

MORGANTOWN BOARD OF ZONING APPEALS
Minutes
September 19, 2007

6:30 PM

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Nick Iannone, Mark Furfari, Jim Shaffer, Leanne Cardoso

MEMBERS ABSENT: None

STAFF PRESENT: Lisa Mardis, Deputy Planning Director

I. MATTERS OF BUSINESS:

- A. July 18, 2007 & August 15, 2007: Motion by Shaffer to approve the July 18, 2007 minutes, and to postpone the approval of the August 15, 2007 meeting until the September meeting. Seconded by Furfari. Motion passed unanimously.
- B. Discussion and approval of Bylaw revisions has been postponed.

II. OLD BUSINESS:

- A. **V07-34 / Morgantown AES Federal Credit Union / 1212 Van Voorhis Rd.:**
Request by Morgantown A.E.S. Federal Credit Union for variance approval from Article 1347.04 of the Planning & Zoning Code as it relates to the maximum front setbacks in the B-2 District at 1212 Van Voorhis Road. Tax Map #6 Parcels #44 & 48; a B-2, Service Business District (TABLED IN AUGUST)

Motion by Shaffer to remove request from table; seconded by Iannone. Motion passed unanimously.

Mardis read the follow up memo. Rereading of the Staff Report was waived.

Lee Gustafson, architect for the applicant, was present. He stated that AES received minor subdivision approval from the Planning Commission. The issue of conveyance of the bus pull-off lane with the property was discussed. Mardis stated that the issue has not been legally addressed.

Shaffer stated that he preferred not to discuss matters pertaining to adjacent properties because property owners have not been contacted and would like to see what the Traffic Commission reports since the property has been utilized the same for sometime.

Mardis advised the Traffic Commission would be looking into the traffic pattern. Mardis was asked to report to the BZA when this specific issue appears on the Traffic Commission's agenda. She agreed to contact Terry Hough for a follow-up memo.

A point of order question arose as to whether or not the other F.O.F's need to be reviewed. Last month's meeting only had three members present; all F & F's were affirmative except #4.

The Chair polled the BZA members present to determine if the information received in the packet was enough to make a decision on the request. Cardoso explained there was enough information, although she did not watch the BZA meeting, but the packet information was clear and precise and was comfortable to proceed. Iannone advised the same.

Discussion continued if a motion could pass with a majority of the quorum or if the decision has to be unanimous. Mardis was asked to look into procedure. She advised that bylaws would be reviewed the following month.

Mardis stated that only the three members who were previously present should vote on F.O.F #4.

Shaffer made a motion to accept F.O.F as written; seconded by Furfari. Motion passed unanimously. Motion by Shaffer to grant approval of request V07-34 / AES Federal Credit Union; seconded by Furfari. Motion passed unanimously.

Bossio advised Mr. Gustafson that there is a 30-day period in which this decision may be appealed to the Circuit Court. Anything done by the applicant in that time period is done at his or her own risk.

III. NEW BUSINESS:

- B. **CU07-12 / Lapinto & Kelly / 250 High Street:** Request by Robert Lapinto and Daniel Kelly for conditional use approval for a "Restaurant private club" license in B-4 District at 250 High Street. Tax Map #26A Parcel #133; a B-4, General Business District.

Mardis read the staff report. She stated that the proposed restaurant-private club, "Echelon", is located in the former Mercury's space, which will contain seating for 58 patrons, not including 11 seats available at the bar. She continued that the proposed hours of operation are 3:00 PM to 12:00 AM Monday thru Saturday; and 10:00 AM to 12:00 PM on Sunday. The business description states that as business improves, the applicants will look to add a professional lunch menu and hours. They also state they look to do target catering and have a live classical pianist on the weekends. Mardis continued the Executive Director of MainStreet Morgantown, Terry Cutright, has submitted a letter in support.

Rob Lapinto, applicant, was present and stated they are looking for an opportunity to succeed at that location where a number of other establishments did not. He continued that a specific idea for that location is needed in order to capture the community. Lapinto is currently the General Manager for Bent Willey's and The Vintage Room; he has worked in the hospitality industry for 15 years.

Shaffer stated he has known Lapinto and of his reputation in the industry.

Furfari asked how many people are involved in the business endeavor.

Lapinto stated he and Kelly are in the process of looking for a chef and until the business is up and running Lapinto will also be working at his current job.

Furfari asked if a 60/40 could be achieved at this location when other establishments could not achieve that.

Lapinto stated that he would be doing off site catering.

Furfari stated that the catering could not be calculated into those numbers. He also stated that the establishment will be non-smoking.

Shaffer stated that Lapinto knows the downtown area very well and will know who his clientele will be.

A Board member stated that there were previously two conflicting sections in the ordinance dealing with Restaurants and Private Clubs. A text amendment was done to make both sections read the same. A waiver can be given to an applicant if they have experience in the restaurant business but do not own a restaurant. The member continued that the applicants for the previous four restaurants and private clubs that were approved at that location owned and operated restaurants.

Bossio stated it is not the BZA's job to police the restaurant. The BZA only approves based on what is represented. It is the Finance Department's job to make sure they are operating at a 60/40 ratio.

Mardis stated that the Director has been working with the Health Dept and the Director of Finance for conditional use properties.

When asked what happens to an establishment if they fall below the 60/40, Bossio advised there is no one to actually address that issue. For true figures, the Finance Department would have to do an audit.

Finding and Fact #1: Parking is available behind and in front of said location with three (3) parking garages within walking distance. Staff recommendation to Findings and Fact # 1 is: The location of the proposed restaurant, private club use will replace a similar use at the same location, which was approved by the Board in May of 2005. Parking is available behind and in front of said location with public parking within walking distance.

Motion to approve answer supplied by applicant by Shaffer; seconded by Cardosa. Motion passed unanimously.

Findings and Fact #2: The building conforms to fire and building regulations. Motion to approve as written; seconded by Furari. Motion passed unanimously.

Findings and Fact #3: The building will not be altered in any way. The lighting will remain the same. All fixtures will be repaired if so needed. Motion to approve as written by Iannone; seconded by Shaffer. Motion passed unanimously.

Findings and Fact #4: We will utilize exiting space and conform to the occupancy level established by the Fire Marshall. Motion to approve as written by Shaffer; seconded by Iannone. Motion passed unanimously.

Findings and Fact #5: The usage of this space will not deviate from its past commercial usage. Motion to approve as written by Shaffer; seconded by Iannone. Motion passed unanimously.

Findings and Fact #6: All proper upkeep will be made. I will have a full time maintenance/HVAC tech on hand 24/7. No structural changes will be made. Staff recommendation to Findings and Fact # 6 is: No structure changes will be made and the proposed use replaces a similar use approved by the Board in 2005. Motion to approved with amendments by Shaffer; seconded by Furfari. Motion passed unanimously.

Findings and Fact #7: The historic relevance will be maintained at all times. Staff Recommendation to Findings and Fact #7 is: It is a commercial building in the B-4 District and replaces a similar use approved by the Board in May 2005. Motion to approve with amendments by Shaffer; seconded by Iannone seconded it. Motion passed unanimously.

Motion to approve the request by Shaffer; seconded by Cardoso. Motion passed unanimously.

Bossio advised that there is a 30 day appeal period in which this decision may be appealed to the Circuit Court. Anything done by the applicant in that time period is done at his or her own risk.

C. OTHER BUSINESS: None

D. PUBLIC COMMENT: None

Furfari asked if a stipulation could be included in the conditional use that a verified audit be submitted within one year for 60/40 to be included. Bossio stated it is easy for owners to fill out a form and say that food is at 60%. Discussions going on with the Planning Department and City Council that the owners will possibly need to start submitting their wholesale food purchases with the basic percentage figures. This way, it could be determined if the 60% is achieved. Discussion continued as to whether or not the Finance Department had the resources to do the audit, versus a certified audit from the applicant. Bossio explained that this Board could only recommend to City Council and the City Manager. Enforcement may need to be stepped up.

Mardis stated that Jim Smith of Alcohol Beverage Commission asked to be notified of every conditional use restaurant-private club request.

CU07-11 / Anvil Enterprises, LLC / 1370 University Avenue. Staff advised that the request had been withdrawn by Applicant.

The meeting was adjourned at 7:45 PM.