BOARD OF ZONING APPEALS

Minutes

6:30 PM **March 18, 2009** **City Council Chambers**

MEMBERS PRESENT: Bernie Bossio, Leanne Cardoso, George Papandreas, Tom Shamberger

MEMBERS ABSENT: Jim Shaffer

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Bossio called the meeting to order at 6:30 PM

II. MATTERS OF BUSINESS:

A. Minutes for the December 17, 2008 meeting – Shamberger moved to approve the December 17, 2008 minutes as submitted; seconded by Cardoso. The motion carried unanimously.

B. The minutes for the January 21, 2009 meeting were postponed to the April meeting.

III. OLD BUSINESS

A. **V08-38 / The Baldwin Group, LLC / 472 Baird Street:** Request by The Baldwin Group, LLC for variance approval from the Planning and Zoning Code, Article 1347.04 (A) (3) & (C) as it relates to setbacks and encroachments for property located 472 Baird Street; Tax Map #26 Parcels #283, 284, 287; a B-2, Service Business District.

Fletcher read the Staff Report stating that in October 2008, the petitioner received approval for an eleven (11) two-bedroom unit multi-family development at the end of Baird Street. He also received variance approval from the Board to encroach into his minimum rear yard setback. The applicant now seeks to increase the extent of the variance relief granted by the Board by 1.5 feet in order to increase the building's bedroom sizes from 7.25 feet to 8 feet.

The following table illustrates the project's previous variance approval and the request amendment.

Criteria	Minimum Standard (B-2)	Approved rear setback	Approved Variance	Amended rear setback	Required Variance
Minimum Rear Setback	40 ft.	12.37 ft.	27.63 ft	**10.87**	**29.13**

Addendum A of this report illustrates the location of the subject site.

Bossio recognized James Baldwin, The Baldwin Group, LLC, and asked if he had anything to add to Fletcher's report. Baldwin stated that he wanted to modestly increase the size of the units to gain additional square footage for the bedrooms and that moving the building further could not be done due to the required four-foot sidewalk immediately in front of the building and the depth of the parking spaces between Baird Street and the sidewalk.

Bossio asked if Baldwin new what the minimum square footage for bedrooms were. Baldwin stated that he wasn't sure. Bossio asked Fletcher, who stated that he believed the Building Code required a minimum of 70 square feet along with other requirements and that he believed the existing floor plan meet Building Code minimums.

Bossio opened up the public comment portion of the meeting. There being none, Bossio closed the public comment portion of the meeting was closed and asked for Staff's recommendations.

Fletcher stated that Staff closely reviewed the petitioner's site plan to identify alternative strategies of meeting the petitioner's design objectives and thereby avoiding a further encroachment into the minimum rear yard setback. Unfortunately, there does not appear to be sufficient flexibility to push the proposed building forward due to minimum parking depth requirements and minimum sidewalk width requirements. It should be noted that the sidewalk a necessary element of the project to ensure safe pedestrian circulation from parked vehicles to the dwelling units; particularly given the approved Westminster House PUD development that will increase vehicular utilization of Baird Street.

Staff recommends that the petitioner's request to increase the extent of the variance relief granted by the Board on October 15, 2008 be approved based on the related Findings of Fact found in the affirmative by the Board on October 15, 2008 and restated below:

<u>Previously approved Findings of Fact</u>:

1. There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

   "The property is not very deep compared to the large rear setback requirement and there is a stormwater line running across the front portion of the property."

2. The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

   "The developable area for other surrounding properties is not reduced due to a stormwater line running across private property rather than within a public right-of-way as is the case with the subject property."

3. The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

   "The variance request is the result of moving the building further into the required rear setback so that the stormwater line is not harmed. Steep slopes provide a natural buffer between the subject property and adjoining properties with structures fronting Locust."

4. The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

> "The proposed setback will allow sufficient space in the front for thirteen on-site parking spaces. These thirteen spaces plus the three off-site spaces on the adjoining property should ensure this project does not contribute to the traffic congestion and vehicular maneuvering limitations caused by neighboring multi-family structures that depend on on-street parking spaces. The project's targeted tenancy and its proximity to the downtown campus is expected to mitigate trip generation that is normally attributed to this type of development. A new building on this site, whose design is in character of the neighborhood, should enhance property values."

Papandreas moved that the Findings of Fact determined by the Board at its October 15, 2008 for the original rear yard setback variance be utilized for the petitioner's request to amend said variance; seconded by Shamberger. The motion passed unanimously.

Shamberger moved to grant a 1.5 feet increase to the rear yard setback variance granted by the Board on October 15, 2008; seconded by Papandreas. The motion passed unanimously.

Bossio advised Baldwin that the Board's decision can be appealed to the Circuit Court within thirty (30) days and that any work done during this time is at the sole financial risk of the petitioner.

IV. NEW BUSINESS

A. <u>V09-06 / Monongalia County Habitat for Humanity / 1202 Tyson Street</u>: Request by Tara Dille, on behalf of Monongalia County Habitat for Humanity, for variance approval from the Planning and Zoning Code, Article 1335.04 (A) as it relates to setbacks and encroachments for property located at 1202 Tyson St. Tax Map #22 Parcel #32; an R-1A, Single Family Residential District.

Fletcher read the Staff Report stating that the Monongalia County Habitat for Humanity seeks variance approval for property located at 1202 Tyson Street to construct a single-family dwelling. The site plan submitted by the petitioner illustrates that the structure conforms to the rear and side setback requirements. However, the following table illustrates that variance relief is necessary to exceed the R-1A District maximum front setback standard.

Max. Front Setback Standard	20 feet
Proposed Front Setback	56 feet
Required Variance	36 feet

The petitioner's grounds for this request are based on the apparent instability of the front portion of the property due to the demolition of a previous structure in that area. Two letters were provided by the petitioner to confirm related site constraints, which are attached hereto. Addendum A of this report illustrates the location of the subject site.

Bossio recognized Tracy Thorne, Executive Director for Habitat for Humanity, and asked if she had anything to add to the Staff Report. Thorne stated that Fletcher had covered everything.

Bossio opened up the public comment portion of the meeting. There being none, Bossio closed the public comment portion of the meeting was closed and asked for Staff's recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant.

Shamberger moved to find in the affirmative for each of the Findings of Fact #1 through #4 with revisions recommended by Staff; seconded by Papandreas. The motion passed unanimously.

NOTE: The following findings were included in the motion.

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

> This is necessary due to the apparent instability of the fill material placed toward the front of the lot. The rear area appears to be more stable.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

> The required setback would prohibit the best use and location of the home site because of the continuing slope on the lower front left of the lot and because of the previous fill being unstable.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

> The variance will not affect the access to adjoining parcels by emergency or service vehicles from Tyson Street. The site is bounded on two sides by an unopened street (Pineta) and the County.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

> This variance cannot improve nor contribute to traffic congestion. This structure will continue to be utilized as a single family residence. Therefore, no additional traffic or congestion will occur as a result of the variance.

Papandreas moved to grant thirty-six (36) foot variance relief to exceed the maximum front setback standard; seconded by Cardoso. The motion passed unanimously.

Bossio advised Thorne that the Board's decision can be appealed to the Circuit Court within thirty (30) days and that any work done during this time is at the sole financial risk of the petitioner.

B. **<u>V09-07 / Blended Way, LLC / 1137 Chelsea Square</u>:** Request by Sara Blankenship, on behalf of Blended Way, LLC, for variance approval from the Planning and Zoning Code, Article 1369 as it relates to signs for property located at 1137 Chelsea Square; Tax Map #6 part of Parcels #37, 37.3, 39, 40, 40.1, 41, 42, 43, 43.1; a B-1, Neighborhood Business District.

Fletcher read the Staff Report stating that the petitioner seeks to erect a thirty-two sq. ft. sign for her business *Blended Way* in the Chelsea Square commercial development along Van Voorhis Road. Article 1369.07 (I) (1) of the Planning & Zoning Code provides that the maximum area of permitted wall signs in the B-1 District is 0.4 square feet for each linear foot of storefront.

The linear width of the subject storefront is twelve (12) feet, which provides a maximum wall sign area of 4.8 sq. ft. As such, the petitioner must obtain a 27.2 sq. ft. variance. Addendum A of this report illustrates the location of the subject site and a photograph of the storefront.

Bossio recognized Sara Blankenship and asked if she had anything to add to the Staff Report. Blankenship stated that she believes it is important to her establishment's messaging coincide with the sizes of neighboring businesses within the Chelsea Square development.

After some discussion concerning whether the petitioner's sought enough relief, Bossio asked why the petitioner did not ask for a larger variance. Blankenship stated that she agreed that a larger sign would be more similar to the existing signage of neighboring businesses but she didn't want to ask for too much.

Bossio opened up the public comment portion of the meeting. There being none, Bossio closed the public comment portion of the meeting was closed and asked for Staff's recommendations.

Fletcher stated that one of the stated purposes within the Planning & Zoning Code for sign regulations is to:

> "…encourage the effective use of signs as a means of communication in the City, to maintain and enhance the pleasing look of the City, which attracts to the City continued economic investment; to preserve Morgantown as a community that is attractive to business, to residents and to visitors…" [Article 1369.01 (A)]

Size restrictions are one of several means to accomplish this policy objective.

The Board of Zoning Appeals must 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 applicant. Staff recommends the following revisions to the petitioner's "Findings of Fact" (deleted matter struck through; new matter underlined).

Papandreas moved to find in the affirmative for each of the Findings of Fact #1 through #4 with revisions recommended by Staff; seconded by Cardoso. The motion passed unanimously.

NOTE: The following findings were included in the motion.

<u>Finding of Fact #1</u> – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

> All signs in the Chelsea Square development appear to be much larger than 5 square feet giving them a visibility advantage to vehicular traffic. The subject shopping plaza

contains commercial uses including restaurants, grocery, specialty stores, and real estate agents. A larger sign than what is required would appear to be more proportional to the other signs in the plaza. The sign regulations for B-1 District appear to be sized more for pedestrian traffic, which is not characteristic of the subject site because of its location along Van Voorhis Road, which serves as a primary corridor.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

A larger sign would appear to be more proportional to the commercial messaging of other existing business signage located within the Chelsea Square shopping center.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

It would permit signage to correspond in size to the majority of signage located within the Chelsea Square shopping center.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The nature of the relief request cannot contribute to nor mitigate traffic congestion; will not alter the existing land use characteristics of the commercial shopping center; and, will continue a commercial signage messaging characteristic that is prevalent within the subject shopping center.

Papandreas moved to grant a thirty-one (31') square-foot variance from the maximum area for permitted wall signs with the condition that said sign not exceed 3' in height and stay within the existing vertical posts that frame the sign area above the subject storefront; seconded by Cardoso. The motion passed unanimously.

Bossio advised Blankenship that the Board's decision can be appealed to the Circuit Court within thirty (30) days and that any work done during this time is at the sole financial risk of the petitioner.

V. OTHER BUSINESS

A. Public Comments – none.

B. Staff Comments – none.

VI. ADJOURNMENT – meeting was adjourned at 6:55 PM.