

# BOARD OF ZONING APPEALS

## Minutes

6:30 PM

May 18, 2011

City Council Chambers

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

**MEMBERS ABSENT:** None.

**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: Approval of Minutes:**

**January 19, 2011 Minutes:** Motion to approve as presented by Shamberger; seconded by Papandreas. The motion carried 4-0, with Bossio abstaining due to his absence at that meeting.

**February 16, 2011 Minutes:** Motion to approve as presented by Papandreas; seconded by Shamberger. The motion carried 3-0, with Cardoso and Shaffer abstaining due to their absence at that meeting.

**March 16, 2011 Minutes:** Motion to approve as presented by Papandreas; seconded by Shamberger. The motion carried unanimously.

**April 20, 2011 Minutes:** Motion to approve as presented by Shamberger; seconded by Cardoso. The motion passed 3-0, with Papandreas and Shaffer abstaining due to their absence at that meeting.

**III. OLD BUSINESS:**

**A. CU09-03 / High Street Pub / 226 High Street:** Request by Gregg Metheny, on behalf of High Street Pub, LLC, for an amendment to a previously approved conditional "Restaurant private club" use in B-4 District at 226 High Street. Tax Map #26A, Parcel #137; B-4, General Business District.

Fletcher read a memorandum stating that on June 17, 2009, the Board granted Conditional "Restaurant, Private Club" Use approval to Mr. Gregory Metheny, Game On Enterprises (DBA "High Street Billiards and Cue") for the subject establishment at 226 High Street.

The petitioner seeks to expand this conditional use into an additional portion of the building to provide a small theatre area and high top tables where the M.T. Pockets theater was once

located. The expansion is situated so that it can be rented for small gathers and parties for various events and age groups.

Because the CU09-03 approval did not include this portion of the building, the petitioner must return to the Board to obtain amendment approval.

Attached herewith are:

- A letter of explanation from the petitioner dated April 13, 2011 requesting an amendment to the June 17, 2009 conditional "Restaurant, Private Club" use approval so that additional space can be included in the area of operation of same.
- Photographs of the subject expansion area.
- The CU09-03 approval letter dated June 24, 2009
- A portion of the June 17, 2009 hearing minutes pertaining to the subject case during which the subject conditional use petition was approved unanimously.
- The May 20, 2009 Staff Report Supplement dated June 15, 2009.
- Drawings and exhibits submitted by the petitioner to the Board between the May 20, 2009 and June 17, 2009 hearings.
- A portion of the May 20, 2009 hearing minutes pertaining to the subject case during which the petition was tabled so that a site visit could be scheduled.
- The May 20, 2009 Staff Report presented to the Board pertaining to the subject case.

It should be noted that the subject expansion area was included in the Board's June 3, 2009 tour of the petitioner's facilities.

Staff recommends that the petitioner's request to amendment CU09-03 be approved so that the additional space illustrated on the petitioner's submitted exhibits be included in the area of operation for the "Restaurant, Private Club" use and that all conditions included in the CU09-03 approval remain in effect.

Bossio introduced the applicant, Greg Metheny, 2419 Stewartstown Rd. Mr Metheny stated that in early April, it was discovered that the additional space was omitted from the original submission, and that they have been operating as if they had the Conditional Use approval.

Bossio affirmed that there was nothing intentional on the applicant's part to overlook this. Metheny stated that there definitely was not.

Bossio opened the public portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor of the request, he then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff's recommendations.

Fletcher stated that staff has already given their recommendation for approval, and since this is an amendment to an existing Conditional Use approval, there are no Findings of Fact.

Motion by Papandreas to amend the approved Conditional Use, as requested; seconded by Shamberger. The motion carried unanimously.

#### IV. NEW BUSINESS:

- A. **V11-11 / Kelly / 616 McLane Avenue**: Request by David Kelly for variance relief from Article 1337 as it relates to setbacks in the R-2 District at 616 McLane Avenue. Tax Map #15, Parcel #137; R-2, Single and Two-Family Residential District.

Fletcher read the Staff Report stating that the the petitioner seeks to remove the covered rear porch of single-family dwelling unit and construct an addition in its place. Addendum A of this report illustrates the location of the subject site.

The existing structure is a two-bedroom single-family rental unit. The proposed addition will provide for an additional bedroom. There appears to be sufficient on-site parking for the resultant increase in residential occupancy.

The petitioner's site plan illustrates the side setback for the existing structure to be one (1) foot and the side setback for the proposed addition to be two (2) feet. The proposed addition will follow the same setback line as the existing covered rear porch. The proposed addition will comply with the minimum rear setback and maximum lot coverage standards.

Bossio introduced the applicant, David Kelly, 100-A Seventh Street, Morgantown. Mr. Kelly stated that he wanted to remove the covered, rear porch to construct a third bedroom. The addition has been designed to complement the original structure, and should no effect on the infrastructure of the neighborhood. He further stated that the Morgantown Utility Board did not even require any additional drainage requirements.

Bossio opened the public portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff's recommendations.

Fletcher read staff recommendations, stating that 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 petitioner.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends approval of petition V11-11 as requested.

Motion by Shamberger to accept the Findings of Facts as amended; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Findings of Fact 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:

The dwelling at 616 Mclane Avenue is situated on a 30 feet wide lot instead of the typical 40 feet wide lots in this neighborhood. The structure was originally built with a one foot property line setback on the right side.

**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:

There are many older properties in this neighborhood that do not conform to the setbacks now required by current zoning requirements.

**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 proposed addition only extends into the rear yard another six feet from the existing rear porch and even with the addition maintains the 44 foot rear yard setback. The addition appears to have been designed to complement the existing structure by matching roof lines and using same exterior finish.

**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 addition proposed for the dwelling at 616 Mclane Avenue will not alter existing land use. The addition adds very little to the building footprint and one additional occupant should not have a detrimental effect on what is now a moderate density neighborhood. The Sunnyside Up Comprehensive Revitalization Plan encourages higher density in the Sunnyside area. The addition should not have a detrimental effect on the adjacent properties in that the addition complements the existing structure and shall include off-street parking for all three of the occupants. The addition of one occupant to this neighborhood should have little or no effect on the existing infrastructure.

Motion by Cardoso to approve petition V11-11; seconded by Shamberger. Motion carried unanimously.

- B. V11-12 / Leonard / 1512 Eastern Avenue:** Request by Steve Leonard for variance approval from the Planning and Zoning Code, Article 1333 as it relates to setbacks for property located at 1512 Eastern Avenue; Tax Map #53, Parcel #188; R-1, Single-Family Residential District.

Fletcher read the Staff Report stating that the Board granted the petitioner a ten (10) foot variance from the minimum side setback requirement for corner lots in the R-1 District on April 15, 2009 for the construction of an attached garage addition (Case No. V09-08).

Article 1381.05 of the Planning and Zoning Code provides:

“In the case where a variance has not been used within twelve (12) months after the granting thereof, then without further action it shall be null and void. This may be extended to eighteen (18) months upon prior written request of the Board. The word ‘used’ shall mean that the approved variance has been activated as evidenced by permits, construction, or required licenses.”

The variance approved on April 15, 2009 was not “used” or “activated” within twelve (12) months nor was the approval granted an extension as described above.

The petitioner now seeks to move forward with the garage addition but must again obtain variance approval. The proposed addition and variance request are identical to that presented to and approved by the Board in 2009.

Attached herewith are the petitioner’s related V09-08 approval letter dated April 16, 2009; a portion of the Board’s April 15, 2009 hearing minutes pertaining to the subject case; and, the Staff Report presented to the Board on April 15, 2009.

Steve Leonard, 1215 Eastern Avenue, stated that they were unable to find a contractor to complete the garage addition in 2009. They are now ready to move forward with construction.

Bossio opened the public portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, Bossio asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff’s recommendations.

Fletcher read Staff recommendation, stating that because the petitioner obtained unanimous approval by the Board for the identical project and variance request, Staff recommends that the Findings of Fact approved during the April 15, 2009 hearing be accepted and that variance relief be granted as requested.

Papandreas made a motion to accept the Findings of Facts; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Facts 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:

R-1 zoning in the area requires a 15’ setback on the side facing Morgan Drive, which is the required 1.5 times the normal 10’ setback. However, there appears to be an approximate 25’ wide empty City lot between the subject side property line and the paved area of Morgan Drive. This 25’ wide lot is composed of overgrown brush and a flat grassy area. The requested 10’ variance to build a garage should not affect the City’s empty lot.

**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 granting of this 10’ variance would allow the construction of a one car garage in what appears to be an appropriate yet limited side yard buildable area of the property without adversely affecting the City’s adjoining vacant lot. The garage addition will increase the availability of off-street parking for the existing single-family structure.

**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 construction of this garage should not affect the empty City lot next to the petitioner's property. The one story garage would not affect visibility at the corner of Eastern and Morgan and would probably improve it due to the required removal of some existing bushes at the corner of Eastern and Morgan. The addition of a garage should increase the value of the home which should also have a positive effect on other homes in the area.

**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 granting of this variance would only effect the City property which is presently an empty lot and is only 25' wide. Morgan Drive already has a paved surface of approximately 20' and should not be adversely impacted by the requested variance. As stated above the one story garage would not affect visibility for traffic on Eastern or Morgan and would have a positive effect of the home's property value which should positively affect the other homeowners in the area.

Shaffer moved to approve petition V11-12; seconded by Papandreas. Motion carried unanimously.

- C. V11-13 / Shaw / 1141 Windsor Avenue:** Request by Christine Shaw for variance approval from the Planning and Zoning Code, Article 1333 as it relates to setbacks for property located at 1141 Windsor Avenue; Tax Map #6, Parcel #35.2; R-1, Single-Family Residential District.

Bossio stated that he owns property within 200 feet of this property and asked the applicant if she had a problem with him voting on this request. Ms. Shaw stated that she did not.

Fletcher read the Staff Report stating that the the petitioner seeks to construct a five (5) foot addition onto the existing attached garage. The existing side setback is, according to the petitioner, approximately ten (10) feet. Addendum A of this report illustrates the location of the subject site.

The proposed addition will be approximately five (5) feet from the side property line, which requires a five (5) foot variance from the R-1 District minimum side setback standard of ten (10) feet.

The side parcel boundary is shared with a vacant lot that is situated at the corner of Burroughs Street and Windsor Avenue.

Christine Shaw, 1141 Windsor Avenue, stated that she is the owner and resident. She would like to enlarge her garage to make it more conducive to opening a car door and creating more space. She also stated that their neighbors were going to come and speak in support of her request, but due to illness, were unable to be there. She stated that none of the other neighbors have any problem with her request.

Bossio opened the public portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor of the request, he then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff's recommendations.

Fletcher read Staff recommendation, stating that 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 petitioner.

Addendum B of this report provides Staff recommended revisions to the petitioner’s findings of fact (deleted matter struck through; new matter underlined).

Staff recommends that variance relief be granted for petition V11-13 so that the proposed addition is no closer than five (5) feet from the side property line.

Papandreas made a motion to accept the Findings of Facts as amended; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Findings of Facts 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:

The existing garage width does not appear to provide sufficient interior space to accommodate normal access. The proposed addition extending no closer than five (5) to the side property line appears to provide sufficient area to accommodate the desired garage width without gratuitously impacting the future development of the adjoining vacant lot.

**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 zero setback variance was granted at 1205 Douglas Avenue by the Board in Case No. V93-11 so that an attached garage could be constructed replacing an existing carport with the same setback. The single-family structure at 1111 Windsor Avenue does not appear to meet the current ten (10) foot side setback standard.

**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 proposed garage addition with a setback of no less than five (5) feet from the petitioner’s side property boundary should provide sufficient distance from the adjoining vacant parcel given the fact that the subject side parcel boundary is shared with the rear yard of adjoining Parcel 35.3.

**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 proposed garage addition will not change the existing single-family land use for the subject property or that within the vicinity; the value of the petitioner’s and surrounding structures should be preserved and/or increase as typically realized with significant home improvements; and, the requested variance cannot contribute to nor decrease existing traffic congestion within the immediate area.

Shaffer made a motion to approve petition V11-13; seconded by Papandreas. Fletcher interjected requesting clarification that the motion was to grant variance relief so that the addition could be no closer than 5 ft. from the side property boundary. Shaffer confirmed that was his motion. Bossio called for the vote and the motion passed unanimously.

- D. V11-14 / Shuman / 604 Preston Road:** Request by Phil Shuman for variance approval from the Planning and Zoning Code, Article 1331.08 Accessory Structures and Uses in Residential Districts for property located at 604 Preston Avenue. Tax Map #30, Parcel #35; R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating that the The petitioner seeks to construct a 20 foot by 24 foot or smaller accessory garden storage building. Addendum A of this report illustrates the location of the subject realty and the proposed location of the accessory structure.

Article 1331.08 (A) of the Planning and Zoning Code provides that:

- (2) Accessory structures, if detached from a principal structure, shall not be placed in the front yard. If placed in a side yard, accessory structures shall not be located closer to the street than the required front setback of the principal structure.
- (7) The total square footage of all accessory structures shall not exceed fifty (50) percent of the first or ground floor area of the principal building.

The proposed location of the accessory structure is within the property's front yard but located in a corner adjoining the rear yards of parcels fronting Preston Road and Miller Street.

The subject property is over two (2) acres and currently contains an approximate 1,511 square foot principal structure and an approximate 1,232 square foot accessory detached garage. The area of the existing accessory structure is approximately 81.5% of the principal structure's ground floor area, which exceeds the fifty (50) percent standard noted above.

The total area of the existing and proposed accessory structures will have an approximate area of 1,712 square feet, which increases the maximum accessory structure area nonconformity to 113% of the principal structure's ground floor area.

To construct the accessory structure and locate it as proposed, the petitioner must obtain variance relief from the requirements noted above.

Phil Shuman, 604 Preston Rd., stated that the Findings of Facts speak for themselves.

Bossio opened the public portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public portion closed.

Bossio asked if a non-conforming use can be expanded upon.

Fletcher stated that it is not a non-conforming use, but rather a non-conforming 'structure' and it exists because the accessory structure exceeds 50% of the principal structure.

Fletcher read Staff recommendation, stating that 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 petitioner.

Addendum B of this report provides the petitioner’s findings of fact as developed with the assistance of Staff.

Staff recommends that variance relief be granted for petition V11-14 so that the proposed accessory structure may be constructed and located no closer than twenty (20) feet from the rear property line of the parcel fronting Preston Road and no closer than five (5) feet from the parcels fronting Miller Street.

Cardoso made a motion to accept the Findings of Facts; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Facts 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:

The petitioner’s property is unique in that it is over two (2) acres. The rear of the petitioner’s property enjoys an extraordinary viewshed over the Greenmont and South Park neighborhoods. Constructing the proposed accessory structure toward the rear of the property would adversely impact said viewshed, which is also enjoyed by several properties along Miller Street. The proposed location of the accessory structure appears to have the least impact on neighboring properties as it will be at the rear of parcels fronting Preston Road and Miller Street.

**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 subject property is over two (2) acres with a long driveway and large front setback that is unique within the area. The addition of an accessory structure does not appear to circumvent or undermine the spirit of the maximum area standard for accessory structure nor will overcrowding of land result. It appears that efforts are being taken to ensure that the viewshed is preserved for the enjoyment of neighboring properties.

**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:

Nearly 97% of the property will remain open space given the area of the existing house, detached garage, and proposed accessory structure. It appears that efforts are being taken to ensure that the viewshed is preserved for neighboring properties. The proposed accessory structure and its location do not appear to adversely impact public improvements.

**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 proposed accessory structure and its location will not change the existing single-family use of the property. It appears that efforts are being taken to ensure that the viewshed is preserved for the enjoyment and market value of neighboring properties. The proposed accessory structure and its location cannot contribute to or mitigate existing traffic congestion within the area.

Papandreas made a motion to approve petition V11-14, with conditions recommended by Staff; seconded by Cardoso. Motion carried unanimously.

**V. OTHER BUSINESS:**

A. Public Comments: None

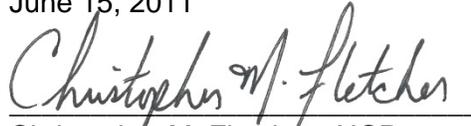
B. Staff Comments: None

**VI. ADJOURNMENT: 7:00 PM**

MINUTES APPROVED:

June 15, 2011

BOARD SECRETARY:

  
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Christopher M. Fletcher, AICP