



# CITY OF WHEELING PLANNING COMMISSION

www.WheelingWV.gov

## STAFF REPORT

PROPERTY LOCATION: 2 Hawk Court  
Tax Parcel W30A-169

NATURE OF REQUEST: Zoning Amendment (R-4 to C-1)

APPLICANT: Everette Gray, Jr.

### BACKGROUND & ANALYSIS:

Everette Gray, Jr. is seeking a change in the zoning classification of a 65' x 100' vacant lot that is currently zoned R-4 High Density Residential. The previous residential structure was razed following a fire. The request is to rezone the property to the C-1 Neighborhood Commercial district.

The property was acquired in 2019. The deed to the property (Deed Book 968 Page 564) and the Plat of North Park (Plat Book 3 Page 100) both contain the following protective covenant, which is not enforced by the city: *1. All lots shall be used for residential purposes only.*

The purpose of the request is to allow for the construction of a neighborhood grocery store on the property. The proposed 500 sq. ft. structure would offer groceries and prepared foods, a drive-thru and 4 off-street parking spaces.

In his correspondence to the Commission, Mr. Gray sites the community's benefit that would result from a retail food store in this location if the zone change were to be approved. The property is not contiguous to an existing commercial district. The closest commercially zoned property is approximately 3,000 feet away. Public benefit has been sited when an otherwise case of spot zoning is apparent. (See *Understanding Spot Zoning*)

The R-4 district allows for single-family, two-family and multi-family dwellings. The purpose of the residential zones is listed in §1335.01 (attached) and includes, "*to provide for adequate daylight, ventilation, quiet, privacy, and recreational opportunities*" and "*to preserve the desirable character of existing neighborhoods*".

The purpose of the C-1 Neighborhood Commercial 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*".

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.

### COMMISSION MEMBERS

JEREMY WEST, CHAIR · THOMAS CONNER · RUSTY JEBBIA  
HOWARD MONROE · DAVE PALMER · CHRISTINA SCHISSLER · WILLIAM SCHWARZ

STAFF: THOMAS CONNELLY, AICP

COMPREHENSIVE PLAN:

The property being considered for a zone change is located in the “Multi-Family Residential” land use area on the Future Land Use Map (Map 8) in the 2014 Comprehensive Plan (page 58, attached). 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.

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 recommends referring the request to the Zoning Committee.

ATTACHMENTS:

Correspondence to the Commission  
Petition for Zoning Amendment  
Application for Zoning Certificate  
Application Timeline  
Plat of North Park  
Deed  
Site Photos  
Location Map (Site Context Plan)  
Proposed Site Plan  
Proposed Floor Plan  
Zoning Map  
Comprehensive Plan Map #2: Existing Land Use Map  
Comprehensive Plan Map #8: Future Land Use Map  
Zoning Ordinance: §1335.01 Residential District: Purpose and Intent  
Comprehensive Plan pgs. 43, 56-57  
*Understanding Spot Zoning* by Daniel Shapiro, Esq.

September 1, 2021

RE: Proposed On Deck Korner Grocery Store, 2 Hawk Court

To: City of Wheeling Board of Zoning Appeals

My name is Everette Gray Jr.; a life-long resident of Wheeling. My family and I resided at 107 Eagle Avenue for thirty years and the corner lot at 2 Hawk Court is now one of the properties I own in the North Park area. I attended and graduated from Wheeling Central High School. I am the father of three children and a proud and active member of the local organization Men of Change which is making a positive impact with young men and fathers in the Ohio Valley.

As a young man I found the North Park area to be a "Food Desert". Walking distance to closest convenience store is approximately thirty minutes away and the closet grocery store approximately sixty minutes away. This distance often proved problematic for people unable to drive, without reliable transportation or during inclement weather who need basic food items and necessities. This distance creates financial hardships as people must rely on public transportation such as a bus or cab to get to a store. For some people public transportation was not an option due to financial constraints so they would have to walk to and from the store.

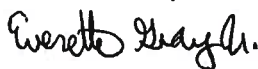
I want to open a neighborhood grocery store at 2 Hawk Court. The store would provide many of the same items as the corner grocery stores that were a part of every neighborhood in Wheeling with competitive, affordable pricing. We will also have deli items, fresh sandwiches and beverages. It is important to note that alcohol sales and gaming will not be offered. Delivery will be available to the elderly and disabled. Employment will be offered to residents of the North Park community with special focus on the youth. As a young man I was fortunate enough that my family could provide me transportation to and from work and when I began to drive I had a vehicle available to me but not all youth are afforded this blessing. Lack of transportation can be a deterrent for young girls and boys who want to work. Hours of operation will be 6:00am-7:30pm on weekdays and 6:00am-9:00pm on weekends.

This store will not only benefit residents of the near community, but will also benefit the greater Wheeling area. African American owned businesses are encouraging to not only African Americans, but all minorities. A business that is successful in the Ohio Valley is a testament that people do not have to leave the area to build, grow and fulfill their dreams. It is a testament that the community where you were born and raised in is in support of your goals.

I care about and I am invested in the community. I want to own and operate the type of business in which I am on a first name basis with my customers. I feel this store will provide a much needed service to North Park residents and will bring the community closer together.

Sincerely,

Everette Gray





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: 2 HAWK COURT, WHEELING, WV, 26003

2. Legal Description: NORTH PARK SECTION 12

Subdivision Name: NORTH PARK Lot No. 169

3. Existing Use: RESIDENTIAL

4. Present Zoning District: R-4

5. Proposed Use: COMMERCIAL

6. Proposed Zoning District: C-1

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: LEVERETTE GRAY JR.

b. Address: 1735 GUERNSEY ST. BELLAIRE, OH.

c. Phone: 740-238-8120 Date: 09/1/2021

9. Signature(s) of Owners

Address of Owners

*Leverette Gray Jr.*

1735 Guernsey St  
Bellaire Ohio 43906

Dated Filed: 09/01/2021

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: 2 HAWK COURT, WHEELING, WV, 26003
- 2. Name of Property Owner: EVERETT GRAY
- 3. Name of Applicant: GUS KAYAFAS
- 4. Address of Applicant: 2307 CHAPLINE ST. #1, WHEELING, WV, 26003
- 5. Applicant Phone: 304-312-6929 Owner Phone: 740-238-8120
- 6. Existing Use: R-4
- 7. Proposed Use:  Same  Other (describe): C-1
- 8. Number of off-street parking spaces to be provided: 1
- 9. Number of off-street loading berths to be provided: -

**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: 0

Number of proposed dwelling units: 1

**Existing Lot Dimensions:** Width: 68'-6" ft. x Depth: 100'-0" ft. = lot area: 6,850 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: 12'-0" ft. x Depth: 36'-0" ft. = Total first floor area, including covered porches: 504 sq. ft.

Setbacks: Front: 27'-5" ft. Rear: 37'-0" ft. Side: 33'-2" ft. Other Side: 20'-7" ft. Height/Stories: 1 FLOOR

Applicant Signature: *Gus Kayafas*

Date: 8/31/21

Owner Signature: *Everett Gray*

Date: 8/31/21

Reset Form

Print Form



# TIME LINE FOR ZONING AMENDMENT

First Contact Date 8/30/21

Petitioner Name Everett Gray

Property Address 2 Hawk Ct.

Application needed by 9/1/21

## MEETINGS

## DATE

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

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\_\_\_\_\_  
Signature of Applicant

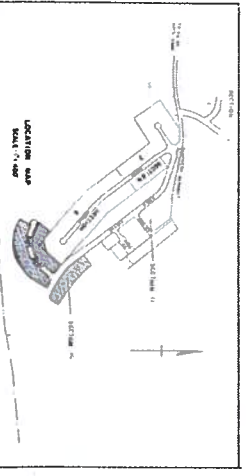
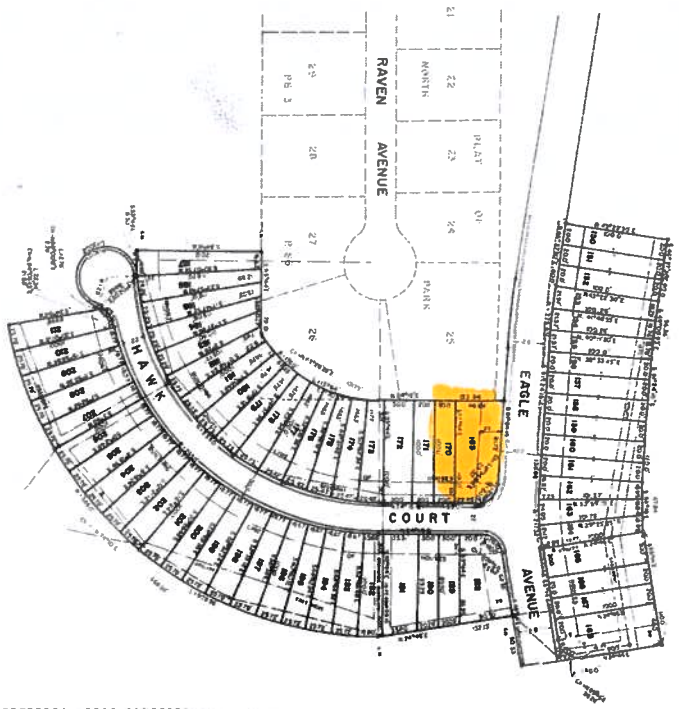
# PLAT OF NORTH PARK (SECTION 10) CITY OF WHEELING, RICHLAND - WASHINGTON DISTRICT OHIO COUNTY, WEST VIRGINIA.

CHESTER W. KLOSS  
CLERK OF COUNTY COURT  
JUN 28 12 23 PM '71  
OHIO COUNTY WEST VIRGINIA  
ADMITTED TO RECORD

# PLAT BOOK 3 + PAGE 100

PLAT OF NORTH PARK  
OF SECTION 10

SCALE IN FEET



I hereby certify that I am a Civil Engineer registered professionally to practice in the State of West Virginia and that this plat is in all respects correct, and was prepared from an actual survey completed by me on December 21, 1970.

*N. George Schmitz*  
N. George Schmitz, W.V. Reg. Eng. No. 1673  
Clerk

Approved by the Council of the City of Wheeling, Ohio County, West Virginia, the 22<sup>nd</sup> day of June, 1971, in accordance with Chapter 39, Article 1, Section 16, of the West Virginia Code.

*Charles H. Kloss*  
Clerk  
This Plat admitted to record this 22<sup>nd</sup> day of June, 1971  
of 2-25 P.M.

Lot No.	Owner Name	Lot No.	Owner Name
101	W. H. HARRIS	111	W. H. HARRIS
102	W. H. HARRIS	112	W. H. HARRIS
103	W. H. HARRIS	113	W. H. HARRIS
104	W. H. HARRIS	114	W. H. HARRIS
105	W. H. HARRIS	115	W. H. HARRIS
106	W. H. HARRIS	116	W. H. HARRIS
107	W. H. HARRIS	117	W. H. HARRIS
108	W. H. HARRIS	118	W. H. HARRIS
109	W. H. HARRIS	119	W. H. HARRIS
110	W. H. HARRIS	120	W. H. HARRIS
121	W. H. HARRIS	131	W. H. HARRIS
122	W. H. HARRIS	132	W. H. HARRIS
123	W. H. HARRIS	133	W. H. HARRIS
124	W. H. HARRIS	134	W. H. HARRIS
125	W. H. HARRIS	135	W. H. HARRIS
126	W. H. HARRIS	136	W. H. HARRIS
127	W. H. HARRIS	137	W. H. HARRIS
128	W. H. HARRIS	138	W. H. HARRIS
129	W. H. HARRIS	139	W. H. HARRIS
130	W. H. HARRIS	140	W. H. HARRIS
141	W. H. HARRIS	151	W. H. HARRIS
142	W. H. HARRIS	152	W. H. HARRIS
143	W. H. HARRIS	153	W. H. HARRIS
144	W. H. HARRIS	154	W. H. HARRIS
145	W. H. HARRIS	155	W. H. HARRIS
146	W. H. HARRIS	156	W. H. HARRIS
147	W. H. HARRIS	157	W. H. HARRIS
148	W. H. HARRIS	158	W. H. HARRIS
149	W. H. HARRIS	159	W. H. HARRIS
150	W. H. HARRIS	160	W. H. HARRIS

Being a subdivision of part of the property that was conveyed by the Bachman Realty Company, a West Virginia corporation, to Interstate Construction Company, a corporation, by deed dated July 31, 1965, and recorded in the Office of the Clerk of the County Court of Ohio County, West Virginia, in Deed Book 466 of Page 416.

**KNOW ALL MEN BY THESE PRESENTS:**

That the Interstate Construction Company, a corporation, organized and existing under the Laws of the State of West Virginia has caused the above Plat of North Park, Section 10, to be made and does hereby dedicate to public use Eagle Avenue and Hawk Court, and does hereby also assign and transfer to the City of Wheeling the sewer, water mains and the hydrants indicated and defined on the above Plat, and does further grant and convey unto the City of Wheeling the right to install, repair and relay sewers passing through said lots.

**PROTECTIVE COVENANTS:**

The following covenants are hereby imposed upon all of the lots shown on the Plat of North Park, (SECTION 10), Wheeling, W. Va.

(1) All lots shall be used for residential purposes only. No structure shall be erected, offered, placed or permitted to remain on any lot other than a dwelling not to exceed three and one-half (3-1/2) stories in height and a private garage for not more than two (2) cars, which garage shall be installed in the basement of, or directly attached to said dwelling or shall be connected to said dwelling by a breezeway.

(2) No structure, except an open porch, piazza or stoop, shall be located on any lot nearer to the front lot line or nearer to the side street line than the twenty (20) foot building setback lines shown on the Plat.

(3) No trailer, basement, tent, camper, shock or garage shell of any time be temporarily or permanently used as a residence, nor shall any structure of any temporary character be used as a residence.

(4) No boat, trailer, camper or truck shall be parked, placed or permitted to remain on any lot or parcel shown hereon unless the same is completely and wholly within the private garage located thereon.

(5) No fence or wall shall be erected or maintained on any lot nearer the street line than the front wall of the dwelling on said lot, except retaining walls protecting the evidence to a basement garage or retaining wall protecting steps in front lawn area of said lot, provided, however, that such retaining wall shall not extend above the grade of the lot.

(6) No noxious or offensive trade or activity shall be carried on upon any lot nor shall any thing be done thereon which may be or become any annoyance or nuisance to the neighborhood.

(7) All surface water shall be drained, emptied or discharged into the storm water sewer lines located at shown on said Plat, and no sewage and household wastes shall be dumped, emptied or discharged into said sewer lines.

(8) Streams and water courses for surface drainage shall not be obstructed, relocated or changed in any way by any purchaser.

All of the foregoing covenants shall be covenants running with the land and may be enforced by the owner or owners of North Park, Section 10, or any lot therein, against the owner or owners of the lot or lots upon which any violation thereof occurs. Said covenants shall be binding upon all purchasers and all persons claiming under them until December 1, 1992 and thereafter until such time as an instrument signed by 50% of the then owners of lots shown on said Plat has been recorded, agreeing to change said covenants in whole or in part. Invalidation of any one of said covenants by judgment or court order shall in no wise effect any of the other provisions which shall remain in full force and effect.

There is accepted and reserved from the lots shown on this Plat all of the coal underlying same together with such mining rights and privileges that have heretofore been accepted and/or conveyed in Witness Whereof the Interstate Construction Company has caused these presents to be signed and its Corporate Seal to be affixed hereto this 22<sup>nd</sup> day of June, 1971, by John Waterhouse, its President, by authority of its Board of Directors, duly open.

*John Waterhouse*  
John Waterhouse, President  
Interstate Construction Company

STATE OF WEST VIRGINIA, COUNTY OF OHIO, to wit:

I, *Notary Public of said county of Ohio, do certify that John Waterhouse, presently appeared before me in my said County and being by me duly sworn, did depose and say that he is President of the Interstate Construction Company, a corporation organized and existing under the Laws of the State of West Virginia, and that the same is the owner of the property shown on the Plat of said Corporation and that the Seal affixed to said writing is the Seal of said Corporation and that said writing was signed and sealed by him in behalf of said Corporation by its authorized duly given.*

And the said John Waterhouse acknowledged the said writing to be the act and deed of the said Interstate Construction Company.

Given under my hand this 22<sup>nd</sup> day of June, 1971.

Notary Public of said Ohio County, West Virginia

My Commission Expires *May 18, 1972*

Notary Public of said Ohio County, West Virginia

My Commission Expires *May 18, 1972*

THIS DEED, Made this 20<sup>th</sup> day of September 2019, by and between BARTSCH REALTY, LLC, a West Virginia limited liability company, party of the first part, and EVERETTE L. GRAY, JR., party of the second part.

WITNESSETH: That for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the said party of the first part does hereby grant and convey unto the said party of the second part, the following described property situate on the northwesterly side of Hawk Court, in the City of Wheeling, Wheeling District, Ohio County, West Virginia, that is to say:

Lots Numbered 169 and 170, as designated and defined on the Plat of North Park (Section 10), which plat is recorded in the Office of the Clerk of the County Court of Ohio County, West Virginia, in Plat Book 3, at page 100.

Said lots are subject to a right-of-way and easement for utility purposes, as shown on said plat; and there is excepted and reserved from this conveyance for the benefit of Interstate Construction Company, its successor and assigns, the right to use said easements for utility purposes in common with second parties and the owners of Lots shown on said plat, together with the right of Interstate Construction Company, its successors and assigns, to go upon said lots for the purpose of repairing, renewing and maintaining utility lines located thereon or therein.

There is excepted and reserved from the property hereby conveyed all of the coal underlying same together with such mining rights and privileges that have been heretofore excepted and/or conveyed.

The party of the second part hereby covenants with the party of the first part that the real estate hereby conveyed shall be subject to the following conditions and restrictions:

1. All lots shall be used for residential purposes only. No structure shall be erected, altered, placed or permitted to remain on any lot other than a dwelling not to exceed three and one-half (3-1/2) stories in height and a private garage for not more than two (2) cars, which garage shall be installed in the basement of, or directly attached to said dwelling by a breezeway.
2. No structure, except an open porch, piazza or stoop, shall be located on any lot nearer to the front lot line than the twenty (20) foot building setback lines shown on the plat.
3. No trailer, basement, tent, camper, shack or garage shall at any time be temporarily or permanently used as a residence, nor shall any structure of any temporary character be used as a residence.
4. No boat, trailer, camper or truck shall be parked, placed or permitted to remain on any lot or parcel shown hereon unless the same is completely and wholly within the private garage located thereon.

5. No fence or wall shall be erected or maintained on any lot nearer the street line than the front wall of the dwelling on said lot, except retaining walls protecting the entrance to a basement garage or retaining walls protecting slopes in front lawn area of said lot; provided, however, that such retaining wall shall not extend above the grade of the lawn of said lot.
6. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become any annoyance or nuisance to the neighborhood.
7. No rain or surface water shall be drained, emptied or discharged into the sanitary sewer lines located as shown on said plat, and only sanitary sewage and household wastes shall be drained, emptied or discharged into said sewer lines.
8. Streams and water courses for surface drainage shall not be obstructed, relocated or changed in any way by any purchaser.

All of the foregoing covenants shall be covenants running with the land and may be enforced by the owner or owners of North Park (Section 10) or any lot therein, against the owner or owners of the lot or tract upon which any violation thereof occurs. Said covenants shall be binding upon all purchasers and all persons claiming under them until December 1, 1992, and thereafter until such time as an instrument signed by 60% of the then owners of lots shown on said plat has been recorded, agreeing to change said covenants in whole or in part. Invalidation of any one of said covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

This conveyance is made subject to exceptions, reservations, restrictions, covenants, conditions, easements and rights-of-way referred to or contained in this deed, any aforementioned deeds and all prior conveyances of record.

The Grantor has no actual knowledge or reason to believe that the property, including its substrata or subsurface, has been used for the storage, treatment or disposal of hazardous waste or that it contains or did contain any underground storage tanks.

Being the same property which was heretofore conveyed to Bartsch Realty, LLC, a West Virginia limited liability company, by Edward E. Hinebaugh, by a deed dated the 29<sup>th</sup> day of October, 2012, and recorded in the aforesaid County Clerk's office in Deed Book No. 847, at page 713.

This Grantor is exempt from the tax withholding requirements of §11-21-71b of the West Virginia Code.

And the said party of the first part hereby covenants with the said party of the second part that he will warrant generally the property hereby conveyed.

Under the penalties of fine and imprisonment as provided by law, the grantor does hereby

declare the total consideration for the property transferred by this document is \$4,500.00.

IN WITNESS WHEREOF, BARTSCH REALTY, LLC, a West Virginia limited liability company, has caused these presents to be signed by Gary L. Bartsch and Robert C. Bartsch, its Members:

BARTSCH REALTY, LLC, a West Virginia limited liability company

By Gary L. Bartsch  
Gary L. Bartsch, its Member

By Robert C. Bartsch  
Robert C. Bartsch, Its Member

STATE OF WEST VIRGINIA,

COUNTY OF OHIO:

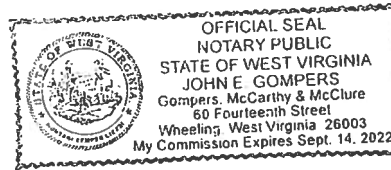
I, John E. Gompers, a Notary Public in and for said state, do hereby certify that GARY L. BARTSCH and ROBERT C. BARTSCH, Members, who signed the foregoing writing, bearing date of 20<sup>th</sup> day of September, 2019, for Bartsch Realty, LLC, a West Virginia limited liability company, have this day acknowledged before me the said writing to be the act and deed of said limited liability company.

Given under my hand this 20<sup>th</sup> day of September, 2019

John E. Gompers  
Notary Public

My Commission Expires:

September 14, 2022



THIS DOCUMENT PREPARED BY:

JOHN E. GOMPERS, ESQUIRE  
GOMPERS, McCARTHY & McCLURE  
60 FOURTEENTH STREET  
WHEELING, WEST VIRGINIA 26003  
(304) 233-2450

Ohio County  
Michael E. Kelly, Clerk  
Instrument 19703952  
09/20/2019 @ 01:34:18 PM  
DEED  
Book 968 @ Page 564  
Pages Recorded 3  
Recording Cost \$ 46.00  
Transfer Tax \$ 24.75



Eagle Avenue

Hawk Court

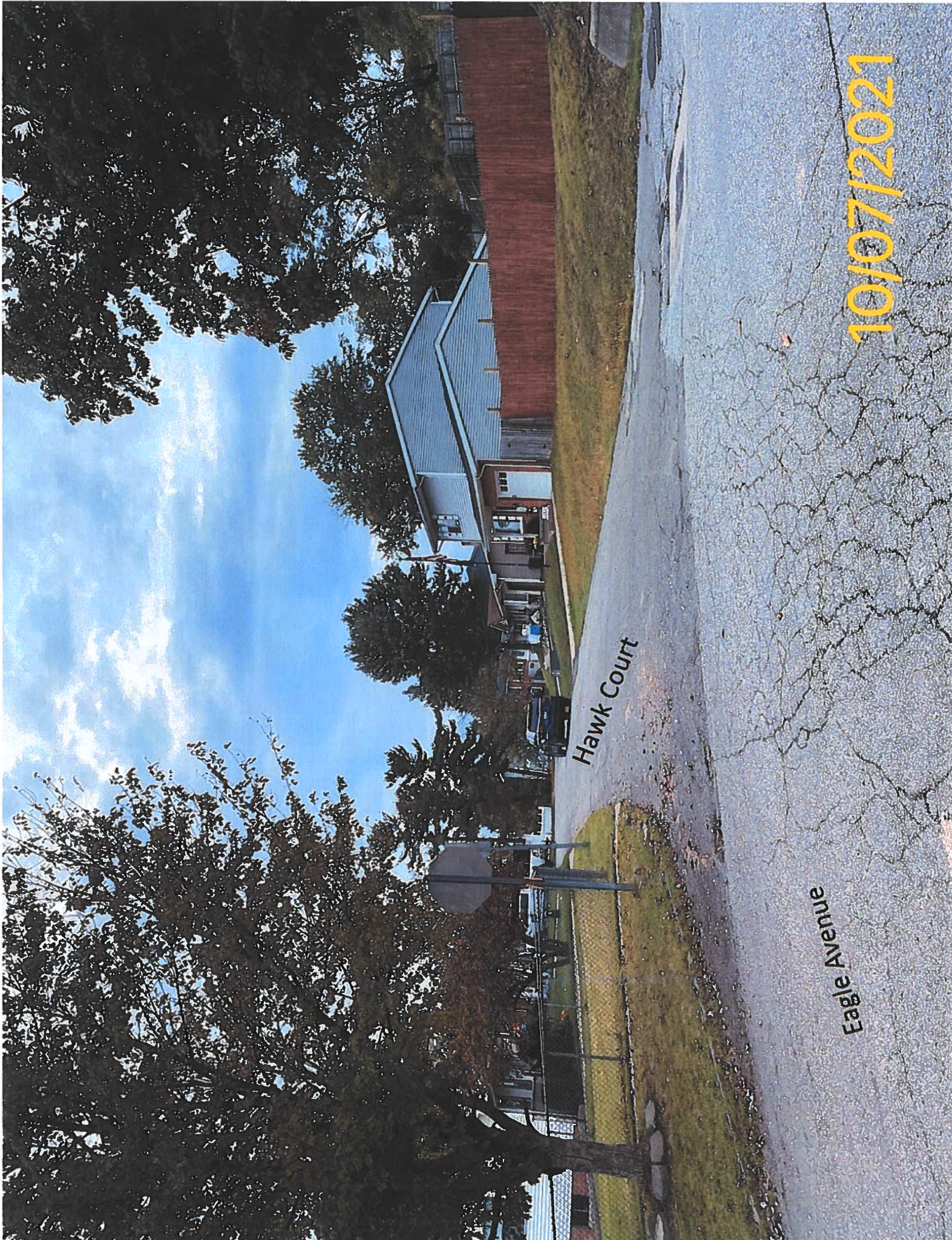
10/07/2021



Hawk Court

Eagle Avenue

10/07/2021



Eagle Avenue

Hawk Court

10/07/2021



CONSTANTINE  
KAY/AP/AS  
ARCHITECTS  
2877 Chapline St.  
Wheeling, WV  
304.233.8116  
304.233.8921 fax  
www.kayarchitects.com

SEPT. 01, 2021  
CONTRACT DATE

ON DRCK KORNEN 910 M  
NE CONVENENCE 910 M  
2 HAWK COURT 910 M  
SHEELNG, WV

JOB NO.  
1521

SITE  
CONTEXT  
PLAN  
S-1

SHEET  
0 P



1 SITE CONTEXT PLAN  
9-1 SCALE N.T.S



CONSTANTINE  
KAY/AP/AS  
ARCHITECTS  
2317 Caroline St.  
Wilmington, WV  
304.281.0616  
304.283.1892 fax  
www.kayasarchitects.com

SEPT. 01, 2021  
SUBMITTAL DATE

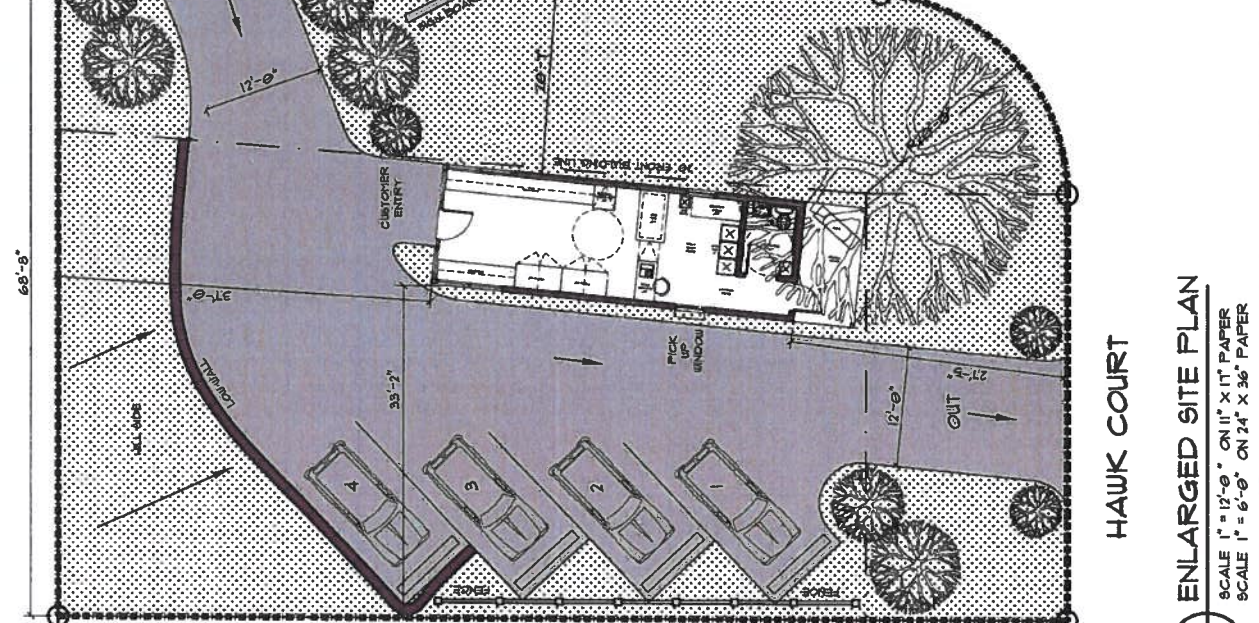
ON DECK KORNEN STORE  
2 HAWK COURT  
NEW CONVENIENCE STORE  
SHEELING, WV

JOB NO.  
1521

ENLARGED  
SITE  
PLAN  
S-2

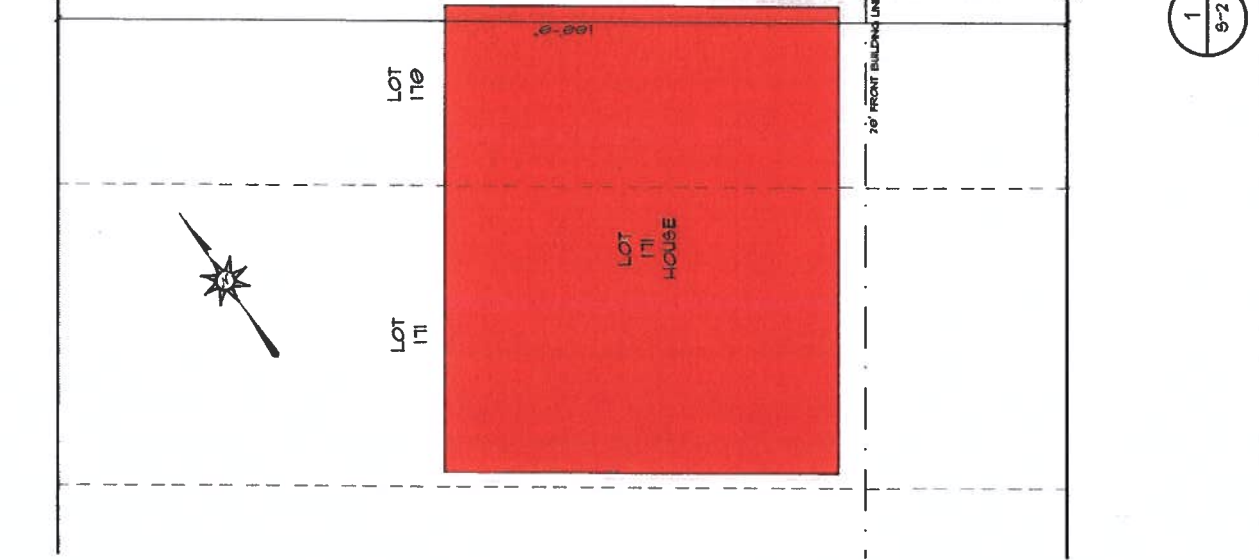
SHEET  
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EXISTING USE		ZONING ORDINANCE	
	R-4		R-4
PROPOSED USE		C1	
MIN. OT. AREA	5,000 SF.	REQUIRED	PROPOSED
MIN. LOT FRONTAGE	50'-0"	50'-0"	60'-0"
MIN. LOT DEPTH	100'-0"	100'-0"	100'-0"
FRONT SETBACK	10'-0"	10'-0"	21'-0"
2-SIDES SETBACK	0'-0"	0'-0"	5'-0"
1-SIDE SETBACK	0'-0"	0'-0"	3'-0"
REAR SETBACK	12'-0"	12'-0"	31'-0"
OFF STREET PARKING	1 / 750 SF. GFA		4



HAWK COURT

1 ENLARGED SITE PLAN  
SCALE 1" = 12'-0" ON 11" X 17" PAPER  
SCALE 1" = 6'-0" ON 24" X 36" PAPER





CONSTANTINE  
KAY-APAS  
ARCHITECTS  
2377 Chapline St.  
Winfield, WV  
304.283.6116  
304.283.1892 fax  
www.kayaparch.com

SEPT. 01, 2021  
CONTRACT DATE

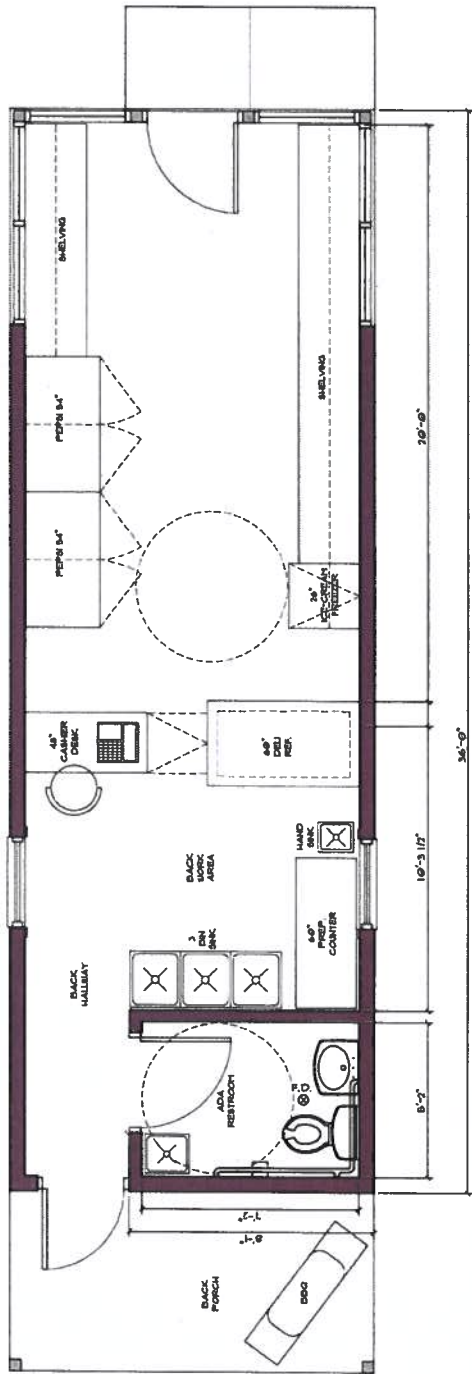
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2 HAWK COURT  
SHEPLING, WV

JOB NO.  
1521

FIRST  
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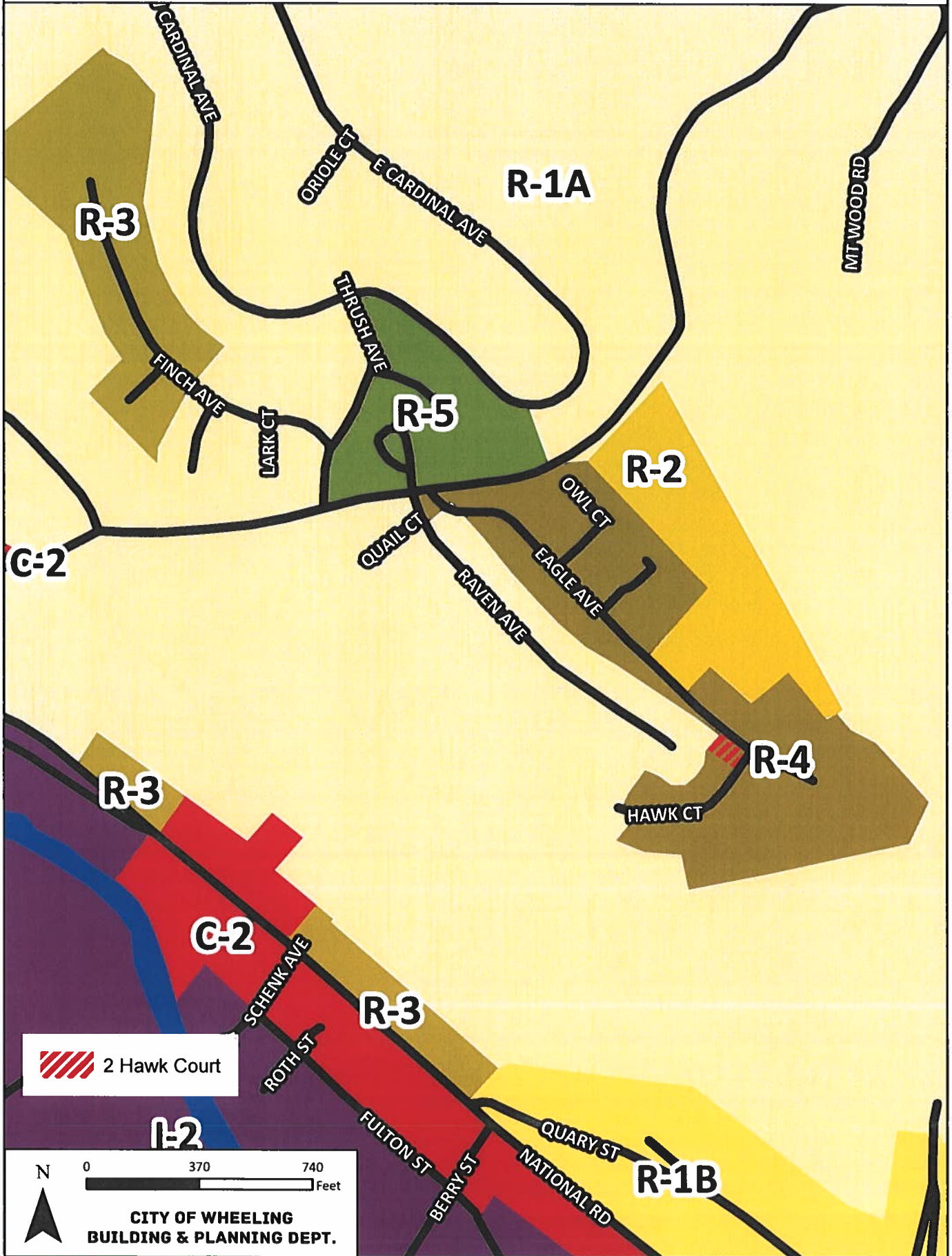
A-1

SHEET  
O.P.



1 FIRST FLOOR PLAN  
SCALE 1/4" = 1'-0" ON 11" X 17" PAPER  
SCALE 1/2" = 1'-0" ON 24" X 36" PAPER

# Zoning Map



R-3

R-1A

R-5

R-2

C-2

R-4

R-3

C-2

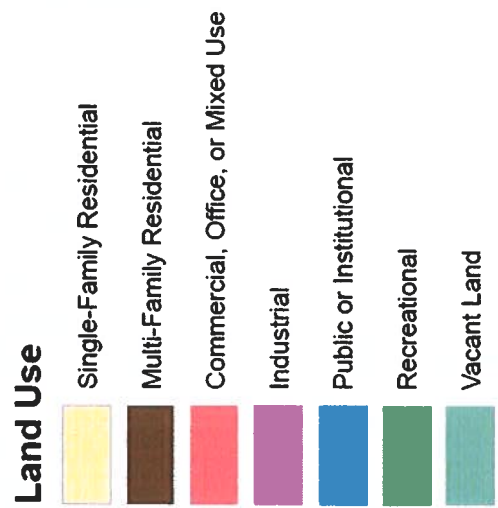
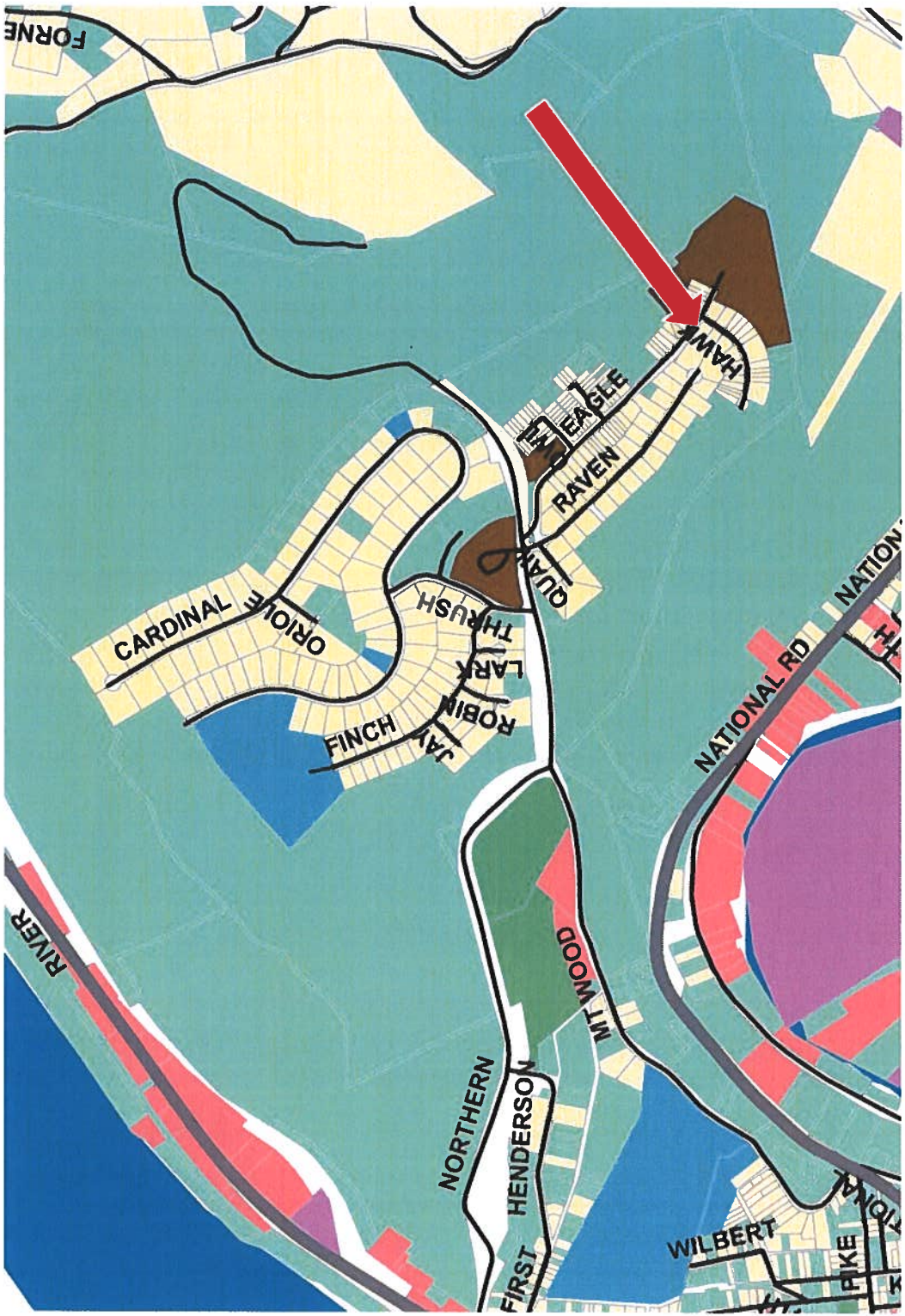
R-3

2 Hawk Court













I-2

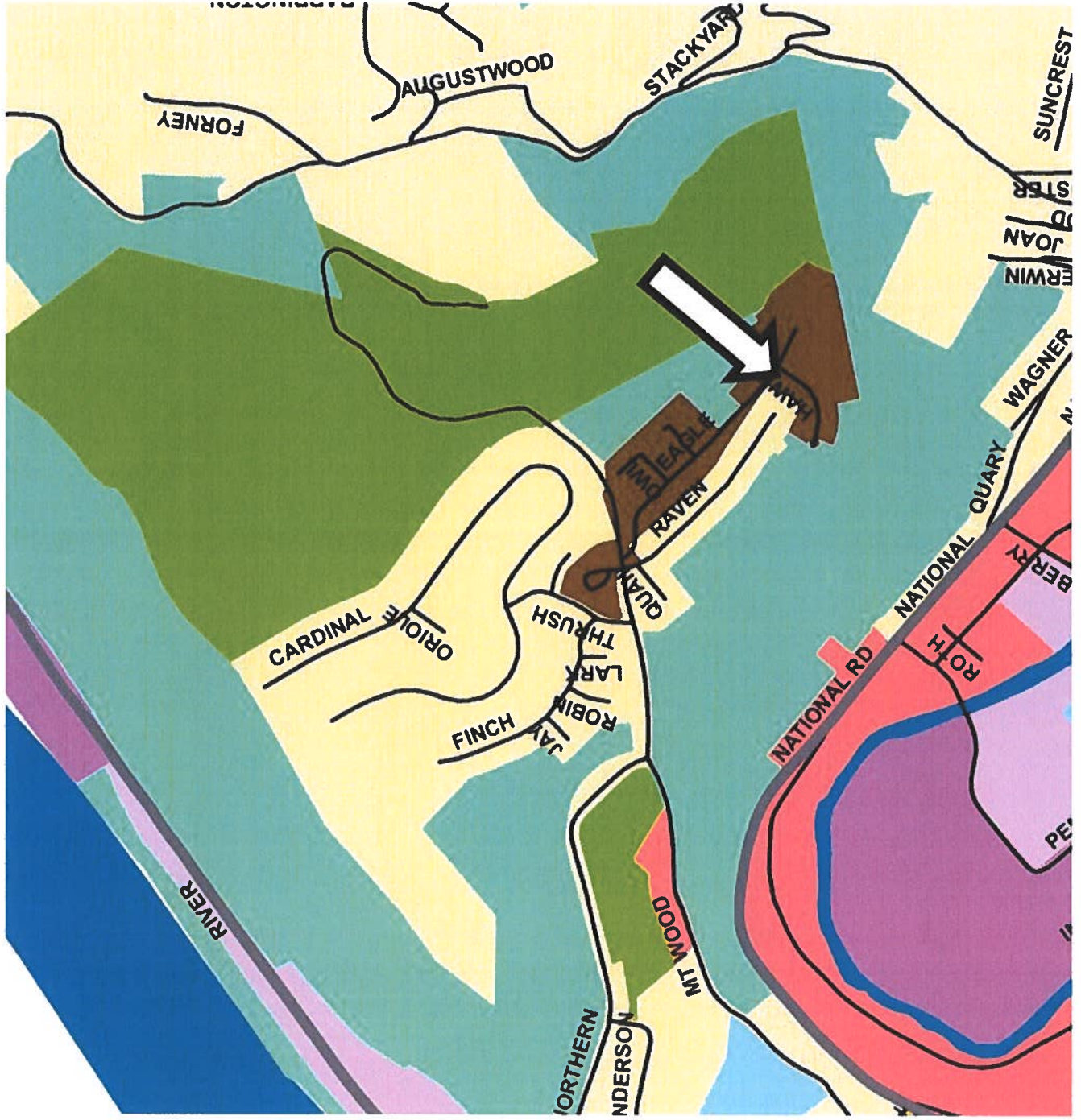
R-1B

CITY OF WHEELING  
BUILDING & PLANNING DEPT.



### 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



**1335.01 GENERAL PROVISION AND REFERENCES.**

**PURPOSE AND INTENT.**

(a) It is the purpose and intent of these districts to promote the following:

- (1) To provide for housing in appropriate locations and to permit limited public and quasi-public uses appropriate in residential neighborhoods.
- (2) To protect residential areas from change and intrusion that may cause deterioration.
- (3) To meet minimum standards of health and safety by protecting against hazards and nuisances.
- (4) To provide for adequate daylight, ventilation, quiet, privacy, and recreational opportunity.
- (5) To preserve the desirable character of existing neighborhoods.

(b) REFERENCES. See Article 1331 for general regulations. See Article 1347 for R- 5, Planned Residential Development. See Article 1355 et seq. for supplemental regulations. See Article 1371 for special permit uses. See Article 1373 for uses subject to site development plan approval.

## **Initiative #4 – Wheeling will invest in its Neighborhoods.**

- **Increase Housing Options:** Almost every stakeholder group who participated in this planning process raised an issue related to housing that included a lack of both affordable housing as well as higher-end homes (\$250,000+), a need for senior housing options, a desire for urban housing, and finally a desire for new housing as compared to older homes that require money and time for renovations.

Regarding the issues about housing affordability, the discussion revolved around the need for housing that the average person can afford more so than low-income housing. Some communities call this workforce housing where, for example, teachers, police officers, and the average worker can afford to live. The two major constraints to affordable housing in Wheeling are:

- The influx of gas and oil workers, which has driven up rent prices because of the demand on housing; and
- The age and condition of housing where many of the affordable homes are older and require substantial time and monetary resources to rehabilitate.

The desire to see senior housing and urban housing choices came from the discussions with older and younger residents who are both looking to live closer to activities such as restaurants, shopping, and entertainment. In these cases, many of the participants pointed out a need for patio homes, often seen as a senior living option, as well as urban housing that was described as both mixed use with residential uses over commercial uses as well as smaller homes on small lots close to downtown. These discussions led to the overall policies to focus redevelopment efforts in and around the downtown area and surrounding neighborhoods where higher densities can be accommodated because of access to roads, transit, and activities.

- **Consider Transitions between Different Uses:** The Future Land Use Plan (Map 8) highlights areas where there should be additional nonresidential or mixed use development in and around existing residential neighborhoods. Past history has shown that many of the properties along National Road and other major roads are shallow, and any development is seen as an encroachment into primarily residential areas. This will be a growing issue as the city encourages, to some degree, more of a mixture of uses and more flow between residential and business areas. This plan recognizes that Wheeling is very much an urban community where nonresidential uses are typically in close proximity to residential areas but that such adjacency can be softened with appropriate buffers and a transition of land use types and intensities.
- **Encourage Property Maintenance:** With an older housing stock and a growing percentage of rental housing units, property maintenance is continuing to be an issue for many neighborhoods. In certain cases, the neighborhood groups have noted that even a few deteriorating buildings can create a domino effect of maintenance issues that need to be resolved. Some of the plan participants believe that the maintenance issues can be resolved by stronger code enforcement but there are other tools available to Wheeling to address building and property conditions as a form of neighborhood stabilization.

### **Suburban Residential Core**

Wheeling has a number of well-established neighborhoods that were built over the course of the city's history. Some, like Center Wheeling and North Wheeling, are examples of the oldest neighborhoods that grew outwards from downtown. Others, like Woodsdale, Park View, and Elm Grove developed later in Wheeling's history and are examples of more suburban development styles albeit, with some historic context.



The areas that are designated as suburban residential core in the future land use 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 offices uses may be appropriate.

### **Multi-Family Uses in the Suburban Residential Core Areas**

The city should allow for the continuation of existing multi-family residential uses. Additionally, new multi-family residential uses may be appropriate with the following considerations:

- The new multi-family uses should be confined to a maximum of six to eight dwelling units per structure with a maximum density of eight units per acre.
- The density and design of the proposed residential use should blend in with the character of the surrounding neighborhood. This may include multi-family residential uses located in a structure that resembles large single-family detached homes or multi-family dwellings that maintain a similar height and scale of surrounding residential uses.
- Multi-family homes that provide affordable or accessible housing options are strongly encouraged (e.g., patio homes or cottage housing).
- Multi-family attached dwellings with more than two units should be located on collector or arterial streets unless they serve as a transition discussed below or are part of a master planned development.
- Multi-family residential uses may be allowed in areas adjacent to nonresidential uses to serve as a land use transition or buffer between the more intense nonresidential use and nearby single-family neighborhoods.



*The above is a multi-family structure that resembles a large, single-family home.*

**Commercial and Offices Uses in the Suburban Residential Core Areas**

The city should allow for the continuation of existing commercial and office uses, particularly where they provide a needed service to the neighborhood such as a grocery store or medical office. New commercial and offices uses within the residential areas should be discouraged to protect the residential nature of these neighborhoods.

**Urban Residential Core**

Wheeling is a National Heritage Area, in large part due to its vast historical resources that are focused in the city's older neighborhoods such as North Wheeling, East Wheeling, Center Wheeling, and others that generally run parallel to the Ohio River. These neighborhoods have a broader mix of residential and nonresidential uses, as well as higher densities than the newer neighborhoods found in the suburban residential core areas. It is a major goal of this plan to encourage the preservation of the city's historic heritage as well as protect these neighborhoods that provide a mix of housing options, neighborhood commercial and office uses, and public services in highly walkable neighborhoods. In areas that are designated as urban residential core, the predominant land use should continue to be residential, which could include single-family homes, two-family homes, and low to moderate density multi-family dwellings in the form of small apartment buildings (6-8 units), townhomes, or rowhouses. All residential uses should be in keeping with the historic characteristics of these areas including smaller lots and shallower setbacks from the streets. Any infill development should be sensitive to the scale and massing of adjacent structures.



**Commercial and Offices Uses in the Urban Residential Core Areas**

These areas were constructed in an era when there was less separation of residential uses and nonresidential uses. This mixture of uses should continue with the following considerations:

- The creation of new commercial or office uses should be focused toward buildings originally designed for nonresidential uses, mixed use buildings (nonresidential first floors), or at the corners of major roadways. While these areas are located in more walkable areas of the city, this plan recognizes the continued reliance on cars for transit and as such, new nonresidential uses will require better access.
- Uses should be limited to neighborhood scale development such as small retail shops or offices.
- The density and design of any new nonresidential building should blend in with the character of the surrounding neighborhood in scale and massing. Big box stores or similarly large scale commercial or office buildings should be discouraged.
- Where there is a larger redevelopment project that contains some nonresidential uses, consider utilizing multi-family housing options as a transitional use between the nonresidential uses and nearby single-family homes.

## **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."<sup>1</sup>

Spot zoning is, in fact, often thought of as the very antithesis of plan zoning.<sup>2</sup> 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*,<sup>3</sup> 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.<sup>4</sup>

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*<sup>5</sup> (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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

Most importantly though, if the zoning is enacted in accordance with a comprehensive plan, it is typically not “spot zoning.”<sup>2</sup>

### 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.

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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).