

Morgantown Board of Zoning Appeals



SPECIAL MEETING PACKET

Monday, February 15, 2016

7:00 PM

City Council Chambers

Board Members:

Leanne Cardoso, Chair

Bill Burton, Vice-Chair

Linda Herbst

George Papandreas

Jim Shaffer

Development Services Department

Christopher M. Fletcher, AICP

Director

**CITY OF MORGANTOWN, WEST VIRGINIA
BOARD OF ZONING APPEALS BYLAWS**

**POLICY ANNEX 3
ADMINISTRATIVE APPEAL HEARINGS
RULES OF PROCEDURE**

SECTION 1 OPENING OF MEETINGS
SECTION 2 ORDER AND CONDUCT OF BUSINESS
SECTION 3 VOTING
SECTION 4 RECORDING OF MEETINGS

Adopted: January 20, 2016

SECTION 1 – OPENING OF MEETINGS

- (A) The Chairperson will call the Board to order and the Secretary shall record the members present and absent.
- (B) The Chairperson will conduct meetings under Robert's Rules of Order, current edition, unless such rules are suspended by majority vote of the Board or superseded by these Rules of Procedure.
- (C) The Chairperson will direct questions to the applicant or any person speaking, in order to bring out all relevant facts, circumstances, and conditions affecting the matter being considered, and then call for the questions from other members of the Board.
- (D) The Chairperson will read a statement for the benefit of the Board, petitioner, and the public that describes the order, rules of procedures, and conduct of the hearing (see Exhibit A – Administrative Appeal Pre-Hearing Announcement).

SECTION 2 – ORDER AND CONDUCT OF BUSINESS

- (A) The Board will review the Administrative Appeal and the Staff Report, if any, prior to the scheduled hearing.
- (B) Any Staff Report responding to an Administrative Appeal shall be submitted to the Board and the administrative appeal applicant at least five (5) calendar days prior to the hearing on the appeal. No additional filings will be permitted or considered by the Board. The Administrative Appeal and Staff Report shall identify the evidence relied upon that was presented at the proceeding subject of the appeal. No evidence outside the record below will be considered by the Board unless the Board determines that good cause exists for supplementation of the record. If additional evidence is admitted by the Board, the Board may offer the opportunity to submit responsive evidence or argument prior to making its decision on the Administrative Appeal.
- (C) Parties to an administrative appeal hearing may only address the Board from the podium, unless the Chairperson permits another method based on good cause shown.
- (D) In order to schedule available resources and control the effective conduct of the meeting and/or public hearing, any electronic display may be presented to the Board only if approved by the Chairperson at least five (5) business days prior to the hearing. No electronic display of materials will be permitted without prior approval.
- (E) The Chairperson will first call for the applicant to present the administrative appeal petition.
- (F) The Chairperson will then call upon staff to present the basis of the decision from which the administrative appeal was filed and present a response to the applicant's administrative appeal.
- (G) The Chairperson will then call upon the applicant to present a rebuttal.
- (H) The Chairperson will then recognize members of the Board who may have questions for the applicant and/or staff.

- (I) Each side will proceed without interruption by the other, and all arguments and pleadings will be addressed to the Board. No questioning or argument between individuals will be permitted.
- (J) The Board shall endeavor to offer an equal amount of time in an administrative appeal hearing to the petitioner or other person aggrieved and staff.
- (K) The Chairperson will then call on those who are in support of the administrative appeal petition.
- (L) The Chairperson will then call on those who are opposed to the administrative appeal petition.
- (M) Presumption of correctness. At the hearing, the staff decision for which the administrative appeal was filed is presumed to be correct.
- (N) The burden of proof of the petitioner. After staff explains the basis for the decision appealed, the petitioner has the burden of proof to rebut the presumption of correctness by a preponderance of the evidence.
- (O) Witnesses shall not ordinarily be sworn unless a specific request therefore is made and granted prior to the taking of any testimony. The Chairperson may, upon request of any member of the Board or upon the advice of the City Attorney, require that all witnesses be sworn before giving testimony in a particular matter. Witnesses may be sworn as a group prior to the presentation of the staff report.
- (P) A member of the Board who is absent from any portion of an administrative appeal hearing conducted by the Board may vote on the matter at the time it is acted upon by the Board; provided that s/he has listened to the tape recording made, or reviewed the minutes of, any portion of the hearing from which s/he was absent, and states for the record prior to voting that s/he has read the staff report and is familiar with it.
- (Q) The hearing need not be conducted according to technical, judicial Rules of Evidence. Any relevant evidence may be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- (R) The Chairperson may exclude irrelevant or redundant testimony and may make such other rulings as may be necessary for the orderly conduct of the proceedings ensuring basic fairness and a full airing of the issues involved.
- (S) In order to expedite the conduct of the hearing, the Chairperson may limit the amount of time which a person may use in addressing the Board. The Chairperson may also limit the speakers or testimony upon a particular issue in order to avoid repetitious and cumulative evidence.

SECTION 3 – VOTING

- (A) After all evidence has been submitted to the Board, each administrative appeal case shall be heard, considered, and acted upon in public meeting.

- (B) The Board shall close public participation for discussion prior to taking action, but may ask questions of the staff, the applicant, or persons in the audience pertaining to the matter under consideration.
- (C) The Board will decide to reverse or affirm, wholly or partly, or may modify, the administrative decision for which the administrative appeal was filed.
- (D) By majority vote, the Board may also defer action on any matter whenever it concludes that additional time for further study is necessary. If continued, any public hearing shall be continued to a date certain, not to exceed twenty (20) days from that date. The Board shall in all cases issue a written decision within thirty (30) days of the initial hearing on the administrative appeal.
- (E) Every decision by the Board must be in writing and state findings of fact and conclusions of law on which the Board based its decision. A written copy of such decision shall be available in the Planning Division Office within five (5) days after making such decision.
- (F) A majority vote of those Board members present and voting shall be required to take official action.
- (G) The Chairperson shall vote on all matters before the Board, and shall have the right to make or second motions in the absence of a motion, or a second, made by a member.
- (H) In the event a majority vote for an official action is not obtained, the matter shall be continued until such time as the Board is able to obtain a majority vote for official action. The failure of the Board to obtain a majority on a vote shall not operate as an approval nor a denial of an application.
- (I) A member shall disqualify him/herself and abstain from voting whenever s/he has, or may have, a personal or monetary interest in the matter under consideration, or will be directly affected by the decision. When a member must disqualify him/herself, s/he must recuse him/herself from any vote, discussion, participation, or other activity regarding the conflicting issue. The determination by a member to abstain from voting on any action before the Board shall not be counted as either a "yes" vote or a "no" vote, nor shall it be counted in the determination of the majority.
- (J) Each member attending will be entitled to one (1) vote which will be by show of hand. The Chairperson may request a voice vote or roll call vote when, in his/her opinion such is necessary to accurately record each member's vote. The minutes of the proceedings shall indicate the vote of each member on every matter acted upon, and shall indicate any absence or failure to vote.
- (K) No member shall be excused from voting except on matters involving the consideration of his/her own official conduct, or such matters as referred to in Section 3 (I) above. In all other cases, a failure of any member to vote shall be entered into the minutes as an affirmative vote.
- (L) The Board shall vote upon the merit of administrative appeal under consideration within thirty (30) days from beginning of the public hearing, unless the application is withdrawn by the applicant. A vote to continue or table the matter under consideration shall not constitute a vote on its merits.

- (M) Any appeal determined by the Board shall be particular to that case and site, and shall not be applied to the entire Ordinance, except as noted in Section 1375.05, Administrative Interpretations.

SECTION 4 – RECORDING OF MEETINGS

- (A) The Secretary shall see that all public meetings of the Board are recorded by electronic device.
- (B) Any person desiring to have a meeting recorded by an alternate electronic device or by a stenographic reporter, at his/her own expense, may do so, provided that s/he consults the with Secretary to arrange facilities for such recording prior to the commencement of the meeting, or does not otherwise disrupt the proceedings.

Adopted: 20 JAN 2016
Date



Chairperson, Morgantown Board of Zoning Appeals



Secretary, Morgantown Board of Zoning Appeals

EXHIBIT A

Administrative Appeal Pre-Hearing Announcement read by the Chairperson

Good evening and welcome to this ADMINISTRATIVE APPEAL HEARING of the City of Morgantown Board of Zoning Appeals. Please turn off all cell phones or other devices that may disrupt these proceedings. It is the duty of this Board to hear properly submitted administrative appeal petitions.

The Board will conduct this administrative appeal hearing in the following order:

- The Board will review the Administrative Appeal and the Staff Report, if any, prior to the scheduled hearing.
- Any party may submit additional evidence for the Board's consideration no less than five (5) business days prior to the scheduled hearing. No evidence submitted after the deadline will be considered unless the Board finds, at the hearing, that good cause exists to admit additional evidence. If additional evidence is admitted by the Board after the deadline, the Board will offer the opportunity to submit responsive evidence or argument prior to making its decision on the Administrative Appeal.
- Parties to an administrative appeal hearing may only address the Board from the podium, unless the Chairperson permits another method based on good cause shown.
- In order to schedule available resources and control the effective conduct of this hearing, any electronic display may be presented to the Board only if approved by the Chairperson at least five (5) business days prior to the hearing. No electronic display of materials will be permitted without prior approval.
- I will first call for the applicant to present the administrative appeal petition.
- I will then call upon staff to present his/her basis of his/her decision for which the administrative appeal was filed and present a response to the applicant's administrative appeal.
- I will then call upon the applicant to present a rebuttal.
- I will then recognize members of the Board who may have questions for the applicant and/or staff.
- Each side will proceed without interruption by the other, and all arguments and pleadings will be addressed to the Board. No questioning or argument between individuals will be permitted.
- I will endeavor to offer an equal amount of time in an administrative appeal hearing to the petitioner or other person aggrieved and staff.
- I will then open a PUBLIC HEARING to hear testimony in support of, or in opposition to, the administrative appeal. Rules regarding public testimony are as follows:

- Anyone wishing to testify during the public hearing may do so once recognized by me or may, in lieu of oral testimony, submit written testimony to the Chair. All recognized speakers must approach the podium, state their name and address for the record, and speak clearly into the microphone.
 - All comments must be addressed to the Board, should be relevant to the administrative appeal application, and may not be of a personal nature or personal attacks.
 - All speakers will be limited to five (5) minutes. If members of the Board have any questions of the speaker, that time will not be counted toward his/her five (5) minutes.
 - If there is a large number of speakers, including many who are part of groups or organizations, I may, to avoid repetitive comments, elect to ask for a representative to speak on behalf of the group or organization.
 - Speakers are notified that irrelevant comments or comments of a personal nature or personal attacks may result in the speaker forfeiting his/her opportunity to participate in the public hearing.
- After all testimony is heard, I will declare the PUBLIC HEARING CLOSED and no further public comment will be permitted.
 - Uncivil, unruly, and/or disruptive behavior at any time during this meeting is prohibited and will result in removal from this hearing.
 - Every decision by the Board must be in writing and state findings of fact and conclusions of law on which the Board based its decision. A written copy of such decision shall be available in the Planning Division Office within five (5) days after making such decision.
 - Any appeal determined by the Board shall be particular to that case and site, and shall not be applied to the entire Ordinance, except as noted in Section 1375.05, Administrative Interpretations.

Thank you for your consideration and respect for these proceedings and the opinions of all meeting participants.



MORGANTOWN BOARD OF ZONING APPEALS

February 15, 2016
6:30 PM
Council Chambers

Leanne Cardoso, Chair
Bill Burton, Vice-Chair
Linda Herbst
George Papandreas
Jim Shaffer

AGENDA

- I. **CALL TO ORDER AND ROLL CALL**
- II. **MATTERS OF BUSINESS:** None
- III. **UNFINISHED BUSINESS:** None
- IV. **NEW BUSINESS:**
 - A. **BA16-01 / Giuliani / 1303 University Avenue:** Request by Samuel H. Simon, on behalf of James Giuliani, for an Administrative Appeal relating to Standard at Morgantown, LLC / 1303 University Avenue; Tax Map 26A, Parcels 6-15; B-4, General Business District.
- V. **ANNOUNCEMENTS**
- VI. **ADJOURNMENT**

If you need an accommodation, please contact us at 304-284-7431.

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

Intentional Blank Page



MORGANTOWN BOARD OF ZONING APPEALS

February 15, 2016
7:00 p.m.
Council Chambers

Board Members:

Leanne Cardoso, Chair
Bill Burton, Vice-Chair
Linda Herbst
George Papandreas
Jim Shaffer

STAFF REPORT

CASE NO: BA16-01 / Giuliani / 1303 University Avenue

REQUEST and LOCATION:

Request by Samuel H. Simon, on behalf of James Giuliani, for Administrative Appeal related to Case No. S15-09-III, in which the Planning Commission will consider a proposed site plan for development of 1303 University Avenue. The applicant includes allegations related to Case No. V15-68, V15-69, V15-70, V15-71, in which the Board of Zoning Appeals ("BZA") will consider requests for variance relief related to the same location. Neither body has issued a decision on the matters it is charged to enforce, and the requests for variance relief has not yet been presented to the BZA.

INTRODUCTION:

The applicant requests an Administrative Appeal to review three reports or memoranda submitted to bodies charged with enforcement of the zoning ordinance: (1) a staff report to the Planning Commission dated December 10, 2015; (2) a staff report to the Board of Zoning Appeals dated December 16, 2015; and (3) a memorandum to the Planning Commission dated December 10, 2015. The reports to the Planning Commission were submitted for the Commission's consideration when the Commission decides whether to approve a Type III site plan review. The report to the BZA was submitted for the Board's consideration when deciding whether the Board will grant variance relief.

The BZA may only consider Administrative Appeals from decisions made by the body or official charged with enforcement of the zoning ordinance. The reports are not decisions by the body charged with enforcement of the zoning ordinance. The bodies enforcing the zoning ordinance for the development at 1303 University Avenue are the Planning Commission, for site plan review, and the Board of Zoning Appeals, for variance relief. Neither body has issued a decision.

The BZA does not have jurisdiction to hear this Administrative Appeal, and accordingly it should deny the applicant's request. In addition, the BZA is required to consider the request for variance relief in the first instance – not as an Administrative Appeal – and it should prohibit any discussion of the merits of variance relief in this proceeding to avoid any prejudice to its future decision on the variance requests.

DISCUSSION:

I. The BZA has no jurisdiction to hear Administrative Appeals of the reports.

The first issue the BZA must determine is whether it has the power to consider an Administrative Appeal in this case, where the applicant has requested appeal of staff reports but the decisions enforcing the zoning ordinance have not been made. In fact, the decisions will be made by the Planning Commission and the BZA itself. As discussed below, administrative appeals are only available from decisions enforcing the zoning ordinance. This application for appeal is premature and should be denied.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

February 15, 2016

7:00 p.m.

Council Chambers

Board Members:

Leanne Cardoso, Chair

Bill Burton, Vice-Chair

Linda Herbst

George Papandreas

Jim Shaffer

The BZA's power to hear administrative appeals is granted by West Virginia Code and codified in the Morgantown City Code. *W. Va. Code* §§ 8A-8-9(1), -10; *City Code* § 1383.01. West Virginia Code grants BZA the following power to hear appeals:

A board of zoning appeals has the following powers and duties:

- (1) Hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance or rule and regulation adopted pursuant thereto[.]

W. Va. Code § 8A-8-9(1). Appeals may only be heard from a decision by a person or body charged with the enforcement of the zoning ordinance. West Virginia Code restates this rule when providing the appeal procedures for the BZA:

An appeal from **any order, requirement, decision or determination made by an administrative official or board charged with the enforcement** of a zoning ordinance, or rule and regulation adopted pursuant to a zoning ordinance, shall be filed with the board of zoning appeals.

W. Va. Code § 8A-8-10 (emphasis supplied). The BZA only has the specific powers granted to it by statute, and that specific jurisdiction for administrative appeals is incorporated in Morgantown City Code:

The Board of Zoning Appeals shall hear and determine appeals from any order, requirement, decision or determination made by an administrative official, board, or staff member charged with the enforcement of this Zoning Ordinance.

City Code § 1383.01. These laws establish that administrative appeals are only available following a decision enforcing the zoning ordinance.

In this case, the Planning Commission will make a decision whether to approve or deny the site plan. *City Code* § 1385.08. The Board of Zoning Appeals will decide whether to grant variance relief. *City Code* § 1381.01. Neither body has made its decision yet. The BZA has not even been presented with the application for variance relief. Because no decision has been made, there is no jurisdiction for an administrative appeal.

The applicant's proper forum to raise the arguments in his appeal are the public participation options available before the bodies charged with enforcement of the zoning ordinance for this proposed project. While the BZA cannot usurp the Planning Commission's authority to make a decision on site plan review, it is even more important that the BZA not consider an appeal related to a request for variance relief. The BZA has a statutory duty to make factual findings and grant or deny variance relief upon initial application. *W. Va. Code* § 8A-7-11. As discussed below, a hearing considering whether the four factors that mandate variance relief are met is required. An administrative appeal cannot substitute for that hearing, and consideration of argument about variance conditions in this appeal may subject the BZA's ultimate determination to appeal. The BZA cannot hear an appeal of the matter it has yet to decide; any review of the variance decision would have to be presented to Circuit Court.

For the reasons stated, there is no jurisdiction to hear an administrative appeal of staff reports when the zoning decisions will be made by the Planning Commission and Board of Zoning appeals. In addition, the Board should avoid interfering with the process granted

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

February 15, 2016
7:00 p.m.
Council Chambers

Board Members:

Leanne Cardoso, Chair
Bill Burton, Vice-Chair
Linda Herbst
George Papandreas
Jim Shaffer

to applicants for variance relief by considering variance arguments in this appeal. The City requests that the BZA deny the applicant's request for administrative appeal for lack of jurisdiction and preclude any discussion of the factors determining whether variance relief is warranted to avoid any interference with the BZA's variance review process.

II. The applicant's requests for review of variance matters fail to state a ground for relief.

The application for appeal focuses mainly on variance relief – after introductory matters the stated grounds for appeal from pages 5-13 are directed to variances. A decision on variance relief must be made by the BZA upon a specific request for variance; it cannot be made through administrative appeal of a preliminary report submitted for the BZA's consideration. Standards for variance relief are specifically provided by West Virginia Code, as follows:

- (1) Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
- (2) 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;
- (3) Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
- (4) Will allow the intent of the zoning ordinance to be observed and substantial justice done.

W. Va. Code § 8A-7-11(b). The BZA has the power and the duty to “[a]uthorize, upon appeal in specific cases, a variance to the zoning ordinance.” *W. Va. Code § 8A-8-9*. The BZA has neither the power nor the duty to consider appeals of variance requests. See *W. Va. Code § 8A-9-1*; *Wolfe v. Forbes*, 159 W. Va. 34, 217 S.E.2d 899 (1975) (BZA may not grant rehearing on same facts). Accordingly, the BZA should deny all of the applicant's requests for relief on variance decisions and confine its consideration of variance relief to its proceedings established to consider variance applications.

III. The applicant's remaining requests for relief are premature or not based on the zoning code.

In addition to the variance issues, the applicant seeks relief on four grounds (stated on pages 13 to 21 of the appeal). The BZA does not have jurisdiction to grant an Administrative Appeal in this instance, and these miscellaneous requests do not state any ground for relief. One request relates to building height measurement, which will be determined by the Planning Commission when it issues a decision enforcing the zoning ordinance. The other requests relate to the Building Code, the Fire Code, and the practicality of constructing a building. None of these Codes or issues is within the jurisdiction of the Planning Commission or BZA, even if an appeal were proper at this time. *W. Va. Code § 8A-8-9(1)*; *City Code § 1385.12(B)*. Accordingly, the BZA should deny the request for administrative appeal and deny any relief on these grounds.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

February 15, 2016

7:00 p.m.

Council Chambers

Board Members:

Leanne Cardoso, Chair

Bill Burton, Vice-Chair

Linda Herbst

George Papandreas

Jim Shaffer

CONCLUSION:

For the reasons stated, the City respectfully requests that the Board of Zoning Appeals decline the applicant's request for an Administrative Appeal because there has been no decision enforcing the zoning ordinance that triggers jurisdiction for such an appeal. In addition, the City requests that the Board preclude any discussion of the propriety of variance relief in this matter to avoid interfering with the established process for considering variance requests. Finally, the City requests that the Board adopt this Staff Report as its written findings and conclusions relative to the applicant's request for Administrative Appeal.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431

Intentional Blank Page



City of Morgantown, West Virginia

APPLICATION FOR ADMINISTRATIVE APPEAL

| | |
|------------|-------|
| OFFICE USE | |
| CASE NO. | _____ |
| RECEIVED: | _____ |
| COMPLETE | _____ |

Article 1383 "Administrative Appeals" of the City's Planning & Zoning Code (attached hereto as Addendum A) provides that the Board of Zoning Appeals hears and determines appeals from any order, requirement, decision or determination made by an administrative official, board, or staff member charged with the enforcement of the City's Zoning Ordinance.

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$35

| | | | |
|--|---|--|-----------------------|
| I. APPLICANT | | | |
| Name: | James Giuliani | Phone: | 304-276-7170 |
| Mailing Address: | 256 Prairie Avenue | Mobile: | 304-282-8131 |
| | <small>Street</small> Morgantown WV 26501 | Email: | alexjewel@comcast.net |
| | <small>City State Zip</small> | | |
| II. AGENT / CONTACT INFORMATION | | | |
| Name: | Samuel H. Simon, Esquire | Phone: | 412-288-2263 |
| Mailing Address: | 401 Liberty Avenue, 22nd Floor | Mobile: | |
| | <small>Street</small> Pittsburgh PA 15222 | Email: | ssimon@hh-law.com |
| | <small>City State Zip</small> | | |
| Mailings - | Send all correspondence to (check one): <input type="checkbox"/> Applicant OR <input checked="" type="checkbox"/> Agent/Contact | | |
| III. PROPERTY | | | |
| Owner: | James Giuliani | Phone: | 304-276-7170 |
| Mailing Address: | 256 Prairie Avenue | Mobile: | 304-282-8131 |
| | <small>Street</small> Morgantown WV 26501 | Email: | alexjewel@comcast.net |
| | <small>City State Zip</small> | | |
| IV. ATTEST | | | |
| I hereby certify that the information which I have provided, that all answers to the questions in this request, and all other supplementary matter attached to and made a part of this administrative appeal request are honest and true to the best of my knowledge and belief. | | | |
| James Giuliani | | <i>Catherine A. Joefler</i> of/blo Samuel H. Simon, Agent | 1-8-16 |
| Type/Print Name of Applicant/Agent | | Signature of Applicant/Agent | Date |

- V. Please attach a narrative describing in detail the nature of your administrative appeal.
- VI. Please attach a copy of the Zoning Official's determination which has resulted in your appeal.
- VII. You or a representative **MUST** be present at the scheduled hearing to present the appeal and answer questions. Failure to appear at the hearing will result in your appeal being tabled.



Houston Harbaugh

ATTORNEYS AT LAW

WRITER'S DIRECT DIAL:
412-288-2263
ssimon@hh-law.com

File # 38730-1

January 8, 2016

VIA FEDERAL EXPRESS

Morgantown Board of Zoning Appeals
389 Spruce Street
Morgantown, WV 26505

RE: Appeal of James Guiliani

To Whom It May Concern:

Please find enclosed the Appeal of James Giuliani, resident of Morgantown, West Virginia in the Matter of Standard at Morgantown, LLC/1303 University Avenue, Morgantown, West Virginia/Case No. S15-09-III (Tax Map 26A, Parcels 6-15 and the Wall Street right of way).

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

Samuel H. Simon

SHS/jlg
Enclosure

**APPEAL BEFORE THE MORGANTOWN
BOARD OF ZONING APPEALS**

IN THE MATTER OF: Standard at Morgantown, LLC/1303 University Avenue, Morgantown, West Virginia/Case No. S15-09-III (Tax Map 26A, Parcels 6-15 and the Wall Street right-of-way)

APPEAL OF: James Giuliani, resident of Morgantown, West Virginia

Pursuant to Section 1383.01 of the City of Morgantown Planning and Zoning Code, James Giuliani (“Mr. Giuliani”) hereby appeals the Morgantown Planning Division’s Staff Report dated December 10, 2015, the Combined Staff Report dated December 16, 2015, and the Memorandum of the City Planner dated December 10, 2015 regarding the above-referenced matter to the Morgantown Board of Zoning Appeals.

I. Introduction and Procedural History

J. Wesley Rogers (the “Contractor”), President of the Standard at Morgantown, LLC, seeks to redevelop real property near West Virginia University located at the intersection of U.S. Route 19 (University Avenue) and Walnut Street in Morgantown, West Virginia. The property is situated in a B-4 district and is currently occupied by McClafferty’s Irish Pub, Vic’s Towing and Garage, and the former Gold’s Gym building (the “Project”). The Contractor wants to develop the property as a massive student housing apartment/retail building with commercial and retail space on the lower levels. The proposed development site is approximately 1.95 acres (84,942 square feet). The proposed Project would include 276 dwelling units with a total of 866 occupants. 692 parking spaces are proposed in 12 parking deck levels that are wrapped by the non-residential and residential portions of the building. The square footage of the lot area is broken down as follows:

Commercial: 13,351 square feet

Retail: 8,486 square feet

Parking: 225,554 square feet (692 spaces)

Housing: 419,947 square feet

Total: 667,338 square feet

Total Less Parking: 441,784 square feet

On or about October 1, 2015, the Contractor applied to the City of Morgantown for the approval of a Type III Development of Significant Impact Plan and also applied for several variances associated with the Project. The City Planner issued a Staff Report dated December 10, 2015 that recommended the Plan designs, including the variance requests, be approved. (A true and correct copy of the Staff Report dated December 10, 2015 is attached hereto as **Exhibit "A"**). In response, Mr. Giuliani filed Objections to the Planning Commission's Consideration of the Project at the Meeting, which is attached hereto as **Exhibit "B."** The Planner submitted a memorandum in response to Mr. Giuliani's objections dated December 10, 2015, which is attached hereto as **Exhibit "C."** The matter was heard on December 10, 2015 at the Morgantown Planning Commission hearing, but it was tabled because Mr. Giuliani was successful in convincing the Commission that any consideration and/or approval of the Standard at Morgantown Project would be premature for numerous reasons pertaining to improper designs and non-compliance with the City's Code provisions by the Contractor.

Thus, no decisions were made by the Commission at that time; rather, the Commission set forth a list of items to be addressed by the City Planner before the next meeting on the matter, including: 1) whether the Contractor requested too many parking spaces in violation of the FAR provisions in the Code; 2) whether the Building height complies the Code; 3) whether there are traffic conditions set forth by the West Virginia Division of Highways ("DOH") that have yet to be satisfied; 4) whether the Building design is in compliance with the National Fire Protection

Association's 101 Life Safety Code; 5) whether there is any actual retail/commercial space available to the public in the Building, or if the Contractor is disguising the space for additional amenities for college students; 6) whether the Contractor will construct a pedestrian bridge over University Avenue to alleviate some of the Commission's traffic concerns; and 7) a determination by the City's Engineer regarding capacity and traffic issues related to the Project after reviewing the Traffic Study.

The City Planner issued a Combined Staff Report with exhibits dated December 16, 2015 recommending that the variances be granted by the BZA at the December 16, 2015 meeting, but in light of the requests made by the Planning Commission, the Planner decided to remove the matter from the BZA agenda. (A true and correct copy of the Combined Staff Report is attached hereto as **Exhibit "D"**). Subsequently, the Contractor removed the Project from the Planning Commission's agenda for the January 14, 2016 meeting.

Mr. Giuliani objects to the City Planner's recommendations in the Staff Reports and Memorandum and contends that it is proper for the BZA to hear and make decisions on the issues contained in those documents, particularly the variance requests by the Contractor. According to the City Code, the BZA is the only entity with authority to grant or deny variances, so this appeal is properly before the BZA and is ripe for resolution.

II. Standing and Jurisdiction

Mr. Giuliani has standing to appeal because he is a resident of the City of Morgantown, and his Objections regarding the Project have been addressed by the City Planner and the Planning Commission at the December 10, 2015 hearing and in the written determinations by the City Planner referenced above. The City Planner issued multiple Staff Reports and a Memorandum concerning this matter to both the Planning Commission and the BZA, and the

Planning Commission had a hearing involving the arguments set forth by the City Planner, the Contractor, Mr. Giuliani, and other interested individuals. Section 1383.01 of the Zoning Code provides that “[t]he Board of Zoning Appeals shall hear and determine appeals from any order, requirement, decision or determination made by an administrative official, board, or staff member charged with the enforcement of this Zoning Ordinance.” Thus, this Appeal is properly before the BZA.

III. Standard of Review

Section 13829.02(D) of the Zoning Code states that one of the duties of the BZA is to authorize variances from the terms of the Code. However, Section 1389.03 of the Code states that “no variance in the application of the provisions of this ordinance shall be made by the Board relating to buildings, land or premises now existing or to be constructed, unless after a public hearing, the Board shall find that the variance:

- (1) Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
 - (2) 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;
 - (3) Would eliminate an unnecessary hardship and permit a reasonable use of the land; **and**
 - (4) Will allow the intent of the Zoning Ordinance to be observed and substantial justice done.
- (Emphasis added).

West Virginia case law indicates that a reserved approach should be taken regarding the granting of variances. “A variance, on the other hand, is a grant of permission to a property owner to depart from the literal requirements of a zoning regulation, generally given where literal compliance would cause **undue hardship** to the owner.” *Longwell v. Hodge*, 297 S.E.2d

820, fn 1 (W.Va. 1982). (Emphasis added). Thus, variances are meant to be used sparingly and should be based on a practical difficulty or a particular hardship that is directly related to the property and related uses. A hardship does not include a potential for economic loss or less than maximum return.

IV. Grounds for Appeal

A. Objections to the Variance Requests

The Contractor submitted 7 variance petitions relating to the Project, which must be determined by the BZA. The variances are: 1) V15-65: Maximum front setback; 2) V15-66: Minimum rear setback; 3) V15-67: Canyon effects; 4) V15-68: maximum driveway curb cut width at the curb line and at the right-of-way line—University Avenue; 5) V15-69: Maximum driveway curb cut width at the curb line and at the right-of-way line—Walnut Street; 6) V15-70: Maximum parking; and 7) V15-71: Transparency. Mr. Giuliani objects to variances V15-68, V15-69, V15-70, and V15-71 and asserts that these variances should be denied by the BZA for the reasons discussed below.

1. Variance petition V15-70 requesting 692 parking spaces for 866 occupants on 1.95 acres in a B-4 zoning district should be denied by the BZA because it violates Section 1365.04 and 1349.06 of the Code.

In both Staff Reports and the Memorandum, the City Planner recommends that the variance petition requesting 692 parking spaces for the Project be granted. However, since the request violates Sections 1365.04 and 1349.06 of the Zoning Code, the request should be denied.

The Project design calls for 692 parking spaces for this massive mixed use complex housing 866 occupants on 1.95 acres. The parking area will comprise 12 parking levels that are enclosed by the residential and non-residential units. Section 1349.08(A)(1) of the Code titled “Parking and Loading Standards” states in relevant part: “With the exception of the first twenty-

two (22) occupants, the minimum number of parking spaces for permitted residential uses **shall** be one-half space (0.5) per occupant, as determined by the West Virginia State Building Code and adopted and implemented by the City.” (Emphasis added). Excepting the first 22 occupants, the minimum number of residential parking spaces permitted for this Project is 422 (844 x 0.5).

Regarding the maximum number of spaces, Section 1365.04(I) titled “Determining the Number of Spaces Required” states: In all non-residential districts the maximum number of spaces provided **shall not exceed 115 percent** of the minimum parking requirement, except for research and development centers, where there shall be no maximum.” (Emphasis added). Therefore, the maximum number of residential parking spaces permitted according to the Code is 485 (422 x 1.15). However, the Code also provides for loading spaces in 1349.08(D): “Loading—Residential uses containing thirty (30) or more dwelling units shall conform to the loading requirements set forth in Section 1365.10 as a ‘Type II Use.’” The table in Section 1365.10 illustrates:

| Use Description | Floor Area in Square Feet | Number of Loading Spaces Required |
|--|---------------------------|-----------------------------------|
| Type II: Office buildings, hotels and motels, retail sales, hospitals, institutions and similar uses | 5,000 – 60,000 | 1 |
| | 60,001 – 100,000 | 2 |
| | Each 20,000 above 100,000 | 1 |

Since the residential area is 419,947 square feet, 19 additional loading spaces are permitted ($419,947 - 100,000 = 319,947 / 20,000 = 16 + 2 + 1 = 19$). The total amount of residential and loading spaces allowed by the Code is 504 (485 + 19). Thus, the excess parking spaces sought by the Contractor are 186 (692-504). It appears that the calculations of the City Planner in the Reports are incorrect in only allowing 14 loading spaces, which brings their total

calculation to 499 (485 + 14). Using the City Planner's numbers, the excess parking spaces sought is 193. Regardless of which number is correct, it is clear that the number of additional parking spaces requested by the variance is far in excess of the maximum spaces permitted by the Code.

The Code sections stated above all use the word "shall," which is a term that is always mandatory, not discretionary. Under both the Zoning Code and West Virginia law, the word *shall* represents an imperative command. Section 1329.01(H) of the Code states: "The word 'shall' is always mandatory and not discretionary." Thus, the Code itself defines the term *shall* as mandatory. Moreover, the West Virginia Supreme Court has repeatedly held that the use of the word *shall* in a statute represents an "imperative command" that "leaves no way open for the substitution of discretion." See *Crusenberry v. Norfolk & W. Ry. Co.*, 180 S.E.2d 219, 222, 155 W.Va. 155, 159 (1971) (modified on other grounds by *Talkington v. Barnhart*, 264 S.E.2d 450, 164 W.Va. 488 (1980)); see also Syl. Pt. 7, *J.A. Street & Associates, Inc. v. Thundering Herd Development, LLC*, 228 W.Va. 695, 724 S.E.2d 299 (2011) ("It is well established that the word 'shall,' in the absence of language in the statute showing a contrary intent on the part of the Legislature, should be afforded a mandatory connotation").

There are no exceptions to these Code provisions, and the Contractor should not be permitted to exceed these maximums and endanger the welfare and interests of residents living in the City of Morgantown simply to increase its monetary return on investment by packing in as many people into one building as possible. It is important to remember that the Contractor is not requesting a mere increase of 3 or 4 spaces—**the request exceeds the maximum number by almost 200 spaces!**

i. The City Planner and Contractor erred in their FAR calculations in the Staff Reports.

Remarkably, the City Planner, in the Staff Reports and the Memorandum, attempts to justify the parking variance requested by the Contractor by manipulating the Floor Area Ratio (FAR) calculations in Section 1349.06. That section, titled “Floor Area Ratio (FAR)” states: The *maximum* FAR for all development in this district [B-4] is 7.0. The area designed, constructed, and utilized to provide parking structure facilities shall be exempt from the maximum FAR, provided such area **does not** exceed 115% of the minimum parking requirement.” (Emphasis added). Importantly, in the definition section of the Code (Section 1329.02), it states that the FAR is an expression of the **intensity of development** and determines the amount of square footage of a building area compared to the square footage of a lot area. The FAR calculation is the gross floor area of the principal and accessory buildings on a lot divided by the area of the lot. Thus, a FAR of 7.0 would allow 7 square feet of building area for each square foot of lot area. In this case, the *maximum square footage* of the building area for this Project in the B-4 district based on the subject lot area is **594,594** (7.0 x 84,942).

The language of Section 1349.06 is particularly important because it provides that the parking area square footage is exempt from the FAR for a building area **provided such area does not exceed 115% of the minimum parking requirement.** However, the Project at issue admittedly exceeds 115% of the minimum parking requirement—hence the variance petition. Therefore, the converse applies and the parking area square footage is included in the FAR calculation. As a result, the gross floor area including parking (667,338) divided by the lot area (84,942) equals a FAR of 7.8, which is a violation of the FAR 7.0 maximum permitted by Section 1349.06. In terms of square footage, the variance is requesting an **additional 72,744 square feet** in excess of the maximum permitted in a B-4 district (7.8 x 84,942 = 667,338 –

594,594 = 72,744). Again, the variance is not asking for a mere accommodation of several additional square feet or even several hundred additional square feet. The request asks for approval of additional tens of thousands of square feet (equal to at least 6 or 7 stories of a building) that would clearly endanger the safety of the residents in the building and impede upon the interests of the surrounding citizens.

As designed, the Standard at Morgantown Project violates these Code provisions, and the Contractor should not be permitted to skirt such important safety measures through a variance request that asks for 193 parking spaces over the maximum permitted by the Code. The calculations of the Contractor and the City Planner in the Staff Reports and Memorandum are incorrect, and they misapplied the FAR calculation to manipulate the numbers in their favor. The Contractor's concern that the marketability of the Building will be jeopardized if "ample" parking is not provided is a condition created by the Contractor as a self-imposed hardship. The parking variance should be denied because it will negatively affect public safety; the excess parking is a condition created by the Contractor and not a special condition pertaining to the physical attributes of the property; it does not eliminate an unnecessary hardship; and it is contrary to the intent of Zoning Ordinance Sections 1365.04 and 1349.06 and the design can be modified to accommodate less parking. Thus, the BZA should disregard the recommendations of the City Planner and deny the parking space variance.

2. Variance petition V15-71 requesting to avoid the minimum transparency requirement should be denied by the BZA because it violates Section 1351.01 of the Zoning Code.

In both Staff Reports and the Memorandum, the City Planner recommends that the transparency variance for the Project be granted. However, since the request violates Section 1351.01 of the Zoning Code, the request should be denied.

The Project indicates that the Contractor is requesting variance relief to avoid the minimum transparency requirement in Section 1351.01, which pertains to the performance standards for buildings in a B-4 district. In particular, Section 1351.01(K)(1) states that “A minimum of sixty percent (60%) of the street-facing building façade between three (3) feet and eight (8) feet in height **must** be comprised of clear windows that allow views of indoor nonresidential space or produce display areas.” (Emphasis added). The word “must” like the word “shall” means that it is always mandatory. *See Crusenberry v. Norfolk & W. Ry. Co.*, 180 S.E.2d 219, 222, 155 W.Va. 155, 159 (1971). Additionally, there are no exceptions to this Section of the Code.

The Project designs at Sheet No. 7.04 illustrate transparency between 3’0” and 8’0” of only 52% on University Avenue and only 11% on Walnut Street, both well below the required minimum of 60%. It is important to remember that this Project is merely in the design phase, and the construction phase has not yet begun. It is entirely feasible and reasonable for the Contractor to modify the drawings to comply with the Code’s 60% transparency requirement, which would take little additional effort. If such an easy modification to construction designs can be avoided by simply asking for a variance to skirt around the Code provisions, why have laws at all, if the enforcing authorities have no intention of following them in order to satisfy the whims of a Contractor?

As designed, the Standard at Morgantown Project violates Section 1351.01 of the Code, and the Contractor should not be permitted to skirt such important measures through a variance request. Section 1327.02(F) of the Zoning Code provides that the Code was adopted in order to **“preserve and enhance the scenic beauty, aesthetics and environmental integrity of the City.”** (Emphasis added). The variance should be denied because it will negatively affect the

rights of adjacent property owners; avoiding the minimum transparency requirements is a condition created by the Contractor and not a special condition pertaining to the physical attributes of the property; it does not eliminate an unnecessary hardship; and it is contrary to the intent of Section 1351.01 and the site design can be altered to comply with the Code. Thus, the BZA should reject the recommendations of the City Planner and deny the transparency variance.

3. Variance petitions V15-68 and V15-69 regarding the maximum width of a driveway at the curb line and the maximum width of a driveway at the street right-of-way line, respectively, should be denied by the BZA because they violate Section 1351.01(D) of the Zoning Code.

In both Staff Reports and the Memorandum, the City Planner recommends that the variances regarding the maximum width of a driveway at the curb line and the maximum width of a driveway at the street right-of-way line be granted. However, since the requests violate Section 1351.01(D) of the Zoning Code, the request should be denied.

The Contractor has requested variances to avoid the requirements of Section 1351.01(D) of the Code regarding curb cuts. This Section states, in relevant part: “The maximum width of any driveway leading from a public street **shall** not exceed twenty-six (26) feet at the curb line or twenty-two (22) feet at the street right-of-way line.” (Emphasis added). Again, this provision utilizes the word “shall” to mean that it is always mandatory, not discretionary. Regarding the maximum width of a driveway at the curb line, the Plan proposes 55.77 feet on University Avenue (an excess of 29.77 feet) and 104.39 feet on Walnut Street (an excess of 78.39 feet). Regarding the maximum width of a driveway at the street right-of-way line, the Plan proposes 27 feet on University Avenue (an excess of 5 feet) and 58.75 feet on Walnut Street (an excess of 36.75 feet). When dealing with such precise measurements, especially on such a busy thoroughfare as University Avenue frequented by a high volume of vehicles and pedestrians, these excessive measurements can have a significant impact on the surrounding area.

Moreover, due to the sheer size of the Project and its location near many commercial and educational institutions in a high traffic volume area, it is necessary to perform a Traffic Impact Study (the "Study"). The Study has been submitted to the West Virginia Division of Highways ("WVDOH") for further analysis to determine whether the Project designs comply with the Code. Documents included in the Project application include correspondence from the WVDOH to TransAssociates, the entity that performed the Study on behalf of the Contractor, indicate numerous concerns with the Plan designs and the negative impact that the Project would have on traffic in the area.

If this Project was to be approved as submitted, the potential for more significant traffic jams and accidents on University Avenue and entrapment of residents attempting to enter or leave the apartment garage during periods of high volume traffic is extremely likely. Ultimately, the site location for such a large, mixed-use complex on a busy thoroughfare like University Avenue that includes numerous intersections, traffic signals, and is in close proximity to a bridge is problematic to say the least. University Avenue is a 5-lane roadway that is busy enough as it is. Imagine the result of adding an extra 692 vehicles into the mix that are attempting to enter and exit the garage while pedestrians are trying to cross at the same time. The garage entrance on University Avenue is located between traffic signals and is only a short distance from the bridge. If the WVDOH determines that the Project designs will back up traffic on University Avenue and block through traffic to the bridge, it will likely not approve the Project, and the Contractor will have to go back to the drawing board.

The Contractor admitted at the Planning Commission meeting that it had no intention of building a pedestrian bridge over University Avenue to accommodate the additional 866 WVU students walking to and from campus and the garage entrance on University Avenue. However,

the Commission, particularly Bill Petros, expressed that if a pedestrian bridge was not built by the Contractor and traffic and safety concerns on University Avenue were not alleviated, the Project was a “no go.” Mr. Petros continued, “We can’t destroy the flow through the City” . . . “I want to know how many minutes University is going to be blocked during rush hour because someone pushed a button and they crossed the street.”

As designed, the Standard at Morgantown Project violates Section 1351.01(D) of the Code, and the Contractor should not be permitted to skirt such important safety measures through these variance requests. Section 1327.02(D) of the Zoning Code states that the Code was adopted in order to **“minimize or avoid congestion in the public streets and to ensure safe, convenient and efficient traffic circulation.”** (Emphasis added). The variance should be denied because it will negatively affect public safety and the rights of adjacent property owners; exceeding max curb cuts is a condition created by the Contractor and not a special condition pertaining to the physical attributes of the property; it does not eliminate an unnecessary hardship; and it is contrary to the intent of Zoning Ordinance Section 1351.01 and the site design can be altered to comply with the Code. Thus, the BZA should reject the recommendations of the City Planner and deny the variances regarding maximum width of a driveway at the curb line and the maximum width of a driveway at the street right-of-way line.

B. Other Appealable Issues in the Staff Reports and Memorandum

1. The height measurements for the Building violate Section 1349.05(B) of the Zoning Code and should not be permitted.

The Staff Reports and Memorandum submitted by the City Planner contain inaccurate measurements regarding the height of the apartment complex that produce misleading results. Since the actual height measurements violate Section 1349.05(B) of the Zoning Code, the

Building plans should not be permitted to go forward as designed, and the Contractor should be required to submit new designs in compliance with the Code.

The Code provides for various minimum and maximum heights of buildings in a B-4 zoning district in Section 1349.05 titled "Building Height." Section 1349.05(B) states, "The maximum height of a principal structure, unless otherwise restricted by Article 1362 B-4NPOD, B-4 Neighborhood Preservation Overlay District, **shall** not exceed 120 feet, except as provided in Section 1363.02(A), Height Exceptions." (Emphasis added). None of the exceptions in Section 1363.02 are applicable to this scenario. Again, this provision utilizes the word "shall" to mean that it is always mandatory, not discretionary.

The average maximum height of a building is calculated by averaging its highest and lowest points of elevation. In the Reports submitted by the City Planner, the lowest elevation (south elevation) of the apartment complex building is 102' – 9 3/8" and the highest elevation (west elevation) is 134' – 4" for an average height of 118' – 6 11/16." However, on Sheets A7.02 and A7.03 in the application packet submitted by the Contractor, the elevations submitted indicate that the west elevation is actually 137' – 4" and the south elevation is 104' – 4," which include the top of the parapet walls of the Building. Thus, the average height of the apartment complex is actually 120' – 10."

The City Planner only includes the flat portion of the roof in the height measurements for the Building, relying on the Building Height definition in Section 1329.02 of the Code, which is "the vertical distance measured from the lot ground level **to the highest point of the roof** for a flat roof . . . Building height calculation shall not include chimneys, spires, elevator and mechanical penthouses, water tanks, radio antennas, and similar projections." (Emphasis added). Section 1363.01 of the Code also provides exceptions to building height, stating "Structures or

parts that shall be exempt from the height limitations are: barns, silos, grain bins, windmills, chimneys, spires, flagpoles, skylights, derricks, conveyors, cooling towers, observation towers, power transmission towers and water tanks.” Notably, parapet walls are not included in either list of exceptions, so the parapet walls surrounding the flat portion of the roof should be included in the height calculations because it is still part of the roof and the exterior wall of the Building. If the height of the parapet is not included, the parapet walls could be as high as desired, including the equivalent of an entire additional floor height, which is an unintended result.

Consequently, the Contractor’s Project designs violate Section 1349.05(B) of the Code. The Contractor did not request a variance on this issue, but even if it did, the variance should not be granted. Rather, the Contractor should be required to modify its design drawings to comply with the Code, and the City Planner erred by stating in the Reports and Memorandum that the Building height was in conformity with the Code. As previously stated, a substantial amount of time and consideration went into drafting the Code and determining the proper measurements to incorporate therein. A Contractor should not be permitted to skirt the Code provisions simply because it does not want to put forth the effort to alter its construction designs and drawings.

2. The Fire stairway on the Level 1 Floor Plan of the Building violates the National Fire Protection Association’s 101 Life Safety Code and should not be permitted.

The Staff Reports submitted by the City Planner approves the Building’s floor plans in relation to the design of the stairwells. However, since fire stairway on the Level 1 Floor Plan of the Building violates the National Fire Protection Association’s 101 Life Safety Code, the Building plans should not be permitted to go forward as designed, and the Contractor should be required to submit new designs in compliance with the NFPA Code.

On Sheet A6.04 that was submitted with the Project application package, there is a clear violation of the National Fire Protection Association's 101 Life Safety Code ("Fire Code"). Section 7.1.3.2.2 indicates that "An exit enclosure shall provide a continuous protected path of travel to an exit discharge." In addition, Section 7.1.3.2.3 provides that "an exit enclosure shall not be used for any purpose that has the potential to interfere with its use as an exit and, if so designated, as an area of refuge."

The Project drawing indicates that the Fire Exit Stairway that serves the apartments as well as the parking garage is interior to the outside and discharges directly into the open lobby space of the commercial area on Level 1 and forces individuals to exit out the front double doors past the elevator tower. According to the Fire Code, a fire stairway must have a continuous path with a two hour fire wall from the vertical stair to the exterior and cannot pass by any other vertical openings, such as an elevator. It appears that all of the other stairs in the structure have the requisite horizontal exit, but this particular stairway only has a vertical exit. These non-compliant designs present a serious safety issue for the residents of the Building as to whether they could quickly and easily escape the Building in the event of a fire or other hazard. At the Planning Commission meeting, John Sausen¹, a local architect for OmniAssociates, stated "This needs to be redesigned. I'm not allowed to do this, but yet they proposed it. Now, let's say you make them go back and change it. Well, that changes the whole nature of that ground floor." Therefore, the design drawings should be modified to comply with the Fire Code.

As a result, the Contractor's Project designs violate the NFPA's Code. The Contractor did not request a variance on this issue, but even if it did, the variance should not be granted.

¹ Mr. Giuliani has retained the services of West Virginia registered architect, John Sausen of Omni Associates to evaluate the Project at issue. Mr. Sausen regularly provides construction and architectural services in the Morgantown area and supports the arguments and calculations contained in this Appeal to the BZA.

Rather, the Contractor should be required to modify its design drawings to comply with the Code, and the City Planner erred by approving these plans and designs. A Contractor should not be permitted to skirt these important Code provisions dealing with safety simply because it does not want to put forth the effort to alter its construction designs and drawings.

- 3. The maximum residential density calculations by the City Planner in the Staff Reports are incorrect because he did not reconcile the Lot Density provision in the City of Morgantown Zone Code, Section 1349.07, with the Lot Density provision in the West Virginia State Building Code, Section 1713.02, which must be read together to produce a practical result.**

Certain Code provisions provide for a maximum residential density calculation, which were drafted with the intent to determine the maximum amount of occupants a building could have based on the square footage for safety reasons. If a building is too crowded compared to its area, it could create safety concerns if an evacuation becomes necessary. Section 1349.07 of the Morgantown Zoning Code titled "Lot Area Per Dwelling Unit (Residential Density)" states that "the minimum lot area per dwelling unit in this district [B-4] is 300 square feet." There is no stated maximum requirement enumerated in this section. The City Planner submits that this is the end of the inquiry and finds that either the word *minimum and maximum* are the same or he simply ignores the word *minimum* altogether and interprets the Code as though the word did not exist. The City Planner surmises that each unit in a B-4 district equals 300 square feet for density calculations while ignoring the word *minimum* in the Code. The City Planner looks at residential density permitted based on the lot area (84,942 square feet) divided by (300 square feet), which equals 283 units. He concludes that since the Contractor is only requesting 276 units, this is

permitted as being below the maximum residential density. His calculations ignore the wording of the Code.²

This calculation method might not be a problem if this situation only involved 1-2 bedroom apartments, which was the occupancy standard when the Zoning Code was written. However, this Code provision only considers the number of dwelling *units*, not bedrooms. In recent years, largely due to the expansion of, and renovations to West Virginia University, contractors have responded to increased demands for student housing by adding units with anywhere from 3-6 bedrooms. The additional number of bedrooms increases the square footage of the unit to several times the amount of a 1-2 bedroom unit. Thus, the maximum number of units permitted in a B-4 district would vary depending on the number of bedrooms per unit because the square footage per unit fluctuates in comparison to the number of occupants.

For example, for purposes of simplicity, consider the scenario with a 10,000 square foot lot. Under the Code as written, the lot would allow 33 units (10,000 square feet divided by 300 square feet). However, the square footage of each unit varies depending on the number of bedrooms in each unit. 33 2-bedroom units amount to 66 bedrooms. 33 4-bedroom units amount to 132 bedrooms. 33 6-bedroom units amount to 198 bedrooms. Undoubtedly, the square footage of a building with 66 bedrooms will have a vastly different square footage than a building with 198 bedrooms simply due to the amount of space needed to accommodate that many occupants. However, since the Code does not provide for a maximum square footage per

² Section 1329.02: Dwelling Unit—A single unit providing complete, independent living facilities for a single housekeeping unit. In no case shall a motor home, trailer, hotel or motel, lodging or boarding house, automobile, tent, or portable building be considered a dwelling unit. Dwelling units are contained within single-family dwellings (in which case the definition is synonymous), garage apartments, two-family dwellings, mixed-use dwellings, and multifamily dwellings. Units without self-contained sanitary facilities and kitchens (as defined herein) are not classified as dwelling units, but rather are considered to be rental rooms. See BOARDING HOUSE.

unit, it does not accurately capture the residential density of a building based on the number of occupants.

Thus, when analyzing Section 1349.07, one must look simultaneously at Section 1713.02 of the West Virginia State Building Code titled “Minimum Area Requirements for Occupancy” which states:

Every dwelling unit for rent or lease within the corporate City limits shall meet minimum standards for square feet and area requirements as it pertains to number of occupants as set forth in this Section 1713.02.

Area for Sleeping Purposes. Every bedroom occupied by one person shall contain at least seventy square feet of floor area, and every bedroom occupied by more than one person shall contain at least fifty square feet of floor area for each occupant thereof.

Overcrowding. Dwelling units shall not be occupied by more than permitted by minimum area requirements of the following table.

Minimum Area Requirements
Minimum Area in Square Feet

| Space | 1-2 Occupants | 3-5 Occupants | 6 or More Occupants |
|------------------|-------------------------------------|---------------|---------------------|
| Living Room a, b | No requirements | 120 | 150 |
| Dining Room a, b | No requirements | 80 | 100 |
| Bedrooms | Shall comply with area for sleeping | | |

According to the chart in Section 1713.02 each unit has a different calculation of square footage depending on the number of bedrooms/occupants. For example, the calculation for a unit with 3 occupants is 410 square feet ($70 \times 3 = 210 + 120 + 80$). Using the lot area in our situation, 84,942 square feet, only 207 3-bedroom units would be permitted ($84,942/410$). In other words, only 621 occupants would be permitted to live in the building in comparison to the lot size (207×3). The calculation for a unit with 6 occupants is 670 square feet ($70 \times 6 = 420 + 100 + 150$). Using the lot area in our situation, 84,942 square feet, only 127 6-bedroom units would be permitted ($84,942/670$). In other words, only 762 occupants would be permitted to live

in the building in comparison to the lot size (127 x 6). No one can argue that there is a big difference between 621 occupants in a building and 762 occupants in a building. Moreover, this example considers the simplest of scenarios, i.e., when all of the apartments have the same number of bedrooms. Consider the difficulty in calculating residential density when one is dealing with units with different numbers of bedrooms, which is the situation involving this Project.

When dealing with a mixed-use complex as large as this Project, it is imperative that the residential density and occupancy limits be given great consideration due to the serious safety issues with overcrowding and emergency situations that could arise. The overcrowding of this building coupled with the fire code violations in the design could be catastrophic. Therefore, the calculations of the City Planner in the Staff Reports are inaccurate, and Sections 1349.07 and Sections 1713.02 must be read together to determine the maximum residential density of the Building.

- i. The plan designs do not provide any accommodations for construction staging or storage on the Project Site, which amplify the residential density issues on the Property.**

The proposed Building is so large that it covers virtually the entire lot in question. Because the Site is completely occupied by the Building structure, there is nowhere to put equipment or materials associated with the Project. University Avenue abuts the front of the lot area, and the river abuts the back of the lot area. There is no space in between to accommodate a staging area for equipment and materials, unless the Contractor shuts down portions of University Avenue. The result would be disastrous, since University Avenue is such a busy thoroughfare, and there are already major traffic issues in that area. If there are space and storage issues regarding where equipment or materials are to be kept, then imagine the issues that

arise when the residential density of the Building itself is being improperly calculated on such a comparatively small piece of Property.

As a result, the Contractor should be required to re-design the Building plans to determine the number of occupants permitted in the Building based on the above analysis, and the City Planner erred by agreeing with the Contractor's calculations and approving these plans and designs. A Contractor should not be permitted to skirt these important Code provisions dealing with safety simply because it does not want to put forth the effort to alter its construction designs to potentially limit its monetary gains.

V. Conclusion

For all the foregoing reasons, the BZA should deny the contested variance petitions, require the Contractor to redesign certain aspects of the Project, and require the City Planner to subsequently submit a new Staff Report that addresses and resolves the substantive concerns raised in this Appeal by Mr. Giuliani.

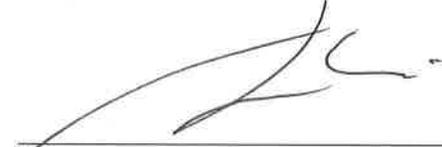
As illustrated above, the Contractor is trying to rewrite the Code to meet solely its needs without any regard for the community and the safety of its citizens. If the BZA allows this Contractor on this Project to skirt numerous safety provisions in the Code by approving these variances and this Project as submitted, it sends a clear message that the BZA will allow others to violate the Code by simply filing variance petitions.

Moreover, the inconsistent application of the Code provisions by the City Planner makes it difficult for other contractors in the future to determine which Code provisions must be followed and which provisions can be ignored. Certainly this was not the intention of the drafters who desired for all provisions of the Code to be followed. The goal of the BZA should be to level the playing field so that some contractors are not given preferential treatment, or even

the appearance of preferential treatment, over other contractors by the City Planner. Most contractors take great care to follow the requirements of the Code, and the Contractor for this Project and the City Planner should be held to the same standard.

Date: January 8, 2016

Respectfully submitted,



Samuel H. Simon
W.Va. ID 9244
ssimon@hh-law.com
Catherine S. Loeffler
W.Va. ID 12442
loefflers@hh-law.com
HOUSTON HARBAUGH, P.C.
Three Gateway Center
401 Liberty Avenue, 22nd Floor
Pittsburgh, PA 15222
(412) 281-5060



MORGANTOWN PLANNING COMMISSION

December 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.

Bill Kawecky, City Councilor

STAFF REPORT

CASE NO: S15-09-III / Standard at Morgantown, LLC / 1303 University Avenue

REQUEST and LOCATION:

Request by J. Wesley Rogers, on behalf of Standard at Morgantown, LLC, for a Type III Development of Significant Impact Site Plan approval at 1303 University Avenue.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 26A, Parcels 6 thru 15; B-4, General Business District

SURROUNDING ZONING:

B-4, General Business District

BACKGROUND:

The petitioner seeks to redevelop the site that is currently occupied by "McClafferty's Irish Pub", "Vic's Towing and Garage," and the former "Gold's Gym" building. Addendum A of this report illustrates the location of the subject site. Attached hereto is a detailed Planning and Zoning Code Conformity Report dated 06 NOV 2015.

Proposed Development Program

The following generally summarizes the proposed development program illustrated in the petitioner's application and exhibits.

- The development site is currently occupied by "McClafferty's Irish Pub," "Vic's Towing and Garage," the former "Golds Gym" building that has been converted into apartments, and the "Shell" gas station mini-mart. The development site includes the public right-of-way of Wall Street, which requires annulment approval by City Council.
- The development site is identified by CTL Engineering as 1.95 acres (84,942 square feet), which includes 82,155 square feet (1.88 acres) for Parcels 6 thru and including 15 of Tax Map 26A and the Wall Street right-of-way.
- The development program includes 276 dwelling units with a total of 866 occupants.
- A total of 692 parking spaces are proposed in 12 parking deck levels that are wrapped by the nonresidential and residential portions of the building.
- The following restates the square footages of programmed spaces provided in submitted plans.
 - Commercial 13,351 sf
 - Retail..... 8,486 sf
 - Parking 225,554 sf (692 parking spaces)
 - Housing 419,947 sf

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431





MORGANTOWN PLANNING COMMISSION

December 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.

Bill Kawecki, City Councilor

- TOTAL 667,338 sf
- Total less parking 441,784 sf

- One (1) right-in-right-out-only driveway entrance is proposed on University Avenue between Wall Street and Fayette Street to access the parking decks. One (1) driveway entrance is proposed on Walnut Street to access the parking decks, dumpster area, and loading area.
- All above ground utilities will be relocated to below ground across the University Avenue frontage of the site to ensure fire department access.

Required Planning and Zoning Code Approvals

The following approvals are required for the development program as proposed.

1. Required City Council approval:
 - a. Right-of-way annulment of Wall Street between University Avenue and the CSX right-of-way.
An annulment application has been submitted and the City Engineer is awaiting requisite letters from public/private utilities.
2. Required Planning Commission approvals:
 - a. S15-09-III..... Type III Site Plan – Development of Significant Impact (DSI).
 - b. Minor Subdivision to combine the ten (10) parcels and the Wall Street right-of-way that compose the development site.
A minor subdivision application will be submitted for Planning Commission review following the annulment determination by City Council.
3. Required BZA approvals:
 - a. V15-65 Article 1349.04(A)(2) – variance relief to exceed the maximum front setback standard for the principal building.
 - b. V15-66 Article 1349.04(A)(5) – variance relief to encroach into the minimum rear setback standard for the principal building.
 - c. V15-67 Article 1351.01(I) – The BZA must either, 1.) Determine that the proposed building sufficiently incorporates design elements that preserve adequate light and airflow to public spaces including streets and sidewalks; or, 2.) Approve or deny variance relief from incorporating design elements that preserve adequate light and airflow to public spaces including streets and sidewalks.
 - d. V15-68 Article 1351.01(D) – variance relief to exceed the maximum driveway curb cut width at the curb line and at the right-of-way line for the proposed driveway entrance on University Avenue.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN PLANNING COMMISSION

December 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.

Bill Kawecki, City Councilor

- e. V15-69 Article 1351.01(D) – variance relief to exceed the maximum driveway curb cut width at the curb line and at the right-of-way line for the proposed driveway entrance on Walnut Street.
- f. V15-70 Article 1365.04 – variance relief to exceed the maximum number of parking spaces in the non-residential district.
- g. V15-71 Article 1351.01(K) – variance relief from minimum transparency requirement.

ANALYSIS:

Comprehensive Plan Concurrence

As recommended in Chapter 9 “Implementation” of the 2013 Comprehensive Plan Update, Addendum B of this report identifies how the proposed development program relates to the land management intent, location, and pattern and character principles of the current Comprehensive Plan and the 2010 Downtown Strategic Plan Update. Staff encourages the Planning Commission to review the Comprehensive Plan for guidance as Addendum B is not intended to represent a complete comparative assessment.

It should be noted that “shall” statements within the Comprehensive Plan must be understood as desired objectives and strategies that do not have the force or effect of law unless incorporated into the City’s Planning and Zoning Code.

It is the opinion of the Planning Division, as explicated in Addendum B, that the proposed development program appears to be in concurrence with the Plan’s principles for land management and desired development pattern and character.

Given public safety concerns raised by Staff, the Downtown Design Review Committee, and West Virginia University’s Transportation and Parking directorate, Staff recommends the Commission explore the developer’s design intentions and planned safeguards for the exterior balconies and determine whether or not related conditions are merited.

STAFF RECOMMENDATION:

Staff recommends the following conditions be included in a Planning Commission approval of Case No. S15-09-III as requested by the petitioner:

1. That annulment of the Wall Street right-of-way must be approved by City Council.
2. That minor subdivision petition approval must be granted by the Planning Commission combining Parcels 6 thru 15 of Map 26A and the annulled portion of the Wall Street right-of-way and final plat recorded prior to building permit issuance.
3. That requisite variance approvals must be granted by the Board of Zoning Appeals and related conditions observed.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN PLANNING COMMISSION

December 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.

Bill Kaweck, City Councilor

4. That, as determined by the City Manager, right-of-entry, access, and/or easement agreements through the City controlled CSX right-of-way be executed and recorded prior to building permit issuance.
5. That, as determined by the City Manager, right-of-entry, access, license, and/or easement agreements securing the developer's proposed public rail-trail access be executed and recorded prior to building permit issuance.
6. That the developer shall continue to consult with the Downtown Design Review Committee and accordingly address the Committee's comments and concerns where practicable.
7. That, as proposed by the petitioner, all above ground utility facilities along the development site's University Avenue frontage must be relocated underground; provided, all affected utilities, the West Virginia Division of Highways, and the City Engineer approve development plans for same.
8. That all sidewalks along the development site's University Avenue and Walnut Street frontages shall be reconstructed to the satisfaction of the City Engineer and, where practicable, incorporate design elements utilized for the High Street Streetscape Improvement Projects.
9. That the developer shall consult with the City Engineer in providing public trash receptacle(s) and bench(es) near retail entrance(s) as well as streetscape lighting across the development site's University Avenue and Walnut Street frontages augmenting existing facilities within the downtown; provided, said street furnishings and lighting standards do not obstruct public sidewalks as determined by the City Engineer.
10. That, to the satisfaction of the City Engineer, a Transportation Route Plan and Transportation Route Protection Agreement shall be approved and executed respectively prior to the issuance of a building permit.
11. That the development must meet all applicable federal Fair Housing and Americans with Disabilities Act standards to the satisfaction of the City's Chief Building Code Official.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431

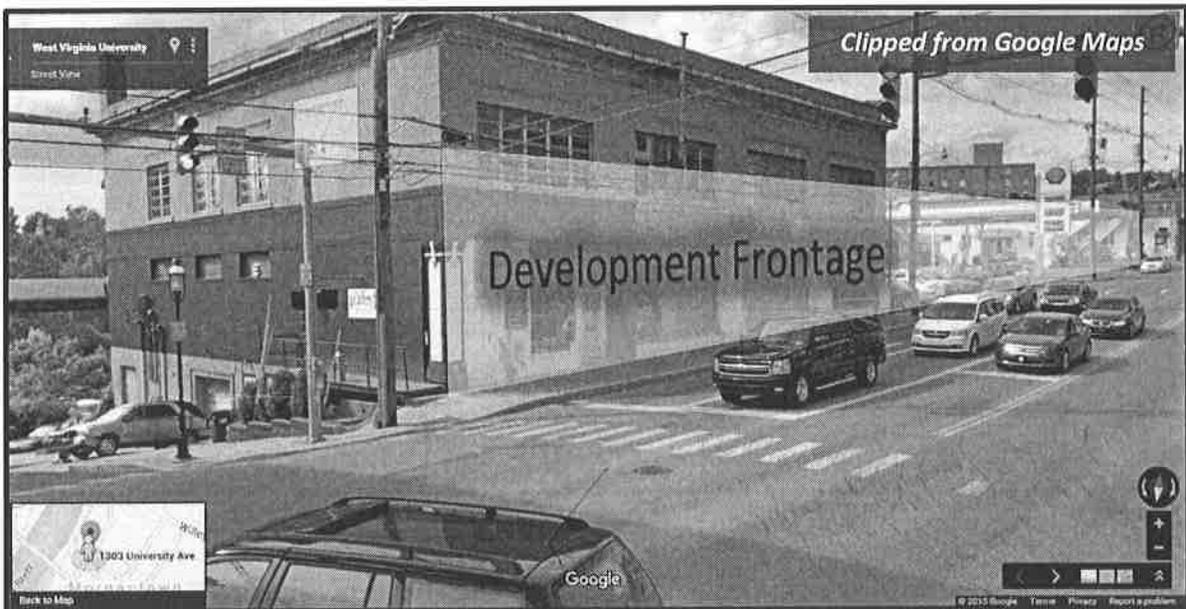
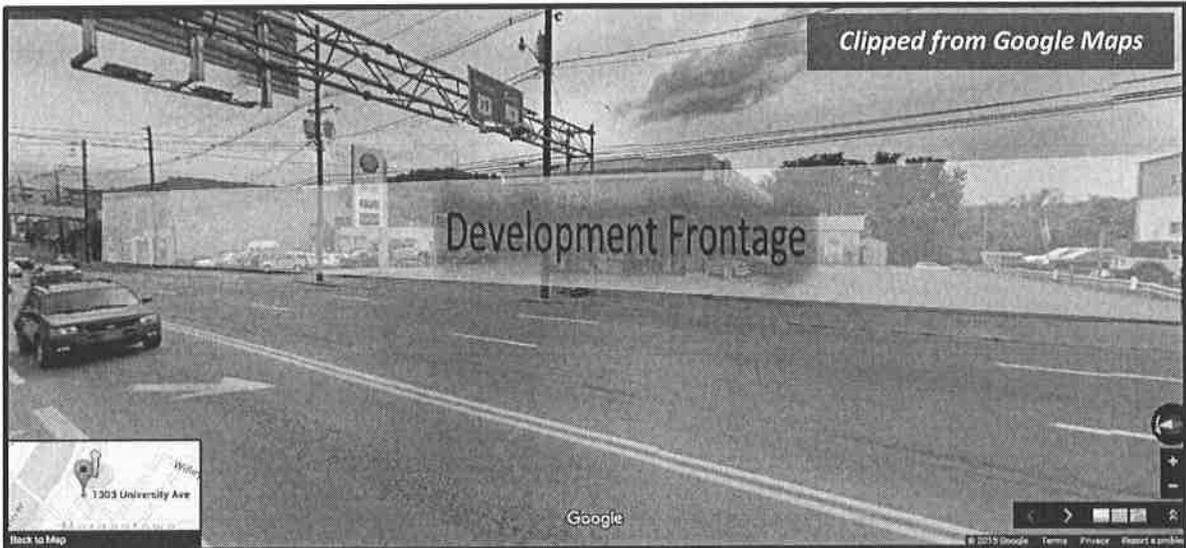
STAFF REPORT ADDENDUM A

S15-09-III / Standard at Morgantown, LLC / 1303 University Avenue



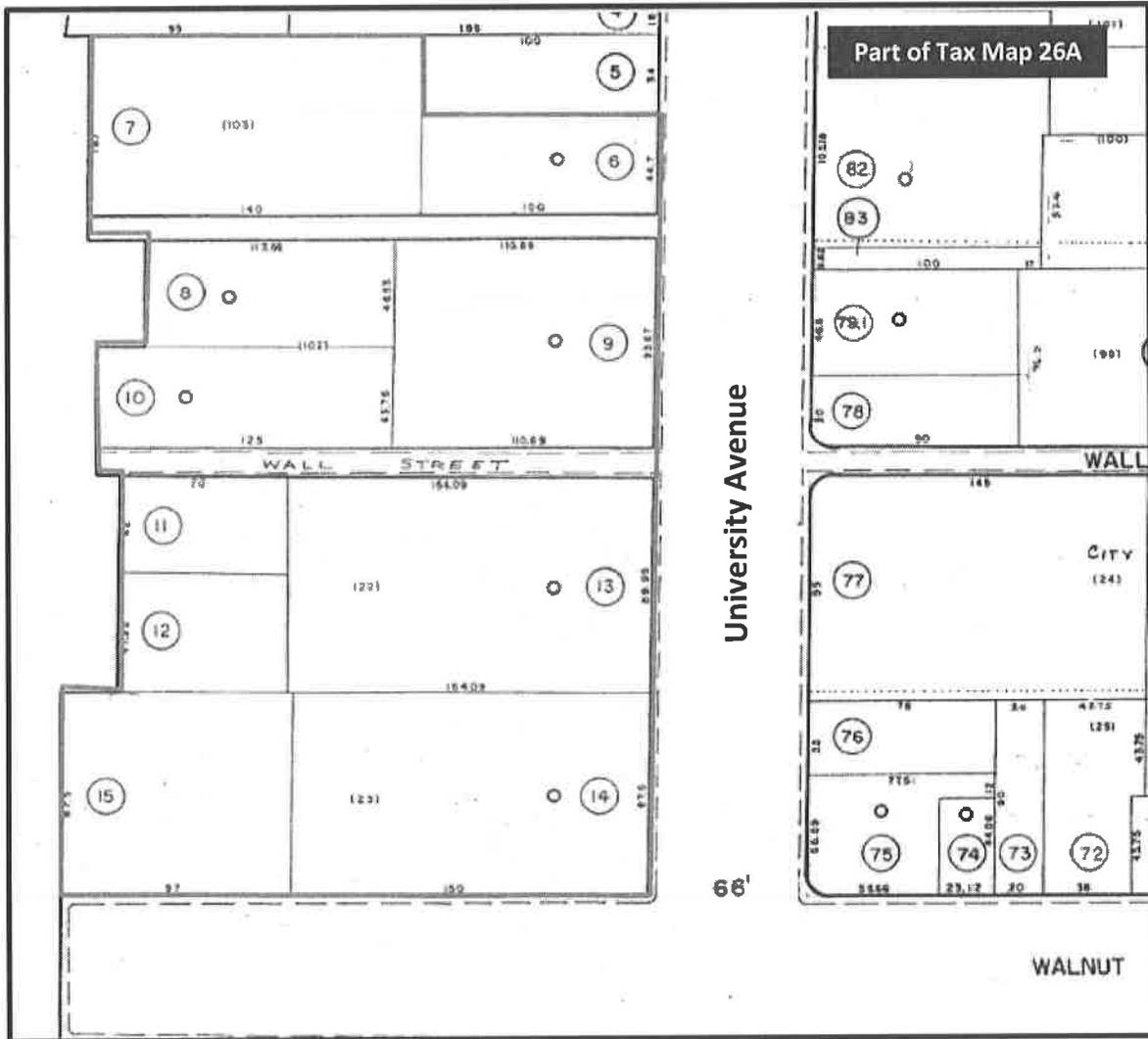
STAFF REPORT ADDENDUM A

S15-09-III / Standard at Morgantown, LLC / 1303 University Avenue



STAFF REPORT ADDENDUM A

S15-09-III / Standard at Morgantown, LLC / 1303 University Avenue



**Intentional
Blank
Page**

STAFF REPORT ADDENDUM B

S15-09-III / Standards at Morgantown, LLC / 1303 University Avenue

Concurrence with the 2013 Comprehensive Plan Update

The following narrative identifies where, in the opinion of the Planning Division, the subject development of significant impact is in concurrence and/or is inconsistent with the 2013 Comprehensive Plan Update.

| | |
|---------------|--|
| INTENT | Development proposals will reflect the spirit and values expressed in the Plan's principals. |
|---------------|--|

Principles for Land Management

| | | |
|-------------|---|--|
| Principal 1 | Infill development and redevelopment of underutilized and/or deteriorating sites takes priority over development in green field locations at the city's edge. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
| | <i>The site is located within the "Encouraged Growth" area, the "Core" pattern and character area, and the "Downtown Enhancement" area and is not located within a green field location at the city's edge.</i> | |
| Principal 2 | Expansion of the urban area will occur in a contiguous pattern that favors areas already served by existing infrastructure. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
| | <i>The site is located within the central urban core and appears to be supported by existing multi-modal transportation options and adequate utility infrastructure capacity.</i> | |
| Principal 3 | Downtown, adjacent neighborhoods and the riverfront will be the primary focus for revitalizations efforts. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
| | <i>The site is located within the B-4 District and appears to leverage its proximity with the University's downtown campus, which should further desired strengthening of the city's urban core in terms of walkability, customer-base, and proximity to residents' primary destinations.</i> | |
| Principal 4 | Existing neighborhoods throughout the city will be maintained and/or enhanced. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
| | <i>The site is not located within or adjacent to a "Neighborhood Conservation" area.</i> | |

| | | |
|---|---|--|
| Principal 5 | Quality design is emphasized for all uses to create an attractive, distinctive public and private realm and promote positive perceptions of the region. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
| <p><i>The developer's professional design team consulted with the Downtown Design Review Committee (DRC) and incorporated several modifications that appear to address the Committee's comments and concerns in terms of architectural style and articulation, cladding material and color, elimination of a majority of balconies, etc.</i></p> | | |
| Principal 6 | Development that integrates mixed-uses (residential, commercial, institutional, civic, etc.) and connects with the existing urban fabric is encouraged. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
| <p><i>The proposed development includes street-level nonresidential use components and residential components. The urban fabric within the immediate built environment is heterogeneous given the various development pattern and character types, scales and densities, forms and functions, land uses, and construction periods.</i></p> | | |
| Principal 7 | Places will be better connected to improve the function of the street network and create more opportunities to walk, bike and access public transportation throughout the region. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
| <p><i>The site is well served by public transit and within walking and biking distance of the University campus, downtown PRT station, the downtown central business district, and the Caperton Trail. Redevelopment of the site to a higher mixed-use density links residents and retail customers to alternate modes of transportation thereby reducing auto dependency within the City and mitigating increased traffic congestion created by commuting traffic from outside the City.</i></p> | | |
| Principal 8 | A broad range of housing types, price levels and occupancy types will provide desirable living options for a diverse population. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
| <p><i>The proposed development program increases housing choice and diversity in the context of the immediate residential area. Proposed bedroom composition ranges from efficient units to six-bedroom units. Zoning ordinance dictates and/or guidelines concerning desired affordability and workforce housing opportunities have not been developed or enacted.</i></p> | | |

Principal 9 Residential development will support the formation of complete neighborhoods with diverse housing, pedestrian-scaled complete streets, integrated public spaces, connection to adjacent neighborhoods, and access to transportation alternative and basic retail needs. Concurrence
 Inconsistent
 Other

The site is within the B-4, General Business District and located within a ¼ mile walking distance of basic retail goods and services, civic, institutional, and public spaces located within the central downtown business district and University's downtown campus.

Principal 10 Parks, open space, and recreational areas are incorporated as part of future development. Concurrence
 Inconsistent
 Other

Semi-public indoor and outdoor spaces have been incorporated to further quality of life, convenience, and enjoyment of the development's residents. The proposed at-grade setbacks appear to functionally widen adjoining public sidewalks. A new pedestrian way will be developed to significantly improve access to the Caperton Trail.

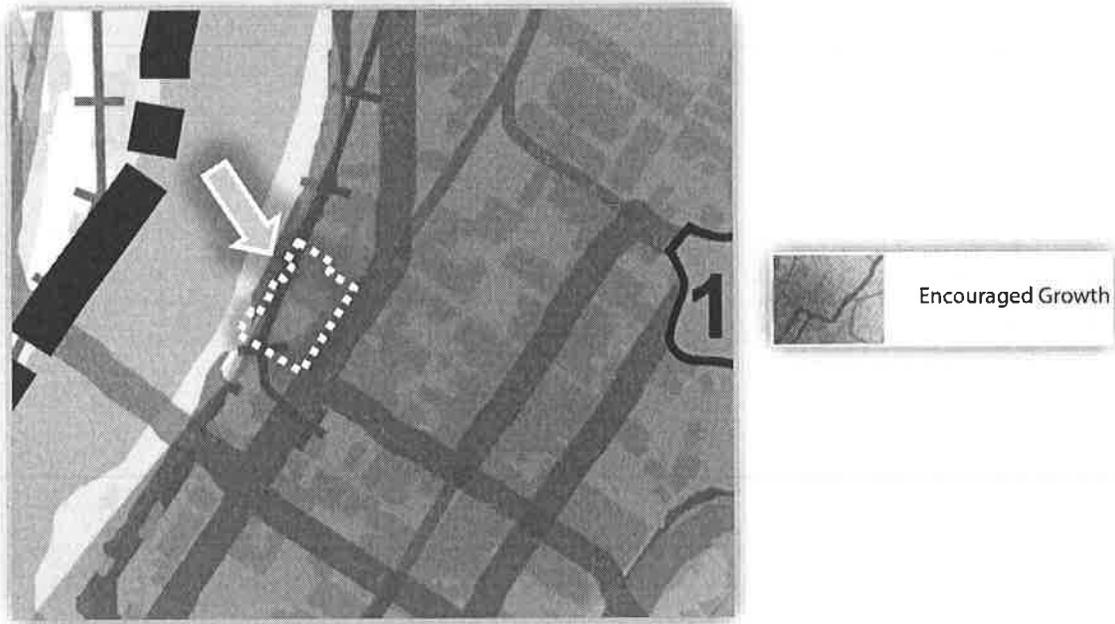
Principal 11 Environmentally sensitive and sustainable practices will be encouraged in future developments. Concurrence
 Inconsistent
 Other

Stormwater management best practices will be required for a large site currently lacking such measures. Environmental remediation work will be completed to remove and/or encapsulate contamination of current and previous uses. The developer's goals and objectives concerning sustainable construction techniques and industry accepted best practices have not been fully developed.

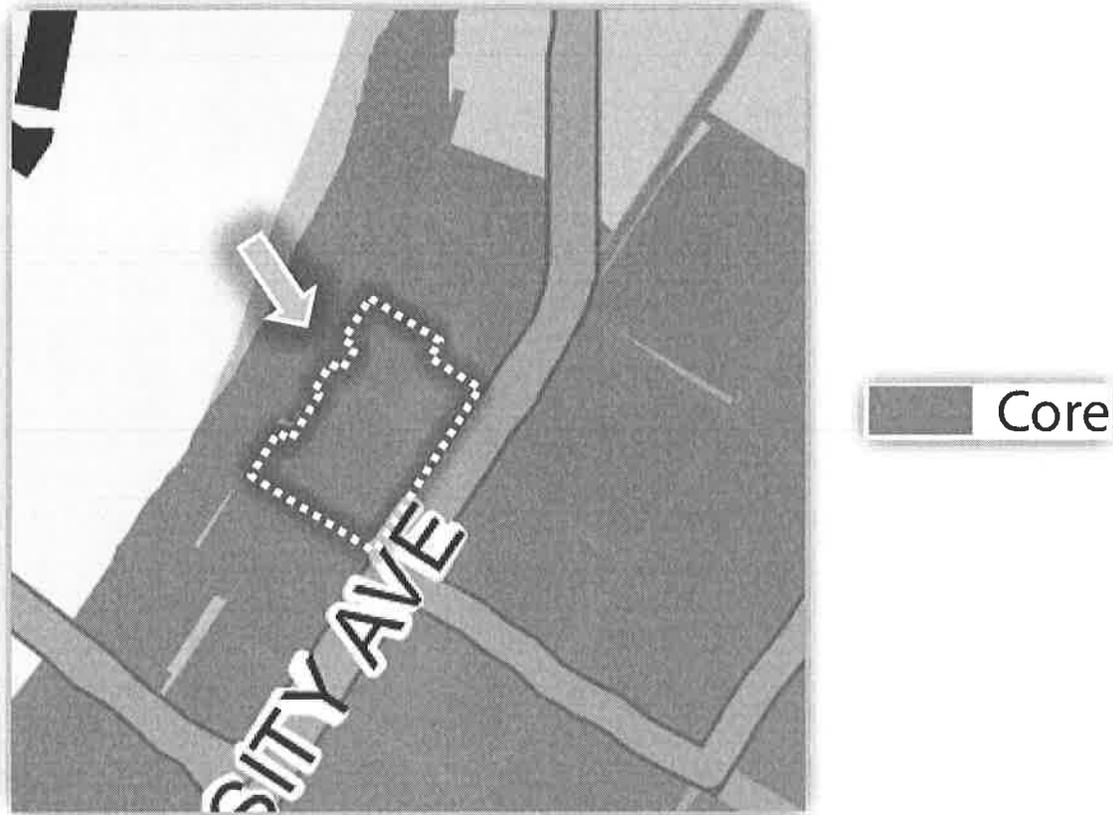
LOCATION

Development proposals will be consistent with the Land Management Map. If the proposal applies to an area intended for growth, infill, revitalization, or redevelopment, then it should be compatible with that intent and with any specific expectations within Areas of Opportunity. If the proposal applies to an area of conservation or preservation, it should be compatible with and work to enhance the existing character of the immediate surroundings.

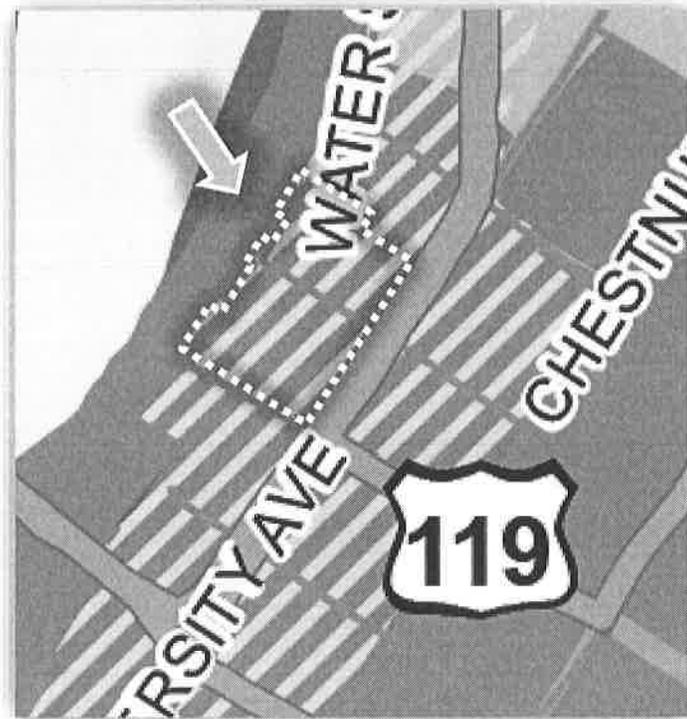
The following graphic is clipped from the **Conceptual Growth Framework Map** included on Page 19 of the 2013 Comprehensive Plan Update. The subject development site is located within the “**Encouraged Growth**” area.



The following graphic is clipped from **Map 3 – Pattern and Character** included on Page 27 of the 2013 Comprehensive Plan Update. The subject development site is located within the “**Core**” pattern and character area.



The following graphic is clipped from **Map 4 – Land Management** included on Page 39 of the the 2013 Comprehensive Plan Update. The subject development site is located within the “**Downtown Enhancement**” concept area.



Downtown Enhancement: Continued infill and redevelopment in the Downtown core with a mix of employment, civic, commercial and residential uses as described in the 2010 Downtown Strategic Plan Update.

Corridor Enhancement:** Improving development along corridors with a mix of uses, increased intensity at major nodes or intersections and roadway improvements to improve traffic flow, pedestrian and biking experience.

PATTERN AND CHARACTER

Development proposals in growth areas will be consistent with preferred development types. Development in areas where growth is not intended should be compatible with the relevant Character Areas description and expectations for how those areas should evolve in the future.

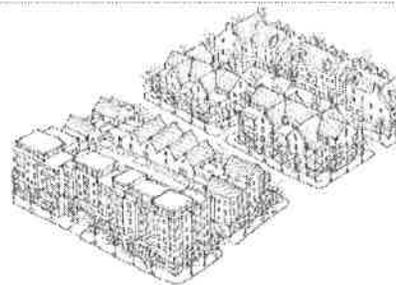
The following graphics are clipped from Pages 41 through 43 of the 2013 Comprehensive Plan Update and identify the development types desired within the “Core Enhancement” concept area.

Appropriate Development Types

| CONCEPT AREA | SF | TF | MF | C | NX | UC | CC | O | I | CD | OS |
|------------------|----|----|----|---|----|----|----|---|---|----|----|
| Core Enhancement | | | • | • | • | • | | | | | • |

MF Multi-family Residential

Includes various forms such as apartment buildings where three or more separate residential dwelling units are contained within a structure and townhouse dwelling types. They vary considerably in form and density depending on the context – from four-story or larger buildings set close to the street in and at the edge of the downtown core and along major corridors, to smaller two- to four-story buildings with greater street setbacks in areas between the downtown core and single-family neighborhoods.



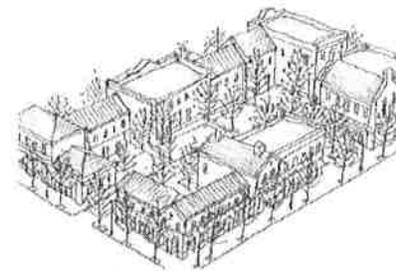
C Civic and Institutional

These sites include both public uses (government buildings, libraries, community recreation centers, police and fire stations, and schools) and semi-public or private uses (universities, churches, hospital campuses). Public uses should be strategically located and integrated with surrounding development. Civic and Institutional sites may be distinctive from surrounding buildings in their architecture or relationship to the street.



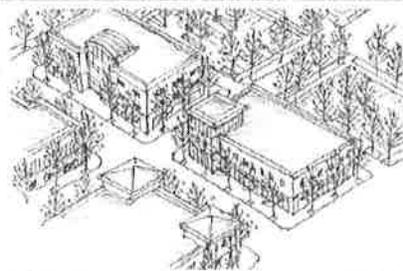
NX Neighborhood Center Mixed-Use

A mix of housing, office, commercial, and civic uses adjacent to one another or contained within the same structure (such as offices or apartments above ground-floor retail). Such uses should be compatible with and primarily serve nearby neighborhoods (within 1/2 mile). Parking should be located behind or to the side of buildings and may be shared between multiple uses.



UC Urban Center Mixed-Use

A mix of housing, office, commercial, and civic uses located adjacent to one another or sharing the same building. Buildings are generally larger in scale than neighborhood mixed-use and contain more employment and commercial uses that serve the broader community. Buildings should be located near the street with parking provided on-street or in shared parking configurations behind or between buildings.



OS Greenspace

Includes formal parks, recreation areas, trails, and natural open space.



**OBJECTIVES
AND
STRATEGIES**

Land Management

A. Goal

Efficient and attractive use of land resources that strengthens the quality, character, and upkeep of the built environment while balancing redevelopment and strategic expansion with open space preservation.

Objective 1. Strengthen Downtown.

➔ LM 1.5 Create incentives for developers to build residential units downtown that will serve a broad age and socioeconomic range.

Objective 5. Encourage land use patterns that support improved transportation choice and efficiency.

➔ LM 5.2 Permit higher density development in areas that are well-supported by existing or planned transportation infrastructure or transit services.

Objective 6. Improve community appearance, particularly at city gateways.

➔ LM 6.5 Encourage major redevelopment projects to relocate utilities from view of primary corridors, arterials, and collectors with emphasis on underground placement.

**OBJECTIVES
AND
STRATEGIES**

Neighborhoods and Housing

A. Goal

Attractive, well-maintained neighborhoods that offer a broad mix of desirable housing options and convenient access to services and amenities.

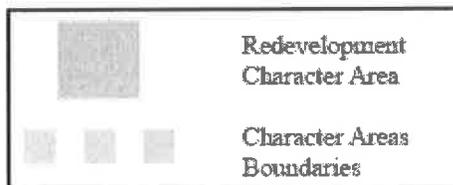
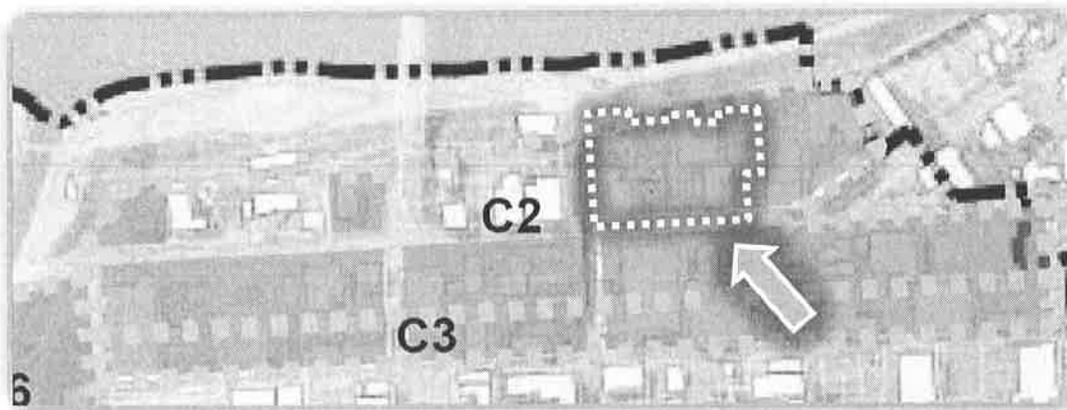
Objective 4. Promote the development of a broad range of housing types and prices.

- ➔ NH 4.1 Provide incentives to developers to encourage development of alternative housing types (i.e. higher density, live-work, mixed-use) in designated growth areas.

2010 Downtown Strategic Plan

Concurrence with the 2010 Downtown Strategic Plan

The following graphics have been clipped from the 2010 Downtown Strategic Plan [Page 69].



- C1 : Waterfront
- C2: University Avenue
- C3: Chestnut Street
- C4: Forest Avenue
- C5: Pleasant Avenue
- C6: Foundry Street
- C7: South High Street
- C8: Cobun Avenue
- C9: Decker's Creek
- C10: Downtown Core

The following graphics are clipped from Pages 76 through 80 of the 2010 Downtown Strategic Plan Update.

6.0 Downtown Strategies

6.3.1.2 Character Area 2 - University Avenue

| STRENGTHS | CHALLENGES |
|---|--|
| <ul style="list-style-type: none"> • Adjacent to the Monongahela River and its parks and amenities, West Virginia University, and the PRT. • Access to the River, Caperton Trail and Deckers Creek Trail. • On primary transportation routes into and out of downtown. • "Step down" in topography from downtown allows for taller buildings and for "tuck under" parking structures. • Urban street grid of downtown links across University Avenue in several locations. • Public transportation access and current investment in the Riverfront Park. • Some good redevelopment in repurposed buildings is currently occurring. | <ul style="list-style-type: none"> • University Avenue is not pedestrian friendly because of the high volume and high speed of traffic moving through intersections. • Urban street grid interrupted in some areas by new development. • Existing uses are primarily single-use facilities and do not provide for a mixed-use line corridor. • No unification in the facade of existing buildings along University Avenue. |
| <p style="text-align: left;">OPPORTUNITIES</p> <ul style="list-style-type: none"> • Promote vibrant mixed-use development to create gateway to the downtown and to the River. • Create overhead and on-grade pedestrian connections across University Avenue. • Utilize topography to create structured parking below and uses above. • Create "eyes on the park" by promoting residential uses within the corridor. • Promote the redevelopment of large single-use, single-story lots into mixed-use structures. | |

76 The Downtown Morgantown Strategic Plan

6.0 Downtown Strategies

VISION / DEVELOPMENT THEME

An attractive pedestrian friendly mixed-use corridor on both sides of University Avenue that balances pedestrian and automobile concerns, promotes a proper gateway image to the city, and includes a variety of uses including lodging, hospitality, institutional uses, green manufacturing, residences and office uses that take advantage of its location along the river, its adjacency to the PRT and its proximity to Western Virginia University.

ACTIONS

- 6.3.1.2a Conduct a detailed traffic and urban design study of University Avenue to balance urban design quality, pedestrians, and cars.
- 6.3.1.2b Develop incentives to enable consolidation of parcels and consistency in development theme and pattern.
- 6.3.1.2c Adopt and enforce Main Street Morgantown Urban Design Guidelines and Design Guidelines for Public Projects.
- 6.3.1.2d Create specific design guidelines for the "University Avenue Character Area".



Inspirational imagery depicting well-crafted waterfront multi-family housing.



6.0 Downtown Strategies

DESIGN GUIDELINE CONSIDERATIONS

General Intent / Goals

Dense pedestrian friendly mixed-use village with mixed-use buildings organized along University Avenue, existing streets and alleys and along the river.

Planning Requirements

- Reinforce the urban quality by increasing the mass, density, and mixed-use buildings that front on well-designed pedestrian streets.
- Create a north-south pedestrian and bicycle accesses to the River at regular intervals at the ends of the alleys that extend to downtown.
- Create balance and harmony in the vertical and horizontal massing of buildings.
- Create a consistent architectural style and palette of materials.
- Areas characterized as "New Mixed-Use Development" in Figure 15 will offer retail/commercial on the ground floor and either office or residential on the upper floors.

Building Height

Maximum height as described in the B-4 Zoning District (120'). All new buildings should be a minimum of three (3) stories or 36' in height to promote a mix of uses and a continuous urban edge.

Setbacks

- Buildings should front onto University Avenue along a consistent "build to line" that allows for the expansion of the sidewalk to a twelve-foot minimum width on both sides of the University Avenue.
- Encourage buildings to be placed close to each other as allowed by building and fire codes.

Parking and Access

- As described in the B-4 Zoning District, with the addition of the City offering an option for reduced required parking amounts for downtown residential developers as described under Transportation Section 6.4.2.
- Access to parcels of land should be from extensions of the urban street and alley grid and not directly from University Avenue.

Building Placement

- Buildings should be oriented along streets and open spaces along an established "build to line" so that an urban edge is created with the buildings.
- Buildings should exhibit continuity in the design of their facades.
- Buildings that front streets and open spaces should have a well-designed and scaled first floor with human scaled elements, doors, windows, awnings, and stoops.
- Buildings should consider pedestrian scaled rhythms along the street and open space networks and provide architectural breaks or interest every 30 - 50 feet of horizontal distance.



6.0 Downtown Strategies

Materials

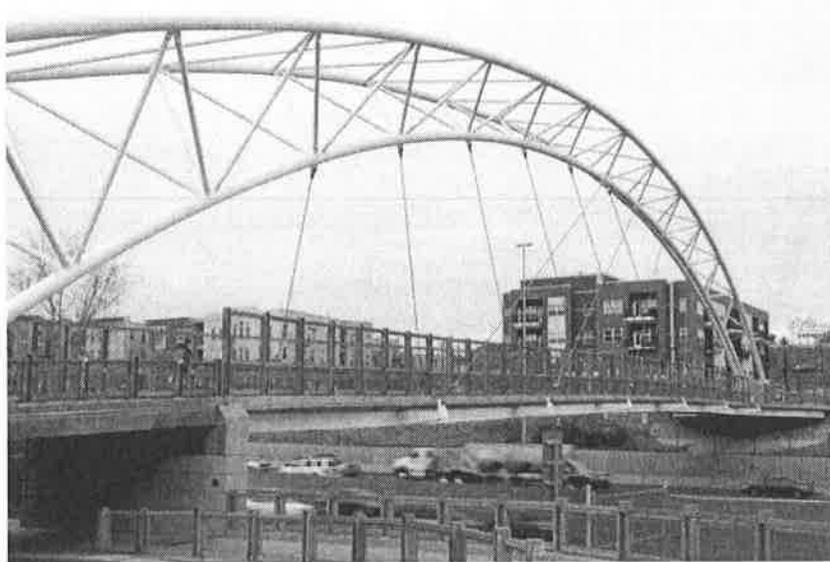
Materials should conform to existing B-4 standards and be consistent with the materials chosen for the existing historic buildings within the "University Avenue Character Area". Materials, methods, treatment, and type for private projects should adhere to the Design Guidelines found under Section N of the Main Street Morgantown Urban Design Document. Materials, methods, treatments, and types for public projects should adhere to Main Street Morgantown's Design Guidelines for Public Projects found in Sections II to V. Select materials and finishes for proposed new buildings that are compatible with historic materials and finishes found in the surrounding buildings that contribute to the special character of the historic district in terms of composition, scale, module, pattern, detail, texture, finish, color, and sheen.

Colors Palette

Warm and earth-toned colors will be encouraged predominantly. Brighter colors will be allowed but in limited accent areas.

Architectural Style

Encourage an architectural reference for the "University Avenue Character Area" that draws inspiration from historic and industrial era brick buildings as described within the Main Street Morgantown Urban and Public Projects Design Guidelines. Existing building renovations, rehabilitations, and adaptive re-uses should follow the Main Street Morgantown Urban and Public Projects Design Guidelines.



Inspirational imagery depicting pedestrian bridge over busy vehicular thoroughfare.



6.0 Downtown Strategies



Figure 15: Character area diagram for University Avenue

The Downtown Marguowen Strategic Plan



**PLANNING AND ZONING CODE CONFORMITY REPORT
FOR PLANS SUBMITTED FOR NOVEMBER PC AND BZA HEARINGS
Planning Division**

“The Standard at Morgantown” – University Ave

The following information identifies Planning and Zoning (P&Z) Code provisions related to the above referenced development. Plans reviewed herein were prepared by the BKV Group and CTL Engineering of West Virginia, Inc, on behalf of Landmark Properties, Inc. Also identified is whether or not the subject development meets P&Z requirements.

PROPOSED DEVELOPMENT PROGRAM

- The development site is currently occupied by “McClafferty’s Irish Pub,” “Vic’s Towing and Garage,” the former “Golds Gym” building that has been converted into apartments, and the “Shell” gas station mini-mart. The development site includes the public right-of-way of Wall Street, which requires annulment approval by City Council.
- The zoning classification for the development site is B-4, General Business District.
- The development site is identified by CTL Engineering as 1.95 acres (84,942 square feet), which includes 82,155 square feet (1.88 acres) for Parcels 6 thru and including 15 of Tax Map 26A and the Wall Street right-of-way.
- The development program includes 276 dwelling units with a total of 866 occupants.
- A total of 692 parking spaces are proposed in 12 parking deck levels that are wrapped by the nonresidential and residential portions of the building.
- The following restates the square footages of programmed spaces provided in the plans reviewed herein.
 - Commercial 13,351 sf
 - Retail 8,486 sf
 - Parking 225,554 sf (692 parking spaces)
 - Housing 419,947 sf
 - TOTAL 667,338 sf
 - Total less parking 441,784 sf
- One (1) right-in-right-out-only driveway entrance is proposed on University Avenue between Wall Street and Fayette Street to access the parking decks. One (1) driveway entrance is proposed on Walnut Street to access the parking decks, dumpster area, and loading area.

SUMMARY OF CONFORMITY OBSERVATIONS

| Planning and Zoning Code Reference | |
|------------------------------------|---|
| Conformity (Y, N, TBD) | Conformity review observations; required approvals noted in bold highlighted (yellow) font . |



**PLANNING AND ZONING CODE CONFORMITY REPORT
FOR PLANS SUBMITTED FOR NOVEMBER PC AND BZA HEARINGS
Planning Division**

| 1349.02 Permitted and Conditional Uses | |
|---|---|
| Y | "Mixed-Use Dwellings" are permitted in the B-4 District by-right. [see Addendum A for additional explanation] |
| TBD | The specific land uses for the commercial retail spaces at grade with University Avenue have not been determined. Land use determinations will be made once commercial retail occupants are identified. |

| 1349.03 Lot Provisions | |
|-------------------------------|--|
| Y | (A) Minimum lot size – 1,500 sf <i>The development site, which includes the Wall Street right-of-way is 1.95 acres (84,942 sf).</i> |
| Y | (B) Minimum lot frontage – 30 ft <i>The University Avenue frontage appears to be approximately 340 ft.</i> |
| Y | (C) Minimum lot depth – 50 ft <i>The lot depth varies from 152.7 ft to 248.2 ft</i> |
| Y | (D) Maximum lot coverage – 90%. <i>Sheet No. 3.01 identifies the proposed lot coverage as 78%.</i> |

| 1349.04 Setbacks and Encroachments | | | |
|---|---|--|---|
| | Provision | Requirement | Proposed |
| Y | (A)(1) Minimum Front | 0 ft. | 4.62 ft |
| N V15-65 | (A)(2) Maximum Front | Average depth of the nearest 2 lots on either side or 10 feet, whichever is less | <i>Sheet C-3.1 illustrates maximum front setbacks varying from 4.62 ft to 8.87 ft., which exceed the 0.26 ft setback for the Mode Roman Building.</i> |
| N/A | (A)(3) Exceptions to max. front | <i>Exceptions not requested.</i> | |
| Y | (A)(4) Minimum Side | 0 ft. | 5 ft (south) 13.61 ft (north) |
| N V15-66 | (A)(5) Minimum Rear | 10% of lot depth | <i>Sheet 3.01 illustrates an encroachment for a portion of the building.</i> |
| Y | (B) Minimum setback for accessory structures – LIFT STATION | 5 ft from side & rear | 5.01 ft from rear 4.25 ft from side |



**PLANNING AND ZONING CODE CONFORMITY REPORT
FOR PLANS SUBMITTED FOR NOVEMBER PC AND BZA HEARINGS
Planning Division**

| 1349.05 Building Height | | | |
|--------------------------------|---|-------------|--|
| | Provision | Requirement | Proposed |
| Y | (A) Minimum Height | 2 stories | 10 stories (as defined by "building height in stories") |
| Y | (B) Maximum Height | 120' | Lowest Elevation: 102' – 9 3/8" (south elevation) Highest Elevation: 134' – 4" (west elevation) Average Height = 118' – 6 11/16" |
| Y | (C) Maximum Height (accessory structure) – 35 ft <i>The lift station is considered an accessory structure.</i> | | |

| 1349.06 Floor Area Ratio (FAR) | |
|---------------------------------------|--|
| Y Note – 1 | Maximum FAR is 7.0. However, area designed, constructed, and utilized to provide parking structure facilities for less than the maximum parking standard is exempt from maximum FAR standard. Maximum FAR calculation: 7.0 x 84,942 sf = 594,594 sf Proposed FAR: 667,338 sf (total) – 225,554 sf (parking) = 441,784 sf |

| 1349.07 Maximum Residential Density | |
|--|--|
| Y | Minimum lot area per dwelling unit is 300 sf. Maximum residential density calculation: 84,942 sf / 300 sf = max. of 283 units . Proposed dwelling unit count is 276 units . |

| 1349.08 Parking and Loading Standards | |
|--|---|
| Y | (A)(1) Residential – 0.5 parking spaces per occupant (except first 22 occupants) 866 occupants – first 22 occupants = 844 occupants 844 occupants x 0.5 = minimum of 422 parking spaces Proposed: 692 parking spaces |
| N/A | (A)(2) Nonresidential <i>The trip generating nonresidential use component (8,486 sf) is less than 15,000 sf and therefore exempt from providing nonresidential required parking spaces.</i> |
| N/A | (A)(3) Movie Theaters |
| N/A | (A)(4) Reduction in Minimum Required Parking |
| N/A | (A)(5) Fee In-Lieu-Of Parking - RESERVED |



**PLANNING AND ZONING CODE CONFORMITY REPORT
FOR PLANS SUBMITTED FOR NOVEMBER PC AND BZA HEARINGS**
Planning Division

| | |
|-----|---|
| N/A | (A)(6) "Alternate Off-Site Parking Strategies". |
| Y | (B) On-site surface parking must be located to the rear of the building or otherwise screened. <i>No surface parking spaces proposed in plans reviewed herein.</i> |
| Y | (C) Bicycle Storage – One (1) indoor, secured, sheltered bicycle storage space is required per dwelling unit that meets minimum design standards. <i>Sheet No. 6.01 illustrates storage for 276 bikes</i> |
| Y | (D) Loading for residential uses containing thirty (30) or more dwelling units. <i>The proposed area of the residential use component is 334,092 sf. According to Table 1365.10.01, a total of 15 loading spaces are required, one (1) of which must be designed for the retail sales uses. Because the dwelling units will be furnished, the dimensions of the residential loading spaces can be the standard 8.5 ft x 18 ft parking space. Sheet Nos. 6.01 and 6.04 illustrate the 14 residential use loading spaces.</i> |

1349.09 Performance Standards

See comments below under Article 1351.

1349.10 Landscaping

See comments below under Article 1367.

1351.01 Performance Standards for Buildings in the B-4 District

| | |
|-----|---|
| Y | (A) <u>Height exemptions for certain facilities and appurtenances.</u> |
| TBD | (B) <u>Private pedestrian walks, street furniture, and open space on private property.</u> <i>Consultation with and review by the City Engineer will be conducted during building permit plans review to determine appropriate public space furnishings.</i> |
| Y | (C) <u>Private parking facilities.</u> |



**PLANNING AND ZONING CODE CONFORMITY REPORT
FOR PLANS SUBMITTED FOR NOVEMBER PC AND BZA HEARINGS**
Planning Division

| | (D) <u>Curb Cuts.</u> The following provides the minimum curb cut performance standards along with proposed conditions. | Provision | Standard | Proposed | |
|-----------------------|---|-----------|-----------|--------------------------|--|
| | | | | University Ave. curb cut | Walnut St. curb cut |
| | | | | Y | Minimum distance of any part of driveway to the street right-of-way line of any intersecting street. |
| Y | Minimum distance of any part of driveway to the end of a curb radius at an intersecting street. | 30 feet | 158.86 ft | 30.15 ft | |
| Y | Minimum distance of any part of a driveway to any other part of another driveway. | 30 feet | 169.26 ft | N/A | |
| N V15-68 V15-69 | Maximum width of a driveway at the curb line. | 26 feet | 55.77 ft | 104.39 ft | |
| N V15-68 V15-69 | Maximum width of a driveway at the street right-of-way line. | 22 feet | 27 ft | 58.75 ft | |
| Y | (E) <u>Corner Visibility.</u> <i>See review opinion from City Engineer.</i> | | | | |
| | (F) <u>Landscaping.</u> <i>See comments below under Article 1351.</i> | | | | |
| N/A | (G) <u>Vacant Lots.</u> | | | | |
| Y | (H) <u>Main Street Morgantown Urban Design Guidelines.</u> <i>The project's design professionals met with the Downtown Design Review Committee on 25 AUG 2015 and 29 SEP 2015.</i> | | | | |
| TBD V15-67 | (I) <u>Minimize Canyon Effects for Buildings Taller than Three (3) Stories.</u> Site plan applications for buildings taller than three (3) stories must include an Air Flow Analysis and a Sunlight Distribution Analysis. <i>The Sunlight Distribution Analysis is provided on Sheet Nos. 6.17 and 6.18. The Air Flow Analysis is provided on Sheet No. 6.19.</i> | | | | |
| Y | (J)(1) <u>Floor-to-Floor Heights Ground-floor Space.</u> <i>Sheet Nos. 6.02, 6.03, 6.04, 7.02, and 7.03 illustrate floor-to-floor heights of at least 11 ft for the stepped ground floor non-residential spaces.</i> | | | | |
| Y | (J)(2) <u>Floor Area of Ground-floor Space.</u> <i>See Addendum B for explanation.</i> | | | | |



**PLANNING AND ZONING CODE CONFORMITY REPORT
FOR PLANS SUBMITTED FOR NOVEMBER PC AND BZA HEARINGS**
Planning Division

| | |
|-------------|---|
| N V15-71 | (K) <u>Transparency.</u> <i>Sheet No. 7.04 illustrates transparency between 3'-0" and 8'-0" of 52% along University Avenue and 11% along Walnut Street, which requires variance relief.</i> |
| Y | (L) <u>Doors and Entrances.</u> |
| Y | (M) <u>Solid Waste.</u> <i>Garbage storage facility design, access modeling, and a letter provided from Republic Services has been submitted.</i> |

| | |
|--|--|
| 1365.04 Determination of the Number of Spaces | |
| N V15-70 | (I) In all non-residential districts the maximum numbers of spaces provided shall not exceed 115 percent of the minimum parking requirement, except for research and development centers, where there shall be no maximum. The minimum parking requirement [see Article 1349.08(A)(1) above] is 422 spaces. 422 spaces x 1.15 = maximum of 485 parking spaces. 485 parking spaces + 14 residential loading spaces = 499 parking spaces. <i>692 parking spaces are proposed, which requires variance relief for the 193 parking spaces that exceed the maximum standard.</i> |

| | |
|--|---|
| 1365.07(A)(2) Off-Site Parking Facilities within the B-4 District | |
| N/A | The BZA may grant conditional use approval to provide required parking spaces on a site that is within 500 feet of the principal use (with certain restrictions). Off-site parking is not proposed. |

| | |
|---------------------------------------|---|
| 1367 Landscaping and Screening | |
| TBD | <i>A Preliminary Landscape Plan is provided on Sheet Nos. 4.03, 4.04, and 4.05. Review of the final Landscape Plan will be conducted during building permit application submission.</i> |

| | |
|-------------------|--|
| 1369 Signs | |
| TBD | <i>Because commercial retail occupants have not been identified yet, signage plans will be reviewed and approved at the time of related building permit application.</i> |

| | |
|----------------------|---|
| 1371 Lighting | |
| TBD | <i>A Preliminary Landscape Plan is provided on Sheet Nos. 4.01 and 4.02. Review of the final Lighting Plan will be conducted during building permit application submission.</i> |



**PLANNING AND ZONING CODE CONFORMITY REPORT
FOR PLANS SUBMITTED FOR NOVEMBER PC AND BZA HEARINGS**
Planning Division

NOTES

Note – 1As noted under Article 1365.04(l) above, 193 parking spaces are proposed in excess of the 115% maximum standard. Article 1349.06 does not permit parking in excess of the maximum parking standard to be exempted from the Maximum Floor Area Ratio (FAR) standard. As such, the following adjusted FAR calculation is required.

- The assumed area of a parking space is $(8.5' \times 18') + (8.5' \times 12') = 255$ sf per space
- 193 parking spaces x 255 sf per space = 49,215 sf
- Proposed FAR: $[667,338$ sf (total) $- 225,554$ sf (parking)] $+ 49,215$ sf = 490,999 sf
- 490,999 sf is still less than the maximum FAR standard of 594,594 sf

SUMMARY OF REQUIRED APPROVALS

1. Required City Council approval:

- a. Right-of-way annulment of Wall Street between University Avenue and the CSX right-of-way.

An annulment application has been submitted and the City Engineer is awaiting requisite letters from public/private utilities.

2. Required Planning Commission approvals:

- a. S15-09-III..... Type III Site Plan – Development of Significant Impact (DSI).
- b. Minor Subdivision to combine the ten (10) parcels and the Wall Street right-of-way that compose the development site.

A minor subdivision application will be submitted for Planning Commission review following the annulment determination by City Council.

3. Required BZA approvals:

- a. V15-65.....Article 1349.04(A)(2) – variance relief to exceed the maximum front setback standard for the principal building.
- b. V15-66.....Article 1349.04(A)(5) – variance relief to encroach into the minimum rear setback standard for the principal building.
- c. V15-67.....Article 1351.01(l) – The BZA must either, 1.) Determine that the proposed building sufficiently incorporates design elements that preserve adequate light and airflow to public spaces including streets and sidewalks; or, 2.) Approve or deny variance relief from incorporating design elements that preserve adequate light and airflow to public spaces including streets and sidewalks.



**PLANNING AND ZONING CODE CONFORMITY REPORT
FOR PLANS SUBMITTED FOR NOVEMBER PC AND BZA HEARINGS**
Planning Division

- d. V15-68.....Article 1351.01(D) – variance relief to exceed the maximum driveway curb cut width at the curb line and at the right-of-way line for the proposed driveway entrance on University Avenue.
- e. V15-69.....Article 1351.01(D) – variance relief to exceed the maximum driveway curb cut width at the curb line and at the right-of-way line for the proposed driveway entrance on Walnut Street.
- f. V15-70.....Article 1365.04 – variance relief to exceed the maximum number of parking spaces in the non-residential district.
- g. V15-71.....Article 1351.01(K) – variance relief from minimum transparency requirement.

ADDITIONAL OBSERVATIONS

- Discussion notes from the two (2) meetings with the Downtown Design Review Committee are attached. The Committee requested to meet again with the developer's design professionals prior to building permit application submission to review final architectural design elements; particularly those few elements that had not been decided prior to the Committee's 29 SEP 2015 meeting.

Digitally signed by Christopher M. Fletcher, AICP
Date: 2015.11.06 15:15:08 -05'00'



**PLANNING AND ZONING CODE CONFORMITY REPORT
FOR PLANS SUBMITTED FOR NOVEMBER PC AND BZA HEARINGS**
Planning Division

ADDENDUM A

Mixed-Use Dwelling Units

Article 1331.06(26) provides that, "the *commercial or office space* shall not be less than 20 percent and not more than 60 percent of the ground floor area."

In the definition of FLOOR AREA provided in Article 1329.02, "...The floor area of enclosed required off-street parking areas shall not be included..."

| | | |
|----------------------|--------------------|-------------------------|
| Floor area of FLR01: | 54,593 sf | total area |
| | <u>- 18,923 sf</u> | parking area |
| | 35,670 sf | total area less parking |

| | | |
|---|-------------------|--------|
| Proposed <i>commercial or office space</i> on ground floor: | 6,244 sf | FLRP1 |
| | <u>+ 2,242 sf</u> | FLR01 |
| | 8,486 sf | Retail |

| | | | | |
|--|-----------------|--------|---|--------------|
| Proposed % <i>commercial or office space</i> | <u>8,486 sf</u> | Retail | = | 23.8% |
| | 35,670 sf | FLR01 | | |

ADDENDUM B

Non-residential on Ground Floor

Article 1351.01(J)(2) provides that all *nonresidential* floor space provided on the ground floor of a mixed-use building must contain at least 20 percent of the lot area on lots with 50 feet of street frontage or more.

The lot area (area of the development site) is 84,942 sf.

| | |
|---|--------------|
| The minimum nonresidential area on the ground floor is: | 84,942 sf |
| | X <u>20%</u> |
| | 16,988.4 sf |

| | | |
|--|-------------------|----------------|
| The proposed nonresidential area on the ground floor is: | 576 sf | FLRP1 |
| | 6,244 sf | FLRP1 |
| | 8,242 sf | FLR01 |
| | <u>+ 2,242 sf</u> | FLR01 |
| | 17,304 sf | Nonresidential |

Downtown Design Review Committee

Meeting Notes

Development: The Standard – University and Walnut Street – Landmark Properties & BKV Group

Date: 8/25/2015 Time: 5:30 PM Place: Public Safety Building

Items Discussed:

Development program details presented:

- 10 to 11 levels with a building height that will not exceed 960 feet above sea level (ASL). Fletcher noted that he has not received elevations with finished adjoining grades to determine the average building height in comparison with the maximum building height standard of 120 feet.
- 283 dwelling units ranging from efficiency units to six-bedroom units for a total of 857 beds geared towards college students. No bedrooms will be double-occupied.
- Property management will be located on-site.
- The roof will include an amenity deck with a swimming pool.
- Vehicular entrances are proposed from University Avenue (right-in-right-out only) and from Walnut Street.
- Truck loading space will be provided off Walnut Street. AutoTURN or similar simulation will be provided to City
- Sidewalk width along University Avenue will be increased beginning at the existing curb line to the building's proposed 7.5 foot front setback effectively creating an approximate twelve-foot wide public space.
- A new trailhead is planned that will significant enhance rail-trail access.
- Commercial space will be located at the University Avenue street level.
- When asked about potential commercial uses at the rear of the building facing the rail-trail, the developer noted such space was not viable along the riverfront.
- The building will include 24 balconies that will be dark grey with painted aluminum plank floors.
- The closest point between the proposed building and the PRT will be approximately ten (10) feet. Committee members encouraged the design team to work with WVU's PRT management.

- The design team intends to locate and screen HVAC mechanical condensing units on the roof; however, further design is needed before plans can be shared with the Committee.
- The parking decks will be wrapped by the building and will require mechanical ventilation that must be designed yet.
- All utility lines in front of the site will be buried to ensure fire truck access to the building.
- Bike storage is planned and kayak storage and/or rental is being considered as an amenity for residents.

Contemplated cladding materials/style:

- The first level will include split face masonry, aluminum storefront display window frames, and precast stone sign band above storefront windows.
- Upper floors will use a mix of brick or brick veneer, metal panel, cementitious panel, and stucco (EIFS)
- Color schemes have not been finalized yet but the design professionals intend to use earth tones similar to the predominant color schemes used on the University's downtown campus and several of the larger-scaled buildings in the downtown. Currently considered is a grey shade for the stucco, tan for the cementitious panels, and red brick.
- The arrangement of façade elements by use of contemplated materials, colors, wall offsets are intended to break up and provide variation in massing to give the appearance of several buildings along University Avenue.
- The retaining wall at the rear Walnut Street corner will be reconstructed; however, building materials have not been determined yet.
- Exterior lighting is still being planned.

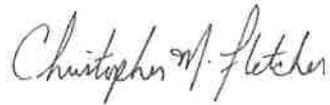
Committee Observations:

- Cladding Materials
 - Committee expressed concerns with the use of split face masonry for the building's base. The primary concern was for the façade along University Avenue where high vehicular traffic will contribute to dirt and soot collecting, holding, and showing on porous split face masonry material along with the difficulty of removing graffiti. Secondary concern was split face masonry appeared to be a tawdry alternative to precast stone/concrete. Committee asked that larger panels of cast stone/concrete be used for the building's base rather than split face masonry.
 - Mills suggested using precast, larger panels, and aluminum wraps be used for the building's base, particularly along University Avenue and Walnut Street.
 - Committee asked to see more refined cladding materials and color palette details as the project's design continues to evolve. The Committee was generally accepting of the

contemplated color palette of cladding materials but wants to see close up drawings/illustration to better understand their use, purpose, and transitions.

- Committee did not like stucco/EIFS; noted examples of poor wearing and dirty facades of nearby stucco/EIFS buildings; noted EIFS will most likely be prohibited in the near future.
- Mills asked that fasteners for cementitious panels not be exposed.
- Committee asked for more detail on materials and colors of the contemplated cornice, parapet cap, and architectural appurtenances at the top of the building.
- The Committee suggested clear, non-tinted glass for the storefront display windows.
- The Committee asked the design team to explore more defined storefront elements.
- Retaining Wall – The Committee asked to see the materials and color of the new retaining wall along Walnut Street.
- Balconies
 - Committee members shared experiences with poor student conduct on balconies in the downtown area and cited concerns for potential problems.
 - Shuman strongly suggested reconsideration of the balconies as it increases the chance of objects being thrown at vehicles on University Avenue and at PRT cars.
 - Mills stated balconies are an attractive nuisance and invite trouble.
- Mechanical Systems – Mills stressed the importance of screening the mechanical systems and requested to see where they will be located and how they will be screened along with the parking garage ventilation system.
- Trail Access
 - Additional information/illustration is needed on how the contemplated trailhead will be designed, constructed, and accessed.
 - Concern was provided on how this space will be programmed and cautioned against furniture and spaces that attract gathering and loitering as experienced along the trail within the immediate area.
 - Concern was provided for the privacy of dwelling units located at grade at the rear of the building.
- Truck Loading – The project must be designed to ensure delivery trucks and loading do not occur in front of the building on University Avenue.
- Exterior Lighting – The Committee asked to see the final exterior lighting plan that included photometric renderings (e.g., Agi32, ElumTools, or similar simulation software).

- Sidewalk and Streetscape – The Committee asked for additional information/illustration of the proposed streetscape along University Avenue including street trees if planned.
- Mills expressed that the pedestrian bridge is a must with this project. Fletcher noted that the City has commissioned an Engineer to work with the developer's design professionals to study the feasibility of pedestrian bridge that will be open to the public.
- Corner at University Avenue and Walnut Street – Mills suggested rethinking the University Avenue and Walnut Street building corner to enhance its presence and architectural contribution to the built environment.
- Site Security – Suggestions were made to install several cameras, especially towards the rear of the building.



Digitally signed by Christopher M. Fletcher, AICP
Date: 2015.09.15 13:37:25 -04'00'



DOWNTOWN DESIGN REVIEW COMMITTEE

August 25, 2015

5:30 PM

Public Safety Building – Conference Room

Committee Members:

Bill Kawecki
Planning Commissioner

Michael Shuman
Planning Commissioner

Tom Anderson

Bob Carubia

Constance Merandi

Michael Mills

ATTENDANCE SHEET

NAME (PLEASE PRINT)

ADDRESS

| | |
|------------------|---|
| JASON DODENBOS | 455 EPPS BRIDGE PKWY |
| JOHN TRIPPIER | 1054 31st NW WASHINGTON, DC. |
| MICHAEL MILLS | 63 WHARF STREET MORGANTOWN |
| Michael Greenlee | 2470 Daniels Bridge Rd Athens GA 30608 |
| Michael Shuman | 705 Willey St Morgan town |
| BILL KAWECKI | 324 COBURN AVE |
| Tom Anderson | 34 TIGER ROAD - |
| Joseph Miller | 455 Epps Bridge Hwy Athens, GA |
| Andrew Costas | 455 Epps Bridge PKWY ^{Athens} GA |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

Development Services

Christopher Fletcher, AICP
Director

Planning Division

289 Spruce Street
Morgantown, WV 26505
304.284.7431

Meeting Notes

Purpose: The Standard – University and Walnut Street – Landmark Properties & BKV Group

Date: 9/29/2015

Time: 5:30 PM

Place: Planning Office (WebEx)

Items Discussed:

- Color schemes have not been finalized yet but the design professionals intend to use earth tones similar to the predominant color schemes used on the University's downtown campus and several of the larger-scaled buildings in the downtown. Currently considered is a grey shade for the EIFS/stucco, tan for the cementitious panels, and red brick. EIFS/stucco will be restricted to the top four floors. Cementitious cladding and brick will be used for the lower five floors. Committee suggested bringing cementitious and brick material all the way up the corner and requested EIFS/stucco not be used along the University Avenue and Walnut Street facades. Committee suggested a darker color for the EIFS/stucco as lighter colors will show dirt from vehicles traveling in the corridor.
- The design professionals noted the arrangement of façade elements by using materials, colors, building line offsets are intended to break up and provide vertical articulation and variation in massing to give the appearance of several buildings along University Avenue.
- The retaining wall at the rear Walnut Street corner will be reconstructed; however, building materials have not been determined yet. The Committee asked if a CMU system is used, that larger-sized units be used and avoid sharp points at corners.
- Split-face masonry materials have been eliminated and replaced with pre-cast concrete in response to the Committee's expressed concerns.
- Concealed cementitious board fasteners will be used as requested by the Committee.
- Clear, non-tinted glass for the storefront display windows will be used as requested by the Committee
- More defined storefront elements have been incorporated as requested by the Committee.
- Most of the balconies have been eliminated as requested by the Committee. However, there are still Juliet balconies along University Avenue where the building face has been extended out from the primary face providing articulation in the façade. The Committee remains concerned with balconies and requested windows and doors be restricted to four to six inch opening to mitigating use of Juliet balconies for public safety concerns.

- The Committee suggested Caperton Trail wayfinding signage be added along Walnut Street. The developer agreed to work with the City as practicable.
- The developer noted that additional planning and design is ongoing concerning:
 - Exterior lighting.
 - Parapet design to screen roof-top mechanical units.
 - Public realm hardscape and street furnishings.
 - Caperton Trail access.
 - Final cladding material schedule and color palette.
- The Committee asked to meet with the developer's design professionals following Planning Commission approval and prior to building permit application to discuss final architectural design elements that have not been decided yet.



DOWNTOWN DESIGN REVIEW COMMITTEE

September 29, 2015

5:30 PM

Public Safety Building – Conference Room

Committee Members:

Bill Kawecki
Planning Commissioner

Michael Shuman
Planning Commissioner

Tom Anderson

Constance Merandi

Michael Mills

ATTENDANCE SHEET

NAME (PLEASE PRINT)

ADDRESS

| NAME (PLEASE PRINT) | ADDRESS |
|---------------------|---|
| Tom Anderson | 37 TIGER RD |
| MICHAEL MILLS | 63 WYOMING STREET |
| Michael Shuman | 705 Willey St |
| Greg Foreman | CTL Engineering 1091 Chaplin Hill Rd |
| Bill Kawecki | 324 WEBER AVE |
| Constance Merandi | 281 Dormont St. |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

**Intentional
Blank
Page**



City of Morgantown, West Virginia
**APPLICATION FOR
 TYPE III SITE PLAN REVIEW
 DEVELOPMENTS OF SIGNIFICANT IMPACT**

| |
|----------------------------|
| OFFICE USE |
| CASE NO. S15-09-III |
| RECEIVED: 10/2/15 |

A Development of Significant (DSI) Impact is any proposed development whose characteristics warrant a more in-depth review by the Morgantown Planning Commission in order to mitigate the negative impact these characteristics may have on surrounding land uses in particular and on the surrounding neighborhood in general. Developments of Significant Impact (DSI) are those that have a Citywide or regional impact. Such impact could involve the transportation network, environmental features such as parks or stream corridor, local schools, etc. Such developments could include large-scale residential, commercial, or mixed-use developments, employment centers, regional shopping centers, industrial and/or manufacturing, and extractive industry. Any proposed residential or non-residential development that meets or exceeds any of the following criteria shall be determined to be a Development of Significant Impact (DSI) and will require a complete development plan to be submitted and reviewed by Planning Division staff and the Planning Commission.

| Land Use Category | Development of Significant Impact (DSI) Thresholds |
|--|---|
| Development in the B-4 District | |
| All Land Use Categories | New construction of a principal structure, regardless of land use category or net acreage of the site. |
| Residential | A development that is 12 or more dwelling units. |
| Non-Residential | A development that is either 10,000 square feet or more of gross floor area or a site of one-half (1/2) acre or more of net acreage. |
| Mixed-Use | A development that exceeds any of the following: 10,000 square feet or more of gross floor area of non-residential use(s); or, 12 or more dwelling units; or, one-half (1/2) acre or more of net acreage. |
| Industrial | All industrial development, regardless of gross floor area or net acreage of the site. |
| Development in all other Zoning Districts | |
| Residential | A development that is 12 or more dwelling units. |
| Non-Residential | A development that is either 15,000 square feet or more of gross floor area or a site of 2 acres or more of net acreage. |
| Mixed-Use | A development that exceeds any of the following: 15,000 square feet or more of gross floor area of non-residential use(s); or, 12 or more dwelling units; or, 2 acres or more of net acreage. |
| Industrial | All industrial development, regardless of gross floor area or net acreage of the site. |



City of Morgantown, West Virginia
**APPLICATION FOR
 TYPE III SITE PLAN REVIEW
 DEVELOPMENTS OF SIGNIFICANT IMPACT**

| |
|----------------------------|
| OFFICE USE |
| CASE NO. S15-09-III |
| RECEIVED: 10/2/15 |

| I. APPLICANT | | | |
|---|---|--------------|-----------------------------------|
| Applicant Name: | Standard at Morgantown, LLC | Phone: | 706-543-1910 |
| Mailing Address: | 455 Epps Bridge Parkway, Suite 201 | Mobile: | |
| | Street Athens GA 30606 | Email: | wes@landmark-properties.com |
| | City State Zip | | |
| Is the Applicant the Owner of the real estate that composes the development site? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | | |
| If no, provide the following information for the Owner of the real estate that composes the development site. | | | |
| Owner Name: | Standard at Morgantown, LLC (under contract) | Phone: | 706-543-1910 |
| Mailing Address: | 455 Epps Bridge Parkway, Building 100, Suite 201 | Mobile: | 706-247-2565 |
| | Street Athens GA 30606 | Email: | jdoornbos@landmark-properties.com |
| | City State Zip | | |
| II. AGENT / CONTACT INFORMATION | | | |
| Name: | Williams and Associates, Mike Greenlee, Project Engineer | Phone: | 706-310-0400 |
| Mailing Address: | 2470 Daniells Bridge Road, Suite 161 | Mobile: | |
| | Street Athens GA 30606 | Email: | mikeg@gaplanning.com |
| | City State Zip | | |
| Send all correspondence to (check one): <input type="checkbox"/> Applicant OR <input checked="" type="checkbox"/> Agent/Contact | | | |
| III. DEVELOPMENT SITE | | | |
| Street Address (if assigned): | 1303 University Avenue | Zoning: | B-4 |
| Tax Map(s) #: | 26-A | Parcel(s) #: | 6,7,8,9,10,11,12,13,14,&15 |
| Development Site Area: | 84,942 square feet | | 1.95 acres |
| Existing Use of Structure and/or Land: | Four commercial buildings are currently on site including one gas station. The rest of the property is asphalt parking. | | |
| Proposed Use of Structure of Land: | <input type="checkbox"/> Residential Only <input checked="" type="checkbox"/> Mixed-Use (residential and nonresidential) <input type="checkbox"/> Non-Residential Only <input type="checkbox"/> Industrial | | |
| Total Value of Construction (exclusive of property acquisition costs): | \$45,000,000 | | |

SITE PLAN REVIEW FEE = \$75 for first \$200,000 in construction costs; \$10 for each additional \$100,000



City of Morgantown, West Virginia
**APPLICATION FOR
 TYPE III SITE PLAN REVIEW
 DEVELOPMENTS OF SIGNIFICANT IMPACT**

| | |
|------------|-----------|
| OFFICE USE | |
| CASE NO. | 815-09-11 |
| RECEIVED: | 10/2/15 |

IV. STRUCTURE

RESIDENTIAL USES

Total No. of Structures: 1 Total No. of Dwelling Units: 276 Total No. of Occupants: 866

NON-RESIDENTIAL USES

Total No. of Structures: 1 Total No. of Tenant Spaces: 3
 Total Gross Floor Area (GFA): 21,837 SF Total No. of Employees: 15

INDUSTRIAL USES

Total No. of Structures: _____ Total No. of Tenant Spaces: _____
 Total Gross Floor Area (GFA): _____ Total No. of Employees: _____

Proposed Height of Structure(s): 119'-10" Feet No. of Stories: 10
 Total No. of On-Site Parking Spaces: 692 Standard: 626 Compact: 50 Accessible: 16

V. SITE PLAN REQUIREMENTS

All applications for Type III Development of Significant Impact Site Plan Review must be accompanied by complete and accurate site plan drawings/exhibits that meet the requirements set forth in the Planning and Zoning Code. **Addendum A** of this application provides a checklist for these requirements. Failure to submit all required site plan drawings/exhibits will result in an incomplete application determination and likely delay in the scheduling of a hearing with the Planning Commission.

VI. 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 and certify that the property owners, if applicable, will conform to all such laws and that I have the authority to bind the owner to this commitment. 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.

J Wesley Rogers _____ 10.1.15
 Type/Print Name of Applicant/Agent Signature of Applicant/Agent Date

- Applicants will be advised of the Technical Review Team meeting date/time if not already held.



City of Morgantown, West Virginia
**APPLICATION FOR
 TYPE III SITE PLAN REVIEW
 DEVELOPMENTS OF SIGNIFICANT IMPACT**

| | |
|-------------------|-----------|
| OFFICE USE | |
| CASE NO. | S15-09-11 |
| RECEIVED: | 10/2/16 |

ADDENDUM A

SITE PLAN SUBMISSION REQUIREMENTS AND CHECKLIST

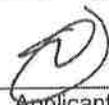
All applications for a Development of Significant Impact (DSI) shall be accompanied by site and development plan drawings submitted under the seal and signature of a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law.

All sheets shall be 24" x 36" size drawn to scale at a minimum 1"=50' and a maximum 1"=10' with the exception of the maps on Sheet One, unless otherwise approved by the City Engineer.

Three (3) full-scale sets of the site plan drawings shall be submitted for review, along with one (1) exact digital file in the most current version of Adobe Acrobat Portable Document Format (PDF). All drawings and sheets shall observe the following format. Failure to follow the format and/or provide required information will result in an incomplete application determination and likely delay in scheduling a hearing with the Planning Commission.

SHEET ONE – Title Sheet.

- Full legal description with sufficient reference to section corners and boundary map of the subject project, including appropriate benchmark references.
- Name of the project.
- Name and address of the owner, developer, and person who prepared the plans.
- Total acreage within the project and the number of residential dwelling units and/or the gross square footage of non-residential buildings whichever is applicable.
- Existing zoning of the subject land and all adjacent lands.
- Boundary lines of adjacent tracts of land, showing owners of record.
- A key or vicinity map at a scale of one inch equals four hundred feet or less, showing the boundaries of the proposed project and covering the general area within which it is to be located.
- A statement of the proposed uses, stating the type and size of residential and non-residential buildings, and the type of business, commercial or industry, so as to reveal the effect of the project on traffic, fire hazards, or congestion of population.
- Any existing or proposed covenants and restrictions affecting property owners and/or homeowners associations.
- Statement of proposed starting and completion dates for the project, including any proposed phasing and sequencing.

| |
|---|
|  Applicant Initials |
|---|



City of Morgantown, West Virginia
APPLICATION FOR
TYPE III SITE PLAN REVIEW
DEVELOPMENTS OF SIGNIFICANT IMPACT

| | |
|-------------------|-----------|
| OFFICE USE | |
| CASE NO. | S15-09-11 |
| RECEIVED: | 10/2/15 |

SHEET(S) TWO – Existing Site Conditions.

- Location, widths, and type of construction of all existing streets, street names, alleys, or other public ways and easements, street classifications as per the approved regional transportation plan, railroad and utility rights-of-way or easements, parks, wooded areas, cemeteries, watercourses, drainage ditches, designated wetlands, low areas subject to flooding, permanent buildings, bridges, and other data considered pertinent by the Planning Commission or the Planning Director for the subject land, and within three hundred (300) feet of the proposed project or six hundred twenty-five (625) feet for extractive industry development.
- Existing water mains, fire hydrants, storm sewers, sanitary sewers, culverts, bridges, and other utility structures or facilities within, adjacent to, or serving the subject land, including pipe sizes, grades, and exact locations, as can best be obtained from public or private records.
- Existing contours based in U.S.G.S. datum with intervals of not more than two (2) feet. Elevations shall be based on sea level datum.
- The water elevation at the date of the survey of rivers, lakes, streams, or designated wetlands within the project or affecting it, as well as the approximate high and low water elevation of such rivers, lakes, streams, or designated wetlands. The plan shall also show the boundary line of the regulatory 100-year flood. The plan shall also show the base flood elevation of the regulatory 100-year flood at any building location along with the elevation of the lowest finished floor. All elevations shall be based on sea level datum.

SHEET(S) THREE – Proposed Site Conditions.

- Location, widths, and type of construction of all existing and proposed streets, street names, alleys, or other public ways and easements, railroad and utility rights-of-way or easements, parks, wooded areas, cemeteries, watercourses, drainage ditches, designated wetlands, low areas subject to flooding, permanent buildings, bridges, and other data considered pertinent by the Planning Commission or the Planning Director for the subject land, and within three hundred (300) feet of the proposed project or six hundred twenty-five (625) feet for extractive industry development.
- Existing and proposed water mains, fire hydrants, storm sewers, sanitary sewers, culverts, bridges, and other utility structures or facilities within, adjacent to, or serving the subject land, including pipe sizes, grades, and exact locations, as can best be obtained from public or private records.
- Water Supply Plan. For development that involves the use of water at higher volumes than customarily associated with nonindustrial-type development, the City may require, in coordination with the Morgantown Utility Board, a water supply plan. A water supply plan must include at least the identification of the water source(s); the development and use of freshwater impoundments, if applicable; when and where water withdrawals will occur; necessary operational water volumes; potential competing water users; and, cumulative impact of the development's water consumption to the public water system, watersheds and/or groundwater.


 Applicant Initials



City of Morgantown, West Virginia
**APPLICATION FOR
 TYPE III SITE PLAN REVIEW
 DEVELOPMENTS OF SIGNIFICANT IMPACT**

| | |
|------------|-----------|
| OFFICE USE | |
| CASE NO. | S15-09-11 |
| RECEIVED: | 10/2/15 |

- Building setback lines, showing dimensions.
- Internal and perimeter sidewalk system/pedestrian circulation plan.
- Proposed contours with intervals of not more than two (2) feet. The plan shall also show the contour line for the floodway fringe boundary. Grading plans and drainage plans and calculations are not required for Planning Commission site plan review, but shall be required prior to issuance of any building permits. Such plans shall be prepared by a registered design professional licensed by the State of West Virginia, and as authorized by West Virginia State law; and shall also meet the City's stormwater management ordinance and all applicable local, state and federal regulations.
- Location and detail plans for all trash dumpsters.
- Location and detail plans for utility and mechanical equipment placed on the ground (e.g. pad-mounted transformers, HVAC units, etc.).
- The number of employees, families, housekeeping units, bedrooms, or rental units the structure(s) is designed to accommodate.
- N/A If applicable, the clear zone for structures similar to silos, grain bins, windmills, chimneys, stacks, spires, flag pole, skylights, derricks, conveyors, cooling towers, observation towers, water tanks, telecommunication facilities, etc. in excess of fifty (50) feet in height.
- SHEET(S) FOUR – Preliminary Landscape Plan and Preliminary Site Lighting Plan.** A preliminary landscape plan prepared to the standards specified in the City's zoning ordinance. A preliminary site lighting plan that includes exterior light fixture details and photometric plans in footcandles.
- SHEET FIVE – Plat-like dedication sheet, if necessary.**
- N/A Parcels of land proposed to be dedicated or reserved for public use, or reserved for common use of all property owners within the project, with the proposed conditions and maintenance requirements, if any, shall be designated as such and clearly labeled on the plans;
- N/A Radii, internal angles, points of curvature; tangent bearings and lengths of all arcs, chord, and chord bearings; and
- N/A Accurate location of all survey monuments erected, corners and other points established in the field in their proper places.
- SHEET(S) SIX – Floor Plans.** Floors plans must illustrate and identify internal and external dimensions, uses, gross floor areas, and include a summary table of residential unit types and/or nonresidential use gross floor areas and any additional information deemed necessary for proper review of the development plan by the Planning Director, City Engineer, or Planning Commission.


 Applicant Initials



City of Morgantown, West Virginia
**APPLICATION FOR
 TYPE III SITE PLAN REVIEW
 DEVELOPMENTS OF SIGNIFICANT IMPACT**

| | |
|------------|-----------|
| OFFICE USE | |
| CASE NO. | S15-09-11 |
| RECEIVED: | 10-2-15 |

- SHEET(S) SEVEN – Building Elevations.** Elevations of all facades illustrating height of building; top of adjoining finish grade elevation; exterior building components (roof, walls, foundation, etc.); exterior finishes and materials; roof slope or pitch; window types; exterior stairs, landings, guardrails, and handrails; and, any additional information deemed necessary for proper review of the development plan by the Planning Director, City Engineer, or Planning Commission.

- SHEET(S) EIGHT – Parking Layout Plan.** Parking layout plan must identify ingress and egress driveway entrance(s) and distances of same from neighboring property boundaries, existing driveway entrances, and intersections; layout of internal roadway; parking stall types, and dimension details for parking stalls and drive aisles; pedestrian circulation plan (if required); and, any additional information deemed necessary for proper review of the development plan by the Planning Director, City Engineer, or Planning Commission.

- ALL SHEETS** shall contain the following information:
 - All dimensions shown on plans relating to the size of the lot and the location of the structure(s) thereon be based on an actual survey by a registered land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant.
 - The proposed name by which the project shall be legally and commonly known.
 - Date of survey, scale, and north point.
 - All lots or outlots intended for sale or lease shall be designated with boundary lines and numbered or labeled for identification purposes.
 - Private parks, common areas, or excluded parcels shall be designated as such and clearly labeled on the plans.
 - All necessary reference points tying the subject property to the appropriate section corners.
 - Each sheet shall be sealed and signed by the professional preparing the drawings.
 - All sheets shall be tied to state plane coordinates for horizontal and vertical controls.

- TBD Such other information as may be deemed necessary for proper review of the site plan by the Planning Director, City Engineer, or Planning Commission to determine conformance with and provide for the enforcement of these zoning regulations.


 Applicant Initials



City of Morgantown, West Virginia
APPLICATION FOR
TYPE III SITE PLAN REVIEW
DEVELOPMENTS OF SIGNIFICANT IMPACT

| | |
|-------------------|----------|
| OFFICE USE | |
| CASE NO. | 95-09-11 |
| RECEIVED: | 10-2-15 |

- TRAFFIC AND ROADWAY IMPACT.** For development which, in the opinion of the City Engineer, may create excessive negative impacts on traffic and/or dedicated City roadways, rights-of-way, or improvements in the immediate vicinity that serve the use, the City may require an analysis of the proposed development's impact on current or future traffic flows and/or dedicated City roadways, rights-of-way, or improvements, at the developer's expense, prepared by a qualified professional engineer. The Planning Commission may also table consideration of a development and refer such development to the City Engineer to ask his or her opinion as to whether a traffic impact study, transportation route plan, and/or transportation route protection agreement may be warranted.
- N/A Traffic Impact Study. If the traffic impact study indicates that the projected traffic impact of the use would result in a two (2) full letter grade decline in the existing Level of Service (e.g., going from a Level of Service B to a Level of Service D) of any dedicated City street directly serving the use, such finding may be considered sufficient grounds for denial of the project, or a requirement that sufficient improvements be made to said streets, at the developer's expense, or that the project be reduced in size and scope to the point where no such negative impact on the Level of Service results. Level of Service refers to the traffic grading system described in the latest edition of the Highway Capacity Manual, published by the Transportation Research Board.
- N/A Approved WV Division of Highways Permit and/or Agreement, if applicable, is not required for Planning Commission site plan review, but shall be required prior to issuance of a building permit. In the event a traffic analysis or traffic impact study is required and the review of same involves WV Division of Highways, written/electronic correspondence from the WV Division of Highways documenting its approval of the traffic analysis or traffic impact study must be presented to the Planning Commission by the applicant prior to DSI site plan approval.
- N/A Transportation Route Plan. A transportation route plan shall include a map of routes and roads for equipment, supplies, chemicals or waste products used or produced by the development. The plan shall include a list of the length of all public roads that will be used for site ingress and egress to Morgantown corporate limits. The map shall also show the location of any areas within the City along the transportation route proposed for truck staging or storage related to the development's operations. The City may restrict the hours of operation of vehicles when the proposed transportation route passes through a designated school zone, heavily used roadways or intersections, or along local residential streets. In the event of construction detours, roadway closure or roadway deterioration along an approved transportation route, the City Engineer may amend the approved transportation route plan.
- N/A Transportation Route Protection Agreement. For development which, in the opinion of the City Engineer may damage or create excessive deterioration to dedicated City roadways, rights-of-way, or improvements, the City may require a transportation route protection agreement. The agreement shall stipulate that the City roadways, rights-of-way, and improvements shall be maintained equal to or better than the original condition; stipulate any required major improvements and restrictions; stipulate the manner in which dirt, dust, mud and debris is to be controlled from leaving the development site; and, required bond. Additional information will be provided to applicants concerning the required provisions and minimum terms should the City Engineer determine that a Transportation Route Protection Agreement will be required.

| |
|---|
|  Applicant Initials |
|---|



City of Morgantown, West Virginia
**APPLICATION FOR
 TYPE III SITE PLAN REVIEW
 DEVELOPMENTS OF SIGNIFICANT IMPACT**

| | |
|-------------------|-----------|
| OFFICE USE | |
| CASE NO. | S15-09-11 |
| RECEIVED: | 10/2/15 |

EMERGENCY RESPONSE AND HAZARDOUS MATERIALS PLANNING.

N/A Emergency Action Response Plan. For development that involves the use and/or storage of large volumes of highly flammable, toxic matter, or explosive materials, the City may require an Emergency Action Response Plan. Additional information will be provided to applicants concerning required plan elements should the City determine that an Emergency Action Response Plan is required.

N/A Hazardous Materials Management Plan. For development that involves the use, storage, or generation of hazardous materials and wastes, the City may require a Hazardous Materials Management Plan. Additional information will be provided to applicants concerning required plan elements should the City determine that a Hazardous Materials Management Plan is required.

OTHER REQUIRED SUBMITTALS. The applicant shall submit written documentation of the following:

All applications for a DSI Site Plan shall be accompanied by a list of the property owners' names and addresses located within 200 feet of any property line of the development site, including the owner(s) of the subject development site, as of record in the office of the Monongalia County Assessor. The applicant must also submit the tax map and parcel numbers for the list of properties and a stamped and addressed envelope for each of the names and addresses of the property owners within 200 feet of the site. A return address shall not be affixed to the envelopes.

TBD Utility encroachment approvals, when applicable and/or required.

TBD Other local, state, and federal approvals, including other City boards, commissions, or departments, when applicable and/or required.

TBD Inspection and testing agreements with the Engineering Department, when applicable and/or required.

TBD Outside reviews as required by the City, when applicable and/or required.

N/A Easements and rights-of-ways not on a plat-like document shall be submitted in the form prescribed by the Engineering Department and include both a full legal description and a drawing exhibit, when applicable and/or required.

To Be Completed in Construction Plan **Erosion and Sediment Control Plan.** Prior to the issuance of any permit authorizing any work relating to grading, grubbing, stripping, etc. as defined and regulated by City Code Article 1741 "Grading Requirements" and/or City Code Article 929 "Stormwater Management and Surface Water Discharge Control," an Erosion and Sediment (E&S) Control Plan must be submitted, reviewed, and approved by the City Engineer and the Morgantown Utility Board (MUB). All control plan documents and design details and all measures for soil erosion and sediment control and sequencing of installation must meet or exceed current methods and standards adopted by the City of Morgantown, the Morgantown Utility Board (MUB), and the West Virginia Department of Natural Resources (WVDNR). The City Engineer and/or the Morgantown Utility Board (MUB) has the right to require additional erosion control measures in the field as conditions warrant.

| |
|---|
|  Applicant Initials |
|---|



City of Morgantown, West Virginia
**APPLICATION FOR
 TYPE III SITE PLAN REVIEW
 DEVELOPMENTS OF SIGNIFICANT IMPACT**

| | |
|------------|-----------|
| OFFICE USE | |
| CASE NO. | S15-09-11 |
| RECEIVED: | 10/2/15 |

TBD **REJECTION OF PLANS.** No site plan shall be accepted unless it is complete and is verified as to the correctness of information given by the signature of the applicant attesting thereto. The Planning Division may reject any submittal for the following reasons:

- Incomplete application.
- The drawing set or supporting documents are not complete.
- Poor legibility.

To Be **NEIGHBOR NOTIFICATION.** Using the list of the property owners' names and addresses and Completed stamped and addressed envelopes, the Planning Division shall send written notification to property by City owners within 200 feet of any property line of the development of the time, date and location of the Planning Commission meeting at which the project will be considered.

TBD **PLANNING COMMISSION APPROVAL OF DSI SITE PLAN.** Site plans approved by the Planning Commission authorize only the use, arrangement, and construction set forth in such approved site plans and no other use, arrangement or construction. Furthermore, the approval of a site plan shall not be construed to be approval of any violation of the provisions of the Planning and Zoning Code. The issuance of a building permit based upon site plans given approval by the Planning Commission shall not prevent the Planning Division from thereafter requiring the correction of errors in said site plans or from preventing operations from being carried on thereunder when in violation of the Planning and Zoning Code. Site plan approval does not eliminate the need to obtain an approved building permit and the applicant's responsibility to meet all other requirements established by local, state and federal regulations.

TBD **RESUBMITTAL OF PLANS.** Should the Planning Commission grant approval of a DSI site plan, the applicant shall submit three (3) complete full-scale sets of the final, revised plans showing conditions required by the Planning Commission and Board of Zoning Appeals, should the site plan require variance and/or conditional use approval and conditions were included therein. One (1) copy of the site plan submitted for building permits shall be returned to the applicant after the Planning Division has marked such copy as either approved or disapproved as to the provisions of the Planning and Zoning Code and any conditions included in such approval by the Planning Commission and, if applicable, the Board of Zoning Appeals, and attested to same by his/her signature on such copy. The original, similarly marked shall be retained by the Planning Division.

DEVIATION FROM THE APPROVED SITE PLAN AND ADDITIONS TO EXISTING STRUCTURES.

TBD If the installation of the elements on the site plan materially deviate from the approved site plan (as determined by the Planning Director or City Engineer), the site plan shall be resubmitted to the Commission or Board for a new site plan approval in accordance with the procedures and requirements for site plan approval. For purposes of this section, material deviation is one that:

| |
|---|
|  Applicant Initials |
|---|



City of Morgantown, West Virginia
**APPLICATION FOR
 TYPE III SITE PLAN REVIEW
 DEVELOPMENTS OF SIGNIFICANT IMPACT**

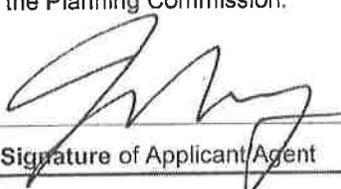
| | |
|------------|-----------|
| OFFICE USE | |
| CASE NO. | 815-09-11 |
| RECEIVED: | 10/2/15 |

- TBD Adds, removes, or reconfigures an internal street or relocates an access point.
- TBD Affects a condition of site plan approval that was established by the Commission or Board during the site plan approval stage.
- TBD Reduces the area devoted to open spaces or buffer landscaping.
- TBD Involves the enlargement of a nonresidential building footprint on the site due to future additions that are more than ten percent (10%) of the gross floor area or 5,000 square feet, whichever is less.
- TBD Minor changes that do not constitute material deviation shall be reviewed and approved by the City Planning and Engineering staff.

To Be **ELECTRONIC SUBMITTAL OF FINAL PLANS AND OTHER DOCUMENTS.** Final plans or other documents required to be submitted under the Type III DSI Site Plan review that will be archived must be submitted in the most current version of Adobe Acrobat Portable Document Format (PDF) and/or AutoCAD. Electronic submittal of said plans and other documents shall be a condition to issuance of any type of permit, approval, or other action related to the final plans or documents. The Planning Division shall provide a schedule indicating which documents must be provided electronically, at which point during the approval process, and other information as necessary for archiving purposes.

- TBD **EXPIRATION DEADLINES.**
- Approval of site plans shall expire two (2) years from the date of approval if the project has not been completed. The Planning Commission or the Board of Zoning Appeals, at its discretion, may grant extensions for a period up to two (2) years.
 - Bonded improvements must be completed within two (2) years of issuance of land alteration permit.
 - Request for extension must be submitted in writing stating the justification for the extension.

I hereby certify that I have read ADDENDUM A – SITE PLAN SUBMISSION REQUIREMENTS AND CHECKLIST and understand that all applications for Type III Development of Significant Impact (DSI) Site Plan Review must be accompanied by the complete and accurate site plan drawings/exhibits set forth herein. I further understand that failure to submit all required site plan drawings/exhibits will result in an incomplete application determination and likely delay in the scheduling of a hearing with the Planning Commission.

J Wesley Rogers  10.1.15

Type/Print Name of Applicant/Agent Signature of Applicant/Agent Date

**Intentional
Blank
Page**



SEP 23 2015

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

1900 Kanawha Boulevard East • Building Five • Room 110
Charleston, West Virginia 25305-0430 • (304) 558-3505

Earl Ray Tomblin
Governor

Paul A. Mattox, Jr., P. E.
Secretary of Transportation/
Commissioner of Highways

September 21, 2015

Mr. Robert E. Goetz, P. E.
Principal
TransAssociates
Twin Towers, Suite 400
4955 Steubenville Pike
Pittsburgh, Pennsylvania 15205

Dear Mr. Goetz:

The West Virginia Division of Highways (WVDOH) has completed its review of the revised Traffic Impact Study (TIS) received on August 12, 2015, regarding the proposed Standard at Morgantown development to be located adjacent to US 19 (University Avenue) and Walnut Street in Morgantown, Monongalia County. The results of our review indicate that you have adequately addressed our previous comments and the WVDOH hereby provides conditional approval of this revised TIS, subject to the following stipulations:

- WVDOH desires additional narrative or analyses, which may be submitted as a supplement to the TIS but that would not require a revised TIS to be submitted, concerning a previous WVDOH comment questioning whether consideration had been given to retiming of the signals in the study area not already mentioned in the TIS. Your response stated that since the retiming of the two intersections (University Avenue/Walnut Street and High Street/Willey Street) did not affect the cycle lengths (only phasing), it did not appear retiming would provide any benefit at the other intersections. The WVDOH intent was to determine to what extent consideration had been given concerning the potential for retiming the system (or intersections) which could include changing the cycle lengths in addition to the phase timings. Although the project isn't expected to result in much additional queuing to what is the background queues, the queues are significant and some extend beyond what is stated to be available storage, with some extending beyond minor side streets and not truly exceeding what is "available". To what extent is there potential for a system retiming to aid in reducing these queues as much as feasible?
- Developer should be aware that if more traffic utilizes the left-turn movement from University Avenue to Walnut Street to enter the Development than currently is

Mr. Robert E. Goetz, P. E.
September 21, 2015
Page Two

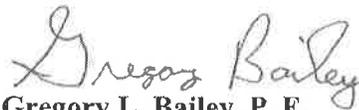
anticipated, and the WVDOH feels that such additional traffic causes undue burden for University Avenue, the WVDOH reserves the right to restrict this movement in order to preserve the progression of University Avenue.

- Developer's plans should include installation of tubular markers along University Avenue associated with the right-in/right-out access.

The recommendations of the TIS are to be incorporated appropriately into the construction plans prepared concerning the development. Please provide this office with *two* digital (CD or USB) versions of the approved TIS reflecting the stipulations above. Additionally, please transmit to David.E.Cramer@wv.gov a PDF of the full TIS.

Thank you for your assistance with this matter. Should you require additional information, please contact Mr. David E. Cramer, P. E., of our Commissioner's Office of Economic Development, at 304-558-9211.

Very truly yours,


Gregory L. Bailey, P. E.
State Highway Engineer

GLB:Cb

JUL 10 2015



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

1900 Kanawha Boulevard East • Building Five • Room 110
Charleston, West Virginia 25305-0430 • (304) 558-3505

Earl Ray Tomblin
Governor

Paul A. Mattox, Jr., P. E.
Secretary of Transportation/
Commissioner of Highways

July 8, 2015

Mr. Robert E. Goetz, P. E.
Principal
TransAssociates
Twin Towers, Suite 400
4955 Steubenville Pike
Pittsburgh, Pennsylvania 15205

Dear Mr. Goetz:

The West Virginia Division of Highways (WVDOH) has completed its review of the Traffic Impact Study (TIS) received on June 2, 2015, regarding the proposed "Standard at Morgantown" development to be located adjacent to US 19 (University Avenue) and Walnut Street in Morgantown, Monongalia County. The results of our review indicate that certain issues need to be addressed before the WVDOH can provide approval of the TIS. To that end, please review and address, as appropriate, each of the following comments regarding the TIS:

- There appears to be an issue with the intersection of University Avenue at Beechurst Avenue and Fayette Street that will not allow the Sim Traffic Software to run properly. In the simulation, motorists at this intersection do not move and essentially appear to gridlock University Avenue.
- The access on Walnut Street that is intended to be only 50 feet from University Avenue causes concern. How do motorists actually access the property? Is this a gated access or free flow into the property from Walnut Street? If there is any type of gated system (such as keycard) that would slow motorists upon entrance, this could quickly cause Walnut Street to queue onto University Avenue if multiple vehicles were trying to access at the same time. This distance also could cause queuing from the University Avenue signal back into the development approach if multiple vehicles are trying to exit at the same time, which potentially could block Walnut Street for inbound motorists going beyond this development. To what extent can consideration be given to moving this access farther from University Avenue?
- The recommended mitigation includes signal timing adjustments at some intersections. To what extent did you review the effect that timing changes could have if all the study area signals had timing adjustments?
- Since the second through lane doesn't begin on University Avenue NB until just prior to Walnut Street, to what extent did you review the effect of changing this lane to a left-turn only onto Walnut Street EB and keeping the through vehicles in one lane until after the Walnut Street intersection?

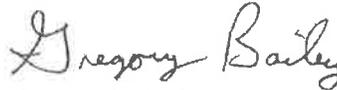
Mr. Robert E. Goetz, P. E.
July 8, 2015
Page Two

- The WVDOH provided signal timing data; why weren't these data included in at least the appendices? This would provide insight as to what has been programmed into the controller versus what is being observed in the field.
- Based on the size (number of floors, beds, etc.), it may be more appropriate to compare the Spack Consulting report to High Rise Apt rather than the standard apartment land use code.

Please address each of these comments, as appropriate, then submit to this office five printed copies and two electronic versions (CD or USB) of the full revised study (report and analyses). Additionally, please provide information concerning the submission and any subsequent review results received from the Morgantown/Monongalia Metropolitan Planning Organization (MPO); the Monongalia County Commission; and the City of Morgantown, in accordance with the executed project agreement.

Thank you for your assistance with this matter. Should you require additional information, please contact Mr. David E. Cramer, P. E., of our Commissioner's Office of Economic Development, at (304) 558-9211.

Very truly yours,



Gregory L. Bailey, P. E.
State Highway Engineer

GLB:Cb

May 2015
Revised August 2015
With October 2015 Supplement

TRAFFIC IMPACT STUDY FOR
STANDARD AT MORGANTOWN
STUDENT APARTMENT DEVELOPMENT
City of Morgantown, West Virginia



Transportation Solutions for Today and Tomorrow

Prepared for:

Landmark Collegiate Acquisitions, LLC
455 Epps Bridge Parkway
Building 100, Suite 201
Athens, Georgia 30606

Prepared by:

Trans Associates Engineering Consultants, Inc.
4955 Steubenville Pike, Suite 400
Pittsburgh, Pennsylvania 15205



Robert Goetz

TABLE OF CONTENTS

| | |
|---|---|
| SUPPLEMENTAL INFORMATION | |
| EXECUTIVE SUMMARY | i |
| PROJECT DESCRIPTION / EXISTING ROADWAY GEOMETRY / DATA COLLECTION | 1 |
| Project Description | 1 |
| Existing Roadway Geometry | 2 |
| Data Collection | 3 |
| 2015 EXISTING TRAFFIC CONDITIONS | 4 |
| SITE TRAFFIC GENERATION AND DISTRIBUTION | 4 |
| PROJECTED 2017 BASE TRAFFIC CONDITIONS WITHOUT DEVELOPMENT | 5 |
| PROJECTED 2017 COMBINED TRAFFIC CONDITIONS WITH DEVELOPMENT | 6 |
| OTHER ANALYSIS | 7 |
| CONCLUSIONS / RECOMMENDATIONS | 8 |

LIST OF TABLES

| | |
|--|----|
| TRIP GENERATION SUMMARY | 1 |
| CAPACITY ANALYSIS SUMMARY AM PEAK HOUR | 2A |
| CAPACITY ANALYSIS SUMMARY PM PEAK HOUR | 2B |
| QUEUE ANALYSIS SUMMARY AM PEAK HOUR | 3A |
| QUEUE ANALYSIS SUMMARY PM PEAK HOUR | 3B |

LIST OF FIGURES

| | |
|---|----|
| SITE LOCATION MAP | 1 |
| SITE PLAN | 2 |
| STUDY INTERSECTIONS AND DISTANCES | 3 |
| 2015 EXISTING AM AND PM PEAK HOUR VOLUMES | 4 |
| 2015 EXISTING PEDESTRIAN PEAK HOUR VOLUMES | 5 |
| AVERAGE DAILY TRAFFIC VOLUMES | 6 |
| SITE VEHICLE TRIP DISTRIBUTION | 7 |
| SITE PEDESTRIAN TRIP DISTRIBUTION | 8 |
| SITE GENERATED AM AND PM PEAK HOUR VEHICLE TRIPS | 9 |
| SITE GENERATED AM AND PM PEAK HOUR PEDESTRIAN TRIPS | 10 |
| PROJECTED 2017 AM AND PM PEAK HOUR BACKGROUND VOLUMES | 11 |
| SHEETZ CONVENIENCE STORE PROJECTED TRIPS | 12 |
| 494 SPRUCE STREET PROJECTED TRIPS | 13 |
| CENTRAL PLACE PROJECTED TRIPS | 14 |
| PROJECTED 2017 AM AND PM PEAK HOUR BASE VOLUMES | 15 |
| PROJECTED 2017 AM AND PM PEAK HOUR COMBINED VOLUMES | 16 |
| PROJECTED 2017 COMBINED PEDESTRIAN VOLUMES | 17 |
| RECOMMENDED MITIGATION | 18 |

LIST OF APPENDICES

| | |
|---|---|
| TURNING MOVEMENT COUNT DATA | A |
| PHOTOGRAPHS, TRAFFIC SIGNAL PLANS, TIMINGS & SKETCHES | B |
| TRIP GENERATION DATA | C |
| LEVEL OF SERVICE DEFINITIONS | D |
| SYNCHRO PRINTOUTS | E |
| 2015 EXISTING CONDITIONS | |
| 2017 BASE CONDITIONS | |
| 2017 COMBINED CONDITIONS | |
| TRAFFIC SIGNAL WARRANT EVALUATION | F |
| DRIVEWAY QUEUE CALCULATIONS | G |
| SYNCHRO PRINTOUTS FOR OPTIMIZED CYCLE LENGTH | H |

**SUPPLEMENTAL INFORMATION
TRAFFIC IMPACT STUDY
STANDARD AT MORGANTOWN STUDENT APARTMENT DEVELOPMENT**

As a result of the West Virginia Division of Highways (WVDOH) review contained in a letter dated September 21, 2015 of the Traffic Impact Study for the Standard of Morgantown Student Apartment Development (TIS) revised August 2015, Trans Associates (TA) is providing supplemental information and stipulations to obtain approval of the TIS for the subject development. This section provides the subject supplemental information while the recommendations in the TIS have been revised to include those items stipulated in the WVDOH's letter.

Concerning the extent of the retiming of the University Avenue signals and the other signalized study intersections to determine if the cycle length could be optimized to reduce queues (1st bullet in WVDOH letter), TA reran the analysis letting *Synchro* optimize the cycle length during the study peak hours along University Avenue and the other study intersections. It was determined that the optimum cycle length calculated by *Synchro* was 115 seconds for the University Avenue signals which is the same cycle length observed during those peak hours. For the remaining signalized study intersections along High Street and Spruce Street, a 65 second optimum cycle was calculated by *Synchro* for the AM peak hour while an 80 second optimum cycle length was calculated for the PM peak hour. The current cycle length for these intersections during the AM and PM peak hours is 85 seconds. The *Synchro* printouts with the cycle optimization are included in a separate Appendix at the back of this report.

Based on the *Synchro* output including the 95th percentile queue lengths, it does not appear that significant reductions in the queue length would result by optimizing the cycle lengths. With the 65 second optimized cycle during the AM peak hour, several of the queues were observed to be shorter by one car length. Since several of these signals have three vehicular phases plus an actuated exclusive pedestrian phase, such a short cycle length would not be practical. Therefore, TA believes that the recommendation to maintain the existing cycle lengths and optimize green time for the intersections of University Avenue / Walnut Street and Willey Street / High Street during the study peak hours provides adequate mitigation for the Standard at Morgantown Student Apartment development.

**TRAFFIC IMPACT STUDY
STANDARD AT MORGANTOWN STUDENT APARTMENT DEVELOPMENT
City of Morgantown, West Virginia**

EXECUTIVE SUMMARY

General Overview of the Development

- Site bounded by University Avenue, Walnut Street, the PRT and a parking lot in downtown Morgantown, West Virginia.
- Development to consist of an 11 level student apartment complex containing 870 beds, 17,000 square feet of specialty retail and 735 parking spaces.
- Access proposed via Walnut Street and a right-in, right-out driveway along University Avenue (US 19/WV 7).
- Development proposed to be completed and initially occupied in 2017.

List of Study Intersections

- University Avenue (US 19/WV 7) / Pleasant Street (US 119) / Westover Bridge (US 19)
- University Avenue (US 19/WV 7) / Walnut Street
- Walnut Street / Site Access
- University Avenue (US 19/WV 7) / Wall Street / Proposed Site Access
- University Avenue (US 19/WV 7) / Beechurst Avenue (US 19/WV 7) / Fayette Street
- Pleasant Street (US 119) / Chestnut Street
- Pleasant Street (US 119) / High Street (US 119)
- Pleasant Street (US 119) / Spruce Street
- Spruce Street (US 119) / Walnut Street
- Spruce Street (US 119) / Fayette Street
- Spruce Street (US 119) / Willey Street (US 119)
- Willey Street (US 119) / High Street (US 119)
- Willey Street / Chestnut Street
- Willey Street / University Avenue

Trip Generation and Distribution

- Vehicle trip generation for apartments determined from *Trip Generation Study – Private Student Housing Apartments* by Spack Consulting based on the number of beds. Pedestrian trip generation determined from the difference between trips generated using the Institute of Transportation Engineers (ITE) publication *Trip Generation Manual, 9th Edition* for apartments (Land Use 220) and vehicle trips determined from the Spack Consulting study.
- Trip generation for the retail component determined from the Institute of Transportation Engineers (ITE) publication *Trip Generation Manual, 9th Edition* for specialty retail (Land Use 826) based on square feet.

- Peak hour trip generation is as follows:

| | |
|------------------|--|
| Average Weekday: | 1,988 Vehicle Trips & 634 Pedestrian Trips |
| AM Peak Hour: | Vehicle Trips – 82 Entering / 95 Exiting / 177 Total Pedestrian Trips – 3 Entering / 79 Exiting / 82 Total |
| PM Peak Hour: | Vehicle Trips – 108 Entering / 90 Exiting / 198 Total Pedestrian Trips – 53 Entering / 8 Exiting / 61 Total |
- Vehicle trips distributed to and from the study area based on desired destinations on the West Virginia University (WVU) campuses and existing traffic volumes and patterns.
- Pedestrian trip distribution based on principal destinations such as the WVU Downtown campus and the PRT station.

Recommended Site Access and Mitigation Measures to Accommodate Development

- Provide a driveway along Walnut Street approximately 50 feet west of University Avenue;
- Provide a right-in, right-out driveway along University Avenue approximately 260 feet north of Walnut Street;
- Install tubular markers along the centerline of University Avenue to reinforce the right turn in, right turn out driveway;
- Retime the University Avenue and Walnut Street traffic signal to provide additional green time for the westbound Walnut Street approach while reducing green time on the University Avenue approaches during the PM peak hour;
- Install a 4 section signal head for the eastbound Walnut Street approach at University Avenue to confirm the split phase operation of the Walnut Street approaches;
- Restripe the westbound approach of Willey Street at High Street to provide 10 foot wide through and left turn lanes;
- Retime the Willey Street and High Street traffic signal to provide additional green time to the High Street and westbound Willey Street left turn phases while reducing green time on the eastbound Willey Street approach; and
- Install "Do Not Block Intersection" signs on the Walnut Street driveway exit.

Also, the WVDOH reserves the right to restrict left turns from northbound University Avenue onto Walnut Street to enter the development should more traffic utilize this movement than is currently anticipated.

**TRAFFIC IMPACT STUDY
STANDARD AT MORGANTOWN STUDENT APARTMENT DEVELOPMENT
City of Morgantown, West Virginia**

Trans Associates (TA) has completed a traffic impact study (TIS) for a proposed student apartment development located along the west side of University Avenue in downtown Morgantown, West Virginia. This TIS has been prepared in accordance with West Virginia Division of Highways (WVDOH) Traffic Engineering Directive (TED) 106-2 and a scope of study discussed with representatives of the WVDOH and the City of Morgantown. The following sections of this report contain: project description / existing roadway geometry / data collection; 2015 existing traffic conditions; site traffic generation and distribution; projected 2017 base traffic conditions without development; projected 2017 combined traffic conditions with development; other analysis; and conclusions / recommendations.

PROJECT DESCRIPTION / EXISTING ROADWAY GEOMETRY / DATA COLLECTION

Project Description

The proposed development is bounded by University Avenue, Walnut Street, the PRT and a parking lot in downtown Morgantown. A site location map is presented on **Figure 1**.

The proposed development will consist of an 11 level student apartment complex containing 870 beds, 17,000 square feet of specialty retail and 735 parking spaces. The development is projected to be completed and initially occupied in 2017. Access to the site is proposed via a driveway along Walnut Street (aka Water Street) and a right-in, right-out driveway along University Avenue. A site plan is presented on **Figure 2**.

In accordance with a scope of study determined through discussions with representatives of the WVDOH and the City of Morgantown, the following intersections and driveways were selected for analysis:

- University Avenue (US 19/WV 7) / Pleasant Street (US 119) / Westover Bridge (US 19)*
- University Avenue (US 19/WV 7) / Walnut Street*
- Walnut Street / Site Access
- University Avenue (US 19/WV 7) / Wall Street / Proposed Site Access
- University Avenue (US 19/WV 7) / Beechurst Avenue (US 19/WV 7) / Fayette Street*
- Pleasant Street (US 119) / Chestnut Street
- Pleasant Street (US 119) / High Street (US 119)*
- Pleasant Street (US 119) / Spruce Street*
- Spruce Street (US 119) / Walnut Street*
- Spruce Street (US 119) / Fayette Street*
- Spruce Street (US 119) / Willey Street (US 119)*
- Willey Street (US 119) / High Street (US 119)*
- Willey Street / Chestnut Street
- Willey Street / University Avenue

* Indicates signalized intersection



The study intersections, with respect to the site, and distances between them are illustrated in **Figure 3**.

Existing Roadway Geometry

A field reconnaissance of the study area was conducted by TA to obtain information on intersections, roadway widths, lane configurations, roadway grades, and posted speed limits. In addition, traffic signal plans for the signalized study intersections within Morgantown's CBD signal system were obtained. Lastly, TA obtained phase and cycle timings from the WVDOH and during the course of the data collection and study peak periods. A description of the study roadways follows.

University Avenue (US 19/WV7) – Between Beechurst Avenue/Fayette Street and Pleasant Street/Westover Bridge, University Avenue provides a five lane section, 50 to 52 feet wide. At the Pleasant Street/Westover Bridge intersection there is a left turn lane, two through lanes and a right turn lane on the southbound approach with a single northbound lane. On the northbound approach to this intersection there is a left turn lane, a through lane and a right turn lane, and two southbound lanes. The intersection of University Avenue/Pleasant Street/Westover Bridge is controlled with a signal providing protected/permitted left turns in both directions for University Avenue. At the Walnut Street intersection there are two southbound through lanes and a through/right lane and on the northbound approach there is a left/through lane and a through lane. The intersection of University Avenue and Walnut Street is controlled with a four phase signal including split phasing for Walnut Street and an actuated exclusive pedestrian phase. At the Beechurst Avenue/Fayette Street intersection there are left and right turn lanes on the northbound approach and a left turn lane, a through lane and a through/right lane on the southbound approach. University Avenue is one way southbound with parking on one or both sides between Willey Street and the Beechurst Avenue/Fayette Street intersection. The University Avenue/Beechurst Avenue/Fayette Street intersection is controlled with a four phase signal providing protected/permitted left turns from Beechurst Avenue. The posted speed limit is 35 mph.

Pleasant Street (US 119) and Westover Bridge (US 19) – Pleasant Street is one way eastbound between University Avenue and Spruce Street providing two lanes in a 28 foot wide cartway. The intersection of Pleasant Street and High Street is controlled with a three phase signal including an actuated exclusive pedestrian phase. At its intersection with Spruce Street there are left and left/through lanes on the eastbound approach and a right turn only lane on the westbound approach. The Pleasant Street/Spruce Street intersection is controlled with a four phase signal providing split phasing for the Pleasant Street approaches and an exclusive actuated pedestrian phase. There is no posted speed on Pleasant Street. The Westover Bridge approach to University Avenue/Pleasant Street provides exclusive left, through and right turn lanes. The posted speed on the Westover Bridge is 25 mph.

Walnut Street – Between Spruce Street and University Avenue Walnut Street is one way westbound providing two lanes and parking on both sides in a 39 foot wide cartway. The westbound approach to University Avenue provides a left turn lane, a left/through lane and a right turn lane without parking. The Walnut Street/Spruce Street intersection is controlled with a three phase signal including an actuated exclusive pedestrian phase. Walnut Street east of Spruce Street is two way with exclusive through and right turn lanes on the westbound approach without parking. Walnut Street west of University Avenue, also known as Water Street, has a 22 foot wide cartway and is two way undelineated without parking. There is no posted speed within the study area.

Spruce Street (US 119) – Spruce Street from Pleasant Street to Willey Street is one-way northbound providing three lanes without parking in a 27 foot wide cartway. The northbound approach at Willey Street provides exclusive left, through and right turn lanes. North of Willey Street the cartway narrows to 22 feet and there is on street parking with a single northbound lane. The intersection of Spruce Street/Fayette Street is controlled with a two phase signal while the Spruce Street/Willey Street intersection is controlled with a three phase signal including an actuated exclusive pedestrian phase. There is no posted speed within the study area.

Willey Street (US 119 & Local) – Willey Street provides one lane in each direction in a 24 to 26 foot wide cartway except between Spruce Street and High Street where two westbound lanes are provided including an exclusive 9 foot wide left turn lane and a 9 foot wide through lane at High Street and an eastbound lane in a 30 foot wide cartway. The intersection of Willey Street and High Street is controlled with a four phase signal including a protected/permitted westbound left turn phase and an actuated exclusive pedestrian phase. There is no posted speed and no parking along Willey Street within the study area.

High Street (US 119) – High Street is one-way southbound within the study area providing two travel lanes and on street parking on both sides. The cartway varies from 37 to 43 feet with curb bump outs. High Street north of Willey Street is 22 feet wide and provides a right only lane and a through/left lane on its approach to Willey Street. There is no posted speed within the study area.

Beechurst Avenue (US 19/WV 7) – The Beechurst Avenue leg of the University Avenue/Fayette Street intersection has dual right turn lanes, an exclusive left turn lane and a single northbound lane in a 42 foot wide cartway. The posted speed is 35 mph.

Fayette Street - Has a 23 foot wide cartway and is one-way eastbound within the study area. There is parking along the south side of Fayette Street between High Street and Spruce Street. There is no posted speed within the study area.

Chestnut Street – Is a one-way street with one northbound lane and parking between Pleasant Street and Willey Street. The northbound approach at Pleasant Street is controlled with a stop sign. The cartway is 16 feet in width between Pleasant Street and Walnut Street, and 22 feet in width between Walnut Street and Willey Street. The approach to Willey Street has separate left and right turn lanes controlled with a stop sign. There is no posted speed within the study area.

Wall Street – Is a narrow, 12 foot wide alley open to vehicular traffic between Chestnut Street and the Monongahela River.

Photographs along with signal plans and sketches of the study intersections, and both the signal timing information obtained from the WVDOH and through filed reconnaissance are included in the Appendix to this report.

Data Collection

Manual turning movement counts were performed at the existing study intersections from 7:00 AM to 9:00 AM and from 3:00 PM to 6:00 PM on successive Fridays in April 2015 when the West Virginia University (WVU) and Monongalia County Schools were in session. These time periods were selected because they typically include the AM and PM peak hours of adjacent street traffic. The counts were summarized in 15-minute intervals and included heavy vehicles and pedestrians.

The AM and PM peak hours selected for this study were the highest four consecutive 15-minute periods selected. These periods are as follows:

- AM Peak Hour – 7:15 to 8:15
- PM Peak Hour – 4:15 to 5:15

The observed AM and PM peak hour traffic volumes were balanced between intersections. The existing AM and PM peak hour vehicle volumes are presented in **Figure 4**. The pedestrian counts were also summarized for the aforementioned peak hours and are presented on **Figure 5**. Summaries of the manual turning movement count data are included in the Appendix to this report.

The latest available average daily traffic volumes (2014) for the study area were obtained from the WVDOH and are presented on **Figure 6**.

2015 EXISTING TRAFFIC CONDITIONS

Capacity and queuing analyses were performed using the existing 2015 traffic volumes shown in Figure 4 for each of the study intersections for the AM and PM peak hours. This analysis was performed using the *Synchro* software. The capacity analysis is quantified in terms of levels of service (LOS) based on average delay. An LOS A represents relatively short delays while an LOS F represents long delays or a failure condition. Definitions of LOS are included in the Appendix. It is noted that exclusive pedestrian phases, where provided, were assumed to have been actuated for the signalized intersections.

The results of the capacity calculations are summarized on **Table 2A** and **2B** for the AM and PM peak hours, respectively. The capacity analysis revealed the following intersections have movements or approaches that operate at an LOS E during one or both peak hours:

- EB Walnut Street approach at University Avenue
- EB Fayette Street approach at University Avenue/Beechurst Avenue
- SB University Avenue through/right and approach at Beechurst Avenue/Fayette Street
- SB High Street left/through and approach at Willey Street

The results of the queuing analysis are summarized on **Table 3A** and **3B** for the AM and PM peak hours, respectively. As shown, the following queues exceed available capacity during one or both peak hours:

- NB University Avenue left at Pleasant Street
- WB Walnut Street left and left/through at University Avenue

Synchro printouts are included in the Appendix to this report.

SITE TRAFFIC GENERATION AND DISTRIBUTION

Due to the lack of data for student housing developments in the Institute of Transportation Engineers (ITE) *Trip Generation Manual*, vehicle trip generation for the proposed development was determined from the publication entitled *Trip Generation Study – Private Student Housing Apartments* by Spack Consulting dated April 12, 2012, based on the number of beds/bedrooms. The ITE *Trip Generation Manual, 9th Edition* Land Use 220, Apartment, was used to determine the total trips (pedestrian and vehicle) for the apartments, with the vehicle trips from the Spack Consulting study deducted to determine the pedestrian trips. Trip generation for the 17,000 square foot (sf) retail component was determined from the Institute of Transportation Engineers (ITE) publication *Trip Generation Manual, 9th Edition* for specialty retail (Land Use 826) based on square feet.

Peak hour trip generation for the development is projected as follows:

| | |
|------------------|--|
| Average Weekday: | 1,988 Vehicle Trips & 634 Pedestrian Trips |
| AM Peak Hour: | Vehicle Trips – 82 Entering / 95 Exiting / 177 Total Pedestrian Trips – 3 Entering / 79 Exiting / 82 Total |
| PM Peak Hour: | Vehicle Trips – 108 Entering / 90 Exiting / 198 Total Pedestrian Trips – 53 Entering / 8 Exiting / 61 Total |

A summary of the projected weekday and peak hour vehicle trips is provided in **Table 1**.

The distribution of vehicle trips to and from the development in the study area was based on desired destinations on the WVU campuses and existing traffic volumes and patterns. Due to one way streets "away" from the Downtown campus, i.e. University Ave. & High St., the distribution is dispersed on Beechurst to Campus Drive, Chestnut Street and Spruce Street. Also, the Downtown campus is close enough that it was assumed a higher percentage of students would walk versus

drive. Conversely, a higher proportion was assumed to drive towards the Evansdale campus or take the PRT. There is also a percentage of vehicle trips destined towards neither the Downtown nor Evansdale campuses, i.e. towards shopping, restaurants, entertainment.

The vehicle trip distribution is shown in **Figure 7**. The distribution of pedestrian trips was based on principal destinations such as the WVU Downtown campus and the PRT station. The pedestrian trip distribution is shown on **Figure 8**.

Peak hour site trip assignments were determined by applying the aforementioned distributions to the site generated vehicle and pedestrian trips. The site generated AM and PM peak hour vehicle trips are shown on **Figure 9**. The site generated AM and PM peak hour pedestrian trips are shown on **Figure 10**.

PROJECTED 2017 BASE TRAFFIC CONDITIONS WITHOUT DEVELOPMENT

The development is projected to be completed and occupied in 2017. Therefore, traffic volumes were projected for the study intersections for 2017 base conditions without development. In order to estimate the 2017 base traffic volumes, a background traffic growth rate of 2.0 percent per year, compounded, was applied to the existing 2015 traffic volumes shown in Figure 4. This background traffic growth rate was obtained from the Morgantown Monongalia Metropolitan Planning Organization (MMMPO) for the study area. The 2017 background traffic volumes with this growth rate are shown in **Figure 11**.

Traffic volumes from three approved, but uncompleted developments (at the time the traffic counts were performed) within the study area were included in the projected 2017 opening year base traffic volumes. A description of the three developments, the source of their site generated volumes, and the figure the volumes are presented as follows:

- Sheetz Convenience Store with 10 fueling positions along University Avenue between Kirk Street and Foundry Street. Site volumes extracted from Revised Traffic Impact Assessment for the University Avenue Development dated September 2013 by Dennis Corporation. Site volumes are shown in **Figure 12**.
- 494 Spruce Street, a student housing development containing 368 bedrooms and 3,500 sf of retail/commercial space located on the southeast corner of the Spruce Street/Willey Street intersection. Site volumes extracted from Traffic Impact Study Proposed Mixed-Use Residential Commercial Development at 494 Spruce Street dated May 28, 2014 by Gannett Fleming. Site volumes are shown in **Figure 13**.
- Central Place, a 120 unit apartment complex located immediately adjacent 494 Spruce Street with access located along Willey Street opposite Price Street. Site volumes extracted from Traffic Impact Study Proposed Mixed-Use Residential Commercial Development at 494 Spruce Street dated May 28, 2014 by Gannett Fleming. Site volumes are shown in **Figure 14**.

Since the intersections included in the aforementioned studies were limited in scope, site volumes for each development were projected through the remaining study intersections based on existing traffic volumes and patterns.

The 2017 base AM and PM peak hour traffic volumes were derived by adding the 2017 background volumes shown in Figure 11, and site volumes from the aforementioned developments shown in Figures 12, 13 and 14. The 2017 base traffic volumes are shown in **Figure 15**.

The results of the capacity calculations using the volumes from Figure 15 are summarized on **Table 2A** and **2B** for the AM and PM peak hours, respectively. The capacity analysis revealed the following intersections have movements or approaches that operate at an LOS E or F during one or both peak hours:

- EB Pleasant Street (bridge) through movement at University Avenue
- NB University Avenue left at Pleasant Street
- WB Walnut Street left at University Avenue
- EB Fayette Street approach at University Avenue/Beechurst Avenue
- SB University Avenue through/right and approach at Beechurst Avenue/Fayette Street
- SB High Street left/through and approach at Willey Street
- NB Chestnut Street left at Willey Street

The results of the queuing analysis are summarized on **Table 3A** and **3B** for the AM and PM peak hours, respectively. As shown, the following locations have queues that exceed available capacity during one or both peak hours:

- NB University Avenue left at Pleasant Street
- WB Walnut Street left and left/through at University Avenue
- NB University Avenue through (to Beechurst) at Beechurst Avenue/Fayette Street
- WB Willey Street left at High Street

Synchro printouts are included in the Appendix to this report.

PROJECTED 2017 COMBINED TRAFFIC CONDITIONS WITH DEVELOPMENT

The forecasted 2017 combined with development traffic volumes for the AM and PM peak hours were determined by adding the projected vehicle trips generated by the proposed Standard at Morgantown development (Figure 9) to the forecasted 2017 base traffic volumes (Figure 15) resulting in the 2017 combined volumes shown on **Figure 16**.

Per TED 106-2, the LOS of all intersections affected by a proposed development should be no worse than the LOS before the new facility opens. Capacity and queuing analyses were performed using forecasted 2017 combined conditions traffic volumes at each of the study intersections for the AM and PM peak hours.

The results of the capacity calculations are summarized in **Table 2A** and **2B** for the AM and PM peak hours, respectively. The capacity analysis revealed the following intersections have movements or approaches that operate at an LOS E or F during one or both peak hours:

- EB Pleasant Street (bridge) through movement at University Avenue
- NB University Avenue left at Pleasant Street
- WB Walnut Street left and left/through at University Avenue
- EB Fayette Street approach at University Avenue/Beechurst Avenue
- SB University Avenue through/right and approach at Beechurst Avenue/Fayette Street
- SB High Street left/through and approach at Willey Street
- NB Chestnut Street left at Willey Street

The aforementioned movements and approaches already operate at LOS E or F in 2017 base conditions with the following exception:

- WB Walnut Street left/through at University Avenue degrades from a LOS D to a LOS E

LOS F with longer delays are incurred with the addition of site traffic at the following location:

- SB High Street left/through and approach at Willey Street

The results of the queuing analysis are summarized on **Table 3A** and **3B** for the AM and PM peak hours, respectively. As shown, the following intersections have queues that exceed available capacity during one or both peak hours:

- EB Walnut Street at University Avenue
- NB University Avenue left at Pleasant Street
- SB University Avenue through at Pleasant Street
- WB Walnut Street left and left/through at University Avenue
- NB University Avenue through (to Beechurst) at Beechurst Avenue/Fayette Street
- WB Willey Street left at High Street

Except for the eastbound Walnut Street queue at University Avenue and the southbound University Avenue through queue at Pleasant Street, these queues already exceed available capacity in 2017 base conditions. The Walnut Street queue may back beyond the site driveway (not a public street) and the University Avenue queue slightly exceeds available capacity by 20 feet.

Synchro printouts are included in the Appendix to this report.

Since the LOS for the westbound Walnut Street left/through lane degrades to a LOS E in 2017 combined conditions, mitigation in the form of signal retiming was assumed during the PM peak hour. Also, signal retiming along with restriping the westbound approach of Willey Street at High Street to provide 10 foot wide left turn and through lanes resulted in a LOS F with less delay for the southbound High Street approach during the PM peak hour.

The results of the capacity calculations performed assuming the aforementioned mitigation is presented in **Table 2A** and **2B** for the AM and PM peak hours, respectively. With the mitigation, the aforementioned movements at the University Avenue/Walnut Street and the Willey Street/High Street intersections operate at the same or improved LOS with less delay as they do in the 2017 base conditions during the peak hours. In addition, queue lengths for the westbound Walnut Street left and left/through lanes are reduced during the PM peak hour to less than those in the 2017 base conditions, as presented in **Table 3A** and **3B** for the AM and PM peak hours, respectively.

Copies of the *Synchro* analysis performed assuming the mitigation at each of the study intersections are included in the Appendix to this report.

In addition to vehicular volumes, projected pedestrian volumes generated by the development shown in Figure 8 were added to the existing pedestrian volumes shown in Figure 5. The combined pedestrian volumes with development are shown in **Figure 17**. As shown, there is a significant increase in the number of pedestrians crossing University Avenue at Walnut Street and at Fayette Street. There is an exclusive actuated pedestrian phase at the University Avenue / Walnut Street intersection, but not at the University Avenue / Beechurst Avenue / Fayette Street intersection. The addition of an exclusive pedestrian phase at this intersection would further degrade LOS.

OTHER ANALYSIS

The need for a traffic signal at the intersection of Willey Street and Chestnut Street was evaluated per the warrant criteria in the 2009 edition of the *Manual on Uniform Traffic Control Devices* (MUTCD). Warrant 2, Four-Hour Vehicular Volume and Warrant 3, Peak Hour, were evaluated for this intersection. It was determined that neither Warrant 2 nor Warrant 3 are satisfied for any condition. Traffic signal warrant charts and evaluation are included in the Appendix.

A queuing analysis was performed for vehicles entering the site driveways from Walnut Street and University Avenue during the peak hours. The purpose of the analysis was to determine if at any time the queue of vehicles waiting to enter the parking garage at the card-actuated gate would back onto either Walnut Street or University Avenue. Based on information from the architect, the Walnut Street entry driveway will have one lane with a gate located 60 feet (i.e. 3 car lengths) from Walnut Street. The University Avenue entry driveway will have one lane with a gate located 50 feet (i.e. 2 car lengths) from University Avenue. Based on a service rate of 225 vehicles per hour, the probability of queues exceeding the provided storage assuming random arrivals is less than 1 percent during the critical PM peak hour. Queue calculations are included in the Appendix.

CONCLUSIONS / RECOMMENDATIONS

This study concluded that the proposed Standard at Morgantown student apartment development will have minimal traffic impact on the surrounding intersections if appropriate mitigation is provided.

The results of the capacity calculations performed for each of the study intersections revealed that the westbound Walnut Street left/through lane at University Avenue degrades from a LOS D to a LOS E between 2017 base and 2017 combined conditions, with longer queues. Also, the southbound High Street left/through lane and approach at Willey Street operates at LOS F with longer delays with the addition of site traffic.

To mitigate the LOS and queues with the site development, signal retiming at the University Avenue and Walnut Street intersection was assumed for the PM peak hour. Also, signal retiming along with restriping the westbound approach of Willey Street at High Street to provide 10 foot wide left turn and through lanes resulted in a LOS F with less delay than the 2017 base conditions for the southbound High Street approach during the PM peak hour.

Therefore TA recommends the following site access and mitigation to accommodate site traffic:

- Provide a driveway along Walnut Street approximately 50 feet west of University Avenue;
- Provide a right-in, right-out driveway along University Avenue approximately 260 feet north of Walnut Street;
- Install tubular markers along the centerline of University Avenue to reinforce the right turn in, right turn out driveway;
- Retime the University Avenue and Walnut Street traffic signal to provide additional green time for the westbound Walnut Street approach while reducing green time on the University Avenue approaches during the PM peak hour;
- Install a 4 section signal head for the eastbound Walnut Street approach at University Avenue to confirm the split phase operation of the Walnut Street approaches;
- Restripe the westbound approach of Willey Street at High Street to provide 10 foot wide through and left turn lanes; and
- Retime the Willey Street and High Street traffic signal to provide additional green time to the High Street and westbound Willey Street left turn phases while reducing green time on the eastbound Willey Street approach; and
- Install "Do Not Block Intersection" signs on the Walnut Street driveway exit.

A schematic diagram with these recommendations is included on **Figure 18**.

Also, the WVDOH reserves the right to restrict left turns from northbound University Avenue onto Walnut Street to enter the development should more traffic utilize this movement than is currently anticipated.

This concludes TA's traffic impact study for a proposed student apartment development located along University Avenue located in Morgantown, West Virginia.

Included in the Appendix to this report are copies of all counts, analysis and calculations.

**Intentional
Blank
Page**



September 23, 2015

Standard at Morgantown
Walnut Street and University Avenue
Morgantown, WV 26505

Attention: Mike Greenlee

Mike,

Mark Osborne the District Manager with Republic Services has looked at the attached diagrams for trash service at the corner of Walnut Street and University Avenue for the Standard at Morgantown and has given his approval on this for the compactor to be serviced at this complex. If you have any questions please let us know.

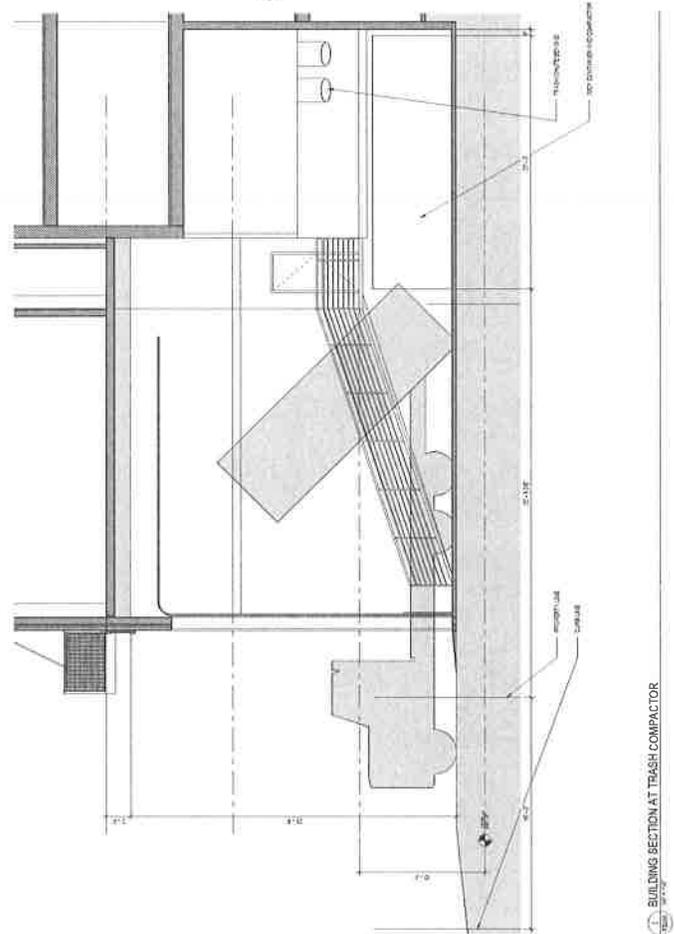
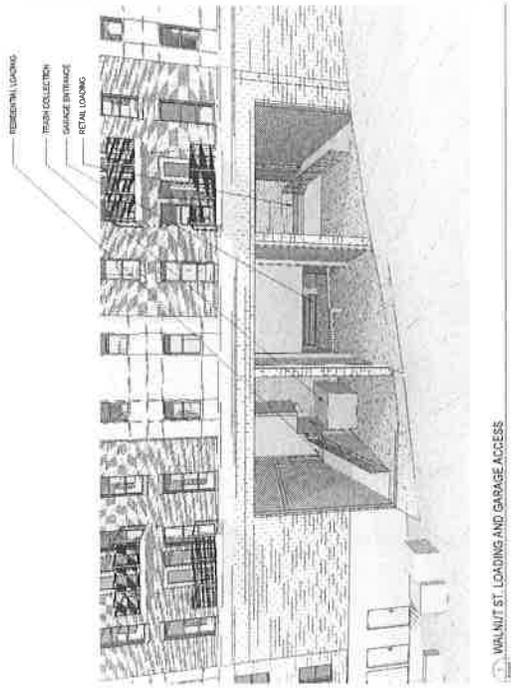
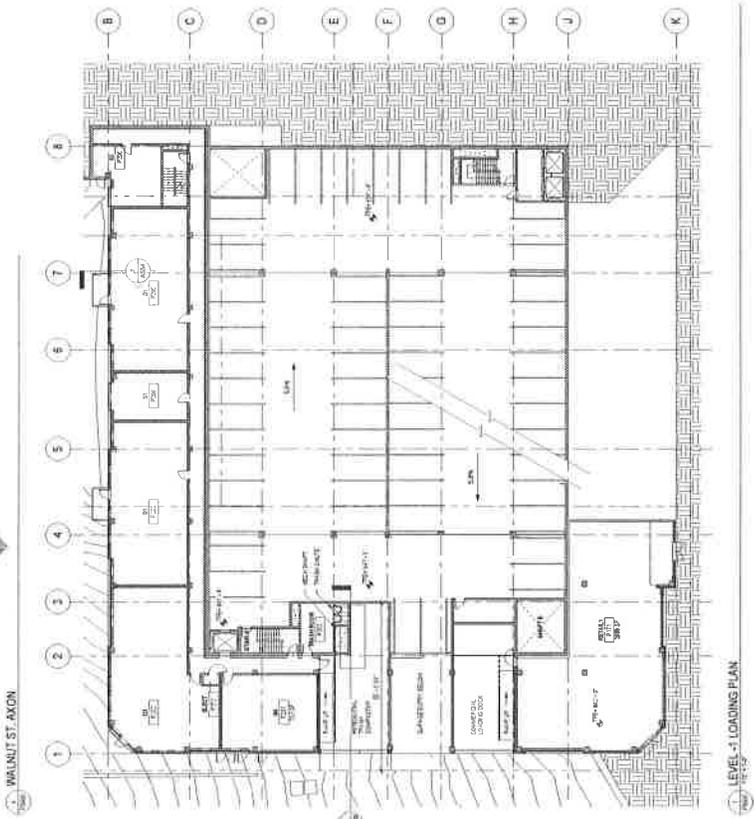
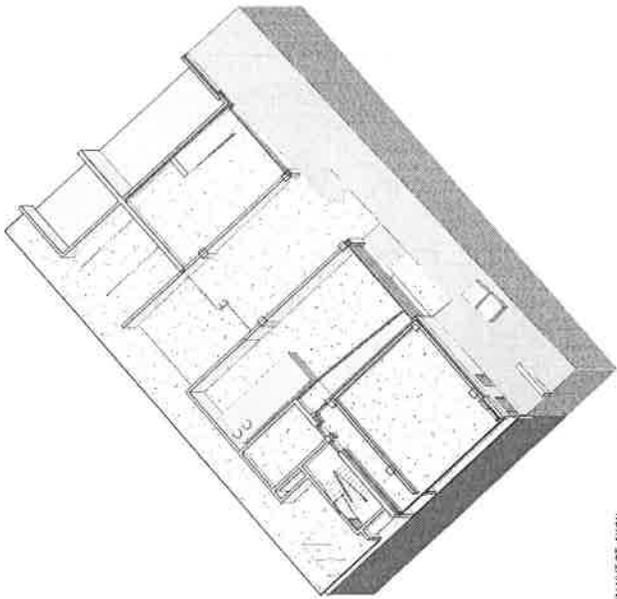
Sincerely,

Roger Huffman
Sales Rep
Republic Services

#2 12th Street
Fairmont, WV 26554
304-366-8900 • Fax 304-366-1267



| DATE | ISSUE # | DESCRIPTION |
|------|---------|-------------|
| | | |
| | | |
| | | |



**OBJECTION TO THE MORGANTOWN PLANNING COMMISSION'S
CONSIDERATION OF THE STANDARD AT MORGANTOWN PROJECT
AT THE DECEMBER 10, 2015 MEETING**

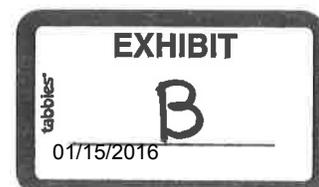
IN THE MATTER OF: Standard at Morgantown, LLC/1303 University Avenue, Morgantown, West Virginia/Case No. S15-09-III (Tax Map 26A, Parcels 6-15 and the Wall Street right-of-way)

OBJECTION OF: James Giuliani, resident of Morgantown, West Virginia

James Giuliani ("Mr. Giuliani") hereby formally objects to the Morgantown Planning Commission's consideration of the Standard at Morgantown Project at the December 10, 2015 Meeting, which involves numerous variances and a Type III Development of Significant Impact Site Plan approval at 1303 University Avenue in Morgantown, West Virginia. Mr. Giuliani requests to be heard, and that this objection be considered, at the Morgantown Planning Commission hearing scheduled for December 10, 2015.

I. INTRODUCTION

J. Wesley Rogers (the "Contractor"), President of the Standard at Morgantown, LLC, seeks to redevelop real property near West Virginia University located at the intersection of U.S. Route 19 (University Avenue) and Walnut Street in Morgantown, West Virginia. The property is situated in a B-4 district and is currently occupied by McClafferty's Irish Pub, Vic's Towing and Garage, and the former Gold's Gym building (the "Project"). The Contractor wants to develop the property as a massive student housing apartment/retail building with commercial and retail space on the lower levels. The proposed development site is approximately 1.95 acres (84,942 square feet). The proposed Project would include 276 dwelling units with a total of 866 occupants. 692 parking spaces are proposed in 12 parking deck levels that are wrapped by the non-residential and residential portions of the building. The square footage of the lot area is broken down as follows:



Commercial: 13,351 square feet

Retail: 8,486 square feet

Parking: 225,554 square feet (692 spaces)

Housing: 419,947 square feet

Total: 667,338 square feet

Total Less Parking: 441,784 square feet

On or about October 1, 2015, the Contractor applied to the City of Morgantown for the approval of a Type III Development of Significant Impact Plan and also applied for several variances associated with the Project. The matter is scheduled to be heard on December 10, 2015 at the Morgantown Planning Commission hearing. For the reasons that follow, Mr. Giuliani contends that any consideration and/or approval of the Standard at Morgantown Project by the Planning Commission is premature.

II. OBJECTIONS

A. Consideration and approval of the Standard at Morgantown Project by the Planning Commission is premature due to numerous outstanding decisions by third parties, including the determination of the variance petitions by the Morgantown Board of Zoning Appeals, decisions and approvals by the West Virginia Division of Highways and the Morgantown City Council; violations of various ordinances and codes; and a necessary interpretation of confusing, ambiguous Code provisions.

1. Consideration and approval of the Standard at Morgantown Project by the Planning Commission is premature due to the outstanding variance petitions that can only be decided by the Morgantown Board of Zoning Appeals.

In relation to the Project, the Contractor applied for seven (7) variances to the City of Morgantown, all of which can only be approved by the Morgantown Board of Zoning Appeals (“BZA”) pursuant to Sections 1389.02 and 1389.03 of the Morgantown Planning and Zoning Code (the “Code”). The Planning Commission has no authority to make variance determinations, and the most it can do is provide recommendations to the BZA. Therefore, it is not logical for

the Planning Commission to even consider the Standard at Morgantown Project until the BZA has either approved or denied the variances. This is a classic example of putting the cart before the horse, and it would be a complete waste of the Planning Commission's time and resources to entertain a hearing on a project with pending variance requests that the BZA will likely not approve due to the violations of numerous Code sections, which is discussed below.

- a. **The variance petition requesting 692 parking spaces for 866 occupants on 1.95 acres in a B-4 zoning district violates Sections 1365.04 and 1349.06 of the Code and will likely be denied by the BZA.**

The Project design calls for 692 parking spaces for this massive mixed use complex housing 866 occupants on 1.95 acres. The parking area will comprise 12 parking levels that are enclosed by the residential and non-residential units. Section 1349.08(A)(1) of the Code titled "Parking and Loading Standards" states in relevant part: "With the exception of the first twenty-two (22) occupants, the minimum number of parking spaces for permitted residential uses *shall* be one-half space (0.5) per occupant, as determined by the West Virginia State Building Code and adopted and implemented by the City." (Emphasis added). Excepting the first 22 occupants, the minimum number of residential parking spaces permitted for this Project is 422 (844 x 0.5).

Regarding the maximum number of spaces, Section 1365.04(I) titled "Determining the Number of Spaces Required" states: In all non-residential districts the maximum number of spaces provided *shall not exceed 115 percent* of the minimum parking requirement, except for research and development centers, where there shall be no maximum." (Emphasis added). Therefore, the maximum number of residential parking spaces permitted according to the Code is 485 (422 x 1.15). However, the Code also provides for loading spaces in 1349.08(D): "Loading—Residential uses containing thirty (30) or more dwelling units shall conform to the

loading requirements set forth in Section 1365.10 as a ‘Type II Use.’” The table in Section 1365.10 illustrates:

| Use Description | Floor Area in Square Feet | Number of Loading Spaces Required |
|--|---------------------------|-----------------------------------|
| Type II: Office buildings, hotels and motels, retail sales, hospitals, institutions and similar uses | 5,000 – 60,000 | 1 |
| | 60,001 – 100,000 | 2 |
| | Each 20,000 above 100,000 | 1 |

Since the residential area is 419,947 square feet, 19 additional loading spaces are permitted ($419,947 - 100,000 = 319,947 / 20,000 = 16 + 2 + 1 = 19$). The total amount of residential and loading spaces allowed by the Code is 504 (485 + 19). Thus, the excess parking spaces sought by the Contractor are 186 (692-504). It appears that the calculations of the City Planner in the Conformity Report are incorrect in only allowing 14 loading spaces, which brings their total calculation to 499 (485 + 14). Using the City Planner’s numbers, the excess parking spaces sought is 193. Regardless of which number is correct, it is clear that the number of additional parking spaces requested by the variance is far in excess of the maximum spaces permitted by the Code.

The Code sections stated above all use the word “shall,” which is a term that is always mandatory, not discretionary. Under both the Zoning Code and West Virginia law, the word *shall* represents an imperative command. Section 1329.01(H) of the Code states: “The word ‘shall’ is always mandatory and not discretionary.” Thus, the Code itself defines the term *shall* as mandatory. Moreover, the West Virginia Supreme Court has repeatedly held that the use of the word *shall* in a statute represents an “imperative command” that “leaves no way open for the substitution of discretion.” See *Crusenberry v. Norfolk & W. Ry. Co.*, 180 S.E.2d 219, 222, 155

W.Va. 155, 159 (1971) (modified on other grounds by *Talkington v. Barnhart*, 264 S.E.2d 450, 164 W.Va. 488 (1980)); *see also* Syl. Pt. 7, *J.A. Street & Associates, Inc. v. Thundering Herd Development, LLC*, 228 W.Va. 695, 724 S.E.2d 299 (2011) (“It is well established that the word ‘shall,’ in the absence of language in the statute showing a contrary intent on the part of the Legislature, should be afforded a mandatory connotation”).

There are no exceptions to these Code provisions, and the Contractor should not be permitted to exceed these maximums and endanger the welfare and interests of residents living in the City of Morgantown simply to increase its monetary return on investment by packing in as many people into one building as possible. It is important to remember that the Contractor is not requesting a mere increase of 3 or 4 spaces—*the request exceeds the maximum number by almost 200 spaces!*

i. The City Planner and Contractor erred in their FAR calculations.

Remarkably, the City Planner, in the Staff Report and Nonconformity Report, attempts to justify the parking variance requested by the Contractor by manipulating the Floor Area Ratio (FAR) calculations in Section 1349.06. That section, titled “Floor Area Ratio (FAR)” states: The *maximum* FAR for all development in this district [B-4] is 7.0. The area designed, constructed, and utilized to provide parking structure facilities shall be exempt from the maximum FAR, provided such area *does not* exceed 115% of the minimum parking requirement.” (Emphasis added). Importantly, in the definition section of the Code (Section 1329.02), it states that the FAR is an expression of the *intensity of development* and determines the amount of square footage of a building area compared to the square footage of a lot area. The FAR calculation is the gross floor area of the principal and accessory buildings on a lot divided by the area of the lot. Thus, a FAR of 7.0 would allow 7 square feet of building area for each square foot of lot

area. In this case, the *maximum square footage* of the building area for this Project in the B-4 district based on the subject lot area is **594,594** (7.0 x 84,942).

The language of Section 1349.06 is particularly important because it provides that the parking area square footage is exempt from the FAR for a building area *provided such area does not exceed 115% of the minimum parking requirement*. However, the Project at issues admittedly exceeds 115% of the minimum parking requirement—hence the variance petition. Therefore, the converse applies and the parking area square footage is included in the FAR calculation. As a result, the gross floor area including parking (667,338) divided by the lot area (84,942) equals a FAR of 7.8, which is a violation of the FAR 7.0 maximum permitted by Section 1349.06. In terms of square footage, the variance is requesting an **additional 72,744 square feet** in excess of the maximum permitted in a B-4 district ($7.8 \times 84,942 = 667,338 - 594,594 = 72,744$). Again, the variance is not asking for a mere accommodation of several additional square feet or even several hundred additional square feet. The request asks for approval of additional tens of thousands of square feet (equal to at least 6 or 7 stories of a building) that would clearly endanger the safety of the residents in the building and impede upon the interests of the surrounding citizens.

As designed, the Standard at Morgantown Project violates these Code provisions, and the Contractor should not be permitted to skirt such important safety measures through a variance request that will likely not be approved by the BZA upon reviewing the above evidence. Therefore, consideration and approval of the Project is premature, and the Planning Commission should refrain from making a decision on the Standard of Morgantown Project at this time.

b. The transparency variance requested for the Project to avoid the minimum transparency requirement violates Section 1351.01 of the Code and will likely not be approved by the BZA.

The Project indicates that the Contractor is requesting variance relief to avoid the minimum transparency requirement in Section 1351.01, which pertains to the performance standards for buildings in a B-4 district. In particular, Section 1351.01(K)(1) states that “A minimum of sixty percent (60%) of the street-facing building façade between three (3) feet and eight (8) feet in height *must* be comprised of clear windows that allow views of indoor nonresidential space or produce display areas.” (Emphasis added). The word “must” like the word “shall” means that it is always mandatory. *See Crusenberry v. Norfolk & W. Ry. Co.*, 180 S.E.2d 219, 222, 155 W.Va. 155, 159 (1971). Additionally, there are no exceptions to this Section of the Code.

The Project designs at Sheet No. 7.04 illustrate transparency between 3’0” and 8’0” of only 52% on University Avenue and only 11% on Walnut Street, both well below the required minimum of 60%. It is important to remember that this Project is merely in the design phase, and the construction phase has not yet begun. It is entirely feasible and reasonable for the Contractor to modify the drawings to comply with the Code’s 60% transparency requirement, which would take little additional effort. If such an easy modification to construction designs can be avoided by simply asking for a variance to skirt around the Code provisions, why have laws at all, if the enforcing authorities have no intention of following them in order to satisfy the whims of a Contractor?

As designed, the Standard at Morgantown Project violates Section 1351.01 of the Code, and the Contractor should not be permitted to skirt such important safety measures through a variance request that will likely not be approved by the BZA upon reviewing the above evidence.

Therefore, consideration and approval of the Project is premature, and the Planning Commission should refrain from making a decision on the Standard of Morgantown Project at this time.

- c. **The air flow and sunlight distribution variance requested for the Project must be considered and decided upon solely by the BZA; therefore, any consideration or approval of the Project by the Planning Commission is premature.**

The Contractor for the Project does not want to comply with the Code, or the Morgantown Urban Design Guidelines (the "Guidelines") specifically adopted by the Code, by incorporating design elements that preserve adequate light and airflow to public spaces, including streets and sidewalks surrounding the proposed massive apartment/retail complex. Obviously, such aesthetic components are very important to the City of Morgantown and its residents, since such provisions were included in the Guidelines and Section 1351.01(I) of the Code:

(I) To minimize canyon effects created by tall structures, buildings taller than three (3) stories **shall** incorporate design elements that preserve adequate light and airflow to public spaces including streets and sidewalks . . . Site plan applications for buildings taller than three (3) stories **must** include the following:

(1) An air flow analysis conducted by a licensed architect or professional engineer, describing and illustrating the estimated impact of the proposed building on existing patterns of air flow in the general vicinity; and how those impacts may affect existing properties within a 300 foot radius of the site.

(2) A sunlight distribution analysis conducted by a licensed architect or professional engineer, describing and illustrating the impact of the proposed building on sunlight distribution in the general vicinity, with special emphasis on predicting light blockage and shadow casting onto all properties within a 300 foot radius of the site. (Emphasis added).

A sunlight distribution analysis is included at Sheet Nos. 6.17 and 6.18 in the Project documents, and an air flow analysis is provided at Sheet No. 6.19, but to date, the BZA has not reviewed or heard argument regarding said documents. It is up to the BZA to analyze these

documents and either approve or deny the variance in accordance with the Code and the intentions of the City of Morgantown as provided in the Guidelines.

Therefore, consideration and approval of the Project is premature, and the Planning Commission should refrain from making a decision on the Project at this time.

2. Consideration and approval of the Project by the Planning Commission is premature due to outstanding decisions by third parties, such as the West Virginia Division of Highways and the Morgantown City Council.

The BZA, the Planning Commission, and other authorities often must wait to render decisions on project plans based upon the determinations of other entities that have an interest in certain aspects of a project. In this case, decisions on the Project by both the Planning Commission and the BZA are premature due to outstanding determinations by the West Virginia Division of Highways and the Morgantown City Council.

a. The BZA cannot render a decision on the variance regarding the maximum width of a driveway at the curb line and the maximum width of a driveway at the street right-of-way line because there are outstanding issues that need to be determined by the West Virginia Division of Highways.

The Project Contractor has requested a variance to avoid the requirements of Section 1351.01(D) of the Code regarding curb cuts. This Section states, in relevant part: "The maximum width of any driveway leading from a public street **shall** not exceed twenty-six (26) feet at the curb line or twenty-two (22) feet at the street right-of-way line." (Emphasis added). Regarding the maximum width of a driveway at the curb line, the Plan proposes 55.77 feet on University Avenue (an excess of 29.77 feet) and 104.39 feet on Walnut Street (an excess of 78.39 feet). Regarding the maximum width of a driveway at the street right-of-way line, the Plan proposes 27 feet on University Avenue (an excess of 5 feet) and 58.75 feet on Walnut Street (an excess of 36.75 feet). When dealing with such precise measurements, especially on such a busy thoroughfare as University Avenue frequented by a high volume of vehicles and pedestrians,

these excessive measurements can have a significant impact on the surrounding area. Clearly, these measurements proposed by the Contractor violate Section 1351.01 and will likely not be approved by the BZA.

Moreover, due to the sheer size of the Project and its location near many commercial and educational institutions in a high traffic volume area, it is necessary to perform a Traffic Impact Study (the "Study"). The Study has been submitted to the West Virginia Division of Highways ("WVDOH") for further analysis to determine whether the Project designs comply with the Code. Documents included in the Project application include correspondence from the WVDOH to TransAssociates, the entity that performed the Study on behalf of the Contractor, indicating numerous concerns with the Plan designs and the negative impact that the Project would have on traffic in the area.

The most recent letter is dated September 21, 2015, which states that the WVDOH provides conditional approval of the Study subject to certain stipulations that still have not been resolved by the Contractor and its affiliates. In particular, the WVDOH was concerned with the retiming of the traffic signals to minimize queuing of traffic at the two intersections near the apartment complex (University Avenue/Walnut Street and High Street/Willey Street). Such a significant request should not be ignored, and the Project should not be considered or approved until the WVDOH has received the additional information requested in order to render an informed decision on this issue.

If this Project was to be approved as submitted, the potential for more significant traffic jams and accidents on University Avenue and entrapment of residents attempting to enter or leave the apartment garage during periods of high volume traffic is extremely likely. Ultimately, the site location for such a large, mixed-use complex on a busy thoroughfare like University

Avenue that includes numerous intersections, traffic signals, and is in close proximity to a bridge is problematic to say the least. University Avenue is a 5-lane roadway that is busy enough as it is. Imagine the result of adding an extra 692 vehicles into the mix that are attempting to enter and exit the garage while pedestrians are trying to cross at the same time. The garage entrance on University Avenue is located between traffic signals and is only a short distance from the bridge. If the WVDOH determines that the Project designs will back up traffic on University Avenue and block through traffic to the bridge, it will likely not approve the Project, and the Contractor will have to go back to the drawing board.

Therefore, consideration and approval of the Plan by both the Planning Commission and the BZA is premature, and they should refrain from making a decision on the Project at this time.

b. Consideration and approval of the Project by both the BZA and the Planning Commission is premature due to the outstanding right-of-way annulment request concerning Wall Street by the Morgantown City Council.

Also pending is the annulment of a dead-end street, known as Wall Street, by the Morgantown City Council. Wall Street runs directly through the Project site between University Avenue and the CSX right-of-way, but it is owned by the City. Thus, an annulment is required to permit the Contractor to demolish the street in order to erect the Project on the Site. Importantly, such an annulment is a public process that requires input from local citizens and interested parties through documentation and hearings. It is not a decision that can be determined in a short period of time by only one party. A note in the Staff Report submitted by the City Planner indicates that the annulment application has been submitted, but the City's engineer is waiting for the requisite documentation from public and private utilities. Once the City obtains approval from these utilities, then it can proceed with the requisite public hearing(s) to determine whether the street can be subsumed by the Project. Until the annulment is formally

approved, no other authorities should be making decisions concerning the approval of the Project, especially since the denial of the annulment would require the Contractor to modify its designs.

Therefore, consideration and approval of the Project by both the Planning Commission and the BZA is premature, and they should refrain from making a decision on the Project at this time.

3. The height measurements for the apartment complex building violate the City of Morgantown Planning and Zoning Code and should not be permitted.

The Code provides for various minimum and maximum heights of buildings in a B-4 zoning district in Section 1349.05 titled "Building Height." Section 1349.05(B) states, "The maximum height of a principal structure, unless otherwise restricted by Article 1362 B-4NPOD, B-4 Neighborhood Preservation Overlay District, *shall* not exceed 120 feet, except as provided in Section 1363.02(A), Height Exceptions." (Emphasis added). None of the exceptions in Section 1363.02 are applicable to this scenario. Again, this provision utilizes the word "shall" to mean that it is always mandatory, not discretionary.

The average maximum height of a building is calculated by averaging its highest and lowest points of elevation. In the Conformity Report submitted by the City Planner, the lowest elevation (south elevation) of the apartment complex building is 102' – 9 3/8" and the highest elevation (west elevation) is 134' – 4" for an average height of 118' – 6 11/16." However, on Sheets A7.02 and A7.03 in the application packet, the elevations submitted indicate that the south elevation is actually 137' – 4" and the west elevation is 104' – 4." Thus, the average height of the apartment complex is actually 120' – 10."

As a result, the Contractor's Project designs violate Section 1363.02 of the Code. The Contractor did not request a variance on this issue, but even if it did, the variance should not be

granted. Rather, the Contractor should be required to modify its design drawings to comply with the Code. As previously stated, a considerable amount of time and consideration went into drafting the Code and determining the proper measurements to incorporate therein. A Contractor should not be permitted to skirt the Code provisions simply because it does not want to put forth the effort to alter its construction designs and drawings.

Therefore, consideration and approval of the Plan by the Planning Commission is premature, and it should refrain from making a decision on the Project at this time.

4. The Fire stairway on the Level 1 Floor Plan of the Building violates the National Fire Protection Association's 101 Life Safety Code and should not be permitted.

On Sheet A6.04 that was submitted with the Project application package, there is a clear violation of the National Fire Protection Association's 101 Life Safety Code ("Fire Code"). Section 7.1.3.2.2 indicates that "An exit enclosure shall provide a continuous protected path of travel to an exit discharge." In addition, Section 7.1.3.2.3 provides that "an exit enclosure shall not be used for any purpose that has the potential to interfere with its use as an exit and, if so designated, as an area of refuge."

The Project drawing indicates that the Fire Exit Stairway that serves the apartments as well as the parking garage is interior to the outside and discharges directly into the open lobby space of the commercial area on Level 1 and forces individuals to exit out the front double doors past the elevator tower. According to the Fire Code, a fire stairway must have a continuous path with a two hour fire wall from the vertical stair to the exterior and cannot pass by any other vertical openings, such as an elevator. It appears that all of the other stairs in the structure have the requisite horizontal exit, but this particular stairway only has a vertical exit. Therefore, the design drawings should be modified to comply with the Fire Code.

Therefore, consideration and approval of the Project by the Planning Commission is premature, and it should refrain from making a decision on the Project at this time.

5. Consideration and approval of the Project by the Planning Commission is premature due to the unresolved interpretations of the Lot Density provisions, Sections 1349.07 and 1713.02 of the Code, which are confusing, ambiguous, and have unintended consequences as written.

Certain Code provisions provide for a maximum residential density calculation, which were drafted with the intent to determine the maximum amount of occupants a building could have based on the square footage for safety reasons. If a building is too crowded compared to its area, it could create safety concerns if an evacuation becomes necessary. Section 1349.07 of the Planning Code titled "Lot Area Per Dwelling Unit (Residential Density) states that "the minimum lot area per dwelling unit in this district [B-4] is 300 square feet." There is no stated maximum requirement enumerated in this section. The City Planner submits that this is the end of the inquiry and finds that either the word *minimum and maximum* are the same or he simply ignores the word *minimum* altogether and interprets the Code as though the word did not exist. The City Planner will argue that each unit in a B-4 district equals 300 square feet for density calculations while, ignoring the word *minimum* in the Code. The City Planner looks at residential density permitted based on the lot area (84,942 square feet) divided by (300 square feet), which equals 283 units. He concludes that since the Contractor is only requesting 276 units, this is permitted as being below the maximum residential density. His calculations ignore the wording of the Code.¹

¹ Section 1329.02: Dwelling Unit—A single unit providing complete, independent living facilities for a single housekeeping unit. In no case shall a motor home, trailer, hotel or motel, lodging or boarding house, automobile, tent, or portable building be considered a dwelling unit. Dwelling units are contained within single-family dwellings (in which case the definition is synonymous), garage apartments, two-family dwellings, mixed-use dwellings, and multifamily dwellings. Units without self-contained sanitary facilities and kitchens (as defined herein) are not classified as dwelling units, but rather are considered to be rental rooms. See BOARDING HOUSE.

This calculation method might not be a problem if this situation only involved 1-2 bedroom apartments, which was the occupancy standard when the Code was written. However, this Code provision only considers the number of dwelling *units*, not bedrooms. In recent years, largely due to the expansion of, and renovations to West Virginia University, contractors have responded to increased demands for student housing by adding units with anywhere from 3-6 bedrooms. The additional number of bedrooms increases the square footage of the unit to several times the amount of a 1-2 bedroom unit. Thus, the maximum number of units permitted in a B-4 district would vary depending on the number of bedrooms per unit because the square footage per unit fluctuates in comparison to the number of occupants.

For example, for purposes of simplicity, consider the scenario with a 10,000 square foot lot. Under the Code as written, the lot would allow 33 units (10,000 square feet divided by 300 square feet). However, the square footage of each unit varies depending on the number of bedrooms in each unit. 33 2-bedroom units amount to 66 bedrooms. 33 4-bedroom units amount to 132 bedrooms. 33 6-bedroom units amount to 198 bedrooms. Undoubtedly, the square footage of a building with 66 bedrooms will have a vastly different square footage than a building with 198 bedrooms simply due to the amount of space needed to accommodate that many occupants. However, since the Code does not provide for a maximum square footage per unit, it does not accurately capture the residential density of a building based on the number of occupants.

Thus, when analyzing Section 1349.07, one must look simultaneously at Section 1713.02 of the West Virginia State Building Code titled "Minimum Area Requirements for Occupancy" which states:

Every dwelling unit for rent or lease within the corporate City limits shall meet minimum standards for square feet and area requirements as it pertains to number of occupants as set forth in this Section 1713.02.

Area for Sleeping Purposes. Every bedroom occupied by one person shall contain at least seventy square feet of floor area, and every bedroom occupied by more than one person shall contain at least fifty square feet of floor area for each occupant thereof.

Overcrowding. Dwelling units shall not be occupied by more than permitted by minimum area requirements of the following table.

Minimum Area Requirements
Minimum Area in Square Feet

| Space | 1-2 Occupants | 3-5 Occupants | 6 or More Occupants |
|------------------|-------------------------------------|---------------|---------------------|
| Living Room a, b | No requirements | 120 | 150 |
| Dining Room a, b | No requirements | 80 | 100 |
| Bedrooms | Shall comply with area for sleeping | | |

According to the chart in Section 1713.02 each unit has a different calculation of minimum square footage depending on the number of bedrooms/occupants. For example, the calculation for a unit with 3 occupants is 410 square feet ($70 \times 3 = 210 + 120 + 80$). Using the lot area in our situation, 84,942 square feet, only 207 3-bedroom units would be permitted ($84,942/410$). In other words, only 621 occupants would be permitted to live in the building in comparison to the lot size (207×3). The calculation for a unit with 6 occupants is 670 square feet ($70 \times 6 = 420 + 100 + 150$). Using the lot area in our situation, 84,942 square feet, only 127 6-bedroom units would be permitted ($84,942/670$). In other words, only 762 occupants would be permitted to live in the building in comparison to the lot size (127×6). No one can argue that there is a big difference between 621 occupants in a building and 762 occupants in a building. Moreover, this example considers the simplest of scenarios, i.e., when all of the apartments have the same number of bedrooms. Consider the difficulty in calculating residential density when one is dealing with units with different numbers of bedrooms, which is the situation involving

this Project. A formal interpretation of these Code provisions should be issued by the City Planner and/or Planning Commission and until such time, this Project should not move forward.

When dealing with a mixed-use complex as large as this Project, it is imperative that the residential density and occupancy limits be given great consideration due to the serious safety issues with overcrowding and emergency situations that could arise. The overcrowding of this building coupled with the fire code violations in the design could be catastrophic. Therefore, consideration and approval of the Project by the Planning Commission is premature, and it should refrain from making a decision on the Project at this time.

III. CONCLUSION

For all the foregoing reasons, the Planning Commission should refrain from considering or approving the Standard at Morgantown Project Plan, and any such decision is premature due to numerous outstanding determinations by third parties, including the determination of the variance petitions by the Morgantown Board of Zoning Appeals, decisions and approvals by the West Virginia Division of Highways and the Morgantown City Council; violations of various ordinances and codes; and a necessary interpretation of critical life safety Code provisions.

Any decision regarding the Project by the Planning Commission at this time would be arbitrary and capricious since the Contractor is trying to rewrite the Code to meet solely its needs without any regard for the community and the safety of its citizens. If the Planning Commission allows this Contractor on this Project to skirt numerous safety provisions in the Code by approving these variances and this Project as submitted, it sends a clear message that the Commission will allow others to violate the Code by simply filing variance petitions.

Moreover, the inconsistent application of the Code provisions by the City Planner makes it difficult for other contractors in the future to determine which Code provisions must be

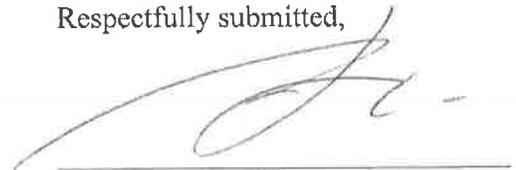
followed and which provisions can be ignored. Certainly this was not the intention of the drafters who desired for all provisions of the Code to be followed. The goal of the Planning Commission should be to level the playing field so that some contractors are not given preferential treatment, or even the appearance of preferential treatment, over other contractors. Most contractors take great care to follow the requirements of the Code, and the Contractor for this Project should be held to the same standard.

Mr. Giuliani has retained the services of West Virginia registered architect, John Sausen of Omni Associates to evaluate the Project at issue. Mr. Sausen regularly provides construction and architectural services in the Morgantown area and supports the arguments and calculations contained in this Objection to the Planning Commission.

Thus, the Planning Commission should refrain from considering or approving the Standard at Morgantown Project Plan.

Date: December 9, 2015

Respectfully submitted,



Samuel H. Simon
W.Va. ID 9244
ssimon@hh-law.com
Catherine S. Loeffler
W.Va. ID 12442
loefflercs@hh-law.com
HOUSTON HARBAUGH, P.C.
Three Gateway Center
401 Liberty Avenue, 22nd Floor
Pittsburgh, PA 15222
(412) 281-5060



Development Services
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

Date: 10 DEC 2015
To: Planning Commission
RE: James Giuliani Objections to Planning Commission's Consideration of Type III Site Plan Petition Case No. S15-09-III

At 11:11 a.m. on Thursday, December 10, 2015, the undersigned received an email from Ms. Catherine Loeffler, Esq. of Houston Harbaugh representing Mr. James Giuliani. Attached to said email was Mr. Giuliani's contention that any consideration and/or approval of the Standard at Morgantown Project by the Planning Commission is premature.

The purpose of this memorandum is, for the benefit of the Planning Commission, to address Mr. Giuliani's objections and to confirm that the Planning Commission can and should proceed in considering the subject Type III Site Plan petition.

Objection A.1. "Consideration and approval of the Standard at Morgantown Project by the Planning Commission is premature due to the outstanding variance petitions that can only be decided by the Morgantown Board of Zoning Appeals."

Response: A proper order or sequence of approvals is not established in the City's Planning & Zoning Code nor in West Virginia State Code for developments requiring approvals by both the Planning Commission and the BZA. When developments require approvals by both reviewing authorities, approvals by each authority are conditioned upon the granting of approval(s) by the other authority. Additionally, Planning Commission and/or BZA approvals for developments that also requires annulment(s) include condition(s) that their respective approval(s) are contingent upon City Council's approval of the related annulment(s).

One could attempt to make the same argument if cases were scheduled for decision by the BZA in advance of those related cases requiring decision by the Planning Commission.

The site plan must be approved or denied by the administrator (Planning Commission for Type III Site Plans) based upon the determination that the proposed plan/project [see 1385.12(B)]:

1. Complies with the general, design and performance standards; or,

From the Desk of:
Christopher M. Fletcher, AICP
Director of Development Services

Page 1 of 8





Development Services
 389 Spruce Street
 Morgantown, WV 26505
 304.284.7431

MEMORANDUM

2. Does not meet the general, design and performance standards; or,
3. Approval of the site plan subject to any conditions, modifications and restrictions as required by the administrator (Planning Commission for Type III Site Plans) which will ensure that the project meets the general, design and performance standards.

Approval or rejection based on these specific standards ensure the uniform ability to use property in accord with the ordinances adopted by City Council. Any decision based on factors other than the ordinances/statutes could be reversed. [W. Va. Code 8A-9-1; *Rissler v. Jefferson County Bd. Of Zoning Appeals*, 225 W. Va. 346 (2010)].

Objection A.1.a

"The variance petition requesting 692 parking spaces for 866 occupants on 1.95 acres in a B-4 zoning district violates Sections 1365.04 and 1349.06 of the Code and will likely be denied by the BZA."

Response:

The undersigned maintains the requisite loading space determination was correctly calculated. Specifically, Article 1349.08(D) provides that residential uses containing thirty (30) or more dwelling units shall conform to the loading requirements set forth in Section 1365.10 as a "Type II Use" (see Table 1365.10.01 below).

| Use Description | Floor Area in Square Feet | Number of Loading Spaces Required |
|--|---------------------------|-----------------------------------|
| <u>Type I:</u> Manufacturing, distribution, wholesaling, storage, and similar uses | 5,000 - 25,000 | 1 |
| | 25,001 - 60,000 | 2 |
| | 60,001 - 100,000 | 3 |
| | Each 50,000 above 100,000 | 1 |
| <u>Type II:</u> Office Buildings, hotels and motels, retail sales, hospitals, institutions and similar uses | 5,000 - 60,000 | 1 |
| | 60,001 - 100,000 | 2 |
| | Each 20,000 above 100,000 | 1 |

From the Desk of:
Christopher M. Fletcher, AICP
 Director of Development Services

Page 2 of 8



Development Services
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

The minimum number of loading spaces calculation was determined by correctly applying this table as follows:

334,092 sq. ft. (residential use component)
- 100,000 sq. ft.
234,092 sq. ft.

$234,092 \text{ sq. ft.} / 20,000 = 11.7$

2 loading spaces (for the first 100,000 sq. ft. of the residential use component)
+ 12 loading spaces (for the remaining 234,092 sq. ft. of the residential use component)
14 loading spaces (minimum requirement)

When variance relief is requested, the decision to grant or deny relief is made by the Board of Zoning Appeals based on proof of four (4) factors. West Virginia State Code 8A-7-11(b) provides:

"The board of zoning appeals shall grant a variance to the zoning ordinance if it finds that the variance: (1) Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents; (2) 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; (3) Would eliminate an unnecessary hardship and permit a reasonable use of the land; and (4) Will allow the intent of the zoning ordinance to be observed and substantial justice done."

West Virginia State Code 8A-7-11(a) provides:

"A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land."

Exceeding the maximum parking standard does not involve permitting land uses that are otherwise prohibited in the zoning district. Exceeding the maximum parking standard does not involve changing the zoning classification of the subject realty. As such, the petitioner may seek variance relief accordingly. However, the merits of approving or denying the related variance petition are matters for the BZA to determine.

From the Desk of:
Christopher M. Fletcher, AICP
Director of Development Services

Page 3 of 8



Development Services
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

Objection A.1.a.I “The City Planner and Contractor erred in their FAR calculations.”

Response: This objection is an incorrect representation of Staff’s related conformity determination. The undersigned maintains the maximum FAR determination was correctly calculated. Specifically, Page 7 of 9 of Staff’s Conformity Report dated 06 NOV 2015 clearly describes, by providing the related calculation, that the area used for parking spaces in excess of the maximum parking standard is in fact included in site’s maximum floor area ratio (FAR) calculation thereby *penalizing* the development program for exceeding the maximum parking standard.

If the proposed FAR, including the area used for parking spaces in excess of the maximum standard, exceeded the maximum FAR standard, than variance relief would be required to exceed the maximum FAR standard. This is, however, not the case. Specifically, the proposed FAR, including the area used for parking spaces in excess of the maximum standard is 490,999 square feet, which is less than the maximum FAR standard of 594,594 square feet for the subject development site.

Staff did not represent conformity with the maximum FAR standard as an exemption or giving the developer the opportunity to exceed the maximum parking standard. Specifically, the FAR calculation is not and cannot be used to permit the maximum parking standard to be exceeded. The FAR standard, in terms of structured parking spaces, specifically limits the parking exemption from including parking spaces that exceed the maximum parking standard. In fact, requisite variance relief to exceed the maximum standard was identified by the undersigned and a related variance petition has been submitted under Case No. V15-70. The merits of approving or denying the related variance petition are matters for the BZA to determine.

Objection A.1.b. “The transparency variance requested for the Project to avoid the minimum transparency requirement violates Section 1351.01 of the Code and will likely not be approved by the BZA.”

Response: Developing less than the minimum percentage of clear windows does not involve permitting land uses that are otherwise prohibited in the zoning district. Developing less than the minimum percentage of clear windows does not involve changing the zoning classification of the subject realty. As

From the Desk of:
Christopher M. Fletcher, AICP
Director of Development Services

Page 4 of 8



Development Services
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

such, the petitioner may seek variance relief accordingly. However, the merits of approving or denying the related variance petition are matters for the BZA to determine.

Objection A.1.c. "The air flow and sunlight distribution variance requested for the Project must be considered and decided upon solely by the BZA; therefore, any consideration or approval of the Project by the Planning Commission is premature."

Response: As explained under Objection 1.A. above, a proper order or sequence of approvals is not established in the City's Planning & Zoning Code nor in West Virginia State Code for developments requiring approvals by both the Planning Commission and the BZA. When developments require approvals by both reviewing authorities, approvals by each authority are conditioned upon the granting of approval(s) by the other authority.

The BZA's review concerning the minimizing canyon effects provision is to determine whether or not the Board concurs with the petitioner's Air Flow Analysis and Sunlight Distribution Analysis that resultant conditions do not warrant mitigating design elements. If the BZA agrees, then it rules accordingly. If the BZA does not agree, then it determines whether or not to grant variance relief accordingly.

Objection A.2. "Consideration and approval of the Project by the Planning Commission is premature due to outstanding decision by third parties, such as the West Virginia Division of Highways and the Morgantown City Council."

Response: As explained under Objection 1.A. above, a proper order or sequence of approvals is not established in the City's Planning & Zoning Code nor in West Virginia State Code for developments requiring approvals by both the Planning Commission and the BZA. When developments require approvals by both reviewing authorities, approvals by each authority are conditioned upon the granting of approval(s) by the other authority. Additionally, Planning Commission and/or BZA approvals for developments that also require annulment(s) include condition(s) that their respective approval(s) are contingent upon City Council's approval of the related annulment(s). Final access agreement(s)/permit(s) by the West

From the Desk of:
Christopher M. Fletcher, AICP
Director of Development Services

Page 5 of 8



Development Services
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

Virginia Division of Highways (WVDOH) are not required prior to Planning Commission and/or BZA consideration of development elements for which WVDOH must grant approvals. WVDOH approvals must be obtained by the developer prior to building permit issuance.

Objection A.2.a. “The BZA cannot render a decision on the variance regarding the maximum width of a driveway at the curb line and the maximum width of a driveway at the street right-of-way line because there are outstanding issues that need to be determined by the West Virginia Division of Highways.”

Response: The petitioner has, as required under 1385.08(D)(2), submitted with the subject Type III Site Plan petition written/electronic correspondence from WVDOH documenting its approval of the petitioner's traffic impact study (TIS). An approved WVDOH access permit/agreement is not required for Planning Commission's site plan review, but is required prior to the issuance of a building permit. WVDOH's stated conditions in its approval of the petitioner's TIS are matters that must be addressed prior to WVDOH's approval of the petitioner's access permit/agreement, which must be obtained prior to the issuance of a building permit.

Objection A.2.b. “Consideration and approval of the Project by both the BZA and the Planning Commission is premature due to the outstanding right-of-way annulment request concerning Wall Street by the Morgantown City Council.”

Response: Again, Planning Commission and/or BZA approvals for developments that also require annulment(s) include condition(s) that their respective approval(s) are contingent upon City Council's approval of the related annulment(s).

Objection A.3. “The height measurements for the apartment complex building violate the City of Morgantown Planning and Zoning Code and should not be permitted.”

Response: This objection is based on an incorrect determination of the proposed building's height in feet. The undersigned maintains the maximum FAR determination was correctly calculated. Specifically, Section 1329.02

From the Desk of:
Christopher M. Fletcher, AICP
Director of Development Services

Page 6 of 8



Development Services
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

provides that "BUILDING HEIGHT IN FEET" is, "The vertical distance measured from the lot ground level to the highest point of the roof for a flat roof...Building height calculation shall not include chimneys, spires, elevator and mechanical penthouses, water tanks, radio antennas, and similar projections."

Section 1329.02 provides that a "PARAPET" is, "The portion of a wall which extends above the roofline."

By definition, the parapet extends above the roofline and is a "similar projection" excluded from calculating BUILDING HEIGHT IN FEET.

The proposed building's height in feet was therefore correctly calculated as having a halfway point between the highest and lowest elevations of the building footprint of less than the 120 foot maximum standard.

Objection A.4. "The Fire stairway on the Level 1 Floor Plan of the Building violates the National Fire Projection Association's 101 Life Safety Code and should not be permitted."

Response: The task of determining compliance with the State Building Code and the State Fire Code are matters for the jurisdictions having authority, which are the City's Chief Building Code Official and the City's Fire Marshal respectively. The Planning Commission and the BZA do not have the authority to determine compliance with said Codes. Any decision by the Planning Commission or the BZA based on factors other than those under its authority could be reversed.

Objection A.4. "Consideration and approval of the Project by the Planning Commission is premature due to the unresolved interpretations of the Lot Density provisions, Sections 1349.07 and 1713.02 of the Code, which are confusing, ambiguous, and have unintended consequences as written."

Response: The undersigned maintains the maximum residential density determination was correctly calculated for the subject Site Plan petition as stated in the Planning and Zoning Code. Whether or not the City's present residential density standard best reflects a housing market uniquely driven by unrelated occupants rather than related occupants is not the matter before

From the Desk of:
Christopher M. Fletcher, AICP
Director of Development Services

Page 7 of 8



Development Services
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

the Planning Commission. The only measure in determining compliance with the present maximum residential density standard is what City Council has enacted in the Planning and Zoning Code. Any decision by the Planning Commission or the BZA based on factors other than those under its authority could be reversed

Conclusion

It is the opinion of the undersigned that the objections presented by Mr. Giuliani are matters for which he appears to oppose the subject development. Mr. Giuliani's objections are not matters for which the Planning Commission cannot fulfill its duties and exercise its authority to consider the subject Type III Site Plan petition and render a decision to: 1.) approve; 2.) deny; or, 3.) approve with conditions, modifications, and restrictions.

From the Desk of:
Christopher M. Fletcher, AICP
Director of Development Services

Page 8 of 8



MORGANTOWN BOARD OF ZONING APPEALS

December 16, 2015
6:30 PM
City Council Chambers

Board Members:

Leanne Cardoso, Chair
Bill Burton, Vice-Chair
Linda Herbst
George Papandreas
Jim Shaffer

COMBINED STAFF REPORT

CASE NO: V15-65 thru V15-71
Standard at Morgantown, LLC / 1303 University Avenue

REQUEST and LOCATION:

Request by J. Wesley Rogers, on behalf of Standard at Morgantown, LLC, for approval of the following variance petitions related to a proposed development project at 1303 University Avenue.

- V15-65 Maximum front setback standards.
- V15-66 Minimum rear setback standard.
- V15-67 Canyon effects.
- V15-68 Maximum curb cut width standards on University Avenue.
- V15-69 Maximum curb cut width standards on Walnut Street.
- V15-70 Maximum number of parking spaces standard.
- V15-71 Minimum transparency standard.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 26A, Parcels 6 thru 15; B-4, General Business District

SURROUNDING ZONING:

B-4, General Business District

BACKGROUND:

The petitioner seeks to redevelop several sites along the west or river side of University Avenue beginning at Walnut Street and extending north approximately 340 feet. Addendum A of this report illustrates the location of the subject site.

Proposed Development Program

The following generally summarizes the proposed development program illustrated in the petitioner's development plans.

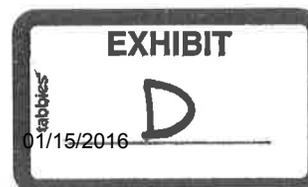
- The development site is currently occupied by "McClafferty's Irish Pub," "Vic's Towing and Garage," the former "Golds Gym" building that has been converted into apartments, and the "Shell" gas station mini-mart. The development site includes the public right-of-way of Wall Street, which requires annulment approval by City Council.
- The development site is identified by CTL Engineering as 1.95 acres (84,942 square feet), which includes 82,155 square feet (1.88 acres) for Parcels 6 thru and including 15 of Tax Map 26A and the Wall Street right-of-way.
- The development program includes 276 dwelling units with a total of 866 occupants.
- A total of 692 parking spaces are proposed in 12 parking deck levels that are wrapped by the nonresidential and residential portions of the building.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431





MORGANTOWN BOARD OF ZONING APPEALS

December 16, 2015
6:30 PM
City Council Chambers

Board Members:

Leanne Cardoso, Chair
Bill Burton, Vice-Chair
Linda Herbst
George Papandreas
Jim Shaffer

- The following restates the square footages of programmed spaces provided in submitted plans.
 - Commercial 13,351 sf
 - Retail..... 8,486 sf
 - Parking 225,554 sf (692 parking spaces)
 - Housing 419,947 sf
 - TOTAL 667,338 sf
 - Total less parking 441,784 sf
- One (1) right-in-right-out-only driveway entrance is proposed on University Avenue between Wall Street and Fayette Street to access the parking decks. One (1) driveway entrance is proposed on Walnut Street to access the parking decks, dumpster area, and loading area.
- All above ground utilities will be relocated to below ground across the University Avenue frontage of the site to ensure fire department access.

Required Planning and Zoning Code Approvals

Attached hereto is a detailed Planning and Zoning Code Conformity Report dated 06 NOV 2015. The following approvals are required for the development program as proposed.

1. City Council approval:
 - a. Right-of-way annulment of Wall Street between University Avenue and the CSX right-of-way.

An annulment application has been submitted and the City Engineer is awaiting requisite letters from public/private utilities.
2. Planning Commission approvals:
 - a. S15-09-III..... Type III Site Plan Development of Significant Impact (DSI).

During its 10 DEC 2015 hearing, the Planning Commission tabled the petitioner's Type III Site Plan petition so the Commission could review objections submitted by Mr. James Giuliani at the hearing, review Staff's response to said objections, and receive additional information concerning, among others, pedestrian traffic generated by the proposed development. Mr. Giuliani's objections and Staff's initial response are attached hereto so they can be reviewed by the Board in advance of the hearing.
 - b. Minor Subdivision to combine the ten (10) parcels and the Wall Street right-of-way that compose the development site.

A minor subdivision application must be submitted for Planning Commission review following site plan and annulment approvals by the Planning Commission and City Council respectively.

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

December 16, 2015
6:30 PM
City Council Chambers

Board Members:

- Leanne Cardoso, Chair
- Bill Burton, Vice-Chair
- Linda Herbst
- George Papandreas
- Jim Shaffer

3. BZA approvals:

a. V15-65.....Maximum front setback.

Article 1349.04(A)(2) provides a maximum front setback standard for the principal building as the average depth of the nearest two lots on either side or 10 feet, whichever is less. The petitioner's plans illustrate front setbacks varying from 4.62 feet to 8.87 feet, which exceed the 0.26 foot front setback for the *Mode Roman* building and requires variance relief.

It should be noted the petitioner's proposed front setbacks increase the functional width of the existing narrow sidewalk along University Avenue and should be viewed as a significant improvement to pedestrian safety.

b. V15-66.....Minimum rear setback.

Article 1349.04(A)(5) provides a minimum rear setback standard of 10% of the lot depth or 10 feet, whichever is greater. The petitioner's plans illustrate encroachments for a portion of the building, which requires variance relief.

c. V15-67.....Canyon effects.

Article 1351.01(I) provides that to minimize canyon effects created by tall structures, buildings taller than three (3) stories shall incorporate design elements that preserve adequate light and airflow to public spaces including streets and sidewalks. Desired design elements include, but are not limited to, one or a combination of recessing or "stepping back" upper floors, increase front and/or street side setbacks while incorporating measures to preserve the continuity of the predominant street wall, etc.

Site plan applications for buildings taller than three (3) stories must include an Air Flow Analysis and a Sunlight Distribution Analysis. The petitioner asserts that the Air Flow Analysis and Sunlight Distribution Analysis performed for the proposed development illustrate adequate light and airflow are preserved to public spaces.

The Board must either, 1.) Determine that the proposed building sufficiently incorporates design elements that preserve adequate light and airflow to public spaces including streets and sidewalks; or, 2.) Approve or deny variance relief from incorporating design elements that preserve adequate light and airflow to public spaces including streets and sidewalks.

d. V15-68.....Maximum driveway curb cut width at the curb line and at the right-of-way line -- University Avenue.

Article 1351.01(D) provides maximum driveway curb cut width standards at the curb line of 26 feet and at the right-of-way line of 22 feet. The proposed University Avenue driveway curb cut width at the curb line is 55.77 feet, which requires variance relief of 29.77 feet. The proposed width at the right-of-way line is 27 feet, which requires variance relief of 5 feet.

It should be noted WVDOH is the authority having jurisdiction to access its road system including driveway entrance location and design.

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

December 16, 2015
6:30 PM
City Council Chambers

Board Members:

- Leanne Cardoso, Chair
- Bill Burton, Vice-Chair
- Linda Herbst
- George Papandreas
- Jim Shaffer

- e. V15-69..... Maximum driveway curb cut width at the curb line and at the right-of-way line – Walnut Street.

Article 1351.01(D) provides maximum driveway curb cut width standards at the curb line of 26 feet and at the right-of-way line of 22 feet. The proposed Walnut Street driveway curb cut width at the curb line is 104.39 feet, which requires variance relief of 78.39 feet. The proposed width at the right-of-way line is 58.75 feet, which requires variance relief of 36.75 feet.

It should be noted the proposed curb cut on Walnut Street serves three (3) separate functions: 1.) Access to a loading bay; 2.) Access to the parking garage; and, 3.) Access to internal garbage containment facilities.

- f. V15-70..... Maximum parking.

Article 1365.04(l) provides a maximum parking requirement of 115 percent of the minimum parking requirement. As presenting in the attached Conformity Report, the petitioner seeks to develop 692 parking spaces, which exceeds the maximum parking and loading space standard of 193 spaces requiring variance relief.

It should be noted some of the principle purposes of maximum parking standards are to mitigate land consumption demands by big-box and suburban retail development from overbuilding surface parking, which reduces green space, damages valuable ecological resources, and undermines best stormwater management practices. Although not afforded in the City of the Morgantown's Planning and Zoning Code, some communities exempt structured parking from maximum parking requirements [see American Planning Association, Planner's Advisory Service, Essential Information Packet 24 (PAS EIP-24) September 2009, Page 19].

- g. V15-71..... Transparency

Article 1351.01(K) provides a minimum transparency standard of 60% of the street-facing building façade between three (3) feet and eight (8) feet in height, which must be comprised of clear windows that allow views of indoor nonresidential space or produce display areas. The petitioner's plans illustrate transparencies of 52% along University Avenue and 11% along Walnut Street, which require variance relief of 8% and 49% respectively.

ANALYSIS:

Comprehensive Plan Concurrence

As recommended in Chapter 9 "Implementation" of the 2013 Comprehensive Plan Update, Addendum B of this report identifies how the proposed development program relates to the land management intent, location, and pattern and character principles of the current Comprehensive Plan and the 2010 Downtown Strategic Plan Update. Staff encourages the Board to review these Plans for guidance as Addendum B is not intended to represent a complete comparative assessment.

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

December 16, 2015
6:30 PM
City Council Chambers

Board Members:

Leanne Cardoso, Chair
Bill Burton, Vice-Chair
Linda Herbst
George Papandreas
Jim Shaffer

It should be noted that "shall" statements within the said Plans must be understood as desired objectives and strategies that do not have the force or effect of law unless incorporated into the City's Planning and Zoning Code.

It is the opinion of the Planning Division, as explicated in Addendum B, that the proposed development program appears to be in concurrence with the Plans' principles for land management and desired development pattern and character.

STAFF RECOMMENDATION:

The Board of Zoning Appeals must determine whether the proposed requests meet 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(s) do 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(s). [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Each respective variance petition must be considered and acted upon by the Board separately.

Addendum C 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 responses (deleted matter struck through; new matter underlined).

Staff recommends that each variance petition, if granted, include the following conditions:

1. That Type III Site Plan approval for the Development of Significant Impact must be granted by the Planning Commission and related conditions observed.
2. That annulment of the Wall Street right-of-way must be approved by City Council.
3. That minor subdivision petition approval must be granted by the Planning Commission combining Parcels 6 thru 15 of Map 26A and the annulled portion of the Wall Street right-of-way and final plat recorded prior to building permit issuance.

Staff submits the following recommendations for each petition:

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

December 16, 2015
6:30 PM
City Council Chambers

Board Members:

Leanne Cardoso, Chair
Bill Burton, Vice-Chair
Linda Herbst
George Papandreas
Jim Shaffer

| Case Nos. | Code Provisions / Recommendation |
|-----------|---|
| V15-65 | <p>Variance relief from Article 1349.04(A)(2) to exceed the maximum front setback standard.</p> <p><i>No Staff recommendations are submitted concerning the petitioner's Findings of Facts. Because the petitioner's proposed setbacks increase the functional width of the existing narrow sidewalk along University Avenue, Staff recommends variance relief be granted as requested without conditions.</i></p> |
| V15-66 | <p>Variance relief from Article 1349.04(A)(5) to encroach into the minimum rear setback standard for the principal building.</p> <p><i>Minor Findings of Fact revision recommendations are provided in Addendum C. No Staff recommendation is submitted concerning whether variance relief should be granted as requested.</i></p> |
| V15-67 | <p>Article 1351.01(l) "Canyon Effects." The Board must either, 1.) Determine that the proposed building sufficiently incorporates design elements that preserve adequate light and airflow to public spaces including streets and sidewalks; or, 2.) Approve or deny variance relief from incorporating design elements that preserve adequate light and airflow to public spaces including streets and sidewalks.</p> <p><i>Minor Findings of Fact revision recommendations are provided in Addendum C. However, Staff recommends the Board determine that, based on the Wind Flow Analysis and Sunlight Distribution Analysis submitted by the petitioner, no additional or further design elements are required to preserve adequate light and airflow to public spaces including streets and sidewalks.</i></p> |
| V15-68 | <p>Variance relief from Article 1351.01(D) to exceed the maximum driveway curb cut width at the curb line and at the right-of-way line for the proposed driveway entrance on University Avenue.</p> <p><i>Minor Findings of Fact revision recommendations are provided in Addendum C. Because WVDOH is the authority having jurisdiction to access its road system, Staff recommends variance relief be granted as requested with the following conditions:</i></p> <ol style="list-style-type: none"> 1. <i>That all requisite WVDOH access permits/agreements be obtained by the petitioner prior to building permit issuance.</i> 2. <i>That the final width of the driveway curb cut at the curb line and at the right-of-way line shall be determined by WVDOH's access permits/agreements.</i> 3. <i>That the sidewalk along site's University Avenue frontage shall be reconstructed to the satisfaction of the City Engineer and, where practicable, incorporate design elements utilized for the High Street Streetscape Improvement Projects.</i> |

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

December 16, 2015
6:30 PM
City Council Chambers

Board Members:

Leanne Cardoso, Chair
Bill Burton, Vice-Chair
Linda Herbst
George Papandreas
Jim Shaffer

| Case Nos. | Code Provisions / Recommendation |
|-----------|--|
| V15-69 | <p>Variance relief from Article 1351.01(D) to exceed the maximum driveway curb cut width at the curb line and at the right-of-way line for the proposed driveway entrance on Walnut Street.</p> <p><i>Minor Findings of Fact revision recommendations are provided in Addendum C. Because the proposed driveway curb cut on steep sloping Walnut Street serves three (3) access functions and because the affected block of Walnut Street is a dead-end street with limited utilization, Staff recommends variance relief be granted as requested with the following conditions:</i></p> <ol style="list-style-type: none"> 1. That the final width of the driveway curb cut at the curb line and at the right-of-way line shall be determined by the City Engineer based on best practice assessment of construction documents submitted at building permit application. 2. That the sidewalk along site's Walnut Street frontage shall be reconstructed to the satisfaction of the City Engineer and, where practicable, incorporate design elements utilized for the High Street Streetscape Improvement Projects. |
| V15-70 | <p>Variance relief from Article 1365.04(I) to exceed the maximum number of parking spaces in the non-residential district.</p> <p><i>Minor Findings of Fact revision recommendations are provided in Addendum C. No Staff recommendation is submitted concerning whether variance relief should be granted as requested.</i></p> |
| V15-71 | <p>Variance relief from the minimum transparency requirement set forth in Article 1351.01(K).</p> <p><i>Minor Findings of Fact revision recommendations are provided in Addendum C. No Staff recommendation is submitted concerning whether variance relief should be granted as requested.</i></p> |

Attachments: Applications, drawings, and enclosures noted above.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431

STAFF REPORT ADDENDUM A

V15-65 thru V15-71 / Standard at Morgantown, LLC / 1303 University Avenue



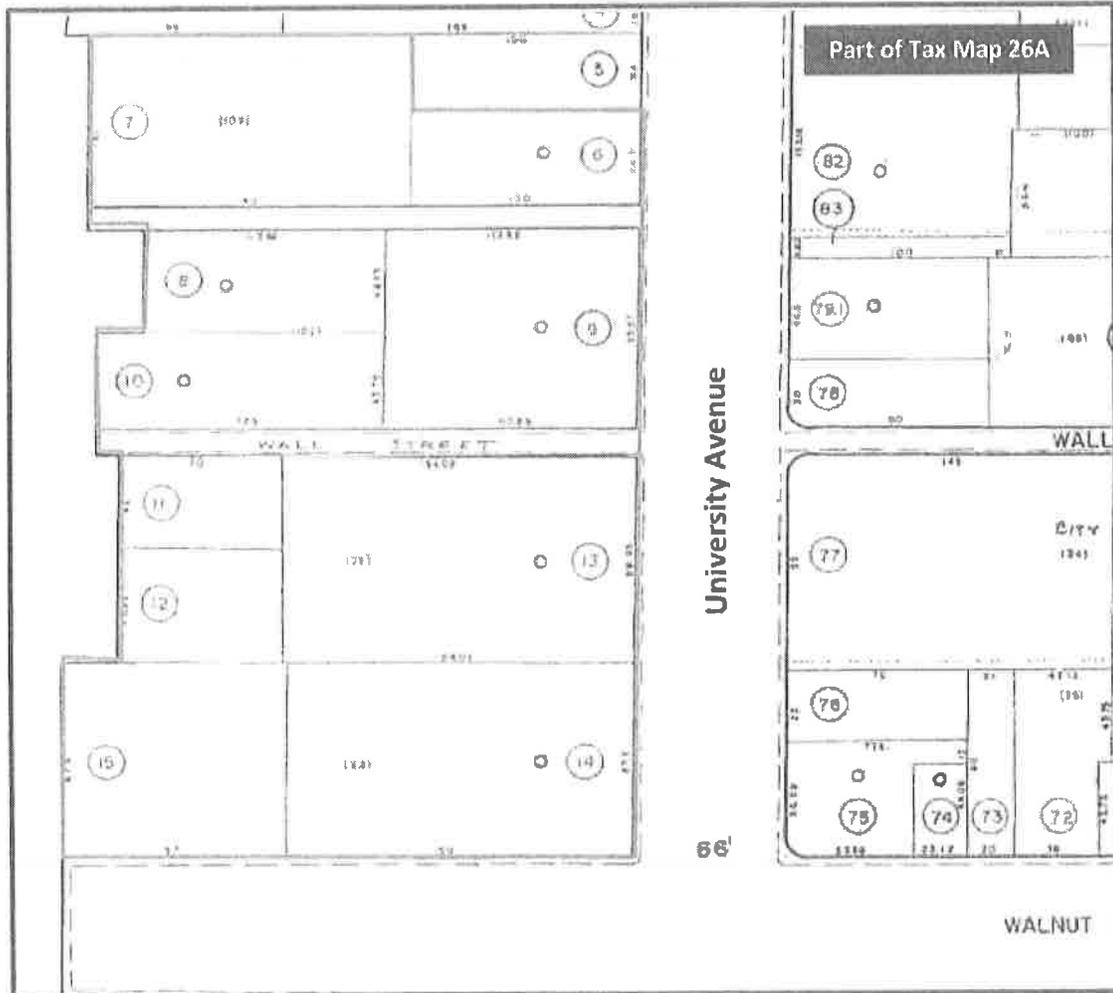
STAFF REPORT ADDENDUM A

V15-65 thru V15-71 / Standard at Morgantown, LLC / 1303 University Avenue



STAFF REPORT ADDENDUM A

V15-65 thru V15-71 / Standard at Morgantown, LLC / 1303 University Avenue



STAFF REPORT ADDENDUM B

V15-65 thru V15-71 / Standard at Morgantown, LLC / 1303 University Avenue

Concurrence with the 2013 Comprehensive Plan Update

The following narrative identifies where, in the opinion of the Planning Division, the subject development of significant impact is in concurrence and/or is inconsistent with the 2013 Comprehensive Plan Update.

| | |
|---------------|--|
| INTENT | Development proposals will reflect the spirit and values expressed in the Plan's principals. |
|---------------|--|

Principles for Land Management

| | | |
|-------------|---|--|
| Principal 1 | Infill development and redevelopment of underutilized and/or deteriorating sites takes priority over development in green field locations at the city's edge. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
|-------------|---|--|

The site is located within the "Encouraged Growth" area, the "Core" pattern and character area, and the "Downtown Enhancement" area and is not located within a green field location at the city's edge.

| | | |
|-------------|---|--|
| Principal 2 | Expansion of the urban area will occur in a contiguous pattern that favors areas already served by existing infrastructure. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
|-------------|---|--|

The site is located within the central urban core and appears to be supported by existing multi-modal transportation options and adequate utility infrastructure capacity.

| | | |
|-------------|--|--|
| Principal 3 | Downtown, adjacent neighborhoods and the riverfront will be the primary focus for revitalizations efforts. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
|-------------|--|--|

The site is located within the B-4 District and appears to leverage its proximity with the University's downtown campus, which should further desired strengthening of the city's urban core in terms of walkability, customer-base, and proximity to residents' primary destinations.

| | | |
|-------------|--|--|
| Principal 4 | Existing neighborhoods throughout the city will be maintained and/or enhanced. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
|-------------|--|--|

The site is not located within or adjacent to a "Neighborhood Conservation" area.

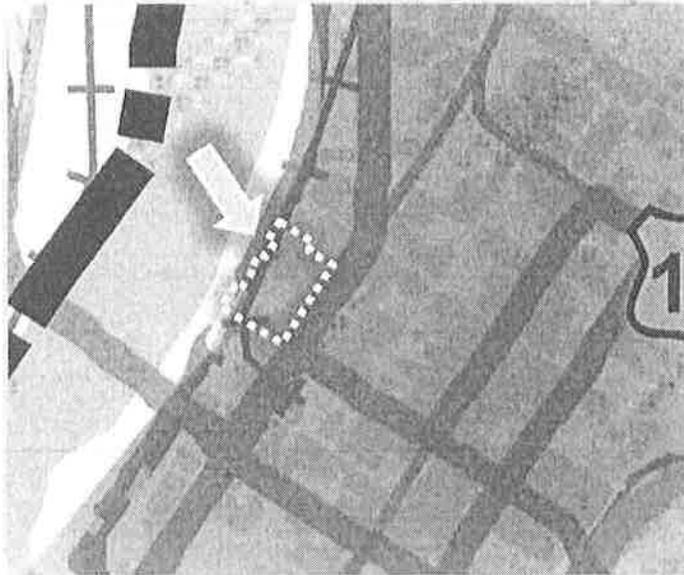
| | | |
|---|---|--|
| Principal 5 | Quality design is emphasized for all uses to create an attractive, distinctive public and private realm and promote positive perceptions of the region. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
| <p><i>The developer's professional design team consulted with the Downtown Design Review Committee (DRC) and incorporated several modifications that appear to address the Committee's comments and concerns in terms of architectural style and articulation, cladding material and color, elimination of a majority of balconies, etc.</i></p> | | |
| Principal 6 | Development that integrates mixed-uses (residential, commercial, institutional, civic, etc.) and connects with the existing urban fabric is encouraged. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
| <p><i>The proposed development includes street-level nonresidential use components and residential components. The urban fabric within the immediate built environment is heterogeneous given the various development pattern and character types, scales and densities, forms and functions, land uses, and construction periods.</i></p> | | |
| Principal 7 | Places will be better connected to improve the function of the street network and create more opportunities to walk, bike and access public transportation throughout the region. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
| <p><i>The site is well served by public transit and within walking and biking distance of the University campus, downtown PRT station, the downtown central business district, and the Caperton Trail. Redevelopment of the site to a higher mixed-use density links residents and retail customers to alternate modes of transportation thereby reducing auto dependency within the City and mitigating increased traffic congestion created by commuting traffic from outside the City.</i></p> | | |
| Principal 8 | A broad range of housing types, price levels and occupancy types will provide desirable living options for a diverse population. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
| <p><i>The proposed development program increases housing choice and diversity in the context of the immediate residential area. Proposed bedroom composition ranges from efficient units to six-bedroom units. Zoning ordinance dictates and/or guidelines concerning desired affordability and workforce housing opportunities have not been developed or enacted.</i></p> | | |

| | | |
|--|---|---|
| Principal 9 | Residential development will support the formation of complete neighborhoods with diverse housing, pedestrian-scaled complete streets, integrated public spaces, connection to adjacent neighborhoods, and access to transportation alternative and basic retail needs. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
| <i>The site is within the B-4, General Business District and located within a ¼ mile walking distance of basic retail goods and services, civic, institutional, and public spaces located within the central downtown business district and University's downtown campus.</i> | | |
| Principal 10 | Parks, open space, and recreational areas are incorporated as part of future development. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other |
| <i>Semi-public indoor and outdoor spaces have been incorporated to further quality of life, convenience, and enjoyment of the development's residents. The proposed at-grade setbacks appear to functionally widen adjoining public sidewalks. A new pedestrian way will be developed to significantly improve access to the Caperton Trail.</i> | | |
| Principal 11 | Environmentally sensitive and sustainable practices will be encouraged in future developments. | <input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input checked="" type="checkbox"/> Other |
| <i>Stormwater management best practices will be required for a large site currently lacking such measures. Environmental remediation work will be completed to remove and/or encapsulate contamination of current and previous uses. The developer's goals and objectives concerning sustainable construction techniques and industry accepted best practices have not been fully developed.</i> | | |

LOCATION

Development proposals will be consistent with the Land Management Map. If the proposal applies to an area intended for growth, infill, revitalization, or redevelopment, then it should be compatible with that intent and with any specific expectations within Areas of Opportunity. If the proposal applies to an area of conservation or preservation, it should be compatible with and work to enhance the existing character of the immediate surroundings.

The following graphic is clipped from the **Conceptual Growth Framework Map** included on Page 19 of the 2013 Comprehensive Plan Update. The subject development site is located within the “**Encouraged Growth**” area.



The following graphic is clipped from **Map 3 – Pattern and Character** included on Page 27 of the 2013 Comprehensive Plan Update. The subject development site is located within the “Core” pattern and character area.



■ Core

The following graphic is clipped from **Map 4 – Land Management** included on Page 39 of the the 2013 Comprehensive Plan Update. The subject development site is located within the "Downtown Enhancement" concept area.



Downtown Enhancement: Continued Infill and redevelopment in the Downtown core with a mix of employment, civic, commercial and residential uses as described in the 2010 Downtown Strategic Plan Update.

Corridor Enhancement:** Improving development along corridors with a mix of uses, increased intensity at major nodes or intersections and roadway improvements to improve traffic flow, pedestrian and biking experience.

PATTERN AND CHARACTER

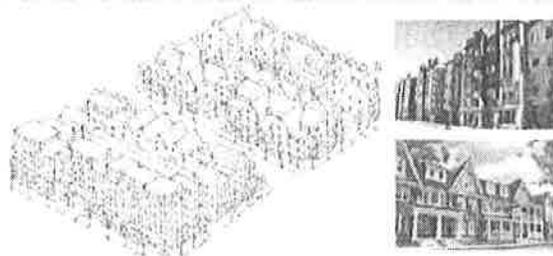
Development proposals in growth areas will be consistent with preferred development types. Development in areas where growth is not intended should be compatible with the relevant Character Areas description and expectations for how those areas should evolve in the future.

The following graphics are clipped from Pages 41 through 43 of the 2013 Comprehensive Plan Update and identify the development types desired within the "Core Enhancement" concept area.

| CONCEPT AREA | Appropriate Development Types | | | | | | | | | | |
|------------------|-------------------------------|----|----|---|----|----|----|---|---|----|----|
| | SF | TF | MF | C | NX | UC | CC | O | I | CD | OS |
| Core Enhancement | | | • | • | • | • | | | | | • |

MF Multi-family Residential

Includes various forms such as apartment buildings where three or more separate residential dwelling units are contained within a structure and townhouse dwelling types. They vary considerably in form and density depending on the context – from four-story or larger buildings set close to the street in and at the edge of the downtown core and along major corridors, to smaller two- to four-story buildings with greater street setbacks in areas between the downtown core and single-family neighborhoods.



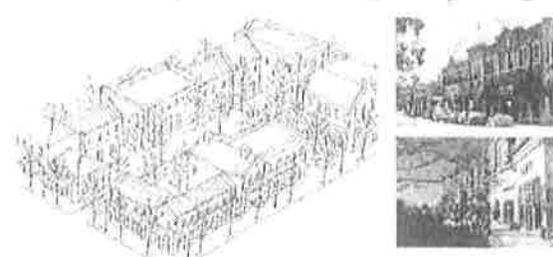
C Civic and Institutional

These sites include both public uses (government buildings, libraries, community recreation centers, police and fire stations, and schools) and semi-public or private uses (universities, churches, hospital campuses). Public uses should be strategically located and integrated with surrounding development. Civic and Institutional sites may be distinctive from surrounding buildings in their architecture or relationship to the street.



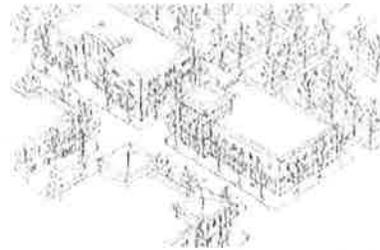
NX Neighborhood Center Mixed-Use

A mix of housing, office, commercial, and civic uses adjacent to one another or contained within the same structure (such as offices or apartments above ground-floor retail). Such uses should be compatible with and primarily serve nearby neighborhoods (within 1/2 mile). Parking should be located behind or to the side of buildings and may be shared between multiple uses.



UC Urban Center Mixed-Use

A mix of housing, office, commercial, and civic uses located adjacent to one another or sharing the same building. Buildings are generally larger in scale than neighborhood mixed-use and contain more employment and commercial uses that serve the broader community. Buildings should be located near the street with parking provided on-street or in shared parking configurations behind or between buildings.



OS Greenspace

Includes formal parks, recreation areas, trails, and natural open space.



**OBJECTIVES
AND
STRATEGIES** **Land Management**

A. Goal

Efficient and attractive use of land resources that strengthens the quality, character, and upkeep of the built environment while balancing redevelopment and strategic expansion with open space preservation.

Objective 1. Strengthen Downtown.

- ➔ LM 1.5 Create incentives for developers to build residential units downtown that will serve a broad age and socioeconomic range.

Objective 5. Encourage land use patterns that support improved transportation choice and efficiency.

- ➔ LM 5.2 Permit higher density development in areas that are well-supported by existing or planned transportation infrastructure or transit services.

Objective 6. Improve community appearance, particularly at city gateways.

- ➔ LM 6.5 Encourage major redevelopment projects to relocate utilities from view of primary corridors, arterials, and collectors with emphasis on underground placement.

**OBJECTIVES
AND
STRATEGIES**

Neighborhoods and Housing

A. Goal

Attractive, well-maintained neighborhoods that offer a broad mix of desirable housing options and convenient access to services and amenities.

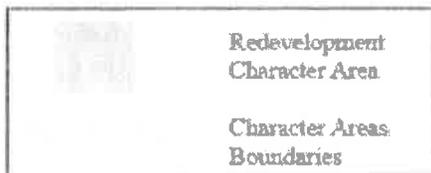
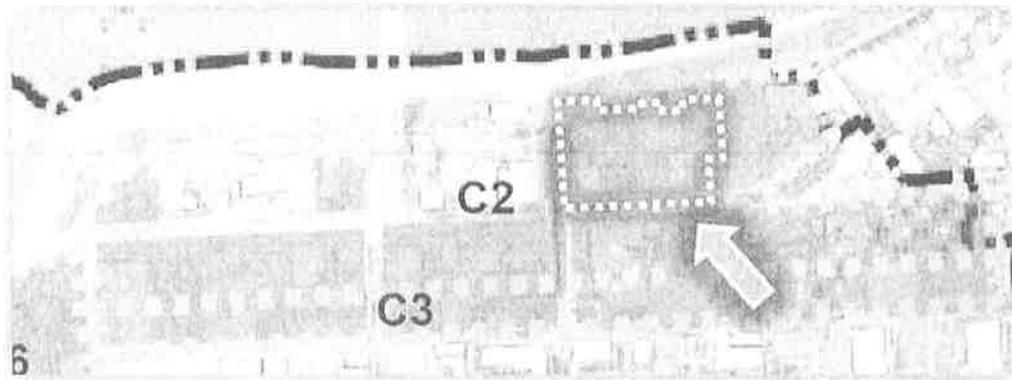
Objective 4. Promote the development of a broad range of housing types and prices.

➔ NH 4.1 Provide incentives to developers to encourage development of alternative housing types (i.e. higher density, live-work, mixed-use) in designated growth areas.

2010 Downtown Strategic Plan

Concurrence with the 2010 Downtown Strategic Plan

The following graphics have been clipped from the 2010 Downtown Strategic Plan [Page 69].



- ➔
- C1 : Waterfront
 - C2: University Avenue
 - C3: Chestnut Street
 - C4: Forest Avenue
 - C5: Pleasant Avenue
 - C6: Foundry Street
 - C7: South High Street
 - C8: Cobun Avenue
 - C9: Decker's Creek
 - C10: Downtown Core

The following graphics are clipped from Pages 76 through 80 of the 2010 Downtown Strategic Plan Update.

6.0 Downtown Strategies

6.3.2 Character Area 2 - University Avenue

| STRENGTHS | CHALLENGES |
|---|--|
| <ul style="list-style-type: none"> • Adjacent to the Monongahela River and its parks and amenities, West Virginia University, and the PRT. • Access to the River, Caperton Trail and Deckers Creek Trail. • On primary transportation routes into and out of downtown. • "Step down" in topography from downtown allows for taller buildings and for "tuck under" parking structures. • Urban street grid of downtown links across University Avenue in several locations. • Public transportation access and current investment in the Riverfront Park. • Some good redevelopment in repurposed buildings is currently occurring. | <ul style="list-style-type: none"> • University Avenue is not pedestrian friendly because of the high volume and high speed of traffic moving through intersections. • Urban street grid interrupted in some areas by new development. • Existing uses are primarily single-use facilities and do not provide for a mixed-use line corridor. • No unification in the facade of existing buildings along University Avenue. |
| <p>OPPORTUNITIES</p> | |
| <ul style="list-style-type: none"> • Promote vibrant mixed-use development to create gateway to the downtown and to the River. • Create overhead and on-grade pedestrian connections across University Avenue. • Utilize topography to create structured parking below and uses above. • Create "eyes on the park" by promoting residential uses within the corridor. • Promote the redevelopment of large single-use, single-story lots into mixed-use structures. | |



6.0 Downtown Strategies

UNIVERSITY AVENUE DEVELOPMENT THEME

An attractive pedestrian friendly mixed-use corridor on both sides of University Avenue that balances pedestrian and automobile concerns, promotes a proper gateway image to the city, and includes a variety of uses including lodging, hospitality, institutional uses, green manufacturing, residences and office uses that take advantage of its location along the river, its adjacency to the PRT and its proximity to Western Virginia University.

GOALS

- 6.3.1.2a Conduct a detailed traffic and urban design study of University Avenue to balance urban design quality, pedestrians, and cars.
- 6.3.1.2b Develop incentives to enable consolidation of parcels and consistency in development theme and pattern.
- 6.3.1.2c Adopt and enforce Main Street Morgantown Urban Design Guidelines and Design Guidelines for Public Projects.
- 6.3.1.2d Create specific design guidelines for the "University Avenue Character Area".



Inspirational imagery depicting well-crafted waterfront multi-family housing.

6.0 Downtown Strategies

General Intent / Goals

Dense pedestrian friendly mixed-use village with mixed-use buildings organized along University Avenue, existing streets and alleys and along the river

Planning Requirements

- Reinforce the urban quality by increasing the mass, density, and mixed-use buildings that front on well-designed pedestrian streets.
- Create a north-south pedestrian and bicycle accesses to the River at regular intervals at the ends of the alleys that extend to downtown.
- Create balance and harmony in the vertical and horizontal massing of buildings.
- Create a consistent architectural style and palette of materials.
- Areas characterized as "New Mixed-Use Development" in Figure 15 will offer retail/commercial on the ground floor and either office or residential on the upper floors.

Building Height

Maximum height as described in the B-4 Zoning District (120'). All new buildings should be a minimum of three (3) stories or 36' in height to promote a mix of uses and a continuous urban edge.

Setbacks

- Buildings should front onto University Avenue along a consistent "build to line" that allows for the expansion of the sidewalk to a twelve-foot minimum width on both sides of the University Avenue.
- Encourage buildings to be placed close to each other as allowed by building and fire codes.

Parking and Access

- As described in the B-4 Zoning District, with the addition of the City offering an option for reduced required parking amounts for downtown residential developers as described under Transportation Section 6.4.2.
- Access to parcels of land should be from extensions of the urban street and alley grid and not directly from University Avenue.

Building Placement

- Buildings should be oriented along streets and open spaces along an established "build to line" so that an urban edge is created with the buildings.
- Buildings should exhibit continuity in the design of their facades.
- Buildings that front streets and open spaces should have a well-designed and scaled first floor with human scaled elements, doors, windows, awnings, and stoops.
- Buildings should consider pedestrian scaled rhythms along the street and open space networks and provide architectural breaks or interest every 30 - 50 feet of horizontal distance.



6.0 Downtown Strategies

Materials

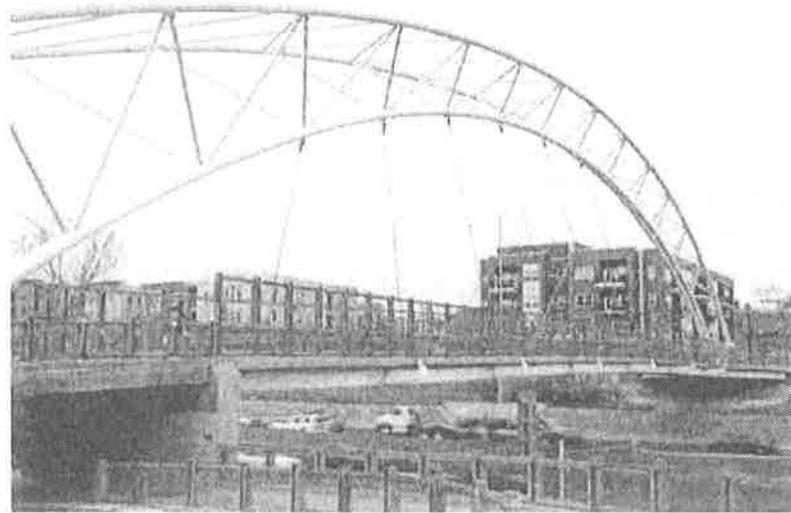
Materials should conform to existing B-4 standards and be consistent with the materials chosen for the existing historic buildings within the "University Avenue Character Area". Materials, methods, treatment, and type for private projects should adhere to the Design Guidelines found under Section N of the Main Street Morgantown Urban Design Document. Materials, methods, treatments, and types for public projects should adhere to Main Street Morgantown's Design Guidelines for Public Projects found in Sections II to V. Select materials and finishes for proposed new buildings that are compatible with historic materials and finishes found in the surrounding buildings that contribute to the special character of the historic district in terms of composition, scale, module, pattern, detail, texture, finish, color, and sheen.

Colors Palette

Warm and earth-toned colors will be encouraged predominantly. Brighter colors will be allowed but in limited accent areas.

Architectural Style

Encourage an architectural reference for the "University Avenue Character Area" that draws inspiration from historic and industrial era brick buildings as described within the Main Street Morgantown Urban and Public Projects Design Guidelines. Existing building renovations, rehabilitations, and adaptive re-uses should follow the Main Street Morgantown Urban and Public Projects Design Guidelines.



Inspirational imagery depicting pedestrian bridge over busy vehicular thoroughfare.



The Downtown Morgantown Strategic Plan

79

8.0 Downtown Strategies

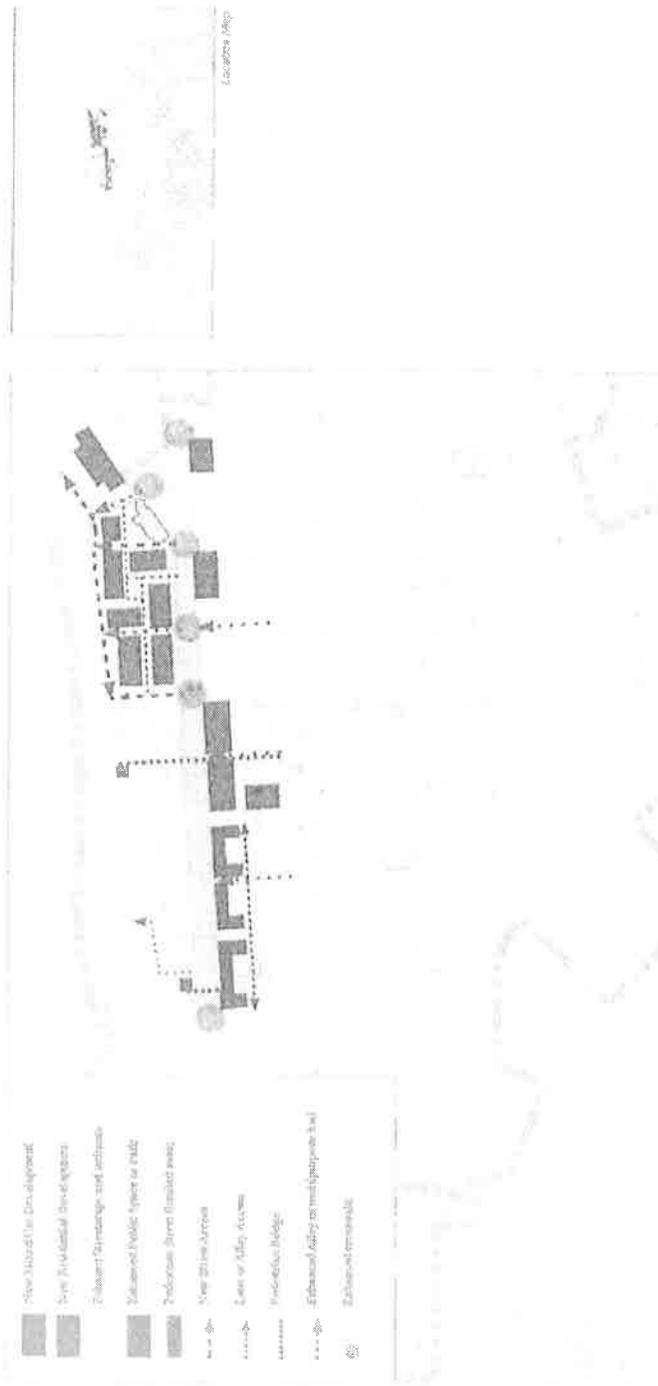


Figure 15: Conceptual site diagram for Clarendon Avenue

STAFF REPORT ADDENDUM C

V15-65 thru V15-71 / Standard at Morgantown, LLC / 1303 University Avenue

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).

Case No. V15-65 Exceed Maximum Front Setback Standard

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:

Granting the increased setbacks along the front of the building will not affect public health, safety or welfare, or rights of adjacent property owners or residents. In fact, it will provide for greater safety because it will allow the increase in width of the sidewalk allowing greater separation between pedestrians and vehicles. Currently at the location of proposed improvements and existing feature (Mode Roman Property) is a parking lot. Without a physical structure located adjacent to the beginning of the project allows the sidewalk to be increased in width without creating an immediate bottle neck for pedestrians.

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 proposed project is located within the B-4 Zoning District, which allows for buildings to be constructed at the front property line with 0' minimum and 10' maximum setback. Allowing the building to be set back from the property line will allow greater width for pedestrian sidewalk and provide a safer walking environment by greater separation between the public and vehicles. Additionally the existing overhead utilities will be buried along the frontage of the project. The additional setback will allow the utility owners to have additional space for the maintenance of their facilities. Per conversations with the Fire Marshal, the southern end of the building has been designed to allow for additional building setback so that the fire apparatus may be parking between the building and the curb in an emergency.

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

The variance to allow an increased set back distance allows the plan to conform to the DOH driveway requirements and the Fire Marshal's staging location between the building and the curb.

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

The request for the increase of front set back will be applied within the B-4 District. The City of Morgantown is concerned with "Canyon Effect" in and around the downtown area. Allowing the increased set back will reduce the "Canyon Effect" along the proposed development site. Additionally, the variance will allow the building to be designed within the allowable 0' to 10' setback

Case No. V15-66 Encroach into Minimum Rear Setback Standard

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 variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents because the building will be constructed entirely within the extents of the property lines. This variance is for the setback located in the back of the building. The back property line abuts against the Rails to Trails / CSX / City Right of Way. The approval of this variance will not encroach towards inhabited parcels or available real estate that can be developed in the future.

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:

Due to the irregular shape of the property along the back, the building would not be feasible to construct and maintain the 10% setback requirements.

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

Trying to hold with the 10% setback would create several offsets and interior building corners costing more to construct ~~and reducing available income by reducing the available square footage of the building.~~ This request is for only a small area (approximately 140 feet long) located at the Northwestern Corner of the building and abutting against the City / CSX / Rails to Trails Right of Way.

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

The relaxation in the 10% setback ordinance will allow the developer to construct a building that is in accordance with the vision for the long term image of the City of Morgantown. The building is being constructed in a B-4 Business District and looking at redevelopment of a blighted area. ~~This building will not have any adverse effects to surrounding properties and will create a landmark for future developments to strive for.~~

Case No. V15-67 Canyon Effects

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:

Granting the proposed variance waiver will not affect the public health, safety or welfare, or rights of adjacent property owners or residents, because the Developer proposes to create a project that will work in harmony with the surrounding city fabric while also providing a stimulus to the surrounding areas of vibrancy. The proposed project is set back approximately 12' off of University Avenue as well as over 20' from Walnut Street to allow for greater street activity and sun paths. It is also set back 15' from the adjacent interior property line to provide an added separation buffer between the lots. Additionally, the project will be sited away from the rear of the site to allow for an increase in the site open area adjacent to the PRT line and Monongalia River with the Developer proposing an upgraded access connection to the nearby Caperton Trail Path. The building design itself steps back at the upper levels and corner as well as insets the current sites condition and will provide a state a modern facility that will be utilized by the neighboring universities students as a residential and commercial facility.

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 Developer proposes a variance relief for a new building that will add a dynamic presence to another otherwise underutilized portion of the City. The scale and configuration of the project works with the Developer's goal of providing an economically viable project that will enhance the neighborhood while also providing a platform for an increased revenue base to the City.

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

The project will allow the construction of a proposal that exceeds the existing criteria that limits building to three stories by proposing the design for a twelve story structure. This will enable the construction of a project that will provide a needed boost to the site and its adjacent surroundings. The ~~developer believes that the~~ approval of this development will help to alleviate an existing blight that categorizes the site as it currently exists.

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

The acceptance of this application for variance relief would allow the project to move forward and provide a new mixed-use development that would aid in fostering an essential link to the revitalization of this area of the city and would be an economic stimulus to future growth.

Case No. V15-68 To exceed the maximum curb cut width of a driveway at the curb line and at the right-of-way line on **University Avenue**.

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:

Granting the increased curb cuts will not affect public health, safety or welfare, or rights of adjacent property owners or residents because the garage entrance off of University Avenue will be located approximately midway of the proposed building. The increased curb cut will allow easier maneuvers of vehicles without running over top of the curb. The extended curb width will be a benefit to vehicles wishing to travel along University Avenue by allowing vehicles to make safer and quicker maneuvers out of the way off of University Avenue.

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:

With the right-in-and-right-out vehicle maneuvers, lane dividers will need to be incorporated into the center of University Avenue per WVDOT recommendations. The lane dividers consist of flexible posts located along the centerline divider pain marking limiting the vehicular maneuvers to right in and right out.

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

In order to provide ease of entry for vehicles, the curb radius must be increased to 18 feet off University Avenue. With the increased curb cuts vehicles can maneuver off University Avenue a little safer and quicker in turn reducing vehicle congestion on University Avenue. With a wider exist radius, vehicles can merge onto University Avenue without running into the left lane.

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

~~The request for extended curb cuts will be applied within the B-4 Business District.~~ With the increased curb cut, vehicles can make safer and quicker maneuvers reducing impacts to traffic flow along University Avenue.

Case No. V15-69 To exceed the maximum curb cut width of a driveway at the curb line and at the right-of-way line on **Walnut Street**.

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:

Granting the increased curb cuts along Walnut Street will not affect public health, safety or welfare, or rights of adjacent property owners or residents because the added curb cut length will provide for additional access to the building therefore reducing parking vehicles along Walnut Street. The increased curb cut will allow for easier maneuvers of extended wheel base service vehicles such as garbage trucks without running over top of the curb. The extended curb width will be a benefit to vehicles wishing to travel down Walnut Street by allowing the service vehicles to make safer and quicker maneuvers out of the way of Walnut 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:

With the garbage facilities being located inside the building, the garbage trucks must be able to enter the building without running over top of the curb. In order to provide an appropriate curb radius for the tracking of the garbage truck to curb cut must be increased. A separate entrance was incorporated into the design to provide for off street parking of delivery vehicles requiring wider curb radius.

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

The entrance off of Walnut Street will incorporate three key components, garbage pickup, access to vehicular parking garage, and delivery vehicles. These entry points were strategically placed at a single location allowing three separate access points for accommodating the identified vehicle maneuvers. Allowing three access points will provide staging areas for the service vehicles making there necessary stops inside the building, this will allow the streets to remain open and free from obstructions. Curb radius were increased to 21 feet on the east and 25 feet on the west to provide vehicle maneuvers without running over the curbs.

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

~~The request for extended curb cuts along Walnut Street will be applied within the B-4 Business District.~~ With the increased curb cut, service vehicles will be moved off the streets allowing better traffic flow and reduced street congestion.

Case No. V15-70 To exceed the maximum parking standard in a nonresidential district.

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:

Granting the increased Maximum Parking from 485-692 will not affect public health, safety or welfare, or rights of adjacent property owners or residents because the parking area will be located within the confines of the building. In fact, the additional parking will be a benefit by providing the anticipated required parking for the residents in addition providing parking for resident visitors thereby reducing the impacts to surrounding parking areas. The parking area will be a secured area providing safety and security of its residents and visitors. With the parking area located inside the confines of the building, no visual impacts of parked vehicles will be experienced by the adjacent property owners.

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 Developer anticipates the required parking demand will exceed the minimum requirement of 0.5 parking spaces per occupant. The Developer wants to insure the residents have safe and secured parking for their tenants and visitors. The Developer is concerned that by not providing ample parking, it may jeopardize the marketability of the building.

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

The Developer desires to provide safe and secure parking for the residents without relying on unsecured outside parking areas. With the additional inside parking provided, the residents will be able to walk safely to their apartments during inclement weather conditions and night time hours.

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

The parking structure will be located in the B-4 Zoning District where available parking is at a premium. Increasing the maximum allowable parking for the residents will eliminate the outsourcing of available parking should the residents exceed the maximum zoning standard of 0.5 parking spaces per occupants.

Case No. V15-71 Minimum transparency.

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:

Granting the proposed variance waiver will not affect the public health, safety or welfare, or rights of adjacent property owners or residents, because the Developer proposes to create a project that will work in harmony with the surrounding city fabric while also providing a stimulus to the surrounding areas vibrancy. The project will combine multiple parcels which currently have limited or no street front windows into a cohesive street front combining retail and residential uses. Upgraded site lighting and pedestrian access will also positively impact the health and safety of the public and neighboring properties. The project will be a noticeable upgrade to the current sites condition and will provide a modern facility that will be utilized by the neighboring university's students as a residential and commercial facility.

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 Developer proposes a variance to the 60% transparency zoning ordinance on University Ave. and Walnut Street.~~ The Developer is limited to the proposed 52% transparent area at University Avenue by a need for vehicular access and electrical transformers adjacent to the street. The remainder of the façade proposes a higher than 60% transparency. The Walnut Street frontage is limited to 11% transparency by existing site conditions as well as functional requirements of the proposed building. Walnut Street slopes steeply down to the Monongahela River which limits the glazing opportunity at this street front. Additionally, project access requirements such as parking, loading, and trash removal make up a portion of the Walnut Street front. These site and project restrictions combine to limit the University Avenue and Walnut Street transparencies.

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

~~The Developer believes that~~ It appears the project, as designed, is a reasonable use of a steeply sloping site with limited street front access points. The project attempts to address and activate the street front with large transparent openings where the site allows along University Avenue while utilizing Walnut Street for other building requirements.

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

The project, as designed, includes at least 60% transparency in concentrated areas of street front retail and building entrances, which are interrupted by solid areas where required by site restrictions or project requirements. The goal of the design is to provide an active street front façade where possible along a highly variable street frontage. The design attempts to find the highest and best use for each of these unique conditions.