

BOARD OF ZONING APPEALS

Minutes

6:30 PM

October 20, 2010

City Council Chambers

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

MEMBERS ABSENT: None

STAFF: Christopher Fletcher, AICP

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

II. MATTERS OF BUSINESS

- A. Minutes for the July 21, 2010 hearing – Shamberger moved to accept the minutes as presented; seconded by Papandreas. The motion passed unanimously with Bossio and abstaining due to his absence.
- B. Minutes for the August 18, 2010 hearing – Fletcher noted that the minutes of the August 18, 2010 hearing were postponed.
- C. Minutes for the September 15, 2010 hearing – Shaffer moved to accept the minutes as presented; seconded by Shamberger. The motion passed unanimously with Cardoso and Papandreas abstaining due to their absence.

III. OLD BUSINESS – None

IV. NEW BUSINESS

- A. **BA10-02 / Traugh / Administrative Appeal:** A petition by Zachary Traugh, Big Zach Productions L.L.C., for an administrative appeal of the Planning Department's interpretation of Article 1331.06 (27) of the City's Planning and Zoning Code as it relates to the proposed land use at 344 High Street. Tax Map #26A, Parcel #109; B-4, General Business District.

Bossio asked if the petitioner or his representative was present. There being no one present, Bossio asked Fletcher if the Board could move forward with considering the petition or deny it because the petitioner or a representative was not present. Fletcher recommended that the Board table the agenda item so that it could be removed from the table later during the meeting if the petitioner appeared. If no one appeared, the Board could remove it from the table at its next hearing.

Shaffer moved to table the petition; seconded by Papandreas. The motion passed unanimously.

- B. CU10-13 / Bowers / 825 Elysian Avenue:** Request by Catherine Bowers for conditional use “Class 2 Home Occupation” approval for property located at 825 Elysian Avenue. Tax Map #48, Parcel #2; R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating that the petitioner

Catherine Bowers opened *Furesshu Style House* at 551 Beechurst Avenue in July 2007. She now seeks to relocate her beauty salon to her residence at 825 Elysian Avenue as a home-based business. According to the, Table 1331.05.01 “Permitted Land Uses” of the Planning and Zoning Code, a “Class 2 Home Occupation” requires conditional use approval in the R-1A District.

The following points highlight the information provided in the petitioner’s application:

- The petitioner’s house is at the very end of the dead end portion of Elysian.
- The proposed hours of operation for the home occupation are Monday thru Saturday from 9 A.M. to 5 P.M.
- The average number of clients at one time is estimated to be one (1) to two (2).
- The average number of clients per day is estimated to be five (5) to seven (7).
- The average number of clients per week is estimated to be twenty (20) to twenty-five (25).
- Ninety-five percent (95%) of the clients are anticipated to arrive by vehicle.
- No delivery trucks are anticipated to visit the site on a regular basis.
- The petitioner will provide one (1) off-street parking space within the existing driveway for customers and indicated that the long driveway should provide overflow space if needed.

Addendum A of this report illustrates the location of the site and photograph of the single-family dwelling.

A “Class 2 Home Occupation” conditional use petition has not been submitted to nor reviewed by the Board of Zoning Appeals since the major zoning ordinance amendment of 2006. The last “Beauty Salon” type home occupation was approved by the Board in 1998, which was located at 3236 University Avenue in the R-1 District (CU98-12).

Bossio recognized Catherine Bowers who added that she has an established clientele that like the idea of moving the business from Beechurst Avenue to her home. By moving the business to her home, it will reduce her daily commute and aid in caring for her family.

There being no questions by the Board, Bossio asked for public comment. There being no public comment, Bossio asked for Staff recommendation.

Fletcher stated that the Board 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. Staff recommends revisions to the petitioner’s findings of fact.

Fletcher stated that should the Board approve the subject conditional use petition, Staff recommends that the following conditions be included:

1. The proposed beauty salon home occupation must not produce detectable fumes, odors, dust, heat, noise, vibration, glare, electro-magnetic field, electrical interference, or other effects outside the dwelling, including transmittal through vertical or horizontal party walls.
2. The proposed beauty salon home occupation shall not require fixed installation of equipment or machinery that substantially changes the residential character of the dwelling.
3. The proposed beauty salon home occupation may not occupy more than twenty-five (25) percent of the floor area of the principal structure, and may not require internal or external alterations or construction features not customary to a residential dwelling.
4. The proposed beauty salon home occupation shall be conducted entirely within the footprint of the existing single-family dwelling. No home occupation shall be conducted outdoors or in any accessory building or garage, except that parking of a vehicle used in conducting the business and/or simple storage of materials or goods used in association with the business may be permitted in such buildings.
5. The proposed beauty salon home occupation may have no more than one vehicle with business identification, and shall have no vehicle with greater than one (1.0) ton capacity and shall not have any trailer.
6. Except as required by State law, there shall be no exterior indication of the proposed beauty salon home occupation, no exterior signs, nor any other on-site advertising visible from the exterior.
7. The proposed beauty salon home occupation shall not involve on-site employment of persons not residing in the dwelling.
8. The proposed beauty salon home occupation shall be registered as a business with the City of Morgantown Finance Office and shall pay applicable business and occupation taxes.
9. Merchandise delivery and/or pick-ups to and from the premises that are associated with the home occupation, and that utilize a commercial delivery service or the United States Postal Service, shall not exceed four (4) per day.
10. Retail sales shall not occur nor services provided on the premises on a regular basis or in substantial volume, such that customer visitation to the premises is deemed to be unreasonable.
11. That the conditional use approval granted herein is specific to the petitioner and may not be transferred without first obtaining approval by the Board of Zoning Appeals.
12. If the holder of subject beauty salon home occupation permit wishes to make changes in the conduct of the business that departs from the description in the application or from any other conditions or restrictions imposed by the Board of Zoning Appeals, the holder must obtain prior permission of the Board of Zoning Appeals.

Cardoso moved to accept the findings of fact as revised by Staff; seconded by Shamberger. The motion passed unanimously.

NOTE: The following findings of fact were included in the motion.

Finding of Fact #1 The home occupation will be compatible with residential uses of the dwelling, in that: The home occupation operations will be in a former apartment above the garage that is separate from the home. No changes or additions are necessary to the existing house. Clients will be seen by appointment only, which should resemble normal traffic trends within the neighborhood and general vicinity.

Finding of Fact #2 The home occupation will not change the residential character of the dwelling, in that: No new construction is needed. Do not need any signs for advertisement. The business will be located in an existing area above the current garage. The business owner has an existing clientele base that will remain with her business.

Finding of Fact #3 The home occupation will not detract from the residential character of the neighborhood, in that: The type of home occupation proposed is such that advertising is not necessary so that the existing residential character within the immediate area will be maintained. The space within the house where the home occupation will be located is somewhat hidden from the street. It is a dead end street. No new construction, structural alterations, or additions will be required.

Finding of Fact #4 Congestion in the streets will not be increased, in that: There appears to be sufficient on-site space in the existing driveway to accommodate the parking needs of the single-family dwelling unit and the proposed home occupation. Clients will be seen by appointment only, which should resemble normal traffic trends within the neighborhood and general vicinity.

Shaffer moved to approve the conditional use with Staff's recommended conditions; seconded by Papandreas. The motion passed unanimously.

Bossio advised Bowers that the decision of the Board could be appealed to Monongalia County Circuit Court within thirty days and that any work done relating to the Board's decision would be at her sole financial risk.

Bossio noted that Agenda Items C, D, E, F, and G relating to the proposed *Auto Zone* development on Earl Core Road were postponed.

V. OTHER BUSINESS

A. Public Comments – None.

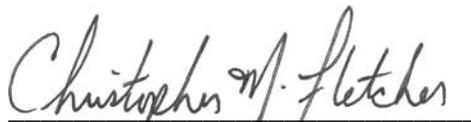
B. Staff Comments – None

VI. ADJOURNMENT – The meeting was adjourned at 6:45 PM.

MINUTES APPROVED:

November 17, 2010

BOARD SECRETARY:



Christopher M. Fletcher, AICP