



**DEVELOPMENT
SERVICES
DEPARTMENT**

The City of Morgantown

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May 16, 2013

Double G Properties, LLC
c/o Lisa Mardis
152 Third Street
Morgantown, WV 26505

**RE: V13-12 through V13-15 / Double G Properties, LLC / 152 Third Street
Tax Map 20, Parcel 32**

Dear Ms. Mardis:

This letter is to notify you of the decisions made by the Board of Zoning Appeals concerning the above referenced variance petitions relating to the proposed development at 152 Third Street. The decisions are as follows:

Board of Zoning Appeals, May 15, 2013:

V13-12 – Variance petition concerning “Non-residential Space on the Ground Floor”

- A. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
- B. The Board approved variance petition V13-12 as requested without conditions.

V13-13 – Variance petition concerning “Setbacks and Encroachments”

- A. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
- B. The Board approved variance petition V13-13 as requested with the following condition:
 1. That, to the satisfaction of the City Engineer, adequate ingress/egress maneuvering for the vehicles parking in the garage must be demonstrated prior to the issuance of a building permit.

V13-14 – Variance petition concerning “Building Materials”

- A. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
- B. The Board approved variance petition V13-14 as requested with the following conditions:
 1. That exterior stairs, steps, landings, porch decking, railings, and support members may not be comprised of exposed wood or treated lumber.

2. That all exposed foundation walls and first floor exterior walls must be clad in masonry or masonry veneer materials as illustrated on the petitioner's elevation renderings.
3. That the above foundation and first floor exterior walls must be clad in cementitious siding comprised of a simulated wood grain profile.
4. That the garbage coral must be constructed of masonry materials with an opaque gate and the exposed exterior walls of said coral must be clad in masonry or masonry veneer materials to match the principal structure.

V13-15 – Variance petition concerning “Design and Performance Standards”

- A. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
- B. The Board approved variance petition V13-15 as requested with the following condition:
 1. All windows on the front façade facing Third Street and side façade facing the adjoining alley must include lintels, trim, and sills to provide a frame and desired shadowing effect.

These decisions may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

The above referenced approvals are set to expire in twelve (12) months unless it can be demonstrated that they have been activated as evidenced by permits, construction, or required licenses. This expiration deadline may be extended to eighteen (18) months upon prior written request of the Board.

Please note that building permits must be issued prior to the commencement of work for which the variance approvals were granted herein.

Should you have any questions or require further clarification, please contact the undersigned. We look forward to serving the development's planning and permitting needs.

Respectfully,



Stacy Hollar
Executive Secretary
shollar@cityofmorgantown.org

ADDENDUM A

Approved Findings of Fact

V13-12 – Non-residential Space on the Ground Floor

Finding of Fact No. 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:

Currently, there are no mixed-use or commercial uses on Third Street or in the immediate vicinity. While the Planning and Zoning Code states that Third Street is a “Primary Street,” lack of pedestrian traffic, terrain, and an abundance of small or non-conforming parcels (square-footage) do not allow for the required parking that would be needed for commercial use. Further, the Code does not recognize site constraints associated with the steep terrain of Third Street. Overbuilding commercial space could result in absorption rates that do not meet conventional development financing standards. High vacancy rates in these areas do not meet market needs in terms of location and square footage. As WVU continues to increase enrollment, it can be anticipated that more and more students will be looking for affordable housing in the Sunnyside area. Allowing residential use on the first floor would encourage development and provide a more reliable source of income than the potentially vacant storefronts required by the Planning and Zoning Code.

Finding of Fact No. 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:

The City’s Planning and Zoning Code, relative to the Sunnyside Overlay Districts, does not reflect realistic opportunities and constraints. The requirement of providing commercial space along Third Street attempts to create retail activity rather than preserve or expand existing uses.

Currently, there are no mixed-use or commercial uses located on the steep terrain of Third Street. Furthermore, nonconforming small parcels negate the ability to provide required parking on site. Historically within the area, mixed-use and commercial uses have been limited to University and Beechurst Avenues.

The developer, in June of 2011, was approved for the same request at 116 Third Street, and Friend Properties was approved at 146 Third Street in September of 2012

Finding of Fact No. 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:

The redevelopment of this property without the non-residential component will not harm this or surrounding properties in the vicinity as there currently are no examples non-residential uses located on Third Street. The potential to increase desirable student housing should serve to improve the area by inspiring further development and the removal of blighted properties. The physical constraints, such as the steep grade and small parcels, make market absorption of commercial space along this primary street challenging and uncertain.

Finding of Fact No. 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:

Many conditionally permitted land uses in the R-3 District have a higher traffic count than the proposed residential use. Redevelopment without the non-residential component will not increase traffic congestion or alter land-use characteristics since there are no commercial uses on Third Street or in the vicinity. The physical constraints, such as the steep grade and small parcels, make market absorption of commercial space along this primary street challenging and uncertain.

V13-13 – Setbacks and Encroachments

Finding of Fact No. 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:

The subject parcel is considered to be nonconforming due to: (1) Its approximate area of 1,740 square feet, which is less than half of the minimum lot size standard of 4,000 square feet in the R-3 District; and, (2) Its approximate frontage of 29 feet, which is 11 feet less than the minimum lot frontage standard of 40 feet in the R-3 District. Additionally, the parcel's frontage is angled following the geometry of Third Street and also includes an recess along the interior side property boundary.

Finding of Fact No. 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:

It appears that nearly all structures on Third Street have a covered front porch that sets as close, or closer to the front setback as the proposed. Other structures appear to have similar front, side, and rear setbacks as the proposed development. The existing structure encroaches into adjacent property and the City right-of-way, and does not meet setback requirements. Mr. Sheppard has received like variances at 116 Third Street and on McLane Avenue, and Friend Rentals received like variances at 146 Third Street

Finding of Fact No. 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:

The redevelopment of this parcel will result in the removal of a functionally obsolete and dilapidated structure with nonconforming setbacks that encroach into the City's right-of-way and adjacent property. A front setback variance will keep with the established building line of adjacent properties and will not harm this property or vicinity improvements. The petitioner affirms that no significant grading will be necessary that would harm the adjoining property, public rights-of-way, or existing utilities. The variance should not affect emergency or service vehicle access to adjacent properties.

Finding of Fact No. 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 redevelopment should enhance the value of the area and accordingly contribute to the market value of neighboring structures. Granting this variance cannot improve nor mitigate traffic congestion that is already present within the neighborhood. Likewise, the approval of this variance would have no adverse impact on the land-use characteristics of the vicinity or zoning district.

V13-14 – Building Materials

Finding of Fact No. 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:

The Design Professionals have actively attempted to incorporate architectural designs that are fitting with the character of the area and are durable in a predominantly student-rental environment. The ground and first-floor levels will be made of brick and remaining comprised of cementitious siding. The structure has been designed to incorporate many required design elements of the Sunnyside Overlay Districts.

Finding of Fact No. 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:

The Planning and Zoning Code states that natural materials are required on the first two floors of the proposed building. The proposed development would utilize brick on the ground and first-floor levels, similar to the previous developments by Mr. Sheppard. The proposed development also intends to utilize material that has been approved by the BZA in other Sunnyside Overlay District developments include 116 and 146 Third Street.

Finding of Fact No. 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:

Incorporating hardiplank, brick, and other materials in the proposed project will not be harmful to the public welfare or other improvements in the vicinity. The more durable products will last longer and need less maintenance than natural materials. The proposed building will improve the vicinity and hopefully spark future redevelopment in a somewhat blighted area on a primary street.

Finding of Fact No. 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:

Granting a variance for building materials cannot add to or mitigate traffic congestion on public streets. The proposed land use and proposed building materials are within the fitting character of the existing and neighboring. Market values of adjacent properties should increase with the proposed development and perhaps spark additional development in the area.

V13-15 – Design and Performance Standards

Finding of Fact No. 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:

The mandated fenestration ratios appear to be more applicable for an urban central business district and not within a streetscape dominated by residential uses. Since Third Street is not currently conducive to commercial uses, the existing architectural style prevalent in the area does not permit the use of the required 60% of ground floor transparency. By permitting a reduced ratio, it would better reflect the existing and desired built environment and provide greater design flexibility.

Finding of Fact No. 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:

It appears that most other structures within the vicinity and Sunnyside Overlay Districts do not meet the required 60% ground floor transparency for the front facade as set forth in the Planning and Zoning Code. Area redevelopment, such as Friend Rentals on Third Street, as well as two other developments belonging to Mr. Sheppard on Third Street have each received the same variance being proposed.

Finding of Fact No. 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:

The proposed structure will have transparency fitting with the architectural design of the surrounding built environment.

Finding of Fact No. 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 approval of this variance cannot add to or mitigate traffic congestion on public streets. The proposed variance will not diminish market values of the area, but should increase the values of surrounding properties and spark additional redevelopment.