

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

July 17, 2013

City Council Chambers

MEMBERS PRESENT: Leanne Cardoso, Tom Shamberger and George Papandreas

MEMBERS ABSENT: Bernie Bossio and Jim Shaffer

STAFF: Christopher Fletcher, AICP

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

II. MATTERS OF BUSINESS:

- A.** Minutes for the May 2, 2013 hearing: Shamberger moved to approve as presented; seconded by Papandreas. Motion carried unanimously.
- B.** Minutes for the May 15, 2013 hearing: Papandreas moved to approve as presented; seconded by Shamberger. Motion carried unanimously.

III. NEW BUSINESS

- A.** CU13-09 / Wendy G. Alke / 3335 Collins Ferry Road: Request by Wendy G. Alke for conditional use approval of a "Class 2 Home Occupation" at 3335 Collins Ferry Road; Tax Map 2, Parcel 169.2; R-1, Single-Family Residential.

Fletcher read the Staff Report stating that in response to a complaint, Staff sent a certified letter dated April 24, 2013 to Wendy Alke concerning a home occupation that had not been approved at 3335 Collins Ferry Road. Ms. Alke responded as requested and submitted a conditional "Class 2 Home Occupation" use petition for the Board's review.

According to the, Table 1331.05.01 "Permitted Land Uses" of the Planning and Zoning Code, a "Class 2 Home Occupation" requires conditional use approval in the R-1 District.

The petitioner states in her application that she conducts a "small boutique law practice" serving mainly family law clients at her 3335 Collins Ferry Road residence. The following points highlight the information provided in the petitioner's application:

- All clients are scheduled by appointment only.
- The number of clients and/or other persons visiting the site at one time is estimated to be one (1) to four (4).
- The average number of clients per week is estimated to be one (1) to four (4).

- The applicant states that approximately 100% of clients arrive to the site by car.
- No delivery trucks are anticipated to visit the site on a regular basis.
- There are twelve (12) parking spaces on the petitioner's property.

Staff understands that the basis of the complaint is congestion within the private drive that traverses the petitioner's property and that the petitioner had not obtained requisite approvals prior to establishing the home-based law practice business. Addendum A of this report illustrates the location of the site and photograph of the single-family dwelling.

Cardoso recognized the petitioner, Wendy Alke of 3335 Collins Ferry Road, who provided a packet of information to the Board members to further explain the conditional use request for a home occupation. Alke stated that a twelve foot right-of-way exists across her property and was granted to the neighbors of 3337 Collins Ferry Road only for ingress and egress. She noted the packet contained copies of the deed for both properties, which confirmed the twelve foot right-of-way. Pictures were included in the packet along with a description of the property. With the twelve foot right-of-way, there is still nine feet remaining to allow adequate room for ingress and egress. She referred to a picture of a dump truck on the Harding's property which demonstrates adequate room for people to enter the gate, which is approximately 12 feet 6 inches in width. Alke noted that a complaint made by the Harding's stated that a business should not exist within a residential neighborhood. After searching the West Virginia Secretary of State's website, Vandalia Consulting, LLC exists at 3337 Collins Ferry Road and is owned by Donald and Julie Harding. After contacting the City of Morgantown Finance Department, she learned that Vandalia Consulting, LLC, is not registered with City. Alke stated that she does not represent criminals, only works fifteen hours a week, travels three months out of the year, and therefore the traffic is kept at a minimal level.

There being no comments or questions by the Board, Cardoso opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request.

Cardoso recognized Martha Schwabb, of 3333 Collins Ferry Road, who stated her husband sent an email to the Board and asked for a response to the inquiry. Fletcher confirmed the email was received and read the email aloud to the Board members, which inquires if a home occupation class II will change the nature of the private right-of-way. Fletcher stated the nature of the right-of-way is a civil issue between property owners and cannot provide a professional opinion on the matter.

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

Fletcher stated that the Board must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). Staff recommends approval of Case No. CU13-09, subject to the following conditions:

1. That the petitioner shall meet all related supplemental regulations specified in Article 1331.06(2) et seq. of the Planning and Zoning Code.

2. That to ensure safe and convenient ingress and egress by residents, visitors, and emergency response vehicles to the subject and adjoining properties, visitors to the petitioner's home occupation may not park vehicles within the private drive shared with adjoining properties. The adherence with and monitoring of this condition shall rely upon the review, suspension, and revocation provisions provided in Article 1331.06(2)(d)(i) of the Planning and Zoning Code.
3. That this conditional use approval granted herein is specific to the petitioner and may not be transferred without prior approval by the Board of Zoning Appeals.
4. If the petitioner, as the sole beneficiary of this conditional use approval, wishes to make changes in the conduct of the business that departs from the description in the application or from any other conditions or restrictions imposed by the Board of Zoning Appeals, the holder must obtain prior permission of the Board of Zoning Appeals.

Shamberger noted that private property is accessed to enter the premises but noted similar instances had been approved in the past. The clients per week are minimal with little traffic.

Papandreas asked where the twelve parking spaces are located on the property. Fletcher explained the twelve spaces were determined using the GIS system with driveway measurements and no spaces were counted in the private driveway. Fletcher referred to the Staff Report and explained the residence has a two car garage with a long driveway entrance that can house ten cars.

Papandreas asked if clients could all park in the driveway to prevent parking in the private area. Fletcher agreed and Staff suggested home occupation visitors be restricted to the driveway.

Fletcher explained that Class II Home Occupations have provisions that residents within 300 feet can petition the Board if they feel that conditions are not being met with this type of conditional use petition.

Papandreas noted that three property owners share the private drive and even though the traffic would be marginal, it would be best to house the parking spaces elsewhere.

Fletcher noted he misspoke on the available parking spaces and referred to the Staff Report Addendum B which states that eight spaces exist on the property, not the aforementioned twelve. These spaces were determined using the GIS system.

Shamberger noted that according to the petitioners' request, 1-4 parking spaces would be utilized at a time, which would allow for spaces to remain open for any additional visitors. A provision could be included in the petition that all cars have to be parked in the driveway.

Cardoso noted the low number of clients and referred to past home occupational petitions that requested many more clients at one time.

Papandreas made a motion to find in the affirmative for all the Findings of Facts as amended by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – The home occupation will be compatible with residential uses of the dwelling, in that:

According to the petitioner, no activities will be performed in relation to the home occupation that would not ordinarily be performed in the course of daily activities in the home.

Finding of Fact No. 2 – The home occupation will not change the residential character of the dwelling, in that:

According to the petitioner, no changes have been or will be made to the dwelling and the dwelling is the same as when it was built in 1991.

Finding of Fact No. 3 – The home occupation will not detract from the residential character of the neighborhood, in that:

With the exception of the complaint of parking and access congestion that should be addressed by the Board's conditions, there does not appear to be obvious activities at the home occupation which give any indication that a business of any kind is being operated there. The owner purports that the family law practice is very limited; that there are no regular business hours and no walk-in traffic; and, that all client visits are by appointment only averaging less than one per week.

Finding of Fact No. 4 – Congestion in the streets will not be increased, in that:

The dimensions of the driveway leading to the petitioner's two-bay integral garage appears to be approximately 60 feet long by 18 feet wide, which should be sufficient to provide eight (8) on-site parking spaces including the garage. The paved width of the shared private dead-end drive appears to be 18 to 20 feet wide across the petitioner's frontage. The Board's condition restricting visitors to the home occupation from parking in the shared private drive should aid in ensuring adequate ingress and egress to the subject site and adjoining properties by residents, visitors, and emergency response vehicles.

Shamberger moved to approve conditional use petition CU13-09 as requested with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Cardoso reminded Ms. Alke that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- B. CU13-12 / Tru Art Restaurant Group, LLC / 40 Donley Street:** Request by Mark Tasker for conditional use approval of a "Restaurant, Private Club" use located at 40 Donley Street; Tax Map 28, Parcel 134; B-4, Service Business District.

Fletcher read the Staff Report stating the petitioner seeks to establish a "Restaurant, Private Club" use that will include a license with the West Virginia Alcohol Beverage Control Administration to sell beer, wine, and liquor. Table 1331.05.01 "Permitted Land Uses" provides that the development of "Restaurant, Private Club" uses in the B-4 District requires conditional use approval by the Board of Zoning Appeals. Addendum A of this report illustrates the location of the subject site.

According to the petitioner's application and exhibits, the proposed restaurant will be called "Table 9" and will feature contemporary new American cuisine that will consist of fine dining dishes served in large or small portions. The bar will feature a wide range of liquors, beers and

wines. The petitioner seeks to open the subject restaurant in August 2013. Anticipated operating days are Sunday through Thursday from 11:00 AM to 10:00 PM and Friday and Saturday from 11:00 AM to 12:00 AM. A detailed description of the establishment's business plan and contemplated menu are included in the petitioner's exhibits.

"Table 9" will be located at 40 Donley Street and was once occupied by the *Boathouse Bistro* and *The Wharf Restaurant*, both of which obtained conditional use approval by the Board for a "Restaurant, Private Club" under Case No. CU07-07 on 16-May-2007 and Case No. CU10-08 on 21-Jul-2010 respectively.

The structure is approximately 3,650 square feet. The establishment's layout consists of approximately 2,550 square feet in eating and bar area, 800 square feet in kitchen area, 300 square feet for restrooms, and 135 square feet for office space. A floor plan is included in the petitioner's exhibits.

"Table 9" has been designed and will be managed by the owner, Mark Tasker of Tru Art Restaurant Group, LLC. Mr. Tasker has been a chef for over ten (10) years and is presently employed with "Charlie's Grille" as a manager and head bartender in Westover, WV. Resumes for Mark Tasker, James Durst, and Kathleen Lewis are included in the petitioner's exhibits.

Cardoso recognized the petitioner, Mark Tasker of 25 Hannah Lane, who explained that "Table 9" is a chef and ingredient driven restaurant with a casual atmosphere. The business is different from the usual chain restaurant and more focused on upscale, smaller portioned food with better ingredients.

Shamberger asked Fletcher if a one-year waiting provision would be necessary. Fletcher stated the Board would have to grant a one-year waiver as it has customarily done in the past.

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

Fletcher stated an email was received by Staff from Kelly Stork that spoke in favor and support of the conditional use request.

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 Administration.

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 petitioner.

Addendum B of this report provides Staff recommended revisions to the petitioner's Findings of Fact (deleted matter struck through; new matter underlined).

Should the Board waive the one-year "bona fide restaurant" requirement and grant approval of the subject conditional use petition to Tru Art Restaurant Group, LLC (d/b/a "Table 9"), Staff recommends that the following conditions be included:

1. That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06 (27) of the Planning and Zoning Code.
2. That the petitioner must obtain permitting as a “restaurant” from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*.
3. That the “Restaurant, Private Club” use shall be limited to the interior design and identified areas of the subject building as illustrated on the drawings submitted with the application and reviewed and approved by the Board of Zoning Appeals. Any expansion of the conditional use or significant deviation from said facility layout design or proposed dining experience must first be approved by the Board of Zoning Appeals.
4. To ensure that the petitioner’s business description and plans are executed as described and considered in granting the one-year “bona fide restaurant” waiver, the subject “Restaurant, Private Club” use must:
 - a. Be open to the general public a minimum of 11:00 AM to 1:00 PM Monday through Friday for the purpose of serving lunch as generally described in the menu submitted with the petitioner’s conditional use application.
 - b. That the petitioner shall voluntarily submit all necessary financial information to the City for the subject establishment following its first twelve (12) months of operation as a “Restaurant, Private Club” use to ensure compliance with Article 1331.06(27)(e) provisions, which requires the sale of food and non-alcoholic beverages to comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month.
5. That any exterior building modifications (i.e. façade, awning, etc.) shall be reviewed and approved by the Downtown Design Review Committee and the Planning Division prior to building permit issuance for same.
6. That any regulated signage shall be reviewed and approved by the Downtown Design Review Committee and the Planning Division prior to building permit issuance for same.
7. That the beneficiary of this conditional use approval is Tru Art Restaurant Group, LLC, which may not be transferred without prior approval of the Board of Zoning Appeals.

Papandreas asked the petitioner if he understood that a one-year waiver must be granted by the Board and asked if he would still open if the waiver were denied. Tasker stated he would still open and serve only beer and wine if the waiver was denied.

Shamberger asked Tasker to explain why the Board should grant a one year waiver. Tasker explained his intentions are to pair mixed drinks with food, and will take a different direction other than the normalcy of wine being paired with food.

Shamberger asked Tasker to educate the Board on the staff that will be working with the restaurant. Tasker explained he has been a chef for the past thirteen years, Jaime Durst currently manages Uno’s at Deep Creek Lake in Maryland and Kate Lewis runs the bar at that same establishment.

Cardoso asked if Kelly Storck that sent the email, is the same person listed to be the business manager. Tasker confirmed.

Shamberger noted that considerable plans have been put into the planned establishment and there is willingness to work as a restaurant and serve lunch items.

Papandreas felt liquor would be an enhancement to the area as the location is challenging but expressed concern with no prices being set for the proposed food items.

Cardoso noted the business plan submitted is very detailed and the employers seem to have a wealth of experience. Papandreas agreed and noted that Uno's is highly successful in the Deep Creek area.

Papandreas made a motion to grant a waiver from the one-year bona fide restaurant standard for CU13-12; seconded by Shamberger. Motion carried unanimously.

Papandreas made a motion to find in the affirmative for all the Findings of Facts as revised by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

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

The subject conditional "Restaurant, Private Club" establishment employees and guests will have a public and private parking garage to park within easy walking distance and therefore not contribute to parking congestion along neighboring public street.

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

The establishment and building will be required to meet all related life safety and fire code provisions.

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

The subject structure already exists and should therefore not affect present light distribution and air flow patterns.

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

No expansion of the existing building is proposed that would increase its building footprint or building height.

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

Maximum occupancy will be regulated by related building and fire code provisions.

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

The subject conditional "Restaurant, Private Club" establishment will be located in a space that has already been used and occupied as a restaurant and appears to have been built to meet these standards.

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

The subject conditional "Restaurant, Private Club" establishment will be located in an existing structure constructed through a riverfront revitalization public-private partnership intended to contribute specifically to the eatery and hospitality offerings within the Wharf District.

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

The space is an ideal setting for a restaurant because of the buildings award winning design and

beautiful setting overlooking the Monongahela River.

Shamberger moved to approve conditional use petition CU13-12 as requested with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Cardoso reminded Mr. Tasker that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- C. V13-24 / Perks / 1899 Earl Core Road:** Request by Michelle Boyers of City Neon, Inc., on behalf of the Morgantown Development, LLC (d/b/a Perks), for variance relief from 1369.07(l) as it relates to wall signs at 1899 Earl Core Road; Tax Map 33, Parcel 52; B-2, Service Business District.

Fletcher read the Staff Report stating the petitioner seeks to erect a 28 square foot neon wall sign for *Perks* located at 1899 Earl Core Road. Addendum A of this report illustrates the location of the subject site.

Article 1369.07(l)(1) provides that the maximum wall sign area in the B-2 District is determined by multiplying the storefront width in feet by 0.6. The storefront width of *Perks* is approximately 20 feet, which results in a maximum area standard of twelve (12) square feet. As such, the proposed sign requires a sixteen (16) square foot variance.

Cardoso recognized the petitioner's representative, Rudy Hoffert of City Neon, who stated the building has been renovated and the previous sign removed. The proposed sign would be smaller, but still need a variance as the building is situated off the road and bigger signage is necessary to attract customers from a distance.

Cardoso asked if the proposed sign is smaller than original sign. Hoffert confirmed and stated the original sign was 100 square feet.

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

Papandreas made a motion to find in the affirmative for all the Findings of Facts as amended by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 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 petitioner has removed the existing nonconforming sign and will be replacing same with a new sign that will be smaller in area. The width of the subject storefront is approximately 20 feet and the distance between the storefront and the adjoining curb line of Earl Core Road is approximately 120 feet from, which appears to merit a sign larger in area than otherwise permitted by-right.

Finding of Fact No. 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:

There are a number of wall signs within the Earl Core Road commercial corridor that exceed the maximum wall sign area standard, many of which have been granted variance relief including for the Walgreens, Goodwill, Southern States, J.D. Byrider, and AutoZone establishments.

Finding of Fact No. 3 – The granting of this variance 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 proposed sign appears to be consistent with other signage within the immediate commercial corridor.

Finding of Fact No. 4 – The granting of this variance 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 nature of the variance relief requested cannot contribute to nor mitigate existing traffic congestion; will not alter the existing land use characteristics within the immediate commercial area; and, will continue a commercial signage messaging characteristic that appears to be prevalent within the commercial corridor.

Shamberger moved to approve variance petition V13-24 as requested with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Cardoso reminded Mr. Hoffert that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- D. **V13-26 / BB&T Corporation / 466 and 496 High Street:** Request by Richard Lane, on behalf of Hometown Development, LLC, for variance relief from Article 1349.04 as it relates to setbacks at 466 and 496 High Street; Tax Map 26, Parcels 104 to 116; B-4, General Business District.
- E. **V13-27 / BB&T Corporation / 466 and 496 High Street:** Request by Richard Lane, on behalf of Hometown Development, LLC, for variance relief from Article 1351.01(K) as it relates to transparency at 466 and 496 High Street; Tax Map 26, Parcels 104 to 116; B-4, General Business District.
- F. **V13-28 / BB&T Corporation / 466 and 496 High Street:** Request by Richard Lane, on behalf of Hometown Development, LLC, for variance relief from Article 1349.05(A) as it relates to minimum building height at 466 and 496 High Street; Tax Map 26, Parcels 104 to 116; B-4, General Business District.
- G. **V13-29 / BB&T Corporation / 466 and 496 High Street:** Request by Richard Lane, on behalf of Hometown Development, LLC, for variance relief from Article 1365.05 as it relates to drive-through stacking and for variance relief from Article 1351.01(C) as it relates to private parking facilities at 466 and 496 High Street; Tax Map 26, Parcels 104 to 116; B-4, General Business District.

Fletcher noted that the cases for Agenda Items D, E, F, and G would be presented under one Staff Report.

Fletcher read the Staff Report stating the petitioner seeks to reconstruct the BB&T drive-through facility at the corner of Spruce Street and Willey Street and construct an addition to the first floor of the BB&T facility at the corner of High Street and Willey Street that will be occupied by a CVS Pharmacy. Addendum A of this report illustrates the location of the subject site.

The follow summary details the proposed development program.

- Raze and remove the existing BB&T seven (7) lane drive-through facility at corner of Spruce Street and Willey Street.
- Construct new 4,275 square foot BB&T retail and three (3) lane drive-through facility to replace the existing drive-through facility.
- Raze and remove the BB&T back-office building on High Street illustrated to the right.
- Construct a 6,000 square foot ground floor addition to BB&T facility at corner of High Street and Willey Street.
- CVS Pharmacy will occupy the first floor of the BB&T facility at the corner of High Street and Willey Street and the 6,000 square foot addition for a total store area of approximately 13,396 square feet. BB&T will occupy the building's 2nd and 3rd floors

The following narrative addresses each variance petition presented herein.

Agenda Item D V13-26

The following explains the calculation of the site's maximum setback standards.

- Article 1349.04(A)(2) provides that the maximum street side building setback may not exceed the average front yard depth of the nearest two lots OR 10 feet, whichever is less.
- Article 1349.04(A)(2)(a) provides that if one or more of the lots required to be included in the averaging calculation are vacant, such vacant lots will be deemed to have a yard depth of zero (0) feet.
- Article 1349.04(A)(2)(b) provides that when the subject lot is a corner lot, the average setback will be computed on the basis of the two (2) lots that front the same street as the subject lot.
- The maximum setback calculation along Spruce Street is 4.25 feet.
- The maximum setback calculation along Willey Street is 8.85 feet.
- Article 1349.04(A)(3)(b) provides that a portion of the building may be set back from the maximum setback line to provide an articulated facade or accommodate a building entrance feature, provided that the total area of the space created must not exceed one square foot for every linear foot of building frontage.

- The proposed building linear frontage along Spruce Street is 67.8 feet, which results in a maximum area allowance of 67.8 square feet to exceed the calculated maximum front setback standard.
- No portion of the building's proposed Willey Street frontage is in compliance with the calculated maximum front standard.

Variance relief is necessary to exceed the maximum front setback along both Willey Street and Spruce Street.

It should be noted that the site's elevation changes and accessible route design requirements appear to contribute to the proposed Willey Street setback given the petitioner's desired retail and drive-through building prototype.

Agenda Item E V13-27

Article 1351.01(K) provides the following related design and performance standards for "Transparency".

- (1) "A minimum of sixty (60%) of the street-facing building façade between three (3) feet and eight (8) feet in height must be comprised of clear windows that allow views of indoor nonresidential space or produce display areas".
- (2) "The bottom edge of any window or product display window used to satisfy the transparency standard of subsection (k)(1) hereof may not be more than three (3) feet above the adjacent sidewalk".
- (3) "Product display windows used to satisfy these requirements must have a minimum height of four feet and be internally lighted."

The total fenestration of the north or Willey Street façade between 3 feet and 8 feet in height is 51%, which requires variance relief.

The total fenestration of the east or Spruce Street façade between 3 feet and 8 feet in height 63%, which complies with the subject standard.

Agenda Item F V13-28

Article 1349.05(A) provides a minimum height of two (2) stories for a principal structure in the B-4 District. The proposed BB&T retail and drive-through building is one story, which requires variance relief. It should be noted that the existing BB&T drive-through facility is one story.

Agenda Item G V13-29

Table 1365.05.01 provides a minimum number of six (6) stacking spaces for each bank/ATM lanes. The proposed number of stacking lanes is two (2) for each drive-through window/kiosk and one (1) for the ATM lane, which requires variance relief.

Article 1351.01(C) provides that parking spaces may not be closer than twenty (20) feet from pedestrian crossing areas. To meet the spirit and intent of this standard, the petitioner has increased the distances of the parking spaces away from the pedestrian crossing by modifying

internal layout design without sacrificing parking spaces. However, the variance relief is still required

Staff recommends that the Board, without objection from members of the Board, the petitioner, or the public, combine the public hearings for the four (4) variance petitions presented herein. However, each respective variance petition must be considered and acted upon by the Board separately.

Cardoso recognized the petitioner's representative, Rich Lane of 425 Industrial Lane, who stated that CVS and BB&T are working together to develop a structure on High Street. CVS would be located on the first floor of the main BB&T building and the existing non-conforming retail drive-thru will be enlarged. The proposed structure will enhance the area with a more modern look and fresh landscaping. The number of drive-thru terminals will be reduced to three and egress will not be allowed onto Willey Street which will help in traffic flow. The Site Plan has been adjusted numerous times to meet the spirit of the code but does require variances in order to adjust to the non-conforming lot. Lane provided illustrations to the Board to further explain the structure and proposed setbacks with landscaping plans. A retaining wall is necessary due to grade changes and to keep the existing cut elevations.

Cardoso asked Mr. Lane to explain the transparency request. Lane believed the variance request was for the North Willey Street frontage and asked Fletcher to clarify. Fletcher explained the façade running parallel to Willey Street includes the back office and the façade facing Spruce Street includes the large picture window.

Lane stated the window lines are achieving or exceeding elevations at 51% on one street level but in regards to how the code is enforced and implemented, they are not able to get credit for the additional glass that is being built in curbside.

There being no further comments or questions by the Board, Cardoso opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request.

Cardoso recognized Jeff Albreck, who is the developer for CVS Pharmacy in West Virginia, stated he is working with BB&T and that both companies are pleased to be part of the Morgantown area. There are obstacles to overcome including the elevation change of the site. The site is not currently in accordance with code regulations however the site will be new and improved.

Cardoso recognized Bob Wagner of 182 Willey Street, who expressed concerns towards increased parking and congestion and trucks off-loading as the area is extremely tight in space.

Cardoso invited Mr. Lane to the podium for the opportunity of rebuttal.

Lane stated the overall square footage of the building is being decreased. CVS is not requesting a drive thru and BB&T is decreasing the number of bays. Therefore, it should be viewed as an overall improvement and enhancement to the site in regards to circulation. Both the City and DOH are favorable in eliminating the ingress and egress off of Willey and making the site ingress only. Deliveries will be on the off hours. A pedestrian study was performed and over 12,000 people crossed the sight within a 12 hour period and this will be primarily a pedestrian location.

Papandreas noted the current parking off High Street is 55 spaces and asked Lane the proposed parking spaces available. Lane did not know the exact spaces but believed 10 additional spaces would be created.

Cardoso declared the public hearing closed and asked for Staff recommendations.

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

Fletcher reminded the Board that each respective variance petition must be considered and acted upon by the Board separately.

Staff recommends the following approvals and related conditions, if any, for each petition:

Agenda Item D Case No. V13-26 – setbacks

Fletcher stated that Staff recommends that variance relief be approved to exceed the maximum front setback standards along both Willey Street and Spruce Street as proposed without conditions.

Papandreas made a motion to find in the affirmative for all the Findings of Facts as revised by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 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 site in question has frontage on three streets, with the proposed redevelopment building being on a corner. The site also has significant slope that would require increased retaining walls as the building is pulled closer to the corner, compromising or eliminating ADA accessibility and causing security concerns due to a "tunnel effect" along Willey Street and Spruce Street.

Finding of Fact No. 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:

There are numerous nonconformity that have been created but zoning code updates in the B-4 District. Without a variance, the applicant affirms that BB&T would be forced to maintain their dated retail concept which is currently more nonconforming than proposed. The variance would allow the redevelopment of the building to be 50% closer to Willey Street than the existing structure.

Finding of Fact No. 3 – The granting of this variance 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:

A preexisting nonconformity, created by a zoning code update, exists. The use will remain the same and the nonconformity will be diminished as new building will be significantly closer to Willey street than the current nonconforming building.

Finding of Fact No. 4 – The granting of this variance 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 land use will not be affected and market value will increase due to capital outlay into the property. Access and overall congestion should decrease as the number of drive thru lanes and overall building square footage will be decreased. The retailer sees this site a pedestrian focused location.

Papandreas moved to approve variance petition V13-26 as requested; seconded by Shamberger. Motion carried unanimously.

Agenda Item E Case No. V13-27 – Transparency

Fletcher stated that Staff recommends that variance relief be approved so that the north or Willey Street façade between 3 feet and 8 feet in height contains a fenestration of no less than 51% as proposed without conditions.

Papandreas made a motion to find in the affirmative for all the Findings of Facts as amended by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 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 property fronts on two streets which requires significantly more window transparency than other buildings in district. The nature of the business requires more security and privacy than other buildings.

Finding of Fact No. 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:

There are nonconforming properties within the district, particularly several downtown buildings having frontage on two or more streets. The proposed redevelopment improves upon a nonconforming structure with regard to window transparency.

Finding of Fact No. 3 – The granting of this variance 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 proposed redevelopment will improve upon a currently dated, nonconforming structure. The use will not change.

Finding of Fact No. 4 – The granting of this variance 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:

This redevelopment project will enhance property values with the infusion of building, hard-scape and landscape improvements. Traffic will be reduced by a reduction of drive thru lanes as well as an improvement in traffic patterns that enter and exit site on Willey and with an “ingress only” access proposed verses the “ingress/egress” access currently in place.

Shamberger moved to approve variance petition V13-27 as requested; seconded by Papandreas. Motion carried unanimously.

Agenda Item F Case No. V13-28 – minimum building height

Fletcher stated that Staff recommends that variance relief be approved to construct a one-story principal structure as proposed with the condition that the extended parapets along the Willey Street and Spruce Street façades and the articulated building entrance feature at the intersection of Willey Street and Spruce Street be developed as illustrated on the plans reviewed and approved herein.

Papandreas made a motion to find in the affirmative for all the Findings of Facts as amended by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 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 building ownership is corporate therefore speculative second floor space cannot be considered and would, accordingly to the petitioner, prohibit the redevelopment from occurring.

Finding of Fact No. 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:

Although not the preferred design pattern in the B-4 District, there are other buildings within the downtown area that do not comply with the minimum building height standard, particularly similar bank drive-through facilities.

Finding of Fact No. 3 – The granting of this variance 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 proposed redevelopment will improve upon a currently dated, nonconforming structure. The use will not change.

Finding of Fact No. 4 – The granting of this variance 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:

This redevelopment project will enhance property values with the infusion of building, hard-scape and landscape improvements. Traffic will be reduced by a reduction of drive thru lanes as well as an improvement in traffic patterns that enter and exit site on Willey with an “ingress only” access proposed verses the “ingress/egress” access currently in place.

Shamberger moved to approve variance petition V13-28 as requested with Staff recommended condition; seconded by Papandreas. Motion carried unanimously.

Agenda Item G Case No. V13-29 – drive-through stacking and private parking facilities

Fletcher stated that Staff recommends that variance relief be approved as requested with the condition that row of six (6) 60° parking spaces closest to the ATM lane be reserved for employee parking only and accordingly marked with pavement stenciling and/or signage to the satisfaction of the Planning Division.

Shamberger made a motion to find in the affirmative for all the Findings of Facts for V13-29 as amended by Staff; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 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 site in question has frontage on three streets. As this is a redevelopment rather than a new development project, room does not appear to exist to comply with the requirement. There appears to be sufficient room for the stacking of vehicles within the access drive from Willey Street.

Finding of Fact No. 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:

There does not appear to be a drive-through bank location within the B-4 District that meets the current minimum stacking requirement. Additionally, MVB Bank was granted similar variance relief by the Board on 20-Jun-2012 under Case No. V12-19 at the Earl Core Road location.

Finding of Fact No. 3 – The granting of this variance 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:

A preexisting nonconformity, created by a zoning code update, exists. The use will remain the same and the nonconformity will be diminished as the number of drive thru aisles will be reduced in half, more or less.

Finding of Fact No. 4 – The granting of this variance 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 land use will not be affected and market value will increase due to capital outlay into the property. Access and overall congestion should decrease as the number of drive thru lanes will be decreased. The retailer sees this site a pedestrian focused location.

Papandreas moved to approve V13-29 as requested with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

Cardoso reminded Mr. Lane that the Board's decisions can be appealed to Circuit Court within thirty days and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- H. **CU13-13 / Central Place, LLC / 475 Baird Street:** Request by Lisa Mardis of Project Management Services, on behalf of Central Place, LLC, for a conditional "Multi-Family Dwelling" use in the R-2 District at 475 Baird Street (former Central School site); Tax Map 26, Parcels 263 and 270; R-2, Single- and Two-Family Residential District and B-2, Service Business District.
- I. **V13-30 / Central Place, LLC / 475 Baird Street:** Request by Lisa Mardis of Project Management Services, on behalf of Central Place, LLC, for variance relief from Article 1337.04 and Article 1347.04 as they relate to setbacks at 475 Baird Street (former Central School site); Tax Map 26, Parcels 263 and 270; R-2, Single- and Two-Family Residential District and B-2, Service Business District.

- J. V13-31 / Central Place, LLC / 475 Baird Street:** Request by Lisa Mardis of Project Management Services, on behalf of Central Place, LLC, for variance relief from Article 1337.06 as it relates to building height at 475 Baird Street (former Central School site); Tax Map 26, Parcels 263 and 270; R-2, Single- and Two-Family Residential District and B-2, Service Business District.
- K. V13-32 / Central Place, LLC / 475 Baird Street:** Request by Lisa Mardis of Project Management Services, on behalf of Central Place, LLC, for variance relief from Article 1365.04 as it relates to minimum off-street parking requirements at 475 Baird Street (former Central School site); Tax Map 26, Parcels 263 and 270; R-2, Single- and Two-Family Residential District and B-2, Service Business District.
- L. CU13-14 / Central Place, LLC / 475 Baird Street:** Request by Lisa Mardis of Project Management Services, on behalf of Central Place, LLC, for a conditional "Off-Site Parking Facilities" use in the B-4 District; Tax Map 26, Parcel 249; B-4, General Business District.
- M. V13-33 / Central Place, LLC / 475 Baird Street:** Request by Lisa Mardis of Project Management Services, on behalf of Central Place, LLC, for variance relief from Article 1347.06 as it relates to parking between building façade and street right-of-way and Article 1367.08 as it relates to landscaping standards at 475 Baird Street (former Central School site); Tax Map 26, Parcels 263 and 270; R-2, Single- and Two-Family Residential District and B-2, Service Business District.
- N. V13-34 / Central Place, LLC / 475 Baird Street:** Request by Lisa Mardis of Project Management Services, on behalf of Central Place, LLC, for variance relief from Article 1337.07 and Article 1347.07 as it relates to performance standards at 475 Baird Street (former Central School site); Tax Map 26, Parcels 263 and 270; R-2, Single- and Two-Family Residential District and B-2, Service Business District.

Fletcher noted that the cases for Agenda Items H through and include N would be presented under one Staff Report.

Fletcher read the Staff Report stating the petitioner seeks to develop a six-story apartment building containing 120 dwelling units, 86 on-site parking spaces, and 37 off-site parking spaces on the former Central School site. Addendum A of this report illustrates the location of the subject development site.

The petitioner's proposed development program details include:

- One six-story building.
- 114 two-bedroom units and 6 one-bedroom units for a total of 120 dwelling units with 234 occupants.
- 86 on-site parking spaces and 37 off-site parking spaces.

- Conversion of the parking lot to the north of the First Presbyterian Church and fronting Spruce Street into an approximate 10,500 square foot recreational open space area for the benefit of the Presbyterian Child Development Center.
- The petitioner will describe the development's proposed ownership, property management, and leasing agent roles and responsibilities between the builder, owner, and First Presbyterian Church affiliation.
- In addition to the site plan, elevation, and floor plan drawings submitted with the application, the petitioner will present a 3D simulation of the proposed structure within the surrounding built environment.

On July 11, 2013, the Planning Commission:

- Approved related Case No. S13-05-III for a Major Development of Significant Impact Site Plan;
- Approved related Case No. MNS13-16 to combine Parcels 263 and 270 of Tax Map 26; and,

The graphic below illustrates that the subject development site is situated in two zoning districts – R-2 and B-2 [see Staff Report for graphic].

Although not considered a required approval for the proposed development program, the petitioner has also separately requested to amend the zoning classification for the subject realty from R-2 and B-2 to B-4, General Business District. Because the subject site adjoins the B-4 District, the reclassifying the property as requested would be considered a minor zoning district boundary adjustment.

On July 11, 2013, the Planning Commission voted unanimously to forward a positive recommendation to City Council for Case No. RZ13-04 to reclassify the subject realty from R-2 and B-2 to B-4.

It should be noted that the extent of requisite BZA approvals for the proposed development program would be less if the zoning classification for the subject property was B-4.

The following narrative describes each of the conditional use and variance cases presented herein.

Agenda Item H Case No. CU13-13

Table 1331.05.01 "Permitted Land Uses" of the Planning and Zoning Code provides that "Multi-Family Dwelling" uses are permitted by-right in the B-2 District and by conditional use in the R-2 District. Because a portion of the development site is situated within the R-2 District, the petitioner must obtain related conditional use approval.

Agenda Item I Case No. V13-30

The subject development site's lot frontage is along Baird Street. The petitioner's proposed front and rear setbacks are ten (10) feet respectively, which do not observe the minimum rear setback requirements in the R-2 District (20 feet) or B-2 District (40 feet) and do not observe the minimum front setback in the B-2 District (15 feet). As such, variance relief is required.

Agenda Item J Case No. V13-31

The proposed height of the building is six-stories and approximately 65 feet. The maximum building height standard in the R-2 District is 2 ½ stories or thirty-five (35) feet, whichever is less. The maximum building height standards in the B-2 District is seventy-two (72) feet. Because a portion of the development site is situated within the R-2 District, the petitioner must obtain variance relief from the related maximum building height standard.

Agenda Item K Case No. V13-32

As noted above, the minimum parking requirement for the proposed development is 177 parking stalls. The site plan illustrates 86 on-site and 37 off-site parking stalls, which, in addition to the conditional use approval for the off-site parking facility, requires variance relief from having to develop or secure 54 additional spaces.

Agenda Item L Case No. CU13-14

The minimum on-site parking requirement for the proposed development is 177 parking stalls. The site plan illustrates 86 on-site and 37 off-site parking stalls. The petitioner must obtain conditional use approval to provide the 37 off-site parking stalls as proposed.

Agenda Item M Case No. V13-33

The development of parking spaces is prohibited between the front façade of a building and any street right-of-way within the B-2 District. The proposed parking lot, internal driveway, and driveway entrances have been designed and located to accommodate access by emergency responders and larger delivery vehicles. As such, variance relief is required.

Additionally, the petitioner will be seeking variance relief from the minimum ten-foot wide landscape buffer along Baird Street (five-foot proposed); relief from developing landscape islands with concrete curbing every ten spaces for multi-family residential development (none proposed); and, relief from developing terminal islands for all rows of parking (terminal island not provided for one of the rows of parking).

Agenda Item N Case No. V13-34

Sidewalks must be developed along the frontage of a lot upon which a use is constructed. The minimum width for new sidewalks is five (5) feet in the R-2 District and six (6) feet in the B-2 District.

Because the subject site's frontage is along the dead-end Baird Street and pedestrian linkages to Willey Street and Spruce Street appear to be more practical, the petitioner seeks relief from developing sidewalks along Baird Street and instead developing a five-foot sidewalk around the entire building and connect the site to the sidewalk running along Willey Street.

Staff recommends that the Board, without objection from members of the Board, the petitioner, or the public, combine the public hearings for all the variance petitions presented herein. However, each respective variance petition must be considered and acted upon by the Board separately.

Cardoso recognized Dave Biafora of Central Place, LLC, who stated the original site was the Westminster House and the new site will include 234 total buildings. The building sits on two

different zoning districts and therefore a rezoning petition was presented before the Planning Commission on July 11, 2013.

Papandreas asked when the rezoning petition would be presented before Council. Fletcher explained the petition would be presented to the Committee of the Whole in July and the final approval would occur in September, 2013.

Papandreas asked if less variances and conditional uses would be required if already a B-4 district. Fletcher confirmed and stated that different types of petitions may be necessary but the extent would be less.

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

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance and conditional use by reaching a positive determination for *each* of the respective "Findings of Fact" submitted by the applicant. Addendum B of this report provides Staff recommended findings of fact.

Again, each respective conditional use and variance petition must be considered and acted upon by the Board separately.

Staff recommends the following approvals and related conditions for each petition:

Agenda Item H Case No. CU13-13 – "Multi-family Dwelling" use in R-2 District.

Staff recommends approval with the following conditions:

1. That Case No. S13-05-III and Case No. MNS13-16 be approved by the Planning Commission and all related conditions therein observed and/or addressed accordingly.
2. That a Lighting Plan be submitted with the building permit application for review and approval. Variance approval must be obtained should said plans not conform to the related performance standards set forth in the City's Planning and Zoning Code. Additionally, the Lighting Plan must include details, heights, and cut-off (shielding) characteristics along with photometric plans illustrating footcandle intensities and distribution for all parking areas and exterior site lighting fixtures.
3. That the external solid waste containment facility shall be enclosed with masonry materials and an opaque gate. Said facility must be designed so that it integrates with and compliments the architectural vocabulary of the principal structure. The enclosure must be at least six (6) feet in height and its opaque gate may not swing into the public right-of-way.
4. That the development must meet all applicable federal Fair Housing and Americans with Disabilities Act standards as determined by the City's Chief Building Code Official.
5. That fire lanes, if applicable, must be provided to the satisfaction of the City's Fire Marshal.

Shamberger made a motion to find in the affirmative for all the Findings of Facts as recommended by Staff; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

1. Congestion in the streets is not increased, in that:

As a required element in the Planning Commission's approval of the "Westminster House" Planned Unit Development (PUD) Outline Plan for the subject site, a traffic impact study dated 01-Oct-2008 was prepared by Gannett Fleming. The study noted that the AM and PM peak period levels of service for the three intersections studied did not change as a result of the proposed development and that no mitigation actions were recommended. The City Engineer concurred with the study's methodology, findings, and recommendations. The City Engineer has reviewed the petitioner's present development program along with the "Westminster House" traffic impact study. Given that the number of residents included in the "Central Place" development program is approximately half that proposed in the "Westminster House" development program and the fact that no mixed-uses are proposed now as before, the City Engineer has determined that a new or amended traffic impact analysis is not warranted at this time.

2. Safety from fire, panic, and other danger is not jeopardized, in that:

The proposed multi-family residential structure, with common areas, will meet or exceed all related building and fire code standards prior to the issuance of occupancy permits.

3. Provision of adequate light and air is not disturbed, in that:

The scale and height of the proposed building appears to reflect similar scaled buildings within the immediate area including Metro Property's Courtyard East and Courtyard West, Morgantown Unity Manor, and WVU's Arnold Hall and Apartments. Additionally, the subject site is situated in a dell below Willey Street, Dallas Street, and Locust Avenue.

4. Overcrowding of land does not result, in that:

The subject site is located within the "Downtown Enhancement" and "Neighborhood Revitalization" concept areas illustrated on the 2013 Comprehensive Plan's Land Management Map. The proposed scale, density, and intensity are in concurrence with the 2013 Comprehensive Plan's Principles for Land Management. Specifically, the proposed development accomplishes infill development and redevelopment of an underutilized and deteriorating site; expands the urban core in a contiguous pattern already served by existing infrastructure at the edge of the central business district; and, is consistent with the preferred development pattern and character types of the noted Plan concept areas.

5. Undue congestion of population is not created, in that:

The proposed residential density is in concurrence with the 2013 Comprehensive Plan's principles for land management. Specifically, the development provides residential opportunities that are integrated into the pedestrian-scale of the central business district; promotes access to alternative transportation modes and basic retail needs; and is consistent with the preferred development pattern and character types and densities of the "Downtown Enhancement" and "Neighborhood Revitalization" concept areas illustrated on the 2013 Comprehensive Plan's Land Management Map.

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

The site appears to be adequately served by existing public utility, infrastructure, and service facilities. The proposed residential density will promote the regular use of alternative modes of transport include increasing public transit ridership.

7. Value of buildings will be conserved, in that:

The significant investment made in the construction of the multi-family structure will enhance the value and market performance for continued mixed-use and multi-family housing interest within the immediate area. The downtown properties and commerce will benefit from the increase in residential density at the edge of the central business district and the university's downtown campus.

8. The most appropriate use of land is encouraged, in that:

The proposed development is consistent with the 2013 Comprehensive Plan's Land Management Principals, Land Management Map, and desired development pattern and character for the "Downtown Enhancement" and "Neighborhood Revitalization" concept areas.

Papandreas moved to approve conditional use CU13-13 as requested with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

Agenda Item I Case No. V13-30 – Setback encroachments.

Staff recommends approval with the following condition:

1. That Case No. S13-05-III and Case No. MNS13-16 be approved by the Planning Commission and all related conditions therein observed and/or addressed accordingly.

Papandreas made a motion to find in the affirmative for all the Findings of Facts as recommended by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 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 uniquely shaped realty creates site-specific design solution necessities to provide desired residential densities and required parking access and maneuvering for emergency response vehicles.

Finding of Fact No. 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 several nearby structures in both the R-2 and B-2 Districts along Willey Street, Forest Avenue, Dallas Street, and Locust Avenue encroach into required building envelope standards.

Finding of Fact No. 3 – The granting of this variance 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 redevelopment of the former Central Elementary School site as proposed represents a unique opportunity to remove a vacant structure that no longer serves a public educational purpose. Over the past few years, the property's current owner has been unable to sustain the financial wherewithal to address deterioration and increased vandalism to the structure and property, which is now contributing to blighting conditions. The proposed setback encroachments appear necessary to provide desired residential densities, site layout design, and required parking access and maneuvering for emergency response vehicles.

Finding of Fact No. 4 – The granting of this variance 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 proposed development is consistent with the 2013 Comprehensive Plan's Land Management Principals, Land Management Map, and desired development pattern and character for the "Downtown Enhancement" and "Neighborhood Revitalization" concept areas. The nature of the setback encroachment variance cannot contribute to nor mitigate existing traffic congestion within the immediate area.

Papandreas moved to approve variance petition V13-30 as requested with Staff recommended condition; seconded by Shamberger. Motion carried unanimously.

Agenda Item J Case No. V13-31 – Maximum building height in R-2 District.

Staff recommends approval with the following condition:

1. That Case No. S13-05-III and Case No. MNS13-16 be approved by the Planning Commission and all related conditions therein observed and/or addressed accordingly.

Shamberger made a motion to find in the affirmative for all the Findings of Facts as recommended by Staff; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 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 proposed development is located in two different zoning districts with incongruous height restrictions ranging from 35 feet to 72 feet. The height of the proposed building appears to reflect similarly scaled buildings within the immediate area including Metro Property's Courtyard East and Courtyard West, Morgantown Unity Manor, and WVU's Arnold Hall and Apartments. Additionally, the subject site is situated in a dell below Willey Street, Dallas Street, and Locust Avenue.

Finding of Fact No. 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:

There appears to be structures within the R-2 District fronting Forest Avenue and Dallas Street that exceed current maximum height restrictions. Additionally, the proposed height of the building observes maximum related standard in the B-2 District.

Finding of Fact No. 3 – The granting of this variance 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 redevelopment of the former Central Elementary School site as proposed represents a unique opportunity to remove a vacant structure that no longer serves a public educational purpose. Over the past few years, the property's current owner has been unable to sustain the financial wherewithal to address deterioration and increased vandalism to the structure and property, which is now contributing to blighting conditions. The proposed building height appears necessary to provide desired residential densities, which is otherwise within the maximum building height standard of the B-2 District.

Finding of Fact No. 4 – The granting of this variance 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 proposed development is consistent with the 2013 Comprehensive Plan's Land Management Principals, Land Management Map, and desired development pattern and character for the "Downtown Enhancement" and "Neighborhood Revitalization" concept areas. As a required element in the Planning Commission's approval of the "Westminster House" Planned Unit Development (PUD) Outline Plan for the subject site, a traffic impact study dated 01-Oct-2008 was prepared by Gannett Fleming. The study noted that the AM and PM peak period levels of service for the three intersections studied did not change as a result of the proposed development and that no mitigation actions were recommended. The City Engineer concurred with the study's methodology, findings, and recommendations. The City Engineer has reviewed the petitioner's present development program along with the "Westminster House" traffic impact study. Given that the number of residents included in the "Central Place" development program is approximately half that proposed in the "Westminster House" development program and the fact that no mixed-uses are proposed now as before, the City Engineer has determined that a new or amended traffic impact analysis is not warranted at this time.

Papandreas moved to approve variance relief V13-31 as requested with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

Agenda Item K Case No. V13-32 – Minimum parking requirement.

Staff recommends approval with the following conditions:

1. That Case No. S13-05-III and Case No. MNS13-16 be approved by the Planning Commission and all related conditions therein observed and/or addressed accordingly.
2. That minor parking lot layout modifications must be provided in plans submitted with the building permit application as described and illustrated in Addendum C of this Staff Report and developed accordingly.

Papandreas made a motion to find in the affirmative for all the Findings of Facts as recommended by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 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:

Continued efforts to increase residential density in the downtown area, within walking distance of primary residential destination points, and within a well-served transit corridor should serve to aid in relieving housing development demand in outlying areas of Monongalia County that contribute to traffic congestion within the City of Morgantown. The subject site is abutting the central business district where minimum parking requirements are significantly less including parking reductions based on proximity to public parking facilities and fixed transit stops.

Finding of Fact No. 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 historic development pattern within the immediate R-2, B-1, B-2, and B-4 Districts has not included provisions for on-site parking and therefore promotes alternative modes of transport

including walking, biking, and public transit.

Finding of Fact No. 3 – The granting of this variance 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 redevelopment of the former Central Elementary School site as proposed represents a unique opportunity to remove a vacant structure that no longer serves a public educational purpose. Over the past few years, the property's current owner has been unable to sustain the financial wherewithal to address deterioration and increased vandalism to the structure and property, which is now contributing to blighting conditions. The proposed on-site and off-site parking plan, along with parking lot layout modification conditions required by the Board, appears necessary to provide desired residential densities. The proposed development reflects minimum parking obligations within the adjoining B-4 District, which furthers smart growth principals including compact building design and walkability. The proposed residential density and reduced parking otherwise required will promote the regular use of alternative modes of transport include increasing public transit ridership.

Finding of Fact No. 4 – The granting of this variance 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 proposed development is consistent with the 2013 Comprehensive Plan's Land Management Principals, Land Management Map, and desired development pattern and character for the "Downtown Enhancement" and "Neighborhood Revitalization" concept areas. As a required element in the Planning Commission's approval of the "Westminster House" Planned Unit Development (PUD) Outline Plan for the subject site, a traffic impact study dated 01-Oct-2008 was prepared by Gannett Fleming. The study noted that the AM and PM peak period levels of service for the three intersections studied did not change as a result of the proposed development and that no mitigation actions were recommended. The City Engineer concurred with the study's methodology, findings, and recommendations. The City Engineer has reviewed the petitioner's present development program along with the "Westminster House" traffic impact study. Given that the number of residents included in the "Central Place" development program is approximately half that proposed in the "Westminster House" development program and the fact that no mixed-uses are proposed now as before, the City Engineer has determined that a new or amended traffic impact analysis is not warranted at this time.

Shamberger moved to approve variance petition V13-32 as requested with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Agenda Item L Case No. CU13-14 – Off-site parking facility.

Staff recommends approval with the following conditions:

1. That Case No. S13-05-III and Case No. MNS13-16 be approved by the Planning Commission and all related conditions therein observed and/or addressed accordingly.
2. That the off-site parking facility approved herein 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. A certified recorded copy of the instrument shall be filed with the Department of Development Services and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, WV.

3. That it shall be the responsibility of the owner of Parcels 263 and 270 of Tax Map 26 to maintain current and valid parking as approved herein. Evidence of such parking is required prior to approval and proof of current leases shall be made available at the request of the City. Each leased space shall have a sign noting the subject multi-family residential development for which the space is reserved. Signs 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 stall. The text on the sign shall state "This space is reserved for patrons of [name of subject multi-family residential development] only, per City Code 1365.07(D)." All leased stalls shall be paved and striped. No unimproved stalls shall be used for parking reserved herein. Leasing of stalls shall not reduce the available parking below the minimum requirement for uses sharing the lot.

Papandreas made a motion to find in the affirmative for all the Findings of Facts as recommended by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

1. Congestion in the streets is not increased, in that:

As a required element in the Planning Commission's approval of the "Westminster House" Planned Unit Development (PUD) Outline Plan for the subject site, a traffic impact study dated 01-Oct-2008 was prepared by Gannett Fleming. The study noted that the AM and PM peak period levels of service for the three intersections studied did not change as a result of the proposed development and that no mitigation actions were recommended. The City Engineer concurred with the study's methodology, findings, and recommendations. The City Engineer has reviewed the petitioner's present development program along with the "Westminster House" traffic impact study. Given that the number of residents included in the "Central Place" development program is approximately half that proposed in the "Westminster House" development program and the fact that no mixed-uses are proposed now as before, the City Engineer has determined that a new or amended traffic impact analysis is not warranted at this time.

2. Safety from fire, panic, and other danger is not jeopardized, in that:

The proposed off-site parking facility is located on an existing surface parking lot and will not jeopardize safety from fire, panic, or other danger.

3. Provision of adequate light and air is not disturbed, in that:

The proposed off-site parking facility is located on an existing surface parking lot and will therefore not affect existing light distribution or air flow patterns.

4. Overcrowding of land does not result, in that:

The subject site is located within the "Downtown Enhancement" and "Neighborhood Revitalization" concept areas illustrated on the 2013 Comprehensive Plan's Land Management Map. The proposed scale, density, and intensity are in concurrence with the 2013 Comprehensive Plan's Principles for Land Management. Specifically, the proposed development accomplishes infill development and redevelopment of an underutilized and deteriorating site; expands the urban core in a contiguous pattern already served by existing infrastructure at the edge of the central business district; and, is consistent with the preferred development pattern and character types of the noted Plan concept areas.

5. Undue congestion of population is not created, in that:

The proposed residential density is in concurrence with the 2013 Comprehensive Plan's principles for land management. Specifically, the development provides residential opportunities that are integrated into the pedestrian-scale of the central business district; promotes access to alternative

transportation modes and basic retail needs; and is consistent with the preferred development pattern and character types and densities of the “Downtown Enhancement” and “Neighborhood Revitalization” concept areas illustrated on the 2013 Comprehensive Plan’s Land Management Map.

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

The site appears to be adequately served by existing public utility, infrastructure, and service facilities. The proposed residential density and reduced parking otherwise required will promote the regular use of alternative modes of transport include increasing public transit ridership.

7. Value of buildings will be conserved, in that:

The significant investment made in the construction of the multi-family structure will enhance the value and market performance for continued mixed-use and multi-family housing interest within the immediate area. The downtown properties and commerce will benefit from the increase in residential density at the edge of the central business district and the university’s downtown campus.

8. The most appropriate use of land is encouraged, in that:

The proposed development is consistent with the 2013 Comprehensive Plan’s Land Management Principals, Land Management Map, and desired development pattern and character for the “Downtown Enhancement” and “Neighborhood Revitalization” concept areas, which will be furthered by the proposed off-site parking facility on an existing surface parking lot.

Shamberger moved to approve conditional use petition CU13-14 as requested with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Agenda Item M Case No. V13-33 – Parking between front façade and street and relief from minimum landscaping standards.

Staff recommends approval with the following conditions:

1. That Case No. S13-05-III and Case No. MNS13-16 be approved by the Planning Commission and all related conditions therein observed and/or addressed accordingly.
2. That minor parking lot internal landscaping modifications must be provided in plans submitted with the building permit application as described and illustrated in Addendum C of this Staff Report and developed accordingly.
3. That a Landscape Plan be submitted with the building permit application for review and approval. Variance approval must be obtained should said plans not conform to the related performance standards set forth in the City’s Planning and Zoning Code. Additionally, the use of stone, mulch, or other inert materials throughout the site must be insignificant with the greatest portion of landscaped areas devoted to grass, turf, and/or other plant materials.

Papandreas made a motion to find in the affirmative for all the Findings of Facts as recommended by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 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 uniquely shaped realty creates site-specific design solution necessities to provide desired

residential densities, parking layout, and access and maneuvering for emergency response vehicles.

Finding of Fact No. 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 adjoining Morgantown Unity Manor development includes parking between the front façade and Willey Street and does not include compliant landscape buffering and terminal islands.

Finding of Fact No. 3 – The granting of this variance 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 redevelopment of the former Central Elementary School site as proposed represents a unique opportunity to remove a vacant structure that no longer serves a public educational purpose. Over the past few years, the property's current owner has been unable to sustain the financial wherewithal to address deterioration and increased vandalism to the structure and property, which is now contributing to blighting conditions. The proposed site plan, along with modifications required by the Board's related conditions, incorporates site-specific design solutions to provide desired residential densities, parking layout, access and maneuvering for emergency response vehicles, and the provision of adequate buffering and internal parking lot landscaping.

Finding of Fact No. 4 – The granting of this variance 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 proposed development is consistent with the 2013 Comprehensive Plan's Land Management Principals, Land Management Map, and desired development pattern and character for the "Downtown Enhancement" and "Neighborhood Revitalization" concept areas. The proposed site plan, along with modifications required by the Board's related conditions, will enhance the development's contribution the immediate area's built environment. The nature of the variances cannot contribute to nor mitigate existing traffic congestions along neighborhood streets.

Shamberger moved to approve variance petition V13-33 as requested with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Agenda Item N Case No. V13-34 – Alternate sidewalk design.

Staff recommends approval with the following conditions:

1. That Case No. S13-05-III and Case No. MNS13-16 be approved by the Planning Commission and all related conditions therein observed and/or addressed accordingly.
2. That internal and connecting concrete sidewalks must be constructed as illustrated on the site plan reviewed and approved herein.
3. That a separate Pedestrian Circulation Plan must be submitted with the building permit application that illustrates pedestrian circulation and safety improvements as described and illustrated in Addendum C of this Staff Report and developed accordingly.

Shamberger made a motion to find in the affirmative for all the Findings of Facts as recommended by Staff; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 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:

It is reasonable to anticipate that pedestrians entering and leaving the site will be in the direction of Willey Street and Spruce Street with very little need to traverse across the subject property's Baird Street frontage.

Finding of Fact No. 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 alternative sidewalk plan meets the spirit and intent of ensuring safe pedestrian ways to existing primary sidewalks and creating sidewalk network connections as desired and intended in a manner that recognizes the unique geometry, topography, and relative isolation of the subject site, which is situated on edge of the downtown central business district.

Finding of Fact No. 3 – The granting of this variance 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 alternative sidewalk plan, along with pedestrian circulation plan conditions required by the Board, recognizes reasonably anticipated pedestrian directional trips connecting the site to the neighboring downtown central business district, the University's downtown campus, and public transportation in a manner that could not be achieved through the strict application of the related sidewalk development standard.

Finding of Fact No. 4 – The granting of this variance 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 proposed development is consistent with the 2013 Comprehensive Plan's Land Management Principals, Land Management Map, and desired development pattern and character for the "Downtown Enhancement" and "Neighborhood Revitalization" concept areas. The alternative sidewalk plan, along with pedestrian circulation plan conditions required by the Board, recognizes reasonably anticipated pedestrian directional trips connecting the site to the neighboring downtown central business district, the University's downtown campus, and public transportation in a manner that could not be achieved through the strict application of the related sidewalk development standard. The nature of the variance cannot contribute to nor mitigate existing traffic congestion on neighboring public streets.

Shamberger moved to approve variance petition V13-34 as requested with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Cardoso reminded Mr. Biafora that the Board's decisions can be appealed to Circuit Court within thirty days and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- O. **V13-25 / Otto Properties, LLC / 510 Burroughs Street**: Request by Lisa Mardis of Project Management Services, on behalf of Otto Properties, LLC, for variance relief from Article 1365.09(B) as it relates to setbacks at 510 Burroughs Street; Tax Map 55, Parcel 37; B-2, Service Business District.

Fletcher read the Staff report and stated that Article 1365.09(B)(4)(d) provides that:

“All paved portions of all parking spaces and maneuvering aisles shall be set back a minimum of five (5) feet from any wall of a building.”

In response to a complaint to City Administration, Staff inspected the subject 510 Burroughs Street site and learned that this provision had not been adhered to; that Staff inadvertently overlooked applying this standard during plans review and permitting; and, that Staff did not accordingly advise the developer of the related site design obligation prior to or during construction. Addendum A illustrates the location of the subject site.

Investigating complaints concerning possible code violations that may have been unnoticed or inadvertently overlooked is consistent with City Administration policy and practice.

Staff advised City Administration that, by virtue of the complaint and further investigation, Article 1365.09(B)(4)(d) had not been uniformly applied by the Planning Division during plans review and permitting since the subject standard's enactment in 2006.

City Administration met with Otto Properties, LLC for the purpose of elucidating the oversight and discussing alternate design solutions. Because the Planning Division had not properly applied the subject standard to other developments, no enforcement action was taken nor was the petitioner required to obtain variance relief.

Additionally, other developments that did not meet the subject standard will also not be required to seek variance relief approval.

In response to the lack of enforcement of the subject provision, City Administration directed the Planning Division to research policy administration solutions to ensure the spirit and intent of the standard is maintained and fairly, equitably, and properly applied.

Prior to the 2006 major zoning ordinance amendment, the following related provision was provided:

“Along any highways, major or minor arterial streets, each building or group of buildings, together with its parking or service areas, shall be physically separated by a vertical curb, maintained planting strip, or other suitable barrier to channel and direct vehicular ingress and egress, except for necessary accessways.”

It appears that prior to 2006, a design standard establishing a minimum proximity of parking spaces and aisles to buildings was not provided. In fact, “accessways” were exempt from the physical vertical separation provisions and parking stalls were not mentioned. However, the intent to protect property and vehicles is evident under the previous and current provisions.

In comparing the present and past correlating standards, Staff identified the following policy incongruities.

- The current standard does not accommodate developments that include facilities like drive-through windows and stacking lanes. As such, a strict application of the standard would require such developments to obtain variance relief from the present five-foot proximity standard.
- The distance of five feet from a building without a vertical barrier does not necessarily ensure that the legislative intent to protect property and vehicles will be achieved.

Given the unnecessary hardship the present five-foot standard places on developments with facilities like drive-through windows; the need to strengthen design solutions to achieve desired protections; return in spirit to the standard in place prior to 2006; and, correct the Planning Division's unintentional oversight of applying the current standard uniformly, Staff recommended the following zoning text amendment to the Planning Commission on 25-Apr-2013:

With the exception of drive-through windows and related stacking lanes, All paved portions of all parking spaces and maneuvering aisles shall be physically separated from any wall of a building by a vertical curb, maintained planting strip, and/or other suitable barrier set back a minimum of five (5) feet from any wall of a building.

On 02-Jul-2013, City Council enacted said zoning ordinance amendment.

The petitioner has voluntarily submitted a variance petition requesting relief of 1'-3" to 1'-6" from the former Article 1365.09(B)(4)(d) standard so that the curb and landscape area may remain as developed and the matter resolved accordingly.

Please note that the site plan submitted with the petitioner's variance application is for illustration purposes only as the layout shown thereon reflects a contemplated expansion of the parking area as a result of the owner's recently acquired portion of realty from the adjoining Unity House development tract.

Cardoso recognized Alex Shook of 315 High Street, who asked the Fletcher if anyone with Otto Properties was notified of the problem with Article 1365.09(b)(d). Fletcher stated he did not recall and asked if Shook was taking a testimony. Shook stated he was asking questions to elicit clarification and Fletcher stated he may or may not respond to the questions.

Shook asked if it was true that the City did not raise any issues regarding Article 1365.09 prior to the issuance of the Certificate of Occupancy with the developers. Fletcher stated not to his recollection.

Shook asked if it was true that the Staff Report stated Article 1365.09 is not uniformly applied. Fletcher noted that the Staff Report was just read aloud.

Cardoso informed Shook the information requested was included in the Staff Report and his questions resemble a cross examination which is not appropriate since information was provided in the Staff Report.

Shook asked if Otto Properties was the only developer that had Article 1365.09 applied or imposed upon. Fletcher referred to the Staff Report on the opinion and position of the Planning Division.

Shook asked if a majority or all of the developments since the adoption of the ordinance had been exempt. Fletcher stated that was read aloud in the Staff Report as well.

Shook asked if there was a reason that Otto Properties was selected for the imposition of Article 1365.09. Fletcher referred to the Staff Report and stated that Otto Properties, LLC was not required to apply for the variance.

Cardoso asked Shook to make statements to support the petition as the questions being asked are comparable to a testimony with cross examination.

Shook stated that Otto Properties, LLC had an issue with the variance being applied for voluntarily. He received a letter on April 25, 2013 that requested the property owners install bollards as a result of the violation of Article 1365.09. It is his understanding that the violation was a result of complaints by a representative from Howard Hannah Premiere Properties, Commercial Division and by a representative of Greer Limestone Company. Shook asked if this is an official position of those companies and feels Otto Properties has been singled out for enforcement of Article 1365.09.

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

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

Fletcher stated that although inadvertent, Staff contributed to affecting the present contravention of Article 1365.09(B)(4)(d) for this and other development sites. It is therefore only appropriate that Staff not submit an approval recommendation for Case No. V13-25.

Papandreas made a motion to find in the affirmative for all the Findings of Facts as revised by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 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 property owners were made aware of this deficiency only after a complaint was filed by an outside source against Otto Properties, LLC, long after the aforementioned owners received a Letter of Compliance for the two rental units and two Certificate of Occupancies (one for the building and related parking, and one for The Wine Bar at Vintner Valley). The development was previously approved with a three (3) foot to 0 landscape area running along the eastern side of the structure. To further exaggerate the exceptional or extraordinary circumstance, this particular code has historically been overlooked, leaving a string of non-conforming code violations. Being led to believe that the development met all applicable zoning codes, as evidenced by Certificate of Occupancies, Otto Properties, LLC has attempted to remedy said violation and to meet the spirit and intent of the Planning and Zoning Code, by placing a barrier, or landscaped island, next to the building ranging from 3'6" to 3'9" (as measured by the Planning Division). The applicant humbly requests a variance

from 1'-3" to 1'-6" running and exceeding the length of the side of the structure to maintain the existing curb and landscaping area that has been developed. The owners fear that encroaching into this distance further would interfere with the pedestrian way leading to the entrance at the front of the building, not to mention that it appears it would restrict the State approved ingress/egress location.

Finding of Fact No. 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 majority, if not all development since the adoption of the Planning and Zoning Ordinance in 2006 has not been made to comply with related code. Furthermore, it appears that this requirement would eliminate drive-thrus. Examples of properties or uses that possess same (approved since ordinance adoption in 2006) include, but are not limited to Giant Eagle Pharmacy drive thru on Greenbag Road, Mud Suckers Car Wash on Brockway Avenue, McDonald's on University Avenue, Morgantown AES Credit Union on Van Voorhis Road.

Finding of Fact No. 3 – The granting of this variance 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 granting variance relief for the subject site as requested may a serve to mitigate potential harm to patrons utilizing the pedestrian pathway/area to gain access to the commercial establishment's entrance at the front of the building.

Finding of Fact No. 4 – The granting of this variance 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 proposed variance is intended to ensure pedestrian safety, which by its nature cannot result in nor contribute to an increase in traffic congestion. Furthermore, the land-use will not be changed.

Papandreas moved to approve variance petition V13-24 as requested; seconded by Shamberger. Motion carried unanimously.

Cardoso reminded Mr. Shook that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

IV. OTHER BUSINESS:

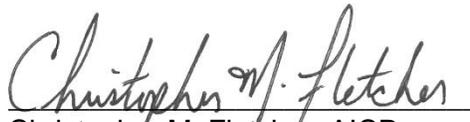
A. Public Comments (matters not on the agenda): None.

B. Staff Comments: None.

V. ADJOURNMENT: 8:23 PM

MINUTES APPROVED:

BOARD SECRETARY:


Christopher M. Fletcher, AICP