MORGANTOWN BOARD OF ZONING APPEALS

September 18, 2013
6:30 PM
Council Chambers

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

STAFF REPORT

CASE NO: BA13-02 / Gary Walden / Administrative Appeal

REQUEST and LOCATION:

A petition by Gary Walden for an administrative appeal of the Planning Division's determination concerning Article 1373 "Nonconforming Provisions" at 645 Pennsylvania Avenue.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 30, Parcel 46; B-2, Service Business District

SURROUNDING ZONING:

B-2, Service Business District

BACKGROUND:

Administrative Appeal Processing

The following table identifies the processing steps as provided in Article 1383.03 of the Planning and Zoning Code.

Event	Date	Lapse of Days
Written administrative determination	09 AUG	
Administrative appeal filed	15 AUG 2013	–
Hearing date set	16 AUG 2013	1 day
Petitioner notified – Gary Walden in person	20 AUG 2013	5 days
Petitioner notified – Edward Kohout	23 AUG 2013	8 days
Publish Notice	28 AUG 2013	13 days
Hearing	18 SEP 2013	34 days

Exhibits

The following exhibits are attached hereto and should be considered a part of the record for the subject administrative appeal:

Exhibit 1 ..... Administrative appeal petition and accompanying documents.

Exhibit 2 ..... Images illustrating location of subject realty.

Exhibit 3 ..... Mr. Kohout's 03 SEP 2013 letter and staff's email response.

Exhibit 4 ..... Staff's 26 JUN 2013 letter to Mr. Walden.

Exhibit 5 ..... Staff's 09 AUG 2013 letter to Mr. Walden.

Exhibit 6 ..... Fire Marshal Plans Rejected Documents

Development Services
Christopher Fletcher, AICP
Director

Planning Division
Heather Dingman, AICP
Principal Planner

389 Spruce Street
Morgantown, WV 26505
304.284.7431

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Exhibit 7 ..... 11 OCT 2009 Fire Incident Report.

Exhibit 8 ..... 14 JUN 20110 Demolition Permit.

Exhibit 9 ..... Article 1373 "Nonconforming Provisions"

Exhibit 10 ..... Article 1383 "Administrative Appeals"

Exhibit 11 ..... Article 1375.01(A) "Responsibility for Administration and Enforcement"

ANALYSIS:

Petitioner's Grounds for Appeal

The following narrative responds to the arguments presented in Mr. Kohout's 13 AUG 2013 letter, which presents the petitioner's grounds for appeal.

1. The reference line in the subject letter identifies 647 Pennsylvania Avenue as the affected realty, which is incorrect. The true address of the subject realty associated with Parcel 46 of Tax Map 30 is 645 Pennsylvania Avenue.

2. The first sentence of the subject letter's first paragraph identifies 467 Pennsylvania Avenue as the affected realty, which is incorrect. The true address of the subject realty associated with Parcel 46 of Tax Map 30 is 645 Pennsylvania Avenue.

3. The second sentence of the subject letter's first paragraph purports that the subject structure suffered a fire casualty "two years ago", which is incorrect. Exhibit 6 of this report verifies that the subject fire casualty occurred on 11 OCT 2009; some 46 months prior to the Planning Division's 09 AUG 2013 determination that the nonconforming status of the subject realty's former use and structure had been abandoned.

4. The first sentence of the second paragraph is true.

5. The second sentence of the second paragraph states that, "The house was bought over 20 years ago…" Staff can only confirm that the Monongalia County Assessor's Office lists Parcel 46 of Tax Map 30 on its website as having been purchased by Tina M. Walden on 09 APR 2008.

6. The second sentence of the second paragraph states that, "…and was grandfathered in as to zooming and building codes…" Staff admits that the subject realty included a legal, pre-existing nonconforming grandfathered use and structure. Specifically, the three-unit "Multi-Family Dwelling" use was considered nonconforming because no on-site parking was provided. Additionally, the structure was considered nonconforming because it did not meet building envelope standards provided in Article 1347 "B-2, Service Business District." The petitioner's statement that the structure was grandfathered under "building codes" is not correct.

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7. The second sentence of the second paragraph states that, "…and is valued at an estimated $50,000." Staff cannot confirm or deny the petitioner's purported value of the subject property. However, the market value of the subject realty is not relevant to the present administrative appeal petition.

8. Staff confirms the portion of the third sentence of the second paragraph that Mr. Scott Krabill has represented Mr. Walden in pursuing a building permit to reconstruct the nonconforming use and structure. However, not all "requested documentation" has been submitted to the City. If this were true, then a building permit would have been issued to reconstruct the nonconforming use and structure.

9. Staff cannot confirm or deny the fourth sentence of the second paragraph as to how much Mr. Walden has spent in submitting building permit application related plans to the City. However, the amount spent by Mr. Walden in pursuing a building permit is not relevant to the present administrative appeal petition.

10. Staff confirms the petitioner's third paragraph that a letter dated 09 AUG 2013 was sent to Mr. Walden with the determination that the grandfathered nonconforming status for the use and structure at 645 Pennsylvania Avenue had been abandoned.

11. Staff denies the assertion in the petitioner's fourth paragraph that "all necessary documentation" has been provided to the City in relation to the requisite building permit application. If this were true, then a building permit would have been issued to reconstruct the nonconforming use and structure.

12. Staff confirms that, in the fourth paragraph, the petitioner seeks relief from the Board to overrule the Planning Division's 09 AUG 2013 determination that the subject nonconforming status has been abandoned.

13. Staff denies the petitioner's assertion in the fourth paragraph that the Board has the authority to order the City to issue the building permit. The City's review and approval of a building permit application includes compliance with regulations, ordinances, and codes beyond the scope of the Planning and Zoning Code and beyond the scope of authority and influence of the Board of Zoning Appeals.

Board's Review Authority

The matter before the Board is not to determine whether the property owner and/or his agent submitted a complete building permit application to the City of Morgantown. Specifically, the incomplete building permit application determinations made by several plans reviewers (i.e., Building Code, Fire Code, Engineering) are not under the review authority of the Board of Zoning Appeals as these plans reviewers are not charged with the enforcement of the zoning ordinance [see Article 1375.01(A) and Article 1383.01].

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The matter before the Board is to decide whether or not the Planning Division correctly determined that the legal, pre-existing, nonconforming use and structure had been discontinued and abandoned by virtue of the owner's failure to undertake reconstruction of the subject use and structure within twelve (12) months following the 11 OCT 2009 fire casualty.

STAFF RECOMMENDATION:

Staff recommends that the Board render a decision upholding the Planning Division's determination that the grandfathered status of the former use and structure at 645 Pennsylvania Avenue has been discontinued and abandoned based on the following findings of fact and conclusions of law.

Findings of Fact

1. The use at 645 Pennsylvania Avenue in existence prior to October 2009 was considered a legal, pre-existing, nonconforming, grandfathered three-unit "Multi-Family Dwelling" because no on-site parking spaces were provided.

2. The structure at 645 Pennsylvania Avenue in existence prior to October 2009 was considered a legal, pre-existing, nonconforming, grandfathered structure because it did not meet building envelope standards provided in Article 1347 "B-2, Service Business District."

3. The structure at 645 Pennsylvania Avenue was destroyed by fire on or about 11 OCT 2009.

4. As a result of the 11 OCT 2009 fire casualty, a permit was issued on or about 14 JUN 2010 for the demolition of the structure at 645 Pennsylvania Avenue.

5. On 28 FEB 2011, a certified letter was sent to Mr. Walden by the Planning Department advising him that the right to reconstruct the legal, pre-existing, nonconforming use and structure would expire on 14 JUN 2011.

6. On or about 24 MAY 2011, a pre-application meeting with the Technical Review Team was conducted with the property owner.

7. Building permit applications to reconstruct the grandfathered use and structure were submitted on or about 26 SEP 2011 and again on or about 18 APR 2013. It was determined by City plans reviewers that both building permit application submissions were incomplete.

8. On 26 JUN 2013, a certified letter was sent to Mr. Walden by the Planning Division providing final notice to file a complete building permit application to reconstruct the legal, pre-existing, nonconforming use and structure.

9. A building permit application to reconstruct the grandfathered use and structure was submitted on 17 JUL 2013. It was determined by City plans reviewers that the building permit application submission was incomplete.

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10. On 09 AUG 2013, a certified letter was sent to Mr. Walden by the Planning Division notified him that his obligation to submit a complete building permit application, for the purpose of protecting his right to reconstruct the subject nonconforming structure at 645 Pennsylvania Avenue had not been fulfilled and that failure to fulfill this obligation resulted in an abandonment of the nonconforming structure.

11. Although Mr. Kohout's 13 AUG 2013 letter, considered the grounds for the present appeal, comes some 46 months after the subject structure's 11 OCT 2009 fire casualty, the petitioner admits in said letter that, "*Two years ago* this old dwelling house, used as a rental unit, caught fire and was a total loss."

Conclusions of Law

1. Article 1373.02(E) provides that any legal, pre-existing nonconforming structure damaged by fire, flood, explosion or other casualty may be reconstructed and used as before, if such reconstruction is undertaken within twelve (12) months of such casualty, and if the restored structure has no greater coverage and contains no greater content (measured in cubic feet) than before such casualty.

2. The legal, pre-existing nonconforming use and structure at 645 Pennsylvania Avenue was destroyed by fire on or about 11 OCT 2009. A strict interpretation and application of Article 1373.02(E) establishes a twelve (12) month deadline of 11 OCT 2010 to reconstruct the nonconforming structure and use as the combination of land and structure at 645 Pennsylvania Avenue ceased to continue on 11 OCT 2009.

3. A permit was issued on or about 14 JUN 2010 for the demolition of the structure at 645 Pennsylvania Avenue. A more moderate interpretation and application of Article 1373.02(E) establishes a twelve (12) month deadline of 14 JUN 2011 to reconstruct the nonconforming structure and use, which was offered in the 28 FEB 2011 certified letter from the Planning Department to Mr. Walden.

4. The 09 AUG 2013 certified letter to Mr. Walden from the Planning Division notifying him of the determination that the subject nonconforming use had been abandoned was 46 months after the structure at 645 Pennsylvania Avenue suffered fire casualty and 38 months after the permit was issued for the demolition of the remaining structure at 645 Pennsylvania Avenue.

5. The Planning Division correctly determined that the nonconforming protections provided in Article 1373 "Nonconforming Provisions" of the City's Planning and Zoning Code to reconstruct the grandfathered nonconforming three-dwelling unit use and structure at 645 Pennsylvania Avenue have expired and that the subject nonconforming status has been abandoned.

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6. Because the legal, pre-existing nonconforming use and structure have been abandoned, the subject realty may only be developed and/or used in compliance with the Zoning Ordinance provisions in affect at the time of development and/or use.

Attachments: Exhibits noted above

Development Services

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0107

CITY OF MORGANTOWN
PLANNING DEPARTMENT
AUG 14 2013
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City of Morgantown, West Virginia

APPLICATION FOR ADMINISTRATIVE APPEAL

OFFICE USE	
CASE NO.	BA13-01
RECEIVED:	8/14/13
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:	Gary Walden	Phone:	304-685-8721
Mailing Address:	Street: 773 Chestnut Ridge Rd	Mobile:	
	City: Morgantown State: WV Zip: 26505	Email:	

II. AGENT / CONTACT INFORMATION

Name:	EDWARD R. KOHOUT	Phone:	304 777-4086
Mailing Address:	Street: 235 High St. # 307	Mobile:	
	City: Morgantown State: WV Zip: 26505	Email:	
Mailings –	Send all correspondence to (check one): ☐ Applicant OR ☒ Agent/Contact		

III. PROPERTY

Owner:	Gary Walden (above)	Phone:	
Mailing Address:	Street:	Mobile:	
	City: State: Zip:	Email:	

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.

EDWARD R. KOHOUT	Ed Kohout	8/13/13
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.

EXHIBIT 1

0107

BA13-01

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Edward R. Kohout, Esquire
West Virginia Bar #4837

August 13, 2013

To: Board of Zoning Appeals

RE: Denial of building permit/ Gary Walden/ 647 Pennsylvania Avenue

The basic facts are the Mr. Gary Walden owns the property located at 467 Pennsylvania Avenue. Two years ago this old dwelling house, used as a rental unit, caught fire and was a total loss. The house was demolished to the foundation.

Thereafter Mr. Walden applied to the City of Morgantown Planning Department for a building permit to rebuild the house on the original footprint. The house was bought over 20 years ago and was grandfathered in as to zooming and building codes, and is valued at an estimated $50,000. Mr. Walden hired professional engineer Scott Krabill who submitted the building plans and permit application to the City along with all requested documentation. Mr. Walden has spent approximately $15,000 in submitting these plans to the City.

On August 9, 2013 the City sent him a letter advising him that his permit application was denied due to his failure to provide necessary documentation and also that his grandfather status had been abandoned. See attached.

Mr. Walden feels that he has provided the City with all necessary documentation for them to issue a building permit and asks the Board to overrule the City's action and order them to issue the permit.

Respectfully submitted,

Edward R. Kohout
Counsel for Mr. Gary Walden

EXHIBIT
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BA13-01

The City of Morgantown

DEVELOPMENT SERVICES DEPARTMENT

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7431 TDD (304) 284-7512
www.morgantownwv.gov

August 9, 2013

VIA CERTIFIED MAIL

Gary Walden
973 Chestnut Ridge Road
Morgantown, WV 26505

RE: 645 Pennsylvania Avenue
Abandonment of Grandfathering Status of Previous Non-conforming Structure

Mr. Walden:

It has been brought to my attention that, in response to this office's letter and final notice to you dated 26-Jun-2013, an additional attempt was made to submit a complete building permit application to reconstruct the three-unit apartment building at 645 Pennsylvania Avenue that was previously razed as a result of substantial fire damage. This office understands that Mr. Scott Krabill submitted additional information and documentation to the Permit Center at approximately 9:30 AM on 17-Jul-2013.

Attached hereto is a memorandum from Amy Fairman, Permit Technician dated 09-Aug-2013 detailing the extent of required information and documentation that was not submitted, which resulted in the rejection of the related building permit application.

You are hereby notified:

1. That **your obligation** to submit a complete building permit application, for the purpose of protecting your right to reconstruct the subject nonconforming structure at 645 Pennsylvania Avenue, has **not been fulfilled** as notified in this office's letter to you dated 26-Jun-2013 and described in Ms. Fairman's subject memorandum; and,

2. That failure to fulfill said obligation has resulted in an **abandonment** of your **right to reconstruct** the subject nonconforming structure at 645 Pennsylvania Avenue as provided in Article 1373 "Nonconforming Provision" of the City's Planning and Zoning Code; and,

3. That the **nonconforming protections** provided in Article 1373 "Nonconforming Provisions" of the City's Planning and Zoning Code to reconstruct the grandfathered nonconforming three-dwelling unit structure at 645 Pennsylvania Avenue **have expired**; and,

4. That any future use and/or development on the subject realty will be required to comply with present City Planning and Zoning Code requirements including, but not limited to: permitted land uses; minimum and maximum building envelope standards; maximum lot coverage standards; maximum building height standards; and, minimum parking requirements.

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BA13-01

Article 1383 "Administrative Appeals" of the City's Planning and Zoning Code affords you an opportunity to appeal this administrative determination to the Board of Zoning Appeals provided an Administrative Appeal Application is duly filed with this office within 30 days from the date of this letter. For your convenience, attached hereto is an Administrative Appeal Application along with Article 1383 detailing the subject appeal process.

Should you have any questions or require further clarification concerning this determination or the Administrative Appeal process, please contact the undersigned.

Respectfully,

Christopher M. Fletcher

Christopher M. Fletcher, AICP
Director of Development Services

Enclosures: as noted above

Copied via email: Mike Stone, Chief Building Code Official
Amy Fairman, Permit Technician
Capt. Ken Tennant, City Fire Marshal
Trevor Lloyd, Engineering Department
Rental Registration File, 645 Pennsylvania Avenue
Building Permit File, 645 Pennsylvania Avenue

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BA13-01

City of Morgantown

Memorandum

August 9, 2013

EXHIBIT 1

To: Chris Fletcher, Director of Development Service

From: Amy Fairman, Permit Tech

CC: Mike Stone, CBO

Re: Rejection of permit application for 645 Pennsylvania Avenue

This correspondence is to clearly establish the deficient information that is required to be submitted with the permit application and thus led to a rejection for the permit application for 645 Pennsylvania Avenue.

Below is a list of items per department that were required but absent at the time of submittal.

Engineering Department

1. Site Plan Requirements

- Show road, creek and property lines.
- Show existing and proposed grades. NO GRADE CHANGE
- Show proposed structure footprint along with any other features such as decks, porches, steps, sidewalks, driveways, etc. with elevations.
- Show the floodway and the floodplain area with elevations.
- Show dimensions of the structure with square footage. SAID 16'x36'
- Show, on a separate drawings, flood vents, elevations, heights, etc. WHY SEP PAGE!
- Show details of the flood vents along with the percentage of water that will pass through the vent. SEP STUDY SHOWN
- Show the location of utilities

2. Elevation Certificate

- This is a new submittal; therefore the Elevation Certificate must be on the most current form. The one submitted has expired and was signed in 2011. ?

BA13-01

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4. ELECTRICAL
   - Show runs
   - Indicate branch circuits?
   - Show location of panel box
   - Specify amp service ON PERMIT APPLICATION
   - Identify wire sizes
   - Mark GFCI locations
   - Show smoke detectors, CO detectors and how they will be wired in?

5. PLUMBING
   - Identify drain line size
   - Specify vent size and location
   - Show where the sewer line goes

6. DECKS/PORCHES
   - Show all dimensions of each deck
   - Show height of decks from ground up
   - Provide lumber sizes for posts, joists, beams as well as spacing for each
   - Show footing detail- location, size, depth, circumference and material/fill PROFILE
   - Give handrail height and spindle spacing(must be under 4")
   - Show stair detail- include rise and tread of stairs
   - Detail attachments- to house, joist to beams, rails to post
   - Include its location on site plan with distances to property lines

7. SITE PLAN
   - Indicate property lines
   - List actual dimensions, size, square footage, and shape of the lot
   - Name adjacent streets ARE NONE!
   - Show the location, square footage, and dimensions of the proposed and existing structures
   - Indicate the location of the lot with respect to adjacent right-of-ways and easements
   - Note setbacks around structure to property lines EXISTING!
   - Show dimensions of structures
   - Illustrate the height of the structure ELEVATIONS
   - Record the location and dimensions of off-street parking and means of ingress and egress for such space N/A

Fire Department

- Site plan which includes a verifiable scale, streets, property lines, landmarks, or other identifiable structures clearly visible/
- Proper structural drawings with UL design reference to fire rated construction Type V-111
- Hydraulic calculations MECB!

BA13-01

- There is new information requirements needed that was not on the previous forms.
- The location and the BFE submitted are incorrect. ? This needs to be revised. OK
- The determination of the BFE on Decker's Creek cannot be established on the FIRM. As Decker's Creek is a studied waterway, a Flood Insurance Study (FIS) must be used. All of this information is available on line or in the Engineering Department. ?

Note from the department:

Please note that the list may not be all inclusive and any additional information submitted for the site will need to be reviewed for accuracy.

Code Enforcement Department

1. WALLS

   - Lumber size of interior and exterior walls
   - Interior and exterior wall covering
   - Spacing of framing lumber
   - Insulation value in the floor and walls
   - Header sizes of windows and doors
   - Vapor barrier OK
   - Fire separation FIRE SUPPRESSION SYSTEM

2. INTERIOR

   - All dimensions of rooms and proposed use of each room
   - Window and door sizes
   - Floor joist size and spacing

3. HVAC

   - Gas unit NO GAS
     1. show location of furnace and hot water heater
     2. show where vented to
     3. size of vents
     4. location of make-up air vents
     5. clearance around unit if in an enclosed room
     6. location of gas shut off

     OR
   - Electric unit
     1. identify BTU
     2. show location of unit
     3. location of disconnect switch

EXHIBIT

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BA13-01

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August 13, 2013

Planning Department
City of Morgantown
389 Spruce Street
Morgantown, WV 26505

RE: Administrative Appeal

To whom it may concern:

Enclosed is the form for an Administrative Appeal on behalf of Mr. Gary Walden for the denial of his building permit for 647 Pennsylvania Avenue in Morgantown. Also enclosed is my check for $35 for the fee and the letter from which we are appealing, and my narrative to the BZA explaining the issues in the appeal.

Very truly yours,

Ed Kohout

Edward R. Kohout

Encls
Cc: Mr. Gary Walden

CITY OF MORGANTOWN
PLANNING DEPARTMENT

AUG 14 2013

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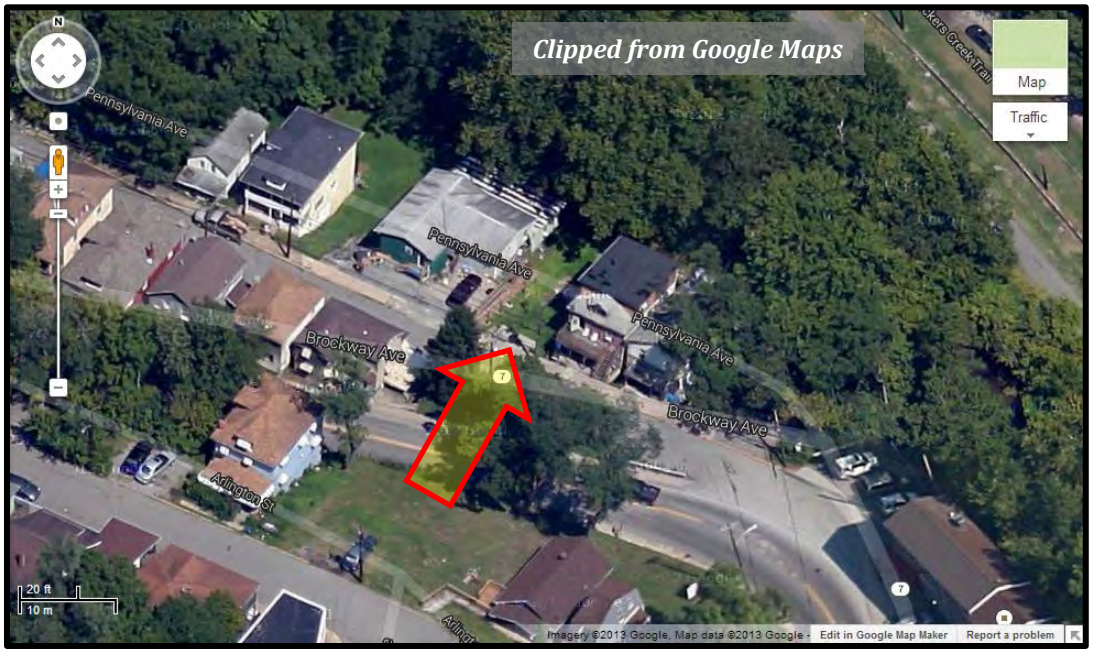
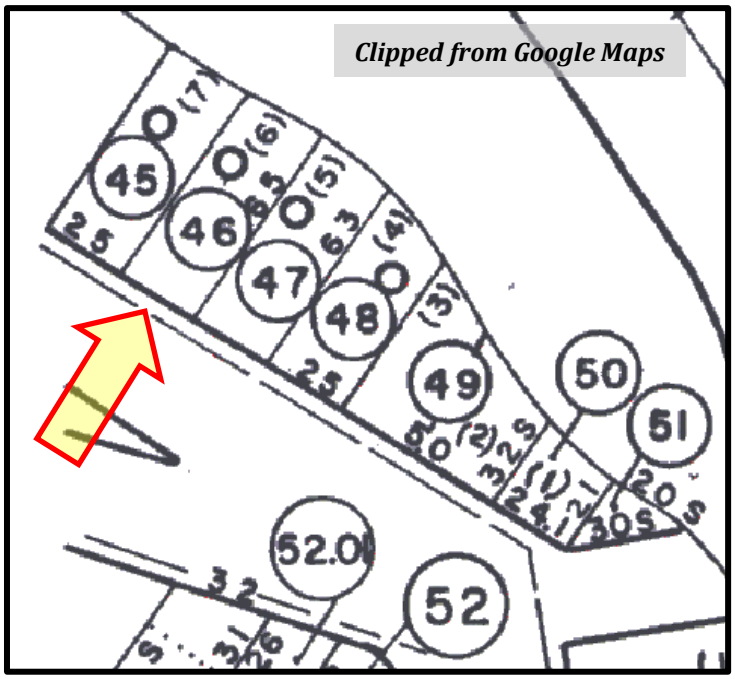
STAFF REPORT ADDENDUM A

BA13-02 / Gary Walden / Administrative Appeal





EXHIBIT

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September 3, 2013

Planning Department
City of Morgantown
389 Spruce Street
Morgantown, WV 26505

RE: Administrative Appeal- 647 Pennsylvania Avenue- Gary Walden
SECOND REQUEST

To whom it may concern:

By letter on August 13, 2013 I filed a request and paid the fee for an administrative appeal to the Board of Zoning Appeals on your denial of the building permit in this property. I have not heard anything. Please acknowledge my request and set the matter for a hearing. If I do not hear back from you I can only assume that you're ignoring my request and I will then file suit against the City to seek judicial review of your arbitrary decision against my client.

Very truly yours,

Edward R. Kohout

Cc: Mr. Gary Walden

CITY OF MORGANTOWN
PLANNING DEPARTMENT

SEP - 5 2013

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EXHIBIT
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Zimbra **cfletcher@cityofmorgantown.org**

RE: Administrative Appeal Petition - Gary Walden - 647 Pennsylvania Avenue

From : ed@kohout-law.com Fri, Sep 06, 2013 08:24 AM
Subject : RE: Administrative Appeal Petition - Gary Walden - 647 Pennsylvania Avenue
To : Christopher Fletcher <cfletcher@cityofmorgantown.org>

Thanks

-------- Original Message --------
Subject: Administrative Appeal Petition - Gary Walden - 647 Pennsylvania Avenue
From: Christopher Fletcher <cfletcher@cityofmorgantown.org>
Date: Thu, September 05, 2013 3:06 pm
To: Ed Kohout <ed@kohout-law.com>

Mr. Kohout:

I am in receipt of your letter dated September 3, 2013 requesting confirmation of whether or not your administrative appeal petition on behalf of Gary Walden was received by this office and whether or not the related hearing before the Board of Zoning Appeals has been scheduled.

Attached hereto are the following:

- The September 3, 2013 letter noted above.

- A scanned copy of the legal advertisement that appeared in the August 28, 2013 edition of the Dominion Post, which includes the subject administrative appeal petition as being scheduled for a hearing before the Board of Zoning Appeals on the September 18, 2013 at 6:30 PM in City Council Chambers.

- The August 13, 2013 letter, administrative appeals petition, and exhibits included therein referenced in the September 3, 2013 letter noted above.

Be advised that Mr. Walden visited this office on August 20, 2013 and was informed by Ms. Stacy Hollar that his administrative appeal petition had been received; that his hearing was scheduled for the Board of Zoning Appeals' September 18, 2013 hearing; and, that he would have an opportunity to address the Board of Zoning Appeals during the hearing.

Be further advised that a voice mail message was left for you at 304-777-4086 the morning of Friday, August 23, 2013 advising you that the hearing was scheduled for September 18, 2013.

This office will email you the Board's September 18, 2013 agenda by Friday, September 13, 2013 along with the Staff Report and exhibits that will be presented to the Board on September 18, 2013.

Please feel free to call me should you require any further clarification on the present status of your administrative appeal petition.

Respectfully,

Christopher M. Fletcher, AICP
Director of Development Services
City of Morgantown
389 Spruce Street

EXHIBIT
3
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Morgantown, WV 26505
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EXHIBIT
3
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City of Morgantown
Planning Division

September, 2013
Legal Notice

The **Morgantown Planning Commission** will hold a public hearing on the following petition during their **Thursday, September 12,** 2013 meeting **at 6:30 P.M.** in City Council Chambers, 389 Spruce Street, Morgantown, WV. Written Comments may be sent to this address.

TX13-05 / Administrative / B-4 District Setbacks: Administratively requested Zoning Text Amendment to Article 1349.04 as it relates to setback and encroachment standards within the B-4 District.

Comprehensive Plan Workshop: The Planning Commission will conduct a workshop immediately following the Commission's business meeting. The purpose of the workshop will be to study the prioritization of strategies identified in the 2013 Comprehensive Plan. Workshops are not considered regular or special meetings and may not include the formal conduct of business, the rendering of decisions, or taking action for which the Commission is charged. Workshops are open to the public and are intended to serve as training, study, public education, etc.

The **Morgantown Board of Zoning Appeals** will hold a public hearing on the following petitions at their **Wednesday, September 18, 2013** meeting **at 6:30 P.M.** in City Council Chambers, 389 Spruce Street, Morgantown, WV. Written Comments may be sent to this address.

BA13-01 / Gary Walden / 645 Pennsylvania Avenue: Request by Edward R. Kohout, on behalf of Gary Walden, for an Administrative Appeal from Article 1373.02(B) as it relates to nonconforming structures at 645 Pennsylvania Avenue; Tax Map 30, Parcel 46; B-2, Service Business District.

CU13-15 / Sunnyside Properties, LLC / 300 Carson Street: Request by William Morlino, on behalf of Sunnyside Properties, LLC, for conditional use approval for a personal storage facility at 300 Carson Street; Tax Map 20, Parcel 148; B-2, Service Business District.

V13-36 / Sunnyside Properties, LLC / 300 Carson Street: Request by William Morlino, on behalf of Sunnyside Properties, LLC, for variance relief from Article 1339.04 as it relates to setbacks at 300 Carson Street; Tax Map 20, Parcel 148; B-2, Service Business District.

V13-49 / Sunnyside Properties, LLC / 300 Carson Street: Request by William Morlino, on behalf of Sunnyside Properties, LLC, for variance relief from Article 1361.03(P)(1) as it relates to design and performance standards at 300 Carson Street; Tax Map 20, Parcel 148; B-2, Service Business District.

V13-50 / Sunnyside Properties, LLC / 300 Carson Street: Request by William Morlino, on behalf of Sunnyside Properties, LLC, for variance relief from Article 1361.03(E) as it relates to transparency at 300 Carson Street; Tax Map 20, Parcel 148; B-2, Service Business District.

V13-51 / Sunnyside Properties, LLC / 300 Carson Street: Request by William Morlino, on behalf of Sunnyside Properties, LLC, for variance relief from Article 1361.03(Q)(2) as it relates to minimum parking requirements at 300 Carson Street; Tax Map 20, Parcel 148; B-2, Service Business District.

V13-52 / Sunnyside Properties, LLC / 300 Carson Street: Request by William Morlino, on behalf of Sunnyside Properties, LLC, for variance relief from Article 1361.03(O)(5) as it relates to minimum building height at 300 Carson Street; Tax Map 20, Parcel 148; B-2, Service Business District.

V13-37 / GCF Properties, LLC / 246 and 248 Fife Street: Request by Lisa Mardis of Project Management Services, on behalf of GCF Properties, LLC, for variance relief from Article 1339.04 as it relates to maximum front setbacks at 246 and 248 Fife Street; Tax Map 26, Parcels 156 and 157; R-3, Multi-Family Residential District.

V13-38 / GCF Properties, LLC / 246 and 248 Fife Street: Request by Lisa Mardis of Project Management Services, on behalf of GCF Properties, LLC, for variance relief from Article 1339.04 as it relates to minimum front setbacks at 246 and 248 Fife Street; Tax Map 26, Parcels 156 and 157; R-3, Multi-Family Residential District.

V13-48 / GCF Properties, LLC / 246 and 248 Fife Street: Request by Lisa Mardis of Project Management Services, on behalf of GCF Properties, LLC, for variance relief from Article 1351.01(D) as it relates to a curb cut at 246 and 248 Fife Street; Tax Map 26, Parcels 156 and 157; R-3, Multi-Family Residential District.

V13-42 / Sheetz, Inc. / 1012 University Avenue: Request by Robert Franks, on behalf of Sheetz, Inc., for variance relief from Article 1349.04(2) as it relates to setbacks at 1012 University Avenue; Tax Map 28A, Parcel 7; B-4, General Business District.

V13-43 / Sheetz, Inc. / 1012 University Avenue: Request by Robert Franks, on behalf of Sheetz, Inc., for variance relief from Article 1349.04(B) as it relates to accessory structures at 1012 University Avenue; Tax Map 28A, Parcel 7; B-4, General Business District.

V13-44 / Sheetz, Inc. / 1012 University Avenue: Request by Robert Franks, on behalf of Sheetz, Inc., for variance relief from Article 1349.08(B) as it relates to location of parking at 1012 University Avenue; Tax Map 28A, Parcel 7; B-4, General Business District.

V13-45 / Sheetz, Inc. / 1012 University Avenue: Request by Robert Franks, on behalf of Sheetz, Inc., for variance relief from Article 1351.01(C)(2) as it relates to performance standards for parking facilities and curb cuts at 1012 University Avenue; Tax Map 28A, Parcel 7; B-4, General Business District.

V13-46 / Sheetz, Inc. / 1012 University Avenue: Request by Robert Franks, on behalf of Sheetz, Inc., for variance relief from Article 1365.04(I) as it relates to exceeding maximum parking standards at 1012 University Avenue; Tax Map 28A, Parcel 7; B-4, General Business District.

V13-47 / Sheetz, Inc. / 1012 University Avenue: Request by Robert Franks, on behalf of Sheetz, Inc., for variance relief from Article 1367.08(C)(1) as it relates to landscaping at 1012 University Avenue; Tax Map 28A, Parcel 7; B-4, General Business District.

V13-53 / Sheetz, Inc. 11012 University Avenue: Request by Robert Franks, on behalf of Sheetz, Inc., for variance relief from Article 1349.05(A) as it relates to minimum building height at 1012 University Avenue; Tax Map 28A, Parcel 7; B-4, General Business District.

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DEVELOPMENT SERVICES DEPARTMENT

The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7431 TDD (304) 284-7512
www.morgantownwv.gov

June 26, 2013

VIA CERTIFIED MAIL

Gary Walden
973 Chestnut Ridge Road
Morgantown, WV 26505

EXHIBIT
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RE: 645 Pennsylvania Avenue
Grandfathering Status of Previous Non-conforming Structure
Building Permit Application Requirements

Mr. Walden:

It has been brought to my attention that a building permit application has been submitted again to reconstruct the three-unit apartment building at 645 Pennsylvania Avenue previously razed as a result of substantial fire damage. I understand from Amy Fairman, Permit Technician that each building permit application submitted for the subject development to date has been incomplete and deficient of requisite documents and design and construction details.

I have attached the following exhibits that chronicle the most recent history of the subject property beginning 11-Oct-2009 as it relates to your pursuit of a building permit to reconstruct the nonconforming structure:

- Exhibit 1 – Letter dated 28-Feb-2009 from Lisa Mardis, Deputy Planning Director concerning the grandfathered zoning status of the nonconforming structure at 645 Pennsylvania Avenue.

- Exhibit 2 – Memorandum from Amy Fairman, Permit Technician providing a time line of events/activities involving the fire at 645 Pennsylvania Avenue and efforts to obtain a building permit to reconstruct the subject nonconforming structure.

- Exhibit 3 – The Code Enforcement Division's itemized list of construction related documents and design and construction details required when applying for a "New Construction" building permit.

- Exhibit 4 – Letter dated 01-Dec-2011 from Trevor Lloyd, Engineering Department, concerning specific building permit application deficiencies that resulted in the Engineering Department's rejection of the building permit application submitted 26-Sep-2011.

- Exhibit 5 – Report from Capt. Ken Tennant, City Fire Marshal, concerning specific building permit application deficiencies that resulted in the Fire Department's rejection of the building permit application submitted 26-Sep-2011.

The present issue is the expiration of the grandfathered status of the razed nonconforming structure and the property right to reconstruct same as provided in Article 1373 of the City's Planning and Zoning Code.

In consultation with the City Attorney, this letter is to serve as **final notice** that the nonconforming provisions and protections provided in Article 1373 of the City's Planning and Zoning Code to reconstruct the grandfathered nonconforming three-dwelling unit structure at 645 Pennsylvania Avenue **will expire on 16-Jul-2013** unless a complete building permit application is submitted prior thereto. A complete building permit application means all requisite design and construction documents and details necessary to perform a complete review by all related City plans review authorities including Zoning, Building Code, Fire Code, Engineering, and Morgantown Utility Board.

The exhibits attached hereto and noted above are intended to identify present building permit application requirements and previous application deficiencies.

This letter is also to serve notice that should the subject nonconforming provisions and protections expire as noted above, development on the subject realty will be required to comply with present Planning and Zoning Code requirements including, but not limited to: permitted land uses; minimum and maximum building envelope standards; maximum lot coverage standards; maximum building height standards; and, minimum parking requirements.

Should you have any questions or require further clarification, please contact the undersigned.

Respectfully,

Christopher M. Fletcher

Christopher M. Fletcher, AICP
Director of Development Services

Enclosures: as noted above

Copied via email: Mike Stone, Chief Building Code Official
Amy Fairman, Permit Technician
Capt. Ken Tennant, City Fire Marshal
Trevor Lloyd, Engineering Department
Rental Registration File, 645 Pennsylvania Avenue
Building Permit File, 645 Pennsylvania Avenue

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EXHIBIT 1
PAGE 1 OF 2

The City of Morgantown

PLANNING DEPARTMENT

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7431 TDD (304) 284-7512
FAX (304) 284-7534 www.morgantown.com

Via Certified Mail

GARY'S COPIES

February 28, 2011

Gary Walden
973 Chestnut Ridge Road
Morgantown, WV 26505

Dear Mr. Walden:

This letter is in regards to our conversation on February 16, 2011 concerning 645 Pennsylvania Avenue. The question of rebuilding the structure has been asked and a determination made.

The following are highlights of our conversation:

- Property is zoned B-2, Service Business District.
- Multi-Family is considered a permitted use in the B-2 District.
- The previous triplex was considered a legal, pre-existing non-conforming structure due to the fact that no parking was associated with the dwelling.
- Structure was destroyed by fire on October 11, 2009.
- A demolition permit was issued on June 14, 2010.
- Property owner has until June 14, 2011 to apply for a building permit.
- According to Article 1373.02 (E), "Any legal, pre-existing nonconforming structure damaged by fire, flood, explosion or other casualty may be reconstructed and used as before, if such reconstruction is undertaken within twelve (12) months of such casualty, and if the restored structure has no greater coverage and contains no greater content (measured in cubic feet) than before such casualty."
- Burden of proof is on the property owner to show that the above referenced ordinance is demonstrated. Failure to comply may result in one or mover variances.
- The Finance Department had the previous structure's Fire Fees calculated by 1,344 square feet. I have also included pictures of the previous structure for your convenience.

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- Before applying for a building permit, you must complete the attached Site Plan II application and attend a Technical Review Meeting. This can be scheduled when submitting the application.

If I can be of further assistance, please do not hesitate to contact me.

Respectfully,

Lisa K. Mardis
Deputy Director
lmardis@cityofmorgantown.org

Enclosure(s)

cc: Rental File, 645 Pennsylvania Avenue
Building Permit File, 645 Pennsylvania Avenue

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City of Morgantown

Memorandum

June 21, 2013

To: Chris Fletcher, Director of Development Services

From: Amy Fairman, Permit Tech

CC: Mike Stone, CBO

Re: 645 Pennsylvania Avenue

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This correspondence is to clearly establish the events of activities that have occurred at 645 Pennsylvania Avenue.

- October 11, 2009 the structure was significantly damaged by fire.
- January 6, 2010 a certified letter was sent by Inspector Styles informing the property owner that the structure at 645 Pennsylvania Avenue must be demolished or repaired. This work needed to begin within 20 days of the receipt of this letter.
- January 27, 2010 a letter from the property owner was written and faxed to the Code Enforcement Department on January 28, 2010 stating the property owner's intent to demolish the structure at 645 Pennsylvania Avenue.
- March 24, 2010 a permit was issued for the asbestos abatement of the damaged structure.
- May 5, 2010 a citation was issued to the property owner for failure to comply with code.
- June 1, 2010 the property owner was found guilty of the charge of May 5, 2010 and fined.
- June 14, 2010 a permit was issued for the demo of 645 Pennsylvania Avenue.

- February 28, 2011 a certified letter was sent to the property owner explaining the requirements to rebuild the structure.
- May 24, 2011 the property owners were involved in a Tech Review meeting with the City of Morgantown.
- September 26, 2011 a permit application was submitted to the Code Enforcement Department for the rebuild of the demolished structure.
- November 3, 2011 the Planning Department approved the application that was submitted.
- By December 2011 the remaining three departments (Engineering, Fire, and Code) had all rejected the permit application due to a lack of required information. Letters and phone calls were made to the property owner and the owners hired engineer in regards to the missing information.
- December 2011 thru August 2012 several emails discussing the requested information were generated among Trevor Lloyd, City of Morgantown Staff Engineer and the property owners hired engineer, R. Scott Krabill.
- January 2013 a letter was sent to the property owner detailing the required information that was needed to complete the review of the permit to rebuild 645 Pennsylvania Avenue.
- April 18, 2013 a new permit application and information was submitted to the Code Enforcement Department.
- A preliminary review of the permit was completed by April 22, 2013 at which time it was discovered that the permit submission was deficient in information required to do a full review.
- April 24, 2013 the Director of Development Services was informed of the incomplete status of the application submittal and asked if permit application would be accepted.
- June 17, 2013 the City Attorney was approached for a determination in the acceptance of the permit application.
- June 18, 2013 a decision was made to accept the submittal and to send out a letter detailing the required information.

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NEW CONSTRUCTION

Do Not Return This Form with Application- Please Supply Construction Documents

FOOTER:

- Size of rebar
- Number of rebar
- Depth and width of footer
- PSI of concrete
- Height of building to be constructed
- How will new footer tie into existing footer (additions/renovations)

FOUNDATION:

- Type of wall material
- Thickness of wall
- Amount/type of reinforcement

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CRAWL SPACE:

- Ventilation detail
- Access opening to crawl space- give dimensions
- Height of crawl space
- Give detail/location of flood openings if in flood area
- List any mechanical, plumbing or electrical items to be in crawl space & give detail of their location, connection & installation specifications
- How will crawl space tie into existing foundation

WALLS:

- Lumber size of interior and exterior walls
- Interior and exterior wall covering
- Spacing of framing lumber
- Insulation value
- Header sizes of windows and doors
- Vapor barrier

ROOF:

- Type- Truss or Rafters
  1. Truss- manufacturers specifications must be submitted
  2. Rafters
     - lumber size
     - lumber spacing
     - span
     - pitch
     - attachment
       1. location of attachments
       2. size of attachments
       3. how a new roof will tie into an existing roof(additions/renovations
  3. type of roofing material- flashing, ice guard
  4. type and size of sheathing
  5. underlayment
  6. snow load and wind load

INTERIOR:

- **All** dimensions of rooms and proposed use of each room
- Window and door sizes
- Floor joist size and spacing
    - if pre-engineered, manufacturers specifications must be submitted

HVAC:

- Gas unit
    1. show location of furnace and hot water heater
    2. show where vented to
    3. size of vents
    4. location of make-up air vents
    5. clearance around unit if in an enclosed room
    6. location of gas shut off
- Electric unit
    1. identify BTU
    2. show location of unit
    3. location of disconnect switch

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ELECTRICAL:

- Show runs
- Indicate branch circuits
- Show location of panel box
- Specify amp service
- Identify wire sizes
- Mark GFCI locations
- Show smoke detectors and how they will be wired in

PLUMBING:

- Identify drain line size
- Specify vent size and location
- Show where the sewer line goes

DRIVEWAYS and PARKING:

- Dimensions of parking and/or driveway
- Locate where driveway and/or parking area will be
- Type of covering-note PSI of concrete if being used

RETAINING WALLS

- Locate where retaining wall will be using site plan
- Detail thickness of wall, batter of wall
- Elevation of wall showing footer elevations and height of wall
- Elevation of existing and proposed grades

DECKS/PORCHES:

- Show all dimensions of deck
- Show height of structure from ground up
- Provide lumber sizes for posts, joists, beams as well as spacing for each

- Show footing detail- location, size, depth, circumference and material/fill
- Give handrail height and spindle spacing(must be under 4")
- Show stair detail- include rise and tread of stairs
- Detail attachments- to house, joist to beams, rails to post
- Include its location on site plan with distances to property lines

RAMPS:

- Indicate location of ramp
- Give sizes of material
- Note any spacing and/or footing detail
- Show and detail attachments
- Detail rise/run

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SITE PLAN:

- Indicate property lines
- List actual dimensions, size, square footage, and shape of the lot
- Name adjacent streets
- Show the location, square footage, and dimensions of the proposed and existing structures
- Indicate the location of the lot with respect to adjacent right-of-ways and easements
- Note setbacks around structure to property lines
- Show dimensions of structures
- Illustrate the height of the structure
- Record the location and dimensions of off-street parking and means of ingress and egress for such space
- Note the existing and proposed use of the structure and land
- Detail storm water discharge plan and erosion/sediment control plan

GRADING:

a) **Minor Grading (less than 1,000 square feet)**

- Note property lines and adjacent property information (including streets)
- Show existing contours and proposed finished grade
- Specify any slopes and nature of existing soils
- Detail existing and proposed structures
- Designate type/source of fill to be used if needed
- Storm water & erosion management plan
- Give plan for re-vegetation

b) Major Grading (more than 1,000 Square feet)

- Note property lines and adjacent property information (including streets)
- Show existing contours and proposed finished grade
- Show existing grade on adjoining properties
- Specify any slopes and nature of existing soils
- Detail existing and proposed structures
- Designate type/source of fill to be used if needed
- Storm water & erosion management plan
- Give plan for re-vegetation

- Must have Evidence of the application and approval from the West Virginia Department of Environmental Protection as follows:
    i. For development(s) between 1 acre and less than 3 acres a Notice of Intent (NOI) Construction Stormwater WV/NPDES General Permit is required
    ii. For development(s) 3 acres or more a WV/NPDES Permit is required

**Floodplain application may be required
** Geotechnical report may be required
** Registered Design Professional may be required
**Performance Bond may be required

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EXHIBIT 4
PAGE 1 OF 2

The City of Morgantown

Public Works Department
389 Spruce Street
Morgantown, West Virginia 26505
Terry L. Hough, P.E., P.S., CFM
Director of Public Works and Engineering
PH: (304) 284-7412 FAX: (304) 284-7409
E-MAIL:

December 1, 2011

REQUIREMENTS

Mr. Gary Walden
973 Chestnut Ridge Road
Morgantown, WV 26505

EXHIBIT
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RE: Building Permit Application for 645 Pennsylvania Avenue

Dear Mr. Walden:

There are several issues on the permit application for the aforementioned project that require clarification before a permit can be approved. As discussed on the phone, the content of this letter has been e-mailed to Scott Krabill.

1. Mr. Krabill's documentation attached to the latest submission correctly identified the quantity and amount of flood openings for the proposed buildings. However, those openings must be shown on a plan both in plan view and elevation view of exactly where they are with respect to the building. As a reminder, flood openings can not be more than twelve inches from the ground.

2. On the elevation certificate, Mr. Krabill used the benchmark at the Decker's Creek Bridge on Roger's Avenue to establish Base Flood Elevation (BFE) which is a legitimate benchmark. However on the calculation sheet for the First Floor Elevation (FFE) of the proposed structure on Pennsylvania Avenue the FFE for the Dairy Castle is referenced. There is no evidence to suggest that this is improper or wrong in anyway but if a prior flood elevation study was used, that data needs to be supplied with the new study.

3. Box B9 on the Elevation Certificate states an approximate BFE of less than or equal to 825 feet. This figure needs to be exact. For example; if the BFE is 825 it should be documented as such. If the BFE is 824.6 feet, that is the figure that should be written.

4. An "Application for Permit to Develop in a Floodplain Area" must also be filled out. Mr. Krabill is familiar with this application however it is not necessary for an Engineer or Surveyor to fill out or sign. You as the owner can do this as you have already retained the services of an Engineer to provide the required accompanying documentation. A copy of the application is enclosed for your convenience.

5. Finally, I'd like to take this opportunity to let you know what will be required during construction so that a Certificate of Occupancy can be obtained. The As-built FFE must be verified at the time the foundation walls are built. This does not necessarily have to be in the form of an Elevation Certificate, but it must be verified, signed and stamped by a competent Surveyor or Engineer. The reason for this extra step is because we all know that things change during construction. If the FFE is supposed to be at a certain elevation, it must be certified that it was actually built at or above that elevation before Occupancy can be granted. It is easiest to do this just after the first floor is constructed and before framing is installed.

Hopefully, I've explained these issues clearly but should you have any concerns that I may help with, please do not hesitate to contact our office at (304) 284-7412.

Sincerely,

Trevor Lloyd, P.E., CFM
Engineering Department

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EXHIBIT 5
PAGE 1 OF 2

COPY

MORGANTOWN FIRE DEPARTMENT
OFFICE of the FIRE MARSHAL
300 SPRUCE STREET
(304) 284-7480
FAX 284-7503

COPY

PLANS REJECTED DOCUMENT

PROJECT: 645 Pennsylvania Avenue, Walden Apartments

Dear Applicant,

We regret to inform you that the submitted plans for your project have been rejected. This document will assist you in determining what additional information or documentation will be required to complete the plan review process.

Pursuant to National Fire Code 1 §1.14.1, §1.14.3, §1.15.2Plans are required for all new construction, modifications, rehabilitations, remodels, repairs, reconstruction, renovations, and additions.

PLAN NARRATIVE

The submitted plans indicate the construction of a three-story apartment building. The plans were reviewed per NFPA 101 Chapter(s) 4, 6, 7, 8, 9, 10, 30, and 43 of the 2009 edition, National Fire Code NFPA 1 Chapter(s) 4, 10, 11, 12, 13, 14, 16, 20, and 50 of the 2009 edition, and the WV State Fire Code Title 87-1. Any additional code requirements shall be referenced.

Comments relative to the submitted plans are as follows:

New Construction___X__Repair_____Renovation_____Modification_____
Reconstruction_____Change of Use_____Change of Occupancy_____
Addition_____Sprinkler System_____Fire Alarm System_____

Plans Reference Number: 2011-R02-(2)
Date Plans were Received: 09/30/2011
Date Plans were Reviewed: 10/10/2011

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EXHIBIT 5
PAGE 2 OF 2

COPY

PLANS REJECTED

The submitted plans have been rejected for the following reasons, conditions, or deficiencies:

COPY

a. Hand drawn site plan with non-verifiable scale, no streets, property lines, landmarks, or other structures are identifiable or measurable.

b. Improper structural drawings with no UL design reference to fire rated construction Type V-111.

c. No sprinkler plans or hydraulic calculations were submitted or indicated on any of the drawings.

Capt. Ken Tennant
City Fire Marshal

Any person may appeal or contest the validity of the above listed requirements by providing written notification to the City Manager's Office within 14 days of this review. All appeals will be forwarded and scheduled before the West Virginia State Fire Commission.

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Original/Owner 1st Copy/Code Enforcement 2nd Copy/File

The City of Morgantown

DEVELOPMENT SERVICES DEPARTMENT

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7431 TDD (304) 284-7512
www.morgantownwv.gov

EXHIBIT
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August 9, 2013

VIA CERTIFIED MAIL

Gary Walden
973 Chestnut Ridge Road
Morgantown, WV 26505

RE: 645 Pennsylvania Avenue
Abandonment of Grandfathering Status of Previous Non-conforming Structure

Mr. Walden:

It has been brought to my attention that, in response to this office's letter and final notice to you dated 26-Jun-2013, an additional attempt was made to submit a complete building permit application to reconstruct the three-unit apartment building at 645 Pennsylvania Avenue that was previously razed as a result of substantial fire damage. This office understands that Mr. Scott Krabill submitted additional information and documentation to the Permit Center at approximately 9:30 AM on 17-Jul-2013.

Attached hereto is a memorandum from Amy Fairman, Permit Technician dated 09-Aug-2013 detailing the extent of required information and documentation that was not submitted, which resulted in the rejection of the related building permit application.

You are hereby notified:

1. That **your obligation** to submit a complete building permit application, for the purpose of protecting your right to reconstruct the subject nonconforming structure at 645 Pennsylvania Avenue, has **not been fulfilled** as notified in this office's letter to you dated 26-Jun-2013 and described in Ms. Fairman's subject memorandum; and,

2. That failure to fulfill said obligation has resulted in an **abandonment** of your **right to reconstruct** the subject nonconforming structure at 645 Pennsylvania Avenue as provided in Article 1373 "Nonconforming Provision" of the City's Planning and Zoning Code; and,

3. That the **nonconforming protections** provided in Article 1373 "Nonconforming Provisions" of the City's Planning and Zoning Code to reconstruct the grandfathered nonconforming three-dwelling unit structure at 645 Pennsylvania Avenue **have expired**; and,

4. That any future use and/or development on the subject realty will be required to comply with present City Planning and Zoning Code requirements including, but not limited to: permitted land uses; minimum and maximum building envelope standards; maximum lot coverage standards; maximum building height standards; and, minimum parking requirements.

Article 1383 “Administrative Appeals” of the City’s Planning and Zoning Code affords you an opportunity to appeal this administrative determination to the Board of Zoning Appeals provided an Administrative Appeal Application is duly filed with this office within 30 days from the date of this letter. For your convenience, attached hereto is an Administrative Appeal Application along with Article 1383 detailing the subject appeal process.

Should you have any questions or require further clarification concerning this determination or the Administrative Appeal process, please contact the undersigned.

Respectfully,

Christopher M. Fletcher, AICP
Director of Development Services

Enclosures: as noted above

Copied via email: Mike Stone, Chief Building Code Official
Amy Fairman, Permit Technician
Capt. Ken Tennant, City Fire Marshal
Trevor Lloyd, Engineering Department
Rental Registration File, 645 Pennsylvania Avenue
Building Permit File, 645 Pennsylvania Avenue

EXHIBIT
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EXHIBIT

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City of Morgantown

Memorandum

August 9, 2013

To: Chris Fletcher, Director of Development Service

From: Amy Fairman, Permit Tech

CC: Mike Stone, CBO

Re: Rejection of permit application for 645 Pennsylvania Avenue

This correspondence is to clearly establish the deficient information that is required to be submitted with the permit application and thus led to a rejection for the permit application for 645 Pennsylvania Avenue.

Below is a list of items per department that were required but absent at the time of submittal.

Engineering Department

1. Site Plan Requirements

- Show road, creek and property lines.
- Show existing and proposed grades.
- Show proposed structure footprint along with any other features such as decks, porches, steps, sidewalks, driveways, etc. with elevations.
- Show the floodway and the floodplain area with elevations.
- Show dimensions of the structure with square footage.
- Show, on a separate drawings, flood vents, elevations, heights, etc.
- Show details of the flood vents along with the percentage of water that will pass through the vent.
- Show the location of utilities

2. Elevation Certificate

- This is a new submittal; therefore the Elevation Certificate must be on the most current form. The one submitted has expired and was signed in 2011.

- There is new information requirements needed that was not on the previous forms.
- The location and the BFE submitted are incorrect. This needs to be revised.
- The determination of the BFE on Decker's Creek cannot be established on the FIRM. As Decker's Creek is a studied waterway, a Flood Insurance Study (FIS) must be used. All of this information is available on line or in the Engineering Department.

Note from the department:

Please note that the list may not be all inclusive and any additional information submitted for the site will need to be reviewed for accuracy.

Code Enforcement Department

1. WALLS

    - Lumber size of interior and exterior walls
    - Interior and exterior wall covering
    - Spacing of framing lumber
    - Insulation value in the floor and walls
    - Header sizes of windows and doors
    - Vapor barrier
    - Fire separation

2. INTERIOR

    - All dimensions of rooms and proposed use of each room
    - Window and door sizes
    - Floor joist size and spacing

3. HVAC
    - Gas unit
        1. show location of furnace and hot water heater
        2. show where vented to
        3. size of vents
        4. location of make-up air vents
        5. clearance around unit if in an enclosed room
        6. location of gas shut off

        OR
    - Electric unit
        1. identify BTU
        2. show location of unit
        3. location of disconnect switch

EXHIBIT

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4. ELECTRICAL
    - Show runs
    - Indicate branch circuits
    - Show location of panel box
    - Specify amp service
    - Identify wire sizes
    - Mark GFCI locations
    - Show smoke detectors, CO detectors and how they will be wired in

5. PLUMBING
    - Identify drain line size
    - Specify vent size and location
    - Show where the sewer line goes

6. DECKS/PORCHES
    - Show all dimensions of each deck
    - Show height of decks from ground up
    - Provide lumber sizes for posts, joists, beams as well as spacing for each
    - Show footing detail- location, size, depth, circumference and material/fill
    - Give handrail height and spindle spacing(must be under 4”)
    - Show stair detail- include rise and tread of stairs
    - Detail attachments- to house, joist to beams, rails to post
    - Include its location on site plan with distances to property lines

7. SITE PLAN
    - Indicate property lines
    - List actual dimensions, size, square footage, and shape of the lot
    - Name adjacent streets
    - Show the location, square footage, and dimensions of the proposed and existing structures
    - Indicate the location of the lot with respect to adjacent right-of-ways and easements
    - Note setbacks around structure to property lines
    - Show dimensions of structures
    - Illustrate the height of the structure
    - Record the location and dimensions of off-street parking and means of ingress and egress for such space

<u>Fire Department</u>

- Site plan which includes a verifiable scale, streets, property lines, landmarks, or other identifiable structures clearly visible/
- Proper structural drawings with UL design reference to fire rated construction Type V-111
- Hydraulic calculations

COPY

COPY

MORGANTOWN FIRE DEPARTMENT
OFFICE of the FIRE MARSHAL
300 SPRUCE STREET
(304) 284-7480
FAX 284-7503

PLANS REJECTED DOCUMENT

PROJECT: 645 Pennsylvania Avenue, Walden Apartments

Dear Applicant,

We regret to inform you that the submitted plans for your project have been rejected. This document will assist you in determining what additional information or documentation will be required to complete the plan review process.

Pursuant to National Fire Code 1 §1.14.1, §1.14.3, §1.15.2Plans are required for all new construction, modifications, rehabilitations, remodels, repairs, reconstruction, renovations, and additions.

PLAN NARRATIVE

The submitted plans indicate the construction of a three-story apartment building. The plans were reviewed per NFPA 101 Chapter(s) 4, 6, 7, 8, 9, 10, 30, and 43 of the 2009 edition, National Fire Code NFPA 1 Chapter(s) 4, 10, 11, 12, 13, 14, 16, 20, and 50 of the 2009 edition, and the WV State Fire Code Title 87-1. Any additional code requirements shall be referenced.

Comments relative to the submitted plans are as follows:

New Construction___X__Repair_____Renovation_____Modification_____
Reconstruction_____Change of Use_____Change of Occupancy_____
Addition_____Sprinkler System_____Fire Alarm System_____

Plans Reference Number: 2011-R02-(2)
Date Plans were Received: 09/30/2011
Date Plans were Reviewed: 10/10/2011

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PLANS REJECTED

COPY

The submitted plans have been rejected for the following reasons, conditions, or deficiencies:

a. Hand drawn site plan with non-verifiable scale, no streets, property lines, landmarks, or other structures are identifiable or measurable.

b. Improper structural drawings with no UL design reference to fire rated construction Type V-111.

c. No sprinkler plans or hydraulic calculations were submitted or indicated on any of the drawings.

Capt. Ken Tennant
City Fire Marshal

Any person may appeal or contest the validity of the above listed requirements by providing written notification to the City Manager's Office within 14 days of this review. All appeals will be forwarded and scheduled before the West Virginia State Fire Commission.

Original/Owner 1st Copy/Code Enforcement 2nd Copy/File

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MORGANTOWN FIRE DEPARTMENT
OFFICE of the FIRE MARSHAL
300 SPRUCE STREET
(304) 284-7480
FAX 284-7503

PLANS REJECTED DOCUMENT

PROJECT: 645 Pennsylvania Avenue, Walden Apartments- Sprinkler System

Dear Applicant,

We regret to inform you that the submitted plans for your project have been rejected. This document will assist you in determining what additional information or documentation will be required to complete the plan review process.

Pursuant to National Fire Code 1 §1.14.1, §1.14.3, §1.15.2, Plans are required for all new construction, modifications, rehabilitations, remodels, repairs, reconstruction, renovations, and additions.

PLAN NARRATIVE

The submitted plans indicate the installation of a sprinkler system for a three-story apartment building. The plans were reviewed per NFPA 101 Chapter(s) 4, 6, 7, 8, 9, 10, 30, and 43 of the 2009 edition, National Fire Code NFPA 1 Chapter(s) 4, 10, 11, 12, 13, 14, 16, 20, and 50 of the 2009 edition, and the WV State Fire Code Title 87-1. Any additional code requirements shall be referenced.

Comments relative to the submitted plans are as follows:

New Construction_____Repair_____Renovation_____Modification_____
Reconstruction_____Change of Use_____Change of Occupancy_____
Addition_____Sprinkler System__X__Fire Alarm System_____

Plans Reference Number: 2013-R04-(2)
Date Plans were Received: 06/17/2013
Date Plans were Reviewed: 06/25/2013

EXHIBIT
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PLANS REJECTED

The submitted plans have been rejected for the following reasons, conditions, or deficiencies:

a. No hydraulic calculations were submitted with the sprinkler layout.

b. No licensed contractor is identified on the permit application to install the sprinkler system. State Fire Code §29-3D-3 requires a license issued by the State Fire Marshal for anyone performing fire protection work in the State of West Virginia.

c. No valid building permit has been approved by the City of Morgantown to construct an apartment building.

Capt. Ken Tennant
City Fire Marshal

Any person may appeal or contest the validity of the above listed requirements by providing written notification to the City Manager's Office within 14 days of this review. All appeals will be forwarded and scheduled before the West Virginia State Fire Commission.

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Original/Owner 1st Copy/Code Enforcement 2nd Copy/File

Morgantown Fire Department
Office of the Fire Marshal
300 Spruce Street
Morgantown, WV 26505
Office (304) 284-7480
Fax (304) 284-7503

Morgantown FD
Station: **1**
Shifts Or Platoon: **C**

Location:
645 Pennsylvania AVE # A
Morgantown WV 26505

Lat/Long:
N 39° 37′ 36.06″
W 79° 56′ 48.9″

Zone:
2 - Company Two
Location Type: **1 - Street address**
Census Tract: **95 -5410**
Population Density: **Urban**

Incident Type:
111 - Building fire

FDID: **31207**
Incident #: **2009-1968**
Exposure ID: **1503711**
Exposure #: **0**
Incident Date: **10/11/2009**
Dispatch Run #: **2009-00088354**

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Report Completed by:	Caravasos , Mark A	**ID:** 0663	**Date:** 10/11/2009
Report Reviewed by:	Tennant , Debra	**ID:** 2025	**Date:** 10/15/2009
Report Printed by:	Tennant, Debra	**ID:** 2025	**Date:** 9/16/2013 **Time:** 09:25

Structure Type: **Enclosed building** | Property Use: **419 - 1 or 2 family dwelling**

Automatic Extinguishment System Present: ☐ | Detectors Present: ☑ | Cause of Ignition: **Failure of equipment or heat source**

Aid Given or Received: **None** | Primary action taken: **11 - Extinguishment by fire service personnel**

Additional actions: **12 - Salvage & overhaul , 86 - Investigate**

Losses		**Pre-Incident Values**					
Property:	**$50,000.00**	Property:	**$50,000.00**	Civilian Injuries:	**0**	Fire Service Injuries:	**0**
Contents:	**$5,000.00**	Contents:	**$5,000.00**	Civilian Fatalities:	**0**	Fire Service Fatalities:	**0**
Total:	**$55,000.00**	Total:	**$55,000.00**	Total Casualties:	**0**	Total Fire Service Casualties:	**0**

Total # of apparatus on call: **5** | Total # of personnel on call: **11**

NARRATIVE

Structure fire, heavy smoke & flame showing upon arrival. Fire extinguished with 2 - 1 1/12" preconnects. Fire started on main level in area of boiler system. Occupant reported seeing flame from under door of boiler area as he departed residence. Heavy involvement of main floor with extension into third floor & attic. Major structural damage to residence. Allegheny Power, Dominion Hope, MUB, building codes notified & responded. Origin of fire traced to boiler unit on main floor. Evidence of heavy fire in this area, with openings in ceiling allowing fire to travel void space under 3rd level floor.

APPARATUS

Unit	E-1	**Unit**	L-1
Type:	Engine	**Type:**	Quint
Use:	Suppression	**Use:**	Suppression
Response Mode:	Lights and Sirens	**Response Mode:**	Lights and Sirens
# of People	3	**# of People**	1
Alarm	10 /11/2009 02:21:04	**Alarm**	10 /11/2009 02:21:04
Dispatched	10 /11/2009 02:22:13	**Dispatched**	10 /11/2009 02:22:13
Enroute	10 /11/2009 02:23:00	**Enroute**	10 /11/2009 02:23:00
Arrived	10 /11/2009 02:27:03	**Arrived**	10 /11/2009 02:27:03
Cancelled	-- / -- / -- -- : -- : --	**Cancelled**	-- / -- / -- -- : -- : --
Cleared Scene	10 /11/2009 04:44:38	**Cleared Scene**	10 /11/2009 04:44:38
In Quarters	10 /11/2009 04:48:01	**In Quarters**	10 /11/2009 04:48:01
In Service	10 /11/2009 04:48:01	**In Service**	10 /11/2009 04:48:01
Unit	E-2	**Unit**	E-3
Type:	Engine	**Type:**	Engine
Use:	Suppression	**Use:**	Suppression
Response Mode:	Lights and Sirens	**Response Mode:**	Lights and Sirens
# of People	3	**# of People**	3
Alarm	10 /11/2009 02:21:04	**Alarm**	10 /11/2009 02:21:04

Dispatched	10 /11/2009 02:22:13	**Dispatched**	10 /11/2009 02:22:13
Enroute	10 /11/2009 02:23:00	**Enroute**	10 /11/2009 02:23:00
Arrived	10 /11/2009 02:28:10	**Arrived**	10 /11/2009 02:33:45
Cancelled	-- / -- / -- -- : -- : --	**Cancelled**	-- / -- / -- -- : -- : --
Cleared Scene	10 /11/2009 04:44:38	**Cleared Scene**	10 /11/2009 04:44:38
In Quarters	10 /11/2009 04:48:01	**In Quarters**	10 /11/2009 04:48:01
In Service	10 /11/2009 04:48:01	**In Service**	10 /11/2009 04:48:01
Unit	ST-1		
Type:	Chief officer car		
Use:	Other		
Response Mode:	Lights and Sirens		
# of People	1		
Alarm	10 /11/2009 02:21:04		
Dispatched	10 /11/2009 02:22:13		
Enroute	10 /11/2009 02:27:53		
Arrived	10 /11/2009 02:50:10		
Cancelled	-- / -- / -- -- : -- : --		
Cleared Scene	10 /11/2009 03:15:00		
In Quarters	10 /11/2009 04:48:01		
In Service	10 /11/2009 04:48:01		
Number Of People not on apparatus: 0			

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FIRE

Acres Burned	0	**Acres Burn From Wildland Form**	False
Area Of Fire Origin	Heating room or area, water heater area	**Heat Source**	Radiated or conducted heat from operating equipment
Item First Ignited	Structural member or framing	**Fire Is Confined To Object Of Origin**	
Type Of Material	Sawn wood, including all finished lumber	**Cause Of Ignition**	Failure of equipment or heat source
Factor Contributing To Ignition	Installation deficiency		
Human Factors Contributing	None		
Equipment Involved In Ignition Flag	True	**Equipment Involved**	Boiler (power, process, heating)
Brand	NEPCC Products Corp	**Equipment Model**	1A1250
Serial	184-28045	**Equipment Year**	
Equipment Power Source	Natural gas or other lighter-than-air gas	**Equipment Portability**	Stationary

STRUCTURE FIRE

Structure Type	Enclosed building	**Building Status**	In normal use
# Of Stories At Above Grade	3	**# Of Stories Below Grade**	0
Square Feet	1000	**Length**	
Width		**Floor Of Origin**	2
Fire Spread	Confined to building of origin		
Minor Damage	1	**Significant Damage**	0
Heavy Damage	3	**Extreme Damage**	0
Item Contributing Most To Spread	Structural member or framing	**Type Of Material Contributing Most To Spread**	Sawn wood, including all finished lumber
Presence Of Detectors	Present	**Type Of Detection System**	Undetermined
Detector Power Supply	Undetermined	**Detector Operation**	Detector operated
Detector Effectiveness	Detector alerted occupants, occupants responded	**Detector Failure Reason**	

PEOPLE -- PERSON 1

Is Owner	True	**Business Name**	
Telephone Number	304-599-6001	**Involvement**	Owner
Name	MR Gary Walden	**Date of Birth**	
Address	973 Chestnut Ridge RD Morgantown, WV 26505-		

PEOPLE -- PERSON 2

Is Owner	False	**Business Name**	
Telephone Number	304-798-8394	**Involvement**	Occupant
Name	MR Terry Edwards	**Date of Birth**	
Address	645 Pennsylvania AVE A Morgantown, WV 26505-6505		

PEOPLE -- PERSON 3

Is Owner	False	**Business Name**	
Telephone Number		**Involvement**	Occupant
Name	MS Lynn Spaw	**Date of Birth**	
Address	645 Pennsylvania AVE A Morgantown, WV 26505-6505		

CUSTOM FIELDS FORM

Is this property owned by WVU? (Enter no if Ruby Hospital Properties)	No
Is this property part of Ruby Memorial Hospital?	No
Was a vehicle involved?	No
Was this a street or dumpster fire?	No

Member Making Report (Captain Mark A Caravasos): _____

Supervisor (Secretary Debra Tennant): _____

EXHIBIT

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City of Morgantown Application for Building Permit

E

Application Date	Permit Type:	Is Applicant Owner?
3/26/10	☐ Electrical ☐ Plumbing ☐ Building Permit ☐ Mechanical ☒ Other DEMOLITION	(Y/N)

Parcel Type: ☐ Residential ☒ Rental/ Commercial ☐ Industrial

PROPERTY INFORMATION:

Street Address Where Work is being done: 645 PENNSYLVANIA AVENUE	Morgantown, WV	Zip Code: 26505
Owners First Name: TINA	Last Name: WALDEN	Phone: 304.685.8721
Owners Address (*if different from above address*): 973 CHESTNUT RIDGE ROAD, MGTOWN, WV		

CONTRACTORS INFORMATION:	Contractors Business Name	City License Number
General Contractor/OWNER	TINA WALDEN => WALDEN RENTALS	2010-
Excavation		2010-
Concrete		2010-
Carpentry		2010-
Electrical		2010-
Plumbing		
Sewer		
Mechanical		
Roofing		
Masonry		
Drywall/Lathing		2010-
Demolition		2010-
Other		2010-

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SCOPE OF WORK TO BE DONE: RAZE STRUCTURE.

Detailed Description of Work: ATTACHED HERETO IS A SIGNED CERTIFICATION, ALONG WITH APPLICABLE ASBESTOS RELATED DOCUMENTS, VERIFYING THAT THE ACM HAS BEEN REMOVED AND PROPERLY DISPOSED OF. STILL AWAITING CONFIRMATION FROM GAS & POWER THAT THESE UTILITIES HAVE BEEN TERMINATED.

MUST ATTACH DETAILED SITE PLAN ☒ YES ☐ NO **Est. Value of Work** $ 800.00

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

SIGNATURE OF APPLICANT	ADDRESS OF APPLICANT	PHONE
	99 PRYTES WAY, MGTOWN 26508	(304) 290-1936

PRINT NAME: R SCOTT KRABILL, PE

OFFICE USE ONLY:

Map/Parcel	Zoning	Ward	Flood Plain
		2	

30/046

APPROVALS:

EXHIBIT 8

Engineering Department Approval Notes:

See attached

Signature of person reviewing: Margaret Smith 4/1/10 **DATE**

Planning Department Approval Notes:

Signature of person reviewing: _____ **DATE**

Code Enforcement Approval Notes:

Signature of person reviewing: _____ **DATE**

VALIDATION:

R-DEMO - 2010-00000037

Building Permit	**Date:** 6/14/10	**Permit Number:**	**Permit Fee** 100.00
Electrical Permit	**Date:**	**Permit Number:**	**Permit Fee**
Plumbing Permit	**Date:**	**Permit Number:**	**Permit Fee**
Mechanical Permit	**Date:**	**Permit Number:**	**Permit Fee**
Demolition	**Date:**	**Permit Number:** DM2010-14	**Permit Fee**
Stop Work Order	**Date:**	**Permit Number:**	**Permit Fee**
Other	**Date:**	**Permit Number:**	**Permit Fee**

Application Accepted and Processed By: [signature]

Total Fee 100.00

Approved By: Mike Stone 6/14/10 **DATE**

Signature of Person Picking Up Building Permit: Brian Walden 6/14/10 **DATE**

Print Name of Person Picking up Permit: Brian Walden

EXHIBIT
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ARTICLE 1373
Nonconforming Provisions

1373.01 Nonconforming uses.
1373.02 Nonconforming structures.
1373.03 Nonconforming parcels.
1373.04 Burden of establishing status.
1373.05 Nonconforming signs.

CROSS REFERENCES
Nonconforming uses - see W. Va. Code 8A-7-10
Nonconforming signs - see P. & Z. 1369.15

1373.01 NONCONFORMING USES.

The uses that were both in existence and in compliance with all land use and other laws on the date of passage of these regulations, and, further, that do not conform to the use regulations set forth in this ordinance, shall be deemed to be legal, pre-existing nonconforming uses that may be continued subject to the following provisions:

(A) No legal, pre-existing nonconforming use may be enlarged, moved or otherwise changed, except that such use may be changed to a permitted use.

(B) A legal, pre-existing nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, provided that no structural alterations are made within the building in order to allow the use to expand, except those that may be required by the Building Inspections Department. However, no such expansion shall be permitted in any parts of such building that were not so arranged or designed or any land outside such building.

(C) When a legal, pre-existing nonconforming use is superseded by a permitted use, the nonconforming use may not thereafter be resumed.

(D) When a legal, pre-existing nonconforming use is discontinued or abandoned for twelve (12) consecutive months, the land, structure, or land and structure in combination, may thereafter only be put to a permitted use and the nonconforming use may not thereafter be resumed.

Any legal, pre-existing nonconforming use shall continue until or unless modified or terminated as herein provided. Such use may be sold, inherited, or otherwise transferred, provided the use, land and structure (if any) remain the same.

1373.02 NONCONFORMING STRUCTURES.

Structures that were in existence and in compliance with all land use and other laws prior to the date of passage of these regulations, but do not conform to the use regulations set forth in this ordinance after its adoption, shall be deemed to be legal, pre-existing nonconforming uses that may be continued subject to the following provisions:

(A) No legal, pre-existing structure may be enlarged, moved or otherwise changed in such a manner that increases the extent of its non-conformity, unless a variance from the terms of the ordinance is obtained from the Board of Zoning Appeals.

(B) When a legal, pre-existing structure is discontinued or abandoned for twelve (12) consecutive months, the structure may thereafter only be used if brought into compliance with this ordinance; however, the nonconforming use within the structure may not thereafter be resumed.

(C) When a nonconforming use exists within a structure, status applies to the structure, and removal or destruction of the structure shall eliminate the nonconforming status of the land.

(D) Normal maintenance and repair of a building or other structure containing a nonconforming use may be performed, including any alterations that would have the effect of bringing the building or other structure into further compliance with the West Virginia Building Code; provided there is no physical change to the building or structure (e.g. design, size, location, etc.) and such maintenance or repair does not extend or intensify the nonconforming use, unless, otherwise authorized by this chapter. If alterations are performed on the building with the specific purpose of bringing the building into further compliance with the West Virginia Building Code, and if such alterations are ordered by the City of Morgantown Code Enforcement Department, and if such alterations necessitate the temporary cessation or abandonment of a current land use, then the Board of Zoning Appeals may extend the 12-month abandonment clause for a reasonable period of time to effectuate said changes.

(E) Any legal, pre-existing nonconforming structure damaged by fire, flood, explosion or other casualty may be reconstructed and used as before, if such reconstruction is undertaken within twelve (12) months of such casualty, and if the restored structure has no greater coverage and contains no greater content (measured in cubic feet) than before such casualty.

(F) Any legal, pre-existing nonconforming dwelling that is deficient in ground floor area and that is removed from a parcel may not be relocated on the parcel or be replaced by any other dwelling which is not in compliance with the requirements of this ordinance.

1373.03 NONCONFORMING PARCELS.

Parcels that were both in existence and in compliance with all land use and other laws on the date of passage of this ordinance, but, that do not conform to the regulations set forth in this ordinance, shall be deemed to be legal, pre-existing nonconforming parcels that may be occupied or used subject to the following provisions:

(A) The use is a permitted use or a legal, pre-existing nonconforming use.

(B) The legal, pre-existing nonconforming parcel may not be further developed until compliance with the ordinance is demonstrated or until a variance from the terms of the ordinance is obtained from the Board.

EXHIBIT

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1373.04 BURDEN OF ESTABLISHING STATUS.

The burden of establishing legal, pre-existing nonconforming use status rests on: the property owner or party seeking to continue the nonconforming use or occupancy; any person applying for a Building Permit or, any other person asserting such status. Such persons shall provide sufficient proof in a form acceptable to the Planning Director of the following:

(A) The date of construction of the building or structure or the date the use was established;

(B) The continuous operation of the nonconforming use; and,

(C) Such other proof as may be deemed necessary by the Planning Director.

1373.05 NONCONFORMING SIGNS.

It is the policy of the City to encourage and, to the maximum extent practicable, require that all signs within the City be brought into compliance with the requirements of this Ordinance.

(A) Nonconforming Signs Protected. A sign which was lawfully erected prior to the effective date of this ordinance but which does not conform in one or more respects with the requirements of this Ordinance may remain in use, subject to the requirements of this Section and other applicable requirements of City Ordinances.

(B) Limitations on Nonconforming Signs.

(1) Temporary Signs. Any nonconforming temporary sign shall be removed on or before 365 days after the effective date of this Ordinance or shall be considered in violation of this Ordinance.

(2) Abandonment. Any sign, including its frame and support structures, related to a use or business that ceases to exist or operate for a continuous period of 90 days shall be considered nonconforming and shall not be reused for sign purposes unless and until it is in full conformity with the provisions of this Ordinance, subject to issuance of a new sign permit. This requirement shall apply whether the property owner has been specifically informed of the 90 day lapse, or not.

(3) Routine Repairs and Maintenance. Repairs and maintenance of nonconforming signs, such as repainting and electrical repairs, shall be permitted, provided that repainting shall not include a change of copy or color.

(4) Change of Copy. No change of copy shall be permitted (except on a changeable copy sign) without bringing the sign into full conformance with this Ordinance.

(5) Required Removal. Where an amendment to a previously approved development plan is proposed, approval of such plan shall be contingent upon removal of all nonconforming signs on the site. For example, if an existing retail establishment proposes a building addition or parking expansion, then any nonconforming signs on the property must be brought into compliance as a condition of approval of the amended site plan.

EXHIBIT

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EXHIBIT
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ARTICLE 1383
Administrative Appeals

1383.01	Authority.	1383.04	Public hearing.
1383.02	Initiation.	1383.05	Decisions.
1383.03	Processing.	1383.06	Appeal of decisions.

CROSS REFERENCES
Appeal process - see W. Va. Code Art. 8A-9

1383.01 AUTHORITY.
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.

1383.02 INITIATION.
An appeal may be filed with the Board of Zoning Appeals by any person aggrieved by the order, requirement, decision or determination described in Section 1383.01. An appeal filed with the Board must specify the grounds of the appeal, be filed in the form established by rules of the Board, and be filed within 30 days of the original order, requirement, decision or determination.

1383.03 PROCESSING.
(A) An appeal shall be filed with the Planning staff, who shall forward such appeal to the Board of Zoning Appeals .

(B) Within 10 days of receipt of the appeal by the Board, the Board shall set a date and time for the public hearing and give notice. The public hearing shall be held within 45 days of receipt of the appeal by the Board.

(C) At least 15 days prior to the date set for the public hearing, the Board shall publish a notice of the date, time and place of the hearing on the appeal as a Class I legal advertisement in compliance with the provisions of West Virginia Code Chapter 59, Article 3, and written notice shall be given to interested parties.

1383.04 PUBLIC HEARING.
A public hearing shall be conducted by the Board of Zoning Appeals in conformance with the West Virginia Code and the Morgantown City Board of Zoning Appeals Rules of Procedure. The party making the appeal shall be required to pay any fee established by City Council.

1383.05 DECISIONS.

The Board of Zoning Appeals shall hear testimony and evidence concerning appeals, and prepare findings of fact and conclusions of law and shall render a final decision on all appeals. A written copy of such decision, as described in the Rules of Procedure, shall be available in the Planning Department within five (5) days after making such decision.

Any appeal determined by the Board of Zoning Appeals 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.

1383.06 APPEAL OF DECISIONS.

Every decision or order of the Board of Zoning Appeals shall be subject to review by certiorari. Any person or persons jointly or severally aggrieved by any decision or order of the Board of Zoning Appeals may present to the Circuit Court of Monongalia County a petition duly verified, setting forth that such decision or order is illegal in whole or in part, and specifying the grounds of the alleged illegality. The petition must be presented to the Court within thirty days after the date of the decision or the order of the Board of Zoning Appeals complained of. In the event that an appeal is filed to the Circuit Court, the City, upon receiving notice of such appeal from the Court, shall send written notification of said appeal to the same property owners that were originally notified during initial consideration of the case.

EXHIBIT

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EXHIBIT
11
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CHAPTER ELEVEN - Administration of Zoning Ordinance

Art. 1375. General Administration and Enforcement.
Art. 1377. Amendments to the Text and Map of the Zoning Ordinance.
Art. 1379. Conditional Uses.
Art. 1381. Zoning Variances.
Art. 1383. Administrative Appeals.
Art. 1385. Site Plan Review.
Art. 1387. Planning Commission.
Art. 1389. Board of Zoning Appeals.
Art. 1391. Permit, Certificate and Approval Revocation.
Art. 1393. Violations and Enforcement.

ARTICLE 1375
General Administration and Enforcement

1375.01 Responsibility for administration and enforcement.
1375.02 General provisions.
1375.03 Zoning reviews.
1375.04 Fees.
1375.05 Administrative interpretations.

CROSS REFERENCES
Statutory provisions - see W. Va. Code Art. 8A-10

1375.01 RESPONSIBILITY FOR ADMINISTRATION AND ENFORCEMENT.

It shall be the duty of the Planning Director, or his or her designee, to:

(A) Perform zoning reviews of building permit applications as necessary to determine compliance with the provisions of this ordinance.

(B) Maintain permanent and current records of all applications for all reclassification, variances, special permits, amendments, and other zoning related records required by this ordinance and of the hearings and actions thereon.

(C) Conduct investigations as necessary to determine compliance with or violation of this ordinance.

(D) Participate in the abatement of violations of this ordinance and aid in the prosecution of such violations.
(E) Maintain in current status the official zoning maps.
(F) Provide information on zoning upon request by citizens and public agencies.

1375.02 GENERAL PROVISIONS.

(A) No commission, board, agency, officer, or employee of the City shall issue, grant, or approve any permit, license, certificate, or any other authorization for any construction, reconstruction, alteration, enlargement, or relocation of any building or structure, or for any use of land or building, that would not be in compliance with the provisions of this ordinance.

(B) In administering the provisions of this ordinance, the standard rule of rounding numbers to the nearest whole shall apply. When the unit of measurement results in a fraction less than one-half (0.5), the fraction shall be disregarded; fractions of one-half (0.5) or more shall be rounded up to the next whole number.

1375.03 ZONING REVIEWS.

(A) No Building Permit pertaining to the construction, enlargement, moving, remodeling, reconstruction of a structure or change of use shall be issued unless approval of the site plan has been granted by the Planning Director or the Planning Commission. The Planning Director shall permit approvals only in conformance with the provisions of this ordinance except when he receives a written order from the Planning Commission, Board of Zoning Appeals, or a court of law in the form of an administrative review, variance, or judgment as provided in this ordinance.

When required, a change of land use permit must be acquired prior to issuance of a certificate of compliance with the zoning ordinance.

(B) For projects that are reviewed administratively, the Planning Director shall make every reasonable effort to review the application and report to the applicant by the end of 30 working days following the day on which a completed application is received. See Site Plan Review Article 1385.

1375.04 FEES.

(A) Fee Requirement and Payment. The Schedule of Fees for zoning applications shall be maintained on file with the Planning Department. The appropriate fee shall be paid by the applicant when the application is submitted for review. An application shall not be considered complete until the appropriate fee is paid in full to the Planning Department. The Planning Department may waive fees in unusual or extreme circumstances, with permission from the City Manager.

Approvals shall not be granted nor zoning certificates of compliance issued until the appropriate fee is paid to the Planning Department.

EXHIBIT
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