

# BOARD OF ZONING APPEALS

## SPECIAL MEETING MINUTES

6:30 p.m.

July 21, 2021

Council Chambers

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

**MEMBERS ABSENT:**

**STAFF:** Rickie Yeager, City of Morgantown

- I. **CALL TO ORDER AND ROLL CALL:** Benison called the meeting to order and read the pre-meeting announcement. Case confirmed that there were no members of the public present.
- II. **MATTERS OF BUSINESS:** Approve meeting minutes from June 16 and July 7, 2021. Both were unanimously approved.

### III. UNFINISHED BUSINESS:

- A. **V21-10 / Hooshyar / 1816 Sturgiss Avenue:** Request by Daryoush Hooshyar for variance relief from Article 1367 concerning landscape buffer requirements; Tax District 14, Tax Map 33, Parcel 47.1; B-2, Service Business District.

Yeager presented the combined staff report for all four variance requests and noted the petitioner was present.

Mr. Hooshyar presented his case regarding the parking lot, and concerns that disturbing the current situation could cause more issues down the road with water issues.

Ms. Cook had concerns about the cases presented. She questioned painting the parking lot, sidewalks, and landscaping with regard to safety concerns. Yeager explained that this would be addressed in the staff recommendation. Benison asked for explanation of where the landscape buffer was, and Yeager again stated this would be addressed in staff recommendation. The main entrance for the property was confirmed to be the Sturgiss Avenue side. The Board did not agree with the argument about the water in the parking lot.

Public hearing was opened. Being that there were no public comments, the hearing was closed.

### **STAFF RECOMMENDATION:**

The Board of Zoning Appeals must 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 the proposed request does not meet the standard criteria for a variance, then the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject variance petition. [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

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

Addendum B of this report restates the petitioner's submitted findings of fact responses.

**Case No. V21-10 – Landscape Buffer**

Staff recommends variance relief from Section 1367.08(C) be granted to eliminate landscaping required for the southern/ rear side of the parcel. Staff recommends that the remaining landscape buffer requirements be maintained, as the petitioner is unable to establish special conditions or attributes which pertain to the property which would limit the development of said landscape buffers.

Staff provides the following findings of fact to establish this recommendation:

1. The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents because the nonconforming structure is in existence and has not infringed on neighboring property owners' health, safety or other rights to date.
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 existing nonconforming structure pre-dates current property ownership.
3. The variance will eliminate an unnecessary hardship and permit a reasonable use of the land as the pre-existing nonconforming structure limits conformance with the rear yard buffer requirement.
4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because as commercial use of the property will be enabled in keeping with the B-2, Service Business District purpose and permitted land-uses.

Motion and second to accept V21-10 landscape buffer variance as stated in the packet. Vote was unanimous.

**Case No. V21-11 – Parking Lot Design**

Staff recommends approval of the variance as minimum off-street parking does not appear to be feasible on this site without requiring variance relief.

Staff provides the following findings of fact to establish this recommendation:

1. The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents because the location of the off-street parking lot would not damage the purpose of the B-2, Service Business District and are already off-set from the primary vehicle corridor.
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 existing nonconforming structure pre-dates current property ownership and limits the location of any off-street parking on-site.
3. The variance will eliminate an unnecessary hardship and permit a reasonable use of the land as the pre-existing nonconforming structure limits the ability to place any off-street parking on-site in conformance with the B-2, Service Business District requirements.

4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because as commercial use of the property will be enabled in keeping with the B-2, Service Business District purpose and permitted land-uses.

Benison asked if there were any concerns regarding this variance.

Motion and second to accept the findings of fact for V21-11 parking lot design variance. Vote was unanimous. Vote was unanimous. Cook moved to approve as per staff report, Tomblin seconded. Vote was unanimous.

#### **Case No. V21-12 – Sidewalks**

Staff recommends denial of the sidewalk variance request and provides the following negative findings of fact on which to base this decision:

Negative Finding of Fact No. 1 - The variance will adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because the installation of this infrastructure is physically possible and negatively affects mobility and safety of pedestrians that would access this site.

Negative Finding of Fact No. 2 - The variance does not arise 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 can physically accommodate the installation of the required six-foot wide sidewalk and the variance is sought to eliminate an economic hardship on the part of the petitioner.

Negative Finding of Fact No. 3 - The variance will not eliminate an unnecessary hardship and will not permit a reasonable use of the land, because there is no non-self-imposed hardship established with the installation of required sidewalks and limits pedestrian access to the site.

Negative Finding of Fact No. 4 - The variance will not allow the intent of the zoning ordinance to be observed and substantial justice done, because the sidewalk requirement can be met on this site and the granting of this variance will encourage other property owners to seek relief from having to provide necessary infrastructure for reasons unrelated to physical real property attributes.

Additionally, if variance relief is not granted, staff (in consultation with the City Engineer's Office) prefer the sidewalk be relocated to the eastern parcel boundary that fronts on Sturgiss Avenue in accordance with the definition of lot front below (Section 1329), as there is presuming more traffic on Sturgiss Avenue than the abutting alley:

*Lot front means the side of a lot that abuts a public street is the front of the lot. For corner lots, the shortest side fronting upon a street shall be considered the front of the lot. Where buildings exist on the lot, the frontage may be established by the orientation of the building, or of the principal entrance, if building orientation does not clearly indicate lot frontage. Where no other method determines conclusively the front of a lot, the Planning Director shall select one frontage based on traffic flow on adjacent streets, so that the lot is considered to front on the street with the greatest traffic flow.*

Motion and second to accept V21-12 sidewalk requirement variance. We are following staff recommendation to deny this variance based on the negative findings of fact. Benison discussed that the board is not discriminating against the property owner but states the safety concern of no buffer in a residential neighborhood. Mr. Hooyshar stated that placing a sidewalk here would be similar to putting an island, since there is nothing for it to connect to.

Yeager followed this by reading the negative Findings of Fact. Vote was unanimous to deny the variance.

**Case No. V21-13 – Parking Lot Landscaping**

Staff recommends denial of the Parking Lot Landscaping variance request and provides the following negative findings of fact on which to base this decision:

Negative Finding of Fact No. 1 - The variance will adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because the physical design of the parking lot as designed by the petitioner provides opportunities for pedestrian and motor vehicle conflicts, which can be alleviated with the required landscape islands.

Negative Finding of Fact No. 2 - The variance does not arise 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 can physically accommodate the installation of the required landscape islands and the variance is sought to eliminate an economic hardship on the part of the petitioner.

Negative Finding of Fact No. 3 - The variance will not eliminate an unnecessary hardship and will not permit a reasonable use of the land, because the parking lot design requirements by themselves are not a hardship and it is reasonable for the public to expect required interior landscaping designs for parking lots as opposed to large expanses of asphalt.

Negative Finding of Fact No. 4 - The variance will not allow the intent of the zoning ordinance to be observed and substantial justice done, because the landscape island requirement can be met on this site, limits Planning and Zoning Code desired interior landscaping opportunities, and will affect vehicular movement on-site.

Yeager stated that Mr. Hooshyar has been in close contact with the Planning office in trying to get this worked out.

Yeager started a discussion regarding using the landscape buffer as a sidewalk, the board did not concur with this idea. Yeager read the negative findings of fact presented in the staff report. Motion by Cook and second by Tomblin to deny the findings of fact, V21-13 parking lot landscaping. Motion and second to deny the variance, vote was unanimous.

Benison noted that these denials may be appealed to the Circuit Court, written decisions will be mailed to the petitioner within seven days.

- B. V21-11 / Hooshyar / 1816 Sturgiss Avenue:** Request by Daryoush Hooshyar for variance relief from Article 1347 concerning parking lot design requirements; Tax District 14, Tax Map 33, Parcel 47.1; B-2, Service Business District.

see above

- C. V21-12 / Hooshyar / 1816 Sturgiss Avenue:** Request by Daryoush Hooshyar for variance relief from Article 1347 concerning sidewalks; Tax District 14, Tax Map 33, Parcel 47.1; B-2, Service Business District.

See above.

- D. **V21-13 / Hooshyar / 1816 Sturgiss Avenue:** Request by Daryoush Hooshyar for variance relief from Article 1367 concerning parking lot landscaping; Tax District 14, Tax Map 33, Parcel 47.1; B-2, Service Business District.

See above.

- E. **V21-16 / Studio 101 Salon / 1290 Richwood Avenue:** Request by Rose Bower on behalf of Studio 101 Salon, for variance relief from Article 1369 concerning signage; Tax District 14, Tax Map 24, Parcel 154; B-1, Neighborhood Business District.

Yeager presented the staff report and noted the applicant is present. Rose Bower, 129 Richwood Avenue. She stated that she wants to take the sign from the old location to the new location. She would like to mount this on the side brick wall. She noted that it would have an illuminated sign that would have an on off switch which would be off when the business is closed.

Public hearing was opened. Being no one present, the hearing was closed.

**STAFF RECOMMENDATION:**

It is the duty of the Board of Zoning Appeals to determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the “Findings of Fact” submitted by the petitioner. If the Board disagrees with the petitioner’s “Findings of Fact” and determines the proposed request does not meet the standard criteria for a variance, then the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject variance petition. [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Addendum B of this report provides staff suggested edits to the petitioner’s Findings of Fact responses (deleted matter struck-through; new matter underlined). Staff edits should not be considered or construed as supporting or opposing the subject variance petition. As is customary with sign variance petitions, no recommendation is submitted by Staff concerning whether variance relief should be granted.

Motion and second to approve the findings of fact. Vote was unanimous. Motion and second to approve the variance, which included two sections (area and illumination) again for both the vote was unanimous.

Benison noted that the petitioner will receive written notice within seven days and may be appealed if need be.

**IV. NEW BUSINESS:**

- A. **CU21-03 / Hertz Corporation / 1409 Greenbag Road:** Request by Justin Repullo on behalf of the Hertz Corporation for approval of a conditional “Automotive Rentals” use; Tax District 14, Tax Map 31, Parcel 101.9; B-2, Service Business District.

Yeager presented the staff report and noted the petitioner was present.

**STAFF RECOMMENDATION:**

The Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a conditional use or variance by reaching a positive determination for *each* of the “Findings of Fact” submitted by the petitioner. If the Board disagrees with the petitioner’s “Findings of Fact” and determines the proposed request does not meet the standard criteria for a conditional use or variance, then the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject conditional use or variance petition. [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Addendum B of this report restates the petitioner’s findings of fact.

Staff provides no recommendation for the case presented in this staff report.

Yeager presented the staff report and noted the petitioner was present. Logan Renner, representing the Hertz Corporation. He stated the information included in the staff report was active. Benison confirmed that no service work would be done on premises, there would only be car rentals and returns. Cook asked about the traffic concerns. Mr. Renner stated max would be 12 vehicles at a time with no customer parking left.

- B. **V21-27 / Mark and Kimberly Lovinski / 364 Oakland Street:** Request by Mark Clark on behalf of Mark and Kimberly Lovinski for variance relief from Article 1333 regarding setback requirements; Tax District 15, Tax Map 11, Parcel 211; R-1, Single-Family Residential District.

**STAFF RECOMMENDATION:**

The Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a conditional use or variance by reaching a positive determination for *each* of the “Findings of Fact” submitted by the petitioner. If the Board disagrees with the petitioner’s “Findings of Fact” and determines the proposed request does not meet the standard criteria for a conditional use or variance, then the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject conditional use or variance petition. [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Addendum B of this report restates the petitioner’s findings of fact.

Staff provides no recommendation for the case presented in this staff report.

Staff presented the staff report and that the applicant was present. He noted that the main section of the addition is off set from the house to allow for setbacks.

Public hearing was opened, seeing none, the public hearing was closed.

Cook moved to grant the variance; Benison seconded. Benison also noted not subject to conditions. Vote was unanimous.

- C. **V21-28 / Wicked Water Saloon / 350 E. Brockway Avenue:** Request by Michael McCusker on behalf of Wicked Water Saloon for variance relief from Article 1369 concerning signage; Tax District 10, Tax Map 35, Parcel 9; B-2, Service Business District.

Yeager presented the staff report and noted the petitioner was present.

Mike McCusker identified himself, and presented the case. The sign he is presented his case and noted the sign is smaller than allowable for the size of the building. Sign is not illuminated, but there is a sign above the sign pointing straight down.

Public hearing was opened to the public, seeing none, the public hearing was closed.

**STAFF RECOMMENDATION:**

The Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a conditional use or variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. If the Board disagrees with the petitioner's "Findings of Fact" and determines the proposed request does not meet the standard criteria for a conditional use or variance, then the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject conditional use or variance petition. [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Addendum B of this report restates the petitioner's findings of fact for each petition. Staff is working with the petitioner to establish off of these conditions.

Staff provides no recommendation for the case presented in this staff report.

Public hearing was opened to the public, seeing none, the public hearing was closed.

Motion and second to approve the findings of fact. Motion by Tomblin to grand and seconded by Cook to approve the variance. Vote was unanimous.

- D. V21-29 / Chick-Fil-A / 334 Patterson Drive:** Request by Jim Walker on behalf of Unistructures for variance relief from Article 1369 concerning signage; Tax District 15, Tax Map 10, Parcel 88; B-2, Service Business District.

Yeager presented the staff report and noted the petitioner was present. Unistructures, Chic Fil A. He stated that all he wants to do is add another sign board.

Public hearing was opened, being no one, it was closed.

**STAFF RECOMMENDATION:**

The Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a conditional use or variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. If the Board disagrees with the petitioner's "Findings of Fact" and determines the proposed request does not meet the standard criteria for a conditional use or variance, then the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject conditional use or variance petition. [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Addendum B of this report restates the petitioner's findings of fact for each petition.

Staff provides no recommendation for the case presented in this staff report.

Tomblin moved to accept finding of fact, seconded by Cook. Cook moved to grant, seconded by Tomblin. All votes were unanimous.

- E. **V21-30 / Michelle Johnson / 746 Ridgeway Avenue:** Request by Michelle Johnson for variance relief from Article 1331 concerning accessory structures and uses in residential districts; Tax District 13, Tax Map 25, Parcel 302; R-1A, Single-Family Residential District.

Yeager presented the staff report and noted the petitioner was present. Michelle Johnson, Ridgeway avenue. She provided additional pictures of the location. She further noted there is a six foot privacy fence around the property also.

Public hearing was opened. Being no one present it was closed.

**STAFF RECOMMENDATION:**

The Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a conditional use or variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. If the Board disagrees with the petitioner's "Findings of Fact" and determines the proposed request does not meet the standard criteria for a conditional use or variance, then the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject conditional use or variance petition. [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Addendum B of this report restates the petitioner's findings of fact for each petition.

Staff provides no recommendation for the case presented in this staff report. In the event a variance relief was granted, staff would recommend that it be contingent on the installation of the privacy fence (as proposed and shown on the site plan).

Motion made by Cook to approve findings of fact, seconded by Tomblin. Motion made by Cook to approve the variance with the conditions as stated in the packet, seconded by Tomblin. Both votes were unanimous.

**V. ANNOUNCEMENTS:**

- VI. ADJOURNMENT:** Meeting adjourned 8:23 p.m.

MINUTES APPROVED:

BOARD SECRETARY:

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Rickie Yeager, AICP