

# BOARD OF ZONING APPEALS

## MINUTES

6:30 PM

November 20, 2013

City Council Chambers

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

**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 and read the standard explanation of the how the Board conducts business and rules for public comments.

**II. MATTERS OF BUSINESS:**

**A.** Minutes for the October 16, 2013 Hearing. Fletcher advised the Board that the minutes would be included on December agenda.

**III. OLD BUSINESS: NONE**

**IV. NEW BUSINESS:**

**A. CU13-18 / Micro Outdoors Advertising, LLC / 1974 Hunters Way:** Request by Russ Bonasso, on behalf of Micro Outdoors Advertising, LLC, for conditional use approval of "Billboard Sign" use located at 1974 Hunters Way under Article 1359 "ISOD, Interstate Sign Overlay District"; Tax Map 44A, Parcel 10; B-2, Neighborhood Business District.

Fletcher read the Staff Report stating that under the major zoning ordinance amendment enacted in January 2006, the Morgantown community significantly restricted the development of billboards and off-premise pole or pylon signs. In doing so, an overlay district was created in proximity to federal interstate rights-of-way within which these types of signs are permitted.

In reviewing the zoning ordinance text and zoning map, there was a conflict between how the overlay district's boundary was described and how it was illustrated. Specifically, Article 1359 described the overlay district boundaries as to within 500 feet of a federal interstate right-of-way. However, the official zoning map illustrated the ISOD, Interstate Sign Overlay District boundary to, what appeared to be, 500 feet from the I-68 centerline. The resultant overlay district as illustrated on the zoning map was contained entirely within the I-68 right-of-way. The West Virginia Division of Highways (WVDOH) does not permit signs to be erected within a right-of-way for which it controls and maintains.

Article 1329.01(D) "Rules of Construction, Intent, and Usage" provides that, "In case of conflict between regulations the more restrictive shall apply."

In this case, the official zoning map was more restrictive but resulted in an area where these types of signs may not be erected due to WVDOH restrictions. As such, the City of Morgantown inadvertently enacted restrictions that made the development of these types of signs impossible.

The City Attorney maintains that, in West Virginia, all land use types must be permitted somewhere within a community that has enacted land use and land development regulations. On this basis, the City of Morgantown had to reassess its enacted regulations to identify an acceptable area for billboards and off-premise pole or pylon signs to be permitted.

ON 10 JAN 2013, the Planning Commission recommended amendments to address the conflict between the zoning ordinance text and zoning map. The amendments were enacted by City Council on 06 MAR 2013 and related ordinances are attached hereto as Exhibit 1.

#### ANALYSIS:

The petitioner seeks to erect an approximate 440 square foot digital "Billboard Sign" at the southern end of the former Sterling Faucet site in Sabraton closest to the I-68 westbound exit ramp intersection with State Route 7. Addendum A of this report illustrates the general location of the proposed billboard sign.

The development of a "Billboard Sign" is restricted to the ISOD, Interstate Sign Overlay District, which is located within 500 feet of a Federal Interstate Highway right-of-way but not within a residential district.

Addendum B of this report identifies the design, performance, and conditional use application requirements for billboard sign development along with development program details submitted by the petitioner.

Bossio recognized Russ Bonasso of Micro Outdoors Advertising, LLC who stated he has been in the billboard business since 1989 and noted there have been many changes since that time. Currently, billboards are made with a vinyl type wrap and West Virginia has permitted digital billboards within the last few years which can be seen around the County and the State. Bonasso stated the billboard would be placed on Route 7 in the Southern States parking area and would be visible from the interstate. The digital board would allow for information to be displayed to the public, including Amber Alerts, Weather Alerts and Silver Alerts. The board will be turned off at midnight and will not flash lights at any time.

Papandreas asked if the billboard is strictly for public service announcements or if advertising would be included. Bonasso stated the billboard would be used for advertising purposes, however, if an amber alert is issued then the advertisement would be interrupted and the Amber Alert would be displayed immediately.

Shaffer asked how far off the ground the billboard would be raised. Bonasso explained the billboard would be 77 feet high and would be raised slightly above the guard rail to allow for easy viewing from Route 7.

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

Bossio recognized Wendy Adkins of Jackson Kelly & Associates in Morgantown who stated she is representing George R. Farmer, Jr. who is a trustee for the Hazel Ruby McQuain Trust. Farmer is aware of the conditional use request by Micro Outdoors Advertising, but did not

receive notification that a Staff Report and exhibits were available and therefore did not have an opportunity to review the information. Ruby Foundation, LLC owns three pieces of property that sit behind the area in which the proposed billboard would be located. The property is approximately 20 acres spread out over three parcels. Farmer believes the property is profitable and asks the Board to postpone a decision until the December meeting to allow the Trust time to review all related documents.

Bossio referred to a picture in the application to show the location of the proposed billboard. Bossio asked Adkins to explain the exact location of said parcels. Adkins provided a tax map to help explain where the three parcels are located.

Fletcher stated an email was received from Adkins on November 20, 2013 with a request to postpone Case Number CU13-18 to the December 2013 Board of Zoning Appeals hearing.

Bossio asked Adkins to explain the concerns raised by Farmer. Adkins explained that since Farmer had not reviewed the Staff Report, he is concerned the billboard would block the view from the property and affect the marketability of the land.

There being no further public comments, Bossio invited Bonasso to the podium for a five-minute rebuttal.

Bonasso stated that Jackson Kelly & Associates is the company he uses for his legal council and felt it was a conflict of interest for Adkins to be representing Farmer in the request to postpone the case. Bossio explained the Board has no involvement with that issue and Bonasso would have to discuss that with Jackson Kelly.

Bonasso noted the case was advertised legally in the newspaper in advance of the hearing and does not see how someone can request to postpone the case. The billboard will not be viewable from the property as it will be facing towards Route 7, although they may be able to see the back side. The view shed from Southern States is a fueling position and he does not understand the difference from a billboard to a natural gas or diesel station. The billboard is eleven feet high and will face Route 7.

Shaffer explained that the public can make any request they want and this is part of the process. Bonasso understood.

Papandreas referred to the Staff Report and asked Bonasso the perceived height of the billboard. Bonasso stated the perceived height would be five feet above the guardrail and noted the sign structure measures at 77 feet from bottom to top.

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

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

Staff recommends the following conditions be included in the Board's approval of Case No. CU13-18:

1. That the digital billboard sign for which conditional use approval is granted herein must comply with the following conditions:
  - a. Digital message display must be static or stationary and may not contain any visible moving parts, alternating or moving messages or have the appearance of having moving parts or messages.
  - b. Digital message display may not flash, undulate, pulse, move, scroll, or portray explosions, fireworks, flashes of light, or blinking lights or otherwise appear to move toward or away from the view, expand or contract, bounce, rotate, spine twist or make other comparable movements.
  - c. The digital billboard sign's frames, borders, and all structural members must be black, with no illumination and no writing or symbols other than the identification (name and/or logo) of the sign owner/operator.
  - d. A City building permit must be issued prior to the installation or modification of the subject digital billboard.
  - e. The petitioner must file with the related building permit application a certificate of insurance naming the City as coinsured and certifying that the applicant and City are insured against bodily injury and for property damage arising out of the erection, maintenance, repair, and replacement of the sign. The petitioner shall maintain said insurance and keep a certificate of insurance currently effective on file with the City Manager's Office so long as the sign is in existence. The certificate shall provide that the City shall receive ten (10) days written notice in case of cancelation of the policy.
  - f. The petitioner must obtain any and all required approvals from State and/or Federal reviewing and approval authorities prior to the issuance of the City's building permit.
  - g. The display or message on the subject digital billboard sign may change no more frequently than once every ten (10) seconds. Any change in message or copy must be completed instantaneously.
  - h. The subject digital billboard sign must have a light sensing device to adjust brightness as ambient light conditions change in order to insure that the message meets the following brightness standard. Maximum brightness levels for digital billboards may not exceed 0.2 (two tenths) foot-candles over ambient light levels measured within 150 feet of the sign. Certification must be provided to the City demonstrating that the sign has been preset to automatically adjust the brightness to these levels or lower. Certified re-inspection and recalibration shall be annually required by the City, in its reasonable discretion, at the sign owner/operator's expense to ensure that the specified brightness levels are maintained at all times. Brightness of the subject digital billboard shall be measured as follows:
    - i. At least 30 minutes following sunset, a foot-candle meter shall be used to obtain an ambient light reading for the location. This is done while the sign is off or displaying black copy. The reading shall be made with the meter aimed directly at the sign area at the pre-set location.

- ii. The sign shall then be turned on to full white copy to take another reading with the meter at the same location.
  - iii. If the difference between the readings is 0.2 (two tenths) foot-candles or less, the brightness is properly adjusted.
- i. Consecutive messages on a single digital or electronic sign face (digital slots) are prohibited when the second message answers a textual question posed on the prior slot, continues or completes a sentence started on the prior slot, or continues or completes a story line started on the prior slot. Nothing in the subsection shall prohibit consecutive messages by the same advertiser or consecutive messages for the same product or service; provided, that the second of such advertisements does not answer textual questions posed on the prior advertisement slot, continue or complete a sentence started on the prior advertisement slot, or continue or complete a story line started on the prior advertisement slot. For example, consecutive advertisements by a single grocery store advertising the same or multiple products are permitted provided that such advertisements do not answer textual questions from one slot to the next slot, continue or complete a sentence from one slot to the next slot, or continue or complete a story line from one slot to the next slot.
  - j. The subject digital billboard sign must have a default mechanism or setting that will cause the sign to turn off or show a "full black" image if a visible malfunction or failure occurs.
  - k. The subject digital billboard sign shall not be configured to resemble a warning or danger signal. The sign shall not resemble or simulate any lights or official signage used to control traffic.
2. That the petitioner shall submit a certified as-built survey, prepared by an engineer or surveyor licensed to practice in West Virginia, within 60 days of substantial construction completion to the Planning Division that illustrates information required in the conditional use application survey set forth in Article 1359.04 and confirms constructed conditions observe the following setback requirements:
    - a. The location of the constructed digital billboard sign is within 500 feet of the federal Interstate 68 right-of-way.
    - b. The location of the constructed digital billboard sign is greater than 300 feet from a residential zoning district.
    - c. The location of the constructed digital billboard sign is greater than 15 feet from any parcel boundary line of the property on which the subject sign is located
  3. *INSERT IF SO DECIDED BY THE BOARD* – That, for the purpose of preserving the character and repose of adjacent residential areas, the subject digital billboard sign must be turned off or display a full black image between INSERT TIME PERIOD.

Bossio referred to the Findings of Fact and expressed that the location of the billboard could not be fully understood from the provided documents.

Papandreas asked the Board if they would allow a sign of that size to be raised five feet from the ground and expressed concerns of the sign blocking views and feels it could affect the value of the property.

Shamberger felt the road visibility would not be an issue as there is enough height in the sign. Bossio agreed.

Shaffer stated that he had not considered how the sign might affect properties to the west of the site and felt more information was needed to fully understand the location of the billboard and suggested postponing the case until additional information could be obtained.

Shamberger asked which Findings of Fact was a concern. Bossio stated that Findings of Fact 3 and 7 are a factor as they refer to adequate light, air and value of the surrounding buildings being affected.

Bossio and Papandreas agreed that they had also not considered viewshed considerations west of the proposed billboard sign location.

Bossio suggested postponing the case and visit the site to gain a better understanding of the billboard and its positioning instead of denying the request. He noted that other communities demonstrate by using balloons attached to a crane.

Bossio invited Bonasso to the podium and asked if he was familiar with using balloons to demonstrate the positioning of billboards. Bonasso stated he was familiar with using a balloon on a tether.

Bossio suggested Adkins and her client could be notified prior to a site visit so they could gain a better perspective of how the billboard would be positioned.

Papandreas made a motion to table Case No. CU13-18 pending a site visit; seconded by Shaffer. Motion carried unanimously.

Bossio reiterated to Bonasso that the request was tabled to the December 2013 Board of Zoning Appeals Hearing and to contact the Planning Office to make arrangements for a site visit.

- B. CU13-19 / Lebanese Bistro / 156 Clay Street:** Request by George Tanios, on behalf of Lebanese Bistro, LLC, for conditional use approval of a "Restaurant, Private Club" use located at 156 Clay Street under Article 1331.06(27); Tax Map 28, Parcel 38; B-4, Service Business District.

Bossio recused himself due to a prior business relationship with the petitioner. Bossio left the Chambers and Shamberger took the Chair position.

Fletcher read the Staff Report stating the petitioner seeks to establish a "Restaurant, Private Club" use that will include a license with the West Virginia Alcohol Beverage Control Administration to liquor. Addendum A of this report illustrates the location of the subject site.

Table 1331.05.01 "Permitted Land Uses" provides that the development of "Restaurant, Private Club" uses in the B-4 District requires conditional use approval by the Board of Zoning Appeals.

Addendum B of this report contains related excerpts from Article 1331.06(27) of the Planning and Zoning Code.

According to the petitioner's application and exhibits, the *Lebanese Bistro* is approximately 3,500 square feet and will feature Middle Eastern and Lebanese cuisine.

Meals will be served with many appetizers and a main entree. All dishes will be made with fresh ingredients and several dishes will be vegetarian and gluten free. Service will be typical for a sit-down restaurant with a host seating guests; a server taking orders and delivering the food; and the guest will pay the server. A lunch buffet will be offered Monday through Friday from 11:30 AM to 2:00 PM for \$9.95. The buffet will consist of many cold dishes, soup, and a few hot items.

The *Lebanese Bistro* will be open seven (7) days a week; closing at 10:00 PM during the week; open until 12:00 AM on Friday and Saturday; and, closed Sunday at 4:00 PM.

The petitioner emailed Staff photo images of the lunch and dinner menus but the quality (resolution) of the images was not sufficient to attach hereto. However, the petitioner will be distributing copies of the menu at the Board's hearing.

The petitioner submitted floor plans to Staff. However, the physical size of the plans was too large to scan and attach hereto. The submitted floor plan will be available for review at the Board's hearing.

The 18 NOV 2013 email from the petitioner to Staff and attached hereto provides additional information concerning the petitioner's bona fide restaurant operations and restaurant business background.

The subject restaurant space was previously occupied by *La Casa Mexican Grill* and *Synergy Chop House and Saloon*, both of which held liquor licenses grandfathered from present related conditional use approval and performance standard requirements.

Shamberger recognized George Tanios of 156 Clay Street who stated he took over the lease approximately two years ago based on the assumption he would be able to open a full scale restaurant. The restaurant is currently serving beer and wine.

Shamberger explained the Board would have to first determine whether or not to waive the one-year "bona fide restaurant" requirement and that 60% of all sales must be food.

Tanios understood the requirement could be waived based on his experience as a business owner and operator. He currently owns two beer and wine licenses with the ABC of West Virginia at two convenience stores, and previously held a liquor license with a former establishment on Walnut Street called *4<sup>th</sup> and Goal*. There was one underage drinking violation in three years which did not happen on his shift.

Tanios stated that he currently owns one restaurant called *Sandwich University* that does not sell alcohol. Previously he owned two restaurants located in State College, PA and his family has a history of operating full scale restaurants for the past 30 years. *Lebanese Bistro* is a family-owned restaurant and they are depending on the business doing well and generating as much income as possible. Tanios does not anticipate selling more than 40% in alcohol, as the restaurant does not attract a binge drinking kind of crowd. There are currently four restaurants

on the Wharf District and three of them are serving liquor. Those restaurants are trying to revitalize the area with bringing a more sophisticated crowd.

Shamberger asked how long the restaurant had been opened. Tanios stated the establishment had been opened a month but didn't press the issue because the purpose of the restaurant is the food and not the liquor.

Papandreas asked if alcohol will be served inside and outside on the deck. Tanios explained that the WVABCA does not allow selling liquor and wine on the back deck as it is a state law that was not previously enforced.

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

Shamberger recognized Terri Cutright of Main Street Morgantown, who stated that she has heard many positive comments about Lebanese Bistro and how the quality of food is excellent. Main Street Morgantown encourages other restaurants in the Wharf and would like to see that area become a dining district.

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

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

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

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

Should the Board waive the one-year "bona fide restaurant" requirement and grant approval of the subject conditional use petition to Lebanese Bistro, LLC, Staff recommends the following conditions be included:

1. That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06(27) of the Planning and Zoning Code.
2. That the petitioner must obtain permitting as a "restaurant" from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*.
3. That the "Restaurant, Private Club" use shall be limited to the interior design and identified areas of the subject building as illustrated on the drawings submitted with the application and reviewed and approved by the Board of Zoning Appeals. Any expansion of the conditional use or significant deviation from said facility layout design, operations, or proposed dining experience must first be approved by the Board of Zoning Appeals.

4. That, to ensure that the petitioner's business description and plans are executed as described and considered in granting the one-year "bona fide restaurant" waiver, the subject "Restaurant, Private Club" use must:
  - a. Be open to the general public a minimum of 11:00 AM to 1:00 PM Monday through Friday for the purpose of serving lunch as generally described in the menu submitted with the petitioner's conditional use application.
  - b. The petitioner shall voluntarily submit all necessary financial information to the City for the subject establishment following its first twelve (12) months of operation as a "Restaurant, Private Club" use to ensure compliance with Article 1331.06(27)(e) provisions, which requires the sale of food and non-alcoholic beverages to comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month.
5. That any regulated signage shall be reviewed and approved by the Downtown Design Review Committee and the Planning Division prior to building permit issuance for same.
6. That the beneficiary of this conditional use approval is Lebanese Bistro, LLC, which may not be transferred without prior approval of the Board of Zoning Appeals.

Papandreas made a motion to waive the one-year "bona fide restaurant" requirement; seconded by Shaffer. Motion carried unanimously.

Shaffer made a motion to find in the affirmative for all the Findings of Facts for CU13-19 as revised by Staff; seconded by Papandreas. Motion carried unanimously.

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

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

This location has been operated as a restaurant for several years with no change in patterns proposed from previous restaurant occupants of the subject site. The Wharf Parking Garage is located approximately 600 feet from the proposed "Restaurant, Private Club" use.

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

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

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

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

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

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

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

Maximum occupancy will be regulated by related building and fire code provisions. There is no residential use proposed as a part of the conditional "Restaurant, Private Club" use.

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

The subject conditional "Restaurant, Private Club" establishment will be located in a space that has already been used and occupied as a restaurant and should therefore not require any further public services or utilities.

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

The location of the proposed "Restaurant, Private Club" has been occupied by various restaurant uses for a several years, which do not appear to have adversely impacted property values within the immediate area.

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

The location of the proposed "Restaurant, Private Club" has been occupied by restaurant uses for several years and is located in close proximity to other various restaurant uses within the downtown Wharf District.

Shaffer moved approve CU13-19 with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

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

- C. CU13-20 / Chaang Thai Restaurant / 361 High Street:** Request by Rajagopal Sundaram, on behalf of PR Thai Images Corporation, for approval of a conditional "Restaurant, Private Club" use located at 361 High Street under Article 1331.06(27); Tax Map 26A, Parcel 98; B-4, Service Business District.

Bossio returned to Chambers and assumed the Chair. Papandreas recused himself due to a business relationship with the petitioner.

Fletcher read the Staff Report stating According to the petitioner, *Chaang Thai Restaurant* seeks to offer, "six to seven exotic [liquor-based] drinks from Thailand to cater to the existing clientele who expect a unique authentic Thai experience." Addendum A of this report illustrates the location of the subject site.

The City's Planning and Zoning Code requires conditional use approval from the Board to sell liquor in the B-4 District as a "Restaurant, Private Club" use. Addendum B of this report contains related excerpts from Article 1331.065(27) of the Planning and Zoning Code.

*Chaang Thai Restaurant* opened at 361 High Street in August 2011. The following information can be found on the establishment's website at chaangthai.com (16 NOV 2013):

- Hours of operation are Monday thru Thursday from 11:00 AM to 9:30 PM; Friday from 11:00 AM to 10:00 PM, Saturday from 11:30 to 10:00 PM, and Sunday from 11:30 AM to 9:30 PM.
- The establishment offers sit-down dining, pre-order, take-out, and delivery services.
- Menus include "Authentic Thai Cuisine" for business lunch, main dinner, party platter, and takeout that appear to be an extensive assortment of appetizers, soups, salads, signature specials, desserts, and a kids menu. The "Chaang Takeout Menu" has been downloaded

from the website and included herein as an attachment to the petitioner's conditional use application.

- The "About Us" narrative on the establishment's website states:

"Welcome to Chaang Thai Restaurant. We hope to make your dining experience memorable as we endeavor to serve you the finest Thai cuisine made with only the freshest and finest ingredients available. Thai cuisine is light, fresh, and strikes a delightful flavor. Each order is freshly prepared and cooked individually to ensure the best quality and taste at all times. So sit back and enjoy, let your eyes and taste buds take you on a culinary trip to a new world of dining pleasure. Please note that some items are spicy. Merely indicate if you want it prepared mild, medium or hot. Thank you for visiting Chaang Thai Restaurant."

Bossio recognized Rajagopal Sundaram of 210 South High Street who stated he has owned the Chaang Thai Restaurant for approximately two years. Initially, the restaurant did not serve any alcohol. After a year of business, he realized that people like to drink beer and wine with their meal. At that point he obtained a beer and wine license. He would like to offer a limited number of exotic mixed drinks with the Thai food to enhance the cultural experience within his restaurant.

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

Bossio recognized Terri Cutright of Main Street Morgantown who was in favor of the request to serve liquor and stated that Sundaram approached her two years ago to inform her of his intentions to open a Thai restaurant. He realized the area was in need of a Thai restaurant and did his due diligence to open the family style restaurant on High Street.

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

Fletcher stated that because the restaurant establishment has been in operation for more than one year, a waiver from the one-year "bona fide restaurant" requirement [Article 1331.06(27)(c)] by the Board is not required.

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

Staff recommends that the CU13-20 conditional "Restaurant, Private Club" use petition be approved with following conditions:

1. That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06 (27) of the Planning and Zoning Code.
2. That the petitioner must obtain permitting as a "restaurant" from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*.
3. That the "Restaurant, Private Club" use shall be limited to the existing interior design and existing areas of operation within the building. Any expansion of the conditional use or

significant deviation from existing facility layout design, operations, or present dining experience must first be approved by the Board of Zoning Appeals.

4. To ensure that the restaurant establishment continues to operate as a “bona fide restaurant”, the petitioner shall voluntarily submit all necessary financial information to the City for the subject establishment following its first twelve (12) months of operation as a “Restaurant, Private Club” use to ensure compliance with Article 1331.06(27)(e) provisions, which requires the sale of food and non-alcoholic beverages to comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month.
5. That the beneficiary of this conditional use approval is PR Thai Images Corporation (d.b.a. *Chaang Thai Restaurant*), which may not be transferred without prior approval of the Board of Zoning Appeals.

Shamberger made a motion to find in the affirmative for all the Findings of Facts for CU13-20 as revised by Staff; seconded by Shaffer. Motion carried unanimously.

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

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

The Chaang Thai Restaurant opened in August 2011. The addition of liquor to the restaurant’s offerings should not contribute to or mitigate existing traffic patterns on neighboring roadways.

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

All the restaurant will be required to comply will all related building and fire codes to maintain occupancy.

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

The subject structure already exists and there will be no changes in the building height or footprint that would alter existing light distribution or air flow patterns.

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

The building and restaurant establishment already exist and there are no plans to expand the building footprint.

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

Maximum occupancy will be regulated by related building and fire code provisions. There is no residential use proposed as a part of the conditional “Restaurant, Private Club” use.

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

The restaurant establishment already exists. The addition of liquor to the restaurant’s offerings should not require any further public services or utilities.

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

The subject restaurant has been in existence at 361 High Street since August 2011 and the subject storefront was previously occupied by an approved “Restaurant, Private Club” use. These restaurant uses do not appear to have adversely impacted property values within the immediate area.

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

The subject restaurant establishment has been in existence at 361 High Street since August 2011 and is located in close proximity to a number of other various restaurant uses within the Downtown business district.

Shaffer moved to approve CU13-20 with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

Bossio reminded Mr. Sundaram that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Department and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- D. V13-61 / Fairmont Morgantown Housing Authority / Buckhannon Avenue:** Request by Chris Eckhardt, on behalf of FMHA, for variance relief from Article 1335.04 as it relates to setbacks on Buckhannon Avenue; Tax Map 36, Parcel 690; R-1A, Single-Family Residential District.

Fletcher stated that the petitioner's representative was not in attendance. Shaffer made a motion to table the petition; seconded by Shamberger. Motion carried unanimously.

- E. V13-62 / Donald Field / 235 Darst Street:** Request by Donald Field for variance relief from Article 1331.08 as it relates to accessory structures at 235 Darst Street: Tax Map 24, Parcel 47; R-1A, Single Family Residential District.

Fletcher read the Staff Report stating the petitioner seeks to construct a 21' x 31' accessory detached carport structure between the principal structure and Jersey Avenue. Addendum A of this report illustrates the location of the subject site.

Article 1329.02 provides the following definition to guide determining lot frontage:

LOT FRONT – The side of a lot that abuts a public street is the front of the lot. For corner lots, the shortest side fronting upon a street shall be considered the front of the lot. Where buildings exist on the lot, the frontage may be established by the orientation of the building, or of the principal entrance, if building orientation does not clearly indicate lot frontage. Where no other method determines conclusively the front of a lot, the Planning Director shall select one frontage on the basis of traffic flow on adjacent streets, so that the lot is considered to front on the street with the greatest traffic flow.

The subject property is bordered on three sides by public rights-of-way; specifically, Darst Street, Central Street, and Jersey Avenue. Additionally, the area directly behind the house is used as a driveway connecting Central Street and Jersey Avenue

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

- (A)(2) Accessory structures, if detached from a principal structure, shall not be placed in the front yard. If placed in a side yard, accessory structures shall not be located closer to the street than the required front setback of the principal structures.
- (A)(4) On corner lots, accessory structures shall not be located between any portion of the principal structure and either street.

Because the petitioner seeks to construct the detached accessory carport structure between the principal structure and Jersey Avenue, variance relief is required from Article 1331.08(A)(2) and Article 133108(A)(4).

It should be noted that similar variance relief was granted under Case No. V13-54 on OCT 16 2013 for a detached accessory storage shed structure at 324 Barrickman Street.

Bossio recognized the petitioner Donald Field of 235 Darst Street who stated he concurred with the Staff Report.

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

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

Staff recommends approval of the variance petition V13-62 with the following conditions:

1. That the proposed accessory detached garage may be located no closer to Darst Street than the principal structure.
2. That the setback of the proposed accessory detached garage may be no closer than ten (10) feet from the property boundary running with the Jersey Street right-of-way.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for V13-62 as revised by Staff; seconded by Shamberger. Motion carried unanimously.

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

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The subject site is situated in a heavily traveled corridor where the predominant commercial signage and messaging patterns 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 tenants occupying the uniquely large professional office building. Additionally, the approximate six-foot clearance between grade and the lowest horizontal plain or bottom of the sign appears necessary to preserve safe visibility for exiting vehicles. Further, the site's two primary driveway entrances from University Avenue access two different levels. Restricting both sides of the two-sided post-and-panel sign to be identical in design and content hinders tenant location messaging in a manner that would otherwise assist in directing visitors to the appropriate level of the site for the purposes of parking and then entering the building at the desired level.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

It appears that the majority of commercial signs within the vicinity of the Prete Building, particularly those serving multi-tenant developments, are nonconforming as all do not meet maximum area and maximum height standards set forth in Article 1369 of the Planning and Zoning Code.

Finding of Fact No. 3 – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The height and area of the proposed multi-tenant sign appears to be consistent with the predominant commercial signage within the vicinity of the Prete Building, which do not presently appear to harm public welfare, adjoining properties, or improvements. Additionally, the approximate six-foot clearance between grade and the lowest horizontal plain or bottom of the sign appears necessary to preserve safe visibility for exiting vehicles. Granting relief from the restriction that both sides of the proposed two-sided post-and-panel sign be identical in design and content should serve to assist in directing visitors to the appropriate level of the site for the purposes of parking and then entering the building at the desired level thereby promoting efficient and effective access from University Avenue.

Finding of Fact No. 4 – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The height and area of the proposed multi-tenant sign appears to be consistent with the predominant commercial signage patterns within the vicinity of the Prete Building, which do not appear to diminish the market value or vitality of the well-established commercial corridor. Variance relief relative to sign height and area cannot contribute to nor mitigate existing traffic volumes on neighboring streets. Eliminating one of the approved nonconforming ground signs should serve to reduce sign clutter within the commercial corridor.

Papandreas moved to amend V13-62 as requested with Staff recommended conditions; seconded by Shaffer. Motion carried unanimously.

Bossio reminded Mr. Field that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Department and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

#### **V. ANNOUNCEMENTS:**

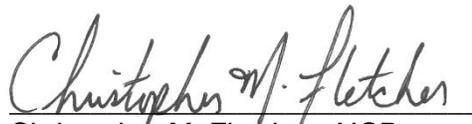
- Fletcher stated that the 2013 Planning and Zoning Code replacement was provided to the Board members.
- Fletcher stated that the Board's decisions from 2011 cases related to 426 Drummond Street that were appealed to Circuit Court and then appealed to the West Virginia State Court of Appeals were upheld.

#### **VI. ADJOURNMENT: 7:53 PM**

MINUTES APPROVED:

December 18, 2013

BOARD SECRETARY:

  
Christopher M. Fletcher, AICP