



MORGANTOWN PLANNING COMMISSION

December 11, 2014
6:30 PM
City Council Chambers

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

STAFF REPORT

CASE NO: TX14-03 / Administrative / Article 1393 Violation and Enforcement

REQUEST:

Administratively requested Zoning Text Amendment to Article 1393 relating to conformity with State Code.

BACKGROUND and ANALYSIS:

Article 1393 "Violations and Enforcement" of the Planning and Zoning Code provides remedies and penalties concerning violations. This municipal authority is derived from West Virginia State Code Chapter 8A, Article 10 "Enforcement Provisions." The following exhibits are attached hereto for comparison.

- Exhibit 1 – Article 1393 of the Planning and Zoning Code
- Exhibit 2 – West Virginia State Code Chapter 8A, Article 10, Paragraphs 1 – 3

There is a slight variation between the City's enforcement provisions and that of the State's, which has resulted in recent attempts to appeal administrative decisions to Circuit Court. Although the lawsuits were dismissed on the basis of a lack of standing, the City Attorney advised that the City's related enforcement provisions in the Planning and Zoning Code should be amended to better reflect State Code and legislative intent.

Specifically, Article 1393.01(A) includes that "...any person or persons, firm or corporation jointly or severally aggrieved" may institute a suit for injunction in the Circuit Court of Monongalia to restrain an individual or governmental unit from violating the Planning and Zoning Code (see highlighted text in Exhibit 1).

The intent of State Code Chapter 8A, Article 10 is to grant municipalities and counties necessary authority to enforce ordinances enacted locally under the West Virginia Planning Enabling Law. It is not stated in nor is it the intent of Article 10 to grant this enforcement authority to individuals.

Individuals, specifically "aggrieved persons" as defined under the law, may appeal decisions or orders of the Planning Commission or the Board of Zoning Appeals by filing a writ of certiorari with the Circuit Court, the process for which is provided in State Code Chapter 8A, Article 9 "Appeal Process." This due process provision is separate and distinct from the enforcement authority granted under Article 10.

To correct this discrepancy, the following revisions to Article 1393 of the City's Planning and Zoning Code have been developed in consultation with the City Attorney (deleted matter struck through; new matter underlined).

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



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ARTICLE 1393

Violations and Enforcement

1393.01 REMEDIES AND PENALTIES.

(A) The Planning Commission, the Zoning Board of Appeals, the City Manager, or any designated enforcement official, ~~or any person or persons, firm or corporation jointly or severally aggrieved,~~ may institute a suit for injunction in the Circuit Court of Monongalia County to restrain any individual or a governmental unit from violating the provisions of this ordinance.

(B) The Planning Commission, or the Board of Zoning Appeals, the City Manager, or any designated enforcement official may also institute a suit for mandatory injunction directing any individual, a corporation or a governmental unit to remove a structure erected in violation of the provisions of this ordinance.

(C) If the Planning Commission, the Zoning Board of Appeals, the City Manager, or any designated enforcement official is successful in any such suit, the respondent shall bear the costs of the action

~~(C)~~ (D) Any building erected, raised or converted, or land or premises used in violation of any provisions of this ordinance or the requirements thereof is hereby declared to be a common nuisance and as such may be abated in such manner as nuisances are now or may hereafter be abated under existing law.

~~(D)~~ (E) Any person, firm or corporation violating any of the provisions of this ordinance shall for each violation, upon conviction thereof, pay a penalty of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), with costs recoverable before the Judge of the Municipal Court; and upon default of payment of the penalty and costs the person or persons convicted may be committed to the City or County Jail for not exceeding thirty (30) days. Each day that a violation is permitted to exist shall constitute a separate offense.

STAFF RECOMMENDATION:

To ensure consistency between related enforcement provisions provided in West Virginia State Code Chapter 8A, Article 10 and Article 1393 of the City's Planning and Zoning Code, Staff respectfully advises the Planning Commission to forward a favorable recommendation to City Council to amend Article 1393 as presented above.

Development Services

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Director

Planning Division

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ARTICLE 1393
Violations and Enforcement

1393.01 Remedies and penalties.

CROSS REFERENCES
Enforcement provisions - see W. Va. Code Art. 8A-10

1393.01 REMEDIES AND PENALTIES.

(A) The Planning Commission, the Zoning Board of Appeals, the City Manager, or any designated enforcement official, or any person or persons, firm or corporation jointly or severally aggrieved, may institute a suit for injunction in the Circuit Court of Monongalia County to restrain any individual or a governmental unit from violating the provisions of this ordinance.

(B) The Commission or the Board may also institute a suit for mandatory injunction directing any individual, a corporation or a governmental unit to remove a structure erected in violation of the provisions of this ordinance.

(C) Any building erected, raised or converted, or land or premises used in violation of any provisions of this ordinance or the requirements thereof is hereby declared to be a common nuisance and as such may be abated in such manner as nuisances are now or may hereafter be abated under existing law.

(D) Any person, firm or corporation violating any of the provisions of this ordinance shall for each violation, upon conviction thereof, pay a penalty of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), with costs recoverable before the Judge of the Municipal Court; and upon default of payment of the penalty and costs the person or persons convicted may be committed to the City or County Jail for not exceeding thirty (30) days. Each day that a violation is permitted to exist shall constitute a separate offense.

**WEST VIRGINIA CODE
CHAPTER 8A. LAND USE PLANNING.
ARTICLE 10. ENFORCEMENT PROVISIONS.**



§8A-10-1. Enforcement.

The governing body of a municipality or county may:

- (1) Enforce penalties, set out in section two of this article, for failure to comply with the provisions of any ordinance or rule and regulation adopted pursuant to the provisions of this chapter; and
- (2) Declare that any buildings erected, raised or converted, or land or premises used in violation of any provision of any ordinance or rule and regulation adopted under the authority of this chapter shall be a common nuisance and the owner of the building, land or premises shall be liable for maintaining a common nuisance.

§8A-10-2. Penalty.

A person who violates any provision of this chapter is guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty dollars nor more than five hundred dollars.

§8A-10-3. Injunction.

- (a) The planning commission, board of subdivision and land development appeals, the board of zoning appeals or any designated enforcement official may seek an injunction in the circuit court of the county where the affected property is located, to restrain a person or unit of government from violating the provisions of this chapter or of any ordinance or rule and regulation adopted pursuant hereto.
- (b) The planning commission, board of subdivision and land development appeals, the board of zoning appeals or any designated enforcement official may also seek a mandatory injunction in the circuit court where the affected property is located, directing a person or unit of government to remove a structure erected in violation of the provisions of this chapter or of any ordinance or rule and regulation adopted pursuant hereto.
- (c) If the planning commission, board of subdivision and land development appeals, the board of zoning appeals or the designated enforcement official is successful in any such suit, the respondent shall bear the costs of the action.