MORGANTOWN BOARD OF ZONING APPEALS

February 17, 2016
6:30 PM
City Council Chambers

Board Members:
Leanne Cardoso, Chair
Bill Burton, Vice Chair
Linda Herbst
George Papandreas
Jim Shaffer

STAFF REPORT

CASE NO: V16-01 / Phillips / 1041 Curtis Avenue

REQUEST and LOCATION:

Lisa Mardis, on behalf of Dave Phillips, for variance relief from Article 1335.04 as it relates to a side setback encroachment at 1041 Curtis Avenue.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 41, Parcels 365 and 366; R-1A, Single-Family Residential District

SURROUNDING ZONING:

R-1A, Single-Family Residential District

BACKGROUND and ANALYSIS:

On 10 SEP 2015, the petitioner obtained minor subdivision approval to combine Parcels 365 and 366 of Tax Map 41. The purpose of pursuing minor subdivision approval was to permit the construction of a two-car garage and second floor living space onto the existing single-family structure without building over the property boundary separating the two (2) subject parcels. Addendum A of this report illustrates the location of the subject site.

On or about 18 SEP 2015, the petitioner was issued a building permit to construct the subject addition. On or about 02 NOV 2015, this Office received a phone call concerning the setback of the partially constructed addition. A Code Enforcement Inspector visited the site, determined the side setback appeared to be closer than the six (6) foot side setback illustrated on the approved site plan, and issued a stop work order.

Following the issuance of the stop work order, the petitioner contacted this Office and was advised that the side setback encroachment violation must be corrected either by removing that portion of the addition encroaching into the minimum side setback standard or by receiving variance relief from the Board.

The petitioner's representative purports in this variance petition that the subject encroachment is a result of an oversight by this Office during building permit plans review and approval. This claim is incorrect. The site plan submitted with the building permit application illustrated a six (6) foot side setback. This dimension is the operative measurement upon which plans review and approval were determined.

Staff presumed the petitioner, because of the requisite survey task following the minor subdivision approval, found his property to be wider than the 60 feet illustrated on Tax Map 41. Discrepancies between a professional Surveyor's determinations and dimensions illustrated on the tax maps are not uncommon. Although the petitioner's agent has included in the variance application exhibits what appears to be a recent

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

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survey ("Exhibit D"), this Office has yet to receive the final plat for the Planning Commissioner's signature of the approved minor subdivision.

Staff reminds the Board the burdens of knowing the location of property boundaries and setback requirements and the obligation of complying with setback standards are those of the property owner.

Article 1335.04(A)(3) provides a minimum side setback requirement of five (5) feet in the R-1A District. The petitioner's "Exhibit D" illustrates an encroachment of eighteen (18) inches for which variance relief must be granted for the addition to remain as constructed.

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. If the Board disagrees with the petitioner's "Findings of Fact" and determines the proposed request does not meet the standard criteria for a variance, than the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject variance 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 petitioner's "Findings of Fact" responses and serve only to remove narrative that is clearly inapplicable. Staff recommended revisions should not be considered or construed as supporting or opposing the merits of the petitioner's "Findings of Fact" responses (deleted matter struck through; new matter underlined).

No recommendation is submitted concerning whether or not variance relief should be granted as requested.

Enclosures: Application and accompanying exhibits

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Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
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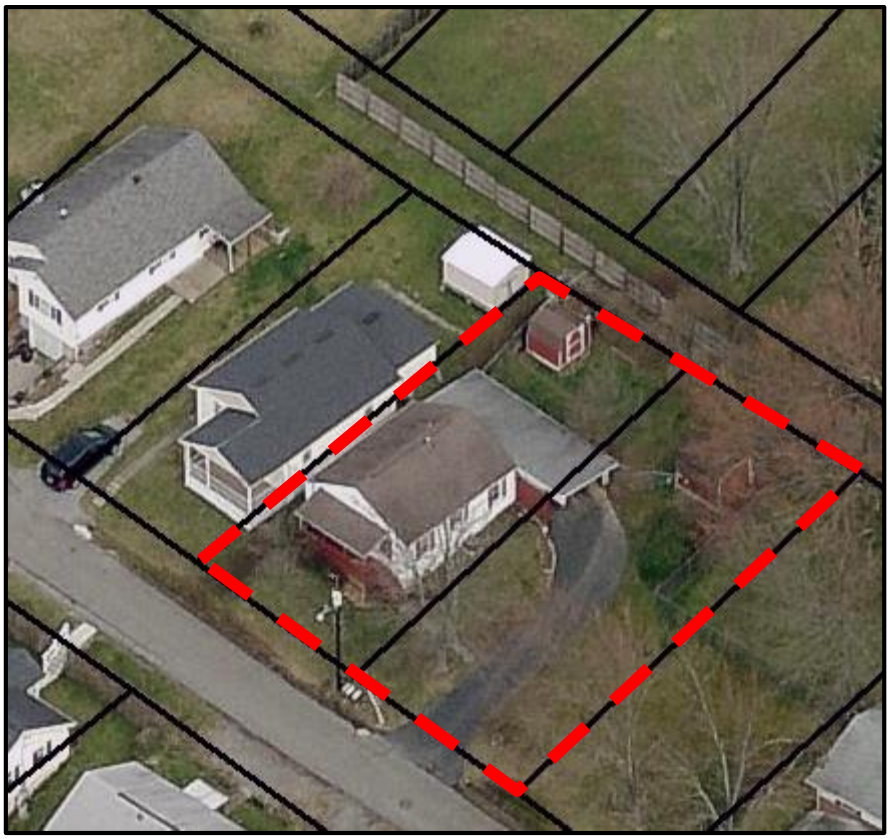
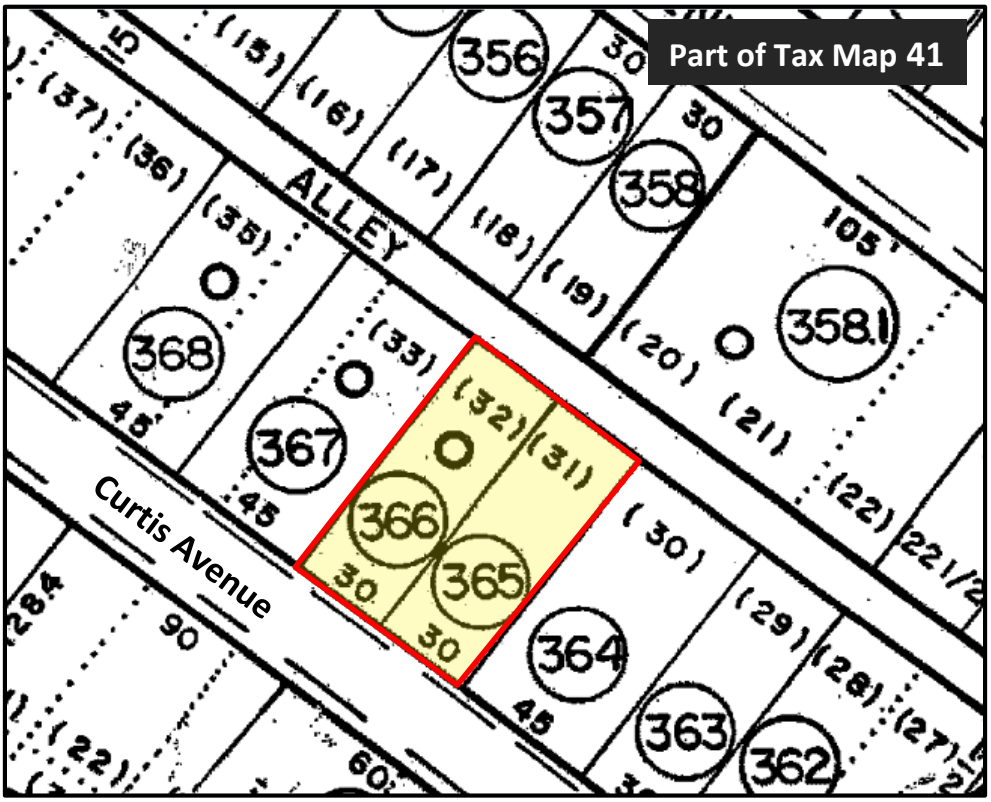
STAFF REPORT ADDENDUM A

V16-01 / Phillips / 1041 Curtis Avenue




Part of Tax Map 41
ALLEY
Curtis Avenue
356
357
358
358.1
368
367
366
365
364
363
362
(15)
(16)
(17)
(18)
(19)
(20)
(21)
(22)
(35)
(36)
(37)
(33)
(32)
(31)
(30)
(29)
(28)
(27)
105'
45'
30'
90'
60'

STAFF REPORT ADDENDUM B

V16-01 / Phillips / 1041 Curtis Street

Staff recommended revisions to the petitioner's Findings of Fact responses provided herein serve only to remove narrative that is clearly inapplicable. 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).

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed variance will not cause alternate encroachment issues on the realty, such as the front or rear property. It appears that the encroachment will only affect one parcel. However, the adjacent structure is situated far from the property boundary.

The newly constructed attached two-car garage and living space should improve the property value and the value of the properties within the neighborhood. The proposed side setback encroachment should not harm public interests or the rights of adjacent property owners as the area has been, according to the petitioner, maintained and used as part of the residential property of 1041 Curtis Street.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The existing home was constructed with an attached car port and a small amount of livable square footage. In order to improve their home and increase the property value, Mr. and Mrs. Phillips hired a contractor and secured a building permit. It was not until the two story garage and living space was near completion that an error was discovered.

According to the petitioner, when the Phillips moved into the residence, seven years ago, discussion ensued with the adjacent property owner in regards to the location of the side property line. ~~It appears that at that time, the adjacent property owner, Mr. Burton, stated that he believed the shared property line to be the fence line.~~

After obtaining consent from the adjacent property owner, this property was maintained and used by the Phillips as if it were their property for seven years. ~~Although not the required ten years that West Virginia requires for adverse possession, the Burton's were given actual notice, thus continuing consent of this area as it was used and maintained by the Phillips.~~

~~The contractor submitted a building permit in August 2015 for the construction of a garage/living area addition. The Planning Commission, in September 2015, approved a minor subdivision request to combine parcels #365 and 366.~~

~~The staff report and survey both state that the combined property at 1041 Curtis Street is now sixty (60) feet. Please keep in mind that the property owners, until now, were under the assumption that their property was seventy (70) feet as indicated in the listing from Pat Stewart (Exhibit A).~~

~~Although no formal complaint was filed with the City departments, Mr. Phillips was notified that a complaint was filed via a phone call stating that the addition, that was well under roof, was encroaching into the setback. Area neighbors were under actual notice that an addition was under construction, approximately one month from completion.~~

~~On further inspection of the submitted building permit, it appears that there was an oversight by the Planning Department when approving the aforementioned building permit. The site plan clearly indicates that the property is sixty-four (64) feet wide and if you add the measurements on the site plan, they equal sixty-five (65) feet.~~

According to the petitioner, for seven years the Phillips have resided at 1041 Curtis Street, ~~under the premise~~ with the belief that their realty extended to the fence line. ~~In the attached photos, I have indicated the approximate encroachment area (Exhibit F).~~

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The additional square footage and two car garage should increase the property values of this and area properties.

Similar to variance case V15-23 on Riverview or V15-20 on Addison Circle, the hardship arises due to the fact that the increased property value and potential increased square footage inevitably requires a garage for most home buyers of the compatible homes on this street and area.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The two-car garage and increased square footage of living space will increase the property value of this home and surrounding properties. The variance will allow improved property's contribution to the surrounding built environment. Variance relief will permit the completion of an addition on to a single-family dwelling on a newly combined parcels that meet R-1A District minimum lot frontage and minimum lot area standards.

City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V16-01
RECEIVED:	

MC

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: $75

I. APPLICANT	Name:	Project Management Services		
Mailing Address:	160 Fayette Street Suite101		Phone:	304-212-5256
	Street Morgantown	WV 26505	Mobile:	304-692-7116
	City	State Zip	Email:	pms160@comcast.net

II. PROPERTY	Street Address:	1041 Curtis Street		
Owner:	Dave & Brooke Phillips		Zoning:	R-1A
Mailing Address:	1041 Curtis Street		Tax Map No:	41
	Street Morgantown	WV 26505	Parcel No:	365/366
	City	State Zip	Phone:	304-376-2988

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

Variance relief from the City of Morgantown Planning and Zoning Code, Article 1335.04 as it relates to setbacks for realty at 1041 Curtis Street.

PAID
PAID DEC 0 2 2015 PAID
BY:

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 Development Services 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 Mardis		12/02/2015
Type/Print Name of Applicant/Agent	Signature of Applicant/Agent	Date

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.

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City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V16-01
RECEIVED:	

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: _____ Gross floor area of each building: _____

Estimated number of employees: _____ 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

City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V16-01
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VII. FINDINGS OF FACT	COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.

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. **The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:**

Attached

2. **The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:**

Attached

V16-01

City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V16-01
RECEIVED:	

VII. FINDINGS OF FACT	COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.

3. The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Attached

4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Attached

Findings of Fact

1. The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed variance will not cause alternate encroachment issues on the realty, such as the front or rear property. It appears that the encroachment will only affect one parcel. However, the adjacent structure is situated far from the property boundary.

The newly constructed attached two-car garage and living space should improve the property value and the value of the properties within the neighborhood. The proposed side setback encroachment should not harm public interests or the rights of adjacent property owners as the area has been maintained and used as part of the residential property of 1041 Curtis Street.

2. The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The existing home was constructed with an attached car port and a small amount of livable square footage. In order to improve their home and increase the property value, Mr. and Mrs. Phillips hired a contractor and secured a building permit. It was not until the two story garage and living space was near completion that an error was discovered.

When the Phillips moved into the residence, seven years ago, discussion ensued with the adjacent property owner in regards to the location of the side property line. It appears that at that time, the adjacent property owner, Mr. Burton, stated that he believed the shared property line to be the fence line.

After obtaining consent from the adjacent property owner, this property was maintained and used by the Phillips as if it were their property for seven years. Although not the required ten years that West Virginia requires for adverse possession, the Burton's were given actual notice, thus continuing consent of this area as it was used and maintained by the Phillips.

The contractor submitted a building permit in August 2015 for the construction of a garage/living area addition. The Planning Commission, in September 2015, approved a minor subdivision request to combine parcels #365 and 366.

The staff report and survey both state that the combined property at 1041 Curtis Street is now sixty (60) feet. Please keep in mind that the property owners, until now, were under the assumption that their property was seventy (70) feet as indicated in the listing from Pat Stewart (Exhibit A).

Although no formal complaint was filed with the City departments, Mr. Phillips was notified that a complaint was filed via a phone call stating that the addition, that was well under roof, was encroaching into the setback. Area neighbors were under actual notice that an addition was under construction, approximately one month from completion.

On further inspection of the submitted building permit, it appears that there was an oversight by the Planning Department when approving the aforementioned building permit. The site plan clearly indicates that the property is sixty-four (64) feet wide and if you add the measurements on the site plan, they equal sixty-five (65) feet.

For seven years the Phillips have resided at 1041 Curtis Street, under the premise that their realty extended to the fence line. In the attached photos, I have indicated the approximate encroachment area (Exhibit F).

3. The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The additional square footage and two car garage should increase the property values of this and area properties.

Similar to variance case V15-23 on Riverview or V15-20 on Addison Circle, the hardship arises due to the fact that the increased property value and potential increased square footage inevitably requires a garage for most home buyers of the compatible homes on this street and area.

4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The two-car garage and increased square footage of living space will increase the property value of this home and surrounding properties. The variance will allow improved property's contribution to the surrounding built environment. Variance relief will permit the completion of an addition on to a single-family dwelling on a newly combined parcels that meet R-1A District minimum lot frontage and minimum lot area standards.

Dave and Brooke Phillips purchased realty at 1041 Curtis Street in 2008. As shown in the sales listing (Exhibit A) the property/lot dimensions are shown as 40 X 70. A survey was not required from the lending institution and no problem seemed to exist at that time.

When the Phillips moved into the residence, seven years ago, discussion ensued between the Phillips and the Burton's in regards to the location of the side property line. It appears that at that time, Mr. Burton stated that he believed the shared property line to be the fence line.

After obtaining consent from the adjacent property owner, this property was maintained and used by the Phillips as if it were their property. Although not the required ten years that West Virginia requires for adverse possession, the Burton's were given actual notice, thus continuing consent of the use of this realty.

The contractor submitted a building permit (Exhibit B) in August 2015 for the construction of a garage/living area addition. In September 2015 the Planning Commission approved a minor subdivision to combine Parcels 365 and 366 in order to commence construction on the addition. The staff report (Exhibit C) and survey (Exhibit D) both state that the combined property at 1041 Curtis Street after combining is sixty (60) feet. Please keep in mind that the property owners, until now, were under the assumption that their property was seventy (70) feet as indicated in the listing from Pat Stewart (Exhibit A).

Although no formal complaint was filed with the City departments, Mr. Phillips was notified that a complaint was filed via a phone call stating that the addition, which was well under roof, was encroaching into the setback. Adjacent and neighbors were under actual notice that an addition was under construction, approximately one month from completion. (Photos – Exhibit F)

Mr. and Mrs. Phillips, attempting to enlarge their home did not intentionally build into the required setback. At their wits in, they contacted me for assistance.

On further inspection of the submitted building permit, it appears that there was an oversight by the Planning Department when approving the aforementioned building permit (Exhibit B). The site plan clearly indicates that the property is sixty-four (64) feet wide and if you add the measurements on the site plan, they equal sixty-five (65) feet.

In an attempt to be good neighbors and come to a fair equitable remedy for both parties, Mr. and Mrs. Phillips offered to purchase two (2) feet of property owned by Mr. Burton (Exhibit E).

The Phillips have invested $64,000 in an addition, and the community, which should increase the property values of the neighborhood. Without the variance, sixteen inches would have to be removed from the two-story addition. This, as you can imagine, is not a cheap or quick remedy.

For seven years the Phillips have resided at 1041 Curtis Street, under the premise that their realty extended to the fence line. Mr. and Mrs. Phillips humbly request a sixteen (16) inch variance. In the attached photos (Exhibit F), I have indicated the approximate encroachment area.

V16-01

Pat Stewart REALTORS

Look for our diamond - a symbol of lasting value in real estate

Experience !

Your Neighborhood REALTOR Since 1973

304-599-9300 or 800-693-5300

Patricia Stewart
Broker

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- Featured Listings
- Area Listings
- Open House
- Morgantown
- Community Activities
- Newcomers Club
- Mortgage Calculator
- Consumer Information
- Referrals
- FREE Market Analysis
- Find Your Dream Home
- Request a Showing
- Sell Your Property
- Weather
- West Virginia University
- Become a Realtor
- Contact Us
- Home

<<<Previous Page

MLS# 10063819

List Price: $ 89,000
1041 Curtis Ave.
Morgantown, WV 26505
County: Monongalia
District: 1 Ward
Area:
Morgantown/Westover/Star City/Granville
Request More Info
Print e-Flyer
Map to Property
View Large Photos
Mortgage Calculator

Cute starter home with out buildings and central air.

Rooms

Bedrooms: 2
Number of Rooms: 4
Bedrooms Above Grade: 2
Master Bedroom: 10x11 / 1
Bedroom 2: 10x10 / 1

Full Bathrooms: 1
Half Bathrooms: 0
Other Bathrooms: 0
Living: 13x16 / 1
Kitchen: 8x11 / 1

General Information

Number of Stories: 1
Year Built: 1945
Number of Fireplaces: 0
Zoning: Single Fam
Construction: 2

Total Finished Living Area: 672
Finished Sq Ft Above Grade: 672
Finished Sq Ft Below Grade: 0
Unfinished Sq Ft Below Grade: 0
Lot Dimensions: 40x70
Home Owners Association: No

Features

Attic -None
Appliances Included -Range -Refrigerator -Washer
Basement -None
Community Amenities -Shopping/Mall -Public Transportation
Construction -Frame
Cooling -Central Air
Electricity -100 Amps
Equipment -Smoke Detectors -Cable Ready
Exterior Features -Porch -Storage Shed/Out Bldg

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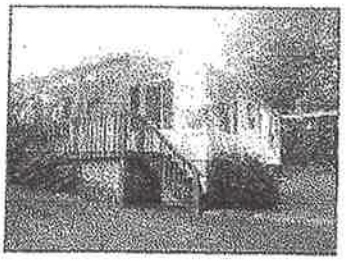

1041 Curtis Ave.
Morgantown **WV** **26505**
Subdivision:
Status: Active
Zoning: Single Family
District: 1 Ward

Single Family Detached **Exclusive Right to Sell**
Area: Morgantown/West... **Listing Number:** 10063819
County Code: Monongalia **Deed Bk:**454 **Deed Pg:**285&...
List Date: 8/4/2008 **List Price:** $89,000
Update: 8/11/2008 **Original Price:** $89,000
Virtual Tour:

Showing Instructions: Lockbox, Call List Office, Show Anytime
Directions: Up Dorsey Ave., right on Sarah, straight to Curtis house on left.
Lock Box Description: Risco **Disclosures:**

LISTING INFORMATION

List Office: PAT STEWART REALTORS **List Office Phone:** Office (304) 599-9300 **Map Page:** 41
List Agent: ERIC LEE **List Agent Phone:** (304) 685-5477 **Parcel #:** 365&366
List Agent 2: **List Agent 2 Phone:** **Minimum Deposit:** 500
Owner Name: Kennedy **Occupied:** Vacant **Possession:** Closing
Legal Description: Lots 32 & 33, 1041 Curtis Ave. **Expiration Date** 11/15/2008

SOLD INFORMATION

How Sold: **Selling Agent Commission:** 2.7 **Selling Agent:**
Sale Price: **Buyers Agent Commission:** 2.7 **Selling Office:**
Closed Date: **Market Time:** 12

PROPERTY FEATURES

Rooms: 4 **Full Bath:** 1
Bedrooms: 2 **Half Bath:** 0
Number of Stories: 1.00 **Other Bath:** 0

295
95
390

Finished SqFt Above Grade: 672
Finished SqFt Below Grade: 0
Unfinished SqFt Below Grade: 0
Total Fin Living Area 672

Lot Dimensions: 40x70 **Acres:**
Lot Square Feet:
New Construction:
Year Built: 1945
Number Fireplaces: 0
Warranty:
Handicap Modified:
Homeowner's Association: No
Homeowner's Assn Fee:
Fee Includes:

ROOM SIZE/LEVELS/DESCRIPTIONS

Living Room:	13x16	1	Ceiling Fan(s), Window Treatment, ...
Dining Room:			
Family Room:			
Kitchen:	8x11	1	Ceiling Fan(s), Vinyl Flooring
Den:			
# of Bedroom Above Grade		2	
Master Bed:	10x11	1	Ceiling Fan(s), Wall to Wall Carpet
Bedroom 2:	10x10	1	Ceiling Fan(s), Wall to Wall Carpet
Bedroom 3:			
Bedroom 4:			
Bedroom 5:			

TAX INFORMATION

Tax Amount: 0.00
Tax Year:
Property ID Number: 0000

SCHOOLS

School County: Monongalia 304-291-9210 **Middle School:** South Jr High **Elementary School:** Mountain View Elem
High School: Morgantown **Other School:**

FEATURES

Lot Description:
Fence Description: Split Rail
View Description: Neighborhood
Waterfront Description: None
Comun. Amen.: Shopping/Mall, Public Transportation

Parking: Carport, 3+ Cars **Garage:** None
Style: Ranch
Foundation: Block
Construction: Frame
Exterior: Vinyl
Exterior Features: Porch, Storage Shed/Out Bldg

Basement: None

Roof: Shingles
Water Sewer: City Sewer, City Water
Int.Feat: All Window Treatments, Elec. Stove Connection, Washer Connection, Elec. Dryer Connection
Electric: 100 Amps
Flooring: Wall To Wall Carpet, Vinyl
Heating: Forced Air, Gas
Cooling: Central Air
Attic: None
Fireplaces: None
Appliances: Range, Refrigerator, Washer
Equipment: Smoke Detectors, Cable Ready

Other Rooms: Laundry/Utility

REMARKS

Cute starter home with out buildings and central air.

The information in this listing was gathered from third-party sources including the seller and public records. North Central West Virginia MLS and its subscribers disclaim any and all representations or warranties as to the accuracy of this information.

V116-01

Exterior Siding -Vinyl
Fence -Split Rail
Fireplace -None
Flooring -Wall To Wall Carpet -Vinyl
Foundation -Block
Garage -None
Heating -Forced Air -Gas
Interior Features -All Window Treatments -Elec. Stove Connection -Washer Connection -Elec. Dryer Connection
Other Rooms -Laundry/Utility
Parking -Carport
Roof -Shingles
Room Description -Ceiling Fan(s) -Vinyl Flooring -Wall to Wall Carpet
Style -Ranch
View -Neighborhood
Water/Sewer -City Sewer -City Water
Waterfront -None

Elementary: Mountain V
Middle: South Jr H
High: Morgantown
School County: Monongalia

Directions: Up Dorsey Ave. right on Sarah straight to Curtis house on left.
Listing Courtesy of: PAT STEWART REALTORS - ERIC LEE

The broker/agent operating this website believes the data here to be correct, but advises interested parties to confirm them before relying on them in a purchase decision. This data is provided exclusively for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing. Information deemed reliable but not guaranteed. Listing broker has attempted to offer accurate data, but buyers are advised to confirm all items. Copyright 2008 North Central West Virginia R.E.I.N. All rights reserved. This data was last updated Tue Aug 19 11:05:32 MDT 2008

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2917 University Ave - Morgantown, WV 26505
800-693-5300 or 304-599-9300
Fax: 304-599-9303

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V16-01

P

Exhibit B

City of Morgantown Application for Building Permit

Application Date	Type of Work:		Is Applicant Owner?
8/20/15	☐ New Construction SFD ☐ ~~SFD~~ Addition ☐ New Construction Rental/Commercial ☐ Rental/Commercial Addition	☐ Garage- attached ☐ Garage- detached	☐ Yes ☑ ~~No~~

PARCELS 364 AND 365 C.M.F.

PROPERTY INFORMATION:

Street address: 1041 Curtis Ave Map# 41 Parcel# ~~366~~ 364 Ward 1 Zoning R-1A

dphillips@clearmountainbank.com

PROPERTY OWNER INFORMATION:

Name: David + Brooke Phillips Business name: none

Address: 1041 CURTIS Ave Phone: 304 376-2985

Email: N/A ☑ property owner ☐ contractor

CONTRACTOR INFORMATION:

TYPE:	Contractors Business Name	City License Number
Architect/Engineer		1477
General Contractor	Harker Construction	
Excavation		
Concrete		
Carpentry		
Electrical		
Plumbing		
Sewer		
Mechanical		
Roofing		
Masonry		
Drywall/Lathing		
Sprinkler		
Paving		
Fire Alarm		

Est. value of building $ 64000.00 **Electrical value $** 3000.00

Square footage of build 780 SQFT **Square footage of grading** 1700 SQFT

*****Must attach detailed construction plans and site plan*****

I here by certify that I am the owner of record of the named property, or that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his authorized agent and I agree to conform to all applicable laws of this jurisdiction. In addition, If a permit for work described in this application is issued, I certify that the code official or the code official's authorized representative shall have the authority to enter areas covered by such permit at any reasonable hour to enforce the provisions of the code(s) applicable to this permit.

SIGNATURE OF APPLICANT	ADDRESS OF APPLICANT	PHONE
	2984 Summers School RD	304-864-4

PRINT NAME: Travis Harker

V16-01

Detailed Description of Work to be Done:

Excavate and construct and finish a 26x30 room addition 2 bed rooms 1 bath Drywall interior vinyl siding exterior 30 yr shingles Double Hung windows ex crawl space pour concrete drive way.

STRUCTURAL FRAME INFORMATION:

☐ Steel ☑ Masonry ☐ Concrete ☑ Wood ☐ Other (identify) 2x6 walls / 8" block cont.

EXTERIOR WALL INFORMATION:

☐ Steel ☐ Masonry ☐ Concrete ☑ Wood ☐ Other (identify) 2x6 walls

Street Frontage (FEET)	28'	**Stories (NUMBER)**	1	**Lot Area (SQ. FT.)**	6890
Front Setback (FEET)	28'	**Bed Rooms (NUMBER)**	2	**Total Building Area (SQ. FT.)**	780
Rear Setback(FEET)	40'	**Full Baths (NUMBER)**	1	**Parking Area (SQ. FT.)**	720
Left Setback (FEET)	5'	**Partial Baths (NUMBER)**	0	**Living Area (SQ. FT.)**	780
Right Area (FEET)	6'	**Garages (NUMBER)**	0 1 ?	**Basement Area (SQ. FT.)**	780
Height Above Grade (FEET)	20'	**Windows (NUMBER)**	2	**Garage Area (SQ. FT.)**	no
New Residential Units (NUMBER)	0	**Fireplaces (NUMBER)**	0	**Office/Sales Area (SQ. FT.)**	no
Existing Residential Units (NUMBER)	1	**Enclosed Parking (NUMBER)**	2	**Service Area (SQ. FT.)**	no
Elevators/Escalator (NUMBER)	no	**Outside Parking (NUMBER)**	0 2	**Manufacturing Area (SQ. FT.)**	no

ELECTRICAL INFORMATION:

Size of underground conductor: existing
Size of grounded conductor: existing
Size of grounding conductor: 1.0Φ Copper
Type of grounding system (water pipe, ground rods, etc): Footer rebar 1/2 steel
Size of conduit used: existing
Electrician license number: M335894 rev 0215

V16-01

OFFICE USE ONLY

APPROVALS:

Engineering Department Approval Notes:

_____

_____

_____

Signature of person reviewing: _____

DATE

Planning Department Approval Notes:

Planning Commission approved MNS15-15 on 10SEP2015 to combine Parcels 364 and 365.

_____

_____

Signature of person reviewing: _____ 11 SEP 2015

DATE

Code Enforcement Approval Notes:

_____

_____

_____

Signature of person reviewing: _____

DATE

Fire Department Approval Notes:

_____

_____

_____

Signature of person reviewing: _____

VALIDATION:

Permit Number: Addition RES- 2015.00001220	**Fee**
Electrical:	**Fee**
Other:	**Fee**
Other:	**Fee**
Stop Work Order:	**Fee**

Application Accepted and Processed By: _____

Total Fee

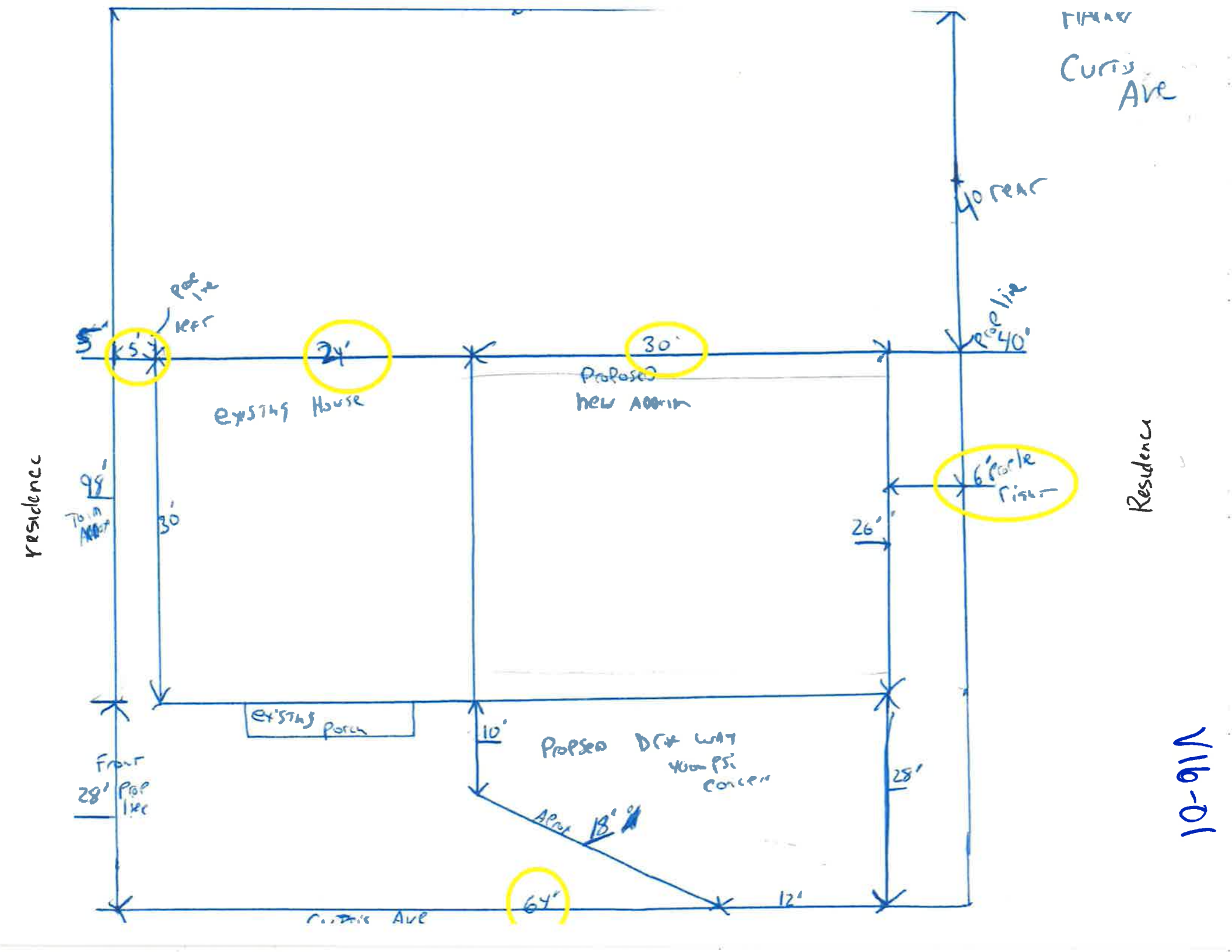
Approved By: _____

DATE

Signature of Person Picking Up Building Permit: _____

DATE

Print Name of Person Picking up Permit: _____



Curtis Ave
40 rear
Prop line
40'
Prop line
5'
5'
24'
30'
Proposed new Addition
existing House
Residence
98'
Town Approx
30'
6' Prop line right
26'
Residence
existing porch
10'
Proposed Drive way 4000 psi concrete
28'
Front
28' Prop line
Aprox 18'
64'
12'
Curtis Ave

V16-01

V119-01

Exhibit C

V16-01

MORGANTOWN PLANNING COMMISSION

September 10, 2015
6:30 PM
City Council Chambers

President:
Peter DeMasters, 6th Ward

Vice-President:
Carol Pyles, 7th Ward

Planning Commissioners:
Sam Loretta, 1st Ward
Tim Stranko, 2nd Ward
William Blosser, 3rd Ward
Bill Petros, 4th Ward
Mike Shuman, 5th Ward
Ken Martis, Admin.
William Kawecki, City Council

STAFF REPORT

CASE NO: MNS15-15 / Phillips / 1041 Curtis Avenue

REQUEST and LOCATION:

Request by David Phillips for minor subdivision approval of property located at 1041 Curtis Avenue.

TAX MAP NUMBER (s) and ZONING DESCRIPTION:

Tax Map 41, Parcels 365 and 366; R-1A, Single-Family Residential District

SURROUNDING ZONING:

R-1A, Single-Family Residential

BACKGROUND and ANALYSIS:

The petitioner seeks to combine Parcels 365 and 366 of Tax Map 41 into one (1) parcel. The proposed subdivision will permit the petitioner to construct an addition to the principal structure located on Parcel 366 that would otherwise encroach onto Parcel 365. Addendum A of this report illustrates the location of the subject site.

The area of the combined parcels will be approximately 5,100 square feet, which will exceed the minimum lot area standard of 3,500 square feet in the R-1A District. The combined frontage of the parcels along Curtis Avenue will be approximately 60 feet, which will exceed the minimum lot frontage of 30 feet in the R-1A District.

It should be noted the proposed subdivision will eliminate two (2) nonconforming parcels that are less in area than the minimum R-1A District standard.

STAFF RECOMMENDATION:

Staff recommends approval with the following conditions:

1. That the petitioner submit three (3) original final plat documents, including all access/utility easements if applicable, signed and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President's signature;

2. That the final plat is filed at the Monongalia County Courthouse within thirty (30) days of meeting the conditions set forth above.

Enclosure: Application and accompanying exhibits

Development Services
Christopher Fletcher, AICP
Director

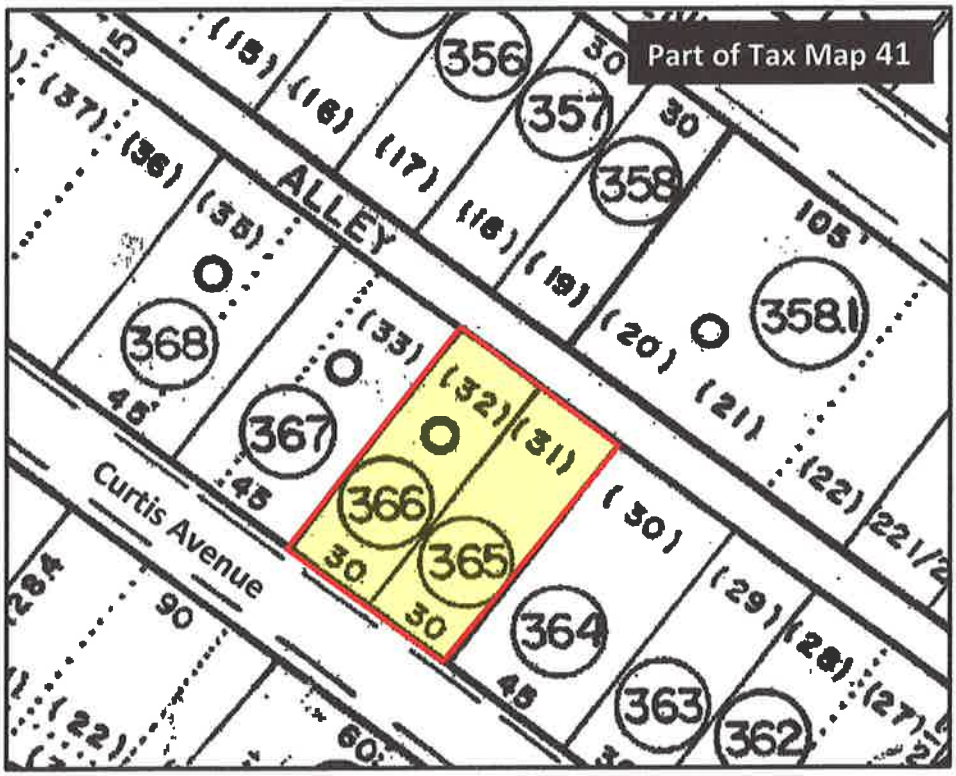
Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

V16-01

STAFF REPORT ADDENDUM A

MNS15-15 / Phillips / 1041 Curtis Avenue

V16-01


Part of Tax Map 41
356
357
358
358.1
368
367
366
365
364
363
362
ALLEY
Curtis Avenue
(15)
(16)
(17)
(18)
(19)
(20)
(21)
(22)
(29)
(30)
(31)
(32)
(33)
(35)
(36)
(37)
30
45
90
60
105

V16-01

City of Morgantown, West Virginia

APPLICATION FOR MINOR SUBDIVISION

OFFICE USE	
CASE NO.	MNS15-15
RECEIVED:	8/24/15
COMPLETE:	

A Minor Subdivision of property includes the creation of up to three (3) parcels or the combination of existing parcels, but does not involve the extension of off-site facilities (streets, etc.) or the dedication of a portion of the site for public use.

(PLEASE TYPE OR PRINT IN BLACK INK)

I. APPLICANT

Name:	David A Phillips	Phone:	304-376-2988
Mailing Address:	1041 Curtis Ave	Mobile:	304-376-2988
	Street Morgantown WV 26501-7028	Email:	dphillips@clearmountainbank.com
	City State Zip		

II. AGENT / CONTACT INFORMATION

Name:	Brooke J Phillips	Phone:	304-290-6122
Mailing Address:	1041 Curtis Ave	Mobile:	304-290-6122
	Street Morgantown WV 26501-7028	Email:	N/A
	City State Zip		
Mailings –	Send all correspondence to (check one): ☑ Applicant OR ☐ Agent/Contact		

III. PROPERTY

Owner:	Brooke J & David A Phillips	Phone:	304-376-2988
Mailing Address:	1041 Curtis Ave	Mobile:	304-376-2988
	Street Morgantown WV 26501-7028	Email:	
	City State Zip		

IV. SITE

Street Address (if assigned):	1041 Curtis Ave	Tax Map #(s):	41
Zoning:	R-1A	Parcel #(s):	366 / 365
Square Footage of Parcel(s):	30 x 85 (2550) ft.²	30 x 85 (2550) ft.²	ft.²
Subdivision Description:	Hayes Addition		
Are there any Variances from the Subdivision Regulations anticipated:	☐ Yes	☑ No	
If yes, to what extent is a variance necessary?	Make Parcels 366 and 365 one parcel combined area approx. 5,100 sq. ft		

V16-01

City of Morgantown, West Virginia

APPLICATION FOR MINOR SUBDIVISION

OFFICE USE	
CASE NO.	MN81545
RECEIVED:	
COMPLETE:	

V. PLAT

Preliminary Plat submission – A Minor Subdivision Application must also include one (1) preliminary plat illustrating:

(a) Existing and proposed property boundaries, property boundary dimensions, and square footage.

(b) A letter of service availability and approval from the Morgantown Utility Board.

Final Plat submission – Upon approval by the Planning Commission, three (3) sealed Final Plat surveys must be submitted to the Planning Office and meet the following standards:

(a) Drawn to a scale of one inch (1") equals fifty feet (50') or larger;
(b) Date of preparation, north arrow, and scale;
(c) Legal description;
(d) Applicant/owner name and address;
(e) Existing zoning;
(f) Legend;
(g) Vicinity map;
(h) Existing and proposed utility lines and easements;
(i) Certification by a registered land surveyor, licensed in the State of West Virginia, that the dimension and bearings are accurately delineated with a seal and signature;
(j) Location, shape, exterior dimensions of each existing building on the site(s);
(k) Location and dimensions of paved surfaces including sidewalks and curb cuts, and of all abutting streets;
(l) Location of springs, streams, other water bodies, and areas subject to flooding;
(m) Floodplain designation making reference to pertinent FEMA Firm Community Panel Number;
(n) Approval signature block allowing space for President of Morgantown Planning Commission;
(o) Other items as deemed necessary by Planner Director or City Engineer.

Please note that all approved minor subdivision plats must be filed with the Monongalia County Tax Office within thirty (30) days of approval. Plats not filed within thirty (30) days will be considered invalid by the City of Morgantown and will require reapproval.

VIII. ATTEST

I hereby certify that I have read and examined this document and know the same to be true and correct. All provisions of laws and ordinance governing this type of work will be complied with whether specified herein or not. Granting of a permit 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.

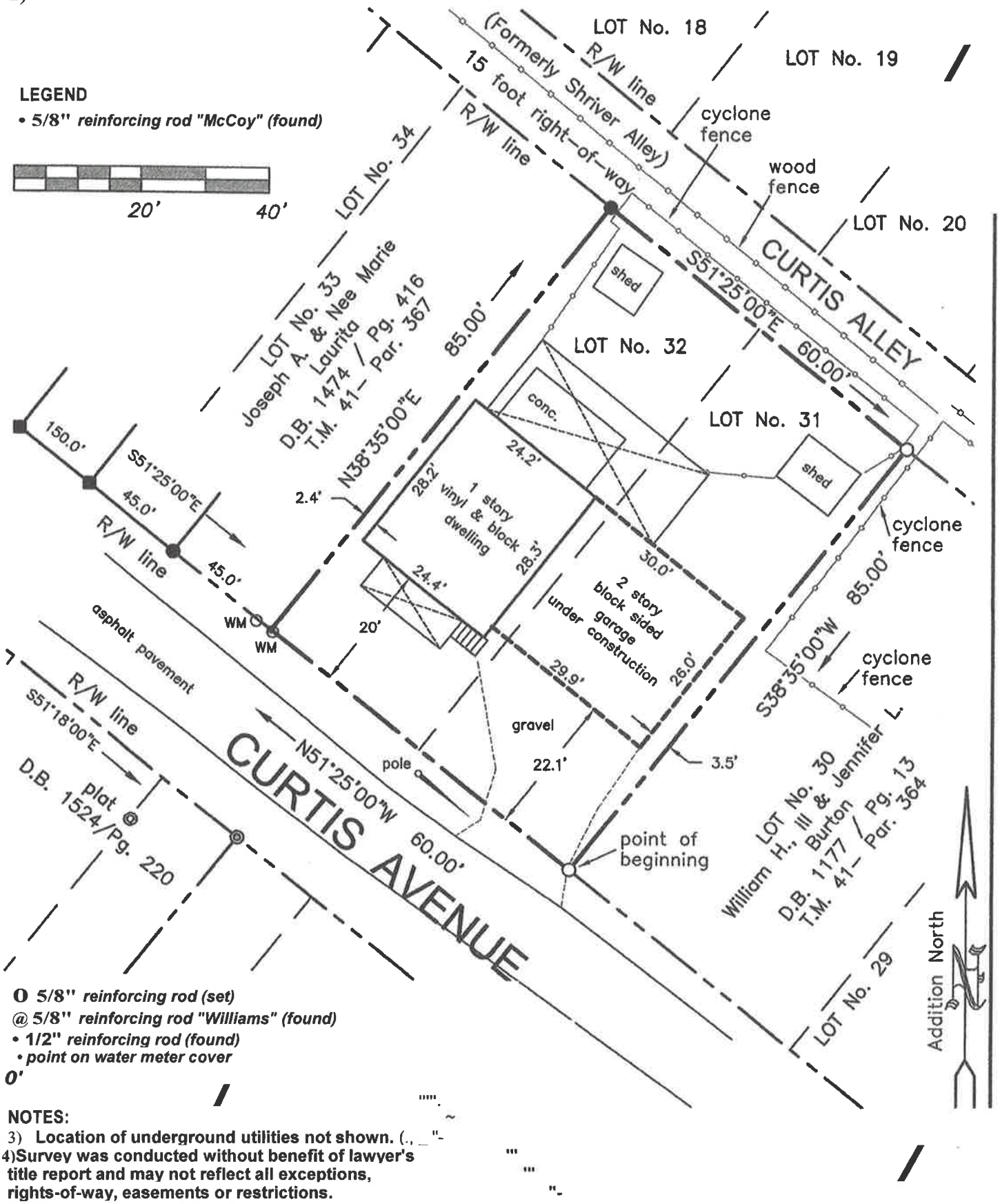
David A Phillips	[signature]	8/24/15
Type/Print Name of Applicant/Agent	Signature of Applicant/Agent	Date

- **Minor Subdivision Application Fee – $35** CASH

V16-01

Exhibit D

2)



NOTES:

3) Location of underground utilities not shown.

4) Survey was conducted without benefit of lawyer's title report and may not reflect all exceptions, rights-of-way, easements or restrictions.

3) This parcel is zoned R-1 A.

V16-01

THIS SUBDIVISION HAS BEEN APPROVED BY THE MORGANTOWN PLANNING COMMISSION OR ASCERTAINED TO MEET THE MORGANTOWN SUBDIVISION REGULA TIONS ON _, 20 _ AND IS READY FOR RECORDING BY THE MONONGALIA COUNTY CLERK OF

PLAT OF SURVEY FOR THE SUBDIVISION FOR

BROOKE J. PHILLIPS &

1'"\ A \111'"\ A OUII I IO~

Exhibit E

V16-01

November 23, 2015

William H. Burton, III
Jennifer Stotts Burton
1119 Curtis Avenue
Morgantown, WV 26501

Dear William and Jennifer,

Since we have not heard back from you following our phone conversation on November 2, 2015, we are writing to formally offer you $1,500 to give us clear title to 2 ft. of land which is currently identified as being part of parcel #364. We have marked this section on the attached survey but, in summary, it is the 2 ft. strip of land that runs from our recently surveyed property line, based on the language in our deed, to your fence line.

We are interested in quickly clearing title to this section of the lot because we have confirmation that your father, William H. Burton, Jr. filed an informal complaint to the planning department. We are aware that your father is Vice Chair of the Board of Zoning Appeals for the City of Morgantown. Although your father should recuse himself at the meeting, we are skeptical that we would receive a fair and equitable chance at a variance hearing and would prefer to avoid even needing a variance to increase a side lot setback by clearing title to this section as quickly as possible.

We hereby make a formal offer of $1,500 for clear title to this 2 ft. strip of land. We would happily accept a quitclaim deed to this section of property which absolves you from providing warranty for the title. Additionally, we will cover the cost of drafting the quitclaim deed, any fees associated in applying to the City for the "sub-division", and, if necessary, a subsequent survey adjusted to your new lot description to benefit you if you should ever decide to sell your home in the future.

It is our desire to continue to be a good neighbor and come to a fair resolution for both parties, especially since we were under the premise that the aforementioned property was part of our residence since the purchase in 2008. At that time you stated that you believed that the property line extended to the fence. After obtaining this consent from you, we maintained this property for over seven years. By maintaining this property for that length of time, you had actual notice that we believed and used this realty as our own.

Please follow-up with us by December 4th, 2015. We look forward to working with you to secure this property and maintaining a sincere friendship between neighbors. Thank you.

David (304) 376-2988, dphill79@yahoo.com Brooke (304) 290-6122, bjpwv@yahoo.com

Sincerely,

David and Brooke Phillips

V16-01

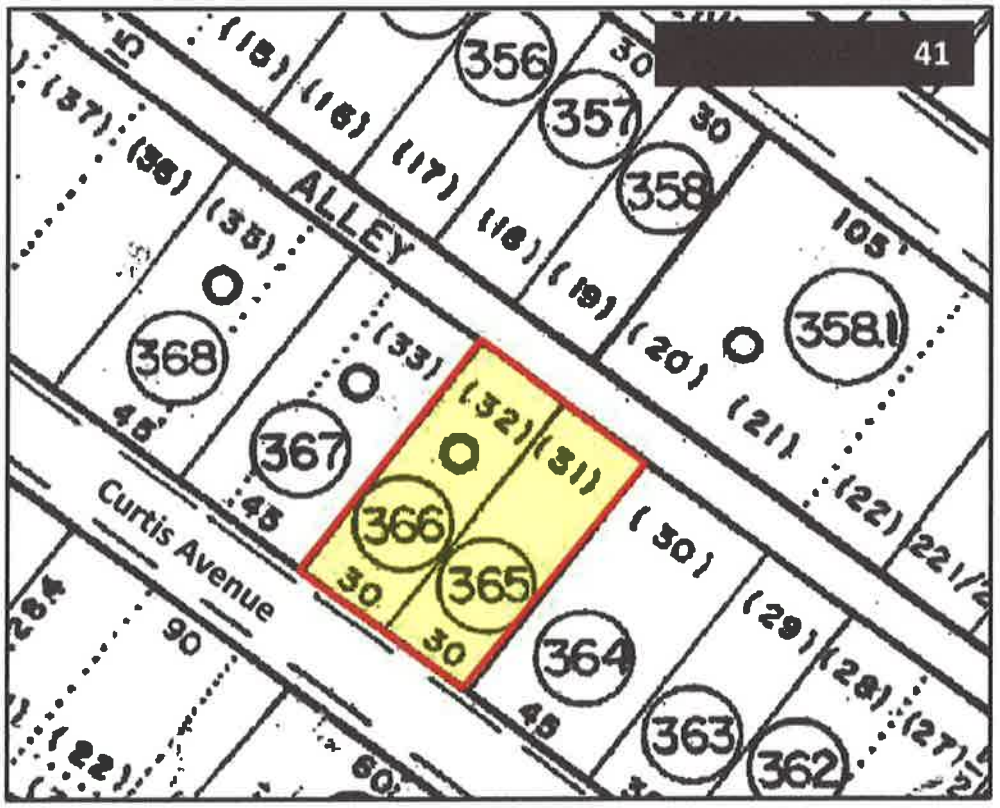

41
356
357
358
358.1
ALLEY
368
367
366
365
364
363
362
Curtis Avenue
105
45
30
90
60

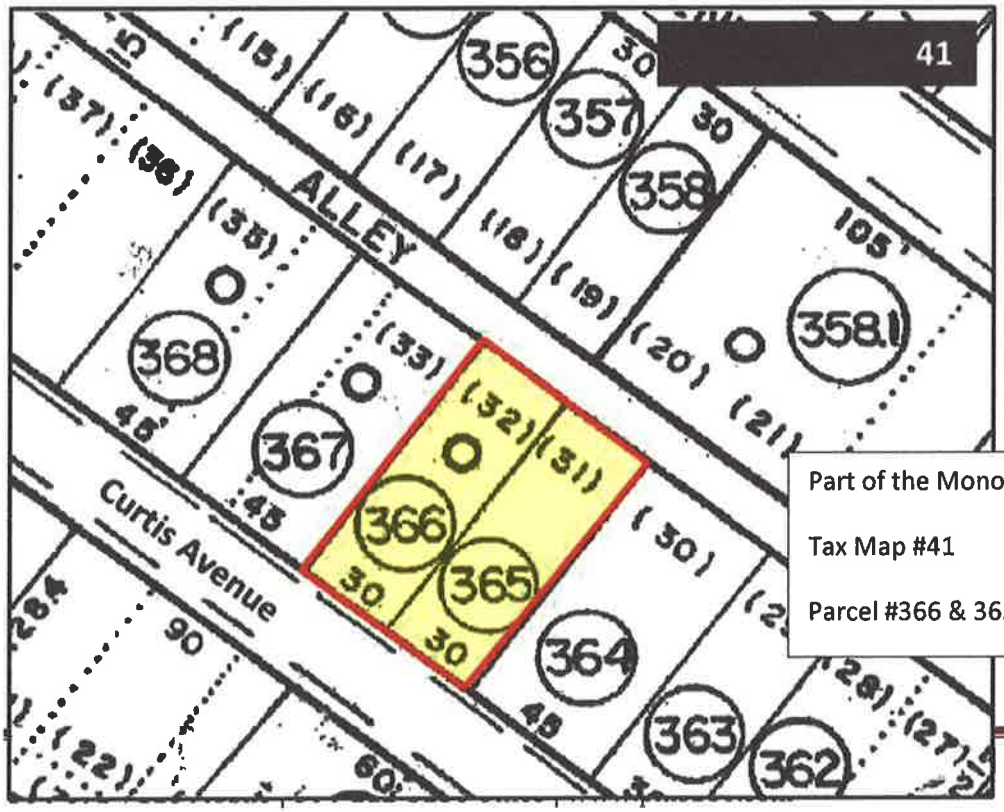
Exhibit F

V16-01

Dave & Brooke Phillips / 1041 Curtis Street / Variance / Article 1335.04

1041 Curtis Street prior to construction

Fence line – believed to be property line for 7 years



Part of the Monongalia County Tax Maps

Tax Map #41

Parcel #366 & 365 – 1041 Curtis Street

V16-01

Dave & Brooke Phillips / 1041 Curtis Street / Variance / Article 1335.04

Section of the City of Morgantown Zoning Map

Approximate property location

1041 Curtis Street / Prior to addition

V16-01

Dave & Brooke Phillips / 1041 Curtis Street / Variance / Article 1335.04

1041 Curtis Street / prior to addition

Property owned by William Burton III

1041 Curtis Street

During construction

Approximate encroachment

V116-01

1041 Curtis Street during construction

Fence line was the assumed property boundary for seven years

V16-01

Dave & Brooke Phillips / 1041 Curtis Street / Variance / Article 1335.04

Approximate area of encroachment

1042 Curtis Street / Appears that either side of structure does not meet the 5 foot setback

V16-01

Dave & Brooke Phillips / 1041 Curtis Street / Variance / Article 1335.04

1041 Curtis Street prior to addition. 2.4' setback. Adjacent property does not appear to meet the required five foot setback.

Curtis Street / It appears that the structure on the right does not have the required 5 foot side setback

V16-01

Dave & Brooke Phillips / 1041 Curtis Street / Variance / Article 1335.04

Curtis Street / House to the right appears not to meet the required 5 yard setback