The City of Morgantown

Linda L. Little, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
llittle@cityofmorgantown.org

Office of the City Clerk

AGENDA
MORGANTOWN CITY COUNCIL
COMMITTEE OF THE WHOLE
September 25, 2012
7:00 p.m.

NOTE: Committee of the Whole Meetings of the Morgantown City Council are intended to provide an opportunity for the Council to receive information, ask questions, and identify policy options in an informal setting. No official action is taken at these meetings. At this Committee of the Whole Meeting the following matters are scheduled:

PRESENTATIONS:

- **Status of Comprehensive Plan**
- **Public Portion**

ITEMS FOR DISCUSSION:

1. **Ordinance: Zoning Reclassification, Parcels in Ward 7 from R-1 to PRO**
2. **Ordinance: Zoning Reclassification, Parcels in Ward 5 from PUD to R-2, B-2 and B-4**
3. **Ordinance: Zoning Reclassification, Parcels in Ward 5 from R-1A to R-2**
4. **Center Street Parking District**
5. **Uniform Parking Criteria**
6. **Ordinance: Repeal Sub-Section 527.04(k) of the General Offenses Code- Engine Brakes/Compression Brakes**
7. **Council Meeting Agenda & Packet Process**
8. **2013 General Municipal Election Update**

If you need an accommodation contact us at 284-7439

Development Services
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

Date: Thursday, August 30, 2012

To: Terrence Moore, City Manager
Linda Little, City Clerk

RE: September 25, 2012 Council Committee of the Whole Agenda
RZ12-03 / Monazam / 3566 Collins Ferry Road / from R-1 to O-I

During its August 23, 2012 hearing, the Planning Commission voted unanimously to forward a recommendation to City Council to **deny** the above referenced Zoning Map Amendment petition.

Attached herewith is the related ordinance along with supplemental information provided to the Planning Commission at its August 23, 2012 hearing.

The following dates will keep to standard Planning and Zoning Code Map Amendment protocol:

- Committee of the Whole ..... Tuesday, September 25, 2012 at 7:00 PM
  City Council Chambers
- First Reading: ..... Tuesday, October 2, 2012 at 7:00 PM
  City Council Chambers
- Public Hearing and Second Reading: ..... Tuesday, November 6, 2012 at 7:00 PM
  City Council Chambers

Please include the attached ordinance on the City Council meeting agendas noted above and include this communication and attached supplemental information in the meeting packet for the September 25th Committee of the Whole meeting.

Thank you.

Christopher M. Fletcher

cc: Esmail Monazam (via email to monazam@earthlink.net)

ORDINANCE NO._____

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF THREE PARCELS OF REAL ESTATE IN THE SEVENTH WARD OF THE CITY OF MORGANTOWN FROM R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT TO PRO, PROFESSIONAL/RESIDENTIAL/OFFICE DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

Property included in this consideration is identified in the Monongalia County Assessor's records as Parcels 6, 6.1, and 6.2 of County Tax Map 51; Morgantown Corporation District.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the zoning classification for Parcels 6, 6.1, and 6.2 of County Tax Map 51 of the Monongalia County tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein is reclassified from the R-1 Single-Family Residential District to the PRO, Professional/Residential/Office District.

2. That the Official Zoning Map be accordingly changed to show said zoning reclassification.

This Ordinance shall be effective from the date of adoption.

FIRST READING:

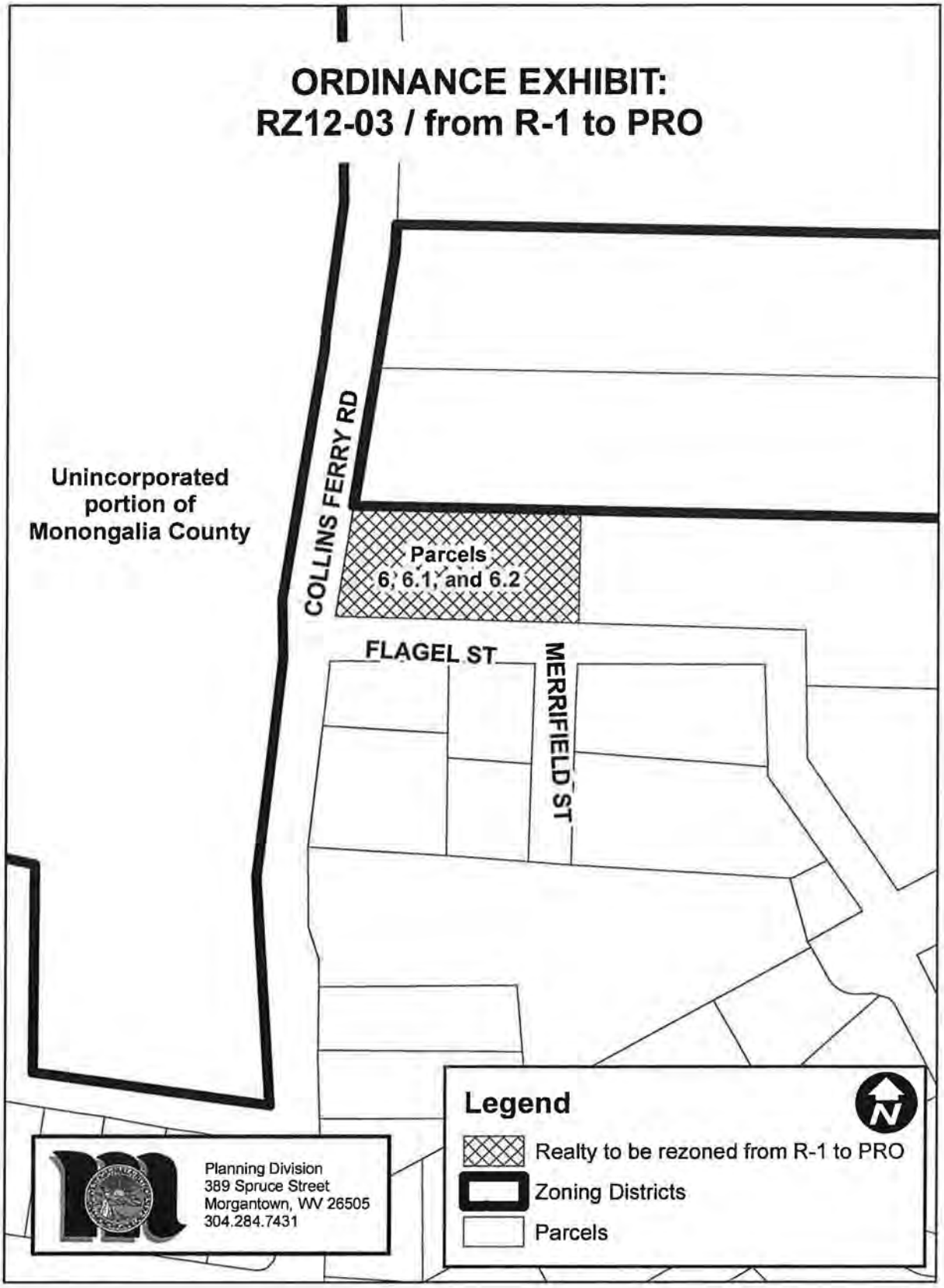
_____
Mayor

ADOPTED:

FILED:

_____
City Clerk

RECORDED:


ORDINANCE EXHIBIT:
RZ12-03 / from R-1 to PRO
Unincorporated portion of Monongalia County
COLLINS FERRY RD
Parcels 6, 6.1, and 6.2
FLAGEL ST
MERRIFIELD ST
Legend
Realty to be rezoned from R-1 to PRO
Zoning Districts
Parcels
Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MORGANTOWN PLANNING COMMISSION

August 9, 2012
6:30 PM
City Council Chambers

President:
Peter DeMasters, 6th Ward

Vice-President:
Carol Pyles, 7th Ward

Planning Commissioners:
Sam Loretta, 1st Ward
Tim Stranko, 2nd Ward
William Wyant, 3rd Ward
Bill Petros, 4th Ward
Mike Shuman, 5th Ward
Ken Martis, Admin.
Jennifer Selin, City Councilor

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
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STAFF REPORT

CASE NO: RZ12-03 / Monazam / 3566 Collins Ferry Road

REQUEST and LOCATION:

Request by Esmail Monazam for a Zoning Map Amendment from the R-1, Single-Family Residential District to the O-I, Office and Institutional District for property addressed as 3566 Collins Ferry Road and along Flagel Street

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 51, Parcels 6, 6.1, 6.2; R-1, Single-Family Residential District

SURROUNDING ZONING:

North: O-I, Office and Institutional District

South and East: R-1, Single-Family Residential District

West: Monongalia County R-4, High Density Residential (unincorporated)

BACKGROUND:

The petitioner seeks to reclassify Parcels 6, 6.1, and 6.2 of Tax Map 51 from the R-1, Single-Family Residential District to the O-I, Office and Institutional District. Addendum A of this report illustrates the location of the subject realty.

Parcel 6.1 currently contains a single-family dwelling unit and is addressed as 3566 Collins Ferry Road. This address is not currently included on the City's Rental Residential Property Registration list. Parcels 6 and 6.2 are vacant, undeveloped properties fronting Flagel Street.

Adjoining and to the north of the petitioner's property is the "Research Ridge" office complex. To the south of the subject site are single-family dwellings. These areas are located within the City of Morgantown.

To the west of Collins Ferry Road from the petitioner's property, the area of which is located outside the City of Morgantown, are multi-family residential complexes and an adult entertainment establishment. This area is included in the Monongalia County West Run Planning District for which the County enacted zoning regulations that became effective on July 1, 2011.

According to Monongalia County Planning Director Rich Wood, the County's zoning classification for the area west of the petitioner's property is R-4, High Density Residential. Multi-family residential development is permitted in this County zoning district. However, the adult entertainment establishment adjacent to the petitioner's property is considered a pre-existing, non-conforming, grandfathered use.

President:
Peter DeMasters, 6th Ward

Vice-President:
Carol Pyles, 7th Ward

Planning Commissioners:
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Tim Stranko, 2nd Ward
William Wyant, 3rd Ward
Bill Petros, 4th Ward
Mike Shuman, 5th Ward
Ken Martis, Admin.
Jennifer Selin, City Councilor

The petitioner advised Staff that he has made efforts to sell the property for single-family development. However, the petitioner maintains that the proximity of the adult entertainment establishment located outside the City of Morgantown has resulted in diminished market interest. As such, the petitioner seeks to amend the zoning classification for the subject property so that it can be marketed for development permitted in the O-I District.

In November 2001, the petitioner requested a zoning map amendment for the same property from the R-1 District to the B-1 District. After much deliberation and vocal public opposition, the Planning Commission voted unanimously to forward City Council a recommendation to deny the petitioner's request. The petitioner decided to withdraw the zoning map amendment petition prior to City Council's consideration of same.

In December 2001, the petitioner returned to the Planning Commission requesting a revised zoning map amendment from the R-1 District to the PRO District. Again, the Planning Commission voted unanimously to forward City Council a recommendation to deny the request.

In February 2002, City Council, having also heard vocal public opposition, concurred with the Planning Commission's December 2001 recommendation and voted unanimously to deny the petitioner's zoning map amendment petition.

In May 2002, the petitioner filed a Writ of Mandamus with the Circuit Court of Monongalia County seeking the Court to declare that the action taken by City Council in denying the petitioner's request for rezoning was unlawful, arbitrary, capricious, unreasonable, and discriminatory. Further, the petitioner requested the Court to order the City of Morgantown to rezone the subject property from the R-1 District to the PRO District. On January 13, 2004, Honorable Circuit Judge Robert B. Stone denied the petitioner's writ mandamus petition (see attached Order for Civil Action No. 02-C-375).

ANALYSIS:

Staff recognizes that the area north of the petitioner's property has experienced growth over the last decade including expansions by Mylan Pharmaceuticals, the U.S. Department of Energy's National Energy Technology Laboratory, and multi-family, offices, and commercial development. However, nearly all of this development occurred outside the City of Morgantown for which zoning regulations, until July 1, 2011, were not enacted by the Monongalia County Commission.

The "Timberline Apartments" complex and the adult entertainment establishment were present prior to the City of Morgantown's 1999 Comprehensive Plan Update and the petitioner's ownership of the subject property.

Specifically, the adult entertainment establishment adjacent to the petitioner's property appears to have been established there since at least the early 1990's. Staff's request to obtain related information prior to this period from the West Virginia Alcohol Beverage Control Administration is pending.

According to online data through the Monongalia County Assessor's Office, the petitioner purchased Parcel 6.1 in December 2000.

Development Services
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Director

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MORGANTOWN PLANNING COMMISSION

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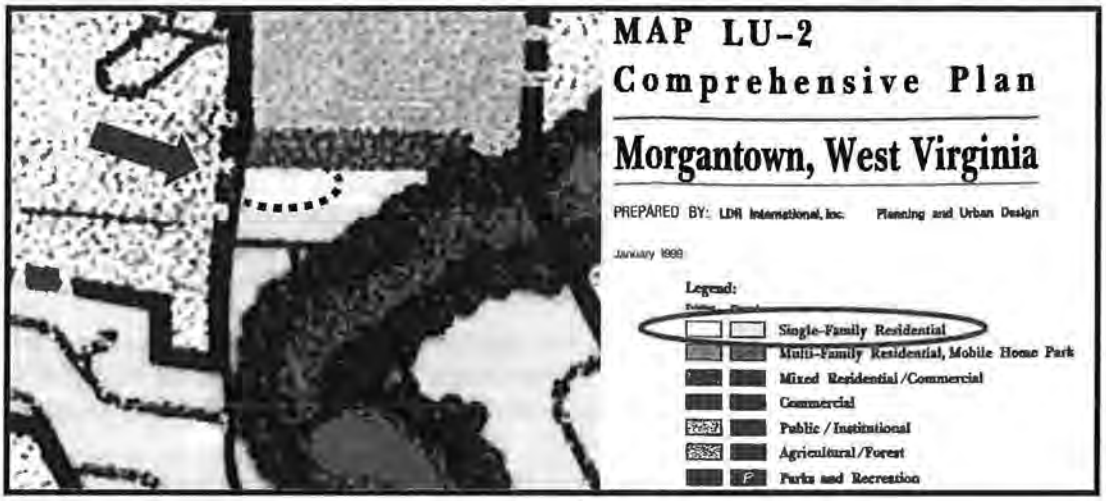
The following figure is a portion of Map LU-2 of the 1999 Comprehensive Plan and illustrates that the planned use for the subject property was "Single-Family Residential."



Because the O-I, Office and Institutional District adjoins the petitioner's property, the requested zoning map amendment is considered a zoning district boundary adjustment.

According to Article 1343.01 of the Planning and Zoning Code, the purpose of the O-I, Office and Institutional District is to:

(A) Provide for office and institutional uses and customary accessory uses on appropriately-sized lots; and,

(B) Provide for a suitable environment for office and institutional uses that can be located adjacent to residential uses without undue harmful effects to such residential uses.

West Virginia State Code §8A-7-8 provides that if a zoning amendment is inconsistent with the adopted Comprehensive Plan, then City Council, with the advice of the Planning Commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and that those changes have substantially altered the basic characteristics of the area.

Zoning map amendment requests should be evaluated on their land-use merits alone. The petitioner's development intentions are extraneous and the Commission should consider the request on its merits as a land-use decision. In conducting such an analysis, the Commission should determine whether or not the O-I, Office and Institutional District is the most appropriate zoning classification for the petitioner's realty, weighing all possible future development and land use scenarios as permitted by the Planning and Zoning Code; particularly, Article 1343 "O-I, Office and Institutional District" and Table 1331.05.01 "Permitted Land Uses".

Development Services
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Jennifer Selin, City Councilor

STAFF RECOMMENDATION:

The Planning Division advises the Planning Commission to determine the following:

1. That the petitioner's zoning map amendment request is inconsistent with the 1999 Comprehensive Plan Update.

2. That the economic, physical, and social character of the development and land uses west of the petitioner's property and outside the City of Morgantown, the nature for and basis on which the petitioner has and presently seeks a zoning map amendment, has remained comparatively unchanged since:

   a. The January 1999 adoption of the City of Morgantown Comprehensive Plan Update;

   b. The December 2000 acquisition of the subject property by the petitioner;

   c. The February 2002 City Council denial of the petitioner's zoning map amendment request for same;

   d. The January 2004 Circuit Court denial of the petitioner's related Writ of Mandamus; and,

   e. The January 2006 City Council enactment of the present Planning and Zoning Code.

3. That the reclassification of the realty along Flagel Street from the R-1 District to any other district within which office, commercial, and/or institutional development is permitted would enable transformational encroachment of same onto a well-established single-family residential area.

4. That the orderliness of maintaining the R-1 District classification for the realty along Flagel Street in support of single-family residential development; the stabilization of single-family residential property values; the promotion of desirable home surrounds; and, the happiness and comfort of citizens within the area immediate to the petitioner's property transcend the private interest and benefit of the petitioner.

5. That the zoning reclassification of the realty along Flagel Street to any other district within which office, commercial, and/or institutional development is permitted would be arbitrary and would solely benefit the private interest of the petitioner.

Therefore, the Planning Division advises the Planning Commission to forward a recommendation to City Council to deny the petitioner's zoning map amendment request RZ12-03.

Development Services
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Director

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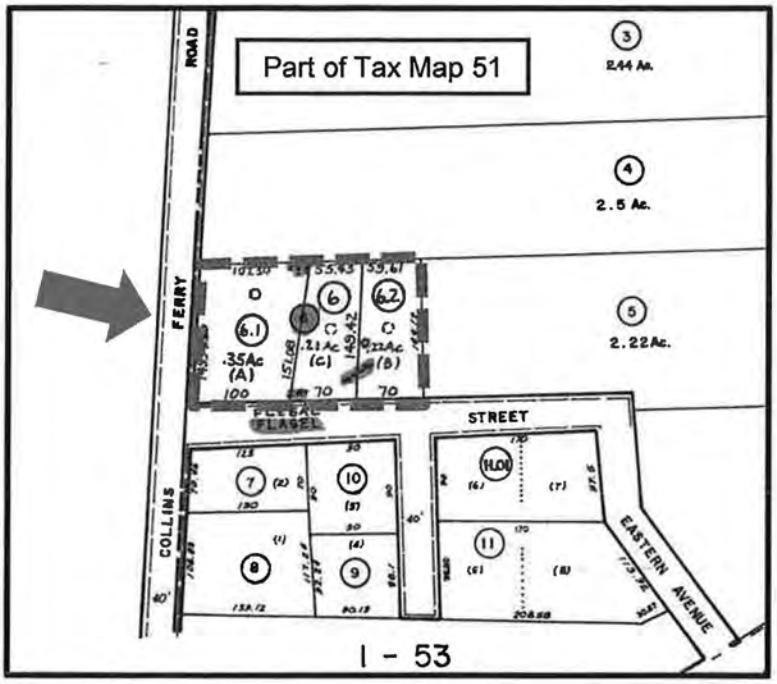
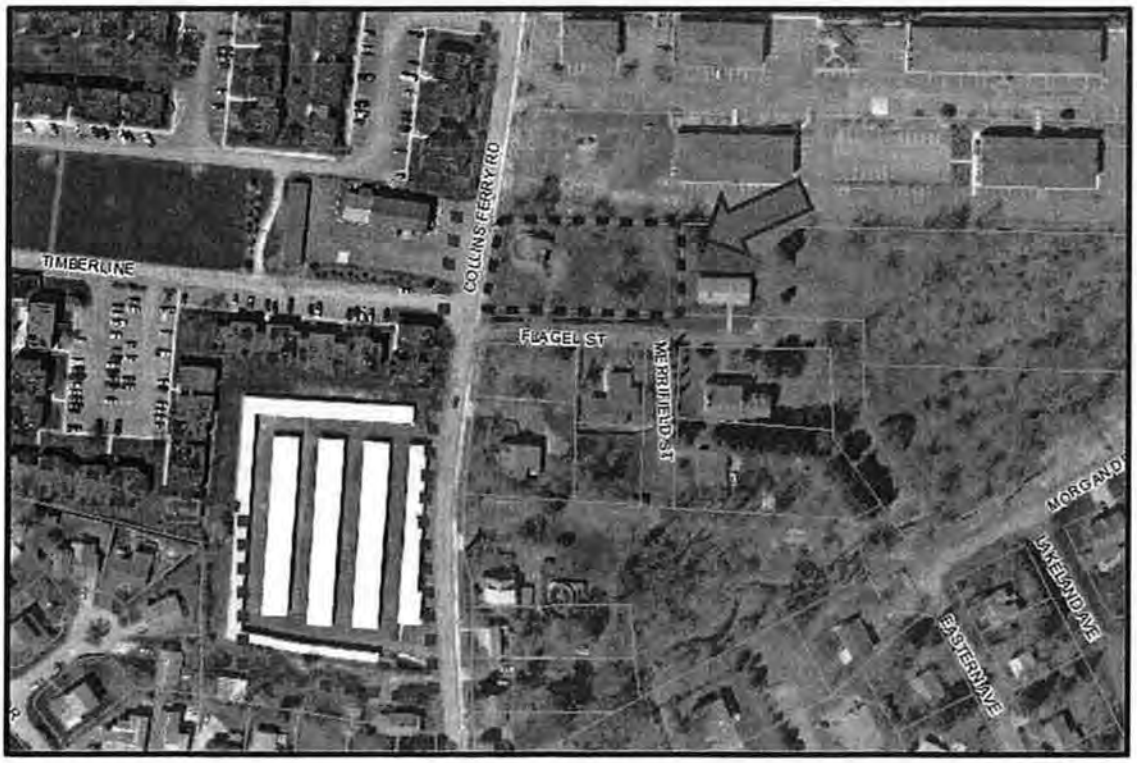
STAFF REPORT ADDENDUM A

RZ12-03 / Monazam / 3566 Collins Ferry Road





City of Morgantown, West Virginia

APPLICATION FOR FOR ZONING MAP AMENDMENT

OFFICE USE	
CASE NO.	RZ12-03
RECEIVED:	6/13/12
COMPLETE:	

Zoning Map Amendment Process – See Addendum A of this Application

(PLEASE TYPE OR PRINT IN BLACK INK)

I. OWNER / APPLICANT

Name:	Esmail Monazam	Phone:	304-598-8882
Mailing Address:	Street: 308 Rotary St.	Mobile:	304-709-0211
	City: Morgantown State: WV Zip: 26505	Email:	monazam@earthlink.net

II. AGENT / CONTACT INFORMATION

Name:		Phone:	
Mailing Address:		Mobile:	
	Street	Email:	
	City State Zip		
Mailings –	Send all correspondence to (check one): ☐ Applicant OR ☐ Agent/Contact		

IV. PROPERTY

Street Address (if assigned):	3566 Collins Ferry Rd.				
Tax Map(s) #:	51	Parcel(s) #:	6, 6.1, 6.2	Size (sq. ft. or acres):	0-75
Current Zoning Classification:	R1	Proposed Zoning Classification:	O-I		
Current Land Use:	Single Family	Proposed Land Use*:			

**The Planning Commission does not take proposed use into consideration. The question is asked merely for staff to determine if the proposed district allows the intended use.*

V. ATTEST

I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent and I agree to conform to all applicable laws of this jurisdiction, whether specified herein or not. I certify that I have read and examined this document and know the same to be true and correct. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions.

Esmail Monazam		6/13/2012
Type/Print Name of Applicant/Agent	Type/Print Name of Applicant/Agent	Date

Zoning Map Amendment Fee - $75

City of Morgantown, West Virginia

APPLICATION FOR
FOR ZONING MAP AMENDMENT

OFFICE USE	
CASE NO.	RZ12-03
RECEIVED:	06/13/12
COMPLETE:	

ADDENDUM A - Zoning Map Amendment Process

Step 1	An application for an amendment, or change, to the City's Official Zoning Map is filed with the Planning Department.
Step 2	The Planning Department conducts a formal review of the completed application and prepares appropriate mapping and the petition.
Step 3	The Planning Department publishes a legal advertisement describing the petition for a zoning map amendment at least 15 days prior to the scheduled public hearing before the Planning Commission. The Planning Department also notifies property owners within 200 feet of the proposed map amendment.
Step 4	The Planning Commission holds a duly scheduled public hearing on the zoning map amendment petition, prepares a report, and makes a recommendation to City Council.
Step 5	City Council hears the petition in accordance with its rules and procedures, normally two readings and an additional public hearing.

APPROVED

If the petition for the zoning map amendment is approved by City Council, the applicant receives approval and is formally notified by mail by the Planning Department. The Planning Department amends the Official Zoning Map to reflect the approved map amendment.

DENIED

If the petition for the zoning map amendment is denied by City Council, the applicant is formally notified in writing by the Planning Department of the denial and the right to appeal the decision to the Circuit Court of Monongalia County.

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
DIVISION NO. 1

STATE OF WEST VIRGINIA, EX REL.,
ESMAIL MONAZAM AND SHERRY MONAZAM,

Petitioners,

vs. **CIVIL ACTION NO. 02-C-375**

THE CITY OF MORGANTOWN, WEST VIRGINIA,

Respondent.

ORDER DENYING THE PETITIONER'S REQUEST TO VACATE THE RESPONDENTS' ZONING DECISION

This matter is before the Court upon the record, including the briefs of the petitioner and the respondent. The Court has studied the entire record and carefully considered the arguments raised in the parties' briefs and by oral argument. As a result of these deliberations. the Court has concluded that the decision of the City of Morgantown should not be vacated.

Opinion

On May 30. 2002, the Petitioners' filed a Writ of Mandamus seeking an order of this Court directing the City of Morgantown to rezone a parcel of real estate involved herein and located in Morgantown. Monongalia County. WV. from an R-1. single family residence. zoning classification to a PRO. professional office. zoning classification per Petitioners' request. The Petition filed by the petitioner seeks this Court to declare that the action taken by the Respondent.

the City of Morgantown, in denying the Petitioners' request for rezoning, was unlawful, arbitrary, capricious, unreasonable and discriminatory. On December 1, 2003, Petitioner Esmail Monazam appeared with counsel, Edmund J. Rollo, and the Respondent appeared by and through its counsel, Stephen R. Fanok, at which time oral arguments were presented to the Court.

Pursuant to Rule 52 of the West Virginia Rules of Civil Procedure, the Court hereby sets forth with specificity its findings of facts and conclusions of law:

FINDINGS OF FACT

1. Petitioners own property located at 3566 Collins Ferry Road, Morgantown, West Virginia, which is shown on Monongalia County Tax Map 51 as Parcel 6.

2. Petitioners' realty is zoned R-1, single family residential, with B-1, neighborhood business, zoned realty abutting to the North, and R-1, single family residential, zoned realty abutting it to the South and East. The area to the West and directly across Collins Ferry Road from Petitioners' realty is outside of the Morgantown city limits, is not regulated by zoning use requirements of any governmental entity, and contains a variety of business and residential uses.

3. On November 8, 2001, Petitioners filed an application with the City of Morgantown requesting that their realty be rezoned from an R-1 classification to a PRO, professional office, classification.

4. Section 14.1 of the City of Morgantown's Zoning Ordinance states:

> The PRO District is intended to provide a suitable environment for certain types of uses, primarily professional and office in character, that can be located adjacent to residential uses without undue harmful effects to such residential uses. The

(PRO) District will be applied where a transition use buffer is appropriate between residential and incompatible uses.

5. On December 13, 2001, the Morgantown Planning Commission held a public hearing regarding Petitioners' request of the City of Morgantown that it rezone the above described parcel from an R-1, single family residential, zoning classification to a PRO, professional office, zoning classification.

6. In his December 13, 2001, Staff Report to the City's Planning Commission, the City Planner reminded the Commission that in considering the Monazam rezoning request it should determine if PRO is the appropriate zoning district for the site; that the analysis involved in that determination should properly weigh all possible future development scenarios for the site under PRO regulations; that there is no surrounding or adjacent PRO zoning in the immediate area; that one can fairly debate which option (either R-1 or PRO) provides the better buffer for the R-1 area; and that it is left to the Planning Commission and City Council to decide if there is a compelling reason to either grant the PRO designation or to keep the property residential.

7. The minutes of the December 13, 2001, Planning Commission meeting, indicate that the Planning Commission held a very thorough hearing on the Monazam rezoning request and that Mr. Monazam was there to speak in favor of his request and that several local residents spoke both for and against the rezoning. Those speaking for the rezoning offered that Mr. Monazam's proposed use of the property for an engineering office would be a "plus" for the neighborhood. Those speaking in opposition to the rezoning emphasized their concerns that the various permitted uses allowed by a rezoning to PRO would, or at least could, negatively impact their R-1 neighboring properties and their quality of life. At that meeting Mr. Monazam stated to

the Planning Commission that he purchased the residence at 3566 Collins Ferry Road [the realty at issue] in January of 2001 with the intention of remodeling it into an office for the engineering business that he owns and operates. After much discussion as to the pros and cons of any such rezoning, the Planning Commission voted to forward a recommendation to Morgantown City Council that it deny Petitioners' rezoning request. Mr. Pat Esposito, a member of the Planning Commission who owns the property north of petitioner's property, recused himself from the consideration of Mr. Monazam's petition.

8. On February 5, 2002, Petitioners' rezoning request and the Morgantown Planning Commission's recommendation that City Council deny the request were presented to Morgantown City Council. At the February 5, 2002, meeting of City Council, Mr. Monazam and his attorney were given the opportunity to speak to Council. Both argued that a PRO rezoning of Mr. Monazam's realty would be an appropriate transition use buffer between the R-1 property to the South of Mr. Monazam's reality and the B-1 property to the North of it. Both men also emphasized that several non-residential uses already existed to the West of Mr. Monazam's property, across Collins Ferry Road in unincorporated territory. Mr. Monazam's attorney stated that since City Council had approved the rezoning of the property abutting Mr. Monazam to the North from R-1 to B-1, City Council had paved the way for the rezoning of Mr. Monazam's property from R-1 to PRO. At that same February 5, 2002, City Council meeting, many residents of the area in question again spoke in opposition to the rezoning stating that it would negatively impact their residential properties. Other individuals spoke in favor of it. Following the public's comments, City Council discussed the matter. Council member Bane expressed concern that a rezoning of Mr. Monazam's property to PRO might result in other neighboring properties

wanting rezoned from R-1 to a more intense zoning usage district. Council member Merow stated that the residents of that neighborhood want to live in a residential neighborhood, that the City's Comprehensive Plan indicates that the area should remain single family residential, and that the Planning Commission had reviewed the matter and recommended to City Council that the rezoning request be denied. At the conclusion of City Council's discussion of the matter, the seven City Council members voted unanimously to deny the Monazam's request to rezone the property from R-1 to PRO.

9. On or about May 30, 2002, Petitioners filed their Petition for Writ of Mandamus with the Court seeking an order which would require Morgantown City Council to rezone the realty at issue from R-1 to PRO.

10. Petitioners' primary arguments in support of their petition are: (1) that property on the other side of Collins Ferry Road from Petitioners' realty is not single family residential in nature and has set a precedent for the City of Morgantown to rezone Petitioners' realty to a more intense use than R-1 single family residential and (2) that by previously rezoning the realty which abutts Petitioners' realty to the North from R-1 to B-1 (neighborhood business), the City has obligated itself to rezone Petitioners' realty to PRO so that it can be a buffer between the B-1 realty and neighboring R-1 properties. Additionally, petitioner argues that there will be no increase in traffic and no significant disruption to the character of the neighborhood.

11. Section 13 of the City of Morgantown's Zoning Ordinance defines a B-1 zoning district as follows:

> This [B-1] District is designed and *located in neighborhoods* to accommodate the shopping and service needs of the locality.

> Although limited in area occupied, these districts are important to the economic welfare of the community in placing "convenience" and "impulse" goods shops close to the consumer.

CONCLUSIONS OF LAW

Petitioners have sought judicial relief via the filing of a Petition for Writ of Mandamus. In that regard, mandamus is a proper remedy to require the performance of nondiscretionary legal duties by various governmental agencies or bodies. State ex rel. Allstate Ins. Co. v. Union Serv. Dist., 151 W.Va. 207, 151 S.E.2d 102 (1966); State ex rel. Anderson v. Board of Educ., 160 W.Va. 208, 233 S.E.2d 703 (1977). Furthermore, if the respondent, (governmental body), has discretion, in the manner it acts, it may be required by mandamus to act, but a court is without authority to command in what manner it shall act unless the action of the governmental body is so arbitrary and capricious as to create a question for judicial determination. State ex rel. Canterbury v. County Court, 151 W.Va. 1013, 158 S.E.2d 151 (1967); State ex rel. Lambert v. Cortellessi, 182 W.Va. 142, 386 S.E.2d 640 (1989). Caselaw nationwide and within this State has thoroughly addressed the authority of local governmental bodies on making zoning decisions in light of the foregoing arbitrary and capricious test.

The authority of local governments to enact zoning regulations is an exercise of police power. The only limitations on that power is that restrictions imposed must be reasonable and not arbitrary and that they bear substantial relation to public health, safety, morals, or general welfare. Carter v. City of Bluefield, 54 S.E.2d 747, 750 (W.Va. 1949). The United States Supreme Court in Ferguson v. Skrupa, 372 U.S. 726, 730, 83 S. Ct. 1028, 1031, 10 L. Ed. 2d 93,

97, 95 A.L.R. 2d 1347, 1352 (1963) addressed the issue of judicial intrusion:

> We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.

Cited in Hartsock-Flesher Candy v. Wheeling Wholesale, 328 S.E.2d 144 (W.Va. 1984): see also DeCoals, Inc. v. Bd. of Zoning Appeals, 284 S.E.2d 856 (W.Va. 1981) ("It is not ours to judge the wisdom or efficacy of those chosen means.") Furthermore, "If most of the factors necessary to the decision of a zoning case have both positive and negative aspects, it would appear that these matters are "fairly debatable", and in such cases, the court will not overrule the city authorities in the exercise of their legislative function." Town of Stonewood v. Bell and Town of Barrackville v. Griffin, 270 S.E.2d 787, 791 (W.Va. 1980).

It must be understood that a municipality is not required to enact the best ordinance under the circumstances, but rather must only enact a reasonable ordinance. Choices among alternative reasonable choices of action are to be determined by the legislature, not the courts; and so long as there is a reasonable or rational basis for a particular course of conduct, there is not a constitutional violation. DeCoals, at 856, 859. Therefore, the judicial role in reviewing a zoning ordinance is rigidly circumscribed: "If the end is legitimate, [the court's] inquiry is limited to whether the means are substantially related to that end". DeCoals, at 858. See also Barley v. Truby, 321 S.E.2d 302 (W.Va. 1984). In other words, the court merely determines whether the zoning regulation, as applied to the particular property promotes public health, safety, or general welfare. The concept of public welfare is broad and inclusive. It includes the orderliness of community growth, land, value, and aesthetic objectives. 5 ROHAN, ZONING AND LAND

USE CONTROLS Section 36.02 (2). In addition, general welfare means stabilization of property values, promotion of desirable home surrounds, and happiness and comfort of the citizens. Id at Section 36.02 (2).

The fact that a owner may otherwise make more profitable use of the property does not render a zoning ordinance unreasonable; it is the very nature of zoning regulations that "rights and privileges of some individuals are to some extent limited or controlled by every such zoning ordinance." G.M. Realty, Inc. v. City of Wheeling, 120 S.E.2d 252 (W.Va. 1961); 5 ROHAN Section 36.02 (5) (C).

Petitioners' argue that the City of Morgantown was obligated to rezone their realty from R-1 to PRO because of the non residential uses existing nearby, across Collins Ferry Road. As Respondent has pointed out, the area across Collins Ferry Road is outside of the City limits and the City has no legal authority to regulate or control its land use. It would be unreasonable to believe that the City should forsake its residents who live in long established R-1 residential neighborhoods, or its Comprehensive Plan which recommends those residential neighborhoods simply because of uncontrolled growth outside the City limits in territory over which the City has absolutely no control. The basis for the City's Comprehensive Plan and Zoning Ordinance is to promote the health, safety, and general welfare of the inhabitants of the City. For the City to begin rezoning properties within the City limits merely because they are near totally different types of uses which lie outside the City limits would be irresponsible. Even if the properties across Collins Ferry Road were within the City limits and zoned nonresidential, it would not be unreasonable for the City to maintain the R-1 area and neighborhood in which Petitioners' realty lies. In 1990, the West Virginia Supreme Court ruled that a zoning ordinance was not arbitrary

and unreasonable as applied to the property where, under the ordinance, properties abutting on one side of a highway could be used for nonresidential purposes, while those abutting on the other side of the highway could be used only for residential purposes. Par Mar v. City of Parkersburg, 183 W.Va. 706, 398 S.E.2d 532 (1990). This Court finds that petitioners' allegation regarding land use across Collins Ferry Road is without merit and does not form a basis for an arbitrary and capricious argument.

Petitioners' also argue that the City has a duty to rezone its property to PRO so that it can be a transition buffer between the B-1 realty to the North and neighboring R-1 properties to the South. Section 14.1(A) of the City's Zoning Ordinance addresses PRO zoning districts and states "that a PRO District will be applied where a transition use buffer is appropriate between residential and *incompatible* uses." Petitioners assert that that is the case with the B-1 zone being the incompatible use that justifies their PRO rezoning as a buffer between the B-1 and neighboring R-1 lots. This Court does not accept Petitioners' argument. Section 13 of the City's Zoning Ordinance defines a B-1 zoning district as follows:

> This [B-1] District is designed and located in neighborhoods to accommodate the shopping and service needs of the locality. Although limited in area occupied, these districts are important to the economic welfare of the community in placing "convenience" and "impulse" goods shops close to the consumer.

In light of the foregoing definition, it does not appear that a B-1 (neighborhood business) zoning district is necessarily or always an *incompatible* use needing buffered from abutting R-1 neighborhoods. The Morgantown Zoning Ordinance's definition of B-1 makes it clear that B-1 zoning and its permitted uses are not only compatible with R-1 single family residential districts.

but also, are intended to be located in neighborhoods to accommodate the shopping and service needs of its residents. Based upon the foregoing, this Court does not believe that Morgantown City Council had any legal duty to rezone Petitioners' property to PRO as a result of City Council's prior rezoning of abutting property to B-1.

The Court agrees with Respondent that in determining whether City Council acted arbitrarily and unreasonably in not rezoning Petitioners' reality to PRO the Court should take into consideration whether the existing R-1 zoning classification of Petitioners' realty is no longer reasonable or appropriate. In that regard, Petitioners have not demonstrated that such a condition exists. To the contrary, the record indicates that the residential R-1 area in question is a thriving single family neighborhood and that for Petitioners' realty to remain R-1 is reasonable. This Court agrees with the approach taken by the Virginia Court in such matters. The Virginia Court. which also follows the Fairly Debatable Doctrine, has offered:

> Where two uses of the land were presented, both reasonable, the legislative body did not err in choosing to retain the use permitted under present zoning, even though the proposed zoning might have been the most appropriate use for the land; the presumption of reasonableness of the legislative body's action stood unrebuttled and therefore was sufficient alone to sustain the denial of the rezoning request.

Board of Supervisors v. International Funeral Service, Inc. 221 Va. 840, 275 S.E.2d 586 (1981).

The Virginia Court has also held:

> A refusal to rezone will be upheld where no compelling need for the rezoning is shown, and it is not clearly demonstrated that the existing zoning classification is no longer reasonable or appropriate. The burden is on the one who seeks rezoning to show the need therefore, and in Virginia, the courts apply the fairly

> debatable rule in the case of denial of a rezoning application.

Town of Vienna Council v. Kohler, 218 Va. 966. 244 S.E.2d 542 (1978). Inasmuch as the West Virginia Supreme Court has historically adopted the principles of Virginia caselaw addressing zoning and the fairly debatable doctrine, when there is no West Virginia law on point. this Court believes that the principles set forth in both Virginia cases apply to the issue at hand. It clearly supports the action taken by City Council in denying Petitioners' rezoning request.

This Court believes it is important to note that Petitioners bought the R-1 realty in question in January of 2001 with the express intention of having it rezoned to PRO so that they could operate an engineering business at the site. Petitioners' purchase and intended office use. in light of the property's R-1 zoning. was a speculative business venture and investment risk. There was no guarantee that the property would be rezoned by the City of Morgantown to something other than R-1 residential use. This Court will not rule that such a speculative purchase. in light of the facts at hand. is reason to hold that the City should have rezoned the property for professional office usage. The caselaw simply does not support a rezoning under such circumstances.

Whether or not Petitioners' realty should have been rezoned to PRO by Morgantown City Council is a matter of debate as evidenced by the Morgantown Planning Commission and Morgantown City Council public hearings on the matter. Petitioner argues that there will be no additional traffic nor will there be a disruption to the character of the neighborhood. Additionally. petitioner presented evidence that his rezoning efforts had the support of some his neighbors. These factors were weighed by the Planning Commission and City Council. This

Court finds that there is no evidence that R-1 zoning for the realty is no longer reasonable or appropriate. Reasonable minds might disagree as to the appropriate zoning of Petitioners' realty. Based upon the foregoing, the matter clearly falls within the Fairly Debatable Doctrine and the Court is precluded from substituting its opinion on the matter for that of Morgantown City Council.

Wherefore, given the foregoing, the Court **ORDERS** that Petitioners' petition for a writ mandamus be **DENIED** and that this matter be dismissed from the docket.

The Circuit Clerk shall provide copies of this order, findings of fact, and conclusions of law to counsel of record.

Entered this 13th day of January, 2004.

Honorable Robert B. Stone, Circuit Judge

Development Services
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

Date: Monday, August 27, 2012

To: Terrence Moore, City Manager

Linda Little, City Clerk

RE: September 25, 2012 Council Committee of the Whole Agenda

RZ08-05 / First Presbyterian Church of Morgantown / "Westminster House PUD" Expiration of Approval

During its August 23, 2012 hearing, the Planning Commission voted unanimously to forward a recommendation to City Council to initiate action amending the Official Zoning Map so as to rescind the above referenced Planned Unit Development designation and reclassify the subject realty to its previous R-2, B-2, and B-4 designations.

Attached herewith is the related ordinance along with supplemental information provided to the Planning Commission at its August 23, 2012 hearing.

The following dates will keep to standard Planning and Zoning Code Official Zoning Map Amendment protocol:

- Committee of the Whole ..... Tuesday, September 25, 2012 at 7:00 PM
  City Council Chambers
- First Reading:..... Tuesday, October 2, 2012 at 7:00 PM
  City Council Chambers
- Public Hearing and Second Reading: ..... Tuesday, November 6, 2012 at 7:00 PM
  City Council Chambers

Please include the attached ordinance on the City Council meeting agendas noted above and include this communication and attached supplemental information in the meeting packet for the September 25th Committee of the Whole meeting.

Thank you.

Christopher M. Fletcher

cc: Chet Parsons, President, Westminster House, Inc. (via email chetparsons@gmail.com)

ORDINANCE NO._____

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF SEVEN PARCELS OF REAL ESTATE IN THE THIRD AND FIFTH WARDS OF THE CITY OF MORGANTOWN FROM PUD, PLANNED UNIT DEVELOPMENT DISTRICT TO R-2, SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT; B-2, SERVICE BUSINESS DISTRICT; AND, B-4, GENERAL BUSINESS DISTRICT BY AMENDING ARTICLE 1331.02 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH THEREIN.

WHEREAS, the City of Morgantown enacted Ordinance 08-48 on December 2, 2008 to amend the Official Zoning Map of the City of Morgantown for the "Westminster House Planned Unit Development (PUD) Outline Plan".

WHEREAS, Ordinance 08-48 provided for the zoning reclassification of Parcels 247, 248, 249, 260, and 262 of Monongalia County Tax Map 26 (2006 tax assessment), Morgantown Corporation District from the B-4, General Business District to the PUD, Planned Unit Development District.

WHEREAS, Ordinance 08-48 provided for the zoning reclassification of Parcels 263 and 270 of Monongalia County Tax Map 26 (2006 tax assessment), Morgantown Corporation District from the R-2, Single- and Two-Family Residential District and the B-2, Service Business District to the PUD, Planned Unit Development District.

WHEREAS, Article 1357.03 (D) of the City's Planning and Zoning Code provides that a PUD Development Plan must be submitted to the Planning Division not more than eighteen (18) months following City Council approval of the PUD Outline Plan. Said Article provides that the Planning Commission may extend the time for application for approval of the PUD Development Plan for good cause, consistent with the purposes of the Zoning Ordinance OR initiate action to amend the Official Zoning Map so as to rescind the Planned Unit Development designation.

WHEREAS, on November 12, 2009, the Planning Commission extended the original PUD Development Plan application deadline from June 3, 2010 to December 3, 2010.

WHEREAS, on February 10, 2011, the Planning Commission again extended the PUD Development Plan application deadline from December 3, 2010 to October 31, 2011.

WHEREAS, on October 13, 2011, the Planning Commission again extended the PUD Development Plan application deadline from October 31, 2011 to December 31, 2011.

WHEREAS, on December 8, 2011, the Planning Commission again extended the PUD Development Plan application deadline from December 31, 2011 to June 30, 2012.

WHEREAS, the Planning Division duly notified Westminster House, Inc. by means of a certified letter dated July 25, 2012 that:

1. Article 1357.03 "Procedure for Approval of Planned Unit Development" of the Planning and Zoning Code provides that a PUD Development Plan must be submitted to the Planning Division no later than eighteen (18) months following City Council approval of the Outline Plan. City Council enacted Ordinance 08-48 establishing "Westminster House" PUD, Planned Unit Development District on December 2, 2008, which established an expiration deadline of June 3, 2010.

2. The Planning Commission approved four (4) PUD Outline Plan Amendments, each extending the deadline to submit the PUD Development Plan respectively.

3. The effective deadline to submit the PUD Development Plan to the Planning Division was June 30, 2012.

4. Article 1357.03(D)(4)(c) requires the Planning Division to report to the Planning Commission on Planned Unit Developments with time limits that have expired and notify the original applicants of same and that the Morgantown Planning Commission may extend the PUD Development Plan submission deadline for good cause, consistent with the purposes of the Zoning Ordinance.

5. The Planning Division is to report the subject expiration to the Planning Commission with a recommendation to determine whether to consider extending the deadline or initiate action to amend the Official Zoning Map so as to rescind the Planned Unit Development designation.

6. The Planning Division advised the Planning Commission that Westminster House, Inc. did not wish to pursue an additional PUD Development Plan submission deadline extension and that the developer intends to pursue a development program that will fall within the standards of the zoning districts for which the subject property was classified prior to City Council's enactment of Ordinance 08-48 on December 2, 2008.

WHEREAS, the Morgantown Planning Commission held a public hearing on August 23, 2012 and voted unanimously to initiate action to amend the Official Zoning Map so as to rescind the "Westminster House" PUD, Planned Unit Development Distrrict designation.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF MORGANTOWN:

1. That the zoning reclassification enacted by Ordinance 08-48 on December 2, 2008 is hereby rescinded;

2. That Parcels 247, 248, 249, 260, and 262 of Monongalia County Tax Map 26 (2006 tax assessment), Morgantown Corporation District as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein are reclassified from the PUD, Planned Unit Development District to the B-4, General District;

3. That Parcels 263 and 270 of Monongalia County Tax Map 26 (2006 tax assessment), Morgantown Corporation District as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein are reclassified from the PUD, Planned Unit Development District to the R-2, Single- and Two-Family Residential District and the B-2, Service Business District as demarcated on the Official Zoning Map of the City of Morgantown in effect on December 2, 2008; and,

4. That the Official Zoning Map be accordingly changed to show said zoning reclassification.

This Ordinance shall be effective from date of adoption.

FIRST READING:

_____
Mayor

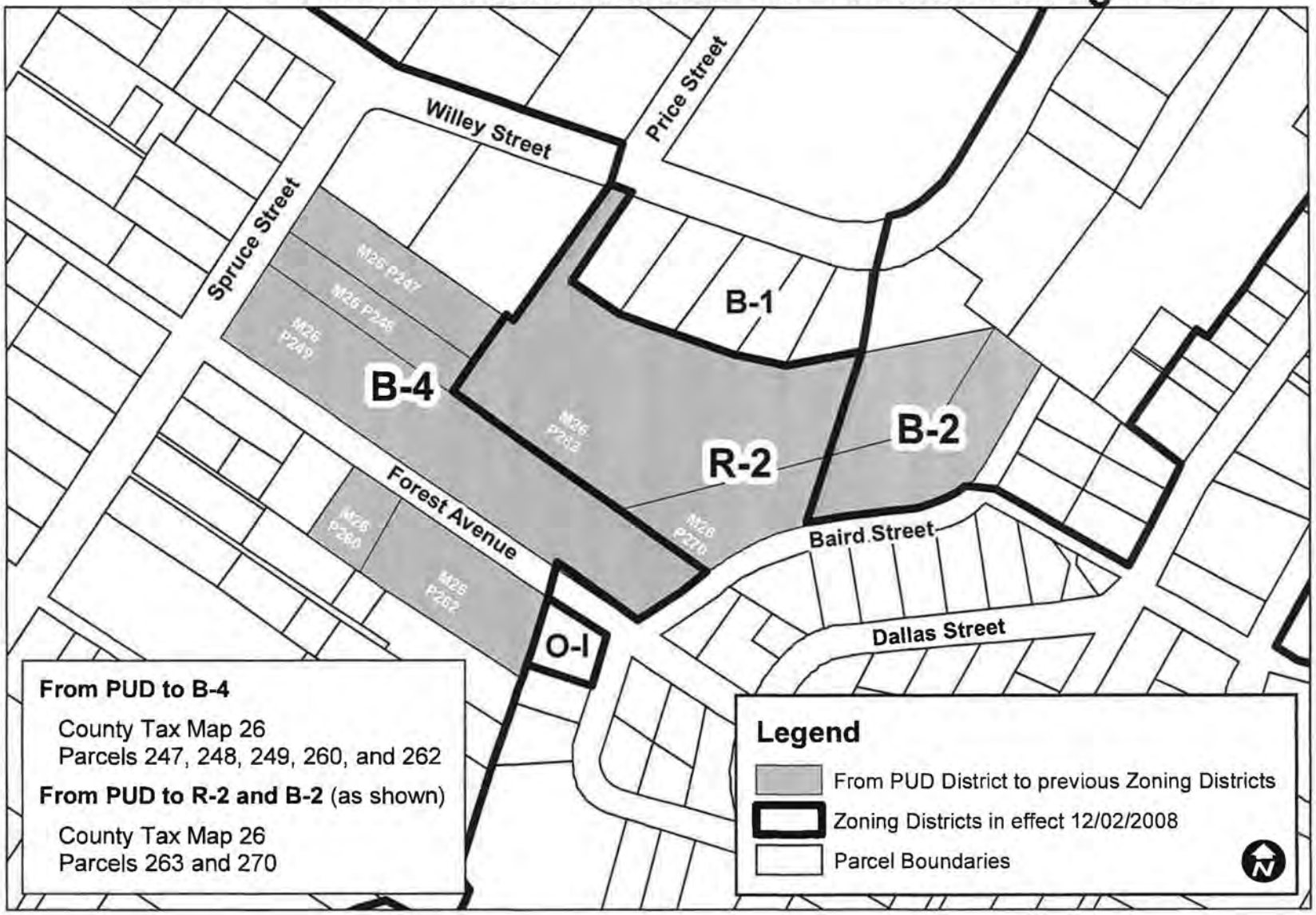
ADOPTED:

FILED:

_____
City Clerk

RECORDED:

ORDINANCE EXHIBIT
RZ08-05 / Westminster House PUD / Rescinding PUD



Development Services
Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

Date: August 9, 2012

To: Planning Commission

RE: RZ08-05 "Westminster House PUD"; First Presbyterian Church of Morgantown Expiration of Approval

Article 1357.03 "Procedure for Approval of Planned Unit Development [PUD]" of the Planning and Zoning Code provides that a PUD Development Plan must be submitted to the City no later than eighteen (18) months following City Council approval of the PUD Outline Plan.

The following timeline illustrates the related approvals and present submission deadline for the "Westminster House" PUD Development Plan.

Planning Commission recommends PUD Outline Plan		Outline Plan Amendment 1 extending submission deadline		Outline Plan Amendment 2 extending submission deadline		Outline Plan Amendment 4 extending submission deadline	
Oct 9 2008	**Dec 2 2008**	**Nov 12 2009**	**Jun 3 2010**	**Feb 10 2011**	**Oct 13 2011**	**Dec 8 2011**	**Jun 30 2012**
	City Council approves Zoning Map Amendment Ordinance (ORD08-48)		Original PUD Development Plan Submission Deadline		Outline Plan Amendment 3 extending submission deadline		Present PUD Development Plan Submission Deadline

The following table illustrates the four (4) PUD Outline Plan amendment approvals and related PUD Development Plan submission deadline extensions.

PUD Outline Plan Amendment Approval Date	Revised PUD Development Plan Submission Deadline
Amendment 1 – November 12, 2009	from June 3, 2010 to December 3, 2010
Amendment 2 – February 10, 2011	from December 3, 2010 to October 31, 2011
Amendment 3 – October 13, 2011	from October 31, 2011 to December 31, 2011
Amendment 4 – December 8, 2011	from December 31, 2011 to June 30, 2012

Staff has maintained ongoing discussions with Mr. Chet Parsons, President of Westminster House, Inc., concerning the petitioner's evolving development objectives and financing challenges. Staff understands that their present intentions are to pursue a development program that will fall within the standards of the zoning districts for which the property was classified prior to the PUD approval. As such, the petitioner does not wish to pursue an additional deadline extension request.

From the Desk of:
Christopher M. Fletcher, AICP
Director of Development Services

Development Services
Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

One of the elements included in the Planning Commission's Outline Plan amendment approvals was to allow the owner to offer portions of the site for permit parking on a temporary basis. The owner advised Staff and the Planning Commission that revenue from the leased parking spaces was necessary to satisfy a portion of the project's debt service. The duration of this temporary parking expired on June 30, 2012 as set forth under the Planning Commission's December 8, 2011 approval of Outline Plan Amendment 4. Staff understands that the owner will be seeking an extension of the temporary parking use during the Planning Commission's September 2012 hearing.

Article 1357.03 (D) (4) (c) requires the Planning Division to report to the Planning Commission on Planned Unit Developments with time limits that have expired and notify the original applicant of same. By the attached letter dated June 25, 2012, Staff notified the petitioner of the pending expiration on July 25, 2012.

It is the opinion of the Planning Division that the Planning Commission must:

1. Determine whether to consider extending the deadline for good cause, consistent with the purposes of the Zoning Ordinance; OR,

2. Initiate action to amend the Zoning Map so as to rescind the Planned Unit Development designation and reclassify the subject realty to its previous R-2, B-2, and B-4 designations.

Should the Planning Commission choose to extend the deadline, than it is obligated to state the basis for which it is to be granted and identify a specific period for same. Again, Staff understands that the petitioner does not wish to seek a deadline extension.

Should the Planning Commission choose to initiate action to rescind the PUD designation, than it must submit a recommendation to City Council to, by ordinance, reclassify the subject realty from a PUD District to the respective R-2, B-2, and B-4 Districts.

Under either scenario, Staff recommends that the Planning Commission hear comments under its standard public hearing procedure before entertaining a motion.

Attachments: City Council Ordinance ORD08-48

December 9, 2011 letter to Mr. Chet Parsons
(action letter for Outline Plan Amendment 4)

July 25, 2012 letter to Mr. Chet Parsons
(pending expiration of approval)

cc: Chet Parsons, Westminster House, Inc. via email

DEVELOPMENT SERVICES
PLANNING DIVISION

The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7431 TDD (304) 284-7512
FAX (304) 284-7534 www.morgantown.com

December 9, 2011

First Presbyterian Church of Morgantown
c/o Chet Parsons
456 Spruce Street
Morgantown, WV 26505

RE: RZ08-05 – First Presbyterian Church of Morgantown, "Westminster House PUD"
Tax Map #26 Parcels #247, 248, 249, 260, 262, 263, and 270
PUD Outline Plan Amendment No. 4

Dear Mr. Parsons:

At their monthly meeting on Thursday, December 8, 2011, the Morgantown Planning Commission **APPROVED** Amendment No. 4 to the "Westminster House" PUD Outline Plan. The Commission's approval included the following conditions and considerations:

1. That the "Westminster House" PUD Outline Plan document be supplemented by this Staff Report and related addenda as the convention to be used in evaluating the petitioner's Development Plan.
2. That review and approval of the project's Development Plan continue to be waived by the Planning Commission and conducted at the Staff level. However, should the Development Plan substantially differ from the approved Outline Plan and amendments approved heretofore, then the petitioner must submit a subsequent Outline Plan amendment to the Planning Commission for approval.
3. That the petitioner obtains minor subdivision approval to reconfigure the existing parcel boundaries in a manner that best meets the overall ownership, development, and management objectives set forth in the "Westminster House" Outline Plan.
4. That the Development Plan submission deadline be extended from December 31, 2011 to June 30, 2012.
5. That the December 31, 2011 deadline for the two (2) temporary parking lot uses be extended to June 30, 2012.

This decision may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Planning Commission during this thirty-day period is at the sole financial risk of the petitioner.

Should you have any questions or require further clarification, please contact the undersigned.

Respectfully,

Heather Whitmore Dingman, AICP
Principal Planner

The City of Morgantown

DEVELOPMENT SERVICES DEPARTMENT

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7431 TDD (304) 284-7512
FAX (304) 284-7534 www.morgantown.com

July 25, 2012

VIA CERTIFIED MAIL

Westminster House, Inc.
c/o Chet Parsons, President
15 Meadow Brooke Drive
Morgantown, WV 26505

RE: "Westminster House" Planned Unit Development (PUD)
Pending Expiration of Approval

Mr. Parsons:

Article 1357.03 "Procedure for Approval of Planned Unit Development [PUD]" of the City of Morgantown's Planning and Zoning Code provides that a PUD Development Plan must be submitted to this Office no later than eighteen (18) months following City Council approval of the PUD Outline Plan. City Council approved the "Westminster House" PUD Outline Plan on December 2, 2008, which established an expiration deadline of June 3, 2010.

As you know, the Planning Commission approved the following four (4) PUD Outline Plan Amendments, each extending the deadline to submit the PUD Development Plan respectively.

PUD Outline Plan Amendment Approval Date	Revised PUD Development Plan Submission Deadline
Amendment 1 – November 12, 2009	from June 3, 2010 to December 3, 2010
Amendment 2 – February 10, 2011	from December 3, 2010 to October 31, 2011
Amendment 3 – October 13, 2011	from October 31, 2011 to December 31, 2011
Amendment 4 – December 8, 2011	from December 31, 2011 to June 30, 2012

Article 1357.03(D)(4)(c) requires this Office to report to the Planning Commission on Planned Unit Developments with time limits that have expired and notify the original applicants of same. I understand from previous conversations we have had that Westminster House, Inc. wishes to proceed with development of the site under the zoning classifications that were in place for the subject properties prior to the related PUD zoning map amendment.

By this letter, you are hereby notified that this Office will report the June 30, 2012 PUD Development Plan submission expiration to the Planning Commission at its August 9, 2012 hearing. This Office will also recommend that the Planning Commission initiate action to amend the City's Official Zoning Map by rescinding the "Westminster House" Planned Unit Development and thereby returning the zoning classification of the affected properties to the previous zoning designations.

Please contact the undersigned should you have any questions or require clarification.

Respectfully,

Christopher M. Fletcher

Christopher M. Fletcher, AICP
Director of Development Services

Development Services
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

Date: Friday, September 14, 2012

To: Terrence Moore, City Manager (via email)
Linda Little, City Clerk (via email)

RE: September 25, 2012 Council Committee of the Whole Agenda
RZ12-05 / Wiley & Giuliani / Zoning Map Amendment from R-1A to R-2

During its September 13, 2012 hearing, the Planning Commission unanimously voted to forward a favorable recommendation to City Council to approve the above referenced Zoning Map Amendment petition.

Attached herewith is the related ordinance as well as the Staff Report presented to the Planning Commission, which provides background, Staff analysis, and recommendations.

The following dates will keep to standard Planning and Zoning Code Map Amendment protocol:

- Committee of the Whole ..... Tuesday, September 25, 2012 at 7:00 PM
  City Council Chambers
- First Reading: ..... Tuesday, October 2, 2012 at 7:00 PM
  City Council Chambers
- Public Hearing and Second Reading: ..... Tuesday, November 6, 2012 at 7:00 PM
  City Council Chambers

Please include the attached ordinance on the City Council meeting agendas noted above and include this communication and attached supplemental information in the meeting packet for the September 25th Committee of the Whole meeting.

Thank you.

Christopher M. Fletcher

cc: John Wiley and James Giuliani (via separate email)

ORDINANCE NO._____

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF SIX PARCELS OF REAL ESTATE IN THE FIFTH WARD OF THE CITY OF MORGANTOWN FROM (R-1A) SINGLE- FAMILY RESIDENTIAL DISTRICT TO (R-2) SINGLE- AND TWO FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

Property included in this consideration is identified in the Monongalia County Assessor's records as Parcels 121, 123, 124, 125, 125.1, and 126 of County Tax Map 29; Morgantown Corporation District.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the zoning classification for 121, 123, 124, 125, 125.1, and 126 of County Tax Map 29 of the Monongalia County tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein is reclassified from (R-1A) Single-Family Residential District to (R-2) Single- and Two-Family Residential District.

2. That the Official Zoning Map be accordingly changed to show said zoning reclassification.

This Ordinance shall be effective from the date of adoption.

FIRST READING:

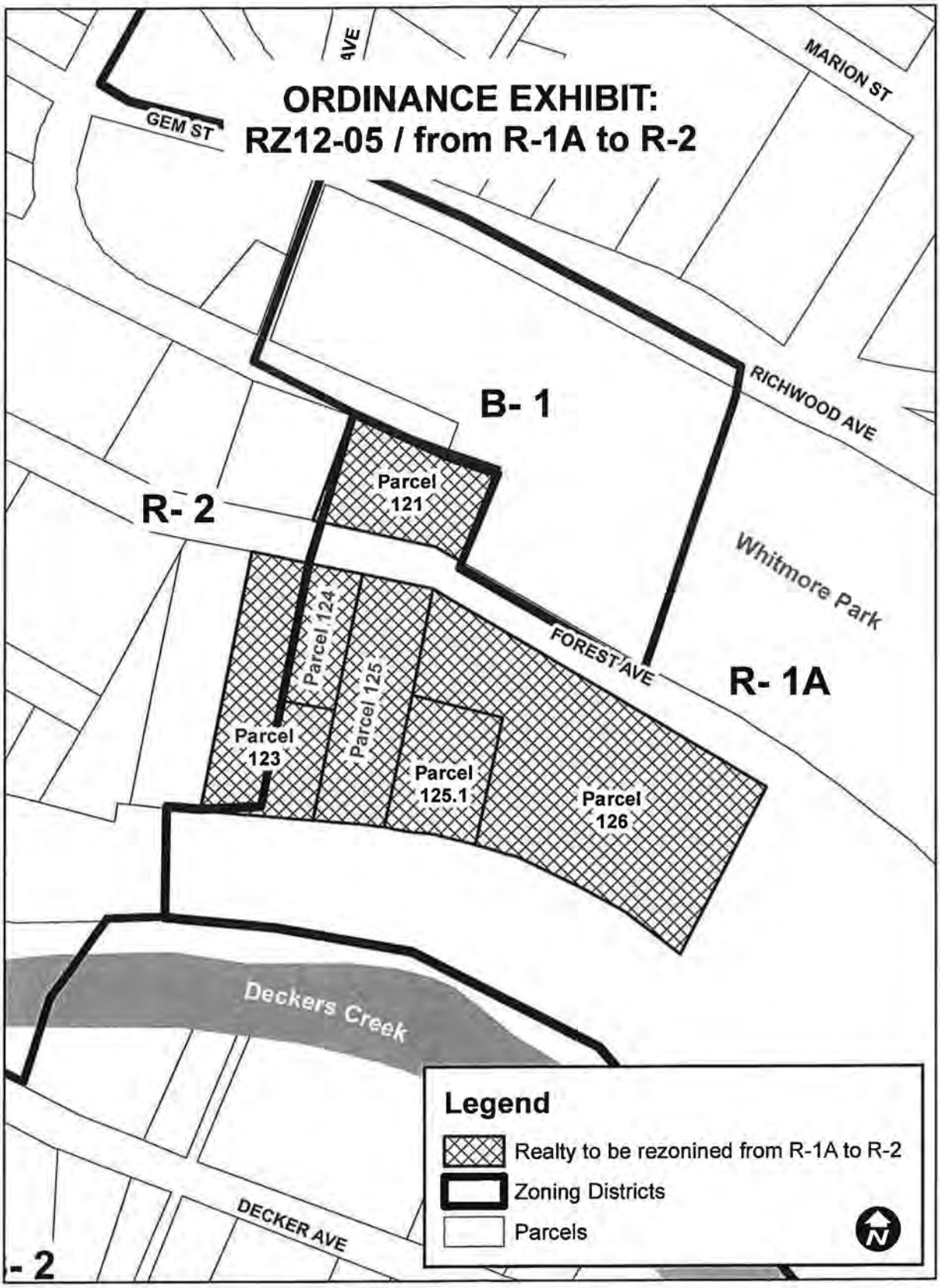
_____
Mayor

ADOPTED:

FILED:

_____
City Clerk

RECORDED:


ORDINANCE EXHIBIT:
RZ12-05 / from R-1A to R-2
GEM ST
MARION ST
RICHWOOD AVE
B- 1
R- 2
Parcel 121
Whitmore Park
FOREST AVE
R- 1A
Parcel 124
Parcel 125
Parcel 123
Parcel 125.1
Parcel 126
Deckers Creek
DECKER AVE
Legend
Realty to be rezonined from R-1A to R-2
Zoning Districts
Parcels

MORGANTOWN PLANNING COMMISSION

September 13, 2012
6:30 PM
City Council Chambers

President:
Peter DeMasters, 6th Ward

Vice-President:
Carol Pyles, 7th Ward

Planning Commissioners:
Sam Loretta, 1st Ward
Tim Stranko, 2nd Ward
William Wyant, 3rd Ward
Bill Petros, 4th Ward
Mike Shuman, 5th Ward
Ken Martis, Admin.
Jennifer Selin, City Councilor

STAFF REPORT

CASE NO: RZ12-05 / Wiley & Giuliani / 408, 460, 488, 491, 500 Forest Avenue

REQUEST and LOCATION:

Joint request by John F. Wiley and James Giuliani for a Zoning Map Amendment from the R-1A, Single-Family Residential District to R-2, Single- and Two-Family Residential at 408, 460, 488, 491, & 500 Forest Avenue.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 29, Parcels 121, 123, 124, 125, 125.1, 126

SURROUNDING ZONING:

North: B-1, Neighborhood Business District and R-1A, Single-Family Residential District

South and East: R-1A, Single-Family Residential District

West: R-2, Single and Two-Family Residential District

BACKGROUND:

The petitioners seek to reclassify six (6) tracts of realty that includes Parcels 121,123,124, 125, 125.1, and 126 of Tax Map 29 from the R-1A, Single Family Residential District to the R-2, Single and Two-Family Residential District. Addendum A of this report illustrates the location of the subject realty.

Staff understands that Mr. Wiley owns and/or controls Parcels 125, 125.1, and 126 and that Mr. Giuliani owns and/or controls Parcels 121, 123, and 124. Mr. Wiley inadvertently included Parcels 72.1 and 81 on his respective zoning map amendment application; the zoning classification for which is already R-2.

The following description summarizes the existing conditions of the petitioners' six (6) respective parcels included on the subject zoning map amendment petition:

- Parcels 121, 124, and 126 contain registered residential rental units.
- Parcels 123, 125, and 125.1 are vacant undeveloped tracts.
- Those parcels south of Forest Avenue have very steep slopes with an elevation change of approximately 80 feet downward from Forest Avenue to the general location of the respective rear parcel boundaries.
- The boundary between the R-1A and R-2 Districts splits Parcel 123. Staff has no working knowledge as to why the subject zoning district edge did not follow road centerlines or parcel boundaries as is customarily drawn.
- The total area of the six (6) parcels is approximately 70,725 square feet or 1.6 acres.

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

President:
Peter DeMasters, 6th Ward

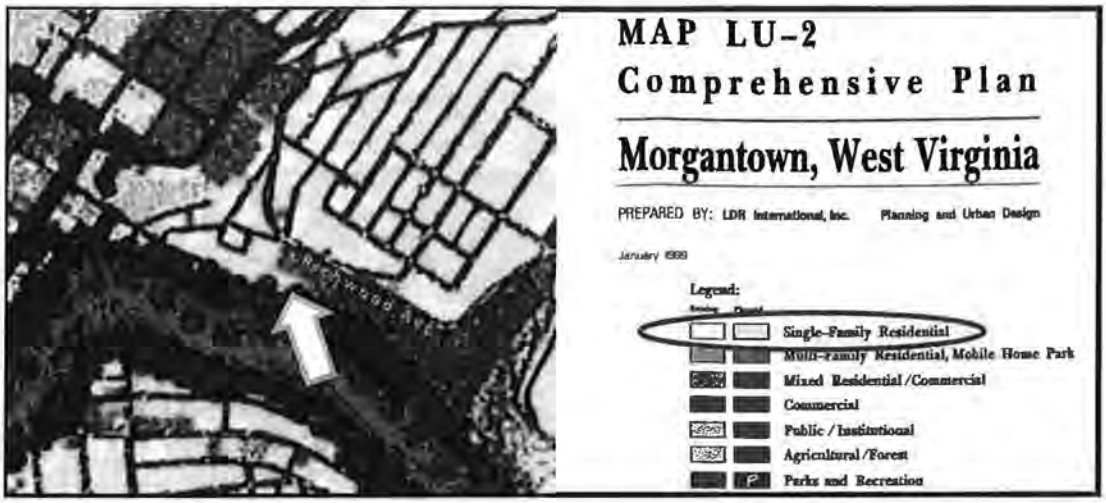
Vice-President:
Carol Pyles, 7th Ward

Planning Commissioners:
Sam Loretta, 1st Ward
Tim Stranko, 2nd Ward
William Wyant, 3rd Ward
Bill Petros, 4th Ward
Mike Shuman, 5th Ward
Ken Martis, Admin.
Jennifer Selin, City Councilor

ANALYSIS:

Because the R-2, Single- and Two-Family Residential District adjoins the petitioners' respective properties, the requested zoning map amendment is considered a zoning district boundary adjustment.

The following figure is a portion of Map LU-2 of the 1999 Comprehensive Plan and illustrates that the planned use for the subject properties was "Single-Family Residential."



According to Article 1335.01, the purpose of the R-1A District is to:

(A) Provide for single family neighborhoods on smaller lots, located within convenient walking distance of other uses, and

(B) Preserve the desirable character of existing single family neighborhoods, and

(C) Protect the single family residential areas from change and intrusion that may cause deterioration, and

(D) Provide for adequate light, ventilation, quiet, and privacy for neighborhood residents.

According to Article 1337.01, the purpose of the R-2 District is to:

(A) Provide for two-family housing development and customary accessory uses at a density slightly higher than in single family neighborhoods, and

(B) Preserve the desirable character of existing medium density family neighborhoods, and

(C) Protect the medium density residential areas from change and intrusion that may cause deterioration, and

(D) Provide for adequate light, ventilation, quiet, and privacy for neighborhood residents.

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

President:
Peter DeMasters, 6th Ward

Vice-President:
Carol Pyles, 7th Ward

Planning Commissioners:
Sam Loretta, 1st Ward
Tim Stranko, 2nd Ward
William Wyant, 3rd Ward
Bill Petros, 4th Ward
Mike Shuman, 5th Ward
Ken Martis, Admin.
Jennifer Selin, City Councilor

West Virginia State Code §8A-7-8 provides that if a zoning amendment is inconsistent with the adopted Comprehensive Plan, then City Council, with the advice of the Planning Commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and that those changes have substantially altered the basic characteristics of the area.

The following points are noted changes that appear to have significantly influenced the economic, physical, and social character of the petitioners' subject properties and the area along Forest Avenue since the adoption of the 1999 Comprehensive Plan Update.

- The tenancy of the dwelling units included in the petitioners' properties has changed from owner-occupancy to rental-occupancy.
- Once a residential dwelling is converted from ownership to investment property, particularly within areas of high rental concentrations, it is very difficult for that unit to become owner-occupied again due to how its value is viewed by the market and the lending community.
- Market interest in owner-tenancy and/or further development of single-family dwellings along Forest Avenue appears to have been significantly diminished due to:
  - The extent of tenancy conversion of dwelling units and recent construction and contemplated development along Forest Avenue beginning at Spruce Street to its terminus at the petitioners' respective properties.
  - The physical and social isolation of the petitioners' respective properties given its location at the end of a very narrow dead-end street accessed through and surrounded by a high concentration of college-aged residents and associated rental properties.
- Potential property assembly opportunities along Forest Avenue under the R-2 zoning classification may provide economic interest and opportunities to redevelop functionally obsolete existing and planned single-family residential uses.

Zoning map amendment requests should be evaluated on their land-use merits alone. The petitioners' development intentions are extraneous and the Commission should consider the request on its merits as a land-use decision. In conducting such an analysis, the Commission should determine if the R-2, Single- and Two-Family Residential District is the appropriate zoning classification for the subject realty, weighing all possible future development and land use scenarios as permitted by the Planning and Zoning Code; particularly, Article 1337 "R-2, Single- and Two-Family Residential District" and Table 1331.05.01 "Permitted Land Uses".

Development Services
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Director

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Mike Shuman, 5th Ward
Ken Martis, Admin.
Jennifer Selin, City Councilor

STAFF RECOMMENDATION:

The Planning Division advises the Planning Commission to determine that there have been economic, physical, and social changes, as described in this Staff Report, within the area involved that do not appear to have been anticipated when the 1999 Comprehensive Plan Update was adopted and that those changes have substantially altered the basic characteristics of the area.

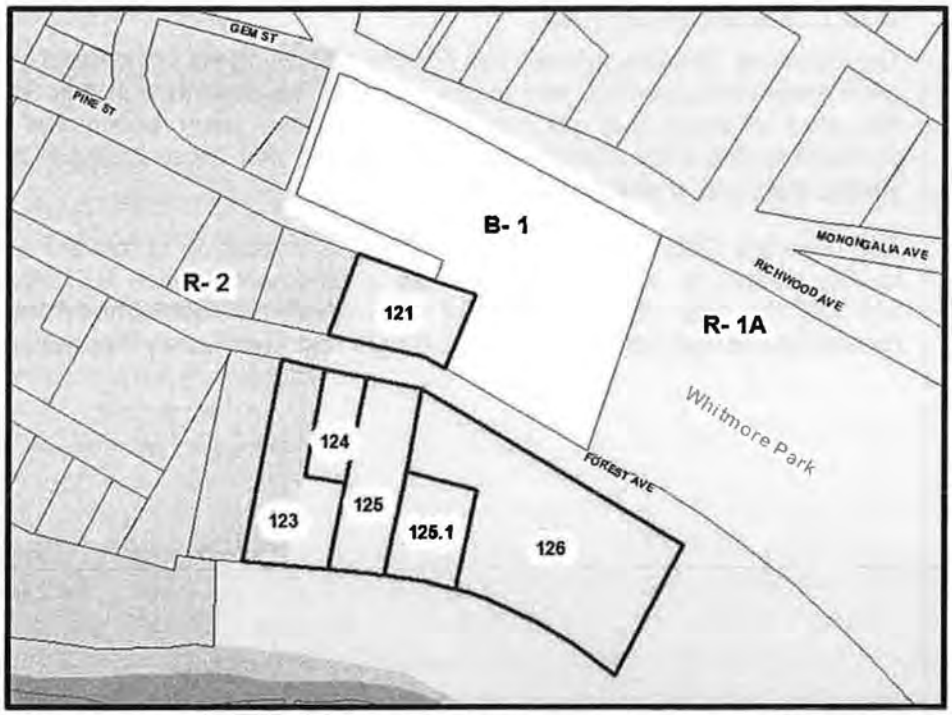
The Planning Division advises the Planning Commission to forward a recommendation to City Council to approve zoning map amendment petition RZ12-05 so that Parcels 121,123,124, 125, 125.1, and 126 of Tax Map 29 are reclassified from the R-1A, Single Family Residential District to the R-2, Single and Two-Family Residential District.

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

STAFF REPORT ADDENDUM A

RZ12-05 / Wiley & Giuliani / 408, 460, 488, 491, 500 Forest Avenue



Original

City of Morgantown, West Virginia

APPLICATION FOR FOR ZONING MAP AMENDMENT

OFFICE USE	
CASE NO.	RZ12-05
RECEIVED:	8/8/12
COMPLETE:	

Zoning Map Amendment Process – See Addendum A of this Application

(PLEASE TYPE OR PRINT IN BLACK INK)

I. OWNER / APPLICANT

Name:	JOHN F. WILEY, MANAGER	Phone:	304.906.7929
Mailing Address:	Lieutenant D Limited Liab. Co.	Mobile:	" " "
	Street 180 CHANCERY ROW	Email:	johnfwiley@aol.com
	City MORGANTOWN State WV Zip 26505		

II. AGENT / CONTACT INFORMATION

Name:	MANAGER, above address & contact info	Phone:	
Mailing Address:		Mobile:	
	Street	Email:	
	City State Zip		

Mailings – Send all correspondence to (check one): ☑ Applicant OR ☐ Agent/Contact

IV. PROPERTY

Street Address (if assigned):	408, 460 and 500 Forest Street		
Tax Map(s) #:	29	Parcel(s) #:	8 → 72.1 → 125.1 & 125 → Size (sq. ft. or acres): 3,700 + 25,600 → 32,700
Current Zoning Classification:	R-1-A	Proposed Zoning Classification:	R-2
Current Land Use:	Multifamily Rental	Proposed Land Use*:	(same as now)

est. sq. ft – irregular lots m. (TOTAL = 62,000+ sq ft)

**The Planning Commission does not take proposed use into consideration. The question is asked merely for staff to determine if the proposed district allows the intended use.*

V. ATTEST

I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent and I agree to conform to all applicable laws of this jurisdiction, whether specified herein or not. I certify that I have read and examined this document and know the same to be true and correct. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions.

Lieutenant D, LLC
By: JOHN WILEY, MANAGER

Type/Print Name of Applicant/Agent — Type/Print Name of Applicant/Agent — 8 Aug 2012 Date

RS2 08/08/2012 KRISTEN 15:22:19 SITE PLAN

ALREADY R-2 COMP

Zoning Map Amendment Fee - $75

408 Forest est. 3,700 sq ft 29-81
460 Forest est. 25,600 sq ft 29-72.1
500 Forest est 32,700 sq ft 29-125.1, 126

DATE STAMP Recorder's Office Morgantown, WV 26505 (304) 284-7408

MAY ALREADY BE R-2, CANNOT TELL!

R-1A COMP

City of Morgantown, West Virginia

APPLICATION FOR FOR ZONING MAP AMENDMENT

OFFICE USE	
CASE NO.	RZ12-05
RECEIVED:	08/08/12
COMPLETE:	

ADDENDUM A - Zoning Map Amendment Process

Step 1	An application for an amendment, or change, to the City's Official Zoning Map is filed with the Planning Department.
Step 2	The Planning Department conducts a formal review of the completed application and prepares appropriate mapping and the petition.
Step 3	The Planning Department publishes a legal advertisement describing the petition for a zoning map amendment at least 15 days prior to the scheduled public hearing before the Planning Commission. The Planning Department also notifies property owners within 200 feet of the proposed map amendment.
Step 4	The Planning Commission holds a duly scheduled public hearing on the zoning map amendment petition, prepares a report, and makes a recommendation to City Council.
Step 5	City Council hears the petition in accordance with its rules and procedures, normally two readings and an additional public hearing.

APPROVED

If the petition for the zoning map amendment is approved by City Council, the applicant receives approval and is formally notified by mail by the Planning Department. The Planning Department amends the Official Zoning Map to reflect the approved map amendment.

DENIED

If the petition for the zoning map amendment is denied by City Council, the applicant is formally notified in writing by the Planning Department of the denial and the right to appeal the decision to the Circuit Court of Monongalia County.

City of Morgantown, West Virginia

APPLICATION FOR FOR ZONING MAP AMENDMENT

OFFICE USE	
CASE NO.	RZ12-05
RECEIVED:	08/09/12
COMPLETE:	

Zoning Map Amendment Process – See Addendum A of this Application

(PLEASE TYPE OR PRINT IN BLACK INK)

alexjewel

I. OWNER / APPLICANT

Name:	JAMES GIULIANI	Phone:	304 282 8131
Mailing Address:	256 PRAIRIE AVE (Street)	Mobile:	304 288 1572
		Email:	alexjewel@comcast.net
	City State Zip		

JAMES

II. AGENT / CONTACT INFORMATION

Name:	SAME AS ABOVE	Phone:	
Mailing Address:		Mobile:	
	Street	Email:	
	City State Zip		
Mailings –	Send all correspondence to (check one): ☐ Applicant OR ☐ Agent/Contact		

IV. PROPERTY

1/2 122 Behind 123, 123 ? Vacant Lot 12

Street Address (if assigned):	488 FOREST AVE + 491 FOREST			488 Behind	40 x 90
Tax Map(s) #:	29	Parcel(s) #:	128 123 124 ?	Size (sq. ft. or acres):	488 40 x 100 491 120 x 120
Current Zoning Classification:	R1A	Proposed Zoning Classification:	R-2		
Current Land Use:	RENTALS	Proposed Land Use*:	RENTALS		

**The Planning Commission does not take proposed use into consideration. The question is asked merely for staff to determine if the proposed district allows the intended use.*

MAP ATTACHED

V. ATTEST

I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent and I agree to conform to all applicable laws of this jurisdiction, whether specified herein or not. I certify that I have read and examined this document and know the same to be true and correct. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions.

JAMES GIULIANI	JAMES GIULIANI	8/9/12
Type/Print Name of Applicant/Agent	Type/Print Name of Applicant/Agent	Date

RSP 8/09/2012 CRYSTAL 10:17:37 SITE PLAN R A I D 75.00

Zoning Map Amendment Fee - $75

Finance Office Morgantown, WV 26505 (304) 284-7408

0107

City of Morgantown, West Virginia

APPLICATION FOR FOR ZONING MAP AMENDMENT

OFFICE USE	
CASE NO.	RZ12-05
RECEIVED:	08/09/12
COMPLETE:	

ADDENDUM A - Zoning Map Amendment Process

Step 1	An application for an amendment, or change, to the City's Official Zoning Map is filed with the Planning Department.
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APPROVED

If the petition for the zoning map amendment is approved by City Council, the applicant receives approval and is formally notified by mail by the Planning Department. The Planning Department amends the Official Zoning Map to reflect the approved map amendment.

DENIED

If the petition for the zoning map amendment is denied by City Council, the applicant is formally notified in writing by the Planning Department of the denial and the right to appeal the decision to the Circuit Court of Monongalia County.

RZ10-05

Submitted w/ application by Mr. Williams

1. 491 FOREST
2 488 FOREST
3 Not Behind
[illegible] part

RZ12-05

SHUMAN, INC.

PHILIP B. SHUMAN, VICE PRESIDENT
235 HIGH STREET, SUITE 414
MORGANTOWN WV 26505
304.296.5931

10 SEPTEMBER 2012

City Planning Office
389 Spruce Street
Morgantown WV 26505

RE: Wiley and Giuliani Requests for R-2 Status on Wednesday 13 September

To Whom It May Concern,

I am an officer and shareholder in Shuman, Inc., with property adjacent to and/or contiguous with Messr.s Wiley and Giuliani in the Forest Street area.

This area has for many years been a multi-unit student housing area, but for the houses of the Blues and Parkers and perhaps two others, all of whom have moved elsewhere.

Both Mr. Wiley, through Lieutenant D LLC, and Mr. Giuliani have been improving a once blighted area of our city, but a block from our downtown. This area, if further improved, backing as it does onto Whitmore Park, the Rail Trail on Deckers Creek, and the Richwood Avenue area, could become a vital area of which we could all be proud.

As a prelude to this, a rezoning of the area to permit this growth is needed.

Thank you,

Philip Shuman, V.P.

CITY OF MORGANTOWN
PLANNING DEPARTMENT
SEP 10 2012
RECEIVED

Submitted by Mr. Wiley and Mr. Giuliani (hand delivered)

AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING SUB-SECTION 527.04(k) OF ITS GENERAL OFFENSES CODE, AS THE SAME APPLIES TO NOISE CONTROL AND ENGINE BRAKES/COMPRESSION BRAKES.

The City of Morgantown hereby ordains that Subsection 527.04(k) of its General Offenses Code is repealed in its entirety.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

_____
MAYOR

ADOPTED:

FILED:

_____
CITY CLERK

RECORDED:

527.03 LOUD AND UNNECESSARY NOISES PROHIBITED.

No person shall make, continue or cause to be made or continued, any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the City.
(Ord. 93-33. Passed 11-16-93.)

527.04 CERTAIN LOUD AND DISTURBING NOISES ENUMERATED.

SEE (K) on next page.

The following acts are declared to be loud, disturbing and unnecessary noises in violation of Section 527.03, but such enumeration shall not be deemed to be exclusive, namely:

(a) Animals and Birds. The keeping of any animal or bird by causing frequent or long continued noise shall disturb the comfort or repose of any persons in the vicinity.

(b) Defect in Vehicle or Load. The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.

(c) Domestic Power Tools. Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool, snowblower, small power equipment, or similar device used outdoors in residential areas between the hours of 9:00 p.m. and 8:00 a.m. the following day so as to cause a noise disturbance across a residential real property boundary.

(d) Drums. The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale.

(e) Engine-Repair and Testing. It shall be unlawful for any person to repair, rebuild or test any engine so as to create a noise disturbance.

(f) Exhaust. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(g) Horns or Signaling Devices. The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place of the City, except as a danger warning; the creation by means of any such signaling device of any unreasonable loud or harsh sound; the sounding of any such device for an unnecessary and unreasonable period of time; the use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any signaling device when traffic is for any reason held up.

(h) Loudspeakers/Public Address System.

(1) Using or operating for any noncommercial purpose any loudspeaker, public address system, or similar device between the hours of 10:00 p.m. and 8:00 a.m. the following day, such that the sound therefrom creates as noise disturbance across a residential real property boundary or within a noise sensitive zone.

(2) Using or operating for any commercial purpose any loudspeaker, public address system, or similar device:

A. Such that the sound therefrom creates a noise disturbance across a real property boundary or within a noise sensitive zone; or

B. Between the hours of 8:00 p.m. and 10:00 a.m. the following day on a public right-of-way or public space.

(i) Radios, Musical Instruments and Similar Devices. Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound:

(1) Between the hours of 11:00 p.m. and 7:00 a.m. the following day in such a manner as to create a noise disturbance across a real property boundary or within a noise sensitive zone (except for activities open to the public and for which a permit has been issued by "appropriate authority" according to criteria set forth in Article 315 of the Morgantown City Code);

(2) In such a manner as to create a noise disturbance at 50 feet from such device, when operated in or on a motor vehicle on a public right-of-way or public space, or in a boat on public waters; or,

(3) In such a manner as to create a noise disturbance to any person other than the operator of the device, when operated by any passenger on a common carrier.

(j) Yelling and Shouting. Yelling, shouting, whistling, hooting, or generally creating a racket on public rights of way or public spaces between the hours of 8:00 p.m. and 10:00 a.m. the following day so as to annoy or disturb the quiet, comfort or repose of persons in any business or residence, or of any person in the vicinity.

(k) Engine Brakes and Compression Brakes. The use of any engine brake, compression brake or mechanical brake which is activated or operated by the compression of a motor vehicle is prohibited within the City limits. Emergency response vehicles shall be exempted from the foregoing prohibition.
(Ord. 01-40. Passed 11-20-01.)

527.05 MEASUREMENT AND CONTROL OF NOISE.

(a) Noise Prohibited. No person shall make, continue or cause to be made or continued any noise in excess of the noise levels set forth herein unless such noise be reasonably necessary to the preservation of life, health, safety or property.

(b) Measurement and Control. It shall be unlawful for any person to cause a sound from a stationary source which exceeds any sound level as set forth in the applicable column in the following table titled "Maximum Permissible Sound Levels" when measured at any point within any other property affected by the sound. Measurement shall be made by a duly authorized individual who is knowledgeable in the proper use of the measurement equipment. Measurement shall be made in slow response, A-weighting, except in the case of impulsive sound which shall be measured with an impulsive sound level meter, ANSI S1.4-1971. Octave band measurements, where noted, shall be made with an octave band analyzer.

The City of Morgantown

Office of the City Clerk

Linda L. Little, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
llittle@cityofmorgantown.org

Council Meeting Packet - New Approval Process

In order to accommodate Council's requests for improved communication and advanced notice of Council Meeting and Committee of the Whole agenda items the following new streamlined procedures are recommended for implementation by the City Clerk's Office.

Calendar

The calendar below illustrates a typical month's schedule for notice, approval, finalization and distribution for COTW and Regular meetings. The schedule shows all the recommended deadlines for approval and distribution of Council Meeting Packets. It also shows reporting requirements for COTW items as they are presented to the City Clerk's Office. The City Clerk highly recommends adoption of the schedule as illustrated:

Sun	Mon	Tues	Wed	Thu	Fri	Sat
29	30	31 **COTW**	1 First report on Items for the NEXT 3 COTW	2 1st RM Packet Finalization	3 1st RM Packet Distribution	4
5	6 Subsequent reports given as items are added up to finalization	7 **1st Reg. Mtg.**	8	9	10	11
12	13	14	15	16 2nd RM Packet Finalization	17 COTW Packet Finalization + 2nd RM Dist.	18
19	20 No further changes to COTW agenda, unless emergency consensus of Council	21 **2nd Reg. Mtg.**	22	23	24 COTW Packet Distribution	25
26	27	28 **COTW**	29	30 1st RM Packet Finalization	1 1st RM Packet Distribution	2

Procedures

In order to streamline and aid in accuracy of all Council Meeting Packets and Agendas, the following procedures are recommended for immediate implementation:

- Beginning with the immediate previous Committee of the Whole meeting, Clerk's Office will issue an e-Memo indicating which items have been slated for the upcoming and next two future Committee of the Whole meetings.

- Additional e-Memos will be issued up to the Committee of the Whole Packet finalization deadline, as items are recommended by the Manager to be added/deleted, including thorough explanations and item descriptions.

- Finalization of the Committee of the Whole Agenda will now take place one week prior to the scheduled distribution Friday.

- Finalization of the Regular Meeting Agendas & Packets will now take place on Thursday, one day prior to the scheduled distribution Friday.

- No changes will be made to the Committee of the Whole Agenda after finalization day.

- If an emergent situation occurs and the addition or deletion of an item is requested by the Manager, and immediate e-Memo will be issued to Council requesting consensus on the matter. The Clerk's Office will take action as directed by Council.

- Packets will continue to be distributed in the same manner as currently executed, on the Friday before the Regular or Committee of the Whole Meeting.

➢ NOTE: The term "e-Memo" refers to a generalized form of notification to Council. This notification will be issued at Council's preference. The suggested options for notification format are as follows:
    - A paper Memorandum as shown on page three, scanned and converted to PDF and sent via email.
    - A simple email worded as the Memorandum.
    - A Document or calendar saved on drop-box and updated with notification of changes via email.
    - Use of Zimbra calendars and internal notifications. (Requires setup and with assistance of IT, and Council Member's access.)

e-Memo

Sample:

MEMORANDUM

TO: MORGANTOWN CITY COUNCIL

RE: COMMITTEE OF THE WHOLE

DATE: *{day after previous COTW}*

The City Clerk's Office has on record, the following matters as slated for the below dated Committee of the Whole Meetings.

****Contact the City Manager's Office immediately with questions, for clarification, or with objections regarding any of the following items.**

{Date of upcoming Meeting}

- ***Presentation- Description***
- ***Item- Description***
- ***Item- Description***
- ***Ordinance- Description***
- ***Resolution- Description***

{Date of 2nd upcoming Meeting}

- ***Presentation- Description***
- ***Item- Description***
- ***Item- Description***
- ***Ordinance- Description***
- ***Resolution- Description***

{Date of 3rd upcoming Meeting}

- ***Presentation- Description***
- ***Item- Description***
- ***Item- Description***
- ***Ordinance- Description***
- ***Resolution- Description***

Items listed in the e-Memo will be detailed to the greatest extent possible for clarity.

TO: Honorable Mayor Manilla and Councilors

FROM: Linda L. Little, City Clerk, CMC

DATE: September 18, 2012

RE: 2013 General Municipal Election Update

The City Clerk's Office felt that the Vote by Mail process was workable and could provide an invaluable service to the citizens of Morgantown, but the program needed modifications in order to be truly viable for future elections. As Council is aware of the City Clerk's office had to process over 6000 envelopes for data entry for voter registration verification, process as stated below:

December 2011

- Data entry, organization and final processing of returned ballot mail are completed, totaling over 900 hours of work.
- Data has been compiled and distributed to proper election authorities for further processing and analysis.
- Additional costs incurred during data entry total $2,396.00

Statistics:

	Registered Voters	*Total Vote*	*Total Cost*	*Cost per Voter*
2007	13,900	225	$15,239.75	$67.73
2009	16,106	1,467	$15,044.36	$10.25
2011	16,621	3,699	$33,385.71	$9.03

The County Clerk's office was given the data in 2011 and the data does not give a clear picture of how much the City could have saved if the voter rolls were cleaned properly.

The City Clerk's Office contacted the Secretary of State's office and asked legal counsel's opinion on whether or not the City of Morgantown had to have another Vote by Mail Election. Legal from Secretary of State noted that there was nothing in code about early withdrawal. So, with that stated the City Clerk's office along with Council's concurrence will move forward in 2013 with the Election using the Polling Places and Pollworkers as we have done in previous Elections.