



# MORGANTOWN BOARD OF ZONING APPEALS

January 20, 2016  
6:30 PM  
City Council Chambers

## **Board Members:**

Leanne Cardoso  
Bill Burton  
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, then 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

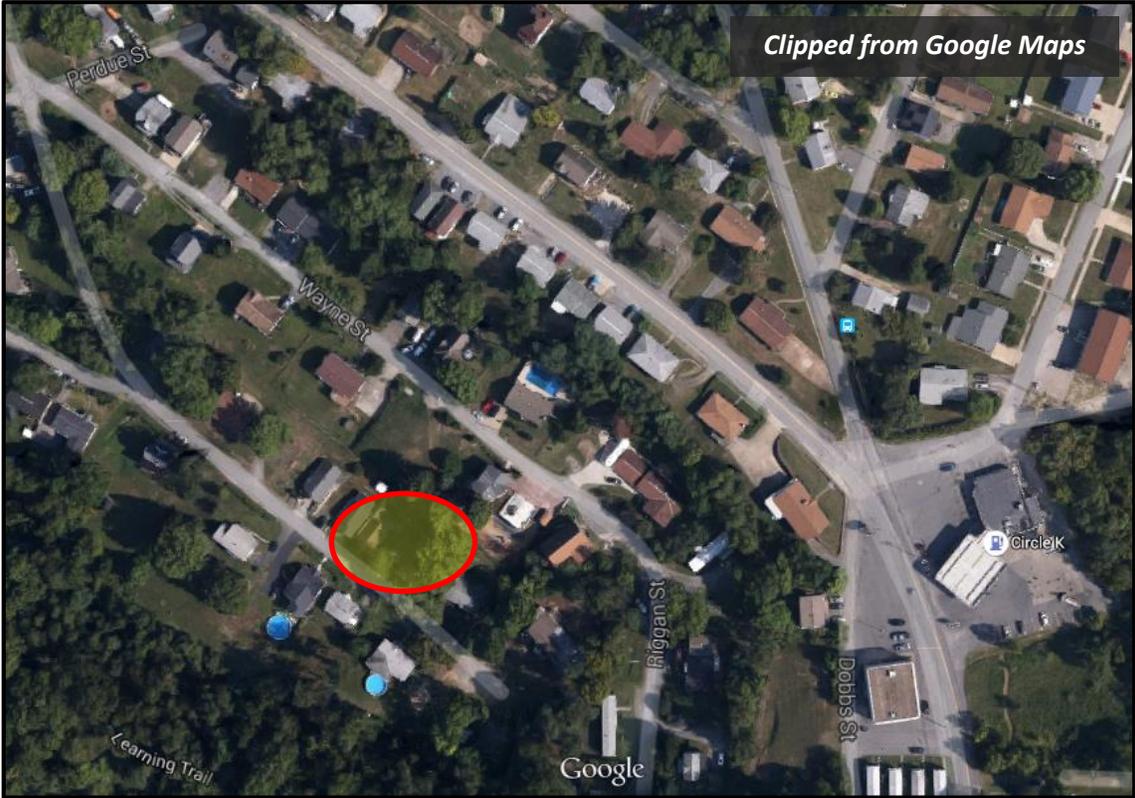
### **Development Services**

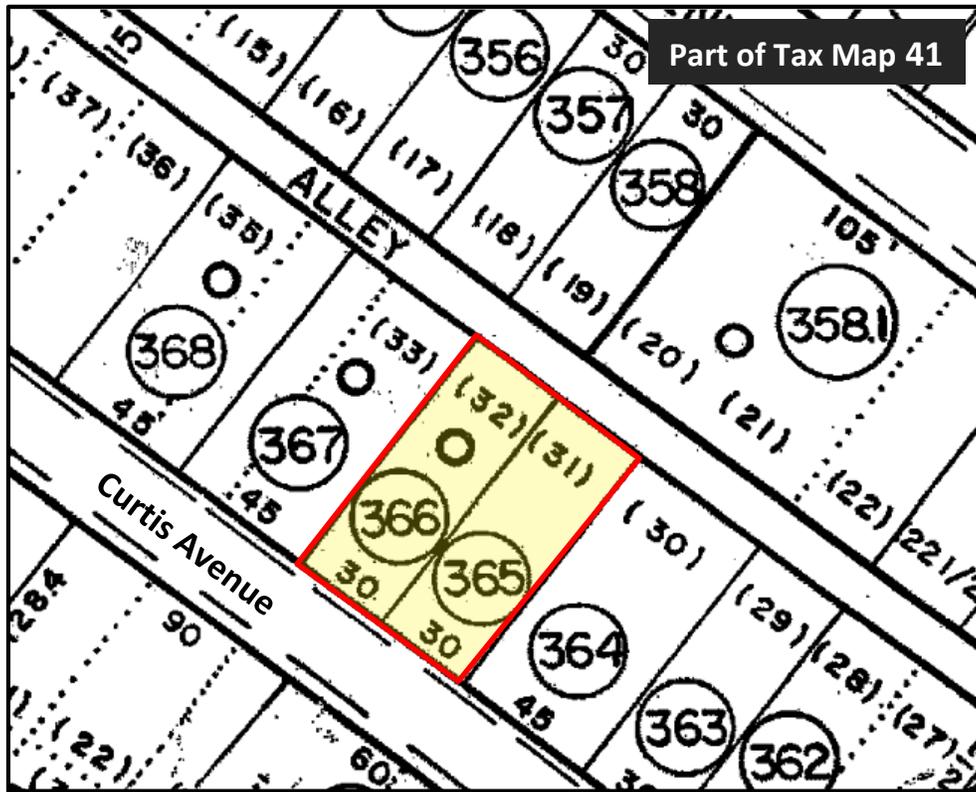
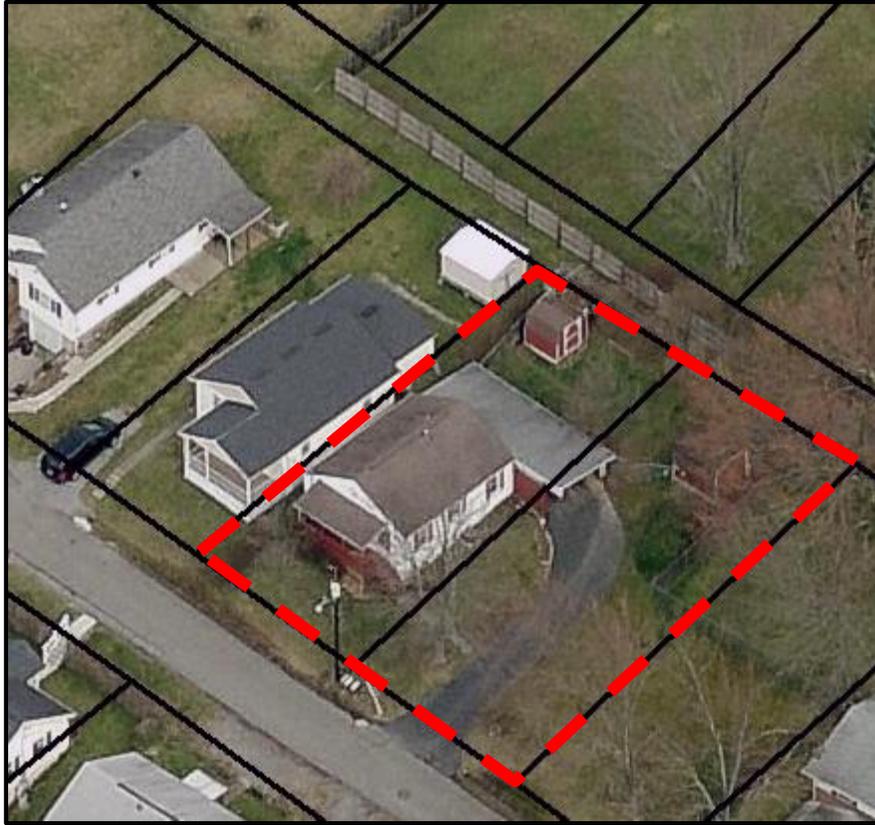
Christopher Fletcher, AICP  
Director

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389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

**STAFF REPORT ADDENDUM A**  
**V16-01 / Phillips / 1041 Curtis Avenue**





## 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

<b>I. APPLICANT</b>		Name: Project Management Services	
Mailing Address:	160 Fayette Street Suite 101		Phone: 304-212-5256
	Street	Morgantown WV 26505	Mobile: 304-692-7116
	City	State Zip	Email: pms160@comcast.net
<b>II. PROPERTY</b>		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
<b>III. NARRATIVE</b>		Please describe the nature and extent of your variance request(s).	
<p>Variance relief from the City of Morgantown Planning and Zoning Code, Article 1325.04 as it relates to setbacks for realty at 1041 Curtis Street.</p> <p style="text-align: center;"><b>PAID</b> DEC 02 2015 <b>PAID</b></p>			
<b>V. ATTEST</b>		BY:	
<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 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.</p>			
Lisa Mardis			
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.

V16-01



City of Morgantown, West Virginia

# APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V16-01
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## 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



**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).

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Phillips / 1041 Curtis Street / Variance / Article 1335.04 (A)

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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).

## Dave & Brooke Phillips / 1041 Curtis Street / Variance

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V116-01

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.

Vile-01



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

# Experience !

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**REALTOR Since 1973**

**304-599-9300 or 800-693-5300**



**Patricia Stewart**  
Broker

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**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**

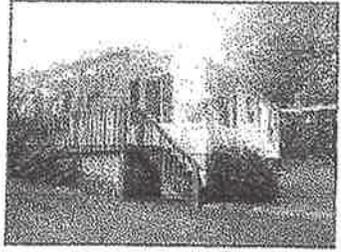
**Number of Stories: 1  
Year Built: 1945  
Number of Fireplaces: 0  
Zoning: Single Fam  
Construction: 2**

**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**

V16-01



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

**Single Family Detached**  
**Area:** Morgantown/West...  
**County Code:** Monongalia  
**List Date:** 8/4/2008  
**Update:** 8/11/2008  
**Virtual Tour:**  
**Exclusive Right to Sell**  
**Listing Number:** 10063819  
**Deed Bk:** 454 **Deed Pg:** 2858...  
**List Price:** \$89,000  
**Original Price:** \$89,000

LISTING INFORMATION		
<b>List Office:</b> PAT STEWART REALTORS	<b>List Office Phone:</b> Office (304) 599-9300	<b>Map Page:</b> 41
<b>List Agent:</b> ERIC LEE	<b>List Agent Phone:</b> (304) 685-5477	<b>Parcel #:</b> 3658366
<b>List Agent 2:</b>	<b>List Agent 2 Phone:</b>	<b>Minimum Deposit:</b> 500
<b>Owner Name:</b> Kennedy	<b>Occupied:</b> Vacant	<b>Possession:</b> Closing
<b>Legal Description:</b> Lots 32 & 33, 1041 Curtis Ave.		<b>Expiration Date:</b> 11/15/2008

SOLD INFORMATION		
<b>How Sold:</b>	<b>Selling Agent Commission:</b> 2.7	<b>Selling Agent:</b>
<b>Sale Price:</b>	<b>Buyers Agent Commission:</b> 2.7	<b>Selling Office:</b>
<b>Closed Date:</b>	<b>Market Time:</b> 12	

PROPERTY FEATURES	
<b>Rooms:</b> 4	<b>Full Bath:</b> 1
<b>Bedrooms:</b> 2	<b>Half Bath:</b> 0
<b>Number of Stories:</b> 1.00	<b>Other Bath:</b> 0
<b>Finished SqFt Above Grade:</b> 672	
<b>Finished SqFt Below Grade:</b> 0	
<b>Unfinished SqFt Below Grade:</b> 0	
<b>Total Fin Living Area:</b> 672	
<b>Lot Dimensions:</b> 40x70	<b>Acres:</b>
<b>Lot Square Feet:</b>	
<b>New Construction:</b>	
<b>Year Built:</b> 1945	
<b>Number Fireplaces:</b> 0	
<b>Warranty:</b>	
<b>Handicap Modified:</b>	
<b>Homeowner's Association:</b> No	
<b>Homeowner's Assn Fee:</b>	
<b>Fee Includes:</b>	

295  
 95  
 ---  
 390

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

TAX INFORMATION	
<b>Tax Amount:</b>	0.00
<b>Tax Year:</b>	
<b>Property ID Number:</b>	0000

SCHOOLS		
<b>School County:</b> Monongalia 304-291-9210	<b>Middle School:</b> South Jr High	<b>Elementary School:</b> Mountain View Elem
<b>High School:</b> Morgantown	<b>Other School:</b>	

FEATURES	
<b>Lot Description:</b>	<b>Roof:</b> Shingles
<b>Fence Description:</b> Split Rail	<b>Water Sewer:</b> City Sewer, City Water
<b>View Description:</b> Neighborhood	<b>Int. Feat:</b> All Window Treatments, Elec. Stove Connection, Washer Connection, Elec. Dryer Connection
<b>Waterfront Description:</b> None	<b>Electric:</b> 100 Amps
<b>Comun. Amen.:</b> Shopping/Mall, Public Transportation	<b>Flooring:</b> Wall To Wall Carpet, Vinyl
<b>Parking:</b> Carport, 3+ Cars	<b>Heating:</b> Forced Air, Gas
<b>Style:</b> Ranch	<b>Cooling:</b> Central Air
<b>Garage:</b> None	<b>Attic:</b> None
<b>Foundation:</b> Block	<b>Fireplaces:</b> None
<b>Construction:</b> Frame	<b>Appliances:</b> Range, Refrigerator, Washer
<b>Exterior:</b> Vinyl	<b>Equipment:</b> Smoke Detectors, Cable Ready
<b>Exterior Features:</b> Porch, Storage Shed/Out Bldg	
<b>Basement:</b> None	<b>Other Rooms:</b> 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

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**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

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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

<b>Application Date</b> <u>8/20/15</u>	<b>Type of Work:</b> <input type="checkbox"/> New Construction SFD <input checked="" type="checkbox"/> SFD Addition <input type="checkbox"/> New Construction Rental/Commercial <input type="checkbox"/> Rental/Commercial Addition <div style="float: right; margin-top: 10px;"> <input type="checkbox"/> Garage- attached  <input type="checkbox"/> Garage- detached             </div>	<b>Is Applicant Owner?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
-------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------

**PROPERTY INFORMATION:**

Street address: 1041 CURTIS AVE Map# 41 Parcel# 366 Ward 1 Zoning R-1A

PARCELS 364 AND 365 C.A.F.

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<sup>00</sup> Electrical value \$ 3000<sup>00</sup>  
 Square footage of build 880<sup>57</sup> Square footage of grading 1200<sup>55</sup>

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

I hereby 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] 2984 Summers School RD 304-864-41  
 SIGNATURE OF APPLICANT ADDRESS OF APPLICANT PHONE  
 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 DRY WALL INTERIOR vinyl SIDING  
 exterior 30 yr SHINGLES Double Hung Windows  
 EXCAVATE pour CONCRETE DRIVE WAY.

**STRUCTURAL FRAME INFORMATION:**

Steel  Masonry  Concrete  Wood  Other (Identify) 2x6 WALLS / 8" block  
 (concrete)

**EXTERIOR WALL INFORMATION:**

Steel  Masonry  Concrete  Wood  Other (Identify) 2x6 WALLS

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

**ELECTRICAL INFORMATION:**

Size of underground conductor EXISTING  
 Size of grounded conductor EXISTING  
 Size of grounding conductor 1.00 COPPER  
 Type of grounding system (water pipe, ground rods, etc) FOOTING REBAR 1/2 STEEL  
 Size of conduit used EXISTING  
 Electrician license number M 335894 FEW 0215

OFFICE USE ONLY

V116-01

APPROVALS:

Engineering Department Approval Notes:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

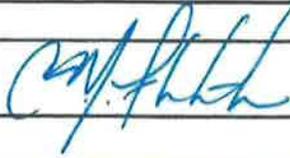
Signature of person reviewing: \_\_\_\_\_

DATE

Planning Department Approval Notes:

*Planning Commission approved MA15-15 on 10 SEP 2015 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: <i>Addition RES- 2015. 00001220</i>	Fee
Electrical:	Fee
Other:	Fee
Other:	Fee
Stop Work Order:	Fee

Application Accepted and Processed By: \_\_\_\_\_

Total Fee

Approved By: \_\_\_\_\_

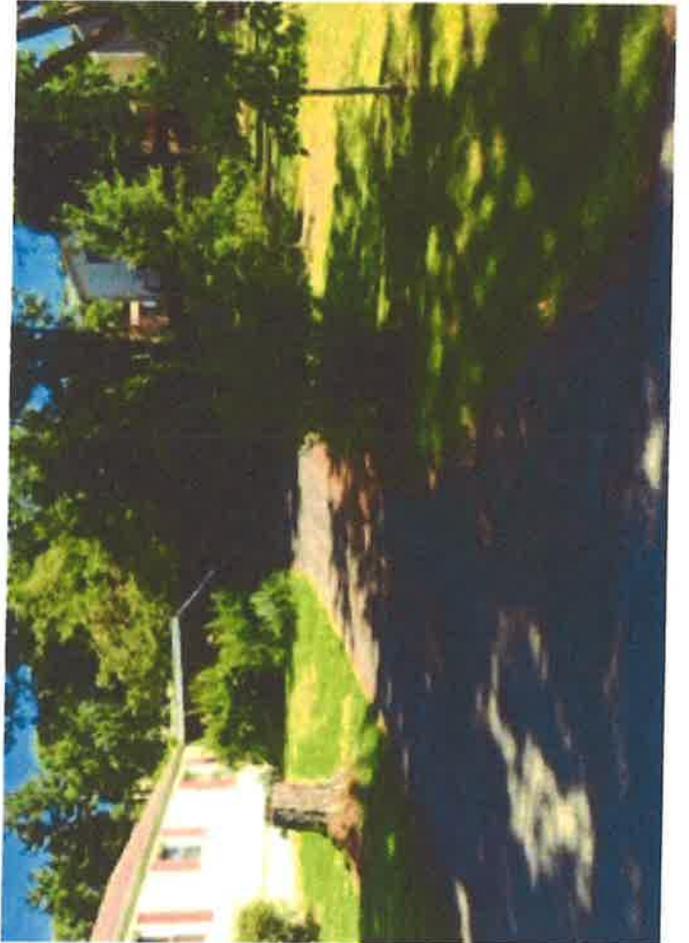
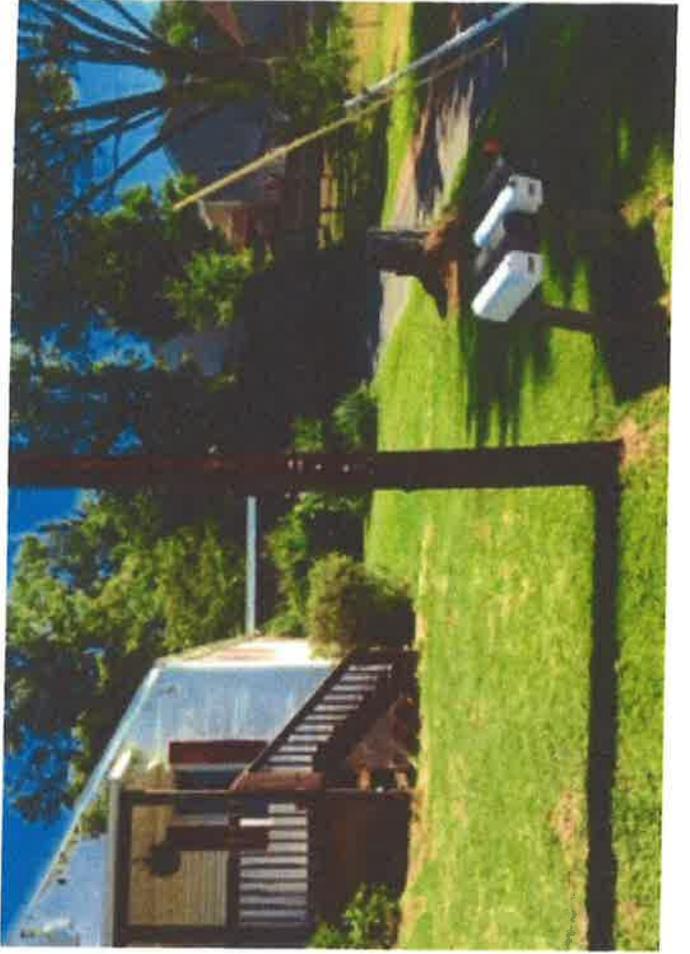
DATE

Signature of Person Picking Up Building Permit: \_\_\_\_\_

DATE

Print Name of Person Picking up Permit: \_\_\_\_\_





10-01A



## MORGANTOWN PLANNING COMMISSION

September 10, 2015  
6:30 PM  
City Council Chambers

**President:**

Peter DeMasters, 6<sup>th</sup> Ward

**Vice-President:**

Carol Pyles, 7<sup>th</sup> Ward

**Planning Commissioners:**

Sam Loretta, 1<sup>st</sup> Ward

Tim Stranko, 2<sup>nd</sup> Ward

William Blosser, 3<sup>rd</sup> Ward

Bill Petros, 4<sup>th</sup> Ward

Mike Shuman, 5<sup>th</sup> 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**

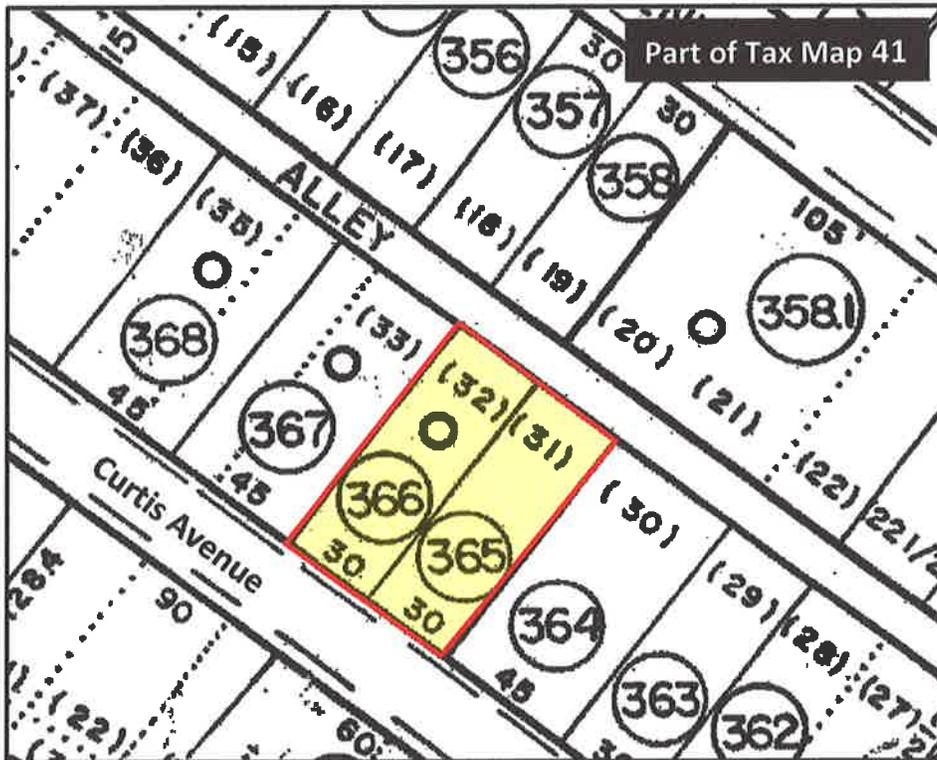
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

V16-01

**STAFF REPORT ADDENDUM A**  
**MNS15-15 / Phillips / 1041 Curtis Avenue**



V116-01





City of Morgantown, West Virginia

# APPLICATION FOR MINOR SUBDIVISION

V116-01

OFFICE USE	
CASE NO.	MN815-15
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)

<b>I. APPLICANT</b>			
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		
<b>II. AGENT / CONTACT INFORMATION</b>			
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): <input checked="" type="checkbox"/> Applicant OR <input type="checkbox"/> Agent/Contact		
<b>III. PROPERTY</b>			
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		
<b>IV. SITE</b>			
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. <sup>2</sup>	30 x 85 (2550) ft. <sup>2</sup>	ft. <sup>2</sup>
Subdivision Description:	Hayes Addition		
Are there any Variances from the Subdivision Regulations anticipated: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
If yes, to what extent is a variance necessary?	Make Parcels 366 and 365 one parcel <i>combined area approx. 5,100 sq. ft</i>		



City of Morgantown, West Virginia

APPLICATION FOR MINOR SUBDIVISION

V116-01

OFFICE USE	
CASE NO.	MN815-15
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
Type/Print Name of Applicant/Agent

[Signature]
Signature of Applicant/Agent

8/24/15
Date

Minor Subdivision Application Fee - \$35 CASH

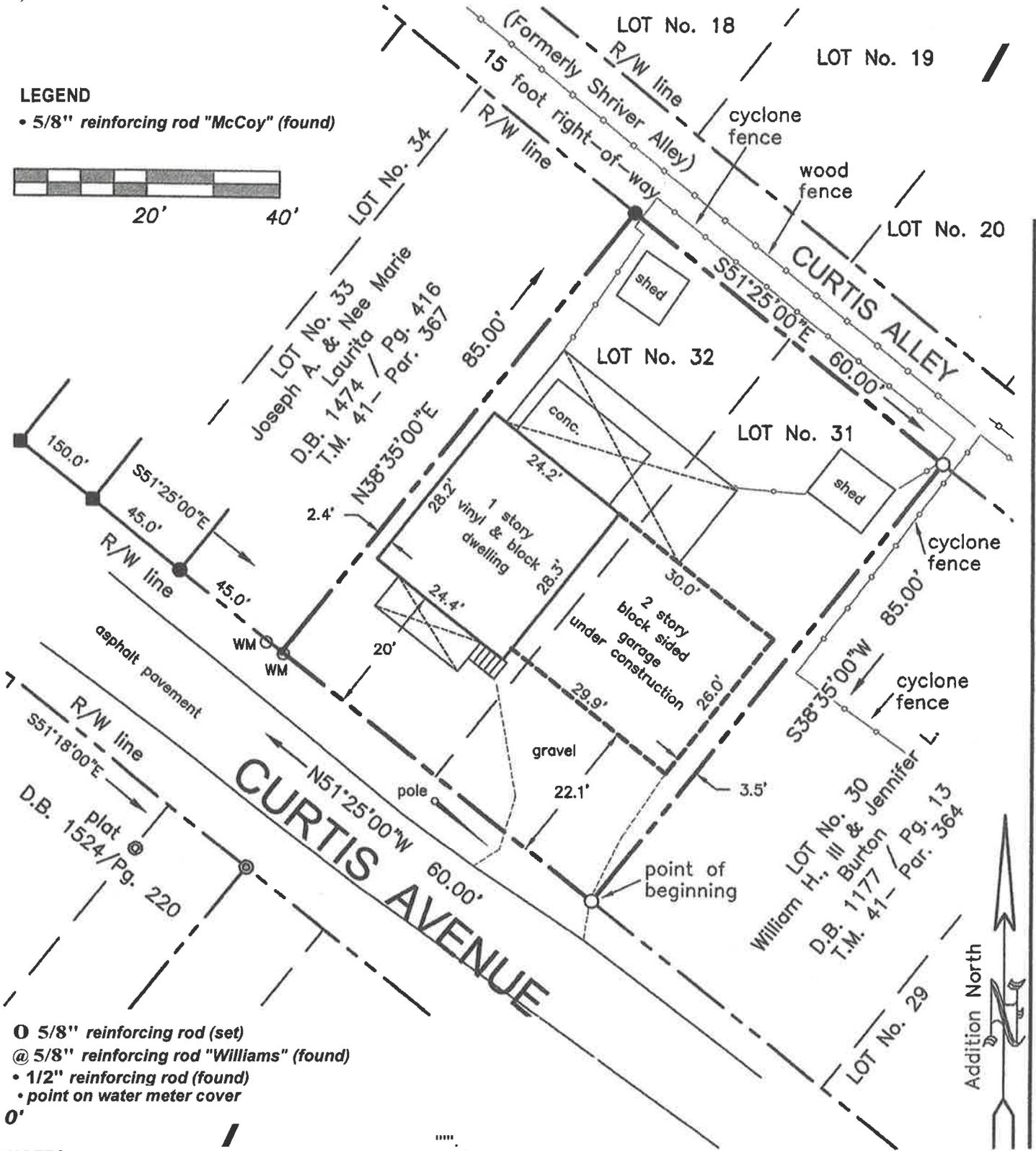
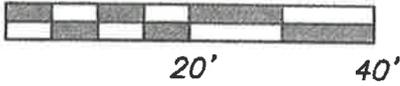
Exhibit D

V116-01

2)

LEGEND

- 5/8" reinforcing rod "McCoy" (found)



- 5/8" reinforcing rod (set)
- @ 5/8" reinforcing rod "Williams" (found)
- 1/2" reinforcing rod (found)
- point on water meter cover

NOTES:

- Location of underground utilities not shown.
- Survey was conducted without benefit of lawyer's title report and may not reflect all exceptions, rights-of-way, easements or restrictions.
- 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 REGULATIONS  
ON \_\_ 20 \_\_ AND IS READY FOR  
RECORDING BY THE MONONGALIA COUNTY CLERK OF

**PLAT OF SURVEY FOR THE SUBDIVISION FOR  
BROOKE J. PHILLIPS &**

1"=111' A QUILLION

## Exhibit E

V116-01

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.

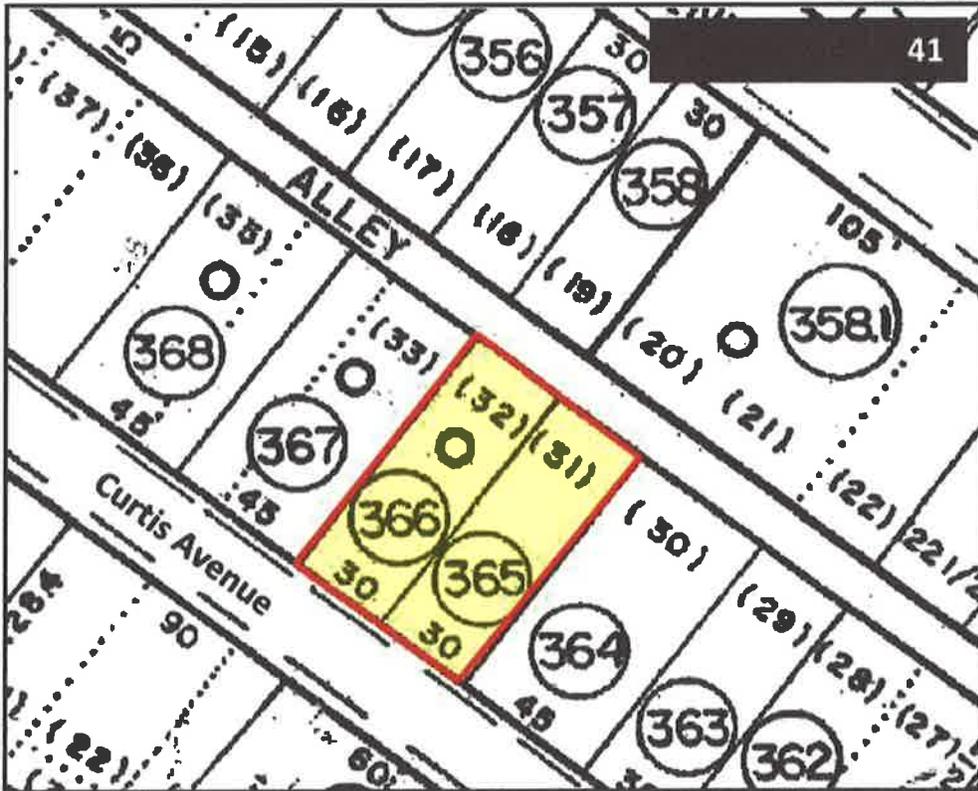
Please follow-up with us by December 4<sup>th</sup>, 2015. We look forward to working with you to secure this property and maintaining a sincere friendship between neighbors. Thank you.

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

Sincerely,

David and Brooke Phillips

V16-01

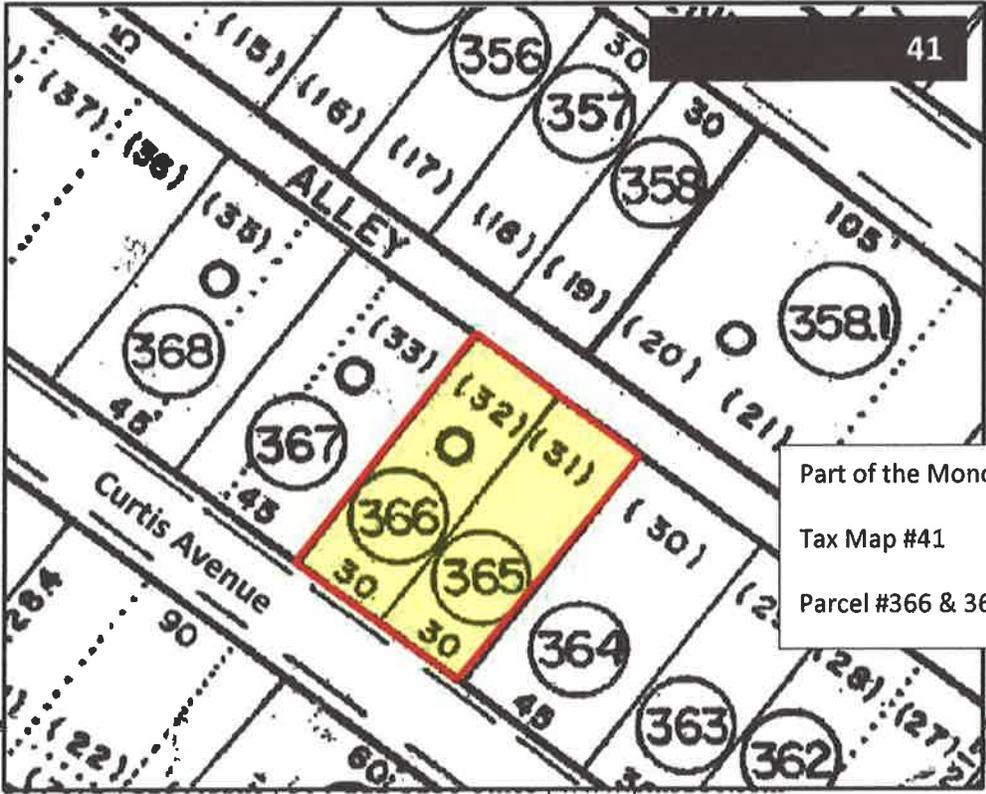


Dave & Brooke Phillips / 1041 Curtis Street / Variance /  
Article 1335.04



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

V116-01

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

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Section of the City of Morgantown Zoning Map  
Approximate property location



1041 Curtis Street / Prior to addition

V116-01

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



1041 Curtis Street / prior to addition

Property owned by  
William Burton III

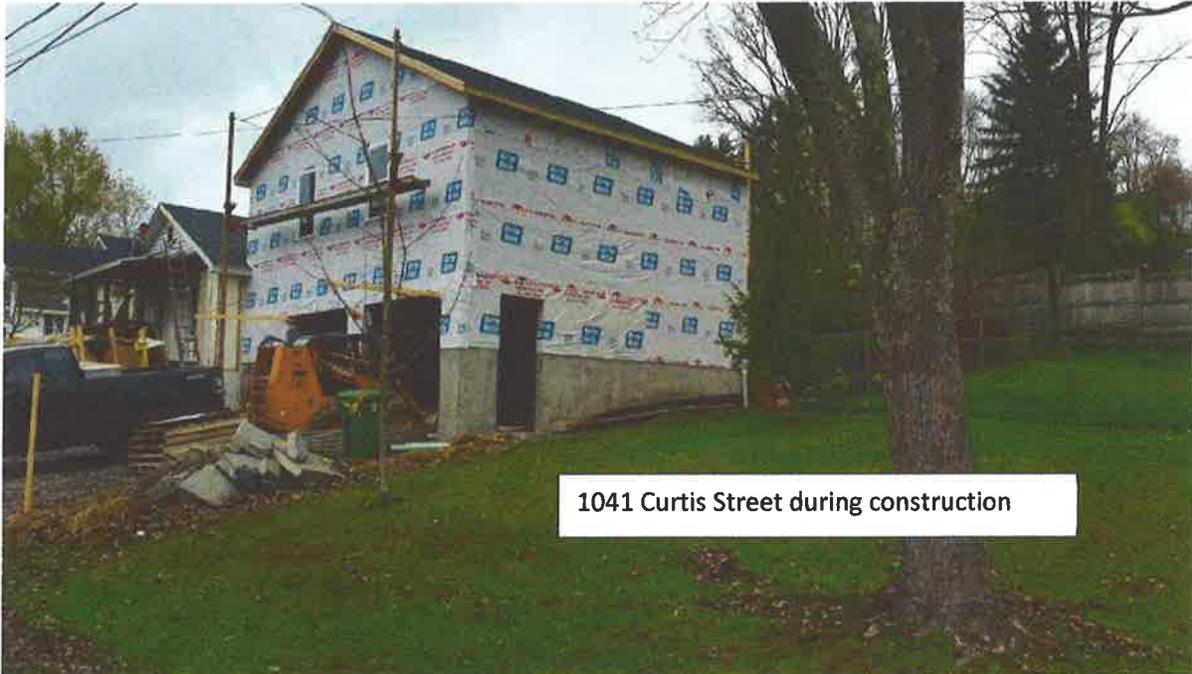


1041 Curtis Street  
During  
construction  
Approximate  
encroachment

V116-01

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

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V116-01

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

V116-01

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



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

V116-01

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

