

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

July 25, 2012

City Council Chambers

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

MEMBERS ABSENT: None

STAFF: Christopher Fletcher, AICP; Ali Railing, Planning Intern

I. CALL TO ORDER AND ROLL CALL: Bossio called the meeting to order at 6:30 PM

II. MATTERS OF BUSINESS:

- A. Approval of the May 16, 2012 minutes. Shamberger made a motion to approve the minutes; seconded by Papandreas. Motion carried 3-0, with Cardoso abstaining due to her absence at the May 16th hearing.
- B. Approval of the June 20, 2012 minutes. Papandreas made a motion to approve the minutes; seconded by Cardoso. Motion carried 3-0, with Shamberger and Shaffer abstaining due to their absence at the June 20th hearing.

III. OLD BUSINESS: None

IV. NEW BUSINESS:

- A. **CU12-11 / Tron Enterprise, LLC / 250 High Street:** Request by Nabarun Kayal, on behalf of Tron Enterprise, LLC, for conditional use approval of a "Restaurant, Private Club" in the B-4 General Business District at 250 High Street; Tax Map 26A, Parcel 133; B-4, General Business District.

Fletcher read the Staff Report, stating that the the petitioner seeks to establish a "Restaurant, Private Club" use that will include a license with the West Virginia Alcohol Beverage Control Administration to sell beer, wine, and liquor. Table 1331.05.01 "Permitted Land Uses" provides that the development of "Restaurant, Private Club" uses in the B-4 District requires conditional use approval by the Board of Zoning Appeals. Addendum A of this report illustrates the location of the subject site.

According to the petitioner's application and exhibits, the restaurant will be called "The Fondue Factory" serving Swiss and French cuisine revolving around cheeses and broths. Patrons will cook their meals in a fondue pot at their dining table on custom built-in electric burners. The petitioner notes an existing restaurant chain called "The Melting Pot" [www.meltingpot.com] as the inspiration of his proposed business plan and dining experience. The closest "The Melting

Pot” franchise to Morgantown appears to be located in Station Square, Pittsburgh, Pennsylvania.

The petitioner notes that there will be approximately 142 seats at booths and tables and approximately 13 seats at the bar. The proposed hours of operation will be Tuesday through Sunday from 11:30 AM to 11:30 PM.

The petitioner has submitted a business description, resume, proposed floor plan, proposed sample menu, and photographic illustrations of the dining table setup.

Addendum B of this report contains related excerpts from the Planning and Zoning Code [Article 1331.06(27)].

Bossio recognized the petitioner, Mr. Nabarun Kayal, 6 Marcus Drive, Morgantown, who told the Board a little about himself and his background. He currently owns and operates Coach’s Sports Bar and Grill, and he stated that he has extensive background in the restaurant and hospitality business. He stated that his business is sort of a spin-off of “The Melting Pot” chain, with the closest being near Pittsburgh, PA. He described to the Board the way the service operates and stated that they use very high quality foods. He also showed pictures of before and after renovation (renovation is still in progress). This was formerly a bar, “Rain”, and the pictures show it transforming from a rather dark/dingy atmosphere to a brighter, more cheerful environment. He described the seating and décor, stating that custom tables to facilitate the fondue apparatus will be used. His wish is that it becomes one of Morgantown’s most popular dining spots, as it is unique and different that most.

Cardoso asked Kayal if any of the custom tables are in place yet. Mr. Kayal answered that there are some tables, but the burners for the fondue are not yet installed.

Papandreas asked how many burners each table will have. Kayal stated that the larger tables, which hold more people, will have 2 burners and 2 pots. The smaller tables will have one.

Shamberger asked how many it could set. Mr. Kayal answered it will seat 115.

Papandreas asked about the size of the kitchen. Kayal stated that the kitchen is not that large, but a large kitchen is not really needed. There is a large walk-in freezer and cooler.

Shaffer asked about hours of operation. Kayal answered that they will operate from Tuesday – Sunday from 11:30 a.m. – 11:30 p.m.

Shamberger asked Kayal to explain in more detail his background in restaurant business. Kayal stated that he currently owns a sports bar, with 49% of his sales being for food. They also provide catering. He has been the owner of the sports bar since November, 2011.

Papandreas asked about the menu and price range. Kayal stated that an appetizer will cost around \$8, salads will be between \$6 - \$10. Entrees will be pricier because of the good quality of meats used.

Cardoso asked what percentage he expected his food sales to be vs. liquor. Kayal said he hopes to have food sales around 60% of the business. Alcohol will be served with meals. It is not the type of place where one would just come to drink.

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 or in opposition to the request. There being none, Bossio declared the public hearing portion closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must first determine whether or not it will waive the one-year “bona fide restaurant” requirement [Article 1331.06(27)(c)] prior to the petitioner obtaining a liquor license from the West Virginia Alcohol Beverage Control Administration.

Should the Board decide to waive said one-year “bona fide restaurant” requirement, it must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for each of the “Findings of Fact” submitted by the petitioner.

It is the opinion of the Planning Division that the Findings of Fact submitted by the petitioner appear to be consistent with previously approved conditional “Restaurant Private Club” uses within the B-4 District.

Should the Board waive the one-year “bona fide restaurant” requirement and grant approval of the subject conditional use petition to Tron Enterprise, LLC (DBA) “The Fondue Factor”, Staff recommends that the following conditions be included:

1. That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06 (27) of the Planning and Zoning Code.
2. That the “Restaurant, Private Club” use shall be limited to the interior design and identified areas of the subject building as illustrated on the drawings submitted with the application and reviewed and approved by the Board of Zoning Appeals. Any expansion of the conditional use or significant deviation from said interior layout design or fondue dining experience must first be approved by the Board of Zoning Appeals.
3. 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:
 - a. Be open no later than 11:30 AM on days of operation for the purpose of serving lunch as described in the menu submitted with the petitioner’s conditional use application.
 - b. 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.
4. 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.
5. That the conditional use approval granted herein may not be transferred.

Based on the Board’s discussion, Fletcher added a sixth recommended condition stating, “That, to the satisfaction of the Planning Division and prior to the issuance of a certificate of occupancy, all dining tables shall have cooking/warming units installed and in working order.”

The Board went through each of the Findings of Facts:

1. Congestion in the streets is not increased, in that:

Parking lots are available within walking distance and metered parking operated by Morgantown Parking Authority.

Papandreas made a motion to accept the first finding of fact; seconded by Shaffer. Motion carried unanimously.

2. Safety from fire, panic, and other danger is not jeopardized, in that:

The establishment will conform with applicable fire and building regulations.

Shaffer made a motion to accept the second finding of fact; seconded by Papandreas. Motion carried unanimously.

3. Provision of adequate light and air is not disturbed, in that:

No structural modifications are being made to the property that may block existing light and air flow to surrounding and adjacent properties.

Papandreas made a motion to accept the third finding of fact; seconded by Shaffer. Motion carried unanimously.

4. Overcrowding of land does not result, in that:

The proposed restaurant will conform to the occupancy level established by the Fire Marshal.

Papandreas made a motion to accept the fourth finding of fact; seconded by Shaffer. Motion carried unanimously.

5. Undue congestion of population is not created, in that:

The use of proposed restaurant will be set in the current footprint of the existing building and will be used for commercial use only.

Papandreas made a motion to accept the fifth finding of fact; seconded by Shaffer. Motion carried unanimously.

6. Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The conditional use request does not appear to increase nor decrease demand for said public infrastructure already needed to serve the existing building and non-residential occupancies.

Papandreas made a motion to accept the sixth finding of fact; seconded by Shaffer. Motion carried unanimously.

7. Value of buildings will be conserved, in that:

It should be increased due to renovations being done for the restaurant.

Papandreas made a motion to accept the seventh finding of fact; seconded by Shaffer. Motion carried unanimously.

8. The most appropriate use of land is encouraged, in that:

The proposed restaurant will serve the public as a unique fine dining experience.

Papandreas made a motion to accept the eighth finding of fact; seconded by Shaffer. Motion carried 4-1, with Shamberger opposing.

Shaffer made a motion to approve CU12-11 as requested with Staff recommended conditions; seconded by Papandreas. The motion passed on a 4-1 vote with Shamberger opposing.

Bossio advised the petitioner that this decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

- B. V12-21 / Gallagher / 310 Ford Street:** Request by Arthur Gallagher for variance relief from Article 1331.04 as it relates to accessory structures and uses in residential districts at 310 Ford Street; Tax Map 37, Parcels 80, 81, and 82; R-1A, Single Family Residential District.

Fletcher read the Staff Report stating that the petitioner placed a detached 10'x16' accessory garden shed structure within the front yard of a corner lot. Addendum A of this report illustrates the location of the subject.

Because the petitioner had purchased the structure and scheduled delivery prior to the Board's hearing, Staff advised the petitioner through the building permit process that the structure could be set and remain provided variance relief was granted by the Board. However, should variance relief be denied by the Board, the subject accessory structure would have to be relocated in compliance with the Planning and Zoning Code.

Article 1331.08 "Accessory Structures and Uses in Residential Districts" provides the following related provisions:

- (2) Accessory Structures, if detached from a principal structure, shall not be placed in the front yard. If placed in a side yard, accessory structures shall not be located closer to the street than the required front setback of the principal structure.
- (4) On corner lots, accessory structures shall not be located between any portion of the principal structure and either street.

The location of the shed is on a tract of land under single-ownership that is surrounded by three public streets: Ford Street, Goodwin Street, and Dorsey Avenue. The existing single-family structure faces Dorsey Avenue but is addressed to Ford Street.

Variance relief is therefore required from paragraphs Article 1331.08(2) and Article 1331.08(4) for the shed to remain.

Bossio recognized the petitioner, Mr. Arthur Gallagher, 310 Ford Street, Morgantown, who stated that he ordered an Amish-built shed and scheduled delivery, then found out he would need to apply for a Variance. He stated that his home was built in the 1860's and is one of the oldest homes in South Park. There is a single detached garage on the property.

The Board discussed the layout of the property, and Shaffer mentioned that he has always admired the home and how it has been kept up.

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 or in opposition to the request. There being no comments, Bossio declared the public hearing closed and asked for Staff 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 approval of Variance Petition V12-21 as requested with the following condition:

1. That the petitioner shall fulfill one of the following actions no later than three (3) months from the variance relief granted herein so that the principal structure and the subject accessory structure are located on the same parcel as required by Article 1363.04(A) of the Planning and Zoning Code:
 - a. A minor subdivision petition must be approved by the Planning Commission to combine Parcels 80, 81, and 82 of Tax Map 37.
OR
 - b. The notation provided in Article 1363.02(B)(3) of the Planning and Zoning Code be placed on the recorded deed(s) to each of the three (3) affected parcels; specifically, Parcels 80, 81, and 82 of Tax Map 37.

Papandreas made a motion to approve the Findings of Facts with strike through and underlined portions; seconded by Cardoso. Motion carried unanimously.

Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.

Variance relief was granted as requested with the following condition:

- a. That the petitioner shall fulfill one of the following actions no later than three (3) months from the variance relief granted herein so that the principal structure and the subject accessory structure are located on the same parcel as required by Article 1363.04(A) of the Planning and Zoning Code:
 - i. A minor subdivision petition must be approved by the Planning Commission to combine Parcels 80, 81, and 82 of Tax Map 37.
OR
 - ii. The notation provided in Article 1363.02(B)(3) of the Planning and Zoning Code be placed on the recorded deed(s) to each of the three (3) affected parcels; specifically, Parcels 80, 81, and 82 of Tax Map 37.

This decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

Shaffer made a motion to approve request V12-21, with staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Bossio advised the petitioner that this decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

- C. V12-22 / Goodwill of Southwest Pennsylvania / Hunters Way:** Request by Raymond McCaughey of Strada Architects, LLC, on behalf of Goodwill of Southwest Pennsylvania, for variance relief from Article 1369 as it relates to signage on Hunters Way; Tax Map 44A, Parcel 7; B-2, Service Business District.

Fletcher read the Staff Report stating that the petitioner seeks to erect four (4) wall signs and one post-and-panel sign on the *Goodwill Store and Donation Center* currently under construction on the former Sterling Faucet site in Sabraton. Addendum A of this report illustrates the location of the subject site.

Article 1369.07(I) of the Planning and Zoning Code provides a maximum wall sign area standard of 0.6 square feet per linear foot of building frontage in the B-2 District. The *Goodwill Store and Donation Center* will have a building frontage along Hunters Way of 112 feet, which results in a maximum wall sign area of 67.2 square feet. The total area of the four (4) proposed wall signs is 146.97 square feet, which requires variance relief of 79.77 square feet.

Additionally, the petitioner seeks to erect a post-and-panel sign near the sites parking lot entrance. Said ground sign complies with the maximum area and maximum height standards set forth in Article 1369.07(F). However, the proposed location of the sign is located within the private right-of-way and not within the site's property boundaries, which results in off-premise signage. As such, variance relief from Article 1369.11(K), which prohibits off-premise signage, is required.

Bossio recognized the petitioner's representative, Mr. Raymond McCaughey of Strada Architects, LLC of Pittsburgh, PA, who stated that he did not have much to add to the Staff report, except to say that the owners of the abutting private right-of-way have already said they would be fine with signs.

Bossio asked who the owner of the private right-of-way is. McCaughey replied that he was not sure of the owner's name, but they own the parcel at the end.

Bossio asked the applicant if he's made any attempt to purchase the private land for the sign. McCaughey stated he was not sure it was for sale or not.

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 or in opposition to the request. There being none, Bossio declared the public hearing portion closed and asked for Staff recommendation.

Fletcher stated that one of the stated purposes within the Planning and Zoning Code for sign regulations is to:

“...encourage the effective use of signs as a means of communication in the City, to maintain and enhance the pleasing look of the City, which attracts to the City continued economic investment; to preserve Morgantown as a community that is attractive to business, to residents and to visitors...” [Article 1369.01(A)]

Size and location restrictions are two of several means to accomplish this policy objective.

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

The Board has granted a number of similar wall sign area variances within the Earl Core Road commercial corridor. The Board has not been requested to nor has approved variance relief for off-premise signage since the enactment of the current sign regulations in January 2006 prohibiting same.

Should the Board grant variance relief as requested, Staff recommends that the following condition be included in the approval:

1. That, prior to the erection of the proposed post-and-panel sign, the petitioner shall enter into a perpetual easement agreement with the owner of the private right-of-way, the form of which shall be reviewed and approved by the Planning Division, granting authority to erect said signage and landscaping within said private right-of-way as proposed. Said easement agreement shall be recorded at the Monongalia County Courthouse and run with the affected tracts of land. A certified recorded copy of the easement agreement shall be submitted to the Planning Division prior to the issuance of the building permit for said post-and-panel sign.

The Board considered each of the findings of fact separately.

Papandreas moved to accept the following finding of fact for the first question as revised by Staff; seconded by Cardoso. The motion carried unanimously.

“Parcel is depressed from main road, and distant to main road, which appears to demonstrate a need for bigger wall signs. Three distinct entries to the building site appear to demonstrate extra signage to orient customers to safe circulation. However, it appears that alternative solutions may be available to located the proposed ground sign on the site or modify the parcel boundary accordingly.”

Shamberger moved to accept the following finding of fact for the second question as revised by Staff; seconded by Papandreas. The motion carried unanimously.

“There appears to be a number of non-conforming and variance relief approved wall signs within the Earl Core Road commercial corridor that exceeds the maximum allowable wall sign area. However, there does not appear to be examples of other off-premise signage that sufficiently warrants variance relief for the location of the ground sign as requested.”

Shamberger moved to accept the following finding of fact for the third question as revised by Staff; seconded by Cardoso. The motion carried unanimously.

“Proper direction/orientation of customers assisted by the size of proposed wall signage appears to be a prime concern of safe circulation of the building parking lot and surrounding streets. However, it appears that alternative solutions may be available to located the proposed ground sign on the site or modify the parcel boundary accordingly.”

Papandreas moved to accept the following finding of fact for the fourth question as revised by Staff; seconded by Shamberger. The motion carried unanimously.

“Surrounding buildings appear larger and taller; added signs for this parcel, with the exception of the proposed location of the ground sign, should not impede surrounding buildings and should aid safer arrival/circulation of all vehicles.”

Papandreas moved to grant variance relief to exceed the maximum wall sign area standard as requested but deny the request for variance relief to locate the proposed ground sign off-premise; seconded by Shamberger. The motion passed unanimously.

Bossio advised the petitioner that this decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

- D. V12-23 / Glenmark Holding, LLC / 9 Sterling Drive:** Request by Michael Saab of Glenmark Holding, LLC, for variance relief from Article 1353.04 as it relates to minimum setbacks and Article 1353.05 as it relates to minimum building height at 9 Sterling Drive; Tax Map 31, part of Parcel 107; B-5, Shopping Center District.

Railing read the Staff Report stating that the petitioner seeks to construct a 6,000 square foot commercial strip building at 9 Sterling Drive. Addendum A of this report illustrates the location of the subject site.

Article 1353.04(A)(2) of the Planning and Zoning Code provides a minimum side setback standard of 30 feet for principal structures in the B-5 District. To meet minimum parking depth and internal roadway width standards and because of the narrowness of the parcel, the petitioner seeks to encroach into the north or left side yard by eight (8) feet, which require variance approval.

Article 1353.05(A) provides a minimum building height standard of twenty-five (25) feet for principal structures in the B-5 District. Due to the additional parking demand a second story would require on the smaller parcel, the petitioner’s proposed building height is seventeen (17) feet, which requires variance relief of eight (8) feet.

Bossio recognized the petitioner, Mike Saab, 322 West Run Road, Morgantown, stated that they are just trying to match existing surrounding properties.

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 or in opposition to the request. There being none, Bossio declared the public hearing portion closed and asked for Staff recommendation.

Railing 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 for Case No. V12-23 (deleted matter struck through; new matter underlined). Staff recommends approval of the variance as requested with no conditions.

Shaffer made a motion to accept all the Findings of Facts as revised by Staff portion; seconded by Shamberger. Motion carried unanimously.

Papandreas made a motion to approve V12-23 as requested without conditions; seconded by Cardoso. Motion carried unanimously.

Bossio advised the petitioner that this decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

V. OTHER BUSINESS:

A. Public Comments (matters not on the agenda): None.

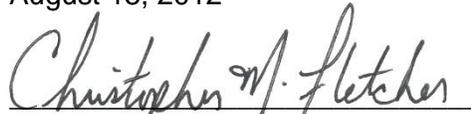
B. Staff Comments: None.

VI. ADJOURNMENT: 7:35 PM

MINUTES APPROVED:

August 15, 2012

BOARD SECRETARY:


Christopher M. Fletcher, AICP