

BOARD OF ZONING APPEALS

Minutes

6:30 PM

November 17, 2010

City Council Chambers

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

MEMBERS ABSENT: Leanne Cardoso

STAFF: Christopher Fletcher, AICP

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

II. MATTERS OF BUSINESS

- A. Minutes for the August 18, 2010 hearing – Bossio noted that not all of the three members present during the August 18th hearing were available to consider the minutes for that hearing and that the said minutes would be postponed until the BZA's December meeting.
- B. Minutes for the October 20, 2010 hearing – Shamberger moved to accept the minutes as presented; seconded by Papandreas. The motion passed unanimously.

III. OLD BUSINESS – None

- A. **BA10-02 / Traugh / Administrative Appeal:** A petition by Zachary Traugh, Big Zach Productions L.L.C., for an administrative appeal of the Planning Department's interpretation of Article 1331.06 (27) of the City's Planning and Zoning Code as it relates to the proposed land use at 344 High Street. Tax Map #26A, Parcel #109; B-4, General Business District.

Fletcher stated that the petitioner requested the agenda item to be postponed as his attorney was unavailable this evening. Fletcher noted that no action was required by the Board.

IV. NEW BUSINESS

- A. **CU10-12 / Auto Zone / Earl Core Road:** Request by Auto Zone Development Corporation for conditional "Automotive Supply" use approval for property located on Earl Core Road. Tax Map #31, Parcels #108, 111, 105.01, and 149.2; B-2, Service Business District.

Fletcher read the Staff Report stating that Auto Zone Development Corp. seeks to re-develop an area that is currently used by *Southern States* for the storage of farm-use and related equipment. Addendum A of this report illustrates the site's location.

The proposed "Automotive Supply" establishment's general development program details include:

- Approximately 7,370 square feet of gross floor area (GFA).

- Thirty-six (36) surface parking spaces are proposed, including two accessible spaces.
- Approximately six (6) employees may be present during the largest shift.
- The petitioner agreed to flip the original site plan to increase the distance between the *Auto Zone* driveway entrance and the entrance serving the adjoining *Sabraton Sudz Carwash* to promote best access management practices and improve public safety. By flipping the original site layout, the petitioner was able to move the building forward to conform to rear setback standards in the B-2 District.
- The petitioner has agreed to install a pedestrian connection to the adjoining Rail-Trail facility at the rear of the property.
- The petitioner has agreed to develop cross-access driveway entrances to the adjoining property lines shared with *Southern States* and *Sabraton Sudz Carwash* lots. The petitioner has also agreed to include a sidewalk with the cross-access driveway entrance to the *Sabraton Sudz Carwash* lot to provide a safe pedestrian way between the compatible adjoining land uses.
- Sidewalks will be developed across the development site's frontage.

Table 1331.05.01 provides that "Automotive Supply" uses require conditional use approval in the B-2 District. It should be noted that there are currently two "Automotive Supply" uses in the Sabraton area – *Advanced Auto*, which is in a B-5 District; and, *Napa Auto Parts*, which is in the B-2 District.

In addition to the conditional use petition, the following variances appear necessary based on the proposed site plan:

- V10-26..... Variance relief from Article 1347.04 of the Planning & Zoning Code as it relates to maximum front setback.
- V10-28..... Variance relief 1347.06 (B) of the Planning & Zoning Code as it relates to parking between the front façade and frontage street.
- V10-30..... Variance relief from Article 1365.04 (I) of the Planning & Zoning Code as it relates to the maximum number of parking spaces provided in non-residential districts.

Bossio recognized Mr. Kevin Murphy, Auto Zone Development Corporation. Mr. Murphy stated that he appreciates being on the agenda tonight and appreciates be heard. He stated that he has worked closely with the Planning Department and the Staff Report provides all the development details. They are proposing a 7,300 square foot retail auto parts store with parking spaces and are ready to get the project under construction.

There being no further questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone wished to speak in favor of or in opposition to the petition. There being no public comments, Bossio declared the public hearing closed and asked for Staff's 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. Staff recommends revisions to the petitioner's Findings of Fact, deleted matter struck through; new matter underlined.

Fletcher stated that Staff recommends that the conditional use petition be approved with the following conditions:

1. That new sidewalks with a minimum width of six feet be developed to the satisfaction of the City Engineer along the site's Earl L. Core Road frontage;
2. That, to the satisfaction of the Planning Director, the final landscape plan meet or exceed the minimum standards set forth in the Planning and Zoning Code with special design and development care given to buffering the site from view of the rail-trail facility;
3. That the petitioner develops and maintains cross-access driveway entrances to the adjoining property boundaries as illustrated on the submitted site plan to promote best access management practices and improve public safety;
4. That the cross-access driveway entrance to the adjoining car wash use include a concrete sidewalk to provide a safe pedestrian way between the compatible adjoining land uses; and,
5. That the petitioner develops and maintains a paved pedestrian way, at least four (4) feet in width, that connects the development site to the adjoining rail-trail facility.

Fletcher added that the Planning Department has worked closely with the petitioner, reviewed several site plan iterations, that the petitioner has been gracious in including all the suggested revisions and reduced the extent of the variances that will be considered by the Board later.

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

NOTE: The following findings of fact were included in the motion.

Finding of Fact #1 The property lies within an area that is an established commercial area. The addition of the proposed project is not expected to increase street congestion. Earl Core Road includes a left turn lane by which motorists may access the store without disrupting traffic in the primary travel lanes. The driveway entrance will be developed away from that serving the adjoining *Sabraton Sudz Carwash* to promote best access management practices and improve public safety. Cross-access driveways will be developed to the property boundaries shared with adjoining parcels thereby promoting the development of a parallel vehicular way designed to reduce the need to reenter Earl Core Road to access neighboring commercial uses.

Finding of Fact #2 This project is consistent with the surrounding commercial properties. Conditional use approval will permit the petitioner to develop a currently underperforming tract of land. The site and proposed building will meet all building and fire code life and safety standards.

Finding of Fact #3 The proposed one-story building is consistent with the scale and density of development along Earl Core Road and should not disrupt existing light and air patterns.

Finding of Fact #4 This project is consistent with the existing commercial density of the area and meets side and rear setback and lot coverage standards in the B-2 District.

Finding of Fact #5 This project is consistent with the surrounding commercial properties and does not include residential uses.

Finding of Fact #6 Water, sewage, stormwater, and other utility facilities appear be available in adequate capacities to serve the proposed conditional use development. The proposed development will not include residential occupancy and therefore will not increase demand on existing public school facilities. The proposed development will include a pedestrian connection to the adjoining rail-trail facility thereby promoting access to and utilization of the community's adjoining lineal park facility.

Finding of Fact #7 This project is consistent with the surrounding commercial properties. The development of the new commercial retail establishment should increase the value of the currently underperforming tract, increase the site's impact on market activity within the commercial area, and positively influence the desirability and value of adjoining properties.

Finding of Fact #8 Conditional use approval will permit the petitioner to develop a currently underperforming tract of land within a thriving commercial area. The proposed one-story building is consistent with the scale and density of commercial development along Earl Core Road. There are two other "Automotive Supply" uses within the Sabraton area, one of which is located in the B-2 District.

Shaffer moved to approve the conditional use with Staff's recommended conditions; seconded by Shamberger. The motion passed unanimously.

Bossio advised the petitioner that the decision of the Board could be appealed to Monongalia County Circuit Court within thirty days and that any work done relating to the Board's decision would be at the petitioner's sole financial risk.

- B. V10-26 / Auto Zone / Earl Core Road:** Request by Auto Zone Development Corporation for variance approval from the Planning and Zoning Code, Article 1347.04 Setbacks, as it relates to the maximum front setback for property located on Earl Core Road. Tax Map #31, Parcels #108, 111, 105.01, and 149.2; B-2, Service Business District.

Fletcher read the Staff Report stating that the Auto Zone Development Corporation seeks to re-develop an area that is currently used by *Southern States* for the storage of farm-use and related equipment. Addendum A of this report illustrates the location of the site.

Fletcher noted that the general development program details were read into the record under the previous petition.

Fletcher stated that the Planning Department prepared one Staff Report for the petitioner's three variance requests, which is customary for development projects requiring more than one variance approval.

Fletcher stated that the following narrative addresses the extent of each of the variance petitions and Staff observations.

V10-26 – Variance relief from Article 1347.04 of the Planning & Zoning Code provides that the maximum front setback in the B-2 District cannot exceed thirty (30) feet. The proposed site plan illustrates a front setback of 77.5 foot, which requires a 47.5 foot variance.

Staff observations include:

- The petitioner has agreed to develop cross-access driveways to the property boundaries shared with adjoining tracts to promote best access management practices and improve public safety. This design element would result in an approximate front setback of 60 feet, which exceeds the maximum front setback standard. To maximize the use of the residual area, the petitioner seeks to develop parking thereby resulting in approximately 18 additional feet in the proposed front setback.
- The merits and benefits of planning vehicular service access routes parallel to Earl Core Road has been realized between several developments within the corridor.
- The proposed front setback appears to be consistent with adjoining commercial properties and the predominant development pattern within the corridor. Additionally, similar variance relief was granted for the development immediately across Earl Core Road from the subject site (V07-38 / Glenmark-USDA).
- The petitioner has agreed to develop landscaping that meets or exceeds the minimum standards set forth in the Planning and Zoning Code to establish an attractive streetscape along the Earl Core Road corridor.

V10-28 – Variance relief from Article 1347.06 (B) of the Planning & Zoning Code which provides that:

- (B) No parking spaces shall be permitted between the front façade of a building and any street right-of-way.

The proposed site plan illustrates fifteen (15) parking spaces immediately in front of the building and approximately one (1) space to the east of the building that are between the proposed building line and Earl L. Core Road. Variance approval is required for the proposed parking plan.

Staff observations include:

- The proposed building has been set back to accommodate cross-access driveways to adjoining commercial tracts to promote best access management practices and improve public safety.
- It appears that the petitioner seeks to maximize the design and utilization of the residual area created by the cross-access driveway setback.
- Parking between the front façade and Earl Core Road appears to be consistent with adjoining commercial properties and the predominant development pattern within the corridor. Additionally, similar variance relief was granted for the development immediately across Earl Core Road from the subject site (V07-39 / Glenmark-USDA).

- The petitioner has agreed to develop landscaping that meets or exceeds the minimum standards set forth in the Planning and Zoning Code to substantially buffer parking from Earl Core Road.

V10-30 – Variance relief from Article 1365.04 (I) of the Planning & Zoning Code as it relates to the maximum number of parking spaces provided in non-residential districts.

The minimum number of parking spaces calculated for the development is 24 stalls, based on the standard for “Automotive Supply” uses established in Table 1365.04.01 – 2.5 spaces per 1,000 sq. ft. of GFA and 1 space per employee.

The maximum parking standard is calculated as 115% of the minimum requirement, or 28 spaces in this case. The proposed site plan illustrates 36 parking stalls. As such, variance relief is required for the additional eight (8) spaces.

Staff observations include:

- The petitioner has successfully reduced the number of parking spaces originally proposed by working with Staff to modify site layout and increase internal landscaping.
- The petitioner has stated that *Auto Zone* holds occasional on-site car shows and that complying with the maximum parking standard may present an unnecessary hardship to this type of public event programming and result in overflow parking on adjoining properties. The petitioner also noted that on-site car shows should create cross-business opportunities for neighboring establishments within the corridor, particularly dining and restaurant uses.

Bossio recognized Mr. Kevin Murphy, Auto Zone Development Corporation. Mr. Murphy stated that they have no objections to any of the conditions proposed for the variances. They are asking for variances to push the front setback off the street and parking between the front façade and the right-of-way. He stated that in all their operations in existing stores that parking toward the rear of the building does not work for them operationally. It sometimes deters the customer from coming to the site because of the unfriendly nature of rear parking. They are very adamant about customer service and they want to provide the best parking stall location for the customer to get easy access into the site, into the building, and out of the site as well. Mr. Fletcher did mention that stores do hold car shows for different events in different types of areas. If they have to go with the minimum 28 spaces, it hampers their ability to get people out to shop at their store and to provide a community function. Providing the greatest extent of parking is all about customer service.

Bossio asked Murphy if he was commenting on all three variance petitions. Murphy stated that he had. Bossio stated that he would recognize Murphy again for each variance if he wanted to add additional information.

There being no further questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone wished to speak in favor of or in opposition to Petition V10-26 relating to maximum front setback variance relief. There being no public comments, Bossio declared the public hearing closed and asked for Staff’s recommendations.

Fletcher stated that the Board must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the “Findings of

Fact” submitted by the applicant. Fletcher noted that each variance petition must be considered and acted upon by the Board separately.

Fletcher stated that Staff recommends revisions to the petitioner’s “Findings of Fact” as provided in Addendum B of the report and that variance relief be granted as requested with the following conditions:

1. That the petitioner develops and maintains cross-access driveway entrances to the adjoining property boundaries as illustrated on the submitted site plan to promote best access management practices and improve public safety; and,
2. That a final landscape plan be submitted with the building permit application which, to the satisfaction of the Planning Director, establishes an attractive streetscape along the Earl Core Road corridor.

Bossio clarified that the matter before the Board was only agenda issue V10-26.

Papandreas moved to accept the Findings of Fact for Petition V10-26 with Staff’s recommended revisions; seconded by Shamberger. The motion passed unanimously.

NOTE: The following findings of fact were included in the motion.

Finding of Fact #1 Throughout this area there are several businesses where their building sits more than the maximum 30’ required. The site, currently used for storage of mulch and farm-use equipment, will contain a new building that appears to be consistent with the setback pattern established by the adjoining *Southern States* and *Sabraton Sudz Carwash* buildings and throughout the Earl Core Road corridor. Cross-access driveways are proposed between the subject site adjoining properties, thus pushing the building further from Earl L. Core Road.

Finding of Fact #2 Adjacent neighbors have their buildings setback greater than the 30’ requirement. The proposed setback appears to be consistent with the setback patterns within the Earl Core Road corridor. Similar variance relief was granted for the development immediately across Earl Core Road from the subject site (V07-38 / Glenmark-USDA).

Finding of Fact #3 It will stay within the same theme and characteristics as all surrounding sites. The proposed setback appears to be consistent with the predominant development pattern within the Earl Core Road corridor, which does not appear to currently harm general public welfare or public improvements. Stormwater retention improvements to the site as a result of the proposed development should mitigate current runoff onto an adjoining property and the rail-trail facility. The site’s driveway entrance will be located away from the entrance serving the adjoining *Sabraton Sudz Carwash* site to improve public safety.

Finding of Fact #4 It will not increase traffic. It can help with circulation to tie in cross-access between sites. The proposed setback appears to be consistent with the predominant development pattern within the Earl Core Road corridor. The variance should not diminish the development’s ability to enhance the existing commercial use and character of the subject site, which should serve to improve the quality and character of the corridor and the value of neighboring properties.

Shaffer moved to grant variance relief for Petition V10-26 as requested with Staff's recommended conditions; seconded by Papandreas. The motion passed unanimously.

Bossio advised the petitioner that the decision of the Board could be appealed to Monongalia County Circuit Court within thirty days and that any work done relating to the Board's decision would be at the petitioner's sole financial risk.

- C. V10-28 / Auto Zone / Earl Core Road:** Request by Auto Zone Development Corporation for variance approval from the Planning and Zoning Code, Article 1347.06 (B) as it relates to no parking spaces permitted between the front façade of a building and any street right-of-way for property located on Earl Core Road. Tax Map #31, Parcels #108, 111, 105.01, and 149.2; B-2, Service Business District.

Bossio recognized Mr. Kevin Murphy, Auto Zone Development Corporation. Mr. Murphy stated that he did not want to add anything.

There being no further questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone wished to speak in favor of or in opposition to Petition V10-28 relating to parking between the front façade and Earl Core Road. There being no public comments, Bossio declared the public hearing closed and asked for Staff's recommendation.

Fletcher stated that Staff recommends revisions to the petitioner's "Findings of Fact" as provided in Addendum B of the report and that variance relief be granted as requested with the following conditions:

1. That the petitioner develops and maintains cross-access driveway entrances to the adjoining property boundaries as illustrated on the submitted site plan to promote best access management practices and improve public safety;
2. That a final landscape plan be submitted with the building permit application which, to the satisfaction of the Planning Director, substantially screens the view of parking from Earl L. Core Road while preserving safe visibility for exiting vehicles; and,
3. That shrubs intended to screen parking along Earl Core Road must be evergreen and not deciduous.

Shamberger moved to accept the Findings of Fact for Petition V10-28 with Staff's recommended revisions; seconded by Papandreas. The motion passed unanimously.

NOTE: The following findings of fact were included in the motion.

Finding of Fact #1 Throughout this area there are several businesses where their parking is between the building and front R.O.W. The proposed building has been set back to accommodate cross-access driveways to adjoining properties. Parking between the front façade and Earl Core Road appears to maximize the design and utilization of the residual area created by the cross-access driveway setback.

Finding of Fact #2 Adjacent neighbors, *Southern States* and *Sabraton Sudz Carwash*, have parking in front of their building and the proposed site layout appears to have been aligned for cross-access. Similar variance relief

was granted for the development immediately across Earl Core Road from the subject site (V07-39 / Glenmark-USDA).

Finding of Fact #3 It will stay within the same theme of the neighborhood allowing cross access between the two sites. Parking between the front façade and Earl Core Road appears to be consistent with the predominant development pattern within the corridor, which does not appear to currently harm general public welfare or public improvements. Landscaping will be designed and development that meets or exceeds the minimum standards to substantially buffer parking from Earl Core Road.

Finding of Fact #4 It will not increase the traffic, how the circulation will be better allowing customers closer spaces to the front door. Parking between the front façade and Earl Core Road appears to be consistent with the predominant development pattern within the corridor. The variance should not diminish the development's ability to enhance the existing commercial use and character of the subject site, which should serve to improve the quality and character of the corridor and the value of neighboring properties.

Shaffer moved to grant variance relief for Petition V10-28 as requested with Staff's recommended conditions; seconded by Papandreas. The motion passed unanimously.

Bossio advised the petitioner that the decision of the Board could be appealed to Monongalia County Circuit Court within thirty days and that any work done relating to the Board's decision would be at the petitioner's sole financial risk.

- D. V10-30 / Auto Zone / Earl Core Road:** Request by Auto Zone Development Corporation for variance approval from the Planning and Zoning Code, Article 1365.04 (l) as it relates to the maximum number of parking spaces provided in non-residential districts for property located on Earl Core Road. Tax Map #31 Parcels #108, 111, 105.01, 149.2; B-2, Service Business District.

Bossio recognized Mr. Kevin Murphy, Auto Zone Development Corporation. Mr. Murphy stated that he did not want to add anything.

There being no further questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone wished to speak in favor of or in opposition to Petition V10-30 relating to the maximum number of parking spaces. There being no public comments, Bossio declared the public hearing closed and asked for Staff's recommendation.

Fletcher stated that Staff recommends revisions to the petitioner's "Findings of Fact" as provided in Addendum B of the report and that variance relief be granted without conditions.

Shamberger moved to accept the Findings of Fact for Petition V10-30 with Staff's recommended revisions; seconded by Shaffer. The motion passed unanimously.

NOTE: The following findings of fact were included in the motion.

Finding of Fact #1 Auto Zone being a retail auto parts store holds annual car shows for district/ regional stores. These car shows are community held events

for city residents to come to the site and enjoy cars. Ample parking will be needed for such events.

Finding of Fact #2 It is a request for better customer access and community events to be held on site. There are a number of existing developments along Earl L. Core Road that appear to exceed the maximum parking standard for non-residential dwellings.

Finding of Fact #3 The nature of exceeding the maximum parking standard should not harm any existing or future improvements or public welfare. It should allow for better customer access to the site for public car show and related events.

Finding of Fact #4 Asking for this relief will not alter market value and land use characteristics. It is a simple request to help with Finding of Fact #1 and the use of Auto Zone's parking for future car shows. The corridor enjoys a wide range of commercial uses and establishments. Granting the variance will permit the construction of a building that has very similar characteristics as other uses in the area. The market value of adjacent properties will not be diminished because the property is large enough to allow the parking of this number of vehicles without any adverse impact on adjacent properties.

Papandreas moved to grant variance relief for Petition V10-30 as requested noting that no conditions were recommended by Staff; seconded by Shaffer. The motion passed unanimously.

Bossio advised the petitioner that the decision of the Board could be appealed to Monongalia County Circuit Court within thirty days and that any work done relating to the Board's decision would be at the petitioner's sole financial risk.

E. V10-27 / Auto Zone / Earl Core Road: Request by Auto Zone Development Corporation for variance approval from the Planning and Zoning Code, Article 1347.04 Setbacks, as it relates to the minimum rear setback for property located on Earl Core Road. Tax Map #31, Parcels #108, 111, 105.01, and 149.2; B-2, Service Business District. WITHDRAWN

Fletcher stated that the petitioner's revisions to the original site plan design eliminated the need for a rear yard setback encroachment variance and therefore Petition V1-27 has been withdrawn. Bossio stated that no action is required by the Board.

F. V10-29 / Auto Zone / Earl Core Road: Request by at Auto Zone Development Corporation for variance approval from the Planning and Zoning Code, Article 1369 "Signs" for property located on Earl Core Road. Tax Map #31, Parcels #108, 111, 105.01, and 149.2; B-2, Service Business District.

Fletcher read the Staff Report stating that Auto Zone Development Corporation seeks to redevelop an area that is currently used by *Southern States* for the storage of farm use and related equipment. The applicant's proposed monument and wall signage plan exceeds maximum height and wall sign area standards. Addendum A of this report illustrates the location of the subject site.

It is the opinion of the Planning Department that the Board should, without objection, review and consider variance relief for a “Master Sign Plan” rather than considering each variance petition separately. The Board proceeded in a similar manner in June 2010 for the reconstruction of the McDonald’s Restaurant site at 2932 University Avenue.

Fletcher noted that the petitioner has worked diligently with the Planning Department to reduce the extent of originally requested variances. Said modifications are not reflected in the original variance applications attached hereto but are accurately represented in Addendum B of this Report, which also addresses all related Planning and Zoning Code standards and Staff observations.

Fletcher stated that Article 1369.07 (E) provides that Monument signs may not exceed six (6) feet in height. The height of the proposed sign is 12 feet, which requires a six-foot variance. The article also provides that monument signs may not exceed 32 square feet in sign area. The sign area for the proposed sign is 73.63 sq. ft., which requires a 41.63 sq. ft. variance.

Observations:

- The petitioner has worked diligently with the Planning Department to reduce the extent of necessary variance relief by lowering the proposed sign, increasing the size of the monument base, and moving the sign further away from Earl L. Core Road to mitigate a line-of-site obstruction for exiting vehicles.
- The BZA should include a condition requiring the monument sign base to be constructed of masonry materials so that it integrates with and compliments the principal structure.

Fletcher stated that Article 1369.07 (I) provides that the total area of all wall signs on a building shall not exceed 0.6 sq. ft. per linear foot of tenant building frontage in the B-2 District. According to the preliminary site plan, it appears that the linear building frontage for the proposed Auto Zone is 123.3 feet. Therefore, the maximum permitted area for all wall signs is 73.98 sq. ft.

The following table identifies the area for each proposed wall sign and the required variance.

Wall Sign Description	Proposed Area
“Auto Zone” on front façade (3.5’ H x 32.5’ W)	113.75 sq. ft.
“Auto Zone” on side façade (3.5’ H x 31.42’ W)	109.97 sq. ft.
TOTAL PROPOSED WALL SIGN AREA	223.72 sq. ft.
REQUIRED WALL SIGN AREA VARIANCE	149.74 sq. ft.

Observations:

- The petitioner eliminated a third wall sign that was originally proposed at the request of the Planning Department in order to reduce the extent of the petitioner’s requested variance.
- The Board may consider requiring the extent of the requested variance to be further reduced by eliminating the remaining side façade wall sign. The variance relief would then be 39.77 sq. ft. rather than 149.74 sq. ft. The basis of this consideration could be:
 - Future redevelopment of the adjoining property could obstruct the view of the proposed side façade wall sign thereby rendering same ineffective.

- The scale, size, and height of the proposed monument sign may serve as the site's primary means of messaging to vehicles along Earl Core Road.

Bossio recognized Mr. Brian Siddall, Auto Zone Development Corporation. Mr. Siddall stated that he worked with the Planning Department on the signage items to go down from the originally requested variances. The proposed signage represents what they believe is necessary for decent visibility considering one of their major competitors is only a couple of football fields away from the location.

There being no further questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone wished to speak in favor of or in opposition to Petition V10-29 relating to the maximum number of parking spaces. There being no public comments, Bossio declared the public hearing closed and asked for Staff's recommendations.

Fletcher stated that the Board must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact". Assuming the Board agrees to consider variance relief for a "Master Sign Plan", Staff recommends Findings of Fact as an alternative to those submitted by the petitioner.

Fletcher stated that Staff recommends the following variance approval and conditions for the proposed Auto Zone Master Sign Plan, which are intended to reduce the extent of requested variances; encourage the effective use of signs as a means of communication; maintain and enhance the pleasing look of the site and its contribution to the surrounding area; and, minimize adverse effects of signs on nearby public and private property:

1. That a 41.63 sq. ft. area variance AND a six (6) foot height variance be granted for the proposed monument sign, provided that:
 - a. The height of the proposed monument sign shall not exceed twelve (12) feet from grade to the top of said sign.
 - b. The monument sign base must, to the satisfaction of the Planning Director, be constructed of masonry materials so that it integrates with and compliments the principal structure.
 - c. The monument sign may not obstruct, to the satisfaction of the City Engineer, clear sight lines for exiting vehicles.
2. That a 149.74 sq. ft. area variance be granted for the proposed wall signs.
3. That a final Master Sign Plan must be submitted with the building permit application and reviewed and approved by the Planning Director to ensure compliance with the conditions set forth above.

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

NOTE: The following findings of fact were included in the motion.

Finding of Fact #1 It appears that the predominant commercial signage and messaging patterns within the Earl Core Road corridor exceed the maximum height and area standards set forth in the Planning and Zoning Code. Compliance with said maximum standards may result in a competitive

disadvantage for the petitioner, particularly when competing “Automotive Supply” uses within the corridor currently have signage that exceeds said standards.

Finding of Fact #2 It appears that the majority of commercial signs along the Earl Core Road corridor are nonconforming as most do not meet maximum area and maximum height standards set forth in Article 1369 of the Planning and Zoning Code.

Finding of Fact #3 The extent of requested variance relief has been reduced to better reflect existing signage patterns along the Earl Core Road corridor, which do not presently appear to harm public welfare, adjoining properties, or improvements.

Finding of Fact #4 The proposed Master Sign Plan appears to be consistent with the predominant commercial signage patterns of the Earl Core Road corridor, which do not appear to diminish the market value or vitality of the well-established commercial corridor. Variances in relation to the Master Sign Plan cannot contribute to nor mitigate existing traffic volumes on neighboring streets.

Shaffer moved to grant variance relief for Petition V10-29 as requested with Staff’s recommended conditions; seconded by Shamberger. The motion passed unanimously.

Bossio advised the petitioner that the decision of the Board could be appealed to Monongalia County Circuit Court within thirty days and that any work done relating to the Board’s decision would be at the petitioner’s sole financial risk.

- G. V10-31 / Castle / 1232 Montrose Avenue:** Request by Michael Castle for variance approval from the Planning and Zoning Code, Article 1335.04 “Setbacks” in the R-1A District for property located at 1232 Montrose Avenue. Tax Map #24, Parcel #280.1; R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating that the petitioner is scheduled to appear before the Planning Commission on November 11, 2010 seeking minor subdivision approval to subdivide realty located at 1232 Montrose Avenue into two parcels. Fletcher noted that the Planning Commission approved the petitioner’s proposed minor subdivision petition. Addendum A of this report illustrates the location of the subject site including photographs taken by Staff.

Proposed Lot #1, which includes an existing single-family structure, will contain approximately 4,050 sq. ft. and have approximately 50 feet of frontage on Montrose Avenue. Proposed Lot #2, which includes an existing accessory detached garage, will contain approximately 3,950 sq. ft. and have approximately 30 feet of frontage on Montrose Avenue.

The purpose of subdividing the property is to create a second buildable lot so that the structural walls of the existing detached garage can be used to develop a single-family dwelling. In utilizing the existing structural walls, the new single-family structure will encroach into the minimum rear setback and exceed the maximum front setback standards, which require variance relief by the Board of Zoning Appeals.

It is the opinion of the Planning Department that, because the petitioner seeks to utilize the structural walls and foundation of the existing accessory detached garage, the front and rear

setback variances are mutually related. As such, the Board can and should consider the petitioner's requested relief jointly.

Bossio recognized Mr. Michael Castle, Phoenix Group. Mr. Castle stated that he is here on behalf of himself and Citizen's Bank. Citizen's Bank foreclosed on the property and offered it for sale. He became interested in the property and has a contingent agreement with them provided these variances are granted. His interest in the property is to take the existing single-family house and separate it from the garage so he can reuse the garage and build a second single-family house on what would become two R-1A lots. He has done a lot of work in the Jerome Park area. This is an opportunity to provide nice new housing at a lower cost. It is contingent upon the approval of the variance.

Papandreas asked if the garage building will be the entire footprint of the new structure. Castle stated yes, it is a thirty foot by thirty foot building.

Bossio asked Fletcher if the Planning Commission approve last week the minor subdivision. Fletcher stated yes. Bossio stated that it is now two separate lots. Fletcher stated that they will be once the subdivision is recorded. Bossio asked if the setbacks for the new garage meet the setbacks of the new subdivision. Fletcher stated that the side setbacks for the garage should meet the five-foot side setback in the R-1A District. Bossio clarified that the Planning Commission approved the subdivision even though the proposed house conversion of the garage would encroach into the minimum rear setback standard. Fletcher stated correct. Fletcher stated that the Planning Commission's review and approval was whether or not the proposed lots meet the minimum lot frontage standard and the minimum lot area standard. The Planning Commission did grant a variance under the Subdivision Regulations to allow the proposed subdivision split to have the approximate fifteen foot jog in the line. Bossio stated that he understood that but his biggest question is, for consistency sake, whether the Planning Commission turned down similar requests in the past when existing buildings did not meet the setbacks. Fletcher stated yes, but this may be the first situation he can recall that an existing structure would be converted from one use to another. Fletcher stated that there have been situations when there are two existing single-family structures were on one parcel, making them nonconforming structures. The owner decided to sell one of the houses requiring a subdivision to create two separate lots. The Planning Commission required that the subdivision split be done to observe the side setback standard. Fletcher stated this petition is somewhat of a different situation.

There being no further questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone wished to speak in favor of or in opposition to Petition V10-31. There being no public comments, Bossio declared the public hearing closed and asked for Staff's recommendations.

Fletcher stated that the Planning Department received one letter of opposition from Mrs. Delores Sisler of 1200 Montrose Avenue, which stated:

"This letter is in reference to a notice we received from the City concerning a possible change to some property beside us at 1232 Montrose Avenue. The reference is the change of a garage changing into a single-family residence. Is there any chance we could block the company from doing this. The property in question is too close to our property (mainly our bedrooms). I am not any good at appearing in person to present this to the commission. I am hoping you might allow this letter (notice) to be used instead. Please consider this in my favor. Thank you."

Bossio asked for Staff's recommendation. Fletcher stated that the Board must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant.

Staff recommends the following revisions to the petitioner's Findings of Fact (deleted matter struck through; new matter underlined) and offers no recommendation on whether or not variance relief should be granted.

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

NOTE: The following findings of fact were included in the motion.

Finding of Fact #1 The garage structure that will be used to develop a new single-family dwelling unit is an existing structure, which conforms to setback standards for accessory structures but will not conform to setback standards as a principal structure.

Finding of Fact #2 There appears to be several instances where single-family homes within the Jerome Park neighborhood have either been constructed toward the rear portion of the lot or fronting rear service alleys.

Finding of Fact #3 The granting of this variance will conform to all other provisions and intent of the R-1A, Single-family Residential District and should improve two Montrose properties thereby adding value to the neighborhood.

Finding of Fact #4 Single-family housing is a permitted use in the R-1A District and should not contribute to traffic congestion that is already present within the neighborhood. The additional buildable lot meets the minimum lot size and frontage standards within the R-1A District. There appears to be several instances where single-family homes within the Jerome Park neighborhood have either been constructed toward the rear portion of the lot or fronting rear service alleys. The improvements and addition of new housing should raise land and housing values within the immediate area.

Shaffer moved to grant variance relief for Petition V10-31 as requested without conditions; seconded by Shamberger. The motion passed unanimously.

Bossio advised the petitioner that the decision of the Board could be appealed to Monongalia County Circuit Court within thirty days and that any work done relating to the Board's decision would be at the petitioner's sole financial risk.

H. CU10-14 / Kramer / 235 S. Walnut Street: Request by Willem Kramer for "Home Occupation, Class 2" conditional use approval for property located at 235 S. Walnut Street. Tax Map #29, Parcel #429; R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating that Willem Kramer seeks to open an exclusive, not widely advertised, massage therapy at his rental residence at 235 South Walnut Street. Mr. Kramer's clientele mainly consists of professional, Olympic, collegiate, high school, and amateur athletes. Non-athletes will be assisted on a case-by-case basis and on special request only.

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-1A District.

The following points highlight the information provided in the petitioner's application:

- The proposed hours of operation for the home occupation are Monday thru Sunday from 9 A.M. to 10 P.M.
- The average number of clients at one time is estimated to be one (1).
- The average number of clients per day is estimated to be three (3).
- The average number of clients per week is estimated to be eighteen (18).
- Clients will either be dropped off or park in the parking garage on Spruce Street.
- No delivery trucks are anticipated to visit the site on a regular basis.
- Off-street parking is not currently available at the subject single-family house. On-street parking is by permit only (blue curb). The petitioner stated that clients will either be dropped off or park at the Spruce Street Parking Garage, which according to the petitioner, is five minute walk to 235 South Walnut Street.

Addendum A of this report illustrates the location of the site and photograph of the single-family dwelling.

Bossio recognized Mr. Willem Kramer who stated that he will be mainly treating WVU athletes. His wife is the WVU Volleyball Coach. He is talking with Oliver Luck, Athletic Director at WVU to assist his medical staff to keep everyone healthy. He can manipulate soft tissue and get people back in three days rather than a couple of weeks or months. The solution is a temporary one. He and his business partners in Europe own a rehab clinic in Europe. They are planning to build a facility in Morgantown or in the surrounding area in the next five years. The solution is temporary. The people that are dropped off are dropped off at Cobun Avenue and South Walnut Street and not in the street itself to prevent higher traffic. He is only going to treat three people per day max because he has a lot of other work to do that his primary hours would be between 9:00 AM and 12:00 PM in the morning and between 7:00 PM and 10:00 PM at night. He does not believe that what he will do will affect the South Walnut area.

Bossio asked for clarification if his work will mainly be for WVU athletes or will it be open for other individuals as well. Kramer stated it will be open for other individuals but his services are about \$350 per hour. He treats NFL players, major league baseball players. They can find him if they want to but he will probably deny treating them. Bossio stated that it is mainly for WVU. Kramer stated yes. Bossio asked if WVU will be paying him. Kramer stated that they are discussing that with WVU medical staff. Bossio asked why WVU would not provide space for him to provide his therapy onsite. Kramer stated that they are currently discussing this opportunity and that is what his home occupation proposal is a temporary solution. Kramer stated that working on grounds would be ideal and he would see less people at his house. Kramer stated that he has worked with the Diamondbacks and some other major league teams as well as European soccer players. Bossio asked if Kramer owned the property. Kramer stated that they are renting the house from Hudson Glen who submitted a letter approving it.

Shaffer asked why Kramer was asking to be open 84 hours a week when he will only be seeing three individuals per day. Kramer stated that he would like to have the opportunity to treat in the morning or at night so that is why he added those hours. He stated that he would only be

seeing three people per day as a maximum not an estimate because he does not need the money. Shaffer asked how long a session is. Kramer stated one hour. He stated that his clients would arrive fifteen minutes apart from each other so he can plan and demand all sorts of things and tell them to park at the parking garage.

Shaffer stated the Kramer is asking the Board to give him permission to stay open 84 hours a week. Kramer stated that he is asking permission to schedule no more than three people each day from 9:00 AM to 10:00 PM, so three hours only each day.

Bossio stated that he only expected three individuals per day. Kramer stated no more than three as a limit and he thinks he will treat less.

Bossio asked Kramer if he understood that after three months, as an example, there is a complaint and he is checked out and there is people lined up all day long coming to your place...Kramer interjected that that would be no good and that is not what he will be doing. Kramer stated that his work is not high volume. Kramer stated that people call him, he flies in, threat them, and he flies back. That is what he does normally. That is what he has done for the Texas Rangers and all kinds of other teams.

Papandreas asked Kramer if his facility needs to be looked at or licensed by the Health Department. Kramer stated no, according to the message therapy board of West Virginia, the only thing he needs, which is stated in the petition as well, is bathroom, hot water, ventilation, some real general things. He stated that he is a physical therapist in Europe and a message therapist here. The requirements here are very limited.

There being no further questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone wished to speak in favor of or in opposition to Petition CU10-14.

Bossio recognized Jill Kramer, wife of the petitioner, who stated that no one can do what he does and he will be a huge asset to her team. He is right, it is temporary. They are talking to Oliver [Luck] and all the medical department staff about what he can do on WVU's campus. Right now, the immediate future he would only be able to work off-grounds. The payment portion has been figured out between the MAC and the Foundation and different things like that to make it work. But until they get a solid connection between him and the medical staff, this is kind of the only solution.

There being no more public comments, Bossio declared the public hearing closed and asked for Staff's recommendations.

Fletcher stated that the Planning Department received an email from Helen Almasy of 217 S. Walnut Street which stated:

"I am responding to the request submitted by Willem Kramer for a conditional use petition for property located at 235 S. Walnut Street which will go to the Board of Zoning Appeals on Wednesday November 17th. I will be unable to attend the meeting but I have a concern. I live at 217 S. Walnut Street and my concern is where would clients park? S. Walnut and surrounding area is all parking by permit during weekdays. The upper end of S. Walnut is a dead end street and as a resident I seldom can park in front of my house due to all the students and renters who have permits from other streets and take up the few spaces. Also there is already a steady stream of traffic turning around on the dead end street because no parking is available. Thank you for giving an opportunity to voice my concern. Will I be notified as what the decision will be by the Board of Zoning?"

Bossio asked for Staff's recommendation. 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. Staff recommends the following revisions to the petitioner's findings of fact.

Fletcher stated that should the Board approve the subject conditional use petition, Staff recommends that the following conditions be included:

1. The proposed massage therapy home occupation must not produce detectable fumes, odors, dust, heat, noise, vibration, glare, electro-magnetic field, electrical interference, or other effects outside the dwelling, including transmittal through vertical or horizontal party walls.
2. The proposed massage therapy home occupation shall not require fixed installation of equipment or machinery that substantially changes the residential character of the dwelling.
3. The proposed massage therapy home occupation may not occupy more than twenty-five (25) percent of the floor area of the principal structure, and may not require internal or external alterations or construction features not customary to a residential dwelling.
4. The proposed massage therapy home occupation shall be conducted entirely within the footprint of the existing single-family dwelling. No home occupation shall be conducted outdoors or in any accessory building or garage, except that parking of a vehicle used in conducting the business and/or simple storage of materials or goods used in association with the business may be permitted in such buildings.
5. The proposed massage therapy home occupation may have no more than one vehicle with business identification, and shall have no vehicle with greater than one (1.0) ton capacity and shall not have any trailer.
6. Except as required by State law, there shall be no exterior indication of the proposed massage home occupation, no exterior signs, nor any other on-site advertising visible from the exterior.
7. The proposed massage therapy home occupation shall not involve on-site employment of persons not residing in the dwelling.
8. The proposed massage therapy home occupation shall be registered as a business with the City of Morgantown Finance Office and shall pay applicable business and occupation taxes.
9. There will not be merchandise delivery and/or pick-ups to and from the premises that are associated with the home occupation, and that utilize a commercial delivery service or the United States Postal Service.
10. Retail sales shall not occur nor services provided on the premises on a regular basis or in substantial volume, such that customer visitation to the premises is deemed to be unreasonable.
11. That the conditional use approval granted herein is specific to the petitioner and may not be transferred without first obtaining approval by the Board of Zoning Appeals.
12. If the holder of subject massage therapy home occupation permit 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.

Papandreas stated, with regard to the letter from Ms. Almasy, should the Board add, just to cover ourselves, a condition that people will be dropped off at the end of the street or park over at the parking garage. Bossio stated that could be done. Papandreas said he would like for Staff to add that condition. Fletcher stated that it would be difficult to enforce. Papandreas stated he understands that but that if the conditional use is approved, neighbor complaints could require the petition to be reviewed again. Bossio noted that this is how it would most likely be enforced.

Bossio asked Kramer if he had any concerns or questions with the recommended conditions because he would have to comply with 100% of the conditions or the neighbors will be up in arms. Kramer stated he understood.

Shaffer stated that the Board is being asked to approve a home occupation in a residential area to be open to operate than stores generally do at a mall. This is a home occupation that has always been looked at in the past as an 8:00 AM to 5:00 PM operation. He wanted to bring this to the Board's attention.

Papandreas stated that he understands Shaffer's point. The applicant is providing a window from 9:00 AM to 10:00 PM but he will only be seeing no more than three clients each day, which means he will really only be working three hours each day.

Shaffer stated we do not know that.

Papandreas stated that we only know what we are being told. To the extent that we approve this and he has ten clients scheduled back to back each day, which is not what is being proposed.

Bossio stated that he understands Shaffer's point, but we go by the word of the applicant and we trust that.

Bossio asked if the Board has every limited the hours of operation say for instance a one-chair beauty salon. Shaffer stated that he does not know if the Board has limited the hours, but we have be presented previously with 8:00 AM to 5:00 PM hours or telecommuting. This is just an extraordinary amount of time we are being asked to approve. We are talking about Monday thru Sunday, thirteen hours a day.

Bossio asked if the Board has every considered hours of operation. Fletcher stated that the application includes questions concerning the proposed hours of operation so that information is considered by the Board.

Bossio asked if the Board has every considered hours as late as what is being proposed. Fletcher stated that he did not recall hours this late.

Papandreas stated that it is normally by appointment only, which is how he is viewing this home occupation. He personally feels that neighborhoods should be neighborhoods and not business districts. However, if a business is going to be located and ridiculously unobtrusive and the applicant goes out of his way to make sure it does not trample anyone else's rights that is living in their house, as it was originally intended, he does not necessarily have a problem with it.

Papandreas stated that he thinks the Board is walking a fine line. He wants to believe the applicant that he is going to have no more than three people, which really means he is going to be open during that window for three hours a day. He is not concerned provided the Board is not being misled. He does not feel that the Board is but he understands Shaffer's concern.

Bossio asked Shaffer if he would like to see an 8:00 AM to 5:00 PM operation. Shaffer stated that his thought of home businesses is that period as what the Board should be looking at; low impact kind of operations, consulting, internet businesses. He is simply saying that the Board is being asked to approve a business in a residential area for 91 hours a week and this seems extraordinary to him.

Bossio asked if the petitioner would say that he would be willing to operate between 9:00 AM to 5:00 PM, would Shaffer be comfortable with that. Shaffer stated that he would be much more comfortable with that.

Shamberger stated that Kramer commented that his primary hours would be between 9:00 AM and 12:00 PM in the morning and between 7:00 PM and 10:00 PM at night. Shamberger noted that his primary clientele will be WVU student athletes who will be in class during the day. Kramer probably needs the flexibility to see them in the evening.

Shaffer stated there have been times that we wanted to see his barber at 9:00 PM at night and that is not happening. He has set hours he works. Shaffer stated his comments are just an observation.

Papandreas stated that he certainly understands Shaffer's posturing, but he wants to believe the applicant, that he will only see three clients per day. Papandreas stated that he is real big on neighborhoods being neighborhoods so he does not want to see anything invasive. The people living next door should have a reasonable expectation to live next door and not to be bombarded with somebody's clients. An internet business does not really bother anything. When you start seeing clients in the house, it does really change things. If this was going to be a constant flow with fifteen minute gaps between clients, he would certainly have a problem with that. If there are only going to be three clients seen a day, it may not be much different in this case of having three visitors come to the house. It depends on what the applicant does with it, as always.

Bossio asked if the Board could compromise by saying there is a maximum of three trips per day to the home and the hours are still open. Bossio asked if this would satisfy Shaffer's concern. Shaffer stated it would but that he did not want to limit his business but limit the hours. Shaffer stated that he did not want to limit gentleman to three if he could see five clients.

Papandreas stated that the information the Board has been given is genuine and that he wants to accommodate his clients the best he can by greater a large window.

Bossio asked Kramer if he would have a problem to being limited to three client visits a day but your window is from 9:00 AM to 10:00 PM. Kramer stated that is what he is asking and that he will probably treat less than three a day.

Papandreas stated that he believes the Board could stipulate this condition but it will be as enforceable as the drop-off and parking condition.

Bossio stated that all of the home occupation conditions are enforceable with the assistance of the neighbors.

Papandreas stated that he is comfortable with the information that has been provided by the applicant.

Shamberger agreed and noted that the applicant's work is physically demanding and would be difficult to keep up with for three clients a day. If there are any complaints, the Board can certainly revisit the petition.

Shaffer stated he agreed but that thirteen hours a day was a lot.

Shamberger moved to accept the Findings of Fact with Staff's recommended revisions; seconded by Papandreas. The motion passed 3-1 with Shaffer voting nay.

NOTE: The following findings of fact were included in the motion.

Finding of Fact #1 According to the petitioner, all that is required and necessary is a clean room with adequate light and ventilation and access to a bathroom providing toilet tissue, a sink with hot and cold running water, soap and clean towels – as stated by the West Virginia Massage Therapy Board. The room to be used as a treatment room has an adjacent bathroom and complies with all rules and requests. Laundering any additional towels or linens used for draping clients should not stress the residence beyond its normal occupancy and lotions, creams or oils will not be used. No interior or exterior modifications or additions to the existing single-family house appear necessary. Clients will be seen by appointment only and will utilize, according to the petitioner, the Spruce Street Parking Garage.

Finding of Fact #2 No changes are necessary and treatment will be, according to the petitioner, confined to a single room. No interior or exterior modifications or additions to the existing house appear necessary as services will be provided in an existing room. The petitioner appears to have an established clientele.

Finding of Fact #3 The number of clients is limited, clients visit separate from each other, cars are parked in a downtown parking facility and manual therapy does not generate noise, fumes or other nuisances. Neither the neighborhood nor any neighbors should notice the existence of the home-based business. The type of home-based business is such that advertising should not be necessary so that the existing residential character within the immediate area will be maintained. No new construction, structural alterations, or additions are necessary.

Finding of Fact #4 If traveling by car clients will park at the Spruce Street parking garage. None of the clients will be permitted or encouraged to park on South Walnut Street. Clients will be seen by appointment only.

Fletcher stated that based on the Board's discussion concerning traffic along the dead end street and limiting the number of clients that visit the home-based business each day, Staff suggests two additional conditions.

13. Clients may only be dropped off at the Cobun Street / South Walnut Street intersection or park in a downtown public parking facility.
14. No more than three (3) clients may be seen at the residence per day.

Bossio reminded the Board the Mr. Kramer stated that he continues to work with WVU to find space within WVU's facilities to see their athletes. Papandreas added that he believes that is the petitioner's preferred solution.

Shamberger moved to approve the conditional use with Staff's fourteen (14) recommended conditions; seconded by Papandreas. The motion passed unanimously.

Bossio addressed Mr. Kramer stating that the home occupation has been approved but that there are considerable conditions included in the approval. Bossio advised the petitioner to understand the conditions completely and to follow them because the Board can rescind the approval. Kramer stated that he understood and thanked the Board.

Bossio advised the petitioner that the decision of the Board could be appealed to Monongalia County Circuit Court within thirty days and that any work done relating to the Board's decision would be at the petitioner's sole financial risk.

- I. **CU10-15 / Byers / 160 Fayette Street:** Request by Justin Byers for conditional "Restaurant, private club" use approval at 160 Fayette Street. Tax Map #26A, Parcel #93; B-4, General Business District.

Fletcher stated that the petitioner requested that the agenda item be postponed as he was unavailable this evening due to a medical emergency. Fletcher noted that no action was required by the Board.

- J. **CU10-16 / Metro Towers, LLC / 2567 University Avenue:** Request by Metro Towers, LLC for conditional "Dwelling, Multi-family" use approval for property located at 2567 University Avenue (former Grand Central Station). Tax Map #15, Parcels # 230.2, 231, 232, 233, 233.1, 273, 93.2 and Tax Map #14, Parcels #14, 14.1, 15; O-I, Office and Institutional District.

Fletcher read the Staff Report stating that the petitioner has purchased the former "Grand Central Station" property, which includes two existing buildings, and seeks to change the current non-residential use to multi-family apartment units. The following points highlight historical, existing, and proposed conditions and uses.

- The two existing buildings were originally constructed as dormitory-style apartment buildings in the mid-1960s.
- The "North" Building contains five (5) floors with a total area of approximately 60,000 square feet (12,000 square feet per floor).
- The "South" Building contains four (4) floors with a total area of approximately 40,000 square feet (10,000 square feet per floor).
- The buildings became unattractive to students in the late 1980s and early 1990s and were closed for periods of time due to very low occupancy rates.

- The buildings were converted to offices and related accessory uses in 1994 (CU94-10 / Kris Warner).
- The Planning Department has no working knowledge of the success of the non-residential use of the buildings in terms vacancy rates.
- The student housing market appears to have significantly changed since the original construction of the subject buildings, particularly over the past fifteen years. This is due in large part to increasing University enrollment and demand for new housing product that better serves the needs and the quality of life expectations of today's students.
- The proposed change in use will deliver approximately 126 one-bedroom units, although there may be some two-bedroom units; no commercial or mixed-use is proposed at this time.
- The proposed change in use will include significant interior modifications and improvements.
- Approximately 70 units will be developed in the "North" Building and approximately 56 units in the "South" Building.
- There are approximately 215 parking spaces on the site.

Addendum A of this report illustrates the location of the subject site.

Article 1329.02 of the Planning and Zoning Code defines "Development" as:

"(1) Any man-made change to improved or unimproved land, including but not limited to the construction, reconstruction, **conversion**, structural alteration, relocation, enlargement or **use** of any structure or parking area; (2) Any mining, excavation, dredging, filling, grading, drilling or any land disturbance; or (3) Any use or extension of the use of the land." **[emphasis added]**

Article 1329.02 also provides that a Major Development of Significant Impact (MDSI) includes the development of 100 or more dwelling units, which requires review and approval by the Planning Commission. MDSI Site Plan Case Number S10-09.III is scheduled for the Planning Commission's November 11, 2010 hearing. Fletcher noted that the Planning Commission approved the petitioner's MDSI Site Plan application.

Table 1331.05.01 "Permitted Land Uses" provides that multi-family dwelling uses in the O-I District require conditional use approval by the Board of Zoning Appeals.

The City Engineer compared estimated traffic generated by the existing and proposed land uses by utilizing data provided in the Institute of Transportation Engineers (ITE) manual for "Trip Generation, 7th Edition". The City Engineer concluded that the traffic generated by the proposed residential use during the AM and PM peak periods would be less than that generated by the existing non-residential uses. As such, a traffic impact study is not necessary. However, the City Engineer noted that a study may be necessary if additional development were to be proposed for the site.

The petitioner met with the City's Technical Review Team on Tuesday, October 26, 2010 to review the development project. All suggested modifications and required life and safety code provisions were agreed to by the petitioner.

Bossio recognized Mr. David Biafora. Mr. Biafora stated that the Staff Report summed up the project and he would answer any questions the Board might have.

There being no further questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone wished to speak in favor of or in opposition to Petition CU10-16. There being no public comments, Bossio declared the public hearing closed and asked for Staff's 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. Staff recommends revisions to the petitioner's Findings of Fact as provided in Addendum B of this report.

It is the opinion of the Planning Department that the proposed development represents a unique opportunity to increase residential density at a site that is strategically situated between WVU's campuses. Because the site is well served by public transit and is within walking and biking distance of primary destinations, the development appears to link residents to alternate modes of transportation thereby lessening auto dependency and reducing traffic congestion.

Staff recommends that the Board approve the conditional use petition with the following conditions:

1. That the development meets all applicable federal Fair Housing and Americans with Disabilities Act standards as determined by the City's Chief Building Code Official.
2. That no parking spaces may remain, if applicable, or be developed within a public right-of-way.
3. That fire lanes must be provided for each building to the satisfaction of the City's Fire Marshall.
4. That the petitioner work with Mountain Line Transit to develop a shelter facility on or near the project site to improve access and utilization of public transit by residents of and near the proposed Metro Towers development.

Papandreas moved to accept the Findings of Fact for Petition CU10-16 with Staff's recommended revisions; seconded by Shamberger. The motion passed unanimously.

NOTE: The following findings of fact were included in the motion.

Finding of Fact #1 The proposed multi-family residential use as proposed should generate less traffic than the current non-residential uses based on the City Engineer's review and recommendation. Because the site is well served by public transit and is within walking and biking distance of primary destinations, the development appears to link residents to alternate modes of transportation thereby lessening auto dependency and reducing traffic congestion.

Finding of Fact #2 The proposed multi-family dwelling units and common areas will be required to meet all related Building Code and Fire Code standards prior to the issuance of occupancy permits.

Finding of Fact #3 The proposed development does not include the construction of additions to the existing two buildings. Therefore, no changes to present light or air conditions are expected within or around the site.

Finding of Fact #4 The proposed development will occur within two existing buildings that were originally constructed for residential use. No additions to the

buildings are currently proposed. Therefore, the development should not contribute to nor mitigate the overcrowding of land.

Finding of Fact #5 The proposed development will occur within two existing buildings that were originally constructed for residential use. No additions to buildings are currently proposed.

Finding of Fact #6 The proposed development will occur within two existing buildings that were originally constructed for residential use. The site appears to be adequately served by existing public utility, infrastructure, and service facilities.

Finding of Fact #7 The significant investment that appears necessary in order to convert the buildings from non-residential uses to multi-family apartment units should enhance the value and market performance of the structures and site.

Finding of Fact #8 The two existing buildings were originally constructed as dormitory-style apartment buildings in the mid-1960s. The proposed development appears to represent a unique opportunity to return residential uses to a site that is strategically situated between WVU's campuses.

Shaffer moved to approve conditional use Petition CU10-16 with Staff's recommended conditions; seconded by Shamberger. The motion passed unanimously.

Bossio advised the petitioner that the decision of the Board could be appealed to Monongalia County Circuit Court within thirty days and that any work done relating to the Board's decision would be at the petitioner's sole financial risk. Bossio thanked the petitioner for taking on the project and investing in the site.

K. CU10-17 / Scotchel / 1501 Andmore Avenue: Request by Jennifer Scotchel for conditional "Home Occupation, Class 2" use approval for property located at 1501 Andmore Avenue. Tax Map #31, Parcel #46.01; R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating that Jennifer Scotchel opened *Mother's Intuition Massage* in March 2006, which was located in Grand Central Business Center. Due to recent ownership changes of same, Ms. Scotchel now seeks to relocate her massage therapy business to her residence at 1501 Andmore Avenue as a home-based business. According to 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-1A District. Addendum A of this report illustrates the location and a photograph of the site taken by Staff.

The following points highlight the information provided in the petitioner's application:

- The proposed hours of operation for the home occupation are Monday thru Friday from 10 A.M. to 6 P.M.
- The average number of clients at one time is estimated to be one (1) to two (2).
- The average number of clients per day is estimated to be one (1) to three (3).
- The average number of clients per week is estimated to be five (5) to twelve (12).
- One hundred percent (100%) of the clients are anticipated to arrive by vehicle.

- No delivery trucks are anticipated to visit the site on a regular basis.
- There are approximately six (6) off-street parking spaces within the existing driveway for use by residents of the home and customers. The petitioner also states that three (3) on-street parking spaces are available in front of the house.

The Planning Department has received several phone calls and one letter of opposition of the request, which is attached hereto.

Bossio recognized Ms. Jennifer Schotchel. Ms. Schotchel stated that she has received all the letters in opposition and has written a rebuttal. She stated that she has read all the concerns submitted by her neighbors for her request for a Class 2 Home Occupation. She stated that she would like to take this time and opportunity to address each one individually. Number one – there is a concern that the streets being narrow will inhibit emergency personnel, increase traffic problems during times of inclement weather, and compound parking on the street. These issues will not be exacerbated by the request due to the fact that all individuals coming to her home will have adequate and ample parking in her driveway, which can accommodate six cars comfortably. The on-street parking in front of her home that is being used by her neighboring guests has not been used by her or her guests coming to her home other at times of social events such as birthday parties. Her driveway is never full other than at those rare occasions. She will have a maximum of two extra cars at one time when one client would be leaving and another coming. Also, her home is one street up from the main road and on the corner and will therefore not inhibit in any way the expansive neighbors above and around it. Number two – there is a concern that bringing unknown people into the neighborhood will increase vulnerability to the neighborhood residents and their homes. The people that would be coming to her office would be long standing clients of hers, some for many years. She knows them well and has such a high level of comfort with them that she would allow them to know where she and her children live and also inside her home. Her clientele is also limited to females, which gives another level of safety when it comes to the level of safety that she would be inviting there. These are upstanding women of the community and if there is any doubt in her mind of their quality or substance, she would not allow them to know where she and her children reside. Number three – there is concern with allowing a home in her neighborhood to be zoned for business would decrease the moral residential basis that it has now and open a door for others to ask for the same request. As of now, there are at least two other businesses in her neighborhood. There is a church at the end of her street, Andmore Avenue and there is a daycare at the end of the street above her on Statler Avenue. Both of these have been run for many years and have much more traffic with their nature than hers would. Also, both of those locations use on-street parking for their patrons. She stated that she would have a maximum of two excess cars at one time in her driveway and has more than enough space for them. Number four – there is concern in the neighborhood for the children safety would be in jeopardy with the approval of the Class 2 Home Occupation while playing outside. The only roads affected by the traffic of her clients would be the very first part of Hillcrest, which is in front of the fire station and connects to the main road and in front of her home to her driveway. When turning on to her street, it is an immediate turn into her driveway. The safety issues that would arise with traffic and allowing children to play in these areas are already in place due to the busyness of the street as it is now. Also, her clients are quality people of the community and would not pose other risks. Number five – there is concern that her animals making it unsanitary to run a message therapy business in her home. Her animals would not be in her business space. The other seventy-five percent or more of her home is for her living space and that is where they would stay. Her business space would be separate from her living space as it should be. There is a level of professionalism that comes with running a business and she

understands those boundaries. Also, she has known other massage therapists that have allowed animals in their offices like therapy cats and therapy dogs as a way of calming their clients down. Others even still that allow them on the message table. These businesses are not in any way chastised for allowing such things and she thinks that allowing animals within the vicinity of where she would be working would not make it unsanitary. She hopes that she has cleared up the issues her neighbors have voiced and the proposed home occupation for her home. She knows that with any change, there is a certain amount of angst on the part of some of her neighbors. If her request is approved, her neighbors will see that there will be little to no effect to them and all of their reasons for opposition will not come to light.

Bossio stated that her request was not a change in the zoning classification for her property. Her application is a conditional use and he wanted to clarify that for her and her neighbors. It would be a conditional use that would be granted to her and only to her. Bossio asked if he rents or owns the home. Schotchel stated that she owns her home.

Bossio asked if she would have to meet some health department or message therapy regulations. Schotchel stated that as Mr. Kramer stated earlier, it is very limited on what standards message therapists have to follow. She is mandated by the licensure board to obtain a license. Bossio asked if she would have a separate area within her home to operate. Schotchel stated that she is proposing to convert half of her two-stall garage and use it for her business space. Bossio asked if all customers who would be coming to her home would park in her driveway and not on the street so narrowing of the streets will not occur. Schotchel stated that is correct. Bossio asked that her clients are only females and are long standing clients. Schotchel stated that is correct.

Shaffer asked where the daycare on Statler is. Schotchel stated she is not sure what the exact address is but that it is on the very end of Statler from where she is located. She stated that she went there when she was little.

Bossio asked Schotchel how long she has been a message therapist. Schotchel stated she opened her business in March 2006 and worked at a spa before that.

There being no further questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone wished to speak in favor of Petition CU10-17. There being none, Bossio asked if anyone wished to speak in opposition of Petitioner CU10-17.

Bossio recognized Fay Masullo of 110 Hillcrest Street. Ms. Masullo stated that she is not sure if she is in favor of or against but has questions. Schotchel has answered some of her concerns but she wants to read what she has written. Masullo stated that she is a registered nurse and she and her husband live across the street from Schotchel. She knew Schotchel as a child and liked her then but truthfully cannot what she is like now because she has not had much interaction with her. As far as having her business in her house, she has several concerns. She has done some checking and knows that she is licensed by the board of message therapists. The internet has been very helpful in learning what some of the stipulations and regulations are in using her home. She knows that she must have a separate room for her customers to dress, to have their therapy in, and to have a separate bathroom. She wanted to make sure Schotchel has addressed these requirements. Since she has not felt free to come to the neighbors before she has presented this to the Board, the neighbors are kind of in the dark. Bossio interjected to clarify that the BZA does not have the power to enforce state licensure mandates and requirements. The only role the BZA has is to either grant or deny the request to have a home occupation which is in the code of the City of Morgantown. Masullo asked about

the safety of the house. Bossio that would fall under the City's building code. Masullo asked how the neighbors would be assured that her business hours would be what she provided in her request. Bossio stated that her application provides operational hours of 10:00 AM to 6:00 PM. If neighbors see customers coming to the house before or after what is approved, they can contact the Planning Department.

Bossio asked Fletcher for an explanation of what would happen in this case. Fletcher stated that the Planning and Zoning Code provides that if there are complaints filed by neighbors concerning approved Class 2 Home Occupations, that the petitioner can be brought back before the Board and the Board can decide whether or not to rescind the conditional use approval. Bossio asked Schotchel if she understood this. Schotchel nodded that she agreed.

Masullo stated that Schotchel does not abide by the City rules now such as the number of animals at her residence as stated in the newspaper article stated several weeks ago. She has at least three cats and sometimes two dogs. The trash collection in the neighborhood is early morning on Tuesdays and Schotchel's trash cans are out by the edge of her property all week long and we have to look at them all the time. Sometimes cars have to stop in the road in order to move the trash cans or lids because they are in the middle of the road.

Shaffer asked Masullo if she has called someone about that. Masullo stated that the neighbors have called. Bossio asked Masullo if she had personally called. Masullo stated that she personally has not called but the neighborhoods have. Bossio stated that the garbage can situation is not a matter of the Board to address. Masullo stated that this is her concern; if Schotchel does not abide by the rules now, how can the neighbors be assured that she will abide by the home occupation rules.

Masullo stated that as far as the traffic goes, Schotchel can park six in her driveway. The only concern is that Schotchel's clients come up Hillcrest and not across Andmore because it is a very narrow street. Masullo asked that Schotchel's clients do not drive over the curb like the garbage trucks do and the school buses are doing and damaging our property.

Bossio asked Masullo if the Board could address most of her concerns, would she be opposed to the petition. As far as garbage trucks and schools buses going over the curb, has Schotchel done this. Masullo stated that Schotchel has not done this but that is what they want to be assured of that they do not do that too because they have met with the school board and have had problems with that. Bossio stated that as far as the way people travel to the home as far as Hillcrest verse Andmore, there is no law that would make people travel a certain way. Bossio asked Schotchel if she would be willing to advise her clients to come up Hillcrest. Schotchel stated that she would.

Masullo stated that she once to keep the area a nice residential area. Bossio asked Masullo if she understood that the request was not to change the zoning classification of the property but a conditional use. Masullo stated that she understood.

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

Bossio asked Schotchel to step back up to the podium and asked there was anything she could do to help address some of the concerns stated in the letters the Board has received and Masullo's comments. Schotchel stated that she is a single mother and the upkeep of the yard, getting the trash out timely, things like, she pretty much gets things done when she can get

them done. Schotchel stated that she is hardly home as it is now because she is constantly working. She has two young girls with no help from the father so she does what she can. She knows that all the neighbors are not happy with her. She is not happy with her yard either. She has a friend now that is helping with the yard, getting the shrubs cut, getting things out of the house that need to be moved, and things like that. A lot of Masullo's concerns will be addressed now. It is very hard to keep up with everything and she is sorry.

Papandreas wanted to reiterate that he is a big advocate of neighborhoods and that he does not think businesses belong in neighborhoods. Having said that, she heard the discussion with Mr. Kramer who is proposing a very similar home occupation, it is his desire to keep the neighborhood untouched as possible by making a lot of the same recommendations. He will be making a recommendation that a condition be included to prohibit client parking in the street. He encouraged Schotchel to make sure that outside of the house is an asset to the neighborhood because it would look bad for her business also. Schotchel stated of course and that she will have more time with having a place in her home rather having to upkeep another location and all of those things. She will have more money and income to take of the outside of her home if she cannot personally do it because she can pay someone without having the overhead and upkeep of another location.

Papandreas stated that the most dangerous threat to her home-based business is that if neighbors start to complain, this is going to come back to the Board again and she may lose her conditional use approval. Schotchel stated that she understands, there may be complaints, but that does not mean they will be warranted. She stated that her hours of operation listed on the application is from 10:00 AM to 6:00 PM, that she would have a maximum of three clients per day, but sometimes people may need to come after work so she may need to take a client at 6:30 PM. She does not work late because she has two children and she spends as much time as possible with them. But as Mr. Kramer stated earlier, when people with money to come and see her also have to work. Her concern is that if she says her hours are from 10:00 AM to 6:00 PM and someone comes at 6:30 PM, her neighbors may complain.

Bossio stated that she did indicate 6:00 PM in her application. Schotchel stated that she did but she has gotten several new clients since that time that have requested after hours. She stated that if that is not feasible than it is not feasible. Bossio asked Schotchel if she was asking for something different now. Schotchel stated that she would like for it not to be a reason for someone to complain if she has a 6:30 PM client.

Shaffer stated that if the Board approves 6:00 PM and if he were a neighbor against the request and a client is there at 6:01 PM, he would be on the phone with a complaint. Shaffer stated that he thinks Bossio is being very clear here. Shaffer stated that this is pretty black and white. Schotchel asked if she could amend her request for different operating hours or is that not possible.

Bossio asked Schotchel until say 7:00 PM. Schotchel stated yes. Bossio stated that the Board will take that up when they deliberate.

There being no further comments or questions by the Board, Bossio asked for Staff's recommendations.

Fletcher stated that Schotchel identified all the concerns raised by the letters of opposition submitted to the Planning Department but for the record, letters of opposition was submitted by

Greg and Elizabeth Bolyard of 136 Hillcrest, Andrew and Barbara Mitchnik of 152 Hillcrest, and Patty Weaver of 1497 Statler Avenue.

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. Staff recommends the following revisions to the petitioner's findings of fact. Should the Board approve the subject conditional use petition, Staff recommends that the following conditions be included:

1. The proposed massage home occupation must not produce detectable fumes, odors, dust, heat, noise, vibration, glare, electro-magnetic field, electrical interference, or other effects outside the dwelling, including transmittal through vertical or horizontal party walls.
2. The proposed massage home occupation shall not require fixed installation of equipment or machinery that substantially changes the residential character of the dwelling.
3. The proposed massage enterprise home occupation may not occupy more than twenty-five (25) percent of the floor area of the principal structure, and may not require internal or external alterations or construction features not customary to a residential dwelling.
4. The proposed massage home occupation shall be conducted entirely within the footprint of the existing single-family dwelling. No home occupation shall be conducted outdoors or in any accessory building or garage, except that parking of a vehicle used in conducting the business and/or simple storage of materials or goods used in association with the business may be permitted in such buildings.
5. The proposed massage home occupation may have no more than one vehicle with business identification, and shall have no vehicle with greater than one (1.0) ton capacity and shall not have any trailer.
6. Except as required by State law, there shall be no exterior indication of the proposed massage home occupation, no exterior signs, nor any other on-site advertising visible from the exterior.
7. The proposed massage home occupation shall not involve on-site employment of persons not residing in the dwelling.
8. The proposed massage home occupation shall be registered as a business with the City of Morgantown Finance Office and shall pay applicable business and occupation taxes.
9. There will be no merchandise delivery and/or pick-ups to and from the premises that are associated with the home occupation, and that utilize a commercial delivery service or the United States Postal Service.
10. Retail sales shall not occur nor services provided on the premises on a regular basis or in substantial volume, such that customer visitation to the premises is deemed to be unreasonable.
11. That the conditional use approval granted herein is specific to the petitioner and may not be transferred without first obtaining approval by the Board of Zoning Appeals.
12. If the holder of subject massage home occupation permit 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.

Fletcher stated that based on the Board's discussion relating to its concern for evening hours of operation and on-street parking, Staff suggests two additional conditions.

13. That the hours of operation may not be earlier than 10:00 AM or later than 7:00 PM.
14. That clients may not utilize on-street parking in front of the petitioner's residence or within the neighborhood.

Papandreas stated that Staff is proposing that the hours of operation be changed from 6:00 PM to 7:00 PM. Fletcher stated that he was simply trying to follow the Board's discussion.

Shaffer stated that he struggles with the hours of operation. Bossio stated that he agreed. Shaffer stated that home-based businesses should be low impact things. When we start getting into nine, ten, eleven hours days, it starts to detract from the neighborhood.

Bossio stated that he understands Shaffer's concern. But first of all it would hard to sit here and approve one home occupation that ends at 10:00 PM and limit the number of clients and then limit another very similar home occupation to 6:00 PM.

Papandreas stated that the Board has a lot more feedback from the neighbors than the Kramer petition. Bossio stated but all the same rules still apply.

Shaffer stated that he is more comfortable with 10:00 AM to 6:00 PM rather than 7:00 PM for the same reasons he mentioned during the Kramer discussion.

Shamberger stated that the nature of this neighborhood is a little different and a little more single-family than South Walnut which is a little more mixed there. There is more foot and car traffic in the evenings near South Walnut Street. He stated that he lives just up the hill from Schotchel's house and sees the differences in the two areas. He stated he understands the concerns for evening travel. He stated that when he looked at this, he did not have much problem with 10:00 AM to 6:00 PM but when the time started moving here during the conversation, he started getting a little uneasy about it. Whatever the hours are the hours are and if the neighbors understand that, everyone needs to respect the boundaries and the boundaries are whatever the Board sets. He stated that he is personally a little more comfortable with 6:00 PM with this neighborhood but he could live with 7:00 PM. He would not go any later than 7:00 PM.

Papandreas stated that first and foremost, this is a neighborhood. This is where they live, it is their investment, they have a lot of money in these houses and he thinks this has to be priority number one. That is not to say that there are certain home-based businesses or certain windows that can be un-invasive that can go into a neighborhood but the applicant came in and started out from 10:00 AM to 6:00 PM and now all of a sudden wants a little leeway to 6:30 PM and the Board grants 7:00 PM, now it is in the evening hours when things are being changed. He is a little more inclined to agree with Shaffer on this one. If this is a day time business so the applicant can spend time with her family in the evenings then the Board should look at it as a day time business and we should not let it breeze into the evening. It comes down to enforcement. If she takes clients at midnight and the City does not find out about it, the neighbors do not complain, than nothing happens. If neighbors have come to the meeting and have a problem, than the Board in good faith should ask whether we want to live there. He

stated that he has no problem with home-based businesses but he thinks he does not like the time frame. What if someone can only make it at 7:30 PM, is Schotchel going to turn them down, probably not, he would not. If he had something going on at his house and a client had to drop something off or pick up something he would say go for it, who is going to see it. This is how it gets out of control. He does not know if it will get out of control. The applicant looks like a fine young lady. It is not personal. It is first and foremost a neighborhood and he does have these concerns. He thinks that a business could be run there and be very un-invasive and the neighbors would not even notice it but the opportunity is there for it to get out of control and he is concerned with that.

Bossio stated that he does not disagree. As far as the time, we are looking at an arbitrary time that she put down on her application. What if she would have put down 5:00 PM and then asked for 6:00 PM. Shaffer stated that he would have been happier with 5:00 PM. Bossio stated that the cutoff of the day into the evening is 5:00 PM. So once you go beyond 5:00 PM, he feels you are into the evening hours. A large percentage of people get off work at 5:00 PM, so should the Board be saying that her business by concluded by 5:00 PM so it is not interfering with neighbors coming home and the usual situations.

Shaffer stated that he has yet to call Lowes and ask them to hold the doors open for him, they do not do it. The time is the time. A business is open and a business is closed and it is conducted between those times. Shaffer stated that he agrees with Papandreas that this home-based business seems un-invasive and respectfully understand Shamberger's thought on the differences in the two neighborhoods. Going back 10 to 15 years ago when reviewing home occupations and daycares, they were 9 to 5 low impact operations.

Bossio stated what is the difference between 6:00 PM and 7:00 PM and once you go into the evening hours, you have gone into the evening hours.

Papandreas stated that the Board should not be reworking her business plan. It is whether or not it is appropriate for certain hours in the neighborhood. He thinks that there has to be a line. He stated that Schotchel asked for 6:00 PM in her application, then the Board should consider 6:00 PM.

Shaffer stated that he does not want to get involved in how many notes are in a saxophone, but we are talking about vehicular traffic that has a measurable impact on a neighborhood. He believes she has given a reasonable proposal for ingress/egress from the main road directly into her home. His problem is the time creep.

Bossio stated that the nature of home-based businesses is changing and the Board seems to be in agreement.

Shamberger stated that he has had home-based businesses around his home that help watch his home when he was gone.

Bossio asked Schotchel if 6:00 PM would work. Schotchel stated it would.

Fletcher stated that condition Number 13 should then read, "That the hours of operation may not be earlier than 10:00 AM or later than 6:00 PM."

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

NOTE: The following findings of fact were included in the motion.

Finding of Fact #1 No external alterations will be necessary. Existing off-street parking appears to be sufficient to accommodate clients. Interior space will be converted for business purposes and should not interfere with living space being used. The home occupation will be located in an unused portion of a two-stall garage. Clients will be seen by appointment only, which should resemble normal traffic trends within the neighborhood and general vicinity.

Finding of Fact #2 The area to be remodeled will utilize the space in a more productive fashion which now is being used as storage. No new construction is proposed that would increase the building footprint. No signs will be needed for advertisement. The business owner has an existing clientele base that will remain with her business.

Finding of Fact #3 Adjacent to off-street parking area is vacant; therefore no neighbor will be directly affected. No external alterations will be necessary. Existing off-street parking appears to be sufficient to accommodate clients. The type of proposed business is such that advertising is not necessary so that the existing residential character within the immediate area will be maintained. Only a moderate amount of construction will be necessary to partition the existing garage with the French style door being the only change visible from the exterior.

Finding of Fact #4 Access roads appear to be sufficient to provide flows resulting from the slight increase of traffic to the neighborhood. There appears to be sufficient on-site parking space in the existing driveway to accommodate the parking needs of the single-family dwelling unit and the proposed home occupation. Clients will be seen by appointment only, which should resemble normal traffic trends within the neighborhood and general vicinity.

Shaffer moved to approve the conditional use with Staff's fourteen (14) recommended conditions; seconded by Shamberger. The motion passed unanimously.

Bossio advised the petitioner that the decision of the Board could be appealed to Monongalia County Circuit Court within thirty days and that any work done relating to the Board's decision would be at the petitioner's sole financial risk.

V. OTHER BUSINESS

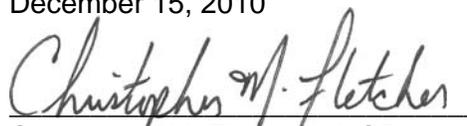
- A. Public Comments** – None.
- B. Staff Comments** – None.

VI. ADJOURNMENT – The meeting was adjourned at 8:35 PM.

MINUTES APPROVED:

December 15, 2010

BOARD SECRETARY:


Christopher M. Fletcher, AICP