

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

June 17, 2015

City Council Chambers

MEMBERS PRESENT: Leanne Cardoso, Bill Burton, Linda Herbst, Jim Shaffer and George Papandreas

MEMBERS ABSENT: none

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Cardoso called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

II. MATTERS OF BUSINESS:

A. Minutes for the May 20, 2015 hearing: Burton moved to approve as presented; seconded by Papandreas. Motion carried unanimously with Shaffer abstaining due to his absence.

III. UNFINISHED BUSINESS: None

IV. NEW BUSINESS:

A. V15-27 / Lytle / 1164 Hampton Avenue: Request by Ron and Jennifer Lytle for variance relief from Article 1335.04 to exceed maximum front setback encroachment; Tax Map 22, Parcel 14 and 15; R-1A, Single-Family Residential District.

Fletcher suggested to table Case No. V15-27 due to a representative not being present at the hearing. Board members agreed. Shaffer made a motion to table V15-27; seconded by Papandreas. Motion carried unanimously.

B. V15-30 / Denny's Restaurant / 258 Retail Circle: Request by Debbie Wilkins of Franchise Signs International, on behalf of Grate Enterprises, Inc., for variance relief from Article 1369 as it relates to signage at 258 Retail Circle; Tax Map 64, Parcel 4; B-5, Shopping Center District. **POSTPONED**

C. V15-36 / Park & Madison Boutique / 407 High Street: Request by Shannon Coombs, on behalf of Park & Madison Boutique, for variance relief from Article 1369 as it relates to signage at 407 High Street; Tax Map 26, Parcel 85; B-4, General Business District. **POSTPONED**

- D. **V15-29 / Glenmark Holding, LLC / Greenbag Road**: Request by Lisa Mardis of Project Management Services, on behalf of Glenmark Holding, LLC, for variance relief from Article 1363.04(A) as it relates to the number of principal structures on a lot; Tax Map 48A, Parcel 15; B-2, Service Business District.

Fletcher presented the combined Staff Report for variance Cases V15-29 and V15-28.

Cardoso recognized Lisa Mardis of Project Management Services who explained the location of the project and stated that Glenmark would like to create a development that is fitting to the built environment by providing a business park style setting. Mardis referred to the Staff report and noted a letter in support of the project from Monongalia County School is attached within the packet.

Burton asked why the project wasn't submitted as a business research park or a PUD if they are planning two additional buildings in the future. Fletcher explained the developer did not want to pursue a PUD and conditions can be listed to state that more than one building can be constructed on the site in the future.

Cardoso asked if a different plan was in place in order to not use part of land that includes the landscape buffer. Mardis explained the area has undergone a lot of changes and Luckey Lane is a highly traveled cut through. Therefore relocating the landscape buffer to BOE property will provide a buffer from the development to the elementary school.

Burton asked if discussions have taken place with DOH to widen Luckey Lane as there will be an increase in traffic on the already narrow road. Mardis referred the question to Fletcher.

Fletcher stated there are no plans or priorities in the MPO's Long-Range Transportation Plan to widen the road.

Cardoso asked where the primary entrance will be for the proposed project. Mardis explained the primary entrance will be off of Greenbag Road and Luckey Lane will be an ancillary access point. Mardis suggested talking with Damien Davis, City Engineer, to discuss possibility of making Luckey Lane a one way road with DOH.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the petition.

Cardoso recognized Garrett Richards of 27 Kingwood Pike who stated he is an employee of the developer and lives within the immediate area and the development offers potential growth for the area.

There being no further comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations for V15-29.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V15-29 as submitted; seconded by Herbst. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The development will be similar to an office park in that it will contain more than one building managed on an integrated and coordinated basis under single ownership. The uniquely shaped parcel, sandwiched between two state routes, on the fringes of the City of Morgantown has historically remained vacant while occasionally being used for heavy equipment or soil storage. The applicant will “Spec build” two 6,000 square foot buildings with an area for future development. While startup and expanding businesses often desire the flexibility to lease and/or purchase their commercial location, the applicant would like the ability to plan accordingly while creating a responsibly planned, unified, and coordinated project with multiple tenants. The purpose of B-2, Service Business District is to provide areas that are appropriate for most kinds of business and services and located along major thoroughfares. The highest and best use of this property is the flexibility to develop separate individual buildings that can be parceled off and owned by separate entities in the future.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The development will be similar to an office park in that it will contain more than one building managed on an integrated and coordinated basis under single ownership. The uniquely shaped parcel, situated between two state routes, on the fringes of the City of Morgantown has historically remained vacant while occasionally being used for heavy equipment or soil storage. This infill “spec” development creates a unique opportunity to create an office park type setting that can be subdivided as the market may or may not respond to.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The development will be similar to an office park in that it will contain more than one building managed on an integrated and coordinated basis under single ownership. The uniquely shaped parcel, situated between two state routes, on the fringes of the City of Morgantown has historically remained vacant while occasionally being used for heavy equipment or soil storage. The infill “spec” development will include two 6,000 square foot buildings with an area for the future development. While startup and expanding businesses often desire the flexibility to lease and/or purchase their commercial location, the applicant would like the ability to plan accordingly while creating a responsibly planned, unified, and coordinated project with multiple tenants. The proposed development creates a unique opportunity to create an office park type setting that can be subdivided as the market may or may not respond to. The purpose of B-2, Service Business District is to provide areas that are appropriate for most kinds of business and services and located along major thoroughfares. The highest and best use of this property is the flexibility to develop separate individual buildings that can be parceled off and owned by separate entities in the future.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The development will be similar to an office park in that it will contain more than one building managed on an integrated and coordinated basis under single ownership. The uniquely shaped parcel, sandwiched between two state routes, on the fringes of the City of Morgantown has historically remained vacant while occasionally being used for heavy equipment or soil storage. The applicant will “Spec Build” two 6,000 square foot buildings with an area for future development. While startup and expanding businesses often desire the flexibility to lease and/or purchase their commercial location, the applicant would like the ability to plan accordingly while creating a responsibly planned, unified and coordinated project with multiple tenants. The spirit and intent of zoning ordinance will be met since the purpose of the B-2, Service Business District is to provide areas that are appropriate for most kinds of business and services and located along major thoroughfares. The highest and best use of this property is the flexibility to develop separate individual buildings that can be parceled off and owned by separate entities in the future.

Papandreas moved to approve V15-29 without conditions to permit more than one (1) principal building and their respective accessory structures to be constructed on Parcel 15 of Tax Map 48A; seconded by Herbst. The motion carried unanimously.

- E. V15-28 / Glenmark Holding, LLC / Greenbag Road:** Request by Lisa Mardis of Project Management Services, on behalf of Glenmark Holding, LLC, for variance relief from Ordinances 98-01 and 15-16 concerning access to Luckey Lane and a landscape buffer; Tax Map 48A, Parcel 15; B-2, Service Business District.

Fletcher read the Staff recommendations for V15-28.

Burton asked if a condition could be included that the petitioner explore all possible means of mitigating potential traffic congestion on Luckey Lane through roadway widening, traffic directional restrictions, and/or turning movement restrictions, etc. Fletcher confirmed and the Board members agreed. A related condition was created to include with the variance approval.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V15-28 as submitted; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The applicant would like to establish a portion of the requisite twenty-five (25) foot buffer strip along the property's Luckey Lane frontage that was established in January 1998 to property owned and operated by the Monongalia Board of Education (BOE), Mountainview Elementary School. It appears that in 1998 this area was established to retain a healthy buffering between future commercial development and the school. The applicant maintains that the ordinance will be adhered to on the northern side of interior across road along Luckey Lane. However, the spirit and intent of the buffer district will likewise be adhered to by moving the buffer onto the school property. This will provide a buffering area from the heavily traveled Luckey Lane, as well as commercial development on the subject property. The subject realty is in corporate City Limits of Morgantown surrounded by unzoned county property and realty owned by BOE. The applicant also seeks variance relief from the same 1998 ordinance which denies access onto Luckey Lane from the aforementioned realty. It is important to note that Luckey Lane is also a state route. In obtaining an access permit on Greenbag Road from the West Virginia Department of Highways (WVDOH), it appears that WVDOH maintains that there must be access onto Luckey Lane. This should also serve to enhance emergency response access. Mr. Frank Devono, Superintendent for the Monongalia County Board of Education, is in full support with moving the buffer to BOE property and also with access on to Luckey Lane, witnessed by the attached letter.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

It appears that the 1998 ordinance was created as a buffer between potential development on the subject realty and the Mountainview Elementary School. This may be the reason that this property has remained undeveloped over the years and used as storage for heavy machinery and mounds of soil. As evidenced by the attached site plan, the applicant is seeking variance relief from the twenty-five (25) foot landscape buffer for the area of realty that narrows at the Luckey Lane/Greenbag Road intersection and access onto Luckey Lane. The applicant is also seeking variance relief to have access onto Luckey Lane. It appears by the attached letter from WVDOH, they would like to maintain a secondary means of egress/ingress. Mr. Frank Devono, Superintendent for the Monongalia County Board of Education, is in full support with moving the buffer to BOE property and also with access on to Luckey Lane, witnessed by the attached letter.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The applicant seeks variance from the 1998 ordinance which denies access on to Luckey Lane from the subject realty and a required twenty-five (25) foot landscape buffer the length of the realty along Luckey Lane. It appears that the ordinance was created as a buffer between potential development on the subject realty and Mountainview Elementary School. This may be the reason that this property has remained undeveloped over the years and used as storage for heavy machinery and mounds of soil. As evidenced on the attached site plan, the landscape area in question pertains to the future development area. Given the unique geometry of the subject property at the intersection of Luckey Lane and Greenbag Road, the potential development area is limited. It appears that there is adequate area for a proposed building. Preliminary review shows that parking and/or drive aisles would most likely encroach into the twenty-five (25) foot landscape buffer area. By moving the required area on only this section of the property and relocating it to property owned and operated by BOE, the spirit and intent of the ordinance is being met. In obtaining an access permit on Greenbag Road from WVDOH, it appears that WVDOH maintains that there must be access onto Luckey Lane. It appears that development on this site would be difficult without a secondary means of egress. Not only for WVDOH, but also for emergency vehicles.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

As evidenced on the attached site plan, the landscape area in question pertains to the future development area only. Given the unique design of the property at the intersection of Luckey Lane and Greenbag Road, the potential development area is limited. It appears that there is adequate area for a proposed building. However, preliminary review shows that parking and/or drive aisles would most likely encroach into the twenty-five (25) foot landscape buffer area. By moving the required area on only this section of the property and relocating it to property owned and operated by BOE, the spirit and intent of the ordinance is being met. Mr. Frank Devono, Superintendent for the Monongalia County Board of Education, is in full support with moving the buffer to BOE property and also with access on to Luckey Lane, witnessed by the attached letter.

Papandreas moved to approve V15-28 granting variance relief from Ordinances 98-01 and 15-16 concerning access to Luckey Lane and a landscape buffer as requested with staff recommended conditions; seconded by Burton. The motion carried unanimously.

NOTE: The following conditions were included in the motion.

1. That, to the satisfaction of the City Engineer and West Virginia Division of Highways (WVDOH), not more than one (1) driveway curb cut may be developed from the subject development site onto Luckey Lane.
2. That the twenty-five (25) buffer district established in City Ordinances ORD98-01 and ORD15-16 may be encroached into solely for the purpose of developing an internal drive aisle(s), parking/loading/maneuvering space(s), dumpster enclosure(s), and/or directional and/or traffic control signage; provided, the petitioner, with the written approval of and authorization by the Monongalia County School Superintendent's Office, establishes, to the satisfaction of the Planning Division and the City Engineer, an off-site landscape buffer on the adjoining Monongalia County School Board realty beginning at the Mountainview Elementary entrance onto Luckey Lane to where Luckey Lane meets Greenbag Road. The landscape plan for said off-site buffer shall be reviewed and approved by the City as a part of the building permit application for the development of Parcel 15, Tax Map 48A. Said landscape plan must also be reviewed and approved by the Monongalia County School Superintendent's Office prior to the issuance of any building permit for the development of Parcel 15, Tax Map 48A.
3. That, based on the Board's concern for increased traffic on the narrow Luckey Lane and prior to building permit issuance, the City Engineer and petitioner consult with the West Virginia Division of Highways (WVDOH) to explore all practicable means of mitigating potential traffic congestion on

Lucky Lane through roadway widening, traffic directional restrictions, and/or turning movement restrictions, etc.

Cardoso reminded Ms. Mardis that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- F. **V15-31 / Sheetz, Inc. / Grafton Road**: Request by Bob Franks on behalf of Sheetz, Inc., for variance relief from Article 1353.05(A) as it relates to minimum building height at the intersection of Hornbeck Road and Grafton Road; Clinton District Tax Map 6, Parcel 4.6; B-5, Shopping Center District.

Fletcher presented the combined Staff Report for variance cases V15-31 through and including V15-35.

Cardoso recognized Mike Nestor of Bridgeport on behalf of Sheetz who stated the property is not in the City limits but there are DOH right-of-ways that exist within the City limits. The developer plans to annex the property at a later date. The existing ordinances that are currently in place are geared toward the downtown area and this property is located on the outskirts of town.

Cardoso asked for further explanation on how the site plan was designed.

Nestor explained the proposed site plan to the Board members and noted that the plans were designed in a way to allow for full circulation around the site. A sidewalk will be constructed and connected to the bus shelter and the store. The sidewalk will also exist to tie in with any future developments in the area.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the petition.

There being no further comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations for V15-31.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V15-31 as revised; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Building height will have no effect on the functionality of this site, the business conducted on it, or the circulation of the development. The other buildings within the B-5 District south of Interstate 68 appear to be less than the minimum building height standard and do appear to present an adverse impact.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

This property is uniquely located outside of the City limits but with a portion of the planned development site to be located within a prior road R/W which fell under the Morgantown corporate limits. As a result, the entire site will be incorporated into the City and is now subject to planning and zoning codes that it otherwise would not have been required to meet.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The size and interior of the Sheetz facility will not change regardless of the building height. Adding additional height to the building would create an increased cost and added construction time that does not appear necessary for the use of this development.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The intent of the minimum building height was to increase density within a smaller development footprint and is most relevant to office buildings, multi-family developments, and other types of retail spaces. The layout of this facility would not be changed as a result of a higher roofline. The gas station/food service business would not function with a multi-story structure.

Shaffer moved to approve V15-31 without conditions to permit the construction of a principal building less than the twenty-five (25) foot minimum building height as illustrated in plans reviewed herein; seconded by Papandreas. The motion carried unanimously.

- G. V15-32 / Sheetz, Inc. / Grafton Road:** Request by Bob Franks on behalf of Sheetz, Inc., for variance relief from Article 1353.07(E) as it relates to sidewalks at the intersection of Hornbeck Road and Grafton Road; Clinton District Tax Map 6, Parcel 4.6; B-5, Shopping Center District.

Fletcher read the Staff recommendations for V15-32.

Burton made a motion to find in the affirmative for the all the Findings of Facts for V15-32 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

There are no existing sidewalks or a walking path network near the site at present day and the Grafton Road / Hornbeck Road intersection does not provide a pedestrian crosswalk access. Providing a sidewalk at the frontage of this lot along Hornbeck Road would serve no real purpose as it would not have anything to connect to. The alternate sidewalk location will link transit riders to the site and will also serve to establish additional sidewalk construction as further development is delivered on the side of the “Common Access” road opposite the *Sheetz* development site thereby integrating the entire development with pedestrian facilities.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The property is located along high traffic routes that do not serve pedestrian traffic and there are no other business, housing, etc. within the immediate area that would access the site on foot.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Constructing a sidewalk at the frontage location along Hornbeck Road would be ineffective as there are no means for pedestrian traffic on either side of the property. Allowing an alternative to provide an internal sidewalk that will ultimately create connectivity between the *Sheetz* and other future business within this overall parcel of land would have a much more positive effect on the development and community.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The intent is to provide for pedestrian connectivity. Construction of the sidewalk at the property frontage by code does not provide that for this specific site. Allowing a substitute to construct the sidewalk along the entrance will better meet the intent of the code.

Papandreas moved to approve V15-32 to construct an alternate sidewalk proposal as requested with staff recommended condition; seconded by Burton. The motion carried unanimously.

NOTE: The following condition was included in the motion.

1. That, to the satisfaction of the City Engineer, a bus shelter pad be developed, in consultation with Mountain Line Transit, at the southwest corner of the Hornbeck Road / “Common Access” road intersection; that a sidewalk, with a minimum width of six (6) feet, be constructed on the opposite side of the “Common Access” road from the *Sheetz* development site; that said sidewalk must begin at the subject new bus shelter pad and continue along the “Common Access” road past the first *Sheetz* driveway curb cut; that a marked crosswalk be developed connecting said sidewalk with a pedestrian way to the *Sheetz* store; that a surety bond be secured by the petitioner to the satisfaction of the City Engineer for the development of the subject bus shelter pad and sidewalk; and, that said bus shelter pad and sidewalk past the first *Sheetz* driveway curb cut must be constructed prior to the issuance of a Certificate of Occupancy for the *Sheetz* store.

H. V15-33 / Sheetz, Inc. / Grafton Road: Request by Bob Franks on behalf of Sheetz, Inc., for variance relief from Article 1365.04 as it relates to exceeding the maximum parking standard at the intersection of Hornbeck Road and Grafton Road; Clinton District Tax Map 6, Parcel 4.6; B-5, Shopping Center District.

Fletcher read the Staff recommendations for V15-33.

Burton made a motion to find in the affirmative for the all the Findings of Facts for V15-33 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Providing more parking spaces will actually create a safer environment for this proposed use, preventing traffic backups outside the development and improve internal circulation.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

This property, though located in the City limits, does not have a connection to the City (proper) and is not accessible by foot traffic from other businesses, parking areas, etc. Patrons of this business must access the site from automobile traffic or public transit. Given that the overwhelming majority of the business from the site will be obtained through automobile traffic due to its geographic location, variance relief appears warranted.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

This site is remote compared to the other property within the City’s boundaries and highly dependent upon automobile traffic in order to serve the public.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The intention of limiting the amount of parking spaces is not to hinder a business but to encourage connectivity within urban areas, utilizing existing parking structures, sharing lots with other business, etc. This site is unique with the city limits because of its remote location. The applicant is only asking for a variance to provide additional parking spaces for what they feel is needed based on historical data and existing traffic information at this location.

Papandreas moved to approve V15-33 without conditions to permit the development of up to eight (8) parking spaces above the maximum number of parking spaces otherwise permitted; seconded by Shaffer. The motion carried unanimously.

- I. **V15-34 / Sheetz, Inc. / Grafton Road**: Request by Bob Franks on behalf of Sheetz, Inc., for variance relief from Article 1365 as it relates to drive-through stacking at the intersection of Hornbeck Road and Grafton Road; Clinton District Tax Map 6, Parcel 4.6; B-5, Shopping Center District.

Fletcher read the Staff recommendations for V15-34.

Burton made a motion to find in the affirmative for the all the Findings of Facts for V15-34 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The drive thru currently allows for 5 to 6 spaces behind the pickup window and another 4 spaces behind the ordering station which effectively gives 9 to 10 stacking stalls. In addition, the 3 parking spaces that are potentially obstructed will be employee parking spaces and will not be needed for routine turnover.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The current lot configuration and access points make deliveries challenging. The separation of the drive thru aisle between the pickup window and ordering station allows for better circulation completely around the building for deliveries and other traffic.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The intent of the code is met by allowing enough stacking stalls to keep from obstructing the ingress and egress of patrons. The configuration is unique and is not currently considered in the existing code.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed plan actually provides more stacking within the entire drive thru than what is required by code. The pickup window allows for stacking of 5 to 6 parking spaces, the order station allows stacking for 4 spaces, and there is actually room for 2 or more cars between the order station and the stop bar, giving a total of 11 to 12 stacking stalls which is double the amount that would be required otherwise. Also, the intent of unobstructed parking stall requirement is to prevent patrons from getting blocked in. In this case, if an obstruction were to occur, it would block in an employee. Shift changes do not typically occur at times of high traffic when multiple cars are expected to be using the drive thru.

Papandreas moved to approve V15-34 as requested with Staff recommended condition; seconded by Herbst. The motion carried unanimously.

NOTE: The following condition was included in the motion.

1. That the five (5) parking spaces adjoining the dumpster enclosure facility be restricted to employee parking only and be marked and/or signed accordingly.

J. V15-35 / Sheetz, Inc. / Grafton Road: Request by Bob Franks on behalf of Sheetz, Inc., for variance relief from Article 1367.08 as it relates to parking area bufferyard at the intersection of Hornbeck Road and Grafton Road; Clinton District Tax Map 6, Parcel 4.6; B-5, Shopping Center District.

Fletcher read the Staff recommendations for V15-35.

Burton made a motion to find in the affirmative for the all the Findings of Facts for V15-35 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The code provides for aesthetic feature and intends to create spacing from newly developed areas. An adequate buffer will still be left on this site but will be contained within the right-of-way instead of on the property location

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The right-of-way for Grafton Road is very large at this location (well over 150 feet).

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The parking area and dumpster does not sit adjacent to another property but instead is located adjacent to a public right-of-way which is in excess of 150 feet in width.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

A grassed area of 28 feet in width will remain between the parking area/dumpster and US 110 at this location. This buffer area will be located within the DOH right-of-way and must remain for roadside drainage (this width remains even after the addition of a new turn lane on US 199).

Shaffer moved to approve V15-35 without conditions to permit the development of a buffer area less than ten (10) feet in width along the Grafton Road right-of-way boundary as illustrated in plans reviewed herein; seconded by Papandreas. The motion carried unanimously.

Cardoso reminded Mr. Nestor that the Board's decisions can be appealed to Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- K. CU15-04 / Grant Avenue, LLC / 400 block of Grant Avenue:** Request by Doug Warden, on behalf of Grant Avenue, LLC, for conditional use approval to construct a building up to 80 feet in height as provided in Article 1339.06(A) in the 400 block of Grant Avenue; Tax Map 19, Parcels 90 thru 95; R-3, Multi-Family Residential District.

Linda Herbst recused herself from CU15-04 & V15-37 thru and including V15-43 due to her familial relationship with one of the business partners of the development. Herbst also noted that because no further business matters were on the agenda following the subject cases that she would not be present for the remainder of the hearing.

Fletcher presented the combined Staff Report for the cases relating to the proposed Grant Avenue, LLC development.

Cardoso recognized of John Sausen of 675 Linton Road who explained the surrounding areas around the proposed project are changing to high rise multi-family complexes. There are many ground levels topographically in that area which makes the project complex and resorts to numerous variance requests.

Burton asked how many ADA spots are provided. Sausen explained there are six handicap parking spaces within the parking garages which are located adjacent to the elevators. There are two spots delegated to vans which are located in the garage as well.

Burton asked where the garbage receptacles will be stored. Sausen stated garbage will be stored outside of the building.

Cardoso asked if the parking levels were below ground. Sausen stated that parking is above ground and referred to the site plans to explain how the parking levels are positioned.

Burton asked if the alley is wide enough to accommodate the increase in traffic. Fletcher noted that the City Engineer will ask for the alley to be improved and paved.

Fletcher noted that a Technical Review Team meeting was conducted and the Fire Marshall did express concerns with the condition of the alley. Therefore the Fire Department's aerial unit will arrive and stage on Grant Avenue.

Sausen explained there will be no on-street parking and that will allow for a fire lane in front of the building.

Burton noted there is minimal parking which doesn't allow for visitors. Sausen confirmed and explained that most students that live in that area will either walk or ride the bus.

Burton asked if a resident manager will live on-site. Sausen stated there is a potential for hiring a resident manager in the future and stated the proposed plans include parking spaces for members of management.

Fletcher noted that units would be furnished, which would help alleviate traffic congestion on move in and move out day.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the petition. There being no comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations for CU15-04.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for CU15-04 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

The City Engineer has determined that the proposed development does not necessitate a traffic impact study.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The proposed building will be required to observe all relative building codes including the WV State Fire Code and NFPA 2012. The building will be equipped with an approved sprinkler system and fire alarm. The main structure will be rated for 1 hr. and the area in the front of the building provides ample room for fire lane access since the parking will be eliminated on development site's portion of Grant Avenue.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

The proposed height of the building is within maximum building height standards established for the R-3 District and building setback and lot coverage standards are observed for the proposed building footprint.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

The proposed building footprint absorbs approximately 46% of the total site, which is less than the maximum lot coverage standard of 60%.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

The proposed project appears to provide adequate living areas and parking according to established local codes and planning requirements.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

Public right-of-way, water, sanitary sewer and stormwater facilities will be improved to support the proposed development.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

The proposed development will abate the site's present state of dilapidation and should significantly increase the site's contribution to continued market interest in property assemblage and increased densities within student housing neighborhood.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

The proposed project offers a density of dwelling units that appears to be similar to other buildings of the same type in Sunnyside.

Shaffer moved to approve CU15-04 without conditions to permit construction of the principal building in excess of 55 feet but less than 80 feet as illustrated on the plans reviewed herein; seconded by Papandreas. The motion carried unanimously.

- L. **V15-37 / Grant Avenue, LLC / 400 block of Grant Avenue**: Request by Doug Warden, on behalf of Grant Avenue, LLC, for variance relief from Article 1339.06(A) to exceed the maximum building height standard in stories in the 400 block of Grant Avenue; Tax Map 19, Parcels 90 thru 95; R-3, Multi-Family Residential District.

Fletcher read the Staff recommendations for V15-37.

Burton made a motion to find in the affirmative for the all the Findings of Facts for V15-37 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed project will be required to observe the International Building Code as well as NFPA 2012 and the WV State Fire Code. This project is not anticipated to infringe on adjacent property owners and is within the standard footprint setbacks established by the City of Morgantown.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The special condition arises from the contradictory provisions in the Planning and Zoning Code that permits a building to be constructed between 55 feet and 80 feet with conditional use approval while remaining silent on how such an approval affects the proportional relationship between overall building height and the number of stories.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The hardship arises from the contradictory provisions in the Planning and Zoning Code that permits a building to be constructed between 55 feet and 80 feet with conditional use approval while remaining silent on how such an approval affects the proportional relationship between overall building height and the number of stories.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Buildings may be constructed between 55 feet and 80 feet with conditional use approval. However, the Planning and Zoning Code is silent on how this increased building height in feet relates to the maximum building height standard for the number of stories. If conditional use approval is granted to construct between 55 feet and 80 feet, it can be easily concluded that the Planning and Zoning Code's intent is to allow for buildings taller than four (4) stories. Otherwise, each of the four (4) stories of an 80 foot tall building would be 20 feet in height.

Papandreas moved to approve V15-37 without conditions to permit six (6) stories and a portion of a seventh story to be constructed along the front elevation facing Grant Avenue as illustrated on the plans reviewed herein; seconded by Burton. The motion carried unanimously.

- M. V15-38 / Grant Avenue, LLC / 400 block of Grant Avenue:** Request by Doug Warden, on behalf of Grant Avenue, LLC, for variance relief from Article 1339.07(A) as it relates to building massing in the 400 block of Grant Avenue; Tax Map 19, Parcels 90 thru 95; R-3, Multi-Family Residential District.

Fletcher read the Staff recommendations for V15-38.

Burton made a motion to find in the affirmative for the all the Findings of Facts for V15-38 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed project will be required to observe the International Building Code as well as NFPA 2012 and the WV State Fire Code. This project is not anticipated to infringe on adjacent property owners and is within the standard footprint setbacks established by the City of Morgantown.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

Several new developments within the Sunnyside Neighborhood, including 4th Street Apartments, Beech View Place, Mountaineer Place Apartments, and University Place, have been developed at much higher massing than neighboring properties. Specifically, new multi-family housing development has occurred by assembling smaller, functional obsolete and underutilized properties and converted single-family homes. The proposed massing appears to reflect efforts to increase residential density in the Sunnyside Neighborhood.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The dwelling density created from the proposed project does come with a direct effect of scale massing but is in line with the zoning and planning concepts of the city and previously developed projects in the vicinity which appears to provide a new context for massing within the Sunnyside Neighborhood.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The R-3 District building envelope standards permit a significant increase in building intensity and massing in relation to the functionally obsolete single-family homes that have been converted into student housing over the last several decades around the subject development site.

Papandreas moved to approve V15-38 without conditions granting relief from substantially conforming in massing to adjacent structures as illustrated on the plans reviewed herein; seconded by Burton. The motion carried unanimously.

- N. V15-43 / Grant Avenue, LLC / 400 block of Grant Avenue:** Request by Doug Warden, on behalf of Grant Avenue, LLC, for variance relief from Article 1339.05(A)(1) as it relates to entrance door canopy encroachment into minimum setback requirements in the 400 block of Grant Avenue; Tax Map 19, Parcels 90 thru 95; R-3, Multi-Family Residential District.

Fletcher read the Staff recommendations for V15-43.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V15-43 as revised; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The variance will allow proper entrance cover for the occupants and visitors along with providing an attractive architectural detail for the overall building.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The proposed encroachment does not permit the building footprint to encroach beyond the minimum building envelope but rather to provide cover at entrances and attractive architectural detail.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The entrance canopy will provide necessary cover for the tenants to enter the building during inclement weather as well as allow shading for the entrance lobby in turn lowering the heat gain effect for this area. The extended eaves for the building provide an attractive architectural detail given the building's mass in relation to the surrounding built environment.-

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed encroachment is for entrance canopies and architectural detail and does not result in a breach of the minimum building envelope requirements by the building's footprint.

Shaffer moved to approve V15-43 without conditions to encroach into the minimum front setback standard for the front eave (0'-11") and for the front entrance canopy (3'-9") as illustrated on the plans reviewed herein; seconded by Papandreas. The motion carried unanimously.

- O. V15-39 / Grant Avenue, LLC / 400 block of Grant Avenue:** Request by Doug Warden, on behalf of Grant Avenue, LLC, for variance relief from Article 1361.03(Q)(8) and Article 1365.09 as it relates to curb cut location, width, and access drive aisle to and for parking spaces in the 400 block of Grant Avenue; Tax Map 19, Parcels 90 thru 95; R-3, Multi-Family Residential District.

Fletcher read the Staff recommendations for V15-39.

Burton made a motion to find in the affirmative for the all the Findings of Facts for V15-39 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed driveway curb cut locations, widths, and access drive aisle has been considered by the City Engineer and accepted to proceed toward building permit application at which time final designs will be reviewed and approved accordingly.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The proposed project appears to maximize access to parking from the rear alley as desired.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed parking access appears to follow similar access patterns to off-street parking by maximizing the use of the rear alley.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed access to the building's parking decks and surface stalls at the rear of the property significantly increases the proportional relationship between residents and off-street parking in a neighborhood where the demand for residential parking far surpasses current off-street and on-street supply.

Papandreas moved to approve V15-39 to permit a curb cut (driveway entrance) on Grant Avenue [Article 1361.03(Q)(8)]; to utilize the rear alley public right-of-way as an access drive aisle for the 16 proposed surface parking spaces [Article 1365.09(A)(4)]; to exceed the maximum driveway width standard of 22 feet at the Grant Avenue and rear alley rights-of-way lines and to permit the rear alley driveway entrance to be closer than 15 feet to the adjoining residential property line [Article 1365.09(B)(2)] as illustrated in the plans reviewed herein without conditions; seconded by Burton. The motion carried unanimously.

- P. V15-40 / Grant Avenue, LLC / 400 block of Grant Avenue:** Request by Doug Warden, on behalf of Grant Avenue, LLC, for variance relief from Article 1365.09(A)(1) as it relates to parking stalls in the 400 block of Grant Avenue; Tax Map 19, Parcels 90 thru 95; R-3, Multi-Family Residential District.

Fletcher read the Staff recommendations for V15-40.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V15-40 as revised; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed project adheres to the standard parking space sizes and arrangements per the local codes and ordinances with appropriate sight lines. Reducing parking stall width by six (6) inches only for those spaces adjoining structure columns appears to be a common design challenge for structured parking decks and should not serve to restrict the functional width of the affected stalls.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The minimum parking width dimension appears to reflect desired surface parking conditions but does not appear to recognize design challenges for parking decks below and structurally supporting occupied levels above.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The constructability of the proposed building appears to require structural support columns symmetrically located within the parking decks, which reduces the width of flanking parking stalls by only six (6) inches. Said width reduction does not appear to restrict the desired functional width of affected parking stalls.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The parking stall width reduction for those parking stalls flanking structural columns does not appear to reduce the functional width required for safe and effective ingress and egress to the effected stalls.

Papandreas moved to approve V15-40 without conditions to partially reduce the width of approximately 36 parking stalls by six (6) inches due to parking structure columns [Article 1365.09(A)(1)] as illustrated in the plans reviewed herein; seconded by Burton. The motion carried unanimously.

Q. V15-41 / Grant Avenue, LLC / 400 block of Grant Avenue: Request by Doug Warden, on behalf of Grant Avenue, LLC, for variance relief from Article 1361.03 as it relates to window design standards in the 400 block of Grant Avenue; Tax Map 19, Parcels 90 thru 95; R-3, Multi-Family Residential District.

Fletcher read the Staff recommendations for V15-41.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V15-41 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The nature of the variance relief will have no positive or negative impact on the public or the rights of adjoining property owners.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The minimum fenestration ratios and window recessing is more appropriate for street level commercial storefronts, which are not included in the proposed development. It appears that observance of the window design standards for the proposed building would significantly diminish the livability and quality of life of interior spaces given the resultant reduction in privacy and safety at the street level.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Similar variance relief has been granted for a number of residential developments within the Sunnyside Overlay Districts since 2006.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

It appears that the proposed window design provides for a higher degree of fenestration than similar high-rise developments in the Sunnyside Neighborhood by incorporating a rhythm of larger floor to ceiling windows in living rooms spaces along with standard bedroom-sized windows throughout the front and rear facades.

Shaffer moved to approve V15-41 from minimum ground floor transparency percentage [Article 1361.03(E)] and from recessing windows [Article 1361.03(O)(6)] as illustrated in the plans reviewed herein without conditions; seconded by Papandreas. The motion carried unanimously.

R. V15-42 / Grant Avenue, LLC / 400 block of Grant Avenue: Request by Doug Warden, on behalf of Grant Avenue, LLC, for variance relief from Article 1361.03 as it relates to cladding material standards in the 400 block of Grant Avenue; Tax Map 19, Parcels 90 thru 95; R-3, Multi-Family Residential District.

Fletcher read the Staff recommendations for V15-42.

Burton made a motion to find in the affirmative for the all the Findings of Facts for V15-42 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Incorporating cementitious fiberboard and brick/stone veneer in the proposed project will not be harmful to the public welfare or other improvements in the vicinity. The more durable products will last longer and need less maintenance than natural materials. The proposed building will improve the vicinity and hopefully spark future redevelopment in a somewhat blighted area.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

It appears that the predominant architectural designs of existing smaller buildings within the immediate area incorporate vinyl and wood siding materials. The use of cementitious siding, rather than vinyl or wood siding, and brick/stone veneer is intended to utilize more durable materials.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Variance relief has been granted by the Board of Zoning Appeals within the Sunnyside Overlay Districts for a number of residential developments to permit the use of cementitious siding and brick and stone veneers.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed building materials appear to be generally within the fitting character of the surrounding built environment. Market values of adjacent properties should increase with the proposed development and perhaps spark additional development in the area.

Papandreas moved to approve V15-42 for variance relief from natural material standards and ratios [Article 1361.03(P)(1)] and to use cement fiber paneling and lap siding and brick/stone veneer [Article 1361.03(P)(2)] as illustrated on the plans reviewed herein without conditions; seconded by Burton. The motion carried unanimously.

Cardoso reminded Mr. Sausen that the Board's decisions can be appealed to Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

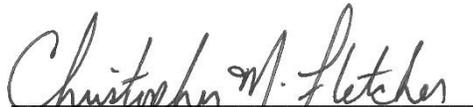
V. ANNOUNCEMENTS: None.

VI. ADJOURNMENT: 8:02 PM

MINUTES APPROVED:

June 15, 2015

BOARD SECRETARY:


Christopher M. Fletcher, AICP