

# BOARD OF ZONING APPEALS

## MINUTES

6:30 p.m.

March 20, 2019

Council Chambers

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

**MEMBERS ABSENT:** Garrett Tomblin

**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 February 20, 2019 hearing. No corrections noted, and minutes approved as presented.
- III. **UNFINISHED BUSINESS:** None.
- IV. **NEW BUSINESS:**
  - A. **V19-11 / Qdoba / 386 Patteson Drive:** Request by Kenny Weeks of Discount Signs and Awnings, on behalf of Qdoba Eats Mexican, for variance relief from Article 1369 concerning signage; Tax Map 11, Parcels 6 and 9; B-2, Service Business District.

Whitmore presented the Staff Report.

Case recognized Kenny Weeks of Discount Signs, on behalf of Qdoba, who concurred with the Staff report and stated the store is remodeling and modernizing their establishment.

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.

Benison noted the proposed sign will be smaller than the existing sign. Whitmore confirmed and referred to the Staff report to provide further explanation on the measurements of the proposed sign.

Cook made a motion to find in the affirmative for all of the Finding of Facts for V19-11 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 size of the wall sign appears to be in keeping with neighboring business wall signage and is functionally smaller than the wall sign to be replaced, which does not appear to have adversely impact the public realm or property rights.

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 *Qdoba* establishment has historically functioned with signage in excess of current maximum sign area standards and appears to be in keeping with other business establishments within the Patteson Drive commercial corridor.

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

The new sign, although smaller than the existing sign to be replaced, appears prudent to message to vehicular passersby within the five-lane Patteson Drive corridor.

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 sign is less in area than the wall sign it will replace thereby modestly decreasing visual clutter within the Patteson Drive commercial corridor.

Cook moved to grant variance relief for Case No. V19-11 without conditions; seconded by Meehan. Motion carried unanimously.

Case reminded Mr. Weeks 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.

- B. V19-12 / Wincor Properties, LLC / 263 Grant Avenue:** Request by Don F. Corwin for variance relief from Section 1361.03 related to building materials; Tax Map 20, Parcel 33; R-3, Multi-Family Residential.

Whitmore presented the combined Staff Report for Case Nos. V19-12, V19-13 and V19-14.

Whitmore noted that Staff received a letter in favor of the petitions from Jaime Craig after the meeting packets were distributed.

Case recognized Don Corwin of 251 Beechurst Avenue, on behalf of Wincor Properties, LLC, who provided further explanation of the project. Corwin stated there have been many upgrades made to the existing house to improve the quality and safety of the structure.

Corwin stated that using a brick material would be hard to match as the existing brick is over a hundred years old. He expressed that using an earth tone hardi-siding with matching trim is attractive for this property and therefore they are requesting variance relief on materials.

Corwin stated it is necessary to change the pitch of the roof in order to improve the quality of house and increase safety to the space. He noted that by changing the roof pitch this created the massing issue which he was not aware existed. Corwin noted there are many surrounding buildings in the Sunnyside area that are bigger in height with increased massing and expressed his house is consistent with the character of the neighborhood.

Corwin stated the porch was dilapidated and therefore they renovated and enclosed part of the front porch to provide a kitchen space. He noted they built the porch based on a line of sight comparison with other porches surrounding the house but then determined with the City Engineer that a survey was necessary which later revealed the porch extended slightly on the right-of-way. Corwin stated they are willing to remove some of the structure out of the City right-of-way to a zero-foot setback pending variance approval.

Case noted a site survey was completed after the meeting packets were distributed. Corwin confirmed.

Corwin handed out additional information on the survey plat to further explain the setback and noted there will be a buffer of grass.

Case asked for further explanation on the proposed materials. Corwin explained the hardi-siding would be more durable and only applied to the top and bottom of the house with the existing brick remaining in the middle. Whitmore referred to pictures in the Staff Report to provide further explanation.

Benison noted that the height of the building is three stories and still below the 55 maximum height requirement.

Case referred to the side setback and noted the wall of the house is not encroaching farther into the setback but rather the wall is longer. Corwin confirmed and stated the existing porch was already nonconforming but since they are enclosing the porch a variance is necessary.

Benison referred to the survey and expressed the results should not impact the Boards deliberations. Whitmore explained the survey shows where the parcel boundaries are located.

Case asked if there were any objections to combining the public hearing for V19-12, V19-13 and V19-14. There being none, Case asked if anyone would like to speak in favor of or in opposition to the variance petitions.

Case referred to the letter received by Staff from Jim and Jaime Craig which expressed favor in the project and asked the letter be entered in to the record.

There being no comments, Case declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Case stated the Board should consider and discuss each case separately.

Board members expressed favor in the proposed materials.

Meehan made a motion to find in the affirmative for all of the Finding of Facts for V19-12 as revised by Staff 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:

Cementitious fiberboard product widely used in building applications. This type of cladding, under several related variance approvals within the Sunnyside Overlay Districts, appears to have proven to be a higher performing material in this predominantly student housing neighborhood without adverse

impact to the public or the rights of adjoining property owners. Specifically, cementitious siding has proven effective against denting, splitting, vandalism, graffiti, fire, etc. compared to wood or vinyl products.

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 use of other “natural materials” such as stone or wood siding would not be compatible with aesthetic of this property. Use of brick does not appear practical as the existing brick is understood to be over 100 years old, have weathered/developed a patina and cannot be matched or duplicated. Cementitious cladding in charcoal gray color should result in an improved aesthetic and match other portions of the house. The special conditions of the exterior, along with the desire to use a higher performing cladding material in a predominantly student housing neighborhood, necessitate this variance and were not created by the owner.

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

Attempting to match the existing brick appears impractical and would detract from the building aesthetic. Other natural products would also be in contrast. The cementitious siding is a high-quality exterior finishing material which is wholly consistent with adjacent buildings. This variance will eliminate any contrast in façade through attempts to match existing material and is reasonable usage relative to adjacent structure construction.

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

Use of cementitious siding, slate gray, appears to be an attractive option for the building, is wholly compatible with surrounding architecture, and will match the other portion of the house. This variance supports the purpose and intent of zoning ordinances(s) that ensure attractive, high quality façade doing substantial justice to the neighborhood, community, and City.

Cook moved to grant variance relief for Case No. V19-12 with Staff the recommended condition that cementitious material must be used and not vinyl material; seconded by Meehan. Motion carried unanimously.

- C. V19-13 / Wincor Properties, LLC / 263 Grant Avenue:** Request by Don F. Corwin for variance relief from Section 1339.07 related to performance standards; Tax Map 20, Parcel 33; R-3, Multi-Family Residential.

Meehan made a motion to find in the affirmative for all of the Finding of Facts for V19-13 as revised by Staff; 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:

Remodeling of top floor bedrooms has resulted in additional “massing” due to addition of exterior walls and lower roof pitch. Performing this work has improved the quality, safety, and living condition of the property. Previous attic rooms were cramped with minimal window space. The replacement of the old, dilapidated roof and addition of knee walls plus new windows results in improved egress. Roof and wall insulation results in more comfortable space. Buildings on both sides, owned by Wincor Properties, do not appear to be significantly impacted as both are also 3 stories in height. Directly across Grant Avenue is WVU’s three-story townhouses, behind which is WVU’s a 12-story *University Place* building. Directly behind the 263 Grant Avenue building are two recently constructed properties including 146 and 152 3<sup>rd</sup> Street properties which were constructed in very similar massing of the top

floor. The work on the 263 Grant property improves the health, safety, welfare and is appears to be wholly consistent and compatible with other adjacent structures.

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 house is approximately 100 years old and has been a rental property for over 45 years. Attic bedrooms are undesirable due to low ceilings, cramped spaces, and poor quality/unsightly construction. The existing roof required replacement due to rotting wood and roofing materials. Installing a new roof, truss system, and insulation while systematically installing new exterior walls will preserve the house while improving the quality of the living space. Variance is sought due to constraints of remodeling and improving an existing structure.

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

The two-family dwelling is located in Sunnyside R-3 neighborhood where residents are predominantly WVU students. Improvement in quality and safety of rental space is necessary due to changing rental market and stricter safety standards. Replacement/remodeling of the attic bedrooms allows the house to be marketed to a wider, higher quality group of residents. Preserving the two-family dwelling while improving the space is reasonable and desirable in this neighborhood as the results are high quality, affordable housing for students. Eliminating the unnecessary hardship of renting a distressed and unsafe living space is effective and reasonable use of the existing land and building.

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

The remodeled two-family dwelling will result in preserving much of the character of the property, be a significant improvement to the neighborhood, result in improved quality and safety for residents, and is consistent with adjacent structures. The results appear to be aligned with purpose and intent of higher densities in the Sunnyside Overlay Districts and the end product appears to ensure substantial justice to the neighborhood, community, and City.

Meehan moved to grant variance relief to permit the conversion of the half-story attic to a full third-story, which results in the massing of 263 Grant Avenue not substantially conforming to and being greater than the existing massing of 255 Grant Avenue without conditions for Case No. V19-13; seconded by Benison. Motion carried unanimously.

- D. V19-14 / Wincor Properties, LLC / 263 Grant Avenue:** Request by Don F. Corwin for variance relief from Section 1339.04 related to setbacks; Tax Map 20, Parcel 33; R-3, Multi-Family Residential.

Case noted the applicant is willing to remove part of the porch in order to back it up to a 0-foot front setback and there will still be a buffer area.

Board members noted most houses in that area are non-conforming and expressed favor with having the buffer area.

Whitmore suggested the Board not consider the buffer area when determining a decision for the setback variance, as the current use of the public right-of-way cannot be guaranteed in the future.

Case asked if anything could be built on the public right-of-way in the future. Whitmore stated private improvements could be done to the land in the right-of-way with an abandonment process and noted the zoning district preference for a plaza space in the future.

Case asked if any examples could be provided of surrounding non-conforming houses with extended porches. Whitmore referred to a 267 Grant Avenue and noted the porch extends to the right-of-way.

Meehan noted a lot of properties would be affected if a street scape project were to occur in the future. Whitmore confirmed.

Corwin noted the Grant Avenue sidewalks were previously extended at least 18 inches with the streetscape improvements.

Case suggested considering surrounding non-conforming properties rather than the buffer area when making a decision. Whitmore referred to the Staff Report to show examples of surrounding non-conforming properties.

Case asked if the newly constructed addition will be farther out than the previous porch. Corwin stated the new addition will be of a similar footprint as the previous porch, but larger.

Cook asked for further explanation on the right-of-way. Whitmore provided further explanation and noted that a right-of-way is for public use of space and pedestrians are baring specific regulation, allowed to occupy the grass area.

Benison expressed they would not be increasing the degree of nonconformity with granting the variance. Board members agreed.

Meehan referred to Finding of Fact 4 and suggested including the zero-foot setback on Grant Avenue. Benison agreed and suggested to reference the condition as well.

Case made a motion to find in the affirmative for all of the Finding of Facts for V19-14 as amended by the Board members; 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:

Remodeling of the first floor included the addition of an adequate kitchen for the building. The unit previously had limited kitchen facilities located in the corner of the living room. Installation of a property equipped kitchen space of 80 sq ft will improve the quality of the property for residents. The health, safety, and welfare of the residents will be enhanced by this work. Rights of adjacent property owners will not be impacted. This work on the 263 Grant property improves the health, safety and welfare and is wholly consistent and compatible with other adjacent structures.

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 house is approximately 100 years old and has been a rental property for over 45 years. Limited space is available on the ground floor to accommodate a full kitchen. Expanding the kitchen into the front is necessary to improve the quality and living condition of residents. This addition will preserve a front porch area of 150 sq ft. Many structures on Grant avenue have completely enclosed porches. A 5ft strip of grass will continue to be maintained between the porch and sidewalk providing green space and landscape buffer. This variance is necessary due to the special property conditions and will make the best use of the available space which is limited due to the age and configuration of the property.

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

The house is located in Sunnyside R-3 neighborhood which WVU Student Rental. Improvement in quality and safety of rental space is necessary due to changing rental market and the desire for upgraded living spaces. This request will permit effective use of existing space while preserving the appearance and quality of the structure. The conditions and configuration of the existing property make it unattractive as a rental unit. Addition of the kitchen is reasonable usage of limited existing space.

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

The addition of the kitchen and remodeled front porch will preserve much of the character of the property while providing quality, safe, and affordable housing. The porch remains, green space is preserved, and the final result will be wholly consistent with adjacent structures in the Sunnyside neighborhood. The results, including the zero foot setback on the Grant Avenue parcel boundary with the condition that no portion of the structure encroach into the public right-of-way, are fully aligned with purpose and intent of zoning ordinance(s) and the end product does substantial justice to the neighborhood, community and City.

Case moved to grant variance relief from Sections 1361.03(M) [five-foot front setback encroachment] or 1339.04(A)(3) [extending the nonconforming side setback] for the partial enclosure of the front porch expansion relating to the interior kitchen improvement with the condition that any and all encroachments, including eaves and gutters, into the Grant Avenue public right-of-way must be removed. for Case No. V19-14; seconded by Meehan. Motion carried unanimously.

Case reminded Mr. Corwin 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.

**V. ANNOUNCEMENTS:**

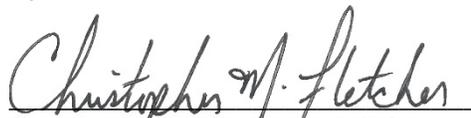
- A. Whitmore stated they will be scheduling the remainder of the training workshop at some point in April and Staff would be in contact with the Board members on finalizing a date.
- B. Whitmore stated there is a conditional use application for Mundy's scheduled for next month's agenda and Staff would be scheduling a site visit.

**VI. ADJOURNMENT: 7:50 p.m.**

MINUTES APPROVED:

April 17, 2019

BOARD SECRETARY:

  
Christopher M. Fletcher, AICP