



MORGANTOWN PLANNING COMMISSION

May 10, 2012
6:30 PM
City Council Chambers

STAFF REPORT

President:

Peter DeMasters, 6th Ward

Vice-President:

Carol Pyles, 7th Ward

Planning Commissioners:

Sam Loretta, 1st Ward

Tim Stranko, 2nd Ward

William Wyant, 3rd Ward

Bill Petros, 4th Ward

Mike Shuman, 5th Ward

Ken Martis, Admin.

Jennifer Selin, City Council

CASE NO: TX12-01 / Administrative / Extractive Industry

BACKGROUND and ANALYSIS:

The following is a timeline of events leading to Staff's recommended Planning and Zoning Code revisions relating to extractive industry uses.

- June 21, 2011 City Council enacts an ordinance banning deep, horizontal gas wells and hydraulic fracturing in the City and within one mile of its borders.
- August 12, 2011 Monongalia County Circuit Court overturns the ordinance.
- November 29, 2011 City Council directs City Administration to study zoning approaches to regulating horizontal drilling operations.
- December 14, 2011 West Virginia Legislature passes and Governor signs House Bill 401 creating the "Natural Gas Horizontal Well Control Act."
- December 22, 2011 Governor Tomblin signs the "Natural Gas Horizontal Well Control Act."
- January 12, 2012 Planning Commission conducts a workshop to generally discuss the "Natural Gas Horizontal Well Control Act" and Staff's analysis of potential related zoning considerations.
- February 20, 2012 Planning Commission conducts a workshop with interested stakeholders to discuss Staff's preliminary recommendations based on the Planning Commission's January 12, 2011 input and direction.
- March 22, 2012 Staff visits an Ohio County horizontal gas well site.

Working with the understanding that municipalities in West Virginia must provide a place for all types of land uses and development and may not exclude or develop regulations that has the effect of excluding land uses and development, Staff advanced the following principles to guide the proposed Planning and Zoning text amendments recommended herein:

- Zoning regulations are limited to surface land use and development, not subsurface development.
- The West Virginia "Natural Gas Horizontal Well Control Act" is the guide from which more urban contextual development and performance standards appear necessary.
- The West Virginia Department of Environmental Protection is the correct agency to develop, implement, monitor, and enforce impacts that heavier industrial-type development may have on air, water, and soil quality.
- Assess and test the entire Planning and Zoning Code as it relates to present policy objectives and heavier industrial-type development.
- Identify land uses, public facilities, and natural resources that may not be compatible with heavier industrial-type development.

Development Services

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Director

Planning Division

Heather Dingman, AICP
Principal Planner

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- Identify areas where extractive industry uses are suitable given preferred buffering distances from potentially incompatible nonindustrial-type uses.
- Advance reasonable development and performance standards that, to the greatest extent feasible, broadly regulate heavier industrial-type development.

The following is a brief summary of the recommended Planning and Zoning text amendments presented in Addendum A of this Report. Staff will provide detailed explanation presentation during the April 12, 2012 Planning Commission hearing.

It should also be noted that the recommended amendments are being reviewed by the City Attorney.

I. Article 1329.02 “Definitions”

Definitions were revised for existing terms and new terms are provided.

II. Article 1331.05 “Permitted Land Uses”

Table 1331.05.01 is revised to associate proposed revisions to the definitions and to cite new supplemental regulations.

III. Article 1331.06 “Supplemental Regulations”

New supplemental regulations are provided to:

- Associate proposed revisions in the Type III Site Plan application and review process.
- Address annexation relative to recognizing existing mineral, oil, and gas rights lease agreements.
- Recognize the temporary nature of caretaker’s residences commonly associated with extractive industry development sites.

IV. Article 1355 “I-1, Industrial District”

Performance standards are proposed to:

- Recognize the development and operational differences between light industry, heavy industry/manufacturing, and extractive industry.
- Incorporate reasonable provisions for heavy industry/manufacturing development to mitigate adverse impacts between incompatible uses and the development site that are not adequately addressed in the Planning and Zoning Code.
- Incorporate reasonable provisions that are specific to the unique nature and operations of extractive industry development.

V. Article 1365.04 “Determining the Number of Spaces Required”

Table 1365.04.01 is revised to establish minimum parking requirements for uses defined but not currently included in the table.

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VI. Article 1385 “Site Plan Review”

Type III Site Plan application and review process is revised to:

- Address transportation route planning and the protection of City roadways, rights-of-way, and improvements from higher volumes of heavier traffic.
- Incorporate additional submission and analysis components associated with heavier industrial-type development.

STAFF REPORT SUPPLEMENT:

Addendum A of this report has been revised to address some of the comments, questions, and concerns offered during the April 12, 2012 Planning Commission hearing. New and revised material is highlighted in **RED FONT**.

Addendum B summarizes the comments, questions, concerns offered during the April 12, 2012 Planning Commission hearing and includes Staff responses.

STAFF RECOMMENDATION:

Staff recommends that the proposed text amendments provided in Addendum A of this report dated May 10, 2012 be submitted to City Council with an affirmative recommendation to amend the City’s Planning and Zoning Code accordingly.

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STAFF REPORT ADDENDUM A
TX12-01 / Administrative / Extractive Industries

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NOTE: Revisions to Staff’s April 12, 2012 presentation to the Planning Commission are highlighted herein in **RED FONT**.

I.

Staff recommended revisions to Article 1329.02 “Definitions”

CLEAR ZONE – An area delineated on a site plan illustrating where structures similar to silos, grain bins, windmills, chimneys, stacks, spires, flag pole, skylights, derricks, conveyors, cooling towers, observation towers, water tanks, telecommunication facilities, etc. in excess of fifty (50) feet may collapse based on the site and structural design.

DRILLING – Digging or boring a new well for the purpose of exploring for, developing, or producing gas or other hydrocarbons, or for the purpose of injecting gas, water, or any other fluid or substance into the earth; includes induced hydraulic fracturing.

EXTRACTIVE INDUSTRY – A heavy industry use that involves the extraction of minerals, including solids, such as coal and ores; liquids, such as crude petroleum; and gasses, such as natural gasses. The term also includes quarrying; well operation; milling, such as crushing, screening, washing, and flotation; and other preparation customarily done at the extraction site or as a part of the extractive activity.

EXTRACTION, MINERAL MINERAL-EXTRACTION – All or any part of the process involved in the mining of minerals by removing overburden and mining directly from the mineral deposits, open pit mining or minerals naturally exposed, mining by auger method, dredging and quarrying, underground mining and surface work incidental to an underground mine.

EXTRACTION, OIL AND GAS – All or any part of the process involved in the drilling, stimulating, production or waste treatment and disposal of natural crude oil, petroleum, natural gas, or other fluid hydrocarbons.

INDUCED HYDRAULIC FRACTURING – The process of injecting water, steam, gas, or other substances into a well to improve hydrocarbon recovery; commonly referred to as “hydrofracking” and/or “fracking”.

OPERATOR – For the purpose of an extractive industry use, the person or company, either proprietor or lessee, in charge and in control of the management and day-to-day operations of an extractive industry development site.

PLANNING DIRECTOR – The Director of the Department of Planning Development Services for the City of Morgantown or his or her designee.

STRUCTURE – (1) A combination of materials forming an edifice or building of any kind, or any piece of work artificially built up or comprised of parts joined together in some definite manner, but excluding the following: retaining walls; fences not over six (6) feet high; platforms or decks not more than thirty (30) inches above grade and not over any basement or story below; utility mains, lines, and underground facilities; and, yard and play equipment; (2) a permanent structure built of materials in a manner that would commonly be expected to remain useful for a substantial period of time; (3) a temporary structure if built of materials in a manner that would commonly be expected to have relatively short useful life, or if built for a purpose that would be expected to be relatively short-term in duration. Structure does not include vehicles, recreational vehicles or campers. Anything constructed, erected, or situated by man that requires location on the ground or attached to something having location on the ground; but not including vehicles, recreational vehicles, campers, tents less than thirty-six (36) square feet in area, retaining walls, fences not over eight (8) feet in height, yard and play equipment, utility lines, and underground facilities.

II.

Staff recommended revisions to Article 1331.05 “Permitted Land Uses”

Table 1331.05.01: Permitted Land Uses

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
Caretaker's Residence	C	C	C	C			C		C	C	<u>P</u>	
Mineral Extraction Extractive Industry											P	<u>31</u>
Industry, Heavy											C	<u>32</u>
Manufacturing, Heavy											P	<u>32</u>

III.

Staff recommended revisions to Article 1331.06 “Supplemental Regulations Pertaining to Permitted Land Uses Table”

- (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 (7) years following annexation. If development of significant impact site plan approval is not obtained within three (3) 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 (18) months. After eighteen (18) months, the caretaker’s residence on an extractive industry development site must meet the supplemental regulations for all single-family dwelling units provided in Article 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.

IV.

Staff recommended revisions to Article 1355 "I-1, Industrial District"

1355.01 PURPOSE.

The purpose of the Industrial District (I-1) is to allow for the development of research and industrial parks, wholesale business, manufacturing and the like while ensuring the health and safety of Morgantown residents. Industrial districts are intended to be located on major thoroughfares where truck traffic does not disrupt local streets.

1355.02 PERMITTED AND CONDITIONAL USES.

See the Permitted Land Use Table 1331.05.01.

1355.03 LOT PROVISIONS.

- (A) The minimum lot size shall be two (2) acres.
- (B) The minimum lot frontage shall be 60 feet.
- (C) The minimum lot depth shall be 100 feet.
- (D) Maximum lot coverage shall be 40 percent.

1355.04 SETBACKS AND ENCROACHMENTS.

- (A) The following setbacks shall be required for all principal structures, except as otherwise provided in Section 1363.02(B) Yard, Building Setbacks and Open Space Exceptions:
 - (1) Minimum Front setback 50 feet
 - (2) Minimum Side setback 30 feet
 - (3) Minimum Rear setback 30 feet
- (B) The minimum setback for accessory structures on a lot shall be five (5) feet from the rear property line and five (5) feet from each side property line when abutting another I-1 District zoned property. No accessory structures are permitted within the front setback, or within the side setback along a public or private street. Where an I-1 District abuts another zoning district, a minimum setback of thirty (30) feet shall be provided for the yard along the shared zoning district boundary line.
- (C) On a corner lot, the front lot line shall be the lot line having the shortest dimension along the street right-of-way line. The required side yard setback on the side facing a street shall be one and one-half (1.5) times the normal side yard setback requirement.

1355.05 BUILDING HEIGHT AND USE.

- (A) The maximum height of a principal structure shall not exceed sixty-five (65) feet, except as provided in Section 1363.02(A), Height Exceptions.
- (B) The maximum height of an accessory structure shall not exceed thirty-five (35) feet.

1355.06 PARKING AND LOADING STANDARDS.

All uses within this district shall conform to the off-street parking and loading requirements in Article 1365, Parking, Loading and Internal Roadways.

1355.07 LANDSCAPING.

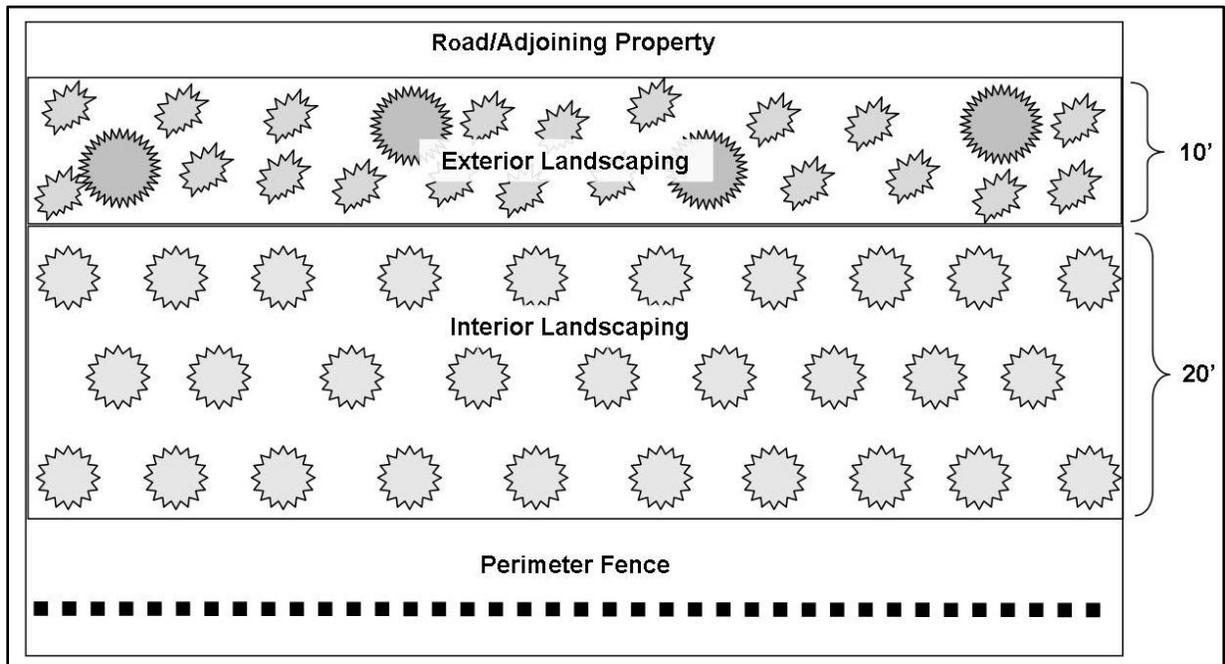
Landscaping and screening as required in Article 1367, Landscaping and Screening, shall be provided for all uses, unless otherwise noted.

1355.08 PERFORMANCE STANDARDS.

- (A) A ~~Light Industrial~~ Use is one which ordinarily uses only light machinery; is conducted entirely within enclosed substantially-constructed buildings; does not use the open area around such buildings for storage of raw materials or manufactured products or for any other industrial purpose and conforms to the following performance standards:
- (1) Smoke. No smoke is emitted of a density greater than No. 1 according to the Ringlemann's Scale, except that smoke of a density not in excess of No. 2 of Ringlemann's Scale shall be permitted for a period not in excess of six minutes in any hour.
 - (2) Fly Ash. No particles from any flue or smokestack shall be permitted to escape beyond the confines of the building in which it is produced.
 - (3) Dust. No dust of any kind produced by the industrial operations shall be permitted to escape beyond the confines of the building in which it is produced.
 - (4) Odor. No noxious odor of any kind shall be permitted to extend beyond the lot line.
 - (5) Gases and Fumes. No gases or fumes toxic to persons or injurious to property shall be permitted to escape beyond the building in which they occur.
 - (6) Glare. No glare shall be seen from any street or any residential area.
 - (7) Vibration. No intense earth shaking vibration shall be created or maintained by any industry beyond the property on which it is located.
 - (8) Noise and Sound. A maximum of 70 decibels at the property line is permitted. Noise is required to be muffled so as not to become objectionable due to intermittence, beat frequency or shrillness. Sound may equal but may not exceed street traffic noise in the vicinity during a normal day shift work period.
 - (9) Exhaust Control. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with any operation shall not be discharged into the open air unless it is equipped with an exhaust muffler, mufflers, or an exhaust box constructed of noncombustible materials designed and installed to sufficiently suppress disruptive noise and vibrations and prevent the escape of obnoxious gases or fumes. All such equipment shall be maintained in good operating condition according to manufacturer's specifications.
- (B) A ~~Heavy Industrial~~ or Heavy Manufacturing Use is one which requires both buildings and open area for manufacturing, fabricating, processing, extraction, heaving, repairing, dismantling, storage or disposal of equipment, raw materials, manufactured products or wastes ~~except certain conditional uses listed in Table 11 hereinafter~~, and provided the use conforms to the following performance standards:
- (1) Smoke. No smoke is emitted of a density greater than No. 2 according to the Ringlemann's Scale, except that smoke of a greater density shall be permitted for a period not in excess of six minutes in any one hour.
 - (2) Fly Ash. No particles from any flue or smokestack shall exceed 0.3 grains per cubic foot of flue gas at a stack temperature of 500 degrees Fahrenheit.

- (3) Dust. No dust of any kind produced by ~~on the industrial operations~~ development site shall be permitted to escape beyond the limits of the property being used. Watering, wetting or other methods or materials must be used to control dust to adjacent properties. Watering, wetting, chemical suppression, or any other dust control measures which result in deposition of the dust control media and/or the captured dust upon the ground surface, or upon surfaces draining to the ground surface, shall be subject to regulation under City Code Article 929 "Stormwater Management and Surface Water Discharge Control" of the City of Morgantown.
- (4) Odor. No noxious odor of any kind shall be permitted to extend beyond the lot lines.
- (5) Gases and Fumes. No gases or fumes toxic to persons or injurious to property shall be permitted to escape beyond the building in which they occur.
- (6) Glare. No glare shall be seen from any street or any residential area.
- (7) Vibration. No intense earth shaking vibration shall be created or maintained by any industry beyond the property on which it is located.
- (8) Noise and Sound. A maximum of 70 decibels at the property line is permitted. Noise is required to be muffled so as not to become objectionable due to intermittence, beat frequency or shrillness. Sound may equal but not exceed street traffic noise in the vicinity during a normal day shift work period.
- (9) Exhaust Control. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with any operation shall not be discharged into the open air unless it is equipped with an exhaust muffler, mufflers, or an exhaust box constructed of noncombustible materials designed and installed to sufficiently suppress disruptive noise and vibrations and prevent the escape of obnoxious gases or fumes. All such equipment shall be maintained in good operating condition according to manufacturer's specifications.
- (10) Perimeter Landscaping and Fencing. For the purpose of screening, buffering, and security, the following improvements shall be installed within thirty (30) days after commencement of development.
 - (a) Landscaping. Where a heavy industry, heavy manufacturing, or extractive industry development site abuts a nonindustrial property (zoned or used) or public or private street, a thirty (30) foot landscaping transitional yard shall be installed the length of said common border as follows:
 - (i) A ten (10) foot wide exterior landscaping transition area containing three (3) to four (4) medium to large trees and fifteen (15) to twenty (20) evergreen shrubs per 100 linear feet.
 - (ii) A twenty (20) foot wide interior landscaping transition area containing parallel, staggered and/or concentric rows of evergreen trees or evergreen hedge planted eight (8) to twelve (12) feet on center per 100 linear feet.
 - (iii) Trees shall have a minimum two inch (2) caliper and shrubs shall be at least three (3) gallons in size.
 - (b) Fencing. A minimum ten (10) foot black vinyl-coated chain link fence must be erected the entire perimeter of a heavy industry, heavy manufacturing, or extractive industry development site between the landscaping transitional yards and the development site. Prominently displayed no trespassing signs are required on all four or more sides of the perimeter fencing.

Graphic 1355.08.01: Perimeter Landscaping and Fencing – Industry



- (c) Entrance Gate specifications. All perimeter fences shall be equipped with at least one (1) entrance gate. The gate shall meet the following specifications:
- (i) Each gate shall be not less than twelve (12) feet wide and be composed of two (2) gates, each of which is not less than size (6) feet wide, or one (1) sliding gate not less than twelve (12) feet wide. If two (2) gates are used, gates shall latch and lock in the center of the span;
 - (ii) The gates shall be provided with a combination catch and locking attachment device for a padlock, and shall be kept locked except when being used for access to the site; and,
 - (iii) The person in charge of the development site must provide the Morgantown Fire Department with a Knox Padlock or Knox Box entry system or equivalent on the gate to access the site in case of an emergency.
- (d) Administrative Adjustment. The Planning Director may approve administrative adjustments to the perimeter landscaping and fencing design if it is found that the adjustments:
- (i) Are consistent with the spirit and intent of the landscaping and fencing requirements; and,
 - (ii) Will not adversely affect the proposed development, use of adjacent property or neighborhoods, or obstruct sight lines at intersections; and,
 - (iii) Are necessary to accommodate an alternative or innovative design that achieves the same or better degree the objective of the landscaping and fencing standard to be modified.
- (11) Signage. For development that involves the use, storage, or generation of highly flammable, toxic, explosive, or hazardous materials, the following signage shall be provided as approved or designated by the City Fire Marshal.

- (a) Prominently displayed permanent weatherproof **retroreflective** signs reading “DANGER NO SMOKING OR OPEN FLAME ALLOWED” shall be posted upon completion of the perimeter fencing at the entrance gate(s) or in any other appropriate location. Sign lettering shall be at least four (4) inches in height and shall be red on a white background or white on a red background.
 - (b) Prominently displayed permanent weatherproof labels must be located on each tank containing highly flammable, toxic, explosive, or hazardous materials indicating the exact chemicals that are contained in the tank. Sign lettering shall be at least six (6) inches in height, contrasting with the background color.
- (12) Waste Disposal. All waste and hazardous materials used, stored, or generated by the development may only be discharged into above-ground **and/or axle-mounted** tanks. Waste materials shall be removed from the site and transported to an **approved and permitted** off-site disposal facility no **less frequently** than every thirty (30) days. Wastewater stored in on-site above-ground **and/or axle-mounted** tanks shall be removed as necessary, **except:**
- (a) **Domestic sanitary sewage shall be discharged to a public sanitary sewer, as required under City Code Article 921 “Sewer Regulations” of the City of Morgantown. Such discharge shall conform to the rules and regulations of the Morgantown Utility Board; and,**
 - (b) **Certain limited process/industrial waste may be discharged to the public sanitary sewer, but only as allow and regulated under City Code Article 923 “Industrial Wastes” of the City of Morgantown. Any such allowed industrial discharge shall conform to the rules and regualtions of the Morgantown Utility Board.**
 - (c) **Any liquid, or semi-liquid, waste not characterized as domestic sanitary sewage or as allowed industrial discharge, as described in items (a) and/or (b) above, shall be disposed of as herein provided above.**
- (13) Security. At all times, the development site shall have a minimum of one security camera mounted inside the perimeter fencing. Signs shall be posted on the fence or wall of the site to indicate that activity on the site may be recorded by video surveillance. Camera systems shall be maintained in proper operating condition and shall be designed and located to meet the following requirements:
- (a) Capture clear video images (day and night) of all traffic entering and exiting the gate(s).
 - (b) Be equipped with motion detection technology.
 - (c) Be equipped with panning technology to pan immediately to any motion detected at or near the gate(s).
 - (d) Show the date and time of all activity on the footage.
 - (e) Be capable of being viewed at the monitoring facility.
- The person in charge of the development site shall maintain video data for a period of five (5) business days. At the request of City law enforcement officials, the person in charge of the development shall make available recorded footage required herein.
- (14) Storage of equipment. On-site storage of equipment is prohibited on the development site **except** when servicing on-going operations. No vehicle or item of machinery shall be parked or stored on any public street, right-of-way or in any development site driveway entrance which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires **except** that equipment which is necessary for the operations of the development site. The Morgantown Fire Department shall be the entity that determines whether equipment on the site constitutes a fire hazard.

- (15) Private roads and driveway entrances. Prior to the commencement of development, all private roads and driveway entrances to the development site shall be at least twenty-four (24) feet wide and have an overhead clearance of at least fourteen (14) feet. At a minimum, the road shall be surfaced with bituminous surface treatment (e.g., chip seal), however asphalt and concrete paving are preferred. Roads shall not be surfaced with gravel or caliche. All private roads shall have a concrete drive approach constructed in accordance with City design standards. In particular cases these requirements governing surfacing of private roads may be altered at the discretion of the City Engineer after consideration of all circumstances including, but not limited to, the following: distances from public streets and highways; distances from nonindustrial property (zoned or used); topographical features; nature of the soil; and, exposure to wind.
- (C) An Extractive Industry Use involves the extraction of minerals, including solids, such as coal and ores; liquids, such as crude petroleum; and gasses, such as natural gasses. In addition to the Heavy Industry or Heavy Manufacturing Use performance standards provided in Article 1355.08(B), extractive industry uses shall conform to the following performance standards:
- (1) Minimum area. The tract of land on which an extractive industry use is to be developed must have a minimum area of five (5) acres.
 - (2) External Setbacks. An extractive industry development must be a distance, calculated from the outermost boundary of its development site in a straight line without regard to intervening structures or objects, of no less than:
 - (a) 625 feet from the R-1, R-1A, R-2, R-3, and PUD Districts.
 - (b) 625 feet from the property boundary on which the following protected uses exist:
 - (i) A dwelling unit located within any zoning district other the R-1, R-1A, R-2, R-3, and PUD Districts.
 - (ii) A church or place of worship.
 - (iii) A hospital.
 - (iv) A public or private school (K-12).
 - (v) A day care facility.
 - (vi) A park.
 - (c) 100 feet from the 1% (100-year) floodplain.
 - (d) 1,000 feet from the Morgantown Utility Board public water supply intake.
 - (e) 1,000 feet from the 1% (100-year) floodplain of the Monongahela River south or upstream of the Morgantown Lock and Dam.
 - (3) External Setback Exception. With variance approval by the Board of Zoning Appeals, the external setbacks provided in paragraph (b) above may be reduced to not less than 300 feet when there is the written consent of sixty (60) percent of the surface property owners within the external setback exception radius area between 300 feet and 625 feet around said extractive industry development site. In the event such consent is not obtained, and upon providing evidence of an attempt to obtain written consent of sixty (60) percent of the surface property owners, then the distance may be reduced to not less than 300 feet with variance approval by the Board of Zoning Appeals. For protection of the public health, safety and welfare, the Board of Zoning Appeals may impose additional requirements for a reduction of such distance, and take into account the presence of natural or man-made barriers.
 - (a) External setback exception applicants shall adhere to the following written consent or objection verification methodology:

- (i) A consent/objection form provided by the Planning Department shall be used by the applicant to obtain consent or objection from all surface property owners as described above. Only one consent/objection form may be obtained from each property owner. Said form shall at a minimum include the name and contact information of the applicant and the operator; a description of the proposed extractive industry development; a map illustrating the location and extent of the proposed extractive industry development site and the external setback exception radius area; the name and address of the surface property owner; the tax map and parcel number(s) owned by the individual surface property owner; and, signature lines to provide written consent or objection by the individual surface property owner.
- (ii) The applicant shall submit to the Planning Department a complete list of the names and addresses of all property owners for parcels that are, in whole or in part, within 625 feet of the proposed extractive industry development site. Such information shall be obtained from the Monongalia County Assessor's Office.
- (iii) The applicant shall be responsible for sending by certified mail the consent/objection form described above to all property owners with the radius of 300 feet and 625 feet around the proposed extractive industry development site.
- (iv) For those surface property owners for which consent or objection is not obtained on the form described above, evidence of an attempt to obtain same shall be provided by returned unopened certified mailings and/or certified mail receipts. Certified unopened mailings returned due to incorrect address shall not be sufficient evidence of an attempt to obtain consent or objection.
- (b) Applicants seeking a reduction of the external setback shall submit all obtained consent/objection forms, returned unopened certified mailings, certified mail receipts, and a summary sheet of the results of the effort to obtain written consent or objection from all of the surface property owners within the external setback exception radius area. The summary sheet shall include at a minimum the following:
 - (i) A map illustrating the location of the proposed extractive industry development site and the external setback exception radius area.
 - (ii) Total number of properties within the external setback exception radius area.
 - (iii) Total number of property owners within the external setback exception radius area.
 - (iv) Total number of consenting properting owners within the external setback exception radius area.
 - (v) Total number of objecting property owners within the external setback exception radius area.
 - (vi) Total number of nonresponsive property owners within the external setback exception radius area.
 - (viii) Total number of returned unopened certified mailings.
 - (ix) Total number of certified mail receipts.
 - (x) Total number of obtained consent/objection forms.
- (c) Applicants shall use ethical methods to obtain written consent/objection forms. The Board of Zoning Appeals should reject an external setback exception variance request if it finds that there is evidence of coercion, deception, compensation, or similar ethical misconduct on behalf of the applicant seeking a reduction of the external setback.

- (d) Pursuant to Article 1381.03(E) of this ordinance, at least ten (10) days prior to the Board of Zoning Appeals hearing on the external setback exception variance approval, the applicant shall notify all owners of property within 625 feet of the public hearing by mail.
- (4) Signage. A sign shall be prominently displayed at the perimeter gate(s) enclosing the development site. Such sign(s) shall be durable weatherproof material, maintained in good condition and, unless otherwise required by the City, shall have a surface area of not less than two (2) square feet nor more than four (4) square feet and shall be lettered with the following:
- (a) Mine, quarry, or well name and number.
 - (b) Name of operator.
 - (c) The emergency 911 number.
 - (d) Telephone numbers of two (2) persons responsible for the extractive industry site who may be contacted in case of emergency.
- (5) Water Impoundment. Freshwater impoundments are permitted on extractive industry development sites. Freshwater impoundments may be earthen impoundments or semi-portable **axle-mounted** above-ground storage tanks.
- (a) Freshwater storage shall be prevented from **putrefaction and/or becoming a mosquito breeding habitat.**
 - (b) Freshwater earthen pits shall be securely enclosed by a six (6) foot tall black vinyl-coated chain link fence.
- (6) Secondary containment. Secondary containment using existing best practices shall be required for all equipment and storage facilities; be capable of containing a release of **no less than one hundred twenty-five (125) percent of the total combined volume of all storage containers; and, have a freeboard of no less than eight (8) inches.** In addition, for oil and gas extraction development, **an earthen perimeter berm of not less than two (2) feet shall be developed around the entire development site and meet at a minimum the following standards:**
- (a) The earthen perimeter berm shall confine a containment volume of no less than one hundred twenty-five (125) percent of the total combined volume of all liquids utilized in the preparation, drilling, and completion of the well.
 - (b) The areas confined within the secondary containment facilities, and within the earthen perimeter berm, including the walls of the secondary containment facilities and the earthen berm, shall all be covered by a synthetic impermeable liner. Joints and seams within said liner shall be chemically or thermally fused so that it serves as a single, continuous unit.
 - (c) Access roadways into the development site shall be configured and designed in such a way as to not compromise the containment integrity of the perimeter earthen berm.
- (7) Waste Disposal.
- (a) Portable closed steel storage tanks must be used for storing liquid hydrocarbons. Tanks must meet American Petroleum Institute (API) standards. All tanks must have a vent line, flame arrester, and pressure relief valve. No tank battery shall be within one hundred (100) feet of any combustible structure.
 - (b) Drilling mud, cuttings, liquid hydrocarbons, **flowback, produced water,** and all other field waste derived or resulting from or connected with extraction shall only be discharged into above-ground **axle-mounted** tanks (closed loop mud **and closed loop fracking system).**

- (c) Waste materials shall be removed from the site and transported to an off-site disposal facility no less frequently than every thirty (30) days. Wastewater stored in on-site tanks shall be removed as necessary.
 - (d) All waste disposal shall be documented using manifest procedures. The manifests shall record the complete chain of custody from the retrieval at the development site to the ultimate disposal location, for all volumes/units of waste generated and removed from the development site. All such documentation shall be provided to the City of Morgantown and/or the Morgantown Utility Board upon their request.
- (8) Gas emission or burning. As a temporary and necessary safety function of the extractive industry operation, venting or burning by open flame (e.g., flaring) is exempt from light and glare regulations as required in this Article and acceptable under the following conditions:
 - (a) No person shall allow, cause, or permit gases to be vented into the atmosphere or to be burned by open flame except as allowed by applicable state and federal laws, rules, and regulations.
 - (b) Such venting or open flame shall not be located closer than three hundred (300) feet from any building not used in development site operations. Every reasonable effort should be made to screen such venting or open flame in such a way as to minimize detrimental effects to adjacent property owners.
 - (c) In order to ensure community awareness and security, the following notifications must be provided by the operator before any temporary burning or flaring activity is to begin:
 - (i) At least ten (10) calendar days, public educational press release and advance notice sent to all primary local news media outlets.
 - (ii) At least five (5) calendar days, published notice in a local newspaper of general circulation.
 - (iii) At least 72 hours, written notification to the City Fire Chief and MECCA 9-1-1.
 - (d) Flaring or burning of gas or petroleum of any kind after an oil or gas well is in production is prohibited.
- (9) Security. In addition to the standards provided in 1355.08(B)(13) above, camera systems shall be designed and located to meet the following requirements:
 - (a) Be equipped to capture clear video images (day and night) of all production equipment located on the site.
 - (b) Be equipped with panning technology to pan immediately to any motion detected at or near production equipment located on the site.
- (10) Cleanup and Maintenance.
 - (a) With the exception of freshwater, any spill, leak, or malfunction resulting in five (5) gallons or more shall be reported within twenty-four (24) hours to the Morgantown Utility Board and the West Virginia Department of Environmental Protection. Regardless of the amount of fluid resulting from the spill, leak, or malfunction, the operator shall remove or cause to be removed all waste materials from any public or private property affected by such spill, leak, or malfunction. Clean-up operations must begin immediately.
 - (b) The twenty-four (24) hour reporting period provided in item (a) above shall apply to discharges occurring within a containment area of the development site. For any discharge which occurs outside of a containment area, the Morgantown Utility Board and the West Virginia Department of Environmental Protection shall be notified immediately.

- (c) Rainfall onto the development site for which containment barriers are required shall be captured by the required containment barriers and be collected and disposed of as is required for spilled wastes, except the occurrence of rainfall shall not require report notification to the Morgantown Utility Board and/or the West Virginia Department of Environmental Protection. Rainfall may not be left to undermine the capability of secondary containment to contain a release of no less than one hundred twenty-five (125) percent of the total combined volume of all storage containers.
 - (d) The development site and public space within one hundred (100) feet shall at all times be kept free of debris, pools of water or other liquids, contaminated soil, weeds, brush, trash, or other waste material.
 - (e) Oil and gas extraction development. After well drilling has been completed and the well is either producing or temporarily plugged for later production and delivery to market, the operator shall clean the drill site, remove derrick(s) and all appurtenant equipment thereto, complete interim restoration activities, and repair all property damage caused by such operations within ninety (90) days.
- (11) Site Restoration. Within six (6) months following the abandonment of an extractive industry development site, including permanent well plugging, the operator shall be responsible for the restoration of the development site to its original condition as nearly as practicable. Abandonment shall be approved by the City Engineer after restoration of the development site has been accomplished in conformity with the following requirements at the discretion of the City Engineer:
- (a) All production, derricks, tanks, towers, and other appurtenant surface equipment and installations shall be removed from the development site.
 - (b) All concrete foundations, piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the development site, unless otherwise directed by the City.
 - (c) All holes and depressions shall be filled with clean, compactable soil.
 - (d) All waste, refuse or waste material shall be removed from the development site.

(G D) Provisions and Exceptions to Light Industrial and Industrial Uses.

- (1) Parking space requirements may be waived by the Board of Zoning Appeals where 50 percent or more of the area in a block was occupied by business or industrial structures at the time of passage of this Ordinance.
- (2) One-half of an alley abutting the rear of a lot may be included in the rear yard, but such alley space shall not be included for loading and unloading berths.
- (3) Chimneys, cooling towers, elevator bulkheads, fire towers, penthouses, tanks, water towers, transmission towers, derricks or essential mechanical appurtenances may be erected to any height not prohibited by other laws or ordinances.

(D E) Supplementary Regulations.

- (1) There shall be one principal entrance to the industrial site from any major thoroughfare bordering the tract, which shall be designed so that traffic at its intersection with the major thoroughfare may be controlled and so that there will be adequate storage space for traffic destined to enter the thoroughfare or to leave the industrial site.
- (2) There shall be direct entrances or exits from parking areas or structures onto the adjoining major thoroughfare, but a service drive parallel to the main traffic-way may be provided for such access. Traffic on the service drive shall enter the main traffic-way via the principal entry.

- (3) The owner or owners shall provide a plan for the installation of adequate facilities for the disposal of human and industrial wastes meeting the approval of the State Department of Health.
- (4) The owner or owners of the site shall establish in the restrictions, which are a part of the plot for the subdivision, a perpetuating organization for the maintenance of the industrial site, such as roads and planting areas, the approval of building plans and other improvements, and the future maintenance of the site.

V.

Staff recommended revisions to Article 1365.04 “Determining the Number of Spaces Required”

Table 1365.04.01: Minimum Off-Street Parking Requirements

Use	Minimum Off-Street Parking Requirement
<u>Industry, Heavy</u>	<u>1 space per employee plus 1 space per vehicle used in the operation of the industry plus 5 customer/visitor spaces</u>
<u>Industry, Light</u>	<u>1 space per employee plus 1 space per vehicle used in the operation of the industry plus 5 customer/visitor spaces</u>
Mineral Extraction <u>Extractive Industry</u>	1 space per employee plus 1 space per vehicle used in the operation of the facility <u>plus 5 customer/visitor spaces</u>

VI.

Staff recommended revisions to Article 1385 "Site Plan Review"

1385.01 SITE PLAN REVIEW REQUIRED.

No land within the jurisdiction of the City of Morgantown shall be developed or altered for the purpose of constructing buildings or establishing uses without first having received site plan approval from either the Planning Department staff, or the Morgantown Planning Commission or the Morgantown Board of Zoning Appeals. It shall be the duty of the Planning Director, or his/her designee, in conjunction with other appropriate departments and agencies, to perform complete and thorough review of all plans submitted to the Planning Department.

1385.02 APPLICATION.

- (A) All applications for site plan review shall be made on application forms prescribed by the Planning Department and follow established submittal deadlines.
- (B) Major development projects often become issues of significant contention between applicants and residents living adjacent to and in the vicinity of the property to be rezoned. Too often this results in difficult and argumentative public hearings before the Municipal Planning Commission and City Council. In most cases, opposition to a rezoning request is based on legitimate concerns over the well-being and preservation of a neighborhood, but sometimes opposition results from a simple lack of communication and understanding between the applicant and the neighborhood residents. The City, therefore, strongly advises any person that is considering applying for a DSI or a Major DSI to discuss the proposal with residents living within 200 feet of the property to be rezoned and with the leadership of any organized neighborhood organizations that represent the area before making application to the Planning Department. The Department can assist by providing contact information for individuals who should be consulted.
- (C) All site plans for development in the B-4 district also shall be submitted to the Downtown Design Review Committee for review and recommendations prior to any formal public hearing or final approval.

1385.03 DESIGN AND IMPROVEMENTS REQUIREMENTS.

- (A) Requirements, standards and specifications for engineering design for construction of improvements for site plans shall be equal to or greater than the minimum requirements, standards, and specifications established for design and improvements by the City Engineer. In addition to the plan sheets specified below, the applicant shall submit a complete drainage report, including calculations and justifications. The City Engineer may approve and/or require other engineering designs or practices when deemed necessary.
- (B) The proper management of storm water runoff is essential in the land development process. The City has adopted a separate storm water management ordinance that considers criteria related to total disturbed area, total/modified impervious area, sedimentation and erosion control and other criteria. Development plans are reviewed for, and must demonstrate compliance with this ordinance.

1385.04 SITE PLAN REVIEW.

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

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

1385.05 REVIEW THRESHOLDS.

In order to determine what type of review a project receives, the following standards have been established and noted for specific land uses in the land use table of this Ordinance.

- (A) Developments of Significant Impact may include but are not limited to:

- Residential Projects: 12 to 99 dwelling units
- Commercial Projects: 15,000 square feet of gross floor area
- Office / Institutional Projects: 15,000 square feet of gross floor area
- Industrial Projects: 0 square feet to 99,999 square feet of gross floor area
- Mixed Use Projects: 15,000 square feet of gross floor area

- (B) Major Developments of Significant Impact may include but are not limited:

- Residential Projects: 100 or more dwelling units
- Commercial Projects: 100,000 or more square feet of gross floor area
- Office / Institutional Projects: 100,000 or more square feet of gross floor area
- Industrial Projects: 100,000 or more square feet of gross floor area
- Mixed Use Projects: 100,000 or more square feet of gross floor area

1385.06 TYPE I: ADMINISTRATIVE REVIEW OF SIMPLE SITE PLANS.

- (A) All applications for permits for single family residential and two-family residential primary and secondary structures shall be accompanied by the following:

- (1) A site plan drawn to scale, that includes the following for the use of the Planning Director:
- (a) The actual dimensions, size, square footage, and shape of the lot to be built upon;
 - (b) The exact sizes and locations on the lot of existing structures, if any;
 - (c) The location(s), square footage(s), and dimensions of ~~the~~ all proposed principal, accessory, and/or temporary structure(s) and/or alteration(s);
 - (d) The location of the lot with respect to adjacent rights-of-way and easements;
 - (e) The existing and proposed uses of the structure(s) and land;
 - (f) The location and dimensions of off-street parking and means of ingress and egress for such space;
 - (g) Height of all structures;
 - (h) Setbacks;

- (i) Grading plan;
- (j) Stormwater management plan;
- (k) Erosion and sediment control plan; and,
- (l) Signature of applicant.

1385.07 TYPE II: ADMINISTRATIVE REVIEW OF DETAILED SITE PLANS.

(A) All applications for permits for non-residential, multi-family structures, and temporary uses that do not constitute a development of significant impact, shall be accompanied by the following:

- (1) A site plan (3 copies), drawn to scale, that includes the following for the use of the Planning Director:
 - (a) The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant;
 - (b) The exact sizes and locations on the lot of existing structures, if any;
 - (c) The location(s), square footage(s), and dimensions of ~~the~~ all proposed principal, accessory, and/or temporary structure(s) and/or alteration(s);
 - (d) The location of the lot with respect to adjacent rights-of-way;
 - (e) The existing and proposed uses of the structure(s) and land;
 - (f) The number of employees, families, housekeeping units, bedrooms, or rental units the structure is designed to accommodate;
 - (g) The location and dimensions of off-street parking and means of ingress and egress for such space;
 - (h) Height of all structures;
 - (i) The clear zone for structures similar to silos, grain bins, windmills, chimneys, stacks, spires, flag pole, skylights, derricks, conveyors, cooling towers, observation towers, water tanks, telecommunication facilities, etc. in excess of fifty (50) feet in height;
 - (~~j~~ j) Setbacks;
 - (~~j~~ k) Buffer yard and screening, if applicable;
 - (~~k~~ l) Location of garbage collection area and screening;
 - (~~l~~ m) Location of existing and/or proposed signsage;
 - (~~m~~ n) Layout of all internal roadways;
 - (~~n~~ o) Location and size of stormwater management facilities;
 - (~~o~~ p) Utility lines and easements;
 - (~~p~~ q) Grading plan;
 - (~~q~~ r) Erosion and sediment control plan; and,
 - (~~r~~ s) Signature of applicant.
- (2) Drainage plan and drainage calculations that bear the name, address, signature and seal of a registered professional engineer, with floodplain zones clearly denoted, a typical of all swales, and a design of the drop inlets;

- (3) If applicable, design of stormwater management facility and drainage calculations that bear the name, address, and seal of a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law and that meet the requirements of this ordinance, the City's stormwater management ordinance and all other applicable local, state and federal regulations;
 - (4) Parking and landscaping plan;
 - (5) Sign plan;
 - (6) Approved WV Division of Highways Access Permit, if applicable;
 - (7) Sediment and erosion control plan as approved by the West Virginia Department of Environmental Protection, ~~and~~ the City of Morgantown, and the Morgantown Utility Board;
 - (8) Any other such information concerning the lot or neighboring lots as may be required by the Planning Director to determine conformance with, and provide for the enforcement of, this ordinance; where deemed necessary, the Planning Director may require that in the case of accessory structures or minor additions, all 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 by a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant;
- (B) No site plan shall be accepted unless it is complete and is verified as to the correctness of information given by the signature of the applicant attesting thereto.
 - (C) Site plans shall be reviewed by an AICP certified planner, and such reviews may include other agencies that the City believes to have a direct or indirect interest in the development site.
 - (D) At least five (5) days prior to planning staff conducting its review, the Planning Director shall notify the planning commissioner representing the ward in which the project is proposed that the plan will be reviewed.
 - (E) Site plans approved by the Planning Director authorize only the use, arrangement, and construction set forth in such approved site plans and no other use, arrangement or construction. Furthermore, the approval of a site plan shall not be construed to be approval of any violation of the provisions of this ordinance. The issuance of a building permit by the City based upon site plans given approval by the Planning Director shall not prevent the City from thereafter requiring the correction of errors in said site plans or from preventing operations from being carried on thereunder when in violation with this ordinance. Site plan approval does not eliminate the need to obtain an approved building permit and the applicant's responsibility to meet all other requirements established by local, state and federal regulations.
 - (F) One copy of the site plan submitted for a permit as required in subsection (C) above for the Planning Department shall be returned to the applicant after the Planning Director has marked such copy as either approved or disapproved as to the provisions of this ordinance and attested to same by his signature on such copy. The original, similarly marked, shall be retained by the Planning Director.

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

(A) Developments of Significant Impact are those that have a Citywide impact. Such impacts would typically involve the transportation network, environmental features such as parks or stream corridor, and local schools.

(1) All applications for a Development of Significant Impact shall be accompanied by the following:

(a) A site plan (14 copies), drawn to scale, that includes the following for the use of the Planning Director:

(i) The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a licensed land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant;

(ii) The exact sizes and locations on the lot of existing structures, if any;

(iii) The location(s), square footage(s), and dimensions of ~~the all~~ proposed principal, accessory, and/or temporary structure(s) and/or alteration(s);

(iv) The location of the lot with respect to adjacent rights-of-way;

(v) The existing and proposed uses of the structure(s) and land;

(vi) The number of employees, families, housekeeping units, bedrooms, or rental units the structure(s) is designed to accommodate;

(vii) The location and dimensions of off-street parking and means of ingress and egress for such space;

(viii) Height of all structure(s);

(ix) The clear zone for structures similar to silos, grain bins, windmills, chimneys, stacks, spires, flag pole, skylights, derricks, conveyors, cooling towers, observation towers, water tanks, telecommunication facilities, etc. in excess of fifty (50) feet in height;

~~(ix x)~~ Setbacks;

~~(x xi)~~ Buffer yard and screening, if applicable;

~~(xi xii)~~ Location of garbage collection area and screening;

~~(xii xiii)~~ Location of ~~sign~~ existing and/or proposed signage;

~~(xiii xiv)~~ Layout of all internal roadways;

~~(xiv xv)~~ Location of stormwater management facilities;

~~(xv xvi)~~ Utility lines and easements; and

~~(xvi xvii)~~ Signature of applicant.

(b) Grading plans and drainage plans and calculations are not required for Planning Commission site plan review, but shall be required prior to issuance of any building permits. Such plans shall be prepared by a registered design professional licensed by the State of West Virginia, and as authorized by West Virginia State law; and shall also meet all applicable local, state and federal regulations.

(c) A complete list of the names and addresses of all property owners for parcels that are, in whole or in part, within 200 feet of any property line of the lot(s) to be developed. Such information shall be obtained from the Monongalia County Assessor's Office.

(d) Parking plan.

- (e) Landscaping plan.
 - (f) Sign plan.
 - (g) Approved WV Division of Highways Access Permit, if applicable.
 - (h) Any other such information concerning the lot or neighboring lots as may be required by the Planning Director to determine conformance with, and provide for the enforcement of, this ordinance; where deemed necessary, the Planning Director may require that in the case of accessory structures or minor additions, all 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 by a registered land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant.
- (5 2) For ~~uses~~ development which, in the opinion of the City Engineer, may create excessive negative ~~traffic~~ impacts on traffic and/or dedicated City streets roadways, rights-of-way, or improvements in the immediate vicinity that serve the use, the City may require an analysis of the proposed development's impact on current or future traffic flows and/or dedicated City roadways, rights-of-way, or improvements, at the developer's expense, prepared by a qualified professional engineer. The Planning Commission may also table consideration of a development and refer such development to the City Engineer to ask his or her opinion as to whether a traffic impact study, transportation route plan, and/or transportation route protection agreement may be warranted.
- (a) Traffic Impact Study. If the traffic impact study indicates that the projected traffic impact of the use would result in a two (2) full letter grade decline in the existing Level of Service (e.g., going from a Level of Service B to a Level of Service D) of any dedicated City street directly serving the use, such finding may be considered sufficient grounds for denial of the project, or a requirement that sufficient improvements be made to said streets, at the developer's expense, or that the project be reduced in size and scope to the point where no such negative impact on the Level of Service results. Level of Service refers to the traffic grading system described in the latest edition of the Highway Capacity Manual, published by the Transportation Research Board.
 - (b) Transportation Route Plan. A transportation route plan shall include a map of routes and roads for equipment, supplies, chemicals or waste products used or produced by the development. The plan shall include a list of the length of all public roads that will be used for site ingress and egress to Morgantown corporate limits. The map shall also show the location of any areas within the City along the transportation route proposed for truck staging or storage related to the development's operations. The City may restrict the hours of operation of vehicles when the proposed transportation route passes through a designated school zone, heavily used roadways or intersections, or along local residential streets. In the event of construction detours, roadway closure or roadway deterioration along an approved transportation route, the City Engineer may amend the approved transportation route plan.
 - (c) Transportation Route Protection Agreement. For development which, in the opinion of the City Engineer may damage or create excessive deterioration to dedicated City roadways, rights-of-way, or improvements, the City may require a transportation route protection agreement. The agreement shall stipulate that the City roadways, rights-of-way, and improvements shall be maintained equal to or better than the original condition; stipulate any required major improvements and restrictions; stipulate the manner in which dirt, dust, mud and debris is to be controlled from leaving the development site; and, required bond.
 - (i) For the purpose of this article, "Required Major Improvements" are those modifications to City roadways, rights-of-way, or improvements that are necessitated by the high volumes of heavy traffic anticipated for the development and may include but are not limited to sight distance improvements, signage,

signalization, road widening, construction of new roadways, and acquisition of rights-of-way.

- (ii) For the purpose of this article, "Restrictions" are requirements directed at the protection of the vehicular and pedestrian traveling public, including but not limited to routing, pilot vehicles, hours of operation, etc.
- (iii) For the purpose of this article, "Anticipated Damage" is the added potential stress placed on City roadways, rights-of-way, or improvements due to increased continuous use by heavy vehicles.
- (iv) The approved route(s) shall be filmed before commencement of development.
- (v) The person in charge of the development site shall provide a 24 hour point-of-contact for use by the City Engineer.
- (vi) Bond. A bond or similar surety acceptable to the City shall be based on the degree of anticipated damage to City roadways, rights-of-way, or improvements up to the following maximum amounts:

\$100,000 Paved Mile

\$ 35,000 Tar and Chipped Mile

\$ 25,000 Graveled Mile

- (3) Emergency Action Response Plan. For development that involves the use and/or storage of large volumes of highly flammable, toxic matter, or explosive materials, the City may require an emergency action response plan. A emergency action response plan shall, **at a minimum**:

- (a) Be submitted **for review** to and placed on file with the City Engineer, City Fire Chief, City Police Chief, **the Morgantown Utility Board**, and the Monongalia County **Homeland Security and Emergency Management Agency**.
- (b) Establish written procedures to minimize any hazard resulting from highly flammable, toxic matter, or explosive materials.
- (c) Identify and describe specific measures of how existing best practices will be managed and maintained regarding protection of the public and how practices are consistent with applicable federal, state, and local laws and regulations.
- (d) Be kept current with any additions, modifications, and/or amendments concerning all related activities including construction, facility upgrades, and processes and production associated with the use of highly flammable, toxic matter or explosive materials. Updated plans shall be submitted **for review** to and placed on file with the City Engineer, City Fire Chief, City Police Chief, **the Morgantown Utility Board**, and the Monongalia County **Homeland Security and Emergency Management Agency** within five (5) business days after any additions, modifications, and/or amendments to said plan.
- (e) Be kept on site, including updated plans.
- (f) Provide for:
 - (i) Prompt and effective response by the person in charge of the development site to emergencies regarding leaks or releases that can affect public health, safety, and welfare; fire or explosions; and natural disasters and severe weather.
 - (ii) Effective means to notify and communicate required and pertinent information to local fire, police, and public officials during an emergency.
 - (iii) The availability of personnel, equipment, tools, and materials as necessary at the scene of an emergency.
 - (iv) Measures to be taken to reduce public exposure to injury.

- (v) Emergency shutdown of highly flammable, toxic matter or explosive materials and related site.
 - (vi) The safe restoration of service and operations following an emergency or incident.
 - (vii) A follow-up incident investigation to determine the cause of the incident and require the implementation of corrective measures.
 - (viii) An emergency notifications page that indicates all emergencies must be reported to MECCA 9-1-1.
 - (ix) Drive-to-maps from public rights-of-way to the development site.
- (4) Hazardous Materials Management Plan. For development that involves the use, storage, or generation of hazardous materials and wastes, the City may require a hazardous materials management plan. A hazardous materials management plan shall, at a minimum:
- (a) Be submitted for review to and placed on file with the City Engineer, City Fire Chief, City Police Chief, the Morgantown Utility Board, and the Monongalia County Homeland Security and Emergency Management Agency.
 - (b) Include contact information for the owner, onsite manager, property manager, environmental manager, and tenants.
 - (c) Include operations information that includes but is not limited to the total number of employees and hours of operation for each day of the week; public access and whether it restricted or unrestricted; and, hazardous-waste generator.
 - (d) Include a site and facilities plan that includes but is not limited to floor layout with uses; hazardous materials storage areas and containers with methods of secondary containment; interior (floor drain) and exterior (stormwater) drainage systems with locations of connections to public sanitary and stormwater systems.
 - (e) Include and maintain an inventory of all hazardous materials and wastes used, stored, or generated by the development.
 - (f) Identify and describe specific measures of how existing best practices will be managed and maintained for the proper use, storage, disposal of hazardous materials and wastes; prevent pollution; reduce the risk of spills; how practices are consistent with applicable federal, state, and local laws and regulations.
 - (g) Include a spill contingency plan responding to spills of hazardous materials and/or wastes that includes but is not limited to emergency contacts; spill response procedures including cleanup protocol, supplies, equipment disposal; and employee training.
- (2 ~~5~~) No site plan shall be accepted unless it is complete and is verified as to the correctness of information given by the signature of the applicant attesting thereto.
- (3 ~~6~~) The Planning Department shall send written notification to property owners within 200 feet of any property line of the development of the time, date and location of the Planning Commission meeting at which the project will be considered.
- (4 ~~7~~) The Planning Director may require that the lot and location of the building thereon shall be staked out on the ground before construction of a dwelling unit or primary structure is begun. The Planning Director, where deemed appropriate, may require the same for accessory structures or minor additions. In any case, it shall be the owner's responsibility to ensure that a structure is placed on his property according to his approved site plan (zoning review) and as required by any applicable City ordinance.

- (6 8) Site plans approved by the Planning Commission authorize only the use, arrangement, and construction set forth in such approved site plans and no other use, arrangement or construction. Furthermore, the approval of a site plan shall not be construed to be approval of any violation of the provisions of this ordinance. The issuance of a building permit based upon site plans given approval by the Planning Commission shall not prevent the Planning Director from thereafter requiring the correction of errors in said site plans or from preventing operations from being carried on thereunder when in violation with this ordinance. Site plan approval does not eliminate the need to obtain an approved building permit and the applicant's responsibility to meet all other requirements established by local, state and federal regulations.
- (7 9) One copy of the site plan submitted for a permit to the Planning Department shall be returned to the applicant after the Planning Director has marked such copy as either approved or disapproved as to the provisions of this ordinance and attested to same by his/her signature on such copy. The original, similarly marked, shall be retained by the Planning Director.
- (10) Electronic Submittal of Final Plans and Other Documents. Final plans or other documents required to be submitted under the Type III Site Plan review that will be archived must be submitted in an electronic format specified by the Planning Director as a condition to issuance of any type of permit, approval, or other action related to the final plans or documents. The Planning Director shall provide a schedule indicating which documents must be provided electronically, at which point during the approval process, and other information as necessary for archiving purposes.

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

Major developments of significant impact are those that are of such scope and scale that they have an impact on the region in terms of the transportation network, the environment, the schools, etc. Such projects could include regional shopping centers, ~~and~~ large scale residential developments, heavy industry, heavy manufacturing, and extractive industry. All applications for a Major Development of Significant Impact shall be accompanied by a site plan submitted under the seal and signature of a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law. All sheets shall be 24" x 36" size drawn to scale at a minimum 1"=50' and a maximum 1"=10' with the exception of the maps on Sheet One, unless otherwise approved by the City Engineer. Eighteen (18) copies of the site plans shall be submitted for review and shall observe the following format:

- (1) Sheet One (Title Sheet). The following information shall be submitted as part of Sheet One:
- (a) Full legal description with sufficient reference to section corners and boundary map of the subject project, including appropriate benchmark references;
 - (b) Name of the project;
 - (c) Name and address of the owner, developer, and person who prepared the plans;
 - (d) Total acreage within the project and the number of residential dwelling units or the gross square footage of non-residential buildings whichever is applicable;
 - (e) Existing zoning of the subject land and all adjacent lands;
 - (f) Boundary lines of adjacent tracts of land, showing owners of record;
 - (g) A key or vicinity map at a scale of one inch equals four hundred feet or less, showing the boundaries of the proposed project and covering the general area within which it is to be located;
 - (h) A statement of the proposed uses, stating the type and size of residential and non-residential buildings, and the type of business, commercial or industry, so as to reveal the effect of the project on traffic, fire hazards, or congestion of population;

- (i) Any existing or proposed covenants and restrictions affecting property owners and/or homeowners associations; and
 - (j) Statement of proposed starting and completion dates for the project, including any proposed phasing and sequencing.
- (2) Sheet Two (Existing Site Conditions). The following information shall be submitted as part of Sheet Two:
- (a) Location, widths, and type of construction of all existing streets, street names, alleys, or other public ways and easements, street classifications as per the approved regional transportation plan, railroad and utility rights-of-way or easements, parks, wooded areas, cemeteries, watercourses, drainage ditches, designated wetlands, low areas subject to flooding, permanent buildings, bridges, and other data considered pertinent by the Planning Commission or the Planning Director for the subject land, and within three hundred (300) feet of the proposed project or six hundred twenty-five (625) feet for extractive industry development;
 - (b) Existing water mains, fire hydrants, storm sewers, sanitary sewers, culverts, bridges, and other utility structures or facilities within, adjacent to, or serving the subject land, including pipe sizes, grades, and exact locations, as can best be obtained from public or private records;
 - (c) Existing contours based in U.S.G.S. datum with intervals of not more than two (2) feet. Elevations shall be based on sea level datum; and
 - (d) The water elevation at the date of the survey of rivers, lakes, streams, or designated wetlands within the project or affecting it, as well as the approximate high and low water elevation of such rivers, lakes, streams, or designated wetlands. The plan shall also show the boundary line of the regulatory 100-year flood. The plan shall also show the base flood elevation of the regulatory 100-year flood at any building location along with the elevation of the lowest finished floor. All elevations shall be based on sea level datum;
- (3) Sheet Three (Proposed Site Conditions). The following information shall be submitted as part of Sheet Three:
- (a) Location, widths, and type of construction of all existing and proposed streets, street names, alleys, or other public ways and easements, railroad and utility rights-of-way or easements, parks, wooded areas, cemeteries, watercourses, drainage ditches, designated wetlands, low areas subject to flooding, permanent buildings, bridges, and other data considered pertinent by the Planning Commission or the Planning Director for the subject land, and within three hundred (300) feet of the proposed project or six hundred twenty-five (625) feet for extractive industry development;
 - (b) Existing and proposed water mains, fire hydrants, storm sewers, sanitary sewers, culverts, bridges, and other utility structures or facilities within, adjacent to, or serving the subject land, including pipe sizes, grades, and exact locations, as can best be obtained from public or private records;
 - (c) Water Supply Plan. For development that involves the use of water at higher volumes than customarily associated with nonindustrial-type development, the City may require, in coordination with the Morgantown Utility Board, a water supply plan. A water supply plan must include at least the identification of the water source(s); the development and use of freshwater impoundments, if applicable; when and where water withdrawals will occur; necessary operational water volumes; potential competing water users; and, cumulative impact of the development's water consumption to the public water system, watersheds and/or groundwater.
 - (e d) Building setback lines, showing dimensions;

- (~~d~~ e) Full description and details, including engineering calculations, for provision of storm water drainage plans and facilities, as required by the City's stormwater management ordinance;
 - (e f) Internal and perimeter sidewalk system/pedestrian circulation plan; and
 - (~~f~~ g) Proposed contours with intervals of not more than two (2) feet. The plan shall also show the contour line for the floodway fringe boundary.
 - (~~g~~h) Show the location and detail plans for all trash dumpsters.
- (4) Sheet Four (Erosion Control Plan). The following information shall be submitted as part of Sheet Four and shall be reviewed prior to issuance of a building permit:
- (a) Location, widths, and type of construction of all existing and proposed streets, street names, alleys, or other public ways and easements, railroad and utility rights-of-way or easements, parks, wooded areas, cemeteries, watercourses, drainage ditches, designated wetlands, low areas subject to flooding, permanent buildings, bridges, and other data considered pertinent by the Planning Commission or the Planning Director for the subject land, and within three hundred (300) feet of the proposed project;
 - (b) Proposed contours with intervals of not more than two (2) feet.
 - (c) Details of terrain and area drainage, including the identity and location of watercourses, intermittent and perennial streams, receiving waters, and springs, and the total acreage of land that will be disturbed.
 - (d) The direction of drainage flow and the approximate grade of all existing or proposed streets.
 - (e) Detailed plans and locations of all surface and subsurface drainage devices, walls, dams, sediment basins, storage reservoirs, and other protective devices to be constructed with, or as part of, the proposed project, together with a map showing drainage area, the complete drainage network, including outfall lines and natural drainage ways which may be affected by the proposed development, and the estimated runoff of the area served by the drains.
 - (f) A description of the methods to be employed in disposing of soil and other material that is removed from the grading site, including the location of the disposal site.
 - (g) Measures for soil erosion and sediment control which must meet or ~~exceed~~ the methods and standards adopted by the City of Morgantown, the Morgantown Utility Board, and by the West Virginia Department of Natural Resources and/or (as set forth in the West Virginia Handbook For Erosion Control in Developing Areas) and which must comply with the design principles, performance standards, and requirements set forth in this chapter.
 - (h) A schedule of the sequence of installation of planned erosion and sediment control measures as related to the progress of the project, including the total area of soil surface that is to be disturbed during each stage, the anticipated starting and completion dates, and a schedule for the maintenance of such measures.
 - (i) Include the following notes on the sheet:
 - (i) "All erosion control practices shall be in accordance with the WVDNR "West Virginia Handbook For Erosion Control In Developing Areas" dated October 1992 and the SCS "Field Office Technical Guide."
 - (ii) "The City Engineer has the right to require additional erosion control measures in the field as conditions warrant."
 - (j) Copies of the letter of intent and response from the Monongalia County Soil and Water Conservation District office for compliance, when required.

- (k) Any other information reasonably required by the Planning Commission or Planning Director to properly evaluate the plan.
- (5) Sheet Five (Landscape Plan). A landscape plan prepared to the standards specified in this zoning ordinance.
- (6) Sheet Six (Plat-like dedication sheet, if necessary). The following information shall be submitted as part of Sheet Five if a plat-like dedication document for easements and rights-of-way is deemed necessary by the Planning Commission or its authorized designee:
 - (a) Parcels of land proposed to be dedicated or reserved for public use, or reserved for common use of all property owners within the project, with the proposed conditions and maintenance requirements, if any, shall be designated as such and clearly labeled on the plans;
 - (i b) Radii, internal angles, points of curvature; tangent bearings and lengths of all arcs, chord, and chord bearings; and
 - (ii c) Accurate location of all survey monuments erected, corners and other points established in the field in their proper places.
- (7) All sheets shall contain the following information:
 - (a) The proposed name by which the project shall be legally and commonly known;
 - (b) Date of survey, scale, and north point;
 - (c) All lots or outlots intended for sale or lease shall be designated with boundary lines and numbered or labeled for identification purposes;
 - (d) Private parks, common areas, or excluded parcels shall be designated as such and clearly labeled on the plans;
 - (e) A traffic impact study, if required by the City Engineer;
 - (f) Such other information as may be deemed necessary for proper review of the site plan by the Planning Director, City Engineer, or Planning Commission;
 - (g) All necessary reference points tying the subject property to the appropriate section corners;
 - (h) Each sheet shall be sealed and signed by the professional preparing the drawings;
 - (i) All sheets shall be tied to state plane coordinates for horizontal and vertical controls;
 - (j) Names and addresses of the parties within 200 feet of the property; and,
 - (k) The applicant must provide self-addressed stamped envelopes in sufficient quantities to provide notification to the parties identified in the item above. Return address is not required.

1385.09 TYPE IV: BZA REVIEW OF CONDITIONAL USE PERMITS.

- (A) All applications for a Conditional Use Permit shall be accompanied by the following:
 - (1) A site plan (8 copies), drawn to scale, that includes the following:
 - (a) The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a licensed land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law.
 - (b) The exact sizes and locations on the lot of existing structures, if any.
 - (c) The location(s), square footage(s), and dimensions of ~~the~~ all proposed principal, accessory, and/or temporary structure(s) or and/or alteration(s).

- (d) The location of the lot with respect to adjacent rights-of-way.
 - (e) The existing and proposed uses of the structure(s) and land.
 - (f) The number of employees, families, housekeeping units, bedrooms, or rental units the structure is designed to accommodate.
 - (g) The location and dimensions of off-street parking and means of ingress and egress for such space.
 - (h) Height of all structure(s).
 - (i) Setbacks.
 - (j) Buffer yard and screening, if applicable.
 - (k) Location of garbage collection area and screening.
 - (l) Location of sign existing and/or proposed signage.
 - (m) Roadway typical detail for internal roadways.
 - (n) Location and size of stormwater management facilities.
 - (o) Utility lines and easements.
 - (p) Grading Plan.
 - (q) Erosion and Sediment Control Plan.
 - (~~p~~ r) Signature of applicant.
- (2) Drainage plan and drainage calculations that bear the name, address, signature and seal of a registered professional engineer, with floodplain zones clearly denoted, and design details of all drainage facilities.
 - (3) If applicable, design of stormwater management facilities and drainage calculations that bear the name, address, and seal of a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law and that meet the requirements of this ordinance and the City's stormwater management ordinance and all other applicable local, state and federal regulations.
 - (4) Parking plan.
 - (5) Landscaping plan.
 - (6) Sign plan.
 - (7) Approved WV Division of Highways Access Permit, if applicable.
 - (8) Approved State of West Virginia NPDES General Permit for Storm Water Associated with Industrial (Construction) Activity, if applicable
 - (9) A traffic impact study, if required by the City Engineer.
 - (10) Any other such information concerning the lot or neighboring lots as may be required by the Planning Director to determine conformance with, and provide for the enforcement of, this ordinance; where deemed necessary, the Planning Director may require that in the case of accessory structures or minor additions, all 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 by a registered land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant.
- (B) No site plan shall be accepted unless it is complete and is verified as to the correctness of information given by the signature of the applicant attesting thereto.

- (C) The Planning Director may require that the lot and location of the building thereon shall be staked out on the ground before construction of a dwelling unit or primary structure is begun. The Planning Director, where deemed appropriate, may require the same for accessory structures or minor additions. In any case, it shall be the owner's responsibility to ensure that a structure is placed on his property according to his approved site plan (zoning review) and as required by any applicable city ordinance.
- (D) Site plans approved by the Board of Zoning Appeals may authorize the use, arrangement, and construction set forth in such approved site plans. Furthermore, the approval of a site plan shall not be construed to be approval of any violation of the provisions of this ordinance. The issuance of a building permit based upon site plans given approval by the Board of Zoning Appeals shall not prevent the Planning Director from thereafter requiring the correction of errors in said site plans or from preventing operations from being carried on thereunder when in violation with this ordinance. Site plan approval does not eliminate the need to obtain an approved building permit and the applicant's responsibility to meet all other requirements established by local, state and federal regulations.
- (E) One copy of the site plan submitted for a permit as required in subsection (C) above for the Planning Department shall be returned to the applicant after the Planning Director has marked such copy as either approved or disapproved as to the provisions of this ordinance and attested to same by his signature on such copy. The original, similarly marked, shall be retained by the Planning Director.

1385.10 OTHER REQUIRED SUBMITTALS.

The Applicant shall be required to submit written documentation of the following, when applicable:

- (A) Utility encroachment approvals;
- (B) Other local, state, and federal approvals, including other City boards, commissions, or departments;
- (C) Inspection and testing agreements with the Engineering Department;
- (D) Outside reviews as required by the City;
- (E) Easements and rights-of-ways not on a plat-like document shall be submitted in the form prescribed by the Engineering Department and include both a full legal description and a drawing exhibit; and,
- (F) Traffic impact study.

1385.11 RESUBMITTAL OF PLANS.

Submit five (5) complete sets of the final, revised plans showing conditions required by the Board of Zoning Appeals or the Planning Commission.

1385.12 REJECTION STATEMENT.

- (A) The Planning Director may reject any submittal for the following reasons:
 - (1) Incomplete application;
 - (2) The drawing set or supporting documents not complete; or
 - (3) Poor legibility.
- (B) After the review of an approved submittal, the Planning Director shall render a decision in writing, which decision shall consist of either:
 - (1) Approval of the site plan based upon the determination that the proposed plan complies with the general, design and performance standards set forth in this Ordinance;
 - (2) Disapproval of the site plan based upon the determination that the proposed project does not meet the general, design and performance standards set forth in this Ordinance;

- (3) Approval of the site plan subject to any conditions, modifications and restrictions as required by the Planning Director which will ensure that the project meets the general, design and performance standards set forth in this Ordinance.

1385.13 DEVIATION FROM THE APPROVED SITE PLAN AND ADDITIONS TO EXISTING STRUCTURES.

- (A) If the installation of the elements on the site plan materially deviate from the approved site plan (as determined by the Planning Director or City Engineer), the site plan shall be resubmitted to the Commission or Board for a new site plan approval in accordance with the procedures and requirements for site plan approval. For purposes of this section, material deviation is one that:
 - (A 1) Adds, removes, or reconfigures an internal street or relocates an access point;
 - (B 2) Affects a condition of site plan approval that was established by the Commission or Board during the site plan approval stage;
 - (C 3) Reduces the area devoted to open spaces or buffer landscaping;
 - (D 4) Involves the enlargement of a nonresidential building footprint on the site due to future additions that are more than 10 percent of the gross floor area or 5,000 square feet, whichever is less.
- (B) Minor changes that do not constitute material deviation shall be reviewed and approved by the City Planning and Engineering staff.

1385.14 RECORD DRAWINGS AND CERTIFICATE OF COMPLETION AND COMPLIANCE.

Where applicable, the developer or owner shall cause record drawings to be prepared and submitted to the Planning Director for all streets, drainage ditches and facilities, utility pipes and structures, and finished grade elevations for the project. Said record drawings shall be filed with the Planning Director prior to the release of any performance assurances. Record drawings, including the approved final plat shall be submitted in electronic format and in paper format, in a manner prescribed by the City Engineer.

- (A) General Requirements: Plans are to contain a certification statement that the improvements have been installed in reasonable compliance with the original design plans with respect to horizontal locations and grades and any deviations of locations, grade or material used are shown in these record drawings. Said certification is to be sealed and signed.
- (B) Specific Requirements:
 - (1) Grading or Development Plan(s)
 - Grades:
 - (a) Major drainage swales and percents of slope;
 - (b) Pad grades;
 - (c) Street grades;
 - (i) Centerline and curb if street is bituminous pavement with concrete curb. Centerline only if streets are concrete and placed with electronic control. (Maximum 50 ft. spacing)
 - (ii) All sag and crest points.
 - (d) Paved swales, if any, at 50 ft. intervals;
 - (e) Lake or pond if applicable;
 - (f) Locations of sidewalk ramps.

- (2) Plan and Profiles.
 - (a) Sanitary Sewers:
 - (i) Invert elevations and percents of slope;
 - (ii) Top of casting elevations;
 - (iii) Lateral locations based on distances along main from manholes;
 - (iv) Locations of each manhole or structure (to make sure they are sufficiently within designated easements to permit future excavation to system if needed);
 - (v) Designate any material change from design plans; where plans show any alternatives, indicate alternative actually used.
 - (b) Storm Sewers:
 - (i) Invert elevations and percents of slope;
 - (ii) Top of casting elevations;
 - (iii) Location of pipe and structures (to make sure they are within designated easements);
 - (iv) Designate any material change from design plans; where plans show any alternatives, indicate alternate actually used.
 - (c) Streets:
 - (i) Grades
 - (ii) All low and high points;
 - (iii) All percents of slope;
 - (iv) Any deviation of alignment;
 - (v) Grades and dimensions on acceleration and deceleration lanes if applicable.

1385.15 EXPIRATION DEADLINES.

- (A) Approval of site plans shall expire two years from the date of approval if the project has not been completed. The Planning Commission or the Board of Zoning Appeals, at its discretion, may grant extensions for a period up to two years.
- (B) Bonded improvements must be completed within two years of issuance of land alteration permit.
- (C) Request for extension must be submitted in writing stating the justification for the extension.

STAFF REPORT ADDENDUM B
TX12-01 / Administrative / Extractive Industries

Staff response to questions, comments, and/or concerns offered during the
April 12, 2012 Planning Commission Hearing

Question / Comment / Concern

Response

Is “caretaker’s residence” defined in the P&Z Code?

Yes, Article 1329.02 provides the following definition:

“CARETAKER’S RESIDENCE – A residence located on a premises with a main nonresidential use and occupied only by a caretaker or guard employed no the premises.”

Why was a period of ten years included in Article 1331.06(31)(b) concerning property annexed into the City? Can/should this expiration period be reduced?

According to an article titled “Information about Oil and Gas Leasing For Surface Owners Who Also Own Their Minerals” dated May 16, 2008 and available on the West Virginia Department of Agriculture website at <http://www.wvagriculture.org/images/Executive/LeasingAdviceWVa2008-05-16.pdf>, oil and gas leases generally have a primary term and a secondary term.

The primary term is generally that period from when the lease is signed until at least one well is drilled. Once a well is drilled and starts producing, the secondary term generally begins. The secondary term generally goes for an indefinite period of years as long as there are productive wells.

The specific periods of the primary and secondary terms are negotiated between the lessor and the lessee. The primary term is generally intended for the producer to secure the “asset” from competing producers and to allow the producer time to plan wells, arrange financing, hire a drilling company, etc.

Three to five years appears to be the standard amount of time for a primary term and many, if not most, lease agreements include an extension clause for the same or shorter period of time as the primary term.

Staff has revised the proposed text amendment for Article 1331.06(31)(b) from ten (10) years to seven (7) years in response to the concern that the term of the original recommendation was too long. Additionally, Staff included more definitive direction of an owner’s ability to secure his/her surface extraction development right by requiring a development of significant impact site plan approval to be obtained within three (3) years of the annexation. Article 1385.15 provides that site plan approval expires two (2) years from the date of approval and that the Planning Commission may grant extensions for a period up to two (2) years. The recommended timeline therefore reduces the period from ten (10) years to seven (7) years following annexation; motivates lease parties to move development forward sooner; and, enhances understanding, expectation, and stability in the real estate market.

Question / Comment / Concern

Response

Should the term “noxious” be used rather than “obnoxious” in Article 1355.08(A)(9) and Article 1355.08(B)(9)?

Webster’s New World Dictionary provides the following definitions:

“Obnoxious” – very unpleasant; objectionable; offensive.

“Noxious” – harmful to the health; injurious.

It is the opinion of the Planning Division that the term “noxious” may require objective proof that injury and/or harm to health has occurred while the reasonable person standard may be utilized to determine if a gas or fume is “obnoxious”. In other words, a gas or fume may be obnoxious but not necessarily noxious. Further, if a gas or fume is noxious, it will most likely be obnoxious. As such, Staff recommends that the use of the term “obnoxious” in these instances is appropriate and should remain.

What additional regulations are in place controlling highly flammable, toxic, explosive, and hazardous materials?

According to the City Fire Marshal, the State Fire and Building Codes regulate the maximum quantities, locations, distances, storage, etc. of hazardous chemicals and materials. According to Acting Director of the Monongalia County Homeland Security and Emergency Management Agency, facilities covered by the federal Emergency Planning and Community Right-to-Know Act (EPCRA) must submit an Emergency and Hazardous Chemical Tier II Inventory Report to his agency and the West Virginia Division of Homeland Security and Emergency Management.

Should the reference to “above-ground tanks” in Article 1355.08(B)(12) be modified to include mobile tanks used for similar purposes to ensure regulatory flexibility?

Yes, “axle-mounted” has been included in all areas where “above-ground tanks” is mentioned.

Should the “not less than” used in Article 1355.08(B)(12) and Article 1355.08(C)(7) be changed to “not more than”?

Yes, corrections have been made so that it states “no less frequently than” to avoid interpretation complications between “not less than” and “not more than”.

Should the term “accept” be replaced with “except” in Article 1355.08(B)(14)?

Yes, correction made.

Should the 100 feet setback requirement from the 1% floodplain provided in Article 1355.08(C)(2)(c) be increased to 1,000 feet?

It is the opinion of the Planning Division that the West Virginia “Natural Gas Horizontal Well Control Act” should be the guide from which more urban contextual development and performance standards are developed. Staff is recommending 100 feet from the 1% floodplain rather than the State’s standard of 100 feet from any perennial stream, natural or artificial lake, pond or reservoir, or a wetland. Staff’s recommendation significantly enhances the State’s effort to protect water resources by recognizing the importance of also protecting sensitive floodplain areas that affect water resources. Adding an additional linear setback distance of ten times Staff’s recommendation without specific reasoning may be argued as unreasonable and arbitrary and unnecessarily expose the City to legal challenges.

Question / Comment / Concern

Response

Why should the P&Z Code include an External Setback Exception as provided in Article 1355.08(C)(3)? Should it be removed? Should it be changed to no less than 500 feet rather than 300 feet? Should requisite written consent be 100% rather than 60%?

The primary intent of including an external setback exception is to guide the BZA's consideration of a related variance, a variance for which may be pursued regardless of whether or not the exception is provided in the P&Z Code. Staff's recommendation also restricts the extent of variance approval. The revised text amendment recommendation significantly enhances the exception process by providing more thorough procedures, conditions, and constraints.

The secondary intent of including an external setback exception is to allow the P&Z Code to take into account and make allowances for unforeseen circumstances and potential development opportunities. The recommended 300-foot provision was included as a relative 50% reduction of the setback while a 500-foot provision would only be a 20% reduction. It is the opinion of the Planning Division that a relative 50% or less reduction enhances the P&Z Code ability to take into account unforeseen circumstances.

It is the opinion of the Planning Division that requiring 100% written consent may be argued as unreasonable and arbitrary and unnecessarily expose the City to legal challenges.

Should the term "freshwater" be defined as used in 1355.08(C)(5)?

Staff has revised this provision by replacing the term "septic" with "putrefaction and/or becoming a mosquito breeding habitat". The proposed revision provides more guidance on what "freshwater" is not rather than attempting to define what "freshwater" is.

Should customer/visitor parking provisions be included for "Extractive Industry" uses in Table 1365.04.01 as is required for "Heavy Industry" and "Light Industry" uses?

Yes, correction made.

Should the site plan review process incorporate temporary structures?

Yes, the definition of "structure" has been revised for greater intelligibility and more clarification has been provided in the Type I, II, III, IV site plan review processes to include principal, accessory, and/or temporary structures.

Should the City utilize a roadway permit to allow access to certain roads for certain types of vehicles based on weight class in place of or in addition to the proposed Article 1385.08(A)(2)(b)?

According to the Director of Public Works and Engineering, Morgantown City Code already provides an overweight permitting process. Like the State, City roadway permits allow heavier vehicles on roads with posted weight restrictions. Conditions of a roadway permit may include maximum weight, frequency, time of day, etc. However, the overweight permit is limited to those City roads with posted weight restrictions.

The proposed "Transportation Route Plan" and "Transportation Route Protection Agreement" strengthens the City's ability to plan for and protect City facilities well in advance of development. Some instances may require a City-issued overweight permit while others may not.

It is the opinion of the Planning Division and the City Engineer that no changes to the proposed amendment are necessary.

Question / Comment / Concern

Response

Can the 200-foot notification requirement set forth in Article 1385.08(A)(2) be increased for extractive industry development?

It can, however requiring written notification within a larger area for a specific type of development may be argued as arbitrary and discriminatory and unnecessarily exposes the City to legal challenges.

Public notification includes a legal advertisement published in the *Dominion Post*, the posting of a sign on the site, neighbor notification letters, website posting, monthly listserv emails, and monthly e-newsletters. It is the opinion of the Planning Division that great effort is already in place to sufficiently notice the public of developments requiring Planning Commission and/or BZA review.

Increasing the 200-foot written notification distance regardless of development would be a fair and equitable approach rather than singling-out a specific type of development. However, an increase in this distance will place an unnecessary cost and time burden on the Planning Division.

Should evacuation planning, gas disbursement modeling, seismic testing, and leak detection standards be required?

Regional evacuation planning is performed by the Monongalia County Homeland Security and Emergency Management Agency. Requiring coordination of the developer's Emergency Action Response Plan and Hazardous Materials Management Plan with this agency is intended to ensure integration and maximize preparedness and cooperation.

It is the opinion of the Planning Division that standards for gas disbursement modeling, seismic testing, leak detection, and similar operational restrictions may be argued as usurping State drilling operations permitting and unnecessarily expose the City to legal challenges.

Should prior public notification of all hydraulic fracturing activities and events be required?

It is the opinion of the Planning Division that this provision may be argued as arbitrary and discriminatory and unnecessarily exposes the City to legal challenges.

Should flaring be restricted to underground?

It is the opinion of the Planning Division that alternative flaring technologies are continuing to evolve, particularly in this region. However, this type of restriction at this point in time may be argued arbitrary and discriminatory and unnecessarily exposes the City to legal challenges.

Should diesel equipment be prohibited by requiring all electric motors?

It is the opinion of the Planning Division that this provision may be argued as arbitrary and discriminatory and unnecessarily exposes the City to legal challenges.