



**DEVELOPMENT
SERVICES
DEPARTMENT**

The City of Morgantown

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October 16, 2014

The Dancing Fig
c/o Mark Bowyer
1464 Mayfield Avenue
Morgantown, WV 26505

**RE: CU14-10 / The Dancing Fig / 2862 University Avenue
Tax Map 11, Parcel 119**

Dear Mr. Bowyer:

This letter is to notify you of the decision made by the Board of Zoning Appeals concerning the above referenced conditional use petition for "Restaurant, Private Club" use at 2862 University Avenue. The decision is as follows:

Board of Zoning Appeals, October 15, 2014:

1. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
2. The Board granted a waiver from the one-year "bona fide restaurant" standard of Article 1331.06(27)(c) approved the conditional "Restaurant, Private Club" under Case No. CU14-10 with the following conditions:
 - A. That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06(27) of the Planning and Zoning Code.
 - B. That the petitioner must obtain permitting as a "restaurant" from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*.
 - C. 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:
 1. Be open no later than 11:00 AM on the weekdays the establishment is open to the public for the purpose of serving lunch as described in the menu submitted with the petitioner's condition use application.
 2. That the petitioner shall voluntarily submit all necessary financial information to the City for the subject establishment following its first twelve (12) months of operation as a "Restaurant, Private Club" use to ensure compliance with Article 1331.06 (27) (e) provisions, which requires the sale of food and non-alcoholic beverages to comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month.

- D. That the beneficiary of this conditional use approval is specific to the business organization that will own *The Dancing Fig* restaurant establishment at the time of Certification of Occupancy issuance. Said beneficiary may not be transferred without prior approval of the Board of Zoning Appeals.

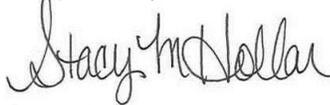
The approval of this conditional use is set to expire in twelve (12) months unless you can demonstrate that it has been acted upon as evidenced by permits, construction, or required licenses. This expiration deadline may be extended to eighteen (18) months upon prior written request of the Board.

This decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the applicant.

Please note that requisite building permits must be obtained prior to the commencement of any work for which approval was granted herein.

Should you have any questions or require further clarification, please contact the undersigned. We look forward to serving your plans review and approval needs.

Respectfully,

A handwritten signature in cursive script that reads "Stacy Hollar".

Stacy Hollar
Executive Secretary
Development Services Department
shollar@cityofmorgantown.org

**ADDENDUM A – Approved Findings of Fact
CU14-10 / The Dancing Fig / 2862 University Avenue**

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

A restaurant is currently on the same property as the proposed restaurant and therefore an increase in trip generation from the previous *Zenclay Café* is not anticipated.

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

The site is currently in use for the same purpose and all building and fire related codes must be observed as a part of Certificate of Occupancy permitting.

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

The site is currently operating in the same capacity and not additions to the existing structure are proposed that would alter current sunlight distribution or air flow patterns.

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

No new structures will be built as a part of the proposed conditional “Restaurant, Private Club” use.

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

The proposed conditional “Restaurant, Private Club” use does not include an increase in residential dwelling units within the existing structure.

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 proposed restaurant use should not require additional public utilities or services that were not already in place for the former *Zenclay Café* restaurant establishment.

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

The proposed “Restaurant, Private Club” establishment will occupy a previous restaurant space, which does not appear to have adversely affected property values within the immediate area.

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

The proposed “Restaurant, Private Club” establishment will occupy a previous restaurant space, which does not appear to have adversely affected neighboring land uses.