



Commissioners of Leonardtown

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J. HARRY NORRIS
Mayor

LASCHELLE E. MILLER
Town Administrator

Commissioners of Leonardtown
LEONARDTOWN BOARD OF ZONING APPEALS

41660 Courthouse Drive
October 23, 2007 at 5:00 P.M.

Attendees: Dr. Herbert Winnik, Chairman
Lanny Lancaster, Member
Kris Kraus, Member

Absent: Dr. William Icenhower, Member

Also in attendance were: Laschelle Miller, Town Administrator; DeAnn Adler, Plans Review; Teri Dimsey, Recorder; Dan Guenther, Marketplace Fine Wines. An official list of attendees is on file at the Town Hall.

Chairman Winnik called the meeting to order at 5:00 p.m. and then took up the first item of business.

Approval of Minutes – April 24, 2007

Member Kraus moved to approve the April 24, 2007 minutes as presented; seconded by Member Lancaster, motion passed unanimously.

NEW BUSINESS

Case # 37-07 - Marketplace Fine Wine and Liquors

Chairman Winnik asked if the Case was properly advertised, certified mailings sent out and property was posted.

Ms. Miller responded that the Public Hearing was advertised in two consecutive issues in the Enterprise on Wednesday, October 3, 2007 and Friday, October 5, 2007. The property was posted and certified mailings were sent to the surrounding properties on October 1, 2007. Public Hearing notices were hand delivered to other tenants at the Breton Marketplace.

Chairman Winnik stated he would like to read the law on the variances and noted that he was unclear if this was considered a pole sign?

Ms. Miller responded that a pole sign is considered more of a permanent sign and these signs are considered temporary signs. What we are saying is that he would be allowed 100 sq. ft of signage under the downtown sign regulations. He has 32 sq. ft. of a wall sign right now and a very small monument sign that has all the businesses listed. This is considered additional signage. In the sign ordinance a lot of different signs are covered and this sign fits this description best.

He currently has 24 sq. ft. of signage on the building and then there is a very small sign out at the front which is 3' by 8'.

Chairman Winnik noted that he is requesting 60 sq. ft and he wants two of them.

Ms. Miller noted that it is 3' by 20' which is 60 sq. ft and for two of them would be a total of 120 sq. ft. plus the 24 sq. ft. plus the additional small sign.

Ms. Miller stated that the only correspondence that we received is the letter at the table today from Ms. Bowles. Mr. Guenther also has a petition.

Chairman Winnik asked if they were residents of the Town as the address listed as is a PO Box or just concerned citizens.

Ms. Miller responded that she did not know.

Mr. Guenther came forward and introduced himself and explained to the Members that he is having a hard time promoting the shop due to the on-going construction and a need to make the shop more visible. Mr. Davis has given me permission to hang these signs for a period of one-year beginning in August. He purchased high quality signs to be placed on the poles to attract customers. Mr. Guenther also provided the members photos of the signs hanging in the shopping center. He noted that one of the poles is closest to the road and the other one sits behind Ledo's.

Chairman Winnik stated that he recently attended last month's Planning and Zoning Commission meeting and heard their discussion of this case and the Planning and Zoning Commission's motion was to forward a recommendation to approve one banner for a time period of one year maximum to be placed in the parking lot of the Breton Marketplace shopping center. The Board's main fear was that the other businesses would also want to put up similar signs and there would be a proliferation of signs. The shopping center already has numerous signs, many of which are in violation.

Mr. Guenther remarked that if any other businesses were to request to put up a similar sign, he would give them one of his two. The petition he provided the members with today is signed by all of the other businesses who are in support of his signs.

Chairman Winnik responded that if we approve two signs for your business, there is no way we could not approve two signs for the other businesses, regardless of your offer. Variances are granted based on the law (as described in the Staff Report below).

STAFF REPORT

Applicant: Mr. Dan Guenther

Enclosed in your packet you will find:

- Board of Zoning Appeals Application
- Sketch of the Banners requested
- Color Photos showing banner hung in parking lot

The applicant is requesting a variance be granted for the placement of (2) 3' x 20' sign banners to be hung in the parking lot of The Breton Marketplace Shopping Center. These banners are advertising a specific business and would fall under the Leonardtown Sign Ordinance. These banners are not approvable signage and would exceed the allowable signage dimensions for an individual business. There was a misunderstanding when Mr. Guenther came in to inquire about the banners prior to him purchasing them. He said they were to be similar to the holiday banners in the Town Square.

Sign Regulations for outside the downtown area allow:

Pole Signs – Less than 32 sq. ft. (or)

Wall Signs – Less than 100 sq. ft. (or)

Ground Sign – Less than 32 sq. ft.

Signage for this location currently consists of a wall sign 3' x 8' = 24 sq. ft. total – located on the face of the building. With these two banners Mr. Guenther would have 144 sq. ft. total signage, much more than the allowable 100 sq. ft.. There are currently nine other businesses in the Breton Marketplace Shopping Center that could potentially request sign banners for their businesses.

The request for public hearing was advertised in two consecutive issues of the Enterprise Newspaper on Wed., Oct. 3, 2007 and also Friday, October 5, 2007. The property was also posted and certified mailings were sent to surrounding properties on Oct. 1, 2007. Public hearing notices were hand delivered by Mr. Guenther to the other tenants of Breton Marketplace.

Excerpt from Article XX Board of Zoning Appeals:

§ 155-136. Limits, guidelines and standards

A. Where in these regulations certain powers are conferred upon the Board or an approval of the Board is required before a permit may be issued or the Board is called upon to decide certain issues, such Board shall study the specific property involved, as well as the neighborhood, and consider all testimony and data submitted and shall hear any person desiring to speak for or against the issuance of the permit. However, the application for a permit shall not be approved where the Board finds that the proposed building, addition, extension of building or use, sign, use or change of use would adversely affect the public health, safety, security, morals or general welfare or would result in dangerous traffic conditions or would jeopardize the lives or property

of people living in the neighborhood. In deciding such matters, the Board shall give consideration, among other things, to the following:

- (1) The number of people residing or working in the immediate area concerned.
- (2) The orderly growth of a community.
- (3) Traffic conditions and facilities.
- (4) The effect of such use upon the peaceful enjoyment of people in their homes.
- (5) The conservation of property values.
- (6) The effects of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.
- (7) The most appropriate use of land and structure.
- (8) Decisions of the courts.
- (9) The purpose of these regulations as set forth herein.
- (10) The types and kinds of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.

B. In the approval of any special exception, variance or appeal which it is required to decide, the Board of Zoning Appeals may impose such conditional approvals as it may deem necessary to assure conformity with the intent and purpose of this article.

At the October 15, 2007 Planning and Zoning Meeting the Board voted to forward a recommendation to approve one banner for a time period of one year maximum to be placed in the parking lot of Breton Marketplace.

Action Needed: The Board of Appeals can approve, approve with conditions or deny.

Mr. Guenther stated that he is asking the members to approve the conditions and consider the environment when looking at the photos, it is for a limited period of time, and I would agree with the condition that if one of the other businesses wanted to put a banner up I would take one down and another condition could be that if there is more than two then it will be one per person.

Member Lancaster asked Ms. Miller to explain the misunderstanding.

Ms. Miller explained that Mr. Guenther had come into the office inquiring about the sign regulations. Mr. Guenther spoke with a staff member who then spoke with me and my understanding from the description I received was that it would be a holiday banner similar to the holiday banners we use in the Town square which are much smaller and my comment then was that if it was not advertising a specific business then it was up to Mr. Davis. It appears there was a misunderstanding of what was being presented as we did not receive a drawing and the size, it was just a question if these would be permitted or not. I specifically talked about not advertising a specific business then it would not be signage for a business but there was some confusion from Mr. Guenther's memory of it, he does remember the holiday discussion but it was not specific to the size.

Mr. Guenther noted that he talked about it running up and down the pole but did not talk specific dimensions.

Member Lancaster stated that this application was not part of the original discussion this is for the variance only.

Ms. Miller commented that when the signs were put up, the Town Council starting receiving calls from some of the business wondering why this business could have more signage then they could and some calls from other sources in the shopping center. A letter was sent informing the property owner and Mr. Guenther then came in to try and resolve the issues. Mr. Guenther complied with taking down the banner and processing the variance request.

Member Lancaster asked who provides the authority to deny or approve putting up signs.

Mr. Guenther stated that Mr. Davis, the property owner, could have granted or denied me the permission to do it.

Ms. Miller noted that our signage ordinance allows each business up to 100 sq. ft. Mr. Davis has allowed each building a minimum signage and none of them have 100 sq. ft. These numbers are from the Town's guidelines and we would allow up to a 100 sq. ft. He has 24 sq. ft on his building right now and if he has two banners, it would be a total of 144 sq. ft. to include the front building sign. According to our sign guidelines it would be 44 sq. ft. more than allowed. Mr. Davis has provided Mr. Guenther permission to temporarily, go over the 24 sq. ft. that he already has.

Chairman Winnik clarified that there are two permissions needed one from the property owner and then they have to meet the requirements of the Town's sign ordinance.

Ms. Miller responded that the Town's ordinance is up to 100 sq. ft. allowed but the property owner can make their requirements less, which is what Mr. Davis has done. He has granted Mr. Guenther permission until August 2008 for the temporary banners.

Member Lancaster commented that our sign ordinance had not been updated since 1973.

Dr. Winnik agreed that he would be in support of updating the sign regulations.

Ms. Miller replied that is correct, although we did update the downtown sign regulations much more recently but the surrounding area sign regulations have not been updated.

Ms. Miller replied that they approved one banner because they felt that one banner kept it within the 100 sq. ft. in the event someone disapproved of giving him over 100 sq. ft. They may want to do the same thing and this would clutter up the area with too many signs. There is language that relates to temporary signs in the Sign Regulations.

Dr. Winnik stated that he does not see that in his packet but referred to the copy provided at the table.

Ms. Miller stated that originally it was presented as an application for a sign but typically a sign needs to be on the building or a pole or monument sign, this does not meet those criteria, the only banners we typically approve would be temporary banners for 30 days.

Dr. Winnik read:

Article 9.2 – Temporary Signs. 1. Temporary signs indicate an event, a public interest such as a County Fair, Horse Show, Church Fair, Party, Bazaar, Dinner, etc. shall be located on the site of the event. Such a sign should not exceed 32 sq. ft. and the area may be illuminated but should not be clashing with color and illumination should be confined to the face of the sign and permits for such signs shall be issued for a period of 30 days only.

Ms. Miller remarked that it is not a typical sign we would allow.

Dr. Winnik stated that it is hard to point out exactly where his banner fits in the sign regulations. I feel that the Planning and Zoning Commission recommendation is reasonable. It gives them a year, but it does not allow for the multiplication for a number of these, or two at a time.

Ms. Miller remarked that if anyone were to come in to ask for this type of banner we would only approve it as a 30-day temporary banner. If you are going to treat this request as a temporary banner then the variance would be for a certain amount of time, if you plan on approving two banners, then it would need to include approval for over the 100 sq. ft. requirement.

Member Lancaster noted that if the other retailers in this shopping center wanted to put up a sign, if it is under 100 sq. ft. they do not need to come before the Board of Appeals for a variance, if Mr. Davis agrees to let them put up a sign.

Ms. Miller remarked that this type of sign does not meet the requirements; it is not on their business, they are not allowed to have multiple signs and are allowed to have only one sign up to 100 sq. ft. Our ordinances indicate that this type of banner is not a pole sign; it is not a wall sign, nor a monument sign.

Chairperson Winnik noted that we would need to give them a variance beyond the 32 sq. ft. over the temporary sign size requirements.

Ms. Miller stated that the original application was for a permanent sign and the Planning and Zoning Commission continued along that line due to the fact that this sign would be up for more than the 30 day temporary banner requirement per the permission of the property owner to allow Mr. Guenther to keep it up until August of 2008 due to the on-going construction.

Mr. Guenther remarked that he spoke with Do Da Deli and they are lamenting that they are empty many times and have trouble getting people to come into their shop. I have used various advertising vehicles such as flyers, newspaper, and radio and am considering television to let people know we are there. When I signed the lease I was not aware that Ledo's would be built, it was not on my plan. Mr. Guenther provided the members with photographs of the signs to show the visibility of the signs.

Dr. Winnik stated that he feels one sign is sufficient.

Ms. Miller commented that it is unfortunate that there was a misunderstanding in the beginning but Mr. Guenther did try to go through the proper channels and once he realized it was against guidelines he did take them down and go through the proper channels. While these signs do not fall within our guidelines, we are trying to make it work for all parties.

Member Lancaster noted that in terms of making a motion whether I would be comfortable with a motion for a standard variance with a time limit based on a hardship because of the construction. Then we found the temporary sign regulations in regards to this banner. And every other section has a Board of Appeals piece to it and this does not. If we go with the temporary, this really doesn't necessary fit into the temporary requirement due to the year permission.

Member Lancaster moved that the Board of Appeals finds that the criteria as set forth in the Section 155-136 of the Ordinance have been met in that the petitioner has shown:

- 1. That granting the requested variance would not be detrimental to the property owners or business owners in the vicinity.**
- 2. That the granting of the variance will not be contrary to the general objectives of moderating the size, number, and obtrusiveness of signs and the reduction of clutter.**

The member further moved, that the Board of Appeals grant the request for a variance of the Ordinance pertaining to signs, Section 155-136 Limits, Guidelines, and Standards, made by Marketplace Wine and Liquors for the purpose of installing a banner sign on the parking lot which is a part of the shopping center.

The variance shall be subject to the following conditions:

- 1. The sign is to be installed per the exhibit submitted with the application.**
- 2. The banner is not to remain on the pole for more than one year, beginning today, October 23, 2007.**

The motion was seconded by Member Kraus. There was no further discussion and the motion passed by a vote of 3-0.

