



MORGANTOWN BOARD OF ZONING APPEALS

May 21, 2014
6:30 PM
City Council Chambers

Board Members:

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

STAFF REPORT

CASE NO: CU14-05 / Brenda Meneely / 1210 Charles Avenue

REQUEST and LOCATION:

Request by Brenda Meneely, for conditional "Class 2 Home Occupation" use approval at 1210 Charles Avenue.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 21, Parcel 146; R-1, Single-Family Residential District

SURROUNDING ZONING:

R-1, Single-Family Residential District

BACKGROUND and ANALYSIS:

The petitioner seeks to establish a "Home Occupation" in her residence at 1210 Charles Avenue. Addendum A of this report illustrates the location of the site and photograph of the single-family dwelling.

Table 1331.05.01 "Permitted Land Uses" of the Planning and Zoning Code provides that "Class 2 Home Occupation" uses in the R-1 District require conditional use approval by the Board.

The petitioner states in her application that she wishes to conduct piano and organ lessons serving clients in her home. The following points highlight the information provided in the petitioner's application:

- All clients are scheduled by appointment only.
- The hours of operation will be from 10:00 AM to 7:00 PM.
- Lessons will be taught to one student at a time and on a one-on-one basis.
- The average number of clients per day is estimated to be four (4) to five (5).
- The average number of clients per week is estimated to be fifteen (15) to twenty (20).
- No delivery trucks associated with the proposed home occupation are anticipated to visit the site on a regular basis.
- There are three (3) parking spaces on the petitioner's property.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

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 "Class 2 Home Occupation" use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. Staff concurs with the petitioner's findings of fact provided in the attached application.

Staff recommends approval of Case No. CU14-05, 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 the conditional use approval granted herein is specific to the petitioner and may not be transferred without prior approval by the Board of Zoning Appeals.
3. 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.

Enclosures: Application and accompanying exhibits

Development Services

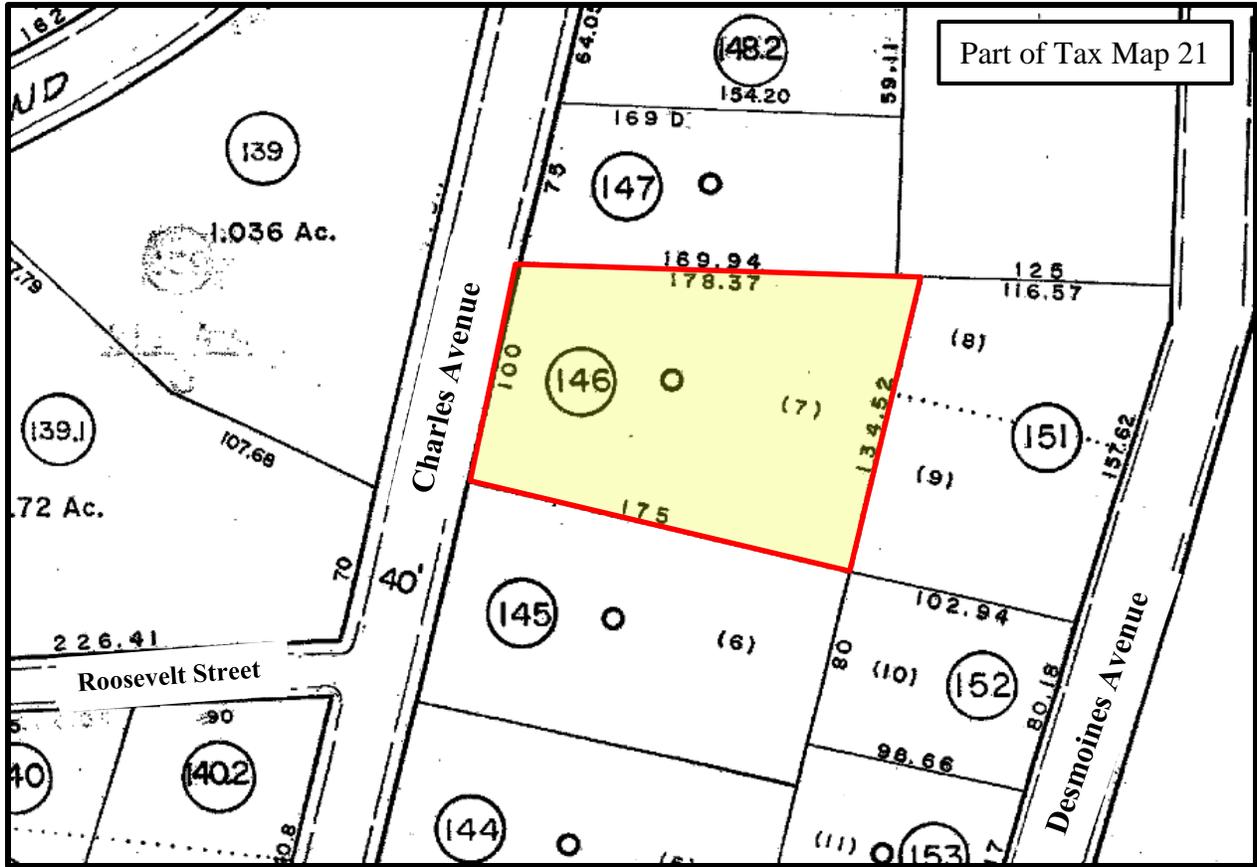
Christopher Fletcher, AICP
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STAFF REPORT ADDENDUM A
CU14-05 / Brenda McNeely / 1210 Charles Avenue



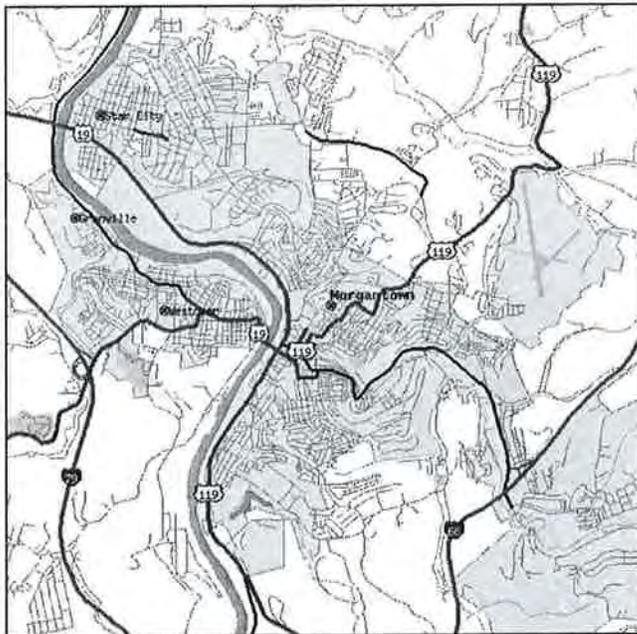


CW14-05



City of Morgantown
West Virginia

HOME OCCUPATION APPLICATION PACKET



Finance Office
Morgantown, WV 26505
(304) 294-7428

CW14-05

Success hinges on partnerships from the very beginning.

Recognized as one of America's "Best Small Towns," Morgantown's success is due largely in part to its ability of forging partnerships between business, civic organizations, academia, and government for the purpose of supporting creativity, innovation, and entrepreneurship. In this spirit, the City strives to encourage and support residents who wish to work from their homes while preserving the residential character of our neighborhoods.

STEPS TO OBTAIN HOME-BASED BUSINESS LICENSE

Step 1 Home Occupation Approval – Contact the **Planning Department** (phone 304.284.7431) for a Home Occupation Application (also available at the City's website: www.morgantown.com). Submit these completed forms to the Planning Department. Home Occupation classification will be determined at this time (see "Zoning Compliance" below).

Home Occupations, Class 1 approvals may be granted administratively.

Home Occupations, Class 2 are considered "Conditional Uses" that require a separate application and approval by the Board of Zoning Appeals.

Step 2 Business License Registration – Once administrative or BZA approval for the Home Occupation is granted, bring a copy of your Home Occupation Approval to the **Finance Department** (phone 304.284.7408) where you will complete business license and municipal tax registration forms.

ZONING COMPLIANCE

Home Occupation – 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 occupations are divided into two classes, as follows:

- A. Home Occupation, Class I:** Considered an accessory use, and is personal to the applicant, is not transferable to any other person, and does not apply to any other business of the applicant. It is also intended to allow businesses that rely solely on electronic or off-premise transactions. Types in this category include, but are not necessarily limited to:
 - a. Business where all work and communication is conducted over the internet, telephone, and/or electronic mail; and that do not engage in any on-premise customer contact.
 - b. Businesses where a service is provided off-premise to a client or customer, 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.
 - c. 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.

- B. Home Occupation, Class II:** A conditional use intended to allow businesses that generate limited quantities of customer visitation and/or merchandise deliveries. The business is personal to the applicant, is not transferable to any other person, and does not apply to any other business of the applicant. Any Home Occupation that is not clearly of type Class I shall be deemed to be Class II.

CM14-05

Initial to confirm that you have read and understand these regulations:	BCL
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C. The following regulations apply to both classes of home occupations:

- a. A home occupation must be compatible with residential uses of the dwelling, must not change the residential character, and must not detract from the character of the neighborhood.
- b. A home occupation must not produce detectable fumes, odors, dust, heat, noise, vibration, glare, electro-magnetic field, electrical interference, or other effects outside the dwelling, including transmittal through vertical or horizontal party walls.
- c. A home occupation shall not require fixed installation of equipment or machinery that substantially changes the residential character of the dwelling.
- d. A home occupation may not occupy more than twenty-five (25) percent of the floor area of the principal structure, and may not require internal or external alterations or construction features not customary to a residential dwelling.
- e. A home occupation shall be conducted entirely within the principal building. No home occupation shall be conducted outdoors or in any accessory building or garage, except that parking of a vehicle used in conducting the business and/or simple storage of materials or goods used in association with the business may be permitted in such buildings.
- f. A home occupation may have no more than one vehicle with business identification, and shall have no vehicle with greater than one (1.0) ton capacity and shall not have any trailer.
- g. Except as required by State law, there shall be no exterior indication of the home occupation, no exterior signs, nor any other on-site advertising visible from the exterior.
- h. A home occupation shall not involve on-site employment of persons not residing in the dwelling, except as otherwise provided the City of Morgantown Zoning Ordinance.
- i. A home occupation shall be registered as a business with the City of Morgantown Finance Office and shall pay applicable business and occupation taxes.
- j. If the applicant is not the owner of the property at which the home occupation will be conducted, the applicant must verify that written notice of intention to conduct the home occupation has been given to the owner of the property.
- k. No sexually oriented business, as defined by the Zoning Ordinance, may be permitted as a home occupation.
- l. Merchandise delivery and/or pick-ups to and from the premises that are associated with the home occupation, and that utilize a commercial delivery service or the United States Postal Service, shall not exceed four (4) per day.

D. The following regulations apply to only Home Occupations, Class 2:

- a. If any resident living within 300 feet of a Home Occupation, Class 2, believes that it is being conducted in violation of the imposed conditions or believes that the home occupation is distracting from the residential character of the neighborhood, the resident can submit a petition for revocation of the conditional use permit. The Planning Director and/or the Board of Zoning Appeals will review such petitions. Such license may be suspended or revoked on a temporary or permanent basis or other conditions imposed on the business.
- b. If the holder of a conditional use Class II home occupation permit 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.
- c. Retail sales shall not occur nor services provided on the premises on a regular basis or in substantial volume, such that customer visitation to the premises is deemed to be unreasonable. The Board of Zoning Appeals shall decide if customer visitation for the proposed type and volume of retail activities or services is reasonable when considering the conditional use permit application.
- d. Conditional Use Home Occupation applications must be filled out completely, or the application will be deemed to be incomplete and shall not be considered by the Board of Zoning Appeals.



HOME OCCUPATION APPLICATION

CW14-05

I. APPLICANT						
Applicant Name:	BRENDA L. MENEELY					
Name of Business:	NONE					
Mailing Address:	1210 CHARLES AVE.			Phone:	304-212-5444	
	Street	MORGANTOWN	WV	26505	Mobile:	
	City	State	Zip		Email:	BRENDAMENEELY@YAHOO.COM
II. PROPERTY						
Street Address:	1210 CHARLES AVE					
Zoning:	RESIDENTIAL	Tax Map No:	21	Parcel No:	146	
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 checked="" 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>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>						

CW14-05



City of Morgantown
West Virginia

HOME OCCUPATION APPLICATION

IV. NARRATIVE

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

Applicant seeks permission to operate a small business teaching piano and organ lessons on the premises of 1210 Charles Avenue. The business will require individual students to visit the subject residence for lessons. The lessons will be taught one student at a time in order to prevent any excessive traffic flow. The Home Occupation requested will not impact the quality nor character of the residential community.

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.

Brenda L Meneely

Brenda L Meneely

3-18-14

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: _____

CW14-05



City of Morgantown
West Virginia

HOME OCCUPATION APPLICATION

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: 10AM - 7PM

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 =	15	maximum =	20
Number per day:	average =	4-5	maximum =	5
Number at one time:	average =	1	maximum =	1

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:

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.

The subject residence has a large driveway that can fit up to three cars at a time. There will not be any need for on-street parking whatsoever.

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**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 residential uses of the dwelling, in that:

If a student visits the subject residence, it will not be more than one vehicle at a time, which is no different than if any other property owner were to have a visitor at their home. A vehicle, if any, would be non-commercial and not change the quality nor nature of the residential community.

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

It will not require any commercial trucks, shipping of goods, increased traffic flow, road obstruction, or additional construction/improvements to the land or structure

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

Teaching piano lessons inside the home will shield the community from any activity involving the applicant's business. There will be no signs, advertisement in the yard, on-street parking, or otherwise commercial activity beyond the single visitor for the purpose of piano lessons.

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

The subject residence has a driveway that can fit at least three cars at a time. The piano lessons will be taught one-on-one, thus there will be excess driveway parking. Additionally, one visitor at a time will not increase the street traffic any more than if the residence were to have an occasional visitor.