



**DEVELOPMENT  
SERVICES  
DEPARTMENT**

# The City of Morgantown

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August 18, 2016

Harry and Margaret Rubenstein  
308 Grand Street  
Morgantown, WV 26501

**RE: V16-22 / Rubenstein / 308 Grand Street  
Tax Map 36, Parcel 52**

Dear Mr. Rubenstein:

This letter is to notify you of the decisions made by the Board of Zoning Appeals concerning the above referenced variance petition relating to encroach into the minimum side and rear setback standards for an accessory structure at 308 Grand Street. The decisions are as follows:

**Board of Zoning Appeals, August 17, 2016:**

1. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
2. The Board granted a five (5) foot variance from the side setback standard for a carport as requested with the following conditions:
  - a. Any and all encroachments of the carport onto the adjoining property are to be mitigated.
  - b. The variance is only for the use of the proposed carport. Any modification of the carport to become a garage or other type of accessory structure, will require a separate variance petition to the Board of Zoning Appeals.
  - c. In the event that the carport is demolished, any placement of a new accessory structure in the carport's building foot print will require a variance petition to the Board of Zoning Appeals in accordance with the Planning and Zoning Code.

This decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

The above referenced approvals are set to expire in twelve (12) months unless it can be demonstrated that they have been activated as evidenced by permits, construction, or required licenses. This expiration deadline may be extended to eighteen (18) months upon prior written request of the Board.

Please note that building permits must be issued prior to the commencement of work for which the variance approvals was granted herein.

Should you have any questions or require further clarification, please contact the undersigned. We look forward to serving the development's planning and permitting needs.

Respectfully,

Stacy Hollar  
Executive Secretary

**ADDENDUM A – Approved Findings of Fact**  
**V16-22 / Rubenstein / 308 Grand Street**

**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:

There is a concrete driveway (off Edgewood Street) and car parking pad have been in place for many years; side and rear yard privacy fences have been in place for years and they appear to keep the concrete pad, car and carport hidden from public view. The carport as designed does not appear to negatively impact health, safety, or welfare, or the rights of adjacent property owners; provided, any and all encroachments onto the adjoining property are mitigated. Property owners will contain and collect all rainwater coming off carport roof so that it does not negatively impact neighbors or public right of way.

**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:

Property owner believes that the pre-existing concrete parking pad, upon which the carport is built, is a special condition or attribute justifying the granting of the requested side yard 5-foot setback variances. Property owners are not creating a new parking area on their realty. Property owners did not create the concrete pad in question; rather, it was in place when they purchased the realty.

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

Property owners will be parking on the rear of their property in the same location previous property owners have parked for decades.

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

The unique characteristics of the realty in question, which include an existing concrete parking pad and driveway which have been continuously utilized for owner parking of their vehicles, and the fact that the granting of the variances will simply allow the applicants to continue parking on the parking pad in question.