



MORGANTOWN BOARD OF ZONING APPEALS

July 20, 2016
6:30 PM
City Council Chambers

Board Members:

Bill Burton,
Chair

George Papandreas,
Vice-Chair

Linda Herbst

Jim Shaffer

Colin Wattleworth

COMBINED STAFF REPORT

CASE NO: V16-17 and V16-18 / Raphael Dodrill / 451 Legion Street

REQUEST and LOCATION:

Request by Raphael Dodrill for variance relief from Article 1331.08 as it relates to the minimum setback standard for an accessory structure and from Article 1333.05 as it relates to minimum setback standards for an uncovered stairs/landings/porches at 451 Legion Street.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 7, Parcel 37; R-1, Single-Family Residential District

SURROUNDING ZONING:

R-1, Single-Family Residential District

BACKGROUND and ANALYSIS:

The petitioner seeks to construct an accessory storage shed structure on the rear left (northwest) corner of the property, and a deck on the rear right (northeast) corner of the existing residence located at 451 Legion Drive. Addendum A of this report illustrates the location of the subject site.

Case No. V16-17 Minimum setback standard for an accessory structure

Article 1331.08 provides a minimum side and rear setback requirement of five (5) feet for accessory structures. The proposed side setback of the storage shed is two (2) feet, which requires a **three (3) foot variance** from both side and rear setback standards.

Case No. V16-18 Minimum rear and side yard setback encroachment

Article 1333.05 provides a front, side, and rear yard setback requirement of three (3) feet for stairs/landings/porches in the R-1 District. The proposed side setback of the stairs/landing/porch will be zero (0) feet, which requires a **three (3) foot variance**, and the proposed rear setback of the stairs/landing/porch will be one (1) foot, which requires a **two (2) foot variance**.

Staff recommends that the Board, without objection from members of the Board, the petitioner, or the public, combine the public hearings for the two (2) variance petitions addressed herein. However, each respective petition must be considered and acted upon by the Board separately.

A letter of opposition dated 05 JUL 2016, attached hereto, was submitted to the Planning Office by Mr. Ray Kesler of 457 Kiwanis Avenue.

Development Services

Christopher Fletcher, AICP
Director

John Whitmore, AICP
Planner III

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 requests meet the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. If the Board disagrees with the petitioner's "Findings of Fact" and determines one or both of the proposed requests do not meet the standard criteria for a variance, then the Board must state findings of fact and conclusions of law on which it bases its decision(s) to deny the subject variance petition(s). [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Again, each respective variance petition must be considered and acted upon by the Board separately.

Addendum B of this report restates the petitioner's "Findings of Fact" provided in the subject variance applications. No recommendations are submitted concerning the petitioner's "Findings of Fact" responses or whether or not variance relief should be granted.

Enclosures: Application and accompanying exhibits

Development Services

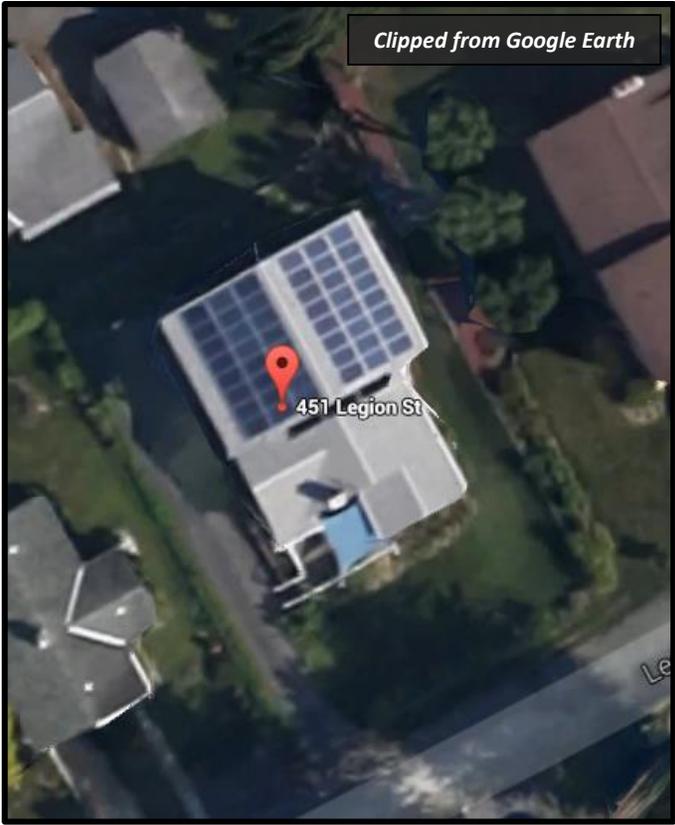
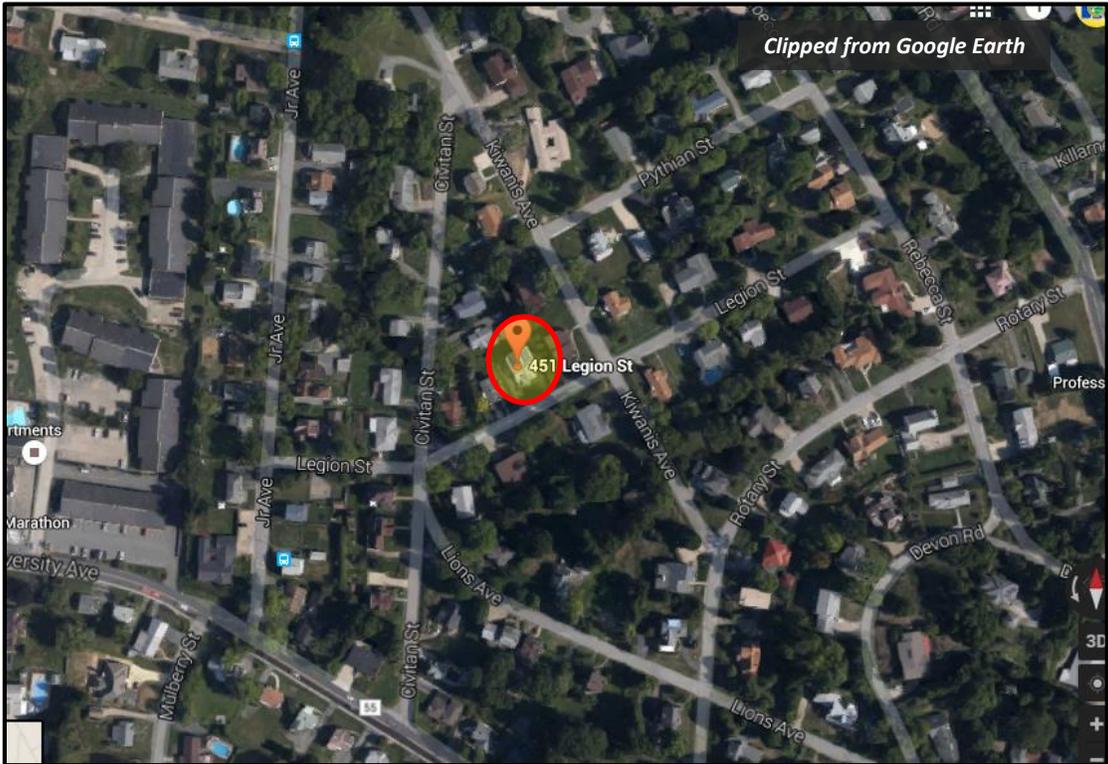
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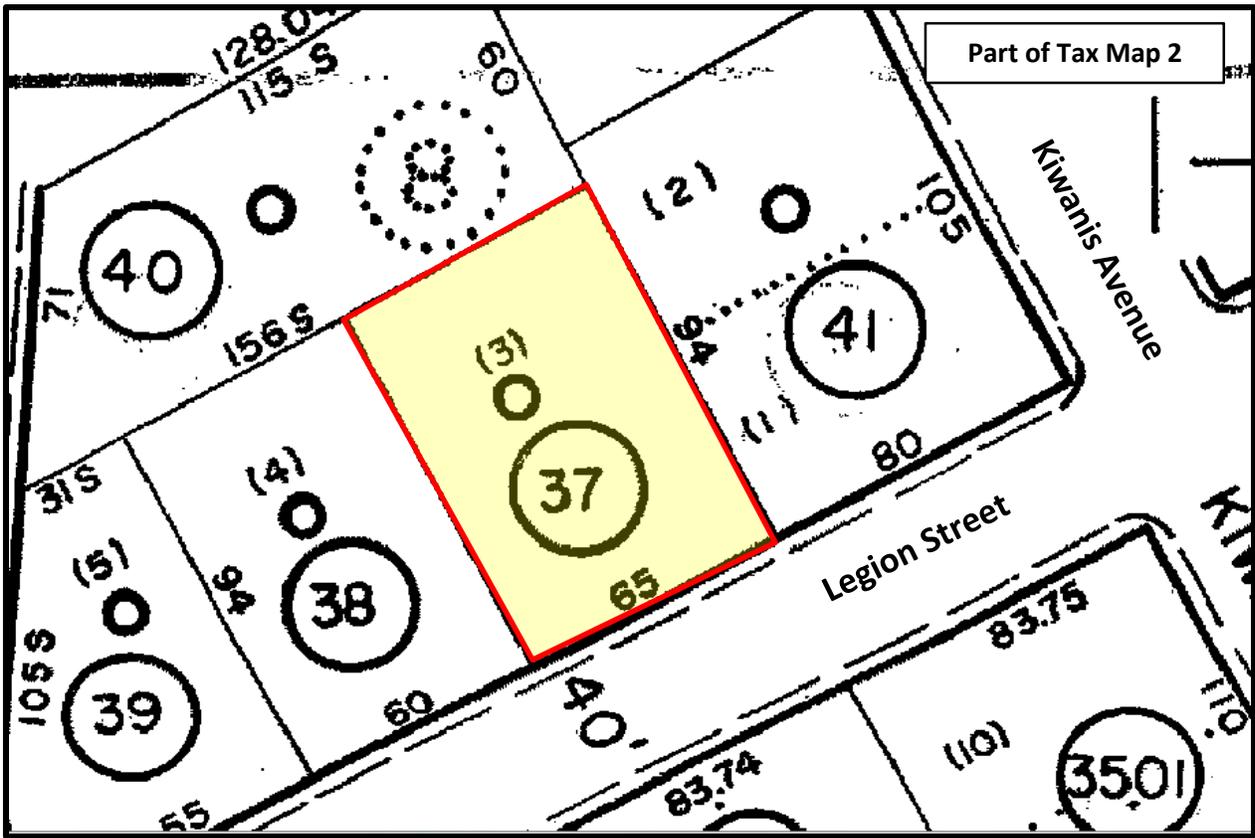
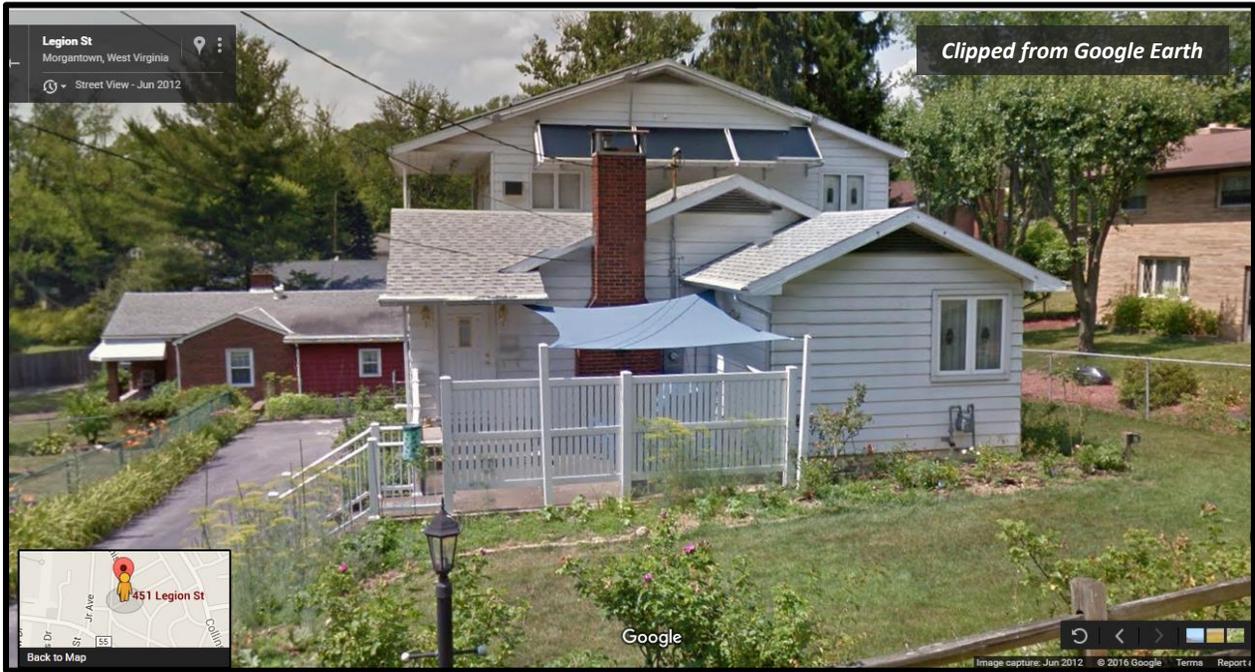
Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431

STAFF REPORT ADDENDUM A
V16-17 & V16-18 / Raphael Dodrill / 451 Legion Street



STAFF REPORT ADDENDUM A
V16-17 & V16-18 / Raphael Dodrill / 451 Legion Street



STAFF REPORT ADDENDUM B

V16-17 & V16-18 / Raphael Dodrill / 451 Legion Street

The following restates the petitioner's responses to the Findings of Fact portion of the variance application. No revisions are recommended by Staff.

V16-17 Minimum Setback for an Accessory Dwelling

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 manufactured vinyl shed would be at the rear of the property and no detract from the residential appearance of the property. Also, the adjacent properties are bounded by fences so a storage shed would not impede the residents from utilizing their properties.

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 existing driveway ends 9 feet from the rear property line and this space is necessary for pulling in/out of the garage. A variance to erect a storage shed that encroaches into the 5-foot setback would provide valuable storage for outdoor power equipment without hindering the ability to use the garage. Also, the house was constructed around 1943 and the existing setbacks do not conform to the current R-1 zoning ordinances. The existing rear setback of the house is 14.5 feet while 1333.04(4) of the planning code specifies a minimum 25-foot rear setback. This would prevent erecting a shed behind the house while maintaining the 5-foot setback and a reasonable clearance between the house and a shed.

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

A variance allowing the storage shed to be erected within the 5-foot rear/side setbacks for accessory structures would maintain the usability of the driveway. It will also allow better use of the garage as the outdoor power equipment is currently stored in the back of the 2 car garage and it is necessary to move one of the vehicles in order to access the equipment.

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

The storage shed would not detract from the residential nature/use of the property. Also, the fact that the existing rear setback of the house is 10.5 feet less than specified by current R-1 zoning ordinances.

V16-18 Minimum Setback Standard for Stairs/Landings/Porches

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 deck will be about 1-foot above grade and surrounded by a privacy fence that conforms to 1331.09(B). As such the appearance from adjacent properties will be the same as if only a fence were present.

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 house was constructed around 1943 and the existing setbacks do not conform to the current R-1 zoning ordinances. The existing rear and side setbacks of the house are 14.5 feet and 9 feet respectively while 1333.04 of the planning code specifies a minimum 25-foot rear and 10-foot side setbacks. Since a 3-foot setback is required for a deck and a hot tub is commonly 7.5 feet X 7.5 feet, this would only allow a 2-foot path around the perimeter of the hot tub. A variance relief would provide additional space making the deck more usable.

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

The proposed deck will be used for entertaining guests and be the location of a hot tub, grill, and picnic table. Due to the limited space behind the house, a variance would allow for an acceptable amount of space to move around the desired hot tub and table.

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

The deck would be used for entertaining guests as is common in a residential setting. The existing rear/side setbacks would prevent the construction of a deck that meets the current zoning ordinance while allowing sufficient space for a hot tub and a picnic table and grill for entertaining purposes.



City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V116-17
RECEIVED:	

(PLEASE TYPE OR PRINT IN BLACK INK)

VISA Fee: \$75

PAID JUN 03 2016

I. APPLICANT		Name: Raphael Dodrill	
Mailing Address:	451 Legion St		Phone: (304) 599-9410
	Morgantown, WV 26505		Mobile: (304) 685-3910
	City State Zip		Email: radodrill@gmail.com
II. PROPERTY		Street Address: 451 Legion St.	
Owner:	William H Dodrill Family Trust		Zoning: R-1
Mailing Address:	451 Legion St.		Tax Map No: 7
	Morgantown, WV 26505		Parcel No: 37
	City State Zip		Phone: (304) 599-9410
III. NARRATIVE		Please describe the nature and extent of your variance request(s).	
<p>Erect a 8' x 15' vinyl storage shed at the foot of the driveway, which would encroach into the required 5' side and rear offsets for an accessory structure as specified in 1331.08(A)(3). The existing driveway is about 6 in from the side property line and ends approximately 9 ft from the rear property line. A variance relief is requested to position the shed 2' from the side and rear property lines such that it does not interfere with maneuvering vehicles in/out of the garage.</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>			
Raphael Dodrill			06/03/2016
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.

V16-17



City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V16-17
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
 - Two-Family Dwelling
- Townhouse 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: _____ No. of dwelling units: _____ No. of bedrooms: _____

Additional structure-related details: _____

Additional Information (as required by Staff):

A site plan showing proposed location of the 8' x 15' storage shed is attached to application.

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



**APPLICATION FOR
VARIANCE PETITION**

OFFICE USE	
CASE NO.	V16-17
RECEIVED:	

VII. FINDINGS OF FACT	COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.
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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 manufactured vinyl shed would be at the rear of the property and not detract from the residential appearance of the property. Also, the adjacent properties are bounded by fences so a storage shed would not impede the residents from utilizing their properties.

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 existing driveway ends 9' from the rear property line and this space is necessary for pulling in/out of the garage. A variance to erect a storage shed that encroaches into the 5' setback would provide valuable storage for outdoor power equipment without hindering the ability to use the garage.

Also, the house was constructed around 1943 and the existing setbacks do not conform to the current R1 zoning ordinances. The existing rear setback of the house is 14.5 ft while 1333.04 (4) of the planning code specifies a minimum 25' rear setback. This would prevent erecting a shed behind the house while maintaining the 5' setback and a reasonable clearance between the house and a shed.

V16-17



City of Morgantown, West Virginia

**APPLICATION FOR
VARIANCE PETITION**

OFFICE USE	
CASE NO.	V16-17
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:

A variance allowing the storage shed to be erected within the 5' rear/side setbacks for accessory structures would maintain the usability of the driveway. It will also allow better use of the garage as the outdoor power equipment is currently stored in the back of the 2 car garage and it is necessary to move one of the vehicles in order to access the equipment.

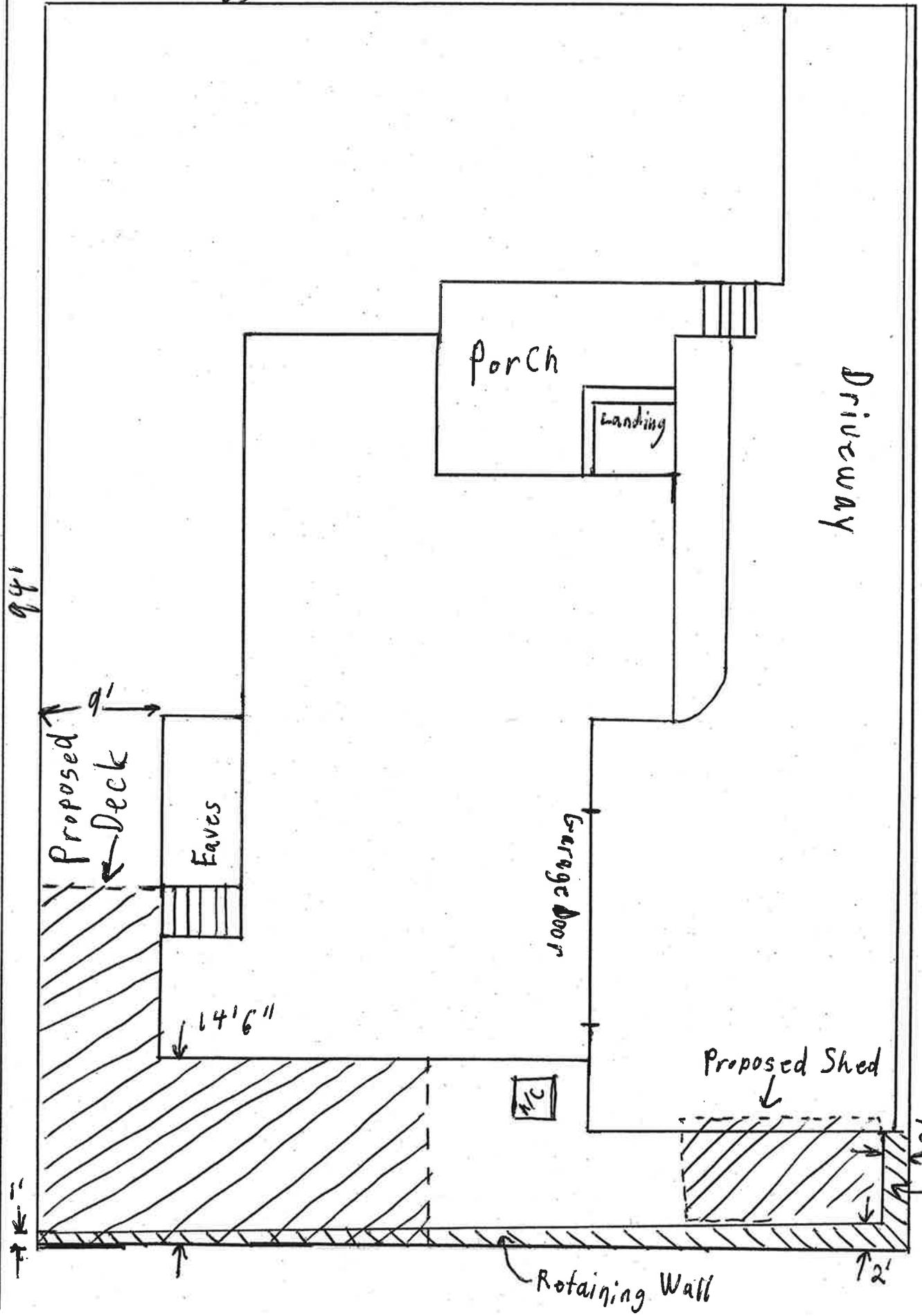
4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The storage shed would not detract from the residential nature/use of the property. Also, the fact that the existing rear setback of the house is 10.5 ft less than specified by current ordinances would prevent placing a storage shed in a location that would conform to the current R1 zoning ordinances.

Map 7 Lot 37 1451 Legion St

Legion St.
65'

V16-17



Porch

Landing

Driveway

Proposed Deck

Eaves

Garage Door

Proposed Shed

A/C

Retaining Wall

Retaining Wall

94'

14'6"

12'

3'

V16-17



Ville-17





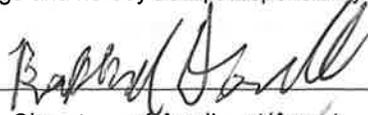
City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V116-18
RECEIVED:	

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

I. APPLICANT		Name:	Raphael Dodrill	
Mailing Address:	451 Legion St		Phone:	(304) 599-9410
	Street	Morgantown, WV 26505	Mobile:	(304) 685-3910
	City	State	Zip	Email: radodrill@gmail.com
II. PROPERTY		Street Address:	451 Legion St.	
Owner:	William H Dodrill Family Trust		Zoning:	R-1
Mailing Address:	451 Legion St.		Tax Map No:	7
	Street	Morgantown, WV 26505	Parcel No:	37
	City	State	Zip	Phone: (304) 599-9410
III. NARRATIVE		Please describe the nature and extent of your variance request(s).		
<p>Construct a deck surrounded by a privacy fence located at the rear corner of the house and about 1' above grade level. The deck will be the intended location of a hot tub and used for entertaining guests. Since the existing rear setback is 14.5 ft and side setback is 9 ft, a variance relief is requested to allow the deck to extend to the rear and side property lines.</p> <p style="text-align: center;">PAID PAID JUN 15 2016 PAID</p>				
V. ATTEST		BY: _____		
<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>				
Raphael Dodrill				06/03/2016
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.

V16-18



City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V16-18
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)

- 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):

A site plan showing proposed location of the deck is attached to application.

- 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



APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V10-18
RECEIVED:	

VII. FINDINGS OF FACT	COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.
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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 deck will be about 1' above grade and surrounded by a privacy fence that conforms to 1331.09(B). As such the appearance from adjacent properties will be the same as if only a fence were present.

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 house was constructed around 1943 and the existing setbacks do not conform to the current R1 zoning ordinances. The existing rear and side setbacks of the house are 14.5 ft and 9 ft respectively while 1333.04 of the planning code specifies a minimum 25' rear and 10' side setbacks. Since a 3 ft setback is required for a deck and a hot tub is commonly 7.5 ft x 7.5 ft, this would only allow a 2' path around the perimeter of the hot tub. A variance relief would provide additional space making the deck more usable.

V16-18



City of Morgantown, West Virginia

**APPLICATION FOR
VARIANCE PETITION**

OFFICE USE	
CASE NO.	V16-18
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:

The proposed deck will be used for entertaining guests and be the location of a hot tub, grill, and picnic table. Due to the limited space behind the house, a variance would allow for an acceptable amount of space to move around the desired hot tub and table.

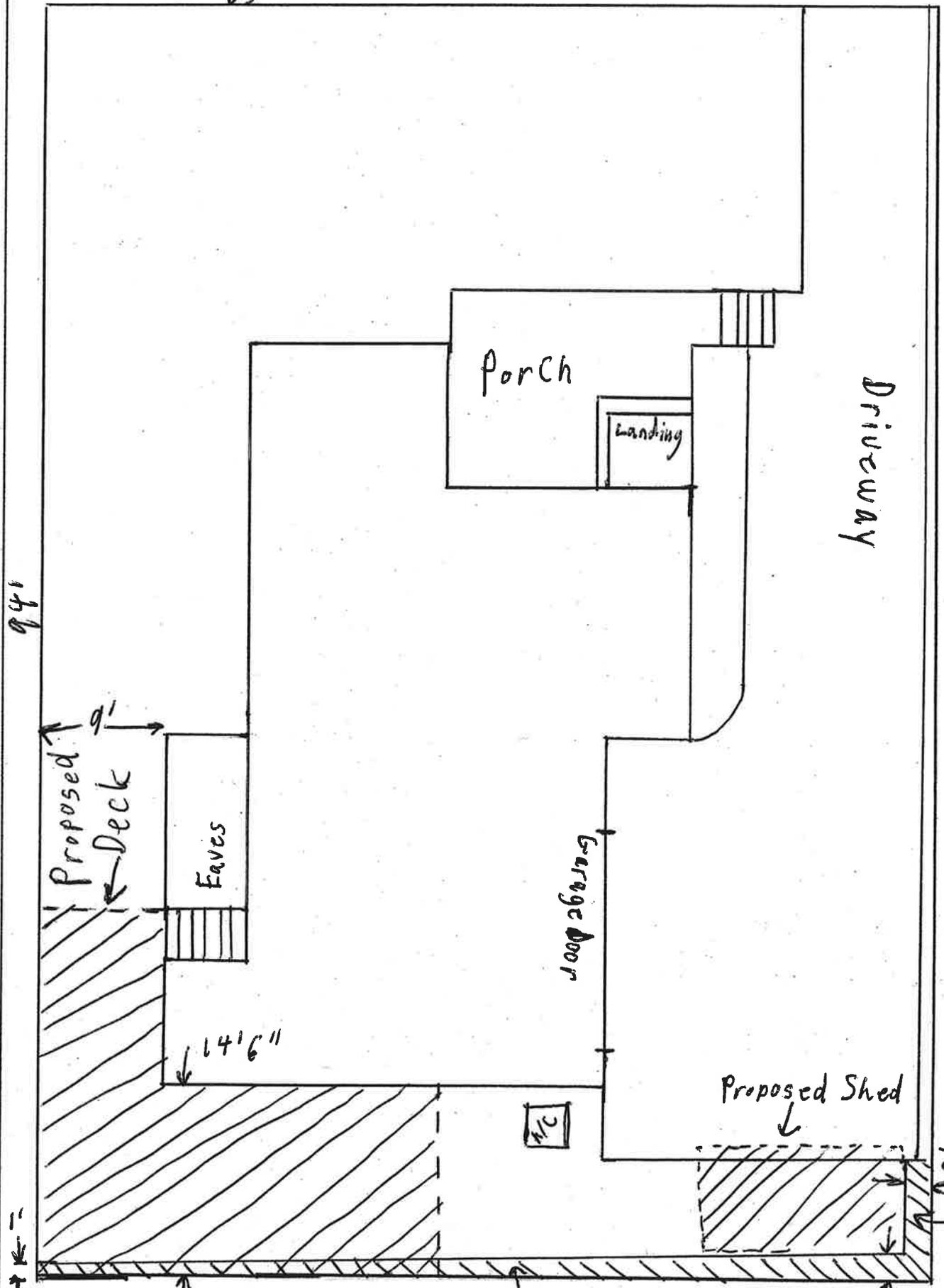
4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The deck would be used for entertaining guests as is common in a residential setting. The existing rear/side setbacks would prevent the construction of a deck that meets the current zoning ordinance while allowing sufficient space for a hot tub and a picnic table and grill for entertaining purposes.

Map 7 Lot 37 1451 Legion St

V110-18

Legion St.
65'



94'

Proposed Deck
9'

Eaves

14'6"

Porch

Landing

Driveway

Garage Door

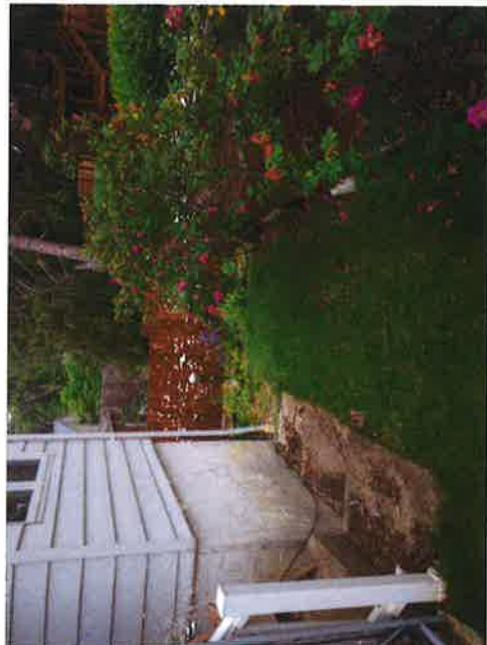
Proposed Shed

Retaining Wall

Retaining Wall

12'

V116-18



July 5, 2016
THE CITY OF MORGANTOWN
The Board of Zoning Appeals
389 Spruce Street
Morgantown, WV 265095

CITY OF MORGANTOWN
PLANNING DEPARTMENT

JUL -7 2016

RECEIVED

To: Stacy Hollar, Executive Secretary

This is a response to your letter concerning a zoning variance submitted by Raphael Dodril for property situated at 451 Legion Street.

1. Is the petitioner the owner of the property?
2. The purpose of set back requirements was originally included to avoid rowhouse effect prevalent in large cities. The 451 property currently has two solar electric converters feeding into the grid system and a third converter attached onto the side of the house. A commercial wood hauling vehicle has been parked on the street for about a year and what appears to be a 500 gallon tank set in the front yard. Excavation work for the building addition has already been complete.
3. I believe that further changes at 451 would materially reduce the value of our properties.

Thank you for your service and consideration,

Ray M. Kesler


457 Kiwanis Avenue
Morgantown, WV 26505