



MORGANTOWN BOARD OF ZONING APPEALS

December 14, 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: V16-46 and V16-47 / Little Mar, LLC / 459-461 Inglewood Blvd.

REQUEST and LOCATION:

Request by Lisa Mardis of Project Management Services, on behalf of Little Mar, LLC, for variance relief from Articles 1339.04 and 1339.05 concerning property setbacks at 459-461 Inglewood Blvd.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 11, Parcel 135; R-3, Multi-Family Residential District

SURROUNDING ZONING:

R-3, Multi-Family Residential District

BACKGROUND and ANALYSIS:

The petitioner constructed a "Two-Family Dwelling" that does not conform to the required side setbacks for the principle structure or the setback for architectural features. Attached hereto is a letter dated 21 OCT 2016 to the petitioner identifying Planning and Zoning Code violations for which variance relief is now before the Board. Addendum A of this report illustrates the location of the subject site.

Case No. V16-46 Encroachment into minimum setback standard for architectural features

Article 1339.05(A)(2) provides a minimum setback requirement of three (3) feet for "uncovered stairs, landings and porches". Based on the as-built survey required by Staff, the setback of the front decks on the second level is 1.34 feet, which requires a **1.66-foot variance** from the architectural features setback standard.

Case No. V16-47 Encroachment into minimum side yard setback standard

Article 1339.04(A)(3) provides a minimum side yard setback requirement of three (5) feet for principal buildings in the R-3 Zoning District. Based on the as-built survey, the west side setback of the principal building, at its least distance, is 3.16 feet requiring a **1.84-foot variance**. The east side setback, at its least distance, is 4.11 feet requiring a **0.89-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.

Development Services

Christopher Fletcher, AICP
Director

John Whitmore, AICP
Planner III

389 Spruce Street
Morgantown, WV 26505
304.284.7431



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STAFF RECOMMENDATION:

It is the duty of the Board of Zoning Appeals to 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 to deny one or both of the subject variance petitions. [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

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

No recommendation is submitted by Staff concerning whether or not the petitioner's Findings of Fact should be amended. Further, no recommendation is submitted concerning whether or not variance relief should be granted by the Board as requested by the petitioner.

Enclosures: Application and accompanying exhibits

Development Services

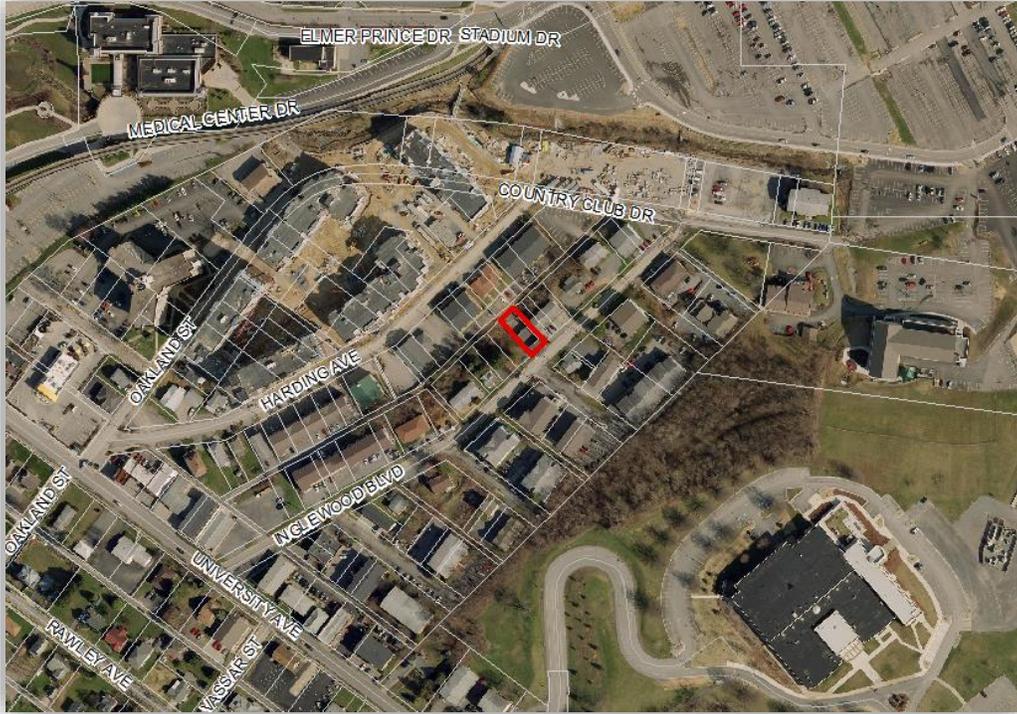
Christopher Fletcher, AICP
Director

John Whitmore, AICP
Planner III

389 Spruce Street
Morgantown, WV 26505
304.284.7431

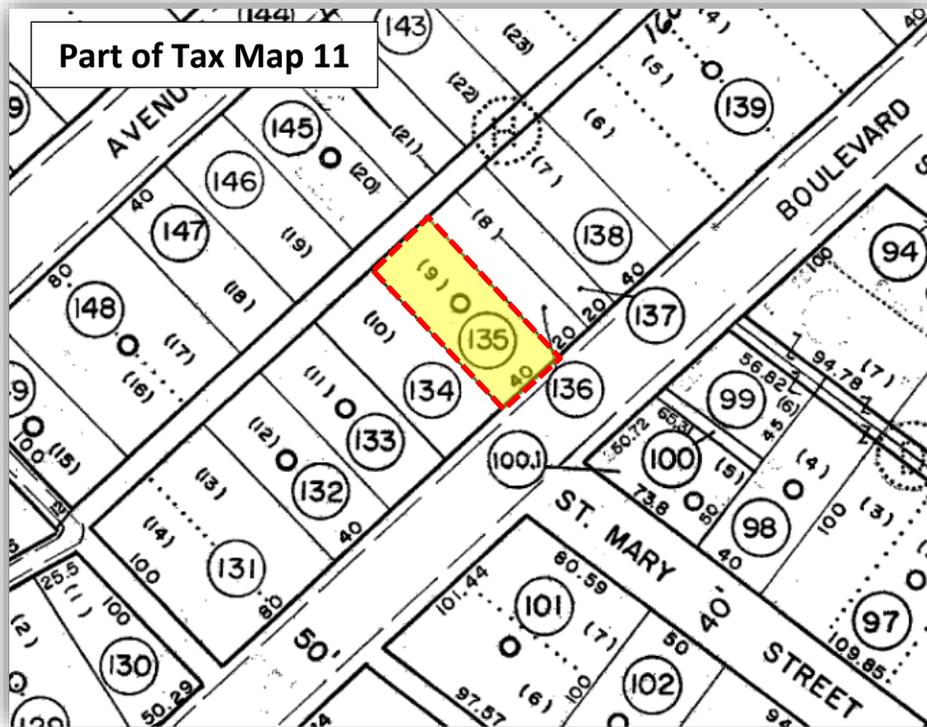
STAFF REPORT ADDENDUM A

V16-46 & V16-47 / Little Mar, LLC / 459-461 Inglewood Blvd.



STAFF REPORT ADDENDUM A

V16-46 & V16-47 / Little Mar, LLC / 459-461 Inglewood Blvd.





**DEVELOPMENT
SERVICES
DEPARTMENT**

The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7431 TDD (304) 284-7512
www.morgantownwv.gov

October 21, 2016

**CERTIFIED MAIL
7012 0470 0001 9378 4298**

Mottie Pavone
522 Blackstone Dr
Morgantown, WV 26508

**RE: 459 – 461 Inglewood Boulevard
Planning and Zoning Code Violations**

Mr. Pavone:

The purposes of this letter are to: 1) memorialize discussions concerning the development of the above referenced duplex related to Planning and Zoning Code compliance obligations; 2) notification of identified violations; and, 3) notification of requisite corrective actions.

Following site inspections requested for the issuance of a Certificate of Occupancy, the undersigned met with you, your attorney Bob Berryman and other City Officials at the subject site on 24 MAY 2016 to discuss changes in the construction of the duplex that were not included under the approved Building Permit 2015-00000054. Specifically, the footprint of the building was increased towards the rear property boundary, which altered the approved rear setback and lot coverage and raised concerns on whether on-site parking requirements could be met. Additionally, concerns were raised on whether the building's front setback was properly placed from the front property boundary rather than from the curb line located within the City's right-of-way.

It was agreed by all in attendance at the meeting on 24 MAY 2016 that an as-built survey prepared by a surveyor licensed in the State of West Virginia was necessary to determine whether or not the subject building was constructed as approved under the related building permit in compliance with the Planning and Zoning Code. You agreed to submit an as-built survey. It was also determined that a Certificate of Occupancy could not be issued until, at least, compliance with setback, lot coverage, and parking requirements could be determined and variance relief granted, if applicable.

Following repeated requests over four (4) months to submit the as-built survey, including a phone conversation between the undersigned and Mr. Berryman, Code Enforcement condemned the subject building on or about 07 OCT 2016, at least, for failure to comply. On 10 OCT 2016, the undersigned met with you at City Hall with other City Officials to again discuss requisite corrective actions including the submission of an as-built survey.

On 20 OCT 2016, an as-built survey dated "October 2016" and prepared by Paul Harbert, PS No. 862 was forwarded to the undersigned by the Code Enforcement Department.

The following identifies Planning and Zoning Code conformity observations and requisite corrective actions, as applicable.

1. Front Setback.

The submitted as-built survey illustrates a front setback of approximately 8.34 feet, excluding the labeled two-foot overhang and measured 5-foot deck. Section 1339.04(A)(1) provides a minimum front setback standard of ten (10) feet in the R-3 District. However, Section 1363.02(C)(1) provides, for residential uses, that, "The front setback shall vary by not more than 8 feet from the home(s) on either side of the lot. This requirement shall supersede the normal minimum and maximum front setbacks [standards]." Based on GIS spatial data, it appears the building addressed as 453 Inglewood Boulevard located to the southwest side of the subject duplex is located closer to the Inglewood Boulevard right-of-way boundary than the subject duplex. Therefore, it appears the as-built front setback for the subject duplex is within eight (8) feet of the front setback of 453 Inglewood Boulevard, which conforms to Section 1363.02(C)(1). No further action is required concerning the building's front setback.

However, Section 1339.05(A)(2) provides that, "Uncovered stairs, landings and porches shall not extend closer than three (3) feet from the property line." The setback of the deck at the front of the building is labeled as 1.34 feet from the front property boundary. **Variance** relief must be granted by the Board of Zoning Appeals OR said deck must either be removed or modified to conform to the subject setback standard thereby abating the encroachment violation.

2. Side Setback.

The submitted as-built survey illustrates labeled side setbacks for the northeast side as 4.11 feet and for the southwest side as 3.16 feet. Section 1339.04(A)(3) provides a minimum side setback standard of five (5) feet in the R-3 District. **Variance** relief must be granted by the Board of Zoning Appeals OR said side setback encroachment violations abated.

3. Rear Setback.

The submitted as-built survey illustrates a labeled rear setback of 25.11 feet. Section 1339.04(A)(4) provides a minimum side setback standard of twenty (20) feet in the R-3 District. It appears the as-built rear setback for the subject duplex conforms to Section 1339.04(A)(4). No further action is required concerning the building's front setback.

4. Lot Coverage.

Section 1339.03(C) provides a maximum lot coverage standard of sixty (60) percent in the R-3 District. The submitted as-built survey illustrates the dimensions of the subject duplex as 31.96 feet wide by 68.06 feet deep or 2,175.2 square feet. The as-built survey also illustrates the dimensions of Parcel 135 of Tax Map 11 as 40.00 feet wide by 100.00 feet deep or 4,000 square feet. The resultant lot coverage is 54.4%, which conforms to the R-3 District maximum lot coverage standard. No further action is required concerning the building's front setback.

5. Parking.

Table 1365.04.01 provides a minimum parking requirement of 1.5 parking spaces per two-family (duplex) dwelling unit. The submitted as-built survey illustrates paved parking at the front of the subject duplex as being located entirely within the City's Inglewood Boulevard right-of-way. Section 1365.04(F) provides that, "No part of an alley or street or

other public right-of-way shall be used to meet the minimum parking requirements of this code..." As such, said parking area may not be counted toward meeting the development's minimum on-site parking obligation. The undersigned defers to the City Engineer on whether or not pavement within the City's right-of-way should be removed accordingly; provided, at least six (6) feet of concrete width is left along the curb establishing a sidewalk as required under Section 1339.07(F).

Each of the two (2) dwelling units include integral basement one-car garages. The rear setback of 25.11 feet noted under item No. 3 above provides sufficient depth for at least two (2) additional parking stalls between the rear face of the subject building and the rear property boundary. It appears the subject duplex conforms to the minimum on-site parking standard. No further action is required concerning the building's front setback.

The undersigned cannot approve the duplex's pending Certificate of Occupancy Permit until the Planning and Zoning Code violations described under Items 1 and 2 above are either resolved by variance relief approval from the Board of Zoning Appeals or abated.

Attached hereto is a variance application for your convenience. The fillable .pdf form can also be accessed online at:

http://www.morgantownwv.gov/wp-content/uploads/Variance-Application_20140601.pdf

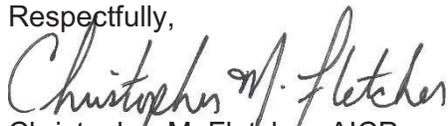
A separate application and fee must be submitted for each of the two (2) subject setback encroachment violations. The next available hearing when these variance petitions can be heard by the Board of Zoning Appeals is WED, 14 DEC 2016; provided, complete applications and fees are submitted to this office no later than FRI, 04 NOV 2016.

Please note, should complete variance applications not be submitted to this office by close of business FRI, 04 NOV 2016, enforcement action will be initiated forthwith, which could include the issuance of citations and/or filing suit for mandatory injunction.

Additionally, information and notice of violations described herein only address Planning and Zoning Code provisions. Additional violations may or may not exist under other provisions of City Code and/or Building Code for which enforcement of same are under city directorates other than the Development Services Department.

Please contact the undersigned should you have any questions or require further clarification concerning the information and notice of violations contained herein.

Respectfully,



Christopher M. Fletcher, AICP
Director of Development Services
cfletcher@morgantownwv.gov

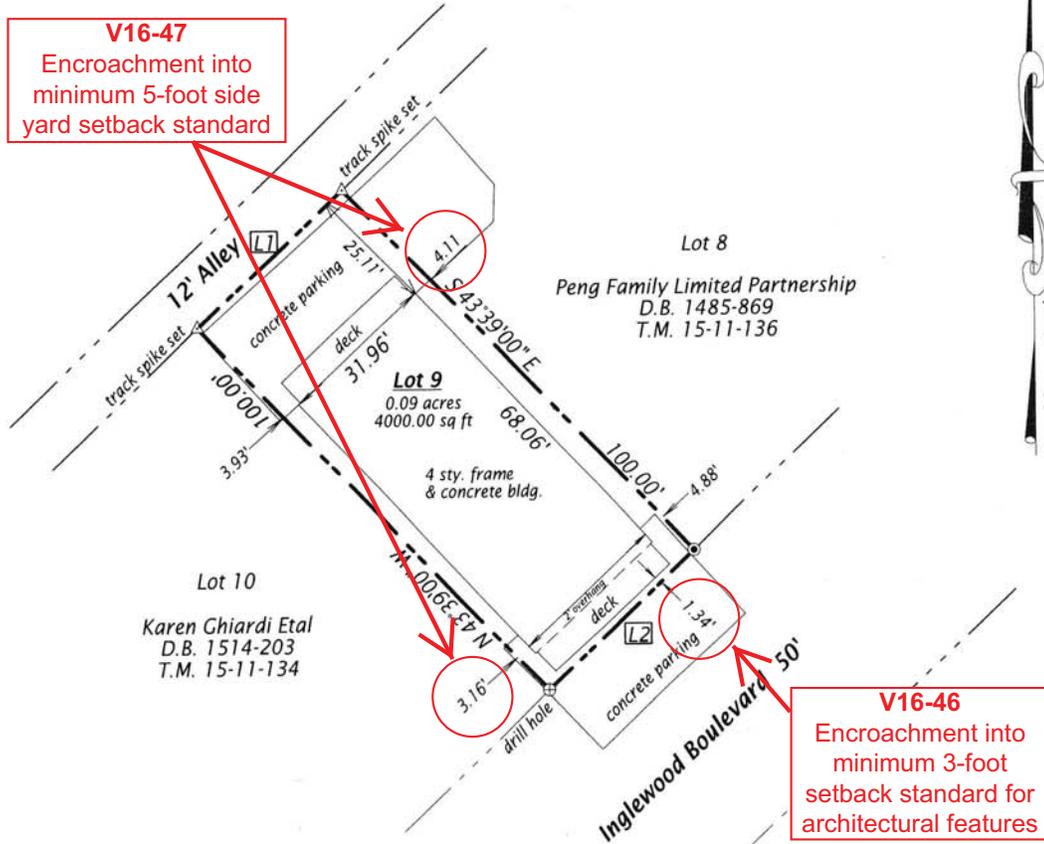
cc via email: Damien Davis, City Engineer
Mike Stone, Chief Building Code Officer

NOTE: THIS SURVEY NOT VALID WITHOUT ORIGINAL BLUE SIGNATURE. THIS SURVEY DECLARATION IS MADE ON THE DATE INDICATED, TO THE OWNER OR BUYER LISTED BELOW. IT IS NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS OR BUYERS.

NOTE: SURVEY WAS CONDUCTED WITHOUT THE BENEFIT OF LAWYER'S TITLE REPORT AND MAY NOT REFLECT ALL EXCEPTIONS, RIGHTS OF WAY, EASEMENTS OR RESTRICTIONS.

Line Chart		
Id	Bearing	Distance
L1	N 46°21'00" E	40.00'
L2	S 46°21'00" W	40.00'

V16-47
Encroachment into minimum 5-foot side yard setback standard



Note: All corners 5/8" iron pins set, except where noted.
Deed Ref. 1507-213
Plat Ref. 178-132
Tax Map 15-11-135

Plat of Lot 9, Block H
University Park Addition
Located at 461 and 463 Inglewood Boulevard
Surveyed For

Little Mar, LLC

7th Ward City of Morgantown
Monongalia Co. West Virginia
Scale 1"=30' October 2016



Paul D. Harbert PS No. 862
Paul D. Harbert, PS
McCoy Land Surveying
Monongah, WV (304) 534-5562



City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V110-46
RECEIVED:	04 NOV 16

(PLEASE TYPE OR PRINT IN BLACK INK)

ck 1571

Fee: \$75

I. APPLICANT		Name:	Project Management Services	
Mailing Address:	12 North Water Street		Phone:	
	Street	Point Marion PA 15474	Mobile:	304-692-7116
	City	State Zip	Email:	lisa.k.mardis@gmail.com

II. PROPERTY		Street Address:	459-461 Inglewood Boulevard	
Owner:	Little Mar, LLC		Zoning:	R-3
Mailing Address:	522 Black Stone Drive		Tax Map No:	11
	Street	Morgantown WV 26508	Parcel No:	135
	City	State Zip	Phone:	

III. NARRATIVE	Please describe the nature and extent of your variance request(s).
<p>Variance relief from the Planning and Zoning Code, Section 1339.05(A)(2) as it relates to uncovered stairs, landings, and porches not extending closer than three (3) feet from the property line.</p> <p>The vaiance request is for 1.66 feet.</p>	

PAID
PAID
 NOV 04 2016
 BY: _____

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.	
Lisa Mardis		11/4/16
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.



APPLICATION FOR VARIANCE PETITION

OFFICE USE table with columns CASE NO. and RECEIVED: containing handwritten values V16-46 and 04 NOV 16

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.

[X] Land Use Characteristics (complete only those that apply)

- [X] 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: 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.	V 16-46
RECEIVED:	04 NOV 16

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:

Attached

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:

Attached



City of Morgantown, West Virginia

**APPLICATION FOR
VARIANCE PETITION**

OFFICE USE	
CASE NO.	V16-46
RECEIVED:	04 NOV 16

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:

Attached

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

Attached

**Little Mar, LLC / 459-461 Inglewood
Boulevard / Variance
Section 1339.05(A)(2)**

V/6-46

Encroachment into minimum setback standard for architectural features

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:

According to a certified letter from Mr. Fletcher dated October 21, 2016, under 1363.02(C)(1) the front setback is in accordance with the Planning and Zoning Code. However, Section 1339.05(A)(2) states that uncovered stairs, landings and porches shall not extend closer than three (3) feet from the property line. According to the as-built survey, the front setback is 1.34 feet, thus requiring a variance of 1.66 feet.

The 1.66 feet variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners due to the encroachment being solely on the applicant's property and that there are additional properties enjoying the same as requested. (Evidenced in the attached Google Earth images)

The related building permit for 459-461 Inglewood Boulevard was obtained from the Code Enforcement Department and building commenced.

Due to the forty (40) foot drop in elevation from Inglewood Boulevard to the unnamed alley, over the distance of one hundred (100) feet, the masonry team built a 2-tier foundation system incorporating a double foundation wall on the rear and sides for stability. The masonry team began building the 2-tier foundation starting from opposite ends of the property, each going off the approved site plan which indicated that the rear and front setback was to be 25' feet. Each team started where they anticipated the property line placement. This did not create a code violation in the rear of the property. However, the front setback was skewed a great deal since Inglewood Boulevard has a very large right-of-way of fifty (50) feet with an actual road way much smaller. The masonry team used the curb line as the property line and began construction accordingly.

Due to the severity of the grade difference from Inglewood Boulevard to the unnamed alley, the code discrepancy was not blatantly noticeable and crews adjusted accordingly and met in the middle to complete the foundation. Unaware of the issues at hand, Little Mar, LLC applied for a Certificate of Occupancy. At such time, the aforementioned issue(s) were noticed.

When obtaining a building permit in the City of Morgantown, a survey is not usually required for approval of same. Until such time, an issue such as a 1.66-foot variance, will be common from time to time. Unfortunately, there are many instances in the City of Morgantown that street right-of-way is abnormally large and the actual road way is either small or not located in the midst of said 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:

Due to the forty (40) foot drop in elevation from Inglewood Boulevard to the unnamed alley, over the distance of one hundred (100) feet, the masonry team built a 2-tier foundation system incorporating a double foundation wall on the rear and sides for stability. The masonry team began building the 2-tier foundation starting from opposite sides of the property, each going off the approved site plan which indicated that the rear and front setback was to be 25' feet. Each team started where they anticipated the property line placement. This did not create a code violation in the rear of the property. However, the front setback was skewed a great deal since Inglewood Boulevard has a very large right-of-way of fifty (50) feet with an actual road way much smaller. The masonry team used the curb line as the property line and began construction accordingly.

According to a certified letter from Mr. Fletcher dated October 21, 2016, under 1363.02(C)(1) the front setback is in accordance with the Planning and Zoning Code. However, Section 1339.05(A)(2) states that uncovered stairs, landings and porches shall not extend closer than three (3) feet from the property line. According to the as-built survey, the front setback is 1.34 feet, thus requiring a variance of 1.66 feet.

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

The 1.66-foot variance will allow for use of an already built uncovered porch attached to the front of the two-family structure, elevated above street level. The uncovered porch was part of the original approved plans. Since the uncovered porch is elevated above street level it will not impede with parking or street traffic. The aforementioned uncovered porch is located on the applicant's property and does not encroach into the City Right-of-way.

There appear to be other issues, same or similar in the vicinity. This is evidenced in the attached Google images and/or pictures.

V/6-46

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

The 1.66-foot variance will enable better use of the property by allowing the use of an existing uncovered elevated front porch. The variance will not decrease property values and will not impact adjacent properties, parking, or traffic negatively.

The variance will permit the improved redevelopment's contribution to the surrounding built environment.

V16-46

Variance(s) / Little Mar, LLC / 459-461 Inglewood Boulevard



Approximate property line

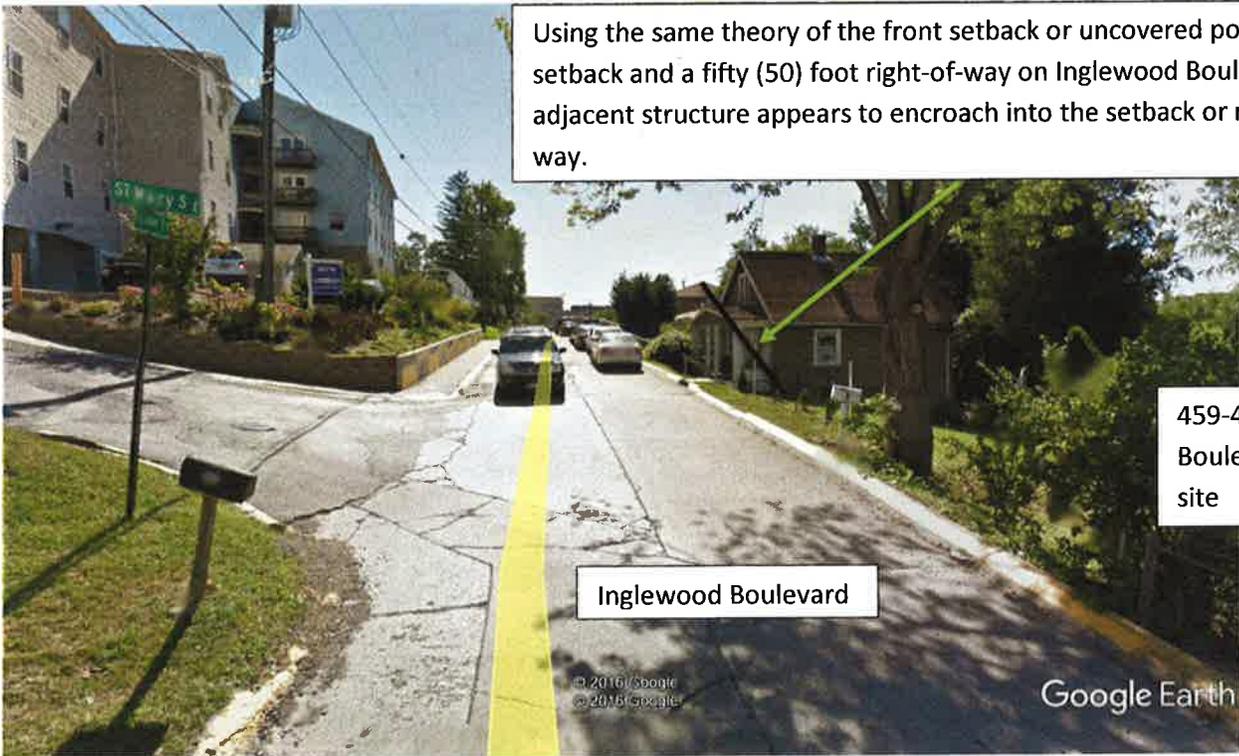
V16-46



459-461 Inglewood Boulevard

© 2016 Google
© 2016 Google

Google Earth



Using the same theory of the front setback or uncovered porch setback and a fifty (50) foot right-of-way on Inglewood Boulevard, the adjacent structure appears to encroach into the setback or right-of-way.

459-461 Inglewood Boulevard – Subject site

Inglewood Boulevard

© 2016 Google
© 2016 Google

Google Earth

V16-46

Inglewood Boulevard – uncovered stairs/landing encroaching into the 3 feet required setback and/or right-of-way



Subject Site just out of sight to the left

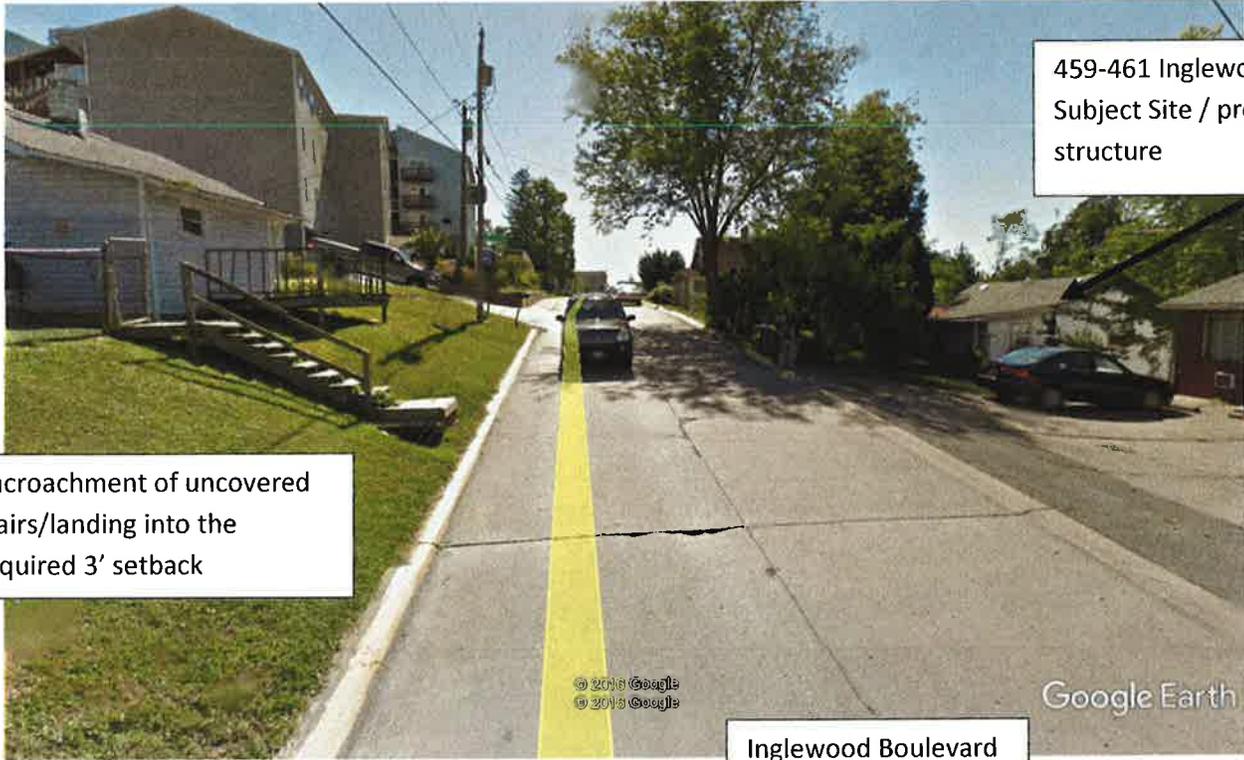


Inglewood Boulevard – line indicates approximate property line. Covered porches appear to encroach into the required 25' front setback

V16-46

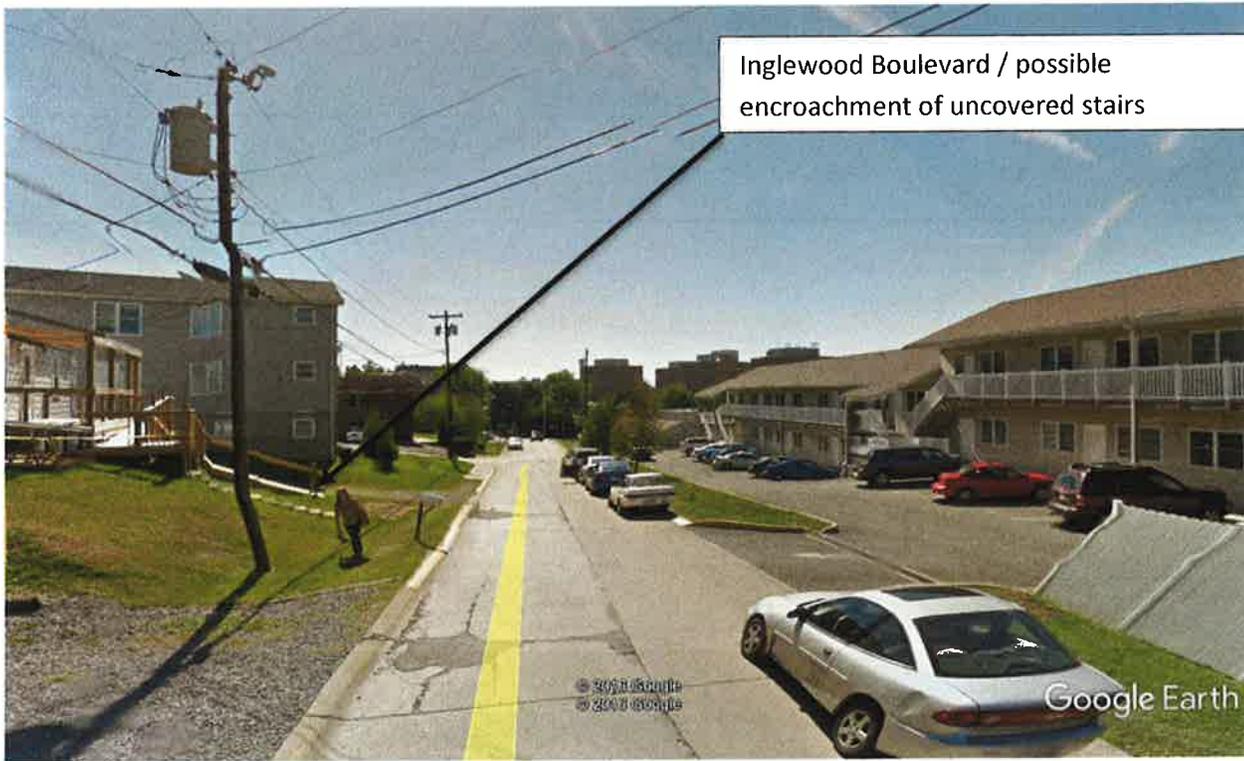
459-461 Inglewood Boulevard
Subject Site / previous
structure

Encroachment of uncovered
stairs/landing into the
required 3' setback



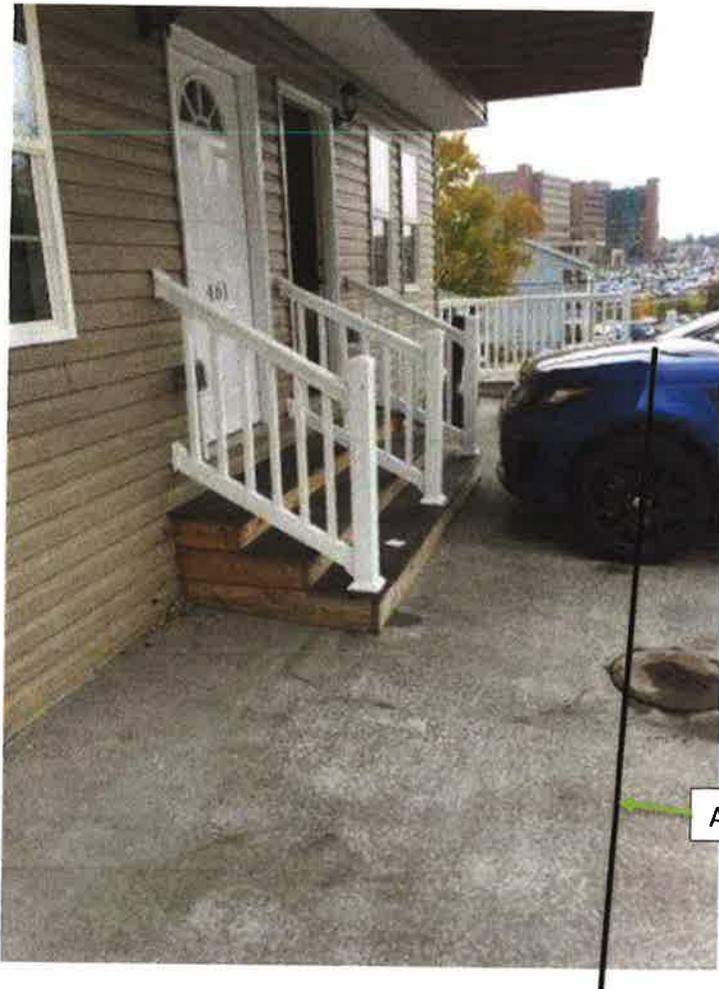
Inglewood Boulevard

Inglewood Boulevard / possible
encroachment of uncovered stairs



Google Earth

V16-46



Approximate property line





City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V116-47
RECEIVED:	04 Nov 16

(PLEASE TYPE OR PRINT IN BLACK INK)

CK 1571

Fee: \$75

I. APPLICANT		Name: Project Management Services	
Mailing Address:	12 North Water Street		Phone:
	Street	Point Marion PA 15474	Mobile: 304-692-7116
	City	State Zip	Email: lisa.k.mardis@gmail.com
II. PROPERTY		Street Address: 459-461 Inglewood Boulevard	
Owner:	Little Mar, LLC		Zoning: R-3
Mailing Address:	522 Black Stone Drive		Tax Map No: 11
	Street	Morgantown WV 26508	Parcel No: 135
	City	State Zip	Phone:
III. NARRATIVE		Please describe the nature and extent of your variance request(s).	
<p>Variance relief from the Planning and Zoning Code, Section 1339.04(A)(3) as it relates to side setbacks in the R-3 District.</p> <p>Northeast side: Setbacks- 4.11-4.88 Variance request -.12-.89 feet</p> <p>Southwest side: Setbacks-3.16-3.93 Variance request - 1.07-1.84 feet</p>			
V. ATTEST		BY: <i>Lisa Mardis</i>	
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.			
Lisa Mardis		11/4/16	
Type/Print Name of Applicant/Agent		Signature of Applicant/Agent	
		Date	

PAID PAID NOV 04 2016

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.	V16-47
RECEIVED:	04 Nov 16

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.

[X] Land Use Characteristics (complete only those that apply)

- [X] 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: _____

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.	V16-47
RECEIVED:	04 Nov 16

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:

Attached

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:

Attached



City of Morgantown, West Virginia

**APPLICATION FOR
VARIANCE PETITION**

OFFICE USE	
CASE NO.	V16-47
RECEIVED:	09 NOV 16

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:

Attached

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

Attached

V16-47

**Little Mar, LLC / 459-461 Inglewood
Boulevard / Variance**
**Section 1339.04(A)(3) Minimum Side
Setback**

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:

According to a certified letter from Mr. Fletcher dated October 21, 2016, under Section 1339.04(A)(3) of the Planning and Zoning Code, a variance is required for both side setbacks. The northeast side of the property has a setback of 4.11-4.88 feet, requiring a **variance of .12-.89 feet** and the southwest side as 3.16-3.93 feet, requiring a **variance of 1.07-1.84 feet**.

The .12-.89 and 1.07-1.84 feet variances will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners due to the encroachment being solely on the applicant's property and that there are additional properties enjoying the same as requested. (Evidenced in the attached Google Earth images)

Due to the forty (40) foot drop in elevation from Inglewood Boulevard to the unnamed alley, over the distance of one hundred (100) feet, the masonry team built a 2-tier foundation system incorporating a double foundation wall on the rear and sides for stability. It appears that the double foundation walls, in which twelve (12) blocks were used in each, caused the encroachment into the side setbacks. The masonry team attempted to square the building with the as-built street leading to varying, but minor, degree of variance relief requested.

Due to the severity of the grade difference from Inglewood Boulevard to the unnamed alley, the code discrepancy was not blatantly noticeable to crews or Code Enforcement. Unaware of the issues at hand, Little Mar, LLC applied for a Certificate of Occupancy. At such time, the aforementioned issue(s) were noticed.

When obtaining a building permit in the City of Morgantown, a survey is not usually required for approval of same. Until such time, an issue such as a 1.66-foot variance, will be common from time to time. Unfortunately, there are many instances in the City of Morgantown that street right-of-way is abnormally large and the actually road way is either small or not located in the midst of said 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:

459-461 Inglewood Boulevard was previously an obsolete single-family rental in an area of multi-family redevelopment over the past 10-15 years due to the proximity to the Evansdale Campus, Health Science Center, and Ruby Memorial Hospital. When Little Mar, LLC bought the realty, it was littered with overgrown trees and bushes. After obtaining the proper building permits, work commenced with the razing and removal of the previous structure and clearing the property for redevelopment.

The .12-.89 and 1.07-1.84 feet variances will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners due to the encroachment being solely on the

applicant's property and that there are additional properties enjoying the same as requested. (Evidenced in the attached Google Earth images)

Due to the forty (40) foot drop in elevation from Inglewood Boulevard to the unnamed alley, over the distance of one hundred (100) feet, the masonry team built a 2-tier foundation system incorporating a double foundation wall on the rear and sides for stability. It appears that the double foundation walls, in which twelve (12) blocks were used in each, caused the encroachment into the side setbacks. The masonry team attempted to square the building with the as-built street lending to varying, but minor, degree of variance relief requested.

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When obtaining a building permit in the City of Morgantown, a survey is not usually required for approval of same. Until such time, an issue such as a 1.66-foot variance, will be common from time to time. Unfortunately, there are many instances in the City of Morgantown that street right-of-way is abnormally large and the actual road way is either small or not located in the midst of said right-of-way.

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

The .12-.89 and 1.07-1.84 foot variances will allow for use of an already built structure. The side setback encroachments are solely contained on the property owned by Little Mar, LLC.

There appear to be other issues, same or similar in the vicinity. This is evidenced in the attached Google images and/or pictures. The adjacent building on the northeast side of the realty appears to encroach into the side setback.

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

The .12-.89 and 1.07-1.84 foot variances will enable better use of the property by allowing the use of an existing two-family structure. The variances will not decrease property values and will not impact adjacent properties, parking, or traffic negatively.

The variance will permit the improved redevelopment's contribution to the surrounding built environment.

Subject Site / Northeast Side /
Setback 4.11 feet / Variance
required .89 feet

The adjacent structure appears
to be closer than five (5) feet



V16-47

Subject Site / Southwest Side
/ Setback 3.16 feet / variance
required 1.84

