



# MORGANTOWN BOARD OF ZONING APPEALS

October 17, 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:** V12-32 / Knowles / 730 Werner Avenue

### **REQUEST and LOCATION:**

Request by Kris Knowles for variance relief from Article 1345.04 as it relates to a rear-yard setback at 730 Werner Avenue.

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

Tax Map 25, Parcel 345; B-1, Neighborhood Business District

### **SURROUNDING ZONING:**

North, South, and East: B-1, Neighborhood Business District  
West: R-1A, Single-Family Residential District

### **BACKGROUND and ANALYSIS:**

The petitioner seeks to include an uncovered deck on the rear of the mixed-use building currently under construction. The deck will measure five and one-half feet deep by eight and one-half feet wide. Addendum A of this report illustrates the location of the subject site.

The minimum rear setback standard in the B-1 District is twenty (20) feet. However, the petitioner received approval for a fourteen-foot variance on August 17, 2011 under Case No. V11-24. As such, the building currently under construction has a rear setback of six feet. The proposed deck will therefore encroach into the minimum setback an additional five and one-half feet resulting in the deck being approximately six inches from the rear property boundary.

It should be noted that the Planning and Zoning Code does not permit encroachments by architectural features in the B-1 District (i.e., uncover porches) as is permitted in other zoning districts where residential and mixed-residential development are permitted.

The Board approved two additional variance petitions for the subject development on October 19, 2011 concerning front façade fenestration (Case No. V11-29) and a two-foot encroachment into the minimum front setback standard to accommodate awnings over the sidewalk along Werner Street (Case No. V11-30). Staff understands that the petitioner may no longer seek to utilize the variance approval relating to the awnings.

### **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. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). Staff recommends approval as requested without conditions.

Attachments: Application and accompanying exhibits

## **Development Services**

Christopher Fletcher, AICP  
Director

## **Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

**STAFF REPORT ADDENDUM A**  
**V12- 32 / Knowles / 730 Werner Avenue**



## STAFF REPORT ADDENDUM B

### V12-32 / Knowles / 730 Werner Avenue

Staff recommended revisions to petitioner's Findings of Fact (deleted matter struck through; new matter underlined)

**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:

~~There are many examples in the direct vicinity of decks and patios that are built well into the setback and very close to property lines. The granting of this request would be consistent with the already built environment around this new structure. Also, it is worth noting that a variance for a 4 foot intrusion into the front setback for an awning was granted to this project by the Planning Commission in the Fall of 2011. This variance would have placed the awning one foot from the front property line. As it turns out, we will not need to build this awning detail and as a result we no longer require the front variance; The building sits 5 feet from the front property line, which is in full compliance with the setback. We are basically proposing to 'give back' that space in the front of the building and to reclaim it in the rear for the small proposed deck. The Board has already approved a rear setback encroachment of fourteen (14) feet (Case No. V11-24) for the building currently under construction. However, the Planning and Zoning Code does not permit encroachments by architectural features in the B-1 District (i.e., uncover porches) as is permitted in other zoning districts where residential and mixed-residential development is permitted. The additional five and one-half foot encroachment for an uncovered rear porch does not appear to exacerbate or undermine the merits, spirit, or intent of the relief granted under Case No. V11-24~~

**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:

~~As mentioned above, there are many examples in the same zoning of decks and patios built at or very close to rear property lines. There appears to be a number of principal and accessory structures, along with related architectural features, within the immediate area that encroach into the required setbacks of the B-1 and R-1A Districts.~~

**Finding of Fact #3** – The granting of this variance 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 granting of this variance would have no negative effect on public welfare or property values, as it ~~will allow us to~~ allows the construction of a feature that is appears to be consistent with the character of the neighborhood and surrounding properties.

**Finding of Fact #4** – The granting of this variance 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 granting of this variance will have no effect on traffic congestion, as it has no bearing on city streets. ~~This variance will allow us to build a feature that is consistent with the existing land use characteristics of the neighborhood and zoning district. The granting of this variance appears to integrate the patio and deck features of other developments within the immediate area.~~



City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V12-32
RECEIVED:	9/4/12
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

<b>I. APPLICANT</b>		Name:	Kris Knowles		
Mailing Address:	Street	851 Grand St.		Phone:	
	City	State	Zip	Mobile:	304-216-2278
				Email:	dkr@knowles-john.com
<b>II. PROPERTY</b>		Street Address:	730 Werner Ave.		
Owner:	Kris Knowles		Zoning:	B1	
Mailing Address:	Street	Same as above		Tax Map No:	25
	City	State	Zip	Parcel No:	345
				Phone:	Same as above
<b>III. NARRATIVE</b>		Please describe the nature and extent of your variance request(s).			
See Attached					
<b>V. ATTEST</b>					
<p>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.</p>					
Kris Knowles		[Signature]		PAID	75.00
Type/Print Name of Applicant/Agent		Signature of Applicant/Agent		75.00	Date

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.

Finance Office  
304.284.7400

ck  
410



# APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V12-32
RECEIVED:	9/14/12
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     
 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: 7,196

Estimated number of employees: 0      No. of dwelling units: 7      No. of bedrooms: 8

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. *Already Submitted*
- 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.



APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V12-32
RECEIVED:	9/14/12
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:

*See Attached*

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:

*cf*

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:

*cf*

### Narrative:

We are proposing to build a small, uncovered deck on the rear of the FireHouse project, which is already under construction. The proposed deck would be 5.5 deep and 8 feet wide and would require a rear setback of 19.5 feet. The Commission reviewed several variance requests for this project in the Fall of 2011 and may recall that we are constructing an architectural, high-end mixed-use residential structure that is designed around the principles of green, modern living. Among other amenities, the project will feature a green roof and a community garden, and should represent a new direction in design and living philosophy in Morgantown.

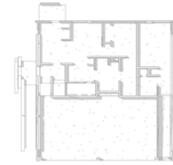
The proposed deck would be constructed from steel and concrete and will be consistent with the aesthetics of the project and the construction methods currently being employed. This deck will serve one apartment and will provide just enough space for an occupant to step outside and enjoy the outdoors. Situated at the rear of the building, the deck would abut the already-existing Woodburn Lofts property and will overlook the community garden that will serve the residents of both properties.

### Findings of Fact:

1. There are many examples in the direct vicinity of decks and patios that are built well into the setback and very close to property lines. The granting of this request would be consistent with the already-built environment around this new structure. Also, it is worth noting that a variance for a 4 foot intrusion into the front setback for an awning was granted to this project by the Planning Commission in the Fall of 2011. This variance would have placed the awning one foot from the front property line. As it turns out, we will not need to build this awning detail and as a result we no longer require the front variance; The building sits 5 feet from the front property line, which is in full compliance with the setback. We are basically proposing to 'give back' that space in the front of the building and to reclaim it in the rear for the small proposed deck.
2. As mentioned above, there are many examples in the same zoning of decks and patios built at or very close to rear property lines.
3. The granting of this variance would have no negative effect on public welfare

or property values, as it will allow us to construct a feature that is consistent with the character of the neighborhood and surrounding properties

4. The granting of this variance will have no effect on traffic or congestion, as it has no bearing on city streets. This variance will allow us to build a feature that is consistent with the existing land-use characteristics of the neighborhood and zoning district.



FLOOR PLAN KEY:

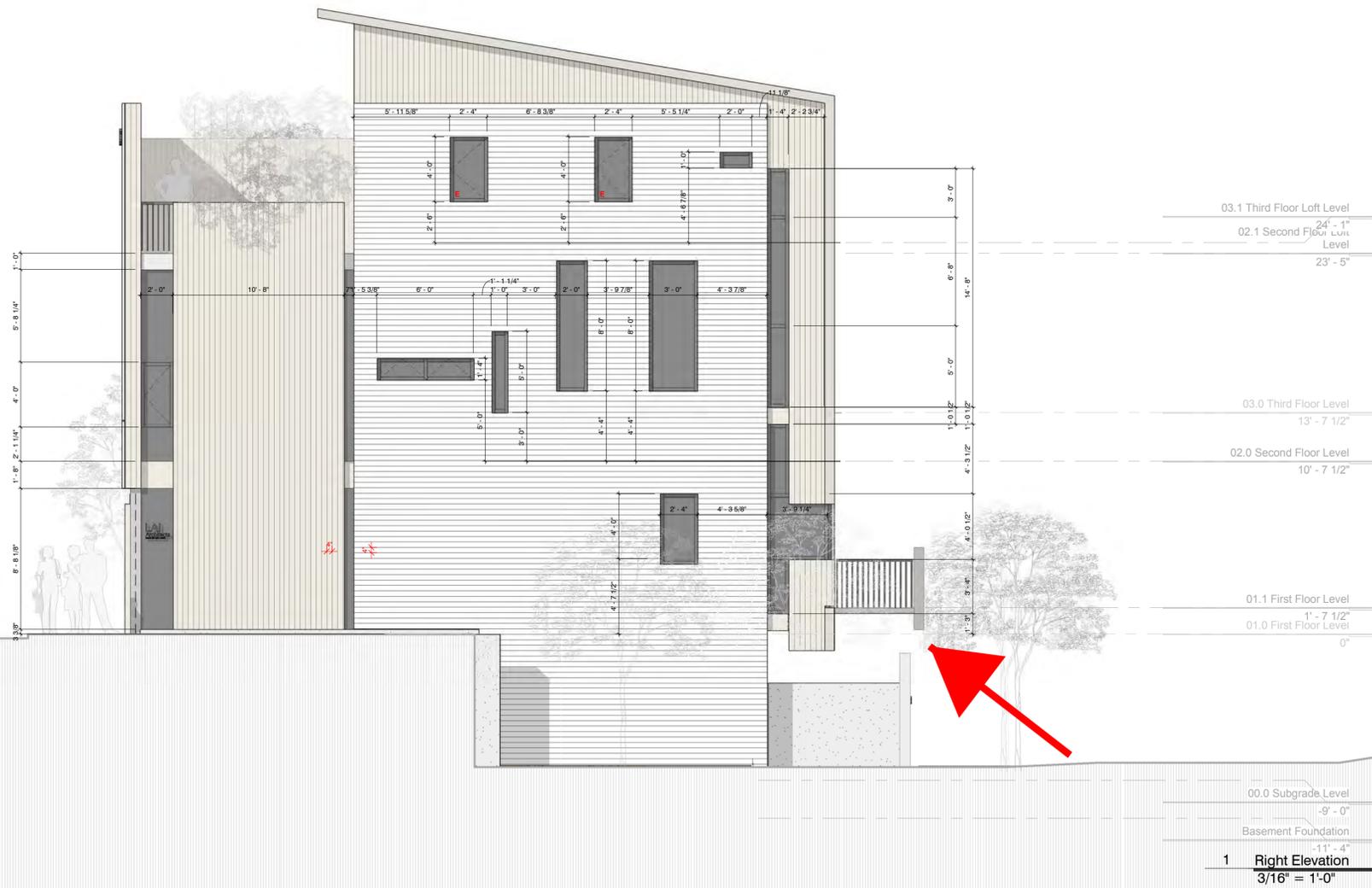
**MATERIALS**

PLEASE NOTE: SPECIFICATION TO BE DETERMINED, THIS LIST IS MEANT ONLY AS COMPONENT REFERENCE

- 01 - Concrete, mix design & color t.b.d., forming system-symons gang system, form surface t.b.d., ThermoMASS insulation system
  - 02 - Brick, size & color t.b.d., joint t.b.d., sealant t.b.d.
  - 03 - Corten Metal, gage, shape, & finish t.b.d.
  - 04 - Corten Metal, gage, shape, & finish t.b.d.
  - 05 - Glazing, Mix of surface being pulled to outer surface of building (mirror finish), others set on the inner surface of building (color t.b.d.)
  - 06 - Ivy, wall location and species t.b.d.
- MS Metal Sales, Burnished Slate (49), Ash Grey (25), Patriot Red (73), Galvalume (41), 29 gauge

- Schematic Design
- Design Development
- Progress
- Bidding
- Building Permit
- Construction Documents

Client Signature for Phase Completion



**fireHOUSE apartments**

Project Address  
**730 Werner Street**  
 Morgantown, WV 26505

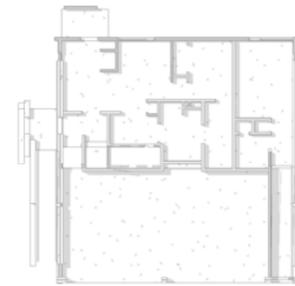
8/7/2012 8:42:38 AM  
 Project Number: 09.011  
 PROJECTdata

As indicated  
 Right Elevation



3 3D View 5

FLOOR PLAN KEY:



## MATERIALS

PLEASE NOTE: SPECIFICATION TO BE DETERMINED, THIS LIST IS MEANT ONLY AS COMPONENT REFERENCE

01. - Concrete, mix design & color t.b.d., forming system-symons gang system, form surface t.b.d., ThermoMASS insulation system

02. - Brick, size & color t.b.d., joint t.b.d., sealant t.b.d.

03. - Corten Metal, gage, shape, & finish t.b.d.

04. - Corten Metal, gage, shape, & finish t.b.d.

05. - Glazing, Mix of surface being pulled to outer surface of building (mirror finish), others set on the inner surface of building (color t.b.d.)

06. - Ivy, wall location and species t.b.d.

MS Metal Sales, Burnished Slate (49), Ash Grey (25), Patriot Red (73), Galvalume (41), 29 gauge