

# BOARD OF ZONING APPEALS

## MINUTES

6:30 PM

June 20, 2012

City Council Chambers

**MEMBERS PRESENT:** Bernie Bossio, Leanne Cardoso, George Papandreas

**MEMBERS ABSENT:** Jim Shaffer, Tom Shamberger

**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.** Approval of the May 16, 2012 minutes. POSTPONED

**B.** Change July hearing date from July 18, 2012 to July 25, 2012. Cardoso moved to change the meeting date; seconded by Papandreas. Motion carried unanimously.

**III. OLD BUSINESS:** None

**IV. NEW BUSINESS:**

**A. CU12-05 / C&E Development / 701-715 McLane Avenue:** Request by C&E Development for conditional use approval of a "Multi-family Dwelling" use at 701, 709, and 715 McLane Avenue; Tax Map 15, Parcels 165, 166, 167; R-2, Single- and Two-Family Residential District.

Fletcher read the Staff Report, stating that the petitioner seeks to raze three existing single-family structures to construct two multi-family structures on the subject property. Addendum A of this report illustrates the location of the subject site.

Details of the proposed development program include the following.

North Building

- Two stories with an average building height of approximately 28' 8" feet
- Includes four dwelling units with a total of six bedrooms.
- Proposed setbacks:
  - Front ..... 10' 1"
  - North side ..... 29' 1"
  - South side ..... 9' 8"
  - Rear ..... 28' 8"

- Lot coverage will be approximately 29.0%
- Includes five parking spaces

South Building

- Two stories with an average building height of approximately 28' 8" feet
- Includes eight dwelling units with a total of twelve bedrooms.
- Proposed setbacks:
  - Front ..... 10' 1"
  - North side ..... 9' 8"
  - South side ..... 10' 1"
  - Rear ..... 28' 8"
- Lot coverage will be approximately 46.8%
- Includes nine parking spaces

The proposed development program meets the R-2 District building height, setback, and lot coverage standards set forth in Article 1337.04. The proposed parking plan meets the minimum number of parking stalls set forth in Article 1365.

The following approvals are necessary for the proposed development program:

- Site Plan for a "Development of Significant Impact" (Case No. S12-03-III), which was approved by the Planning Commission on June 14, 2012.
- Minor Subdivision (Case No. MNS12-10), which was approved by the Planning Commission on June 14, 2012.
- Conditional Use for a "Multi-family Dwelling" use in an R-2 District (Case No. CU12-05).

Bossio recongized Lisa Mardis, Project Management Services, located at 160 Fayette Street, who represented the applicant. She concurred with the Staff report, adding that the developer and architect took special care with the plans and shared in more detail the intentions of the developer.

Bossio opened the public hearing portion, asking if anyone was present to speak in favor or opposition to the request.

David Kelly, 107<sup>th</sup> Street, Morgantown, stated that he felt this Conditional Use request, if approved, would bring about a big change for the neighborhood. He is concerned that this may set a precedent where future developers may not be as concerned with the overall good of the neighborhood. He also stated that all houses currently have covered porches, and he would encourage that the porches be required if this is approved. He also encouraged tandem parking.

There being no further comments in favor or opposition, Bossio declared the public hearing portion closed.

Fletcher read several items of opposition that were received by his office: one from Fred Fiorini and a letter from David Kelly. There was also an item of correspondence from Sunnyside Up, stating that their board had given their approval and support to the project.

Bossio gave Mardis a chance for rebuttal. Mardis stated that there is a multi-family structure at 725 McLane Avenue. She stated that she had went over several scenarios with the developer and that he could have chosen to build 3 duplexes or 4 townhomes on the property and would not be required to provide as much parking.

Papandreas asked about whether the property across the street could be developed for additional parking. Mardis stated that it could, and that the developer may very well decide to do that for overflow parking. Papandreas asked how large the lot is, and if any other type of development could take place on it. Mardis stated that it is small and would require variances to build any type of structure.

Fletcher stated that the roofs that were discussed would require variance approval. The small piece of property that could potentially be used for overflow parking would require a conditional use if the developer decided to pursue that.

Fletcher read Staff recommendation, stating that it is the opinion of the Planning Division that the proposed redevelopment project represents a unique opportunity to modestly increase residential density within the R-2 District area of the Sunnyside Neighborhood. It appears that careful consideration has been given to architectural design, scale, and scope in an effort to integrate the proposed structures into the built environment as well as site planning to provide adequate buffering for adjoining single- and two-family structures and minimum on-site parking.

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 applicant. 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 Case No. CU12-05 with the following conditions:

1. That Minor Subdivision Petition MNS12-10 must be approved by the Planning Commission and conditions thereto observed.
2. That Development of Significant Impact Site Plan Petition S12-03-III must be approved by the Planning Commission and conditions thereto observed.
3. That a Landscape Plan meeting related standards set forth in Article 1367 must be submitted with the building permit application and approved by the Planning Division prior to building permit issuance.
4. That a Lighting Plan meeting the related standards set forth in Article 1371 must be submitted with the building permit application and approved by the Planning Division prior to building permit issuance.
5. That the development must be designed and constructed to meet all applicable federal Fair Housing and Americans with Disabilities Act standards as determined by the City's Chief Building Code Official.

6. That, to the satisfaction of the City Engineer, the existing sidewalk along the property's McLane Avenue frontage must be reconstructed to a minimum width of five feet.
7. That, to the satisfaction of the City Engineer, a new sidewalk with a minimum width of five feet must be constructed beginning at the McLane Avenue sidewalk noted in Condition 6. above thence along Seventh Street to the alley at the rear of the subject property.
8. That the shared solid waste containment enclosure must be constructed with masonry materials at least six feet in height and include opaque gates.
9. That, to the satisfaction of the Planning Division, a perpetual easement must be recorded with the deed(s) running with the subject property providing for access to common areas and facilities including private sidewalks, solid waste containment enclosure, parking, mail boxes, etc.

Papandreas commented that the Board can either look at this project as a stand-alone or it can take into consideration how it could affect future development.

Bossio stated that the Board must deal with each case separately, but that there is an element of being mindful of setting precedents. He asked how the Board felt about the size of the buildings.

Cardoso said she is not opposed to the size or the number of units since the developer can choose to have it in various ways. She stated she wished all developers would do as this one has done and consider the feelings of the neighborhood and adjacent property owners. She feels this is the best scenario, given the options.

Fletcher stated that the Planning Commission made a requirement that the porches be added.

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

Cardoso made a motion to approve request CU12-05 with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Bossio advised the petitioner that this decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

- B. CU12-10 / Suncrest Cafe / 3192 Collins Ferry Road:** Request by Richard Reeder, on behalf of Suncrest Café, for conditional "Private Club" use approval at 3192 Collins Ferry Road; Tax Map 55, Parcel 35.2; B-2, Service Business District.

Fletcher read the Staff Report stating that the petitioner seeks to convert the Suncrest Café's "Tavern" use classification to a "Private Club" use classification so that liquor may be sold in addition to beer and wine. Addendum A of this report illustrates the location of the subject site.

Article 1329.02 defines "Tavern" as:

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

Article 1329.02 defines "Private Club" as:

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

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

Therefore, in order to serve liquor, Suncrest Cafe must obtain conditional use approval as a "Private Club".

Section 1331.06 (18) provides that:

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

According to the petitioner, no exterior or interior modifications are presently proposed nor will existing outdoor seating be expanded. Therefore, noise at this location should not increase from existing conditions.

Bossio recognized Richard Reeder, 608 Callen Avenue, who stated that the place was changed to more of a food place with TV's to encourage the viewing of sports, which is why they would like permission to serve alcohol. No changes were made outside.

Bossio asked Mr. Reeder if the food menu had been expanded. Mr. Reeder answered in the affirmative. Bossio also stated he noticed a new paint job on the outside, to which Mr. Reeder stated that yes, it was done about a year ago. Bossio asked if there was a separate entrance to the gaming area. Mr. Reeder stated that the name of the entire place is called "Suncrest Café Hotspot", so there is no separate entrance.

Papandreas stated he thought you needed a liquor license to operate a Hot Spot. Bossio stated that you do not.

There being no further questions by the Boad, Bossio opened the public hearing portion of the meeting asking if anyone was present to speak in favor or in opposition to the request. There being none, Bossio declared the public hearing portion closed and asked for Staff's recommendation.

Fletcher read a letter from Kathy Hanko on June 8<sup>th</sup> who stated she is against the rezoning of the café to a hotspot. Fletcher did respond and clarified that this was not a rezoning request and explained the process of obtaining a Conditional Use.

Fletcher read the Staff recommendation, stating that it is the opinion of the Planning Division that the sale of liquor in addition to beer and wine within Suncrest Café should have no appreciable change in the character of the establishment or the surrounding area.

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 that Case No. CU12-10 be approved as requested with the following conditions:

1. That existing exterior seating and gathering space may not be expanded without the approval of the Board of Zoning Appeals.
2. That all regulated signage for the subject establishment must comply with related standards set forth in Article 1369 "Signs".
3. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.

Cardoso commented that, in looking at the Findings of Facts, she does not feel there would be any issue with any Finding in regards to this request. Bossio agreed, stating that they have been in business for many years and have received no violations.

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

Cardoso made a motion to approve request CU12-10, with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Bossio advised the petitioner that this decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

- C. V12-13 / Neidermeyer / 364 Kenmore Street:** Request by Chris Bailey on behalf of Presha Neidermeyer, for variance relief from Article 1333.04 as it relates to side yard setbacks at 364 Kenmore Street; Tax Map 7, Parcel 195; R-1, Single-Family Residential District.

Fletcher read the Staff Report stating that the petitioner seeks to construct a one-story addition to the rear of the existing house. Addendum A of this report illustrates the location of the subject site.

The side setback of the existing house is approximately four (4) feet from the property line, which encroaches into the minimum side setback requirement of ten (10) feet in the R-1 District. Because the existing house does not run parallel with the side property line, the proposed thirteen-foot addition from the house into the rear yard will increase the extent of the nonconforming side setback by six (6) to nine (9) inches.

Article 1373.02 (A) provides that:

“No legal, pre-existing structure may be enlarged, moved, or otherwise changed in such a manner that increases the extent of its non-conformity, unless a variance from the terms of the ordinance is obtained from the Board of Zoning Appeals.”

As such, the petitioner must obtain variance relief to extend the nonconforming setback and to increase the extent of the existing nonconformity by six (6) to nine (9) inches.

Bossio recognized Presha Neidermeyer, who explained that the Variance is being requested so that they can build a 13 ft. addition to the back of their existing home. Since the house was constructed before the present setback requirements were established, the Variance becomes necessary. The addition will increase the existing non-conformity by 6 – 9 inches. She noted that any addition to the rear of the home, using the existing footprint and roofline, do not appear to be capable of conforming to the minimum 10 ft. requirement as a result of the shape of the tract of property. It also appears that a number of other homes in the area are also closer than the minimum required 10 ft. setback. She also noted that the proposed addition will not diminish the character of the surrounding properties and should, in fact, help increase the values. She concurred with conditions stated in Staff recommendations.

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 or in opposition to the request. There being none, Bossio declared the public hearing portion closed and asked for Staff’s recommendation.

Fletcher read Staff recommendation stating 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 that the Board grant variance relief for Case No. V12-13 as requested with the following conditions:

1. That the proposed deck addition may be no closer than three (3) from the side property line as required by Article 1333.05(A)(2).
2. That any water runoff onto the adjoining property to the south that may exist presently must be corrected as a part the construction of the proposed addition.
3. That great care should be exercised in preserving the health and character of the privacy hedges separating the subject property from the adjoining property to the south.

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

Cardoso made a motion to approve request V12-13 with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Bossio advised the petitioner that this decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

- D. **V12-14 / Priddle / 533 White Avenue**: Request by Robert Priddle for variance relief from Article 1335.04 as it relates to front yard setbacks at 533 White Avenue; Tax Map 36, Parcel 309; R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating that the petitioner seeks to reconstruct a front porch roof that was demolished several years ago as a result of substantial fire damage. Addendum A of this report illustrates the location of the subject property.

According to several photographs submitted by the petitioner, the front porch area of the subject house once included a wraparound front porch roof. An addition has since been constructed to the house nearly doubling the structure's width along its White Avenue frontage.

According to the petitioner's site plan, the proposed front porch roof will extend from the house four (4) feet. City Planning and Engineering Staff visited the site and believe the front property line is at or very near the inside edge of the existing sidewalk based on the White Avenue right-of-way width and measurements taken of a retaining wall in front of the former school approximately 300 feet northwest of the petitioner's property.

The northwest setback of the original house from the inside edge of the sidewalk is approximately nine feet, four inches (9' 4"). The southeast setback of the original house from the inside edge of the sidewalk is approximately seven feet (7').

Article 1335.04(1) provides that the minimum front setback requirement in the R-1A District is eight (8) feet. However, Article 1335.05(A)(3) provides that:

"Open and covered, but un-enclosed front porches attached to single-family dwellings may extend into the required front setback a distance equal to fifty (50) percent of the setback depth. Such porches may not subsequently be enclosed unless the normal setback requirements for the district are met."

In other words, the petitioner's proposed un-enclosed front porch roof may extend no closer than four (4) feet from the front property line. Because a portion of the original structure's front setback appears to be less than eight (8) feet, variance relief is necessary to construct the roof as proposed.

Bossio recognized Robert Priddle, 533 White Avenue, who stated that this is mainly about aesthetics to improve the looks of the property.

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

Fletcher read Staff recommendation stating 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 that the Board grant variance relief for Case No. V12-14 so that the petitioner may construct a four-foot deep, un-enclosed front porch roof as requested.

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

Papandreas made a motion to approve variance petition V12-14 as requested; seconded by Cardoso. Motion carried unanimously.

Bossio advised the petitioner that this decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

- C. V12-15 / Cross / 1181 Sabraton Avenue:** Request by Emily Cross for variance relief from Article 1331.08 as it relates to accessory structures and uses in residential districts at 1181 Sabraton Ave; Tax Map 24, Parcel 178; R-1A, Single Family Residential District.

Fletcher read the Staff Report stating that the petitioner seeks to construct a detached garage and storage building utilizing a portion of an existing garage foundation along Sabraton Avenue that was built into the hillside. Addendum A of this report illustrates the location of the subject site.

Although the property is addressed to and fronts Sabraton Avenue, the principal structure was constructed closer to the rear alley than the frontage street. As such, the proposed accessory structure will be located in the property's front yard between the principal structure and Sabraton Avenue.

The petitioner's variance application and drawing provide that the proposed detached garage will be 24' X 20' and include two levels. According to the petitioner, the second level of the proposed accessory structure will be used for storage. The total square footage of the proposed garage/storage accessory structure is therefore 960 square feet (480 square feet X 2 levels).

According to recent aerial photography, the area of the principal structure is approximately 1,205 square feet. The proposed garage/storage structure is therefore 79.7% of the first or ground floor area of the principal building.

Article 1331.08 "Accessory Structures and Uses in Residential Districts" provides the following related provisions:

- (2) Accessory structures, if detached from a principal structure, shall not be placed in the front yard. If placed in a side yard, accessory structures shall not be located closer to the street than the required front setback of the principal structure.
- (7) The total square footage of all accessory structures shall not exceed fifty (50) percent of the first or ground floor area of the principal building.
- (9) Accessory structures shall not exceed eighteen (18) feet in height.
- (10) No accessory structure shall be constructed with a cellar or below-grade story.
- (11) No part of any such structure shall be designed or used for sleeping purposes, and no cooking fixtures shall be placed or permitted therein.

Based on the petitioner's proposed construction plans, variance relief is necessary from paragraphs (2), (7), (9), and (10) above.

It should be noted that there appears to be a number of detached garages that have been built into front yard hillsides within the area, two of which are located just west of the petitioner's property. However, Staff is concerned that the second level presents an unnecessary enforcement burden on the City to ensure that said space is not designed, constructed, or later used as an accessory dwelling unit.

Redeveloping the area of the present dilapidated garage foundation should serve to improve the Sabraton Avenue streetscape.

Bossio recognized Jon Welch, 1181 Sabraton Avenue, who added that the storage part above the garage will not be used for living quarters.

Papandreas asked how large the foundation was currently. Mr. Welch answered that he thinks it is 20 x 21 now.

Cardoso asked how high the ceiling would be for the storage area. Mr. Welch stated the peak would be 7 ft., with a total height of about 17 ft.

Fletcher stated that the original building permit had 2 levels. In working with the petitioner, it was revised so that the second level is not a full story.

There being no further questions by the Board, Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor or in opposition to the request. There being none, Bossio declared the public hearing portion closed and asked for Staff recommendations.

Fletcher read Staff recommendation stating 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 findings of fact developed with the petitioner.

Staff recommends that variance relief be granted for case V12-15 with the following conditions:

1. That the proposed second level intended by the petitioner for storage space may not be a full story in height thereby reducing the extent of variance relief sought and to aid in ensuring that said space is not designed or constructed as an accessory dwelling unit.
2. That no part of the proposed accessory structure may be designed or constructed for sleeping purposes and no cooking fixtures shall be placed or permitted therein as provided in Article 1331.08(A)(11).

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

Cardoso made a motion to approve V12-15 with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Bossio advised the petitioner that this decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

- D. V12-16 / Fantasy Nail Salon & Spa / 1137 Van Voorhis Road:** Request by Rudy Hoffert of City Neon, Inc., on behalf of Fantasy Nail Salon & Spa, for variance relief from Article 1369 as it relates to signage at 1137 Van Voorhis Road; Tax Map 6, Parcel 43; B-2, Service Business District.

Fletcher read the Staff Report stating that the petitioner seeks to erect a 30 square foot wall sign (3' H X 10' W) for the *Fantasy Nail Salon & Spa* establishment in the Chelsea Square commercial development at 1137 Van Voorhis Road. Addendum A of this report illustrates the location of the subject site.

Article 1369.07 (I) (1) of the Planning and Zoning Code provides that the maximum area of permitted wall signs in the B-1 District is 0.4 square feet for each linear foot of storefront.

The linear width of the subject storefront is 20 feet, which provides a maximum wall sign area of 8 square feet. As such, the petitioner must obtain a 22 square foot variance.

The petitioner also seeks to internally illuminate the proposed wall sign with fluorescent lamps. Article 1369.08(B) provides that signs within the B-1 District may not be internally illuminated. As such, the petitioner must obtain variance relief to internally illuminate the wall sign as requested.

Bossio recognized Rudy Hoffert, with City Neon, 428 Industrial Avenue, who added that the landlord would prefer that the sign be illuminated.

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 or opposition to the request. There being none, Bossio declared the public hearing portion closed and asked for Staff's recommendations.

Fletcher read Staff recommendation, stating that One of the stated purposes within the Planning and Zoning Code for sign regulations is to:

“...encourage the effective use of signs as a means of communication in the City, to maintain and enhance the pleasing look of the City, which attracts to the City continued economic investment; to preserve Morgantown as a community that is attractive to business, to residents and to visitors...” [Article 1369.01(A)]

Size restrictions are one of several means to accomplish this policy objective.

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

The Board granted similar wall sign variance relief within the Chelsea Square commercial development for Case No. V09-07 *Blended Way* and Case No. V09-15 *Kenyan Café*.

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

Papandreas made a motion to approve request V12-16 as requested; seconded by Cardoso. Motion carried unanimously.

Bossio advised the petitioner that this decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

- E. V12-17 / Southern States / 1974 Hunters Way:** Request by Brian SchROUT of Commercial Builders Inc., on behalf of Bruceton Farm Service, Inc., for variance relief from Article 1369 as it relates to maximum area of wall signage at 1974 Hunters Way; Tax Map 44A, Parcel 10; B-2, Service Business District.

Fletcher stated that the Staff reports for V12-17 and V12-18 have been combined. Fletcher read the Staff Report stating that the As a part of the new *Southern States* store currently under construction on the former Sterling Faucet site, the petitioner seeks, under variance petition V12-17, to erect two wall signs in addition to the five (5) walls signs for which a building permit has been approved and, under variance petition V12-18, relocate the existing post-and-panel sign from the current *Southern States* location at 1591 Earl Core Road to the 1974 Hunters Way site. Addendum A of this report illustrates the location of the subject site.

#### V12-17 – Wall Sign (area)

Article 1369.07 (I) of the Planning and Zoning Code provides that the maximum area of permitted wall signs in the B-2 District is 0.6 square feet for each linear foot of storefront. The linear width of the *Southern States* storefront is 265 feet. As such, the maximum wall sign area for the building is 159 square feet.

According to the petitioner's application exhibits, the total area of the five (5) signs for which a building permit has been approved is 151.57 square feet. This leaves 7.43 square feet available for additional wall signage.

The petitioner now seeks to erect two additional signs ("BFS Petroleum" and "Lawn & Garden") that have a total area of 74.43 square feet. The two additional wall signs require **variance relief of 67 square feet** as proposed.

#### V12-18 – Post-and-Panel Sign (height and area)

Article 1369.07 (F) provides that the maximum height of a post-and-panel sign is six (6) feet. The height of the post-and-panel sign proposed for relocation is 25 feet, which requires **variance relief of 19 feet**.

Article 1369.07 (F) provides that the maximum area of a post-and-panel sign is 32 square feet.

Article 1329.02 "Definitions" provides the following for a "Changeable Copy Sign":

"Any sign designed so that letters or numbers attached to the sign can be periodically changed to indicate a different message."

Changeable copy type signs are only permitted for marquee type signs [Article 1369.07(C)], menu board type signs [Article 1369.07(D)], and wall type signs for a theater use [Article

1369.07(I)]. As such, the changeable copy portion of the subject post-and-panel sign is considered nonconforming.

The area of the subject post-and panel sign is as follows:

- The upper *Southern States* portion is 80 square feet in area.
- The lower changeable copy sign portion is 28 square feet in area.
- The total area of the subject post-and-panel sign is therefore 108 square feet.

As such variance relief is necessary under the following two scenarios:

- Scenario 1: Relocation of entire sign  
**Variance relief of 76 square feet.**
- Scenario 2: Eliminating the changeable copy portion of the sign  
**Variance relief of 48 square feet.**

Please note that variance petitions V12-17 and V12-18 must be considered and acted upon by the Board separately.

Bossio recognized Gary Hatch, 206 Suzanne Rd., Director of Merchandising for BFS. He thanked Mr. Fletcher for working with him on this request. He stated the building is 265 ft. wide and is a good distance from Earl Core Rd. The sign on the front of the building would help identify the building from a distance. The relocation of the existing sign from old location on Earl Core Road to Hunter Way would include a changeable message board, again helping to identify it from a distance further away from the main road.

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 or in opposition to the request. There being none, Bossio declared the public portion closed and asked for Staff recommendations.

Fletcher stated that he received an email from Andrew Smith in support of the Variance request for signs. He did express concern regarding the process of staff recommended revisions and the Findings of Facts. Fletcher stated that he had exchanged several emails with him since receiving this first one.

Fletcher read Staff recommendation, stating that one of the stated purposes within the Planning and Zoning Code for sign regulations is to:

“...encourage the effective use of signs as a means of communication in the City, to maintain and enhance the pleasing look of the City, which attracts to the City continued economic investment; to preserve Morgantown as a community that is attractive to business, to residents and to visitors...” [Article 1369.01(A)]

Size restrictions are one of several means to accomplish this policy objective.

The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant. Again, variance petitions V12-17 and V12-18 must be considered and acted upon by the Board separately.

The Board granted similar wall and post-and-panel sign variance relief within the Earl Core Road corridor for at least the following petitions:

- Case No. V11-45 *LH Jones*
- Case No. V11-31 *Walgreens*
- Case No. V11-29 *Auto Zone*
- Case No. V11-15 *Glenmark Holding* (multi-tenant post-and-panel)
- Case No. V10-05 *JD Byrider*

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact for Case No. V12-17 (deleted matter struck through; new matter underlined). Staff offers no recommended conditions should the Board grant variance relief.

Cardoso commented that, given the distance from the main road, she feels the signs are fitting.

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

Papandreas made a motion to approve variance V12-17 as requested; seconded by Cardoso. Motion carried unanimously.

Bossio advised the petitioner that this decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk.

- F. V12-18 / Southern States / 1974 Hunters Way:** Request by Brian Schrouf of Commercial Builders Inc., on behalf of Bruceton Farm Service, Inc., for variance relief from Article 1369 as it relates to maximum height and area of post and panel signage at 1974 Hunters Way; Tax Map 44A, Parcel 10; B-2, Service Business District.

Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor or in opposition to the request. There being none, Bossio declared the public hearing portion closed and asked for Staff recommendations.

Fletcher read Addendum C of Staff recommendation, stating that Addendum C of this report provides Staff recommended revisions to the petitioner's findings of fact for Case No. V12-18 (deleted matter struck through; new matter underlined). Staff offers the following condition should the Board grant variance relief:

1. That the changeable copy portion of the subject post-and-panel sign be removed prior to relocation of same thereby reducing the extent of maximum sign area variance relief sought by the petitioner and to remove that portion of the subject post-and-panel sign that does not conform to Article 1369 "Signs" of the City's Planning and Zoning Code as it relates to where changeable copy type signs are permitted.

Papandreas asked for clarification on the relocation of the sign. Fletcher stated that Staff is suggesting that the sign be reduced and by removal the element of the sign that is not permitted.

Papandreas stated he does not have a problem with the changeable copy portion of the sign, being as far removed from the road as it will be.

Bossio agreed, but stated that the Board just needs to be cautious against setting a precedent.

Cardoso stated that she feels it would be different if it were a brand new sign, but it is the same sign, being moved from one location to another. She felt it was unlikely that the Board would encounter the same scenario in the future.

Bossio asked Mr. Hatch if he had a problem renovating the sign, if necessary.

Gary Hatch, 206 Suzanne Road stated that he still believes there is merit to the sign, even if located on Hunters Way. He stated that eventually Hunters Way will become more of an access route to other businesses as the area is developed. He also believes that since the sign is already in existence, and he assured the Board they that have no intention of putting in more obtrusive signage in the future.

Cardoso asked what would be involved in removing the portion of the sign. Mr. Hatch said that it is welded to the structure, so it would have to be cut. He added that there would be some expense to the renovation.

Fletcher agreed that this is a unique request, as he does not recall ever handling a request to relocate a sign such as this in the past.

Cardoso feels that each request needs to be considered on a case-by-case basis.

Papandreas made a motion to approve the Findings of Fact for request V12-18 as revised by Staff; seconded by Cardoso. Motion carried unanimously.

- a. The Board granted variance relief of 19 feet from the maximum height for post-and-panel signs as set forth in Article 1369.07 (F) of the Planning and Zoning Code.
- b. The Board granted variance relief of 76 square feet from the maximum wall sign area standard set forth in Article 1369.07 (F) of the Planning and Zoning Code as requested.

Papandreas made a motion to approve request V12-18 to grant variance relief of 19 feet from the maximum height for post-and-panel signs and to grant variance relief of 76 square feet from the maximum wall sign area standard; seconded by Cardoso. Motion carried unanimously.

Bossio advised the petitioner that this decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

- G. V12-19 / MVB Bank / Earl Core Road and Sterling Drive:** Request by Doug Forni of Thrasher Engineering, on behalf of MVB Bank, for variance relief from Table 1365.05.01 “Stacking Space Requirements” on property located at Earl Core Road and Sterling Drive; Tax Map 31, part of former Parcel 107; B-5, Shopping Center District.

Fletcher read the combined Staff Report for both request V12-19 and V12-20, stating that the petitioner seeks to construct a 3,672 square foot “Financial Services Establishment” use at the corner of Earl Core Road and Sterling Drive. Addendum A of this report illustrates the location of the subject site.

#### V12-19 – Stacking Space Requirement

Table 1365.05.01 “Stacking Space Requirements” of the Planning and Zoning Code provides that bank and ATM uses must have a total of seven (7) stacking spaces for the queuing of vehicles awaiting use of drive-through windows.

Table 1365.04.01 “Minimum Off-Street Parking Requirements” provides that “Financial Services Establishment” uses provide four (4) stacking spaces per drive-in lane.

Article 1329.01(D) provides that:

“In case of conflict between regulations the more restrictive shall apply.”

The petitioner’s proposed development program includes three drive-through lanes on the southeast side of the building and one ATM lane on the northwest side of the building. The site plan has been designed to provide four (4) stacking spaces for each lane. Any additional stacking spaces appear to obstruct a driveway or internal circulation way, which is not permitted under Article 1365.05.

As such, **variance relief** is necessary for the petitioner to develop **four (4) stacking spaces** for each of the four (4) drive-through lanes rather than seven (7).

It is the opinion of the Planning Division and the Engineering Department that the number of proposed drive-through and ATM lanes along with the respective number of stacking spaces proposed for the site appear to sufficiently accommodate drive-through queuing demand and that the spirit and intent of the Planning and Zoning Code are observed.

#### V12-20 – Side Setback Requirement

Article 1353.04 provides that that the minimum side setback requirement in the B-5 District is 30 feet. The petitioner’s proposed site plan illustrates that the drive-through roof canopy encroaches into the southwest minimum side setback requirement by six (6) feet. As such, a **six (6) foot variance** necessary for the petitioner to construct the roof canopy as proposed.

It is the opinion of the Planning Division that the proposed side setback encroachment results in the following benefits to the site and surrounding area:

- The exit onto Sterling Drive from the ATM lane that is located within the northeast side yard has been designed to maximize safety in terms achieving desired visibility angles for exiting vehicles.

- Although not considered by the petitioner, locating the building as proposed may aid in sustaining visibility of the *JD Byrider* and hotel establishments located behind the subject MVB Bank site.

Please note that variance petitions V12-19 and V12-20 must be considered and acted upon by the Board separately.

Bossio recognized Doug Forni, Thrasher Engineering, representing the MVP Bank. He complimented Mr. Fletcher for an excellent staff report. He presented a large poster board with pictures to illustrate what they proposed to do, which the Board found very helpful.

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 or opposition to the request.

Tim Turner, 34 Sterling Drive, representing J.D. Byrider, who stated that they are looking forward to having MVP Bank as a neighbor. He expressed some concern with visibility, since for a car dealership, visibility is a must. They are already somewhat limited by being back so far from the road and with the multi-tenant sign. His suggestion is that the Board consider and applicant consider reversing the drive-thru lanes to the opposite side of the building to help maximize visibility.

Fletcher stated that there were a number of scenarios reviewed by Staff, and the current one seemed to maximize the visibility and ability to keep the traffic on the site, whereas other options changed the character of the building and added more congestion to Sterling Drive.

Mr. Forni commented that he is in agreement that flipping the building would cause them to have to apply for a Variance for the other side and would also cause an immediate turning movement if the drive-thru was on the opposite side.

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

Fletcher read Staff recommendation, stating 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. Again, variance petitions V12-19 and V12-20 must be considered and acted upon by the Board separately.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact for Case No. V12-19 (deleted matter struck through; new matter underlined). Staff recommends approval of the variance as requested with no conditions.

Papandreas made a motion to approve the Findings of Fact for request V12-19 as revised by Staff; seconded by Cardoso. Motion carried unanimously.

Papandreas made a motion to approve variance V12-19 as requested; seconded by Cardoso. Motion carried unanimously.

Bossio advised the petitioner that this decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

- H. **V12-20 / MVB Bank / Earl Core Road and Sterling Drive:** Request by Doug Forni of Thrasher Engineering, on behalf of MVB Bank, for variance relief from Article 1353.04 as it relates to side yard setbacks on a property located at Earl Core Road and Sterling Drive; Tax Map 31, part of former Parcel 107; B-5, Shopping Center District.

Bossio opened the public hearing asking if anyone was present to speak in favor or opposition to the request. There being none, Bossio declared the public hearing portion closed and asked for Staff recommendation.

Fletcher read Addendum C of the Staff Report stating that Addendum C of this report provides Staff recommended revisions to the petitioner's findings of fact for Case No. V12-20 (deleted matter struck through; new matter underlined). Staff recommends approval of the variance as requested with no conditions.

Cardoso made a motion to approve the Findings of Fact for request V12-20as revised by Staff; seconded by Papandreas. Motion carried unanimously.

Papandreas made a motion to approve variance V12-20 as requested; seconded by Cardoso. Motion carried unanimously.

Bossio advised the petitioner that this decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

**V. OTHER BUSINESS:**

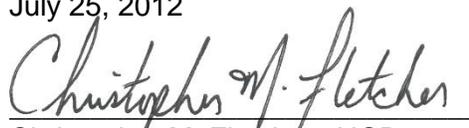
- A. Public Comments: None
- B. Staff Comments: Bossio read a letter he received from the West Virginia Ethics Commission, dismissing ethical allegations by Andrew Smith relating to the 424 Drummond Street cases.

**VI. ADJOURNMENT: 8:30 PM**

MINUTES APPROVED:

July 25, 2012

BOARD SECRETARY:

  
Christopher M. Fletcher, AICP