

BOARD OF ZONING APPEALS

The regular meeting of the Board of Zoning Appeals was held on April 5, 2018, at 7:02 p.m. in the Public Safety Building located at 500 Quincy Street.

Board Member Manchin called the meeting to order at 7:00 p.m.

ROLL CALL OF MEMBERS

Present

Board Member Manchin
Board Member Shultz
Board Member Bolyard
Board Member Deasy

Absent

President Majic
Board Member Ragen

City Staff Present

City Planner, Sandra Scaffidi
Senior Staff Assistant, Maria Cipolla

Board Member Shultz motioned to excuse Vice President Ragan and President Majic from tonight's meeting.
Board Member Bolyard seconded the motion.
Motion carried 4-0

APPROVAL OF MINUTES

Board Member Manchin asked for a motion to approve the minutes.
Board Member Shultz motioned to approve the minutes.
Board Member Bolyard seconded the motion.
Motion carried 4-0.

PUBLIC HEARINGS FOR April 5, 2018

1. Bernard Dale Moore II is requesting a conditional use permit to operate an automobile service operation at 1130 Fairmont Avenue. The zoning is Main Corridor Commercial and the property is identified as 3-6-13.

Board Member Manchin asked if there was any one to speak in favor of this request.

Bernard Dale Moore II: The garage is located at 1130 Fairmont Avenue.

Board Member Manchin asked if there was anyone to speak against this conditional use.
There were none.

Board Member Manchin asked for a motion to close the public hearing.
Board Member Deasy motioned to close the public hearing.
Board Member Shultz seconded the motion.
Motion carried 4-0

Board Member Manchin asked for the staff report.

Sandra Scaffidi: The proposed request to continue to utilize a building to provide automobile service would not be in conflict with other uses in the area. Staff understands that the applicant is only utilizing the area for automobile service and not sales. The applicant does not have enough outdoor property to conduct automobile sales on the site. Due to the fact that the site has been an active business for many years and that no significant changes have been proposed by

the applicant, staff supports the conditional use request to allow the property to be used as an automobile service center, as long as the applicant meets the requirements as identified in Section 4.3.2 and 4.16.

Board Member Manchin: Were there any negative comments from other agencies?

Maria Cipolla: There are no negative agency comments on this request.

Board Member Manchin: Do I have a motion on this request?

Board Member Shultz motioned to approve the request.

Board Member Deasy seconded the motion.

Motion carried 4-0

2. **Anastasia Hilvers is requesting a variance from the City of Fairmont Planning and Development Code 5.8 to install a 6 foot fence in the front yard of her home at 1011 Marion Avenue. The zoning is General Residential and the property is identified as 3-12-123.**

Board Member Manchin asked if there was anyone to speak in favor of this request.

Anastasia Hilvers: I am a disabled veteran. I had this service dog for six years (Potato). I have been working with the City for two years to get a fence. I could only afford part of it last year. I am finishing it up this year. The trolley used to run in front of my house. You can't get to my house from Marion Avenue. What was the front yard is really now the side yard. As you can see, this other dog (Chip) is my service dog in training. Potato is getting too old. They stand about seven feet tall on their back legs. The next door property is a rental property. I don't want anyone saying my dogs bit them even though they have been trained not to bite. It is the first thing they are trained to do. I can stick my hand in their mouth, but who needs the trouble. I am going to need a service dog the rest of my life. I will probably need two more in my lifetime. I figure I will live to be about eighty years old.

Board Member Manchin: What type of fence is it?

Anastasia Hilvers: It is a decorative fence. They look like flat rails. We are going to be painting them so they look aged. We want it to look pretty. You can see through it. We will be putting up horse wire to close up the opening between the rails. We bury the wire about two feet down because when these dogs dig it is like they are escaping from a prison yard. The fence will be six feet in height. The posts are already up.

Board Member Manchin: Is there anyone to speak against this request.

Maria Cipolla: I have a letter from the neighbor, Gary Duim, in opposition of this request.

Letter Read: I, Gary Duim, owner of 1009 Marion St. Neighbor put 4x4 on my property without permission or consent after I told her to get a survey. She did not and put poles on my side of the wall and line at bottom of property fades to my side. Would like to request fence builder to get survey or remove poles from my side of wall and reduce existing 4x4. Gary Duim (304) 612-3860.

Anastasia Hilvers: We have engaged with McCoy Surveyors. It has been raining and he won't bring his equipment out in the rain. We are just waiting for the weather to cooperate and then he will be out to survey between the properties before the project goes any further. I have been calling every few days. I have no problem moving the post if I need to once the survey is complete. Mr. Duim did tell me last year that I could do this. He has a right to change his mind, but not after the fence is built. I am here for the height of the fence. I will happily put the fence wherever the surveyor says is the property line. This is a simple matter.

Board Member Manchin asked for a motion to close the public hearing
Board Member Shultz motioned to close the public hearing.
Board Member Bolyard seconded that motion.
Motion carried 4-0.

Board Member Manchin asked for the staff report.

Sandra Scaffidi: It is my recommendation that the variance for the front yard fence height be granted due to the special needs of the family, but a survey is required to indicate the proper location of property lines. Section 8.9.7.B of the Planning and Zoning Code states the BZA may grant a variance from the zoning ordinance if it finds that the variance meets all of the following findings. I do not believe this fence will adversely affect the public health, safety, or welfare of the adjacent property owner, residents, or the neighborhood. The special condition that arises is that the front yard of the house does not allow access to the building. This would eliminate an unnecessary hardship on the property owner. It will allow the zoning ordinance to be observed. It is the minimum variance to accomplish this purpose. My recommendation is to approve the variance request.

Board Member Manchin: If there are no other questions or concerns, I will accept any motion.
Board Member Deasy motioned to approve the request.
Board Member Shultz seconded the motion.
Motion Carried 4-0

3. Quinten Turner is requesting a conditional use permit to operate a bar at 306 ½ Merchant Street. The zoning is City Center and the property is identified as 5-7-25.

Board Member Manchin: Is there anyone here to speak for this request?

Quinten Turner: This is going to be called 'Overtime Sports Bar & Grill'.

Board Member Shultz: Wasn't this before us about three months ago? Why are we hearing this again?

Sandra Scaffidi: This is the same request, but a different owner. Since there is a different ownership on the business license, we recommended the applicant go before the Board again. The bar/night club is a conditional use in the City Center zoning district.

Board Member Manchin: Is there anyone to speak against this request.
There were none.

Board Member Manchin asked for a motion to close the public hearing.
Board Member Deasy motioned to close the public hearing.
Board Member Bolyard seconded that motion.
Motion carried 4-0.

Board Member Manchin asked for the staff report.

Sandra Scaffidi: The proposed request to continue to utilize a building that previously housed a bar would not be in conflict with other uses in the area. Due to the fact that the site has been an active business for many years and that no significant changes have been proposed by the applicant, staff supports the conditional use request to allow the property to be used as a bar, as long as the applicant meets the requirements as identified in Section 4.31 and 4.4.

Board Member Manchin: Are there any negative agency comments or concerns?

Maria Cipolla: No. There are none.

Board Member Manchin: If there are no other questions or concerns, I will accept any motion.

Board Member Shultz motioned to approve the conditional use.

Board Member Deasy seconded the motion.

Motion Carried 4-0

4. Nicole & Paul Mouser is requesting a variance from City Code Section 5.8 to install a 6 foot fence in the front yard of their home at 1465 Barry Street and is identified as 3-12-138.

Board Member Manchin: Is there anyone here to speak for this request?

Nicole Mouser: We are asking to put a privacy fence up on the one side of our house. The neighbor has a large dog that growls and barks all the time. It is particularly mean towards our six year old son. He has autism. He is petrified of this dog. He gets so upset that we actually have to carry him into the house. We just want a privacy fence on that part of the house that is six feet tall. This is where we have the most all of the problem since it is where we park. The neighbor has a four foot chain-linked fence, but the dog can jump up and get his head over it. He has nipped my husband while he is mowing the lawn.

Paul Mouser: He is a vicious animal.

Board Member Manchin: Do you have any dialogue with the neighbor? Does the neighbor acknowledge this at all?

Paul Mouser: I have had plenty of dialogue with the neighbor and she doesn't care.

Nicole Mouser: We have called the dog warden and talked to the police. Basically, because she has a fence with a 'no trespassing sign' and a 'beware of dog' sign, there isn't anything we can do until the dog gets a hold of somebody.

Board Member Manchin: Is there anyone to speak against this request?
There were none.

Board Member Manchin asked for a motion to close the public hearing.

Board Member Shultz motioned to close the public hearing.

Board Member Bolyard seconded that motion.

Motion carried 4-0.

Board Member Manchin asked for the staff report.

Sandra Scaffidi: It is my recommendation that the variance for the front yard fence height be granted due to the special needs of the family. Property owners are responsible for knowing where their property line is and I recommend a survey. I also want to make sure that the fence is not going to obscure visibility in or out of their driveway, but otherwise, I support it.

Board Member Manchin: Do we have any agency comments?

Maria Cipolla: I do have a comment for Dominion Hope. They ask that you do call before you dig because they do have gas lines in the area. Just call 811 and they will mark your property.

Board Member Manchin: This is nice to do, because if something does happen, it is not your responsibility. They stand by their work. It can save you a lot of grief.

Board Member Manchin asked for a motion on the variance request.

Board Member Shultz motioned to approve this variance.

Board Member Deasy seconded the motion.

Motion carried 4-0.

DISPOSITION OF PAST CASES

None

OTHER BUSINESS

Election of officers: This item has been tabled since the President and Vice President are both absent. All Members were in favor of this.

Staff Update:

Maria Cipolla: We do have a work session on May 3rd at 5:30 with Jesse Richardson. He is with the WVU Law Clinic. He will cover variances, conditional uses, and non-conforming uses. He is extremely good. You can't ask his advice on a specific upcoming request, but he can answer any hypothetical situations. We don't have anything on the agenda at this time, other than the election of officers, but there is still time for an application to come in.

ADJOURNMENT

Board Member Manchin asked for a motion to adjourn.

Board Member Shultz motioned to adjourn.

Board Member Bolyard seconded the motion.

Motion carried 4-0.