

BOARD OF ZONING APPEALS

Minutes

6:30 PM

September 16, 2009

City Council Chambers

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

MEMBERS ABSENT: Leanne Cardoso

STAFF: Lisa Mardis, Deputy Director

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

II. MATTERS OF BUSINESS:

A. Approval of August 19, 2009 minutes – Shamberger moved to approve the minutes as submitted; seconded by Shaffer. The motion passed unanimously.

III. OLD BUSINESS: None

IV. NEW BUSINESS:

A. V09-26 / Glenmark Holding, LLC / 1085 Van Voorhis Road: Request by Glenmark Holding, LLC, for variance approval from the Planning and Zoning Code Article, Article 1369 as it relates to signs for property located at 1085 Van Voorhis Road; Tax Map #6, Parcel #69; a B-2, Service Business District.

Mardis read the staff report. She stated that Glenmark Holding, LLC, seeks to erect a directory-type sign with an illuminated signage area of 127.2 square feet and a height of eighteen (18) feet.

She continued that Article 1369.07 (B) (1) of the Planning & Zoning Code provides that the maximum height permitted for a directory sign in the B-2 District is six (6) feet and the maximum area is 18 square feet. Mardis confirmed that the petitioner is requesting variance relief of twelve (12) feet for sign height and 109.2 square feet for sign area.

Mardis stated that the proposed signage will be set back less than the minimum twenty-foot from the front property line due to the existing retaining wall and parking area.

Mardis affirmed that one of the stated purposes within the Planning & 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. She continued that size restrictions are one of several means to accomplish this policy objective.

Mardis stated that the petitioner currently has one monument sign adjacent to the location of the proposed signage and that according to Article 1369.07; all other signs for individual tenants

must be wall signs, suspended signs, or sandwich board signs. She recommended that the Board may wish to consider, as a condition of approving the requested variance, that the existing monument sign be removed.

Mark J. Nesselroad, Esq., was present and represented Glenmark Holding, LLC. He reiterated the proposal made by Glenmark Holding, LLC. He added that the proposed sign would be very similar to the monument style sign located across the access drive on property owned by Glenmark Holding, LLC. He also added that this sign would be located further back on the property due to the turning lane onto the private access drive; approximately five feet from the sidewalk and twenty-five feet from the actual road.

Shamberger inquired as to what types of signs that new tenants will use. Nesselroad responded that some tenants will be able to use the new monument sign or small directory type signs that will not be visible from the main road.

Shamberger voiced concerns that more and more request are being made for signs that exceed the maximum requirements and wants to limit visual clutter along Van Voorhis Road.

Bossio asked for public comment; there being none, the public portion was closed.

Mardis read the staff recommendation. She stated 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.

Motion by Shaffer to approve the Findings of Fact as submitted by the applicant with amendments made by staff; seconded by Papandreas. Motion approved unanimously.

Motion by Shaffer to approve the request as submitted by the applicant with the condition that the current monument sign, which would be adjacent to the proposed sign be removed; seconded by Shamberger. Motion approved unanimously.

B. CU09-09 / Lightner / 216-218 Walnut Street: Request by Robert Lightner for condisiotnal use approval for a "Restaurant private club" license in the B-4 District at 216-218 Walnut Street. Tax Map #26A Parcel #130; a B-4, General Business District.

Mardis read the Staff Report stating that in September 2008, the Board of Zoning Appeals denied Mr. Lightner's request for a waiver from "one year bona fide restaurant" requirement for a "Restaurant, Private Club" use in the B-4 District. She continued that specifically, the Board stated in its September 24, 2008 letter to Mr. Lightning that,

"The Board voted not to waive the "one year bona fide restaurant" requirement provided in Article 1331.06 (27) (c) because it was not clearly demonstrated by the application, supporting documents, and/or testimony provided during the September 23, 2008 hearing that the proposed establishment would meet the City's Planning & Zoning Code performance standards set forth for "Restaurant, Private Club" uses in the B-4 District."

Mardis continued that the petitioner again seeks conditional use "Restaurant, Private Club" license so that the existing "Taylor Morgan Restaurant and Delicatessen" establishment may obtain a license from the West Virginia Alcohol Beverage Control Administration (WVABCA) to sell liquor. She stated that the subject establishment is currently considered a

“Restaurant, Private Wine” use, which is permitted by-right in the B-4 District and licensed by the State to sell beer and wine.

Mardis affirmed that according to online state databases (WV Secretary of State and WVABCA), Mr. Lightner’s business name for the subject establishment is Octane, Inc. “The Taylor Morgan Restaurant and Delicatessen” and “Club Octane” are listed as DBAs. She continued that the petitioner has submitted the following exhibits: Business description; Owner’s Experience Narrative; Managerial resumes; Proposed Menu; and a Seating Plan.

Mardis stated that according to the said exhibits, Mr. Lightner owned three private club establishments, which were/are grandfathered under the City’s Planning & Zoning Code, which include Beemer’s Lounge, later Shooters at 233 ½ Walnut Street; Fuel at 234 ½ Walnut Street; and Club Z at 228 Walnut Street.

Mardis continued that Mr. Lightner noted food service industry experience to include “Dogs on Walnut” mobile food vending service (2004-2006) and Fox’s Pizza Den for six years (two as manager) during high school and early college. She also added that the business description highlights include: Opens daily at Noon; Live entertainment beginning in the early evening; Tuesday Jazz Night; Wednesday Comedy Night; and The full dining menu available until 2:00 AM.

Mardis stated that the petitioner has, as suggested by the Board at its September 23, 2008 hearing, operated “The Taylor Morgan Restaurant and Delicatessen” as a “Restaurant, Private Wine” use and that the petitioner now seeks to demonstrate to the Board that the subject establishment has operated in a manner that meets the supplemental regulations and performance standards set forth in the Planning & Zoning Code for “Restaurant, Private Club” uses in the B-4 District.

Mardis confirmed that staff encouraged the petitioner, prior to his application in mid-August, to submit with this request the following types of information to substantiate the establishment’s capacity over the past year to meet said Planning & Zoning Code provisions: Cash receipts journals or equivalent; Sales journals or equivalent; Trial balance; Financial Statements (if prepared); Monthly WV Sales and Use Tax Returns; Federal and state income tax returns.

Mardis also stated that on Friday, September 11, 2009, the petitioner submitted monthly West Virginia Sales and Use Tax Return forms for the period of September 2008 thru May 2009 and due to late submission and the timely preparation of this Staff Report, the Planning Department has not examined said information. Mardis also stated that there is a supplemental memorandum for review by the Board.

Robert Lightner, applicant, 880 Vandalia Road, was present and reiterated his proposal to the Board. He also added that he sent an email to Lisa Mardis before the meeting started in regards to the sales and use tax returns and the percentage of food sales for the Taylor Morgan Restaurant and Delicatessen.

Shaffer questioned the applicant as to the lateness of the information contained in the aforementioned email.

Bossio asked for clarification as to the columns on the West Virginia Sales and Tax Returns. He wanted to know if column one was for food sales. Lightner responded that it was correct. Bossio also wanted clarification on how the applicant got the numbers that are listed on the

Sales and Tax Returns. Specifically, how the applicant isolates them at his store. The applicant stated that he got those numbers from a PLU report at the register. Bossio then questioned if the applicant had a separate PLU number for each item. The applicant stated yes. Bossio then stated that at the petitioner's last proposal, and in conjunction with the recommendations by staff, the applicant had all the tools to show the Board that the 60/40 rule could be met. Bossio inquired if the applicant had the PLU reports. The applicant stated that it would be cumbersome to review such reports. Bossio responded that he would like to review the PLU reports and receipts from purveyors, which were mentioned as Boar's Head and Sam's Club. Bossio asked the applicant if he could provide them to the Board; the applicant answered that he could.

Shaffer inquired why the applicant had pertinent information for four months but decided not to submit them to staff until the Friday before the meeting and why the applicant waited until sixty minutes before the hearing to make a rebuttal. Shaffer stated that he is willing to either give the applicant another opportunity to get information that was previously requested by the Board or deny the request.

Lightner stated that when he submitted the conditional use application, he was aware of what the Board stated and required from the last conditional use restaurant private club license. He also added that he thought the information was for auditing purposes only.

Shaffer added that at the petitioner's last request, the Board clearly stated what would be expected of the applicant.

Mardis added that when Mr. Lighter requested a conditional use application he was also given a copy of Mr. Metheny's staff report that indicated the information that would be requested if an audit were to take place. This information is also contained in the applicant's staff report. Mardis also stated that Mr. Lighter was instructed that the more information that he could provide for the Board the better and that it was up to the applicant to provide that information.

Lightner responded that he believed that by providing the Sale and Use Tax Return that he clearly illustrated that he could provide the 60/40 requirement. He added that he is willing to provide additional information.

Bossio asked the applicant if he would like to withdrawal or table the request in order to provide more information. Lightner responded that he would rather have the proposal tabled than denied.

Papandreas added that he would like to make it clear as to what the applicant needed to provide.

Bossio asked for clarification as to what staff instructed Mr. Lightner to provide to the Board. Mardis again responded that he was instructed what would be needed to provide for an audit and that the more information he could get the Board the more could be based on the decision. She also added that she first spoke to the applicant concerning the application at the beginning of August.

Papandreas asked when Mr. Lightner submitted the West Virginia Sales and Use Tax Returns. Mardis responded that they received the forms the day that packets were mailed to the Board. Papandreas also wanted further clarification on the columns in the submitted returns. Information obtained from the Finance Department which is included in Staff's memorandum

was reiterated. It was stated that if the applicant was approved for a restaurant private club license, Column 1 would have to be sixty percent. Papandreas stated that according to the information presented from the applicant, the establishment is currently meeting that requirement.

Discussion ensued on the West Virginia Sales and Use Tax Return and the applicant's system of PLU recording.

Papandreas stated that food receipts may be more accurate than PLU reports.

Shaffer stated that at the last meeting with Mr. Lighter the Board was explicit as to what information needed to be submitted for future review. The Board concluded that the information needed were the wholesale receipts, PLU's, current pricing, and beer receipts.

Bossio stated that he would like to schedule a walk-thru with the applicant, similar to what the Board did with Mr. Metheny, which could be scheduled after the applicant submits the required information.

The applicant requested that his proposal be tabled by the Board until additional information can be obtained.

Motion made by Papandreas to table the request to October 21, 2009 and that the applicant provide wholesale receipts, PLU reports, current pricing, and beer receipts to the Planning Department by October 2, 2009, seconded by Shaffer. Motion approved unanimously.

V. OTHER BUSINESS

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

Papandreas asked if there was a food requirement for a restaurant private wine establishment. Shaffer stated that it is inappropriate to further discuss this case.

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