



MORGANTOWN BOARD OF ZONING APPEALS

August 18, 2010
6:30 PM
City Council Chambers

Board Members:

Bernie Bossio, Chair
Leanne Cardoso, Vice-Chair
Jim Shaffer
George Papandreas
Tom Shamberger

STAFF REPORT REVISED

CASE NO: V10-22 / BTI Enterprises / 651 - 657 George Street

REQUEST and LOCATION:

Request by Matt Wolfe, on behalf of BTI Enterprises, for variance relief from the Planning and Zoning Code, Article 1335.05 Encroachment into setbacks as it relates to the placement of HVAC mechanical units for properties located at 651, 653, 655, and 657 George Street.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map #21, former Parcel #5; R-1A, Single Family Residential District

SURROUNDING ZONING:

R-1A, Single-Family Residential District

BACKGROUND and ANALYSIS:

The petitioner constructed four (4) single-family houses addressed 651, 653, 655, and 657 on George Street. 651 George Street was sold in August 2009. 655 and 657 George Street were sold in May 2010. 653 George Street has not been sold.

The approved site plans show five-foot side setbacks for each house but the locations of the HVAC compressor units were not identified on said plans.

Article 1335.05 (D) "Encroachments into Setbacks" provides that:

"HVAC mechanical units may be located no closer than five (5) feet to a side lot."

After receiving a call from the owner of the adjacent rental property at 661 George Street, a site visit was made and the compressor units at 651, 655, and 657 George Street were found to be installed on the side of the structures, which is closer than five feet from the side property lines. Said compressor units appear to be approximately 1.5 feet from side property lines based on the approved site plans and measurements of the units extending from the building lines. The exact setbacks from the property lines can only be verified by a survey and as-built site plan.

The objection of the owner of the adjacent rental property at 661 George Street is based on his purported inability to perform routine lawn maintenance due to the installation of the compressor unit at 657 George Street.

The Planning and Zoning Code requires the nonconforming HVAC compressor units to be relocated to the rear of the structures unless the Board grants an approximate 3.5 foot variance for each of the subject properties.

Planning Department

Christopher Fletcher, AICP
Planning Director
389 Spruce Street
Morgantown, WV 26505
304.284.7431



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The petitioner has stated that the relocation of the HVAC units would be cost prohibitive. Staff contacted Suburban Plumbing and learned that relocation costs for each of the compressor units could be upwards of \$500.

The compressor unit for 653 George Street has not been installed and the petitioner has agreed to comply with Article 1335.05 (D).

The following points appear relevant in evaluating the merits of the variance petition:

1. The compressor units appear to be wholly on their respective properties and adjoining property owners should be able to maintain their individual lawns without trespassing.
2. The compressor units have been installed toward the rear portion of each dwelling to reduce their visibility from George Street.
3. The compressor units have been elevated above grade thereby mitigating impediments to normal lawn maintenance for properties on which the compressor units are located.

Addendum A of this report illustrates the location and conditions of the subject properties.

STAFF RECOMMENDATION:

The Board 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 applicant.

For the points noted above, Staff recommends that the following "Findings of Fact", which replace in whole those submitted by the petitioner, be found in the affirmative and that variance relief be granted as requested.

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

The single-family structures at 651, 655, and 657 George Street have been sold and the owners of which did not contribute to the HVAC compressor unit encroachment. The petitioner has agreed to install the compressor unit at 653 George Street at the rear of the structure to comply with Article 1335.05 (D).

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

There appears to be a number of HVAC mechanical units that encroach into currently required setback standards as there was not a setback restriction for same prior to the City's extensive zoning ordinance amendment of 2006.

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

The subject HVAC compressor units appear to be located wholly on their respective properties and should not adversely affect the enjoyment or normal lawn care maintenance of adjoining property owners without trespassing. Further, said compressor units do not appear to encroach into or adversely impact public rights-of-way, public improvements, or common public areas.

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

The subject HVAC compressor units appear to be located wholly on their respective properties and, as such, should not adversely impact the value, character, quality, or enjoyment of the newly constructed single-family homes or previously constructed neighboring homes. Variance relief cannot improve nor mitigate traffic congestion that may already be present in the neighborhood.

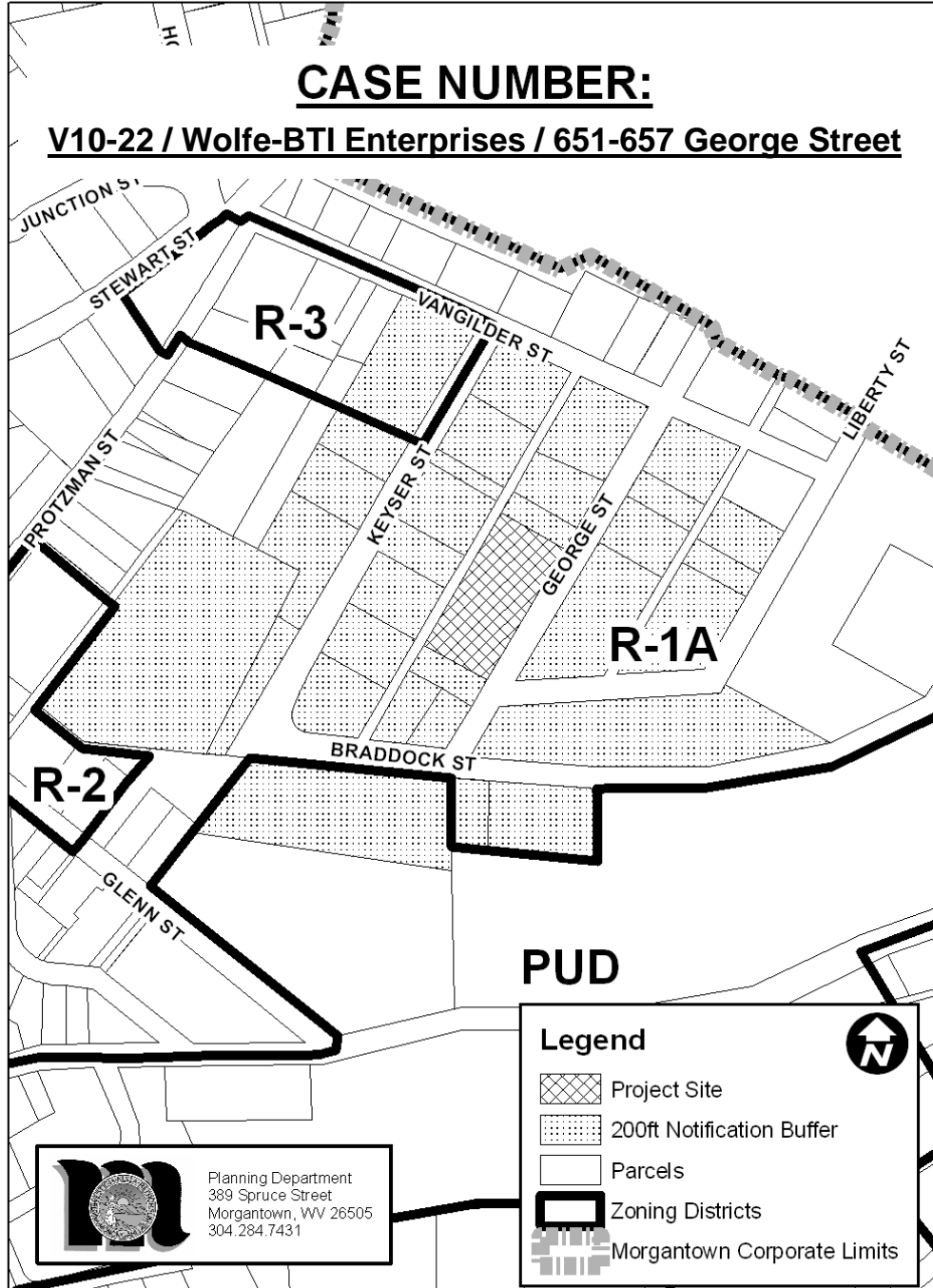
Attachments: Application, Elevation drawings, photos taken by staff.

Planning Department

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Planning Director
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Morgantown, WV 26505
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STAFF REPORT ADDENDUM A

V10-22 / Wolfe – BTI Enterprises / 651-657 George Street



STAFF REPORT ADDENDUM A

V10-22 / Wolfe – BTI Enterprises / 651-657 George Street



Front View

657 George Street



Rear View

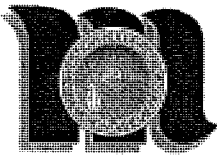
STAFF REPORT ADDENDUM A

V10-22 / Wolfe – BTI Enterprises / 651-657 George Street



655 George Street





City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO:	V10-22
RECEIVED:	
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

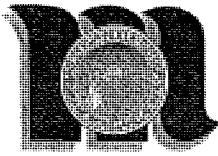
Fee: \$75

I. APPLICANT		Name: BTI Enterprises (Matt Wolfe)	
Mailing Address:	Street	11 Pleasant Ridge Lane	
	City	State	Zip
	Morgantown	WV	26508
	Phone:		
	Mobile:	304-692-9653	
	Email:	Bigdog587@yahoo.com	
II. PROPERTY		Street Address: 655 + 657 George St.	
Owner:	BTI Enterprises		Zoning: R1A
Mailing Address:	Street	SAME	
	City	State	Zip
		Tax Map No:	25 21 (M)
	Parcel No:	HT 5	
	Phone:		

III. NARRATIVE	Please describe the nature and extent of your variance request(s).
	The Hotac units are one the side of the house which are About 3 ft. in width. The oversite was unintentional by both Party's + the cost of moving them would be to high

V. ATTEST		
I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. The granting of a variance does not presume to give authority to violate or cancel the provisions of any other federal, state, or local law regulating construction or the performance of construction. I certify that the information submitted herein and attached hereto is true and accurate and understand that if found otherwise may result in the denial of this request or subsequent revocation of any and all related approvals. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions. I hereby authorize the Planning Department to erect a notification sign on the subject property approximately 15 days prior to the BZA hearing. I further agree to maintain said signage and hereby accept responsibility in case of destruction or removal.		
Matthew D. Wolfe	<i>[Signature]</i>	6/25/10
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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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.

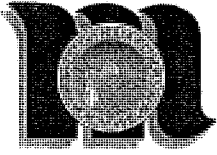
- Land Use Characteristics (complete only those that apply)
- | | | |
|--|---|--|
| <input type="checkbox"/> Residential | <input type="checkbox"/> Single-Family Dwelling | <input type="checkbox"/> Townhouse Dwelling |
| | <input type="checkbox"/> Two-Family Dwelling | <input type="checkbox"/> Multi-Family Dwelling |
| <input type="checkbox"/> 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

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



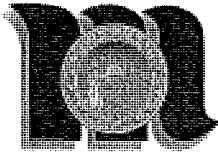
City of Morgantown, West Virginia

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Suggested Scale: 1 square = 5'

SEE PHOTOS
IN STAFF
REPORT
CONF



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COMPLETE:	

VII. FINDINGS OF FACT

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

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

The current structure meets ~~the~~ set back requirements on both sides, The HVAC on the side of the house was an oversight by both myself & we were not instructed by the city of the requirements. the potential cost would not be conducive.

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

659 George St. & others do not meet set back standards &

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

we have added new single family homes to George St. improving street appeal & value.

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

The unit will not alter the use of the property or impend use of the side yard, & is out of site over the hill & past the midpoint of any neighbors