



MORGANTOWN BOARD OF ZONING APPEALS

July 21, 2010
6:30 PM
City Council Chambers

Board Members:

Bernie Bossio, Chair
Leanne Cardoso, Vice-Chair
Jim Shaffer
George Papandreas
Tom Shamberger

STAFF REPORT

CASE NO: CU10-08 / Watts - Petroplus / 40 Donley Street

REQUEST and LOCATION:

Request by Daniel Watts, on behalf of Parry G. Petroplus, for conditional use approval for a "Restaurant, Private Club" use in the B-4 District for property located at 40 Donley Street.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map #28, Parcels #18 & 134; a B-4, General Business District

SURROUNDING ZONING:

B-4, General Business District

BACKGROUND and ANALYSIS:

Daniel Watts, on behalf of Parry G. Petroplus, seeks conditional use approval to open a "Restaurant, Private Club" use called *The Wharf* in the building that was formerly occupied by the *Boathouse Bistro* located. The petitioner has submitted the following exhibits, which are attached hereto:

- Proposed Menu
- The Warf Business Concept
- Resumes – General Manager and Foot and Beverage Director
- Floor Plan

Boathouse Bistro, LLC obtained conditional use approval from the BZA to open a "Restaurant, Private Club" use on May 16, 2007 at the subject site. According to the City's Finance Department, the Boathouse Bistro received a City License on June 29, 2007 and closed on December 31, 2008.

The "Restaurant, Private Wine" and "Tavern" uses are permitted by-right in the B-4 District. *The Wharf* seeks to sell liquor in addition to beer and wine, which changes the use classification to "Restaurant, Private Club."

The proposed *The Wharf* establishment will contain approximately 3,000 square feet with seating for up to one hundred thirty (130) people indoors and forty (40) outdoors on a seasonal basis. The proposed hours of operation are 11:30 AM to 1:00 AM daily. Although parking is not required in the B-4 District, there appears to be ample parking available within existing public and private parking facilities situated nearby.

Addendum A of this report illustrates the location of the subject site. Addendum B of this report contains related excerpts from the Planning & Zoning Code [Article 1331.06 (27)].

Planning Department

Christopher Fletcher, AICP
Planning Director
389 Spruce Street
Morgantown, WV 26505
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STAFF RECOMMENDATION:

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. The petitioner’s request for a said waiver appears to be generally consistent with recent waivers granted by the Board.

Should the Board waive said requirement, than it 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. Addendum C of this report provides Staff recommended following revisions to the petitioner’s findings of fact (deleted matter struck through; new matter underlined).

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 shall 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 applicant must obtain permitting as a “restaurant” from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*;
3. 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; and,
4. That the conditional use approval granted herein may not be transferred.

Attachments: Application and exhibits noted above

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STAFF REPORT ADDENDUM B
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Article 1331.06 (27) of the Planning and Zoning Code, Supplemental Regulation Pertaining to Permitted Land Use Table provides the following applicable performance standards:

- (a) Such private club shall have as its principal purpose the business of serving meals on its premises to its patrons and to members of such club and their quests. For the purposes of this section, the term "meal" shall be consistent with that of the State of West Virginia as defined in its Legislative Rules and Regulations pertaining to Private Club License and shall not include packaged potato chips and similar products; packaged crackers; packaged nuts; packages desserts (fruit pies, cakes, cookies, etc.); and bar sausages and similar products.
- (b) Such private club with a bar shall post a sign not smaller than three (3) square feet in a prominent location near the bar that states the following: "It is a violation of City Ordinance to serve wine or liquor beverages after 1:00 a.m." (Amended by Ord. 06-14, Passed 06-06-2006.)
- (c) 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.
- (d) NOT APPLICABLE
- (e) Food and non-alcoholic beverages shall comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month.
- (f) Such private club shall provide a seating capacity for at least fifty (50) persons, at a table or counter maintained for the principal purpose of serving meals. Seats at a bar, which is primarily for the serving of alcoholic beverages, shall not be counted as meeting the minimum seating capacity of the establishment. Liquor or wine may be served either at seats intended primarily for dining, or at any bar area within the restaurant, with or without an accompanying meal.
- (g) Liquor or wine shall not be served later than 1:00 a.m., except on New Year's Eve.
- (h) The private club shall, at the time of each sale or at the time of payment, record the amount of revenue derived from the sale of liquor and wine beverages separately from the amount of revenue derived from the sale of food and non alcoholic beverages.
- (i) During each calendar month, the private club shall maintain and preserve accurate and adequate records including those required by paragraphs (e) and (h) above, to prove compliance to the City's Finance Director, and shall make all such records available for review and audit promptly upon request by the Finance Director. The records for each month shall be preserved for not less than twenty-four (24) months next following.
- (j) Quarterly, the private club shall send to the City Finance Director summaries showing the amount of revenue derived from liquor and wine beverages versus the amount derived from the sale of food and non-alcoholic beverages.
- (k) NOT APPLICABLE

STAFF REPORT ADDENDUM C

CU10-08 / Watts - Petroplus / 40 Donley Street

Staff recommended revisions to petitioner's Findings of Fact (deleted matter struck through; new matter underlined)

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

~~We~~ The proposed *The Wharf* establishment appears to ~~will be~~ targeting lunch and dinner patrons within walking distance and those individuals using the rail-trail and the river and employees and clients of neighboring professional service establishments. There appears to be ~~are more than enough~~ adequate parking spots located at the City garage and the Garages located at the WVU building and the Morgantown event center.

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

The restaurant will be located in the new facility owned by the City which meets the latest fire codes and multiple opportunities for safe egress in the event of an emergency.

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

~~There is more than adequate separation from other buildings to address light and air concerns including the fact that the building is a single story at the trail grade.~~ There are no alterations proposed to the existing building that would increase building footprint or scale.

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

This is non-residential low density use. There are no alterations proposed to the existing building that would increase building footprint or scale.

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

~~We~~ The proposed *The Wharf* establishment appears to ~~are providing~~ reestablish a similar dining option that once existed in the same location ~~and are not creating an environment that will promote vagrancy within the area specified.~~ The petitioners do not wish to alter the existing building which was once occupied by the *Boathouse Bistro Restaurant* nor provide residential occupancy.

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

~~This is a neighborhood, commercial use which can seamlessly tap into existing infrastructure and not create strains on the above mentioned public infrastructure just as previous tenant.~~ The proposed *The Wharf* establishment should neither increase nor decrease demand for public infrastructure and services that served the previously approved *Boathouse Bistro* "Restaurant, Private Club" conditional use.

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

This proposed use will further establish new businesses in the transitional area. ~~We feel this operation will~~ and should enhance the overall real estate within the Wharf District.

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

This restaurant ~~will~~ should provide an additional alternative for dining in the Wharf District and will market itself to the trail users as well as the other businesses that are within the Wharf District. The building was occupied by a restaurant that received approval in May 2007 for a conditional use “Restaurant, Private Club” establishment that has since gone out of business. The presence of another restaurant should contribute to the quality and character of the dining and social experience within the Wharf District.