



MORGANTOWN BOARD OF ZONING APPEALS

May 15, 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: CU13-06 / Blue Sky Realty / 401 Spruce Street

REQUEST and LOCATION:

Request by Lisa Mardis of Project Management Services, on behalf of Blue Sky Realty, LLC, for conditional use approval of a "Lodging or Rooming House" use at 401 Spruce Street.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 26, Parcel 91; 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 401 Spruce Street from "Mixed-use Dwelling" and "Professional Services Establishment" uses 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.

According to the City's Residential Rental Registry, there is currently one apartment on the second floor of the building. According to the City's Finance Department, the first floor of the building is currently occupied by Plaid Group, LLC (d/b/a Bill's Bail Bonds).

The petitioner seeks to provide a seven-bedroom "Lodging or Rooming House" use by eliminating the nonresidential use/occupancy on the first floor.

On July 16, 2008, the Board denied conditional use Case No. CU08-12 where the petition requested to change the "Mixed-use Dwellings" and "Professional Services Establishment" uses to a "Multi-family Dwelling" use.

Staff maintains, as it did in Case No. CU08-12, that the preservation of existing at-grade commercial leasable space in mixed-use buildings is paramount to ensuring desired mixed land use patterns within the B-4 District. In so doing, the following information is restated from the related Staff Report dated July 16, 2008.

The objective of mixed-use development and land use patterns is to contribute to the creation of places that enliven urban centers while meeting the everyday needs of the community. Mixed-use development offers many advantages over single-use development in fostering better urban environments including:

- Sense of Community – Mixed-use development provides opportunities for community interaction by catering to a diversity of people and uses in one place.
- Vitality – Diversified, mixed-use urban centers become community destinations.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

May 15, 2013

6:30 PM

City Council Chambers

Board Members:

Bernie Bossio, Chair

Leanne Cardoso, Vice-Chair

George Papandreas

Tom Shamberger

Jim Shaffer

- Convenient Access – The mixing of diverse uses within proximity of public spaces, services, and amenities makes it possible to reduce vehicle trips and encourage shared parking and transit ridership.
- Pedestrian-Friendly Environment – Mixed-use development provides more opportunities for convenient and safe pedestrian access.
- Longer Hours of Active Street Life – A range of uses are generally active at different times of the day or on different days of the week, which activates the space for longer hours than is possible for any one single use type.
- Safety – Mixing residential, commercial, and professional activities within a compact area ensures activity throughout the day and evening, creating a sense of safety.

Because the Planning and Zoning Code provides that “mixed-use” and “over-store” dwelling uses are permitted by-right in the B-4 District, it appears that the preferred residential use pattern is to maintain and preserve a non-residential presence at street level. However, “multi-family” dwelling conditional use status in the B-4 District affords the Board an opportunity to review requests on a case-by-case basis.

There appears to be several conditions around the subject site that should contribute to the success of a suitable non-residential use on the first floor of the subject building, including:

- Availability of on-site parking
- Access to and availability of public parking, both metered curb and metered lots, within close proximity of the subject site.
- Anchor public uses within close proximity that include churches, government offices, public library, etc.
- Low commercial vacancy rates along Fayette Street between High and Spruce Streets.
- High visibility of the subject site created by the traffic light at Spruce and Fayette Streets; activity at City Hall; Farmers’ Market [Morgantown Marketplace pavilion completed in 2012] across the street on Saturdays during summer months, etc.
- High daily traffic volumes along Spruce Street.
- A fixed public transit stop within one block of the subject site.

Since the Board’s decision denying Case No. CU08-12, the July 2010 Downtown Strategic Plan Update was completed and provides the following guidance relating to planned land uses and preferred development patterns within the City’s central business district (emphasis added).

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

May 15, 2013

6:30 PM

City Council Chambers

Board Members:

Bernie Bossio, Chair

Leanne Cardoso, Vice-Chair

George Papandreas

Tom Shamberger

Jim Shaffer

Section 4.8 Housing (Page 51):

“The opportunities to create a variety of housing types and price levels in the downtown are vast, as downtown Morgantown has many historic buildings whose upper floors could be redevelopment for use as apartments and/or condominiums. In addition, there are a number of empty lots that could be developed with new **mixed-use buildings**.”

Section 6.0 Downtown Strategies (Page 64):

“Housing and Redevelopment: Redevelop vacant and underperforming properties throughout the downtown and promote a variety of **mixed-use housing** in order to diversify the demographics of downtown residents.”

Section 6.1 Downtown Framework Plan (Page 65):

“Downtown’s traditional core already reflects the new paradigm for American downtowns: walkable gridded streets, public gathering places, **mixed-uses**, and mixed demographics. These qualities should be extended throughout the study area to promote a strong sense of community and **attract new residents, merchants, entrepreneurs, and investors**.”

Section 6.3.1.4 Character Area C4 – Forest Avenue (Page 86):

“Opportunities – Additional **mixed-use** infill at the **north end of Spruce Street**.”

Section 6.3.1.4 Character Area C4 – Forest Avenue (Page 87):

“Reinforce the urban quality by increasing the mass, density, and **mixed-use** quality buildings that front on well-designed pedestrian streets.”

Section 6.6 Housing and Redevelopment (Page 122):

“6.6.2 Encourage the reuse and conversion of underutilized **upper floors for new residential uses**.”

As noted above, the goals, objectives and strategies provided in the 2010 Downtown Strategic Plan Update emphasize mixed-use housing. Additionally, the preservation and growth of street level commercial retail storefronts is emphasized by focusing, in part, on the conversion of upper floors as additional residential opportunities.

Moreover, “mixed-use” and “over-store” dwelling uses are permitted by-right in the B-4 District, which supports the Plan’s preferred residential use pattern of maintaining and preserving a non-residential presence at street level. However, “lodging or rooming house” uses are currently permitted in the B-4 District as a conditional use.

Article 1329.02 of the Planning and Zoning Code defines “conditional use” as:

“A use which because of special requirements or characteristics may be permitted in a particularly zoning district only after review by the Board of Zoning Appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in this Ordinance.”

Requiring a particular land use to obtain conditional use approval affords the Board of Zoning Appeals and the community through a public hearing the opportunity to review the merits of the conditional use request on a case-by-case basis.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

May 15, 2013
6:30 PM
City Council Chambers

Board Members:

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

Consideration is given to the characteristics peculiar to the proposed conditional use and its location with reference to its surroundings (e.g., built environment, neighboring uses, streets, existing improvements, demand upon public facilities, etc.). The approval of a conditional use along with specific conditions, if warranted, are intended to ensure that the particular conditional use at the particular site on which such use is proposed to be located is compatible with other existing or permitted uses surrounding the site.

As reflected in the Board's denial of CU08-12 and reaffirmed in the 2010 Downtown Strategic Plan Update, the preservation of existing at-grade commercial leasable space in existing mixed-use buildings is paramount to ensuring desired mixed land use patterns within the urban commercial center.

STAFF RECOMMENDATION:

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.

Staff recommends revisions to the petitioner's findings of fact as provided in Addendum B of this report (deleted matter struck through; new matter underlined) and that the Board deny CU13-06 based on the negative determinations provided for Findings of Fact No. 7 and No. 8.

Attachments: Application and submitted exhibits.

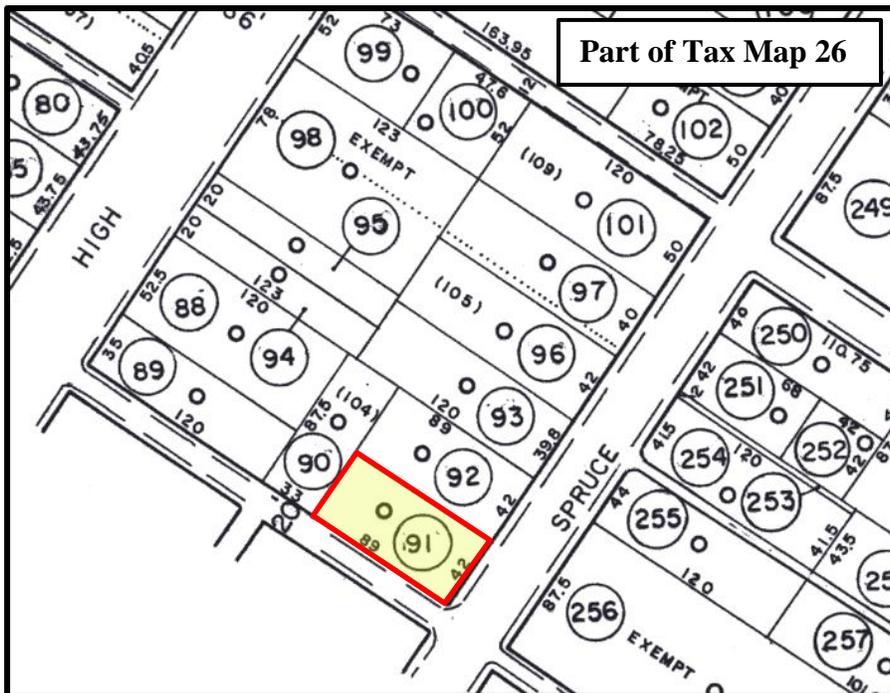
Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431

STAFF REPORT ADDENDUM A
CU13-06 / Blue Sky Realty / 401 Spruce Street



STAFF REPORT ADDENDUM B
CU13-06 / Blue Sky Realty / 401 Spruce Street

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

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

The additional resident(s) granted by the proposed conditional use request will not significantly impact the average daily and AM and PM peak times related to origination trips from and destination trips to the subject site. The proposed use is located within an existing structure with approximately six (6) parking spaces on site.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The petitioner will comply with all recommendations and requirements of the City Fire Marshal and Building Code Inspectors to ensure the building is safe for all residents and neighbors.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

The granting of the conditional use will not result in an addition to the existing footprint or height of the building and should therefore not affect existing light distribution and air flow patterns within the immediate area.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

The petitioner seeks to change the use classification of the existing structure and should therefore not affect the existing density or intensity of the site.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

The petitioner will comply with all requirements as provided by Building Code Enforcement and the City Fire Marshal. There will not be any addition to the existing footprint or height of the building and should therefore not affect congestion of population.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The vicinity is served by public transportation. The proposed change in use classification does not appear to require public infrastructure, public utilities, or public services beyond that which is currently available.

Finding of Fact No. 7 – Value of buildings will **NOT** be conserved, in that:

~~By updating or adding sprinkler and smoke detectors, the value of the building will be increased. The petitioner intends to address maintenance needs, and do what is necessary to increase the safety of the aged structure to make it suitable for long-term residential and/or commercial use. The proposed conversion of the first floor space in an existing mixed-use building may contribute to higher commercial vacancies at street level within the immediate area and particularly along Fayette Street from High to Spruce Streets. Further, allowing said use change may stimulate market interest in similar conversions of existing mixed-use structures. Such interest may result in adverse impacts to property values and the availability of at-grade leasable commercial space within the immediate area.~~

Finding of Fact No. 8 – The most appropriate use of land is **NOT** encouraged, in that:

~~The petitioner's proposed conditional use should serve to further generally accepted benefits of mixed uses within a central business district including greater housing variety; land use synergies and reduced distances between housing, workplaces, retail businesses, and other amenities and destinations; and, utilization of alternate modes of transportation including walking, biking, and public transit.~~ The preservation of existing at-grade level non-residential commercial leasable space in existing mixed-use buildings is paramount to ensuring mixed-use development patterns desired within the B-4 District as provided in the 2010 Downtown Strategic Plan Update and the City's Planning and Zoning Code.



City of Morgantown, West Virginia

APPLICATION FOR TYPE IV SITE PLAN – CONDITIONAL USE

OFFICE USE	
CASE NO.	0113-06
RECEIVED:	3/8/13
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

I. APPLICANT					
Name:	Blue Sky Realty			Phone:	304 292 1332
Mailing Address:	1221 Chalfant Lane			Mobile:	
	Street	City	State	Zip	Email:
	Morgantown	WV		26505	
II. AGENT / CONTACT INFORMATION					
Name:	Project Management Services			Phone:	304 212 5256
Mailing Address:	160 Fayette St, Ste 101			Mobile:	304 692 7116
	Street	City	State	Zip	Email:
	Morgantown	WV		26505	pms160@comcast.net
Mailings –	Send all correspondence to (check one): <input type="checkbox"/> Applicant OR <input checked="" type="checkbox"/> Agent/Contact				
III. PROPERTY					
Owner:	Blue Sky Realty			Phone:	304 292 1332
Mailing Address:	401 Spruce Street			Mobile:	
	Street	City	State	Zip	Email:
	Morgantown	WV		26505	
IV. SITE					
Street Address (if assigned):	401 Spruce Street		Tax Map #:	26	Parcel #: 91
Zoning:	B-4 General Business District				
Lot Dimensions:	Width:	Ft.	Depth:	Ft.	Square Footage: ft. ²
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:	mixed-use				
Proposed Use of Structure of Land:	lodging or rooming house				



City of Morgantown, West Virginia

APPLICATION FOR TYPE IV SITE PLAN – CONDITIONAL USE

OFFICE USE	
CASE NO.	CU13-06
RECEIVED:	
COMPLETE:	

V. STRUCTURE

Proposed Setbacks: Front: _____ ft. Rear: _____ ft. Side A: _____ ft. Side B: _____ ft.
 Proposed Height of Structure: Existing building No. of Proposed Off-Street Parking Spaces: _____
 No. of Dwelling Units (if applicable): 1 No. of Bedrooms: 7 No. of Employees: 0
 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.



City of Morgantown, West Virginia

**APPLICATION FOR
TYPE IV SITE PLAN – CONDITIONAL USE**

OFFICE USE

CASE NO. 0113-06
RECEIVED: _____
COMPLETE: _____

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.



City of Morgantown, West Virginia

**APPLICATION FOR
TYPE IV SITE PLAN – CONDITIONAL USE**

OFFICE USE	
CASE NO.	<u>CU13-Ne</u>
RECEIVED:	_____
COMPLETE:	_____

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:

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

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

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

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

attached gm



City of Morgantown, West Virginia

**APPLICATION FOR
TYPE IV SITE PLAN – CONDITIONAL USE**

OFFICE USE	
CASE NO.	CU13-06
RECEIVED:	_____
COMPLETE:	_____

VIII. FINDINGS OF FACT (cont.)

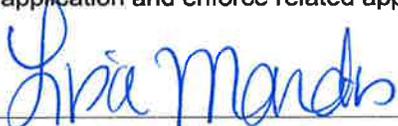
6. Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

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

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

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.

		
Type/Print Name of Applicant/Agent	Signature of Applicant/Agent	Date

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

APPLICATION FOR CONDITIONAL USE

Findings of Fact

Blue Sky Realty

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:

The additional resident(s) granted by the proposed conditional use request will not significantly impact the average daily and AM and PM peak times related to origination trips from and destination trips to the subject site. The proposed use is located within an existing structure with approximately six (6) parking spaces on site.

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

The petitioner will comply with all recommendations and requirements of the City Fire Marshal and Code Inspectors to ensure the building is safe for all residents and neighbors.

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

The granting of the conditional use will not result in an addition to the existing footprint or height of the building and should therefore not affect existing light distribution and air flow patterns within the immediate area.

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

The petitioner seeks to change the use classification of the existing structure and should therefore not affect the existing density or intensity of the site.

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

The petitioner will comply with all requirements as provided by Code Enforcement and the Fire Marshal. There will not be any addition to the existing footprint or height of the building and should therefore not affect congestion of population.

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

The vicinity is served by public transportation. The proposed change in use classification does not appear to require public infrastructure, public utilities, or public services beyond that which is currently available.

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

By updating or adding sprinkler and smoke detectors, the value of the building will be increased. The petitioner intends to address maintenance needs, and do what is necessary to increase the safety of the aged structure to make it suitable for long-term residential and/or commercial use.

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

The petitioner's proposed conditional use should serve to further generally accepted benefits of mixed-uses within a central business district including greater housing variety; land-use synergies and reduced distances between housing, workplaces, retail businesses, and other amenities and destinations; and, utilization of alternate modes of transportation including walking, biking, and public transit.

CU13-06

APPLICATION FOR CONDITIONAL USE

**Request for Lodging
or Rooming House in
the B-4 District**

Findings of Fact

Blue Sky Realty

Lisa Mardis

Type/Print Name of Applicant/Agent

Lisa Mardis

Signature of Applicant/Agent