

MORGANTOWN BOARD OF ZONING APPEALS

MINUTES*

August 17, 2005

6:30 P.M.

City Council Chambers

Members Present: Kevin Leyden (Late), Nick Iannone, Bernie Bossio, and Mark Furfari.

Members Absent: Jim Rockis.

Staff Present: Jim Wood, Planning Director.

MATTERS OF BUSINESS:

Motion by M. Furfari, second by B. Bossio to approve the minutes of July 20, 2005, as written.
Motion carried unanimously.

OLD BUSINESS:

1. **V04-14 / Stern / Richwood Avenue:** Request by Linda Stern for variance approval from the *Table 2, Residential Development Standards* for property located on the corner of Richwood Avenue and Miller Street. Tax Map #30 Parcel #113; a B-1, Neighborhood Business District

J. Wood read the staff report stating that Ms. Stern was previously approved in August 2004 to construct a three level three level 972 square foot building at the corner of Richwood Avenue and Miller Street. Ms. Stern is asking for a six-month extension. Due to the illness of her mother, she has not been able to start building.

J. Wood explained that the intention of the applicant is to have a first floor seamstress business while residing, with family members, on the additional floors. The lot contains 5,456.46 square feet. Due to the depth of the property, adhering to the minimum setbacks would create an unusual hardship in terms of building anything of reasonable size or shape on the property.

J. Wood noted that in a B-1 District, according to the Residential Development Standards, the minimum front yard and rear yard setback is 25 feet. The applicant is requesting a front yard variance, on the most northern corner of the building, of 2.67 square feet and a rear yard variance of 12 feet. Therefore, the proposed building would have a front yard of 22.33 feet on the aforementioned corner and a rear yard of 13 feet. The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance. Staff offers no recommendation in this case, and merely urges the Board to consider it on the basis of the findings of fact.

Linda Stern, applicant, was available to answer any questions.

N. Iannone asked for public comments. There being none, the public portion was closed.

Motion to approve the extension of the variance for six months by B. Bossio, second by M. Furfari.
Motion carried unanimously.

NEW BUSINESS:

2. **CU05-11 / Hill / 976 South Point Circle:** Request by Diana Hill for conditional use approval to begin a home based business at 976 South Point Circle. Tax Map #42, Parcel #68; an R-1, Single-family Residential District.

J. Wood read the staff report stating that Diana Hill would like to begin a home occupation, D.J.'s Home Treasures, that will operate via direct sales to individuals and businesses of craft and home décor items. All customer orders will be drop-shipped to them from the supplier. There will be no stockpiling of merchandise.

J. Wood advised that there are no set hours of operation for the home business since no clients will be visiting the premise. All business will be conducted by phone, e-mail, P.O. Box, web site, or at other locations. The business mailing address will be a post office box and not the applicant's residence.

J. Wood reported the area of Ms. Hill's residence that will be utilized for the proposed business is 1-2% of the total finished square footage of the home and will not require internal or external alterations. The applicant has stated that she will utilize a personal computer, desk, chair, one-two drawers of existing filing cabinets, home phone, and personal cell phone.

J. Wood observed that staff believes that the application meets all the criteria for home occupation approval and recommends approval, as it will not adversely affect adjacent properties. Staff believes that the business operation will not change the residential character of the neighborhood. Staff believes the Board should find in the positive with the addition to Finding of Fact #3 of "there will not be any construction or alterations to the interior or exterior of the residence", and to #5, "no customers or clients will visit the applicant's home." It is the Board of Zoning Appeals' task to determine if the home occupation will be compatible with the residential uses in the area, will not change the residential character of the dwelling, and will not result in substantial increase in traffic, congestion, or parking burdens in the neighborhood. The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance.

Diana Hill, applicant, reiterated the staff report.

N. Iannone asked for public comments. There being none, the public portion was closed.

Motion to accept the Findings of Fact as written with the staff additions to #3 and #5 by B. Bossio, second by M. Furfari. Motion carried unanimously.

Motion to approve the request by M. Furfari, second by B. Bossio. Motion carried unanimously.

3. **CU05-12 and F05-10 / Panico / 98 South Walnut Street:** Request by Joe Panico for conditional use and façade review approval for a multi-family structure in the B-4 District at 98 South Walnut Street. Tax Map #29, Parcel #348; a B-4, General Business District.

J. Wood advised that applicant requested that the case be tabled to the September meeting.

Motion to table the request by B. Bossio, second by M. Furfari. Motion carried unanimously.

4. CU05-13 / Skidmore / 440 Junior Avenue: Request by Christina Skidmore for home occupation conditional use approval for day care services at 440 Junior Avenue. Tax Map #2, Parcel #84: an R-1, Single-family Residential District.

J. Wood presented the staff report stating that Christina Skidmore would like home occupation approval to operate a Home Occupation Child Care Service from her home at 440 Junior Avenue. The applicant requests to provide child care for no more than five children between the ages of infant to twelve years, Monday through Friday from 6:00a.m. to 6:00p.m. The applicant has made preliminary contacts with potential clients if the business is approved. The pickup and drop off times were listed in a chart.

J. Wood read that the site is located on an interior lot, 40 X 110 (4,400 square feet), off of Junior Avenue. There is a small rear yard behind the structure that could be used as a play area if it is properly enclosed. We have asked for, but have not been given a definitive answer from the applicant as to whether or not she intends to offer outdoor play area. It is important to have this information before making a final decision, because having an outdoor play area, while arguably better for the children, also has a different type of impact on surrounding properties than a day care that is conducted entirely indoors. Inside the premises the applicant provides 2,028 square feet of area.

J. Wood reported that a paved driveway with access from Junior Avenue will be used as a drop off and pickup point. The applicant is asking that parents utilize this point while dropping off or picking up their child(ren), which will be on a staggered schedule.

J. Wood advised that §19.E.3, *Home Occupation Family Child Day Care Facility*, states that an outside play area, if provided, shall be enclosed by a three-foot high solid wall of fence with self-latching gate. And for each child in the play area at any time there must be at least 75 square feet of play area, and no play equipment shall be closer than 15 feet to any lot line. 75 feet of play area X 12 children (the maximum that could be permitted with this type of day care) equals 900 square feet. The applicant is requesting her business be for no more than five children. Therefore, the outside play area would need to be at least 375 square feet. The applicant has a rear play area of 30 X 36 (1,080 square feet) that is not currently fenced.

J. Wood noted that in October 2001, City Council amended the related ordinance to allow one person that does not reside in the residence to be employed to work on-site to assist in the daily supervision of children. The applicant would like to keep this option open for the future.

J. Wood stated that the Board of Zoning Appeals must determine whether the day care activity is consistent with the goals and objectives of the Comprehensive Plan. The lots in this area are relatively small by Suncrest standards, and a key consideration should be whether or not an outdoor play area would negatively impact adjoining properties through excess noise. Staff leaves it to the Board of Zoning Appeals to determine if having such a play area is acceptable. If it is not, the application should be denied, or have a condition placed on it that would prohibit the provision of such a play area.

J. Wood observed that the Planning Commission, on August 11, 2005, voted to forward a favorable recommendation to the Board with the following conditions:

1. Limit business to five nonresident children,
2. Parents must come at staggered start times, not less than 15 minutes apart.

3. Parents must bring children to back door of house for drop-off and pick-up.
4. Parents must turn vehicle around at end of driveway and pull out onto Junior Avenue facing forward. No backing out onto Junior Avenue.

The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance. Staff believes the BZA should find in the positive, with the addition to Finding of Fact #3 of “the applicant has a driveway that could be accessed in case of an emergency.”

J. Wood read a letter of opposition into the record.

Ladies and Gentlemen of the Planning Commission:

We live at 461 Junior Avenue and strongly oppose the proposed daycare facility/home occupation at 440 Junior Avenue for the following reasons:

Junior Avenue is a very congested street. More than a thousand people work at the end of Collins Ferry Road. Most of them travel Junior Avenue to University Ave. and onto Interstate 79. Hundreds more live in townhouses and apartment complexes down Collins Ferry Road they too use Junior as a cut through to University Ave. Thousands more live on the north and east side of Collins Ferry, (newer Suncrest), they too travel the short cut down Junior Ave. Compounding all this traffic is Suncrest primary and dozens of School buses and private automobiles that converge there picking up and dropping off students going to Suncrest Primary, MHS and Suncrest Middle. There are also delivery trucks supplying Suncrest Primary and businesses down at the end of Collins Ferry Road daily. There is also traffic from Star City that avoids congestion at the bottom of University Avenue at Boyer Street that comes up Fairfield and Fenwick cuts through Junior to University Ave. WVU football traffic cuts through and comes down Burroughs Street to Collins Ferry to Aspen and onto Junior Ave. to University going out to I-79. The entire area uses our street because Junior Ave. is the only street between Collins Ferry Road and University Ave. that is a direct two way street. Pocahontas Ave. is one way Collins Ferry to University Ave.

We invite any member of the Planning Commission to visit and sit on our porch and observe the traffic. We also invite any of you to try and back out of our driveway between 7:00am and 9:00am each morning or to try it between 5:00pm and 7:00pm each evening. We are opposed to allowing a home business/daycare which will bring more traffic onto our street and possible safety issues involved with stopped traffic picking up and dropping off infant and toddler children.

We also oppose changing the R-1, single-family Residential District zoning status. A change in the zoning will affect our property value and begin the destruction our neighborhood status. You must oppose this request and protect our street and neighborhood from any attempts at establishing a business.

Sincerely,

Ralph and Maureen Schmitt
461 Junior Avenue

Christina Skidmore, applicant, stated she wanted to stay home with her son and gave the reasoning behind the request for five children. There is plenty of room outside for five children and they are getting estimates for having it fenced in. There is a lot of traffic on Junior but the driveway will be used for pick up and drop off.

B. Bossio questioned the shared driveway.

Ms. Skidmore stated that she has worked out the details with her neighbor about coming and going on the shared driveway and that it is not an issue for them.

B. Bossio asked if the applicant's deed shows the shared driveway.

Ms. Skidmore replied in the affirmative.

B. Bossio asked if there was a letter from a neighbor.

Ms. Skidmore responded, "No."

B. Bossio questioned how she intends to self-enforce the Planning Commission conditions on her clients.

M. Skidmore answered that she will give clients an orientation session about the rules and drop them if they violate.

M. Furfari asked about the traffic on Junior Avenue.

Ms. Skidmore replied that her traffic volumes are low and she is not open on football Saturdays.

M. Furfari questioned how much time kids will be outside or if she will take the kids to a park.

Ms. Skidmore answered that the traffic is too dangerous in the neighborhood to walk the children to the park.

M. Furfari asked where the Schmitt's house is (letter of opposition).

Ms. Skidmore responded they are across the street and three or four houses down.

N. Iannone asked about the fence for the play area.

Ms. Skidmore answered that there will be no fence if the day care is not approved.

N. Iannone asked for public comments. There being none, the public portion was closed.

B. Bossio noted that conditional uses can be periodically reviewed and revoked if the conditions are not followed.

Motion to accept the Findings of Fact as amended by staff by B. Bossio, second by M. Furfari.
Motion carried unanimously.

Motion to approve the request with the Planning Commission conditions by M. Furfari, second by B. Bossio. Motion carried unanimously.

5. **V05-08 / King / Willowdale Road:** Request by Ryan Petrucci on behalf of Lynn and Nancy King for variance approval from the *Table 2, Residential Development Standards* for property

located on Willowdale Road. Tax Map #14, Parcels #112-113; an R-1A, Single-family Residential District.

J. Wood read the staff report stating that the applicants are seeking a variance from the *Table 2, Residential Development Standards*. The Kings are requesting to build a single family dwelling within ten feet of the front property line, a 15' front yard variance. Please note that because of the odd shaped lot, the variance would only encompass a portion of the front yard. On the northern part of the lot, the front setback would increase to 27 feet.

J. Wood explained that the applicants received minor subdivision approval from the Planning Commission to combine two substandard parcels into one. If the parcels had remained separate, to be buildable lots, variances would be needed for front, rear, and/or side setbacks, lot coverage, and minimum ground floor area. By virtue of their combining these two significantly substandard lots, they have created one lot that is only slightly substandard, and that would require minimal variance. The parcel, which is 5,226 square feet, exceeds the minimum 4,000 square foot requirement in an R-1A District. By granting this variance, no additional setback or lot coverage issues will be created,

J. Wood declared that, according to the Zoning Ordinance, §14.B.5.a, *Front Yard*, “Where 25% or more of the lots in the block are occupied by building, the average setback of such buildings determines the dimension of the front yard on the block.” The applicants performed measurements to determine if their desired setback could be achieved by using this formula, but they still fell a little short. The average for the block is approximately 17 feet. The applicants have supplied a map indicating the setbacks for the block. They range from 7 feet to 43 feet. Given this average, they still require some variance relief. Considered in this light, one way to look at it is that the applicants are only asking for a 7' variance from what the ordinance would allow in 14.B.5.a, and even then only for a small portion of the lot.

J. Wood added that staff believes the property owner has done his part to reduce nonconformity of his parcels by combining them, and thus reduced the needed variance to the bare minimum. Despite those efforts, some variance is still needed due to the unusual shape of the parcel. Given those two factors, staff believes the requested variance is warranted in this case, and recommends approval. The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance. Staff believes the applicant's responses to the Findings of Fact are adequate, and do not need additional commentary.

Ryan Petrucci, representing the applicants, stated that the home would not be a rental property; it is being funded by the WV Housing Development Fund. They will also remove an existing outbuilding to provide more greenspace.

N. Iannone asked for public comments.

Susan Hennon, 382 Laurel Street, stated that the proposed home is too close to her property and will devalue her property. There will be drainage and sewer problems in the area from building a new house. Ms. Hennon approached B. Bossio to look at the map to determine where the house will be in relation to her property.

J. Wood clarified that the proposed house will meet the required separation from her property without a variance.

Tom Niner, 636 Afton Street, discussed drainage problems in the neighborhood and agreed that the house is too close to Willowdale. He is also worried that the house could become a rental and about the danger from driveways on Willowdale and vision problems.

Margaret Chase, 234 Willowdale Road, asked whether the applicant will be required to pull out of her driveway rather than back out onto Willowdale.

Bill Hendershot, 648 Afton Street, brought up aesthetics and is worried about it becoming a rental property. He also has concerns about visibility...

Sarah Hennon, 657 Afton Street, was concerned that the home will dilute the privacy she enjoys on her pool deck. She is also concerned about the rental possibility, traffic safety, and her property value.

Nancy King, 286 Randolph Road and applicant's mother, said the home will not be a rental unit and the proposed driveway will be safer than the existing adjacent parking pad.

Hoye Walls, 552 Melrose Alley, has lived in the neighborhood for 62 years and there will be no adverse effect from the new house on the neighborhood. It will not create additional water problems and the variance should be approved. There are no lots available in the neighborhood and the proposed house will improve the property.

Thomas Niner returned to ask if the existing parking pad serving the adjacent rental will be removed, and if so, where will those renters park? He asked if the Board can require conditions to be fulfilled on property not related to the site.

B. Bossio responded that the BZA cannot worry about adjoining parcels.

Ryan Petrucci stated that MUB will review the runoff.

J. Wood explained MUB's new stormwater runoff guidelines.

N. Iannone asked for further public comments. There being none, the public portion was closed.

N. Iannone asked if the property had already been combined.

J. Wood said that it has been combined.

B. Bossio explained that the BZA cannot do anything about rentals or drainage. These issues are for other forums.

J. Wood clarified that it would be illegal to deny someone the right to rent a home.

M. Furfari noted that a majority of the homes in the block are already closer to Willowdale than the applicant's proposed home.

N. Iannone commented that if the two properties had not been combined, there could have been two more houses in the neighborhood.

Motion to accept the Findings of Fact as written by B. Bossio, second by M. Furfari. Motion carried unanimously.

Motion to approve the request by B. Bossio, second by M. Furfari. Motion carried unanimously.

OTHER BUSINESS:

Public Comments: NONE.

Staff Comments:

ADJOURNMENT

***Neither audiotape nor videotape was made of this meeting.**