



# CITY OF WHEELING PLANNING COMMISSION

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## STAFF REPORT OCTOBER 9, 2020

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

### ZONING COMMITTEE UPDATE:

The Planning Commission referred the request to the Zoning Committee at the recommendation of both the Planning and Legal staff. The Legal Department requested the opportunity to explain past zoning issues on the property. The Planning staff sought to determine if any information or comments presented and discussed during the public hearing would assist in analyzing the request.

- The property is comprised of 3 lots. Two of the lots are zoned R-4 Residential and the remaining lot is zoned R-1A Single Family, Low Density. The only Principal Permitted use in these districts is residential. The purpose and intent of the residential zoning districts outlined in city code is 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 request is to rezone the property to the EMO Educational Medical Office commercial 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.*” (§1339.08)
  - Prior to the current zoning ordinance being adopted in 2001, “colleges and universities” were a Principal Permitted Use in the residential districts and this property was used for university purposes. Upon adoption of the 2001 ordinance, the “college and university” use became a non-conforming use and was allowed to continue.
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- Non-conforming Uses are defined and regulated in §1331.15 of City Code; including the provisions that they cannot:
    - change into another non-conforming use,
    - be enlarged, increased, extended or expanded;
    - be moved in whole or in part to any other portion of the lot or parcel,
    - increase their external evidence,
    - be reestablished if discontinued for a period of six months during a twelve-month period.
  - The applicant has not indicated if other areas of the city already zoned commercial or designated for commercial growth have been pursued and exhausted.
  - The applicant did not inquire with staff as to the zoning of this site before acquiring it.

### 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

- The following comments have been received:
  - Sarita Dofka, 1106 W. Washington Ave – Spoke during the hearing in opposition for reasons stated on the record and outlined in her email.
  - Richard Ferda, 1104 W. Washington Ave – Supported, no reasons given.
  - Tim & Cynthia Latz, 124 Washington Ave – Supported, citing it would be an asset
  - Debbie Mahoney, 233 Washington Ave – Opposed for reasons outlined in the attached letter.

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 three lots being considered for a zone change are located in two different future land use categories on Map 8 of the Comprehensive Plan, “Future Land Use Map”: the “Public and Institutional” and “Suburban Residential Core”.

- The Future Land Use Plan is intended to serve as a guide for continued development and redevelopment within Wheeling.
- “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.*” The designation of “Public and Institutional” on a portion of this property is related to the anticipated growth and expansion of the university when the Plan was being prepared.
- “Suburban Residential Core” is described on pages 56/57 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.*

STAFF RECOMMENDATION:

As stated in the “Steps for Zoning Amendment” packet given to potential zone change applicants, “*The main purpose of zoning is to secure a reasonable development pattern by keeping similar and related uses together and by separating dissimilar and unrelated uses. It is based upon a carefully conceived comprehensive plan that should be a consistent and stable base for future development on the various areas of the City in general. Changing needs and recurring problems are two reasons why there must be a process for consideration of amendments to keep the Zoning Ordinance workable. However, amendments are treated with caution and with the community as a whole in mind.*” It is clear this request

would benefit the property owner. As for “the community as a whole in mind”, staff refers to the goals and objectives found in the Comprehensive Plan to make that determination.

Upon review of the application materials, it is the staff’s position that the request is inconsistent with the Comprehensive Plan. Furthermore, staff is unable to “identify changes that have significantly altered the characteristics of the area” since the 2014 Plan was adopted as required in West Virginia Code 8A-8 to support the zone change request. Therefore, staff recommends denying the request for the following reasons:

1. The intended use does not fit the intent and purpose of the proposed EMO district as outlined in §1339.08.
2. The intended use does not fit the description of the Public and Institutional land use category found in the Comprehensive Plan. The applicant is not proposing a “major public or institutional site that would have a significant impact on the community” (p. 62)
3. The introduction of a commercial use at this location would contradict the purpose of the surrounding residential district (§1335.01) which includes preserving the desirable character of the existing neighborhood, to provide quiet and privacy, and to protect residential areas from change and intrusion that may cause deterioration.

The applicant owns and operates many successful business enterprises that are an asset to Wheeling’s business community and has designed a very attractive building to occupy this location. However, this location is best suited for new residential use, the need for which was identified throughout the Comprehensive Plan. However, if the Commission recommends approval, they must find it to be consistent with the Comprehensive Plan or site the changes that significantly altered the area. If approved, staff anticipates additional applications to rezone property on Washington Avenue for commercial purposes.

ATTACHMENTS:

October 1, 2020 Correspondence  
*Refer to the original staff report (8/10/20) for all other supplements*

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**FITZSIMMONS**  
LAW FIRM PLLC

October 1, 2020

***Via Facsimile Transmission and U.S. Mail***  
**304-234-3899**

James J. Mauck, Chairman  
City of Wheeling Planning Commission  
City County Building  
1500 Chapline Street  
Wheeling, WV 26003

**Re: Zone Change Request**  
**200/1108 West Washington Ave. – R4 & R-1A to EMO**  
**Fulton Storage LLC / Chris Duplaga**

Dear Chairman Mauck:

At the previous hearing, we had been asked whether some type of buffer could be placed between Mr. Duplaga's property and the adjacent neighbor who had filed a complaint and we indicated that it would be our intent to have such a buffer. A copy of a rendering is enclosed for your and all other planning commission members' review.

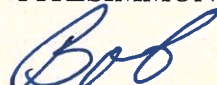
Additionally Mr. Chairman, you had asked what Mr. Duplaga's intent would be if Mr. Duplaga was not permitted to construct the Medical/Dental office building he proposed. Based upon the property's location to Wheeling University, Mr. Duplaga is considering constructing a three-story apartment building similar to that constructed by the Bedway's down the street on Washington Avenue. We have had a rendering of that building on this lot which is also attached and which can be shared with those who have commented on the Medical/Dental office building.

If anyone has any questions before the hearing, please don't hesitate to call.

Thanking you, I remain

Very truly yours,

FITZSIMMONS LAW FIRM PLLC

  
Robert P. Fitzsimmons

RPF/klc

Enclosures

cc: Thomas Connelly (via email transmission and U.S. Mail: [tconnelly@wheelingwv.gov](mailto:tconnelly@wheelingwv.gov))  
Rosemary Humway-Warmuth (via email transmission and U.S. Mail: [rhwarmuth@wheelingwv.gov](mailto:rhwarmuth@wheelingwv.gov))  
Rocky Fitzsimmons, Esq.  
Chris Duplaga

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MEDICAL OFFICE/PROFESSIONAL CENTER- WASHINGTON AVE.

**MI MILLS GROUP**  
ARCHITECTURE ■ PLANNING ■ PRESERVATION

DATE: 09-30-2020

**RENDERING**  
FRONT VIEW



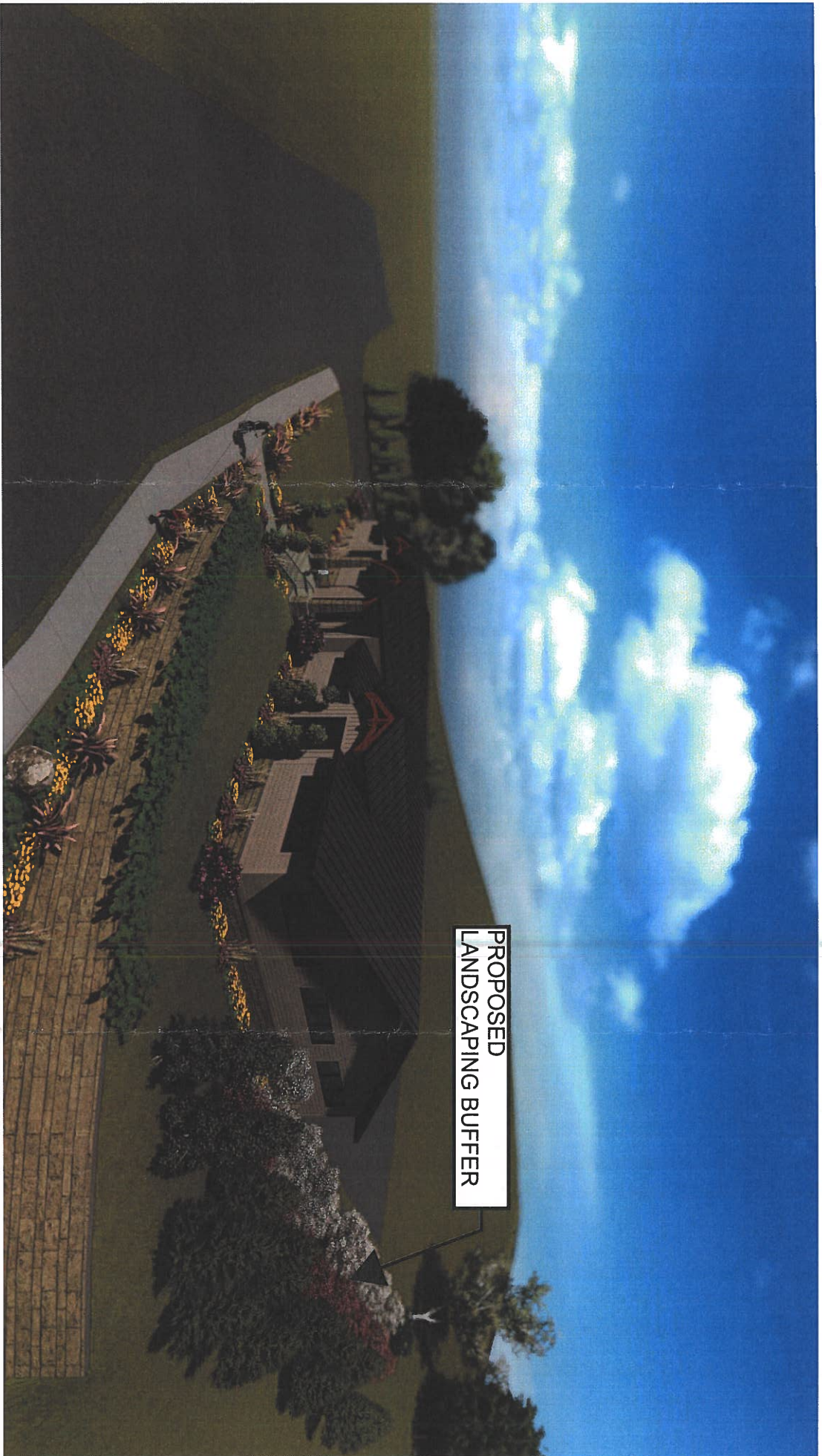
PROPOSED  
LANDSCAPING BUFFER

MEDICAL OFFICE/PROFESSIONAL CENTER- WASHINGTON AVE.

**IM** MILLS GROUP  
ARCHITECTURE ■ PLANNING ■ PRESERVATION

DATE: 09-30-2020

**RENDERING**  
FRONT VIEW



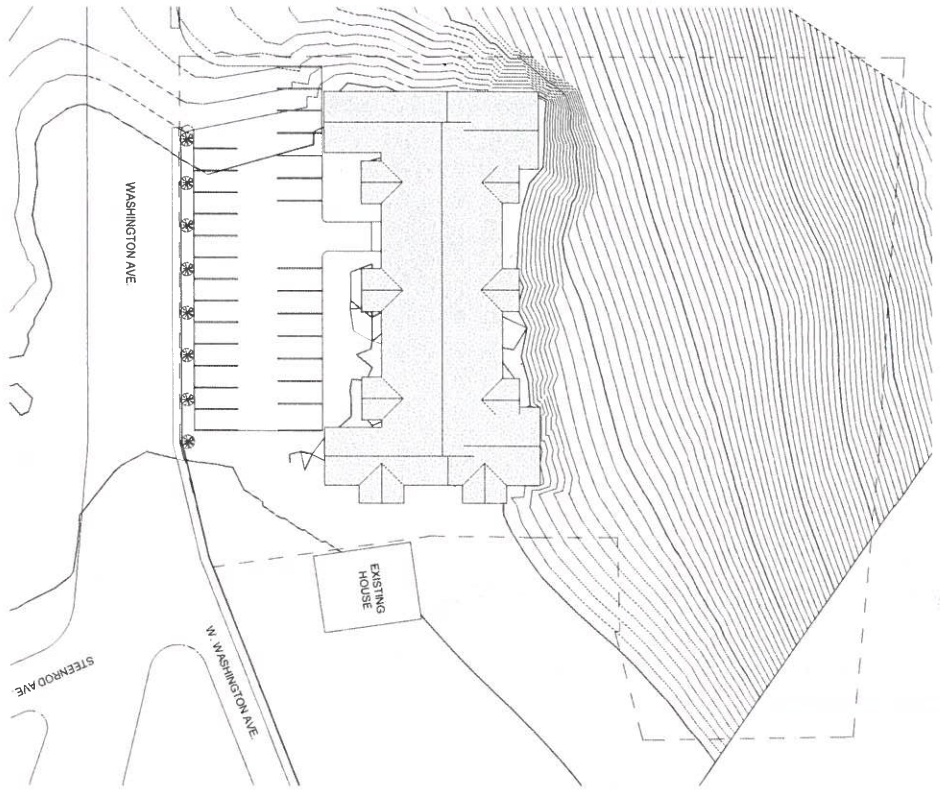
PROPOSED  
LANDSCAPING BUFFER

MEDICAL OFFICE/PROFESSIONAL CENTER-WASHINGTON AVE.

**MI MILLS GROUP**  
ARCHITECTURE ■ PLANNING ■ PRESERVATION

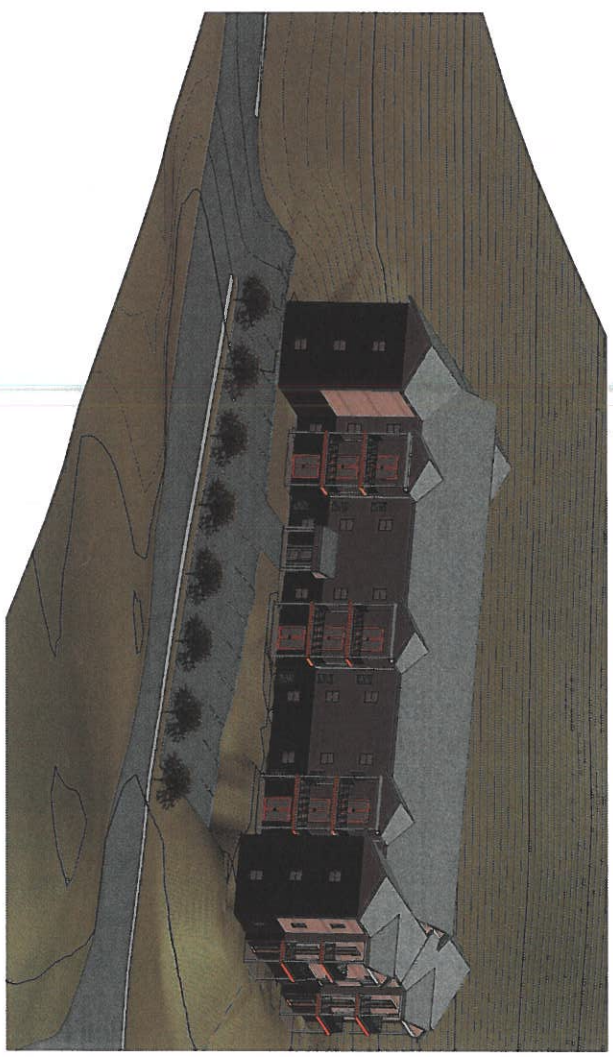
DATE: 09-30-2020

**RENDERING**  
FRONT VIEW



1 SITE  
1" = 50'-0"

SCALE 1" = 50'-0"



2 3D VIEW 1