

# BOARD OF ZONING APPEALS

## Minutes

6:30 PM

July 20, 2011

City Council Chambers

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

**MEMBERS ABSENT:** Jim Shaffer

**STAFF:** Christopher Fletcher, AICP

- I. **CALL TO ORDER AND ROLL CALL:** Bernie Bossio called the meeting to order at 6:30 PM
- II. **MATTERS OF BUSINESS:** Minutes for the June 15, 2011 hearing were postponed.
- III. **OLD BUSINESS:**
  - A. **CU08-10/Dragonfly Restaurant/341 Chestnut Street:** Request by Gregory Candelario, on behalf of "Banks Enterprises, LLC" (DBA Dragonfly) for a second amendment to a previously approved conditional use petition for a "Restaurant, Private Club" at 341 Chestnut Street; Tax Map #26A, Parcel #79; B-4, General Business District.

Fletcher read a memorandum stating that Mr. Gregory Candelario, on behalf of "Banks Enterprises, LLC" (DBA "Dragonfly Restaurant"), seeks approval to transfer the beneficiary assignment of the related conditional "Restaurant, Private Club" use approval from "Banks Enterprises, LLC" to "PDA Enterprises, LLC".

Conditional use approvals are specific to the petitioner and do not run with the land as variance approvals do. As such, the Board must consider and approve said beneficiary assignment transfer.

In the attached letter dated June 14, 2011, Mr. Candelario's Attorney Robert Berryman states that,

"The change in name is for purposes related to his liquor license and will not result in any other change in the nature or operation of his restaurant."

According to the West Virginia Secretary of State's website, the filing for "PDA Enterprises, LLC" became effective on August 17, 2010 (see attachment). Mr. Candelario is listed as the only current member of the limited liability corporation.

Staff recommends that the Board approve the beneficiary assignment transfer of the June 18, 2008 conditional "Restaurant, Private Club" use granted under Case No. CU08-10 for "Dragonfly Restaurant" located at 341 Chestnut Street on Parcel 79 of Tax Map 26A from

“Banks Enterprises, LLC” to “PDA Enterprises, LLC” and that “PDA Enterprises, LLC” and its managers, officers, employees, and agents shall comply with the conditions set forth by the Board in its June 18, 2008 conditional use approval as well as the requirements set forth in Paragraph 27, Article 1331.06 “Supplemental Regulations Pertaining to Permitted Land Use Table” of the Planning and Zoning Code.

Bossio recognized the petitioner, Mr. Gregory Candelario, 22 Walnut Street. Candelario stated that he is doing this for the liquor license and that they are complying with all the conditions set forth from the June 18, 2008 conditional use approval.

Shamberger asked what name the liquor license was in prior to this. Candelario stated that it was in the name of the prior owner.

Papandreas asked if the business was entirely his now and if that was the reason for the change. Mr. Candelario stated that yes, he is the current owner and would like for everything to be out from under the old owner’s names so that if ever a [WVABCC] charge were made, it would not be the 2<sup>nd</sup> or 3<sup>rd</sup> offense, but the first.

Shamberger asked about an offense against the business, and Candelario clarified that there was an offense for selling alcohol past 1:00 a.m. and also for selling to underage.

There being no further questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff’s recommendation.

Fletcher re-read the staff recommendation portion of the memo.

Papandreas made a motion to approve the beneficiary assignment transfer of the June 18, 2008 conditional “Restaurant, Private Club” use granted under Case No. CU08-10 for “Dragonfly Restaurant” located at 341 Chestnut Street on Parcel 79 of Tax Map 26A from “Banks Enterprises, LLC” to “PDA Enterprises, LLC” and that “PDA Enterprises, LLC” and its managers, officers, employees, and agents shall comply with the conditions set forth by the Board in its June 18, 2008 conditional use approval as well as the requirements set forth in Paragraph 27, Article 1331.06 “Supplemental Regulations Pertaining to Permitted Land Use Table” of the Planning and Zoning Code. The motion was seconded by Shamberger; motion carried unanimously.

- B. CU10-07/Sellaro/309 Eighth Street:** Request by Sam Sellaro for an extension of a June 16, 2010 approval of a condition off-site parking use in relation to the development of a duplex at 309 Eighth Street. Tax Map #15, Parcel #108; R-2, Single and Two-Family Residential District.

Fletcher read a memorandum, stating that Article 1379.05 “Expiration” provides that:

“In the case where a Conditional Use Permit has not been used within twelve (12) months after the granting thereof, then without further action it shall be null and void. This may be extended to eighteen (18) months upon prior written request of the Board. The word ‘used’ shall mean that the approved Conditional Use Permit has been activated as evidenced by permits, construction, or required licenses.”

On June 16, 2010, the Board granted conditional use approval to Mr. Sam Sellaro for off-site parking spaces to meet the minimum parking required for a duplex proposed on Parcel 108 of Tax Map 15 along Eighth Street. Said approval, in accordance with Article 1379.05, was set to expire on June 16, 2011. Attached herewith is the June 17, 2010 BZA action letter.

Mr. Sellaro contacted the Planning Division in April 2011 requesting that he be included on the Board's June 15, 2011 agenda to seek approval of a six month extension for said conditional use approval.

On Friday, June 10, 2011, Mr. Sellaro notified the Planning Division that he would not be able to attend the Board's June 15, 2011 hearing due to an unforeseen out-of-town commitment (see attached email string). Staff advised him that his request would be included on the Board's July 20, 2011 agenda.

Staff recommends that the Board grant a six-month conditional use approval extension for Case No. CU10-07 so that the expiration of same is extended from June 16, 2011 to December 16, 2011.

Bossio recognized Mr. Sam Chico, who was present to represent Mr. Sellaro due to his out-of-town travel. Chico stated that the reason for the request for extension is because, due to other jobs, Mr. Sellaro has just not gotten to this project yet.

Shamberger clarified with Mr. Chico that the job has not been started and that there were definite intentions to complete the project. Mr. Chico said that it has not been started, but he does intend to complete the job.

There being no further questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone was present to speak in favor of the request. There being no comments in favor, Bossio then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing closed.

Bossio asked Fletcher if six months was the standard extension time. Fletcher stated that the six month extension is provided in the Planning and Zoning Code, but he can have up to 180 days to start construction after required permits are obtained during the extension period.

Shamberger made a motion to grant a six-month conditional use approval extension for Case No. CU10-07 so that the expiration of same is extended from June 16, 2011 to December 16, 2011. The motion was seconded by Papandreas; motion carried unanimously.

#### **IV. NEW BUSINESS:**

- A. V11-21 / Kyber / 208 Park Street:** Request by Elizabeth Kyber for variance relief from Article 1335.04 of the Planning and Zoning Code as it relates to minimum side setback standards for property at 208 Park Street; Tax Map #29, Parcel #395; R-1A, Single-Family Residential District.

Fletcher read the Staff Report, stating that the petitioner seeks to reconstruct and enlarge a rear porch that suffered recent fire damage. The renovation plans submitted with the building permit application illustrate a side setback of 2 ½ feet for the covered and enclosed rear porch addition.

Article 1335.04 of the Planning and Zoning Code provides that the minimum side setback in the R-1A District is five (5) feet. As such, the petitioner must obtain a 2 ½ foot variance to construct the rear porch as currently designed.

It should be noted that the petitioner's submitted site plan illustrates that the existing house does not appear to meet the minimum side setback standards as portions of same are very close if not at the property line.

Addendum A of this report illustrates the location of the subject site.

Bossio recognized Elizabeth Ashley Kyber of 208 Park Street. Kyber stated that her request is to enlarge and screen a porch that was lost in a fire on Easter Sunday. The house currently sits on the lot line and this request follows the building line of the existing kitchen.

Bossio asked if the porch that was lost in the fire was on a foundation. Kyber stated that it was, and the stone foundation is intact.

Shamberger asked for clarification on the lot lines. Kyber explained that the two houses that were built were built right on the lot lines and that this porch would follow building line, but would not meet the required 5 ft. setback, so she is asking for a 2.5 ft. Variance.

There being no further questions by the Board, Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition to the request.

Bossio recognized Christian Shoup of 212 Park Street who stated that he is the adjoining property owner and that he is not absolutely opposed to this request being granted, but he has two concerns: 1) lack of a barrier, should there ever be another fire, because he feels that the 5 ft. barrier exists to protect property owner privacy; and, 2) that what was once an open area will now be enclosed with a structure.

There being no further comments in opposition, Bossio declared the public hearing closed and 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 petitioner.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends that variance relief be granted for petition V11-21 as requested so that the proposed rear porch addition is no closer than 2 ½ feet from the side property line.

Bossio asked Ms. Kyber to step back to the podium to answer a few more questions. Bossio asked why the porch could not be extended into the yard area. Ms. Kyber responded that she has very little backyard as it is, and would like to preserve what is there for her small child to play. She further stated that when the houses were built, the porches were designed to be 'drying porches', where laundry was hung, and they were not built large enough to hold furniture of any type.

Bossio asked if it was possible to shift the extension to the other side of the porch. Ms. Kyber stated she could, but she was hoping to preserve that space for bicycle storage.

Papandreas asked Mr. Shoup how far off the property line he is, because it does not appear there is 5 feet. Shoup said he is probably only 3.5 feet from the property line.

Papandreas asked Ms. Kyber about the roof over the porch and whether it is built into the overhang of original roof. She stated that the shed roof of the porch is built into the wall of the bathroom above.

Bossio suggested going through the Findings of Facts on an individual basis.

After a brief discussion on procedures for finding in the negative when considering a petitioner's Findings of Fact responses, Fletcher stated that based on the Board discussion, he constructed the following negative finding for the Board to respond to Finding of Fact No. 1:

"There are not 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 it appears that there are other design solutions to achieve the petitioner's desired addition objectives that can be realized within the minimum required building envelope."

Cardoso made a motion to approve the negative finding stated by Fletcher in responding to Finding of Fact No.1. Papandreas seconded the motion; motion carried unanimously.

Papandreas made a motion to deny V11-21 based on the negative finding unanimously approved by the Board; seconded by Cardoso; motion carried unanimously.

Bossio advised Kyber that decisions made by the Board of Zoning Appeals may be appealed to the Monongalia County Circuit Court within thirty-days of receiving written notice of the Board's decision.

- B. V11-22 / Mylan Pharmaceuticals, Inc / 781 Chestnut Ridge Road: Request by Mylan Pharmaceuticals, Inc. for variance relief from Article 1369 of the Planning and Zoning Code as it relates to monument signs at 781 Chestnut Ridge Road.**

Fletcher read the Staff Report, stating that the petitioner seeks to replace an existing monument sign with a new monument sign at the same location for the purpose of increasing visibility for delivery trucks and visitors. The existing sign appears to be obstructed by parked vehicles and security fencing enclosing the parking area and facility.

The proposed height of the new monument sign is twelve (12) feet. Article 1369.07 (E) provides that the maximum height of a monument sign is 72 inches. As such, variance relief of six (6) feet in sign height must be granted for the sign as proposed.

The proposed area of the sign is 48 square feet. Article 1369.07 (E) provides that the maximum area of a monument sign is 32 square feet. As such, variance relief of sixteen (16) feet in sign area must be granted for the sign as proposed.

The proposed sign will be internally illuminated by fluorescent lighting. Article 1369.08 (B) (2) provides that signs within the B-1 District may not be internally illuminated except for neon signs. As such, variance relief must be granted so that fluorescent internal illumination may be utilized as proposed.

Bossio recognized Mr. Michael Penix who stated that the reason for asking for the larger sign is that they are open 24 hours a day and it will make it more visible to delivery vehicles. The current sign is obstructed by parked vehicles and a mandatory security fence. He also stated that the fencing is a U.S. Food and Drug Administration requirement.

There being no questions by the Board, Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff's recommendation.

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 petitioner. Addendum A of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). Staff recommends approval of petition V11-22 as requested with the following conditions:

1. That both sides of the two-sided monument sign must be identical in design and content.
2. That the copy/display included on the monument sign must be limited to the name, logo, and address of the company and may not contain any additional commercial messaging or off-premise signage.

Shamberger stated that there appears to be exceptional circumstances that warrant approving this request.

Papandreas asked about removal of trees and stated he felt that would make the sign more visible. Penix answered that at this time, there are no plans to remove trees.

Shamberger made a motion to accept all the Findings of Facts as amended by Staff. Cardoso seconded the motion; motion carried unanimously.

NOTE: The following Findings of Facts were included in this 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 property is currently zoned B-1, Neighborhood Business District. The subject property is not located within a neighborhood, but rather is located along one of the heaviest traveled corridors within the region and adjacent to many other businesses with signs that, in many instances, exceed the height, square footage, and/or internal illumination of the proposed sign. The property's unique security requirement (security fencing along the perimeter), in conjunction with the setback distance of the sign from Chestnut Ridge Road (705), would obstruct the visibility of a lower sign. Lastly, unlike

many of the adjacent businesses, Mylan is unique in that it is open 24 hours a day and receives both deliveries and visitors at all hours.

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 subject property is located along one of the heaviest traveled corridors within the region and adjacent to many other businesses with signs that, in many instances, exceed the height, square footage, and/or internal illumination of the proposed sign. Lesser, lower signage would not allow adequate visibility for Mylan in comparison to other nearby businesses in the same vicinity with similar or greater comparable signage.

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:

Adequate visible signage identification should enable traffic viewers (specifically visitors and deliveries to Mylan) a greater reaction time to safely navigate at moderate speeds through several traffic lanes to make the turn into the facility. By more clearly identifying Mylan's facility, the potential of a traffic collision or harm to the public welfare, property, or improvements should be minimized.

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 height, area, and internal illumination of the proposed monument sign appears to be consistent with the predominant commercial signage patterns along Chestnut Ridge Road and Van Voorhis Road, which do not appear to diminish the market value or vitality of the well-established commercial corridor. Variance relief relative to height, area, and internal illumination cannot contribute to nor mitigate existing traffic volumes within the corridor.

Papandreas made a motion to approve request V11-22 as requested with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

- C. **V11-23 / Vintner Reserve, LLC / Burroughs Street:** Request by Vintner Reserve, LLC for variance relief from Article 1365.04 (I) as it relates to exceeding the maximum number of parking spaces allowed in a non-residential district on Burroughs Street; Tax Map #55, part of former Parcel #37; PRO, Professional Residential, and Office District.

Bossio announced that he is a stockholder with Vintner Reserve, LLC and would have to recuse himself from the discussion and decision. Bossio left Council Chambers and Cardoso assumed the Chair.

Fletcher read the Staff Report stating that the petitioner seeks to develop a 1 ½ story building along Burroughs Street on the remnant parcel created by the adjoining Vintner Reserve single-family subdivision, which is also next to the Unity House development fronting Collins Ferry Road. Addendum A of this report illustrates the location of the subject realty.

The petitioner’s final development program and corresponding minimum parking requirement is dependent upon the approval of a related zoning map amendment petition from the PRO District to the B-2 District, which was recommended by the Planning Commission on July 14, 2011 and now pending before City Council.

The following table identifies the alternate permitted development program scenarios under both the PRO District and the B-2 District classifications; related minimum parking standards provided in Table 1365.04.01; related minimum parking calculations; and, related maximum parking calculations provided in Article 1365.04 (I), which is 115 percent of the minimum parking requirement.

It should be noted that the net floor area (NFA) for the structure is not currently known. As such, it is reasonable to assume that minimum and maximum parking requirements calculated for the PRO District development scenario may actually be one or two spaces less than that stated in the following table.

Additionally, the number of employees that will work within the non-residential component of the structure is not currently known. As such, it is reasonable to assume that the minimum and maximum parking requirements calculated for the B-2 District development scenario will be more than that stated in the following table.

Permitted Land Use	Minimum Parking Standard	Minimum Parking Requirement	Maximum Parking Requirement
<b>PRO DISTRICT</b>			
“Office Building” use 3,362 sq. ft. GFA	3 spaces per 1,000 sq. ft. of NFA	10 spaces	12 spaces
<b>B-2 DISTRICT</b>			
“Professional Services Establishment” use 2,106 sq. ft. GFA	3 spaces per 1,000 sq. ft. of GFA plus 1 per employee	6+ spaces (approx. subtotal)	N/A
“Mixed-use Dwelling” use Two one- bedroom units	1 space per dwelling unit or...n/a	2 spaces (subtotal)	N/A
		8+ spaces (approx. subtotal)	9+ spaces

The petitioner’s proposed site plan submitted with the variance petition illustrates 21 parking spaces, regardless of the final permitted development program scenario pursued.

In considering the petitioner’s request to exceed the maximum parking standard, the Board should recognize that the extent of the variance is unknown as it may range from as much as 9 spaces to as little as 5 spaces.

Cardoso recognized Lisa Mardis, Project Management Services, 1165 Hampton Avenue, representing Vintner Reserve, LLC. Mardis described the architectural design and stated that two major concerns were taken into consideration: negative impact on traffic and storm water impact. With regard to traffic, it has been decided that a traffic impact study is not necessary. With regard to storm water, MUB is reviewing and will make recommendations concerning the storm water plan.

Shamberger asked why it is necessary to obtain a variance to exceed the maximum parking standard. Mardis answered that the use of the land is not yet known, and the developer wishes to make sure that there will be adequate parking.

There being no further questions by the Board, Cardoso opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request.

Cardoso recognized Warren Harger of 3180 Collins Ferry Road and the Property Manager and resident of the adjoining Unity House Apartments. Mr. Harger spoke in favor of the request, stating that it will preserve the character of the area and he hopes having the additional business will help with more response to snow and ice removal in the winter.

Cardoso then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Cardoso declared the public hearing closed and asked for Staff's recommendation.

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 petitioner. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends that variance relief be granted for petition V11-23 as requested so that twenty-one (21) parking spaces may be developed regardless of the final extent of the same.

Papandreas made a motion to accept all the Findings of Facts as amended and corrected by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Facts were included in this 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 location and topographical isolation of the subject development site appears to warrant careful consideration when planning for and developing requisite parking. Specifically, future non-residential permitted uses on the subject development site may generate a higher parking demand than the maximum number of allowable spaces provided by the Planning and Zoning Code, which could contribute to traffic congestion caused by customers/clients of the permitted uses circling the congested area to find a parking space. Further, the risk of insufficient parking on the subject site may result in customer/clients parking on neighboring commercial parking lots, the area of which does not appear to have been suitably planned or developed for shared parking opportunities.

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:

Similar variance relief under Case No. V09-19 was granted by the Board for the redevelopment of the former Wagon Wheel trailer park at the corner of Burroughs Street and Van Voorhis 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:

It appears that granting variance relief for the subject site as requested may aid in properly planning for potential parking demand not recognized by the spirit and intent of the maximum parking standard and should thereby serve to mitigate potential harm that may otherwise be realized to other properties and improvements within the immediate 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 location of the subject surface parking area is adjacent to existing parking areas serving the Unity House and the Keylogic building fronting Collins Ferry Road. Further, ensuring that sufficient parking is developed on the subject site recognizes the need to mitigate potential harm to neighboring properties that may be created should parking demand generated by the development site's future uses exceed onsite parking supply.

Shamberger made a motion to approve V11-23 as requested; seconded by Papandreas. Motion carried unanimously.

**V. OTHER BUSINESS:**

**A. Public Comments:** None

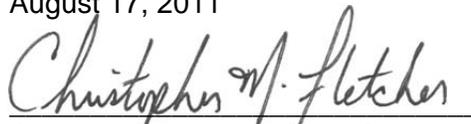
**B. Staff Comments:** None

**VI. ADJOURNMENT:** 7:37 PM

MINUTES APPROVED:

August 17, 2011

BOARD SECRETARY:

  
Christopher M. Fletcher, AICP