

# BOARD OF ZONING APPEALS

## MINUTES

**6:30 PM**

**December 22, 2011**

**City Council Chambers**

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

**MEMBERS ABSENT:** Jim Shaffer

**STAFF:** Heather Whitmore Dingman, AICP, Christopher Fletcher, AICP

**I. CALL TO ORDER AND ROLL CALL:** Bossio called the meeting to order at 6:30 p.m.

**II. MATTERS OF BUSINESS:** Approval of November 16, 2011 hearing: Shamberger made a motion to approve the Minutes from the November 16, 2011 hearing; seconded by Papandreas. Motion carried unanimously

**III. OLD BUSINESS:**

**A. CU11-10 / Dixon / 1591 Deckers Creek Blvd:** Request by Jerry Dixon for conditional use approval of a "Personal Storage Facility" use for property at 1591 Deckers Creek Blvd; Tax Map 31, Parcel 114; B-2, Service Business District. (MUST BE REMOVED FROM TABLE.)

Shamberger made a motion to remove request CU11-10 from the Table; seconded by Papandreas. Motion carried unanimously.

Dingman read the Staff report, stating that the petitioner initially submitted a request to develop a 7,000 square foot building for his personal storage in October 2011. During the course of deliberations the Board tabled the conditional use application. The petitioner requested that the related variances be postponed to a later meeting as well. The Board recommended that Staff coordinate an onsite visit with the applicant to review the case in more detail. Addendum A of this report illustrates the site's location.

On November 15, 2011, Planning Staff Heather Dingman and Board of Zoning Appeals members Bernie Bossio, Leanne Cardoso, George Papandreas, and Tom Shamberger met the applicant at the subject property to discuss development options. The applicant and the Board members shared their perspectives on the proposed project. At the conclusion of the site visit, the applicant agreed to continue working with Staff to develop the details of the development plan. On November 16, 2011, the applicant asked the Board to postpone consideration of this conditional use and associated variances to provide him time to finalize development plan revisions.

The October 2011 petition included a 7,000 square foot building with a dirt floor and no utilities. That building had two parking spaces and encroached into several setback areas and required three variances.

The petitioner now seeks to construct a 2,400 square foot building for his personal storage use. The building will adhere to all building code standards for a business and storage use. The building will have eight parking spaces in the rear yard screened by a substantial landscape buffer. The parking lot will be accessed from a driveway off of Deckers Creek Boulevard. The building has garage doors that open to a loading zone off of Deckers Creek Boulevard. The loading zone complies with Article 1365.10, "Loading Requirements."

Although the petitioner intends to use the proposed building for his personal storage, he has redesigned the building and site to accommodate a business in the future. The building will not be occupied as a residential use.

The applicant has worked closely with Staff to create a site and building program that optimizes the property's commercial use potential, while providing the owner the ability to utilize his property for storage. The applicant now requests to continue the conditional use permit for a personal storage facility. The enclosure includes the applicant's exhibits, containing the proposed site plan illustrating building, parking, and landscape layout.

After carefully reviewing land uses provided in Article 1329, "Definitions"; Article 1331.05, "Permitted Land Uses; and, Article 1331.06, "Supplemental Regulations pertaining to Permitted Land Uses Table", there does not appear to be a specific land use classification provided in the Planning and Zoning Code that corresponds with the proposed storage building as a principal structure.

Article 1375.05, "Administrative Interpretations", which is attached hereto as Addendum B, provides guidance in these instances. It is the opinion of the Planning Division that the proposed storage building use is substantially similar to a "Personal Storage Facility" use, which is defined in Article 1329.02 as:

"PERSONAL STORAGE FACILITY or SELF-SERVICE STORAGE FACILITY – A building or group of buildings consisting of individual, self-contained units leased to individuals, organizations, or businesses for self-service storage of personal property. Also commonly referred to as mini-warehouses."

Table 1331.05.01 "Permitted Land Uses" provides that "Personal Storage Facility" uses are permitted in the B-2 District as a conditional use.

Article 1375.05 "Administrative Interpretations" (E) (4) provides that:

"If the proposed use is most similar to a use allowed only as a conditional use in the district in which it is proposed to be located, then any use interpretation authorizing such use shall be subject to the issuance of a condition use permit."

In addition to the subject conditional use approval, Mr. Dixon has submitted one (1) variance petition that must be approved for the development as proposed.

Bossio recognized the applicant, Jerry Dixon, 3025 Earl Core Rd., Morgantown, who thanked Heather Dingman for her help and cooperation during this process. He also expressed appreciation to all the Board members for taking the time to visit the site.

Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing portion closed.

Dingman read Staff recommendation, stating that because the present conditional use petition and supporting exhibits have significantly changed since the Board's October 19, 2011 consideration and tabling of same, it is the opinion of the Planning Division that the Board must first address the affirmative findings of fact motions carried during said hearing. Specifically, a majority of the members present carried motions in the affirmative for the first seven conditional use findings of fact. Robert's Rules of Order provides that a motion to reconsider a previous vote may be made, without notice, to bring back for further consideration a motion already voted on. The purpose of reconsidering a vote is to, in part, take into account added information or a changed situation that has developed since the taking of the original vote. A motion to reconsider can be made only by a member who voted with the prevailing side, which in this case is Board members Bossio, Papandreas, and Shaffer. The Planning Division recommends that the following motion be made by one of the noted Board members so that all the findings of fact determinations may reflect the amended conditional use petition:

"I move to reconsider the October 19, 2011 votes for the first seven findings of fact for CU11-10 so that the Board may consider revisions to the petitioner's conditional use request. I voted for said motions."

The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the 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 that CU11-10 be approved as requested, the following conditions be included:

1. That the subject storage building may not be used for residential occupancy; and
2. That no building permit may be issued until the final landscape and parking plan is approved by the Planning Division in accordance with the petition's site plan.

Papandreas made a motion to reconsider the October 19, 2011 votes for the first seven Findings of Fact for CU11-10 so that the Board may consider revisions to the petitioner's conditional use request; seconded by Shamberger. Motion carried unanimously.

Bossio asked the Board members if they wished to go through the Findings of Facts on an individual basis. Papandreas stated he did not feel the need to do so.

Papandreas made a motion to accept the Findings of Facts, with strike-through and underlined portions; seconded by Shamberger. Motion carried unanimously.

The Findings of Fact included in this motion are as follows:

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

The site is located at the end of a dead end street and should generate minimal traffic associated with the drop-off and pickup of the owner's stored personal items.

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

All related building and fire code life safety requirements will be addressed to the satisfaction of the Chief Building Code Official and the City Fire Marshall respectively.

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

The proposed storage building will be one-story and should accordingly not adversely impact light distribution and air flow patterns that currently existing around the subject site.

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

All setback and lot coverage standards will be observed.

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

No residential use will occupy the proposed storage building.

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

The site is located at the end of a dead end street so transportation is impacted minimally; the proposed development should not require public service beyond that which is currently available within the immediate area; and, the building does not include a residential component, therefore schools, parks or other similar public requirements will not be impacted by the proposed storage building.

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

Nearby properties fronting on the same street are currently vacant. The property owner will develop the property consistent with the zoning. The new building should be a valuable and appropriate reuse for a business in the Earl Core Road B-2 District Area.

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

The subject development site is located toward the end of a dead end street with very little vehicular traffic and limited visibility from the primary commercial corridors of Earl Core Road and Deckers Creek Road. The property owner will develop the property in a manner that is consistent with zoning regulations. The property owner has made every effort to develop the property in a way that appears appropriate for his present needs, future uses, and the surrounding properties.

Papandreas made a motion to approve request CU11-10 with Staff conditions; seconded by Shamberger. Motion carried unanimously.

#### IV. NEW BUSINESS:

- A. **V11-34 / Dixon / 1591 Deckers Creek Blvd:** Request by Jerry Dixon for variance relief from Article 1347.07 as it relates to sidewalks for property at 1591 Deckers Creek Blvd; Tax Map 31, Parcel 114; B-2, Service Business District.

Dingman read the Staff report, stating that the applicant seeks relief from Article 1347.07 as it relates to sidewalks for the subject property. Addendum A of this report illustrates the location of the site.

This case is an associated variance for conditional use CU11-10. The applicant requests to build a 2,400 square foot personal storage building. The building will have eight parking spaces in the rear yard screened by a substantial landscape buffer. The parking lot will be accessed from a driveway off of Deckers Creek Boulevard. The building has garage doors that open to a loading zone off of Deckers Creek Boulevard.

Article 1347.07 (F) provides that sidewalks must be constructed along the frontage of a lot upon which a use is to be constructed. Additionally, the sidewalks must be at least six (6) feet wide or the same width as an existing but incomplete sidewalk along the same side of the street.

Connectivity and pedestrian infrastructure is a priority in Morgantown. Many roadways in the City do not presently have sidewalks. As a result, pedestrians hazardously walk along roadway shoulders. Establishing complete and maintained connective sidewalk routes throughout the City will significantly improve the walkability of Morgantown by creating safe access to citywide destinations.

The Planning and Zoning Code is supported by the policies of the Morgantown Pedestrian Safety Board *Pedestrian Safety Plan*, adopted June 2010, and the Morgantown City Council *Complete the Streets Plan* resolution, adopted December 2007. Sidewalk requirements were included in the Planning and Zoning Code for all Zoning Districts (except industrial) in 2006.

There are currently no sidewalks along Deckers Creek Boulevard from its intersection with Earl Core Road to its dead end terminus. The petitioner seeks variance relief so that the construction of sidewalks is not required. The City Engineer was consulted and concurs with the petitioner's request.

Bossio recognized the applicant, Jerry Dixon, 3025 Earl Core Rd., Morgantown, stated that he does not feel a sidewalk is needed there since it would not lead anywhere.

Bossio asked if he were required to put in sidewalks, would it change his plan for the building. Mr. Dixon answered no.

Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing portion closed.

Dingman read Staff recommendation, stating 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 suggested affirmative revisions of the petitioner's "Findings of Fact." Significant changes in conditions of the application have occurred since the applicant submitted for the variance in October 2011. Although Deckers Creek Boulevard does not have sidewalks, requiring sidewalks for all new construction creates necessary sidewalk infrastructure. Addendum C of this report provides staff suggested negative revisions of the petitioner's "Findings of Fact."

Staff recommends that relief from Article 1347.07 as it relates to sidewalks within the B-2 District be denied for petition V11-34 as requested.

Cardoso asked Dingman how much sidewalk would be required for this project. Dingman answered that it would be the entire frontage along Deckers Creek Blvd., which would be approximately 123 linear foot

Bossio asked if properties in the future would be developed, would they also face the sidewalk requirement. Dingman stated that any future development would need to extend the sidewalk along their frontage.

Shamberger stated that there are other developments without sidewalks, and he feels that since it is on a dead end and the use is personal, he does not feel the lack of sidewalk would have a major impact. If it were being used as a business use, then that may be different.

Bossio suggested adding a stipulation to the approval that, as long as it is being used for personal storage, a sidewalk would not be required. However, if it ever turned to a business use, a sidewalk would be required.

Papandreas stated that he could see the rest of the area beyond Archie's Restaurant being developed one day, if the houses were to be demolished. He feels that a sidewalk would be a good addition.

Shamberger stated that he would be comfortable granting the request, with the one condition that if it ever becomes a business use, that a sidewalk would be required. He feels that Mr. Dixon has been very cooperative and met all other requirements.

Shamberger made a motion to accept the positive Findings of Fact, as amended; seconded by Papandreas. Motion carried unanimously.

The Finding of Facts included in this motion are as follows:

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

There are no sidewalks on either side of Deckers Creek Boulevard from its intersection with Earl Core Road to its dead end terminus. There does not appear to be any existing buildings or uses along Deckers Creek Boulevard that serve as origins or destinations for pedestrians. Further, there does not appear to be a demand for a sidewalk linking pedestrian between the ends of the subject right-of-way.

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

There does not appear to be any existing buildings or uses along Deckers Creek Boulevard that serve as origins or destinations for pedestrians. Further, there does not appear to be a demand for a sidewalk linking pedestrians between the ends of the subject right-of-way.

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

A sidewalk along the front of the subject site does not appear to complete an existing pedestrian link nor create a pedestrian connection of the ends of Deckers Creek Boulevard.

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

The requested variance cannot contribute to or mitigate traffic congestion on the dead end street.

Papandreas made a motion to approve request V11-34 with condition, as stated; seconded by Cardoso. Motion carried unanimously.

- B. V11-35 / Dixon / 1591 Deckers Creek Blvd:** Request by Jerry Dixon for variance relief from Article 1347.07 as it relates to sidewalks for property at 1591 Deckers Creek Blvd; Tax Map 31, Parcel 114; B-2, Service Business District. WITHDRAWN. NO ACTION NECESSARY.
- C. V11-36 / Dixon / 1591 Deckers Creek Blvd:** Request by Jerry Dixon for variance relief from Article 1347.06 as it relates to parking between the front façade and street and Article 1367.08 as it relates to minimum landscape buffer for property at 1591 Deckers Creek Blvd; Tax Map 31, Parcel 114; B-2, Service Business District. WITHDRAWN. NO ACTION NECESSARY.
- D. CU11-14 / Larew / 1459 N. Willey Street:** Request by Nicole Larew for conditional use approval of an “Animal Grooming” use at 1459 N. Willey Street. Tax Map 21, Parcel 77; PRO, Professional, Residential, and Office District.

Motion by Shamberger to remove CU11-14 from the Table; seconded by Papandreas. Motion carried unanimously.

Dingman read the Staff report, stating that On November 1, 2011, City Council, at the request of the petitioner, enacted Ordinance 11-44 amending Table 1331.05.01 “Permitted Land Uses” so that “Animal Grooming Service” uses may be permitted as a conditional use in the PRO District.

The petitioner now seeks conditional use approval for her establishment at 1459 N. Willey Street. Addendum A of this report illustrates the location of the subject site.

Article 1329.02 of the Planning and Zoning Code defines “Animal Grooming Service” as:

“Any place or establishment whose primary service offered is to be a place where animals are bathed, clipped or combed for the purpose of enhancing their aesthetic value and/or health, and for which a fee is charged.”

As this petition will be the first “Animal Grooming Services” conditional use in the PRO District, Staff worked with the petitioner to identify issues that may adversely impact properties adjoining this type of use within the PRO District.

- Noise attributed to barking dogs. Outdoor and/or open air pens and runs should not be developed.
- Odors attributed to animal waste. Outdoor and/or open air pens and runs should not be developed.

Additionally, due to the character of the heavily traveled North Willey Street corridor and the relative isolation of the building resulting from the large parcel and considerable building setbacks, potential noise and odor do not appear to be a concern for the petitioner’s location.

- Hours of operation. There appear to be several PRO District areas within the City were existing or potential commercial space may be in close proximity to residential dwelling units thereby necessitating special case-by-case consideration of whether or not limiting the hours of operation of an “Animal Grooming Service” use is warranted.

Due to the mixed-use character of the North Willey Street corridor and high traffic volumes, limited of hours of operation does not appear necessary at the petitioner’s location.

Bossio introduced the applicant, Nicole Larew, 1109 Vista Del Rio, Morgantown, stated that Ms. Dingman has conveyed the information well. She stated, as far as traffic and parking concerns, that the scheduling will be spread out. She will not have many customers coming and going at one time. She does not feel that noise (barking) will be a concern and that traffic noise will override any noise coming from her property.

Cardoso asked about property ownership and surrounding property ownership. Larew stated she is leasing the property for the grooming business. She stated that Biafora owns property adjacent.

Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing portion closed.

Dingman read Staff recommendations, stating that The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the “Findings of Fact” submitted by the petitioner.

Staff concurs with the petitioner’s Findings of Fact and recommends that CU11-14 be approved as requested with the following conditions:

1. That animals must be kept indoors at all times and no outdoor and/or open air pens or runs may be developed.
2. That the exterior must be kept clean and free of animal waste.
3. That a split rail or similar fence must be constructed at the edge of the gravel parking area running perpendicular to the east side of the building to aid in mitigating vehicles from going over the embankment toward the rear of the property.

4. That the existing dumpster in the parking area must be removed and garbage service changed so that tote containers can be placed along the side of the building to ensure that minimum parking requirements are met.
5. That the gravel parking area must be maintained in such a manner as to accommodate at least four parking spaces at all times.
6. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.

Papandreas made a motion to accept the Findings of Facts, as presented; seconded by Cardoso. Motion carried unanimously.

The Findings of Fact included in this motion are as follows:

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

The fore mentioned property was previously used for commercial purposes; there will be no changes in the amount of congestion.

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

Applicable building and fire codes are in place and have been inspected.

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

This is an existing structure there will be no additional affects to lighting or air flow.

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

This is an existing structure in which no additions will be made.

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

Again this is an existing structure previously used for commercial purposes. There will be no changes in congestions and no additions to existing structures.

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

Existing public infrastructure and facilities appear to be adequate for purposed animal grooming facility.

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

There will be no changes or additions to existing structure other than general maintenance and upkeep.

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

It is a permitted conditional use that is similar personal services previously established on property that are permitted according to zoning codes.

Shamberger made a motion to approve request CU11-14, with conditions; seconded by Papandreas. Motion carried unanimously.

- E. V11-46 / Andrew Smith / 426 Drummond Street:** Request by Andrew Smith, on behalf of Smith CPA for variance relief from Article 1367.08 (C) as it relates to minimum landscape buffer at 426 Drummond Street; Tax Map 6, Parcel 17; PRO, Professional, Residential, and Office District.
- F. V11-47 / Andrew Smith / 426 Drummond Street:** Request by Andrew Smith, on behalf of Smith CPA for variance relief from Article 1341.07 (I) as it relates to sidewalks 426 Drummond Street; Tax Map 6, Parcel 17; PRO, Professional, Residential, and Office District.

Fletcher read the combined Staff reports, stating that because the subject variance petitions are related by virtue of determining landscape buffering and sidewalk widths along the property's Drummond Street frontage between the public street and the parking area, Staff submits a combined Staff Report.

The petitioner has redeveloped an existing single-family dwelling into a "Professional Services Establishment" use that is permitted by-right in the PRO District. Addendum A of this report illustrates the location of the subject site.

Article 1329.02 "Definitions" provides that:

DEVELOPMENT – (1) Any man-made change to improved or unimproved land, including but not limited to 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.

Article 1367.02 "Landscaping and Screening – Applicability" provides that:

- A. These landscape regulations shall apply to two-family, multi-family, commercial, office, industrial, and institutional development. Previously approved development need not comply unless new site development approval is being sought.

Article 1367.08 "Parking Lot Landscaping Requirements" provides that:

- (C) Development with Parking Located Between Building and Street. If any parking is located between the street and the building line, the following shall apply;
- (1) A ten-foot wide buffer shall be provided for the length of any parking area abutting the street. The buffer area shall contain at least one (1) two inch (2") caliper trees for every twenty (20) feet and at least three (3) shrubs of a least three (3) gallons in size clustered between each two (2) trees.

Article 1341.07 "Performance Standards" [PRO District] provides that:

1. Sidewalks shall be constructed along the frontage of a lot upon which a use is to be constructed. New sidewalks shall be at least six (6) feet wide, or the same width as an existing but incomplete sidewalk along the same side of the street.

Building Permit EG2010-3 was issued on or about May 23, 2010 (see Addendum B). The building permit was issued for "minor grading" and did not include work associated with the development of a parking lot, which is evidenced by the work description provided on the building permit application and the estimated value of \$6,500. Because the building permit was

limited to grading, the building permit application was not circulated through Planning Staff for review prior to issuance.

On or about September 15, 2010, Staff received a complaint that the entire front yard of the subject site had been covered in gravel. This was the first instance that Planning Staff was made aware of the petitioner's development project.

After visiting the site and reviewing building permit application documents, Staff contacted the petitioner's agent Scott Krabill to coordinate compliance with related Planning and Zoning Code provisions. Staff also met with Chad Bilotta on site at the request of the petitioner. Staff accepted that the petitioner was advised by his agents of requisite development provisions as articulated in a memorandum to Scott Krabill dated September 17, 2010 and by a landscape plan prepared by Chad Bilotta and emailed to Staff by the petitioner.

During the week prior to October 24, 2011, Staff received a complaint that the parking area had been paved and the requisite landscaping buffer and sidewalk were not developed. Staff visited the site and measured the depth between the back of the street curb to the front of the parking lot curb closest to the street to be approximately three feet.

Addendum C of this report includes a chronological order of related correspondence including the September 17, 2010 memorandum to Mr. Krabill and Mr. Bilotta's revised site plan. Addendum D of this report contains the conditions included in the temporary Certificate of Occupancy issued for the petitioner's permitted business.

Assuming the back of the street curb is the boundary separating the petitioner's property from the public right-of-way, the petitioner seeks a seven-foot variance from the minimum ten-foot landscape buffer and variance relief to waive the development of a requisite sidewalk.

#### Landscaping Buffer

The Planning and Zoning Code's parking lot landscaping requirements are intended to screen parking areas from the street, prevent large expanses of unbroken paving, and provide shade to cool paved areas during the hot summer months. Further, a "buffer strip" is intended to visually separate one use from another or to shield or block noise, light, or other nuisances.

The zoning classification for the properties to the north and across Drummond Street from the petitioner's site is R-1, Single-Family Residential District. The existing land uses on the north side of Drummond Street from Koontz Avenue to Windsor Avenue are four single-family homes and a place of worship.

It is the opinion of the Planning Division that three feet does not provide sufficient width for plant materials to be installed and mature into a landscape buffer as intended by the Planning and Zoning Code. Of particular concern are: (1) The area developed for landscaping by the petitioner is right along the street curb leaving plant materials subject to damage from vehicles and winter road salt; and, (2) To achieve intended buffering, the landscape materials are intended to grow vertically, which will most likely obstruct the view of motorists exiting the site onto Drummond Street given their close proximity to the street curb.

## Sidewalks

Connectivity and pedestrian infrastructure is a priority in Morgantown. Many roadways in the City do not presently have sidewalks. As a result, pedestrians hazardously walk along roadway shoulders. Establishing complete and maintained connective sidewalk routes throughout the City will significantly improve the walkability of Morgantown by creating safe access to citywide destinations.

The Planning and Zoning Code sidewalk requirement is supported by the policy recommendations of the Morgantown Pedestrian Safety Board's *Pedestrian Safety Plan* adopted in June 2010, and the Morgantown City Council's *Complete the Streets Plan* resolution adopted in December 2007.

Sidewalks are intended to improve pedestrian safety, access, and quality of life as well as enhance the quality of development and economic benefit of the built environment. Constructing infill sidewalks for the purpose of developing sidewalk networks will take time and resolve.

Based on a site visit by Staff, it appears that the distance between the back of the street curb to the front of the parking lot curb closest to the building is approximately 53 feet. The parking lot, as designed, requires 18 feet for the parking spaces and 20 feet for the drive aisle. This leaves approximately 15 feet to provide the minimum 10-foot landscape buffer and the minimum six-foot sidewalk – one foot less than what is required to meet minimum design provisions for a sidewalk, landscaping, drive aisle, and parking space depth.

As such, it appears that reasonable variance relief is merited based on the fact that the building's existing setback from Drummond Street may not provide sufficient depth to achieve all requisite design elements.

Bossio recognized the applicant, Andrew Smith, 426 Drummond Street. Smith stated that he bought the property in 2009 and intends to be a good neighbor and increase the tax base for Morgantown. He further stated that there was no negative feedback from the public notification, aside from the Pedestrian Board, who is generally opposed to any variance from a sidewalk requirement. He noted one positive comment from a property owner nearby which stated that they feel his project will be an improvement to the area. He stated that he submitted a comprehensive plan back in May, 2010, but later found out that it was not processed as it was supposed to be, due to an error of a former City employee. This caused a delay in his plans. While he respects the opinion of the Pedestrian Board to include sidewalks for pedestrian safety, he noted that there are currently no sidewalks on Drummond, Windsor, or Koontz. As far as the existing front buffer, he feels adequate landscaping is possible with the 3 foot buffer without affecting site vision.

He further stated that his landscaping plan will exceed the requirements. He stated that there are other businesses on Drummond that do not have the 10 foot landscaping buffer. He stated he will also have trouble providing the required 10 parking spaces with the 10 foot buffer. He does not feel that he is asking for anything more than others in the area already have and wishes to be a good neighbor.

Bossio asked Mr. Smith how many projects he has completed in the City. Bossio asked him how a professional landscape plan can reflect a required 10 foot when there is only 3 foot. Smith answered that he is not putting it all in the front, but also on the sides.

Bossio stated that this goes against what the Code requires. Bossio also stated that the other existing businesses that he is comparing to have been there for many years, prior to the existing Zoning Code requirements being in place.

Bossio asked Fletcher what the date was when the existing requirements went into effect. Fletcher stated it was January 6, 2006.

Shamberger asked Mr. Smith to reiterate the specific hardship for which he is asking for the variance. Smith stated that meeting the requirement for 10 parking spaces with the 10 foot buffer is a hardship.

Fletcher stated that he would like to request a 10 minute recess so that he can make copies of the actual application of the petition itself and an as-built site plan, which he does not recall seeing.

Bossio stated that he does not know if it is the Board's responsibility to make sure he has enough parking spaces. He could request a variance for one of the parking spaces. Fletcher stated that it would have to be advertised and on the agenda next month.

Bossio opened the public hearing portion, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition to the request.

Ms. Chambers, 57 Grandview Avenue, representing her mother who resides at 415 Drummond Street, which is directly across from the project site. The surrounding businesses are nicely landscaped and really do not have the appearance of a 'business'. She feels that the properties across the street will almost be discriminated against by the granting of these variance requests.

Clark Ridgeway, 1046 Koontz Avenue, stated that the owners of three of the four properties closest to this project site are present tonight, and none of them were ever contacted by Mr. Smith. The house that was there had been well-maintained. The area in front of the house had been lawn, with two large oak trees. The grass has been removed and paved. He does not know how Mr. Smith will put any type of landscaping in such a small space. He feels that lack of sidewalks is a detriment to the area. He was greatly disturbed that the owner put in this parking lot without regard to the zoning requirements.

Matthew Cross, 524 Milford Street, pointed out that Dr. Hall's place of business was intentionally designed to look like a residence. He is concerned about the noise and the need for a buffer, such as shrubs. He also pointed out that Windsor Avenue is becoming increasingly more busy as a shortcut from traffic on VanVoorhis and the need for off-street parking is important. He commended Mr. Smith for his professional and respectful presentation to the Board and welcomed him to the Suncrest area. However, he does feel that the fact that the work was done prior to coming to the Board represents a lack of respect for current zoning laws.

Marlene Duran, 435 Drummond Street, stated that she is concerned that if this variance is approved, it may set a precedent when the other properties are sold.

There being no further comments in opposition, Bossio declared the public hearing portion closed.

Fletcher asked to read two items of correspondence that were received – one in support, the other in opposition – so that they could be entered into the record. They are as follows:

An email from Leonard George expressing support and approval for the project. He feels the project will be an improvement to the area.

Correspondence from Christiaan Abildso, Chair of the Morgantown Pedestrian Board, expressing his concern and opposition to the variance. He feels that the sidewalk should be required and this would be a good place to start with to require a sidewalk and set a precedent for the future.

Fletcher described the site plan which he made copies of and distributed during the brief break. He also described the timeline of meetings with Mr. Smith, Scott Krabill and Chad Bilotta. Krabill and Bilotta were engineers for the project. He stated that he had conveyed to Mr. Krabill that sidewalks were required, and there was no talk then about a variance for the sidewalk. Sidewalk waivers are not allowed for Business Districts. The as-built drawings contain no measurements to indicate exactly what the construction situation is. Based on the scale, the parking spaces are of varied widths, but all smaller than the 9 foot that is required.

Fletcher asked the Board if they would like to consider taking another month to review the case. The applicant asked for an extension of June 30, 2012. Fletcher agreed there is time for a site visit.

Fletcher read the Staff recommendation, stating that it appears necessary in this instance to consider the area between the right-of-way and the petitioner's parking lot was an important sidewalk and screening area. Given the fact that approximately 15 feet is available after minimum parking depth and drive aisle standards are met, and 16 feet is necessary to meet the minimum requirements, reasonable variance relief appears prudent.

However, the petitioner's request to waive the sidewalk requirement and provide only thirty percent of the landscape buffering requirement stands to undermine the legislative intent of the Planning and Zoning Code to improve pedestrian safety, enhance the quality of development, and buffer parking lots from streets and other properties.

Additionally, any arguments supporting the petitioner's variance requests based on compliance costs and/or inconvenience should be considered immaterial as the circumstances for which the subject variance petitions have been submitted are arguably the result of a self-imposed hardship.

As such, Staff submits the following recommendation.

1. That the Board grant a five-foot variance under V11-46 from the minimum ten-foot landscape buffer standard set forth in Article 1367.08 (C);
2. That the Board grant a one-foot variance under V11-47 from the minimum six-foot sidewalk standard set forth in Article 1341.07 (I);
3. That the desired design and development under the variances granted herein is a minimum five-foot sidewalk beginning at and measured from the back of the street curb; thence a minimum five-foot landscaping buffer measured from the back of said sidewalk to a concrete curb at the edge of the concrete parking lot to protect the plant materials;

4. That the petitioner must make application for a building permit that includes all the work associated with the variance relief granted herein;
5. That said building permit application must include a Landscape Plan meeting the standards for same as set forth in Article 1367.04;
6. That the landscape plant materials must be approved by the Planning Division with consultation by the City Engineer to ensure safe visibility for exiting motorists prior to building permit issuance and installation; and,
7. That all work necessary to comply with the variances granted herein must be completed no later than June 30, 2012; failure to comply with said deadline will result in enforcement action provided in Article 1393 of the Planning and Zoning Code.
8. Addendum E of this report provides Staff recommended findings of fact that combines the recommended variance relief.

Papandreas asked that, since the site plan shows 15 foot left over and the requirement is 16 foot, is there a reason why the request is not for a 1 foot variance. Fletcher stated that the spaces on the ends need extra room for turnaround area.

Mr. Smith stated the property was a registered rental property prior to him purchasing it. He does not expect his business to produce much traffic. He feels the building will be very aesthetic. As for landscaping, he assured the Board that he has not planted the landscaping yet, but he plans to invest heavily in a good landscape plan. He stated that he lives nearby, attends church, and his children attend North Elementary, so he is very much interested in preserving the quality of life. He invited the Board to make a site visit.

Papandreas stated that he has a problem having confidence in the drawings because they all differ. Bossio agreed and stated that he feels Mr. Smith understands that this process is to involve an engineer who has the capability of drawing to scale for the Board.

Bossio asked Mr. Smith if he wished for these two requests to be tabled to give the Board time to make a site visit and to collect further needed information. Smith stated that yes, he wished to have these two requests tabled.

Papandreas made a motion to TABLE request V11-46; seconded by Cardoso. Motion carried unanimously.

Papandreas made a motion to TABLE request V11-47; seconded by Cardoso. Motion carried unanimously.

**G. CU11-16 / Suburban Lanes / 735-A Chestnut Ridge Road:** Request by Jerry Lorenze, on behalf of Suburban Lanes for conditional use approval of a "Private Club" use at 735-A Chestnut Ridge Road; Tax Map 56, Parcel 3; B-2, Service Business District.

Dingman read the Staff Report, stating that Suburban Lanes currently seeks to obtain a "Class A Private Club" license from the West Virginia Alcoholic Beverage Control Administration (ABCA) to sell liquor for on-premise consumption in addition to beer and wine. Addendum A of this report illustrates the location of the subject site.

Article 1329.02 defines "Tavern" as:

"A place licensed to sell only beer and wine, but no liquor. Food may or may not be served. Taverns are allowed in all districts except residential and office districts."

Article 1329.02 defines "Private Club" as:

"Any corporation or unincorporated association meeting the definition of private club as contained and utilized within the Code of West Virginia Chapter 60, Article 7, Section 1 et seq. as the same applies to licensing for sale of alcoholic liquor. These establishments are permitted to sell liquor, beer and wine."

Table 1331.05.01 "Permitted Land Uses" provides that "Tavern" uses are permitted in the B-2 District by-right while "Private Club" uses are permitted by conditional use approval.

Therefore, in order to serve liquor, Suburban Lanes must obtain conditional use approval as a "Private Club".

Section 1331.06 (18) provides that:

"When reviewing new or the conditional use Private Club applications, the Board of Zoning Appeals shall consider potential adverse impacts on surrounding residential properties such as, but not limited to, the arrangement and use of According to the petitioner, no exterior or interior modifications are presently proposed nor will outdoor seating be pursued. Therefore, noise at this location, as a result of an ABCA issued "Private Club" license, is not anticipated.

Bossio introduced the applicant, Jerry Lorenze, 735-A Chestnut Ridge Road, who stated that he had nothing to add to the Staff Report.

Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing portion closed.

Dingman read Staff recommendation, stating that it is the opinion of the Planning Division that the sale of liquor in addition to beer and wine at Suburban Lanes will not appreciably alter the recreational bowling facility use and related goods and services that have evolved since it opened in 1964. Additionally, the Kegler's and Stefano's establishments, which are also located in the Suburban Lanes Shopping Center, are ABCA licensed "Private Clubs".

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

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact.

Staff recommends approval of CU11-16 as requested with the following conditions:

1. That no exterior seating or gathering space may be developed without the approval of the Board of Zoning Appeals.

2. That the conditional use approval granted herein is specific to the petitioner and may not be transferred without the approval of the Board of Zoning Appeals.

Papandreas made a motion to accept the Findings of Facts with strike through and underline portions; seconded by Cardoso. Motion carried unanimously.

The Findings of Fact included in this motion are as follows:

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

The WVABCA licensed sale of liquor for on-premise consumption, in addition to beer and wine, within the existing bowling alley establishment should not contribute to congestion that is already present within the Chestnut Ridge Road commercial corridor.

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

The proposed conditional use should not require additional mechanical fire prevention or security systems.

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

The proposed conditional use does not result in an increase in the footprint or height of the existing facility and would therefore not alter existing light distribution or air circulation patterns.

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

The proposed conditional use does not result in an increase in the footprint or height of the existing building.

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

The proposed conditional use does not include a residential use and would therefore not contribute to increased population congestion or residential density.

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

The proposed conditional use does not appear to require upgrades to existing public utilities or additional public services.

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

The proposed conditional use will enable the petitioner to seek a WVABCA “Private Club” license, which is currently held by two other establishments within the Suburban Lanes Shopping Center.

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

The proposed conditional use does not appear to alter the recreational bowling and related goods and services that have evolved since the facility opened in 1964.

Shamberger made a motion to approve request CU11-16 with provisions set forth by staff; seconded by Cardoso. Motion carried unanimously.

- H. **V11-45 / L.H. Jones Equipment / 1801-1825 Earl Core Road:** Request by Len Hancock, on behalf of L.H. Jones Equipment Co., Inc. for variance relief from Article 1369 as it relates to signage at 1801-1825 Earl Core Road; Tax Map 33, Parcels 48 and 49; B-2, Service Business District.

Dingman read the Staff report, stating that the petitioner seeks to develop a multi-tenant post and panel sign at 1825 Earl Core Road. Addendum A of this report illustrates the location of the subject site. The proposed sign development will remove the existing non-conforming *Dollar General* pylon type sign and replace it with a post and panel type sign for the *L.H. Jones, Dollar*

*General*, and *Pizza Hut* establishments along with an additional sign cabinet for a future tenant. The sign will be internally illuminated. The proposed post and panel sign will have an overall dimension of 23 feet – 7 ¾ inches in height and 10 feet – 8 inches in width. The lowest horizontal plain or bottom of the panel will be eight feet above grade. Signage area computation is based on the smallest rectangle that encompasses the extreme limits of the writing, representation, emblem, and/or other display.

Based on the illustration provided by the sign contractor, the aggregate area of the sign cabinets was calculated as follows.

Area of sign cabinet .....	20.8 SF
Area of tenant sign cabinets (12) .....	93.4 SF
Total Area.....	114.2 SF

Article 1369.07 (F) provides the following regulations for post and panel signs specific to the petitioner’s proposed design:

- (1) Post and panel signs shall be allowed, provided that:
  - (a) Such signs shall not exceed **6 feet in height**;
  - (b) Such signs shall not exceed **32 square feet in area** per side; and,
  - (c) Setbacks shall be adequate to protect the clear sight triangle, in accordance with the Zoning Ordinance.
- (2) Both sides of a two-sided post and panel sign shall be identical in design and content;
- (3) NOT APPLICABLE.
- (4) For multi-tenant buildings the only post and panel sign allowed on the property shall be a directory sign. All other signs for tenants shall be wall signs or sandwich board signs; and
- (5) NOT APPLICABLE

Staff’s interpretation of subparagraph (4) above is that the post and panel signs for multi-tenant buildings are limited to logos and/or business names and may not contain any additional commercial messaging. Additionally, one directory sign is permitted per driveway entrance.

The following table identifies requisite variance relief for the sign as proposed.

Standard	Proposed	Variance
Height – maximum 6 feet	23 feet, 7 ¾ inches	18 feet
Area – maximum 32 SF	114.2 SF	82.2 SF

Bossio introduced Len Hancock, 14 Hickory Ridge Rd., Morgantown, of L.H. Jones Equipment Co., and also representing the tenant, stated that there will be a cabinet left open for a future tenant. He assured the Board that the signage would only be for the tenants of that plaza and there would be no outside commercial messaging.

Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing portion closed.

Dingman read Staff recommendations, stating that the proposed sign development will remove the non-conforming *Dollar General* pylon sign. The adjacent non-conforming *Kroger Market Place* post and panel sign appears to be 25 to 30 feet in height. Additionally, the Board granted the following variances on June 15, 2011 for a similar multi-tenant sign requested by Glenmark Holding, LLC for its *Sterling Commons* development on Earl Core Road (V11-15).

Papandreas asked Mr. Hancock if the existing Dollar General sign is close to the same height. Mr. Hancock stated that he didn't believe it was, and that the Dollar General sign is between 12-15 foot high. Papandreas asked about if there was a vacant spot in the plaza, since there will be a vacant sign cabinet. Mr. Hancock stated that there really is no vacancy, but some spots are large enough to be subdivided.

Bossio asked the Board if they had any further questions of the applicant in regards to wanting condition #3 to be struck.

Fletcher clarified that condition #3 is straight from the Code. What Mr. Hancock is asking permission to do is possibly to fill the vacant sign slot to advertise a specific brand that they sell a lot of (such as "Bobcat"). He further stated that Ms. Dingman has created a modified condition and asked her to read it.

Dingman read the modified condition, stating that the copy/display included on the post and panel sign must be limited to logos and/or business names of establishments located within the L.H. Jones Plaza development and may not contain any additional commercial messaging or off-premise signage. However, the petitioner may utilize the lowest tenet sign cabinet space to display the name and/or logo of additional tenant space within the L.H. Jones Plaza

Bossio clarified with Mr. Hancock that he would not be coming back to the Board in the future, asking for more signage. Mr. Hancock stated he would not.

Shamberger made a motion to accept the Findings of Facts as amended by Staff; seconded by Papandreas. Motion carried unanimously.

The Findings of Facts included in this motion are as follows:

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

The subject site is situated in one of the most heavily traveled corridors within the region 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 new development within the Earl Core Road commercial corridor.

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

It appears that the majority of commercial signs along the Earl Core Road commercial corridor, particularly those serving multi-tenant developments, are nonconforming as most do not meet maximum area and maximum height standards set forth in Article 1369 of the Planning and Zoning Code. Additionally, similar variance relief has recently been granted along Earl Core Road for the Sterling Commons development by Glenmark Holding, LLC.

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

The height and area of the proposed multi-tenant sign appears to be consistent with the predominant commercial signage patterns along Earl Core Road which do not presently appear to harm public welfare, adjoining properties, or improvements.

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

The height and area of the proposed multi-tenant sign appears to be consistent with the predominant commercial signage patterns along Earl Core Road, which do not appear to diminish the market value or vitality of the well-established commercial corridor. Additionally, the proposed sign development will remove an existing nonconforming pylon sign. Variance relief relative to sign height and area cannot contribute to nor mitigate existing traffic volumes on neighboring streets.

Papandreas made a motion to approve request V11-45 with the all the conditions as supplied by Staff, including the third modified condition; seconded by Shamberger. Motion carried unanimously.

- I. **V11-48 / Jim Prete / 3040 University Avenue**: Request by Rudy Hoffert of City Neon, on behalf of Jim Prete, for variance relief from Article 1369 as it relates to signage at 3040 University Avenue; Tax Map 6, Parcel 13; B-2, Service Business District.

Dingman read the Staff report, stating that the petitioner seeks to develop two multi-tenant post and panel signs at 3040 University Avenue, one at each of the primary driveway entrances from University Avenue. Addendum A of this report illustrates the location of the subject site.

The petitioner advised Staff that the *Prete Building* has been predominantly occupied over the years by West Virginia University related offices, services, and programming. As such, commercial messaging for tenants has not been necessary. However, many of these WVU related uses have begun relocating to other sites as a part of WVU's ongoing facility upgrades and new construction. Therefore, the demand for multi-tenant signage is logical.

Additionally, the *Prete Building* development is accessed by two primary driveway entrances from University Avenue serving multiple building entrances on the lower level closest to Koontz Avenue and the upper level closest to Collins Ferry Road.

The proposed post and panel signs will have an overall dimension of 18.7 feet in height and 10 feet in width. The lowest horizontal plain or bottom of the panel will be six feet above grade.

Signage area computation is based on the smallest rectangle that encompasses the extreme limits of the writing, representation, emblem, and/or other display. Based on the illustration provided by the sign contractor, the aggregate area of the sign cabinets was calculated as follows.

Area of <i>Prete Building</i> sign cabinet.....	16.5 SF
Area of tenant sign cabinets (12) .....	72 SF
Total Area.....	88.5 SF

Article 1369.07 (F) provides the following regulations for post and panel signs specific to the petitioner's proposed design:

- (1) Post and panel signs shall be allowed, provided that:
  - (a) Such signs shall not exceed **6 feet in height**;
  - (b) Such signs shall not exceed **32 square feet in area** per side; and,
  - (c) Setbacks shall be adequate to protect the clear sight triangle, in accordance with the Zoning Ordinance.
- (2) Both sides of a two-sided post and panel sign shall be identical in design and content;
- (3) NOT APPLICABLE.
- (4) For multi-tenant buildings the only post and panel sign allowed on the property shall be a directory sign. All other signs for tenants shall be wall signs or sandwich board signs; and
- (5) NOT APPLICABLE

Staff's interpretation of subparagraph (4) above is that the post and panel signs for multi-tenant buildings are limited to logos and/or business names and may not contain any additional commercial messaging. Additionally, one directory sign is permitted per driveway entrance.

The following table identifies requisite variance relief for the sign as proposed.

<b>Standard</b>	<b>Proposed</b>	<b>Variance</b>
Height – maximum 6 feet	18.7 feet	12.7 feet
Area – maximum 32 SF	88.5 SF	56.5 SF

Bossio introduced the person representing Mr. Prete, Mr. Rudy Hoffert; Mr. Hoffert, Rt. 2, Fairmont, thanked the Planning Staff for working with them on this project. He stated that, with all the space available in such a large building, they need some signage for advertising.

Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing portion closed.

Dingman read Staff recommendations, stating 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 petition V11-48 as requested with the following conditions:

1. That each post and panel sign must be identical in design and content on both sides.
2. That the location of the post and panel signs may not, to the satisfaction of the City Engineer, obstruct the clear line of site needed for vehicles exiting onto University Avenue. To accomplish this objective, the locations of the sign must be staked and inspected by the City Engineer prior to building permit issuance.
3. That the copy/display included on the post and panel signs must be limited to logos and/or business names of establishments located within the *Prete Building* development and may not contain any additional commercial messaging or off-premise signage.

Bossio asked Mr. Prete how many big the building was. Mr. Prete answered 162,500 sq. foot with three floors. At one time it was all occupied by WVU and Niosh employees. Now that they have moved out, he has potential tenants, but they require that there be signage.

Papandreas asked if the signs at each entrance would be structurally identical. Prete said they would, but of course the sign content would be different.

Papandreas made a motion to accept the Findings of Facts with strike through and underlined portions; seconded by Shamberger. Motion carried unanimously.

The Findings of Facts included in this motion are as follows:

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

The subject 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.

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

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

The 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.

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

The 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.

Papandreas made a motion to approve request V11-48, with conditions as stated; seconded by Cardoso. Motion carried unanimously.

**I. OTHER BUSINESS:**

A. Public Comments: None

B. Staff Comments: Dingman wished the Board Happy Holidays.

**II. ADJOURNMENT: 9:15 PM**

MINUTES APPROVED:

January 18, 2012



BOARD SECRETARY:

\_\_\_\_\_  
Heather Whitmore Dingman, AICP