

MORGANTOWN BOARD OF ZONING APPEALS

MINUTES

November 15, 2006

6:30 P.M.

City Council Chambers

NOTE: Meeting was not recorded

Members Present: Nick Iannone, Jim Shaffer, Mark Furfari, Bernie Bossio, and Jim Rockis

Members Absent: None

Staff Present: Christopher Fletcher, Planning Director

MATTERS OF BUSINESS:

Motion to approve the minutes of October 9, 2006 and revising typographic error by Bossio, second by Shaffer. Motion carried 4-0 (Furfari abstained).

Fletcher noted that the August 16th and October 18th minutes will be on the December agenda.

OLD BUSINESS: NONE

NEW BUSINESS:

- A. **CU06-11 / Palumbo Pre-Owned Auto Sales II / 429 Brockway Avenue:** Request by Palumbo Pre-owned Auto Sales II for conditional use approval for an automobile sales establishment in a B-2 District at 429 Brockway Avenue. Tax Map #29 Parcel #217; a B-2, Service Business District.

Fletcher read the staff report stating that the petitioner wished to establish an automotive sales business at the subject realty. According to Table 1331.05.01 "Permitted Land Use Table" of the Planning & Zoning Code, "Automotive Sales" establishments are considered conditional uses in the B-2 District. Addendum A of the report illustrates the location and photographs of the subject realty.

The building and property were formerly occupied by an automotive repair and gas station establishment. The petitioner opened the proposed automotive sales establishment prior to obtaining conditional use approval. Upon notification of nonconformance, the petitioner agreed to use the lot for inventory storage for an existing establishment outside the City pending approval of his conditional use petition.

Fletcher noted that in opening the establishment prematurely, several signs were erected without obtaining appropriate permitting. Addendum A of his report highlights the subject signage. The maximum area for wall-type signs for the site, as set forth in Article 1369, is 75 square feet. It appears that the maximum permitted area has been exceeded. Additionally, pennant streamers (shown as "G" in Addendum A) are not permitted.

Fletcher discussed two parking calculation scenarios: 1) where the existing service bays would be used for incidental maintenance or servicing of vehicles; OR 2) where the existing service bays would not be used for incidental maintenance or services of vehicles. Scenario 1 would require 11 parking spaces and Scenario 2 would require 7 parking spaces.

Fletcher noted that the proposed site plan illustrated only five (5) dedicated parking stalls, which is less than required under either scenario. Additionally, at least one (1) of the required parking stalls must be designed and marked as a handicap parking stall.

Fletcher noted that the proposed use exceeds 5,000 square feet. As such, a minimum of one (1) loading space with adequate maneuvering area must be provided as set forth in Article 1365.10. The site plan does not provide nor does the geometry of the site and existing structures appear to permit sufficient area for loading and receiving inventory.

Rockis stated that he was concerned that Palumbo did not fully understand the City's requirements in getting approving for this type of business at this location. Rockis noted that Palumbo needs to make sure that he familiarizes himself with City regulations relative to his business.

Chip Palumbo was present and noted that they had improved the site from its previous condition.

Shaffer asked Palumbo which scenario he would be agreeable to in determining the number of required parking stalls.

Palumbo stated scenario two.

Bossio asked if Palumbo understood that scenario two meant that they could not service vehicles for the general public.

Palumbo stated that he understood and that they would not have a mechanic on site.

Iannone asked for public comments, there being none, he closed the public portion of the hearing.

Fletcher noted 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.

Fletcher stated that staff concurs with the findings of fact as submitted by the applicant, and recommends approval of the automotive sales establishment conditional use with the following conditions:

1. Signage – That compliance with sign regulations be achieved unless variances are approved by the Board prior to the issuance of a permanent Certificate of Occupancy. Additionally, Staff recommends that the pole sign structure shown as location "C" in Addendum A of this report be removed for the purpose of ensuring compliance with signage regulations and "conserving the value of buildings" as desired by Finding of Fact #7.
2. Parking – That a revised site plan be submitted illustrating, to the satisfaction of the Planning Director, compliance with minimum parking requirements under either Scenario 1 or Scenario 2 as noted above. Should Scenario 2 be approved, Staff recommends that the

petitioner not be permitted to utilize the existing bays for incidental maintenance or servicing of vehicles that are not a part of the establishment's inventory unless additional parking is approved by the Board.

All required parking stalls must be appropriately marked (including no less than one handicap space) as customer/employee parking and wheel stops installed. Further, no inventory may be parked or displayed in such a way that reduces the number of spaces reserved and available for customer and employee parking.

3. Loading – The establishment may not receive inventory delivered to the site by truck unless the site plan is modified and approved by the Board to include an acceptable loading space and maneuvering area.

Fletcher read each finding of fact presented by the applicant. Each finding of fact was found in the positive as amended below:

Finding of Fact 1 – There was a business there previously that generated higher traffic volumes than what is proposed. There is more than adequate parking on the property.

Finding of Fact 2 – There will not be further construction of another building and the existing building will meet current fire and life safety codes.

Finding of Fact 3 – The building is already present on the location and there will not be further construction.

Finding of Fact 4 – The building is present. There will not be further construction. There is more than adequate space to hold the inventory and parking.

Finding of Fact 5 – It was previously a business. We don't perceive having a huge number of customers at one time due to the nature of the business. Undue congestion will not occur.

Finding of Fact 6 – There was a previous business at the location. There will not be anything changed on the property to affect the provision of transportation, water, sewage, schools, parks, or other public requirements.

Finding of Fact 7 – The building will be given the upkeep it needs. Cleaning and renovations will be done to improve the building.

Finding of Fact 8 – There was a business there previously and the properties surrounding are businesses.

Bossio asked that vehicular circulation be evaluated again by staff.

Rockis moved to approve the conditional use with the following conditions:

1. Condition – That compliance with the City's sign regulations be achieved unless variances are approved by the Board prior to the issuance of a permanent Certificate of Occupancy.
2. Condition – That a revised site plan be submitted illustrating, to the satisfaction of the Planning Director, compliance with the minimum parking requirements of seven (7) spaces including at least one (1) handicap space. All required parking stall must be appropriately marked as custom/employee parking and wheel stops installed. No inventory may be

parked or displayed in such a way that reduces the number of spaces reserved and available for customer and employee parking.

3. Condition – That a revised site plan be submitted illustrating, to the satisfaction of the Planning Director, an unobstructed internal vehicular circulation plan.
4. Condition – That the existing bays may not be used for incidental maintenance or servicing of vehicles that are not a part of the establishment's inventory unless additional parking is approved by the Board of Zoning Appeals.
5. Condition – That the establishment may not receive inventory delivered to the site by truck unless the site plan is modified and approved by the Board of Zoning Appeals to include an acceptable loading space and maneuvering area.

Furfari seconded. Motion passed unanimously.

- B. V06-23 / Mansberger / 2017 Carnegie Street:** Request by Daniel Mansberger for variance approval from Appendix A: Development Standards Table for property located at 2017 Carnegie Street. Tax Map #44 Parcel #5; an R-1A, Single-family Residential District. **(Withdrawn by Planning Department)**
- C. V06-24 / Genessee Properties, LLC / Beechurst Avenue:** Request by Genessee Properties, LLC for variance approval from Appendix A: Development Standards Table for property located on Beechurst Avenue. Tax Map #26 Parcels #34-35; an R-3, Multi-family Residential District. **(Withdrawn by applicant)**
- D. CU06-12 / Genessee Properties, LLC / Beechurst Avenue:** Request by Genessee Properties, LLC for conditional use approval from Appendix A: Development Standards Table as it relates to height for property located on Beechurst Avenue. Tax Map #26 Parcels #34-35; an R-3, Multi-family Residential District. **(Withdrawn by applicant)**
- E. V06-25 / Oliva / 247 South High Street:** Request by Diane Oliva for variance approval from Appendix A: Development Standards Table for property located at 247 South High Street. Tax Map #37 Parcel #132; an R-1A, Single-family Residential District.

Fletcher read the staff report stating that the applicant seeks to construct a 24ft X 30ft garage connected to the existing house by an enclosed breezeway. The rear setback for the proposed garage is six (6) feet.

According to Article 1331.08 (A) (5) and (6) of the City's Planning and Zoning Code [Zoning Ordinance Article 300.08 (a) (5) and (6)], accessory structures connected to the principle structure with an enclosed breezeway must comply in all respects with zoning requirements applicable to the principle structure.

The minimum rear setback requirement for principle structures in the R-1A District is 20 feet. As such, the petitioner must obtain a 14-foot variance to permit the proposed six-foot rear setback. The proposed development project meets all remaining applicable design and performance standards. Addendum A of his report illustrates the location and existing conditions of the site.

Diana Oliva was present and noted that Fletcher had covered her request completely.

Iannone asked for public comments, there being none, he closed the public portion of the hearing.

Fletcher noted that the Board 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 applicant.

Staff recommends approval of the variance as requested with certain amendments to the findings of fact.

Shaffer moved to find in the positive for all the following findings of fact:

Finding of Fact 1 – The realty is unique in that it does not enjoy similar garage and accessory structure configurations existing for the majority of adjacent properties.

Finding of Fact 2 – Several accessory structures along the alley appear to encroach into the required 5-foot setback standard for detached accessory structures. Additionally, an enclosed breezeway connecting a garage to the principle structure at 237 South High Street appears to encroach further into the required 20-foot rear setback than what is proposed.

Finding of Fact 3 – The garage will be off of the alley farther than any of the other garage in that alley way.

Finding of Fact 4 – The project updates and makes the property more valuable and also will make the neighbors more friendly after the two trees are removed and wall replaced on the other side.

Rockis seconded. Motion passed.

Furfari moved to approve the variance as requested. Shaffer seconded. Motion passed unanimously.

OTHER BUSINESS:

Public Comments: None

Staff Comments: Fletcher reported that the City Zoning Ordinance had been codified, which changed the numbering. The Planning Department will provide new copies of the City’s Planning and Zoning Code after anticipated revisions are incorporated.

ADJOURNMENT: 7:30 p.m.