



CITY OF WHEELING PLANNING COMMISSION

www.WheelingWV.gov

STAFF REPORT

PROPERTY LOCATION: 200 / 1108 West Washington Avenue
Tax Parcels W47-18.2, W47-18.3, W47-18.4

NATURE OF REQUEST: Zoning Amendment (R-1A & R-4 to EMO)

APPLICANT: Fulton Storage LLC / Chris Duplaga

BACKGROUND & ANALYSIS:

Fulton Storage LLC, owned by Chris Duplaga, is seeking a change in the zoning classification of 3 lots that total approximately 210' x 325' and are identified as lots 23, 24 & part of lot 25 of the Map of Steenrod Place. Lots 23 and 24 are currently zoned R-4 Residential and lot 25 is zoned R-1A Residential Single Family, Low Density. The request is to rezone the property to the EMO Educational Medical Office commercial district. Fulton Storage LLC acquired the property in January 2020 from Diocesan Real Estate Inc. The purpose of the request is to allow for the construction of a new 5,000 square foot single story medical office building.

The property is currently zoned R-1A Single Family, Low Density and R-4 Residential. The only permitted use in the R-1A district is a single-family dwelling. The R-4 district allows single family and multi-family dwellings. Prior to the current zoning ordinance being adopted in 2002, colleges and universities were a Permitted Use in the residential districts and this property was used for university purposes. The purpose and intent of the residential zoning districts outlined in city code are to preserve the desirable character of existing neighborhoods, to provide quiet and privacy, and to protect residential areas from change and intrusion that may cause deterioration (§1335.01).

The property being considered for a zone change is contiguous to property owned by Diocesan Real Estate Inc. that is part of Wheeling University's campus and is zoned EMO. The property being considered for a zone change were originally residences, however were most recently used by Wheeling Jesuit University. As stated in §1339.08 of City Code, "the objectives of the EMO district are to recognize those areas in the City where major institutional uses are the principal permitted land uses and to control their special bulk, density, and impacts." A complete list of land uses permitted in the EMO zone has been included in this report.

State code section 8A-7-8 states that prior to amending the zoning ordinance, the governing body with the advice of the planning commission, must find the amendment to be consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body, with the advice of the planning commission must find there have been major changes of an economic, physical or social nature within the area which were not anticipated when the comprehensive plan was adopted and that those changes have substantially altered the basic characteristic of the area.

COMPREHENSIVE PLAN:

The property being considered for a zone change are located in the "Public and Institutional" and "Suburban Residential Core" land use areas on the Future Land Use Map (Map 8) in the 2014

COMMISSION MEMBERS

JAMES J. MAUCK, CHAIR · MARTHA WRIGHT, VICE CHAIR · THOMAS CONNER · RUSTY JEBBIA
HOWARD MONROE · DAVE PALMER · CHRISTINA SCHESSLER · WILLIAM SCHWARZ · JEREMY WEST

STAFF: THOMAS CONNELLY, AICP

Comprehensive Plan. The Future Land Use Plan is intended to serve as a guide for continued development and redevelopment within Wheeling. The user should take into consideration the recommendations and policies of the section, the character of the surrounding area as well as individual conditions of the site including, but not limited to the existing use of the site, natural topography, presence of flood hazard areas, traffic, surrounding uses, and similar conditions.

- “Public and Institutional” is described on page 62 of the Plan as “major public and institutional sites that include schools, hospitals, cemeteries, universities, or college campuses that have a significant impact on the community and several are major employers that the city supports from a business and cultural standpoint.”
- “Suburban Residential Core” is described on page 56 of the Plan “should continue “as-is” with the primary use being single family residential uses at low to moderate densities reflecting the existing neighborhoods. While single family uses will continue to be the predominant land use, there are areas where multi-family residential uses and commercial or office uses may be appropriate.”
- Commercial and Office Uses in the Suburban Residential Core Areas (p. 57)
The city should allow for the continuation of existing commercial and office uses. New commercial and office uses within the residential areas should be discouraged to protect the residential nature of these neighborhoods.

In addition to the Future Land Use Plan, other sections of the Comprehensive Plan to consider include the Community Initiatives and Goals pages 38-47.

STAFF RECOMMENDATION:

In order to avoid being classified as spot zoning, the EMO district was chosen by the applicant as opposed to the C-1 or C-2 zones, which also allow medical offices.

The Commission needs to determine if the location being considered for a zone change is consistent with the Comprehensive Plan, and if not, can satisfy WV Code 8A-8. The commission must also find that the property meets the purpose and intent of the EMO district cited in §1339.08

The applicant has not requested the expedited time line indicated on the attached “Time Line For Zoning Amendment”.

Staff recommends referring the request to the Zoning Subcommittee.

ATTACHMENTS:

- Correspondence to the Commission
- Petition for Zoning Amendment
- Application Timeline
- Map of Steenrod Place
- Site Photo
- Location Map
- Zoning Map
- Existing Land Use Map
- Future Land Use Map
- §1339.08 EMO Educational Medical Office
- Understanding Spot Zoning* by Daniel Shapiro, Esq.

FULTON STORAGE LLC

P.O.BOX 6251

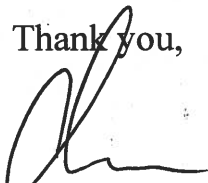
Wheeling, WV 26003

Phone: (304) 233-0332

To Whom It May Concern:

I, Chris Duplaga, owner of Fulton Storage LLC am requesting a zone change at 1108 and 200 W Washington Avenue Wheeling, WV 26003 to build a medical office building.

Thank you,



Chris Duplaga



PETITION FOR ZONING AMENDMENT
CITY OF WHEELING, WEST VIRGINIA

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The undersigned, representing owner(s) of 50 percent or more of the following legally described property, hereby petition the Council of the City of Wheeling for consideration of change in zoning district classification as specified below:

1. Address or Location: 200 / 1108 WEST WASHINGTON AVE.

2. Legal Description: SEE ATTACHED

Subdivision Name: Steenrod Place Lot No. 23, 24, 25

3. Existing Use: VACANT

4. Present Zoning District: RIA

5. Proposed Use: Medical office

6. Proposed Zoning District: EMO

7. Supporting Information:

- a. Attach a vicinity map showing the property and plans
- b. Attach a letter of transmittal outlining request
- c. Application Fee (\$100.00) Payable to: City of Wheeling

8. Person Originating Petition:

a. Name: Chris Duplaga / Fulton Storage LLC

b. Address: P.O. Box 6251 Wheeling WV 26003

c. Phone: 304-215-5210 Date: 6-26-20

9. Signature(s) of Owners

Address of Owners

[Handwritten Signature]

Dated Filed: 6-26-20

Date of Notice in Newspaper: 7/24/20



TIME LINE FOR ZONING AMENDMENT

First Contact Date June 26, 2020

Petitioner Name Chris Duplaga

Property Address 200 + 1108 West Washington

Application needed by 7/1/20

MEETINGS

	<u>DATE</u>	
City Council Referral to Planning Commission	<u>July 7</u>	
Planning Commission - Public Hearing	<u>August 10</u>	<div style="font-size: 2em;">7</div>
Zoning Committee	<u>Sept. 8</u>	
Planning Commission - Vote	<u>Sept. 14</u>	<u>Aug. 10</u>
Report Received by City Council	<u>Oct. 6</u>	<u>Aug. 18</u>
Report Accepted/Approved by City Council	<u>Oct. 20</u>	<u>Sept. 1</u>
City Council - 1 st Reading of Ordinance	<u>Oct. 20</u>	<u>Sept. 1</u>
City Council - 2 nd Reading of Ordinance	<u>Nov. 4</u>	<u>Sept. 15</u>

If the time line shown above in any way inhibits your project, please state the reason below and the Commission may consider voting following the public hearing:

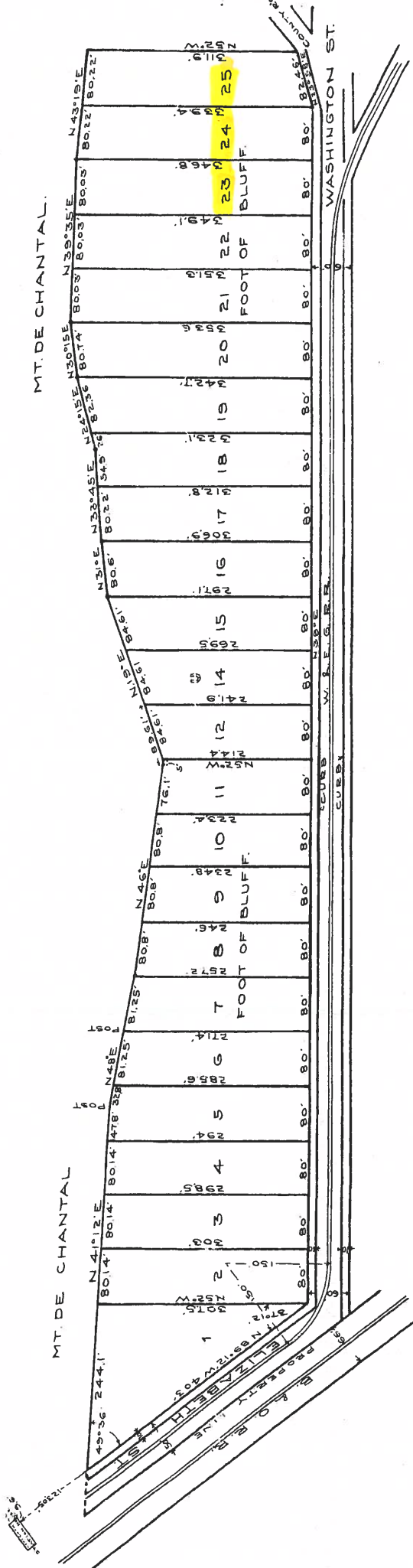
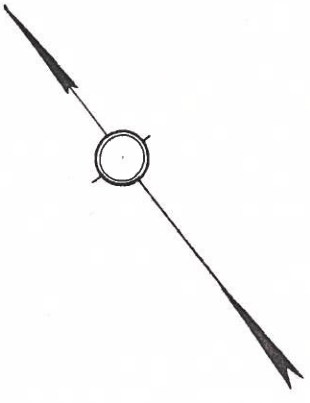
Signature of Applicant

MAP OF STEENROD PLACE

TRACED BY ORION KOLLER, 1912

SCALE 1 IN = 100 FT.

C. SMITH ENGINEER
WHEELING, W. VA.
DEC. 8, 04.



Witness my hand and seal this 19th day of December 1904.

Lewis Steenrod (SEAL)

The State of West Virginia, Ohio County, Sct.

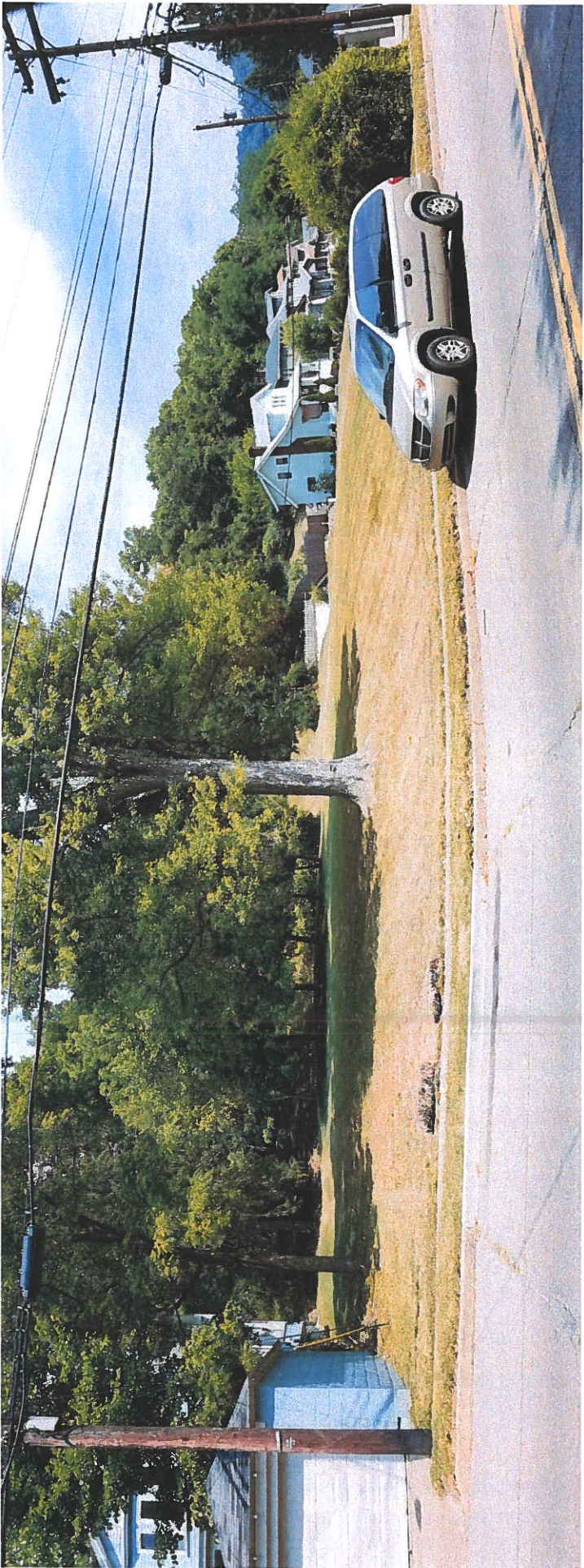
I, Richard Robertson, Clerk of the County Court of said County, do CERTIFY, that Lewis Steenrod whose name is signed to the annexed Plat bearing date on the 19th day of December 1904 has this day acknowledged the same before me, in my office in the county aforesaid.

Given under my hand this 19th day of December 1904

Richard Robertson Clerk

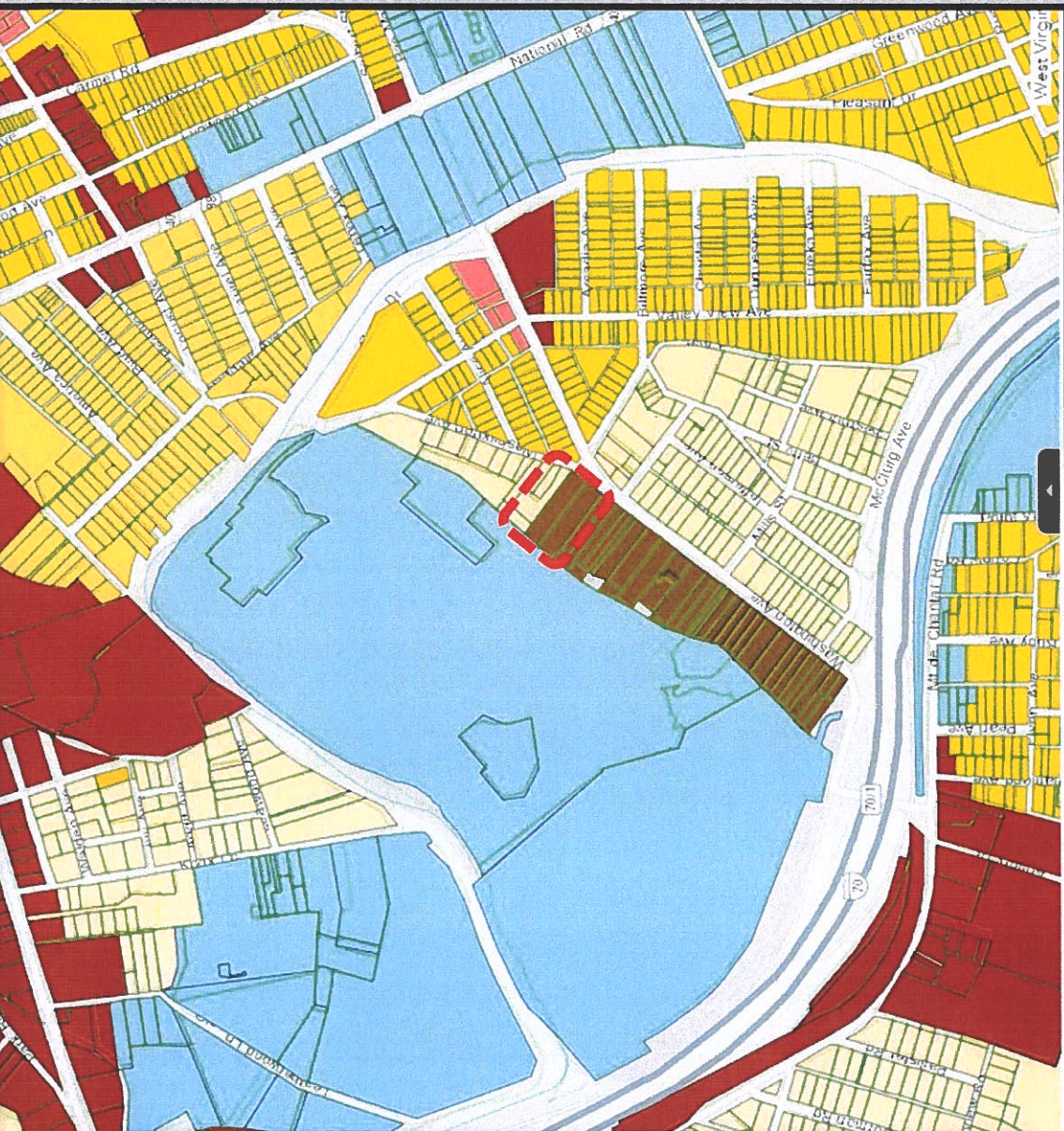
The foregoing plat filed for record December 19, 1904

Teste Richard Robertson Clerk



Location Map





Find address or place

Map navigation icons: Home, Refresh, Full Screen, Print, Share, Layers, Search, and a search icon.

Layers

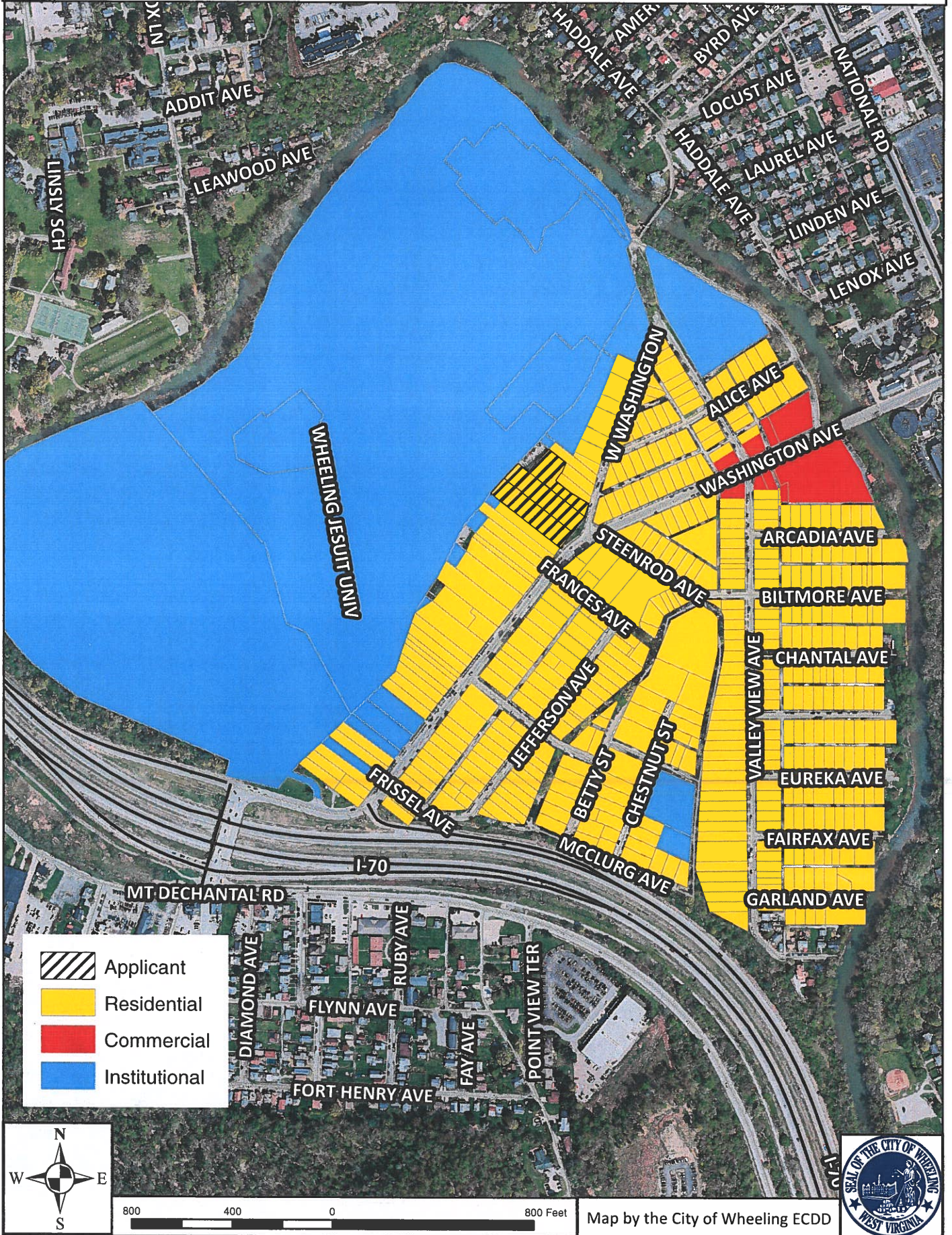
Zoning By Parcel

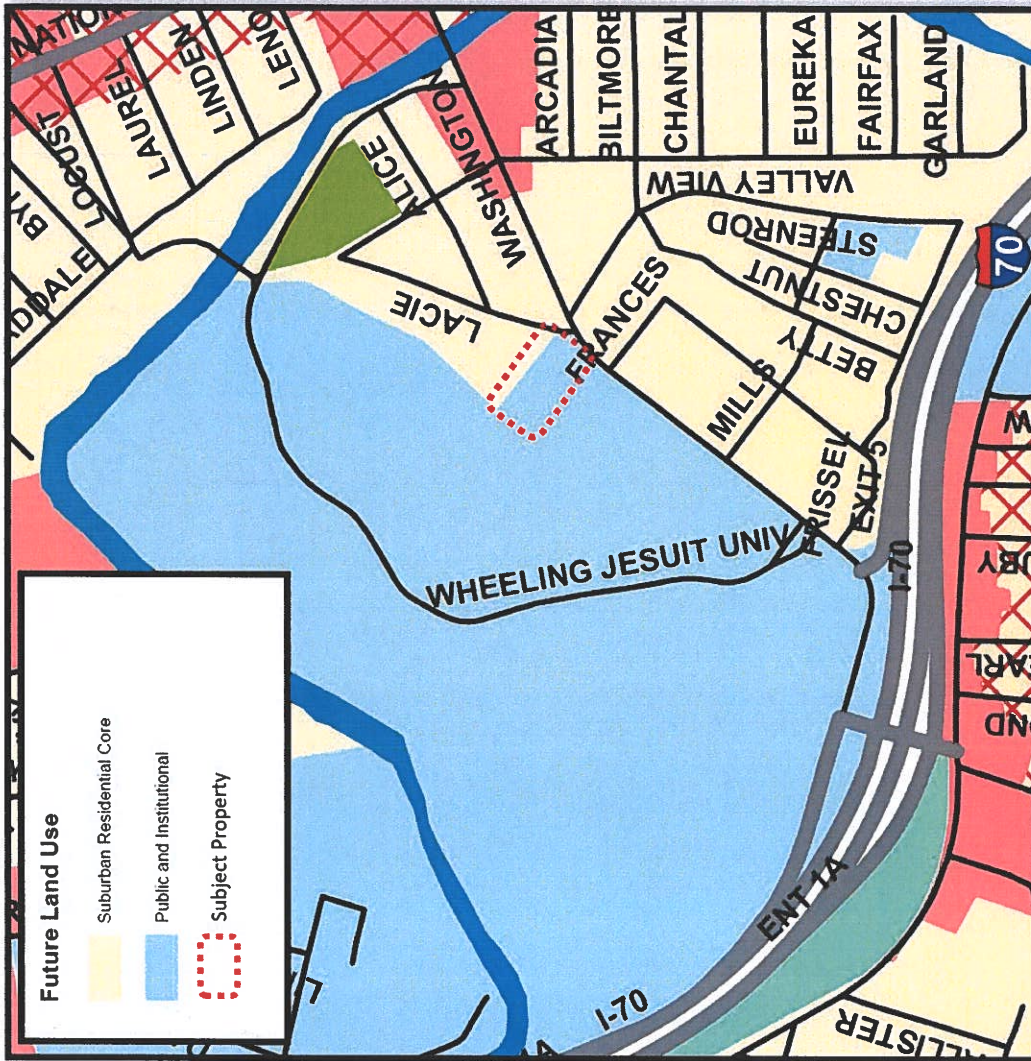
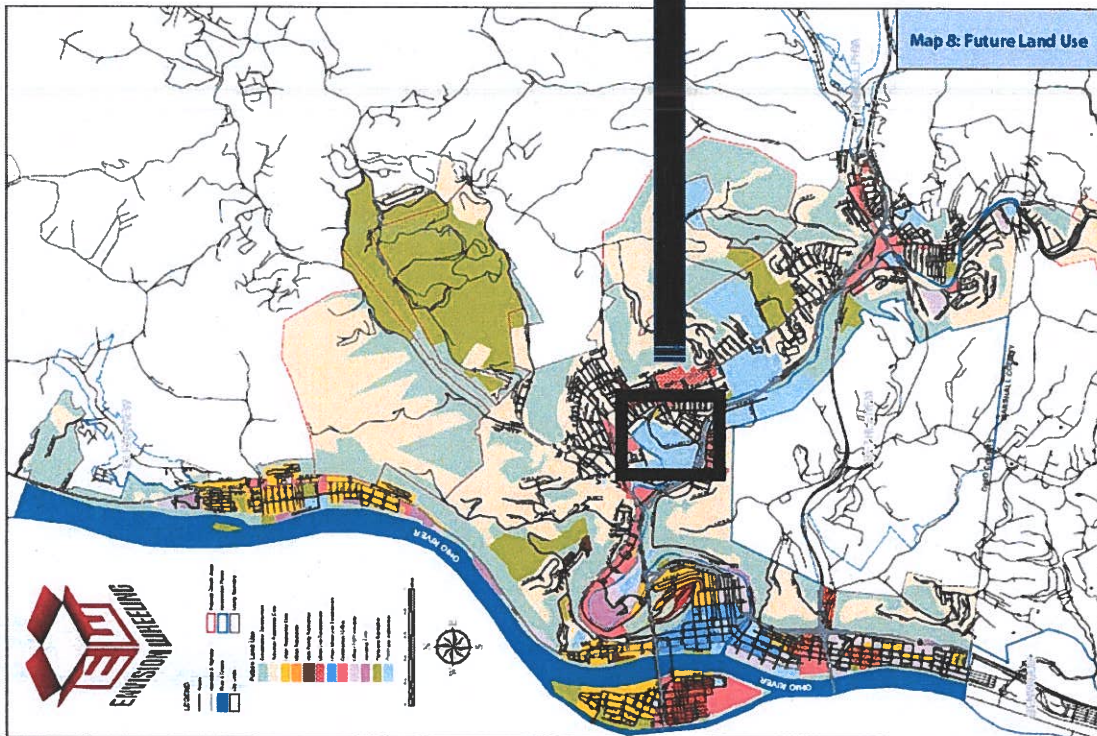
	R1A	
	R1B	
	R1C	
	R2	
	R3	
	R4	
	C1	
	C2	
	D1	
	D2	
	D3	
	EMO	
	EWSD	
	NWSD	
	I1	
	I2	
	R5	

Zoning District

Community Locations

Existing Land Use Map





1339.07 D-3 RIVERFRONT DISTRICT.

The D-3 District allows low to medium density residential and commercial uses along the riverfront and is designed to encourage the appropriate revitalization of this area of the Downtown. Maximum building height in this district is more restricted than in D-1 and D-2 in order to preserve river views from upland areas in the Downtown. Public access to the riverfront and the bicycle path are required. In D-3, land and structures may only be used for:

(Ord. 14405. Passed 1-2-13.)

(a) **PRINCIPAL PERMITTED USES**

- (1) Multi-family dwelling.
- (2) Any non-residential use allowed in D-2.
- (3) Civic or governmental facility.
- (4) Park.
- (5) Adult establishment, subject to the standards in Article 1361.

(Ord. 14993. Passed 8-15-17.)

(b) **ACCESSORY USES**

Accessory uses that are customary and clearly incidental to the principal use.

(c) **SPECIAL PERMIT USES**

Parking garage or parking lot.

(d) **PUBLIC ACCESS**

Mapped roads that intersect with Main Street and Water Street shall not be demapped within the D-3 district.

Alleys that exist in the D-3 district as of the effective date of this ordinance shall continue as alleys or public walkways in the D-3 district.

Public access from the roads and alleys noted above to the riverfront park path system shall be maintained.

Wherever land is rezoned to a D-3 district, roads and alleys that are mapped at the time of the rezoning shall be maintained. Public access connections shall be provided to the riverfront park path system or directly to the river if the park system has not yet been extended in the rezoned area.

1339.08 EMO EDUCATIONAL, MEDICAL, AND OFFICE DISTRICT.

The objectives of the EMO district are to recognize those areas in the City where major institutional uses are the principal permitted land uses and to control their special bulk, density, and impacts. Residences are compatible uses in the EMO districts. In an EMO district, land and structures may only be used for:

(a) **PRINCIPAL PERMITTED USES**

Any residential use permitted in R-3.

Hospital and related facilities.

Educational institution and related facilities. (Ord. 12225. Passed 4-17-01.)

Religious land use. (Ord. 12879. Passed 7-20-04.)

Senior housing.

Office building.

Funeral home.

(b) **ACCESSORY USES**

Uses and structures that are customary and clearly incidental to the principal use.

(c) **SPECIAL PERMIT USES**

Parking garage or parking lot.

Day care or nursery school.

Cemetery

Restricted accessory parking.

Understanding Spot Zoning by Daniel Shapiro, Esq.

Editor's note: We're pleased to continue offering articles providing an overview of some of the key zoning and land use law issues planners and planning commissioners face. As with all such articles, we encourage you to consult with your municipal attorney as laws and legal practice vary from state to state.

Occasionally, planning boards or commissions are faced with a petitioner's request to re-zone property only to be challenged with an objector's claim that doing so would constitute illegal spot zoning. The plan commission often has a quandary; approve the development and risk making an improper, if not illegal decision, or deny the development which would have financially improved the community. To better assist with this difficult decision, it is beneficial for the commission to understand exactly what "spot zoning" is.

What Constitutes Spot Zoning?

The "classic" definition of spot zoning is "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners." ¹

Spot zoning is, in fact, often thought of as the very antithesis of plan zoning. ² When considering spot zoning, courts will generally determine whether the zoning relates to the compatibility of the zoning of surrounding uses. Other factors may include; the characteristics of the land, the size of the parcel, and the degree of the "public benefit." Perhaps the most important criteria in determining spot zoning is the extent to which the disputed zoning is consistent with the municipality's comprehensive plan.

Counties and municipalities both adopt comprehensive plans for the purposes of stating their long term planning objectives, and addressing the needs of the community in one comprehensive document that can be referred to in making many zoning decisions over time.

Comprehensive plans also typically map out the types (and locations) of future land use patterns which the municipality would like see -- again, these provide guidance for changes in the zoning ordinance and zoning district maps.

The key point: rezonings should be consistent with the policies and land use designations set out in the comprehensive plan.

Importantly, each claim of spot zoning must be considered based upon its own factual scenario. Indeed, some courts engage in a cost/benefit analysis to determine whether the challenged zoning is spot zoning.

For instance, in *Griswold v. Homer*, ³ the Alaska Supreme Court found spot zoning to exist by considering a cost benefit analysis, as well as the size of the parcel in question and the rezoning in relationship to the comprehensive plan. Critically, it found that the spot zoning was absent because, among other things, the underlying ordinance resulted in genuine benefits to the City of Homer as a whole, and not just to the particular land owner.

Although courts often find spot zoning where the challenged zone is surrounded by other incompatible zones, spot zoning is less likely to occur when the rezoning has "slopped over" by the extension of the perimeter of an existing zone to include the rezoned area.

Additionally, improper spot zoning is less likely when the disputed area is characterized by mixed uses or transitional areas. In other words, spot zoning is more frequently found in residential than in commercial neighborhoods.

When holding that spot zoning is invalid, some courts will couch their ruling in in terms of substantive due process -- in other words, that the rezoning was not "reasonably related" to a legitimate state interest. Other courts will frame a ruling upon equal protection principles.⁴

Regardless, when courts declare such rezoning invalid they must base their declaration on: (1) the lack of connection of the rezoning to a legitimate power or purpose; (2) the lack of the rezoning's conformity to the comprehensive plan; or (3) the rezoning's representing an unreasonable inequality in the treatment of similarly situated lands. See, e.g., *Hanna v. City of Chicago*⁵ (spot zoning occurs when a relatively small parcel or area is rezoned to a classification out of harmony with the comprehensive plan).

Rebutting Spot Zoning

Spot zoning, however, may be rebutted when the challenged zoning is found to be consistent with a municipality's recent zoning trends in the area, not just with the present surrounding uses.⁶ To illustrate the importance that each factual scenario must be closely addressed, rather than merely labeled, it should be noted that one Illinois court found that the rezoning of small parcels inconsistent with the zoning of surrounding areas is not necessarily unlawful.⁷ The size of a parcel is just one factor to be considered in determining spot zoning.

A claim of spot zoning may also lack merit, for instance, when the zoning or planning regulations consider the boundaries of the property in dispute to contain a line of demarcation between zoning districts which would appropriately separate one zoning district from another.⁸

Most importantly though, if the zoning is enacted in accordance with a comprehensive plan, it is typically not "spot zoning."⁹

What's a Planning Commission to Do?

When considering zoning map amendments, the planning commission or board must not only determine whether the petitioner has satisfactorily responded to the traditional standards in support of his or her application, but it should also closely scrutinize whether a potential exists for spot zoning. In doing so, the commission should look at the comprehensive plan and the surrounding uses to the property at issue.

While the commission is not qualified to make legal determinations of spot zoning, it is nonetheless the gatekeeper of identifying that such an issue may exist. It is therefore appropriate for the commission to defer its decision and consult with its municipal attorney *before* voting to approve the rezoning and referring it to the governing body for adoption.

Summing Up:

Spot zoning must be addressed upon the facts and circumstances of each case. As such, when faced with allegations of spot zoning, the courts will closely look at factors such as the size of the parcel; the anticipated public benefit; the consistency with the community's comprehensive plan; and the consistency with surrounding zoning, and uses, to make a determination of the validity of the rezoning.

Dan Shapiro is a partner with the law firm of Robbins, Salomon and Patt, Ltd in Chicago, Illinois. He practices in the areas of land use, zoning, governmental relations, municipal law, and civil litigation.

Dan represents a wide variety of private developers as well as governmental entities and advises his clients closely on issues of concern. As part of his practice, he has successfully presented legislative and administrative matters before plan commissions, zoning boards, and other village, city, and county bodies.

Dan also is an adjunct professor teaching land use at Kent Law School in Chicago, and is the Chairman of the Village of Deerfield (Illinois) Plan Commission.

Notes:

1. Anderson's American Law of Zoning, 4th Edition, § 5.12 (1995).
2. See, e.g., *Jones v Zoning Board of Adjustment of Township of Long Beach*, 32 N.J. Super 397,108 A.2d 498, 502 (1954).
3. *Griswold v. Homer*, 926 P.2d 1015 (Alaska 1996)
4. See, e.g., *Rando v. Town of N. Attleborough*, 692 N.E.2d 544 (Mass. App. Ct. 1998).
5. *Hanna v. City of Chicago* 771 N.E.2d 13 (2002)
6. See e.g., *1350 Lakeshore Associates v. Casalino*, 352 Ill.App.3d 1027, 816 N.E.2d 675 (1st Dist. 2004).
7. See, e.g., *Goffinet v. County of Christian*, 65 Ill.2d 40 357 N.E.2d 442 (1976).
8. See, e.g., *LaSalle National Bank v. City of Highland Park*, 344 Ill.App.3d 259, 799 N.E.2d 781 (2nd Dist. 2003).
9. See, e.g., *Jones v. Zoning Board of Adjustment of Township of Long Beach*, 32 N.J. Super. 397, 108 A.2d 498, 502 (1954).