

MORGANTOWN BOARD OF ZONING APPEALS

MINUTES

October 9, 2006

6:30 P.M.

City Council Chambers

Members Present: Nick Iannone, Jim Rockis, Bernie Bossio, and Jim Shaffer.

Members Absent: Mark Furfari.

Staff Present: Lisa Mardis, Deputy Planning Director.

MATTERS OF BUSINESS:

Motion to approve the minutes of June 21, 2006, by Rockis, second by Bossio. Motion carried unanimously.

Motion to approve the July 11, 2006, Special Meeting minutes by Bossio, second by Rockis. Motion carried 3-0. (Shaffer abstained.)

Motion to approve the minutes of July 19, 2006, minutes by Shaffer, second by Bossio. Motion carried unanimously.

OLD BUSINESS:

1. **TABLED - V06-14 / Panico / 225 Chestnut Street:** Request by Joe Panico for variance approval from *Appendix A: Development Standards Table* for property located at 225 Chestnut Street. Tax Map #26A, Parcel #46; a B-4, General Business District.

Motion to take off the table by Bossio, second by Shaffer. Motion carried 3-0. (Rockis abstained.)

Rockis stated that he had reviewed the case and asked the applicant if it was acceptable for him to participate since he was not present at the previous meeting.

Mr. Panico stated that he would agree to let Mr. Rockis participate.

Mardis read the staff report stating that the petitioner seeks to construct a multi-family dwelling structure containing eleven (11) units on the subject realty with internal parking at the lowest level. Staff prepared a site plan based on information provided by the petitioner (attached hereto). Mr. Panico seeks to construct the building with zero (0) setback for the rear and sides and a three (3) foot setback for the front. The Zoning Ordinance sets forth in *Appendix A: Development Standards Table* the following related development standards for multi-family residential uses:

Criteria	Standard	Proposed Conditions	Variance Request
Maximum Lot Coverage	90%	97%	7%
Min./Max. Front Setback	0 ft. / 10 ft.	3 ft.	None
Minimum Rear Setback	10 ft.	0 ft.	10 ft.
Minimum Side Setback	5 ft.	0 ft.	5 ft. (each side)

Mardis advised that the petitioner met with the Technical Review Committee on February 14, 2006, and May 23, 2006. City Department representatives raised several issues concerning the development and submitted documents that require additional information from the applicant (meeting notes and May 30, 2006 email attached). Staff is currently working with the petitioner to address these issues.

Mardis noted that of primary concern is adequate site vision for vehicles exiting the proposed internal parking area onto Chestnut Street. The Planning and Engineering Departments requested the applicant to stake the proposed building front and coordinate a site visit to ascertain whether or not the façade presents safety issues for exiting vehicles. The petitioner scheduled a site visit for Staff on Friday, August 11th. Addendum A of this report illustrates the location of the subject realty and photograph.

Mardis explained that Mr. Panico has since met with the Design Review Committee which approved all the design standards.

Joe Panico, applicant, stated that Finding of Fact #3 was the stumbling block and gave a brief synopsis of why he wanted the variance. He addressed the concerns raised at the previous meeting, corridor effect between properties and devaluing adjacent property, and had photographs to demonstrate his points.

Rockis asked if he is building a new building with parking underneath.

Panico answered yes.

Rockis questioned why there is no commercial space on Chestnut Street side.

Panico explained that he has a vacancy in his other building and it will alleviate the parking. He will take parking over commercial space.

Rockis inquired if the sight distance problem was straightened out.

Panico replied that we set the building back three more feet to accommodate the sight triangle on Chestnut Street. It will have a six foot setback.

Iannone asked for public comments. There being none, the public portion was closed.

Iannone was satisfied with all the City Engineering requirements.

Rockis asked for clarification that no parking needed to be supplied.

Mardis answered that parking is not required in the B-4 District.

Mardis explained that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. It is the opinion of the Planning Department the BZA should exercise caution when considering the "Findings of Fact" so that each conclusion (1. rear and side yard setbacks; 2. lot coverage) is adequately justified. Although related, each issue presents unique considerations. Staff submits the following recommendations:

- Staff supports the proposed lot coverage variance request as it relates more to the geometry of the proposed structure, the typography of the lot, and the design and configuration of internal parking spaces (i.e., a reduction in dwelling units will not necessarily decrease the proposed building envelope because of internal parking design requirements). However, the proposed front setback of three (3) feet may present safety hazards to vehicles exiting from the internal parking area onto Chestnut Street. This hazard may be mitigated through building design modification and/or an increase in front setback. Should the lot coverage variance be granted, Staff recommends that it be conditioned upon the mitigation of potential site vision hazards to the satisfaction of the City Engineer and the Planning Director.
- Staff supports the side and rear setback variance requests as they are consistent with development patterns of existing buildings located on smaller lots within the B-4 District.

Mardis read each Finding of Fact and, after discussion, the Board revised them to read as follows:

- #1. There are exceptional and extraordinary circumstances and conditions that are applicable to this property because of the narrowness of the lot, the typography, and the lack of commercial on the first floor due to the location not being in a highly trafficked or visible area of the B-4 District.

Motion to find in the positive, as amended by Bossio, second by Rockis. Motion carried unanimously.

#2. The proposed setbacks and lot coverage will be consistent with existing neighborhood buildings in the General Business District and striking the second sentence.

Motion to find in the positive, as amended by Shaffer, second by Rockis. Motion carried unanimously.

#3. Striking the second sentence.

Motion to find in the positive, as amended, by Rockis, second by Bossio. Motion carried unanimously.

#4. Added: Realty is currently a parking area and will remain parking with residential above. It is consistent with existing neighborhood conditions and will improve and enhance adjacent properties.

Motion to find in the positive, as amended, by Bossio, second by Shaffer. Motion carried unanimously.

Motion to approve the variance request by Rockis, second by Rockis. Motion carried unanimously.

NEW BUSINESS:

1. **V06-20 / Panico / 341 Chestnut Street:** Request by Joe Panico for variance approval from *Appendix A: Development Standards Table* for property located at 341 Chestnut Street. Tax Map #26A, Parcel #80; a B-4, General Business District.

Mardis read the staff report stating that the petitioner seeks to raze an existing garage structure and to develop a mixed-use structure containing (see attached preliminary plans):

- A ground floor with retail and office space uses, common areas, workout facilities for residents, and mechanical equipment area.
- Seven floors of dwelling units, 21 of which will be one-bedroom units and 21 will be two-bedroom units (total of 42 units and 63 bedrooms)

Mardis stated that Addendum A of the staff report illustrates the location of the subject realty. The following table provides the development standards for the B-4 Districts contained in Appendix A of the Zoning Ordinance. With the exception of maximum lot coverage, the proposed project meets all development standards for the B-4 District. The petitioner must obtain a 7% variance from the maximum lot coverage.

Height, Bulk, Area, and Density		
Development Standard	Provision	Provided
Height	10 stories or 120 ft.	8 stories or 80 ft.
Lot	1,500 sq. ft.	8,021.65 sq. ft
Setbacks	Side: 0 ft. Front: 0 ft. Rear: 0 ft.	Side: 0 – 1.5 ft. Front: 0 ft. Rear: 0 ft.
Maximum Lot Coverage	90%	97%

Joe Panico, applicant, said that it's a catch-22; with front and side yard setbacks, you could have 100% lot coverage. There is a corridor between the existing parking garage to allow access to the middle of the building; that's where I'm getting a reduction of lot coverage. It was approved by the Design Review Committee and is architecturally designed and engineered by Alpha Associates. There will also be a rooftop pool and garden on the garage and other commercial space in the parking garage. I will be coming back for the commercial space. It will be eight stories of luxury type of very large one and two bedroom units, marketed as condos and maybe rental units. He believes it will be a tremendous asset to the city.

Bossio inquired if it abuts to the parking garage.

Panico answered yes; there are three canopied connectors between the building and the parking garage at three different locations.

Bossio asked if a person could walk from the proposed building to the parking garage on three different levels.

Panico replied yes, the connection will be in the middle of the corridor. The dumpster will roll out to the front through that corridor.

Rockis asked if it will be brick or Drivit®.

Panico asserted that it will be primarily Drivit® on the top, similar to Mike Castle's building in look with a different color scheme. He addressed the different perspectives of wording for the "Finding of Facts".

Iannone asked for public comments. There being none, the public portion was closed.

Mardis advised that the proposed project represents a unique opportunity to redevelop an aging, underutilized structure into a modern, mixed-use building that should conform with and contribute to the overall development pattern of the downtown area. The petitioner also proposes to provide 60 parking spaces for residential occupants within the adjoining private parking garage. Although the

proposed lot coverage exceeds the maximum standards, the proposed project will reduce the existing lot coverage Of 100% to 97%.

Mardis explained that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant. Staff believes the petitioner’s request is reasonable, concurs with the findings of fact as submitted by the applicant, and recommends approval of the variance as requested.

Mardis read each Finding of Fact and, after discussion, the Board revised them to read as follows:

#1: There are extraordinary conditions that are applicable to this property because most structures in B-4 have 100% lot coverage. Lot coverage and setbacks do not coincide and the code is inconsistent with the intended land use.

Motion to find in the positive, as amended, by Shaffer, second by Rockis. Motion carried unanimously.

#2. Most structures in B-4 have 100% lot coverage. Lot coverage and setbacks do not coincide and the code is inconsistent with the intended land use.

Motion to find in the positive, as amended, by Rockis, second by Shaffer. Motion carried unanimously.

#3. It is consistent with neighborhood properties and what we are looking for in B-4 Districts. Pedestrian living is appropriate and this follows the Comprehensive Plan.

Motion to find in the positive, as amended, by Bossio, second by Rockis.

#4. Second sentence was deleted.

Motion to find in the positive, as amended, by Rockis, second by Bossio. Motion carried unanimously.

Motion to approve the request by Shaffer, second by Rockis. Motion carried 3-1. (Bossio voted No.)

2. **CU06-10 / Mountaineer Pre-owned Motors / 250 Greenbag Road:**
Request by Mountaineer Pre-owned Motors for conditional use approval or an automobile sales establishment in a B-2 District at 250 Greenbag Road. Tax Map #31, Parcel #101.9; a B-2, Service Business District.

Mardis read the staff report stating that the applicant seeks to develop an automotive sales establishment at the subject realty. According to Table 300.05.01, "Permitted Land Use Table" of the Zoning Ordinance, "Automotive Sales" establishments are conditional uses in the B-2 District. Addendum A of this report illustrates the location of the subject realty. The building and property were formerly occupied by "Tatem's Nursery". The proposed business will occupy a majority of the building. The owners have opted to partition the structure leaving room for an additional business at a later time.

Table 401.04.01, "Minimum Off-street Parking Requirements" of the Zoning Ordinance requires two (2) spaces per 1,000 square foot of gross floor area of enclosed sales area plus one (1) space per 2,500 square feet of gross floor area of open sales area plus two (2) spaces per service bay plus one (1) space per employee (minimum five spaces required).

The establishment will not have a service bay; the enclosed sales area is 1,540 square feet; the outdoor sales area is 1,296 square feet; and the enterprise will have three (3) employees. Therefore, the off-street parking requirement is six (6) spaces. The petitioner's site plan illustrates fifty-eight parking stalls, two of which are dedicated as accessible stalls. The City Engineer has waived the paving requirement (see the attached email).

Teather Bryant, applicant, observed that there are other automotive sales on the Greenbag Road that are grand-fathered under the new zoning ordinance or outside City limits.

Iannone questioned not paving the lot.

Mardis replied that the issue is left to the decision of the City Engineer; only the accessible parking stalls need to be paved.

Bryant noted that has already been done.

There was discussion on gravel vs. asphalt in a floodplain.

Rockis advised that it will impact other folks.

Mardis read the portion on surfacing in the zoning ordinance.

Bossio pointed out they are not approving the surface, only the conditional use for automotive sales.

Iannone asked for public comments. There being none, the public portion was closed.

Mardis explained that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for each of the 3 "Findings of Fact" submitted by the applicant. Staff believes the petitioner's request is reasonable, concurs with the "Findings of Fact" as submitted by the applicant, and recommends approval of the automotive sales conditional use with the following conditions (noting this was before receipt of the City Engineer's e-mail):

1. That no less than six (6) parking spaces, including the two (2) handicapped spaces, be paved along with an accessible route to the building; appropriately striped; marked by signage reserving same as customer/employee parking; and, wheel stops installed. Further, that no inventory may be parked or displayed in such a way that reduces the number of spaces reserved and available for customer and employee parking.
2. That the petitioner complete and submit, to the satisfaction of the City Engineer, a Floodplain Elevation Certificate.
3. That the petitioner obtains an entrance permit from the West Virginia Division of Highways and submits a copy of same to the Planning Director and the City Engineer.

Mardis read each Finding of Fact and, after discussion, the Board revised them to read as follows:

#1: Motion to find in the positive, as written, by Bossio, second by Rockis. Motion carried unanimously.

#2. ...and the applicant will submit a plan the WV DOH for proper egress.

Motion to find in the positive by Bossio, second by Rockis. Motion carried unanimously.

#3. Motion to find in the positive, as written, by Bossio, second by Rockis. Motion carried unanimously.

#4. Motion to find in the positive, as written, by Bossio, second by Rockis. Motion carried unanimously.

#5. Due to the nature of the business, undue congestion will not occur

Motion to find in the positive, as amended, by Rockis, second by Bossio. Motion carried unanimously.

#6. The infrastructure is already in place.

Motion to find in the positive by Rockis, second by Bossio. Motion carried unanimously

#7. Motion to find in the positive, as written, by Rockis, second by Bossio. Motion carried unanimously.

#8. Motion to find in the positive, as written, by Bossio, second by Rockis. Motion carried unanimously.

Motion to approve the conditional use request as submitted by Rockis, second by Bossio. Motion carried unanimously.

3. **V06-17 / Oldham / 312 Mulberry Street:** Request by David Oldham for variance approval from 300.08, Accessory Structures and Uses in Residential Districts at 312 Mulberry Street. Tax Map #7, Parcel #153; an R-1, Single-family Residential District.

Mardis read the staff report stating that the applicant seeks to construct a detached accessory structure in the rear of the property that requires two variance approvals. The applicant has provided detailed exhibits that illustrate the location of the subject realty, the site plan for the proposed structure, and the locations and photographs of similar structures.

Issue 1 – Article 300.08 (A)(7) states that the total square footage of all accessory structures shall not exceed fifty (50) percent of the first or ground floor area of the principal building. The petitioner proposes a 660 square foot garage, which represents 53% of the area of the ground floor of the principal structure (see Page 2 of petitioner’s attached exhibits). Although the applicant is planning a future addition to the existing principal structure, which would appear to make this issue moot, a 3% variance is required.

Issue 2 – Article 300.08 (A)(9) states that accessory structures shall not exceed eighteen (18) feet in height. The proposed garage will be 22.5 feet in height. As such, a 4.5 foot variance is required.

Criteria	Standard	Proposed Conditions	Variance Request
300.08 (A)(7)- accessory structure - percent of the ground floor of principal building	50%	53%	3%
300.08 (A)(9)- accessory structure – Height	18 ft.	22.5 ft.	4.5 ft.

Mardis stated that the petitioners have stated that they have selected the proposed architectural style for the garage because they believe it best conforms to the character of the existing house and surrounding neighborhood. The petitioner is aware and understands that the upper portion of the proposed garage may not be used as an accessory dwelling unit; that no kitchen and/or bathroom facilities may be included in the construction; and, that the upper portion may only be used as storage or other uses subordinate and incidental to the primary residential use. Additionally, it should be noted that variances would

not be required if the proposed accessory structure were to be attached to principal structure directly or with a breezeway.

Ann Oldham, applicant's wife, said that the garage fits in with the character of the others in the neighborhood. The lot is so long and narrow that the logical place for the garage is at the end of the driveway as a detached unit.

Bossio questioned that since the room above cannot be used as living space, why go to the extra expense.

Oldham replied that they are self-employed and out of space. Their current garage is filled as her husband is a geologist and stores maps. The dormers will be for filing cabinets.

Bossio asked if any of the other garages have any type of living quarters.

Oldham responded that she did not know of any.

Iannone asked for public comments. There being none, the public portion was closed.

Mardis explained that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Staff believes the petitioner's request is reasonable and concurs with the findings of fact as submitted by the applicant. As such, Staff recommends approval as requested with the conditions:

1. That no portion of the proposed accessory structure may be used as an accessory dwelling; and
2. That no portion of the proposed accessory structure may be used for sleeping purposes by containing kitchen or bathroom facilities.

Motion to approve the Findings of Fact as submitted, by Shaffer, second by Rockis. Motion carried unanimously.

Motion to approve the request by Shaffer, second by Bossio. Motion carried unanimously.

- 4. V06-18 / Goff Insurance Service, LLC / 401 Spruce Street:** Request by Goff Insurance Services, LLC for variance approval from Zoning Ordinance 403.07, *Conditions for Permitted Signs*, I.1, as it relates to sign size at 401 Spruce Street. Tax Map #26, Parcel #94; a B-4, General Business District.

Mardis read the staff report stating that Goff Insurance Services, LLC has recently relocated to 401 Spruce Street (formerly Spruce Street Sub Shop). The petitioner would now like to erect two signs on the building, one on the rear of the

building (12 sq. ft.) and one on the side of the building on Fayette Street (16 sq. ft.). Article 403.07 (l)(1) of the Zoning Ordinance restricts the maximum area of permitted wall signs in the B-4 District to 0.4 square feet for each linear foot of storefront. The linear store frontage at this location is 37.5 feet. Therefore, the applicant may not exceed fifteen (15) square feet without obtaining a variance of thirteen (13) square feet from the Board for the proposed signage.

Mardis explained that the applicant originally had another design for the sign to be placed on the Fayette Street façade but would rather utilize both signs that were located at their University Avenue address. The Downtown Design Review Committee has reviewed and approved the proposed signs.

The following table illustrates the signage area and linear storefront trends of commercial establishments along Spruce Street:

Establishment	Frontage (approx. linear ft.)	Sign Area (approx. ft ²)	Permitted sign area under new ordinance	Sign Area/ Frontage Ratio
Angiotti and Straface	38 ft.	40 ft ²	15.2 ft ²	1.05
Mylan Puskar Health Right	88 ft.	45.7 ft ²	35.2 ft ²	0.52
Goff Insurance (proposed)	37.5 ft.	28 ft²	15 ft²	.75

Karen Bodkin, office manager, stated that the monument type sign has been a landmark for the last seven years and customers are asking if they still look for the monument sign.

Iannone asked for public comments. There being none, the public portion was closed.

Discussion ensued about revisiting the sign ordinance.

Mardis explained that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant. One of the stated purposes within the Zoning Ordinance for sign regulations is to: “...encourage the effective use of signs as a means of communication in the City, to maintain and enhance the pleasing look of the City, which attracts to the City continued economic investment; to preserve Morgantown as a community that is attractive to business, to residents and to visitors...” (Article 403.01) Size restrictions are one of several means to accomplish this policy objective. Staff concurs with the “Findings of Fact” as submitted by the petitioner and recommends approval as requested based on the fact that the Board recently granted a similar variance for the “Jimmy John’s” establishment on High Street.

Motion to approve the Findings of Fact as submitted, by Bossio, second by Shaffer. Motion carried unanimously.

Motion to approve the request by Bossio, second by Rockis. Motion carried unanimously.

5. **V06-19 / Bjorkman / 525-531 Grant Avenue:** Request by Bill Bjorkman for variance approval from *Appendix A: Development Standards Table* for property located at 525-531 Grant Avenue. Tax Map #15, Parcels #216,217,220; an R-3, Multi-family Residential District.

Mardis explained that Mr. Bjorkman requested tabling this until the next meeting.

Motion to table as requested by the applicant by Bossio, second by Rockis. Motion carried unanimously.

OTHER BUSINESS:

Public Comments: None.

Staff Comments: None.

ADJOURNMENT: 8:04 p.m.