

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

August 15, 2012

City Council Chambers

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

MEMBERS ABSENT: Bernie Bossio

STAFF: Christopher Fletcher, AICP

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

II. MATTERS OF BUSINESS:

A. Approval of the July 25, 2012 minutes: Motion by Shamberger to approve the minutes as submitted; seconded by Papandreas. Motion carried unanimously.

III. OLD BUSINESS: None

IV. NEW BUSINESS:

A. V12-25 / Adams / 219 Wall Street: Request by Bilal Adams for variance relief from Article 1369.07 (J) as it relates to sandwich board signage at 219 Wall Street; Tax Map 26A, Parcel 116; B-4, General Business District.

Fletcher read the Staff Report stating that the petitioner seeks to place a three (3) foot by two (2) foot sandwich board sign at the intersection of High Street and Wall Street. Addendum A of the Staff Report illustrates the location of the subject site.

Article 1369.07(J) of the Planning and Zoning Code states:

- (1) A single sandwich board sign shall be permitted to be placed on a private sidewalk or on a public sidewalk, **for each business that is adjacent to such a sidewalk**, provided that Section 905.02 of the City Code is adhered to;
- (2) Such sign shall not be higher than 4 feet and 2 feet wide;
- (3) Artwork, lettering and color of such sign should be consistent with the shopfront's architectural character; and,
- (4) Such sign must not present a risk to public safety; must be removed from the street outside trading hours; and must be removed in adverse weather conditions.

emphasis added

Article 905.02 of the Morgantown City Code states:

- (a) No person shall place any merchandise, sign or obstruction of any kind upon any street or sidewalk within the City for the purpose of advertising, display or sale except as provided and authorized by this article, and the Zoning Ordinance of the City.

(b) Wherever a business is conducted and maintained, on property adjacent to any public sidewalk, street or alley, no owner of any such property or business or agent thereof shall set or place any goods, wares or merchandise by way of exposing them for sale, in any street or alley, or on the sidewalks of any such street or alley, to project more than two feet from the wall or front of the place of business in questions. This shall also apply to approved movable signs. ***A five-foot wide clear passage for pedestrians on any sidewalk shall be maintained at all times.***

emphasis added

Classic Cutz seeks variance relief from Article 1369.07(J)(1) to allow the subject sandwich board to be placed approximately 155 feet from its Wall Street storefront along the High Street sidewalk. The petitioner's basis of this request is the unique location of the establishment in relation to significantly higher vehicular and pedestrian traffic volumes along High Street.

It should be noted that Staff has observed a positive change in the character, interest, and commercial activity along Wall Street between High Street and Spruce Street since the opening of *Classic Cutz*. Staff also understands that the petitioner is currently renovating additional space within the storefront to offer retail sales of shoes and apparel.

Additionally, *Maxwells*, a restaurant located on Wall Street between High Street and Chestnut Street, has placed a similar sandwich board sign along the High Street sidewalk for a number of years, which has been considered a grandfathered, non-conforming sign.

Cardoso recognized the petitioner Bilal Adams, 219 Wall Street, who stated that the purpose of the type of sign is to call attention to the fact that they are actually on the side street.

Papandreas remarked how nice the store looks and feels it will be a very good addition to this area.

There being no further comments or questions by the Board, Cardoso opened the public hearing asking if anyone was present to speak in favor of or in opposition to the petitioner's request. There being none, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read Staff recommendation, stating 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 locational 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.

Staff normally does not offer a recommendation for sign variance petitions. However, in this instance, Staff concurs with the petitioner's findings of fact and recommends approval as requested with the following conditions:

1. That *Classic Cutz*, or any establishments located at 219 Wall Street, may place only one (1) sandwich board sign that complies with the size restrictions set forth in Article 1369.07(J)(2) of the Planning and Zoning Code on the public sidewalk at either the 219 Wall Street storefront as permitted by-right or at the intersection of High Street and Wall Street but not at both locations at the same time.
2. That said sandwich board sign may not be placed at the intersection of Spruce Street and Wall Street due to the fact that said portion of Wall Street is open to vehicular access to the adjacent parking lot behind the *Morgantown Health Right Clinic* and due to the narrowness of the sidewalk along Spruce Street.
3. That said sandwich board may be placed on the public sidewalk only during the hours *Classic Cutz*, or any establishments at 219 Wall Street, is open for business.
4. That *Classic Cutz*, or any establishments located at 219 Wall Street, shall maintain at all times a five-foot wide clear passage around its sandwich board sign to ensure clear and safe pedestrian movement.

Papandreas moved to accept the Findings of Facts as presented by the petitioner; seconded by Shamberger. Motion carried unanimously.

Shamberger moved to grant variance relief for Case No. V12-25 as requested with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

- B. V12-26 / Kleinschmidt / 526 Valley Road:** Request by Robert F. Kleinschmidt for variance relief from Article 1333.04 as it relates to a rear setback at 526 Valley Road; Tax Map 53, Parcel 203; R-1, Single-Family Residential District.

Fletcher read the Staff Report stating that the petitioner seeks to reconstruct an existing 240 square foot sunroom at the rear portion of his property, which is approximately fifteen feet from the rear property line. Addendum A illustrates the location of the subject.

Article 1333.04(4) provides that the rear setback standard for principal structures in the R-1 District is 25 feet. The petitioner seeks to reconstruct the sunroom using the existing concrete slab and footprint and will thereby not increase the existing rear setback encroachment. However, variance relief is necessary.

It should be noted that the protections afforded legal, pre-existing, nonconforming structures provided in Article 1373.02 do not apply in this case as the subject sunroom has not suffered damage by fire, flood, explosion, or other casualty. Specifically, the subject sunroom could be repaired without variance relief. However, the petitioner maintains that repairing the existing addition as desired would exceed the cost of reconstructing the 240 square foot sunroom addition and would not fully achieve desired quality of construction.

Cardoso recognized the petitioner Robert Kleinschmidt, who stated that he owns and lives on the property at 526 Valley Road. He just wanted to emphasize that he is not planning to make anything larger – just repairing what is deteriorating.

There being no comments or questions by the Board, Cardoso opened the public hearing asking if anyone was present to speak in favor of or in opposition to the petitioner's request. There being none, Cardoso 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 V12-26 as requested with the following condition:

1. That the reconstruction of the subject sunroom may not increase the extent of the existing nonconforming rear setback by extending any closer to the rear property line than the present sunroom addition.

Papandreas moved to accept the Findings of Fact as revised by Staff; seconded by Shamberger. Motion carried unanimously.

Shamberger moved to grant variance relief for Case No. V12-26 as requested with Staff’s recommended condition; seconded by Papandreas. Motion carried unanimously.

- C. V12-27 / C&E Development / 701-715 McLane Avenue:** Request by C&E Development for variance relief from Article 1337.04 as it relates to encroachment into the front setback at 701-715 McLane Avenue; Tax Map 15, Parcels 165, 166, 167; R-2, Single- and Two-Family Residential District.

Fletcher read the Staff Report stating that the petitioner seeks to develop two multi-family dwelling structures on the subject property and has obtained site plan approval by the Planning Commission on June 14, 2012 (S12-03-III) and conditional use approval by the BZA on June 20, 2012 (CU12-05). Addendum A of the Staff Report illustrates the location of the subject site.

The Planning Commission included the following condition in its above referenced site plan approval:

“That the petitioner incorporates roof elements above the proposed front porches to enhance architectural design integration efforts with the surrounding built environment unless variance relief is denied by the Board of Zoning Appeals.”

Article 1337.05 “Encroachments into Setbacks” of the Planning and Zoning Code provides the following:

- (A) Architectural features may project into a required setback as provided below:
 - (3) Open and covered, but unenclosed front porches attached to single-family dwellings or two-family dwellings may extend into the required front setback a distance equal to fifty (50) percent of the setback depth. Such porches may not subsequently be enclosed unless the normal setback requirements for the district are met.

It appears that the preferred architectural design within the R-2 District is the incorporation of front porch roof elements as evidenced by the ordinance’s encroachment bonus afforded to single- and two-family structures. However, multi-family dwellings are not included in said front setback encroachment bonus. As such, variance relief is necessary.

The petitioner's design drawings illustrate a five-foot encroachment for each of the three (3) proposed front porch roofs. The north building will include one front porch roof encroachment and the south building will include two.

The petitioner correctly submitted a conditional use application for each of the two buildings. For practicality purposes, Staff combined the petitions into one conditional use case. The Board may consider these conditional use petitions jointly or separately.

Cardoso recognized the petitioner's representative, Lisa Mardis of Project Management Services, 160 Fayette Street. Mardis stated that the petitioner would like to enhance the structures on McLane Avenue by incorporating the roof elements above the porches.

Shamberger commented that it appears that the proposal is in accordance with the plans for improvement of Sunnyside.

There being no further comments or questions by the Board, Cardoso opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that it is the opinion of the Planning Division that the petitioner's design professionals have given careful consideration to architectural design, scale, and scope in an effort to integrate the proposed structures into the built environment. The Planning Commission's related site plan approval condition and the petitioner's requested variance appear to advance desired project integration into the architectural vocabulary and rhythm of the neighborhood.

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 the five-foot front setback encroachment for each of the three (3) proposed front porch roofs as requested.

Papandreas moved to accept the Findings of Facts as revised by Staff; seconded by Shamberger. Motion carried unanimously.

Papandreas moved to grant variance relief for Case No. V12-27 as requested without conditions; seconded by Shaffer. Motioned carried unanimously.

- D. V12-28 / Clear Mountain Bank / 1085 Van Voorhis Road:** Request by Bob DeRiggi of J.D. Signs, Inc., on behalf of Clear Mountain Bank, for variance relief from Article 1369 as it relates to signage at 1085 Van Voorhis Road; Tax Map 6, Parcel 69; B-2, Service Business District.

Fletcher read the Staff Report stating that the petitioner seeks to erect a 137.74 square foot, internally illuminated wall sign for the *Clear Mountain Bank* branch that will soon be occupying the former *United Bank* space at 1085 Van Voorhis Road. Addendum A of the Staff Report illustrates the location of the subject site.

Article 1369.07(l)(1) provides that the maximum wall sign area in the B-2 District is determined by multiplying the storefront width in feet by 0.6. The storefront width of the *Clear Mountain Bank*, which includes the drive-thru facility, is approximately 130 feet. Therefore, the maximum area for the subject wall sign is 78 square feet.

It is the opinion of the Planning Division that the blue outline surrounding the letters and logo should be considered a part of the extreme limits of the sign's display as it appears to form an integral part of sign's background used to differentiate the sign from the structure as provided in Article 1369.04(A) of the Planning and Zoning Code. As such, the proposed sign requires a 59.74 square foot variance.

Fletcher also added that Mr. DeRiggi was very helpful in working through several scenarios to arrive at the proposed sign plan.

Cardoso recognized the petitioner's representative Bob DeRiggi, General Manager for J.D. Signs. DeRiggi thanked Mr. Fletcher for his kind comments, and stated that they had put much time and effort into choosing the right sized sign.

There being no comments or questions by the Board, Cardoso opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Cardoso declared the public hearing closed and asked for Staff recommendations.

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 restrictions are one 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). Fletcher stated that the Board has granted a number of similar wall sign area variances within the Van Voorhis Road commercial corridor.

Papandreas commented that he felt the sign was very appropriate for the area.

Papandreas moved to accept the Finding of Facts as revised by Staff; seconded by Shamberger. Motion carried unanimously.

Shaffer moved to grant a 59.74 variance from the maximum wall sign area standard for Case No. V12-28 as requested; seconded by Papandreas. Motion carried unanimously.

V. OTHER BUSINESS:

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

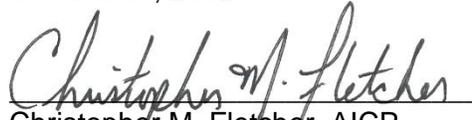
B. Staff Comments: None.

VI. ADJOURNMENT: 7:10 PM

MINUTES APPROVED:

October 17, 2012

BOARD SECRETARY:


Christopher M. Fletcher, AICP