



MORGANTOWN BOARD OF ZONING APPEALS

August 17, 2016
6:30 PM
City Council Chambers

Board Members:

Bill Burton,
Chair
George Papandreas,
Vice Chair
Linda Herbst
Jim Shaffer
Colin Wattleworth

STAFF REPORT

CASE NO: V16-22 / Rubenstein / 308 Grand Street

REQUEST and LOCATION:

Request by Harry Rubenstein for variance relief from Article 1331 concerning a carport at 308 Grand Street.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 36, Parcel 52; R-1A, Single-Family Residential District

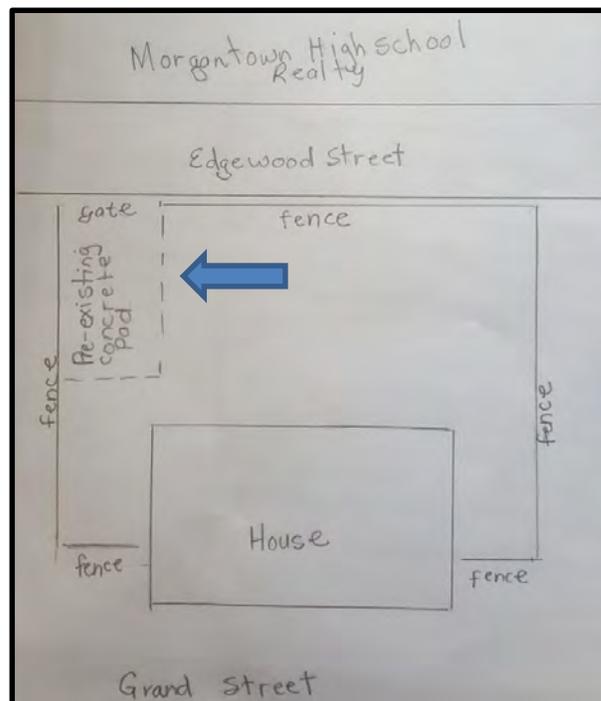
SURROUNDING ZONING:

R-1A, Single-Family Residential District

BACKGROUND and ANALYSIS:

The petitioner erected a detached accessory carport structure to the rear of the single-family dwelling located at 308 Grand Street. Construction of the carport was initiated prior to the issuance of a building permit. Addendum A of this report illustrates the location of the subject site.

The following graphic is clipped from the petitioner's application documents and shows the location of the driveway pad, over which the carport has been constructed.



Development Services

Christopher Fletcher, AICP
Director

John Whitmore, AICP
Planner III

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

August 17, 2016
6:30 PM
City Council Chambers

Board Members:

Bill Burton,
Chair

George Papandreas,
Vice Chair

Linda Herbst

Jim Shaffer

Colin Wattleworth

Article 1331.08(A)(3) provides a minimum side yard setback of five (5) feet for the accessory structure. The subject carport appears to have been constructed at the side property boundary shared with Parcel 51 of Tax Map 36, which requires variance relief of five (5) feet.

Additionally, the carport's roof eave appears to encroach over the side property boundary and into Parcel 51. It is the Planning Division's understanding that this encroachment will be corrected.

STAFF RECOMMENDATION:

It is the duty of the Board of Zoning Appeals to 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. If the Board disagrees with the petitioner's "Findings of Fact" and determines the proposed request does 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 to deny the subject variance petition. [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Addendum B of this report provides Staff recommended revisions to the petitioner's Findings of Fact responses (deleted matter struck through; new matter underlined). Staff recommended revisions serve only to remove narrative that is clearly inapplicable. Recommended revisions should not be considered or construed as supporting or opposing the merits of the petitioner's "Findings of Fact" responses.

No recommendation is submitted by Staff concerning whether or not variance relief should be granted. However, should the Board decide to grant variance relief as requested, Staff recommends a condition be included that any and all encroachments of the carport onto the adjoining property be mitigated.

Enclosures: Application and accompanying exhibits

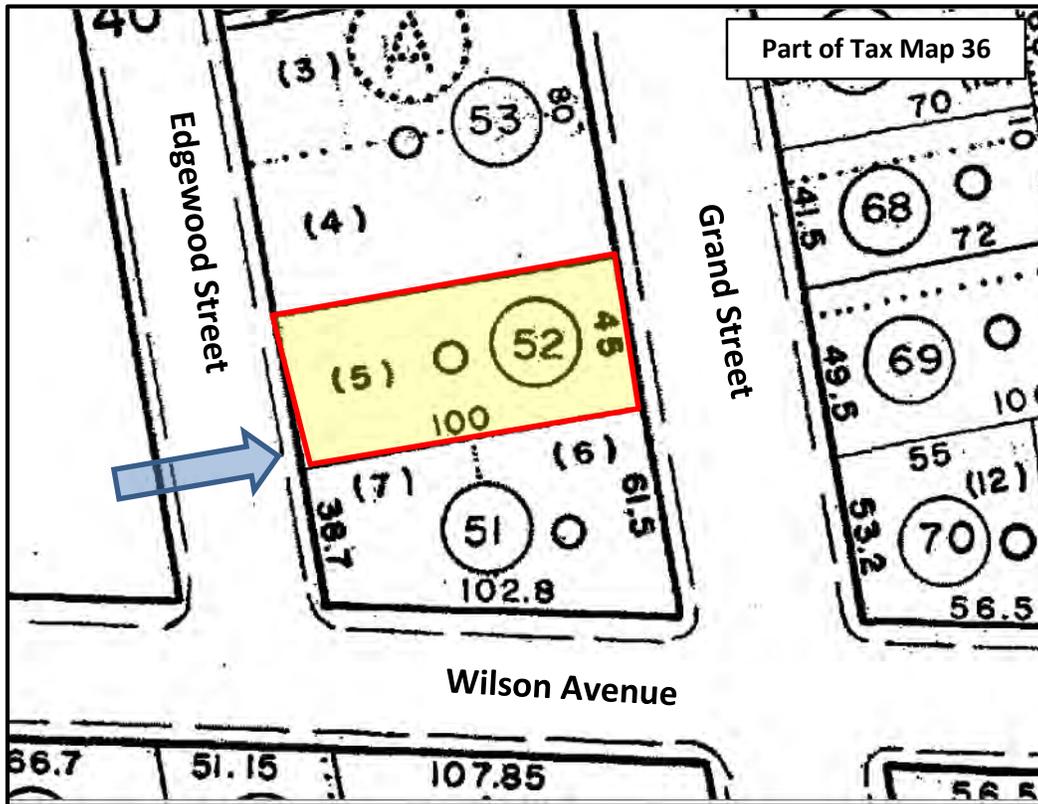
Development Services

Christopher Fletcher, AICP
Director

John Whitmore, AICP
Planner III

389 Spruce Street
Morgantown, WV 26505
304.284.7431

STAFF REPORT ADDENDUM A
V16-22 / Rubenstein / 308 Grand Street



STAFF REPORT ADDENDUM B
V16-22 / Rubenstein / 308 Grand Street

Staff recommends the following revisions to the petitioner’s Findings of Fact responses (deleted matter struck through; new matter underlined). Staff recommended revisions serve only to remove narrative that is clearly inapplicable. Recommended revisions should not be considered or construed as supporting or opposing the merits of the petitioner’s “Findings of Fact” responses.

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, many years; side and rear yard privacy fences have been in place for years and they ~~and~~ 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. ~~In fact, the adjacent property owners have complimented the quality and aesthetically pleasing design of the carport.~~ 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 ~~rear and side yard 5-foot setback~~ variances. Property owners are not creating a new parking area ~~or use~~ 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:

~~No new uses by property owners will result.~~ 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 ~~grand fathered~~ 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.



City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V16-22
RECEIVED:	

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

I. APPLICANT		Name: Harry M. ("Moe") Rubenstein and Margaret Janie Frist Rubenstein	
Mailing Address:	308 Grand Street	Phone:	
	Street Morgantown, WV 26501	Mobile: (304) 282-2834	
	City State Zip	Email:	
II. PROPERTY		Street Address: 308 Grand Street	
Owner:	Harry M. ("Moe") Rubenstein and Margaret Janie Frist Rubenstein	Zoning:	R-1A
Mailing Address:	308 Grand Street	Tax Map No:	36
	Street Morgantown, WV 26501	Parcel No:	52
	City State Zip	Phone:	(304) 282-2834
III. NARRATIVE		Please describe the nature and extent of your variance request(s).	
<p>Property owners hired contractor to build a carport on the footprint of an "existing concrete parking pad" on the rear of their realty. Concrete pad extends to both rear property line and side property line fences. City administration has informed property owners that they must seek variances from City's Zoning Ordinance, which requires 5 foot rear and side yard setbacks for structures. Property owners are requesting a variance of 5 foot in rear and also 5 foot on side variance.</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>			
Margaret Janie Frist Rubenstein		6/22/16	
Harry M. ("Moe") Rubenstein		6/22/16	
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.	V116-22
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: 1 - carport Gross floor area of each building: Carport = 12' x 26'

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

Additional structure-related details:

See Applicants' attached Exhibit.

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.	Vile-22
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:

Concrete driveway (off Edgewood Street) and car parking pad have been in place for many, many years; side and rear yard privacy fences have been in place for years and they tend to keep the concrete pad, car, and carport hidden from public view. The carport does not negatively impact health, safety, or welfare, or the rights of adjacent property owners. In fact, the adjacent property owners have complimented the quality and aesthetically pleasing design of the carport. 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.

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 rear and side yard 5 foot setback variances. Property owners are not creating a new parking area or use on their realty. Property owners did not create the concrete pad in question; rather, it was in place when they purchased the realty.



City of Morgantown, West Virginia

**APPLICATION FOR
VARIANCE PETITION**

OFFICE USE	
CASE NO.	V16-22
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:

No new uses by property owners will result. Property owners will be parking on the rear of their property in the same location previous property owners have parked for decades.

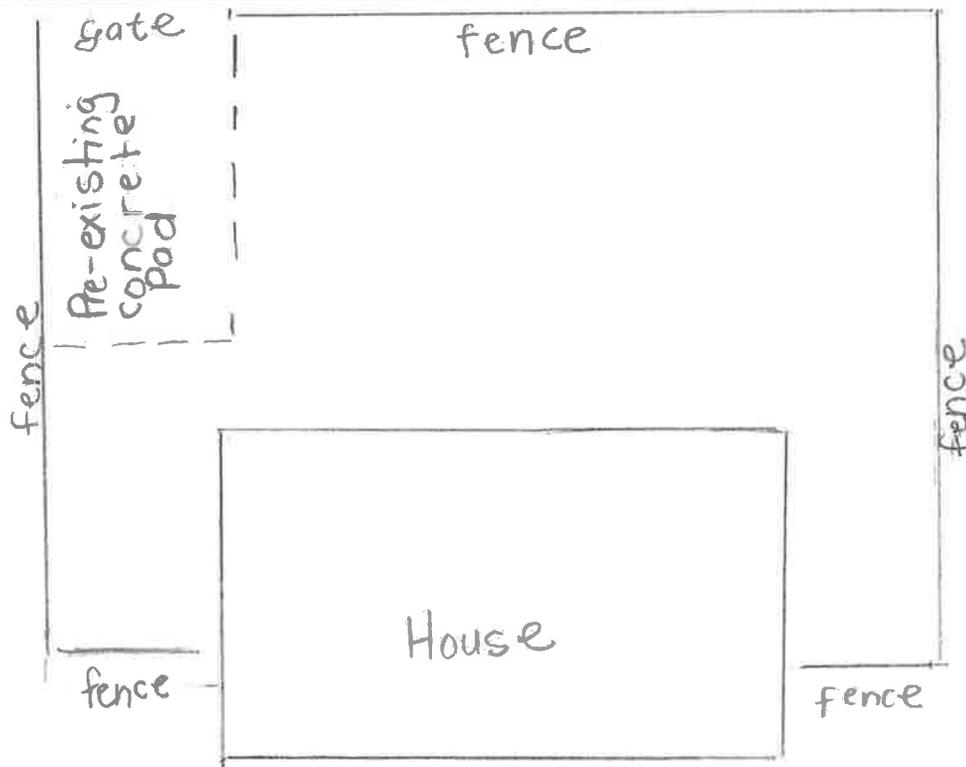
4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The unique characteristics of the realty in question; which include grand-fathered 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.

RUBENSTEIN REALTY
308 GRAND STREET
VARIANCE APPLICATION

Morgantown High School
Realty

Edgewood Street



Grand Street