

BOARD OF ZONING APPEALS

Minutes

6:30 PM

September 15, 2010

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Tom Shamberger, Jim Shaffer

MEMBERS ABSENT: Leanne Cardoso, George Papandreas

STAFF: Lisa Mardis

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

II. MATTERS OF BUSINESS: None

III. OLD BUSINESS – None

IV. NEW BUSINESS

V10-24 / Anderson / 669 Afton Street: Request by Trudy Anderson for variance approval from the Planning and Zoning Code, Article 1373.02 Nonconforming Structures Afton property located at 669 Afton Street. Tax Map #14, Parcel #115; R-1A, Single-Family Residential District.

Mardis read the staff report stating that the petitioner seeks to construct a 10' X 16' addition onto the front of the single-family dwelling at 669 Afton Street. She affirmed that the side setback of the existing structure at the southeast corner is 1.9 feet and that the proposed design will extend the nonconforming setback at this point ten feet toward the front property line.

Mardis continued that the minimum side yard setback in the R-1A District is five (5) feet. She also stated that Article 1373.02 (A) Nonconforming Structures of the Planning and Zoning Code provides that:

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

Mardis stated that it appears from the submitted survey that the east side of the house and the east side property boundary are not parallel as the side setback of the northeast corner of the structure is 1.6 feet. As such, the side setback of the proposed addition should slightly increase. However, variance relief from Article 1373.02 (A) will be required for the addition.

Mardis concluded that it appears that lot coverage, including the proposed addition, will be approximately 21%, which is less than the maximum lot coverage standard of 50% in the R-1A District [Article 1335.03 (C)] and that the addition will comply with the front setback standards. She added that Addendum A of this Report illustrates the location of the site and photographs of the existing structure.

Trudy Anderson, owner of 669 Afton Street, reiterated her request for variance approval. Anderson stated that the existing structure is small and the addition would make the home more enjoyable and add to the value of the property.

Bossio asked the applicant about the design of the existing structure and asked the reasoning of putting the addition on the proposed side as opposed to the opposite.

Anderson stated that it would not be beneficial to put the addition onto the opposite side since the bedrooms are currently there and that the living room is small and the proposal is to enlarge that area.

Bossio asked for clarification on the setback of the proposed addition. Mardis stated that the current structure is 1.9" from the property line and that the addition would be 1.6" to the property line.

Bossio asked for public comment; there being none the public portion was closed.

Mardis read the staff recommendation and 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.

She continued that 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 property has a fence that almost completely surrounds the property. The new structure would be an addition and would still remain within the fenced area. The property also adjoins an empty property owned by the City. The existing single-family dwelling was constructed toward the rear (northeast corner) of the parcel, which does not conform to current front, side, or rear setback standards in the R-1A District. The adjacent property that would be affected by the addition has been owned by the City of Morgantown since 1948 according to information on the Monongalia County Assessor's website. Due to the interior layout of the structure, it appears that variance relief is necessary for the desired addition to be constructed in a manner that would meet standard building design practices.

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

The original structure was built evidently before this variance was required and should not impede the extension of an existing structure next to a property that is empty and too small for a dwelling. The circumstances of the adjoining parcel being owned by the City is unique and variance relief should not adversely impact the City's property or potential improvements thereto because its size of approximately 1,770 square feet appears to be too small for the development of any habitable structures within the R-1A District. The requested variance should not adversely impact's the City's ability to provide improved public open space on the adjoining parcel in the future.

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 addition will be within the same fenced area as the existing structure. It will not obstruct any views of adjoining properties since it is on the front of the property and will be adjacent to adjoining an empty parcel owned by the City for over sixty years on which no improvements have been made and future development appears unfeasible due to its size and irregular shape.

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 property will remain residential and, in fact, should improve the overall characteristics of the dwelling and should improve and increase property value. Traffic will not be affected because it will remain a single-family dwelling

Motion made by Shaffer to approve the Findings of Fact with staff's revisions; seconded by Shamberger. Motion approved unanimously.

Motion made by Shamberger to approve variance request V10-24 / Anderson; seconded by Shaffer. Motion approved unanimously.

V10-25 / Zealy / 404 Civitan Street: Request by Barbara Zealy for variance relief from the Planning and Zoning Code, Articles 1333.04 and 1373.02 as they relate to side setbacks and nonconforming setbacks for property located at 404 Civitan Street. Tax Map #7, Parcel #17; R-1, Single-Family Residential District.

Mardis read the staff report and stated that the petitioner seeks to construct a 16' X 9'-2" addition along the north side of the existing single-family dwelling at 404 Civitan Street. She affirmed that the proposed plan is to enclose a recess created by the original house and a later constructed addition.

Mardis continued that the petitioner submitted a survey prepared in 1947 that shows a north side setback of 9.0 feet at the rear of the original structure and that the survey also shows that the relationship between the original structure and the north side parcel boundary is not parallel.

Mardis stated that the petitioner's proposed addition will extend the north side building line by 16 feet, which will begin at a 9-foot setback from the side parcel line and end at an approximate 7.5-foot side setback due to the asymmetrical relationship between the building line of the original house and the parcel boundary.

Mardis affirmed that the minimum side setback in the R-1 District is set forth in Article 1333.04 as 10 feet. Additionally, Article 1373.02 (A) *Nonconforming Structures* of the Planning and Zoning Code provides that:

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

Mardis continued to read the staff report which stated that it appears that the petitioner must obtain variance approval from Articles 1333.04 and 1373.02 for the addition as proposed.

It should be noted that the parcel is considered nonconforming because:

1. It has an area of approximately 4,577 sq. ft., which is less than the minimum area of 7,200 required in the R-1 District [Article 1333.03 (A)]; and,
2. It has frontage of 45.12 feet, which is less than the minimum 70 feet required in the R-1 District [Article 1333.03 (B)]

Mardis concluded that it should also be noted that based on the date of the 1947 survey, the subject parcel was created and the original structure developed prior to Morgantown's annexation of the Suncrest area in 1949. It also appears that lot coverage, including the proposed addition, will be approximately 35.6%, which is less than the maximum lot coverage standard of 40% in the R-1 District [Article 1333.03 (C)]. The addition will comply with rear setback standards. She then stated that Addendum A of the Report illustrates the location of the site and photographs of the existing structure and that Addendum B of this Report illustrates the proposed addition and setbacks using the 1947 survey.

Ken Downy, 417 Linden Street, contractor, represented the applicant. He stated that the reason for the addition is for ADA access for the applicant's brother, Roger. He also stated that the proposal is to put the kitchen into the new addition and reconfigure some aspects for easier ingress/egress for the applicant's brother. Downy also stated that the proposal would be better in emergency cases and that Ms. Zealy would like to be able to still take care of her brother.

Bossio asked for public comment.

Barbara Zealy, applicant, spoke in favor of the request. Ms. Zealy stated that she is the legal guardian for Roger and that it was her parents wish to keep Roger in this house as long as possible. She stated that it is getting increasingly more difficult to get Roger in and out of the house herself.

Jane Cyphert, 12 French Quarter Drive, stated that she is Roger's other sister and that when he is alone, he would not be able to get himself out of the house in case of an emergency.

There being no additional public comment, the portion was closed.

Mardis read the staff recommendation and 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.

Mardis stated that 4Staff 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:

Lot 16 & 20 face Lions Ave, these homes are to the side and read of 404 Civitan Street, and a distance of 50' and 75' away from the property line. This variance will not encroach on any neighbor.

The subject parcel was created prior to Morgantown's annexation of the Suncrest area and is now considered non-conforming because it is less in area and width than that required within the R-1 District. The parcel's configuration is more consistent with R-1A minimum standards. Because of the parcel's configuration, the asymmetrical relationship between the house and the parcel boundaries, its existing nonconforming side setback, and the interior layout of the structure, it appears that variance relief is necessary for any addition to be constructed that would meet standard building design practices.

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:

Because of the need for a handicapped door where the kitchen is now located, a new location for the kitchen is needed. This addition will not does not appear to adversely impact any neighbors. The rear setback of the adjoining house at the corner of University Avenue and Civitan Street does not appear to meet current rear setback requirements within the R-1 District.

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:

This addition is only for the current residents, it will not increase traffic, or the number of people that live in the residence. It will not do harm to the district, only make the residence more habitable and safe for its' lifelong handicapped resident. The proposed addition will enclose a recess created by the original house and a later constructed addition by extending the existing building line of the original structure, which will not increase the width of the original house in relation to street frontage nor should it harm improvements to neighboring properties or to public rights-of-way, or improvements.

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:

This addition will not effect any values or land use characteristics because the home remains a single family residence, there will be no increase in traffic, or encroachment on any of the adjacent properties, in fact the addition adds to the value of the house and brings it on a par with its neighbors and other houses on the street. The proposed addition should enhance the livability and value of the existing structure, provide additional square footage to a single-family home that appears smaller in living area to that of many neighboring homes, and thereby enhance the overall market value of neighboring properties. The proposed addition will not alter the existing single-family dwelling use or character of the subject structure and property. The proposed addition cannot contribute to nor mitigate traffic that is already present within the neighborhood.

Motion by Shamberger to approve the Findings of Fact as revised by staff; seconded by Shaffer. Motion approved unanimously.

Motion by Shaffer to approve variance request V10-25 / Zealy; seconded by Shamberger. Motion approved unanimously.

V. OTHER BUSINESS

A. Public Comments –

Nancy Ganz stated that she is the President of the Suncrest Neighborhood Association and would like to talk about the Culton-Byron case that was previously reviewed by the Board. She stated that since those minutes are not readily available she is going on hear-say. Ganz continued that Mr. Culton was asked to remove part of the structure and granted another request. She stated that she wanted to talk about lessons that the community learned. She stated that there were large numbers of the community for both of the other meetings that are not with her currently. Ganz stated that the petitioner, Culton, has built in City limits and is aware of City codes and ordinances and chose not to come for variances for a variety of reasons and then was granted one and not the other. Ganz stated that it would be a good idea, under lessons learned, that property where the boundaries are in question that we should have an independent selection of the surveyor and compared it to a bank's independent appraiser. She used an unnamed survey as an example. She continued that information from the petitioner's attorney included other variances that the Board has approved and mentioned that variances are variances for particular purposes, but as stakeholders in Suncrest they expect that deed restrictions and ordinances that they buy in to when purchasing a home be adhered by unless there is a good reason for a variance. Ganz stated that the Suncrest Neighborhood encourage people to do additions, but this was a particular circumstance that she feels and the neighborhood association feels that the neighbors were let down on in terms of interaction with the BZA and the City Planner, and the City grantors of variance in that the variance was not granted and that the petitioner was asked to move a wall and chose only to move part of the wall back and the City said that was fine. She stated that that is very discouraging and very disenfranchising to our community when you have fifty people at one meeting and thirty some at another working together being very educated about their approach and then as the attorney for the other gentleman said that everything that has been said before is irrelevant and everything that these people say is irrelevant. Ganz stated that that has become very clear. She continued that they are very disappointed in what has happened so that is why she is speaking representing the Neighborhood Association and the residents of that part of Suncrest.

Bossio stated he was not present at that meeting. Ganz stated that she was not present at the second hearing. Bossio asked Ganz about the survey that she referred to and asked to see the survey. Ganz replied that there have been several copies of the survey that have been made available to the public and that she has one of the copies. Bossio asked to look at the document. Ganz obliged and took it to his seat. Bossio asked Ganz if it was stamped by a surveyor. Ganz answered that the copy that she has not been stamped, but there is a stamped copy. She stated that she spoke to Mr. Fletcher early on standards of surveying. She stated that she is not knowledgeable and not an engineer, but just working with the residents about their concerns. She stated that he is

much more knowledgeable about such things. Bossio stated that the surveyor was David Sypolt and that all surveys have to go by a standard. Ganz talked about benchmarks and geological standards. She stated that in a lot of cases in regards to fences, everyone in Suncrest knows where their property lines are and there are no issues. Ganz stated that there are a few where there are issues and one of the things that occurred in this case that the survey came from out of town, was paid a lot more than the surveyors that she has used for surveys on her properties, and then puts caveats in the survey. She stated that when she has had a survey, that there were no disclaimers. She continued that disclaimers concern her. She stated that in the planning process, in the future, when there is something in dispute she thinks that the things we should do is what banks do. She again compared the process to the banks process of appraising. She stated that she is trying to find a way where neighbors are not against neighbors. She suggested that as part of the BZA process, that when there is a dispute, or something similar, that maybe the process needs to be looked at in the master plan. She stated that Mr. Gianola mentioned all the other variances that have been granted in Suncrest related to setbacks that proves that this one needs to be granted. She stated that she believes the ones that did not need variances should have been mentioned.

Shaffer stated from being on the Board for a number of years that it has never been his concern if the Board will get sued in order for him to make his decision.

Ganz stated that she believes that the Board made a good decision but that decision was backed down by the City.

Bossio stated that the Board has held people to task if there are questions on borders. He used an example from previous months. He also continued that if she believes that the Board made a decision and it was not upheld by others that perhaps she should appear before City Council. She stated that she has gone to Council Members and they suggested that she mention it to the Board. Bossio asked for clarification on what Department Ganz was referring to in "backing down." Ganz stated that the City stated that one wall could remain how it is. Bossio asked if that were the case even after the Board ordered the applicant to remove it. Mardis stated that the wall in question is not covered by the roof and that it is part of the existing footer.

Shaffer stated that if Ganz is suggesting that there has been some misinterpretation to the Boards decision that it needs to go through another process.

Ganz stated that splitting hairs can cause disharmony in a community when it is constant. She stated that this case was contentious from the beginning because the applicant did not apply for a variance first.

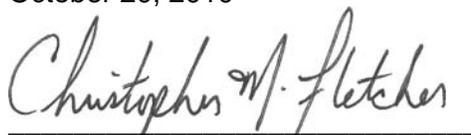
B. Staff Comments – None

VI. ADJOURNMENT – The meeting was adjourned at 7:03 PM.

MINUTES APPROVED:

October 20, 2010

BOARD SECRETARY:



Christopher M. Fletcher, AICP