

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

May 16 2012

City Council Chambers

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

MEMBERS ABSENT: Leanne Cardoso

STAFF: Christopher Fletcher, AICP

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

Shamberger moved to amend the agenda so that the "Old Business" agenda items can be considered after the "New Business" agenda items; seconded by Papandreas. The motion carried unanimously.

II. MATTERS OF BUSINESS:

- A. Minutes for the March 21, 2012 hearing. Shaffer moved to approve as presented; seconded by Shamberger. The motion carried 3-0 with Papandreas abstaining due to his absence.
- B. Minutes for the April 18, 2012 hearing. Shamberger moved to approve as presented; seconded by Shaffer. The motion carried unanimously.

IV. NEW BUSINESS:

- A. **CU12-08 / John Staley / 359 Brockway Avenue:** Request by John Staley for a conditional "Private Club" use approval at 359 Brockway Avenue; Tax Map 29, Parcel 199; B-2, Service Business District.

Fletcher read the Staff Report, stating that the petitioner seeks to convert a pre-existing "Tavern" formally "Vickers Pub" to "Pregamers" "Private Club". Addendum A of this report illustrates the location of the subject site.

Article 1329.02 defines "Tavern" as:

"A place licensed to sell only beer and wine, but no liquor. Food may or may not be served. Taverns are allowed in all districts except residential and office districts."

Article 1329.02 defines "Private Club" as:

"Any corporation or unincorporated association meeting the definition of private club as contained and utilized within the Code of West Virginia Chapter 60, Article 7, Section 1 et seq. as the same applies to licensing for sale of alcoholic liquor. These establishments are permitted to sell liquor, beer and wine."

Table 1331.05.01 "Permitted Land Uses" provides that "Tavern" uses are permitted in the B-2 District by-right and "Private Club" uses are permitted by conditional use approval.

Therefore, in order to serve liquor, Pregamer's "Tavern" must obtain conditional use approval as a "Private Club".

According to City Hall business license records, the subject property has been a Tavern since at least 1993. From 2011 – 2007 the site was Vickers Pub, in 2007 it was Jack's Place, in 2006 it was Pit Bull's Bar and Grill, and from 2006 – 1993 it was Yanns Hot Dogs. No records we found for the property prior to 1993.

Section 1331.06 (18) provides that:

"When reviewing new or the conditional use Private Club applications, the Board of Zoning Appeals shall consider potential adverse impacts on surrounding residential properties such as, but not limited to, the arrangement and use of outdoor seating areas, hours of wine and liquor sales, noise, etc."

According to the petitioner, no exterior or interior modifications are presently proposed nor will outdoor seating be pursued. Therefore, noise at this location is not anticipated to be a problem.

Hours of operation will be Monday through Sunday from 11am to 3am.

The business will employ a total of three people. Like all of the prior taverns that have occupied the space before "Pregamer's," the business does not have off-street parking and will strictly utilize available on street parking.

In summary, the Tavern establishment use is preexisting and the Private Club designation is not inconsistent with the existing use or character of the area.

Bossio recognized Mr. John Staley, 359 Brockway Avenue. Staley stated that they are seeking the conditional use to make the business more appealing, improve menu, hire more staff, pay their staff well, increase profits, and renovate more. He stated that the West Virginia Alcoholic Beverage Control Administration (WVABCA) has not had problems at this location in the past. They want to have a more diverse clientele and prosper the business.

Bossio asked if Staley was a new owner of the establishment. Staley stated yes. Bossio asked if he was continuing the same liquor license or will this be a new liquor license. Staley stated that it will be a new liquor license. Bossio asked if Staley was aware of any previous WVABCA violations. Staley stated no.

Papandreas asked if 25 was his occupancy. Staley stated yes. Papandreas asked if Staley thought this would stay the same. Staley stated yes. Papandreas asked if the establishment was going to serve food. Staley stated they have a new kitchen. Staley stated that the menu will be mostly bar food including hotdogs, hamburgers, fries, cheesesteaks, etc. Papandreas asked if the kitchen was equipped with a hood system. Staley stated yes.

Bossio asked Staley how adding liquor would help the business. Staley stated that it will increase profits for the small business and try to develop a classy place.

Shaffer asked if Staley was going to change the business's hours of operation. Staley said that they would stay the same.

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

being no public comments, Bossio declared the public hearing closed and asked for Staff's recommendation.

Fletcher stated that the Board of Zoning Appeals 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. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

It is the opinion of the Planning Division that the sale of liquor in addition to beer and wine within the Tavern establishment use will have no appreciable change in the character of the establishment or the surrounding commercial area.

Staff recommends that CU12-08 be approved as requested with the following conditions:

1. That no exterior seating or gathering space may be developed without the approval of the Board of Zoning Appeals.
2. That interior and exterior modifications to the subject structure may not significantly increase the occupancy of the proposed establishment without first obtaining approval by the Board of Zoning Appeals.
3. That all regulated signage for the subject establishment must comply with related standards set forth in Article 1369 "Signs".
4. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.

Shaffer moved to accept the findings of fact as revised by Staff; seconded by Papandreas. The motion carried unanimously.

Papandreas moved to approve CU12-08 as requested with Staff recommended conditions; seconded by Shamberger. The motion carried unanimously.

Bossio advised Straley that any work done relating to the Board's approval during the next thirty-day appeal period will be at the petitioner's sole financial risk.

- B. V12-11 / Kevin Trembush / 699 Burroughs Street:** Request by Project Management Services, on behalf of Kevin Trembush, for variance relief from Article 1341.04 as it relates to side yard setbacks at 699 Burroughs Street; Tax Map 55, Parcel 93; PRO, Professional, Residential, and Office District.

Bossio announced that he would abstain from the Board's deliberations and consideration of this agenda item due to a conflict of interest having been the former owner and developer of the petitioner's property. Bossio left Council Chambers and Shamberger assumed the Chair.

Fletcher read the Staff report, stating that the Advanced Health Medical practice requests to expand its operation at the subject location on Burroughs Avenue and Van Voorhis Road. Addendum A of this report illustrates the location of the subject site.

Article 1341.04 provides that the minimum side yard setback in the PRO District is 15 feet. In 2009, Advanced Health built a two story building, but only occupied the first floor. Due to growing business success, they desire to expand the business into the second floor.

In order to expand into the second floor, the building must have a wet/dry sprinkler system. Both the first and second floor will be retro fitted. The small 4' x 6' proposed building expansion will contain a wet/dry pump house sprinkler system. This structure will be located in the northern side yard, and will be setback six feet from the northern property line. This request requires a nine foot side yard setback variance.

In 2009, the subject property was granted a side yard setback variance on the northern side yard property line in case V09-17. As stated in the applicant's petition application, the site has been constrained by several development factors. WVDOH's stormwater easement reduced the width of the site's buildable area. Furthermore, the width of the properties' remaining buildable area as well and the configuration of WVDOH's stormwater easement boundary left few develop options.

Shamberger recognized the petitioner's representative Lisa Mardis of Project Management Services. Mardis stated that Dr. Trembush's business has experienced success and requires the use of additional area with the building, which requires retrofitting of a wet or dry fire suppression system. The dry system will be used for the half-story area and dry systems are used in line freeze situations. The lines remain full of air rather than water. Due to the West Virginia Division of Highways (WVDOH) right-of-way easement, the dry system must be placed as proposed. This area of the building where the system needs to be installed includes a stairwell that does not include the area need to install the system. The petitioner therefore requires an additional four-foot encroachment into the previously approved setback variance to best locate the dry system without impacting the medical service delivery and observing WVDOH restrictions.

There being no questions by the Board, Shamberger opened the public hearing portion asking if anyone was present to speak in favor of or in opposition to the petitioner's request. There being no public comments, Shamberger declared the public hearing closed and asked for Staff's recommendation.

Fletcher read into the record an email from Mr. Leonard George of Tuesday, April 24, 2012 stating:

"Dr. Trembush has or will be requesting the below listed variance. Old Palace the adjoining property has no objections to this variance. Allowing Dr. Trembush to install additional fire protection is a good thing for everyone. While I know that such variances can be a problem, I hope that the law and the zoning board will do whatever it legally can to accommodate Dr. Trembush, who along with Mr. Bossio single handily transformed a disastrous, eye sore trailer park to an absolutely beautiful medical complex. These two gentlemen along with other entrepreneurs have transformed Burroughs Street from the ugliest, problematic street in Morgantown to one of the prettiest streets in town. I hope the Zoning Board will be able to find a way to accommodate Dr. Trembush's request, to further improve the community. Leonard George, President, Old Palace Ltd."

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 petitioner. Staff recommends that each of the findings of

fact submitted by the petitioner be accepted without revision. Staff recommends that the Board grant a nine foot side yard setback variance for case V12-11 as requested.

Papandreas moved to accept the findings of fact as submitted by the petitioner; seconded by Shaffer. The motion carried unanimously.

Shaffer moved to grant variance relief for V12-11 as requested without conditions; seconded by Papandreas. The motion carried unanimously.

Shamberger advised Mardis that any work done relating to the Board's approval during the next thirty-day appeal period will be at the petitioner's sole financial risk.

Bossio returned to Council Chambers and resumed the Chair.

- C. V12-12 / Scott Properties / Old Golden Blue Lane:** Request by Scott Property for variance relief from Article 1329 as it relates to the definition of "Frontage" and "Lot Front"; Tax Map 20, Parcels 257-263, 265-268.1; R-2, Single- and Two-Family Residential District.

Fletcher read the Staff report, stating that the petitioner seeks to continue his "Jones Place" townhouse development on realty bound by Jones Avenue and First Street (public streets) and Old Golden Blue Lane (private street).

On April 12, 2012, Staff prepared an administrative interpretation for the purpose of determining the subject realty's frontage and lot front, which is necessary to establish building envelope orientation and to calculate building height based on the number of stories. The question was whether the realty fronts Jones Avenue or Old Golden Blue Lane based on related standards set forth in the Planning and Zoning Code.

The Planning and Zoning Code provides the following guidance in determining the front of a building, frontage, and lot front (**emphasis added**):

BUILDING HEIGHT IN STORIES – The number of stories in a building measured vertically at the **front elevation** from the ground level to the top of the building vertically above that same point. For the purposes of determining building height, a basement shall not be considered a story.

BUILDING, FRONT LINE OF – The line of the face of the building nearest the **front lot line**.

FRONTAGE – (1) The boundary of a lot fronting on a **public street**; (2) the **front lot line**.
LOT FRONT – The side of a lot that abuts a **public street** is the front of the lot. For corner lots, the shortest side fronting upon a street shall be considered the front of the lot. Where buildings exist on the lot, the frontage may be established by the orientation of the building, or of the principal entrance, if building orientation does not clearly indicate lot frontage. Where no other method determines conclusively the front of a lot, the Planning Director shall select one frontage on the basis of traffic flow on adjacent streets, so that the lot is considered to front on the street with the greatest traffic flow.

Based on the definitions and guidance provided above and a thorough review of the Planning and Zoning Code, Staff concluded that a building's front is the elevation facing and nearest the lot line of the frontage of the "public street".

As such, it appears that the lot front of the subject property is Jones Avenue (public street). Administrative latitude to determine otherwise appears to be specifically limited to situations where buildings already exist with emphasis on recognizing traffic flow trends on adjacent streets, both of which are not applicable to the subject property.

Variance relief from the "Lot Front" and "Frontage" definitions appears necessary for Old Golden Blue Lane (private street) to be considered the property's frontage street based on our several meetings and discussions concerning the site's steep topographical challenges and alternative site planning scenarios.

Otherwise, the petitioner will most likely have to pursue variance relief from the maximum height standard, relief from the maximum front setback standard, and relief from the minimum rear setback standard due primarily to the steep topographical challenges of the site and to design and achieve desired slope stability.

Bossio recognized Mr. Gregg Metheny, 2419 Stewartstown Road. Metheny stated that the history of the site is that he approached the Planning Commission with a Planned Unit Development (PUD) proposal for the site. He went through the public meeting process and the Wiles Hill neighborhood wanted the property to remain R-2 and be developed as permitted within that district. The neighborhood felt that the property was more of a transitional site between the high density apartments and the neighborhood. On a 4-3 vote, the Planning Commission decided not to send a favorable recommendation to City Council. He decided at that time to move forward with what the neighborhood wanted by developing a townhome development permitted by-right. After two years, he wanted to thank the Planning Commission. Although he really wanted and worked hard at designing an apartment complex on that site, he believes the townhouse development is a very nice transitional townhome community at this location. The project has completely transitioned the look of that hillside. [Metheny showed and discussed pictures and renderings of the project]. What he is asking for is to develop and additional eleven units on the hillside that is very similar to what has been constructed.

Bossio stated nice job on the project and does work well and he is glad Metheny sees that as a transitional area. Bossio asked if it is mostly rented or is it for purchase. Metheny stated that most are for rental but that have kept one unit on the market for sale. Metheny stated that he feels there may be an opportunity for parents to purchase the units because they are very nice.

Shaffer echoed Bossio's sentiments and that it is an outstanding project. He has brought friends from out of town to the site and they are envious that this is in Morgantown.

Metheny stated that the City Departments have been so supportive from day one. After the PUD, they said let's work together and he wanted to thank all involved.

There being no further questions by the Board, Bossio opened the public hearing asking if anyone wished to speak in favor of or in opposition to the request. There being no public comments, Bossio declared the public hearing closed and asked for Staff 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 petitioner.

Staff recommends that each of the findings of fact submitted by the petitioner be accepted without revision.

Staff recommends that the Board grant variance relief as requested so that the petitioner may design additional buildings on the subject realty with Old Golden Blue Lane (private street) serving as the property's frontage and lot front rather than Jones Avenue (public street).

Papandreas moved to accept the findings of fact as presented by the petitioner; seconded by Shaffer. Motion carried unanimously.

Shaffer moved to grant variance relief for V12-12 as requested without conditions; seconded by Papandreas. The motion carried unanimously.

Bossio advised Metheny that any work done relating to the Board's approval during the next thirty-day appeal period will be at the petitioner's sole financial risk.

NOTE: A transcript was commissioned by the City of Morgantown and prepared by Monique Christiansen of DepoTran beginning after "New Business" Agenda Item C. through and up to, but not including, "Other Business". Said transcript covers Mr. Andrew Smith's challenge of Mr. Bernie Bossio's bias as provided under the Board's adopted By-laws; New Business Agenda Item D; New Business Agenda Item E.; Old Business Agenda Item A; and, Old Business Agenda Item B. Said transcript is attached hereto and made a part hereof.

- D. **BA12-01 / Andrew Smith / 426 Drummond Street:** Request by Andrew Smith, on behalf of Smith CPA, for an Administrative Appeal as it relates to minimum landscape buffer at 426 Drummond Street; Tax Map 6, Parcel 17; PRO, Professional, Residential, and Office District.
- E. **BA12-02 / Andrew Smith / 426 Drummond Street:** Request by Andrew Smith, on behalf of Smith CPA, for an Administrative Appeal as it relates to sidewalks 426 Drummond Street; Tax Map 6, Parcel 17; PRO, Professional, Residential, and Office District.

III. OLD BUSINESS:

- A. **V11-46 / Andrew Smith / 426 Drummond Street:** Request by Andrew Smith, on behalf of Smith CPA for variance relief from Article 1367.08 (C) as it relates to minimum landscape buffer at 426 Drummond Street; Tax Map 6, Parcel 17; PRO, Professional, Residential, and Office District. **MUST BE REMOVED FROM THE TABLE**
- B. **V11-47 / Andrew Smith / 426 Drummond Street:** Request by Andrew Smith, on behalf of Smith CPA for variance relief from Article 1341.07 (I) as it relates to sidewalks 426 Drummond Street; Tax Map 6, Parcel 17; PRO, Professional, Residential, and Office District. **MUST BE REMOVED FROM THE TABLE**

V. OTHER BUSINESS:

A. Public Comments:

Bossio recognized Mr. James Prete, who stated that he commended the Board for its patience and that this proves that the Board is doing a good. The Board solved the problem and satisfied the residents. He was on the Planning Commission a long time ago for four years and one of his co-members Frank Scafella. The question of scaled drawings was solved a long time ago. They would refuse to act on an application that did not have the proper drawings and an engineer's stamp. He wanted to comment on the Chairperson acting with prejudice on some of applications that come before this body. He watches the meetings on TV. If you look at what Mr. Bossio has done in this town; all the work he has done; all the things he has built; and particularly Van Voorhis Road and Burroughs Street, he thinks the City should have put a sign up there saying thank you Mr. Bossio for eliminating a blighted area. He did a beautiful job there. On Munsey Street and Burroughs Street, you couldn't ask for a better development; it is beautiful. Everything Bossio has done is top notch work. He doesn't have to worry about competitors because he has more work than he can do so how could he be prejudiced about something. He doesn't think that could be remotely possible. He knows that at the proper time and the proper situation, he would recuse himself. Thank you.

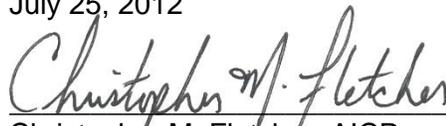
B. Staff Comments: None.

VII. ADJOURNMENT: 10:40 PM

MINUTES APPROVED:

July 25, 2012

BOARD SECRETARY:



Christopher M. Fletcher, AICP

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BEFORE THE CITY OF MORGANTOWN

BOARD OF ZONING APPEALS

In Re: Andrew Smith Variance Request V11-46
Andrew Smith Variance Request V11-47
for 426 Drummond Street

* * *

Board of Zoning Appeals Hearing

May 16, 2012

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Morgantown City Hall

388 Spruce Street

Morgantown, West Virginia

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Appearances:

Bernie Bossio, Chairman

Chris Fletcher, Director of Development Services

Jim Shaffer, Board Member

George Papandreas, Board Member

Tom Shamberger, Board Member

1 MR. BOSSIO: Okay. I'm going to
2 have Mr. Fletcher read the statements.

3 MR. FLETCHER: Thank you.
4 Section 5 of the Board of Zoning Appeals Bylaws
5 Policy Annex 2 Guidance and Fairness and Impartiality
6 provides that any party to a quasi-judicial
7 proceeding may challenge the partiality and
8 appearance of fairness of any board member during the
9 hearing. A challenge must include the facts relied
10 on by the challenging party relating to the board
11 member's alleged bias, prejudice or personal
12 interest or other basis by which the party has
13 concluded that the board member cannot participate in
14 an impartial manner.

15 On March 12th, 2012, the Planning Division
16 received a written challenge under Section 5 from Mr.
17 Andrew Smith concerning Chairman Bernie Bossio 's
18 participation during the Board's December 21st, 2011,
19 hearing for Mr. Smith's variance petitions V11-46 and
20 V11-47 and the related January 17th, 2012, site
21 visit.

22 Mr. Smith's challenge and accompanying
23 exhibits were included in the Boards' meeting packet
24 for this hearing and are, therefore, part of the

1 record.

2 The following procedures will be followed
3 as provided in Section 5. First I will read Mr.
4 Smith's March 12th, 2012, letter, and then ask Mr.
5 Smith if he has anything further to add to his
6 challenge.

7 Second, I will then ask Mr. Bossio to
8 respond to Mr. Smith's challenge in a statement that
9 must include the reasons why he should be allowed to
10 participate. Mr. Bossio 's statement will be a part
11 of the record and copies of this statement were just
12 distributed now to Board members and to Mr. Smith.

13 Number Three: Mr. Bossio 's statement
14 regarding continuing to participate in the hearing is
15 not subject to examination by the Board.

16 Number Four: I will then ask Mr. Smith if
17 he wishes to offer a rebuttal to Mr. Bossio 's
18 statement.

19 Number Five: If Mr. Smith offers a
20 rebuttal, I will then ask Mr. Bossio if he wishes to
21 respond by making special reference to the facts
22 alleged in Mr. Smith's rebuttal.

23 Six, at the conclusion of Mr. Bossio 's
24 response to Mr. Smith's rebuttal, I will ask Mr.

1 Bossio for his decision to either continue to
2 participate in the hearings on the matters involving
3 Mr. Smith and 426 Drummond Street, or step down from
4 participating. If Mr. Bossio decides to disqualify
5 himself by stepping down, he must state his reasons
6 therefore.

7 So what I will do is read the letter of
8 March 12th, 2012, to myself. The reference is,
9 "Challenge as per Section 5 Performance Morgantown
10 Board of Zoning Appeals Bylaws Annex 2 Guidance on
11 Fairness and Impartiality.

12 Dear Mr. Fletcher, Bernie Bossio , Chair of
13 the Board of Zoning Appeals BZA decision regarding my
14 variance requests was made before the hearing. I
15 also believe MR. Bossio has made my variance
16 requests personal and clearly has a pecuniary
17 interest indirectly in the matter. Mr. Bossio is
18 biased and is affected in a manner which may
19 influence his vote. MR. Bossio participated
20 materially and directly in the December 21st, 2011,
21 Board of Zoning Appeals meeting where my variance
22 requests were introduced, and Mr. Bossio also
23 attended a site visit at 426 Drummond Street on
24 January 17th, 2012. Once Mr. Bossio has had the

1 opportunity to respond in a statement, this challenge
2 and his response should be immediately referred to
3 the West Virginia Ethics Commission. Facts relied
4 upon: Number one, Mr. Bossio has at least 17
5 properties/parcels in the same neighborhood as 426
6 Drummond Street, all in the 7th Ward -- Assessor Ward
7 as follows (see attached Monongalia County Parcel
8 Search Record documents)."

9 In bullets, the 17 properties are, 1054
10 Koontz Avenue, 385 feet from 426 Drummond. Next
11 property is 1068 Koontz, 619 feet from 426 Drummond.
12 Next property is 1081 Windsor, 873 feet from 426
13 Drummond. Next, 1113 Windsor, which is 1,191 feet
14 from 426 Drummond. Next is 437 Milford Street, which
15 is 1,589 feet from 426 Drummond. Next is 571/573
16 Burroughs Street, 2,068 feet from 426 Drummond
17 Street. Next property is 484 Rotary, 2,412 feet from
18 426 Drummond Street. The next property is 424
19 Rotary, 2,447 feet from 426 Drummond. Next property
20 is 1242 Killarney, 2,549 feet from 426 Drummond
21 Street. Next property is 1232 Lyons Avenue, Zoey 2
22 LLC, 2,765 feet from 426 Drummond Street. Next
23 property is 481 Kiwanis, and it's 3,291 feet from 426
24 Drummond Street. The next property is Vintner Place,

1 one lot. Then the last property is Vintner Reserve,
2 five lots.

3 "Windsor and Koontz directly connect to
4 Drummond Street, and five of the 17 properties are
5 located in Map 6, same map location as 4."

6 Fact No. 2, "On January 9th, 2009, I walked
7 away from a potential land purchase and building
8 construction project related to land that Mr. Bossio
9 owned on Van Voorhis Road, and Mr. Bossio was also
10 interested in a construction of an office building
11 for my CPA firm on that same property. Please see
12 attached emails related to this project for evidence
13 of our prior business dealings. I also attached the
14 proposed contract for purchase. Mr. Bossio recused
15 himself during an April 2010 BZA variance request
16 related to a rental company, which I am owner, Smith
17 Rentals, LLC, based on this same prior business
18 relationship. See the agenda item below.

19 I believe Mr. Bossio holds hard feelings
20 with me over this prior business matter based on the
21 fact that I did not move forward with the project."

22 And then this paragraph I'm going to read
23 now is what he referenced, "See the agenda item
24 below."

1 "BA10-01 Smith Rentals, LLC, 348 Elysian
2 Avenue request by Smith Rentals, LLC, for
3 administrative appeal relating to the planning and
4 zoning code and interpretation made by the planning
5 department for property located at 348 Elysian
6 Avenue. Tax Map No. 37, Parcel No. 54. R-1A single
7 family residential district. Bossio stated that he
8 would have to recuse himself from the discussion and
9 decision for this petition due to previous business
10 dealing with the Petitioner. Bossio left the
11 chambers and Cardozo chaired the meeting.

12 Challenge Fact No. 3. I have attached a
13 transcript of the 12/21/2011 BZA hearing where my
14 variance requests first got introduced into the
15 record. This transcript clearly shows a hostile,
16 prejudiced environment where Mr. Bossio berates me
17 for bringing a variance request before the Board who
18 could grant such variances. This board regularly
19 grants such variances and respectfully listens to
20 requests from other citizens. Mr. Bossio himself,
21 and through his assigns, has requested and received
22 many variances with the Board of Zoning Appeals and
23 also zoning changes through the Morgantown Planning
24 Commission. Lists can be provided as requested. Mr.

1 Bossio has drawn conclusions for other board members
2 that I am well aware of the zoning rules, and by
3 doing so, biased the committee as to my honesty. See
4 page 21 starting at line six. The December 21st,
5 2011, BZA hearing was the first time I have ever
6 attended a BZA meeting and have only filed one other
7 such BZA interpretation request, April 2010, in my
8 entire career. Mr. Bossio 's knowledge of the area,
9 currently owning 17 properties, and personally living
10 on the street connected to Drummond Street allow him
11 to influence the other BZA members into essentially
12 giving him what he wanted for his neighborhood
13 without giving me a fair hearing. This was shown in
14 that the matter is extremely complicated and none of
15 the board members had any questions, except for one
16 board member asking what my hardship was, and
17 remained in total silence for the most part during
18 the hearing. I also have a copy of the video of the
19 hearing for viewing as needed.

20 Regarding the attached transcript, please
21 pay particular attention to page 20, lines two
22 through six; and page 21 through page 37; and pages
23 41 to 43; and page 66, line 20 through line 22; and
24 pages 79 to 84.

1 Challenge Fact No. 4: See my January 17th,
2 2012, 6:30 p.m. email just after the BZA site visit
3 ended to Chris Fletcher documenting that Mr. Bossio
4 told all of us at the site visit that the BZA had
5 discussions about my variance requests outside of
6 anything allowed in Morgantown Board of Zoning
7 Appeals Bylaws Article 3 meetings, and that I could
8 assume my variance requests would not be granted as
9 requested. The other BZA members at the site visit
10 also remained in total silence, except for MR. Bossio
11 and limited interaction from one other member.
12 Sincerely, signed Andrew C. Smith, CPA, Smith &
13 Associates, CPAs & Consultants, PLLC."

14 Mr. Smith, is there anything that you want
15 to add to your challenge?

16 MR. SMITH: No, sir.

17 MR. FLETCHER: Mr. Bossio , do
18 you want to respond to Mr. Smith's challenge in a
19 statement that must include the reasons why you
20 should be allowed to participate?

21 MR. BOSSIO: Yes, I do. Thank
22 you, Chris. I very much so want to respond to all of
23 the allegations that Mr. Smith has made.

24 I think that everybody has been provided a

1 copy of my statement.

2 MR. FLETCHER: The board members
3 and Mr. Smith, yes.

4 MR. BOSSIO: And there will be a
5 copy here. I have produced copies that I'll be able
6 to pass out. I would like to read my statement for
7 the record.

8 First, and most importantly, Section 5 of
9 the Board of Zoning Appeals Bylaws Policy Annex 2,
10 Guidance and Fairness and Impartiality provides that
11 any party to a quasi-judicial proceeding may
12 challenge the partiality and appearance of fairness
13 of any BZA member during the hearing. Any legitimate
14 challenge by Mr. Smith of my partiality should have
15 been made prior to the Board's December 21st, 2011,
16 deliberations on the variance petitions V11-46 and
17 V11-47.

18 Mr. Smith's March 12th, 2012, letter
19 challenging my partiality was submitted nearly three
20 months after the initial hearing and nearly two
21 months after the Board's January 17th, 2012, site
22 visit.

23 Further consideration of the variance
24 petitions are pending, as the matters were tabled at

1 the December 21st, 2012, hearing, and no related
2 decisions have been made by this board.

3 Second, let me make clear that my
4 deliberations regarding Mr. Smith's variances
5 petitions were based and conducted on the entire
6 record, presented at the 21st of December 2011,
7 hearing, which included approximately 40 pages of
8 documentation, as well as the merits and hardship of
9 the request. My deliberations were not and are not
10 based on any bias personal or pecuniary interest in
11 the matter.

12 Third, I will respond to each of Mr.
13 Smith's four challenges as follows: Concerning Mr.
14 Smith's first challenge of a pecuniary interest
15 relating to my present and past financial interests
16 in 17 specific properties he has identified as being
17 between 385 feet and 3,291 feet from 426 Drummond
18 Street, I hereby will submit these facts for the
19 record: Mr. Smith's property addressed at 426
20 Drummond Street, for which Mr. Smith is presently
21 pursuing relief under variance V11-46 and V11-47 is
22 located in a PRO zoning district. All 17 properties
23 that Mr. Smith has identified that I had or have
24 financial interest in are located in an R-1 single-

1 family residential district.

2 The scale and scope of the development and
3 land uses permitted in the PRO district are
4 significantly different from those permitted in the
5 R-1, single-family residential district.

6 Any suggestion or implication that there is
7 market comparability, competition and/or influence
8 between development by Mr. Smith at the 426 Drummond
9 Street property and those properties listed by Mr.
10 Smith are simply false and misleading.

11 Article 1381.02(D)(4) and Article
12 1381.03(E) of the City's Planning and Zoning code
13 provide the property owners and interested parties
14 within 200 feet of a property on which a variance is
15 sought are notified by mail of the Board of Zoning
16 Appeals relating to a hearing.

17 According to the Planning Division, the
18 following list of properties are identified, and the
19 owners within 200 feet of Mr. Smith's 426 Drummond
20 Street property: MaryAnn and Danielle Barill, Kyle
21 T. Boswell, Albert D. Calemine, Friendship Homes,
22 Inc., William Hall and Patsy A. Hall, Waldo and Betty
23 Lowe, Betty Lynch, Metaxxa, LLC, another parcel by
24 Metaxxa, LLC, William and Elaine Ridgeway, West

1 Virginia Conference of the Seventh Day Adventists,
2 Sellaro Enterprises and another parcel from Sellaro
3 Enterprises.

4 The list provided by Mr. Smith clearly
5 demonstrates that the 17 properties are not within
6 even the notification area established under the
7 City's Planning and Zoning code.

8 West Virginia State Code 8A-1-2b provide
9 the following definition for an aggrieved person,
10 which is also reiterated in Article 1329.02 of the
11 City's Planning and Zoning code. "An aggrieved
12 person is one that, A, or One, is denied by the
13 Planning Commission Board of Subdivision and Land
14 Development Appeals, or the Board of Zoning Appeals
15 in whole or in part the relief sought in any
16 application or appeal or has demonstrated that he or
17 she will suffer pecuniary injury, prejudice or
18 inconvenience beyond that which other residents of
19 the county or municipality may suffer."

20 Article 1383.06 of the City's Planning and
21 Zoning code provide the following process concerning
22 appeals of the BZA's decisions. Every decision or
23 order by the Board of Zoning Appeals shall be subject
24 to review by statutory, any person or persons jointly

1 or severally aggrieved by any decision or order of
2 the Board of Zoning Appeals may present to the
3 Circuit Court of Monongalia County a petition duly
4 verified setting forth such decision or order as
5 legal in whole or in part and specify the grounds of
6 the alleged legality.

7 Based on the definition of an aggrieved
8 person and the variance appeal process established in
9 the State Code and the City's Planning and Zoning
10 Code, with these clear definitions of an aggrieved
11 person, I, in fact, would not have the ability to
12 demonstrate to the Monongalia County Circuit Court
13 that I have sufficient connection to or would be
14 harmed by the Board of Zoning Appeals decision
15 concerning Mr. Smith's variance petitions -- Variance
16 11-46 or Variance 11-47.

17 In summary, concerning Mr. Smith's first
18 challenge, his commercial property at 426 Drummond
19 Street Drummond Street has no market comparability,
20 competition and/or influence on the 17 identified
21 residential properties of mine. These properties are
22 not within the 200 feet of Mr. Smith's 426 Drummond
23 Street property. I do not meet the aggrieved
24 person's standard established under the State code.

1 Concerning Mr. Smith's second challenge
2 relating to a potential land purchase at the corner
3 of Van Voorhis Road and Burroughs Street -- this is
4 the former Wagon Wheel Trailer Park -- I will hereby
5 submit the following facts for the record.

6 I am a partner in a company known as Zoey
7 2, LLC, which owned the former Wagon Wheel Trailer
8 Park property located at the corner of Van Voorhis
9 Road and Burroughs Street. In 2008, Zoey 2, LLC, was
10 in negotiations exclusively with Dr. Kevin Trembush
11 to lease a commercial building to be built as a part
12 of Zoey 2, LLC,'s redevelopment of the trailer park.

13 In November of 2008, Dr. Trembush
14 introduced Mr. Smith to Zoey 2, LLC, with a proposal
15 to jointly purchase the subject property, rather than
16 leasing a new building to Dr. Trembush. Discussions
17 simply included the sale of the property and did not
18 even include the construction of a new commercial
19 building by Zoey 2, LLC,.

20 Mr. Smith notified Zoey 2, LLC, in January
21 of 2009, that he was no longer interested in
22 purchasing the property with Dr. Kevin Trembush. No
23 purchase or sales agreement was ever executed with
24 Mr. Smith. Furthermore, in an attempt to mislead,

1 Mr. Smith has submitted with his March 12th, 2012,
2 challenge a draft purchase agreement that neither
3 myself nor the only other partner of Zoey 2, LLC,
4 stockholder has ever seen.

5 In my packet, I will ask that you would
6 look at an attached email dated December 8th, 2008,
7 at 2:22 p.m. from Andrew Smith to Jeffery S. Compton,
8 Attorney at Law, stating that there is no contract.

9 There are many more email communications
10 between Mr. Smith and Zoey 2, LLC, partners than
11 those submitted with Mr. Smith's March 12th, 2012,
12 challenge. Of particular interest and relevance is a
13 January 1, 2009, email, which was not included in the
14 challenge exhibits, where Mr. Smith agrees that he
15 had gotten in over his head. Additionally, all
16 parties agree in this email that there were no hard
17 feelings. This email is attached hereto and made a
18 part of the record. Moreover, please note that a
19 January 9th, 2009, email included in Mr. Smith's
20 challenge exhibits that Zoey 2, LLC, reiterated our
21 stance that there are certainly no hard feelings.

22 Dr. Trembush decided without delay to move
23 forward on his own in purchasing the property, which
24 included the construction of a commercial building by

1 Zoey 2, LLC,. Mr. Smith's decision to not purchase
2 the subject property did not interrupt or suspend
3 Zoey 2, LLC,'s progress in redeveloping the
4 functionality (sic) obsolete site into a contributing
5 commercial building. In fact, Mr. Smith's decision
6 cleared the way to move forward with Dr. Trembush in
7 site and building designs, which is evidenced by
8 development-related approvals granted by the City in
9 the following months.

10 As such, any suggestion or implication that
11 Zoey 2, LLC, or its partners had any pecuniary
12 interest with Mr. Smith, suffered monetary loss or
13 project delay, or experienced any other incident
14 causing hard feelings as a result of Mr. Smith's
15 decision not to purchase the property are false.

16 Although I do not believe my recusal at the
17 April 21st, 2010, Board of Zoning Appeals hearing
18 concerning Mr. Smith's administrative appeal BA10-01
19 was obligatory, I felt it prudent given the fact that
20 Zoey 2, LLC, and Dr. Trembush had not yet closed on
21 the sale of the subject property. The closing did
22 not occur until June 2010, and the Certificate of
23 Occupancy for Dr. Trembush's Advantage Health and
24 Wellness building was not issued by the City until

1 October 2010.

2 In summary, concerning Mr. Smith's second
3 challenge to me, his land purchase proposal was
4 unsolicited, a sales or purchase agreement was never
5 executed, discussions with Mr. Smith and the decision
6 not to proceed did not result in any monetary loss,
7 delay in the delivery of the redevelopment project.

8 Zoey 2, LLC, and the redevelopment project
9 benefited by Mr. Smith's decision not to proceed, and
10 my recusal in the April 2010 is inconsequential and
11 extraneous to various petitions V11-46 and V11-47.

12 In response to Mr. Smith's third challenge
13 concerning a hostile, prejudiced environment and
14 drawing conclusions for and influencing the Board of
15 Zoning Appeals, I hereby submit the following facts
16 for the record: The partial transcript -- partial
17 transcript submitted by Mr. Smith failed to recognize
18 that the official meeting record included
19 approximately 40 pages of documents contained in the
20 Board of Zoning Appeals meeting packet. These
21 documents served as background and preparation
22 material, which are routinely delivered to board
23 members of the Board of Zoning Appeals in advance of
24 our meetings. These documents demonstrated that Mr.

1 Smith proceeded with his construction and development
2 of 426 Drummond Street prior to obtaining all
3 necessary approvals.

4 I believe my line and manner of questioning
5 was consistent with other instances where petitioners
6 sought variance relief after construction, rather
7 than before as required.

8 Further, page 38, line one of Mr. Smith's
9 transcript demonstrates that Board Member, Number
10 One, assented to my questions by stating, "Actually,
11 you covered a lot of the questions that I had."

12 Mr. Smith continued without question to
13 allow me to be a part of the site visit on January
14 17th, 2012, but alleges nearly two months later that
15 my participation created a hostile, prejudiced
16 environment.

17 At the site visit I, as I customarily do,
18 qualified my comments and suggestions with, "I am
19 only one portion on the board, and the other board
20 members may not agree with my comments or
21 suggestions."

22 Additionally I, along with the other board
23 members in attendance offered several different
24 parking layout suggestions in an effort to try to

1 help Mr. Smith.

2 Mr. Smith states that I personally lived on
3 the street connected to Drummond Street. I assume
4 he's referring to 1113 Windsor Avenue. The fact is,
5 I sold and moved from this house in September of
6 2010. That is 14 months prior to the board members'
7 December 21st, 2011, hearing.

8 In summary, concerning Mr. Smith's third
9 challenge, my line and manner of questioning was to
10 determine if Mr. Smith had previously been
11 responsible for knowing and complying with city
12 development-related regulations, which by his
13 answers, he had.

14 Mr. Smith's hearing was more than fair, as
15 evidenced by the Board's unanimous decision to table
16 the variance petitions so that a site visit could be
17 scheduled and to afford Mr. Smith an opportunity to
18 develop the alternate site design scenarios.

19 The later reason is of particular note,
20 given the fact that the information Mr. Smith
21 provided to the City to determine minimum parking
22 requirements at the beginning of its construction and
23 development project was less than the information
24 provided to the Board of Zoning Appeals, which

1 demonstrated that Mr. Smith had not fulfilled his
2 obligation to meet the minimum parking requirements.

3 When considering the entire official
4 meeting record, the alleged inconspicuous environment
5 was engendered by Mr. Smith himself.

6 In response to Mr. Smith's fourth challenge
7 alleging the Board of Zoning Appeals had discussions
8 with Mr. Smith's variance petitions outside the
9 December 21st, 2011, hearing, I hereby submit the
10 following for the record: At approximately 4:00 p.m.
11 on Tuesday, January the 17th of 2012, the Board of
12 Zoning Appeals conducted a site visit to 426 Drummond
13 Street that was attended by myself, Tom Shamberger,
14 LeeAnn Cardoso, George Papandreas, Mr. Smith, Chris
15 Fletcher and Heather Dingman were all present.

16 During the visit, I referenced, "the other
17 night," as when the Board of Zoning Appeals discussed
18 Mr. Smith's variance petitions. It appears that Mr.
19 Smith misunderstood my use of "the other night,"
20 giving rise to his position that the discussions
21 among board members with the Board of Zoning Appeals
22 occurred between the December 21st, 2011 hearing and
23 the January 17th, 2012 site visit.

24 Please note that I have attached hereto

1 email messages from BZA members George Papandreas on
2 January the 18th, 2012, and Mr. Tom Shamberger,
3 January 19th, 2012, demonstrating that the
4 discussions alleged by Mr. Smith, in fact, did not
5 occur.

6 Mr. Smith's allegations that I stated he
7 could assume his variance requests would not be
8 granted as requested are simply false.

9 I suggested during the site visit to Mr.
10 Smith that his design professional development
11 alternative parking lot landscape scenarios to
12 determine if variance relief from the minimum parking
13 requirements would be necessary. I stated, and all
14 present agreed, that alternate designs developed
15 should include a scenario of no variance relief being
16 granted and a scenario of variance relief being
17 granted as recommended by the staff. I, along with
18 other attendees, raised and discussed several
19 conceptual alternatives.

20 In summary, concerning Mr. Smith's fourth
21 challenge to me, I had no discussions concerning
22 variance petitions V11-46 and V11-47 with members of
23 the Board of Zoning Appeals outside the December 2011
24 hearing or the January 17th, 2012, site visit.

1 I mistakably (sic) -- and I want to make
2 sure that everybody understands I'm using the word
3 "mistakably" and not "mistakenly," I mistakably (sic)
4 referred to the December 21st, 2011, hearing as, "the
5 other night," when, in fact, I was speaking of the
6 last regular Board of Zoning Appeals meeting, which
7 included Mr. Smith's variance petitions on the
8 agenda. The sole purpose of discussing alternate
9 parking lot landscaping scenarios was to aid in
10 determining whether or not the minimum number of
11 parking spaces could be arranged on the site with or
12 without the variance relief.

13 That is the summary, and I've responded to
14 all four of Mr. Smith's allegations to me.

15 Thank you, Mr. Fletcher.

16 MR. FLETCHER: Mr. Smith, do you
17 wish to offer a rebuttal to Mr. Bossio 's statement?

18 MR. SMITH: I mean, clearly this
19 is a large document. This is the first I've seen
20 this document. I do appreciate the detail. I think
21 it's unfair to expect me to respond. I would like
22 the opportunity to respond. I think there's
23 information in here that's clearly -- I clearly don't
24 agree with.

1 A quick response, reserving my right to
2 fully respond, if that's allowed in a written form
3 where I have an opportunity to study this, I did
4 assume Mr. Bossio would recuse himself in the
5 beginning, so - there were some contentions about,
6 "Why would I continue on." I was shocked that he
7 remained at the Chair.

8 Mr. Bossio frequently and regularly gets
9 zoning changes done through the Planning Commission
10 and the City Council. His contention that
11 residential property is a sort of different animal,
12 he can get those zoning changes done -- for example,
13 the Burroughs property he's currently working on, he
14 had rezoned professional to, I believe, B3 or B2, so
15 what the zoning may appear is not always what it ends
16 up being.

17 You discussed why you recused yourself
18 April 2010. I was going to ask you why you would do
19 it then and then not in this hearing, but I think
20 you've attempted to answer that.

21 I would like to know the examples of other
22 instances when you, sort of, treated other people the
23 same way you treated me regarding variance relief
24 after construction. I mean, I think you've made a

1 point that you have examples. I think that would be
2 helpful to know. We could, then, find those
3 transcripts and those CDs and copies of those
4 hearings to determine if it is similar. That would
5 be the only other thing that I would say.

6 I stick by my challenge. I believe Mr.
7 Bossio ought to recuse himself. Look, I mean, I
8 think -- I've watched a lot of these hearings on TV,
9 and I've only attended one, which was the 12/21.
10 There's been many instances of recusal for much less
11 than this, okay. This clearly -- clearly rises to
12 the level -- you know, in fairness to the citizen,
13 that this clearly is biased, as I've stated.

14 I did also -- I could have entered this
15 earlier -- produced a map. It is a little more
16 helpful. I did not make copies. I apologize. Is
17 there any way I can circulate this map?

18 MR. FLETCHER: Yeah.

19 MR. SMITH: Which, this map has
20 letters A through L, and it gives you kind of a quick
21 -- I'll pass it here first -- snapshot of just my
22 building, which is A, compared to Mr. Bossio's
23 buildings. That's a Google map clearly showing this
24 is within his neighborhood of ownership.

1 But, again, I reserve the right to respond
2 more fully if allowed. I think it's unfair to expect
3 me -- I want to make clear for the record and for
4 viewers, this document, which is six pages, and
5 attached emails -- three, four, five, six, seven,
6 eight -- so, say, 14 pages I've just seen tonight.
7 Mr. Bossio has had my challenge since March of 2012,
8 and all documents relating to the same.

9 Mr. Fletcher can -- if you wouldn't mind,
10 Mr. Fletcher, I don't know if you have the data, but
11 with respect to the attachments of emails and
12 correspondence between Bernie and I, there may be
13 some context needed in that there was -- I would like
14 to -- I don't have the exact count, but let's say at
15 least 30 pages of emails attached to the original
16 challenge. There was a lot of correspondence working
17 through the Wagon Wheel transaction, which
18 unfortunately didn't happen.

19 That's all I have for right now.

20 MR. FLETCHER: If I could just do
21 a couple -- just to answer your question of how many
22 pages that were a part of your challenge, I'm going
23 to try to figure that out, if everyone could just
24 give me a moment.

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(Brief pause)

If my math is right, it's about 120 pages of documents that your challenge was.

Mr. Bossio, do you wish to respond by making specific reference to the facts alleged in Mr. Smith's rebuttal?

MR. BOSSIO: I do, Mr. Fletcher. If I could have the map that he just presented real quickly, I'll try to keep this very quick and simple, and I will respond, and I don't need any other time. What I've read into the record is more than enough to satisfy myself and my conscience, and also the West Virginia State Ethics Commission, which I'll be happy and look forward to having them review this.

Again Mr. Smith has provided a map with the properties. It's very interesting that, again, these properties that he took footage measurements from my -- all the properties that I own and in their surrounding area that he calls "my neighborhood," the neighborhood belongs to the people, not to myself. I do own properties. I've never denied that I own properties.

As far as connectivity between streets, heck, if I lived in Pittsburgh, I'm connected by

1 streets. I go down I-79, which is connected to
2 University Avenue, which is connected to Muncie
3 Street, which is connected -- I could go on forever.
4 The fact remains that zero of my properties were
5 located in the 200-foot radius that is the usual
6 standard of the City of Morgantown's -- where they
7 notify people of anything happening to a property.

8 Number two in the rebuttal, Mr. Smith
9 brings up a property at 510 Burroughs Street. Mr.
10 Smith had three months to come up with a reason to
11 change his request -- or to come up with a reason.
12 Again, the reason was is because I was biased or
13 unfair.

14 Well, in that particular time that he had
15 to produce this document and go through emails, he
16 also included the document, which included a sales
17 contract, which I never layed eyes on, which my
18 partner never layed eyes on, and he wanted to confuse
19 and mislead the public of making them think that that
20 contract was something that was between he and I.
21 If you'll take note of that document, and if the
22 courts will take note of that document, it was never
23 signed. I never saw it.

24 And then to prove my case, and I've made a

1 part of the record, is an email from Mr. Smith to his
2 own attorney, Mr. Compton, that says, "There is no
3 contract." I'm not sure why Mr. Smith would think
4 that producing that contract would be an interesting
5 thing to do or to mislead the people.

6 As far as the 510 Burroughs Street, let me
7 get back to that. I -- in his three -- two-month
8 preparation, he listed 17 properties that I either
9 had relationship to that Mr. Fletcher read to you
10 earlier on, I responded to those 17 properties, and
11 all 17 of those properties were zoned R-1, nothing
12 more than R-1. His property is zoned pro.

13 Again, in my rebuttal, I'll simply rest on
14 my document that I will submit for the record, for
15 the City, and for everyone else.

16 MR. FLETCHER: Can I interject?
17 I'm sorry. Are you done with your response?

18 MR. BOSSIO: Mm-hmm.

19 MR. FLETCHER: I need to keep
20 this. I can make a copy for you or scan it and email
21 it to you so it's a part of the record.

22 Okay, just for clarification purposes,
23 before I ask Mr. Bossio for his decision, the bylaws
24 provide that the challenge -- that this whole --

1 everything that we've done here; the challenge
2 itself, the response, the rebuttals happens during
3 the hearing, okay? There's no provision in the
4 bylaws for continuance or further consideration. I
5 just wanted to make that clear to you and to everyone
6 else.

7 MR. FLETCHER: Mr. Bossio, what
8 is your decision? Is your decision to either
9 continue to participate in the hearings on the
10 matters involving Mr. Smith and 426 Drummond Street,
11 or step down from participating?

12 MR. BOSSIO: Mr. Fletcher, my
13 decision is to not step down, based on my statement
14 of facts that have been entered into the record this
15 evening, Mr. Smith's challenges -- number one, I've
16 created no personal or pecuniary connection with the
17 interests on my part and Mr. Smith or the 426
18 Drummond Street property as alleged.

19 I have created no preconception,
20 predisposition or prejudice on my part as alleged.
21 I have established no actual or potential conflict of
22 interest on my part as alleged. I have no
23 consequence on my ability to remain fair, impartial
24 and unbiased in fulfilling my duties as a member of

1 the Board of Zoning Appeals.

2 Finally, I do not disqualify -- nothing
3 disqualifies me from participating in any manner that
4 is or may come before the Board of Zoning Appeals
5 related to 426 Drummond Street or Mr. Smith's
6 involvement therein.

7 Again, I firmly believe that any legitimate
8 challenge by Mr. Smith should have been appropriately
9 made prior to the Board's December 21st, 2011,
10 deliberations on his variance petitions V11-46 and
11 V11-47.

12 Therefore, I will not step down from
13 participating in the matters before the Board this
14 evening that pertain to Mr. Smith and his 426
15 Drummond Street property.

16 MR. BOSSIO: May I have the floor
17 back, Mr. Fletcher?

18 MR. FLETCHER: Yeah. I'm not
19 sure I actually ever took it from you. I was just
20 trying to facilitate --

21 MR. BOSSIO: Okay.

22 MR. FLETCHER: So it's New
23 Business Agenda Item D, as in David.

24 MR. BOSSIO: First item back on

1 to as -- to our amended agenda is (sic) BA12-01,
2 Andrew Smith, 426 Drummond Street. Request by Andrew
3 Smith on behalf of Smith CPA for an administrative
4 appeal as it relates to minimum landscape buffer at
5 426 Drummond Street. This is Tax Map 6, Parcel 17,
6 pro. It's a professional, residential and office
7 district.

8 Mr. Fletcher?

9 MR. FLETCHER: "The surrounding
10 zoning to the north is R-1A, single-family
11 residential district. To the south, east and west is
12 PRO, professional, residential and office district.

13 On September 17th, 2010, staff met with and
14 provided a memorandum to the Petitioner's agent and
15 design professional, Mr. Scott Krabill, detailing
16 landscaping, parking, sidewalk and refuse storage
17 provisions required under the Planning and Zoning
18 code for the Petitioner's reuse, development and
19 construction at 426 Drummond Street. See attachment.

20 Staff learned in October 2011 that the
21 Petitioner constructed a parking area at 426 Drummond
22 Street that did not include requisite landscaping and
23 sidewalks. Staff advised the Petitioner that he
24 would have to seek variance relief from the minimum

1 landscaping and sidewalk requirements, which was also
2 stated in the conditions included in a Temporary
3 Certificate of Occupancy issued by the City.

4 On November 14th, 2011, the Petitioner
5 filed variance petitions V11-46 concerning
6 landscaping and V11-47 concerning sidewalks.

7 On December 21st, 2011, the Board of Zoning
8 Appeals tabled said petitions for the purpose of
9 conducting a site visit and to afford the Petitioner
10 an opportunity to develop parking layout design
11 alternatives. Alternate parking layout designing
12 became necessary after staff and the Board learned
13 that the Petitioner provided the City inaccurate
14 information in 2010 pertaining to square footage and
15 the number of employees used in calculating minimum
16 parking requirements.

17 The 2010 calculation resulted in a minimum
18 parking requirement of 10 spaces. The correct
19 calculation based on an appraisal report submitted by
20 the Petitioner confirmed by staff's field
21 measurements and the Petitioner's increased number of
22 employees results in a minimum parking requirement of
23 13 spaces.

24 On February 8th, 2012, the Petitioner

1 submitted an Application for Interpretation of the
2 applicability of Article 1367 landscaping and
3 screening to his reuse, development and construction
4 at 426 Drummond Street.

5 On February 9th, 2012, staff responded with
6 an interpretation determination as requested. On
7 February 17th, 2012, the Petitioner filed a related
8 administrative appeal.

9 That was the background.

10 Analysis: The Petitioner's appeal attempts
11 to argue that Article 1367, landscaping and
12 screening, does not apply to the subject reuse,
13 development and construction at 426 Drummond Street
14 because Article 1367.02(B) provides a 50 percent as
15 assessed value exception. Related planning and
16 zoning code provisions facts and staff's
17 determination are provided in the attached February
18 9th, 2012, memorandum.

19 Additionally, Article 1383, Administrative
20 Appeals, provides the following standards with
21 emphasis added.

22 Article 1383.01, Authority. The Board of
23 Zoning Appeals shall hear and determine appeals from
24 any order, requirement, decision or determination

1 made by an administrative official, board or staff
2 member charged with the enforcement of this zoning
3 ordinance.

4 Article 1383.02, Initiation. An appeal may
5 be filed with the Board of Zoning Appeals by any
6 person aggrieved by the order, requirement, decision
7 or determination described in Section 1383.01. An
8 appeal filed with the Board must specify the grounds
9 of the appeal, be filed in the form established by
10 rules of the board, and be filed within 30 days of
11 the original order, requirement, decision or
12 determination.

13 It's also important to note that that
14 provision is also nearly verbatim in the State code,
15 and the State's planning (inaudible).

16 It is the opinion of the Planning Division
17 that the Petitioner's right to file an administrative
18 appeal expired as early as 30 days from staff's
19 September 17th, 2010, memorandum. However, the
20 petitioner alleged during the Board's December 21st,
21 2011, hearing, that he had never received nor was
22 aware of said memorandum.

23 Giving the Petitioner the benefit of the
24 doubt, it is the opinion of the Planning Division

1 that the Petitioner's right to file an administrative
2 appeal expired 30 days from his November 14th, 2011,
3 filing of variance petition V11-46, for which he is
4 presently seeking relief from the minimum landscape
5 requirements set forth in Article 1367, and Mr. Smith
6 is present.

7 MR. BOSSIO: Mr. Smith, would you
8 like to step to the podium and add anything to Mr.
9 Fletcher's comments and Staff Report?

10 MR. SMITH: Andrew Smith, 426
11 Drummond Street. The process of administrative
12 appeal 1375.05 clearly states that an Application for
13 Interpretation of the zoning ordinance shall be filed
14 on a form provided by the planning department and
15 shall contain information describing the nature of
16 the requested information.

17 Currently, there is no form that exists in
18 the planning department to apply for an Application
19 for Interpretation, okay? That form, or the lack
20 thereof, is important.

21 Now, there is an appeal form after the
22 interpretation is provided, and I provided my request
23 for an interpretation on my own prescribed form.

24 On the appeal form, it asks for the order

1 from the Planner to be attached, so I don't know how
2 you can, in effect, use a 30-day expiration period
3 when the order wasn't issued. It has to be issued
4 from the Planner through 1375.05, so I want to start
5 out by saying that that, sort of, default 30-day
6 expiration is inconsistently applied. If you look at
7 the code, I don't think that applies here.

8 With respect to -- if you'll allow me to
9 have the appeal heard without the automatic denial
10 with the 30-day expiration argument, the code section
11 that I'm referring to, okay, is under landscaping,
12 1367.02(B), okay? And this code specifically
13 discusses an addition or renovation to an existing
14 structure, which is exactly what I did, okay? A
15 renovation to an existing structure.

16 This code section fundamentally allows,
17 because it's an existing structure, that if you spend
18 less than 50 percent of the assessed value, which is
19 public record, of your -- of the -- in the
20 renovation, you are excluded from any all 1367
21 landscape provisions. It does not apply.

22 You know, I believe the planning department
23 is taking a simple phrase that says "addition or
24 renovation to an existing structure," and calling it

1 intensification of use establishes a change in the
2 type of development where I just don't think it's
3 literally read. I think there's interpretation being
4 made, which is certainly part of the Planner's job,
5 but I believe, simply read, that provision can apply
6 to my project -- landscaping does not apply.
7 Therefore, the variance related to landscaping is a
8 mute (sic) point, and um...one of the other
9 fundamentals the Planner is using is this scenario
10 where it's single-family to professional. That's one
11 of the core principles the Planner is using to say
12 that I went from a single-family residence that
13 didn't require landscaping, or wasn't -- the 1367
14 landscaping provisions don't apply to single-family
15 residents to a professional office that does require
16 it.

17 But at the end of the day, I wanted to be
18 clear: 426 Drummond Street had three unrelated
19 college students renting that property just before
20 the change in use, which is ultimately what I did. I
21 changed the use, okay?

22 This property has been a rental property
23 for many years. Before I owned it, it was a rental
24 property. Barton Lore, Drummond Street, LLC, owned

1 the property, and he rented the property. Had a
2 letter of compliance. It was for one unit, but I
3 just want to, sort of, document for your
4 consideration that it was a rental property. I paid
5 B&O tax with the City of Morgantown. The real estate
6 tax class was Business 4, not Class 2, which is owner
7 occupied.

8 In a literal sense, it was a business
9 asset. It was used as a business asset for my
10 purposes and the purposes before. This was not a
11 traditional single-family home with single-family,
12 owner-occupied residents. This was a rental
13 property. I think you need to consider that when you
14 go from single family over to professional. I'm not
15 sure it's that cut and dried.

16 So, anyways, I had three unrelated college
17 students living in the property, okay?

18 1367.09 -- let's say, for example, you
19 believe that 1367.02 does not apply and my argument
20 does not work for you, you then could move into
21 1367.09, which allows for the Planner, okay, to make
22 adjustments to the required landscaping, okay? And
23 it particularly allows the Planner to do that
24 whenever you have a change in use, which, if you read

1 the code, and I know you guys do, the code gives
2 preferential treatment to change-in-use projects on
3 an ongoing basis throughout the code. In fact, it
4 talks about removal of existing pavement. I had a
5 concrete driveway. It was removed.

6 The Planning Director can then approve a
7 reduction to minimum planting areas, okay?

8 I've provided in my original variance
9 applications more square foot of landscaping than
10 would be required in 1367. That was provided in the
11 initial application that I would always provide more
12 square foot of landscaping. There's no attempt not
13 to provide landscaping, but at the end of the day,
14 these provisions are used and they are for change-in-
15 use projects that the Planner can use. I'm coming to
16 the end here. I'll quit very -- I know I have five
17 minutes.

18 MR. BOSSIO: Take your time.

19 MR. SMITH: Thank you. There's
20 also -- so 1367.09 additionally provides that, due to
21 a change in use of an existing site, the required
22 buffer yard is larger than can be provided, okay, you
23 can make adjustments, okay? I clearly believe that
24 the buffer yard is larger than can be provided to

1 allow for the parking, which was my original
2 contention for the variance applications.

3 Then going further to allow the Planner to
4 make adjustments to the required landscaping, you've
5 got a site that involves space limitations, or
6 unusually-shaped parcels. Clearly, I've got space
7 limitations. This is not a traditional large parcel
8 in a business location. This is a small parcel in an
9 area where I have clearly space limitations. In
10 fact, I've already had to put to tandem spaces in to
11 meet the 13 parking space objective.

12 So there's a lot of leeway that was not
13 provided in the -- there was some planning department
14 adjustments on the initial amount of the buffer in
15 the front, but there's a lot more opportunities -- I
16 don't think that landscaping provisions apply under
17 the proposed -- under 1367.02(B) regarding addition
18 or renovation to an existing structure, and that's
19 the extent of my counter argument here. Thank you.

20 MR. BOSSIO: Thank you.

21 Could you stay at the podium, please? I
22 have some questions and some of the board members
23 may, as well.

24 Andrew, you mentioned something -- Mr.

1 Smith, you mentioned something earlier in
2 relationship to the Planning Department as far as
3 their saying that this was a major renovation versus
4 a minor renovation; is that correct?

5 MR. SMITH: Yes.

6 MR. BOSSIO: Can you reference
7 exactly what that is? Is there some type of a code
8 there or...

9 MR. SMITH: Well, the -- I mean,
10 there's a response to my Request for an
11 Administrative Interpretation.

12 MR. BOSSIO: But from your
13 interpretation, Mr. Smith, you would say that what
14 the Planning Department is saying is this was a major
15 renovation, not just a minor renovation; is that
16 correct?

17 MR. SMITH: Well, I would even go
18 further. I think the Planning Department calls it a
19 -- let me give you the terminology here.

20 MR. BOSSIO: Please.

21 MR. SMITH: "Intensification of
22 use" is some wording that I've seen.

23 MR. BOSSIO: Okay. But you do
24 follow that into a code section they're referring to

1 where it's coming from, as you stated, it had been a
2 residential rental unit for all the years in the
3 past; correct?

4 MR. SMITH: Yes.

5 MR. BOSSIO: And as far as the
6 tax ticket is, even though it's residential use, it
7 automatically becomes Class 4, which is the same as
8 all the other nonowner-occupied tax classifications;
9 is that correct?

10 MR. SMITH: If it's used for
11 business or for profit or for rental, it's a Class
12 426 Drummond Street.

13 MR. BOSSIO: Right, but you can't
14 have a Class 426 Drummond Street -- you have many
15 rental properties yourself; correct?

16 MR. SMITH: Yes.

17 MR. BOSSIO: And it's all
18 classified as Class 4?

19 MR. SMITH: Yes.

20 MR. BOSSIO: So it's the county
21 that dictates what that classification is.

22 MR. SMITH: That's correct.

23 MR. BOSSIO: So when you did the
24 remodeling, what did you do on the exterior of the

1 building? You know, with the residential
2 classification of an R-1, there's a 25-foot setback.
3 If I recall correctly, there was a large tree out in
4 the front yard with a lot of grass area in the front
5 yard, and --

6 MR. SMITH: Right.

7 MR. BOSSIO: What did you do, can
8 you tell us?

9 MR. SMITH: Well, I basically
10 took the front yard and made it parking and, in
11 effect, sided the property and basically worked on
12 the floors and walls and the property. I didn't do
13 any major additions, didn't do any demolition or any
14 major construction project. It was more of what I
15 would call rehabilitation renovations as stated in
16 1367.

17 MR. BOSSIO: If you don't mind,
18 let's stick to the front of the property right now
19 we've started talking about, if you don't mind.

20 MR. SMITH: No problem.

21 MR. BOSSIO: Just talking about
22 the front, can you tell me again -- there was a large
23 type of a Penn oak tree sitting out in front?

24 MR. SMITH: Yes.

1 MR. BOSSIO: And there were shrub
2 beds and all kinds of vegetation that were out front,
3 is that correct, with a driveway --

4 MR. SMITH: There was a driveway.
5 I don't recall a lot of vegetation with, like,
6 landscaping, but there was a tree. There were some
7 trees.

8 MR. BOSSIO: But there was a
9 considerable amount of grass versus the ratio of
10 grass to concrete.

11 MR. SMITH: Correct.

12 MR. BOSSIO: So all that grass
13 area is gone and the tree is gone.

14 MR. SMITH: Yes.

15 MR. BOSSIO: How many square feet
16 of concrete did you actually put out there?

17 MR. SMITH: I don't know the
18 exact answer to that.

19 MR. BOSSIO: Okay. Good enough
20 on the outside. Let's talk about your inside. You
21 said that you didn't do any additions. If you would
22 have done an addition under the classification that
23 you are, you would have had to come before the Board
24 of Zoning Appeals because you wouldn't have met the

1 setback requirements to do any addition onto that
2 building; is that correct?

3 MR. SMITH: Likely.

4 MR. BOSSIO: And also, too, if
5 you added more space onto the building, you would
6 need more parking spaces, and you were already --

7 MR. SMITH: That's correct.

8 MR. BOSSIO: -- kind of teeter-
9 tottering on the space issue.

10 MR. SMITH: That's right.

11 MR. BOSSIO: As a matter of fact,
12 when--

13 as Mr. Fletcher read earlier on into the record, is
14 that the number of employees that you had and how
15 many spaces you needed to provide from what was
16 originally provided to what we've come to find after
17 we measured the building when we went out there
18 January 17th, your actual square footage was less --
19 the number that you provided was less than what is
20 truly actually there.

21 MR. SMITH: Right. The employee
22 count, just so you know why that happened, it's hard
23 for me to determine a lot of times. Like right now,
24 I have one full-time, two part-time. Tax season, I

1 can go up to five. So that one was sort of like at
2 the point in time -- the square foot -- I mean,
3 again, I'm a CPA. I don't necessarily -- I'm not on
4 point with square foot. Plus I didn't know if it was
5 basement and bathrooms -- if they were included, so a
6 lot of that I think potentially could have been
7 excluded. When you measured the building at the site
8 visit, you had an accurate read, but clearly, that's
9 created extra parking, which is 13 spaces, as I
10 understand it.

11 MR. BOSSIO: So what you did on
12 the inside from the building permit that was
13 submitted and the inspections that were done, you
14 actually moved walls.

15 MR. SMITH: I didn't move any
16 walls.

17 MR. BOSSIO: You didn't move any
18 walls.

19 MR. SMITH: No.

20 MR. BOSSIO: So you partitioned
21 off walls? You said -- in your statement earlier, I
22 thought that you said you moved walls.

23 MR. SMITH: No. I mean, I
24 basically painted the walls. I put in a floor. You

1 know, a hardwood floor and then, basically, kept the
2 existing -- I mean, I took -- I put a new kitchen in.
3 Some new cabinets and new countertop. I took out the
4 old and put in the new, but I kept the exact same
5 look of the property in terms of its design.

6 MR. BOSSIO: Of the interior.

7 MR. SMITH: Of the interior.

8 MR. BOSSIO: Okay. But
9 definitely the exterior changed considerably.

10 MR. SMITH: Yeah, based on the
11 parking requirement, and that's why I hated to tear
12 the trees down. I know there's people here tonight
13 who didn't enjoy that, but I certainly --

14 MR. BOSSIO: Let's go back to
15 what your motivations were, if you don't mind.

16 So you're saying that you've moved no
17 walls, cut no door openings --

18 MR. SMITH: No.

19 MR. BOSSIO: Any of that stuff,
20 you painted and put --

21 MR. SMITH: Essentially, painted
22 wall-- oh, well, let me take that back. Excuse me.
23 I did put a covering over the garage. A garage was
24 gone and brick went into the garage, which is now a

1 conference room.

2 MR. BOSSIO: Right. So you --

3 MR. SMITH: The floor and walls--

4 MR. BOSSIO: -- changed the use
5 of a garage into more square footage for your office
6 space.

7 MR. SMITH: That's correct.

8 MR. BOSSIO: Okay. So a garage
9 door went out, windows went in, and that happened.
10 So you had a concrete floor there --

11 MR. SMITH: Yes.

12 MR. BOSSIO: -- and you layed new
13 flooring on that concrete floor.

14 MR. SMITH: That's correct.

15 MR. BOSSIO: And then did you
16 have to touch the electrical at all?

17 MR. SMITH: Yes. I did a little
18 bit of electrical, but I didn't rewire it. I didn't
19 put in any new service. I used the existing service
20 mast. There's two --

21 MR. BOSSIO: But out there in the
22 garage, you did change the electrical ser-- you
23 changed the electrical that was out in the garage and
24 also in some of the rooms you either added outlets or

1 added Cat-5 or Cat-5E systems --

2 MR. SMITH: Yes. I did add Cat-
3 5, that's correct, and it is networked. That is
4 correct. It was not before --

5 MR. BOSSIO: And what did you do
6 to plumbing? Did you touch any of the plumbing?

7 MR. SMITH: Not really. The
8 plumbing, there's just two full baths -- actually, a
9 full bath and a half and then a kitchen. It's the
10 existing half and full bath and the kitchen that was
11 already there, because for a professional office, you
12 don't really need a ton of plumbing.

13 MR. BOSSIO: And you consider
14 that just to be a minor renovation.

15 MR. SMITH: Well, I consider it
16 to be renovation to an existing structure that
17 doesn't exceed 50 percent of the assessed value of
18 the structure, okay, where Section 1367, "...shall
19 not be required," which is the landscaping provision.

20 MR. SHAFFER: Can I --

21 MR. BOSSIO: Sure. Please.

22 MR. SHAFFER: I'm having a hard
23 time here with this. If you had a detailed
24 memorandum September of 2010 and were going through,

1 as the Chairman talks about, all these renovations,
2 where did the -- and then October, all of a sudden,
3 we find out that you're not in compliance with the
4 memorandum of 2010, where did that -- how did that
5 change this kind of, like, morph into that? I mean,
6 you're very knowledgeable about the code, and then
7 somewhere along the line surely you've had to ask
8 yourself, "I'm changing something here."

9 MR. SMITH: Well, let me pass
10 this out. I wasn't going to get into this right now,
11 but you brought it up.

12 Can I pass this out here, Chris?

13 MR. BOSSIO: Please do.

14 MR. SHAFFER: I'm sorry, Bernie.

15 I just--

16 MR. BOSSIO: No. No. That's
17 fine.

18 MR. SMITH: What occurred with
19 this project -- and it's a good question -- and I
20 know that I don't recall that you attended the
21 December 21st hearing, or the site visit, but I filed
22 a comprehensive site plan -- actually, let me back
23 up. I hired a professional engineer, Scott
24 Krabill. Scott Krabill worked for the City of

1 Morgantown on many instances, and he's also worked
2 for the Chairperson. He's known as a professional
3 engineer in Morgantown. I know you all know him.

4 I hired him in the beginning to do the
5 comprehensive site plan is what I thought happened.
6 He filed this plan. At the time, it was March 2010,
7 February 2010. We've completed actually a completely
8 different site plan than what you see today. We had
9 two entrances. We had a bay in the middle. I mean,
10 we went through the whole thing.

11 MR. SHAFFER: This is an
12 affidavit in front of me dated February of this year
13 by Scott saying that he did not receive the
14 memorandum of 2010.

15 Is that what we're saying here?

16 MR. SMITH: Yes, sir. So my
17 point to you is --

18 MR. SHAFFER: So -- I have a --
19 why didn't we see this in October of 2011?

20 MR. SMITH: When you say,
21 "October," what is the significance of that date?

22 MR. BOSSIO: I'm reading here
23 that the Petitioner constructed a parking lot at 426
24 that did not include the requisite landscaping and

1 sidewalk. It's at that point, you probably became
2 aware of the fact that you were not doing exactly
3 what this memorandum that was not --

4 MR. SMITH: I didn't know about
5 it in October.

6 MR. SHAFFER: What did you think
7 was going on in October when the City come out and
8 said, "Wait a second" --

9 MR. SMITH: The only mention of
10 sidewalks is in this hand-delivered memo in any and
11 all correspondence that I can find, and there's --
12 well, I would say multiple hundred emails --

13 MR. SHAFFER: "Staff advised the
14 Petitioner that he would have to seek variance
15 relief..." -- this is in October of 2011 -- "...that
16 he would have to seek variance relief on the minimum
17 landscape and sidewalk requirements."

18 MR. SMITH: Again, the only
19 sidewalk communication is this September 10 hand-
20 delivered memo, which I have an affidavit saying that
21 it wasn't produced.

22 MR. SHAFFER: Well, I'm reading
23 right here in October of 2011, or am I missing
24 something?

1 MR. SMITH: I'm not sure of the -
2 - I'm not -- well, and we can ask Chris on that, but
3 the only sidewalk notification is this document -- in
4 this document, I've provided an affidavit from the
5 professional engineer that he never got it. Terry
6 Hough was in the meeting, and I've asked for Terry
7 Hough to provide an affidavit or provide information
8 if she remembered this document. This document was
9 never provided to me, so I went down the road of
10 developing without this knowledge. This document
11 surfaced much later.

12 But back to my point, and let me make sure
13 you understand, we filed a comprehensive site plan
14 March 10. A city employee did not circulate -- an
15 ex-city employee did not circulate our site plan to
16 planning. I heard from Chris in September '10, after
17 we had already got a building permit in March '10,
18 we're off and running. We have a building permit.
19 We're going down the road of our site plan. Luckily,
20 we didn't move as fast as I wanted to, and Chris
21 stopped the project in September '10, because he had
22 never even seen it, knew it existed.

23 When I walked into the city with my
24 professional engineer, layed the documents on their

1 desk, in effect. Now, clearly, you know, I'm not
2 here to disparage anybody, but the city employee is
3 now -- and Chris can discuss it in more detail -- is
4 not there, but...

5 MR. SHAFFER: But let me
6 understand this, if that's what you're saying, and I
7 get what you're saying, so then why wouldn't you, in
8 September of 2010, say, "I didn't get this
9 memorandum"?

10 MR. SMITH: Say that one more
11 time.

12 MR. SHAFFER: Why wouldn't you
13 say in September of 2010, "I didn't get this
14 memorandum"?

15 MR. SMITH: Because I didn't know
16 it existed. It surfaced way after the fact.

17 MR. SHAFFER: Well, there's got
18 to be some clues here at some point that something --
19 that you're not -- something is going on that's not --
20 - not -- not right. Something is going on that
21 you're not in variance, or you need a variance, or
22 you're not in code or --

23 MR. SMITH: No. Everything was
24 going along fine. We had an approved site plan after

1 that and everything was fine, and right at the end --
2 I'll tell you when it happened, now that I'm -- as
3 you're -- as you're -- as you're eliciting my
4 recollection, when I finished the job, I filed for a
5 sign permit and a landscaping permit. That's when
6 Planning said, "No. You haven't followed the exact
7 specifications regarding sidewalks and landscape
8 buffer." I said, "Sidewalks? What are you talking
9 about?" I never even knew about it. In the hundreds
10 of emails, it was never mentioned.

11 I have emails that show that the site plan
12 we provided after the changes were needed, that it
13 was agreed to without the sidewalk.

14 Now, the buffer was discussed. There are
15 emails about the buffer. The buffer, I made a
16 judgment at the time to extend that parking because
17 of the space requirement, and when the concrete was
18 being poured, I had to -- when I was measuring the
19 spaces that I knew I would have, even then it was 10,
20 I needed the two parallel spots in the front. That's
21 when I thought was my hardship at that time -- I
22 didn't -- you know, that was something I had to make
23 a decision on. I have emails where the buffer was
24 discussed, but the sidewalk was a complete surprise,

1 and the only mention of it is in a hand-delivered
2 document, and there's no evidence at all, that I'm
3 aware of, of anybody who can corroborate this
4 document, and I've just provided an affidavit from
5 the engineer that was in the meeting that he didn't
6 get it.

7 Plus, there's another email that I think
8 Chris will bring up where -- I can hand it over. The
9 only thing I would ask, it is a bit, um, potentially
10 disparaging to one city employee, but I think it's
11 relevant.

12 MR. SHAFFER: Well, I don't think
13 we need to know that. My question is simply this:
14 If we're looking down this project and we're going
15 down the timeline, there's a couple red flags going
16 on that maybe this thing is not going quite exactly
17 right, or there's some issues here that need to be
18 drawn out, and then all of a sudden, I get something
19 a year and a half later saying, "Oh, gee, I didn't
20 get the document." That's just a simple...

21 MR. SMITH: Well, a year and a
22 half later only because I'm here trying to
23 reconstruct the facts to the extent I can, but, no,
24 October 11 was when I entered back in and said I need

1 my sign permit and my landscaping permits, and I was
2 told, "No. You didn't follow the sidewalk --"

3 MR. SHAFFER: Okay. You've
4 answered my question.

5 MR. SHAMBERGER: You say you've
6 made a decision to extend that.

7 MR. SMITH: Yes, sir.

8 MR. SHAMBERGER: You made a
9 decision, but you presented a site plan to the City
10 showing something different?

11 MR. SMITH: The buffer, I had it
12 on the site plan to do 10 foot, and then I --

13 MR. SHAMBERGER: And then you
14 made the decision to proceed and you didn't check
15 with the City. Is that what I'm hearing?

16 MR. SMITH: That's correct.

17 MR. SHAMBERGER: You just did it
18 and you didn't check.

19 MR. SMITH: I did it because I
20 knew that I would need the parking --

21 MR. SHAMBERGER: But was there
22 any question in your mind, because even if you're
23 saying you knew you needed a landscape buffer, you
24 made the decision to not provide it; is that correct?

1 MR. SMITH: I knew I needed the
2 parking, and I picked --

3 MR. SHAMBERGER: You said earlier
4 you knew about the landscape buffer because it was in
5 there. You're saying you didn't know about the
6 other. You said you knew about the landscape buffer,
7 but then you just said you decided to, on your own
8 without consulting the City, eliminate the landscape
9 buffer; is that correct?

10 MR. SMITH: I didn't eliminate
11 it, but I took seven foot approximately from it.

12 MR. SHAMBERGER: You altered your
13 plan and eliminated seven feet of that.

14 MR. SMITH: I altered the plan,
15 yes. Eliminated seven foot.

16 MR. SHAMBERGER: And you didn't
17 check with the City; is that correct?

18 MR. SMITH: At that time, I was
19 unable to check with the City.

20 MR. SHAMBERGER: You were unable
21 to check with the City or you did not check with the
22 City?

23 MR. SMITH: I did not check with
24 the City.

1 MR. SHAMBERGER: Okay. Thank
2 you.

3 MR. PAPANDREAS: If I can ask a
4 question --

5 MR. SMITH: Yes.

6 MR. PAPANDREAS: This kind of
7 builds on what Tom was just asking.

8 You knew that you needed to provide a site
9 plan to the City originally; right?

10 MR. SMITH: Yes, sir.

11 MR. PAPANDREAS: Okay. Why do
12 you think that you would need to provide a site plan
13 to the City?

14 MR. SMITH: Well --

15 MR. PAPANDREAS: Was it because
16 it's a requirement? Is it because it's the
17 neighborly thing to do? I'm just trying to figure
18 out why you would think that you needed to provide an
19 original site plan to the City.

20 MR. SMITH: Well, first of all, I
21 hired a professional engineer. We met at the site.
22 I told him I want to do x, y and z here. He said,
23 "You need to do a site plan. We need to fill out a
24 building permit. We need to contact MUB. We need to

1 go through the City," and fundamentally we began down
2 that road, so it wasn't necessarily my judgment or it
3 wasn't some light bulb that went off. It was in
4 correspondence with a professional, paid engineer. I
5 mean, I paid professional fees. I stand here today
6 on my own, but clearly I entered the whole project
7 using a professional. I mean, I wanted someone to
8 handle it for me, like most business owners do in a
9 lot of cases. I'm not -- I have a lot of rental
10 property, but I don't deal with planning and zoning
11 on a frequent basis. More of a code.

12 MR. PAPANDREAS: And I would
13 suspect that it would be your intention, when you
14 provided that first original site plan, to provide an
15 accurate site plan.

16 MR. SMITH: That's correct.

17 MR. PAPANDREAS: Would that be
18 accurate?

19 MR. SMITH: That's correct, and
20 comprehensive.

21 MR. PAPANDREAS: Okay. I'm glad
22 you added that, because then whenever you changed
23 your plan and you decided to just wing it, didn't
24 that kind of fly in the face of an earlier decision

1 that you had made to provide an accurate,
2 comprehensive site plan?

3 MR. SMITH: I didn't wing it. I
4 didn't wing it.

5 MR. PAPANDREAS: Well, I'm having
6 trouble following you. I'm having trouble -- and
7 this is important, because although I think everyone
8 is benefiting here from the questions being asked by
9 everyone else --

10 MR. SMITH: Right.

11 MR. PAPANDREAS: -- we've been
12 cited here as maybe not asking questions for
13 ourselves, so if you're hearing things twice, it may
14 be because you've identified that as something that
15 you would prefer.

16 So what I'm wondering is if you hired
17 professionals to do the right thing in the first
18 place and it was your goal, which you've just clearly
19 stated, to give us accurate, comprehensive
20 information -- I think those were the words that you
21 just used; right?

22 MR. SMITH: Right.

23 MR. PAPANDREAS: Okay. Then
24 whenever you decided to change that, why would you

1 not think that it would be just as prudent to come
2 back and revise the information that you had given to
3 the City so that we would, again, have accurate,
4 comprehensive information regarding your project?

5 MR. SMITH: Well, I did. There
6 was a second site plan. A revised. See --

7 MR. PAPANDREAS: Before or after
8 the work was done?

9 MR. SMITH: Some work was done.
10 Well, let me be sure --

11 MR. PAPANDREAS: You understand
12 there's a process here.

13 MR. SMITH: Well, yeah, but hear
14 me out. I mean, March 10 we filed our plan. We're
15 moving along at a slow pace, so everything wasn't
16 materially done, but we had started removing the
17 yard, removing trees getting ready. Planning has not
18 even seen this project, even though we submitted fees
19 and permits inviting them to look at the site plan.

20 MR. PAPANDREAS: What was your
21 permit for?

22 MR. SMITH: Our permit was for a
23 site plan. I mean, that's one of the contentions
24 here that I think you'll hear --

1 MR. PAPANDREAS: --(inaudible)

2 regrading the permit --

3 MR. SMITH: Again --

4 MR. PAPANDREAS: -- (inaudible)

5 first permit?

6 MR. SMITH: It's a \$6,500 -- it -

7 - it-- it's grading and it's a --

8 MR. PAPANDREAS: Your permit was

9 for the site plan? Is that what you're telling me?

10 MR. SMITH: The permit was for a

11 parking lot --

12 (Multiple speakers.)

13 MR. PAPANDREAS: In preparation

14 for paving; right?

15 MR. SMITH: Right. For a parking

16 lot.

17 MR. PAPANDREAS: No, no, no. No,

18 no, no. (Inaudible).

19 MR. BOSSIO: Mr. Smith, can we

20 just really get down to the exact, direct

21 answers? I think that we're trying to ask

22 direct answers, and we're trying to help

23 this out so that we can move this matter

24 along for you.

1 The application that Mr. Papandreas is
2 asking you about, was that a permit to grade, or was
3 that a permit to give you the ability to actually
4 pour the concrete? It's a very simple question. I
5 truly think it is.

6 MR. SMITH: It was both. It was
7 both, and here's the actual document that Trevor
8 Lloyd signed for a building permit for parking area,
9 426 Drummond. I actually received a building permit.

10 MR. FLETCHER: Okay.

11 MR. SMITH: I mean, why would we
12 go --

13 MR. BOSSIO: Let me stop for just
14 one second. Mr. Fletcher, could you shed some light
15 on that and exactly what that was, please?

16 MR. FLETCHER: The documents that
17 were provided in the December 21st BZA hearing, which
18 are included again here this evening, is on page 110
19 -- This is the actual building permit, page 110. At
20 the top of the page, application date February 26,
21 2010. The checkbox that's checked is, "Other."
22 "Grading" is written underneath. I'm fairly sure
23 that's Mr. Krabill's writing. The description at the
24 bottom of that first page is, "Minor regrading

1 required for installation of new asphalt parking lot
2 and storm water management drainage features." This
3 is why this particular building permit application
4 didn't come to Planning, because it was a building
5 permit for minor regrading, which is evidenced by the
6 estimated value of the work, which is \$6,500, which,
7 in the City Administration's opinion, is
8 significantly less than the development costs of the
9 concrete parking area out front.

10 So that is what that building permit was
11 issued for. Work went well past beyond that. That's
12 why the planning department got involved and
13 contacted Mr. Smith and all those involved and said,
14 "Why is this going on?"

15 MR. BOSSIO: Thank you, Mr.
16 Fletcher.

17 MR. FLETCHER: Thank you.

18 MR. BOSSIO: The reason why I
19 brought that up is because of us having, again with
20 all the packet of information that we have before us
21 that we've been looking over for months now, you put
22 on this, "Minor regrading."

23 MR. SMITH: No, I did not put it
24 there. Scott Krabill did.

1 MR. BOSSIO: He is your employee;
2 correct?

3 MR. SMITH: (Inaudible)

4 MR. BOSSIO: You sat there and
5 you used the word, when you started making the
6 statement, "My
7 engineer."

8 Is that the word that you used earlier?
9 You said, "my engineer."

10 MR. SMITH: I probably did, but -
11 -

12 MR. BOSSIO: And you hired him
13 and you paid your engineer.

14 MR. SMITH: That's correct.

15 MR. BOSSIO: Okay. So he is a
16 representative of you.

17 MR. PAPANDREAS: Mr. Chair?

18 MR. BOSSIO: Yes?

19 MR. PAPANDREAS: May I clarify
20 something here?

21 After you received this building permit,
22 did you do any work?

23 MR. SMITH: A little bit, yes.
24 We did the minor regrading, which it was.

1 MR. PAPANDREAS: So, then,
2 obviously you relied on this building permit to
3 actually begin your work; right?

4 MR. SMITH: Yes.

5 MR. PAPANDREAS: Do me a favor
6 and please do not refer any of these people that
7 you've hired as though you had no control or you had
8 no benefit from their work, because I recall when we
9 -- when we met once before here, I can't remember
10 whether it was when we met here or when we met for
11 the site review at your property that you attended,
12 you toggled between two different engineers --

13 MR. SMITH: Correct.

14 MR. PAPANDREAS: -- like you
15 weren't happy with what Scott Krabill was doing, so
16 you got a different one, and then you weren't happy
17 with what he did, but then you went back to Scott
18 Krabill over something else, and that is adding a
19 great deal of confusion to this whole process,
20 because it almost appears -- and I'm sure that this
21 is not your intent -- but it almost appears as though
22 you're trying to make it sound like you've been
23 victimized here, and please don't make that your
24 intent.

1 The questions are pretty simple here. It
2 appears as though, from what we're looking at, which
3 is an actual copy of someone's handwriting that was
4 approved that you got a permit for grading only --
5 minor grading -- and then you went above and beyond
6 and did additional work.

7 Now, that would be okay if the additional
8 work was legal and lawful, if anybody knew you were
9 doing it, and if it were on the permit, but it's not
10 on the permit, and that is an important thing for us
11 to know here.

12 So when I ask you a question, really a
13 straightforward answer is the simplest, because we've
14 got the documentation.

15 MR. BOSSIO: I want to stop all
16 discussion at this point. We need to switch out the
17 tape so this is a record.

18 MR. FLETCHER: Do you want to
19 take, like, a 10-minute recess?

20 MR. BOSSIO: We'll take an eight-
21 and-a-half-minute recess.

22 (Brief recess)

23 MR. BOSSIO: Okay. We're going
24 to reconvene now. If the Board members will allow me

1 to just bring a few points together, I would like to
2 keep in mind that we are strictly talking about the
3 minimum landscape buffer at this point in time, so
4 we'll need to streamline down to that, but there were
5 a couple points I would like to make.

6 Mr. Smith, would you please step to the
7 podium again?

8 (Mr. Smith complied.)

9 MR. BOSSIO: In carrying on with
10 what Mr. Papandreas said, you did use the terminology
11 of, "my engineer" earlier, so you employed that
12 engineer.

13 MR. SMITH: That's correct.
14 You're referring to myself? That I referred to him
15 as "my engineer"?

16 MR. BOSSIO: Yes.

17 MR. SMITH: Okay. Yes.

18 MR. BOSSIO: You did employ him;
19 correct?

20 MR. SMITH: Yes.

21 MR. BOSSIO: You even made
22 mention that you paid money for professional services
23 and so forth.

24 MR. SMITH: Yes, sir.

1 MR. BOSSIO: And this is an
2 affidavit -- we are a quasi-judicial board.

3 MR. SMITH: Right.

4 MR. BOSSIO: So an affidavit is
5 great, except for is he here this evening, or can you
6 bring him in, because we can't question this
7 affidavit. Usually, as a judicial board, you want to
8 be able to cross-examine on an affidavit.

9 MR. SMITH: Again, it's an
10 affidavit. It's signed and notarized under penalties
11 of perjury, so I think it has weight in and of
12 itself. It's used in courts, as you well know, so I
13 think --

14 MR. BOSSIO: Yes, but I also well
15 know that --

16 MR. SMITH: You don't have to
17 appear in court to make it valid.

18 UNKNOWN SPEAKER: Can be
19 subpoenaed.

20 MR. BOSSIO: I'm not questioning
21 whether it's valid or not. I'm questioning whether
22 the fact that I can cross-examine and how much weight
23 I can give to this, because I can't cross-examine
24 this individual, and every Circuit Court judge in

1 this county and many counties to be will question an
2 affidavit that's prepared and presented without being
3 able to cross-examine that individual.

4 You used the word, "judgment" earlier.

5 MR. SMITH: Yes.

6 MR. BOSSIO: And you used the
7 word, "judgment" during the point in time -- you made
8 the judgment call to move the concrete out further.

9 MR. SMITH: Correct.

10 MR. BOSSIO: So that was your
11 judgment call.

12 MR. SMITH: Correct.

13 MR. BOSSIO: Okay. On the
14 building permit -- again, your employee, your hired,
15 retained engineer --

16 MR. SMITH: Correct.

17 MR. BOSSIO: -- said, "minor
18 regrading."

19 During your discussion -- and this is why I
20 would like to have Mr. Krabill here, as well, and I
21 can't question him -- did you tell him it was a minor
22 grading permit? He's an engineer. He's a qualified
23 engineer.

24 MR. SMITH: That's right. I

1 appreciate you saying that.

2 MR. BOSSIO: Do you today say
3 that it was a minor grading?

4 MR. SMITH: I didn't look at the
5 application before he signed it --

6 MR. BOSSIO: That's not what I'm
7 asking you, Mr. Smith --

8 MR. SMITH: -- but I can -- I
9 have --

10 MR. BOSSIO: I'm simply asking
11 you a simple question.

12 MR. SMITH: I can't recall what
13 we said.

14 MR. BOSSIO: From the property
15 that you bought to what exists now, was that a minor
16 regrading of that front yard?

17 MR. SMITH: I would say the
18 grading of the yard, in my limited experience in
19 construction, is minor grading.

20 MR. BOSSIO: Okay.

21 MR. SMITH: That's a very flat
22 yard, and it really just needed to be pressed and put
23 some gravel. It wasn't a major excavation dig-out.
24 There was no elevation problems --

1 MR. BOSSIO: I wasn't a dig-out?
2 You didn't dig out -- you poured your new concrete
3 over top of the old driveway concrete?

4 MR. SMITH: No. There was some
5 preparatory work with machines, but it wasn't a major
6 regrading.

7 MR. BOSSIO: Did you haul any
8 soils out of there?

9 MR. SMITH: No. We brought
10 gravel in.

11 MR. BOSSIO: On top of the
12 existing soil.

13 MR. SMITH: Correct.

14 MR. BOSSIO: And the tree that
15 came down, you didn't dig out that stump?

16 MR. SMITH: We did bring -- I
17 rented a stump grinder from MPE Rentals. That was a
18 couple-hour project.

19 MR. BOSSIO: So minor grading --
20 now, the \$6,500, you do see that that building permit
21 says, "Minor regrading."

22 Did you do this yourself? Were you the
23 general contractor, or did you sub it out?

24 MR. SMITH: I was the general

1 contractor. That's correct, and I have a
2 contractor's license.

3 MR. BOSSIO: And so how much did
4 the excavation of that front yard and the placement
5 of concrete on there finally cost you?

6 MR. SMITH: I'd have to go back
7 to my records. I'm not prepared.

8 MR. BOSSIO: You have no idea
9 whatsoever? How many yards of concrete did you use?

10 MR. SMITH: And that's what I
11 mean. I'd have to go back. I wasn't prepared for
12 that. I can follow up with it, but I want to say, if
13 I might, let me be very clear: the building permit
14 says, "Minor grading required for the installation of
15 new asphalt parking lot and storm water management
16 drainage features."

17 I want the listening public to know it
18 wasn't just minor regrading. Plus I would like --

19 MR. BOSSIO: So it was not just
20 minor regrading.

21 MR. SMITH: Well, the permit
22 doesn't say just minor regrading. It has additional
23 verbiage regarding installation of new asphalt
24 parking lot.

1 MR. BOSSIO: Okay. Let me try it
2 this way: Is it asphalt?

3 MR. SMITH: It didn't turn out to
4 be, no. It turned out to be concrete.

5 MR. BOSSIO: Did you tell Mr.
6 Krabill that you were going to put asphalt on there?

7 MR. SMITH: At that time, I
8 believed I was.

9 MR. BOSSIO: Okay. So you didn't
10 bother calling to repay for a larger permit here?
11 This \$6,500 permit you thought was to do your entire
12 parking lot including the pavement of it?

13 MR. SMITH: At that time, yes,
14 and let me show as an attachment the site plan. If
15 you'll allow me, the comprehensive site plan that was
16 issued with this permit application, which should
17 have been distributed to Planning, and the meeting
18 that Planning had after they found out about it --
19 and I think, again, Chris is here, and I can call
20 witnesses if I need to, but I can talk to him about -
21 - that he was clearly upset that it wasn't
22 distributed to Planning. I know everybody right now
23 is saying it shouldn't have been, but it should have
24 been.

1 MR. BOSSIO: I'm going to go back
2 to you made a judgment call, you added concrete
3 instead of asphalt, and you moved the concrete into
4 what should have been the shrub vegetation area; is
5 that correct?

6 MR. SMITH: I used seven foot of
7 that, correct.

8 MR. BOSSIO: You did move the
9 concrete from where it was designed on the site plan
10 that you showed the City and it moved into the shrub
11 bed area.

12 MR. SMITH: Yes, I did.

13 MR. SHAFFER: We have this in our
14 packet.

15 MR. BOSSIO: Okay.

16 MR. SMITH: I just wanted to let
17 you know there was an extensive site plan with
18 parking spaces provided.

19 MR. FLETCHER: Mr. Chair, if I
20 could just make sure, what he just gave you, is that
21 the same as what's on page 112?

22 MR. BOSSIO: Could I see this?

23 MR. SMITH: That was the original
24 site plan that was changed extensively once Planning

1 was aware of it.

2 MR. FLETCHER: Yeah, we got --
3 they got it.

4 MR. BOSSIO: I need to ask Mr.
5 Fletcher before you sit down, I'm going to ask Mr.
6 Fletcher a question.

7 Mr. Fletcher, I have an affidavit here of
8 an individual, Scott Krabill, that I cannot cross-
9 examine at this point.

10 Who hand-delivered this memorandum?

11 MR. FLETCHER: My recollection
12 was that we met in this room with Mr. Krabill --
13 myself and Terry Hough -- went over exactly what all
14 of our concerns were and then, at the time, how we
15 learned of the problem was the entire front yard was
16 graveled. Well, not entire, but most of the front
17 yard was graveled, okay, which was -- well, let me
18 back up.

19 Most of the front yard was graveled. We
20 pulled the building permit. We discussed the
21 building permit.

22 Following up on what Mr. Smith just said,
23 again, the top of that first page it says, "Grading,"
24 so there's a breakdown, if you will, in what came in

1 as a building permit, what was processed, and then
2 actual the work that was done.

3 So contacted Mr. Smith or Mr. Krabill, I
4 can't remember, had a quick meeting. When I mean
5 quick, there was a quick turnaround so we could try
6 to rectify the problem. It was on a Friday. It was
7 on that date. We sat right in here, the three of us,
8 and went over everything.

9 Having worked with Mr. Krabill in the past
10 is why I prepared the memo.

11 MR. SHAFFER: September 17th of
12 2010?

13 MR. FLETCHER: September 17th,
14 and it's the date of -- our meeting was on a Friday.
15 My recollection is we went through that memorandum.
16 I'm not going to dispute his affidavit where he can't
17 recall receiving it or hand-delivering it. That'
18 fine, but that's my recollection, okay?

19 Does that answer your question?

20 MR. SHAFFER: So you would be
21 prepared to sign an affidavit equally giving weight
22 to saying that it was hand-delivered?

23 MR. FLETCHER: Absolutely.
24 Absolutely.

1 MR. SHAFFER: Okay.

2 MR. SMITH: What about Terry
3 Hough, would she be willing -- I'm sorry.

4 MR. SHAFFER: Terry's not here.

5 MR. BOSSIO: At that time of the
6 17th -- September 17th?

7 MR. FLETCHER: Yes, sir.

8 MR. BOSSIO: Okay. You were
9 alerted to the fact that it was all gravel in the
10 front yard?

11 MR. FLETCHER: Days or a couple
12 weeks before that, yeah.

13 MR. BOSSIO: So your red flags
14 went up, and, so, at that point when you had this
15 meeting, concrete had not been layed at that point in
16 time.

17 MR. FLETCHER: Say that -- I'm
18 sorry.

19 MR. BOSSIO: There was no
20 concrete installed at that point in time?

21 MR. FLETCHER: No. There was
22 not.

23 MR. BOSSIO: So there was still
24 ability to comply with the requirements that you

1 requested?

2 MR. FLETCHER: Correct.

3 MR. BOSSIO: One last quick
4 thing: As far as the \$6,500 permit -- estimated
5 value of the grading permit, you mentioned that you
6 are a CPA earlier on, so you can't tell me what you
7 ended up -- was it above that cost to do that entire
8 parking lot?

9 MR. SMITH: To do it in concrete
10 it was, yes.

11 MR. BOSSIO: Did you go back and
12 pay the City for that increased value?

13 MR. SMITH: I didn't know that
14 you had to or was never asked to, but if that needs
15 to be done, I'll be glad to do it.

16 MR. BOSSIO: Okay.

17 Any more questions of Mr. Smith?

18 Thank you, Mr. Smith.

19 I'm going to open this --

20 MR. PAPANDREAS: I do actually --

21 MR. BOSSIO: I'm sorry. Go
22 ahead.

23 MR. PAPANDREAS: Do you own Smith
24 Rentals?

1 MR. SMITH: Yes.

2 MR. PAPANDREAS: Do you do this a
3 lot?

4 MR. SMITH: What?

5 MR. PAPANDREAS: Do you deal with
6 property quite a bit?

7 MR. SMITH: I deal with permits
8 with respect to small projects. I do rental
9 rehabilitation of existing structures. Not from into
10 a professional office building, and I don't do a lot
11 of parking lots. I don't deal with Planning and
12 Zoning a whole lot.

13 MR. PAPANDREAS: You mentioned a
14 little while ago, unless I heard this wrong -- and
15 somebody else can chime up if they want to -- that
16 you're an accountant. That you don't do or you don't
17 get square footage.

18 You get square footage; right?

19 MR. SMITH: Well, I mean, clearly
20 I get it, but it's not -- I'm not by trade a
21 construction-minded person. My entry point into
22 rentals is more from the financial side. I have
23 employees and I have people who I rely on, but that's
24 not how -- I buy existing rentals generally built in

1 the forties, fifties, sixties, and I do roofs and I
2 do, you know, plumbing -- not me, but I have people
3 who do it. I don't generally deal with the zoning
4 and planning because I don't do a lot of larger what
5 would be considered larger renovations and whatnot.

6 MR. PAPANDREAS: Do you have,
7 like, an estimate of what you might have spent
8 renovating -- all the work that you did to this piece
9 of property that we're talking about?

10 MR. SMITH: I have it on my tax
11 returns. I could pull that.

12 MR. PAPANDREAS: Can you just
13 wing a number?

14 MR. SMITH: I would say --

15 MR. PAPANDREAS: All the
16 renovations --

17 MR. SMITH: -- the 40,000 range.

18 MR. PAPANDREAS: \$40,000 range?

19 MR. SMITH: Yeah.

20 MR. PAPANDREAS: Thank you.

21 MR. BOSSIO: Any other questions
22 from the board members?

23 Thank you, Mr. Smith.

24 I'm going to open this up to the public

1 portion. Is there anyone here that would like to
2 speak in favor of this particular request? Anybody
3 in favor?

4 (No response.)

5 MR. BOSSIO: Okay. Anybody in
6 opposition of this particular request, please raise
7 your hand.

8 (Audience member raised hand.)

9 MR. BOSSIO: Okay. We'll start
10 over here. I'm sorry. I should have gone ladies
11 first.

12 Please state your name and address for the
13 record.

14 MR. RIDGEWAY: I am Clark
15 Ridgeway, and I live at 1046 Koontz Avenue, and our
16 property does fall within that 200-foot limit
17 notification that is required for this type of
18 action.

19 I thank the Chair and the members of the
20 Commission for allowing us to come and vent our
21 frustration and our anger, I think, at the way this
22 has been done. "This" being the remodeling of that--
23 or reworking of that property.

24 Prior to that, it was a typical,

1 residential-type lawn. Trees, shrubs, a lot of
2 grass, a driveway that went back to the garage.
3 Typical, residential setting. Then last summer, the
4 tree is down, the grass is gone, the whole front is
5 graveled, and it sat that way for some months. Then
6 finally the whole front -- virtually, the whole front
7 is layed in concrete. We were very upset, and you
8 will hear from other neighbors about this as well.
9 We think it has destroyed, deteriorated the
10 appearance of the neighborhood and, as such, has
11 harmed us as adjacent property owners. Then to find
12 out later on that this was done almost arbitrarily on
13 behalf of the person doing the construction in
14 ignorance or in violation of the code just kind of
15 grinds salt into the wound for us.

16 We're very much opposed to what was done.
17 We would like to see that green space restored to
18 what it should have been and hope that you'll be open
19 to our pleas.

20 MR. BOSSIO: Thank you. Anybody
21 have any questions?

22 (No response)

23 MR. BOSSIO: Okay. Anybody else
24 here that would like to speak in opposition, please

1 step to the podium and state your name and address
2 for the record, please.

3 MS. RIDGEWAY: Hi. I'm Elaine
4 Ridgeway, 1046 Koontz Avenue. I'm very upset that
5 rules that people have taken so long to develop for
6 the betterment of our community were just totally
7 disregarded. That just isn't right. It just isn't
8 right. In the rules of civility for society, we have
9 to take into account the rules that we're all
10 governed by. We may not always agree with rules, and
11 that's why we do have recourse, but to just blatantly
12 disregard rules just goes against society. Thank
13 you.

14 MR. BOSSIO: Ms. Ridgeway, can I
15 ask a question, please?

16 MS. RIDGEWAY: Yes.

17 MR. BOSSIO: You're not in
18 opposition that to that being a pro zoning. You're -
19 - what your husband said, to restore back. You
20 understand that it is zoned pro.

21 MS. RIDGEWAY: Yes.

22 MR. BOSSIO: You would just like
23 to see it fall within what that PRO zoning allows.

24 MS. RIDGEWAY: That's right.

1 MR. BOSSIO: For the landscaping
2 and so forth.

3 MS. RIDGEWAY: That's right. It
4 has been done in other properties there.

5 MR. BOSSIO: You're not trying to
6 say that he should get rid of the PRO zoning there
7 and go back to a residential --

8 MS. RIDGEWAY: No.

9 MR. BOSSIO: Okay. Thank you. I
10 just wanted to clarify that.

11 Anybody else here that would like to speak
12 in opposition of this particular request? Let's just
13 stay in the same row. We'll just come on up. State
14 your name and address for the record.

15 MS. DURAN: I'm Marlene Duran,
16 and I'm at 425 Drummond Street. Now, I have never
17 received a notification of anything, and this isn't
18 the first time that my neighbors did that I should
19 have received, so I don't know why I'm on the role or
20 if there's something missing.

21 MR. BOSSIO: Well, we'll make
22 note of that and hopefully Mr. Fletcher can find out
23 why, in fact, that did not happen.

24 MS. DURAN: Okay. Thank you.

1 MR. BOSSIO: I think your name
2 was listed on the list Mr. Fletcher read --

3 MS. DURAN: I don't think I heard
4 it.

5 MR. BOSSIO: -- that's within the
6 200 feet. Did I read it? Okay. Anyway.

7 MS. DURAN: I don't think my name
8 was on it.

9 MR. BOSSIO: We'll look into that
10 for you.

11 MS. DURAN: Okay. Thank you.

12 Mr. Smith bought a resident (sic) that was
13 transformed into a professional office. The property
14 is on a street that is residential in nature,
15 although two of the properties on either side of him
16 are professional, but the grounds of these
17 professional properties were designed to be
18 sympathetic with the neighborhood, and they -- you
19 know, they have been complying with the requirements.

20 At the December zoning meeting, Mr. Smith
21 commented that the variance was needed because he
22 needed to accommodate a certain number of parking
23 spaces, and the Board members seemed very sympathetic
24 to his needs, and it seemed like you were trying to

1 accommodate him quite a bit, but seems like a logical
2 conclusion is that he really bought a property that
3 was too small for his needs, and the only way he can
4 accommodate was to get a variance.

5 The fact is that the property doesn't fit
6 in with the neighborhood the way it is right now, and
7 the fear is that he could start a trend that
8 neighbors see, "Well, look what he's done." If the
9 next property changes hands, they'll say, "Well, he
10 can do this, I can do this." That could be a trend
11 right through the entire city, really, and granting
12 Mr. Smith his variance would set a precedent that a
13 strategy of building first and then asking for a
14 variance later is very frightening that, you know, it
15 sets the precedent, and who knows where it would end.

16 Thank you very much.

17 MR. BOSSIO: Thank you. Anybody
18 else here that would like to speak in opposition,
19 please step to the podium and state your name and
20 address for the record.

21 MS. CHAMBERS: I'm Cindy
22 Chambers. I live at 57 Grandview in South Park, but
23 my mother lives directly across the street, and I'm
24 speaking for her. My father was mentioned, Kyle

1 Boswell. He's since deceased in (inaudible).

2 MR. BOSSIO: I'm sorry.

3 MS. CHAMBERS: Thank you.

4 Most everyone here has already conveyed our
5 concerns. You know, just, you built first and asked
6 for the variances later. You had a person here --
7 one thing I can add is Mr. Metheney was here earlier
8 tonight, and he came and asked for his variances and
9 was denied, and he went back and worked on his
10 property and came up with a better plan that really
11 was really a transitional development between what he
12 was wanting to develop and the properties that were
13 existing, understanding that some properties are
14 zoned differently than others, and it's -- you need
15 this transitional development to keep things nice for
16 everybody. I think Mr. Fletcher worked very hard, it
17 sounded like from the meeting we had in December, to
18 try to come up with a compromise, because originally
19 it was a six-foot sidewalk and a 10-foot buffer, and
20 probably he needed a parking variance over at the
21 property more than anything, but Mr. Fletcher came up
22 with the idea of the five-foot sidewalk and the five-
23 foot buffer of landscaping. I'm not sure I speak for
24 everyone, but it seemed like a pretty good compromise

1 to have something in between. Right now, it's, like,
2 eight inches of concrete over the entire front of the
3 property. Again, it looks like a drug store parking
4 -- you know, or a convenience store parking lot. It
5 just needs some sort of transitional type of
6 development there to make the property fit within the
7 neighborhood that it's in.

8 Thank you.

9 MR. BOSSIO: Thank you for your
10 comments.

11 Anybody else here that would like to speak
12 in opposition to this particular request? Anybody in
13 opposition?

14 (No responses)

15 MR. BOSSIO: Mr. Smith, would you
16 like to rebut to any of the comments that you've
17 heard?

18 MR. SMITH: Sure. The only thing
19 I would say, and I appreciate the neighborhood and I
20 appreciate the neighborhood's right to oppose, so
21 whatever I say is not meaning to be non-neighborly,
22 but I think -- and I think Mr. Bossio did mention it
23 -- it's PRO zoned. I mean, if you look at the
24 street, you've got businesses on both sides of my

1 property, okay? Dr. Hall has been there since 1978.

2 The large brick building to my left that
3 sets further back from Drummond, admittedly, has the
4 parking lot that enters that has multiple business
5 concerns inside of that. I know that's been there
6 more than 20 years. I remember in high school, it
7 was actually stucco. It was University Health
8 Associates.

9 On the end is a nonconforming, four unit,
10 or at least has four electrical meters, and it has
11 blacktop all the way up. I think it's Mrs. Lynch's
12 property. Nice lady who I've met and have had
13 conversations with. She's not here this evening. It
14 has blacktop all the way to the curb. My property
15 fits with the as-built in that neighborhood. I
16 regret cutting the trees. I know Mr. Ridgeway
17 mentioned -- well, I don't want to say the word
18 "regret," but I wouldn't have cut the trees, but
19 you've got to understand in the zoning requirements
20 that I needed 13 -- or I thought 10, it moved to 13
21 parking spaces. The City of Morgantown has required
22 me to have these parking spaces. A lot of people
23 don't understand that it's not me. So a lot of
24 people don't understand that it's not me. I think

1 particularly Ms., um -- excuse me. Ms. Boswell. She
2 will tell you, hopefully, or her daughter, I very
3 rarely -- I might have two or three cars parked in
4 the lot at any time. I have two employees right now.
5 I don't flood the parking lot. It's a very low-
6 volume traffic business. We don't have a lot in and
7 out.

8 I have also tremendously improved that
9 property. I understand Mr. Ridgeway remembers it as
10 a certain way, but I've put a lot of money in it and
11 made it extremely decent and spent money to make it
12 right. I didn't do it in a cheap way, I don't think.

13 Regarding Ms. Boswell, the only thing I
14 would say with respect to that, she's directly across
15 the street. Number one, she bought her property in
16 June '11, so I just want to make that clear. It's
17 her right to buy her property at that date, but she's
18 only been there since June '11. I hope her realtor
19 told her it was PRO zoned across the street. I want
20 to be clear that she's just been there since June
21 '11. Correct me if I'm wrong, but I believe that's
22 the case.

23 I also believe that Ms. Boswell complained
24 about a low-level landscape light I had, which

1 Heather Dingman visited my office, and I immediately
2 -- in fact, the same day -- turned it around facing
3 my building out of respect for what would be
4 considered a complaint, even though I didn't set it
5 there, it only extracts about three feet, I believe.
6 I mean, that's the manufacturer's extent of the
7 lighting.

8 So I'm not over there trying to cause harm.
9 Mr. Ridgeway -- again, respectfully -- he lives on
10 Koontz. Koontz -- his house faces the Prete's office
11 building. He's already looking at a huge
12 professional building, I guess. I think the City
13 Police are in there.

14 I mean, you know --

15 MR. BOSSIO: The City Police are
16 not in there.

17 MR. SMITH: Or not the City
18 Police. Excuse me. West Virginia University Police.

19 You know, everybody has a right to their
20 opinion. I clearly am not here to -- these residents
21 have been there longer than I have, admittedly. I
22 grew up in South Park. I live on Van Voorhis Road.
23 I bought that property only because it was PRO zoned.
24 Believe me, I had no intentions of causing harm. I

1 knew Glenda Spiroff, who lived in Ms. Boswell's
2 property. She sold me a piece of land a while back,
3 so I have no intentions -- and you can see who's here
4 tonight. It's mainly the residential. The business
5 concerns on my side of the street have not expressed
6 any dissatisfaction that I'm aware of. They haven't
7 voiced it or written it and attended any of the
8 meetings.

9 There is a business zoning on the other
10 side of the street. By right, I'm allowed to be
11 there, okay? I think that although I appreciate the
12 complaints, I think that people have to begin to
13 appreciate my right to exist there and maybe we can
14 get along a little better, and I think you've tried
15 to clarify that a couple times, admittedly, and
16 tonight you did it again, because I think some people
17 want me to, like, take the parking lot out, and
18 that's not what we're talking about. We're talking
19 about adjustments that I believe are given frequently
20 to other members of the community, so I just want to,
21 again, respectfully respond and try to be a good
22 neighbor. I do want to emphasize that. I'm more
23 than willing to meet with anybody or discuss or
24 invite anybody over to my property. If they have

1 suggestions, I'm more than willing.

2 MR. BOSSIO: Let me ask you a
3 question, Mr. Smith, or make a comment. They
4 understand it's PRO zoning. That's why I asked that
5 particular question. I wanted to make sure that they
6 did understand that it was PRO zoning. I don't think
7 that, from what I asked, that they're asking you to
8 do anything, other than what simply the code asks for
9 to be done. I believe that there's been some work
10 and some plans -- I know the Planning Department has
11 been working on it. There's been simply some plans
12 put out there that would meet your parking
13 requirements and, as the young lady back there
14 mentioned, that by meeting the parking requirement --
15 and there's been, like, a meeting of the minds and
16 some give and take so that you can reduce the
17 sidewalk, reduce the vegetation buffer, or landscape
18 buffer, that would be amenable to everybody.

19 Is there a reason why you just wouldn't
20 want to comply with that?

21 MR. SMITH: Well --

22 MR. BOSSIO: So that you could
23 coexist and everybody would be happy?

24 MR. SMITH: Well, I mean, the -

1 clearly, the reason I'm here asking for a variance is
2 because I would like to work through it, but on the
3 flipside, I mean, you clearly get that -- I mean,
4 you're talking about taking out substantial amount of
5 concrete and fatigue on my business and on the
6 building, on there area there.

7 Now, I'm just not, at this point, a hundred
8 percent convinced we can't do it with what's there
9 and make it right in a way so that everyone can be
10 happy with respect to the area that's there in terms
11 of landscaping. I believe that front area can be
12 properly shielded. I still believe that.

13 MR. BOSSIO: And put the sidewalk
14 in?

15 MR. SMITH: Well, look, the
16 sidewalk makes no sense, and I don't know if we're --

17 MR. BOSSIO: We're not here to
18 decide whether the sidewalk is -- we're talking about
19 your vegetation. This is what this particular
20 variance request is about, BA12-01, minimum
21 landscaping buffer, okay?

22 MR. SMITH: I want to put
23 landscaping in. I have had multiple thousand dollars
24 of quotes. I would like to invite the neighbors to

1 my house.

2 MR. BOSSIO: And you did say in
3 your statement just a few minutes ago that it could
4 be done. It could be -- you could cut a section of
5 your concrete out --

6 MR. SMITH: Well, I think I can
7 do it without cutting the concrete. I still believe.
8 That's why I'm here. I'm not trying to be smart.
9 I'm just telling you I believe the section in the
10 front can screen, line of sight is not going to be a
11 problem, and I can provide the right landscaping that
12 will grow. You got to understand, I'm there every
13 day.

14 MR. BOSSIO: But, then again,
15 we're not talking about the sidewalk, but then you're
16 not including the sidewalk.

17 MR. SMITH: Well, because again,
18 I don't think the sidewalk makes zero sense. It's a
19 sidewalk to nowhere, and that's my position.

20 MR. BOSSIO: Thank you.

21 MR. SMITH: Thank you.

22 MR. BOSSIO: Mr. Fletcher?

23 MR. FLETCHER: Okay. If I could,
24 before I go into the Staff Recommendation -- again,

1 we're still talking about the administrative appeal
2 on the landscape. There's been a couple few things
3 that the Petitioner is throwing out there that I
4 think needs to be responded from in terms of from the
5 staff's standpoint.

6 Again, the general affidavit, I am not
7 disagreeing with Mr. Krabill. If he cannot
8 recollect, that's fine. Okay? But Mr. Smith did say
9 that that -- that memorandum is the only thing where
10 we ever told him that that was the case.

11 On page 113 in your packet -- and this was
12 included in the documents that were a part of the
13 record of the December 21st hearing -- page 113.
14 This is an email on Monday, October 24th, 2011. Now,
15 granted this was after the concrete was poured, but
16 Mr. Smith's statement that that memorandum was the
17 only time we communicated anything at all, that's not
18 the case. Again, recognizing that this particular
19 email was after the concrete was done.

20 If I can, again, drive home the point that
21 the building permit was for grading only, and I
22 believe some of the emails that you have in your
23 packet as far as referencing other staff and
24 comments, that is the City Administration's

1 understanding. All of the other work was not
2 included in that original permit. If it was, it
3 would have come to the planning office for review,
4 and we would have made sure there was enough parking
5 there. We would have, at that time, communicated
6 about the sidewalks and the landscaping and so on and
7 so forth.

8 I guess I'll leave it at that.

9 MR. BOSSIO: Thank you, Mr.
10 Fletcher.

11 MR. FLETCHER: If you get to the
12 Staff Report so I can read the correct
13 recommendation...

14 MR. PAPANDREAS: Can I ask one
15 clarifying question?

16 MR. BOSSIO: You certainly can.

17 MR. PAPANDREAS: Are we talking
18 out 10 spaces now or 13 spaces?

19 MR. FLETCHER: It's 13 spaces.

20 MR. BOSSIO: Thirteen. Remember,
21 we found that the building was bigger than --

22 MR. PAPANDREAS: I did remember
23 that, but I didn't know what we were doing, because
24 you said -- you just now stated there were some ideas

1 out there that accomplished providing all those
2 parking spaces and still the landscape area?

3 MR. BOSSIO: Actually, I think
4 Mr. Smith himself -- I mean, I knew that this was in
5 the process, as I've driven by there, but he's added
6 two more spaces, I believe, to the side where we were
7 walking around when we did that site visit.

8 MR. PAPANDREAS: On the left-hand
9 side of the development?

10 MR. BOSSIO: On the left-hand
11 side of the development.

12 MR. SHAMBERGER: I think we
13 discussed this as a possibility when we were out
14 there --

15 (Multiple speakers)

16 MR. SHAMBERGER: We were trying
17 to help -- I mean, he does have limited options in
18 the back. He has limited options on the side, and
19 that was -- and I -- correct me if I'm wrong, but I
20 think that was talked more in light of an employee
21 parking or somebody who would not be going in and
22 out. It would have been -- you know, somebody who is
23 there all day and then the front spaces would be the
24 in and out spaces. Is that -

1 MR. SMITH: Yes.

2 MR. SHAMBERGER: Mr. Smith agrees
3 with that recollection.

4 MR. BOSSIO: Okay. Thank you.

5 MR. FLETCHER: We do have a site
6 plan that's in your packet that we'll talk about when
7 we get to that.

8 MR. BOSSIO: Can I ask one more
9 quick thing of Chris?

10 MR. FLETCHER: Yes.

11 MR. BOSSIO: The water retention
12 management system that's underneath there, do we have
13 a copy of that to see --

14 MR. FLETCHER: No. You all don't
15 have those plans. MUB did all the permitting for the
16 storm water and everything.

17 MR. BOSSIO: But that should be
18 included in the scope of the work on the estimated
19 value; is that correct?

20 MR. FLETCHER: Again, our
21 understanding, City Administration, that permit was
22 for grading only. It did not include the storm water
23 management.

24 MR. BOSSIO: Okay. Go ahead.

1 MR. FLETCHER: Again, so we are
2 on Agenda Item BA12-01. The Staff Recommendation
3 would be on page 77 of your packet. "The Planning
4 Division recommends that the Board of Zoning Appeals
5 upholds the February 9th, 2012, administrative
6 interpretation determination by concluding that, One,
7 the Petitioner's right to file an administrative
8 appeal under Article 1383.02 expired 30 days after
9 his November 14th, 2011, filing of variance petition
10 V11-46, for which he is presently seeking relief from
11 the minimum landscape requirements set forth in
12 Article 1367."

13 Number two, "The Planning Division has
14 correctly interpreted the applicability of Article
15 1367, landscaping and screening, to the reuse,
16 development and construction by the Petitioner at 426
17 Drummond Street in that, A, new site development
18 approval was required for the reuse of the structure
19 and related construction of exterior site
20 improvements, particularly parking. B, Article
21 1367.02(A) identifies the specific types of
22 development for which the landscape requirements are
23 applicable and compliance is required. Such is the
24 case for the subject development and construction by

1 the Petitioner at 426 Drummond Street. C, the 50-
2 percent assessed value exception provided in Article
3 1367.02(B) argued by the Petitioner is not applicable
4 when the intensification of a use establishes a
5 change in the type of development from one where
6 landscape compliance is not required -- "that would
7 be single-family dwelling -- "to one where compliance
8 is obligatory, which would be professional service
9 establishment. Such is the case for the subject
10 development and construction by the Petitioner at 426
11 Drummond Street.

12 Letter D, Article 1367.09(B) restricts the
13 administrative approval of a reduction of minimum
14 planting areas to where compliance is required as a
15 result of change in use or expansion of an existing
16 building and where compliance will necessitate
17 removal of existing pavement. Such is not the case
18 for the subject development and construction by the
19 Petitioner at 426 Drummond Street.

20 MR. BOSSIO: Thank you, Chris.

21 Board members, we've had a lot of
22 discussion here this evening. How would you like to
23 proceed on this?

24 MR. SHAMBERGER: What are our

1 options?

2 MR. BOSSIO: I think the number
3 one thing is we have to, before we consider it, am I
4 correct in saying we have to look at the
5 administrative appeal as it relates to the --

6 MR. FLETCHER: The matter before
7 you is the administrative appeal, not the actual
8 variance.

9 MR. BOSSIO: Does he have a right
10 to be able to appeal it is what we're looking at
11 right now.

12 MR. FLETCHER: Our recommendation
13 deals with does he have a right to appeal it because
14 of the time frame, and we're also recommending that
15 the Board consider the facts layed out and the
16 interpretation we've provided, which we restated --

17 MR. SHAFFER: And we need a place
18 to hang our hat on; right?

19 MR. FLETCHER: Which is what
20 we've provided you in the recommendation.

21 MR. SHAFFER: Right.

22 MR. BOSSIO: So that's the thing.
23 We're not actually considering the landscape buffer
24 right now. We're actually simply considering whether

1 or not to permit this to go forward this evening, or
2 did the time period expire, number one --

3 MR. SHAFFER: And it's a real
4 quick discussion. My take on this is that he's gone
5 past any reasonable time frame to look for an appeal.
6 The discussion that's gone on, for me, the time frame
7 -- the timeline just doesn't jibe in the whole -- the
8 all way down. It just doesn't seem right to me, so I
9 would vote in support of the staff's recommendation.

10 MR. BOSSIO: Any other comments
11 or questions?

12 Tom?

13 MR. SHAMBERGER: I think clearly
14 if there was an issue -- if there was something to
15 appeal, it should have been done timely, and this
16 came up quite a bit after the fact even after the --
17 as we're hearing, even after grading was done,
18 several communications, and even after we had our
19 first meeting that we tabled so we could go out and
20 do a site visit. Even after we, as the Board,
21 actually measured the building, which is typically
22 what we don't do on the site visit -- we go out and
23 look at-- we actually depend on that information
24 being provided by the applicant, and we typically

1 don't go out and measure buildings. I mean, that's
2 not really our -- I won't say "job," because we're
3 not paid at this, but that's not our duty really.

4 (Laughter)

5 MR. SHAMBERGER: I think if there
6 was some question about it, it should have been, at
7 any step along the way, should have been appealed way
8 before it was because, you know, it just languished
9 too long.

10 MR. FLETCHER: Mr. Chair, if I
11 could please make one point.

12 MR. BOSSIO: Yes.

13 MR. FLETCHER: In the first
14 recommendation we made, we say at the November 14th,
15 2011, a lot of back and forth as to when we found
16 out, when he found out, when he didn't find out. I
17 think, and this is why we put this in the
18 recommendation, wash all that away. When he was
19 instructed that he had to file for a variance
20 petition, that was the time when he should, in our
21 opinion, should have questioned the applicability of
22 the landscaping.

23 The date that he filed that variance, we
24 believe that's when the 30-day-- that's when the

1 Board of Zoning Appeals can look at -- that's when
2 the 30 days got started.

3 MR. BOSSIO: Right.

4 MR. BOSSIO: That's the meter.
5 When the meter started ticking.

6 MR. FLETCHER: I think anything
7 before that, I would -- and that's why we used that
8 date just to clarify in our recommendation that all
9 of the material, all of the discussion as to when,
10 why, how, before is immaterial at this point by
11 evidence of him applying for those variances. That's
12 our recommendation. We hope you all can take that
13 into consideration.

14 MR. SHAFFER: I understand what
15 you're saying.

16 MR. BOSSIO: George?

17 MR. PAPANDREAS: I want to make
18 sure I phrase this motion correctly.

19 MR. BOSSIO: You're going
20 straight into a motion.

21 MR. PAPANDREAS: Is that
22 inappropriate?

23 MR. BOSSIO: No, it's not.

24 MR. PAPANDREAS: I'd like to make

1 a motion, then, that we uphold the Planning
2 Division's recommendation of February 9th, 2012, and
3 their interpretation by -- do I want to say -- by
4 denying this administrative appeal? If that's the
5 correct terminology, then that's my motion.

6 MR. BOSSIO: Yes.

7 MR. SHAMBERGER: Second.

8 MR. BOSSIO: Second by Mr. Tom
9 Sham--

10 MR. FLETCHER: Wait a second. We
11 don't have Findings of Fact and conclusions of law,
12 but you definitely have to have the Findings of Fact
13 as to what the motion was, okay? So what you stated
14 was you basically tried to restate that first
15 sentence, but you excluded the items below in your
16 motion.

17 MR. BOSSIO: You need to put all
18 those in there.

19 MR. FLETCHER: It doesn't have to
20 be those. I'm just saying there needs to be more to
21 that motion.

22 MR. PAPANDREAS: And that's why I
23 say I want to get the semantics right on this. I'd
24 like to make a motion that we uphold the Staff

1 Recommendation, including all the associated
2 documentation.

3 Would that work?

4 MR. BOSSIO: Would you just
5 simply like to make a motion to the Petitioner's
6 right to file and administrative appeal under Article
7 da-da-da-da, read Number One in there and Number Two?

8 MR. PAPANDREAS: So I want to
9 make a motion, then, that we deny the Petitioner's
10 right to file an administrative appeal under Article
11 1383.02; correct?

12 MR. BOSSIO: Which expired 30
13 days...

14 MR. PAPANDREAS: Oh, okay. Which
15 expired after his November 14th, 2011, filing for
16 variance petition V11-46, for which he is presently
17 seeking relief from the minimum landscaping
18 requirements set forth in Article 1367.

19 MR. BOSSIO: And you could
20 continue on there, if you want.

21 MR. PAPANDREAS: The Planning
22 Division has correctly -- do I need to read all this,
23 or can I just say -- I mean, I will gladly read all
24 this, but I'm just looking for a way to simplify

1 this.

2 MR. BOSSIO: Chris?

3 MR. PAPANDREAS: I mean, clearly
4 we know what my intent is. Tell me how to phrase the
5 motion.

6 MR. FLETCHER: The motion -- and
7 we do this frequently where I try to aid in
8 wordsmithing motions. The motion is to deny the
9 Petitioner's administrative request by upholding the
10 February 9th, 2012, administrative interpretation
11 determination by concluding that 12(A)(B)(C) and(D)
12 as recommended by staff, and that would be the entire
13 motion.

14 MR. PAPANDREAS: And just
15 actually refer to 12(A)(B)(C) and (D)?

16 MR. FLETCHER: (A) (B) (C) and
17 (D) as recommended by staff.

18 MR. PAPANDREAS: Okay.

19 MR. BOSSIO: Okay. Does
20 everybody have that motion clear?

21 MR. PAPANDREAS: I mean, that
22 would be my motion. Do I need to repeat that?

23 MR. BOSSIO: Go ahead and repeat
24 it just for the record.

1 MR. PAPANDREAS: I'd like to make
2 a motion that we uphold the Staff Recommendation
3 where the Planning Division recommended that the
4 Board of Zoning Appeals uphold the February 9th,
5 2011, administrative interpretation determination by
6 concluding that Paragraph 1, 2, 2a, b, c and d are
7 included in that, and that we, as I said, deny this
8 appeal.

9 MR. BOSSIO: Second?

10 MR. SHAMBERGER: I second.

11 MR. BOSSIO: Second by Mr. Tom
12 Shamberger. All in favor please signify...

13 (All members raised hands in favor of the motion)

14 MR. BOSSIO: And that is
15 unanimous.

16 Mr. Smith, as you've heard, and as I stated
17 at the very beginning of the meeting, anything that
18 this board does after you receive notification can be
19 appealed at the Circuit Court of Monongalia County,
20 so anything that you do is done at your own sole
21 financial risk.

22 Okay. Are we ready to move on?

23 MR. FLETCHER: Yes, sir.

24 * * *

1 MR. BOSSIO: Moving on. BA12-02,
2 Andrew Smith at 426 Drummond Street. This is a
3 request by Andrew Smith on behalf of Smith CPA for an
4 administrative appeal as it relates to sidewalks at
5 426 Drummond Street. Tax Map 6, Parcel 17. This is
6 a pro -- professional -- residential and office
7 district.

8 Chris?

9 MR. FLETCHER: On September 17th,
10 2010, staff met with and provided a memorandum to the
11 Petitioner's agent and design professional, Mr. Scott
12 Krabill, detailing landscaping, parking, sidewalk and
13 refuse storage provisions required under the planning
14 and zoning code for the petitioner's reuse,
15 development and construction at 426 Drummond Street.
16 See attachment. Staff learned in October of 2011
17 that the petitioner constructed a parking area at 426
18 Drummond Street that did not include requisite
19 landscaping and sidewalks. Staff advised the
20 Petitioner that he would have to seek variance relief
21 from the minimum landscaping and sidewalk
22 requirements, which was also stated in the conditions
23 included in the temporary certificate of occupancy
24 issued by the City.

1 On November 14th, 2011, the Petitioner
2 filed variance petitions V11-46 dealing with
3 landscaping V11-747 dealing with sidewalks.

4 On December 21st, 2011, the Board of Zoning
5 Appeals tabled said petitions for the purpose of
6 conducting a site visit and to afford the Petitioner
7 an opportunity to develop parking layout design
8 alternatives. Alternate parking layout designing
9 became necessary after staff and the Board learned
10 that the Petitioner provided the City inaccurate
11 information in 2010 pertaining to square footage and
12 the number of employees used in calculating minimum
13 parking requirements.

14 The 2010 calculation resulted in minimum
15 parking requirement of 10 spaces. The correct
16 calculation based on an appraisal report submitted by
17 the Petitioner confirmed by staff's field
18 measurements and the Petitioner's increased number of
19 employees resulted in a minimum parking requirement
20 of 13 spaces.

21 On March 12, 2012, the Petitioner submitted
22 an Application for Interpretation of Article 1341.07,
23 Paragraph (I) concerning requisite sidewalks relating
24 to the reuse, development and construction by the

1 Petitioner at 426 Drummond Street. On April 12th,
2 2012, staff responded with an interpretation
3 determination as requested. On April 17th, 2012, the
4 Petitioner filed a related administrative appeal.

5 Analysis: The Petitioner's appeals and
6 attempts to argue that the provisional sidewalk set
7 forth on Article 1341.07(I) is not required unless a
8 use is constructed and that his development at 426
9 Drummond Street does not constitute construction.

10 Related planning and zoning code
11 provisions, facts and staff's determination are
12 provided in the attached April 12th, 2012,
13 memorandum.

14 Additionally, Article 1383, administrative
15 appeals, provides the following standards, emphasis
16 added, Article 1383.01, Authority. The Board of
17 Zoning Appeals shall hear and determine appeals from
18 any order, requirement, decision or any determination
19 made by an administrative official board or staff
20 member charged with the enforcement of this zoning
21 ordinance.

22 Article 1383.02, Initiation. An appeal may
23 be filed with the Board of Zoning Appeals by any
24 person aggrieved by the order, requirement, decision

1 or determination described in Section 1383.01. An
2 appeal filed with the Board must specify the grounds
3 of the appeal and be filed in the form established by
4 rules of the board and be filed within 30 days of the
5 original order, requirement, decision or
6 determination.

7 It is the opinion of the Planning Division
8 the Petitioner's right to file administrative appeal
9 expired as early as 30 days from staff's September
10 17th, 2010, memorandum. However, the Petitioner
11 alleged during the Board's December 21st, 2011,
12 hearing that he had never received nor was aware of
13 said memorandum. Giving the Petitioner the benefit
14 of the doubt, it is the opinion of the Planning
15 Division that the Petitioner's right to file an
16 administrative appeal expired 30 days from his
17 November 14th, 2011, filing of variance petition V11-
18 47, for which he is presently seeking relief from the
19 minimum sidewalk requirement set forth in Article
20 1341.07(I).

21 Before I turn it over to --

22 MR. BOSSIO: Mr. Smith.

23 MR. FLETCHER: Yeah, are there
24 any questions -- and I should have done this before -

1 - are there any questions or any explanation I can
2 help provide of the April 12th, 2012, administrative
3 interpretation memorandum?

4 Should I read it into the record? Because
5 I didn't -- the last time, it might have been helpful
6 during the course of the discussion.

7 MR. BOSSIO: Let's save time. Go
8 ahead.

9 MR. FLETCHER: The memorandum
10 dated Thursday, April 12th, 2012, which was emailed
11 to Andrew Smith as a response to an Administrative
12 Interpretation Application dated March 12th, 2012,
13 the following restates provisions of the Planning and
14 Zoning Code for which the attached application seeks
15 an interpretation determination. Article 1327.03
16 "Prohibitive Uses and Acts. Except as provided in
17 these regulations, no building, structure or premises
18 may be used for any purpose, other than those
19 permitted in the zoning district in which the
20 building, structure or premises is located. No land
21 or lot area may be reduced, diminished, used or
22 developed except in accordance with all applicable
23 provisions of these regulations. No building or
24 structure may be altered, erected, constructed,

1 installed, moved, replaced or maintained except in
2 accordance with all applicable provisions of these
3 regulations."

4 Article 1329.02, "Definitions. Definition
5 for the term, "alteration," is any change, addition
6 or modification in construction or occupancy of an
7 existing structure. Definition for, "development,"
8 One, any man-made change to improved or unimproved
9 land included, but not limited to, the construction,
10 reconstruction, conversion, structural alteration,
11 relocation, enlargement or use of any structure or
12 parking area. Two, any mining, excavation, dredging,
13 filling, grading, drilling or any land disturbance,
14 or Three, any use or extension of the use of the
15 land."

16 Article 1341.07, "Performance standards,
17 paragraph (I), Sidewalks shall be constructed along
18 the frontage of a lot upon which a use is to be
19 constructed. New sidewalks shall be at least six
20 feet wide, or the same width as an existing but
21 incomplete sidewalk along the same side of the
22 street."

23 "The following administrative
24 interpretation determination is specific to the

1 application attached hereto and made a part hereof
2 and relates to the specific development of 426
3 Drummond Street. First, the terms, 'construct,
4 constructed or construction,' are not defined in
5 Article 1329.02.

6 Second, the terms, 'alteration and
7 development' are defined in Article 1329.02 as stated
8 above and appear to integrate physical change, use
9 and the conversion of use.

10 Next, the conversion of the realty and
11 structure of 426 Drummond Street from a single-family
12 dwelling use to a professional services establishment
13 use included interior and exterior physical changes
14 for which building permits were issued. An example
15 of this would be the removal of the entire
16 residential front yard to construct requisite parking
17 spaces to serve the converted use."

18 Next, "It is, therefore, the determination
19 of the Planning Division that the conversion of the
20 realty and structure at 426 Drummond Street from a
21 single-family dwelling use to a professional services
22 establishment use and related physical changes to the
23 site and building constituted the construction of a
24 use."

1 Next, "As such, Article 1341.07(I) is
2 applicable to the subject development at 426 Drummond
3 Street, which provides that a new sidewalk at least
4 six feet in width must be constructed along the
5 site's frontage unless variance relief is granted by
6 the Board of Zoning Appeals."

7 Next, "In the last paragraph of your
8 attached Application--" and it's addressing Mr. Smith
9 in this memorandum -- "In the last paragraph of your
10 attached Application for Interpretation, you assert
11 that, 'Even if you determine it does apply using a
12 starting point of a six-foot wide sidewalk is not
13 proper, as there is an existing but incomplete
14 sidewalk along the same side of the street on
15 University Avenue, which is not six feet wide.'

16 In response, Drummond Street and University
17 Avenue are not the same street, but are two different
18 streets that do not intersect. Although
19 inconsequential, the realty addressed as 426 Drummond
20 Street fronts Drummond Street and does not border
21 University Avenue."

22 And then it'll go on here to advise him
23 that he can seek administrative appeal.

24 MR. BOSSIO: Thank you, Chris.

1 Mr. Smith, would you like to add anything
2 to what Mr. Fletcher is saying?

3 MR. SMITH: Yes, sir. Regarding
4 -- Andrew Smith, 426 Drummond Street -- in Mr.
5 Fletcher's response to the Administrative
6 Interpretation, he states the term, "construct,
7 constructed or construction," are not defined in
8 Article 1329.02. The specific code, 134107,
9 "Performance Standards in a Professional District;
10 sidewalks shall be constructed along the frontage of
11 a lot upon which a use is to be constructed." And
12 then we have also the documentation of that undefined
13 term, okay? It's a clear contradiction in the code.

14 Clearly, I did not construct. I took an
15 existing property and changed its use. My
16 interpretation of that is "construction" means new
17 building or a new structure. It's not defined, and
18 the Planning Department has already noted that, and I
19 do not believe sidewalks apply.

20 If you disagree, you must further look
21 that, again, the spirit and intent of this code talks
22 about an incomplete -- you know, it would be, "New
23 sidewalk shall be at least six feet wide, or the same
24 width as an existing but incomplete sidewalk along

1 the same side of the street."

2 I mean, there are no sidewalks on any side
3 of the street on Drummond, on Koontz, on Windsor.
4 This will be the first sidewalk ever put in this
5 area, if it happens, I guess. There is a sidewalk
6 down on University Avenue, which currently -- and
7 I've related this to Mr. Fletcher and the Planning
8 Department -- there are plans to put a turning lane
9 on University at the intersection of Patteson Drive
10 over towards the Boston Beanery. The Department of
11 Highways is going to redo, and I've met with them
12 about this, that side of University Avenue's
13 sidewalks that sort of meet up with Koontz, but
14 anyways, that sidewalk is three foot. So a six-foot
15 sidewalk is never utilized. I've not seen it. I
16 mean, you look around that area, Burroughs has some
17 sidewalks, okay. They're not six foot.

18 In any event, it's clearly not the intent
19 of the area, but again, I don't believe it applies
20 because the term can't be defined. Clearly, if you
21 just use what would be considered a rational and
22 reasonable explanation of the term, I did not
23 construct a use. Thank you.

24 MR. BOSSIO: If you could, hold

1 on in case there's questions. I, of course, do have
2 questions.

3 You said, and I quote you, that there are
4 no other sidewalks in that area.

5 MR. SMITH: That's correct.

6 MR. BOSSIO: Christy Street,
7 which is connected to Windsor Avenue, which is
8 connected to Drummond Street coming up alongside when
9 that development was done at the corner of Christy
10 and what is called 705 right now, there's a sidewalk
11 that comes up along where Starbucks is that goes to
12 no place; correct? It just comes up along that
13 section and stops.

14 MR. SMITH: I think isn't it
15 connected to the 705 to Van Voorhis?

16 MR. BOSSIO: But it comes up
17 Christy Street. When you said there was no other
18 sidewalks in that area --

19 MR. SMITH: No. I said there was
20 none on Koontz and Windsor and Drummond.

21 MR. BOSSIO: You said, "That
22 area."

23 MR. SMITH: Well, you know, look:
24 There's probably sidewalks if you want to look around

1 the 7th Ward, but in the immediate area, there's no
2 sidewalks.

3 MR. BOSSIO: There is a sidewalk
4 that comes up from Christy Street alongside
5 Starbucks; correct?

6 MR. SMITH: Okay.

7 MR. BOSSIO: And it stops at the
8 end of the --

9 MR. SMITH: That's further away
10 from the property, being Koontz and Windsor.

11 MR. BOSSIO: As you come in off
12 of Burroughs Street onto Muncie Street along the side
13 there, there was a sidewalk constructed on the first,
14 oh, 200 feet that just stops at a certain spot;
15 correct?

16 MR. SMITH: Is Muncie in front of
17 Vintner Reserve?

18 MR. BOSSIO: It is.

19 MR. SMITH: Is that a
20 construction -- did you put the sidewalk in?

21 MR. BOSSIO: Vintner Reserve put
22 the sidewalk in.

23 MR. SMITH: Right. Your company
24 did.

1 MB: Yes.

2 MR. SMITH: So, sure. I mean, if
3 you put a sidewalk in because it connects to
4 Burroughs, then that benefits your project and
5 additionally why early on I talked about a potential
6 bias because sidewalks benefits you as a member of
7 the Board.

8 MR. BOSSIO: Why would a sidewalk
9 benefit me but not benefit you?

10 MR. SMITH: Well, it doesn't
11 matter if it benefits me. It benefits you. You're
12 making a decision about my request, and if it
13 benefits you, you're biased. That's my point.

14 MR. BOSSIO: I'm sorry. How is
15 the sidewalk down at your -- on Drummond Street going
16 to benefit --

17 MR. SMITH: Well, you own
18 property on Koontz; correct? Maybe a sidewalk --

19 MR. BOSSIO: Is Koontz Drummond
20 Street?

21 MR. SMITH: No, but it connects
22 to Drummond, and so does Windsor, so if sidewalks are
23 developed --

24 MR. BOSSIO: And so does Windsor

1 connect to University, and so does Windsor connect to
2 Christy Street, and as I said --

3 MR. SMITH: Would you like to see
4 more sidewalks in the 7th Ward?

5 MR. BOSSIO: I'd like to see
6 sidewalks all around the City so that the citizens
7 would be able to walk them.

8 Would you not like that?

9 MR. SMITH: I'm not saying I
10 would or I wouldn't, but I wouldn't vote on someone
11 else's opportunity to put a sidewalk in or not when I
12 own property right beside it, or near it, or within
13 the area that it's in.

14 MR. BOSSIO: I'm referring to one
15 thing that you said, Mr. Smith.

16 MR. SMITH: Okay.

17 MR. BOSSIO: You said, "There are
18 no other sidewalks that lead to nowhere in that
19 area." Earlier you state in your thing, you quoted
20 all the different footages and properties and so
21 forth.

22 MR. SMITH: Right.

23 MR. BOSSIO: Well, you included
24 that in your "area." So when you said there's no

1 other sidewalks in that area, I just went ahead and
2 said --

3 MR. SMITH: Well, but it connects
4 with another sidewalk. Explain to me a sidewalk that
5 has no connection on either side in that area. Can
6 you?

7 MP: Excuse me.

8 MR. SMITH: It doesn't exist.

9 MR. PAPANDREAS: Can we get back
10 to talking about this piece of property --

11 MR. SHAFFER: Yeah, right. Good
12 point.

13 (Multiple speakers)

14 MR. PAPANDREAS: Because all
15 streets in Morgantown connect to each other somehow.
16 Can you talk about this piece of property?

17 MR. SHAFFER: I've got a question
18 real quick.

19 MR. BOSSIO: Yes.

20 MR. SHAFFER: And it's the same
21 question I had before: Are you still maintaining
22 that the engineer that you hired did not see the
23 memorandum in September 2010 that outlined the issues
24 that we're talking about?

1 MR. SMITH: Yes.

2 MR. SHAFFER: And we have a sworn
3 affidavit here; right?

4 MR. SMITH: Correct.

5 MR. SHAFFER: And the City
6 Planner has already indicated that he would equally
7 sign an affidavit saying he did give that to your
8 City Planner (sic) here in this room.

9 MR. SMITH: Well, and I wasn't
10 able to say this in the last round, but after -- and
11 it's true -- Scott Krabill disassociated -- I
12 disassociated him from the project. I brought in a
13 person named Chad Bilotta. He drew up -- Mr.
14 Fletcher met with him. He drew up a revised site
15 plan from the one Krabill drew up. On the revised
16 plan, there was no sidewalk. Mr. Fletcher approved
17 that plan. I have an email where he says that plan
18 appears to meet the standard, and he can show that
19 email as well as I can. It's in the record. There
20 was no sidewalk on that plan. That's my point. I
21 wasn't able to finish it, but there was a second plan
22 that was an amended site plan that had no sidewalk.
23 When I heard about sidewalks was in '11, when I had
24 finished pouring concrete late. I moved in in

1 November '11. I finished around October. I sent --
2 I visited for my sign permit and landscaping and
3 found out that I needed a sidewalk. The only
4 document in the entire -- and there are thousands of
5 papers in this so-called mess, or whatever you want
6 to call it, thousands of papers back and forth. The
7 only document that has sidewalks mentioned is a hand-
8 delivered document, and I think you need to consider
9 that.

10 MR. PAPANDREAS: If I can ask a
11 question --

12 MR. SHAFFER: I am considering
13 it.

14 MR. SMITH: Thank you.

15 MR. PAPANDREAS: The site plan
16 that you referenced, I've got -- I don't know whether
17 it's two or three different ones here. I've got that
18 original one and then I've got another one.

19 Are those the ones that whenever we were
20 actually at the site and we were looking at them, we
21 found out that none of the measurements on it were to
22 scale? That the number of parking spaces across the
23 front of the building wouldn't fit because, although
24 they were drawn in, they weren't scaled properly,

1 so--

2 MR. SMITH: That was an as-built
3 site plan that I was required to get as part of the
4 variance applications.

5 MR. PAPANDREAS: So how many site
6 plans have you delivered to the City?

7 MR. SMITH: I delivered one with
8 the initial permit in February '10, and I delivered a
9 second one through Chad Bilotta, and then I guess
10 there was sort of an as-built site plan, which would
11 have been the third one at the site visit, or before
12 the site visit as part of the variance application.

13 MR. PAPANDREAS: Of the three,
14 how many were accurate? Actually scaled accurately.

15 MR. SMITH: Well, I mean, look,
16 you know, the bottom line is --

17 MR. PAPANDREAS: Now, we're
18 getting to the bottom line.

19 MR. SMITH: You know, the word,
20 "accurate" is tough. There's no -- there's no
21 negative intent if something wasn't accurate. I
22 mean, clearly --

23 MR. PAPANDREAS: No. I'm not
24 implying that there is. All I'm saying is we were

1 given drawings, and we've been given -- and we
2 touched on this a little while ago -- we've been
3 given drawings all along that have less than reliable
4 information on it. We've been given measurements for
5 square footage that had less than reliable
6 information on it, so I'm trying to weed through all
7 of these papers and all of this information that
8 we've got there. I'm just trying to figure out what
9 information that's been provided to this group that's
10 actually accurate enough to be reliable versus what
11 is like a work in progress and not to be depended on,
12 as far as having reliable information. I mean,
13 you've got to admit, this is really a lot of stuff
14 for us to wade through. Some of this stuff that
15 we're trying to wade through seems to have no -- it's
16 not valid or --

17 MR. BOSSIO: Missing.

18 MR. PAPANDREAS: -- or it's
19 missing, or it comes to us and then you say, "But
20 that person is no longer working for us." And my
21 recollection also is from that site visit that we did
22 that you did indicate that you hired Mr. Krabill.
23 That Mr. Krabill was, then, switched over for the
24 second person. I can't remember his name right off

1 the bat, but then at one point you went back to
2 Krabill for something else; is that correct?

3 MR. SMITH: That's correct.

4 MP: So he was so unreliable the
5 first time that you went back to him?

6 MR. SMITH: Well, what had
7 occurred there was the speed at which I needed it. I
8 mean, you know --

9 MP: So accuracy and reliability
10 were out the window. It was speed at that point.

11 MR. SMITH: No. I mean, accuracy
12 is always important, but at the end of the day, I
13 mean, a lot of what's occurred here is because the
14 City of Morgantown took my original site plan, didn't
15 contact me, I believed everything was okay, and then
16 changed on me six months later. I had to adjust.

17 Do you understand what I mean? I had a
18 plan and submitted it. Now, we can debate whether
19 the permit was adequate or the amounts were adequate,
20 but the site plan was submitted to City officials.
21 Now, they didn't pass it through the proper channels.
22 I mean, clearly that's the case. It was submitted.
23 You can't say that a site plan that comes in with a
24 building permit -- these people work together every

1 day. They're in the same office --

2 MR. SHAMBEGER: Okay. This was
3 the grading building permit.

4 MR. SMITH: Yeah. I mean, the
5 grading permit.

6 MR. SHAMBERGER: It was not a
7 paving building permit. Isn't that what we
8 established? It was a grading building permit.

9 MR. SMITH: It was a grading
10 parking lot --

11 MR. SHAMBERGER: Grading building
12 permit.

13 MR. SMITH: -- permit.

14 MR. SHAMBERGER: So this is the
15 one we looked at earlier.

16 MR. SMITH: Yeah. With an
17 attached site plan, which I passed around.

18 MR. SHAMBERGER: The other thing,
19 too, let's get back to the site plan that we looked
20 at. The as-built drawings did not have straight
21 lines on it when we went out to the site visit; isn't
22 that correct? Do you recall that?

23 MR. SMITH: I mean, I don't
24 recall --

1 MR. SHAMBERGER: You don't -- we
2 were trying to determine the parking spaces. You
3 really were not sure of the measurements.

4 MR. SMITH: Right.

5 MR. SHAMBERGER: You were unsure
6 of the -- do you recall that actually people who were
7 there --we actually laid a tape out and did
8 measurements. We were unsure, you were unsure, and
9 that's why, at that point, we asked you to go back
10 and look at other alternatives that you could work
11 out some type of plan to make this work, because the
12 drawing wasn't -- it didn't appear to be to scale,
13 the one that we saw in January.

14 MR. SMITH: Look, if the intent
15 is to show that we're trying to do a sloppy job or
16 we're not trying to meet code or I'm some kind of
17 person who doesn't respect the process, I feel it's
18 unfair to say that. I mean, I'm not an architect or
19 an engineer.

20 MR. PAPANDREAS: I don't think
21 anybody has mentioned that that's the intent at all.
22 What we're looking at, or at least the way it appears
23 to me -- I'll certainly not speak for anyone else on
24 the panel -- but the way it appears to me is that all

1 of this was done, for whatever reason, for whatever
2 excuse, and now we're reverse engineering how it
3 happened. We've got documentation that you provided
4 that's not to scale. You admitted to that when we
5 were out there. We were looking at the drawings and
6 we were looking at the property and we were trying to
7 figure out, how did you get nine spaces across here?
8 There's no room for nine spaces. We were trying to
9 figure all this -- well, it's easy to shrug your
10 shoulders, but -- but --

11 MR. SMITH: Well, I don't know if
12 I admitted that, I guess. I'm not sure I admitted,
13 but go ahead.

14 MR. PAPANDREAS: But we've
15 listened to how you hired professionals --

16 MR. SMITH: Right.

17 MR. PAPANDREAS: -- you paid for
18 professionals--

19 MR. SMITH: Right.

20 MR. PAPANDREAS: We got
21 handwritten drawings on something just slightly
22 better than a napkin that are not to scale -- that we
23 found were not to scale because we actually went
24 above our area or our responsibility and measured the

1 property and measured the building because virtually
2 all of the numbers that we've been given have not
3 been reliable.

4 MR. SMITH: Right.

5 MR. PAPANDREAS: Now, it's
6 anybody's guess whether or not that was your intent.
7 I'm not saying that it was. All I'm saying is that
8 with that type of a history, it makes it very, very
9 difficult for us to look at any documentation here
10 and take it at face value because it just hasn't
11 worked out that way.

12 MR. SMITH: Well --

13 MR. PAPANDREAS: So you can read
14 into this whatever you want to. I'm not assuming
15 anything.

16 MR. SMITH: That's fair.

17 MR. SHAFFER: George has got a
18 good point.

19 Do you believe that it's an important for
20 an engineer to have the capacity or the capability to
21 draw plans for us to scale?

22 MR. SMITH: Well, of course. I
23 don't think anybody would --

24 MR. SHAFFER: I think that's

1 George's point.

2 MR. SMITH: Yeah. Absolutely.

3 MR. PAPANDREAS: Wouldn't you
4 want accurate -- didn't we talk about accuracy and
5 what was the other word, started with "c"? Earlier
6 whenever we were talking about these drawings and
7 stuff that were provided, you would want that as a
8 person that hires a professional to do a job --

9 MR. SMITH: Right. I had no
10 reason to believe they weren't.

11 MR. PAPANDREAS: -- (inaudible)
12 how you'd deal with them, but what we've been given
13 is less than professional. We're trying to weed
14 through that.

15 MR. SMITH: That's fair, but I
16 think right now the consideration is, by looking at
17 the code, 134107, you've got a pro zoning, you've got
18 a building that was renovated, and you've got a code
19 that says in pro performance standards, "Sidewalk
20 shall be constructed along the front of the lot upon
21 which the use is to be constructed," and I'm here
22 tonight to say and to plead with you that that is not
23 what I did, and sidewalks do not apply to my project
24 independent of whether lines are straight or not --

1 that's a fair future discussion.

2 MR. PAPANDREAS: Well, I'm
3 wondering -- I've got to wonder, then, could a
4 professional office have been put in that house as it
5 existed with no parking lot? Just a simple yes or
6 no. No parking lot whatsoever.

7 MR. SMITH: No. It would be a
8 violation of City zoning laws.

9 MR. PAPANDREAS: Okay. So, then,
10 by constructing a parking lot, you created a use that
11 would not have been permitted before; would that be a
12 correct statement?

13 MR. SMITH: I don't know. It's
14 not defined in the code. That's what I'm trying to
15 say. How can you --

16 MR. PAPANDREAS: -- speaking
17 English. There's a lot of words that are not
18 necessarily defined in the code, but I'm having --

19 MR. SMITH: Okay.

20 MR. PAPANDREAS: Convince me how
21 -- I mean, this is why you're here is to try to show
22 us where your side is -- makes sense here.

23 Convince me how the construction of that
24 parking lot, whether that parking lot was done

1 lawfully or not -- we'll put that on the side right
2 now. Convince me how the construction of that
3 parking lot did not make that use possible, because
4 I'm -- I'm -- that's where the disconnect is --

5 MR. SMITH: Well, let me -- let
6 me ask -- and while I'm thinking of a response, let
7 me throw this back. If you had -- if there wasn't a
8 building there and I just had the, say, .3 acres and
9 I brought in a construction company and I built a
10 building that was a professional office, would that
11 be considered constructed?

12 MR. SHAFFER: That's not what
13 we're talking about.

14 MR. PAPANDREAS: That's not what
15 we're talking about.

16 MR. SMITH: Well, but I'm trying
17 to understand --

18 MR. SHAFFER: No, no, no, no.
19 Your variance is very specific. Your variance is
20 about this. It's not about -- we're not talking
21 about a variance of --

22 MR. SMITH: I know, but I am just
23 trying to understand what it means. I'm trying to
24 understand if you agree what it means. It sounds

1 like we don't know what it means.

2 MR. PAPANDREAS: You're just
3 creating a use. I mean, if you put an Arby's there,
4 you'd be creating a restaurant.

5 MR. SMITH: Absolutely.

6 MR. PAPANDREAS: A hotel, you're
7 going to be creating a hotel.

8 MR. SMITH: That's right.

9 MR. PAPANDREAS: All I'm saying
10 is as that property sat, and this is what I'm having
11 trouble figuring out, and you're trying to make this
12 case, and I'm not feeling it here. If that
13 construction that you did by grading and pouring all
14 that concrete and making those changes to that
15 building didn't create the ability to use that
16 building in the way you're using it, I'm kind of
17 missing -- you kind of can't define "construction" as
18 "construction" when it's handy and not use that
19 definition when it's not handy.

20 So show me the difference. Show me where,
21 if that building could have been used at your present
22 use back in the day without any construction being
23 done to make that use possible, I'm okay, but I'm not
24 seeing that. I'm seeing that construction had to be

1 done to that property to make the use that you're
2 using it for happen. It could not be used for the
3 use that you're presently using it for, enjoying,
4 without that construction. I mean, it's just English
5 for me, so maybe --

6 MR. SMITH: All I did was change
7 a use.

8 MR. PAPANDREAS: You constructed
9 a lot on the property --

10 MR. SMITH: Well, the building
11 was --

12 MR. PAPANDREAS: -- in order to
13 enable a change of use. Yeah, you changed the use,
14 but not all by itself. It didn't just happen. You
15 did work. You put forth effort. You spent money and
16 you put materials on the property in order to make
17 that use something that you could enjoy on that
18 property. That's where I'm having the problem, and
19 maybe I'm speaking for other people here, too, but
20 I'm not saying I am. I'm just wondering. It's not
21 making sense to me.

22 MR. SHAMBERGER: I think we're
23 trying to get into looking at all sides of this, but
24 there is a question of whether -- you know, the one

1 thing is is this a timely appeal.

2 MR. BOSSIO: It goes back to what
3 the buffer for the landscaping was.

4 MR. SHAMBERGER: I think we can
5 debate all the ins and outs and you can ask questions
6 about zoning and whether you like it or not. We
7 don't make the zoning, okay? That's not our charge.
8 The Planning Commission makes the recommendations.
9 The City Council passes the zoning. We have to work
10 within the adjustments, or if there's a conditional
11 use, if it's permitted, to review those things.
12 That's our charge, or to hear appeals. But I think
13 for this, we need to double back to the similar
14 question that we had on the landscape buffer, and
15 I'll throw that out there for discussion before we go
16 any deeper into any of this other is was this a
17 timely appeal?

18 MR. SMITH: Can I respond to
19 that?

20 MR. SHAMBERGER: I think -
21 let's --

22 (Multiple speakers)

23 MR. SHAMBERGER: I'd ask you to
24 respond to that. That part of the question, yes.

1 You certainly can respond.

2 MR. SMITH: Again, I said this
3 earlier, there's no form -- you need, on an appeal,
4 an order-- a final order or determination from
5 Planning to attach the appeal. There is no form
6 that's supposed to be provided by Planning to apply
7 for an interpretation.

8 Now, you can use the 30-day requirement,
9 but you have to have all the pieces together to set
10 those rules. The pieces aren't there. Chris will,
11 you know, he can debate that. There's no form to
12 apply. I didn't know, nor would anyone know when
13 this is an official final order, plus you've got to
14 attach it to your appeal when you pay the fee, so how
15 do you know what you're attaching? I mean, I just
16 think the process is flawed and you ought to give the
17 benefit of the doubt there, because it's not set up
18 to even facilitate. You can't facilitate an
19 interpretation request. I think that needs to be
20 looked at before it's summarily dismissed.

21 I also believe that -- I don't disagree
22 with Mr. Papandreas in respects to your points.
23 However, I would like to think that the code can
24 stand on its own and it can read the way it's

1 supposed to read and not need that kind of, you know,
2 interpretation, in a way. I mean, it seems to me
3 like if that was what it meant, why wouldn't it say
4 that. I just wish that the code would read that way,
5 but if it doesn't, it doesn't.

6 To me, "constructed" is a new building.

7 MR. BOSSIO: Okay. Thank you.

8 MR. SMITH: Thank you.

9 MR. BOSSIO: Okay. I'm going to
10 ask Mr. Fletcher -- Mr. Smith has said several things
11 that I would like you to respond to.

12 MR. FLETCHER: Okay.

13 MR. BOSSIO: Well, I'll tell you
14 what. I'll just let you go ahead and start talking.
15 If you hit all of the four points that I --

16 MR. FLETCHER: No. Go ahead.

17 MR. BOSSIO: No, no, no. I want
18 you to go ahead, and hopefully you'll just streamline
19 through it in response to the allegations or what Mr.
20 Smith has said.

21 MR. FLETCHER: Mr. Smith is
22 correct. We do not have a form that you fill out
23 requesting an interpretation. In all of my
24 experience, someone calls us, we have a meeting, and

1 they say, "I disagree with you. Put that in
2 writing." And that's what we do, okay? If the code
3 says we have to have an application, we'll prepare an
4 application, but Mr. Smith's argument that that
5 application not being provided, I don't believe, is
6 sufficient for him to seek an appeal when we told him
7 he had to apply for a variance. Technically, the
8 email that we have that we sent to him that says,
9 "You need to apply for variances," okay, which I have
10 pulled this email. I can enter it into the record.
11 It's October 24th, 2011. It's a long email string
12 where we say this is what you need to do, and he's
13 saying, "Thanks for the correspondence." He's
14 saying, "Okay, thanks. I think we're close. I'll
15 have my variance submitted to you 12/21/2011." I'll
16 give you a copy of this, because I made copies of it.
17 He also goes into great detail as to his problems
18 with Mr. Krabill professionally, okay, and why he
19 decided to move away from him and go a different
20 direction, okay? So I don't believe -- and I'm
21 confident that the court will see that when he was
22 told he had to apply for it, he applied for it. That
23 is when he should have questioned whether or not the
24 rules and regulations were applicable to his

1 property. That's that point.

2 MR. BOSSIO: Okay.

3 MR. FLETCHER: The other point he
4 had said earlier is that he has an email -- and I've
5 tried real hard to find it, and I think it's in the
6 record, but he referenced it -- didn't give a date --
7 when he said -- when Mr. Chad Bilotta's site plan
8 came in and he said, "Well, Chris, I've got an email
9 from Chris (sic) saying that it's okay," there's a
10 response to that email that says, "No, I was looking
11 at the parking layout."

12 This entire process has always been trying
13 to figure out how to get 10 at the time and then
14 later 13 spaces on this property to then wrap around
15 the other requirements, okay? I think those are the
16 two points that I wanted to make.

17 Did I hit anything that you wanted to --

18 MR. BOSSIO: You covered
19 everything. It just seems to me that this keeps
20 being a moving target.

21 MR. SHAFFER: Mm-hmm. Mm-hmm.

22 MR. BOSSIO: It's all over, and
23 that's how I perceive it. Thank you.

24 Public comments?

1 MR. FLETCHER: Yes, sir.

2 MR. BOSSIO: I want to open this
3 up to the public.

4 Is there anybody here that would like to
5 speak in favor of this particular request? In favor
6 of the administrative appeal for the sidewalk
7 variance?

8 (No responses)

9 MR. BOSSIO: Anybody in opposition to?

10 MR. FLETCHER: Administrative
11 appeal. You said variance. We're on the
12 administrative appeal.

13 MR. BOSSIO: I thought I did say
14 administrative appeal.

15 MR. FLETCHER: I thought you just
16 said variance.

17 MR. BOSSIO: The administrative
18 appeal. I'm saying administrative appeal.

19 Is there anybody here that would like to
20 speak in opposition to this particular request for an
21 administrative appeal?

22 (No responses.)

23 MR. BOSSIO: Public portion is
24 now closed. I'll bring it back to the board members.

1 We've gone over a lot of this same, basic
2 information that was provided for the landscape
3 buffer, and we're really dealing basically with the
4 same thing, only a different issue. One is
5 landscape, one is sidewalk.

6 MR. SHAFFER: Right.

7 MR. FLETCHER: Mr. Chairman?

8 MR. BOSSIO: Yes?

9 MR. FLETCHER: Can I go ahead and
10 read your Staff Recommendation for you?

11 MR. SHAFFER: Yes. I'm really
12 sorry. May I?

13 MR. BOSSIO: Yes, sir.

14 MR. FLETCHER: "The Planning
15 Division recommends that the Board of Zoning Appeals
16 upholds the April 12th, 2012, administrative
17 interpretation determination by concluding that, One,
18 the Petitioner's right to file administrative appeal
19 under Article 1383.02 expired 30 days after his
20 November 14th, 2011, filing of variance petition V11-
21 47 for which he is presently seeking relief from the
22 minimum sidewalk requirements set forth in Article
23 1341.07(L).

24 Two, the Planning Division has correctly

1 interpreted the applicability of Article 1341.07(L)
2 to the reuse, development and construction by the
3 Petitioner at 426 Drummond Street in that, A, the
4 conversion of the realty and structure at 426
5 Drummond Street from single-family dwelling use to a
6 professional services establishment use constituted
7 the construction of a use as evidenced by site
8 improvements, particularly parking, for which
9 building permits were issued.

10 B, the sidewalk along University Avenue
11 referenced by the Petitioner that may be less than
12 six feet in width is not relevant to establishing the
13 minimum sidewalk width standard for the use
14 constructed at 426 Drummond Street. The referenced
15 sidewalk is not along Drummond Street, and the 426
16 Drummond Street property does not border University
17 Avenue. Therefore, the minimum width for a requisite
18 sidewalk at 426 Drummond Street is six feet."

19 MR. BOSSIO: Thank you.

20 MR. PAPANDREAS: If we see an
21 error in this, can we correct this as a semantics
22 error?

23 MR. BOSSIO: Sure.

24 MR. PAPANDREAS: Okay. Back to

1 A --

2 MR. BOSSIO: Page?

3 MR. FLETCHER: Page 91.

4 MR. PAPANDREAS: "Conversion of
5 the realty and structure at 426 Drummond Street from
6 a single-family dwelling to a professional services
7 establishment use constituted the construction of a
8 use as evidenced by site improvements, particularly
9 parking, for which some building permits were
10 issued."

11 I don't believe we have on file anything
12 that ever -- that ever was a building permit for a
13 parking lot, do we?

14 MR. FLETCHER: I was -- I'm not
15 prepared to answer that. I would think --

16 (Multiple speakers)

17 MR. SHAFFER: Is someone going to
18 change the --

19 MR. FLETCHER: I think the Board
20 should assume that all building permits were issued,
21 okay? Whether or not they were or not, that's -- I
22 would --

23 MR. SHAFFER: Whatever you're
24 comfortable with.

1 MR. FLETCHER: Yeah. I would
2 feel comfortable with what was written, because I'm
3 not prepared to answer that question, to be honest
4 with you.

5 MR. BOSSIO: And we should
6 streamline back to this is an administrative appeal
7 for a sidewalk.

8 MR. FLETCHER: Mm-hmm.

9 MR. BOSSIO: So...

10 MR. SHAFFER: I'd like to make a
11 motion that we uphold the Planning Division's
12 recommendation that the Petitioner's right to file an
13 Administrative Appeal has passed the 30 days after
14 his November 14th, 2011, filing of the Variance
15 Petition V11-47, as well as comments 2a and b.

16 MR. BOSSIO: Was that 1, 2a and
17 2b?

18 MR. SHAFFER: I'm sorry. 1, 2,
19 2a and b.

20 MR. BOSSIO: Is there a second to
21 that motion?

22 MR. PAPANDREAS: (Seconded
23 motion.)

24 MR. BOSSIO: Seconded by Mr.

1 Papandreas.

2 All in favor, please signify by raising your right
3 hand.

4 (All board members raised hands in favor of the
5 motion)

6 MR. BOSSIO: And that is
7 unanimous.

8 Again, Mr. Smith, as I said at the very
9 beginning of the meeting, anything that is decided
10 here this evening can be appealed to the Circuit
11 Court of Monongalia County within the first 30 days.

12 * * *

13 MR. BOSSIO: Okay. Now we're
14 moving into old business. We need to have a motion
15 to remove V11-46 off the table.

16 MR. PAPANDREAS: Make a motion
17 that we remove V11-46, Andrew Smith, 426 Drummond
18 Street, off the table.

19 MR. BOSSIO: Is there a second to
20 that motion?

21 MR. SHAMBERGER: Second.

22 MR. BOSSIO: Seconded by Mr. Tom
23 Shamberger. All in favor, please signify.

24 (All board members raised hands in favor of the

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motion.)

MR. BOSSIO: That is unanimous.

Okay, Mr. Fletcher? Well, let me read.

"Variance 11-46." This is for Andrew Smith at 426 Drummond Street. This is a request by Andrew Smith on behalf of Smith CPA for variance relief from Article 1367.08(C) as it relates to minimum landscape buffers at 426 Drummond Street, Tax Map 6, Parcel 17, pro professional, residential and office district."

Chris?

MR. FLETCHER: Okay. What I would suggest to the Board for consideration is that the December 21st hearing included the presentation of the Staff Report up to the recommendation and public comments were taken, okay? If you could go to page 97 of your packet -- for those of you that are on the computer, on page 97, there's three links on that page. There's the first link that's underlined in blue that's the minutes, which we don't need to necessarily go over. Next one is the December 21st Staff Report, which if you recall, was a combined Staff Report. You'll have to take action on each of them separately. The only thing you removed from the table is V11-46, which is fine. Then the last link

1 on there -- the last bullet on that page is, Parking
2 layout One prepared by Landmark Surveying dated
3 January 24th, 2012. That's the only new record or
4 document that staff has included into the record.

5 MR. SHAFFER: Just to go back
6 again. I'm sorry. The 21st, 2011, Staff Report and
7 then the parking lot layout.

8 MR. FLETCHER: Yeah. The
9 parking.

10 MR. BOSSIO: The parking layout
11 was done after our 17th January 2012 onsite visit --

12 MR. FLETCHER: Correct.

13 MR. BOSSIO: -- with
14 recommendations that we brought back from there, so
15 Landmark Survey did some stuff with our
16 recommendations to help this process get done.

17 MR. FLETCHER: Correct. So the
18 only thing I would suggest is if we can go ahead and
19 hit that link of the parking layout No. 1 so we can
20 look at that site plan that's prepared by Landmark
21 Surveying, it's on page 146.

22 What Landmark Surveying did was take the
23 as-built that Mr. Krabill prepared, remeasured
24 everything, and layed out 13 parking spaces. As Mr.

1 Bossio said, this particular design solution, if you
2 will, includes two tandem spaces for employees.

3 MR. BOSSIO: 10, 11, 8, 9.

4 MR. FLETCHER: Correct.

5 MR. BOSSIO: 10/11 is the new
6 parking that since we did our onsite visit that Mr.
7 Smith has gone ahead and done.

8 MR. FLETCHER: Now, you'll notice
9 parking spaces 12 and 13. I went out with the City
10 Engineer

11 -- or the Assistant City Engineer. We took this
12 document, measured everything. Staff is confident
13 that this is what can fit out there, okay? The
14 important point to note is from the curb, okay, from
15 Drummond Street, from the curb, there's three feet of
16 area that Mr. Smith is claiming that he can get
17 landscaping in, okay?

18 At that curb, you have another seven feet
19 until you get to parking spaces 12 and 13. I concur,
20 as well as the Assistant City Engineer concurs, that
21 if those - if parking space 12 and 13 are placed
22 there, they will not be in the site triangle vision -
23 - clear vision so you can see.

24 As such there is, proven by Landmark

1 Surveyor, that there's 10 feet from that back of that
2 curb to create a five-foot sidewalk and a five-foot
3 landscape buffer as staff recommended. It was just
4 coincidental that it happened to work out that way,
5 but it worked out that way.

6 Not only that, if you put the sidewalk in,
7 and staff fully understands and has heard Mr. Smith's
8 claim that he can get landscaping in that three feet
9 so that it will buffer those parking areas, it can't
10 because you've got to go vertical with landscaping.
11 When you go vertical with landscaping at the curb, it
12 creates a sight triangle problem.

13 Buffering screening is vertical. It's not
14 ground cover, okay? So if you put your five-foot
15 sidewalk in, and we tested this, and you put your
16 five-foot landscape buffer at that point, you can go
17 vertical and those cars or parking spaces 12 or 13,
18 it all fits.

19 MR. BOSSIO: Great.

20 MR. FLETCHER: Okay? So that's
21 the only new document that Mr. Smith emailed to us
22 back probably in January. It's been field tested.
23 Staff is confident that with Landmark Surveying's
24 work, and we're just -- again, coincidental that it

1 worked out to be that's what staff recommended way
2 back in December.

3 So now what I would suggest the Board
4 consider is go ahead and kind of go back to where we
5 were. I would suggest you all open up public
6 comments again and then we get into the
7 recommendation, which is what we didn't get into in
8 December because it was tabled at that point.

9 MR. BOSSIO: It was tabled.

10 MR. PAPANDREAS: So, then, are we
11 discussing here taking that whole buffer in the front
12 from 16 feet down to 10 feet? Sixteen feet that
13 would normally be required by --

14 MR. FLETCHER: Yeah.

15 MR. BOSSIO: Five and five.
16 Five-foot sidewalk, five-foot landscape buffer.

17 MR. PAPANDREAS: In this.

18 MR. BOSSIO: Yes.

19 MR. PAPANDREAS: But otherwise it
20 would be 10 and six.

21 MR. BOSSIO: Correct.

22 MR. FLETCHER: Correct.

23 MR. BOSSIO: Six, requirement for
24 sidewalk, and 10 requirement for vegetation or

1 landscape buffer.

2 MR. PAPANDREAS: And the reason
3 once again why we've thrown that out? I mean, why
4 we've made that suggestion?

5 MR. FLETCHER: Staff has made
6 that recommendation trying to find a middle ground to
7 allow him to get his parking spaces in there and
8 still get enough room to put vegetation that goes
9 vertical and to get the sidewalks in.

10 MR. PAPANDREAS: I've got all
11 that part. What I was --

12 MR. FLETCHER: That was our
13 recommendation.

14 MR. PAPANDREAS: Okay. Thank
15 you.

16 MR. BOSSIO: Okay. I'm going to
17 open this up for public comment.

18 Is there anybody here that would like to
19 speak in favor of this particular request? In favor?

20 (No responses)

21 MR. BOSSIO: Is there anybody
22 that would like to speak in opposition of this
23 particular request? Please step to the podium and
24 state your name and address for the record.

1 MR. RIDGEWAY: Clark Ridgeway,
2 1046 Koontz Avenue. I think my comments earlier this
3 evening and from the December 21st meeting are part
4 of the record.

5 MR. BOSSIO: That's correct.

6 MR. RIDGEWAY: I don't want to
7 prolong this any longer than we have to. I would
8 just reiterate, or ask the members to consider what
9 we said at that time. I am not opposed to a pro use
10 for that site.

11 MR. BOSSIO: Mr. Ridgeway, can I
12 ask you a question?

13 MR. RIDGEWAY: Yes.

14 MR. BOSSIO: You understand -- I
15 think Mr. Papandreas mentioned -- you know, the true
16 requirement is 10 and six, and trying to meet a happy
17 ground to help Mr. Smith out, to help the neighbors
18 out with a five-five; five-foot sidewalk, five-foot
19 landscape area.

20 MR. RIDGEWAY: I personally would
21 accept that, yes.

22 MR. BOSSIO: Okay. Thank you.

23 Is there anybody else that would like to
24 speak in opposition of the particular request as it's

1 stated? Anybody in opposition?

2 (No responses)

3 MR. BOSSIO: Okay. The public
4 portion is now closed.

5 Mr. Fletcher? Oh, I'm sorry. Rebuttal to
6 Mr. Ridgeway. You have five minutes.

7 MR. SMITH: Thank you. The only
8 other thing I wanted to bring up, I do have a DOH
9 permit --

10 MR. BOSSIO: I thought you were
11 going to do a rebuttal. This is the time for
12 rebuttal to Mr. Ridgeway's comments.

13 MR. SMITH: Is there - well --

14 MR. BOSSIO: Well, I'll tell you
15 what. I'm going to let you have the latitude to go
16 ahead and do something else, but usually, Mr. Smith,
17 this is reserved exactly for that; it's a rebuttal to
18 what was commented on.

19 MR. SMITH: I'll call it a
20 general rebuttal.

21 MR. BOSSIO: Okay.

22 MR. SMITH: Drummond Street is a
23 Department of Highways road. It's not a city road.
24 It's not maintained by the City. It is managed by

1 the Department of Highways. I have received an
2 ingress/egress permit from the Department of
3 Highways, and they have accepted the site triangle,
4 so to speak, and the current condition. I just
5 wanted to throw that out that I think that there may
6 be a jurisdictional issue here.

7 MR. SHAFFER: Where's the permit?

8 MR. SMITH: I have it with me
9 here.

10 I'd like to have you consider the authority
11 to supersede their -- shoot. Let's see here. I
12 provided it to the Planning Department. Here it is.
13 From their Division of Highways engineer Greg
14 Phillips. I would just like to follow up that I
15 think that since it's not a city street and the West
16 Virginia Department of Highways engineers have
17 approved it as is, that any further changes to it
18 could be problematic, at the least. If you could
19 consider that. Thank you.

20 MR. BOSSIO: Thank you.

21 Mr. Fletcher?

22 MR. FLETCHER: Mr. Chair, if I
23 could see that permit, because I think that permit
24 was issued long before--

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(Multiple speakers)

MR. BOSSIO: Go ahead with what
you were stating. That permit was issued long before
--

MR. FLETCHER: I think the permit
was issued long before we had this, which is fine.
One point that I would want to make, because the
reason I'm interested in looking at it is seeing if
there's a site plan that's in there, because the --
there actually were two entrances recommended at one
time.

The other -- I guess getting to the point
Mr. Smith is making is "jurisdictional superseding
authority" -- we work regularly with DOH to get
sidewalks in. Perfect example is Sabraton. How many
patches of sidewalk have we had developed, you know,
borne by developers down in Sabraton for probably
three or four different sites that are starting to
actually connect the dots down there. There is no
jurisdictional divide. DOH is -- access permit is
simply you can access your property onto their road.
That does not supersede the municipality's ability to
require sidewalks, landscaping, so on and so forth.

MR. BOSSIO: Mr. Smith, could you

1 step up to the podium again, please?

2 (Mr. Smith complied.)

3 MR. BOSSIO: As far as this
4 permit that you're providing to us, and you've added
5 a lot of verbiage to it in saying that they approved
6 that sight -- line of sight and so forth and so on,
7 where does that say that in here?

8 I mean, this is simply just a permit to
9 access the roadway. It doesn't say anything about
10 that they've approved, as you went on about how they
11 looked at the site plan and they approved the view
12 there that there's no problem --

13 MR. SMITH: Why would they visit
14 the site with me, schedule an appointment and then go
15 through the site? I mean, clearly the Department of
16 Highways has a motivation to have some safety
17 component of their ingress/egress. I haven't read
18 every word of the document. We could --

19 MR. BOSSIO: I'm reading it, and
20 the only thing it says is it says, "Concrete access
21 driveway and trench drain at new business located at
22 Drummond Street."

23 MR. SMITH: Well, I mean, it --
24 it -- you know, I'd have to read it word for word

1 into the record, but --

2 MR. BOSSIO: I just did.

3 MR. SMITH: Okay. Well, I mean,
4 it's a larger document than that. I mean, it's two
5 pages double-sided. There's attachments.

6 MR. BOSSIO: But what it's
7 considering, "For the purposes herein set forth and
8 in accordance with plans and specifications, which
9 are attached hereto and made a part hereof..." so
10 we'd have to assume that "attached to and hereof,"
11 you're simply providing -- I don't --

12 MR. SMITH: There's multiple
13 paragraphs on it.

14 MR. BOSSIO: Tell you what, as we
15 look at it, what is attached here is exactly what I
16 read. It's showing a concrete driveway. It's
17 showing a concrete curb. It does not show anything
18 for shrubs, for line of sight, as you said. I mean,
19 can you see where you have any plantings or anything
20 here that they're showing or where that vertical
21 shrub bed would go?

22 MR. SMITH: Here's what I know.
23 I'm going to say it like that. I met a DOH engineer.
24 He wanted to visit the site. He walked the site. He

1 reviewed the site. He followed up with a document
2 generated on their legal paper, and he gave it to me
3 as what's called -- as it's titled, "Your approved
4 copy" --

5 (Multiple speakers)

6 MR. SMITH: It's a State road, do
7 you agree with me? It's not a city road.

8 MR. BOSSIO: It is a State road.
9 So is Windsor Avenue. What does that have to do with
10 it?

11 MR. SMITH: It's not a city road.

12 MR. BOSSIO: Your statement that
13 your property is in "the city limits" which is
14 governed by the code that we are dealing with here
15 tonight -- I'm just simply trying to ask a question,
16 okay?

17 MR. SMITH: Yes.

18 MR. BOSSIO: You stated, as you
19 were fumbling through your papers, that this is a
20 Department of Highways -- and you elaborated when you
21 said that -- that they approved it after seeing the
22 line of sight, and the vegetation and the shrubs and
23 so forth and so on and they said that there wouldn't
24 be any problem. Those were your words, were they

1 not?

2 MR. SMITH: Say what my words
3 were one more time.

4 MR. BOSSIO: I believe that they
5 were something to the effect that they came out and
6 they approved the line of sight. That there wouldn't
7 be any problem with the line of sight with the shrubs
8 and so forth.

9 MR. SMITH: That was the
10 conversation that I had with the engineer that day.

11 MR. BOSSIO: But in the document
12 there, I don't see anything about -- all it shows is
13 curb and it stops there.

14 MR. SMITH: How can you review
15 that document in 30 seconds?

16 MR. SHAFFER: That document is
17 dated November. We're talking about May. Why wasn't
18 --

19 MR. SMITH: It's already been
20 provided to Chris Fletcher in November of '11.

21 MR. FLETCHER: Whoa, I've never
22 seen that document. I have never seen that entire
23 document.

24 MR. SMITH: Okay. That's fair.

1 But, I mean, it was part of what you requested to get
2 a -- a -- but I've emailed this document.

3 MR. FLETCHER: The Engineering
4 Department may have a copy of that.

5 MR. SMITH: Well, I mean, look, I
6 mean, I look at the City as a consolidated entity
7 that works together. I can't -- I mean, I think we
8 need some consolidation of efforts at the City to be
9 able to transact business, now. I mean, clearly my
10 file became relevant, so things should be shared.

11 MR. FLETCHER: Mr. Bossio, I'm
12 sorry. I'm trying to be patient here for the last
13 several hours.

14 The Planning and Zoning Department on a
15 State road access permitting happens with DOH and
16 Engineering. When they decide where that happens,
17 then we try to wrap it around that process, okay? I
18 still haven't looked at that. I'm curious as to
19 whether or not that that is -- if you've actually
20 developed your access point as to what the permit
21 was, because this site plan has changed so many
22 times.

23 (Mr. Fletcher refers to site plan.)

24 This site plan shows that your driveway

1 entrance is at the center of your property.

2 MR. BOSSIO: When, in fact, it
3 isn't.

4 MR. FLETCHER: You never
5 developed it that way.

6 MR. SMITH: I visited in November
7 with a DOH engineer. That's all I'm saying. Look,
8 you know, if it doesn't matter to you, you're more
9 than welcome -- you're on record, everything you're
10 saying is on the record, just like myself.

11 MR. BOSSIO: Exactly.

12 MR. SMITH: Clearly, you don't
13 believe that it matters. You've already made your
14 mind up. I can sit down and you can do what you need
15 to do. I'm just showing it to you. It will be
16 brought up again, but it's a document --

17 MR. BOSSIO: But you were talking
18 about specifics, Mr. Smith. Specifics.

19 MR. SMITH: I really --

20 MR. BOSSIO: And your driveway
21 now --

22 MR. SMITH: -- don't --

23 MR. BOSSIO: Wait a second.

24 MR. SMITH: I'm sorry.

1 MR. BOSSIO: I'm asking you a
2 question.

3 MR. SMITH: Yes, sir.

4 MR. BOSSIO: We just want to try
5 to get you moved on so we can get this case closed.

6 MR. SMITH: I have no problem --

7 MR. BOSSIO: What I'm asking you
8 is is that you -- as you were opening up that paper
9 and you said, "I couldn't possibly look at this in 30
10 seconds and make a determination," --

11 MR. SMITH: Then you're more
12 skilled than I am. I -- you know, that's a
13 complicated document you're looking at.

14 MR. BOSSIO: Can you show me -- I
15 would like you to step forward here. Because you are
16 so detailed, and that's what you said earlier;
17 correct?

18 MR. SMITH: Yes, sir.

19 MR. BOSSIO: Is that where your
20 driveway is?

21 MR. SMITH: I'm not sure I
22 understand the drawing, but --

23 MR. BOSSIO: You would agree that
24 this is your property right here that they've

1 designated right here.

2 MR. SMITH: Mm-hmm.

3 MR. BOSSIO: Is that shown --
4 isn't your driveway currently coming in as if you're
5 standing on the road and you're entering, it's on the
6 right-hand side?

7 MR. SMITH: It appears to be more
8 on the right-hand side, yes. I follow what you're
9 saying, but --

10 MR. BOSSIO: Does that show
11 anything that it's even close to being -- that's
12 showing center line.

13 MR. SMITH: I mean, again --

14 MR. BOSSIO: So you actually
15 don't have a permit to come out the center. This
16 permit is showing this. This was a very detailed
17 document from the State.

18 MR. SMITH: Listen, I mean, I'll
19 go back to the record --

20 MR. BOSSIO: You're still on the
21 record even when you're up here.

22 MR. SMITH: Oh, I didn't know
23 that.

24 Again, I visited personally with an

1 engineer that I can get an affidavit from that can
2 testify. He will tell you we met. He visited the
3 site. I can't talk to you about how he drew it or
4 how he didn't draw it or what the -- you know --

5 MR. BOSSIO: But you're standing
6 here relying on it. You were the one that said --
7 you came back in rebuttal and I allowed you to go
8 ahead to put this into evidence as something we
9 should consider.

10 MR. SMITH: Well, again --

11 MR. BOSSIO: If we should
12 consider it, shouldn't it be factual?

13 MR. SMITH: Again, it's a State
14 document signed by a State engineer. I mean, if
15 you're calling it nonfactual, I don't know how you
16 can make that determination in a few minutes, but
17 it's, you know, look. It's your forum. I can't tell
18 you how to think. If that's what you believe, you're
19 more than welcome, but I'm going to tell you that's
20 the active and current ingress/egress permit that I
21 was required to get and I received. I believe that
22 whatever happens, I need to go back to those
23 individuals and make sure that they're on board.
24 It's a State road, and I just think that's important,

1 because a lot of the roads are City roads.

2 MR. BOSSIO: There is no doubt
3 it's a State road.

4 MR. SMITH: Okay.

5 MR. BOSSIO: Windsor Avenue is a
6 State road.

7 MR. SMITH: And I think that you
8 have to coordinate with DOH to make any decisions at
9 a city level.

10 MR. SHAFFER: Let's let the City
11 and the State figure that out later.

12 MR. BOSSIO: Is there anything
13 else that you want to add?

14 MR. SMITH: No, sir. Thank you.

15 MR. BOSSIO: Chris, can you
16 consolidate, wrap up on the points, please?

17 MR. FLETCHER: Okay. I need to -
18 - I didn't read the recommendation last time -- or in
19 December.

20 Again, the recommendation is a combined
21 recommendation as the Staff Report is combined. We
22 did do public comments; right?

23 MR. PAPANDREAS: What page are we
24 on?

1 MR. BOSSIO: Yes, we --

2 MR. FLETCHER: I was just going
3 to tell you, page 107.

4 MR. BOSSIO: Mr. Smith's was a
5 rebuttal to Mr. Ridgeway's public comments.

6 MR. FLETCHER: Page 107, Staff
7 Recommendation. "It appears necessary in this
8 instance to consider the planning of the depth
9 between the right-of-way and the Petitioner's parking
10 lot as an integrated design area. Given the fact
11 that approximately 15 feet is available after minimum
12 parking depth and drive-aisle standards are met and
13 16 feet is necessary to meet the minimum
14 requirements, reasonable variance relief appears
15 prudent. However, the Petitioner's request to waive
16 the sidewalk requirement and provide only 30 percent
17 of the landscape buffering requirement stands to
18 undermine the legislative intent of the Planning and
19 Zoning code to improve pedestrian safety, enhance the
20 quality of development and buffer parking lots from
21 streets and other properties. Additionally, any
22 arguments supporting the Petitioner's variance
23 requests based on compliance costs and/or
24 inconvenience should be considered immaterial as the

1 circumstances for which the subject variance
2 petitions have been submitted are arguably the result
3 of a self-imposed hardship.

4 As such, staff submits the following
5 recommendation. One, that the Board grant a five-
6 foot variance under V11-46 from the minimum 10-foot
7 landscape buffer standard set forth in Article
8 1367.08(c). Number Two, that the Board grant a one-
9 foot variance under V11-47 from the minimum six-foot
10 sidewalk standard set forth in Article 1341.07(I).
11 Three, that the desired design and development under
12 the variances granted herein is a minimum five-foot
13 sidewalk beginning at and measured from the back of
14 the street curb, fence a minimum five-foot
15 landscaping buffer measured from the back of said
16 sidewalk to a concrete curb at the edge of the
17 concrete parking lot to protect the plant materials.
18 Four, that the Petitioner must make application for a
19 building permit that includes all the work associated
20 with variance relief granted herein. Five, that said
21 building permit application must include a landscape
22 plan meeting the standards for same as set forth in
23 Article 1367.04. Six, that the landscape plant
24 materials must be approved by the Planning Division

1 with consultation by the City Engineer to insure safe
2 visibility for exiting motorists prior to building
3 permit issuance and installation; and Seven, that all
4 work necessary to comply with the variances granted
5 herein must be completed no later than..." -- now,
6 remember, this was back in December. We had
7 suggested, "...June 30th, 2012. Failure to comply
8 with said deadline will result in enforcement action
9 provided in Article 1393 of the Planning and Zoning
10 code."

11 I would suggest that that be changed to
12 October, November, something -- whatever the Board
13 feels is -- but within this same construction
14 schedule -- or construction season. I'm sorry.

15 Again, just as a reminder, you have taken
16 V11-46 off the table. I think you can use the same
17 recommendations and Findings of Fact for both,
18 because the Findings of Fact in Addendum E are
19 combined. You just have to go through it twice.

20 MR. BOSSIO: Let me ask you one
21 quick question, though, that I want to clarify on is
22 that his request is to take the landscape buffer down
23 even less than what you're recommending. That's what
24 his request is.

1 MR. FLETCHER: Correct. And its
2 location is, like, right on the curb.

3 MR. BOSSIO: Right. So you're
4 saying you recommend a five-foot, okay. Do we need
5 to ask the Applicant if he's willing to accept that,
6 or he just wants, A, be turned down completely --
7 you're changing what he's asking for, which --

8 MR. FLETCHER: Well, yes, I am,
9 but if someone -- and I think the Board has done this
10 before. Someone --

11 MR. BOSSIO: We have, but --

12 MR. FLETCHER: -- (inaudible).

13 MR. BOSSIO: -- we asked the
14 Petitioner if he would allow us --

15 MR. FLETCHER: I can't recall
16 that. I can't -- our recommendation was trying to
17 find a solution to the problem.

18 MR. SHAMBERGER: Right, and I
19 think the drawing that Chris came up with after the
20 things that shows that this is a doable action. He
21 can enjoy his property, which is really, when we went
22 out on the site visit, we were looking for solutions.
23 How can we make this work.

24 MR. BOSSIO: Right.

1 MR. SHAMBERGER: He came up with
2 how --

3 MR. BOSSIO: Well, this is pretty
4 much how we did, though. Remember we came up that
5 evening. The two spaces that he has added he's been
6 good enough to let us do that.

7 MR. SHAMBERGER: Right. I think
8 he looked at the tandem spaces. There is a solution.
9 It isn't a perfect solution. I'm sure some people
10 would like it, but it's -- I see this as really what
11 the Board of Zoning Appeals is supposed to do to try
12 to make adjustments to make it work. We're still
13 keeping in spirit with the sidewalk and the buffer,
14 which is basic planning for all of this through the
15 whole city, and eventually it would connect. If
16 somebody does major renovation in one of those other
17 properties, they have to comply, and they probably --
18 and I would guess they would have to comply with the
19 line of the sidewalk that we're putting down here,
20 if we go with the five-foot sidewalk.

21 MR. BOSSIO: Right. Right.

22 MR. SHAMBERGER: And that -- you
23 know, we're trying to find a solution here.

24 MR. BOSSIO: Right.

1 MR. SHAMBERGER: And I think
2 there's one presented that would work.

3 MR. BOSSIO: So correct me if I'm
4 wrong, I mean, we're only talking about cutting a
5 small amount -- there's already a three-foot opening.
6 So if we're going to do five and five, only seven
7 feet of the concrete has to be sawed off and cut off
8 to be able to make this work, but not for the entire
9 length. It looks like it's for -- with two cars,
10 you're probably talking 20-25 feet?

11 MR. FLETCHER: I'm sorry. Let me
12 get
13 to -- okay. Yeah. I see what you're saying. You're
14 talking from the corner of the property to the
15 driveway.

16 MR. BOSSIO: To here. That's all
17 you're going to be doing anyway.

18 MR. FLETCHER: Yeah. The rest of
19 the concrete can stay. Now, if I could just add --
20 yeah, Mr. Bossio, I think you had said something of
21 what if we just denied it, right? What if we just
22 denied *in toto*? Now, the point in that is if the
23 Board did that, then he wouldn't be able to meet his
24 parking, because that 16 feet goes out and consumes

1 the area that you need for parking spaces 12 and 13,
2 okay, which means he would then need to come back in
3 and ask for a parking variance.

4 MR. BOSSIO: A parking variance,
5 right.

6 MR. FLETCHER: So that's what the
7 - middle ground just to try and avoid --

8 MR. BOSSIO: So just to be
9 correct, is it something again where I need to ask
10 the Applicant
11 if --

12 MR. SHAFFER: No. I mean...

13 MR. PAPANDREAS: Can I ask
14 (inaudible)? Maybe we should have a small discussion
15 here on whether or not we would rather see a parking
16 variance or we would rather see -- you're shaking
17 your head no, but here's what I'm asking: We're
18 effectively, for this whole area, because this will
19 be used as a guideline for the next piece of property
20 if they would continue it. We're effectively
21 changing the requirements for this whole area to a
22 five-foot sidewalk and a five-foot green space.

23 Would that be accurate?

24 MR. BOSSIO: Yeah. It would be

1 for --

2 (Off-the-record discussion.)

3 MR. BOSSIO: Okay. Everybody
4 stop talking for a minute so we can change the disks.

5 MR. SHAFFER: Turn the mics off.

6 (Off the record)

7 MR. BOSSIO: Okay. We're going
8 to reconvene. We had to take a break there so that
9 Mr. Anderson could change the DVD, or add a new one.

10 You were saying?

11 MR. PAPANDREAS: I just wanted to
12 throw that out. I wanted to say, you know, we're
13 effectively -- let's say, you know, worst-case
14 scenario, adjoining pieces of property were to go in
15 the same direction, we're effectively changing the
16 whole neighborhood. You know, the intent of this is
17 to have a sidewalk and a large buffer area. If we do
18 what we're doing, then the standard that everybody
19 else is going to set themselves to is a five-foot
20 sidewalk with a five-foot green space. Are we okay
21 with that? Would we rather see something like that,
22 or would we rather -- I mean, and you even reference
23 it in here. I kind of see this parking thing as kind
24 of a self-imposed hardship. We've discussed that

1 before. We can deal with that in either of two ways
2 with what you're proposing or with a parking
3 variance. I don't know which is better. I'm just
4 saying should we have this conversation.

5 MR. FLETCHER: If I could please
6 interject, I strongly encourage you not to make
7 statements as individuals or groups on a potential
8 application that may come in now --

9 MR. PAPANDREAS: That's fair.

10 MR. FLETCHER: -- because if it
11 comes in later, then you've already stated what your
12 feelings were on that application. Do you
13 understand? I would say just stick with the matters
14 that are before you now. I'm sorry, George. I
15 understand where you're going with it, but that's --

16 MR. PAPANDREAS: That's fair. I
17 just don't know whether -- I'm looking at a plan,
18 so...

19 MR. SHAMBERGER: I believe that
20 the plan that we have out here is -- and, you know,
21 we went from 10 spaces, we found out that it was 13.
22 I think there was a solution to 13 that we came up
23 with. It means a five-foot -- well, it's a foot off
24 the sidewalk and some off the -- you know, a total of

1 10 feet for sidewalk and the vegetation to make this
2 work so he can use the total square footage of his
3 building, and granted -- I mean, there's some
4 limitations because of the placement of this. It was
5 originally a house, but it works. It works with this
6 modification, and I think there is a solution here,
7 and it's a solution that would put landscaping in.
8 It's a solution that would put the sidewalk in, and
9 it's a solution where he has all 13 of his spaces.
10 Now, granted, a couple of his employees might have to
11 jockey their cars to get out to lunch, but it is a
12 solution.

13 MR. BOSSIO: I think it's a good
14 working solution, a meeting of the minds, as even the
15 residents of the area have mentioned that that's a
16 solution that they could live with.

17 MR. SHAFFER: Let's make a motion
18 we accept in the positive the Findings of Facts for
19 V11-46.

20 MR. FLETCHER: As?

21 MR. SHAFFER: As (inaudible)
22 underlines --

23 MR. FLETCHER: Actually, if I
24 could, because staff's recommendation was --

1 MR. SHAFFER: Yeah, I'm looking
2 for it, Chris. Help me out here.

3 MR. FLETCHER: Yeah, I'm trying
4 to get it. It should be, like, all the way towards
5 the end of the document. Oh, nope. Never mind.
6 Hold on.

7 MR. PAPANDREAS: It's 107.

8 MR. SHAFFER: Is it 107?

9 MR. FLETCHER: No, but there's --
10 Addendum C goes on for several pages. Hold on. Just
11 give me one second. Okay. Here we go. Page 145.
12 Page 145 is Addendum E. There were Findings of Facts
13 submitted by the Petitioner. Because staff took a
14 different direction and it suggested that variance be
15 granted in the way that we've discussed to detail, we
16 offered these Findings of Fact.

17 MR. BOSSIO: Okay. Let me look
18 at them real quick. Okay. I'll still make a motion.
19 I'd like to make the motion we find in the positive
20 of the Findings of Fact for variance request 11-46
21 Smith as presented to us in Staff Report Addendum E.

22 MR. SHAMBERGER: Second.

23 MR. BOSSIO: Seconded by Mr. Tom
24 Shamberger. All in favor, please signify.

1 (Mr. Shaffer and Mr. Shamberger raised hands in favor
2 of motion.)

3 MR. BOSSIO: All opposed?

4 (Mr. Papandreas raised hand in opposition to the
5 motion.)

6 MR. BOSSIO: Mr. Papandreas
7 opposed.

8 MR. SHAFFER: Are you going to
9 read him his rights:

10 MR. FLETCHER: Wait. Well, we
11 need to make a motion for --

12 MR. SHAFFER: Oh, I'm sorry. I'd
13 like to make a motion -- I'm getting punchy too --
14 I'd like to make a motion, Mr. Chairman, that we
15 grant variance V11-46 to Smith.

16 MR. FLETCHER: What kind of
17 variance?

18 MR. SHAFFER: With Staff
19 Recommendations.

20 MR. FLETCHER: No more detail?

21 MR. SHAFFER: Nope.

22 MR. BOSSIO: Second to that
23 motion?

24 MR. SHAMBERGER: I second.

1 MR. BOSSIO: Seconded by Mr.
2 Shamberger. All in favor, please signify by raising
3 your right hand.
4 (Mr. Shaffer and Mr. Shamberger raised their hands in
5 favor of the motion.)
6 MR. BOSSIO: And all opposed?
7 (Mr. Papandreas raised hand in opposition.)
8 MR. BOSSIO: Mr. Papandreas is
9 opposed.
10 Mr. Smith, as you have heard, we've granted
11 the variance 11-46, but it was granted as the Staff
12 Report and as the staff recommended, which is what
13 we've talked about, the five and five.
14 Let's move on. Anything you do within the
15 first 30 days is at your own sole and financial risk.
16 MR. SHAFFER: I'd like to make a
17 motion to remove from the table V11-47.
18 MR. BOSSIO: Okay. Second that?
19 MR. PAPANDREAS: Second.
20 MR. BOSSIO: Seconded by George
21 Papandreas. All in favor, please signify.
22 (All members raise hands in favor of motion.)
23 MR. BOSSIO: And that is
24 unanimous.

1 We're looking at variance 11-47, Andrew
2 Smith at 426 Drummond Street. This is a request by
3 Andrew Smith on behalf of Smith CPA for a variance
4 relief from Article 1341.07(I) as it relates to
5 sidewalks at 426 Drummond Street, Tax Map 6, Parcel
6 17, pro professional residential and office district.

7 Chris, since we basically have given -- oh,
8 we've only provided a five foot for the landscape
9 buffer and the other, correct, so this is a whole
10 separate issue. We're dealing with the sidewalks
11 now.

12 Chris?

13 MR. FLETCHER: Mr. Chair, I would
14 just simply suggest that you open public comments
15 again. The Staff Report has already been read into
16 the record. There's no difference.

17 MR. BOSSIO: Okay. Is there
18 anybody here that would like to speak in favor of
19 this particular request? In favor?

20 (No responses.)

21 MR. BOSSIO: Anybody in
22 opposition to this particular request?

23 (No responses.)

24 MR. BOSSIO: Okay. The public

1 portion is closed.

2 Mr. Fletcher?

3 MR. FLETCHER: Again, I've read
4 the recommendation into the record, as well. There's
5 no difference. The one thing, though, I would add is
6 that there was no date in the motion of the last when
7 that needed to be --

8 MR. SHAFFER: Oh, that's right.

9 MR. FLETCHER: So maybe we can
10 incorporate that into --

11 MR. SHAFFER: Into this one?

12 MR. FLETCHER: Yeah.

13 MR. SHAFFER: Do we need to go
14 back, Chris, and open the other one up just to be on
15 the...

16 MR. SHAMBERGER: The other
17 recommendation said June 30th.

18 MR. FLETCHER: Mm-hmm.

19 MR. SHAFFER: I think, in all
20 fairness -- and I think that nobody disagrees -- that
21 that date needs to be amended to allow time for it to
22 happen.

23 MR. BOSSIO: Right. Right.

24 MR. SHAMBERGER: And, you know,

1 whether that -- and there was a couple dates that
2 went out -- October 31 was out there --

3 MR. SHAFFER: Right. Right.

4 MR. SHAMBERGER: -- or whatever,
5 which would be giving additional four or five months.
6 A pretty much a good construction schedule.

7 MR. SHAFFER: How do you want us
8 to handle that?

9 MR. SHAMBERGER: If we
10 incorporate that into this but, you know, we
11 definitely don't -- I don't think we want to go back
12 and hold June 30th, no. That's not the intent.

13 MR. SHAFFER: How about we try --

14 MR. SHAMBERGER: The whole thing
15 is how can we make it work so it's workable for --

16 MR. SHAFFER: Can we include the
17 date in this variance as a condition, or is the
18 recommendation, and then also include the previous
19 variance?

20 MR. FLETCHER: Honestly, under
21 Robert's rules, I think you'd have to pass a motion
22 to reconsider and go through that whole process --

23 (Multiple speakers.)

24 MR. SHAFFER: Let's do that

1 first, then.

2 Mr. Chairman, I'd like to make a motion to
3 reconsider our passage of Variance 11-46.

4 MR. BOSSIO: Okay. Second on
5 that motion --

6 (Mr. Papandreas seconded motion.)

7 MR. BOSSIO: -- by Mr.
8 Papandreas. All in favor, please signify?

9 (All members indicated in favor of motion.)

10 MR. BOSSIO: That is unanimous.

11 MR. SHAFFER: Mr. Chairman, I'd
12 like to make a motion that we find the Findings of
13 Fact in Appendix E as staff recommended...

14 MR. SHAMBERGER: I think we just
15 have to consider the main motion, don't we?

16 (Multiple speakers.)

17 MR. FLETCHER: Yeah.

18 MR. SHAFFER: Just the main
19 motion?

20 (Multiple speakers)

21 MR. SHAMBERGER: October 30th?
22 October 31st?

23 MR. SHAFFER: Fair enough.

24 Make a motion that we grant the variance of

1 V11-46 with the amendment in line seven on the Staff
2 Recommendation that the "no-later-than" date be
3 October 31st, 2012.

4 MR. BOSSIO: Second to that
5 motion?

6 MR. SHAMBERGER: Second.

7 MR. BOSSIO: Mr. Shamberger. All
8 in favor, please signify.

9 (Mr. Shaffer and Mr. Shamberger in favor of motion.)

10 MR. BOSSIO: And all opposed.

11 (Mr. Papandreas indicated opposition to motion.)

12 MR. BOSSIO: George Papandreas is
13 opposed.

14 MR. FLETCHER: That was Jim, Tom,
15 okay.

16 MR. SHAFFER: The other one is
17 still off the table; right?

18 MR. BOSSIO: Yes. That is still
19 off the table. Go ahead. You --

20 MR. SHAFFER: I was on a roll,
21 right.

22 Mr. Chairman, I'd like to make a motion
23 that we find the Findings of Fact of V11-47 --

24 MR. FLETCHER: (Inaudible.)

1 MR. BOSSIO: We had public
2 comments.

3 MR. FLETCHER: Okay. That's
4 right. Okay.

5 MR. SHAFFER: Do we or not?

6 MR. BOSSIO: I already did public
7 comments. There was no one that had comments.

8 MR. SHAFFER: Okay. Finding of
9 Facts is as staff recommended in Appendix E.

10 MR. BOSSIO: Second to that?

11 MR. SHAMBERGER: Second.

12 MR. BOSSIO: Second by Tom. All
13 in favor, please signify.

14 (All members in favor of motion)

15 MR. BOSSIO: And that is unanimous.

16 MR. SHAFFER: Sir, I'd like to
17 make a motion that we grant variance V11-47 Smith
18 with Staff Recommendations, with the exception of No.
19 7, where we make the "no-later-than" date October
20 31st, 2012.

21 MR. PAPANDREAS: Second.

22 MR. BOSSIO: Seconded by Mr.
23 George Papandreas. All in favor, please signify.

24 (All board members indicated in favor of motion.)

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MR. BOSSIO: And that is
unanimous.

Mr. Smith, again, as you heard from the
first one on Variance 11-46 and now on Variance 11-
47, anything you do within the first 30 days is done
at your own sole and financial risk.

* * *

C E R T I F I C A T E

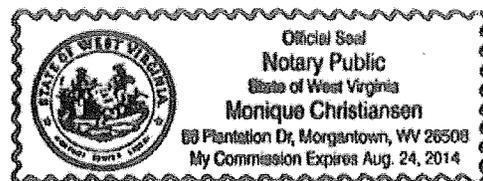
I, Monique A. Christiansen, Court Reporter
and Notary Public within and for the State of West
Virginia, duly commissioned and qualified, do hereby
certify that the foregoing proceeding was held outside
of my physical presence; that a transcript thereof was
produced from audio and DVD recordings provided to me
after said proceedings; that the foregoing is a true
and correct transcription of said audio and DVD
recordings within the parameters of inherent
limitations of transcription after the fact; that no
assumptions were made as to speaker identification
and/or any other content, substantive or otherwise.

I further certify that I am not a relative
or attorney of any parties, or otherwise interested in
the event of this action.

IN WITNESS THEREOF, I have hereunto set my
hand and affixed my seal of office at Morgantown, West
Virginia, on the 13th day of June, 2012.



Monique Christiansen



My commission expires August 14, 2014.