



MEMORANDUM

Date: August 18, 2010
To: Board of Zoning Appeals
RE: **STAFF REPORT APPENDAGE**
V10-20 / Byron-Culton / 1268 Fairlawn Avenue

At its July 21, 2010 hearing, the Board tabled the above referenced variance petition. In its tabling motion, the Board directed the petitioner to submit a survey and as-built site plan prepared by the surveyor licensed in West Virginia so that the Board would be confident in the extent of the variance being requested. The Board also requested the City Manager to issue a stop work order pending its decision.

Attached herewith are:

- July 21, 2010 Staff Report for V10-20 / Byron-Culton / 1268 Fairlawn Avenue
- July 22, 2010 memorandum from Dan Boroff, City Manager, to Mike Stone, Chief Building Code Official concerning the Board's stop work order request
- July 22, 2010 Stop Work Order issued by Mike Stone
- Survey/As-built Site Plan prepared by David C. Sypolt, PS #879, which was received by the Planning Department on July 30, 2010

Survey/As-built Site Plan

- Rear Setback (V10-20) – The drawing illustrates that the rear setback for the garage addition is 22.1 feet or 22' – 1 3/16". Article 1333.04 (4) provides that the minimum rear setback standard in the R-1 District is 25 feet. As such, the drawing illustrates that a **2.9'** or 2' – 10 13/16" **variance** is required rather than the original request of 10 feet.
- Side Setback from Mulberry (V10-21) – The drawing illustrates that the side setback from Mulberry is 13.1 feet or 13' – 1 3/16". Article 1333.07 (B) provides that the minimum side setback standard for a corner lot in the R-1 District is 15 feet. As such, the drawing illustrates that a **1.9'** or 1' – 10 13/16" **variance** is required. The petitioner has submitted a second variance petition seeking relief from said side setback standard.
- Side Setback from Adjoining Parcel – The drawing illustrates that the side setback for the master closet addition from the adjoining parcel boundary is 14.4', which is greater than the 10 foot setback standard provided in Article 1333.04 (3). As such, variance relief is not required.
- Lot Coverage – The drawing illustrates that the lot coverage for the house and garage and master closet additions is 28.3%, which is less than the maximum lot coverage standard provided in Article 1333.03 (C) of 40%. As such, variance relief is not required.



MEMORANDUM

Stop Work Order

The attached July 22, 2010 Stop Work Order provides that, "No further building operations are permitted at this location which relates specifically to work performed to and within said garage and master closet additions until a release form signed by the City Manger/Code Official has been issued."

After the survey/as-built site plan was submitted, Mike Stone and I met with Mr. Culton on August 30th and informed him that work may continue on the master closet addition. The reason for allowing work to go forward on the master closet addition was that the plan showed compliance with side setback requirements for same and that maximum lot coverage had not been exceeded. Mr. Culton requested to continue work on the garage at his own risk. Mr. Stone advised Mr. Culton that the Stop Work Order remained in effect for the garage addition until the BZA reached a decision on his variance petitions and that no work was permitted on the garage addition.

On Monday, August 2nd, Paul Satterfield and I found that two or three pieces of siding were hung on the garage along the wood deck. Mr. Satterfield instructed the workers on that date that no additional work to the garage would be allowed. On Tuesday, August 3rd, Mr. Satterfield and I found that additional siding was hung on the same side of the garage along the wood deck. Mr. Satterfield and I together spoke with Mr. Culton on August 3rd instructing him that any additional work on the garage would result in enforcement action.

A citation was not issued for these events due to Code Enforcement's experience with the Municipal Court under similar circumstances. The Code Enforcement Division has a higher degree of confidence that the Municipal Court will uphold enforcement action if Mr. Culton continues work on the garage beyond that noted above.

Course of Action

The Board is reminded that Case No. V10-20 must be removed from the table under Robert's Rule of Order before additional discussion or deliberation may proceed. The Board is also reminded that its obligation to hold a public hearing by taking public comments was fulfilled during the Board's July 21st hearing. As such, the Board may elect to simply continue its discussion without additional public comment for Case No. V10-20.

The Board must 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. Should the Board not agree with the findings submitted by the petitioner, it must develop its own positive or negative findings keeping in mind that a decision to approve or deny the variance petition may be appealed to Circuit Court.

As noted in the July 21, 2010 Staff Report, no Staff recommendation is offered as doing so in either case may be perceived as unfair and prejudiced given the circumstances of the present variance petition.



MORGANTOWN BOARD OF ZONING APPEALS

July 21, 2010
6:30 PM
City Council Chambers

Board Members:

Bernie Bossio, Chair
Leanne Cardoso, Vice-Chair
Jim Shaffer
George Papandreas
Tom Shamberger

STAFF REPORT

CASE NO: V10-20 / Byron-Culton / 1268 Fairlawn Avenue

REQUEST and LOCATION:

Request by Dean Culton, on behalf of Megan Byron, for variance relief from Article 1333.04 of the Planning and Zoning Code as it relates to minimum rear setback for property located at 1268 Fairlawn Avenue.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map #7, Parcel #165; R-1, Single Family Residential District

SURROUNDING ZONING:

R-1, Single-Family Residential District

BACKGROUND and ANALYSIS:

The petitioner obtained a building permit to construct a garage addition to the existing single-family structure at 1268 Fairlawn Avenue, which is a corner lot. Addendum A of this report illustrates the location of the subject site.

Prior to building permit application, Staff met the petitioner at the property to discuss the proposed garage addition and setback requirements. The petitioner was advised that the front setback from Mulberry Street had to be at least twenty-five (25) feet from the front property line and the side setback from the adjoining house had to be at least ten (10) feet from the side property line.

With the exception of the property addressed to Fairlawn Avenue, which was not noted by Staff during review, the building permit application and drawings submitted by the petitioner were consistent with Staff's onsite consultation. Specifically, drawings noted the Mulberry Street elevation as the front and the setbacks noted on the building permit application were 25 feet for the front setback and 10 feet for the left side setback. A survey was not included in building permit application, which is customary for additions to single-family homes in established neighborhoods where parcel boundaries are generally decipherable. The building permit was accordingly approved and issued.

After construction commenced, the Planning Department received several complaints from neighboring residents on June 24th and 25th concerning the setback from Mulberry Street. Staff returned to the site on Friday June 25th and discovered that an error was made in determining the structure's orientation.

The property's true front is facing Fairlawn Avenue and not Mulberry Street. The incorrect orientation determination by the Planning Department resulted in the garage addition being constructed within the required twenty-five (25) foot rear yard setback.

Planning Department

Christopher Fletcher, AICP
Planning Director
389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

July 21, 2010

6:30 PM

City Council Chambers

Board Members:

Bernie Bossio, Chair

Leanne Cardoso, Vice-Chair

Jim Shaffer

George Papandreas

Tom Shamberger

The Planning Department immediately advised the petitioner of the error; that variance approval to encroach into the minimum rear yard setback would be necessary; and, that continued construction pending a determination by the BZA would be at the petitioner's sole financial risk.

Article 1705.07 "Period of Validity; Renewals" of City Code provides that the Building Inspection Department is authorized to suspend or revoke a permit issued wherever the permit is issued in error, or on the basis of incorrect, inaccurate information, or in violation of any ordinance or regulation of any of the provisions of City Code.

After consultation with the City Manager and the City Attorney, Staff advised the petitioner that failure to seek variance relief at the BZA's July 21st hearing would result in the issuance of a stop work order. After several discussions during the week of June 28th, the petitioner agreed to submit a variance application for the July hearing even though he felt he had constructed the addition as advised and approved. As such, a stop work order was not issued but the petitioner was again advised that continued construction would be at their own financial risk.

The Planning Department fielded numerous calls and emails from neighboring residents concerning the circumstances of the building permit, the Planning Department's error, and the variance petition. Addendum B of this report summarizes the questions/complaints and responses sent via several emails during the week of July 5th.

Staff measured the distance of the rear setback beginning at the middle of the hedgerow separating the adjoining properties to the subject garage addition as 16'-6". A variance of 10 feet is required for the encroachment into the minimum 25 foot rear yard setback.

Staff measured the distance of the side setback of the garage addition along Mulberry Street using two methods.

1. The measurement from the back of the curb along Mulberry Street to the garage addition was 25 feet.
2. The width of Mulberry Street from curb to curb is 20 feet. The platted right-of-way width of Mulberry Street is 40 feet. Assuming the road was constructed in the center of the right-of-way, the measurement from the middle of the road to the garage addition was 35 feet.

Without a survey, it is reasonable to assume based on the measurements noted above that the side setback of the garage addition from the property line along Mulberry Street is between 15 feet and 25 feet. Article 1333.07 of the Planning and Zoning Code provides that the minimum side setback for the corner lot is 15 feet – 1.5 times the normal side setback requirement of 10 feet in the R-1 District.

Planning Department

Christopher Fletcher, AICP
Planning Director
389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

July 21, 2010
6:30 PM
City Council Chambers

Board Members:

Bernie Bossio, Chair
Leanne Cardoso, Vice-Chair
Jim Shaffer
George Papandreas
Tom Shamberger

STAFF RECOMMENDATION:

The Board must 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 applicant.

The fact that the Planning Office incorrectly determined the structure's orientation during building permit review and the fact that construction has begun are extraneous to the Board's decision to either approve or deny the requested variance relief.

Given the circumstances of the present variance petition, no Staff recommendation is offered as doing so in either case may be perceived as unfair and prejudiced.

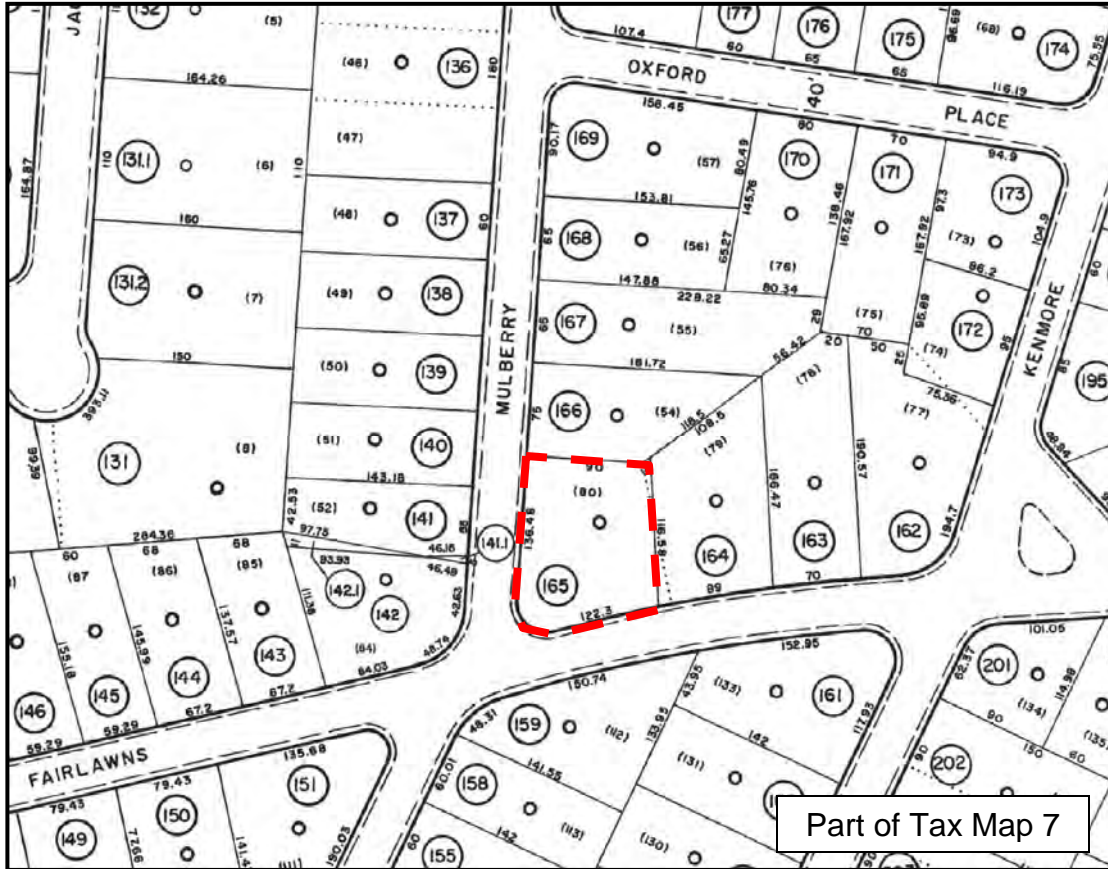
Attachment: Variance application, building permit application

NOTE: Building drawings have not been included with the attachments due to size; said drawings will be available at the hearing

Planning Department

Christopher Fletcher, AICP
Planning Director
389 Spruce Street
Morgantown, WV 26505
304.284.7431

STAFF REPORT ADDENDUM A
V10-20 / Byron-Culton / 1268 Fairlawn



STAFF REPORT ADDENDUM B

V10-20 / Byron-Culton / 1268 Fairlawn

SUMMARY OF COMPLAINTS AND RESPONSES

QUESTION – As mentioned at the Council of the Whole Meeting on June 29, 2010 there seems to be a change in the R-1 variance process if construction can occur with administrative approval rather than a variance and public hearing at the Board of Zoning Appeals. An explanation is needed to explain this administrative change.

RESPONSE – As the neighbor notification letter states, which you received a copy, the petitioner obtained a building permit to construct a garage addition to the existing single-family structure at 1268 Fairlawn Avenue. In reviewing and approving the building permit, the Planning Department incorrectly determined the orientation of the front of the structure toward Mulberry Street rather than Fairlawn Avenue. After construction commenced, the Planning Department recognized its error and found that the garage addition, as approved, encroached into the minimum required 25 foot rear yard setback. The Planning Department immediately advised the petitioner of the error, that variance approval to encroach into the minimum rear yard setback would be necessary, and that continued construction pending a determination by the Board of Zoning Appeals would be at the petitioner's sole financial risk. There has been no "change" to the review and approval process asserted above. The incorrect order of present approval events occurred as a result of this administrative error...not by any "administrative change".

QUESTION – It is unclear how the setback variance would have not gone to the BZA based on the "incorrect determination of the front orientation." With either orientation it appears that the set-backs for front, side, or rear would have needed a variance.

RESPONSE – If the orientation of the structure faced Mulberry, which this Office clearly recognizes was an incorrect determination, than the "front" setback facing Mulberry would have to be 25 feet or more and the "side" setback closest to the adjoining house would have to be 10 feet or more. The measured distance from the back of the curb along Mulberry to the subject garage addition is 25 feet, which would comply with this "front setback" provision if it were the correct orientation. I [Fletcher] will also note that the next closest front setback (from back of curb to structure) along the same side of Mulberry between Oxford and Fairlawn is 31'-10"...which is less than a 7 foot difference from the true side setback distance between the subject garage addition and back of the curb along Mulberry.

The measured distance from the middle of the hedgerow between the subject garage addition and the neighboring house is 16'-6", which would comply with the "side setback" provision if it were the correct orientation. Because the orientation determination was not correct, a rear setback encroachment was realized. As such, an approximate ten-foot variance from the true rear yard setback standard of 25 feet is necessary. Variance relief is not necessary from the true side setback standard of 15 feet (1.5 times the minimum side setback standard of 10 feet on corner lots in the R-1 District)...again the true side setback measured 25 feet between the back of the curb along Mulberry and the subject garage addition.

QUESTION – The neighbors have not received notice of specifics of the measurements and variance petition.

RESPONSE – As noted above, the distance of the true side setback from the back of the curb along Mulberry to the subject garage addition measured 25 feet. The distance of the true rear setback from the center of the hedge row between the adjoining properties to the subject garage addition measured 16'-6".

QUESTION – There is a question whether the additions adhere to the 40% footprint requirement. The neighbors do not know how the current additions affect the previous footprint and fit into the requirement.

RESPONSE – The present house and additions total 3,639 sq. ft., which covers 27.1% of the 13,443 sq. ft. parcel and is less than the 40% maximum lot coverage standard in the R-1 District.

QUESTION – The variance request needs to be based on a current survey approved by the appropriate benchmark authority, taking in account neighbor's property lines.

RESPONSE – Requiring petitioners to obtain surveys in all variance applications is not practical given the costs for surveying services and turnaround time. We have learned that there simply are not enough licensed surveyors in the greater Morgantown area to meet demand. For example, the subdivision regulations require final subdivision plats to be prepared and recorded within 30 days of Planning Commission approval. Most property owners can not get a surveyor on the property within 30 days following Planning Commission approval...especially for very simple surveying work of locating existing and/or setting new pins. To offset this market problem, we require recordation to occur within 30 days of the Planning Commission President signing the final plat. In established neighborhoods like Suncrest, we utilize tax mapping, Geographic Information System data, and field reconnaissance for variance petitions unless there is a property line dispute between adjoining neighbors. In those instances, the BZA may require a survey to be completed. The location of property boundaries for the 1268 Fairlawn site does not appear to be in question...the problem arose from the incorrect orientation determination by this Office.

I [Fletcher] will also point out that the distance between the subject garage addition and the neighboring structure is 29 feet...3 feet more than the distance between the structures directly across Mulberry. Further, the side setback (toward the street) of the house on the southeast corner of Fairlawn and Kenmore measured 22'-5" from the back of the curb along Fairlawn. Although I [Fletcher] could not get an accurate measurement of the setbacks for the house at the southeast corner of Fairlawn and Mulberry due to overgrown landscaping, I [Fletcher] suspect one or more setback encroachments may exist. The house at the southwest corner of Fairlawn and Kenmore measured 29'-3" from the back of the curb along Fairlawn and 27'-8" from the back of the curb along Kenmore. The rear yard setback of the house on the southwest corner of Cambridge and Laurel measured 14'-10". The western side yard setback of the mid-block house on Cambridge between Laurel and Rotary measured 4'-8". The side yard setback of the house (between adjoining structures) on the southeast corner of Kenmore and Cambridge measured 9'-2". I [Fletcher] also saw several detached accessory structures (garages, garden sheds, etc.) within a three block area of 1268 Fairlawn that have been constructed at the property line or closer than the minimum five-foot setback standard for same. I [Fletcher] also saw by a flyer posted at one house

that is for sale along Mulberry between Fairlawn and Parkview that there is a nonconforming accessory dwelling unit (granny flat) above a detached garage.

QUESTION – Don't you need a survey to determine setbacks on projects where building has begun before BZA approval?

RESPONSE – Requiring petitioners to obtain surveys in all variance applications is not practical given the costs for surveying services and turnaround time. We have learned that there simply are not enough licensed surveyors in the greater Morgantown area to meet demand. For example, the subdivision regulations require final subdivision plats to be prepared and recorded within 30 days of Planning Commission approval. Most property owners can not get a surveyor on the property within 30 days following Planning Commission approval...especially for very simple surveying work of locating existing and/or setting new pins. To offset this market problem, we require recordation to occur within 30 days of the Planning Commission President signing the final plat. In established neighborhoods like Suncrest, we utilize tax mapping, Geographic Information System data, and field reconnaissance for variance petitions unless there is a property line dispute between adjoining neighbors. In those instances, the BZA may require a survey to be completed before rendering a decision.

QUESTION – Also, property lines do not start at street side of curb. They are 4-7 feet inside yards inside Suncrest Park.

RESPONSE – I [Fletcher] am aware and understand this fact. The field measurements that we have taken from the back of curb lines is intended to provide equal balance and context to the setback trends along Mulberry given the present conditions of the built environment. Setback requirements are from property boundaries and not improvements within the right-of-way. The widths of the Mulberry and Fairlawn rights-of-way are each 40 feet. The distance from curb to curb on Mulberry is approximately 20 feet. If the road was constructed in the center of the right-of-way, than the property boundaries are 10 foot beyond either side of the curbs. Our field measuring rule of thumb is to stand in the center of the street, measure half the distance of the platted right-of-way (in this case 20 feet) and then measure the distance of the structure or proposed location of the structure. As such, the setback of the subject garage addition is between 15 and 25 feet from what should be the property boundary...which meets the minimum 15-foot setback requirement. Where a survey is not necessary or impractical, we, along with the Engineering and Code officials, have successfully used this field method for many years.

QUESTION – As published in the paper the property transferred from Nancy Watson to Megan Byron. Mr. Dean Culton is not listed as property owner and does he have a right to petition for a variance?

RESPONSE – Mr. Culton may submit a variance petition application as the applicant/agent without the objection of the property owner. Frequently, the builder, contractor, developer, and/or design professional will apply on behalf of the property owner.

QUESTION – Is there a requirement that the petitioner keep the variance sign posted prior to the hearing? On July 3 a neighbor saw the petitioner remove the sign, so the neighbor put it back up. On July 5 it was not there while construction was occurring.

RESPONSE – Article 1381.03 (F) provides that, "At least ten (10) days prior to the Board of Zoning Appeals hearing on the application for variance approval, the applicant shall post and maintain a sign on the subject property notifying those passing the property that a

request for variance approval for the property has been made. The sign shall be provided to the applicant by the Planning Director.”

This Office customarily performs this task as a service to petitioners...and to make sure it is posted. By going into the field to post signs, we also gather additional information and photographs.

I [Fletcher] personally posted a red sign on the property around 5:00 PM on Friday, July 2nd. We received complaints yesterday [July 6] morning that the sign had been removed. Our intern posted a blue sign yesterday [July 6]. I [Fletcher] personally saw the sign there this morning [July 7] at 7:00 AM.

Because we have experienced many instances of notification signs being removed across the city...we believe by youngsters, college students seeking a wall hanging in their homes, lawn care professionals, and even unhappy neighbors...we have never issued citations to the property owner. One caller purported that he saw Mr. Culton remove the sign. I [Fletcher] believe it would be very difficult for this Office to convince the Court to uphold a related citation. I [Fletcher] am very confident, given the number of emails and calls we have received along with the public comments provided to City Council during its recent public meetings, that the neighboring property owners are acutely aware of present circumstances involving the subject garage addition at 1268 Fairlawn. This Office will not return to erect a third sign should the second one be removed.

QUESTION – The sign is gone again. How many days do you have to advertise via sign for issue to go on BZA agenda?

RESPONSE – Article 1381.03 (F) provides that, “At least ten (10) days prior to the Board of Zoning Appeals hearing on the application for variance approval, the applicant shall post and maintain a sign on the subject property notifying those passing the property that a request for variance approval for the property has been made. The sign shall be provided to the applicant by the Planning Director.”

This Office customarily performs this task as a service to petitioners...and to make sure it is posted. By going into the field to post signs, we also gather additional information and photographs.

I personally posted a red sign on the property around 5:00 PM on Friday, July 2nd. We received complaints yesterday [July 6] morning that the sign had been removed. Our intern posted a blue sign yesterday [July 6]. I [Fletcher] personally saw the sign there this morning [July 7] at 7:00 AM. Lisa Martis spoke with Mr. Culton earlier today [July 7] and he stated that he is in Florida.

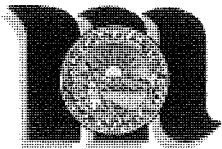
Because we have experienced many instances of notification signs being removed across the city...we believe by youngsters, college students seeking a wall hanging in their homes, lawn care professionals, and even unhappy neighbors...we have never issued citations to the property owner. One caller purported that he saw Mr. Culton removed the sign. I [Fletcher] believe it would be very difficult for this Office to convince the Court to uphold a related citation. I [Fletcher] am very confident, given the number of emails and calls we have received along with the public comments provided to City Council during its recent public meetings, that the neighboring property owners are acutely aware of present circumstances involving the subject garage addition at 1268 Fairlawn. This Office will not return to erect a third sign should the second one be removed...which may be the case given the calls we have received today.

QUESTION – Based on conversations with the stakeholders in the immediate vicinity of this property, I [N. Ganz] request that a stop work order be applied to this construction site until the appropriate BZA hearing takes place on July 21, 2010 at City Council Chambers at 6:30pm and the above issues are resolved.

RESPONSE – This Office, with consultation by the City Manager and City Attorney, determined that a practical, common sense approach was warranted given its incorrect orientation determination. This Office advised Mr. Culton that construction prior to the July 21st hearing would be at his sole financial risk. He was also advised that a stop work order would be issued if he did not seek variance relief at the July 21st.

QUESTION – Not related to the BZA, but City Ordinance there seems to be loud construction machinery and hammering violating the noise ordinance including at 6:30am on July 3rd after the variance notice was placed in the yard.

RESPONSE – This Office has no administrative authority to enforce City Code concerning noise. I [Fletcher] will forward this issue onto the Police Department and Building Code Office.



City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V10-20
RECEIVED:	
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

I. APPLICANT		Name: Dean Culton	
Mailing Address:	Street	Phone:	304-692-5096
	City	State	Zip
	Mobile:		Email:
II. PROPERTY		Street Address: 1268 Fairlawns Avenue	
Owner:	Megan Byron	Zoning:	R-1
Mailing Address:	1268 Fairlawns Avenue		Tax Map No: 07
	Street	City	State
	Morgantown	WV	26505
Parcel No: 165		Phone: 685-6920	
III. NARRATIVE		Please describe the nature and extent of your variance request(s).	
Article #334.04 Setbacks in the R-1 District			
V. ATTEST			
I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. The granting of a variance does not presume to give authority to violate or cancel the provisions of any other federal, state, or local law regulating construction or the performance of construction. I certify that the information submitted herein and attached hereto is true and accurate and understand that if found otherwise may result in the denial of this request or subsequent revocation of any and all related approvals. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions. I hereby authorize the Planning Department to erect a notification sign on the subject property approximately 15 days prior to the BZA hearing. I further agree to maintain said signage and hereby accept responsibility in case of destruction or removal.			
Type/Print Name of Applicant/Agent		Signature of Applicant/Agent	Date
Dean Culton Megan Byron		<i>[Signature]</i>	7/14/10

You or a representative MUST be present at the scheduled hearing to present the request and answer questions. Failure to appear at the hearing will result in your request being tabled.



APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V1020
RECEIVED:	
COMPLETE:	

VI. SUPPLEMENTAL INFORMATION

Depending on the type of variance request and the scale and scope of the development proposal, supplemental information may be needed to assist the Board of Zoning Appeals in rendering a variance decision. Staff will check the appropriate boxes below that must be addressed.

Land Use Characteristics (complete only those that apply)

- Residential Single-Family Dwelling Townhouse Dwelling
- Two-Family Dwelling Multi-Family Dwelling
- Non-Residential or Mixed (please explain)

Structure Characteristics (complete only those that apply)

Total number of buildings: 1 Gross floor area of each building: _____

Estimated number of employees: _____ No. of dwelling units: _____ No. of bedrooms: _____

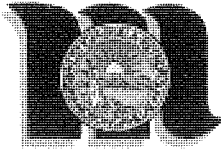
Additional structure-related details:

Additional Information (as required by Staff):

Site Plan A scaled site plan may be required to assist the Board in rendering a variance decision. The following features must be represented, as required by Staff.

- Location, shape, exterior dimensions, and number of stories of each building on the site.
- Standard yard setbacks for the applicable zoning district
- Location, grade, and dimensions of paved surfaces, and all abutting streets
- Existing and proposed contours, at an interval of at least two (2) feet
- Complete traffic circulation plan showing dimensions, entrance/exit drives, planters, and similar improvements
- Location of landscaped areas (to be detailed on landscape plan), fences, walls, and other screen required

For simple variance requests (as determined by Staff), please use the graph area on the following page to illustrate applicable features listed above.



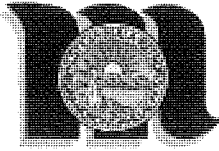
City of Morgantown, West Virginia

**APPLICATION FOR
ZONING VARIANCE**

OFFICE USE	
CASE NO.	V10-20
RECEIVED:	_____
COMPLETE:	_____

Suggested Scale: 1 square = 5'

*See attached
plan*



APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V10-20
RECEIVED:	
COMPLETE:	

VII. FINDINGS OF FACT

The Board of Zoning Appeals may grant a variance request only if each of the following "Findings of Fact" criteria is determined to be in the positive. Applicants must give their own responses to the following criteria statements.

1. There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

see attached JM

2. The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

3. The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

4. The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

APPLICATION FOR VARIANCE

Case No.: V010-20

Findings of Fact

Culton-Byron / 1268 Fairlawn Ave

- 1. There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:**

The existing structure appears to be situated on the large corner parcel in a manner that requires rear setback encroachment in order to develop the desired number of garage off-street parking spaces while maintaining and preserving the architectural design and character of the existing house.

- 2. The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:**

The improvements appear to increase the square footage and modernize an existing single-family structure and garage amenities similar to other renovations within the Suncrest and Evansdale areas. Specifically, the BZA approved on June 19, 2002 a 23-foot rear yard variance to allow a rear setback of two feet at 396 Kenmore Street. On July 19, 2006, the BZA approved a five-foot rear yard variance to allow a rear setback of 20 feet at 1244 Oxford Place. On December 20, 2006, the BZA approved 19-foot rear yard variance to allow a six foot rear setback at 533 Princeton Avenue. On May 19, 2010, the BZA approved a 22.5-foot rear yard variance to allow a rear setback of 2.5 feet at 881 Fairfax Drive.

- 3. The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:**

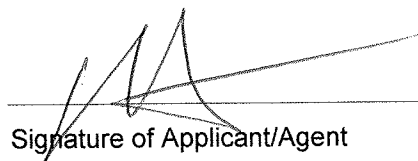
The subject addition appears to replace a very small single-car garage. With the exception of the rear yard setback, the addition meets all other R-1 design and performance standards. The subject garage addition should enhance the value of the subject structure and properties within the vicinity, particularly where many of the homes within the neighborhood have either grown through additions or have been replaced by larger homes on sites the previously contained smaller structures.

- 4. The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:**

The use and characteristics of the principal structure will remain a single-family dwelling; the additional square footage and garage capacity should increase the value of the home and consequentially enhance the value of surrounding homes; and, the variance cannot affect traffic congestion that already exists, although the development of additional off-street parking should reduce on-street parking demand.

DEAN C. HOWE

Type/Print Name of Applicant/Agent



Signature of Applicant/Agent

APPLICATION FOR PLAN EXAMINATION AND BUILDING PERMIT

APPLICANT INSTRUCTIONS: For all applications, complete Parts 1, 2, 3, 4 and 5 of this form. If electrical work, complete also Part 6. If plumbing work, complete also Part 7. If mechanical work, complete also Part 8. For other permits, complete also Part 9. Site Plan (Part 10) is to be shown on Page 4 or attached hereto. Parts 11-18 (Pages 5 and 6) are for department use only.

App. Date <u>5/21/2018</u>	Type Permit <input checked="" type="checkbox"/> Building (B)	<input checked="" type="checkbox"/> Electrical (E)	<input type="checkbox"/> Plumbing (P)		Is Owner Applicant <input checked="" type="checkbox"/> (Y) <input type="checkbox"/> (N)
	<input type="checkbox"/> Mechanical (M)	<input type="checkbox"/> Other (O) (See item 9)			

1. PROPERTY INFORMATION

Street Address <u>1268 Fairlawn Ave. Morgantown WV</u>	Apt. <u>26505</u>	Zip <u>26505</u>	Parcel Number <u>07/165</u>	Zoning <u>R-1</u>
Subdivision <u>Suncrest Park Addition of Defense Homes Corp</u>	Lot Number <u>80</u>	Parcel Type <input checked="" type="checkbox"/> Residential (R)	<input type="checkbox"/> Industrial (I)	<input type="checkbox"/> Commercial (C) <input type="checkbox"/> Other (O)

2. OWNER INFORMATION

First Name <u>Megan</u>	Last name or Business Name <u>Byron</u>	Phone <u>304-685-6920</u>
Street Address <u>1268 Fairlawn Ave.</u>	City <u>Morgantown</u>	State Zip <u>WV 26505</u>

3. CONTRACTORS INFORMATION

	NAME OF CONTRACTOR	ST. ADDRESS	CITY, ST.	LICENSE NO.
Applicant (not owner)	OWNER			
Architect / Engineer	<u>NONE</u>			
General Contractor	OWNER <u>OWNER</u>			
Excavation	<u>OWNER</u>			
Concrete	<u>OWNER</u>			
Carpentry	<u>OWNER</u>			
Electrical	<u>OWNER</u>			
Plumbing	<u>OWNER</u>			
Sewer	<u>NONE</u>			
Mechanical	<u>NONE</u>			
Roofing	<u>OWNER</u>			
Masonry	<u>OWNER</u>			
Drywall or Lathing	<u>OWNER</u>			
Sprinkler	<u>NONE</u>			
Paving	<u>NONE</u>			
Fire Alarm	<u>NONE</u>			

4. CERTIFICATION

I hereby certify that I am the owner of record of the named property, or that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his authorized agent and I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the code official or the code official's authorized representative shall have the authority to enter areas covered by such permit at any reasonable hour to enforce the provisions of the code(s) applicable to such permit.

<u>Megan M Byron</u>	<u>1268 Fairlawn Ave Morgantown WV</u>	<u>304-685-6920</u>
SIGNATURE OF APPLICANT	ADDRESS	PHONE NO.
<u>Megan M Byron</u>	<u>1268 Fairlawn Ave Morgantown WV</u>	<u>304-685-6920</u>
RESPONSIBLE PERSON IN CHARGE OF WORK, TITLE		PHONE NO.

5. BUILDING PERMIT APPLICATION

For Dept. Use Only	Request Plan No. Assignment (Y/N)	PROPOSED USE:		INSTITUTIONAL	<input type="checkbox"/> OTHER (24)
Plan Number		ASSEMBLY	<input type="checkbox"/> THEATRE (1)	<input type="checkbox"/> GROUP HOME (12)	PARKING GARAGE
IMPROVEMENT TYPE:		<input type="checkbox"/> NIGHT CLUB (2)	<input type="checkbox"/> RESTAURANT (3)	<input type="checkbox"/> HOSPITAL (13)	CARPORT
		<input type="checkbox"/> CHURCH (4)	<input type="checkbox"/> OTHER ASSEMBLY (5)	<input type="checkbox"/> JAIL (14)	MOTOR FUEL SERV.
		<input type="checkbox"/> NEW CONSTRUCTION (1)	<input type="checkbox"/> BUSINESS (6)	<input type="checkbox"/> MERCANTILE (15)	REPAIR GARAGE
		<input type="checkbox"/> ADDITION (2)	EDUCATIONAL	RESIDENTIAL	PUBLIC UTILITY
		<input type="checkbox"/> ALTERATION (3)	<input type="checkbox"/> (GRADES 1-12) (7)	<input type="checkbox"/> HOTEL, MOTEL (16)	HPM
		<input type="checkbox"/> REPAIR / REPLACEMENT (4)	<input type="checkbox"/> DAY CARE FACILITY (8)	<input type="checkbox"/> MULTI-FAMILY (17)	_____
		<input type="checkbox"/> DEMOLITION (5)	FACTORY	<input type="checkbox"/> BOCA TWO FAMILY (18)	_____
		<input type="checkbox"/> RELOCATION (6)	<input type="checkbox"/> MODERATE HAZARD (9)	<input type="checkbox"/> CABO TWO FAMILY (19)	_____
		<input type="checkbox"/> FOUNDATION ONLY (7)	<input type="checkbox"/> LOW HAZARD (10)	<input type="checkbox"/> BOCA SINGLE FAMILY (20)	_____
		<input type="checkbox"/> CHANGE OF USE ONLY (8)	<input type="checkbox"/> HIGH HAZARD (11)	<input type="checkbox"/> CABO SINGLE FAMILY (21)	_____
Structural (check that applicable) Frame			Exterior (Check those applicable) Walls		
<input type="checkbox"/> Steel (1)	<input type="checkbox"/> Concrete (3)	<input type="checkbox"/> Other (5), Identify: _____	<input type="checkbox"/> Steel (1)	<input type="checkbox"/> Concrete (3)	<input type="checkbox"/> Other (5), Identify: _____
<input type="checkbox"/> Masonry (2)	<input type="checkbox"/> Wood (4)	_____	<input type="checkbox"/> Masonry (2)	<input type="checkbox"/> Wood (4)	_____

Are any **structural assemblies** fabricated off-site? Yes No

Street Frontage (Feet) <u>36'</u>	Stories (Number) <u>1</u>	Lot Area (Sq. feet)
Front Setback (Feet) <u>25'</u>	Bed Rooms (Number) <u>0</u>	Building Area (Sq. feet) <u>36' X 30</u>
Rear Setback (Feet) <u>Not App</u>	Full Baths (Number) <u>0</u>	Parking Area (Sq. feet) <u>25 X 36</u>
Left Setback (Feet) <u>10'</u>	Partial Baths (Number) <u>0</u>	Living Area (Sq. feet) <u>0</u>
Right Setback (Feet) <u>Not App</u>	Garages (Number) <u>1</u>	Basement Area (Sq. feet) <u>0</u>
Height Above Grade (Feet) <u>18'</u>	Windows (Number) <u>4</u>	Garage Area (Sq. feet) <u>36 X 30</u>
New Residential Units (Number) <u>0</u>	Fireplaces (Number) <u>0</u>	Office/Sales (Sq. feet) <u>0</u>
Existing Residential Units (Number) <u>0</u>	Enclosed Parking (Number) <u>0</u>	Service (Sq. feet) <u>0</u>
Elevators / Escalator (Number) <u>0</u>	Outside Parking (Number) <u>0</u>	Manufacturing (Sq. feet) <u>0</u>
Est. Start <u> / / </u>	Est. Finish <u> / / </u>	Building Est. Value \$ <u>75,000</u>

6. ELECTRICAL PERMIT APPLICATION

Electrical Work Yes No

Total Service <u> </u> AMPS	Number of Circuits: <u>2 WIRE</u> <u>3 WIRE</u> <u>4 WIRE</u>	Number of Service Outlets: <u>110V</u> <u>220V</u>			
POWER DEVICES	No.	OUTPUT/LOAD	POWER DEVICES	No.	OUTPUT/LOAD
1		7			
2		8			
3		9			
4		10			
5					
6		Total Number of Motors			
Utility Service Revisions:					
Est. Start <u> / / </u>	Est. Finish <u> / / </u>	Electrical Work Est. Value \$ <u>3,000</u>			

7. PLUMBING PERMIT APPLICATION

Plumbing Work Yes No

Enter the Number of Fixtures Being Installed, Replaced or Repaired			
Tubs/Showers	1	Drinking Fountains	Back Flow Preventers
Shower Stalls	1	Floor Drains	Water Pumps
Lavatories	2	Water Heaters	Roof Openings
Toilets	1	Water Softeners	Parking Lot Drains
Urinals		Sewage Ejectors	Inside Downspouts
Sinks	1	Sump Pumps	Swimming Pools
Laundry Tubs	0	Grease Traps	Standpipes (Y/N) (Number Hose Outlets)
Dishwashers		Bidets	Fire Sprinklers (Y/N) (Number of Heads)
Garbage Disposals			Lawn Sprinklers (Y/N) (Number of Heads)
			Total Fixtures
Public Water (Y/N)		Public Sewer (Y/N)	
Water Service Size _____ IN.	Water Meter Size _____ IN.	Avg. Daily Water Use _____ GPD	
Utility Service Revisions:			
Est. Start _____ / _____ / _____	Est. Finish _____ / _____ / _____	Plumbing Work Est. Value \$	

8. MECHANICAL PERMIT APPLICATION

Mechanical Work Yes No

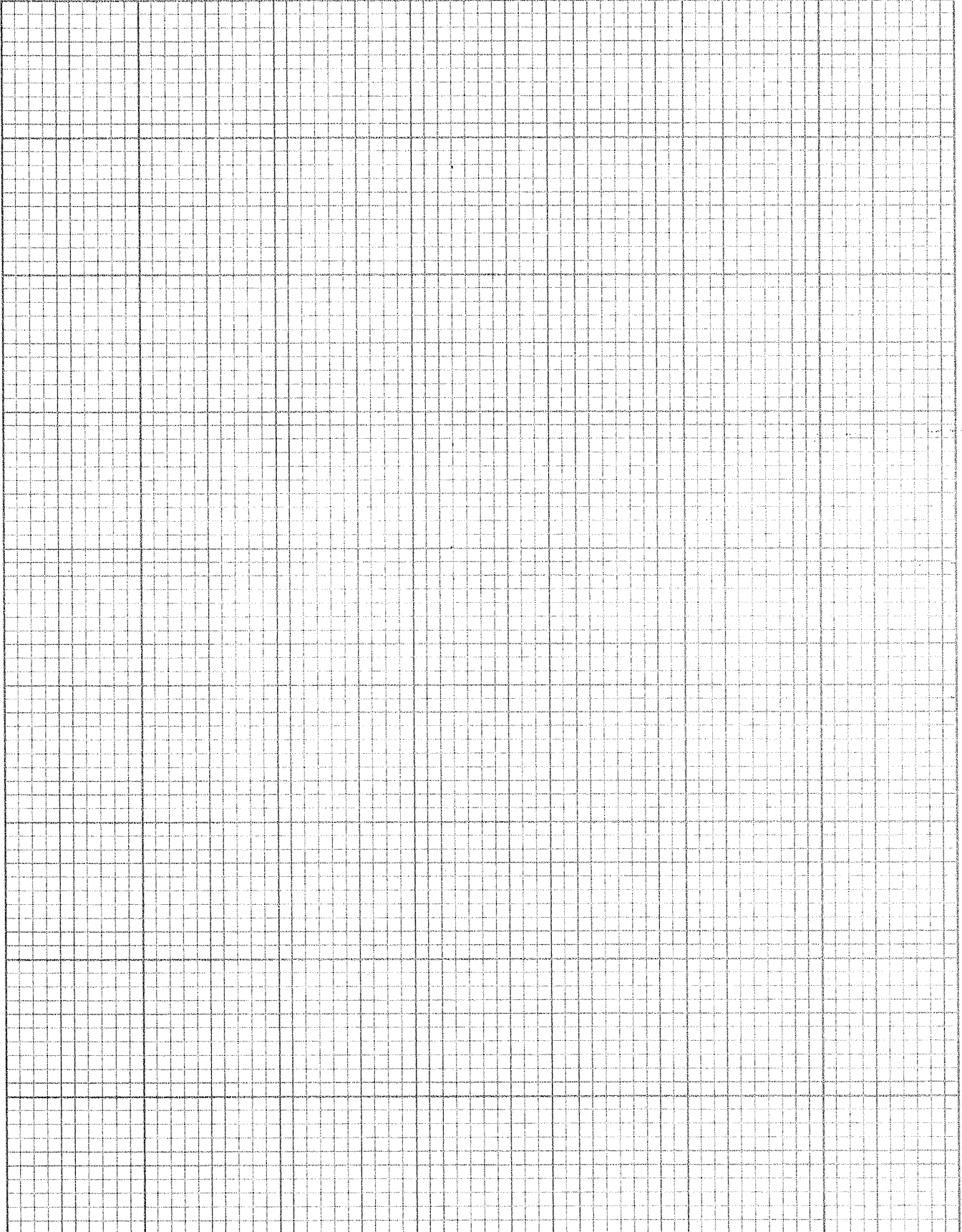
Enter Number of New or Replacement Units			
Forced Air Furnace		Incinerator	Air Handling Unit
Unit Heater		Boiler	Heat Pump
Gas/Oil Conversion		Coil Unit	Air Cleaner
Space Heater		Window A/C Unit	Kitchen Exhaust Hood
Gravity Furnace		Split System A/C	Hazardous Exhaust System
Solid Fuel Appliance		A/C Compressor	Electric Furnace
Utility Service Revisions:			
Type of Heating Fuel: (Check One) <input type="checkbox"/> Gas (1) <input type="checkbox"/> Oil (2) <input type="checkbox"/> Electric (3) <input type="checkbox"/> Coal (4) <input type="checkbox"/> Wood (5) <input type="checkbox"/> Other (6)			
Est. Start _____ / _____ / _____	Est. Finish _____ / _____ / _____	Mechanical Work Est. Value \$	

9. OTHER REQUIRED PERMIT APPLICATION(S)

Permit Type:		
Description of Work: <i>Building Garage & master closet & remodeling kitchen & Deck</i>		
Est. Start _____ / _____ / _____	Est. Finish _____ / _____ / _____	Est. Value \$ <i>75,000</i>

10. SITE PLAN

(Show lot lines, easements and work layout and dimensions)



SCALE = 1 Inch = _____ FEET

11. DATA ENTRY

Application Received: / /
 By: _____
 Application Reviewed: / /
 By: _____
 Data Entry: / /
 By: _____

12. FLOODPLAIN EVALUATION

FLOOD MAP NUMBER & DATE _____ LOWEST FLOOR ELEVATION _____
 FLOOD ZONE _____ BASE FLOOD ELEVATION _____

13. ZONING PLAN EVALUATION

ZONING DISTRICT R-1 MAP NUMBER 7/165
 LOT AREA (From Page 2) _____ LOT COVERAGE (%) < 40%
 LOT AREA PER ROOM - ENCROACHMENTS N/A
 OFF STREET PARKING SPACES, REQUIRED - PROVIDED ~~100~~ 8m + 2
 LOADING SPACE -
 SIGNS; NUMBER _____ SIZE OF EACH SIGN _____
 PLANNING COMMISSION APPROVAL REQUIRED planning made a site visit. Project clearly does not exceed max lot coverage or encroach into set
 BOARD OF ZONING APPEALS APPROVAL REQUIRED backlog. JM

14. PLAN REVIEW RECORD

Plans Review Required	Check	Plan Review Fee	Date Plans Started	By	Date Plans Approved	By	Notes
BUILDING		\$					
PLUMBING		\$					
MECHANICAL		\$					
ELECTRICAL		\$					
		\$					
TOTAL		\$	TO BE ENTERED ON PART 18				

15. ADDITIONAL PERMITS REQUIRED

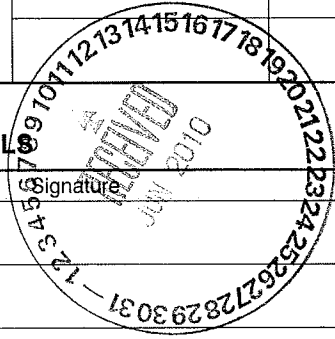
Permit or Approval	Check	Date Obtained	Number	By	Permit or Approval	Check	Date Obtained	Number	By
BOILER					PLUMBING				
CURB OR SIDEWALK CUT					ROOFING				
ELEVATOR					SEWER				
ELECTRICAL					SIGN OR BILLBOARD				
FURNACE					STREET GRADES				
GRADING					USE OF PUBLIC AREAS				
OIL BURNER					DEMOLITION				

16. PROJECT DOCUMENTS (DRAWINGS & CALCULATIONS)

TYPE DRAWINGS/REPORT	SUBMITTED	SIGNED AND SEALED	DATE	REVISION DATE
Site Plan	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Soil Report	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Architectural Drawings	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Structural Drawings	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Mechanical Drawings	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Electrical Drawings	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Job Specifications	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Structural Connect. Drwngs.	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Structural Calculations	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Special Inspection Data	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Sprinkler Drawings	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Sprinkler Calculations	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		

17. OTHER DEPARTMENT APPROVAL

Signature	Date	Signature	Date
		Health and Sanitation	
<i>Tom Sp...</i>	6/8/10	Water	
<i>Jana Mand...</i>	6/7/10	Architectural Review	
Environmental Management			



18. VALIDATION

Permit Type	Date	Number	Permit/Insp. Fee
Building Permit	6/10/10	BP200-527	25.00 75.60
Electrical Permit			50.00
Plumbing Permit			
Mechanical Permit			

Plan Review Fee (From Part 14)
 Certificate of Occupancy Fee
 Other Fee

TOTAL FEES

126.50

Prepared By: *A. Benson* Date: 6/10/10

Approved By: *Mike Star* Title: _____



City Manager's Office
389 Spruce Street
Morgantown, WV 26505
304.284.7405

MEMORANDUM

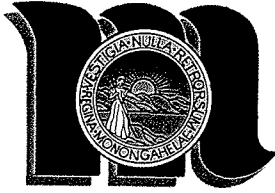
Date: July 22, 2010
To: Mike Stone, Chief Building Code Official
RE: 1268 Fairlawn Avenue, BP2010-527
Stop Work Order

The Board of Zoning Appeals met on July 21, 2010 concerning a variance petition relating to the above referenced property and building permit. The BZA voted to table the matter until a survey and as-built site plan is prepared and submitted delineating property boundaries and setbacks of the house and additions.

The BZA also requested that a stop work order be issued until they have reviewed said survey and as-built site plan and determined whether or not to grant setback variance relief.

Please review related City Code provisions and proceed in issuing a stop work order with a requirement to submit a survey and as-built site plan.

A handwritten signature in black ink, appearing to read "Dan Boroff", is written over the bottom portion of the page.



BUILDING AND HOUSING
INSPECTION DEPARTMENT

The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7401

OFFICIAL NOTICE STOP WORK ORDER

July 22, 2010

RE: Property Owner: Megan M. Byron
1268 Fairlawn Avenue; Tax Map 7, Parcel 165
Building Permit No. BP2010-527
Planning Case No. V10-20 / Byron-Culton / 1268 Fairlawn Avenue
Contractor: Dean Culton, Culton Construction

By the authority of Articles 1701.03, 1705.06, and 1705.07 (b) of the City's Building and Housing Code, **OFFICIAL NOTICE** is hereby given that:

1. The garage and master closet additions constructed under the above referenced building permit are in violation of Article 1333.04 of the City's Planning and Zoning Code as same relates to setbacks in the R-1, Single-Family Residential District.
2. No further building operations are permitted at this location which relates specifically to work performed to and within said garage and master closet additions until a release form signed by the City Manger/Code Official has been issued. Said release may be obtained by contacting the Building Code Division, located on the first floor of the Municipal Building, 389 Spruce Street, 304-284-7401, 8:00 AM to 5:00 PM. Building operations relating to interior remodeling to and within any other portion of the structure may continue as approved under the Building Permit noted above.
3. Two original copies of a scaled survey and as-built site plan prepared by a surveyor licensed in the State of West Virginia must be submitted to this Office showing:
 - a. The property boundaries of Tax Map 7, Parcel 165;
 - b. The building footprint of the original structure, any and all additions that have expanded said building footprint, and any and all porches, decks, etc.; and,
 - c. Notations of setback distances between property boundaries and structure and improvements noted above.

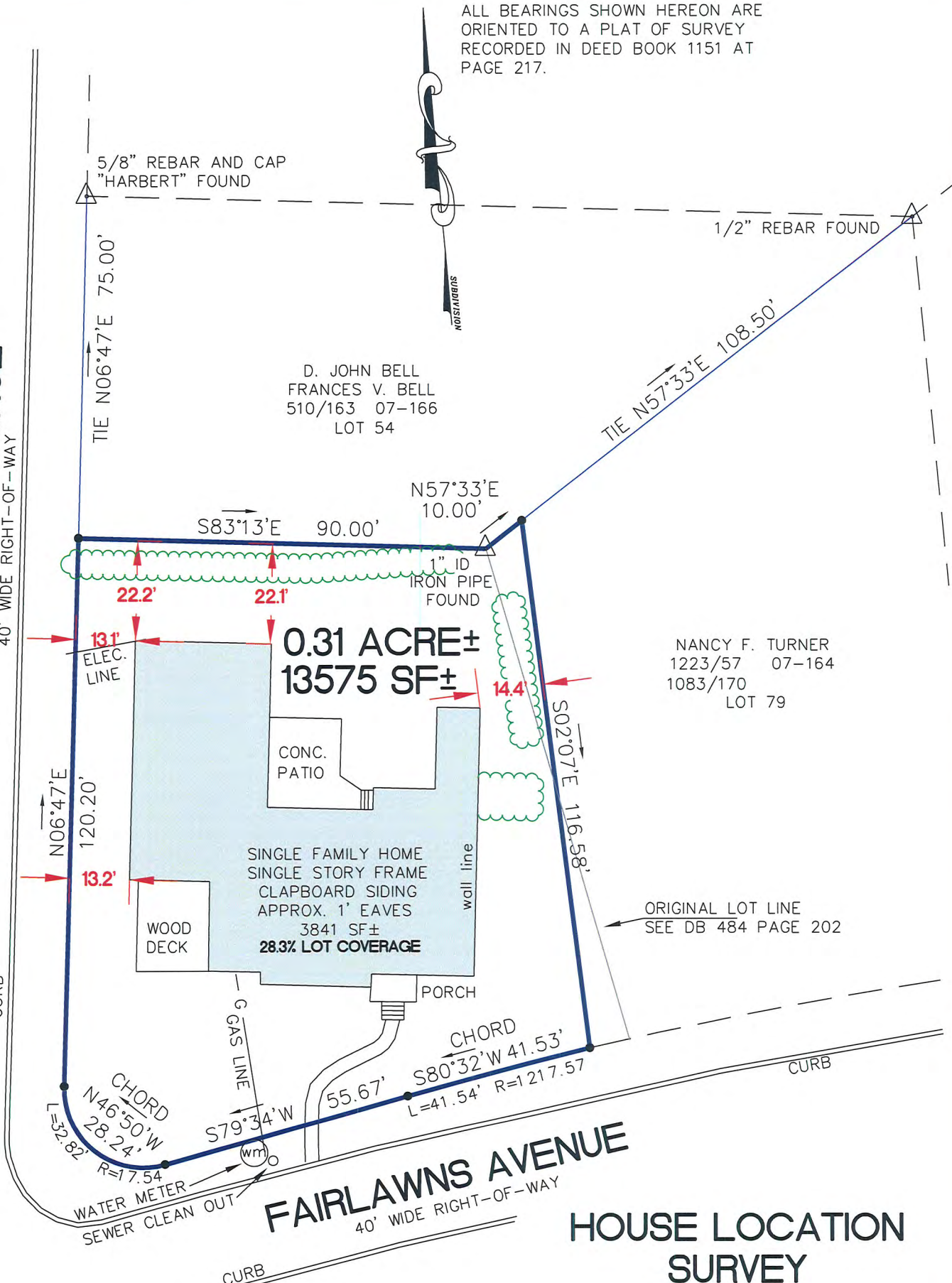
Notice Received By: _____

(Your signature implies only receipt of this notice)


Signature of Code Official

ALL BEARINGS SHOWN HEREON ARE ORIENTED TO A PLAT OF SURVEY RECORDED IN DEED BOOK 1151 AT PAGE 217.

MULBERRY AVENUE
40' WIDE RIGHT-OF-WAY



D. JOHN BELL
FRANCES V. BELL
510/163 07-166
LOT 54

NANCY F. TURNER
1223/57 07-164
1083/170
LOT 79

0.31 ACRE±
13575 SF±

SINGLE FAMILY HOME
SINGLE STORY FRAME
CLAPBOARD SIDING
APPROX. 1' EAVES
3841 SF±
28.3% LOT COVERAGE

ORIGINAL LOT LINE
SEE DB 484 PAGE 202

FAIRLAWNS AVENUE
40' WIDE RIGHT-OF-WAY

HOUSE LOCATION SURVEY

FOR

DEAN CULTON

MORGANTOWN CORP. MONONGALIA COUNTY
WEST VIRGINIA
LOT 80 DEFENSE HOMES CORPORATION
RE-SUBDIVISION OF SUNCREST PARK ADDITION
SCALE 1"=30' JULY 2010

BEING PART OF THE SAME PARCEL OF LAND CONVEYED FROM DEFENSE HOMES CORPORATION TO LEIGHTON G. WATSON AND NANCY C. WATSON AND BEING THE SAME PARCEL OF LAND CONVEYED FROM DAVID FIELDING MARSH AND AUDREY S. MARSH TO LEIGHTON G. WATSON AND NANCY C. WATSON BY DEEDS DATED DECEMBER 26, 1945 AND AUGUST 4, 1952, RESPECTIVELY, AND RECORDED IN THE OFFICE OF THE CLERK OF THE MONONGALIA COUNTY COMMISSION IN DEED BOOK 373 AT PAGE 306 AND DEED BOOK 484 AT PAGE 202, RESPECTIVELY; ALSO, BEING PARCEL NUMBERED 165 AS SHOWN ON SHEET 7 OF THE MORGANTOWN CORP. TAX SHEET.

LEGEND

- FOUND MONUMENT
- PROPERTY LINE
- TIE LINE
- ADJOINER LINE
- 000/000 DEED BOOK / PAGE NUMBER
- 00-00 TAX MAP - PARCEL NUMBER
- SHRUBBERY

NOTE: THIS SURVEY WAS CONDUCTED WITHOUT THE BENEFIT OF A LAWYER'S TITLE REPORT AND MAY NOT ADDRESS ALL RIGHT-OF-WAYS, EASEMENTS, RESTRICTION OR EXCEPTIONS.

SURVEYED DURING JULY 2010 BY SURVEYOR AND ASSOCIATES, INC. KINGWOOD, WEST VIRGINIA

David C. Sypolt
DAVID C. SYPOLT, PS# 879