



# MORGANTOWN BOARD OF ZONING APPEALS

September 19, 2012  
6:30 PM  
City Council Chambers

## **Board Members:**

Bernie Bossio, Chair  
Leanne Cardoso, Vice-Chair  
George Papandreas  
Jim Shaffer  
Tom Shamberger

## **STAFF REPORT**

**CASE NO:** V12-07 thru V12-10, V12-29, and CU12-09  
Friend Rentals / 146 Third Street

### **REQUEST and LOCATION:**

Request by Lisa Mardis of Project Management Services, on behalf of Friend Rentals, LLC, for five (5) variance and one (1) conditional use approvals relating to a proposed multi-family dwelling structure at 146 Third Street.

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

Tax Map 20, Parcels 47 and 48; R-3, Multi-Family Residential District

### **SURROUNDING ZONING:**

R-3, Multi-Family Residential District

### **BACKGROUND and ANALYSIS:**

The petitioner seeks to raze two functionally obsolete and dilapidated structures and construct a multi-family dwelling structure at 146 Third Street. Addendum A illustrates the location of the subject.

The combined area of the two parcels is approximately 2,700 square feet, which is 1,300 square feet less than the minimum parcel size within the R-3 District. Because the parcels are considered pre-existing, non-conforming parcels, the Planning Commission approved MNS12-14 on September 13, 2012 to combine Parcels 47 and 48 of Tax Map 20 so that the property can be assembled and redeveloped.

The follow summary details the proposed development program.

- Four story building with five habitable levels including the basement.
- Five three-bedroom units.
- Parking is proposed at an existing off-site parking area across Third Street on the McLane Manor site, which is less than 100 feet from the subject site.

The following narrative addresses each variance and conditional use petition separately.

**V11-07** – Variance relief from Article 1339.04(B) as it relates to a side setback encroachment on a corner lot.

The minimum side setback on a corner lot in the R-3 District is 7.5 feet. The petitioner seeks a variance of 2.5 feet so that the proposed building can be constructed with a side setback of 5 feet. The proposed side setback does not appear to adversely impact the adjoining public right-of-way.

## **Development Services**

Christopher Fletcher, AICP  
Director

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**V12-29** – Variance relief from Article 1339.04(A)(1) as it relates to a front setback encroachment.

The minimum front setback in the R-3 District is 10 feet. The proposed building is located at the ten-foot front setback line. However, the petitioner wishes to construct a roof over the front porch to better integrate the design of the proposed building with predominant architectural design elements of the neighborhood's built environment. The proposed roof will encroach into the front setback by approximately 5 feet. The Board granted similar variance relief at 701 – 715 McLane Avenue under V12-27.

**CU12-09** – Conditional use approval of off-site parking under Article 1365.07.

The minimum parking requirement for multi-family dwellings within the Sunnyside Overlay District is 0.5 spaces per occupant as provided in Article 1361.04(Q)(3). The minimum parking requirement for the proposed development is therefore 8 spaces.

Article 1361.04(Q)(2) provides that on-street parking spaces immediately adjacent to a land use can be counted toward fulfilling parking requirements for the use. It is the opinion of the Planning Division that there is one on-street parking space meeting immediately adjacent to the petitioner's site. As such, the petitioner must provide seven (7) off-street parking spaces.

Because of the significantly limited space available to provide on-site parking on the 2,700 square foot site, the petitioner seeks to provide the seven (7) spaces on property he owns immediately across the street from the development site.

Aside from the thirteen (13) on-street parking spaces along McLane Avenue identified by the petitioner, there are approximately 31 parking spaces on the McLane Manor site. The minimum parking requirement for the McLane Manor development and the 146 Third Street development is 23 spaces. As such, there appears to be a sufficient number of parking spaces on the McLane Manor site to the minimum parking needs for both McLane Manor and the proposed development at 146 Third Street.

**V12-08** – Variance relief from Article 1361.03(Q)(1) as it relates to a non-residential space on the ground floor.

The predominant configuration of parcels along Third Street are narrow frontages and corner parcels fronting intersecting streets (i.e. Grant Avenue), which leaves relatively constricted and disconnected opportunities of commercial storefront development.

Very few of the parcels along Third Street appear to have been "assembled" for the redevelopment of more intense mixed-uses. Even if parcels are "assembled" along Third Street, the steep grade would result in the stepping of commercial storefronts. The steep grade of sidewalks along Third Street presents accessibility challenges to commercial uses, particularly for persons with disabilities.

With the exception of corner parcels fronting Beechurst Avenue, all uses along Third Street are residential. The requirement of providing commercial space along Third Street therefore attempts to create retail activity rather than preserve or expand existing

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commercial uses. Given the physical constraints noted above, market absorption of commercial space along Third Street appears challenging and uncertain.

The Board has granted similar variance relief along Third Street for the reasons noted above.

**V12-09** – Variance relief from Article 1361.03(P) as it relates to building materials at 146 Third Street.

The petitioner seeks to utilize manufactured or cultured masonry materials and cementitious siding (i.e. Hardy Plank siding) instead of natural materials as required in the Sunnyside Overlay Districts. Because the proposed cladding does not meet the natural and composite material standards, variance relief is required. The Board has granted similar variance relief throughout the Sunnyside neighborhood recognizing the quality, durability, and reduced maintenance cost associated with these building materials.

**V12-10** – Variance relief from Articles 1361.03(E), 1361.03(O)(1), and 1361.03(O)(6) as it relates to fenestration.

The front façade fenestration requirements along primary streets within the Sunnyside Overlay District are intended to accommodate commercial uses on the ground floor. Should variance relief be granted so that ground floor commercial/retail space is not required for the subject development, it is reasonable to conclude that transparency design should be scaled to better reflect residential uses.

Additionally, the mandated fenestration ratios appear to be more applicable for an urban central business district and not within a streetscape dominated by residential uses. It is the opinion of the Planning Division that the design method of achieving desired shadowing effect for windows should be flexible rather than narrowly prescriptive.

The Board has granted similar variance relief within the Sunnyside neighborhood where it agreed that commercial uses were not anticipated to positively affect neighborhood-scaled commercial activity given specific challenges of the respective sites; in this case, the steep terrain of Third Street.

### **STAFF RECOMMENDATION:**

Staff recommends that the Board, without objection from members of the Board, the petitioner, or the public, combine the public hearings for all of the five (5) variance and one (1) conditional use petitions presented herein. However, each respective variance and conditional use petition must be considered and acted upon by the Board separately.

The Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a variance or conditional use respectively by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant.

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With the exception of Staff recommended revisions to the petitioner's findings of fact for CU12-09 noted in Addendum B attached hereto, Staff recommends that each of the findings of fact submitted by the petitioner be accepted without revision.

Staff recommends approval of each of the variance and conditional use petitions with the following corresponding conditions.

**V11-07** – Variance relief from Article 1339.04(B) as it relates to a side setback encroachment on a corner lot.

NO RECOMMENDED CONDITIONS.

**V12-29** – Variance relief from Article 1339.04(A)(1) as it relates to a front setback encroachment.

1. That the columns supporting the front porch roof and railings may not include exposed wood or treated lumber.

**CU12-09** – Conditional use approval of off-site parking under Article 1365.07.

1. That an accessible route to the off-site parking area meet all applicable federal Fair Housing and Americans with Disabilities Act standards as determined by the City's Chief Building Code Official.
2. That the off-site parking facility be encumbered by an easement or similar agreement, to the satisfaction of the Planning Division, which is duly executed and acknowledged and specifies that the land upon which the off-site parking facility is located (Tax Map 19 Parcel 103) is encumbered by the parking use of the subject rental unit for no less than seven (7) spaces. That this instrument must bind the use for *no less than three-years*. That said instrument must be filed with the Planning Division and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia. That the Certificate of Occupancy for the subject dwelling space shall be contingent upon the continuance of said agreement and encumbrance and should said agreement and encumbrance be annulled for any reason at any time, said Certificate of Occupancy shall be revoked upon written notification by the Planning Division. That a valid and current copy of said instrument must be made available at the request of Planning Division.
3. That the proposed seven (7) spaces shall have signs noting the rental unit for which the spaces are reserved. That such signage shall be 12 inches wide by 18 inches tall and shall be mounted between three feet and five feet above the finish surface of the parking stalls. That the text on the sign state "This space is reserved for residents located at [address assigned by City Engineer] only, per City Code 1365.07(D)."
4. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.

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**V12-08** – Variance relief from Article 1361.03(Q)(1) as it relates to a non-residential space on the ground floor.

NO RECOMMENDED CONDITIONS.

**V12-09** – Variance relief from Article 1361.03(P) as it relates to building materials at 146 Third Street.

1. That exterior stairs, steps, landings, porch decking, railings, and support members may not be comprised of exposed wood or treated lumber.
2. That the above foundation exterior walls must be clad in cementitious siding comprised of a simulated wood grain profile.
3. That, to provide for a more durable cladding surface where the proposed garbage storage coral is located and the rear entrance, the manufactured or cultured masonry cladding used on the ground level or first story along the adjoining alley must also be used for the length of the rear (east) façade's ground level or first story.
4. That the exposed foundation wall of the south elevation by clad in the same manufactured or cultured masonry material used on the remaining building.
5. Six sets (two on each story) of shutters framed by lintels, trim, and sills that simulate windows must be provided for the second, third, and fourth stories of the rear (east) façade.

**V12-10** – Variance relief from Articles 1361.03(E), 1361.03(O)(1), and 1361.03(O)(6) as it relates to fenestration.

1. All windows on the front façade facing Third Street must include lintels, trim, and sills to provide a frame and desired shadowing effect as illustrated on the submitted architectural renderings.

Attachments: Application and accompanying exhibits

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**STAFF REPORT ADDENDUM A**  
**V12-07 thru V12-10, V12-29, and CU12-09**  
**Friend Rentals / 146 Third Street**



## STAFF REPORT ADDENDUM B

### V12-07 thru V12-10, V12-29, and CU12-09

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Staff recommended revisions to petitioner's Findings of Fact for CU12-09 (deleted matter struck through; new matter underlined)

**Finding of Fact #1** – Congestion in the streets is not increased, in that:

The location of the proposed, 300 McLane Avenue, has an off-site parking area which is located directly across Third Street from the proposed structure, approximately 44 feet. It also owned by the applicant and serves the multi-family structure, McLane Manor, on the same realty. This area is within the required 300 feet of the principal use and is within a district that permits commercial parking lots as a conditional use. According the Planning and Zoning Code, McLane Manor has approximately ~~sixteen (16)~~ eight (8) excess parking spaces. The surface parking area closest to Third Street will serve the proposed development, as will ~~two~~ one on-street parking spaces on Third Street. The existing structure at 146 Third Street does not currently have on-premise parking, only the ~~two~~ one on-street spaces on Third Street. The site of the proposed development is only 2,700 square feet in area, which significantly restricts the development of on-site parking.

**Finding of Fact #2** – Safety from fire, panic, and other danger is not jeopardized, in that:

~~There is currently excess parking on the McLane Manor realty, 300 McLane Avenue that can be used by the proposed development. The current residents use this and the two immediate on-street parking spaces. Utilizing the existing overflow parking area will not jeopardize safety from fire, panic, or other danger because it already exists. The area associated with the off-premise parking will be improved to the Principal Planner's satisfaction. The proposed off-site parking location is an existing surface parking lot facility.~~

**Finding of Fact #3** – Provision of adequate light and air is not disturbed, in that:

~~The existing parking area associated with McLane manor currently provides parking for the multi-family structure and some of Mr. Friend's other tenants. The area associated with the Third Street proposed development will be improved to the planner's specifications. No new structure is proposed to provide the off-site parking facility that would affect existing light distribution or air flow patterns.~~

**Finding of Fact #4** – Overcrowding of land does not result, in that:

~~The existing parking area accommodates more than is required for the nine-unit apartment building at McLane Manor. The aforementioned rental only requires, by today's standards, fifteen (15) spaces. Other of Mr. Friend's tenant may utilize the lot but not as required for new devilmment. The new development requires eight (8) spaces, two of which will be on-street parking immediately adjacent to the property on Third Street, and the proposed six (6) spaces at McLane Manor. The parking area at McLane Manor will still have excess spaces, available for Mr. Friends other tenants. The Planning and Zoning Code provides the opportunity of dedicating off-premise parking to mitigate overcrowding development patterns.~~

**Finding of Fact #5** – Undue congestion of population is not created, in that:

~~The off-site parking area is in existence and contains more parking than what is required for the nine-unit McLane Manor apartment building. Improvements will be made to the satisfaction of the Planner. No structures associated with 146 Third Street will be built on the proposed off-premise parking area. This area is currently used by other tenants of Friend Rentals, LLC and will be signed for the sole purpose of the tenants of 146 Third Street, as according to the Planning and Zoning Code. The Planning and Zoning Code provides the opportunity of dedicating off-premise parking to mitigate population congestion. Additionally, increase residential density is desired in the Sunnyside-Up Neighborhood Comprehensive Revitalization Plan.~~

**Finding of Fact #6** – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

~~The conditional use request will neither increase nor decrease demand for said public infrastructure as it appears to serve existing and future demand. ~~is existence and already serves the structure at 146 Third Street. The existing structure at 146 Third Street currently has non on-premise parking. The area associated with the conditional use for off-premise parking will be improved to the satisfaction of the Planner.~~~~

**Finding of Fact #7** – Value of buildings will be conserved, in that:

~~The parking area associated with the conditional use for 146 Third Street will be upgraded and will contain the required signage associated with other off-site parking approvals. The small parcels within the Sunnyside area make it difficult to redevelop and maintain the highest and best use for the property. The current rental structure at 300 McLane Avenue will still have the same number of parking spaces. No changes to the structure are slated. The off-site parking appears necessary to continue private sector efforts of razing functionally obsolete structures on very small parcels thereby adding value and incentive for continued redevelopment and property maintenance.~~

**Finding of Fact #8** – The most appropriate use of land is encouraged, in that:

~~The land uses at 300 McLane Avenue and 146 Third Street will not change. 300 McLane Avenue will remain a nine-unit multi-family structure with excess parking. Parking associated with conditional use approval for 146 Third Street will be improved to the satisfaction of the Planner. The location of the proposed off-site parking area utilizes an existing parking lot that exceeds the minimum parking requirement associated with the McLane Manor structure.~~