



**Development Services**  
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

## MEMORANDUM

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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 25<sup>th</sup> Committee of the Whole meeting.

Thank you.

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

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

Page 1 of 1

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

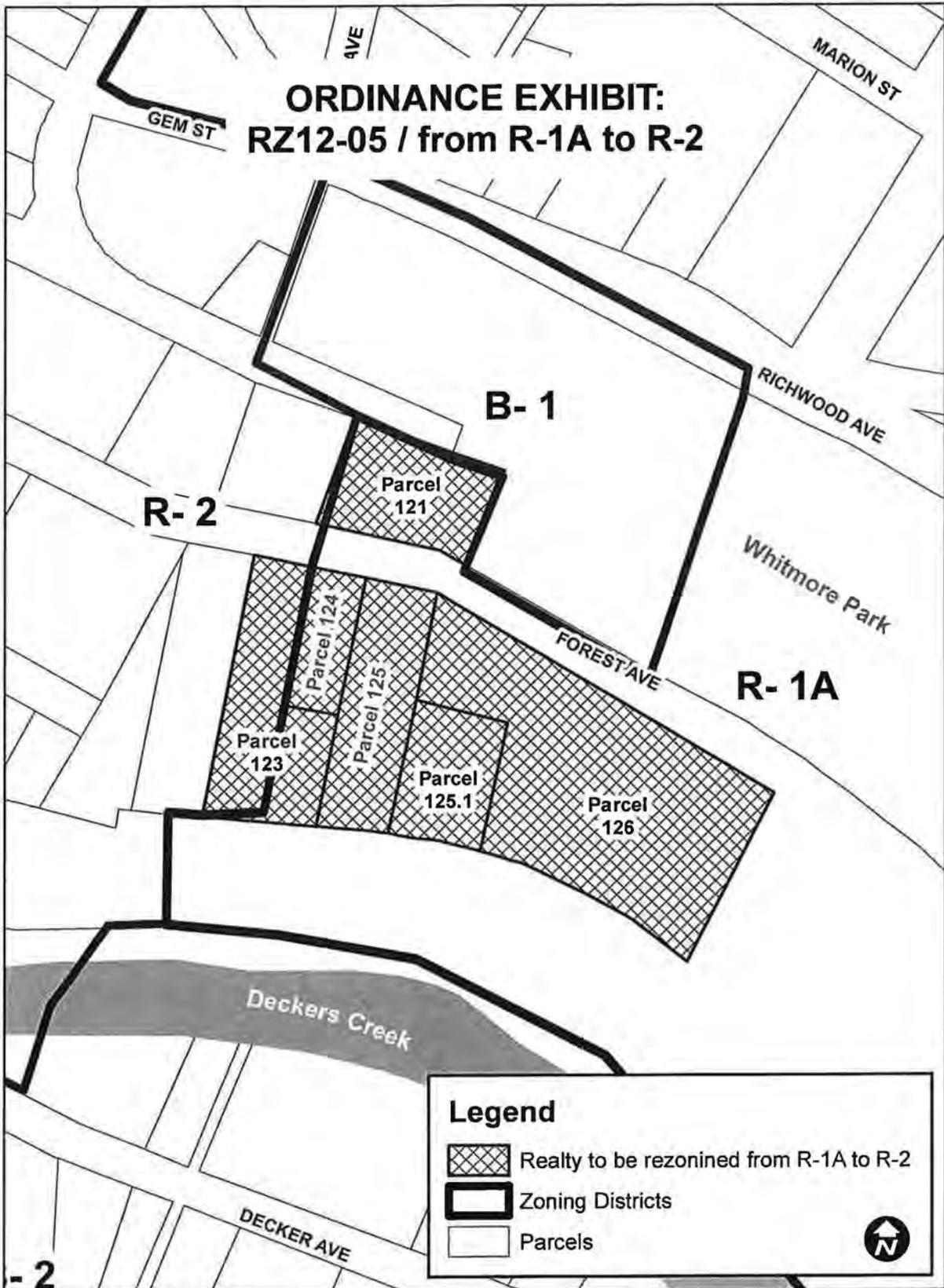
ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk

**ORDINANCE EXHIBIT:  
RZ12-05 / from R-1A to R-2**





## MORGANTOWN PLANNING COMMISSION

September 13, 2012  
6:30 PM  
City Council Chambers

**President:**

Peter DeMasters, 6<sup>th</sup> Ward

**Vice-President:**

Carol Pyles, 7<sup>th</sup> Ward

**Planning Commissioners:**

Sam Loretta, 1<sup>st</sup> Ward

Tim Stranko, 2<sup>nd</sup> Ward

William Wyant, 3<sup>rd</sup> Ward

Bill Petros, 4<sup>th</sup> Ward

Mike Shuman, 5<sup>th</sup> 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**

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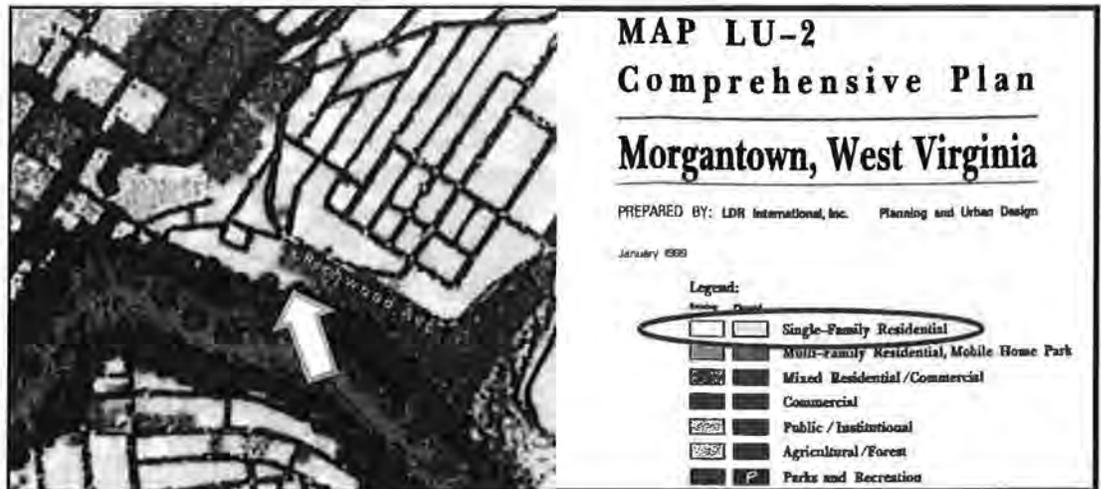
Ken Martis, Admin.

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**

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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**

Christopher Fletcher, AICP  
Director

**Planning Division**

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Bill Petros, 4<sup>th</sup> Ward

Mike Shuman, 5<sup>th</sup> 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**

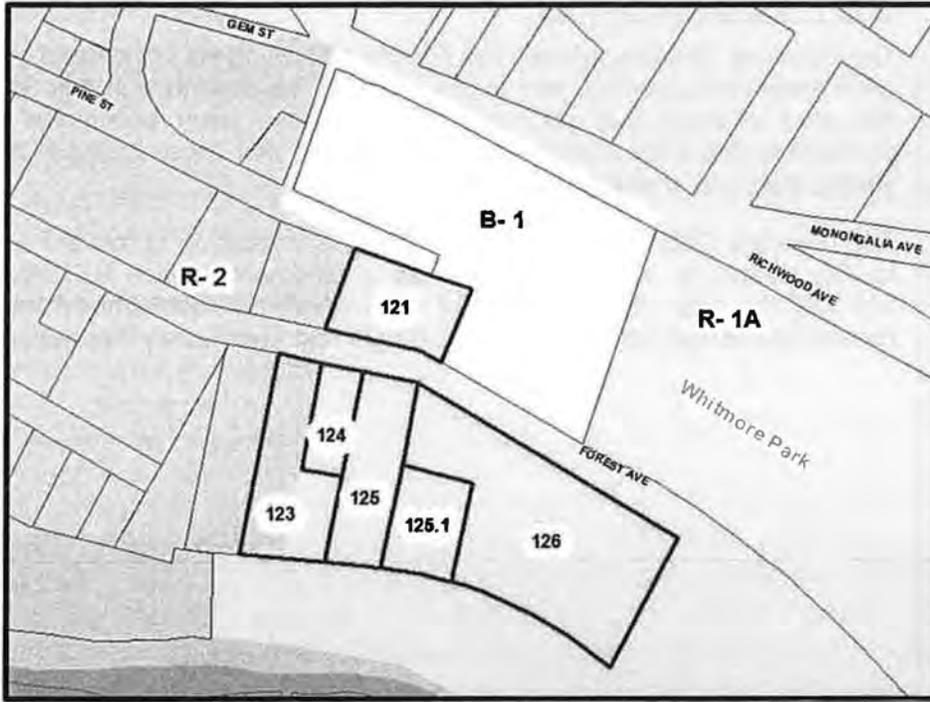
Christopher Fletcher, AICP  
Director

**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





City of Morgantown, West Virginia  
**APPLICATION FOR  
 FOR ZONING MAP AMENDMENT**

original:

OFFICE USE	
CASE NO.	R212-05
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:	Leutenant D Limited Liab. Co.	Mobile:	" " "
	Street: 190 CHANCERY ROW	Email:	johnfwiley@zol.com
	City: MORGANTOWN State: WV Zip: 26505		
II. AGENT / CONTACT INFORMATION			
Name:	MANAGER, above address & contact info	Phone:	
Mailing Address:	Street:	Mobile:	
	City: State: Zip:	Email:	
Mailings –	Send all correspondence to (check one): <input checked="" type="checkbox"/> Applicant OR <input type="checkbox"/> Agent/Contact		
IV. PROPERTY			
Street Address (if assigned):	408, 460 and 500 Forest Street		
Tax Map(s) #:	29	Parcel(s) #:	81
Current Zoning Classification:	R-1-A	Proposed Zoning Classification:	R-2
Current Land Use:	Multi-family Rental	Proposed Land Use*:	(same as now)
*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.			
By: JOHN WILEY, MANAGER			
Type/Print Name of Applicant/Agent	Type/Print Name of Applicant/Agent	DATE	15:22:15 8 Aug 2012

est. sq. ft - irregular lots = TOTAL = 62,000+ sq. ft

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

Planning Department • 389 Spruce Street, Morgantown, WV 26505  
 304.284.7431 • 304.284.7534 (f)

Page 1 of 2  
 Form Rev. 01.03.06

MAY ALREADY BE R-2, CANNOT TELL!

ALREADY R-2 COMP  
 R-1A COMP



City of Morgantown, West Virginia  
**APPLICATION FOR  
FOR ZONING MAP AMENDMENT**

OFFICE USE	
CASE NO.	PZ12-05
RECEIVED:	08/08/12
COMPLETE:	

**ADDENDUM A - Zoning Map Amendment Process**

- |               |  |
|---------------|--|
| <b>Step 1</b> | An application for an amendment, or change, to the City's Official Zoning Map is filed with the Planning Department.   |
| <b>Step 2</b> | The Planning Department conducts a formal review of the completed application and prepares appropriate mapping and the petition.   |
| <b>Step 3</b> | 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. |
| <b>Step 4</b> | 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.   |
| <b>Step 5</b> | 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

<b>I. OWNER / APPLICANT</b>			
Name:	JAMES GIULIANI	Phone:	304 282 8131
Mailing Address:	256 PRAIRIE AVE	Mobile:	304 288 1572
	Street	Email:	alexjewel@comcast.net
	City State Zip		
<b>II. AGENT / CONTACT INFORMATION</b>			
Name:	SAME AS ABOVE		Phone:
Mailing Address:	Street		Mobile:
	City State Zip		Email:
	Mailings – Send all correspondence to (check one): <input type="checkbox"/> Applicant OR <input type="checkbox"/> Agent/Contact		
1/2 vacant Lot 1/2 122 Behind 123, 123? <b>IV. PROPERTY</b> 12			
Street Address (if assigned):	488 FOREST AVE + 491 FOREST	488 Behind	40 x 90
Tax Map(s) #:	29	Parcel(s) #:	123 124 ?
Current Zoning Classification:	RIA	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		<b>V. ATTEST</b>	
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 Type/Print Name of Applicant/Agent		JAMES GIULIANI Type/Print Name of Applicant/Agent	
		RSE 8/09/2012 201304/19	
		CRYSTAL 10:17:37 SITE PLAN 8/9/12	
		A I D Date	

JAMES

75.00

Zoning Map Amendment Fee - \$75

Finance Office  
 Morgantown, WV 26505  
 (304) 284-7400

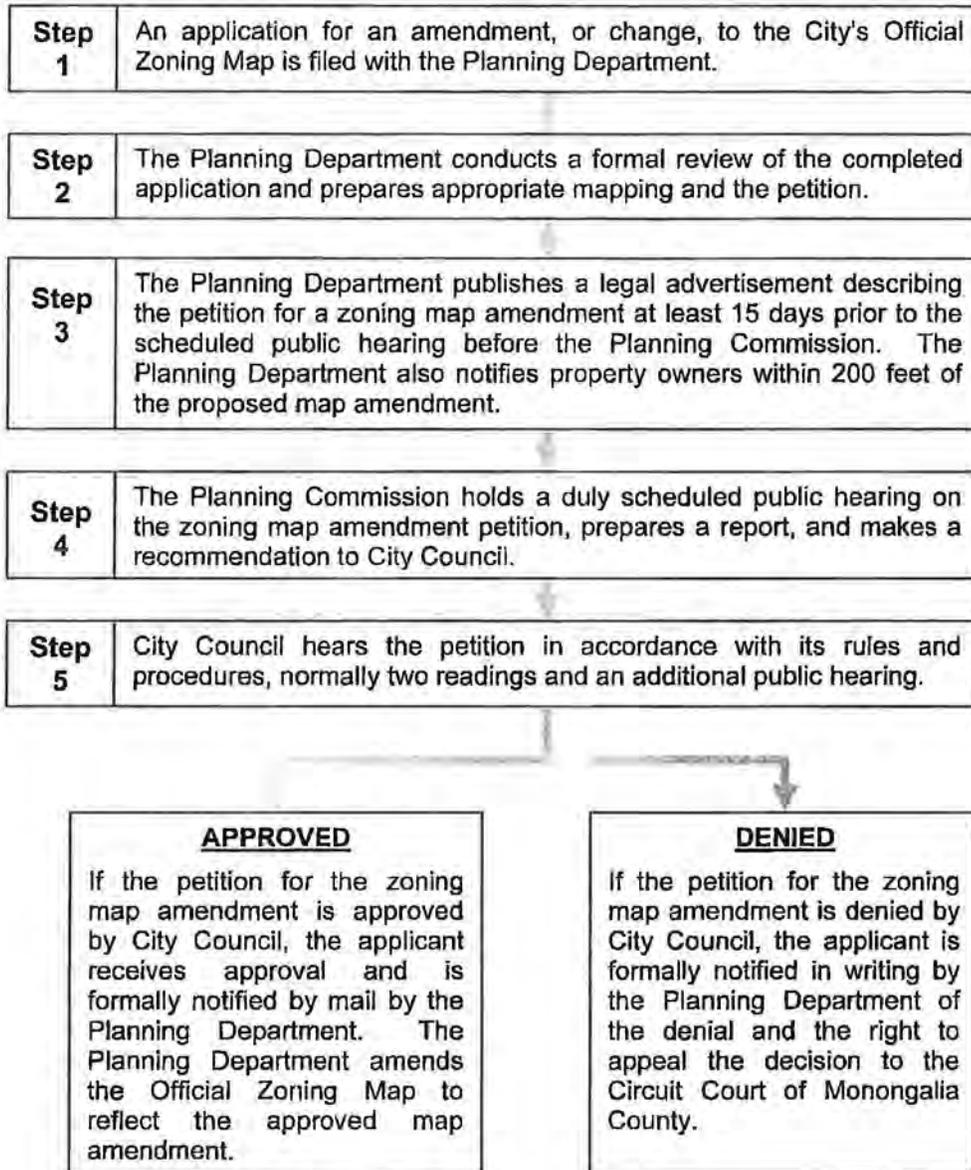
0107



City of Morgantown, West Virginia  
**APPLICATION FOR  
FOR ZONING MAP AMENDMENT**

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

**ADDENDUM A - Zoning Map Amendment Process**



RZ12-05

Submitted  
w/ application  
by Mr. Siciliani  
C.M.F.



- 1. 401 FORBES C
- 2. 488 FORBES C
- 3. 404 BOWLING
- 4. 404 BOWLING

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)  
(M.P.)

**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.**

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:

- SEE (11) on next page.*
- (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: