

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

September 17, 2014

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Leanne Cardoso, George Papandreas and Jim Shaffer.

MEMBERS ABSENT: Bill Burton

STAFF: Christopher Fletcher, AICP

- I. **CALL TO ORDER AND ROLL CALL:** Bossio called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

- II. **MATTERS OF BUSINESS:**
 - A. **Minutes for the August 20, 2014 Hearing:** Shaffer moved to approve as presented; seconded by Cardoso. Motion carried 3-1 with Papandreas abstaining due to his absence.

- III. **UNFINISHED BUSINESS:** None

- IV. **NEW BUSINESS:**
 - A. **V14-24 / CA Student Living / 494 Spruce Street:** Request by Lisa Mardis of Project Management Services, on behalf of CA Student Living, for variance relief from Article 1351.01(l) as it relates to minimizing canyon effects created by structures taller than three (3) stories at 494 Spruce Street; Tax Map 26, Parcels 245 and 246; B-4, General Business District.

Fletcher presented the Staff Report.

Bossio recognized Scott Erdy of Erdy McHenry Architecture and Dan Hrankowsky of CA Living who presented a Power Point presentation of the proposed project to further explain the design of the building and discuss canyon effects. Erdy noted the design includes stepping the building back at the upper floors and setting the building back on the ground floor to maintain compliance with the ordinance.

Fletcher noted that public input responses were received by Staff from the following people: Randall Underwood, Dan Kimble, Mainstreet Morgantown Board of Directors, Elliot Lewis, Paul Garvin, Chet Parsons, and Margaret Bolt. Fletcher stated that members on the Board received the communications prior to the meeting.

There being no comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized Charles McEweyn of 324 Grandview Avenue who stated that no building is too big or too tall for a City that wants to grow and feels the proposed building is an appropriate use for the property.

Bossio recognized Terri Cutwright of Mainstreet Morgantown who stated she is in support of the project. She has traveled to many cities throughout the United States and feels this project would have minimal to no canyon effects.

Bossio recognized Paul Garvin of 96 Claremont Court who asked the Board to consider in favor of the proposed project. He expressed that the building would keep in character of the downtown area and it is vitally important to grow downtown regardless of the size of the building.

Bossio recognized Vickie Adams of 261 Willey Street, who stated she initially submitted a letter of protest but after meeting with representatives of CA Living and seeing the design alterations she is happy with the changes and asked to rescind her initial letter. Adams noted that a building of this size will cast shadows but the ordinance does not prevent structures of this size and the canyon effect is only an issue because people aren't happy with the size of the structure. The proposed building would also increase property values to surrounding structures. Adams stated the builder has offered for her members to use certain resources and space and is in favor of the project.

Shaffer asked Adams if she would still be against the project had design alterations not been made. Adams confirmed as the shadowing would have been more severe.

Bossio recognized David Biafora of 6200 Mid Atlantic Drive who asked for George Papandreas to recuse himself due to previous discussions where Papandreas stated he would vote in favor of the project.

Papandreas explained he did not know what the project would look like when it presented itself again. He stated he did not say that this specific development with this specific developer was good but only that he is in favor of development in the downtown area and does not feel that he compromised himself in any way and will not recuse himself.

Biafora expressed the building is huge and compared it to the Waterfront Hotel. Biafora suggested getting rid of the parking and getting the building down to 6 stories. He noted the developers are from Chicago and do a lot of "smoke in mirrors" with Chicago politics when presenting the development. Biafora stated the building would cause shadowing 12 months out of the year and a bigger lot is needed to build a twelve-story development.

Bossio recognized Bryan Edwards of 1200 Dorsey Avenue who referred to Article 1351.01(I) and the measures to preserve the continuity of the predominant street wall and stated the building is taller than any others going up Spruce Street and will stick out like a sore thumb.

Bossio recognized Sam Simon on behalf of Central Place, LLC who expressed that shadows would be present over a twelve-month period and during the four seasons which is a canyon effect. The only way to avoid a canyon effect is to decrease the size of the structure or to put the building on a bigger lot. Currently there are no buildings over ten stories high in the downtown area for a reason. The City needs to enforce proper planning to prevent perpetual shade.

Bossio asked Simon if he is from Pittsburgh. Simon confirmed. Bossio asked if Pittsburgh should have stopped progress as there are canyon effects in the City. Simon expressed that him and his client believe in progress but the project needs to be done right and as the code requires.

Shaffer noted that the code states buildings can't be higher than 120 feet and the proposed project is in compliance.

Simon stated the code does not allow for the canyon effects to take place.

There being no further public comments, Bossio declared the public hearing closed.

Bossio invited Hrankowsky to the podium for a rebuttal.

Hrankowsky stated the issue is a subjective concept and the language in the ordinance is suggestive. The site of the building is unique and urban with a more open radial corner which opens the pressure of any potential two-sided canyon effect that you would get to the street front. There are constraints at the site and developers have worked with the City to provide the best possible outcome in altering the design of the building.

Cardoso asked for Article 1351.01(I) to be read aloud to clarify what the Board members would be voting for on the project, which refers to canyon effects.

Fletcher read Article 1351.01(I) from the Planning and Zoning Code.

Fletcher read the Staff recommendations.

Fletcher noted the job of the Board is to decide if any additional mitigation is required based on the Wind Flow and Sunlight Distribution reports. If additional mitigation is needed, then a variance would be necessary.

Papandreas expressed he is in favor of increased density and feels the developers have gone above and beyond with modifications to the design of the initial project.

Cardoso expressed that developers have addressed the concerns pertaining to the code and a shadow will occur with any size of a building. She noted it is a step in the right direction to increase growth and density and feels design elements have been incorporated to minimize canyon effects.

Shaffer referred to the code and noted all mitigation measures have been taken to minimize canyon effects.

Bossio noted that if the City wants progress and growth then buildings will have to be twelve stories high and maybe more in the future.

Shaffer made a motion that, based on the Wind Flow Analysis and Sunlight Distribution Report submitted by the petitioner, no additional or further design elements are required to preserve adequate light and airflow to public spaces around the subject site. The motion was seconded by Papandreas and carried unanimously.

- B. **V14-37 / Blondell Trickett / 412 Cobun Avenue**: Request by Blondell Trickett for variance relief from Article 1331.08 as it relates to setbacks for accessory structures at 412 Cobun Avenue; Tax Map 29, Parcel 565; R-1A, Single Family Residential District.

Fletcher presented the Staff Report.

Bossio recognized the petitioner's representative, Cyndi Smith of Dunbar, PA who stated the petitioner is an elderly woman with limited mobility. The carport would be erected over an existing concrete pad and would help keep snow and ice off her vehicle.

There being no comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Bossio declared the public hearing closed.

Fletcher read the Staff recommendations.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V14-37 as revised by Staff; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The carport will be placed above an existing cement pad that is presently used for off-street parking. There appears to be several carports and principal structures in the South Park and Greenmont neighborhoods that do not comply with requisite setback and lot coverage standards given compact parcel configurations and development patterns.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

There is not sufficient space in the rear yard to develop a carport over an existing paved off-street parking space without encroaching into the minimum rear yard setback standard or exceeding the maximum lot coverage standard because of the limited space available on the 1,902 square foot parcel.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The hardship exists due to the limited size of the lot and confined rear yard, which appears to be a common challenge given the compact development patterns of the South Park and Greenmont neighborhoods.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Granting variance relief as requested will permit the development of a carport over an existing paved off-street parking space in a manner that will foster the comfort, convenience, and enjoyment of the property without undermining the legislative intent of protecting and preserving the predominant development pattern within the immediate built environment.

Papandreas moved to approve V14-37 with the following condition:

1. That the detached accessory structure shall not be located closer than five (5) feet to each side property line.

The motion was seconded by Cardoso and carried unanimously.

Bossio reminded Ms. Smith that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- C. V14-38 / Kroger Fueling Station / 3100 University Avenue:** Request by Robert DeRiggi of J. D. Signs, Inc., on behalf of Kroger Limited Partnership 1, for variance relief from Article 1369 as it relates to signage at 3100 University Avenue; Tax Map 7, Parcel 260; B-2, Service Business District.

Fletcher presented the Staff Report.

Bossio recognized the petitioner's representative, Bob DeRiggi of J.D. Signs who stated the proposed sign would be slightly smaller than the existing BP sign that is currently on the property. The idea of a monument sign was explored as an option but future landscaping of trees would eventually grow to cover the sign.

DeRiggi presented Board members with a site plan to further explain the location of the sign, the clock tower, and surrounding landscaping.

Shaffer asked how the future trees and clock tower would improve visibility from the intersection off Collins Ferry Road. DeRiggi explained that if developers were to be complaint with a monument sign then the future trees would eventually grow to cover the sign. Therefore the sign has been elevated to allow for clear visibility.

Fletcher explained that the trees would be set back to not obstruct visibility at the intersection and the proposed sign would be located where the existing sign is now.

Bossio asked for explanation of light standards and if they will use the ones there currently.

DeRiggi stated it would be separate lighting and the sign will be internally illuminated. The price sign is not LED and will be a scrolling sign.

Fletcher noted the current light standards [poles] exist because there are driveway entrances. There will not be any lighting in that area after the driveway entrances are gone.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized Jeff Armstrong, representative of Kroger Company out of Roanoke VA., who stated that Morgantown is extremely important to the company and they are planning to remodel the Patteson Drive and 705 stores in the near future.

Bossio recognized Steve Cramerage, store manager of Patteson Drive Kroger, who expressed the proposed sign is beautiful and the logos are important for business and the fuel center.

There being no further public comments, Bossio declared the public hearing closed.

Fletcher read the Staff recommendations.

Papandreas expressed that this project would be an appropriate entrance for a gateway to the community. Bossio agreed.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V14-38 as revised by Staff; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Subject property is located at the convergence of 2 access arteries coming into Morgantown. The site has exposure to approx. 18,000 +/- vehicles daily. Many similar businesses in the regional area, have multiple brandings along with pricing and identification signage both on canopies and freestanding options. Proposed clock-tower size, type, and location will not only provide greater visibility from multiple vantage points, but it will do so with less than typical signage along with being more compliant than that presently on site, additionally while accentuating one of the City's entry arteries. Elevation of Post and Panel Clock-tower is necessary for visibility due in part to the necessary canopy coverage-elevation blockage, kiosk location/orientation-elevation blockage, and additional green-space blockage required around the kiosk. These combined issues would negate the effectiveness of a monument.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

With the proposed Fuel Center being located at a prime thoroughfare arterial convergence, along with the market involved competitiveness, not permitting the client reasonable means to effectively advertise (fuel cost/identity) would hinder their ability to justify the cost means for their investment and local improvement. Should they not be allowed similar exposure opportunities afforded to others in the region, identification/communication concerns are noteworthy since a considerable amount of the fuel center business will be directly related to visible sign conveyed information and navigation. Given existing signage clutter within the immediate area, and traffic volumes and speeds, erecting effective signs that meet that maximum height and maximum area standards at the subject location does not appear practicable or achievable.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Wall Signs – Icon only on Canopy for Identification Purposes only. Located visually above the typical drivers' line of sight, non-obtrusive and additionally being parallel to the road they face. Post and Panel Clock-tower sign – Natural design and position of a post and panel sign affords minimal viewing obstructions between columns. Elevated placement of sign panels are above normal traffic line of sight in addition to being placed on premise, out of State ROW, located in a revised green-space area (outside vehicular and pedestrian areas) and placed near the position of the existing sign for which it is replacing, having no known safety concerns. Design also offers a community service with the incorporation of a Mainstreet Style clock, featured in the design pediment.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The improved/planned use of the site, along with the requested signage, should not contribute to additional traffic congestion with the proposed being similar to that presently in existence. With the additional architecture features incorporated, planned land usage improvements, along with more compliant signage considerations, the possibility of decreasing the market values of neighboring properties is most unlikely.

Cardoso moved to grant the following relief for Case No. V14-38:

1. To erect the two (2) wall signs on the accessory fuel canopy structure as proposed.
2. To exceed the maximum height standard by 17.5 feet and to exceed the maximum area standard by 20.5 square feet.

The motion was seconded by Papandreas and carried unanimously.

Bossio reminded Mr. DeRiggi that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- D. V14-39 / Morgantown Beauty College / 276 Walnut Street:** Request by Bob Lindsey of LAI Architects, Inc., on behalf of Morgantown Beauty College, for variance relief from Article 1331.06(20)(c) as it relates to "Overstore Dwelling" uses at 276 Walnut Street; Tax Map 29, Parcels 27 and 31; B-4, General Business District.

Fletcher read the Staff Report.

Bossio recognized the petitioner's representative, Robert Lindsey of Fairmont, WV, who concurred with the Staff Report.

There being no comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Bossio declared the public hearing closed.

Fletcher read the Staff recommendations.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V14-39 as revised by Staff; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The existing exterior conditions are to remain, only the reworking of the flow and order of the existing Beauty College. The proposed design presents little modifications to the public eye yet improves the public entrance and egress into the existing structure in a functional and aesthetic way.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The loft apartments are introduced in an existing building at the same level of the existing street level of the Beauty College but are located completely behind the college providing a street entrance and then extending above the college level.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The undeveloped use of the existing building will allow the proper density needed to support the increasing demands of the Beauty College curriculum.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The new loft apartments are not experienced from the street level and extend above the existing business as intended in the zoning provision for which variance relief is sought. Specifically, the Beauty College will remain as the primary use and interaction with the Walnut Street streetscape and public realm.

Papandreas moved to approve V14-39 as requested; seconded by Cardoso. The motion carried unanimously.

Bossio reminded Mr. Lindsey that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

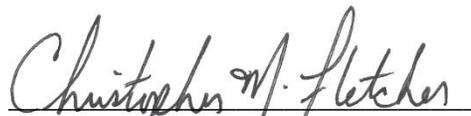
V. ANNOUNCEMENTS: Fletcher informed the Board members that an Administrative Appeal has been filed for Case No. S14-07-III and will be included on the October 15, 2014 BZA agenda.

VI. ADJOURNMENT: 8:15 PM

MINUTES APPROVED:

October 15, 2014

BOARD SECRETARY:


Christopher M. Fletcher, AICP