

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

August 17, 2016

City Council Chambers

MEMBERS PRESENT: Bill Burton, Jim Shaffer, Linda Herbst, and Colin Wattleworth

MEMBERS ABSENT: George Papandreas

STAFF: John Whitmore, AICP

- I. **CALL TO ORDER AND ROLL CALL:** Burton called the meeting to order at 6:30 p.m. and read the standard explanation of the how the Board conducts business and rules for public comments.

- II. **MATTERS OF BUSINESS:**
 - A. Minutes for the June 15, 2016 hearing: Shaffer moved to approve as presented; seconded by Wattleworth. Motion carried unanimously.
 - B. Minutes for the July 20, 2016: Wattleworth moved to approve as presented; seconded by Herbst. Motion carried unanimously with Shaffer abstaining due to his absence.

- III. **UNFINISHED BUSINESS:** None.

- IV. **NEW BUSINESS:**
 - A. **V16-22 / Rubenstein / 308 Grand Street:** Request by Harry M. Rubenstein and Margaret Janie Frist Rubenstein for variance relief from Article 1331.08(A)(3) to encroach into the minimum side and rear setback standards for an accessory structure; Tax Map 36, Parcel 52; R-1A, Single-Family Residential District.

Burton recognized Harry Rubenstein of 308 Grand Street who concurred with the Staff Report and apologized they did not obtain a permit prior to building the structure.

There being no comments or questions by the Board, Whitmore presented the Staff Report.

Burton asked if anyone was present to speak in favor of or in opposition to the petitions.

Burton recognized Sheila Schumacy of 304 Grand Street located next door to the petitioner. Schumacy noted the petitioners are doing beautiful renovations and their projects provide improvement to the neighborhood.

There being no further comments, Burton declared the public portion closed.

Burton asked for Staff recommendations, which were read by Whitmore.

Burton read additional conditions to the variance request that states an additional variance would be needed in the event the structure is torn down or if any modifications are made to the existing carport structure.

Shaffer noted that Edgewood Street is a frequently visited street and stated he is in full support of the project.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V16-22 as revised by Staff; seconded by Wattleworth. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

There is a concrete driveway (off Edgewood Street) and car parking pad have been in place for many years; side and rear yard privacy fences have been in place for years and they appear to keep the concrete pad, car and carport hidden from public view. The carport as designed does not appear to negatively impact health, safety, or welfare, or the rights of adjacent property owners; provided, any and all encroachments onto the adjoining property are mitigated. Property owners will contain and collect all rainwater coming off carport roof so that it does not negatively impact neighbors or public right of way.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

Property owner believes that the pre-existing concrete parking pad, upon which the carport is built, is a special condition or attribute justifying the granting of the requested side yard 5-foot setback variances. Property owners are not creating a new parking area on their realty. Property owners did not create the concrete pad in question; rather, it was in place when they purchased the realty.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Property owners will be parking on the rear of their property in the same location previous property owners have parked for decades.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The unique characteristics of the realty in question, which include an existing concrete parking pad and driveway which have been continuously utilized for owner parking of their vehicles, and the fact that the granting of the variances will simply allow the applicants to continue parking on the parking pad in question.

Burton asked the petitioner if they understood the two (2) additional conditions added to the variance. Rubenstein asked if a garage door would be allowed. Burton declined and stated that a carport structure is open on all sides.

Rubenstein asked if a sliding gate would be allowed. Whitmore explained that if the gate is attached to the fence then it would be allowed, however if the gate is attached to the carport then that would not be allowed.

Shaffer expressed he felt uncomfortable discussing what is and isn't allowed as they could come back in the future with another variance request.

Shaffer moved to approve V16-22 as requested with conditions; seconded by Herbst. Motion carried unanimously.

NOTE: The following condition was included in the motion:

1. *Any and all encroachments of the carport onto the adjoining property are to be mitigated.*
2. *The variance is only for the use of the proposed carport. Any modification of the carport to become a garage or other type of accessory structure, will require a separate variance petition to the Board of Zoning Appeals.*
3. *In the event that the carport is demolished, any placement of a new accessory structure in the carport's building foot print will require a variance petition to the Board of Zoning Appeals in accordance with the Planning and Zoning Code.*

Burton reminded Mr. Rubenstein that the Board's decisions can be appealed to Monongalia County Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

B. CU14-09 / DiMarco / 91 Grandview Avenue: Request by Ann DiMarco for an amendment to a previously approved conditional "Class 2 Home Occupation" use; Tax Map 41, Parcel 57; R-1A, Single-Family Residential.

Burton recognized Ann DiMarco of 91 Grandview Avenue who stated she operates a small mental health practice at her home and asked for a modification to her hours on Monday to operate until 7:00 PM in order to accommodate the patients that go to work or school.

There being no comments or questions by the Board, Whitmore presented the Staff Report.

Burton asked if anyone was present to speak in favor of or in opposition to the petitions. There being no comments, Burton declared the public portion closed.

Burton asked for Staff recommendations, which were read by Whitmore.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for CU14-09 as revised by Staff; seconded by Herbst. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – The home occupation will be compatible with residential uses of the dwelling, in that:

The petitioner states that the home office will occupy the front room and hallway of the house. This part will be separated from the rest of the house by 2 wooden folding doors. An enclosed front porch will act as a waiting room, accessible from the street. There will be an entry bell. Shades and 2 white noise machines will assure privacy. Downstairs bathroom is available at request during the hours of operation, the house is empty.

Finding of Fact No. 2 – The home occupation will not change the residential character of the dwelling, in that:

The petitioner states that there will be no big, noticeable changes to the character of the dwelling. The enclosed porch will have less clutter and be used mainly for sitting. The furniture in the office is not out of character for use in a residential dwelling, which includes filing cabinets, bookcases, and a table, are already in the room and another bookcase type piece in the hallway will be used for storage, and I have a laptop computer, printer/copier, and paper shredder.

Finding of Fact No. 3 – The home occupation will not detract from the residential character of the neighborhood, in that:

The petitioner states that the residential character of the neighborhood will be intact. There will be no changes to the exterior of the house or outside grounds. There will be no additional delivery trucks, etc. required for the business.

Finding of Fact No. 4 – Congestion in the streets will not be increased, in that:

The petitioner's business operations do not appear to result in a discernable increase in daily traffic that is customary to any residential neighborhood. There appears to be sufficient parking spaces on the petitioner's property to mitigate on-street parking congestion.

Shaffer moved to approve the amendment to CU14-09 as requested; seconded by Wattleworth. Motion carried unanimously.

Burton reminded Ms. DiMarco that the Board's decisions can be appealed to Monongalia County Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

C. V16-21 / Boost Mobile / 749 Chestnut Ridge Road: Request by Brenda Stipanovich of Fast Signs of Uniontown, on behalf of Boost Mobile, for variance relief from Article 1369 concerning signage; Tax Map 56, Parcel 4; B-2 Service Business District.

Burton recognized Brenda Stipanovich of Fast Signs of Uniontown, on behalf of Boost Mobile, who requested an adequate size of channel letters to be installed at 749 Chestnut Ridge Road.

Wattleworth referred to measurements listed in the Staff Report and asked if the landlord has been contacted and if they will allow for the sign to encroach onto another store front. Stipanovich stated the measurements listed are incorrect as the width of the store frontage is fourteen (14) feet and confirmed the landlord will permit the size of the sign proposed.

Shaffer asked if any additional signage is being proposed. Stipanovich stated only the channel letters on the front of the store are proposed.

There being no further comments or questions by the Board, Whitmore presented the Staff Report.

Whitmore noted there is a three-foot discrepancy and therefore establishes the maximum wall sign area at 6.6 square feet but a variance is still required for the sign.

Whitmore provided further clarification on the square footage requested.

Wattleworth asked if the proposed sign would still need a variance after the new sign codes established. Burton explained the question is irrelevant as the Board has to review the sign based on the present sign regulations. Wattleworth understood and noted the proposed sign appears smaller than the previous sign.

Burton asked if anyone was present to speak in favor of or in opposition to the petitions. There being no comments, Burton declared the public portion closed.

Burton asked for Staff recommendations, which were read by Whitmore.

Board members decided to consider each Finding of Fact individually.

Shaffer made a motion to find in the affirmative for Finding of Fact 1 as revised by Staff; seconded by Herbst. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents because the signage as designed, creates greater visibility that will enhance business.

Shaffer made a motion to find in the affirmative for Finding of Fact 2 as revised by Staff; seconded by Wattleworth. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought appears to have been created by the person seeking the variance, because the business needs greater visibility through adequate signage as proposed, due to the location of the business in the shopping center.

Shaffer made a motion to find in the affirmative for Finding of Fact 3 as revised by Staff; seconded by Herbst. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because the variance for larger signs will eliminate the unnecessary hardship of residents, guests and emergency vehicles not being able to identify the property. The inability to locate the residence could cause traffic accidents or delays in emergency to the property.

Shaffer made a motion to find in the affirmative for Finding of Fact 4 as corrected to reflect variance relief of 10.1 square feet of signage; seconded by Wattleworth. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 4 – The variance will allow the intent of the Zoning Ordinance to be observed and substantial just done because the increased size of the signs will be an effective means to communicate with the pedestrian and motorize public at relevant locations. It should improve traffic safety.

Shaffer moved to approve V16-21 as corrected to reflect variance relief of 10.1 square feet for signage; seconded by Wattleworth. Motion carried unanimously.

Burton reminded Ms. Stipanovich that the Board's decisions can be appealed to Monongalia County Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

D. V16-23 / The Vapor Hut, LLC / 250 Retail Circle: Request by William Watson, on behalf of The Vapor Hut, LLC, for variance relief from Article 1369 concerning signage; Tax Map 64, Parcels 4 and 5; B-5 Shopping Center District.

Burton recognized William Watson of 250 Retail Circle who stated he concurred with the Staff Report.

Wattleworth asked if the sign changes pictures. Watson explained the software to the sign would be set to not scroll and would say "The Vapor Hut".

There being no further comments or questions by the Board, Whitmore presented the Staff Report.

Burton asked if anyone was present to speak in favor of or in opposition to the petitions. There being no comments, Burton declared the public portion closed.

Watson noted the square footage listed in the Staff Report is incorrect and should reflect 25 linear square feet of store frontage.

Shaffer expressed that a scrolling sign is not desirable in that area. Wattleworth agreed but noted that scrolling signs are allowed in the B-5 district.

Whitmore noted that, with 25 linear square feet of frontage, then a 4.8 square foot variance is needed.

Burton asked for Staff recommendations, which were read by Whitmore.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V16-23 as revised by Staff; seconded by Herbst. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The business is located in a retail park, where only similar businesses and shopping locations exist, with similarly or greater sized signage.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The tenant is moving into an area where much larger businesses and companies already exist. The sign we seek to have approved is slightly larger than ordinance but will look better and more in place next to larger companies such as Dollar Tree, Wal-Mart, and Gamestop.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

While the sign is slightly larger than permitted, it would still be one of the smallest signs in the plaza, smaller even than some existing signs on suites of the same size. In addition to this, the tenant's suite is the corner suite and has the least visibility from the road and parking lot.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed sign will give the tenant a better chance to attract customers and business, will better match the current aesthetic of the retail park, and still remain modestly sized in comparison to existing signs.

Shaffer moved to approve V16-23 as corrected to reflect variance relief of 4.8 square feet for signage; seconded by Wattleworth. Motion carried unanimously.

Burton reminded Ms. Watson that the Board's decisions can be appealed to Monongalia County Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

E. V16-24 / Sheetz, Inc. / 21 Asturias Lane: Request by Robert J. Franks, on behalf of Sheetz, Inc., for variance relief from Article 1369 concerning master plan signage; Clinton District, Tax Map 6, Parcel 4.6; B-5 Shopping Center District.

Burton recognized Robert Franks on behalf of Sheetz, Inc. who apologized for not applying for the variance prior to erecting the signs. Franks noted why they chose that particular location and explained the type of signage used is for directional purposes when customers are on the property. Franks provided further explanation on the location and design of the signs and where they would be situated on the property.

Wattleworth noted the Sheetz logo was not included on the Do Not Enter sign. Franks confirmed.

There being no further comments or questions by the Board, Whitmore presented the Staff Report.

Burton asked if anyone was present to speak in favor of or in opposition to the petitions. There being no comments, Burton declared the public portion closed.

Burton asked for Staff recommendations, which were read by Whitmore.

Burton noted that the building is located in a rural area and if there weren't signs then the area would be dark. Burton also noted that Sheetz on University Avenue does not have as many signs as they are in a developed area where there are lights at night.

Wattleworth ask if Sheetz owns Asturias Lane. Franks explained the street is not their property and was once a lane that was constructed by the owner of the property.

Burton noted the location of the access points from Asturias Lane and noted that the store has three sides of road frontage.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V16-24 as presented; seconded by Herbst. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The property is located in a rural commercial area with minimal existing development. There is business along the same road, closer to the City with signage of similar size. The signage is designed to provide the public the ability to recognize services offered while still traveling safely on a high traffic road that provides minimal reaction time for making a decision. A large portion of the signage is designed to be seen and provide the public direction while within the boundaries of the property and difficult to be seen outside the boundaries of the property. This provides no negative impact on the surrounding properties. The design of the signage is consistent with the architectural design of the facility which is consistent with planning and zoning codes.

A gas price sign provides the public adequate notice that gasoline is sold on the Property, and notice of the price, in order for drivers to get into the proper lane and make a safe turn onto the Property. The lack of any sign advertising price may result in unsafe turning movements or reductions in speed while customers attempt to determine the gas price before turning onto the Property. It may also result in congestion of interior drives while customers drive up to the pump to determine gas prices. The sign also provides useful information on the services provided that are either new to Sheetz and or important to the customer base in this area. The sign is elevated above the road and does not create a line of site issue. The public also has ample time to recognize and react while driving along a high traffic roadway.

The design of this building is a new one of kind design and the wall signs on the building have been designed as an architectural element marking the locations of the entrance doors and provide brand recognition. The drive thru sign on the wall provides the public information on a new service offered and not typically found at a Sheetz. The wall signs on the canopy, which is a one of kind design for Sheetz, are required to reinforce to the public that the petroleum products being offered are Sheetz products.

All the signage associated with the drive thru (directional, clearance and menu) all are required to help the public recognize a new service typically not found at most Sheetz stores. The design is also to help the traveling public maneuver through the lot with little indecision leading to safer travel for everyone on the property. Use of the logo's helps to reinforce the brand message. Internal illumination is a preference, external illumination of directional signage can be a maintenance item, lights being knocked over during mowing, cars that may drive over the curb etc. once these lights are in disrepair and the directional signs are not illuminated can lead to the potential traffic confusion within the property. The order point operates similar to the order points found inside a Sheetz. Again since a drive thru is a relatively new concept and the means to order is unconventional to a typical drive thru at other non-Sheetz locations, the need to educate the customers on where to place their order exist. The menu sign is designed to help educate the public and was created with minimal wording.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The property was originally not located within the City limits and was not subject to the City's planning and zoning codes. Due to a right of way which fell under the Morgantown corporate limits, the property was ultimately incorporated into the City. The property sites on a high volume traffic road which has challenging topography.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The granting of this variance will not be harmful to public welfare or harm property in the vicinity. To the contrary, it serves the public welfare by encouraging safe turning movements in and on the Property. The use of signage has been tactfully designed and incorporated with little nuisance to neighboring properties.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The variance will not alter the land use characteristics of the vicinity or diminish the market value of adjacent properties or increase traffic congestion. The design of the signage is in conjunction with the architectural design of the building and services offered on the property. The design has also been tactfully completed without the use of loud and flashing/moving parts. The signage will help minimize conflicting traffic movements. The requested variance will not have any impact on the adjoining properties or the surrounding area.

Shaffer moved to approve V16-24 as requested; seconded by Wattleworth. Motion carried unanimously.

Burton reminded Mr. Franks that the Board's decisions can be appealed to Monongalia County Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

F. V16-25 / Davis / 2060 Eugeniva Avenue: Request by Phillip Davis for variance relief from Article 1335.05(A)(2) to encroach into the minimum setback standard for an uncovered stairs/landing/porch; Tax Map 44, Parcel 123.1; R-1A, Single-Family Residential District.

Burton recognized Phillip Davis of 2060 Eugeniva Avenue who explained the reason for the request is because he erected a fence to conform to the slope of the yard and didn't know the setbacks.

There being no comments or questions by the Board, Whitmore presented the Staff Report.

Davis noted he is only asking for an 18-inch variance relief from the side property line.

Burton asked what the accessory structure consisted of. Davis explained the accessory structure is a canopy and is not permanent or attached to the deck.

Burton asked if the accessory structure should be considered if it isn't permanent. Whitmore stated that Staff is recommending the accessory structure be removed.

Burton asked if a patio umbrella would be considered an accessory structure. Whitmore referred to the Planning and Zoning Code to read the definition of accessory structure and the definition of a structure.

Wattleworth expressed the canopy would not be a structure. Burton agreed and suggested putting a condition on the variance that would prohibit the use of a permanent accessory structure.

Wattleworth asked if the accessory structure should even be considered as they are asking for a setback variance. Burton noted the accessory structure was listed in the Staff Report and therefore needs addressed by the Board.

Board members determined the canopy would not be considered an accessory structure.

Board members decided to vote on each Findings of Fact separately for Case V16-25.

Shaffer made a motion to find in the affirmative for Finding of Fact 1 as corrected; seconded by Wattleworth. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents because due to the variance requested for an uncovered deck meets an existing privacy fence located 10 inches from front property line and 18 inches from the front property line. The uncovered deck will be on property and within property lines. Uncovered deck will also create more appeal to the area and residence.

Shaffer made a motion to find in the affirmative for Finding of Fact 2 as presented; seconded by Herbst. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought appears to have been created by the person seeking the variance, because the present area is a slope and/or inclined hill not useful to property owners and/or tenants, present area is currently more hazardous and an inconvenience. The variance will allow utilization of the property.

Shaffer made a motion to find in the affirmative for Finding of Fact 3 as presented; seconded by Wattleworth. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because the land is a slope making the area useless and a hazard to occupants. The variance will allow use of land in a safe environment for occupants. The variance will also eliminate hardship with keeping area clean and grass cutting on a sloped environment.

Shaffer made a motion to find in the affirmative for Finding of Fact 4 presented; seconded by Herbst. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 4 – The variance will allow the intent of the Zoning Ordinance to be observed and substantial just done because the variance will enable better use of the property. The variance will not decrease property value and will not impact and adjacent property negatively.

Per discussion among the Board, applicant and staff, it was determined the canopy is not considered an accessory structure.

Shaffer moved to approve V16-25; seconded by Wattleworth. Motion carried unanimously.

Burton reminded Mr. Davis that the Board's decisions can be appealed to Monongalia County Circuit Court within thirty (30) days of receiving written notification from the Planning Division and

that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

G. V16-26 / Smith / 798 Morgan Avenue: Request by Mary Jane Smith for variance relief from Article 1333.04(A)(3) concerning a side setback encroachment for an elevator addition; Tax Map 52, Parcel 49; R-1, Single-Family Residential District.

Burton recognized Mary Jane Smith of 798 Morgan Avenue who introduced Bill Patterson who is the contractor of the elevator. Smith stated they began construction prior to knowing a variance was needed and concurred with the Staff Report.

Burton asked how the elevator would be accessed. Smith explained access would be thru the garage.

Herbst expressed concerns with not knowing the exact property line.

Patterson noted there is a water utility hub on the property in which he measured from and feels the setback is over 10 feet from the side property line rather than the 5.6 feet listed in the Staff Report.

Wattleworth asked how Staff determined the location of the property line. Whitmore noted that question is addressed in the Staff Report.

There being no further comments by the Board, Whitmore read the Staff Report.

Whitmore referred to Addendum A and explained Staff did not receive a survey and therefore based the property line off of the tax map in GIS.

Wattleworth asked for further clarification on how the property line was determined. Burton explained there is 33 feet between the two houses and when split in the middle then it would 16 feet or it could as little as 10 feet if the house were built to code.

Burton explained that without a survey, the property line cannot be determined and the variance is requested in the event the structure was not built to code and could be as much as 4.2 feet.

There being no further comments or questions by the Board, Burton asked if anyone was present to speak in favor of or in opposition to the petitions. There being no comments, Burton declared the public portion closed.

Burton asked for Staff recommendations, which were read by Whitmore.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V16-26 as revised; seconded by Herbst. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

There is nothing in the elevator that connects to the property next to it. The elevator enclosure will not in any way affect the safety or welfare of anyone in the neighborhood.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

According to the petitioner, the owners of the property is 78 years old. This elevator will allow her to remain in this house for many years to come. The integral basement garage from which access to the upper story via the elevator addition is fixed and appears to be the only functional and reasonable area to locate the independent living amenity.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

According to the petitioner, the elevator structure has been designed to be compatible with the existing house. It does not detract from the appearance of the house.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

According to the petitioner, the elevator structure was designed by a person knowledgeable in making a structure for this elevator. This elevator has to be constructed at this location in order to take her to a necessary upper room in the house.

Shaffer moved to approve V16-26 as requested; seconded by Herbst. Motion carried unanimously.

Burton reminded Ms. Smith that the Board's decisions can be appealed to Monongalia County Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner

H. V16-28 / Cashland Pawn / 530 Brockway Avenue: Request by Crystal Miller of City Neon, Inc., on behalf of Cashland Pawn, for variance relief from Article 1369 concerning signage; Tax Map 29, Parcels 289, 289.1, 290, and 291; B-2 Service Business District.

Burton recognized Crystal Miller of City Neon, 1095 Chaplin Hill Road, who explained the sign located at the front of the building has been approved and the variance is to allow two additional signs on each side of the building. Miller explained the owner has requested to use existing signs from a previous building.

Burton expressed the two additional signs are too large and felt smaller signs would be more appealing.

Wattleworth expressed the sign next to the parking lot is acceptable.

Burton expressed the building is not very wide. Wattleworth agreed and noted the building is in a neighborhood.

Wattworth asked if the illuminated sign will affect the window above. Miller explained the owner of Cashland Pawn owns the vacant lot and the building and noted she did not know how the sign would affect the window above.

Wattleworth asked for further clarification on the Staff Report where it noted that eliminating lower portions of the sign would reduce the square footage and asked why this wasn't a Staff recommendation. Burton explained that Staff does not make recommendations on signage.

Whitmore explained that Staff anticipated discussion on eliminating a cabinet.

Shaffer inquired if the petition should be tabled in order for the representative to speak with the petitioner of thoughts and suggestions made by the Board.

Burton asked if the applicant is adamant about having the bigger signs. Miller stated it is important for the applicant to have the requested signage.

Wattleworth asked if it was possible to eliminate the lower cabinet of the signs. Miller confirmed.

Whitmore explained the applicant is allowed 88 square feet and if the lower portions of the two signs are eliminated then a variance of 8 square feet would be necessary.

Board members decided to vote on each Findings of Fact separately for Case V16-28.

Shaffer made a motion to find in the affirmative for Finding of Fact 1 as requested; seconded by Wattleworth. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents because the proposed sign will not impair adequate light or air to adjacent properties. It will not increase the hazard from fire or other dangers to said property or adjacent properties. It will not diminish or impair property values within the neighborhood. It will not create a nuisance. It will not result in an increase in public expenditures..

Shaffer made a motion to find in the affirmative for Finding of Fact 2 as requested; seconded by Wattleworth. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought appears to have been created by the person seeking the variance, because the building is located in a narrow section of Brockway Avenue in which a sign on either side of the building as well as the store front could better help customers to find the location. The former tenant of this building owned a business that was geared to a predominantly female interest. Whereas, the new business is geared more to a male clientele. Many men would not readily identify this building. Advertising and signage becomes crucial to bringing in business.

Shaffer made a motion to find in the affirmative for Finding of Fact 3 as corrected; seconded by Wattleworth. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because it will allow the business to repurpose a portion of an existing sign without a large investment in new signage or structural change to the property.

Shaffer made a motion to find in the affirmative for Finding of Fact 4 presented; seconded by Wattleworth. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 4 – The variance will allow the intent of the Zoning Ordinance to be observed and substantial just done because it will help create revenue in the area without harming the public health, safety or welfare, or the rights of adjacent property owners.

Shaffer moved to approve V16-28 to include 96 square feet total signage for a variance of 8 square feet; seconded by Wattleworth. Motion carried unanimously.

Burton reminded Ms. Miller that the Board's decisions can be appealed to Monongalia County Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- I. **V16-27 / Saffron Indian Cuisine Restaurant / 268 High Street**: Request by Crystal Miller of City Neon, Inc., on behalf of Saffron Indian Cuisine Restaurant, for variance relief from Article 1369 concerning signage; Tax Map 26A, Parcel 131; B-4 General Business District. POSTPONED

Whitmore explained Case No. V16-27 is postponed by Staff until September 21, 2016 BZA hearing.

- J. **Special Hearing**: Wednesday, August 31, 2016; 6:30 p.m., City Council Chambers; BA16-02 / Giuliani and Mode Roman.

Whitmore read a memorandum dated Wednesday, August 17, 2016 to the Board of Zoning Appeals regarding Special Hearing, BA16-02 / Giuliani and Mode Roman. Shaffer moved to cancel Special Hearing BA16-02 / Giuliani and Mode Roman based on the findings and conclusions presented in the memorandum; seconded by Herbst. Motion carried unanimously.

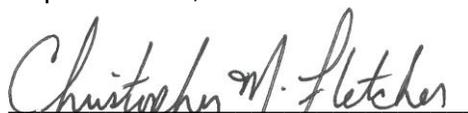
V. **ANNOUNCEMENTS**: None.

VI. **ADJOURNMENT**: 8:30 PM

MINUTES APPROVED:

September 21, 2016

BOARD SECRETARY:


Christopher M. Fletcher, AICP