



Planning Commissioners:

Matthew Ridgway PE, President

Vince Putkowski, Vice President

Jeff Arnett, County Commissioner

Bader Giggenbach

Joe Panico

Barton Loar

Michael Mills

Rick Colebank

Ed Hawkins

Director of Planning:

Andrew Gast-Bray, AICP

County Planner:

Patricia Booth, AICP

Floodplain Administrator &

GIS Coordinator:

Michael Paugh, CFM, GISP

Regular Meeting
September 8, 2021
6:00 pm
Via Tele-Conference

AGENDA

- I. Call to Order and Roll Call
- II. Approval of Minutes – MCPC President
 - A. Action on Absences
 - B. Action on Minutes
 - i. July 14, 2021, there was no August meeting
- III. Public Hearings

Case TA 001-2021: Request for a Text Amendment to the West Run Zoning Ordinance. Applicant requests to: 1) Alter the definition to “Video Lottery Establishment” in Article 2250 to include two categories, A: over 21 and B: under 21; 2) Add “video lottery establishment – category b” to Section 1300.03; 3) Add “video lottery establishment – category b” to Section 1350.03; and 4) Add “video lottery establishment – category a and b” to Section 1400.03.
- IV. Public Comments/Questions
- V. Administrative/Financial Report - Planning Director
- VI. Announcements/Communications
- VII. Sub-Committees Updates – MCPC President

Frank Devono resigned effective 7/31/21 via email

Director Committee: Putkowski, Ridgway, Arnett
Comprehensive Plan Committee: Mills, Colebank, Hawkins
Zoning Committee: Giggenbach, Panico, Hawkins
Budget Committee: Putkowski Giggenbach
- VIII. New Business
 - A. Status Subdivision Regulations – Planning Director and Ridgway
 - B. DSI and MDSI Comparison Review – Director and Ridgway
 - C. Covid Status
 - D. Broadband
 - E. Comp Plan/MTP
- IX. Old Business
- X. Adjournment



MEMORANDUM

MONONGALIA COUNTY PLANNING COMMISSION

To: The West Run Planning District Board of Zoning Appeals

From: Andrew Gast-Bray, AICP, Director of Planning,

Date: August 5, 2021

Subject: Request for a Text Amendment to the West Run Zoning Ordinance. Applicant requests to: 1) Alter the definition to “Video Lottery Establishment” in Article 2250 to include two categories, A: over 21 and B: under 21; 2) Add “video lottery establishment – category b” to Section 1300.03; 3) Add “video lottery establishment – category b” to Section 1350.03; and 4) Add “video lottery establishment – category a and b” to Section 1400.03.

Meeting: September 8, 2021

I. REQUEST:

A request for approval to amend the ordinance text to:

- 1) Change the definition to “Video Lottery Establishment” in Article 2250

Article 2250 (“video lottery establishment”) as currently written:

A building, structure, or parcel of land that contains or is intended to contain by a Video Lottery Permittee one or more Video Lottery Terminals for public or private use.

Article 2250 (“video lottery establishment”) as proposed:

*A building, structure, or parcel of land that contains or is intended to contain by a Video Lottery Permittee one or more Video Lottery Terminals for public or private use **which restricts access to adults only through one of the following restrictive measures:***

- a. Category A: Entry to the entire establishment shall be restricted to persons age 21 or older.*
 - b. Category B: Entry to the establishment shall be open to adults and minors, and limited video lottery gaming and terminals shall be located in a separate room with adult-only restricted access, the interior of which is not visible to persons outside the room, in accordance with West Virginia Code §29-22B-328(a)(1).*
- 2) Add a new subsection in Article 1300, Conditional Uses

Section 1300.03, N as proposed:

Video lottery establishment – Category B

- 3) Add a new subsection in Article 1350, Conditional Uses

Section 1350.03, 24 as proposed:

Video lottery establishment – Category B

- 4) Add d new subsection in Article 1400, Conditional Uses

Section 1450.03, K as proposed:

Video lottery establishment – Categories A and B

Location:

Affects all parcels zoned C-1 (Neighborhood Commercial), C-2 (General Commercial) and C-3 (Highway Commercial) and the Definition of “Video Lottery Establishment”

Applicant/Agent:

Applicants: Coaltrain Corporation

Agent: Larry Lewis

RELEVANT PRIOR COUNTY ACTIONS:

The Monongalia County Planning Districts Comprehensive Plan was amended in 2003 to include the West Run Planning District.

The West Run Planning District Zoning Ordinance became effective on November 12, 2010.

The Monongalia County Planning Districts Comprehensive Plan was updated in 2013 per state requirements.

On June 30, 2021, a Ms. Christina Goodwin came in regarding an ABC license in relation to a Limited Video Lottery (LVL). The property in question is zoned C-1, which does not allow for an LVL. 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 paths for her were to propose changes.

On July 1, 2021, Ms. Goodwin submitted a CUP to permit sale of alcohol for on-site consumption in relation to a bar which was then approved on July 21, 2021.

II. BACKGROUND INFORMATION:

On July 16, 2021, Mr. Timothy Linkous called regarding applying for a text amendment due to possible inconsistencies within the Zoning Ordinance.

On July 26, 2021, Mr. Timothy Linkous emailed with a draft application for a cursory review to ensure the application was complete and all proposed changes did not directly conflict with other sections of the Ordinance.

III. REVIEW OF APPLICATION:

1. **Consistency of the proposed amendment with the provisions and intent of the Monongalia County Planning Districts Comprehensive Plan:**

In accordance with the West Run Planning District Zoning Ordinance Section 2200.01, whenever public necessity and the public health, safety, and general welfare require, the County Commission may amend, supplement, or modify, the Official Zoning Map of this Ordinance without holding an election if found to be consistent with the adopted Comprehensive Plan for the Planning Districts of Monongalia County.

As the applicant is not requesting to have the proposed uses be permitted, but instead conditional which requires additional permitting, staff has found that the proposed text amendment is not inconsistent with the provisions and intent of the West Run Planning District Comprehensive Plan.

Policies from the Monongalia County Planning Districts Comprehensive Plan (2013 Addition) that directly pertain to the proposed amendments include:

Section 3 Land Use and Conservation:

The primary goal for the commercial development is to provide well designed clusters conveniently located and offering a full variety of goods and services while fulfilling the needs of the community without becoming a liability to it.

Strategy 3.6.1b states to encourage higher density infill commercial and office/service development.

This text amendment would allow for infill development through utilization of an existing building.

Section 4 Transportation:

Strategy 4.1.2b states that new development should be encouraged in designated growth areas to group commuter origins and destinations.

This text amendment would allow for development in an area with both multi-family and other commercial entities and is located adjacent to an existing bus route.

2. Consistency of the proposed amendment with the provisions and intent of the West Run Planning District Zoning Ordinance:

In accordance with the West Run Planning District Zoning Ordinance Section 2200.01, whenever public necessity and the public health, safety, and general welfare require, the County Commission may amend, supplement, or modify, the Official Zoning Map or the regulations set forth in the text of this Ordinance without holding an election consistent if found to be consistent with the adopted Comprehensive Plan for the Planning Districts of Monongalia County. If not found to be consistent with the adopted Comprehensive Plan for the Planning Districts of Monongalia County, the County Commission must find that there have been significant changes of an economic, physical, or social nature within the area involved which was not anticipated when the comprehensive plan was adopted, and those changes have substantially altered the basic characteristics of the area.

Changes in the economic, physical, or social nature of the proposed map amendment area that were not anticipated when the comprehensive plan was adopted:

The applicant has identified a possible inconsistency, in that the only district which currently allows for LVLs, is Article 1400 of the West Run Planning District. Per WV Code §29-22B-328, LVLs are defined as an adult use. However, there are two current issues at hand.

First is that LVLs have a series of definitions separate from the other adult uses in Article 2250. These are “video lottery”, “video lottery establishment”, “video lottery permittee” and “video lottery terminal”. There other adult uses defined which are “adult bookstore”, “adult business”, “adult motion picture theater”, “adult video store” and “adult entertainment establishment”. Adult business denotes the other three as defined in the ordinance, while the other three emphasize “relating to ‘specific sexual activities’ or ‘specific anatomical areas,’ as defined in this ordinance”.

Second is that WV Code, while defining LVLs as an adult use, also denote their use where minors are present. WV Code §29-22B-328(a)(1) “Restricted access adult-only facility defined” states that when the private club is frequented by minors and their parents, video lottery terminals shall be located in a separate room suitable for the location of video lottery terminals with adult-only restricted access, the interior of which is not visible to persons outside the room.

Presently the MCPC’s current interpretation relies solely on LVLs being an adult use and does not take into consideration WV Code §29-22B-328(a)(1) as the definitions section of the ordinance does not make mention of it either. Additionally, WV Code §29-22B-1902(b) states that the provisions of this article preempt all regulations, rules, ordinances, and laws of any county or municipality in conflict herewith: provided, that nothing herein shall invalidate any zoning law, or Sunday closing law.

The applicant believes that since the intent of, WV Code §29-22B includes areas accessible by minors provided 328(a)(1) is met, then the zoning ordinance should also incorporate this type of use as well. Further the applicant understands the intent to limit LVL locations and is therefore proposing two LVL use types within county zoning and have said listed uses as a conditional use within the coinciding districts.

PLEASE NOTE: A change in the text of Article 2250 and Articles 1300, 1350, and 1400 will add new subsections which will expressly allow a new use within those districts.

The four requested text amendments are:

- 1) Change the definition to “Video Lottery Establishment” in Article 2250
- 2) Add a new subsection in Article 1300, Conditional Uses
- 3) Add a new subsection in Article 1350, Conditional Uses
- 4) Add d new subsection in Article 1400, Conditional Uses

Article Purposes:

- 1) *2250 The West Run Definitions Article* is created to allow for the following words and phrases to have the meanings respectively described to them by this Article. If not defined herein, or within other Articles of this Ordinance, terms used in this Ordinance shall have the meanings provided in any standard dictionary or American Planning Association publication as determined by the Director of Planning.
- 2) *1300.01 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.
- 3) *1350.01 The West Run Neighborhood Commercial District (C-2)* is created for the following purposes: To provide appropriately located areas for retail stores, offices, service establishments, amusement establishments, and wholesale businesses.
- 4) *1400.01 The West Run Neighborhood Commercial District (C-3)* is established to provide suitable locations for larger scale retail, service, and entertainment businesses, including automobile, boat and trailer sales, and service establishments. The uses provided in this zone are meant to serve local and regional residents as well as those who are passing through the area. Access to these areas is provided by adjoining major thoroughfares.

Article as currently written:

- 1) Article 2250(“video lottery establishment”) *A building, structure, or parcel of land that contains or is intended to contain by a Video Lottery Permittee one or more Video Lottery Terminals for public or private use.*
- 2) Section 1300.03, N *There is no subsection currently*
- 3) Section 1350.03, 24 *There is no subsection currently*

- 4) Section 1400.03, K *There is no subsection currently. Staff at this time has the use under 1400.03, C “Nightclubs and lounges, including legally permitted adult uses”, as LVLs are a strictly adult use.*

Article as proposed:

- 1) Article 2250(“video lottery establishment”) *A building, structure, or parcel of land that contains or is intended to contain by a Video Lottery Permittee one or more Video Lottery Terminals for public or private use which restricts access to adults only through one of the following restrictive measures:*

Category A: Entry to the entire establishment shall be restricted to persons age 21 or older. Category B: Entry to the establishment shall be open to adults and minors, and limited video lottery gaming and terminals shall be located in a separate room with adult-only restricted access, the interior of which is not visible to persons outside the room, in accordance with West Virginia Code §29-22B-328(a)(1).

- 2) Section 1300.03, N *Video lottery establishment – Category B*
- 3) Section 1350.03, 24 *Video lottery establishment – Category B*
- 4) Section 1400.03, K *Video lottery establishment – Categories A and B*

Impact on the zoning ordinance and future construction:

- 1) Alters how the video lottery establishment is defined by breaking it down into two distinct categories, those whose exterior access is limited to those 21 and older, and those whose separate interior room access is limited to those 21 and older. Alone, does not directly affect future construction.
- 2) Allows an explicit new *conditional use* category within the zoning district which allows for any existing or proposed restaurant/bar/tavern which meets the criteria under West Virginia Code §29-22B to allow for installation of Limited Video Lottery, provided such LVL also meets the new criteria created under the proposed changes to Article 2250.
- 3) Allows an explicit new *conditional use* category within the zoning district which allows for any existing or proposed restaurant/bar/tavern which meets the criteria under West Virginia Code §29-22B to allow for installation of Limited Video Lottery, provided such LVL also meets the new criteria created under the proposed changes to Article 2250.
- 4) Allows an explicit new *conditional use* category within the zoning district which allows for any existing or proposed restaurant/bar/tavern which meets the criteria under West Virginia Code §29-22B to allow for installation of Limited Video Lottery, provided such LVL also meets the new criteria created under the proposed changes to Article 2250. This will establish LVLs as a completely separate category from other adult uses.

IV. RECOMMENDATION:

Whereas it is clear that there can be a distinction made between LVLs and other adult uses, Staff has no basis, nor evidence one way or the other in their guiding documents concerning whether to or where to apply such a distinction. Consequently, Staff recommends NO

RECOMMENDATION to the Planning Commission and County Commission (i.e. the decision is entirely up to them) for the sections as proposed:

Article 2250(“video lottery establishment”) *A building, structure, or parcel of land that contains or is intended to contain by a Video Lottery Permittee one or more Video Lottery Terminals for public or private use which restricts access to adults only through one of the following restrictive measures:*

Category A: Entry to the entire establishment shall be restricted to persons age 21 or older. Category B: Entry to the establishment shall be open to adults and minors, and limited video lottery gaming and terminals shall be located in a separate room with adult-only restricted access, the interior of which is not visible to persons outside the room, in accordance with West Virginia Code §29-22B-328(a)(1).

Section 1300.03 (conditional uses), N *Video lottery establishment – Category B*

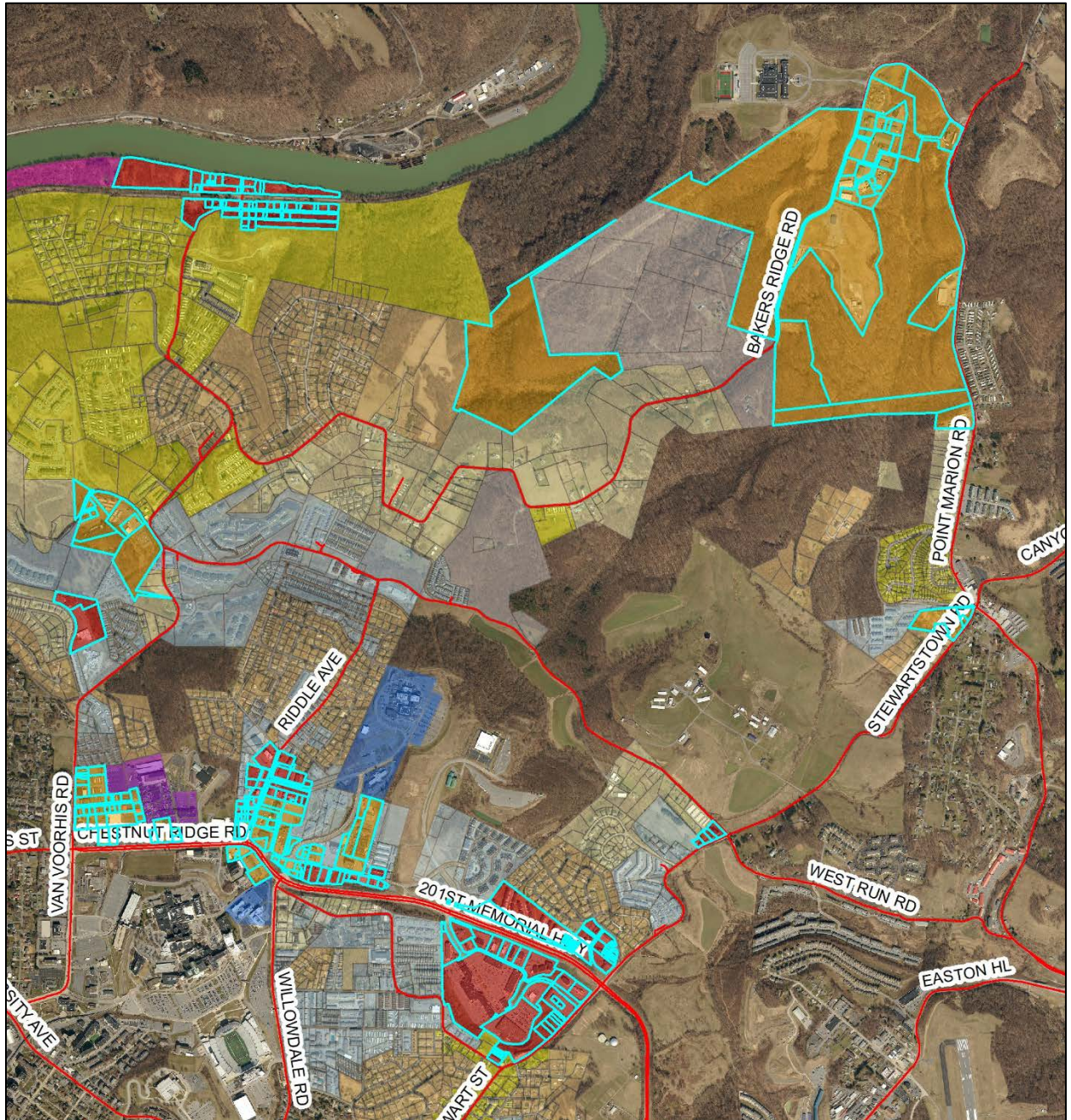
Section 1350.03 (conditional uses), 24 *Video lottery establishment – Category B*

Section 1450.03 (conditional uses), K *Video lottery establishment – Categories A and B*

VI. PLANS REVIEWED:

Application for a request to amend the text of Article 1200.05(A), by Coaltrain Corporation, and Larry Lewis. Agent.

ATTACHMENTS:



Exhibits A: Area of Zoning Map showing the three zoning districts impacted (C-1, C-2, and C-3), outlined in light blue.