

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

August 17, 2011

City Council Chambers

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

MEMBERS ABSENT: George Papandreas

STAFF: Christopher Fletcher, AICP

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

II. MATTERS OF BUSINESS:

A. Minutes of the June 15, 2011 hearing – Motion by Shamberger to approve as presented; seconded by Shaffer. Motion carried unanimously.

B. Minutes for the July 20, 2011 – Motion by Cardoso to approve as presented; seconded by Shamberger. Motion carried unanimously with Shaffer abstaining due to his absence.

III. OLD BUSINESS: None

IV. NEW BUSINESS:

A. CU11-09 /BFS, Inc. / Hunter Way: Request by Howard Goodstein, on behalf of Bruceton Farm Service, Inc. for conditional “Outdoor Storage” use approval for bulk storage and bulk fuel on Hunter Way (former Sterling Faucet site in Sabraton): B-2, Service Business District; Tax Map 44A, Parcel 10.

Fletcher read the staff report stating that the petitioner seeks to relocate the *Southern States* retail store from its present location along 1591 Earl Core Road to the former Sterling Faucet site in Sabraton. Addendum A of this report illustrates the location of the subject site.

The petitioner’s proposed development program details include:

- The development site is approximately 4.6 acres.
- The proposed one-story “Retail Sales Establishment” use will include approximately 13,968 square feet of store, office, and warehouse space; approximately 3,456 square feet of open air garden center space; and, approximately 1,728 square feet of greenhouse space.
- The site will also include open air showroom and storage area; outdoor laydown and bulk storage space; bulk mulch bins; and, six (6) above ground bulk fuel oil facility tanks (e.g. propane, kerosene, heating oil, diesel, and/or gasoline), which requires conditional

use approval by the Board of Zoning Appeals for an “Outdoor Storage” use in the B-2 District.

- The final locations of the above ground bulk fuel oil facility tanks and mulch bins are dependent upon City Fire Marshal review and approval.
- Phase 1 will include the development of the bulk fuel oil facility; Phase 2 will include all remaining elements.
- Construction of Phase 1 could begin as early as September or October 2011; the anticipated construction schedule of Phase 2 is four months after commencement.

Further, additional parking stalls for the remaining “Outdoor Storage” uses appears to result in the overdevelopment of parking due to the fact that a portion of the store structure used to calculate the minimum parking requirement for the “Retail Sales Establishment, not otherwise specified” use is actually warehouse space for large farm-related equipment, provisions, and feed. As such, the Board should consider waiving parking requirements for the “Outdoor Storage” use.

Final parking design and layout, related landscape planning, and lighting planning are dependent upon stormwater management plan review and approval by the Morgantown Utility Board (MUB).

The Planning Commission approved the petitioner’s related Development of Significant Impact Site Plan petition on August 11, 2011.

Bossio recognized the petitioner Mike Groves, 1768 Mileground Rd., representing BFS, Inc. He stated there was nothing to add to the Staff Report.

There being no questions from Board, Bossio opened the public hearing portion of the meeting. There being no comments in favor or opposition to the request, 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 conditional use by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant.

Staff recommends revisions to the petitioner’s Findings of Fact as stated in Addendum C of this report (deleted matter struck through; new matter underlined).

Staff recommends that the conditional use petition be approved as requested with the following conditions:

1. That all applicable standards and provisions of the Fire and Building Codes be met to the satisfaction of the City Fire Marshall and City Chief Building Code Official respectively, including the final location of the bulk mulch bins and above ground bulk fuel oil facility tanks.
2. That the requirement to provide additional on-site parking stalls for the conditional “Outdoor Storage” use is waived.
3. That all applicable City Floodplain Ordinance standards and provisions be met to the satisfaction of the City Engineer.

Shamberger made a motion to accept the Findings of Facts as amended by Staff; seconded by Cardoso. Motion carried unanimously.

NOTE: The Findings of Facts included in this motion are as follows:

Finding of Fact #1 – Congestion in the streets is not increased, in that:

According to the petitioner, the majority of fuel oil business will be delivery to retail customers. The site lies in an established commercial district. The addition of the proposed “Outdoor Storage” use is not expected to contribute to traffic congestion that is currently present. With the exception of the addition of above ground bulk fuel oil facilities, the remaining proposed outdoor storage uses appear to be similar in area and operation of like facilities existing at the *Southern States* establishment at 1591 Earl Core Road.

Finding of Fact #2 – Safety from fire, panic, and other danger is not jeopardized, in that:

All applicable building and fire code life and safety regulations will be followed in the construction and operation of the outdoor storage areas and uses.

Finding of Fact #3 – Provision of adequate light and air is not disturbed, in that:

The size and scope of the proposed outdoor storage areas and uses as depicted on the attached site plan does not appear to adversely impact current light and air traits.

Finding of Fact #4 – Overcrowding of land does not result, in that:

As depicted on the attached site plan, there appears to be adequate space to allow for the proposed “Outdoor Storage” development.

Finding of Fact #5 – Undue congestion of population is not created, in that:

The proposed development does not include a residential use.

Finding of Fact #6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

Water, sewage, stormwater, and other utility facilities appear be available in adequate capacities to serve the proposed conditional “Outdoor Storage” use.

Finding of Fact #7 – Value of buildings will be conserved, in that:

The proposed outdoor storage areas and uses will be used for commercial/retail purpose which appears to be consistent with the character of the surrounding area.

Finding of Fact #8 – The most appropriate use of land is encouraged, in that:

The proposed outdoor storage areas and uses appear to be appropriately situated within a well-established commercial corridor and close to the I-68 interchange.

Shaffer made a motion to approve CU11-09 with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

B. V11-24 / Knowles / 730 Werner Street: Request by Kris Knowles for variance relief from Article 1345.04 of the Planning and Zoning Code as it relates to minimum setback standards for property at 730 Werner Street; Tax Map 25, Parcel 345; B-1, Neighborhood Business District.

Fletcher read the Staff Report stating that the petitioner seeks to raze an existing garage structure on the subject site and construct a mixed-use development. Addendum A of this report illustrates the location of the subject site.

The following points describe the proposed development program as stated by the petitioner in the attached narrative and illustrated on the attached drawings.

- The development site is 50 feet wide by 56 feet deep (2,800 sq. ft.) as a result of the Planning Commission's August 11, 2011 subdivision approval to increase the parcel's width by ten (10) feet.
- The building consists of three levels above the grade of Werner Street and one level below said grade.
- The lowest or basement level is 44 feet wide by 40 feet deep (1,760 sq. ft.).
- The first and second levels are 44 feet wide by 45 feet deep as a result of a proposed five-foot rear cantilever (1,980 sq. ft. per level or two level total gross floor area of 3,960 sq. ft.).
- The third level is 22 feet wide by 30 feet deep (660 sq. ft.).
- The total gross floor area of all four levels is 6,380 sq. ft., which is less than the maximum standard of 15,000 sq. ft. in the B-1 District [Article 1345.05 (D)].
- The proposed structure will include the following uses:
 - Six (6) mixed-use dwelling units consisting of five (5) one-bedroom units and one (1) two-bedroom units.
 - At least 20% (approximately 400 sq. ft.) of the first level gross floor area is programmed for professional office space.
 - Four (4) internal garage parking spaces are proposed with access from Werner Street. The petitioner is concurrently requesting conditional use off-site parking approval to satisfy the proposed development's remaining minimum off-street parking requirement.
- Proposed building setbacks include:
 - Front..... 5 feet, which meets the minimum standard.
 - Sides 3 feet, which meets the minimum standard.
 - Rear..... 6 feet, which requires 14-foot rear setback variance relief.
- The median building height calculation is 39 feet, which is less than the maximum building height of 40 feet in the B-1 District [Article 1345.05 (B)].

The following issues may require additional variances depending on final design and construction documents submitted with the related building permit application.

- Relief from the maximum lot coverage standard of 70%: The proposed five-foot rear cantilever results in a lot coverage calculation of 70.7%; the requisite variance could be eliminated if the cantilever depth is reduced from five feet to four feet.
- Because only a massing illustration has been submitted to date, compliance determination of cladding materials and configuration, window articulation, and front façade fenestration ratio cannot be completed.
- The minimum sidewalk width in the B-1 District is six (6) feet. The front setback illustrated on the submitted site plan is five (5) feet. There may be sufficient width between the building front and the roadway to accommodate a six-foot wide sidewalk provided a curb/sidewalk obstruction to the roadway is not created.

Bossio recognized the petitioner Kris Knowles, 851 Grand Street, who asked for time to explain the project in a little more detail.

Mr. Knowles stated that the working name currently is ‘the firehouse’ because of the design being like that of a modern fire house. The project is small – 6 units – with an emphasis on quality material and great design to create a unique living experience. The building will meet or exceed LEED standards, and the emphasis of the project is sustainability. Part of the project, as well, is to create a community garden with raised beds. The most exciting part is a flat, vegetative roof, which will contain plants. The vegetative roof will increase insulation of the building, and will decrease storm water runoff. Two garage doors will be in the front and will be a unique architectural design. All units will be built to a quality level, using stone, concrete, wood, metal, with plenty of creative space. All units will have access to the community garden. Clientele will pay around \$1,500 per month. There will be room for a sidewalk and a small concrete apron.

There being no questions by the Board, Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request.

Ren Peterson, 742 Globe Avenue, spoke in favor of the request, stating that he welcomes this kind of creative thinking. He also stated that he is a charter member of the first community Garden on Garrison Street and is happy that this project will include a garden.

There being no more comments in favor of the request, Bossio asked if anyone was present to speak in opposition to the project. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher referred to an illustration in the packet and stated that the petitioner engaged a design professional, which helps the Board see more clearly than simply a narrative would.

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.

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 a fourteen (14) foot rear setback variance be granted for petition V11-24 as requested.

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

NOTE: The Findings of Facts included in this motion are as follows:

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 preexisting lot depth of 56 feet appears to prohibit redevelopment of the subject site into a higher a better use desired in the B-1 District given the building envelope established by the minimum five-foot front and minimum twenty-foot rear setback standards.

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 proposed rear setback of six (6) feet is identical to the rear setback of the existing functionally obsolete garage structure. Additionally, the rear setbacks for the existing structures on Parcel 28 (corner of Werner Street and Richwood Avenue) and Parcel 29 (Mario's Fishbowl) of Tax Map 30 do not appear to meet the B-1 rear setback standard of twenty (20) feet.

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 rear setback of six (6) feet is identical to the rear setback of the existing functionally obsolete garage structure. The proposed rear setback maintains easement access for the Morgantown Utility Board's underground utility lines. Variance relief of the minimum rear setback standard appears to create an opportunity for the new development to economically observe front and side setback requirements, within which the existing garage structure appears to encroach.

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:

Rear setback variance relief appears necessary to economically create a redevelopment opportunity of the functionally obsolete, dilapidated site into a development that should contribute positively to the market value and desired character of the immediate B-1 District. Off-street parking will be provided as required in the B-1 District and six mixed-use dwelling units and approximately 400 square feet of professional office space should not contribute to traffic congestion that currently exists within the immediate neighborhood.

Cardoso made a motion to approve V11-24 as requested; seconded by Shaffer. Motion carried unanimously.

C. CU11-08 / Knowles / 730 Werner Street: Request by Kris Knowles for conditional use approval for off-site parking under Article 1365.07 of the Planning and Zoning Code for property located at 730 Werner Street.

Fletcher read the Staff Report, stating that the petitioner seeks conditional use approval under Article 1365.07 "Off-Site Parking Facilities" for the dedication of three (3) off-site parking spaces to meet the minimum off-street parking requirement for the petitioner's proposed mixed-use development at 730 Werner Street. The location of the proposed off-site parking will be within the adjoining parking lot serving the "Richwood Lofts" at 749 Richwood Avenue (see Addendum A of this report). Details of the subject proposed development are presented in the related V11-24 Staff Report, the Board's agenda item for which precedes this conditional use petition.

The minimum parking requirement for the subject development is seven (7) off-street parking stalls; six (6) spaces for the six (6) mixed-use dwelling units and one (1) space for the approximately 400 square feet of professional office space. Four (4) internal garage parking spaces will be provided within the proposed 730 Werner Street structure.

The petitioner has agreed to reduce three (3) two-bedroom units within the "Richwood Lofts" development to three (3) one-bedroom units thereby reducing the minimum parking requirement for said multi-family residential development and creating three (3) spaces for the proposed structure at 730 Werner Street.

Article 1365.07 (C) stipulates that:

"Offsite parking facilities shall be encumbered by an easement or similar agreement duly executed and acknowledged, which specifies that the land upon which the offsite parking facility is located is encumbered by the parking use. Said instrument shall specify and bind the time period to the anticipated life of the building or use to which the parking facilities are accessory. Said instrument shall be filed in the applicable Building Permit files of the Department of Planning, and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, WV."

Bossio recognized the petitioner Kris Knowles, 851 Grand Street. He stated that he felt the Staff Report was self-explanatory. He mentioned that one of the bedrooms will be converted into other use.

Bossio asked if the office would be his office. Knowles stated that the office has to be there. Fletcher stated that in B-1 districts, multi-family units are not permitted. He stated that Mr. Knowles is seeking the minimum office space for the ground floor area.

There being no further questions By the Board, Bossio opened the public hearing portion of the meeting. There be no public comments in favor or opposition to the request, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that The Board must determine whether the proposed request meets the standard criteria for conditional use approval by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant.

Addendum B of this report provides Staff recommended Findings of Fact, which strikes entirely the findings submitted by the petitioner.

Staff recommends approval of the petitioner's proposed "Off-Site Parking Facility" with the following conditions:

1. That the off-site parking spaces shall be encumbered by an easement or similar agreement, to the satisfaction of the Planning Division, which is duly executed and acknowledged and specifies that the land upon which the off-site parking facility is located is encumbered by the parking use of the subject mixed-use development at 730 Werner Street for no less than three (3) spaces. That said instrument must be filed with the Planning Division and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia.
2. That a valid and current copy of said instrument must be made available at the request of Planning Division.
3. That the Certificate of Occupancy for the subject mixed-use development at 730 Werner Street shall be contingent upon the continuance of said agreement and encumbrance. Should said agreement and encumbrance be annulled for any reason at any time, said Certificate of Occupancy shall be revoked upon written notification by the Planning Division.
4. That three (3) two-bedroom units within the "Richwood Lofts" multi-family development must be identified as having been converted to three (3) one-bedroom units and documented as such with the City's Rental Registration. Program and related Letters of Compliance. Failure to maintain said one-bedroom units within the "Richwood Lofts" multi-family development will result in the revocation of the conditional "Off-Site Parking Facility" use granted herein as set forth in Article 1391 of the Planning and Zoning Code.
5. That the three (3) off-site parking spaces shall have signs noting the mixed-use development at 730 Werner Street for which the spaces are reserved. That such signage shall be 12 inches wide by 18 inches tall and shall be mounted between three feet and five feet above the finish surface of the parking stalls. That the text on the sign state, "This space is reserved for residents of located at [addressed to be assigned by City Engineer] only, per City Code 1365.07 (D)."
6. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.

Cardoso made a motion to accept the Findings of Facts as revised by Staff; seconded by Shamberger. Motion carried unanimously.

The Findings of Facts included in this motion are as follows:

Finding of Fact #1 – Congestion in the streets is not increased, in that:

Three off-street parking spaces will be developed within the acceptable distance of 300 feet from Parcel 345, Tax Map 25 thereby alleviating on-street parking congestion.

Finding of Fact #2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The proposed off-site parking spaces will be located within a concrete-paved parking lot.

Finding of Fact #3 – Provision of adequate light and air is not disturbed, in that:

The development of three off-street parking spaces, that meet City design and construction standards, cannot contribute to the disturbance of existing light or air characteristics.

Finding of Fact #4 – Overcrowding of land does not result, in that:

The development of off-site parking spaces will enable the redevelopment of an existing functionally obsolete and dilapidated garage structure in a manner that will otherwise meet, with the exception of the minimum rear setback encroachment, all B-1 District design, development, and performance standards.

Finding of Fact #5 – Undue congestion of population is not created, in that:

The development of off-site parking spaces will enable the redevelopment of an existing functionally obsolete and dilapidated garage structure in a manner that will otherwise meet, with the exception of the minimum rear setback encroachment, all B-1 District design, development, and performance standards.

Finding of Fact #6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

Off-site parking will neither increase nor decrease demand for public infrastructure and services already needed to serve existing and proposed development within the area.

Finding of Fact #7 – Value of buildings will be conserved, in that:

The provision of off-street parking will be provided as a condition of occupancy and will be located within an existing concrete-paved parking lot.

Finding of Fact #8 – The most appropriate use of land is encouraged, in that:

The location of the proposed off-site parking facility will be within in existing concrete paved parking lot.

Shaffer made a motion to approve CU11-08 with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

D. V11-25 / Sunhersh, LLC / 915 Weaver Street: Request by Michael Castle, on behalf of Sunhersh, LLC for variance relief from Article 1335.04 of the Planning and Zoning Code as it relates to minimum setback standards for property at 915 Weaver Street; R-1A, Single-Family Residential District; Tax Map 25, Parcel 5.

Fletcher read the staff report, stating that The petitioner constructed a single-family structure on the subject site illustrated in Addendum A of this report.

Near the end of construction, the petitioner was advised by the adjoining property owner Mr. Philip Bartling that his commissioned survey found that the side setback of the subject newly constructed single-family house was not five (5) feet or more along the shared parcel boundary as required in the R-1A District.

After being contacted by both parties, Staff understands that the survey markers were removed prior to the construction of footers and foundation walls. The cause of the removal of said survey markers is unknown.

Staff advised the petitioner that a variance petition accompanied by an as-built survey would be required for review and approval by the Board of Zoning Appeals prior to the issuance of a permanent Certificate of Occupancy. The attached survey illustrates that the left rear corner of the structure encroaches into the minimum five-foot side setback by 0.74 feet and the left front corner of the structure encroaches by 1.58 feet.

Staff received an email from Mr. Bartling on August 16, 2011 stating:

“Dear Mr. Fletcher,
I own the property at 900 Willey Street, directly beside 915 Weaver St property.
I will NOT oppose the approval of this Variance -- I give my approval, which I believe covers two issues,
1) the structure does not meet the 5ft Set-Back Code requirement.
2) the structure does not meet the 24ft width Code requirement.
I am unable to attend the Variance hearing. Please feel free to contact me at any time.”

Bossio recognized the petitioner Michael Castle, 1117 University Avenue, who stated that the reason for the variance is because the foundation was built out of setback due to survey markers being moved and then put back in the wrong place. He confessed that it was an error made in earnest and that is why the request for variance.

There being no questions by the Board, Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request.

Bossio recognized Ren Peterson, 742 Globe Avenue stated that he is neither in favor or against, but has some questions. Bossio stated that this is not the format to ask questions, but rather for persons to speak in favor or opposition. Mr. Peterson stated that he would address his concerns to the Planning Staff.

There being no further comments in favor of the petition, Bossio asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hear closed and asked for Staff recommendations.

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.

Staff concurs with the findings of fact submitted by the petitioner and recommends variance relief approval as illustrated on the petitioner’s as-built survey.

Shaffer stated that he is a little confused and asked for clarification that this is a case where they grant a variance after the fact. Bossio stated that it is treated as if it is a request where no work has been done.

Shaffer made a motion to approve the Findings of Facts as submitted; seconded by Shamberger. Motion carried unanimously. The Findings of Fact included in this motion are as follows:

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 single-family dwelling was constructed in relation to the property boundary indicator present when the property was purchased. Due to improvements made by the Morgantown Utility Board, this marker was inadvertently removed. It was brought to the property owner's attention, after a survey was completed by the adjacent property owner, that the previous survey marker may have been marked incorrectly, resulting in a nonconforming side setback of 3'8" to 3'10".

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:

Other houses in the vicinity appear to have similar side setbacks as that being requested by the petitioner. The following addresses have non-confirming side yard setbacks for the zoning district. Although they are located in the R-2 District, they share the same side yard minimum setback requirement of five feet: 732 and 736 Weaver Street; 752 Weaver Street; 760 and 764 Weaver Street; 764 and 770 Weaver Street; 746 and 740 Willey Street; 718 and 712 Willey Street; 686 and 694 Willey Street (Photo attached)

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:

There will be approximately 3.66 to 3.83 feet of side yard that should provide sufficient spacing between the existing structure and the adjoining parcel boundary thereby protecting the interests and enjoyment of the adjoining property. No significant grading will be necessary that would harm the adjoining property, public rights-of-way, or existing utilities. The variance should not affect emergency or service vehicle access to the adjacent property. The affected adjacent property fronts Willey Street, Therefore the encroachment borders the rear yard and does not create air, light, fire, or life safety issues.

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:

A side yard setback variance will not detract from the significant improvement to the quality and character of the site and surrounding area. The project is expected to enhance the market value of properties within the immediate area by promoting quality development. A side yard variance cannot result in nor contribute to an increase in traffic congestion.

Shamberger made a motion to approve V11-25; seconded by Cardoso. Motion carried unanimously.

- E. **V11-26 / Administrative / 915 Weaver Street:** Administratively requested variance relief from Article 1331.06 (16) as it relates to minimum width of single-family dwelling units for property at 915 Weaver Street; R-1A, Single-Family Residential District; Tax Map 25, Parcel 5.

Fletcher read the Staff Report, stating that Article 1331.06 (16) (f) provides that:

“No housing unit shall be less than twenty-four (24) feet in width.”

Near the end of construction, Michael Castle of Sunhersh, LLC, developer of the single-family structure on the subject site, was advised by the adjoining property owner Mr. Philip Bartling that his commissioned survey found that the side setback of the subject newly constructed single-family house was not five (5) feet or more along the shared parcel boundary as required in the R-1A District.

After being contacted by both parties, Staff visited the site to investigate the setback discrepancy and observed that the nearly constructed single-family structure appeared to be less than the twenty-four (24) foot minimum width standard. The building permit application and related site plan, which are attached hereto, were immediately reviewed.

The site plan submitted with the building permit application clearly illustrated the width of the proposed structure to be 13' 9", which should have been discovered by the Planning Division and either rejected or the developer notified that variance relief must be granted by the Board of Zoning Appeals prior to building permit issuance.

Staff consulted the City Attorney and was advised to request administrative variance relief on behalf of the developer.

Bossio recognized Michael Castle, 1117 University Avenue, who stated that he felt the Staff Report was conclusive.

Bossio asked Mr. Castle if he was aware of the minimum 24 foot requirement. Mr. Castle stated he was not. Once he contacted the Planning Office in regards to the side setback variance, it was discovered at that time that there was a 24 foot minimum requirement. Mr. Fletcher told him that Staff would submit a variance request on his behalf.

Shaffer stated that he is surprised that this was not caught, since the setback was blown by over 50 percent.

There being no further questions by the Board, Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the petition.

Bossio recognized Vince Putkowski, 114 Lewellen Road who was the contractor for the project who stated that he applied for the permit for the foundation portion and nothing was said. He said the 24 ft. requirement was a big surprise to him. He feels there is a lot of confusion about setbacks.

There being no further comments in favor of the petition, 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 recommendations.

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.

Bossio referred to cases in the past where work was knowingly done without a permit, after which the petitioner comes to the Board to ask for forgiveness. He stated that this is not the case with Mr. Castle. All proper procedures were pursued, approvals were granted. Bossio further stated that he is not sure this is something that should be remedied by the Board of Zoning Appeals.

Shaffer stated that this is more of a 'clerical' error rather than bad judgment.

Fletcher stated that the decision to proceed in this manner was a result of a recommendation from the City Attorney.

Shamberger stated that the board needs to look at the hardship, and he does not see this as a self-imposed hardship. Based on that, he feels the Board could take action.

Cardoso said it would be impossible to look at this project without looking at the mistake that was made. She does not feel that it is the place of the Board of Zoning Appeals to make this decision.

Bossio said that he was told to view every request as if it has not yet been built, and he cannot clear his conscience to handle this as an administrative appeal. He stated that the Board could table this request until they can get clear guidance from the City Attorney. He also stated that it could potentially establish precedence.

Fletcher advised the Board that, based on the discussion and questions of Board, it appears that a clear decision may be difficult and that consultation with the City Attorney may be prudent.

Cardoso made a motion to table variance petition V11-26 so that the Board can consult with the City Attorney and a special meeting called to render a decision; seconded by Shaffer. Motion carried unanimously.

Bossio stated he would allow Mr. Castle to speak. Castle stated that he would like to see this resolved as quickly as possible and his one concern is that his Certificate of Occupancy expires within the next week.

Fletcher said he that the temporary Certificate of Occupancy can be extended, based on the fact that the Board has made a decision to table this request.

V. OTHER BUSINESS

A. Public Comments: None

B. Staff Comments: None

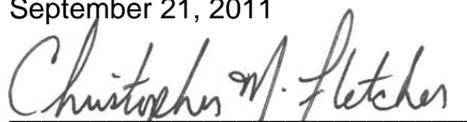
Cardoso expressed her appreciation for the exemplary work Mr. Fletcher demonstrates when putting the meeting materials together.

VI. ADJOURNMENT: 8:03 PM

MINUTES APPROVED:

September 21, 2011

BOARD SECRETARY:



Christopher M. Fletcher, AICP