

BOARD OF ZONING APPEALS

Minutes

6:30 PM

August 19, 2009

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Leanne Cardoso, Tom Shamberger

MEMBERS ABSENT: Jim Shaffer, George Papandreas

STAFF: Lisa Mardis, Deputy Director

I. CALL TO ORDER and ROLL CALL: Bossio called the meeting to order at 6:34 PM

II. MATTERS OF BUSINESS:

A. Approval of July 15, 2009 minutes – Shamberger moved to approve the minutes as submitted; seconded by Cardoso. The motion passed unanimously.

III. OLD BUSINESS

A. CU09-08 / Charlton Enterprises, LLC / 361-365 Brockway Avenue: Request by Charlton Enterprises, LLC for conditional use approval from the Planning and Zoning Code Article 1365.07 Off-Site Parking Facilities for property located at 361/365 Brockway Avenue; Tax Map #29 Parcel #199; a B-2, Service Business District.

Motion to remove CU09-08 from table by Shamberger; seconded by Cardoso. Motion unanimously approved.

Mardis read the staff report stating that the applicant seeks approval for off-site parking to utilize a one-bedroom rental unit at 361/365 Brockway Avenue. She explained that currently the multi-family structure has four (4) registered rental units and that the previous owner was unable to show sufficient evidence that the fourth unit was a grandfathered rental unit. Thus was required to obtain off-premise parking conditional use approval, which was granted by the Board in December 2006. She continued that since a conditional use approval is non-transferable, the new owner of the subject realty, Mr. Michael Charlton, is seeking the same conditional use as previously approved and has signed a three year parking lease with Ervin's Towing at 53 Kingwood Street.

Mardis continued to explain that according to Article 1365.07 – Off-Site Parking Facilities of the Planning and Zoning Code, in business, industrial and multi-family districts, the Board may grant conditional use approval to provide required spaces on a site that is: 1) within 300 feet of the principal use; and, 2) within a district that permits commercial parking lots as principal or conditional use. She stated that the proposed grandfathered parking area is within 300 feet as illustrated in the staff report graphic.

Mike Charlton, applicant, was present and stated that he concurs with the staff report.

There being no public comments, either for or against, the public portion was closed and the staff recommendation read.

Mardis stated that The Board of Zoning Appeals 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 applicant. She continued that staff concurs with the findings of fact as revised and recommends that the conditional use be granted as requested with the following conditions:

1. That the off-site parking facility is encumbered by an easement or similar agreement, to the satisfaction of the Planning Director, which is duly executed and acknowledged and specifies that the land upon which the off-site parking facility is located (55 Kingwood Street) is encumbered by the parking use of the subject dwelling unit (*address to be assigned by City Engineer*). That this instrument binds the use for no less than three-years. That said instrument is filed with the Planning Department and the Rental Registration Program of the City's Code Enforcement Division, and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, WV.
2. That the leased space has a sign noting the residence for which the space is reserved. That such sign is 12 inches wide by 18 inches tall and shall be mounted between three feet and five feet above the finish surface of the parking stall. That the text on the sign state "This space is reserved for the residents of (insert address) only, per City Code 1365.07 (D)."
3. That registration renewal with the City's Rental Registration Program for the subject dwelling unit, currently triennial, is conditioned upon demonstrating that the said agreement and encumbrance is extended for a period equal to the subject dwelling unit's registration period. That failure to provide such surety will result in the denial of registration and occupancy of the subject dwelling unit.

Staff recommends the following revisions to the petitioner's Findings of Fact (deleted matter struck through; new matter underlined) and that the conditional use be granted as requested.

Finding of Fact #1 – Congestion in the streets is not increased, in that:

This same conditional use was approved in December 2006. The proposed off-site parking stall is within an existing parking lot.

Finding of Fact #2 – Safety from fire, panic, and other danger is not jeopardized, in that:

Nothing has changed since the approval in December 2006 that would jeopardize safety in any form. The proposed off-site parking space is already established and is located in a parking lot that appears to be underutilized.

Finding of Fact #3 – Provision of adequate light and air is not disturbed, in that:

The conditional use request will not result in the development of new structures and thereby have no affect on light or air.

Finding of Fact #4 – Overcrowding of land does not result, in that:

The subject dwelling unit exists as does the dedicated off-premise parking stall that was established by the conditional use granted to the previous owner of the subject realty in December 2006.

Finding of Fact #5 – Undue congestion of population is not created, in that:

There will be no increase in population.

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

No change will take place. The proposed space is already established as parking with no additional demand for public infrastructure or services.

Finding of Fact #7 – Value of buildings will be conserved, in that:

The subject rental property will maintain its current value as a four (4) unit multi-family building.

Finding of Fact #8 – The most appropriate use of land is encouraged, in that:

The multi-family dwelling unit and off-site parking space are established.

Shamberger made a motion to approve the findings of fact as revised; seconded by Cordoso. Motion passed unanimously.

Motion to approve request with staff recommended conditions by Shamberger; seconded by Shamberger. Motion approved unanimously.

B. CU01-07 / Corbett / 76 High Street: Request by Judy Spade for an amendment to a previously approved conditional use for a “Restaurant private club” use in the B-4 District at 76 High Street; Tax Map #29 Parcel #3; a B-4, General Business District.

Bossio highlighted the memo prepared by staff. The highlights of the memo are as follows: On April 18, 2001, the Board approved a “Restaurant, private club” conditional use at 76 High Street to David Corbett and Olivia Carrick, which opened *Café Bacchus*; the establishment appears to have complied will all conditions established by the Board and/or set forth in the Planning & Zoning Code; in 2005, Judy Spade became a part owner of the *Café Bacchus* and is now in the process of purchasing remaining ownership interests from Corbett and Carrick and establishing J&C Spade, LLC as the new owner of *Café Bacchus*. The memo explained that a conditional use approval is specific to the petitioner and can not be transferred. As such, it is the opinion of the Planning Department that Ms. Spade must obtain approval from the Board to transfer the approved conditional use from Corbett and Carrick to J&C Spade, LLC.

Cardoso stated that the applicant, Judy Spade, and she work in the same building and has asked her questions. Cardoso continued that she referred the applicant to Chris Fletcher and stated that she believes that she can make a fair and unbiased decision. Bossio asked the applicant if she was comfortable with Cardoso rendering a decision. The applicant stated that she was comfortable continuing.

Mardis stated that the petitioner's request to transfer conditional use approval from Corbett and Carrick to J&C Spade, LLC be approved with the following customary "Restaurant, private club" conditions:

1. That the petitioner shall maintain compliance with all supplemental regulations set forth in Article 1331.06 (27) of the Planning and Zoning Code.
2. That the establishment shall not serve liquor, including wine, later than 1:00 a.m., except on New Year's Eve.
3. That the applicant must obtain permits as a "restaurant" from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*.
4. That the conditional use approval granted herein may not be transferred.

Judy Spade, applicant, 425 Elysian Avenue, was present and summarized her request. She stated that she has been an owner and/or manager for the past five (5) years.

There being no public comments either for or against, the public portion was closed.

Motion to approve request with staff recommended conditions by Cardoso; seconded by Shamberger. Motion passed unanimously.

V. OTHER BUSINESS

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

VI. ADJOURNMENT – The meeting was adjourned at 6:51 PM.