road, and there will be a gas canopy on the property that will block certain views of the building. All of the foregoing physical circumstances limit the amount of signage that will be seen by potential customers. Allowing a small increase in building signage will allow wall signs on two sides of the building and on the doors, partially combating the negative effects of the layout of the land. There are extraordinary circumstances applicable to the intended use of the Property because the retail sale of gasoline is unlike the sale of any other product in that customers expect to see a sign displaying the price of gasoline before deciding whether to even stop at a gas station. Because every gas station displays the price of a gallon of gas, practically speaking, a sign advertising the price of gas is a necessity for a gas station. Moreover, a gas price sign provides the public adequate notice that gasoline is sold on the Property, and notice of the price, in order for drivers to get into the proper lane and make a safe turn onto the Property. A variance for the materials used on the sign is also needed. The gas price signs are made with the specified materials to provide for the scrolling mechanism that controls the numbers, which cannot be replicated with the allowed materials. Given that the sign sits on the ground in a high traffic area, it also requires plastic to protect it from being damaged.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The variances are necessary for the preservation of a substantial property right possessed by other properties in the vicinity in that the other properties in the vicinity are physically situated so to allow the same sign exposure with less square feet of signage. The variances are necessary for the preservation of a substantial property right possessed by other properties in the vicinity in that there are other gas stations in the vicinity of the Property that have gas price signs. As set forth above, due to customer expectations in the sale of gasoline, denying Sheetz the right to advertise its gas price with the requested materials would place Sheetz at an unfair competitive disadvantage as other gas station property owners in the City possess a right to advertise gas prices.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The granting of this variance will not be harmful to public welfare or harm property in the vicinity. The increase in signage is small and people will likely only see one of the building signs. To the contrary, it serves the public welfare by encouraging safe turning movements in and on the Property.

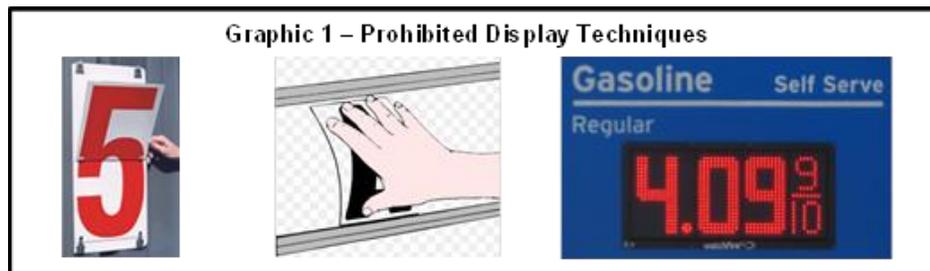
Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The variance will not alter the land use characteristics of the vicinity or diminish the market value of adjacent properties or increase traffic congestion. The Property is zoned commercial and the increase in signage is small and will likely not be noticed from most views of the building. The variance will not alter the land use characteristics of the vicinity or diminish the market value of adjacent properties or increase traffic congestion. The Property is zoned commercial and the purpose of a gas price sign is to allow customers to know the price of gas without slowing or stopping thereby reducing the possibility of traffic congestion. Further, customers do not go out of their way to visit a “convenience” store/gas station as a destination, but, rather, a convenience store primarily attracts “pass-by” traffic that already exists at the site. The requested variance will not have any impact on the adjoining properties or the surrounding area as the requested materials will not look substantially different than allowed materials.

Shaffer moved to approve V14-03 as requested with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

NOTE: The following conditions were included in the motion.

1. Wall Sign – That, in accordance with Article 1369.08(A), illumination of the proposed wall sign shall be restricted to external up-lighting and/or reverse (back-lit) halo lighting techniques.
2. Wall Sign – That, in accordance with Article 1369.08(B), the proposed wall sign shall be made of wood; sculpted “sign foam”; ornamental metals such as bronze, brass, copper, etc.; a painted aluminum panel; or stone or masonry.
3. That, with the exception of the wall signs for which variance relief is granted herein, no additional signage, commercial messaging, or copy may be affixed to the exterior or interior surface of any door or window glazing or exterior awning without first obtaining additional variance relief approval from the Board of Zoning Appeals.
4. Monument Sign – That the fuel price changeable copy display on the monument sign shall be restricted to an electronically managed scrolling price display (e.g., *Skyline Products* or similar technology) as generally illustrated below in Graphic 1. Said fuel price changeable copy display may not include manual flip, individual alphanumeric manual changeable characters, or LED or similar alphanumeric character illumination display as generally illustrated below in Graphic 2.



5. Monument Sign – That internal illumination and polymer/acrylic/plastic type protective sign face is restricted to the alphanumeric characters only; and, that the remaining sign face, illustrated in red color on the plans reviewed herein, must be opaque and meet sign material performance standards set forth in Article 1369.08(B). Further, that masonry brick/stone or veneer brick/stone be used, as illustrated on the plans reviewed herein, that complement the materials used on the principal structure; and, that the color of the metal sign cap match the bronze color used on the vertical members of the fuel canopy accessory structure.
6. Monument Sign – That the copy on each side of the monument sign must be identical in design and content.
7. That fuel price flip type sandwich board or similar portable fuel price messaging type signage is prohibited at the subject site.
8. That no signage may be affixed, attached, erected, etc. to/on the awning portion of or the vertical structural elements of the accessory fueling station canopy structure that can be read, understood, or legible from a public street by most persons of normal vision.
9. That no signage may be affixed, attached, erected, etc. to/on the gas pumps, gas pump islands, and/or air filling stations that can be read, understood, or legible from a public street by most persons of normal vision.

10. That no signage may be affixed, attached, erected, etc. to/on the dumpster enclosure, informational parking sign posts, bollards, lamp posts, traffic control regulatory sign posts, or similar structures and features that can be read, understood, or legible from a public street by most persons of normal vision.
11. That traffic control regulatory signs and informational parking signs (i.e., accessible parking) must be reviewed and approved as a part of the building permit application for the development of the site.
12. Monument Sign – That, in accordance with Article 1351.01(E) and Article 1369.07(E)(1)(c), the monument may not obstruct the corner visibility of the Foundry Street and University Avenue intersection nor the driveway entrance from the site onto Foundry Street as determined by the City Engineer.

Bossio reminded Mr. Hensley that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- D. V14-04 / Morgantown Dental Group / 142 High Street:** Request by Joshua Dolin, on behalf of Morgantown Dental Group, for variance relief from Article 1369 as it relates to signage at 142 High Street; Tax Map 28A, Parcel 47; B-4, General Business District.

Fletcher read the Staff Report.

Bossio introduced Josh Dolin who stated he concurred with the Staff Report and had no further information.

Shaffer noted the variance request is five times the allotted amount. Dolin confirmed and stated the front of the building is not readily viewable by potential customers and the request is to hang the sign on the side of the building along High Street.

Dolin explained the sign would consist of foam like material that would be constructed by the Morgantown Sign Factory and would not include lighting. Bossio suggested using a metal material for longevity or painting the sign on the building.

Dolin explained the existing sign is not affixed to the building and would be removed at the City's request.

Cardoso noted a sign is needed on the sign of the building to help identify the building and some sort of variance is needed.

The Board discussed the size of the sign and noted that past or future sign petitions on High Street need to be fair and equitable for everyone. The proposed sign requests a 57 foot variance. Papanreas noted the side of the building is large in area and the code is written to calculate signage according to the frontage of the building.

Cardoso suggested a long and thin sign on the side of the building instead of a rectangle.

Dolin stated he would be open to looking at other sign designs and options.

Burton asked if a mural would be allowed as it would improve the aesthetics of the building.

Bossio suggested tabling the request while Dolin works with the Planning Division to develop alternate options.

Shaffer made a motion to table V14-04 pending additional information; seconded by Burton. Motion carried unanimously.

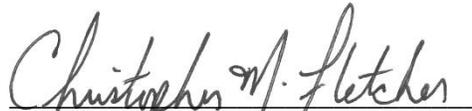
VI. ANNOUNCEMENTS: None.

VII. ADJOURNMENT: 7:45 PM

MINUTES APPROVED:

February 19, 2014

BOARD SECRETARY:


Christopher M. Fletcher, AICP