



# MORGANTOWN BOARD OF ZONING APPEALS

June 19, 2013  
6:30 PM  
City Council Chambers

## **Board Members:**

Bernie Bossio, Chair  
Leanne Cardoso, Vice-Chair  
George Papandreas  
Jim Shaffer  
Tom Shamberger

## **STAFF REPORT**

**CASE NO:** V13-18 and V13-23 / Shoney's / 9 Sterling Drive

### **REQUEST and LOCATION:**

Request by Hassein Nikzad, on behalf of Nikz Enterprises, Inc. (d/b/a/ "Shoney's of Morgantown"), for variance relief from Article 1353.07 and Article 1367.08 as they related to cladding materials and parking lot landscaping requirements respectively.

### **TAX MAP NUMBER(s) and ZONING DESCRIPTION:**

Tax Map 31, part of former Parcel 107; B-5, Shopping Center District

### **SURROUNDING ZONING:**

B-5, Shopping Center District

### **BACKGROUND and ANALYSIS:**

The petitioner seeks to construct a *Shoney's Restaurant* between the *Save a Lot* grocery store and the recently developed *MVB* bank branch on Earl Core Road. The subject parcel is the last development site that includes the *J.D. Byrider* and *Suburban Extended Stay* hotel developments. Addendum A of this report illustrates the location of the subject site.

#### **V13-18** Cladding Material

Article 1353.07(C)(1) provides the following cladding material standard:

"Walls shall be clad in stone, brick, marble, approved metal paneling, and/or cast concrete."

The petitioner seeks to utilize an Exterior Insulation Finish System (EIFS) in conjunction with cultured masonry materials (stone and/or brick), which in the B-5 District requires variance relief from the Board. It should be noted that the petitioner has agreed to emulate cast concrete in the EIFS on the front and side facades, which is generally illustrated in the petitioner's building elevations.

#### **V13-28** Landscaping

Article 1367.08(C) requires developments with parking located between the building and the street to provide a ten-foot wide landscape buffer for the length of the parking area abutting the street and a six-foot wide side and rear landscape buffer.

Given the width of the site, required parking, parking lot layout design standards, and on-site drive aisle requirements for fire department access and circulation, the petitioner seeks variance relief so that an eight-foot front landscape buffer can be developed and no side or rear landscape buffers be required.

## **Development Services**

Christopher Fletcher, AICP  
Director

## **Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



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It appears that one to two additional feet may be necessary from the front landscape buffer to ensure that the proposed parking spaces do not obstruct the desired cross-access driveway connecting the adjoining parking lot.

Article 1367.08(D) requires terminal islands with concrete curbs that are at least 130 square feet for all rows of parking spaces when a parking lot contains 20 or more parking stalls. Terminal islands are intended to protect parked vehicles, provide visibility, confine moving traffic aisles and driveways, and provide space for landscaping.

For the same reasons noted above, the petitioner seeks variance relief so that two proposed terminal islands can be developed less than 130 square feet in area as well as relief from having to develop two additional required terminal islands.

Addendum B of this report identifies the specific landscaping and terminal island elements noted above.

Staff recommends that the Board, without objection from members of the Board, the petitioner, or the public, combine the public hearings for two (2) variance petitions presented herein. However, each respective variance petition must be considered and acted upon by the Board separately.

## **STAFF RECOMMENDATION:**

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 applicant.

Addendum C of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). Each respective variance petition must be considered and acted upon by the Board separately.

Staff recommends the following approvals and related conditions for each of the subject petitions:

### **V13-18** Cladding Material

Staff recommends that variance relief be granted for Case No. V13-18 as requested with the following conditions:

1. That the location, area, and extent of the cultured masonry materials (stone and/or brick) that is illustrated on the elevations submitted with the petitioner's variance application may not be reduced.
2. That the EIFS clad facades, to the satisfaction of the Planning Division, must emulate cast concrete on the front and side facades.

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Director

## **Planning Division**

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### **V13-23 Landscaping**

Staff recommends that a four-foot variance be granted from Article 1367.08(C)(1) rather than the two-foot variance requested by the petitioner to ensure that the desired cross-access driveway connecting the adjoining parking lot is not obstructed by the parking space depth along the subject site's Earl Core Road frontage; and, that variance relief be granted from developing six-foot landscape buffers along the side and rear of the parking lot as otherwise required under Article 1367.08(C)(2) with the following conditions:

1. That the front landscape buffer shall contain the landscape material type and spacing requirements set forth in Article 1367.08(C)(1).
2. To promote public welfare and protect property, the following minimum site design modifications must be, to the satisfaction of the Planning Division and City Engineer, incorporated to properly confine and channel the adjoining Sterling Drive traffic aisle from on-site parking spaces:
  - a. A concrete curb with a minimum height of six inches must be developed beginning at the sidewalk to be constructed at the Sterling Drive / Earl Core Road intersection, thence to and including the terminal island located at the site's Sterling Drive entrance.
  - b. The Sterling Drive traffic aisle along the subject site's side boundary must be physically separated from the adjoining parking stalls by a vertical barrier between 2 ½ feet and 3 ½ feet in height. Design preference is for a decorative guard rail type facility that compliments the architectural design of the principal building and meets best practice standards for same as determined by the City Engineer. Additionally, appropriate low level ground cover landscaping must be incorporated to the greatest extent practicable.
  - c. A concrete curb with a minimum height of six inches must be developed along Sterling Drive and the row of seven parking stalls at the rear most portion of the site. Said concrete curb must continue along the outermost sides of the subject row of parking where the terminal islands are otherwise required. The height of the curb along the outermost sides of the subject row of parking may be tapered to ensure access for emergency response and delivery vehicles provided the outermost parking stalls are properly confined so that parked vehicles do not encroach into or obstruct adjoining driveway entrances and related aisles.
  - d. The Sterling Drive traffic aisle along the subject site's rear boundary must be physically separated from the adjoining row of seven parking stalls by a vertical barrier between 2 ½ feet and 3 ½ feet in height. Given the more limited space compared to the subject site's side boundary along Sterling Drive, a bollard and chain design may be developed provided the facility meets best practice standards for same as determined by the City Engineer.

### **Development Services**

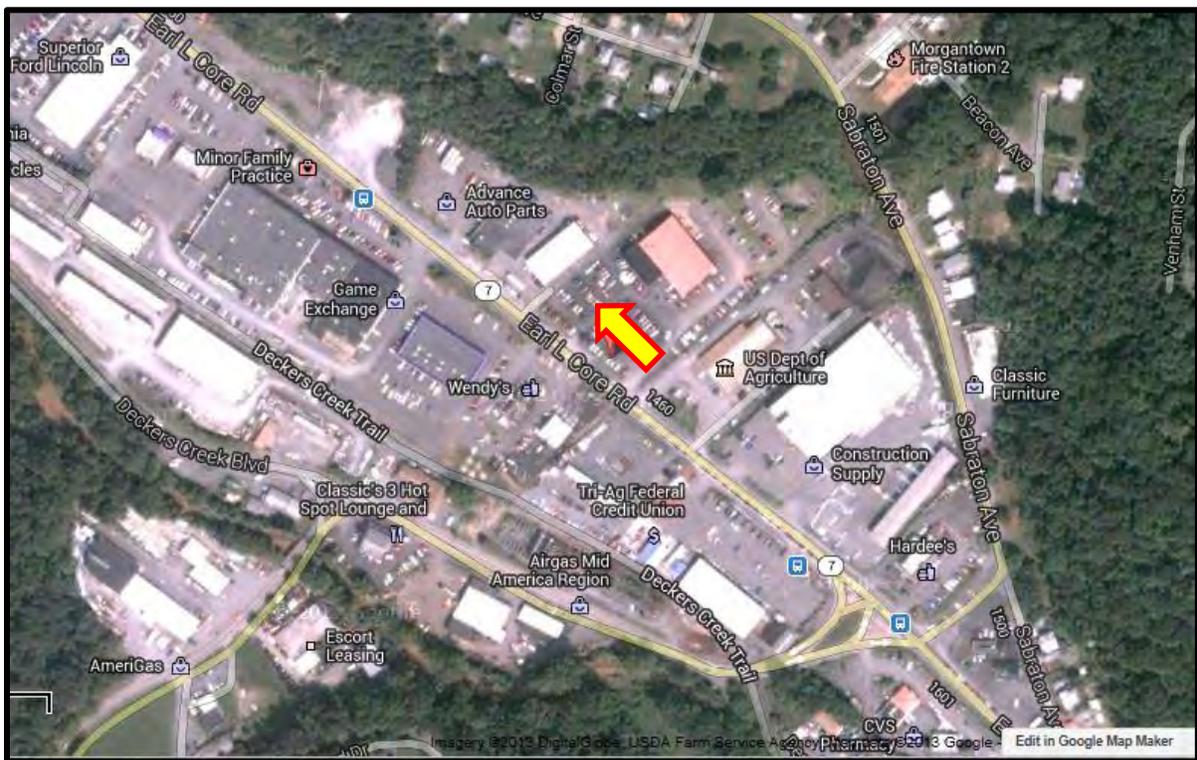
Christopher Fletcher, AICP  
Director

### **Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

Enclosures: Application and accompanying exhibits

**STAFF REPORT ADDENDUM A**  
**V13-18 and V13-23 / Shoney's / 9 Sterling Drive**





## STAFF REPORT ADDENDUM C

### V13-18 and V13-23 / Shoney's / 9 Sterling Drive

Staff recommended revisions to petitioner's Findings of Fact for **V13-18** relating to cladding materials (deleted matter struck through; new matter underlined).

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

According to the petitioner, the design of this facility is controlled by Shoney's Corporate Headquarters operating with narrow branding standards. The Board's condition requiring a minimum extent of cultured masonry cladding materials and that EIFS cladding be designed and finished to emulate cast concrete appropriately protects, preserves, and furthers the intent of ensuring quality and contributing cladding design. They consider the use of EIFS as an acceptable exterior material that will provide an aesthetic and pleasing appearance. Shoney's has already approved the use of EIFS pending approval of the overall design.

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

EIFS is an exterior finish material that is desired and preferred in many upscale commercial and residential environments. Furthermore, surrounding properties will be enhanced by the exterior appearance of this facility. Other properties within the vicinity are not subjected to the same corporate requirements to maintain a consistent look that ensures brand integrity of this national corporation. The majority the structures within the immediate B-5 District utilize cladding materials that are not included on the permitted use including EIFS, cultured masonry materials, ornamental concrete block, etc.

**Finding of Fact No. 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:

Utilizing EIFS as an exterior finish meets the spirit and intent of providing a pleasing appearance. The appearance of the proposed exterior material appears to fits contextually within this vicinity and should adds to the aesthetics created by adjacent properties.

**Finding of Fact No. 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:

This variance has no negative impact on the land use of this vicinity or traffic flow of the public streets. The appearance of this exterior finish is widely accepted and will not affect the market values of this vicinity particularly when Shoney's has stringent guidelines regarding exterior aesthetics.

Staff recommended revisions to petitioner's Findings of Fact for **V13-23** relating to cladding materials (deleted matter struck through; new matter underlined).

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

The width and geometry of the site and necessary design provisions for the access of emergency/fire vehicles in and around this facility requires traffic routes with dimensions beyond the minimum requirements. This significantly inhibits the ability to allow for buffer zones at the side and rear of the site along with a full 10'-0" buffer zone at the site's frontage. It also prevents the installation of terminal islands above that shown without considerable reduction in the number of parking spaces which are already at the minimum required.

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

The variance is necessary to meet the parking and traffic flow needs of the business as well as public safety. Furthermore, other properties within the vicinity uphold the spirit and intent without meeting the exact specifications of the zoning requirements such as buffer zones and terminal islands.

**Finding of Fact No. 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:

Maintaining a frontage buffer and providing terminal islands at the maximum sizes available on the site meets the spirit and intent of the requirement without reducing the parking spaces below the minimum required. This upholds the landscape aesthetics created by adjacent properties. These variances are contained within the site itself and do not negatively affect surrounding property owners. The Board's condition requiring curbs and vertically facilities to physically separate and channel the Sterling Drive traffic aisle from adjoining on-site parking stalls is intended to promote the public welfare and protect property.

**Finding of Fact No. 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 landscaping will uphold the spirit and intent of the requirement within the constraints of the site and will not compromise; in fact will add to, the look and feel of the adjacent properties. This variance does not obstruct or hinder the traffic flow of the public streets.



City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V13-18
RECEIVED:	5/8/13
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

<b>I. APPLICANT</b>		Name: NIKZ ENTERPRISES, INC. DBA SHONEI'S OF MORGANTOWN	
Mailing Address:	Street	4673 SHADYSIDE LN.	Phone: 304-594-3773.
	City	MORGANTOWN, WV. 26508	Mobile: 304-282-6265
	State	Zip	Email: azk1n60HDD@COMCAST.net
<b>II. PROPERTY</b>		Street Address: 9 STERLING DRIVE, M-TOWN, WV. 26505	
Owner:	GLENMARK HOLDING LLC	Zoning:	MORGANTOWN CORPORATION B-5
Mailing Address:	Street	6 CANYON ROAD, Suite 300	Tax Map No: 31
	City	MORGANTOWN, WV. 26508	Parcel No: 1A P/O 107
	State	Zip	Phone: 304-599-3369
<b>III. NARRATIVE</b>		Please describe the nature and extent of your variance request(s).	
<p>1353.07 Performance Standards require that "Walls shall be clad in stone, brick, marble, approved metal paneling and or cast concrete." The current design reflects the use of EIFS (Exterior Insulation Finish System) in conjunction with brick and cultured stone. Therefore, variance relief is requested to utilize EIFS as currently contemplated.</p>			
<b>V. ATTEST</b>			
<p>I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. The granting of a variance does not presume to give authority to violate or cancel the provisions of any other federal, state, or local law regulating construction or the performance of construction. I certify that the information submitted herein and attached hereto is true and accurate and understand that if found otherwise may result in the denial of this request or subsequent revocation of any and all related approvals. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions. I hereby authorize the Planning Department to erect a notification sign on the subject property approximately 15 days prior to the BZA hearing. I further agree to maintain said signage and hereby accept responsibility in case of destruction or removal.</p>			
HOSSEIN NIKZAN		 <small>PAID 75.00</small>	
Type/Print Name of Applicant/Agent	Signature of Applicant/Agent	Date: 5-7-13	

You or a representative **MUST** be present at the scheduled hearing to present the request and answer questions. Failure to appear at the hearing will result in your request being tabled.



APPLICATION FOR ZONING VARIANCE

OFFICE USE
CASE NO. V13-18
RECEIVED:
COMPLETE:

VI. SUPPLEMENTAL INFORMATION

Depending on the type of variance request and the scale and scope of the development proposal, supplemental information may be needed to assist the Board of Zoning Appeals in rendering a variance decision. Staff will check the appropriate boxes below that must be addressed.

Land Use Characteristics (complete only those that apply)

- Residential, Single-Family Dwelling, Townhouse Dwelling, Two-Family Dwelling, Multi-Family Dwelling

Non-Residential or Mixed (please explain)

Family Restaurant

Structure Characteristics (complete only those that apply)

Total number of buildings: 1 Gross floor area of each building: 5000 SF

Estimated number of employees: No. of dwelling units: No. of bedrooms:

Additional structure-related details:

Masonry load bearing walls with bar joist and metal decking roof

Additional Information (as required by Staff):

Site Plan A scaled site plan may be required to assist the Board in rendering a variance decision. The following features must be represented, as required by Staff.

- Location, shape, exterior dimensions, and number of stories of each building on the site.
Standard yard setbacks for the applicable zoning district
Location, grade, and dimensions of paved surfaces, and all abutting streets
Existing and proposed contours, at an interval of at least two (2) feet
Complete traffic circulation plan showing dimensions, entrance/exit drives, planters, and similar improvements
Location of landscaped areas (to be detailed on landscape plan), fences, walls, and other screen required

For simple variance requests (as determined by Staff), please use the graph area on the following page to illustrate applicable features listed above.



City of Morgantown, West Virginia

**APPLICATION FOR  
ZONING VARIANCE**

OFFICE USE	
CASE NO.	V13-18
RECEIVED:	_____
COMPLETE:	_____

Suggested Scale: 1 square = 5'

*See attachment  
CWP  
12-Jun-2013*



**APPLICATION FOR  
ZONING VARIANCE**

OFFICE USE	
CASE NO.	V13-18
RECEIVED:	
COMPLETE:	

**VII. FINDINGS OF FACT**

The Board of Zoning Appeals may grant a variance request only if each of the following "Findings of Fact" criteria is determined to be in the positive. Applicants must give their own responses to the following criteria statements.

**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 design of this facility is controlled by Shoney's Corporate Headquarters. They consider the use of EIFS as an acceptable exterior material that will provide an aesthetic and pleasing appearance. Shoney's has already approved the use of EIFS pending approval of the overall design.

**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:**

EIFS is an exterior finish material that is desired and preferred in many upscale commercial and residential environments. Furthermore, surrounding properties will be enhanced by the exterior appearance of this facility. Other properties within the vicinity are not subjected to the same corporate requirements to maintain a consistent look that ensures brand integrity of this national corporation.

**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:**

Utilizing EIFS as an exterior finish meets the spirit and intent of providing a pleasing appearance. The appearance of this exterior material fits contextually within this vicinity and adds to the aesthetics created by adjacent properties.

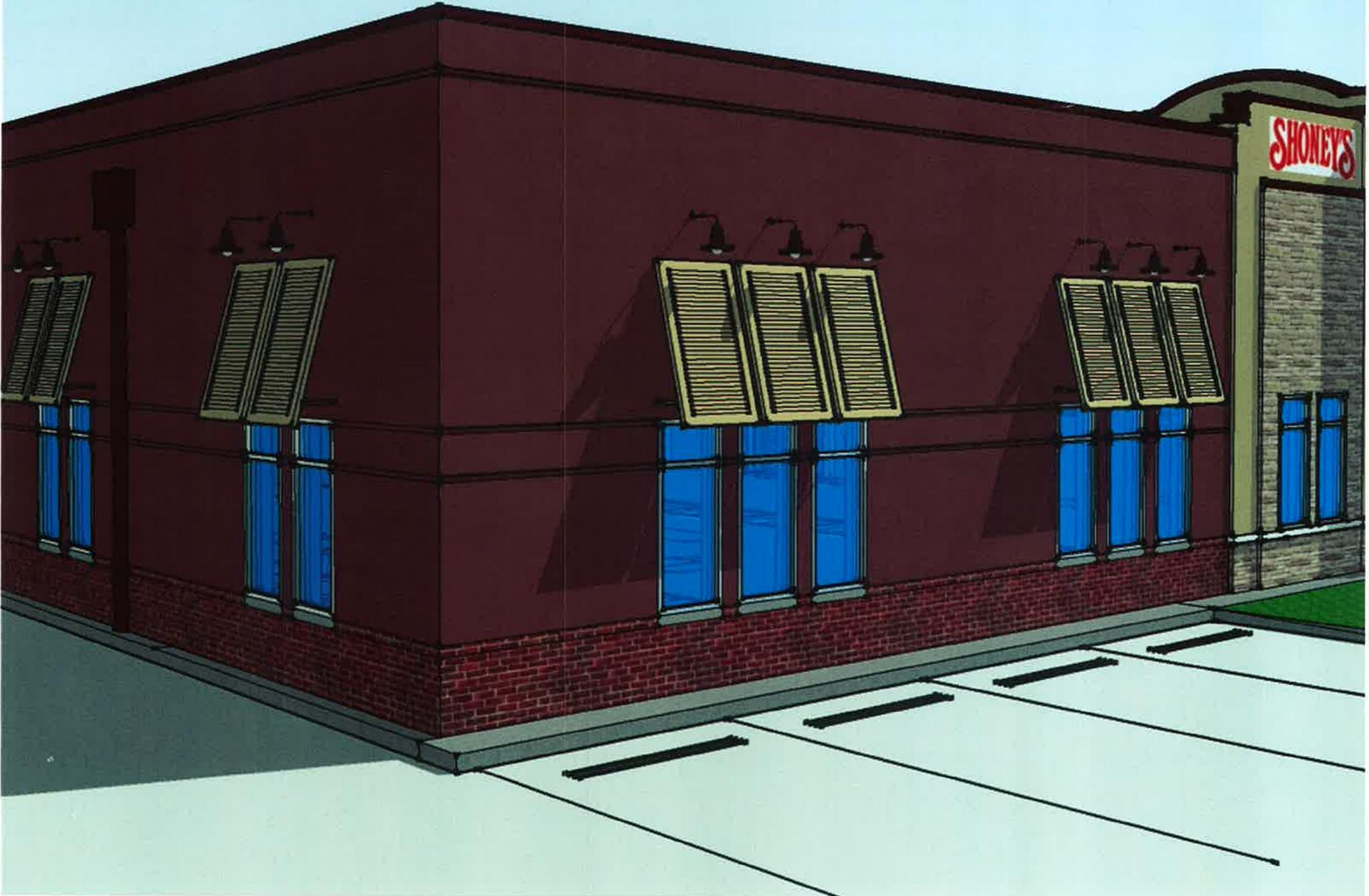
**4. The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:**

This variance has no negative impact on the land use of this vicinity or traffic flow of the public streets. The appearance of this exterior finish is widely accepted and will not effect the market values of this vicinity particularly when Shoney's has stringent guidelines regarding exterior aesthetics.

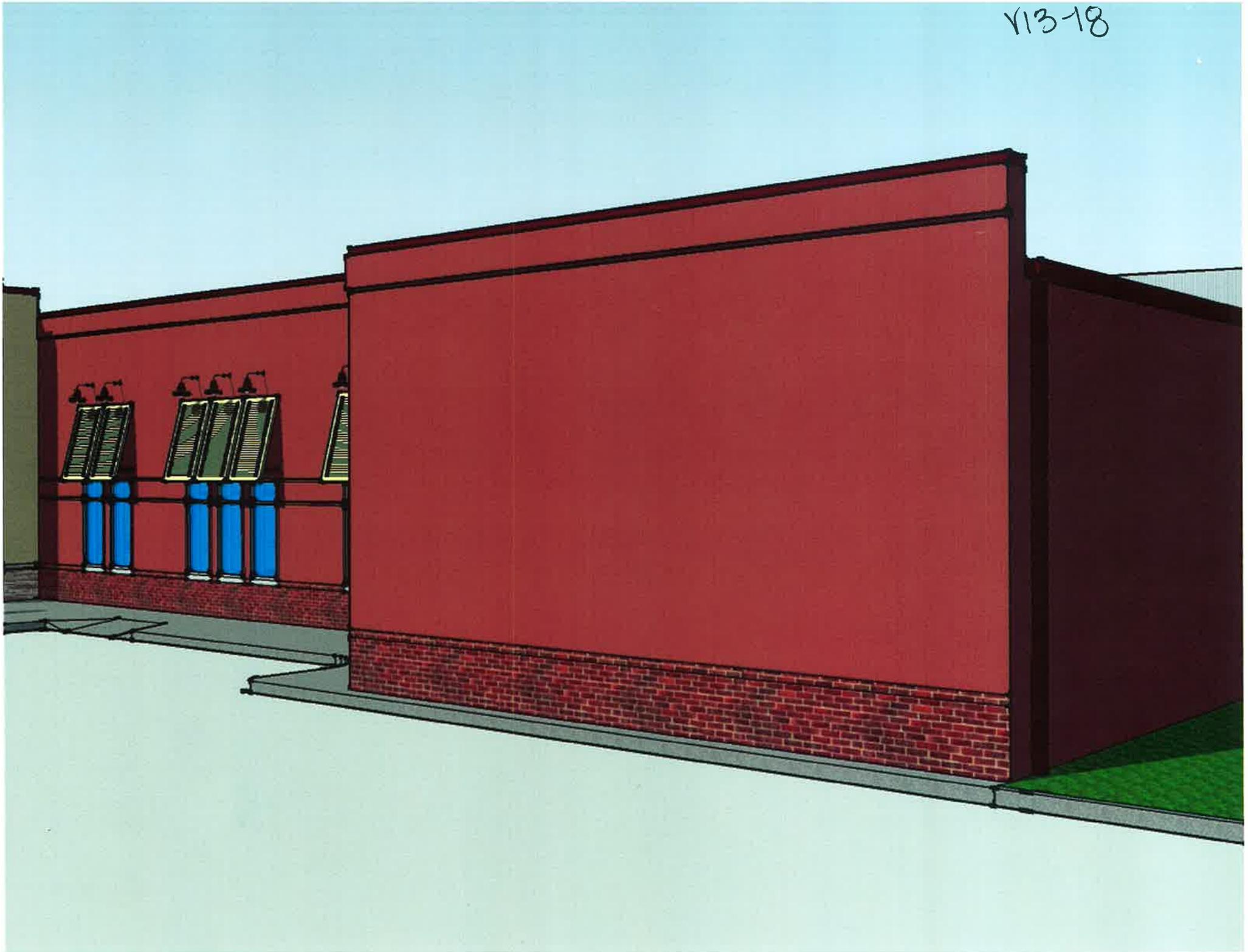
V13-18



V13-18



V13-18



V13-18





City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	113-23
RECEIVED:	5/24/13
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

<b>I. APPLICANT</b>		Name: Nick H. Nikzad	
Mailing Address:	Street	4673 Shadyside Lane	Phone: 304-594-3773
	City	Morgantown WV 26508	Mobile: 304-282-6265
			Email: azkin60hd@comcast.net
<b>II. PROPERTY</b>		Street Address: 9 Sterling Dr. Morgantown, WV 26508	
Owner:	Nick H. Nikzad		Zoning: B-5
Mailing Address:	Street	4673 Shadyside Lane	Tax Map No: 31
	City	Morgantown, WV 26508	Parcel No: P/O 107
			Phone:

**III. NARRATIVE** Please describe the nature and extent of your variance request(s).

Article 1367.08 Parking Lot and Landscaping requirements:

Item 1. Article 1367.08 (C)(1) Relief from the requisite ten-foot wide buffer along the site's frontage.

Item 2. Article 1367.08 (C)(2): Relief from providing the requisite six foot wide buffer areas along the sites side and rear parking areas.

Item 3. Article 1367.08 (D)(2): Relief from providing the terminal islands other than those already shown site plan.

**V. ATTEST**

I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. The granting of a variance does not presume to give authority to violate or cancel the provisions of any other federal, state, or local law regulating construction or the performance of construction. I certify that the information submitted herein and attached hereto is true and accurate and understand that if found otherwise may result in the denial of this request or subsequent revocation of any and all related approvals. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions. I hereby authorize the Planning Department to erect a notification sign on the subject property approximately 15 days prior to the BZA hearing. I further agree to maintain said signage and hereby accept responsibility in case of destruction or removal.

Nick H. Nikzad  KRISTEN 5/24/13

Type/Print Name of Applicant/Agent Signature of Applicant/Agent Date

You or a representative **MUST** be present at the scheduled hearing to present the request and answer questions. Failure to appear at the hearing will result in your request being tabled.



APPLICATION FOR ZONING VARIANCE

OFFICE USE
CASE NO. 113-23
RECEIVED:
COMPLETE:

VI. SUPPLEMENTAL INFORMATION

Depending on the type of variance request and the scale and scope of the development proposal, supplemental information may be needed to assist the Board of Zoning Appeals in rendering a variance decision. Staff will check the appropriate boxes below that must be addressed.

Land Use Characteristics (complete only those that apply)

- Residential, Single-Family Dwelling, Townhouse Dwelling, Two-Family Dwelling, Multi-Family Dwelling

Non-Residential or Mixed (please explain)

Family Restaurant

Structure Characteristics (complete only those that apply)

Total number of buildings: 1 Gross floor area of each building: 5000 SF

Estimated number of employees: No. of dwelling units: No. of bedrooms:

Additional structure-related details:

Masonry load bearing walls with bar joists and metal deck roof.

Additional Information (as required by Staff):

Site Plan A scaled site plan may be required to assist the Board in rendering a variance decision. The following features must be represented, as required by Staff.

- Location, shape, exterior dimensions, and number of stories of each building on the site.
Standard yard setbacks for the applicable zoning district
Location, grade, and dimensions of paved surfaces, and all abutting streets
Existing and proposed contours, at an interval of at least two (2) feet
Complete traffic circulation plan showing dimensions, entrance/exit drives, planters, and similar improvements
Location of landscaped areas (to be detailed on landscape plan), fences, walls, and other screen required

For simple variance requests (as determined by Staff), please use the graph area on the following page to illustrate applicable features listed above.



City of Morgantown, West Virginia

# APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V13-23
RECEIVED:	_____
COMPLETE:	_____

Suggested Scale: 1 square = 5'

*All attachment  
C. J. P.  
12-JUN-2013*



**APPLICATION FOR  
ZONING VARIANCE**

OFFICE USE

CASE NO.

V13-23

RECEIVED:

COMPLETE:

**VII. FINDINGS OF FACT**

The Board of Zoning Appeals may grant a variance request only if each of the following "Findings of Fact" criteria is determined to be in the positive. Applicants must give their own responses to the following criteria statements.

**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:**

Access of emergency/fire vehicles in and around this facility requires traffic routes with dimensions beyond the minimum requirements. This significantly inhibits the ability to allow for buffer zones at the side and rear of the site along with a full 10'-0" buffer zone at the site's frontage. It also prevents the installation of terminal islands above that shown without considerable reduction in the number of parking spaces which are already at the minimum required.

**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:**

The variance is necessary to meet the parking and traffic flow needs of the business as well as public safety. Furthermore, other properties within the vicinity uphold the spirit and intent without meeting the exact specifications of the zoning requirements such as buffer zones and terminal islands.

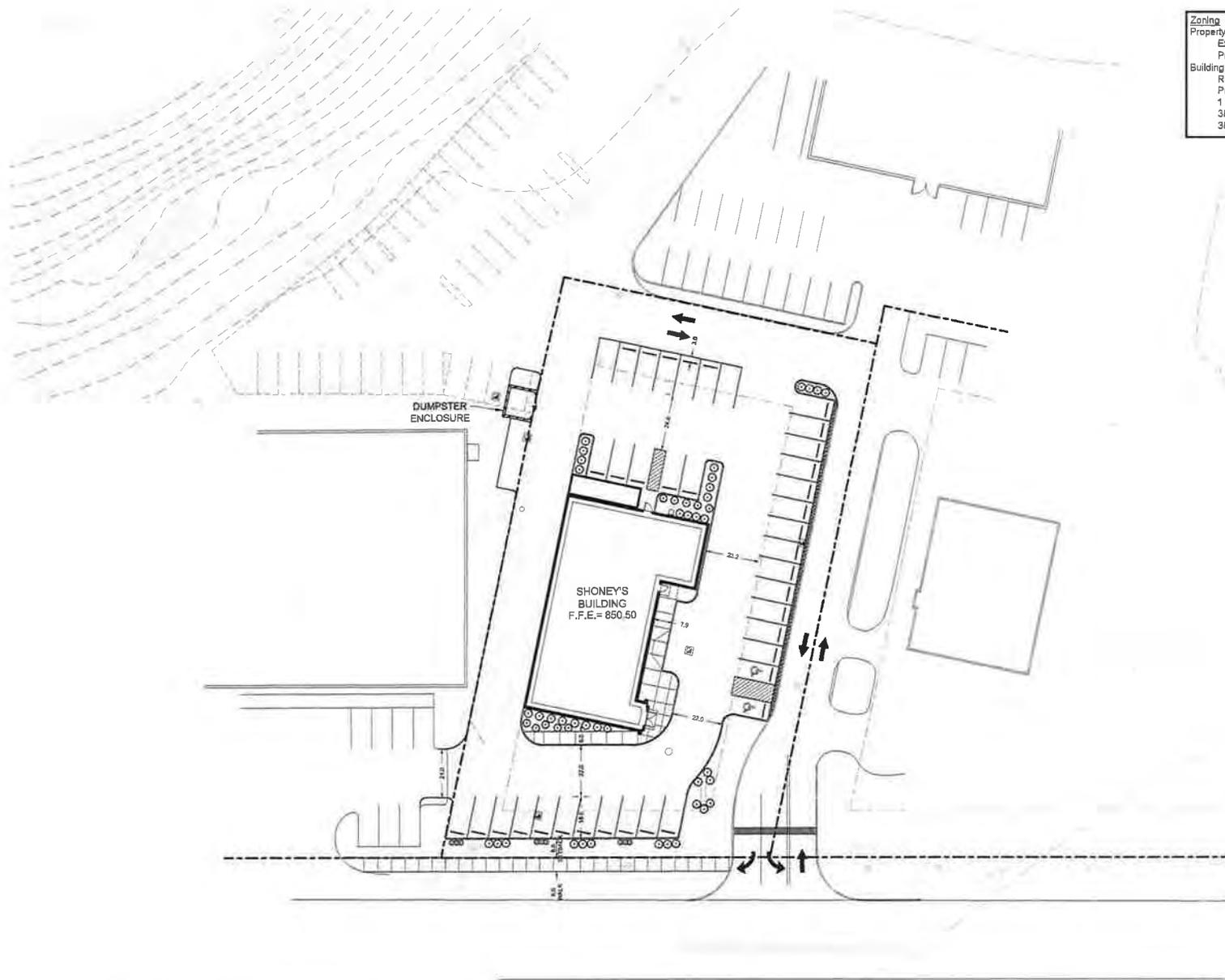
**3. The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:**

Maintaining a frontage buffer and providing terminal islands at the maximum sizes available on the site meets the spirit and intent of the requirement without reducing the parking spaces below the minimum required. This upholds the landscape aesthetics created by adjacent properties. These variances are contained within the site itself and does not negatively effect surrounding property owners.

**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 landscaping will uphold the spirit and intent of the requirement within the constraints of the site and will not compromise; in fact will add to, the look and feel of the adjacent properties. This variance does not obstruct or hinder the traffic flow of the public streets.

V13-18



**Zoning**  
 Property Zoned:  
 Existing - "B-5" Shopping Center District  
 Proposed - "B-5" Shopping Center District  
 Building Sizes:  
 Restaurant - 5,017 SF  
 Parking Requirements:  
 1 Space per 100 SF of eating area plus 1 per employee  
 38 spaces Required  
 38 Spaces Provided

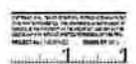


SHONEY'S  
 Raleigh, West Virginia  
 NOT FOR CONSTRUCTION  
 5/7/2013

**omni**  
 associates  
 architects  
 1000 Tenth Street, Suite 200  
 Raleigh, NC 27601  
 omni-111.com



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