

MORGANTOWN BOARD OF ZONING APPEALS

6:30 PM

MINUTES

CITY COUNCIL CHAMBERS

July 16, 2008

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

MEMBERS ABSENT: None

STAFF: Christopher Fletcher, AICP

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

II. MATTERS OF BUSINESS:

A. Approval of May 21, 2008 meeting. Papandreas moved to take off the table approval of the May 21, 2008 minutes; seconded by Shaffer. The motion passed unanimously. Shaffer moved for approval of the May 21, 2008 minutes as submitted; seconded by Cardoso. The motion passed, with Shamberger abstaining since he did not attend the May 21 meeting.

B. Approval of June 18, 2008 meeting. Papandreas moved to approve the June 18 minutes as submitted; seconded by Shamberger. The motion passed with Shaffer and Cardoso abstaining since they did not attend the June 18 meeting.

III. OLD BUSINESS: None

IV. NEW BUSINESS:

A. V08-30 / Krabill / Lot #11 French Quarters Drive. Request by R. Scott Krabill for variance approval from the Planning and Zoning Code, Article 1335.04 (B) Setbacks as it relates to side yard setback on the side facing a street for property located in the French Quarter, Lot #11, adjoining Eastern Avenue; Tax Map #55 Parcel #11; an R-1A, Single-Family Residential District.

Fletcher read the Staff Reporting stating that the petitioner seeks to construct a single-family dwelling in the French Quarters subdivision on Parcel 11 of Tax Map 55B (lot 11). Addendum A of this report illustrates the location of the site and a photograph the subject area.

Article 1335.04 (B) of the Planning & Zoning Code provides that:

On a corner lot, the front lot line shall be the lot line having the shortest dimension along the street right-of-way line. The required side yard setback on the side facing a street shall be one and one-half (1.5) times the normal side setback requirement.

The proposed site plan demonstrates conformance with the front, rear, and western side setback standards. However, the eastern setback is proposed at 5 feet, which encroaches into

the 7.5 feet minimum required side setback for the corner lot. As such, a variance of 2.5 feet must be approved by the Board of Zoning Appeals.

Bossio advised he would recuse himself if petitioner requested since he owns property adjacent to the property in question and because he is a developer. Krabill stated he did not believe that was necessary.

Scott Krabill, representing the petitioner Culton Construction, stated that the subdivision was applied for in 2005 before there was a change in the zoning ordinance's setbacks. Since then, the corner lot request is to have one and one half times the side yard setback on the side closest to the road. There was originally five feet, but now needs seven and one half feet. That number cannot be met with the current lot configuration.

Shaffer questioned that he had noticed the last house in the area is set forward closer to the street and wondered if there is any code the Planner Director or developer is aware of that says it needs set back further to line up with the other houses. Krabill replied he would need a larger variance to make it even with those structures. Fletcher advised that single-family dwellings must provide two off street parking spaces, which is provided with the two-car garage. Fletcher stated that he agrees that the front setback as proposed does not provide enough room for two additional parking spaces in front of the garage without encroaching into the right-of-way.

Bossio asked for public comment, either for or against this request. There being none, Bossio closed the public comment portion of the meeting and asked for staff's recommendations.

Fletcher stated that Staff recommends approval of the variance as requested by finding in the affirmative for each of the Findings of Fact as revised by Staff.

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

“In October 2007, the Board granted a similar setback variance, in terms of lot shape, within this subdivision. The subdivision was approved in 2005, before the current zoning regulations were enacted. Previously, the side setback in R-1A was five (5) feet regardless of whether the lot was considered a corner lot or not.”

Shaffer moved to find in the affirmative for Finding of Fact #1, as recommended by Staff; seconded by Papandreas. The motion passed unanimously.

Shaffer then moved to dispense with the reading of the remaining Findings of Fact, and find in the affirmative for findings #2, #3 and #4 as recommended by Staff; seconded by Papandreas. The motion passed unanimously.

NOTE: The revised Findings of Fact #2, #3 and #4 included in the Staff Report were:

Finding of Fact #2 – The subdivision was approved in 2005 before the current zoning regulations were enacted. Previously, the side setback in R-1A was five (5) feet regardless of whether or not the lot was considered a corner lot. In October 2007, the Board granted a similar setback variance, in terms of lot shape, within this subdivision.

Finding of Fact #3 – It appears that only a small portion of the structure to the rear encroaches into the minimum side yard setback for corner lots. The proposed structure appears to be buffered from the property line and right-of-way by a decorative masonry and wood fence running the length of the development along Eastern Avenue. The proposed setback will not obstruct the view of vehicles exiting the development onto Eastern Avenue.

Finding of Fact #4 – The encroachment does not appear to undermine the intent of increased side setback on corner lots as the distance of the side setback at the front of the proposed structure, where vehicles are entering and exiting the development, is significantly larger than the minimum 7.5 feet. The variance will enable the remaining lot to enjoy the same building footprint used throughout the French Quarters development. The variance cannot improve nor contribute to traffic congestion.

Shaffer moved to grant variance approval for V08-30 as requested; seconded by Shamberger. The motion passed unanimously.

Bossio advised the petitioner that the Board’s decision could be appealed to Circuit Court within 30 days and that any work done during this period would be at the sole financial risk of the petitioner.

B. V08-31 / Heiskell / 221 E. Brockway Avenue. Request by Justin Heiskell for variance approval from the Planning and Zoning Code, Article 1369, Signs, as it relates to height for signage at 221 E. Brockway Avenue; Tax Map #30 Parcel #74; a B-2, Service Business District.

Fletcher read the Staff Report stating that Mr. Justin Heiskell, owner of Mudsucker’s Car Wash, seeks to increase the height of his existing post and panel sign at 221 E. Brockway Avenue. The sign appears to meet all regulations set forth in the Planning & Zoning Code for a post and panel signage.

Article 1369.07 (F) (1) (a) of the Planning & Zoning Code, “Post and Panel Sign”, provides that “Such signs shall not exceed 6 feet in height.”

The petitioner stated in his application that he seeks to increase the height of the subject sign for safety reasons by increasing site distance. Mr. Heiskell also stated that the current sign has been vandalized due to it’s proximity to the ground and adjacent sidewalk.

The following table illustrates the present and proposed conditions.

Dimension	Current	Proposed
Height from ground to bottom of sign	> 1 ft.	6 ft.
Height from ground to top of sign	≈ 6 ft.	12 ft.
Width of sign panel	4 ft.	4 ft.
Height of sign panel	6 ft.	6 ft.
Area of sign	24 ft. ²	24 ft. ²

Justin Heiskell / 11 Wren Lane, Morgantown presented his petition stating that the original sign as approved and where it is now positioned does not give a clear view of oncoming traffic when vehicles are pulling out of the automatic bay. This sign had also been vandalized approximately one month ago, and was reported to Morgantown City Police.

Bossio asked for public comment speaking in favor, or against this request. There being none, Bossio closed the public comment portion of the hearing and asked for staff's recommendations.

One of the stated purposes within the Planning & Zoning Code for sign regulations is to:

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

Height restrictions are one of several means to accomplish this policy objective. As the applicant indicated, the placement of the existing sign was reviewed closely by the City Engineer. Preservation of a clear site triangle was also closely assessed in approving the existing sign. It appears that the primary benefit of increasing the height of the sign is to mitigate vandalism vulnerabilities.

The Board of Zoning Appeals must determine whether the petitioner's request meets the standard criteria for a variance by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant.

Staff recommended the following conditions be included in granting a variance:

1. That the area of the post and panel sign may not be increased from the current 24 sq. ft.
2. That the sign and structural components of the increased sign must meet all applicable building codes (i.e. wind load, anchoring, etc.).
3. That the area between the posts and below the panel sign may not be closed, covered, or obstructed.
4. That no additional permanent signage for the subject establishment may be erected at this location.

Shaffer moved to dispense with the reading of Finding of Fact #1 thru #4 and find in the positive for all four with Staff's recommended revisions; seconded by Cardoso. The motion passed unanimously.

Shaffer then moved to grant variance approval for V08-31, with Staff's recommended conditions; seconded by Papandreas. The motion passed unanimously.

NOTE: The revised Findings of Fact for #1, #2, #3, and #4 included in the Staff Report were:

Finding of Fact #1 - The current height of the sign and its proximity to the adjacent sidewalk create opportunities of destruction and/or vandalism of same, which have been suffered at the subject site. There are similar signs within the area that are elevated and thereby reduce similar vulnerabilities.

Finding of Fact #2 - Because the neighboring structure has a very little if any setback, visibility of the car wash is very restricted, thus requiring a sign nearest East Brockway. Neighboring commercial properties all have elevated signs that exceed the maximum six foot height standard.”

Finding of Fact #3 - It appears that the clear line of site for vehicles entering East Brockway from Nolan Avenue could be improved by increasing the height of the subject sign.

Finding of Fact #4 - Increasing the height of the existing the sign will not lower market values, or change the character of retail within the vicinity, or contribute to increased traffic. The existing land use will not change.

C. V08-32 / Morlino / 300 Carson Street. Request by William Morlino for variance approval from the Planning and Zoning Code, Article 1361, Sunnyside Overlay District at 300 Carson Street; Tax Map #20 Parcel #148; an R-3, Multi-Family Residential and South Sunnyside District.

Fletcher read the Staff Report stating that for the past two years, the petitioner has razed some of his deteriorating, functionally obsolete multi-family rental structures in the Sunnyside Neighborhood and developed surface commercial parking lots in their place. The petitioner’s objective is to provide leased parking spaces within the Sunnyside Neighborhood and within close proximity of the downtown campus. Addendum A of this report illustrates the location of the subject sites, other developed parking lots by the petitioner, and surrounding conditions.

The petitioner currently seeks to do the same on Parcels 147 and 148 of Tax Map 20. Parcel 148, 300 Carson Street is situated on the corner of Carson Street and Grant Avenue. The existing structure at 300 Carson Street contains three multi-family dwelling units, one of which has been condemned by the City.

Because the Parcels 147 and 148 are located in the R-3 District and the South Sunnyside Overlay District, the petitioner must obtain the following approvals:

- V08-32 – variance relief for Parcel 148 from Article 1361.03 (Q) (4) of the Planning & Zoning Code, which provides that:
“...surface lots shall not be constructed where two (2) public rights-of-way intersect.”
- CU08-11 – conditional use approval for the development of a “Commercial parking lot” use in the R-3 District on Parcels 147 and 148.

Addendum B of this report identifies Planning & Zoning Code provisions related to the development of a commercial surface parking lot on the subject site.

It should be noted that the petitioner has not met with the Technical Review Team to evaluate the proposed site plan. Given the required approvals by the Board and the project’s limited scale, Staff considered it prudent for the petitioner to obtain said approvals first as a more efficient approach for both the petitioner and Staff.

William Morlino, 2045 University Avenue spoke on behalf of his variance and conditional use request and stated that he wants to tear down the existing structure and put in a parking lot.

Shaffer questioned whether or not the petitioner had any plans to integrate all the parking lots.

Morlino stated only if there was an advantage to it. Presently all the parking lots are separate and have guard rails. He believes if they are combined, he would be losing parking spaces. Since he was not familiar with the technique, Shaffer asked the petitioner to explain the technique, impervious concrete, he would be using to pave this lot.

Morlino stated it is impervious concrete which allows the water to drain back into the ground. He explained it was difficult to find someone who had tried this technique but did find someone in Charleston and Ohio who did it. It is similar to concrete, with a rough, unfinished surface, similar to just rocks in mortar. It is put down with an asphalt spreader.

Papandreas questioned the resilience of the surface and whether or not it would crack.

Bossio stated he had spoken to someone who has used this technique and they found that road salt would cause some type of damage. Morlino stated he was not aware that salt would cause any type of problem and asked for contact information from Bossio so that he may contact the person who had done this procedure.

Shaffer asked if Morlino was aware and agreeable of the conditions recommended by Staff. Morlino replied he was.

Bossio asked for public comment speaking in favor, or against this request. There being none, Bossio closed the public comment portion of the hearing and asked for staff's recommendations.

Fletcher stated that it is the opinion of the Planning Department that the development of surface parking lots as undertaken by the petitioner may not represent the highest and best use of these strategically located parcels.

However, the removal of functionally obsolete and deteriorating housing stock in the area of the subject site appears desirable. The site is located within close proximity to West Virginia University's newest Honors Dormitory, which is currently under construction. The new dormitory is reported to include five floors, 91,000 square feet, and 362 beds in the suite-like apartments at an estimated investment of \$19.5 million.

The availability of off-street parking in the Sunnyside Neighborhood limited as noted in the Sunnyside Up Comprehensive Revitalization Plan. Developing leasable spaces should bring value to neighboring rental dwelling units as an amenity. The proposed project should not hinder but rather stimulate redevelopment interest in the property as it will result in a larger assembled tract where functionally obsolete and deteriorating structures have been removed.

Staff has received complaints concerning the petitioner's delays in surfacing other recently developed commercial parking lots. The petitioner has indicated that his surfacing plans include the use of pervious asphalt or concrete to reduce and/or eliminate the need to develop storm water retention facilities. The project could serve as an example for other developers interesting in employing alternate storm water management techniques. The availability of pervious surfacing materials and contractors skilled in its application is limited in this market. The petitioner also indicated that staging pervious paving work is critical and that the Board's approval of the subject petitions will enable him to schedule the work during the summer of 2009.

The Board must determine whether the proposed request meets the standard criteria for a variance and a conditional use by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant. Please note that, although both approvals are necessary for the proposed development, the variance and conditional use petitions must be considered and acted upon by the Board separately. Staff recommendations follow the approval headings provided below.

Variance Case No. V08-32 / Morlino / 300 Carson Street

Staff concurs with the petitioner’s Findings of Fact and recommends approval with the following conditions:

1. That the related conditional use petition (CU08-11) be approved by the Board of Zoning Appeals and that all conditions thereto be met.
2. That the petitioner meet with the Technical Review Team to review the proposed site plan (i.e., parking lot layout, design, landscaping, etc.) and that all required design modifications be addressed prior to building permit application.
3. That the site plan, design, and development of said parking lots meet all applicable standards set forth by Article 1365 “Parking, Loading, and Internal Roadways” of the Planning & Zoning Code.
4. That the Landscape Plan be reviewed and approved by the Planning Director prior to installation and occupancy. Variance approval must be obtained should the Landscape Plan not conform to the performance standards set forth in the City’s Planning & Zoning Code.
5. That a Lighting Plan, if necessary, be submitted with the building permit application for review and approval by the Planning Director. Variance approval must be obtained should the Lighting Plan not conform to the performance standards set forth in the City’s Planning & Zoning Code.
6. That a right-of-way access permit(s) be approved by the City Engineer prior to building permit issuance.
7. That a storm water management plan be approved the Morgantown Utility Board prior to building permit issuance.
8. That all existing structures on Parcel 148 be razed prior to building permit issuance for the development of the proposed commercial parking lot.

CONDITIONAL USE CASE NO. CU08-11 / MORLINO / 300 CARSON STREET

Staff concurs with the petitioner’s Findings of Fact and recommends approval with the following conditions:

1. That the related variance petition (V08-32) for Parcel 148 of Tax Map 20 be approved by the Board of Zoning Appeals and that all conditions thereto be met.
2. That the petitioner meet with the Technical Review Team to review the proposed site plan (i.e., parking lot layout, design, landscaping, etc.) and that all required design modifications be addressed prior to building permit application.

3. That the site plan, design, and development of said parking lots meet all applicable standards set forth by Article 1365 "Parking, Loading, and Internal Roadways" of the Planning & Zoning Code.
4. That the Landscape Plan be reviewed and approved by the Planning Director prior to installation and occupancy. Variance approval must be obtained should the Landscape Plan not conform to the performance standards set forth in the City's Planning & Zoning Code.
5. That a Lighting Plan, if necessary, be submitted with the building permit application for review and approval by the Planning Director. Variance approval must be obtained should the Lighting Plan not conform to the performance standards set forth in the City's Planning & Zoning Code.
6. That a right-of-way access permit(s) be approved by the City Engineer prior to building permit issuance.
7. That a stormwater management plan be approved the Morgantown Utility Board prior to building permit issuance.
8. That all existing structures on Parcel 148 be razed prior to building permit issuance for the development of the proposed commercial parking lot.
9. That the subject commercial parking lots shall be utilized solely for the parking of automobiles, motorcycles, and/or bicycles. Said parking lots shall not be used for the storage, display, sale repair, dismantling or wrecking of any vehicle, equipment or material.
10. That automobiles and motorcycles without current license plates and inspection stickers or in an inoperable condition so as to be deemed dead storage shall be prohibited on the subject commercial parking lots.
11. That solid waste cans, toters, dumpsters, etc. may not be situated on the subject sites.
12. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.

Bossio asked the Planner who was complaining about the parking lot not being paved. Fletcher stated several complaints were received by the Planning Office. Fletcher then went on to say that parking lots in parcels 146 and 151 were permitted by-right and while no conditional use was required, the lots had to be resurfaced within 12 months. Staff does not recommend including any conditions that relate to parcels 146 and 151 because they do not require the BZA's involvement. Only parcels 147 and 148 require the BZA's attention.

Bossio stated his only concern was that complaints had been received and questioned when the permit for 146 and 151 was issued since a requirement for Morlino was to have the work completed within a 12 month period. Morlino stated it was sometime in July of 2007. Bossio advised the petitioner that as part of the condition was to resurface the parking lot. Morlino stated this issue was not the reason he was at the BZA.

Bossio explained his concern was that if approval was given, how would the BZA know that he would do what was required when he had not done what was required of him before.

Morlino stated that he is concerned about where storm water run off will be, and has not yet looked into that, so that is one reason paving was not completed. After some discussion Morlino stated that he would pave the lot with in 12 months. He also asked the Planner who was complaining about the lot, because he was never told, although he knew it was the City Engineer. He said the city is arbitrary and capricious when deciding its standards.

Fletcher stated the petitioner is scheduled to meet with the Technical Review Committee within the next two weeks. At that time they will discuss adding parcel 130 with the others and paving all the lots.

Shaffer asked what Morlino's timeframe might be. He stated he was waiting on asbestos abatement for the house, but hoping for August 15.

Bossio asked for the reading of the Findings or Fact for V08-32.

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

“The structure on the property is functionally obsolete and should be razed. The proposed commercial parking lot expands the same type of development and use recently completed on adjacent Parcels 147 and 150 of Tax Map 20. Commercial parking lots are permitted in the R-3 district, except on corner lots within the Sunnyside Overlay Districts.”

Shaffer moved to find in the affirmative for Finding of Fact #1; seconded by Papandreas. The motion passed unanimously.

Shaffer then moved to dispense with the reading of Findings of Fact #2 through #4 and find in the positive for the remaining Finding of Fact as submitted; seconded by Papandreas. The motion passed unanimously.

Shaffer moved to grant approval for V08-32 with conditions recommended by Staff; seconded by Papandreas. The motion passed unanimously.

NOTE: The Finding of Fact for #2, #3 and #4 included in the Staff report were:

Finding of Fact #2 – The proposed commercial parking lot extends the same type of development and use recently completed on adjacent Parcels 147 and 150 of Tax Map 20.

Finding of Fact #3 – The availability of parking in the Sunnyside Neighborhood is very limited. Developing leasable spaces should bring value to neighboring rental dwelling units as an amenity.

Finding of Fact #4 – The availability of parking in the Sunnyside Neighborhood is very limited. Developing leasable spaces may aid in reducing on-street parking congestion within the immediate area and bring value to neighboring rental dwelling units an amenity.

D. CU08-11 / Morlino / 300 Carson Street. Request by William Morlino for conditional use approval from the Planning and Zoning Code, Article 1361, Sunnyside Overlay District at 300 Carson Street; Tax Map #20 Parcel #148; an R-3, Multi-Family Residential and South Sunnyside District.

Bossio asked Morlino if he wished to provide any additional information concerning his conditional use request. Morlino said that he did not.

Bossio asked for public comment, either in favor or against Morlino's conditional use request. There being none, Bossio closed the public comment portion of the meeting was closed and asked staff's recommendations.

Shaffer asked Fletcher to read only the conditional use differences versus those in the variances. Fletcher advised the differences were contained in #9, #10, #11 and #12. All other conditions fall back to the other provisions in the City's Planning and Zoning Code.

Shaffer moved to dispense with the reading of the findings of fact and find in the positive for all each as submitted; seconded by Cardoso. The motion passed unanimously.

NOTE: The Finding of Fact for #1 through #8 included in the Staff Report were:

Finding of Fact #1 – The availability of parking in the Sunnyside Neighborhood is very limited. Developing leasable spaces may aid in reducing on-street parking congestion within the immediate area.

Finding of Fact #2 – The demolition of the existing structure to develop the proposed commercial parking lot will eliminate building and/or fire code violations that may exist.

Finding of Fact #3 – The development of the proposed commercial parking lot will result in the demolition of the existing structure thereby increasing the provision of light and air to surrounding buildings.

Finding of Fact #4 – The development of the proposed commercial parking lot will result in the demolition of all existing structures.

Finding of Fact #5 – The development of the proposed commercial parking lot will result in the demolition of all existing habitable structures.

Finding of Fact #6 – The development of the proposed commercial parking lot will result in the demolition of all existing habitable structures thereby eliminating the need for said public services. Storm water management facilities will be provided in accordance with Morgantown Utility Board requirements.

Finding of Fact #7 – The availability of parking in the Sunnyside Neighborhood is very limited. Developing leasable spaces should bring value to neighboring rental dwelling units as an amenity.

Finding of Fact #8 – The availability of parking in the Sunnyside Neighborhood is very limited. Developing leasable spaces should bring value to neighboring rental dwelling units as an amenity. The proposed project should not hinder but rather stimulate redevelopment interest in

the property as it will result in larger assembled tract where functionally obsolete and deteriorating structures have been removed.

Shaffer moved to grant conditional use approval for CU08-11 with the conditions recommended by Staff; seconded by Papandreas. The motion passed unanimously.

Bossio advised Morlino that the Board's decision could be appealed to Circuit Court within 30 days and that any work done during this period would be at the sole financial risk of the petitioner.

E. CU08-12 / A & L Enterprises / 401 Spruce Street. Request by A and L Enterprises for conditional use approval from the Planning and Zoning Code, Table 1331.05.01 Permitted Land Uses as it relates to multi-family dwellings in the B-4, General Business District at 401 Spruce Street. Tax Map #26 Parcel #91; a B-4, General Business District.

Fletcher read the Staff Report stating that the petitioner seeks to convert existing first floor commercial space at 401 Spruce Street to two (2) dwelling units. The second floor contains one (1) dwelling unit. The current use of the structure is considered "Mixed-use Dwelling", which is permitted by-right in the B-4 District (see Table 1331.05.01 "Permitted Land Use Table" of the Planning & Zoning Code). By converting the first floor space, the use of the structure will be considered "Multi-family Dwelling", which requires conditional use approval in the B-4 District.

The adjacent structure at 419 Spruce Street is considered "Multi-family Dwelling" and contains five (5) dwelling units. It appears that the adjacent use is considered a grandfathered use. The remaining structures within the immediate area that contain residential uses appear to be "Mixed-use Dwelling" types.

Richard Brant, President of Main Street Morgantown, submitted a letter dated July 2, 2008, attached hereto, expressing concerns that the storefront (grade level) be preserved for non-residential uses and requesting the Board to deny the petitioner's request.

Gregg Goff, owner of the Goff Insurance Services, LLC and the subject building, submitted a letter dated July 3, 2008, attached hereto, sharing his experience with operating a non-residential use on the first floor and requesting the Board to approve the petitioner's request.

Mike Gallagher of 360 Charleston Avenue spoke on behalf of his conditional use request. He noted that a number of businesses, Spruce Street Sub Shop and Fatheads, on Spruce are no longer open and believes this is due to the fact that that Spruce Street does not enjoy the same type of foot traffic that the businesses on High Street do. His own business, Ed & Mark Locksmiths, is also suffering. He also said parking in the city lot is a problem when the students are in town.

Bossio suggested that changing the façade of the building to make it look more commercial may be helpful. He also suggested looking into the grants that are available through Main Street Morgantown for that type of change. Gallagher has not had any discussions with Main Street.

Gallagher stated that he has this building under contract with the condition that the conditional use variance is granted. Gregg Goff, Goff Insurance Company, the building's previous owner stated the building had no appeal for customers. Gallagher advised he presently has some 127 rental properties and it is not his intention to do anything commercial.

Bossio noted that the Board denied a conditional use variance to Mode Roman, and they have even less foot traffic than Spruce Street. Gallagher did not agree with that.

Shaffer stated it may not be a matter of traffic but what actually goes in there that would make it appealing.

Bossio asked for public comment, either in favor or against the request. There being none, Bossio closed the public portion comment of the meeting and asked for staff's recommendations.

Fletcher read the Staff Report stating that the objective of mixed-use development and land use patterns is to contribute to the creation of places that enliven urban centers while meeting the everyday needs of the community. Mixed-use development offers many advantages over single-use development in fostering better urban environments including:

- Sense of Community – Mixed-use development provides opportunities for community interaction by catering to a diversity of people and uses in one place.
- Vitality – Diversified, mixed-use urban centers become community destinations.
- Convenient Access – The mixing of diverse uses within proximity of public spaces, services, and amenities makes it possible to reduce vehicle trips and encourage shared parking and transit ridership.
- Pedestrian-Friendly Environment – Mixed-use development provides more opportunities for convenient and safe pedestrian access.
- Longer Hours of Active Street Life – A range of uses are generally active at different times of the day or on different days of the week, which activates the space for longer hours than is possible for any one single use type.
- Safety – Mixing residential, commercial, and professional activities within a compact area ensures activity throughout the day and evening, creating a sense of safety.

Because the Planning & Zoning Code provides that “mixed-use” and “over-store” dwelling uses are permitted by-right in the B-4 District, it appears that the preferred residential use pattern is to maintain and preserve a non-residential presence at street level. However, “multi-family” dwelling conditional use status in the B-4 District affords the Board an opportunity to review requests on a case-by-case basis.

There appears to be several conditions around the subject site that should contribute to the success of a suitable non-residential use on the first floor of the subject building, including:

- Availability of on-site parking
- Access to and availability of public parking, both metered curb and metered lots, within close proximity of the subject site.
- Anchor public uses within close proximity that include churches, government offices, public library, etc.
- Low commercial vacancy rates along Fayette Street between High and Spruce Streets.
- High visibility of the subject site created by the traffic light at Spruce and Fayette Streets; activity at City Hall; Farmers’ Market across the street on Saturdays during summer months, etc.

- High daily traffic volumes along Spruce Street.
- A fixed public transit stop within one block of the subject site.

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.

It is the opinion of the Planning Department that the preservation and continued development of at-grade commercial leasable space is paramount to ensuring desired mixed land use patterns within the B-4 District. Further, the petitioner has not demonstrated that said conversion is within the fitting character of the surrounding area in terms of conserving the value of buildings; nor has it been demonstrated that said conversion is consistent with the spirit, purpose, and intent of Planning & Zoning Code in terms of the most appropriate use.

Staff recommends the following revisions to the petitioner’s findings and that the petitioner’s request be denied based on the negative determinations provided for Findings of Fact #7 and #8 (deleted matter struck through; new matter underlined):

Finding of Fact #1: The proposed use is within an existing structure. Although parking is not required for the proposed use, there are spaces available on site and public parking is available within close proximity. Shaffer moved to find in the positive for Finding of Fact #1; Papandreas seconded it. The motion passed unanimously.

Finding of Fact #2: – The structure will be required to meet all city building and fire code regulations and standards. Shamberger moved to find in the positive for Finding of Fact #2; Papandreas seconded it. The motion passed unanimously.

Finding of Fact #3: The additional units will be contained within the existing structure thereby not resulting in an increase in building height or footprint. Papandreas moved to find in the positive for Finding of Fact #3; Shamberger seconded it. The motion passed unanimously.

Finding of Fact #4: There will be no change in footprint of the building. The existing uses of the structure are one residential unit and one commercial/office unit. Cardoso moved to find in the positive for Finding of Fact #4; Shamberger seconded it. The motion passed unanimously.

Finding of Fact #5: Renovations and improvements will meet occupancy requirements of the building and fire codes. Further, the additional two dwelling units for a total of three units within the structure is significantly less than the maximum residential density of twelve units for the subject parcel as provided by Article 1349.07 of the Planning & Zoning Code. Shaffer moved to find in the positive for Finding of Fact #5; Papandreas seconded it. The motion passed unanimously.

Finding of Fact #6: The conditional use request will neither increase nor decrease demand for said public infrastructure and services already needed to serve the previous use and occupancy. Papandreas asked Gallagher if he discussed the purchase of the building with the Fire Department since he believes there is now a regulation that the building would require sprinklers. Gallagher stated he did not speak with the Fire Department but as a developer is aware of the fire code and, if needed, he would do whatever is necessary to meet code. Shamberger moved to find in the positive for Finding of Fact #6; Papandreas seconded it. The motion passed unanimously.

Finding of Fact #7:

Negative Finding – Value of buildings will not be conserved, in that: The proposed conversion of the first floor space may contribute to higher commercial vacancies at street level within the immediate area and particularly along Fayette Street from High to Spruce Streets. Further, allowing said use change may stimulate market interest in similar conversions. Such interest may result in adverse impacts to property values and the availability of at-grade leasable commercial space within the immediate area. Shamberger moved to find in the positive for the negative finding in Finding of Fact #7; Shaffer seconded it. The motion passed unanimously.

Finding of Fact #8:

Negative Finding – The most appropriate use of land is not encouraged, in that: At-grade level commercial leasable space is paramount to ensuring desired mixed-use development patterns within the B-4 District. Further, the success of one commercial establishment would appear to be an injudicious measure in determining commercial viability of the subject site. Papandreas moved to find in the positive for the negative finding in Finding of Fact #8; Cardoso seconded it. The motion passed unanimously.

Shaffer moved to accept Staff's recommended findings of fact; second by Shamberger. The motion passed unanimously.

Shaffer moved to deny the conditional use petition; seconded by Shamberger. The motion passed unanimously.

Bossio advised Gallagher that he was the right to appeal the decision of the BZA to Circuit Court within 30 days. Any work done to the property will be at his sole financial risk.

V. PUBLIC COMMENT: None

VI. STAFF COMMENT: None

Shaffer asked Fletcher what the status on the Pepsi Cola sign on the Knights of Columbus building. Fletcher said there is discussion going on and it was hoped that while doing construction on the building something could be done. There is a possibility they will work with Main Street Morgantown's artist to paint a mural that would cover it. Progress on the building is slow.

Shaffer also questioned that status of Rain's conformance to the zoning ordinance and the BZA's conditions. Fletcher stated the situation is being monitored and would be glad to discuss it with him after the meeting.

Shaffer commented on how attractive the Moser property on Beechurst has turned out.

Bossio asked Fletcher if there were any problems with the change of tenants (Flying Fish leaving and Oliverio's coming in) and the credit union property. He then asked for the status of the credit union development on Van Voorhis. Fletcher advised it was his belief that building permits were approved within the last month. He will be reporting on that progress in the near future.

Bossio adjourned the meeting at 7:45 PM.