

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

January 16, 2013

City Council Chambers

MEMBERS PRESENT: Leanne Cardoso, Bernie Bossio, Tom Shamberger, George Papandreas, and Jim Shaffer

MEMBERS ABSENT: None

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Bossio called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

II. 2013 LEADERSHIP ELECTION:

A. President: Shaffer nominated Bossio to serve as President for the 2013 calendar year; seconded by Papandreas. Motion carried unanimously.

B. Vice President: Papandreas nominated Cardoso to serve as Vice President for the 2013 calendar year; seconded by Shaffer. Motion carried unanimous.

III. MATTERS OF BUSINESS:

Minutes for the December 19, 2012 Hearing. Shamberger moved to approve as presented; seconded by Papandreas. Motion carried 5-0.

IV. OLD BUSINESS:

A. V11-48 / Jim Prete / 3040 University Avenue: Request by Rudy Hoffert of City Neon, on behalf of Jim Prete, for variance relief from Article 1369 as it relates to signage at 3040 University Avenue; Tax Map 6, Parcel 13; B-2, Service Business District. REQUEST FOR EXTENSION OF APPROVAL

Fletcher read the Staff Report stating that the petitioner seeks to extend this variance request for an additional 6 (six) months in order to develop two multi-tenant post and panel signs at 3040 University Avenue, one at each of the primary driveway entrances from University Avenue.

Article 1381.05, "Expiration" states:

"In the case where a variance has not been used within twelve (12) months after the granting thereof, then without further action it shall be null and void. This may be extended to eighteen (18) months upon prior written request of the Board. The word

'used' shall mean that the approved variance has been activated as evidenced by permits, construction, or required licenses."

The following exhibits are attached hereto to confirm the petitioner's written request and aid the Board's recollection of the subject variance petition:

- Email dated January 2, 2013 from Mr. Prete. Please note that the petitioner contacted Staff on December 20, 2012 requesting assistance in extending the Board's approval.
- The Board's approval notification letter dated December 22, 2011.
- The Staff Report presented to the Board during its December 21, 2011 hearing.

Please note that the facts and merits of the petitioner's variance relief are not matters for deliberation or reconsideration by the Board at this point. The matter before the Board is simply whether or not to extend the vested right granted by the Board on December 21, 2011 to develop the subject grounds signs as previously reviewed and approved.

The expiration of the variance approval, should the Board extend same as provided in Article 1381.05, would become June 21, 2013.

Fletcher explained that the petitioner left a message on December 31, 2012, stating that he had been out of town and apologized for not submitting the written request after his initial phone call on December 20, 2012. Staff responded and offered to represent the petitioner in the event of his absence, in which the petitioner accepted the offer with a written request dated January 2, 2013.

There being no comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked the Board for a motion.

Shamberger moved to extend variance petition V11-48 until June 21, 2013 as requested; seconded by Papandreas. Motion carried unanimously.

V. NEW BUSINESS:

- A. CU12-19 / Benach / 1554 Saxman Avenue:** Request by Joseph R. Benach, Psy. D. for conditional use approval of a "Class 2 Home Occupation" at 1554 Saxman Avenue; Tax Map 32, Parcel 8; R-1A, Single-Family Residential.
WITHDRAWN BY PETITIONER

Fletcher advised the Board that the petitioner had requested the Board to withdraw this agenda item and that no further action was required by the Board.

- B. V13-01 / MVB Bank / 10 Sterling Drive:** Request by Robert E. Deriggi of J.D. Signs, Inc., on behalf of MVB Bank, for variance relief from Article 1369.07 as it relates to signage at 10 Sterling Drive; Tax Map 31, Parcel 107; B-5, Business Shopping Center District.

Fletcher read the Staff Report stating that the petitioner seeks to erect a post-and-panel sign for the MVB bank branch development currently under construction in Sabraton along Earl Core Road. Addendum A of this report illustrates the location of the subject site.

The following table identifies the area and height standards for post-and-panel signs provided in Article 1369.07(F) along with the proposed dimensions and associated variances requested by the petitioner.

Standard	Proposed Dimension	Requisite Variance
Max. Height – 6.0 ft.	23.83 ft.	17.83 ft.
Max. Area – 32 sq. ft.	96 sq. ft.	64 sq. ft.

The area calculation includes the following three sign faces:

- “MVB” logo panel – 64 sq. ft.
- Electronic / scrolling message panel – 24 sq. ft.
- “Drive-Thru & ATM” panel – 8 sq. ft.

Please note that electronic / scrolling message signs are permitted within the B-5 District.

Bossio recognized the petitioner’s representative, Bob DeRiggi of J.D. Signs, who stated the property is situated between the entrance of Sterling Commons and the USDA building and has a large traffic count of approximately 13,000 vehicles per day and 4.7 million annually. DeRiggi noted that the actual “MVB” letters would occupy 12 square feet of the 64 square foot panel, with the remaining area being the logo portion of the sign. The structure seems to be equivalent with other comparisons in the region. In addition to the City’s compliance, there is also a State compliance that has to be adhered to which includes staying off the right-a-way, and maintaining a certain square footage. An LED message center has been discussed in which the State would require all communication to be stagnant for 8 seconds.

Bossio inquired about the State having a minimum square footage regulation. DeRiggi explained that if a sign is displayed on a state road and is 50 foot or less from a building, there are no restrictions on the height or square footage. However, if the sign is 50 foot or greater, it would be considered on premise and only 150 square feet are permitted. LED message centers have guidelines with the transitions between screens.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher specified that one of the stated purposes within the Planning and Zoning Code for sign regulations is to:

“...encourage the effective use of signs as a means of communication in the City, to maintain and enhance the pleasing look of the City, which attracts to the City continued economic investment; to preserve Morgantown as a community that is attractive to business, to residents and to visitors...” [Article 1369.01(A)]

Size restrictions are one of several means to accomplish this policy objective. The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant. Addendum B of this report provides Staff recommended revisions to the petitioner’s findings of fact (deleted matter struck through; new matter underlined). The Board has granted a number of similar ground sign height and area variances along the Sabraton commercial corridor.

Shamberger asked if the proposed sign is one of the larger pole signs to be developed within the area. Fletcher referred to the petitioner’s exhibits which includes pictures of signs within the area and their dimensions. An example discussed was the Sterling Commons multi-tenant sign that was constructed with an approximate height of 23 feet.

Bossio asked Shamberger if he is referring to signs in the area that have been approved by the Board of Zoning Appeals. Shamberger stated that he is asking for approved signs only and not any general sign that is located within the area.

Papandreas made a motion to find in the affirmative for all the Findings of Facts as revised by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The subject property is located along one of the five major Morgantown access arteries. According to the petitioner’s submitted exhibits, the site has an exposure to over 13,000 daily vehicles. Many banks and other businesses in the area appear to have a similar type signage in comparison to the petitioner’s requested sign. The site also sits in the shadow of a larger multi-tenant sign serving the adjacent development on its west side along with a commercial multi-story building on its east side.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

There appears to be a number of ground signs within the Earl Core Road commercial corridor that enjoy ground signs that exceed maximum area and maximum height standards. Additionally, the BZA has granted similar relief within the immediate area since the sign standards were revised in the 2006 major zoning ordinance amendment.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The natural design of a typical post and panel sign with adequate grade line clearance above the normal traffic line of site allows for uninterrupted visibility between the columns for vehicles existing onto Earl Core Road from Sterling Drive. Placement outside the existing State right-of-way, also being compliant with State regulations, the proposed sign will be located within a newly landscaped green space, therefore should not interfere with the normal pedestrian patterns.

Finding of Fact No.4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The improved land use of the site along with the requested signage, should not contribute to additional traffic congestion any more than the present businesses located along the same. With the land use being similar/same to the other business within the commercial corridor, along with the requested signage type and design being characteristic of the B-5 Zoning District, additional congestion or decreasing the market value of nearby neighboring properties or uses is not anticipated.

Papandreas moved to approve variance petition V13-01 as requested with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

Bossio reminded Mr. DeRiggi that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- C. CU13-01 / Scott Properties / Jones Place:** Request by Greg Metheny of Scott Properties for conditional use approval of a "Multi-Family Dwelling" use in the R-2 District along Old Golden Blue Lane and Jones Avenue; Tax Map 20, former Parcels 258, 259, 260, 261, 262, 263, and 266; R-2, Single- and Two-Family Residential District.

Fletcher read the Staff Report stating that in June 2010, the petitioner withdrew his Planned Unit Development (PUD) petition for the subject realty after the Planning Commission forwarded a recommendation to City Council to deny the related PUD Outline Plan. The petitioner has since proceeded in razing the functionally obsolete structures on the property and initiated phased development of townhouse dwellings, which are permitted by-right within the R-2 District. Addendum A of this report illustrates the location of the subject site.

The petitioner has, through separate phases, constructed 22 four-bedroom townhouse units along the upper portion of the property. The petitioner wishes to diversify dwelling unit types along the lower portion of the property to meet varying interests in rental housing products and strengthen the market viability of the overall site.

Staff understands that the petitioner's development intention, under Phase III, was to construct three-bedroom townhouse units on three habitable levels along the lower portion of the property. However, the site experienced several landslide events last year resulting in a great deal of earth being removed from the site to protect Jones Avenue from closure. The removal of the earth increased the elevation change between Old Golden Blue Lane and Jones Avenue. This increased elevation change necessitated the Phase III development program to include an additional story of foundation walls to support the internal private road named Old Golden Blue Lane. In other words, the number of habitable levels increased from three levels to four levels.

Rather than changing the 10 townhouses from three-bedroom units to four-bedroom units and reversing the petitioner's objective to diversify housing products, the petitioner decided to study the feasibility of maintaining the three-bedroom townhouses on the upper three habitable levels

and utilize the lowest habitable level resulting from the elevation change as one- and two-bedroom dwelling units separated from the townhouse units above.

Article 1329.02 of the Planning and Zoning Code provides the following definition for “Townhouse Dwelling”:

“Townhouse Dwelling – Also known as a ‘Rowhouse.’ A one-family dwelling unit, with private entrance, which is part of a structure whose dwelling units are attached horizontally in a linear arrangement, and having a totally exposed front and rear wall to be used for access, light, and ventilation.”

Because the petitioner seeks to isolate dwelling units one over another vertically, the dwelling unit type changes from townhouse units to multi-family units, which are permitted with conditional use approval in the R-2 District.

The following table provides a dwelling unit and bedroom count comparison between the PUD Outline Plan that was withdrawn, the townhouse dwellings that have been constructed, and the two Phase III scenarios...by-right verse conditional use.

Development Scenarios	No. of Units	No. of Bedrooms
Withdrawn PUD Outline Plan	157	257
Scenario 1: By-right		
By-right Phases I and II	22	88
By-right Phase III	10	40
SCENARIO 1 TOTALS	32	128
Scenario 2: By-right and Conditional Use		
By-right Phases I and II	22	88
Conditional Use Phase III	14	36
SCENARIO 2 TOTALS	36	124

As the table above illustrates, Development Scenario 2, which the petitioner seeks conditional use approval, results in four (4) additional dwelling units but four (4) less bedrooms. In other words, the petitioner is seeking conditional use approval to develop fewer bedrooms than what he can develop by-right.

Bossio recognized the petitioner Gregg Metheny of Scott Properties, who stated that a PUD outline plan was presented previously before the Planning Commission in June 2010. During the PUD process for this structure, two options were decided upon after meeting with the Wiles Hill neighborhood. The first development option was the PUD Outline, and the other option was a by-right townhome. The homeowners of Wiles Hills were against the PUD and Mr. Metheny feels that is the reason the Planning Commission denied the PUD Outline request with a 4-3 vote at that time. The property has since been developed according to the townhome concept.

The Wiles Hill neighborhood had expressed concern with the possibility of increased traffic and congestion along the streets when the proposed structure had been discussed previously at the June 2010 Hearing. The townhome concept proposed the creation of a cut through street off

Lorentz Avenue to be used as the main artery for traveling. Mr. Metheny spoke with the City engineers and explained that the homeowners did not want Lorentz Street further developed as it would increase the traffic within their neighborhood. At that time a new design was established that included the creation of a private road that is now called "Old Golden Blue". Metheny had previously obtained approval from the Planning Department for the private road to be utilized for frontage or additional townhome units.

At the current time, Phase I and II are completed and occupied with 22 units. The units are cosmetically appealing and can be seen throughout the town. Upon completing Phase I and II, Metheny decided that he did not want an entire stock in four bedroom townhomes and wanted to diversify the product. Therefore, with Phase III, Metheny made the decision to proceed with three bedroom townhomes. Based on the original design with the frontage on Old Golden Blue, it was determined through geotechnical reports that rock was embedded within the foundation on the hillside and resulted in a step foundation plan. A visual aid was distributed to the Board Members that illustrated the step foundation plans.

The permit that was provided to the City of Morgantown, included the basement as a storage room, with no utilization, and was later approved. During excavation, it was discovered that no rock or any additional barriers existed and full excavation could occur. At that point, Mr. Metheny felt it made more sense to fully excavate the site to ensure a secure foundation for Old Golden Blue Lane. Metheny manipulated between two options at that point, which included developing the existing townhomes into four bedroom units, or seek a conditional use approval for apartment use. Metheny did not want another four bedroom unit and explained that with the development of apartments, the overall bedroom count would be reduced and his product would be more diversified. Additional illustrations were distributed to the Board, which revealed the new designs and proposed plans for the apartments. Within the visual aid, an enclosed picture was taken from the Mountainlair to demonstrate the close proximity of the downtown campus. Metheny explained that the usage of this structure is geared towards students based on the location of where the building is located. Because he wanted to keep the appearance of a townhome, windows and doors were already being installed into the units based on the original print set. Metheny explained that the foundation was originally going to be stepped at a high level but once fully excavated, the site and footing were brought down into the rock base.

Metheny explained that with this conditional use request, the building will not change the exterior and the bedroom count will be reduced. In addition, the structure will now become a multi-family unit and additional safety measures are required, such as installing a sprinkler and a fire alarm system, which will ensure the safer environment for the future occupants. Metheny provided the Board with a handout that illustrates the entire phase.

Metheny stated that the parking requirements have been met, and referred to the illustrations. He acknowledged the concerns of the neighborhood and stated that he has no intention to put up additional multi-unit buildings in the future. Metheny stated that with this multi-unit conditional use approval, the occupancy will be reduced and thus will diversify the product and asked the board for their serious consideration.

Bossio asked for the difference in numbers of bedrooms that were originally intended. Metheny stated the total bedroom count that he could submit by-right is 68, and he has submitted a proposal for 61 bedrooms. Metheny then explained that if the Board were to decline his

conditional use request for the apartment use, then he could by-right install an additional set of steps in the unit to create four-bedroom townhomes which would result in a total of 17, four-bedroom townhomes with 68 bedrooms.

Bossio asked for the configuration of the lower level units. Metheny stated that a total of 10 bedrooms would exist in the lower level units. He asked the Board to keep in mind that the original submission included 51 bedrooms within 17 units. Upon excavation, the opportunity arose to add bedrooms in the lower elevation, which lead to the potential of having 17 more bedrooms for a total of 68. Metheny reiterated that he is only asking for 10 additional bedrooms instead of the 17 that would ensue with a 4 bedroom townhouse and that no design plans would change.

Bossio asked Metheny if he is stating the right to build 68 bedrooms at the present time. Metheny confirmed the statement.

Bossio asked the number of bedrooms that have been approved to date, and Metheny stated that by-right, a total of 40 bedrooms have been approved, however the next submission would include the additional 28 bedrooms. Bossio stated that the additional 28 bedrooms would not be by-right, and would require a conditional use approval. Metheny disagreed and stated that the additional two buildings would have the same design within the structures, and a four story townhome would add an additional 28 bedrooms.

Papandreas asked Metheny if the additional lower level bedrooms in the current proposed site will be available in all four units upon completion of the phases. Metheny stated that no decisions have been made at the present time and assessments will be based upon geotechnical tests and excavation.

Papandreas asked if apartments already exist within the lower level of the units since the drawings submitted to the Board include windows and doors in that area. Metheny stated that no apartments exist presently and explained that Mills Group designed the structures with windows and doors because they were referring to a product already delivered. Papandreas asked if the appearance will change if the request is denied or would the windows and doors remain for the "storage" areas. Metheny explained that there will never be storage at this point in time because he has the right to finish the structure and add a 4th bedroom. Papandreas asked Metheny if he is correct in saying that the units will either be single bedroom apartments or a fourth bedroom will be added below the 3 bedroom unit. Metheny confirmed that was Papandreas was correct.

Cardoso asked Metheny if his intentions were to close off the lower level bedrooms and provide a separate entrance from the existing townhome above. Metheny confirmed and stated that the City would benefit from a more diversified product with the one bedroom apartments. Metheny reiterated that the number of bedrooms are being reduced which results in less density for the area.

Bossio asked for the square footage of the lower level apartments. Metheny explained that each unit would be approximately 450 square feet. Metheny stated that more than one pod is being used to create the units and referred to the illustrations provided. Bossio asked for the total number of bedrooms upon completion. Metheny specified that there would be 4 one-

bedrooms and 2 two-bedrooms which is a total of 10 bedrooms. The upstairs townhomes would remain the same with no changes.

Bossio clarified to the Board and the public that Metheny could use the 450 square feet area to develop another bedroom in the townhouse if the conditional use petition request is denied. Metheny said he prefers to develop one bed room apartments and needs to utilize the additional space for income production. Bossio expressed that he does not like evaluating all of the phases and giving blanket coverage as each structure will be different in terms of excavating.

Shamberger asked if the conditional use request involved only Phase III. Metheny stated that the request was for the full .91 acres and that the Planning Department had illustrated just for Phase III in the staff report. Shamberger expressed concerns with not knowing what Phase IV entails. Metheny asked Fletcher to provide the Board with more clarity on the subject. Fletcher stated that the conditional use request is only specific to Phase III per the application that was submitted by Metheny. Metheny stated that he had illustrated the Parcel numbers of all .91 acres in the application, and the request pertains to all the Phases.

Bossio asked Metheny if he would continue to excavate the whole foot print for Phase IV if the request was denied. Metheny stated he would proceed with excavation even if the request was denied but would not step it since there is not a reason or means to step it. Metheny said he had intended to submit the plans for Phase IV that morning and Bossio reminded Metheny that Phase IV would have to be advertised and approved first. Metheny disagreed stating that it is a by-right usage and then Bossio clarified that he was referring to the petition he is currently submitting.

Fletcher told the Board that Metheny had submitted a request for both Phase III and IV and that Staff made an error in representing the petitioner's request by focusing only on the existing structure, Phase III. Fletcher explained to the Board that Phase III included 10 townhomes and the petitioner is seeking to do 14 units. Phase IV would include 7 townhomes and 4 apartments.

Metheny noted that he understands the neighborhoods concerns with granting conditional use multi-family with the permission to build any type of structure in the next phase, but asserted that he has no intentions of doing that. Metheny referred to the staff report that states,

“Staff recommends that the Board extend its approval of CU13-01 to include Phase IV so that the petitioner may proceed accordingly if he so desires; provided the three-bedroom unit over one- or two-bedroom unit townhouse appearing-design submitted under CU13-01 and reviewed by the Board herein is utilized AND Phase IV includes no more than eleven (11) total dwelling units.”

Metheny intended to submit plans for Phase IV earlier, but delayed the submission and decided to wait until the Board makes their decision on his conditional use request.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized Ed Haden of 2020 Hornview Street who stated that he had worked closely with Mr. Metheny and is familiar with the type of construction. Haden noted that if the request is denied then the fire sprinkler system would not be required and feels that a fire sprinkler system

is important in the community and the student population and hopes that the board would grant the variance allowance.

Bossio recognized Jenny Simons of 127 Willowdale Road who stated that there is an R-2 buffer zone between the business and the University in Wiles Hill. Simmons asked the Board to preserve the integrity of the R-2 zoning area and stated that a townhouse with a student population would not be considered a single family dwelling. Simmons feels that the transient population would not make the same investment in the community as the people who lease a townhouse. Simmons stated that the integrity of the townhouse would be destroyed with students moving in and out so frequently, and doesn't feel that any student would want to live in the basement. In addition, there will be issues of noise and limited parking, as residents are currently utilizing off street parking on Lorentz Avenue.

Bossio recognized Richard Dumas of 444 Overhill Street who stated that he had submitted his comments via email to the Planning Department prior to the meeting and would read his comments aloud to the Board. Dumas stated that he is opposed to the conditional use request by Mr. Metheny and feels that the ongoing development within the area is an encroachment on a viable residential neighborhood of Wiles Hill and Highland Park. Dumas stated that the R-2 zoning areas were established and are designed to serve as a buffer between the R-1A and the R-3 neighborhoods. Mr. Dumas feels that the request should not be granted to a developer that had to over build due to topography and geography of the property and it would appear to break the spirit of the law. In addition, granting of this request would set a dangerous and unacceptable precedent that would open the door for conditional use clause contained in the R-2 buffer zone designation to be used in future developments throughout the City. The granting of this petition would increase density, noise and automobile traffic on the environment and owner occupied families.

Shamberger reminded Dumas that Metheny could develop the property as four-bedroom townhomes which would increase the density further.

Dumas stated that his primary concern is the spirit of the law and how it is set to have R-2 areas serve as a buffer. Dumas explained that by approving the conditional use petition, a precedent will be set for future developers and additional conditional use petition requests. Dumas noted that the board has been consistent with all hearings in the past, and he doesn't want a standard to be set with the approval of Mr. Metheny's request. Dumas stated that he is aware the density would increase with the townhome concept, but the type of residents that would reside in a townhouse would be different than those living in a one bed room apartment. Dumas noted that every effort needs to be taken to protect the buffer zones or else Wiles Hill and Highland Park will not exist in 15 years.

Bossio recognized Matthew Cross of 524 Milford Street who stated that it appears the request has only been made by the petitioner since they didn't hit bedrock upon excavation. Cross feels that developers should take a more critical approach to the initial stages in order to prevent future requests.

Bossio recognized Roger Banks of 444 Overhill Street and stated according to the submitted drawings and illustrations provided by the petitioner, that the intent was always to put basement apartments in the structure for both Phases. Banks feels that if the conditional use is approved then it will hinder and discourage appropriate development in the area, and would set a

precedent for other zoning variances and conditional use permits for apartment complexes and other inappropriate development within the remaining property of the R-2 zone. Banks stated that the request is not about density but rather the future continued existence in Morgantown that are specifically zoned to create a buffer for residential neighborhoods.

Bossio recognized Nadine Kelly of 466 Overhill Street who stated that she applauds Mr. Metheny for the quality and aesthetic value his project has added to Jones Avenue. However, she knows it is possible to increase a profit by decreasing the number of bedrooms. Kelly asked the board to give serious consideration to what is not stated in the report and presentation, such as the potential implications if approved. Kelly inquired that if this request is permitted, what door is being left open for other projects current and future and will a precedent be set that will result with regrets down the road. Kelly lacks confidence with loop holes in zoning laws and being approved as projects go on with unforeseen situations.

Bossio recognized Metheny asking if he wished to address the questions and concerns with a five minute rebuttal. Metheny noted that the same individuals spoke against the PUD petition in 2010 and he has tried to keep the students segregated by developing a private drive off of Lorentz Avenue. Metheny felt that he has provided a buffer property as requested by the Board at the 2010 Hearing. Metheny denied that the initial plans included lower level units and that geotechnical reports were completed two years ago. The lower level units were decided upon after excavation with the discovery that there were no barriers to prevent the full excavation. Metheny noted that prior to the construction of the townhomes, Lorentz Avenue was a one way street, and falling apart. His company personally paid for the necessary repairs to correct the storm drainage issues and improve the street.

Cardoso asked if the four-bedroom townhomes are for rent or for sale. Metheny stated that the townhomes will be for rent and it is not his intention to sell them at this time.

Cardoso asked if there is a master bedroom within the townhomes. Metheny stated that there was not a master bedroom and they have 3 bedrooms and 2.5 bathrooms within the unit. He stated that with the addition of another bedroom, he would add an additional bathroom as well.

Papandreas asked if they are going to be rented to students, and Metheny confirmed that they would be rented to students and explained that his customer base is mainly students.

Papandreas asked Fletcher what the total number of units if the conditional use is granted.

Fletcher stated that by-right the number of units for Phase III would be 10 with four bedrooms each for a total number of 40 beds. Phase IV would be 7 units with four-bedrooms for total a number of 28 beds. Phase III and IV by-right would be a total of 17 units with 68 beds. Under the current conditional use request for both Phases III and IV, Fletcher has a total of 24 dwelling units with a total of 55 beds.

Metheny explained that upon completion, all units would make a combined total of 61 beds.

Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board 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 petitioner. Staff concurs with the petitioner’s findings of fact as submitted and recommends approval of CU13-01 for Phase III and Phase IV provided the three-bedroom unit over one- or two-bedroom unit townhouse appearing-design submitted under CU13-01 and reviewed by the Board herein is utilized AND that the total number of units do not exceed 24 units, and the total number of beds do not exceed 61 beds.

Fletcher read two additional communications of opposition that were received via email to the Planning Division. Susan Ensteep of 448 Grove Street expressed concerns with increased density and traffic congestion. James Crisler, property owner of 313 Stewart Street, expressed concerns with the loss of off-street parking.

Bossio noted that the construction has been done well and he doesn’t feel that the petitioner intended to construct the lower levels prior to excavation. Bossio explained that by-right townhomes are permitted in the R-2 area and that with the addition of a one-bedroom apartment, it doesn’t seem that it should still be characterized as a townhome.

Papandreas stated that Metheny has done a stellar job and he doesn’t believe he had ill will intentions with the addition of the lower levels. He further explains that the Board is driven by definitions and regulations within the Planning and Zoning Code and therefore, the units that Metheny wants to produce should not be characterized as a “townhouse”. Papandreas clarified that a townhouse is a one family dwelling unit and believes that the structures look and feel like townhouses but they don’t fit the definition.

Fletcher stated that the structures do fall within a family dwelling unit, as the definition of family in the R1 and R1-A districts are defined as “those that are no more than two unrelated”. All other zoning districts are based on the number of occupants within the units and the corresponding building codes.

Cardoso felt that the townhomes are not set up for a family to purchase in the future due to lack of amenities such as a master bedroom and therefore would conclude that the future tenants will forever be students. Cardoso felt that one bedroom apartments would attract graduate students that would be less inclined to party. She did not feel that the conditional use request would cause an increase in vehicles or a number of guests.

Bossio did not believe a precedent would be set with the approval of this petition, and explained that each individual situation is reviewed on a case by case basis. Bossio also stated that codes do not require a townhouse have a master suit or other amenities. However, when an apartment is located on the lower level, he doesn’t consider that the look and feel would reflect that of a townhome.

Shamberger conveyed that a calmer atmosphere would result with the one bedroom apartments. When referring to the Findings and Fact within the staff report, the question asked is “does this request cause harm”? He does not feel any harm would be imposed and noted that developers are usually asking for additional units, and Mr. Metheny is asking to decrease the number of beds. Shamberger stated that cases will be completed on an individual basis and he doesn’t see any harm in increasing the number of units and decreasing the bedrooms.

Shaffer feels that Phase III and IV are two different things and should be presented separately simply because Phase III changed after excavation and phase IV could present different challenges.

Fletcher stated that the petitioner had requested for Phase III and Phase IV as evidenced in the application. The Staff made an error in how it represented the development program within the staff report and it has been corrected. Fletcher reminded the Board that if the case is appealed to Circuit Court, and a decision is based on an understanding that the petitioner only asked for a conditional use for Phase III, then it could be viewed as a point of contention and an error in judgment. Fletcher apologized to the Board for the error.

It was decided by the Board to read and vote on each of the findings and facts individually with Bossio reading each of the finding of fact statements and Fletcher reading each of the petitioner's responses.

Shamberger made a motion to find in the affirmative for Finding of Fact No. 1 as submitted by the petitioner; seconded by Cardoso. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No.1 – Congestion in the streets is not increased, in that:

Existing private streets (Old Golden Blue and TBD Street) will be used for access. Street parking will not be used as parking is provided within the site. The R-2 townhome zoning of 0.75 spaces per bedroom is met.

Papandreas made a motion to find in the affirmative for Finding of Fact No. 2 as submitted by the petitioner; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No.2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The multifamily designation required a sprinkler system and fire alarm system not required of a townhome structure. The units will utilize existing space presently within the structure with additional safety criteria met per the fire code.

Cardoso made a motion to find in the affirmative for Finding of Fact No. 3 as submitted by the petitioner; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No.3 – Provision of adequate light and air is not disturbed, in that:

The units will be constructed within an existing building. Direct sun-light and windows were already proposed within the under level space.

Papandreas made a motion to find in the affirmative for Finding of Fact No. 4 as submitted by the petitioner; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No.4 – Overcrowding of land does not result, in that:

Utilization of existing space will be used for the additional units. The footprint of the structure will not be changed.

Shamberger made a motion to find in the affirmative for Finding of Fact No. 5 as submitted by the petitioner; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No.5 – Undue congestion of population is not created, in that:

Sufficient parking meeting the 0.75 spaces per bedroom is provided although the structures sit within Sunnyside overlay district. The less restrictive 0.5 space per bedroom has not been requested per Sunnyside Overlay.

Shamberger made a motion to find in the affirmative for Finding of Fact No. 6 as submitted by the petitioner; seconded by Cardoso. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No.6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The property and structure are located within 500 steps of a bus stop and downtown campus with easy access to the PRT station. Existing water supplies and sewage will be used. The principle tenants are WVU students.

Shamberger made a motion to find in the affirmative for Finding of Fact No. 7 as submitted by the petitioner. The motion died for the lack of a second.

Following the Board's discussion to develop an alternate affirmative finding, Fletcher suggested the following:

Finding of Fact No.7 – Value of buildings will be conserved, in that:

The location of the proposed mixed-bedroom composition multi-family units is below the elevation of the adjoining R-1A District. Further, the by-right townhouse units that have been constructed serve as a buffer between the R-1A District and the proposed multi-family units thereby conserving the quality and character of the immediate area and preserving the purpose and intent of the R-2 District.

Cardoso made a motion to find in the affirmative for Finding of Fact No. 7 as stated by Fletcher; seconded by Shamberger. Motion passed 3-2 with Shaffer and Bossio voting nay.

Following the Board's discussion to develop an alternate affirmative finding, Fletcher suggested the following:

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

The proposed dwelling unit mix and bedroom composition results in fewer bedrooms than permitted by-right under an all townhouse development program thereby reducing parking and traffic congestion and noise within the immediate area that is associated with a higher number of residents within the petitioner's development as proposed.

Cardoso made a motion to find in the affirmative for Finding of Fact No. 8 as stated by Fletcher; seconded by Shamberger. Motion failed 3-2 with Bossio, Papandreas, Shaffer and voting nay.

Following the Board's discussion to develop a negative finding, Fletcher suggested the following:

Finding of Fact No.8 – The most appropriate use of land is NOT encouraged, in that:

Altering the townhouse dwelling unit configuration of the petitioner's development site may increase traffic and parking congestion and noise within the immediate area as a result of an increase in the number of dwelling units as requested by the petitioner.

Papandreas made a motion to find in the negative for Finding of Fact No. 8 as stated by Fletcher; seconded by Shaffer. Motion passed 3-2 with Cardoso and Shamberger voting nay.

Shaffer moved to deny conditional use petition CU13-01 based on the negative finding for fact No. 8; seconded by Papandreas. The motion passed 3-2 with Cardoso and Shamberger voting nay.

Bossio reminded Mr. Metheny that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- D. CU13-02 / Schaupp / 502 White Avenue:** Request by Adelheid Schaupp for conditional "Re-use of Closed/Vacant School or Church" use for property located at 502 White Avenue; Tax Map 36, Parcels 712.1 and 712.2; R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating On December 15, 2010 the Board approved the petitioner's conditional use petition Case No. CU10-18 to convert the former Second Ward Elementary School Annex located at 502 White Avenue into seven (7) one-bedroom multi-family dwelling units.

Article 1379.05 of the Planning and Zoning Code provides the:

"In the case where a Conditional Use Permit has not been used within twelve (12) months after the granting thereof, then without further action it shall be null and void. This may be extended to eighteen (18) months upon prior written request of the Board. The word 'used' shall mean that the approved Conditional Use Permit has been activated as evidenced by permits, construction, or required licenses."

The petitioner has not activated the December 15, 2010 conditional use approval nor did the petitioner submit a written extension request. To pursue the development and reuse project now as proposed then, the petitioner must reapply for a new conditional use approval.

The following exhibits are attached hereto to confirm the petitioner's CU10-18 request and aid the Board's recollection of the subject conditional use petition:

1. The Board's approval notification letter dated December 28, 2010.
2. The Staff Report presented to the Board during its December 15, 2010 hearing.

Again, the petitioner's development program for which she currently seeks building permits for has not changed from that considered and approved by the Board on December 15, 2010.

Bossio recognized the petitioner, Adelheid Schaupp of 208 Dewey Street who apologized for letting the conditional use lapse as it has been an exceedingly long process. Schaupp noted that a building permit was requested for a new roof on the structure and at that time she was notified by Staff that her conditional use petition had expired. She apologized as she misunderstood the process and thought that by pulling a permit, the conditional use would immediately be activated.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board 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 petitioner.

Because the petitioner's proposed development program and merits of the conditional use petition have not changed from the CU10-18 petition, Staff recommends that the Board find in the affirmative and approve CU13-02 utilizing the same findings of fact and conditions set forth in the Board's related December 15, 2010 decision respectively, both of which are stated in the December 28, 2010 approval notification letter.

Shamberger made a motion to find in the affirmative for all the Findings of Facts as found in the CU10-18 petition; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

Building is already being utilized as a public meeting place, the conversion of building into eight (8) units will actually decrease the daily traffic in and around the building.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

Building is easily accessible to emergency vehicles and all dwelling units will be sprinkled and built to current safety and fire codes.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

Building is located on half an acre on the corner lot with few surrounding buildings. Structure is also located on the top of a hill which allows for both light and air without disturbing neighboring houses.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

Using existing footprint of the building and existing parking spaces when feasible. Additional parking will be provided on a now vacant lot.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

Eight (8) one(1) bedroom units will only allow for eight (8) tenants. This is significantly less people than who currently use the building for meeting daily. Building was originally a school and was built to accommodate larger groups.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

We will be able to use existing water and sewage hook-ups with the addition of sprinkler requirements. Other public requirements will not be impacted.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

Building is currently in a state of disrepair. Renovation of the building and proposed park will considerably add value to the property on and around the lot.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

The upper half of the lot will be most efficiently used as apartments and parking in that the building and lot allow for adequate space. The bottom half of the lot does not need to be incorporated into the apartment building but rather could be used more effectively as a neighborhood park.

Papandreas moved to approve conditional use petition CU13-02 with the conditions set forth in CU10-18 petition approval; seconded by Shamberger. Motion carried unanimously.

NOTE: The following conditions were included in the motion.

1. That a scaled site plan, to the satisfaction of the Planning Division, be submitted with the building permit application that, among other elements, illustrates the location, design, and grade of parking areas and all existing and proposed facilities and amenities serving the site.
2. That no less than eight (8) onsite parking spaces be designed and developed to the satisfaction of the Planning Division and the City Engineer and that each dwelling unit have a signed and designed parking space.
3. That the Board reserves the right to require the development of additional onsite and/or offsite parking if it later finds that the development contributes to traffic and/or parking congestion and/or adversely impacts the preservation and enjoyment of property within the immediate area.
4. That the number of dwelling units, bedroom configuration, and the gross floor area for each of the dwelling units may not be increased beyond that illustrated on the plans submitted to and approved by the Board of Zoning Appeals without prior approval of the Board.
5. That the development meets all applicable federal Fair Housing and Americans with Disabilities Act standards as determined by the City's Chief Building Code Official.
6. That the applicant must submit, to the satisfaction of the Planning Division and City Engineer, a solid waste storage and removal plan prior to building permit issuance.

7. That the petitioner must obtain subdivision approval from the Planning Commission to combine the two (2) existing parcels onto one parcel prior to the issuance of any occupancy permit.

Bossio reminded Ms. Schaupp that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

VI. OTHER BUSINESS:

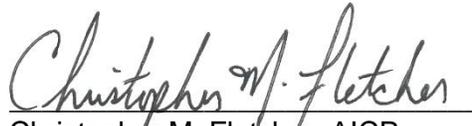
- A. Public Comments (matters not on the agenda): None.
- B. Staff Comments: Fletcher announced that the Comprehensive Plan Open House took place on Monday, January 14, 2013, from 7 PM to 9 PM at the Morgantown Public Library and that approximately 75 individuals attended the open house.

VII. ADJOURNMENT: 9:20 PM

MINUTES APPROVED:

February 20, 2013

BOARD SECRETARY:


Christopher M. Fletcher, AICP