

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

July 16, 2014

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Bill Burton, Leanne Cardoso, George Papandreas and Jim Shaffer.

MEMBERS ABSENT: None.

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Bossio called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

II. MATTERS OF BUSINESS:

A. Minutes for the June 18, 2014 Hearing: Papandreas moved to approve as presented; seconded by Burton. Motion carried 4-1 with Bossio abstaining due to his absence.

Bossio informed the Board that he would be recusing himself from Case Nos. CU14-07 and CU14-08 due to previous business relationships with the petitioners. Bossio exited Council Chambers and Cardoso assumed the Chair.

III. UNFINISHED BUSINESS:

A. CU14-07 / Traugh / 344 High Street: Request by Zachary Traugh, on behalf of The Bank, for conditional use approval of a "Restaurant, Private Club" at 344 High Street; Tax Map 26A, Parcel 109; B-4, General Business District. TABLED AT JUNE 18, 2014 HEARING.

Papandreas made a motion to remove CU14-07 from the table; seconded by Burton. Motion carried unanimously.

Fletcher noted the Staff Report is the same as last month but included additional documents that were distributed at the Board's site visit that was held on July 9, 2014 at 344 High Street.

Cardoso recognized the petitioner's representative Jason Messenger of 105 East End Avenue who explained the floor plan has changed to include increased seating and removing pool tables. Menu items have also been added along with a change in operational hours to include a lunch buffet.

There being no comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the request.

Cardoso recognized Piresh Riconni of Charleston, West Virginia who stated he is the co-owner of the building and felt the restaurant would be good for downtown Morgantown and thanked the Board for their suggestions as the establishment is already improving.

There being no further comments, Cardoso declared the public hearing closed.

Fletcher read the Staff recommendations.

Burton made a motion to grant the one-year bona-fide restaurant for CU14-07; seconded by Papandreas. Motion carried 3-1 with Shaffer voting nay.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for CU14-07 as revised by Staff; seconded by Burton. Motion carried 3-1 with Shaffer voting nay.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

A restaurant is currently on the same property as the proposed restaurant.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The site is currently in use for the same purpose.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

The site is currently operates in the same capacity.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

No new structures will be built.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

The site is currently operating in the same capacity.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

We are replacing a business of the same type.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

We are replacing a business of the same type.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

The site is currently operating in the same capacity.

Papandreas moved to approve CU14-07 with the following conditions:

- A. That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06(27) of the Planning and Zoning Code.
- B. That the petitioner must obtain permitting as a “restaurant” from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*.

- C. To ensure that the petitioner's business description and plans are executed as described and considered in granting the one-year "bona fide restaurant" waiver, the subject "Restaurant, Private Club" use must:
1. Be open no later than 11:00 AM Monday through Friday for the purpose of serving lunch as described in the menu submitted with the petitioner's conditional use application.
 2. That the petitioner shall 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" use 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.
- D. That any regulated signage shall be reviewed and approved by the Downtown Design Review Committee and the Planning Division prior to building permit issuance for same.
- E. That the beneficiary of this conditional use approval is specific to the business organization that will own *The Bank* restaurant establishment at the time of Certification of Occupancy issuance. Said beneficiary may not be transferred without prior approval of the Board of Zoning Appeals.

The motion was seconded by Burton and carried 3-1 with Shaffer voting nay.

Cardoso reminded Mr. Messenger that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

IV. NEW BUSINESS:

- A. CU14-08 / Tanios / 350 East Brockway Avenue:** Request by George Tanios for conditional use approval of an "Outdoor Flea Market" use at 350 East Brockway Avenue; Tax Map 35, Parcel 9; B-2, Service Business District.

Fletcher read the Staff Report.

Cardoso recognized the petitioner George Tanios of 156 Clay Street who stated he has been operating the business for the past three years and has now acquired the property. Tanios explained the property can't be built on and felt a flea market would benefit the location as it's visible to the public. Vendors will not be permitted to sell food or drinks which would help generate business for the store. He is okay with the twelve vendors suggested in the Staff Report.

Papandreas asked how many vendors were initially requested on the lot. Tanios explained that 30 vendors were requested as he would be sharing the spaces with Buck's Place but he is okay with twelve spaces if that is what the Board decides. The market would take place on Sunday's and sits in a great location as an entrance to Morgantown.

Cardoso asked for the hours of operation proposed. Tanios explained the markets would be open from 10AM to 4PM on Sunday's.

Cardoso asked if those proposed hours would overlap the surrounding businesses. Tanios explained that Buck's does not open until 4:00 PM and he would open his store earlier on Sunday's to help generate business.

Burton asked Fletcher if a letter would be required from the other property owner to share and utilize their parking. Fletcher noted that a conditional use approval would be required to utilize off-site parking, which was not a part of the petitioner's present conditional use petition. Fletcher referred to the Staff Report and explained the parking areas surrounding the proposed market located on the petitioner's property.

Tanios noted that he knows the former owner of the Dairy Castle, which is located across the street from the proposed market, and feels the space could be used for extra parking if necessary.

Fletcher noted again that an additional conditional use approval for off-site parking would be required if parking would be utilized at the former Dairy Castle. Fletcher also expressed concern of pedestrians crossing the Brockway Avenue between the former Dairy Castle site and the proposed market.

Shaffer stated he is more comfortable with 12 spaces rather than original 30.

Fletcher expressed the petitioner could return at a later date and request a conditional use for additional parking if the market should grow and need additional space.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Cardoso declared the public hearing closed.

Fletcher read the Staff recommendations for Case No. CU14-08.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for CU14-08 as revised by Staff; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

The Board's conditions restricting the operation of hours of the "Farmer's Market" / "Outdoor Flea Market" and restricting the number of vendors is intended to mitigate congestion that may be associated with the conditional use.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

All related Building and Fire Code provisions will be addressed as required by the Chief Building Code Official and the City Fire Marshal.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

This will be an outside venue. No permanent structure is proposed or necessary for the conditional "Farmer's Market" / "Outdoor Flea Market" use that would alter existing light distribution and air flow patterns within the general vicinity.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

Site use will be limited and there is adequate space for parking and vendors, provided the Board's conditions are observed restricting the "Farmer's Market" / "Outdoor Flea Market" operational hours and the number of vendors. Additionally, no permanent structure is proposed or necessary for the occasional "Farmer's Market" / "Outdoor Flea Market" use that would result in increasing the mass, density, or intensity of the existing structure.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

People will generally be quick in and out and can move about easily, provided the Board's conditions are observed restricting the "Farmer's Market" / "Outdoor Flea Market" operational hours and the number of vendors. Additionally, a residential use is not proposed as a part of the conditional "Farmer's Market" / "Outdoor Flea Market" use.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The nature of the conditional "Farmer's Market" / "Outdoor Flea Market" use does not appear to require public services and/or facilities that are not already available to and serving the site and general vicinity.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

Nothing will be changed or disturbed. No permanent structure is proposed or necessary for the conditional "Farmer's Market" / "Outdoor Flea Market" use that would alter market values or commercial activity of adjacent buildings and uses. Additionally, the Board's conditions restricting the operational hours of the "Farmer's Market" / "Outdoor Flea Market" and restricting the number of vendors is intended to conserve existing access, utilization, and enjoyment of adjoining properties.

Papandreas moved to approve CU14-08 with the following conditions:

1. That any and all required floodplain approvals must first be obtained from the City Engineer.
2. That a revised site plan must be submitted to the Planning Division illustrating specific vendor location(s) and specific parking spaces.
3. That no less than eighteen (18) parking spaces must be designated and clearly marked at the site and meet the parking space dimension standards set forth in Table 1365.09.01 of the Planning and Zoning Code.
4. That the days of operation for the conditional "Farmers Market" / "Outdoor Flea Market" use approved herein are restricted to Sunday's and that the hours of operation are restricted to 10AM to 4PM.
5. That no more than twelve (12) vendors may be present at any given time during the permitted hours of operation for the conditional "Farmers Market" / "Flea Market" use approved herein.
6. That the conditional use granted herein is specific to the petitioner and may not be transferred without prior approval from the Board of Zoning Appeals.

The motion was seconded by Burton and carried unanimously.

Cardoso reminded Mr. Tanios that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

Bossio returned to Council Chambers and resumed the Chair.

- B. V14-29 / Bradford / 474 Pythian Street:** Request by Geoffrey Bradford and Kathryn Moffett-Bradford for variance relief from minimum front setback standards at 474 Pythian Street; Tax Map 2, Parcel 110; R-1, Single-Family Residential District.

Fletcher read the Staff Report

Bossio recognized the petitioner Geoffrey Bradford of 474 Pythian Street who stated he concurred with the Staff Report and noted the variance request is only for the garage and not the entire addition.

There being no comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Bossio declared the public hearing closed.

Fletcher read the Staff recommendations for Case No. V14-29.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V14-29 as revised by Staff; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The addition planned for the front of the house, including the garage, should improve the appearance of the house, and should not in any way take away from the single-family neighborhood atmosphere or encroach on the street. The position of the garage, being one-foot closer to the street compared to the rest of the front of the house, should be imperceptible and should not adversely affect the predominant building line form by houses on the south side of Pythian Street between Kiwanis Avenue and Rebecca Street.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

It appears from information provided by the petitioner and the architectural plans reviewed by the Board that by constructing the proposed addition along the side of the house in conformance with the minimum front setback requirement would result in the elimination of an existing living room window on the west façade. Removing said window would appear to unnecessarily change the quality, character, and enjoyment of the existing livable space.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

According to the petitioner, a living room window will not have to be removed from an existing structural wall with the granting of the requested variance. If the garage were to be built one (1) foot further back, the existing window will have to be removed.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The granting of a one (1) foot variance in this case should not undermine the legislative intent of protecting and preserving predominant development patterns and building lines within the existing single-family built environment. Further, the proposed addition will eliminate the carport and actually

bring the final setback of the existing main structure closer to the front property boundary and in more alignment with other houses fronting the south side of Pythian Street.

Shaffer moved to approve V14-29 granting a one (1) foot variance from the minimum front setback standard of 24 feet provided in Article 1363.02 without conditions.

The motion was seconded by Papandreas and carried unanimously.

Bossio reminded Mr. Bradford that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- C. V14-30 / Bruenderman / 3201 University Avenue:** Request by Julia Ann Bruenderman for variance relief from Article 1331.08 as it relates to accessory structures at 3201 University Avenue; Tax Map 7, Parcel 94; R-1, Single-Family Residential District.

Fletcher read the Staff Report.

Bossio recognized the petitioner Julia Ann Bruenderman of 3201 University Avenue who stated that she concurred with the Staff Report.

There being no comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Bossio declared the public hearing closed.

Fletcher read an email in opposition that was sent by Kay Zinn on July 8, 2014.

Fletcher read the Staff recommendations for Case No. V14-30.

Bossio noted there is no regulation against an above ground pool within the City limits and expressed favor in surrounding the pool with a fence. Insurance regulations usually require a fence when erecting a pool and agreed with the Staff recommendation.

Cardoso noted the letter in opposition suggested a fence and therefore agreed with the recommendation to erect a fence around the pool.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V14-30 as revised by Staff; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

It will be in a fenced-locked yard. The proposed above ground swimming pool will be placed inside a locked, fenced-in area of the yard, which should further desired public safety objectives in terms of unauthorized access from passersby.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

I have a fenced in yard on a corner lot of Rotary and University Avenue. The shape of the petitioner's lot, the position and orientation of the principal structure on the lot, and the width and slope of the remaining interior side yard do not appear to create any other option of locating the proposed above ground swimming pool that will conform to Article 1331.08(A)(4).

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Pool needs to because I'm on a corner lot. There appears to be a number of above and in-ground residential swimming pools that exist or have existed within the immediate area. Examples include residential swimming pools at 373 Rotary Street, 1261 Cambridge Avenue, 376, Kenmore Street, 1216 Fairlawns Avenue, 384 Mulberry Street, 380 Jacobs Drive, 390 Jacobs Drive, etc. Of particular note is the above ground swimming pool at 1232 Cambridge Avenue, which is located in the side yard of a corner lot as illustrated in the following graphics. [NOTE: referenced graphics included in Staff Report]

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

It will be an above ground in my yard already fenced in. The Board's condition to screen the proposed above ground pool from the view of adjoining public rights-of-way with a privacy fence should sufficiently protect existing aesthetics and characteristics of the immediate built environment in a way that preserves the desirability of the immediate area and its marketability to the public.

Papandreas moved to approve V14-30 under Article 1331.08 with the following condition:

1. That the proposed above ground swimming pool for which variance relief is granted herein must be screened from the view of adjoining public rights-of-way by a privacy fence at least 6.5 feet in height but not more than 8 feet in height and conform to related standards set forth in Article 1331.08(B).

The motion was seconded by Shaffer and carried unanimously.

Bossio reminded Ms. Bruenderman that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- D. V14-31 / Dollar General / 221 High Street:** Request by Michelle Boyers of City Neon, on behalf of Nasey, LLC, for variance relief from Article 1369 as it relates to signage at 228 High Street; Tax Map 26A, Parcel 134; B-4, General Business District.

Fletcher read the Staff Report.

Bossio recognized the petitioner's representative, Rudy Hoffert of City Neon, who stated that Dollar General updated their logo a couple of years ago and therefore an updated sign is necessary. Dollar General is trying to change the sign in the most cost effective way possible by using the existing cabinet and changing the face of the sign.

Papandreas referred to the Staff Report and noted the Dollar General sign located at a store in New Jersey was much smaller than the one being proposed. Hoffert confirmed and stated the

store is trying to avoid changing the storefront in order to save costs by using the existing cabinet.

Bossio noted the store has already spent a considerable amount of money on inside renovations and feels they would want to do the same with their signage. Hoffert agreed.

Shaffer asks for the costs involved with replacing the sign face.

Hoffert explained the face of that sign could range from \$2,500 to \$3,500.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized Milley Carlet of 41 Wilson Avenue who stated she is opposed to the sign and doesn't understand why the City has no regulations or standards concerning facades of buildings in the downtown district. Carlet understands the sign has been previously grandfathered and doesn't support another variance on an already nonconforming sign, especially just because the company wants to save money. The current and proposed sign would not maintain the integrity of the downtown area.

There being no further comments, Bossio declared the public hearing closed.

Papandreas noted the example sign provided in the Staff Report from another Dollar General store in New Jersey is more attractive and is smaller than the existing sign.

Bossio expressed the size of sign regulations in the code were established for a reason by City Council and the Board should consider this when making a decision.

Shaffer noted he has a concern with the company asking for variance relief and the remedy for the relief is to erect the same sign.

Papandreas expressed that he liked to see a variety of signs however the proposed sign is an eyesore.

Bossio stated he is against tabling or approving a variance for the proposed sign as it is doesn't appear to have a hardship.

Burton expressed that denying the request would be taking a hardline approach and suggested tabling the request to allow for the company to explore other options. Also, if the request is denied, the company has the right to keep the existing sign up as it is grandfathered.

Papandreas noted the Board has worked with prior requests in modifying sign plans and feels the Board should table the request to allow for exploring alternate ideas and designs.

Fletcher explained that if the Board should table the request, it keeps the spirit of negotiating open and allows for the petitioner to present an alternate plan at the August hearing. Should the Board deny the request, the petitioner would have to apply for a new variance that would not be presented until the September hearing.

Papandreas made a motion to table V14-30; seconded by Burton. Motion carried unanimously.

Papandreas asked Hoffert if the example sign provided in the Staff Report could be produced for a price comparable to the budget allowed. Hoffert expressed the sign could be produced in house for the same amount the company is willing to spend. He noted the existing sign sits on plywood and feels that individual letters would be appealing.

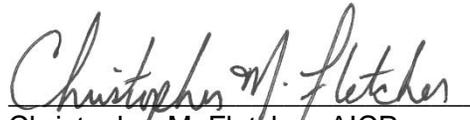
V. ANNOUNCEMENTS: None.

VI. ADJOURNMENT: 7:50 PM

MINUTES APPROVED:

August 20, 2014

BOARD SECRETARY:


Christopher M. Fletcher, AICP