

BOARD OF ZONING APPEALS

MINUTES

6:30 p.m.

January 16, 2019

Council Chambers

MEMBERS PRESENT: Harrison Case, Kevin Meehan, Chris Benison, and Heidi Cook

MEMBERS ABSENT: None

STAFF: John Whitmore, AICP

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. 2019 LEADERSHIP ELECTION:

Meehan made a motion for Case to remain as President; seconded by Cook. Motion carried unanimously.

Case made a motion for Meehan to remain Vice President; seconded by Benison. Motion carried unanimously.

III. MATTERS OF BUSINESS:

A. Minutes for the December 19, 2018 hearing. No corrections noted, and minutes approved as presented.

IV. UNFINISHED BUSINESS: None.

V. NEW BUSINESS:

A. V19-03 / ALDI, Inc. / 1351 Earl L. Core Road: Request by Rory Garr, on behalf of ALDI, Inc., Saxonburg Division, for variance relief from Section 1347.04 regarding building setbacks; Tax Map 31, Parcels 101.2 and 101.5; B-2, Service Business District and B-5, Shopping Center District, respectively. **POSTPONED**

B. V19-04 / ALDI, Inc. / 1351 Earl L. Core Road: Request by Rory Garr, on behalf of ALDI, Inc., Saxonburg Division, for variance relief from Section 1347.06 regarding parking and loading standards; Tax Map 31, Parcels 101.2 and 101.5; B-2, Service Business District and B-5, Shopping Center District, respectively. **POSTPONED**

C. V19-05 / Kawecki / 121 Richmond Avenue: Request by Barry Dickson, on behalf of Mark Kawecki, for variance relief from Section 1331.08 regarding accessory structure height; Tax Map 41, Parcel 39; R-1A, Single-Family Residential. **WITHDRAWN**

- D. **V19-01 / Supercuts / 200 Hornbeck Road**: Request by Crystal Miller of City Neon, Inc., on behalf of Supercuts, for variance relief from Article 1369 concerning signage; Tax Map 64, Parcels 5 and 6; B-5, Shopping Center District.

Whitmore presented the Staff Report.

Case asked the petitioner to discuss both cases for V19-01 and V19-02.

Case recognized Crystal Miller of City Neon, Inc., who stated that *Supercuts* is going through a rebranding.

Miller referred to Case V19-01 and stated a larger sign is needed to be visible from the road.

Miller referred to Case V19-02 and stated the current sign is an “eye sore” and the proposed sign would be smaller than the existing sign. Miller stated a larger sign than allowed by Code is necessary to be visible from the road.

Without any objections from the petitioner or the public, the Board decided to combine Cases V19-01 and V19-02.

Whitmore presented the Staff report for V19-02.

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

Board members noted that both proposed signs are comparable to other surrounding businesses and both locations are set back from the road.

Cook made a motion to find in the affirmative for all of the Finding of Facts for V19-01 as presented; 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:

A larger sign will help promote the business within the unique conditions of the plaza's location and distance from Retail Circle, which will not adversely impact the public realm or property rights of others.

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 shopping plaza is set back approximately 225' from the center of Retail Circle off of Hornbeck Road. The store front will only allow for a 12 sq ft sign which would be very difficult to see through the parking lot (approximately 17 cars deep).

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

A larger sign would allow the business to identify itself to potential customers despite the large setback from the road.

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

The business will be able to effectively advertise its location without harming the rights of others.

Cook moved to grant variance relief for Case No. V19-01; seconded by Meehan. Motion carried unanimously.

- E. V19-02 / Supercuts / 366 Patteson Drive:** Request by Crystal Miller of City Neon, Inc., on behalf of Supercuts, for variance relief from Article 1369 concerning signage; Tax Map 11, Parcel 2; B-5, Shopping Center District.

Meehan made a motion to find in the affirmative for all of the Finding of Facts for V19-02 as presented; seconded by Tomblin. 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:

A larger sign will allow the business to identify itself to potential customers in a high traffic area.

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 business will be able to effectively advertise its location without harming the rights of others.

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

A larger sign will help promote the business within the unique conditions of the plaza's location and distance from Patteson Drive, which will not adversely impact the public realm or property rights of others.

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

The shopping plaza is set back approximately 175' from the center of Patteson Drive, which is a very busy roadway. The store front is small and would only allow for a 9 sq ft sign which would be very difficult to see through the parking lot (4 cars deep) and traffic on the roadway.

Cook moved to grant variance relief for Case No. V19-02; seconded by Meehan. Motion carried unanimously.

Case reminded Ms. Miller that the Board's decisions 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.

- F. **CU19-01 / Library Bar / 2007 University Avenue**: Request by Megan Gregory of Desmone Architects, on behalf of Eric Hardman, for conditional-use approval of a Private Club; Tax Map 20, Parcel 144; B-2, Service Business District & SSOD, Sunnyside South Overlay District.

Whitmore presented the combined Staff Report for CU19-01 and V19-06.

Case recognized Meghan Gregory of Desmone Architects, on behalf of the *Library Bar*, who provided further explanation on the project.

Case noted the use is for a "Private Club" which does not require food sales. Whitmore confirmed and explained there are different requirements with this use.

Case referred to the meeting packet and asked if there is guidance in the code to follow when reviewing conditional use petitions. Whitmore stated the Board would review the questions answered within the Findings of Facts from the application to make an informed decision on the petition.

Benison asked if there were any inconsistencies with the installation of the kitchen related to the definition of private club. Whitmore stated the WVABCA will require them to have limited kitchen space with the sell of liquor.

There being no further questions or comments by the Board, Case asked if anyone would like 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 favor with the petition since the establishment has a past history as a club and is located below street level.

Case noted that the surrounding immediate environment is not residential houses and includes higher density multi-tenant buildings with a mixed use-area. Whitmore confirmed and stated the area includes high density multi-tenant mixed-use structures in that corridor.

Case expressed noise would be less as the establishment is located in the basement.

Whitmore referred to the Findings of Facts and noted that there may be noise outside of the establishment as people enter and exit the building.

Case noted the business would have to follow the codes that others follow in terms of noise or disturbances.

Benison asked for the hours of operation. Whitmore stated the days of operation will gear more toward the weekend and as late as 3 a.m. but noted it will have to follow WVABCA rules and regulations pertaining to the business.

Case made a motion to find in the affirmative for all of the Finding of Facts for CU19-01 as presented; seconded by Tomblin. Motion carried 4-1 with Cook voting nay.

NOTE: The following findings were included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

Adjacency to WVU and residential neighborhoods encourages new and existing pedestrian traffic to the space. The subject tenant space has been occupied by several commercial establishments over the past several decades.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

Means of egress from the establishment will not be hindered. Upgrades to the current exits will be implemented and the subject tenant space will be required to meet related Building and Fire Code provisions.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

Current openings to remain and the proposed use will not increase the existing building's footprint or height that would alter existing sunlight distribution and air flow within the immediate area.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

No exterior/site work included in new work project scope and no additions to the existing building are proposed.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

Existing population and foot traffic to the area is currently established. No additional square footage will be added to the property nor is a residential component space proposed.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

All existing utility conditions to remain intact and will not inhibit public means or methods. Current commercial destination related traffic within the immediate area is primarily foot/pedestrian.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

Aesthetic and functional improvements will be provided to the first/ground floor of the current building. Updated finishes included within an efficient layout provide added value to the building owner.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

The current building will reopen along the University Avenue/Campus Drive intersection encouraging foot traffic from the Sunnyside Neighborhood and providing continued economic growth in the urbanized business corridor.

Case moved to approve a conditional use for Case No. CU19-01 with the Staff recommended conditions; seconded by Meehan. Motion carried 4-1 with Cook voting nay.

The following conditions were included in the motion.

1. *That variance relief from minimum parking requirements must be granted under Case No. V19-06.*
2. *That the proposed tenant space reviewed and approved herein for occupancy by the proposed "Private Club" use may not expand to include additional tenant space without prior approval of the Board of Zoning Appeals.*

3. That the "Private Club" use may not include outdoor seating, gathering, etc. type space, which could contribute to adversely impacting surrounding residential properties.
4. That the beneficiary of this conditional use approval is specific to Mr. Eric Hardman's business organization that owns the proposed "Private Club" establishment at the time of this conditional use approval. Said beneficiary may not be transferred without prior approval of the Board of Zoning Appeals.

G. V19-06 / Library Bar / 2007 University Avenue: Request by Megan Gregory of Desmone Architects, on behalf of Eric Hardman, for variance relief from Section 1365.04 regarding minimum parking requirements; Tax Map 20, Parcel 144; B-2, Service Business District & SSOD, Sunnyside South Overlay District.

Case referred to a field note that was distributed to the Board members and noted that a minimum of 19 parking spaces are required as opposed to 29 spaces originally listed in the Staff Report.

Whitmore noted the variance will be for relief from 19 parking spaces as they will not be providing any off-street parking.

Meehan expressed the parking is consistent with the surrounding businesses.

Case made a motion to find in the affirmative for all of the Finding of Facts for V19-06 as presented; seconded by Meehan. Motion carried 4-1 with Cook voting nay.

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:

Multiple tenants currently utilize the building with limited to no parking, without evident negative impacts to business operations or the surrounding area.

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 building site, as it stands, does not contain on-site parking. The building property lines abut the building exterior, hindering expansion of the site and eliminating possible addition of parking spaces.

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

Other uses within the subject building operate without parking spaces. The subject commercial tenant space appears to have been occupied by several different commercial establishments over the past several decades without the benefit of on-site parking. Most recent commercial occupants appear to have focused on pedestrian traffic.

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

The subject tenant space can be occupied by the proposed "Private Club" use, given the change in land use classification, thereby ensuring continued commercial activity within an area where business establishments do not have adequate on-site parking and focus primarily on pedestrian traffic for continued economic vitality.

Case moved to grant variance relief for Case No. V19-06 without conditions; seconded by Meehan. Motion carried 4-1 with Cook voting nay.

Case reminded the petitioner that the Board's decisions 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:

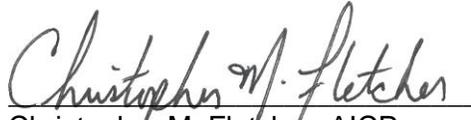
- A. Whitmore noted the Planning Commission's 2018 Annual Report to City Council was included in the meeting packet and provided further explanation on the results of the report.
- B. Whitmore stated there will be a training session for all Board members in the next few months. A time and date will be determined after members respond with their availability using a Doodle calendar poll that will be sent by staff.

VII. ADJOURNMENT: 7:20 p.m.

MINUTES APPROVED:

February 20, 2019

BOARD SECRETARY:


Christopher M. Fletcher, AICP