



MORGANTOWN BOARD OF ZONING APPEALS

August 20, 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: CU14-09 / Ann DiMarco / 91 Grandview Avenue

REQUEST and LOCATION:

Request by Ann DiMarco, for conditional "Class 2 Home Occupation" use approval at 91 Grandview Avenue.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 41, Parcel 57; R-1A, Single-Family Residential District

SURROUNDING ZONING:

R-1A, Single-Family Residential District

BACKGROUND and ANALYSIS:

The petitioner seeks to establish a "Home Occupation" in her residence at 91 Grandview Avenue. Addendum A of this report illustrates the location of the site.

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

The petitioner states in her application that she wishes to provide part-time mental health therapy services to clients in her home. The following points highlight the information provided in the petitioner's application:

- The petitioner seeks to move her existing practice from 1102 About Town Place, Morgantown (off Greenbag Road) to her home at 91 Grandview Avenue.
- All clients are scheduled by appointment only one client at a time and include individuals and family therapy with children, teens, and adults.
- The hours of operation will be from 10:00 AM to 6:00 PM, Monday through Friday.
- The average number of clients per day is estimated to be two (2) to five (5).
- The average number of clients per week is estimated to be ten (10) to fifteen (15).
- No delivery trucks associated with the proposed home occupation are anticipated to visit the site on a regular basis.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



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- There are two (2) parking spaces on the petitioner's property accessed from Grandview Avenue, two (2) spaces in a garage accessed from Richmond Street with four (4) spaces in front of the garage.
- The petitioner notes that clients with a substance abuse diagnosis are and will be referred to another practitioner or agency.
- The petitioner notes that her licensure restricts her from delivering services to Medicaid clients and that said clients are and will be referred to another practitioner or agency.
- The petitioner notes that she does not plan to deliver group therapy services.

The Planning Division received an email of opposition from Mr. Rodney Maddox of 83 Grandview Avenue on 13 AUG 2014, which is included in the meeting packet following the petitioner's application and accompanying exhibits.

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

Staff recommends approval of Case No. CU14-09, subject to the following conditions:

1. That clients visiting the petitioner's Class 2 Home Occupation use must, to the greatest extent practicable, park their vehicles on the petitioner's property in existing off-street parking spaces accessed from either Grandview Avenue or Richmond Street. 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.
2. That the petitioner shall meet all related supplemental regulations specified in Article 1331.06(2) et seq. of the Planning and Zoning Code.
3. 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.
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 conditions or restrictions imposed by the Board of Zoning Appeals, the holder must obtain prior approval of the Board of Zoning Appeals. Changes include, but are not limited to, days and/or hours of operation, group therapy services, etc.

Development Services

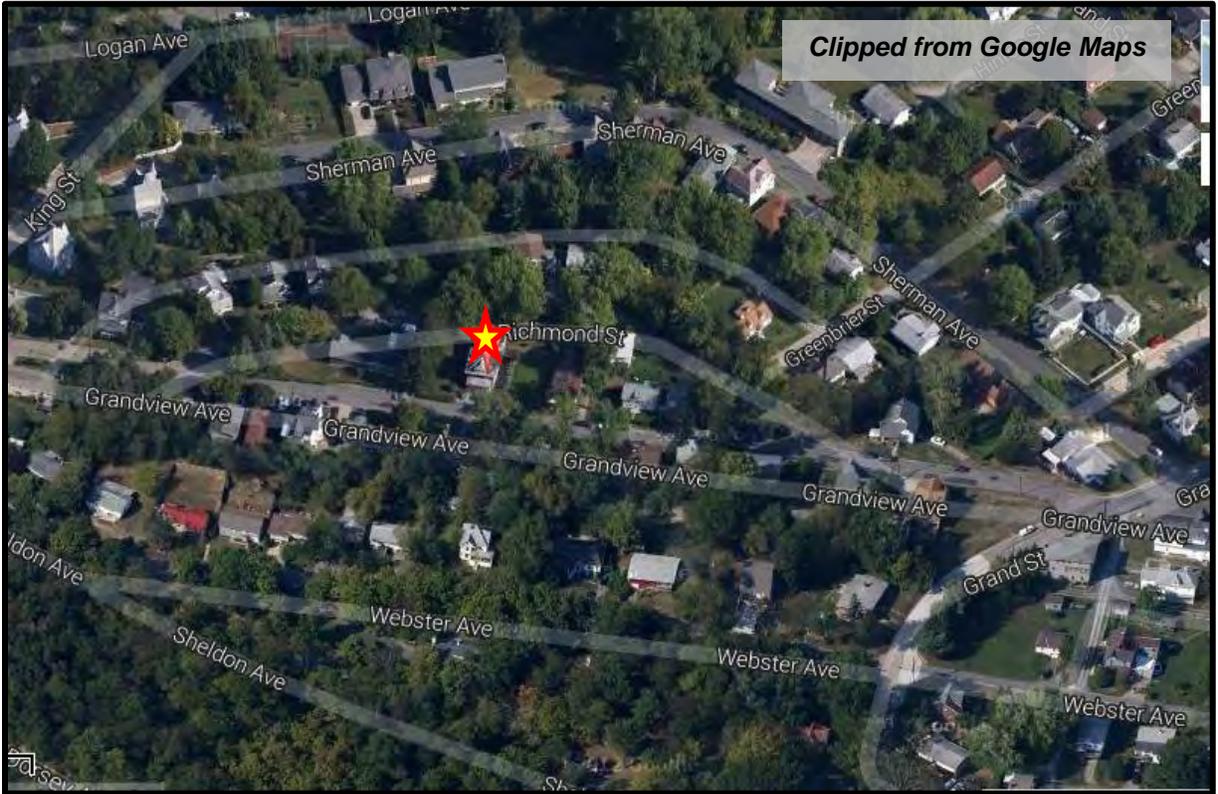
Christopher Fletcher, AICP
Director

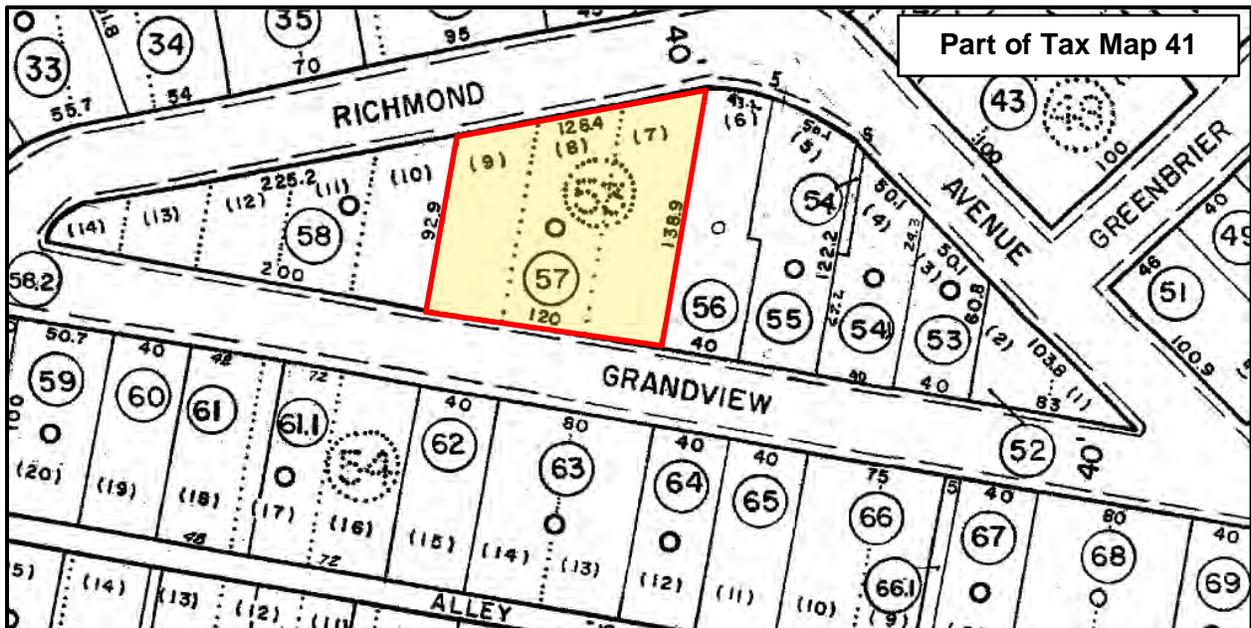
Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431

Enclosures: Application and accompanying exhibits

STAFF REPORT ADDENDUM A
CU14-09 / Ann DiMarco / 91 Grandview Avenue





STAFF REPORT ADDENDUM B
CU14-09 / Ann DiMarco / 91 Grandview Avenue

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

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*,

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

The petitioner states that the home office will occupy the front room and hallway of the house. This part will be separated from the rest of the house by 2 wooden folding doors. An enclosed front porch will act as a waiting room, accessible from the street. There will be an entry bell. Shades and 2 white noise machines will assure privacy. Downstairs bathroom is available at request during the hours of operation, the house is empty. ~~My husband, the only other occupant, is at work.~~

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

The petitioner states that there will be no ~~big~~, noticeable changes to the character of the dwelling. The enclosed porch will have less clutter and be used mainly for sitting. The furniture in ~~my~~ the office is not out of character for use in a residential dwelling, which includes filing cabinets, bookcases, and a table, ~~are already in the room and~~ another bookcase type piece in the hallway will be used for storage, and ~~I have~~ a laptop computer, printer/copier, and paper shredder.

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

The petitioner states that the residential character of the neighborhood will be intact. There will be no changes to the exterior of the house or outside grounds. There will be no additional delivery trucks, etc. required for the business.

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

~~Congestion in the street will not be increased as I will be seeing 1 client and/or family at a time. That means 1 car or at the most 2 cars, which will not cause any additional stresses to the neighborhood.~~ The petitioner's business operations do not appear to result in a discernable increase in daily traffic that is customary to any residential neighborhood. There appears to be sufficient parking spaces on the petitioner's property to mitigate on-street parking congestion.

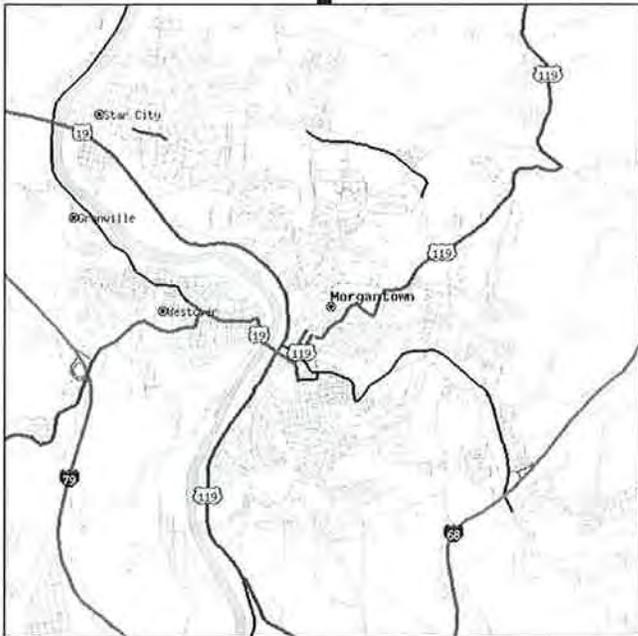
CU114-09



City of Morgantown
West Virginia

HOME OCCUPATION APPLICATION PACKET

BUSINESS PLAN



CW14-09

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 product(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.

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.

CW14-09



City of Morgantown
West Virginia

HOME OCCUPATION APPLICATION

I. APPLICANT					
Applicant Name:		Ann DiMarco			
Name of Business:		Ann DiMarco LICSW/ACSW/CTT			
Mailing Address:	Street		Phone:		(304)290-9732
	City		Mobile:		(304)290-9732
	State		Email:		anadi877@gmail.com
Zip					
Morgantown		WV		26501	
II. PROPERTY					
Street Address:		91 Grandview Ave Morgantown WV 26501			
Zoning:		Tax Map No:		Parcel No:	
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>					



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HOME OCCUPATION APPLICATION

IV. NARRATIVE

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

I have a small, part-time private mental health practice. I would like to transfer this therapy business to a home office. The business covers individual and family therapy with children, teens, and adults. I will be seeing 1 client 2x per family at a time and, as now, there are no excessive waiting times between sessions. The available hours of operation are M-F from 10 AM - 6 PM with an hour off for lunch, but all the slots are not full. I already complete my own billing procedures & have a Post Office Box. I also have a City Business Registration and know I will have to reapply with the home office address, if it is accepted.

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.

Ann DiMarco

07/10/14

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: _____

CUII4-09



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: M-F

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>10</u>	maximum =	<u>15</u>
Number per day:	average =	<u>2</u>	maximum =	<u>5</u>
Number at one time:	average =	<u>1</u>	maximum =	<u>3</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? 100%

Please explain: clients live outside of the neighborhood / in Morgantown

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.

off-street (driveway beside house)
on-street (2 spaces in front of house)

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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: The home office will occupy the front room and hallway of the house. This part will be separated from the rest of the house by 2 wooden sliding doors. An enclosed front porch will act as a waiting room, accessible from the street. There will be an entry bell. Shades and 2 white noise machines will assure privacy. Down stairs bathroom is available at request. During the hours of operation, the house is empty. My husband, the only other occupant, is at work.

2. The home occupation will not change the residential character of the dwelling, in that: There will be no big, noticeable changes to the character of the dwelling. The enclosed porch will have less clutter & be used mainly for sitting. The furniture in my office is not out of character for use in a residential dwelling. Filing cabinets, bookcases, & a table are already in the room and another bookcase type piece in the hallway will be used for storage. I have a laptop computer, printer/copier, and paper shredder.

3. The home occupation will not detract from the residential character of the neighborhood, in that: The residential character of the neighborhood will be intact. There will be no changes to the exterior of the house or outside grounds. There will be no additional delivery trucks, etc. required for the business.

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

Congestion in the street will not be increased as I will be seeing 1 client and/or family at a time. That means 1 car or at the most 2 cars, which will not cause any additional stresses to the neighborhood.

C1114-09

Ann DiMarco, LICSW/ACSW/CTT

Mental Health Therapist
anndi777@gmail.com

PO Box 1474
Morgantown WV 26507

Education and Certification:

- LICSW (Licensed Independent Clinical Social Worker), 1999, #DP00939059
- ACSW (Academy of Certified Social Workers), 1998
- M.S.W. West Virginia University, 1994
- M.S. (Recreational Therapy) Northeastern University, 1977
- B.S. (Psychology), Pennsylvania State University, 1974

Professional Expertise

- Counseling and psychological testing
 - evaluation of youth for emotional, and behavioral problems
 - family, couples, group and individual counseling
 - implementation of play therapy and trauma work techniques
- Communication/administration
 - supervision of caseworkers, MSW student interns, and social work temporary licensees
 - coordination with educational and community services to treat disadvantaged youth and families

Experience (1977-present)

- Mental Health Therapist; Private Practice; 2/01 to present (individual, couples, family, and EAP counseling)
- Mental Health Therapist; Intensive Trauma Therapy, Morgantown, WV (part of a treatment team using an intensive treatment protocol for clients with Post Traumatic Stress Disorder or other dissociative disorders)
- Mental Health Therapist; Trauma Recovery Institute, Morgantown, WV (individual, group, and family therapy mostly with children and adolescents with Post Traumatic Stress or other dissociative disorders)
- Child/Family Therapist, Try-Again Homes Inc., Fairmont, WV, 11/92 to 11/00 (in-home therapy, individual counseling for family preservation/reunification)
- Mental Health Therapist, Counseling Service Inc., Bellefonte PA, 1/89 to 8/92 (individual counseling with emotionally-disturbed youth and adolescents)
- Counselor, HRDC of Montana, Billings and Bozeman, MT, 3/88 to 12/88 (job training for economically disadvantaged clients)
- Therapist, Shodair Adolescent, Billings MT, 12/86 to 12/87 (drug/alcohol residential program)
- Counselor, Billings Workshop, Billings MT, 10/84 to 11/86 (developmentally disabled training)
- Counselor, Southtown, Vancouver, B.C., Canada, 8/82 to 8/84 (alternate education program for disturbed teens)
- Habilitation Instructor, Butte Head Start, Butte, MT, 9/81 to 4/82 (preschool program for disadvantaged children)
- Counselor/Recreational Therapist, Children's Unit, Warm Springs (MT) State Hospital, 1/77 to 9/81 (residential treatment program for emotionally disturbed youth)

Professional References: Available upon request.

CW14-09

**WEST VIRGINIA
STATE TAX DEPARTMENT
BUSINESS REGISTRATION
CERTIFICATE**

ISSUED TO:
**ANN DIMARCO
1102 ABOUT TOWN PL
MORGANTOWN, WV 26508-0000**

BUSINESS REGISTRATION ACCOUNT NUMBER: 1007-8773

This certificate is issued on: **06/13/2011**

*This certificate is issued by
the West Virginia State Tax Commissioner
in accordance with Chapter 11, Article 12, of the West Virginia Code*

*The person or organization identified on this certificate is registered
to conduct business in the State of West Virginia at the location above.*

This certificate is not transferrable and must be displayed at the location for which issued.

This certificate shall be permanent until cessation of the business for which the certificate of registration was granted or until it is suspended, revoked or cancelled by the Tax Commissioner.

Change in name or change of location shall be considered a cessation of the business and a new certificate shall be required.

TRAVELING/STREET VENDORS: Must carry a copy of this certificate in every vehicle operated by them.
CONTRACTORS, DRILLING OPERATORS, TIMBER/LOGGING OPERATIONS: Must have a copy of this certificate displayed at every job site within West Virginia.

08/01/14 Additional Information:

CU14-09

- The clients seen through my business will not have a substance abuse diagnosis. Treatment of these individuals does not blend well with my skill set. As I have done in the past, they will be referred to another practitioner or agency.
- Due to my licensure and WV laws, I cannot see any clients using a Medicaid card. As I have done in the past, these clients will be referred to another practitioner or agency.
- I do not plan to have any group therapy sessions. There may be family therapy or couples work, as needed. But most of my clients are seen on an individual basis.
- There is additional off-street parking available at the back of the house (wide gravel driveway).

Carol Marner
LICSW/ACSW

Zimbra

shollar@cityofmorgantown.org

comment on variance application CU14-09

From : Rodney Maddox <Rodney.Maddox@77nrg.com>
Subject : comment on variance application CU14-09
To : shollar@cityofmorgantown.org

Wed, Aug 13, 2014 08:03 AM

 1 attachment

The City of Morgantown
389 Spruce Street
Morgantown, WV 26505

ATTN: Planning Division

RE:Case No. CU14-09/DiMarco/91 Grandview Avenue

I am submitting the following comments to express my concerns, and my belief that this variance should not be granted. I occupy the property next door to the proposed variance site on the west side of that property (83 Grandview).

1. On street parking is limited in the area, and is generally utilized at a high percentage. While the variance site does have several off street spaces, both in the rear and the front of the property, these spaces are not convenient nor accessible for client access to the upper main level of the house. Consequently, it is likely that clients would choose on street spaces as opposed to alternatives.
2. To my knowledge no other businesses exist in the area which have clients or customers coming to the site. If this variance is granted it will be the first of its kind in the neighborhood, and will open the door for future businesses to be permitted also. We need to preserve the integrity of the neighborhood as a family oriented area.
3. While it may not be proper to single out certain types of businesses more than others the proposed business seems to have a greater potential of disruption, and unpredictable behavior, from the clients than might be expected from one which serves a different clientele. This is a neighborhood with many children.

Thank You,
Rodney Maddox
83 Grandview Avenue
Morgantown, WV 26501



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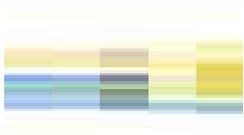


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