

BOARD OF ZONING APPEALS

Minutes

6:30 PM

January 20, 2010

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Leanne Cardoso, Tom Shamberger

MEMBERS ABSENT: Jim Shaffer, George Papandreas

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER and ROLL CALL: Bossio called the meeting to order at 6:30 PM

II. MATTERS OF BUSINESS:

A. 2010 Leadership Election – Bossio advised that the Board that State Code and the Board's By-laws provide that the election of leadership for the positions of Chair and Vice-Chair is to occur at the Board's first meeting of the calendar year. Shamberger moved to nominate Bossio for the 2010 Chair; seconded by Cardoso. Shamberger moved to nominate Cardoso for the 2010 Vice-Chair; seconded by Bossio. There being no further nominations, Bossio and Cardoso were appointed by acclamation as Chair and Vice-Chair respectively.

B. Approval of November 18, 2009 minutes – Cardoso moved to accept the minutes as presented; seconded by Shamberger. The motion passed unanimously.

Approval of the December 16, 2009 minutes – Bossio asked that the December 16, 2009 minutes be postponed until at least three Board members present at said hearing were available to consider a motion to approve or amend same.

III. OLD BUSINESS – None

IV. NEW BUSINESS

A. CU10-01 / Gates / 672 Bellaire Drive: Request by Georgia Lee Gates for a home occupation conditional use approval for property located at 672 Bellaire Drive; Tax Map #54 Parcel #206; an R-1, Single-Family Residential District.

Fletcher advised the Board that Ms. Gates had withdrawn her conditional use petition and that no action was required by the Board.

B. CU10-02 / Hong (Ogawa Japanese Restaurant) / 2920 University Avenue:
Request by Kwoneui Hong, on behalf of Ogawa Japanese Restaurant, for conditional use approval for a "Restaurant private club" use in B-1 District for property located at 2920 University Avenue. Tax Map #11 Parcel #181; a B-1, Neighborhood Business District

Fletcher read the Staff Report stating that Mr. Hong, proprietor of "Ogawa Japanese Restaurant" at 2920 University Avenue, seeks to change the land use type for the existing establishment from "Restaurant, private wine" to "Restaurant, private club" conditional use so that Saki and liquor can be sold.

According to the petitioner, "Ogawa" has been in operation since 2003. The petitioner purchased the establishment in November 2009 under Maki Maki, Inc.

The petitioner submitted the following exhibits, which are attached hereto: business plan, owner's resume, existing menu, and floor plan.

Bossio recognized Mr. Hong. There being no questions by the Board, the petitioner deferred to information provided in the Staff Report and accompanying documents but noted that the restaurant is open on Sunday as well closing at 9:30 PM.

Bossio opened the public comment portion asking if anyone present wished to speak in favor or in opposition of the conditional use petition. There being none, Bossio asked for Staff's recommendations.

Fletcher stated that the Board must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Staff recommends the following revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined) and that the conditional use approval be granted to Maki Maki, Inc. with the following conditions noted below:

1. That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06 (27) of the Planning and Zoning Code. That the establishment shall not serve liquor, including wine, later than 1:00 a.m., except on New Year's Eve;
2. That the petitioner must obtain permitting as a "restaurant" from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*;
3. That any regulated signage shall be reviewed and approved by the Planning Director prior to building permit issuance for same;
4. That the petitioner voluntarily submit all necessary financial information to the City for the subject establishment following its first twelve (12) months of operation as a "Restaurant, private club" to ensure compliance with Article 1331.06 (27) (e) provisions, which requires the sale of food and non-alcoholic beverages to comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month; and,
5. That the conditional use approval granted herein is specific to the petitioner and may not be transferred without first obtaining approval by the Board of Zoning Appeals.

Shamberger moved to accept the Findings of Fact with revisions recommended by Staff; seconded by Cardoso. The motion passed unanimously.

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

Finding of Fact #1 – Congestion in the streets is not increased, in that:

Parking is available behind and in front of said location with a total of sixteen (16) parking spaces.

Finding of Fact #2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The building and existing restaurant is required to conform to fire, safety, and building regulations.

Finding of Fact #3 – Provision of adequate light and air is not disturbed, in that:

There are no alterations proposed to the existing building that would diminish existing air flow and sunlight distribution conditions.

Finding of Fact #4 – Overcrowding of land does not result, in that:

There are no alterations proposed to the existing building that would increase building scale.

Finding of Fact #5 – Undue congestion of population is not created, in that:

The requested conditional use will simply allow for the sale of liquor, which can not contribute to the increase of population density.

Finding of Fact #6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The existing building was used as a restaurant by the previous tenant and granting the requested conditional use with neither increase nor decrease demand for public infrastructure and services already needed to serve the previous use and occupancy that had been approved.

Finding of Fact #7 – Value of buildings will be conserved, in that:

The existing building and subject leased space has been occupied by a restaurant since at least 2003.

Finding of Fact #8 – The most appropriate use of land is encouraged, in that:

The existing building and subject leased space has been occupied by a restaurant since at least 2003 and the conditional “restaurant, private club” use should contribute to the quality and character of the dining and social experience in this area.

Shaffer moved to approve CU10-02 as requested with the conditions recommended by Staff; seconded by Cardoso. The motion passed unanimously.

Bossio advised the petitioner that the Board’s decision can be appealed to the Circuit Court within thirty (30) days and that any work done during that time is at the sole financial risk of the applicant.

V. OTHER BUSINESS

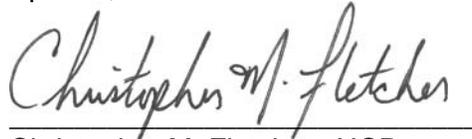
- A. Public Comments – None**
- B. Staff Comments – None**

VI. ADJOURNMENT – The meeting was adjourned at 6:38 PM.

MINUTES APPROVED:

April 21, 2010

BOARD SECRETARY:



Christopher M. Fletcher, AICP