



# MORGANTOWN BOARD OF ZONING APPEALS

December 16, 2014  
6:30 PM  
City Council Chambers

## **Board Members:**

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

## **STAFF REPORT**

**CASE NO:** CU15-11 / Victory Holdings, LLC / 321 Brockway Avenue

### **REQUEST and LOCATION:**

Request by Joe Panico, on behalf of Victory Holdings, LLC, for conditional use approval for a "Two-Family Dwelling" use located at 321 Brockway Avenue.

### **TAX MAP NUMBER(s) and ZONING DESCRIPTION:**

Tax Map 29, Parcel 349, B-4, General Business District and B-4NPOD, B-4 Neighborhood Preservation Overlay District.

### **SURROUNDING ZONING:**

North, East and West; B-4, General Business District  
South; R-1A, Single-Family Residential District

### **BACKGROUND and ANALYSIS:**

The petitioner's building at 321 Brockway Avenue includes three (3) multi-family dwelling units. The subject building is considered a nonconforming structure as it does not, at least, meet all minimum setback requirements. Addendum A of this report illustrates the location of the subject site.

The building suffered fire damage and has remained condemned by the City since 18 FEB 2013. Attached hereto are documents from the Code Enforcement Department illustrating fire damage and condemnation/vacant building registration information.

The petitioner seeks to remodel the structure and change its land use classification from "Multi-Family Dwellings" to "Two-Family Dwellings." In other words, the petitioner seeks to reduce the number of dwelling units within the structure from three (3) units to two (2) units.

According to the petitioner's application, remodeling work will result in each of the "Two-Family Dwelling" units containing three (3) bedrooms. Because the subject realty is located within the B-4 Neighborhood Preservation Overlay District (B-4NPOD), the minimum parking requirement is 1.5 spaces per dwelling unit or a total of three (3) spaces. However, Article 1365.02 provides the following guidance concerning the provision of parking when changes in land use are proposed and nonconforming uses suffer significant casualty:

- (B) When the intensity of use of any building, structure or premises shall be increased through the addition of dwelling units, floor area, beds, seating capacity, or other unit of measurement, parking and loading facilities as required herein shall be provided for such increase in intensity of use.

## **Development Services**

Christopher Fletcher, AICP  
Director

## **Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



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(C) For any non-conforming use which is hereafter damaged or partially destroyed, and which is lawfully reconstructed, re-established, or repaired, off-street parking and loading facilities equivalent to those maintained at the time of such damage or partial destruction shall be restored and continued in operation; provided, however, in no case shall it be necessary to restore or maintain parking or loading facilities in excess of those required by the Code for equivalent new uses.

The petitioner indicates a, "parking area already exists" on the subject site. However, the site plan submitted with the conditional use application does not illustrate how parking spaces are configured or how parking spaces are accessed. Additionally, it appears the area behind the subject structure where parking appears to be situated is accessed through and across the adjoining Parcel 348.1.

Although the petitioner seeks to reduce the use intensity of the structure from three (3) dwelling units to two (2) dwelling units, the petitioner is obligated to restore and continue in operation at least three (3) parking spaces for the new "Two-Family Dwelling" use. Staff recommends the Board explore the existing onsite parking conditions and the petitioner's intentions to maintain parking in terms of the number of on-site spaces and the preservation of access through the adjoining property.

### **STAFF RECOMMENDATION:**

The Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. If the Board disagrees with the petitioner's "Findings of Fact" and determines one or more of the proposed requests do not meet the standard criteria for a variance, then the Board must state findings of fact and conclusions of law on which it bases its decision(s) to deny the subject variance petition(s). [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Addendum B of this report provides Staff recommended revisions to the petitioner's "Findings of Fact" responses and serve only to remove narrative that is clearly inapplicable. Staff recommended revisions should not be considered or construed as supporting or opposing the merits of the petitioner's responses.

Staff recommends the following conditions be included should the Board grant approval of Case No. CU15-11:

1. That no less than three (3) onsite parking spaces shall be maintained for the "Two-Family Dwelling" conditional use for which approval is granted herein.
2. That, prior to issuance of a building permit to perform work for which conditional use approval is granted herein, access to said onsite parking spaces through the adjoining Parcel 348.1 of Tax Map 29 must be preserved by easement or similar recorded instrument running with the affected parcels.

### **Development Services**

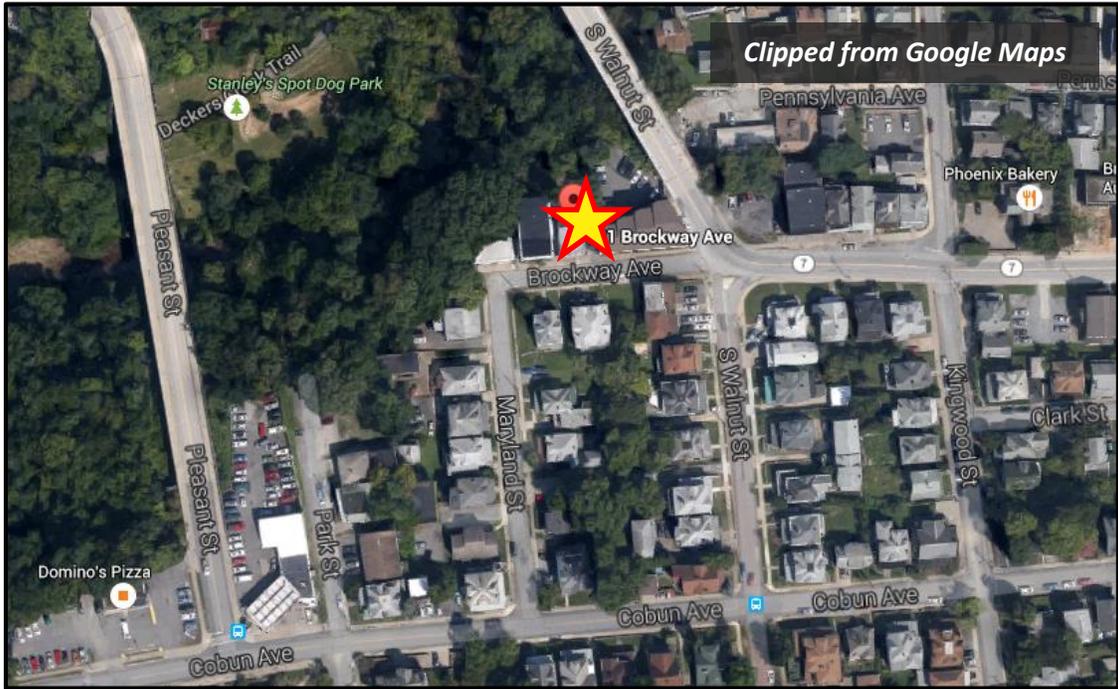
Christopher Fletcher, AICP  
Director

### **Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

Attachments: Application and submitted exhibits.

**STAFF REPORT ADDENDUM A**  
**CU15-11 / Victory Holdings, LLC / 321 Brockway Avenue**





**STAFF REPORT ADDENDUM B**  
**CU15-11 / Victory Holdings, LLC / 321 Brockway Avenue**

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Staff recommended revisions to petitioner's Findings of Fact (deleted matter struck through; new matter underlined).

**Finding of Fact No. 1** – Congestion in the streets is not increased, in that:

Parking area already exists, does not create any congestion.

**Finding of Fact No. 2** – Safety from fire, panic, and other danger is not jeopardized, in that:

~~We are remodeling a burnt structure.~~ Bringing structure up to current state building code.

**Finding of Fact No. 3** – Provision of adequate light and air is not disturbed, in that:

No additions to structure that been there since 1940's.

**Finding of Fact No. 4** – Overcrowding of land does not result, in that:

Parking area will ~~enable us to~~ exceed code requirements.

**Finding of Fact No. 5** – Undue congestion of population is not created, in that:

~~We are rebuilding a burnt structure into a duplex which meets goals of comprehensive plan and strategic downtown plan.~~

**Finding of Fact No. 6** – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

Rebuilding previous number of tenants and providing off street parking.

**Finding of Fact No. 7** – Value of buildings will be conserved, in that:

Rebuilding damaged structure ~~and meeting downtown strategic plan.~~

**Finding of Fact No. 8** – The most appropriate use of land is encouraged, in that:

Adding ~~3~~ three-bedroom units to B-4 zone is an attempt to diversify residents for families in downtown zone.



City of Morgantown, West Virginia

APPLICATION FOR TYPE IV SITE PLAN - CONDITIONAL USE

|            |         |
|------------|---------|
| OFFICE USE |         |
| CASE NO.   | CW15-11 |
| RECEIVED:  |         |
| COMPLETE:  |         |

(PLEASE TYPE OR PRINT IN BLACK INK)

|  |  |  |                                  |                               |                                    |   |
|--|--|--|----------------------------------|-------------------------------|------------------------------------|---|
| <b>I. APPLICANT</b>                    |  |  |                                  |                               |                                    |   |
| Name:                                  | Victory Holdings LLC   |  | Phone:                           | 3046853015                    |                                    |   |
| Mailing Address:                       | Street   | SAME   | Mobile:                          |                               |                                    |   |
|  | City   | State  | Zip                              | Email:                        |                                    |   |
| <b>II. AGENT / CONTACT INFORMATION</b> |  |  |                                  |                               |                                    |   |
| Name:                                  | JOE PANICO   |  | Phone:                           | SAME                          |                                    |   |
| Mailing Address:                       | Street   | 507 BEECHIST AVE                             | Mobile:                          |                               |                                    |   |
|  | City   | MOTN WV 26505                                | State                            | Zip                           | Email: JOEPANICO5@GMAIL            |   |
| Mailings -                             | Send all correspondence to (check one): <input type="checkbox"/> Applicant OR <input type="checkbox"/> Agent/Contact |  |                                  |                               |                                    |   |
| <b>III. PROPERTY</b>                   |  |  |                                  |                               |                                    |   |
| Owner:                                 | Victory Holdings LLC   |  | Phone:                           |                               |                                    |   |
| Mailing Address:                       | Street   | SAME   | Mobile:                          |                               |                                    |   |
|  | City   | State  | Zip                              | Email:                        |                                    |   |
| <b>IV. SITE</b>                        |  |  |                                  |                               |                                    |   |
| Street Address (if assigned):          | 321 BARKWAY AVE  | Tax Map #:                                   | 29                               | Parcel #:                     | 349                                |   |
| Zoning:                                | B-4 NPOD   |  |                                  |                               |                                    |   |
| Lot Dimensions:                        | Width:   | Ft.  | Depth:                           | Ft.                           | Square Footage:                    | ft. <sup>2</sup>                        |
| Shape of Lot:                          | <input type="checkbox"/> Corner  | <input checked="" type="checkbox"/> Interior | <input type="checkbox"/> Through | <input type="checkbox"/> Flag | <input type="checkbox"/> Irregular | <input type="checkbox"/> Non-conforming |
| Existing Use of Structure or Land:     | 3 UNIT RESIDENTIAL   |  |                                  |                               |                                    |   |
| Proposed Use of Structure of Land:     | Duplex RESIDENTIAL   |  |                                  |                               |                                    |   |

Finance Office Morgantown, WV 26505 (304) 284-7408

Handwritten initials: JS, OK, BSL



**APPLICATION FOR  
TYPE IV SITE PLAN – CONDITIONAL USE**

OFFICE USE

CASE NO.

CU15-11

RECEIVED:

COMPLETE:

**VII. SUPPLEMENTAL PLANS AND EXHIBITS**

Applicants **MUST** also submit the following plans and exhibits, unless waived by the Planning Director:

- (a) Drainage plan and drainage calculations that bear the name, address, signature and seal of a registered professional engineer licensed by the State of West Virginia, with floodplain zones clearly denoted, a typical of all swales, and a design of the drop inlets.
- (b) If applicable, design of stormwater management facilities and drainage calculations that bear the name, address, and seal of a registered professional engineer licensed by the State of West Virginia that meet the requirements of the City Zoning Ordinance, the City Stormwater Management Ordinance, and all other applicable local, state and federal regulations.
- (c) Parking and Landscaping Plan
- (d) Sign Plan
- (e) Approved WV Division of Highways Access Permit, if applicable
- (f) Sediment and erosion control plan as approved by the West Virginia Department of Environment Protection and the City of Morgantown
- (g) Approved State of West Virginia NPDES General Permit for Storm Water Associated with Industrial (Construction) Activity, if applicable
- (h) A traffic impact study, if required by the City Engineer
- (i) The Planning Director may require the applicant to submit additional information concerning the lot or neighboring lots to determine conformance with, and provide for the enforcement of, the City Zoning Ordinance.
- (j) The Planning Director may require the applicant to submit, in the case of accessory structures or minor additions, dimensions shown on plans relating to the size of the lot and the location of the structure(s) thereon be based on an actual survey prepared a registered design professional licensed by the State of West Virginia.

Applicants submitting a conditional use application in accordance with Article 313.05 "Building Height and Use" within the B-4 General Business District **MUST** also submit the following analyses:

- (a) An air flow analysis conducted by a licensed architect or profession engineer, describing the estimated impact of the proposed building on existing patterns of air flow in the general vicinity; and how those impacts may affect existing properties with a 300 foot radius of the site.
- (b) An analysis of the impacts of the proposed building on sunlight distribution in the general vicinity, with special emphasis on predicting light blockage and shadow casting onto all properties with a 300 foot radius of the site. Such analysis shall be conducted by a licensed architect or professional engineer.
- (c) An analysis of the potential of "stepping back" upper floors as a technique to avoid negative impacts with respect to light and airflow, and to minimize the canyon effect of non-recess tall buildings. Such analysis shall be conducted by a licensed architect or professional engineer.
- (d) An infrastructure and traffic analysis predicting the impacts of the building on water, sewer, drainage, electrical and gas infrastructure, on transportation levels of service (including transit) for impacted streets, and on fire suppression capabilities of the city. Such analysis shall be conducted by a licensed architect or professional engineer.



APPLICATION FOR TYPE IV SITE PLAN – CONDITIONAL USE

|            |         |
|------------|---------|
| OFFICE USE |         |
| CASE NO.   | CM15-11 |
| RECEIVED:  |         |
| COMPLETE:  |         |

VIII. FINDINGS OF FACT (cont.)

- 6. Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that: *REDUCING PREVIOUS NUMBER OF TENANTS AND PROVIDING OFF STREET PARKING*
- 7. Value of buildings will be conserved, in that: *REBUILDING DAMAGED STRUCTURE AND MEETING DOWNTOWN STRATEGIC PLAN*
- 8. The most appropriate use of land is encouraged, in that: *ADDING 2<sup>ND</sup> 3BR UNITS TO B-4 ZONE IS AN ATTEMPT TO DIVERSIFY RESIDENTS FOR FAMILIES IN DOWNTOWN ZONE*

IX. ATTEST

I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent and I agree to conform to all applicable laws of this jurisdiction. I certify that the information submitted herein and attached hereto is true and accurate and understand that if found otherwise may result in the denial of this request or subsequent revocation of any and all related approvals. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions.

*Jocelyn D*

*[Signature]*

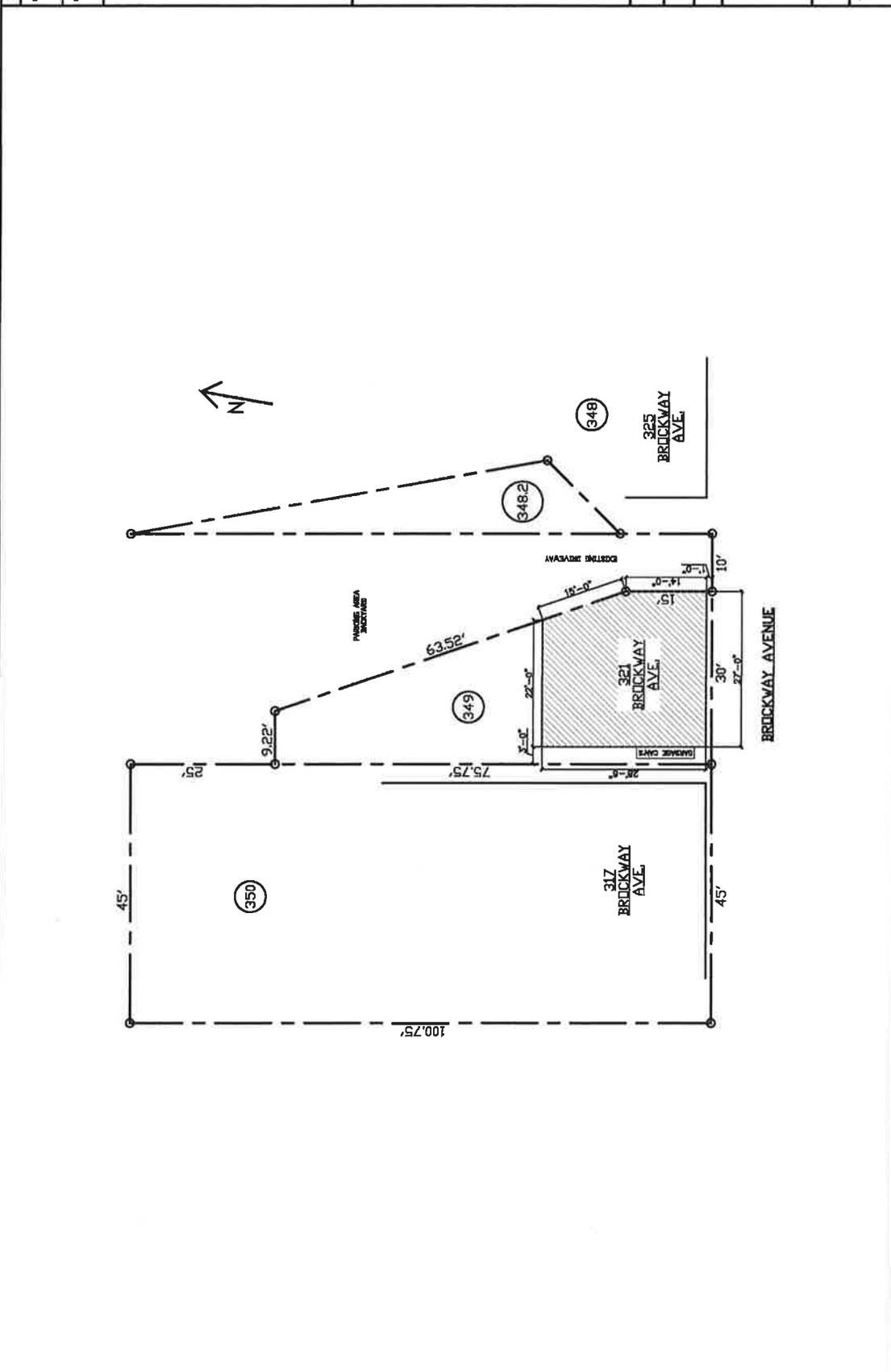
Type/Print Name of Applicant/Agent

Signature of Applicant/Agent

Date

- Conditional Use Petition Fee of \$75 must accompany application

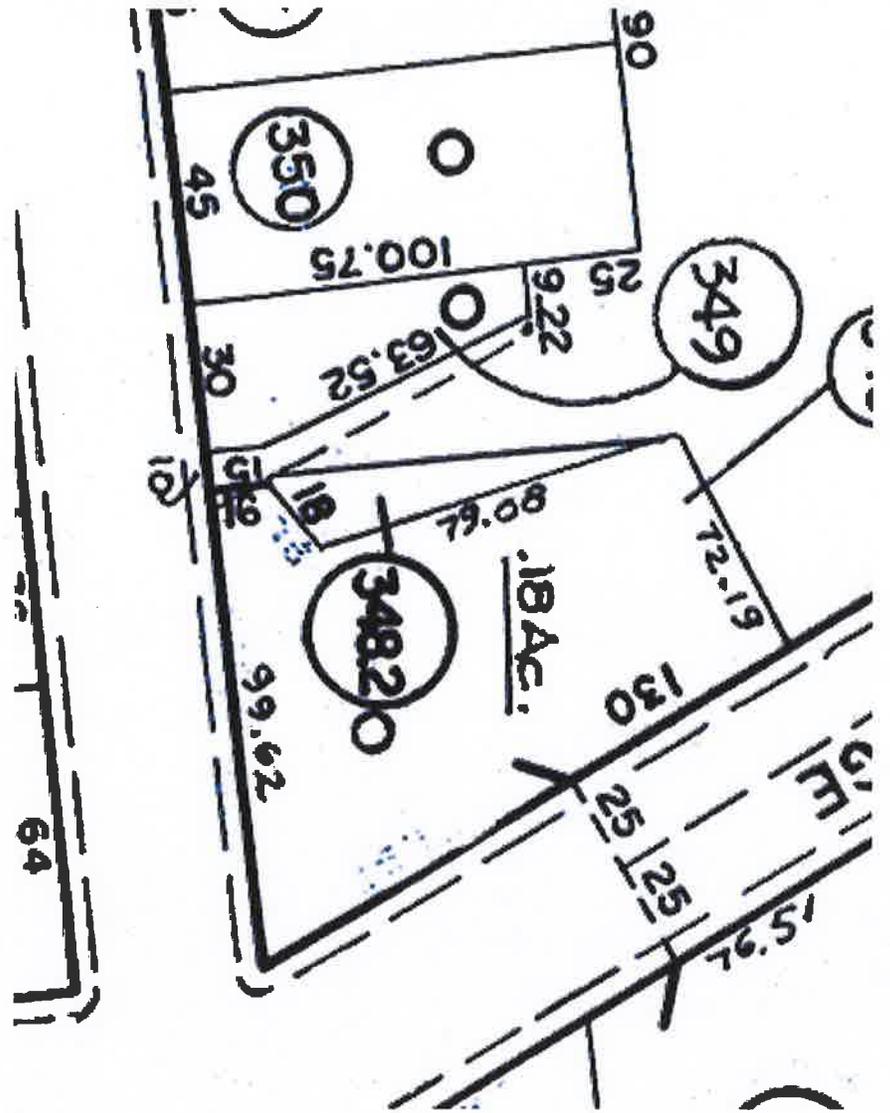
|                              |  |
|------------------------------|--|
| CONTACT INFORMATION          |  |
| PHONE NUMBER<br>304-555-1281 | PROJECT LOCATION<br>321 BROCKWAY AVENUE<br>MORGANTOWN<br>WEST VIRGINIA |
| EMAIL ADDRESS                | PROJECT NO.<br>15045.01  |
|                              | SCALE<br>1/16"=1'-0"   |
|                              | DRAWN BY<br>DANIEL BUCKWELL  |
|                              | SHEET TITLE<br>GENERAL<br>SITE<br>LAYOUT                               |
|                              | DATE<br>11/10/15   |
|                              | SHEET NO.<br>S-1   |



CW15-11



CU15-11



|     |                |           |      |
|-----|----------------|-----------|------|
| ID  | Date Condemned | Inspector | St # |
| 263 | 2/18/2013      | CONRAD    | 321  |

|              |      |     |        |
|--------------|------|-----|--------|
| Address      | Ward | Map | Parcel |
| BROCKWAY AVE |      |     |        |

|                  |           |
|------------------|-----------|
| Owner            | OwnerSt # |
| VICTORY HOLDINGS |           |

|              |             |              |     |
|--------------|-------------|--------------|-----|
| OwnerAddress | Owners City | Owners State | Zip |
|              |             |              | 0   |

Type of Bluiding

Rental  Residential  Commercia  Accessory Structure

|         |
|---------|
| Code #  |
| 108.1.5 |

|                         |
|-------------------------|
| Reason for Condemnation |
| FIRE DAMAGE             |

Condemned-Life, Health, Safety Violation

|                      |
|----------------------|
| DateViolationCleared |
|                      |

Condemned-Requires Further Analysy

|                           |
|---------------------------|
| Type of Analysis Required |
|                           |

|                 |
|-----------------|
| AnalysisResults |
|                 |

|                    |         |            |
|--------------------|---------|------------|
| Date Rehabilitated | Permit# | Date Razed |
|                    |         |            |

Condemned-Raze Remove

|                       |                     |        |
|-----------------------|---------------------|--------|
| AbestosRemovalCompany | RemovalCost         | \$0.00 |
| DemolitionCompany     | DemolitionCost      | \$0.00 |
|                       | TotalDemolitionCost | \$0.00 |

# CONDEMNED/VACANT PROPERTIES

Date Condemned/Vacated

2/18/13

Inspector

CONRAD

Address

321 BROCKWAY AVE

Ward

\_\_\_\_\_

Map

\_\_\_\_\_

Parcel

\_\_\_\_\_

Owner of Property

VICTORY Holdings

Owners Address

230 Beechcroft AVE

Owners Phone Number

304-292-9555

Type of Building:

Rental

Commercial

Residential

Accessory Building

Code Section: IPMC 108.1.5 Dangerous structure or Premises

Reason/Comments for Condemnation:

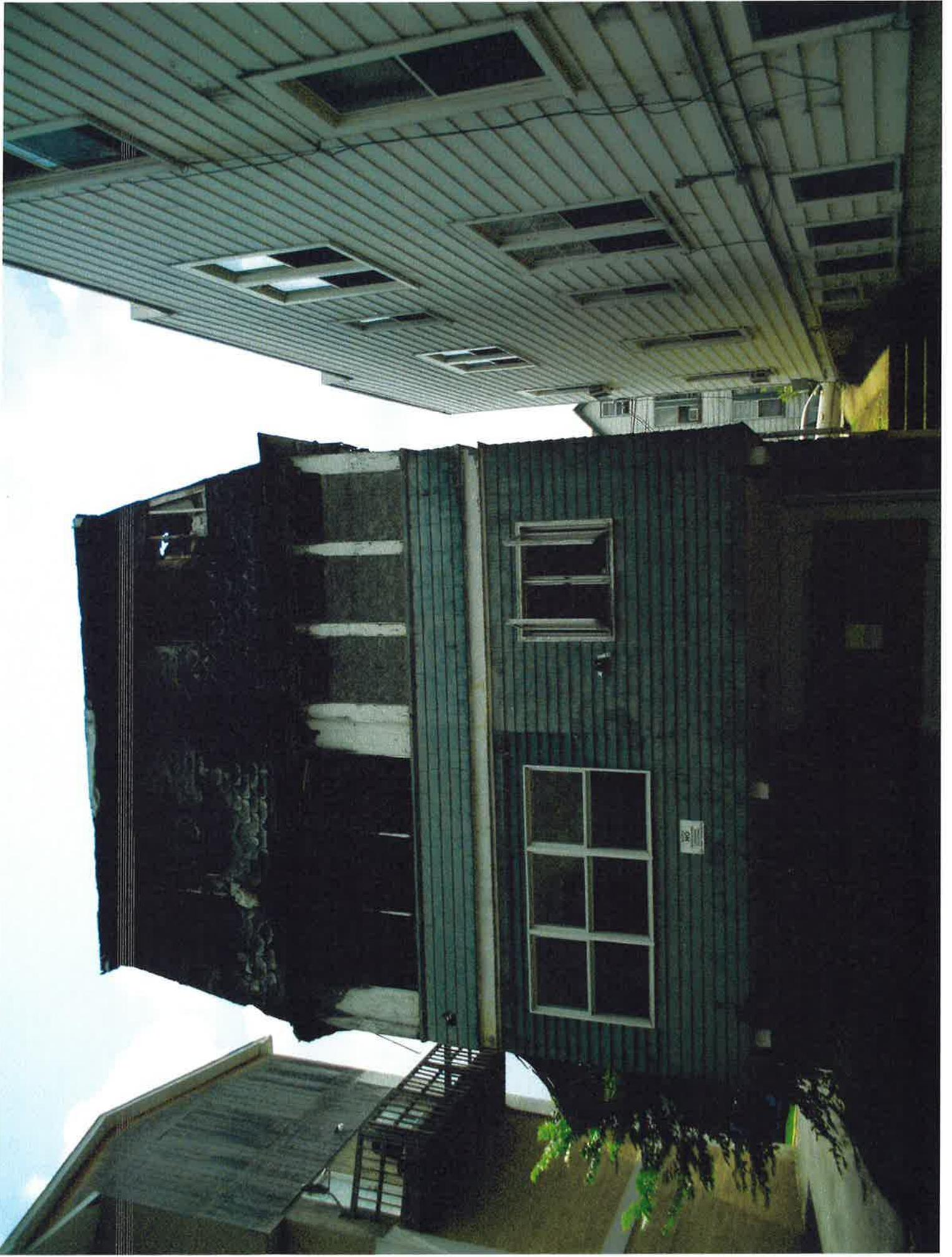
FIRE in side structure, middle and top floor  
burnt beyond Repair.

Condemned- Life, Health, Safety Violations

Corrective Measures Taken:

Date Violation Cleared

\_\_\_/\_\_\_/\_\_\_







FOR SALE



FOR SALE







CODE ENFORCEMENT  
BUILDING AND HOUSING  
INSPECTION DEPARTMENT

## The City of Morgantown

389 SPRUCE STREET  
MORGANTOWN, WEST VIRGINIA 26505  
(304) 284-7401

### LETTER OF COMPLIANCE

DATE ISSUED: **1/28/2013**

EXPIRATION: **9/2/2015**

This letter certifies that at the date of this inspection the dwelling unit located at **321 BROCKWAY AVE** Morgantown, West Virginia, which contains **3** rental unit(s), after inspection of the premises, dwelling units and registration documentation on **9/3/2012** has been found to comply with the requirements of the Morgantown City Code – Part Seventeen – Building and Housing Code Chapter Seven - Article 1751 - Housing Code.

The owner of this rental unit is **VICTORY HOLDINGS** located at **507 BEECHURST AVENUE, MORGANTOWN WV 26505**

### ADDITIONAL INFORMATION

NUMBER OF UNITS: **3**  
STRUCTURE TYPE: **APT**  
FILE REFERENCE NUMBER: **124**

IF THE INFORMATION PRESENTED ON THIS LETTER OF COMPLIANCE IS NOT CORRECT THIS LETTER OF COMPLIANCE IS VOID. THERE MAYBE OTHER CODES THAT APPLY. IT IS YOUR RESPONSIBILITY TO MAKE CERTAIN THAT OTHER CODE REQUIREMENTS ARE MET WITH RESPECT TO THIS LOCATION.

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Rental Housing Inspector  
City of Morgantown