

BOARD OF ZONING APPEALS

MINUTES

6:43 p.m.

February 21, 2018

Council Chambers

MEMBERS PRESENT: Harrison Case, Tom Shamberger, Kevin Meehan and Chris Benison

MEMBERS ABSENT: None

STAFF: John Whitmore, AICP

Shamberger nominated Case to be temporary Chair; seconded by Benison. Motion carried unanimously.

- I. **CALL TO ORDER AND ROLL CALL:** Case called the meeting to order and read the standard explanation of the how the Board conducts business and rules for public comments.
- II. **2018 LEADERSHIP ELECTION:** Chair and Vice-Chair. Meehan nominated Case to serve as Chair and Shamberger to serve as Vice-Chair of the Board of Zoning Appeals for the 2018 calendar year; seconded by Shamberger. Motion carried unanimously.
- III. **MATTERS OF BUSINESS:**
 - A. Minutes for the December 20, 2017 hearing. No corrections noted; minutes approved as presented.
- IV. **UNFINISHED BUSINESS:** None.
- V. **NEW BUSINESS:**
 - A. **V18-01 / TLC Dental / 1801 Earl L. Core Road:** Request by Dr. Robert Martino, on behalf of TLC Dental, for variance relief from Article 1369 concerning signage; Tax Map 33, Parcel 48; B-2, Service Business District.

Whitmore presented the Staff Report.

Case recognized William Thompson of Bridgeport, WV, on behalf of TLC Dental, who concurred with the Staff Report and noted the signs are not obstructive or protrusive and are only an-eighth of an inch thick and mounted to the façade.

Shamberger expressed the Board should look at the need for the signage and if there is hardship as the request for variance relief is extensive.

Benison suggested to remove the façade sign and then increase the size of the tenant's signage associated with the directory signage.

Meehan noted the sign is comparable to the “Dollar General” sign next door.

Benison inquired to combine “TLC Dental” and “Super Kid Dental” into one sign on one side and then retain the other signs.

Thompson stated they want to advertise for Super Kid Dental separately and noted the artwork was drawn and trademarked by Dr. Martino. Thompson stated they chose the location as it is on a corner and the signs are not visible coming from the opposite direction.

There being no further questions or comments by the Board, Case asked if anyone was present to speak in favor of or in opposition to the variance petition. There being none, Case declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Meehan expressed the signage is comparable to surrounding businesses.

Shamberger expressed the business is close to the road and is visible and stated that he needs a strong compelling reason the signage is necessary to make a favorable decision.

Benison noted the variance is an excessive amount and would not feel comfortable setting a precedent with approval.

Case expressed the signage erected does not distract or cause a nuisance to the commercial strip with similar signage but noted the applicant erected the signage without prior approval.

Thompson stated they thought the person hired to create and erect the signage would also be obtaining the appropriate permits and they learned that was not done when they received the citation.

Case asked if the citation stands if a variance is granted. Whitmore stated it was not a citation but a notice of violation.

Thompson expressed the building has two frontages because of how the space is located on the corner of the structure.

Case asked if the side facing the road enters into the square foot calculation. Whitmore stated the square footage is calculated based on store frontage.

Benison suggest removing the signs on the side and storing them as back ups when replacements are needed. Thompson expressed they would like to keep the signs as they are currently.

Board members decided to review the Findings of Facts separately.

Shamberger made a motion to find in the affirmative for Finding of Fact 1 as presented by the petitioner; seconded by Meehan. Motion carried unanimously.

NOTE: The following finding was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

All signage is limited to the business storefront, both parking lot side and street side, and does not interfere with any other businesses' space. Wall signs are constructed from lightweight, durable sign material (Piopanel) and secured to the metal face of the business with a variety of appropriate screws.

Case expressed that the position of building would be a special condition as the side of the building is not allowed to be included in the calculation. Meehan agreed and said the signage is consistent to others in the shopping plaza.

Shamberger expressed that the code allows for enough square footage for visibility of the signage.

Case asked if Shamberger felt that the position of the building towards the road would be a special condition. Shamberger said maybe partially it would be a limiting condition.

Meehan made a motion to find in the affirmative for Finding of Fact 2 as presented by the petitioner; seconded by Case. Motion failed 2-2 with Shamberger and Benison voting nay.

NOTE: The following finding was included in the motion

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The allowed sign square footage for this location would limit the business to extremely small signs relative to storefront area available.

Whitmore explained that a failure to gain a majority is not grounds to deny a finding of fact.

Shamberger made a motion to find in the negative for Finding of Fact 2 as there are not special conditions or attributes pertaining to the property to grant the variance; motion died for lack of second.

Case expressed it would be appropriate to consider Staff's suggestion of a smaller variance.

Case referred to Finding of Fact 2 and asked Board members if they felt there were special conditions or attributes. Meehan agreed and expressed they could suggest smaller signage.

Shamberger inquired if the petition should be tabled to allow for the applicant to work with Staff on smaller signage.

Case asked if the applicant was made aware of Staff's recommendation for a smaller sign. Whitmore stated he believes Staff spoke with the company in charge of erecting the sign and noted the recommendation is to remove signage from the side facing Earl L. Core Road. Case asked if there are any opposition to tabling the petition to allow for the applicant to review with Staff.

Case asked Thompson if he had any opposition to tabling the petition. Thompson stated he was fine with tabling the petition and it will allow for him to discuss with the owner.

Shamberger made a motion to table V18-01 to provide the applicant time to work with Staff; seconded by Benison. Motion unanimously.

B. V18-02 / Supercuts / 1429 Earl L. Core Road: Request by Ismail Latif, on behalf of Supercuts, for variance relief from Article 1369 concerning signage; Tax Map 31, Parcel 100; B-5, Shopping Center District.

Whitmore presented the Staff Report.

Case recognized Ismail Latif of 17 Miramichi Trail who stated the business is located in Sabraton Plaza and they installed signage on the face of both end caps.

Shamberger asked if there was a hardship with the zoning and asked why the need for a bigger sign. Latif noted that surrounding businesses have larger signs to ensure visibility from the road.

Meehan noted there is a pylon sign that can advertise for the business. Latif agreed and expressed that sign is small and hard to see.

There being no further questions or comments by the Board, Case asked if anyone was present to speak in favor of or in opposition to the variance petition. There being none, Case declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Case noted that the applicant created the hardship by erecting the signage without prior approval and expressed that to remain consistent with prior cases they table the matter to allow the applicant to review other options and designs with the Staff.

Shamberger agreed this case is a similar situation and questioned if the sign is hardship or if the applicant wants a bigger sign. Shamberger expressed the maximum size allowed per the code would be enough square footage to be visible from the road.

Benison agreed that this is a similar case to V18-01 and expressed the sign was not out of scale with neighboring businesses.

Case asked the petitioner if he would be opposed to tabling the petition to allow for opportunity to discuss alternate sizes with Staff. Latif stated they are a small business and any modification will be costly and a financial hardship. Latif noted that neighboring businesses have larger signs and expressed that people need to be able to see the signs easily from the road.

Case asked why a permit was not requested prior to erecting the signs. Whitmore stated the petitioner did apply for a permit in December 2017 along with submitting a variance application. Whitmore stated the petitioner erected the signage without variance relief or permit approval.

Case asked Latif why the signage was erected prior to approvals. Latif stated they wanted a sign similar to "Save a Lot" and needed to get the signage up in order to follow lease requirements.

Whitmore noted that a citation was issued by Code Enforcement with a court date of February 27, 2018 and it was understood that Code Enforcement will be seeking an order to remove the signage as it is internally illuminated and was not approved by the Code Enforcement Department.

Shamberger made a motion to table V18-02 to provide an opportunity for the petitioner to work with Staff on alternatives; seconded by Meehan. Motion carried unanimously.

C. V18-03 / Saigon Pho Kitchen / 3109 University Avenue: Request by Rajagopal Sundaram, on behalf of Saigon Pho Kitchen, for variance relief from Article 1369 concerning signage; Tax Map 7, Parcel 257; B-1, Neighborhood Business District.

Whitmore presented the Staff Report.

Case recognized Rajagopal Sundaram of 361 High Street who apologized for not seeking a permit and explained that with construction delays he erected temporary sign banners. Sundaram stated he did not know he needed a permit for a temporary sign and noted the building is located along a busy intersection where visibility is obstructed as he is located on the end. Sundaram stated he will be working on a permanent sign within the next two to three months that will be comparable to a neighboring business to keep consistency.

Benison asked if a pylon sign is located along University Avenue. Sundaram confirmed and stated that pylon sign is located too close to the road and is too tall for a passerby to read. Sundaram noted he prefers signage on his façade to ensure visibility from the intersection.

Case asked if the Board is only reviewing the temporary signs in question. Whitmore confirmed and stated the item before the Board is for two vinyl signs and any future signage will be a separate request.

Whitmore noted that the signage in the shopping plaza is nonconforming and was approved prior to the current Planning and Zoning Code.

There being no further questions or comments by the Board, Case asked if anyone was present to speak in favor of or in opposition to the variance petition. There being none, Case declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Benison asked if the 60 days referred to in Staff recommendations is consistent with the timeline for a storefront development. Whitmore explained that temporary banners are allowed for 90 days and noted the banners in question has been up since November 2017.

Case asked how this signage came to the attention of Staff. Whitmore explained the banners were discovered while doing field work on other illegal signage in the right-of-way.

Case referred to Staff recommendations and expressed that allowing the petitioner to keep one banner up for an additional 30 days is reasonable. Board members agreed.

Whitmore suggested that the petitioner be given till May 31, 2018 to remove the temporary sign banner.

Shamberger made a motion to find in the negative for all Finding of Facts for Case V18-03; seconded by Benison. Motion carried unanimously.

NOTE: The following findings were included in the motion.

Finding of Fact No. 1 – The variance will adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The excessive area and substandard sign materials used in this case diminish the attractiveness, quality, character, and investment within the subject commercial development and the surrounding built environment.

Finding of Fact No. 2 – The variance **does not arise** from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The petitioner erected the vinyl signs without prior consultation with or approval by the City, which created the present circumstance. Further, the petitioner failed to consider that conditions or attributes, which may be present for the site, are shared by all commercial tenants within the development and are therefore not unique; particularly, given the fact an existing ground sign serves tenant commercial copy and commercial messaging needs of the development to communicate to vehicular and pedestrian passersby along University Avenue, Collins Ferry Road, and Baldwin Street.

Finding of Fact No. 3 – The variance will **not** eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The erection of the signs in this case, without prior consultation with or approval by the City, created a self-imposed hardship. Additionally, more practical, functional, and attractive sign solutions appear readily available within related permitted materials and maximum area standards, which is demonstrated by other commercial tenants within the subject development.

Finding of Fact No. 4 – The variance will **not** allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The signs in this case fail to observe any related sign regulation provisions nor do they substantially advance any of the sign regulation enumerated in Section 1369.01 of the Planning and Zoning Code.

Shamberger made a motion to deny Case No. V18-03 with the condition that the petitioner has five (5) days to remove one banner and until May 31, 2018 to remove the remaining banner; seconded by Meehan. Motion carried unanimously.

Case reminded Mr. Sundaram that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

D. V18-04 / The Cue and Garcia's Restaurant / 222 High Street: Request by Tim Gray, on behalf of The Cue and Garcia's Restaurant, for variance relief from Article 1369 concerning signage; Tax Map 26A, Parcels 137 and 138; B-4, General Business District.

Whitmore presented the Staff Report.

Case recognized Tim Gray who is the pastor and director of "The Cue" and a representative for "Garcia's Restaurant", apologized for erecting the signage as he did not realize a permit was necessary. Gray stated the business is located downstairs and does not have a store front. Gray expressed that signage is necessary for locating their business as they are "sandwiched" in between the "Dollar General".

There being no further questions or comments by the Board, Case asked if anyone was present to speak in favor of or in opposition to the variance petition. There being none, Case declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Shamberger noted the allowed square footage for the frontage is very small and this is a unique and special circumstance. Case agreed and stated they have two business occupying one space as well.

Benison referred to Finding of Fact 3 and expressed this signage is not a self-created problem. Shamberger made a motion to find in the affirmative for all the Findings of Facts for V18-04; seconded by Benison. Motion carried unanimously.

NOTE: The following findings were included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The signage is properly affixed, and out of the way, yet visible to the public, but not oversized or gaudy. The signs do not appear to detract from adjacent businesses nor cause a safety concern.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The tenant space is located under the *Dollar General*, making the entrance to the tenant space “sandwiched” in/under the business of the *Dollar General*, which makes for the entrance and signage difficult to be seen and understood. The size of the signage must be visible, yet not distracting, which is only possible with variance from the sign area regulation in this case. Because the “Cue” establishment wall sign consumes much of the façade’s sign band, two (2) smaller circular signs, similar to the suspended sign, appear to have been subtly used to message the shared location of the “Garcia’s” establishment, given extremely limited street level tenant presence.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The sign ordinance does not appear to take into account limited commercial messaging visibility opportunities of subterranean uses in a traditional urban downtown environment; particularly those with very limited street level storefront width but substantial basement space.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The signage will enable the use of the structure’s basement space for community and commercial needs, in accordance with the B-4 Zoning District’s purpose, without deleteriously impacting the built environment or overburdening commercial copy on the building.

Shamberger moved to grant approval for Case No. V18-04 as presented; seconded by Meehan. Motion carried unanimously.

Case reminded Mr. Gray that the Board’s decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board’s decisions during this period would be at the sole financial risk of the petitioner.

E. V18-05 / The Vapor Hut, LLC / 250 Retail Circle: Request by William Watson, on behalf of The Vapor Hut, LLC, for variance relief from Article 1369 concerning signage; Tax Map 64, Parcel 6; B-5, Shopping Center District.

Whitmore presented the Staff Report.

Case recognized William Watson of 250 Retail Circle who stated the proposed sign is the same size as the one previously approved and will look better in the plaza.

Shamberger noted this building sits back and the business is in a corner unit.

Watson expressed he does not like the current digital sign and noted that the company is creating the same signage for all stores to keep uniformity.

Benison asked if there was other signage for the business. Watson stated they do have a spot in the marquee sign but they have not provided them with signage for that sign.

There being no further questions or comments by the Board, Case asked if anyone was present to speak in favor of or in opposition to the variance petition. There being none, Case declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Case asked for the difference in square footage from the last sign. Whitmore noted an updated sign plan was submitted after application was reviewed due to an employee having the flu.

Whitmore stated the proposed sign is larger than initially submitted and if approved then the Board needs to reflect what was submitted more recently.

Meehan made a motion to find in the affirmative for all the Findings of Facts for V18-05; seconded by Shamberger. Motion carried unanimously.

NOTE: The following findings were included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The business is located in a retail park, where only similar businesses and shopping locations exist, with similarly or greater sized signage.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The tenant is moving into an area where much larger businesses and companies already exist. The sign we seek to have approved is slightly larger than ordinance but will look better and more in place next to larger companies such as Dollar Tree, Wal-Mart, and Gamestop.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

While the sign is slightly larger than permitted, it would still be one of the smallest signs in the plaza, smaller even than some existing signs on suites of the same size. In addition to this, the tenant's suite is the corner suite and has the least visibility from the road and parking lot.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed sign will give the tenant a better chance to attract customers and business, will better match the current aesthetic of the retail park, and still remain modestly sized in comparison to existing signs.

Meehan moved to grant approval for Case No. V18-05 for 19.5 square feet.; seconded by Shamberger. Motion carried unanimously.

Case reminded Mr. Watson that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

VI. ANNOUNCEMENTS:

- A.** Whitmore presented the Planning Commission's 2017 Annual Report to City Council

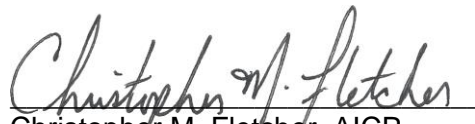
- B.** Whitmore stated the March 2018 hearing will be held on March 14 rather than March 21 and that a special hearing has been scheduled on March 1 to consider an administrative appeal.

VII. ADJOURNMENT: 8:30 p.m.

MINUTES APPROVED:

March 14, 2018

BOARD SECRETARY:


Christopher M. Fletcher, AICP