



# MORGANTOWN BOARD OF ZONING APPEALS

May 20, 2009  
6:30 PM  
City Council Chambers

## **Board Members:**

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

## **STAFF REPORT**

**CASE NO:** CU09-03 / High Street Pub, LLC / 226 High Street

### **REQUEST and LOCATION:**

Request by Jim Dierwechter and Gregg Metheny, on behalf of High Street Pub, LLC, for conditional use approval for a "Restaurant, Private Club" use in the B-4 District at 226 High Street.

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

Tax Map #26A Parcel #137; a B-4, General Business District

### **SURROUNDING ZONING:**

B-4, General Business District

### **BACKGROUND and ANALYSIS:**

The petitioner seeks conditional use approval for the establishment of a "Restaurant, Private Club" use in the former Strokerz Billiard Lounge at 226 High Street. The business name for the proposed establishment is High Street Pub, LLC doing business as "High Street Pub." Addendum A of this report illustrates the location of the proposed conditional use.

Mr. Metheny has stated that he is the current owner of the subject building and that he also owns the existing commercial equipment of the former Strokerz Billiard Lounge. Strokerz was granted a conditional use permit for "Restaurant, Private Club" use on December 2000. Conditional use approvals are specific to the applicant and do not run with the land. Therefore, Mr. Dierwechter and Mr. Metheny must obtain a new conditional use approval.

The petitioner has submitted the following exhibits, which are attached hereto:

- Business description
- Owner's resumes
- Proposed menu
- Floor plan

According to said exhibits, Mr. Metheny has owned the following enterprises including:

- The Furniture Haven, Inc. at 1867 Mileground Road, Morgantown, WV
- Triple Scott Holdings, Inc. at 1867 Mileground Road, Morgantown, WV
- Scott Properties & Nasey, LLC at P.O Box 818, Morgantown, WV
- NAK Builders, LLC at P.O. Box 818, Morgantown, WV
- Benden Developers, LLC at P.O. Box 818, Morgantown, WV

## **Planning Department**

Christopher Fletcher, AICP  
Planning Director  
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Morgantown, WV 26505  
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- Mountaineer House, LLC at 200 Morgantown St, Kingwood, WV

According to said exhibits, Mr. Dierwechter has owned the following enterprises including:

- Caesar's Restaurant, Cologne, NJ (1994-1998)
- So-Fro-Yo Desserts, Brigantine, NJ and Ocean City, NJ (1990-1997)

Staff was unable to confirm Mr. Dierwechter's interest or role in the above mentioned food service establishments.

The proposed business description highlights include:

- 12,000 square feet of restaurant, billiards, arcade, sports entertainment, and private party space
- A full menu will be provided until 10:00 PM Sunday thru Thursday and until 11:00 PM on Fridays and Saturdays
- Appetizers and beverages will be available until 11:00 PM Sunday thru Thursday and until 1:00 AM on Fridays and Saturdays
- Smoke-free, family friendly arcade space
- Bar area with a 22-seat pub-style bar with three flat-screen TVs
- Four (4) showcase billiards tables surrounded by bench-style seating
- A lounge area with 19 high-top table and 9 booths with 3 Biergarten-style table and two billiards tables.
- An ad hoc stage to feature live music and entertainment
- Private area for private gatherings and special events.

Addendum B of this report contains related excerpts from the Planning & Zoning Code [Article 1331.06 (27)].

### **STAFF RECOMMENDATION:**

The Board of Zoning Appeals must first determine whether or not it will waive the one-year "bona fide restaurant" requirement [Article 1331.06 (27)(c)] prior to the petitioner obtaining a liquor license from the West Virginia Alcohol Beverage Control Commission.

Should the Board decide to waive said one-year "bona fide restaurant" requirement, it must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant.

It is the opinion of the Planning Department that the petitioner's following responses appear to sufficiently address each conditional use Finding of Fact.

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### **Finding of Fact #1** – Congestion in the streets is not increased, in that:

There is access to municipal parking lots on the corner of Pleasant and Spruce Streets. In addition, a 20 space parking lot at 188 Spruce Street will be used for employees working within the establishment.

### **Finding of Fact #2** – Safety from fire, panic, and other danger is not jeopardized, in that:

The space has four exits of which may be used for emergency egress (1- Spruce Street, 1- High Street, 2 – Court Alley.) The building is protected by an automatic sprinkler and fire alarm notification system. The system was upgraded in 2001 and has annual inspections completed by Brewer & Company and Fast Integration.

### **Finding of Fact #3** – Provision of adequate light and air is not disturbed, in that:

The building is an existing structure. The space is located in the basement and the rear level of the 1<sup>st</sup> floor of the building. The intended use is similar to past tenants and any cosmetic improvements will only enhance lighting and air within the confines of the space.

### **Finding of Fact #4** – Overcrowding of land does not result, in that:

No additional structures will be erected. The occupancy level established by the Fire Marshall will be enforced and conformity to zoning regulations in the B-4 district will be adhered to.

### **Finding of Fact #5** – Undue congestion of population is not created, in that:

The building has been historically used as a commercial space. The intended usage is consistent with past tenants.

### **Finding of Fact #6** – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The conditional use request will neither increase nor decrease demand for said public infrastructure and services already required to serve the structure

### **Finding of Fact #7** – Value of buildings will be conserved, in that:

The proposed request will maintain the historic significance of the exterior façade of the Batlas Building with little or no change. The interior of the building will be upgraded by remodeling the space into a restaurant / sports venue and should preserve and enhance the historic relevance of this grand structure.

### **Finding of Fact #8** – The most appropriate use of land is encouraged, in that:

The proposed usage is a commercial endeavor within the B-4 district and should enhance the culture and atmosphere in downtown Morgantown. The intent is to serve a missing niche within the community.

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Should the Board waive the one-year “bona fide restaurant” requirement and grant approval of the subject conditional use petition, Staff recommends that the following conditions be included:

1. That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06 (27) of the Planning and Zoning Code. That the establishment shall not serve liquor, including wine, later than 1:00 a.m., except on New Year's Eve;
2. That the petitioner must obtain permitting as a “restaurant” from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*;
3. That any exterior building modifications (i.e. façade, awning, etc) shall be reviewed and approved by the Downtown Design Review Committee and the Planning Director prior to building permit issuance for same;
4. That any regulated signage shall be reviewed and approved by the Downtown Design Review Committee and the Planning Director prior to building permit issuance for same; and,
5. That the conditional use approval granted herein may not be transferred.

Attachments: Application and exhibits noted above

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**STAFF REPORT ADDENDUM B**  
**CU09-03 / High Street Pub, LLC / 226 High Street**

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Article 1331.06 (27) of the Planning and Zoning Code, Supplemental Regulation Pertaining to Permitted Land Use Table provides the following applicable performance standards:

- (a) Such private club shall have as its principal purpose the business of serving meals on its premises to its patrons and to members of such club and their quests. For the purposes of this section, the term "meal" shall be consistent with that of the State of West Virginia as defined in its Legislative Rules and Regulations pertaining to Private Club License and shall not include packaged potato chips and similar products; packaged crackers; packaged nuts; packages desserts (fruit pies, cakes, cookies, etc.); and bar sausages and similar products.
- (b) Such private club with a bar shall post a sign not smaller than three (3) square feet in a prominent location near the bar that states the following: "It is a violation of City Ordinance to serve wine or liquor beverages after 1:00 a.m." (Amended by Ord. 06-14, Passed 06-06-2006.)
- (c) No such applicant may be licensed as a private club under this conditional use that has not been in operation for at least one year as a bona fide restaurant before making application for a license under this conditional use. However when an applicant owns another bona fide restaurant the same as the one being proposed, the Board of Zoning Appeals may consider the proposed restaurant application on the basis of the existing restaurant which has been in operation for at least one year. In the B-4 district the Board of Zoning Appeals may waive the requirement, to be in business for one year as a bona fide restaurant, when the applicant's written description of the business operations, plus floor plans, demonstrate clearly that the establishment will meet the criteria in this subsection of the ordinance.
- (d) NOT APPLICABLE
- (e) Food and non-alcoholic beverages shall comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month.
- (f) Such private club shall provide a seating capacity for at least fifty (50) persons, at a table or counter maintained for the principal purpose of serving meals. Seats at a bar, which is primarily for the serving of alcoholic beverages, shall not be counted as meeting the minimum seating capacity of the establishment. Liquor or wine may be served either at seats intended primarily for dining, or at any bar area within the restaurant, with or without an accompanying meal.
- (g) Liquor or wine shall not be served later than 1:00 a.m., except on New Year's Eve.
- (h) The private club shall, at the time of each sale or at the time of payment, record the amount of revenue derived from the sale of liquor and wine beverages separately from the amount of revenue derived from the sale of food and non alcoholic beverages.
- (i) During each calendar month, the private club shall maintain and preserve accurate and adequate records including those required by paragraphs (e) and (h) above, to prove compliance to the City's Finance Director, and shall make all such records available for review and audit promptly upon request by the Finance Director. The records for each month shall be preserved for not less than twenty-four (24) months next following.
- (j) Quarterly, the private club shall send to the City Finance Director summaries showing the amount of revenue derived from liquor and wine beverages versus the amount derived from the sale of food and non-alcoholic beverages.
- (k) NOT APPLICABLE