



West Run Planning District Board of Zoning Appeals
July 21, 2021
6:00 pm
Via Tele-Conference
Special Meeting

AGENDA

- I. Call to Order and Roll Call
- II. Approval of Minutes (June 16, 2021)
- III. Public Hearings

Case VAR 007-2021: A variance request to reduce: 1) the front yard setback from thirty-five (35) feet to twenty-six (26) feet at its minimum; and 2) permit a continued pre-existing, non-conforming use within a new building for the property legally described as Union Tax Map 21, Parcels 1.1, 1.3, and 1.4 in order to construct a building for a non-conforming use. On the corner of West Run and Van Voorhis.

Case CUP 003-2021: A conditional use permit to allow for the sale of alcohol for on-site consumption for the property legally described as Morgan Tax Map 4C, Parcel 22.1, which is zoned neighborhood commercial (C-1). At 1052 Maple Drive.

- VI. Other Business
Bylaws Amendment on Meeting Requirements
- VII. Adjournment

Board of Zoning Appeals:

Kent Pauley, Chair

Frank Oliverio, Vice Chair

James Barnes

Billy Smerka

Nate Gladish

Director of Planning:

Andrew Gast-Bray, AICP

County Planner:

Patricia Booth, AICP

II. RELEVANT PRIOR COUNTY ACTIONS:

The Applicant began talking with the Flood Plain Manager, Mike Paugh in 2019 regarding updates to the site for their business as the area was located within the Flood Plain.

Therefore, on January 31, 2020 the Flood Plain Manager issued Flood Plain Permit, FP20.001, permitting the construction of the U-Haul facility development project in the West Run 100-year floodplain.

On June 10, 2021 a gentleman called regarding possible construction on Parcels 1.1, 1.3, and 1.4. After a site inspection the same day, construction was found onsite without proper zoning permitting.

As a result of multiple back and forth, on June 16, 2021, Michael Nestor from Ascent Consulting submitted a formal application.

III. BACKGROUND INFORMATION:

- A. Size of Site: 2.37 ac
- B. Zoning District: Low Density Residential (R-1)
- C. Existing Use: Residence
- D. Proposed Use: Construction of a building for a non-conforming use
- E. Community Character of Immediate Vicinity: Mixture of commercial, and multi-family.

IV. REVIEW OF APPLICATION:

❖ **The Applicant is requesting a variance to:**

- 1) Reduce the front yard setback from thirty-five (35) feet to twenty-six (26) feet at its minimum in order to construct a building for a non-conforming use.

Pursuant to Section 1100.05 of the West Run Planning District Zoning Ordinance, the required setbacks for the R-1 for single family residences are as follows: Front yard 35 feet, Side Yard 25 feet; and Rear Yard 50 feet.

The applicant is required to stay 35 feet off the front yard property line.

The Applicant is requesting to **reduce** the front yard setback for their building from thirty-five feet to twenty-six feet at its minimum (see Exhibit A). This proposed building follows the footprint of a prior building on site (*see Exhibit B*), but takes into account floodplain considerations, which push the building footprint into the front yard setback.

As a result, the Applicant will be allowed the building, while maintaining the overall integrity of the setbacks, requirements and overall aesthetics.

- 2) Permit a continued pre-existing, non-conforming use within a new building, in order to construct a building for a non-conforming use.

Pursuant to Sections 2350.03, A and 2350.04, A no legal pre-existing use or structure may be enlarged, moved or otherwise changes in such a manner that increases the extent of its nonconformity, unless a variance from the terms of this ordinance is obtained from the Board of Zoning Appeals.

Pursuant to Section 2350.03, D and 2350.04, B, when a legal, pre-existing nonconforming use is discontinued or abandoned for twelve consecutive months, the land structure or land and structure in combination, may thereafter only be put to a permitted use and the nonconforming use may not thereafter be resumed.

Pursuant to Section 2350.04, D, normal maintenance and repair of a building or other structure containing a nonconforming use may be performed, provided there is no physical change to the building or structure (e.g., design, size, location, etc.) and such maintenance or repair does not extend or intensify the nonconforming use, unless, otherwise authorized by this Ordinance.

Pursuant to Section 2350.04, E, any legal, pre-existing nonconforming structure damaged by fire, flood, explosion, or other casualty may be reconstructed and used as before, if such reconstruction is undertaken within twelve months of such casualty, and if the restored structure has no greater coverage and contains no greater content than before such casualty.

The applicant is required to adhere to the permitted uses of the R-1 zoning district, namely single family detached units.

The applicant is requesting to construct a building to be used as an office for a pre-existing U-Haul business on site. One of the prior residences on site was used to house the office (*see Exhibit B*) but had since become dilapidated. While the ordinance does not specifically state that the use allows clear replacement, it does allow for reconstruction, if need be, as well as “increase” via a variance from the BZA. The new building will be located in the footprint of the prior building and will also be one story. Additionally, this office will include a kitchen area so as to be as to be readily convertible back into a residence should the nonconforming use stop for a year and day.

As a result, the Applicant will be allowed to continue the pre-existing non-conforming use in a safe manner, while maintaining the overall integrity of the setbacks, requirements and overall aesthetics.

❖ ***Pursuant to Section 2400.08 of the West Run Planning District Zoning Ordinance, the Board of Zoning Appeals may grant a variance if the Applicant demonstrates that all of the following standards are met:***

The two requested variances are:

- 1) Reduce the front yard setback from thirty-five (35) feet to twenty-six (26) feet at its minimum in order to construct a building for a non-conforming use.
- 2) Permit a continued pre-existing, non-conforming use within a new building, in order to construct a building for a non-conforming use

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

Staff has no evidence that indicates that granting this variance will adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents.

- 1) Based on aerial photography of the area and a site inspection, Staff has determined that the proposed building will be similar to other such items in the immediate area

in terms of size and location. Additionally, the building will be in the same location as a prior residence onsite.

- 2) Based on aerial photography of the area and a site inspection, Staff has determined that the proposed construction of the building to replace a previous residence serving the same function will permit the non-conforming use to continue without unfairly impinging on the property owner.
- B. 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:
- 1) The project site includes several preexisting parcels from prior to the ordinance. It meets the basic parcel requirements, but has a stream to the rear which is under the Floodplain Ordinance requirements. As shown in the aerial photos the placement of the building is in the same footprint as a prior building on site (see Exhibits A and B).
 - 2) The use of the site a U-Haul dealer is from prior to the ordinance. Construction of the new building would allow for continued use of the site for the nonconforming use in a safe manner.
- C. The variance would eliminate an unnecessary hardship and permit a reasonable use of the land:
- 1) Staff has found based on aerial photos and assessor data that the size and location of the proposed building will be similar to other structures in the area. Permitting the reduced setbacks will eliminate an unnecessary hardship by allowing use of the property akin to uses currently in the surrounding area, especially improving the situation by designing in consideration of floodplain issues.
 - 2) The proposed construction of the building is not a permitted use within the R-1 zoning district. However, the replacement building will include a kitchen area to allow for easy reuse as a residential structure should the use end for a year and a day. Additionally, the new building will replace a residence which was previously being used as the office onsite.
- D. Will allow the intent of this Ordinance to be observed and substantial justice done:
- 1) The placement of the building is similar to other structures in the area observing setbacks to the greatest extent possible while still allowing for permitted uses to be used on the property.
 - 2) The use of the building in a commercial setting will allow continued use of the property in the manner originally used with creating undue hardship.

Staff has found that granting this variance will allow the intent of this Ordinance to be observed and substantial justice be done similar to other similar structures in the area.

V. RECOMMENDATION:

Staff recommends APPROVAL to the Board of Zoning Appeals for a variance of 1) the front yard setback from thirty-five (35) feet to twenty-six (26) feet at its minimum; and 2) permit a

continued pre-existing, non-conforming use within a new building, in order to construct a building for a non-conforming use. with the following conditions:

- A. The approval of this variance is based on the design of the building shown on the site plan submitted with the application. Work not specified or alterations to the site plan may not be carried out without additional Planning approval.
- B. Use of the building shall only be permitted for a commercial use akin to a U-Haul business. Should the business be discontinued for a year and a day, the use of the property shall revert to the designated zoning district at the time of discontinued use.

VI. ITEMS REVIEWED:

- A. Site Plan of Proposed addition to a carport
- B. Assessor Maps and Data Cards

VII. ATTACHMENTS:

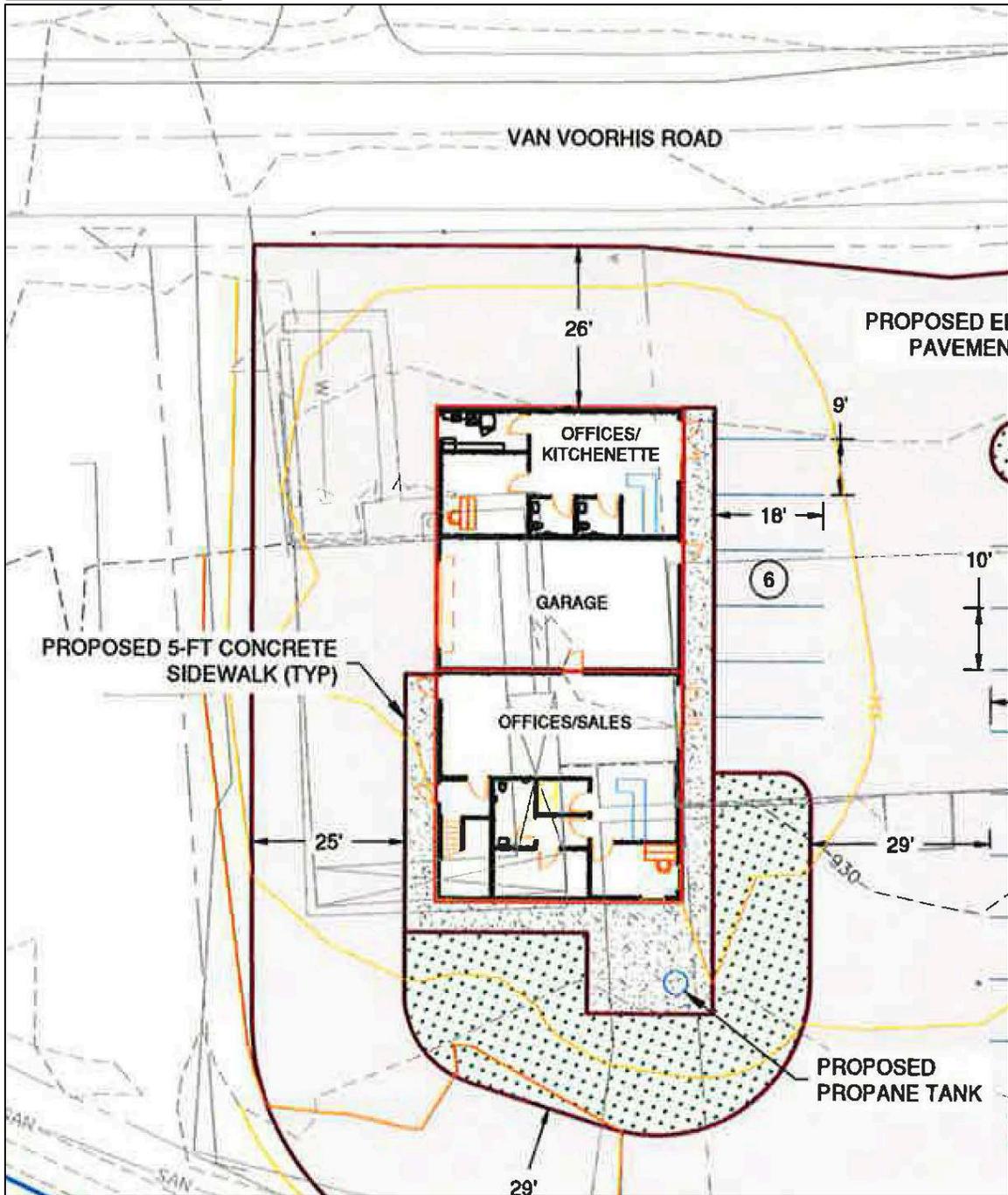


Exhibit A: Inset of the project site as a whole showing the area where the proposed building will go. (not to scale)



Exhibit B: Site Map showing the project site in 2020 with the old buildings, both of which have been removed. The area of purple is the approximate location. (not to scale)



MEMORANDUM

MONONGALIA COUNTY PLANNING COMMISSION

To: The West Run Planning District Board of Zoning Appeals
From: Andrew Gast-Bray, AICP, Director of Planning
Date: July 14, 2021
Subject: Request for Conditional Use approval by Larry Lewis for property legally described as Parcel 22 of Map 4C in the Morgan Tax District

Meeting: July 21, 2021

I. REQUEST:

The Applicant is requesting approval of a conditional use in order to allow for sale of alcohol for on-site consumption for the property legally described as Morgan Tax Map 4C Parcel 22 which is zoned neighborhood commercial (C-1).



Subject area outlined in red. Location of building requesting the CUP in purple, located on the 1st floor of the building.

Location:

Address: 1062 Maple Drive

Legal Description: Parcel 20, Tax Map 4C of the Morgan Tax District

II. RELEVANT PRIOR COUNTY ACTIONS:

On June 30, 2021, a Ms. Christina Goodwin came in regarding an ABC license in relation to an LVL. The property in question is zoned C-1, which does not allow for Limited Video Lottery. This is only permitted within the C-3 district. Staff explained that the current zoning does not allow for an LVL and what the possible avenues for her were.

After several back and forth talks regarding the application, on July 1, 2021, Ms. Goodwin submitted a CUP to permit sale of alcohol for on-site consumption in relation to a bar.

III. BACKGROUND INFORMATION:

- A. Size of Site: 0.23 acres (10,018.8 ft)
- B. Zoning District: Neighborhood Commercial (C-1)
- C. Existing Use: Commercial Structure installed from prior to the zoning ordinance
- D. Proposed Use: Use of part of the existing building, for sale of alcohol for on-site consumption.
- E. Community Character of Immediate Vicinity: The subject property is located adjacent to other C-1 zoning and has a multi-family property across the street.

IV. REVIEW OF APPLICATION:

The purpose of a conditional use is to recognize that there may be cases where community and Comprehensive Plan goals are met through a flexible and individual regulation of land uses within a zoning district. The establishment of a conditional use permit procedure provides for certain uses which shall be permitted only if adequate conditions exist or can be imposed that will make such uses compatible with the purposes of this Ordinance and the Comprehensive Plan. The conditional use permit procedure shall provide for some measure of individualized judgment and the imposing of conditions on certain uses, in order to make them compatible with uses in the surrounding area. It is further intended that the conditional use permit, through a site plan review process, shall provide a method whereby it can be determined whether or not a use would cause any damage, hazard, nuisance, or other detriment to persons or property in the vicinity.

Pursuant to Section 2300.04 of the West Run Planning District Zoning Ordinance, The Board of Zoning Appeals may approve an application for a conditional use permit, subject to such reasonable conditions and restrictions as are directly related to an incidental to the proposed conditional use permit, if it finds that the following general standards have been met:

- a. The proposed use is compatible with the goals of the adopted comprehensive plan.

Staff has found that the proposal will be consistent with the goals of the comprehensive plan.

- b. The proposed use shall be compatible with the appropriate and orderly development of the zoning 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.

The property is located within a C-1 Neighborhood Commercial District where services selling alcohol for on-site or off premise consumption are conditionally permitted. This particular development wishes to include the sale of alcohol for on-site consumption. Staff has found that the use would be consistent with the surrounding uses of the immediate area.

- c. The proposed site development shall be such that the use will not hinder nor discourage the appropriate development and use of adjacent land and buildings, taking into consideration the location, nature and height of buildings and the location, nature and height of landscaping and buffering on the site.

Staff has no evidence that the proposed sale of alcohol for on-site consumption would discourage appropriate development and uses of adjacent lands and buildings based on the location, nature and landscaping/buffering height.

- d. Neighborhood character and surrounding property values shall be reasonably safeguarded.

The property is bordered by the other commercially zoned property to the South. The property to the North is zoned high density residential and is built as such. The property to the East and West is zoned high density residential, but built out as commercial. Staff finds that based on these factors, the neighborhood character and surrounding property values shall be reasonably safeguarded.

- e. Operations in connection with the use shall not be offensive, dangerous, destructive of property values and basic environment characteristics, or detrimental to the public interest of the community. They shall not be 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 zoning district.

Staff has no evidence that the proposed use will be offensive, dangerous, destructive to property values or environmental characteristics and/or detrimental to the public interest of the community.

- f. The character and appearance of the proposed use, buildings, structures should be in general harmony or better, with the character and appearance of the surrounding neighborhood.

Based on the plans submitted, the use would not be inconsistent with the surrounding uses.

Consideration by the Board of Zoning Appeals shall be based on adopted standards and requirements. These considerations shall be both general, applying to all conditional uses, and

specific, applying to individual types of conditional uses. In addition, the Board of Zoning Appeals may impose additionally, reasonable conditions to fit the particular use and site under review. The following outlines the proposal's compliance in reference to the West Run Planning District Zoning Ordinance.

1. Purpose of the C-1 District (§1300.01): In Compliance.

The West Run Neighborhood Commercial District (C-1) is created to provide for the business and commercial needs of the residential districts served. The products and services intended are those primarily represented by convenience goods and services purchased frequently.

2. Conditional Uses: **Compliance to be determined**

Pursuant to Article 1300, Section 1300.03, H and I, the sale of alcohol via a bar/tavern or for off-premise consumption may be permitted as a Conditional Use as reviewed and determined in accordance with Article 2300 "Administration and Enforcement" of this Ordinance and subject to BZA approval.

3. Height (§1300.04): In Compliance.

The Applicant is not proposing any new construction. The building was constructed prior to the zoning ordinance.

4. Lot Requirements (§1300.04A): In Compliance.

The parcel is preexisting from prior to adoption of the ordinance.

5. Lot Disturbance Standards – Minimum Yard Setbacks (§1300.04B):

The parcel is preexisting from prior to adoption of the ordinance.

6. Required Parking (§2500.04): In Compliance.

The Applicant is not proposing any new construction. The building was constructed prior to the zoning ordinance.

7. Required Landscaping (§2550.07): In Compliance.

The Applicant is not proposing any new construction. The building was constructed prior to the zoning ordinance.

8. Fencing, Hedges and Walls (§1350.04G): In Compliance.

The Applicant is not proposing any new construction. The building was constructed prior to the zoning ordinance.

9. Signs: In Compliance.

The Applicant is not proposing any new construction. The building was constructed prior to the zoning ordinance.

10. Building plans and elevations illustrating construction, alteration, materials, textures and colors: In Compliance.

The Applicant is not proposing any new construction. The building was constructed prior to the zoning ordinance.

11. Lighting and Illumination: In Compliance.

The Applicant is not proposing any new construction. The building was constructed prior to the zoning ordinance.

12. Drainage and Stormwater Management (§2650.01): In Compliance.

The Applicant is not proposing any new construction. The building was constructed prior to the zoning ordinance.

13. Water Facilities (§2650.01): In Compliance.

The Applicant is not proposing any new construction. The building was constructed prior to the zoning ordinance.

14. Sewerage Facilities (§2650.01): In Compliance.

The Applicant is not proposing any new construction. The building was constructed prior to the zoning ordinance.

15. Fire Protection: In Compliance.

The Star City Volunteer Fire Department provides services to this site.

16. Access: In Compliance.

Access is being provided via Maple Drive.

17. Traffic Generation: In Compliance.

The Applicant is not proposing any new construction. The building was constructed prior to the zoning ordinance.

V. RECOMMENDATION:

Staff recommends APPROVAL to the Board of Zoning Appeals in order to allow for sale of alcohol for on-site consumption at an existing building with the following conditions:

- A. Prior to the sale of alcohol, the applicant shall procure appropriate documents from the WV ABC.
- B. Approval of the CUP for the consumption of alcohol does not include the approval of the site for Limited Video Lottery.

VI. PLANS REVIEWED:

- A. Site Plan showing the area of the building

ATTACHMENT:



Site Map Showing the area of the proposed bar.