PLANNING DIVISION

The City of Morgantown

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

May 12, 2015

CERTIFIED MAIL
7013 2250 0001 5726 6489

Central Place, LLC
c/o J. Bryan Edwards, Esq.
1200 Dorsey Avenue, Suite II
Morgantown, WV 26501

RE: BA15-01 and BA15-02 / Central Place, LLC / 494 Spruce Street
CORRECTION TO 08 MAY 2015 NOTIFICATION LETTER

Dear Mr. Edwards:

This letter is to notify you of the decisions made by the Morgantown Board of Zoning Appeals concerning the following Administrative Appeal petitions:

The decisions are as follows:

Board of Zoning Appeals, May 7, 2015:

1. The Board, with the consent of the petitioner and the City, voted unanimously to combine the two (2) subject administrative appeal petitions.

2. The Board voted unanimously to affirm the Planning Division's interpretations outlined in the Staff Report that was presented to the Planning Commission on 12 MAR 2015 and the Planning Commission's 12 MAR 2015 site plan approval of Case No. S15-03-III as the same relate to the seven (7) allegations comprising the two (2) administrative appeal petitions thereby denying the two (2) subject administrative appeal petitions based on the findings of fact and conclusions of law presented in the Staff Report to the Board dated 07 MAY 2015, which is attached hereto and made a part hereof.

This decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days.

Please note that a copy of this letter will be sent to Mr. Dan Hrankowsky, CA Student Living as a courtesy given the relationship of the Board's decisions to his organization's related development.

Respectfully,

Christopher M. Fletcher

Christopher M. Fletcher, AICP
Director of Development Services

cc via email: Ryan Simonton, City Attorney
Dan Hrankowsky, CA Student Living

MORGANTOWN BOARD OF ZONING APPEALS

May 7, 2015
6:30 PM
Council Chambers

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

COMBINED STAFF REPORT

CASE NO: BA15-01 / Central Place, LLC / 494 Spruce Street
BA15-02 / Central Place, LLC / 494 Spruce Street

REQUEST and LOCATION:

Requests by Attorney Bryan Edwards, on behalf of Central Place, LLC, for two (2) Administrative Appeals related to Case No. S15-03-III that was presented to the Planning Commission on March 12, 2015.

AUTHORITY

Article 1383.01 "Authority" of the City's Planning and Zoning Code states the following:

> 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.

When reviewing and approving or denying Type III Site Plan applications, the Planning Commission is the administrative board charged with the enforcement of the City's Zoning Ordinance as provided under Article 1385.04 and Article 1385.05(B) [see Addendum A, Exhibit 1].

As such, the information provided to the Planning Commission in the Staff Report for S15-03-III was not a decision by the body charged with enforcement of the Zoning Ordinance. The enforcement decision was made by the Planning Commission when it approved the site plan. The Staff Report is not a determination that can be appealed to the Board of Zoning Appeals.

If the Board agrees and determines that its authority in the present matter is limited to the Planning Commission's approval of the Type III Site Plan for a Major Development of Significant Impact, then the petitioner's five (5) allegations in the Administrative Appeal Application under Case No. BA15-01 should not be considered and no further action taken by the Board. Specifically, the Board can move forward in considering the petitioner's second and separate Administrative Appeal Application under Case No. BA15-02. The same five (5) allegations are identically reproduced in the Administrative Appeal filed in Case No. BA15-02, and two (2) additional allegations are added in that case.

Should the Board disagree with Staff's recommendation and determine that it has authority to review the petitioner's Administrative Appeal Application under Case No. BA15-01, then Staff submits the following answers to the petitioner's first five (5) allegations.

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

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

BA15-01 ALLEGATIONS

Staff submits the following answers to the petitioner's five (5) allegations filed under Case No. BA15-01.

RESPONSE TO ALLEGATION No. A:

Required Number of Parking Spaces

The Planning Division denies the petitioner's allegation that the application for the proposed development does not have the required number of parking spaces. The petitioner erroneously argues that Table 1365.04.01 of the Zoning Ordinance is the only standard that regulates minimum parking for the subject development.

In the B-4 District where the site is located, parking standards are modified by Article 1349.08. Specifically, Article 1349.08 supersedes Article 1365.04(J) and Table 1365.04.01 "Minimum Off-Street Parking Requirements" when determining minimum off-street parking requirements within the B-4 District [see Addendum A, Exhibit 2]. Additionally, Article 1349.08 categorizes off-street parking requirements into residential, nonresidential, and movie theater land use components.

The subject development will include 331 occupants (residential use). The correct minimum parking calculation for the residential component of the development, as set forth under Article 1349.08(A)(1), is [(331 – 22) * 0.5] = 155 parking spaces.

Because the nonresidential component of the development is less than the nonresidential use criteria of a Development of Significant Impact or a Major Development of Significant Impact, parking is not required for the 7,649 square feet of nonresidential space; 3,435 square feet of which is leasable commercial/retail space.

Therefore, the total number of required off-street parking for the subject development is 155 parking stalls. The plans reviewed and approved by the Planning Commission on 12 MAR 2015 include 157 parking stalls.

Staff recommends that the Board, based on the findings of fact and conclusions of law presented herein, uphold the Planning Division's interpretation outlined in the Staff Report that was presented to the Planning Commission on 12 MAR 2015 and the Planning Commission's 12 MAR 2015 approval of the subject site plan as the same relate to the subject development's minimum parking requirement.

RESPONSE TO ALLEGATION No. B:

Distance of driveway curb cut on Willey Street to another driveway curb cut

The Planning Division denies the petitioner's allegation that the separation between the proposed Willey Street driveway curb cut and another driveway curb cut is closer than the minimum related standard.

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

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

Article 1351.01(D), in part, establishes minimum distances between new driveway curb cuts and adjoining driveway curb cuts [see Addendum A, Exhibit 3].

The relevant Zoning Ordinance section is 1351.01(D) [emphasis added]:

> "No part of a driveway ***leading from*** a public street shall be nearer than thirty-five (35) feet to the street right-of-way line of any intersecting street, nor nearer than thirty (30) feet to the end of a curb radius at an intersecting street, nor shall the driveway be nearer than thirty (30) feet to any other part of another driveway ***entering a public street***."

Planning Staff and the Planning Commission are required to rely on the plans submitted for review in the site plan review process to determine required measurements.

The distance of the proposed Willey Street driveway curb cut from the driveway curb cut for the Central Place, LLC development is approximately thirty-eight (38) feet as shown on Sheet 3B of the plans submitted and reviewed by the Planning Commission, which exceeds the required separation of thirty (30) feet.

The Board should note that the required separation is measured from the portion of driveways that enter onto (or lead from) a public street, which are the tangents of the respective curb cut flares and the curb line. Other portions of a driveway within a property are not regulated by this Zoning Ordinance section. Separation between driveway curb cuts onto the street promotes the traffic flow and safety this Zoning Ordinance section intends to preserve.

Staff recommends that the Board, based on the findings of fact and conclusions of law presented herein, uphold the Planning Division's interpretation outlined in the Staff Report that was presented to the Planning Commission on 12 MAR 2015 and the Planning Commission's 12 MAR 2015 approval of the subject site plan as the same relate to the distance between the proposed Willey Street driveway curb cut and the driveway curb cut for the Central Place, LLC development.

RESPONSE TO ALLEGATION No. C:

Distance of driveway curb cut on Spruce Street to an intersecting street

The Planning Division denies the petitioner's allegation that the separation between the proposed Spruce Street driveway curb cut and an intersecting street is closer than minimum related standards.

Article 1351.01(D), in part, establishes minimum distances between new driveway curb cuts and the right-of-way line and the curb radius of an intersecting street [see Addendum A, Exhibit 3].

Again, the relevant Zoning Ordinance section is 1351.01(D) [emphasis added]:

> "No part of a driveway ***leading from*** a public street shall be nearer than thirty-five (35) feet to the street right-of-way line of any intersecting street, nor nearer than thirty (30) feet to the end of a curb radius at an intersecting street, nor shall the driveway be nearer than thirty (30) feet to any other part of another driveway ***entering a public street***."

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

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

Planning Staff and the Planning Commission are required to rely on the plans submitted for review in the site plan review process to determine required measurements.

The distance of the proposed Spruce Street driveway curb cut from the right-of-way line of Willey Street is approximately sixty-one (61) feet as shown on Sheet 3B of the plans submitted and reviewed by the Planning Commission, which exceeds the required separation of thirty-five (35) feet. This distance is measured from the tangent of the Spruce Street driveway curb cut flare and curb line to the extension of the Willey Street right-of-way line.

The distance of the proposed Spruce Street driveway curb cut from the radius of the intersecting Willey Street is thirty (30) feet as shown on Sheet 3B of the plans submitted and reviewed by the Planning Commission, which meets the required separation of thirty (30) feet. This distance is measured from the tangent of the Spruce Street driveway curb cut flare and curb line to the tangent of the curb radius of the intersecting Willey Street.

The distance of the proposed driveway shown on the plans submitted from any other potential or existing driveway meets or exceeds the required separation from curb radii and street rights-of-way.

The Board should note that separation between a driveway curb cut onto the street and an intersecting street promotes the traffic flow and safety this Zoning Ordinance section intends to preserve.

Staff recommends that the Board, based on the findings of fact and conclusions of law presented herein, uphold the Planning Division's interpretation outlined in the Staff Report that was presented to the Planning Commission on 12 MAR 2015 and the Planning Commission's 12 MAR 2015 approval of the subject site plan as the same relate to the distance between the proposed Spruce Street driveway curb cut and an intersecting street.

RESPONSE TO ALLEGATION No. D:

Traffic Study

The Planning Division denies the petitioner's allegation that the subject site plan application should have been rejected based on the absence of a new traffic impact study.

A traffic impact study is only submitted in the discretion of City Administration (based on the opinion of the City Engineer) under Article 1385.08(A)(2), for plan review of either Developments of Significant Impact or Major Developments of Significant Impact [see Addendum A, Exhibit 4]. Any decision to deny or modify a site plan based on the traffic impact study is permissive in the Commission. However, the Commission is never required to consider a traffic impact study or deny a proposed development based on a traffic impact study.

Article 1385.08(A)(2)(a) provides that if a traffic impact study indicates that the projected traffic impact of the use would result in a two (2) full letter grade decline in the existing

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

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

Level of Service (LOS) of any dedicated City street directly serving the use, such finding *may* be considered sufficient grounds for denial of the site plan or improvements made or the development reduced in size and scope. Key considerations for the Board to note are:

1. The subject Traffic Impact Study prepared by Gannett Fleming in May 2014 and updated in August 2014 concluded that there would be no degradation of LOS as a result of anticipated traffic from the subject development compared to the no-build condition.
2. Even if the subject study indicated that a Level of Service decline of two (2) full letter grades would result from the use, the Planning Commission would not have been compelled to deny the site plan.

The Planning Division denies the petitioner's allegation that the traffic impact study did not correctly account for all the development's trip-generating uses.

The subject Traffic Impact Study prepared by Gannett Fleming in May 2014 and then updated in August 2014 corresponds to the trip-generating space in the site plan. The CA Living MDSI application illustrates 3,435 square feet of trip-generating leasable retail/commercial space. The subject study and update accounted for 3,500 square feet of trip generating retail/commercial space.

The West Virginia Department of Transportation, Division of Highways, and Morgantown's City Engineer, determined the traffic impact study was appropriate for use in this site plan review, and those determinations were provided to the Planning Commission [see Addendum A, Exhibit 5].

The petitioner fails to distinguish retail/commercial space that will generate traffic from nonresidential space that will be used for resident common areas and administrative activity.

Staff recommends that the Board, based on the findings of fact and conclusions of law presented herein, uphold the Planning Division's interpretation outlined in the Staff Report that was presented to the Planning Commission on 12 MAR 2015 and the Planning Commission's 12 MAR 2015 approval of the subject site plan as the same relate to the subject traffic impact study.

RESPONSE TO ALLEGATION No. E:

Construction staging or storage

The Planning Division denies the petitioner's allegation that the subject site plan application should have been rejected based on whether or not the availability of space exists for construction staging and storage.

The availability of space for construction staging and storage is not one of the criteria evaluated by the Planning Commission in site plan reviews, and the Commission is not authorized to deny a development application because it believes there is inadequate room for construction.

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

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

Any street closure for construction is outside the scope of the Commission's site plan review.

In this instance and because Spruce Street and Willey Street are a part of the State Highway System, temporary closure and/or temporary use of the public right-of-way would only be permitted with the approval of the West Virginia Division of Highways (WVDOH).

Further, the issuance of a building permit for the subject development would be conditioned upon an approved agreement or permit from WVDOH for access, use, impact, and improvements to Spruce Street and/or Willey Street.

The Planning Commission has the right and the duty to approve site plans that meet the established review criteria – without regard to hypothetical construction issues. The West Virginia State Code provision cited by the Administrative Appeal is inapplicable to site plan review and approval. The Commission's approval of the site plan does not purport to grant authority to illegally enter upon or construct works in a state road.

Staff recommends that the Board, based on the findings of fact and conclusions of law presented herein, determines that the petitioner's allegations concerning the availability of space for construction staging and storage is without merit and that the Planning Division and the Planning Commission do not have the authority to deny a site plan as purported and alleged by the petitioner.

BA15-02 ALLEGATIONS

Staff submits the following answers to the petitioner's two (2) additional allegations filed under Case No. BA15-02.

RESPONSE TO ALLEGATION No. F:

Building height and the Comprehensive Plan

The Planning Division denies the petitioner's allegation that building height provisions contained within the 2013 Comprehensive Plan are mandatory and reminds the Board that it has already considered and rejected this allegation by the same petitioner for the same site design in its 15 OCT 2014 decision under Case No. BA14-03 [see Addendum A, Exhibit 6].

The purpose of a comprehensive plan is clearly stated in West Virginia State Code §8A-3-1, which reads as follows (*emphasis added*):

(a) The general purpose of a comprehensive plan is to ***guide*** a governing body to accomplish a coordinated and compatible development of land and improvements within its territorial jurisdiction, in accordance with present and future needs and resources.

(b) A comprehensive plan is a process through which citizen participation and thorough analysis are used to develop a set of strategies that establish as clearly and practically as possible the best and most appropriate future development of the area under the jurisdiction of the planning commission. A comprehensive plan ***aids the planning***

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

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

> ***commission in*** designing and ***recommending to the governing body ordinances*** that result in preserving and enhancing the unique quality of life and culture in that community and in adapting to future changes of use of an economic, physical or social nature. A comprehensive plan ***guides*** the planning commission in the performance of its duties to help achieve sound planning.

West Virginia State Code Chapter 8A "Land Use Planning Act" makes the distinction between the operative terms "adopt" and "enact" by their use throughout the Act. Specifically, §8A-3-8 provides for the "adoption of the comprehensive plan by governing body"; §8A-1-1(b)(8)(D) provides, "Based upon a comprehensive plan, governing bodies may…enact a zoning ordinance"; and, §8A-7-5 provides for the "enactment of zoning ordinance."

As the petitioner notes, the contents of the Downtown Strategic Plan are recommendations. The recommendations for this area also include, "[a]dditional mixed-use infill at the north end of Spruce Street."

These recommendations for future action in the Downtown Strategic Plan and/or the Comprehensive Plan do not prevail over the specific building height provisions of the zoning ordinance. Further, if the recommendation is not enacted by amending the City's zoning ordinance, then it has no force or effect of law.

The definition of the term "shall" in Article 1329.01 is explicitly made in reference to the text of the zoning ordinance, not the policies of the Downtown Strategic Plan or the Comprehensive Plan.

Article 1363.01 "Height, Bulk, Area and Density Provisions" of the zoning ordinance clearly sets forth the operation of standards within the zoning ordinance, which reads as follows:

> (A) Except as providing in this ordinance, no building or structure shall be erected, enlarged, altered, changed or otherwise modified, on a lot unless such building, structure or modification conforms to the height, bulk, area and density regulations of the zone [zoning district] in which it is located.
>
> (B) The conditions, standards, requirements and notes set forth in each district and otherwise prescribed by this ordinance are established as the basic height, bulk, area and density regulations for the City.

Therefore, the maximum building height standard for the B-4 District is not the four (4) stories or 50 feet recommendation provided in Section 6.3.1.4 of the 2010 Downtown Strategic Plan Update alleged by the petitioner but is set forth in Article 1349.05(B) of the zoning ordinance, which states:

> "The maximum height of a principal structure…shall not exceed 120 feet, except as provided in Section 1363.02(A), Height Exceptions."

The subject site plan includes a building height within the allowable limits prescribed by the zoning ordinance for the B-4 District.

Staff recommends that the Board, based on the findings of fact and conclusions of law presented herein, uphold the Planning Division's interpretation outlined in the Staff Report

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

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

that was presented to the Planning Commission on 12 MAR 2015 and the Planning Commission's 12 MAR 2015 approval of the subject site plan as the same relate to Article 1349.05(B) establishing the maximum building height in the B-4 District and not Section 6.3.1.4 of the 2010 Downtown Strategic Plan Update.

RESPONSE TO ALLEGATION No. G:

"Canyon effect"

The Planning Division denies the petitioner's allegation that the subject development would generate an impermissible "canyon effect."

The Board should note that Article 1351.01(I) does not prohibit "canyon effects" in the B-4 District – which would preclude exactly the type of development characteristic of the district – but requires developments to minimize related impacts through design features.

The Planning Division correctly interpreted and the Planning Commission correctly determined that the subject site plan included design elements minimizing canyon effects as required by Article 1351.01(I) of zoning ordinance [see Addendum A, Exhibit 7].

The petitioner erroneously claims that, "there are no plans to incorporate any recesses or 'steps' on the sides of the building facing Spruce Street or Willey Street." The site plan, in fact, included desired recesses [see Addendum A, Exhibit 8].

The Board should also note that it determined on 17 SEP 2014 under Case No. V14-24, that, based on the wind flow analysis and sunlight distribution report that was also provided to the Planning Commission, no further design elements were required of the subject development to preserve adequate light and airflow [see Addendum A, Exhibit 9].

Staff recommends that the Board, based on the findings of fact and conclusions of law presented herein, uphold the Planning Division's interpretation outlined in the Staff Report that was presented to the Planning Commission on 12 MAR 2015 and the Planning Commission's 12 MAR 2015 approval of the subject site plan as the same relate to minimizing "canyon effects" under Article 1351.01(I) and that no additional or further design elements were required to preserve adequate light and airflow to public spaces (i.e. streets and sidewalks) around the subject site.

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

STAFF REPORT ADDENDUM A

BA15-01 / Central Place, LLC / 494 Spruce Street

BA15-02 / Central Place, LLC / 494 Spruce Street

EXHIBIT 1

The following illustrations are clipped from the 2014 Replacement of the City's Planning and Zoning Code.

1385.04 SITE PLAN REVIEW.

There are four types of site plan reviews which have different application requirements and approval procedures. Types 2, 3 and 4 shall be reviewed by an internal technical review team, whose membership shall include the City Manager or his designee, the Chief Code Enforcement Officer, the City Engineer, a representative from the Morgantown Utility Board, and the City's Fire Department. The types of review are:

Type I	Administrative Review, by the Planning Director, of Simple Site Plans
Type II	Administrative Review, by the Planning Director, of Detailed Site Plans
Type III	Planning Commission Review of Developments of Significant Impact
Type IV	Board of Zoning Appeals Review of Conditional Uses

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

(B) Planning Commission Review of Major Developments of Significant Impact of a Regional Scale. The review process shall be identical to that for Developments of Significant Impact, except as otherwise noted in the plan submission requirements listed below.

EXHIBIT 2

The following illustration is clipped from the 2014 Replacement of the City's Planning and Zoning Code.

1349.08 PARKING AND LOADING STANDARDS.

(A) Off-street parking shall be provided in accordance with Article 1365, Parking, Loading and Internal Roadways for all Developments of Significant Impact and Major Developments of Significant Impact within this district, unless otherwise restricted by Article 1362 B-4NPOD, B-4 Neighborhood Preservation Overlay District, except as follows:

(1) Residential: Parking shall not be required for the first twenty-two (22) occupants, as determined by the West Virginia State Building Code and adopted and implemented by the City, within permitted residential development. With the exception of the first twenty-two (22) occupants, the minimum number of parking spaces for permitted residential uses shall be one-half a space (0.5) per occupant, as determined by the West Virginia State Building Code and adopted and implemented by the City. (Ord. 11-03. Passed 3-1-11.)

(2) Nonresidential: Parking shall not be required for permitted nonresidential development which does not meet or exceed the criteria of a Development of Significant Impact or a Major Development of Significant Impact. The minimum number of parking spaces for permitted nonresidential uses shall be provided in accordance with Table 1365.04.01 "Minimum Off-Street Parking Requirements" for that gross floor area that exceeds the criteria of a Development of Significant Impact or a Major Development of Significant Impact.

(3) Movie Theaters, as defined in this Zoning Ordinance.

(4) Reduction in Minimum Required Parking – The B-4 zoning district is characterized by businesses and mixed-uses that are well connected to pedestrian and public transit routes and are in close proximity to publicly provided parking facilities. In addition, the uses in the B-4 district are characterized by a mixture of primarily daytime and nighttime uses. For these reasons, the minimum parking requirements may be reduced somewhat in the B-4 district, as a conditional use, as provided in Section 1365.04 "Determining the Number of Spaces Required."

(5) Fee In-Lieu-of Parking – RESERVED

(6) The Board of Zoning Appeals, with the recommendation of the Planning Commission, may permit as a conditional use alternate strategies (i.e. remote parking, etc.) to meet minimum off-street parking requirements provided the intent of this Ordinance is observed and substantial justice done. (Ord. 08-06. Passed 3-4-08.)

EXHIBIT 3

The following illustrations are clipped from the 2014 Replacement of the City's Planning and Zoning Code.

ARTICLE 1351
Performance Standards for Buildings in the
General Business (B-4) District

1351.01 STANDARDS.

(D) Curb Cuts. No part of a driveway leading from a public street shall be nearer than thirty-five (35) feet to the street right-of-way line of any intersecting street, nor nearer than thirty (30) feet to the end of a curb radius at an intersecting street, nor shall the driveway be nearer than thirty (30) feet to any other part of another driveway entering a public street. The maximum width of any driveway leading from a public street shall not exceed twenty-six (26) feet at the curb line or twenty-two (22) feet at the street right-of-way line. Driveways that cross pedestrian walks shall be designated to allow for barrier free pedestrian travel.

EXHIBIT 4

The following illustrations are clipped from the 2014 Replacement of the City's Planning and Zoning Code.

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.

(2) For development which, in the opinion of the City Engineer, may create excessive negative impacts on traffic and/or dedicated City roadways, rights-of-way, or improvements in the immediate vicinity that serve the use, the City may require an analysis of the proposed development's impact on current or future traffic flows and/or dedicated City roadways, rights-of-way, or improvements, at the developer's expense, prepared by a qualified professional engineer. The Planning Commission may also table consideration of a development and refer such development to the City Engineer to ask his or her opinion as to whether a traffic impact study, transportation route plan, and/or transportation route protection agreement may be warranted.

(a) Traffic Impact Study. If the traffic impact study indicates that the projected traffic impact of the use would result in a two (2) full letter grade decline in the existing Level of Service (e.g., going from a Level of Service B to a Level of Service D) of any dedicated City street directly serving the use, such finding may be considered sufficient grounds for denial of the project, or a requirement that sufficient improvements be made to said streets, at the developer's expense, or that the project be reduced in size and scope to the point where no such negative impact on the Level of Service results. Level of Service refers to the traffic grading system described in the latest edition of the Highway Capacity Manual, published by the Transportation Research Board.

EXHIBIT 5

The following illustrations are clipped from the 12 MAR 2015 Staff Report presented to the Planning Commission and made a part of the Commission's hearing record.

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

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

Earl Ray Tomblin
Governor

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

August 8, 2014

Mr. Dan Hrankowsky
Director of Design
CA Student Living
161 N Clark
Suite 2050
Chicago, Illinois 60601

Dear Mr. Hrankowsky:

In June 2014, the West Virginia Division of Highways (WVDOH) issued approval of a Traffic Impact Study (TIS) regarding the proposed 494 Spruce Development to be located adjacent to US 119 in Morgantown, Monongalia County. You recently notified the WVDOH that certain revisions to the scope of the project are proposed, and the WVDOH has reviewed the revised information presented to us.

The results of our review indicate that based on the information provided, the WVDOH sees no need for you to provide the WVDOH with any updates to the previously approved TIS, as the revisions are relatively negligible and no increase in trip generation is proposed. The previously approved TIS still would be in effect for WVDOH permitting purposes with no revisions necessary and the TIS would be finalized after you have addressed appropriately any comments/concerns you may receive from the City of Morgantown and/or the Greater Morgantown Metropolitan Planning Organization. As noted previously, you would need to provide the WVDOH with three printed versions and two electronic versions of the full, final, approved TIS.

The access location along US 119 (Willey Street) appears to be the same as previously proposed and the WVDOH still is agreeable to that location, provided it has the same restriction (no left turn onto Willey Street from the site) as previously agreed. The information provided to the WVDOH also appears to indicate that the US 119 Northbound (Spruce Street) access now is proposed to be egress only from the site; the WVDOH has no objection to that but we are also still agreeable to a right-in/right-out access at Spruce Street as previously proposed. Also, please provide additional information concerning your proposed Option 1. Our understanding previously was that the bottom level of parking within the site was to be accessible only from Spruce Street. If the Spruce Street access is to be egress only, will the lower level of parking remain and if so, will it now be accessible from Willey Street?

E.E.O./AFFIRMATIVE ACTION EMPLOYER

The recommendations and conclusions of the TIS, once finalized, are to be incorporated into the Plans. When desired, you may submit to the WVDOH four sets of the Project Plans and any associated drainage calculations for review by WVDOH as part of our Plan approval/permitting process.

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

Very truly yours,

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

GLB:Cb

cc: Mr. Damien Davis, City of Morgantown
Mr. Chris Fletcher, City of Morgantown

Gannett Fleming

Excellence Delivered As Promised

August 7, 2014

Mr. Dan Hrankowsky
Director of Design
CA Student Living
161 N Clark Street, Suite 2050
Chicago, IL 60601

Re: Proposed 494 Spruce Residential/Commercial Development

Dear Mr. Hrankowsky:

Gannett Fleming, Inc. recently completed a Traffic Impact Study for the above-captioned project dated May 28, 2014. At the time, the report addressed a mixed-use development containing 368 bedrooms and 3,500 square feet of commercial space. Since that time, the development proposal has been modified to include 331 bedroom with the same amount of commercial space.

As indicated in the study, the anticipated trip generation for the residential portion of the development was based on research conducted at similar facilities. This research included the development of rates based on the number of apartment units, number of bedrooms, and number of parking spaces. The rates utilizing the number of bedrooms as the independent variable yielded the most conservative results and were therefore utilized for the analysis. This trip generation methodology was accepted by the West Virginia Division of Highways.

Considering the proposed change in residential intensity, the following tables outline a comparison of the anticpated trip generation for the original proposal versus the revised proposal.

Original Trip Generation Estimates

	AM Peak Hour			PM Peak Hour			Daily		
Land Use	In	Out	Total	In	Out	Total	In	Out	Total
368 Bedrooms	11	15	26	25	23	48	261	262	523
3,500 SF Retail	12	12	24	10	8	18	78	77	155
Total	23	27	50	35	31	66	339	339	678

P.O. Box 67100 • Harrisburg, PA 17106-7100 | 207 Senate Avenue • Camp Hill, PA 17011-2316
t: 717.763.7211 • f: 717.763.8150
www.gannettfleming.com

Revised Trip Generation Estimates

	AM Peak Hour			PM Peak Hour			Daily		
Land Use	In	Out	Total	In	Out	Total	In	Out	Total
331 Bedrooms	10	13	23	23	20	43	235	235	470
3,500 SF Retail	12	12	24	10	8	18	78	77	155
Total	22	25	47	33	28	61	313	312	625

As can be seen by comparing the tables, there is an 11 to 13 percent reduction in the number of trips for the residential portion of the development based on the revised development proposal.

The Traffic Impact Study summarized that the proposed development would have a minor impact on the adjacent roadway system, and as such no roadway, traffic signal, or other system improvements were recommended. It is our determination based on the above information that the revised proposal will have less of an impact to the adjacent roadway system as compared to the original proposal, and therefore the study outome has not changed.

If you have any questions regarding this information, please do not hesitate to contact me.

Very truly yours,

Gannett Fleming, Inc.

Mark Metil, P.E., PTOE
Director of Transportation Operations and Planning

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

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

Earl Ray Tomblin
Governor

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

June 6, 2014

Mr. Stephen G. Bus
Senior Vice President –
Acquisitions & Development
CA Student Living - CA Ventures
161 N Clark
Suite 2050
Chicago, Illinois 60601

Dear Mr. Bus:

The West Virginia Division of Highways (WVDOH) has completed its review of the Traffic Impact Study (TIS) received electronically on May 28, 2014, regarding the proposed 494 Spruce Development to be located adjacent to US 119 in Morgantown (City), Monongalia County.

The results of our review indicate that the TIS can be approved by the WVDOH as submitted, although we stipulate that the TIS should be finalized only after you have addressed appropriately any comments/concerns you may receive from the City and/or the MPO. If the TIS is revised in any manner to reflect additional comments from other, then provide the WVDOH with three printed versions and two electronic versions of the full, final, approved TIS. The recommendations and conclusions of the TIS, once finalized, are to be incorporated into the plans. When desired, you may submit to the WVDOH four sets of the project plans and any associated drainage calculations.

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

Very truly yours,

Original Signed By:
GREGORY L. BAILEY

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

GLB:Cm

cc: Ms. Terry Hough
City of Morgantown

E.E.O./AFFIRMATIVE ACTION EMPLOYER

Memo

City of Morgantown
Department of Public Works and Engineering

To: Chris Fletcher, Director of Development Services

From: Terry Hough, Director

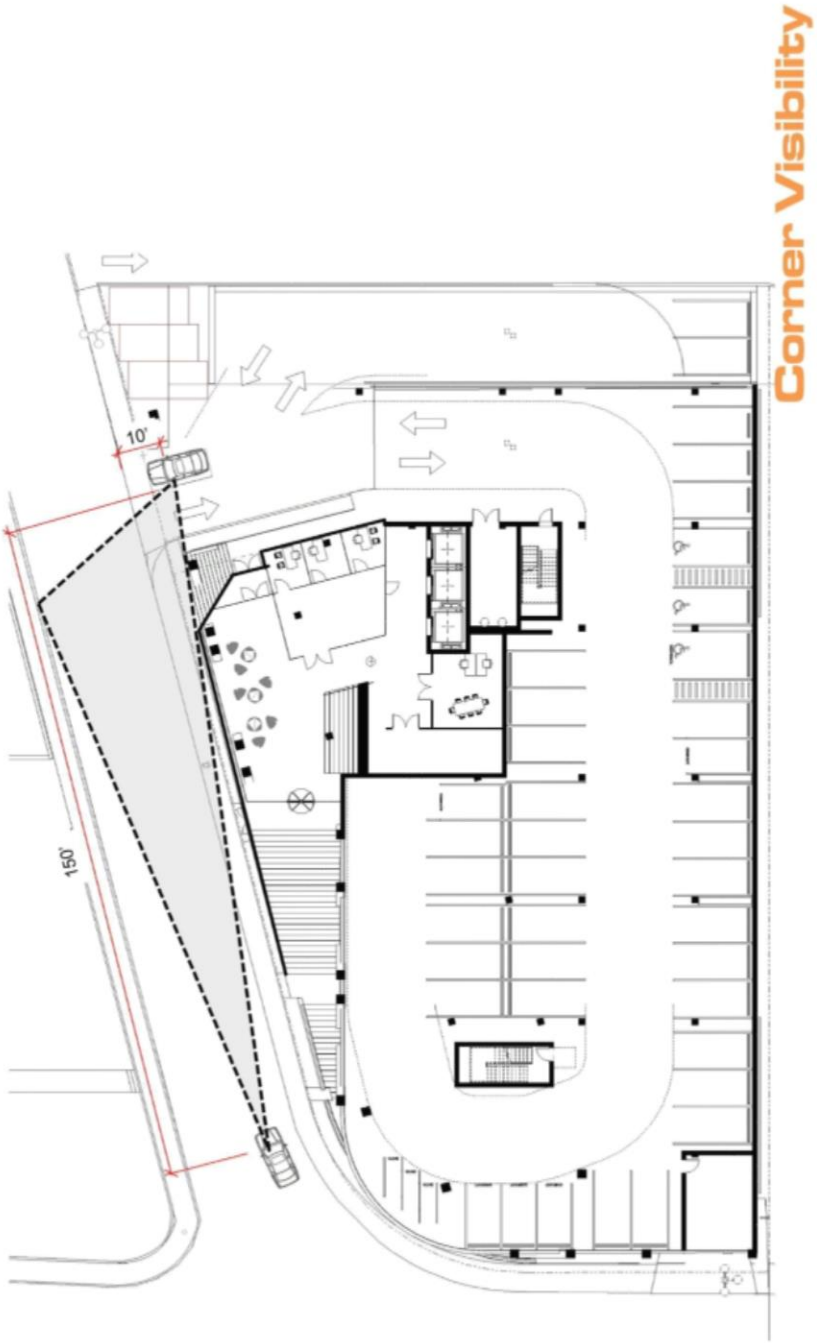
Subject: 494 Spruce Street Traffic Impact Study/Sight Distance.

Date: June 10, 2014

The final Traffic Impact Study (TIS) was submitted to this office regarding the proposed development located at 494 Spruce Street. After reviewing the study, along with discussions with the West Virginia Division of Highways, it is the conclusion of this office that the proposed increase in the vehicular volumes due to this development will have a minor impact on the Level of Service (LOS) of the adjoining roadway system. Given this, there are no roadway system improvements recommended.

This office did have concerns regarding the sight distance for vehicles exiting the development onto Willey Street. A subsequent plan has been submitted showing changes to the site development which eliminates the sight distance concerns. The submitted plans are included with this memo.

Given the above, this office approves the submitted TIS for this project. If you have any questions or need any additional information, please do not hesitate to contact me.


Corner Visibility
10'
150'

Traffic Impact Study
Proposed Mixed-Use Residential Commercial Development at 494 Spruce Street

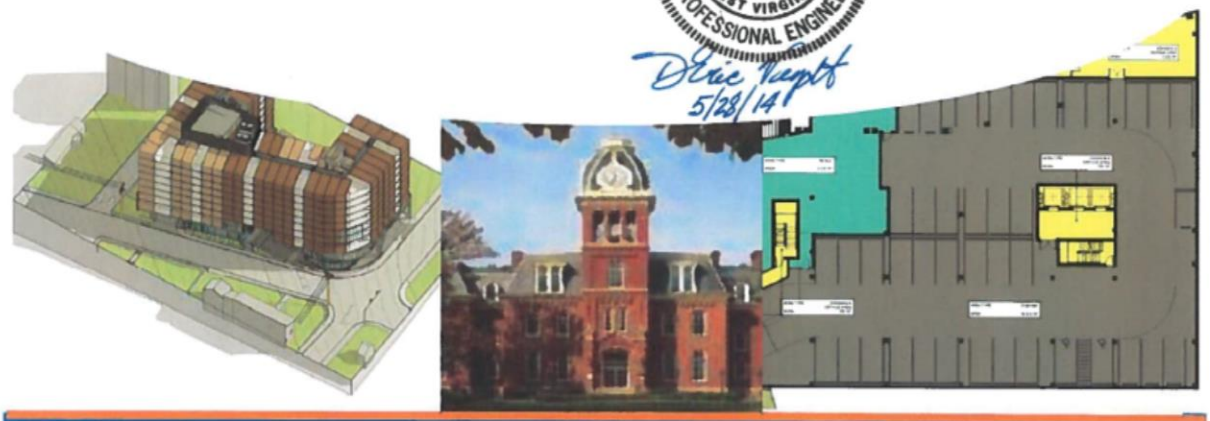
City of Morgantown, West Virginia

Prepared for: Campus Acquisitions Holdings, LLC
CA Student Living, LLC
Chicago, IL

Prepared by: Gannett Fleming
D. Eric Veydt, P.E.
Mark Metil, P.E., PTOE

D. ERIC VEYDT
REGISTERED
14135
STATE OF WEST VIRGINIA
PROFESSIONAL ENGINEER

D Eric Veydt
5/28/14



May 28, 2014

TABLE OF CONTENTS

TABLE OF CONTENTS I
1.0 EXECUTIVE SUMMARY 1
2.0 GENERAL OVERVIEW OF THE DEVELOPMENT 2
3.0 EXISTING ROADWAY CONDITIONS 3
3.1 Study Area 3
3.2 Existing Roadway Conditions 3
4.0 EXISTING TRAFFIC VOLUMES 5
4.1 Intersection Turning Movement Counts (TMCs) 5
4.2 Average Daily Traffic (ADT) Volumes 5
5.0 TRIP GENERATION AND DISTRIBUTION 6
5.1 Trip Generation 6
5.2 Trip Distribution 7
6.0 PROJECTED TRAFFIC VOLUMES 9
6.1 Other Area Development Trip Generation and Distribution 9
6.2 2016 Projected Traffic Volumes 9
7.0 OPERATIONAL ANALYSIS 11
8.0 QUEUE ANALYSIS 14
9.0 CONCLUSIONS 16

1.0 EXECUTIVE SUMMARY

Gannett Fleming has completed a Traffic Impact Study (TIS) for the proposed 494 Spruce residential/commercial development to be located in Morgantown, WV. This study was performed in accordance with West Virginia Division of Highways (DOH) Traffic Engineering Directive (TED) 106-2.

The purpose of the study was to determine if the 494 Spruce residential/commercial development would adversely affect the surrounding roadway network. Study findings included the following:

- The study area included the following intersections:
  - Willey Street and High Street (US Route 119 Southbound)
  - Willey Street and Spruce Street (US Route 119 Northbound)
  - Willey Street and Price Street
  - Willey Street and Proposed Access Driveway
  - Spruce Street and Proposed Access Driveway.
- The proposed development is projected to generate 50 total trips during the AM Peak Hour, 66 total trips during the PM Peak Hour, and 678 total daily trips.
- The addition of site generated traffic from the proposed development results in only a 2-3% increase in traffic volume at the study intersections.
- The results of the operational analysis indicate that there will be no degradation of LOS as a result of anticipated traffic from the 494 Spruce development compared to the no-build condition.
- The results of the queue analysis indicate that the addition of site generated traffic from the proposed development will not result in exceeding the available storage length for intersection movements with adequate storage capacity.

Considering the findings of the study as summarized above and detailed in the body of this report, the proposed development will have a minor impact on the adjacent roadway system, and as such no roadway, traffic signal, or other system improvements are recommended.

EXHIBIT 6

The following illustration is the Board of Zoning Appeals' 15 OCT 2014 decision under Case No. BA14-03.

PLANNING DEPARTMENT

The City of Morgantown

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

October 16, 2014

CERTIFIED MAIL
7010 0780 0002 0687 8361

Central Place, LLC
c/o J. Bryan Edwards, Esq.
1200 Dorsey Avenue, Suite II
Morgantown, WV 26501

RE: BA14-03 / Central Place, LLC / 494 Spruce Street

Dear Mr. Edwards:

This letter is to notify you of the decisions made by the Morgantown Board of Zoning Appeals concerning the above referenced petition for Administrative Appeal under Article 1383 related to information provided in the Staff Report by the Planning Division for site plan Case No. S14-07-III that was presented to the Morgantown Planning Commission on September 11, 2014.

The decisions are as follows:

Board of Zoning Appeals, October 15, 2014:

1. The Board decided that the Petitioner, Central Place, LLC, established standing as an aggrieved person and therefore may initiate the subject administrative appeal petition filed under Case No. BZ14-03.

2. Concerning Petitioner's Allegation No. 1, the Board decided that the development of the VFW Post 548 site at the corner of Spruce Street and Willey Street by CA Student Living under Case No. S14-07-III is a "Major Development of Significant Impact" as provided under Article 1329.02 of the City's Planning and Zoning Code and not a "Development of Significant Impact" as determined by the Planning Division.

3. Concerning Petitioner's Allegation No. 2, the Board decided, based on the findings of fact and conclusions of law presented by the Planning Division, to uphold the Planning Division's administrative determination that the area and location of requisite nonresidential use provided in Case No. S14-07-III is consistent with the related standards set forth under Article 1331.06(26)(a) and Article 1351.01(J)(2)(b) of the Planning and Zoning Code.

4. Concerning Petitioner's Allegation No. 3, the Board decided that Case No. S14-07-III should not have been presented to the Planning Commission for consideration prior to West Virginia Division of Highways (WVDOH) issuance of access permits onto Spruce Street and Willey Street as provided under Article 1385.08(A)(1)(g) of the City's Planning and Zoning Code.

Page 1 of 2

5. Concerning Petitioner's Allegation No. 4, the Board decided, based on the findings of fact and conclusions of law presented by the Planning Division, to uphold the Planning Division's administrative determination that Article 1349.05(B) establishes the maximum building height in the B-4 District as it relates to Case No. S14-07-III and not Section 6.3.1.4 of the 2010 Downtown Strategic Plan Update.

This decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days.

Please note that a copy of this letter will be sent to Mr. Dan Hrankowsky, CA Student Living as a courtesy given the relationship of the Board's decisions with his organization's related development.

Respectfully,

Christopher M. Fletcher

Christopher M. Fletcher, AICP
Director of Development Services

cc: Dan Hrankowsky, CA Student Living

Page 2 of 2

EXHIBIT 7

The following illustrations are clipped from the 2014 Replacement of the City's Planning and Zoning Code.

ARTICLE 1351
Performance Standards for Buildings in the
General Business (B-4) District

1351.01 STANDARDS.

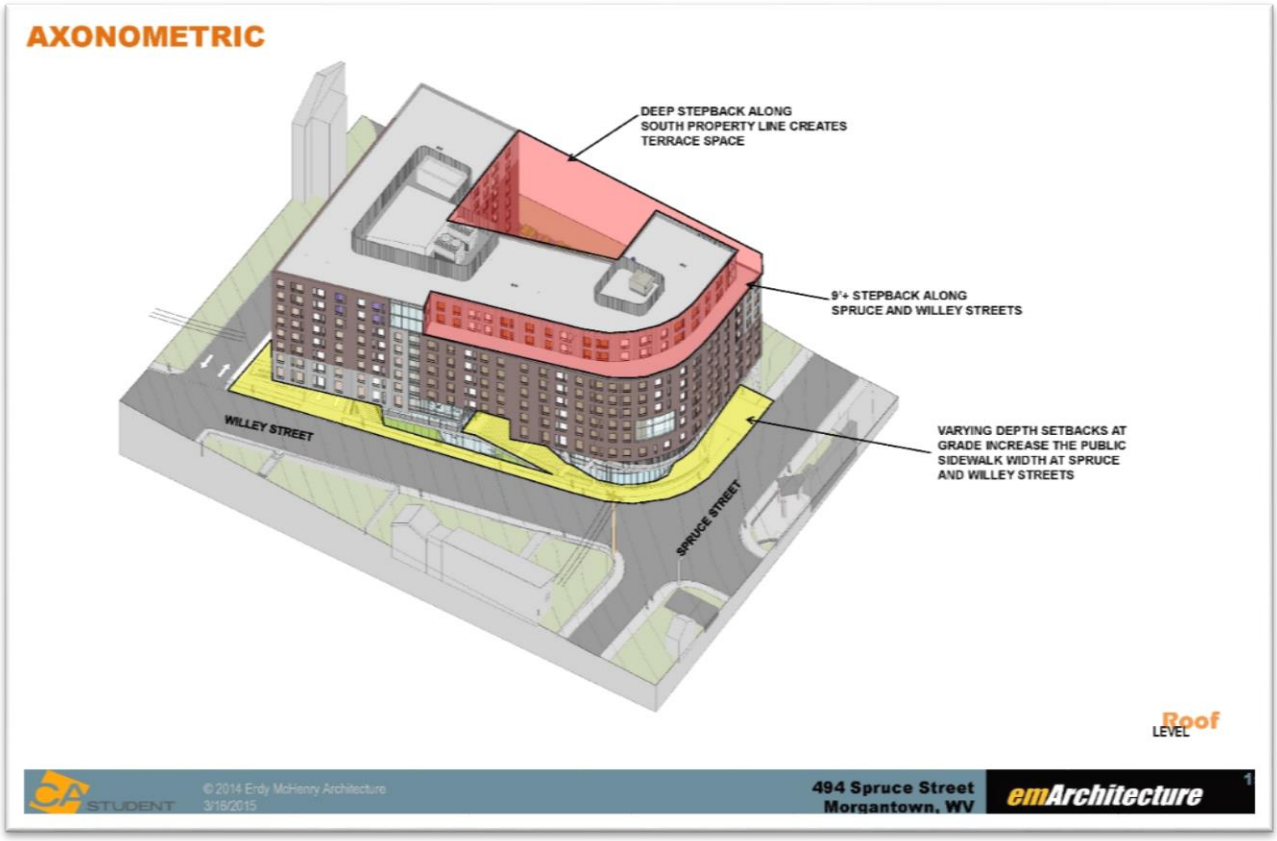
(I) To minimize canyon effects created by tall structures, buildings taller than three (3) stories shall incorporate design elements that preserve adequate light and airflow to public spaces including streets and sidewalks. Desired design elements include, but are not limited to, one or a combination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

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

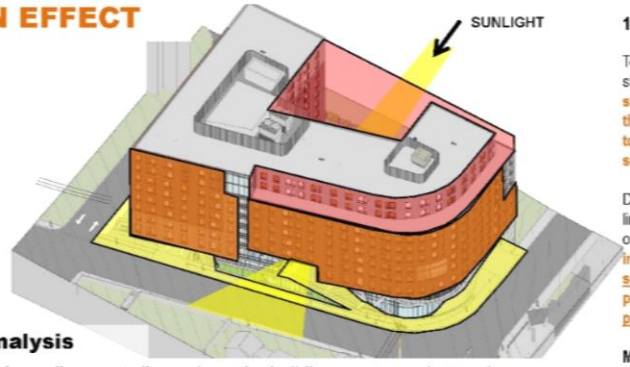
(2) A sunlight distribution analysis conducted by a licensed architect or professional engineer, describing and illustrating the impact of the proposed building on sunlight distribution in the general vicinity, with special emphasis on predicting light blockage and shadow casting onto all properties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

EXHIBIT 8

The following illustrations are clipped from the developer's presentation to the Planning Commission on 12 MAR 2015.



MITIGATING CANYON EFFECT



Building Design Supportive Analysis

- **"Setbacks"** have been incorporated along all property lines where the building meets grade to enhance the public spaces along the streets and sidewalks
- **"Stepbacks"** along the top two stories of the building designed to preserve light and airflow to the streets and sidewalks as well as reduce the overall building mass and appearance.
- **"Predominant street walls"** have been preserved to give scale and definition to adjacent streets and public spaces.
- The building transparency between the exterior terrace and interior monumental stair allow the morning sun to pass through the building to illuminate the public areas along Willey Street providing **street level increase of light and airflow**
- **Air Flow Analysis** for this building shows an overall **reduction in average wind speed** at the street level
- **Sunlight Distribution Analysis** shows shadow distribution throughout the year

1351.01 (I) Summary:

To minimize canyon effects created by tall structures, **buildings taller than three (3) stories shall incorporate design elements that preserve adequate light and airflow to public spaces including streets and sidewalks.**

Desired design elements include, but are not limited to, one or a combination of recessing or **"stepping back" upper floors, increased front and/or street side setbacks while incorporating measures to preserve the continuity of the predominant street wall, etc.**

Must include the following:

(1) An **air flow analysis** conducted by a licensed architect or professional engineer, describing and illustrating the estimated impact of the proposed building on existing patterns of air flow in the general vicinity; and how those impacts may affect existing properties within a 300 foot radius of the site.
(2) **A sunlight distribution analysis** conducted by a licensed architect or professional engineer, describing and illustrating the impact of the proposed building on sunlight distribution in the general vicinity, with special emphasis on predicting light blockage and casting onto all properties within a 300 foot radius of the site.

STUDENT © 2014 Erdy McHenry Architecture 3/18/2015

494 Spruce Street
Morgantown, WV

emArchitecture

1

EXHIBIT 9

The following illustration is the Board of Zoning Appeals' 17 SEP 2014 decision under Case No. V14-24.

The City of Morgantown

DEVELOPMENT SERVICES DEPARTMENT

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

September 18, 2014

CA Student Living
c/o Lisa Mardis
Project Management Services
160 Fayette Street
Morgantown, WV 26501

RE: V14-24 / CA Student Living / 494 Spruce Street
Tax Map 26, Parcels 245 and 246

Dear Ms. Mardis,

This letter is to notify you of the decision made by the Board of Zoning Appeals concerning the above referenced variance petition for variance relief from Article 1351.01(l) as it relates to canyon effects at 494 Spruce Street.

The decision is as follows:

Board of Zoning Appeals, September 17, 2014:

1. The Board determined that, based on the Wind Flow Analysis and Sunlight Distribution Report, no additional or further design elements were required to preserve adequate light and airflow to public spaces (i.e. streets and sidewalks) around the subject site. Therefore, variance relief from Article 1351.01(l) is not required.

This decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

The above referenced approval is set to expire in twelve (12) months unless you can demonstrate that they have been activated as evidenced by permits, construction, or required licenses. This expiration deadline may be extended to eighteen (18) months upon prior written request of the Board. Please note that a building permit must be obtained prior to the commencement of work for which variance relief was granted herein.

Should you have any questions or require further clarification, please contact the undersigned. We look forward to serving your plans review and permitting needs.

Respectfully,

Stacy Hollar
Executive Secretary
Development Services Department
shollar@cityofmorgantownwv.gov

Page 1 of 1