



# MORGANTOWN BOARD OF ZONING APPEALS

August 15, 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:** V12-27 / C & E Development, Inc. / 701-715 McLane Ave

### **REQUEST and LOCATION:**

Request by C&E Development for variance relief from Article 1337.04 as it relates to encroaching into the front setbacks for proposed buildings at 701-715 McLane Avenue.

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

Tax Map 15, Parcels 165, 166, and 167; R-2, Single- and Two-Family Residential District

### **SURROUNDING ZONING:**

North, East, West: R-2, Single and Two-Family Residential District  
South: B-2, Service Business District

### **BACKGROUND and ANALYSIS:**

The petitioner seeks to develop two multi-family dwelling structures on the subject property and has obtained site plan approval by the Planning Commission on June 14, 2012 (S12-03-III) and conditional use approval by the BZA on June 20, 2012 (CU12-05). Addendum A of this report illustrates the location of the subject site.

The Planning Commission included the following condition in its above referenced site plan approval:

“That the petitioner incorporates roof elements above the proposed front porches to enhance architectural design integration efforts with the surrounding built environment unless variance relief is denied by the Board of Zoning Appeals.”

Article 1337.05 “Encroachments into Setbacks” of the Planning and Zoning Code provides the following:

(A) Architectural features may project into a required setback as provided below:

- (3) Open and covered, but unenclosed front porches attached to single-family dwellings or two-family dwellings may extend into the required front setback a distance equal to fifty (50) percent of the setback depth. Such porches may not subsequently be enclosed unless the normal setback requirements for the district are met.

It appears that the preferred architectural design within the R-2 District is the incorporation of front porch roof elements as evidenced by the ordinance’s encroachment bonus afforded to single- and two-family structures. However, multi-family dwellings are not included in said front setback encroachment bonus. As such, variance relief is necessary.

## **Development Services**

Christopher Fletcher, AICP  
Director

## **Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



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The petitioner's design drawings illustrate a five-foot encroachment for each of the three (3) proposed front porch roofs. The north building will include one front porch roof encroachment and the south building will include two.

The petitioner correctly submitted a conditional use application for each of the two buildings. For practicality purposes, Staff combined the petitions into one conditional use case. The Board may consider these conditional use petitions jointly or separately.

### **STAFF RECOMMENDATION:**

It is the opinion of the Planning Division that the petitioner's design professionals have given careful consideration to architectural design, scale, and scope in an effort to integrate the proposed structures into the built environment. The Planning Commission's related site plan approval condition and the petitioner's requested variance appear to advance desired project integration into the architectural vocabulary and rhythm of the neighborhood.

The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance 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 the five-foot front setback encroachment for each of the three (3) proposed front porch roofs as requested.

Enclosures: Application and accompanying exhibits

### **Development Services**

Christopher Fletcher, AICP  
Director

### **Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

**STAFF REPORT ADDENDUM A**  
**V12-27 / C&E Development / 701-715 McLane Ave**



## STAFF REPORT ADDENDUM B

### V12-27 / C&E Development / 701-715 McLane

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

**Finding of Fact #1** – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

According to the approval letter, as a condition by the Planning Commission, the petitioner is required to incorporate roof elements above the proposed front porches to enhance architectural design integration efforts with the surrounding built environment. The original design incorporated roof elements but were removed ~~upon the recommendation of the previous planner to eliminate the need for variances.~~ C & E Development would like once again to incorporate the roof elements into their plans in order to be more fitting with the built environment.

**Finding of Fact #2** – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

As an approved conditional use multi-family structure, it is important to maintain some of the same building elements, such as covered porches, that are prominent in the surrounding area. As the area transitions to a higher density neighborhood, it is important to include design elements and scale. Future developments should be encouraged to continue with the neighborhood feel that is complimentary with the strategic goals of the SunnysideUp ~~program~~ planning and redevelopment objectives. With the inclusion of said porches roofs, the applicant's development could be a prototype for future multi-family structures in the area. It appears that the preferred architectural design within the R-2 District is the incorporation of front porch roof elements as evidenced by the ordinance's encroachment bonus afforded to single- and two-family structures. However, multi-family dwellings are not included in said front setback encroachment bonus. As such, variance relief is necessary.

**Finding of Fact #3** – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

As the granting of this variance would allow the applicant's development to better fit with the built environment, the public welfare and property or improvements in the vicinity ~~will~~ should not be harmed and should be enhanced by advancing desired project integration into the architectural vocabulary and rhythm of the neighborhood.

**Finding of Fact #4** – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The addition of front porches roofs to the development would allow the structures to be more complimentary to the current built environment. As the development replaces ~~blighted, aging, and under-utilized~~ functionally obsolete structures, granting this variance ~~would only~~ should continue to add to the market values of adjacent properties. ~~This variance will have no impact to the parking of the development, and thus will not increase traffic congestion on public streets. The nature of the variance should not have the effect of contributing to nor mitigating existing traffic patterns within the immediate area.~~



City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

NORTH BLDG

OFFICE USE	
CASE NO.	V12-27
RECEIVED:	7/6/12
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

<b>I. APPLICANT</b>		Name: <u>Cand E Development</u>	
Mailing Address:	Street	Phone:	<u>304-276-8125</u>
	City	State	Zip
	<u>PO Box 4248</u>		
	<u>Star City</u>	<u>WV</u>	<u>26504</u>
		Mobile:	
		Email:	<u>charles.guseman@gmail.com</u>
<b>II. PROPERTY</b>		Street Address: <u>701-715 McLane Avenue</u>	
Owner:	<u>Cand E Development</u>		Zoning: <u>R-2</u>
Mailing Address:	Street	Tax Map No:	<u>15</u>
	City	State	Zip
	<u>701-715 McLane Avenue</u>	Parcel No:	<u>1165, 1166, 1167</u>
	<u>Morgantown</u>	<u>WV</u>	<u>26505</u>
		Phone:	

**III. NARRATIVE** Please describe the nature and extent of your variance request(s).

Variance relief of five (5) feet from the Planning and Zoning Code, Article 1337.04 (A.1) as it relates to encroachment into the front setbacks of buildings in the R-2 District. The addition of covered porches, to conform to the built environment, requires such variance relief.

**V. 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. I agree to conform to all applicable laws of this jurisdiction. The granting of a variance does not presume to give authority to violate or cancel the provisions of any other federal, state, or local law regulating construction or the performance of construction. 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. I hereby authorize the Planning Department to erect a notification sign on the subject property approximately 15 days prior to the BZA hearing. I further agree to maintain said signage and hereby accept responsibility in case of destruction or removal.

Lisa Marquis      Lisa Marquis      Hristen

Type/Print Name of Applicant/Agent      Signature of Applicant/Agent      Date

RS2 7/05/2012 201211567      15:44:43      SITE PLAN

You or a representative **MUST** be present at the scheduled hearing to present the request and answer questions. Failure to appear at the hearing will result in your request being tabled.

277



APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V12-27
RECEIVED:	7/6/12
COMPLETE:	

VI. SUPPLEMENTAL INFORMATION

Depending on the type of variance request and the scale and scope of the development proposal, supplemental information may be needed to assist the Board of Zoning Appeals in rendering a variance decision. Staff will check the appropriate boxes below that must be addressed.

Land Use Characteristics (complete only those that apply)

- Residential       Single-Family Dwelling       Townhouse Dwelling
- Two-Family Dwelling       Multi-Family Dwelling
- Non-Residential or Mixed (please explain)

Structure Characteristics (complete only those that apply)

Total number of buildings: 1      Gross floor area of each building: 2104 sq ft  
 Estimated number of employees: n/a      No. of dwelling units: 4      No. of bedrooms: 6

Additional structure-related details:  
The north building will have (1) one porch

Additional Information (as required by Staff):

Site Plan A scaled site plan may be required to assist the Board in rendering a variance decision. The following features must be represented, as required by Staff.

- Location, shape, exterior dimensions, and number of stories of each building on the site.
- Standard yard setbacks for the applicable zoning district
- Location, grade, and dimensions of paved surfaces, and all abutting streets
- Existing and proposed contours, at an interval of at least two (2) feet
- Complete traffic circulation plan showing dimensions, entrance/exit drives, planters, and similar improvements
- Location of landscaped areas (to be detailed on landscape plan), fences, walls, and other screen required

For simple variance requests (as determined by Staff), please use the graph area on the following page to illustrate applicable features listed above.



City of Morgantown, West Virginia

**APPLICATION FOR  
ZONING VARIANCE**

*NORTH BLOG*

OFFICE USE

CASE NO. V12-27  
RECEIVED: 07/06/12  
COMPLETE: \_\_\_\_\_

Suggested Scale: 1 square = 5'

*All attachments  
conf*



City of Morgantown, West Virginia

# APPLICATION FOR ZONING VARIANCE

NORTH BLDG

OFFICE USE

CASE NO. V12-07

RECEIVED: 07/06/12

COMPLETE:

## VII. FINDINGS OF FACT

The Board of Zoning Appeals may grant a variance request only if each of the following "Findings of Fact" criteria is determined to be in the positive. Applicants must give their own responses to the following criteria statements.

1. There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

2. The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

*see attachment*  
*cmf*

3. The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

4. The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

V12-27  
7/6/12  
NORTH BLDG

**FINDINGS OF FACT**  
**C&E Development, LLC 701-715 McLane Avenue**

**Variance relief of five (5) feet from the Planning and Zoning Code, Article 1337.04.A.1 as it relates to encroachment into the primary setback of buildings in the R-2 Districts.**

**1. There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:**

According to the approval letter, as a condition by the Planning Commission, the petitioner is required to incorporate roof elements above the proposed front porches to enhance architectural design integration efforts with the surrounding built environment. The original design incorporated roof elements but were removed upon the recommendation of the previous planner. C & E Development would like once again to incorporate the roof elements into their plans in order to be more fitting with the built environment.

**2. The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:.**

As an approved conditional use multi-family structure, it is important to maintain some of the same building elements, such as covered porches, that are prominent in the surrounding area. As the area transitions to a higher density neighborhood, it is important to include design elements and scale. Future developments should be encouraged to continue with the neighborhood feel that is complimentary with the strategic goals of the SunnysideUp program. With the inclusion of said porches, the applicant's development could be a prototype for future multi-family structures in the area.

**3. The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:**

As the granting of this variance would allow the applicant's development to better fit with the built environment, the public welfare and property or improvements in the vicinity will not be harmed.

**4. The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:**

The addition of front porches to the development would allow structure to be more complimentary to the current built environment. As the development replaces blighted, aging, and under-utilized structures, granting this variance would only continue to add to the market values of adjacent properties. This variance will have no impact to the parking of the development, and thus will not increase traffic congestion on public streets.



Type/Print Name of Applicant/Agent



Signature of Applicant/Agent



City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

SOUTH BLDG

OFFICE USE	
CASE NO.	V12-27
RECEIVED:	7/16/12
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

<b>I. APPLICANT</b>		Name:	Carol E Development			
Mailing Address:	Street	PO Box 4248			Phone:	304-276-8125
	City	State	Zip	Mobile:		
		Star City	WV	26504	Email:	charles.gusewan@gmail.com
<b>II. PROPERTY</b>		Street Address:	701-705 Melane Ave			
Owner:	Carol E Development			Zoning:	R-2	
Mailing Address:	Street	701-705 Melane Ave			Tax Map No:	15
	City	State	Zip	Parcel No:	1165, 1166, 1167	
		Morgantown	WV	26505	Phone:	
<b>III. NARRATIVE</b>		Please describe the nature and extent of your variance request(s).				
<p>Variance relief of five (5) feet from the Planning and Zoning Code, Article 1337.04 (A.1) as it relates to encroachment into the front setbacks of buildings in the R-2 District. The addition of covered porches, to conform to the built environment, requires such variance relief.</p>						
<b>V. ATTEST</b>		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. I agree to conform to all applicable laws of this jurisdiction. The granting of a variance does not presume to give authority to violate or cancel the provisions of any other federal, state, or local law regulating construction or the performance of construction. 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. I hereby authorize the Planning Department to erect a notification sign on the subject property approximately 15 days prior to the BZA hearing. I further agree to maintain said signage and hereby accept responsibility in case of destruction or removal.				
Type/Print Name of Applicant/Agent		Signature of Applicant/Agent		PAID	Date	
Lisa Mardis		Lisa Mardis		75.00	7/16/2012 15:44:25 SITE PLAN 7/16/12	

You or a representative **MUST** be present at the scheduled hearing to present the request and answer questions. Failure to appear at the hearing will result in your request being tabled.



APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V12-27
RECEIVED:	07/06/12
COMPLETE:	

VI. SUPPLEMENTAL INFORMATION

Depending on the type of variance request and the scale and scope of the development proposal, supplemental information may be needed to assist the Board of Zoning Appeals in rendering a variance decision. Staff will check the appropriate boxes below that must be addressed.

Land Use Characteristics (complete only those that apply)

- Residential
  - Single-Family Dwelling
  - Townhouse Dwelling
  - Two-Family Dwelling
  - Multi-Family Dwelling
- Non-Residential or Mixed (please explain)

Structure Characteristics (complete only those that apply)

Total number of buildings: 1 Gross floor area of each building: 3621 sqft  
 Estimated number of employees: N/A No. of dwelling units: 8 No. of bedrooms: 12

Additional structure-related details:  
The south building will have (2) two porches

Additional Information (as required by Staff):

Site Plan A scaled site plan may be required to assist the Board in rendering a variance decision. The following features must be represented, as required by Staff.

- Location, shape, exterior dimensions, and number of stories of each building on the site.
- Standard yard setbacks for the applicable zoning district
- Location, grade, and dimensions of paved surfaces, and all abutting streets
- Existing and proposed contours, at an interval of at least two (2) feet
- Complete traffic circulation plan showing dimensions, entrance/exit drives, planters, and similar improvements
- Location of landscaped areas (to be detailed on landscape plan), fences, walls, and other screen required

For simple variance requests (as determined by Staff), please use the graph area on the following page to illustrate applicable features listed above.



City of Morgantown, West Virginia

**APPLICATION FOR  
ZONING VARIANCE**

*SOUTH BLDG*

OFFICE USE

CASE NO. V12-27  
RECEIVED: 07/06/12  
COMPLETE: \_\_\_\_\_

Suggested Scale: 1 square = 5'

*All Attachments*



City of Morgantown, West Virginia

## APPLICATION FOR ZONING VARIANCE

SOUTH BLDG

OFFICE USE

CASE NO. VI2-27

RECEIVED: 07/08/12

COMPLETE: \_\_\_\_\_

### VII. FINDINGS OF FACT

The Board of Zoning Appeals may grant a variance request only if each of the following "Findings of Fact" criteria is determined to be in the positive. Applicants must give their own responses to the following criteria statements.

1. There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

2. The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

*see attachment*

3. The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

4. The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

V12-27  
07/06/02  
SOUTH BLDG

**FINDINGS OF FACT**  
**C&E Development, LLC 701-715 McLane Avenue**

**Variance relief of five (5) feet from the Planning and Zoning Code, Article 1337.04.A.1 as it relates to encroachment into the primary setback of buildings in the R-2 Districts.**

**1. There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:**

According to the approval letter, as a condition by the Planning Commission, the petitioner is required to incorporate roof elements above the proposed front porches to enhance architectural design integration efforts with the surrounding built environment. The original design incorporated roof elements but were removed upon the recommendation of the previous planner. C & E Development would like once again to incorporate the roof elements into their plans in order to be more fitting with the built environment.

**2. The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:**

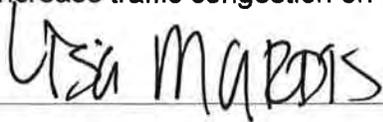
As an approved conditional use multi-family structure, it is important to maintain some of the same building elements, such as covered porches, that are prominent in the surrounding area. As the area transitions to a higher density neighborhood, it is important to include design elements and scale. Future developments should be encouraged to continue with the neighborhood feel that is complimentary with the strategic goals of the SunnysideUp program. With the inclusion of said porches, the applicant's development could be a prototype for future multi-family structures in the area.

**3. The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:**

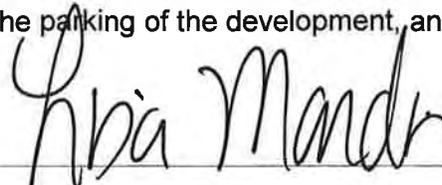
As the granting of this variance would allow the applicant's development to better fit with the built environment, the public welfare and property or improvements in the vicinity will not be harmed.

**4. The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:**

The addition of front porches to the development would allow structure to be more complimentary to the current built environment. As the development replaces blighted, aging, and under-utilized structures, granting this variance would only continue to add to the market values of adjacent properties. This variance will have no impact to the parking of the development, and thus will not increase traffic congestion on public streets.



Type/Print Name of Applicant/Agent



Signature of Applicant/Agent

**C & E Development, Inc / 701-715 McLane Avenue / Variance Pictures**  
The following pictures show a range of front porches in the vicinity



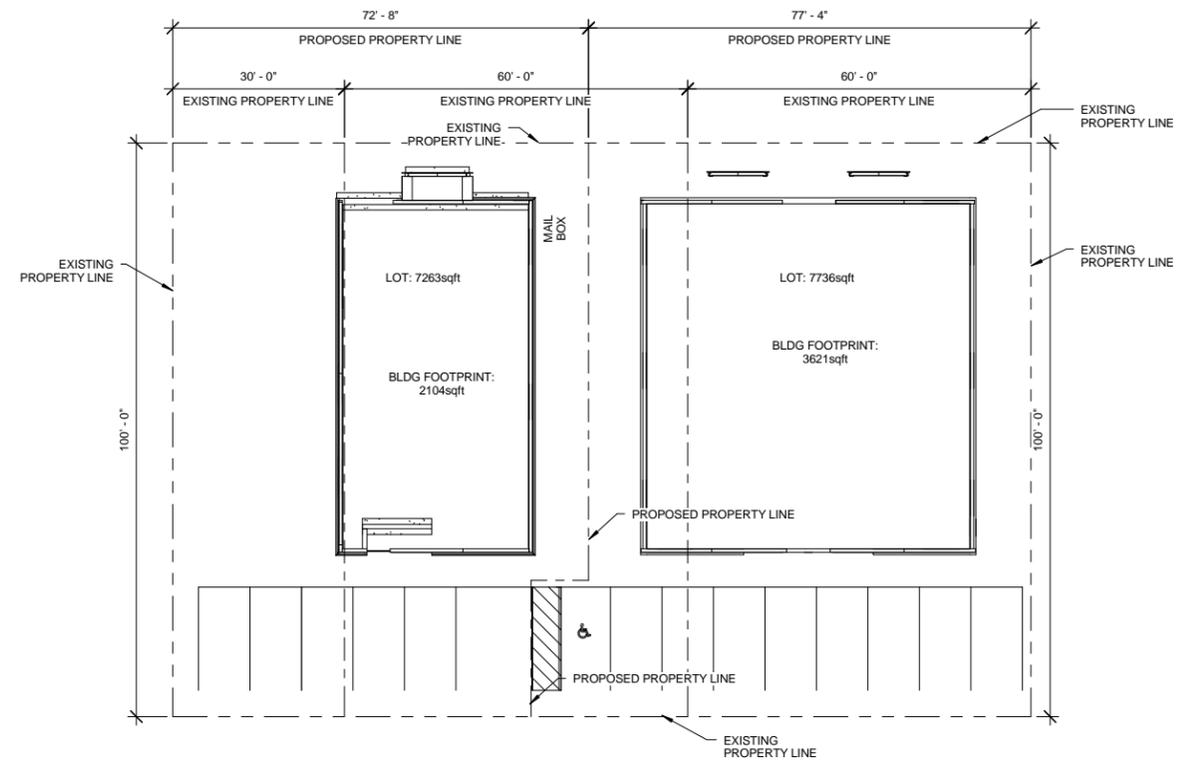
**C & E Development, Inc / 701-715 McLane Avenue / Variance Pictures**

The following pictures show a range of front porches in the vicinity

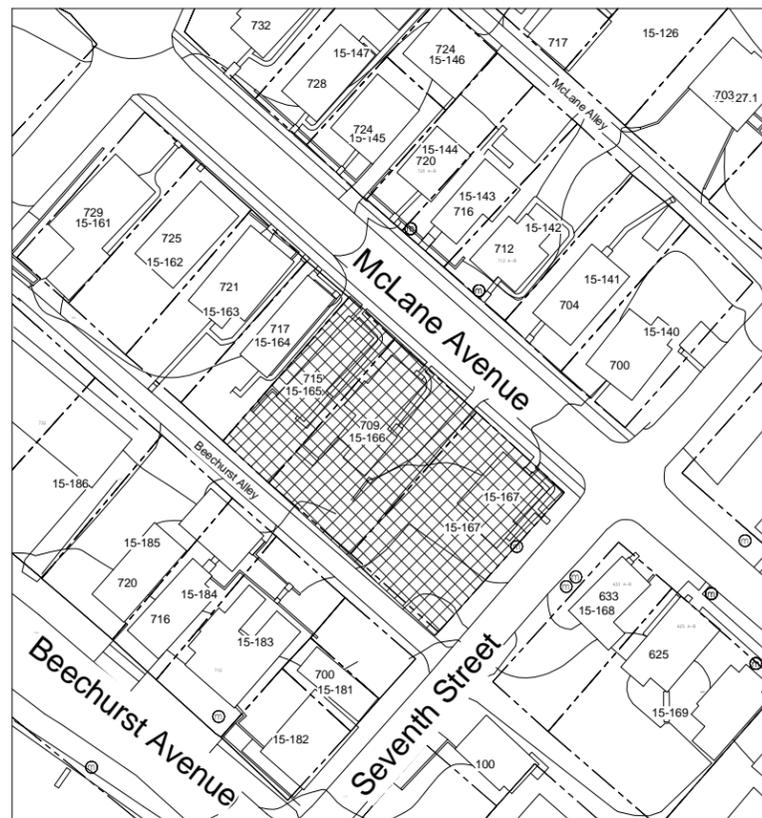


**C & E Development, Inc / 701-715 McLane Avenue / Variance Pictures**  
The following pictures show a range of front porches in the vicinity

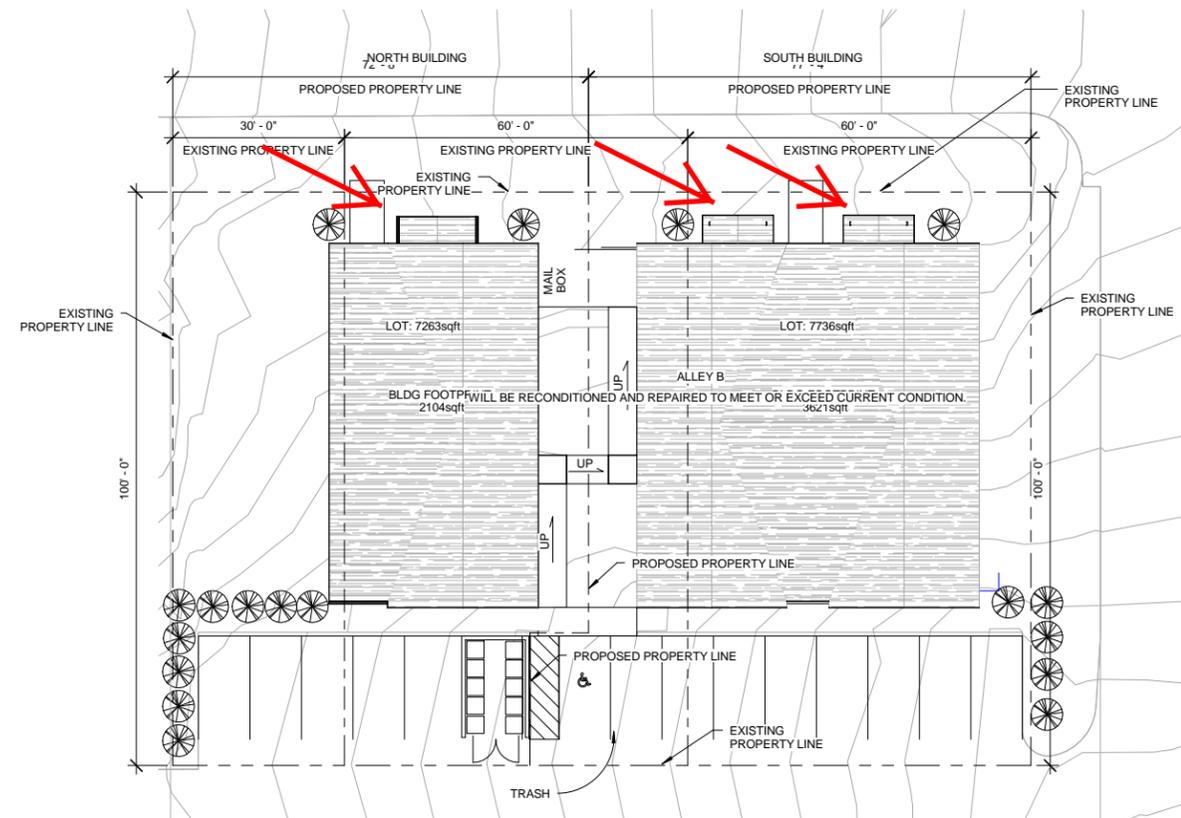




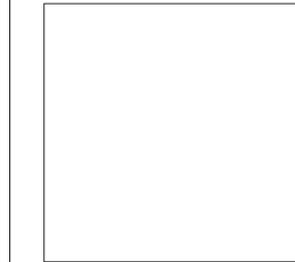
③ SUBDIVISION SITE PLAN  
 1/16" = 1'-0"



LOCATION MAP



① SITE PLAN  
 1/16" = 1'-0"



PROJECT:  
**McLane Ave. Apartments**  
 P.O. Box 4248 Morgantown, WV. 26504  
 C&E Development Inc.  
**SITE PLANS**

Drawing Set Number

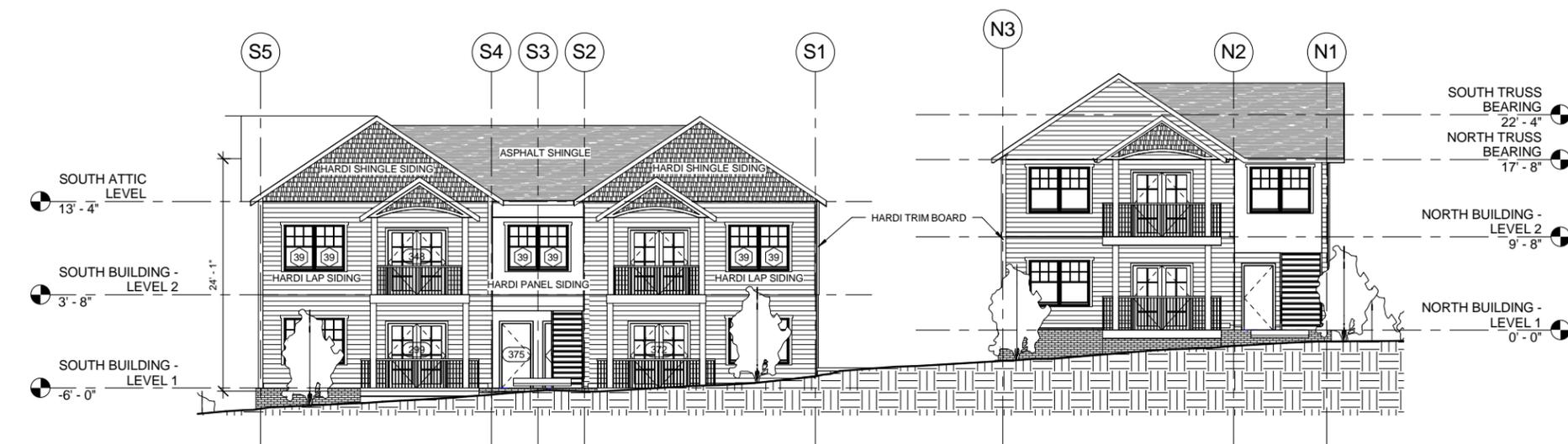
Revision Schedule		
No.	Revision Description	Date

INTENDED DRAWING USE:	
<b>REVIEW</b>	Conceptual
	Review
	Permitting
	Bidding
	Construction Documents

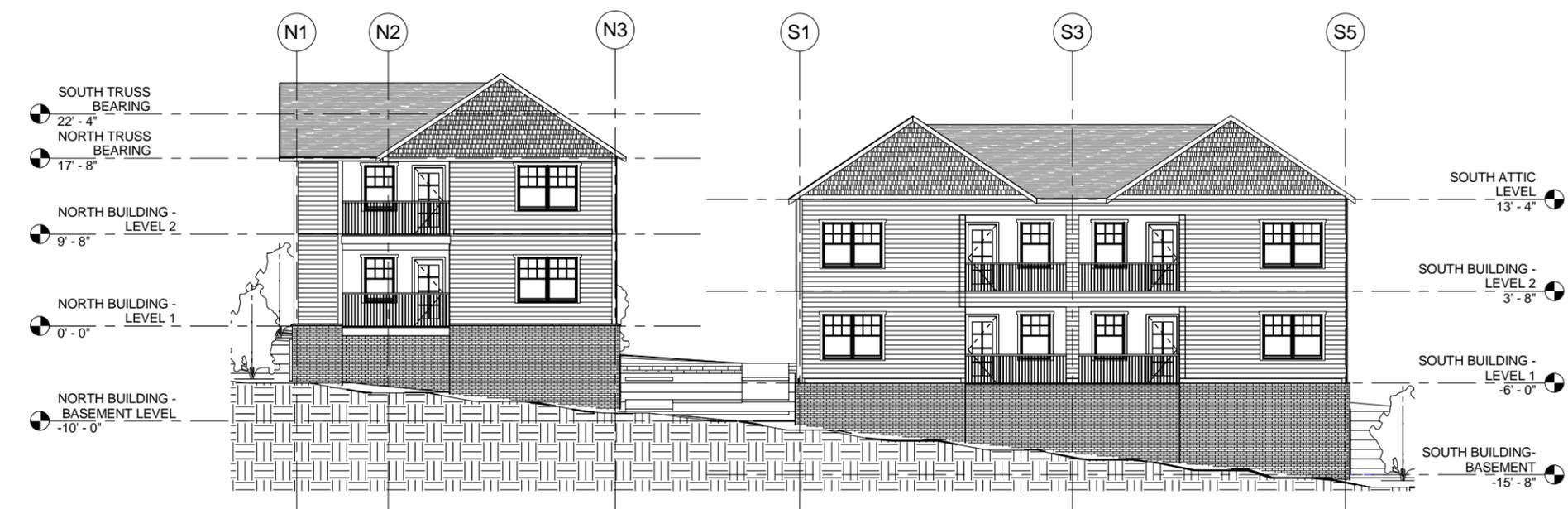
Project number	11115
Date	06/26/2012
Drawn by	ARC
Checked by	RGE

**C-101**

Scale As indicated



① COMBINED ELEVATION NORTH  
 1/8" = 1'-0"



② COMBINED ELEVATION SOUTH  
 1/8" = 1'-0"

PROJECT:  
**McLane Ave. Apartments**  
 P.O. Box 4248 Morgantown, WV. 26504  
 C&E Development Inc.  
**COMBINED ELEVATIONS**

Drawing Set Number

Revision Schedule		
No.	Revision Description	Date

INTENDED DRAWING USE:	
<b>REVIEW</b>	Conceptual
	Review
	Permitting
	Bidding
	Construction Documents

Project number	11115
Date	06/26/2012
Drawn by	Author
Checked by	Checker

**AB-202**

Scale 1/8" = 1'-0"