

# BOARD OF ZONING APPEALS

## Minutes

6:30 PM

January 21, 2009

City Council Chambers

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

**MEMBERS ABSENT:** None

**STAFF:** Christopher Fletcher, AICP

**I. CALL TO ORDER AND ROLL CALL:** Bossio called the meeting to order at 6:30 PM

### II. MATTERS OF BUSINESS

**A. Leadership Election for 2009.** Fletcher advised that the Board's By-laws provide that the election of leadership for the positions of Chair and Vice-Chair is to occur at the Board's first meeting of the calendar year. Papandreas moved to nominate Bossio for Chair and Shaffer for Vice-Chair for 2009; seconded by Shamberger. The motion passed unanimously. Their being no further nominations, Bossio and Shaffer were appointed by acclamation for Chair and Vice-Chair respectively.

**B. Minutes of the November 19, 2008 meeting.** Cardoso stated the November minutes showed she was present when she was not. Shamberger moved the minutes of November 19, 2008 be approved with the noted amendment; Papandreas seconded it. The motion passed unanimously with Cardoso abstaining due to her absence.

**C. Minutes for the December 17, 2008 meeting.** Fletcher stated these minutes were not included in the packet, and would be postpone to the Board's February meeting.

### III. OLD BUSINESS

**A. V08-44 / Mullett / 931 Louise Avenue:** Request by Sara Mullett for variance approval from the Planning and Zoning Code, Article 1331.08, Accessory Structures and Uses in Residential Districts, for property located at 931 Louise Avenue; Tax Map #25 Parcel #199; an R-1A, Single-Family Residential District. TABLED DECEMBER 17, 2008 BOARD MEETING

Fletcher stated that the Board requested at its December 17, 2008 hearing additional information in order to make a determination for the petitioner's request. Fletcher stated that he met with the Mullett on January 13, 2009 at the site. Fletcher stated that the rules-of-thumb generally utilized to identify parcel boundaries in the field could not be done with this property. The neighboring parcel boundary was estimated and a measurement was taken from that point using the lot dimension illustrated on the tax map. Fletcher stated he was relatively confident that the measurement was within a couple of feet of where a surveyor would determine the

boundary line to be. Fletcher reminded the Board that property boundary disputes are viewed as civil issues between affected owners.

Bossio recognized Sara Mullett of 931 Louise Avenue and asked if she wished to provide any additional information. Mullett stated that she had nothing new to add and would answer any questions the Board might have.

Bossio opened the public comment portion of the meeting and asked for comments either in favor or against the request. There being none, he closed the public comment portion and asked for staff's recommendations.

Fletcher reported that based on the observations provided in the memorandum included in the Board's packet, it is the opinion of the Planning Department that requiring the petitioner to submit a survey certifying the location of the subject parcel boundary, fence, and accessory structure is unnecessary and impracticable. Further, the "best evidence rule" principles should be utilized by the Board, as is often done, by relying on the information provided by the petitioner until proven to be erroneous. Fletcher stated that Staff recommends that, should the Board find in the affirmative for each of the four variance findings of fact and grant the petitioner relief, the following consideration and condition be included in the Board's decision:

- A four-foot (4') variance be granted rather than the three and a half foot (3.5') requested by the applicant.
- That corrective action must be taken by the petitioner or any future owner of the subject realty should it be determined later by survey and/or lawful order of a competent court of jurisdiction that the subject accessory structure is closer to the side property line than the relief granted herein by the Board.

Shamberger moved to accept the findings of fact as recommended by Staff; seconded by Papandreas. The motion passed unanimously with Shaffer abstaining due to his absence at the December Board meeting.

**NOTE: The following findings 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 landscape in the neighborhood varies due to topography changes. The subject structure was built on a shelf located in the middle of a steep slope. The property does not have a garage and only has on-street parking. There is an un-opened alley at the rear of the property that does not currently provide access for a garage. The backyard has varying degrees of slope and requires stairs to access the rear of the property. The current location of the shed appears to be the only relatively flat land suitable for the accessory structure.

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:

Of small amount of level ground on the subject site. The shed located in this area will enable the property owner to keep and store items securely while still remaining accessible.

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 accessory storage structure is traditionally designed for residential use. The existing fence appears to provide a sufficient barrier that mitigates any potential impact on the adjacent property.

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 accessory structure appears to be a simple shed designed for residential use that is located behind an existing wooden fence. Further, the location of the shed will have no influence on vehicular movements/circulation or traffic congestion.

Papandreas moved to approve V08-44 with the consideration and condition recommended by Staff; seconded by Cardoso. The motion passed unanimously with Shaffer abstaining for the reason noted earlier.

Bossio advised Mullett that the Board's decision can be appealed to the Circuit Court within thirty (30) days and that any work done during this time is at the sole financial risk of the petitioner.

#### **IV. NEW BUSINESS**

- A. V09-01 / Straface / 32 Vintner Place:** Request by David Straface for variance approval from the Planning and Zoning Code, Article 1334.04 (A) as it relates to setbacks and encroachments for property located at 32 Vintner Place. Tax Map #55 part of Parcel #37; an R-1, Single Family Residential District.

Bossio stated that he would recuse himself from this addenda item due to that fact that he has a direct connection with to development. Bossio left Council Chambers and Vice-Chair Shaffer took is place. Shaffer asked Fletcher to proceed with his Staff Report.

Fletcher stated that after the petitioner started the construction of his single-family residential structure in the "Vintner Reserve" development, the cul-de-sac alignment was modified as required by the City Engineer. The realignment increased the radius of the cul-de-sac as well as modified the parcel boundary dividing the adjoining parcels. These changes modified the parcel's building envelope which created an encroachment into the front and side setback requirements.

Additionally, the topography and fill at the rear of the subject property forced the garage to be located at the front of the house rather than the rear as originally designed thereby leaving little

room for adjusting the cul-de-sac radius and parcel alignment without creating an encroachment by the structure.

The site plan submitted by the petitioner illustrates that the structure conforms to the rear and southern side setback requirements. However, the northern side setback is 5.1 feet, which encroaches into the ten (10) foot minimum required side setback. As such, a side yard setback variance of 4.9 feet must be granted by the Board. Likewise, the front setback is 23.2 feet, which encroaches into the twenty-five (25) minimum front setback. As such, a front yard setback variance of 1.8 feet is required. Addendum A of this report illustrates the location of the subject site.

Shaffer recognized David Straface, 369 Jacobs Drive, and asked if he wished to add anything to the Staff Report. Straface stated that the proposed findings of fact were well stated and the modification was required due to the topography and fill. The setbacks are only for a stretch of about 16 feet and not the entire length of the house.

With no questions from the Board, Shaffer asked for public comment either in favor or against the request. Fletcher stated the Planning Department received a call from a neighbor, Steve Dennis, who received notification of the request. He had no opposition to the proposal.

There being no additional comments offered, Shaffer closed the public comment portion of the hearing and asked for Staff's recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Staff recommends approval of the variance petition with the following revisions to the petitioner's Findings of Fact (deleted matter struck through; new matter underlined).

Papandreas moved to accept the Findings of Fact as recommended by Staff; seconded by Shamberger. The motion passed unanimously with Bossio's abstention noted.

**NOTE: The following findings 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 subject property is one of six (6) parcels created from a major subdivision approved by the Planning Commission in April 2008. The six (6) parcels are accessed by a private thirty-five (35) foot right-of-way from Munsey Street. The aforementioned properties are completely bordered by a six (6) foot vinyl and stone pillar privacy fence. The cul-de-sac and parcel alignments were modified with created setback encroachments after construction began on the structure. The irregular shape of the lot resulting from the cul de sac on the private drive reduces the available area for a front setback. In July 2008 and October 2007, the Board granted a similar setback variance, at the French Quarters. The front variance is very minimal, approximately 1.8 feet. In addition, the topography and land fill have made it necessary to change the location of the garage, therefore encroaching into the front and side yard setbacks.

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:

There are several properties in the vicinity that have enjoyed similar variances. In July 2008, the Board granted a similar setback variance, in terms of lot shape, within the French Quarter subdivision. No additional variances will be required.

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 small variances will not affect the access to the development or adjoining parcels by emergency or service vehicles from Munsey or Burroughs Streets. The thirty-five (35) foot right-of-way will not be affected, which is larger than some roads in the Suncrest area.

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 variance(s) will enable the remaining footprint to meet all required Development Standards of the R-1 District. The variance can not improve nor contribute to traffic congestion. The structure will continue to be utilized as a single family residence. Therefore, no additional traffic or congestion will occur. The garage will be utilized by the owners of the residence and will increase this property, as well as surrounding property values.

Shamberger moved to approve V09-01 as requested; seconded by Cardoso. The motion passed unanimously with Bossio's abstention noted.

Shaffer advised Straface that the Board's decision can be appealed to the Circuit Clerk within thirty (30) days and that any work done during this time is at the sole financial risk of the petitioner.

Bossio returned to the meeting and resumed as Chair.

- B. V09-02 / Weppler / 100 Hornbeck Road:** Request by Ricky Weppler for variance approval from the Planning & Zoning Code, Article 1369 as it relates to signs for property located at 100 Hornbeck Road, Suite 102; Tax Map #64 Parcel #1; a B-5, Shopping Center District.

Fletcher read the Staff Report stating that Ricky Weppler, a general partner in R & S Investments, seeks variance approval to erect a sixteen (16) square foot sign at 100 Hornbeck Road, Suite 102. Addendum A of this report illustrates the location of the subject site and a photograph of the storefront.

Article 1369.07 (I) (1) of the Planning & Zoning Code provides that the maximum area of permitted wall signs in the B-5 District is 0.6 square feet for each linear foot of storefront. The linear width of the subject storefront is 21.33 feet, which provides a maximum wall sign area of thirteen (13) square feet. Therefore, the applicant must obtain a three (3) foot variance.

Bossio recognized Ricky Weppler, 725 Timberline, and asked if he wished to provide any additional information. Weppler distributed photos showing the business's location, which is beside the new Dollar Tree at the Grafton Road Wal-Mart. He stated that presently, the business is seasonal accounting, but he may look at expanding his services beyond the seasonal tax services.

Bossio asked for public comment, either in favor or against the request. There being none, Bossio asked for staff's recommendations.

Fletcher stated that one of the stated purposes within the Planning & 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.

Staff recommends the following revisions to the petitioner's “Findings of Fact” (deleted matter struck through; new matter underlined).

Papandreas moved to accept all the Findings of Fact as recommended by Staff; seconded by Shamberger. The motion passed unanimously.

**NOTE: The following findings 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's store appears to be smaller in size than most stores in the shopping plaza (1,100 square feet) with a 21'4” frontage, therefore the proposed sign size requirements are much smaller than the other signs in the shopping plaza. A larger sign than what is required would appear to be more proportional to the other signs in the plaza.

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:

A larger sign appears to be more proportional to other signs located in the plaza, and provide more uniform commercial messaging for the shopping center.

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:

A variance to exceed the maximum wall sign area would prevent general maintenance or improvements to the subject or neighboring storefronts with the strip commercial development.

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:

This is a commercial wall sign on a new commercial strip development. Granting this variance would in no way alter the land-use characteristics of the vicinity and zoning district. Granting this variance should not in any way diminish market value of adjacent properties. Granting this variance would not increase traffic congestion on public streets in the area. The store front is located in a shopping center with just one way in so there are no public streets in the vicinity of the shopping center where we will be located. There would be no people there except for people visiting the stores in the shopping plaza.

Shaffer moved to grant variance approval for V09-02 as requested; seconded by Papandreas. The motion passed unanimously.

Bossio advised Weppler that the Board's decision can be appealed to the Circuit Clerk within thirty (30) days and that any work done during this time is at the sole financial risk of the applicant.

- C. **V09-03 / Weser-Sargasso / 215 Don Knotts Boulevard**: Request by Phil Weser, on behalf Sargasso Morgantown, LLC, for variance approval from the Planning and Zoning Code, Article 1373.02 (A), Non-Conforming Structures as it relates to an expansion of a nonconforming structure at 215 Don Knotts Blvd, Suite 110; Tax Map #49 Parcel #25; an I-1, Industrial District.

Fletcher read the Staff Report stating that the petitioner seeks to extend the existing enclosed patio area at the southwest corner of the building to develop an office and restrooms for the Sargasso Restaurant. The minimum rear yard setback for the subject realty is thirty (30) feet.

The existing structure has a rear yard setback of 4.75 feet, which was approved in February 2007 by the Board. The proposed extension of the enclosed patio area will have a rear yard setback of 3.5 feet. This will increase the extent of the structure's nonconformity by 1.25 feet and require approval of a 26.5 foot variance.

Article 1373 of the Planning and Zoning Code requires variance approval by the Board when an expansion of a non-conforming structure increases the extent of its non-conformity. Fletcher also stated that the construction of this building began before the January 2006 zoning amendment.

Bossio recognized Phil Wesser, 973 Tyrone Road, and asked if he wished to provide additional information. Wesser stated that the addition is in an alcove of the existing building that encroaches because the property line is skewed at that point. It will not encroach onto the Rail-Trail.

Bossio asked for public comments either in favor or against the request. There being none, Bossio closed the public comment portion of the hearing and asked for Staff's recommendations.

Fletcher stated that 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. Staff recommends the following revisions to the petitioner’s “Findings of Fact” (deleted matter struck through; new matter underlined).

Shamberger moved to accept all the Findings of Fact as recommended by Staff; seconded by Papandreas. The motion passed unanimously.

**NOTE: The following findings 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 gas line and related easement running along the south side of the existing building and the rail-trail running along the west side of the structure restrict building or restaurant expansion.

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:

There are other existing restaurants and business that enjoy a similar proximity, access, and orientation to the public rail-to-trail facility, i.e. Oliverio’s Ristorante, Synergy Chop Shop and Saloon, etc.

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 proposed extension will simply allow the remaining portion of the patio to be enclosed and will not increase the size or extent of the existing retaining wall or patio footprint.

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:

Although the proposed addition will extend closer to the rear property line than allowed within the zoning district, there remains a considerably distance between the proposed enclosure and the rail-trail facility. The addition is intended to provide space for an office and additional bathroom and will not alter the land use of surrounding properties nor can it contribute to traffic congestion.

Shaffer moved to grant variance approval for V09-03 as requested; seconded by Papandreas. The motion passed unanimously.

Bossio advised Weser that the Board’s decision can be appealed to the Circuit Clerk within thirty (30) days and that any work done during this time is at the sole financial risk of the applicant.

- D. **V09-05 / March Westin / 46 Waterfront Place**: Request by March Westin, on behalf of Mermaid, LLC, for variance approval from the Planning and Zoning Code, **[A]** Article 1349.08 (B) as it relates to parking between the front façade and public right-of-way and **[B]** Article 1351.01 (C) (3) as it relates to relief from the building-like façade design provision at 46 Waterfront. Tax Map #37A portion of Parcel #3; a B-4, General Business District.

Fletcher read from the Staff Report stating that the City of Morgantown and a subsidiary of Platinum Properties are currently developing the Morgantown Event Center as a public-private, design-build project. The Event Center building is a City development project through the City's Building Commission while the parking garage and surface parking area components are considered a private development project. As such, the former is not required under State Code to adhere to the City's Planning & Zoning Code while the later is.

The petitioner seeks to construct a parking garage connected to the Morgantown Event Center that is currently under construction and surface parking to serve the Event Center, the Waterfront Jeep Dealership, and the Caperton Trail. General development program details include:

- Approximately 74,000 square foot parking garage that includes four (4) parking decks.
- Approximately eight (8) surface accessible and valet spaces in front of the garage structure.
- Approximately fifty-nine (59) spaces between the parking garage structure and the Waterfront Jeep Dealership.
- Approximately eight (8) parallel spaces along the Caperton Trail to be dedicated for trail use.
- Approximately three tour bus spaces behind the Waterfront Jeep Dealership.
- Approximately thirty-eight (38) spaces behind and to be dedicated for the Waterfront Jeep Dealership.

The petitioner met with the Technical Review Team on Tuesday, December 9, 2008. All requested/suggested modifications were included in the final site plan submission.

Article 1351.01 (C) (3) provides that:

"Parking structures shall be designed with building-like facades and architectural context that will complement the scale, facades and materials found within the district. Where feasible, the design of parking structures shall incorporate street level retail or service uses to ensure pedestrian viability of the block."

As such, variance relief must be obtained. There are two parking garage structures within the Wharf District that were not required to meet this building-like façade design standard. It is the opinion of the Planning Department that the proposed parking garage design rightly respects and appropriately incorporates the architectural vocabulary that characterizes the Waterfront Hotel and WVU Foundation developments.

Article 1349.08 (B) provides that:

"All on-site surface parking must be located to the rear of the principal building or otherwise screened so as to not be visible from public right-of-way."

The petitioner's site plan illustrates approximately nine (9) on-site parking spaces located between the building's front facade and Don Knotts Blvd. These spaces will be used for accessible vans that exceed the parking garage's height limits as well as valet parking. As such, variance relief must be obtained.

Because of the activities and programming anticipated for the Morgantown Event Center, it is necessary to provide large accessible van parking that is appropriately situated and within close proximity to entrance doors. The subject parking area was designed to fill a development site void created by existing utility lines, associated easements, and the internal roadway.

Bossio recognized Jamie Ridgway, March-Weston, and asked if he wished to provide additional information. Ridgway stated that the developer is looking to construct a surface parking lot behind the garage. There is a sixteen-foot deep sanitary line combined with a sanitary storm line twenty-four feet back, so the parking lot cannot go back any further. A MUB main water line goes through the surface parking lot, which is why parking spaces are in the front.

Shaffer questioned the three spots for tour buses on the back side, and what would be done if more than three were needed. Ridgway stated that the number of spaces was determined by a traffic study. If needed, the surface parking lot could accommodate any overflow.

The Board also questioned the type of permanent surfacing that would be used for the parking lot. Fletcher reminded the Board that the type of paving was not a matter of BZA review or approval.

Papandreas asked about the landscaping. Ridgway stated that a complete landscape plan is being developed by Biafora Landscaping.

Bossio asked for public comments either in favor or against the request. Fletcher reminded the Board that there were two requests for relief and that comments should either be taken for both petitions or separately. Bossio asked the Board and those in attendance if there were any objections to combining the public comment portion. There being no objections offered, Bossio proceeded with a combined public comment period.

Paul Walker, 2036 Henry Clay Drive and project Architect, stated that he believed the zoning requirements ensuring that structured parking garages include building-like facades made a lot of sense in an urban context. However, the nature of this complex is different as it does not have any surrounding retail component or historic significance. He stated that the proposed design is intended to continue the architectural character of the Event Center, Waterfront Place Hotel and Conference Center, the West Virginia University Foundation Building, and the Foundation Parking Garage.

There being no further public comments, Bossio closed the public comment portion and asked for Staffs recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Please note that each of the two variance petitions must be considered and acted upon by the Board separately.

Staff recommends approval of the variance petitions with the following revisions to the petitioner's Findings of Fact (deleted matter struck through; new matter underlined).

Shaffer moved to find in the positive for all Findings of Fact as recommended by Staff for V09-05 [A] – relief from building-like facades on parking structures; seconded by Cardoso. The motion passed unanimously.

**NOTE: The following findings were included in the motion for V09-05 [A].**

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:

Article 1351.01 (C) (3), adopted on November 6, 2007 provides that parking garages are to have a building-like facade design. The existing parking garages in the Wharf District do not comply with this code, as they were built recently but before this standard was enacted. The design of the proposed garage appears to reflect the aesthetics and architectural vocabulary of the Waterfront Hotel & Conference Center, the West Virginia University Foundation Building, and its adjacent parking garage. The proposed garage is located outside the central B-4 District core where the subject building-like façade design standard is highly desirable and most advantageous in protecting the quality and character of Morgantown’s historic downtown.

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:

Article 1351.01 (C) (3) states that parking garages are to have a building-like facade design, but there are parking garages within the zoning district recently constructed that do not comply with this code. The proposed parking garage has been designed with aesthetics and architectural vocabulary to match the Waterfront Hotel & Conference Center, the West Virginia University Foundation Building, and its adjacent parking garage.

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:

This property will provide ample parking for the Morgantown Event Center. It will also provide parking for surrounding businesses and other special events not being held at the Morgantown Event Center. This project will make improvements for all surrounding parties in the zoning district.

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:

This variance will enhance the use of the zoning district by providing better access to all attractions and features. Also, the proposed building has been designed with aesthetics to match other garages and buildings within the district. This will not diminish the market value of surrounding properties.

Shaffer moved to grant variance approval as requested for V09-05 [A] Relief from building-like facades on parking structures; seconded by Cardoso. The motion passed unanimously.

Bossio advised Ridgway that the Board's decision can be appealed to the Circuit Clerk within thirty (30) days and that any work done during this time is at the sole financial risk of the applicant.

Cardoso moved to find in the positive for all Findings of Fact recommended by Staff for V09-05 [B] – relief from parking between front façade and public right-of-way; seconded by Papandreas. The motion passed unanimously.

**NOTE: The following findings were included in the motion for V09-05 [B].**

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:

Article 1349.08 (B) states there shall not be parking between the front facade of building and public right-of-way. To adequately facilitate all handicapped vehicles, these parking spaces will be used for handicapped vans. The garage has clearance for normal passenger vehicle handicapped parking, but not for handicapped vans.

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:

This variance is needed to provide better parking for disabled users of the Morgantown Event Center. The height clearance in the parking garage does not allow for handicapped vans to use the space. Without these spaces there will not be a handicapped accessible area for these vans.

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 variance will not harm the public welfare of the property improvements, but rather it will make the Morgantown Event Center more accessible to all members of the community.

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 location of these parking spaces is ideal with respect to the garage. The parking spaces are adjacent to the entrance-only access point of the parking garage. These cars will be isolated from the rest of the outflow traffic, and will not impede the traffic of the garage after an event.

Shaffer moved to grant variance approval as requested for V09-05 [B], relief from parking between front façade and public right-of-way; seconded by Papandreas. The motion carried unanimously.

Bossio again advised Ridgway that the Board's decision can be appealed to the Circuit Clerk within thirty (30) days and that any work done during this time is at the sole financial risk of the applicant.

- E. **CU09-01 / Solis/ 100 Hornbeck Road:** Request by Terry Noel, on behalf of Mariachi Loco, for conditional use approval for “Restaurant, Private Club” license in the B-5 District at 100 Hornbeck Road, Suite 101; Tax Map #64 Parcel #1; a B-5, Shopping Center District.

Fletcher read the Staff Report stating that the petitioner seeks conditional use approval for the establishment of a “Restaurant, Private Club” at a new commercial strip development at 100 Hornbeck Rd., Suite 101. The business name for the proposed establishment is “*Mariachi Loco*”. Addendum A of this report illustrates the location of the proposed conditional use.

The petitioner has submitted the following exhibits, which are attached hereto:

- Business plan
- Proposed menu
- Owner’s resume
- Floor plan

According to said exhibits, Mr. Solis is also the current owner of a successful conditional “Restaurant, Private Club” use known as *Los Mariachi* located at 1137 Van Voorhis Road, which was approved by the Board in 1998. Mr. Solis has reported, on average, 87% quarterly food and non-alcoholic beverage sales for said location. In addition, the applicant received conditional “Restaurant, Private Club” use approval in 2004 for the former “*Margaritas*” on High Street.

It should be noted that, unlike the B-1 and B-4 Districts, conditional “restaurant, private club” uses in the B-5 District are not required to comply with Article 1331.06 “Supplemental Regulations Pertaining to Permitted Land Use Table,” Paragraph (27); i.e., one-year “bona fide restaurant” requirement, 60/40 food/alcohol sales, 1:00 AM liquor sales restrictions, etc.

The location of the proposed restaurant, private club is within a recently constructed commercial strip development and includes sufficient parking for all existing and contemplated commercial tenants.

Bossio recognized Terry Noel, Columbia, SC, and asked if he wanted to provide any additional information. Noel stated that he was representing the Solis family, who owns a very similar type of restaurant on Van Voorhis Road *Los Mariachi*. He stated that the *Los Mariachi* restaurant is family-owned since 1998 and they have held a liquor license at that location since then. The proposed *Mariachi Loco* restaurant will serve margaritas with Mexican cuisine, which is the reason the liquor license is needed.

Bossio asked for public comments either in favor or against the request. There being none, he closed the public comment portion of the hearing and asked for Staff’s recommendations.

Fletcher stated that Staff recommends the following revisions to the petitioner’s findings of fact (deleted matter struck through, new matter underlined) and that the conditional use petition be approved with the following conditions:

1. That the petitioner must obtain permitting as a “restaurant” from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*.
2. That the conditional use approval granted herein may not be transferred.

Papandreas moved to accept all Findings of Fact as recommended by Staff; seconded by Cardoso. The motion passed unanimously.

**NOTE: The following findings were included in the motion.**

Finding of Fact #1 – Congestion in the streets is not increased, in that:

There appears to be sufficient on-site parking.

Finding of Fact #2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The proposed use and occupancy will be required to meet all applicable building, fire, and health codes.

Finding of Fact #3 – Provision of adequate light and air is not disturbed, in that:

The conditional use will be located within an existing commercial strip development and can therefore not improve or deteriorate existing light or air conditions.

Finding of Fact #4 – Overcrowding of land does not result, in that:

The proposed conditional use will be located within an existing commercial strip development that appears to include sufficient parking and can therefore not contribute to the overcrowding of land.

Finding of Fact #5 – Undue congestion of population is not created, in that:

The leasehold appears to have ample square footage interior and the newly constructed strip center appears to have more than adequate walkways and parking for all tenants and customers.

Finding of Fact #6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

This leasehold is part of a commercial development and will be properly maintained and comply with all regulations and/or public requirements. Further, the proposed conditional use will not affect demands on public schools or parks.

Finding of Fact #7 – Value of buildings will be conserved, in that:

The addition of a quality restaurant within this newly constructed development should enhance the value of the commercial center and other tenancies.

Finding of Fact #8 – The most appropriate use of land is encouraged, in that:

The use of the leasehold as a restaurant appears to contribute positively to the overall intent of a strip shopping center; to provide retail services within a commercial district.

Shaffer moved to grant conditional use approval for CU09-01 with the conditions recommended by Staff; seconded by Shamberger. The motion passed unanimously.

Bossio advised Noel that the Board's decision can be appealed to the Circuit Clerk within the thirty (30) days and that any work done during this time at the sole financial risk of the petitioner.

- F. **V09-04 / Synergy Management Group, LLC / 156 Clay Street**: Request by Synergy Management Group, LLC for variance approval from the Planning and Zoning Code, Article 1369 as it relates to signs 156 Clay Street; Tax Map #28 Parcel #38; a B-4, General Business District.

Fletcher advised the Board that the variance request had been withdrawn by the applicant and that no action was required by the Board.

- G. **CU09-02 / Baron / 1335 University Avenue**: Request by John Baron for conditional use approval "Restaurant, Private Club" license in B-4 District at 1335 University Avenue; Tax Map #26A Parcel #13; a B-4, General Business District.

Fletcher advised the Board that the variance request had been withdrawn by the applicant and that no action was required by the Board.

## V. OTHER BUSINESS

A. **Public Comments** – None

B. **Staff Comments**

Fletcher advised the Board that the Downtown Plan meetings are scheduled for February 25 and 26. Steering committees, that will represent all stakeholder groups, will be assembled and a public workshop scheduled.

Fletcher stated that the Planning Department will be submitted an administrative requested text amendment in the near future to the Planning Commission to consider revising Table 1331.05.01 "Permitted Land Uses" of the Planning & Zoning Code so that "Restaurant, Private Club" are permitted by-right in the B-5 Districts.

Shaffer asked about the Pepsi Cola sign on the Knights of Columbus building. Fletcher advised that he met with the property owner, Terri Cutright, and a mural artist. The artist will be submitted a rendering and cost proposal to the property owner for consideration. If there is no agreement soon, Staff will proceed with enforcement.

## VI. ADJOURNMENT – The meeting adjourned at 7:25 PM