

BOARD OF ZONING APPEALS

Minutes

6:30 PM

May 20, 2009

City Council Chambers

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

MEMBERS ABSENT: None

STAFF: Christopher Fletcher, AICP

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

II. MATTERS OF BUSINESS

A. **Minutes for April 15, 2009 Meeting.** Cardoso moved to approve the minutes for the April 15, 2009 meeting as submitted; seconded by Shaffer. The motion passed unanimously with Papandreas abstaining due to his absence during the April meeting.

III. **OLD BUSINESS** – None

IV. NEW BUSINESS

A. **CU09-03 / High Street Pub, LLC / 226 High Street:** Request by Gregg Metheny, on behalf of High Street Pub, LLC, for conditional use approval “Restaurant private club” license in B-4 District at 226 High Street. Tax Map #26A Parcel #137; a B-4, General Business District

Fletcher read the Staff Report stating that the applicant the petitioner seeks conditional use approval for the establishment of a “Restaurant, Private Club” use in the former *Strokerz Billiard Lounge* at 226 High Street. The business name for the proposed establishment is High Street Pub, LLC doing business as “The High Street Pub.” Addendum A of this report illustrates the location of the proposed conditional use.

Mr. Metheny has stated that he is the current owner of the subject building and that he also owns the existing commercial equipment of the former *Strokerz Billiard Lounge*. *Strokerz* was granted a conditional use permit for “Restaurant, Private Club” use on December 2000. Conditional use approvals are specific to the applicant and do not run with the land. Therefore, Mr. Dierwechter and Mr. Metheny must obtain a new conditional use approval.

The petitioner has submitted the following exhibits, which were included in the Staff Report.

- Business description
- Owner’s resumes
- Proposed menu
- Floor plan

According to said exhibits, Mr. Metheny has owned the following enterprises including:

- The Furniture Haven, Inc. at 1867 Mileground Road, Morgantown, WV
- Triple Scott Holdings, Inc. at 1867 Mileground Road, Morgantown, WV
- Scott Properties & Nasey, LLC at P.O. Box 818, Morgantown, WV
- NAK Builders, LLC at P.O. Box 818, Morgantown, WV
- Benden Developers, LLC at P.O. Box 818, Morgantown, WV
- Mountaineer House, LLC at 200 Morgantown St, Kingwood, WV

According to said exhibits, Mr. Dierwechter has owned the following enterprises including:

- Caesar's Restaurant, Cologne, NJ (1994-1998)
- So-Fro-Yo Desserts, Brigantine, NJ and Ocean City, NJ (1990-1997)

Staff was unable to confirm Mr. Dierwechter's interest or role in the above mentioned food service establishments.

The proposed business description highlights include:

- 12,000 square feet of restaurant, billiards, arcade, sports entertainment, and private party space
- A full menu will be provided until 10:00 PM Sunday thru Thursday and until 11:00 PM on Fridays and Saturdays
- Appetizers and beverages will be available until 11:00 PM Sunday thru Thursday and until 1:00 AM on Fridays and Saturdays
- Smoke-free, family friendly arcade space
- Bar area with a 22-seat pub-style bar with three flat-screen TVs
- Four (4) showcase billiards tables surrounded by bench-style seating
- A lounge area with 19 high-top table and 9 booths with 3 Biergarten-style table and two billiards tables.
- An ad hoc stage to feature live music and entertainment
- Private area for private gatherings and special events.

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

Gregg Metheny, 222 High Street provided Board members and Staff with a revised floor plan dated 01/21/2009 and prepared by Paradigm Architecture and a hand-drawn kitchen plan and equipment inventory quote prepared by US Foodservice. Metheny stated that he originally appeared before the Board in December of 2008 with a related request and the Board's consensus was that proposal was a good thought, but had some pieces missing. He and Jim Dierwechter put together an executive summary business plan and completed more market research for their proposal. In addition, as requested by the Board, he presented a more formal floor plan. Since his last visit appearance before the Board, the restaurant has been renamed to *The High Street Pub* and it is his intention for the restaurant to be a Morgantown experience. The entrees will all have names familiar to Morgantown. The dining area will accommodate 79 patrons and there will be a video arcade for children with a redemption area for arcade games. These areas will be separated from the bar/restaurant area. There will be a private party area for 24 people that may be rented. Only six pool tables will be included as opposed to the "billiard hall environment" as previously proposed. The intention is to create a more social entertainment area. Metheny stated that 14 x 26 kitchen was designed by U.S. Foodservice as a complete restaurant kitchen and able to comply with the City's 60/40 food and non-alcoholic

beverage to alcoholic beverage sales standard. A weeknight buffet is also being considered that would help meet the 60/40 standard. The social area will have a bar accommodating 21 patrons and an additional high-top table area will accommodate 109 patrons. There will be a mixture of high top tables and standing social areas.

Papandreas asked if the establishment would be open for lunch. Metheny stated the hours of operation would be an opening of 11:00 AM on weekdays and a 1:00 PM opening on weekends. Metheny stated he met with Main Street Morgantown and they realized that portion of the block on High Street is the missing link to everything else that is going on downtown.

Papandreas questioned whether the kitchen dimensions would accommodate all kitchen equipment needed. Metheny stated that U.S. Foodservice prepared the kitchen design for *Yesterday's* near the Mileground and he relied on their expertise.

Metheny stated he brought Jim Dierwechter in as his partner on the venture and Dierwechter is actually the majority owner. Presently Dierwechter is the owner of *West Virginia Game Day* on the Mileground and previously owned a software development company. He also has restaurant experience. Dierwechter is active in the WVU Alumni Association and it is their intention to advertise the restaurant through the Alumni Association.

Jim Dierwechter, 3023 Meadowland Drive stated that he originally lived in South Jersey and was involved in a family-owned business, Cesario's. The restaurant was owned by his great-aunt that became a family involvement. Dierwechter stated he is not a restaurateur by career, but ran the restaurant on weekends and was the person in charge when the responsibilities become too much for his great aunt. He stated that he was also involved in an ice cream shop from 1990 to 1994, but was not actually an owner.

Bossio stated that he was concerned with Dierwechter's restaurant experience since information provided on his resume was unable to be verified and that Dierwechter provided on the resume that he was an owner but stated before the Board that he was not an owner of the establishments listed.

Bossio asked Dierwechter for information concerning labor cost rates and fixed costs for Cesarios. Dierwechter stated that he was not really involved with the books. Bossio asked if Dierwechter to guess what the labor cost rate was for Cesarios. Dierwechter stated, off the top of his head, 75%.

Bossio asked if Dierwechter could project the labor cost for the proposed establishment. Dierwechter stated that, off the top of his head, the projected mark up on food would be 300% to cover labor and fixed costs.

There being not further questions from the Board, Bossio opened the public comment portion of the meeting, asking for anyone wishing to speak in favor of the request.

Terri Cutright Executive Director of Main Street Morgantown stated that she was speaking on behalf of Main Street Morgantown and that the organization believes the proposed establishment would be an excellent adaptive reuse of the space. It would provide for the property owner to maintain the building and preserve the community's history. It would provide an opportunity for people to come downtown. Cutright met with Metheny and Dierwechter to discuss grant programs and review the menu, floor plan, drawing of the building, and

market/customer base. She stated they would have no problem complying with the required 60/40 and Main Street would support their request for a liquor/wine license.

Bossio asked Cutright if she was confident *High Street Pub's* intent is actually what is being presented to the BZA. Cutright stated she could see their integrity and believes this would be a restaurant.

Bossio stated that he was concerned with the fact the restaurant was below ground level and asked Cutright if there were any other restaurants in Morgantown that were below ground level. Cutright advised *The Montmartre* restaurant [127 High Street] was.

If no one else seeking to speak in favor of the conditional use petition, Bossio asked if there was anyone wishing to speak against the request. There being no response, Bossio closed the public comment portion of the meeting was closed and asked for Staff's recommendations.

Fletcher stated that the Board of Zoning Appeals must first determine whether or not it will waive the one-year "bona fide restaurant" requirement [Article 1331.06 (27)(c)] prior to the petitioner obtaining a liquor license from the West Virginia Alcohol Beverage Control Commission. Should the Board decide to waive said one-year "bona fide restaurant" requirement, it must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant.

Shaffer stated he did not have the level of confidence needed to grant the waiver.

Cardoso stated the requirement says the applicant must "own a similar restaurant to the one that is proposed". She does not believe that is the case with Dierwechter. She stated that does not, however, have a lack of confidence in the management team.

Bossio believes Dierwechter's experience did not meet the code's intent to justify waiving the requirement. He stated that he was concerned that the Board has turned similarly requests down in the past for a lack of restaurant experience as provided in the Code. He stated that the BZA has to be careful about how it decides to waive the one-year requirement.

Fletcher offered to read the related Planning & Zoning Code requirements that were provided in Addendum B of the Staff Report. After some discussion, Fletcher stated that it appears the Board has the discretion within the B-4 District to closely consider the proposed business operations description, the menu, and floor plans regardless on experience.

Bossio asked Fletcher if the Board could make the approval conditional on submitting a final kitchen plan that, in the opinion of the Board, has a higher likelihood of complying with the 60/40 standard. Fletcher advised that some additional study would be necessary before Staff would be able to make an informed recommendation.

After discussion, Bossio stated he had experience in the restaurant business as did Papandreas and there are still many things about the request that are still unclear to the Board. The numbers for the labor cost rate and fixed expenses that were presented do not appear complete even possible.

Papandreas stated that he was concerned that there does not appear to be enough refrigeration to sustain the restaurant and meet the 60/40 standard.

Bossio recognized Metheny to address some of Board's concerns and comments. Metheny stated that the numbers offered were break even figures. He also stated he wanted to demonstrate a more cohesive plan by that was provided in the executive summary.

Fletcher advised the Board that matter could be tabled and a workshop scheduled to visit the site with the petitioners to further study the request.

Bossio advised Metheny that since he was previously turned down on some of the same items he was hoping he would have all i's dotted and t's crossed, but there are still many gray areas.

Shamberger stated that he had concerns with the apparent lack of restaurant experience.

Papandreas stated he hoped Dierwechter's resume would be stronger and feels the Board has been somewhat misled.

Bossio stated it appears that beyond the one-year bona fide restaurant requirement, the Findings of Fact presented by the applicants should be sufficient.

Papandreas moved to table the request and set up a walk through site visit with the Board within the next 30 days; seconded by Shaffer. The motion passed unanimously.

Fletcher stated that Staff will schedule the workshop by suggesting possible meeting dates and times with the Board by e-mail.

B. V09-13 / Kinsley Construction, Inc. / 405 VanGilder Avenue: Request by Kinsley Construction, Inc for variance approval from the Planning and Zoning Code, Article 1335.04 as it relates to setbacks for property located at 405 VanGilder Avenue. Tax Map #13 Parcel #14; an R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating that Kinsley Construction, Inc. seeks variance approval for property located at 405 Van Gilder Avenue to raze and remove a previously condemned structure and construct a single-family dwelling. The principles of Kinsley Construction, Inc. are also the principles of the property's ownership entity DMR Developers, LLC.

The site plan submitted by the petitioner illustrates that the structure conforms to the front and side setback requirements. However, the following table illustrates that variance relief is necessary to exceed the R-1A District rear setback standard.

Rear Setback Standard	20 feet
Proposed Rear Setback	10 feet
Required Variance	10 feet

The petitioner's grounds for this request are based on the shallowness of the lot, which is seventy (70) feet deep, and the non-conforming lot area, which is 3,080 sq. ft. Also, the applicant is proposing a basement level garage, which normally is required to be set back at least the depth of one car so that cars parked in front of the garage do not encroach into the right-of-way.

Concerning the non-conforming lot area, the petitioner considered adjusting the side parcel boundary separating Parcels 14 and 25 thereby increasing the area of Parcel 14 and

conforming to the R-1A minimum lot area of 3,500 sq. ft. The petitioner learned that this could not be accomplished due to a Morgantown Utility Board easement situated between said parcels.

Bossio recognized Doug Kinsley, 413 Van Gilder Avenue, who stated that he agreed with Fletcher's report.

There being no additional questions by the Board, Bossio opened the public comment portion of the meeting, asking for comments in favor or against the request.

Fletcher stated the Planning Department received a phone call from adjacent property owner, Paul Dunham of 425 Van Gilder stating he had no objection to Kinsley's variance request.

There being none further public comments offered, Bossio closed the public comment portion of the hearing and asked for Staff's recommendations.

Fletcher stated The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant.

Staff recommends revisions to the petitioner's Findings of Fact (deleted matter struck through; new matter underlined) and that variance relief be granted as requested.

Shaffer moved to find in the affirmative for all the revised Findings of Fact recommended by Staff; seconded by Papandreas. The motion passed unanimously.

NOTE: The following findings were included in the motion.

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

This R-1A lot is short and narrow, 44' X 70' and does not contain the minimum lot area of 3,500 sq. ft. Without this variance the applicant could not provide the minimum required two (2) on-site parking spaces. The twenty foot front setback appears to be consistent with the front setback characteristics of adjacent structures.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

A ten (10) foot rear setback variance was approved in August 2004 for Van Gilder properties directly across the street. The required setback would prohibit the best use and location of the homesite because of the depth of the lot.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Parking in an enclosed structure requires a safe distance from the street to ensure that additional parking in front of the structure does not encroach into the City right-of-way. The required rear setback for this zoning district appears to deny the best use and location of the homesite.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

This variance cannot improve nor contribute to traffic congestion. This structure will be utilized as a single-family residence, which is permitted by-right in the R-1A District. The proposed house will include a basement garage, which should mitigate additional demand on already congested on-street parking along Van Gilder Avenue. The redevelopment of this site will replace a condemned house with a new single-family structure, which should positively contribute to the market value of neighboring homes.

Shaffer moved to approve V09-13 / Kinsley Construction as requested; seconded by Shamberger. The motion passed unanimously.

Bossio advised Kinsley that the Board's decision could be appealed to the Monongalia County Circuit Court within the next thirty (30) days and that any work done during that time is at the sole financial risk of the applicant.

- C. V09-14 / Kinsley Construction, Inc / 419 VanGilder Avenue.**: Request by Kinsley Construction, Inc for variance approval from the Planning and Zoning Code, Article 1335.04 as it relates to setbacks for property located at 419 VanGilder Avenue. Tax Map #13 Parcel #14; an R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating that Kinsley Construction, Inc. seeks variance approval for property located at 419 Van Gilder Avenue to construct a single-family dwelling. The principles of Kinsley Construction, Inc. are also the principles of the property's ownership entity DMR Developers, LLC.

The site plan submitted by the petitioner illustrates that the structure conforms to the front and side setback requirements. However, the following table illustrates that variance relief is necessary to exceed the R-1A District rear setback standard.

Rear Setback Standard	20 feet
Proposed Rear Setback	10 feet
Required Variance	10 feet

The petitioner's grounds for this request are based shallowness of the lot, which is only seventy (70) feet deep. Although this parcel exceeds the minimum lot area, the petitioner is constructing a three (3) car attached garage to the single family structure to mitigate congested on-street parking along Vangilder Avenue. The proposed garage would normally be required to be set back at least the depth of one car so that cars parked in front of the garage do not encroach into the right-of-way.

Bossio recognized Doug Kinsley, 413 Van Gilder Avenue, who stated that he agreed with Fletcher's report.

There being no additional questions by the Board, Bossio opened the public comment portion of the meeting, asking for comments in favor or against the request.

Fletcher stated the Planning Department received a phone call from adjacent property owner, Paul Dunham of 425 Van Gilder stating he had no objection to Kinsley's variance request.

There being none further public comments offered, Bossio closed the public comment portion of the hearing and asked for Staff's recommendations.

Fletcher stated The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant.

Staff recommends revisions to the petitioner's Findings of Fact (deleted matter struck through; new matter underlined) and that variance relief be granted as requested.

Cardoso moved to find in the affirmative for all the revised Findings of Fact recommended by Staff; seconded by Papandreas. The motion passed unanimously.

NOTE: The following findings were included in the motion.

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The subject lot is not as deep as conventional R-1A lots and the proposed twenty foot front setback appears to be consistent with the front setback characteristics of adjacent structures. The proposed site design provides parking in front of the garage so that three additional cars may be parked without encroaching into the right-of-way.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

A ten (10) foot rear setback variance was approved in August 2004 for Van Gilder properties directly across the street. The required setback would prohibit the best use and location of the homesite because of the depth of the lot.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Parking in an enclosed structure requires a safe distance from the street to ensure that additional parking in front of the structure does not encroach into the City right-of-way. The required rear setback for this zoning district appears to deny the best use and location of the homesite.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

This variance cannot improve nor contribute to traffic congestion. This structure will be utilized as a single-family residence, which is permitted by-right in the R-1A District. The proposed house will include a three-car garage and space for three cars in front of the garage, which should mitigate additional demand on already congested on-street parking along Van Gilder Avenue.

Shaffer moved to approve V09-14 / Kinsley Construction as requested; seconded by Shamberger. The motion passed unanimously.

Bossio advised Kinsley that the Board's decision could be appealed to the Monongalia County Circuit Court within the next thirty (30) days and that any work done during that time is at the sole financial risk of the applicant.

- D. V09-15 / Kenyan Café / 1137 Chelsea Square:** Request by Denis Gekara, on behalf of Kenyan Cafe, for variance approval from the Planning and Zoning Code, Article 1369 as it relates to signs for property located at 1137 Chelsea Square; Tax Map #6 part of Parcels #37, 37.3, 39, 40, 40.1, 41, 42, 43, 43.1; a B-1, Neighborhood Business District.

Fletcher read the Staff Report stating that the petitioner seeks to erect a 28.75 sq. ft. sign (180" X 23") for his business *Kenyan Cafe* in the Chelsea Square commercial development along Van Voorhis Road. Article 1369.07 (I) (1) of the Planning & Zoning Code provides that the maximum area of permitted wall signs in the B-1 District is 0.4 square feet for each linear foot of storefront.

The linear width of the subject storefront is 15.5 feet, which provides a maximum wall sign area of 6.2 sq. ft. As such, the petitioner must obtain a 22.55 sq. ft. variance. Addendum A of this report illustrates the location of the subject site and a photograph of the storefront. The petitioner has also included with his application a rendering of the proposed sign.

Bossio reminded the Board that a variance was previously approved for a business within the Chelsea Square development.

Bossio recognized Denis Gekara, 425 Kensington Avenue, who stated that he had nothing to add to staff's report.

Papandreas questioned whether or not his sign covers the same area as the sign that is coming down. Gekara stated it did.

There being no further questions by the Board, Bossio opened the public comment portion of the meeting, asking for comments in favor or against the request. There being none, Bossio closed the public comment portion of the hearing and asked for Staff's recommendations.

Fletcher stated one of the stated purposes within the Planning & Zoning Code for sign regulations is to: "...encourage the effective use of signs as a means of communication in the City, to maintain and enhance the pleasing look of the City, which attracts to the City continued economic investment; to preserve Morgantown as a community that is attractive to business, to residents and to visitors..." [Article 1369.01 (A)] Size restrictions are one of several means to accomplish this policy objective.

The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant.

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

Papandreas moved to find in the affirmative for all the revised Findings of Fact recommended by Staff; seconded by Shamberger. The motion passed unanimously.

NOTE: The following findings were included in the motion.

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

All signs in the Chelsea Square development appear to be much larger than six square feet giving them a visibility advantage to vehicular traffic. The subject shopping plaza contains commercial uses including restaurants, grocery, specialty stores, and real estate agents. A larger sign than what is required would appear to be more proportional to the other signs in the plaza. The sign regulations for B-1 District appear to be sized more for pedestrian traffic, which is not characteristic of the subject site because of its location along Van Voorhis Road, which serves as a primary corridor.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

A larger sign would appear to be more proportional to the commercial messaging of other existing business signage located within the Chelsea Square shopping center.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

It will allow the signage to match the majority of signage in size and font with other existing shops within Chelsea Shopping Center.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The nature of the relief request cannot contribute to nor mitigate traffic congestion; will not alter the existing land use characteristics of the commercial shopping center; and, will continue a commercial signage messaging characteristic that is prevalent within the subject shopping center.

Shaffer moved to approve V09-15 as requested; seconded by Papandreas. The motion passed unanimously.

Bossio advised Gekara that the Board's decision could be appealed to the Monongalia County Circuit Court within thirty (30) days and that any work done in that time is at the sole financial risk of the applicant.

- E. **CU09-04 / Glenmark Holding, LLC / 466 Christy Street:** Request by Glenmark Holding, LLC conditional use approval for off-site parking from the Planning and Zoning Code, Article 1365.07, Off-site Parking Facilities for property located at 466 Christy Street; Tax Map #6 Parcels #71, 72, 72.1, 73; a PRO, Professional, Residential, and Office District.

Fletcher advised that he received an e-mail from Brian Gallagher, representing the petitioner, stating the project is currently being re-evaluated and that the petitioner is requesting the Board to table agenda items CU09-04 and V09-16.

Shamberger moved to table CU09-04; seconded by Shaffer. The motion passed unanimously.

- F. V09-16 / Glenmark Holding, LLC / 466 Christy Street:** Request by Glenmark Holding, LLC for variance approval from the Planning and Zoning Code, Article 1341.04 as it relates to setbacks and encroachments in the PRO, Professional, Residential, and Office District and from Article 1347.04 as it relates to setbacks and encroachments in the B-2, Service Business District for property located at 466 Christy Street; Tax Map #6 Parcels #71, 72, 72.1, 73; a PRO, Professional, Residential, and Office District.

Shamberger moved to table V09-16; seconded by Shaffer. The motion passed unanimously.

- G. V09-17 / Zoey 2, LLC / 699 Burroughs Street:** Request by Alex Shook, on behalf of Zoey 2, LLC, for variance approval from the Planning and Zoning Code 1341.04 as it relates to setbacks and encroachments in the PRO, Professional, Residential, and Office District located at 699 Burroughs Street. Tax Map #55 Parcel #93; a PRO, Professional, Residential, and Office District.

Bossio stated that he would recuse himself from the discussion and decisions on case numbers V09-17, V09-18, and V09-19 due to a conflict of interest. Bossio left Council Chambers and Shaffer took the Chair.

Fletcher advised the Board that one Staff Report was prepared for the case numbers V09-17, V09-18, and V09-19 but each must be decided by the Board separately.

Fletcher read the Staff Report stating that the petitioner seeks to redevelop the present Wagon Wheel Mobile Home Park at the corner of Burroughs Street and Van Voorhis Road to construct a 4,000 sq. ft. medical office building. The present residential use was developed in 1955. Addendum A of this report illustrates the location of the subject site.

Over 50% of the subject site, approximately .56 acres, is undevelopable due to a stormwater easement of the West Virginia Department of Highways (WVDOH) leaving a narrow area to construct a building and accommodate parking and internal driveways. The petitioner has received the following approvals from WVDOH, documentation of which has been provided to the City Engineer:

- Permission to maintain the existing driveway entrance to Van Voorhis Road with stop bar and signage improvements as required by WVDOH.
- Permission to carry out a beautification project within WVDOH stormwater easement area that will include the removal of existing chain-link fencing and guardrail and replace same with decorative wrought iron fencing as well as landscape installation on both sides of the existing stormwater facility.

The required variance approvals for the proposal redevelopment are listed below followed by an explanation of each petition.

- V08-17..... Article 1341.04 as it relates to setbacks and encroachments in the PRO, Professional, Residential, and Office District.

The maximum front setback in the PRO District is 15 feet. The petitioner seeks to construct the proposed building with a front setback from Van Voorhis Road of approximately 78 feet. The minimum side setback in the PRO District is 15 feet. The proposed side setback to the north is 10 feet.

The following site constraints appear to make compliance with the PRO District setback standards challenging.

- WVDOH's stormwater easement reduces the width of the site's buildable area.
- The width of the realty's remaining buildable area as well and the configuration of WVDOH's stormwater easement boundary requires careful planning of where to situate the proposed building.
- Access to the rear parking area requires a driveway width of twenty (20) feet to meet State Fire Code standards. It should be noted that WVDOH could require the owner to vacate their use of the stormwater easement area. As such, said driveway must be provided within the site's buildable area thus further reducing where the proposed building can be situated.

- V09-18..... Article 1341.06 as it relates to parking and loading standards in the PRO, Professional, Residential, and Office

Article 1341.06 (B) provides that within the PRO District, "No parking spaces shall be permitted between the front façade of a building and any street right-of-way." The subject realty is situated at the corner of Van Voorhis Road and Burroughs Street. The proposed building is positioned at the widest point of the property's remaining buildable area leaving insufficient area at the rear of the property to meet minimum parking requirements. It should be noted that the proposed parking within WVDOH's stormwater easement cannot be used to satisfy minimum parking requirements as WVDOH could require the owner to vacate their use of same. As such, it appears necessary to utilize the portion of property between the façade and Van Voorhis Road to meet minimum parking requirements. Further, parking proposed between the façade and Burroughs Street also necessitates variance relief from the subject Planning & Zoning Code provision.

- V09-19..... Article 1365.04 (I) as it relates to the maximum number of parking spaces in non-residential districts

Table 1365.04.01 of the Planning & Zoning Code provides that the minimum parking requirement for an "Office, Medical" use is, "4 spaces per 1,000 sq. ft. of net floor area..." The petition's floor plan is still being designed to meet future tenant needs. As such, Staff conservatively calculated the development's minimum parking requirement based on gross floor area or 4,000 sq. ft, which is a minimum of 16 spaces.

Article 1365.04 (I) provides that, "In all non-residential districts the maximum number of spaces provided shall not exceed 115 percent of the minimum parking requirement, except for research and development centers, where there shall be no maximum." As such, the maximum allowable parking for the proposed development is 24 spaces. The proposed site plan includes 43 spaces, which exceeds the maximum parking standard

and requires variance approval. It should be noted that the development of parking within the stormwater easement is a part of the beautification project agreement between the petitioner and WVDOH. Nonetheless, variance approval is necessary under the City's Planning & Zoning Code.

Article 1367.08 (E) (3) of the Planning & Zoning Code provides that, "Landscaped islands with concrete curbs and at least 130 square feet of area shall be provided...every 15 spaces or less within a row of spaces for commercial developments..." As such, modifications illustrated in the graphic provided in the Staff Report should be included as a condition with this variance approval.

There being no questions by the Board for Staff, Shaffer recognized Alex Shook, 734 Courtney Avenue. Shook stated that he is an owner and partner in Zoey 2 LLC and owns the Wagon Wheel Trailer Court and is interested in the development of this area in Suncrest. He redeveloped the BP Station on Collins Ferry Road into a retail space currently owed and occupied by *Slight Indulgence*. He is involved in the Vintner residential development on Burroughs Street and believes the project will be consistent with the character and quality of other projects his company has completed within the area. The propose redevelopment of the mobile home park will have steep, high pitched roofs, high eaves, cement board siding, and windows accented with brick. The redevelopment project should be a significant improvement to that this intersection.

Shook stated that petition V09-20 had been withdrawn as site recommendations of the Planning Director were incorporated in the final design. Shook stated that he agreed to comply with Staff's recommended conditions for variance petitions V08-18 and V08-19.

Shook stated he is asking for a front setback due to the space needed in front of the building to meet the number of parking spaces. The building will be moved back on the location's widest point from the frontage to get the building footprint within the boundary of the property to maintain the 20' road requirement. He is also asking for a five-foot variance side setback. Presently the property has six trailers on it with zero set back. The plan is to move the footprint off ten feet from where the trailers exist in order to meet the twenty-foot road requirement and DOH easement. The excess parking ties in with the DOH easement. The parking will be on their easement and the DOH can pull their permit at any time.

Shook stated that There will be access and egress off Van Voorhis Road; the sidewalk in front will be widened; and, ADA requirements will be met.

Shaffer asked if the site lines will be improved for the entrance. Shook stated it would. DOH has given an access permit for a left turn off Van Voorhis Road. DOH will also be improving the stop bar at that area.

There being no further questions by the Board and without objection, Shaffer opened the public comment portion of the hearing for Case Numbers V09-17, V09-18, and V09-19 asking for comments in favor or against the requests.

Jim Culverson of 1268 Colonial Drive stated he was very happy with the enhancement of that corner and was asked by representatives of the Suncrest Neighborhood Association to address some concerns they had, which were, making sure there would not be a negative impact on pedestrian traffic; there would not be negative impact on stormwater drainage in that area; and, that DOH approved the egress and access to turn left off of VanVoorhis Road.

Kevin Trumbush of 801 Willowdale Road and owner of Advantage Health and Wellness, chiropractic and manual therapy, which will be occupying the proposed building, stated that the building and his business should be a positive addition to the area.

Fletcher stated Ed Sneckenberg, past president of the Suncrest Neighborhood Association, emailed the planning office with the concerns stated by Mr. Culverson.

There being no additional public comments, Shaffer recognized Shook to address the concerns offered by the Suncrest Neighborhood Association. Shook stated that he has been involved in working to address the storm water issue by removing five trailers on that property, at his expense, to work with MUB's recent remediation project. He reviewed the area during the recent rainstorms and the property did not flood.

Shaffer commented on the residential feel of the plan. Shook stated he wanted it to tie in with other properties nearby. The Vintner Square residential development has similar architecture and materials. An additional \$100,000 has been spent to have that "homey" look.

Shaffer closed the public comment portion of the meeting, asking for Staff's Recommendations.

Fletcher stated The Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Fletcher reminded the Board that each of the three (3) variance petitions must be considered and acted upon by the Board separately.

Fletcher stated that Staff concurs with the each of the petitioner's findings of fact submitted for all three (3) variance requests and submits the following approval recommendations:

- For Case Number V08-17 relating to rear and side yard setback encroachments, Staff recommends approval without conditions.
- For Case Number V09-18 relating to parking between the building façade and right-of-way, Staff recommends approval with the following condition:
 1. That the final Landscape Plan be approved by the Planning Director and include adequate buffering/screening of the front parking area from Van Voorhis Road and the adjoining realty to the north.
- For Case Number V09-19 relating to exceeding maximum parking in a nonresidential zoning district, Staff recommends approval with the following conditions:
 1. That the parking space at the southeast corner of the site be eliminated to improve visibility for vehicles exiting the site onto Van Voorhis Road.
 2. That final parking lot design observes all internal landscaping requirements provided in Article 1367.08 (E) (3) of the Planning & Zoning Code.

Papandreas moved to find in the affirmative for all the Findings of Fact submitted by the petitioner for V09-17; seconded by Cardoso. The motion passed unanimously with Bossio abstaining.

NOTE: The following findings were included in the motion.

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

This is a very unique property at the corner of Van Voorhis and Burroughs. It has been a mobile home community since the mid 1950's and has long since outlived its existence. The state obtained a right-of-way agreement with the previous owners to help mitigate continuing flooding issues. The unbuildable portion encompasses approximately 56% of the actual realty and makes the front, property adjacent to Van Voorhis Road, narrower than it would otherwise be. The front is approximately 60.27" wide becoming wider near the middle and then once again tapering in the rear. To more effectively utilize this unique property for sustainable redevelopment, the proposed structure must be located near the middle, or the broadest portion, of the property and the northern property line, creating a need for a variance from the maximum front setback and side yard setback.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which is denied to this property, because:

Wedgewood Family Practice, also located in the PRO district, although grand-fathered, exceeds the maximum front setback. Other properties in the same vicinity, but not located in the PRO District have large front yard setbacks, such as BB& T Bank, The Dairy Mart, Monongalia General Store; which were constructed under the previous standards, which did not have a maximum setback requirement. The proposed setback of the building appears to be consistent with the predominant setback trend along Van Voorhis Road.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The architectural design of the building and redevelopment of the property will significantly enhance adjacent properties, improvements, and the neighborhood's overall built environment, all of which will not be diminished by granting this variance.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The variance will not detract from the significant improvement anticipated to the quality and character of the site and surrounding area. The project is expected to enhance the market value of properties within the immediate area by promoting quality professional office space. Permitted land uses in the PRO District have a lower traffic count than other districts. The variance can not result in nor contribute to an increase in traffic congestion.

Papandreas moved approve V09-17 as requested without conditions; seconded by Shamberger. The motion passed unanimously with Bossio abstaining.

Shaffer advised Shook that the Board's decision could be appealed to the Monongalia County Circuit Court within thirty (30) days and that any work done in that time is at the sole financial risk of the applicant.

- H. V09-18 / Zoey 2, LLC / 699 Burroughs Street:** Request by Alex Shook, on behalf of Zoey 2, LLC, for variance approval from the Planning and Zoning Code 1341.06 as it relates to parking and loading standards in the PRO, Professional, Residential, and Office District located at 699 Burroughs Street. Tax Map #55 Parcel #93; a PRO, Professional, Residential, and Office District.

Shamberger moved to find in the affirmative for all the Findings of Fact submitted by the petitioner for V09-18; seconded by Cardoso. The motion passed unanimously with Bossio abstaining.

NOTE: The following findings were included in the motion.

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

This property is unique in that only a portion can be utilized for building development due to the right-of-way agreement with the Department of Highways and because it has frontages located on two (2) major thoroughfares. The shape of the usable lot coupled with the best placement of a building, leaves wasted area that is best suitable for parking, which is between the street and right-of-way and the building.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Adjacent properties along the Van Voorhis Road, in the PRO District, such as Wedgewood Family Practice and Drummond Chapel Church have parking between the building and public right-of-way. Almost all other property in the vicinity, but not situated in the PRO District also have parking between the building and street right-of-way.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Granting the variance will not be detrimental to the public or to other properties in the area. Parking in front of the building will not create any traffic congestion or entrance/exit issues. Most all other properties in the vicinity have parking in front of the building; therefore, no harm will occur to these properties.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The redevelopment of this property from a small blighted mobile home park, which was created in the 1950's will only enhance the vicinity and zoning district. The land use characteristics in and around Van Voorhis Road show that most parcels have parking in front of the buildings. Market value will not be decreased by allowing parking to continue as it does on adjacent properties. Granting the variance will not increase congestion.

Papandreas moved to approve V09-18 as requested with the condition that the final Landscape Plan be approved by the Planning Director and include adequate buffering/screening of the front parking area from Van Voorhis Road and the adjoining realty to the north; seconded by Shamberger. The motion passed unanimously with Bossio abstaining.

Shaffer advised Shook that the Board's decision could be appealed to the Monongalia County Circuit Court within thirty (30) days and that any work done in that time is at the sole financial risk of the applicant.

- I. **V09-19 / Zoey 2, LLC / 699 Burroughs Street**: Request by Alex Shook, on behalf of Zoey 2, LLC, for variance approval from the Planning and Zoning Code Article 1365.04 (I) as it relates to maximum number of parking spaces in non-residential districts at 699 Burroughs Street. Tax Map #55 Parcel #93; a PRO, Professional, Residential, and Office District.

Cardoso moved to find in the affirmative for all the Findings of Fact submitted by the petitioner for V09-19; seconded by Shamberger. The motion passed unanimously with Bossio abstaining.

NOTE: The following findings were included in the motion.

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

This is a very unique property at the corner of Van Voorhis and Burroughs in that the West Virginia Department of Highways (WVDOH) obtained a right-of-way agreement with the previous owners which encompasses a large portion of the property. WVDOH has given permission for only pavement and beautification, such as landscaping and a decorative fencing, to be placed on their right-of-way, which is currently a mixture of concrete, fence or guard rail and weeds. WVDOH may use this property at any time including the maintenance of the drainage channel. The intended land use, medical office, requires sixteen (16) parking spaces; therefore, the maximum parking would be eighteen (18) spaces. The required sixteen (16) spaces are indicated on the site plan on area not encumbered by the right-of-way agreement. The proposed site plan also indicates an additional twenty-seven (27) spaces on WVDOH right-of-way; two (2) of which could count toward fulfilling the maximum number of parking spaces. The additional twenty-five (25) spaces, including elements of beautification; would be placed over the area that currently contains concrete, mixture of woven fire fence and guard rail, and weeds. The medical office will house two (2) doctors and approximately 12-15 employees.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

There are a number of existing developments along Van Voorhis Road that appear to exceed the maximum parking standard. Most other development in the adjacent PRO properties were developed under the previous ordinance when there was not a maximum parking standard.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The architectural design of the building and redevelopment of the property will significantly enhance adjacent properties, improvements, and the neighborhood's overall built environment, all of which will not be diminished by granting this variance.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The variance will not detract from the significant improvement anticipated to the quality and character of the site and surrounding area. The project is expected to enhance the market value of properties within the immediate area by promoting quality professional office space. The variance cannot result in nor contribute to an increase in traffic congestion.

Papandreas moved to approve V09-19 as requested with the following conditions:

1. That the parking space at the southeast corner of the site be eliminated to improve visibility for vehicles exiting the site onto Van Voorhis Road.
2. That final parking lot design observes all internal landscaping requirements provided in Article 1367.08 (E) (3) of the Planning and Zoning Code.

The motion was seconded by Cardoso. The motion passed unanimously with Bossio abstaining.

Shaffer advised Shook that the Board's decision could be appealed to the Monongalia County Circuit Court within the next thirty (30) days and that any work done in that time is at the sole financial risk of the applicant.

- J. V09-20 / Zoey 2, LLC / 699 Burroughs Street:** Request by Alex Shook, on behalf of Zoey 2, LLC, for variance approval from the Planning and Zoning Code Article 1367.08 (C) as it relates to landscaping for development with parking located between building and street at 699 Burroughs Street; Tax Map #55 Parcel #93; a PRO, Professional, Residential, and Office District.

Fletcher advised the Board the V09-20 had been withdrawn by the petitioner and that no action was required by the Board.

Bossio returned to Council Chambers and resumed as Chair.

- K. V09-21 / Schaupp / 128 Wagner Road:** Request by Fred Schaupp for variance approval from the Planning and Zoning Code Article 1365.09 (C) as it relates to surfacing and drainage for off-street parking areas for property located at 128 Wagner Road; Tax Map #28 Parcel #122; an R-1A, Single-Family Residential District.

Fletcher advised the Board the V09-21 had been withdrawn by the petitioner and that no action was required by the Board.

V. OTHER BUSINESS

A. Public Comments – None

B. Staff Comments – None

Papandreas asked Fletcher how the Board could facilitate enforcement of conditional uses granted or take a more active role to arbitrate complaints when brought before the City. Fletcher reminded the Board that enforcement is a function of the Administration because the BZA serves as the appeal authority for enforcement action taken by the City Manager.

The meeting adjourned at 8:50 PM.