

MORGANTOWN BOARD OF ZONING APPEALS

MINUTES

August 15, 2007

6:30P.M.

City Council Chambers

Members Present: Bernie Bossio, Mark Furfari, Jim Shaffer

Members Absent: Nick Iannone

Staff: Christopher Fletcher, AICP

I. MATTERS OF BUSINESS:

Furfari moved to approve the minutes of June 20, 2007. Jim Shaffer seconded it. The motion passed unanimously. Approval of the July 18th minutes will be postponed until the September 2007 meeting.

II. OLD BUSINESS: None

III. NEW BUSINESS

V07-33 / Rosenberger / 133 Peninsula Blvd: Request by John Rosenberger for variance approval from Article 1331.08 Planning & Zoning Code as it relates to accessory structures in residential districts at 133 Peninsula Boulevard. Tax Map #35 Parcel # 54; an R-1A, Single-family Residential District.

Fletcher presented the staff report noting that the petitioner applied for a building permit on May 19, 2007 to install a truss roof on an existing detached garage due to roof leaking noting that tarring was no longer working. This was considered a routine roof replacement and not forwarded to the Planning Department for review. Code Enforcement Officer Jim Gatian visited the site and found the project included the construction of an additional story that was not disclosed on the building permit application. A stop work order was issued on July 6, 2007. The Planning Department identified the following issues relating to the work as it was completed without a building permit:

Issue 1 – Article 1329.02 of the Planning & Zoning Code defines an “accessory structure” as a subordinate structure detached from but located on the same lot as the principle building. The use of an accessory structure must be incidental and accessory to the use of the principle building. Accessory structures include detached garages, carports, sheds, greenhouses, playhouses and the like.

Issue 2 – Article 1363.04 (A) of the Planning & Zoning Code provides that only one principle building and its accessory structures may be located on a lot unless development is approved as a planned unit development, or as a shopping center, office park, or research and development center as permitted in the O-I, B-5, and I-1 Districts.

Issue 3 – Article 1327.03 “Prohibited Uses and Acts” of the Planning & Zoning Code provides that except as provided in these regulations, no building, structure or premises may be used for any purpose other than those permitted in the zoning district in which the

building, structure or premises is located. No land or lot area may be reduced, diminished, used or developed except in accordance with all applicable provisions of these regulations. No building or structure may be altered erected, constructed, installed, moved, replaced or maintained except in accordance with all applicable provisions of these regulations.

Issue 4 – Article 1331.08 (A)(7) of the Planning & Zoning Code provides that the total square footage of all accessory structures shall not exceed fifty (50) percent of the first or ground floor area of the principle building. The principle residential structure has a ground floor footprint of approximately 1,056 square feet. The area of the accessory structure, including the illegally constructed second story, is approximately 2,317 square feet, which is nearly 4 ½ times the maximum allowed area for an accessory structure.

Issue 5 – Article 1331.08 (A)(9) of the City’s Planning & Zoning Code provides that accessory structures shall not exceed 18 feet in height. The partially constructed second story garage addition is 23 feet in height, which exceeds the maximum height by 5 feet.

Issue 6 – Based on statements made by the petitioner to staff, it is the opinion of the Planning Department that the petitioner intends to use the second story as a rental apartment (accessory dwelling unit). Article 1331.08 (A)(11) of the City’s Planning & Zoning Code provides that no accessory structure shall be *designed* or *used* for sleeping purposes, and no cooking fixtures shall be placed or permitted therein. The petitioner later indicated that the additional area was intended for storage. The Planning Department has learned through similar experiences that monitoring the use and occupancy of similar “storage areas” and often results in the issuance of citations and legal action.

Joan Rose, Esq., speaking on behalf of the petitioner, stated that at the time the petitioner applied for the permit, a diagram was submitted showing a second story proposed for the structure. She stated petitioner made it clear that he would be putting an apartment above the garage. All work was stopped when the Code Enforcement Officer issued the stop work order. She stated that Mr. Rosenberger had agreed not wire or plumb the second story for an apartment, and that the space would be used instead as storage. However, the structure would then be 23 ft, and not the allowable 18ft, making it 5ft. out of compliance.

Bossio questioned who prepared the diagram stating it was not done to scale as is required. He also questioned where the stairs would be. Mr. Rosenberger stated they would be on the exterior of the building on the side away from the house. Mr. Rosenberger stated he has been in the contracting business for over 45 years and has done a great deal of construction work in the area. Originally when he constructed the garage in 1979, he advised the City at that time he intended on putting an apartment over the garage at some point.

Bossio then asked for any public comment either for or against the issue. After hearing none, he declared the public comment portion was closed.

Shaffer asked Fletcher if he was aware of the drawing. Fletcher advised he was not and had received the materials from Mr. Gatian. After reviewing them, Staff advised “Background and Analysis – Issue #4 would need to be changed from approximately 2,317 square feet to 2,576 square feet.

Furfari stated that the figures of \$10,000 for construction would be almost reasonable for construction of a second story.

Bossio then stated that this permit somehow had gotten through the system and that while the Board may not be looking at what was actually submitted, the drawing was not to scale and does not meet code.

Fletcher advised that the table on pages 3 and 4 of the Staff Report would also need to be changed. Original standard figures of 528 sq. ft. would change to 644 sq.ft; created conditions would change from 2,317 sq.ft. to 2,576 sq. ft.; variance request figures change from 1,789 sq. ft. to 1,932 sq. ft.

Jim Shaffer moved to find in the negative for Finding of Fact #1. Furfari seconded it. The motion passed unanimously.

Shaffer moved to find in the negative for Finding of Fact #2. Furfari seconded it. The motion passed unanimously.

Furfari moved to deny Finding of Fact #3. Shaffer seconded it. The motion passed unanimously.

Shaffer moved to find in the negative for Finding of Fact #4. Furfari seconded it. The motion passed unanimously. (Staff noted in the answer to F&F #4, R-1 should be changed to R-1A).

Shaffer then moved to deny the variance petition with the following negative Findings of Fact:

1. There does not appear to be exceptional or extraordinary circumstances or conditions applicable to the subject property that apply to other properties and thereby warrants relief from the maximum height and/or maximum area standards for accessory structures in residential districts as set forth in Article 1331.08 (A) of the City's Planning & Zoning Code.
2. There does not appear to a substantial property right possessed by other properties, which exceed the maximum height and/or maximum area of an accessory structure, either in the vicinity of the subject property or within the R-1A Zoning District that is denied to the subject property. Further, any hardship that may currently exist at the subject property appears to have been created by the petitioner's development without required City approvals and permits.
3. The granting of the subject variance petition appears to be harmful to the public welfare as it would overlook and/or excuse the responsibility of the petitioner or any resident or property owner to obtain required City approvals and permits prior to undertaking development within the City of Morgantown. Further, granting said variance may give credence to circumventing the purpose of the City's zoning regulations, as stated in Article 1327.02 of the Planning & Zoning Code, by undertaking development without the required City approvals and permits. The granting of the subject variance petition appears to be harmful to property in the vicinity and R-1A Zoning District as it may set an unwarranted precedent in allowing accessory structures to significantly exceed the maximum height and/or maximum area for same.

4. The granting of the subject variance will alter the existing land-use characteristics of the vicinity by allowing an accessory structure in a residential district to be designed or used for sleeping purposes. The granting of the subject variance may diminish the market value of adjacent properties by allowing development to occur that significantly and unnecessarily fails to conform to and comply with the desired R-1A development patterns relative to the maximum height and maximum area of accessory structures. Further, Article 1363.04 (A) of the Planning & Zoning Code clearly provides that only one principle building and its accessory structures may be located on a lot. The scale of the illegally constructed addition to the accessory structure (garage) in relation to the scale of the principle structure (existing single-family dwelling unit) appears to create two principle structures on the lot.

Furfari seconded it. The motion passed unanimously.

Shaffer noted that the Staff provided suggestions that the petitioner may take to correct this situation.

Bossio advised the petitioner that the Board unanimously voted to reject Findings of Fact 1 through 4. The illegally erected structure must be removed or corrective action taken within 30 days. The Board's decision may be appealed to the Circuit Court of Monongalia County. Any work done by the petitioner within the next 30 days will be at his own financial risk.

V07-34 / Morgantown AES Federal Credit Union / 1212 VanVoorhis Road. Request by Morgantown AES Federal Credit Union for variance approval from Appendix A: Development Standards Table for property located at 1212 Van Voorhis Road.

Fletcher read the staff report noting that the petitioner met with the Technical Review Committee on June 12, 2007 and incorporated all requested site plan modifications.

Lee Gustafson, architect for the project, was present on behalf of the petitioner. Gustafson stated that the correct address for the project is 1133 VanVoorhis Road. He stated a setback has been requested for stack space for cars in the back of the Credit Union. This will allow more vehicles to get through. They are also attempting to avoid the relocation of existing sewer lines. He stated his client will allow for a bus pull off lane at that location and feels it would have a positive impact on the neighborhood. He discussed the proposed traffic circulation and indicated that traffic would enter the location from VanVoorhis and exit on Christie Street, left turn only.

Shaffer asked how they plan to prohibit right turns onto Christie. Gustafson stated a "pork chop" curb would be installed forcing left turn movements.

Shaffer stated that he is concerned with the traffic on Christie as well as the width of that road.

Bossio also stated he has concerns with traffic on Christie Street. The width of that road is only 16 feet. The turning radius of a car turning off of Van Voorhis cannot maneuver that radius. He also was concerned with cut through traffic into the adjoining neighborhood.

Shaffer noted that he preferred not having the same ingress and egress on VanVoorhis Road. He asked whether or not the City should look at widening Christie.

Bossio asked if maybe this issue could be tabled until the Technical Review Committee could take another look at it and provide more information. Gustafson then asked if whether the Board could ask the City to take care of the problem with Christie Street.

David Rice, Manager of the Credit Union stated this facility would not be the open to the general public as it serves Mylan, Mon County Schools, NIOSH, Glenmark and NETL employees. The Credit Union has approximately 4,700 members. He feels their busiest times would be between 8 and 9 am and after 3PM.

Bossio asked for public comment, for or against. There was none and the public comment portion was closed.

Shaffer asked for the Planner's opinion. Fletcher advised that the same concerns of the Board were discussed at length by the Technical Review Committee. Fletcher noted that petitioner's proposed traffic circulation represents the best approach. Fletcher advised he would take the Board's concerns back to the Technical Review Board and perhaps request a traffic study.

Bossio discussed the status of the terra cotta pipe illustrated on the site plan. Gustafson noted that he was not sure whether or not that line had been abandoned.

Shaffer moved to accept Finding of Fact #1 as presented by the applicant. Furfari seconded it. The motion passed 2 to 1 with Bossio voting no.

Furfari moved to accept Finding of Fact #2 with the following addition recommended by Staff:

"Recent developments located on the same side of Van Voorhis Road were constructed under previous setback standards, which did not have a maximum setback requirement. The proposed setback of the building appears to be consistent with the predominant setback trend along Van Voorhis Road."

Shaffer seconded it. The motion passed 2 to 1 with Bossio voting no.

Shaffer moved to accept Finding of Fact #3 as presented by the applicant. Furfari seconded it. The motion passed 2 to 1 with Bossio voting no.

Furfari moved to accept Finding of Fact #4. The motion died for lack of a second.

After a brief discussion, Shaffer moved to table the application for further study. Furfari seconded it. The motion unanimously passed.

Fletcher was asked to meet with the petitioner again with the City Engineer to identify if any alternate traffic circulation plans could be identified and their input provided to the Board at next month's meeting.

Gustafson was concerned with the time it will take for a decision. He feels this penalizes the development. Bossio advised that if necessary, the Board could call a special session after the Staff provides more information.

CU07-10 / William / 250 High Street. Request for conditional use approval for a "Restaurant private club" license in B-4 District at 250 High Street

Fletcher advised that Board that this request was listed on the agenda as withdrawn by the Planning Department because the petitioner had not submitted a complete application was incomplete. Fletcher noted that the petitioner has since decided not to move forward with the request.

IV. OTHER BUSINESS

Public Comments: None

Staff Comments:

Status of Replacing Board Vacancy – Fletcher advised that City Council will be meeting with potential applicants and two people have been scheduled to meet next week with Council.

By-Laws – Fletcher advised that the Board's Bylaws need to be reviewed and changes made as a result of revisions to the State's planning enabling law and the City's Planning & Zoning Code. Revisions will be placed on a future agenda.

The meeting adjourned at 8:40 PM.