

# BOARD OF ZONING APPEALS

## Minutes

6:30 PM

December 17, 2008

City Council Chambers

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

**MEMBERS ABSENT:** Jim Shaffer

**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.** Approval of October 15, 2008 minutes. Papandreas moved to approve the October 15, 2008 minutes as submitted; seconded by Shamberger. The motion carried unanimously.
- B.** The minutes for the November 19, 2008 meeting will be postponed until January 2009.

**III. OLD BUSINESS:**

**IV. NEW BUSINESS**

- A. V08-44 / Mullett / 931 Louise Avenue:** Request by Sara Mullett for variance approval from the Planning and Zoning Code, Article 1331.08, Accessory Structures and Uses in Residential Districts, for property located at 931 Louise Avenue; Tax Map #25 Parcel #199; an R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating the petitioner seeks setback variance approval for an 8' X 7' accessory building that was constructed without a Building Permit near the southern corner of her property at 931 Louise Avenue. The applicant's site plan illustrates that the subject storage shed is approximately eighteen (18) to twenty-two (22) inches from the adjacent fence, which the applicant purports to have been erected on the property line. Addendum A of Staff Report illustrated the location of the subject site.

Article 1331.08 (a) (3) of the Planning & Zoning Code provides that:

"Accessory structures, if detached from a principal structure, shall not be located closer than five feet to the side or rear property line."

As such, the petitioner must obtain a 3.5-foot variance to encroach into the required minimum rear setback for the accessory structure.

Fletcher also noted that correspondence was received from Francis Bryer of 926 Louise Avenue and Robin DeGreer, who is a neighbor of Mullett. The applicant was present to speak on behalf of the petition.

Sara Mullett, 931 Louise Avenue, explained that her property is located on a steep slope and there are two flights of stairs to the location, one stairway going to the house and the other going to the upper hill side. She is requesting the variance for a garage/storage area, which would be located on a flat piece of the property. It would be used to store bicycles, saws, recycling, sheltering garbage, etc. The unit couldn't be placed any closer to the house, and the location chosen was the most convenient place to put it.

Bossio stated that the one communication received from Robin DeGreer claims the storage shed goes beyond Mullett's property line and asked if a survey had been done.

Mullett responded that she owned the property for approximately 3 ½ years and there was an existing fence around the property. She just rebuilt the fence in the same location. There was a tree on the property that was struck by lightning that was on her property. There was another tree located on the top of the hillside, maybe 2 ½ feet into DeGreer's property. Once the fence was reconstructed, Mullett realized the property line may not be correct. She explained she did not have her property surveyed, but her neighbor had his surveyed. When the fence was installed, DeGreer agreed to it. But when she came home from Iraq, she was very upset. Mullett also stated she received no correspondence from DeGreer and asked if Fletcher could share what was received. She has, however, received four emails from neighbors who say that the fence looks great. If there is a problem she just wants to make it right. DeGreer's house is now being rented by students.

Bossio asked Mullett if she would be willing to have her property surveyed. Mullett stated that she is a student and does not have the funds to do so. The shed was a gift from her mother.

Bossio opened up the public comment portion of the meeting. There being none, Bossio closed the public comment portion of the meeting was closed and asked for Staff's recommendations.

Papandreas believed there was first a need to establish whether or not the property belongs to Mullett. If it does not, there is no need to go through the findings of fact.

Fletcher stated the matter of property boundary locations is a civil issue between property owners.

Bossio stated he would not turn her request down, but since the letter has been received regarding the property line issue, the Board could pass her conditional use request, and as a condition, the property would have to be surveyed.

Papandreas had a problem with the petition in that it leads one to believe that the structure has not yet been constructed, when in fact, it has already been.

Fletcher stated that if the Board would include the requirement for a survey in the conditional use, it should include a time period for the survey work to be completed and a plat submitted for review.

Bossio stated the BZA does not want to do the wrong thing and expressed concern with approving the 3'2" variance is approved without verification of the boundary location.

Fletcher then suggested that the issue be tabled so that Staff could visit the site and informally attempt to locate the parcel boundary. This could potentially save the petitioner surveying costs. Not only would this be an issue of expense for the petitioner, there would be the matter of time to actually get the survey completed.

Cardoso then moved to table V08-44 based on the discussion; seconded by Papandreas. The motion passed unanimously.

Fletcher reiterated that the purpose of Staff visiting the site was not to identify and certify the location of the subject property line but to make observations and report them to the Board.

Bossio added that if DeGreer stills feels this is incorrect, she can have her own survey done. If it is found Mullett is over the property line, she will be permitted to move her building so that she can have a 3'2" variance. Suggested that Mullett think of some other considerations just in case. She may come back to the BZA in January.

- B. CU08-19 / Metheny / 226 High Street:** Request by Gregg Metheny, on behalf of Game On Enterprises, LLC, for conditional use approval for a "Restaurant private club" use in B-4 District at 226 High Street; Tax Map #26A Parcel #137; a B-4, General Business District.

Fletcher read the Staff Report stating that the petitioner seeks conditional use approval for the establishment of a "Restaurant, Private Club" use in the former Strokerz Billiard Lounge at 226 High Street. The business name for the proposed establishment is Game On Enterprises, LLC doing business as "Game On." Addendum A of this report illustrates the location of the proposed conditional use.

Mr. Metheny has stated that he is the current owner of the subject building and that he also owns the existing commercial equipment of the former Strokerz Billiard Lounge. Strokerz was granted a conditional use permit for "Restaurant, Private Club" use on December 2000. Conditional use approvals are specific to the applicant and do not run with the land. Therefore, Mr. Metheny must obtain a new conditional use approval for the reestablish the conditional use.

The petitioner submitted the following exhibits, which are attached hereto: business description, owner's resume, manager's resume, proposed menu, floor plan, interior photos.

According to said exhibits, Mr. Metheny has owned the following successful enterprises including:

- The Furniture Haven, Inc. at 1867 Mileground Road, Morgantown, WV
- Triple Scott Holdings, Inc. at 1867 Mileground Road, Morgantown, WV
- Scott Properties & Nasey, LLC at P.O. Box 818, Morgantown, WV
- NAK Builders, LLC at P.O. Box 818, Morgantown, WV
- Benden Developers, LLC at P.O. Box 818, Morgantown, WV
- Mountaineer House, LLC at 200 Morgantown St, Kingwood, WV

The proposed business description highlights include:

- 14,000 square feet of Restaurant, Billiards, Arcade, Sports Entertainment, and Private Party space
- Full menu until 11:00 PM
- Appetizers and beverage until 1:00 AM
- 2,700 square feet of smoke-free, family friendly arcade space
- Three private rooms for birthday parties and other events
- 12 pool tables surrounded by 8 HD plasma televisions
- A lounge area 150" HD projection screen for sporting events and second-run sports movies served by a full wait staff.

Greg Metheny, 2419 Stewartstown Road, stated that he is principally a landlord in the area, but has other ventures, as stated in the staff report. He has owned the building, presently housing Strokerz, since 2000. He also owns three other buildings on that block. Strokerz had been operational since 2000, but recently feel behind in their payments. Metheny made the decision to continue to operate the facility as a pool hall/entertainment venue, much like Dave & Buster's. There is 14,000 square feet of space. MT Pockets used to be housed in the rear of the facility, and this is the area where old fashioned arcade games will be set up. He would like to improve the quality of the atmosphere, improve the dining area, have large screen TV's to watch games. Size of the kitchen is approximately 15 x 30. Metheny's manager has actually been a tenant of his since 1997, and he has a number of years of restaurant experience.

Papandreas, referencing the floor plan, asked if there was an entrance off High Street. Metheny stated the entrance, a double glass entry door would be off Court Alley, and there is another entrance off Spruce Street. It is a sprinklered building and has adequate fire alarms.

Bossio asked what the maximum capacity for the establishment. Metheny was not sure of the number yet because final plans had not been submitted to the City Fire Marshall for review. Metheny explained he is in the business to make money and would not attempt to proceed with this venture if he didn't think it would be successful.

Bossio asked if there was a possibility Metheny would continue to run the business the way it is now, Metheny answered no.

Cardoso asked about Metheny's restaurant experience. Metheny advised his grandfather owned the first Mountaineer House and the original home was converted into a bed and breakfast in 2003. They do not provide the food for customers but use Monroe's Restaurant.

Cardoso asked Metheny what specific restaurant experience he himself had. He stated he grew up in the restaurant business, his family owned *Mary's* in Kingwood.

Bossio advised that, before anything else, the Board needs to consider whether or not to waive the bona fide one year restaurant experience requirement.

Papandreas stated the Board looked at a similar request a few months ago, and the owner did not have any restaurant experience on his resume, but he did have more than Metheny does.

In the interest of consistency, he must question this point. Although the manager has experience, he does not have a monetary interest as such.

Metheny responded that he was not in the furniture business experience prior to starting such a business four years ago. Until 10 years ago, he didn't have any home development experience until he started into that business, so he is not coming into the venture with no business background.

Papandreas asked Fletcher to read from the section of the code that deals with the specifics of what this issue.

Fletcher stated that Article 1331.06 (27) (C) provides that, "No such applicant may be licensed as a private club under this conditional use that has not been in operation for at least one year as a bona fide restaurant before making application for a license under this conditional use. However when an applicant owns another bona fide restaurant the same as the one being proposed, the Board of Zoning Appeals may consider the proposed restaurant application on the basis of the existing restaurant which has been in operation for at least one year. In the B-4 district the Board of Zoning Appeals may waive the requirement, to be in business for one year as a bona fide restaurant, when the applicant's written description of the business operations, plus floor plans, demonstrate clearly that the establishment will meet the criteria in this subsection of the ordinance."

Papandreas stated that he believes the Board's hands are tied.

Shamberger asked if in his business model, did all 60% involve non alcoholic beverages.

Metheny responded he was not sure how Strokerz 60/40 was met, but his belief is if Strokerz could maintain a 60/40 with the type of business they had, he could do the same thing. Strokerz is just a pool hall, although it was considered one of the best in the State. The owner's just did not have the financial backing to take the business to the next step. The main reason he decided to undertake this type of venture was due to the fact, that one day, after his son's flag football game, a group of families wanted to go somewhere where everyone could eat and enjoy themselves. They went to Strokerz, which at the time was vacant. The kitchen was still operational, so Metheny prepared food, the children played pool, and everyone had a great time. He's attempting to fill the void for this type of family oriented restaurant. In the past few weeks, their family has attended 6 children's birthday parties at Suburban Lanes. That's really the only type of thing available for children's parties.

Papandreas agreed with the petitioner, but asked if it was possible to proceed with just beer and wine for right now. He also stated he is not feeling the 60/40 concept.

Bossio also believed that the concept was a good one and this is a niche in the market that no one has really approached. But for the sake of consistency, Metheny does not have any restaurant experience. Rather than denying the petition, would the applicant consider operate with only beer, wine, and food, and come back to the Board in three to six months with some restaurant experience.

Metheny said he is looking to invest \$100,000 in arcade games alone and doesn't think he want to proceed on the hopes that things will change in three to six months. There are major renovations being planned and he would have to shut down at the end of 3 or 6 months to complete them. He is looking at a sizeable investment.

Bossio stated that the proposed menu was disappointing. He said that if it is to be venue for children's parties, etc., there was no reference to room rental for parties, or even a children's menu available. While the concept is great, there is no reference to children's birthday parties. If it is the petitioner's intention to be like Dave & Buster's, the menu does not indicate that. He would like to see a family concept.

Metheny questioned how recent conditional use approvals were different from his.

Bossio advised "Rain" (High Street) was granted conditional use because it was opened by someone who owned an existing restaurant. "Babs" (High Street) was granted conditional use because the Babilonia family previously owned a restaurant and was in the restaurant business for years.

There being no further questions by the Board, Bossio opened the public comment portion of the meeting, asking if anyone wished to speak in favor or against the petition. There being none, Bossio closed the public comment portion of the hearing asked Fletcher how the Board should proceed.

Fletcher advised the Board that until the waiver issue is taken care of, there is no reason to consider the petitioner's Finding of Facts.

Papandreas moved to deny the conditional use petition based on the fact that that petitioner had not demonstrated compliance with Article 1331.06 (27) (C) in meeting the one year bona fide restaurant waiver provision; seconded by Shamberger. The motion passed unanimously.

Bossio advised the petitioner that he could reapply next month. Fletcher reminded Bossio that the conditional use request was not denied, the Board denied waiving the one year restaurant requirement.

Shamberger told the petitioner he could still open with beer and wine and when the Board received evidence that the business would work three to six months down the road, the Board might be willing to waive the requirement.

Bossio advised that petitioner that the Board's decision may be appealed within 30 days to the Circuit Court of Monongalia County.

The meeting was adjourned at

**V. OTHER BUSINESS**

**A.** Public Comments – none.

**B.** Staff Comments

- Fletcher reminded the Board that leadership elections for the 2009 calendar year would be on January's agenda

- Fletcher stated the City Council reappointed Bossio and Papandreas to serve another three-year term on the BZA. Fletcher thanked them for continuing to serve and thanked City Council for their prompt response in reappointing them.
- Fletcher stated that the Planning Department's Annual Report is ready and will be included in January's packet.
- Fletcher advised the Board that a Writ of Certiorari had been filed by James Guiliani and he will keep the Board updated on the petition's progress.
- Fletcher stated that the Planning Intern John Butterworth, who staffed a BZA meeting earlier in the year, graduated from WVU in December and has accepted an entry level planning position with Putnam County, West Virginia.

**VI. ADJOURNMENT** – meeting was adjourned at 7:15 PM.