BOARD OF ZONING APPEALS

Minutes

6:30 PM **November 18, 2009** **City Council Chambers**

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

MEMBERS ABSENT: None

STAFF: Lisa Mardis, Deputy Director

I. CALL TO ORDER and ROLL CALL: Bossio called the meeting to order at 6:35 PM

II. MATTERS OF BUSINESS:

A. Approval of Minutes for the September 16, 2009 and October 21, 2009 meetings.
Shamberger moved for approval of the September 16, 2009 minutes as submitted; seconded by Papandreas. Motion passed unanimously.

III. OLD BUSINESS: None

IV. NEW BUSINESS:

A. V09-30 / Victory Holdings / 512 Beechurst Avenue: Request by Victory Holdings for variance approval from the Planning and Zoning Code, Article 1347.04 Setbacks and Encroachments, (A) for property located at 512 Beechurst Avenue. Tax Map #19 Parcels #57, 58, 59; a B-2, Service Business and Beechurst Corridor Overlay Districts.

Mardis read the staff report and stated that the petitioner seeks variance relief from Article 1347.04 (A) of the Planning & Zoning Code, "Setbacks and Encroachments" which provides for a five (5) foot side setback. She continued that at the request of the Fire Department, the applicant seeks to construct a roof covering the fourth floor steps for an existing structure on Beechurst Avenue. This variance will also allow the petitioner to provide safe access in inclement weather for tenants. The desired roof would require a two (2) foot side setback, a variance of three (3) feet; and a six (6) inch side setback, a variance of 4.5 feet.

Joe Panico, 512 Beechurst Avenue, was present and stated that he had appeared before the Board of Zoning Appeals in March of 2008 and had received four variances for the building and did not request side and front yard setbacks at that time. Panico stated that during the final inspection, the Fire Department and Building inspector noted the railings on the top floors appeared wobbly and requested that they be corrected. Panico continued that the problem could be remedied by a roof, which would also make the stairs safer in inclement weather. Panico was then advised a variance would be needed for a covering. Panico affirmed that there is adequate water retention so that the adjacent property owners would not have problems with the water runoff.

Discussion ensued on having the property surveyed. Panico stated that an additional survey would cost of at least $500 to $700. Bossio stated that Code Enforcement Officer, Dave Friend, stated that there was no requirement for a roof and their main concern was to correct the problem with the wobbly railing.

Bossio questioned what type of materials would be used for the covering. Panico stated he is considering using a corrugated polymer and that only the steps would be covered. He added that he is only seeking a 3 foot variance.

Bossio asked for public comment.

Ella Dean, property owner of 532 Beechurst Avenue, stated that she opposes the variance. Dean believes that the roof covering could affect the safety of her tenants and the structural integrity of her property due to water runoff. Dean advised that Panico told her it was his intention to install a gutter system and she feels that may cause dangerous conditions since her tenants use that sidewalk. Dean stated that she contacted Panico in an attempt to work out a solution but they could not come to a reasonable resolution. She asked the Board not to approve his request because the roof was not required by the Fire Department.

Bossio asked Dean if there was no water runoff onto her property if she still would be willing to work out a compromise. Dean stated in the affirmative.

Panico advised he held off on the guttering until this issue was resolved. Bossio asked if it was possible to gable the roof which would then cause the wather to come onto his property and not Dean's property. Panico agreed to that suggestion. Bossion then asked Dean if she understood what was being proposed. Dean agreed to the recommended suggestion.

There being no further public comment, the public portion of the meeting was closed.

Bossio asked Mardis for staff's recommendations which were:

- Variance petition V09-30 / Victory Holdings be table.

- An as built survey be submitted for Board's review and consideration. Said survey must accurately illustrate the relationship of parcel boundaries to the subject stairs, proposed roofs including overhangs; gutter or alternative water runoff features if necessary. Said survey must be submitted to the Planning Department no less than two weeks prior to the Board's hearing at which a final determination will be rendered for V09-30 / Victory Holdings;

- The Board studed the feasibility and practicality of including a condition, if variance relief is granted, that requires the design of the proposed roofs to include measures that mitigate water runoff onto neighboring properties. Staff further recommends that the Board seek the advice of the City's Chief Building Code Official when studying all possible water runoff mitigation measures and that the roof and any gutter or water runoff management system be confined to and contained within the petitioner's property.

Mardis advised 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 petitioners

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:

In the initial design and permit application process the necessity for a roof or covering over the apartment access was overlooked. The Fire Department has required increased strengthening for the top railing and recommended covering the steps for public safety due to inclement weather.

Shamberger moved to find in the positive as amended by staff with strike through and underlines; seconded by Panandreas. The motion unanimously carried.

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:

After review it has become imperative that a covering or roof be built over the stairs and apartment access for tenant safety due to inclement weather, as well as making the railing more secure. Neighboring structures also set close to the property boundaries.

Papandreas moved to find in the positive as amended by staff with strike throughs and underlines and as amended by the Board; seconded by Shamberger. The motion unanimously carried.

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:

Constructing a basic weather cover over an existing framework will only enhance the newly developed structure, and adjoining properties. Public welfare is the main reason to place a roof of these areas. The improvements will make this structure more safe therefore not harming property or improvements in the vicinity.

Papandreas moved to find in the positive as amended by staff with strike throughs and underlines; seconded by Shamberger. The motion unanimously carried.

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:

Land use characteristics of the vicinity and zoning district will be affected with a roof cover installed on existing framework. Market value of the adjacent properties will be increased with further improvements and a roof over an existing stairs and porch can not increase traffic congestion on public streets.

Motion made by Papandreas to find all the Findings of Fact in the positive with the revisions as noted; seconded by Cardoso. Motion passed unanimously.

Motion made by Shaffer for approval of V09-30 that will include a shingled gable roof extending from the current hip roof, at the dimension of 24' by 8', and will include a gutter system that releases into the current water retention system; seconded by Papandreas. Motion passed unanimously.

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

B. V09-31 / Fletcher / Highland Avenue: Request by Jerry Fletcher for variance approval for the Planning and Zoning Code, Article 1335.06 Building Height for property located on Highland Avenue. Tax Map #14 Parcel 197.1; an R-1A, Single-Family Residential District.

Mardis read the staff report and stated that Jerry and Marsha Fletcher are seeking variance relief from the maximum height standard for a principal structure in the R-1A District for property located on Highland Avenue for the construction of a single family residential dwelling on a fairly steep sloping lot between Highland Avenue and Smith Avenue.

Mardis read Article 1335.06 of the Planning & Zoning Code, "Building Height" which provides that: "The maximum height of a principal structure shall not exceed two and one-half (2.5) stories or thirty-five feet, whichever is less, except as provided in Section 1363.02 (A), Height Exceptions." and Article 1329.02 provides that: "BUILDING HEIGHT IN FEET – The vertical distance measured from the lot ground level to the highest point of the roof for a flat roof, to the deck line of a mansard roof, and to the mean height between eaves and ridges of gable, hip, and gambrel roofs. On lots with topographic elevation changes, the lot ground level shall be construed to mean the halfway point between the highest and lowest elevations of the building footprint. Building height calculation shall not include chimneys, spires, elevator and mechanical penthouses, water tanks, radio antennas, and similar projections." She then read the definition for "BUILDING HEIGHT IN STORIES – The number of stories in a building measured vertically at the front elevation from the ground level to the top of the building vertically above that same point. For the purposes of determining building height, a basement shall not be considered a story." and "BASEMENT – A space having one-half or more of its floor-to-ceiling height below the average level of the adjoining ground."

Addendum B of the report contained plan elevations with notations by Staff to illustrate that the structure exceeds the maximum height standards in the R-1A District for principal structures in terms of height in feet and height in stories. The petitioner was present to speak on behalf of his request.

Jerry Fletcher, 284 Lakeside Drive, stated he is requesting a variance as presented by Staff.

Bossio asked for public comment.

Fred Wyant stated the notice he received did not have the correct lot shown. He asked how high above ground level the structure would be. Wyant stated he was not in favor of Fletcher's request since it would be setting precedent; it should stay within the zoning requirements as to not to obstruct the view.

There was some question as to whether or not Wyant understood what was being proposed. Mardis provided him with a copy of the staff report and a photograph of the property and explained to him what would be done. After he had a better understanding of the issue, Bossio asked if he wished to speak against the petition. Wyant stated he was not in opposition to the request.

In rebuttal, Fletcher stated the structure is 33' below Highland Street's elevation.

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

Bossio asked for staff's recommendations.

Mardis 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. Staff recommends the following revisions to the petitioners 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 subject site appears to have an approximate 38-foot elevation change from Highland Avenue to Smith Avenue, which is significant in comparison to other neighboring R-1A District parcels. Observing the maximum height standard would result in a house that is lower in elevation from the Highland Avenue grade to other homes fronting said street.

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 project site's significant slope appears to require relief from the maximum building height so that a single-family infill development can occur in a low density residential neighborhood that otherwise meets all related performance standards.

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 house has been designed to have a low impact on the site and will have many environmentally friendly systems within it. From Highland Avenue, you will only be able to see the upper two floors of the proposed house; therefore, the house will maintain the character of the other properties along Highland Avenue. The proposed single-family structure is the preferred land use in the R-1A District.

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:

Only the two upper most floors will be visible from Highland Avenue, which appears to be consistent with neighboring two-story homes. The new owner-occupied, single-family house should be a significant improvement in an area where most of the housing stock is older. The property is zoned for single-family residences. All other related design and performance standards set forth in the Planning and Zoning Code will be met or exceeded. Although the minimum number of parking standard for a single-family structure is two (2) spaces, there will be at least four provided onsite that should mitigate on-street parking congestion.

Motion by Papandreas to dispense with reading all Findings of Fact and find in the positive as amended by Staff; seconded by Shamberger. Motion passed unanimously.

Motion by Shaffer to approve V09-31; seconded by Cardoso. Motion passed unanimously.

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

C. <u>CU09-10 / Colasante / 341 Chestnut Street</u>: Request by Anthony Colasante for conditional use approval for a "Restaurant private club" license in B-4 District at 341 Chestnut Street. Tax Map #26A Parcel #79; a B-4, General Business District.

Motion made by Shamberger to table the request; seconded by Cardoso. Motion passed unanimously.

V. OTHER BUSINESS:

A. Public Comments - None

B. Staff Comments – Mardis stated the walk through for Colasante, 341 Chestnut Street, will be held on December 2, 2010 at 1:30.

VI. ADJOURNMENT – The meeting was adjourned at 7:50 PM

MINUTES APPROVED: January 20, 2010

BOARD SECRETARY: Christopher M. Fletcher

Christopher M. Fletcher, AICP