



MORGANTOWN BOARD OF ZONING APPEALS

July 17, 2013
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: V13-25 / Otto Properties / 510 Burroughs Street

REQUEST and LOCATION:

Request by Lisa Mardis of Project Management Services, on behalf of Otto Properties, LLC, for variance relief from Article 1365.09(B) as it relates to setbacks at 510 Burroughs Street.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 55, Parcel 37; B-2, Service Business District

SURROUNDING ZONING:

North: B-2, Service Business District
South and East: R-1, Single-Family Residential District
West: R-2, Single- and Two-Family Residential District

BACKGROUND and ANALYSIS:

Article 1365.09(B)(4)(d) provides that:

“All paved portions of all parking spaces and maneuvering aisles shall be set back a minimum of five (5) feet from any wall of a building.”

In response to a complaint to City Administration, Staff inspected the subject 510 Burroughs Street site and learned that this provision had not been adhered to; that Staff inadvertently overlooked applying this standard during plans review and permitting; and, that Staff did not accordingly advise the developer of the related site design obligation prior to or during construction. Addendum A illustrates the location of the subject site.

Investigating complaints concerning possible code violations that may have been unnoticed or inadvertently overlooked is consistent with City Administration policy and practice.

Staff advised City Administration that, by virtue of the complaint and further investigation, Article 1365.09(B)(4)(d) had not been uniformly applied by the Planning Division during plans review and permitting since the subject standard's enactment in 2006.

City Administration met with Otto Properties, LLC for the purpose of elucidating the oversight and discussing alternate design solutions. Because the Planning Division had not properly applied the subject standard to other developments, no enforcement action was taken nor was the petitioner required to obtain variance relief.

Additionally, other developments that did not meet the subject standard will also not be required to seek variance relief approval.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



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In response to the lack of enforcement of the subject provision, City Administration directed the Planning Division to research policy administration solutions to ensure the spirit and intent of the standard is maintained and fairly, equitably, and properly applied.

Prior to the 2006 major zoning ordinance amendment, the following related provision was provided:

“Along any highways, major or minor arterial streets, each building or group of buildings, together with its parking or service areas, shall be physically separated by a vertical curb, maintained planting strip, or other suitable barrier to channel and direct vehicular ingress and egress, except for necessary accessways.”

It appears that prior to 2006, a design standard establishing a minimum proximity of parking spaces and aisles to buildings was not provided. In fact, “accessways” were exempt from the physical vertical separation provisions and parking stalls were not mentioned. However, the intent to protect property and vehicles is evident under the previous and current provisions.

In comparing the present and past correlating standards, Staff identified the following policy incongruities.

- The current standard does not accommodate developments that include facilities like drive-through windows and stacking lanes. As such, a strict application of the standard would require such developments to obtain variance relief from the present five-foot proximity standard.
- The distance of five feet from a building without a vertical barrier does not necessarily ensure that the legislative intent to protect property and vehicles will be achieved.

Given the unnecessary hardship the present five-foot standard places on developments with facilities like drive-through windows; the need to strengthen design solutions to achieve desired protections; return in spirit to the standard in place prior to 2006; and, correct the Planning Division’s unintentional oversight of applying the current standard uniformly, Staff recommended the following zoning text amendment to the Planning Commission on 25-Apr-2013:

With the exception of drive-through windows and related stacking lanes, All paved portions of all parking spaces and maneuvering aisles shall be physically separated from any wall of a building by a vertical curb, maintained planting strip, and/or other suitable barrier set back a minimum of five (5) feet from any wall of a building.

On 02-Jul-2013, City Council enacted said zoning ordinance amendment.

The petitioner has voluntarily submitted a variance petition requesting relief of 1’-3” to 1’-6” from the former Article 1365.09(B)(4)(d) standard so that the curb and landscape area may remain as developed and the matter resolved accordingly.

Please note that the site plan submitted with the petitioner’s variance application is for illustration purposes only as the layout shown thereon reflects a contemplated expansion of the parking area as a result of the owner’s recently acquired portion of realty from the adjoining Unity House development tract.

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STAFF RECOMMENDATION:

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).

Although inadvertent, Staff contributed to affecting the present contravention of Article 1365.09(B)(4)(d) for this and other development sites. It is therefore only appropriate that Staff not submit an approval recommendation for Case No. V13-25.

Enclosures: Application and accompanying exhibits

Development Services

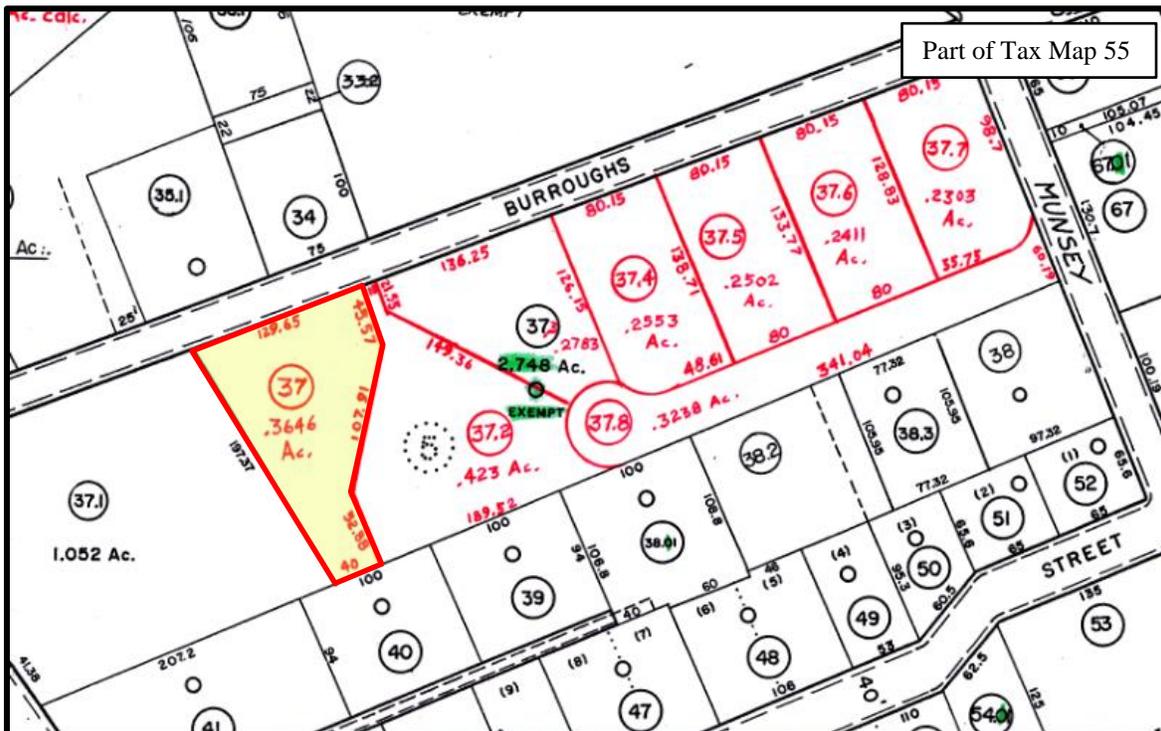
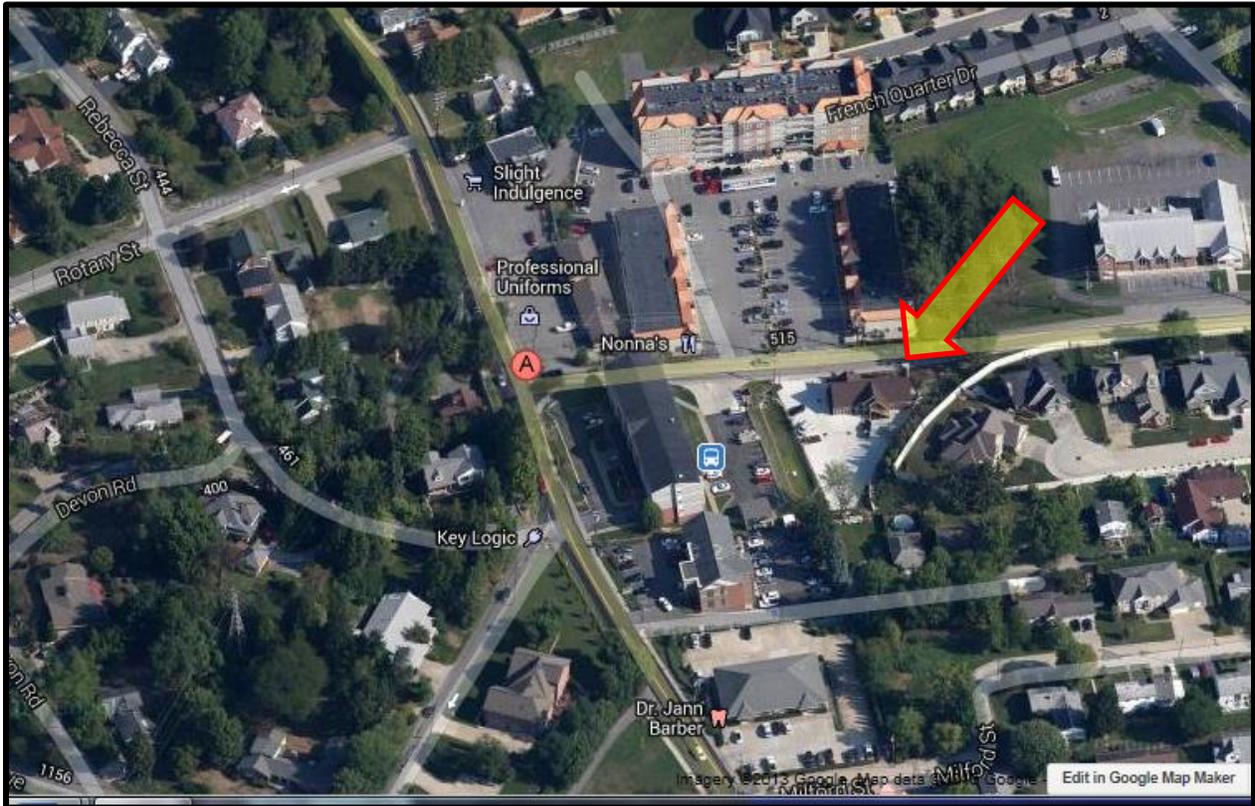
Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431

STAFF REPORT ADDENDUM A

V13-25 / Otto Properties, LLC / 510 Burroughs Street



STAFF REPORT ADDENDUM B

V13-25 / Otto Properties / 510 Burroughs Street

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

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 property owners were made aware of this deficiency only after a complaint was filed by an outside source against Otto Properties, LLC, long after the aforementioned owners received a Letter of Compliance for the two rental units and two Certificate of Occupancies (one for the building and related parking, and one for *The Wine Bar at Vintner Valley*). The development was previously approved with a three (3) foot to 0 landscape area running along the eastern side of the structure.

To further exaggerate the exceptional or extraordinary circumstance, this particular code has historically been overlooked, leaving a string of non-conforming code violations. Being led to believe that the development met all applicable zoning codes, as evidenced by Certificate of Occupancies, Otto Properties, LLC has attempted to remedy said violation and to meet the spirit and intent of the Planning and Zoning Code, by placing a barrier, or landscaped island, next to the building ranging from 3'6" to 3'9" (as measured by the Planning Division). The applicant humbly requests a variance from ~~4'1" to 1'4"~~ 1'-3" to 1'-6" running and exceeding the length of the side of the structure to maintain the existing curb and landscaping area that has been developed. The owners fear that encroaching into this distance further would interfere with the pedestrian way leading to the entrance at the front of the building, not to mention that it appears it would restrict the State approved ingress/egress location.

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 majority, if not all development since the adoption of the Planning and Zoning Ordinance in ~~2005~~ 2006 has not been made to comply with related code. Furthermore, it appears that this requirement would eliminate drive-thrus. Examples of properties or uses that possess same (approved since ordinance adoption in ~~2005~~ 2006) include, but are not limited to Giant Eagle Pharmacy drive thru on Greenbag Road, Mud Suckers Car Wash on Brockway Avenue, McDonald's on University Avenue, Morgantown AES Credit Union on Van Voorhis Road.

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:

It appears that granting variance relief for the subject site as requested may serve to mitigate potential harm to patrons utilizing the pedestrian pathway/area to gain access to the commercial establishment's entrance at the front of the building.

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:

~~By approved~~ The proposed variance and is intended to ensuring ensure pedestrian safety, which by its nature cannot result in nor contribute to an increase in traffic congestion. Furthermore, the land-use will not be changed.



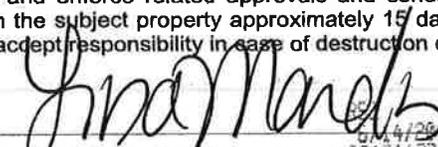
City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V13-25
RECEIVED:	6/14/13
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

I. APPLICANT		Name: Project Managemenet Services	
Mailing Address:	160 Fayette Street Suite 101		Phone: 304-221-5256
	Street	Morgantown WV 26505	Mobile: 304-692-7116
	City	State Zip	Email: pms160@comcast.net
II. PROPERTY		Street Address: 510 Burroughs Street	
Owner:	Otto Properties, LLC		Zoning:
Mailing Address:	510 Burroughs Street		Tax Map No: 55
	Street	Morgantown WV 26505	Parcel No: 37
	City	State Zip	Phone: 304-241-1687
III. NARRATIVE		Please describe the nature and extent of your variance request(s).	
<p>Variance relief from Article 1365.09 (B)(4)(d) as it relates to a minimum setback of five (5) feet between a wall of a building and parking spaces and maneuvering aisles.</p>			
V. ATTEST			
<p>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.</p>			
Lisa Mardis		 KR 06/03/2013 10:25:32 201314372 SITE PLAN Date	
Type/Print Name of Applicant/Agent		Signature of Applicant/Agent	

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.

PAID 75.00
Finance Office
Morgantown, WV 26505
(304) 284-7408

VISA



City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

OFFICE USE

CASE NO. V13-25

RECEIVED: _____

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: _____
Estimated number of employees: 8 No. of dwelling units: _____ No. of bedrooms: _____
Additional structure-related details:

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**

OFFICE USE	
CASE NO.	V13-25
RECEIVED:	
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:

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:



City of Morgantown, West Virginia

**APPLICATION FOR
ZONING VARIANCE**

OFFICE USE	
CASE NO.	<u>V13-25</u>
RECEIVED:	_____
COMPLETE:	_____

Suggested Scale: 1 square = 5'

APPLICATION FOR VARIANCE

Findings of Fact

V13-25

Variance – 1365.09(B)(4)(d)

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 property owners were made aware of this deficiency only after a complaint was filed by an outside source against Otto Properties, LLC, long after the aforementioned owners received a Letter of Compliance for the two rental units and two Certificate of Occupancies (one for the building and related parking, and one for *The Wine Bar at Vintner Valley*). The development was previously approved with a three (3) foot to 0 landscape area running along the eastern side of the structure.

To further exaggerate the exceptional or extraordinary circumstance, this particular code has historically been overlooked, leaving a string of non-conforming code violations. Being led to believe that the development met all applicable zoning codes, as evidenced by Certificate of Occupancies, Otto Properties, LLC has attempted to remedy said violation and to meet the spirit and intent of the Planning and Zoning Code, by placing a barrier, or landscaped island, next to the building ranging from 3'6" to 3'9" (as measured by the Planning Division). The applicant humbly requests a variance from 1'1" to 1'4" running and exceeding the length of the side of the structure. The owners fear that encroaching into this distance further would interfere with the pedestrian way leading to the entrance at the front of the building, not to mention that it appears it would restrict the State approved ingress/egress location.

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 all development since the adoption of the Planning and Zoning Ordinance in 2005 has not been made to comply with related code. Furthermore, it appears that this requirement would eliminate drive-thrus. Examples of properties or uses that possess same (approved since ordinance adoption in 2005) include, but are not limited to Giant Eagle Pharmacy drive-thru on Greenbag Road, Mud Suckers Car Wash on Brockway Avenue, McDonald's on Univrsity Avenue, Morgantown AES Credit Union on Van Voorhis Road.

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:

It appears that granting variance relief for the subject site as requested may a serve to mitigate potential harm to patrons utilizing the pedestrian pathway/area to gain access to the commercial establishment.

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:

By approved proposed variance and ensuring pedestrian safety cannot result in nor

APPLICATION FOR VARIANCE

V13-25

Findings of Fact

contribute to an increase in traffic congestion. Furthermore, the land-use will not be changed.

Lisa Mardis

Type/Print Name of Applicant/Agent

LISA MARDIS

Lisa Mardis

Signature of Applicant/Agent