

BOARD OF ZONING APPEALS

This meeting of the Board of Zoning Appeals was held June 3rd ,2021 at 7:00 p.m. in the Public Safety Building located at 500 Quincy Street.

ROLL CALL OF MEMBERS

Present

President Shultz
Board Member Manchin
Board Member Knapp
Board Member Perkins
Board Member Majic

Absent

City Staff Present

Director of Planning- Shae Strait
Staff Assistant, Kirstin Poluck

APPROVAL OF MINUTES OF May 6th, 2021

President Shultz asked for everyone to read of the previous months minutes and look for corrections or additions. With no corrections or additions indicated, a motion was made by Board Member Manchin to approve the minutes. Board Member Knapp seconded the motion. Motion passed unanimously.

Board Member Schultz called the meeting to order at 7:00 p.m.

PUBLIC HEARINGS FOR June 3rd, 2021

1. Little General is requesting a variance from section 5.2.2.D.ii.c – transparency requirements for commercial buildings to be reduced to 49% instead of the required 70%.

President Schultz asks if there is anyone here to speak on behalf of the request. Mike Proctor of SLS Engineering, located in Beckley, WV is here to speak on behalf of the Little General. They are proposing of 52 percent rather than the 70 percent required by out code. The front elevation view has windows that go all the way to the ground . The Little General has 7 foot windows that are 15’ width. The Terayaki restaurant will have windows that are 14 ft in width and they will also go to the floor. The total percentages will be 51.5 almost 52 percent.

Board Member Manchin asks why they are having to ask for the variance? As their architect on the project should have been aware of the zoning code and regulations that are in place.

Mr. Proctor stated that this design submitted is the usual design used for the Little General Store. They are also concerned if they add more windows, it will cause issues with the load bearing walls. Also, the block provides additional security for potential cars that may have an accident if they would accidentally hit the gas instead of the break when parking.

If we could count the windows on the side of the building it would also add to the percentage of the transparency needed.

President Shultz asks if other stores of the same style are opened in close by?

Board Member Knapp asks if the variance is not approved, do they have a drawing to show the board? It does look as if there is room for additional windows.

President Shultz also mentions that putting in separate windows would help with the structures weight distribution and support.

Planning Director Shae Strait states that when calculation the transparency figures only takes into consideration the front façade and the side windows will not be counted.

Board Member Knapp asked since the building is free standing could the side windows be counted? Planning Director Shae Strait stated that there hasn't been anything of that nature considered before which would set the precedent.

Board Member Knapp asked if this lot would be considered a corner lot?

Planning Director Shae Strait stated that the entire wall is considered and not just a portion of it.

Mr. Proctor stated that with vehicles parking directly in front of the building there is the possibility for an accident to occur.

President Shultz asks if there are any other questions?

Larry Goff the General Contractor from Trulargo out of Morgantown was also here to speak. He stated that with the side view being visible from both side of the road it would be good if they could be taken into consideration for the transparency quota.

Board Member Knapp asked how they would hit the 70 percent transparency rule?

Larry Goff stated that if the building was to have additional structural changes it would then make it less stable.

President Shultz asked if there were any more questions?

There were none.

President Shultz asked if there is anyone here to speak against the request?

There was none.

President Shultz asks for a motion to close.

Board Member Perkins did want to know why no one checked the code before starting a project.

Planning Director Shae Strait stated that he has looked at the three convenience stores nearby and those meet the requirements, some may be out of city limits. The former building on that premises also meets the requirements. The Sheetz on Fairmont Ave is at 46%. However, 10 St. has 60% or greater. With the occupied pedestrian spaces, the frontage comes out to 63% scale. That project wouldn't have come to the BZA due to multitude of things that needed to be done and it would have had to go to the planning commission.

President Shultz asks again for a motion to close the public hearing.

Board Member Majic makes a motion to close the public hearing. Board Member Manchin seconded the motion.

Planning Director Shae Strait stated that while this was a difficult decision, the design is not we just grant a variance for among the BZA. There is no substantial evidence for the variance but b/c of the place their project thought the variance should be heard. We could consider a variance but that would be on the determination that the rules in general are too burdensome, however this would be a blanket statement for everyone. Staff recommends that is doesn't meet one of the three requirements for the federal law.

President Shultz states that the property is almost out of the city limits, and that it would be possible to change the code by district.

Board Member Majic states that he would be comfortable to change the code by district.

Planning Director Shae Strait states that is the change was to occur it would change this property as well as future properties.

Board Member Manchin states that the provisions have been in place for years and the architect/engineers should have checked about the code regulations. **He makes a motion to not approve the request.**

Board Member Perkins **seconds the motion.**

A roll call vote is done. **The members will be voting YES to Board Member Manchin's request to vote NO for the proposed request.**

President Shultz	Yes
Board Member Manchin	Yes
Board Member Knapp	Yes
Board Member Perkins	Yes
Board Member Majic	Yes

Variance was denied.

2. James and Susan Musick-Williams are requesting a height variance from section 3.1.2.F for an accessory structure to be two stories.

President Shultz asks if anyone is here to speak in favor to the request.

Mrs. Susan Musick-Williams is here to speak on behalf of the request. She states they are requesting the variance in order to have the best access to the Northern Light. A single-story building wouldn't be high enough to achieve the required light for an artist light.

Board Member Knapp asks about the proposed location of the building and if it's possible for it to be moved?

Mrs. Musick- Williams states that with the topography of the yard that moving the structure would not be possible.

Board Member Perkins asks of the straight platform will for from the residence to the accessory structure and the East side would have two exits for fire safety.

James Williams, also of 622 Jo Harry Dr stated that the accessory structure for main and accessory structures. There will be an 18-foot ramps on the first floor, and the second floor will have stairs. The accessory structure height will be built as a house would be.

President Shultz asked if there are any more questions?

Mr. Williams states that are there 60-foot Fur trees in the back yard that cause an excessive amount of shade that would be an issue for an artist studio. It would not be an issue for the neighbor.

President Shultz asked if there is anyone here to speak against the request? There was none. She then asks for a motion to close the public hearing.

Board Member Knapp makes a motion to close the public hearing, Board Member Majic seconds the motion.

Planning Director Shae Strait states as a principal structure is meets all the requirements, however it's the height restrictions are the one issue with the neighbors. It won't negatively impact his surroundings. If the intent is for an artist studio to capture the natural light a one-story building would not allow that. He is in favor of the variance, but does suggest that the board use a 20-foot setback from the property line.

Board Member Manchin makes a **motion to approve**, Board Member Majic **seconds the motion**.

President Shultz	Yes
Board Member Manchin	Yes
Board Member Knapp	Yes
Board Member Perkins	Yes
Board Member Majic	Yes

All in favor. Variance request passes.

3. Matthew and Samantha Lieving of 1649 Big Tree Drive are requesting a variance for the following.

- A. 3.1.1.F to request that the side yard setback be less than the required 10% of the lot width. Petitioner is requesting for a 15 feet setback rather than the approximately 26 feet that is required.
- B. 5.2.5.B.i.b which requires on Residential Building that all garages with more than two bays shall be turned so that they are not visible from the street. Petition is requesting to have three garage bays facing the street.

Samantha Lieving, the property owner stated that she and her husband purchased the property 4 years ago. Then they purchased an additional lot of 3 acres. There is no road on Kennywood drive. The Cook brothers also came out and said that the proposed location of the house was the only reasonable location especially with the location of the garage door. It will be a 3-bay garage, with one double door as well as a single door. If the garage was placed on the side of the home, it would be more expensive, especially with the topography of their yard and how much longer the drive way would have to be.

President Schultz asks if anyone else to speak in favor of the request.

Rocky Simmons of Vision Homes is here to speak in favor of the request as well. He is the contractor of the home. It will be 16 1/2 feet off set from the garage. They have added a gable to be more aesthetically pleasing to the eye. The owners did get two bids for the site work and everyone agreed that if the garage did need to be moved it would increase the cost by 25,000.

President Shultz asked if there were any more questions on the structure. There were none. She asks for a motion to close the public hearing.

Board Member Manchin makes a motion to close the public hearing. Board member Perkins seconds the motion.

Planning Director Shae Strait states that the timing of the request for the petitioners is unfortunate because the planning commission is proposing changes to the zoning code amendments which are currently affecting the petitioner. The rules were found to be burdensome in 2018. There is a substantial slope to build on and that makes a difference. Staff proposes an 8 feet total setback or 20 percent. They also have a valid case with the garage.

President Shultz states that Kennywood drive is not officially abandoned.

Board Member Knapp asks if there is any actual change to the location.

Planning Director Shae Strait stated that moving would not change anything.

President Shultz asks for a motion regarding the request.

Board Member Perkins makes a motion to approve for item A. Board Member Knapp **seconds the motion.**

President Shultz	Yes
Board Member Manchin	Yes
Board Member Knapp	Yes
Board Member Perkins	Yes
Board Member Majic	Yes

All in favor. Motion Passes.

President Shultz asks for a motion regarding item B. Board member Majic **motions to approve**, Board member Knapp **seconds the motion.**

President Shultz	Yes
Board Member Manchin	Yes
Board Member Knapp	Yes
Board Member Perkins	Yes
Board Member Majic	Yes

All in favor. Motion passes.

Disposition of Past Cases

NONE

New Business

None

Other Business

None

Adjournment

President Shultz asked for a motion to adjourn. Board Member Majic **motioned to adjourn**, Board Member Knapp **seconds the motion.** Motion passes unanimously.