Development Services
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

Date: FRI, 02 SEP 2016

To: Planning Commissioners

RE: RZ16-05 / South Baptist Convention – Home Mission Board of Trustees / 519 Burroughs Street

MNS16-07 / South Baptist Convention – Home Mission Board of Trustees / 519 Burroughs Street

During the Planning Commission's 11 AUG 2016 hearing, the motion to send a favorable recommendation to City Council concerning Zoning Map Amendment Petition No. RZ16-05 failed to obtain a majority with a vote of 3-3. The petition was therefore continued.

The Planning Commission raised concerns with ensuring an adequate buffer is provided at the edge of the proposed zoning map amendment and the adjoining single-family residences along French Quarter Drive. The Planning Commission directed Staff to discuss zoning district boundary and related subdivision alternatives with the petitioner. The alternate generally described during the hearing was to adjust the zoning district boundary and related subdivision twenty (20) feet from rear parcel boundary shared with French Quarter Drive fronting parcels so that twenty-foot "strip" would remain with the larger parcel on which the Calvary Baptist Church is situated.

Staff met with the petitioner's representative Joseph Schaeffer, Esq. of Spilman Thomas & Battle on TUE, 30 AUG 2016 to discuss potential alternatives. Consultation with the City Attorney concerning potential alternatives will occur prior to the Planning Commission's 08 SEP hearing and will be reported to the Commission accordingly.

Attached hereto are three (3) opposition communications submitted following the Planning Commission's 11 AUG hearing from:

- Mikylah McTeer
- Vinod Kulathumani
- Sven and Lisa Verlinden

It should be restated Staff advised Mr. Schaeffer to discuss the proposal with residents living within 200 feet of subject site along with the leadership of the Suncrest Neighborhood Association and contact information was accordingly provided. It should also be noted all related advance public notification tasks (e.g., published legal advertisement, letters to owners of properties within 200 feet, posting of sign, etc.) were completed for both the 11 AUG and 08 SEP Planning Commission hearings.

Concerning the related Minor Subdivision Petition No. MNS16-07, the matter was tabled during the Planning Commission's 11 AUG hearing and will require a motion to remove it from the table prior to discussion.

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

Stacy Hollar

From: Mikylah McTeer <mikylahmcteer@gmail.com>
Sent: Monday, August 29, 2016 9:43 AM
To: Stacy Hollar
Subject: Rezoning Case RZ16-05 and MNS16-07

Dear Stacy and the Members of the Morgantown Planning Division,

As residents of 9 French Quarter Dr, located directly behind the Calvary Baptist Church at 519 Burroughs St., we are writing to you with several concerns regarding the re-zoning requests being made by the church: Case number RZ16-05 (the petitioner seeks to reclassify a portion of Parcel 33 from R-1 to B-1 or B-2), and Case number MNS16-07 (The petitioner seeks to subdivide Parcel 33 to create a new parcel on the westerly side, bordering Parcels 33.1, 33.2, & 34, with 80 feet of frontage along Burroughs Street and continuing to the rear of the property at the northerly rear boundary shared with Parcel 4 of Tax Map 55B.)

Our concerns are:

1. A lack of transparency and communication by the church to the residents on French Quarter Drive. The Morgantown Planning Commission, in its August 11, 2016 report, clearly states: "Staff advised Mr. Schaeffer to discuss the proposal with residents living within 200 feet of subject site along with the leadership of the Suncrest Neighborhood Association with contact information accordingly provided. Staff has no knowledge of whether or not communication efforts have been undertaken by the petitioner. As of FRI, 05 AUG 2016, the Planning Division has received no communication in opposition of the proposed zoning map amendment."

The first written notice we received regarding these petitions was an August 23, 2016 letter from The City of Morgantown. Neither Mr. Schaeffer nor the Suncrest Neighborhood Association has made any contact with us regarding this petition.

Secondly, the petition to rezone states "it is the property owner's intention to create a buffer on the northerly border with Parcel 32, with the buffer to extend 20' (feet) from the property line in a southerly direction toward Burroughs Street. The buffer will include plantings, at least some of which will have a minimum 10' (foot) height when planted."

However, in reading the supporting letters of the petitioner's request, it is clear that the intent is to sell the land to the Wine Bar to create a parking lot.

We feel that the Wine Bar is a welcome and excellent addition to the Suncrest business community and we wish to see the business continue and thrive. We also wish to see the Church continue with upkeep and remodeling of the building, which has been falling into disrepair over the last several years. We understand that the sale of the rezoned land to the Wine Bar will be beneficial to both businesses. However, this lack of transparency over the land-use plans is unsettling.

2. Should Parcel 33 be rezoned to B-1 or B-2, and then should the petition to subdivide the parcel into 3 parcels, one of which would directly abut at least one house on French Quarter Dr., what will be the uses of these parcels, either by the Church, or through the sale of the parcels? The land is currently classified as a "Limited Growth" area, and the preservation of this green space is integral to conserving the existing neighborhood character. <u>With plans already stated to turn one of the subdivisions into a parking lot, we must</u>

insist that the Planning Commission preserve the remaining green space of the other two parcels. Any further building or paving to the area would destroy the existing green-space neighborhood character.

We plan to attend the September 8 City Council Meeting and look forward to the continued discussion.

Sincerely,

Mikylah and Carson McTeer

9 French Quarter Dr

Morgantown, WV 26505

Stacy Hollar

From: Vinod Kulathumani <Vinod.Kulathumani@mail.wvu.edu>
Sent: Monday, August 29, 2016 9:59 AM
To: Stacy Hollar
Subject: Rezoning case RZ16-05 and MNS16-07

Dear members of the Morgantown Planning commission

I am resident of 13 French quarters drive, that falls directly behind the Calvary Baptist Church at 519 Burroughs St.

It was brought to our attention by our neighbors that there is a request for rezoning made by the church. It turns out we have not received this notice either from the church or from the city council.

Any changes to the zoning at the church property directly impacts us. Therefore, we request that we be notified (with a detailed description) of the requested changes and that no decisions be taken until proper discussions are held with all the home owners at French quarters drive. We also request for more transparency regarding these changes.

Regards
Vinod

Sven & Lisa Verlinden

1 French Quarters Dr.

Morgantown, WV. 26505

304-291-4287 verlindenlisa@gmail.com

August 30, 2016

Christopher Fletcher, AICP

Development Services/Planning Division

389 Spruce St.

Morgantown, WV 26505

304-284-7431

Dear Mr. Fletcher,

We write to you today with strong objections to the proposed project (CASE NO: MNS16-07 / South Baptist Convention – Home Mission Board of Trustees/519 Burroughs Street made by Joseph V. Schaeffer, ESq.).

As homeowners of property located at 1 French Quarters Dr., (directly behind the Calvary Baptist Church) we will take this opportunity to outline our objections with regard to the way you have them listed in your Staff Report Addendum C as Principals 1-11.

While the rezoning says it's needed to allow Calvary Baptist Church to sell one section of the property so the Wine Bar can have parking, the rezoning, in truth, allows for any business use, including the installation of store fronts and multi-family home units. We highly object to the rezoning specifically as to B-1 and B-2, B-2 being worse as this allows for service facilities for businesses. In general, this area, is more residential and must maintain neighborhood character to allow for property values to be comparable, and the resale of homes to be competitive with other homes of this nature in Suncrest.

Principal 1: *Infill development and redevelopment of underutilized and/or deteriorating sites takes priority of development in green field locations at the city's edge.*

<u>Our objection:</u> The landscape in the proposed area allows for a buffer between current commercial property and residential property located behind. Disturbing this by allowing rezoning to B-1 and B-2 means that the existing neighborhood character would be gone. One of the proposed parcels sits directly against a home in the French Quarter subdivision. This is unacceptable and will significantly affect the property values of these homes.

Principal 2: *Expansion of the urban area will occur in a contiguous pattern that favors areas already served by existing infrastructure.*

Our objection: Existing infrastructure is inadequate and has resulted multiple times in flooding (of our home 2009 & 2010), traffic issues and lawsuits regarding destruction of residential properties. Adding additional strain to the current infrastructure is not a solution. This will cause the systems in place to be taxed even more ultimately causing property damage, financial strain and loss.

Principal 3: *Downtown, adjacent neighborhoods and the riverfront will be the primary focus for revitalizations efforts.*

Our objection: Not consistent, period

Principal 4: *Existing neighborhoods throughout the city will be maintained and/or enhanced.*

Our objection: Existing site provides an IMPORTANT "buffer" business and parking so proximate to existing rear property will decrease property values and ruin aesthetics and comfort.

Principal 5: *Quality design is emphasized for all uses to create an attractive, distinctive public and private realm and promote positive perceptions of the region.*

Our objection: No design has been submitted; no plans as to how the parking lot will be constructed and we already know the approved plans are not always followed or even compelled by the city and its inspectors. The lot and a possible future business(es) at this location will impact property values, traffic volume and overall condition of the neighborhood-street lights, traffic patterns, noise, dumpsters, etc., The lot will decrease the amount of buffer presently existing. Communication to the neighborhood as stated in the Staff Report by Joseph V Schaeffer, Esq., has not taken place.

Principal 6: *Development that integrates mixed-uses (residential, commercial, institutional, civic, etc.) and connects with the existing urban fabric is encouraged.*

Our objection: Creating an environment for additional commercial space/use would, in fact, ruin the neighborhood character of the adjacent residential property, and increase a security risk to the neighborhood.

Principal 7: *Places will be better connected to improve the function of the street network and create more opportunities to walk, bike and access public transportation throughout the region.*

Our objection: This in fact, does none of the above! There are no walking trails, sidewalk, etc., and traffic concerns are already an issue, this is only going to create more of a danger to pedestrians.

Principal 8: *A broad range of housing types, price levels and occupancy types will provide desirable living options for a diverse population.*

<u>Our objection:</u> Not proper for high density/business, means traffic and additional load on existing infrastructure.

Principal 9: *Residential development will support the formation of complete neighborhoods with diverse housing, pedestrian-scaled complete streets, integrated public spaces, connection to adjacent neighborhoods, and access to transportation alternative and basic retail needs.*

<u>Our objection:</u> There is no need for additional retail and traffic volume. This will decrease the aesthetics of existing neighborhood and increase pass through and business traffic. Potentially effecting property and resale values of existing homes.

Principal 10: *Parks, open space, and recreational areas are incorporated as part of future development.*

<u>Our objection:</u> 20ft is an insufficient buffer to all the noise, lights and traffic this will create.

Principal 11: *Environmentally sensitive and sustainable practices will be encouraged in future developments.*

<u>Our objection:</u> "encouraged" is NOT guaranteed, as we have seen in the past.

We plan to attend the September 8th City Council Meeting and look forward to the continued conversation.

With Regards,

Sven and Lisa Verlinden

MORGANTOWN PLANNING COMMISSION

August 11, 2016
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 Blosser, 3rd Ward
Bill Petros, 4th Ward
Mike Shuman, 5th Ward
William Kawecki, City Council
VACANT, City Administration

Development Services Department
Christopher Fletcher, AICP
Director

John Whitmore, AICP
Planner III

Planning Division
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STAFF REPORT

CASE NO: RZ16-05 / South Baptist Convention – Home Mission Board of Trustees / 519 Burroughs Street

REQUEST and LOCATION:

Request by Joseph V. Schaeffer, Esq., on behalf of South Baptist Convention – Home Mission Board of Trustees, for a Zoning Map Amendment to reclassify a portion of Parcel 33 of Tax Map 55 from R-1, Single-Family Residential District to B-1, Neighborhood Business District or B-2, Service Business District.

SURROUNDING ZONING:

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

North: R-1A, Single Family Residential District

West: B-2, Service Business District

BACKGROUND:

The petitioner seeks to amend the zoning map by reclassifying a portion of Parcel 33 from R-1 to either B-1 or B-2. That portion of Parcel 33 included in this petition is on the westerly side, bordering Parcels 33.1, 33.2, & 34, with 80 feet of frontage along Burroughs Street and continuing to the rear of the property at the northerly rear boundary shared with Parcel 4 of Tax Map 55B. Addendum A of this report illustrates the location of the subject site.

The subject site is currently vacant, is occupied by a mature stand of evergreen trees, and is utilized as ancillary greenspace for the Calvary Baptist Church. The area of the zoning map amendment is also a matter for consideration under minor subdivision petition Case No. MNS16-07, which also appears on the Commission's 11 AUG agenda.

Because the subject area adjoins the B-2 District at the site's western side, a zoning reclassification to B-2 would be considered a zoning district boundary adjustment.

Because the subject site does not adjoin a B-1 District nor is in close proximity to or connected with the petitioner's site through existing B-1 scaled development patterns or land uses, the B-1 District may be considered "spot zoning." Addendum B of this report provides several classic definitions for "spot zoning." Additionally, there are two (2) articles available at www.plannersweb.com authored by Daniel Shapiro, Esq. and Robert C. Widner, Esq. concerning "spot zoning" following Addendum B.

ANALYSIS:

According to Article 1333.01 of the Planning and Zoning Code the purpose of the R-1 Districts is to:

(A) Provide for attractive single family neighborhoods for residents who prefer larger lot sizes, and do not generally desire to live in close proximity to other types of uses, and

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Mike Shuman, 5th Ward
William Kawecki, City Council
VACANT, City Administration

(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 provide for adequate light, ventilation, quiet, and privacy for neighborhood residents.

According to Article 1335.01, the purpose of the B-2 District is to:

> Provide areas that are appropriate for most kinds of businesses and services, particularly large space users such as department stores.

The petitioner has provided an addendum to the subject application noting that, "it is the property owner's intention to create a buffer on the northerly border with Parcel 32, with the buffer to extend 20' (feet) from the property line in a southerly direction toward Burroughs Street. The buffer will include plantings, at least some of which will have a minimum 10' (foot) height when planted."

Comprehensive Plan Concurrence

As recommended in Chapter 9 "Implementation" of the 2013 Comprehensive Plan Update, Addendum C of this report identifies how the proposed development program relates to the land management intent, location, and pattern and character principles of the current Comprehensive Plan.

It should be noted that "shall" statements within the Comprehensive Plan must be understood as desired objectives and strategies that do not have the force or effect of law unless incorporated into the City's Planning and Zoning Code.

Staff encourages the Planning Commission to review the Comprehensive Plan for guidance as Addendum C is not intended to represent a complete comparative assessment.

The Comprehensive Plan identifies the subject site as a part of the "Neighborhood Conservation" land management concept area with "Corridor Enhancement" opportunities along the site's Burroughs Street frontage. The site is also located in the "Limited Growth" conceptual growth framework area.

The "Neighborhood Conservation" land management concept area provides for:

> "Preservation of existing neighborhood character and continued maintenance of buildings and infrastructure."

The "Corridor Enhancement" land management concept area provides for:

> "Improving development along corridors with a mix of uses, increased intensity at major nodes or intersections and roadway improvements to improve traffic flow, pedestrian and biking experience."

The "Limited Growth" conceptual growth framework area provides for:

> "All other areas that are subject to development, but where increased intensity is generally not desired. These areas include both existing open space and existing development and all developable land in areas of the County that are not shown."

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It is the opinion of the Planning Division that, although a B-1 zoning classification may represent lower by-right densities and intensities given neighboring R-1 and R-1A scaled single-family development, the proposition amounts to "spot zoning."

A zoning reclassification from R-1 to B-2 appears, at least along the site's Burroughs Street frontage, to represent the general goals of the 2013 Comprehensive Plan and appears to be in general concurrence with the Plan's principles for land management and encouraged growth objectives. However, the middle to rear portion of the property is not included in the "Corridor Enhancement" land management concept area.

Staff met with the petitioner's representative Mr. Joseph Schaeffer on 30 JUN 2016 in advance of application submission. As provided in Article 1377.01(D), Staff advised Mr. Schaeffer to discuss the proposal with residents living within 200 feet of subject site along with the leadership of the Suncrest Neighborhood Association with contact information accordingly provided. Staff has no knowledge of whether or not communication efforts have been undertaken by the petitioner. As of FRI, 05 AUG 2016, the Planning Division has received no communication in opposition of the proposed zoning map amendment.

STAFF RECOMMENDATION:

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 requests on their merits as a land-use decision.

In conducting such an analysis, the Planning Commission should determine if the B-2, Service Business 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 1347 "B-2, Service Business District" and Table 1331.05.01 "Permitted Land Uses."

With the exception of avoiding "spot zoning" by pursuing a reclassification of the subject area to B-1, Staff submits no endorsement concerning whether or not a favorable recommendation should be submitted to City Council supporting the petitioner's zoning map amendment request.

However, should the Planning Commission act to forward a recommendation to City Council to approve the requested zoning map amendment, Staff recommends it be conditioned upon minor subdivision approval granted under Case No. MNS16-07 and that the area of said zoning reclassification be limited to the new parcel created therein; specifically, that portion of Parcel 33 of Tax Map 55 on its westerly side adjoining Parcels 33.1, 33.2, & 34, with 80 feet of frontage along Burroughs Street and continuing to the rear of the property at the northerly rear boundary shared with Parcel 4 of Tax Map 55B.

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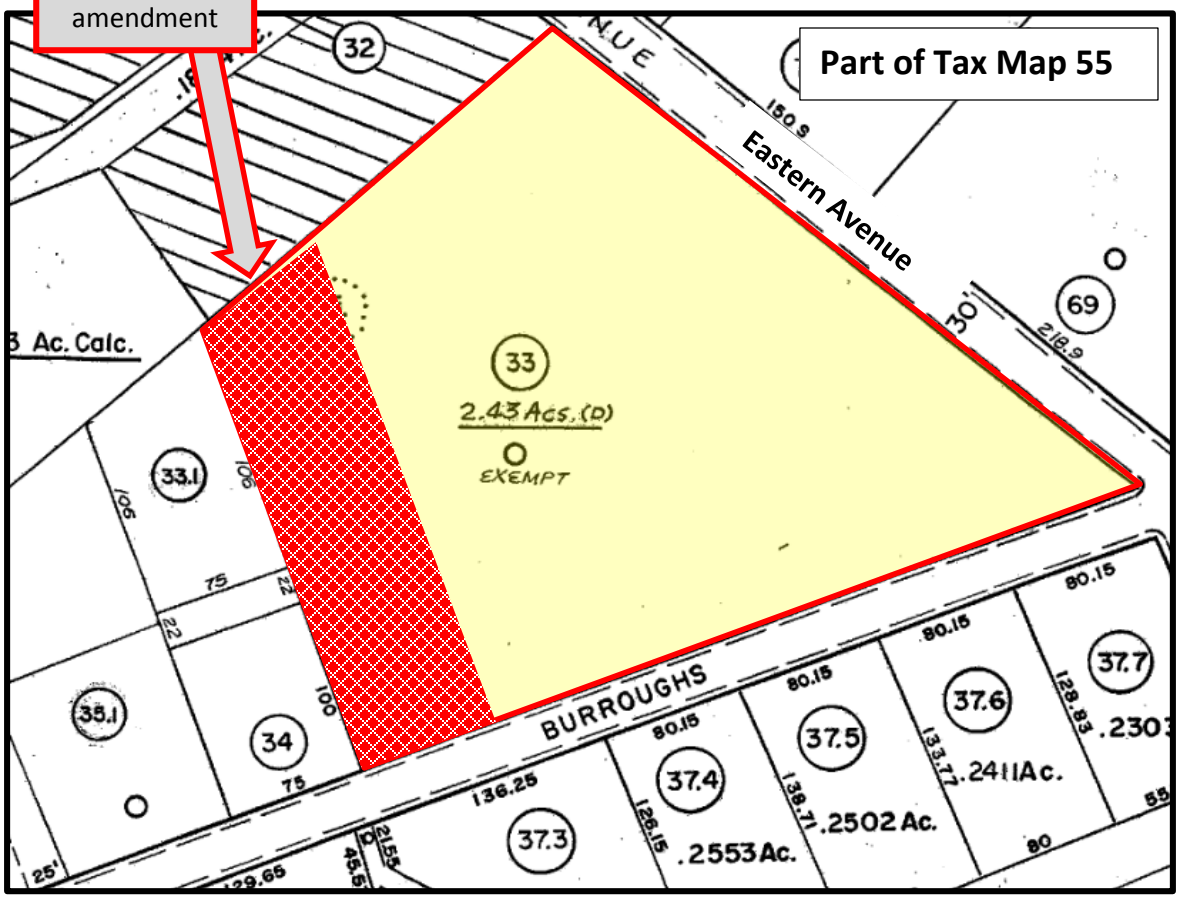
STAFF REPORT ADDENDUM A

RZ16-05 / South Baptist Convention – Home Mission Board of Trustees / 517 Burroughs Street

STAFF REPORT ADDENDUM A

RZ16-05 / South Baptist Convention – Home Mission Board of Trustees / 517 Burroughs Street



STAFF REPORT ADDENDUM B

RZ16-05 / South Baptist Convention – Home Mission Board of Trustees / 519 Burroughs Street

"Spot Zoning"

Article 1329.02 of the Planning and Zoning Code provides the following instruction for defining terms for the purpose of the zoning ordinance:

> "If not defined here [Article 1329.02 DEFINITION OF TERMS], or within other sections of this ordinance [Morgantown Zoning Ordinance], terms used in this ordinance shall have the meanings provided in any standard dictionary or American Planning Association publication as determined by the Planning Director."

The term "spot zoning" does not appear in the City's Planning and Zoning Code. However, the following definitions are presented to provide context and an understanding of the practice of "spot zoning."

Anderson's American Law of Zoning, 4th Edition, §5.12 (1995) provides the following definition for "spot zoning":

> "The process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners."

The American Planning Association's Planning Advisory Service published a report in APR 2004 titled *A Planners Dictionary (PAS 521/522)*. The following definitions for "spot zoning" and the communities from which the definitions are included in this report.

- [A] change in district boundaries, variances, and other amendments to the zoning code and use and area maps that violate sound principles of zoning and are characterized by the following: (a) Individuals seek to have property rezoned for their private use. (b) Usually the amount of the land involved is small and limited to one or two ownerships. (c) The proposed rezoning would give privileges not generally extended to property similarly locating in the area. (d) Applications usually show little or no evidence of, or interest in, consideration of the general welfare of the public, the effect on surrounding property (including adequate buffers), whether all uses permitted in the classification sought are appropriate in the locations proposed, or conformity to the comprehensive planning principles (including alterations to the population density patterns and increase of load on utilities, schools, and traffic.) *(Coral Gables, Fla.)*
- The zoning of a small land area for a use which differs measurable from the zoned land use surrounding this area. Land may not merely be so zoned in the interest of an individual or small group, but must be in the general public interest. Such zoning does not conform to the future land use plan and is not otherwise necessary in order to protect the health, safety, welfare, or morals of the community. *(Hot Springs, Ark.)*
- A change in the zoning code or area maps that is applicable to no more than a few parcels and generally regarded as undesirable or illegal because it violates equal treatment and sound planning principles. *(Wisconsin Department of Natural Resources)*
- Rezoning a lot of parcel of land to benefit an owner for a use incompatible with surrounding uses and not for the purpose or effect of furthering the comprehensive plan. *(Temple, Tex.)*
- An arbitrary zoning or rezoning of a small tract of land, usually surrounded by other uses or zoning categories that are of a markedly or substantially different intensity, that is not consistent with the comprehensive land use plan, and that primarily promotes the private interest of the owner rather than the general welfare. *(Norfolk, Nebr.)*

Understanding Spot Zoning

by Robert C. Widner, Esq.

Most planning commissioners have heard the impassioned cry that a particular rezoning decision will constitute an invalid "spot zoning." This allegation typically arises where the community is considering the rezoning of a single lot or small parcel of property held by a single owner and the rezoning will permit land uses not available to the adjacent property.

Because spot zoning often focuses on the single parcel without considering the broader context, that is, the area and land uses surrounding the parcel, it is commonly considered the antithesis of planned zoning. While rezoning decisions that only affect a single parcel or small amount of land are most often the subject of spot zoning claims (as opposed to rezonings of larger areas), a locality *can* lawfully rezone a single parcel if its action is shown to be consistent with the community's land use policies. As I will discuss shortly, courts look to the community's comprehensive plan, or to other planning studies, in determining whether the rezoning is, in fact, consistent with local land use policies.

Of course, whether a particular rezoning constitutes an unlawful spot zoning depends largely upon the facts surrounding the zoning decision and upon the judicial decisions of each state. However, courts commonly note that the underlying question is whether the zoning decision advances the health, safety, and welfare of the community. A zoning decision that merely provides for individual benefit without a relationship to public benefit cannot be legally supported. Where a particular zoning decision is not supported by a public purpose, the zoning decision is arbitrary and may be subject to invalidation as unlawful spot zoning.

Although courts throughout the nation differ in their specific approaches when reviewing spot zoning claims, the majority consider: (1) the size of the parcel subject to rezoning, (2) the zoning both prior to and after the local government's decision; (3) the existing zoning and use of the adjacent properties; (4) the benefits and detriments to the landowner, neighboring property owners, and the community resulting from the rezoning, and (5) the relationship between the zoning change and the local government's stated land use policies and objectives.

> A ZONING DECISION THAT MERELY PROVIDES FOR INDIVIDUAL BENEFIT WITHOUT A RELATIONSHIP TO PUBLIC BENEFIT CANNOT BE LEGALLY SUPPORTED.

This last factor — the relationship of the rezoning decision to the community's land use policies and objectives — is perhaps the most important one. As a result, when a planning commission (or governing body) initially considers a rezoning request it should determine whether the request is consistent with the comprehensive or master plan. Many communities' zoning codes also require a separate planning study that examines the merits of the proposed rezoning. This further ensures that any rezoning is consistent with the community's land use objectives, and not a case of spot zoning. The bottom line is that courts will give considerable weight to evidence that the locality's rezoning decision reflects thoughtful consideration of planning factors. *"Consistency With the Plan."*

It should be noted that there is one situation where a rezoning decision that does not conform to the comprehensive plan may nevertheless be upheld. That is where there is evidence showing significant changes in the community since the adoption of the plan that would justify a rezoning of the property. This is especially true where a review of other factors, such as benefit to the community and the size of the rezoned parcel, indicate that the rezoning was not merely intended to confer a benefit to the property owner. ◆

Robert (Bob) Widner is an assistant city attorney for the City of Arvada, Colorado. Bob serves as legal counsel to the Arvada Planning Commission and is principally responsible for land use and planning issues for the City. He also holds a master's degree in urban and regional planning and is an adjunct faculty member at the University of Colorado Graduate School of Architecture and Planning in Denver. Bob also wants to remind you that if you're confronted with a claim that a particular rezoning may constitute spot zoning, seek the opinion of your commission's attorney — it might avoid litigation later on.

Consistency With the Plan

When a rezoning decision is in conformance with the municipal plan, courts will uphold the decision *even though* it may adversely affect surrounding land uses. For example, in *Pollock v. Zoning Board of Adjustment*, 342 A.2d 815 (1975) a Pennsylvania court upheld the rezoning from residential to commercial/ industrial of a tract less than one acre in area which was surrounded on three sides by residentially zoned land. The parcel, however, fronted on a major boulevard, and, as the court noted, "the comprehensive plan for the city is to encourage commercial development along the properties fronting on the boulevard ... the rezoning of the instant tract was but another action in conformity with that pattern of development."

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Understanding Spot Zoning

by Daniel Shapiro, Esq.

Editor's note: We're pleased to continue offering articles providing an overview of some of the key zoning and land use law issues planners and planning commissioners face. As with all such articles, we encourage you to consult with your municipal attorney as laws and legal practice vary from state to state.

Occasionally, planning boards or commissions are faced with a petitioner's request to re-zone property only to be challenged with an objector's claim that doing so would constitute illegal spot zoning. The plan commission often has a quandary; approve the development and risk making an improper, if not illegal decision, or deny the development which would have financially improved the community. To better assist with this difficult decision, it is beneficial for the commission to understand exactly what "spot zoning" is.

What Constitutes Spot Zoning

The "classic" definition of spot zoning is **"the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners."** [1]

Spot zoning is, in fact, often thought of as the very antithesis of plan zoning. [2] When considering spot zoning, courts will generally determine whether the zoning relates to the compatibility of the zoning of surrounding uses. Other factors may include; the characteristics of the land, the size of the parcel, and the degree of the "public benefit." **Perhaps the most important criteria in determining spot zoning is the extent to which the disputed zoning is consistent with the municipality's comprehensive plan.**

Counties and municipalities both adopt comprehensive plans for the purposes of stating their long term planning objectives, and addressing the needs of the community in one comprehensive document that can be referred to in making many zoning decisions over time.

Comprehensive plans also typically map out the types (and locations) of future land use patterns which the municipality (or county) would like see -- again, these provide guidance for changes in the zoning ordinance and zoning district maps.

The key point: rezonings should be consistent with the policies and land use designations set out in the comprehensive plan.

Importantly, each claim of spot zoning must be considered based upon its own factual scenario. Indeed, some courts engage in a cost/benefit analysis to determine whether the challenged zoning is spot zoning.

For instance, in *Griswold v. Homer,* [3] the Alaska Supreme Court found spot zoning to exist by considering a cost benefit analysis, as well as the size of the parcel in question and the rezoning in relationship to the comprehensive plan. Critically, it found that the spot zoning was absent because, among other things, the underlying ordinance resulted in genuine benefits to the City of Homer as a whole, and not just to the particular land owner.

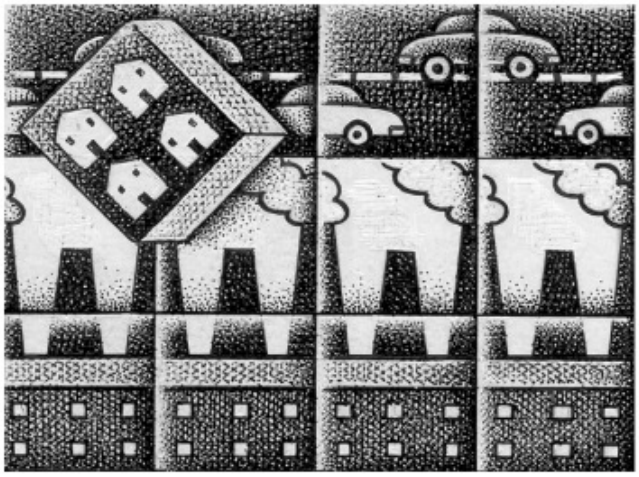

illustration by Paul Hoffman for PlannersWeb

Although courts often find spot zoning where the challenged zone is surrounded by other incompatible zones, spot zoning is less likely to occur when the rezoning has "slopped over" by the extension of the perimeter of an existing zone to include the rezoned area.

illustration by Paul Hoffman for PlannersWeb

Additionally, improper spot zoning is less likely when the disputed area is characterized by mixed uses or transitional areas. In other words, spot zoning is more frequently found in residential than in commercial neighborhoods.

When holding that spot zoning is invalid, some courts will couch their ruling in in terms of substantive due process -- in other words, that the rezoning was not "reasonably related" to a legitimate state interest. Other courts will frame a ruling upon equal protection principles. [4]

Regardless, when courts declare such rezoning invalid they must base their declaration on: (1) the lack of connection of the rezoning to a legitimate power or purpose; (2) the lack of the rezoning's conformity to the comprehensive plan; or (3) the rezoning's representing an unreasonable inequality in the treatment of similarly situated lands. See, e.g., *Hanna v. City of Chicago* [5] (spot zoning occurs when a relatively small parcel or area is rezoned to a classification out of harmony with the comprehensive plan).

Rebutting Spot Zoning

Spot zoning, however, may be rebutted when the challenged zoning is found to be consistent with a municipality's recent zoning trends in the area, not just with the present surrounding uses. [6] To illustrate the importance that each factual scenario must be closely addressed, rather than merely labeled, it should be noted that one Illinois court found that the rezoning of small parcels inconsistent with the zoning of surrounding areas is not necessarily unlawful. [7] The size of a parcel is just one factor to be considered in determining spot zoning.

A claim of spot zoning may also lack merit, for instance, when the zoning or planning regulations consider the boundaries of the property in dispute to contain a line of demarcation between zoning districts which would appropriately separate one zoning district from another. [8]

Most importantly though, if the zoning is enacted in accordance with a comprehensive plan, it is typically not "spot zoning." [9]

What's a Planning Commission to Do?

When considering zoning map amendments, the planning commission or board must not only determine whether the petitioner has satisfactorily responded to the traditional standards in support of his or her application, but it should also closely scrutinize whether a potential exists for spot zoning. In doing so, the commission should look at the comprehensive plan and the surrounding uses to the property at issue.

While the commission is not qualified to make legal determinations of spot zoning, it is nonetheless the gatekeeper of identifying that such an issue may exist. It is therefore appropriate for the commission to defer its decision and consult with its municipal attorney *before* voting to approve the rezoning and referring it to the governing body for adoption.

Summing Up:

Spot zoning must be addressed upon the facts and circumstances of each case. As such, when faced with allegations of spot zoning, the courts will closely look at factors such as the size of the parcel; the anticipated public benefit; the consistency with the community's comprehensive plan; and the consistency with surrounding zoning, and uses, to make a determination of the validity of the rezoning.

Dan Shapiro is a partner with the law firm of Robbins, Salomon and Patt, Ltd in Chicago, Illinois. He practices in the areas of land use, zoning, governmental relations, municipal law, and civil litigation.

Dan represents a wide variety of private developers as well as governmental entities and advises his clients closely on issues of concern. As part of his practice, he has successfully presented legislative and administrative matters before plan commissions, zoning boards, and other village, city, and county bodies.

Dan also is an adjunct professor teaching land use at Kent Law School in Chicago, and is the Chairman of the Village of Deerfield (Illinois) Plan Commission.

Notes:

1. Anderson's American Law of Zoning, 4th Edition, § 5.12 (1995).
2. See, e.g., Jones v Zoning Board of Adjustment of Township of Long Beach, 32 N.J. Super 397,108 A.2d 498, 502 (1954).
3. Griswold v. Homer, 926 P.2d 1015 (Alaska 1996)
4. See, e.g., Rando v. Town of N. Attleborough, 692 N.E.2d 544 (Mass. App. Ct. 1998).
5. Hanna v. City of Chicago 771 N.E.2d 13 (2002)
6. See e.g., 1350 Lakeshore Associates v. Casalino, 352 Ill.App.3d 1027, 816 N.E.2d 675 (1st Dist. 2004).

7. See, e.g., Goffinet v. County of Christian, 65 Ill.2d 40 357 N.E.2d 442 (1976).
8. See, e.g., LaSalle National Bank v. City of Highland Park, 344 Ill.App.3d 259, 799 N.E.2d 781 (2nd Dist. 2003).
9. See, e.g., Jones v. Zoning Board of Adjustment of Township of Long Beach, 32 N.J. Super. 397, 108 A.2d 498, 502 (1954).

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Print

Tags:Land Use Law, Zoning & Land Use Regulations

css.p

STAFF REPORT ADDENDUM C

RZ16-05 / South Baptist Convention – Home Mission Board of Trustees / 519 Burroughs Street

Concurrence with the 2013 Comprehensive Plan Update

The following narrative identifies where, in the opinion of the Planning Division, the subject zoning map amendment petitions are in concurrence and/or are inconsistent with the 2013 Comprehensive Plan Update.

INTENT	Development proposals will reflect the spirit and values expressed in the Plan's principals.

Principles for Land Management

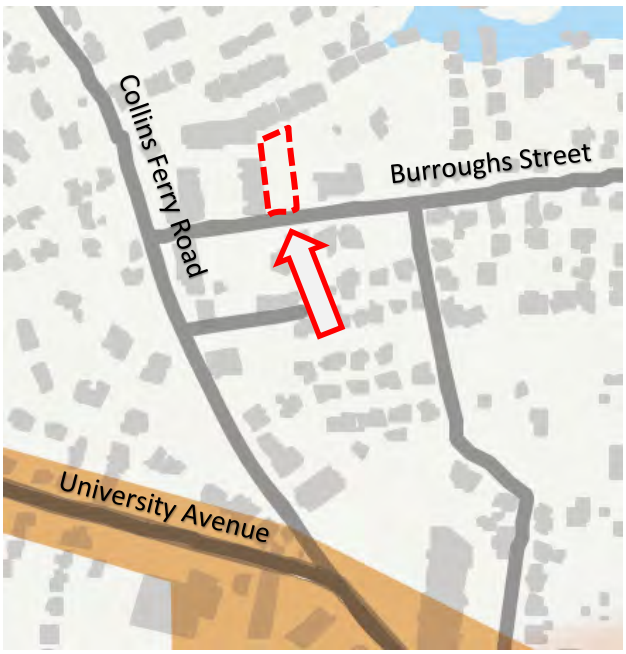
Principal 1	Infill development and redevelopment of underutilized and/or deteriorating sites takes priority over development in green field locations at the city's edge.	☒ Concurrence ☐ Inconsistent ☒ Other
	The subject site is currently vacant with a stand of mature trees, mostly evergreen. Because a portion of the subject, particularly the site's frontage along Burroughs Street, is identified as a "Corridor Enhancement" general concept area, development along the corridor with a mix of uses is desired. Mixed-use development is permitted in the B-1 and B-2 Districts. However, the majority of the subject site at the middle and towards the rear is with the "Neighborhood Conservation" general concept area where the preservation of existing neighborhood character is desired. Additionally, the site is located within a "Limited Growth" area where increased intensity is generally not desired.	
Principal 2	Expansion of the urban area will occur in a contiguous pattern that favors areas already served by existing infrastructure.	☒ Concurrence ☐ Inconsistent ☐ Other
	The subject site is within the urban area with existing utility and road infrastructure in close proximity and there is similar non-residential development in the adjacent parcel to the west.	
Principal 3	Downtown, adjacent neighborhoods and the riverfront will be the primary focus for revitalizations efforts.	☐ Concurrence ☐ Inconsistent ☒ Other
	Although the subject site is not located within or adjacent to the central business district or riverfront, it adjoins the B-2 District and related land uses and development pattern.	

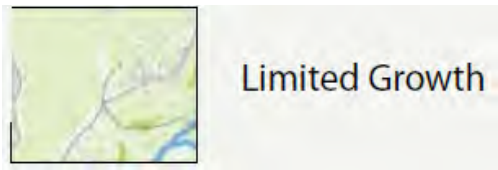
Principal 4	Existing neighborhoods throughout the city will be maintained and/or enhanced.	☒ Concurrence ☐ Inconsistent ☒ Other
	The subject site is located within two (2) general concept areas – "Corridor Enhancement" and "Neighborhood Conservation" with the majority of the property located within the "Neighborhood Conservation" concept area. The subject site is also located within a "Limited Growth" area where increased intensity is generally not desired.	
Principal 5	Quality design is emphasized for all uses to create an attractive, distinctive public and private realm and promote positive perceptions of the region.	☐ Concurrence ☐ Inconsistent ☒ Other
	Site design is extraneous to the petitioner's zoning map amendment request.	
Principal 6	Development that integrates mixed-uses (residential, commercial, institutional, civic, etc.) and connects with the existing urban fabric is encouraged.	☒ Concurrence ☐ Inconsistent ☒ Other
	The zoning map amendment request from R-1 to either B-1 or B-2 advances desired mixed-use development patterns, particularly along the site's Burroughs Street frontage, which is identified as a "Corridor Enhancement" general concept area where a mix of uses is desired. The site also adjoins a development to the west currently occupied by a mixed-use development pattern with residential and nonresidential uses.	
Principal 7	Places will be better connected to improve the function of the street network and create more opportunities to walk, bike and access public transportation throughout the region.	☒ Concurrence ☐ Inconsistent ☐ Other
	The map amendment would enable corridor development as envisioned by the 2013 Comprehensive Plan Land Management Map.	
Principal 8	A broad range of housing types, price levels and occupancy types will provide desirable living options for a diverse population.	☒ Concurrence ☐ Inconsistent ☒ Other
	A range of higher density and various residential dwelling types are permitted within the B-2 District as compared to the R-1 District. However, the site is located within a "Limited Growth" area where increased intensity is generally not desired.	
Principal 9	Residential development will support the formation of complete neighborhoods with diverse housing, pedestrian-scaled complete streets, integrated public spaces, connection to adjacent neighborhoods, and access to transportation alternative and basic retail needs.	☐ Concurrence ☐ Inconsistent ☒ Other
	Site design is extraneous to the petitioner's zoning map amendment request.	

Principal 10	Parks, open space, and recreational areas are incorporated as part of future development.	☐ Concurrence ☐ Inconsistent ☒ Other
	No parks, open space, or recreational area plans were included with the subject map amendment petition. However, the petitioner notes in an application addendum they intend to create a buffer on the northerly border shared with R-1A District single-family homes a buffer to extend 20 feet from the rear property line in a southerly direction toward Burroughs Street to include plantings.	
Principal 11	Environmentally sensitive and sustainable practices will be encouraged in future developments.	☐ Concurrence ☐ Inconsistent ☒ Other
	Site design is extraneous to the petitioner's zoning map amendment request.	

LOCATION	Development proposals will be consistent with the Land Management Map. If the proposal applies to an area intended for growth, infill, revitalization, or redevelopment, then it should be compatible with that intent and with any specific expectations within Areas of Opportunity. If the proposal applies to an area of conservation or preservation, it should be compatible with and work to enhance the existing character of the immediate surroundings.

The following graphic is clipped from the **Conceptual Growth Framework Map** included on Page 19 of the 2013 Comprehensive Plan Update. The subject development site is located within the **"Limited Growth"** concept area.

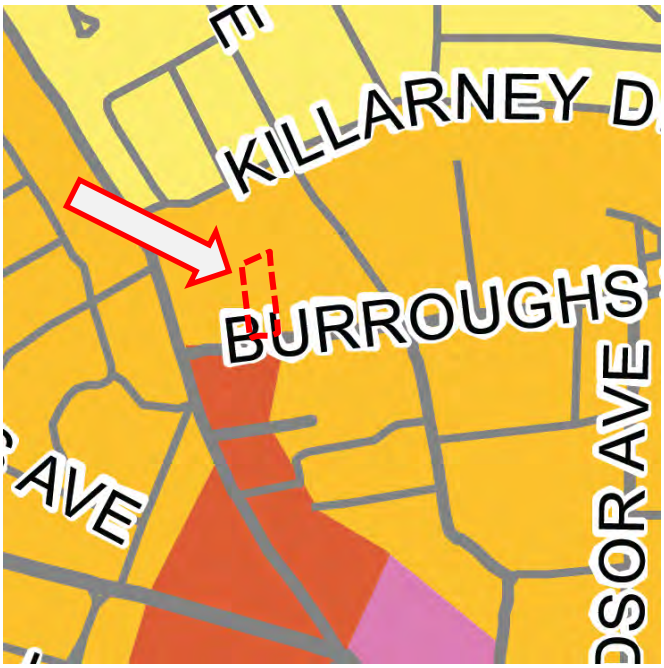




Limited Growth – All other areas that are subject to development, but where increased intensity is generally not desired. These areas include both existing open space and existing development and all developable land in areas of the County that are not shown.

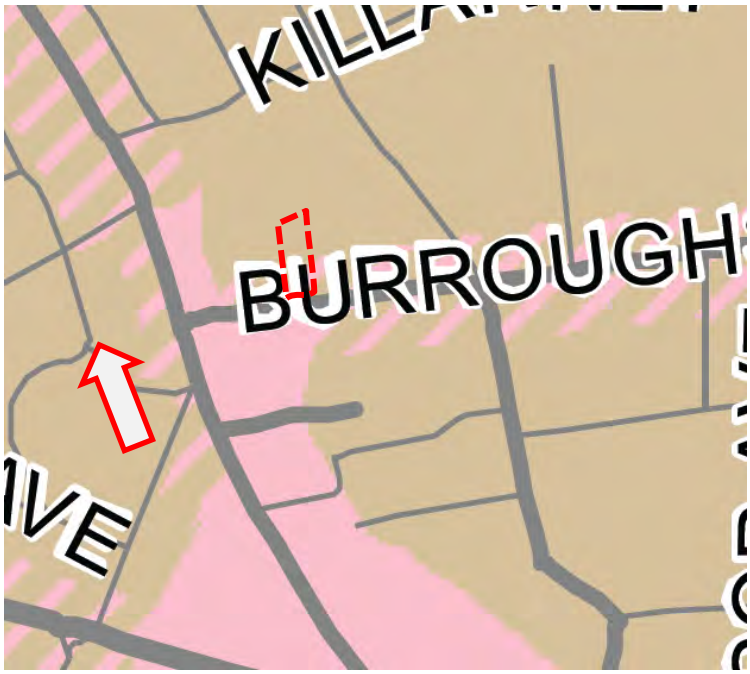
PATTERN AND CHARACTER	Development proposals in growth areas will be consistent with preferred development types. Development in areas where growth is not intended should be compatible with the relevant Character Areas description and expectations for how those areas should evolve in the future.

The following graphic is clipped from **Map 3 – Pattern and Character** included on Page 27 of the 2013 Comprehensive Plan Update. The subject development site is located within the **"Neighborhood 1"** pattern and character areas.



Neighborhood 1. Neighborhood 1 includes the oldest residential areas in the city surrounding Downtown and WVU's campus. It encompasses most of the city's historic neighborhoods as well as areas dominated by student renters. This neighborhood type has the highest density of buildings on the smallest lots. The district contains a mix of housing types ranging from older single family homes to four-six unit apartment buildings to newly constructed multi-story apartment buildings – often with multiple housing types in the same block. Small-scale commercial or civic uses are also integrated into the neighborhood fabric. The blocks are small and generally follow a grid street pattern. This is the most walkable neighborhood area.

The following graphic is clipped from **Map 4 – Land Management** included on Page 39 of the the 2013 Comprehensive Plan Update. The subject development site is located within the "**Infill and Redevelopment"** concept area.



Neighborhood Conservation*: Preservation of existing neighborhood character and continued maintenance of buildings and infrastructure.

Corridor Enhancement:** Improving development along corridors with a mix of uses, increased intensity at major nodes or intersections and roadway improvements to improve traffic flow, pedestrian and biking experience.

*See Map 3. Pattern and Character for existing context.
**Hatched areas indicate opportunities for corridor enhancement within another concept area.

The following graphics are clipped from Pages 41 through 43 of the 2013 Comprehensive Plan Update and identify the development types desired within the "**Infill and Redevelopment**" concept area.

Appropriate Development Types

CONCEPT AREA	SF	TF	MF	C	NX	UC	CC	O	I	CD	OS
Neighborhood Conservation*	•	○	○	•							•
Corridor Enhancement*			•	•	•		•	•			•

* Appropriate development depends on existing context. See Development Patterns and Character (pages 26-32)

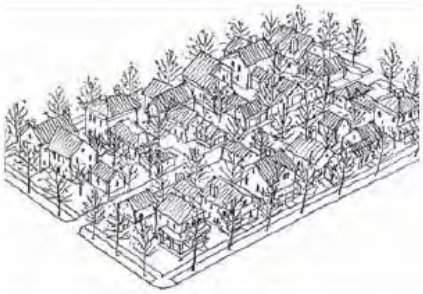
○ Neighborhood Conservation is a concept intended to maintain and protect existing neighborhoods. Multi-family residential may be appropriate in these areas if such development currently exists there. Multi-family residential is not appropriate for many Neighborhood Conservation areas.

DEVELOPMENT TYPE DESCRIPTIONS | **PATTERN AND CHARACTER EXAMPLES**

SF **Single Family Residential**
Detached 1-2.5 story residential structures each intended for one family. Densities range from six to twelve units per acre.

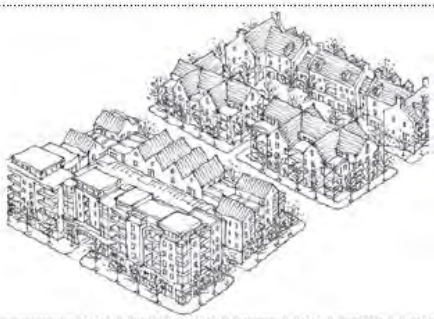
TF **Two Family Residential**

Detached structures that each contain two separate residential dwellings and townhouse dwelling types. May be built in a similar pattern as single-family structures and integrated in neighborhoods with other single-family structures and/or at the edge of single-family neighborhoods. Densities range from six to twenty units per acre.



MF **Multi-family Residential**

Includes various forms such as apartment buildings where three or more separate residential dwelling units are contained with a structure and townhouse dwelling types. They vary considerably in form and density depending on the context – from four-story or larger buildings set close to the street in and at the edge of the downtown core and along major corridors, to smaller two- to four-story buildings with greater street setbacks in areas between the downtown core and single-family neighborhoods.



C **Civic and Institutional**

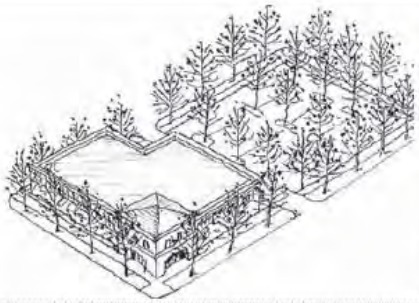
These sites include both public uses (government buildings, libraries, community recreation centers, police and fire stations, and schools) and semi-public or private uses (universities, churches, hospital campuses). Public uses should be strategically located and integrated with surrounding development. Civic and Institutional sites may be distinctive from surrounding buildings in their architecture or relationship to the street.

NX **Neighborhood Center Mixed-Use**

A mix of housing, office, commercial, and civic uses adjacent to one another or contained within the same structure (such as offices or apartments above ground-floor retail). Such uses should be compatible with and primarily serve nearby neighborhoods (within 1/2 mile). Parking should be located behind or to the side of buildings and may be shared between multiple uses.

CC **Community Commercial**

Larger scale, primarily retail, restaurant and accommodation uses that serve the broader community. Buildings should be located close to the street with parking to the rear or side and should be well-connected to surrounding development and pedestrian infrastructure.

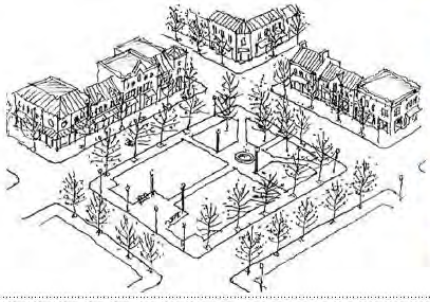


O **Office / Research**

Larger-scale 2-6 story buildings generally housing professional offices or research/development activities with single or multiple tenants. May involve multiple large-scale buildings in a campus setting, but buildings should be in a walkable configuration with shared parking typically behind or to the side. Supportive retail establishments may occupy the lower levels of a multistory building. Supportive retail uses include coffee shops, delicatessens, barbers, and bookstores among others.

OS **Greenspace**

Includes formal parks, recreation areas, trails, and natural open space.



City of Morgantown, West Virginia

APPLICATION FOR FOR ZONING MAP AMENDMENT

OFFICE USE	
CASE NO.	RZ16-05
RECEIVED:	7/1/16
COMPLETE:	

PAID JUL 01 2016 BY:

Zoning Map Amendment Process – See Addendum A of this Application

(PLEASE TYPE OR PRINT IN BLACK INK)

I. OWNER / APPLICANT

Name:	South Baptist Convention-Home Mission Board of Trustees	Phone:	304-599-2505
Mailing Address:	19 Burroughs Street (Street)	Mobile:	
	Morgantown (City) WV (State) 26505 (Zip)	Email:	

II. AGENT / CONTACT INFORMATION

Name:	Joseph V. Schaeffer	Phone:	304-291-7952
Mailing Address:	48 Donley St., Suite 800 (Street)	Mobile:	
	Morgantown (City) WV (State) 26501 (Zip)	Email:	jschaeffer@spilmanlaw.com

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

IV. PROPERTY

Street Address (if assigned):	519 Burroughs Street → 80-FOOT OF FRONTAGE ALONG BURROUGHS ST.		
Tax Map(s) #: 55	Parcel(s) #: 33 PORTION OF	Size (sq. ft. or acres):	
Current Zoning Classification: R-1		Proposed Zoning Classification:	B-1/B-2 B-1 OR B-2
Current Land Use: Religious		Proposed Land Use*:	Commercial

**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.*

20 JUL 2016

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.

Joseph V. Schaeffe		June 30, 2016
Type/Print Name of Applicant/Agent	Type/Print Name of Applicant/Agent	Date

Zoning Map Amendment Fee - $75 9854

City of Morgantown, West Virginia

APPLICATION FOR FOR ZONING MAP AMENDMENT

OFFICE USE	
CASE NO.	RZ16-05
RECEIVED:	
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.

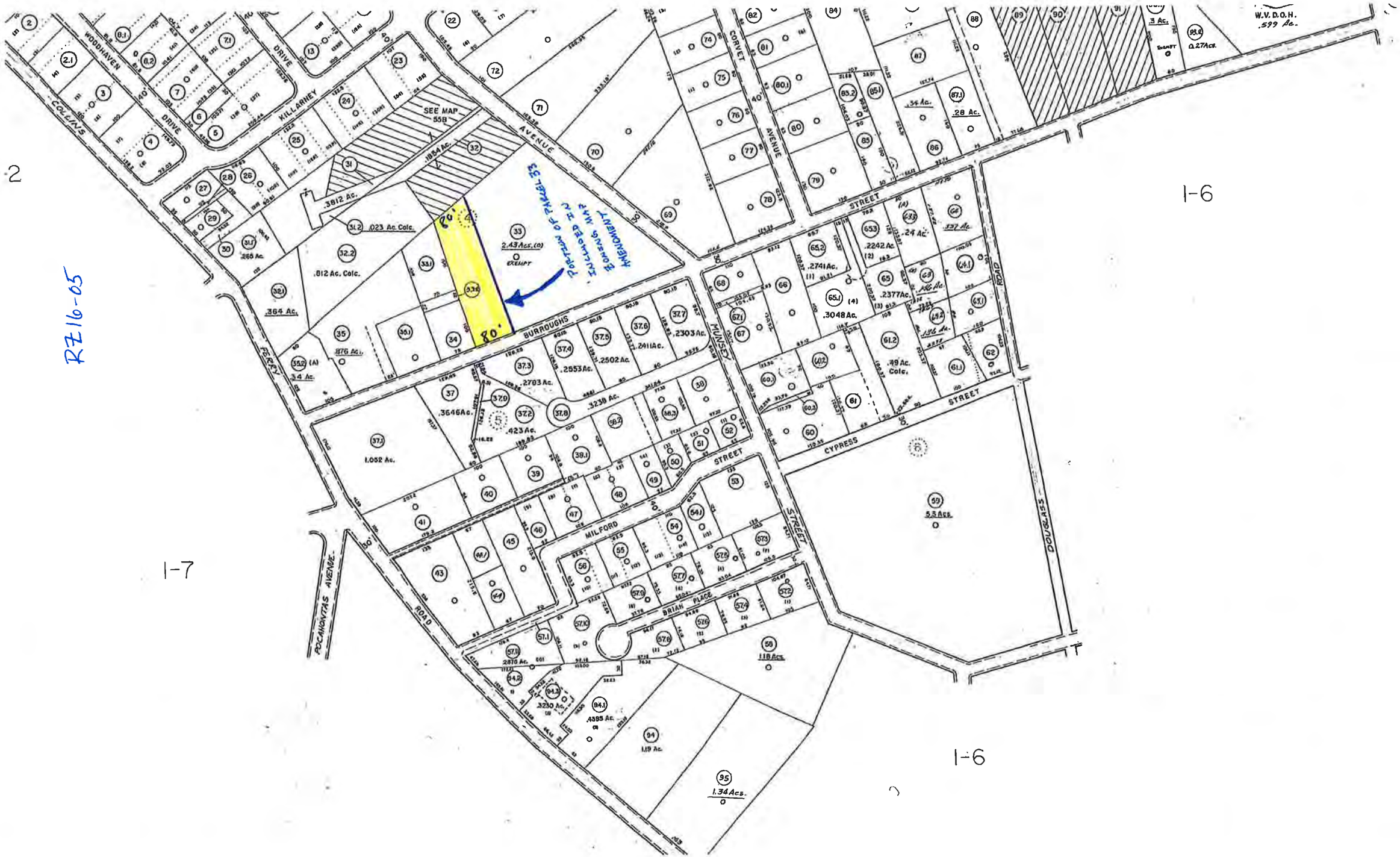
DENIED

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.

RZ16-05

ADDENDUM

It is the property owner's intention to create a buffer on the northerly border with Parcel 32, with the buffer to extend 20' from the property line in a southerly direction toward Burroughs Street. The buffer will include plantings, at least some of which will have a minimum 10' height when planted.


RZ16-05
2
1-6
1-7
1-6
COLLINS
WOODHAVEN
DRIVE
KILLARNEY
DRIVE
SEE MAP 55B
AVENUE
CORVET
AVENUE
STREET
BURROUGHS
MUNSEY
STREET
CYPRESS
STREET
MILFORD
STREET
BRIAN PLACE
FERRY
ROAD
POCAHONTAS AVENUE
DOUGLASS
ROAD
W.V.D.O.H.
.599 Ac.
.3 Ac.
EXEMPT
0.27Ac.
.34 Ac.
.28 Ac.
.1884 Ac.
.3812 Ac.
.023 Ac Calc.
.812 Ac. Calc.
.364 Ac.
.876 Ac.
.34 Ac.
2.43 Acs. (0)
EXEMPT
80'
80'
PROPERTY OF PARCEL 33
SUBJECTED TO
ZONING MAP
AMENDMENT
.3646Ac.
1.052 Ac.
.2703 Ac.
.2553Ac.
.2502 Ac.
.2411Ac.
.2303Ac.
.3230 Ac.
.423 Ac.
.2741Ac.
.2242 Ac.
.24 Ac.
.2377Ac.
.3048Ac.
.49 Ac. Calc.
.196 Ac.
5.3 Acs.
.2870 Ac.
.3230 Ac.
.4385 Ac.
1.19 Ac.
1.34 Acs.
1.18 Acs.

CITY OF MORGANTOWN
PLANNING DEPARTMENT

AUG -2 2016

RECEIVED

July 29, 2016

Planning Commission
City of Morgantown
389 Spruce Street
Morgantown, WV 26505

Planning Commission:

I am writing to request that you approve the request by Calvary Baptist Church on Burroughs Avenue for re-zoning of a parcel of land to allow for the creation of a parking lot for the Wine Bar. This action will not result in the introduction of a new business to this area but only provide additional needed parking.

The parcel of land in question has no identified use by the church but its sale will result in the church being able to move forward with completing the new sanctuary which is partially completed. This will result in a win-win situation for both parties without introducing an additional business to the area. I understand that the City Planner has recommended against the change but has not provided details regarding this position. I do not believe this change would in any way further alter the nature and character of the area in question.

I urge you to approve requested change.

Thank you.

Alan & Cindy Martin

Alan and Cindy Martin

August 1, 2016

We are requesting you Please consider Calvary Baptist Church's request to rezone a parcel of land on Burroughs Street, so we, as a church, can use the funds to complete our new sanctuary. The parcel is 80' X 255' and is not suitable for residential use.

Thank you for your consideration.

Sincerely,

David Harkins
Trustee

Ruby Harkins

Ruby Harkins

CITY OF MORGANTOWN
PLANNING DEPARTMENT

AUG -4 2016

RECEIVED

In 1999 the people of Calvary Baptist Church embarked on an ambitious plan to build a new sanctuary at 519 Burroughs Street in Suncrest. We started this program with $300,000 in pledges and a line of credit with Wesbanco. We have spent roughly $640,000 dollars on the project to date. Due to a succession of Pastors who did not share our vision, the program was delayed until today. We are now debt free having paid off the note with Wesbanco but the people who donated to the project are no longer at Calvary or have died. We have the opportunity to gain the funds to finish the project by selling an 80' X 255' parcel along the lower edge of our property abutting Biafora"s commercial tract. The property is zoned R1 and covered with old growth trees which are dying and present a danger of falling. One fell during a recent storm. The property has to be rezoned B1 in order to gain the desired funds. It could be sold as R1 but would have less value. The church has no desire to sell as residential tracts and in truth no one would want to build a house on the property.

I urge you to bring a favorable decision to our petition as it represents the only way the building can be occupied in the near future. A negative vote would leave this building in an unfinished for possibly another decade. This petition would enable us to move toward occupation with a minimal loan. Our congregation, being small at this time, cannot afford to take on another large debt and continue to meet expenses.

Thank you for your consideration,

The people of Calvary

Jamie Posey
Linda Rogers
[illegible]
[illegible]
David Hankins
Ruby Hankins
Patricia Amendola
Sandra Upright
Linda Channell
Frank Channell
Sheryl Saunders
Alfred A Amendola
Lois Kelley
Ronald P. Gillis
Carolyn S. Gillis

CITY OF MORGANTOWN
PLANNING DEPARTMENT

AUG -4 2016

RECEIVED

CITY OF MORGANTOWN
PLANNING DEPARTMENT

AUG -4 2016

RECEIVED

1454 Center Hill Avenue
Star City, W. Va. 26505

August 1, 2016

Morgantown Planning Commission
389 Spruce Street
Morgantown, W. Va. 26505

Dear Members,

As members of Calvary Baptist Church, we want to ask that you would consider changing the Zoning of a small plat of land on church property from the following R1 to B1

We have received an offer from a businessman to buy this plot which would be used to complete our sanctuary.

This plat of land would be used as a parking lot by the businessman. We feel it is not land of which could be used for a house.

We hope that you will consider our request.

Sincerely yours,
Dr. Larry D. Bennett
Mrs. Sandra Bennett

CITY OF MORGANTOWN
PLANNING DEPARTMENT

AUG -2 2016

RECEIVED

July 29, 2016

Planning Commission

389 Spruce Street

Morgantown, WV 26501

Dear Planning Commission:

Calvary Baptist Church at 519 Burroughs Street, Morgantown is in need of funds to complete a building project that began in 1999. The project started with an initial sum of $300,000 in pledges and a line of credit from Wesbanco. Since then an additional $340,000 has been spent on the project. The church is close to completing the project but additional funds are needed for the completion. The church has the opportunity to gain the funds to finish the project by selling an 80' x 255' parcel of land along the lower edge of its property abutting Biafora's commercial tract. The property is currently zoned R1. The church is requesting that the parcel be rezoned B1 to gain the necessary funds to complete the church project.

We are requesting a favorable decision on the church's petition for rezoning as it represents the only way the church can complete its building project. A negative vote would leave the new sanctuary addition unusable for many years. A favorable decision on the church's petition would allow the church to move towards completion with a minimum loan. At this point in time, the church congregation cannot afford to assume a large debt and continue to meet normal expenses.

Thank you for your consideration of the church's petition.

Sincerely yours,

Members of Calvary Baptist Church

Patricia A Amendola

Patricia A. Amendola

Alfred A Amendola

Alfred A. Amendola

1050 Imperial Drive

Morgantown, WV 26508

Stacy Hollar

From: Myla Bowman <mylabowman@gmail.com>
Sent: Wednesday, September 07, 2016 5:26 PM
To: Stacy Hollar
Subject: Parcel 33, Calvary Baptist Church

My husband and I live directly across the street from the Calvary Baptist Church on Burroughs St. We are definitely not in favor of a zoning change from R-1 for Parcel 33. Our development contains upper scale homes and we would not want to have something which would create more noise. conjestion and traffic in the area.
Myla Bowman, 28 Vintner Place

Stacy Hollar

From: Dave Lemley <dave121758@yahoo.com>
Sent: Tuesday, October 04, 2016 9:13 AM
To: Stacy Hollar
Subject: Re: Case # RZ16-05

I don't see anything in the request for a variance that says what the reason is for this motion. I did read in a few of the letters from residents that this is supposed to become a parking lot for the business across Burroughs St.

This concerns me for two reasons.

First, why would the City allow a business to open without adequate parking?

Second, why would the City allow and encourage possible intoxicated people to cross a very busy road near the top of a hill at all hours of the day?

This makes no sense to me at all. Personally I don't think this variance should be made. It certainly isn't in the best interest of the community, the motorists on Burroughs Street, or the patrons of the business.

From: Stacy Hollar <shollar@morgantownwv.gov>
To: Dave Lemley <dave121758@yahoo.com>
Sent: Friday, September 30, 2016 1:16 PM
Subject: RE: Case # RZ16-05

Mr. Lemley,

I have attached the Staff report that was presented to the Board in August and September.

Please let me know if you have further questions.

Respectfully,

Stacy Hollar
Executive Secretary
Development Services Department
304-284-7431

From: Dave Lemley [mailto:dave121758@yahoo.com]
Sent: Friday, September 30, 2016 1:02 PM
To: Stacy Hollar <shollar@morgantownwv.gov>
Subject: Case # RZ16-05

We received a letter about a proposed zoning change on Burroughs today. In the Project Description section it describes the property location and the change being requested from R-1 to either B-1 or B-2 but no description of a project. Doesn't a zoning change request have to have a description of what the owner is desiring to do with the property?

I would like to know why this request is being made and what is being planned for this property.

David A. Lemley
529 Burroughs St.
Morgantown, WV 26505

Stacy Hollar

From: Jessica Tuel <tueljessica@gmail.com>
Sent: Thursday, September 08, 2016 2:24 PM
To: Stacy Hollar
Subject: Zoning Petition Case No. RZ16-05

Ms. Hollar,

My name is Jessica Tuel and I am contacting you in regard to re-zoning case no. RZ16-05, filed by South Baptist Convention- Board of Trustees, for 519 Burroughs St, Tax Map 55, part of Parcel 33. I am a resident of 30 Vintner Pl, Morgantown, WV, 26505. I am opposed to and concerned about the proposed zoning change and reclassification of Parcel 33 from R-1 to B-1 or B-2. It is across the street from my home and will have significant negative effects to our home, street, and neighborhood. My husband and I chose to raise our three children at this location because we enjoyed the fact that it was residential, with minimal business activity. If this change is enacted, it will increase traffic on Burroughs St, which is not suitable for such, due to it's short length and blind hill with an already dangerous intersection at the corners of Munsey St and Eastern Ave. I urge the Planning Commission and Board of Zoning Appeals to consider the safety off all the families and children in this neighborhood and deny this zoning change. Moreover, the environmental impact of the loss of yet another tract of natural beauty cannot be understated. Please keep our residence residential.

Thank you for your time and consideration,
Jessica Tuel
30 Vintner Pl
Morgantown, WV. 26505
304-633-1892

Stacy Hollar

From: Alia Rai <raialia@yahoo.com>
Sent: Thursday, September 08, 2016 3:16 PM
To: Stacy Hollar
Subject: Zoning Poetition Case No. RZ16-05

Ms. Hollar,

My name is Alia Rai and I am contacting you in regard to re-zoning case no. RZ16-05, filed by South Baptist Convention- Board of Trustees, for 519 Burroughs St, Tax Map 55, part of Parcel 33. I am a resident of 22, Vintner Pl, Morgantown, WV, 26505. I am opposed to and concerned about the proposed zoning change and reclassification of Parcel 33 from R-1 to B-1 or B-2. It is across the street from my home and will have significant negative effects to our home, street, and neighborhood. My husband and I chose to raise our three children at this location because we enjoyed the fact that it was residential, with minimal business activity. If this change is enacted, it will increase traffic on Burroughs St, which is not suitable for such, due to it's short length and blind hill with an already dangerous intersection at the corners of Munsey St and Eastern Ave. I urge the Planning Commission and Board of Zoning Appeals to consider the safety off all the families and children in this neighborhood and deny this zoning change. Moreover, the environmental impact of the loss of yet another tract of natural beauty cannot be understated. Please keep our residence residential.

Thank you for your time and consideration,
Alia Rai
22 Vintner Place
Morgantown, WV. 26505

Sent from my iPhone

Stacy Hollar

From: Yuxin Liu <yux.liu@gmail.com>
Sent: Thursday, September 08, 2016 3:59 PM
To: Stacy Hollar
Cc: Samuel.Ameri@mail.wvu.edu; Mikylah McTeer; sverlind@wvu.edu; Vinod.Kulathumani@mail.wvu.edu; john.mcteer@mail.wvu.edu; lisa.verlinden@mail.wvu.edu; Lixin Shen
Subject: Rezoning Case RZ16-05 and MNS16-07

Dear Chair and Members of the Morgantown Planning Division,

As residents of 17 French Quarters Dr., we, are one of the closest and most immediately impacted by the re-zoning proposal being made by the South Baptist Convention with case number RZ16-05, in which the petitioner seeks to reclassify a portion of Parcel 33 from R-1, Single-Family Residential District to B-1, Neighborhood Business District or B-2, Service Business District.

We, as concerned French Quarter Drive residents, are opposed to the rezoning for several reasons in the following:

1. The proposed changes are significant and inappropriate, which will result in instability of our neighborhood with a dramatically increasing the commercial property in this area.

The petitioner seeks to subdivide Parcel 33 to create a new parcel on the westerly side, bordering Parcels 33.1, 33.2, & 34, with 80 feet of frontage along Burroughs Street and continuing to the rear of the property at the northerly rear boundary (French Quarter Drive Residential District). The area of the proposed re-zoning parcel is approximately **21,700 square feet, which takes 21% from the parent Parcel**, and it is reasonable to be considered as a large-scale development. We are concerning this significant change is inappropriate and will result in instability of our neighborhood with a dramatically increasing the commercial property in this area.

2. Lack of genuine neighborhood engagement and transparency.

While the property owner and developer had been advised to discuss the proposal with residents living within 200 feet of subject site along with the leadership of the Suncrest Neighborhood Association with contact information accordingly provided. However, none of our neighbors are aware of the petition until a letter sent from the City of Morgantown on August 23, 2016. This letter is the only written notice regarding these petitions we have received. We did not notice that any efforts from either Mr. Schaeffer or the Suncrest Neighborhood Association have been made by contact with us regarding this petition, if any. This explained why "*As of FRI, 05 AUG 2016, the Planning Division has received no communication in opposition of the proposed zoning map amendment.*" **We definitely oppose this rezoning proposal if we are aware this zoning map amendment.**

3. Flooding damage in the neighborhood was caused by the construction of the previous project of the Church.

We are concerning flooding potential from the proposed development: parking lot construction and paving. One home of our neighbors was flooding twice in 2009 and 2010. The flooding caused

damages to the property and leaded to a lawsuit. From the file of Case MNS16-07 (additional document for Case RZ16-05 petition), a letter from MUB was attached for the confirmation of the availability of the water, sanitary sewer, and storm service, however, the letter noted that "***Right-of-ways will be needed from neighboring properties to provide sanitary and storm sewer service to this property***", and also noted that "***we are unable to certify whether the depth/elevation and/or size of the existing MUB facilities are adequate to serve the proposed structure.***" The information provided from the MUB letter is not adequate as an evidence to indicate a well planning has been made and potential risks of flooding to the neighborhood area have been considered for prevention.

4. Privacy, Safety, Noise and other Nuisance are large concerns and dramatically changes due to the rezoning:

The hour for the Wine bar is till 10pm from Sunday to Thursday and is till midnight 12am on Friday and Saturday. In addition to the value of neighboring properties would be reduced, but damages in the form of noise, odor, and visual intrusion on peace and privacy would occur in varying degrees. In the available document, it seems that the only plan made by the developer is "to create a buffer on the northerly border with Parcel 32, with the buffer to extend 20' (feet) from the property line in a southerly direction toward Burroughs Street. The buffer will include plantings, at least some of which will have a minimum 10' (foot) height when planted." It is questionable that a buffer and plants can effectively prevent noise, odor, and visual intrusion. Again, this is the intention of the developer without any inputs from the surrounding residents.

5. Other business development and usage of the rezoning land is not clear. How do we prevent other business development, like a 5 story large building to be built on the land after rezoning?

Although the developer has mentioned that the parking lot would not result in the introduction of ***a new business***. Our concern is that once a R-1 to B-1/B-2 rezoning successful, will any future development of the re-zoning area, such as building construction, be monitored or regulated by the Planning Division? The intention of paving for the parking lot indicated in the letter does not process legal validity.

6. Neighborhood property values diminution.

In considering of reasons mentioned above, the neighborhood environment change will result in a diminution of **Neighborhood property values.**

We respectfully ask for no zoning change on this parcel because 1) there is lack of transparency and communication by the property owner to the surrounding residents; 2) Findings are not supported by the evidence; 3) the imposed conditions and planning available from the document do not protect us from the negative impacts of this re-zoning request and can cause unreasonable detriment to us as well as our neighbors and our neighborhood; and 4) the construction of re-zoning area will *significantly alter the nature and character of the* neighborhood areas.

Sincerely,

Lixin Shen and Yuxin Liu

17 French Quarters Drive

Morgantown, West Virginia 26505

MEMO TO FILE

Case No. RZ16-05 / South Baptist Convention / 51 Burroughs Street

TUE, 04 OCT 2016

Ms. Rose Hagedorn called the Planning Office in opposition to Case No. RZ16-05. Ms. Hagedorn stated she has lived at 528 Burroughs Street since 1953. She believes reclassifying the subject realty as requested will increase traffic along Burroughs Street, which already has too much traffic and high speeds. She has difficulties getting in and out of her driveway onto Burroughs Street now given traffic congestion and speeds. She tells her visitors not to come to her house after 2 p.m. because it is dangerous to get in and out of her driveway due to traffic congestion and speeds. She is concerned the proposed zoning map amendment will only worsen existing traffic conditions. Ms. Hagedorn asked Staff to communicate her concerns as she does not write well, does not use email, and will be unable to attend the Planning Commission's 13 OCT 2016 hearing. Ms. Hagedorn's phone number is 304-376-7767.