



MORGANTOWN BOARD OF ZONING APPEALS

September 16, 2015
6:30 PM
City Council Chambers

Board Members:

Leanne Cardoso, Chair
Bill Burton, Vice-Chair
Linda Herbst
Jim Shaffer
George Papandreas

COMBINED STAFF REPORT

CASE NOS: V15-54 thru V15-56 / Bocci, LLC / 48 Donley Street

REQUEST and LOCATION:

Request by Raymond Eddy, on behalf of Bocci, LLC, for approvals of three (3) variance petitions relating to property at 48 Donley Street.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 28, Parcels 14 through 17; B-4, General Business District

SURROUNDING ZONING:

B-4, General Business District

BACKGROUND and ANALYSIS:

The petitioner seeks to develop a parking lot next to and a part of the *Marina Tower* building. The parking lot will have ten (10) parking stalls, one (1) of which will be an accessible stall. Addendum A of this report illustrates the location of the subject site.

The following summarizes requisite variance relief under the three (3) petitions before the Board.

Case No. V15-56 Curb Cuts

Article 1351.01(D) provides that the maximum width of any driveway leading from a public street shall not exceed twenty-six (26) feet at the curb line or twenty-two (22) feet at the street right-of-way line. The proposed curb cut (driveway entrance) onto Donley Street is 43'-5" at the curb line and approximately 31.25' at the right-of-way line, which requires variance relief. It appears that the wider curb cut is proposed to accommodate access to a trash compactor enclosure. The proposed curb cut (driveway entrance) onto Warren Street observes the maximum curb cut dimension standards.

Case No. V15-54 Perimeter Landscape Buffer

Article 1367.08(B)(1) provides that a four (4) foot perimeter buffer shall be provided, along the sides and rear yard of the property, that contains at least one two inch (2") caliper tree every twenty (20) feet and at least three (3) shrubs of at least three (3) gallons in size clustered between each two (2) trees.

The proposed site plan provides a landscape buffer along Donley Street that exceeds the minimum depth standard but does not include the requisite tree due to above ground utility lines that a tree might encroach upon, which requires variance relief.

The proposed site plan does not include a landscape buffer along the side yard due to requisite parking space and drive aisle dimensions given the proposed angled parking

Planning Department

Christopher Fletcher, AICP
Planning Director
389 Spruce Street
Morgantown, WV 26505
304.284.7431



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design, which requires variance relief. The only parking layout design that would create sufficient area for the requisite side yard buffer would be parallel parking spaces, which would reduce the parking space yield from ten (10) spaces to four (4) parking spaces.

The proposed site plan provides a landscape buffer along Warren Street but does not meet the minimum buffer depth standard for the entire length of the adjoining parking space and does not include the requisite tree due to above ground utility lines and the street light that a tree might encroach upon, which requires variance relief.

Case No. V15-55 Points of potential conflict between pedestrians and vehicles

Article 1351.01(C)(2) provides that parking spaces shall not be closer than twenty (20) feet to pedestrian crosswalks at parking lots. One (1) parking space is within this distance from the Donley Street driveway entrance and two (2) parking spaces are within this distance from the Warren Street driveway entrance, which requires variance relief.

It should be noted the potential conflict intended to be addressed by this standard appears to be mitigated at the Warren Street driveway entrance by the proposed one-way parking lot layout. Additionally, the petitioner has eliminated two (2) parking spaces near the Donley Street entrance from the original design for the purpose of meeting the spirit and intent of this standard.

Staff recommends that the Board, without objection from members of the Board, the petitioner, or the public, combine the public hearings for the three (3) variance petitions addressed herein. However, each respective variance petition must be considered and acted upon by the Board separately.

STAFF RECOMMENDATION:

The Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Again, each respective variance petition must be considered and acted upon by the Board separately.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Attachments: Applications and drawings.

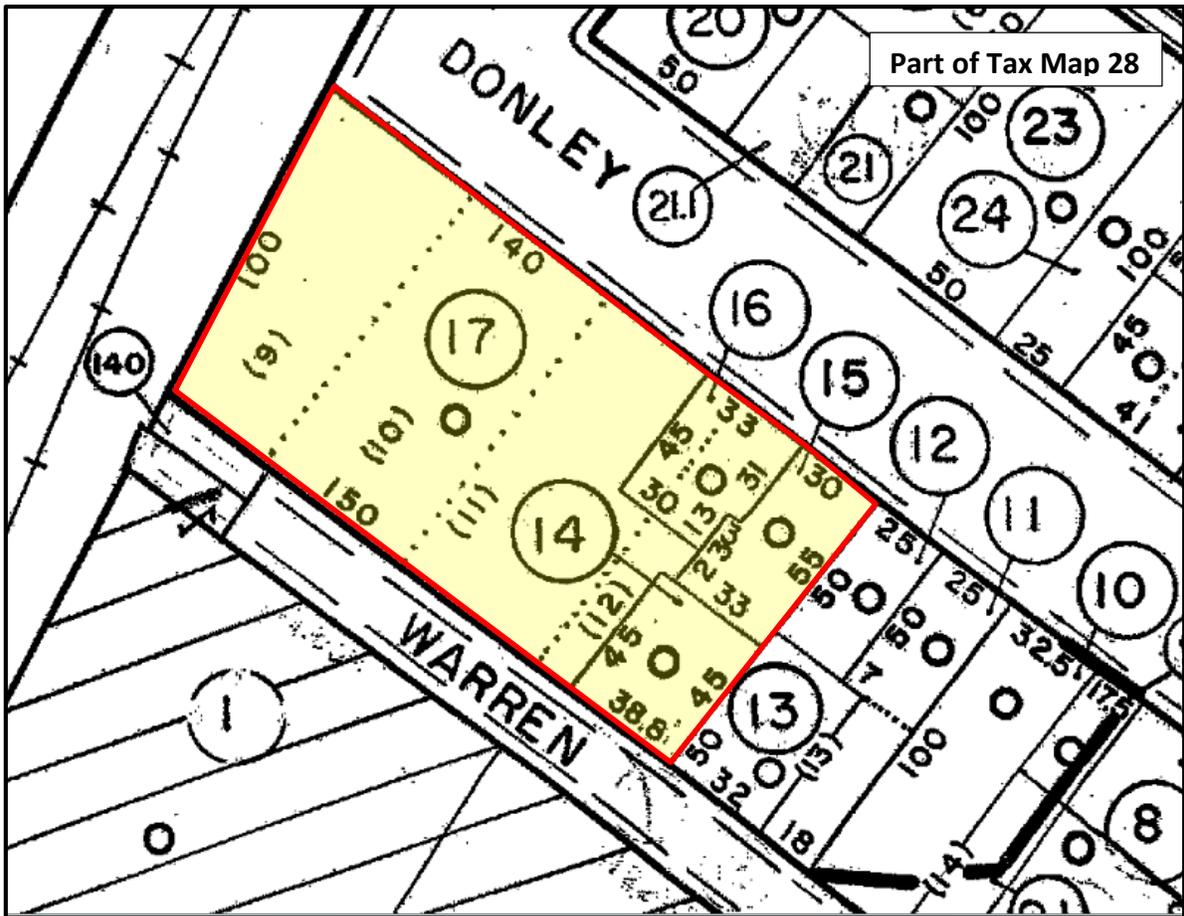
Planning Department

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STAFF REPORT ADDENDUM A

V15-54 thru V15-56 / Bocci, LLC / 48 Donley Street





STAFF REPORT ADDENDUM B

V15-54 thru V15-56 / Bocci, LLC / 48 Donley Street

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

Case No. V15-56 Curb Cuts

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed curb cut will serve two (2) adjoining facilities, which include access to the proposed parking lot and access to the existing garbage enclosure. The sidewalk will be maintained as a pedestrian first sidewalk design (~~Which is also similar to the design~~ used at the Spruce Street Farmers Market) Place Pavilion.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The location of the existing garbage enclosure to the proposed curb cut creates a need for longer curb cut and cannot be separated given limited space available to serve both the parking lot facility and the existing garbage enclosure facility.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

It will allow for a less confusing entrance to this lot and the existing garbage enclosure.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

~~The use of a pedestrian first sidewalk (Which is also used at the Spruce Street Farmers Market Shelter).~~ The longer curb cut will provide safe and efficient access to both the parking lot facility and the existing garbage enclosure facility

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The addition of landscaping at the entrance is provided for the intent to be matched. Any future building on the adjacent lot would eliminate any planting placed in the ~~rear- side~~ yard area of this property.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

To create a functioning parking area with the desired number of parking spaces, the entire lot, up to the property line, ~~were~~ appears to be needed given minimum parking space and drive aisle dimension standards. The dimensional constraints of the site do not allow for additional landscaping at the ~~rear- side~~ yard area.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

~~To create a functioning parking area, the entire lot, up to the property line, were needed.~~ The variance relief will allow the safe dimensions necessary for the parking layout given the petitioner's desired number of parking spaces.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

~~As we removed two parking spot from the original proposed 12 spots, we used the~~ By reducing the number of proposed parking spaces from 12 spaces to 10 spaces, the newly gained space was programmed to increase the planting buffer areas and added additional screening at the entrance and exit of the proposed parking layout in an attempt to maintain further the intent of the ordinance.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The location of this parking spot creates a very small portion of its dimension within the 20 foot setback. The potential conflict intended to be addressed by this standard appears to be mitigated at the Warren Street driveway entrance by the proposed one-way parking lot layout. Additionally, the petitioner has eliminated two (2) parking spaces near the Donley Street from the original design for the purpose of meeting the spirit and intent of this standard. Only a small portion of the parking space closest to Donley Street is closer than 20 feet from the adjoining parking lot crosswalk and the petitioner has created an accessible space at said location in an area void of accessible parking spaces.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The minimum 20 foot setback from pedestrian sidewalks for parking spot. The dimensions and geometry of the parking lot area along with the existing garbage enclosure near the proposed Donley Street entrance, the existing natural gas meter near the proposed Warren Street exit, and minimum dimensions standards for the parking spaces and the drive aisle appear to significantly reduce parking lot layout design options to achieve the petitioner's desired number of parking spaces.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

It will prevent the removal of an addition parking spot from an already limited parking area.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The impact felt by the variance will be at the farthest limits of a 20 foot setback from a sidewalk along Donley Street. The one (1) space that slightly encroaches into the 20 foot setback standard near the Donley Street sidewalk appears to have the benefit of using the apron in front of the existing garbage enclosure for back-out movement. Additionally, sight lines for both pedestrians and motorists do not appear to be obstructed by the Marina Tower building or its appurtenances. The potential conflict intended to be addressed by this standard appears to be mitigated at the Warren Street driveway entrance by the proposed one-way parking lot layout.



City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V15-56
RECEIVED:	

OK 89418

Fee: \$75

(PLEASE TYPE OR PRINT IN BLACK INK)

I. APPLICANT		Name:	Bocci LLC.		
Mailing Address:	Street	48 Donley Street		Phone:	304-292-0680
	City	State	Zip	Mobile:	
				Email:	greg@marchwestin.com
II. PROPERTY		Street Address:	48 Donley Street		
Owner:	Bocci LLC.			Zoning:	B-4
Mailing Address:	Street	48 Donley Street		Tax Map No:	28
	City	State	Zip	Parcel No:	17
				Phone:	
III. NARRATIVE		Please describe the nature and extent of your variance request(s).			
<p>Variance to the maximum length of curb cut allowed (22'-0").</p> <p><i>Article 1351.01(D)</i></p>					
V. ATTEST					
<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 Development Services 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>					
Raymond G. Eddy				08/17/2015	
Type/Print Name of Applicant/Agent		Signature of Applicant/Agent		Date	

PAID
PAID
 AUG 28 2015
 BY: _____

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.



City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE table with CASE NO. V15-56 and RECEIVED:

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)

Parking lot.

- Structure Characteristics (complete only those that apply)
Total number of buildings: Gross floor area of each building:
Estimated number of employees: No. of dwelling units: 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



City of Morgantown, West Virginia

**APPLICATION FOR
VARIANCE PETITION**

OFFICE USE	
CASE NO.	V15-56
RECEIVED:	

VII. FINDINGS OF FACT

COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.

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. The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The sidewalk will be maintained as a pedestrian sidewalk (Which is also used at the Spruce Street farmers Market).

2. The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

Location of the existing garbage enclosure to the proposed curb cut creates a need for a longer curb cut.



City of Morgantown, West Virginia

**APPLICATION FOR
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OFFICE USE	
CASE NO.	V15-56
RECEIVED:	

VII. FINDINGS OF FACT	COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.
3. The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:	It will allow for a less confusing entrance to this lot and the garbage enclosure.
4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:	The use of a pedestrian first sidewalk (Which is also used at the Spruce Street Farmers Market Shelter).



City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V15-54
RECEIVED:	

CK 89418

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

I. APPLICANT		Name:	Bocci LLC.		
Mailing Address:	Street	48 Donley Street		Phone:	304-292-0680
	City	State	Zip	Mobile:	
				Email:	greg@marchwestin.com

II. PROPERTY		Street Address:	48 Donley Street		
Owner:	Bocci LLC.			Zoning:	B-4
Mailing Address:	Street	48 Donley Street		Tax Map No:	28
	City	State	Zip	Parcel No:	17
				Phone:	

III. NARRATIVE	Please describe the nature and extent of your variance request(s).
Required landscaping of 4 feet around the side-yard and rear-yard around parking lot of more than four spots.	
<i>Article 1367.08(B)(1)</i>	

V. ATTEST		
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 Development Services 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.		
Raymond G. Eddy		08/17/2015
Type/Print Name of Applicant/Agent	Signature of Applicant/Agent	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.



City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V15-54
RECEIVED:	

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)

Parking lot.

Structure Characteristics (complete only those that apply)

Total number of buildings: _____ Gross floor area of each building: _____

Estimated number of employees: _____ No. of dwelling units: _____ 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



City of Morgantown, West Virginia

**APPLICATION FOR
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VII. FINDINGS OF FACT	COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.
<p>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.</p>	
<p>1. The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:</p> <p>The addition of landscaping at the entrance is provided for the intent to be matched. Any future building on the adjacent lot would eliminate any planting placed in the rear-yard area of this property.</p>	
<p>2. The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:</p> <p>To create a functioning parking area, the entire lot, up to property line, were needed. The dimensional constraints of the site do not allow for additional landscaping at the rear-yard area.</p>	



City of Morgantown, West Virginia

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VII. FINDINGS OF FACT

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3. The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

To create a functioning parking area, the entire lot, up to property line, were needed. The variance relief will allow the safe dimension necessary for the parking layout.

4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

As we removed two parking spot from the original proposed 12 spots, we used the newly gained space to increase the planting areas and added additional screen at the entrance and exit of the propose parking layout in an attempt to maintain the intent of the ordinance.



City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	115-55
RECEIVED:	

OK 8/4/15

Fee: \$75

(PLEASE TYPE OR PRINT IN BLACK INK)

I. APPLICANT		Name:	Bocci LLC.		
Mailing Address:	Street	48 Donley Street		Phone:	304-292-0680
	City	State	Zip	Mobile:	
					Email:

II. PROPERTY		Street Address:	48 Donley Street			
Owner:	Bocci LLC.				Zoning:	B-4
Mailing Address:	Street	48 Donley Street		Tax Map No:	28	
	City	State	Zip	Parcel No:	17	
					Phone:	

III. NARRATIVE	Please describe the nature and extent of your variance request(s).
Variance 01 will be to give setback relief to a parking spot within the minimum 20 setback of a pedestrian sidewalk.	
<i>Article 1351.01(c)(2)</i>	

V. ATTEST		
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 Development Services 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.		
Raymond G. Eddy		08/17/2015
Type/Print Name of Applicant/Agent	Signature of Applicant/Agent	Date

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APPLICATION FOR VARIANCE PETITION

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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)
- Parking lot.

- Structure Characteristics (complete only those that apply)

Total number of buildings: _____ Gross floor area of each building: _____

Estimated number of employees: _____ No. of dwelling units: _____ 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



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VII. FINDINGS OF FACT

COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.

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. The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The location of this parking spot creates a very small portion of its dimension within the 20 foot setback.

2. The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The minimum 20 foot setback from pedestrian sidewalks for parking spot.



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VII. FINDINGS OF FACT	COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.
	<p>3. The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because: It will prevent the removal of an addition parking spot from an already limited parking area.</p>
	<p>4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because: The impact felt by the variance will be at the farthest limits of a 20 foot setback from a sidewalk.</p>

