Morgantown Board of Zoning Appeals

MEETING PACKET

Wednesday, July 17, 2019
6:30 p.m.
City Council Chambers

Board Members:
Harrison Case, Chair
Kevin Meehan, Vice Chair
Chris Benison
Heidi Cook
Garrett Tomblin

Development Services Department
Christopher M. Fletcher, AICP, Director
John Whitmore, AICP, Planner III
BZA Pre-Meeting Announcement read by the Chairperson

Good evening and welcome to the regular/special meeting of the City of Morgantown Board of Zoning Appeals. Please turn off all cell phones or other devices that may disrupt these proceedings. It is the duty of this Board to consider requests for relief from the requirements of the City’s zoning regulations; to consider conditional use permit requests; and, to hear administrative appeals.

The Board conducts business in the following order:

- Review, amend, and approve minutes of a previous meeting.
- Unfinished Business
- New Business
- Announcements from Staff

Each request is heard in the order that it appears on the agenda. For each Conditional Use and Variance request, the following is done:

- I will introduce the agenda item and the Planning Division will present a Staff Report, which may or may not offer a recommendation.

- The applicant/agent will be asked to present their justification for their request, which may include questions by members of the Board.

- I will then open a PUBLIC HEARING to hear testimony in support of, or in opposition to, the request. Rules regarding public testimony are as follows:
  - Anyone wishing to testify during the public hearing may do so once recognized by me or may, in lieu of oral testimony, submit written testimony to the Chair. All recognized speakers must approach the podium, state their name and address for the record, and speak clearly into the microphone.
  - All comments must be addressed to the Board, should be relevant to the application, and may not be of a personal nature or personal attacks.
  - All speakers will be limited to FIVE (5) MINUTES. If members of the Board have any questions of the speaker, that time will not be counted toward his/her five (5) minutes.
  - If there is a large number of speakers, including many who are part of groups or organizations, I may, to avoid repetitive comments, elect to ask for a representative to speak on behalf of the group or organization.
- Speakers are notified that irrelevant comments or comments of a personal nature or personal attacks may result in the speaker forfeiting his/her opportunity to participate in the public hearing.

- I may elect to recognize the applicant/agent at the end of the public hearing to provide rebuttal or additional comments, which will be limited to five (5) minutes. If members of the Board have any questions of the applicant/agent, that time will not be counted toward his/her five (5) minutes.

- After all testimony is heard, I will declare the **PUBLIC HEARING CLOSED** and no further public comment will be permitted.

- Uncivil, unruly, and/or disruptive behavior at any time during this meeting is prohibited and will result in removal from this public meeting.

- State law requires the Board to consider findings of fact for each conditional use and variance request. The request cannot be granted unless a majority of the quorum present finds in the positive of ALL of the findings of fact. The Board may elect to continue the hearing to another date if it needs additional information.

- Applicants and requesting parties will be notified in writing by the Planning Division of the Board’s findings and conclusions. Regardless of whether a request is approved or denied, decisions of the Board can be appealed to the Circuit Court of Monongalia County within thirty (30) days upon receipt of the written notification. Any work done relating to decisions rendered by this Board during this thirty-day period is at the sole financial risk of the applicant.

Thank you for your consideration and respect for these proceedings and the opinions of all meeting participants.
AGENDA

I. CALL TO ORDER AND ROLL CALL

II. MATTERS OF BUSINESS:
   A. Minutes for the June 19, 2019 hearing

III. UNFINISHED BUSINESS: None.

IV. NEW BUSINESS:
   A. CU19-03 / HTM Properties / 499 Locust Avenue: Request by Doug Shepard, on behalf of HTM Properties, for conditional-use approval of a “Dwelling, Multi-Family” use; Fifth Ward Tax District, Tax Map 26, Parcel 281; R-2, Single and Two-Family Residential District.
   B. V19-26 / HTM Properties / 499 Locust Avenue: Request by Doug Shepard, on behalf of HTM Properties, for variance relief from Article 1331 concerning common entrance design standards; Fifth Ward Tax District, Tax Map 26, Parcel 281; R-2, Single- and Two-Family Residential District.
   C. V19-23 / Istanbul Delicacy / 2995 University Avenue: Request by Maria Pachina, on behalf of Istanbul Delicacy, for variance relief from Article 1369 concerning signage; Seventh Ward Tax District, Tax Map 11, Parcel 7; B-2, Service Business District.
   D. V19-24 / Alpha Rho Corporation of WV / 650 N. Spruce Street: Request by Brian Dawson, on behalf of Alpha Rho Corporation of WV, for variance relief from Section 1339.04 regarding setbacks; Fifth Ward Tax District, Tax Map 26, Parcel 217; R-3, Multi-Family Residential District.
   E. V19-25 / Sigma Phi Epsilon / 709 N. High Street: Request by Crystal Miller of City Neon, Inc., on behalf of Sigma Phi Epsilon, for variance relief from Article 1369 concerning signage; Fifth Ward Tax District, Tax Map 26, Parcel 160.1; R-2, Single- and Two-Family Residential District.

V. ANNOUNCEMENTS

VI. ADJOURNMENT
BOARD OF ZONING APPEALS

MINUTES

6:33 p.m. June 19, 2019 Council Chambers

MEMBERS PRESENT: Kevin Meehan, Chris Benison, Heidi Cook, and Garrett Tomblin

MEMBERS ABSENT: Harrison Case

STAFF: John Whitmore, AICP

I. CALL TO ORDER AND ROLL CALL: Meehan called the meeting to order and read the standard explanation of the how the Board conducts business and rules for public comments.

II. MATTERS OF BUSINESS:
   A. Minutes for the May 15, 2019 hearing. No corrections noted, and minutes approved as presented.

III. UNFINISHED BUSINESS: None.

IV. NEW BUSINESS:
   A. CU19-03 / HTM Properties / 499 Locust Avenue: Request by Doug Shepard, on behalf of HTM Properties, for conditional-use approval of a “Dwelling, Multi-Family” use; Fifth Ward Tax District, Tax Map 26, Parcel 281; R-2, Single and Two-Family Residential District. POSTPONED

   B. CU19-04 / Waterfront Jeep / 285 Don Knotts Blvd.: Request by Pete Hudson, on behalf of Waterfront Jeep, for conditional-use approval of an “Automotive Sales” use; First Ward Tax District, Tax Map 39, Parcel 29; B-2, Service Business District.

Meehan recognized Pete Hudson, owner of Waterfront Jeep, who provided further explanation on the petition and stated he would like to sell used vehicles on the property.

Whitmore presented the Staff Report and provided further clarification on the petition.

Benison asked if the universal van space is included parking calculations. Whitmore confirmed and stated there will be seven (7) total spaces.

Benison asked if repairs and services would go through the primary office. Hudson provided further explanation and stated that used cars would be sold at this location and also repaired when necessary. Hudson expressed he needs the extra space to be able to sell used cars at a higher volume.
Tomblin inquired if there is adequate parking on the property. Hudson stated there are about 30 spaces and noted there is additional parking in the rear of the property for employees.

Whitmore referred to the definition of “Automotive Sales” in the Planning and Zoning Code and stated it includes storage, maintenance, and servicing of vehicles.

Hudson noted that used vehicles and tires were previously sold on this property and stated the whole area includes retail sales.

There being no further questions or comments by the Board, Meehan asked if anyone would like to speak in favor of or in opposition to the variance petition. There being none, Meehan declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Benison asked if Staff anticipates the petitioner would seek variance approval. Whitmore stated a variance may be necessary for signage.

Benison made a motion to find in the affirmative for all of the Finding of Facts for CU19-04 as presented; seconded by Cook. Motion carried unanimously.

*NONE: The following findings were included in the motion.*

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

- The Automotive Sales use will only be using existing parking spaces, and is located in a commercial corridor along an arterial route that can accommodate increased traffic from the use.

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

- There is no anticipated hazardous practices associated with this use and conformance with related Building and Fire Codes will be required as a part of occupancy permitting.

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

- The proposed use will not require construction of a new building or an addition to the existing building disrupting existing light distribution and airflow patterns within the immediate area.

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

- The proposed use will not require construction of a new building or an addition to the existing building that would change the existing scale and density of the site.

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

- The proposed development does not include a residential component.

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 “Automotive Sales” use does not appear to require additional public utilities or services above levels currently in place.

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

- No physical changes to the building are anticipated and the retail nature of the commercial side of the corridor is maintained.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:
The proposed “Automotive Sales” appears to compliment other commercial and retail uses along the riverside of the corridor.

Cook moved to approve Case No. CU19-04 with the Staff recommended conditions; seconded by Tomblin. Motion carried unanimously.

Meehan reminded Mr. Hudson that the Board’s decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board’s decisions during this period would be at the sole financial risk of the petitioner.

C. **V19-08 / Asian Massage / 1390 University Avenue**: Request by Thomas M. Matthew of TMM Holdings, Inc., on behalf of Asian Massage, for variance relief from Article 1369 concerning signage; Third Ward Tax District, Tax Map 26A, Parcel 85; B-4, General Business District.

Whitmore presented the Staff Report.

Meehan recognized Rocky Gianola of 1714 Mileground Road, on behalf of TMM Holdings, Inc., who referred to the Staff report and stated the location of the business is in a challenging location that sits back from the road. Gianola expressed the proposed illuminated signage is necessary for advertising and for customers to locate the business.

There being no questions or comments by the Board, Meehan asked if anyone would like to speak in favor of or in opposition to the variance petition. There being none, Meehan declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Tomblin asked if other means of lighting the sign were explored by the petitioner. Gianola stated the petitioner explored down lighting but the glare would be encroaching onto Beechurst. He noted that upward lighting was not possible as there is nothing to attach to below the signage.

Tomblin asked if there are any concerns by having illuminated red lettering on the sign at the intersection. Gianola stated the setback is sufficient and not at the level of the stop light. He also noted that state regulations prohibit green and red lighting at the intersection and the proposed signage would be clear illumination.

Whitmore stated the WVDOH would seek modifications if there are any concerns as the surrounding roads are owned by the state. He stated the proposed signage had been operational previously and no complaints had been received by Staff.

Benison asked if surrounding businesses had illuminated signage. Whitmore stated there is a pizza place and a book store that has illuminated signage in that area.

Whitmore stated that City could work with the applicant to stay in compliance to ensure glare is not projected onto the public right-of-way.

Cook made a motion to find in the affirmative for all of the Finding of Facts for V19-08 as presented; seconded by Tomblin. Motion carried unanimously.

**NOTE:** The following findings were included in the motion.
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:

Proposed sign materials and internal illumination do not appear to adversely affect the public health or safety at the subject location. It’s away from the street walkway and away from on-site parking or sidewalk.

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 business is located along a five-lane arterial roadway with a tenant frontage that is fifty-feet from the nearest road-pavement. Providing an internally illuminated suspended sign will allow for the business to be visible to motorists, while respecting the limited sign area requirement.

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

The petitioner’s storefront entrance is located in an alcove of the building that is difficult to see by pedestrian or vehicular passersby. Permitting materials and internal illumination for a sign that otherwise meets suspended sign area standards appears to be reasonable compromise to adequately communicate the presence of the establishment to a busy five-lane arterial route with limited pedestrian traffic. Additionally, external illumination permitted by-right could present a glaring condition within the adjacent intersection.

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

The establishment will be permitted to communicate its challenging location with a storefront that is difficult to identify to passersby without exceeding the maximum suspended sign area standard.

Cook moved to approve Case No. V19-08 without conditions; seconded by Tomblin. Motion fails 0-4 with Cook, Meehan, Tomblin and Benison voting nay.

Meehan moved to approve Case No. V19-08 with the condition that the sign shall not create glare or interfere with public safety; seconded by Cook. Motion passes unanimously.

Meehan reminded Mr. Gianola that the Board’s decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board’s decisions during this period would be at the sole financial risk of the petitioner.

D. V19-18 / ALDI, Inc. / 1351 Earl L. Core Road: Request by Rory Garr, Saxonburg Division, on behalf of ALDI, Inc., for variance relief from Article 1369 concerning signage; Sixth Ward Tax District, Tax Map 31, Parcels 101.2; B-2, Service Business District.

Whitmore presented the Staff Report.

Meehan recognized Stephanie Albright of APD Engineering, on behalf of Aldi, Inc. who provided a presentation to further explain the proposed signage.

Albright noted they would be willing to lower the sign if necessary.
Bension asked for the average height of the signs on the corridor. Whitmore stated they do not have calculations for the average height along the corridor but noted the last sign to be erected by *Defense in Depth* had a maximum height of approximately 28 feet. He noted the sign for *Long John Silver’s* is non-conforming.

An *Aldi* representative [was not recognized] expressed that the taller signage is preferable as it is standard to *Aldi* and would allow for customers to easily locate the business prior to stopping at the intersection.

Whitmore noted that a pole sign is not permitted and gave examples of other pole signage along the corridor. He noted an alternative to altering the height would be to scale back the size of the sign.

The *Aldi* representative stated they would like to keep the proposed size of the sign if the height is permitted but agreed to scale back the size if the Board wanted it to be lowered.

Whitmore stated that Staff reviewed the *Popeye’s* signage as a guide in developing the Staff Report and noted that the bottom of their signage is approximately 8 feet in height, which avoids any clearance issues.

Tomblin suggested a compromise and allow 24 feet in height to keep sequential uniformity with the signage along the corridor.

The *Aldi* representative noted the 30 feet proposed is *Aldi’s* standard height at other locations and provided further explanation of their signage standards.

There being no further questions or comments by the Board, Meehan asked if anyone would like to speak in favor of or in opposition to the variance petition. There being none, Meehan declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Meehan read aloud the Findings of Facts 1 through 4.

Cook referred to Finding of Fact 2 and expressed the proposed signage is not consistent as it is higher and larger in size.

Bension referred to another similar case where the petitioner was granted a variance but was compelled to forgo one of the façade sides. He argued the Board should remain consistent with all cases.

Cook referred to the verbiage in Finding of Fact 3 regarding the separate facades and questioned if the Facts should be approved all together.

After further discussion, Board members expressed the two façade signs are necessary to identify the entrance to the business at that location.

The *Aldi* representative expressed if the two façade signs were not permitted then *Aldi* may reconsider building at that location as it is important from a business standpoint.

Whitmore suggested Board members review the Findings of Facts individually and recommended altering Finding of Fact 2 to state the ground sign appears to be necessitated by the commercial use.
Cook made a motion to find in the affirmative for Finding of Fact 1 as presented; seconded by Tomblin. Motion carried unanimously.

NOTE: The following finding was included in the motion.
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 there appears to be a number of wall signs within the Earl Core Road commercial corridor that exceed maximum wall sign area and maximum ground sign area and height standards, which do not appear to have adversely affected the public realm or private property rights. The proposed signs appear to be within the predominant sign development pattern within the immediate area.

Whitmore reiterated suggested changes to the wording in Finding of Fact 2.

Meehan made a motion to find in the affirmative for Finding of Fact 2 as revised by the Board; seconded by Cook. Motion carried unanimously.

NOTE: The following findings were included in the motion.
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 increased wall sign area intensity appears to overcome messaging challenges arising from the principle building’s extended front setback from Earl Core Road arising from floodplain location constraints. The ground appears to be necessary for this commercial use at this location. The modified ground sign height variance appears necessary to ensure the sign is not obstructed by on-site parking stalls.

Whitmore suggested changes to the wording to remain consistent with Finding of Fact 2.

Meehan made a motion to find in the affirmative for Finding of Fact 3 as revised by the Board; seconded by Cook. Motion carried unanimously.

NOTE: The following findings were included in the motion.
Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because each of the proposed wall signs appears to be relatively close the maximum wall sign area. The petitioner’s corner entry design appears to necessitate two (2) wall signs on separate facades. Two (2) walls that total less than the maximum wall sign area standard would result in both wall signs not be legible by passersby. The ground appears to be necessitated by the business use at this location. The modified sign ground sign height variance appears necessary to ensure the sign is not obstructed by on-site parking stalls.

Whitmore suggested changes in wording to remain consistent.

Meehan made a motion to find in the affirmative for Finding of Fact 4 as revised by the Board; seconded by Benison. Motion carried unanimously.

NOTE: The following findings were included in the motion.
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 signs for Aldi’s appear to be necessary for the development pattern within the Earl Core Road commercial corridor.

Tomblin moved to grant the variance relief from Section 1369.07(F)(1) to develop a 76 square foot post and panel ground sign that shall not exceed 24-feet in total height. The motion was seconded by Benison; the motion carried unanimously.
Tomblin moved to grant the variance from Section 1369.07(I)(1) to develop two (2) total wall signs as proposed without conditions. The motion was seconded by Meehan; the motion carried 3-1 with Cook voting nay.

Meehan reminded Ms. Albright and Aldi that the Board’s decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board’s decisions during this period would be at the sole financial risk of the petitioner.

E. **V19-19 / McDonalds / 2932 University Avenue:** Request by Tracey Diehl, on behalf of McDonalds Corporation, for variance relief from Article 1369 concerning signage; Seventh Ward Tax District, Tax Map 11, Parcels 66, 69, and 70; B-1 Neighborhood Business District.

Whitmore presented the Staff Report.

Meehan recognized Tara Puntasecca, on behalf of McDonalds Corporation, who provided further explanation on the proposed signage and noted the total sign area will be reduced from what is currently in place.

Whitmore stated there was previous variance approval for this location in 2010 and this petition is only pertaining to the menu boards.

Whitmore noted this petition is comparable to a previously approved variance petition for Starbucks.

There being no further questions or comments by the Board, Meehan asked if anyone would like to speak in favor of or in opposition to the variance petition. There being none, Meehan declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Meehan expressed favor in the lighting and the reduced signage area.

Tomblin made a motion to find in the affirmative for all of the Finding of Facts for V19-19 as revised; seconded by Cook. Motion carried unanimously.

**NOTE:** The following findings were included in the motion.

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 variance for this site was previously approved. Additional menus boards that are not legible from adjoining properties or public rights-of-way should not have a negative impact on adjacent properties, the public realm, or residents.

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:

Contemporary practice for “Fast Food Restaurant” uses appears to utilize multiple menu boards to allow enhanced traffic flow while simultaneously encouraging additional on-site commerce. The additional menu boards appear to reflect present signage trends serving drive-thru customers.
Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The variance is necessary for the business to operate as a drive thru establishment in manner that appears common in the fast food service industry.

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

The menu boards that exist are under an existing variance. This variance would allow for the property to continue to exist as a drive thru establishment and it is necessary for the menu boards to be replaced.

Cook moved to approve Case No. V19-19 to develop four (4) total menu board type signs without conditions; seconded by Tomblin. Motion passes unanimously.

Meehan reminded Ms. Puntasecca that the Board’s decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board’s decisions during this period would be at the sole financial risk of the petitioner.

F. V19-20 / McDonalds / 1820 Sturgiss Avenue: Request by Joseph C. Sparone, on behalf of McDonalds Corporation, for variance relief from Article 1369 concerning signage; Sixth Ward Tax District, Tax Map 33, Parcel 53.1; B-2, Service Business District.

Whitmore presented the Staff Report.

Meehan recognized Joseph Sparone, on behalf of McDonalds, who provided further explanation on the proposed signage and noted they will be reducing the size of the existing menu board signage.

Benison inquired if tandem lanes are necessary from a corporate standpoint or if it is the physical characteristics of that location. Sparone stated that McDonald’s are remodeling all of their signage and their corporate office analyzes each store to determine if tandem lanes are necessary. He noted that it appears they are a good fit for this location and therefore necessary to accommodate the customer demand.

Whitmore reminded the Board that signage is the only matter to be considered and the tandem lanes are being reviewed by the City Engineer.

There being no further questions or comments by the Board, Meehan asked if anyone would like to speak in favor of or in opposition to the variance petition. There being none, Meehan declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Cook made a motion to find in the affirmative for all of the Finding of Facts for V19-20 as presented; seconded by Tomblin. Motion carried unanimously.

NOTE: The following findings were included in the motion.

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:
While the number of menu boards will increase to four (4) with the addition of a pre-browse board, the total overall aggregate area of the menu boards will be reduced when compared to that which exists. The new menu boards will provide a state-of-the-art drive-thru facility that’s not only in line with McDonald’s latest standards but also the current quick service restaurant industry. The modernization of the drive-thru will serve to increase its efficiency resulting in reduced wait times and minimizing the stacking of vehicles in the drive-thru lane. The propose menu boards will be located in a similar location as the existing boards and are designed to be viewed and utilized by customers already on-site.

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 property is bound by two (2) public roadways and other commercial development. While the variances are specific to this site, the amount and type of signage proposed is not out of character from that on similar uses or the surrounding area. Market competition and customer expectations require the aesthetics and functionality of existing quick service restaurants to be improved. The proposed menu-board signage will bring the sit up to date with current McDonald’s and industry standards for a more modern, efficient drive-thru.

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

Allowing an additional menu-board onsite will increase the efficiency of the existing drive-thru. The use of multiple menu boards is standard on new McDonald’s and common place not only on other quick service restaurant establishments but similar commercial uses.

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

Per review of the purpose and findings of the sign code at Article 1369, the intent of the code is to promote communication in the City in an aesthetically pleasing manner to enhance the look of the city while avoiding adverse effects of signs on nearby public and private property. The proposed signage variances will allow the existing restaurant to better match the company’s new image, match the design of their new buildings, and keep pace with industry standards. Additionally, the proposed signage is not out of the ordinary for similar commercial uses.

Cook moved to approve Case No. V19-20 to develop four total menu board signs as proposed without conditions; seconded by Tomblin. Motion passes unanimously.

Meehan reminded Mr. Sparone that the Board’s decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board’s decisions during this period would be at the sole financial risk of the petitioner.

G. **V19-21 / Wesbanco Bank / 1350 Earl L. Core Road**: Request by Crystal Miller of City Neon, Inc., on behalf of Wesbanco Bank of Fairmont, Inc., for variance relief from Article 1369 concerning signage; Sixth Ward Tax District, Tax Map 31, Parcel 101.3; B-2, Service Business District.

Whitmore presented the Staff Report.

Meehan recognized Crystal Miller of City Neon, Inc., on behalf of Wesbanco Bank of Fairmont, Inc., who provided further explanation on the proposed signage and noted the front sign is
compromised by a lot of dead space. Miller stated the bank would like to utilize the rear entrance of the building from Hartman Run Road and therefore additional signage is necessary.

Tomblin asked if traffic patterns would be changed.

A representative from Wesbanco [did not state name] of 1350 Earl Core Road stated that traffic patterns would remain the same and additional signage is necessary to alert customers they can enter from Hartman Run Road.

Whitmore stated the intersection is a state route and the WVDOH will be doing the installation of the traffic lights.

There being no further questions or comments by the Board, Meehan asked if anyone would like to speak in favor of or in opposition to the variance petition. There being none, Meehan declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Cook made a motion to find in the affirmative for all of the Finding of Facts for V19-21 as presented; seconded by Tomblin. Motion carried unanimously.

NOTE: The following findings were included in the motion.

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:

Many businesses along this particular road have sought and received relief for signage increase with no ill effects to the public or other business/property owners. The client wishes to keep their branding and signage similar to other Main Branch divisions throughout their entire corporate structure.

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:

This branch is the Main Branch for the Morgantown area and houses the various services the Bank offers unlike the many of their “Drive-Thru” style branches throughout the Morgantown area. As such, the Client would like the signage to show the significance of this branch to Morgantown. The client would like to utilize the rear wall to advertise to the heavily traveled Hartman Run Road traffic because of the entrance to the main parking lot from Hartman Run Road. Traffic is coming from a wooded residential area into the commercial corridor of Sabraton which is very busy and often congested with traffic.

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

The client will be able to advertise to both heavily traveled roads that it services while showing the significance of this particular branch.

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 signage is in production to the size of the building and on a corner lot servicing two streets. The client will be able to advertise efficiently to both streets.

Cook moved to approve Case No. V19-21 to develop two wall signs as proposed without conditions; seconded by Tomblin. Motion carried unanimously.
Meehan reminded Ms. Miller that the Board’s decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board’s decisions during this period would be at the sole financial risk of the petitioner.

**H. V19-22 / Northeast Natural Energy / 48 Donley Street:** Request by Crystal Miller of City Neon, Inc., on behalf of Northeast Natural Energy, for variance relief from Article 1369 concerning signage; First Ward Tax District, Tax Map 28, Parcel 17; B-4, General Business District.

Whitmore presented the Staff Report.

Meehan recognized Crystal Miller of City Neon, Inc., on behalf of Northeast Natural Energy, who provided further explanation on the proposed signage and noted the building setback significantly from the road and additional signage is needed to be visible from the road.

Tomblin inquired about the type of illumination that would be used.

Whitmore noted the business is in the B-4 zone and explained the lighting standards within that district.

There being no further questions or comments by the Board, Meehan asked if anyone would like to speak in favor of or in opposition to the variance petition. There being none, Meehan declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Benison asked if the proposed materials are comparable to the “Spillman” sign. Whitmore confirmed.

Benison made a motion to find in the affirmative for all of the Finding of Facts for V19-22 as presented; seconded by Cook. Motion carried unanimously.

**NOTE:** The following findings were included in the motion.

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 signage will be attached in the wall space between the 4th and 5th floors of the building’s Don Knotts Blvd. face. (The previous sign in that placement was Dixon Hughes). It is not directly facing any residence or business. All previous signs on this particular building have had internal illumination with similar materials (all achieved through previous variances) with no ill effects to public health, safety or welfare, or the rights of adjacent property owners or residents.

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 eight story building sits off of the road approximately 300’ from Don Knotts Boulevard on a slight downward slope. The scale of the building vs the setback from the main road would allow for larger signage for maximum visibility of the client. Allowing proposed materials would be more cost effective for the client as less maintenance will need to be done to the signage. Rentals of cranes are expensive in order to maintain the neon gas/transformers in the signage.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:
The LED’s that will be used are more energy efficient, more durable, and longer lasting and need less maintenance than the Morgantown’s Code preference of Neon.

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

The client will have a visible sign from Don Knotts Boulevard while remaining in proportion to the building is attached. Signage is designed to compliment the building style and represent the client in a cohesive manner, while utilizing cost effective materials standard of the current sign industry.

Cook moved to approve Case No. V19-22 to develop a wall sign as proposed without conditions; seconded by Tomblin. Motion passes unanimously.

Meehan reminded Ms. Miller that the Board’s decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board’s decisions during this period would be at the sole financial risk of the petitioner.

V. ANNOUNCEMENTS:

Whitmore informed the Board of upcoming petitions for July 2019 and asked the Board to inform Staff of any planned vacations.

VI. ADJOURNMENT: 8:33 p.m.

MINUTES APPROVED:

BOARD SECRETARY: _____________________________

Christopher M. Fletcher, AICP
COMBINED STAFF REPORT

CASE NO: CU19-03 and V19-26 / HTM Properties / 499-501 Locust Avenue

REQUEST and LOCATION:
Request by Mr. Doug Shephard, on behalf of HTM Properties, for conditional use approval of a “Multi-Family Dwelling” use at 499-501 Locust Avenue.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:
Fifth Ward Tax District, Tax Map 26, Parcel 281; R-2, Single- and Two-Family Residential District

SURROUNDING ZONING:
North: B-2, Service Business District
East, South, and West: R-2, Single- and Two-Family Residential District

BACKGROUND and ANALYSIS:
CU19-03 – Multi-Family Dwelling

HTM Properties seeks to convert the number of dwelling units located within the principle building from two (2) to three (3), which changes the land use classification for the principle building from a “Two-Family Dwelling” use to a “Multi-Family Dwelling,” use. “Multi-Family Dwelling” uses are permitted within the R-2 District with conditional use approval by the Board. Addendum A of this report illustrates the location of the subject establishment.

Currently, 499-501 Locust Avenue is configured as a duplex [see Section 1329.02 definition for “Two-Family Dwelling” below] containing one (1) one-bedroom unit and one (1) three-bedroom unit.

The petitioner seeks to reconfigure the duplex into a triplex. A “triplex” is considered a “Multi-Family Dwelling” use as defined in Section 1329.02 below:

**Definition:**
- **DWELLING, TWO-FAMILY:** A freestanding building containing two (2) dwelling units, each of which has direct access to the outside. (Ord. 06-01, Passed 1-3-06.)

- **TRIPLEX:** A detached residential structure containing three (3) and only three (3) dwelling units, designed for occupancy by not more than three (3) families living independently of each other. Such units are also classified as multi-family.
A “Multi-Family Dwelling” use is defined in Section 1329.02 as:

“Multi-Family Dwelling” uses are permitted in the R-2 District with conditional-use approval as provided in Table 1331.05.01 Permitted Land Uses shown below:

<table>
<thead>
<tr>
<th>Uses</th>
<th>R-1</th>
<th>R-1A</th>
<th>R-2</th>
<th>R-3</th>
<th>PRO</th>
<th>B-1</th>
<th>B-2</th>
<th>B-4</th>
<th>CI</th>
<th>B-5</th>
<th>I-1</th>
<th>Supplemental Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwelling, Multi-family</td>
<td></td>
<td>C</td>
<td></td>
<td></td>
<td>P</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>35</td>
</tr>
</tbody>
</table>

Parking

Per Table 1365.04.01 Minimum Off-Street Parking Requirements, the current “Two-Family Dwelling” use and the proposed “Multi-Family Dwelling” use, proposed to contain three (3) one-bedroom units, share the same minimum parking requirement as shown below:

<table>
<thead>
<tr>
<th>Use</th>
<th>Minimum Off-Street Parking Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwelling, Two-family</td>
<td>1.5 spaces per unit</td>
</tr>
<tr>
<td>Dwelling, Multi-family</td>
<td>1 bedroom dwelling unit - 1 space per unit</td>
</tr>
<tr>
<td></td>
<td>2 or more bedroom dwelling unit - 0.75 spaces per occupant as determined by the West Virginia State Building Code and adopted and implemented by the City.</td>
</tr>
</tbody>
</table>

The parcel is occupied by roughly 83% of building and sidewalk and there does not appear to be any feasible on-site parking development option availability. Parking for the existing “Two-Family Dwelling” use utilizes on-street parking.

Section 1365.03(D)(2) provides that for the change of use, off-street parking requirements are the number of additional off-street parking spaces required for the new use, minus the number of off-street parking spaces that should have been established to meet the minimum off-street parking requirement. As both uses have the same minimum off-street parking requirement, the applicant is therefore not required to provide additional off-street parking requirements under the current site conditions for the proposed change in land use classification. However, the “Multi-Family Dwelling” use may not expand beyond that proposed (i.e., additional number of dwelling units, additional number of bedrooms, etc.) unless additional parking spaces are provided in conformance with the related zoning regulations.

V19-26 – Direct Access to Dwelling Unit from Principal Façade

The following Supplemental Regulation 1331.06(35)(a) is provided for “Multi-Family Dwelling” uses.
The existing principal façade for the building appears to provide individual dwelling unit access, as opposed to one (1) common entrance as defined in Section 1329.02 below:

The petitioner provided floor plans for two of the three levels. Levels 1 and 2 are currently configured as one three-bedroom dwelling unit. Proposed improvements to Levels 1 and 2 illustrate a one-bedroom dwelling unit for each of the two levels. Level 3 is currently a one-bedroom dwelling unit and, according to the petitioner, will remain.

The following images illustrate proposed entrance conditions along with the following explanation:

- Level 1 (below street grade) will be accessed through Doors 3 and 4.
- Level 2 (at street grade) will be access through Door 1.
- Level 3 (above street grade) will be accessed through Door 2.
The petitioner has advised Staff that Doors 1 and 2 must remain because the existing floor plans, including stairs to Level 3 through Door 2, would not permit reconfiguration to eliminate one direct entrance door and have the one remaining door serve as a common entrance to the dwelling units on Levels 2 and 3. Because direct access to the individual dwelling units located on Levels 2 and 3 are proposed through the principal façade, variance relief is required.

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

STAFF RECOMMENDATION:

It is the duty of the Board of Zoning Appeals to determine whether the proposed requests meet the standard criteria for a conditional use and variance, respectively, by reaching a positive determination for each of the “Findings of Fact” submitted by the petitioner. If the Board disagrees with the petitioner’s “Findings of Fact” and determines the proposed request(s) does not meet the standard criteria for a conditional use and/or variance, respectively, then the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject conditional use petition. [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Again, each conditional use and variance petition must be considered and acted upon by the Board separately. Addendum B of this report provides revisions to the petitioner’s Findings of Fact responses (deleted matter struck through; new matter underlined). Staff recommended revisions should not be considered or construed as supporting or opposing the merits of the petitioner’s responses or the subject petitions.

Staff recommends the following:

CU19-03 – Multi-Family Dwelling. Staff recommends approval of the conditional use petition under Case No. CU19-03 to permit the proposed “Multi-Family Dwelling” use in the R-2 District as requested with the following conditions:

1. That any exterior improvements to the structure shall meet R-2 District Performance Standards for multi-family redevelopment projects as outlined in Section 1337.07(C) of the Planning and Zoning Code.

2. That conditional use approval granted herein is specific to the proposed “Multi-Family Dwelling” use configuration of three (3) one-bedroom units. No additional number of bedrooms or number of dwelling units may be developed without prior Board of Zoning Appeals approval.

V19-26 – Direct Access to Dwelling Unit from Principal Façade. Staff provides no recommendation regarding the requested variance relief.

Attachments: Application and exhibits
The following revisions are recommended to the petitioner’s findings of fact responses (deleted matter struck-through; new matter underlined). Staff recommended revisions should not be considered or construed as supporting or opposing the merits of the petitioner’s responses or the subject variance petition.

CU19-03 – Multi-Family Dwelling

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

We are eliminating one resident. The change of use from “Two-Family Dwelling” that includes one (1) one-bedroom and one (1) three-bedroom unit to “Multi-Family Dwelling” unit that includes three (3) one-bedroom unit is a reduction in occupancy. Additionally, the minimum parking requirement does not change with the land use reclassification as proposed.

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

Each unit will have its own egress and building will now be inspected by under both fire and city building codes departments.

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

There will be no changes to the exterior of the existing structure thereby not disrupting existing light distribution and airflow conditions within the immediate area.

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

There will be no changes to the exterior of the existing structure.

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

No changes to the existing structure. The change in land use classification will result in a lower residential occupancy for the principal building as proposed.

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:

We are decreasing the population at site. The residential occupancy of the principle building will be decreased by the land use reclassification as proposed.

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

No change only improved. No Change in room layout. The area is an existing higher density rental neighborhood. The change of use will provide for increased fire and building code compliance requirements, which should serve to elevate the safety of this structure.

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

It addresses an unmet need in rental community ie: 1 bedroom units. The structure is currently a permitted by-right two-family dwelling with occupancy designed for four individuals. The proposed reconfiguration will result in fewer residents and provide higher rates of occupancy, while also increasing life-safety standards for the structure.
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:

Utilizing existing entrances for each new unit. As proposed there will be no façade changes. The front façade of the structure will not change as a result of this development activity. Instead, the change of use from a two-family dwelling to a multi-family dwelling will lower the current occupancy. The existing separate direct access entrances through the front façade does not appear to have jeopardized persons or property. All things being equal, the impact of not having a common entrance will not be noticed by the general public or surrounding property owners.

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 building is solid block construction. Doing this aggressive of a change in over design of building could The creation of a common entrance will necessitate improvements that could result in structural degradation. Additionally, there isn’t does not appear to be requisite physical space room to move the staircase in 3rd floor unit to accommodate the common entrance.

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

It will allow us to reconfiguration and use of the existing building existing. This will keep conformity in neighborhood and not compromise the structure. The common entrance requirement does not appear to account for existing building design and related physical constraints of existing floor plans and multiple level access.

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

The use requested is the spirit of the neighborhood and doesn’t place undo burden on construction. The use of two-separate entrances in the principal facade will allow for three individual one-bedroom units. The design of the existing entrances does not create visual blight, and is found in other older structures in the vicinity.
## I. APPLICANT/AGENT

<table>
<thead>
<tr>
<th>Name:</th>
<th>ATM Properties</th>
<th>Phone: 304-685-3243</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mailing Address:</td>
<td>PO Box 4147</td>
<td>Mobile:</td>
</tr>
<tr>
<td>Street Address:</td>
<td>Morgantown, WV 26505</td>
<td>Email: <a href="mailto:DSHEP1000@hotmail.com">DSHEP1000@hotmail.com</a></td>
</tr>
</tbody>
</table>

## II. PROPERTY

<table>
<thead>
<tr>
<th>Owner:</th>
<th>Same</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mailing Address:</td>
<td>Relationship not provided</td>
<td>Mobile:</td>
</tr>
</tbody>
</table>

## III. CONDITIONAL USE DESCRIPTION

<table>
<thead>
<tr>
<th>Street Address (if assigned):</th>
<th>499 Locust Street</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zoning:</td>
<td>R-2</td>
</tr>
<tr>
<td>Tax Map #:</td>
<td>26</td>
</tr>
<tr>
<td>Parcel #:</td>
<td>251</td>
</tr>
<tr>
<td>Parcel Area:</td>
<td>sq. ft.</td>
</tr>
</tbody>
</table>

**Existing Use of the Site, including total building area per building on site:**

- as a 3BR and a 1BR apt., total 4 occupants

**Proposed Use of the Site, including total building area per building on site:**

- convert to 3 1BR units
### IV. CONDITIONAL USE DESCRIPTION (cont.)

<table>
<thead>
<tr>
<th>On-Site Parking Spaces</th>
<th>Existing:</th>
<th>Proposed:</th>
</tr>
</thead>
<tbody>
<tr>
<td>IF RESIDENTIAL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total No. of Dwelling Units:</td>
<td>3</td>
<td>600 sq. ft.</td>
</tr>
<tr>
<td>Bedroom Composition:</td>
<td>No. of 1BD:</td>
<td>No. of 2BD:</td>
</tr>
<tr>
<td>Location within the building:</td>
<td></td>
<td>GFA to be occupied:</td>
</tr>
</tbody>
</table>

- This application may be supplemented by submitted additional information deemed helpful by the applicant to explain the nature of the proposed conditional use.
- Likewise, the Planning Division, if it determines necessary, may require additional information.

### V. PHYSICAL CHANGE INFORMATION

For conditional use applications providing for physical change including, but not limited to, construction, reconstruction or alteration, and/or site modification or improvements, the following information must be attached.

1. Vicinity map showing all adjacent properties and nearby streets within a 300-foot radius around the project site, drawn at an appropriate scale.

2. **Site Plan.** A site plan (3 copies) drawn to scale at a minimum 1" = 50' and a maximum of 1" = 10' and include the following:
   (a) The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a licensed land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law.
   (b) The exact sizes and locations on the lot of existing structures, if any.
   (c) The location(s), square footage(s), and dimensions of all proposed principal, accessory and/or temporary structure(s), and/or alteration(s).
   (d) The location of the lot with respect to adjacent rights-of-way.
   (e) **Parking Plan.** The location and dimensions of off-street parking and means of ingress and egress for such space.
   (f) Required and proposed setbacks.
APPLICATION FOR CONDITIONAL USE

(g) Buffer yard location and landscaping and screening plan, if applicable. Landscaping Plan should be a separate drawing based on the site plan.

(h) Location of garbage collection area and screening.

(i) Location of existing and/or proposed signage, if applicable.

(j) Roadway typical detail for internal roadways, if applicable.

(3) Building Elevations. All preliminary building elevations shall be drawn at a scale of 1/8" = 1'-0" or larger and identify:

(a) Height of all principal buildings and/or accessory structures. If applicable, measured in feet as provided in the definition of "BUILDING HEIGHT IN FEET" provided in Section 1329.02.

(b) All exterior materials and colors to be used including roofing, cladding, and windows.

(c) Show any improvements made to the property that have been approved but not yet constructed and label the area as such.

(d) Photographic or similar representation showing the building height in relationship to surrounding buildings.

(4) Floor Plans. All preliminary floor plans shall be drawn to a scale of 1/8" = 1'-0" or larger and identify:

(a) Both existing and proposed floor layouts with square footage indicated.

(b) Label the use of all rooms on the plans, with the dimensions of the room(s) and the overall dimensions of the building.

(c) Show any improvements made to the property that have been approved but not yet constructed and label the area as such.

(d) Photographic or similar representation showing the practice of the use, to include but not be limited to, seating arrangements, appliance/equipment layout, time-series analysis, etc.

(5) Traffic Impact Study. A traffic impact study shall be submitted, if required by the City Engineer. Approved WV Division of Highways Permit and/or Agreement, if applicable, is not required for Board of Zoning Appeals conditional use review, but shall be required prior to issuance of a building permit. In the event a traffic analysis or traffic impact study is required and the review of same involves WV Division of Highways, written/electronic correspondence from WV Division of Highways documenting its approval of the traffic analysis or traffic impact study must be presented to the Board of Zoning Appeals by the applicant prior to conditional use permit approval.
VI. FINDINGS OF FACT

The Board of Zoning Appeals may grant the request only if each of the Conditional Use Findings of Fact criteria is determined to be in the positive. Applicants must give their own responses to the criteria statements provided below.

This Conditional Use is within the fitting character of the surrounding area and is consistent with the spirit, purpose, and intent of the Zoning Ordinance, because:

1. Congestion in the streets will not be increased, in that:

   we are eliminating 1 resident

2. Safety from fire, panic, and other danger will not be jeopardized, in that:

   Each unit will have own egress and building will now be inspected by fire + city code dept.

3. Provision of adequate light and air will not be disturbed, in that:

   no changes to existing structure

4. Overcrowding of land will not result, in that:

   no changes to existing structure

5. Undue congestion of population will not be created, in that:
VI. FINDINGS OF FACT (cont.)

6. Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

   We are decreasing population at the site.

7. Value of buildings will be conserved, in that:

   No change in current improvement.
   No change in room layout.

8. The most appropriate use of land is encouraged, in that:

   It addresses a current need in the rental community i.e. 1 bedroom units.

VII. CONDITIONAL USE APPROVAL OBJECTIVES

Section 1379.03 of the Planning and Zoning Code provides that the Board of Zoning Appeals should consider the following when evaluating each conditional use application. Applicants are encouraged to attach a supplemental narrative addressing the following evaluation objectives and/or be prepared to address these objectives during the Board of Zoning Appeals’ hearing.

1. The proposed conditional use is compatible with the goals of the adopted comprehensive plan.

2. The proposed conditional use is compatible with the appropriate and orderly development of the district, taking into consideration the location and size of the use, the nature and intensity of the operations involved in or conducted in connection with such use, the size of the site in relation to the use, the assembly of persons in connection with the use, and the location of the site with respect to streets giving access to the site.

3. The proposed site development, if applicable, is such that the proposed conditional use will not hinder or discourage the appropriate development and use of adjacent land and buildings, taking into consideration the location, nature and height of buildings, the location, nature and height of walls and fences, and the nature and extent of landscaping on the site.
APPLICATION FOR CONDITIONAL USE

4. Neighborhood character and surrounding property values are reasonably safeguarded.

5. Operations in connection with the proposed conditional use are not offensive, dangerous, destructive of property values and basic environmental characteristics, or detrimental to the public interest of the community. The proposed conditional use is not more objectionable to nearby properties by reason of fumes, noise, vibration, flashing of or glare from lights, and similar nuisance conditions than the operations of any permitted use not requiring a conditional use permit in the district.

6. The character and appearance of the proposed conditional use, buildings, structures, and/or outdoor signs should be in general harmony or better, with the character and appearance of the surrounding neighborhood.

VIII. 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 and I agree to conform to all applicable laws of this jurisdiction. 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.

[Signature]

Type/Print Name of Applicant/Agent

Signature of Applicant/Agent

Date
APPLICATION FOR VARIANCE

(PLEASE TYPE OR PRINT IN BLACK INK)

I. APPLICANT/AGENT

Name: HTM Properties LLC
Phone: 304-685-3243
Email: 755HEP1000@email.com

II. PROPERTY

Street Address:
Owner: HTM Prop LLC
Zoning: R-2
Tax Map No:
Parcel No:
Mailing Address: 26505
City: Morgantown
State: WV
Zip: Phone: 304-685-3243

III. NARRATIVE

Describe the specific use and the standard for which the variance is sought.

Seeking Sec 13-31.06 (B) Common entrance requirement

IV. 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 Development Services 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.

Type/Print Name of Applicant/Agent: Doug Shepherd
Signature of Applicant/Agent:
Date:
APPLICATION FOR VARIANCE

You or a representative **MUST** be in attendance at the scheduled hearing to present this request and answer questions. Failure to appear at the hearing will result in your variance petition being tabled and potential delay of your project.

V. SITE PLAN

This application must be accompanied by a site plan illustrating the following information, unless otherwise stipulated by the Planning Division or Board of Zoning Appeals.

- Vicinity map showing all adjacent properties and nearby streets within a 300-foot radius around the project site, drawn or illustrated at an appropriate scale.

- A site plan (3 copies) drawn to scale at a minimum 1" = 50' and a maximum of 1" = 10' and include the following:
  - The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a licensed land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law.
  - The exact sizes and locations on the lot of existing structures, if any.
  - The location(s), square footage(s), and dimensions of all proposed principal, accessory and/or temporary structure(s), and/or alteration(s).
  - The location of the lot with respect to adjacent rights-of-way.
  - Parking Plan. The location and dimensions of off-street parking and means of ingress and egress for such space.
  - Required and proposed setbacks.
  - Buffer yard location and landscaping and screening plan, if applicable. Landscaping Plan should be a separate drawing based on the site plan.
  - Location of garbage collection area and screening.
  - Location of existing and/or proposed signage, if applicable.
  - Roadway typical detail for internal roadways, if applicable.

- Additional information that may be required by the Planning Division or the Board of Zoning Appeals includes building elevations/renderings, floor plans, traffic impact study, existing and proposed grading plans, erosion and sediment control plan, stormwater management plan, etc.

VI. FINDINGS OF FACT

The Board of Zoning Appeals may grant a variance request only if each of the following “Findings of Fact” criteria are determined to be in the positive. Applicants must give their own responses to the following finding of fact statements.
### VI. FINDINGS OF FACT

<table>
<thead>
<tr>
<th>COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:</td>
</tr>
</tbody>
</table>

- Utilizing existing entrances for each new unit. As proposed there will be no facade changes. |

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 building is solid block construction. Doing this aggressive of a change in over design of building could result in structural degradation. Additionally there isn't room to move this case in 3rd floor unit.
## VI. FINDINGS OF FACT

### COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.

3. The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

   - It will allow us to use the building existing.
   - This will keep conformity in neighborhood and not compromise the structure.

4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

   - The use requested is in the spirit of the neighborhood and doesn't place undue burden on construction.
STAFF REPORT

CASE NO: V19-23 / Istanbul Delicacy / 2995 University Avenue

REQUEST and LOCATION: Request by Maria Pachina on behalf of Istanbul Delicacy, for variance relief from Article 1369 concerning signage at 2995 University Avenue.

TAX MAP NUMBER(s) and ZONING DESCRIPTION: Seventh Ward Tax District, Tax Map 11, Parcel 7; B-2, Service Business District

SURROUNDING ZONING: North: B-5, Shopping Center District
East, South, and West: B-2, Service Business District

BACKGROUND and ANALYSIS:
The petitioner seeks to re-install wall signage at a commercial tenant space at 2995 University Avenue requiring variance from Article 1369 of the Planning and Zoning Code. Addendum A of this report illustrates the location of the subject site.

Section 1369.07(I)(1) provides a maximum wall sign area standard of six tenths (0.6) square feet for every one-foot of tenant building frontage in the B-4 District. The linear width of the tenant’s frontage is 50 feet +/-, which establishes a maximum wall sign area standard of 30 square feet. The petitioner proposes a total of 84 square feet of wall signage. In particular, the signage being requested is the re-use of previously abandoned wall sign cabinets that were on-site for the previous tenant. As such, variance relief of 54 square feet is required for the wall sign as proposed and further illustrated in the table below.

<table>
<thead>
<tr>
<th>Wall Signs</th>
<th>Sign Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Istanbul Delicacy</td>
<td>42 sf (x2 = 84 sf)</td>
</tr>
<tr>
<td>Total Permitted Sign Standards</td>
<td>30 sf</td>
</tr>
<tr>
<td>Total Requested Variance</td>
<td>54 sf</td>
</tr>
</tbody>
</table>
STAFF RECOMMENDATION:

It is the duty of the Board of Zoning Appeals to 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. If the Board disagrees with the petitioner’s “Findings of Fact” and determines the proposed request does not meet the standard criteria for a variance, then the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject variance petition. [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Addendum B of this report provides revisions to the petitioner’s Findings of Fact responses (deleted matter struck through; new matter underlined). Staff recommended revisions should not be considered or construed as supporting or opposing the merits of the petitioner’s responses or the subject petition.

As is customary with sign variance petitions, no recommendation is submitted by Staff concerning whether variance relief should be granted as requested.

Attachments: Application and accompanying materials
The following revisions are recommended to the petitioner’s findings of fact responses (deleted matter struck-through; new matter underlined). Staff recommended revisions should not be considered or construed as supporting or opposing the merits of the petitioner’s responses or the subject variance petition.

**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:

It’s not in right of way. Not increasing in size. We only changing the face of the sign. The area of the signage is in keeping with previously installed wall sign cabinets, which do not appear to have jeopardized persons or property nor created negative impacts on the surrounding area.

**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:

We replacing existing sign to advertise for our business. The “Restaurant” use is located along a five-lane, 35 mph posted roadway with limited visibility due to the University Avenue intersection alignment. The previous signage was grandfathered and lost its nonconforming status due to abandonment provisions in the Nonconforming Provisions of the Planning and Zoning Code. The applicant seeks what is nearly similar to a change of copy face for the wall sign cabinets that would be permitted if the subject sign cabinets had not been abandoned.

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

Sign will direct customers to our restaurant. Nearly all surrounding businesses have sought and been provided sign area variance relief due to the unique conditions occurring as a result of the Patteson Drive roadway design in relationship to service business uses. Without increased signage area, the viability of the subject tenant space would appear to be jeopardized.

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

The sign will not increase in size from what is currently there. We replace the face to advertise local restaurant. The petitioner’s tenant space is located within a mixed use building located in vehicular dominated business corridor. The comparative size of the tenant space’s storefront results in a maximum wall sign area standard that does not appear to adequately communicate to vehicular passersby. The requested variance relief seeks to reuse previously functional sign cabinets that appear to integrate into the surrounding B-2 District built environment.
**APPLICATION FOR VARIANCE**

(PLEASE TYPE OR PRINT IN BLACK INK)

<table>
<thead>
<tr>
<th>I. APPLICANT/AGENT</th>
<th>Name:</th>
<th>Abdullah Aytaç &amp; Maria Pachna</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mailing Address:</td>
<td></td>
<td>2945 University Ave Morgan</td>
</tr>
<tr>
<td>City:</td>
<td></td>
<td>WV</td>
</tr>
<tr>
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<td></td>
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<tr>
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<tr>
<td>Email:</td>
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<tr>
<th>II. PROPERTY</th>
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<tbody>
<tr>
<td>Owner:</td>
<td>Maria Pachna</td>
<td></td>
</tr>
<tr>
<td>Mailing Address:</td>
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<td></td>
</tr>
<tr>
<td>City:</td>
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<table>
<thead>
<tr>
<th>III. NARRATIVE</th>
<th>Describe the specific use and the standard for which the variance is sought.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Changing existing signs</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>IV. ATTEST</th>
<th>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 Development Services 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.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Maria Pachna</td>
</tr>
<tr>
<td>Type/Print Name of Applicant/Agent</td>
<td>Signature of Applicant/Agent</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
APPLICATION FOR VARIANCE

You or a representative MUST be in attendance at the scheduled hearing to present this request and answer questions. Failure to appear at the hearing will result in your variance petition being tabled and potential delay of your project.

V. SITE PLAN

This application must be accompanied by a site plan illustrating the following information, unless otherwise stipulated by the Planning Division or Board of Zoning Appeals.

- Vicinity map showing all adjacent properties and nearby streets within a 300-foot radius around the project site, drawn or illustrated at an appropriate scale.

- A site plan (3 copies) drawn to scale at a minimum 1" = 50' and a maximum of 1" = 10' and include the following:
  - The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a licensed land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law.
  - The exact sizes and locations on the lot of existing structures, if any.
  - The location(s), square footage(s), and dimensions of all proposed principal, accessory and/or temporary structure(s), and/or alteration(s).
  - The location of the lot with respect to adjacent rights-of-way.
  - Parking Plan. The location and dimensions of off-street parking and means of ingress and egress for such space.
  - Required and proposed setbacks.
  - Buffer yard location and landscaping and screening plan, if applicable. Landscaping Plan should be a separate drawing based on the site plan.
  - Location of garbage collection area and screening.
  - Location of existing and/or proposed signage, if applicable.
  - Roadway typical detail for internal roadways, if applicable.

- Additional information that may be required by the Planning Division or the Board of Zoning Appeals includes building elevations/renderings, floor plans, traffic impact study, existing and proposed grading plans, erosion and sediment control plan, stormwater management plan, etc.

VI. FINDINGS OF FACT

The Board of Zoning Appeals may grant a variance request only if each of the following "Findings of Fact" criteria are determined to be in the positive. Applicants must give their own responses to the following finding of fact statements.
### VI. FINDINGS OF FACT

<table>
<thead>
<tr>
<th>VI. FINDINGS OF FACT</th>
<th>COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:</td>
<td></td>
</tr>
<tr>
<td>It's not in right of way.</td>
<td></td>
</tr>
<tr>
<td>Not increasing in size.</td>
<td></td>
</tr>
<tr>
<td>We only changing the face of the sign</td>
<td></td>
</tr>
<tr>
<td>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:</td>
<td></td>
</tr>
<tr>
<td>We replacing existing sign to advertise for our business.</td>
<td></td>
</tr>
</tbody>
</table>
### VI. FINDINGS OF FACT

**COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.**

3. The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

   Sign will direct customers to our restaurant.

4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

   The sign will not increase in size from what is currently there. We replace the face to advertise local restaurant.
Intentional
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Page
## STAFF REPORT

**CASE NO:** V19-24 / Alpha Rho Corporation / 650 N. Spruce Street

**REQUEST and LOCATION:**
Requests by Brian Dawson on behalf of Alpha Rho Corporation of West Virginia, for variance relief from Article 1339.05 concerning setback encroachments at 650 N. Spruce Street.

**TAX MAP NUMBER(s) and ZONING DESCRIPTION:**
Fifth Ward Tax District, Tax Map 26, Parcel 217; R-3, Multi-Family Residential District

**SURROUNDING ZONING:**
R-3, Multi-Family Residential District

**BACKGROUND and ANALYSIS:**
The petitioner seeks to install a deck feature at a “Fraternity or Sorority House” use at 650 North Spruce Street requiring variance from Article 1339.05(A) of the Planning and Zoning Code. Addendum A of this report illustrates the location of the subject site.

Section 1339.05(A)(2) provides a minimum three (3) foot setback standard for deck features. The applicant seeks three (3) foot setback encroachments to the front and side yards to install a deck at. The deck will project nine (9) feet from the North Spruce Street principal front façade and project 10.9 feet +/- from the Wiles Street principal side façade. Available tax map data provides the following anticipated setback encroachments:

<table>
<thead>
<tr>
<th>North Spruce Street</th>
<th>Setback</th>
<th>Encroachment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Less than one, one-hundredth of an inch</td>
<td>2.93 feet</td>
</tr>
</tbody>
</table>

---
STAFF RECOMMENDATION:

It is the duty of the Board of Zoning Appeals to 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. If the Board disagrees with the petitioner’s “Findings of Fact” and determines the proposed request does not meet the standard criteria for a variance, then the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject variance petition. [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Addendum B of this report restates the petitioner’s Findings of Fact responses. Staff provides no recommendation regarding the requested variance relief. Should the Board of Zoning Appeals find cause to grant variance relief from the Section 1339.05(A)(2) setback encroachment standards, staff recommends the following conditions be included with the approval:

1. That the applicant shall not permit the deck’s encroachment into either the North Spruce Street or Wiles Street public rights-of-way.

2. That within 60 days of completion of the deck improvements, Alpha Rho Corporation of West Virginia shall submit to the Development Services Department an improvement location survey prepared by a surveyor licensed in the State of West Virginia. The improvement location survey must depict all parcel boundaries of the subject site, all physical improvements of the subject site, and labeled setbacks of all improvements from adjacent parcel boundaries of the subject site. Failure to fulfill this obligation will automatically revoke variance approval granted under Case No. V19-24; whereupon, enforcement action will be initiated, which may include an order to remove the deck for which variance relief was granted under Case No. V19-24.

Attachments: Application and accompanying materials
The following restates the petitioner’s findings of fact responses.

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 variance will not adversely affect the following because the property is located on a corner lot with no neighbors where the deck is proposed. The safety and welfare of the public will not be affected because this deck will provide its residents a location to socialize and relieve use of a common sidewalk currently used for that reason.

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:

This variance arises from special conditions because this property was issued a permit in the 2000’s for this structure already. This deck was torn down due to disrepair and its occupants would greatly benefit if a new deck was allowed to go back in its place. This property also has double sidewalks in front of its house as shown on the site plan. This will allow the public to have ample room to pass by without being affected by this structure.

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

This variance will eliminate an unnecessary hardship because and provide reasonable use of land because this structure would sit on an area which is unusable as it currently sits. No green space would be disturbed and this deck would make sense for its residents therefore providing a reasonable use of the land.

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

This variance will allow the intent of zoning to be conformed to because of the location of the property. Since there are no neighbors and there is a double sidewalk in front of the structure the public will not be affected. The intent of the zoning ordinance in this case is to insure the proposed structure does not affect anyone else in doing so, and this structure will not. If there was not a double sidewalk present the 3’ setback would be necessary to provide ample room.
# APPLICATION FOR VARIANCE

**Fee:** $150.00 [Z-V]

## I. APPLICANT/AGENT

<table>
<thead>
<tr>
<th>Name</th>
<th>Alpha Rho Corporation of WV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mailing Address</td>
<td>650 Spruce Street, Morgantown, WV 26505</td>
</tr>
<tr>
<td>Phone</td>
<td>304-906-0032</td>
</tr>
<tr>
<td>Mobile</td>
<td></td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:Briandawson3@gmail.com">Briandawson3@gmail.com</a></td>
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## II. PROPERTY

<table>
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<tr>
<th>Street Address</th>
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</tr>
<tr>
<td>Phone</td>
<td>304-906-0032</td>
</tr>
</tbody>
</table>

## III. NARRATIVE

Describe the specific use and the standard for which the variance is sought.

The variance sought is to request relief to extend closer to property line than the 3’ setback requirement for the reconstruction of a deck. Alpha Rho requests to rebuild its deck in its original location. This location is approximately 1-2’ closer to the property line than code requires.

## IV. 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 Development Services 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.

Brian Dawson - Agent (General Contractor)  
06/06/2019
APPLICATION FOR VARIANCE

You or a representative MUST be in attendance at the scheduled hearing to present this request and answer questions. Failure to appear at the hearing will result in your variance petition being tabled and potential delay of your project.

V. SITE PLAN

This application must be accompanied by a site plan illustrating the following information, unless otherwise stipulated by the Planning Division or Board of Zoning Appeals.

- Vicinity map showing all adjacent properties and nearby streets within a 300-foot radius around the project site, drawn or illustrated at an appropriate scale.

- A site plan (3 copies) drawn to scale at a minimum 1" = 50' and a maximum of 1" = 10' and include the following:
  - The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a licensed land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law.
  - The exact sizes and locations on the lot of existing structures, if any.
  - The location(s), square footage(s), and dimensions of all proposed principal, accessory and/or temporary structure(s), and/or alteration(s).
  - The location of the lot with respect to adjacent rights-of-way.
  - Parking Plan. The location and dimensions of off-street parking and means of ingress and egress for such space.
  - Required and proposed setbacks.
  - Buffer yard location and landscaping and screening plan, if applicable. Landscaping Plan should be a separate drawing based on the site plan.
  - Location of garbage collection area and screening.
  - Location of existing and/or proposed signage, if applicable.
  - Roadway typical detail for internal roadways, if applicable.

- Additional information that may be required by the Planning Division or the Board of Zoning Appeals includes building elevations/renderings, floor plans, traffic impact study, existing and proposed grading plans, erosion and sediment control plan, stormwater management plan, etc.

VI. FINDINGS OF FACT

The Board of Zoning Appeals may grant a variance request only if each of the following "Findings of Fact" criteria are determined to be in the positive. Applicants must give their own responses to the following finding of fact statements.
## VI. FINDINGS OF FACT

**COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.**

1. The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

   The variance will not adversely affect the following because this property is located on a corner lot with no neighbors where the deck is proposed. The safety and welfare of the public will not be affected because this deck will provide its residents a location to socialize and relieve use of a common sidewalk currently used for that reason.

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:

   This variance arises from special conditions because this property was issued a permit in the 2000's for this structure already. This deck was torn down due to disrepair and its occupants would greatly benefit if a new deck was allowed to go back in its place. This property also has double sidewalks in front of its house as shown on the site plan. This will allow the public to have ample room to pass by without being affected by this structure.
### VI. FINDINGS OF FACT

<table>
<thead>
<tr>
<th>COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.</th>
</tr>
</thead>
</table>

3. **The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:**

   This variance will eliminate an unnecessary hardship because and provide reasonable use of land because this structure would sit on an area which is unusable as it currently sits. No green space would be disturbed and this deck would make sense for its residents therefore providing a reasonable use of the land.

4. **The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:**

   This variance will allow the intent of zoning to be conformed to because of the location of the property. Since there are no neighbors and there is a double sidewalk in front of the structure the public will not be affected. The intent of the the zoning ordinance in this case is to insure the proposed structure does not affect anyone else in doing so, and this structure will not. If there was not a double sidewalk present the 3' setback would be necessary to provide ample room.
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STAFF REPORT

CASE NO: V19-25 / Sigma Phi Epsilon / 709 N. High Street

REQUEST and LOCATION:
Requests by Crystal Miller of City Neon on behalf of Sigma Phi Epsilon, for variance relief from Article 1369 concerning signage at 709 N. High Street.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:
Fifth Ward Tax District, Tax Map 26, Parcel 106.1; R-2, Single- and Two-Family Residential District

SURROUNDING ZONING:
R-2, Single- and Two-Family Residential District

BACKGROUND and ANALYSIS:
The petitioner seeks to install wall signage at a “Fraternity or Sorority House” use requiring variance from Article 1369 of the Planning and Zoning Code. Addendum A of this report illustrates the location of the subject site.

Section 1369.09(B)(2) provides a maximum wall sign area standard of six (6) square feet plus 0.1 square feet per dwelling unit for multi-family uses. Per the applicant, the structure includes six (6) bedrooms, allowing for 6.6 square feet of signage. The petitioner proposes a total of 36 square feet of wall signage. As such, variance relief of 29.4 square feet is required for the two (2) signs as proposed and further illustrated below.

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<tr>
<th>Wall Signs</th>
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<td>36 total sf</td>
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<tr>
<td>Total Permitted Sign Standards</td>
<td>6.6 sf</td>
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<tr>
<td>Total Requested Variance</td>
<td>29.4 sf</td>
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STAFF RECOMMENDATION:

It is the duty of the Board of Zoning Appeals to 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. If the Board disagrees with the petitioner’s “Findings of Fact” and determines the proposed request does not meet the standard criteria for a variance, then the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject variance petition. [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Addendum B of this report restates the petitioner’s Findings of Fact responses. As is customary with sign variance petitions, no recommendation is submitted by Staff concerning whether variance relief should be granted as requested.

Attachments: Application and accompanying materials
The following restates the petitioner’s findings of fact responses.

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 signage is similar in size to the various other fraternities and sororities in the vicinity. The signage on these properties have not had any ill effects on the public or residents of the area.

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:

In the past, this building has housed fraternities that have displayed large Greek letters on the building’s exterior. There are two entrances to the parking lot and the proposed signage will make wayfinding easier to pedestrian/vehicular traffic coming from the Mountain Lair, North High Street, and other side streets.

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

The proposed signage fits within the architectural elements of the building in which it will be mounted and improve way finding for all types of traffic.

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 wall signs will be consistent with other fraternities and sororities in the area while maintaining a balance of the building’s architecture.
## I. Applicant/Agent

<table>
<thead>
<tr>
<th>Name:</th>
<th>City Neon, Inc - Crystal Miller</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone:</td>
<td>304-599-1854</td>
</tr>
<tr>
<td>Mailing Address:</td>
<td>PO Box 40 Morgantown WV 26507</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:crystal@cityneon.com">crystal@cityneon.com</a></td>
</tr>
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</table>

## II. Property

<table>
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<tr>
<th>Street Address:</th>
<th>709 N. High Street</th>
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<tbody>
<tr>
<td>Owner:</td>
<td>West Range Morgantown, LLC</td>
</tr>
<tr>
<td>Mailing Address:</td>
<td>8347 West Range Cove Memphis TN 38125</td>
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<td>Parcel No:</td>
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## III. Narrative

Sigma Phi Epsilon is moving to a new house and would like to install two sets of Greek Letters to the facade of the building. The house is listed on Mon Co GIS as having 6 bedrooms. Thus allowing 6.6 sq. ft. in signage. The total of the two proposed signs is 35.7 sq ft. We are requesting 29.1 sq ft in relief from the code.

## IV. 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 Development Services 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.

Crystal Miller

Type/Print Name of Applicant/Agent: Crystal Miller

Signature of Applicant/Agent: [Signature]

Date: 06/07/2019
APPLICATION FOR VARIANCE

You or a representative MUST be in attendance at the scheduled hearing to present this request and answer questions. Failure to appear at the hearing will result in your variance petition being tabled and potential delay of your project.

V. SITE PLAN

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- Vicinity map showing all adjacent properties and nearby streets within a 300-foot radius around the project site, drawn or illustrated at an appropriate scale.

- A site plan (3 copies) drawn to scale at a minimum 1" = 50' and a maximum of 1" = 10' and include the following:
  - The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a licensed land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law.
  - The exact sizes and locations on the lot of existing structures, if any.
  - The location(s), square footage(s), and dimensions of all proposed principal, accessory and/or temporary structure(s), and/or alteration(s).
  - The location of the lot with respect to adjacent rights-of-way.
  - Parking Plan. The location and dimensions of off-street parking and means of ingress and egress for such space.
  - Required and proposed setbacks.
  - Buffer yard location and landscaping and screening plan, if applicable. Landscaping Plan should be a separate drawing based on the site plan.
  - Location of garbage collection area and screening.
  - Location of existing and/or proposed signage, if applicable.
  - Roadway typical detail for internal roadways, if applicable.

- Additional information that may be required by the Planning Division or the Board of Zoning Appeals includes building elevations/renderings, floor plans, traffic impact study, existing and proposed grading plans, erosion and sediment control plan, stormwater management plan, etc.

VI. FINDINGS OF FACT

The Board of Zoning Appeals may grant a variance request only if each of the following “Findings of Fact” criteria are determined to be in the positive. Applicants must give their own responses to the following finding of fact statements.
## VI. FINDINGS OF FACT

### COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.

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 signage is similar in size to the various other fraternities and sororities in the vicinity. The signage on these properties have not had any ill effects on the public or residents of the area.

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:

   In the past, this building has housed fraternities that have displayed large Greek letters on the building's exterior. There are two entrances to the parking lot and the proposed signage will make wayfinding easier to pedestrian/vehicular traffic coming from the Mountain Lair, North High Street, and other side streets.
### VI. FINDINGS OF FACT

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3. The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed signage fits within the architectural elements of the building in which it will be mounted and improve way finding for all types of traffic.

4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed wall signs will be consistent with other fraternities and sororities in the area while maintaining a balance of the building's architecture.
ROUTED PVC LETTERS MOUNTED DIRECTLY TO BUILDING WITH STUDS AND CLEAR ADHESIVE BUILDING LENGTH 54' LETTER SIZE 40" X 108"
ROUTED LETTERING INSTALLED TO BUILDING USING STUD MOUNTS AND ADHESIVE BUILDING LENGTH 102' LETTER SIZE 18" X 48"