



MORGANTOWN BOARD OF ZONING APPEALS

February 20, 2013
6:30 PM
City Council Chambers

Board Members:

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

STAFF REPORT

CASE NO: CU13-03 / Leech / 206 Spruce Street

REQUEST and LOCATION:

Request by Douglas Leech for a conditional use approval of a "Lodging or Rooming House" use located at 206 Spruce Street; Tax Map 29, Parcel 18.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 29 Parcel 18; B-4, General Business District

SURROUNDING ZONING:

B-4, General Business District

BACKGROUND and ANALYSIS:

The petitioner seeks to convert the use of the building at 206 Spruce Street from a "Professional Services Establishment" use to a "Lodging or Rooming House" use, which requires conditional use approval by the Board of Zoning Appeals. Addendum A of this report illustrates the location of the subject site.

The building is known as the "Judge Frank Cox House" and is currently occupied by the Law Offices of Kelly R. Reed. The two and a half story Queen Anne style brick structure was constructed in 1898 and listed on the National Register of Historic Places in 1984.

The petitioner seeks to manage the "Lodging or Rooming House" use as a "sober living house," the details and "house rules" for which can be found in the submitted application and accompanying exhibits.

Land Use

Article 1329.02 provides the following definitions of related residential dwelling types used to guide Staff's determination in classifying the proposed residential use (emphasis added).

GROUP RESIDENTIAL HOME – A building owned or leased by developmentally disabled or behaviorally disabled persons for purposes of establishing a personal residence. A behavioral health service provider may not lease a building to such persons if the provider is providing services to the persons without a license as provided for in the Code of the State of West Virginia, Chapter 27, Article 17, et seq., as amended.

HALFWAY HOUSE – A place for transitional group living arrangements for persons discharged from hospitals, correctional facilities, or in lieu of hospitalization, characterized by the presence of such live-in staff, emphasizing the development of skills necessary for more independent living. The facility shall be licensed and operated in accordance with all applicable laws.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
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LODGING OR ROOMING HOUSE – A building or portion of a mixed-use building that provides sleeping accommodations for no more than 16 people on a transient or permanent basis, without personal care services, with or without meals, but without separate cooking facilities for individual occupants. A building that contains a lodging or rooming housing use may not contain any additional such use nor any other residential dwelling use. Also called a boarding house.

It is the opinion of the Planning Division, based on the petitioner’s description of the residential use’s intended management mission, occupancy and related restrictions, that the appropriate land use classification for the subject use is a “Lodging or Rooming House” for the following reasons:

1. The building will not be owned or leased by persons with developmental or behavioral disabilities who are, by reason of their respective disability, seeking to establish a personal residence.
2. The petitioner does not seek to license the residence with the State of West Virginia as halfway house facility to serve the transitional living needs of persons discharged from hospitals or correctional facilities.
3. Occupants may be considered transient or permanent; personal care services will not be provided as a part of the use; and, the structure will not provide separate cooking facilities for individual occupants.

The following is an excerpt from Table 1331.05.01 “Permitted Land Uses.”

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	O1	B-5	I-1
Group Residential Home	P	P	P	P		P	P	P			
Half-way House			C	C		C	C				
Lodging or Rooming House			C	P			P	C			

“Lodging or Rooming House” Uses in the Downtown

The closest address to the petitioner’s property that is registered with the City of Morgantown as a “Lodging or Rooming House” is 427 Spruce Street.

The map below illustrates buildings along Spruce Street that are occupied generally by unrelated occupants in various dwelling unit and bedroom compositions.

Development Services
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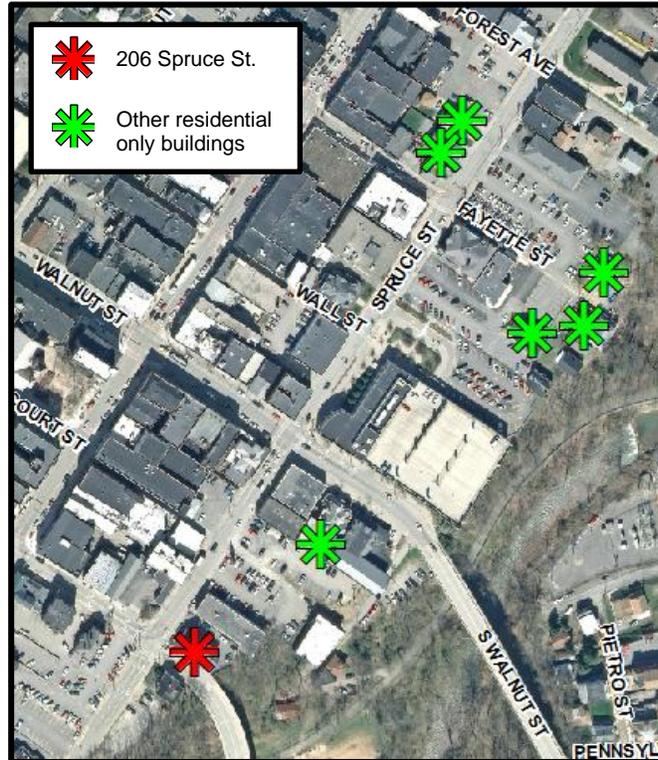
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This illustration is not intended to suggest that these locations are comparable with the petitioner’s proposed residential use. It is intended to provide context in terms of identifying buildings within the immediate area that are currently occupied by residential-only uses.



Is a “Sober Living House” the same as a “Halfway House”?

In researching sober living houses, it appears to Staff that the terms “sober living house” and “halfway house” are sometimes used interchangeably. However, in looking more closely at the term “halfway house” and how it is classified in zoning regulations in other areas of the country, there appears to be a direct connection between “halfway house” uses and transitional housing needs relating to probation, parole, participation in a penal institution’s pre-release program, personal rehabilitation related care, and/or juvenile delinquency.

Addendum B of this report provides various definitions for “halfway houses” included in the American Planning Association’s Planning Advisory Service Report published in April 2004 titled, “A Planners Dictionary”. This information is intended to provide comparative context on what other communities consider a “halfway house” to be in terms of regulating local land uses. Because the Planning and Zoning Code specifically defines what a “Halfway House” use is, the definitions provided in Addendum B may not interpose or supersede Morgantown’s current regulatory policy in this regard.

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Building Improvements

Staff understands that the petitioner has consulted with City building code and fire code plans reviewers to ascertain the level of interior improvements that will be required under the respective codes for the proposed change in use. In speaking with the petitioner and City plans reviewers, Staff understands that a significant investment will be necessary to comply with related building and fire code provisions including, but not limited to, the installation of a fire sprinkler system. The petitioner has also indicated that the building will receive interior and exterior improvements addressing deferred maintenance that should be recognizable by passersby.

Parking

Although the subject site appears to include sufficient space for six to seven on-site parking spaces, Article 1349.08(A)(1) specifies that residential uses in the B-4 District are not required to provide on-site parking for the first twenty-two (22) occupants as determined by the West Virginia State Building Code.

STAFF RECOMMENDATION:

It is the opinion of the Planning Division that the petitioner's "sober living" intentions are extraneous to Staff's obligation to present the facts of what the proposed land use classification is within the restrictions prescribed in the City's Planning and Zoning Code. Further, conjecture at the Staff level as to the market need or demand for a "sober living house" in Morgantown would be as inappropriate and biased as publicly speculating on the merits and/or viability of a developer's intention to deliver a new business to the community.

It is the Board's duty to measure the petitioner's development proposal, consider public input, and determine individualized judgment if adequate conditions exist or can be imposed that will make the proposed conditional use compatible with uses in the surrounding area.

In doing so, Staff encourages the Board to consider, to some extent, how its deliberation of the subject conditional use petition may be different if the issue of "sober living" was not the foundation of the petitioner's proposed venture. This does not however suggest that the Board can or should only consider a part of the petitioner's development proposal.

The Board 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 C of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

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Staff recommends approval of conditional use petition CU13-03 based on the following facts:

1. Irrespective of the petitioner's intentions to manage the residence as a sober living home, the land use remains a "Lodging or Rooming House" as defined in the City's Planning and Zoning Code.
2. "Lodging or Rooming House" uses, by definition, are intended to be occupied by unrelated individuals residing together on a permanent or transient basis, without personal care services, and without separate cooking facilities for individual occupants.
3. The petitioner does not seek to license the residence as a halfway house; a use which would not be permitted within the B-4 District.
4. "Lodging or Rooming House" uses exist and are permitted in the B-4 District with conditional use approval by the Board of Zoning Appeals.
5. The Building Code and Fire Code will require significant improvements to the building as a result of the proposed change in use, which should serve to increase the safety of the 115 year old building for the petitioner's proposed use and residential and/or commercial uses in the future.
6. Unlike variance approvals, which apply to the specific property and may be transferred with ownership of the specific property (See Article 1381.06), condition use approvals authorize only the particular use specific in and by the beneficiary of a conditional use approval. The beneficiary of a conditional use may not be transferred without prior approval of the Board of Zoning Appeals.

Attachments: Application and submitted exhibits.

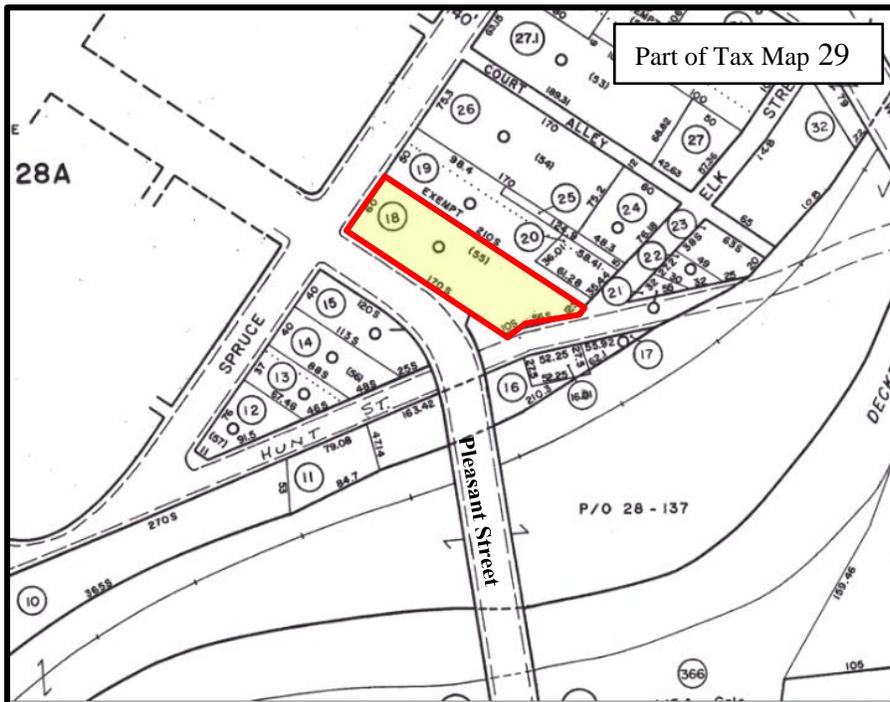
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STAFF REPORT ADDENDUM A
CU13-03 / Douglas Leech / 206 Spruce Street



STAFF REPORT ADDENDUM B
CU13-03 / Douglas Leech / 206 Spruce Street

Selected definitions for "Halfway House" from "A Planners Dictionary"; American Planning Association; Planning Advisory Service Report No. 521/522.

"A licensed home for inmates on release from more restrictive custodial confinement or initially placed in lieu of such more restrictive custodial confinement, wherein supervision, rehabilitation, and counseling are provided to mainstream residents back into society, enabling them to live independently. (Peoria, Ill.)"

"A licensed home for inmates on release from more restrictive custodial confinement or initially placed in lieu of such more restrictive custodial confinement, wherein supervision, rehabilitation, and counseling are provided to mainstream residents back into society, enabling them to live independently. Such placement is pursuant to the authority of the state department of corrections. (Hot Springs, Ark.)"

"A facility owned or operated by an agency or an individual authorized to provide housing, food, treatment or supportive services for not more than 16 individuals on supervised release from the criminal justice system and who have been assigned by a court to a residential home in lieu of placement in a correctional institution; or for individuals who have been institutionalized and released from the criminal justice system or who have had alcohol or drug problems which make operation in society difficult and who require the protection of a supervised group setting. (Troy, Ohio)"

"An establishment qualified for a license by [the state] which provides resident services to individuals of whom one or more are unrelated. The individuals are handicapped, aged, or disabled, are undergoing rehabilitation or extended care, and are provided services to meet their needs. This category includes group homes for all ages, halfway houses, and foster homes, but excludes family care homes. (Lake Lure, N.C.)"



CASE NO.

CW13-03

RECEIVED:

1/14/03

COMPLETE:

APPLICATION FOR TYPE IV SITE PLAN - CONDITIONAL USE

(PLEASE TYPE OR PRINT IN BLACK INK)

I. APPLICANT

Name:	DOUGLAS J. LEECH	Phone:	
Mailing Address:	907 RIVERVIEW DR	Mobile:	304-290-2588
	MORGANTOWN, WV 26505	Email:	DLEECH@DLTJADVISORS.COM

II. AGENT / CONTACT INFORMATION

Name:		Phone:	
Mailing Address:	Street	Mobile:	
	City State Zip	Email:	

Handwritten: SAME

Mailings - Send all correspondence to (check one): Applicant OR Agent/Contact

III. PROPERTY

Owner:	KELLY REID	Phone:	
Mailing Address:	206 SPRUCE STREET	Mobile:	
	MORGANTOWN, WV 26505	Email:	

IV. SITE

Street Address (if assigned):	206 SPRUCE ST	Tax Map #:	29	Parcel #:	18	
Zoning:	B-4					
Lot Dimensions:	Width:	Ft.	Depth:	Ft.	Square Footage:	ft. ²
Shape of Lot:	<input checked="" 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:	"PROFESSIONAL SERVICES USE"					
Proposed Use of Structure of Land:	"LODGING OR ROOMING HOUSE" USE					

Finance Office Morgantown, WV 26505 (304) 284-7405



OFFICE USE	
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APPLICATION FOR TYPE IV SITE PLAN – CONDITIONAL USE

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: 14* No. of Employees: 1, maybe

Square Footage of all Proposed Structures (please explain): → OCCUPANTS

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
TYPE IV SITE PLAN – CONDITIONAL USE**

OFFICE USE	
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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. *10 APPROXIMATE PARKING SPACES*
- (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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APPLICATION FOR TYPE IV SITE PLAN – CONDITIONAL USE

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:

AS MOST OCCUPANTS WILL NOT BE DRIVING A VEHICLE, AUTOMOBILES WILL BE FEWER THAN FOR EXISTING APPROVAL AS LAW OFFICES.

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

FIRE MARSHAL AND CITY INSPECTORS HAVE DICTATED THAT BUILDING IS TO BE RETROFITTED WITH SPRINKLER SYSTEM AND SMOKE ALARMS. SO BUILDING SAFETY WILL BE IMPROVED UPON OCCUPANCY FROM IT'S CURRENT STATUS.

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

NO CHANGES IN NUMBER OF OCCUPANTS FROM PRESENT USE.

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

NO CHANGES IN EXTERNAL ASPECTS OF BUILDING

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

CITY INSPECTORS AND FIRE MARSHALL HAVE INDICATED A CAPACITY OF 14 IS ACCEPTIBLE TO THEIR STANDARDS. THIS WOULD BE NO MORE THAN IF ALL THREE FLOORS OF THE LAW OFFICE WERE LEASED AND OCCUPIED.



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APPLICATION FOR TYPE IV SITE PLAN – CONDITIONAL USE

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:

PUBLIC TRANSPORTATION READILY AVAILABLE. MINOR MODIFICATION of WATERLINE By MUB (2" line to be installed) handles WATER + SEWER ADEQUATELY. THIS IS FOR 14 PERSONS, POSSIBLY 1 MANAGER

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

VALUE of BUILDING TO BE ENHANCED By ADDING SPRINKLER SYSTEM, SMOKE DETECTORS. Deferred MAINTENANCE TO BE REPAIRED (ROOF LEAKS, PORCH ROTTED IN PLACES, etc) By NEW OWNER — LEECH

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

See "ATTACHMENT A."

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.

DOUGLAS J. LEECH

[Signature]

1/13/13

Type/Print Name of Applicant/Agent

Signature of Applicant/Agent

Date

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

Morgantown Sober Living

Mission Statement

The Morgantown Sober Living (MSL) program is designed to reintegrate recovering individuals into the world. Accountability is at the core of the MSL program. Residents will begin to develop strong relationships and demonstrate transparency in their daily lives, as they maintain accountability to the group. A consistent theme of honesty and integrity in all things is the goal as we work to develop connectedness and communal responsibility.

Through this process, residents will gain independence and responsibility, both financially and emotionally, as they become the person they want to be, which is the ultimate goal.

The sober house provides a safe, caring, and supportive environment for residents to begin living a sober lifestyle and developing healthy new relationships in Morgantown's active recovering community. The MSL house affords residents the freedom to develop spiritually in their own way, and the structure to assure that sobriety and recovery remain the number one priority.

Attachment A: OVERVIEW

My son Douglas M. Leech grew up in Morgantown and late in his high school years at University High, began an affiliation with a group of friends that led to, or contributed to his developing over a 10 year period an excessive use of alcohol and drugs. This problem is somewhat of an epidemic in Morgantown, and is getting worse each year. My son's life, like most with addictive behaviors, deteriorated dramatically over the years with increasing incidents with the law, culminating in an arrest in April, 2011. Unfortunately, despite my efforts to get him into rehab sooner, it took the leverage of dealing with the law to get him to agree to get help...his back was against the wall.

I flew him to Hazelden, in Minneapolis, Minnesota where he completed a three phase program: **First**, a 28 day **primary care** treatment facility: **Second**, he then moved to a **Half-Way House** which is a very structured, intensive outpatient treatment program including medication management, on-site visits with counselors and therapists regarding recovery coaching, the development of personalized transitional plans, etc. He was in the very structured environment of the half-way house for 5 months. At the end of 6 months, he was ready for phase **Three: a Sober Living Home**...a home which is alcohol and drug free that provides a safe, caring and supportive environment for residents to begin living a sober lifestyle and developing healthy **NEW relationships** in the community.

Because Morgantown offers no sober living homes where the final step of transitioning to a normal life can take place, I kept him in Minnesota at a Sober living home. This was a significant inconvenience for him and our family due to the distance from family and expense due to the fact no such facility is available locally.

When my son returned to Morgantown, he approached me and asked if I would be willing to partner with him to bring a Sober Living environment to Morgantown. Doug has great remorse about what had happened, and wanted to give something back to the community...to help others live a sober lifestyle and mend the very painful, and hurtful family relationships that get so badly damaged during addiction. I agreed that this would be a real asset to the Morgantown community and said the I would take, along his side, a leadership role.....thus our application. I am personally committed to seeing this project through to a long term success, as I have personally seen the devastation that occurs in a family where addiction exists.

The Morgantown Sober Living House is designed to assist the resident with that transition by providing sober peer support and by offering accountability in the **final phase three** of their long term recovery. Just as their addiction did not progress to its full manifestation over a short period of time, their recovery will take some time to

develop. Recovery is not simply about abstaining from alcohol and other drugs. It is about living a life that is meaningful and participating in relationships in a way that benefits them and the people around them. For these reasons, the resident will be expected to achieve certain goals and follow house rules while they are here.....see house rules attached as "B "

To bridge the gap between leaving primary care treatment, then a half-way house, and then.....entering the real world is benefited with highly increased odds for success with the opportunity to live a clean, drug and alcohol free life supported by new friends who are doing the same. Morgantown Sober Living offers an environment for men to support them in a safe, quiet home-like experience as they keep in action their recovery program, gain employment and/or return to school and reunite with their families for a lifetime of recovery.

This newly renovated residence will offer a nurturing, home-like atmosphere where individuals can focus on recovery in comfort. Morgantown Sober Living will be a place to practice using the tools of recovery and to focus on applying the 12-Steps to solve every day problems while living with other recovering individuals. It will support individuals as they fully reclaim their independence from addictive substances, learn to manage the stress of an active life without returning to drug and alcohol dependence, and attain personal, career and recovery goals. We plan to offer resume and job placement assistance to further their chances of regaining a productive life.

See attachment "B" for house rules, however some of which, for convenience, are listed here: There will be a curfew at the home; the facility will be drug and alcohol free; active participation in Alcoholics Anonymous / Narcotics Anonymous; minimum of 32 hours a week of school, work and/or volunteering; and there will be no overnight guests.

We have discussed the merits and potential demand for such a facility with Pastors, Priests, Physicians, West Virginia University officials and local Judges. All are strongly in favor of such a program to begin to address the very serious drug and alcohol problems that exist in our town. A Board of Directors will oversee the non-profit entity, and we do expect additional facilities in the future.

Respectfully submitted.

Douglas J. Leech, and Douglas M. Leech.

Exhibit B**Morgantown Sober Living****House Rules**

- Commitment to a minimum six-month stay
- Must be sober and maintain sobriety; drug / alcohol testing will be provided at random or at house manager's discretion if using is suspected. Failure to submit testing will result in discharge.
- Active participation in Alcoholics Anonymous or Narcotics Anonymous, including at least three meetings weekly
- Employment of at least 32 hours weekly, or reasonable combination of school employment and volunteer work. Job readiness / vocational preparation group meets weekly and is mandatory for anyone not fulfilling this requirement.
- Holding a weekly service commitment in A.A. or other approved community volunteer activity
- Attendance at two house meetings weekly; The house meeting, where group inventory and other house issues are discussed, as well as an organized 12-step meeting which will be brought to the house by the local AA district.
- Mandatory active 12-step sponsorship with required face to face weekly meetings. This sponsor must be experienced and capable of guiding the newly sober person through the 12 steps
- Residents will have house chores and organizational / cleanliness expectations.
- Demonstrate a desire to grasp and develop a healthy sober live