



## MORGANTOWN PLANNING COMMISSION

March 11, 2010  
6:30 PM  
City Council Chambers

### **President:**

Peter DeMasters, 6<sup>th</sup> Ward

### **Vice-President:**

Sam Loretta, 1<sup>st</sup> Ward

### **Planning Commissioners:**

Tim Stranko, 2<sup>nd</sup> Ward

Barbara Ferrell, 3<sup>rd</sup> Ward

Bill Petros, 4<sup>th</sup> Ward

Mike Shuman, 5<sup>th</sup> Ward

Carol Pyles, 7<sup>th</sup> Ward

Ken Martis, Admin.

Jennifer Selin, City Councilor

## **STAFF REPORT**

**CASE NO:** TX10-01 / Administrative / "Family" Definition

### **REQUEST:**

Administratively requested text amendments to the following Planning & Zoning Code sections as they relate to defining "Family", determining residential occupancy, and correspondingly adjusting minimum parking requirements for residential uses citywide:

- Article 1329.02 "DEFINITIONS" pertaining to "Family, "Functional Family Unit", and "Related Persons"
- Table 1365.04.01 "MINIMUM OFF-STREET PARKING REQUIREMENTS"
- Article 1361.03 "DESIGN AND PERFORMANCE STANDARDS COMMON TO ALL SUNNYSIDE OVERLAY DISTRICTS"

### **BACKGROUND:**

Determining residential occupancy standards within local zoning ordinances have taken many forms across the country. Defining "family" locally has been one strategy aimed at historically addressing two legislative objectives.

First, local governments have sought to ensure safe habitable dwelling units by restricting the composition or number of occupants to some locally defined "family" unit.

Second, local governments have sought, through the use of defining "family", to preserve a desired quality of life within neighborhoods as well as sustain housing market stability thereby protecting property values and public and private investment. The second legislative objective has resulted in a great deal of litigation and case law that has served to balance local ordinances with the rights and civil liberties of family units regardless of tenancy type.

### **Safety**

Over the past fifteen to twenty years, there appears to have been a progression away from defining "family" as a principle means of ensuring safe habitable dwelling units toward the use of state or local building codes. Building code development and administration have significantly improved during this time with the merger of several building codes and through the incorporation of Federal Fair Housing and ADA compliant provisions. Building codes are arguably a higher performing regulatory approach to this objective because they focus on architectural and structural elements rather than the composition or number of the occupants (i.e., bedroom dimensions and size, common area and kitchen size, number of bathrooms, etc.).

### **Neighborhood Preservation**

College and university communities have, for the most part, continued to utilize some form of "family" due largely to unique local housing market trends and social pressures. Transient student households and lifestyles are often cited as the source of disturbance

### **Planning Department**

Christopher Fletcher, AICP  
Planning Director  
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



## MORGANTOWN PLANNING COMMISSION

March 11, 2010

6:30 PM

City Council Chambers

**President:**

Peter DeMasters, 6<sup>th</sup> Ward

**Vice-President:**

Sam Loretta, 1<sup>st</sup> Ward

**Planning Commissioners:**

Tim Stranko, 2<sup>nd</sup> Ward

Barbara Ferrell, 3<sup>rd</sup> Ward

Bill Petros, 4<sup>th</sup> Ward

Mike Shuman, 5<sup>th</sup> Ward

Carol Pyles, 7<sup>th</sup> Ward

Ken Martis, Admin.

Jennifer Selin, City Councilor

and conflicts with permanent family-like households in traditional single-family residential neighborhoods.

The economics of housing college-aged students has changed over the past ten to fifteen years. Lower mortgage rates, higher rental rates, tax benefits for owning a second home, and limited on-campus housing have given rise to parents purchasing single-family homes for their children. Realty generally appreciates during the four to five years their child is enrolled in school and extra bedrooms can be rented to roommates providing positive cash flow.

Although somewhat slowed as a result of more conservative financing during the present state of the global economy, this trend has and continues to erode the effectiveness of defining “family” as a strategy to mitigate adverse impacts on the desirability and sustainability of traditional single-family residential neighborhoods. New economic impacts have also had an effect.

Specifically, more frequent sale transactions often results in inflated property values, which reduces housing choice across income spectrums; drives middle and low income residents further from the urban core; and, stimulates urban sprawl. This contributes to higher costs of living, traffic congestion, increased costs of delivering public services and utilities, environmental impact, etc.

Further, the appraisal and mortgage process between single-family, owner-occupied dwelling units and single-family, renter-occupied dwelling units is very different. Once a single-family house is converted from ownership to investment property, it is very difficult for that unit to become owner-occupied again due to how its value is viewed by the market and the lending community. This transition erodes homeownership opportunities and neighborhood stability. An example of this challenge is the Morgantown Housing Authority’s struggle to feasibly purchase targeted investment properties that can be rehabilitated and resold to homeowners under their “Morgantown Homecoming” program.

### New Legislative Approaches

The legislative objective to preserve and protect traditional owner-occupied neighborhoods and ultimately the desirability and economic sustainability of a community as a whole remains paramount in university communities. However, the means to achieve this objective must respond to changes within the housing market.

College and university communities across the country have begun to respond by adjusting their approaches of ensuring quality safe housing stock and neighborhood preservation. Many have amended their “family” definitions to incorporate a hybrid approach that uses building codes within multi-family areas and a new concept of “functional families” within traditional single-family neighborhoods.

This hybrid approach is relatively new and is taking many different forms in response to local issues. The legislative enactment of various “functional families” strategies does not appear to have fully benefited from legal challenges or court opinions.

**Planning Department**

Christopher Fletcher, AICP  
Planning Director  
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



## MORGANTOWN PLANNING COMMISSION

March 11, 2010  
6:30 PM  
City Council Chambers

### **President:**

Peter DeMasters, 6<sup>th</sup> Ward

### **Vice-President:**

Sam Loretta, 1<sup>st</sup> Ward

### **Planning Commissioners:**

Tim Stranko, 2<sup>nd</sup> Ward

Barbara Ferrell, 3<sup>rd</sup> Ward

Bill Petros, 4<sup>th</sup> Ward

Mike Shuman, 5<sup>th</sup> Ward

Carol Pyles, 7<sup>th</sup> Ward

Ken Martis, Admin.

Jennifer Selin, City Councilor

### **Planning Department**

Christopher Fletcher, AICP  
Planning Director  
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

### **ANALYSIS:**

Morgantown is no different than other university communities across the country faced with the present challenges and opportunities noted above. At the request of the City Manager, the Planning Department organized a comprehensive review of related issues including professional and media articles, ordinances from other communities, and legal opinions.

This body of work was delivered to Robert Bastress, Law Professor at West Virginia University, for review and guidance on what strategies could be pursued given statutes and case law specific to West Virginia. Over the last several months, the Planning and Legal Departments worked closely with Prof. Bastress in developing several iterations that reflected changes implemented in other university communities, but tailored to Morgantown's physical and political landscape.

With the technical assistance of the City's Legal, Engineering, and Fire Departments and the Code Enforcement Division, a preliminary draft of City Code amendments were prepared. The following issues guided this work:

- The current "family" definition of "no more than three unrelated" occupants has withstood legal challenges and has framed the structure within which student housing has been provided in Morgantown for many years.
- All potential market impacts, both positive and negative, resulting from changes to this structure must be identified and considered carefully.
- Simply amending the definition of "family" affects a number of interrelated zoning, building, fire, and rental registration policy and programming elements. Therefore, a comprehensive code and administrative policy analysis is necessary.
- Proposed changes will require a great deal of outreach and engagement to identify and mitigate unintended consequences and build public support prior to Council's final consideration.
- Revisions must strike a fair and equitable balance between the market needs and opportunities of student housing and the pursuit of preserving traditional neighborhoods.
- Revisions must address the practice of "family" leases within Morgantown's student housing market that serve to circumvent City Code and needlessly place legal and financial jeopardy on unaware students.
- Consideration must be given to how implementation timelines correspond with the student housing industry's normal leasing schedule.
- A strategic delay between final enactment and implementation should be included to educate the public and student housing providers as well as to plan for staffing and programming capacities and retool administrative procedures.



## MORGANTOWN PLANNING COMMISSION

March 11, 2010  
6:30 PM  
City Council Chambers

### **President:**

Peter DeMasters, 6<sup>th</sup> Ward

### **Vice-President:**

Sam Loretta, 1<sup>st</sup> Ward

### **Planning Commissioners:**

Tim Stranko, 2<sup>nd</sup> Ward

Barbara Ferrell, 3<sup>rd</sup> Ward

Bill Petros, 4<sup>th</sup> Ward

Mike Shuman, 5<sup>th</sup> Ward

Carol Pyles, 7<sup>th</sup> Ward

Ken Martis, Admin.

Jennifer Selin, City Councilor

To gauge interest and seek input of key community stakeholders, the Planning Department facilitated discussions with the following groups:

- Morgantown Board of Realtors, Executive Committee
- North Central West Virginia Property Owners Association, Executive Committee
- Morgantown Neighborhood Coordinating Council
- Morgantown Housing Advisory Committee
- West Virginia University Off-campus Housing Office
- West Virginia University Social Justice Council

The direction and preliminary draft were very well received by each group. Through continued discussions, a few minor revisions were requested to better reflect specific policy interests and concerns and solidify support.

On November 12, 2009, the Planning Commission held an informational workshop to review and comment on the preliminary draft. Residents attended and participated in the discussion. The Planning Commission requested additional analysis regarding the following to concerns:

1. Requiring at least one member of a "Functional Family Unit" to be at least 25 years of age appeared arbitrary.
2. Confirm that the proposed ordinances do not discriminate against nor cause undue burden for unwed and/or LGBT persons, couples, families, and/or households.

Staff incorporated Planning Commission workshop-related revisions, which have been reviewed by Prof. Bastress. Attached hereto are the final versions along with noted supporting information:

**Exhibit 1** – A proposed ordinance amending Article 1329.02 of the **Planning & Zoning Code** pertaining to revised definitions for "Family" and "Related Persons" and establishing a definition and standards for "Functional Family Unit".

### Summary:

- Dwelling unit occupancy within single-family residential districts (R-1 and R-1A) is lowered to no more than two unrelated people unless occupants can meet a new "Functional Family Unit" standard.
- An exception is included for legal, pre-existing, non-conforming dwelling units within the single-family residential districts so that the current "no more than three unrelated" provision remains in effect. The purpose of this exception is to:
  - Recognize and protect the rights of multi-family developments within these zoning districts.
  - Recognize and protect the rights of single-family dwelling units that do not meet this new standard.
  - Prevent the enactment of an ordinance that would result in costly regulatory-taking legal challenges.

### **Planning Department**

Christopher Fletcher, AICP  
Planning Director  
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



## MORGANTOWN PLANNING COMMISSION

March 11, 2010  
6:30 PM  
City Council Chambers

### **President:**

Peter DeMasters, 6<sup>th</sup> Ward

### **Vice-President:**

Sam Loretta, 1<sup>st</sup> Ward

### **Planning Commissioners:**

Tim Stranko, 2<sup>nd</sup> Ward

Barbara Ferrell, 3<sup>rd</sup> Ward

Bill Petros, 4<sup>th</sup> Ward

Mike Shuman, 5<sup>th</sup> Ward

Carol Pyles, 7<sup>th</sup> Ward

Ken Martis, Admin.

Jennifer Selin, City Councilor

- Dwelling unit occupancy within all other zoning districts is determined by the West Virginia State Building Code.

**Exhibit 2** – A proposed ordinance amending Table 1365.04.01 “Minimum Off-street Parking Requirements” of the **Planning & Zoning Code** as it relates to residential dwellings.

#### Summary:

- The minimum parking requirements for nearly all residential dwelling unit types are amended to better reflect revised dwelling unit occupancy characteristics rather than relying on bedroom composition. The proposed 0.75 per occupant standard for two or more bedroom multi-family dwelling units is the relative mathematical equivalent of the current bedroom composition standard.

**Exhibit 3** – A proposed ordinance amending Article 1361.03 “Design and Performance Standards common to all Sunnyside Overlay Districts” of the **Planning & Zoning Code** as it relates to minimum parking spaces.

#### Summary:

- The minimum parking allowance within the Sunnyside Overlay Districts is amended to better reflect revised dwelling unit occupancy characteristics rather than relying on bedroom composition.

**Exhibit 4** – A proposed ordinance amending Article 1751.02 “Definitions” of the **Housing Code** as it relates to the definition of “Family”.

#### Summary:

- The definition of “Family” set forth in the Housing Code is amended to ensure consistency with the Planning & Zoning Code definition for same.

**Exhibit 5** – A proposed ordinance amending Article 1511.02 “Code Enforcement” of the **Fire Prevention Code** as it relates to lodging and rooming houses.

#### Summary:

- The proposed amendment closes the family lease loophole that has been used in the student housing market to circumvent fire safety features required within structures classified under the Fire Code as “Lodging and Rooming Houses”.

**Exhibit 6** – An email string between Staff and Prof. Bastress concerning the issues identified during the Planning Commission’s November 12, 2009 workshop,

#### Summary:

- Prof. Bastress suggested modification alternatives, which have been accordingly incorporated, that are intended to adequately resolve potential discrimination or undue burden created by the proposed amendments for unwed and/or LGBT persons, couples, families, and/or households.
- An explanation is provided for replacing the 25 year old provision of the earlier draft with the express presumption that a household comprised of three or more

### **Planning Department**

Christopher Fletcher, AICP  
Planning Director  
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



## MORGANTOWN PLANNING COMMISSION

March 11, 2010  
6:30 PM  
City Council Chambers

**President:**

Peter DeMasters, 6<sup>th</sup> Ward

**Vice-President:**

Sam Loretta, 1<sup>st</sup> Ward

**Planning Commissioners:**

Tim Stranko, 2<sup>nd</sup> Ward

Barbara Ferrell, 3<sup>rd</sup> Ward

Bill Petros, 4<sup>th</sup> Ward

Mike Shuman, 5<sup>th</sup> Ward

Carol Pyles, 7<sup>th</sup> Ward

Ken Martis, Admin.

Jennifer Selin, City Councilor

college students is not a “functional family unit”. Prof. Bastress confirmed that said presumption is:

“okay...not conclusive...[that] it is certainly reasonable to conclude that most college students are transients and typically do not have the characteristics of a ‘functional family’...the presumption would thus make the ordinance easier to administer.”

**Exhibit 7** – Provides a list of communities that were included in Staff’s comparative study of related zoning strategies that address residential occupancy, student housing, and neighborhood preservation.

It must be clearly noted that the only City Code provisions for which the Planning Commission is being asked to make a recommendation to City Council are those specific to the Planning & Zoning Code. Although closely associated, related amendments to the City’s Housing and Fire Prevention Codes may be outside the scope of the Planning Commission’s advisory role under the West Virginia planning enabling statute. To avoid any potential arguments that the Planning Commission has reached beyond its scope by advising City Council on matters that pertain to the City’s Housing and Fire Prevention Codes, Exhibits 4 and 5 of this report are provided for informational purposes only.

**STAFF RECOMMENDATION:**

The Planning Department advises the Planning Commission to:

1. Forward a recommendation to City Council to approve the City Code amendments provided in Exhibits 1 thru 3 attached hereto.
2. Communicate to City Council that said amendments should:
  - a. Modernize of the City’s legislative approach to protecting the integrity and preserving the quality, character, and sustainability of traditional, permanent, owner-occupied neighborhoods.
  - b. Slow down the conversion of permanent owner-occupied, single-family dwelling units to transient student, investment properties in the R-1 and R-1A Zoning Districts.
  - c. Shift residential occupancy standards from a subjective zoning code to an objective building code as a more appropriate means of ensuring dwelling unit safety.
  - d. Enable an incremental increase in density in traditional student neighborhoods balanced with adjusted minimum parking standards.
  - e. Eliminate the need for student housing providers to divide larger homes into smaller dwelling units to meet the current “no more than three unrelated” occupant standard.

Enclosure(s): Application

**Planning Department**

Christopher Fletcher, AICP  
Planning Director  
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

**AN ORDINANCE AMENDING ARTICLE 1329.02 OF THE PLANNING & ZONING CODE PERTAINING TO THE DEFINITIONS OF “FAMILY”, “FUNCTIONAL FAMILY UNIT”, AND “RELATED PERSONS”**

WHEREAS, the City of Morgantown is a diverse, inclusive, attractive, and desirable university community with many vital single-family, two-family, multi-family, and mixed-housing type neighborhoods;

WHEREAS, each of the City’s neighborhoods enjoy distinct housing stocks and quality of life characteristics; and,

WHEREAS, establishing standards for determining dwelling unit occupancy is intended to:

1. Preserve and strengthen the quality of life within and the sustainability of the City’s range of neighborhoods;
2. Protect public and private investments by ensuring the vitality and stability within the City’s range of neighborhoods;
3. Enhance the character and desirability of and housing choice within the City as a whole; and,
4. Reduce urban sprawl.

NOW THEREFORE, the City of Morgantown hereby ordains that Article 1329.02 of the Planning & Zoning Code of the City of Morgantown is amended as follows (deleted matter struck through, new matter underlined):

~~FAMILY — One or more persons occupying a single dwelling unit, provided that unless all members are related by blood, marriage, or legal adoption, no such family shall contain over three unrelated persons. However, where disability requires that more than three unrelated persons reside together; in such cases, there shall be no requirement for persons with disabilities to petition, apply or experience a process to obtain approval to live in any zoning district of the City.~~

FAMILY – for determining residential dwelling unit occupancy within the City’s many diverse neighborhoods and zoning districts, the following definitions shall apply:

- A. Within single-family residential zoning districts – A person living alone or any of the following groups living together as a single housekeeping unit and sharing common living, cooking, and eating facilities:
  - (1) A person or any number of related persons, as that term is defined in this Article;
  - (2) Two (2) unrelated people or two (2) unrelated people and any children related to either of them by blood, marriage, or legal adoption;
  - (3) One or two persons with foster children placed in the home by a government agency or court of authorized legal jurisdiction to do so;
  - (4) A “Group Residential Home” or “Group Residential Facility” as defined in this Article;

(5) Three (3) or more unrelated persons who the Planning Director determines to be a “Functional Family Unit,” as defined in this Article.

(6) Exceptions.

a. Occupancy for legal, pre-existing, non-conforming dwelling units in single-family residential zoning districts shall be no more than three unrelated persons and any children related to either of them by blood, marriage, or legal adoption.

b. Where disability requires that more than the maximum number of unrelated persons provided in this Article to reside together; in such cases, there shall be no requirement for persons with disabilities to petition, apply, or experience a process to obtain approval to live in any zoning district of the City.

B. Within all other zoning districts, dwelling unit occupancy will be determined by the West Virginia State Building Code.

**AND**

FUNCTIONAL FAMILY UNIT – Three or more persons occupying a dwelling unit and living together as a single, nonprofit housekeeping unit whose relationship is of a permanent and distinct domestic character, with a demonstrable and recognizable bond where each party is responsible for the basic material needs of the other and all are living as a single housekeeping unit consistent with the purposes of zoning restrictions in the R-1, Single-Family Residential District and the R-1A, Single-Family Residential District.

(1) In determining whether or not a group of unrelated individuals is a “functional family unit” under the definition set forth above, the following characteristics must be present:

(a) The occupants must share the entire dwelling unit. A dwelling unit in which the various occupants act as separate roomers cannot be deemed to be occupied by a “functional family unit”.

(b) The household must have stability with respect to the purpose of functioning as a family unit. Evidence of such stability may include the following:

[1] The presence of minor dependent children regularly residing in the household.

[2] Proof of the sharing of expenses for food, rent or ownership costs, utilities and other household expenses.

[3] Whether or not different members of the household have the same address for the purposes of:

[a] Voter registration.

[b] Drivers’ licenses.

[c] Motor vehicle registration.

[d] The filing of taxes.

[e] Summer or other residences.

[4] Enrollment of dependent children in public or private schools within Monongalia County.

[5] Employment of householders in the local area.

# EXHIBIT 1

- [6] A showing that the householders have been living together as a “functional family unit” for twelve (12) consecutive months or more, whether in the current dwelling unit or other dwelling units.
- [7] Any other factor reasonably related to whether or not the unrelated persons are the functional equivalent of a family.
- (2) A group of individuals living in the same dwelling unit shall be presumed not to be a “functional family unit”, as defined above, if such dwelling unit contains three or more unrelated persons whose association is temporary or seasonal in character or nature or a group whose sharing of a dwelling unit is merely for convenience and economics.
- (3) A group of individuals living in the same dwelling unit shall be presumed not to be a “functional family unit”, as defined above, if such dwelling unit contains three or more college students over the age of 16 years.
- (a) A college student is a person who attends, at least half time, any college, university, or other institution authorized to confer degrees by the State of West Virginia.
- (b) For the purpose of this presumption, dependent children of any other member of the household shall be excluded in calculating the number of college students in the household.
- (4) The presumptions set forth in Subsections (2) and (3) of this definition may be rebutted by sufficient evidence of the characteristics set forth in Subsection (1) of this definition.
- (5) The initial determination of whether a “functional family unit” status exists shall be made by the Planning Director, either by application or investigation. Any person seeking the rights and privileges afforded a member of a “functional family unit” shall have the burden of proof by clear and convincing evidence of a “functional family unit” as provided above. Nothing in this section shall be deemed to confer any legal rights upon any person on the basis of conduct otherwise unlawful under any existing law. The City will limit disclosure of any information provided by “functional family unit” status applicants to the extent permitted by law.

## AND

RELATED PERSONS – Persons related by blood, marriage, adoption, guardianship, or other duly-authorized custodial relationship but limited to the following: husband, wife, child, grandchild, great grandchild, stepchild, parent, grandparent, great grandparent, stepparent, aunt, uncle, nephew, niece, and first cousin.

This ordinance shall be effective upon July 1, 2010.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk

**AN ORDINANCE AMENDING TABLE 1365.04.01 “MINIMUM OFF-STREET PARKING REQUIREMENTS” OF THE PLANNING & ZONING CODE AS IT RELATES TO RESIDENTIAL DWELLINGS**

WHEREAS, the City of Morgantown has amended its Planning & Zoning Code standards for determining dwelling unit occupancy; and,

WHEREAS, the minimum off-street parking requirements set forth in the Planning & Zoning Code must be amended to reflect said occupancy standard revisions to ensure that sufficient parking is developed for residential dwellings.

NOW THEREFORE, the City of Morgantown hereby ordains that Table 1365.04.01 “Minimum Off-street Parking Requirements” of the Planning & Zoning Code of the City of Morgantown is amended as follows (deleted matter struck through, new matter underlined):

Table 1365.04.01: Minimum Off-Street Parking Requirements

Use	Minimum Off-Street Parking Requirement
Dwelling, Accessory	1 space per unit
Dwelling, Mixed Use	<del>1 space per residential unit plus 25% of the required spaces for commercial uses</del> <u>1 space per dwelling unit OR 0.75 spaces per occupant as determined by the West Virginia State Building Code, whichever is greater, plus required spaces for the commercial use(s)</u>
Dwelling, Multi-family	<u>1 bedroom dwelling unit – 1 space per unit</u> <del>2 bedroom unit – 1.5 spaces per unit</del> <del>3 bedroom unit – 2 spaces per unit</del> <del>4 bedroom unit – 2.5 spaces per unit</del> <u>for each additional bedroom add 0.5 spaces</u> <u>2 or more bedroom dwelling unit – 0.75 spaces per occupant as determined by the West Virginia State Building Code</u>
Dwelling, Over-store	1 space per dwelling unit <u>OR 0.75 spaces per occupant as determined by the West Virginia State Building Code, whichever is greater, plus required spaces for the commercial use(s)</u>
Dwelling, Single family	2 spaces per <u>dwelling unit</u>
Dwelling, Townhouse	1.5 spaces per <u>dwelling unit OR 0.75 spaces per occupant as determined by the West Virginia State Building Code, whichever is greater</u>
Dwelling, Two-family	1.5 spaces per <u>dwelling unit OR 0.75 spaces per occupant as determined by the West Virginia State Building Code, whichever is greater</u>

This ordinance shall be effective upon July 1, 2010.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk

**AN ORDINANCE AMENDING ARTICLE 1361.03 “DESIGN AND PERFORMANCE STANDARDS COMMON TO ALL SUNNYSIDE OVERLAY DISTRICTS” OF THE PLANNING & ZONING CODE AS IT RELATES TO MINIMUM PARKING SPACES FOR MULTI-FAMILY DWELLINGS**

WHEREAS, the City of Morgantown has amended its Planning & Zoning Code standards for determining dwelling unit occupancy;

WHEREAS, the City of Morgantown has also amended minimum off-street parking requirements set forth in the Planning & Zoning Code to reflect said occupancy standard revisions to ensure that sufficient parking is developed for residential dwellings; and,

WHEREAS, minimum off-street parking for multi-family, mixed-use, and over-store dwelling units within the Sunnyside Overlay Districts must be amended to reflect said revisions.

NOW THERFORE, the City of Morgantown hereby ordains that Article 1361.03 “Design and Performance Standards Common To All Sunnyside Overlay Districts”; Section (Q) “Street Hierarchies and Land Use”; Subsection (3) of the Planning & Zoning Code of the City of Morgantown is amended as follows (deleted matter struck through, new matter underlined):

1361.03 DESIGN AND PERFORMANCE STANDARDS COMMON TO ALL SUNNYSIDE OVERLAY DISTRICTS.

The following design and performance standards are held in common and shall apply to the SCOD, SSOD, and BCOD districts.

(Q) Street Hierarchies and Land Use:

- (3) The minimum number of off-street parking spaces for multi-family ~~uses~~ dwellings shall be one-half a space (0.5) per ~~bedroom~~, rounded to the nearest whole number occupant as determined by the West Virginia State Building Code. The minimum number of off-street parking spaces for mixed-use and over-store dwellings shall be one-half a space (0.5) per occupant as determined by the West Virginia State Building Code plus required spaces for commercial use(s).

This ordinance shall be effective upon July 1, 2010.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk

**AN ORDINANCE AMENDING ARTICLE 1751.02 “DEFINITIONS” OF THE HOUSING CODE AS IT RELATES TO THE DEFINITION OF “FAMILY”**

WHEREAS, the City of Morgantown has amended its Planning & Zoning Code standards for determining dwelling unit occupancy; and,

WHEREAS, the City of Morgantown’s Housing Code must also be amended to ensure consistency with the Planning & Zoning Code.

NOW THEREFORE, the City of Morgantown hereby ordains that Article 1751.02 “Definitions”, Section (7) “Family” of the Housing Code of the City of Morgantown is amended as follows (deleted matter struck through, new matter underlined):

1751.02 DEFINITIONS.

(7) ~~“Family” means one or more persons occupying a single dwelling unit, provided that unless all members are related by blood, marriage, or legal adoption, no such family shall contain over three unrelated persons except:~~

~~A. Where disability requires that more than three unrelated persons shall reside together; in such cases, there shall be no requirement for persons with disabilities to petition, apply or experience a process to obtain approval to live in any zoning district of the City; or~~

~~B. Where the dwelling unit is located in a Planned Unit Development, in which case the number of unrelated persons residing together shall be no more than four, unless disability requires that more than four unrelated persons reside together.~~

~~Regardless of the provisions of either this article or the City’s Zoning Ordinance, State Fire Code Rules and Regulations, as they apply to Fire Code inspections and number of occupants, will be enforced.~~

“Family” – see Article 1329.02 “FAMILY” and “FUNCTIONAL FAMILY UNIT” of the Planning and Zoning Code and Article 1511.02 “CODE ENFORCEMENT” of the Fire Prevention Code.

This ordinance shall be effective upon July 1, 2010.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk

## EXHIBIT 5

### **AN ORDINANCE AMENDING ARTICLE 1511.02 “CODE ENFORCEMENT” OF THE FIRE PREVENTION CODE AS IT RELATES TO LODGING AND ROOMING HOUSES**

WHEREAS, the City of Morgantown has amended its Planning & Zoning Code and Housing Code standards for determining dwelling unit occupancy; and,

WHEREAS, the City of Morgantown’s Fire Prevention Code must also be amended to ensure consistency with its Planning & Zoning Code and Housing Code.

NOW THEREFORE, the City of Morgantown hereby ordains that Article 1511.02 “Code Enforcement” of the Fire Prevention Code of the City of Morgantown is amended as follows (deleted matter struck through, new matter underlined):

#### 1511.02 CODE ENFORCEMENT.

- (a) The Fire Chief shall be responsible for the enforcement of the City of Morgantown Fire Prevention Code. To assist in the performance of the responsibilities and duties placed upon the Fire Chief, a Bureau of Fire Prevention and a Bureau of Fire Investigation in the Fire Department are hereby created. Both Bureaus shall operate under the supervision of the Fire Chief, who shall designate fire officials of the Fire Department as Fire Marshals for each. The Fire Marshals shall report to the Fire Chief, shall be the administrators of the Bureau of Fire Prevention and Bureau of Fire Investigation and shall be responsible for administration and enforcement of the Fire Prevention Code. The Fire Chief may also designate members of the Fire Department, who have met the qualifications and training as set forth in either Morgantown Fire Department Code Enforcement S.O.P. #6 or Fire Investigation S.O.P. #8 as Deputy Fire Marshals. The Fire Chief is authorized, if he/she deems it necessary, to create additional bureaus and appoint additional Fire Marshals. The Fire Marshals and Deputy Fire Marshals are hereby empowered to enforce the Fire Prevention Code and to cite for any Fire Code violations upon observation of each such offense. Violations for which citations may be issued by the Fire Marshals and Deputy Fire Marshals include, but are not limited to:
  - (1) Locked or blocked fire exits.
  - (2) Overcrowding in violation of posted occupant loads.
  - (3) Failure to maintain occupant load posting.
  - (4) Blocking or obstructing designated fire lanes.
  - (5) Outdoor burning without a State forester permit, when such a permit is required.
  - (6) Burning of materials not authorized in the State burning permit.
  - (7) Having a bonfire or other similar fire without approval of the Morgantown Fire Department.
  - (8) Refusing to cease burning of materials when ordered to do so by proper authority.
  - (9) Tampering with any portable or fixed fire extinguishing system or device or any fire warning system.
  - (10) Illegal burning.

EXHIBIT 5

- (11) Malicious burning.
- (12) Obstructing a Fire Marshal.
- (13) Failure to Comply with Orders.
- (14) Any violation of the Morgantown Fire Prevention Code, West Virginia State Fire Code, or any other fire codes or standards adopted by specific reference by the State of West Virginia.

The Fire Chief, who is responsible for the enforcement of the Fire Prevention Code, may revoke or rescind, at any time, any Fire Department member's enforcement powers when, in the opinion of the Fire Chief, these powers have been abused or improperly enforced.

Nothing within this article shall prevent a Fire Marshal or an Assistant Fire Marshal from seeking injunctive relief against the responsible party at any time once any Code violation is noted. (Ord. 09-19. Passed 5-19-09.)

(b) LODGING AND ROOMING HOUSES – Regardless of the provisions of either the City's Planning and Zoning Code, the City's Housing Code, or any type of lease or family sublease agreement, State Fire Code Rules and Regulations, as they apply to "Lodging and Rooming Houses", will be enforced on all new and existing structures housing four or more persons. Exception: A dwelling unit occupied by a "Functional Family Unit", as defined in Article 1329.02 of the City's Planning and Zoning Code, will not be classified as a "Lodging or Rooming House" under the State Fire Code Rules and Regulations.

(c) There is hereby established a Morgantown Fire Prevention Board which shall ultimately be responsible for the orderly enforcement of the Fire Prevention Code. The membership of the Board shall be composed of the City Manager, who shall be its permanent chairperson, the Chief of the Fire Department and the City Engineer. All actions contemplated by the City's Fire Marshal or Deputy Fire Marshals shall first be reviewed by the Fire Chief who at his discretion may delay any such action until such time as the matter has been presented to the Board for deliberation and recommendation. The Board shall prescribe its own rules and regulations governing its meetings and proceedings, and may, from time to time promulgate appropriate rules and regulations, not otherwise inconsistent with the ordinances of the City or the statutes of the State, which the Board may deem necessary for the orderly enforcement of the Fire Prevention Code. The Board shall have the right to conduct appeal hearings pursuant to Section 1511.05. (Ord. 92-25. Passed 6-16-92.)

This ordinance shall be effective upon July 1, 2010.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk

**From:** Chris Fletcher  
**Sent:** Friday, January 22, 2010 10:44 AM  
**To:** 'Robert Bastress'  
**Cc:** Steve Fanok; Brent Burton  
**Subject:** RE: City of Morgantown - Family Definition

Professor Bastress:

Thank you for your prompt and thorough review. I will revise the ordinance to address your first concern accordingly.

Concerning your second noted flag, I replaced the "25-year old" provision of the previous draft with the current "presumption regarding college students" provision. Fanok and I were concerned that potential legal challenges may require the City to argue a rational basis for the specified age. We also received several comments with concerns, including WVU's Legal Services Office, that the City appeared to be arbitrarily picking 25...why not 21 or 30, etc.

Again, I greatly appreciate your assistance.

Chris.

-----Original Message-----

**From:** Robert Bastress [mailto:Robert.Bastress@mail.wvu.edu]  
**Sent:** Thursday, January 21, 2010 6:53 PM  
**To:** Chris Fletcher  
**Subject:** Re: City of Morgantown - Family Definition

Chris,

I think (A)(2), "Two (2) unrelated people and any children related to either of them by blood, marriage, or legal adoption," could be read to apply only to a couple with children. If so, that would exclude as a "family" any unmarried couple (gay or straight) without children. In fact, that reading was probably my intent when I drafted that provision, the thinking being that a couple that lived with children related to one or both of the cohabitants would almost certainly be a family. My definition of the "functional family" then included any "two or more unrelated persons," which would cover the cases of unmarried couples. The current version of the definition provides for "three or more persons," which would not capture the unmarried couples.

So, I think you should either make clear that (A)(2) includes two unrelated persons living by themselves and two unrelated persons living with children related to either or reduce the "functional family" minimum size to "two or more persons."

The only other flag that I saw was the express presumption regarding college students. I think that is okay; the presumption is not conclusive, and it is certainly reasonable to conclude that most college students are transients and typically do not have the characteristics of a "functional family." The presumption would thus make the ordinance easier to administer.

Good luck!

Bob Bastress

>>> "Chris Fletcher" <cfletcher@cityofmorgantown.org> 1/20/2010 1:47 PM  
>>> >>>

Professor Bastress:

After several meetings with key stakeholders and a workshop with the Planning Commission, we have arrived at a "final" version (see attachment) of the proposed ordinances concerning the definition of "family" and determining residential occupancy city-wide.

These discussions have resulted in changes to the drafts that you originally reviewed and provided comments.

On behalf of the Administration and the Planning Commission, I respectfully request your assistance in reviewing the attachment one final time to:

\* Confirm that the proposed ordinances do not conflict with related State or Federal statutes or Civil Liberty protections; and,

\* Confirm that the proposed ordinances do not discriminate against nor cause undue burden for unwed and/or LGBT persons, couples, families, and/or households.

The first focus noted above was the primary basis for your original review. Interest in the second noted focus has arisen from discussions with WVU's Social Justice Council and public comments offered during the Planning Commission's recent workshop.

We are scheduled to present these ordinances to the Planning Commission on Thursday, February 11, 2010 and would greatly appreciate receiving your review and comments by Wednesday, February 3, 2010.

Please accept my sincere appreciation for your continued technical assistance and guidance. I am available to discuss this matter at your convenience.

Respectfully,

Christopher M. Fletcher, AICP  
Planning Director  
City of Morgantown  
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431 (o)  
304.906.7843 (c)  
304.284.7534 (f)  
cfletcher@cityofmorgantown.org <mailto:cfletcher@cityofmorgantown.org>  
www.morgantown.com/planner.htm

# EXHIBIT 7

## TX10-01 / Administrative / “Family”

The Morgantown Planning Department reviewed the zoning ordinances of the following communities to ascertain their respective approaches to defining “Family” and determining residential occupancy standards.

Community	College/University	Student Enrollment
Alexandria, Virginia	George Washington University	24,000
Bloomington, Indiana	Indiana University	40,000
Burlington, Vermont	University of Vermont	11,000
Chapel Hill, North Carolina	University of North Carolina at Chapel Hill	28,000
Charlottesville, Virginia	University of Virginia	20,000
Columbia, Missouri	University of Missouri	31,000
Ithaca, New York	Cornell University	19,000
Gainesville, Florida	University of Florida	49,000
Knoxville, Tennessee	University of Tennessee	28,000
Macomb, Illinois	Western Illinois University	14,000
Meridian, Michigan	Michigan State University	46,000
Poughkeepsie, New York	Marist College and Vassar College	
Fort Collins, Colorado	Colorado State University	25,000
Urbana, Illinois	University of Illinois	41,000
Oak Creek, Wisconsin		
Roanoke, Virginia		