

BOARD OF ZONING APPEALS

MINUTES

6:33 p.m.

July 17, 2019

Council Chambers

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

MEMBERS ABSENT: None.

STAFF: John Whitmore, AICP

- I. **CALL TO ORDER AND ROLL CALL:** Case called the meeting to order and read the standard explanation of the how the Board conducts business and rules for public comments.
- II. **MATTERS OF BUSINESS:**
 - A. Minutes for the June 19, 2019 hearing. No corrections noted and minutes approved as presented.
- III. **UNFINISHED BUSINESS:** None.
- IV. **NEW BUSINESS:**
 - A. **CU19-03 / HTM Properties / 499 Locust Avenue:** Request by Doug Shepard, on behalf of HTM Properties, for conditional-use approval of a "Dwelling, Multi-Family" use; Fifth Ward Tax District, Tax Map 26, Parcel 281; R-2, Single and Two-Family Residential District.

Whitmore presented the combined Staff Report for CU19-03 and V19-26.

Case recognized Doug Shepard of 820 Riverview Drive who provided further explanation of the project.

Case asked how many levels would be on the property. Shepard explained there would be three (3) levels and provided further explanation of the proposed multi-family structure.

Case noted they meet the parking requirements.

There being no further questions or comments by the Board, Case asked if anyone was present to speak in favor of or in opposition to the petitions. There being none, Case declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Case referred to the Findings of Facts and stated there is not an increase in occupancy with the conversion as it is eliminating a bedroom. Case noted that each unit has their own exits so fire safety is not jeopardized, and the building will be inspected by both the Code Enforcement and

the Fire Marshal. Case stated there are no changes to the exterior of the structure and the value of the building will be conserved as one-bedroom rentals appear to be a better use for the property.

Meehan made a motion to find in the affirmative for all of the Finding of Facts for CU19-03 as presented; seconded by Tomblin. Motion carried unanimously.

NOTE: The following findings were included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

The change of use from “Two-Family Dwelling” that includes one (1) one-bedroom and one (1) three-bedroom unit to “Multi-Family Dwelling” unit that includes three (3) one-bedroom unit is a reduction in occupancy. Additionally, the minimum parking requirement does not change with the land use reclassification as proposed.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

Each unit will have its own egress and building will now be inspected under both fire and building codes.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

There will be no changes to the exterior of the existing structure thereby not disrupting existing light distribution and airflow conditions within the immediate area.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

There will be no changes to the exterior of the existing structure.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

The change in land use classification will result in a lower residential occupancy for the principal building as proposed.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The residential occupancy of the principle building will be decreased by the land use reclassification as proposed.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

The area is an existing higher density rental neighborhood. The change of use will provide for increased fire and building code compliance requirements, which should serve to elevate the safety of this structure.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

The structure is currently a permitted by-right two-family dwelling with occupancy designed for four individuals. The proposed reconfiguration will result in fewer residents and provide higher rates of occupancy, while also increasing life-safety standards for the structure.

Cook moved to approve Case No. CU19-03 with the Staff recommended conditions; seconded by Benison. Motion carried unanimously.

- B. V19-26 / HTM Properties / 499 Locust Avenue:** Request by Doug Shepard, on behalf of HTM Properties, for variance relief from Article 1331 concerning common entrance design standards; Fifth Ward Tax District, Tax Map 26, Parcel 281; R-2, Single- and Two-Family Residential District.

Case read aloud the modified Findings of Facts in the Staff Report. Case noted the building is located in a dense area on a unique lot.

Case expressed there is not a change in the existing structure that would be visible from the street and therefore the change would not negatively affect the surrounding area or cause a hardship to the public.

Meehan made a motion to find in the affirmative for all of the Finding of Facts for V19-26 as presented; seconded by Benison. Motion carried unanimously.

NOTE: The following findings were included in the motion.

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 front façade of the structure will not change as a result of this development activity. Instead, the change of use from a two-family dwelling to a multi-family dwelling will lower the current occupancy. The existing separate direct access entrances through the front façade does not appear to have jeopardized persons or property. All things being equal, the impact of not having a common entrance will not be noticed by the general public or surrounding property owners.

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 building is solid block construction. The creation of a common entrance will necessitate improvements that could result in structural degradation. Additionally, there does not appear to be requisite physical space to move the staircase in 3rd floor unit to accommodate the common entrance.

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

It will allow reconfiguration and use of the existing building. This will keep conformity in neighborhood and not compromise the structure. The common entrance requirement does not appear to account for existing building design and related physical constraints of existing floor plans and multiple level access.

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

The use requested is the spirit of the neighborhood and doesn't place undo burden on construction. The use of two-separate entrances in the principal facade will allow for three individual one-bedroom units. The design of the existing entrances does not create visual blight, and is found in other older structures in the vicinity.

Tomblin moved to approve Case No. V19-26 with the Staff recommended conditions; seconded by Meehan. Motion carried unanimously.

Case reminded Mr. Shepard that the Board's decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- C. V19-23 / Istanbul Delicacy / 2995 University Avenue:** Request by Maria Pachina, on behalf of Istanbul Delicacy, for variance relief from Article 1369 concerning signage; Seventh Ward Tax District, Tax Map 11, Parcel 7; B-2, Service Business District.

Due to the applicant not being present Case moved V19-23 to the end of the agenda in case the applicant was running late.

- D. V19-24 / Alpha Rho Corporation of WV / 650 N. Spruce Street:** Request by Brian Dawson, on behalf of Alpha Rho Corporation of WV, for variance relief from Section 1339.04 regarding setbacks; Fifth Ward Tax District, Tax Map 26, Parcel 217; R-3, Multi-Family Residential District.

Whitmore presented the Staff Report.

Case recognized Eric Dyson, Vice President of the Alpha Rho Corporation, who stated they had obtained a permit to build the deck in 1996 that was torn down eleven years later due to deterioration. Dyson stated they would like to rebuild the deck from the previously approved footprint.

Case asked if this was a fraternity house. Dyson confirmed.

Benison asked if the property is leased to WVU. Dyson stated they no longer lease to WVU and now direct lease to students.

Case asked what the motivation is to rebuild the deck. Dyson stated the deck is necessary for safety and to take students off the streets to allow for better flow of foot traffic.

Case asked for further explanation on the design of the proposed deck. Whitmore referred to the Staff Report to provide further explanation.

Cook asked if this deck would be the exact same footprint as what was previously approved.

Case recognized Brian Dawson of Jamestown Drive who stated the proposed deck is the exact same footprint and stated the Staff Report includes pictures of the original deck.

Benison asked if a survey has been conducted to determine property lines. Dawson confirmed.

There being no further questions or comments by the Board, Case asked if anyone would like to speak in favor of or in opposition to the variance petition. There being none, Case declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Case reviewed the Findings of Facts listed in the Staff Report.

Case noted there are houses surrounding the property and noted there is a potential for large outdoor gatherings on the deck. Case recognized the area is mostly student housing.

Cook inquired if the previously approved deck would follow the current Planning and Zoning Code as there have been new regulations enacted in 2006. Cook expressed that it would set a precedent if they approve every petition that was presented in the past.

Case expressed concerns with the 0-foot setback onto North Spruce Street as pedestrians would be walking underneath the deck structure.

Case inquired if not having a deck structure would be a hardship.

Benison noted the previous deck was allowed to fall into a state of disrepair.

Dawson stated there are dual sidewalks on North Spruce Street with ample room for pedestrians as shown in the Staff Report illustration.

Case referred to the Staff Report and asked for further explanation on the design and materials used to build the deck. Dawson provided further explanation and stated the railing would have a bracket to prevent people from sitting or falling off.

Cook noted that one sidewalk has a steep slope. Whitmore stated the current condition of the sidewalk does have a slope with some cracking and the property owner could be requested to repair the sidewalk to meet standards.

Case expressed there are benefits to clearing the public right-of-way by giving pedestrians a place to congregate. Board members agreed.

Case asked if the Board could request the sidewalk be brought up to standards as a condition to the petition. Whitmore confirmed.

Case asked if the property owner would consider repairing the sidewalk in conjunction with erecting the deck. Dyson stated they would not be opposed to repairing the sidewalk.

Whitmore stated a condition could be listed to repair the sidewalk to the satisfaction of the City Engineer.

Benison made a motion to find in the affirmative for all of the Finding of Facts for V19-24 as presented; seconded by Tomblin. Motion carried unanimously.

NOTE: The following findings were included in the motion.

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 will not adversely affect the following because the property is located on a corner lot with no neighbors where the deck is proposed. The safety and welfare of the public will not be affected because this deck will provide its residents a location to socialize and relieve use of a common sidewalk currently used for that reason.

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:

This variance arises from special conditions because this property was issued a permit in the 2000's for this structure already. This deck was torn down due to disrepair and its occupants would greatly

benefit if a new deck was allowed to go back in its place. This property also has double sidewalks in front of its house as shown on the site plan. This will allow the public to have ample room to pass by without being affected by this structure.

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

This variance will eliminate an unnecessary hardship because and provide reasonable use of land because this structure would sit on an area which is unusable as it currently sits. No green space would be disturbed and this deck would make sense for its residents therefore providing a reasonable use of the land.

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

This variance will allow the intent of zoning to be conformed to because of the location of the property. Since there are no neighbors and there is a double sidewalk in front of the structure the public will not be affected. The intent of the zoning ordinance in this case is to ensure the proposed structure does not affect anyone else in doing so, and this structure will not. If there was not a double sidewalk present the 3' setback would be necessary to provide ample room.

Meehan moved to approve Case No. V19-24 with the Staff recommended conditions and adding the condition that the applicant will reconstruct the Spruce Street sidewalk along the frontage of Spruce Street to the satisfaction of the City Engineer; seconded by Cook. Motion carried unanimously.

Case reminded Mr. Dawson that the Board's decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- E. V19-25 / Sigma Phi Epsilon / 709 N. High Street:** Request by Crystal Miller of City Neon, Inc., on behalf of Sigma Phi Epsilon, for variance relief from Article 1369 concerning signage; Fifth Ward Tax District, Tax Map 26, Parcel 160.1; R-2, Single- and Two-Family Residential District.

Whitmore presented the Staff Report.

Case recognized Crystal Miller of City Neon, Inc., on behalf of Sigma Phi Epsilon who provided further explanation on the requested signage.

There being no questions or comments by the Board, Case asked if anyone would like to speak in favor of or in opposition to the variance petition. There being none, Case declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Case reviewed the listed Findings of Facts listed in the Staff report.

Benison asked if the variance petition is only for square footage and not materials. Miller confirmed.

Tomblin made a motion to find in the affirmative for all of the Finding of Facts for V19-25 as presented; seconded by Benison. Motion carried unanimously.

NOTE: The following findings were included in the motion.

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 proposed signage is similar in size to the various other fraternities and sororities in the vicinity. The signage on these properties have not had any ill effects on the public or residents of the area.

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:

In the past, this building has housed fraternities that have displayed large Greek letters on the building's exterior. There are two entrances to the parking lot and the proposed signage will make wayfinding easier to pedestrian/vehicular traffic coming from the Mountain Lair, North High Street, and other side streets.

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

The proposed signage fits within the architectural elements of the building in which it will be mounted and improve way finding for all types of traffic.

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

The proposed wall signs will be consistent with other fraternities and sororities in the area while maintaining a balance of the building's architecture.

Meehan moved to approve Case No. V19-25 without conditions; seconded by Cook. Motion carried unanimously.

Case reminded Ms. Miller that the Board's decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

Whitmore referred to Case V19-23 / Istanbul Delicacy / 2995 University Avenue and stated the Board could act on the petition as the sign dimensions were not changing or they could table it to the next month. Board members decided to table the petition to allow the petitioner to bring a picture with further explanation of the proposed sign.

Cook moved to table V19-23; seconded by Benison. Motion carried unanimously.

V. ANNOUNCEMENTS:

Whitmore informed the Board that Morgantown Flower is Feed is proposing a change in hours of operation and asked if Board members wanted to schedule a field trip prior to the hearing. Board members declined a field trip.

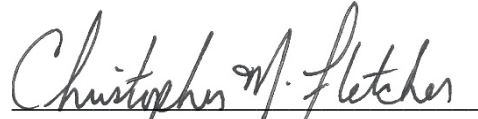
Cook asked for Staff to super impose pictures into Staff Reports to help Board members understand further requests and expressed it would have helped to see how the proposed deck on North Spruce Street would look when finished.

VI. ADJOURNMENT: 7:45 p.m.

MINUTES APPROVED:

August 21, 2019

BOARD SECRETARY:


Christopher M. Fletcher, AICP