

BOARD OF ZONING APPEALS

Minutes

6:30 PM

December 16, 2009

City Council Chambers

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

MEMBERS ABSENT: Bernie Bossio

STAFF: Lisa Mardis

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

II. MATTERS OF BUSINESS:

A. Approval of November 18, 2009 minutes – Shaffer reported that the November 18th minutes would be postponed until the January 20th meeting.

III. OLD BUSINESS

A. CU08-17 / Giuliani / 608 Allen Avenue: Request by Laura Giuliani for conditional use approval The Planning and Zoning Code, Table 1331.05.01, Permitted Land Uses, as it relates to Lodging or Rooming House in the R-2 District for property located at 608 Allen Avenue. Tax Map #26 Parcel #488; an R-2, Single and Two-Family Residential District.

B. CU08-18 / Giuliani Properties, LLC / 630 McLane Avenue: Request by Giuliani Properties, LLC for conditional use approval The Planning and Zoning Code, Table 1331.05.01, Permitted Land Uses, as it relates to Lodging or Rooming House in the R-2 District for property located at 630 McLane Avenue. Tax Map #15 Parcel #139; an R-2, Single and Two-Family Residential District.

Mardis read the memo dated December 16, 2009 concerning the two above referenced proposals concerning the Circuit Court of Monongalia County order to the Board of Zoning Appeals. In this case, Circuit Court reversed decisions made by the Board on November 19, 2008.

No discussion ensued.

Motion made by Shamberger to approve conditional use petitions CU08-17 and CU08-18 and incorporating Planning Department recommend conditions stated in the November 19, 2008 Staff Reports for same as ordered d by the Monongalia County Circuit Court on October 19, 2009 for Civil Action No. 08-C-911; seconded by Cardoso. Motion passed unanimously.

- C. **CU09-10 / Colasante / 341 Chestnut Street:** Request by Anthony Colasante for conditional use approval for a “Restaurant private club” license in B-4 District at 341 Chestnut Street. Tax Map #26A, Parcel #79; B-4, General Business District.

Mardis read the staff report and stated that the petitioner seeks conditional use approval for the establishment of a “Restaurant, Private Club” use at 341 Chestnut Street. The business name for the proposed establishment is “RockSuon.” Mardis stated that RockSuon, LLC is not currently listed on the West Virginia Secretary of State’s online Business Organization Information System. However, Mr. Panico and Mr. Colasante are listed as managing partners of Manhattan Place, LLC, which is the owner of the subject property.

Mardis affirmed that on Wednesday, December 2, 2009 at 1:30 PM, the Board held a workshop at the site to meet with Mr. Panico and walkthrough the subject building and rooftop area. The purpose of the workshop was to afford the Board an opportunity to see what building renovations were proposed to accommodate the contemplated “Restaurant, private club” establishment. With the exception of Mr. Shaffer, all Board members were present as well as Staff.

Mardis continued that the petitioners submitted the following exhibits: RockSuon mission statement; Resume for Mr. Colasante; Proposed menu; Construction, floor, seating and kitchen plans. She also added that the proposed mission statement highlights include: Latin fusion rooftop restaurant and pool bar; Detailed décor to include Tahitian-style cabanas, rock structure waterfalls, stainless steel chandelier lighting, and a glass dining room floor; Outdoor pool and hot/cool tub; From scratch recipes and internationally acclaimed beverage selection; Target audience will be young professionals, conference attendees, hotel patrons, and WVU students.

Mardis added that according to the submitted resume, Mr. Colasante and his family have owned and operated Colasante’s Ristorante and Pub, located in Westover, West Virginia, for the past forty (40) years. Mr. Colasante is responsible for establishing the Ristorante’s policies, hiring, and training all employees, as well as developing business concepts for menus and marketing.

Papandreas stated that he is involved in a project that may be viewed as in compromising his objectivity in ruling on this project and asked the appropriateness of recusing himself from the hearing. Papandreas directed the question to Mr. Panico. Mr. Panico stated that he has no objections as long as Papandreas can be fair in his decision.

Joe Panico and Antonio Colasante were present and presented their proposal for a roof-top style restaurant and stated that it would meet all the requirements of the Zoning Ordinance. Mr. Panico added that it is his opinion that the proposal meets the requirements for the one year waiver set forth in the Zoning Ordinance.

Shaffer stated that he was not present at the site meeting and asked the applicant questions concerning the swimming pool.

Panico responded that the proposed idea is new to the area but common at hotels or in beach communities. Panico added that there will be cabanas and an enclosed bar area. Panico stated that he had previous permission for a hotel in the vacant lot adjacent to the building that would compliment this project. The applicant added that the restaurant will meet the fifty (50) person minimum without the calculation of the bar. He continued that, although not shown on

the drawing, one additional seat could be placed at each booth. Panico commented that the proposal would be similar to Oliverio's with heating overhead.

Shaffer asked for clarification in reference to layout and design and asked the applicant to approach the Board. Panico responded and stated that there will be a glass railing, a minimum of fifty-four (54) inches on top of the building.

Panico also stated that there would be three means of ingress to the restaurant which will be an external stairwell that will be constructed of steel and bolted to the building, so it can be utilized in the proposed building, and internal stairway, and the ramp from Chestnut Street. He continued that they are proposing using a gold cart to transport clientele from the Chestnut to the roof top.

Questions ensued concerning the placement of the kitchen. Panico stated that the kitchen would be on the third floor and an enclosed walkway constructed from the kitchen to the bar area.

Papandreas stated that he has concerns with the validity of the kitchen and the restaurant due to its small size of the kitchen and the extensiveness of the menu.

Panico stated that the presented menu is only a representative of the final menu, which has not been finalized. He added that it will be on a trial and error bases, but will have a Latin infusion style.

Colasante stated that the restaurant does not contain enough seating for a nine page menu. He continued that for the first few months, the restaurant will only use four to five page menus. Colasante affirmed that Latin food is similar to Asian in that it does not require a great deal of space.

Shamberger added that the restaurant must be operated under the Zoning Ordinance which includes 60% food sales. He added that the Board must feel comfortable with the conditional use and the one year waiver, as well as the requirement will be met. Shamberger continued that while Mr. Colasante has owned or operated a restaurant for a considerable amount of time, it is not the same as being proposed.

Colosante stated that his family's restaurant consists of two floors, the top being a bar only area. He added that they are seeking to draw a middle aged professional crowd, similar to the Dragon Fly.

Panico added that the Dragonfly currently has a 80-20 food to alcohol percentage and wants to operate similar to them. He stated that most of the restaurant's business will be on Saturday and Sunday during the day in summer, spring, and fall.

Shaffer asked the applicants how they think that the conditional use approval would serve their needs. Panico responded that outside dining, and not just the pool, would be an attraction with frozen summer drinks.

Cardoso voiced concerns on the restaurant becoming a typical night club, the pool, the ability to maintain the 60-40% requirement, and accessibility.

Panico affirmed that the pool is of a residential type measuring 20' X 40' and will be installed via crane. He attested that the pool area, while an attraction, will be highly regulated for safety reasons. Panico stated that they could do the same thing with just beer and wine, but feels it is necessary to offer frozen drinks, such as margaritas since it is a Latin infused restaurant. Panico stated that the proposed kitchen cost an estimated \$35,000 and that equipment will change according to the menu. Panico stated that the building contains sixty (60) parking spaces.

Shamberger asked Colasante on the background of his business in Westover. Colasante stated that he has thirty (30) plus years of doing every job in the hospitality industry and gave more information on his current business.

Shaffer questioned staff as to a pool in the B-4 District. Mardis affirmed that an outdoor recreational facility, such as a pool, is not permitted as a principal use in the B-4 District. But is permitted as an accessory use.

Panico stated that the hours of operation will be from 11:00 A.M. to 1:00 P.M. and would like to open in the summer of 2010

Discussion ensued on the pool being an area of contention. Shaffer reiterated that the prime reason must be food sales.

As request by Papandreas, Mardis read Zoning Ordinance Article 1331.06 (27) concerning the one year waiver.

Panico stated that there are mechanisms in the Zoning Ordinance to police the areas that the Board is finding areas of contention.

Cardoso questioned staff as to the process if a conditional use restaurant private club does not meet the required 60-40 split. Mardis stated the Planning Department would send letter to the owner and that if it happened on a continual basis the City Manager would proceed with enforcement.

After discussion of the Board, it was determined that approving a provisional conditional use was not wanted by the Board.

Discussion ensued on placing conditions on an approval. .

Panico stated that he appreciates the discussion of the Board and understands that it is unique proposal but does not want to go through an extra process that others have not been made to go through.

Shamberger stated that with the information provided, the tour, and the discussion, he believes that the proposal is for a legitimate restaurant. Cardoso stated that she concurs.

Papandreas stated that he has confidence in City's ability of enforcement.

Motion by Papandreas to waive the one year requirement; Seconded by Cardoso. Motion passed unanimously.

Mardis read the staff recommendation. She stated that the Board of Zoning Appeals must first determine whether or not it will waive the one-year “bona fide restaurant” requirement [Article 1331.06 (27)(c)] prior to the petitioner obtaining a liquor license from the West Virginia Alcohol Beverage Control Commission. Mardis 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.

As customary submitted to the Board for “Restaurant, private club” conditional use petitions in the B-4 District, the Planning Department does not offer a recommendation either in favor of or in opposition to the subject petition. However, suggested revisions to the petitioner’s findings of fact are provided below (deleted matter struck through; new matter underlined).

Finding of Fact #1 – Congestion in the streets is not increased, in that:

The proposed “Restaurant, private club” conditional use is within an existing building that includes approximately 60 parking spaces and is located next to a City parking garage.

Finding of Fact #2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The subject structure will conform to all State fire and building codes.

Finding of Fact #3 – Provision of adequate light and air is not disturbed, in that:

The proposed “Restaurant, private club” conditional use will be located on the rooftop area of an existing building.

Finding of Fact #4 – Overcrowding of land does not result, in that:

The proposed “Restaurant, private club” conditional use will be located on the rooftop area of an existing commercial building.

Finding of Fact #5 – Undue congestion of population is not created, in that:

The proposed “Restaurant, private club” conditional use will be located on the rooftop area of an existing commercial building and does not include residential dwelling units.

Finding of Fact #6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The subject structure already has all utilities, the proposed “Restaurant, private club” conditional use should not create any other demands.

Finding of Fact #7 – Value of buildings will be conserved, in that:

The proposed “Restaurant, private club” conditional use will include renovations to an old existing building in downtown.

Finding of Fact #8 – The most appropriate use of land is encouraged, in that:

The subject building is a large structure within which the proposed “Restaurant, private club” conditional use should add more options for downtown patrons and stimulate more business.

Should the Board waive the one-year “bona fide restaurant” requirement and grant approval of the subject conditional use petition, Staff recommends that the following conditions be included:

1. That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06 (27) of the Planning and Zoning Code. That the establishment shall not serve liquor, including wine, later than 1:00 a.m., except on New Year's Eve;
2. That the petitioner must obtain permitting as a "restaurant" from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*;
3. That any exterior building modifications (i.e. façade, awning, etc) shall be reviewed and approved by the Downtown Design Review Committee and the Planning Director prior to building permit issuance for same;
4. That any regulated signage shall be reviewed and approved by the Downtown Design Review Committee and the Planning Director prior to building permit issuance for same;
5. That the petitioner voluntarily submit all necessary financial information to the City for the subject establishment following its first twelve (12) months of operation as a "Restaurant, private club" to ensure compliance with Article 1331.06 (27) (e) provisions, which requires the sale of food and non-alcoholic beverages to comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month;
6. That seating counted toward meeting the minimum capacity and related standards required by Article 1331.06 (27) (f) of the Planning and Zoning Code shall be indoor year-round; and,
7. That the conditional use approval granted herein is specific to the petitioners and may not be transferred without first obtaining approval by the Board of Zoning Appeals.

Shaffer asked for public comment. There being none, the public portion was closed.

Motion by Papantreas to accept the Findings of Facts as amended by Staff; seconded by Cardoso. Motion passed unanimously.

Motion to approve petition with the conditions set forth by staff including being open for lunch hours of operation being 11-1; seconded by Cardoso. Motion passed unanimously.

IV. NEW BUSINESS

- A. **V09-27 / V09-32 / Canterbury / Sanford Street**: Request by Stephen Canterbury for variance approval for the Planning and Zoning Code, Article 1335.04, Setbacks, for property located on Sanford Street. Tax Map #37, Parcel #236; R-1A, Single-Family Residential District.

Mardis read the staff report. She stated that the petitioner seeks to develop four (4) single-family dwellings on Parcel 236 of Tax Map 37. Addendum A of this report illustrates the location of the realty as well as the approximate 68 foot elevation change from Sanford Street to the bottom of the property.

Mardis continued that due to the narrow road width of Sanford Street and the steep slope of the realty, the petitioner seeks variance relief to exceed the maximum front setback standard of 20 feet in the R-1A District by five (5) to eight (8) feet. Variance approval should enable the

petitioner to conveniently and safely develop off-street parking in a manner that alleviates having to back out onto Sanford Street from the proposed driveways.

Mardis stated that according to the site plan submitted by the petitioner, the proposed structures appear to conform to minimum rear and side setback and maximum lot coverage standards.

Steven Canterbury, applicant, was present. He stated that he intends to construct four (4) Craftsman-style single-family structures on the four (4) parcels that were created with a minor subdivision that was approved by the Planning Commission on December 10, 2009. The applicant continued that he plans minimal disturbance of the land and that the structures will have relatively small footprints.

Canterbury approached the board and showed a site plan of his proposal. He stated that he is working with the grade that is there.

Shaffer asked for public comment.

Jim Shibble, Waitman Street, spoke in opposition of the request stating that their will be water problems and does not want to see the trees removed.

Amanda Webster, 353 Sanford Street, stated that she wanted to go on record with concerns of the narrowness of the road and concerns for safety.

Rita Smith, 454 Sanford Street, spoke in opposition stating that the road is narrow and steep.

There being no further comments, the public portion was closed.

Mardis read the staff recommendation. She stated 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 the following revisions to the petitioner's Findings of Fact (deleted matter struck through; new matter underlined) and that variance relief be granted as requested.

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

Developing off-street parking to the side or rear of the proposed single-family structures with access from Sanford Street appears to be impractical due to the property's steep slope. Additionally, the right-of-way to the rear of the property is unopened.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Houses across the street appear to have been built with similar setbacks as that being requested; although the proposed development will include required off-street parking, other houses along Sanford Street do not have off-street parking.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The variance will allow for the development of safe vehicular ingress and egress with acceptable grade.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

Single-family residential development is the preferred land use in the R-1A District; appears to be consistent with the predominant use patterns within the immediate area; and, meets all other Planning and Zoning Code standards. The project has been designed to maximize vehicular safety by alleviating the need for vehicles from having to back out onto the narrow city street from each of the driveways.

Motion by Shamberger to approve the Findings of Fact as amended by the Planning Department; seconded by Papandreas. Motion passed unanimously.

Motion by Papandreas to approve the request to exceed the maximum front yard set back on lots A, B, C, and D; seconded by Shamberger. Motion passed unanimously.

V. OTHER BUSINESS

- A. Public Comments** – None.
- B. Staff Comments** – None.

VI. ADJOURNMENT – The meeting was adjourned at 8:34 PM.

MINUTES APPROVED: March 16, 2009

COMMISSION SECRETARY: _____
Christopher M. Fletcher, AICP