

BOARD OF ZONING APPEALS

Minutes

6:30 PM

May 19, 2010

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. **Approval of April 21, 2010 minutes** – Papandreas moved to accept the minutes as presented; seconded by Shamberger. The motion passed unanimously.

III. **OLD BUSINESS** – None

IV. **NEW BUSINESS**

A. **V10-03 / Trembush / J.D. Signs / 699 Burroughs Street:** Request by Robert DeRiggi, on behalf of Dr. Kevin Trembush, for variance relief from Article 1369.09 “Size Restrictions on Permitted Signs” (E) of the Planning and Zoning Code as it relates to a proposed monument sign at 699 Burroughs Street. Tax Map #55, Parcel #93; PRO, Professional, Residential, and Office District. **WITHDRAWN**

Bossio advised the Board that the petitioner withdrew this request.

B. **V10-04 / Trembush / J.D. Signs / 699 Burroughs Street:** Request by Robert DeRiggi, on behalf of Dr. Kevin Trembush, for variance relief from Article 1369.09 “Size Restrictions on Permitted Signs” (E) of the Planning and Zoning Code as it relates to maximum area of a post and panel sign at 699 Burroughs Street. Tax Map #55, Parcel #93; PRO, Professional, Residential, and Office District.

Bossio announced that he would recuse himself from the discussion and decisions for Agenda Items “B” and “C” due to a conflict of interest he has as the owner and developer of the site on which the signage variance petitions have been submitted. Bossio left the Chambers and Cardoso assumed the Chair.

Fletcher stated that one Staff Report was prepared for Case Numbers V10-04 and V10-05 because they are related.

V10-04.....Request by Robert DeRiggi, on behalf of Dr. Kevin Trembush, for variance relief from Article 1369.09 “Size Restrictions on Permitted Signs” (E) of the Planning and Zoning Code as it relates to maximum area of a post and panel sign at 699 Burroughs Street

V10-05.....Request by Robert DeRiggi, on behalf of Dr. Kevin Trembush, for variance relief from Article 1369.07 “Conditions for Permitted Signs” (F) of the Planning and Zoning Code as it relates to maximum height of a proposed post and panel sign at 699 Burroughs Street

Fletcher read the Staff Report stating that Robert DeRiggi, on behalf of Dr. Kevin Trembush, seeks to erect a post and panel sign near the entrance of the recently developed professional office building on the former Wagon Wheel Trailer Park at the corner of Burroughs Street and Van Voorhis Road.

One of the stated purposes within the Planning and 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 and height restrictions are means to accomplish this policy objective.

Article 1369.09 “Size Restrictions on Permitted Signs” (E) of the Planning and Zoning Code provides that the maximum area for business-related signage in the PRO District is 20 sq. ft.

There are two portions of the proposed post and panel sign that were used in calculating total area. The area of the top portion of the sign, which includes the name and logo of the establishment, is 43.12 sq. ft. The area of the bottom portion of the sign, which contains a trivision display panel, is 50 sq. ft. The total area for the proposed post and panel sign is therefore 93.12 sq. ft., which requires a variance of 73.12 sq. ft.

Article 1369.07 “Conditions for Permitted Signs” (F) (1) (a) of the Planning and Zoning Code provides that the maximum height for post and panel signs is six (6) feet.

The proposed height of the post and panel sign is 19.5 feet, which requires a variance of 13.5 feet. It should be noted that Article 1363.03 “Safety and Vision” provides that signs may not obstruct sight lines on corner lots at elevations between two and one-half (2½) feet and eight (8) feet above the crown of the adjacent roadway. Because of the proposed sign’s proximity to the driveway entrance onto Van Voorhis Road, it is reasonable to argue that the required variance should be reduced by eight (8) feet to 5.5 feet.

Staff met with the petitioner on two occasions at the site to discuss several challenges and strategies to adequately message the location of the establishment. The following points highlight the petitioner’s stated merits of the requested variances:

- The petitioner originally proposed one post and panel at the driveway entrance and one monument sign at the other end of the property. Both signs as proposed required variance relief. The petitioner agreed to abandon the monument sign to focus variance relief on the post and panel sign.
- According to West Virginia Division of Highways (WVDOH), the twenty-four hour traffic count on 02/19/2008 within the Burroughs / Van Voorhis / Chestnut Ridge intersection was 32,480 vehicles. According to the petitioner and the information provided with his application, there appears to be a proportional relationship between traffic volumes and the operational size and height of signage.

- As the illustration below demonstrates, the zoning classification for two of the four corners of the intersection is B-2, Service Business District. The recently constructed office building was developed to meet related PRO District design and use standards. However, PRO District signage standards appear to leave *Advantage Health and Wellness* at a competitive disadvantage given the more intense zoning districts that comprise the intersection. Specifically, average motorists will most likely recognize the intersection as a single functioning area in terms of signage rather than a confluence of multiple zoning districts with differing performance standards for signage.
- The most advantageous location for signage at the subject site would appear to be at or near the intersection. A considerable portion of the area between the intersection and the office building is within WVDOH's right-of-way and includes related stormwater system facilities. The developer, who is not the petitioner, has significantly improved the appearance of the intersection through a WVDOH Beautification Permit including the replacement of chain-link fencing with decorative metal fencing and landscaping. The petitioner confirmed with Raymond Tackett, WVDOH District 4 that sign placement within this right-of-way and the beautification area would not be allowed. As such, the consequential location is approximately 70' from Burroughs Street and approximately 165' from the stop bar on Van Voorhis Road for northbound traffic.
- Based on the balloon simulation photographs provided by the petitioner, it appears that the proposed post and panel sign will be most visible to southbound travelers along Van Voorhis Road and eastbound travelers along Burroughs Street. The sign does not appear to be visible to westbound travelers along Chestnut Ridge Road due to the grade and landscaping immediately in front BB&T Bank. Although the sign will be visible to northbound travelers along Van Voorhis Road, it appears that it may only be readable to the first two or three vehicles at the stop bar. Further, there appears to be WVDOH roadway directional signs and overhead utilities that obstruct the view of the proposed sign to northbound travelers along Van Voorhis Road.
- Existing signage within and approaching this intersection appear to exceed the maximum area and height standards for the zoning districts within which the developments are located. Most of the signage was erected prior to related area and height standards being enacted. Every sign erected since the current standards were enacted within the immediate area have received variance relief (i.e. establishments within Chelsea Square, Morgantown AES Federal Credit Union, United Bank Center, etc.).

Cardoso recognized the petitioner's agent Mr. Robert DeRiggi, General Manager of J.D. Signs of Fairmont, 1140 Airport Road. DeRiggi distributed a handout to Board members. Dr. Trembush contacted him in late January to study signage design alternatives. There are several opposing factors presented at the site that limit optimal signage design. First is the setback due to the West Virginia Division of Highways' right-of-way and their inability to use the right-of-way for signage. The development's means of egress pushes the sign further away from the intersection, which is illustrated in the submitted site plan. He used the California Institute of Technology's standards for letter sizes on signs in relation to distance, which was provided as an exhibit with the application. He uses the center column to guide what is readable. The other column illustrates what distances you can see the sign but not comprehend it, which is applicable for national affiliates like Cracker Barrel. He looked at the traffic count information from the state. The largest traffic volume is westbound on Route 705. Signage can not be seen by this traffic due to BB&T and its landscaping unless the sign was 30-35 feet in

height. The first stationary vehicle at the stop light northbound on Van Voorhis Road is approximately 165 feet from the proposed post and panel sign. This distance results in letter height of 17 inches that is readable from this distance as recommended by the column. Letter heights of 17 inches would result in a very large sign; there is not enough room for this sized sign and he did not believe the Board would approve it. Other site factors were recognized with the balloon test. There are state roadway signs that appear to obstruct the view of the proposed sign. The state has recently installed new sign posts that are higher than the existing ones and he hopes that the new signs will not be higher than the existing roadway signs. Manual of Uniform Traffic Code requires a minimum height of seven feet. Based on the balloon test and the roadway signage height of seven feet, the post and panel sign would have to be at least ten foot in height to even be seen. BB&T has an advantage with their sign to a five-foot higher elevation. The proposed post and panel sign is at a similar height of the BB&T sign. He compared adjacent sites including Health Care Works that is in excess of 100 square feet. He looked the minimum and maximum size and heights of adjacent signs to design a retrospect sign that is within the existing conditions. The proposed sign height is 19.5 feet. He looked at percentages of adjacent frontages. He has also found that if a sign can not be read, does not function, and does not serve the owner than it becomes a cost disadvantage to him and becomes obtrusive to the surrounding area because it can not convey the information and is useless.

Cardoso asked if Dr. Trembush wished to add any addition information or comments. He declined.

There being no questions by the Board, Cardoso opened the public hearing asking if anyone present wished to speak in favor of or in opposition to either the V10-04 or V10-05 petitions. There being no public comments offered, Cardoso declared the public hearing closed and asked for Staff's recommendations.

Shamberger stated that he thought they had done a very good analysis in looking at it and presented very good information.

Papandreas stated that given all the other signs within the area, he would be at a disadvantage if he could not obtain relief from the standards. He thought that the proposal was pretty well thought out.

Fletcher stated 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. Each variance petition must be considered and acted upon by the Board separately. Staff recommends the following revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Concerning Case Number V10-04, a 73.12 sq. ft. variance from the maximum area of a post and panel sign in the PRO District, Papandreas moved to accept the Findings of Fact as revised by Staff; seconded by Shamberger. The motion passed unanimously with Bossio abstaining.

(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 subject site is situated in one of the most heavily traveled corridors within the region, yet appears to suffer from poor visibility due to its distance from the intersection. This distance results from the lane configuration along Van Voorhis and Chestnut Ridge Roads and WVDOH's right-of-way width and stormwater facilities along the site's Burroughs Street frontage. Although the development of the site has complied with desired design standards and uses within the PRO District, it appears that messaging the site must contend with more intense uses and signage within and approaching the intersection that have occurred due to the indiscernible convergence of differing zoning classifications and the vacillation of Morgantown's corporate boundaries.

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:

It appears that the majority, if not all, of the commercial signs within the Van Voorhis and Chestnut Ridge Road corridors exceed the PRO District square footage restrictions for which *Advantage Health and Wellness* must meet. Additionally, the Board has granted square footage variance relief for other establishments within close proximity to the subject site – V09-26 Glenmark Holdings, V09-15 Kenyan Café, V09-07 Blended Way, and V08-36 Morgantown AES Credit Union.

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 area of the sign appears to be at the lower end of the established range of signage within the heavily travelled Van Voorhis Road and Chestnut Ridge Road corridors.

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 area of the sign appears to be at the lower end of the established range of signage within the heavily travelled Van Voorhis Road and Chestnut Ridge Road corridors. The design and character of the proposed sign appears to complement the architecture of the newly constructed professional office building on the former Wagon Wheel Trailer Park, which should raise the standard for similar facilities within the subject corridors. The requested variance will not contribute to nor mitigate traffic congestion.

Shamberger moved to approve V10-04 as requested; seconded by Papandreas. The motion passed unanimously with Bossio abstaining.

- C. **V10-05 / Trembush / J.D. Signs / 699 Burroughs Street:** Request by Robert DeRiggi, on behalf of Dr. Kevin Trembush, for variance relief from Article 1369.07 “Conditions for Permitted Signs” (F) of the Planning and Zoning Code as it relates to maximum height of a proposed post and panel sign at 699 Burroughs Street. Tax Map #55, Parcel #93; PRO, Professional, Residential, and Office District.

Concerning Case Number V10-05, a 13.5 foot variance from the maximum height of a post and panel sign in the PRO District, Papandreas moved to accept the Findings of Fact as revised by Staff; seconded by Shamberger. The motion passed unanimously with Bossio abstaining.

(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 subject site is situated in one of the most heavily traveled corridors within the region, yet appears to suffer from poor visibility due to its distance from the intersection. This distance results from the lane configuration along Van Voorhis and Chestnut Ridge Roads and WVDOH’s right-of-way width and stormwater facilities along the site’s Burroughs Street frontage. Although the development of the site has complied with desired design standards and uses within the PRO District, it appears that messaging the site must contend with more intense uses and signage within and approaching the intersection that have occurred due to the indiscernible convergence of differing zoning classifications and the vacillation of Morgantown’s corporate boundaries.

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:

It appears that the majority, if not all, of the commercial signs within the Van Voorhis and Chestnut Ridge Road corridors exceed the PRO District height restrictions for which *Advantage Health and Wellness* must meet. Additionally, the Board has granted height variance relief for other establishments within close proximity to the subject site – V09-26 Glenmark Holdings and V08-36 Morgantown AES Credit Union.

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 height of the sign appears to be at the lower end of the established range of signage within the heavily travelled Van Voorhis Road and Chestnut Ridge Road corridors. Further, the proposed height of the sign is, in part, a result of complying with Article 1363.03 “Safety and Vision”, which provides that signs may not obstruct sight lines on corner lots at elevations between two and one-half (2½) feet and eight (8) feet.

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 height of the sign appears to be at the lower end of the established range of signage within the heavily travelled Van Voorhis Road and Chestnut Ridge Road

corridors. The design and character of the proposed sign appears to complement the architecture of the newly constructed professional office building on the former Wagon Wheel Trailer Park, which should raise the standard for similar facilities within the subject corridors. The requested variance will not contribute to nor mitigate traffic congestion.

Shamberger moved to approve V10-05 as requested; seconded by Papandreas. The motion passed unanimously with Bossio abstaining.

Cardoso advised the petitioner that decisions of the Board can be appealed to the Circuit Court within the next thirty days and that any work done during this time would be at their sole financial risk.

Bossio returned to the Chambers and assumed the Chair.

D. V10-06 / Sam Sellaro / Eighth Street: Request by Sam Sellaro for variance relief from Table 1365.04.01 "Minimum Off-Street Parking Requirements" of the Planning and Zoning Code as it relates to providing the minimum number of parking spaces for a proposed two-family structure (duplex). Tax Map #1, Parcel #33; R-2, Single and Two-Family Residential District.

Bossio announced that he would recuse himself from the discussion and decisions for Agenda Item "D" due to a conflict of interest. Bossio left the Chambers and Cardoso assumed the Chair.

Fletcher read the Staff Report stating that the petitioner seeks to develop a duplex on the subject realty. The Planning Commission approved the petitioner's related minor subdivision (MNS10-07), which creates one parcel that includes an existing structure and a second parcel where the proposed duplex is to be developed.

Table 1365.04.01 "Minimum Off-Street Parking Requirements" of the Planning and Zoning Code requires that a minimum of three (3) on-site parking spaces be included in the proposed development.

The petitioner asserts that providing three (3) off-street parking spaces would, "be extremely costly and dangerous because [the petitioner] would have to cut into [the] retaining wall and people would have to blindly back out onto Eighth Street."

Article 1365.01 "Purpose" of the Parking, Loading, and Internal Roadways requirements provides that:

"The regulations of this section are designed to alleviate or prevent congestion of the public streets by establishing minimum requirements for on-site storage of motor vehicles, in accordance with the use for which the property is occupied."

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

Cardoso recognized Mr. Mark Sellaro, father of the petitioner. Sellaro stated that he was representing his son who was out of town and unable to attend the hearing. The building that is there now is a single-family structure zoning R-2 and does not have off-street parking. When the property was purchased, it did not have off-street parking. There is a retaining wall there that may belong to the City. It is put up in early 1900's. He is not sure if they would be allowed to cut into the wall. They had the property surveyed and the survey pins are about five feet

between the house and the wall so the wall is on the City right-of-way. Secondly, there is on-street parking and there has always been on-street parking there. He purchased it in 1994 and turned it over to his son in about 2003 or 2004 and there has always been on-street parking and it has never been an issue. There is another house on that side of Eighth Street owned by the Petite family just above this property that does not have on-street parking. There is another house across the street that is vacant. The Petite property is vacant. They rented it one time and did not like the way the tenants took care of the property and refused to rent it again. People park all along Eighth Street all the way to the top where it meets University Avenue. The wall itself is six feet tall at least. It is a cut stone or has the appearance of a cut stone wall and in that day was a work of art. He thinks it would be an injustice to cut into that wall. If you cut into that wall to create off-street parking, you would destroy the integrity of the remaining portion of the wall and it would fail. The other issue is the safety issue if you cut into it to create parking spaces people would have to back out onto Eighth Street, which would create a tremendous hazard and the safety of the public would be in jeopardy at that point in time. We've had rentals there since 1994 and it's never been a problem with parking issues on that site. There are students there that even walk into town. We hope that you grant that so he can develop the property to its potential.

Shamberger asked about the subdivision and whether it had been split. Sellaro said it was deeded as one piece but there were two lots. There were always two lots. When he turned it over to his son he included both pieces in one deed. He stated that there were always two 40' X 120' lots or 60' X 100' he thought. He did it as one deed for convenience and to save some attorney fees. There were no changing lot lines or anything. His son created two deeds to conform to the two existing lots. Shamberger asked if his son created the two lots with the Planning Commission. Sellaro stated that his son didn't change anything to the two existing lots. He just created one deed for one lot and another deed for the other lot. Why his son did that he didn't know.

Papandreas asked Sellaro if he had any idea how many cars could park along that stretch of Eighth Street. Sellaro stated 15 or 20 along that stretch. Up to the Petite house maybe eight or nine cars from where the yellow line starts. Sellaro noted that the City changed the yellow line and the one there now wasn't always there. There was a house below his son's house that was torn down. When that house was torn down, the City moved the yellow line up in front of that lot. There would be more but the City wanted to get parking further away from Grant Avenue. He owns the two lots below that area.

Papandreas stated that that is a pretty hairy area. Papandreas asked for clarification on the several houses Sellaro mentioned that do not have off-street parking and are utilizing the street now. Sellaro stated yes. Papandreas asked if he could verify how many. Sellaro stated there are two on their side of the street and he thinks there may be houses on the lower section of Eighth Street that do not have off-street parking. Papandreas asked how many cars are parked there now on the street without the duplex being there. Sellaro stated one...maybe two if they have company. Papandreas asked if there was room for eight or ten. Sellaro stated easily.

Cardoso asked Sellaro how many people he expected to live in the duplex. Sellaro stated that if they build a duplex it will probably be two two-bedroom units. A lot of times they have one car or two cars and sometimes none. When he rented it before to a woman who worked at the medical center she walked up Eighth Street to work everyday. The same way on Pattison Drive they own, they don't have cars and walk. They try to stick with professional students or professionals due to maturity levels and level of abuse on the properties and things like that.

Cardoso asked if there was any other way to provide off-street parking. Sellaro stated that there is a wall that encompasses that property. To his knowledge, there is no other way to get that there without an elevator to get on, go up, and drive off. Sellaro asked Fletcher if he thought there was another way. Fletcher stated that nothing is impossible. Sellaro stated that it would be very costly to say the least and there are other houses there do not have off-street parking.

Shamberger stated that those houses have been there long enough that they are grandfathered in. Sellaro stated yes.

Papandreas asked Sellaro if he stated that he owned another piece of property that was vacant next to the site. Sellaro stated that he owns two lots that are at the corner of Grant Avenue and Eighth Street. Papandreas asked if they are vacant. Sellaro stated yes. Papandreas asked if there was any way to put parking on them. Sellaro stated that he hopes to someday develop them. He said that when he gets to it he plans to cut a road in behind but that would require redividing the property so that the lots face Grant Avenue rather than Eighth Street as they do now so he could pull into garages off Grant under the duplexes. His plan is to develop a road either between the two duplexes or on the far left side to get to the back of his son's property.

Papandreas asked Sellaro if there is any other property on Eighth Street that is adjacent to his property that has not been developed that he may not own. Papandreas stated that he is concerned with the fact that there is only so many spaces on Eighth Street and Eighth Street is weird anyway and he is concern that if the Board approves this than a precedent is set to grant similar requests that space on Eighth Street runs out. Sellaro stated that above that house is Mr. Petite's house is vacant but there is parking all the way up Eighth Street from his property to the top which a quarter mile long.

Fletcher noted that the Petite family house is the one that has the garage that is a part of the retaining wall that has one of those old doors that slides down the wall. Sellaro stated that he know the house on the corner used to have one of those and you blindly backed out of that garage which was a tremendous situation trying to back out of it. Fletcher stated to provide perspective, at the corner of Grant and Eighth there is now a vacant lot that Mr. Sellaro stated that he owns. There is an open space and then an existing house, which is the property in question. The duplex would go up the hill above that house and then the only other house on that side of the street is the Pettite house that has that garage door. There are only two structures on that side. Fletcher used a map provided in the Staff Report to describe the existing houses and parcel configurations of adjacent realty noting the steep hillside. Fletcher stated in answering the question of design alternates, they could develop a road from Grant to the rear of the proposed duplex, other the property is owned separately by the son and the father.

Sellaro noted that there is quite a bit of room for parking on Eighth Street.

Cardoso asked Sellaro for clarification concerning the corner property he owns at Grant and Eighth and whether he would also develop it without off-street parking. Sellaro noted that he stated that was not his intent he wanted to put garages underneath and use the space in front of the garage to provide parking. Cardoso asked if it was possible to plan ahead. Sellaro stated that he was in the process of building another project on a different section of Grant Avenue and he did not have the resources to do both if that was her question. Cardoso stated that what she was asking if the parking spaces could be provided on the vacant property. Sellaro stated that right now it would take a tremendous excavation because a bank at Grant Avenue. He would have to remove all that dirt to build the buildings would probably being doing one at a time

anyways. The site plan and the design would be incorporated at the same time and then doing it in stages. And until that gets designed he would have no way of knowing where the best place to put a road in. An Engineer would have to tell him that he would think. His intent is to some point in time to his son come across because at some point in time this property will be his son's too.

Papandreas asked if there was anyway to put garages underneath his son's proposed duplex on Eighth Street. Sellaro said that he didn't think that would be possible. He thinks it will be difficult to build and get supplies to. He thinks they have boom trucks now to get supplies part way there. Sellaro said he's not a builder.

Shamberger stated that the thing he is struggling with going no parking. The other houses are grandfathered but to go no parking when there are other alternatives to go in there. It has the appearance of what you might call it a self-imposed hardship. Sellaro stated that technically to be consistent with the other places on that road he's hoping that his son be allowed to have this and you have to keep in that there are two entities. He owns the bottom property not his son. His son doesn't have those two lots because they are still deeded to him. In some point in time when he retires he wants to develop that so he can have time to devote to it. His son only owns those two pieces of property with no access from the Eighth Street side. This variance is being requested for his son and not him. In all fairness, if he has an uncle that owns property next to him, he shouldn't be expected to be required to give up property to develop his.

Papandreas stated that he is certainly not suggested that, it just makes the project look a whole lot better. Sellaro stated that his goal is to do that. He stated that if you know anything about his family's history, they always try to do nice developments. The City has not had any trouble from their developments. They have had several rentals around and they monitor them close. At one time when he owned the property there was a bike issue there. The kids had motorcycles and there were making some noise and but a stop to it quite. He asked the Police Chief for help to monitor it. He talked to the kids and told them that if he got any more complaints that he would remove them. Each of his leases says that complaints from neighbors warrant grounds for eviction and he is very adamant about that. He values his peace and tranquility at his house and doesn't want neighbors of his rentals to suffer from that abuse.

Cardoso stated that she didn't think anyone was questioning that. The issue here is that there is a reason why there is a requirement for parking because at some point the on-street parking is going to run out. Where do you draw that line and that is exactly why this needs to be requested. So we are just suggesting or trying to think of alternatives to make this a possibility which is why they are asking about his property.

Sellaro stated that his plans are when he develops that other piece of property is to give him access. If he lived there, he would certainly not want to park on the street. He would want to park in a driveway that you could get to and that is there ultimate goal. There is a little lot at 701 Grant Avenue that planning that a variance was granted for a while back...just a set off variance because the lot is only forty-two feet deep in one place. This is the one he is working on now that is a little simpler and less expensive.

Papandreas stated that he is conflicted because he always thought the parking on Eighth Street didn't belong there. It looks dangerous, it looks too steep, it looks like a problem in bad weather and he hates to add to that even though his choices seem limited because it's such a weird place.

Sellaro stated that if it's any consolation, there is a level spot or plateau there that would make it easier.

There being no further comments or questions by the Board, Cardoso opened the public hearing asking if anyone present wished to speak in favor of petition. There being none, she asked if anyone present wished to speak in opposition of the petition.

Joyce Adkin, 152 Eighth Street, stated that she is not in opposition of the house but is in opposition of the parking. In the winter, if you get past Grant Avenue you are doing pretty good because it gets pretty slippery there. Eighth Street is a raceway. The speed limit of 25...she doesn't think anyone goes 25 up and down Eighth Street. Vandalism on Eighth Street on the cars and all and on Grant Avenue...they are constantly getting egged; she has lost four mirrors on her cars. You can come down Eighth Street and see all the vandalism. The main thing is when the ambulances are going up and buses coming down. The buses need that whole corner to get into Eighth Street. Some days she thinks the buses are going to turn over because they are going so fast. It's a bad place because students stand there to wait on buses. There is a lot directly across that is for sale that may become a parking problem. The other thing is when these people have company where are they going to park...they will park on Grant Avenue and she will have no place to park. The houses that Mr. Kelly put up on Grant Avenue has plenty of parking behind the house...do you think somebody uses it...no. It's very hard to have company. Her kids don't even like to come anymore because there is no place to park and parking on the street you get vandalized. Again, she has no problem with the dwelling but there needs to be something done about the parking. During the school year, that's law students and law professors parking on Eighth Street. On game days, they're parked all the way to the corner. It makes it very difficult for anyone making the corner. An improvement would be to put a yellow caution light there to let people know its there. People have gone over the guard rail into their yard. It's just a really bad situation. There are a lot of kids that walk up and down Eighth Street and there are no sidewalks.

Papandreas asked Adkins to show him where on the map her house was.

Cardoso asked Adkins where she parks. Adkins stated that she has a handicapped place right in front of here house and the other car is on Hardy Street.

Papandreas asked whether her house faced Grant or Eighth. Adkins stated that her house faces Eight Street. They have a garage for a Model T but you couldn't get a car in it.

There being not further public comments, Cardoso declared the public hearing closed.

Fletcher stated that Staff received two communications that were distributed this evening. On April 29th, Staff received a letter from Eneide Marony stating, "Ms. Marony has stated that she does not have a problem with the proposal but has concerns that future development would cause additional parking problems on Hard Street and Beverly Avenue, adjacent to her residence." Staff also received a phone call from Ms. Betty Gamble stating that she has objections to the proposal made by Mr. Sellaro due to the fact that the street is narrow and already congested.

Fletcher read the recommendation provided in the Staff Report stating that the Board 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.

Fletcher stated that it is the opinion of the Planning Department that:

1. Minimum parking requirements, in addition to the Code's purpose noted above, are intended to:
 - Prevent parking demand generated by one land use or property from congesting curbside parking;
 - Prevent reduced accessibility to adjacent properties and land uses;
 - Mitigate overflow parking along neighboring streets; and,
 - Provide for the basic facilities and quality of life amenities considered necessary by residents and future property owners.
2. A reasonable use of the subject realty should address all minimum development standards that serve to mitigate adverse impacts on surrounding properties and public rights-of-way.
3. The petitioner has not demonstrated that the minimum parking requirement has resulted in an unnecessary hardship because he is deprived of all economic use or benefit from the subject realty.
4. Approving the variance as requested would undermine the integrity of the City's minimum parking requirements.

As such, Staff recommends the following negative "Findings of Fact" and that the subject petition be denied.

Shamberger stated that he thought the Board should consider the Findings of Fact one at a time.

After discussion of the petitioner's positive Findings of Fact version that was retyped by Staff for legibility purposes and the Staff recommended negative version, the Board read each of the petitioner's findings.

Before proceeding, Papandreas stated that his feeling is that the Board is going to see this again. He is not at all against the development but he has this question about the parking on Eighth Street. By definition, this particular finding of fact he would have to find in the negative simply because the next time someone wants to develop on anyone of those pieces of property they are going to be before the Board for the same question so that makes this one not exceptional or extraordinary because its probably going to be the story of all these pieces of property that line Eighth Street who don't have parking and are not grandfathered in.

Shamberger agreed noting that most of the other houses without parking are grandfathered in and if we are getting higher density development over there particularly that far out; parking is going to become a bigger issue. He thinks there are properties closer to campus that have been held to the parking standard.

Cardoso stated that as our city grows, we need to make sure we can accommodate land use and population. She agrees that parking is a real issue.

Cardoso read the Finding of Fact #1 submitted by the petitioner. Shamberger moved to find in the negative for the petitioner's submitted Finding of Fact #1; seconded by Papandreas. The motion passed unanimously with Bossio abstaining.

Cardoso asked Fletcher to read the recommended negative finding. Fletcher stated, "There are NOT 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 complexity of developing hilly terrain is a common landscape characteristic within the immediate area and throughout the community."

Shamberger moved to accept the recommended negative finding for Finding of Fact #1 as written by Staff; seconded by Papandreas. The motion passed unanimously with Bossio abstaining.

Cardoso and Fletcher read the Finding of Fact #2 submitted by the petitioner.

Papandreas asked for clarification on the question; in order to build something other than a duplex, how many off-street parking would be required. Fletcher stated that a single-family would be two spaces, a duplex would be three spaces, and multi-family, which is permitted in R-2 as a conditional use, would be based on whatever the bedroom composition was. Fletcher noted that he did not believe this site was big enough to development more than two units. Papandreas asked if by the semantics of this question should the answer be true because there are other properties on Eighth Street that are functioning without parking because they are grandfathered.

Shamberger stated that he viewed it as negative because the grandfathered uses are grandfathered and you have to look at the standard of what the zoning is on a new development which is putting parking in so if anybody else were to put in new development, they would have to put in parking. The exception is not the grandfathering of the existing structures.

Papandreas agrees with the logic but the finding of fact question asked is what is possessed by other properties within the vicinity so they should look at what is already there not what's proposed.

Papandreas asked if the Board must find in the affirmative for all the findings of fact. Fletcher stated that the petitioner's response does not seem germane to the question asked and he could wordsmith an affirmative response if the Board desired to find in the affirmative for this finding of fact but not use the petitioner's response. Papandreas stated that the Board has already determined one negative finding. Shamberger stated that the Board must make findings for each of the four questions so the petitioner knows exactly why the petition is denied to provide clarity.

Shamberger moved to find in the negative for the petitioner's submitted Finding of Fact #2; seconded by Papandreas. The motion passed unanimously with Bossio abstaining.

Shamberger read Staff's recommended negative finding for Finding of Fact #2, stating, "The variance is NOT 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 off-street parking appears to have been provided as a part of the majority of developments along Eighth Street and along Grant Street between Eighth and Seventh Streets."

Shamberger moved to accept the recommended negative finding for Finding of Fact #2 as written by Staff; seconded by Papandreas. The motion passed unanimously with Bossio abstaining.

Cardoso and Fletcher read the Finding of Fact #3 submitted by the petitioner.

Shamberger moved to find in the negative for the petitioner's submitted Finding of Fact #3; seconded by Papandreas. The motion passed unanimously with Bossio abstaining.

Shamberger read Staff's recommended negative finding for Finding of Fact #3, stating, "The granting of this variance WILL be harmful to the public welfare and WILL harm property or improvements in the vicinity and zoning district in which the subject property is located, because it will:

- a. Perpetuate on-street parking congestion that has been realized in the adjoining Sunnyside neighborhood and within many R-2 residential areas where development was not required to provide on-site parking prior to 1959;
- b. Unreasonably and unfairly require the City to assume the responsibility and cost of meeting the parking needs of private development in a location where public parking is not currently managed by the City;
- c. Unreasonably and unfairly reduce the supply of on-street common parking that is currently available to the general public;
- d. Undermine the purpose of ensuring basic quality of life facilities necessary for the enjoyment of the subject property's residents and visitors; and,
- e. Weaken the purpose, spirit, and integrity of the City's Planning and Zoning Code to mitigate adverse impacts of development on adjoining properties and public commons."

Shamberger moved to accept the recommended negative finding for Finding of Fact #3 as written by Staff; seconded by Papandreas. The motion passed unanimously with Bossio abstaining.

Cardoso and Fletcher read the Finding of Fact #4 submitted by the petitioner.

Papandreas moved to find in the negative for the petitioner's submitted Finding of Fact #4; seconded by Shamberger. The motion passed unanimously with Bossio abstaining.

Cardoso read Staff's recommended negative finding for Finding of Fact #4, stating, "The granting of this variance WILL alter the land-use characteristics of the vicinity and zoning district, diminish the market value of adjacent properties, and increase traffic congestion on public streets, because it will gratuitously reduce the current supply of on-street common parking spaces available to the general public."

Papandreas moved to accept the recommended negative finding for Finding of Fact #4 as written by Staff; seconded by Shamberger. The motion passed unanimously with Bossio abstaining.

Shamberger moved to deny V10-06 based on the negative findings of accepted by the Board; seconded by Papandreas. The motion passed unanimously with Bossio abstaining.

Cardoso asked Sellaro to communicate to his son that he has thirty days to appeal the Board's decision to the Monongalia County Circuit Court.

Fletcher advised Sellaro that the Planning Department would be more than willing to sit down with the petitioner to study alternative development opportunities.

Bossio returned to Chambers and assumed the Chair.

- E. V10-07 / Rebecca Rinker / 881 Fairfax Drive:** Request by Rebecca Rinker, on behalf of Betty Rinker, for variance relief from Articles 1373.02 (A) and 1333.04 (A) (4) of the Planning and Zoning Code as they relate to increasing the extent of the nonconformity of an existing structure and minimum rear setback at 881 Fairfax Drive. Tax Map #15, Parcel #18 and 19; R-1, Single-Family Residential District.

Fletcher read the Staff Report stating that the petitioner seeks to construct a 21' X 11' (230 sq. ft.) addition onto the rear of her mother's home at 881 Fairfax Drive. The rear setback of the existing structure is approximately five (5) feet, which is less than the minimum rear setback requirement of twenty-five (25) feet in the R-1 District.

The purpose of the addition is to accommodate the needs and increase the quality of life for the petitioner's elderly mother so that washer and dryer facilities can be located on the same level as the majority of the home's living space.

The proposed addition will continue twenty-one feet along the rear property boundary. The extent of the non-conforming setback will be extended for a portion of the twenty-one feet. Encroachment into the minimum rear setback will also be increased at the exterior corner of the proposed addition leaving a 2 ½ rear setback. The increased encroachment is due to the angle of the rear parcel boundary in relation to the plane of the proposed addition and existing house.

According to the site plan submitted by the petitioner, the proposed addition appears to conform to minimum side setback and maximum lot coverage standards.

Article 1373.02 (A) "Nonconforming Structures" of the Planning and Zoning Code provides that:

"No legal, pre-existing structure may be enlarged, moved or otherwise changed in such a manner that increases the extent of its non-conformity, unless a variance from the terms of the ordinance is obtained from the Board of Zoning Appeals."

Addendum A of this Report illustrates the location of the site. Addendum B provides an illustrative rendering of the proposed addition prepared by Staff. The Planning Department has not received comments in opposition of the requested variance.

Bossio recognized Ms. Rebecca Rinker, daughter of the petitioner. Rinker stated that she submitted some additional photos of other properties that are in close proximity to their property lines. She has nothing really more to add. She has talked to the neighbors in the rear and they have not objection. There is a wall that serves as a property line. Their only concern is that they want to have access to replace the wall if ever needed.

Papandreas asked if they expected any water runoff problems created by the addition. Rinker stated that they did not. Papandreas asked if the water will be controlled. Rinker stated yes. Papandreas asked if the existing house is already five feet from the rear property line. Rinker stated yes.

Shamberger asked if they were simply continuing the line of the existing building. Rinker stated yes.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone present wished to speak in favor of or in opposition to the petition. There being no public comments offered, Bossio declared the public hearing closed and asked for Staff's recommendations.

Fletcher stated that the Board 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 positive revisions to the petitioner's "Findings of Fact" and that variance relief be granted as requested.

Papandreas moved to accept the Findings of Fact as revised by Staff; seconded by Cardoso. The motion passed 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 house is situated on two (2) parcels that are irregular in shape and already exhibit exceptions to existing building envelope requirements. Because the existing structure was developed toward the rear of the parcel and probable interior layout impediments, it appears that design options for an addition that meets the quality of life needs of the owner are limited.

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 substantial property issue appears to be the right to make necessary addition and improvements to add a room onto the house. The addition is being made so that the petitioner's 82 year old mother (Betty Rinker) and residents of the property can live all on one level of the house. The addition will allow her to have her washer and dryer placed on the first level and allow her easier access to the garage. There appears to be no other way in which to make the improvements that are needed to accommodate her needs to live on a single floor with access to the garage other than the way proposed, which would require a variance.

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 planned project is intended to accommodate the needs of the resident (Betty S. Rinker) so she can continue to live in her home and have all her needs for living located on the first floor of the property and easier access to the garage. According to the petitioner and by virtue of no comments in opposition, it appears that the neighbors on the side for which the variance is requested, Bill and Betty Lou Santonas, and the other directly adjacent neighbor, Daniel Hursh, have no objections to the planned project and support the petitioner's request for variance. Further, it appears that a variance would have no adverse impact on public rights-of-way, improvements, or common public areas.

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 planned addition would not affect the vicinity's land-use characteristics as the existing structure would remain a single-family home. It should increase the value of the petitioner's home, which should have a positive effect on the values of surrounding homes, and not diminish the value of adjacent properties. The variance can not contribute nor mitigate traffic that is already present within the neighborhood.

Papandreas moved to approve V10-07 as requested; seconded by Shamberger. The motion passed unanimously.

Bossio advised the petitioner that decisions of the Board can be appealed to the Circuit Court within the next thirty days and that any work done during this time would be at the petitioner's sole financial risk.

F. V10-08 / ALLPRO Home Improvements / 432 Western Avenue: Request by ALLPRO Home Improvements, on behalf of Kristin Miller, for variance approval from Article 1333.04 of the Planning and Zoning Code as it relates to setbacks in the R-1 District for property located at 432 Western Avenue. Tax Map #53, Parcel #47; R-1, Single-Family Residential District. **WITHDRAWN**

Bossio advised the Board that the petitioner withdrew this request.

V. OTHER BUSINESS

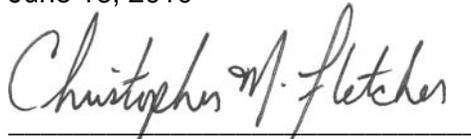
- A. Public Comments** – None
- B. Staff Comments** – None

VI. ADJOURNMENT – The meeting was adjourned at 7:50 PM.

MINUTES APPROVED:

June 16, 2010

BOARD SECRETARY:



Christopher M. Fletcher, AICP