



# MORGANTOWN BOARD OF ZONING APPEALS

September 19, 2012  
6:30 PM  
City Council Chambers

## **Board Members:**

Bernie Bossio, Chair  
Leanne Cardoso, Vice-Chair  
George Papandreas  
Jim Shaffer  
Tom Shamberger

## **STAFF REPORT**

**CASE NO:** V12-31 / Vintner Reserve, LLC / 24 Vintner Place

### **REQUEST and LOCATION:**

Request by Lisa Mardis of Project Management Services, on behalf of Vintner Reserve, LLC, for variance relief from Article 1333.04 as it relates to a side-yard setbacks at 24 Vintner Place.

### **TAX MAP NUMBER(s) and ZONING DESCRIPTION:**

Tax Map 55, former Parcel 37; R-1, Single-Family Residential District

### **SURROUNDING ZONING:**

R-1, Single-Family Residential District

### **BACKGROUND and ANALYSIS:**

The petitioner obtained required building permitting to construct a single-family structure one lot in from the corner of Vintner Place and Munsey Street. Addendum A of this report illustrates the location of the subject site.

The petitioner's building permit plans were approved with the correct interior side setbacks of ten (10) feet.

After construction commenced and framing and roofing was near completion, Staff understands that the petitioner of V12-30 commissioned an as-built survey required by their respective lender. The as-built survey found that the footer and foundation walls constructed for both houses had shifted from the approved plans resulting in a one (1) foot encroachment of the side setback for the 24 Vintner Place house.

The petitioner contacted the Planning Division accordingly and now seeks a one (1) foot variance to encroach into the west side setback requirement.

It should be noted that similar variance relief has been granted within the Vintner Reserve development as well as the neighboring French Quarter development. Additionally, the petitioner's single-family dwelling meets the maximum lot coverage standard for the R-1 District thereby observing required single-family residential density and development scale standards for same.

## **Development Services**

Christopher Fletcher, AICP  
Director

## **Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



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## **STAFF RECOMMENDATION:**

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 petitioner.

Staff concurs with the petitioner's findings of fact and recommends approval as requested.

Attachments: Application and accompanying exhibits

## **ADDENDUM A**



**Development Services**  
Christopher Fletcher, AICP  
Director

**Planning Division**  
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



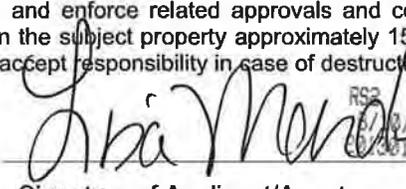
City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V12-31
RECEIVED:	8/10/12
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

<b>I. APPLICANT</b>		Name: Project Management Services	
Mailing Address:	160 Fayette Street		Phone: 304-212-5256
	Street	Morgantown WV 26505	Mobile: 304-694-7116
	City	State Zip	Email: pms160@comcast.net
<b>II. PROPERTY</b>		Street Address: 24 Vintner Place	
Owner:	Vintner Reserve		Zoning: R-1
Mailing Address:	480 Kiwanis Ave		Tax Map No: 55
	Street	Morgantown WV 26505	Parcel No: 37
	City	State Zip	Phone: 304-685-9810
<b>III. NARRATIVE</b>		Please describe the nature and extent of your variance request(s).	
The owner is requesting a side-yard setback of one (1) foot.			
<b>V. ATTEST</b>			
I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. The granting of a variance does not presume to give authority to violate or cancel the provisions of any other federal, state, or local law regulating construction or the performance of construction. I certify that the information submitted herein and attached hereto is true and accurate and understand that if found otherwise may result in the denial of this request or subsequent revocation of any and all related approvals. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions. I hereby authorize the Planning Department to erect a notification sign on the subject property approximately 15 days prior to the BZA hearing. I further agree to maintain said signage and hereby accept responsibility in case of destruction or removal.			
Lisa Maradis		 <small>RS2 8/10/2012 16:18:58 63361370</small> <small>CRYSTAL SITE PLAN</small>	
Type/Print Name of Applicant/Agent		Signature of Applicant/Agent	
		Date: 8/10/12	

**You or a representative MUST be present at the scheduled hearing to present the request and answer questions. Failure to appear at the hearing will result in your request being tabled.**

75.00  
 Morgantown, WV 26505  
 (304) 284-7400



APPLICATION FOR ZONING VARIANCE

OFFICE USE
CASE NO. v12-31
RECEIVED: 8/10/12
COMPLETE:

VI. SUPPLEMENTAL INFORMATION

Depending on the type of variance request and the scale and scope of the development proposal, supplemental information may be needed to assist the Board of Zoning Appeals in rendering a variance decision. Staff will check the appropriate boxes below that must be addressed.

Land Use Characteristics (complete only those that apply)

- Residential (checked), Single-Family Dwelling, Townhouse Dwelling, Two-Family Dwelling, Multi-Family Dwelling, Non-Residential or Mixed (please explain)

Structure Characteristics (complete only those that apply)

Total number of buildings: 1, Gross floor area of each building:
Estimated number of employees: N/A, No. of dwelling units: 1, No. of bedrooms:
Additional structure-related details:

Additional Information (as required by Staff):

Site Plan A scaled site plan may be required to assist the Board in rendering a variance decision. The following features must be represented, as required by Staff.

- Location, shape, exterior dimensions, and number of stories of each building on the site.
Standard yard setbacks for the applicable zoning district
Location, grade, and dimensions of paved surfaces, and all abutting streets
Existing and proposed contours, at an interval of at least two (2) feet
Complete traffic circulation plan showing dimensions, entrance/exit drives, planters, and similar improvements
Location of landscaped areas (to be detailed on landscape plan), fences, walls, and other screen required

For simple variance requests (as determined by Staff), please use the graph area on the following page to illustrate applicable features listed above.



City of Morgantown, West Virginia

**APPLICATION FOR  
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Suggested Scale: 1 square = 5'

Attached



**APPLICATION FOR  
ZONING VARIANCE**

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COMPLETE:	

**VII. FINDINGS OF FACT**

The Board of Zoning Appeals may grant a variance request only if each of the following "Findings of Fact" criteria is determined to be in the positive. Applicants must give their own responses to the following criteria statements.

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:

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:

*Attached*

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:

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:

V12-31  
8/10/12

## FINDINGS OF FACT Vintner Reserve / 24 Vintner Place

**Variance relief from the Planning and Zoning Code, Article 1339.04 as it relates to the minimum side setback on corner lots in the R-3 District.**

**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 major subdivision, Vintner Reserve, was approved in 2007 and went through various revisions in an attempt to satisfy all future development on site. With the last two parcels in the subdivision slated for construction, building permits were approved by the City for 22 and 24 Vintner Place in the same approximate timeframe. On a deadline for complete construction, the excavating crew hastily dug for footers and began construction of 22 Vintner Place; followed closely with another crew beginning on the subject property.

With closer examination by the developer of the two partially constructed dwellings in reference with the other properties in the development a survey was completed and indicated what the developer feared, side yard setback discrepancies.

Due to the atypical curvature of the parcel upon entering the development, located on realty at 22 Vintner Place, in conjunction with the location of the existing fence surrounding the development, it appears that the excavating crew measured incorrectly when beginning footer construction on both structures. In combination with the miscalculation, the building permit for 22 Vintner Place was erroneously approved with a non-conforming side setback for a corner lot in the R-1 District. These factors caused a snowball effect and the construction for the subject site was miscalculated by one (1) foot. Therefore, the applicant requests a side yard variance of one (1) foot, a side yard setback of nine (9) feet

The finished design of the partially constructed dwelling unit will be equivalent to design, square footage, and scale of the as built environment of Vintner Reserve.

The residential dwellings in the development are reasonably secluded in that when the former church property went through major subdivision approval, the developer was granted distinctive permission to face the dwelling units on to a private drive instead of a public right-of-way. Vintner Reserve is completely surrounded by a privacy fence and mature landscape. The only adjacent property is that also located in the development.

**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:**

While the development is uniquely different being private, on a private drive, and secluded from other properties in the vicinity either by fence, access road, or a major thoroughfare, there appear to be other properties in the vicinity that have non-conforming side setbacks on corner lots. The built environment of the Suncrest Neighborhood pre-dates the Planning Code rewrite that was adopted in 2005 in which there were not dedicated side yard setbacks for corner lots.

32 Vintner Place received a side yard setback variance in January 2009. The structure located on Munsey Street, appears to have a non-conforming side setback, approximately three (3') feet as shown in the attached photographs.

**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 proposed variance will not harm this property or vicinity improvements as it is located in a private subdivision and has only one adjacent property, which is also located in Vintner Reserve. The Development is completely secluded by a privacy fence, mature landscape, interior access road, and major thoroughfare. All the structures are oriented towards the private drive, and cannot be seen easily from a public-right-of-way. The proposed variance does not detract from surrounding properties in that it can only be seen from private property. The proposed variance will not be harmful to the adjoining property, public rights-of-way, or existing utilities. The variance will not affect emergency or service vehicle access to adjacent properties.

**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:**

Completion of the partially constructed dwelling should enhance the value of the area and accordingly contribute to the market value of neighboring structures. The slight deviation will be unseen from other properties since it is solely located in a private residential development surrounded by a privacy fence, mature landscape and on a private access drive. Granting this variance cannot improve nor mitigate traffic congestion that is already present within the neighborhood. Likewise, the approval of this variance would have no impact on the land-use characteristics of the vicinity or zoning district.

V12-31

ASPHALT PAVEMENT  
**BURROUGHS 30' STREET**

N83°40'41" E 80.15'  
3' CONCRETE WALK

LOT 4  
ROBERT E. HADEN  
BEVERLY D. HADEN  
D.B. 1368 PG. 289  
T.M. 55 PAR. 37.5

N9°51'19" W 133.77'

**LOT 5**

FOUNDATION  
UNDER  
CONSTRUCTION

9.0'

25.6'

11.1'

S9°51'19" E 128.83'

2 STORY  
DWELLING  
UNDER  
CONSTRUCTION

LOT 6  
VINTNER RESERVE, LLC  
D.B. 1366 PG. 472  
T.M. 55 PAR. 37.7

80.00'  
S80°08'41" W

**VINTNER 30' PLACE**

**MUNSEY 30' STREET**  
ASPHALT PAVEMENT

NOTE: THIS SURVEY WAS CONDUCTED WITHOUT  
BENEFIT OF A LAWYER'S TITLE REPORT AND  
MAY NOT REFLECT ALL EXCEPTIONS,  
RIGHTS-OF-WAY, EASEMENTS OR RESTRICTIONS.

TAX MAP NO. 55 PARCEL NO. 37.6

AREA = 0.2303 ACRES (10,030 SQ. FT.)

TITLE REF.: VINTNER RESERVE, LLC  
D.B. 1366 PG. 472

PLAN REF.: KOONTZ HEIRS PLAN OF LOTS  
D.B. 200 PG. 486 1/2

D.B. 1156 PG. 91  
VINTNER RESERVE SUBDIVISION  
MAP CABINET 5 ENVELOPE 39A



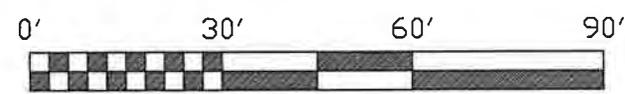
SURVEY FOR

**LOT 5 - VINTNER RESERVE SUBDIVISION**

**SEVENTH WARD MORGANTOWN, MONONGALIA COUNTY, WV**

**SCALE: 1" = 30' JULY 30, 2012**

WILLIAMS ENGINEERING COMPANY  
MORGANTOWN, WV



## Proposed side setback variances for 22 & 24 Vintner Place



Photo showing the City required sidewalk and landscape, which is located on realty at 22 Vintner Place.



Property boundary of 22 Vintner Place



Photo taken from edge of development and Munsey Street . The photo shows the side setback of 22 Vintner Place. The property owner requests a .5' variance. The building permit was approved with a 10' side setback. The required setback in an R-1 District for a corner lots is 15'.



Photo taken from Burroughs Street. The photo shows another view of the side setback of 22 Vintner Place.

The current side setback is 14.5'. The property owner requests a 6" variance.



Photo taken from Burroughs Street. The setback discrepancies are not noticeable from the Burroughs Street public right-of-way.



Photo taken from parking area of church, located directly across Burroughs Street. There appears to be at more than twenty (20) feet between 22 & 24 Vintner Place from this angle.



Area between 22 & 24 Vintner Place; the property boundary is indicated. The property owners (Rai) of 22 Vintner Place requests a 4.3' side setback variance. From this angle, there appear to be more than 10' of side setback for both structures.



String line ran from the middle of the pillar, the property boundary to the front of the structures. Measurement shows a 10' 2" side setback. The applicant requests a 4.3' side setback variance.



Close up of measurement between 22 & 24 Vintner Place.



Photo taken from church property which is located directly across Burroughs Street. The photo shows another view of the distance between 22 & 24 Vintner Place.



Photo showing the property boundary between 24 & 26 Vintner Place. Applicant requests a 1' variance.



Wide angle of same. Photo shows property boundary.



Wide angle of same.



Photo shows property boundary between 26 & 28 Vintner Place.



Photo shows measurement between 24 & 26 Vintner Place. The distance is measured at 19' 6". The property owner is requesting a 1' variance.



Photo shows the same property boundary between 26 & 28 taken from the church parking lot, directly across Burroughs Street.



Photo shows the property boundary between 28 & 30 Vintner Place. The property to the left in the photo, 30 Vintner Place, is on a pie shaped lot due to the curvature of the cul-de-sac.



Photo showing the property boundary between 28 & 30 Vintner Place. Photo taken from church property located directly across Burroughs Street.



Photo of property boundary between 30 & 32 Vintner Place. 32 Vintner Place received a 5' side setback variance due to the curvature of the cul-de-sac.



Photo showing the build-to-line of the development. Internal access road is a private drive.



Photo of the French Quarter subdivision showing the most recent approved variance. Similar to the Vintner Reserve Subdivision, the homes are bounded by a privacy fence and the variances (this and proposed) does/will not detract from the built environment. One difference of the subdivisions is that the road within the French Quarter's subdivision is a public right-of-way and the Vintner Reserve's road remains a private access road.



Close-up of the previous photo showing the area of the approved variance.

Close up of non-conforming side setback approved within the French Quarter subdivision

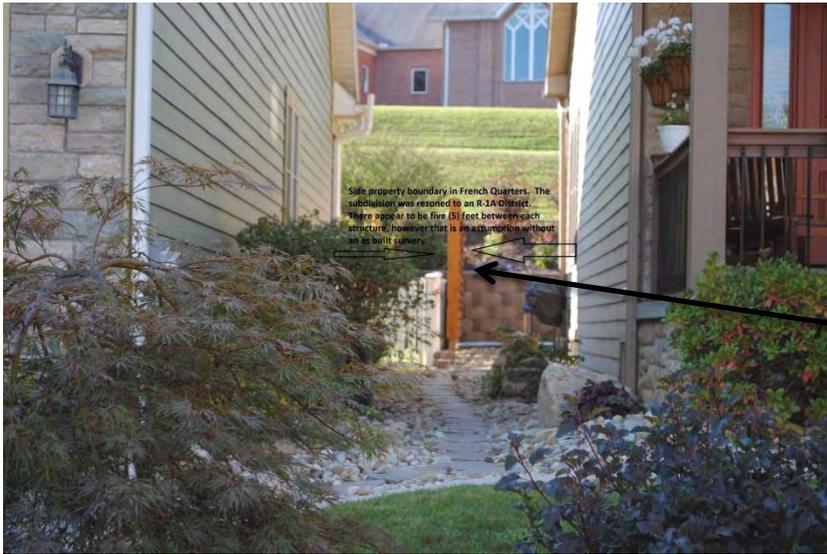


Photo showing the property boundary in the French Quarter's subdivision. The area was rezoned to R-1A. There appears to be at least five (5) feet between each structure, however that is an assumption without an as built survey.

Side property boundary in French Quarters. The subdivision was rezoned to an R-1A District. There appear to be five (5) feet between each structure, however that is an assumption without an as built survey.



This appears to be the side property boundary, however, without an as-built survey, it is difficult to tell.

The French Quarter subdivision was approved in February 2005. Depending on when the building permits were approved, there would have to be at least 5' from the sidewalk by today's standards.

The sidewalk edge appears to be the property line between these two structures (in the French Quarter's subdivision). However, it is difficult to say without an as-built survey. The subdivision was approved in February 2005. Depending on when the actually building permits were obtained, there would need to be at least 5' between the HVAC units and the property boundaries by today's standards.