

BOARD OF ZONING APPEALS

Minutes

6:30 PM

August 18, 2010

City Council Chambers

MEMBERS PRESENT: Leanne Cardoso, Tom Shamberger, Jim Shaffer

MEMBERS ABSENT: George Papandreas, Bernie Bossio

STAFF: Christopher Fletcher, AICP

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

II. MATTERS OF BUSINESS:

A. The minutes for the July 21, 2010 meeting were postponed.

III. OLD BUSINESS

A. V10-20 / Bryon-Culton / 1268 Fairlawn Avenue: Request by Dean Culton, on behalf of Megan Byron, for variance relief from Article 1333.04 of the Planning and Zoning Code as it relates to minimum rear setback for property located at 1268 Fairlawn Avenue. Tax Map #7, Parcel #165; R-1, Single-Family Residential District.

Fletcher read the Staff Report stating that at the July 21, 2010 hearing, the Board tabled the above referenced variance petition. In the tabling motion, the Board directed the petitioner to submit a survey and as-built site plan prepared by the surveyor licensed in West Virginia so that the Board would be confident in the extent of the variance being requested. The Board also requested the City Manager to issue a "Stop Work Order" pending the outcome.

Attached herewith are:

- July 21, 2010 Staff Report for V10-20 / Byron-Culton / 1268 Fairlawn Avenue
- July 22, 2010 memorandum from Dan Boroff, City Manager, to Mike Stone, Chief Building Code Official concerning the Board's stop work order request
- July 22, 2010 Stop Work Order issued by Mike Stone
- Survey/As-built Site Plan prepared by David C. Sypolt, PS #879, which was received by the Planning Department on July 30, 2010

Concerning the Survey/As-built Site Plan, Fletcher stated that:

- Rear Setback (V10-20) – The drawing illustrates that the rear setback for the garage addition is 22.1 feet or 22' – 1 3/16". Article 1333.04 (4) provides that the minimum rear setback standard in the R-1 District is 25 feet. As such, the drawing illustrates that a 2.9' or 2' – 10 13/16" variance is required rather than the original request of 10 feet.
- Side Setback from Mulberry (V10-21) – The drawing illustrates that the side setback from Mulberry is 13.1 feet or 13' – 1 3/16". Article 1333.07 (B) provides that the

minimum side setback standard for a corner lot in the R-1 District is 15 feet. As such, the drawing illustrates that a 1.9' or 1' – 10 13/16" variance is required. The petitioner has submitted a second variance petition seeking relief from said side setback standard.

- Side Setback from Adjoining Parcel – The drawing illustrates that the side setback for the master closet addition from the adjoining parcel boundary is 14.4', which is greater than the 10 foot setback standard provided in Article 1333.04 (3). As such, variance relief is not required.
- Lot Coverage – The drawing illustrates that the lot coverage for the house and garage and master closet additions is 28.3%, which is less than the maximum lot coverage standard provided in Article 1333.03 (C) of 40%. As such, variance relief is not required.

Concerning the Stop Work Order, Fletcher stated that the July 22, 2010 Stop Work Order provides that, "No further building operations are permitted at this location which relates specifically to work performed to and within said garage and master closet additions until a release form, signed by the City Manager/Code Official, has been issued."

After the survey/as-built site plan was submitted, Mike Stone and Fletcher met with Culton on August 30th and informed him that work may continue on the master closet addition. The reason for allowing work to go forward on the master closet addition was that the plan showed compliance with side setback requirements for same and that maximum lot coverage had not been exceeded. Culton requested to continue work on the garage at his own risk. Mr. Stone advised Culton that the Stop Work Order remained in effect for the garage addition until the BZA reached a decision on his variance petitions and that no work was permitted on the garage addition.

On Monday, August 2nd, Paul Satterfield and Fletcher found that two or three pieces of siding were hung on the garage along the wood deck. Satterfield instructed the workers on that date that no additional work to the garage would be allowed. On Tuesday, August 3rd, Satterfield and Fletcher found that additional siding was hung on the same side of the garage along the wood deck. After speaking with Culton on August 3rd and instructing him that any additional work on the garage would result in enforcement action.

A citation was not issued for these events due to Code Enforcement's experience with the Municipal Court under similar circumstances. The Code Enforcement Division has a higher degree of confidence that the Municipal Court will uphold enforcement action if Culton continues work on the garage beyond that noted above.

Concerning Course of Action, Fletcher stated that the Board is reminded that Case No. V10-20 must be removed from the table under Robert's Rule of Order before additional discussion or deliberation may proceed. The Board is also reminded that its obligation to hold a public hearing by taking public comments was fulfilled during the Board's July 21st hearing. As such, the Board may elect to simply continue its discussion without additional public comment for Case No. V10-20.

The Board must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for each of the "Findings of Fact" submitted by the petitioner. Should the Board not agree with the findings submitted by the petitioner, it must develop its own positive or negative findings keeping in mind that a decision to approve or deny the variance petition may be appealed to Circuit Court.

As noted in the July 21, 2010 Staff Report, Fletcher stated that no Staff recommendation is offered as doing so in either case may be perceived as unfair and prejudiced given the circumstances of the present variance petition.

Cardoso noted that the Board is under no obligation to hear public comment but only for new information that had been presented since the last meeting. Cardoso then proceeded to recognize the applicant.

Rocky Gianola, representative of the applicant, stated that the original request was ten (10) feet based on miss information. He continued that after the survey it is known that the variance relief is only two (2) feet. He stated that the rest of the information has already been presented.

Shamberger asked the number of garage stalls. Gianola replied that it is a matter of square footage and not the number of garage ports. Shamberger stated that he counted four garage ports. Gianola replied that the size of the garage is consistent with a previous garage addition that was granted a variance in the previous month.

Kathy Bell, 332 Mulberry Street, stated it is unfortunate that everything has come to this. She is concerned that the variance will establish a new precedent in the neighborhood. She added that the property in question has crept into the property line over through numerous renovations over the years. She understands that every resident has an equal right to develop their property but would like to keep the existing guidelines from inching away.

Kevin Daly, 329 Mulberry Street, stated that he would ask two people to raise their hands indicating they yielded their time to him. He explained that there is no issue with property rights as long as everyone follows the rules and regulations that everyone is held to. He showed pictures of the plan presented and approved by the City and superimposed over the surveyors outline so the Board can see the existing features are compared to what was presented and approved. He showed the surveyors map over the map of the existing structure and explained that the garage addition is a car length bigger from what it was previously. In regards to the question asked by Shamberger, he stated that the car is a Hyundai Elantra and it is 14.4 inches in length. He showed satellite pictures of the old home with a Hyundai Elantra parked in the driveway and states that two cars can park in the driveway simultaneously. He showed a picture of the current structure and he explained that the structure has been extended towards the street significantly. He continued explaining that in the plans submitted, the roof of the garage is the same height as the roof of the existing house. However, it was not built accordingly. He reiterated with all the illustrations showed today, they clearly demonstrate that the building was not built according to what was originally approved. He referenced article 1705.07 of the building code that states that "The building Inspection Department is authorized to suspend or revoke a permit issued wherever the permit is issued in error, or on the basis of incorrect, inaccurate information, or in violation of any ordinance or regulation of any of the provisions of City Code." He added that the contractor has shown complete disrespect to the community and the Board for trying to sidestep the rules and circumvent the laws.

Jenny Selin, 1224 Fairlawns Avenue, insisted that this is a case of a garage that seems to be expanding. She added that it is the responsibility of all citizens to know where their lot lines are and if they do not know they should get a surveyor. She believes that everyone needs to follow the rules. She added that the overall size of the garage will have a negative impact and would like the Board to deny the variance.

Dave Ornick, 349 Mulberry Street, stated that he owns four (4) lots on Mulberry Street and all are within sight of this project. He stated that there has been a lack of prudence by the petitioner because he started building into three different directions without a survey. He added that once the petitioner had the building permit, he then tried to build the structure as quickly as possible before the City could react. He explained that the petitioner has claimed that he did nothing wrong but that the ordered survey by the BZA clearly contradicted that claim. He added that a prudent person would have stopped building after the survey was ordered. The petitioner has substantial experience in building within Morgantown and is aware of the setback requirements. He added that the petitioner is counting on a lack of commitment by the City and believes it is time for a showdown. He stated that if this project is allowed to stand, the City might as well dissolve the Planning Commission, BZA and Code enforcement. He asked the Board to deny the application and the structure be brought back into compliance.

Cardoso reminded the speakers to focus on the new information.

John Taylor, 1281 Fairlawns Avenue, stated that he will try to be brief but asked a speaker to yield their five minutes. He thanked the Board and stated that the applicant is asking for a significant variance and that the presentation made today seems to show a substantial variation between the approved proposal and what has actually been built. He added that the variance application stated that the garage has only gone four feet up Mulberry but the pictures on the presentation earlier showed that the garage has also extended towards Mulberry. For his third point, he stated that if the Board grants this variance there will be two presidencies set - that anyone can propose a plan, get it approved, build something different and then ask for a variance and the other, is that most of us can not do badly but developers can. He explained that all together there is nearly a 186 sq. feet of occupied space against the law. He stated that in order for a variance to be granted one of the criteria's is that the property must have exceptional circumstances that do not apply to other properties in the same vicinity. He stated that in the application for rear setback, one of the reasons given to develop the desired number of garage spaces while preserving the architectural character of the existing house. To him, this argument seems like the petitioner just wanted a really big garage and without a variance he could not have that. Another reason given on the rear setback application is that the petitioner has a desire to expand the single stall garage to a modern four stall car garage. He insists that Mr. Culton could have built a modern three car garage that could have satisfied all the requirements. He believes that there is nothing exceptional about the reasons given for a four car garage stall or that there are any hardships than to rebuild the garage if asked to. He believes that there is not any substantial property right that Mr. Culton could not enjoy if asked to comply with the rules. He added that it does not seem as if there is anything extraordinary about the property or any substantial property right that the petitioner will not enjoy. Mr. Taylor insisted that this is simply a case in which the petitioner would like to build something bigger than is actually allowed. He reiterated Mr. Daly's point that there seems to be a gap between submitted plans and what was actually built. He added that it is not right to change what was on the plan and then ask for a variance. He pointed out that this issue has produced concern about the City having different rules for ordinary citizens than it does for developers. He understands that three BZA members took the position because they care about the City. He asked the Board to please do what he thinks is right and reject the variance.

There being no public comment in support, the public portion was closed. Cardoso asked Mr. Gianola for rebuttal.

Rocky Gianola talked about the actual size of the garage when the application was filed. He acknowledged that they now know that the existing garage encroaches more than the old

garage. He explains that the reality is that it is a two foot encroachment, which is better than a five foot wide encroachment that goes clearly to the property line, which the rules are designed to protect against. He added that at no time was the applicant attempting to trivialize the neighborhood. He continued that there are other neighboring homes that have received even larger variances, which is the substantial property right that will be denied to the applicant.

Shaffer asked Mr. Gianola to site the properties that he spoke about. Gianola replied that it is in the Staff Report.

Shaffer asked Gianola why the site plans have changed several times. Gianola replied that he is not able to accurately answer that question, but the builder contends that he brought the changes up with the Code Enforcement Department. Shaffer asked if there is a paper trail to that claim. Gianola stated that he is not aware of any and added that in regards to the application changing, the original application was not drawn to scale. Once everything was put to scale, it was apparent that the property line was substantially closer than once thought.

Cardoso stated that she heard from more than one neighbor that the structure be brought into compliance. She asked if Gianola's client has any options to bring the structure into compliance. Gianola answered that he does not know the answer to the question.

Shaffer explained that he is difficult to bring the property into compliance when the target keeps moving. He added that he agrees with Gianola in the sense that when the square footage is not of a concern to the Board because they also look at lot coverage. Gianola explained that the project has not changed from the time the building inspector came and approved construction. If an error was made, it was made before that point in time. He added that he does not believe that there was malice on anyone's part to not go forward with the approved plans. He also insisted that the architectural drawings do not show as much of a difference on the plan while construction was taking place. He stated that the structure was built with a permit and under frequent inspections. He acknowledged that there was an error, and that is why they are at the Board of Zoning Appeals.

Fletcher interjected to confirm Mr. Gianola's statement that the findings of fact for V10-21 were submitted before the site plan and as-built survey and that Staff was rushed to get it the advertisement to the paper.

There being no more questions by the Board, Cardoso declared the public portion closed and asked the Board for discussion.

Shamberger questioned the rear setback which was initially ten feet and now is two feet.

Shaffer stated that his struggle with the whole case was his experience with the builder and how the site plan changed over the course of time. Shamberger stated that the issue with the rear was known and the error was based on that. He added that if the side setback would have extended out past the existing line there would not have been a variance problem for the side.

Shamberger questioned the surveyor's marks on the corner of the property. Fletcher stated that he has visited the site to inspect the surveyor's marks or monuments. Shamberger stated that the marks appear to be 3 to 4 feet from the hedge and he would guess that the hedge was the assumption of the property line in the beginning of the process. Fletcher answered in the positive and added that when the survey was submitted the property line was actually on the neighbor's side of the hedge. Shamberger stated that he would take the mark as a survey

mark. Fletcher added that the actual property line appears to be eight feet closer towards the Bell property than what was field estimated by Staff.

Cardoso stated that if the structure was within the requirements, the structure would be acceptable. She added that neighbors complained about the massiveness of the structure but the structure would be acceptable if it was within the guidelines.

Shaffer stated that there had been a number of developers in the past that have asked for a re-adjustment of their variance. Sometimes, he added, there are some legitimate reasons for readjustment but this does seem like a weird way to get to where we are. He understands that the Board will have to judge by request.

Shamberger stated that the circumstances of this request are different from the side request which was based upon an error. He explained that errors from the Planning Department are quite few and acknowledged that humans make errors. He added that the ten foot error turned out to be a much smaller error.

Shaffer asked to go through the findings of facts one at a time.

Cardoso read Findings of Fact number one stating that 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:

Fletcher read the petitioner's response stating that the existing structure appears to be situated on the large corner parcel in a manner that requires rear setback encroachment in order to develop the desired number of garage off-street parking spaces while maintaining and preserving the architectural design and character of the existing house.

Shamberger added that there was an error made in regards to the setback. Cardoso asked if he is suggesting that the error is an extraordinary and exceptional circumstance.

Fletcher stated that the fact that the Planning Office incorrectly determined the structure's orientation during building permit review and the fact that construction has begun are extraneous to the Board's decision to either approve or deny the requested variance relief.

Shamberger asked staff how he would look at this if it was brought to him as a plan and nothing was wrong with it. He brought up a case with another garage that neighbors were very supportive of and had no complaints. Shafer added that in that situation the Board could have asked the petitioner to move the garage in order to come into compliance. He added that the Board is asking the degree of the extraordinary circumstance.

Shaffer asked Fletcher if the memorandum is suggesting that the Board look at the extraordinary circumstances based on the fact that the petitioner wants a 2.9 foot variance. Fletcher stated that Staff simply provided the facts.

Cardoso stated that one thing to look at is how the house is situated on the parcel, but she is not sure if that is an extraordinary circumstance that applies to other properties in the vicinity.

Shaffer stated that if the issue was brought up differently the Board may have had the opportunity to look at the case in a different manner.

Cardoso stated that she thinks the proper way to look at this case is to imagine that there is not any new construction there at this time and just look at the plans as the Board would in any other case.

Shaffer stated that there have been other situations where they have granted variances for similar cases but the way the house is situated on the lot makes it a unique case. He added that a 2 foot variance is different from a 10 foot variance. Shaffer added that the lot coverage is 29% which gives the Board more room to play with and suggested to put the matter up for a vote.

Shamberger motioned to find in the positive for Findings of Fact number one seconded by Shaffer. The motion passed by a two to one vote. Shaffer voted against.

Cardoso read Findings of Fact number two and stated that 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:

Fletcher read the petitioner's response stating that the improvements appear to increase the square footage and modernize an existing single-family structure and garage amenities similar to other renovations within the Suncrest and Evansdale areas. Specifically, the BZA approved on June 19, 2002 a 23-foot rear yard variance to allow a rear setback of two feet at 396 Kenmore Street. On July 19, 2006, the BZA approved a five-foot rear yard variance to allow a rear setback of 20 feet at 1244 Oxford Place. On December 20, 2006, the BZA approved 19-foot rear yard variance to allow a six foot rear setback at 533 Princeton Avenue. On May 19, 2010, the BZA approved a 22.5-foot rear yard variance to allow a rear setback of 2.5 feet at 881 Fairfax Drive.

Shaffer moved to find in the positive for Findings of Fact number two, seconded by Shamberger, the motion passed unanimously.

Cardoso read Findings of Fact number three stating that 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:

Fletcher read the petitioner's response stating the subject addition appears to replace a very small single-car garage. With the exception of the rear yard setback, the addition meets all other R-1 design and performance standards. The subject garage addition should enhance the value of the subject structure and properties within the vicinity, particularly where many of the homes within the neighborhood have either grown through additions or have been replaced by larger homes on sites that previously contained smaller structures. Fletcher noted that FOF number three was submitted before the survey and he would suggest an addition into the second sentence that with the exception of the rear yard and side yard setback.

Shamberger motioned to find in the positive including Staff's recommended revisions to Findings of Fact #4; seconded by Shaffer; The motion passed by a two to one vote with Shaffer voting against.

Cardoso read Findings of Fact number four stating that 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:

Fletcher read the petitioner's response stating the use and characteristics of the principal structure will remain a single-family dwelling; the additional square footage and garage capacity should increase the value of the home and consequentially enhance the value of surrounding homes; and, the variance cannot affect traffic congestion that already exists, although the development of additional off-street parking should reduce on-street parking demand.

Cardoso stated that the house is being built oddly. She added that Mrs. Bell talked about the charm of the neighborhood and she is not sure if the design of the house will be helpful to the neighborhood. Shaffer stated that he is only considering the rear setback right now and suggests that both side and rear setbacks have different considerations. Shamberger stated that two feet is not a lot but there is a creep factor. He added that he is leaning slightly to the positive. Cardoso thanked Shaffer for reminding her to focus on the rear setback.

Shaffer moved to find in the positive of Findings of Fact number four, Seconded by Shamberger, the motion passed unanimously.

Shamberger moved to find in the positive for V10-20, Seconded by Shaffer. The motion passed unanimously.

Cardoso advised Mr. Gianola that the Board's decision can be appealed to the Circuit Court within thirty (30) days and that any work done during that time is at the sole financial risk of the applicant.

IV. NEW BUSINESS

- A. V10-21 / Bryon-Culton / 1268 Fairlawns Avenue:** Request by Megan Byron for variance approval from the Planning and Zoning Code, Article 1333.07 Performance Standards (B) as it relates to the side yard setback for property located at 1268 Fairlawns Avenue. Tax Map #7, Parcel #165; R-1, Single-Family Residential District.

Fletcher read the Staff Report stating that at its July 21, 2010 hearing, the Board tabled Case No. V10-20 concerning the rear setback of the four-car garage addition constructed under a building permit issued in error. In its tabling motion, the Board directed the petitioner to submit a survey and as-built site plan prepared by the surveyor licensed in the West Virginia so that the Board was confident in the extent of the variance being requested.

The petitioner accordingly submitted a survey and as-built site plan which illustrates a second setback encroachment.

Said drawing, attached herewith, illustrates that the side setback from Mulberry Street is 13.1 feet or 13' – 1 3/16". Article 1333.07 (B) provides that the minimum side setback standard for a corner lot in the R-1 District is 15 feet. As such, a 1.9' or 1' – 10 13/16" variance is required.

Rocky Gianola, representative of the petitioner, stated that the Board has already gone over the side yard setback as much as the rear yard setback. He added that the curb is substantially further to the property line which he believes contributed to the error that was made. He added that there are several cases cited in the Staff Report that were granted larger side yard setback variances and believes that given the totality and circumstances, the variance should be issued.

There being no further questions by the Board, Cardoso proceeded to the public portion of the meeting. There being no public comment in favor of the petition, she asked for comment against the petition.

Kathy Bell, 332 Mulberry, stated that her driveway is adjacent to the petitioner's house and the house as it sits blocks her view of the street when pulling out her driveway. She added that off-street parking is going to be relieved for the petitioner but not for the rest of the neighborhood.

Jenny Selin, 1224 Fairlawns Avenue, stated that she likes the idea of looking at the totality of the circumstances. She added that the plan is not particularly adhere to the setback in question. She understands that in other situations there have been setbacks granted for homes in the neighborhood but she believes that those were for specific reasons. She added that just because others were granted the variance does not mean that it should be granted in this case. She believes that the petitioner is overreaching and greedy to use up space that is expected to be open space. She explains that the garage as it sits is not conforming with the other homes that front the street. She added that this is not a need situation; a four car garage is excessive. She believes that the neighborhood character is going to be diminished by the garage. She added that the neighborhood has a certain character and by leaving the structure as it is, the neighborhood character will be diminished. She asked the Board to consider the neighborhood character, which is important to the residents, and deny the petition.

Wendy Daly, 324 Mulberry Street, stated that there is a utility pole in the middle of the driveway. She added it used to be on the grass with the previous household and now it is in the driveway.

Kevin Daly, 324 Mulberry Street, stated that the argument that the harmless mistakes taken along the way have always been biased to the petitioner's advantage. He added as a scientist, he knows that mistakes are errors and errors are normally distributed. He added that as a behaviorist he looks at what people do for a living and in this case he sees a systematic series of behaviors that clearly demonstrates that the petitioner chose not to follow the rules. He stated he comes from a long line of architects and he showed the plans to his father to show the disconnect between the plans and what is being built. His father said that not even in China does a local government allow for that much deviation from what is planned to what has been built.

John Taylor, 1281 Fairlawns Avenue, stated that he is not familiar with the intricacies of land use laws but would like to make a couple of points against granting the variance. He stated that previous variance granted in the past for residents of the neighborhood should not be a factor in the decision until the Board knows what the reasons were for granting those variances. He added that he noticed that the Board was trying to figure out the meaning of extraordinary circumstances but wants the Board to think about what gets denied if this application is seen as an extraordinary circumstance. He added that the message that will come from granting the variance is that if people complain extraordinary circumstances apply and they do not, it does not apply. Taylor stated that the big mystery for him was that the mistake made by Mr. Fletcher that the front of the home was on Mulberry. He understands how someone could make that mistake especially if they do not live in the neighborhood. The survey is only showing the 13 feet side yard setback when it is supposed to be 25 feet, for him that is a very big mistake and will ask the Board to speculate how a City Planner with competency and honesty can make such a mistake. He explained that the error was most likely made because the plans the Mr. Fletcher saw and approved had a substantially smaller garage than the plans the petitioner built with. He acknowledges that he has not seen every document but it appears that during the building process it appears that the plans were changed to move the garage closer to the street

because the garage was squeezing out some of the space in the back yard. He stated that could be a reason for someone who is as honest and competent as Mr. Fletcher would think that even if Mulberry was the front of the house, this would be ok. He added that the rear of the structure is actually what the approved plans proposed but the side of the building is substantially different. He asked the Board to consider that this might be the story of the error and would like the Board to ponder the significance of that.

Mathew Cross, 524 Milford Street, stated that he believes that there are multiple exceptions according to the survey and the petitioner is asking for two variances. He added that whether the petitioner acted malicious or not, not adhering to the rules have cost a lot of time and effort. In regards to the precedence of other variances that were granted in the past, he asked the Board to consider whether any of them were granted after the structure was built.

Jenny Selin, 1224 Fairlawns Avenue, asked the Board to look at the original blue print that would show the discrepancy between what was built and what was proposed.

There being no further comment against the petition, Cardoso asked the petitioner's representative for a rebuttal.

Rocky Gianola, representative of the petitioner, stated that the utility pole will be removed when the structure is complete. He added the construction took place periodically with regular checks from the building inspectors and respectfully asks for the Board to grant the variance request.

There being no further comments, Cardoso closed the public comment section of the meeting

Fletcher read Staff's recommendations stating that the Board must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for each of the "Findings of Fact" submitted by the applicant. Should the Board not agree with the findings submitted by the petitioner, it must develop its own positive or negative findings keeping in mind that a decision to approve or deny variance petition V10-21 may be appealed to Circuit Court.

The fact that construction has begun is extraneous to the Board's decision to either approve or deny variance petition V10-21. Given the circumstances of the present variance petition, no Staff recommendation is offered, as doing so in either case may be perceived as unfair and prejudice.

Shaffer suggested to Cardoso to take the findings of fact one at a time. Cardoso agreed.

Cardoso stated that she is not sure if looking at the original plans is relevant in deciding. She asked the Board for further comment. Shamberger responded that without the original plans, the Board would not be talking about this case right now.

Cardoso read Findings of Fact number one stating that there are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally apply to other properties or uses in the same vicinity, because:

Fletcher read the petitioner's response stating that subject property is a corner lot with orientation of the house to Fairlawns Avenue. The request addition is to expand the current older, out of date and in need of repair, small single stall garage to a modern, larger 3-4 car garage.

Shaffer stated that he does not find the extraordinary need for a four car garage

Shaffer stated that the side setbacks are there for a reason such as visibility. He added that looking at the property on the map he knew that there may be a side setback variance problem. He added that the side setback has a different impact than the back does and he does not see any extraordinary circumstances to allow it.

Cardoso stated that this is the part that strikes her about the case. She does not see a reason to go that close to the property line.

Shaffer moved to find Finding of Fact number one in the affirmative, seconded by Shamberger second, and the motion failed unanimously.

The Board recommends Finding of Fact #1 – There are no exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally apply to other properties or uses in the same vicinity, because:

There appears to be sufficient space on the property that would allow the petitioner to construct a four-car garage addition without breaching the established building line, creating a potential visibility hazard for neighboring driveways, or resulting in cars parked out into the right-of-way in front of the garage addition.

Cardoso read Finding of Fact number two stating that 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:

Fletcher read the petitioner's response stating that previous applications regarding similar cases of variances substantially larger than the requested variance have been granted. Additionally, the addition is an extension of the old garage. The old garage had the same side yard setback as the new addition. Therefore, the side yard setback variance is an increase of the extent of a pre-existing, non-conforming side yard setback requirement. He again reiterated that Finding of Fact number two was submitted before the survey was done.

Shaffer moved to find Finding of Fact number two in the affirmative, seconded by Shamberger second, and the motion failed unanimously.

The Board recommends Finding of Fact #2 – The variance is not necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

There appears to be sufficient space on the property for the petitioner to accomplish desired construction without side yard setback variance relief.

Cardoso read the Finding of Fact number three stating that the granting of this variance will not be harmful to the public welfare and will harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Fletcher read the petitioner's response stating that the subject additions meet all other R-1 design and performance standards. The addition should enhance the value of the property and the surrounding properties. The addition will provide additional off-street parking.

Shaffer moved to find Finding of Fact number three in the affirmative, seconded by Shamberger second, and the motion failed by a 1-2 vote. Shaffer voted in favor.

The Board recommends Finding of Fact #3 – The granting of this variance will be harmful to the public welfare and will harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Granting relief may reduce driver visibility creating a hazard and breach a well-established building line between Fairlawns Avenue and Oxford Place.

Shamberger motioned to use the BZA Findings of Fact as Written, seconded by Cardoso, the motioned passed 2-1. Shaffer voted against.

Cardoso read Finding of Fact Number four stating that the granting of this variance will not alter the land-use characteristics of the vicinity and zoning district or increase traffic congestion on public streets but will diminish the market value of adjacent properties, because:

The use and characteristics of the property will remain a single-family dwelling. The addition and remodeling should increase the market value of adjacent properties. The addition will provide additional off-street parking and will therefore not increase congestion on the street.

Shaffer stated that he believes that whether the garage is moved back 2,3, or 4 feet there is no value lost there but when the addition encroaches so much towards the lot line it can be a problem with visibility more than the rear setback would

Cardoso stated that she thinks that the structure, as it is now, does not look normal because it is so close to the street.

Shaffer moved to find Finding of Fact number three in the affirmative, seconded by Shamberger second, and the motion failed unanimously.

Fletcher suggests that since the discussion for Finding of Fact number four is focused solely on market value, he asked if that is what the board is generally in agreement on.

The Board recommends Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district or increase traffic congestion on public streets but will diminish the market value of adjacent properties, because:

It would uncharacteristically and unnecessarily encroach into the minimum side setback requirement as well as the well-established building line between Fairlawns Avenue and Oxford Place.

Shaffer moved to accept finding in the negative number 4, seconded by Shamberger second, and the motion passed unanimously.

Shaffer motioned to deny request for variance V10-21, seconded by Shamberger, the motion passed unanimously.

Cardoso advised Mr. Gianola that the Board's decision can be appealed to the Circuit Court within thirty (30) days and that any work done during that time is at the sole financial risk of the applicant.

- B. CU10-10 / Traugh / 344 High Street:** Request by Zachary Traugh for conditional use approval for a “Restaurant private club” use in the B-4 District for property located at 344 High Street. Tax Map #26A, Parcel #109; B-4, General Business District.

Fletcher read the Staff Report stating that Zachary Traugh seeks conditional use approval to open a “Restaurant, Private Club” use called The Bank in the building that was formerly occupied by Wesbanco at 344 High Street.

The petitioner has submitted the following exhibits, which are attached hereto:

- The Bank mission statement and business description
- Proposed Menu
- Resumes:
 - Zachary Traugh, owner/manager
 - Janet Ferraro, executive chef
 - Matthew Wolfe, consultant
- Floor Plans for first floor restaurant, kitchen area, and second floor conference/meeting room and professional office incubator

The “Restaurant, Private Wine” and “Tavern” uses are permitted by-right in the B-4 District. The Bank seeks to sell liquor in addition to beer and wine, which changes the use classification to “Restaurant, Private Club”.

The proposed The Bank establishment will contain approximately 2,900 square feet on the first floor with seating for approximately 76 patrons as shown on the floor plan submitted by the petitioner. The proposed hours of operation are 11:00 AM to 11:00 PM Monday through Saturday.

The second floor will contain a conference/meeting room that may be catered by The Bank. The remaining second floor area will be used for incubator office space for short or long-term lease tenants.

Although parking is not required in the B-4 District, there appears to be ample parking available via on-street metered parking and public and private parking lots and garage facilities within the immediate area.

Addendum A of this report illustrates the location and conditions of the subject site. Addendum B of this report contains related excerpts from the Planning & Zoning Code [Article 1331.06 (27)].

Cardoso recognized Zachary Trough of 22 Walnut Street. He stated that the Staff Report correctly proposes his request but there are two requests he would like to address. In regards to Staff’s recommendation #3, Mr. Trough stated that he did not agree with the hours of permeation because the customers might request they open later and opening past twelve will be a violation of what will be agreed upon. In regards to Staff’s recommendation #4, he is not sure if a variance is needed for the exhaust to exit through Wall Street and also is not sure if it is possible to run a vent inside the building. He added if the variance is granted, he would do everything possible to reduce the vent encroachment onto Wall Street

Cardoso asked the petitioner what is his vision of The Bank. Trough responded that The Bank will be a heavily European influenced Bistro that is meant to be a nice place for people to meet and have sit down lunch within their budget and to be entertained.

Cardoso confirmed that Trough will be the owner but is unsure what the other people in the application will be. Trough replied that he has a chef and consultant, Mathew Wolfe. Cardoso asked if they would have any financial interest in the restaurant. Trough replied in the negative.

Cardoso asked Trough to explain his restaurant experience. Trough replied that his restaurant experience is frequenting them. Cardoso explained that if the Board is to waive the one year requirement, they have to be confident that Mr. Trough has enough experience of running a restaurant.

Shaffer asked Trough about the conferences center concept. Trough replied it is actually for the second floor offices that could be leased out. He added the lease will pay for internet, phone, and a receptionist. The offices are meant for start-up businesses such as a lawyer, insurance agent, etc. He added that the offices will share the conference room which they could use for a number of functions. Shaffer asked if the conference room is exclusively for the lessee's. Trough replied in the negative but tenants will have first choice on dates. Shaffer asked what kind of event would be held at the conference center. Trough answered the conference room would be used for training, board meetings and other similar functions.

Shamberger asked why would the business need to stay open after twelve AM. Trough replied that he does not claim the need to stay open past twelve AM, but he knows of Christmas parties that go past midnight and other events that he would like to cover without kicking everyone out at midnight. He added that he simply asked to be treated like everyone else. Shaffer asked Trough to explain what he meant by his treated like everyone else comment. He replied that from his understanding, there is a one AM restriction for businesses to be open.

Cardoso stated the in the petitioner's business plan, open hours would be from eleven AM to eleven PM. He replied that that is a mistake on his part. Cardoso stated that it seems to be an interesting mistake, since the City granted the petitioner an extra hour than what he requested.

Shamberger stated that people do not usually order diner after eleven PM. Trough replied that he just wants to cover himself for if the circumstances arise that he would be required to open passed twelve AM and also does not want to be an exception. Shaffer stated that it is not unusual for a restaurant to ask patrons to leave when it is time for them to close. He added that he generally does not go to a place that closes at eleven PM and ask them to stay open to one PM. Trough responds that he agrees.

Fletcher interjected and stated that most restaurant private club use requests that have come to the Board in the past have been required to open at eleven AM to ensure that they were operating as a restaurant. He added that Staff recommended the closure to be twelve AM which was based on the petitioner's intended hours of operation in the application. He explained that the petitioner makes a valid point because this would be the first time that the Board will include a closure restriction and the Board should discuss its merits and if it will be an over burden.

Shaffer stated that the petitioner could have a restaurant that he could show that operates well enough to waive the one year or have a business plan that demonstrates it is going to be a restaurant. He added that Downtown Morgantown between eleven PM to one AM is dominated by the bar crowd. He is not assured whether the petitioner will slide into the bar business and

get out of compliance with what the restaurant private club is. He stated to Mr. Trough that the Board has to judge whether his plan looks like a bona fide restaurant private club. Trough responded that he hopes the Board sees it that way because that is what he envisions it to be. He added that he has spent a lot of money to get the right resources that will back a successful restaurant. He stated that the eleven PM time on the application was actually there to show what time the kitchen will start to close.

Cardoso asked why the one year waiver is important to run the restaurant. Trough responded that it is in the opinion of his chef and his consultant that it is necessary.

Shamberger asked if the petitioner is ok with the stipulation to be open at eleven AM. Trough responded that he is fine with it.

Cardoso asked Trough to talk a little bit about the menu. He replied that there is going to be a lot of appetizers that can be shared in either single portion or family sized portions. He added that the menu is not a final draft but an idea of what they expect.

Cardoso stated that she is looking at the hand drawn kitchen plan and she wants to know if that building was previously a restaurant. Trough answered that to his knowledge the kitchen was previously bank vault. Cardoso asked if all the kitchen equipment will have to be installed. Trough answered in the positive.

Shaffer asked how many people is the restaurant going to hold. Trough answered 76 people.

Cardoso asked what kind of help is Mr. Wolfe going to provide. Trough replied that he would help to hire staff and train staff, layout of kitchen, organize the bar and help to keep the cost down. Cardoso asked how long his consultant will title end. Trough replied that he has known Mr. Wolfe a long time and will part ways with him when Mr. Wolfe decides he wants to leave. Cardoso asked about Miss Ferraro. Trough replied that she is recently the executive chef for the Vintage Room which he believes is one of the better restaurants in Morgantown. He added that he is excited to get her on the team and expects that she would do for him what she did for the vintage room.

Cardoso asked how Mr. Trough plans to market the restaurant. He replied that his audience is a lot of the people that work and play downtown and he would like to draw more people downtown. He added that he would market to the professional crowd in Westover and Sabraton that do not have a nice place to go and eat. Shaffer that the Metropolitan Theater is going to be done soon and would be a great place to market his restaurant. Trough stated that he plans to ask the theater to work something out.

There being no further questions for the petitioner, Cardoso opened the public comment portion of the meeting. Cardoso asked for public comment in favor of the petition.

Michael Kupack of 209 Green Street stated that he wants to offer support to the petition as he expects to be a tenant of the facility. He explained that his father has an office in Clarksburg that he uses but has clients in Morgantown and would want to have an office in Morgantown. He added that he likes the idea of incubated offices with a restaurant attached to it and would be able to utilize that kind of set up. He believes that by keeping the cost down he would be able to open a satellite office in Morgantown. He thinks its going to be an excellent resource for small businesses to have a catered lunch for meetings. He stated that a he is in talks with a number of

groups that may use the facility, such as the Morgantown Bar Association, and it would be nice if the petitioner can serve drinks.

Mathew Wolfe of 11 Pleasant Ridge stated he is the consultant for Mr. Trough and also the owner for Big Times bar downtown. He added that the business will bring more people of his age downtown. In regards to the liquor issue, he believes that in order to attract the grown and professional crowd to the business it would require a liquor cocktail. He added that it would not be appropriate to have a business that targets the upscale crowd without having a liquor license.

Cardoso asked Mr. Wolfe of his restaurant experience. He replied that he is a graduate of Johnson and Wales University with a culinary arts degree. He added that he worked as a chef I for a restaurant in Tennessee, worked at the Stone Crab restaurant as head chef and restaurant manager and at AJ's as executive chef. He explained that he started his career at fifteen and has been working in the restaurant business since.

Janet Ferraro of 513 Center Street stated that she will be the executive chef of the restaurant and would like to address a couple of the questions the Board had earlier. She explained that she is trained in classical French cooking and incorporates a lot of liquors in her sources. She added that she will be using a lot of brandy and ports in her cooking. From a business standpoint she believes that for the restaurant to be successful without selling liquor as is evident with the success of chain restaurants in Morgantown. She added that if a group of six were to visit the restaurant at least one will ask for a drink and it would be a big disadvantage not being able to serve a drink. In regards to the one AM extension, she envisions the kitchen closing at eleven. She believes that the target market base will be older people and families and the menu developed will try to keep cost down. She added that she envisions the restaurant attracting the younger crowd who may come in at eleven and order appetizers because of the location and that younger people eat at crazy hours.

There being no public comment in favor or against the request, Cardoso declared the public comment portion closed and asked for Staff's recommendations

Fletcher stated that The Board of Zoning Appeals must first determine whether or not it will waive the one-year "bona fide restaurant" requirement [Article 1331.06 (27)(c)] prior to the petitioner obtaining a liquor license from the West Virginia Alcohol Beverage Control Commission. The petitioner's request for a said waiver appears to be generally consistent with recent waivers granted by the Board.

Should the Board waive said requirement, than it 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. Addendum C of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Should the Board waive the one-year "bona fide restaurant" requirement and grant approval of the subject conditional use petition, Staff recommends that the following conditions be included:

1. That the petitioner shall maintain compliance with all supplemental regulations set forth in Article 1331.06 (27) of the Planning & Zoning Code.

2. That the applicant must obtain permitting as a “restaurant” from the Monongalia County Health Department under the Monongalia County Clean Indoor Air Regulations.
3. To ensure that the petitioner’s business description is executed as described and considered in granting the one-year “bona fide restaurant” requirement, the subject “Restaurant, Private Club” use must, for the purposes of serving lunch, be open by at least 11:00 AM Monday through Friday and close no later than 12:00 AM during all days of operation.
4. To preserve the quality and character of the adjoining pedestrian way and protect significant public and private improvements and investment, all kitchen appliance and/or exhaust venting systems must terminate or exit through the roof of the building and may not terminate or exit through the wall of the building along the public pedestrian way (former Wall Street).
5. That the area of the “Restaurant, Private Club” use shall be limited to the first floor and second floor conference/meeting room as shown in the submitted floor plans. Any expansion of said use beyond the conference/meeting room of the second floor and/or into the basement level must first be approved by the BZA.
6. That the petitioner voluntarily submit all necessary financial information to the City for the subject establishment following its first twelve (12) months of operation as a “Restaurant, Private Club” use to ensure compliance with Article 1331.06 (27) (e) provisions, which requires the sale of food and non-alcoholic beverages to comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month.
7. That any exterior building modifications (i.e. façade, awning, etc.) shall be reviewed and approved by the Downtown Design Review Committee and the Planning Director prior to building permit issuance for same.
8. That any regulated signage shall be reviewed and approved by the Downtown Design Review Committee and the Planning Director prior to building permit issuance for same.
9. That the conditional use approval granted herein may not be transferred.

Shaffer asked if the petitioner will be open on Saturday’s and Sunday’s. Trough replied that currently they would not be open on Sunday’s but that does not mean that they will not one day and he plans to open on Saturday with the same hours he is asking for.

Fletcher interjected and stated that the only reason Staff suggested to open by at least eleven AM Monday to Friday is because there does not appear to be a lunch crowd on Saturday.

Shamberger stated that on Saturday people are more likely to dine out on Saturday evenings. Fletcher added that he believes that there may be opportunities available on Sundays.

Cardoso stated that the Board must first decide whether to waive the one year requirement. Shaffer added that he wishes these cases did not come to the Board.

Shaffer asked Fletcher to explain the issue with the 12 AM closing requirement. Fletcher stated that Staff initially suggested a closing time of 12 AM because that is what was reflected in the business plan of the petitioner. He added that restaurant private club uses are permitted by

right to stay open until their ABC license says they have to close which is at three, however liquor and wine sale must cease at 1 AM.

Shaffer stated that he is apprehensive letting the petitioner pass without any kind of restriction because he is concerned with the business become just a bar. Fletcher stated that from experience, when a restaurant private club starts to falter, they usually start selling liquor after 1 AM. He understands that requiring them to close before the downtown bar crowd peaks may help prove that they would solely be operating as a restaurant but he believes that this is also an enforcement trap. He added that they should be allowed to operate as any other restaurant private club before and through experience, if they start to falter they will start selling liquor after 1 AM. Shaffer asked if the Board allows the petitioner to open from eleven AM Monday to Friday period.

Cardoso stated that the petition seems to have thought this out and has some good people with him w that have good experience but none of them have a monetary interest in the restaurant and the petitioner could fire them after he walks out the door. She added that they have to go through with what was presented and trusts that he follows his plan.

Shaffer stated that he is leaning towards granting the waiver because he believes everyone deserves a chance to fail. Cardoso added that in the past, the Board has looked extensively at the issue and in fairness to applicants.

She asked the Board to look at the bar compared to the rest of the seating which can give an idea about the restaurant. Shaffer added that it does not look like it would only seat about 10 to 12. Cardoso stated that there is not much detail in the plans and in the past they have required people to show more information.

Shaffer stated that the restaurant has novelty but believes the quality of food will be the decider of how many people stay late. He added that he would have liked to have seen a better menu but the management team seems to be fine.

Shamberger stated that the case is border line because of his lack of experience in the restaurant business, but likes the idea of limiting drinks to certain levels. He added that the applicant can open now with everything but liquor sales.

Motion to waive the one-year bona fide restaurant requirement by Shaffer; seconded by Shamberger. Motion passed unanimously.

Shaffer moved to approve all the Findings of Fact for CU10-10 with Staff recommended revisions; seconded by Shamberger. The motion passed unanimously.

Shamberger moved to approve the conditional use petition CU10-10 with Staff's recommended conditions as amended; seconded by Shaffer. The motion passed unanimously.

Cardoso advised the petitioner that the Board's decision can be appealed to the Monongalia County Circuit Court within thirty (30) days and that any work done during that time is at the sole financial risk of the applicant.

C. V10-22 / Wolfe – BTI Enterprises / 651-657 George Street: Request by Matt Wolfe, on behalf of BTI Enterprises for variance approval from the Planning and Zoning Code, Article 1335.05 Encroachment into setbacks as it relates to the placement of HVAC mechanical units for properties located at 651, 653, 655, and 657 George Street. Tax Map #21, former parcel #5; R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating that the petitioner constructed four (4) single-family houses addressed 651, 653, 655, and 657 on George Street. 651 George Street was sold in August 2009. 655 and 657 George Street were sold in May 2010. 653 George Street has not been sold.

The approved site plans show five-foot side setbacks for each house but the locations of the HVAC compressor units were not identified on said plans.

Article 1335.05 (D) "Encroachments into Setbacks" provides that:

"HVAC mechanical units may be located no closer than five (5) feet to a side lot."

After receiving a call from the owner of the adjacent rental property at 661 George Street, a site visit was made and the compressor units at 651, 655, and 657 George Street were found to be installed on the side of the structures, which is closer than five feet from the side property lines. Said compressor units appear to be approximately 1.5 feet from side property lines based on the approved site plans and measurements of the units extending from the building lines. The exact setbacks from the property lines can only be verified by a survey and as-built site plan.

The objection of the owner of the adjacent rental property at 661 George Street is based on his purported inability to perform routine lawn maintenance due to the installation of the compressor unit at 657 George Street.

The Planning and Zoning Code requires the nonconforming HVAC compressor units to be relocated to the rear of the structures unless the Board grants an approximate 3.5 foot variance for each of the subject properties.

The petitioner has stated that the relocation of the HVAC units would be cost prohibitive. Staff contacted Suburban Plumbing and learned that relocation costs for each of the compressor units could be upwards of \$500.

The compressor unit for 653 George Street has not been installed and the petitioner has agreed to comply with Article 1335.05 (D).

The following points appear relevant in evaluating the merits of the variance petition:

1. The compressor units appear to be wholly on their respective properties and adjoining property owners should be able to maintain their individual lawns without trespassing.
2. The compressor units have been installed toward the rear portion of each dwelling to reduce their visibility from George Street.

3. The compressor units have been elevated above grade thereby mitigating impediments to normal lawn maintenance for properties on which the compressor units are located.

Mathew Wolfe of 11 Pleasant Ridge stated that he does not have a lot more to add to the Staff rReport but would like the Board to know that this is his company's first experience building within the City. He added that in previous developments within before the HVAC has never been considered as part of the structure. He explained that the HVAC was on the submitted and approved building permit. He stated that it was never brought to his attention that he was in violation of anything until the home was built and a hope occupation certificate was granted. He does not believe that the complaint is valid because the neighbor who complained has hedges that creep unto his the new property.

There being no further comments by the Board, Cardoso asked for public comment in favor or in opposition of the request. There being none, Cardoso declared the public portion of the meeting closed and asked for Staff's recommendation.

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

For the points noted above, Staff recommends that the following "Findings of Fact", which replace in whole those submitted by the petitioner, be found in the affirmative and that variance relief be granted as requested.

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 single-family structures at 651, 655, and 657 George Street have been sold and the owners of which did not contribute to the HVAC compressor unit encroachment. The petitioner has agreed to install the compressor unit at 653 George Street at the rear of the structure to comply with Article1335.05 (D).

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

There appears to be a number of HVAC mechanical units that encroach into currently required setback standards as there was not a setback restriction for same prior to the City's extensive zoning ordinance amendment of 2006.

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 subject HVAC compressor units appear to be located wholly on their respective properties and should not adversely affect the enjoyment or normal lawn care maintenance of adjoining property owners without trespassing. Further, said compressor units do not appear to encroach into or adversely impact public rights-of-way, public improvements, or common public areas.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The subject HVAC compressor units appear to be located wholly on their respective properties and, as such, should not adversely impact the value, character, quality, or enjoyment of the newly constructed single-family homes or previously constructed neighboring homes. Variance relief cannot improve nor mitigate traffic congestion that may already be present in the neighborhood.

Shaffer motioned to find in the positive the Finding of Fact for case number V10-22; seconded by Shamberger. The motion passed unanimously.

Shamberger moved to approve case number V10-22 for 651, 655, 657 George Street; seconded by Shaffer. The motion passed unanimously.

Cardoso advised Mr. Wolfe that the Board's decision can be appealed to the Circuit Court within thirty (30) days and that any work done during that time is at the sole financial risk of the applicant.

D. V10-23 / Diller / 1301 Wetzel Avenue: Request by John Diller for variance approval from the Planning and Zoning Code, Article 1335.04 Setbacks in the R-1A District for property located at 1301 Wetzel Avenue. Tax Map #21, Parcel #59; R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating that the petitioner seeks to construct an addition onto the rear of an existing single-family dwelling on Parcel #21 of Tax Map #59. Addendum A of this report illustrates the location and conditions of the subject site.

The petitioner's site plan illustrates that the proposed addition will be situated approximately eighteen (18) feet from the rear property line. The minimum rear setback in the R-1A District is 20 feet. As such, a rear setback variance of two (2) feet is required.

According to the submitted site plan, the proposed structure appears to conform to minimum side and maximum lot coverage standards for the R-1A District.

John Diller of 1301 Wetzel Avenue stated that he would like to add an extension for a master bedroom.

Cardoso asked if the variance is not granted, what his other options are. Mr. Diller replied that he could only go out 12 feet. Cardoso asked if that's the case what the square footage of the room is. Diller replied that it would be 12' by 14'. Cardoso asked the size of the other two bedrooms. Diller replied that they are both about 10' by 11'.

Shaffer asked what was on the backside of the property. Diller replied that there is an adjacent property.

Shamberger asked if the fence delineates the property line. Diller replied in the positive. Shamberger asked if he Mr. Diller surveyed the property. Diller replied in the negative and added that as far as he knows the fence is the property line.

Shamberger stated that if the variance is granted without a survey and it becomes known that the property is closer, he has got a problem. Diller replied that he knows.

Fletcher stated that the lot is very oddly shaped and when he laid out the tax map information, he believes the building may or may not be on the property. He added that the addition will be well within and suspects that there has been right of way creep in that neighborhood. Shamberger asked if someone attempts to sell the property they may be selling something that they do not own. Fletcher explained that by virtue of the City maintaining part of the property it become a prescriptive easement and becoming part of the right of way but he just wants to bring to the Board's attention that a great deal of work was put into figuring out the correct property line without the requiring a survey.

Fletcher asked if Mr. Diller included an exit clause in the purchase agreement if he was not able to obtain variance approval. Diller replied in the negative.

Shamberger stated that he rather not grant the variance and it turns out that the property line is different from what is being presented today. Fletcher added that the Board may grant more than what the petitioner is requested.

Cardoso asked to put a requirement for the petitioner to come back once the survey is done and if he finds out that he needs a greater variance than requested.

Shaffer asked Mr. Diller if he is adding a third bedroom. Diller answered in the positive.

Cardoso asked if this is going to be Mr. Diller's home. Diller replied that the home will be his son's.

Shaffer stated that the petitioner came up with a pretty good alternative for a small an oddly shaped lot. He added that the addition will not affect vision because it will be on the back.

There being no further questions by the Board, Cardoso asked for public comment in favor or in opposition of the request. There being none, Cardoso closed the public comment portion of the hearing and asked for Staff recommendations.

Fletcher read the Staff recommendations stating that the Board must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for each of the "Findings of Fact" submitted by the applicant.

Staff recommends the following revisions to the petitioner's Findings of Fact (deleted matter struck through; new matter underlined) and that variance relief be granted as requested.

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 lot is oddly shaped. Any additions or increases to the building footprint can only occur at the rear of the property and into the minimum rear setback. The front of the single-family dwelling fronts on Wetzell Avenue and Winter Alley. The non-conforming lot contains approximately 2,916 square feet.

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 setbacks as that being requested by the petitioner.

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:

It will increase property value. There will still be approximately eighteen feet of rear yard that should provide sufficient spacing between the proposed addition 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 adjacent properties.

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:

Increase Property Values. Create additional parking for this property. The existing single-family use will remain the same. The addition should enhance the value of the home and accordingly contribute to the market value of neighboring homes. Granting this variance cannot improve nor mitigate traffic congestion that is already present within the neighborhood.

Shamberger motioned to accept the Findings of Facts with Staff recommended revisions; seconded by Shaffer. The motion passed unanimously.

Shaffer motioned to approve V10-23 as requested; seconded by Shamberger. The motion passed unanimously.

Cardoso advised the petitioner that the Board's decision can be appealed to Monongalia County Circuit Court within thirty (30) days and that any work done during that time is at the sole financial risk of the applicant.

V. OTHER BUSINESS

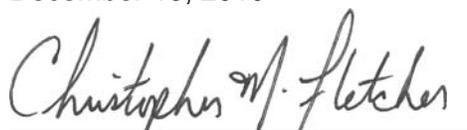
- A. Public Comments – None
- B. Staff Comments – None

VI. ADJOURNMENT – The meeting was adjourned at 9:35 PM.

MINUTES APPROVED:

December 15, 2010

BOARD SECRETARY:



Christopher M. Fletcher, AICP