

September 4, 2018

Board of Zoning Appeals  
City of Bridgeport County  
of Harrison  
State of West Virginia

The Bridgeport Board of Zoning Appeals conducted a public hearing Tuesday, September 4, 2018, at 6:00 p.m. in Bridgeport City Hall, 515 West Main Street, with the following members attending: Chairman Meredith McCarthy, Vice Chairman Richard Forren, Members Ryan Haws, Sam Spatafore, and Rod Smallridge.

Also attending were Mark and Septembre Wilt, 983 Wiseman Run, Salem WV, Sherri Lowther, 15 Twilight Lane, Morgantown WV, Marty Knouse, 15 Twilight Lane, Morgantown WV, and Tyler Suzanne Grogg, Secretary to the Board.

At 6:01 p.m. Chairman McCarthy called the meeting to order and everyone wishing to speak was sworn in.

**1. PUBLIC HEARING: Consider the request of Mark and Septembre Wilt, 139 Conference Center Way, Suite 121, for a zoning variance to modify the City of Bridgeport's limited video lottery ordinance [1315.05 B-2 business district (a) principal permitted uses section {16}] for the specific requirement of 1,000 feet from a "public building".**

- Sam Spatafore recused himself from the discussion due to Mark Wilt being a tenant of one of his rental locations.
- Mark Wilt stated he first saw the location for rent in May 2018 and went to the City to ask if they or Charles Pointe would have any issues with a video lottery business. He was told there was not an ordinance at this time through the City, but he would need to go to Charles Pointe and make sure they do not have an ordinance of their own.

After he met with the City, he spoke with Sherri Lowther, owner of Sherri's Closet, because she was the current tenant of the location in question. Sherri talked with the owner of her building, Metro Properties, to make sure they didn't have any issues with the business. Metro Properties came back with a signage issue. He would not be permitted to have a sign that says Hot Spot, and the wording of the sign could only be acceptable to Metro Properties. Metro Properties also stated they would speak with Charles Pointe to make sure they didn't have any issues, and according to Metro Properties, Charles Pointe didn't have any issues.

Mark stated when he came in to get the building permits, he talked to the same person from his earlier visit. The gentleman said there wasn't a problem and gave him some suggestions with licensing.

The day they were supposed to meet with Sherri Lowther to sign the lease, he called to make an appointment with the building inspector, Mike Osborn, to go over the floorplans. Mr. Osborn informed him of the issue with the new building, that the ordinance would not allow the business to be permitted. When he asked what ordinance he was referring to, his reply was that I should speak with Andrea Kerr, Director of Community and Economic Development.

Mark met with Andrea and she gave him a copy of the ordinance and told him what the

issues were. Andrea checked with the City Attorney and he said Mark would need to go before the Board of Zoning Appeals.

Mark also explained the background on the lottery and the concerns most people have with the business. He explained what revenues the lottery brings in, all the funding the lottery provides for education, state parks, nursing homes, etc. He said the City of Bridgeport itself gets \$4,000 a month from the video lottery that has been grandfathered in.

Mark stated when the City made this ordinance, it appeared to directly target Johnson Avenue, Route 50, Lodgeville Road, and Route 279 to stop any future business. He would like to know if the City really meant to have this ordinance carried to the new growing areas after the ordinance was passed.

Mark said he was misinformed and already has a lot of expenses invested including floorplans, contractors, and \$30,000 in equipment. He asked since the CVB Building is brand new and not completely full, he would like to be grandfathered in due to the fact if he had established two years prior then this building wouldn't be an issue. Mark also asked why was the ordinance designed, what was it meant for, did the City mean to apply it to the new growth throughout the City, and would there be any way to consider allowing this business to get the opportunity to produce the B&O tax that would come from food and alcohol sales, and the 1% revenue that would come from the gross sales of the machines.

- Rod Smallridge asked if the equipment purchased can be used in another location or returned.
- Mark Wilt stated it cannot be returned, and there are restrictions on how much equipment can be in one location. All the equipment he has in all his other locations is new.
- Meredith McCarthy stated the board was provided with a copy of the Use and Occupancy Unit and Common Elements for Charles Pointe. Charles Pointe itself has a restriction on the video lottery in the lease. She asked Mark if Charles Pointe provided him with a copy.
- Mark Wilt stated the process went from Metro Properties with Mike Audia, who contacted Charles Pointe and Mike stated they did not have any issues. Mark assumed the process would start with who owned the business he would be leasing from and that would be Metro Properties. He did not know that Charles Pointe had an ordinance.
- Mark Wilt asked if there was a way to table this discussion until he can do further research.
- Meredith McCarthy stated yes, and there are a couple of codes she would like to bring to Mark's attention. The first is 1307.05(h) Use Variance - "The board shall not grant a variance to allow an establishment of a use in a zone district when such use is prohibited by the provisions of the code." The second is 1307.05(j) Decisions - "The board shall be permitted to decide in any manor it seems fit, however it shall not have the authority to alter or change the code of zoning map or allow for a use that will be inconsistent the requirements set forth within the code." The board is limited by those two codes because shall is such a strong word. In your investigation work we are prohibited to give advice but you might want to talk to the City. The statute is old, there is a planning commission, there are people within the City you may want to talk to, and again this is not legal advice.
- Rod Smallridge stated even if they wanted to, this board does not have the authority to change the ordinance.
- Meredith McCarthy stated they can still table the request until Mark was able to do his investigation work. She also mentioned there has never been a request like this come before the board.
- Member Rod Smallridge made a motion to table the request for a zoning variance to modify the City of Bridgeport's limited video lottery ordinance [1315.05 B-2 Business District (a) principal permitted uses section {16}] for the specific requirement of 1,000 feet from a

“public building” for sixty (60) days. The motion was seconded by Vice Chairman Richard Forren and unanimously approved.

- Ryan Haws stated that this is a permitted use. It’s stipulated within 1,000 feet of certain structures, public education under the B-2 district. A video lottery business is allowed under that district, but the problem is the ordinance states within 1000 feet of a structure. As a Zoning Board, one of the things is the request must be an extenuating circumstance.
- Mark Wilt said it has been a long time since the ordinance was passed and many things changed since then.

## 2. Approval of Minutes

The minutes of the June 5, 2018 Board of Zoning Appeals meeting were unanimously approved as amended on a motion by Vice Chairman Richard Forren, seconded by Member Rod Smallridge.

- The amendment included a change in the minutes, bullet #5 should read “Ryan Haws asked if this would be a covered porch and Nancy Hawkins said **yes.**”
- The amendment included a change in the order, second paragraph should read “The purpose of this hearing was to consider the request of James and Nancy Hawkins, 518 Lawman Avenue, for a variance to construct a **covered front porch.**”
- The amendment included a change in the order, fourth paragraph should read “After consideration of the sworn testimony, a motion was made by Member Sam Spatafore to approve an 8.8-foot variance which would keep the porch 2 feet off the property line, with the unique circumstance that the property is subdivided **behind the house**, and the house was built within the 25-foot setback.”

The meeting was adjourned at 6:32 p.m. on a motion by Vice Chairman Richard Forren, seconded by Member Rod Smallridge, and was unanimously approved.

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Meredith McCarthy, Chairman

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Date