

BOARD OF ZONING APPEALS

MINUTES

6:30 p.m.

April 17, 2019

Council Chambers

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

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. **MATTERS OF BUSINESS:**
 - A. Minutes for the March 20, 2019 hearing. No corrections noted, and minutes approved as presented.
- III. **UNFINISHED BUSINESS:** None.
- IV. **NEW BUSINESS:**
 - A. **CU19-02 / Mundy's Place / 669 Madigan Avenue:** Request by Julana Enterprises, LLC, on behalf of Mundy's Place, for approval of a conditional "Restaurant, Private Club" use; Tax Map 40, Parcel 88; B-1, Neighborhood Business District.

Whitmore presented the Staff Report.

Case recognized Keith Summers of 669 Madigan Avenue who provided a brief history of the business and stated they would like to expand the business further by providing additional drink options to include liquor. Summers noted they would like to grow their clientele and expressed that offering mixed drinks would attract more people and help to grow the business.

Case asked if the hours of operation will remain the same. Summers stated they are omitting lunch hours throughout the week due to financial reasons and noted they have no desire to stay open past midnight which would also require a higher insurance premium.

Case asked if the parking lot is under the same leasing agreement. Summers confirmed.

Whitmore referred to the Staff Report to further explain the supplemental regulations in the B-1 and B-4 zoning districts which states liquor cannot be served later than 1:00 a.m. except on New Year's Eve.

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.

Case recognized Janet McCabe of 424 Legion Avenue who spoke in opposition to the petition and expressed concerns with the addition of liquor and with the preservation of the neighborhood.

Case recognized Judy Semilar of 536 Madigan Avenue who expressed that adding liquor does not go well with a neighborhood bar and noted that children visit the establishment regularly. Semilar also expressed concerns with an increase in garbage, traffic and parking congestion within the neighborhood.

Case offered the petitioner a chance for rebuttal.

Summers stated that Mundy's has served liquor in the past and provided examples of other neighborhood bars that serve liquor, such as *Mario's Fishbowl* and *Tanner's Tavern*. Summers noted their customer base is older and there would not be an increase in traffic or garbage as the number of patrons would not change and liquor does not come in a container that would leave the establishment. Summers stressed they are a neighborhood establishment open to families and they are not trying to appeal to the nightclub crowd.

Tomblin asked if their hours overlap with the adjacent church hours. Summers stated they do not open until 1:00 p.m. on Sundays and they do not use the church parking lots. He noted they have never received complaints from the neighboring churches.

Cook asked how *Mundy's* is helping the community. Summers expressed that neighborhood bars are fading away and being replaced by chain restaurants. He noted that there are old pictures and maps displayed inside of *Mundy's* as it has a history within the neighborhood, and he would like to keep it alive.

Meehan inquired about enforcement for hours of operation with restaurant private clubs. Whitmore provided further explanation on the supplemental regulations within the Staff Report and stated that there would be enforcement for any establishment that stayed open past 1:00 a.m. in the B-1 and B-4 Districts.

Summers stated they have no desire to stay open past midnight and reiterated they would have to pay a higher insurance premium.

Case referred to the supplemental regulations within the Staff Report and noted the petitioner had offered receipts to show that their alcohol sales have been less than their food sales. Summers confirmed and stated they predict an increase in food sales as they have invested a lot of money in renovating the kitchen and buying paper products such as to-go containers.

There being no further comments, Case declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Benison asked if the building capacity was posted within the establishment. Summers did not believe it was posted.

Meehan inquired about the proximity of Jack Roberts Park. Tomblin expressed the distance of the park is irrelevant as there is enough parking offered by the establishment and nearby streets, based on the physical characteristics of an automobile's length.

Meehan expressed that serving liquor would not increase traffic or parking and noted a positive experience when doing a site visit to the establishment.

Case asked if there have been any police records or public complaints towards the establishment.

Whitmore stated the Planning Division has not received any complaints or negative correspondence.

Whitmore referred to the Planning and Zoning Code and stated that the change in use would not require additional on-site parking to the existing nonconforming condition as the minimum parking standard is the same for “tavern” and “restaurant, private club” uses.

Case expressed the change of use to “restaurant, private club” does not appear to result in a change to the fundamental nature of the existing business.

Meehan made a motion to find in the affirmative for all of the Finding of Facts for CU19-02 as presented; seconded by Tomblin. Motion carried unanimously.

NOTE: The following findings were included in the motion.

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

Off street parking is provided; furthermore the business has been in operation for several years and has operated at occupancy capacity on several occasion with no negative effects. As a neighborhood pub located in a mainly residential area many patrons arrive on foot by utilizing public sidewalks.

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

This building meets or exceeds all current local and state required safety standards and has the approval of the local and state fire marshals.

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

The existing building does not change any light or air flow patterns and no modifications are being requested.

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

The existing building has occupied the plat of land prior to 1949 and no further modifications are being requested.

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

The majority of the occupants or patrons live within the neighborhood known as First Ward therefore further population congestion is not a factor.

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:

The current business, although under different ownership has operated at this location since 1949 as the existing neighborhood developed around it. In no way should any of the items listed above be negatively impacted or caused to become inadequate.

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

The existing building was constructed using construction methods of the 1940's and no request to devalue or modify the existing structure is being requested.

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

The existing use of the land as a neighborhood restaurant/pub is the most appropriate use of the land and has been since 1949. Further, the current use adds for a vibrant, neighborly environment that many residents in the area frequently patronize.

Tomblin moved to approve conditional use for Case No. CU19-02; seconded by Cook. Motion carried unanimously.

Whitmore reminded the Board that there are conditions to be reviewed and included within the approval.

Case referred to the conditions listed in the Staff Report for review. Whitmore suggested there be a motion to dismiss previous motion and new motion to include the conditions.

Cooked moved to rescind previous motion; seconded by Benison. Motion carried unanimously.

Cook moved to approve conditional use for Case No. CU19-02 with the Staff recommended conditions; seconded by Meehan. Motion carried unanimously.

Case reminded Mr. Summers 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.

V. ANNOUNCEMENTS:

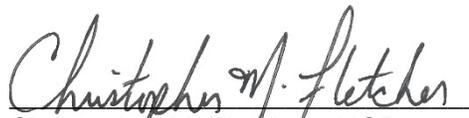
Morgantown Board of Zoning Appeals Chair Harrison Case has, in accordance with the BZA's Bylaws, duly called a workshop to be held immediately following the regularly scheduled meeting that begins at 6:30 p.m. on Wednesday, April 17, 2019. The workshop will be held in the Planning Office, City Hall, 389 Spruce Street, Morgantown, WV. The purpose of this workshop will be to provide training for members of the Board of Zoning Appeals to include duties and responsibilities, ethical issues, preparing for and conducting meetings, decision making, findings of fact, etc. Workshops are not considered regular or special meetings and may not include the formal conduct of business, the rendering of decisions, or taking action for which the Board is charged. Workshops are open to the public and are intended to serve as training, study, public education, etc.

VI. ADJOURNMENT: 7:22 p.m.

MINUTES APPROVED:

May 15, 2019

BOARD SECRETARY:


Christopher M. Fletcher, AICP