



# MORGANTOWN BOARD OF ZONING APPEALS

November 29, 2012  
6:30 PM  
City Council Chambers

## **Board Members:**

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

## **STAFF REPORT**

**CASE NO:** CU12-17 / Mountaineer Gardening and Hydroponics  
258 Kingwood Street

### **REQUEST and LOCATION:**

Request by Christopher R. Myers for conditional use approval of a "Florist Shop" use in the R-1A District at 258 Kingwood Street.

### **TAX MAP NUMBER(s) and ZONING DESCRIPTION:**

Tax Map 29, Parcel 447; R-1A, Single-Family Residential District

### **SURROUNDING ZONING:**

R-1A, Single-Family Residential District

### **BACKGROUND and ANALYSIS:**

The petitioner seeks to establish a retail use called "Mountaineer Gardening and Hydroponics" at 258 Kingwood Street. The first floor of the subject property was occupied from 1950 until 2001 by *Crestholm Pharmacy*. Prior to the pharmacy, the subject space, which is approximately 592 square feet, was occupied by a general store. Staff understands that the subject first floor, non-residential space has remained vacant since the closure of the neighborhood pharmacy. The second floor of the subject property contains two dwelling units. Addendum A of this report illustrates the location of the subject site.

The nature of the petitioner's business is the retail sale of organic and hydroponics gardening products. Hydroponics is a method of growing plants using mineral nutrient solutions without soil either in a water or solution culture or in an inert medium culture such as perlite, sand, gravel, mineral wool, rockwool, coconut husk, etc. Plants and vegetables can be grown indoors year round.

Article 1329.02 "Definition of Terms" defines "Retail Sales Establishment" as:

"A business having as its primary function the supply of merchandise or wares to the end consumer. Such sales constitute the 'primary function' of the business when such sales equal at least eight (80) percent of the gross sales of the business."

"Retail Sales Establishment" uses are not permitted in any of the residential districts (R-1, R-1A, R-2, and R-3) or the PRO District. However, a closer examination of Table 1331.05.01 "Permitted Land Uses" reveals a number of non-residential or business uses permitted within these districts.

## **Development Services**

Christopher Fletcher, AICP  
Director

## **Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



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The following list includes business uses permitted either by-right or by conditional use approval in the R-1A District:

- Animal Grooming Service (conditional)
- Appliance Repair Establishment (conditional)
- Art Gallery (conditional)
- Retail Bakery (conditional)
- Barber Shop / Beauty Salon (conditional)
- Neighborhood Convenience Store (conditional)
- Class 1 Day Care Facility (by-right)
- Class 2 Day Care Facility (conditional)
- Drug Store (conditional)
- **Florist Shop** (conditional)
- Instruction Studio (conditional)
- Newsstand (conditional)

It appears that, unless a specific business or retail use is identified in Table 1331.05.01 "Permitted Land Uses", all retail-type business uses fall in the category of "Retail Sales Establishments" regardless of the establishment's scale, scope, or intensity.

It is the opinion of the Planning Division that the scale and intensity of the petitioner's proposed retail business reflects the neighborhood-scaled business uses identified above as permitted within the R-1A District either by-right or by conditional use approval. Further, the subject site has historically been occupied by business uses (drug store and neighborhood convenience store) that are currently permitted in the R-1A District with conditional use approval.

Article 1375.05 "Administrative Interpretations" provides the following guidance in addressing specific proposed uses that may not clearly fall within the common meaning of any of the uses listed in Table 1331.05.01 "Permitted Land Uses":

- (A) Authority. The Planning Director, subject to the procedures, standards, and limitations of this article, may render written interpretations, including use interpretations, of the provisions of this Zoning Ordinance and of any rule or regulation issued pursuant to it. The Planning Director may forward requests for interpretations to the Board of Zoning Appeals, where, in the opinion of the Planning Director, the proposed use is not sufficiently similar to a use expressly listed as a permitted or conditional use on the Permitted Land Use Table 1331.05.01 to allow staff interpretation.
- (B) Purpose. The interpretation authority established by this section is intended to recognize that the provisions of this Zoning Ordinance, though detailed and extensive, cannot, as a practical matter, address every specific situation to which they may have to be applied. In particular, certain categories of uses are listed as either Conditional or Permitted uses, but certain specific proposed uses may not clearly fall within the common meaning of any of the listed uses. Many such situations can be readily addressed by an interpretation of the specific provisions

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of this Zoning Ordinance in light of the general and specific purposes for which those provisions have been enacted. Because the interpretation authority established is an administrative rather than a legislative authority, an interpretation shall not have the effect of adding to or changing the essential content of this Zoning Ordinance, but is intended only to allow authoritative application of that content to specific cases.

- (E) Standards for Use Interpretations. The following standards shall govern the Planning Director and the Board of Zoning Appeals (on appeals from the Planning Director) in issuing use interpretations:
- (1) Any listed use defined in Article 1329, Definitions, shall be interpreted as therein defined;
  - (2) No use interpretation shall authorize any use in any district unless evidence is presented demonstrating that it will comply with the general district regulations established for that particular district.
  - (3) No use interpretation shall authorize any use in a particular district unless such use is substantially similar to other uses specifically listed as permitted or conditional in such district and is more similar to such uses than to other uses listed as permitted or conditional in another zoning district.
  - (4) If the proposed use is most similar to a use allowed only as a conditional use in the district in which it is proposed to be located, then any use interpretation authorizing such use shall be subject to the issuance of a conditional use permit pursuant to Article 1379 of this Zoning Ordinance.
  - (5) No use interpretation shall allow the establishment of any use that would be inconsistent with the statement of purpose of the district in question, unless such use meets the standards of Subsections (E)(3) and (4) hereof.
- (F) Effect of Favorable Use Interpretations. Use interpretations shall only authorize a use in a specific district and shall not allow the development, construction, reconstruction, alteration, or moving of any building or structure. Use interpretations shall merely authorize the preparation, filing, and processing of applications for any permits and approvals that may be required by the codes and ordinances of the City, including, but not limited to, a Building Permit, a Certificate of Occupancy, Subdivision Approval, and Site Plan Approval.
- (G) Limitations on Favorable Use Interpretations.
- (1) A use interpretation finding a particular use to be Permitted, or allowed as a conditional use in a particular district, shall be deemed to authorize only the particular use for which it is issued, and such interpretation shall not be deemed to authorize any allegedly similar use for which a separate use interpretation has not been issued.
  - (2) Once a use interpretation is made for a particular use in a particular district, that use shall be permitted as a conditional use for the entire district and shall be available for other property owners in that district through the conditional use process.

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It is the opinion of the Planning Division that Article 1375.05 provides sufficient administrative and Board interpretation latitude in this instance to narrow the use classification of business establishment proposed by the petitioner to one that is more specifically stated and provided in the Planning and Zoning Code rather than classifying same as a "Retail Sales Establishment" use.

In reviewing the list of business uses permitted in the R-1A District, it appears that the petitioner's proposed establishment is most similar to a "Florist Shop" use. However, "Florist Shop" is not defined in Article 1329.02 and only appears twice in the Planning and Zoning Code (see Table 1331.05.01 "Permitted Land Uses" and Table 1365.04.01 "Minimum Off-Street Parking Requirements").

Article 1329.02 "Definition of Terms" provides the following guidance when the definition of a term is needed to render an interpretation determination:

"For the purpose of this ordinance, the following words and phrases shall have the meaning respectively prescribed to them by this section. If not defined herein, or within other sections of this ordinance, terms used in this ordinance shall have the meanings provided in any standard dictionary or American Planning Association publication as determined by the Planning Director."

*A Planners Dictionary* provides the following definitions for a "Florist" and "Specialty Retail Sales Establishment" (Planning Advisory Service Report 521/522, American Planning Association, 2004, pgs. 191 and 339):

Florist (see also retail sales establishment, specialty). Retail business whose principal activity is the selling of plants which are not grown on the site and conducting business within an enclosed building.

Retail Sales Establishment, Specialty. Retail operations that specialize in one type or line of merchandise. Such stores may include but are not limited to apparel stores, jewelry stores, bookstores, shoe stores, stationary stores, antique stores, and similar establishments.

Based on the interpretation latitude provided in Article 1375.05 and Article 1329.02, it is the opinion of the Planning Division that the petitioner's proposed business establishment can be classified as a "Florist Shop" with the approval of the Board as a conditional use permitted in the R-1A District.

### **Minimum Parking Calculation**

The minimum parking requirement for a "Florist Shop" use is one (1) space per 400 square feet of gross floor area (GFA) PLUS one (1) space per employee. The minimum parking calculation for the petitioner's 592 square foot business establishment would therefore be four (4) off-street parking spaces...one space for the gross floor area and two spaces for the employees.

As a part of the present conditional use petition, the petitioner seeks to utilize the four existing off-site parking spaces located on the adjoining Parcel 448 of Tax Map 29. Said parking spaces appear to have served as the parking area for the previous neighborhood pharmacy and general store establishments. Parcels 447 and 448 are currently owned by the Emil J. Ferrara, Jr. Estate. It appears that the existing parking

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spaces on both parcels are sufficient to meet off-street parking requirements for the petitioner's business establishment and the rental dwelling units.

The petitioner submitted a copy of an email dated October 4, 2012 from Mr. Joe Nagy supporting the petitioner's conditional use request. On November 2, 2012 at approximately 8:10 AM, the Staff received a voice mail message from Erin Burkhart of 116 Kingwood Street supporting the petitioner's conditional use petition. At the time of preparing this report, Staff had not received any communications in opposition.

### **STAFF RECOMMENDATION:**

The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends approval of Case No. CU12-17 as requested with the following conditions:

1. That the Certificate of Occupancy for the petitioner's proposed business establishment classified under this conditional use approval as a "Florist Shop" use shall remain dependent upon the continued access, use, and enjoyment by the petitioner of the four (4) parking spaces that directly access Kingwood Street on Parcel 448 of Tax Map 29.
2. That all regulated signage for the subject establishment must comply with related standards set forth in Article 1369 "Signs".
3. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.

Enclosures: Application and accompanying exhibits

### **Development Services**

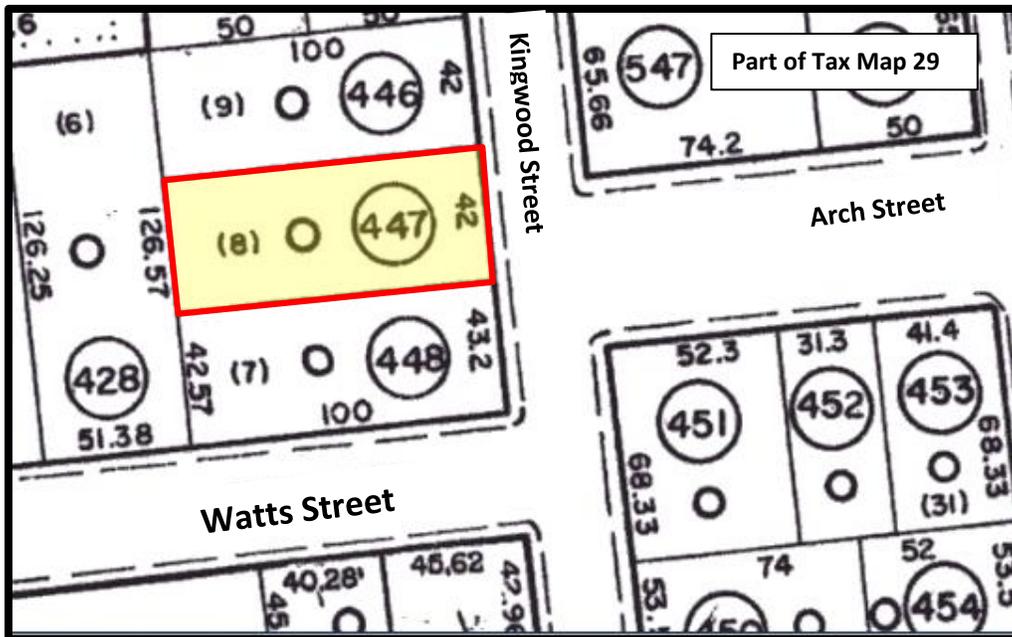
Christopher Fletcher, AICP  
Director

### **Planning Division**

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# STAFF REPORT ADDENDUM A

CU12-17 / Mountaineer Gardening and Hydroponics / 258 Kingwood Street





## STAFF REPORT ADDENDUM B

### CU12-17 / Mountaineer Gardening and Hydroponics / 258 Kingwood Street

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Staff recommended revisions to petitioner's Findings of Fact (deleted matter struck through; new matter underlined)

**Finding of Fact #1** – Congestion in the streets is not increased, in that:

Property has four designated off street parking spaces located on the adjoining Parcel 448 of Tax Map 29, which appears to have served the parking needs of the previous neighborhood pharmacy and general store uses. Additionally, it appears that sufficient parking spaces are available to meet the parking requirements of the petitioner's "Florist Shop" use and the rental dwellings located on Parcels 447 and 448 of Tax Map 29.

**Finding of Fact #2** – Safety from fire, panic, and other danger is not jeopardized, in that:

Smoke detectors, carbon monoxide detectors and fire extinguishers will be onsite and operational at all times. Business space has two exit points (front and rear). All related Building and Fire Code provisions will be met prior to the issuance of a Certificate of Occupancy for the petitioner's "Florist Shop" use.

**Finding of Fact #3** – Provision of adequate light and air is not disturbed, in that:

There is appears to be adequate light provided to all rooms, entrances and exits on property. Additionally, the proposed "Florist Shop" use will occupy a former business use space that has existed for over fifty years.

**Finding of Fact #4** – Overcrowding of land does not result, in that:

No additional construction or additions to the property is necessary.

**Finding of Fact #5** – Undue congestion of population is not created, in that:

Property has appears to have adequate parking for employees, customers, and residents of the rental dwellings at location.

**Finding of Fact #6** – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

Property has all public utilities. Traffic flow will not be disrupted as adequate parking off street is provided. The proposed "Florist Shop" use does not appear to require additional public utilities, services, or facilities that is not already available to the property and surrounding area.

**Finding of Fact #7** – Value of buildings will be conserved, in that:

Property is listed on the historical registry as a general store and then a pharmacy. Wooden shelves inside are being restored and maintained for original retail purpose. It appears that the petitioner's "Florist Shop" use should continue the commercial tradition of the building and contribute to the commercial and trade function identified in the National Register of Historic Places for the Greenmont Historic District.

**Finding of Fact #8** – The most appropriate use of land is encouraged, in that:

Proposed space was a retail location for over seventy years.



City of Morgantown, West Virginia

APPLICATION FOR  
TYPE IV SITE PLAN – CONDITIONAL USE

OFFICE USE	
CASE NO.	CU12-17
RECEIVED:	10/9/12
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

I. APPLICANT			
Name:	Mountaineer Gardening and Hydroponics	Phone:	304-566-7303
Mailing Address:	258 Kingwood St.	Mobile:	304-290-2460
	Street Morgantown WV 26505	Email:	mtrgardeningandhydro
	City State Zip Morgantown WV 26505		@gmail.com
II. AGENT / CONTACT INFORMATION			
Name:	Christopher R. Myers	Phone:	304-566-7303
Mailing Address:	PO Box 3162	Mobile:	304-290-2460
	Street Clarksburg WV 26301	Email:	mtrgardeningandhydro
	City State Zip Clarksburg WV 26301		@gmail.com
Mailings –	Send all correspondence to (check one): <input type="checkbox"/> Applicant OR <input checked="" type="checkbox"/> Agent/Contact		
III. PROPERTY			
Owner:	Jeff Edward	Phone:	
Mailing Address:	9 Buchanan St.	Mobile:	304-216-2341
	Street Morgantown WV 26501	Email:	wvshred@yahoo.com
	City State Zip Morgantown WV 26501		
IV. SITE			
Street Address (if assigned):	258 Kingwood St.	Tax Map #:	29 Parcel #: 447
Zoning:	R1A		
Lot Dimensions:	Width: Ft.	Depth: Ft.	Square Footage: ft. <sup>2</sup>
Shape of Lot:	<input type="checkbox"/> Corner <input type="checkbox"/> Interior <input type="checkbox"/> Through <input type="checkbox"/> Flag <input type="checkbox"/> Irregular <input type="checkbox"/> Non-conforming		
Existing Use of Structure or Land:	Student Rental		
Proposed Use of Structure of Land:	Retail Store and Rental		

RS2  
10/05/2012 13:02:19  
201304118 SITE PLAN

P A I D  
75.00

Finance Office  
Morgantown, WV 26505  
(304) 284-7408



APPLICATION FOR TYPE IV SITE PLAN – CONDITIONAL USE

OFFICE USE	
CASE NO.	CV12-17
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**V. STRUCTURE**

Proposed Setbacks: Front: \_\_\_\_\_ ft. Rear: \_\_\_\_\_ ft. Side A: \_\_\_\_\_ ft. Side B: \_\_\_\_\_ ft.

Proposed Height of Structure: \_\_\_\_\_ No. of Proposed Off-Street Parking Spaces: \_\_\_\_\_

No. of Dwelling Units (if applicable): 1 No. of Bedrooms: 3 No. of Employees: 1

Square Footage of all Proposed Structures (please explain):

**VI. SITE PLAN**

A Site Plan (8 copies), drawn to scale, that includes the following elements must accompany the application if not provided above in Sections IV and V:

- (a) The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a registered design professional licensed by the State of West Virginia.
- (b) The exact sizes and locations on the lot of existing structures, if any;
- (c) The location, square footage, and dimensions of the proposed structure or alteration;
- (d) The location of the lot with respect to adjacent rights-of-way;
- (e) The existing and proposed uses of the structure and land;
- (f) The number of employees, families, housekeeping units, bedrooms, or rental units the structure is designed to accommodate;
- (g) The location and dimensions of off-street parking and means of ingress and egress for such space;
- (h) Height of structure;
- (i) Setbacks;
- (j) Buffer yard and screening, if applicable;
- (k) Location of garbage collection area and screening;
- (l) Location of existing and/or proposed signs, if applicable;
- (m) Roadway typical detail for internal roadways, if applicable;
- (n) Location and size of stormwater management facilities; and,
- (o) Utility lines and easements, if applicable.



**APPLICATION FOR  
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**VII. SUPPLEMENTAL PLANS AND EXHIBITS**

Applicants **MUST** also submit the following plans and exhibits, unless waived by the Planning Director:

- (a) Drainage plan and drainage calculations that bear the name, address, signature and seal of a registered professional engineer licensed by the State of West Virginia, with floodplain zones clearly denoted, a typical of all swales, and a design of the drop inlets.
- (b) If applicable, design of stormwater management facilities and drainage calculations that bear the name, address, and seal of a registered professional engineer licensed by the State of West Virginia that meet the requirements of the City Zoning Ordinance, the City Stormwater Management Ordinance, and all other applicable local, state and federal regulations.
- (c) Parking and Landscaping Plan
- (d) Sign Plan
- (e) Approved WV Division of Highways Access Permit, if applicable
- (f) Sediment and erosion control plan as approved by the West Virginia Department of Environment Protection and the City of Morgantown
- (g) Approved State of West Virginia NPDES General Permit for Storm Water Associated with Industrial (Construction) Activity, if applicable
- (h) A traffic impact study, if required by the City Engineer
- (i) The Planning Director may require the applicant to submit additional information concerning the lot or neighboring lots to determine conformance with, and provide for the enforcement of, the City Zoning Ordinance.
- (j) The Planning Director may require the applicant to submit, in the case of accessory structures or minor additions, dimensions shown on plans relating to the size of the lot and the location of the structure(s) thereon be based on an actual survey prepared a registered design professional licensed by the State of West Virginia.

Applicants submitting a conditional use application in accordance with Article 313.05 "Building Height and Use" within the B-4 General Business District **MUST** also submit the following analyses:

- (a) An air flow analysis conducted by a licensed architect or profession engineer, describing the estimated impact of the proposed building on existing patterns of air flow in the general vicinity; and how those impacts may affect existing properties with a 300 foot radius of the site.
- (b) An analysis of the impacts of the proposed building on sunlight distribution in the general vicinity, with special emphasis on predicting light blockage and shadow casting onto all properties with a 300 foot radius of the site. Such analysis shall be conducted by a licensed architect or professional engineer.
- (c) An analysis of the potential of "stepping back" upper floors as a technique to avoid negative impacts with respect to light and airflow, and to minimize the canyon effect of non-recess tall buildings. Such analysis shall be conducted by a licensed architect or professional engineer.
- (d) An infrastructure and traffic analysis predicting the impacts of the building on water, sewer, drainage, electrical and gas infrastructure, on transportation levels of service (including transit) for impacted streets, and on fire suppression capabilities of the city. Such analysis shall be conducted by a licensed architect or professional engineer.



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VIII. FINDINGS OF FACT

The Board of Zoning Appeals may grant the request only if each of the Conditional Use Findings of Fact Criteria is determined to be in the positive. Applicants must give their own responses to the criteria statements provided below.

This Conditional Use is within the fitting character of the surrounding area and is consistent with the spirit, purpose, and intent of the Zoning Ordinance, because,

1. Congestion in the streets is not increased, in that:

Property has four designated off street parking spaces.

2. Safety from fire, panic, and other danger is not jeopardized, in that:

Smoke detectors, carbon monoxide detectors and fire extinguishers will be onsite and operational at all times. Business space has two exit points (front and rear).

3. Provision of adequate light and air is not disturbed, in that:

There is adequate light provided to all rooms, entrances and exits on property.

4. Overcrowding of land does not result, in that:

No additional construction or additions to property is necessary.

5. Undue congestion of population is not created, in that:

Property has adequate parking for customers at location.



APPLICATION FOR TYPE IV SITE PLAN – CONDITIONAL USE

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VIII. FINDINGS OF FACT (cont.)

6. Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

Property has all public utilities. Traffic flow will not be disrupted as adequate parking off street is provided.

7. Value of buildings will be conserved, in that:

Property is listed on the historical registry as a general store and then a pharmacy. Wooden shelves inside are being restored and maintained for original retail purpose.

8. The most appropriate use of land is encouraged, in that:

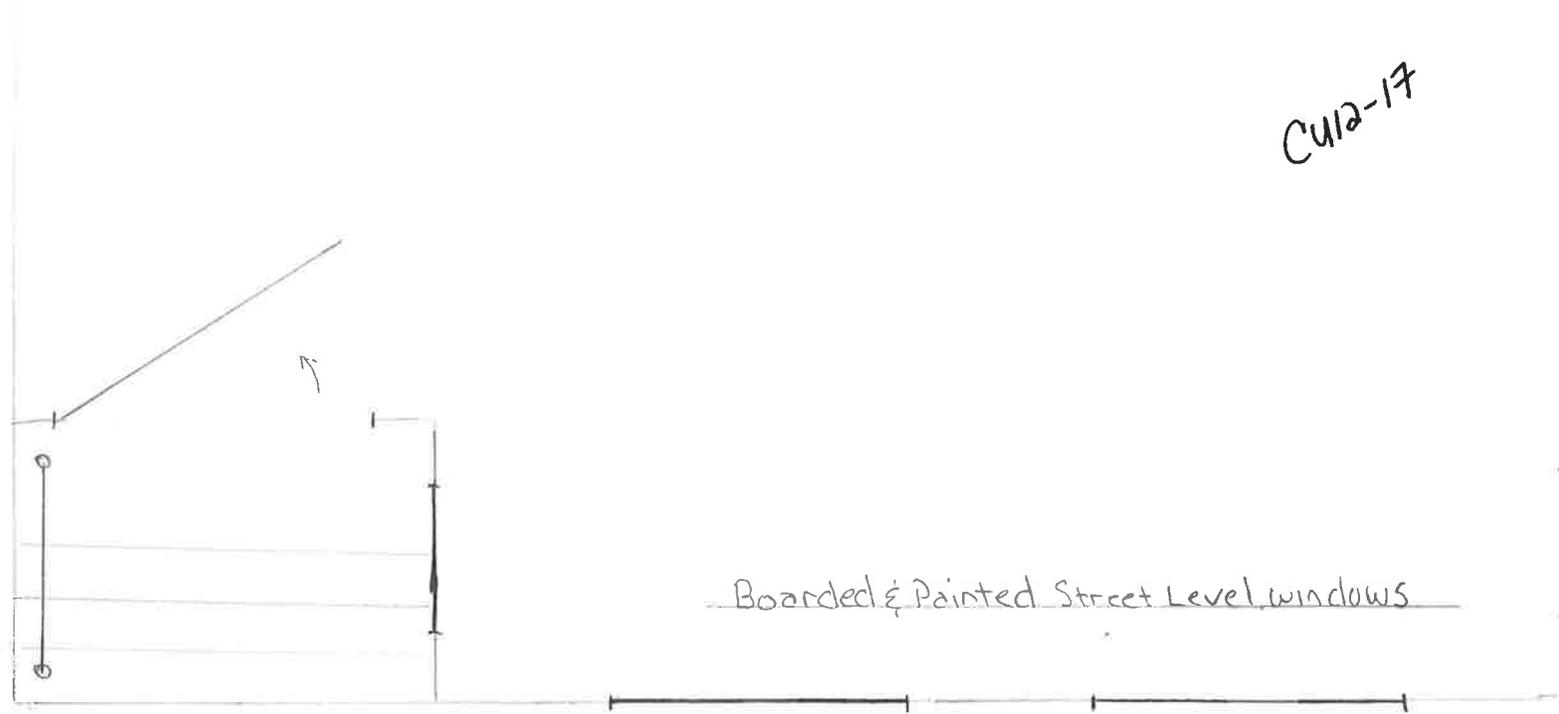
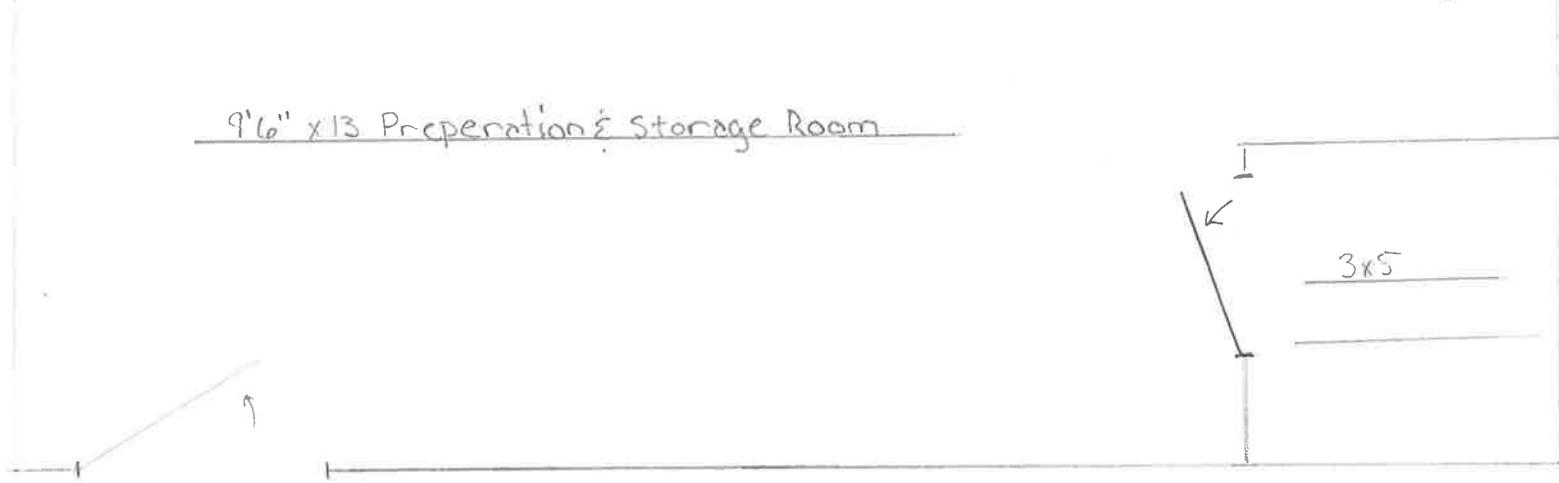
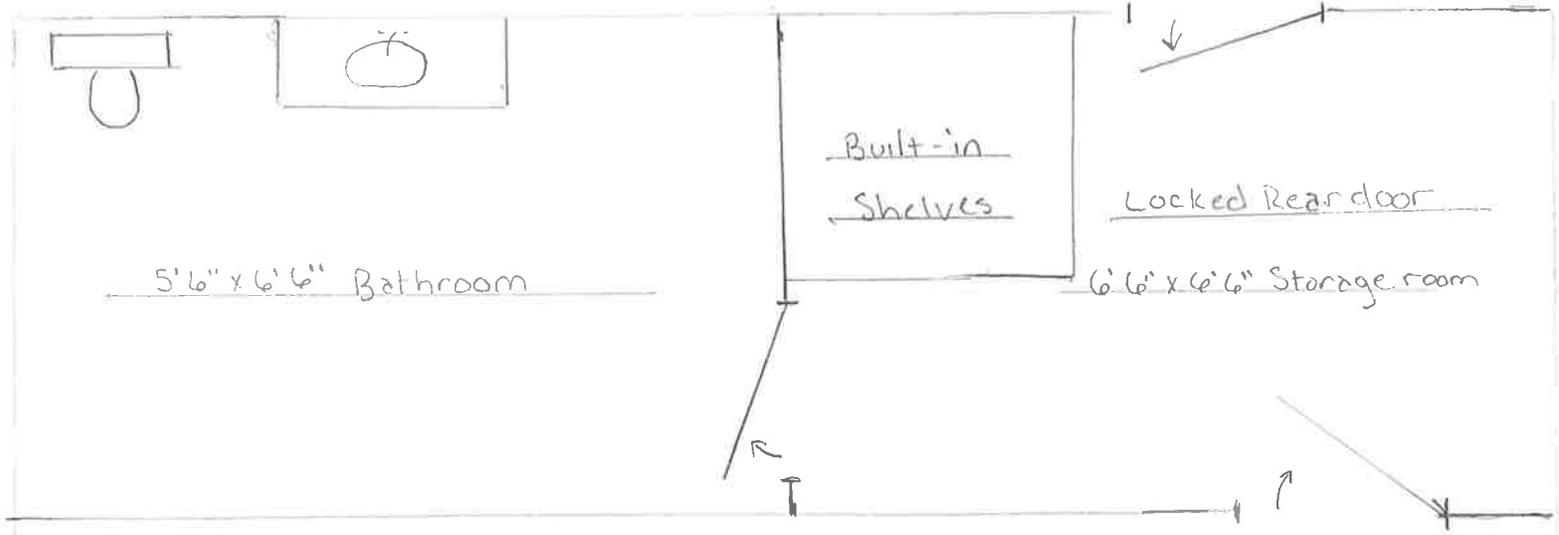
Proposed space was a retail location for over seventy years.

IX. 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 and I agree to conform to all applicable laws of this jurisdiction. 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.

Christopher R. Myers	<i>Christopher R. Myers</i>	10/05/2012
Type/Print Name of Applicant/Agent	Signature of Applicant/Agent	Date

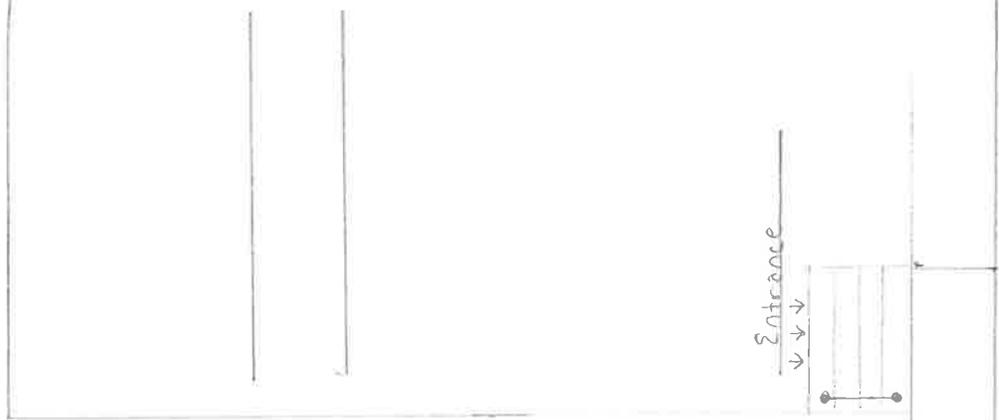
• Conditional Use Petition Fee of \$75 must accompany application



C412-17

Rear Parking for Adjacent

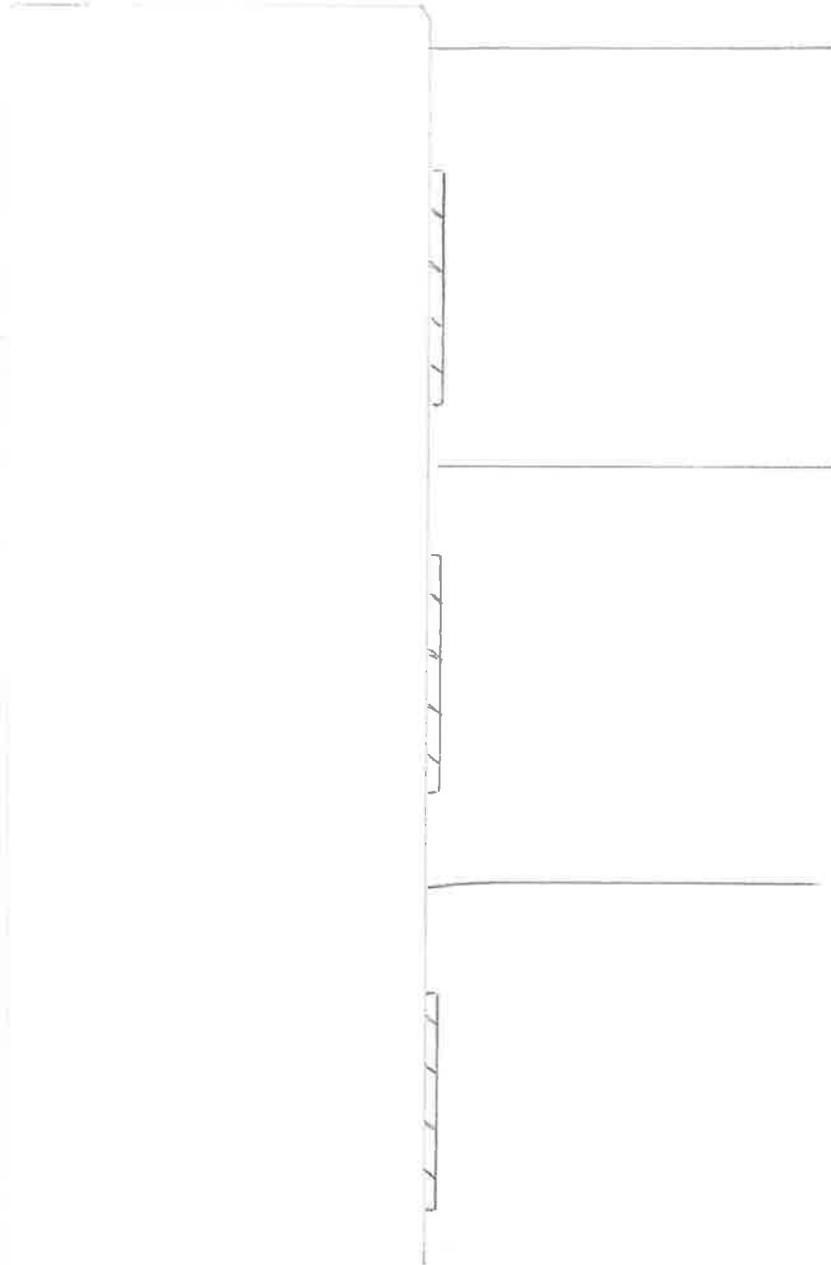
Rentals



18 x 36 Parking Lot & Side Alleyway / Left of Building

C412-17

Sidewalk





**Mountaineer Gardening and Hydroponics**

**Business Description:**

Mountaineer Gardening and Hydroponics is a business designed to help people improve their gardening yields without using chemicals harmful to the environment and the human body. The products provided at this business will be organic and made from nature (like hydrolyzed fish, kelp, etc.). I plan to educate consumers on the various ways of growing organically year-round using hydroponic techniques (such as growing plants in a soilless medium). With this, consumers will be able to grow plants such as vegetables indoors year-round. During spring and summer months I will help educate consumers on how to improve their gardens using organic products that will produce healthier yields. During fall and winter months I will educate consumers on how to continue producing healthy vegetables for their families (grown at home organically indoors).

C412-17



Christopher Myers <mtrgardeningandhydro@gmail.com>

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## Letter of Recommendation

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Joe Nagy, Jr <motown500@gmail.com>  
To: mtrgardeningandhydro@gmail.com

Thu, Oct 4, 2012 at 1:07 PM

**October 4th, 2012**

### To Whom It May Concern:

Recently I have had the good fortune of getting to know my new neighbor, Chris Myers. I live in the same building that Chris is preparing to set up his new business, and in the last few weeks we have become fast friends. I cannot think of anyone more professionally capable of starting a successful business here in Morgantown.

In addition, Chris always extends his kindness and generosity in a way that makes people feel at ease. He is quick with a smile, and he tells me every time I see him ... "let me know if there's anything you need."

I can only wish him the best as he begins this new chapter in his life. I hope this letter goes a long way to convincing the good people of Morgantown that they will be doing business for a long time with this solid and upstanding citizen. And please, don't let this letter be your only reference- take a few minutes to talk and get to know him yourself. You'll be glad you did.

Sincerely,

Joe Nagy  
258 Kingwood Street  
Morgantown, WV.  
motown500@gmail.com

CU12-17