



MORGANTOWN BOARD OF ZONING APPEALS

April 30, 2014
6:30 PM
Council Chambers

Board Members:

Bernie Bossio, Chair
Leanne Cardoso, Vice-Chair
Bill Burton
George Papandreas
Jim Shaffer

STAFF REPORT

CASE NO: BA14-01 / Andrew Smith / Parking Development along Deckers Creek Avenue and Pennsylvania Avenue

REQUEST and LOCATION:

A petition by Andrew Smith for an administrative appeal of the Planning Division's determination concerning the development of parking along Deckers Creek Avenue and Pennsylvania Avenue.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 29, Parcels 136, 137, 138, 139, 140, 143.1, 143 and 144; B-2, Service Business District

SURROUNDING ZONING:

B-2, Service Business District

BACKGROUND:

Administrative Appeal Processing

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

Event	Date	Timeline Standards	Actual Timeline
Written administrative determination	25 FEB 2014		
Administrative appeal filed	04 MAR 2014	within 30 days of administrative determination	7 days
Hearing date set	07 MAR 2014	within 10 days of receipt of appeal	3 days
Publish Notice	21 MAR 2014	at least 15 days prior to hearing	26 days
Original Hearing Date	16 APR 2014	within 45 days of receipt of appeal	43 days
Lack of quorum discovered	31 MAR 2014		
Hearing rescheduled	01 APR 2014		
Rescheduled hearing date	30 APR 2014	within 45 days of receipt of appeal	57 days

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

April 30, 2014
6:30 PM
Council Chambers

Board Members:

- Bernie Bossio, Chair
- Leanne Cardoso, Vice-Chair
- Bill Burton
- George Papandreas
- Jim Shaffer

Exhibits

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

- Exhibit 1Legal notice and email correspondence documenting actions taken to reschedule hearing to a date when a quorum could be established.
- Exhibit 2Administrative appeal petition and accompanying documents.
- Exhibit 3Aerial map and tax map illustrating location of the subject site.
- Exhibit 4Excerpts from the Planning and Zoning Code referenced in the administrative determination letter dated 25 FEB 2014.
- Exhibit 5Article 1383 “Administrative Appeal” of the Planning and Zoning Code.
- Exhibit 6Email dated 31 JAN 2014 from the petitioner confirming that he does not own Parcel 136 of Tax Map 29.

ANALYSIS:

Petitioner’s Grounds for Appeal

The following narrative responds to the arguments presented by the petitioner in his email dated 27 FEB 2014, which was attached to his Administrative Appeal petition and specifies his grounds of the present appeal. Please note that the petitioner’s narrative is provided in *italic font*.

Denial 1. Parcel 136 can be excluded from the work it is not owner by anyone. That is not a material to the permit process. There is also no requirement that all affected property owners give authorization in permitting process.

In addition to the reasoning presented in the 25 FEB 2014 administrative determination letter, the Planning Division, based on sound judgment, maintains that it may not approve proposed development on realty whose owner is either not aware of the proposed development and/or has not authorized the proposed development regardless of whether or not the owner of the property is known. Exhibit 6 confirms that the petitioner was aware that his proposed development included Parcel 136 of Tax Map 29 and that he was not the owner of the said realty at the time his related building permit application was submitted to the City.

Denial 2. The permit request is for multiple commercial parking lots, not a private parking lot, those commercial lots include the right to a stand along use of a parcel, for leased stalls. Article 1365.04(l) does not apply as the site and adjoining area is clearly a residential district. Mr. Fletcher is incorrectly interpreting “B-2 zoning” means non-residential district in 1365.04(l). That is not what is stated in 1365.04(l) and if it meant all B-2 zoning why not state that. The planning commission does not apply as the parcels do not need combined with stand along commercial lots.

The Planning Division maintains that the proposed parking lots cannot be considered “stand-alone” uses of the subject parcels because the single-family, two-family, and multi-family dwelling uses that currently exist on the realty will continue to exist after development of the proposed parking areas. Therefore, the correct land use

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

April 30, 2014
6:30 PM
Council Chambers

Board Members:

Bernie Bossio, Chair
Leanne Cardoso, Vice-Chair
Bill Burton
George Papandreas
Jim Shaffer

classification for the proposed parking development is a series of "Private Parking Lot" uses and not a series of stand-alone "Commercial Parking Lot" uses.

The Planning Division advised the petitioner in the 25 FEB 2014 administrative determination that parking may be developed to meet minimum parking requirements for the existing uses; provided the development of parking does not exceed the maximum 115% standard under Article 1365.04(I) within non-residential districts.

The Planning Division maintains that the B-2 District is a non-residential district, regardless of what the existing development and land use pattern is within the immediate area of the petitioner's proposed development site. Specifically, Article 1329.02 provides the following definition for "Zoning District":

A specifically delineated area or district within the corporate limits of the City for which the requirements governing use, placement, spacing, size, lot dimensions, and bulk of buildings and premises are uniform.

Guidance on distinguishing residential zoning districts from non-residential zoning districts is provided in Article 1331.06, which is clipped from the Planning and Zoning Code and provided below.

- (29) In the R-1, R-1A, R-2 and R-3 districts, the following regulations shall apply to permitted non-residential uses:
- (a) Buildings shall be required to be two stories.
 - (b) Gross building size shall not exceed 2,000 square feet with not more than half (1,000 square feet) being devoted to non-residential use; and any café or food service area shall be limited to 500 square feet of customer seating area.
 - (c) May have residential or office uses on second floor, but no residential use shall be permitted on ground floor.
 - (d) All building facades visible from a public street shall be faced with masonry, stone, wood siding, or stucco-covered block. No vinyl, metal, or exposed concrete block walls.
 - (e) Shall have a minimum front setback of three (3) feet and a maximum of six (6) feet.
 - (f) All parking lots shall be screened along the street frontage by a decorative masonry wall (not concrete block) between three and one-half (3.5) and five (5) feet in height, and by dense landscaping along property lines not adjoining a public street.

It is the opinion of the Planning Division that the City's residential zoning districts are R-1, R-1A, R-2, and R-3 and the non-residential zoning districts are PRO, OI, B-1, B-2, B-4, B-5, and I-1.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431

Denial 3. City of Morgantown Engineering department and MUB, was able to decipher the plans submitted, the plans were submitted by a WV licensed professional engineer, the statements by the City Planner clearly show bias and discrimination.

As stated in the 25 FEB 2014 administrative determination, it is the opinion of the Planning Division that the causes for denial No. 1 and No. 2 are independently and collectively sufficient to deny the petitioner's Building Permit Application No. 2014-00000021.



MORGANTOWN BOARD OF ZONING APPEALS

April 30, 2014
6:30 PM
Council Chambers

Board Members:

Bernie Bossio, Chair
Leanne Cardoso, Vice-Chair
Bill Burton
George Papandreas
Jim Shaffer

Staff qualified its "Cause for Denial No. 3" by stating that:

"Assuming that the proposed development was under single ownership or authorized by all affected property owners and that the proposed development was permitted under the Planning and Zoning Code, plans submitted with the subject building permit application do not meet minimum submission standards, are indecipherable, and fail to demonstrate compliance with related Planning and Zoning Code design and performance standards."

The Planning Division accepts the petitioner's assertion in his responses to the six (6) noted plan submission deficiencies that said items can and should be addressed through the plans submission, plans review, plans rejection, and plans resubmittal process customary to building permit review and approval. The purpose of identifying the deficiencies was to alert the petitioner that a number of issues required attention and modification relative to site designing, plan preparation, and submission, should he pursue an alternative parking development scenario for the property under his control and permitted in the B-2 District.

However, one must first have the right as the property owner or authorized developer to pursue a proposed development; and, second have the right to pursue a development that is permitted under the Planning and Zoning Code.

Concerning the quality of the submitted site plan drawings, Staff would also like to point to the fact that the petitioner asserts that a survey of the development site should not be required but also asserts that the submitted site plan was shown on an actual survey by a registered design professional licensed by the State of West Virginia. It should be noted that the labeled dimensions on the site plan drawings did not match the engineered scale on same. Further, a suitable scale could not be calculated due to inconsistencies with the labeled dimensions illustrated on the drawings.

STAFF RECOMMENDATION:

It is important to note that Staff recognizes the on-street parking congestion that exists within the subject area that has advanced from the significant increase in residential density resulting from the conversion of single-family units into two-unit and multi-unit structures. Further, Staff commends the petitioner for pursuing development solutions that will improve these conditions along with the quality of life and convenience of his tenants.

However, the Planning Division maintains that the merits of the petitioner's objectives are regrettably not supported by the related regulations set forth in the Planning and Zoning Code.

The matter before the Board is to decide whether or not the Planning Division correctly determined:

1. That the petitioner does not have the right to pursue the development of parking for a site that includes realty not owned by the petitioner or whose owner has not authorized the petitioner accordingly, regardless of whether the owner is known or not.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN BOARD OF ZONING APPEALS

April 30, 2014
6:30 PM
Council Chambers

Board Members:

Bernie Bossio, Chair
Leanne Cardoso, Vice-Chair
Bill Burton
George Papandreas
Jim Shaffer

2. That the petitioner does not have the right to pursue the development of a series of "Private Parking Lot" uses that exceed the maximum 115% standard for the existing single-family dwelling, two-family dwelling, and multi-family dwelling uses located within the non-residential B-2 District.

Attachments: Exhibits noted above

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431

010028281

March 21

**City of Morgantown
Planning Division****April, 2014
Legal Notice**

The **Morgantown Planning Commission** will hold a public hearing on **Thursday, April 10, 2014 at 6:30 P.M.** in City Council Chambers, 389 Spruce Street, Morgantown, WV. No business items on the agenda require advance public notification. Additionally, the Planning Commission will conduct a workshop immediately following the Commission's business meeting. The purpose of the workshop will be to study the Type III Site Plan review thresholds for Developments of Significant Impact. 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, April 16, 2014 meeting at 6:30 P.M.** in City Council Chambers, 389 Spruce Street, Morgantown, WV. Written Comments may be sent to this address.

CU14-02 / M&J Property Holdings / 484 Harding Street: Request by Michael Saab, on behalf of M&J Property Holdings, for conditional use approval of "Parking Lot, Private" use located at 484 Harding Street; Tax Map 11, Parcel 141; R-3, Multi-Family Residential District.

CU14-03 / Maxwell's Place, LLC / 1 Wall Street: Request by Mark Bowers, on behalf of Maxwell's Place, LLC, for conditional use approval of "Restaurant, Private Club" use located at 1 Wall Street; Tax Map 26A, Parcel 106; B-4, General Business District.

CU03-17 / Mountain State Brewing Company / 140 High Street: Request by Brian Arnett, on behalf of Mountain State Brewing Company, for an amendment to a previously approved conditional "Restaurant, Private Club" use at 140 High Street; Tax Map 28A, Parcel 47; B-4, General Business District.

V14-17 / Mon County Habitat for Humanity / Jerome Park: Request by Evan Zuverink, on behalf of Mon County Habitat for Humanity, for variance relief as it relates to side setbacks along Jerome Street; Tax Map 24, Parcel 41; R-1A, Single-Family Residential District.

BA14-01 / Andrew Smith / Parking Development along Deckers Creek Avenue and Pennsylvania Avenue: Request by Andrew Smith for an Administrative Appeal under Article 1383 of an administrative determination by the Planning Division concerning the development of parking along Deckers Creek Avenue and Pennsylvania Avenue; Tax Map 29, Parcels 136, 137, 138, 139, 140, 143.1, 143 and 144; B-2, Service Business District.

For further information, please contact the Planning Division at 304-284-7431 or shollar@cityofmorgantown.org.

Zimbra

April BZA

From : Jim Shaffer <jshaffer@westliberty.edu>

Tue, Mar 25, 2014 11:08 AM

Subject : April BZA

To : 'Christopher Fletcher' <cfletcher@cityofmorgantown.org>

Cc : 'Stacy Hollar' <shollar@cityofmorgantown.org>

Chris,

I will be in Washington the week of April 14th through the 19th. I will be unable to attend the April BZA meeting.

Jim

Zimbra

cfletcher@cityofmorgantown.org

Fwd: IMPORTANT - RESPOND WITH AVAILABILITY

From : Stacy Hollar <shollar@cityofmorgantown.org>
Subject : Fwd: IMPORTANT - RESPOND WITH AVAILABILITY
To : Chris Fletcher <cfletcher@cityofmorgantown.org>

Thu, Apr 24, 2014 09:07 AM

Stacy Hollar
Executive Secretary

From: "Stacy Hollar" <shollar@cityofmorgantown.org>
To: "Bill Burton" <bill@whburton.com>, "Jim Shaffer" <jshaffer@westliberty.edu>, "Bernie Bossio" <bernie@bossioent.com>, "George Papandreas" <gpapandreas@gmail.com>, "Leanne Cardoso" <lcardoso@wvjcmorgantown.edu>
Sent: Monday, March 31, 2014 2:33:57 PM
Subject: IMPORTANT - RESPOND WITH AVAILABILITY

Hello All,

We were unable to establish a quorum for the April 16, 2014 BZA meeting. Please click on the link below and provide your availability so I may establish a new date for the April meeting.

<http://doodle.com/z48yv4ipbuqnmaw>

Thank you for your quick response.

Respectfully,

Stacy Hollar
Executive Secretary
Development Services Department
389 Spruce Street
Morgantown, WV 26505
304-284-7431
shollar@cityofmorgantown.org

Zimbra

April BZA Meeting - Rescheduled

From : Stacy Hollar <shollar@cityofmorgantown.org>

Tue, Apr 01, 2014 08:32 AM

Subject : April BZA Meeting - Rescheduled

To : Bernie Bossio <bernie@bossioent.com>, Leanne Cardoso <lcardoso@wvjcorgantown.edu>, bill@whburton.com, George Papandreas <gpapandreas@gmail.com>, Jim Shaffer <jshaffer@westliberty.edu>

Cc : Susan Sullivan <ssullivan@cityofmorgantown.org>, Christopher Fletcher <cfletcher@cityofmorgantown.org>

Good morning!

The April Board of Zoning Appeals meeting has been rescheduled to **Wednesday, April 30th, 2014 at 6:30 PM** in City Council Chambers. Please mark your calendars accordingly.

Thank you for your quick responses.

Respectfully,

Stacy Hollar
Executive Secretary

From: "Stacy Hollar" <shollar@cityofmorgantown.org>
To: "Bernie Bossio" <bernie@bossioent.com>, "Leanne Cardoso" <lcardoso@wvjcorgantown.edu>, bill@whburton.com
Sent: Monday, March 31, 2014 1:52:18 PM
Subject: BZA Meeting 04/16/2014 - Quorum Needed

Good afternoon,

Both Mr. Shaffer and Mr. Papandreas will be absent for the April 16, 2014 BZA hearing. Please let me know if you all plan to attend, as I am trying to establish a quorum.

Thank you!

Stacy Hollar
Executive Secretary
Development Services Department
389 Spruce Street
Morgantown, WV 26505
304-284-7431
shollar@cityofmorgantown.org

Zimbra

Re: CAN I GET A COPY OF THE AGENDA AND STAFF REPORT FOR TOMORROW BZA MEETING

From : Stacy Hollar <shollar@cityofmorgantown.org>

Wed, Apr 16, 2014 08:48 AM

Subject : Re: CAN I GET A COPY OF THE AGENDA AND STAFF REPORT FOR TOMORROW BZA MEETING

To : Andrew Smith <Andrew@smithcpapllc.com>

Cc : cfletcher@cityofmorgantown.org

Mr. Smith,

Jim Shaffer sent both myself and Mr. Fletcher an email on or about March 25, 2014 notifying us that he was unable to attend the April meeting date of 04/16/2014. George Papandreas came into my office on March 31, 2014 to notify us he would also be unable to attend that same meeting date of 04/16/2014. At that time, I sent an email to the remaining members to ask them if they would be in attendance as I needed to establish a quorum. Bernie Bossio called in that same day, March 31, 2014, and notified the office that he would not be able to attend the meeting date of 04/16/2014.

Therefore, on 04/01/2014, we established a new meeting date and notified all petitioners via phone message.

Respectfully,

Stacy Hollar
Executive Secretary

From: "Andrew Smith" <Andrew@smithcpapllc.com>

To: "Stacy Hollar" <shollar@cityofmorgantown.org>

Cc: cfletcher@cityofmorgantown.org

Sent: Wednesday, April 16, 2014 8:35:55 AM

Subject: RE: CAN I GET A COPY OF THE AGENDA AND STAFF REPORT FOR TOMORROW BZA MEETING

When did each of these member notify you they could not attend the meeting – thanks
Andrew.

From: Stacy Hollar [mailto:shollar@cityofmorgantown.org]

Sent: Wednesday, April 16, 2014 8:30 AM

To: Andrew Smith

Cc: cfletcher@cityofmorgantown.org

Subject: Re: CAN I GET A COPY OF THE AGENDA AND STAFF REPORT FOR TOMORROW BZA MEETING

Mr. Smith,

The following members were not able to attend the original date of 04/16/2014:

George Papandreas
Bernie Bossio
Jim Shaffer

A press release will be issued today notifying the public of the new date, 04/30/2014, as well as a notice posted to the front door of City Hall, Spruce Street.

Respectfully,

Stacy Hollar
Executive Secretary

From: "Andrew Smith" <Andrew@smithcpapllc.com>
To: "Stacy Hollar" <shollar@cityofmorgantown.org>
Cc: cfletcher@cityofmorgantown.org
Sent: Wednesday, April 16, 2014 8:22:10 AM
Subject: RE: CAN I GET A COPY OF THE AGENDA AND STAFF REPORT FOR TOMORROW BZA MEETING

Thanks

Who was not able to attend the meeting – which members

Also will you –re-notice the new meeting time and date in the Dominion Post

From: Stacy Hollar [<mailto:shollar@cityofmorgantown.org>]
Sent: Wednesday, April 16, 2014 8:14 AM
To: Andrew Smith
Cc: cfletcher@cityofmorgantown.org
Subject: Re: CAN I GET A COPY OF THE AGENDA AND STAFF REPORT FOR TOMORROW BZA MEETING

Mr. Smith,

I had left you a message on 04/01/2014 using phone number 304-676-0930 informing you of the change in meeting date. At that time, the website was also updated.

I apologize that the message did not get to you. I will send you an agenda along with a staff report as soon as they are finalized.

Respectfully,

Stacy Hollar
Executive Secretary

From: "Andrew Smith" <Andrew@smithcpapllc.com>
To: cfletcher@cityofmorgantown.org, shollar@cityofmorgantown.org
Sent: Tuesday, April 15, 2014 3:18:20 PM
Subject: CAN I GET A COPY OF THE AGENDA AND STAFF REPORT FOR TOMORROW BZA MEETING



City of Morgantown, West Virginia

APPLICATION FOR ADMINISTRATIVE APPEAL

OFFICE USE	
CASE NO.	BA14-01
RECEIVED:	03MAR14
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 15448

I. APPLICANT			
Name:	ANDREW SMITH		Phone: 304 6760930
Mailing Address:	Street	426 DRUMMOND STREET	
	City	State	Zip
	MORGANTOWN	WV	26505
Mobile:	/		
Email:	/		
II. AGENT / CONTACT INFORMATION			
Name:	N/A		Phone:
Mailing Address:	Street	/	
	City	State	Zip
Mobile:			
Email:			
Mailings –	Send all correspondence to (check one): <input type="checkbox"/> Applicant OR <input type="checkbox"/> Agent/Contact		
III. PROPERTY			
Owner:	SEE ATTACHED		Phone:
Mailing Address:	Street		
	City	State	Zip
Mobile:			
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.			
ANDREW SMITH			
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.

3/04/2014 3:57:21
 Morgantown, WV 26505
 (304) 284-7488

Melissa Kennedy

BA14-01

From: Andrew Smith
Sent: Thursday, February 27, 2014 8:56 AM
To: Melissa Kennedy
Subject: FW: city of morgantown permitting
Attachments: IMG_0003.pdf; IMG_0004.pdf

-----Original Message-----

From: Andrew Smith
Sent: Wednesday, February 26, 2014 4:03 PM
To: 'Jeff Mikorski'; Kathy Plum; Rodney Kovach (keycontracting1@yahoo.com)
Cc: 'citycouncilward7@cityofmorgantown.org'; 'citycouncilward2@cityofmorgantown.org'; 'citycouncilward3@cityofmorgantown.org'; 'citycouncilward4@cityofmorgantown.org'; 'citycouncilward5@cityofmorgantown.org'; 'citycouncilward6@cityofmorgantown.org'; 'citycouncilward1@cityofmorgantown.org'; 'cfletcher@cityofmorgantown.org'; 'Steve Fanok'; 'Chris Fletcher'; Stacy Hollar (shollar@cityofmorgantown.org)
Subject: city of morgantown permitting

I finally got correspondence from City of Morgantown today by certified mail denying my permit application after more than three months and after I have invested multiple thousands of dollars in the permit process with a licensed professional engineer helping me get approval of this project with the City of Morgantown and MUB. The denial letter is attached for review. This denial letter will provide all those in this email with a reason we have such a parking problem in Morgantown City because our own City government has caused the problem or alternatively will not allow private developers to help solve the problem, using their own private funds. Further the City Planning office works directly in contrast to the needs of our local Emergency Management Services, and Trash utility services for which the City contracts with.

I also attached emails from City personnel as follows

1. 11-15-2013 - correspondence from Andrew Smith and Stacy Hollar noting Mr. Fletcher site visit on 11-19-2013 at 2:30pm
2. 11-19-2013 - correspondence from Stacy Hollar stating Mr. Fletcher advised Mr. Kovach he would be following up with all parties in couples days .
3. 1-7-2013 - correspondence from Trevor Lloyd noting " I agree that a professional survey may be an unnecessary burden for this particular project at this time"

I also just got off the phone with Rodney Kovach with Key contracting who met both Trevor Lloyd and Chris Fletcher at the site location on 11-19-2013, and he told me both of them stated it would " not be a problem to get this done", and the City would like to get the "block wall" from the excavation that would be done (which I agreed to). I have also offered to excavate an adjoining city property at the corner of the site for no cost to the City.

I will now quickly address the items in the denial letter.

Denial 1. Parcel 136 can be excluded from the work it is not owner by anyone. That is not a material to the permit process. There is also no requirement that all affected property owners give authorization in permitting process.

Denial 2. The permit request is for multiple commercial parking lots, not a private parking lot, those commercial lots include the right to a stand along use of a parcel, for leased stalls. Article 1365.04(1) does not apply as the site and adjoining area is clearly

a residential district. Mr. Fletcher is incorrectly interpreting "B-2 zoning" means non-residential district in 1365.04 (1). That is not what is stated in 1365.04(1) and if it meant all B-2 zoning why not state that. The planning commission does not apply as the parcels do not need combined with stand along commercial lots.

Denial 3. City of Morgantown Engineering department and MUB, was able to decipher the plans submitted, the plans were submitted by a WV licensed professional engineer, these statements by the City Planner clearly show bias and discrimination.

Regarding the Deficiencies in the plan number 1 through 6 , those are items that can be addressed but do not cause the absolute denial of the project.

To address those by number.

Number 1. The site plan was shown on an actual survey by a registered design professional licensed by the State of WV.

Number 2. Functional vehicular access and maneuvering is common issue that is worked out , related to parking and site plan development, the City planner knows well this is not a reason to deny a permit application.

Number 3. Paving will done as required by code, it is not relevant at this point what form or nature , that can come later when applicable, as long as the code is complied with ,again not a reason to deny permit.

Number 4. More adjustments that are normal and customary and can be done, when a City planner and developer work together as opposed to working against each other.

Number 5. Lighting was to be provided from the outside lighting mounted on the residential structures.

Number 6 Sidewalks concerns are normal and customary and can be done if requiried, when a City planner and developer work together as opposed to working against each other.

The City planner is also assuming incorrectly there may not be variances issued in this site plan to the Planning Code as applicable.

Thanks all

Andrew Smith

BA14-01

Andrew Smith

From: Stacy Hollar <shollar@cityofmorgantown.org>
Sent: Friday, November 15, 2013 11:48 AM
To: Andrew Smith
Cc: Christopher Fletcher
Subject: Re: what time and date did you set up to meet rodney - at penn - thanks

Mr. Smith,

Mr. Fletcher is not familiar with the property and therefore is unsure at this time what applications are needed. I am happy to email them to you directly after the site visit.

Respectfully,

Stacy Hollar
Executive Secretary

From: "Andrew Smith" <Andrew@smithcpapllc.com>
To: "Stacy Hollar" <shollar@cityofmorgantown.org>
Cc: "Christopher Fletcher" <cfletcher@cityofmorgantown.org>
Sent: Friday, November 15, 2013 11:43:46 AM
Subject: RE: what time and date did you set up to meet rodney - at penn - thanks

Thanks - can you bring the forms that might apply or email them to me so we can start completing those after the meeting

From: Stacy Hollar [mailto:shollar@cityofmorgantown.org]
Sent: Friday, November 15, 2013 11:42 AM

To: Andrew Smith
Cc: Christopher Fletcher
Subject: Re: what time and date did you set up to meet rodney - at penn - thanks

Mr. Kovach is scheduled to meet with Mr. Fletcher at the proposed site on Tuesday, November 19, 2013 at 2:30 PM.

Regards,

Stacy Hollar
Executive Secretary

From: "Andrew Smith" <Andrew@smithcpapllc.com>
To: "Stacy Hollar" <shollar@cityofmorgantown.org>
Cc: "Rodney Kovach" <keycontracting1@yahoo.com>
Sent: Friday, November 15, 2013 11:40:23 AM
Subject: what time and date did you set up to meet rodney - at penn - thanks

About that parking lot

BA14-01

Andrew Smith

From: Stacy Hollar <shollar@cityofmorgantown.org>
Sent: Tuesday, November 19, 2013 4:46 PM
To: Andrew Smith
Cc: Trevor Lloyd; Christopher Fletcher
Subject: Re: please email me what i need - on that parking lot - on penn



I understand that Mr. Fletcher advised Mr. Kovach that he would follow up with all parties in a couple of days.

Respectfully,

Stacy Hollar
Executive Secretary

From: "Andrew Smith" <Andrew@smithcpapllc.com>
To: "Christopher Fletcher" <cfletcher@cityofmorgantown.org>
Cc: "Stacy Hollar" <shollar@cityofmorgantown.org>, "Trevor Lloyd" <tlloyd@cityofmorgantown.org>
Sent: Tuesday, November 19, 2013 4:40:23 PM
Subject: please email me what i need - on that parking lot - on penn

Survey will take forever that is hard to get done in Monongalia County these days, so I need to try to get it done but keep moving if you follow me - I am willing to pay for the survey and have no problem getting it done - but nobody in town does them anymore (if you know of someone that does them and can do it asap I would love to know who it is) - most surveyors take forever when you do find someone ?

What else can I do without the survey to keep things moving - that is what I will work on - and or Rodney - if you tell us what we need to do -

Please make sure the list is cleared in full with all departments at the city that might be effected or have input to surprise me later - I know that a comprehensive list is better than a list that is not checked across departments and such - so that I don't run in to any trouble with changes later. Like to think once I clear the list of items that I wont have to come back to it.

Please be easy on me and don't push me so hard that makes the project financially impossible, or so compliance intensive that it is unreasonable, I really think this will help on all fronts in that historically bad parking area for long term - the lot could really make a difference.

Thanks
Andrew .

Andrew Smith

From: Trevor Lloyd <tloyd@cityofmorgantown.org>
Sent: Tuesday, January 07, 2014 1:07 PM
To: Andrew Smith
Cc: Rodney Kovach; Scott Krabill; Christopher Fletcher
Subject: Re: parking penn lot



Okay, I hear you. I don't necessarily agree with all your points, but I do agree that a professional survey may be an unnecessary burden for this particular project at this time. A survey is typically the cheapest insurance against future right-of-way issues, but there are more reasonable/timely measures that can be taken in the spirit of moving forward. However, just so you are aware, it is the owner's responsibility to ensure the development does not encroach onto neighboring property or public rights-of-way. Fifty years ago, the City was not vigilant about this issue and its causing many headaches today. Since I've been with the City I've been trying to pay more attention to this.

If Rodney could call me when he is staking out his corners, I can come out to the site with the best information we have on file and work with him to resolve any problems, if any at all. Deckers Creek Road is a 30' right-of-way. If there are sufficient markers in the surrounding area, we will probably be able to guess where the line is. If you wanted a little extra insurance, you could keep the curb back about 12 inches.

MUB and City are the only approvals you'll need for this project as far as I know.

From: "Andrew Smith" <Andrew@smithcpapllc.com>
To: "Trevor Lloyd" <tloyd@cityofmorgantown.org>
Cc: "Rodney Kovach" <keycontracting1@yahoo.com>, "Scott Krabill" <rkrabill@comcast.net>, "Christopher Fletcher" <cfletcher@cityofmorgantown.org>
Sent: Tuesday, January 7, 2014 11:50:03 AM
Subject: RE: parking penn lot

Survey will be impossible to get done timely and too costly for this project, it is also not a requirement of the permitting process, but I appreciate your request for one, and I understand what you mean. So you know, there are no competent and reasonably priced survey professional in Morgantown area any longer, trust me I have evidence of this fact. That market is simple dead and the only ones left doing Surverys are working on year plus timelines, or work exclusive for larger developers on ongoing basis and won't leave that ongoing work.

We believe the property lines and drawings done are accurate, Scott will come back and submit the plans for your review, he will also submit the plans to MUB for storm water.

We believe MUB and the City of Morgantown are the only government entities that we need to gain approval for this project, if we are mistaken please advise.

Keep in touch with me please on any changes to the plan, ideas or suggestions, after you review them in full. I continue to want to work with the City of Morgantown to get this project done soon – thanks
 Andrew

From: Trevor Lloyd [mailto:tloyd@cityofmorgantown.org]
Sent: Tuesday, January 07, 2014 10:12 AM
To: Andrew Smith
Cc: Rodney Kovach; Scott Krabill; Christopher Fletcher
Subject: Re: parking penn lot

BA14-01



**DEVELOPMENT
SERVICES
DEPARTMENT**

The City of Morgantown

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

February 25, 2014

VIA CERTIFIED MAIL

Andrew Smith
Smith Rentals
426 Drummond Street
Morgantown, WV 26505

RE: Building Permit Application No. 2014-00000021
Parking Lots along Deckers Creek Avenue and Pennsylvania Avenue

Mr. Smith:

This communication is intended to provide this Office's administrative determination of its denial of the above referenced building permit application under the City's Planning and Zoning Code.

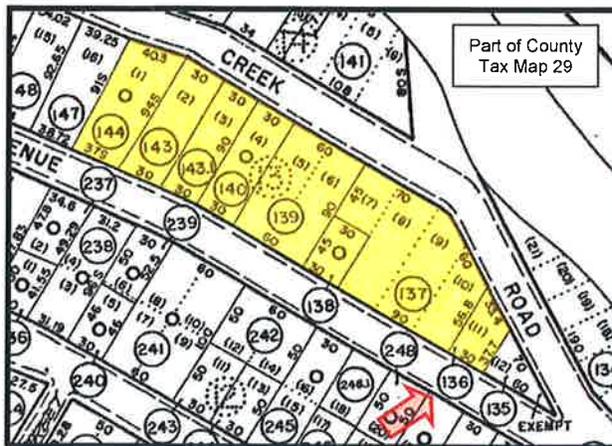
CAUSE FOR DENIAL No. 1 – The subject development site is not under single ownership nor has Smith Rentals, LLC obtained authorization by all affected property owners to pursue the development for which the subject building permit application was submitted.

Explanation – Article 1329.02 of the Planning and Zoning Code provides the following definition.

DEVELOPMENT – (1) Any man-made change to improved or unimproved land, including but not limited to the construction, reconstruction, conversion, structural alteration, relocation, enlargement or use of any structure or parking area; (2) Any mining, excavation, dredging, filling, grading, drilling or any land disturbance; or (3) Any use or extension of the use of the land.

SITE – A lot, tract or parcel of land considered as one land-unit for purposes of this ordinance. For a single-family residence, the site shall be the subdivided lot on which it is located. For multi-family projects, the site shall be all land occupied by the buildings in the project and adjoining such property and under common ownership with it. For vacant land, the site shall be all of the adjoining vacant land under single ownership. For single-occupancy, nonresidential properties, the site shall be the subdivided lot that is occupied. For multiple occupancy properties, the site shall be all land included under the original "site plan" or "subdivision plan" approval under the Zoning Ordinance.

It appears from the drawings submitted with the subject building permit application that the proposed development of four separate parking lots include Parcels 136, 137, 138, 139, 140, 143.1, 143, and 144 of Tax Map 29. The affected parcels are highlighted in yellow on the tax map illustration below and in red on the aerial photograph illustration below.



According to the Monongalia County Assessor's website, all of the affected parcels, with the exception of Parcel 136, are owned by Smith Rentals, LLC. The ownership of Parcel 136 is not listed on the Assessor's website (see red arrow above on Tax Map illustration). In a 31 JAN 2014 email to the undersigned, you confirmed that you do not own Parcel 136 and that you have or may be filing a complaint against the unknown owner of Parcel 136 and the West Virginia State Auditor's Office claiming ownership through adverse possession.

CAUSE FOR DENIAL No. 2 – The development of parking, as proposed, is not a permitted use within the B-2 District.

Explanation – The zoning classification for the proposed development site is B-2, Service Business District as illustrated to the right.



Article 1329.02 provides the following land use definitions relating to the proposed development sought under the subject building permit application.

PARKING LOT, COMMERCIAL – A private parking lot that is a stand-alone use of a parcel, and whose stalls are leased to individuals for any length of time.

PARKING LOT, PRIVATE – An open area, other than a street or alley, designed to be used for the temporary parking of more than four motor vehicles, whether free or for compensation, and available for private use or as an accommodation for clients or customers.

Table 1331.05.01 "Permitted Land Uses" provides that "Commercial Parking Lot" uses are permitted by-right in the B-2 District. However, "Private Parking Lot" uses are not permitted in the B-2 District.

Additionally, Article 1365.04(l) provides that, "In all non-residential districts the maximum number of spaces provided shall not exceed 115% of the minimum parking requirement, except for research and development centers, where there shall be no maximum."

It is the opinion of the undersigned that parking may be developed to meet the minimum parking requirement for the existing single-family, two-family, and multi-family uses; provided, the development of parking does not exceed the maximum 115% standard for said uses. However, the development of parking as proposed would be considered a "Private Parking Lot" use and

not a "Commercial Parking Lot" use because the parking facility would not be the stand-alone use of the property. Again, "Private Parking Lot" uses are not permitted in the B-2 District.

After an extensive review of the Planning and Zoning Code, it appears that the only course to pursue the development of a "Commercial Parking Lot", as reviewed herein, is as follows:

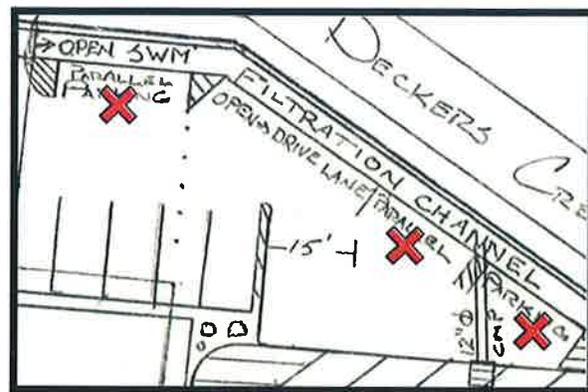
- Step 1 Smith Rentals, LLC acquires Parcel 136 of Tax Map 29 before any development approvals may be pursued as reviewed herein.
- Step 2 The existing single-family, two-family, and multi-family structures located on the proposed development site must be razed and removed so that a "Commercial Parking Lot" use can be developed as a stand-alone use of development site.
- Step 3 Subdivision approval must be granted by the Planning Commission to combine all the parcels owned by Smith Rentals, LLC that comprise the proposed development site.
- Step 4 Resubmit a building permit application addressing, for Planning and Zoning Code plans review purposes, the deficiencies noted in the following narrative.

CAUSE FOR DENIAL No. 3 – Assuming that the proposed development was under single ownership or authorized by all affected property owners and that the proposed development was permitted under the Planning and Zoning Code, plans submitted with the subject building permit application do not meet minimum submission standards, are indecipherable, and fail to demonstrate compliance with related Planning and Zoning Code design and performance standards.

Explanation – The following list identifies deficiencies in the plans submitted with the subject building permit application and assumes that the Steps 1 through 4 above are pursued. The following deficiencies are not intended to be a complete or thorough list as additional information may be required should Steps 1 through 4 above be pursued.

Deficiency No. 1..... Article 1385.07(A)(1)(a) provides that a site plan, drawn to scale, must illustrate actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a registered design professional licensed by the State of West Virginia.

Deficiency No. 2..... The labeled dimensions on the "Parking Plan/Metrics" drawing do not match the 1" = 30' scale provided on same nor are the labeled dimensions consistent enough to determine an alternate scale. As such, plans cannot be reviewed to confirm compliance with dimensions, layout, and design standards provided in Article 1365.09(A) through (B). Additionally, the following graphics, which have been clipped from a scanned version of the "Parking Plan/Metrics" drawing, identify specific parking spaces that do not appear to have been designed with a functional and/or safe means of vehicular access and maneuvering.



Deficiency No. 3..... Paving design plans and details were not submitted to confirm compliance with related provisions under Article 1365.09(C).

Deficiency No. 4..... Article 1365.09(B)(6) provides that all parking lots in any district containing more than four spaces shall be subject to the landscaping and screening requirements for such parking lots as set forth in Article 1367.

No landscaping plan was submitted with the subject building permit application nor does it appear that landscape and buffer areas are planned in the submitted drawings as required under Article 1367. Examples of required landscaping, assuming Steps 1 through 4 are pursued, include, but are not limited to:

- Four-foot perimeter landscape buffer.
- Five (5) percent of the parking area reserved for interior landscaping.
- Terminal landscape islands with concrete curbs, at least 130 square feet of area each, to protect parked vehicles, provide visibility, and confine moving traffic to aisles and driveways.
- One internal landscape islands with concrete curbs, at least 130 square feet of area each, for every 15 spaces within a row of spaces.

Deficiency No. 5..... Article 1371.02 provides that lighting facilities shall be required for all off-street parking areas and off-street loading and for all driveways providing ingress and egress thereto for all non-residential and multi-family developments. In the approval of any development plan, the Planning Director or Planning Commission shall have the authority to require lighting to be incorporated for other uses or locations where in their reasonable discretion such lighting is warranted.

No lighting plan was submitted with the subject building permit application that identifies light fixture details, locations, electrical feeds, photometric drawing illustrating illumination patterns and intensities in footcandles, etc.

Deficiency No. 6..... Article 1347.07 provides that sidewalks shall be constructed along the frontage of a lot upon which a use is to be constructed. New sidewalks shall be at least six feet wide or the same width as an existing but incomplete sidewalk along the same side of the street.

Assuming Steps 1 through 4 above is pursued, the construction of sidewalks along the development site's Deckers Creek Avenue frontage will be required.

CONCLUSION

It is the determination of the undersigned that Cause for Denial No. 1 and No. 2 above are independently and collectively sufficient to deny the application for development approval submitted under Building Permit Application No. 2014-00000021. Further, that Cause for Denial No. 3 above is sufficient to deny said building permit application should the basis for No. 1 and No. 2 be resolved.

RIGHT TO APPEAL

Article 1383.02 provides that an appeal may be filed with the Board of Zoning Appeals (BZA) by any person aggrieved by the order, requirement, decision or determination made by an administrative official, board, or staff member charged with the enforcement of the City's Zoning Ordinance. An administrative appeal filed with the BZA must specify the grounds of the appeal, be filed in the form established by rules of the BZA, and be filed within 30 days of the original order, requirement, decision or determination. For your convenience, Article 1381 "Administrative Appeals" and an "Application for Administrative Appeal" are attached hereto.

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

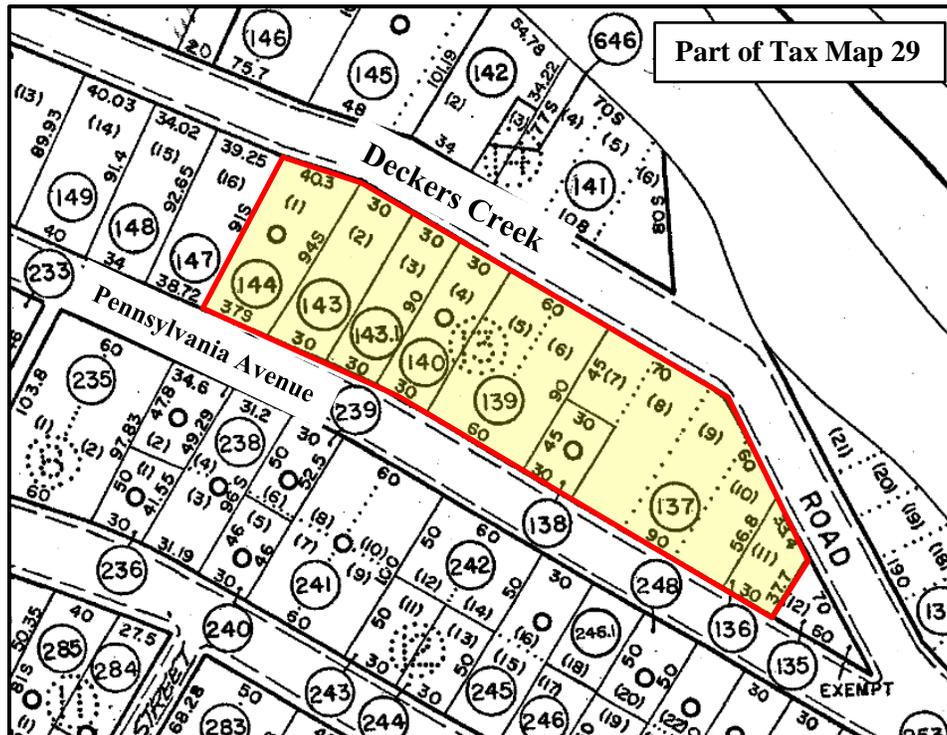
Respectfully,


Christopher M. Fletcher, AICP
Director of Development Services
cfletcher@cityofmorgantown.org

cc via email: Jeff Mikorski, City Manager; Terry Hough, City Engineer; Ken Willis, Morgantown Utility Board; Mike Stone, Chief Building Code Official; Amy Fairman, Permit Technician

EXHIBIT

BA14-01 / Andrew Smith / Administrative Appeal



DENSITY – The number of dwelling units situated on or to be developed on a net acre (or smaller unit) of land, which shall be calculated by taking the total gross acreage and subtracting surface water, undevelopable lands (e.g. wetlands) and the area in rights-of-way for streets and roads.

DENSITY BONUS – The granting of the allowance of additional density in a development in exchange for the provision by the developer of other desirable amenities from a public perspective (e.g., public open spaces, plazas, art, landscaping, etc.).

DEPARTMENT STORE – A retail store carrying a general line of apparel, home furnishings, floor coverings, major household appliances, and housewares. These and other merchandise lines are normally arranged in separate sections or departments with accounting on departmentalized basis, integrated under a single management.

DEVELOPMENT – (1) Any man-made change to improved or unimproved land, including but not limited to the construction, reconstruction, conversion, structural alteration, relocation, enlargement or use of any structure or parking area; (2) Any mining, excavation, dredging, filling, grading, drilling or any land disturbance; or (3) Any use or extension of the use of the land.

DEVELOPMENT OF SIGNIFICANT IMPACT and MAJOR DEVELOPMENT OF SIGNIFICANT IMPACT – Any proposed development whose characteristics warrant a more in-depth review by the Planning Commission in order to mitigate the negative impact these characteristics may have on surrounding land uses in particular and on the surrounding neighborhood in general.

Developments of Significant Impact are those that have a neighborhood or citywide impact. Such impacts would involve the transportation network, environmental features such as parks or corridor streams, and local schools.

Major developments of significant impact are those that are of such scope and scale that they have an impact on the region in terms of the transportation network, the environment, the schools, etc. Such projects could include regional shopping centers and large-scale residential developments.

Any proposed residential or non-residential development which meets or exceeds any of the following criteria shall be determined to be a Development of Significant Impact and will require a complete development plan to be submitted and reviewed by planning staff and the Planning Commission:

SIGN, ROOF – A sign erected above the eaves of a building.

SIGN, SANDWICH BOARD – A sign not permanently attached to the ground or some type of permanent structure; a sign connected to or located on A or T frames; a two-sided sign attached to boards.

SIGN, SHINGLE – A sign suspended from and located entirely under a covered porch, covered walkway, or an awning. See **SIGN, SUSPENDED**.

SIGN, SPECIAL EVENT – A sign advertising or announcing a special community wide event or activity conducted by, or sponsored by, or on behalf of a unit of local government, West Virginia University, a charitable organization, or a nonprofit corporation. A special community wide event or activity is one that occurs not more than twice in any twelve (12) month period and seeks to attract donations, participants, or customers throughout the City.

SIGN, SUSPENDED – A sign that is suspended from the underside of a horizontal plane surface and supported by such surface.

SIGN, TEMPORARY – Any sign that is used only temporarily and is not permanently mounted, and that can be used only for a designated period of time.

SIGN, TRAFFIC – A sign indicating federal, state, or municipal regulations for automobile, truck, bicycle or pedestrian movement.

SIGN, V-TYPE – A type of sign with two faces connected at one end, but facing away from each other at angles that impart a “V” shape to the sign. For purposes of computing surface area, such signs are two separate signs if the angle between the two outer surfaces is less than 60 degrees; otherwise the wings shall be considered one sign.

SIGN, WALL – Any sign painted on or attached to and extending not more than six (6) inches from an exterior wall in a parallel manner.

SIGN, WINDOW – Any sign that is applied to the inside of glassed areas of a building. Such signs shall be treated as wall signs.

SITE – A lot, tract or parcel of land considered as one land-unit for purposes of this ordinance. For a single-family residence, the site shall be the subdivided lot on which it is located. For multi-family projects, the site shall be all land occupied by the buildings in the project and adjoining such property and under common ownership with it. For vacant land, the site shall be all of the adjoining vacant land under single ownership. For single-occupancy, non-residential properties, the site shall be the subdivided lot that is occupied. For multiple-occupancy properties, the site shall be all land included under the original “site plan” or “subdivision plan” approval under the Zoning Ordinance.

OVERLAY DISTRICT – A zoning district that extends on top of a base zoning district and is intended to protect certain critical features and resources. Unlike with a planned unit development, overlay districts govern only development standards. The uses permitted in the underlying zoning district remain the same.

PARAPET – The portion of a wall which extends above the roofline.

PARCEL – A single lot, or a grouping of old lots acquired by a single deed and considered as one buildable lot for zoning purposes. Parcels that consist of a grouping of old City lots acquired by a single deed may be subdivided for purposes of creating more buildable parcels, provided all regulations contained within this ordinance and the Subdivision Ordinance are adhered to.

PARK – Any area that is predominately open space, used principally for active or passive recreation, and not used for a profit-making purpose. Any area designated by the City as a park.

PARK AND RECREATION SERVICES – Establishments which are non-commercial, not-for-profit facilities designed to serve the recreation needs of community residents. Such facilities include development recreation facilities (neighborhood parks), community parks, regional parks and special use facilities, school and religious institution ballfields, football fields and soccer fields.

PARKING AISLE – The clear space for either one or two-way traffic movement or maneuvering between rows of parking stalls. (Ord. 06-01. Passed 1-3-06.)

PARKING, AUTOMOBILE – Parking of operational and street legal automobiles on a temporary basis within an off-street parking area.

PARKING, BICYCLE – Parking of bicycles on a temporary basis with a minimum width of three (3) feet, a minimum length of six (6) feet, and a means of securing individual bicycles. (Ord. 08-06. Passed 3-4-08.)

PARKING LOT, COMMERCIAL – A private parking lot that is the stand-alone use of a parcel, and whose stalls are leased to individuals for any length of time.

PARKING LOT, PRIVATE – An open area, other than a street or alley, designed to be used for the temporary parking of more than four motor vehicles, whether free or for compensation, and available for private use or as an accommodation for clients or customers. (Ord. 06-01. Passed 1-3-06.)

PARKING, MOTORCYCLE – Parking of operational and street legal motorcycles on a temporary basis with a minimum width of four (4) feet and a minimum length of 9 feet.

PARKING, REMOTE – A parking lot on a site other than the property that it serves, usually at a substantial distance, and often connected by a shuttle bus.

PARKING, SHARED – Joint use of a parking area by more than one use. (Ord. 08-06. Passed 3-4-08.)

PARKING SPACE, COMPACT – A space in a garage or parking area, not less than 7 feet wide clear dimension and 16 feet long clear dimension, reserved for the parking of only one compact automobile.

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
Newsstand		C	C	C		P	P	P	P	P		
Nursery, Plant							P	C		C		
Nursing Home				P			P		P			
Office Building				C	P	C	P	P	P	P		
Office Equipment Repair Establishment							P	P		P	P	4, 9, 10
Office, Medical					P		P	P	P	P		
Office Park									C	P	P	
Office Supplies Establishment						P	P	P	P	P		28
Oil Change Facility							P	P		P	P	
Outdoor Flea Market						C	C	C		C		
Outdoor Storage							C			C	P	
Outdoor Storage, Seasonal							P			P	P	
Park and Recreational Services	C	C	C	P		P	P	P	P			11, 28
Parking Lot, Commercial				C		P	P	P				28
Parking Lot, Private			C	C	C	C						
Passenger Station, Motor Bus, Railroad						C	P	P		P	P	
Pawnshop						P	P	P		P		28
Penal/Correctional Institution											C	
Personal Services Establishment				C	P	P	P	P	C	P		28, 29
Personal Storage Facility							C			C	C	15
Private Club							C			P	P	18
Professional Services Establishment			C	C	P	P	P	P		P		28, 29
Recreation Facility, Commercial, Outdoor						C	P			P		11
Recreational Facility, Commercial, Indoor						C	P			P		11
Recyclable Collection Center/ Solid Waste Transfer Station											P	6
Recycling Center										P	P	
Repair, Small Engine and Motor Shop							P	P		P	P	4, 9, 10

- (4) The City of Morgantown reserves the right to deny or revoke a certificate of occupancy to any land use, in the following situations:
 - (a) If a land use utilizing a shared parking facility changes from a daytime use to a nighttime use (or vice-versa); or changes to a use that requires more parking than the previous use, and the resulting change in parking requirements cannot be satisfied in the shared parking facility.
 - (b) If a land use utilizing a shared parking facility loses the legal right, whether through voluntary or involuntary actions and circumstances, to continue using the shared parking facility; and such use cannot make arrangements to provide required parking elsewhere in conformance with minimum parking requirements. The exception to this shall be in the event of a public construction project that temporarily (one year or less) makes use of the shared facility impossible, or reduces effective use of the facility.
- (5) Shared parking facilities shall provide signs on the premises indicating the availability of the facility for the patrons of the participating uses.
- (6) Parking spaces to be shared must not be reserved for a specific person, or use, on a twenty-four hour basis. This shall not be construed so as to limit the development of parking for persons with disabilities.

(E) Required off-street loading and unloading spaces shall not be construed as being part of the required off-street parking spaces.

(F) No part of any alley or street or other public right-of-way shall be used to meet the minimum parking requirements of this code, unless otherwise provided for herein.

(G) For purposes of determining off-street parking requirements under this section, gross floor area shall mean the total horizontal areas of the one or several floors of the building or portion thereof devoted to a particular use, including accessory storage areas located within selling or working space such as counters, racks, or closets and any basement floor area devoted to retailing activities, to the production or processing of goods or to offices; provided, however, gross floor area shall not include that area devoted entirely and permanently to storage purposes, parking and loading facilities, or space used for restrooms, utilities, stairwells or elevator shafts.

(H) Number of employees indicates the number of employees on the largest shift, unless otherwise indicated.

(I) In all non-residential districts the maximum number of spaces provided shall not exceed 115 percent of the minimum parking requirement, except for research and development centers, where there shall be no maximum.

(J) Off-street parking shall be provided in accordance with Table 1365.04.01, Minimum Off-Street Parking Requirements.

(K) Every company car, truck, tractor or trailer normally stored at a business site shall be provided with an off-street parking space. Such space shall be in addition to the parking requirements listed in Table 1365.04.01.

- (A) Developments of Significant Impact may include but are not limited to:
Residential Projects: 12 to 99 dwelling units
Commercial Projects: 15,000 square feet of gross floor area
Office / Institutional Projects: 15,000 square feet of gross floor area
Industrial Projects: 0 square feet to 99,999 square feet of gross floor area
Mixed Use Projects: 15,000 square feet of gross floor area
- (B) Major Developments of Significant Impact may include but are not limited:
Residential Projects: 100 or more dwelling units
Commercial Projects: 100,000 or more square feet of gross floor area
Office / Institutional Projects: 100,000 or more square feet of gross floor area
Industrial Projects: 100,000 or more square feet of gross floor area
Mixed Use Projects: 100,000 or more square feet of gross floor area
(Ord. 12-31. Passed 7-3-12.)

1385.06 TYPE I: ADMINISTRATIVE REVIEW OF SIMPLE SITE PLANS.

- (A) All applications for permits for single family residential and two-family residential primary and secondary structures shall be accompanied by the following:
- (1) A site plan drawn to scale, that includes the following for the use of the Planning Director:
- (a) The actual dimensions, size, square footage, and shape of the lot to be built upon;
 - (b) The exact sizes and locations on the lot of existing structures, if any;
 - (c) The location(s), square footage(s), and dimensions of all proposed principal, accessory, and/or temporary structure(s) and/or alteration(s);
 - (d) The location of the lot with respect to adjacent rights-of-way and easements;
 - (e) The existing and proposed uses of the structure(s) and land;
 - (f) The location and dimensions of off-street parking and means of ingress and egress for such space;
 - (g) Height of all structures;
 - (h) Setbacks;
 - (i) Grading plan;
 - (j) Stormwater management plan;
 - (k) Erosion and sediment control plan; and,
 - (l) Signature of applicant.
- (Ord. 12-31. Passed 7-3-12.)

1385.07 TYPE II: ADMINISTRATIVE REVIEW OF DETAILED SITE PLANS.

- (A) All applications for permits for non-residential, multi-family structures, and temporary uses that do not constitute a development of significant impact, shall be accompanied by the following:
- (1) A site plan (3 copies), drawn to scale, that includes the following for the use of the Planning Director:
- (a) The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant;

- (b) The exact sizes and locations on the lot of existing structures, if any;
 - (c) The location(s), square footage(s), and dimensions of all proposed principal, accessory, and/or temporary structure(s) and/or alteration(s);
 - (d) The location of the lot with respect to adjacent rights-of-way;
 - (e) The existing and proposed uses of the structure(s) and land;
 - (f) The number of employees, families, housekeeping units, bedrooms, or rental units the structure is designed to accommodate;
 - (g) The location and dimensions of off-street parking and means of ingress and egress for such space;
 - (h) Height of all structures;
 - (i) The clear zone for structures similar to silos, grain bins, windmills, chimneys, stacks, spires, flagpole, skylights, derricks, conveyors, cooling towers, observation towers, water tanks, telecommunication facilities, etc. in excess of fifty (50) feet in height;
 - (j) Setbacks;
 - (k) Buffer yard and screening, if applicable;
 - (l) Location of garbage collection area and screening;
 - (m) Location of existing and/or proposed signage;
 - (n) Layout of all internal roadways;
 - (o) Location and size of stormwater management facilities;
 - (p) Utility lines and easements;
 - (q) Grading plan;
 - (r) Erosion and sediment control plan; and,
 - (s) Signature of applicant.
- (2) Drainage plan and drainage calculations that bear the name, address, signature and seal of a registered professional engineer, with floodplain zones clearly denoted, a typical of all swales, and a design of the drop inlets;
 - (3) If applicable, design of stormwater management facility and drainage calculations that bear the name, address, and seal of a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law and that meet the requirements of this article, the City's stormwater management ordinance and all other applicable local, state and federal regulations;
 - (4) Parking and landscaping plan;
 - (5) Sign plan;
 - (6) Approved WV Division of Highways Access Permit, if applicable;
 - (7) Sediment and erosion control plan as approved by the West Virginia Department of Environmental Protection, the City of Morgantown, and the Morgantown Utility Board;

- (8) Any other such information concerning the lot or neighboring lots as may be required by the Planning Director to determine conformance with, and provide for the enforcement of, this article; where deemed necessary, the Planning Director may require that in the case of accessory structures or minor additions, all dimensions shown on plans relating to the size of the lot and the location of the structure(s) thereon be based on an actual survey by a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant;

(B) No site plan shall be accepted unless it is complete and is verified as to the correctness of information given by the signature of the applicant attesting thereto.

(C) Site plans shall be reviewed by an AICP certified planner, and such reviews may include other agencies that the City believes to have a direct or indirect interest in the development site.

(D) At least five (5) days prior to planning staff conducting its review, the Planning Director shall notify the planning commissioner representing the ward in which the project is proposed that the plan will be reviewed.

(E) Site plans approved by the Planning Director authorize only the use, arrangement, and construction set forth in such approved site plans and no other use, arrangement or construction. Furthermore, the approval of a site plan shall not be construed to be approval of any violation of the provisions of this article. The issuance of a building permit by the City based upon site plans given approval by the Planning Director shall not prevent the City from thereafter requiring the correction of errors in said site plans or from preventing operations from being carried on thereunder when in violation with this article. Site plan approval does not eliminate the need to obtain an approved building permit and the applicant's responsibility to meet all other requirements established by local, state and federal regulations.

(F) One copy of the site plan submitted for a permit as required in subsection (C) above for the Planning Department shall be returned to the applicant after the Planning Director has marked such copy as either approved or disapproved as to the provisions of this article and attested to same by his signature on such copy. The original, similarly marked, shall be retained by the Planning Director.
(Ord. 12-31. Passed 7-3-12.)

1385.08 TYPE III: PLANNING COMMISSION REVIEW OF DEVELOPMENTS OF SIGNIFICANT IMPACT AND MAJOR DEVELOPMENTS OF SIGNIFICANT IMPACT.

(A) Developments of Significant Impact are those that have a Citywide impact. Such impacts would typically involve the transportation network, environmental features such as parks or stream corridor, and local schools.

- (1) All applications for a Development of Significant Impact shall be accompanied by the following:
- (a) A site plan (14 copies), drawn to scale, that includes the following for the use of the Planning Director:

(B) Commercial Vehicles on Private Property. The parking of a commercial vehicle in residential zone districts shall be prohibited, except that one commercial vehicle of not more than three (3) tons capacity may be parked on any lot on which there is located a principal building, provided, however, that such vehicle is parked in an enclosed garage, accessory building or rear yard and is used by an occupant of the premises. This requirement shall not be interpreted to prohibit commercial vehicles from temporary loading and unloading in any residential district.

1365.09 PARKING DEVELOPMENT STANDARDS.

All off-street parking areas for four or more automobiles shall be developed in accordance with the standards of this section, except in the case of one and two-family dwellings, agricultural and rural uses, and storage of vehicular merchandise not counting toward the minimum requirements as set forth in this Code.

(A) Dimensions.

- (1) Each required off-street standard parking space shall be at least eight and one half (8.5) feet in width and at least eighteen (18) feet in depth, exclusive of access drives or aisles, ramps, columns, or office or work areas. Such space shall have adequate vertical clearance.
- (2) Up to ten (10) percent of the total number of required parking spaces may be designed for compact cars; provided, compact spaces are limited to employees or residents only and the property owner/manager assigns and enforces such spaces accordingly. Compact spaces shall be grouped together and identified as "compact cars only" with pavement stenciling and/or signage. Compact spaces should be located furthest from building entrances to discourage use by noncompact vehicles. Each compact space shall be at least eight (8) feet in width and at least fifteen (15) feet in depth, exclusive of access drives or aisles, ramps, columns, or office or work areas. Such space shall have adequate vertical clearance.
- (3) Except on lots occupied by one and two-family dwellings, each off-street parking space shall open directly upon an aisle or driveway at least twelve (12) feet wide or such additional width and design in accordance with Table 1365.09.01, so as to provide safe and efficient means of vehicular access to such parking space. Such aisle or driveway shall be unobstructed and allow for the passage of emergency vehicles at all times. This requirement may be waived by the Planning Director where such waiver will not cause a hazard.
- (4) All required parking spaces and aisles shall be provided wholly within the property lines and shall not extend into any public right-of-way.

Table 1365.09.01: Dimensions

Parking Angle	Stall Type	Width of Stall (feet)	Depth of Stall Perpendicular to Aisle (feet)	One-Way Aisle Width (feet)	Two-Way Aisle Width (feet)
45°	Standard	8.5	17.5	12.0	20.0
	Compact	8	16.0	12.0	20.0
60°	Standard	8.5	19.0	16.0	20.0
	Compact	8	17.0	15.0	20.0
90°	Standard	8.5	18.0	20.0	20.0
	Compact	8	15.0	20.0	20.0
Parallel	Standard	22.0	7.5	12.0	20.0
	Compact	19.0	7.5	10.0	20.0

(B) Layout and Design.

- (1) All off-street parking or loading facilities shall be designed with appropriate means of vehicular access to a street or an alley in a manner which will least interfere with traffic movement.
- (2) Driveway entrances or exits shall be no closer than 15 feet to an adjoining residential property line or 5 feet to an adjoining non-residential property line or designed in such a manner as to least interfere with traffic movement. No driveway across public property at the right-of-way line of the street shall exceed a width of 22 feet, unless a greater width is specifically approved by the City Engineer. No driveway shall be located closer than 30 feet of the nearest point of the intersection of two streets.
- (3) Connections between parking lots or reservations of land for future such connections may be required at the discretion of the Planning Director.
- (4) Required off-street parking spaces shall be so designed, arranged and regulated so that:
 - (a) Such parking areas are lined or designated to insure the most efficient use of the parking spaces.

- (b) Individual spaces on lots with 5 percent average slope or greater are provided with anchored bumper guards or wheel guards. Under no circumstances shall parking spaces be provided on lots in excess of 10 percent slope.
 - (c) Parking spaces are unobstructed and have access to an aisle or driveway so that any automobile may be moved without moving another, and so that no maneuvering directly incidental to entering or leaving a parking space shall be on any public right-of-way or walkway, unless otherwise permitted at the direction of the Planning Director.
 - (d) With the exception of drive-through windows and related stacking lanes, all parking spaces and maneuvering aisles shall be physically separated from any wall of a building by a vertical curb, maintained planting strip, and/or other suitable barrier.
- (5) Off-street parking spaces may be open to the sky or enclosed in a building. In any instance when a building is constructed or used for parking facilities on the lot, said building shall be treated as any major structure and subject to all requirements thereof.
 - (6) All parking lots abutting residential uses or districts, and all parking lots in any district containing more than four (4) spaces shall be subject to the landscaping and screening requirements for such parking lots as set forth in Article 1367, Landscaping and Screening.
 - (7) Any lighting facilities used to illuminate off-street parking areas shall be so located, shielded and directed upon the parking area in such a manner that they do not reflect or cause glare onto adjacent properties or interfere with street traffic. In no instance shall bare, unshaded bulbs be used for such illumination. (Ord. 06-01. Passed 1-3-06.)

(C) Surfacing and Drainage.

- (1) All open off-street parking areas shall be surfaced with an all-weather, dust-free concrete or asphalt material, and shall be maintained in good condition and free of weeds, dirt, trash and debris; except that, a gravel surface may be used for a period not exceeding six months after the date of granting the Certificate of Occupancy where ground conditions are not immediately suitable for permanent surfacing as specified above.
- (2) A gravel surface in the area of storage or handling may be used permanently in association with industries that handle liquids or chemicals which create a potential hazard if containment should be lost and where absorption into the ground through a loose surface material would eliminate or alleviate such hazard.
- (3) Such parking areas shall be graded and properly drained in such a manner that there will be no free flow of water onto either adjacent property or public sidewalks. Further, any run-off generated by such improved areas shall be disposed of in accordance with the stormwater management ordinance and other City regulations.
- (4) Other surface materials and designs may be utilized when specifically approved by the City Engineer, for purposes of reducing storm water runoff or other environmental and aesthetic considerations. (Ord. 13-33. Passed 7-2-13.)

ARTICLE 1371
Lighting

1371.01	Purpose.	1371.04	Installation and maintenance.
1371.02	Applicability.	1371.05	Exemptions.
1371.03	General provisions and standards.		

CROSS REFERENCES
Lighting of signs - see P. & Z. 1369.13

1371.01 PURPOSE.

It is the goal of this section to provide guidance to developers in implementing minimum requirements for lighting for all non-residential projects and multi-family developments. The City recognizes that inappropriate and poorly designed or installed outdoor lighting causes unsafe and unpleasant conditions, limits residents' ability to enjoy the nighttime sky, and results in unnecessary use of electric power. Conversely, the City also recognizes that some outdoor lighting is appropriate and necessary in areas such as civic, commercial and industrial centers. To ensure appropriate lighting while minimizing its undesirable side effects, the following regulations are established.

1371.02 APPLICABILITY.

Lighting facilities shall be required for all off-street parking areas and off-street loading areas and for all driveways providing ingress and egress thereto for all non-residential and multi-family developments. In the approval of any development plan, the Planning Director or Planning Commission shall have the authority to require lighting to be incorporated for other uses or locations where in their reasonable discretion such lighting is warranted.

1371.03 GENERAL PROVISIONS AND STANDARDS.

(A) All exterior lights and illuminated signs shall be designed, located, installed and directed in such a manner as to prevent glare from encroaching onto adjoining properties or public rights-of-way.

(B) Uplighting of any architectural feature of a building or of a sign is permitted, but such lighting may consist only of low wattage fixtures (designed for bulbs not exceeding 75 watts) trained directly onto the surface intended to be illuminated. Internally lit signs are acceptable in certain zoning districts provided that they meet the requirements of this ordinance.

ARTICLE 1347
B-2, Service Business District

1347.01	Purpose.	1347.05	Building height, use and size.
1347.02	Permitted and conditional uses.	1347.06	Parking and loading standards.
1347.03	Lot provisions.	1347.07	Performance standards.
1347.04	Setbacks and encroachments.	1347.08	Landscaping.

CROSS REFERENCES

Group residential facility - see W. Va. Code 8A-11-2
 Outdoor kennels - see P. & Z. 1331.06(7), (24)
 Daycare facility - see P. & Z. 1331.06(19)

1347.01 PURPOSE.

The purpose of the Service Business (B-2) District is to provide areas that are appropriate for most kinds of businesses and services, particularly large space users such as department stores. Typically B-2 districts are located along major thoroughfares.

1347.02 PERMITTED AND CONDITIONAL USES.

See the Permitted Land Use Table 1331.05.01.

1347.03 LOT PROVISIONS.

- (A) The minimum lot size shall be 6,000 feet.
- (B) The minimum lot frontage shall be 60 feet.
- (C) The minimum lot depth shall be 100 feet.
- (D) Maximum lot coverage shall be 60 percent.

1347.04 SETBACKS AND ENCROACHMENTS.

(A) The following setbacks shall be required for all principal structures, except as otherwise provided in Section 1363.02(B) Yard, Building Setbacks and Open Space

Exceptions:

- (1) Minimum Front setback:..... 15 feet
- (2) Maximum Front setback:..... 30 feet
- (3) Minimum Side setback:..... 5 feet on one side and 20 feet on the side where any access drives are located.
- (4) Minimum Rear setback: 40 feet.

(B) The minimum setback for accessory structures on a lot shall be ten (10) feet from the rear property line and ten (10) feet from each side property line. No accessory structures are permitted within the front setback.

(C) On a corner lot, the front lot line is the one having the shortest dimension along the street right-of-way line. The required side yard setback on the side facing a street shall be one and one-half (1.5) times the normal side yard setback requirements.

1347.05 BUILDING HEIGHT, USE AND SIZE.

(A) The maximum height of a principal structure shall not exceed seventy-two (72) feet, except as provided in Section 1363.02(A), Height Exceptions.

(B) The maximum height of an accessory structure shall not exceed twenty (20) feet. (Ord. 06-40. Passed 11-21-06.)

1347.06 PARKING AND LOADING STANDARDS.

(A) All uses within this district shall conform to the off-street parking and loading requirements in Article 1365, Parking, Loading and Internal Roadways.

(B) No parking spaces shall be permitted between the front façade of a building and any street right-of-way.

1347.07 PERFORMANCE STANDARDS.

(A) Important structures should be built so that they terminate street vistas whenever possible, and should be of sufficient design to create visual anchors for the community. All principal structures within a development should maintain a consistent architectural style.

(B) Metal paneling may be used for wall surfaces but the area of the metal paneling should not exceed twenty (20) percent of any one wall face.

(C) Materials:

- (1) Walls should be clad in stone, brick, marble, stucco, approved metal paneling, and/or cast concrete.
- (2) Roofs should be clad in slate, sheet metal, corrugated metal, and/or diamond tab asphalt shingles.
- (3) The orders, if provided, should be made of wood or cast concrete.

(D) Techniques:

- (1) Windows should be set to the inside of the building face wall.
- (2) All primary entrance exterior doors should have rectangular recessed panels or glass.
- (3) All rooftop equipment that is enclosed should be enclosed in building material that matches the structure or is visually compatible with the structure.

(E) Playground equipment, if provided, shall be located entirely behind the principal structure and shall meet required setbacks.

(F) Sidewalks shall be constructed along the frontage of a lot upon which a use is to be constructed. New sidewalks shall be at least six (6) feet wide, or the same width as an existing but incomplete sidewalk along the same side of the street.

1347.08 LANDSCAPING.

Landscaping and screening as required in Article 1367, Landscaping and Screening, shall be provided for all uses, unless otherwise noted.

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.

Zimbra

EXHIBIT

6

exhibitsticker.com

FW: LOT CLAIM

From : Andrew Smith <Andrew@smithcpapllc.com>

Fri, Jan 31, 2014 12:33 PM

Subject : FW: LOT CLAIM

 1 attachment

To : cfletcher@cityofmorgantown.org, Jeff Arnett <jeffarnett@arnettlaw.org>

Hey chris – just so you know we have started this – place in your planning file – it is just a matter of time before that 136 small parcel is in my possession –

Any work I do to it as part of this permit– would be at my own expenses and risk of course – and I plan on keeping that – exposure low of course as part of the permitting -but the attached - I am confident will be fruitful – done it before and it works

Thanks
Andrew.

 **smith rentals.doc**
34 KB

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

SMITH RENTALS, LLC,
A WEST VIRGINIA LIMITED LIABILITY COMPANY

Plaintiff,

vs.

CIVIL ACTION NO. C14-_____

DEFENDANT NO. 1: THE UNKNOWN OWNERS OF TAX MAP 29, PARCEL 136,
SECOND WARD DISTRICT, MONONGALIA COUNTY, WV;

vs.

DEFENDANT NO. 2: THE WV STATE AUDITORS OFFICE,
UNCLAIMED/ABANDONED PROPERTY DIVISION,

Defendants.

COMPLAINT

COMES NOW the Plaintiff, by and through counsel, Jeffrey L. Arnett and hereby alleges and says as follows:

1. That Plaintiff, SMITH RENTALS, LLC, is resident entity of Monongalia County, West Virginia.
2. That Defendant No. 1 are the unknown land owners to property identified as Tax Map 29, Parcel 136, Monongalia County, West Virginia, being Lot 11 Homeside Addition, Morgantown, West Virginia;
3. That Defendant No. 2 is the West Virginia State Auditors Office, Unclaimed/Abandoned Real Property Division;
5. That Plaintiff is claiming ownership of real property identified as Tax Map 29, Parcel 136, Monongalia County, West Virginia, being Lot 11 Homeside Addition, Morgantown, West Virginia, by virtue of Adverse Possession;

6. Plaintiff obtained title to the neighboring parcel of Tax Map 29 Parcel 137-140 on May 25, 2012 by virtue of a deed from James Roger Pisegna, et al., recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1460, at Page 347.8.

7. That Pisegna, et al. obtained title to said real estate on January 24, 1925.

8. That beginning on January 24, 1925 through present day, either Pisegna or Smith Rentals, LLC, has at all times material hereto: (1) held the tract of Tax Map 29, Parcel 136 adversely to the rightful owner; (2) actually possessed the property; (3) That said possession has been open and notorious (4) That said possession has been exclusive; (5) That said possession has been continuous; (6) That possession has been under claim of title or color of title (That the possessor claims the property as its own).

9. That adverse possession is a proper way to claim title to real estate in West Virginia by virtue of *W. Va. Code § 55-2-1*.

WHEREFORE, Plaintiff, Smith Rentals, LLC, demands judgment against Defendants No. 1 and No. 2 and prays that this Court will enter an Order of Judgment Declaring Smith Rentals, LLC to be the true and rightful owner of the real property identified as Tax Map 29, Parcel 136, Monongalia County, West Virginia, being Lot 11 Homeside Addition, Morgantown, West Virginia.

SMITH RENTALS, LLC,
PLAINTIFF, BY COUNSEL

LAW OFFICE OF JEFFREY L. ARNETT, P.L.L.C.

By: _____
Jeffrey L. Arnett, Esq.
State Bar #8026
711 Greenbag Road
Morgantown, WV 26508
(304)292-9429

Counsel for Plaintiff

VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF MARION, to-wit:

The Plaintiff named in the foregoing Complaint being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be upon information; and that so far as they are therein stated to be on information, Plaintiff believes them to be true.

SMITH RENTALS, LLC,
A WEST VIRGINIA LIMITED LIABILITY CO.

BY: _____
ANDREW SMITH, MEMBER

Taken, subscribed and sworn to before me in my said County, this _____
day of _____, 2014.

My commission expires: _____

Notary Public