



CITY OF WHEELING PLANNING COMMISSION

www.WheelingWV.gov

STAFF REPORT

PROPERTY LOCATION: 150 North 17th Street

NATURE OF REQUEST: Zoning Amendment (R-1C to I-2)

APPLICANT: Ed Hinebaugh

BACKGROUND & ANALYSIS:

Ed Hinebaugh is seeking a change in the zoning classification of property he owns at 150 North 17th Street. The property is currently zoned R-1C. The existing warehouse is a non-conforming use under contract for demolition. The request is to rezone the property to the I-2 General Industrial district. There is an I-2 District across the walking trail from this property, which could be extended to include this property.

The purpose of the request is to allow for the construction of a new warehouse. The proposed 50' x 100' building would be used as storage for the applicant's rental properties and businesses.

ZONING:

The R-1C district allows for single-family homes. 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 I-2 General Industry district "is a low-density district that allows light and medium industrial uses, also known as general industry, that conform to established performance standards. Commercial uses are also allowed. Residential uses are not allowed".

Zoning is a long-term land-use planning tool whose goal is to establish desired development patterns. In doing so, it gives property owners the confidence of knowing what potential neighboring land uses will be. Therefore, anytime a zone change is considered, the district's purpose and entire list of permitted uses needs to be considered as being appropriate at that location.

It is the intent of the zoning regulations to permit nonconformities to continue until they are removed or abandoned and that such uses are incompatible with permitted uses in the existing district. The ordinance encourages nonconforming uses and structures to be brought into conformity with these regulations as soon as reasonable.

As outlined in the zone change application materials given to applicants, "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." When considering a zone change request, the Commission should determine if the request is a benefit to the community or just the applicant. This can often be answered when comparing the request to the city's Comprehensive Plan.

PUBLIC HEARING:

COMMISSION MEMBERS

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

STAFF: THOMAS CONNELLY, AICP

At the public hearing, residents and property owners immediately surrounding this property spoke in opposition to the request. The comments focused on the unwanted secondary effects of living next to an industrial district, such as unknown future uses/occupants, truck traffic, and safety of the children. Following the public hearing, an email was received from a neighbor, Bernie Lombard, commenting on the condition of other storage buildings owned by the applicant.

2014 COMPREHENSIVE PLAN:

As described on page 51 of the Comprehensive Plan, *“The future land use plan establishes the desired future land use types for properties. In some areas, the city envisions the continuation of existing uses while in others, this plan establishes the ground work for allowing alternative development that fits within the community vision and will be more sustainable in the long run”*. The property being considered for a zone change is located in the “Urban Residential Core” land use area on the Future Land Use Map (Map 8) in the 2014 Comprehensive Plan (page 57). The “Urban Residential Core” category does recognize these neighborhoods have a *“broader mix of residential and nonresidential uses, including neighborhood commercial and office uses”*, however, the Urban Residential Core category does not include industrial uses, such as a warehouse (page 57).

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.

- Initiative #4 Wheeling will invest in its Neighborhoods by “establishing and enforcing policies and ordinances that will provide for the long-term protection of neighborhoods without creating excessive burdens on homeowners and business owners.” p.39
- Initiative #4 Wheeling will invest in its Neighborhoods: increase housing options. The lack of readily available flat, buildable lots in the city is well known. This land which is zoned R-1C, already has the necessary infrastructure to support single family dwellings and is along an established, stable residential street.

STATE CODE:

West Virginia 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.

STAFF RECOMMENDATION:

Staff does not find the request to be consistent with the 2014 Comprehensive Plan as outlined above nor can staff identify that there have been major changes of an economic, physical or social nature in the area since 2014 as required by state code. Rezoning the property in order to permit an abandoned non-conforming use to be reestablished could set an unwanted precedent and undermine the stated purpose of limiting their continuation. In addition, the I-2 zone is the least restrictive zoning district, which could lead to unforeseen non-compatible uses should the

applicant's intended use as a storage building change in the future. Therefore, staff recommends against the zone change request.

ATTACHMENTS:

Correspondence to the Commission
Petition for Zoning Amendment
Application for Zoning Certificate
Application Timeline
Site Photos
Zoning Map
Comprehensive Plan Map #2: Existing Land Use Map
Comprehensive Plan Map #8: Future Land Use Map
Zoning Ordinance: §1331.15 Non-Conforming Uses
Comprehensive Plan Future Land Use Category description:
Urban Residential Core, page 57
December 17, 2021 neighbor email & photos

Tom Connelly

From: Beth Hinebaugh <bethhinebaugh@gmail.com>
Sent: Tuesday, October 12, 2021 3:22 PM
To: Tom Connelly
Subject: [EXTERNAL] Warwood property

Caution! This email is from an external source. Be careful with links & attachments.

Tom,

We are tearing down the old warehouse and will be building a new steel building in its place on the concrete slab that will be left. The building will be smaller, approximately 50x100.

Edward Hinebaugh

PETITION FOR ZONING AMENDMENT
WHEELING, WEST VIRGINIA

The undersigned, representing owner(s) of 50 % 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:

ADDRESS OR LOCATION 150 N. 17th Street Wheeling, WV 26003

LEGAL DESCRIPTION:

Subdivision Name Town of Warwood Section #4 Lot No. A. 384, 385, 386, 387
(if not available, attach copy of deed)

EXISTING USE Warehouse

PRESENT ZONING DISTRICT CLASSIFICATION R-1C Single Family Residential

PROPOSED USE Warehouse

PROPOSED ZONING DISTRICT CLASSIFICATION I-2 General Industry

SUPPORTING INFORMATION:

Attach a vicinity map showing your plans

PERSON ORIGINATING PETITION Beth Hinebaugh DATE 10/12/2021

Mailing Address 1308 Steenrod Ave. Wheeling Phone 304 281-1431

SIGNATURE(S) OF OWNERS

ADDRESS OF OWNERS

[Signature]

1308 Steenrod Avenue
Wheeling, WV 26003

FOR OFFICIAL USE ONLY
(Planning Commission)

Date Filed 10/12/21
Date of Notice in Newspaper 11/26/21

ZonAmend 8.03

ITEMS REQUIRED FOR A ZONING AMENDMENT



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: 150 N. 17th Street Wheeling, WV 26003
- 2. Name of Property Owner: Edward Hinebaugh
- 3. Name of Applicant: Beth Hinebaugh
- 4. Address of Applicant: 1308 Steenrod Avenue Wheeling, WV 26003
- 5. Applicant Phone: 304 281-1431 Owner Phone: 304 281-6784
- 6. Existing Use: Warehouse
- 7. Proposed Use: Same Other (describe): _____
- 8. Number of off-street parking spaces to be provided: _____
- 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: _____

Number of proposed dwelling units: _____

Existing Lot Dimensions: Width: _____ ft. x Depth: _____ ft. = lot area: _____ 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: Beth Hinebaugh Date: 10/12/2021

Owner Signature: E Hinebaugh Date: 10/12/2021

Reset Form

Print Form



TIME LINE FOR ZONING AMENDMENT

First Contact Date Oct. 4, 2021

Petitioner Name H. Niebarg

Property Address 130 N. 17th St.

Application needed by Oct. 13, 2021

MEETINGS

DATE

City Council Referral to Planning Commission	<u>Oct. 19</u>	
<input checked="" type="checkbox"/> Planning Commission - Public Hearing	<u>Dec. 13</u>	<u>7</u>
Zoning Committee	<u>Jan. 4</u>	
Planning Commission - Vote	<u>Jan. 10</u>	<u>Dec. 13</u>
Report Received by City Council	<u>Jan 18</u>	<u>Dec 21</u>
Report Accepted/Approved by City Council	<u>Feb 1</u>	<u>Jan. 4</u>
City Council - 1 st Reading of Ordinance	<u>Feb 1</u>	<u>Jan 4</u>
City Council - 2 nd Reading of Ordinance	<u>Feb 15</u>	<u>Jan. 18</u>

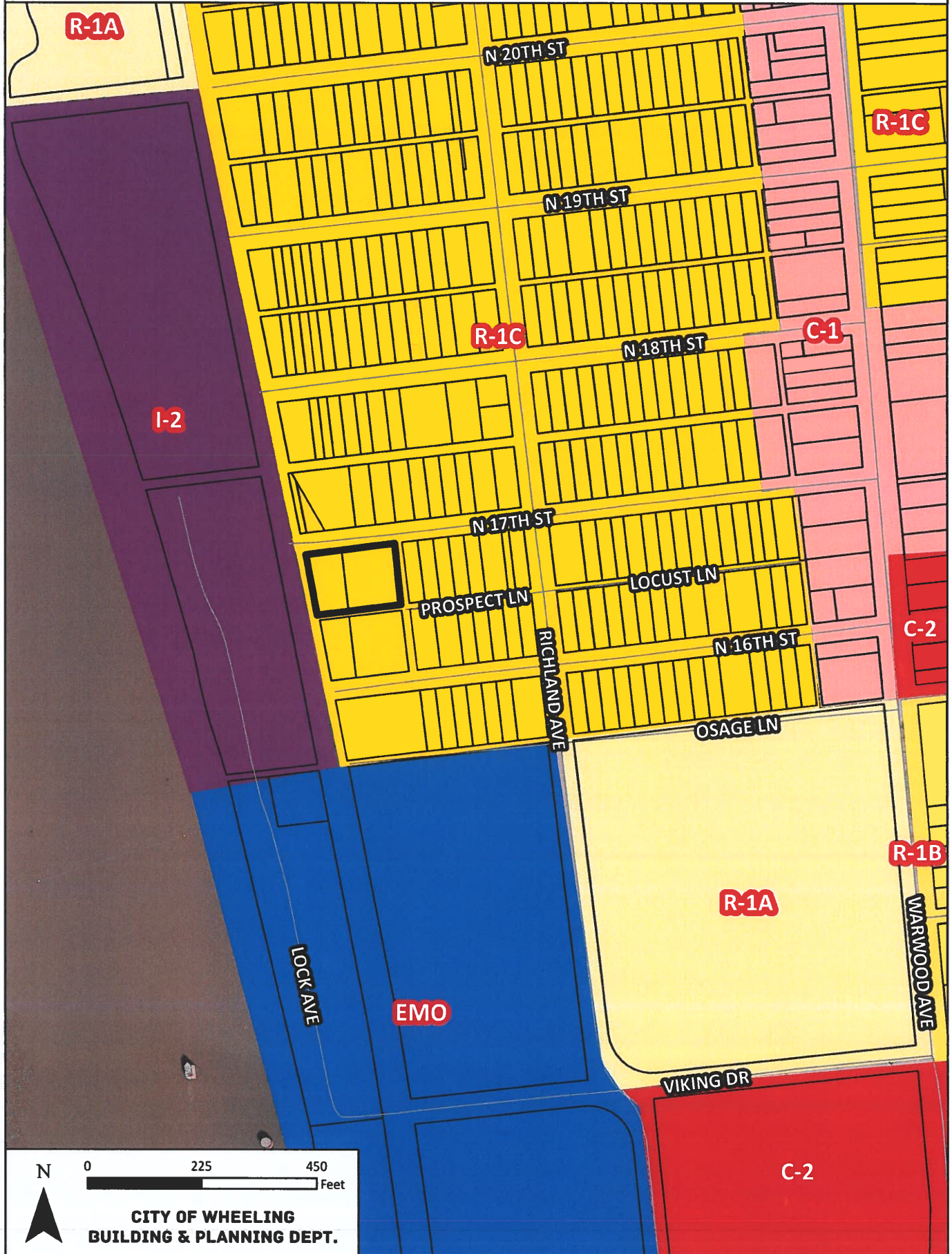
If the time line shown above in any way inhibits your project, please state the reason below and the Commission may consider voting following the public hearing:

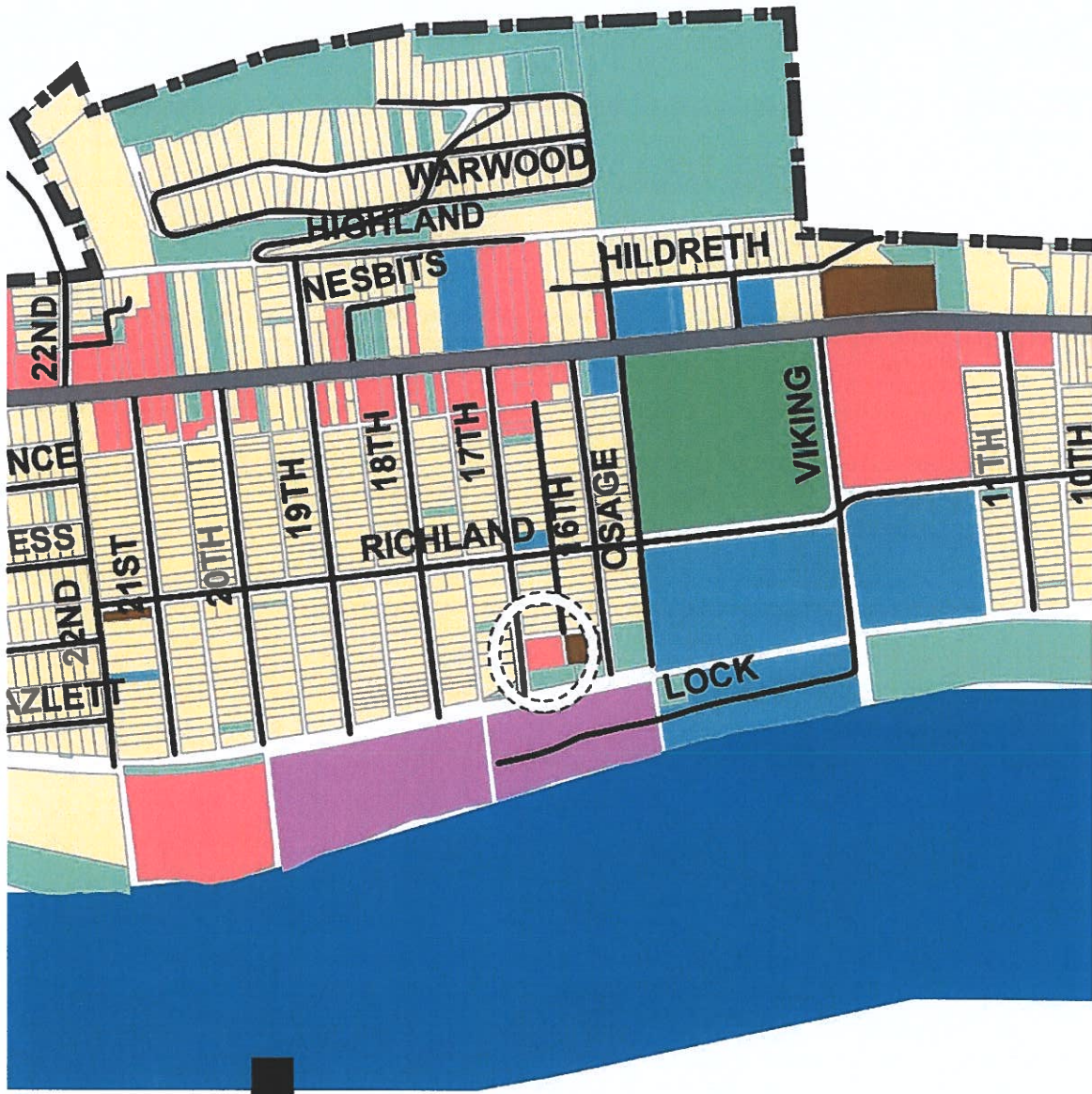
Signature of Applicant












Zoning Map















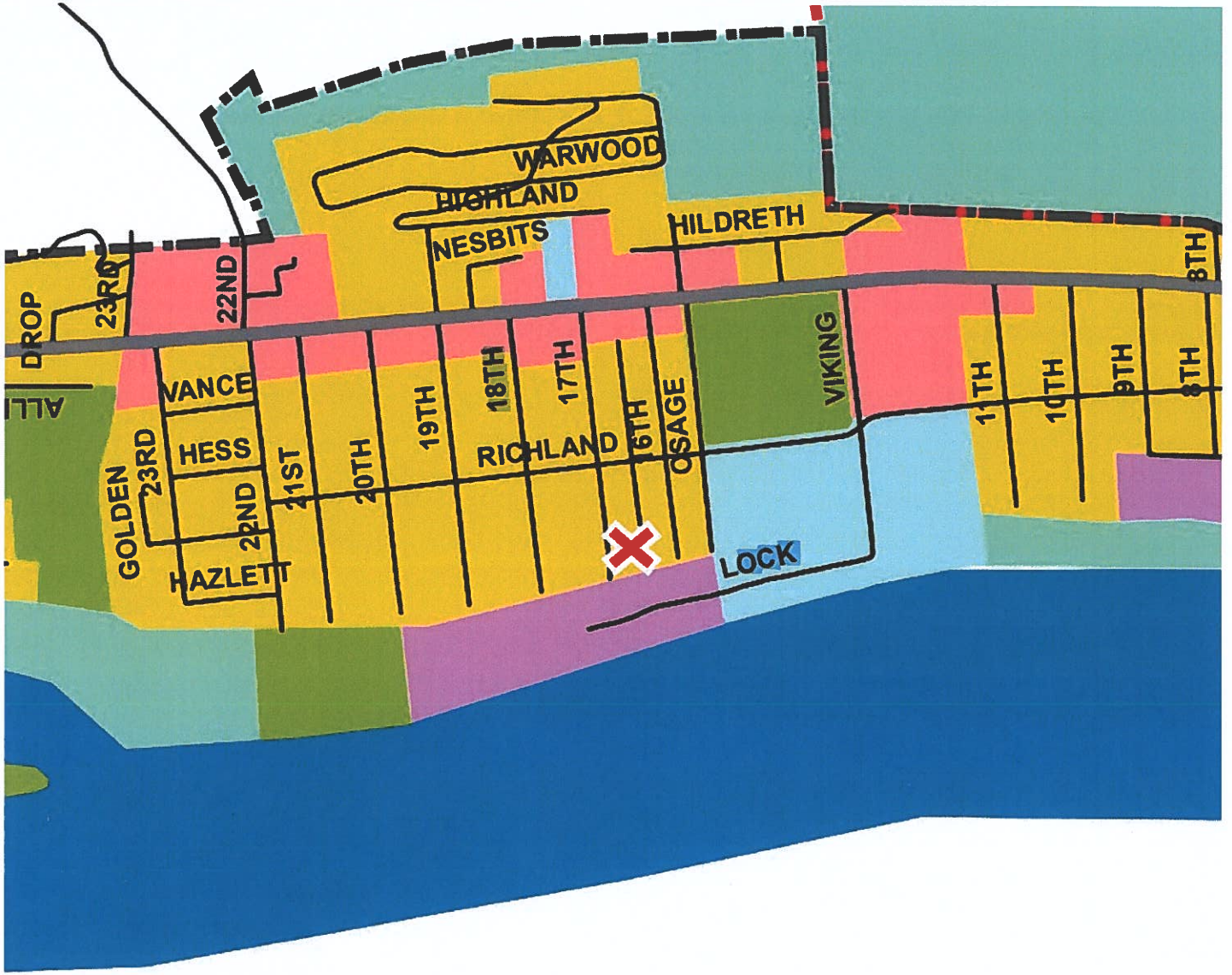


Land Use

-  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



1331.15 NONCONFORMING USES, LOTS, AND STRUCTURES.

(a) **INTENT.** If, within the districts established by this Zoning Ordinance or amendments that may later be adopted, there exist lots, structures, and uses of land and structures which were lawful before the effective date of this Zoning Ordinance, but which do not conform to this Zoning Ordinance or future amendments, it is the intent of these regulations to permit these nonconformities to continue until they are removed or abandoned. Such uses are declared by this Zoning Ordinance to be incompatible with permitted uses in the districts involved. However, these regulations recognize the right of nonconformities to continue, but encourage such lots, uses, and structures to be brought into conformity with these regulations as soon as reasonable.

(b) **NONCONFORMING LOTS OF RECORD.**

- (1) In any district in which residential dwellings are permitted, notwithstanding limitations imposed by other provisions of this Zoning Ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Zoning Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. If the lot is dimensionally nonconforming with regard to yard requirements, a variance must be obtained from front, side, and rear yard requirements from the Board of Zoning Appeals. The lot shall comply with all other development standards for the district and with Section 1331.06.
- (2) Expansion or Reduction of Nonconforming Lots. Lots that fail to meet minimum width or area requirements may be expanded to include abutting lots under the same ownership. Lots that fail to meet minimum width or area requirements may not be reduced in width or area respectively.

(c) **NONCONFORMING USES.** Where a lawful use exists which, on the effective date of these regulations or subsequent amendment thereto, becomes nonconforming, such use may be continued so long as it has not been abandoned and remains otherwise lawful, subject to the following provisions:

- (1) No nonconforming use shall be changed into another nonconforming use.
- (2) No nonconforming use shall, if once changed into a conforming use, be changed back to a nonconforming use.
- (3) No nonconforming use shall be enlarged, increased, extended, or expanded.
- (4) No nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use.
- (5) External evidence of a nonconforming use shall not be increased by any means whatsoever.
- (6) No nonconforming use shall be re-established if such use has for any reason been discontinued for a period of six months during any twelve-month period, except when government action impedes access to the premises. Discontinuance shall be deemed substantial or total cessation of activities with respect to the nonconforming use and/or substantial or total vacancy of the structure in which the nonconforming use was conducted. Such discontinuance shall be deemed abandonment, irrespective of whether an intent to abandon the nonconforming use may exist. Intent to resume a nonconforming use shall not confer the right to do so.
- (7) If a nonconforming use of land is ceased for any reason, any subsequent use of such land shall conform to the regulations specified by this Zoning Ordinance for the district in which such land is located.

(Ord. 12225. Passed 4-17-01.)

- (8) Any property found to be a public nuisance by City Council, which has a nonconforming status, shall lose its nonconforming status after three months.
- (9) Any property found to be a permanent public nuisance by City Council, which has a nonconforming status, shall immediately lose its nonconforming use status and revert to the land use permitted in accord with the Zoning Ordinance.

(Ord. 12746. Passed 12-2-03.)

(d) **NONCONFORMING STRUCTURES.** Where a lawful structure exists at the effective date or amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on lot area, lot coverage, height, yards, floor area ratio, off-street parking, loading, or other dimensional requirements or characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful. Such a building or structure that is otherwise conforming in use shall be deemed to be dimensionally nonconforming. The following provisions apply:

- (1) Any nonconforming building or structure or portion thereof may be altered to decrease its dimensional nonconformity.
- (2) Should a nonconforming structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

(e) **NONCONFORMANCE CREATED BY ZONING CHANGE OR OTHER AMENDMENTS TO THIS CHAPTER.** Whenever a zoning designation or the restrictions affecting property within a district shall be changed hereafter so as to render nonconforming a use, building, or structure then presently or theretofore legally existing, such use, building, or structure may nevertheless continue subject to the conditions set forth in this chapter. Said uses shall be deemed nonconforming uses and said buildings and structures shall be deemed dimensionally nonconforming. Nothing in these regulations shall require any change in the plans, construction, or designated use of a building for which a building permit was issued prior to the effective date of these regulations provided that such building permit has not expired when construction is commenced.

(f) **REPAIRS AND MAINTENANCE.** A nonconforming structure may be maintained, repaired, or altered but shall not be enlarged in any way that increases its nonconformity. Nothing in this Zoning Ordinance shall prevent the restoration to a safe condition of any building or part thereof declared to be unsafe by the Building Inspector.

(g) **RECONSTRUCTION OF NONCONFORMING USES AND STRUCTURES.** Should a nonconforming structure or portion thereof, or a conforming structure with a nonconforming use be destroyed or damaged by any means to an extent where the cost of reconstruction exceeds fifty percent of the fair market value thereof at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Zoning Ordinance.

(h) **SPECIAL PERMIT USES.** Any use for which a special use permit is required as provided in this Zoning Ordinance shall not be deemed a nonconforming use, but shall be deemed a conforming use in such district.

(i) **AUTOMATIC SPECIAL PERMIT.** Any use in existence as of the effective date of this chapter which is by this chapter made a special permit use in the district in which it is located shall be presumed to have a special permit to the extent such use is legally conforming as of the date immediately prior to the effective date of this Chapter.

Tom Connelly

From: Bernard J Lombard III <BJL@route40realty.com>
Sent: Friday, December 17, 2021 1:42 PM
To: Tom Connelly
Subject: [EXTERNAL]150 North 17 Zone Change
Attachments: EH3.jpg; EH4.jpg; EH5.jpg; EH1.jpg; EH2.jpg; IMG_2835.jpg; IMG_2849.jpg; IMG_2850.jpg; IMG_2832.jpg

Caution! This email is from an external source. Be careful with links & attachments.

Tom

Please share the pictures attached with the members on the Zoning committee. The applicant indicated during the public hearing that they did not own other ware houses. This information is not correct. They own a warehouse located at 2 Berry street, the pictures that are attached are of that property located at 2 Berry Street. This is a good induction of how he keeps his properties and we do not want this in a residential neighborhood.

If we allow this zoning change we would be rewarding a negligent property owner. It is position of code enforcement that the landlord is responsible for the grass and other outside maintenance of their rental property even though it is clearly states in the lease the tenant is supposed to maintain it. The same should be true for owners property being sold on land contracts. Specifically since most of all land contracts are never

Here are the picture of the warehouse that is owned by the applicant for the zoning change. We do not want this type of owner in our neighborhood. Attached also are two other properties that are owned by the applicant.

Thank you

Bernie

Route 40 Realty, LLC

Glenn Elliott, Broker

1310 Market Street, #201

Wheeling, WV 26003
Tel.: (304) 232-0200











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.