

**TOWN OF ELKTON
BOARD OF ZONING APPEALS
MARCH 20, 2008
MINUTES**

Present: Sharon Foster, Chair; Ronald Rae; Robert Olewine; Cindy Fetterolf; Don Williams; Brenda Sexton, Esquire, Attorney; J. Craig Trostle, Jr., Zoning Administrator

Absent: Cheryl Gee

Steno: Carol Beresh

Ms. Foster called the meeting to order at 7:00 p.m.

ACTION: Motion was made by Mr. Williams to approve the minutes of the February 21, 2008 meeting. Motion was seconded by Mr. Olewine and unanimously approved.

Ms. Cindy Fetterolf requested to be recused from Cases 1336 & 1337.

Cases 1336 & 1337 were initially presented at the February 21, 2008 meeting and remained open until the March meeting in order for the Board to have time to review the variances requested at that time. Ms. Foster called for any additional testimony for either case.

CASE # 1337 – REQUEST OF UNION HOSPITAL OF CECIL COUNTY HEALTH SERVICES, INC., 106 BOW STREET, ELKTON, MARYLAND FOR A SPECIAL EXCEPTION TO PERMIT A 41,160 SQUARE FOOT, THREE-STORY MEDICAL OFFICE BUILDING IN THE C-1 ZONE. THIS ACTION CONCERNS PROPERTY LOCATED AT 127, 129, 131, 135, 137 & 141 WEST HIGH STREET, ELKTON, MARYLAND, TAX MAP 310, PARCELS 862, 863, 864, 904, 905 & 1371, ZONED C-1

Mr. David Gipson, Chief Operating Officer of Union Hospital stated that there would be no additional testimony presented regarding this case.

MOTION: Motion was made by Mr. Rae to approve the special exception to permit a 41,160 square foot, three-story medical office building in the C-1 zone. The motion was seconded by Mr. Olewine and unanimously approved.

CASE # 1336 – REQUEST OF UNION HOSPITAL OF CECIL COUNTY HEALTH SERVICES, INC., 106 BOW STREET, ELKTON, MARYLAND FOR THE FOLLOWING VARIANCES: 1) REQUEST A RELAXATION OF THE MINIMUM LOT SIZE BY 4.33 ACRES; 2) TO EXCEED THE MAXIMUM

FLOOR AREA RATIO BY .86; 3) REQUEST A RELAXATION OF MINIMUM DISTANCE BETWEEN ANY OTHER NON-RESIDENTIAL USE OF 18 FEET; 4) REQUEST A RELAXATION OF MINIMUM GRASS AREA (OPEN SPACE) FROM 40% to 34%; 5) REQUEST A RELAXATION OF MAXIMUM BUILDING HEIGHT OF 28 FEET; 6) REQUEST A RELAXATION OF MINIMUM PARKING SPACE REQUIREMENT BY 136 SPACES. THIS ACTION CONCERNS PROPERTY LOCATED AT 127, 129, 131, 135, 137 & 141 WEST HIGH STREET, ELKTON, MARYLAND, TAX MAP 310, PARCELS 862, 863, 864, 904, 905 & 1371, ZONED C-1

Mr. Gipson stated that there would be no new testimony presented for the first four variances.

Mr. Gipson noted that at the previous meeting there was discussion regarding the potential placement of a corner architectural feature on the building. He stated that the average building height would be 48' at the parapet and that the architectural feature that would define the entrance that faces High Street has been reduced from 68' to 58' and therefore they are making a 10' reduction of the original height variance. He stated that the main vehicular access for the building will be off Singerly Avenue and McQuilken Street with High Street being more of a pedestrian entrance. He added that there will be a pedestrian bridge between the proposed office building and the existing office building in order to provide interior access to all three buildings.

Ms. Foster asked if there would be any 'writing' on the building. Mr. Gipson stated that there would be writing but what it would be has not been determined at this time.

Mr. Gipson addressed variance # 6 regarding parking and presented an overview of the hospital property and where parking currently exists. He stated that the parking lot they are proposing to use for this new office building is currently being used by staff from the existing medical office building and that these employees would be redistributed between the garage and adult daycare lot. He pointed out that the owners of each of the suites in the proposed building would be allocated a specified number of spaces for use by doctors or staff depending upon the office size. The breakdown of parking will be approximately 40% of staff into the garage and the remaining 60% to the other hospital lots at adult daycare and the Railroad Avenue lot.

Mr. Gipson went on to explain their analysis of hospital parking which they monitor on a daily basis. He pointed out that the Town ordinance is designed to assure that parking is provided during peak times for the building and its particular use. He went on to point out that the parking for a 'medical campus' is different due to the nature of the use. He noted that the heaviest load of parking at the hospital is during the evening hours when patients are receiving visitors. He stated that approximately one quarter of the existing medical building houses surgeons who typically are open only three days per week or physicians who split their time between two different office locations and would not be at

this office part of the week. With regards to the adult daycare the building never uses the allocated parking due to the fact that the clients do not drive. The patients are picked up and dropped off by either the hospital or family members. These factors drive the parking load rather than the sum of the individual buildings.

Mr. Gipson recollected at the previous meeting that there was discussion regarding whether the hospital is handling all of the parking. He pointed out that some patients choose not to park at the hospital garage but on the street and some employees choose to park in the municipal lots rather than in hospital employee parking. He stated that this amount is not enough to skew the numbers provided in the parking rationale.

Ms. Foster inquired about the McQuilken lot and whether it will be patient parking only. Mr. Gipson pointed out that if this proposed building were stand alone building on a green site the zoning code requires 160 spaces. They believe that the 96 spaces they are proposing will handle the load required at peak times.

Ms. Foster inquired if there would be entrances at both ends of the parking lot. Mr. Gipson said that the lot will be reconfigured and the entrance will be off McQuilken Street and the entrance to the lot will be right across from the building. He said that they may close the Singerly Avenue entrance and that McQuilken Street would remain one way so that the preferred traffic flow would be either off of Railroad Avenue or High Street.

Mr. Williams asked how the 90 spaces at this building were factored into the parking rationale. Mr. Gipson stated that 40% would be relocated to the garage and the remaining 60% to the other hospital lots.

There was continuing discussion regarding the parking rationale and how this building's parking is factored in. Mr. Strauss stated that some of the concerns were addressed in the parking rationale and that he used the minimum spaces in each instance rather than the average.

Mr. Olewine asked what the analysis would be for this parking lot. Mr. Gipson stated that this lot is closest to the existing office building and hospital and therefore it fills first.

Ms. Foster asked if employees are able to park in the garage or if they are restricted. Mr. Gipson stated that approximately 70 employees from the medical office building park in the garage and the remainder use other hospital parking. He noted that they begin at approximately 2:30 p.m allowing employees working the 3 pm to 11 pm shift or the 7 pm to 7 am shifts to park in the garage. He also pointed out a small lot at the corner of Cathedral and Bridge Streets of approximately 25 spaces.

Ms. Foster entertained any additional questions from the Board. There were none.

Mr. Gipson ended by saying that he would accept any questions the Board may have and that they consider this an important project for the hospital as well as the community and they are cognizant of responsible growth and development and feel their history has shown such.

Ms. Foster entertained questions and comment from the audience.

Mr. Kenneth Lewis, President of Union Hospital, wished to remind the Board of the unique nature of the ebb and flow of patients, physicians and visitors in a healthcare setting. He stated that as a member of the Elkton Alliance he is aware of the concerns that exist concerning parking within the Town. He stated that they see this section of town as the 'health and education' section and feel that it would be counterproductive to what they have been trying to accomplish over the past few years if patients and visitors were dissatisfied with parking. He noted that this is a high stakes projects due to the fact that they are growing through relocation of physicians and recruitment of new physicians. He stated that they feel the hospital has been a good citizen of the community and intend to continue that in the future.

MOTION: Motion was made by Mr. Rae to approve the request to relax the minimum lot size by 4.33 acres. The motion was seconded by Mr. Olewine and unanimously approved.

MOTION: Motion was made by Mr. Rae to approve the request to exceed the maximum floor area ratio by .86. The motion was seconded by Mr. Olewine and unanimously approved.

MOTION: Motion was made by Mr. Olewine to approve the request for relaxation of minimum distance between any other non-residential use of 18 feet. The motion was seconded by Mr. Rae and unanimously approved.

MOTION: Motion was made by Mr. Olewine to approve the request for relaxation of minimum grass area (open space) from 40% to 34%. The motion was seconded by Mr. Rae and unanimously approved.

MOTION: Motion was made by Mr. Olewine to approve the request for a relaxation of maximum building height of 18 feet. The motion was seconded by Mr. Rae and unanimously approved.

MOTION: Motion was made by Mr. Rae to approve the request for relaxation of the minimum parking space requirement by 136 spaces. The motion was seconded by Mr. Olewine with the remaining members voting as follows: Mr. Williams – Nay; Ms. Foster – Nay. The motion failed due to a split decision.

CASE # 1339 – REQUEST OF DAVID L. PERRY, 108 MIDLAND DRIVE, ELKTON, MARYLAND FOR A 7 FOOT SIDE YARD SETBACK VARIANCE. OWNER PROPOSES TO PLACE A GARAGE. THIS ACTION CONCERNS PROPERTY LOCATED AT 108 MIDLAND DRIVE, ELKTON, MARYLAND, TAX MAP 312, PARCEL 2321, ZONED R-2

Mr. David Perry was sworn in and introduced to the Board. He stated that although he had a variance approved for this project previously he had sustained an injury to his hand which required surgery and this kept him from being able to begin the work. He stated that he is enlarging the garage but it would still be the same distance from the side property line.

Ms. Foster asked about the existing concrete pad on the property. Mr. Perry stated that it would be removed and that a new driveway would be placed between the existing driveway and the new garage.

Ms. Foster asked if the entire garage would be three feet from the property line. Mr. Perry confirmed that it would. He stated that he is placing a one-car garage. He stated that the fence, which is 6” from the property line, belongs to him and he wants to keep the fence. He said that he has enough room to maintain the property which would exist between it and the garage.

Mr. Williams asked if this property is within the impervious surface allowance required for this zone. Mr. Trostle stated that it is within the allowance.

There was discussion regarding whether the neighbor was in favor of or opposed to the variance. Mr. Perry stated that he had spoken to his neighbor when he was before the Board originally and the neighbor stated that he could do whatever he wanted with his property. He added that they have been neighbors for 22 years. Further discussion determined that since the property had been posted and the notice was in the paper for two weeks that sufficient notice had been given for anyone to make an objection. Once the Board makes a decision regarding the case any subsequent sale of the neighboring property would have no bearing on the approve placement of the garage.

Ms. Foster entertained further questions from the Board and the audience. There were none.

MOTION: Motion was made by Mr. Olewine to approve the seven (7) foot side setback variance for placement of a garage at 108 Midland Drive. The motion was seconded by Mr. Williams and unanimously approved.

CASE # 1340 – REQUEST OF XIUHUI JU, 218 EAST PULASKI HIGHWAY, ELKTON, MARYLAND FOR AN APPEAL OF THE TOWN ZONING ADMINISTRATOR’S DECISION REGARDING WHETHER OR NOT PRIMARY SERVICES PROVIDED AT WESTERN ACUPRESSURE WOULD BE INTERPRETED AS MASSAGE. THIS ACTION CONCERNS PROPERTY LOCATED AT 218 EAST PULASKI HIGHWAY, ELKTON, MARYLAND, TAX MAP 315, PARCEL 2375, ZONED C-2

Mr. Craig Trostle was sworn in and presented information with regard to his decision concerning this business use. He stated that his office was contacted regarding a new

massage parlor opening at 218 East Pulaski Highway. The Town's Code Enforcement Officer, Mr. Charles Hicks, investigated the inquiry and determined that an establishment existed at that location offering acupuncture as its principal use. Mr. Hicks advised the tenants that this was considered by our zoning ordinance to be massage and therefore was not permitted in that zoning district. The manager decided to appeal Mr. Trostle's decision and met with him to explain what acupuncture consisted of and provided him with a written description as well. The letter basically stated that it consists of applying finger pressure to specific acupoints along the body. Mr. Trostle stated that the definition of massage is 'any manipulation of tissue, as by rubbing, kneading or tapping with hand or instrument for therapeutic purposes'. He stated that massage is allowed only in the C-3 zone by special exception within Town limits.

Ms. Foster asked when this inquiry and investigation took place. Mr. Trostle stated that it was in February of this year.

Mr. Olewine asked what prompted the initial inquiry regarding this business. Mr. Trostle stated that he received a call from the Elkton Police Department.

Ms. Xiuhui Ju and Ms. Shaofant were sworn in and introduced to the Board.

Ms. Ju stated that when she was contacted by the Building Department she was not sure why the Town wanted her to relocate. She stated that they provide acupuncture rather than massage therapy. Ms. Foster stated that the definition of acupuncture is applying pressure to certain points of the body and when pressure is released then massaging of the area is applied.

There was discussion regarding a sign found in the window of the business which stated that the business had moved. It was determined that the sign was placed in order to refer a client to another location for his appointment. Ms. Shaofant stated that another person worked for them until yesterday. She has gone to work permanently for the business at 1181 E. Pulaski Highway and it was she who placed the sign in the window that said they had moved. She stated that she has been the only person working at 218 since the other person left. Ms. Shaofant stated that Ms. Ju has been very sick and lives in New York and has not been in the area very much.

Ms. Foster asked for an explanation of acupuncture and how it is applied. She stated that they work on shoulder, face, neck, legs and back. Ms. Foster asked if they move tissue in any way when they apply the acupuncture. Ms. Ju stated that they do not move tissue.

Ms. Foster asked if they use any other type of body work techniques. Ms. Ju stated that they do perform other types of body work along with acupuncture. Ms. Foster asked if she could name any of the types of body work which they use. Ms. Ju was unable to understand the question. Ms. Foster asked if they use "Tuina". Ms. Ju was unable to answer the question. Ms. Foster asked if they do massaging and rubbing. Ms. Ju stated

that they do not do massaging only rubbing. Ms. Foster asked if these two things were not the same thing. Ms. Ju gave no response.

Mr. Olewine asked about the website information regarding 'table showers' with body shampoo included and how this technique could be done without massaging or touching someone. Ms. Ju made a statement that was unable to be understood. Ms. Sexton asked if she could repeat her answer. Ms. Ju did not respond. Ms. Foster asked if Mr. Olewine should ask the question again. Ms. Ju stated that she closed the shop at 218 East Pulaski Highway as of today because she has little if any business. She was asked if she was moving the business to 1181 Pulaski Highway. She stated that she is not moving but she is closing her business. Ms. Foster asked the effective date of the business closing. Ms. Ju stated that she would be moving the last of her belongings out of the building in the next few days. She said the business is losing too much money and she needs to concentrate on her family. She has a two year old at home that she feels she needs to provide with more attention.

Mr. Williams asked if someone from the Town had called to ask if the business was closing. Ms. Ju stated that she received a call about coming to the meeting and because she was unfamiliar with the requirements she thought she might be in trouble if she didn't come. She said she wanted the Town to give her a 'closed' paper for her business. Dr. Moradi told her that he cannot let her out of her lease.

Mr. Olewine asked if the Town were to contact Dr. Moradi would he tell us that your business was closed. She stated that Dr. Moradi is currently out of the country but she would need to leave the information from the Board with his office staff. Ms. Foster asked if she signed a lease with Dr. Moradi. Mr. Ju stated that she did sign a lease and it is for three years.

Ms. Foster stated that currently there is a sign at 218 East Pulaski Highway that the business is closed. Mr. Williams asked if Ms. Ju was moving to 1181 East Pulaski Highway and she stated that she is not moving there. She went on to explain that she lives in New York and it is very difficult to deal with the business from such a distance.

Mr. Williams asked if she lived at 131 East Main Street. Mr. Ju stated that she knows people who live at that address.

Mr. Williams asked whether her business was incorporated or if she had ever signed an article of incorporation. He asked if anyone from New York had filled out an article of incorporation for her. She stated that she had not nor had anyone else filled out an article of incorporation. He asked if she knew anyone at a tax firm in Flushing, NY. She stated that she was not familiar with Flushing, NY. Mr. Williams stated that there is an article of incorporation on file in New York State for Western Acupressure, Inc. at 218 East Pulaski Highway. He stated that her signature is on the form. Mr. Williams went on to point out that in the articles of incorporation, which are on file in Maryland, state that the

purpose of the business was to perform body work. He went on to say that body work encompasses more than acupressure.

Specific questions were presented to the applicants and they were unable to respond with an appropriate answer. Ms. Foster asked if they would be performing any more work at 218 East Pulaski Highway. Ms. Ju stated that they would not.

Mr. Williams presented information from the State Chiropractic Board addressing definitions for massage which states that if body work is being done that it is considered massage in the State of Maryland. He noted that in order to do massage in the State they must be registered massage therapists. Ms. Ju did not understand the information provided by Mr. Williams and was unable to respond.

Ms. Foster entertained additional questions from the Board or comment from the audience. There were none.

MOTION: Motion was made by Mr. Olewine to uphold the Zoning Administrator's decision that primary services provided at Western Acupressure would be interpreted as massage. The motion was seconded by Mr. Williams and unanimously approved.

OLD BUSINESS: Mr. Williams requested follow up at 703 Graymount Circle regarding the deck stairs which were denied by the Board of Zoning Appeals. Mr. Trostle stated that a letter had been sent to the owner that the stairs needed to be removed or moved out of the setback or a criminal summons would be filed.

Mr. Trostle asked the Board for clarification/interpretation of their decision concerning the variance for wall signage at Delancy Plaza. The Board informed Mr. Trostle that their intention was for each business to have one wall sign only. They noted that at the meeting it was discussed that any additional wall signage would require a variance regardless of the number of suites the business would incorporate.

NEW BUSINESS: Mr. Trostle was asked the status of the Meeting Ground case. He stated that a representative of Meeting Ground contacted him to get the dates for the Planning Commission and Board of Zoning Appeals meetings but we have not received a special exception application as of the date of this meeting.

There being no further business to discuss Ms. Foster adjourned the meeting at 8:45 p.m.

Respectfully submitted,

Brenda Humphreys