



**PLANNING AND ZONING CODE CONFORMITY REPORT
FOR PLANS SUBMITTED FOR NOVEMBER PC AND BZA HEARINGS**

Planning Division

- d. V15-68..... Article 1351.01(D) – variance relief to exceed the maximum driveway curb cut width at the curb line and at the right-of-way line for the proposed driveway entrance on University Avenue.
- e. V15-69..... Article 1351.01(D) – variance relief to exceed the maximum driveway curb cut width at the curb line and at the right-of-way line for the proposed driveway entrance on Walnut Street.
- f. V15-70..... Article 1365.04 – variance relief to exceed the maximum number of parking spaces in the non-residential district.
- g. V15-71..... Article 1351.01(K) – variance relief from minimum transparency requirement.

ADDITIONAL OBSERVATIONS

- Discussion notes from the two (2) meetings with the Downtown Design Review Committee are attached. The Committee requested to meet again with the developer’s design professionals prior to building permit application submission to review final architectural design elements; particularly those few elements that had not been decided prior to the Committee’s 29 SEP 2015 meeting.

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PLANNING AND ZONING CODE CONFORMITY REPORT
FOR PLANS SUBMITTED FOR NOVEMBER PC AND BZA HEARINGS

Planning Division

ADDENDUM A

Mixed-Use Dwelling Units

Article 1331.06(26) provides that, “the *commercial or office space* shall not be less than 20 percent and not more than 60 percent of the ground floor area.”

In the definition of FLOOR AREA provided in Article 1329.02, “...The floor area of enclosed required off-street parking areas shall not be included...”

Floor area of FLR01:	54,593 sf	total area
	<u>- 18,923 sf</u>	parking area
	35,670 sf	total area less parking

Proposed <i>commercial or office space</i> on ground floor:	6,244 sf	FLRP1
	<u>+ 2,242 sf</u>	FLR01
	8,486 sf	Retail

Proposed % <i>commercial or office space</i>	<u>8,486 sf</u>	Retail	=	23.8%
	35,670 sf	FLR01		

ADDENDUM B

Non-residential on Ground Floor

Article 1351.01(J)(2) provides that all *nonresidential* floor space provided on the ground floor of a mixed-use building must contain at least 20 percent of the lot area on lots with 50 feet of street frontage or more.

The lot area (area of the development site) is 84,942 sf.

The minimum nonresidential area on the ground floor is:	84,942 sf
	<u>X 20%</u>
	16,988.4 sf

The proposed nonresidential area on the ground floor is:	576 sf	FLRP1
	6,244 sf	FLRP1
	8,242 sf	FLR01
	<u>+ 2,242 sf</u>	FLR01
	17,304 sf	Nonresidential

Downtown Design Review Committee

Meeting Notes

Development: The Standard – University and Walnut Street – Landmark Properties & BKV Group

Date: 8/25/2015 Time: 5:30 PM Place: Public Safety Building

Items Discussed:

Development program details presented:

- 10 to 11 levels with a building height that will not exceed 960 feet above sea level (ASL). Fletcher noted that he has not received elevations with finished adjoining grades to determine the average building height in comparison with the maximum building height standard of 120 feet.
- 283 dwelling units ranging from efficiency units to six-bedroom units for a total of 857 beds geared towards college students. No bedrooms will be double-occupied.
- Property management will be located on-site.
- The roof will include an amenity deck with a swimming pool.
- Vehicular entrances are proposed from University Avenue (right-in-right-out only) and from Walnut Street.
- Truck loading space will be provided off Walnut Street. AutoTURN or similar simulation will be provided to City
- Sidewalk width along University Avenue will be increased beginning at the existing curb line to the building's proposed 7.5 foot front setback effectively creating an approximate twelve-foot wide public space.
- A new trailhead is planned that will significant enhance rail-trail access.
- Commercial space will be located at the University Avenue street level.
- When asked about potential commercial uses at the rear of the building facing the rail-trail, the developer noted such space was not viable along the riverfront.
- The building will include 24 balconies that will be dark grey with painted aluminum plank floors.
- The closest point between the proposed building and the PRT will be approximately ten (10) feet. Committee members encouraged the design team to work with WVU's PRT management.

- The design team intends to locate and screen HVAC mechanical condensing units on the roof; however, further design is needed before plans can be shared with the Committee.
- The parking decks will be wrapped by the building and will require mechanical ventilation that must be designed yet.
- All utility lines in front of the site will be buried to ensure fire truck access to the building.
- Bike storage is planned and kayak storage and/or rental is being considered as an amenity for residents.

Contemplated cladding materials/style:

- The first level will include split face masonry, aluminum storefront display window frames, and precast stone sign band above storefront windows.
- Upper floors will use a mix of brick or brick veneer, metal panel, cementitious panel, and stucco (EIFS)
- Color schemes have not been finalized yet but the design professionals intend to use earth tones similar to the predominant color schemes used on the University's downtown campus and several of the larger-scaled buildings in the downtown. Currently considered is a grey shade for the stucco, tan for the cementitious panels, and red brick.
- The arrangement of façade elements by use of contemplated materials, colors, wall offsets are intended to break up and provide variation in massing to give the appearance of several buildings along University Avenue.
- The retaining wall at the rear Walnut Street corner will be reconstructed; however, building materials have not been determined yet.
- Exterior lighting is still being planned.

Committee Observations:

- Cladding Materials
 - Committee expressed concerns with the use of split face masonry for the building's base. The primary concern was for the façade along University Avenue where high vehicular traffic will contribute to dirt and soot collecting, holding, and showing on porous split face masonry material along with the difficulty of removing graffiti. Secondary concern was split face masonry appeared to be a tawdry alternative to precast stone/concrete. Committee asked that larger panels of cast stone/concrete be used for the building's base rather than split face masonry.
 - Mills suggested using precast, larger panels, and aluminum wraps be used for the building's base, particularly along University Avenue and Walnut Street.
 - Committee asked to see more refined cladding materials and color palette details as the project's design continues to evolve. The Committee was generally accepting of the

- contemplated color palette of cladding materials but wants to see close up drawings/illustration to better understand their use, purpose, and transitions.
- Committee did not like stucco/EIFS; noted examples of poor wearing and dirty facades of nearby stucco/EIFS buildings; noted EIFS will most likely be prohibited in the near future.
 - Mills asked that fasteners for cementitious panels not be exposed.
 - Committee asked for more detail on materials and colors of the contemplated cornice, parapet cap, and architectural appurtenances at the top of the building.
 - The Committee suggested clear, non-tinted glass for the storefront display windows.
 - The Committee asked the design team to explore more defined storefront elements.
- Retaining Wall – The Committee asked to see the materials and color of the new retaining wall along Walnut Street.
 - Balconies
 - Committee members shared experiences with poor student conduct on balconies in the downtown area and cited concerns for potential problems.
 - Shuman strongly suggested reconsideration of the balconies as it increases the chance of objects being thrown at vehicles on University Avenue and at PRT cars.
 - Mills stated balconies are an attractive nuisance and invite trouble.
 - Mechanical Systems – Mills stressed the importance of screening the mechanical systems and requested to see where they will be located and how they will be screened along with the parking garage ventilation system.
 - Trail Access
 - Additional information/illustration is needed on how the contemplated trailhead will be designed, constructed, and accessed.
 - Concern was provided on how this space will be programmed and cautioned against furniture and spaces that attract gathering and loitering as experienced along the trail within the immediate area.
 - Concern was provided for the privacy of dwelling units located at grade at the rear of the building.
 - Truck Loading – The project must be designed to ensure delivery trucks and loading do not occur in front of the building on University Avenue.
 - Exterior Lighting – The Committee asked to see the final exterior lighting plan that included photometric renderings (e.g., Agi32, ElumTools, or similar simulation software).

- Sidewalk and Streetscape – The Committee asked for additional information/illustration of the proposed streetscape along University Avenue including street trees if planned.
- Mills expressed that the pedestrian bridge is a must with this project. Fletcher noted that the City has commissioned an Engineer to work with the developer’s design professionals to study the feasibility of pedestrian bridge that will be open to the public.
- Corner at University Avenue and Walnut Street – Mills suggested rethinking the University Avenue and Walnut Street building corner to enhance its presence and architectural contribution to the built environment.
- Site Security – Suggestions were made to install several cameras, especially towards the rear of the building.



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DOWNTOWN DESIGN REVIEW COMMITTEE

August 25, 2015

5:30 PM

Public Safety Building – Conference Room

Committee Members:

Bill Kawecki
Planning Commissioner

Michael Shuman
Planning Commissioner

Tom Anderson

Bob Carubia

Constance Merandi

Michael Mills

ATTENDANCE SHEET

NAME (PLEASE PRINT)

ADDRESS

JASON DOENBOS

455 EPPS BRIDGE PKWY

JOHN TRIPPER

1054 31st NW WASHINGTON, DC.

MICHAEL MILLS

63 WHARF STREET MORGANTOWN

Michael Greenlee

2470 Daniels Bridge Rd Athens GA 30608

Michael Shuman

705 Willey St Morgantown

BILL KAWECKI

324 COBURN AVE

Tom Anderson

32 TIGER ROAD -

Joseph Miller

455 Epps Bridge Hwy Athens GA

Andrew Costas

455 Epps Bridge PKWY Athens GA

Development Services

Christopher Fletcher, AICP
Director

Planning Division

89 Spruce Street
Morgantown, WV 26505
304.284.7431

Meeting Notes

Purpose: The Standard – University and Walnut Street – Landmark Properties & BKV Group

Date: 9/29/2015

Time: 5:30 PM

Place: Planning Office (WebEx)

Items Discussed:

- Color schemes have not been finalized yet but the design professionals intend to use earth tones similar to the predominant color schemes used on the University's downtown campus and several of the larger-scaled buildings in the downtown. Currently considered is a grey shade for the EIFS/stucco, tan for the cementitious panels, and red brick. EIFS/stucco will be restricted to the top four floors. Cementitious cladding and brick will be used for the lower five floors. Committee suggested bringing cementitious and brick material all the way up the corner and requested EIFS/stucco not be used along the University Avenue and Walnut Street facades. Committee suggested a darker color for the EIFS/stucco as lighter colors will show dirt from vehicles traveling in the corridor.
- The design professionals noted the arrangement of façade elements by using materials, colors, building line offsets are intended to break up and provide vertical articulation and variation in massing to give the appearance of several buildings along University Avenue.
- The retaining wall at the rear Walnut Street corner will be reconstructed; however, building materials have not been determined yet. The Committee asked if a CMU system is used, that larger-sized units be used and avoid sharp points at corners.
- Split-face masonry materials have been eliminated and replaced with pre-cast concrete in response to the Committee's expressed concerns.
- Concealed cementitious board fasteners will be used as requested by the Committee.
- Clear, non-tinted glass for the storefront display windows will be used as requested by the Committee
- More defined storefront elements have been incorporated as requested by the Committee.
- Most of the balconies have been eliminated as requested by the Committee. However, there are still Juliet balconies along University Avenue where the building face has been extended out from the primary face providing articulation in the façade. The Committee remains concerned with balconies and requested windows and doors be restricted to four to six inch opening to mitigating use of Juliet balconies for public safety concerns.

- The Committee suggested Caperton Trail wayfinding signage be added along Walnut Street. The developer agreed to work with the City as practicable.
- The developer noted that additional planning and design is ongoing concerning:
 - Exterior lighting.
 - Parapet design to screen roof-top mechanical units.
 - Public realm hardscape and street furnishings.
 - Caperton Trail access.
 - Final cladding material schedule and color palette.
- The Committee asked to meet with the developer’s design professionals following Planning Commission approval and prior to building permit application to discuss final architectural design elements that have not been decided yet.



DOWNTOWN DESIGN REVIEW COMMITTEE

September 29, 2015

5:30 PM

Public Safety Building – Conference Room

Committee Members:

Bill Kawecki
Planning Commissioner

Michael Shuman
Planning Commissioner

Tom Anderson

Constance Merandi

Michael Mills

ATTENDANCE SHEET

NAME (PLEASE PRINT)

ADDRESS

NAME (PLEASE PRINT)	ADDRESS
Tom Anderson	37 TIGGS RD
MICHAEL MILLS	63 WYOMING STREET
Michael Shuman	705 WILLY ST
Greg Foreman	CTL Engineering 1091 Chaplin Hill Rd
Bill Kawecki	324 WYOMING AVE
Constance Merandi	281 Dormont St

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Chris Fletcher

From: Catherine S. Loeffler <loefflercs@hh-law.com>
Sent: Thursday, December 10, 2015 11:11 AM
To: Chris Fletcher
Cc: Samuel H. Simon
Subject: James Giuliani Objection Brief
Attachments: Executed copy of the Obejction to Planning Commission re Standard Building (H1170418x9CF62).pdf

Mr. Fletcher:

We represent James Giuliani, and attached is his Objection to the Morgantown Planning Commission's Consideration of the Standard at Morgantown Project at the December 10, 2015 Meeting. We ask that you please review it prior to the meeting this evening. We overnighted 10 copies of the Brief to the members of the Planning Commission as well. Mr. Giuliani intends to explain his arguments at the meeting tonight.

Please let me know if you have any questions.

Regards,

Catherine

Catherine S. Loeffler

Attorney At Law

HoustonHarbaugh

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**OBJECTION TO THE MORGANTOWN PLANNING COMMISSION'S
CONSIDERATION OF THE STANDARD AT MORGANTOWN PROJECT
AT THE DECEMBER 10, 2015 MEETING**

IN THE MATTER OF: Standard at Morgantown, LLC/1303 University Avenue, Morgantown, West Virginia/Case No. S15-09-III (Tax Map 26A, Parcels 6-15 and the Wall Street right-of-way)

OBJECTION OF: James Giuliani, resident of Morgantown, West Virginia

James Giuliani (“Mr. Giuliani”) hereby formally objects to the Morgantown Planning Commission’s consideration of the Standard at Morgantown Project at the December 10, 2015 Meeting, which involves numerous variances and a Type III Development of Significant Impact Site Plan approval at 1303 University Avenue in Morgantown, West Virginia. Mr. Giuliani requests to be heard, and that this objection be considered, at the Morgantown Planning Commission hearing scheduled for December 10, 2015.

I. INTRODUCTION

J. Wesley Rogers (the “Contractor”), President of the Standard at Morgantown, LLC, seeks to redevelop real property near West Virginia University located at the intersection of U.S. Route 19 (University Avenue) and Walnut Street in Morgantown, West Virginia. The property is situated in a B-4 district and is currently occupied by McClafferty’s Irish Pub, Vic’s Towing and Garage, and the former Gold’s Gym building (the “Project”). The Contractor wants to develop the property as a massive student housing apartment/retail building with commercial and retail space on the lower levels. The proposed development site is approximately 1.95 acres (84,942 square feet). The proposed Project would include 276 dwelling units with a total of 866 occupants. 692 parking spaces are proposed in 12 parking deck levels that are wrapped by the non-residential and residential portions of the building. The square footage of the lot area is broken down as follows:

Commercial: 13,351 square feet

Retail: 8,486 square feet

Parking: 225,554 square feet (692 spaces)

Housing: 419,947 square feet

Total: 667,338 square feet

Total Less Parking: 441,784 square feet

On or about October 1, 2015, the Contractor applied to the City of Morgantown for the approval of a Type III Development of Significant Impact Plan and also applied for several variances associated with the Project. The matter is scheduled to be heard on December 10, 2015 at the Morgantown Planning Commission hearing. For the reasons that follow, Mr. Giuliani contends that any consideration and/or approval of the Standard at Morgantown Project by the Planning Commission is premature.

II. OBJECTIONS

A. Consideration and approval of the Standard at Morgantown Project by the Planning Commission is premature due to numerous outstanding decisions by third parties, including the determination of the variance petitions by the Morgantown Board of Zoning Appeals, decisions and approvals by the West Virginia Division of Highways and the Morgantown City Council; violations of various ordinances and codes; and a necessary interpretation of confusing, ambiguous Code provisions.

1. Consideration and approval of the Standard at Morgantown Project by the Planning Commission is premature due to the outstanding variance petitions that can only be decided by the Morgantown Board of Zoning Appeals.

In relation to the Project, the Contractor applied for seven (7) variances to the City of Morgantown, all of which can only be approved by the Morgantown Board of Zoning Appeals (“BZA”) pursuant to Sections 1389.02 and 1389.03 of the Morgantown Planning and Zoning Code (the “Code”). The Planning Commission has no authority to make variance determinations, and the most it can do is provide recommendations to the BZA. Therefore, it is not logical for

the Planning Commission to even consider the Standard at Morgantown Project until the BZA has either approved or denied the variances. This is a classic example of putting the cart before the horse, and it would be a complete waste of the Planning Commission's time and resources to entertain a hearing on a project with pending variance requests that the BZA will likely not approve due to the violations of numerous Code sections, which is discussed below.

a. The variance petition requesting 692 parking spaces for 866 occupants on 1.95 acres in a B-4 zoning district violates Sections 1365.04 and 1349.06 of the Code and will likely be denied by the BZA.

The Project design calls for 692 parking spaces for this massive mixed use complex housing 866 occupants on 1.95 acres. The parking area will comprise 12 parking levels that are enclosed by the residential and non-residential units. Section 1349.08(A)(1) of the Code titled "Parking and Loading Standards" states in relevant part: "With the exception of the first twenty-two (22) occupants, the minimum number of parking spaces for permitted residential uses *shall* be one-half space (0.5) per occupant, as determined by the West Virginia State Building Code and adopted and implemented by the City." (Emphasis added). Excepting the first 22 occupants, the minimum number of residential parking spaces permitted for this Project is 422 (844 x 0.5).

Regarding the maximum number of spaces, Section 1365.04(I) titled "Determining the Number of Spaces Required" states: In all non-residential districts the maximum number of spaces provided *shall not exceed 115 percent* of the minimum parking requirement, except for research and development centers, where there shall be no maximum." (Emphasis added). Therefore, the maximum number of residential parking spaces permitted according to the Code is 485 (422 x 1.15). However, the Code also provides for loading spaces in 1349.08(D): "Loading—Residential uses containing thirty (30) or more dwelling units shall conform to the

loading requirements set forth in Section 1365.10 as a ‘Type II Use.’” The table in Section 1365.10 illustrates:

Use Description	Floor Area in Square Feet	Number of Loading Spaces Required
Type II: Office buildings, hotels and motels, retail sales, hospitals, institutions and similar uses	5,000 – 60,000	1
	60,001 – 100,000	2
	Each 20,000 above 100,000	1

Since the residential area is 419,947 square feet, 19 additional loading spaces are permitted ($419,947 - 100,000 = 319,947 / 20,000 = 16 + 2 + 1 = 19$). The total amount of residential and loading spaces allowed by the Code is 504 ($485 + 19$). Thus, the excess parking spaces sought by the Contractor are 186 ($692 - 504$). It appears that the calculations of the City Planner in the Conformity Report are incorrect in only allowing 14 loading spaces, which brings their total calculation to 499 ($485 + 14$). Using the City Planner’s numbers, the excess parking spaces sought is 193. Regardless of which number is correct, it is clear that the number of additional parking spaces requested by the variance is far in excess of the maximum spaces permitted by the Code.

The Code sections stated above all use the word “shall,” which is a term that is always mandatory, not discretionary. Under both the Zoning Code and West Virginia law, the word *shall* represents an imperative command. Section 1329.01(H) of the Code states: “The word ‘shall’ is always mandatory and not discretionary.” Thus, the Code itself defines the term *shall* as mandatory. Moreover, the West Virginia Supreme Court has repeatedly held that the use of the word *shall* in a statute represents an “imperative command” that “leaves no way open for the substitution of discretion.” See *Crusenberry v. Norfolk & W. Ry. Co.*, 180 S.E.2d 219, 222, 155

W.Va. 155, 159 (1971) (modified on other grounds by *Talkington v. Barnhart*, 264 S.E.2d 450, 164 W.Va. 488 (1980)); *see also* Syl. Pt. 7, *J.A. Street & Associates, Inc. v. Thundering Herd Development, LLC*, 228 W.Va. 695, 724 S.E.2d 299 (2011) (“It is well established that the word ‘shall,’ in the absence of language in the statute showing a contrary intent on the part of the Legislature, should be afforded a mandatory connotation”).

There are no exceptions to these Code provisions, and the Contractor should not be permitted to exceed these maximums and endanger the welfare and interests of residents living in the City of Morgantown simply to increase its monetary return on investment by packing in as many people into one building as possible. It is important to remember that the Contractor is not requesting a mere increase of 3 or 4 spaces—*the request exceeds the maximum number by almost 200 spaces!*

i. The City Planner and Contractor erred in their FAR calculations.

Remarkably, the City Planner, in the Staff Report and Nonconformity Report, attempts to justify the parking variance requested by the Contractor by manipulating the Floor Area Ratio (FAR) calculations in Section 1349.06. That section, titled “Floor Area Ratio (FAR)” states: The *maximum* FAR for all development in this district [B-4] is 7.0. The area designed, constructed, and utilized to provide parking structure facilities shall be exempt from the maximum FAR, provided such area *does not* exceed 115% of the minimum parking requirement.” (Emphasis added). Importantly, in the definition section of the Code (Section 1329.02), it states that the FAR is an expression of the *intensity of development* and determines the amount of square footage of a building area compared to the square footage of a lot area. The FAR calculation is the gross floor area of the principal and accessory buildings on a lot divided by the area of the lot. Thus, a FAR of 7.0 would allow 7 square feet of building area for each square foot of lot

area. In this case, the *maximum square footage* of the building area for this Project in the B-4 district based on the subject lot area is **594,594** (7.0 x 84,942).

The language of Section 1349.06 is particularly important because it provides that the parking area square footage is exempt from the FAR for a building area *provided such area does not exceed 115% of the minimum parking requirement*. However, the Project at issues admittedly exceeds 115% of the minimum parking requirement—hence the variance petition. Therefore, the converse applies and the parking area square footage is included in the FAR calculation. As a result, the gross floor area including parking (667,338) divided by the lot area (84,942) equals a FAR of 7.8, which is a violation of the FAR 7.0 maximum permitted by Section 1349.06. In terms of square footage, the variance is requesting an *additional 72,744 square feet* in excess of the maximum permitted in a B-4 district ($7.8 \times 84,942 = 667,338 - 594,594 = 72,744$). Again, the variance is not asking for a mere accommodation of several additional square feet or even several hundred additional square feet. The request asks for approval of additional tens of thousands of square feet (equal to at least 6 or 7 stories of a building) that would clearly endanger the safety of the residents in the building and impede upon the interests of the surrounding citizens.

As designed, the Standard at Morgantown Project violates these Code provisions, and the Contractor should not be permitted to skirt such important safety measures through a variance request that will likely not be approved by the BZA upon reviewing the above evidence. Therefore, consideration and approval of the Project is premature, and the Planning Commission should refrain from making a decision on the Standard of Morgantown Project at this time.

b. The transparency variance requested for the Project to avoid the minimum transparency requirement violates Section 1351.01 of the Code and will likely not be approved by the BZA.

The Project indicates that the Contractor is requesting variance relief to avoid the minimum transparency requirement in Section 1351.01, which pertains to the performance standards for buildings in a B-4 district. In particular, Section 1351.01(K)(1) states that “A minimum of sixty percent (60%) of the street-facing building façade between three (3) feet and eight (8) feet in height *must* be comprised of clear windows that allow views of indoor nonresidential space or produce display areas.” (Emphasis added). The word “must” like the word “shall” means that it is always mandatory. *See Crusenberry v. Norfolk & W. Ry. Co.*, 180 S.E.2d 219, 222, 155 W.Va. 155, 159 (1971). Additionally, there are no exceptions to this Section of the Code.

The Project designs at Sheet No. 7.04 illustrate transparency between 3’0” and 8’0” of only 52% on University Avenue and only 11% on Walnut Street, both well below the required minimum of 60%. It is important to remember that this Project is merely in the design phase, and the construction phase has not yet begun. It is entirely feasible and reasonable for the Contractor to modify the drawings to comply with the Code’s 60% transparency requirement, which would take little additional effort. If such an easy modification to construction designs can be avoided by simply asking for a variance to skirt around the Code provisions, why have laws at all, if the enforcing authorities have no intention of following them in order to satisfy the whims of a Contractor?

As designed, the Standard at Morgantown Project violates Section 1351.01 of the Code, and the Contractor should not be permitted to skirt such important safety measures through a variance request that will likely not be approved by the BZA upon reviewing the above evidence.