

MORGANTOWN PLANNING COMMISSION

Minutes

6:30 PM

December 8, 2011

Council Chambers

MEMBERS PRESENT: Peter DeMasters, Carol Pyles, Sam Loretta, William Wyant, Bill Petros, Michael Shuman, Ken Martis

MEMBERS ABSENT: Tim Stranko, Jennifer Selin

STAFF: Heather Dingman, AICP, Christopher Fletcher, AICP

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

II. GENERAL PUBLIC COMMENTS: None

III. MATTERS OF BUSINESS: Approval of November 10, 2011 Minutes: Pyles noted that she was marked absent and she was not absent. Martis suggested a change to Section VI: Other Business. The last sentence should read: "...make a recommendation to City Council for a replacement member." Martis made a motion to approve the November 10, 2011 Minutes, with the two suggested changes; seconded by Pyles. Motion carried unanimously.

IV. OLD BUSINESS:

A. RZ08-05 / Westminster House PUD: Request by First Presbyterian Church of Morgantown for a Planned Unit Development (PUD) Outline Plan submission and temporary parking use deadlines for property along Spruce Street and Forest Avenue and the old Central School site along Baird Street and Willey Street; Tax Map No. 26, Parcels No. 247, 248, 249, 260, 262, 263, and 270; PUD District.

Dingman read the Staff Report, stating that in December 2008, City Council approved the "Westminster House" PUD Outline Plan establishing a Development Plan submission deadline of June 3, 2010. Ordinance 08-48 and its exhibit illustrating the subject PUD area is attached hereto as Addendum A.

Article 1357.03 (D) (4) (b) provides that:

"The Development Plan shall be submitted to the Planning Department no more than eighteen (18) months following City Council approval of the Outline Plan...The Municipal Planning Commission may extend the time for application for approval of Development Plan for good cause, consistent with the purposes of the Zoning Ordinance."

The following list identifies the related deadline extension approvals granted by the Planning Commission to date.

- Outline Plan Amendment No. 1 – approved November 12, 2009 (see Addendum B)
 - Development Plan submission deadline extended from June 3, 2010 to December 3, 2010.
 - Temporary parking use deadline established as December 31, 2010.
- Outline Plan Amendment No. 2 – approved February 10, 2011 (see Addendum C)
 - Development Plan submission deadline extended from December 3, 2010 to October 31, 2011.
 - Temporary parking use deadline extended from December 31, 2010 to December 31, 2011.
- Outline Plan Amendment No. 3 – approved October 13, 2011 (see Addendum D)
 - Development Plan deadline extended from October 31, 2011 to December 31, 2011.
 - Temporary parking use deadline remained as December 31, 2011.

The First Presbyterian Church of Morgantown now seeks approval for Amendment No. 4 to the “Westminster House” PUD Outline Plan (see petitioner’s letter dated November 15, 2011 attached hereto as Addendum E), which would provide for the:

- Extension of the PUD Development Plan submission deadline from December 31, 2011 to June 30, 2012.
- Extension of the temporary parking use from December 31, 2011 to December 30, 2012 or the commencement of construction, whichever comes first.

Article 1357.06 “CHANGES IN THE APPROVED PLANNED UNIT DEVELOPMENT” of the Planning & Zoning Code provides that:

- (A) Changes Requiring Outline Plan Approval. Changes which alter the concept or intent of the Planned Unit Development including but not limited to:
 - (1) Significant increases in density;
 - (2) Significant changes in the proportion or allocation of land uses;
 - (3) Change in the list of approved uses;

- (4) Changes in the locations of uses;
- (5) Changes in functional uses of open space, where such change constitutes an intensification of use of the open space; and/or
- (6) Changes in the final governing agreements where such changes conflict with the approved Outline Plan.

It is the opinion of the Planning Division that the petitioner's proposed PUD Outline Plan Amendment No. 4 alters the concept, intent, and development schedule of the originally approved PUD Outline Plan and related amendments to the extent that Planning Commission approval is warranted.

Please note that specific revisions to the development program will most likely require review and approval by the Planning Commission in the coming months as a fifth PUD Outline Plan amendment, assuming the present deadline extension amendment is approved.

DeMasters recognized the petitioner, Rev. John Sonnenday, Co-Pastor of the First Presbyterian Church, 355 Spruce Street, Morgantown, West Virginia. He stated that the project began in 2008, but due to the economic downturn, they were unable to secure the level of funding needed. This put the project on hold. Since that time, they have worked with other developers to come up with a modification of the original design to make it financially feasible. He explained that the request for the extensions is due to circumstances beyond their control. He feels that the project has substantial promise to contribute to the greater good of the community.

Loretta asked if the Central School building is for sale. Sonnenday stated that it cannot be sold, due to an agreement with the Board of Education that the building cannot be sold on the open market for five years. That will not be until April, 2013. The building is currently for rent, but no one is interested in putting the money into the building without at least a three year time frame, and they cannot grant them that.

Petros asked if they have received any complaints about the temporary parking lot. Sonnenday said they have not and that the only people who are affected are the people who live on Baird Street, and it is actually a benefit to them.

DeMasters 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, DeMasters declared the public hearing portion closed.

Dingman read Staff recommendation, stating that the petitioner has remained in regular contact with the Planning Division concerning the project's planning progress and their determination to identify investors and development partners. It is the opinion of the Planning Division that the petitioner continues to make every effort in advancing the project and fulfilling their commitment under the approved PUD Outline Plan.

As noted by Staff in previous reports concerning Outline Plan Amendment requests for the subject PUD, investment complexities do not appear to be unique to the petitioner as the current state of financial markets has tempered complex development investment. Staff maintains that patience and prudence should influence expectations and decisions concerning well-planned development.

However, duration of the temporary parking use has remained an expressed concern by the Planning Commission relative to highest and best use of the subject realty and its proximity to the central business district.

Staff suggests the Planning Commission consider the merits of granting a temporary parking use deadline extension to June 30, 2012 rather than the requested December 30, 2012. This will provide the petitioner additional time to advance a more definitive construction schedule and temporary parking use timeline as a part of the anticipated Outline Plan amendment addressing approved Outline Plan development program revisions.

As such, Staff recommends that the proposed Outline Plan Amendment No. 4 be approved with the following considerations and conditions:

1. That the "Westminster House" PUD Outline Plan document be supplemented by this Staff Report and related addenda as the convention to be used in evaluating the petitioner's Development Plan.
2. That review and approval of the project's Development Plan continue to be waived by the Planning Commission and conducted at the Staff level. However, should the Development Plan substantially differ from the approved Outline Plan and amendments approved heretofore, then the petitioner must submit a subsequent Outline Plan amendment to the Planning Commission for approval.
3. That the petitioner obtains minor subdivision approval to reconfigure the existing parcel boundaries in a manner that best meets the overall ownership, development, and management objectives set forth in the "Westminster House" Outline Plan.
4. That the Development Plan submission deadline be extended from December 31, 2011 to June 30, 2012.
5. That the December 31, 2011 deadline for the two (2) temporary parking lot uses be extended to June 30, 2012.

Wyant made a motion to approve RZ08-05; seconded by Petros. Motion carried 5-2, with Shuman and Loretta voting in opposition.

V. NEW BUSINESS:

- A. MNS11-24 / McIntosh / 118 Maple Avenue:** Request by Jennifer McIntosh for minor subdivision approval of property located at 116 Maple Avenue; Tax Map 36, Parcel 503; R-1A, Single-Family Residential District.

Dingman read the Staff report, stating that the petitioner seeks to subdivide the existing parcel into two parcels. The parent parcel, 116 Maple Ave, will retain a three-story single-family dwelling with an area of approximately 6,321 square feet and 97 feet of street frontage. The new parcel will be approximately 6,604 square feet with 53 feet of street frontage. Both parcels appear to adhere to the minimum lot and minimum frontage requirements in an R-1A District. Addendum A of this report illustrates the location of the subject site.

Staff was asked to represent the petitioner.

DeMasters 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, DeMasters declared the public hearing portion closed.

Dingman read Staff recommendation, stating that Staff recommends approval with the following conditions:

1. That the petitioner submit three (3) original final plat documents signed and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President's signature; and,
2. That the final plat is filed at the Monongalia County Courthouse within thirty (30) days of meeting the condition set forth above.

Pyles made a motion to approve MNS11-24; seconded by Loretta. Motion carried unanimously.

- B. MNS11-25 / Nellie II, LLC / 1310-1312 Sabraton Avenue:** Request by James Gianola, Esq., on behalf of Nellie II, LLC, for a minor subdivision approval located at 1310-1312 Sabraton Avenue; Tax Map 24, Parcel 208; B-1, Neighborhood Business District.

Dingman read the Staff report, stating that the applicant requests to divide an 8,000 square foot B-1 District lot into two parcels. Two buildings are currently located on the property. The subdivision divides the land so as to create a parcel for each building. Addendum A illustrates the location of the subject site.

As Addendum B shows, Lot A will be 4,293 square feet with 43 feet of frontage. Lot B will be 3,707 square feet with 37 feet of frontage. The B-1 District minimum lot area is 3,000, and the minimum frontage is 30 feet. Both lots adhere to the minimum lot area and frontage requirements for the B-1 District.

Once the lots are divided, the building walls will be separated approximately 1.35 feet. This provides a .7 foot side yard to each building. The minimum side yard in the B-1 District setback is three feet.

The roof line of the two story brick building on Lot A will encroach over Lot B by .80 foot. Additionally, the buildings are connected by a breezeway. The breezeway is approximately six feet wide and two feet long.

Article 1321.06 of the Subdivision Regulations states the following:

(a) The lot arrangement and design shall be such that all sublots will provide satisfactory and desirable building sites, properly related to topography and the character of surrounding development.

(c) No lot shall have less area or width at the building line than is required by the zoning regulations applying to the area in which it is located.

The Subdivision Regulations provide no guidance on lot design criteria in relation to existing buildings. It appears that the Subdivision Regulations purely govern the subdivision of land without consideration of existing buildings.

Therefore, Article 1321.06 (a) references only future building sites and the creation of lots and lot arrangements that are satisfactory and properly related to the character of surrounding development. The proposed lots as single B-1 District lots are satisfactory and properly related to the character of surrounding development. Likewise, Article 1321.06 (c) discusses only the area or width required by the zoning regulations. Again, the proposed lots as single B-1 District lots adhere to the required area and width of the zoning district.

Lastly, concerning the side yard setbacks, as previously stated it appears that the Subdivision Regulations purely govern the subdivision of land without consideration of existing buildings. The only aspects of the Zoning Ordinance referenced in the Subdivision Regulations are the zoning district lot area and width. An existing building's side yard setback does not appear to be a critical lot design criteria.

It has been the Planning Commission's practice to mitigate property encroaches in all subdivision approvals. However, that does not appear to be possible under the current subdivision terms as presented by the applicant.

DeMasters recognized the applicant, James (Rocky) Gianola, 1714 Mileground Road, Morgantown, West Virginia. He gave a history of the lots, stating that some of the markers and pins were actually off compared to modern surveying techniques.

He referred to what he calls a breezeway, which was used as a loading/unloading zone when it was a beer distributor business. The owners have no problem with eliminating the breezeway, since the roofline encroaches the property line. He stated that what they are essentially asking is for the granting of a minor subdivision to take the two smaller lots and adjusting the boundary to minimize the encroachment to only the eve that is protruding into the adjacent lot.

DeMasters asked for clarification that the two lots have never been combined other than for tax purposes. Gianola stated that yes, that is correct and the lots both appear on a single tax ticket. They were combined in the late 80's or early 90's. DeMasters asked when the second building was built, did the two buildings have common owners. Gianola stated that yes, they did. The lots will be separate if the minor subdivision is granted.

DeMasters asked for clarification that the owners are in agreement with the easement. Gianola stated that yes, they are, and he had hoped to have signed statements from both to bring to the meeting, but he was not able to obtain them in time for the meeting.

Wyant asked again for clarification of the request. Gianola stated that he would like to subdivide lots 4 and 5, which will allow the two buildings to sit on separate parcels.

DeMasters asked Staff if, by granting this request, the Commission would be creating a non-conforming situation. Dingman stated that the Subdivision Regulations provide no guidance in terms of setbacks. The Subdivision Regulations say that parcels must conform to width and area requirement dictated by the Zoning Ordinance, which is consistent with this request. The Commission has, in the past, attempted to create lot splits that have conforming setbacks, but there is no directive that mandates this.

Gianola stated that he felt the Commission would be setting a precedent if it were new construction, but in this case, since both buildings are existing, he does not feel a precedent would be set.

Petros raised the question of a future building being built in this spot, should the current one be demolished, would the setback apply. DeMasters stated that the Commission would have to look at it as a new construction and the minimum side setback of three feet would apply. Gianola agreed.

Fletcher stated that if the Commission were to include that as a condition, he would suggest not being specific with a three foot setback.

DeMasters 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, DeMasters declared the public hearing portion closed.

Dingman read Staff recommendations, stating that Staff recommends approval with the following conditions:

1. That the breezeway connecting the buildings be removed;
2. That a property access easement agreement, to the satisfaction of the Planning Division, be recorded in related deeds providing for building maintenance and related access for both property owners;
3. That an easement agreement, to the satisfaction of the Planning Division, be recorded in related deeds that provides for the encroachment of the .80 foot two story building roofline on Lot A over Lot B;

4. That the petitioner submit three (3) original final plat documents signed and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President's signature; and,
5. That the final plat is filed at the Monongalia County Courthouse within thirty (30) days of meeting the conditions set forth above.

Wyant made a motion to approve MNS11-25; seconded by Shuman. Motion carried unanimously.

VI. OTHER BUSINESS:

A. Committee Reports:

- Traffic Commission:

Martis reported that a survey of truck traffic is being conducted by the Traffic Commission. The Planning Commission will be informed of the results when the survey is complete.

The new Morgantown Bicycle Plan was unveiled at the last Traffic Commission meeting.

Martis announced to the Traffic Commission that he would be resigning as the Planning Commission representative. DeMasters asked him for a nomination of a current Planning Commission member to serve in his place. Martis made a motion to nominate William Wyant to serve on the Traffic Commission; seconded by Pyles. Motion carried unanimously. The recommendation will go before City Council for final approval.

- Green Team: No Report

VII. ADJOURNMENT: 7:42 PM

MINUTES APPROVED:

January 12, 2011



BOARD SECRETARY:

Heather Whitmore Dingman, AICP