

BOARD OF ZONING APPEALS

Minutes

6:30 PM

April 15, 2009

City Council Chambers

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

MEMBERS ABSENT: 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. Minutes for January 21, 2009 – Shamberger moved to approve the January 21, 2009 minutes as submitted; seconded by Cardoso. The motion passed unanimously.

B. Minutes for March 18, 2009 – Cardoso moved to approve the March 21, 2009 minutes as submitted; seconded by Shamberger. The motion passed unanimously. Shaffer abstained from voting due to his absence from that March meeting.

III. OLD BUSINESS

A. CU07-09 / Babilonia / 357-361 High Street: Request by Edgardo Babilonia for an amendment to a previously approved conditional use for a “Restaurant private club” use in the B-4 District at 357-361 High Street; Tax Map #26A Parcel #98; a B-4, General Business District.

Fletcher read the Staff Report stating that Mr. Edgardo Babilonia received conditional use approval from the Board of Zoning Appeals to open a “Restaurant, Private Club” use called *Bab’s Italian Grill* in the former location of DeVincent’s Music at 357-361 High Street in July 2007. The petitioner has opened the establishment and appears to have complied with all conditions established by the Board and/or provided in the Planning & Zoning Code.

One of the Board’s conditions was, “That the conditional use approval granted herein may not be transferred.” Mr. Babilonia seeks to restructure the establishment’s ownership from a limited liability company to a corporation – Balsam, Inc. To comply with said condition, it is the opinion of the Planning Department that Mr. Babilonia should seek Board approval for said ownership restructuring.

Fletcher stated that Mr. Robert Berryman, attorney for *Bab’s Italian Grill*, will be in attendance at the Board’s April 15, 2009 hearing to further explain the ownership of the new corporation; the transfer of the previous conditional use approval to Balsam, Inc.; and, Mr. Babilonia’s continued involvement in the establishment.

Bossio recognized Mr. Robert Berryman, 2917 University Avenue. Berryman, representing Babilonia, stated that from the exterior, there would be no difference with the exception that Mrs. Babilonia, who was also in attendance, is an officer and shareholder. Berryman stated that she has been in the restaurant business as long as Mr. Babilonia has been. The request was merely to authorize the restructuring of the business's ownership and to ensure conform to the Board's previous conditional use approval.

Shaffer asked if any findings of fact where necessary. Fletcher stated that the merits for which the original conditional use was approved appeared be remain and that Staff recommended that the original conditions be included with the approval of the ownership restructuring.

Bossio then opened the public comment portion of the meeting. There being no comments, either in favor or against the request, the public comment portion was closed and asked for staff's recommendations.

Fletcher stated that Staff recommends that the petitioner's request to transfer conditional use approval from Mr. Babilonia to Balsam, Inc. be approved with all conditions previously set forth by the Board for the subject establishment as restated below:

1. That the petitioner shall 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 applicant must obtain permits as a "restaurant" from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*.
3. That the basement or any other interior portion of the subject building that is not illustrated in the petitioner's preliminary drawing submitted with the conditional use application documents shall not be used by the subject establishment for any purpose without first obtaining approval by the Board.
4. That the currently contemplated outdoor area to the rear of the building shall not be created, improved or otherwise used by the subject establishment until the improvements of such area are reviewed and approved by the Downtown Design Review Committee and the Planning Director. That said area shall meet or exceed all related building and fire codes prior to use thereof. That potential seating in such area shall not be used in calculating minimum seating requirements as set forth in Article 1331.06 (27) (f) of the Planning and Zoning Code.
5. That any exterior building modifications shall be reviewed and approved by the Downtown Design Review Committee and the Planning Director prior to building permit issuance for same.
6. That any regulated signage shall be reviewed and approved by the Downtown Design Review Committee and the Planning Director prior to building permit issuance for same.
7. That the conditional use approval granted herein may not be transferred.

Shamberger moved to approve the ownership restructuring from a limited liability company or a corporation with the conditions recommended by Staff; seconded by Cardoso. The motion passed unanimously.

Bossio advised Berryman that the Board's decision could be appealed to Monongalia County Circuit Court within thirty (30) days and that any work done during this time would be at the sole financial risk of the petitioner.

IV. NEW BUSINESS

- A. **V09-08 / Leonard / 1512 Eastern Avenue:** Request by Steve Leonard for variance approval from the Planning and Zoning Code, Article 1333 as it relates to setbacks for property located at 1512 Eastern Avenue; Tax Map #53 Parcel #188; an R-1, Single-Family Residential District.

Fletcher read from the Staff Report stating that the applicant seeks to construct a one-car attached garage to the side of his existing single-family residence. Addendum A of this report illustrates the site's location.

According to the Planning & Zoning Code Article 1333.04 (A) (3) the minimum side setback is ten (10) feet. However, Article 1333.07 (B) of the Planning & Zoning Code provides that:

"On a corner lot, the front lot line shall be the lot line having the shortest dimension along the street right-of-way line. The required side yard setback on the side facing a street shall be one and one-half (1.5) times the normal side setback requirement."

The petitioner's proposed plan is to construct the garage approximately five (5) to ten (10) feet from the side property line. To do so, the Board must grant a five (5) to ten (10) foot variance from Article 1333.07 (B). It should be noted that the adjoining Morgan Drive right-of-way of approximately 69.67' appears to be unusually wide due to the fact that the City acquired additional realty in 1993 to connect Morgan Drive to Eastern Avenue (see attached application exhibits).

Bossio recognized Steve Leonard, 1512 Eastern Avenue who stated that he asked his neighbors if they would have a problem with his constructing a one-car attached garage to the side of his existing residence and no one offered any objections. Leonard stated the garage would be set back far enough so as not to interfere with the site line of the intersection. He stated that the City owns the overgrown vacant property next to his and they cut the grass but do not deal with the brush. He feels once the brush is cut down, it will actually improve visibility at the intersection.

With no questions from the Board, Bossio opened the public comment portion of the meeting, asking for comments either in favor or against the request.

Fletcher read into the record a letter from Beverly Powell of 1502 Eastern Avenue and Michael Hurst of 790 Morgan Drive which stated they did not oppose Leonard's request.

There being further comments, Bossio closed the public comment portion of the hearing asked for Staff's recommendations.

Fletcher stated that the Board of Zoning Appeals 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. Staff recommends the revisions to the petitioner's

“Findings of Fact” (deleted matter struck through; new matter underlined) and approval of the variance petition with the following conditions:

1. That, if necessary, an access permit be obtained by the City Engineer; and,
2. That all off-street parking on the subject realty be paved within twelve (12) months following construction of the subject garage addition.

Shaffer moved to find in the affirmative for all the revised Findings of Fact recommended by Staff; seconded by Shamberger. The motion passed unanimously.

NOTE: The following findings 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:

R-1 zoning in the area requires a 15’ setback on the side facing Morgan Drive, which is the required 1.5 times the normal 10’ setback. However, there appears to be an approximate 25’ wide empty City lot between the subject side property line and the paved area of Morgan Drive. This 25’ wide lot is composed of overgrown brush and a flat grassy area. the requested 10’ variance to build a garage should not affect the City’s empty lot.

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 granting of this 10’ variance would allow the construction of a one car garage in what appears to be an appropriate yet limited side yard buildable area of the property without adversely affecting the City’s adjoining vacant lot. The garage addition will increase the availability of off-street parking for the existing single-family structure.

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 construction of this garage should not affect the empty City lot next to the petitioner’s property. The one story garage would not affect visibility at the corner of Eastern and Morgan and would probably improve it due to the required removal of some existing bushes at the corner of Eastern and Morgan. The addition of a garage should increase the value of the home which should also have a positive effect on other homes in the area.

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 granting of this variance would only affect the City property which is presently an empty lot and is only 25’ wide. Morgan Drive already has a paved surface of approximately 20’ and should not be adversely impacted by the requested variance. As stated above the one story garage would not affect visibility for traffic on Eastern or Morgan and would have a positive effect of the home’s property value which should positively affect the other homeowners in the area.

Shamberger moved to grant variance relief as requested with conditions recommended by Staff; seconded by Cardoso. The motion passed unanimously.

Bossio advised Leonard that the Board's decision could be appealed to Monongalia County Circuit Court within thirty (30) days and that any work done during this time would be at the sole financial risk of the petitioner.

- B. V09-09 / Moser Investments, LLC / 103 3rd Street:** Request by Moser Investments, LLC for variance approval from the Planning and Zoning Code, Article 1361.03 (A) which states that buildings shall be oriented with the front facing the lot's primary street for property located at 103 3rd Street; Tax Map #19 Parcel #118; an R-3, Multi-Family Residential District and a Sunnyside South Overlay District.

Fletcher advised the Board that the request had been withdrawn by the applicant and not further action was required by the Board.

- C. V09-10 / Moser Investments, LLC / 103 3rd Street:** Request by Moser Investments, LLC for variance approval from the Planning and Zoning Code, Article 1339.04 as it relates to setbacks for property located at 103 3rd Street; Tax Map #19 Parcel #118; an R-3, Multi-Family Residential District and a Sunnyside South Overlay District.

Fletcher advised the Board that the request had been withdrawn by the applicant and not further action was required by the Board.

- D. V09-11 / Moser Investments, LLC / 103 3rd Street:** Request by Moser Investments, LLC for variance approval from the Planning and Zoning Code, Article 1361.03 (E) and 1361.03 (O) (1) as they relate to fenestration and transparency for property located at 103 3rd Street; Tax Map #19 Parcel #118; an R-3, Multi-Family Residential District and a Sunnyside South Overlay District.

Fletcher stated that one Staff Report was prepared for Variance Cases V09-11 and V09-12. Fletcher read the Staff Report stating that the petitioner seeks to construct a multi-family structure as part of the recently constructed Fourth Street Apartments and the Ashbrooke Liquor Outlet development.

The following points highlight the proposed development program:

- The subject realty is situated on Third Street with a zoning classification of R-3, Multi-family Residential District and South Sunnyside Overlay District.
- The proposed structure will contain eight (8) two-bedroom dwelling units, which only requires administrative site plan review and approval.
- The structure will contain four (4) stories of residential dwelling units above one level of garage parking spaces that will be accessed from an existing alley.

- Setbacks:
 - Front4 feet

Proposed front setback meets the following Planning & Zoning Code provision:

1363.02 (C) Developed Blocks. If seventy-five percent (75%) or more of the lots in a block, on both sides of the street, are occupied by buildings, the following regulations shall apply:

(1) Residential Uses. The front setback shall vary by not more than 8 feet from the home(s) on either side of the lot. This requirement shall supersede the normal minimum and maximum front setbacks.

- Side6 feet and 10 feet

Proposed side setbacks meet the minimum standard of 5 feet.

- Rear..... 10 feet

Proposed rear setback meets Article 1361.04 (A) (3), which provides:

Minimum rear setbacks shall be one-half (1/2) of that ordinarily required in the underlying zoning district.

- The proposed lot coverage is approximately 47%, which is less than the 70% permitted within the Sunnyside Overlay Districts.
- The minimum parking requirement is calculated on .5 spaces per bedroom. The proposed plan illustrates eight (8) spaces, which meets the minimum parking requirement for the proposed development. One (1) space is designated as handicap accessible.
- Addendum A of this report illustrates the location of the subject site.
- Addendum B of this report contains a review with the Sunnyside Overlay District design and performance standards.

The following variance approvals are required for the proposed development:

- V09-11..... Relief from the Planning & Zoning Code, Article 1361.03 (E) and 1361.03 (O) (1) relating to ground floor and front façade fenestration in the Sunnyside Overlay Districts
- V09-12..... Relief from the Planning and Zoning Code, Article 1361.03 (P) (1) and (2) relating to cladding materials in the Sunnyside Overlay Districts

The petitioner met with the Technical Review Team and has incorporated all suggested modifications. It is the opinion of the Planning Department that the redesigned development program has been significantly enhanced by:

- Flipping the floor plan of the first floor dwelling unit closest to Third Street so that an entrance door and ground-level windows can be incorporated.
- Adding a covered front porch to enhance the proposed façade facing Third Street and complement the architecture character of neighboring structures that front Third Street.

- Incorporating decorative shutters that include trim, sills, and lintels on the second, third, and fourth stories of the façade facing Third Street to bring architectural character to an otherwise blank wall.
- Incorporating shaker or similar alternative style cladding material within the roof gable end portion of the façade facing Third Street that is texturally different from the wood-grain style cement fiber board used on the remaining façade thereby creating an additional horizontal break in the façade facing Third Street.
- Incorporating octagon windows in the building's side facades near the front and rear corners to provide unique architectural character.

Bossio recognized the petitioner Mr. Joseph Moser who stated that the current project would enhance and add to Beechurst Avenue. The façade of the building will look more like a home.

Without objection, Bossio opened the public comment portion of the meeting for both petitions V09-11 and V09-12. There were no comments either in favor or against the petitions, Bossio closed the public comment portion of the meeting and asked for Staff's recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant.

Fletcher reminded the Board that each variance petition must be considered and acted upon by the Board separately.

Concerning Case V09-11, relief from fenestration-related requirements, Fletcher stated that Staff concurs with the petitioner's findings of fact and recommends approval with the following conditions:

1. That, to the satisfaction of the Planning Director, decorative shutters, including trim, sills, and lintels on the second, third, and fourth stories of the façade facing Third Street be incorporated to bring architectural character to an otherwise blank wall.
2. That, to the satisfaction of the Planning Director, shaker or similar alternative style cladding material be incorporated within the roof gable end portion of the façade facing Third Street that is texturally different from the wood-grain style cement fiber board to provide an additional horizontal break in same.
3. That, to the satisfaction of the Planning Director, all windows within the structure include decorative trim, sills, and lintels to create a distinct and uniform shadow line for the building's façades.

Shaffer moved to find in the affirmative for all the revised Findings of Fact submitted by the applicant; seconded by Shamberger. The motion passed unanimously.

NOTE: The following findings were included in the motion.

Findings of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The architectural vocabulary proposed for the front entrance façade reflects the traditional design used in recently constructed multi-family development within the Sunnyside Neighborhood. The ground floor transparency requirement generally addresses the commercial component of a mixed use development. By locating the building to the building line along 3rd Street, as desired within the Sunnyside Overlay District, the minimum required window fenestration ratio will reduce the quality of life for residential occupants, particularly on the first floor.

Findings 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 proposed design of the front façade and the entire building incorporates much the same degree of fenestration, natural light, and quality design as the older neighboring structures. Mr. Panico was granted a fenestration variance in January 2007 and Metro Properties in July 2007. Likewise, the adjacent building owned by the applicant received variance approval in June 2007 with a proposed fenestration for the façade along Beechurst Avenue of 20% and the ground floor fenestration along Beechurst Avenue of 34%. Due to interior design of the building, window replacement on the 2nd floor and above is negated by bathroom placement. The applicant has agreed to place louvered shutters on the front of the building, a design element utilized in other designs throughout the city.

Findings 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 architectural design of the building will significantly enhance adjacent property, improvements, and the neighborhood's overall built environment, all of which will not be diminished by granting this variance.

Findings 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 variance will not detract from the significant improvement anticipated to the quality and character of the site and surrounding area. The project is expected to enhance the market value of properties within the immediate area by promoting quality redevelopment and by incorporating a majority of the Sunnyside Overlay District design and performance standards. The variance can not result in nor contribute to an increase in traffic congestion.

Shamberger moved to grant variance relief as requested with conditions recommended by Staff; seconded by Cardoso. The motion passed unanimously.

Bossio advised Leonard that the Board's decision could be appealed to Monongalia County Circuit Court within thirty (30) days and that any work done during this time would be at the sole financial risk of the petitioner.

- E. **V09-12 / Moser Investments, LLC / 103 3rd Street**: Request by Moser Investments, LLC for variance approval from the Planning and Zoning Code, Article 1361.03 (P) (1) & (2) as it relates to building materials for property located at 103 3rd Street; Tax Map #19 Parcel #118; an R-3, Multi-Family Residential District and a Sunnyside South Overlay District.

Fletcher advised that Staff concurred with the petitioner's Findings of Fact and recommended approval without conditions.

Shaffer moved to find in the affirmative for all the revised Findings of Fact submitted by the applicant; seconded by Cardoso. The motion passed unanimously.

NOTE: The following findings were included in the motion.

Findings of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The redeveloped project creates a unique opportunity for new construction within a blighted area where absentee landlords do not keep up with the maintenance of their property. The first or ground floor (garage area) of the building will be comprised of imitation dry-stack stone, which often cannot be distinguished from natural stone. "Hardy Plank" is a concrete fiber siding that resembles conventional wood lap siding. It is a superior material and outperforms wood siding in terms of durability, impact of insects and animals, and maintenance.

Findings 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 proposed design of the building incorporates a majority of the Sunnyside Overlay District objectives while recognizing that existing older structures along 3rd Street with natural wood materials and vinyl and aluminum siding are in disrepair due to the rigorous maintenance they require due to road-related dirt, pollution, and wear from traffic along Beechurst Avenue and 3rd Street. The Board granted approval of like material in June 2007 for the applicant's now existing building and in July 2007 for Glenlock on University Avenue.

Findings 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 redevelopment will produce a quality living space, which is much needed in the vicinity. The architectural design and building materials of the structure will significantly enhance adjacent property, improvements, and the neighborhood's overall built environment, all of which will not be diminished by granting a cladding material variance.

Findings 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:

A building material variance will not detract from the significant improvement anticipated to the quality and character of the site surrounding area. The project is expected to enhance the market value of properties within the immediate area by promoting quality redevelopment. A building material variance can not result in nor contribute to an increase in traffic congestion.

Cardoso moved to grant variance relief as requested with conditions recommended by Staff; seconded by Shaffer. The motion passed unanimously.

Bossio advised Leonard that the Board's decision could be appealed to Monongalia County Circuit Court within thirty (30) days and that any work done during this time would be at the sole financial risk of the petitioner.

V. OTHER BUSINESS

A. Public Comments – None

B. Staff Comments – None

Shamberger complimented the Planning Department on their work with applicants to provide complete petitions and findings of fact. Bossio stated the Board has come a long way over the last few years through the efforts of the Planning Department Staff.

The meeting adjourned at 7:05 PM