



MORGANTOWN BOARD OF ZONING APPEALS

July 15, 2015
6:30 PM
City Council Chambers

Board Members:

Leanne Cardoso, Chair
Bill Burton, Vice-Chair
Linda Herbst
George Papandreas
Jim Shaffer

STAFF REPORT

CASE NO: CU15-06 / Messinger / 1216 University Avenue

REQUEST and LOCATION:

Request by Steven Messinger for Conditional Use approval for an "Incidental Automobile Repair Shop" at 1216 University Avenue.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 26A, Parcel 26; B-4, General Business District

SURROUNDING ZONING:

B-4, General Business District

BACKGROUND and ANALYSIS:

The petitioner seeks to establish an "Incidental Automobile Repair Shop" use at the subject location. The applicant is currently operating a retail operation out of the subject location selling car stereo and vehicle enhancements and understands that conditional use approval is required for the establishment to remain at the subject location. Addendum A of this report illustrates the location of the subject site.

Table 1331.05.01 "Permitted Land Uses" provides that "Incidental Automobile Repair Shop, Incidental" uses are permitted in the B-4 District with conditional use approval by the Board of Zoning Appeals. Automotive-oriented uses are generally not permitted in the B-4 District, except as a Conditional Use as an "Incidental Repair Shop," associated with a Principle Use permitted in the district.

Article 1329.02 defines "Automotive Repair Shop" as

"Any building, structure, improvements, or land used for the repair and/or maintenance of automobiles, motorcycles, trucks, trailers, or similar vehicles including but not limited to body, fender, muffler or upholstery work, oil change and lubrication, painting, tire service and sales, or installation of CB radios, car alarms, stereo equipment or cellular telephones."

Article 1329.02 defines "Automotive Repair Facility/Shop, Incidental" as:

"Any building, structure or land used for the repair or maintenance of automobiles, motorcycles, trucks, trailers, or similar vehicles, and which is incidental to the primary use. Examples may include, but are not limited to, service bays associated with a gasoline station, and battery and tire repair services and/or oil change services associated with automobile parts stores."

According to the petitioner, the subject establishment is primarily a retail sales establishment where vehicle enhancement products are sold directly to the consumer. On-site installation services are secondary and incidental to retail sales. The installation

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



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service area is accessed by one (1) garage door locating in the front of the building as illustrated in Addendum A of this report. Retail customer parking is provided in front of the building. There will be two people present during the busiest shift and the hours of operation are Monday through Friday 9 A.M. – 6 P.M., Saturday 10 A.M. – 2 P.M.

Table 1331.06 provides two (2) relevant performance standards for the operation of “Incidental Automobile Repair Shop” uses, which are recommended as conditions below. These conditions are necessary to mitigate any potential impacts by the proposed conditional use on surrounding properties and public rights-of-way.

It should be noted that the Board granted similar conditional use approval for an “Incidental Automobile Repair Shop” on 21 MAR 2012 under Case No. CU12-03 for *Car Tunes* at 1233 University Avenue, which is located across University Avenue from the petitioner’s site.

STAFF RECOMMENDATION:

The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the “Findings of Fact” submitted by the petitioner.

Addendum 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 CU15-06 with the following conditions:

1. That all storage associated with the conditional “Incidental Automobile Repair Shop” use shall be indoors.
2. That all aspects of the conditional “Incidental Automobile Repair Shop” use shall be conducted within the principal structure.
3. That the “Incidental Automobile Repair Shop” use shall not handle, process, or store hazardous substances.
4. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.

Enclosures: Application and accompanying exhibits

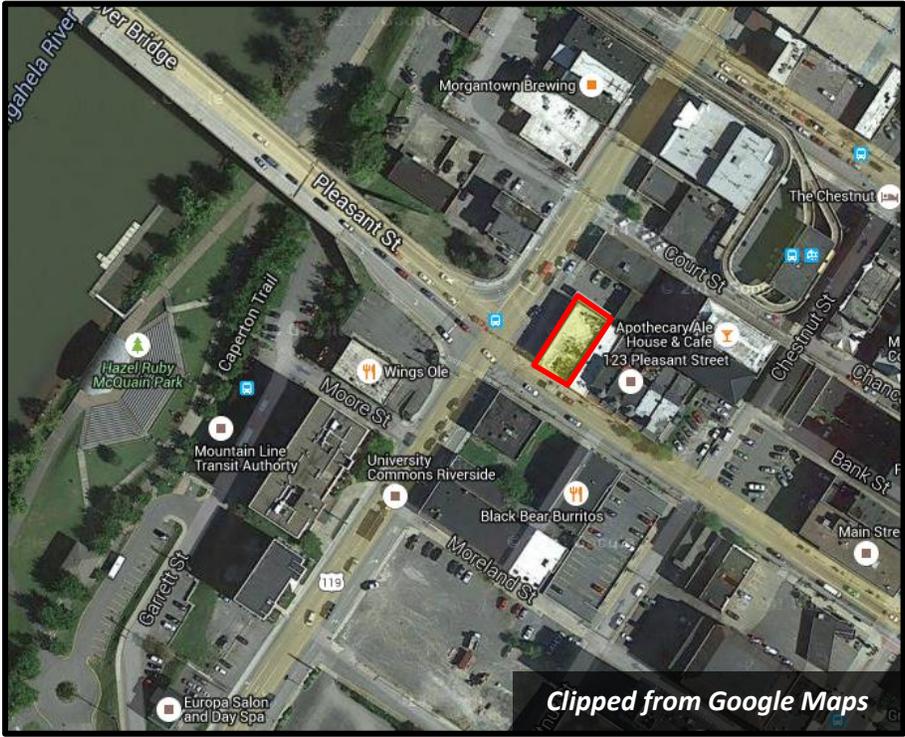
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Director

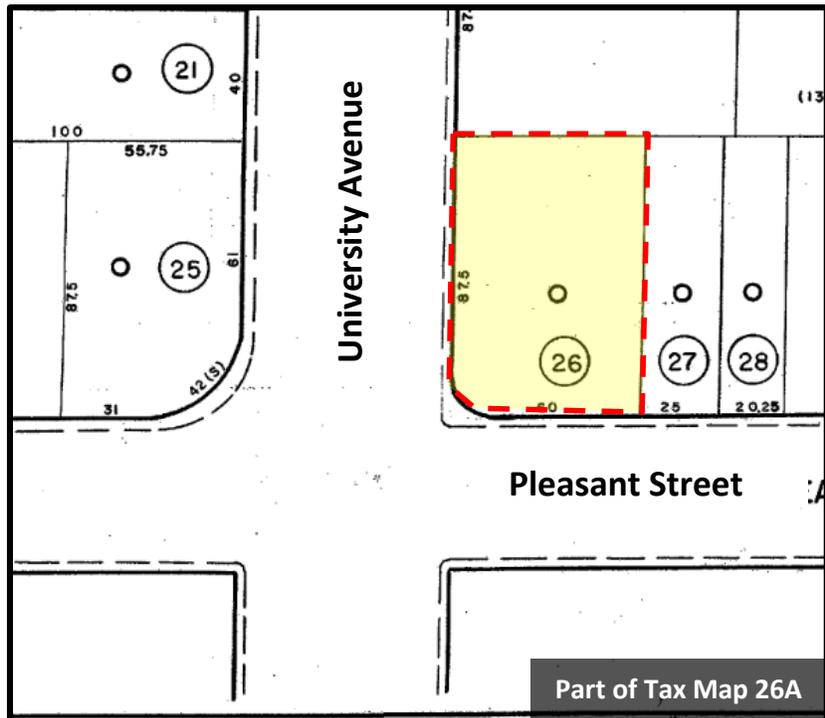
Planning Division

389 Spruce Street
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STAFF REPORT ADDENDUM A
CU15-06 / Messinger / 1216 University Avenue



Clipped from Google Maps



STAFF REPORT ADDENDUM B
CU15-06 / Messinger / 1216 University Avenue

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

<p>Finding of Fact No. 1 – Congestion in the streets is not increased, in that:</p>
<p>There is adequate parking and entry and exit from the premises is easy. <u>On-site parking is provided on the site, which is not required for the use in the B-4 District. Traffic generation associated with the daily operation of the "Incidental Automobile Repair Shop" use is not anticipated to negatively contribute to traffic congestion on surrounding roadways.</u></p>
<p>Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:</p>
<p>There will be no conduct that could affect safety. <u>Conformity with relevant Building and Fire Codes will be required as a part of Certificate of Occupancy issuance. Additionally, the Board's condition prohibiting the handling, processing, or storing of hazardous substances serves to further this objective.</u></p>
<p>Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:</p>
<p>We do not use any harmful chemicals or pollutants. <u>No physical addition to the existing structure is proposed that would alter current sunlight distribution or airflow trends within the immediate area.</u></p>
<p>Finding of Fact No. 4 – Overcrowding of land does not result, in that:</p>
<p>There will be no increased traffic as a result of our store. <u>The proposed "Incidental Automobile Repair Shop" use will occupy an existing commercial tenant space within an established principal structure.</u></p>
<p>Finding of Fact No. 5 – Undue congestion of population is not created, in that:</p>
<p>This is retail location is expected to have with a low volume of customers. The parking available in the front of the location is <u>appears to be</u> adequate to support the volume of customers. The proposed conditional use request does not contain a residential use component.</p>
<p>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:</p>
<p><u>The proposed "Incidental Automobile Repair Shop" use will be located within an existing commercial tenant space and is not anticipated to require public services beyond that which is currently available within the immediate area.</u></p>
<p>Finding of Fact No. 7 – Value of buildings will be conserved, in that:</p>
<p>The premises will be updated and well taken care of. <u>The proposed "Incidental Automobile Repair Shop" use appears to be compatible with surrounding uses and will occupy an existing commercial tenant space that includes an existing garage door that can be used to incidental installation services thereby ensuring that the use and related storage remains inside the principal structure.</u></p>
<p>Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:</p>
<p><u>There is a similar business within the same area of the proposed location, for which conditional "Incidental Automobile Repair Shop" use approval was granted on 21 MAR 2012 under Case No. CU12-03.</u></p>



City of Morgantown, West Virginia

APPLICATION FOR TYPE IV SITE PLAN – CONDITIONAL USE

OFFICE USE	
CASE NO.	CN15-06
RECEIVED:	
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

I. APPLICANT					
Name:	Steven Messinger			Phone:	304-212-5441
Mailing Address:	1216 University Ave.			Mobile:	
	Street			Email:	smessinger@yq.com
	Morgantown	WV	26508		
	City	State	Zip		
II. AGENT / CONTACT INFORMATION					
Name:				Phone:	
Mailing Address:				Mobile:	
	Street			Email:	
	City	State	Zip		
Mailings –	Send all correspondence to (check one): <input checked="" type="checkbox"/> Applicant OR <input type="checkbox"/> Agent/Contact				
III. PROPERTY					
Owner:	John Angotti			Phone:	304-319-0197
Mailing Address:				Mobile:	
	Street			Email:	
	City	State	Zip		
IV. SITE					
Street Address (if assigned):	1216 University Ave.	Tax Map #:	26A	Parcel #:	26
Zoning:	B-4				
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:					
Proposed Use of Structure of Land:	This structure will be used as a retail location for the sell of Automotive Accessories, Car Stereos, Alarms, ect.				



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

OFFICE USE	
CASE NO.	_____
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V. STRUCTURE

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



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

OFFICE USE	
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VII. SUPPLEMENTAL PLANS AND EXHIBITS

Applicants **MUST** also submit the following plans and exhibits, unless waived by the Planning Director:

- (a) Drainage plan and drainage calculations that bear the name, address, signature and seal of a registered professional engineer licensed by the State of West Virginia, with floodplain zones clearly denoted, a typical of all swales, and a design of the drop inlets.
- (b) If applicable, design of stormwater management facilities and drainage calculations that bear the name, address, and seal of a registered professional engineer licensed by the State of West Virginia that meet the requirements of the City Zoning Ordinance, the City Stormwater Management Ordinance, and all other applicable local, state and federal regulations.
- (c) Parking and Landscaping Plan
- (d) Sign Plan
- (e) Approved WV Division of Highways Access Permit, if applicable
- (f) Sediment and erosion control plan as approved by the West Virginia Department of Environment Protection and the City of Morgantown
- (g) Approved State of West Virginia NPDES General Permit for Storm Water Associated with Industrial (Construction) Activity, if applicable
- (h) A traffic impact study, if required by the City Engineer
- (i) The Planning Director may require the applicant to submit additional information concerning the lot or neighboring lots to determine conformance with, and provide for the enforcement of, the City Zoning Ordinance.
- (j) The Planning Director may require the applicant to submit, in the case of accessory structures or minor additions, dimensions shown on plans relating to the size of the lot and the location of the structure(s) thereon be based on an actual survey prepared a registered design professional licensed by the State of West Virginia.

Applicants submitting a conditional use application in accordance with Article 313.05 "Building Height and Use" within the B-4 General Business District **MUST** also submit the following analyses:

- (a) An air flow analysis conducted by a licensed architect or profession engineer, describing the estimated impact of the proposed building on existing patterns of air flow in the general vicinity; and how those impacts may affect existing properties with a 300 foot radius of the site.
- (b) An analysis of the impacts of the proposed building on sunlight distribution in the general vicinity, with special emphasis on predicting light blockage and shadow casting onto all properties with a 300 foot radius of the site. Such analysis shall be conducted by a licensed architect or professional engineer.
- (c) An analysis of the potential of "stepping back" upper floors as a technique to avoid negative impacts with respect to light and airflow, and to minimize the canyon effect of non-recess tall buildings. Such analysis shall be conducted by a licensed architect or professional engineer.
- (d) An infrastructure and traffic analysis predicting the impacts of the building on water, sewer, drainage, electrical and gas infrastructure, on transportation levels of service (including transit) for impacted streets, and on fire suppression capabilities of the city. Such analysis shall be conducted by a licensed architect or professional engineer.



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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: There is adequate parking and entry and exit from the premises is easy.
2. Safety from fire, panic, and other danger is not jeopardized, in that: There will be no conduct that could affect safety.
3. Provision of adequate light and air is not disturbed, in that: we do not use any harmful chemicals or pollutants.
4. Overcrowding of land does not result, in that: There will be no increased traffic as a result of our store.
5. Undue congestion of population is not created, in that: This is retail location with a low volume of customers. The parking available in the front of the location is adequate to support the volume of customers.



City of Morgantown, West Virginia

APPLICATION FOR
TYPE IV SITE PLAN – CONDITIONAL USE

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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: The premises will be updated and well taken care of.

8. The most appropriate use of land is encouraged, in that: There is a similar business within the same area of the proposed location.

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.

Steven Messenger

6-11-15

Type/Print Name of Applicant/Agent

Signature of Applicant/Agent

Date

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