

BOARD OF ZONING APPEALS

Minutes

6:30 PM

June 17, 2009

City Council Chambers

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

MEMBERS ABSENT: None

STAFF: Lisa Mardis, Deputy Planning Director

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 May 20, 2009 meeting – Shamberger moved to approve the May 20, 2009 minutes as submitted; seconded by Papandreas. The motion carried unanimously.

III. **OLD BUSINESS**

- A. **CU09-03 / High Street Pub, LLC / 226 High Street:** Request by Gregg Metheny, on behalf of High Street Pub, LLC, for conditional use approval “Restaurant, Private Club” license in B-4 District at 226 High Street. Tax Map #26A Parcel #137; a B-4, General Business District. **TABLED AT MAY 20, 2009 HEARING**

Shamberger made a motion to remove from the table; seconded by Cardoso. The motion was unanimously approved.

Mardis read a Staff Report Supplement detailing the history of the proposed conditional use. The Memorandum contained documentation of a workshop that took place on June 3, 2009 between Board members and Mr. Metheny. The Board toured the site of the proposed “Restaurant, Private Club” and made requests of both Staff and Mr. Metheny based on observations made during the site visit. The Memo also contained a Staff recommendation for approval with conditions.

Mr. Metheny passed out the previously requested information to the Board members regarding the proposed refrigeration plans.

Bossio 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.

Mardis stated that if the Board waives 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. 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 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.
4. 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.
5. That the conditional use approval granted herein may not be transferred.

Shamberger moved to waive the one-year "bona-fide restaurant" requirement; seconded by Papandreas. The motion passed unanimously.

Shaffer moved to approve the Findings of Fact as submitted by the Petitioner; seconded by Papandreas. The motion passed unanimously.

Shaffer moved to approve CU09-03 / High Street Pub, LLC including the review and any other recommendations set forth by Staff; seconded by Papandreas. The motion passed unanimously.

Bossio advised Metheny and Dierwechter that the Board's decision could be appealed to the Monongalia County Circuit Court within the next thirty (30) days and that any work done during that time is at the sole financial risk of the applicant.

IV. NEW BUSINESS

- A. V09-22 / Johnson / 259 Caddell Street:** Request by Jason Johnson for variance approval from the Planning and Zoning Code, Article 1335.05, Encroachment into setbacks, (A) (2) as it relates to uncovered stairs, landings and porches extending closer than three (3) feet from the property line for Single-Family Residential District.

Mardis read the Staff Report stating that Mr. Johnson seeks variance approval to construct a deck to his existing residential structure located at 259 Caddell Street. The proposed uncovered deck would come within approximately one-half foot (six inches) of the southwestern property boundary, facing Caddell Street, for approximately twenty-two (22) feet and within approximately one-half (six inches) foot of the northwestern property line adjoining Parcel #184 for approximately fifty-seven (57) feet.

Article 1335.05 (A) (2) of the Planning and Zoning Code provides that:

"Uncovered stairs, landings and porches shall not extend closer than three (3) feet from the property line."

The petitioner, Jason Johnson was present.

The petitioner's grounds for this request are based on non-conforming lot size and the topography of the property.

Bossio recognized the property owner Jason Johnson and asked if he had anything to add to the Staff Report. Johnson stated that the staff report covered everything.

Bossio opened up the public comment portion of the meeting. There being none, Bossio closed the public comment portion of the meeting and asked for Staff's recommendations.

Mardis 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.

Shamberger moved to find in the affirmative for each of the Findings of Fact with revisions recommended by Staff; seconded by Cardoso. 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:

The subject parcel appears to be extraordinarily small in comparison to the majority of parcels throughout the Chancery Hill and South Park neighborhood. At less than 2,400 sq. ft. (30 x82.1x34.29x72.48), the subject lot is considerably smaller than the two adjoining lots (Parcels #184 and #186 approximately 4,300 sq. ft. and approximately 5,800 sq. ft. respectively). Additionally, the slope appears to limit outdoor living space relative to other properties in the neighborhood. Adhering to the three-foot property line setback appears to significantly limit the amount of porch space that would otherwise be available within the parcel.

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:

There appears to be several instances of uncovered porches and accessory structures within the immediate area that do not comply with required setback standards. An example of this circumstance would be the neighboring single-car garage which appears to have very little if any side setback.

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 proposed porch would approach the property line (within one half foot) in places where the property line is already distinguished by an approximate three-foot cinder block retaining wall. As such, the proposed porch would appear to extend the manner in which the property's elevation is already characterized.

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 porch could not adversely impact traffic congestion, nor would it adversely impact the predominant character of the dwelling as a single-family home among a neighborhood of predominantly singly-family homes. Moreover, considering that the proposed porch would significantly enhance the parcel's outdoor living space, it would not only improve the value of the overall property but also contribute to the quality of the neighborhood.

Papandreas moved to approve V09-22 / Johnson; seconded by Cardoso. The motion passed unanimously.

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

- B. CU09-05 / Terra, LLC / Mason Street:** Request by Terra, LLC for conditional use approval from the Planning and Zoning Code, Table 1331.05.01, Permitted Land Uses, as it relates to Multi-Family Dwellings in the R-2 District for property located on Mason Street. Tax Map #20 Parcel #364; an R-2, Single & Two-Family Residential District. **PETITIONER HAS REQUESTED ISSUE BE TABLED**

Shaffer moved to table CU09-05; seconded by Cardoso. The motion passed unanimously.

- C. CU09-06 / Byers / 160 Fayette Street:** Request by Justin Byers for conditional use approval "Restaurant, Private Club" license in B-4 District at 160 Fayette Street. Tax Map #26A Parcel #93; a B-4, General Business District. **PETITIONER HAS REQUESTED ISSUE BE TABLED**

Papandreas moved to table CU09-06; seconded by Shamberger. The motion passed unanimously.

V. OTHER BUSINESS

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

Papandreas posed a question regarding the sign ordinance as it relates to marquee signs in the B-4, General Business District. A general desire was expressed for the Planning Commission to review the entire sign ordinance and suggest changes or updates to the ordinance. The Board is especially interested in the ordinance as it relates to moveable and internally illuminated signs in the B-4 District.

VI. ADJOURNMENT – meeting was adjourned at 6:55 PM.