



Development Services

389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

Date: 04 NOV 2015
To: Planning Commission
RE: S15-10-II / ACC / Temporary Use Permit
12 NOV 2015 Public Hearing

ISSUE

ACC OP (U Club Sunnyside), LLC (a.k.a. ACC) established a temporary office and model apartment structure/use on the tract of realty located at the corners of Quay Street and Overhill Street and Jones Avenue and Overhill Street. The subject site is planned as the off-site "Private Parking Lot" for which conditional use approval was granted by the Board of Zoning Appeals on 18 MAR 2015 under Case No. CU15-03.

The record for ACC's Type III Site Plan Application [Case No. S15-04-III] and ACC's related presentation to the Planning Commission on 12 MAR 2015 did not include the subject temporary use/structure. Additionally, building permits issued to date for the ACC development do not include work associated with the subject temporary use/structure nor has a "Temporary Use Permit" been issued.

Section 1331.07 of the City's Planning and Zoning Code addresses "Temporary Uses" and "Temporary Use Permit" requirements [see Section 1331.07 attached]. Specifically, temporary office, model home or model apartment, and incidental signs thereof, both incidental and necessary for the sale, rental, or lease of realty property in the zoning district are listed as permitted temporary use types with a maximum permitted time period of eighteen (18) months.

"Temporary Use Permit" applications are categorized as administratively reviewed Type II Site Plan applications with permit issuance authority designated to the City Manager. However, Section 1331.07(B)(3) requires a public hearing before the Planning Commission.

ACC has been notified that it must obtain requisite permits for the subject temporary use/structure. Additionally, ACC has been notified and ACC has agreed the subject temporary structure may not be used until the requisite "Temporary Use Permit" is issued by the City Manager. ACC has accordingly submitted related permit applications and is awaiting a "Temporary Use Permit" determination by the City Manager.

PROCEDURE

Section 1331.07(A) clearly assigns the authority to issue "Temporary Use Permits" to the City Manager and not the Planning Commission. The Planning Commission's function in regards to "Temporary Use Permits" is solely to hold a public hearing for the purpose of receiving related public comments. It is assumed that this provision intends for the Planning Commission to report



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public comments it receives to the City Manager prior to the City Manager's determination in issuing the related "Temporary Use Permit."

Staff advises the Planning Commission to conduct a public hearing to receive public comments regarding the pending Type II Site Plan "Temporary Use Permit" Application under its normal public comment procedures. Because the Planning Commission is not delegated permit issuance authority, no decision concerning whether or not the "Temporary Use Permit" should be issued is required nor would a decision be proper. The Planning Commission should simply conduct the public hearing as set forth under Section 1331.07(B)(3) and then direct Staff to forward public comments it may receive to the City Manager.

(c) If the erection or installation of a telecommunications facility has the potential to cause an impact on an historic property, as determined by the Planning Director, then the application for the telecommunications facility shall include completion of the Section 106 review process of the National Historic Preservation Act. (A.O.)

- (31) The following regulations are specific to EXTRACTIVE INDUSTRY development:
- (a) Extractive Industry uses are considered Major Developments of Significant Impact of a Regional Scale for the purpose of site plan review and approval.
 - (b) Regardless of zoning classification, property annexed into the City still obligated to a mineral, oil and/or gas rights lease agreement with another party may exercise such lease for the surface extraction development of minerals, oil and/or gas as established under said lease for a period not to exceed seven years following annexation. If development of significant impact site plan approval is not obtained within three years of annexation, then the surface extraction development right shall expire unless otherwise permitted under this Ordinance. All extractive industry development, regardless of zoning classification, must comply with related site plan review and performance standards of this Ordinance.
 - (c) A recreational vehicle or camper may be utilized as a caretaker's residence for a period not to exceed eighteen months. After eighteen months, the caretaker's residence on an extractive industry development site must meet the supplemental regulations for all single-family dwelling units provided in Section 1331.06(16).

(32) HEAVY INDUSTRY and HEAVY MANUFACTURING uses are considered Major Developments of Significant Impact of a Regional Scale for the purpose of site plan review and approval. (Ord. 12-28. Passed 7-3-12.)

1331.07 TEMPORARY USES.

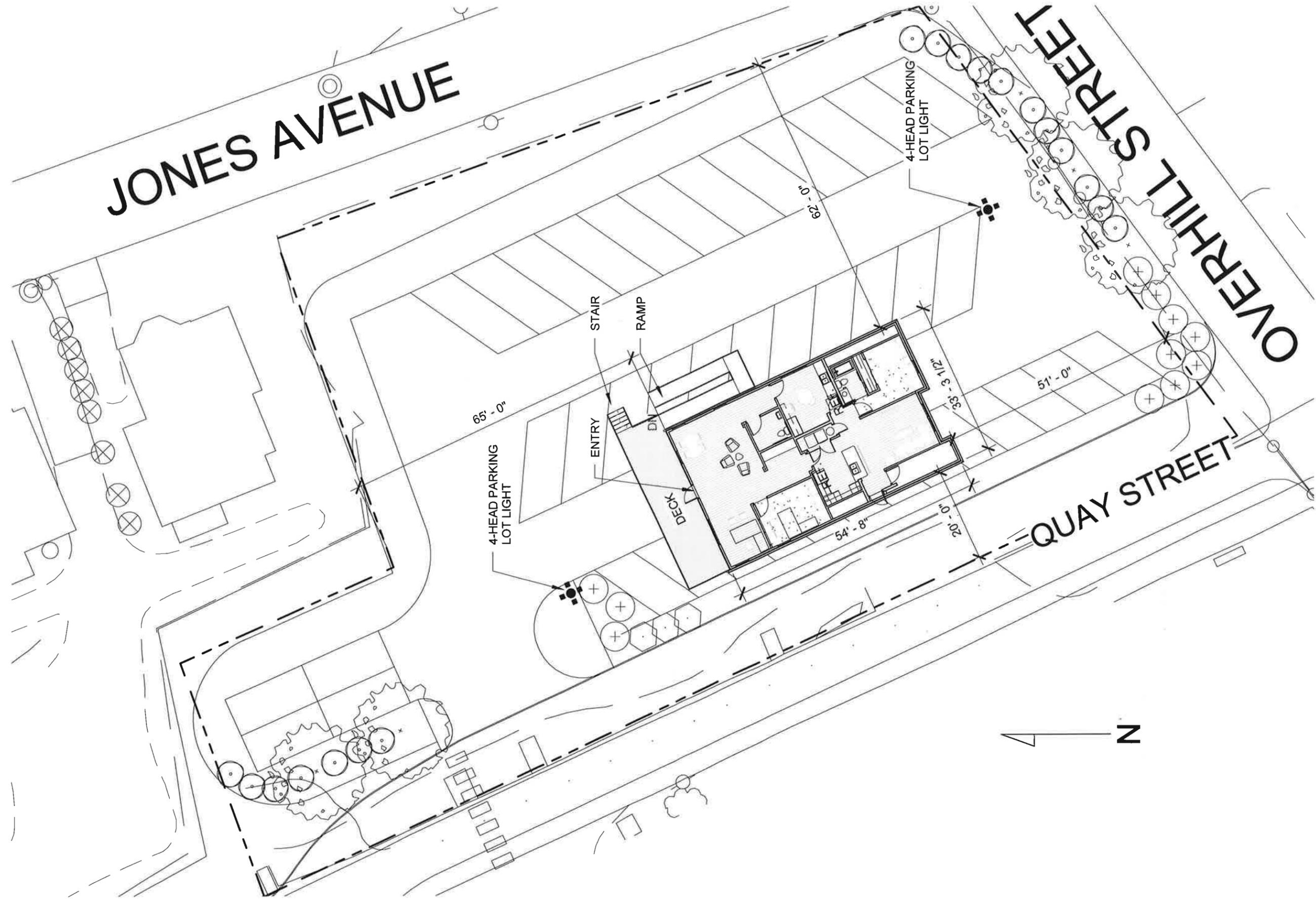
(A) Intent. Temporary Uses shall be permitted in all districts by the grant of a Temporary Use Permit issued by the City Manager, or his designee, in accordance with the requirements of this section.

- (B) General Provisions.
- (1) The duration of the temporary period is stated hereinafter, provided, however, renewal of such permit may be requested. The Planning Director is not obligated to renew such permits.
 - (2) Temporary Uses shall be subject to all the regulations of the applicable district in which they are located.
 - (3) Temporary Use permit applications shall be categorized as Type II Site Plan Submissions and shall require a public hearing before the Planning Commission.
- (C) Permitted Temporary Uses.
- (1) Temporary office, model home or model apartment, and incidental signs thereof, both incidental and necessary for the sale, rental, or lease of real property in the Zoning District. Maximum time permitted: eighteen (18) months.
 - (2) Bazaars, carnivals, and similar temporary uses. Maximum time permitted: ten (10) days.
 - (3) Sale of Christmas trees, outdoor tent theater, sale of seasonal fruits and vegetables from roadside stands, tent sales. Maximum time permitted: sixty (60) days and no more than four (4) sales per year.

- (4) Freestanding canopies or awnings used to enclose permitted outdoor seating areas of restaurants and/or private clubs and taverns. Maximum time permitted: four and one-half (4.5) months between April 15 to September 1. Such canopies or awnings shall be designed to withstand a wind load of thirty (30) pounds per square foot.
 - (5) Other similar uses deemed temporary by the Planning Commission and attached with such time period, conditions and safeguards as the Board may deem necessary.
- (D) Standards.
- (1) Adequate access and off-street parking facilities shall be provided which shall not interfere with traffic movement on adjacent streets.
 - (2) Any flood lights or other lighting shall be directed upon the premises and shall not be detrimental to adjacent properties.
 - (3) No commercial banners shall be permitted in a residential district.
 - (4) Signs shall not flash or blink or resemble traffic and emergency warning signals, and shall be limited in size to twenty (20) square feet each and in number to three signs.
 - (5) The lot shall be put in clean condition devoid of temporary use remnants upon termination of the temporary period.

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. (Amended by Ord. 06-14, Passed 06-06-2006.)
 - (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.



1 Site - Approx. Location for Leasing Trailer
 1" = 20'-0"