

# BOARD OF ZONING APPEALS

## Minutes

6:30 PM

July 15, 2009

City Council Chambers

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

**MEMBERS ABSENT:** Bernie Bossio

**STAFF:** Christopher Fletcher, AICP

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

**II. MATTERS OF BUSINESS:**

**A. Approval of June 17, 2009 minutes** – Papandreas moved to approve the minutes as submitted; seconded by Shamberger. The motion passed unanimously.

**III. OLD BUSINESS**

Fletcher stated that a proposed development on Christy Street requires Board consideration on matters that appear on the agenda under old and new business and recommended that item V09-24 to be heard before CU09-04. Papandreas moved to amend the agenda as; seconded by Shamberger. The motion passed unanimously.

Shaffer stated old business agenda items A. CU09-05, B. CU09-06, C. CU09-04, and D. V09-16 be taken off the table before the start of any business.

Papandreas moved to remove CU09-05, Terra LLC from the table; seconded by Shamberger. The motion passed unanimously.

Papandreas moved to remove CU09-06, Byers from the table; seconded by Cardoso. The motion passed unanimously.

Papandreas moved to remove CU09-04, Glenmark from the table; seconded by Cardoso. The motion passed unanimously.

Papandreas moved to remove V09-16, Glenmark from the table; seconded by Cardoso. The motion passed unanimously.

**A. CU09-05 / Terra, LLC / Mason Street:** Request by Terra, LLC 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 R-2 District for property located on Mason Street; Tax Map #20 Parcel #364; an R-2, Single & Two-Family Residential District.

Fletcher read the Staff Report stating that the applicant seeks to develop a nine-unit, multi-family structure on Mason Street. Table 300.05.01 "Permitted Land Use Table" of the Zoning Ordinance lists "Multi-family Dwellings" as a Conditional Use in the R-2 District.

According to Code Enforcement, the surrounding properties are largely registered as rental units ranging from single-family to eight-unit structures. The following table identifies the land use characteristics of the immediate area based on information provided obtained from the Code Enforcement's Rental Registration Program and area calculations using GIS by Planning Staff. The table is followed by a map that illustrates same.

Land use	Area (sq. ft.)	Percentage
Single-Family Rental	53,820	12.8%
Duplex	80,837	19.2%
<b>Multi-Family</b>	<b>115,989</b>	<b>27.5%</b>
Mixed-Use	37,241	8.8%
Vacant	71,898	17.1%
Not Registered	61,301	14.6%
Total Area	421,086	100.0%

Fletcher stated that Article 1365, Parking, Loading, and Internal Roadways, Table 1365.04.01, Minimum Off-street Parking Requirements, of the Zoning Ordinance requires that each one-bedroom unit have one (1) parking space. The request is for nine 1-bedroom units. Therefore, the minimum off-street parking requirement is nine (9) spaces. The current site plan indicates ten (10) off-street spaces, including one handicap. Access to the parking area is from Stewart Street through an adjacent parcel owned by the petitioner.

Shaffer recognized Chuck Lemley, Surveyor and representative for Terra, LLC. Lemley advised the Board the nine (9) unit apartment building fronts Mason Street. Access to the apartment will be in the rear through a private drive so there will be no additional traffic on the very narrow Mason Street. There will be a masonry structure to house the trash dumpster that will serve all the units owned by the developer within the immediate area. The developer has met with the US Postal Service and has made arrangements that residents with disabilities will receive mail at their door while all other mail will be delivered to a gang box located on Mason Street.

There being no questions by the Board, Shaffer opened the public comment portion of the meeting asking for any comments in favor of the request. There being none, he asked for comments in opposition to the request.

Mary Ann Selinsky, 434 Stewart Street, stated that her property and the property in question are side by side. She is concerned that if the house on Stewart Street is going to be torn down, she would want a retaining wall between the properties so there are no cave-ins on her property. The sewer goes through her property and she does not want any storm water run off.

Shaffer recognized Lemley to address concerns raised by Selinsky. Lemley stated that the proposed development is on the lower side of the property and is not adjacent to Selinsky's property. There are no plans for any retaining walls and the storm water issue has been

addressed with MUB. There has been no decision as to whether the house Selinsky is concerned about will be torn down in future.

Shaffer closed the public comment portion of the meeting and asked for Staff's Recommendations.

Papandreas questioned how far away the trash dumpster is from the building. Lemley stated they were located approximately 100 feet southwest to the property. Papandreas expressed concern that 100 feet may be a long way to walk to put out the trash. Lemley stated that if trash becomes an issue, smaller receptacles could be considered, but the garbage trucks had a problem accessing Mason Street.

Fletcher read the Staff Report stating that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant.

Staff recommends revisions to the petitioner's findings of fact below (deleted matter struck through; new matter underlined) and that the petitioner's conditional use be approved with the following conditions:

1. That subdivision recordation documents include easements across affected parcels to address common access drive, vehicular circulation, solid waste storage/removal, U.S. Postal Service drop location, etc.
2. That, due to repeated dumpster burning within the area and the increase in service resulting from the proposed development, the petitioner shall work with the City's contracted trash and recycle collection company, to the satisfaction of the Planning Director, to identify one dumpster location that will serve all adjacent properties owned by the petitioner and that said dumpster location shall be improved with a masonry enclosure and opaque gate.
3. That a Landscape Plan be submitted with the building permit application for review and approval by the Planning Director. Variance approval must be obtained should the Landscape Plan not conform to the performance standards set forth in the City's Planning & Zoning Code.
4. That a Lighting Plan 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.
5. That the development meets all applicable Fair Housing and Americans with Disabilities Act (ADA) standards to the satisfaction of the City Engineer and Chief Code Official.

Shamberger moved to accept the Findings of Fact with revisions recommended by Staff,; seconded by Papandreas. The motion passed unanimously.

**(NOTE: The following Findings of Fact were included in the motion)**

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

The development meets or exceeds minimum parking requirements. Access to the proposed parking area utilizes an existing driveway from Stewart Street.

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

The development will meet related building and fire codes. Vehicular access to the development's parking area will come from an existing driveway from Stewart Street thereby reducing vehicular traffic that would otherwise result on Mason Street, which is very narrow.

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

The proposed structure will meet or exceed all setback and building height requirements for the R-2 District.

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

The proposed structure will meet or exceed all setback and building height requirements for the R-2 District.

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

The building occupancy will be similar to that of other buildings in the neighborhood, which is predominantly multi-family student housing and within walking distance to WVU's downtown campus and public transit lines.

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

The proposed development should not require public infrastructure, utilities, or service beyond that which is currently available within the immediate area.

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

The value of buildings should increase by cleaning up the property and adding new dwelling units within an area where single-family homes have been converted into student housing leaving much of the adjacent housing stock functionally obsolete. This would also remove a place where people can throw garbage or set fires.

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

The building occupancy will be similar to that of other buildings in the neighborhood, which is predominantly multi-family student housing and within walking distance to WVU's downtown campus and public transit lines.

Papandreas moved to approve CU09-05 / Terra, LLC, contingent upon the conditions recommended by Staff; seconded by Cardoso. The motion passed unanimously.

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

- B. CU09-06 / Byers / 160 Fayette Street:** Request by Justin Byers for conditional use approval “Restaurant private club” license in B-4 District at 160 Fayette Street; Tax Map #26A Parcel #93; a B-4, General Business District.

Papandreas stated that the petitioner was involved in a lawsuit against one of his tenants and asked if the petitioner if he felt that he [Papandreas] should recuse himself from the matter before the Board. Justin Byers stated that he did not feel it was necessary for Papandreas to recuse himself.

Fletcher read the Staff Report stating that the petitioner seeks conditional use approval for the establishment of a “Restaurant, Private Club” use in the former “Café of India” location at 160 Fayette Street. The business name for the proposed establishment is “The Union.”

Mr. Byers has stated that he is the current owner of the subject building and that he also owns the existing commercial equipment of the former Café of India. The petitioner has submitted the following exhibits, which are attached hereto:

- Business description
- Owners resumes
- Manager’s resumes
- Proposed menu
- Floor plan

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

- De Lazy Lizard / High Street Banquet Center; Morgantown, WV
- Coins Restaurant and Pub; Ocean City, MD
- Owner of [www.thebestcrabcake.com](http://www.thebestcrabcake.com)
- Past owner of Mutt’s Place; Morgantown, WV
- Owner of several residential and commercial rental companies; Morgantown, WV

Staff spoke with John Horner, Sanitarian with the Worcester County Health Department and learned the “Coins Restaurant and Pub” has been in operation for many years; Justin Byers has been registered as one of the establishment’s owners since 2005; he characterized the establishment as a bar with a light bar fare; inspections generally result in code findings that are customary for similarly establishments.

According to said exhibits, Ms. Claudia Atkins and Mr. J. Atkins have owned or managed the following enterprises including:

- Owners of Claudia Atkinson Catering (Current)
- Owners of Mary’s Restaurant; Kingwood, WV (1989-2009)
- Owner/Manager Bishop House Inn & Conference Center; Kingwood, WV (2003-2006)
- Operator of the Pines Country Club Dining Room; (1987-1989)

The proposed business description highlights include:

- 3,500 square feet of restaurant, including three (3) dining areas
  - The Ballroom: two hundred (200) person seating area; main catering room
  - The Parlor: fifty person (50)seating area; mid-sized for cocktail parties
  - The Library: twenty (20) person seating area; large conference table with full audio-visual capabilities
- Full menu catering based
- Reservation-only seating – no set hours
- Smoke-free
- 90% of all catering events will end by 11:00 PM

The applicant was present to speak on behalf of the request.

There being no questions by the Board, Shaffer recognized Justin Byers, 160 Fayette Street. Byers stated that the property was previously occupied by *Café of India*. This will be strictly a catering business and there will be no walk up service. He stated that *De Lazy Lizard* is presently booked on Thursdays, Fridays, and Saturdays for catering for the next 40 weeks. The addition will not cut *De Lazy Lizards* catering, but will supplement it. Byers also added that *Coins* is a full service restaurant and not just light bar fare as stated by the Worcester County Health Department Sanitarian.

Shamberger asked the applicant if he had ever been cited for liquor violations. Byers stated he has had approximately ten (10) violations in the last five (5) years. There were six (6) fire marshal violations and four (4) violations for fake IDs. *Mutt's* was never cited. The business in Ocean City was also never cited.

Papandreas commented that while in Ocean City he dined at *Coins* and would not characterize it as a bar as it was family-oriented and had a full service menu.

Shaffer opened the public comment portion of the meeting asking for comments either in favor or against the petition. There being none, Shaffer closed the public comment portion and asked for Staff's Recommendations.

Fletcher stated that the Board of Zoning Appeals must first determine whether or not it will waive the one-year "bona fide restaurant" requirement [Article 1331.06 (27)(c)] prior to the petitioner obtaining a liquor license from the West Virginia Alcohol Beverage Control Commission.

Should the Board decide to waive said one-year "bona fide restaurant" requirement, it must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant.

Fletcher stated that it is the opinion of the Planning Department that the petitioner's responses appear to sufficiently address each conditional use Finding of Fact.

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

1. That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06 (27) of the Planning and Zoning Code. That the establishment shall not serve liquor, including wine, later than 1:00 a.m., except on New Year's Eve;
2. That the petitioner must obtain permitting as a “restaurant” from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*;
3. That any exterior building modifications (i.e. façade, awning, etc) shall be reviewed and approved by the Downtown Design Review Committee and the Planning Director prior to building permit issuance for same;
4. That any regulated signage shall be reviewed and approved by the Downtown Design Review Committee and the Planning Director prior to building permit issuance for same; and,
5. That the conditional use approval granted herein may not be transferred.

Shaffer wanted to make sure there is no possibility in the future that this facility will be a walk up business. Fletcher suggested that a sixth condition could be included that would address this concern. After some discussion, Fletcher read the following additional Staff recommended condition.

6. With the exception of dinner theatre type events, services shall be limited to reservation only and catering as proposed by the petitioner.

Papandreas moved to waive the one year bona fide restaurant requirement; seconded by Shamberger. The motion passed unanimously.

Papandreas moved to accept the Findings of Fact as submitted by the petitioner; seconded by Cardoso. The motion passed unanimously.

**(NOTE: The following Findings of Fact were included in the motion)**

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

The location of the proposed restaurant private club use will replace a similar use that ceased doing business in March 2006. Public surface parking is available in front of said location with public parking garages within walking distance on Chestnut Street and on the corner of Chestnut and Fayette Street.

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

The building has numerous exits and will conform to fire and building regulations. The building is protected by an automatic sprinkler and fire alarm notification system.

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

The building is an existing structure. Internal structural changes will enhance lighting and air regulations will be properly met. The space is located on the main level of a mixed use building and the intended use is similar to past tenants.

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

The building is existing; the occupancy level established by the Fire Marshal will be enforced and conformity to zoning regulations in the B-4 District will be adhered to. No additional structures will be erected.

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

The building has been historically used as a commercial space. The intended usage is consistent with past tenants.

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

The conditional use request will neither increase nor decrease demand for said public infrastructure and services already needed to serve the previous use and occupancy.

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

The building will be upgraded by remodeling the space into a more upper scale catering and restaurant establishment and should preserve and enhance the historic relevance of the building and surrounding areas and will be maintained at all times. The proposed request will maintain the historic significance of the exterior façade of the old Women’s Christina Temperance Union with little or no change.

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

It is a commercial business in the B-4 District and should enhance the atmosphere in downtown Morgantown.

Shamberger moved to approve CU09-06 / Byers, contingent upon the six (6) conditions recommended by Staff; seconded by Shamberger. The motion passed unanimously.

Shaffer advised the applicant that the Board’s decision can be appealed to the Circuit Court within thirty (30) days and that any work done during that time is at the sole financial risk of the applicant.

**(NOTE: The following agenda item was moved by Board motion earlier in the meeting.)**

- A. **V09-24 / Glenmark Holding, LLC / 466 Christy Street:** Request by Glenmark Holding, LLC for variance approval from the Planning and Zoning Code, Article 1341.05 (C) as it relates to Building Height, Size and Use, to exceed the maximum gross floor area for property located at 466 Christy Street. Tax Map #6 Parcels #71, 72, 72.1, 73.1; a PRO, Professional, Residential, and Office District.

Fletcher read from the Staff Report stating that the petitioner seeks to develop a two-story, 10,000 sq. ft. office building at 466 Christy Street. Addendum A of this report illustrates the location of the subject site. The proposed development requires the following approvals:

- V09-16..... relief from the maximum front setback and minimum rear setback standards [Article 1341.04]
- CU09-04..... conditional use approval for off-site parking

Article 1341.05 (C) provides that within the PRO District, "The total maximum gross floor area of any building shall not exceed 4,000 square feet". Because this standard does not associate the area of a building to the area of the realty on which it is to be developed, it appears the standard is intended to control building mass rather than the density.

The petitioner presented two development scenarios to a group of approximately thirty (30) neighbors at the Suncrest United Methodist Church on Thursday, June 4, 2008, site plans of which are included in Addendum B. Addendum B also includes handouts prepared and distributed by Staff at this meeting that were intended to provide information on Planning & Zoning Code standards for each scenario, a table illustrating required approvals, and a comparative massing illustration.

As Addendum B shows, the two 4,000 sq. ft. buildings scenario does not require conditional use or variance approvals. However, it results in a building only 15 feet from the adjacent single-family residential property and contributes to increased vehicular traffic on Christy Street.

At the end of a nearly two hour informational meeting with the neighbors, the preferred scenario among attendees was the one, 10,000 sq. ft. building. Stated reasons for their support were:

- The one building scenario would not increase traffic on Christy Street because vehicular access to the site would be through the existing United Bank Center from Van Voorhis Road.
- The one building scenario would allow the development of a more effective buffer yard between the office building and the adjacent single-family dwelling fronting Windsor Avenue.
- The only entrance in the façade fronting Christy Street in the one building scenario would be for emergency exit only thereby reducing perceived parking within the adjacent neighborhood by employees, customers, and/or visitors of the subject development.
- The one building scenario with off-site parking significantly increased the area devoted to landscaping rather than pavement.
- The one building scenario would not require the reclassification of a portion of the subject site from PRO to B-2 as previously requested by the petitioner; provided the related variances and conditional use petitions are approved (RZ09-03 has been tabled by City Council at the request of the petitioner).

The point stressed by Staff at this meeting was that the zoning standards do not always result in the best development scenario. Unlike a building or fire code, one cannot foresee the influence of a zoning code in all circumstances. A site's location and conditions and its relationship to and potential impact on its surrounding environment create unique situations and opportunities that must be recognized.

Mark J. Nesselroad, Steptoe & Johnson, stated that he was present to represent Glenmark Holding, LLC. Nesselroad stated that the main points for consideration were covered in the Fletcher's report. The alternative plan for the property of two buildings at 4,000 square feet, is permitted by-right in the PRO district. But a 10,000 square foot building as is now proposed only needs a variance of 2,000 square feet from the maximum square footage that could be built on the site.

Shaffer opened the public comment portion of the meeting asking for comments against the petition. There being none, Shaffer asked for comments in favor of the request.

Don Spencer, 565 Harvard Avenue, stated that he has studied the project since it was announced in May 2009. He appreciates the fact that no additional traffic will affect Christy Street. He hopes that the Construction Business and Occupation taxes generated by the development may be reinvested for improvements to Christy Street including crosswalks and sidewalks. He supports the project as presented.

There being no further public comments, Shaffer closed the public comment portion of the hearing and asked Fletcher to discuss the massing illustration in Addendum B of the Staff Report.

Fletcher stated that Addendum B was presented at the neighborhood meeting to provide a comparative illustration between the two development schemes presented by the developer. Fletcher noted that the boxes simply illustrate the maximum height of 35 feet within the PRO District and not what the building would necessarily look like. Fletcher stated that the illustration for Scheme #2 showed a forty-foot setback from the residential use fronting Windsor Avenue which maximized vertical and horizontal buffering opportunities.

Shamberger stated that he also attended the neighborhood meeting. He believes the one building scheme is a good solution to increase traffic on Christy Street and providing buffering from the homes on Windsor Avenue.

Shaffer asked the Planner if the building was sold, would the condition go with the building or would the concern over the egress on to Christy again be a concern. Fletcher stated that Staff was also concerned with potential future access to Christy Street and considered recommending a condition that would not allow a curb cut, regardless of ownership. However, restricting the owner's right to access Christy Street could create an issue of taking potential compensation for the loss of this right. Fletcher advised that this matter should be addressed if it becomes an issue in the future.

Shaffer stated that he is concerned with the amount of traffic currently entering and exiting the United Bank Center and that adding additional cars, particularly to left turn movements, would make the intersection for dangerous. In addition, WVU's multimodal facility directly across the United Bank Center entrance will create traffic problems.

Fletcher stated that this concern was also expressed during the neighborhood meeting. Fletcher stated that Van Voorhis Road is considered a state route and maintained by WVDOH. Fletcher stated that he believes WVDOH considered all traffic generated by Applebees and the United Bank Center's surface and structured parking stalls at maximum capacity when it granted access approval, which included a deceleration lane along Van Voorhis Road. Because the parking is currently underutilized, the proposed development is still within the scope of the traffic study considered by WVDOH. Fletcher stated that the traffic impact of WVU's intermodal facility is currently being studied by WVDOH.

There being no further discussion, Fletcher read the Staff Report stating that the Board must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Staff recommends revisions to the petitioner's Findings of Fact (deleted matter struck through, new matter underlined).

Staff recommends that the petitioner's request for relief from the maximum front setback and minimum rear setback be approved as requested with the following condition:

1. That the related variance petition V09-16 and conditional use petition CU09-04 be approved by the Board.

Shamberger moved to approve the Findings of Fact with revisions recommended by Staff; seconded by Cardoso. The motion passed unanimously.

**(NOTE: The following Findings of Fact were included in the motion)**

**Finding of Fact #1** – There are exceptional or extraordinary circumstances or conditions

The Property is exceptional in that it is a transition property between the retail properties on the Van Voorhis side of Christy Street and the residential properties on the Windsor side of Christy Street. The size and the shape of the Property permit the construction of two (2) separate buildings with related parking being on site with access onto Christy Street, without the need for variances or extraordinary approvals. Given the transitional nature of the Property and the availability of parking in the United Center parking garage, the Property has the unique opportunity to be developed in a manner that provides for significant setbacks with little impact on Christy Street or the adjacent residential neighborhood. Granting of the variance permits the development of the Property in this manner. Further, the intended use as an office building facing the United Center parking garage, and benefiting from the excess parking in the shared garage is exceptional when compared to other properties in the area because other properties simply do not have the ability to take advantage of the parking amenities provided by the shared garage.

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

It appears that the size of the Property is sufficient to support a 10,000 square foot building while providing significant side setbacks (40 feet from the residential neighborhood, 26 feet from the retail property toward Van Voorhis) and a significant front setback (19 feet from Christy Street). There are a number of office buildings within the PRO District that exceed 4,000 sq. ft. including Wedgewood Family Practice on Van Voorhis Road; Suncrest Professional Office Building at the corner of Patteson Drive and University Avenue; and, several of the office buildings along Collins Ferry Road between University Avenue and Burroughs Street.

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

It appears that constructing one (1) building on the Property with significant setbacks and no vehicular access to Christy Street should be far less harmful to the public or other property in the area when compared to the construction of two (2) buildings with smaller setbacks and access onto Christy Street, which would be permitted by-right in the PRO District.

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

The majority of property in the area is office use. Office use is a permitted use in the PRO zoning district. Market values should not be diminished because the proposed building will have significant setbacks that are compatible with the existing setbacks of the residential properties in the area. The variance should have no impact on the value of the retail properties which are oriented toward Van Voorhis with little visibility toward the Property. Congestion will not be increased in public streets because all vehicular access will be via the United Bank Center parking garage, which has access to Van Voorhis Road.

Papandreas moved to approve V09-24 with conditions recommended by Staff; seconded by Shamberger. The motion passed unanimously.

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

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

Fletcher read the Staff Report stating that the petitioner seeks to develop a two-story, 10,000 square foot office building at 466 Christy Street. The proposed development requires the following variance approvals:

- V09-16.....relief from the maximum front setback and minimum rear setback standards [Article 1341.04]
- V09-24.....relieve from the maximum gross floor area standard [Article 1341.05 (C)]

Fletcher stated that as a part of the proposed development, the petitioner seeks conditional use approval to use the existing United Center parking garage and surface parking area to provide off-site parking for the proposed office building. The United Center parking garage and surface parking area has a total of 307 parking spaces, of which 178 are required for existing uses within the United Center development.

Because the interior building design has not been completed, gross floor area was used in calculating minimum parking for the proposed "Office Building" use rather than the net floor area provided in Table 1365.04.01 "Minimum Off-Street Parking Requirements" of the Planning & Zoning Code. As such, the minimum parking requirement for the proposed building is thirty (30) stalls, which would leave surplus capacity remaining in the adjacent parking garage and surface parking area.

Fletcher stated that it should be noted that vehicular access to the proposed office development will not come from Christy Street but from Van Voorhis Road by way of the existing access drive serving the United Center development. This site design attribute has been incorporated so that

the proposed development does not contribute to increased traffic congestion on Christy Street or in the adjoining neighborhood fronting Windsor Avenue.

Article 1365.07 "Off-site Parking Facilities" of the Planning & Zoning Code provides that:

- (A) In business, industrial, and multi-family districts, the Board of Zoning Appeals may grant Conditional Use Approval to provide required spaces on a site that is:
  - (1) Within 300 feet of the principal use; and,
  - (2) Within a district that permits commercial parking lots as principal or conditional use.

Fletcher stated that the illustration provided in the Staff Report demonstrates that the proposed office building development site is within 300 feet of the adjoining United Center parking garage and surface parking area (aerial photography circa 1997). Although much of the development that exists today is not shown in the aerial photograph below, the 300-foot buffer extends to the driveway entrance from Van Voorhis Road that currently provides access to the Appleby's Restaurant and United Center development parking areas.

Fletcher stated that Article 1365.07 (C) provides that:

"Off-site parking facilities shall be encumbered by an easement or similar agreement duly executed and acknowledged, which specifies that the land upon which the off-site parking facility is located is encumbered by the parking use. Said instrument shall specify and bind the time period to the anticipated life of the building or use to which the parking facilities are accessory. Said instrument must be placed on public record in the Office of the Clerk of the County Commission of Monongalia County."

Shaffer recognized Mark J. Nesselroad. Nesselroad stated that he echoed Fletcher's comment regarding the DOH study. The United Center has a total of 370 spaces; 174 spaces are required; 10,000 square feet requires 30 spaces, leaving 99 spaces free.

Shaffer reiterated his concern with traffic. He asked if it was possible to make the egress a right-turn only during peak hours. Fletcher stated he will communicate the concern to the City Engineer but reminded the Board that the United Bank / Applebees entrance was already approved by WVDOH.

Shaffer opened the public comment portion of the meeting asking for anyone wishing to speak in favor or against the request. There being none, Shaffer closed the public comment portion of the hearing and asked for Staff's recommendations.

Fletcher stated that the Board must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Staff recommends revisions to the petitioner's Findings of Fact (deleted matter struck through, new matter underlined).

Fletcher stated that Staff recommends that the petitioner's off-site conditional use petition be approved with the following conditions:

1. That related variance petitions V09-16 and V09-24 be approved by the Board.
2. That the development meets all handicap parking requirements to the satisfaction of the City Engineer.

3. That the off-site parking facility be encumbered by an easement, covenant, or similar agreement, to the satisfaction of the Planning Director, which is duly executed and acknowledged and specifies that the land upon which the off-site parking facility is located is encumbered by the minimum parking requirements of the subject 466 Christy Street development for no less than thirty (30) spaces. That said instrument must be filed with the Planning Department and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia. That the Certificate of Occupancy for the subject 466 Christy Street development shall be contingent upon the continuance of said agreement and encumbrance and should said agreement and encumbrance be annulled for any reason at any time, said Certificate of Occupancy shall be revoked upon written notification by the Planning Director. That a valid and current copy of said instrument must be made available at the request of Planning Director.
4. That the off-site parking spaces dedicated for the subject 466 Christy Street development shall have signs noting that the spaces are reserved. That such signage shall be 12 inches wide by 18 inches tall and shall be mounted between three feet and five feet above the finish surface of the parking stalls. That the text on the sign state "This space is reserved for [name of tenant(s) of subject 466 Christy Street development] only, per City Code 1365.07 (D)."
5. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.

Shamberger moved to accept the Findings of Facts as revised by Staff; seconded by Cardoso. The motion passed unanimously.

**(NOTE: The following Findings of Fact were included in the motion)**

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

Vehicular access to the Project will be available only by way of the United Center driveway on Van Voorhis Road. There will be no vehicular access onto Christy Street. Congestion in the street will not be increased, because the United Center complex was designed for 307 parking spaces, with access supporting 307 parking spaces. Granting this conditional use will simply result in currently vacant parking spaces being utilized as originally designed.

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

The Project is designed and planned to complement and work in cooperation with the United Center complex. Granting the conditional use will simply permit use of the United Center parking garage at levels nearer the designed capacity than currently utilized. The United Center complex was designed and constructed to provide for efficient, safe transportation and parking on Glenmark's property, with access to public streets being limited to one (1) access point. Fire is not an issue because the parking garage has been constructed in compliance with all City Fire Code and Building Code requirements. Panic or other danger are not issues because the garage, surface parking areas and entrance road are designed to compliment each other to provide for integrated, efficient and safe access and parking for the United Center. Granting this conditional use will allow the Project to benefit from the same design.

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

Provided the proposed Site Plan is approved, the Project building is designed in a manner that complements neighboring properties. All setback requirements (except for the setback line adjoining the parking garage) will be satisfied and all height requirements will be satisfied. The existing buildings on the Property will be demolished and replaced with a building that satisfies existing setbacks. In fact, the Project setback area adjacent to the residential neighbor will be five (5) feet more than required by the zoning ordinance. This additional area will be heavily landscaped to provide an attractive buffer between the Project and the residential neighbor. Granting the conditional use should have no impact on light or air quality issues, as the parking garage is already constructed and the proposed building will comply with setback and height requirements.

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

The Project will contain one (1) building that will be constructed in compliance with all setback and height restrictions (subject to the required rear setback variance from adjoining the parking garage). Granting this conditional use should minimize the impact on adjacent neighbors by directing all vehicular traffic through the United Center. Setback areas, instead of being improved with access roads and parking, will be heavily landscaped.

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

The Project has been designed as part of the master plan for the entire United Center complex in a manner that minimizes the impact on the adjacent residential neighborhood. Vehicles for the Project will be required to park in the existing parking garage, which only accesses public streets via Van Voorhis. Reduced traffic on Christy Street minimizes interference with the adjacent property owners.

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

Water, sewage and other utilities are available in more than adequate capacities to service the Project. Granting the request will have no impact on schools as the request will not increase residential housing in the area and no schools are located in the area. Transportation will be benefited because vehicular access will be on Van Voorhis, not Christy Street. No other public requirements, such as fire service, will be adversely affected because the Project can be accessed for fire protection purposes via Christy Street. The Project will satisfy all City building and fire codes and ordinances.

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

Glenmark owns both the Project site and the United Center. Any adverse effect on the value of the United Center, because of increased traffic through the United Center parcel, is at Glenmark's risk. Adjacent properties not owned by Glenmark will not be affected, because traffic to and from the Project will be directed away from these properties. All setback and height restrictions will be satisfied (subject to the required rear setback variance from adjoining the parking garage), thus, there will be minimal, if any, impact on adjacent properties.

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

Granting the conditional use promotes shared parking pursuant to an integrated, efficient development plan for the entire United Center development and the proposed Project. Granting the conditional use will permit the Project to be constructed in a manner that eliminates Project traffic onto Christy Street. Development in a manner that reduces traffic on Christy Street is a very appropriate use of land. With the off-site conditional use, substantial landscape buffers will be developed along the residential boundaries and along Christy Street without the need of utilizing this space for parking or access roads. Without the off-site parking conditional use, the project would have to be redesigned to provide parking on site with access to Christy Street.

Cardoso moved to approve CU09-04 Glenmark Holding, LLC as requested with the conditions recommended by Staff; seconded by Papandras. The motion passed unanimously.

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

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

Fletcher read the Staff Report stating that the petitioner seeks to develop a two-story, 10,000 square foot office building at 466 Christy Street. The proposed development requires the following approvals:

- V09-24..... variance relieve from the maximum gross floor area standard [Article 1341.05 (C)]
- CU09-04..... conditional use approval for off-site parking

Fletcher stated that the petitioner's proposed site plan shows a front setback of nineteen (19) feet and a rear setback of fifteen (15) feet. As such, the petitioner must obtain a four (4) foot variance from the maximum fifteen (15) foot front setback and a twenty-five (25) foot variance from the 40 foot minimum rear setback.

The petitioner's basis for seeking variance relief is to:

- Increase the buffer yard between the proposed building and the adjacent single-family residence fronting Windsor Avenue;
- Increase the buffer yard between the proposed building and Christy Street; and,
- Reduce the distance between the proposed building's functional front façade to the rear of the site and the adjacent United Center parking area.

Fletcher stated that it should be noted that vehicular access to the proposed office development will not come from Christy Street but from Van Voorhis Road by way of the existing access drive serving the United Center development and Applebee's restaurant. This site design attribute has been incorporated so that the proposed development does not contribute to increased traffic congestion on Christy Street or in the adjoining neighborhood fronting Windsor Avenue.

Shaffer recognized Mark J. Nesselroad. Nesselroad stated that this request goes hand in hand with the two previous petitions. He believes it is beneficial for the residential community on Windsor Street and for the developer to have parking closer to the building. With this building configuration, there will be 11.1% more greenspace between Christy Street and the building.

Shaffer opened the public comment portion of the meeting, asking for comments in favor or against the petition. There being none, Shaffer closed the public comment portion of the hearing and asked for Staff's recommendations.

Fletcher stated that the Board must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Staff recommends revisions to the petitioner's Findings of Fact (deleted matter struck through, new matter underlined).

Fletcher stated that Staff recommends that the petitioner's request for relief from the maximum front setback and minimum rear setback be approved as requested with the following conditions:

1. That the related variance petition V09-24 and conditional use petition CU09-04 be approved by the Board.
2. That, to the satisfaction of the Planning Director, significant landscape buffering be provided along the property line shared with the adjacent single-family residence fronting Windsor Avenue (Tax Map 6, Parcel 52).
3. That, to the satisfaction of the Planning Director, the façade facing Christy Street shall be contextually designed to appear as the front of the building rather than the rear of a commercial building.

Papandreas moved to accept the Findings of Fact as revised by Staff; seconded by Shamberger. The motion passed unanimously.

**(NOTE: The following Findings of Fact were included in the motion)**

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

*Relief from maximum front setback:*

The property is exceptional in that it is a transition property between the retail properties on the Van Voorhis side of Christy Street and the residential properties on the Windsor side of Christy Street. The size and the shape of the property permit the construction of two (2) separate buildings with related parking being on site with access onto Christy Street, without the need for variances for extraordinary approvals. Given the transitional nature of the property and the availability of parking in the United Center parking garage, the property has the unique opportunity to be developed in a manner that provides for

significant setbacks with little impact on the Christy Street or the adjacent residential neighborhood. Granting of the variance permits the development of the property in this manner.

*Relief from minimum rear setback:*

The side parcel boundary of the subject property is shared with the rear parcel boundary of the existing single-family residence fronting Windsor Avenue. The proposed site plan shifts the forty-foot rear yard to the side and the fifteen foot side yard to the rear thereby creating greater physical distance and enhanced landscape buffering opportunities between the residential and non-residential uses.

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

*Relief from maximum front setback:*

The majority of commercial buildings within the immediate area appear to exceed the maximum front setback standard for the PRO and B-2 Districts.

*Relief from minimum rear setback:*

Several properties in the area violate the 40 foot rear setback line. The American Dry Cleaners building the Marquee Center are examples. In fact, the existing improvements on the property substantially violate the 40 foot rear setback line.

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

*Relief from maximum front setback:*

Relief from the maximum front setback will increase the amount of front yard that can be used for sidewalk development and front yard landscaping which can not harm public welfare nor harm neighboring property or improvements.

*Relief from minimum rear setback:*

Relief from the minimum rear setback standard enables the proposed building to be situated closer to its functional front entrance facing the United Bank Center parking garage. This site design element is specifically intended to mitigate apparent harm that could be caused by increased vehicular traffic on Christy Street and Windsor Avenue.

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

*Relief from maximum front setback:*

The orientation and setback of the proposed building is similar to the remaining commercial uses along Christy Street in that the buildings' front façades do not face Christy Street nor do they establish a common street wall or streetscape that would be otherwise adversely impacted by this variance. This variance can not contribute to nor mitigate traffic congestion along Christy Street.

*Relief from minimum rear setback:*

Encroaching into the rear setback enables additional side setback along the property line shared with the single-family dwelling fronting Windsor Avenue thereby creating a larger buffer yard and preserving the enjoyment of said property. This variance can not contribute to nor mitigate traffic congestion along Christy Street.

Papandreas moved to approve V09-16 Glenmark Holding, LLC with conditions recommended by Staff; seconded by Shamberger. The motion passed unanimously.

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

#### **IV. NEW BUSINESS**

- (a) **CU09-07 / Wubbie / 163 Kirk Street:** Request by Wubbie Development Group, LLC for conditional use approval from the Planning and Zoning Code Article 1365.04 (P) as it relates to minimum parking reductions in the B-4 District for property located at 163 Kirk Street; Tax Map #28A Parcel #26; a B-4, General Business District.

Fletcher read the Staff Report stating that the petitioner received DSI Site Plan approval in June 11, 2009 to convert a vacant structure at 163 Kirk Street (formerly the Morgantown Printing and Binding building) into twenty-two (22) multi-family dwelling units. The approved development program details included:

- A. The addition of two (2) full floors to the existing structure.
- B. Twenty-two (22) units: three (3) efficiencies units; eighteen (18) 2-bedroom units; one (1) 3-bedroom units.
- C. Internal parking area.
- D. The applicant met with the Downtown Design Review Committee to review the amended conceptual plans on March 25, 2009 and received a unanimous show of support with suggestions that the applicant agreed to.

Concerning parking, Fletcher stated that Article 1349.08 (A) (1) provides a minimum parking requirement of one-half a space (0.5) per bedroom for those dwelling units that exceed the criteria of a Development of Significant. The units with the most bedrooms were used to calculate the proposed development's minimum parking requirement – the one three-bedroom units and ten of the two-bedroom units. As such, the minimum parking required for the proposed development is twelve (12) spaces (.5 spaces X 23 bedrooms). The petitioner has sufficient access and area within the structure's basement to meet this minimum requirement.

Concerning B-4 parking reduction, Fletcher stated that Article 1356.04 (P) provides the following four (4) opportunities to reduce minimum parking requirements for developments within the B-4 District, provided conditional use approval is granted by the Board of Zoning Appeals.

- (1) By a factor of ten (10) percent if the land use is located within 500 feet, measured from the closest edge of the building, of a parcel containing a fixed public transit stop, whether a bus, trolley, or Personal Rapid Transit (PRT) station.
- (2) By a factor of ten (10) percent if the land use is located within 500 feet, measured from the closest edge of the building, of a parcel containing 25-50 publicly owned and controlled parking spaces. If within 500 feet of a parcel containing more than 50 public parking stalls, the reduction may be a factor of fifteen (15) percent.
- (3) By a factor of one (1) automobile parking space for each dedicated motorcycle parking space, up to a maximum reduction of three (3) automobile parking spaces. This reduction shall not be permitted for uses that are required to provide six (6) or fewer parking stalls. Nor shall this reduction be permitted for uses that primarily sell large, bulky merchandise not typically transported via motorcycle.
- (4) By a factor of one (1) automobile parking space for every three (3) bicycle parking spaces provided, up to a maximum reduction of three (3) automobile parking spaces. This reduction shall not be permitted for uses that are required to provide six (6) or fewer parking stalls. Nor shall this reduction be permitted for uses that primarily sell large, bulky merchandise not typically transported via bicycle. Required bicycle storage may not be used to reduce minimum parking requirements.

Fletcher referred to an illustration in the Staff Report stating that it identifies the 500-foot buffer surrounding the project site. It appears that the petitioner may seek conditional use approval to reduce the development's minimum requirement by at least three (3) spaces given the site's proximity to a fixed public transit stop (1 parking space) and the sixty-seven space Pleasant Street City Parking Garage (2 parking spaces).

Fletcher stated that the petitioner also seeks to reduce minimum parking requirement by two (2) additional spaces by providing two (2) motorcycle stalls within the internal parking area.

The total requested reduction of required parking is five (5) spaces.

The petitioner received conditional use approval (CU08-14) on September 23, 2008 for multi-family residences in the B-4 District so that the reuse of the subject building was not required to include commercial use(s) on the ground floor.

Fletcher referenced the floor plan in the petitioner's application pointing out the two oversized garage doors located at grade with Chestnut Street. Twelve parking spaces have been delineated showing that the minimum requirement for parking has been met.

Shaffer recognized Michael Shuman. Shuman stated that he is requesting a reduction of five (5) parking spaces. The property is close to the PRT, bus station, the Pleasant Street, Wharf District and Spruce Street parking garages. Three parking spaces are being removed due to the positioning of the elevator. This will also cut down parking on Chestnut Street. This is an older building with zero lot line and no place for additional parking. He is also working with Morgantown Trust and BOPARC for a shared garbage dumpster location on the adjacent property.

Shaffer opened the public comment portion of the meeting, asking comments in favor or against the petition. There being none, Shaffer closed the public comment portion and asked for Staff's recommendations.

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

Fletcher stated that Staff recommends revisions to the petitioner's Findings of Fact (deleted matter struck through; new matter underlined) and that the conditional use to reduce the petitioner's minimum parking requirement from twelve (12) spaces to seven (7) spaces be granted as requested with the following conditions:

1. That the interior parking design and layout must be approved by the Planning Director and the City Engineer prior to building permit issuance.
2. That the conditional use approval granted herein may not be transferred.

Shamberger moved to accept the Findings of Fact as revised by Staff; seconded by Cardoso. The motion passed unanimously.

**(NOTE: The following Findings of Fact were included in the motion)**

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

(a) The proposal to reduce the onsite parking does not increase congestion with the Chestnut St parking garage and other private parking lots which are within 100 ft of the proposed project site, (b) the proposal to reduce the onsite parking does not increase congestion with the PRT and Bus Systems which are within 500 ft of the proposed project site, and (c) the proposal to reduce the onsite parking does not increase congestion in that the proposed project places more residents within walking distance of the downtown campus, effectively reducing the number of vehicles on the surrounding streets.

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

(a) the proposed project will be designed to satisfy all requisite and applicable safety, building codes, and ordinary (b) the proposed project is primarily masonry construction, (c) the area surrounding the proposed project is either parking lots or vacant property; The footprint of the building will not be increased and density is less than the B-4 maximum residential density.

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

The proposed project is the renovation and rehabilitation of a building that has been sitting in the downtown area for nearly if not more than a full century, not the construction of a new building. The proposed project is a reuse of an existing and important downtown structure to meet current market needs and opportunities and serves to protect the architectural character of the existing building.

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

The proposed project is the renovation and rehabilitation of a building that has been sitting in the downtown area for nearly if not more than a fully century, not the construction of a new building. The proposed project is unique in that it renovates and rehabilitates a structure that is located within the city that has a low impact visibility and provides an ideal location for residential uses given its proximity to the downtown campus. Furthermore, the proposed project is a reuse of an existing and important

downtown structure to meet current market needs and opportunities and serves to protect the architectural character of the existing building.

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

(a) the proposal to reduce the first floor parking of the proposed project will have no impact on the population of the surrounding area, but will allow the area to be used in the future as a business or have commercial use that will only result in a few additional customers in the area in relation to the proposed project as a whole, (b) the area surrounding the proposed project in all directions is presently vacant property or parking lots, (c) the proposed project places more residents within walking distance of downtown businesses, effectively reducing the number of vehicles on the surrounding streets, and (d) the proposed project places more residents within walking distance of the downtown campus, effectively reducing the number of vehicles on the surrounding streets, thus reducing traffic flow in the downtown area. The proposed density is less than the B-4 maximum residential density.

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

(a) the proposed project is the renovation and rehabilitation of a building that has been sitting at the entrance to the downtown area for nearly if not more than a full century, not the construction of a new building, (b) all utility services are presently available at the proposed project, and those utilities are more than sufficient to accommodate a few more residences on the first floor of the proposed project, (c) the residents of the proposed project will be in walking distance to campus and the downtown area, thus reducing the traffic in the downtown and surrounding area.

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

The proposed project is the renovation and rehabilitation of a building that has been sitting in the downtown area for nearly if not more than a full century, not the construction of a new building. This has been a building that presently has been unoccupied and abandoned for roughly over a decade. The proposed project is highly unique, in an ideal location, and reuses an existing structure of significant value to the city to meet current market needs and opportunities. The proposal to reduce parking on the first floor of the proposed project will not impact surrounding property values in that all surrounding properties are either vacant lots or parking lots. Other than Superior Buick, which has its own parking spots, there is not other commercial business within a two blocks radius of the proposed project. The proposed project will not be the construction of a new building inconsistent with its architectural surroundings, and the first floor parking area will blend in with its surroundings.

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

Because mixed land uses are preferred for residential units in the downtown, reducing the number of parking spaces creates area within the first floor that could be used for street level commercial leasable space in the future based on market opportunities.

Papandres moved to approve CU09-07 with conditions recommended by Staff; seconded by Shamberger. The motion passed unanimously.

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

- C. **V09-23 / Vester / 603 Park Street**: Request by Matthew Vester for variance approval from the Planning and Zoning Code Article 1335.04 as it relates to Setbacks for property at 603 Park Street. Tax Map #36 Parcel #553; an R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating that the applicant seeks to construct an addition onto the rear of the existing structure for a kitchen enlargement project but also to repair the back exterior wall of the existing kitchen. The desired addition would require a five (5) foot rear setback variance from the required minimum twenty (20) feet. The addition is requested in order to extend the existing kitchen, add a half bath and mudroom on the ground floor, and to preserve existing off-street parking. Addendum A of this report illustrates the location of the subject site.

Shaffer recognized Matthew Vester, 603 Park Street. Vester stated that he purchased the house in 2000. At the time, the back wall was buckled and the foundation was not in good shape but they couldn't afford to fix it at that time. They now wish to modernize the kitchen and it can only be expanded toward the back. The neighbor has supported this petition by letter. They also wish to preserve the integrity of the original structure.

Shaffer opened the public comment portion of the meeting asking if anyone wished to speak in favor or against the request. There being none, Shaffer closed the public comment portion of the hearing and asked for Staff's recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meet the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Staff recommends revisions to the petitioner's Findings of Fact (deleted matter struck through; new matter underlined) and that variance relief be granted as requested.

Cardoso moved to accept the Findings of Fact as revised by Staff; seconded by Papandreas. The motion passed unanimously.

**(NOTE: The following Findings of Fact were included in the motion)**

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

The subject house, its situation on the lot, and its relationship to surrounding structures is unusual and already exhibits exceptions to existing ordinances. The house sits diagonally on the lot, which means that an encroachment on the setback on one side would not necessarily encroach on the other side. The petitioner appears to share part of a lot, a driveway, and a parking space with a neighbor. According to the petitioner, part of the neighbor's cottage already hangs over onto part of the petitioner's lot. The property line affecting the setback for the project in question is the middle of the shared driveway: if the effective property line was considered to be the edge of the driveway on neighboring side of it, then the planned project would appear to be within the setback

provisions, without the need to apply for a variance. SEE PETITIONER'S APPENDIX A, "603 PARK ST – AREA OF PROPOSED PROJECT," AND APPENDIX A1, "1995 PROPERTY SURVEY"

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

The substantial property right at issue appears to be the right to make necessary repairs and improvements to a room in the house (the kitchen) whose layout and convenience has a significant impact on the overall value of the home (SEE PETITIONER'S APPENDIX B, "PROJECT PLAN"). There appears to be no other way in which to effect these repairs and improvements than the way proposed, which would require a variance (SEE PETITIONER'S APPENDIX C, "STATEMENT BY PROFESSIONAL PLANNER"). It appears that the only feasible direction in which to make this addition is toward the back, for the following reasons submitted by the petitioner:

- "The back exterior wall of the existing kitchen needs to be repaired. Our house was originally constructed in 1901, and the existing kitchen was added on later (ca. 1950s). When the kitchen was added, an insufficient foundation was laid, and the exterior back kitchen wall is now buckling. A repair is necessary, and it would represent a significant extra cost to make that repair while expanding the kitchen in a different direction. The structure and interior arrangement of the house makes expansion to one side or the other impractical and would harm rather than enhance property value. Expanding to the side rather than the back would compromise the historical integrity of the original 1901 structure. It would also prevent us from adding a ground floor half bath, an important component of the house's value."
- "An addition toward the uphill side of the house would eliminate our on-site parking space, decreasing the value of the house and creating an inconvenience for our neighbors, who often use part of this space and need it to access their garage. An addition toward the downhill side would cost us a window (we already have minimal light) and would be unattractive because of topographical concerns, creating a very high porch that would be unsightly and less safe."
- "In order for the addition to be able to accommodate an attractive and functional kitchen, the addition must extend by the distance indicated on the plans. Were the length of the back extension to be shortened by half, the reconfigured kitchen would be cramped and inconvenient, and would lack space for storage and appliances. This would result in low-quality addition that would not be worth the investment in the project."

There also appears to be a number of houses in the petitioner's neighborhood whose back setback is far less than 20 feet; SEE PETITIONER'S APPENDIX D, "BACK SETBACKS IN NEIGHBORHOOD AROUND 603 PARK ST."

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

The planned project appears to benefit the welfare of those in the vicinity by potentially increasing property values based on improvements intended to increase square footage and modernize an older home. It would also enable the petitioner's neighbors to continue to access their garage and share the petitioner's property for parking. It

appears that the petitioner's neighbors on the side for which the variance is requested, Charles and Heidi Wiedebusch, and also the other directly adjacent neighbors, Kennis Baker and Alissa Macchia, have no objections to the planned project and support the petitioner's request for a variance; SEE PETITIONER'S APPENDIX E, "STATEMENTS BY NEIGHBORS."

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

The planned addition would not affect the vicinity's land-use characteristics as the existing structure would remain a single-family home. It would not affect the use of the shared private driveway or parking space. It should increase the value of the petitioner's home, which should have a positive effect on the values of surrounding homes, and not diminish the value of adjacent properties.

Shamberger moved to approve V09-23 as requested; seconded by Papandreas. The motion passed unanimously.

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

- D. **CU09-08 / Charlton Enterprises, LLC / 361-365 Brockway Avenue:** Request by Charlton Enterprises, LLC for conditional use approval from the Planning and Zoning Code Article 1365.07 Off-Site Parking Facilities for property located at 361/365 Brockway Avenue. Tax Map #29 Parcel #199; a B-2, Service Business District.

Fletcher stated that petitioner was not present. Papandreas moved to table CU09-08; seconded by Shamberger. The motion passed unanimously.

## V. OTHER BUSINESS

- A. **Public Comments** – None
- B. **Staff Comments** – None

VI. **ADJOURNMENT** – The meeting was adjourned at 8:05 PM.