



**DEVELOPMENT
SERVICES
DEPARTMENT**

The City of Morgantown

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September 17, 2015

M & J Property Holdings, LLC
c/o Mark Nesselroad
6 Canyon Road, Suite 300
Morgantown, WV 26508

**RE: CU15-10, V15-53 & V15-57 through V15-60 / M & J Property Holdings, LLC /
453 Oakland Street / Tax Map 11, Parcel 83**

Dear Mr. Nesselroad:

This letter is to notify you of the decisions made by the Board of Zoning Appeals concerning the above referenced conditional use and variance petitions relating to the proposed development at 453 Oakland Street. The decisions are as follows:

Board of Zoning Appeals, September 16, 2015:

CU15-10 – Off-Site Parking Facility

1. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
2. The Board approved Case No. CU15-10 as requested with the following conditions:
 - a. That, prior to building permit issuance for the construction, the off-site parking facilities shall be encumbered by an easement or similar agreement duly executed and acknowledged, which specifies that the land upon which the off-site parking facility is located is encumbered by the parking use. Said instrument shall specify and bind the time period to the anticipated life of the building or use to which the parking facilities are accessory. Said instrument shall be filed with the Planning Division and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia. Additionally, the number of off-site parking spaces encumbered may not be less than the minimum number of spaces required for the use(s) that occupy the proposed two-story nonresidential building as set forth under Article 1345.06(A) of the Planning and Zoning Code.
 - b. With the exception of related landscaping and screening requirements, all requisite on-site and off-site parking spaces shall be designed, improved, paved, and striped in accordance with Article 1365.09 "Parking Development Standards" and lighting facilities developed in accordance with Article 1371.

V15-58 – Proposed location of parking spaces

1. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
2. The Board approved petition V15-58 to permit parking spaces between the proposed building and the City's public right-of-way for Oakland Street and the private street named University Park Drive as requested without conditions.

V15-53 – Setbacks

1. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
2. The Board granted the following variance relief under Case No. V15-53 from the maximum front setback standard [Article 1345.04(A)(2)], the minimum rear setback standard [Article 1345.04(A)(5)], and the side bufferyard standard [Article 1367.07] as requested without conditions.

V15-60 – Landscape Buffer (parking)

1. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
2. The Board granted variance relief from the landscape buffer standard for parking [Article 1367.08(C)(1)] and the landscape buffer between new nonresidential uses and existing residential uses [Article 1367.07(A)] as requested with the following conditions:
 - a. That, prior to building permit issuance for the construction, the proposed landscape buffer area shall be encumbered by an easement or similar agreement duly executed and acknowledged, which specifies that the land upon which the landscape buffer is located is encumbered by the landscape use. Said instrument shall specify and bind the time period to the anticipated life of the building or use to which the landscape buffer area is accessory. Said instrument shall be filed with the Planning Division and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia.
 - b. The petitioner shall work with the Planning Division and the Morgantown Utility Board in planning the most appropriate plant materials within the requisite landscape buffer area considering above and below ground utilities that may be present and the best bioswale design practices.

V15-59 – Location of dumpster enclosure

1. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
2. The Board granted variance relief from the landscape buffer standard for parking [Article 1367.06(E)] as requested with the following conditions:
 - a. That, prior to building permit issuance for the construction, the proposed trash enclosure facility location shall be encumbered by an easement or similar

agreement duly executed and acknowledged, which specifies that the land upon which the trash enclosure is located is encumbered by the trash enclosure use. Said instrument shall specify and bind the time period to the anticipated life of the building or use to which the trash enclosure is accessory. Said instrument shall be filed with the Planning Division and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia.

- b. That the trash enclosure shall be constructed with masonry materials to a height of no less than six (6) feet and design so that it integrates with and compliments the architectural vocabulary of the West Virginia University Erickson Alumni Center building. Additionally, the masonry enclosure must include an opaque access gate(s).

V15-57 – Cladding and window materials and fenestration ratio standards

1. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
2. The Board granted the following variance relief under Case No. V15-57 without conditions:
 - a. To permit the use cementitious and brick and/or stone veneer cladding materials as requested [Article 1345.07(C)(1)].
 - b. To permit the heavier wall material to be used above the first floor as requested [Article 1345.07(D)(1)].
 - c. To permit street level windows to be tinted so that energy efficient windows can be used as requested [Article 1345.07(D)(3)].
 - d. To permit a fenestration ratio for the front façade of less than 60% as requested [Article 1345.07(D)(5)].

These decisions 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 petitioner.

The above referenced approvals are set to expire in twelve (12) months unless it can be demonstrated that they have been activated 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. Please note that building permits must be issued prior to the commencement of work for which the variance approvals were granted herein.

Should you have any questions or require further clarification, please contact the undersigned. We look forward to serving the development's planning and permitting needs.

Respectfully,



Stacy Hollar
Executive Secretary

ADDENDUM A

Approved Findings of Fact

Case No. CU15-10 Off-Site Parking Facilities

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

Much of the parking already exists and does not create congestion. Much of the parking is an expansion of an already existing parking lot. The parking is laid out appropriately with drive lanes, sidewalks, and landscaping. It will allow cars not to be parked in the street.

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

It is open air parking and allows for efficient traffic/pedestrian flow.

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

Occupants and customers of the adjacent 453 Oakland Street building will utilize the parking.

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

The parking is laid out to include 13 spaces adjacent to the on-site parking, 31 already existing spaces, and 15 spaces added to an already existing parking lot.

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

The parking is efficiently laid out to connect with on-site parking, an expanded lot, and already-existing spaces in conjunction with drive lanes and sidewalks.

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:

It will provide sufficient parking to the businesses at 453 Oakland Street.

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

The parking will be paved, and striped, connecting with sidewalks and landscaping, similar to parking areas on adjacent parcels.

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

It will provide parking for the businesses at 453 Oakland Street, and much of it already exists or is an expansion of existing parking.

Case No. V15-58 Location of Parking Spaces

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed parking spaces are in character with, and allow for aesthetically pleasing use of materials similar to, surrounding properties.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The relatively small, angled, corner, sloping lot appears to restrict the development of adequate

parking, landscaping, and internal driveway width without adding parking between the front façade and street. Most of the surrounding parcels are larger and regularly-shaped to accommodate B-2, R-3, and WVU developments, facilities, and amenities. This property is unique in that it is zoned B-1 and on a relatively small and angled corner lot but, at the same time, can provide a positive amenity for surrounding properties.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed parking is consistent with surrounding properties and will permit use of a relatively small, angled corner, sloping lot that is zone B-1 to provide a positive amenity for the surrounding R-3, B-2, and WVU uses.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed parking is consistent with surrounding properties and will permit a relatively small, angled, sloping, corner lot that is zoned B-1 to include additional parking and also sufficient drive lanes, landscaping, visibility, sidewalk, and similar positive attributes.

Case No. V15-53 Setback Encroachments

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed setback distances are in character with, and allow for aesthetically-pleasing visibility of, surrounding properties.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The small, angled, corner lot appears to restrict the development of adequate parking depth, landscaping, and internal driveway width without encroaching reasonably into the side and rear setbacks and efficiently utilizing an increased front setback. Most of the surrounding parcels are larger and regularly-shaped to accommodate R-3 multi-family developments and associated facilities and amenities. This property is unique in that it is zoned B-1 and on a relatively small and angled corner parcel but, at the same time, can provide a positive amenity for the surrounding properties.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed setback distances are consistent with surrounding properties and will permit use of a small, angled, corner lot that is zoned B-1 to provide a positive amenity for the surrounding R-3 uses.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed setback distances are consistent with surrounding properties and will permit a small, angled, corner lot that is zoned B-1 to include parking, drive lane, landscaping, visibility, and similar positive attributes.

Case No. V15-60 Landscape Buffer Standards

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed buffer is in character with, and allow for aesthetically pleasing use of materials similar to, surrounding properties.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The relatively small, angled, corner, sloping lot appears to restrict the development of adequate parking, landscaping, and internal driveway width without reducing the buffer and efficiently utilizing the front setback. Most of the surrounding parcels are larger and regularly-shaped to accommodate B-2, R-3, and WVU developments, facilities, and amenities. This property is unique in that it is zoned B-1 and on a relatively small and angled corner lot but, at the same time, can provide a positive amenity for surrounding properties.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed buffer is consistent with surrounding properties and will permit use of a relatively small, angled corner, sloping lot that is zone B-1 to provide a positive amenity for the surrounding R-3, B-2, and WVU uses.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed buffer is consistent with surrounding properties, being at the rear of a building and parcel, it will permit a relatively small, angled, sloping, corner lot that is zoned B-1 to include additional parking and also sufficient drive lanes, landscaping, visibility, sidewalk, and similar positive attributes.

Case No. V15-59 Dumpster Enclosure Location

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed dumpster location is in character with, and allow for aesthetically pleasing use of materials similar to, surrounding properties.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The relatively small, angled, corner, sloping lot appears to restrict the development of adequate parking, landscaping, and internal driveway width without locating the dumpster to the immediately adjoining parcel at the rear of the building. Most of the surrounding parcels are larger and regularly-shaped to accommodate B-2, R-3, and WVU developments, facilities, and amenities. This property is unique in that it is zoned B-1 and on a relatively small and angled corner lot but, at the same time, can provide a positive amenity for surrounding properties.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed dumpster location is consistent with surrounding properties and will permit use of a relatively small, angled corner, sloping lot that is zone B-1 to provide a positive amenity for the

surrounding R-3, B-2, and WVU uses.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed dumpster location is consistent with surrounding properties, being at the rear of a building and parcel, it will permit a relatively small, angled, sloping, corner lot that is zoned B-1 to include additional parking and also sufficient drive lanes, landscaping, visibility, sidewalk, and similar positive attributes.

Case No. V15-57 Cladding and Window Materials

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed cladding, window materials, and fenestration ratio standards are in character with, and allow for aesthetically pleasing use of materials similar to, surrounding properties.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The relatively small, angled, corner, sloping lot limits development to certain types of structures but allows for quality design and use of materials. Many of the surrounding properties include buildings with similar uses/applications of materials. Most of the surrounding parcels are larger and regularly-shaped to accommodate B-2, R-3, and WVU developments, facilities, and amenities. This property is unique in that it is zoned B-1 and on a relatively small and angled corner lot but, at the same time, can provide a positive amenity for surrounding properties.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed cladding, window materials, and fenestration ratio standards are consistent with surrounding properties and will permit use of a relatively small, angled corner, sloping lot that is zone B-1 to provide a positive amenity for the surrounding R-3, B-2, and WVU uses.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed cladding, window materials, and fenestration ratio standards are consistent with surrounding properties and will permit the use of high quality durable materials in an efficient and aesthetically pleasing manner on a relatively small, angled, sloping, corner lot that is zoned B-1.