



# MORGANTOWN BOARD OF ZONING APPEALS

November 16, 2015  
6:30 PM  
City Council Chambers

## **Board Members:**

Bill Burton,  
Chair

George Papandreas,  
Vice Chair

Linda Herbst

Jim Shaffer

Colin Wattleworth

## **STAFF REPORT**

**CASE NO:** CU16-11 / Samuel Fisher / 1247 Central Avenue

### **REQUEST and LOCATION:**

Request by Samuel Fisher for conditional "Class 2 Home Occupation" use approval at 1247 Central Avenue.

### **TAX MAP NUMBER(s) and ZONING DESCRIPTION:**

Tax Map 24, Parcel 45.2; R-1A, Single-Family Residential District

### **SURROUNDING ZONING:**

R-1A, Single-Family Residential District

### **BACKGROUND and ANALYSIS:**

The petitioner seeks to establish a "Class 2 Home Occupation" in his residence at 1247 Central Avenue. Addendum A of this report illustrates the location of the subject site.

The petitioner states in his application he wishes to provide massage therapy services in his residence. Because clients will be visiting the residence, the home-based business is considered a "Class 2 Home Occupation". 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 following points highlight information provided in the petitioner's application:

- The petitioner owns and resides in the subject single-family dwelling and no modifications to the structure are planned to aid or support the proposed home-based business.
- The proposed hours of operation are from 10 a.m. to 6 p.m. Monday through Friday with no weekend client visits.
- Clients will be scheduled at ninety (90) minute intervals for one-hour therapy sessions to relieve overlap congestion between appointments.
- A maximum of four (4) clients will be seen a day.
- No delivery trucks associated with the proposed home occupation are anticipated to visit the site on a regular basis.
- There appears to be approximate area for four (4) off-street parking spaces on the petitioner's driveway, but the surface only provides lane access for two (2) sets of stacked (tandem) spaces. Additionally, there is a basement garage with opening to the driveway, which appears to be for two (2) vehicles. A total of six (6) vehicles could be parked on the property at any one time. Off-street parking is accessible from Jersey Avenue.

## **Development Services**

Christopher Fletcher, AICP  
Director

John Whitmore, AICP  
Planner III

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. If the Board disagrees with the petitioner's "Findings of Fact" and determines the proposed request does not meet the standard criteria for a variance, then the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject variance petition. [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Addendum B of this report provides Staff recommended revisions to the Findings of Fact responses submitted by the petitioner. Staff recommended revisions should not be considered or construed as supporting or opposing the merits of the petitioner's responses (deleted matter struck through; new matter underlined).

Should the Board grant conditional "Class 2 Home Occupation" use approval, Staff recommends the following conditions, which have been recently included in similar home-based businesses providing physical or mental health therapy services:

1. That services may only be offered at the petitioner's Class 2 Home Occupation between 10 a.m. and 6 p.m. Monday thru Friday.
2. That customer visits shall, to the greatest extent practicable, be limited to one arrival and one departure per customer visit.
3. That, to the greatest extent practicable, there must be at least 30 minutes between visitor departure and the next visitor's arrival.
4. 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 Jersey Avenue.
5. The adherence with and monitoring of conditions 1 thru 4 above shall rely upon the review, suspension, and revocation provisions provided in Article 1331.06(2)(d)(i) of the Planning and Zoning Code.
6. That the petitioner shall initial Page 3 of 7 of the subject Home Occupation application and shall meet all related supplemental regulations specified in Article 1331.06(2) et seq. of the Planning and Zoning Code.
7. 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.
8. 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. Changes include, but are not limited to, days and/or hours of operation, number of clients seen per day, etc.

## **Development Services**

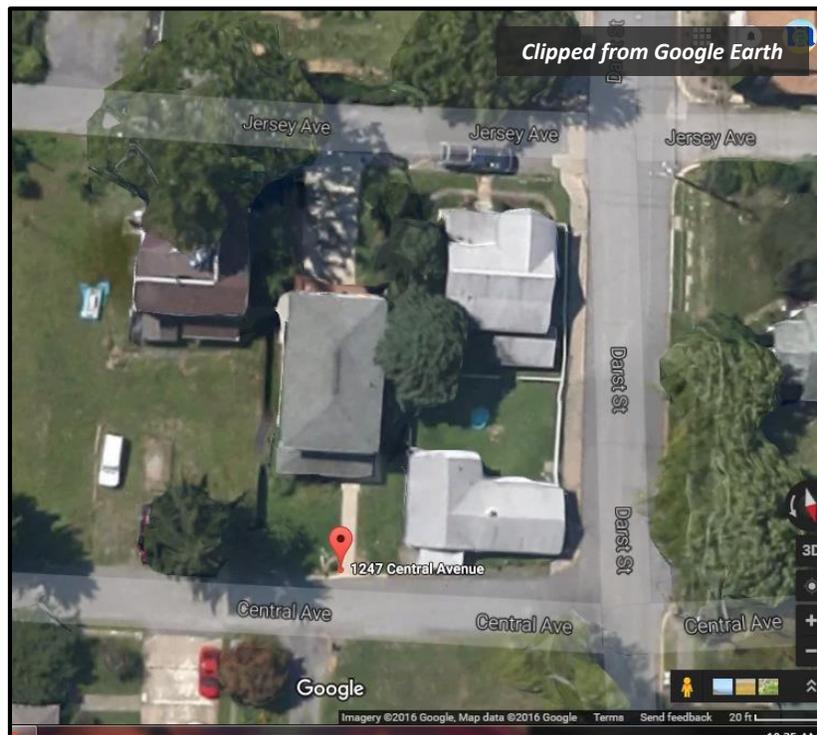
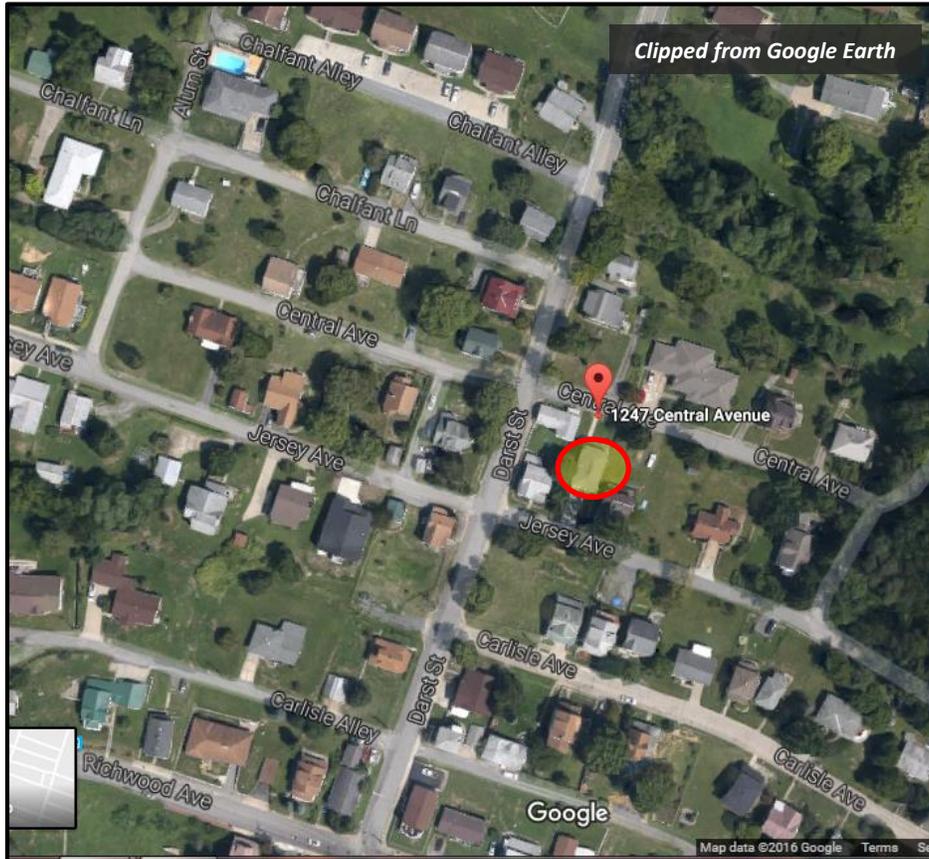
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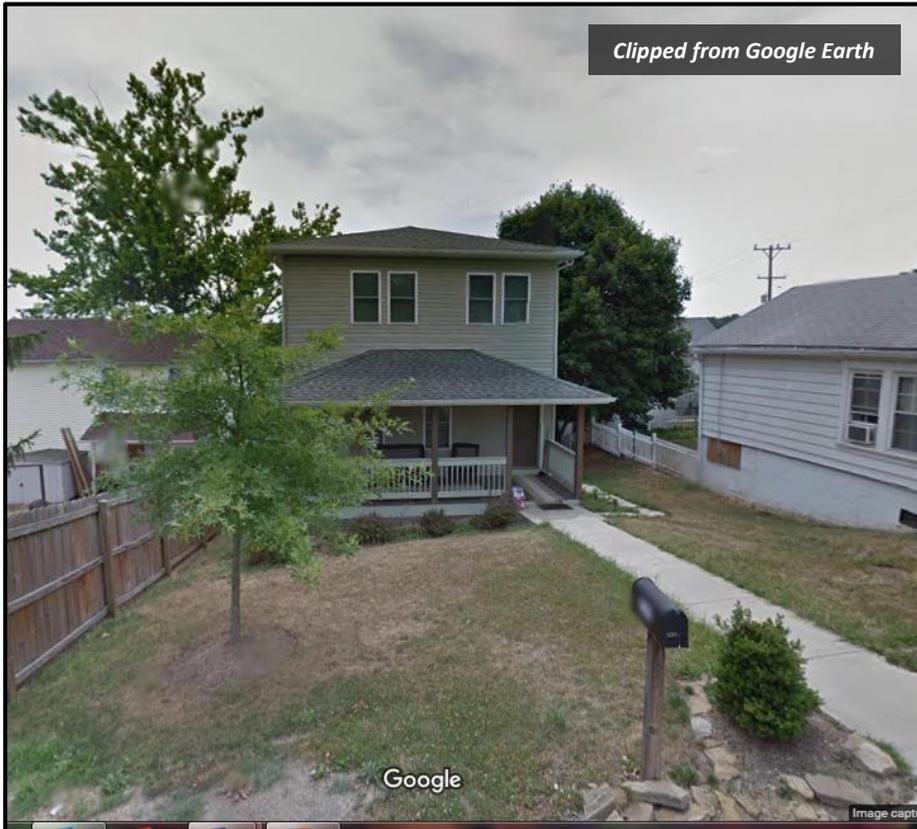
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

Enclosures: Application and accompanying exhibits

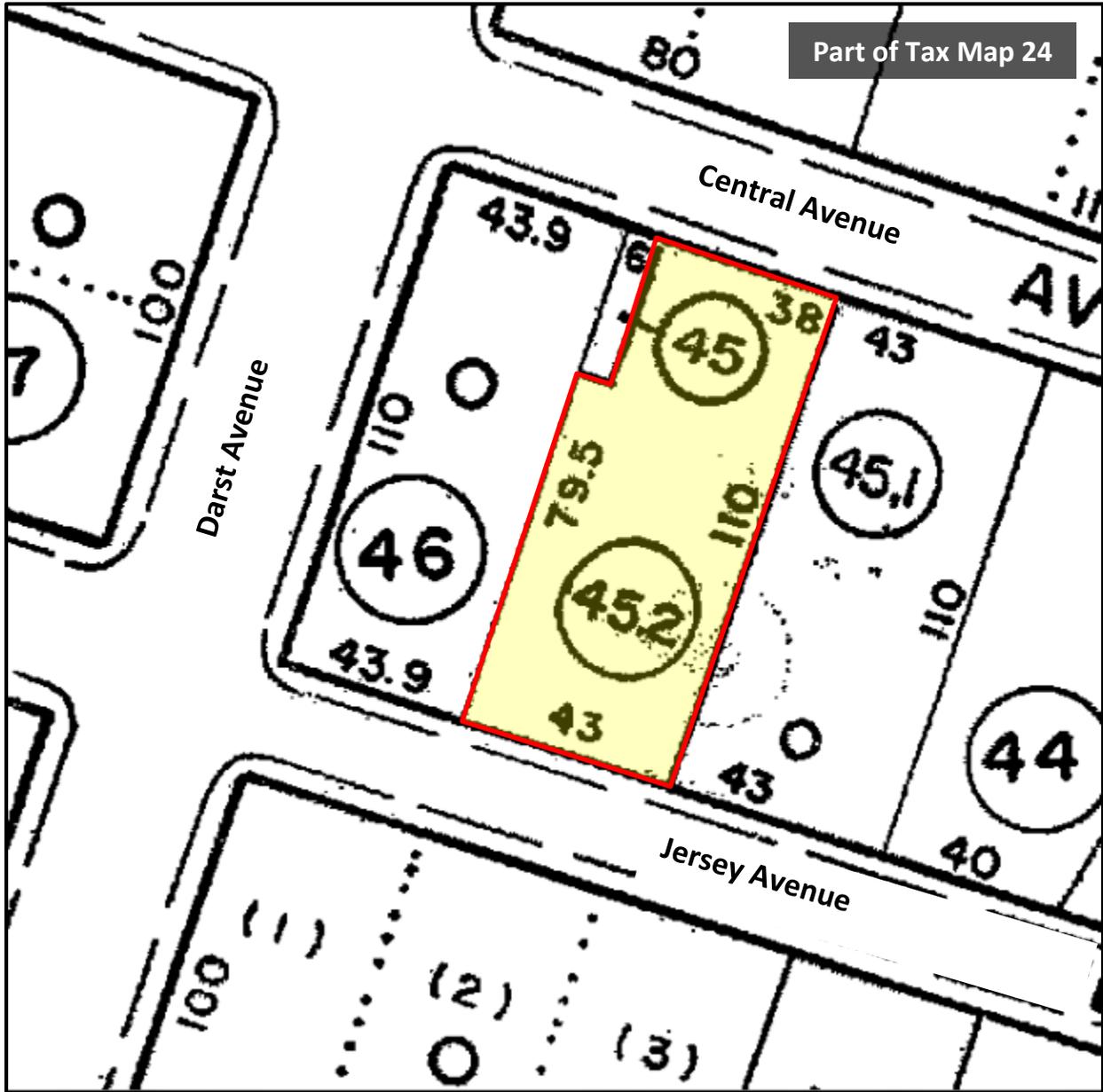
**STAFF REPORT ADDENDUM A**  
**CU16-11 / Fisher / 1247 Central Avenue**



**STAFF REPORT ADDENDUM A**  
**CU16-11 / Fisher / 1247 Central Avenue**



STAFF REPORT ADDENDUM A  
CU16-11 / Fisher / 1247 Central Avenue



**STAFF REPORT ADDENDUM B**  
**CU16-11 / Fisher / 1247 Central Avenue**

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Staff submits the following revisions to petitioner's Findings of Fact (deleted matter struck through; new matter underlined). Staff recommended revisions should not be considered or construed as supporting or opposing the merits of the petitioner's responses or the subject conditional use petition.

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:

There is a separate room which will be used for message therapy appointments.

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

It is not necessary to modify the existing property structure in any way in order to conduct the proposed home-based massage therapy business.

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

It is not necessary to modify the existing property in any way in order to conduct the proposed home-based massage therapy business.

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

Clients will be scheduled one at a time with no overlap, so no more than one business-related additional vehicle will be present at the home at any time.

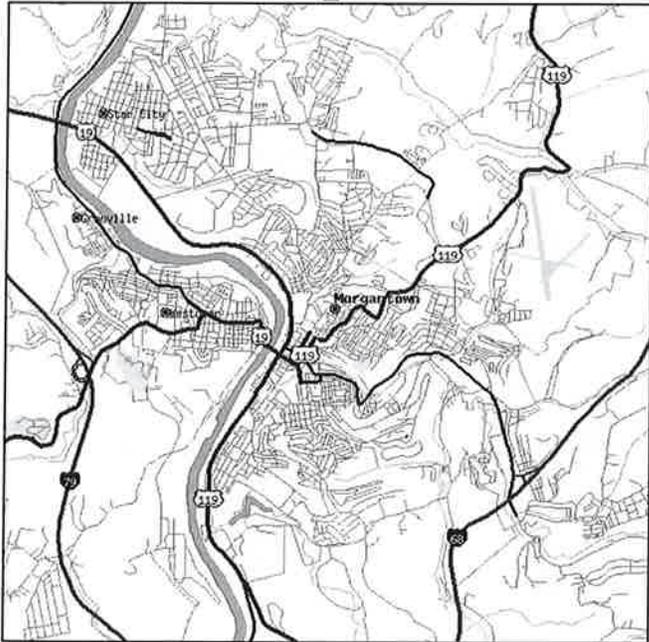
CU16-11



# HOME OCCUPATION APPLICATION PACKET

**BUSINESS PLAN**

\$75.<sup>00</sup> CK 447  
01 SEP 16  
C.M.P.



***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](http://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.

Initial to confirm that you have read and understand these regulations:	
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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.

C416-11



City of Morgantown  
West Virginia

# HOME OCCUPATION APPLICATION

## I. APPLICANT

Applicant Name:		Samuel G. Fisher				
Name of Business:		(To Be Determined)				
Mailing Address:	1247 Central Avenue			Phone:	304-216-4993	
	Street	Morgantown	WV	26505	Mobile:	304-376-7025
	City	State	Zip	Email: samgfisher@gmail.com		

## II. PROPERTY

Street Address:		1247 Central Avenue			
Zoning:	R1A	Tax Map No:	24	Parcel No:	45.2

## III. DESCRIPTION

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.

Yes     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.

Yes     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.

Yes     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.

2. Is the applicant the owner of the dwelling at which the home occupation will be conducted?

Yes     No    If not, a copy of the applicant's written notice to the owner of the intention to conduct the business must be attached.

Cu16-11



City of Morgantown  
West Virginia

# HOME OCCUPATION APPLICATION

## IV. NARRATIVE

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

We hope to begin a home-based massage therapy business. Clients will be scheduled at one-and-a-hour intervals for one hour massage therapy appointments. In general no more than four appointments will be scheduled per day as four clients is the maximum number the therapist can accommodate in order to maintain his health. Ample parking is available at the home, and because only one client will be present at a time, the presence of the business should have little to no impact on the surrounding neighborhood.

## 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.

Samuel G. Fisher

9/7/2016

Type/Print Name of Applicant/Agent

Signature of Applicant/Agent

Date

### OFFICE USE ONLY

Received: 01 SEP 16

Complete: \_\_\_\_\_

Class 1

Class 2

By:

Class 1 Approved

Class 1 Disapproved

Date: 01 SEP 16

Comments: Cu16-11 scheduled for BZA hearing on 16/10/16.



# 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: Monday - Friday 10 am - 6 pm

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 =	3	maximum =	4
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?      100%

Please explain:      The home is not in a location that is convenient to public transportation.

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 is one parking space in front of the home is 20 feet long and 8 feet wide. Vehicles parked on this side of the street do not obstruct the flow of traffic. The driveway, which is in the back of the home, is approximately 54 feet long and 16 feet wide and can accommodate two vehicles parked side by side.

**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:**

There is a separate room which will be used for massage therapy appointments.

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

It is not necessary to modify the existing property in any way in order to conduct business.

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

It is not necessary to modify the existing property in any way in order to conduct business.

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

Clients will be scheduled one at a time with no overlap, so no more than one business-related additional vehicle will be present at the home at any time.

## APPLICATION FOR TYPE IV SITE PLAN – CONDITIONAL USE

1247 CENTRAL AVENUE, MORGANTOWN, WV 26505 BUSINESS OPERATION PLAN

This home-based massage therapy business will have little to no physical impact on the surrounding neighborhood. The therapist plans to schedule clients at one-and-a-half hour intervals for one hour massage therapy appointments. This means that, although the home has ample parking available, only one client's vehicle should be present at the therapist's home at any one time. Clients will be instructed to park either in front of the home beside the chain link fence or in the rear of the home on the driveway. The presence of a client's vehicle will be no different than that of a visitor to the home. In general, no more than four appointments will be scheduled per day as four clients is the maximum number that the therapist can accommodate in order to maintain his health. Therefore, the increase of traffic in and out of the neighborhood will be minimal.

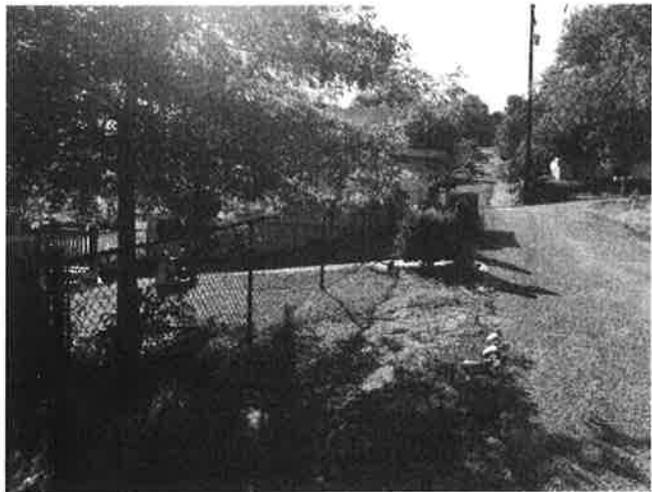
Images of the property and parking spaces are attached.

APPLICATION FOR TYPE IV SITE PLAN – CONDITIONAL USE  
1247 CENTRAL AVENUE, MORGANTOWN, WV 26505



Front view of the home. One client parking space is to the left of the mailbox.

View of the front parking space from the street. The space is 20 feet long and 8 feet wide. Vehicles parked on this side of the street do not obstruct the flow of traffic.



Rear view of the home. The driveway is approximately 54 feet long and 16 feet wide and can accommodate two vehicles parked side by side.