



MORGANTOWN BOARD OF ZONING APPEALS

December 14, 2016
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: CU16-16 / Liz Rossi Works / 157 Johns Street

REQUEST and LOCATION:

Request by Elizabeth Rossi on behalf of Liz Rossi Works, for conditional "Class 2 Home Occupation" use approval at 157 Johns Street.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 43, Parcel 1.2; R-1A, Single-Family Residential

SURROUNDING ZONING:

North: Unincorporated Monongalia County

East, South, and West: R-1A, Single-Family Residential District

BACKGROUND and ANALYSIS:

The petitioner seeks to establish a home-based business in their residence at 157 John Street. Addendum A of this report illustrates the location of the subject site.

The petitioner states in her application she wishes to provide a Pilates studio in her 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 for the proposed home-based business. The following images generally illustrate the Pilates reformer (three pieces) and chair (two pieces) equipment referenced in the application.



- The proposed hours of operation are from 8 a.m. to 4 p.m. Monday through Friday with no weekend client visits.
- Up to three (3) clients will be scheduled for one-hour sessions.

Development Services

Christopher Fletcher, AICP
Director

John Whitmore, AICP
Planner III

389 Spruce Street
Morgantown, WV 26505
304.284.7431



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- A maximum of six (6) clients will be seen a day and a maximum of 14 clients per week.
- No delivery trucks associated with the proposed home occupation are anticipated to visit the site on a regular basis.
- The petitioner notes there is space for five (5) vehicles to park on site. There appears to be approximate area for two (2) tandem off-street parking spaces on the petitioner's gravel driveway. On-street parking does not appear to exist within the immediate area given the narrow improved width of John Street; however, there appears to be area for two (2) to three (3) parking spaces on the unimproved portion of the John Street right-of-way at the end of the petitioner's driveway that the petitioner may be incorrectly considering a part of her "driveway." The use of the subject unimproved portion of the John Street right-of-way does not appear to obstruct traffic on John Street, access to 159 John Street, or access to neighboring properties. It should be noted access and use of public right-of-way is open to the general public and may not be reserved for private access or use.

STAFF RECOMMENDATION:

It is the duty of the Board of Zoning Appeals to 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. If the Board disagrees with the petitioner's "Findings of Fact" and determines the proposed request does not meet the standard criteria for a conditional use, then the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject conditional use 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 8 a.m. and 4 p.m. Monday thru Friday.
2. That, to the greatest extent practicable, there must be at least 30 minutes between the end of one Pilates session and the start of the next session to mitigate traffic congestion and ensure sufficient parking is available for visitors between sessions.
3. That clients visiting the petitioner's Class 2 Home Occupation use must first park their vehicles on the petitioner's property in the existing off-street parking area. Visitors using the unimproved portion of the John Street right-of-way may not obstruct traffic on John Street or access to neighboring properties.

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4. That clients parking vehicles on-site may only do so on the petitioner's improved (gravel) parking area and not do so on any unimproved (grass) portions of the front, side, or rear yards. Additionally, any work to expand on-site parking must obtain proper building permit approval(s).
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 conditional use approval granted herein is specific to the petitioner and may not be transferred without prior approval by the Board of Zoning Appeals.
7. 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.

Enclosures: Application and accompanying exhibits

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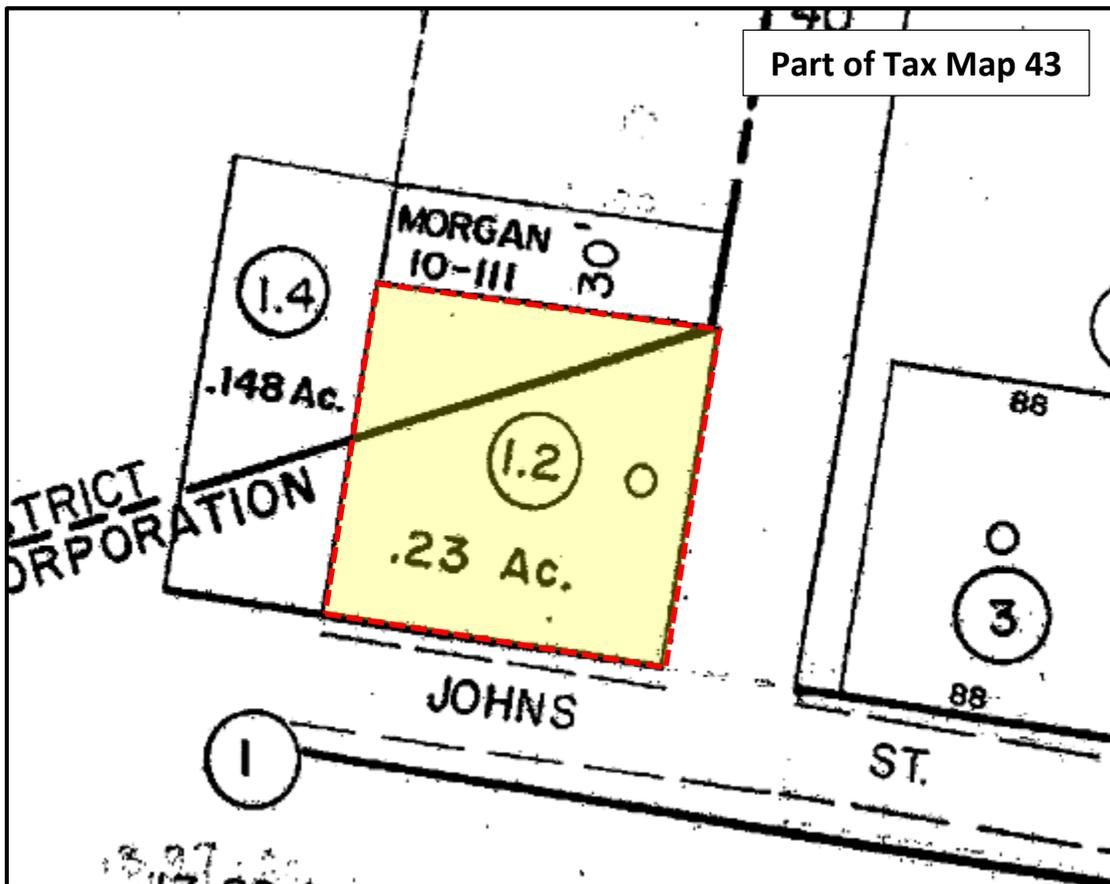
389 Spruce Street
Morgantown, WV 26505
304.284.7431

STAFF REPORT ADDENDUM A
CU16-16 / Rossi / 157 Johns Street



STAFF REPORT ADDENDUM A

CU16-16 / Rossi / 157 Johns Street



STAFF REPORT ADDENDUM B

CU16-16 / Rossi / 157 Johns Street

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:

~~It's providing~~ The home occupation appears to provide a home atmosphere for personal training where all clients can feel welcome and comfortable.

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

~~We will not be doing any structural changes to our house, only working towards making it more attractive.~~ There will not be any structural changes to the house that would alter the single-family dwelling's character.

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

~~There will be no signage. The most cars in my drive will be four (including mine). I mostly will do private lessons and there should be no distractions either way.~~ It appears the nature of the proposed home-based Pilates instruction business should not result in appreciable changes to the existing character of the immediate area or public nuisances.

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

~~There is only parking in my driveway. There is only one house after mine of the road. There are only five houses on our road.~~ The maximum number of session participants appears to coincide with the number of on-site parking and the existing area within the adjoining unimproved portion of the John Street right-of-way. Additionally, the Board's condition requiring at least 30 minutes between Pilates, if properly managed by the petitioner, should mitigate traffic congestion within the immediate area and ensure normal access to neighboring properties. The nature of the proposed home-based Pilates instruction business should not result in any increase in existing visits by delivery vehicles (e.g., UPS, FedEx, USPS, etc.) to the immediate area.

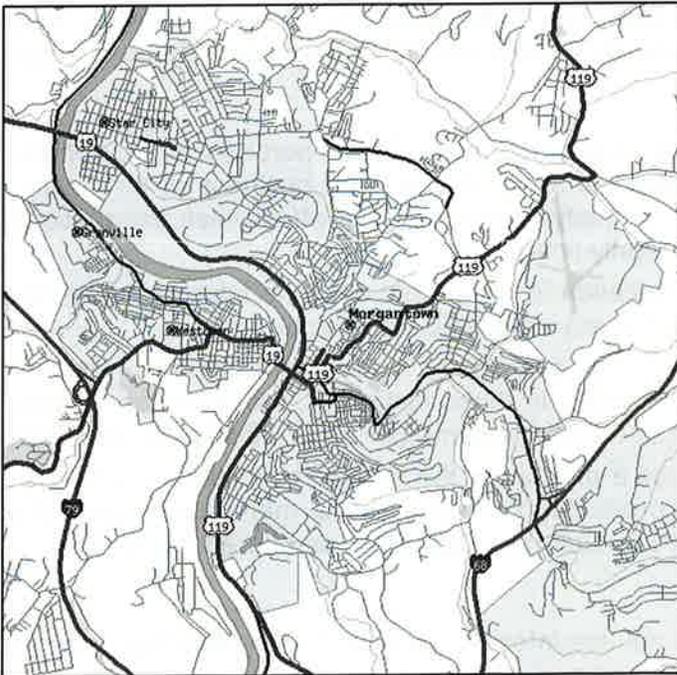
Culle-16



City of Morgantown
West Virginia

HOME OCCUPATION APPLICATION PACKET

BUSINESS PLAN



51-2110

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:
- 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.
 - 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.
 - 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.

C. The following regulations apply to both classes of home occupations:

- a. A home occupation must be compatible with residential uses, 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 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.
- e. Vehicles used in association with the business cannot exceed 6000lbs. gross vehicle weight. Trailers used to transport equipment, goods, and materials used in association with the business cannot exceed sixteen (16) feet in length, measured from the tongue to the farthest rear extension of the trailer.
- f. Except as required by State law, there shall be neither exterior indication of home occupation, no exterior signs, nor any other on-site advertising visible from the exterior.
- g. A home occupation shall be registered as a business with the City of Morgantown Finance Office and shall pay applicable business and occupation taxes.
- 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. 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.
- j. No sexually oriented business, as defined by the Zoning Ordinance, may be permitted as a home occupation.
- k. 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 two (2) 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 home occupation, Class 2, 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 on the premises on a regular basis or in substantial volume, such that customer visitation exceeds three (3) customers per day.
- 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.



City of Morgantown
West Virginia

CK 1054
75.00

HOME OCCUPATION APPLICATION

PAID
NOV 14 2016
PAID
BY:

I. APPLICANT

Applicant Name:	Elizabeth Rossi		
Name of Business:	Liz Rossi Works		
Mailing Address:	Street	157 Johns Street	Phone: 304.216.3445
	City	Morgantown WV 26505	Mobile: " "
	State	Zip	Email: musictheatrecoach@yahoo.com

II. PROPERTY

Street Address:	157 Johns Street		
Zoning:	Tax Map No: 43	Parcel No: 1.2	

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.



HOME OCCUPATION APPLICATION

IV. NARRATIVE

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

A Pilates studio with three reformers and two chairs (Both Pilates equipment.) I will have up to three people at my house at a time teaching 1 hour sessions.

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.

Elizabeth Rossi

Elizabeth Rossi

Type/Print Name of Applicant/Agent

Signature of Applicant/Agent

Date

OFFICE USE ONLY

Received: 14 Nov 16 Complete: _____ Class 1 Class 2 By: [Signature]

Class 1 Approved Class 1 Disapproved Date: 14 Nov 16

Comments: Bea conditional use hearing scheduled for 14 Dec 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: *Primarily mon → Friday 8am → 4pm*

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 =	<i>6</i>	maximum =	<i>14</i>
Number per day:	average =	<i>3</i>	maximum =	<i>6</i>
Number at one time:	average =	<i>3</i>	maximum =	<i>3</i>

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? *90%*

Please explain: *I expect that 10% will walk from rail/trail.*

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.

*no onstreet
5 in my driveway
no public parking*

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:

It's providing a home atmosphere for personal training where all clients can feel welcome and comfortable.

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

We will not be doing any structural changes to our house, only working towards making it more attractive.

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

There will be no signage. The most cars in my drive will be four (including mine.) I mostly will do private lessons and there should be no detractions either way.

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

There is only parking in my driveway. There is only one house after mine on the road. There are only five houses on our road.