

MORGANTOWN BOARD OF ZONING APPEALS MINUTES

May 16, 2007

6:30P.M.

City Council Chambers

Members Present: Bernie Bossio, Nick Iannone, Mark Furfari (arrived late), and Jim Shaffer

Members Absent: None

Staff Present: Christopher Fletcher, AICP, Planning Director

MATTERS OF BUSINESS:

A. Minutes of April 18, 2007 postponed until June meeting.

OLD BUSINESS:

NONE

NEW BUSINESS:

A. V07-10 / Benyahia / 454 Civitan Street: – Request by Sofiane Benyahia for variance approval from 1331.08 (B) (1) as it pertains to the height of a fence at 454 Civitan Street. Tax Map #2 Parcel #101; an R-1, Single-Family Residential District.

Fletcher read the background and analysis that states that the applicant seeks to construct a cedar fence, eight (8) feet in height and approximately eighty (80) foot in length along the eastern property boundary. Fletcher gave the supporting city code that regulates fence height to 6.5ft in the residential areas. Several neighborhood homes contain fencing along yard parameters that conform to the maximum fence height standard.

The applicant has stated that their reasoning for the request is to buffer frequent noise disturbances from the neighboring house. According to MECCA 911 Emergency Dispatch, police officers have never been dispatched to the neighboring address in response to noise complaints.

Staff has received one phone call in opposition from Ms. Sally P. Shepherd of 433 Civitan Avenue (notes attached hereto).

Sofiane Benyahia, 454 Civitan Street, stated that about a year after they moved in a lot of students also moved in and that brought excess noise. Their bedroom is along the side of the house facing the neighbor's house. He continued that they had called the police several times and a letter was sent to the neighbors regarding the noise. A double fence that is higher should buffer the noise. This is not a permanent structure and could be removed if needed.

Maria Benyahia, 454 Civitan Street, stated that the college students party from 9pm to 1am. They considered moving and putting the home up for sale, but decided to try the fencing to eliminate the noise.

Fletcher clarified that Mr. Benyahia wanted a double fence. He inquired as to the height of the windows in the bedroom.

Benyahia stated that he would like the two fences back to back and that the windows are approximately 8 feet.

Furfari asked if they own the property or rent.

Benyahia stated the parents bought it for one of the students, but others live there.

Bossio clarified that Mr. Benyahia called the police.

Fletcher stated that the department checked with MECCA 911, but if Benyahia called the police department directly there would be no record.

Benyahia stated that since he did not consider it an emergency, he did not call 911.

Bossio called for public comments in favor of and against. There being no public comment, the portion was closed.

Bossio advised staff has offered alternate responses to findings of facts #1, #2, #3, and #4.

Shaffer clarified there was only one letter in opposition received and located that property on the map for clarification.

Shaffer moved to accept the findings of facts on this application with the changes that staff has presented, second by Furfari. Motion carried unanimously.

Shaffer moved to grant a 1.5ft variance, second by Iannone. Motion carried unanimously.

B. CU07-07 / Boathouse Bistro, LLC / 40 Donley Street: Request by Boathouse Bistro, LLC for conditional use approval for private club license in the B-4 District at 40 Donley Street. Tax Map #28 Parcel #18 & 134; a B-4 General business District.

Fletcher advised that the published address was 40 Donley Street, but it may change pending approval for the establishment.

Fletcher continued that Mr. Richard Lane, representing Boathouse Bistro, LLC, seeks conditional use approval to open a "Restaurant, Private Club" use called *Boathouse Bistro* in the newly constructed Upper Monongahela River Center located in the Wharf District. The petitioner has submitted the following exhibits, which are attached hereto:

- Business description
- Upper Monongahela River Center site plan
- Dominion Post Article dated April 20, 2007

He explained that the establishment will contain approximately 3,000 square feet with seating for 128 indoors and 48 outdoors on a seasonal basis. The proposed hours of operation are 11:30 AM to 12:00 AM Sunday through Thursday and 11:30 AM to 1:00 AM on Friday and Saturday. Although parking is not required in the B-4 District, there appears to be ample parking available with existing public and private parking facilities. Addendum A of this report contains photos of the site taken by staff.

The "Restaurant, Private Wine" and "Tavern" uses are permitted by-right in the B-4 District. The Boathouse Bistro seeks to sell liquor in addition to beer and wine, which changes the use classification to "Restaurant, Private Club."

Fletcher went on to read the City Codes that pertain to this request.

Rich Lane, 2 Waterfront Place, thanked the board for having him. Lane explained Chef Wongs background experience. Lane stated they are the landlords for the restaurant. They are asking for a variance on the conditional use to be open to 1 A.M. and to waive the one year waiting period for the liquor license since Chef Wong has ran other operations and items of interest.

Bossio asked for committee comments

Lane stated he thought the City owned the property.

Lane clarified that the City of Morgantown, through the Building Commission, owns the property but it is sub-leased to the Bistro and that Bopark will run the boat dock. This is a joint public and private project.

Bossio asked for public comment.

Robert Wong, applicant, explained he intends to be the proprietor of the Bistro. Wong introduced himself and a gave brief description on his background and the format for business. Wong also gave an overview of the Bistro menu.

Bossio asked if there was a menu.

Wong gave Bossio a copy of the menu and explained the establishment is a restaurant and not intended to function as a bar. There will be limited bar seating. The operations manager will be on site by the next week.

Furfari asked about serving lunch and the size of the kitchen.

Lane explained that the restaurant would be having lunch and dinner; and the kitchen is approximately 35% of the gross square footage. They will be open on 7 days to start.

Shaffer asked if there would be concern with dress requirement for people on the marina.

Lane explained they would need to be dressed appropriately.

Michael D. Thorn, General Manager, wanted to express his favor for the project.

No comments in opposition. The public portion was closed.

Shaffer asked Fletcher about the ordinance. Fletcher advised accordingly.

Shaffer asked if the conditional use is for the Bistro, and if this restaurant left would it transfer to anyone else or if they would have to come back the board for permission.

There was discussion regarding the situation in which the property would change hands and the manner in which the conditional use would go with the exchange of the property. If conditions are approved, a major character change would require the BZA to review.

Fletcher read the requirements Should the Board waive the one-year "bona fide restaurant" requirement and grant approval of the subject conditional use petition, Staff recommends that the following conditions be included:

1. That the petitioner shall maintain compliance with all supplemental regulations set forth in Article 1331.06 (27) of the Planning and Zoning Code as amended, 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 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 Downtown Design Review Committee and the Planning Director prior to building permit issuance for same; and,
4. That the conditional use approval granted herein may not be transferred.

Iannone asked about a previous case in which a conditional use went to Circuit Court.

Fletcher gave a brief on the case.

Shaffer moved to accept all findings of facts submitted by applicant, second by Iannone. Motion carried unanimously.

Shaffer moved to grant conditional use with staff recommended conditions, second by Furfari. Motion carried unanimously.

OTHER BUSINESS:

Public Comments: None

Comments from Staff: Fletcher advised that Rockis had resigned and a proclamation will be sent to Council asking for his years of service to be recognized.

Bossio added that he will be missed and is sad that Rockis moved out of the City.

ADJOURNMENT: 7:15 PM