

BOARD OF ZONING APPEALS

Minutes

6:30 PM

January 19, 2011

City Council Chambers

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

MEMBERS ABSENT: Bernie Bossio

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER and ROLL CALL: Cardoso called the meeting to order at 6:30 PM

II. MATTERS OF BUSINESS

- A. 2011 Leadership Election: Chair and Vice-Chair. Papandreas nominated Bossio to serve as Chair for the 2011 calendar year; second by Shaffer. There being no further nominations, Bossio was elected to serve as Chair by acclamation. Shamberger nominated Cardoso to serve as Vice-Chair for the 2011 calendar year; seconded by Papandreas. There being no further nominations, Cardoso was elected to serve as Vice-Chair by acclamation.
- B. Minutes for the December 15, 2010 hearing. POSTPONED.

III. OLD BUSINESS

- A. CU08-09 / Monongalia Friends Meeting / 648 East Brockway Avenue: Request by Monongalia Friends Meeting for an amendment to a previously approved conditional use petition establishing a "Church, Place of Worship" use in an R-1A District at 648 East Brockway Avenue. Tax Map #35, Parcel #110; R-1A Single-Family Residential District.

Shaffer moved to take the matter from the table; seconded by Shamberger. The motion passed unanimously.

Fletcher read the Staff Report stating that the petitioner received conditional use approval on June 18, 2008 to establish a "Church, Place of Worship" use at 648 East Brockway Avenue, which is located in the R-1A District. In November 2008, the petitioner returned to the Board seeking an amendment to the originally approved conditional use so that an occasional overnight/short-term sojourner affiliated with the Monongalia Friends Meeting may stay on a temporary basis.

The Board tabled the petitioner's requested amendment so that:

"The parties may have additional time to develop a plan of action and return to the Board with a more concrete proposal."

The petitioner is requesting the Board to remove the issue from the table and consider their conditional use approval amendment.

Article 1329.02 "Definition of Terms" of the Planning and Zoning Code provides that a "Church or Place of Worship" is:

"A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such place for worship and religious activities. **Customary accessory uses include a caretakers residence**, a meeting or activity hall, a gymnasium, a playground, the sale of items associated with the practice of religion, etc., but not a medical clinic, homeless shelter, rehabilitation center, etc." (**emphasis added**)

Article 1329.02 defines "Caretakers Residence" as:

"A residence located on a premises with a main nonresidential use and occupied only by a caretaker or guard employed on the premises."

Even though the Planning and Zoning Code provides for a "Caretaker Residence" as a permitted accessory use for principal "Church or Place of Worship" uses, Staff required the petitioner to return to the Board to amend the original conditional use approval because:

1. When asked by the Board during the June 18, 2008 if someone would be residing within the structure on a permanent or temporary basis, the petitioner's representative stated "no".
2. Neighbors who attended the June 18, 2008 hearing expressed concern that the use might include student residents.
3. Because of the occasional and temporary nature of a sojourner affiliated with the Monongalia Friends Meeting, the occupancy of same does not appear to meet the Planning and Zoning Code's definition or intent for a "Caretaker Residence".

In speaking with Mr. Lozier, it is the opinion of the Planning Department that the testimony provided by the Monongalia Friends Meeting representative who attended the June 18, 2008 Board hearing was unaware of the organization's entire reuse proposal and that the petitioner did not intend to misinform the Board.

Further, the petitioner states in the attached email dated December 14, 2010 that the Monongalia Friends Meeting's "...intent is not to offer a public accommodation or rental residence".

Cardoso recognized John Lozier, 345 Virginia Avenue, who read the policy of the Friends, explaining that they could have guests stay a night or two, or a volunteer might stay for a longer term.

Cardoso asked if there was a guest limit. Lozier stated that there are 4 bedrooms and two of those are being used for other purposes, so that leaves 2 bedrooms to house guests. It could be up to 4, if it were 2 couples.

Cardoso asked Lozier to explain at what point a guest might become a volunteer and/or a volunteer might become a caretaker. Lozier said that a volunteer makes a commitment for some specific purpose in exchange for staying. He also stated there is never a charge to anyone who stays overnight. A caretaker would be there for the purpose of taking care of the house on a longer term basis.

Lozier stated that he has spoken with several of the neighbors and they indicated that they were supportive of his request. He also stated that 2 of the neighbors had written support letters.

There being no further questions from the Board, Cardoso opened the public hearing portion, asking if anyone was present to speak in favor of the request.

Catherine Tall, 425 Elm Street, a member of the Friends, spoke in favor of the request.

There being no further comments in favor of the request, Cardoso asked if anyone was present to speak in opposition to the request.

There being no comments in opposition to the request, Cardoso declared the public hearing closed and asked for Staff's recommendation.

Fletcher read the Staff Report, stating that asking that the Board approve the petitioner's request for a minor conditional use modification to allow a caretaker resident and/or an occasional overnight/short-term sojourner affiliated with the Monongalia Friends Meeting with the following conditions:

1. That the structure must meet all applicable building and fire codes and City registration requirements specific to the accessory caretaker residence use as well as those requirements that may be applicable to a short-term sojourner/guest occupant(s).
2. That, to the satisfaction of the Planning Director, the caretaker resident or short-term sojourner/guest must be affiliated with the Monongalia Friends Meeting's operation and/or worship mission.
3. That "short-term" shall mean not more than six consecutive months unless the occupant is, to the satisfaction of the Planning Director, considered a caretaker resident as evidenced by employment and/or contract with the Monongalia Friends Meeting as such.
4. That should the caretaker resident or short-term sojourner/guest include more than one person, those persons must meet, with the exception of "Group Residential Home" and "Group Residential Facility" uses, the standards set forth in Article 1329.02 "Definitions" of the City's Planning and Zoning Code for a "Family".
5. That, by granting this conditional use approval amendment, the petitioner:
 - a. Understands that the Monongalia Friends Meeting accepts the burden of proof in demonstrating compliance with applicable City Code and the conditions set forth in the June 18, 2010 conditional use approval as well as the conditions set forth herein; and,
 - b. Consents to assisting any City investigation that may become necessary to ensure that compliance with applicable City Code and said conditional use and amendment conditions are sustained.
6. That the conditional use approved on June 18, 2008 and the amendment granted to same herein is specific to the Monongalia Friends Meeting and may not be transferred.

Fletcher pointed out that Condition #4 does not provide for one (1) caretaker and one (1) sojourner, and that it may need to be modified.

Papandreas stated that, while he is not necessarily against this request, this appears to be exactly what the neighbors were worried about the last time the request was brought before the Board. He further stated that he is not comfortable with the sojourner/caretaker definitions and is concerned that these are definitions of 'convenience' rather than a description of what is really going on. An example is that it could be a college student who turns it into a semester's stay.

Cardoso asked if people can be classified when they arrive.

Shamberger stated that this is a common practice among members of the Quaker community, and he feels that control will be kept in the spirit of their mission. He also stated that this Conditional Use could not transfer to another property owner, but would have to be re-evaluated.

Shaffer agreed with Shamberger, stating that this area has had many years of cultural experience with the Friends and feels that it will be very well regulated.

Fletcher stated that two of the neighboring property owners who were previously opposed to this request are now in support of the request. He referenced letters from Josephine Tarantini and Cecilia Palmer. He also recommended changing Condition #4 to read "Should the caretaker or short-term sojourner/guest include more than two unrelated persons", etc. This would make it consistent with the next door house, should it become a rental property.

Fletcher also suggested that perhaps changing Condition #3 to read "not more than three consecutive months", rather than six months would be more definitive of a caretaker.

Shaffer made a motion to approve the request, with the changes as specified above to Conditions #3 and #4; Shamberger seconded motion. Motion carried unanimously.

- B. BA10-02 / Traugh / Administrative Appeal:** A petition by Zachary Traugh, Big Zach Productions L.L.C., for an administrative appeal of the Planning Department's interpretation of Article 1331.06 (27) of the City's Planning and Zoning Code as it relates to the proposed land use at 344 High Street. Tax Map #26A, Parcel #109; B-4, General Business District.

Shamberger moved to take the matter from the table; seconded by Shaffer. The motion passed unanimously.

Fletcher read the Staff Report stating that on July 30, 2010, Staff met with the petitioner's representative and the property owner to discuss a proposed "Restaurant, Private Club" use in the former Wesbanco Building at 344 High Street. The petitioner noted that an approximate 22' X 24' square foot meeting/conference room was planned on the second floor as a part of the restaurant use located on the first floor.

Article 1331.06 (27) of the Planning and Zoning Code provides several supplemental performance standards for "Restaurant, Private Club" uses in the B-4 District including an exemption, which provides:

“(d) In the B-4 District a full-service hotel, convention or conference center which serves meals and services to private functions shall be exempt from the requirements of this section when the areas where liquors are served are only accessible from an internal part of the building. Such a hotel’s bar facilities may serve to the general public after 9 PM.”

The petitioner’s representative asserted that because the proposed meeting/conference room on the second floor was a part of the restaurant establishment, said establishment should be exempt from the “Restaurant, Private Club” performance standards provided in Article 1331.06 (27). Staff advised the petitioner that said meeting/conference room did not trigger the exemption and that conditional use approval would be necessary for the restaurant establishment to sell liquor.

The petitioner’s representative requested Staff to provide a written determination concerning its interpretation of the exemption’s applicability so that an administrative appeal could be filed. An administrative determination was sent to Mr. Robert Shuman, Esq. on August 5, 2010, a copy of which is attached hereto.

In the interim, the petitioner sought and was granted conditional use approval by the Board of Zoning Appeals on August 18, 2010 for the “Restaurant, Private Club” (see attached notification letter dated August 19, 2010).

The petitioner filed this administrative appeal on September 3, 2010, which was within thirty-days of said August 5, 2010 determination letter as provided in Article 1383.02 of the Planning and Zoning Code.

Fletcher stated that the petitioner’s appeal attempts to argue that:

1. There is no ambiguity in the Planning and Zoning Code’s statutory construction and that Article 1331.06 (27) (d) provides that said exemption is applicable to three uses – “hotel, “convention center”, and “conference center”.
2. The proposed use at 344 High Street is a “Conference Center” use rather than a “Restaurant, Private Club” use and should therefore be exempted from the performance standards enumerated in Article 1331.06 (27).

Related Planning and Zoning Code provisions, facts, and Staff’s interpretation are provided in the attached August 5, 2010 determination letter.

It is the opinion of the Planning Department that the petitioner’s first argument noted above fails to recognize that the last sentence of Article 1331.06 (27) (d) – “*Such a hotel’s bar facilities may serve to the general public after 9 PM*” – clearly establishes the subject exemption to be specific to the bar facilities of a “Full-service Hotel” use with convention or conference facilities.

The petitioner’s second argument noted above would therefore be moot.

If, however, this question is unresolved, the Planning Department affirms that:

1. Article 1329.02 defines a “Principal Use” as, “The primary use of any lot. Only one principal use may be permitted on a lot, unless authorized specifically by this ordinance.”

The principal use of the proposed establishment at 344 High Street is a “Restaurant, Private Club” as the preparation, serving, and consumption of food, beverages, and liquor are indeed the primary business and operation concentrations.

2. Article 1329.02 defines an "Accessory Use" as, "A land use that is (1) subordinate in area, extent and purpose to the principal use; (2) contributes to the comfort, convenience or necessity of the principal use; and (3) is located on the same lot and in the same zoning district as the principal use."

The 22' X 24' square foot meeting/conference room on the second floor is by definition a subordinate feature of the principal "Restaurant, Private Club" use. As such, the subject exemption is not applicable.

3. A "Conference Center" use, as defined in Article 1329.02, is considered a principal use OR an accessory use to a hotel.

The subject exemption cannot be applied to the petitioner's purported "Conference Center" as it is not the principal use nor can it be an accessory use to a "Restaurant, Private Club" establishment.

Fletcher then read the staff recommendations, stating that The Planning Department recommends that the Board of Zoning Appeals upholds the August 5, 2010 administrative determination by concluding that the exemption provided in Article 1331.06 (27) (d) is not applicable to the proposed establishment at 344 High Street based on the following findings and conclusions:

1. The sale of liquor for onsite consumption within the B-4 District is expressively limited by Table 1331.05.01 "Permitted Land Uses" and the accompanying supplemental performance standards enumerated in Article 1331.06 (27) to "Restaurant, Private Club" and "Full Service Hotel" uses.
2. The statutory construction and legislative intent of Article 1331.06 (27) (d) unambiguously limits the subject exemption to the bar facilities of a full-service hotel with convention or conference center facilities.
3. The principal use of the proposed establishment at 344 High Street is neither a "Full Service Hotel" use nor a "Convention Center" use.
4. The principal use of the proposed establishment at 344 High Street is a "Restaurant, Private Club" use, for which conditional use approval was granted by the Board of Zoning Appeals on August 18, 2010.

Cardoso recognized the petitioner, Robert Shuman, 256 High Street. Mr. Shuman stated that his primary purpose for seeking this is because the previous Conditional Use is not transferable. Having this absolute right, vs. Conditional Use, adds value to both the tenant and property owner. He explained the layout of the building, with the first floor being a restaurant; second floor is going to be a conference room/center which will host things like downtown business meetings and groups. It will be something similar to what the Waterfront Hotel offers, but on a much smaller scale.

Shuman further stated that in the zoning ordinance, the definition for conference center is a stand-alone definition and not tied to hotel. He feels the ordinance is crystal clear and is describing three separate entities: full-service hotel, convention, or conference center. He feels the last sentence is more of an explanation and not a qualifier. In this case, the conference center, by definition is an accessory use to the restaurant downstairs. In the ordinance, a

conference center can be an accessory use for a hotel and exemption still applies. To say it can't be an accessory use to a restaurant is discriminatory.

Papandreas asked if the upstairs rooms would be rented. Shuman said they would be and it would be somewhat of an 'incubator' system with a common secretary. Rooms would be rented month-to-month or for longer terms. Papandreas asked how many rooms there were, to which Shuman replied there were 10, in addition to the one large room.

Papandreas then asked the City Planner to clarify Article 1331.06 (27), section (d), where it states that "area where liquors are served are only accessible from an internal part of the building."

Fletcher used the example of the bar, Rack Pack, at the Waterfront Hotel. You must enter the hotel lobby before entering the bar. You cannot enter the bar area from an outside location.

Shuman confirmed that the upstairs area cannot be accessed without coming into the downstairs lobby.

Shaffer asked if it would be possible to hold a public function, to which Shuman said, in that case, you would be renting the upstairs conference area, with food being catered from the restaurant below.

Shaffer asked Mr. Shuman if there is a compromise here, or does he see his request as being black and white? Shuman answered that he feels it is black and white because the Conditional Use is already in place. What he is trying to establish here is absolute right, which will be more beneficial to both tenants and current and future property owners. If the building is sold, the right goes with it.

There being no further questions by the Board, Cardoso opened the public hearing portion of the meeting, asking if anyone was present to speak in support of the request. There being no comments in favor of the request, Cardoso then asked if anyone was present to speak in opposition of the request. There being no comments in opposition, Cardoso declared the public hearing closed, and opened the request for discussion by Board members.

Papandreas asked if the vestibule constitutes an internal part of the building? In order for exemption to kick in, the area where liquor is served can only be accessible from an internal part of the building, so what exactly constitutes 'internal part of building'?

Fletcher described the vestibule area as a multi-access point for several places in the building, or building common assembly area.

Papandreas thanked Fletcher for clarifying that. He then asked about the definition of "conference center". He doesn't see where a room constitutes a "center".

Fletcher referred to his letter of August 5, 2010, in which the definition of "conference center" is stated. He stated that there is no guidance or scale within the zoning ordinance to define what a conference center is. His understanding is that when he enters the vestibule, he is entering and can have lunch or dinner as a patron. He is not necessarily entering as a conference attendee. The room is an amenity to the restaurant/private club.

Cardoso stated that the Board needs to look at verbage. She referred to Art. 1331.06, section (d) and asked if the Board considers hotel, convention or conference center to be three separate things?

Cardoso also referred to a clause in paragraph (d) "to private functions", which indicates it is not a function open to the public. In a B-4 district full-service hotel, where would you carry that out? There is no definition for a "convention center", so dealing with this part of the code that doesn't define some of its key terms.

Papandreas said he would default back to this building have 10 offices that will be rented for other things, that makes it essentially an office building with a meeting room. He sees a big stretch between that and what a conference center is.

Fletcher stated that the room upstairs was included in the restaurant/private club so that alcohol can be served up there.

Shaffer said he has never been to a hotel conference center where they don't use their own restaurant/bar. To separate it as three things takes away the ambiguity.

Shamberger stated that this doesn't appear to be like the hotel/conference center that was described. With this one, you have to first enter a 'common area' to go wherever it is you want to go. Does not appear to be integrated.

Cardoso asked the City Planner if these are three separate uses, then do we need to look at the accessory use.

Fletcher stated that first the Board needs to answer the question of what is the principal use? Is it the restaurant/private club or the conference center? If the principal use is the conference center, then the exemption would apply. As far as the Planning part is concerned, the area upstairs is subordinate to the restaurant/private club downstairs.

Papandreas asked if, since they already hold a license for a restaurant/private club, does that simplify it for us, as being a primary use?

Fletcher stated he didn't think so, because he advised the petitioner to pursue restaurant/private club conditional use because of the development time schedule.

Papandreas feels that just having the use of the room there doesn't make it a conference center anymore than having a treadmill in your basement makes it a gymnasium. He feels it is a real stretch to call it a conference center. There is enough accessory use to tip it toward just being a room rather than a center.

Shaffer said that a conference center can't be determined by size, as there are many different sizes of groups and events.

Papandreas said he isn't so much thinking of the size as much as the facility it's located in.

Cardoso feels it meets the definition of a conference center, but if we're looking at the entire thing, only one principal use may be permitted. Is it a restaurant/private club, or a conference center? It appears to be an accessory use to what happens downstairs.

Cardoso asked for a motion, but Fletcher asked to interject before the motion, stating that if the Board determines that “or” means “or”, then, under recommended findings and conclusions, #2 would be removed. The Board also would not agree with finding #3, if agreeing with Petitioner.

Cardoso read all the findings and conclusions and recommended removing the verbage “and ‘Full Service Hotel Uses”, and that #2 be removed completely.

Cardoso recognized the petitioner. Mr. Shuman suggested tabling this issue until he and the City Planner could discuss. Fletcher said there needs to be direction from the Board.

Shaffer made a motion to find in favor of petitioner. Motion died for lack of a second.

Cardoso made a motion to uphold the staff recommendation with the findings and conclusions amended as follows: #1, strike the words “and Full Service Hotel uses”; and entirely remove finding and conclusion #2; approve finding and conclusion #3 and #4. Papandreas seconded the motion. Motion carried unanimously.

- C. **CU10-15 / Byers / 160 Fayette Street:** Request by Justin Byers for conditional “Restaurant, private club” use approval at 160 Fayette Street. Tax Map #26A, Parcel #93; B-4, General Business District. **WITHDRAWN**

IV. NEW BUSINESS

- A. **CU11-01 / Rees / 467 Chestnut Street:** Request by David Rees for conditional use approval for a “Restaurant private club” use in the B-4 District for property located at 467 Chestnut Street. Tax Map #26, Parcel #55; B-4, General Business District.

Fletcher read the Staff Report stating that the The petitioner seeks conditional use approval for the establishment of a “Restaurant, Private Club” use within a proposed 6,581 sq. ft. third-story addition to *Bent Willey’s* building located at 467 Chestnut Street. The name of the proposed restaurant establishment is *Bent Willey’s Sports Venue*, which, according to the petitioner, is intended to be an upscale sports restaurant and bar and will operate independently of the existing grandfathered private club establishment.

Addendum A of this report illustrates the location of the proposed conditional use.

The petitioner is the current owner of the building and has submitted the following exhibits, which are attached hereto:

- Business description
- Owner’s resume
- Manager’s resume
- Proposed menu
- Floor plan
- Building elevations

According to said exhibits, Mr. Rees has owned the following enterprises in Morgantown:

- Double M, LLC, (Micro Brewery) Bent Willey's products (2001-present)
- Mo-Town Taxi, LLC, Pulse Nightclub (2003)
- Schell Game, LLC, D.J. Hummers Nightclub (2001)
- Chestnut Emporium, LLC, (1999-present)
- AKA Enterprises, Bent Willey's (1997-present)
- A & Ali, Inc., J.D. Riprocks Nightclub (1996)
- TRL, Inc., Havana's Cigar Bar (1995)
- Focus, Inc., McGuffy's Nightclub (1993)
- Peking Express, LLC (1992)
- TRI W. Inc., Peking Garden (1990)
- MAR Corp., Dungeon Nightclub (1986)
- The Wine Rack (1984)
- Mr. Rees has stated that he has over 20 years of experience in site development, construction of hospitality environments, operations management, budget development, staffing, cost control, marketing, and sales. According to his resume, he also has experience in commercial real estate.

According to said exhibits, Robert Lapinto eatery experience includes:

- General Manager, *AKA Enterprises, Inc.*, Morgantown, WV (2003-present)
- General Manager, *AJ's on the Fairway*, Cheat Lake, WV (2000-2003)
- General Manager, *Boston Beanery*, Morgantown, WV (1998-2000)
- General Manager, *Boston Beanery*, Indianapolis, IN (1997-1998)
- Corporate Operator, *Boston Beanery*, Morgantown, WV (1991-1998)

The proposed business description highlights include:

- Façade renovations that will include:
 - Three (3) level stair tower to provide adequate ingress/egress requirements for the existing and proposed building
 - Solar shading over retractable windows along the Chestnut Street façade
 - Incorporation of a chestnut-colored brick
 - Retractable walls and windows along exterior deck are for outdoor dining
- Hours of operation will be Monday thru Sunday from 11:00 AM to 1:00 AM.
- A full menu, including take-out, will be available from 11:00 AM to 1:00 AM.
- Estimated seating capacity is 250 patrons
- Addition of an elevator to allow accessible entry for all floors
- 1,300 sq. ft. kitchen facility with walk-in cooler and freezer

- A staff of more than thirty (30) individuals
- Wood oven pizza station
- Smoke-free

Addendum B of this report contains related excerpts from the Planning & Zoning Code [Article 1331.06 (27)].

Rocky Gianola, 1714 Mileground Road, Attorney representing Davis Rees, referenced waiver of one-year restaurant requirement. He feels this waiver is justified because of Mr. Rees' many years of experience in the restaurant business.

Gianola said Conditional Use request is for 3rd floor of Bent Willey's building. It will be a sports venue. Renovation will be a complete renovation of building. Stairwell will be put in, elevator, current stairwell will be renovated and expanded. Proposed Conditional Use meets or exceeds requirements of Code. With history of this particular Conditional Use, this developer far exceeds the requirements. Staff has imposed several restrictions which will adequately protect the City. Restaurant will have large kitchen, plus an ancillary kitchen. Will seat approximately 150-170 persons. Permanent seating – not table and chairs. This project is a vertical development, which is the way downtown should be developed. There will be adequate parking.

Papandreas asked about the menu and if the restaurant will serve all floors. Gianola replied that it would serve all floors and they will likely be adding a few more upscale menu entrée choices.

Cardoso asked if there was an age requirement for the restaurant on the 3rd floor. Gianola replied that anyone under 21 must be with a parent or guardian over the age of 21.

Gianola described the restaurant as having a sports atmosphere, such as Damons.

Shamberger feels menu is limited.

Gianola said he recognizes they need to meet the 60/40 restaurant/bar requirement.

Cardoso asked if it would be of benefit to make a site visit, to which discussion took place about the benefits of having site visits.

Cardoso opened the public portion of the meeting and asked if anyone was present to speak in support of the request.

There being no comments, Cardoso then asked if anyone was present to speak in opposition of the request.

There being no comments, Cardoso declared the public hearing portion closed.

Fletcher read staff recommendation, stating that the Board of Zoning Appeals must first determine whether or not it will waive the one-year "bona fide restaurant" requirement [Article 1331.06 (27)(c)] prior to the petitioner obtaining a liquor license from the West Virginia Alcohol Beverage Control Commission.

Should the Board decide to waive said one-year “bona fide restaurant” requirement, it 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 applicant. Addendum C of this report includes Staff recommended revisions to the petition’s submitted findings of fact.

Should the Board waive the one-year “bona fide restaurant” requirement and grant approval of the subject conditional use petition, Staff recommends that the following conditions be included:

1. That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06 (27) of the Planning and Zoning Code.
2. That the applicant must obtain permitting as a “restaurant” from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations* so that smoking is not permitted within the interior or exterior space of the approved conditional “Restaurant, Private Club” use.
3. That the “Restaurant, Private Club” use shall be limited only to the proposed third-story addition and the interior layout design that is illustrated on the plans and drawings submitted with the petitioner’s conditional use application. Any expansion of the conditional use or significant deviation from said interior layout design must first be approved by the Board of Zoning Appeals.
4. To ensure that the petitioner’s business description and plans are executed as described and considered in granting the one-year “bona fide restaurant” waiver, the subject “Restaurant, Private Club” use must:
 - a. Be open no later than 11:00 AM Monday through Friday for the purpose of serving lunch as described in the menu submitted with the petitioner’s conditional use application.
 - b. Obtain a State of West Virginia liquor license that is specific to the approved conditional “Restaurant, Private Club” use. Further, that said West Virginia State liquor license must remain separate from any and all West Virginia State liquor licenses that currently exist or may in the future exist within any remaining portion of the structure located on Parcel 55 of Tax Map 26.
 - c. To the satisfaction of the City Fire Marshall, provide and maintain direct access from the street to the third floor addition where the approved conditional “Restaurant, Private Club” use is to be located and that said access ways must remain, with the exception of emergency egress, separate from all other uses within the structure located on Parcel 55 of Tax Map 26.
 - d. That the petitioner shall voluntarily submit all necessary financial information to the City for the subject establishment following its first twelve (12) months of operation as a “Restaurant, Private Club” use to ensure compliance with Article 1331.06 (27) (e) provisions, which requires the sale of food and non-alcoholic beverages to comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month.

5. That the proposed third-floor addition and façade improvements must be presented to the Downtown Design Review Committee for review prior to building permit application. Further, that, to the satisfaction of the Planning Director, said third-floor addition and façade improvements must be consistent with the design renderings submitted with the petitioner's conditional use application and include all reasonable Downtown Design Review Committee recommendations concerning cladding material, glazing, color palette, etc.
6. That any regulated signage shall be reviewed and approved by the Downtown Design Review Committee and the Planning Director prior to building permit issuance for same.
7. That the conditional use approval granted herein may not be transferred.

Papandreas said he feels that Mr. Rees has the reputation to qualify for such an exemption. He feels the menu is adequate.

Shamberger motioned to TABLE this request to allow time for the Board to make a site visit; Papandreas seconded motion. Motion carried 3-1, with Shaffer abstaining.

Fletcher asked Shaffer why he abstained from voting. Shaffer stated that he did not feel that a site visit is needed to approve this request.

Fletcher suggested scheduling a workshop at which more details can be shared.

- B. V11-03 / Manhattan Place, LLC / Chestnut Street:** Request by Manhattan Place, LLC for variance approval from the Planning and Zoning Code, Article 1349.03 "Lot Provisions" as it relates to maximum lot coverage for property located on Chestnut Street. Tax Map #26A, Parcels #79 & 80; B-4, General Business District.

Fletcher read the Staff Report stating that the The petitioner seeks to develop a four-story hotel on a lot currently used for parking. The proposed hotel will be attached to the adjacent private parking garage facility, of which a portion of is currently occupied by Dragonfly Restaurant. Addendum A of this report illustrates the location and photographs of the subject site.

The petitioner's proposed development program details include:

- The development project has an estimated construction cost of \$2 million.
- The proposed hotel will be approximately 30,000 square feet.
- The hotel facility will have at least two internal connections to the adjoining parking garage facility.
- The partial basement area will include commercial laundry and housekeeping facilities, elevator mechanical facilities, building systems control facilities, and dumpster facilities.
- There will be approximately 41 quest rooms/suites: 2 accessible rooms on the first story and 13 rooms per floor for the remaining three stories

The first floor will include a lobby area, management offices, fitness and business centers, common restrooms, and an approximate 2,100 sq. ft. meeting/assembly room.

- The building will be served by two stair towers and one elevator.

- Approximately fifty (50) parking spaces will be dedicated for the hotel use in the adjoining parking garage; valet service will be provided at the entrance of the parking garage; loading facilities for deliveries will be located inside the garage.
- As a part of the hotel development, the petitioner will be refurbishing the exterior of the parking garage by repointing the brick façade, removing windows but leaving grilles to maintain architectural feature, and rehabilitating the marquee awning.

The following table illustrates those B-4 District development standards that have been evaluated by Staff based on the proposed site plan and preliminary building drawings submitted to date. Final building and design drawings have not been submitted for compliance review of remaining B-4 District development and performance standards. As such, additional variance relief may be necessary.

Development Standard	Provision	Proposed
Min. Lot Area (Article 1349.03)	1,500 sq. ft.	approx. 8,046 sq. ft. (based on C. Lemley drawing dated 11/29/10)
Max. Lot Coverage (Article 1349.03)	90%	91.2%
Setbacks (Article 1349.04)	Side: 0 ft.	Side: 1.5ft
	Front: 0 ft.	Front: 5 ft.
	Rear: 10% of the lot depth or 10 ft., whichever is greater (i.e. 14 feet)	Rear: 1 ft.
Max. Height (Article 1349.05)	120 ft.	4 stories (approx. 50 ft.)
Max. Floor Area Ratio (Article 1349.06)	7.0 (i.e. 56,323 sq. ft.)	3.7

As illustrated above, the petitioner must obtain at least a 1.2% variance from the maximum lot coverage standard and a thirteen (13) foot variance from the rear setback standard.

It should be noted that the Board of Zoning Appeals approved a maximum lot coverage variance of 7% on October 9, 2006 for a mixed-use development proposed by the petitioner (V06-20). Said approval has since expired and the development abandoned by the petitioner.

It is the opinion of the Planning Department that the exterior walls, the planning and programming of interior hotel space, and internal connections with the adjoining parking garage facility result in a mutual relationship between the lot coverage and rear setback variances. As such, the Board can and should consider the petitioner's requested relief jointly.

Cardoso recognized the petitioner, Joe Panico, Beechurst Avenue. Mr. Panico stated that he came before the Board in 2006 and was approved for an 8-story building. Due to economy, he did not pursue that project. He stated he feels this time he has a much better plan. This is for a 4-story, built on 'envelope' of old site, except for the front. He went on to describe the layout of the building. He stated he would like to break ground in the next month or two, provided financing is approved.

Shamberger asked the City Planner if the rear setback of 14 ft. is for service to the building. Fletcher said he believed that was the intent.

Panico stated that it is on the side because he has no room in the back.

Papandreas about the revolving doors on the side and front and stated that this building is higher. He asked about the front being brick and Panico said that it was, with windows on the front, back and side.

Cardoso opened the public hearing portion and asked if anyone was present to speak in favor of the request.

There being no comments in favor of the request, she then asked if anyone was present to speak in opposition of the request.

There being no comments, Cardoso declared the public hearing portion closed.

Fletcher read staff's recommendations, stating that the Board 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.

Staff recommends revisions to the petitioner's Findings of Fact, which are provided in Addendum B of this report, and that variance relief be granted as requested herein with the following condition:

1. That the petitioner must obtain site plan approval from the Planning Commission for the subject Development of Significant Impact (S11-01-III).

Cardoso commented that she has no trouble envisioning his plan.

Shamberger stated that the parking structure is very solid.

Papandreas made a motion to accept the findings of fact, with staff recommend revisions; Shaffer seconded motion. Motion carried unanimously.

NOTE: The following findings of facts were included in the motion:

Finding of Fact #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 petitioner razed a structure, which appeared to have had 100% lot coverage, on lot 79 in 2007 to make way for an approved 7 story condo project, for which a lot coverage variance of 7% was granted on October 9, 2006. The seven-story development did not proceed and the variance approval expired. The proposed development will abut an existing private parking garage facility with internal connections, which appears to necessitate unique design planning and building placement and coverage.

Finding of Fact #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:

The proposed building will replace a previous demolished structure that will, be an asset to the downtown and main campus areas. A number of buildings in the B-4 District currently enjoy more than 90% lot coverage's with little or no setbacks.

Finding of Fact #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 development of this building appears to be consistent with the overall development pattern and goals for the central business district. Improving this site should benefit adjoining and nearby properties, local businesses, and the City in general.

Finding of Fact #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 proposed hotel is a permitted use in the B-4 District. The proposed hotel development should significantly increase the value of the property and thereby enhance the values of adjoining properties. The requested variance relief should not contribute to nor mitigate traffic that is already present within the area.

Papandreas made a motion to approve the Variance request with staff recommended condition; Shamberger seconded motion. Motion carried unanimously

C. V11-01 / Big Pong, LLC: Request by Sean Murphy, on behalf of Big Pong, LLC, for variance approval from the Planning and Zoning Code, Article 1347.04 "Setbacks and Encroachments" for property located on a private drive off of Eljadid Street. Tax Map #33, Parcel #51; B-2, Service Business District.
POSTPONED

D. V11-02 / Big Pong, LLC: Request by Sean Murphy, on behalf of Big Pong, LLC, for variance approval from the Planning and Zoning Code, Article 1347.06 "Parking and Loading Standards" for property located on a private drive from Eljadid Street. Tax Map #33, Parcel #51; B-2, Service Business District.
POSTPONED

V. OTHER BUSINESS

A. Public Comments – None.

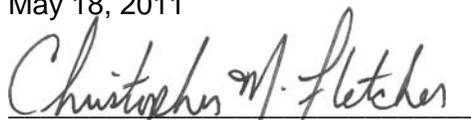
B. Staff Comments – None.

VI. ADJOURNMENT – The meeting was adjourned at 9:00 PM.

MINUTES APPROVED:

May 18, 2011

BOARD SECRETARY:


Christopher M. Fletcher, AICP