



MORGANTOWN PLANNING COMMISSION

December 11, 2014
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.

Bill Kawecky, City Council

CASE NO: TX14-02 / Administrative / Article 1385 Site Plan Review

REQUEST:

Administratively requested Zoning Text Amendment to Article 1385 of the Planning and Zoning Code as it relates to Site Plan Review.

BACKGROUND and ANALYSIS:

Article 1385.08(A)(1) of the Planning and Zoning Code identifies what documents and information must be submitted with Type III Site Plan Applications for Developments of Significant Impact that are reviewed by the Planning Commission, which are attached hereto as Exhibit 1.

Exhibit 1 highlights that an "Approved WV Division of Highways Access Permit, if applicable" shall be submitted as a part of a Type III Site Plan application.

Many developments require approvals by various state and local authorities prior to the commencement of construction. Coordination and cooperation between authorities best serves the public's interest and expectation for efficient and effective administration of public policy.

It has been the consistent practice of the Planning Division and the Planning Commission for Type III Site Plans to uphold the spirit and intent of this access permit provision by ensuring that the Planning Commission's site plan approval is not complete until access permits are issued by the West Virginia Division of Highways (WVDOH) when state roadways are involved. This element is stated in the list of conditions that Planning Commission normally includes in its approvals.

West Virginia State Code §8A-5-12 provides that when the Planning Commission approves a site plan, its decision is a significant affirmative governmental act that establishes a vested property right, which cannot be later affected or taken outside of very narrow statutory circumstances and/or compensation. The Planning Division has been advised on several occasions by WVDOH that its permits establish a vested right to access WVDOH's roadway system. Permitting these vested rights to be established must be pursued collaboratively for the greater good of affecting local and state policies attentively and effectively.

The practice of including a site plan approval condition that, when applicable, WVDOH access permits must be issued prior to building permit issuance has been consistently, fairly, and equitably applied since the subject provision was enacted by City Council in 2006. City administration, the Planning Commission, and the Morgantown community are in the strongest position to affect site planning and best access management practice and design by working with WVDOH in this manner.

Enforcing a literal application of Article 1385.08(A)(1)(g) to require WVDOH access permit issuance prior to Planning Commission consideration of a Development of Significant Impact will result in the establishment of a vested access right well in

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



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advance of the community's awareness of a proposed development, which will undermine the City's ability to fully administer local land use and land development regulations and related approvals.

Moreover, WVDOH requires complete development plans to be submitted and approved as a part of its MM-109 permitting/agreement process. Requiring this to occur before presentation to the Planning Commission places a significant financial burden on the developer to complete site and development designs prior to knowing whether or not the Planning Commission will approve the development or require design modification. This burden is unnecessary and can cause time delays for construction and deliver; both of which are not customer-oriented and do not attract economic development confidence or interest.

The communication and review process that City Administration and WVDOH have implemented over the last several years has been successful. However, the Planning and Zoning Code, as written, does not facilitate this intergovernmental collaboration.

In a recent Administrative Appeal decision, the Board of Zoning Appeals concluded that the term "shall" in Article 1385.08(A)(1) must be interpreted and administered literally under the law. In other words, a Type III Site Plan Application may not be complete and may not be presented to the Planning Commission until an access permit from WVDOH is submitted by the petitioner.

City Administrative met with WVDOH officials recently to discuss the present challenge in the Planning and Zoning Code. Monongalia County Planning Office personnel joined the discussion as they too have similar site plan application requirements. Based on these discussions, the following zoning text amendment to Article 1385.08(A)(1)(g) has been developed to resolve this local legislative hindrance (deleted matter struck through; new matter underlined).

- (g) Approved WV Division of Highways Access Permit and/or Agreement, if applicable, is not required for Planning Commission site plan review, but shall be required prior to issuance of a building permit. In the event a traffic analysis or traffic impact study is required and the review of same involves WV Division of Highways, written/electronic correspondence from the WV Division of Highways documenting its approval of the traffic analysis or traffic impact study must be presented to the Planning Commission by the applicant prior to site plan approval.

Please note that similar provisions are currently provided in Article 1385.08(A)(1)(b) concerning the design and approval of grading and drainage related development.

STAFF RECOMMENDATION:

To ensure successful continuation of collaboration between the City of Morgantown and the West Virginia Division of Highways in reviewing development and furthering best access management practices, Staff respectfully advises the Planning Commission to forward a favorable recommendation to City Council to amend Article 1385.08(A)(1)(g) as presented above.

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Director

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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 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;

(x) Setbacks;



- (xi) Buffer yard and screening, if applicable;
 - (xii) Location of garbage collection area and screening;
 - (xiii) Location of sign existing and/or proposed signage;
 - (xiv) Layout of all internal roadways;
 - (xv) Location of stormwater management facilities;
 - (xvi) Utility lines and easements; and
 - (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 article; 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.