BOARD OF ZONING APPEALS

Minutes

6:30 PM **June 15, 2011** **City Council Chambers**

MEMBERS PRESENT: Bernie Bossio, Leanne Cardoso, Jim Shaffer, 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 the May 18, 2011 – Motion by Shamberger to approve the minutes as presented; seconded by Papandreas. Motion carried unanimously.

III. OLD BUSINESS:

A. **CU08-11 / Morlino / 300 Carson Street:** Request by Bill Morlino for an amendment to a previously approved conditional use petition for a one-car garage on a commercial parking lot at 300 Carson Street: Tax Map #20, Parcel #148; R-3 Multi-Family Residential District.

Fletcher referred to a memo in the packet, which he read, stating that On July 16, 2008, Mr. Bill Morlino received conditional use approval for Case No. CU08-11 for the development of a "Commercial Parking Lot" on Parcels 147 and 148 of Tax Map 20. Mr. Morlino also received variance relief for Case No. V08-32 so that the subject "Commercial Parking Lot" on Parcel 148 could be developed on a parcel situated at two intersecting public rights-of-way (Carson Street and Grant Avenue). Attached herewith are:

- The July 16, 2008 Staff Report.
- The July 17, 2008 approval notification letter.
- A portion of the July 16, 2008 BZA hearing minutes pertaining to the subject cases.
- Photographs of the site taken by Staff on June 15, 2011.
- Amended conditional use application, site plan, and findings of fact submitted by the petitioner.

It should be noted that the petitioner has not to date:

- Entirely paved Parcel 147.

- Submitted a landscape plan or installed required landscaping to buffer or screen parking on Parcels 147 and 148 along their respective Carson Street and Grant Avenue frontages.
- Submitted a lighting plan.
- May not have submitted or obtained a stormwater management plan approval from the Morgantown Utility Board.

Mr. Morlino, on behalf of Sunnyside Properties, LLC, seeks an amendment to the CU08-11 approval so that a garage / covered parking structure may be constructed on Parcel 148 utilizing the footers and foundation walls of the previously razed structure.

1. Should the BZA approve the petitioner's conditional use petition amendment request, Staff recommends the following conditions: That because the footers and foundation walls that remain from the previously razed structure appear to retain off-site property and public improvements, said facilities may be utilized for the new structure despite the fact that same do to not appear to meet current setback and lot coverage standards applicable to the subject site. However the following building material provisions must be observed, which are consistent with the standards set forth in Article 1361.03 (P) and related variances approved by the BZA for development within the Sunnyside Overlay Districts:
    a. Smooth or split-faced concrete block may not be used for exposed foundation walls.
    b. Exposed foundation walls must be clad in either natural or imitation stone or brick veneer OR concrete cast in pattern brick mold finish, which may not be concrete gray but integrally colored to simulate brick. "Integrally colored" means that the concrete foundation wall is colored throughout rather than an exterior surface coloring treatment or finish.
    c. Exterior walls above exposed foundation walls must either be clad in natural or imitation stone or brick veneer OR wood plank siding OR cementitious siding (i.e. Hardy Plank siding) comprised of a simulated wood grain profile
    d. That roof cladding should either be diamond tab asphalt shingles, standard seam metal, or metal simulated slate, shingle, shake, or tile.
2. That all conditions set forth in the July 16, 2008 approval of CU08-11 and V08-32 must be fulfilled prior to building permit issuance for the proposed garage / covered parking structure.

Bossio recognized the applicant, Bill Morlino, 2045 University Avenue, who stated that the walls would be simulated stone, the roof will eventually have solar panels. Parcel 147 is not entirely paved but has met MUB's requirement for stormwater runoff. He plans to do landscaping eventually, but will not be installing lighting because there are ample street lights.

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

Fletcher stated that he already gave a recommendation in the memo, as far as conditions for approval.

Shaffer asked Fletcher what was left still to be done. Fletcher stated that parcel 147 will need some landscaping. He stated that lighting has not been discussed, but Public Works will need to make a determination of whether the street lighting is adequate. He spoke with Scott Copen, MUB, who said he could not recall whether storm water was approved because it's been awhile. He is going to look into this and find out.

Shaffer asked if this was another Conditional Use to be considered, but Fletcher said it is not a new one, but an amendment to the existing. Shaffer asked why the conditions that have not been met were not done so before bringing this request before the board.

Bossio again recognized Mr. Morlino to answer that question. Mr. Morlino stated that he was not aware he was required to have a landscaping or lighting plan and admitted that perhaps it was ignorance on his part. He stated that if he installs hedgerows along parcel 148, it will block the entrance and exit to the parking lot.

Cardoso asked if this could be tabled until other conditions are met.

Bossio stated that he agrees, but rather than table the request, he said that if what he is asking for is something the Board could approve or deny, they could approve it, but state that no building permit can be issued until those conditions are met.

Papandreas made a motion to approve the amendment to CU08-11 with the conditions No. 1 and No. 2 being reversed in order, making condition No. 2 the first condition and condition No. 1 the second condition. Shaffer seconded the motion; motion carried unanimously.

Fletcher stated that, in this case, Findings of Facts are required since it was an amendment to an existing approved conditional use petition.

IV. NEW BUSINESS:

A. **V11-15 / Glenmark Holding / Sterling Drive and Earl Core Road:** Request by Glenmark Holding, LLC for variance relief from the Planning and Zoning Code, Article 1369 as it relates to the maximum height and maximum area of post and panel signs at the intersection of Sterling Drive and Earl Core Road; Tax Map #31, Parcel #107; B-5, Shopping Center District.

Fletcher read the Staff Report, stating that the petitioner seeks to develop a multi-tenant post and panel sign near the Sterling Drive intersection with Earl Core Road. Sterling Drive is the access entrance leading from Earl Core Road to the recently opened J.D. Byrider automotive sales establishment. Addendum A of this report illustrates the location of the subject site.

The proposed post and panel sign will have an overall dimension of 27 feet in height and 12 feet in width. The lowest horizontal plain or bottom of the panel will be approximately eight feet above grade.

Signage area computation is based on the smallest rectangle that encompasses the extreme limits of the writing, representation, emblem, and/or other display. Based on the illustration

provided by the sign contractor, the computed area of the sign is approximately 143.5 square feet.

The sign will be constructed of aluminum routed cabinet with acrylic backer on two steel poles set in concrete. The sign will be LED internally illuminated (120 watts).

Article 1369.07 (F) provides the following regulations for post and panel signs specific to the petitioner's proposed design:

(1) Post and panel signs shall be allowed, provided that:

(a) Such signs shall not exceed 6 feet in height;

(b) Such signs shall not exceed 32 square feet in area per side; and,

(c) Setbacks shall be adequate to protect the clear sight triangle, in accordance with the Zoning Ordinance.

(2) Both sides of a two-sided post and panel sign shall be identical in design and content;

(4) For multi-tenant buildings the only post and panel sign allowed on the property shall be a directory sign. All other signs for tenants shall be wall signs or sandwich board signs;

Staff's interpretation of subparagraph (4) above is that the post and panel signs for multi-tenant buildings are limited to logos and/or business names and may not contain any additional commercial messaging.

The following table identifies requisite variance relief for the sign as proposed.

Standard	Proposed	Variance
Height – maximum 6 feet	27 feet	21 feet
Area – maximum 32 sq. ft.	143.5 sq. ft.	111.5 sq. ft.

Bossio recognized the representative from Glenmark Holding of Mike Saab, 322 West Run Road, who stated that Mr. Fletcher pretty much covered everything and that he is just there to answer questions.

There being no questions from the Board, Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition of the request. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff's recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends approval of petition V11-15 as requested with the following conditions:

1. That both sides of the two-sided post and panel sign must be identical in design and content.

2. That the location of the post and panel sign may not, to the satisfaction of the City Engineer, obstruct the clear line of site needed for vehicles exiting onto Earl Core Road.
3. That the copy/display included on the post and panel sign must be limited to logos and/or business names of establishments located within the "Sterling Common" development (former Parcel 107 of Tax Map 31) and may not contain any additional commercial messaging or off-premise signs.

Shamberger made a motion to accept all the Findings of Facts as amended by Staff. Papandreas seconded the motion; motion carried unanimously.

NOTE: The following Findings of Facts were included in this 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 site is situated in one of the most heavily traveled corridors within the region where the predominant commercial signage and messaging patterns exceed the maximum height and area standards set forth in the Planning and Zoning Code. Compliance with said maximum standards may result in a competitive disadvantage for new development within the Earl Core Road commercial 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:

> It appears that the majority of commercial signs along the Earl Core Road commercial corridor, particularly those serving multi-tenant developments, are nonconforming as most do not meet maximum area and maximum height standards set forth in Article 1369 of the Planning and Zoning Code. Additionally, similar variance relief has recently been granted along Earl Core 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 height and area of the proposed multi-tenant sign appears to be consistent with the predominant commercial signage patterns along Earl Core Road which do not presently appear to harm public welfare, adjoining properties, or improvements.

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 height and area of the proposed multi-tenant sign appears to be consistent with the predominant commercial signage patterns along Earl Core Road, which do not appear to diminish the market value or vitality of the well-established commercial corridor. Variance relief relative to height and area cannot contribute to nor mitigate existing traffic volumes on neighboring streets.

Cardoso made a motion to approve V11-15 as requested with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

B. **<u>CU11-06/Mountain State Brewing Company/54 Clay Street:</u>** Request by Brian Arnett on behalf of Mountain State Brewling Company for conditional "Restaurant, Private Club" use at 54 Clay Street, Tax Map #28, Parcel #58; B-4, General Business District.

Fletcher read the Staff Report, stating that the petitioner established the Mountain State Brewpub and Restaurant at the subject location in March 2011 with a WVABC beer and wine license, which is permitted by-right in the B-4 District. The petitioner now seeks conditional "Restaurant, Private Club" use so that liquor can be sold in addition to beer and wine. The restaurant is located in the former "Whitetail Bicycle Shop" as illustrated in Addendum A of this report.

The BZA conducted a site visit on Thursday, June 2, 2011 at 4:00 PM that included Mr. Bossio, Ms. Cardoso, Mr. Papandreas, Mr. Shamberger, Mr. Arnett, and Staff. The BZA learned and observed the following elements of the company's brewery and restaurant operations:

- The Mountain State Brewing Company (MSBC) established its brewery and brewpub in Thomas, West Virginia in October 2005.
- In September 2008, the company added a Brewpub and Restaurant in Deep Creek Lake, Maryland and offers MSBC ales, craft artisan flatbreads baked in a wood-fired oven, and the company's newest addition – MSBC Root Beer.
- The company currently distributes its hand-crafted ales in the Canaan Valley, Davis, Thomas, Elkins, Morgantown, and Fayetteville areas.
- The Morgantown Brewpub and Restaurant elements include:
  - A hand-built eight-foot diameter wood-burning oven.
  - The décor (design style and furnishings) can be characterized as a rustic mountain lodge.
  - The current menu includes snack starters, salads, sandwiches, flatbreads, deserts, and a children's menu.
  - Seating is provided in several areas that include standard tables, high-top tables, booths, bar area, and an outdoor patio along the rail-trail.
  - Family board and card games are located near the entrance for patron use.
- Business hours for the Morgantown location is Monday thru Wednesday 11:00 AM to 10:00 PM; Thursday thru Saturday 11:00 AM to 11:00 PM; and, Sunday 11:00 AM to 9:00 PM.
- The entire facility is smoke-free

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

Bossio recognized Brian Arnett, 54 Clay Street, who stated that he brought along financial statements from his other establishments which shows that 65% of sales are for food and beverage.

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

comments in favor of the request, Bossio asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff 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. Addendum C of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

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

1. That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06 (27) of the Planning and Zoning Code.
2. That the applicant must obtain permitting as a "restaurant" from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations* so that smoking is not permitted within the establishment.
3. To ensure that the petitioner's business description and plans are executed as described and considered in granting the one-year "bona fide restaurant" waiver, the subject "Restaurant, Private Club" use must:
    a. Be open no later than 11:00 AM Monday through Friday for the purpose of serving lunch as described in the menu submitted with the petitioner's conditional use application.
    b. That the petitioner shall voluntarily submit all necessary financial information to the City for the subject establishment following its first twelve (12) months of operation as a "Restaurant, Private Club" use to ensure compliance with Article 1331.06 (27) (e) provisions, which requires the sale of food and non-alcoholic beverages to comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month.
4. That any regulated signage shall be reviewed and approved by the Downtown Design Review Committee and the Planning Division prior to building permit issuance for same.
5. That the conditional use approval granted herein may not be transferred.

Bossio stated that the Board made a site visit, and he wanted to say that this company has come to the Board very prepared. They were even ready to open the doors of business whether the liquor license was granted or not.

Papandreas made a motion to accept all the Findings of Facts as revised by Staff; seconded by Cardoso. Motion carried unanimously.

NOTE: The following Findings of Facts were included in this motion:

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

There appears to ample underutilized parking within the city's Wharf Garage that is located within short walking distance of the restaurant.

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

The building must meet related building and fire codes including automatic sprinkler suppression and fire alarm notifications systems.

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

Building is existing, and currently used as a restaurant. No additions or alterations are proposed that would adversely impact existing sunlight distribution or air flow patterns.

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

The proposed conditional "Restaurant, Private Club" use is located within an existing commercial space and appears to enjoy an eight-foot sidewalk along the frontage, a trail head and open space amenities to one side and the rail-trail facility to the rear.

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

Space is designed to handle anticipated load and does not include a residential use component.

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

Building is existing and currently being used as a restaurant, which does not appear to require any additional public services or utilities beyond those serving the subject building or Wharf District.

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

The proposed "Restaurant, Private Club" use appears to be consistent with surrounding buildings, uses, restaurants, and amenities and should positively contribute to value of buildings within the Wharf District.

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

The proposed "Restaurant, Private Club" use appears to be consistent with surrounding uses, restaurants, and amenities and should positively contribute to commercial activity within the Wharf District.

Papandreas made a motion to approve CU11-06 as requested with Staff's recommended conditions; seconded by Cardoso. Motion carried unanimously.

C. **CU11-07 / Hindu and Cultural Center / 1137 VanVoorhis Road:** Request by Viswanath Bandaru, on behalf of the Hindu Religious and Cultural Center, for conditional "Church, Place of Worship" use at 1137 Van Voorhis Road (Chelsea Square); Tax Map #6, Parcel #43; B-1, Neighborhood Business District.

Fletcher read the Staff Report stating that the petitioner seeks to establish a "Church, Place of Worship" use on the second floor above the Los Mariachis Restaurante in the Chelsea Square development. "Church, Place of Worship" uses within the B-1 District require conditional use approval by the Board of Zoning Appeals. Addendum A of this report illustrates the location of the subject site.

The area leased by the petitioner is approximately 1,000 square feet. The petitioner has stated that religious gathers and meetings are scheduled bi-weekly on Tuesday evenings and Sunday mornings. A temporary certificate of occupancy was granted on or about April 28, 2011 and including the following Planning Division conditions:

- The Hindu Religious and Cultural Center must obtain conditional "Church, Place of Worship" use approval by the Board of Zoning Appeals during its June 15, 2011 hearing.
- The Hindu Religious and Cultural Center may occupy the building until the subject June 15, 2011 hearing.
- The issuance of a Permanent Certificate of Occupancy is contingent upon the Board of Zoning Appeals' approval of the related conditional use petition.
- The Temporary Certificate of Occupancy will be revoked should the Board of Zoning appeals deny the related conditional use petition.

Staff monitored shared parking trends within the Chelsea Square development over the last 30 to 45 days including early morning to late evening hours for each day of the week. Observations indicate that the majority of professional service establishments and non-food related retail establishments within the subject development are closed during weekday evening hours and on Sundays. The peak parking demand appears to occur during normal dinner hours throughout the week. However, there still appears be a number of on-site spaces available during the peak demand, particularly behind the off-site Dairy Mart store.

As such, ample parking within the Chelsea Square development appears available for the proposed "Church, Place of Worship" use during the late evening hours throughout the week and on Sundays.

Because of readily observed parking availability, a minimum parking demand analysis was not conducted for the proposed "Church, Place of Worship" use nor for the entire development.

Bossio recognized Pramod Thakur of 2025 Ices Ferry Drive who stated he is the President of HRCC. He stated he has nothing to add to the report.

There were no questions from the Board. Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, Bossio asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff's recommendations.

Fletcher read Staff's recommendations, stating 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).

Staff recommends approval of conditional use petition CU11-07 as requested.

Bossio asked if the fact that this is a place of worship would affect the granting of future liquor licenses to other areas in the plaza. He stated that Los Mariachis, below, who currently holds a liquor license, is grandfathered.

Fletcher said Board could approve a restaurant private club application, but the establishment may have difficulty obtaining a liquor license. He feels this would be a risk for the property owner and not a decision for the Board.

Shamberger made a motion to approve all the Findings of Facts as amended by Staff; seconded by Cardoso. Motion carried unanimously.

NOTE: The following Findings of Facts were included in the motion:

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

> Chelsea Square Plaza and its access driveways are located on Van Voorhis Road, which is a major arterial corridor and includes commercial development of various scales and intensities and at least one other "Church or Place of Worship" use (Suncrest United Methodist Church).

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

> The proposed "Church or Place of Worship" use will be located within an existing building and will be required to meet all applicable building and fire code provisions for same.

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

> The proposed "Church or Place of Worship" use will be located within an existing two-story building and no additions or exterior alterations will be made to impact existing sunlight distribution or air flow patterns.

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

> No additions or exterior alterations will be made to the existing two-story structure.

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

> No residential uses will be established or created with the proposed "Church or Place of Worship" and the proposed use will be located within an existing commercial plaza.

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

The proposed "Church or Place of Worship" use does not appear to result in an increased demand on existing public services and utilities that currently serve the Chelsea Square Plaza development.

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

No additions or alterations will be made to the existing structure.

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

The additional activity generated by the proposed "Church or Place of Worship" use should positively impact on-site and neighboring commercial uses.

Shaffer made a motion to approve CU11-07; seconded by Shamberger. Motion carried unanimously.

NOTED: Items "D" through "H" under "New Business" were consolidated due to the fact that the petitions were related to the same development project.

D. **V11-16 / GCF2 Properties, LLC / 116 Third Street:** Request by GCF2 Properties, LLC for variance relief from the Planning and Zoning Code, Article 1361.03 (Q) (1) as it relates to dedicating non-residential space on the ground floor within the Sunnyside Overlay Districts for property located at 116 Third Street; Tax Map #20, Parcel #50; R-3, Multi-Family Residential District.

E. **V11-17 / GCF2 Properties, LLC / 116 Third Street:** Request by GCF2 Properties, LLC for variance relief from Article 1361.03 (E) as it relates to minimum transparency of ground floor facades that are adjacent to public streets; Article 1361.03 (O) (1) as it relates to minimum fenestration for building facades facing primary streets and/or public open; and, Article 1361.03 (O) (6) as it relates to the majority of window openings being recessed from the exterior building wall along the building's primary façade within the Sunnyside Overlay Districts for property located at 116 Third Street, Tax Map #20, Parcel #50; R-3, Multi-Family Residential District.

F. **V11-18 / GCF2 Properties, LLC / 116 Third Street:** Request by GCF2 Properties, LLC for variance relief from Article 1361.03 (D) as it relates to providing streets trees along primary streets and Article 1361.03 (L) as it relates to minimum sidewalk requirements located on primary streets in the Sunnyside South Overlay District for property located at 116 Third Street; Tax Map #20, Parcel #50; R-3, Multi-Family Residential District.

G. **V11-19 / GCF2 Properties, LLC / 116 Third Street:** Request by GCF2 Properties, LLC for variance relief from Article 1361.03 (P) as it relates to building materials within the Sunnyside Overlay Districts on property located at 116 Third Street; Tax Map #20, Parcel #50; R-3, Multi-Family Residential District.

H. **<u>V11-20 / GCF2 Properties, LLC / 116 Third Street:</u>** Request by GCF2 Properties, LLC for variance relief from Article 1339.04 as it relates to the minimum front setback and Article 1339.05 (A) (2) as it relates to covered porches 116 Third Street; Tax Map #20, Parcel #50; R-3, Multi-Family Residential District.

Fletcher read the Staff Report, stating that GCF2, LLC seeks to raze the existing structure at 116 Third Street and construct a three (3) three-bedroom multi-family development. Addendum A this report illustrates the site's location and existing conditions.

The following narrative addresses each variance petition separately.

V11-16 – Variance relief from Article 1361.03 (Q) (1) as it relates to dedicating non-residential space on the ground floor within the Sunnyside Overlay Districts.

Article 1361.03 (Q) (1) provides that:

> "Except for single- and two-family dwellings, buildings constructed along primary streets shall have sixty (60) percent or more of their ground floor space dedicated to retail, restaurant, office or personal services uses. Residential uses shall be permitted on the ground floor in the remaining space, but shall not enfront the primary street."

Article 1361.02 provides that Third Street is considered a primary street within the Sunnyside Overlay Districts. As such, all new development along Third Street must include at least sixty (60) percent or more of dedicated commercial space on the ground floor. The petitioner's proposed development program does not include a commercial/retail component. As such, variance relief is required.

Staff observations include:

- Staff recently met with A.J. Schwartz of EPD, LLC who prepared the Sunnyside Neighborhood Revitalization Plan along with Jim Hunt, Sunnyside Up to discuss the Sunnyside Overlay District policy objectives and merits of, among others, requiring commercial development along Third Street.
- A summary of related issues discussed include:
  - The predominant configuration of parcels along Third Street are narrow frontages and corner parcels fronting intersecting streets (i.e. Grant Avenue), which leaves relatively constricted and disconnected opportunities of commercial storefront development.
  - Very few of the parcels along Third Street appear to have been "assembled" for the redevelopment of more intense mixed-uses.
  - Even if parcels are "assembled" along Third Street, the steep grade would result in the stepping of commercial storefronts.
  - The steep grade of sidewalks along Third Street presents accessibility challenges, particularly for persons with disabilities.
  - With the exception of corner parcels fronting Beechurst Avenue, all uses along Third Street are residential. The requirement of providing commercial space along Third Street therefore attempts to create retail activity rather than preserve or expand existing commercial uses.

- Given the physical constraints noted above, market absorption of commercial space along Third Street appears challenging and uncertain.

- Based on consultation with Mr. Schwartz and Mr. Hunt, Staff will in the near future present a text amendment to the Planning Commission for consideration that removes the burden of including commercial space in development along Third Street. However, the Board must consider the merits of the petitioner's variance request based on standards currently in effect.

V11-17 – Variance relief from Article 1361.03 (E) as it relates to minimum transparency of ground floor facades that are adjacent to public streets; Article 1361.03 (O) (1) as it relates to minimum fenestration for building façades facing primary streets and/or public open; and, Article 1361.03 (O) (6) as it relates to the majority of window openings being recessed from the exterior building wall along the building's primary façade within the Sunnyside Overlay Districts.

Article 1361.03 (E) provides that:

> "Building facades that are adjacent to public streets and/or open spaces shall have a high degree of ground floor transparency (at least sixty (60) percent)."

Article 1361.03 (O) (1) provides that:

> "Total fenestration shall be at least fifty (50) percent for building facades facing primary streets and/or public open spaces. For the ground floor, the ratio shall be at least sixty (60) percent."

Article 1361.03 (O) (6) provides that:

> "The majority of window openings shall be slightly recessed (4-8 inches) from the exterior building wall to create a distinct and uniform shadow line for the building's primary facade"

According to the petitioner's design professional Mr. Michael Mills, AIA, the percent transparency of the north façade (front) is 19% and the east façade (side facing alley) is 12%. As such, variance relief of 41% and 48% respectively is required.

The petitioner seeks to develop window lintels, sills, and residential shutters to achieve the desired shadow line rather than provide requisite recessed windows, which requires variance relief.

Staff observations include:

- Staff recently met with A.J. Schwartz of EPD, LLC who prepared the Sunnyside Neighborhood Revitalization Plan along with Jim Hunt, Sunnyside Up to discuss the Sunnyside Overlay District policy objectives and merits of, among others, the mandated fenestration ratios set forth within the Sunnyside Overlay Districts.

- A summary of related issues discussed include:

  - The mandated fenestration ratios appear to be more applicable for an urban central business district and not within a streetscape dominated by residential uses.

  - Should variance relief be granted so that ground floor commercial/retail space is not required for the subject development, it is reasonable to conclude that transparency design should be scaled to better reflect residential uses.

  - The design method of achieving desired shadowing effect for windows should be flexible rather than narrowly prescriptive.

- Based on consultation with Mr. Schwartz and Mr. Hunt, Staff will in the near future present a text amendment to the Planning Commission for consideration that reduces the transparency ratio standards to better reflect the existing and desired built environment and provide greater design flexibility to achieve desired window shadowing effects. However, the Board must consider the merits of the petitioner's variance request based on standards currently in effect.

V11-18 – Variance relief from Article 1361.03 (D) as it relates to providing streets trees along primary streets and Article 1361.03 (L) as it relates to minimum sidewalk requirements located on primary streets in the Sunnyside South Overlay District.

Article 1361.03 (D) provides that:

> "On primary streets, street trees shall be provided at a minimum of thirty-five (35) feet on center."

Article 1361.03 (L) provides that:

> "On primary streets, sidewalks shall be a minimum of eight (8) feet in width."

City Staff is consulting with Sunnyside Up in the infrastructure improvement planning for Phase 2 of the "Sunnyside Tax Increment Financing (TIF)". Phase 1 provided for the reconstruction of curbs and sidewalks and decorative lighting and streetscape amenities along Grant Avenue between Campus Drive and Fourth ½ Street. Phase 2 is expected to complete said improvements for the remainder of Grant Avenue. Phase 2 may also include similar streetscape improvements along Third Street from Beechurst Avenue to Grant Avenue. Sidewalk width along Third Street and whether or not street trees will be included have not been determined. As such, Staff recommends below a condition to ensure sidewalks improvements are made along the frontage of the petitioner's site, whether as a part of the Phase 2 TIF project or completed by the petitioner.

V11-19 – Variance relief from Article 1361.03 (P) as it relates to building materials within the Sunnyside Overlay Districts.

Article 1361.03 (P) provides that:

> "Building Materials:
>
> (1) Except for single and two family dwellings, the first two (2) floors of a building shall be constructed of natural materials. Natural materials include stone, brick, and wood siding, but do not include materials such as, or similar to, wood roof shingles, reflective glass, split faced concrete block, imitation stone, and imitation stucco or Drivit. Thirty-five (35) percent of the remaining building facade(s) on the public right-of-way or any facade(s) facing a single-family residence shall also be constructed of natural materials.
>
> (2) Vinyl siding or other composite materials shall not exceed thirty-five (35) percent of a building face that abuts a right-of-way."

According to the petitioner's design professional Mr. Michael Mills, AIA, the petitioner seeks to utilize cementitious siding (i.e. Hardy Plank siding); cementitious trim (i.e. Hardy Plank trim); vinyl shutters; and, cast in pattern brick mold finish for exposed foundation walls.

Because the proposed cladding and exposed foundation materials do not meet the natural material and composite material standards noted above, variance relief is required.

Based on consultation with Mr. Schwartz and Mr. Hunt, Staff will in the near future present a text amendment to the Planning Commission for consideration that provides greater flexibility in cladding material selection within the Sunnyside Overlay Districts. However, the Board must consider the merits of the petitioner's variance request based on standards currently in effect.

V11-20 – Variance relief from Article 1339.04 as it relates to the minimum front setback and Article 1339.05 (A) (2) as it relates to covered porches.

Article 1339.04 provides that the minimum front setback in the R-3 District is ten (10) feet. The proposed front setback of eight (8) feet requires a two-foot variance.

Article 1339.05 (A) (2) provides that:

> "Uncovered stairs, landings and porches shall not extend closer than three (3) feet from the property line. Such porches may not subsequently be enclosed unless the normal setback requirements for the district are met."

The proposed front porch extends to three (3) feet from the front property line. However, the petitioner seeks to include a roof cover to complement the predominant development pattern and architectural design along Third Street, which requires variance relief.

It is the opinion of the Planning Division that the proposed front porch roof is consistent with the front façade design of several existing structures along Third Street and should positively contribute to the prevailing architectural vocabulary and rhythm of the built environment.

Concerning the Public Hearing procedure, Fletcher stated that Staff recommends that the Chair, without objection by the Board, the petitioner, or those present at the hearing, consider consolidating the public hearings for all the variance petitions related to the proposed development at 116 Third Street. If there is an objection, the Board should proceed with separate public hearings accordingly. Please note that the Board must vote on each variance petition and correlating findings of fact separately.

Bossio recognized Lisa Mardis, Project Management Services, 1165 Hampton Avenue, representing the petitioner, who stated that the Staff Report explains everything very well. She thanked the Board for making a site visit and asked if they had any questions.

There being no questions from the Board, Bossio asked if any member of the Board or any person present at the hearing objected to combining the public hearings for "New Business" agenda items "D" thru "H".

There being no objections offered, Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the requests. There being no one present to speak in favor, he then asked if anyone was present to speak in opposition to the requests. There being no one present to speak in opposition, Bossio declared the public hearing closed and asked for Staff's recommendations.

There being no further discussion by the Board, the following motions were made and approved as follows:

Concerning variance petition V11-16, Shamberger made a motion to approve all the Findings of Facts as submitted by the petitioner; seconded by Cardoso. Motion carried unanimously.

Papandreas made a motion to approve V11-16 as requested; seconded by Shamberger. Motion carried unanimously.

Concerning variance petition V11-17, Shaffer made a motion to accept the Findings of Facts as submitted by the petitioner; seconded by Papandreas. Motion carried unanimously.

Shaffer made a motion to approve request V11-17 with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

NOTE: The following conditions were included in the motion:

a. All windows on the front façade must include lintels, trim, and sills to provide a frame and desired shadowing effect as illustrated on the submitted architectural renderings.
b. Shutters framed by lintels, trim, and sills that simulate a window must be provided for the second story front façade, behind which the interior stairs are located, as well as for each of the three stories on the side façade facing the alley between the front corner of the building and the downspout illustrated on the submitted architectural renderings.
c. That all windows on the front and alley-facing facades must include sash bars or grills in at least the upper or top half as illustrated on the submitted architectural renderings.

Concerning variance petition V11-18, Papandreas made a motion to accept the Findings of Facts as amended by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact 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:

To ensure design and construction continuity with the contemplated Third Street sidewalk reconstruction and streetscape improvements publicly funded through the Sunnyside Tax Increment Financing (TIF) District, it appears prudent to delay the petitioner's compliance responsibility so that sufficient time can be afforded to the City of Morgantown and Sunnyside Up for the development of final improvement project designs, programming, and implementation. Although a final determination has not been made, the provision of street trees may not be desired or included in the publicly funded streetscape improvement final design.

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

The mandatory width of eight (8) sidewalk may not be achievable due to limited available right-of-way. However, the existing three (3) foot sidewalk can be widened by improving the area beginning at the back of the curb to the edge of the Third Street right-of-way. To ensure design and construction continuity with the contemplated Third Street sidewalk reconstruction and streetscape improvements publicly funded through the Sunnyside Tax Increment Financing (TIF) District, it appears prudent to delay the petitioner's compliance responsibility so that sufficient time can be afforded to the City of Morgantown and Sunnyside Up for the development of final improvement project designs, programming, and implementation.

Although a final determination has not been made, the provision of street trees may not be desired or included in the publicly funded streetscape improvement final design.

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:

Delaying the petitioner's compliance with sidewalk width improvements and street tree standards while requiring the petitioner to furnish a surety bond or similar guarantee to cover the expenses of same is intended to ensure design and construction continuity with the contemplated Third Street sidewalk reconstruction and streetscape improvements publicly funded through the Sunnyside Tax Increment Financing (TIF) District. The granting of this variance does not relieve the petitioner of the responsibility of complying with the mandatory sidewalk width improvement or incorporation of street trees. Final sidewalk improvement width design may be reduced and the provision of street trees may be waived if so designed as such under the publicly funded improvement project, whether constructed or not, provided the intent of said mandatory standards are observed and substantial justice done.

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:

Delaying the petitioner's compliance with sidewalk width improvements and street tree standards will not relieve the petitioner from complying with same; nor will it diminish the quality, character, land uses, or market value of properties, public facilities, or improvements within the immediate area; nor will it contribute to or mitigate existing traffic congestion.

Cardoso made a motion to approve V11-18 with Staff recommended condition; seconded by Shamberger. Motion carried unanimously.

NOTE: The following condition was included in the motion:

a. For the purpose of ensuring design and construction continuity under the prospective Third Street sidewalk reconstruction and streetscape improvements publicly funded through the Sunnyside TIF District, the petitioner may delay compliance with Article 1361.03 (D) and Article 1361.03 (L) of the Planning and Zoning Code. However, the petitioner shall furnish a surety bond or similar guarantee acceptable to the City covering the cost of sidewalk reconstruction from the back-of-curb to the edge of the right-of-way, unless greater than eight (8) feet in width, across the entire front of the subject property including ADA compliant design provisions if necessary. Sidewalk reconstruction must be completed by the petitioner or through the publicly funded infrastructure improvement project no later than twenty-four (24) months following the date of occupancy permit issuance. The required street tree may be waived if the publicly funded infrastructure improvement project's design, whether constructed or not, does not include the provision of street trees. The subject surety bond or similar guarantee instrument must be executed prior to the issuance of any building permit.

Concerning variance petition V11-19, Shaffer made a motion to approve the Findings of Facts as submitted by the petitioner; seconded by Shamberger. Motion carried unanimously.

Shamberger made a motion to approve V11-19 as requested with Staff recommended conditions; seconded by Cardoso. Motion carried unanimously.

NOTE: The following conditions were included in the motion:

a. That the above foundation exterior walls must be clad in cementitious siding comprised of a simulated wood grain profile.

b. That the proposed cast in pattern brick mold finish exposed foundation walls may not be concrete gray but integrally colored to simulate brick. "Integrally colored" means that the concrete foundation wall is colored throughout rather than an exterior surface coloring treatment or finish.

Concerning variance petition V11-20, Papandreas made a motion to accept the Findings of Facts as submitted by the petitioner; seconded by Shamberger. Motion carried unanimously.

Papandreas made a motion to approve V11-20 as requested with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

NOTE: The following conditions were included in the motion:

a. That the front porch must be constructed on cast in pattern brick mold finish foundation walls that are integrally colored to simulate brick. "Integrally colored" means that the concrete foundation wall is colored throughout rather than an exterior surface coloring treatment or finish.

b. That the roof covering the front porch must be extended across the entire width of the front façade and include a cross-gable design element accenting the front entrance door.

c. That the columns supporting the front porch roof and railings may not include exposed wood or treated lumber.

V. OTHER BUSINESS:

A. Public Comments: None

B. Staff Comments: None

VI. ADJOURNMENT: 7:35 p.m.

MINUTES APPROVED: August 17, 2011

BOARD SECRETARY: Christopher M. Fletcher

Christopher M. Fletcher, AICP