



# MORGANTOWN BOARD OF ZONING APPEALS

October 12, 2015  
6:30 PM  
Council Chambers

## **Board Members:**

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

## **STAFF REPORT**

**CASE NO:** BA15-03 / Giuliani / 256 Prairie Avenue

### **REQUEST and LOCATION:**

Request by Samuel H. Simon, on behalf of James Giuliani, for an Administrative Appeal relating to an accessory dwelling unit at 256 Prairie Avenue; Tax Map 28, Parcel 130; R-1A, Single-Family Residential District.

### **AUTHORITY**

Attached hereto is a letter dated 06 AUG 2015 to the petitioner providing an administrative interpretation (the "Interpretation") following the procedures, standards, and limitations for same under Section 1375.05 of the City's Zoning Ordinance concerning the land use classification and permitted use of a detached summer kitchen (the "Kitchen Building") situated on the petitioner's subject property. Attached to said letter is Section 1375.05 and Article 1383 "Administrative Appeal."

Also attached hereto is an Application for Administrative Appeal (the "Appeal") and its exhibits filed by the petitioner on 04 SEP 2015. Said application was filed within thirty (30) days of the original administrative interpretation as set forth under Section 1383.02 "Initiation."

### **BA15-03 ALLEGATIONS**

Staff submits the following responses to the petitioner's allegations filed under Case No. BA15-03.

#### RESPONSE TO ALLEGATION No. I.

##### *Introduction and Procedural History*

The Planning Division admits the petitioner's introduction and procedural history allegations and reiterates the petitioner's following statements:

- Paragraph 1, Sentence 3 – "The building in question [kitchen building] is an enclosed structure that is **separate and detached from the primary residence** but is in close proximity, within several feet."
- Paragraph 2, Sentence 1 – "...**convert** the kitchen building into an accessory use apartment."

## **Development Services**

Christopher Fletcher, AICP  
Director

## **Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



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## RESPONSE TO ALLEGATION No. II.

### *Standing and Jurisdiction*

The Planning Division admits the petitioner's standing and jurisdiction allegations. Specifically, Section 1375.05 "Administrative Interpretation" of the City's Zoning Ordinance, Paragraph (H) states the following:

(H) Appeals from Planning Director Decisions. The Board of Zoning Appeals shall, pursuant to Article 1383 of this Zoning Ordinance, hear and decide appeals from any administrative interpretations by the Planning Director acting pursuant to the authority and duties under this section.

Additionally, Section 1383.01 "Authority" of the City's Zoning Ordinance 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.

## RESPONSE TO ALLEGATION No. III.A.

The Planning Division denies the petitioner's allegations the *kitchen building* is an "Accessory Dwelling" and reaffirms the correct land use classification for the *kitchen building* to be an "Accessory Structure."

1. The Planning Division denies the petitioner's allegation the *kitchen building* has, "always been considered a dwelling unit." (Appeal, p. 3).

As documented in the Interpretation, the principal building located on Parcel 130 of Tax Map 28 has been registered with the City's Rental Housing Registration Program in various dwelling unit configurations since at least March 23, 1984. The petitioner has maintained this principal building registration since acquiring the subject realty on or about 21 MAY 1997 (<http://www.assessor.org/parcelweb/>). The property's registration file verifies the petitioner has always maintained that one (1) of the dwelling units within the principal building has remained owner-occupied. The registration file has no record of the *kitchen building* being registered as a habitable rental dwelling unit since at least March 23, 1984.

For a residential space to be considered habitable under the State Building Code, it must have, among other elements, operable plumbing facilities. The petitioner admits the *kitchen building* was constructed without plumbing. (Appeal, p. 3). Further, the petitioner admits his intent is to install indoor plumbing facilities. (Appeal, p. 5). As such, the *kitchen building* may not be considered a habitable structure in its current state under the current State Building Code nor could it have been considered habitable since at least the 1976 National Building Code enforced by the City at the time.

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The petitioner's attempt to argue that the *kitchen building*, described by the petitioner as being used as "sleeping quarters for household staff and other family members" (Appeal, p.1), was ever designed, constructed, intended, and/or used as an independent dwelling...regardless of era...is a fallacy.

The Planning Division reaffirms that the subject *kitchen building* is not an independent dwelling unit; that it has not been used as an independent dwelling unit since at least the mid-1970s; and, questions if the *kitchen building* could have ever been considered a legal independent dwelling unit.

2. The Planning Division denies the *kitchen building* is necessary and essential to the principal building as alleged by the petitioner. (Appeal, p.3).

The two (2) or three (3) dwelling units within the principal building registered with the City since at least 1984 have been required, under the State Building Code, to have, among other requirements, operable kitchen facilities to be considered habitable dwelling units. Further, operable kitchen facilities have been required for habitable residential space since at least the 1976 National Building Code enforced by the City at the time.

As such, the *kitchen building* could not have been, since at least the mid-1970s, considered "necessary and essential to the function of the [principal building]" as alleged by the petitioner.

The Planning Division reaffirms the subject *kitchen building* can only be considered incidental and accessory to the use of the principal building.

3. The Planning Division denies the petitioner's allegation the use of the *kitchen building* is not the same as the uses contemplated in the Zoning Ordinance's definition of the term "ACCESSORY STRUCTURE." (Appeal, p.4 ).

The petitioner admits the uses enumerated in the definition of the term "ACCESSORY STRUCTURE" are *examples*. The legislative intent of this list is to be representative of use types and not to be an exhaustive list of all structures that might be considered accessory to its principal building. For instance, structures exist and are classified within the City as accessory to nonresidential principal buildings occupied by commercial or industrial uses, examples of which are not provided in the subject definition but are none the less considered accessory structures based on a whole reading of the definition of the term "ACCESSORY STRUCTURE."

The petitioner attempts to obscure the definition of "ACCESSORY STRUCTURE" by alleging, "Those types of structures do not contain cooking or sleeping quarters, unlike the subject kitchen building." (Appeal, p.4 ).

An example of a residential dwelling unit, which by definition is considered an accessory structure, is provided in the Interpretation – CARETAKER'S RESIDENCE. Further, a CARETAKER'S RESIDENCE must be registered with the City as a rental unit, which would require, among other elements, operable cooking facilities and meet minimum sleeping quarter standards under the State Building Code.

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The Planning Division reaffirms the subject *kitchen building* is the type of subordinate structure that is incidental and accessory to the use of the principal building and therefore considered an ACCESSORY STRUCTURE.

4. The Planning Division denies the petitioner's allegation the subject *kitchen building* has been used for cooking and sleeping purposes. (Appeal, p. 4). Further, the Planning Division denies the petitioner's allegation that cooking and sleeping quarters already exist in the subject *kitchen building*. (Appeal, p. 5).

The petitioner provides no evidence in the Appeal that the subject *kitchen building* has been or is now being legally used for cooking and/or sleeping purposes under the City's Zoning Ordinance and/or the State Building Code in any manner that could be construed as providing or establishing a habitable dwelling unit.

5. The Planning Division denies the petitioner's allegation the classification of the future contemplated use of the *kitchen building* has any merit in establishing a vested property right protected and preserved under Article 1373 "Nonconforming Provisions." (Appeal, p. 5).

Please see the Planning Division's response below to Allegation III.B.

### RESPONSE TO ALLEGATION No. III.B.

The Planning Division denies the petitioner's alternative allegation that the subject *kitchen building* is a legal, pre-existing, nonconforming, grandfathered "Accessory Dwelling" and reaffirms the correct land use classification for the *kitchen building* to be an "Accessory Structure."

1. The Planning Division denies the petitioner's allegation, "...it is clear that the kitchen building contains a Dwelling Unit." (Appeal, p. 6).

The Planning Division restates and reaffirms its responses under No. 1 and No. 4 above to Allegation III.A that the subject *kitchen building* is not an "Accessory Dwelling" as alleged by the petitioner.

2. The Planning Division denies the petitioner has met the burden of establishing legal nonconforming status for the subject *kitchen building* as an "Accessory Dwelling." Section 1373.04 of the City's Zoning Ordinance states the following:

#### 1373.04 BURDEN OF ESTABLISHING STATUS.

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

- (A) The date of construction of the building or structure or the date the use was established;
- (B) The continuous operation of the nonconforming use; and,
- (C) Such other proof as may be deemed necessary by the Planning Director.

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The petitioner admits the *kitchen building* was constructed without plumbing. (Appeal, p. 3). Further, the petitioner admits his intent is to install indoor plumbing facilities. (Appeal, p. 5). The petitioner fails to prove in the Appeal that he or previous owners of the subject realty maintained or even attempted to maintain a legal continuous operation of the subject *kitchen building* as a dwelling unit.

Further, the City would have, going back to at least the mid-1970s, condemned the *kitchen building* if the petitioner or previous owners of the subject realty attempted to use the subject *kitchen building* as a dwelling unit for, at least, the lack of operable plumbing.

3. Even if the subject *kitchen building* was used at some point in its history as a legal dwelling unit, which the Planning Division denies, the alleged residential use has long been discontinued and abandoned as provided in Section 1373.01 (D) below.

#### 1373.01 NONCONFORMING USES.

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

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

The Planning Division reaffirms and restates the petitioner has not established the subject *kitchen building* as being legally used as a dwelling unit for it to have even been discontinued or abandoned.

4. Even if the subject *kitchen building* was legally used at some point in its history as a dwelling unit, which the Planning Division denies, that alleged dwelling use has long been superseded by a permitted use, most likely a permitted storage shed type use commonly found as accessory uses/structures to principal single- and two-family dwelling uses/buildings. As Section 1373.01(C) below provides, the alleged nonconforming dwelling use may not thereafter be resumed. However, the *kitchen building* appears to be a conforming "Accessory Structure" if used for storage, personal workshop, etc. that is subordinate and incidental to the principal building and its two-family dwelling use.

#### 1373.01 NONCONFORMING USES.

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

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

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Again, the Planning Division reaffirms and restates the petitioner has not established the subject *kitchen building* as being legally used as a dwelling unit for it to have even been superseded by a permitted use.

### RESPONSE TO ALLEGATION No. III.C.

The Planning Division denies the petitioner's alternative allegation that the petitioner's intent of not increasing or extending the size of the subject *kitchen building* has any merit on whether it is an "Accessory Dwelling" or a legal, pre-existing, nonconforming, grandfathered "Accessory Dwelling" and reaffirms the correct land use classification for the *kitchen building* to be an "Accessory Structure."

1. The Planning Division restates and reaffirms its responses under No. 1 and No. 4 above to Allegation III.A that the subject *kitchen building* is not an "Accessory Dwelling" use alleged by the petitioner.
2. The Planning Division restates and reaffirms its response in whole to Allegation III.B above that the subject *kitchen building* is not a legal, pre-existing, nonconforming, grandfathered "Accessory Dwelling" use alleged by the petitioner.
3. The Planning Division affirms the petitioner's attempt in this allegation is to obscure the legislative intent of prohibiting nonconforming uses from being enlarged [see Section 1373.01(A) below]. The petitioner's stated intent to do no harm or to do no further harm by limiting physical work to the inside of the subject *kitchen building* thereby not increasing or not extending the size of the *kitchen building* lacks merit and is irrelevant to establishing the alleged "Accessory Dwelling" use or the alleged legal, pre-existing, nonconforming, grandfather "Accessory Dwelling" use for the subject *kitchen building*.

#### 1373.01 NONCONFORMING USES.

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

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

### **Development Services**

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Director

### **Planning Division**

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The Planning Division recommends the Board, based on the findings of fact and conclusions of law presented herein, uphold the Planning Division's determinations outlined in the subject Administrative Interpretation dated 06 AUG 2015 for which this Administrative Appeal has been filed and adopt these findings of fact and conclusions of law as its ruling on the Administrative Appeal Case No. BA15-03.



**DEVELOPMENT  
SERVICES  
DEPARTMENT**

# The City of Morgantown

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## CERTIFIED MAIL

**7008 1140 0002 2808 9868**

August 6, 2015

James Giuliani  
256 Prairie Avenue  
Morgantown, WV 26501

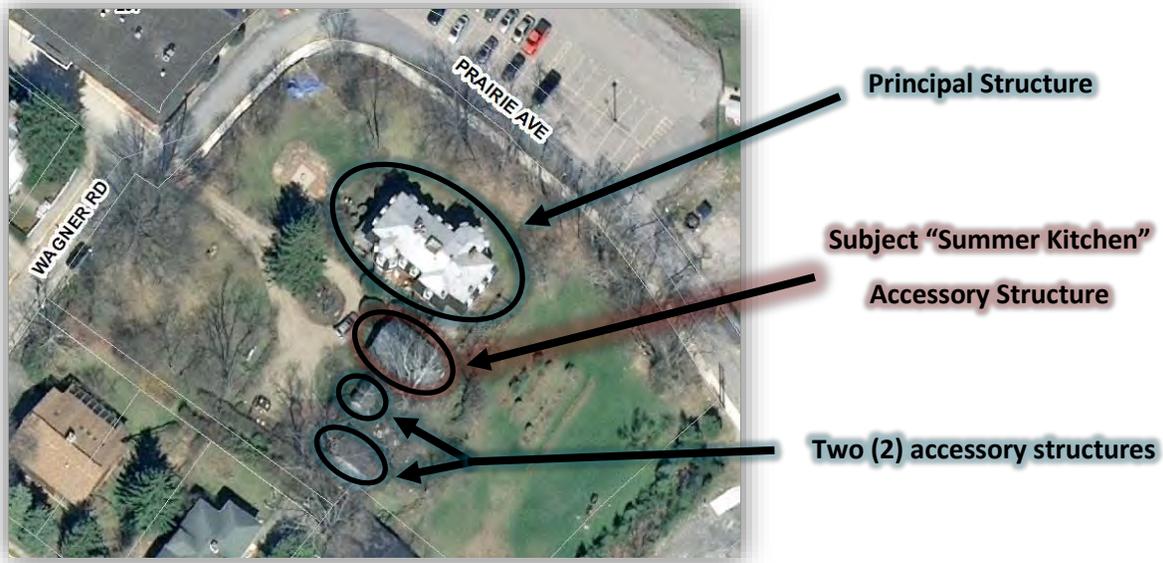
RE: Contemplated Accessory Dwelling Unit at 256 Prairie Avenue (Tax Map 28, Parcel 130)

Mr. Giuliani:

On July 20, 2015, you visited this office with a partially completed building permit application describing the following contemplated work at the above referenced realty (see Exhibit 1 attached hereto):

“Lot size 1.3 acres. Convert existing detached summer kitchen (circa 1860) into a[n] accessory use apartment. Once permission is granted, complete plans will follow accordingly with upgrades and improvements.”

The following aerial photograph illustrates the principal and three (3) accessory structures presently on the subject property. The subject accessory “summer kitchen” structure is highlighted in red.



### **Application for Interpretation**

Article 1375.05 “Administrative Interpretations” of the Planning and Zoning Code establishes the procedures, standards, and limitations for administrative interpretations concerning the provisions of the City’s Zoning Ordinance (see Exhibit 2 attached hereto). Further, Article 1375.05(C) provides that applications for interpretations may be filed by any person having a legal or equitable interest in property that gives rise to the need for an interpretation, provided interpretations shall not be sought by any person based solely on hypothetical circumstances or where the interpretation would have no effect other than as an advisory opinion.

The Monongalia County Assessor’s website lists the owner of the subject realty as James F. and Karen L. Giuliani, which the undersigned accepts, in terms of the subject partially completed building permit application, as a legal or equitable interest in the subject realty and right to seek an administrative interpretation.

Despite the fact the subject partially completed building permit application was not submitted to the City’s Code Enforcement Department for plans review and the pursuit of building permit issuance, as evidenced by the lack of building permit application case number assignment on the second page of same, the undersigned accepts said partially completed building permit application as a genuine intent to pursue the contemplated work described therein and not a hypothetical circumstance. Further, the undersigned accepts said partially completed building permit application as a written request or application for an administrative interpretation of related Zoning Ordinance provisions.

Although not clearly expressed in the partially completed building permit application, the undersigned understands your application for an administrative interpretation to be:

*Is the contemplated work described in the partially completed building permit application allowed under related provisions of the Zoning Ordinance?*

### **Analysis**

The zoning classification for the subject realty is R-1A, Single-Family Residential District. The following information was obtained from the City’s Rental Housing Registration Case File No. 1508 for 256 Prairie Avenue.

- It appears the subject principal building was initially registered as rental housing with the City on March 23, 1984 by Rebecca Wade. Letters of Compliance (LOC) appear to have been issued under the Rental Registration Program since this initial registration.
- An LOC was issued on 10/23/2001 to James Giuliani for one (1) of the two (2) dwelling units within the principal building, which expired on 05/16/2004. The zoning land use classification of the principal building was a “Two-family Dwelling,” commonly referred to as a “duplex,” which was considered a pre-existing, nonconforming, grandfathered use.
- An LOC was issued on 09/10/2004 to James Giuliani for one (1) of the two (2) dwelling units within the principal building, which expired on 08/09/2007. The zoning land use classification of the principal building was a “Two-family Dwelling,” which was considered a pre-existing, nonconforming, grandfathered use.

- The Case File did not indicate why an LOC was not issued covering the period from 08/09/2007 to 01/07/2008.
- An LOC was issued on 01/07/2008 to James Giuliani for two (2) of three (3) dwelling units within the principal building, which expired on 01/03/2011. The Case File did not indicate how or why the number of dwelling units within the principal building increased from two (2) units to three (3) units. The zoning land use classification of the principal building would have been a “Multi-Family Dwelling” use, which was not permitted in the R-1A District. This increase in the number of dwelling units within the subject principal building would be considered a violation of the zoning ordinance.
- The Case File did not indicate why an LOC was not issued covering the period from 01/03/2011 to 10/08/2012.
- An LOC was issued on 10/08/2012 to James Giuliani for one (1) of the two (2) dwelling units within the principal building, which expired on 01/03/2014. The zoning land use classification of the principal building was a “Two-family Dwelling,” which was considered a pre-existing, nonconforming, grandfathered use.
- Current LOC was issued on 03/31/2014 to James Giuliani for a four-bedroom unit on the third floor of the principal building. The LOC expires on 01/03/2017. The zoning land use classification of the principal building is a “Two-family Dwelling,” which is considered a pre-existing, nonconforming, grandfathered use.

Article 1329.02 of the Planning and Zoning Code provides the following definitions for terms relied upon in this analysis and interpretation.

**ACCESSORY STRUCTURE** – A subordinate structure detached from but located on the same lot as a principal building. The use of an accessory structure must be incidental and accessory to the use of the principal building. Accessory structures include detached garages, carports, sheds, greenhouses, playhouses and the like.

**BUILDING, PRINCIPAL** – A building in which is conducted the main or principal use of the lot on which said building is situated.

**CARETAKER’S RESIDENCE** – A residence located on a premises with a main nonresidential use and occupied only by a caretaker or guard employed on the premises.

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

**DWELLING, SINGLE FAMILY** – A freestanding building designed solely for occupancy by one family for residential purposes, as a single housekeeping unit.

**DWELLING, TWO-FAMILY** – A freestanding building containing two (2) dwelling units, each of which has direct access to the outside.

**GUEST HOUSE** – An attached or detached building that provides living quarters for guests and (a) contains no kitchen or cooking facility; (b) is clearly subordinate and incidental to the principal residence on the same building site; and (c) is not rented or leased, whether compensation be direct or indirect.

The current land use classification for the subject principal building is a “Two-Family Dwelling” use as defined in Article 1329.02. “Two-Family Dwelling” uses are not permitted in the R-1A District. However, and with the exception of the noted lapses of issued Letters of Compliance, it appears the principle building has maintained registration as a “Two-Family Dwelling.” As such, it appears the “Two-Family Dwelling” use classification is considered a legal, pre-existing, nonconforming, grandfathered use that may continue as provided under the nonconforming provisions of Article 1373.

The current land use classification for the subject “summer kitchen” structure is an “Accessory Structure” use as defined in Article 1329.02. Specifically, said structure appears to be detached from, subordinate to, and located on the same lot as its principal building. Additionally, the use of the subject accessory “summer kitchen” structure appears to be incidental and accessory to the use of the principal “Two-Family Dwelling” building.

A definition for the term or variant of “Accessory Dwelling” is not provided in Article 1329.02. Additionally, the land use classification of “Accessory Dwelling” is not included in Table 1331.05.01 “Permitted Land Uses.”

However, “Accessory Dwelling” use is included in Table 1365.04.01 “Minimum Off-Street Parking Requirements”; the minimum standard for which is “1 space per [accessory dwelling] unit.” Additionally, the definition of “Dwelling Unit” in Article 1329 includes the term “garage apartment” as a listed example of a dwelling unit.

Although not defined nor listed within the Permitted Land Uses Table, it appears the Planning and Zoning Code recognizes “Accessory Dwelling” as a residential use type.

The “Caretaker’s Residence” use classification is not applicable to the proposed work and subject accessory “summer kitchen” structure because the principal building and use to which it is subordinate is residential and not nonresidential as provided in Article 1329.02.

The “Guest House” use classification is not applicable to the proposed work and subject accessory “summer kitchen” structure because the term “apartment” used in the work description of your partially completed building permit application indicates an intent to provide a “Dwelling Unit”, as defined in Article 1329.02, within the accessory “summer kitchen” structure. Specifically, an intent to submit a building permit application for work that will result in the accessory “summer kitchen” structure becoming a complete, independent living facility for a single housekeeping unit. It should be noted that “Guest House” uses are not listed in Table 1331.05.01 as permitted in the R-1A District.

The remaining zoning ordinance provision that can be relied upon in this analysis and interpretation is Article 1331.08, which provides (emphasis added):

1331.08 ACCESSORY STRUCTURES AND USES IN RESIDENTIAL DISTRICTS.

(A) Customary and incidental accessory buildings and uses are allowed in all residential districts, as specifically regulated in that district, provided that:

(1) In no case shall the maximum lot coverage permitted in a zoning district be exceeded.

- (2) Accessory structures, if detached from a principal structure, shall not be placed in the front yard. If placed in a side yard, accessory structures shall not be located closer to the street than the required front setback of the principal structure.
- (3) Accessory structures, if detached from a principal structure, shall not be located closer than five feet to the side or rear property line.
- (4) On corner lots, accessory structures shall not be located between any portion of the principal structure and either street.
- (5) When an accessory structure is attached to a principal structure, it shall comply in all respects with the requirements of this Zoning Ordinance applicable to the principal structure(s).
- (6) Any structure connected to another structure by an open breezeway (i.e., without enclosed walls) shall be deemed to be a separate structure.
- (7) The total square footage of all accessory structures shall not exceed fifty (50) percent of the first or ground floor area of the principal building.
- (8) The square footage of the first (ground) floor of the accessory structure(s) shall be included in the computation of lot coverage.
- (9) Accessory structures shall not exceed eighteen (18) feet in height.
- (10) No accessory structure shall be constructed with a cellar or below-grade story.
- (11) No part of any such structure shall be designed or used for sleeping purposes, and no cooking fixtures shall be placed or permitted therein.**
- (12) Any accessory structure designed as a poolhouse shall be located no farther than ten feet from the swimming pool to which it shall be accessory. A swimming pool and poolhouse shall constitute one accessory structure.
- (13) A private garage may be constructed as part of a principal structure, provided that when so constructed the garage walls shall be regarded as the walls of the principal structure in applying the applicable front, side and rear setback requirements.

### **Administrative Interpretation**

It is the opinion of the undersigned that the contemplated work described in the subject partially completed building permit application **WOULD NOT BE PERMITTED** under related provisions of the Zoning Ordinance based on the information presented herein and findings summarized below.

1. The subject “summer kitchen” structure is an “Accessory Structure.”
2. The definition of “Dwelling Unit” provided in Article 1329.02 requires it to be a single unit providing complete, independent living facilities for a single housekeeping unit. Additionally, a unit without self-contained sanitary facilities and kitchens is not classified as a “Dwelling Unit.”
3. The zoning classification for the subject realty is R-1A, Single-Family Residential District.
4. The R-1A District is a residential district.

5. Article 1331.08(11) prohibits accessory structures in residential districts from being designed or used for sleeping purposes.
6. Article 1331.08(11) prohibits cooking fixtures from being placed or permitted within accessory structures in residential districts.
7. Article 1331.08(11) interdicts an accessory structure located in a residential district from containing a “Dwelling Unit” unless an accessory structure containing a “Dwelling Unit” can be considered a legal, pre-existing, nonconforming, grandfathered use and/or structure.
8. The subject accessory “summer kitchen” structure is not a legal, pre-existing, nonconforming, grandfathered “Accessory Dwelling” or “Garage Apartment” as said accessory structure is not documented in the City’s Rental Housing Registration Case File No. 1508 for 256 Prairie Avenue as being a registered dwelling unit. Further, the Case File notes that one (1) of the two (2) dwellings units within the principal building is occupied by the property owner.

### **Additional Considerations**

To pursue the contemplated work and improvements to the subject accessory “summer kitchen” structure described in the your partially completed building permit application, there appears to be two (2) options for your consideration.

1. Zoning Text Amendment. An application to amend the text of the zoning ordinance can be submitted that would, if enacted, permit the type of work contemplated in the subject partially completed building permit application. Zoning text amendment applications are reviewed by the Morgantown Planning Commission, which then makes recommendation to City Council. Zoning text amendments require ordinance enactment by City Council. Although no commitment can or will be made at this point as to whether the undersigned would recommend related zoning text amendments, this office will serve and assist you in developing potential text revisions for an application you might submit in the future. This option would likely change how and/or where “Accessory Dwelling” uses are permitted or not permitted in all residential districts.
2. Minor Subdivision. Article 1363.04(A) prohibits more than one principal building and its accessory structures to be located on a lot unless development is approved as a planned unit development, shopping center, office park, research and development center, townhouse dwellings, or multi-family dwellings as permitted in Table 1331.05.01 “Permitted Land Uses”. The subject realty is rather large compared to the parcel configuration of the surrounding R-1A District neighborhood. Subdividing the tract into two (2) parcels so that the current principal building and the “summer kitchen” are situated on their own parcels might be an acceptable approach to your contemplated improvements. This might permit the “summer kitchen” structure to be converted into a “dwelling unit” that would become the principal building of the second parcel. However, several additional elements must be considered including the geometry of the resultant two (2) parcels, access to both principal buildings, off-street parking requirements for both

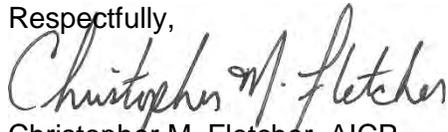
principal buildings, setbacks of the existing buildings from a new parcel boundary, etc. This option would be specific to Parcel 28 of Tax Map 130.

Please feel free to schedule an appointment with the undersigned by contacting Stacy Hollar at 304-284-7431 to discuss in greater detail these options and how you might consider initiating them.

**Administrative Appeal**

Article 1383 of the Planning and Zoning Code provides that this administrative interpretation, which would be a determination denying the subject partially completed building permit application if same were to be completed and submitted to the City's Code Enforcement Department, can be appealed to the Board of Zoning Appeals. For your convenience, enclosed herein is Article 1383 "Administrative Appeals" and an Administrative Appeal Application.

Respectfully,



Christopher M. Fletcher, AICP  
Director of Development Services

cc: Jeff Mikorski, City Manager (via email)  
Mike Stone, Chief Building Code Official (via email)

enc: Exhibit 1 – Copy of the subject partially completed building permit application  
Exhibit 2 – Article 1375.05 "Administrative Interpretations"  
Article 1383 "Administrative Appeals"  
Administrative Appeal Application



# City of Morgantown Application for Building Permit

**Application Date** 7/17/2015 **Type of Work:**  Electrical  Plumbing  Demo **Is Applicant Owner?**  Yes  No

Deck  Mechanical  Grading  Asbestos  Other  Remodel or Repair  Shed

**PROPERTY INFORMATION:** **Parcel Type:**  Residential  Rental/ Commercial  Industrial

Street Address Where Work is being done: 256 PRAIRIE AVENUE Morgantown, WV Zip Code: 26501

Owners First Name: JAMES Last Name: GIULIANI Phone: 304 282 8131

Owners Address (if different from above address): ALST 276 7170

CONTRACTORS INFORMATION:	Contractors Business Name	City License Number
General Contractor	<i>SELF</i>	
Excavation		
Concrete		
Carpentry		
Electrical		
Plumbing		
Sewer		
Mechanical		
Roofing		
Masonry		
Drywall/Lathing		
Demolition		
Other		



**SCOPE OF WORK TO BE DONE:**

Detailed Description of Work: LOT SIZE 1.3 ACRES

CONVERT EXISTING DETACHED SUMMER KITCHEN (CIRCA 1860) INTO A ACCESSORY USE APARTMENT. ONCE PERMISSION IS GRANTED, COMPLETE PLANS WILL FOLLOW ACCORDINGLY WITH UPGRADES AND IMPROVEMENTS

**MUST ATTACH DETAILED SITE PLAN** YES NO **Est. Value of Work \$** 0

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

**SIGNATURE OF APPLICANT** [Signature] **ADDRESS OF APPLICANT** 256 PRAIRIE AVE **PHONE** 304 282 8131

**PRINT NAME:** JAMES GIULIANI

**OFFICE USE ONLY:**

<b>Map/Parcel</b>	<b>Zoning</b>	<b>Ward</b>	<b>Flood Plain</b>

**APPROVALS:**

**Engineering Department Approval Notes:**

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Signature of person reviewing: \_\_\_\_\_ **DATE**

**Planning Department Approval Notes:**

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Signature of person reviewing: \_\_\_\_\_ **DATE**

**Code Enforcement Approval Notes:**

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Signature of person reviewing: \_\_\_\_\_

**Fire Department Approval Notes:**

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Signature of person reviewing: \_\_\_\_\_ **DATE**

**VALIDATION- CODE ENFORCEMENT USE ONLY:**

<b>Permit Number:</b>	<b>Fee</b>
<b>Other:</b>	<b>Fee</b>
<b>Stop Work Order:</b>	<b>Fee</b>

Application Accepted and Processed By: \_\_\_\_\_

<b>Total Fee</b>
------------------

Approved By: \_\_\_\_\_ **DATE**

**Signature of Person Picking Up Building Permit:** \_\_\_\_\_ **DATE**

**Print Name of Person Picking up Permit:** \_\_\_\_\_

(B) Applications and petitions filed pursuant to the provisions of this ordinance shall be accompanied by the filing fees hereinafter specified.

For each petition for an appeal from the decision of the Planning Board, a fee of Thirty-five Dollars (\$35.00) to be paid to and collected by the Finance Department, the receipt for which shall accompany the petition.

For each application for approval by the Board of Zoning Appeals for a Change in Land Use, a fee of Seventy-five Dollars (\$75.00) to be paid to and collected by the Finance Department, the receipt for which shall accompany the petition.

For each petition for Amendment to the Zoning Map, a fee of Seventy-five dollars (\$75.00) to be paid to and collected by the Finance Department, the receipt for which shall accompany the petition.

For each application for approval by the Board of Zoning Appeals of a variance, a fee of Seventy-five dollars (\$75.00) to be paid to and collected by the Finance Department, the receipt for which shall accompany the petition.

(C) No part of any filing fee paid pursuant to this section shall be returnable to the applicant or petitioner.

#### 1375.05 ADMINISTRATIVE INTERPRETATIONS.

(A) Authority. The Planning Director, subject to the procedures, standards, and limitations of this article, may render written interpretations, including use interpretations, of the provisions of this Zoning Ordinance and of any rule or regulations issued pursuant to it. The Planning Director may forward requests for interpretations to the Board of Zoning Appeals, where, in the opinion of the Planning Director, the proposed use is not sufficiently similar to a use expressly listed as a permitted or conditional use on the Permitted Land Use Table 1331.05.01 to allow staff interpretation.

(B) Purpose. The interpretation authority established by this section is intended to recognize that the provisions of this Zoning Ordinance, though detailed and extensive, cannot, as a practical matter, address every specific situation to which they may have to be applied. In particular, certain categories of uses are listed as either Conditional or Permitted uses, but certain specific proposed uses may not clearly fall within the common meaning of any of the listed uses. Many such situations can be readily addressed by an interpretation of the specific provisions of this Zoning Ordinance in light of the general and specific purposes for which those provisions have been enacted. Because the interpretation authority established is an administrative rather than a legislative authority, an interpretation shall not have the effect of adding to or changing the essential content of this Zoning Ordinance, but is intended only to allow authoritative application of that content to specific cases.

(C) Parties Entitled to Seek Interpretations. Applications for interpretations may be filed by any person having a legal or equitable interest in property that gives rise to the need for an interpretation, provided that interpretations shall not be sought by any person based solely on hypothetical circumstances or where the interpretation would have no effect other than as an advisory opinion.

(D) Procedure.

(1) Application. Applications for interpretations of this Zoning Ordinance shall be filed on a form provided by the Planning Department and shall contain information describing the nature of the requested information.



- (2) Action on Application. The Planning Director shall inform the applicant in writing of his or her interpretation, stating any specific precedent, the reasons, and the analysis upon which the determination is based.

(E) Standards for Use Interpretations. The following standards shall govern the Planning Director and the Board of Zoning Appeals (on appeals from the Planning Director) in issuing use interpretations:

- (1) Any listed use defined in Article 1329, Definitions, shall be interpreted as therein defined;
- (2) No use interpretation shall authorize any use in any district unless evidence is presented demonstrating that it will comply with the general district regulations established for that particular district.
- (3) No use interpretation shall authorize any use in a particular district unless such use is substantially similar to other uses specifically listed as permitted or conditional in such district and is more similar to such uses than to other uses listed as permitted or conditional in another zoning district.
- (4) If the proposed use is most similar to a use allowed only as a conditional use in the district in which it is proposed to be located, then any use interpretation authorizing such use shall be subject to the issuance of a conditional use permit pursuant to Article 1379 of this Zoning Ordinance.
- (5) No use interpretation shall allow the establishment of any use that would be inconsistent with the statement of purpose of the district in question, unless such use meets the standards of Subsections (E)(3) and (4) hereof.

(F) Effect of Favorable Use Interpretations. Use interpretations shall only authorize a use in a specific district and shall not allow the development, construction, reconstruction, alteration, or moving of any building or structure. Use interpretations shall merely authorize the preparation, filing, and processing of applications for any permits and approvals that may be required by the codes and ordinances of the City, including, but not limited to, a Building Permit, a Certificate of Occupancy, Subdivision Approval, and Site Plan Approval.

(G) Limitations on Favorable Use Interpretations.

- (1) A use interpretation finding a particular use to be Permitted, or allowed as a conditional use in a particular district, shall be deemed to authorize only the particular use for which it is issued, and such interpretation shall not be deemed to authorize any allegedly similar use for which a separate use interpretation has not been issued.
- (2) Once a use interpretation is made for a particular use in a particular district, that use shall be permitted as a conditional use for the entire district and shall be available for other property owners in that district through the conditional use process.

(H) Appeals from Planning Director Decisions. The Board of Zoning Appeals shall, pursuant to Article 1383 of this Zoning Ordinance, hear and decide appeals from any administrative interpretations by the Planning Director acting pursuant to the authority and duties under this section.

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.



City of Morgantown, West Virginia

**APPLICATION FOR  
ADMINISTRATIVE APPEAL**

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

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

**(PLEASE TYPE OR PRINT IN BLACK INK)**

**Fee: \$35**

I. APPLICANT			
Name:		Phone:	
Mailing Address:	Street	Mobile:	
	City State Zip		Email:
II. AGENT / CONTACT INFORMATION			
Name:		Phone:	
Mailing Address:	Street	Mobile:	
	City State Zip		Email:
Mailings –	Send all correspondence to (check one): <input type="checkbox"/> Applicant OR <input type="checkbox"/> Agent/Contact		
III. PROPERTY			
Owner:		Phone:	
Mailing Address:	Street	Mobile:	
	City State Zip		Email:
IV. ATTEST			
<p>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.</p>			
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.**



City of Morgantown, West Virginia  
**APPLICATION FOR  
 ADMINISTRATIVE APPEAL**

**PAID PAID PAID** BA15-03  
 OFFICE USE  
 CASE NO. RECEIVED: **SEP 04 2015**  
 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 **MC**

I. APPLICANT			
Name:	James Giuliani	Phone:	304-276-7170
Mailing Address:	256 Prairie Avenue	Mobile:	304-282-8131
	Street Morgantown WV 26501	Email:	alexjewel@comcast.net
	City State Zip		
II. AGENT / CONTACT INFORMATION			
Name:	Samuel H. Simon, Esquire	Phone:	412-288-2263
Mailing Address:	401 Liberty Avenue, 22nd Floor	Mobile:	
	Street Pittsburgh PA 15222	Email:	ssimon@hh-law.com
	City State Zip		
Mailings -	Send all correspondence to (check one): <input type="checkbox"/> Applicant OR <input checked="" type="checkbox"/> Agent/Contact		
III. PROPERTY			
Owner:	James Giuliani	Phone:	304-276-7170
Mailing Address:	256 Prairie Avenue	Mobile:	304-282-8131
	Street Morgantown WV 26501	Email:	alexjewel@comcast.net
	City State Zip		
IV. ATTEST			
I hereby certify that the information which I have provided, that all answers to the questions in this request, and all other supplementary matter attached to and made a part of this administrative appeal request are honest and true to the best of my knowledge and belief.			
James Giuliani		9/4/2015	
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.

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

**IN THE MATTER OF:** Contemplated Accessory Dwelling Unit at 256 Prairie Avenue,  
Morgantown, West Virginia (Tax Map 28, Parcel 130)

**APPEAL OF:** James Giuliani

Pursuant to Sections 1375.05(H) and 1383.01 of the City of Morgantown Planning and Zoning Code, James Giuliani (“Giuliani”) hereby appeals the administrative interpretation of the City of Morgantown, Development Services Department (the “DSD”) dated August 6, 2015 to the Morgantown Board of Zoning Appeals.

**I. Introduction and Procedural History**

James Giuliani owns property located at 256 Prairie Avenue, Morgantown, West Virginia (Tax Map 28, Parcel 130) that contains several separate building structures. One of the buildings is his primary residence, which existed on the property prior to 1860. The building in question is an enclosed structure that is separate and detached from the primary residence but is in close proximity, within several feet. It is also a pre-1860 structure, which was used as the kitchen for the primary residence and sleeping quarters for household staff and other family members.

On or about July 20, 2015, Giuliani personally submitted a building permit application (the “Application”) dated July 17, 2015 to the DSD, along with a request for an administrative interpretation as to whether he could convert the kitchen building into an accessory use apartment. (See the Application attached hereto as Exhibit A). In response, Christopher M. Fletcher, Director of Development Services for the City of Morgantown, issued an administrative interpretation (the “Interpretation”) by letter dated August 6, 2015, determining that the contemplated use described in the Application would not be permitted under the provisions of

the City of Morgantown Zoning Ordinances described therein. (See the Interpretation attached hereto as Exhibit B). Giuliani is appealing the Interpretation of the DSD.

## **II. Standing and Jurisdiction**

Giuliani has standing to appeal because he is a resident of Morgantown, and the DSD Interpretation pertains to the building permit application he submitted for the contemplated use of the kitchen building on his property located at 256 Prairie Avenue, Morgantown, West Virginia. This appeal is proper under City Code Section 1375.05(H), which states: "Appeals from Planning Director Decisions. The Board of Zoning Appeals shall, pursuant to Article 1383 of this Zoning Ordinance, hear and decide appeals from any administrative interpretations by the Planning Director acting pursuant to the authority and duties under this section." In addition, this appeal is proper under Section 1383.01, which provides that "[t]he Board of Zoning Appeals shall hear and determine appeals from any order, requirement, decision or determination made by an administrative official, board, or staff member charged with the enforcement of this Zoning Ordinance." Finally, although Giuliani only submitted a partial building permit application, the DSD acknowledges in the Interpretation that ". . . the undersigned accepts said partially completed building permit application as a written request or application for an administrative interpretation of related Zoning Ordinance provisions."

## **III. Grounds for Appeal**

- A. Giuliani's Contemplated Use of the Kitchen Building Should Have Been Permitted by the DSD Because it is Not an "Accessory Structure" but an "Accessory Dwelling," Which is Not Defined in the City of Morgantown Planning and Zoning Code, and Nothing in the Code Prohibits the Use of an Accessory Dwelling in an R-1A Zoning District.**

Giuliani contends that the DSD erred when it determined in the Interpretation that the subject kitchen building is an Accessory Structure under the Code, which prohibits these types of

structures in residential districts from being designed or used for sleeping or cooking purposes. (Interpretation, p. 5-6). Rather, the kitchen building should be considered an Accessory Dwelling, which is not defined under the Code provisions applicable to this situation and which is in no way prohibited in an R-1A zoning district by any provisions of the Code.

In the Interpretation, the DSD details the zoning classification history of the principal building, which has been used as a residence or dwelling for its entire 150+ years in existence. The type of land use classification for the primary residence has changed over the years, but it has always been considered a dwelling unit, and even if some uses were non-conforming, they were considered pre-existing, nonconforming, grandfathered uses. (Interpretation, p. 3). When the principal building was constructed in the mid-19<sup>th</sup> century, it was customary for the kitchen of the house to be located in a separate building in case of fire. Thus, the kitchen building was the main kitchen for the primary residence, which was necessary and essential to the function of the latter. The only reason why the kitchen building did not have plumbing is due to the fact that few structures back then had indoor plumbing. In fact, only 5% of households in the 1860's had indoor plumbing. As such, the primary residence would not have had indoor plumbing either. Over the years, the kitchen building also contained living quarters that included a bed for sleeping purposes for the household staff and eventually other family members.

Article 1329.02 of the Code defines an Accessory Structure as follows: "A subordinate structure detached from but located on the same lot as a principal building. The use of an accessory structure must be incidental and accessory to the use of the principal building. Accessory structures include detached garages, carports, sheds, greenhouses, playhouses and the like." The kitchen building is not an Accessory Structure for several reasons. First, the kitchen building is not incidental and accessory because it was intended to be the main kitchen to the

principal building, which is why it has a fireplace and cooking capabilities. (See photographs attached hereto as Exhibit C). Second, the building's use as a kitchen is not the same as the uses contemplated by the examples in the Accessory Structure definition, i.e., detached garages, carports, sheds, greenhouses, playhouses, etc. Those types of structures do not contain cooking or sleeping quarters, unlike the subject kitchen building.

Instead, Giuliani asserts that the kitchen building should be considered an "Accessory Dwelling," which was contemplated by the DSD in the Interpretation, even though the DSD acknowledged that it was not defined in the Code: "A definition for the term or variant of 'Accessory Dwelling' is not provided in Article 1329.02. Additionally, the land use classification of 'Accessory Dwelling' is not included in Table 1331.05.01 'Permitted Land Uses.' The only reference that DSD finds is included in Table 1365.04.01 relating to Minimum Off-Street Parking Requirements, the minimum standard for which is 1 space per accessory dwelling unit. (Interpretation, p. 4). The DSD also notes that the definition of "Dwelling Unit" in Article 1329 includes the term "garage apartment" as an example of a dwelling unit.

As described above, the kitchen building has been used for cooking and sleeping purposes, which is more akin to the definition of a dwelling unit or garage apartment. Importantly, the DSD states, "[a]lthough not defined nor listed within the Permitted Land Uses Table, it appears the Planning and Zoning Code recognizes 'Accessory Dwelling' as a residential use type." If an Accessory Dwelling is recognized as a residential use type, it is more akin to a Dwelling Unit than an Accessory Structure, which is permissible in an R-1A zoning district. Of equal importance, while there is no definition of "Accessory Dwelling" in the Code, there are also no provisions in the Code that prohibit an Accessory Dwelling in an R-1A residential zoning district.

Also, for purposes of this case, it is important to focus on the classification of the *future* contemplated use of the kitchen building, i.e., an apartment. As stated above, the cooking and sleeping quarters already exist in the kitchen building, so Giuliani's reason in applying for the building permit is to convert the building to be *more conforming* to the R-1A zoning district by installing indoor plumbing facilities and modernizing the existing kitchen and sleeping facilities. Once the plumbing is installed and the interior remodeled, the building would contain all the updates to be considered a modern Dwelling Unit and/or Accessory Dwelling Unit furnished for independent living quarters. Dwelling Units and/or Accessory Dwelling Units are certainly residential use types permitted in R-1A zoning districts. Updating a dwelling to become more modern, habitable, and functional in an R-1A zoning district is certainly a purpose for which the DSD and the Code were created to promote and encourage.

Therefore, the DSD should have considered the subject kitchen building an Accessory Dwelling, which is not prohibited in an R-1A zoning district under the Code, and approved Giuliani's plans to convert the subject kitchen building into an independent living Dwelling Unit and/or Accessory Dwelling Unit.

**B. In the Alternative, Giuliani's Contemplated Use of the Kitchen Building Should Have Been Permitted by the DSD Because it is an Accessory Structure Containing a Dwelling Unit that is a Legal, Pre-Existing, Nonconforming, Grandfathered Use and/or Structure, which is Permissible in an R-1A Zoning District.**

In the alternative, if it is determined that the subject kitchen building is not an Accessory Dwelling, then Giuliani contends that it is an Accessory Structure containing a Dwelling Unit that is a legal, pre-existing, nonconforming grandfathered use, which is permitted in an R-1A zoning district. In the analysis portion of the Interpretation, the DSD references Article 1331.08(11) of the Code which "interdicts an accessory structure located in a residential district

from containing a 'Dwelling Unit' unless an accessory structure containing a 'Dwelling Unit' can be considered a legal, pre-existing, nonconforming, grandfathered use and/or structure." (Interpretation, p. 6).

As stated above, it is clear that the kitchen building contains a Dwelling Unit. In the mid-19<sup>th</sup> century when the structure was built, the kitchen building had cooking facilities and living quarters, and the only reason why it did not have indoor plumbing is because it was a novel invention that was present in only 5% of households at the time. Therefore, the majority of households, wealthy or not, made due with outdoor "sanitary" facilities, but this did not make their residence any less of a habitable dwelling. The only nonconforming portion of the kitchen building is the lack of indoor plumbing.

Notably, West Virginia did not even become a state until 1863, which was several years subsequent to the subject primary residence's and kitchen building's construction. According to the City of Morgantown's official website, the City did not officially adopt a code regulating housing and zoning until 1989, over 130 years after these structures were built. And now, over 150 years later, the DSD is attempting to enforce a 26-year-old Code to prohibit Giuliani from performing updates to simply modernize this Accessory Structure that contains a Dwelling Unit, which is clearly a legal, pre-existing, nonconforming, grandfathered use. Ultimately, Giuliani is merely requesting to update and remodel the interior of the kitchen building that was constructed to be a Dwelling Unit over 150 years ago.

Therefore, the DSD should have considered the subject kitchen building an Accessory Structure containing a Dwelling Unit that is a legal, pre-existing, nonconforming, grandfathered use, which is permitted in an R-1A zoning district.

**C. In the Alternative, Giuliani's Contemplated Use of the Kitchen Building Should Have Been Permitted by the DSD Because He Does Not Intend to Increase or Extend the Size of the Building.**

Lastly, Giuliani contends that if the subject kitchen building is considered an Accessory Structure containing a Dwelling Unit that is a legal, pre-existing, nonconforming, grandfathered use, his intention to simply modernize and remodel the interior of the kitchen building will not increase or extend the size of the nonconforming use. In the photographs attached hereto, it is clear that the kitchen building is, and always has been, a separate, detached, and *enclosed* structure. (See Exhibit C). Giuliani has no intention of adding to the physical footprint of the building whatsoever. His request for a building permit was to remodel the interior of the kitchen building to include indoor plumbing and modernize the kitchen and sleeping quarters to develop a more habitable dwelling. In fact, the installation of indoor plumbing will actually *eliminate* the nonconforming use and permit the dwelling to comply with the Code regulations for the R-1A residential zoning district.

Therefore, because Giuliani does not intend to increase or extend the physical footprint of the kitchen building's nonconforming use, but rather eliminate the nonconforming use altogether, the DSD should have approved his building permit application.

Respectfully submitted,

Dated: September 4, 2015

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

BA15-03

# City of Morgantown Application for Building Permit

Application Date 7/17/2015 Type of Work:  Electrical  Plumbing  Demo  Is Applicant Owner?  Yes

Deck  Mechanical  Grading  Asbestos  Other  
 Remodel or Repair  Shed  No

### PROPERTY INFORMATION:

Parcel Type:  RIA  Residential  Rental/ Commercial  Industrial

Street Address Where Work is being done: <u>256 PRAIRIE AVENUE</u>		Morgantown, WV	Zip Code: <u>26501</u>
Owners First Name: <u>JAMES</u>	Last Name: <u>GIULIANI</u>	Phone: <u>304 282 8131</u>	
Owners Address (if different from above address):		<u>APT 276 7170</u>	

CONTRACTORS INFORMATION:	Contractors Business Name	City License Number
General Contractor	<i>SELF</i>	<div style="border: 2px solid black; padding: 5px; width: fit-content; margin: auto;"> <p><b>EXHIBIT</b></p> <p style="text-align: center;">1</p> </div>
Excavation		
Concrete		
Carpentry		
Electrical		
Plumbing		
Sewer		
Mechanical		
Roofing		
Masonry		
Drywall/Lathing		
Demolition		
Other		

### SCOPE OF WORK TO BE DONE:

LOT SIZE 1.3 ACRES

CONVERT EXISTING DETACHED SIMMER KITCHEN (CIRCA 1860) INTO A ACCESSORY USE APARTMENT. ONCE PERMISSION IS GRANTED, COMPLETE PLANS WILL FOLLOW ACCORDINGLY WITH UPGRADES AND IMPROVEMENTS

MUST ATTACH DETAILED SITE PLAN YES NO Est. Value of Work \$ 0

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

SIGNATURE OF APPLICANT: [Signature] ADDRESS OF APPLICANT: 256 PRAIRIE AVE PHONE: 304 282 8131

PRINT NAME: JAMES GIULIANI

**EXHIBIT**

**A**

BA15-03

OFFICE USE ONLY:

Map/Parcel	Zoning	Ward	Flood Plain

APPROVALS:

Engineering Department Approval Notes:

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Signature of person reviewing: \_\_\_\_\_ DATE

Planning Department Approval Notes:

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Signature of person reviewing: \_\_\_\_\_ DATE

Code Enforcement Approval Notes:

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Signature of person reviewing: \_\_\_\_\_

Fire Department Approval Notes:

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Signature of person reviewing: \_\_\_\_\_ DATE

VALIDATION - CODE ENFORCEMENT USE ONLY:

Permit Number:	Fee
Other:	Fee
Stop Work Order:	Fee

Application Accepted and Processed By: \_\_\_\_\_ Total Fee

Approved By: \_\_\_\_\_ DATE

Signature of Person Picking Up Building Permit: \_\_\_\_\_ DATE

Print Name of Person Picking up Permit: \_\_\_\_\_

BA15-03



# The City of Morgantown

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

**CERTIFIED MAIL**  
**7008 1140 0002 2808 9868**

August 6, 2015

James Giuliani  
256 Prairie Avenue  
Morgantown, WV 26501

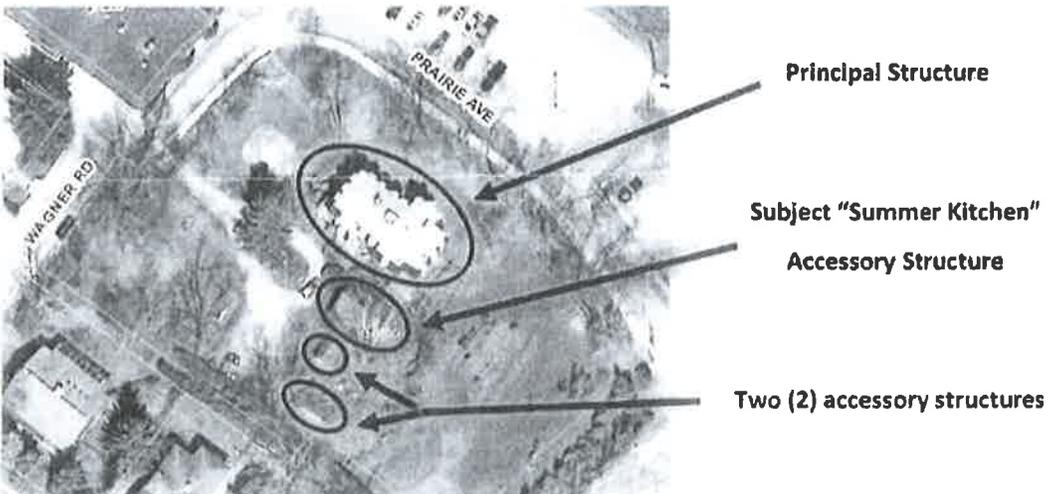
RE: Contemplated Accessory Dwelling Unit at 256 Prairie Avenue (Tax Map 28, Parcel 130)

Mr. Giuliani:

On July 20, 2015, you visited this office with a partially completed building permit application describing the following contemplated work at the above referenced realty (see Exhibit 1 attached hereto):

"Lot size 1.3 acres. Convert existing detached summer kitchen (circa 1860) into a[n] accessory use apartment. Once permission is granted, complete plans will follow accordingly with upgrades and improvements."

The following aerial photograph illustrates the principal and three (3) accessory structures presently on the subject property. The subject accessory "summer kitchen" structure is highlighted in red.



### Application for Interpretation

Article 1375.05 "Administrative Interpretations" of the Planning and Zoning Code establishes the procedures, standards, and limitations for administrative interpretations concerning the provisions of the City's Zoning Ordinance (see Exhibit 2 attached hereto). Further, Article 1375.05(C) provides that applications for interpretations may be filed by any person having a legal or equitable interest in property that gives rise to the need for an interpretation, provided interpretations shall not be sought by any person based solely on hypothetical circumstances or where the interpretation would have no effect other than as an advisory opinion.

The Monongalia County Assessor's website lists the owner of the subject realty as James F. and Karen L. Giuliani, which the undersigned accepts, in terms of the subject partially completed building permit application, as a legal or equitable interest in the subject realty and right to seek an administrative interpretation.

Despite the fact the subject partially completed building permit application was not submitted to the City's Code Enforcement Department for plans review and the pursuit of building permit issuance, as evidenced by the lack of building permit application case number assignment on the second page of same, the undersigned accepts said partially completed building permit application as a genuine intent to pursue the contemplated work described therein and not a hypothetical circumstance. Further, the undersigned accepts said partially completed building permit application as a written request or application for an administrative interpretation of related Zoning Ordinance provisions.

Although not clearly expressed in the partially completed building permit application, the undersigned understands your application for an administrative interpretation to be:

*Is the contemplated work described in the partially completed building permit application allowed under related provisions of the Zoning Ordinance?*

### Analysis

The zoning classification for the subject realty is R-1A, Single-Family Residential District. The following information was obtained from the City's Rental Housing Registration Case File No. 1508 for 256 Prairie Avenue.

- It appears the subject principal building was initially registered as rental housing with the City on March 23, 1984 by Rebecca Wade. Letters of Compliance (LOC) appear to have been issued under the Rental Registration Program since this initial registration
- An LOC was issued on 10/23/2001 to James Giuliani for one (1) of the two (2) dwelling units within the principal building, which expired on 05/16/2004. The zoning land use classification of the principal building was a "Two-family Dwelling," commonly referred to as a "duplex," which was considered a pre-existing, nonconforming, grandfathered use.
- An LOC was issued on 09/10/2004 to James Giuliani for one (1) of the two (2) dwelling units within the principal building, which expired on 08/09/2007. The zoning land use classification of the principal building was a "Two-family Dwelling," which was considered a pre-existing, nonconforming, grandfathered use.

- The Case File did not indicate why an LOC was not issued covering the period from 08/09/2007 to 01/07/2008.
- An LOC was issued on 01/07/2008 to James Giuliani for two (2) of three (3) dwelling units within the principal building, which expired on 01/03/2011. The Case File did not indicate how or why the number of dwelling units within the principal building increased from two (2) units to three (3) units. The zoning land use classification of the principal building would have been a "Multi-Family Dwelling" use, which was not permitted in the R-1A District. This increase in the number of dwelling units within the subject principal building would be considered a violation of the zoning ordinance.
- The Case File did not indicate why an LOC was not issued covering the period from 01/03/2011 to 10/08/2012.
- An LOC was issued on 10/08/2012 to James Giuliani for one (1) of the two (2) dwelling units within the principal building, which expired on 01/03/2014. The zoning land use classification of the principal building was a "Two-family Dwelling," which was considered a pre-existing, nonconforming, grandfathered use.
- Current LOC was issued on 03/31/2014 to James Giuliani for a four-bedroom unit on the third floor of the principal building. The LOC expires on 01/03/2017. The zoning land use classification of the principal building is a "Two-family Dwelling," which is considered a pre-existing, nonconforming, grandfathered use.

Article 1329.02 of the Planning and Zoning Code provides the following definitions for terms relied upon in this analysis and interpretation.

**ACCESSORY STRUCTURE** – A subordinate structure detached from but located on the same lot as a principal building. The use of an accessory structure must be incidental and accessory to the use of the principal building. Accessory structures include detached garages, carports, sheds, greenhouses, playhouses and the like.

**BUILDING, PRINCIPAL** – A building in which is conducted the main or principal use of the lot on which said building is situated.

**CARETAKER'S RESIDENCE** – A residence located on a premises with a main nonresidential use and occupied only by a caretaker or guard employed on the premises.

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

**DWELLING, SINGLE FAMILY** – A freestanding building designed solely for occupancy by one family for residential purposes, as a single housekeeping unit.

**DWELLING, TWO-FAMILY** – A freestanding building containing two (2) dwelling units, each of which has direct access to the outside.

**GUEST HOUSE** – An attached or detached building that provides living quarters for guests and (a) contains no kitchen or cooking facility; (b) is clearly subordinate and incidental to the principal residence on the same building site; and (c) is not rented or leased, whether compensation be direct or indirect.

The current land use classification for the subject principal building is a "Two-Family Dwelling" use as defined in Article 1329.02. "Two-Family Dwelling" uses are not permitted in the R-1A District. However, and with the exception of the noted lapses of issued Letters of Compliance, it appears the principle building has maintained registration as a "Two-Family Dwelling." As such, it appears the "Two-Family Dwelling" use classification is considered a legal, pre-existing, nonconforming, grandfathered use that may continue as provided under the nonconforming provisions of Article 1373.

The current land use classification for the subject "summer kitchen" structure is an "Accessory Structure" use as defined in Article 1329.02. Specifically, said structure appears to be detached from, subordinate to, and located on the same lot as its principal building. Additionally, the use of the subject accessory "summer kitchen" structure appears to be incidental and accessory to the use of the principal "Two-Family Dwelling" building.

A definition for the term or variant of "Accessory Dwelling" is not provided in Article 1329.02. Additionally, the land use classification of "Accessory Dwelling" is not included in Table 1331.05.01 "Permitted Land Uses."

However, "Accessory Dwelling" use is included in Table 1365.04.01 "Minimum Off-Street Parking Requirements"; the minimum standard for which is "1 space per [accessory dwelling] unit." Additionally, the definition of "Dwelling Unit" in Article 1329 includes the term "garage apartment" as a listed example of a dwelling unit.



Although not defined nor listed within the Permitted Land Uses Table, it appears the Planning and Zoning Code recognizes "Accessory Dwelling" as a residential use type.

*Note*  
Business

The "Caretaker's Residence" use classification is not applicable to the proposed work and subject accessory "summer kitchen" structure because the principal building and use to which it is subordinate is residential and not nonresidential as provided in Article 1329.02.

*No*

The "Guest House" use classification is not applicable to the proposed work and subject accessory "summer kitchen" structure because the term "apartment" used in the work description of your partially completed building permit application indicates an intent to provide a "Dwelling Unit", as defined in Article 1329.02, within the accessory "summer kitchen" structure. Specifically, an intent to submit a building permit application for work that will result in the accessory "summer kitchen" structure becoming a complete, independent living facility for a single housekeeping unit. It should be noted that "Guest House" uses are not listed in Table 1331.05.01 as permitted in the R-1A District.

The remaining zoning ordinance provision that can be relied upon in this analysis and interpretation is Article 1331.08, which provides (emphasis added):

1331.08 ACCESSORY STRUCTURES AND USES IN RESIDENTIAL DISTRICTS.

- (A) Customary and incidental accessory buildings and uses are allowed in all residential districts, as specifically regulated in that district, provided that:
  - (1) In no case shall the maximum lot coverage permitted in a zoning district be exceeded.

- (2) Accessory structures, if detached from a principal structure, shall not be placed in the front yard. If placed in a side yard, accessory structures shall not be located closer to the street than the required front setback of the principal structure.
- (3) Accessory structures, if detached from a principal structure, shall not be located closer than five feet to the side or rear property line.
- (4) On corner lots, accessory structures shall not be located between any portion of the principal structure and either street.
- (5) When an accessory structure is attached to a principal structure, it shall comply in all respects with the requirements of this Zoning Ordinance applicable to the principal structure(s).
- (6) Any structure connected to another structure by an open breezeway (i.e., without enclosed walls) shall be deemed to be a separate structure.
- (7) The total square footage of all accessory structures shall not exceed fifty (50) percent of the first or ground floor area of the principal building.
- (8) The square footage of the first (ground) floor of the accessory structure(s) shall be included in the computation of lot coverage.
- (9) Accessory structures shall not exceed eighteen (18) feet in height.
- (10) No accessory structure shall be constructed with a cellar or below-grade story.
- (11) **No part of any such structure shall be designed or used for sleeping purposes, and no cooking fixtures shall be placed or permitted therein.**
- (12) Any accessory structure designed as a poolhouse shall be located no farther than ten feet from the swimming pool to which it shall be accessory. A swimming pool and poolhouse shall constitute one accessory structure.
- (13) A private garage may be constructed as part of a principal structure, provided that when so constructed the garage walls shall be regarded as the walls of the principal structure in applying the applicable front, side and rear setback requirements.

#### Administrative Interpretation

It is the opinion of the undersigned that the contemplated work described in the subject partially completed building permit application WOULD NOT BE PERMITTED under related provisions of the Zoning Ordinance based on the information presented herein and findings summarized below.

1. The subject "summer kitchen" structure is an "Accessory Structure."
2. The definition of "Dwelling Unit" provided in Article 1329.02 requires it to be a single unit providing complete, independent living facilities for a single housekeeping unit. Additionally, a unit without self-contained sanitary facilities and kitchens is not classified as a "Dwelling Unit."
3. The zoning classification for the subject realty is R-1A, Single-Family Residential District.
4. The R-1A District is a residential district.

5. Article 1331.08(11) prohibits accessory structures in residential districts from being designed or used for sleeping purposes.
6. Article 1331.08(11) prohibits cooking fixtures from being placed or permitted within accessory structures in residential districts.
7. Article 1331.08(11) interdicts an accessory structure located in a residential district from containing a "Dwelling Unit" unless an accessory structure containing a "Dwelling Unit" can be considered a legal, pre-existing, nonconforming, grandfathered use and/or structure.
8. The subject accessory "summer kitchen" structure is not a legal, pre-existing, nonconforming, grandfathered "Accessory Dwelling" or "Garage Apartment" as said accessory structure is not documented in the City's Rental Housing Registration Case File No. 1508 for 256 Prairie Avenue as being a registered dwelling unit. Further, the Case File notes that one (1) of the two (2) dwellings units within the principal building is occupied by the property owner.

#### **Additional Considerations**

To pursue the contemplated work and improvements to the subject accessory "summer kitchen" structure described in the your partially completed building permit application, there appears to be two (2) options for your consideration.

1. Zoning Text Amendment. An application to amend the text of the zoning ordinance can be submitted that would, if enacted, permit the type of work contemplated in the subject partially completed building permit application. Zoning text amendment applications are reviewed by the Morgantown Planning Commission, which then makes recommendation to City Council. Zoning text amendments require ordinance enactment by City Council. Although no commitment can or will be made at this point as to whether the undersigned would recommend related zoning text amendments, this office will serve and assist you in developing potential text revisions for an application you might submit in the future. This option would likely change how and/or where "Accessory Dwelling" uses are permitted or not permitted in all residential districts.
2. Minor Subdivision. Article 1363.04(A) prohibits more than one principal building and its accessory structures to be located on a lot unless development is approved as a planned unit development, shopping center, office park, research and development center, townhouse dwellings, or multi-family dwellings as permitted in Table 1331.05.01 "Permitted Land Uses". The subject realty is rather large compared to the parcel configuration of the surrounding R-1A District neighborhood. Subdividing the tract into two (2) parcels so that the current principal building and the "summer kitchen" are situated on their own parcels might be an acceptable approach to your contemplated improvements. This might permit the "summer kitchen" structure to be converted into a "dwelling unit" that would become the principal building of the second parcel. However, several additional elements must be considered including the geometry of the resultant two (2) parcels, access to both principal buildings, off-street parking requirements for both

BA15-03

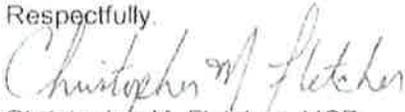
principal buildings, setbacks of the existing buildings from a new parcel boundary, etc  
This option would be specific to Parcel 28 of Tax Map 130.

Please feel free to schedule an appointment with the undersigned by contacting Stacy Hollar at 304-284-7431 to discuss in greater detail these options and how you might consider initiating them.

**Administrative Appeal**

Article 1383 of the Planning and Zoning Code provides that this administrative interpretation, which would be a determination denying the subject partially completed building permit application if same were to be completed and submitted to the City's Code Enforcement Department, can be appealed to the Board of Zoning Appeals. For your convenience, enclosed herein is Article 1383 "Administrative Appeals" and an Administrative Appeal Application.

Respectfully,



Christopher M. Fletcher, AICP  
Director of Development Services

- cc: Jeff Mikorski, City Manager (via email)  
Mike Stone, Chief Building Code Official (via email)
- enc Exhibit 1 – Copy of the subject partially completed building permit application  
Exhibit 2 – Article 1375.05 "Administrative Interpretations"  
Article 1383 "Administrative Appeals"  
Administrative Appeal Application

BA 15-03



EXHIBIT

C

Becker

BA15-03



BA15-03



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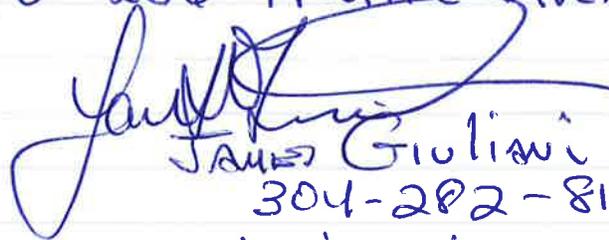
BA15-03

Sept. 23, 2015

To: Planning Department/  
Planning Director

From: James Giuliani

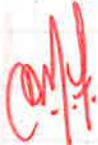
This is a Follow up, after our Sept. 18, 2015 phone conversation, requesting a site visit to 256 Prairie Ave. before Oct. 12, 2015 special meeting for my administrative appeal to the BZA regarding a denial for an accessory dwelling at my home. Please accept this for a formal request for a site visit to 256 Prairie Ave.



JAMES GIULIANI  
304-282-8131

alexjewel@comcast.net

CITY OF MORGANTOWN  
PLANNING DEPARTMENT



SEP 23 2015

RECEIVED

## Chris Fletcher

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**From:** Leanne Cardoso <lcardoso@wvjc.edu>  
**Sent:** Wednesday, September 23, 2015 8:35 PM  
**To:** Chris Fletcher  
**Cc:** Stacy Hollar  
**Subject:** Re: James Giuliani Administrative Appeal

**Importance:** High

Chris,

I think that Direction 2 (Wait until the 12 OCT 2015 special hearing for the BZA to discuss the merits of a site visit after receiving and hearing Mr. Giuliani's administrative appeal petition and the City's response.) is the most appropriate at this time. Mr. Giuliani can make his request to the Board at the special hearing.

Thank you.

Leanne

On Sep 23, 2015, at 2:19 PM, Chris Fletcher <[cfletcher@morgantownwv.gov](mailto:cfletcher@morgantownwv.gov)> wrote:

BZA Chairperson Leanne Cardoso:

Good afternoon. The attached letter was hand delivered today on behalf of Mr. Giuliani requesting the BZA to hold a site visit at his residence (256 Prairie Avenue) prior to the BZA's special hearing scheduled for 12 OCT 2015. As you know, the special hearing on 12 OCT is to consider an administrative appeal petition he recently filed.

Please advise at your earliest convenience on which of the following is your direction so that we may respond, on your behalf, to Mr. Giuliani's request.

1. Direction 1 – Schedule a site visit, which will be initiated by Staff polling BZA members on potential dates/times and scheduling and advising Mr. Giuliani's attorney accordingly.
2. Direction 2 – Wait until the 12 OCT 2015 special hearing for the BZA to discuss the merits of a site visit after receiving and hearing Mr. Giuliani's administrative appeal petition and the City's response.

Thank you.

**Christopher M. Fletcher, AICP**  
Director of Development Services  
City of Morgantown  
T: 304-284-7431  
M: 304-906-7843

PLEASE NOTE MY NEW EMAIL ADDRESS

[cfletcher@morgantownwv.gov](mailto:cfletcher@morgantownwv.gov)

<20150923\_itr2\_C-Fletcher\_from\_J-Giuliani.pdf>

## Chris Fletcher

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**From:** Chris Fletcher  
**Sent:** Thursday, September 24, 2015 7:46 AM  
**To:** Samuel H. Simon  
**Cc:** Stacy Hollar  
**Subject:** RE: Notice of Morgantown Board of Zoning Appeals Hearing for Administrative Appeal - Case No. BA15-03  
**Attachments:** 20150923\_2035hrs\_email2\_C-Fletcher\_from\_L-Cardoso\_Giuliani-Site-Visit-Request.pdf

Mr. Simon:

Good morning. I have attached an email string concerning BZA Chairperson Leanne Cardoso's direction regarding Mr. Giuliani's written request for the BZA to conduct a site visit prior to the 12 OCT 2015 Special Hearing.

Please confirm receipt of this notice.

Respectfully,

**Christopher M. Fletcher, AICP**  
Director of Development Services

PLEASE NOTE MY NEW EMAIL ADDRESS  
[cfletcher@morgantownwv.gov](mailto:cfletcher@morgantownwv.gov)

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**From:** Samuel H. Simon [mailto:ssimon@hh-law.com]  
**Sent:** Thursday, September 10, 2015 4:27 PM  
**To:** Chris Fletcher <cfletcher@morgantownwv.gov>  
**Subject:** RE: Notice of Morgantown Board of Zoning Appeals Hearing for Administrative Appeal - Case No. BA15-03

Thank you for the information.

Best regards,

**Samuel H. Simon, Esquire**  
**HoustonHarbaugh**

Three Gateway Center  
401 Liberty Avenue, 22nd Floor  
Pittsburgh, PA 15222-1005  
(412) 288-2263  
(412) 281-4499 FAX  
[ssimon@hh-law.com](mailto:ssimon@hh-law.com)  
[www.hh-law.com](http://www.hh-law.com)

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**From:** Chris Fletcher [mailto:cfletcher@morgantownwv.gov]  
**Sent:** Thursday, September 10, 2015 4:24 PM  
**To:** Samuel H. Simon  
**Cc:** Stacy Hollar  
**Subject:** Notice of Morgantown Board of Zoning Appeals Hearing for Administrative Appeal - Case No. BA15-03  
**Importance:** High

Mr. Samuel Simon, Esq.:

Please accept this communication as notice that the Morgantown Board of Zoning Appeals has scheduled a Special Hearing to consider the Administrative Appeal you recently filed on behalf of Mr. James Giuliani. The Special Hearing is scheduled for **Monday, October 12, 2015 at 6:30 p.m.** in City Council Chambers located at 389 Spruce Street, Morgantown, WV 26505.

This notice is being sent to you because you are listed on the subject Administrative Appeal application as the "Agent/Contact" to whom we are to send all correspondence.

This Administrative Appeal will be the only item on the agenda for this Special Hearing. Mr. Giuliani's application and Staff's response will be provided to the BZA and to you approximately one (1) week prior to the Special Hearing as is customarily performed.

Please confirm receipt of this notice.

Respectfully,

**Christopher M. Fletcher, AICP**  
Director of Development Services  
City of Morgantown

PLEASE NOTE MY NEW EMAIL ADDRESS  
[cfletcher@morgantownwv.gov](mailto:cfletcher@morgantownwv.gov)