

BOARD OF ZONING APPEALS

Minutes

6:30 PM

March 16, 2011

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Leanne Cardoso, Jim Shaffer, Tom Shamberger, George Papandreas

MEMBERS ABSENT: None

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. Minutes for the December 16, 2009 hearing – Papandreas moved to accept the minutes as presented; seconded by Cardoso. The motion passed unanimously with Bossio abstaining due to his absence.
- B. Minutes for the December 15, 2010 – Papandreas moved to accept the minutes as presented; seconded by Cardoso. The motion passed unanimously.
- C. Minutes for the January 19, 2011 and February 16, 2011 hearings. POSTPONED.

III. OLD BUSINESS: None

IV. NEW BUSINESS:

- A. **CU11-04 / Randy Butler Automotive / Hunter's Way:** Request by Randy Butler for conditional "Automotive Sales" use approval in the B-2 District on Hunter's Way within the former Sterling Faucet site.

Fletcher read the Staff Report, stating that the petitioner seeks to develop an "Automotive Sales" use at the subject site, which requires conditional use approval. Addendum A of this report illustrates the location of the subject site. The following elements describe the proposed development program:

- The site is approximately 1.3 acres with approximately 1.14 useable acres according to a portion of a plat submitted by the petitioner.
- Frontage and access to the subject site will be from Hunter's Way rather than directly from WV State Route 7.
- A temporary sales office trailer will be located on the site until the permanent structure is constructed and developed with twelve (12) months of opening.

- The preliminary site plan illustrates approximately 35 to 40 parking spaces that will be used for employees, customers, and the outdoor display of inventory.
- Units (vehicles) offered for sale will be reconditioned and detailed at the petitioner's main location in Accident, Maryland and trucked to the subject site.
- Projected sales are anticipated to be approximately 20-25 units (vehicles) per month.

The Board of Zoning Appeals approved a similar condition "Automotive Sales" use petition on July 21, 2010 for Glenmark Holding, LLC (Case No. CU10-09), which is currently under construction for the *JD Byrider* retailer.

Bossio recognized Randy Hunter, from Accident, MD. Mr. Hunter stated that he had nothing to add to the Staff Report. He stated he is from a rural area in Maryland, a second generation car dealer with 32 years of experience, so this is not a new venture for him. He further stated that he loves Morgantown and attends church here. He feels it is a good town for a car business.

Papandreas asked if there were any pictures showing what the permanent structure would look like? Mr. Hunter stated he did not have any pictures.

Bossio asked how soon the building would be built. Mr. Hunter stated that it will be erected as soon as the business shows signs of being successful. The name of the business will most likely be "Randy Butler Pre-Owned".

Bossio opened the public hearing, asking if anyone was present to speak in favor of this request. There being no comments, Bossio then asked if anyone was present to speak in opposition of the request. There being no comments, Bossio declared the public hearing closed and asked for Staff's recommendations.

Fletcher read the Staff recommendations, stating 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 revisions to the petitioner's Findings of Fact as stated in Addendum B of this report (deleted matter struck through; new matter underlined).

Staff recommends that the conditional use petition be approved as requested with the following conditions:

1. That the development's site plan must be reviewed by the Technical Review Team prior to building permit application.
2. That incidental automotive repair work, as defined in the City's Planning and Zoning Code, may not occur unless approval by the Board of Zoning Appeals as a change in land use as permitted by conditional use approval in the B-2 District.
3. That a Sign Plan must be submitted to and approved by the Planning Director prior to installation of same in accordance with Article 1369 of the Planning and Zoning Code.

4. That windblown devices, pennants, streamers, animated signs, or any other attention attracting devices shall not be permitted as set forth in Article 1369 of the Planning and Zoning Code.
5. That the temporary certificate of occupancy for the proposed sales office trailer may not be granted for more than twelve (12) months.
6. That the temporary sales office trailer shall have electric, water, and sanitary sewerage and be anchored to the ground as required by the West Virginia State Building Code.
7. That the development and construction of a permanent sales office structure, that is built of materials in a manner that would commonly be expected to remain useful for a substantial period of time, shall be completed and ready for permanent certificate of occupancy permitting no later than twelve (12) months following the issuance of the temporary certificate of occupancy for the proposed temporary sales office trailer.
8. That the development of sidewalks along the frontage as set forth in Article 1347.07 (F) may be delayed until the construction and development of the permanent sales office structure.
9. That the anchoring of the proposed temporary sales office trailer, as required by the West Virginia State Building Code, shall not constitute or be construed as meeting Condition No. 7 above. Further, said temporary sales office trailer shall be removed from the site as a condition of issuing the permanent certificate of occupancy for the permanent sales office structure.
10. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.

Shamberger moved to accept the Findings of Facts, as revised by Staff; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Findings of Facts were included in the motion:

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

The petitioner is not seeking driveway entrance from WV State Route 7. Rather ingress and egress will come from Hunter's Way to promote best access management practices. Potential customers will access the property by turning onto the access road between First United Bank and the Burger King restaurant or by using the existing traffic light at Eljadid Street and Earl Core Road. The proposed conditional Automotive Sales" use should not contribute to traffic congestion that already exists within the commercial/retail corridor.

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

The pathway for ingress and egress will follow the established two lane roadway. The lot will be devoted mainly to vehicle display and customer parking. The petitioner will be required to meet all related life and safety standards within the City's Building and Fire Codes.

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

The nature of the proposed development being predominantly surface parking should have insignificant impact on existing light distribution and air flows patterns.

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

The lot coverage created by the proposed temporary office trailer and later for the permanent structure will be well below the B-2 District's maximum lot coverage standard of sixty (60) percent.

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

The proposed conditional use is limited to automotive retail and will not include a residential use component.

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

It appears that adequate infrastructure is available to serve the needs of the development; a residential use component is not included in the proposed development program and therefore will not increase demand for public schools.

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

The dealership should add to the commercial nature and activity of the current location and retail corridor.

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

There are other new and used auto dealerships within the Earl Core Road corridor and a similar conditional use petition was granted for case number CU10-09 on July 21, 2010 for Glenmark Holding, LLC, which is currently under construction for the *JD Byrider* automobile retailer.

Shaffer moved to approve CU11-04 with conditions recommended by Staff; seconded by Papandreas. Motion passed unanimously.

- B. V11-01 / Big Pong, LLC:** Request by Sean Murphy, on behalf of Big Pong, LLC, for variance approval from the Planning and Zoning Code, Article 1347.04 "Setbacks and Encroachments" for property located on a private drive off of Eljadid Street. Tax Map #33, Parcel #51; B-2, Service Business District.

Fletcher noted that the Staff Report addresses the V11-01 and V11-02 petitions. He read the Staff Report stating that Big Pong, LLC seeks to re-develop a vacant area that is located off an unnamed private street behind Clear Mountain Bank and adjacent to Kroger's and *Kentucky Fried Chicken*. Addendum A of this report illustrates the location of the site.

The general development program details for the proposed "Restaurant" include:

- Approximately 9,573 square feet of gross floor area (GFA).
- Thirty-six (36) surface parking spaces.
- Approximately twelve (12) employees may be present during the largest shift.

Due to the location of the floodway that encompasses a large portion of the western side or rear of the property, the amount of buildable area appears to be diminished for the development program proposed by the petitioner. Specifically, the size of the restaurant and the planned drive-thru facility presents challenges to site design in terms of providing minimum parking, mitigating pedestrian and vehicle conflict presented by the drive-thru lane, and providing sufficient access for fire trucks.

Staff has reviewed several site design iterations and believes that the petitioner's proposed site plan is the most practicable solution.

The following narrative addresses the extent of each of the variance petitions and Staff observations.

V-11-01Article 1347.04 of the Planning and Zoning Code provides a maximum front setback in the B-2 District of thirty (30) feet. The proposed site plan illustrates a front setback of 74.5 feet, which requires a 44.5 foot variance. The purpose of the setback is to accommodate the necessary parking and drive-thru facility for the proposed restaurant establishment given the reduced buildable area of the tract as a result of the adjacent stream.

V11-02Article 1347.06 (B) of the Planning and Zoning Code provides that, "No parking spaces shall be permitted between the front façade of a building and any street right-of-way." The proposed site plan illustrates approximately 25 parking stalls between the unnamed private street and the front building line. As such, variance approval is necessary. Although there appears to be sufficient area behind the proposed structure to develop parking, particularly if the structure is moved forward, associated grading and earthwork to accomplish same could adversely impact the floodplain and floodway of Deckers Creek. Because Deckers Creek is prone to flood inundation during moderate and severe rain events, Planning and Engineering Staff supports best practice efforts to preserve the natural floodplain capacity of this area.

Bossio recognized the Petitioner, Sean Murphy, 265 High Street. Mr. Murphy introduced himself as the attorney representing Big Pong, LLC. He stated that, after meeting with engineers (both from the City and private) and architects, they have had to shrink the size of the building.

Shamberger asked if the road would remain closed or would it be open? Mr. Murphy stated he understands it is an ongoing negotiation between the bank and Kroger as to whether Kroger will allow access. Kroger is concerned about some liability issues. He would like to see it open and he said he knows the bank is in favor also.

Shamberger agreed that it would be much more convenient if it were to be opened. Fletcher stated that the Planning Commission required the owner, at that time, to plat out a cul-de-sac. The cul-de-sac area now needs to be used for parking. He also stated that the City is talking to Kroger to try and persuade them to reconsider opening the road.

Bossio opened the public hearing for both V11-01 and V11-02 without objection, asking if there was anyone present to speak in favor of the request. There being no comments, he then asked if anyone was present to speak in opposition of the request. There being no comments, Bossio declared the public hearing closed and asked for Staff's recommendations.

Fletcher read the Staff recommendations, stating that The Board must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination

for each of the "Findings of Fact" submitted by the applicant. Each variance petition must be considered and acted upon by the Board separately.

Staff recommends revisions to the petitioner's "Findings of Fact" for each of the variance requests as provided in Addendum B of this report.

Staff recommends that variance relief be granted for each of the petitions as requested with the following conditions for each variance approval:

1. That a final landscape plan be submitted with the building permit application which, to the satisfaction of the Planning Director, establishes an attractive streetscape and substantially screens the view of parking from the private access road preserving safe visibility for exiting vehicles.
2. That the final site plan submitted with the building permit application include, to the satisfaction of the Planning Director, an accessible sidewalk across the development's frontage along the unnamed private street.

Shaffer moved to accept the Findings of Facts for V11-01, with Staff recommended revisions; seconded by Papandreas. Motion carried unanimously.

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

Finding of Fact #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 proposed building site had to be moved forward in order to stay out of the floodway. The requested variance is necessary in order for the lot to house the proposed building, to have the required number of parking spaces, and so that there is adequate ingress and egress for emergency vehicles.

Finding of Fact #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 predominant front setback trend within the Earl Core Road commercial corridor and along connection commercial side streets appears to be greater than the 30' requirement. The proposed setback appears to be consistent with the setback patterns within the subject commercial area. Similar variance relief petitions were granted for V07-38 / Glenmark-USDA and V10-26 / Auto Zone Development.

Finding of Fact #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 design efforts in developing the proposed site plan appear to demonstrate care in preserving the adjoining floodplain and mitigating adverse impacts that would otherwise be realized without situating the building further from the front property line to create an area for parking.

Finding of Fact #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 proposed variance will allow development of the lot that is consistent with other development in the area; should significantly raise the market contribution of a currently nonperforming and underutilized tract; and should not contribute to traffic congestion that is already present within the commercial area.

Shaffer made a motion to approve V11-01 as requested with Staff recommended conditions; seconded by Cardoso. Motion passed unanimously.

- C. **V11-02 / Big Pong, LLC:** Request by Sean Murphy, on behalf of Big Pong, LLC, for variance approval from the Planning and Zoning Code, Article 1347.06 “Parking and Loading Standards” for property located on a private drive from Eljadid Street. Tax Map #33, Parcel #51; B-2, Service Business District.

Shamberger moved to accept the Findings of Facts for V11-02; Cardoso seconded. Motion carried unanimously.

NOTE: The Findings of Facts were included in the motion.

Finding of Fact #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 proposed building site had to be moved forward in order to stay out of the floodway. The requested variance is necessary in order for the lot to house the proposed building, to have the required number of parking spaces, and so that there is adequate ingress and egress for emergency vehicles. Throughout this area, there are several businesses where their parking is between the building and the frontage street.

Finding of Fact #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 predominant development pattern within the Earl Core Road commercial corridor contains parking between commercial storefronts and frontage streets. The proposed parking plan appears to be consistent within the subject commercial area. Similar variance relief petitions were granted for V07-39 / Glenmark-USDA and V10-28 / Auto Zone Development.

Finding of Fact #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 design efforts in developing the proposed site and parking plans appear to demonstrate care in preserving the adjoining floodplain and mitigating adverse impacts that would otherwise be realized without situating the building further from the front property line to create an area for parking.

Finding of Fact #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:

Parking between the storefront and the frontage street appears to be consistent with the predominant development pattern within the commercial area. The variance should not diminish the development's ability to enhance the existing commercial use and character of the subject site, which should serve to improve the quality and character of the corridor and the value of neighboring properties. The development, as required by the Planning Commission, will provide a vehicle turnaround opportunity for the general public and emergency vehicles that is not currently available.

Papandreas moved to approve V11-02 as requested with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

D. V11-05 / J.D. Byrider / 1500 Earl Core Road: Request by Corporate ID Solutions, on behalf of J.D. Byrider for variance relief from the Planning and Zoning Code, Article 1369 "Signs" for property located at 1500 Earl Core Road. Tax Map #31, former Parcel #107; B-2, Service Business District.

Fletcher read the Staff Report, stating that The *J.D. Byrider* automotive retail establishment is near construction on a portion of the former site of the Chrysler Dealership site. The petitioner's proposed wall signage plan exceeds the maximum wall sign area standard in the B-5 District. Addendum A of this report illustrates the location of the subject site.

Article 1369.07 (I) (1) of the Planning and Zoning Code provides that the maximum area of all wall signs on a building in the B-5 District is 0.6 square feet of wall sign area per linear foot of tenant building frontage.

The *J.D. Byrider* building has 85 feet of building frontage and is therefore permitted to have 51 square feet of wall signage. The proposed wall sign area 138.08 square feet, which requires 87.08 square feet in variance relief.

One of the stated purposes within the Planning & Zoning Code for sign regulations is to:

"...encourage the effective use of signs as a means of communication in the City, to maintain and enhance the pleasing look of the City, which attracts to the City continued economic investment; to preserve Morgantown as a community that is attractive to business, to residents and to visitors..." [Article 1369.01 (A)]

Size restrictions are one of several means to accomplish this policy objective.

Bossio recognized the Petitioner, Mark Morris, from Marietta, OH, General Operations Manager. Mr. Morris stated he had nothing to add to the Staff Report.

There being no questions from Board members, Bossio opened the public hearing asking if anyone was present to speak in favor of the request. There being no comments in favor of the request, he then asked if anyone was present to speak in opposition of the request. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher read Staff's recommendations, stating that the Board must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact".

Staff recommends the following revisions to the petitioner's Findings of Fact (deleted matter strikethrough; new matter underlined) and offers no recommendation to approve or deny the variance petition.

Papandreas moved to accept the Findings of Fact, as revised by Staff; seconded by Shamberger. Motion carried unanimously.

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

Finding of Fact #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 subject building is approximately 240 feet from Earl Core Road, which may create a significant disadvantage for visibility of the business in comparison to similar automotive retailers within the corridor. It appears that the predominant commercial signage and messaging patterns within the Earl Core Road corridor exceed the maximum area standards set forth in the Planning and Zoning Code. Compliance with said maximum standards may result in a competitive disadvantage for the petitioner.

Finding of Fact #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:

It appears that the majority of commercial signs along the Earl Core Road corridor are nonconforming as most do not meet maximum area set forth in Article 1369 of the Planning and Zoning Code. In October 2010, the Board granted a 149.74 square foot sign variance for *Auto Zone*, which sets back 77.5 feet from Earl L. Core Road.

Finding of Fact #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 extent of requested variance relief has been reduced to better reflect existing signage patterns along the Earl Core Road corridor, which do not presently appear to harm public welfare, adjoining properties, or improvements.

Finding of Fact #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 proposed plan appears to be consistent with the predominant commercial signage patterns of the Earl Core Road corridor, which do not appear to diminish the market value or vitality of the well-established commercial corridor. Variances in relation to signage cannot contribute to nor mitigate existing traffic volumes on neighboring streets.

Papandreas moved to approve V11-05 as requested with Staff recommended conditions; seconded by Shaffer. Motion carried unanimously.

Fletcher announced that items D-I of the Agenda are all postponed.

OTHER BUSINESS:

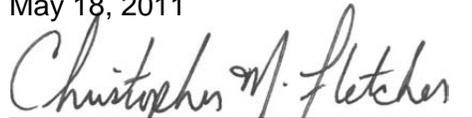
- A. Public Comments: None
- B. Staff Comments: Fletcher announced that a site visit for GCFS Properties, 152 Third Street, would be scheduled prior to Board's next hearing.

ADJOURNMENT: 7:00 p.m.

MINUTES APPROVED:

May 18, 2011

BOARD SECRETARY:



Christopher M. Fletcher, AICP