



**DEVELOPMENT
SERVICES
DEPARTMENT**

The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7431 TDD (304) 284-7512
www.morgantownwv.gov

June 16, 2016

Standard at Morgantown, LLC
c/o J. Wesley Roberts
455 Epps Bridge Parkway
Building 100, Suite 201
Athens, GA 30606

**RE: V15-65 thru V15-71 / Standard at Morgantown, LLC / 1303 University Avenue
Tax Map 26A, Parcels 6 thru 15**

Dear Mr. Roberts:

This letter is to notify you of the decisions made by the Board of Zoning Appeals concerning the above referenced variance petitions relating to the subject "Standard at Morgantown" development at 1303 University Avenue. The decisions are as follows:

Board of Zoning Appeals, June 15, 2016:

V15-65 – Variance petition exceeding the maximum front setback standard.

- A. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
- B. Variance relief was **granted** for Case No. V15-65 to exceed the maximum front setback standard provided in Article 1349.04(A)(2) of the City's Planning and Zoning Code as requested with the following conditions:
 1. That Type III Site Plan approval for the Development of Significant Impact must be granted by the Planning Commission and related conditions observed.
 2. That minor subdivision petition approval must be granted by the Planning Commission combining Parcels 6 thru 15 of Map 26A and the annulled portion of the Wall Street right-of-way and final plat recorded prior to building permit issuance.

V15-66 – Variance petition to encroach into the minimum rear setback standard.

- A. The Board **denied** variance relief from Article 1349.04(A)(5) to encroach into the minimum rear setback as requested for Case No. V15-66 based on its Findings of Fact stated in Addendum A of this letter; particularly, Findings of Fact No. 2, 3, and 4.

V15-67 – Variance petition concerning canyon effects.

- A. The Board determined that the proposed building does not sufficiently incorporate design elements that preserve adequate light and air to public spaces including streets and sidewalks as desired in Article 1351.01(I) of the City's Planning and Zoning Code.
- B. The Board **denied** variance relief from Article 1351.01(I) of the City's Planning and Zoning Code for Case No. V15-67 based on its Findings of Fact stated in Addendum A of this letter.

V15-68 – Variance petition to exceed the maximum curb cut width standards at the curb line and at the right-of-way line on University Avenue.

- A. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
- B. Variance relief was **granted** for Case No. V15-68 to exceed the maximum width standards for a driveway at the curb line and at the right-of-way line as provided in Article 1351.01(D) of the City's Planning and Zoning Code for the University Avenue driveway entrance with the following conditions:
 - 1. That Type III Site Plan approval for the Development of Significant Impact must be granted by the Planning Commission and related conditions observed.
 - 2. That minor subdivision petition approval must be granted by the Planning Commission combining Parcels 6 thru 15 of Map 26A and the annulled portion of the Wall Street right-of-way and final plat recorded prior to building permit issuance.
 - 3. That all requisite West Virginia Division of Highway access permits/agreements be obtained by the petitioner prior to building permit issuance.
 - 4. That the final width of the driveway curb cut at the curb line and at the right-of-way line shall be determined by West Virginia Division of Highways' minimum width design standards for same under its access permits/agreements approval process.
 - 5. That the sidewalk along the site's University Avenue frontage shall be reconstructed to the satisfaction of the City Engineer and, where practicable, incorporate design elements utilized for the High Street Streetscape Improvement Projects. Further, that the point of potential conflict between pedestrian and vehicular traffic within the University Avenue driveway entrance shall, to the satisfaction of the City Engineer, be designed to encourage pedestrians to cross the subject driveway entrance at the narrower width of the driveway throat through the use of a contrast in color and/or texture and/or material and/or other design elements within the hardscape that defines the pedestrian crossing through the driveway entrance.

V15-69 – Variance petition to exceed the maximum curb cut width standards at the curb line and at the right-of-way line on Walnut Street.

- A. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.

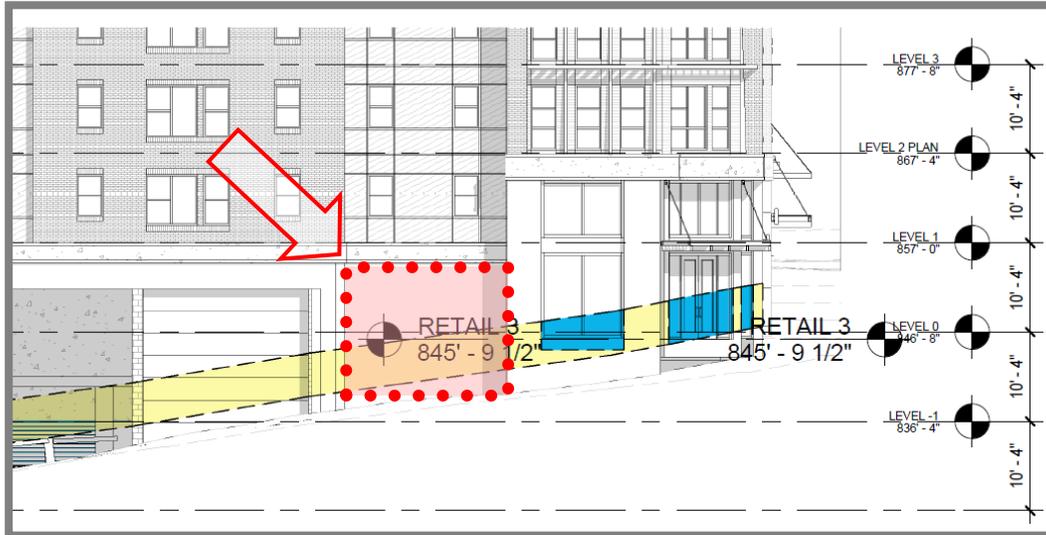
- B. Variance relief was **granted** for Case No. V15-69 to exceed the maximum width standards for a driveway at the curb line and at the right-of-way line as provided in Article 1351.01(D) of the City's Planning and Zoning Code for the Walnut Street driveway entrance with the following conditions:
1. That Type III Site Plan approval for the Development of Significant Impact must be granted by the Planning Commission and related conditions observed.
 2. That minor subdivision petition approval must be granted by the Planning Commission combining Parcels 6 thru 15 of Map 26A and the annulled portion of the Wall Street right-of-way and final plat recorded prior to building permit issuance.
 3. That the final width of the driveway curb cut at the curb line and at the right-of-way line shall be determined by the City Engineer based on best practice assessment of construction documents submitted at building permit application.
 4. That the sidewalk along site's Walnut Street frontage shall be reconstructed to the satisfaction of the City Engineer and, where practicable, incorporate design elements utilized for the High Street Streetscape Improvement Projects.

V15-70 – Variance petition to exceed the maximum number of parking spaces standard.

- A. The Board **denied** variance relief from Article 1365.04(I) to exceed the maximum number of parking spaces in the non-residential district as requested for Case No. V15-70 based on its Findings of Fact stated in Addendum A of this letter.

V15-71 – Variance petition concerning minimum transparency standard.

- A. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
- B. Variance relief was **granted** for Case No. V15-70 from the minimum transparency requirement set forth in Article 1351.01(K) of the City's Planning and Zoning Code for the site's Walnut Street façade with the following conditions:
1. That Type III Site Plan approval for the Development of Significant Impact must be granted by the Planning Commission and related conditions observed.
 2. That minor subdivision petition approval must be granted by the Planning Commission combining Parcels 6 thru 15 of Map 26A and the annulled portion of the Wall Street right-of-way and final plat recorded prior to building permit issuance.
 3. That spandrel glass shall, to the satisfaction of the Planning Division, be provided in the area generally marked in the graphic below and shall be framed to complement the rhythm, pattern, and design of the building's other retail windows. [The following graphic was clipped for illustration purposes from the petitioner's drawing titled "Transparency Studies", Sheet No. 7.04, prepared by BKV Group, dated 02 OCT 2015]



These decisions may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

The above referenced approvals are set to expire in twelve (12) months unless it can be demonstrated that they have been activated as evidenced by permits, construction, or required licenses. This expiration deadline may be extended to eighteen (18) months upon prior written request of the Board.

Should you have any questions or require further clarification, please contact the undersigned.

Respectfully,

Christopher M. Fletcher
 Christopher M. Fletcher, AICP
 Director of Development Services

ADDENDUM A
Approved Findings of Fact

Case No. V15-65 To Exceed the Maximum Front Setback Standard **GRANTED**

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Granting the increased setbacks along the front of the building will not affect public health, safety or welfare, or rights of adjacent property owners or residents. In fact, it will provide for greater safety because it will allow the increase in width of the sidewalk allowing greater separation between pedestrians and vehicles. Currently at the location of proposed improvements and existing feature (Mode Roman Property) is a parking lot. Without a physical structure located adjacent to the beginning of the project allows the sidewalk to be increased in width without creating an immediate bottle neck for pedestrians.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The proposed project is located within the B-4 Zoning District, which allows for buildings to be constructed at the front property line with 0’ minimum and 10’ maximum setback. Allowing the building to be set back from the property line will allow greater width for pedestrian sidewalk and provide a safer walking environment by greater separation between the public and vehicles. Additionally, the existing overhead utilities will be buried along the frontage of the project. The additional setback will allow the utility owners to have additional space for the maintenance of their facilities. Per conversations with the Fire Marshal, the southern end of the building has been designed to allow for additional building setback so that the fire apparatus may be parking between the building and the curb in an emergency.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The variance to allow an increased set back distance allows the plan to conform to the DOH driveway requirements and the Fire Marshal’s staging location between the building and the curb.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The request for the increase of front set back will be applied within the B-4 District. The City of Morgantown is concerned with “Canyon Effect” in and around the downtown area. Allowing the increased set back will reduce the “Canyon Effect” along the proposed development site. Additionally, the variance will allow the building to be designed within the allowable 0’ to 10’ setback.

Case No. V15-66 To Encroach into the Minimum Rear Setback Standard **DENIED**

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents because the building will be constructed entirely within the extents of the property lines. This variance is for the setback located in the back of the building. The back property line abuts against the Rails to Trails / CSX / City Right of Way. The approval of this variance will not encroach towards inhabited parcels or available real estate that can be developed in the future.

Finding of Fact No. 2 – The variance does not arise from special conditions or attributes which pertain to the property for which a variance is sought because the condition or attribute for which variance relief is sought was created by the petitioner as their proposed design of the building.

Finding of Fact No. 3 – The variance will not eliminate an unnecessary hardship nor permit a reasonable use of the land because no hardship exists meriting variance relief as requested.

Finding of Fact No. 4 – The variance will not allow the intent of the zoning ordinance to be observed nor substantial justice done because no hardship exists meriting variance relief as requested.

Case No. V15-67 Canyon Effects **DENIED**

Finding of Fact No. 1 – The variance will adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because the proposed building does not sufficiently incorporate design elements that preserve adequate light and air to public spaces including streets and sidewalks as desired in Article 1351.01(I) of the City’s Planning and Zoning Code.

Finding of Fact No. 2 – The variance does not arise from special conditions or attributes which pertain to the property for which a variance is sought because the condition or attribute for which variance relief is sought was created by the petitioner and their proposed design of the building.

Finding of Fact No. 3 – The variance will not eliminate an unnecessary hardship nor permit a reasonable use of the land because no hardship exists meriting variance to sufficiently incorporate design elements that preserve adequate light and air to public spaces including streets and sidewalks as desired in Article 1351.01(I) of the City’s Planning and Zoning Code.

Finding of Fact No. 4 – The variance will not allow the intent of the zoning ordinance to be observed nor substantial justice done to sufficiently incorporate design elements that preserve adequate light and air to public spaces including streets and sidewalks as desired in Article 1351.01(I) of the City’s Planning and Zoning Code.

Case No. V15-68 University Avenue Driveway Entrance **GRANTED**

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Granting the increased curb cuts will not affect public health, safety or welfare, or rights of adjacent property owners or residents because the garage entrance off of University Avenue will be located approximately midway of the proposed building. The increased curb cut will allow easier maneuvers of vehicles without running over top of the curb. The extended curb width will be a benefit to vehicles wishing to travel along University Avenue by allowing vehicles to make safer and quicker maneuvers out of the way off of University Avenue.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

With the right-in-and-right-out vehicle maneuvers, lane dividers will need to be incorporated into the center of University Avenue per WVDOH recommendations. The lane dividers consist of flexible posts located along the centerline divider limiting the vehicular maneuvers to right in and right out.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

In order to provide ease of entry for vehicles, the curb radius must be increased to West Virginia Division of Highway's minimum design standards for same. With the increased curb cuts vehicles can maneuver off University Avenue a little safer and quicker in turn reducing vehicle congestion on University Avenue. With a wider exit radius, vehicles can merge onto University Avenue without running into the left lane.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

With the increased curb cut, vehicles can make safer and quicker maneuvers reducing impacts to traffic flow along University Avenue.

Case No. V15-69Walnut Street Curb Cut..... **GRANTED**

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Granting the increased curb cuts along Walnut Street will not affect public health, safety or welfare, or rights of adjacent property owners or residents because the added curb cut length will provide for additional access to the building therefore reducing parking vehicles along Walnut Street. The increased curb cut will allow for easier maneuvers of extended wheel base service vehicles such as garbage trucks without running over top of the curb. The extended curb width will be a benefit to vehicles wishing to travel down Walnut Street by allowing the service vehicles to make safer and quicker maneuvers out of the way of Walnut Street.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

With the garbage facilities being located inside the building, the garbage trucks must be able to enter the building without running over top of the curb. In order to provide an appropriate curb radius for the tracking of the garbage truck to curb cut must be increased. A separate entrance was incorporated into the design to provide for off street parking of delivery vehicles requiring wider curb radius.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The entrance off of Walnut Street will incorporate three key components, garbage pickup, access to vehicular parking garage, and delivery vehicles. These entry points were strategically placed at a single location allowing three separate access points for accommodating the identified vehicle maneuvers. Allowing three access points will provide staging areas for the service vehicles making their necessary stops inside the building, this will allow the streets to remain open and free from obstructions. Curb radius were increased to 21 feet on the east and 25 feet on the west to provide vehicle maneuvers without running over the curbs.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

With the increased curb cut, service vehicles will be moved off the streets allowing better traffic flow and reduced street congestion.

V15-70 Maximum Number of Parking Spaces **DENIED**

Finding of Fact No. 1 – The variance will adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents because granting the variance will overstate the allowable floor area ratio (FAR) calculation.

Finding of Fact No. 2 – The variance does not arise from special conditions or attributes which pertain to the property for which a variance is sought because the marketability of the development is not a unique or qualifying condition meriting variance relief as requested.

Finding of Fact No. 3 – The variance will not eliminate an unnecessary hardship nor permit a reasonable use of the land because the marketability of the development is not a hardship meriting variance relief.

Finding of Fact No. 4 – The variance will not allow the intent of the zoning ordinance to be observed nor substantial justice done because granting the variance relief as requested will overstate the allowable floor area ratio (FAR) calculation.

V15-71 Minimum Transparency Standard..... **GRANTED**

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The Developer proposes to create a project that will work in harmony with the surrounding city fabric while also providing a stimulus to the surrounding areas vibrancy. The project will combine multiple parcels which currently have limited or no street front windows into a cohesive street front combining retail and residential uses. Upgraded site lighting and pedestrian access will also positively impact the health and safety of the public and neighboring properties. The project will be a noticeable upgrade to the current sites condition and will provide a modern facility that will be utilized by the neighboring university’s students as a residential and commercial facility.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The Developer is limited on the Walnut Street frontage to 11% transparency by existing site conditions as well as functional requirements of the proposed building. Walnut Street slopes steeply down to the Monongahela River which limits the glazing opportunity at this street front. Additionally, project access requirements such as parking, loading, and trash removal make up a portion of the Walnut Street front. These site and project restrictions combine to limit the Walnut Street transparencies.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

It appears the project, as designed, is a reasonable use of a steeply sloping site with limited street front access points. The project attempts to address and activate the street front with large transparent openings where the site allows along University Avenue while utilizing Walnut Street for other building requirements.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The project, as designed, includes at least 60% transparency in concentrated areas of street front retail and building entrances, which are interrupted by solid areas where required by site restrictions or project requirements. The goal of the design is to provide an active street front façade where possible along a highly variable street frontage. The design attempts to find the highest and best use for each of these unique conditions.