



CITY OF WHEELING PLANNING COMMISSION

www.WheelingWV.gov

STAFF REPORT

PROPERTY LOCATION: 50 Virginia Street
Tax Parcel W50-5

NATURE OF REQUEST: Zoning Amendment (C-1 to I-1)

APPLICANT: J & W Holdings, LLC / Joyce Pifer

BACKGROUND & ANALYSIS:

J & W Holdings LLC, owned by Joyce Pifer, is seeking a change in the zoning classification of a 30' x 120' vacant lot that is currently zoned C-1 Neighborhood Commercial. The request is to rezone the property to the I-1 Light Industrial district. The property was acquired in 2011. The purpose of the request is to allow for a trailer to be stored on the property. The owner had previously been storing the trailer on this property until they were informed it violated the zoning ordinance, at which time they relocated to 113/115 South Penn Street in front of the business, a laundromat, that necessitates the storage.

50 Virginia Street is zoned C-1 Neighborhood Commercial and can be used for any purpose listed in §1339.03 of city code (attached). The purpose of the C-1 district is to *“permit a compatible mix of commercial and residential uses within a medium density neighborhood business district, and to contain retail business in a compact and cohesive location. The commercial uses should predominantly serve the convenience retail and service needs of local residents and employees”*. “Accessory Parking lots” are a Special Permit Use in the C-1 district, however the proposed trailer storage does not meet the criteria outlined in §1371.21 (attached). Therefore, a change to an Industrial district (attached), which allows “storage” would be required to store the trailer on the property. The industrial district also allows “truck terminal”.

The purpose of the industrial zone is to *“provide the city of Wheeling with industrial areas appropriate to its regional role, geographic locations of such uses, and road and rail network.”*

The property is not contiguous to an existing industrial district and if approved could be considered “spot zoning”.

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 “Mixed Residential” and “Mixed Use Development” land use areas on the Future Land Use Map (Map 8) in the 2014 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

COMMISSION MEMBERS

JEREMY WEST, CHAIR · THOMAS CONNER · RUSTY JEBBLA
HOWARD MONROE · DAVE PALMER · CHRISTINA SCHESSLER · WILLIAM SCHWARZ

STAFF: THOMAS CONNELLY, AICP

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.

- “Mixed Residential” is described on page 58 of the Plan
- “Mixed Use Development” on Wheeling Island is described on page 60 of the Plan

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:

Staff does not find the request to be consistent with the Comprehensive Plan, nor have there been changes at this location that were unforeseen when the Plan was adopted. Additionally, staff does not believe the intended use meets the stated purpose of the district. Therefore, staff recommends denying the request.

If the Commission recommends approving the request, 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 should also find that the property meets the purpose and intent of the I-1 district cited in §1339.08 because once changed, any use listed in the I-1 or C-2 could be established.

ATTACHMENTS:

Correspondence to the Commission
Petition for Zoning Amendment
Application for Zoning Compliance
Application Timeline
Map of John A. Armstrong’s Addition
Aerial Photo of Properties
Site Photos
Zoning Map
Comprehensive Plan Map #2: Existing Land Use Map
Comprehensive Plan Map #8: Future Land Use Map
Comprehensive Plan pgs. 58 & 60, 61
Zoning Ordinance: §1339.03 C-1 Neighborhood Commercial
Zoning Ordinance: §1343.03 I-1 Light Industrial
Zoning Ordinance: §1371.21 Restricted Accessory Parking regulations
Understanding Spot Zoning by Daniel Shapiro, Esq.

8/30/21

City of Wheeling WV
Board of Zoning Appeals
1500 Chapline Street
Suite 305
Wheeling, WV 26003

Board of Zoning Appeals:

I am writing to request that I be permitted to use my existing commercial lot to park my own trailers.

The trailers must currently be parked in such a way as to block access for up to three (3) businesses. Making this space accessible may help to bring business to the city and expand the city tax base. This space cannot be made viable for business if I am unable to park my trailers on the lot in question.

I would like to request that I be put on the calendar for a discussion of the particulars of the situation.

Please assist me in finding a way to create a win-win situation for both myself and the city.

Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Joyce Pifer". The signature is written in a cursive, flowing style.

Joyce Pifer



PETITION FOR ZONING AMENDMENT
CITY OF WHEELING, WEST VIRGINIA

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: 50 VIRGINIA STREET

2. Legal Description: J ARMSTRONG E 1/2 LOT 3

Subdivision Name: NIA Lot No. NIA

3. Existing Use: PARKING/MISC.

4. Present Zoning District: C-1

5. Proposed Use: PARKING/MISC.

6. Proposed Zoning District: I-1 Light Industrial

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: JOYCE PIFER

b. Address: 152 VIRGINIA STREET

c. Phone: (412) 979-0448 Date: 8/30/21

9. Signature(s) of Owners

Address of Owners

X Joyce M. Pifer

152 VIRGINIA ST. WHEELING WV

Dated Filed: 8/31/21 Date of Notice in Newspaper: 10/1/21



APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE FOR THE USE, ERECTION, ALTERATION, OR REPAIR OF A BUILDING OR LAND

The undersigned applies for a Certificate of Zoning Compliance for the following, said certificate is to be issued on the basis of the information contained within the application. *The applicant hereby certifies that all information and attachments are true and correct.*

- 1. Address of Property: 50 Virginia Street
- 2. Name of Property Owner: J & W Holdings, LLC.
- 3. Name of Applicant: Joyce Pifer
- 4. Address of Applicant: 152 Virginia Street
- 5. Applicant Phone: 412-979-0448 Owner Phone: 412-979-0448
- 6. Existing Use: Parking/Misc.
- 7. Proposed Use: Same Other (describe): _____
- 8. Number of off-street parking spaces to be provided: 15
- 9. Number of off-street loading berths to be provided: 0

COMPLETE THIS SECTION BELOW FOR THE ERECTION, ALTERATION, OR ADDITION OF A STRUCTURE

Type of Improvement:

- New Building
- Addition
- Alteration / Repair

Residential:

Number of existing dwelling units: _____

Number of proposed dwelling units: _____

Existing Lot Dimensions: Width: 120 ft. x Depth: 30 ft. = lot area: 3,600 sq. ft.

Existing Principal Building:

Dimensions: Width: _____ ft. x Depth: _____ ft. = Total first floor area, including covered porches: _____ sq. ft.

Setbacks: Front: _____ ft. Rear: _____ ft. Side: _____ ft. Other Side: _____ ft. Height/Stories: _____

Existing Accessory Building: (garage, carport, shed, pool, etc):

Dimensions: Width: _____ ft. x Depth: _____ ft. = Total first floor area, including covered porches: _____ sq. ft.

Setbacks: Front: _____ ft. Rear: _____ ft. Side: _____ ft. Other Side: _____ ft. Height/Stories: _____

Proposed Construction:

Dimensions: Width: _____ ft. x Depth: _____ ft. = Total first floor area, including covered porches: _____ sq. ft.

Setbacks: Front: _____ ft. Rear: _____ ft. Side: _____ ft. Other Side: _____ ft. Height/Stories: _____

Applicant Signature: Joyce Pifer Date: 8-31-2021

Owner Signature: Joyce Pifer Date: 8-31-2021

Reset Form

Print Form



TIME LINE FOR ZONING AMENDMENT

First Contact Date 8/27/21
 Petitioner Name Frank Calabrese / PFe
 Property Address 50 Virginia St.
 Application needed by 9/1/21

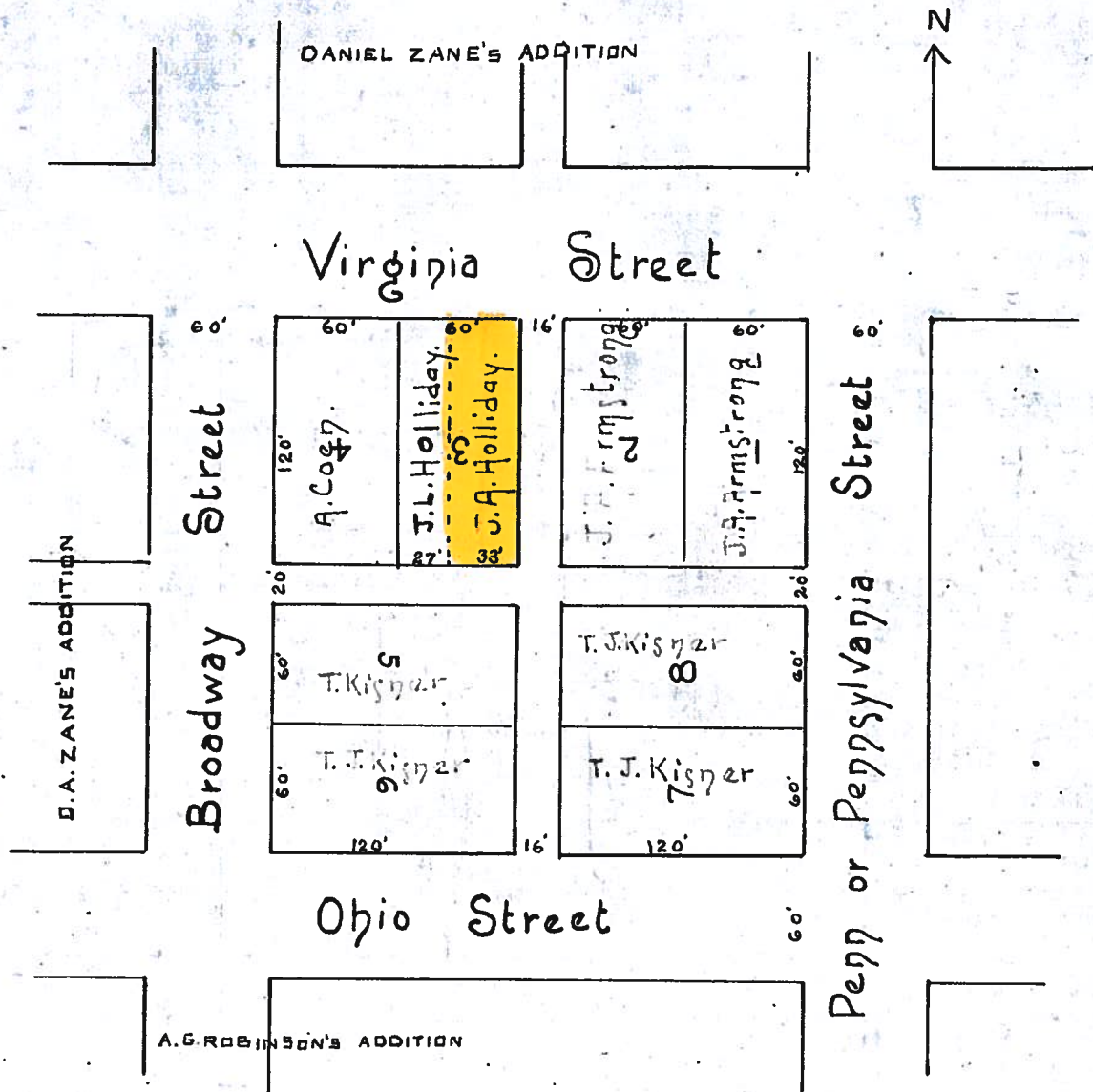
MEETINGS

	<u>DATE</u>
City Council Referral to Planning Commission	<u>9/7/21</u>
Planning Commission - Public Hearing	<u>10/18/21</u>
Zoning Committee	<u>11/1/21</u>
Planning Commission - Vote	<u>11/8/21</u> <u>10/18</u>
Report Received by City Council	<u>11/16/21</u> <u>11/2</u>
Report Accepted/Approved by City Council	<u>12/7/21</u> <u>11/16</u>
City Council - 1 st Reading of Ordinance	<u>12/7/21</u> <u>11/16</u>
City Council - 2 nd Reading of Ordinance	<u>12/21/21</u> <u>12/7</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

and others, on Wheeling Island, South of Virginia and east of
Broadway Street



Be it known that we have laid out the land represented by the above plat into lots and alleys in the manner represented by said plat and have dedicated and do hereby dedicate to public use all our right, title and interest in the said alleys as above represented. The above to be known as John A. Armstrong's Addition to the City of Wheeling.

Witness the following signatures and seals, Wheeling, January 22, 1868

John A. Armstrong, (Seal)
 J. A. Holliday, (Seal)
 Alex Coen, (Seal)
 J. L. Holliday, (Seal)
 T. J. Kiser, (Seal)

West Virginia

Be it remembered that on the 22d day of Jan'y. 1868, the above plat of

50 Virginia Street



VIRGINIA ST

S BROADWAY ST

OHIO ST

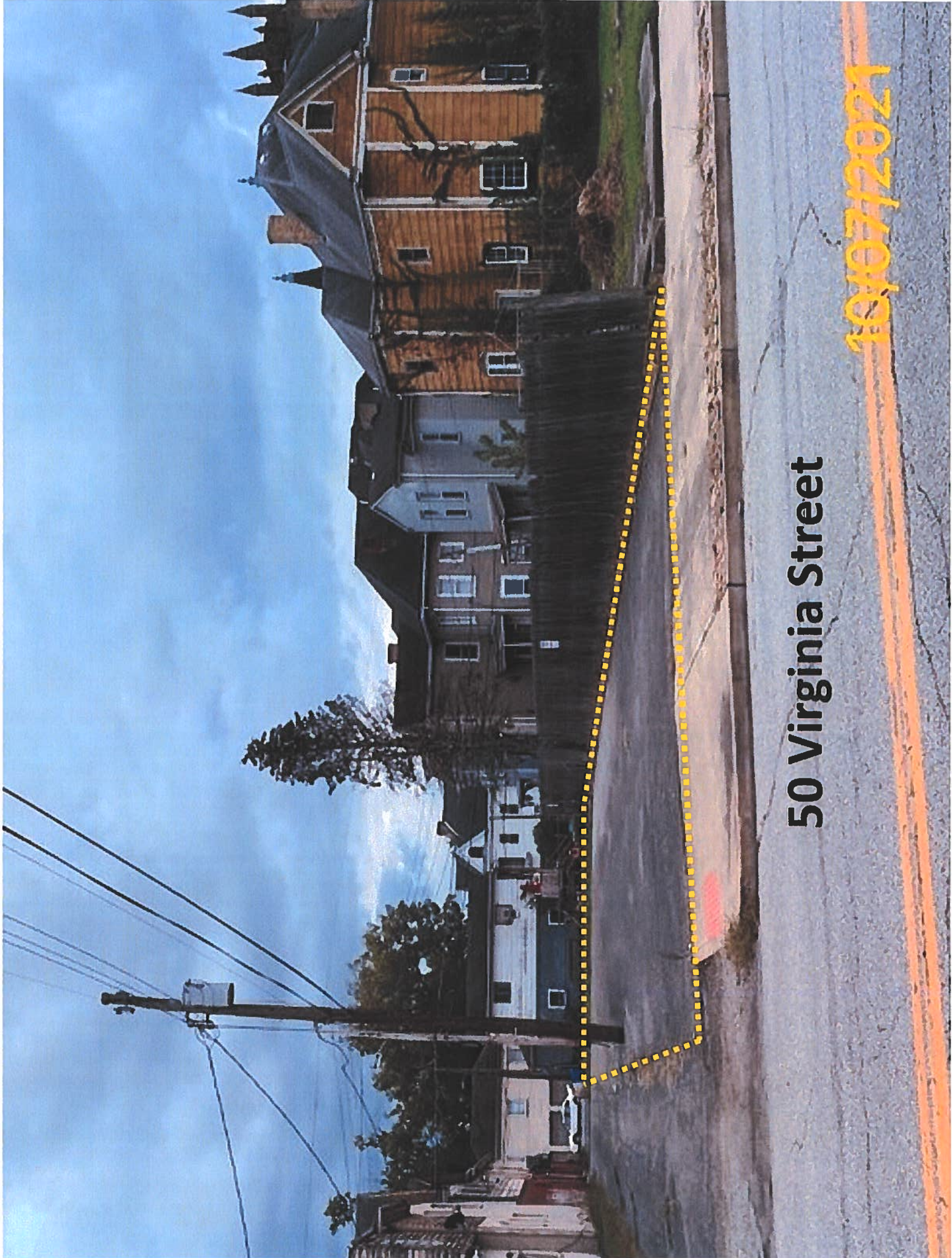
S PENN ST

LANE 41

N

0 50 100 Feet

**CITY OF WHEELING
BUILDING & PLANNING DEPT.**



50 Virginia Street

10/07/2021



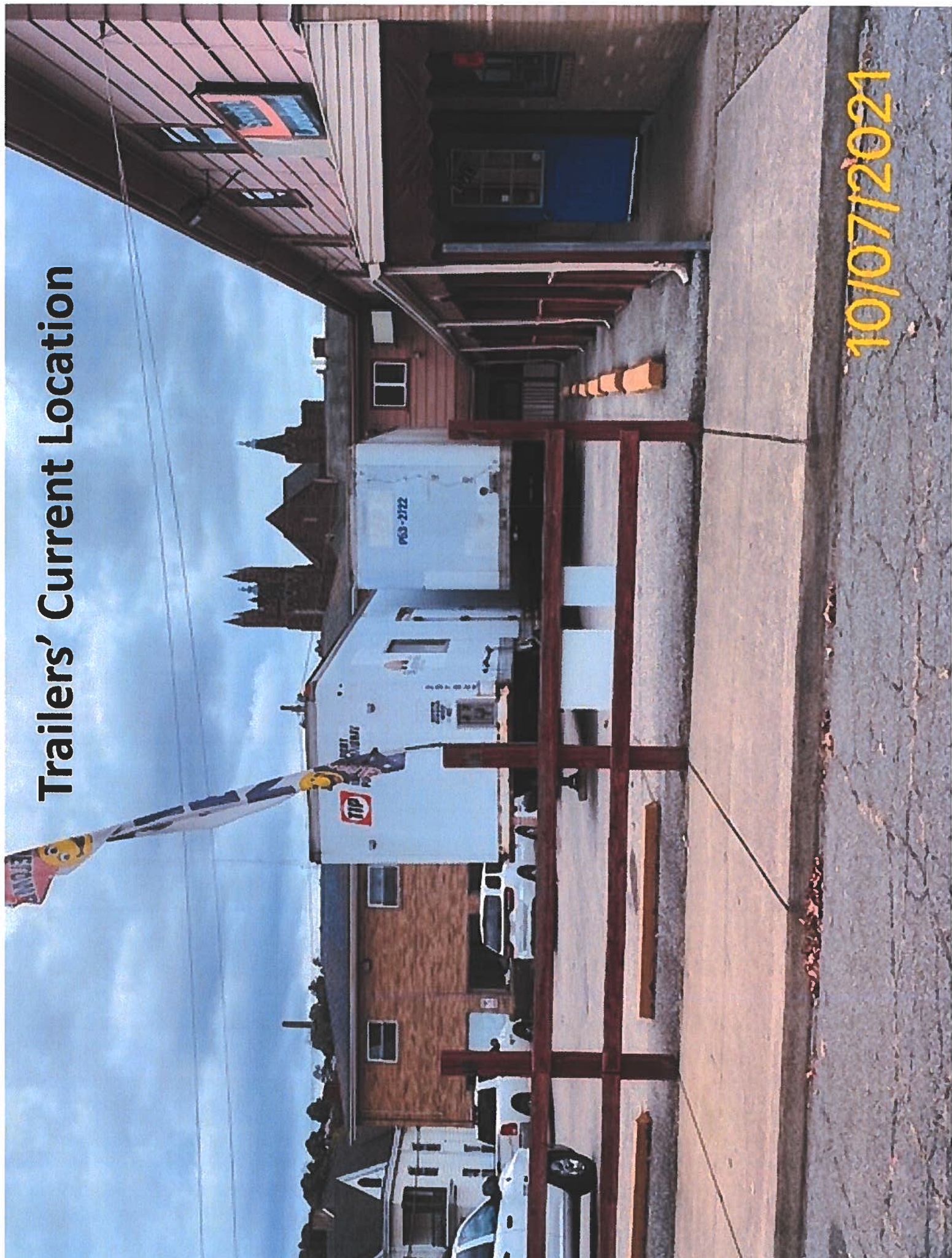
Previous Conditions (pre-2021)

50 Virginia St
Wheeling, West Virginia
Google
Street View - Jul 2019



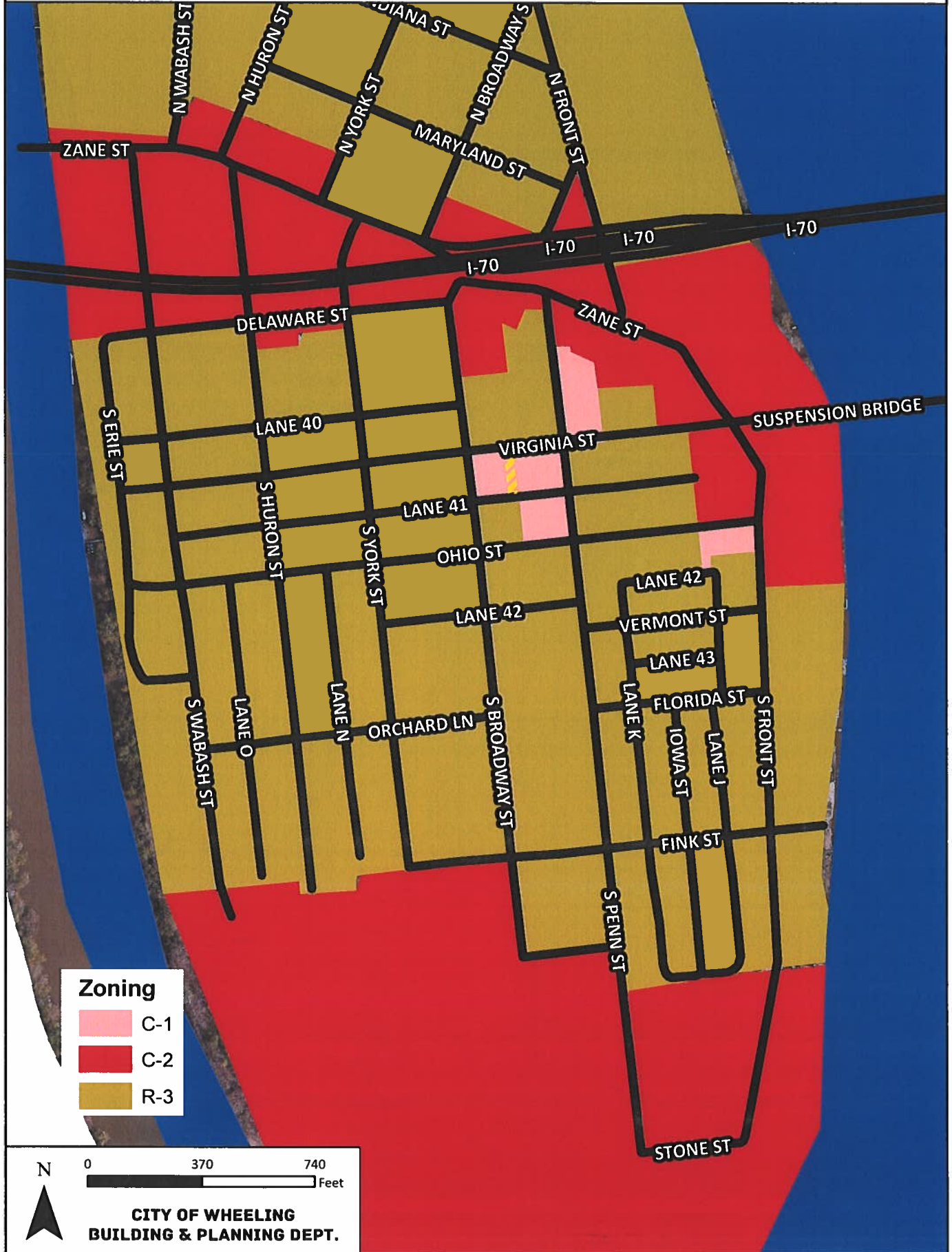
Google

Trailers' Current Location



10/07/2021

Zoning Map



Zoning

- C-1
- C-2
- R-3

N













0 370 740 Feet

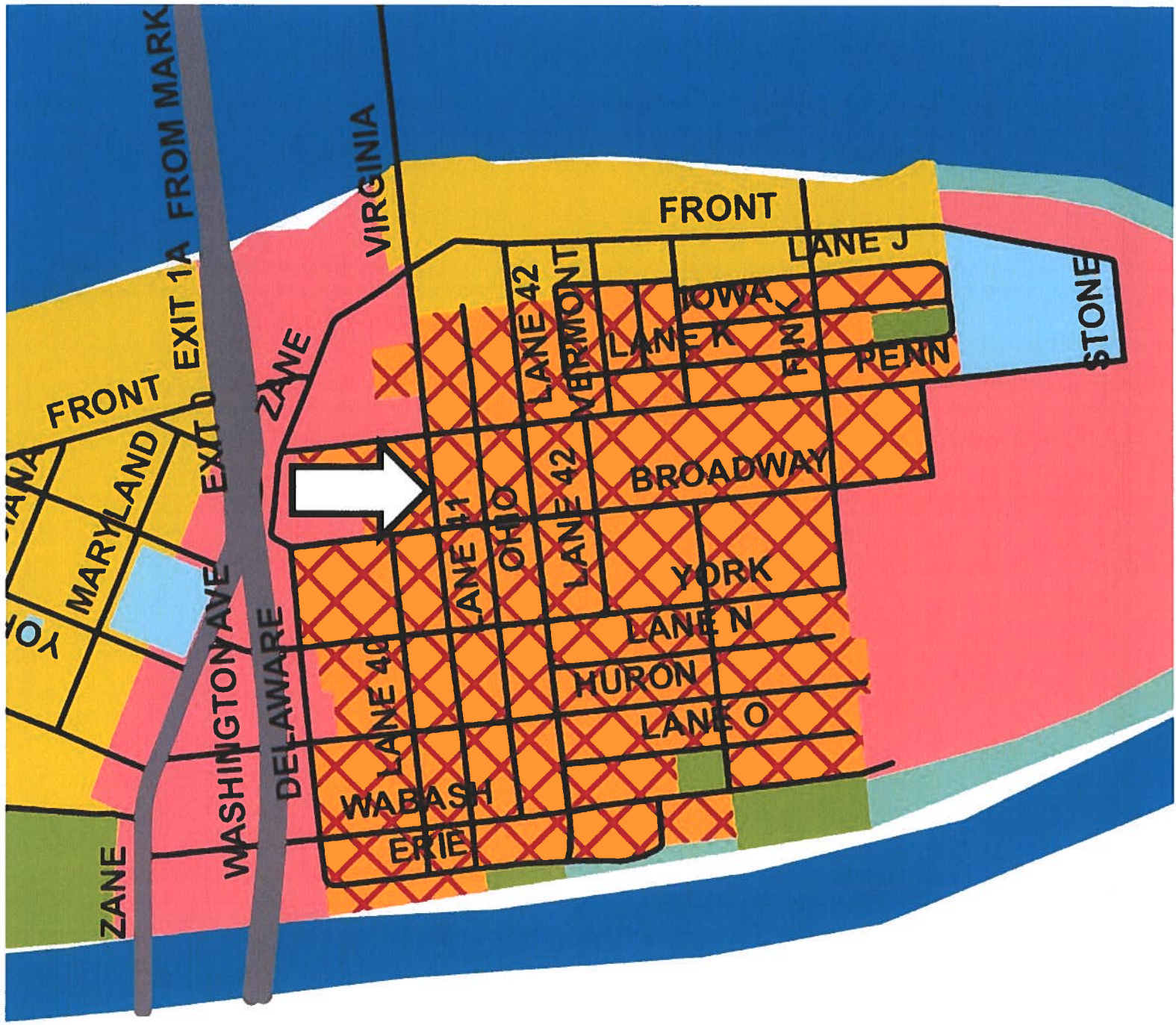
CITY OF WHEELING
BUILDING & PLANNING DEPT.

- Land Use**
- Single-Family Residential
 - Multi-Family Residential
 - Commercial, Office, or Mixed Use
 - Industrial
 - Public or Institutional
 - Recreational
 - Vacant Land



Future Land Use

-  Conservation Development
-  Suburban Residential Core
-  Urban Residential Core
-  Mixed Residential
-  Multi-Family Residential
-  Mixed Use Development
-  Urban Mixed Use Development
-  Commercial / Office
-  Office / Light Industrial
-  Industrial Core
-  Parks and Recreation
-  Public and Institutional



Multi-Family Residential

There are a number of high density multi-family residential buildings in Wheeling that include older mansions converted to apartment buildings and large, high-rise apartment buildings. These stand-alone residential structures provide a housing option necessary to a community like Wheeling. The future land use plan illustrates the continued use of land for multi-family residential uses that consist of the highest density residential uses in the city that are not part of a mixed use building that contains nonresidential uses as part of the mix.



Mixed Residential

Many of Wheeling's neighborhoods have a variety of housing types intermixed amongst each other that developed naturally over the course of history. While the preservation of this mixture is encouraged in areas designated as urban residential core, the primary intention of these areas is the preservation of the existing housing stock. In other areas of the community, there is the potential for broader redevelopment activities that could see the clearing of large areas for residential redevelopment. For example, the ridgeline areas of East Wheeling and the southern portion of Wheeling Island are two areas where there are a larger number of vacant lots, deteriorating housing stock, and natural development constraints including floodplain and steep slopes where redevelopment may remedy certain development issues.



Example of a neighborhood block with a mix of housing types

The following are development principles that should apply to Mixed Residential areas on the future land use map:

- Maintain historically significant structures to the maximum extent feasible but ease restrictions for the demolition of other structures to allow for the consolidation of lots that will allow increased redevelopment opportunities
- Redevelopment should be accomplished in a manner that will protect homes from flood hazards and minimize grading of steep terrain. This may include designing new buildings so they are elevated above base flood elevations (parking on the ground level) and/or clustering homes in areas with the flattest topography.
- Allow for higher density housing where the effect will be to protect the natural resources described in this plan.
- Encourage a mixture of housing types within a single development to increase the housing choices in Wheeling. This may include a mixture of detached homes and attached housing adjacent to one another.

Mixed Use Development (Overlay)

There are several areas of the city where there is the potential for the development or redevelopment of a number of different types of uses. In order to provide some level of flexibility within this plan, the future land use plan incorporates a mixed use development category as an overlay to other future land use categories. In these areas, owners have the option to develop based on either the base land use category or an alternative under this mixed use development area that is shown as an overlay on the map. In these areas, the mixed use development may take the form of vertical mixed use within a single building (e.g., residential uses over a commercial first floor) or could simply take the form of what is considered general mixed use where residential uses or office uses may be interspersed with commercial uses in stand-alone buildings.

Mixed Use Development along Grandview Avenue

The area along Grandview Avenue in East Wheeling has good street access and distinctive views overlooking the river and Wheeling Creek valley that creates the potential for the development of some neighborhood-scale commercial or mixed use development. The following are development principles that should apply to any commercial or mixed use development that contains a nonresidential use:

- The commercial uses should be limited so as to not create a small business district but enough that it could provide some local neighborhood services.
- The scale (size and height) of the uses should be in keeping with the residential character of the surrounding development.
- Uses should be limited to restaurants, small retail, small office spaces, or a combination of those uses and residential uses that will serve the immediate neighborhood. Auto-heavy uses such as gas stations or fast-food restaurants should be prohibited to minimize impacts on surrounding residential uses.

Mixed Use Development on Wheeling Island

There are a lot of potential redevelopment opportunities on Wheeling Island that could range from all residential to a mix of uses that creates a corridor between the interstate and the casino complex. The purpose of establishing the mixed use development overlay in this area is to provide flexibility that might be necessary to allow for any mixture of uses on Wheeling Island, especially if such redevelopment is designed to protect buildings from flood hazards. The following are development principles that should apply to any mixed use development on Wheeling Island:

- Industrial uses should be prohibited.
- Even though the overlay calls for a mixture of uses, residential uses should not be a required component in the mixture, although it should be encouraged.
- Given the flood elevations in this area, the scale of buildings will have to be relatively tall with parking the likely use of the ground level. Any new development in the area should be encouraged to be creative in creating aesthetic treatments of any ground level parking to buffer the appearance of the parking areas from pedestrian views.

- Encourage development that capitalizes on the views and access of the Ohio River, especially for restaurants and other commercial uses that can serve both customers who come from the land as well as those who might gain access from the river via boats.

Other Areas of Mixed Use Development

In the other areas of mixed use development, any type of mixed use should be allowed including vertical mixed use (i.e., not mixed within a single building) as well as mixed use within a single building. In these areas, auto-oriented commercial uses may be acceptable if there is adequate access.

Commercial and Office

The commercial and office land use category covers areas of the city that would be appropriate for commercial retail, office, and service uses that cater to both the local and regional market. The areas typically lie along major road corridors or at key intersections where there are high volumes of traffic. General commercial uses are the primary shopping locations for the community and include, but are not limited to, grocery stores, wholesale clubs, large-scale general retail, discount department stores, specialty retail, restaurants, banks and gas stations. The heavy retail focus of these areas makes them primarily auto oriented. However, this plan strongly encourages development that establishes pedestrian access between nonresidential buildings and surrounding residential development.



Office/Light Industrial

Wheeling has seen a significant transition from the heavy industrial of the past to office space and light industrial uses that are generally located within an enclosed building. The areas shown as office or light industrial on the future land use plan should be used for such office space or business that manufacture or assemble goods in low-impact settings. Uses should be those that do not have extensive outdoor storage or activities. Any outdoor storage or activities should be appropriately buffered from adjacent properties.

Industrial

This land use category encompasses much of Wheeling's older industrial properties that are still viable but consist of more intense manufacturing uses or ones that are reliant on heavy truck traffic or river access that can potentially create conflict with adjacent land uses. These areas should be maintained as industrial uses with a focus on redevelopment to light industrial uses, where appropriate, and minimizing the impacts to the environment.

1339.03 C-1 NEIGHBORHOOD COMMERCIAL.

The objectives of the C-1 District are to permit a compatible mix of commercial and residential uses within a medium-density neighborhood business district, and to contain retail businesses in a compact and cohesive location. The commercial uses should predominantly serve the convenience retail and service needs of local residents and employees. In commercial district C-1, land and structures may only be used for:

(a) **PRINCIPAL PERMITTED USES.**

- (1) Bank or lending institution.
- (2) Government service or office.
- (3) Office.
- (4) Personal service establishment.
- (5) Recreational facility.
- (6) Restaurant without lounge.
- (7) Retail business and business-to-business establishment.
- (8) Retail Food Establishment.
- (9) Veterinarian; non-boarding animals only.
- (10) Residential Uses, as per R-4;
 - A. Single-family dwelling.
 - B. Two-family dwelling.
 - C. Multi-family dwelling.
 - D. Home occupation as an accessory use to a principal residential use, regulated under Article 1367.

(Ord. 12821. Passed 5-4-04.)

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

(b) **ACCESSORY USES.**

- (1) Accessory buildings and structures that are customary and clearly incidental to the principal use.
- (2) A private garage or open parking for operative passenger vehicles and for not more than one commercial licensed operative vehicle of person residing on the premises.
- (3) A playhouse, tool house, garden house, greenhouse, or private swimming pool not operated for gain.
- (4) Customary home occupation. See Article 1367.
- (5) One accessory apartment in an owner-occupied single-family dwelling.

(c) **SPECIAL PERMIT USES.**

- (1) Community center.
- (2) Day care center; nursery school.
- (3) Membership association.
- (4) Public or private utility.
- (5) Service station.
- (6) Restricted accessory parking.
- (7) Restaurant with lounge. (Ord. 12821. Passed 5-4-04.)

1343.03 I-1 LIGHT INDUSTRIAL.

The I-1 district is a low-density district that allows light industry that conforms to established performance standards. Commercial uses are also allowed. In industrial district I-1, land and structures may only be used for:

(a) **PRINCIPAL PERMITTED USES**

- (1) Any principal use allowed in C-2, but not including residential use.
- (2) Wholesale business, storage, and warehousing.
- (3) Vehicle sales, service, and washing.
- (4) Animal sales.
- (5) Truck terminal.
- (6) Public and private utility.
- (7) Non-vehicular repair and maintenance service

(b) **ACCESSORY USES**

- (1) Uses and structures that are customary and clearly incidental to the principal use.
- (2) Residence of watchman, custodian, or caretaker employed on premises.

(c) **SPECIAL PERMIT USES**

- (1) Marina, with sale of fuel.
- (2) Parking garage or lot.
- (3) Service station.
- (4) Light manufacturing.
- (5) Residential use existing at the time of the effective date of this ordinance shall be automatically granted a permit to continue as allowed specially permitted uses.

1371.21 RESTRICTED ACCESSORY PARKING.

Restricted accessory parking areas may be established under the following circumstances:

- (a) The land of the accessory parking lot and the land of the principal use shall be under the same ownership.
- (b) Accessory parking lots for permitted uses in a zoning district shall lie within two hundred and fifty feet of the buildings in which they are designed to serve.
- (c) An accessory parking lot serving a business established in a contiguous C-1, C-2, D-1, D-2, or D-3 District may be located in R-3, R-4, or EMO Districts. Such accessory parking shall be located within two hundred and fifty feet of the business which it serves.
- (d) Proof shall be shown that the additional parking spaces are essential to the public interest as evidenced by a serious need for off-street parking facilities and as being not injurious to the area in which the lot is located. This is subject to the verification and approval by the Economic and Community Development Department.
- (e) The parking spaces shall be used for parking two-axle vehicles only.
- (f) Ingress and egress to the area shall be approved by the City Engineer.
- (g) The parking spaces shall be developed in accordance with the provisions of Article 1355.
- (h) Signs shall be permitted and regulated pursuant to Article 1355.

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 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).