

# BOARD OF ZONING APPEALS

## MINUTES

6:30 p.m.

April 15, 2020

By Electronic Means

**MEMBERS PRESENT:** Harrison Case, Chris Benison, Garrett Tomblin, Heidi Cook and Kevin Meehan

**MEMBERS ABSENT:** None

**STAFF:** John Whitmore, Senior Planner

- I. **CALL TO ORDER AND ROLL CALL:** Mr. Case called the virtual meeting to order and read the explanation of how the Board remotely conducts business and rules for public comments.
- II. **MATTERS OF BUSINESS:**

Minutes for the January 15, 2020 hearing were reviewed and unanimously approved. Planning commission's 2019 Annual Report to City Council. Whitmore stated that this was included for information purpose only, per State Cold 8A-2-11, the Planning Commission is to make an annual report to the governing bodies concerning the operation of the Planning Commission.

- III. **UNFINISHED BUSINESS:** None.
- IV. **NEW BUSINESS:**

- A. **CU20-02 / Harshbarger / 1009 Vandalia Road:** Request by Colleen Harshbarger for approval of a conditional accessory "Home Occupation" use; Second Ward Tax District, Tax Map 35, Parcel 156; R-1, Single-Family Residential District.

Whitmore presented the Staff Report for CU20-02 and noted the petitioner is present.

Tomblin moved recuse himself from this case. Case asked Whitmore to clarify the protocol. He was asked to log out of the meeting. Whitmore will email when the case is concluded so that he may rejoin. Case noted that there was still a quorum present.

Mrs. Colleen Harshbarger, 1009 Vandalia Road, Morgantown WV 26501. Harshbarger stated that up until 2005 that she operated a business as described from my home in the same space. I am looking to come back to teaching yoga classes from my home studio. Would be teaching no more than four yoga classes per week with no more than eight people per class. I anticipate the classes being at 8:30 or 9 in the morning and 5:30 in the evening. I do have a sizeable driveway and many of the people that take my classes are neighbors and live within walking distance, requested that I move my classes to this location because of proximity.

Case opened the public hearing and with no one present for the hearing, declared the public hearing closed.

Whitmore provided the Staff Recommendation in favor of the petition with the following conditions:

1. That, to the greatest extent practicable, there must be at least 30 minutes between the end of one yoga session and the start of the next session to mitigate traffic congestion and ensure sufficient parking is available for visitors between sessions.
2. That clients visiting the petitioner's Class 2 Home Occupation use must first park their vehicles on the petitioner's property in the existing off-street parking area. Visitors using the portions of the Vandalia Road right-of-way may not obstruct traffic or access to neighboring properties.
3. The adherence with and monitoring of conditions 1 thru 3 above shall rely upon the review, suspension, and revocation provisions provided in Section 1331.06(2)(d)(i) of the Planning and Zoning Code.
4. That the conditional use approval granted herein is specific to the petitioner and may not be transferred without prior approval by the Board of Zoning Appeals.
5. If the petitioner, as the sole beneficiary of this conditional use approval, wishes to make changes in the conduct of the business that departs from the description in the application or from any conditions or restrictions imposed by the Board of Zoning Appeals, the holder must obtain prior approval of the Board. Changes include, but are not limited to, days and/or hours of operation, number of clients seen per day, etc.
6. The use may only be offered at the petitioner's Class 2 Home Occupation between 8:30 a.m. and 2 p.m. Monday thru Friday and 4 p.m. to 8 p.m. Monday thru Friday, during Monongalia County Schools days of instruction, to avoid excessive street congestion during times of school bussing. All other days of operation may be from 8:00 a.m. to 6:00 p.m.

Case reviewed the conditions with the applicant, she had no objections. Case had a question about the last condition regarding. To clarify, it appears it would prohibit the applicant having any classes after 6:00 p.m. Is that the intent? Whitmore confirmed that is correct. Case proposed changing the end time to 8:00 p.m. to be able to accommodate the applicant.

Case moved to approve in the affirmative for all the findings of fact in this case as set forth in the Staff Report. The motion was seconded by Cook. The motion to approve the findings of fact passed unanimously.

**Finding of Fact No. 1** – The home occupation will be compatible with residential uses of the dwelling, in that:

Classes are only held a few times per week, typically when neighbors are at work, and the use is communal in nature.

**Finding of Fact No. 2** – The home occupation will not change the residential character of the dwelling, in that:

The non-intensive use will occupy approximately 450 square feet of existing studio space above an attached garage. No interior improvements are necessary to support the home-based business. No external changes to the single-family dwelling will be made.

**Finding of Fact No. 3** – The home occupation will not detract from the residential character of the neighborhood, in that:

The proposed yoga studio allows for neighbors to interact with one another and would predominantly occur during day light hours.

**Finding of Fact No. 4** – Congestion in the streets will not be increased, in that:

The majority of the clients will park on-site, and hours of operation are scheduled to occur during non-peak travel times when community members are more likely to be in the neighborhood.

Case moved to grant the conditional use application with the five conditions set forth by Staff, and with the sixth condition set forth by Staff with the modification to strike 6:00 p.m. and replace 8:00 p.m. Seconded by Cook. Motion passed unanimously.

**B. V20-04 / Callen / 3435 Collins Ferry Road**: Request by Michael Callen for variance relief from Article 1333 concerning setbacks; Seventh Ward Tax District, Tax Map 53, Parcels 127 and 128; R-1, Single-Family Residential District.

Whitmore presented the Staff Report for V20-01 and noted that the petitioner was present and muted.

Mike Callen, 182 Greenville School Road, Bruceton Mills, WV 26525. Mr. Callen clarified exactly what he was asking. He is going to use the smallest lot dimensions for example and that would be lots B and C. The lot dimension is 80 x 108 ft. deep. Because of the 25-foot roadway that runs through the bottom section of the lot, by R1 standards the house is to be built on the 25-foot setback and would be on the curve of the road. That is the whole issue. The variance he is requesting is not to build a bigger house, the existing setbacks are plenty big enough. The current buildable footprint with setbacks is 60 by 60. I only need 50 x 40. Would like to have a nicer front and rear yard. Side note, private developments are appraised separately. They are appraised by houses in the development or similar developments nearby. Within ½ mile of the development I am doing, there are four similar developments. The sister development to this one has a front and rear setback of 20 which is what I am requesting.

Case asked Board members if they had any questions. There were none. Public hearing was opened. Whitmore stated there were no members of the public and Case closed the public hearing. Whitmore read the Staff recommendation to approve the petition with the condition that development of Lot A as indicated on the Survey Plat associated with MNS 19-08 / Bossio / 3431 and 3435 Collins Ferry Road, meet side yard setbacks in accordance with Section 1333.04(B) as they relate to corner lots (minimum of 15-foot side setback standard for corner lots).

Case asked Mr. Callen to confirm that he had no objections which he confirmed.

Cook motioned to adopt the findings of fact. Case seconded that motion. The motion passed unanimously.

**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:

This is a private development completely surrounded by a privacy fence with its own private entrance. This variance does not affect the private road nor does it affect the development's grading. The reason for the variance is to improve the development as well as all houses in the surrounding area. By approving this variance houses will be arranged to resemble the traditional low density single-family residential district specifications.

**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 property line of all the houses is on the left side of the new development's private road. By following the R-1 zoning front and rear setbacks, the house would sit on the curb of the 25-foot wide private road limiting pedestrian infrastructure and neighborhood amenities. The variance would allow for a front yard and driveway which would closely resemble the traditional R-1 district setbacks.

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

Granting the variance would allow the houses to sit 20 feet from the road instead of right on the road. By having the houses sit 20 feet from the private road it will look like all the other houses in the R-1 zoning district and surrounding neighborhood. Having 20 feet from the private road and having 20 feet from the private privacy fence allows the house to sit comfortably in the lot with equal spacing all around. It does not change the size or shape of the house, it only improves the developments overall look.

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

Site characteristics limit where houses be built to resemble the R-1 zoning. The variance will not change anything or affect the single-family dwelling concept or existing residential neighborhood.

Cook moved that to grant the variance with conditions stated in the staff report. Case seconded. The variance was approved unanimously.

**C. V20-05 / Vision Homes / 1994 Marvin Street:** Request by Ross Slovak on behalf of *Vision Homes*, for variance relief from Article 1335 concerning single-family dwelling street orientation at 1994 Marvin Street.

Whitmore presented the Staff Report and noted that the petitioner was present.

Vision Homes is representing Mr. Slovak, 28 Grafton Road, Morgantown WV 26508. The applicant had a home at this location several years ago that was lost due to fire. That house faced the opposite direction, which is what we are trying to do. Trying to get the best setting for this new home. Hoping to replace the house back to the way it originally was on the lot for the fifty years prior to this.

Case opened Public hearing was opened. Whitmore stated there were two individuals on the call who may want to participate in the hearing.

Traci Aberegg of 1933 Carnegie Street indicated that the new structure was designed to be oriented as the former house had been located.

Ross Slovak of 1994 Marvin Street indicated that he agreed with previous testimony.

There being no further comment, Case closed the public hearing. Meehan motioned to approve the findings of fact. Cook seconded.

**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 property has been in use with brief interruption since 1901 and the adjoining neighbors have not changed in over 50 years. The requested variance would permit the new single-family dwelling to be oriented toward Marvin Street as the previous house was developed over a 100 years ago.

**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:

Ross is requesting a variance to place his new home in the same direction facing Marvin Street as previous structure. The city would not approve his permit that Vision Homes applied for. Changing the design of the home and frontage will bear extreme costs for the buyer who has a loan in place to build. The topography of this neighborhood combined with previous development patterns present a practical opportunity to construct a single-family dwelling. The variance is minor in that it will preserve the traditional block layout while reestablishing the parcel to the R-1A, Single-Family dwelling preferred use.

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

The layout of the land and the design of the home would conform to the lot, changing the direction would not be appealing or allow practical use of the parcel.

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

The variance will allow for a single-family home to be developed at the site and allow the placement of house to fit on the lot parcel.

The Findings of Fact were initially approved minus Benison who was unable to vote due to technical difficulties. The motion passed 5-0 with Benison able to participate after rejoining the call.

Meehan motioned to approve the variance, seconded by Cook. The variance was approved unanimously.

**D. V20-06 / Stead / 2885 University Avenue:** Request by Traci Stead for variance relief from Article 1369 concerning signage; Seventh Ward Tax District, Tax Map 11, Parcels 240 and 240.2; PRO, Professional, Residential, and Office District.

Whitmore presented the Staff Report and noted the petitioner is present.

Traci Stead, 2885 University Avenue Suite B. Ms. Stead gave details of her signage request stating that the business in the back of the building and the signage cannot be seen from the road. Ms. Stead explained that the business is a tea and coffee shop, offering to go and an indoor seating area. She stated that it is a community-based business. Waiting on inspections before they are officially open.

Case asked the board if there were any questions. Meehan noted that the business is on the lower level and that is why the signage is needed. Whitmore noted that if the variance does not pass, the allowable signage area would be zero.

Whitmore noted that no members of the public messaged to say they would be attending but that there is someone on the video feed.

Case opened the public hearing.

Matt Stead stated that he is Traci's husband. They are opening the business together. He noted that the sign positioning has been adjusted to be able to see around it and not obstruct traffic.

Case closed the public hearing.

Whitmore presented the Staff Recommendation.

Case asked the board regarding questions or concerns. Cook questioned the wood on the legs of the sign and being in conformity. Case reiterated that the legs would be covered in a plastic sheath and that they would conform. Stead confirmed.

Case motioned to adopt the findings of fact. Benison seconded. Unanimously approved.

**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 variance allows for safe signage permitting the flow of traffic to continue. The variance does not interfere with current signage or tenants. The signage will be 13 feet from the road creating an ample field of vision for motorists.

**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 lower level was built long ago with rear entrance. There is not an entrance from the upper level. The “Office Building” use includes basement/garden level tenants that warrant advertising. The proposal would place this signage away from residentially zoned neighboring properties and in proximity to the University Avenue roadway and other commercial establishments.

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

It will easily direct/notify customers and traffic of the location. The basement/garden level nature of this location and its being directly behind the common pedestrian and motor traffic way limit proper messaging for the use.

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

The physical location of the building and the proximity of the tenant to other wayfinding signage does not appear readily available. The sign’s variances will allow for the permitted use in the “Office Building” to function and reasonably enable the continued use of a permitted PRO District structure.

Case moved to grant the variance. Benison seconded. Unanimously approved.

**E. V20-07 / Almost Heaven / 374 High Street:** Request by Crystal Miller of City Neon, on behalf of Almost Heaven, for variance relief from Article 1369 concerning signage; Third Ward Tax District, Tax Map 26A, Parcel 111; B-4, General Business District.

Whitmore presented the Staff Report and noted the petitioner and a member of the public were present to speak.

Crystal Miller, City Neon, 1095 Chaplin Road on behalf of Almost Heaven Bar and Grill regarding the signage. The owners were going to drop the bar and grill portion of the sign to save space, but the Almost Heaven name is too popular in the area and it needed to stay.

Case opened the public hearing.

Barbara Watkins, Executive Director of Main Street Morgantown, 201 High Street. She stated that she is in support of this signage.

As there were no more members of the public present, Case deemed the public hearing closed.

**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 tenant is seeking signage that is cohesive to the architectural elements of the building's previous renovations. There are several signs in the downtown, B-4 district that contain elements of the signage we are proposing without negative impact upon the community.

**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 tenant is asking for a design that will be visible both during day and night time business hours. The building's architectural elements leave the uppermost section of the building for signage. A design was chosen to allow for visibility during daylight hours against a very dark background that would work well with illumination during evening and night business hours as well.

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

The tenant will be able to effectively advertise and attract customers throughout all business hours with signage similar to other businesses in the downtown community.

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

The tenant can utilize commercial advertising throughout the day and evening as appropriate. And can continue to grow and prosper in the downtown district.

Whitmore presented the staff recommendation including information regarding the use of the awning for signage.

Case opened the floor for questions. Discussions were held regarding the signage and the variance. Whitmore reviewed some alternative options for the signage. Ms. Miller spoke again in favor of the proposed signage and explained the options they had and why they would not work. Ms. Cook asked about the Staff Recommendation. Whitmore explained that this would be the largest sign on this section of High Street. Staff has advised using the awning or a vertical sign with different lettering. Miller referred to the packet with the pictures of the signage on the awning. They have a sign by the storefront on the building and a sign on the building.

Case motioned to find in the affirmative the four findings of fact. Meehan seconded. Cook expressed interest in tabling the issue. Voting ensued and the motion passed unanimously.

The Chair moved to approve the variance as requested. Meehan seconded. The vote was unanimous.

- F. **V20-08 / Automax / 525 Don Knotts Boulevard**: Request by Crystal Miller of City Neon, on behalf of Automax, for variance relief from Article 1369 concerning signage; First Ward Tax District, Tax Map 37, Parcel 5.1; B-4, General Business District

Whitmore presented the Staff Report and noted the petitioner is present.

Crystal Miller, City Neon, 1095 Chaplin Road. Requesting further signage. The previous variance was approved, we realized there had been a mistake on their part and had filed for the wrong size of sign on the front side of the building.

Case asked if there were questions or concerns. Meehan asked about the change in sign size. Cook stated she had no problem with the size.

Case opened the public hearing. As there was no one present to speak to the item, the public hearing was closed.

Whitmore presented the Staff Recommendation.

Meehan motioned to approve the findings of fact. Cook seconded. Vote was unanimous.

**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 tenant would like to install new signage in place of previous signage as well as keep existing signage. This existing signage, from the previous tenant designates this building as part of the Waterfront development area, is an internally illuminated channel letter set. The previous signage did not make any negative impact on the adjacent property owners throughout the years, and the change of sign copy associated with the new signage would not be anticipated to have any meaningful negative effects to the community.

**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 site has two entrances in the lot Sales and Service located on opposite sides of the building. This particular stretch of Don Knotts Boulevard is a 50-mph divided four lane road and is highly traveled. The building is nestled in the hillside of Don Knotts as an effective use of land space but has forced the signage and entrances to be placed onto the smaller side of the building creating a smaller signage allowance.

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

Site topography in combination with sign area restrictions limit the practical commercial use of this location. Variance relief as requested would permit the continuation of a legal, pre-existing nonconforming land-use, that provides practical benefit to the residents of the City in its physical location.

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

While the site is zoned B-4, it is not located in the downtown area and is at the end of the Wharf District. Access to the site is primarily achieved via a 50-mph roadway that requires commercial messaging that is not scaled to pedestrian foot traffic as is the focus of the majority of the B-4 District. The tenant will be able to effectively advertise along a very busy stretch of Don Knotts Boulevard with variance relief as requested.

Tomblin motioned to approve the variance, seconded by the Chair. Vote was unanimous.

- G. V20-10 and V20-11/ Mini Mountaineer Early Learning Center, LLC / 3414 Collins Ferry Road:** Request by Gloria Scotchel, on behalf of Mini Mountaineer Early Learning Center, LLC, for variance relief from Section 1365.09 regarding parking aisles; Seventh Ward Tax District, Tax Map 53, Parcels 219 and 220; B-1, Neighborhood Business District.

Whitmore presented the Staff Report and noted the petitioner is present.

Case asked if there was any issue with combining the public hearings. There were no objections.

Mike Lutman, 4131 Coakley Drive, Morgantown WV speaking on behalf of Gloria Scotchel, the owner of the facility. Our previous variance expired. We are not changing anything since the last time. We have addressed the parking issue and the landscaping. The owners are operating other facilities in different counties and she just got a little strapped, which is why this was not started last year. She is ready to move on currently.

Case opened the public hearing. As there was no one present to speak to the item, the public hearing was closed.

Whitmore presented the Staff Recommendation.

***Case No. V20-10 – Landscape Buffer***

Staff recommends variance relief from Section 1367.08(C) be granted to eliminate landscaping required between the Martin Street right-of-way and the 90-degree parking spaces with the following condition.

1. That the row of parking spaces in the rear most portion of the development site and running nearly parallel with Martin Street may not be located closer than 10 feet from side parcel boundary and must be landscaped in accordance with Section 1367.08(C) Planning and Zoning Code. Specifically, the area between the row of parking spaces and the side property boundary must include one (1) tree at least 2-inch caliper in size and flanked by three (3) shrubs (total of 6 shrubs) at least three (3) gallons in size. Landscaping material should be selected based on their appropriateness within a floodplain. A Landscaping Plan, in accordance with Section 1367.04 of the Planning and Zoning Code must be submitted to and reviewed and approved by the Planning Division prior to planting.

**Case No. V20-11 – Parking Development Standards**

Staff provides no recommendation whether variance relief from Section 1365.09(A)(4) of the Planning and Zoning Code should be granted to permit the Martin Street right-of-way to be used as the aisle serving the 90-degree parking spaces illustrated on the parking layout plan. However, should the Board decide to grant variance relief, Staff recommends the following conditions be included:

1. That no more than 16 parking spaces may be created on the development site unless variance relief is granted to exceed the maximum parking standard.
2. That all parking spaces shall be improved, surfaced, and marked/striped to the satisfaction of the City Engineer.
3. That a Lighting Plan under Article 1371 of the Planning and Zoning Code must be submitted to and reviewed and approved by the Planning Division under a proper Building Permit Application prior to installation of exterior lighting fixtures to ensure light trespass and glare are properly mitigated and to prevent floodplain encroachment review by the City Engineer.

Meehan motioned to approve the findings of fact as outlined in Addendum C for V20-10. Cook seconded. Unanimously passed.

**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:

This variance request pertains to the City Code, Section 1367.08 (C), “Landscape Buffer”. Site conditions relating to the existing building, support areas, parking scheme and watercourse (Burroughs run) which bisects a portion of Parcel 219 make it very difficult and impractical to comply with the requirements of this Section of the Code (See attached “Site Plan”).

There is not ample space to achieve the required parking spaces (15-18) as stipulated by Code to accommodate the day care facility (City Code, Section 1365.09(A)(3), “Parking Aisles”. Attempting to comply with this Section of the Code would negate the majority of the required parking. Several “buffer areas” are proposed in an attempt to comply with the Code (See attached Site Plan). The landscaping plan for the proposed identified areas will be in accordance with Article 1367 of the Planning and Zoning Code for Type II Site Plan Approval. Previous business operations at this property established parking directly off Martin Street. Martin Street is not a main thoroughfare and serves primarily the residents that live in this area. Residents have become accustomed to this parking arrangement and traffic condition. It is important to note that site distance is more than adequate for vehicular travel on Martin Street in the vicinity of the daycare facility.

This request for variance is based on the above discussion of existing conditions and prior use of the building and parking scheme which in our opinion will not cause hazard or risk the safety of the neighboring residents or the customers and employees of the daycare facility.

**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:

As indicated in Item “No. 1” above, this variance emerges because of the parking requirements dictated by the City Code (See attached site plan). Note “existing conditions” depicted in Item No. 1 referring to the existing building, support areas and the parking scheme established by prior businesses at this location.

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

This variance will permit the reasonable use of the existing facility to the fullest extent with minor improvements (incorporate additional parking with landscaping buffer areas as indicated on the Landscape Plan and establish a playground area with fencing) and facilitate the intended use to serve as a daycare establishment and comply with the City Code requirements. Proposed additional parking areas will be stabilized with asphalt paving, a tar and chip application or other recognized material to prevent mud or gravel from being transported onto the public streets.

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

The approval of the identified improvements will serve the intended use of the facility as a daycare and comply with the existing zoning ordinance and will avoid an unreasonable economic burden on the owner to justify the needs in order to operate a safe and healthy establishment.

It should be noted that there is a relative significant amount of area on the east side of Burroughs Run that is not being developed and is to remain as “green” area (See attached Landscape Plan).

Meehan motioned to grant the variance for V20-10. Seconded by Tomblin. The vote was unanimous in favor.

Case asked for a motion to adopt the findings of fact for case V20-11. Cook motioned, seconded by Meehan. Unanimously passed.

**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:

This variance request pertains to the City Code, Section 1365.09(A)(3), “Parking Aisles”. Site conditions relating to the existing building, support areas, parking scheme and watercourse (Burroughs Run) which bisects a portion of Parcel 219 make it very difficult to comply with the requirements of this Section of the Code (See attached “Site Plan”).

There is not ample space to achieve the required parking spaces (15-18) as stipulated by Code to accommodate the daycare facility (City Code, Section 1367.08 (C), “Landscaping”. Previous business operations at this property established parking directly off Martin Street. Martin Street is not a main thoroughfare and serves primarily the residents that live in this area. Residents have become accustomed to this parking arrangement and traffic condition. It is important to note that site distance is more than adequate for vehicular travel on Martin Street in the vicinity of the daycare facility.

The request for variance is based on the above discussion of existing conditions and prior use of the building and parking scheme which in our opinion will no cause a hazard or risk the safety of the neighboring residents or the customers and employees of the daycare facility.

**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:

As indicated in Item “No. 1” above, this variance emerges as a result of the parking requirements dictated by the City Code (see attached Site Plan). Note “existing conditions” depicted in Item No. 1 referring to the existing building, support areas and the parking scheme established by prior businesses at this location.

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

This variance will permit the reasonable use of the existing facility to the fullest extent with minor improvements (incorporate additional parking and establish a playground area with fencing) and facilitate the intended use to serve as a daycare establishment and comply with City Code requirements. Proposed additional parking areas will be stabilized with asphalt paving, a tar and chip application or other recognized material to prevent mud or gravel from being transported onto the public streets.

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

The approval of the identified improvements will serve the intended use of the facility as a daycare and comply with the existing zoning ordinance and will avoid an unreasonable economic burden on the owner to justify the needs in order to operate a safe and healthy establishment.

Cook moved to grant the variance, seconded by Benison. The vote was unanimous in favor.

- V. **ANNOUNCEMENTS:** Whitmore updated on the Restaurant, Private Club. Stated that there were some inconsistencies with the Restaurant Private Clubs in the downtown B-4, General Business District. Staff investigated this issue in February and March of 2020. Staff found that two of the restaurant/private clubs were not in compliance with their conditional use. After consultation with the Development Services Director staff will hold off on enforcement given the current COVID-19 pandemic. Case agreed with this not being our top priority right now but appreciated the update. Case also appreciates all members of the Board, Whitmore, Fletcher, and Andrew for all you are doing to make this meeting possible.

- VI. **ADJOURNMENT:** 10:00 p.m.

MINUTES APPROVED:

July 15, 2020

BOARD SECRETARY:

  
Christopher M. Fletcher, AICP