



MORGANTOWN BOARD OF ZONING APPEALS

July 17, 2013
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: CU13-09 / Wendy Alke / 1335 Collins Ferry Road

REQUEST and LOCATION:

Request by Wendy Alke, for conditional "Class 2 Home Occupation" use approval at 3335 Collins Ferry Road

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 2, Parcel 169.2; R-1, Single-Family Residential District

SURROUNDING ZONING:

R-1; Single-Family Residential District

BACKGROUND and ANALYSIS:

In response to a complaint, Staff sent a certified letter dated April 24, 2013 to Wendy Alke concerning a home occupation that had not been approved at 3335 Collins Ferry Road. Ms. Alke responded as requested and submitted a conditional "Class 2 Home Occupation" use petition for the Board's review.

According to the, Table 1331.05.01 "Permitted Land Uses" of the Planning and Zoning Code, a "Class 2 Home Occupation" requires conditional use approval in the R-1 District.

The petitioner states in her application that she conducts a "small boutique law practice" serving mainly family law clients at her 3335 Collins Ferry Road residence. The following points highlight the information provided in the petitioner's application:

- All clients are scheduled by appointment only.
- The number of clients and/or other persons visiting the site at one time is estimated to be one (1) to four (4).
- The average number of clients per week is estimated to be one (1) to four (4).
- The applicant states that approximately 100% of clients arrive to the site by car.
- No delivery trucks are anticipated to visit the site on a regular basis.
- There are twelve (12) parking spaces on the petitioner's property.

Staff understands that the basis of the complaint is congestion within the private drive that traverses the petitioner's property and that the petitioner had not obtained requisite approvals prior to establishing the home-based law practice business.

Addendum A of this report illustrates the location of the site and photograph of the single-family dwelling.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

Heather Dingman, AICP
Principal Planner

389 Spruce Street
Morgantown, WV 26505
304.284.7431



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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 applicant.

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. CU13-09, subject to the following conditions:

1. That the petitioner shall meet all related supplemental regulations specified in Article 1331.06(2) et seq. of the Planning and Zoning Code.
2. That to ensure safe and convenient ingress and egress by residents, visitors, and emergency response vehicles to the subject and adjoining properties, visitors to the petitioner's home occupation may not park vehicles within the private drive shared with adjoining properties. The adherence with and monitoring of this condition shall rely upon the review, suspension, and revocation provisions provided in Article 1331.06(2)(d)(i) of the Planning and Zoning Code.
3. That this conditional use approval granted herein is specific to the petitioner and may not be transferred without prior approval by the Board of Zoning Appeals.
4. If the petitioner, as the sole beneficiary of this conditional use approval, wishes to make changes in the conduct of the business that departs from the description in the application or from any other conditions or restrictions imposed by the Board of Zoning Appeals, the holder must obtain prior permission of the Board of Zoning Appeals.

Attachments: Certified Letter to Petitioner dated 24-Apr-2013
Application and accompanying exhibits

Development Services

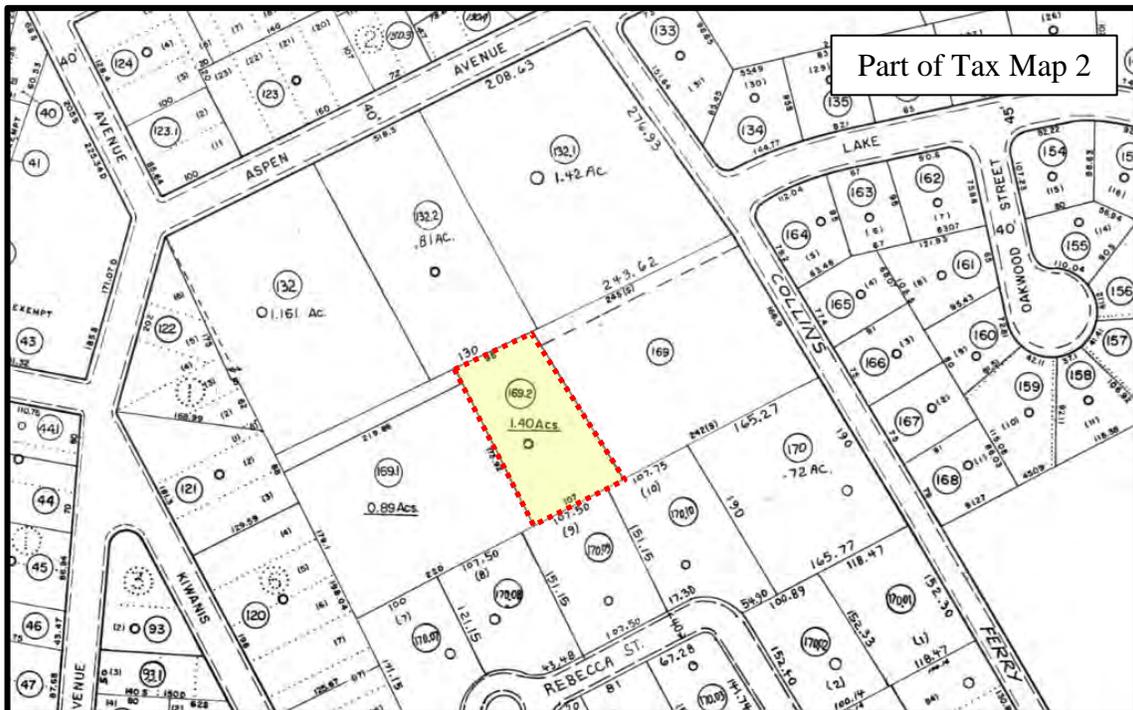
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STAFF REPORT ADDENDUM A
CU13-09 / Wendy Aike / 3335 Collins Ferry Road



STAFF REPORT ADDENDUM B
CU13-09 / Wendy Alke / 3335 Collins Ferry Road

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

Finding of Fact No. 1 – The home occupation will be compatible with residential uses of the dwelling, in that:

According to the petitioner, no activities will be performed there in relation to the home occupation that would not ordinarily be performed in the course of daily activities in the home.

Finding of Fact No. 2 – The home occupation will not change the residential character of the dwelling, in that:

According to the petitioner, no changes have been or will be made to the dwelling; and the dwelling is the same as when it was built in 1991 by building plans approved by the City of Morgantown.

Finding of Fact No. 3 – The home occupation will not detract from the residential character of the neighborhood, in that:

With the exception of the complaint of parking and access congestion that should be addressed by the Board's conditions, there does not appear to be are no overt obvious activities at the home occupation which give any indication that a business of any kind is being operated there. The owner's purports that the family law practice is very limited; The owner travels approximately three months per year, which greatly reduces the amount of activity at the site. that there are no regular business hours and there is no walk-in traffic; and, that all client visits are by appointment only and those averaging less than one per week.

Finding of Fact No. 4 – Congestion in the streets will not be increased, in that:

On an average, less than one client per week comes to the home occupation. Occasionally, perhaps four times a year, there will be a meeting at the home occupation which might include three cars at one time. There is more than enough parking to accommodate those vehicles on the owner's property which includes the lane in front of her house. That portion of the lane is owned solely by her. The neighbor at 3337 Collins Ferry Road, has only a non-exclusive right of way for ingress and egress. He has no control whatsoever so regarding the use of the driveway so long as he has access. The dimensions of the driveway leading to the petitioner's two-bay integral garage appears to be approximately 60 feet long by 18 feet wide, which should be sufficient to provide eight (8) on-site parking spaces including the garage. The paved width of the shared private dead-end drive appears to be 18 to 20 feet wide across the petitioner's frontage. The Board's condition restricting visitors to the home occupation from parking in the shared private drive should aid in ensuring adequate ingress and egress to the subject site and adjoining properties by residents, visitors, and emergency response vehicles.



**DEVELOPMENT
SERVICES
DEPARTMENT**

The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7431 TDD (304) 284-7512
www.morgantownwv.gov

April 24, 2013

CERTIFIED MAIL

Wendy Alke
3335 Collins Ferry Road
Morgantown, WV 26505

Dear Ms. Alke:

It has been brought to the attention of this Office that a home-based business may be operating at 3335 Collins Ferry Road prior to obtaining requisite "Home Occupation" approval. Article 1329.02 "Definitions" of the City's Planning and Zoning Code provides that "Home Occupation" uses are:

"Any business activity conducted entirely within the owner's primary residence which requires a business license issued by the State of West Virginia and by the City of Morgantown; and is clearly incidental to or secondary to the residential use of the dwelling."

Home Occupation uses are divided into two classes. A Class 1 Home Occupation is generally characterized as one where all work and communication is conducted over the internet, telephone, and/or electronic mail and does not engage in any on-premise customer contact. Class 1 Home Occupation uses must be reviewed and approved administratively by this Office.

A Class 2 Home Occupation is generally characterized as one that generates limited quantities of customer visitation and/or merchandise deliveries to the residence. Class 2 Home Occupation uses must be reviewed and approved by the Board of Zoning Appeals (BZA) as a conditional use.

For your convenience, a home occupation application packet has been enclosed that fully defines the differences between Class 1 and Class 2 Home Occupation uses, related performance standards, and requisite approval processes. Please review this information thoroughly and contact the undersigned **no later than Wednesday, May 1, 2013** to discuss Home Occupation approval obligations.

If this letter was sent error, please contact the undersigned by the date noted above to advise us accordingly and please accept our sincere apologies for any inconvenience this may cause.

We look forward to serving your approval needs

Respectfully,

Christopher M. Fletcher, AICP
Director of Development Services
cfletcher@cityofmorgantown.org

cc: Wendy Alke, PO Box 4302, Morgantown, WV 26505 (CERTIFIED MAIL)

Enclosure: Home Occupation Application Packet

MAY 10 2013



City of Morgantown
West Virginia

HOME OCCUPATION APPLICATION

RECEIVED

I. APPLICANT			
Applicant Name:		Wendy Jail Alke	
Name of Business:		Law Office of Wendy Jail Alke	
Mailing Address:	Street:	Phone:	304-599-4858
	City:	Mobile:	
	State:	Zip:	Email: Lawofficewjalke@qol.com
Morgantown, WV 26505			
II. PROPERTY			
Street Address:		3335 Collins Ferry Road, Morgantown, WV	
Zoning:	R-1	Tax Map No:	2
Parcel No:	169.2	(BMA)	
III. DESCRIPTION			
<p>1. Please answer either "YES" or "NO" to each of the following descriptions that best explains your proposed home-based business. A "NO" response to any of these descriptions may lead to a Class 2 Home Occupation classification.</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No All work and communication is conducted over the internet, telephone, and/or electronic mail AND does not engage in any on-premise customer contact.</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Services are provided off-premise to clients or customers, with no client or customer visitation to the business location. In these instances, the business location is used solely for bookkeeping and electronic or telephone communication with clients and customers.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No Businesses where the owner produces a product at the business location and offers it for sale over the internet or transports the products(s) to off-premise merchants, trade shows, flea markets, and the like for sale. No products are displayed or offered for sale to customers visiting the business location.</p> <p style="text-align: right;">RSE 5/10/2013 9:28:32 CRYSTAL</p>			
<p>2. Is the applicant the owner of the dwelling at which the home occupation will be conducted?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If not, a copy of the applicant's written notice to the owner of the intention to conduct the business must be attached.</p> <p style="text-align: right;">75.00</p>			

Finance Office
Morgantown, WV 26505
(304) 284-7400



HOME OCCUPATION APPLICATION

CW13-09

IV. NARRATIVE

Please describe, in greater detail, the nature of your proposed enterprise

The owner has a small boutique law practice which involves mainly family law clients. She does not solicit criminal clients. Occasionally, she will represent family or friends in matters other than family law. The entrance to the office is under the stairs and away from public view. There is no signage. She has not advertised her address on any web-site. The owner travels extensively, and is usually away for up to three months per year. With the rare exception, she meets with her clients for a few times during each case. Most of the communication is through email and telephone conversations. Since the owner is a solo practitioner, and since she travels so frequently, she keeps the number of clients which she services to a manageable number.

V. ATTEST

I have read and understand the zoning regulations pertaining to Home Occupations. I understand that my signature indicates that all of the information contained on this application is true and correct, and if found otherwise may result in the denial of this request or subsequent revocation of any and all related approvals. I understand that approval of this home occupation is dependent upon me abiding by all the regulations found in the City of Morgantown Zoning Ordinance. 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 this application and enforce related approvals and conditions

Wendy ALKE

5-8-2013

Type/Print Name of Applicant/Agent

Signature of Applicant/Agent

Date

OFFICE USE ONLY

Received: _____ Complete: _____ Class 1 Class 2 By: _____
 Class 1 Approved Class 1 Disapproved Date: _____
Comments: _____



CW13-09

VI. SUPPLEMENTAL INFORMATION
(Class 2 Conditional Use ONLY)

The Board of Zoning Appeals may impose additional conditions or restrictions and additional off-street parking depending on the nature of the proposed home occupancy. The following information is required to demonstrate the scale and scope of the proposed home-based enterprise

1. The days and hours of operation will be By Appointment only

2. Will any customers, clients, students or other persons visit the dwelling on a regular basis?

Yes No

If yes, state the average and maximum number of persons who will visit per week, per day, and at any one time

Number per week:	average =	<u>1</u>	maximum =	<u>4</u>
Number per day:	average =		maximum =	
Number at one time:	average =	<u>1</u>	maximum =	<u>4</u>

With respect to persons visiting the dwelling, what percentage do you anticipate will come by car, as opposed to on foot or by public transportation?

Please explain: All by vehicle

4. Will any delivery trucks stop at the dwelling on a regular basis, either to deliver or pick-up materials, supplies, finished products or other items?

Yes No

If yes, please state the average and maximum number of stops by delivery trucks per week and per day.

Number per week:	average =		maximum =	
Number per day:	average =		maximum =	

5. Describe the availability of on-street, off-street and public parking at the site and in the vicinity.

There are twelve private parking spaces which are owned solely by the owner and which are on her land.

CW13-09

VII. FINDINGS OF FACT
(Class 2 Conditional Use ONLY)

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. The home occupation will be compatible with the residential uses of the dwelling, in that:

No activities will be performed there that would not ordinarily be performed in the course of daily activities in home.

2. The home occupation will not change the residential character of the dwelling, in that:

No changes have been or will be made to the dwelling. The dwelling is the same as when it was built in 1991 by building plans approved by the City of Morgantown.

3. The home occupation will not detract from the residential character of the neighbor, in that:

There are no overt activities at the occupation which give any indication that a business of any kind is being operated there. The owner's practice is very limited. The owner travels approximately three months per year, which greatly reduces the amount of activity at the site. There are no regular business hours and there is no walk-in traffic. All client visits are by appointment only and those average less than one per week.

4. Congestion in the streets will not be increased, in that:

On an average, less than one client per week comes to the home occupation. Occasionally, perhaps four times a year, there will be a meeting at the home occupation which might include three cars at one time. There is more than enough parking to accommodate those vehicles on the owner's property which includes the lane in front of her house. That portion of the lane is owned solely by her. The neighbor at 3337 Collins Ferry Road, has only a non-exclusive right-of-way for ingress and egress. He has no control whatsoever so regarding the use of the driveway so long as he has access

Mr. Chris Fletcher
Planning Board

JUL 11 2013

July 10, 2013

RECEIVED

Conditional Use Class 2 Home Occupation Request Information

We are submitting this information for your review and consideration **PRIOR** to the rescheduled hearing on July 17, 2013 @ 6:30PM of Case No. CU13-09/ Wendy Alke/ 3335 Collins Ferry Road; Tax Map 2, Parcel 169.2

We are vehemently opposed to such Conditional Use in the private drive adjacent to Collins Ferry Road. Many factors have led us to this decision but ultimately the safety of the three residences along this drive, as well as potential customers and employees, is our primary concern. It was in fact when we routinely had difficulty accessing our own property due to customer, client and employee parking along this private drive that we felt compelled to report this activity. We feel as though "any" business in this residential area would be inappropriate and unsafe.

Based on our observations as residents of this private drive for the last two years, listed below are our concerns:

- **Easement of Necessity to properties 3333, 3335 and 3337:** This is not a city street. This means that ingress and egress CANNOT be impeded by any of the three properties served guaranteed by state statute. This easement of necessity is wide enough for Emergency/Fire Vehicles, but only when it's free from customer parking and turn around areas.
- **Ingress and egress issues:** Customer, client and employee parking on the easement would impede/block Emergency/Fire responders. We are currently working with the Morgantown Fire Marshal's Office to determine the accessibility with/without customer and employee parking impeding a Fire Lane.
- **Increased Traffic:** While the application you've received is "to serve law clients by appointment only" it's important to recognize that when such meetings involve mediation, multiple parties – including employees/contractors and other attorneys and their clients - are in attendance. Clients, employees and other business traffic have in the past, and will likely continue to, trespass on our property. In the two years we have lived at this residence, our property has been used as a turnaround for clients, employees and delivery trucks related to the on-going business activity.
- **Shared easement** with shared expenses, such as paving and annual seal coating, ultimately leads to an unfair burden on other involved property owners. Increased usage/traffic as the result of a business will continue to reduce the life of any maintenance procedures we fund.
- **Increased Liability:** Liability of clients on a shared easement on property owners on a deeded easement of necessity creates a liability risk for ALL property owners involved.
- **Dangerous climate:** Bringing clients into a strictly residential area for emotional meetings creates a serious safety concern. Many times clients have left the premises in anger driving

erratically. It's also our understanding that these visiting clients are often criminals. This activity is best suited for an area zoned for business activity for better Law Enforcement response, etc.

- **Residential Area:** There are no other businesses in this neighborhood. The Morgantown Planning Board has done a wonderful job restricting/monitoring the area of Suncrest as an exclusive residential area. We moved here for this reason! And, this type of restriction is our only hope for maintaining the value of our investment in this property.
- **Expenses incurred:** We have already had to install a \$10,000 gate system to help prevent clients and customers from accessing our property. Additionally, costs related to re-paving and seal coating the easement have surfaced more quickly than one would expect if planning for normal traffic solely related to three residences.
- **Monitoring:** Allowing the "by appointment only" clause will not solve/prohibit our main concerns, which are safety, ingress and egress for emergency responders. Additionally, we are concerned that the burden of monitoring the "by appointment only" clause could fall to homeowners in the area. After all, this business has apparently existed without question for many years without appropriate licenses and usage permits.

Our stance for opposing this "Conditional Use" for 3335 is based on sound safety issues for ALL property owners involved. We are not attempting to control or dictate what a person/persons can do on their property/homes, rather we are trying to ensure the safety of our family and that of our neighbors by restricting **ALL PARKING** of clients, employees and customers in the easement of necessity. All we ask is unfettered and free access to our property, which is guaranteed to us by state law, without fear of emergency vehicles being blocked or impeded access to ALL property's involved.

As mentioned earlier, we have been in communication with the Morgantown Fire Department about this subject. In his most recent communication, Captain/Fire Marshall Ken Tennant stated, "**The Board's condition restricting visitors to the home occupation from parking in the shared private drive should aid in ensuring adequate ingress and egress to the subject site and adjoining properties by residents, visitors, and emergency response vehicles.**" [Captain Tennant's contact information is (304) 284-7486 Office; (304) 376-7504 Cell]. This would be an amicable solution for this situation.

We urge you review this letter and perhaps visit our neighborhood prior to rendering your decision in this Conditional Use Request. This Board has previously acted to ensure the integrity and safety of residential neighborhoods and we hope that you will likewise consider all factors involved in our objections.

If you have questions please contact us at 304/376-4787. Again, we encourage you to also visit our neighborhood!

Respectfully,



Don & Julie Harding
3337 Collins Ferry Rd.
Morgantown, WV. 26505
304/376-4787

Mr. Bernie Bossio, Chair
Planning Board

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Don & Julie Harding
3337 Collins Ferry Rd.
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Ms. Leanne Cordoso
Planning Board

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We are vehemently opposed to such Conditional Use in the private drive adjacent to Collins Ferry Road. Many factors have led us to this decision but ultimately the safety of the three residences along this drive, as well as potential customers and employees, is our primary concern. It was in fact when we routinely had difficulty accessing our own property due to customer, client and employee parking along this private drive that we felt compelled to report this activity. We feel as though "any" business in this residential area would be inappropriate and unsafe.

Based on our observations as residents of this private drive for the last two years, listed below are our concerns:

- **Easement of Necessity to properties 3333, 3335 and 3337:** This is not a city street. This means that ingress and egress CANNOT be impeded by any of the three properties served guaranteed by state statute. This easement of necessity is wide enough for Emergency/Fire Vehicles, but only when it's free from customer parking and turn around areas.
- **Ingress and egress issues:** Customer, client and employee parking on the easement would impede/block Emergency/Fire responders. We are currently working with the Morgantown Fire Marshal's Office to determine the accessibility with/without customer and employee parking impeding a Fire Lane.
- **Increased Traffic:** While the application you've received is "to serve law clients by appointment only" it's important to recognize that when such meetings involve mediation, multiple parties – including employees/contractors and other attorneys and their clients - are in attendance. Clients, employees and other business traffic have in the past, and will likely continue to, trespass on our property. In the two years we have lived at this residence, our property has been used as a turnaround for clients, employees and delivery trucks related to the on-going business activity.
- **Shared easement** with shared expenses, such as paving and annual seal coating, ultimately leads to an unfair burden on other involved property owners. Increased usage/traffic as the result of a business will continue to reduce the life of any maintenance procedures we fund.
- **Increased Liability:** Liability of clients on a shared easement on property owners on a deeded easement of necessity creates a liability risk for ALL property owners involved.
- **Dangerous climate:** Bringing clients into a strictly residential area for emotional meetings creates a serious safety concern. Many times clients have left the premises in anger driving

erratically. It's also our understanding that these visiting clients are often criminals. This activity is best suited for an area zoned for business activity for better Law Enforcement response, etc.

- **Residential Area:** There are no other businesses in this neighborhood. The Morgantown Planning Board has done a wonderful job restricting/monitoring the area of Suncrest as an exclusive residential area. We moved here for this reason! And, this type of restriction is our only hope for maintaining the value of our investment in this property.
- **Expenses incurred:** We have already had to install a \$10,000 gate system to help prevent clients and customers from accessing our property. Additionally, costs related to re-paving and seal coating the easement have surfaced more quickly than one would expect if planning for normal traffic solely related to three residences.
- **Monitoring:** Allowing the "by appointment only" clause will not solve/prohibit our main concerns, which are safety, ingress and egress for emergency responders. Additionally, we are concerned that the burden of monitoring the "by appointment only" clause could fall to homeowners in the area. After all, this business has apparently existed without question for many years without appropriate licenses and usage permits.

Our stance for opposing this "Conditional Use" for 3335 is based on sound safety issues for ALL property owners involved. We are not attempting to control or dictate what a person/persons can do on their property/homes, rather we are trying to ensure the safety of our family and that of our neighbors by restricting **ALL PARKING** of clients, employees and customers in the easement of necessity. All we ask is unfettered and free access to our property, which is guaranteed to us by state law, without fear of emergency vehicles being blocked or impeded access to ALL property's involved.

As mentioned earlier, we have been in communication with the Morgantown Fire Department about this subject. In his most recent communication, Captain/Fire Marshall Ken Tennant stated, "**The Board's condition restricting visitors to the home occupation from parking in the shared private drive should aid in ensuring adequate ingress and egress to the subject site and adjoining properties by residents, visitors, and emergency response vehicles.**" [*Captain Tennant's contact information is (304) 284-7486 Office; (304) 376-7504 Cell*]. This would be an amicable solution for this situation.

We urge you review this letter and perhaps visit our neighborhood prior to rendering your decision in this Conditional Use Request. This Board has previously acted to ensure the integrity and safety of residential neighborhoods and we hope that you will likewise consider all factors involved in our objections.

If you have questions please contact us at 304/376-4787. Again, we encourage you to also visit our neighborhood!

Respectfully,



Don & Julie Harding
3337 Collins Ferry Rd.
Morgantown, WV. 26505
304/376-4787

Mr. James Shaffer
Planning Board

JUL 11 2013

July 10, 2013

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Planning Board

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