

# MORGANTOWN BOARD OF ZONING APPEALS

## Minutes

November 28, 2007

6:30 PM

Public Safety Building

NOTE: Due to meeting location change and technical difficulties, this meeting was not recorded through audio or video means

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

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Christopher Fletcher, AICP

### I. MATTERS OF BUSINESS:

- A. Approval of August 15, 2007 meeting minutes. Iannone noted two typographical errors: 1) remove "the" in the last paragraph on Page 2 of 6; and, 2) change "and" to "of" in the fourth paragraph on Page 4 of 6. Furfari moved to approve the minutes with the noted corrections; second by Shaffer. The motion passed unanimously with Iannone abstaining due to his absence from the meeting.
- B. October 24, 2007 meeting minutes. Iannone moved to approve the minutes as presented; second by Cardoso. The motion passed unanimously with Shaffer abstaining due to his absence from the meeting.
- C. Discuss and Approve Bylaw Revisions. Furfari moved to consider the resolutions at the end of the agenda; second by Iannone. The motion passed unanimously.

### II. OLD BUSINESS: None

### III. NEW BUSINESS:

- A. **V07-41 / Mayer / 444 High Street**: Request by Roger Mayer for variance approval from the Planning and Zoning Code, Article 1369.07 (I) Wall Sign, Nonresidential for property located at 444 High Street. Tax Map #26 Parcel #98; a B-4, General Business District

Bossio abstained from the discussion and Iannone chaired this portion of the meeting.

Fletcher read the Staff Report stating Roger Mayer, owner of Dairy Queen, seeks to erect an awning over the front of their commercial space with a 20.88 square foot sign attached. Addendum A of this report illustrates the location of the subject site.

Mr. Mayer has stated that the current 14.51 ft<sup>2</sup> sign was erroneously placed in a position that makes it difficult for patrons to know exactly where their establishment is located. Also, the current awning has been damaged and needs to be replaced. The applicant has stated that he believes that an awning sign is more professional than a sandwich board sign located at the sidewalk since their store does not front High Street.

Related Planning & Zoning Code provisions include:

- Article 1369.07 (I) (1) – The maximum area of permitted wall signs in the B-4 District is 0.4 square feet for each linear foot of storefront. The linear width of the subject storefront is 50.25 feet and the maximum amount of signage is 20.1 square feet. Therefore, the applicant is requesting a variance of 15.29 ft<sup>2</sup>.
- Article 1369.07 (I) (2) – Signs on awnings attached to buildings are considered wall signs.

The Downtown Design Review Committee reviewed the proposed sign and has recommended approval. Fletcher read two letters from L.D. Luttrell, on behalf of the First Baptist Church board. The November 26, 2007 letter was in support of the variance request and the May 2, 2007 letter identified purported encroachment of the Dairy Queen refurbishment onto the First Baptist Church property.

Iannone questioned Staff's calculations in determining the actual square footage relief being sought. After a lengthy discussion, Fletcher confirmed that the only portion of the awning used in calculating the signage area is that used for the lettering and not the entire sign and that the variance needed may be 10-12 square feet rather than 15.29 square feet requested.

Roger Mayer was present and noted that the previous awning was damaged by a contractor; a new awning was installed; and, letter on the awning is needed to increase visibility from High Street.

There being no additional questions by the Board, Iannone asked for public comments. No public comments were offered and the public hearing portion was closed.

Fletcher continued the Staff Report by stating 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...” [Article 1369.01 (A)]

Size restrictions are one of several means to accomplish this policy objective.

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 applicant.

Staff advises that the following conditions be included in granting a variance:

- That the copy be restricted to the name and logo of the business; and,
- That no additional permanent signage for the subject establishment may be erected at this location.

Staff concurs with the “Findings of Fact” submitted by the applicant with a revision to Finding #1 so that they are:

Finding of Fact #1: “The business location does not front High Street like other surrounding establishments and provides a walk-up window facing a public courtyard approximately 29.7 feet from the sidewalk.”

Finding of Fact #2: “It will make our business more visible; variance that is similar to Jimmy Johns, Erie Insurance, Martins Memorabilia, River Stone Ale House, and Waterfront Hotel.”

Finding of Fact #3: “The awning already exists. We just want to increase visibility of our business.”

Finding of Fact #4: “The building and awning already exist, bringing more business to Dairy Queen.”

Shaffer moved to accept all the findings of fact as submitted the applicant and revised by Staff. Cardoso seconded the motion. The motion passed unanimously with Bossio abstaining.

Furfari requested that the second condition include flexibility in the event the applicant removes the existing “DQ” sign to install a suspended sign. Fletcher suggested that the second condition be revised to state, “That no additional permanent signage for the subject establishment may be erected at this location unless one or more of subject wall signs are removed or reduced in size.”

Furfari moved to grant the necessary variance to erect the illustrated lettering on the awning as requested with the modified conditions recommended by staff; Shaffer seconded. The motion passed unanimously with Bossio abstaining.

Iannone advised the applicant that any work done related to the Board’s decision during the 30-day appeal period would be at the applicant’s sole financial risk.

**B. V07-42 / Morgantown Dental Group / 142 High Street:** Request by Morgantown Dental Group for variance approval from the Planning and Zoning Code, Article 1369.07 (I) Wall Sign, Nonresidential for property located at 142 High Street. Tax Map #26A Parcel #47; a B-4, General Business District

Bossio rejoined and chaired the remainder of the meeting.

Fletcher read the Staff Report stating Morgantown Dental Group seeks to erect a thirty (30) square foot sign on the rear façade. The current sign located on the High Street façade is approximately 25 ft<sup>2</sup> and is considered a legal pre-existing conforming sign approved under the previous ordinance. Addendum A of this report illustrates the location of the site.

Related Planning & Zoning Code provisions include:

- Article 1369.07 (I) (1) – The maximum area of permitted wall signs in the B-4 District is 0.4 square feet for each linear foot of storefront. The linear width of the subject storefront is 44.5 feet. The applicant is permitted to have one, 18.2 ft<sup>2</sup> sign. Therefore, the applicant seeks an 11.8 ft<sup>2</sup> variance.
- Article 1369.07 (I) (4) – On a multi-occupancy building, each occupant with an outside entrance serving the general public may have a separate wall sign.
- Article 1373.05 (A) – Nonconforming Signs Protected. A sign which was lawfully erected prior to the effective date of this Ordinance but which does not conform in one or more respects with the requirements of this Ordinance may remain in use, subject to the requirements of this Section and other applicable requirements of City Ordinances.

- Article 1373.05 (B) (4) – Change of Copy. No change of copy shall be permitted without bringing the sign into full conformance with this Ordinance.

The Downtown Design Review Committee reviewed the proposed sign has recommended approval. The Committee recognized that the location of the subject site is not conducive for pedestrian-sized signage.

Earl Summers of Duffer Signs was present to represent the applicant and noted that the proposed sign was needed to increase visibility of the business from Spruce Street.

There being no additional questions by the Board, Bossio asked for public comments. No public comments were offered and the public hearing portion was closed.

Fletcher continued the Staff Report by stating 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...” [Article 1369.01 (A)]

Size restrictions are one of several means to accomplish this policy objective.

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 applicant.

Staff advises that the following conditions be included in granting a variance:

- That one sign may be erected on the rear of the building facing Spruce Street;
- That the copy be restricted to the name and logo of the business; and,
- That no additional permanent signage for the subject establishment may be erected at this location.

Fletcher offered the following revisions to the “Findings of Fact”:

- Finding of Fact #1 – Morgantown Dental has an entrance on High Street and from the parking lot at the rear located off of Spruce Street. The entrance from the parking area is located approximately 1,500 feet from Spruce Street, which does not appear conducive for pedestrian-scaled signage.
- Finding of Fact #2 – The business site is located on the second floor of the structure with two entrances. The High Street entrance is predominately for pedestrian traffic, where the rear entrance is predominately for vehicular traffic. On one side of the structure is a funeral home which is located in close proximity and is very visible from Spruce and Kirk Streets. On the opposite side of the structure is a small parking area (owned by the Hotel Morgan). Other businesses that have frontage on Spruce Street are not separated by a public parking area.

- Finding of Fact #3 – The larger sign will increase the business’s visibility from Spruce Street, enhance the façade’s orientation and function as an entrance, and match other signage efforts in B-4 to reach vehicular traffic.
- Finding of Fact #4 – The sign will not lower market values, change the character of the retail vicinity or increase traffic. The land use will not change. The sign will be legible from Spruce Street, but will not encroach in a public right-of-way.

Shaffer moved to accept all the findings of fact as recommended by Staff; Iannone seconded the motion. The motion passed unanimously.

Shaffer moved to grant the variance as requested with Staff’s recommend conditions; Furfari seconded the motion. The motion passed unanimously.

Bossio advised the applicant’s representative that any work done related to the Board’s decision during the 30-day appeal period would be at the applicant’s sole financial risk.

**C. CU07-13 / Dalton / 717 Ohio Avenue:** Request for conditional use approval for a Class II Day Care Facility in an R-1A District for property located at 717 Ohio Avenue. Tax Map #40 Parcel #289; an R-1A, Single-Family Residential District

Ms. Monica Dalton seeks to expand her current Class II Day Care Facility, *Little Tikes*, located at 428 Mississippi Street to the neighboring property, 717 Ohio Avenue. The applicant opened the current facility approximately six (6) months ago to serve the child care needs of the community. Since that time, the applicant purports to now have approximately twenty-eight (28) children on a waiting list.

The aforementioned properties, although adjacent, are not classified under the same zoning district. The current facility at 428 Mississippi Street is located in a B-1 District and the proposed 717 Ohio Avenue facility is located in an R-1A District. Addendum A contains a map illustrating the location of the site and photographs of the structures.

According to the Planning and Zoning Code, Table 1331.05.01, Permitted Land Use, a Class II Day Care Facility is permitted by-right in the B-1 Zoning District, but permitted by conditional use in the R-1A Zoning District. The applicant could have petitioned the Planning Commission for a zoning map amendment to extend the B-2 District. Staff concurs with the applicant’s concern that a map amendment may adversely impact the surrounding single-family neighborhood in the event the child care establishment ceased to operate.

The following provides related Planning & Zoning Code provisions:

- Article 1329.02, Definitions, Day Care Facility, Class 2 – A facility licensed by the State and established to provide care for four to twelve (a) functionally-impaired adults, or (b) elderly persons, or (c) children in a protective setting for a portion of a 24-hour day.
- Table 1365.04.01: Minimum Off-Street Parking Requirements – Day Care Facility, All Classes – 1 space per 4 clients and 1 space per employee.

Fletcher noted that the applicant provided the following details in her business description:

- The new facility will house 7-12 children, but not more than 12 children.

- Will be licensed by the Department of Health and Human Resources, and the State Fire Marshall.
- The hours of operation will be the same as the current facility, 7 A.M. to 5:30 P.M.

Fletcher noted that the following information concerning parking was provided by the petitioner:

- Number of children served at the 428 Mississippi Street facility ..... 30
- Number of children to be served at the 717 Ohio Avenue facility ..... 12
- Number of employees at both facilities..... 6
- Minimum number of required off-street parking spaces ..... 17
- Number of parking spaces available at the 428 Mississippi Street facility..... 20
- Number of parking spaces available at the 717 Ohio Avenue facility..... 2
- Number of surplus parking spaces ..... 5

Fletcher read the letters of support from the following parties:

- Rebecca Seay, 712 Madison Avenue
- Lyronne Webber (no address provided)
- Tracey Hartley, 736 Madison Avenue

*NOTE: A letter form John and Paula Sisler, 732 Madison Avenue, was included in the record.*

Monica Dalton was present and described the merits of expanding her operation into the second structure. Board members asked questions to clarify the operations of the existing day care facility on Mississippi Street.

There being no additional questions by the Board, Bossio asked for public comments.

John Sisler, 732 Madison Avenue, spoke in favor of the conditional use petition noted that the existing facility is a welcome addition to the neighborhood.

Beverly Plum, employee of the *Little Tikes*, spoke in favor of the conditional use petition. There being no further public comments offered in favor or against the petition, the public hearing portion was closed.

Fletcher continued the Staff Report stating that child care remains in integral component of the social infrastructure needed for neighborhood sustainability and community development. The location, access, and affordability of quality child care are not only important for the well-being of children but are critical to supporting the needs of working parents and their employers. The need for additional child care services and facilities in Morgantown was recently covered in the *Dominion Post* (see attached articles).

Staff recommends that each of the Findings of Fact be found in the affirmative with the following revisions (deleted matter struck through, new matter underlined):

Finding of Fact #1: There will be no congestion on the street. There will be a parking lot provided to park in. Clients will be required to utilize the existing parking area at 428 Mississippi Street for drop-off and pick-up thereby not increasing traffic on Ohio Avenue.

Finding of Fact #2: The building will be inspected by the State Fire Marshall and DHHR for safety and codes. The facility will meet all related West Virginia State Fire Marshall and West Virginia Department of Health and Human Resources safety regulations.

Finding of Fact #3: There will be no extra lighting than what is already provided. The structure currently exists and no additions or change to the footprint are currently proposed.

Finding of Fact #4: There will be no new construction to this building.

Finding of Fact #5: There will not be anyone staying at the daycare facility for any length of time. The property will remain R-1A and its use will revert to a single-family dwelling should the business cease to operate. Parking and recreation for the proposed use will take place at the 428 Mississippi Street facility.

Finding of Fact #6: There will be no new construction done. No increases in public services or improvements to public facilities appear necessary to operate the proposed Class 2 Day Care Facility at the subject site.

Finding of Fact #7: The home will be taken better care of. No additions or modifications are proposed that would change the characteristics of the detached single-family structure. The use of the structure will revert to a detached single-family dwelling if the business ceases to operate.

Finding of Fact #8: Structure already exists and no additions or modifications are proposed that would change the characteristics of the detached single-family structure. The use of the structure will revert to a detached single-family dwelling if the business ceases to operate. The proposed child care facility should serve as an amenity and contribute to the quality and stability of the neighborhood.

Staff recommends that the conditional use petition be granted with the following conditions:

1. That the number of children cared for at the 717 Ohio Avenue facility may not exceed twelve (12);
2. That no signage may be erected at the 717 Ohio Avenue facility;
3. That clients shall be required to use the parking area at the 428 Mississippi Street facility for drop-off and pick-up;
4. That existing off-street parking at the 717 Ohio Avenue site may only be used by employees;
5. Unless otherwise required by State regulations, regular out-door recreational activities for the 717 Ohio Avenue facility must take place at the 428 Mississippi Street facility;
6. Except those modifications that may be required under State regulations pertaining to this class of day care facilities, no structural additions or equipment not customary to a detached single-family residential dwelling will be permitted without prior approval of the Board of Zoning Appeals; and,
7. That the conditional use approval granted herein is specific to the applicant and may not be transferred without prior approval of the Board of Zoning Appeals.

Shaffer raised concerns that the increase in the scale of the operations may have an impact on the surrounding neighborhood. Fletcher noted that several of the recommended conditions are intended to address these issues and mitigate any potential adverse impacts.

Iannone asked for clarification that parking for the Ohio Avenue facility would be located on the separate adjoining Mississippi Street property. Fletcher confirmed and noted that requiring customer parking and access to the Ohio Avenue facility from the Mississippi Street site should mitigate any additional traffic that may be created on Ohio Street.

Shaffer moved to accept all the findings of fact as submitted the applicant and revised by Staff. Cardoso seconded the motion. The motion passed unanimously.

Shaffer moved to grant conditional use approval as requested with Staff's recommended conditions; second by Furfari. The motion passed unanimously.

Bossio advised the applicant that any work done related to the Board's decision during the 30-day appeal period would be at the applicant's sole financial risk.

**D. BA07-01 / Yost:** Request by James Yost, representing Saratoga Hot Spot, LLC for administrative relating to Planning and Zoning Code, Article 1369.07 (M), Off-premise signs

Fletcher noted that he had spoken with the applicant earlier in the day and understands that the applicant has agreed to remove the illegal sign by December 10, 2007. As such, the applicant has withdrawn his administrative appeal petition and no action is required by the Board.

## **I. MATTERS OF BUSINESS:**

### **C. Discuss and Approve Bylaw Revisions.**

Furfari requested clarification on the issues of executive session and 200-foot neighbor notification addressed in the proposed bylaw revisions. Fletcher described what he recalled to be acceptable matters of executive session and noted that the 200-foot notification provision is established in the Planning & Zoning Code.

After a discussion concerning additional ideas of increasing public awareness of matters before the Board including working with the Dominion Post and the use of larger site signs, Furfari moved to approve Resolution 2007-01 "Repeal and Adopt Bylaws"; seconded by Shaffer. The motion passed unanimously.

Furfari moved to approve Resolution 2007-02 "Adopt Bylaws Annex 1 – Order & Conduct of Business"; seconded by Cardoso. The motion passed unanimously.

Furfari informed members that he had recently been approached by a local developer, who was later identified as David Biafora. Mr. Biafora stated that he would seek to disqualify Furfari from any future hearing pertaining to any projects Mr. Biafora was involved in because Furfari had contacted the City with concerns of a billboard pole sign recently erected on the City Gardens development along North Willey Street.

**PUBLIC COMMENT:** None

**STAFF COMMENTS:** None

Meeting was adjourned at 7:50.