



MORGANTOWN BOARD OF ZONING APPEALS

June 18, 2014
6:30 PM
Council Chambers

Board Members:

- Bernie Bossio, Chair
- Leanne Cardoso, Vice-Chair
- Bill Burton
- George Papandreas
- Jim Shaffer

STAFF REPORT

CASE NO: BA14-02 / Bruno Mandarano / 318 Raymond Street

REQUEST and LOCATION:

A petition by Bruno Mandarano for an Administrative Appeal under Article 1383 of an administrative determination by the Planning Division concerning the renovation of a nonconforming structure located at 318 Raymond Street.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 20, Parcel 300; R-1A, Single-Family Residential District

SURROUNDING ZONING:

R-1A, Single-Family Residential District

BACKGROUND:

Mr. Bruno Mandarano of BM Enterprises, LLC submitted a building permit application to complete interior renovations to one (1) of the units within the existing duplex (Two-Family Dwelling) located at 318 Raymond Street. The subject property has, according to the Rental Registration Coordinator, been registered with the City as residential rental units since 1980.

The petitioner's building permit application provided for the conversion of the two-bedroom and one bathroom unit within the duplex into a three-bedroom and two bathroom unit.

Exhibits

The following exhibits are attached hereto and should be considered a part of the record for the subject administrative appeal:

- Exhibit 1Administrative appeal petition and accompanying documents.
- Exhibit 2Aerial map and tax map illustrating location of the subject site.
- Exhibit 3Article 1383 "Administrative Appeal" of the Planning and Zoning Code.

ANALYSIS:

The zoning classification for the subject property is R-1A, Single-Family Residential District. Table 1331.05.01 of the Planning and Zoning Code provides that "Two-Family Dwelling" uses are not permitted in the R-1A District.

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

June 18, 2014
6:30 PM
Council Chambers

Board Members:

Bernie Bossio, Chair
Leanne Cardoso, Vice-Chair
Bill Burton
George Papandreas
Jim Shaffer

Because the "Two-Family Dwelling" use at 318 Raymond Street was established prior to the creation of the R-1A District in the mid-1990's, the use is considered to be a legal, pre-existing nonconforming use. Article 1373.01 provides that nonconforming uses may continue and may be sold, inherited, or otherwise transferred, provided the use, land and structure remain the same.

In reviewing the subject building permit application, the Planning Division determined that:

"The proposed improvements and related building permit application may not be approved as they are in conflict with the Planning and Zoning Code."

The following Planning and Zoning Code provisions were drawn upon for guidance in denying the petitioner's building permit application.

Article 1373.01 "Nonconforming Uses", Paragraph (A) provides that,

"No legal, pre-existing nonconforming use may be enlarged, moved or otherwise changed, except that such use may be changed to a permitted use."

Article 1373.01 "Nonconforming Uses", Paragraph (B) provides that,

"A legal, pre-existing nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, provided that no structural alterations are made within the building in order to allow the use to expand, except those that may be required by the Building Inspections Department [Code Enforcement Division]. However, no such expansion shall be permitted in any parts of such building that were not so arranged or designed or any land outside such building."

Based on the Planning and Zoning Code provisions above, the Planning Division determined that,

"The proposed improvements [at 318 Raymond Street] will enlarge the residential occupancy density of the subject dwelling unit. Additionally, the existing structure does not appear to have been manifestly arranged or designed for the proposed improvements as evidenced by the existing and proposed floor plans submitted with the subject building permit application."

In reviewing the petitioner's administrative appeal application, the Planning Division draws upon the following provisions that reinforce the facts that the petitioner's proposed improvements at 318 Raymond Street are in conflict with the Planning and Zoning Code.

Article 1373.02 "Nonconforming Structures", Paragraph (A) provides that,

"No legal, pre-existing structure may be enlarged, moved or otherwise changed in such a manner that increases the extent of its non-conformity, unless a variance from the terms of the ordinance is obtained from the Board of Zoning Appeals."

The latter portion of this provision pertaining to a variance is not applicable to the petitioner's renovations pursuits. Specifically, Article 1381.03(K) provides that,

"Variances from the use of a parcel or building...shall not be permitted under any circumstances."

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

June 18, 2014
6:30 PM
Council Chambers

Board Members:

Bernie Bossio, Chair
Leanne Cardoso, Vice-Chair
Bill Burton
George Papandreas
Jim Shaffer

Article 1373.02(A) is applicable when, for instance, a petitioner seeks to construct an addition to a building and that building encroaches into a required setback and the proposed addition will result in an increase in the extent of the nonconforming setback. The increase in the extent of the nonconforming setback may be reviewed as a variance by the Board of Zoning Appeals.

Article 1373.02 "Nonconforming Structures, Paragraph (C) provides that,

"When a nonconforming use exists within a structure, status applies to the structure, and removal or destruction of the structure shall eliminate the nonconforming status of the land."

Article 1373.02 "Nonconforming Structures, Paragraph (D) provides that,

"Normal maintenance and repair of a building or other structure containing a nonconforming use may be performed, including any alterations that would have the effect of bringing the building or other structure into further compliance with the West Virginia Building Code; provided there is no physical change to the building or structure (e.g. design, size, location, etc.) and such maintenance or repair does not extend or intensify the nonconforming use, unless, otherwise authorized by this chapter. If alterations are performed on the building with the specific purpose of bringing the building into further compliance with the West Virginia Building Code, and if such alterations are ordered by the City of Morgantown Code Enforcement Department, and if such alterations necessitate the temporary cessation or abandonment of a current land use, then the Board of Zoning Appeals may extend the 12-month abandonment clause for a reasonable period of time to effectuate said changes."

It is the opinion of the Planning Division, based on the Article 1373.02 provisions above, that the petitioner's proposed renovations:

- Are not considered to be "normal maintenance and repair."
- Do not "have the effect of bringing the building...into further compliance with the West Virginia Building Code."
- Result in a physical change to the design of the structure in such a manner that intensifies the nonconforming use.
- Have not been ordered by the Code Enforcement Division.

STAFF RECOMMENDATION:

The matter before the Board is to decide whether or not the Planning Division correctly determined:

1. That the existing "Two-Family Dwelling" use at 381 Raymond Street is a legal, pre-existing, nonconforming use within the R-1A District.
2. That the petitioner's proposed renovations and improvements to the subject nonconforming "Two-Family Dwelling" use will change the subject dwelling unit.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

June 18, 2014
6:30 PM
Council Chambers

Board Members:

Bernie Bossio, Chair
Leanne Cardoso, Vice-Chair
Bill Burton
George Papandreas
Jim Shaffer

3. That the petitioner's proposed renovations and improvements constitute an enlargement of the nonconforming "Two-Family Dwelling" use by increasing the residential occupancy density of same; the intentions of which are confirmed by the petitioner in his administrative appeal application.
4. That the proposed renovations and improvements, which result in a change in and enlargement of the subject nonconforming "Two-Family Dwelling" use are prohibited under Article 1373.01(A) of the Planning and Zoning Code.
5. That the building at 381 Raymond Street was not manifestly arranged or designed for the change in and enlargement of the nonconforming "Two-Family Dwelling" use as intended by the petitioner's proposed renovations and improvements.
6. That the petitioner's proposed renovations and improvements constitute structural alterations within the building in order to change and enlarge the nonconforming "Two-Family Dwelling" use.
7. That Article 1373.01(B) prohibits the petitioner's intentions to pursue structural alterations within a building that was not manifestly arranged or designed for the change in and enlargement of the nonconforming "Two-Family Dwelling" use.

Staff recommends that the Board uphold the Planning Division's administrative determination to deny the petitioner's related building permit application based on the above findings and conclusions.

Additionally, Staff recommends that the following findings and conclusions be included in Board's decision.

1. That the nonconforming "Two-Family Dwelling" use status applies to the structure as provided in Article 1373.02(C).
2. That the petitioner's proposed renovations and improvements to the nonconforming "Two-Family Dwelling" use and nonconforming structure results in an increase in the extent of its non-conformity by increasing the residential occupancy density of same.
3. That Article 1373.02(A) prohibits the petitioner's intention to increase the extent of subject structure's non-conformity.
4. That the petitioner's proposed renovations and improvements are not considered normal maintenance and repair; the intentions of which are confirmed by the petitioner in his administrative appeal application.
5. That the petitioner's proposed renovations and improvements do not have the effect of bringing the building into further compliance with the West Virginia Building Code as ordered by the Code Enforcement Division.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

June 18, 2014
6:30 PM
Council Chambers

Board Members:

Bernie Bossio, Chair
Leanne Cardoso, Vice-Chair
Bill Burton
George Papandreas
Jim Shaffer

6. That the right under Article 1373.02(D) for owners of nonconforming structures to perform normal maintenance and repair and/or bring the building into further compliance with the West Virginia Building Code as ordered by the Code Enforcement Division does not include the petitioner's proposed renovations and improvements.
7. That the petitioner's proposed renovations and improvement result in a physical change to the design of the structure in such a manner that intensifies the nonconforming use.
8. That Article 1373.02(D) prohibits the petitioner's intention of physically changing the design of the structure to intensify the nonconforming use.
9. That the petitioner's building permit application for the proposed renovations and improvements at 318 Raymond Street may not be approved as they are in conflict with Planning and Zoning Code Articles 1373.01(A), 1373.01(B), 1373.02(A), and 1373.02(D).

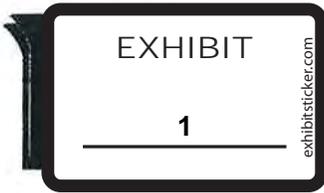
Attachments: Exhibits noted above

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



APPLICATION FOR ADMINISTRATIVE APPEAL



Article 1383 "Administrative Appeals" of the City's Planning & Zoning Code (attached hereto as Addendum A) provides that the Board of Zoning Appeals hears and determines appeals from any order, requirement, decision or determination made by an administrative official, board, or staff member charged with the enforcement of the City's Zoning Ordinance.

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$35

I. APPLICANT			
Name:	Bruno Mandarano	Phone:	610.428.7766
Mailing Address:	56 Summit Ave	Mobile:	
	Street Cedar Knolls NJ 07927	Email:	mandaranob@yahoo.com
	City State Zip		
II. AGENT / CONTACT INFORMATION			
Name:	Bel-Cross Properties, c/o Arthur Trusler	Phone:	304.296.7930
Mailing Address:	62A High St	Mobile:	
	Street Morgantown WV 26505	Email:	art@belcross.com
	City State Zip		
Mailings –	Send all correspondence to (check one): <input checked="" type="checkbox"/> Applicant OR <input type="checkbox"/> Agent/Contact		
III. PROPERTY			
Owner:	Bruno Mandarano	Phone:	610.428.7766
Mailing Address:	56 Summit Avenue	Mobile:	
	Street Cedar Knolls NJ 07927	Email:	mandaranob@yahoo.com
	City State Zip		
IV. ATTEST			
I hereby certify that the information which I have provided, that all answers to the questions in this request, and all other supplementary matter attached to and made a part of this administrative appeal request are honest and true to the best of my knowledge and belief.			
<i>Arthur Trusler</i>		<i>[Signature]</i>	
Type/Print Name of Applicant/Agent	Signature of Applicant/Agent	CRYSTAL 57021201 201409400 BLDG. PERM. PAID Date	5/15/14

- V. Please attach a narrative describing in detail the nature of your administrative appeal.
- VI. Please attach a copy of the Zoning Official's determination which has resulted in your appeal.
- VII. You or a representative **MUST** be present at the scheduled hearing to present the appeal and answer questions. Failure to appear at the hearing will result in your appeal being tabled.

BA14-02

April 30, 2014

Planning & Zoning Committee
389 Spruce St.
Morgantown, WV 26505



To whom it may concern,

I am writing to appeal the current judgment which denied our request to renovate and transition one of the two units at 318 Raymond St. Morgantown, WV. It is classified as a non-conforming duplex apartment that was granted a grandfather clause in an R-1A district.

We are requesting to convert one of the units in the duplex from a 2 bedroom and 1 bathroom unit into a 3 bedroom and 2 bathroom apartment. The unit is in need of a renovation and we have worked closely with the city on all previous dwellings and projects. We have significantly improved the quality and beauty of all of our apartments, inside and out, in Morgantown and are hoping to do the same with 318 Raymond St.

Currently there is an increased demand for housing in the areas near the medical center and downtown campus, especially for 3 bedroom units. A large number of homes have been bought up and replaced with 1, 2 and 4 bedroom high-density housing. We would like to help meet this demand for 3-bedroom units, while also taking care of some functional obsolescence of the property, and increasing the quality of housing that we are providing.

The current bedrooms are over double the size of what is required by the city to be deemed a bedroom. The proposed plan maintains a large bedroom size. It also creates an open floor plan and adds a bathroom, making it more desirable for prospective residents. Sufficient off-street parking is provided for both units, even with the increase of 1 tenant.

Attached is a copy of the current and the future proposal floor plans.

Thank you for your review and consideration.

Respectfully,

Bruno Mandarano
BM Enterprises LLC
610.428.7766

BA14-02



EXHIBIT
1
exhibitsticker.com

PLANNING DIVISION REVIEW OF BUILDING PERMIT

**Development Services
Department**

389 Spruce Street
Morgantown, WV 26505
304.284.7431
304.284.7534 (f)

BUILDING PERMIT: 2014-00000365

APPLICANT NAME: Bruno Mandarano

PROPERTY ADDRESS: 318 Raymond Street

TAX MAP NUMBER: 20 **PARCEL NUMBER:** 300

ZONING DISTRICT: R-1A **OVERLAY DISTRICT:** N/A

REVIEWED BY: C.M.F. **REVIEW DATE:** 22 APR 2014

PERMIT PENDING: APPROVED DENIED ON HOLD

COMMENTS:

The use classification of the existing structure is a "Two-Family Dwelling", which is considered a legal, pre-existing nonconforming use in the R-1A District. In other words, "Two-Family Dwelling" units are not permitted in the R-1A District.

Article 1373.01(A) of the Planning and Zoning Code provides that, "No legal, pre-existing nonconforming use may be enlarged, moved or otherwise changed, except that such use may be changed to a permitted use."

Additionally, Article 1373.01(B) of the Planning and Zoning Code provides that, "A legal, pre-existing nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, provided that no structural alterations are made within the building in order to allow the use to expand, except those that may be required by the Building Inspections Department. However, no such expansion shall be permitted in any parts of such building that were not so arranged or designed or any land outside such building."

It is the opinion of the Planning Division that the proposed improvements will enlarge the residential occupancy density of the subject dwelling unit. Additionally, the existing structure does not appear to have been manifestly arranged or designed for the proposed improvements as evidenced by the existing and proposed floor plans submitted with the subject building permit application.

For the reasons stated herein, the proposed improvements and related building permit application may not be approved as they are in conflict with the Planning and Zoning Code.

The applicant has thirty (30) days from receipt of this notice to appeal this administrative decision to the Board of Zoning Appeals by contacting this office to obtain an Administrative Appeal application and a copy of the related Planning and Zoning Code procedural regulations.

Development Services
Christopher Fletcher, AICP
Director

Planning Division

Digitally signed by Christopher M. Fletcher, AICP
Date: 2014.04.22 14:21:50 -04'00'

BAIL-02

From: Bruno Mandarano mandarano@yahoo.com
Subject: Fwd:
Date: April 13, 2014 at 10:28 PM
To:

CURRENT
bottom unit

start print

wall framing
2x4x8
on 16" center

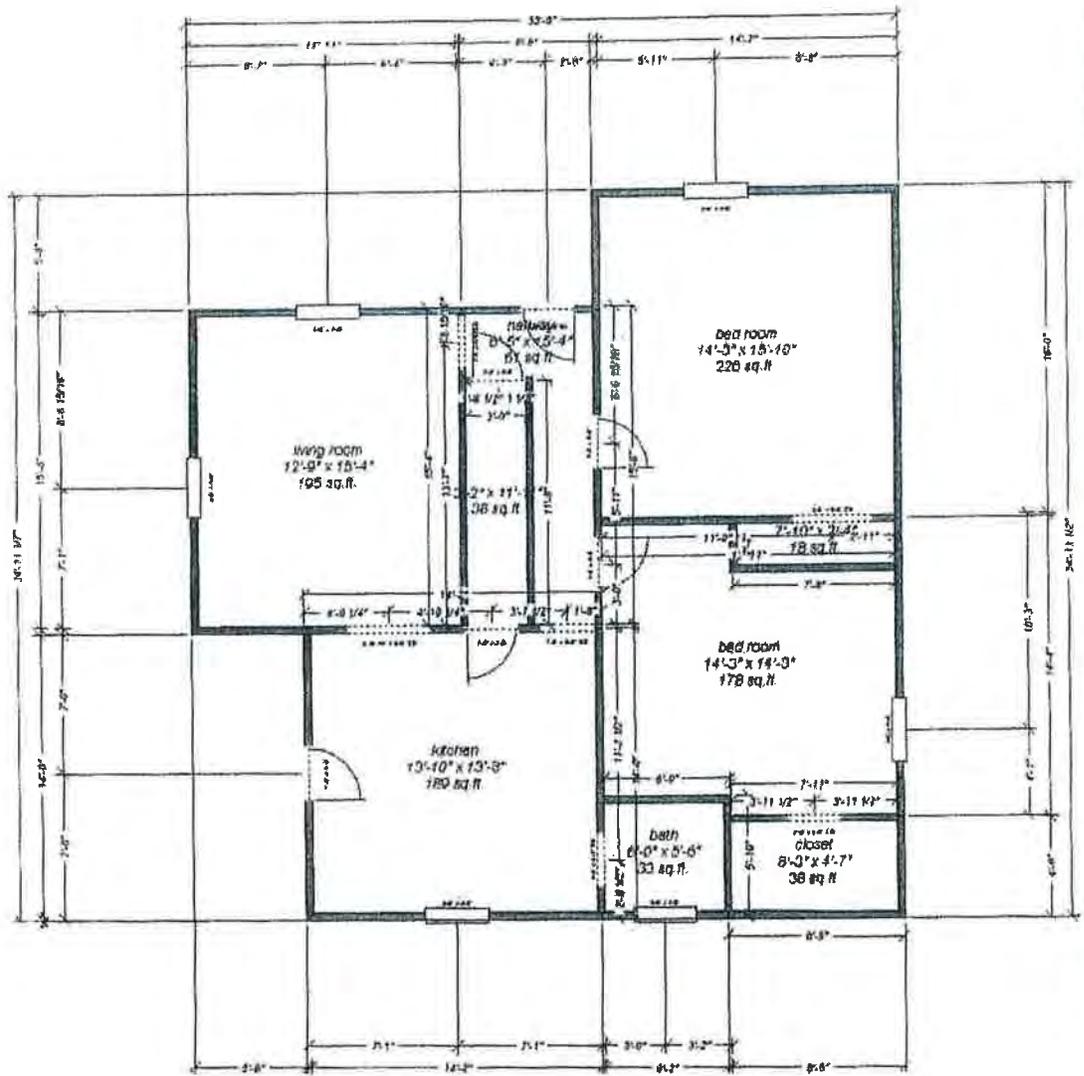


EXHIBIT
1
exhibitsticker.com

B114-D2

From: Bruno Mandarano mandarano@yahoo.com
Subject:
Date: April 13, 2014 at 10:27 PM
To:

New
bottom unit

new print

framing
wall
2x4x8 studs
on 16" center
2x10 or 2x12 header
insulation
R 13
1/2" wall bord

electrical

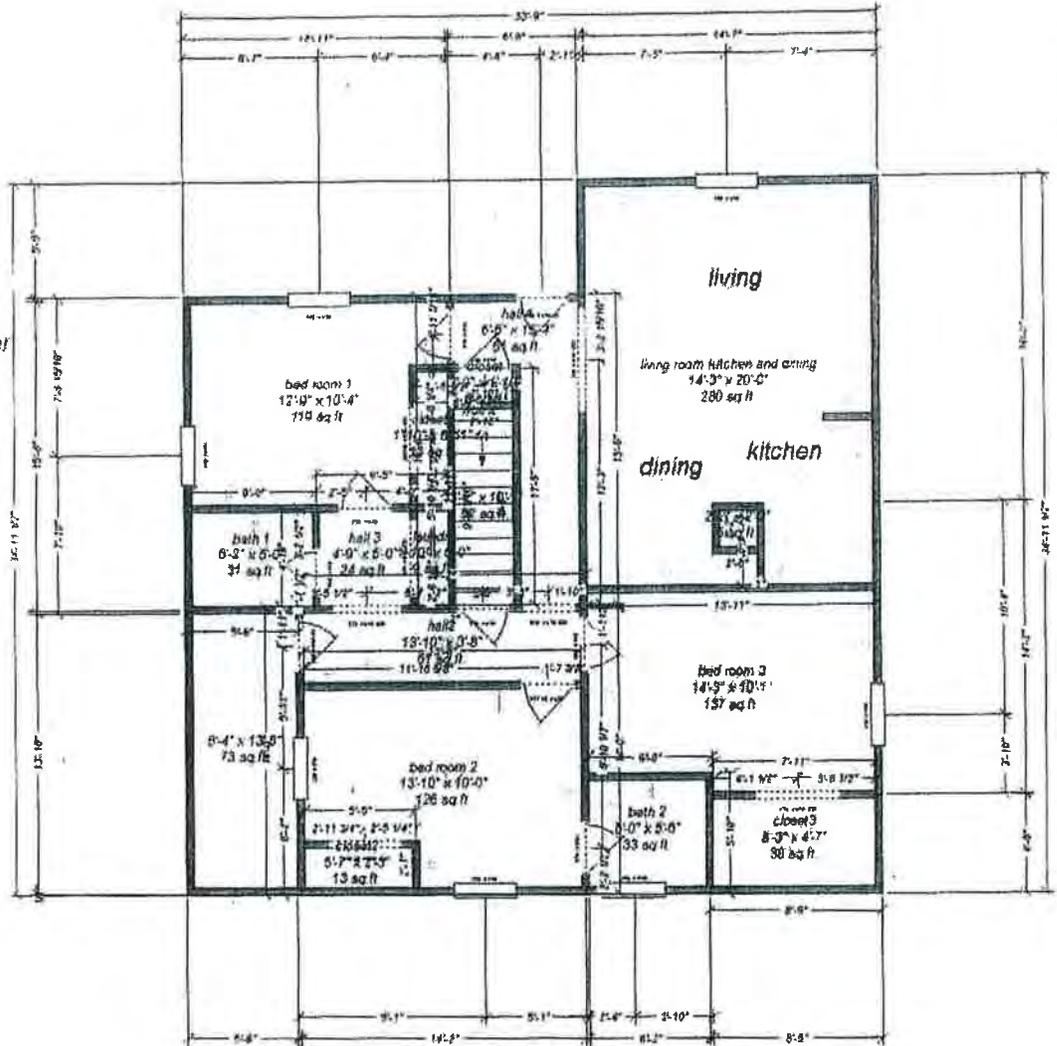
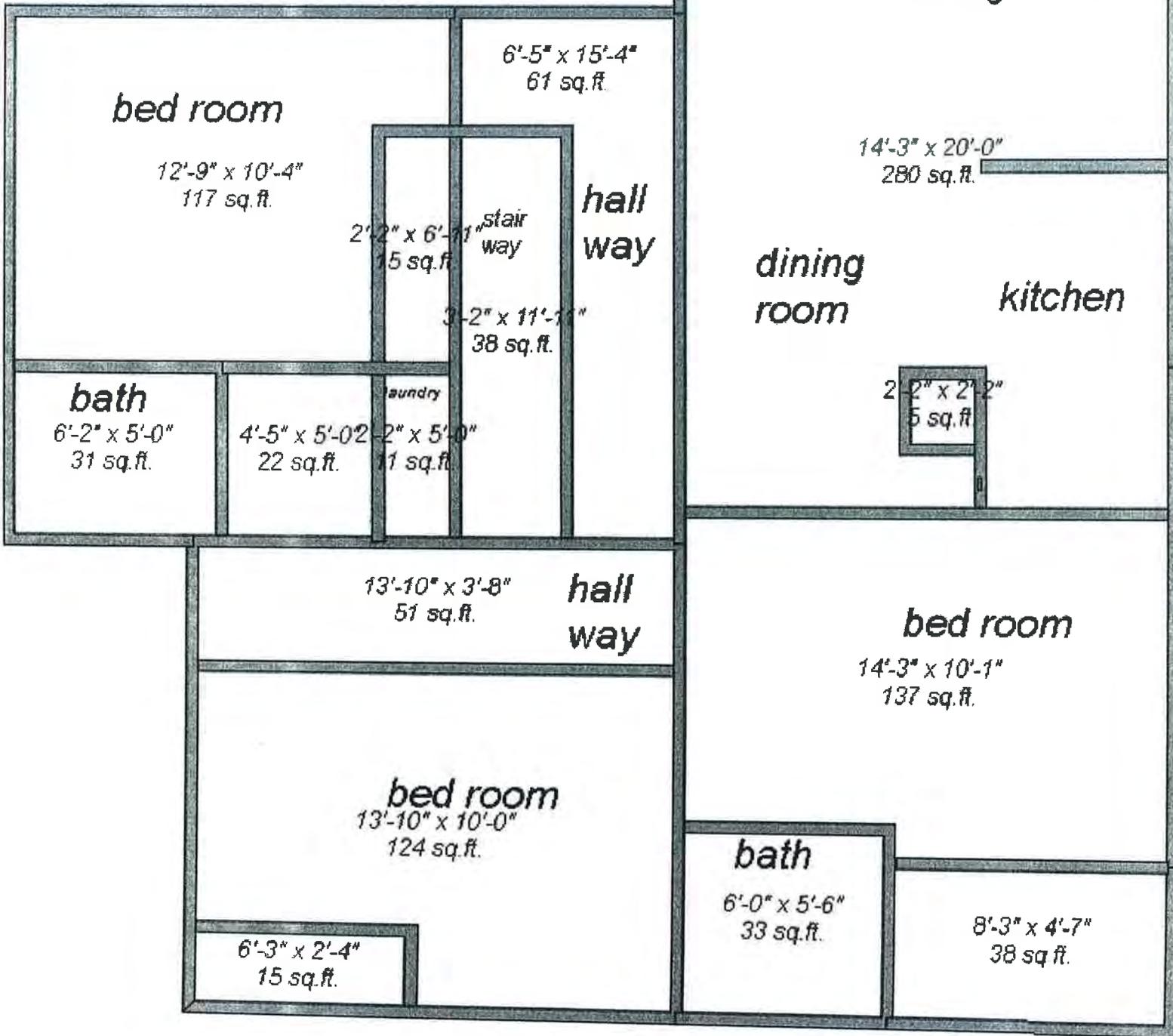


EXHIBIT
1
exhibitsticker.com

BA14-02

EXHIBIT
1
exhibitsticker.com



BA14-01 / Mandarano / 318 Raymond Street



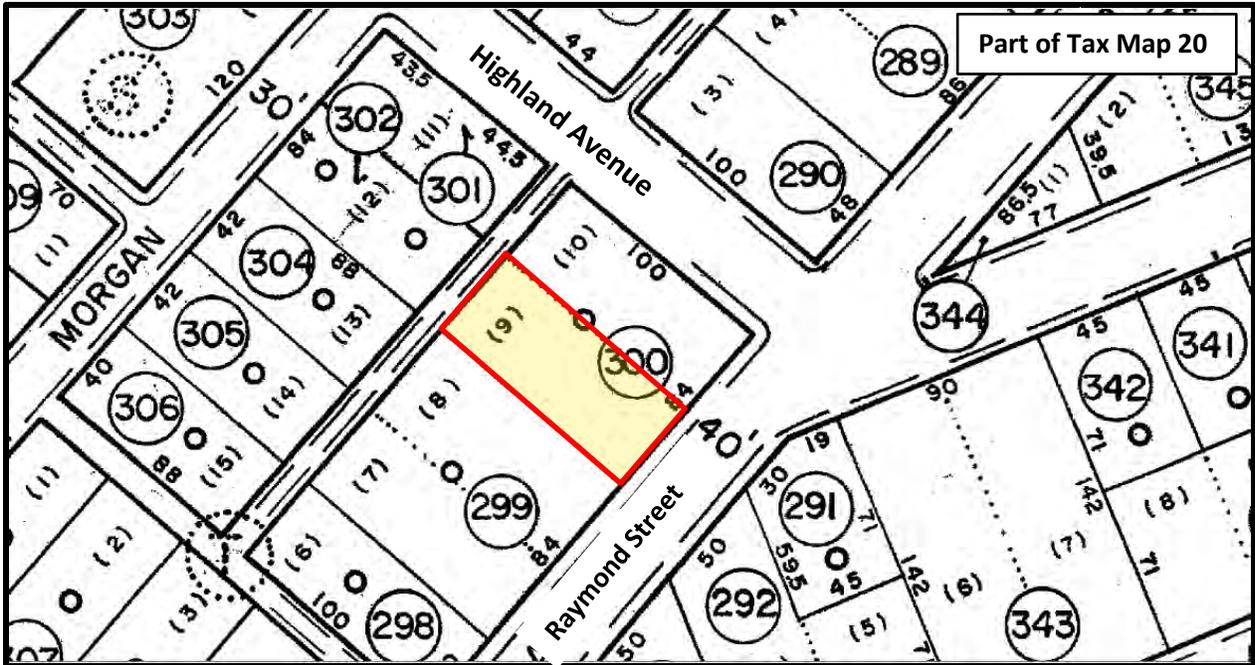


EXHIBIT
2
exhibitsticker.com



ARTICLE 1383
Administrative Appeals

1383.01	Authority.	1383.04	Public hearing.
1383.02	Initiation.	1383.05	Decisions.
1383.03	Processing.	1383.06	Appeal of decisions.

CROSS REFERENCES

Appeal process - see W. Va. Code Art. 8A-9

1383.01 AUTHORITY.

The Board of Zoning Appeals shall hear and determine appeals from any order, requirement, decision or determination made by an administrative official, board, or staff member charged with the enforcement of this Zoning Ordinance.

1383.02 INITIATION.

An appeal may be filed with the Board of Zoning Appeals by any person aggrieved by the order, requirement, decision or determination described in Section 1383.01. An appeal filed with the Board must specify the grounds of the appeal, be filed in the form established by rules of the Board, and be filed within 30 days of the original order, requirement, decision or determination.

1383.03 PROCESSING.

(A) An appeal shall be filed with the Planning staff, who shall forward such appeal to the Board of Zoning Appeals .

(B) Within 10 days of receipt of the appeal by the Board, the Board shall set a date and time for the public hearing and give notice. The public hearing shall be held within 45 days of receipt of the appeal by the Board.

(C) At least 15 days prior to the date set for the public hearing, the Board shall publish a notice of the date, time and place of the hearing on the appeal as a Class I legal advertisement in compliance with the provisions of West Virginia Code Chapter 59, Article 3, and written notice shall be given to interested parties.

1383.04 PUBLIC HEARING.

A public hearing shall be conducted by the Board of Zoning Appeals in conformance with the West Virginia Code and the Morgantown City Board of Zoning Appeals Rules of Procedure. The party making the appeal shall be required to pay any fee established by City Council.

1383.05 DECISIONS.

The Board of Zoning Appeals shall hear testimony and evidence concerning appeals, and prepare findings of fact and conclusions of law and shall render a final decision on all appeals. A written copy of such decision, as described in the Rules of Procedure, shall be available in the Planning Department within five (5) days after making such decision.

Any appeal determined by the Board of Zoning Appeals shall be particular to that case and site, and shall not be applied to the entire Ordinance, except as noted in Section 1375.05, Administrative Interpretations.

1383.06 APPEAL OF DECISIONS.

Every decision or order of the Board of Zoning Appeals shall be subject to review by certiorari. Any person or persons jointly or severally aggrieved by any decision or order of the Board of Zoning Appeals may present to the Circuit Court of Monongalia County a petition duly verified, setting forth that such decision or order is illegal in whole or in part, and specifying the grounds of the alleged illegality. The petition must be presented to the Court within thirty days after the date of the decision or the order of the Board of Zoning Appeals complained of. In the event that an appeal is filed to the Circuit Court, the City, upon receiving notice of such appeal from the Court, shall send written notification of said appeal to the same property owners that were originally notified during initial consideration of the case.

