



# MORGANTOWN BOARD OF ZONING APPEALS

August 18, 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:** V10-21 / Byron-Culton / 1268 Fairlawn Avenue

### **REQUEST and LOCATION:**

Request by Megan Byron for variance approval from the Planning and Zoning Code, Article 1333.07 (B) as it relates to the side yard setback for corner lots for property located at 1268 Fairlawns 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:**

At its July 21, 2010 hearing, the Board tabled Case No. V10-20 concerning the rear setback of the four-car garage addition constructed under a building permit issued in error. In its tabling motion, the Board directed the petitioner to submit a survey and as-built site plan prepared by the surveyor licensed in the West Virginia so that the Board was confident in the extent of the variance being requested.

The petitioner accordingly submitted a survey and as-built site plan which illustrates a second setback encroachment.

Said drawing, attached herewith, illustrates that the side setback from Mulberry Street 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, a **1.9'** or 1' – 10 13/16" **variance** is required.

### **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. 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 variance petition V10-21 may be appealed to Circuit Court.

The fact that construction has begun are extraneous to the Board's decision to either approve or deny variance petition V10-21. 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, Survey/As-built Site Plan

## **Planning Department**

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



City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V10-21
RECEIVED:	07/30/10
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

<b>I. APPLICANT</b>		Name:	Dean Culton		
Mailing Address:	Street	Phone:			
	City	State	Zip	Mobile:	
				Email:	
<b>II. PROPERTY</b>		Street Address:			
Owner:	Megan Byron		Zoning:	R - 1	
Mailing Address:	1268 Fairlawns Ave.		Tax Map No:	07	
	Street	Morgantown, WV 26505		Parcel No:	165
	City	State	Zip	Phone:	685-6920
<b>III. NARRATIVE</b>		Please describe the nature and extent of your variance request(s).			
<p>Article 1334.04 set backs R-1 zoning district</p> <ul style="list-style-type: none"> <li>- Rear set back variance of 2' 10"</li> <li>- Side yard set back variance of 1' 6" *</li> <li>- Request for rear yard variance is a modification of a previous application reducing the request from 10 feet to 2' 10"</li> </ul> <p>* RELIEF FROM ARTICLE 1333.07(B) - SIDE SETBACK ON CORNER LOT REQUEST FOR VARIANCE of 1.8' OR 1'-10 3/16" <i>CMJ</i></p>					
<b>V. ATTEST</b>		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.			
Dean Culton Megan Byron		<i>Megan Byron</i>		RS2 7/30/2010 201017142	JUDY 11:11:24 7/30/2010 SITE PLAN
Type/Print Name of Applicant/Agent		Signature of Applicant/Agent		PAID	Date

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.

75.00  
Request Fee  
Morgantown, WV 26505  
(304) 284-7400

*Cash*



City of Morgantown, West Virginia

APPLICATION FOR  
ZONING VARIANCE

OFFICE USE	
CASE NO.	V10-21
RECEIVED:	07/30/10
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: \_\_\_\_\_ 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.	V10-21
RECEIVED:	09/30/10
COMPLETE:	

Suggested Scale: 1 square = 5'

See Attached



# APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V10-21
RECEIVED:	07/30/10
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:

Subject property is a corner lot with orientation of the house to Fairlawn Ave. The requested addition is to expand the current older out of date and in need of repair, small single stall garage to a modern, larger 3-4 car garage.

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:

See previous application regarding similar cases that variances substantially larger than the requested variance have been granted. Additionally, the addition is an extension of the old garage. The old garage had the same side yard set back as the new addition. Therefore, the side yard set back variance is an increase of the extent of a pre-existing, non-conforming side yard set back requirement.

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:

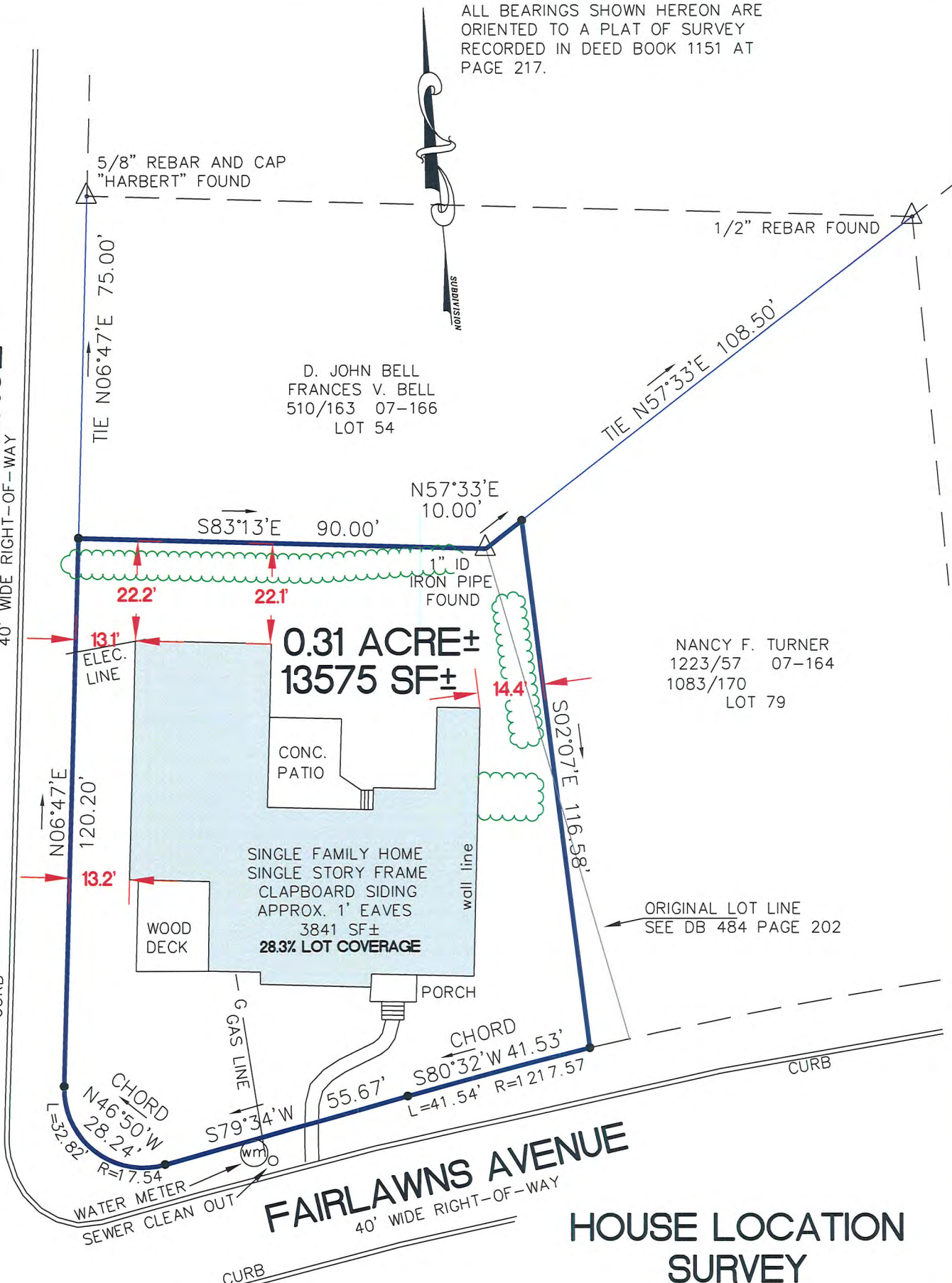
The subject additions meet all other R-1 designs and performance standards. The addition should enhance the value of the property and the surrounding properties. The addition will provide additional off street parking.

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 property will remain a single family dwelling. The addition and remodeling should increase the market value of adjacent properties. The addition will provide additional off street parking and will therefore not increase congestion on the streets.

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