

ORDINANCE NO. 2044

AN ORDINANCE AMENDING ARTICLE X OF THE CITY CODE

BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, that Article X of the City Code is hereby adding Section 129-50, and amending Sections 129-151 and 129-153 as follows:

Section 1.

“ARTICLE X. – PROFESSIONAL DISTRICT

Sec. 129-150. – Intent and purpose.

The Professional District is intended to provide appropriate-scaled buildings for professional offices. The district may be applied to sites which can establish an effective transition to adjacent residential neighborhoods.

Sec. 129-151. – Permitted uses.

(a) The uses permitted in Professional Districts shall be as follows:

1. Professional offices
2. Accessory structures customarily incidental to the uses permitted by this section 129-151.

(b) Conditions on Permitted Uses. All uses in the Professional District shall be conditional uses and shall only be permitted with prior written approval of the city council. Conditional uses are uses which may be acceptable within the Professional District, based on specific circumstances and mitigating site design provisions that would eliminate the potential for these uses to otherwise have negative impacts on adjacent property or other uses in the vicinity. Therefore, they require special review to better determine if the circumstances and design provisions for the proposed use, when applied to a specific site, are sufficient to mitigate any potential negative impacts. Proposed conditional uses will be reviewed as to the following.

- i. Whether the use would disparately impact public parking in the area;
- ii. Whether vehicular or pedestrian circulation would be adversely impacted by the use;
- iii. Whether the use would adversely impact surrounding existing uses;
- iv. Whether the hours of operation or peak traffic times would adversely impact the surrounding properties and public streets.
- v. Whether sufficient landscape buffers exist or are proposed along any adjoining residential properties;
- vi. Whether existing or proposed exterior lighting is sufficiently designed so as not to spill onto adjoining properties.

(c) The city council may require the party applying for the approval of such conditional use to furnish to the city council any or all of the following information and

2044

documents and such additional information and documents which the city council may consider necessary or helpful in deciding whether to approve such requested conditional use:

1. A survey of the property;
2. A topographical survey of the property;
3. A site plan for the property, showing the location, size, height and elevation of all existing and proposed improvements, the location, number and size of parking spaces and such other information about the existing and proposed improvements and the development plan for the property which the planning commission considers reasonably necessary for its consideration of the request for approval;
4. Plans for all proposed improvements;
5. The type of construction materials to be used in the proposed improvements;
6. A traffic study with respect to the traffic expected to be generated by the use;
7. Information concerning outdoor lighting;
8. The hours of operation of the activities proposed to be conducted on the property;
9. Information concerning the visibility of the proposed improvements from adjacent property, buildings and public streets;
10. Information concerning the proposed screening of the proposed improvements by fences, walls, berms, shrubs, trees or other means;
11. Whether any trees or other vegetation which would serve to screen the proposed improvements and the use thereof from adjacent property will be removed from the property; and
12. Information concerning vehicles, equipment and materials which may be stored on the property or within the improvements.

All materials and information required to be submitted must be submitted to the zoning officer at least 24 days prior to consideration of any application for such conditional use.

- (d) The city council shall hold a public hearing for the consideration of any such conditional use, after giving at least ten days' notice thereof. For purposes of this section, written notice of public hearings held by the city council shall be sent, by United States mail, to all property owners, any portion of whose property lies within 500 feet of any portion of the parcel included in a request for conditional use consideration. For the purpose of such notice, the owner of a parcel shall be considered to be the person who is shown as the owner of such parcel according to the records of the tax assessor of Jefferson County, Alabama. If a public hearing is continued or postponed during the meeting of the city council during which such hearing was held or was scheduled to have been held, no notice of such continued or postponed hearing need be given.

- (e) Any use established and permitted by right in the Professional District prior to April 23, 2019 shall be permitted to continue in the same location without regard to these provisions, provided that such use is not expanded. However, should such use be expanded, such expansion shall require prior written approval of the city council per subsection (b) of this section.
- (f) A Professional Office use established on or after April 23, 2019 and permitted after city council review and approval under subsection (b) of this section may be replaced by another Professional Office use if the zoning officer determines that there are non-material changes for the proposed professional use utilizing the criteria for review outlined in subsection (b). In the absence of such a determination, city council review of the replacement use shall be required under subsection (b).

Sec. 129-153. – Additional requirements and provisions.

- (a) Service yards. On any parcel on which a professional building is hereafter built, the construction of which is started after the effective date of this chapter, there shall be provided a service yard, the size of which shall be sufficient to serve the needs of the occupants of the building, and which shall be located at the rear of such office building. The service yard shall have access to a street, alley or driveway and shall provide adequate accommodations for the handling of waste and garbage and for the loading and unloading of vehicles. The service yard shall be paved with asphalt or concrete and shall be enclosed with an opaque wall or fence of permanent construction, at least 6 feet, but no more than 8 feet, in height, and designed and constructed to conceal the service yard from visibility from outside such wall or fence. The entrance to the service yard shall be screened by a gate constructed of an opaque material, which gate must be at least 6 feet, but not more than 8 feet, in height. No part of the service yard may be used to satisfy the offstreet parking requirements of this article.
 - (b) Building setbacks. Any professional office, the construction of which is started after the effective date, shall not be located closer to the front lot line than 35 feet, or the front line of the principal structure on the adjacent property located in a residential district, whichever is greater.”
2. **Repealer.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.
 3. **Severability.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

4. **Effective Date.** This ordinance shall become effective immediately upon adoption and publication as provided by law.

ADOPTED: This 23rd day of April, 2019.



Council President

APPROVED: This 23rd day of April, 2019.



Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, at its meeting held on this 23rd day of April, 2019, as same appears in the minutes of record of said meeting, and published by posting copies thereof on April 24, 2019, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street
Overton Park, 3020 Overton Road

Gilchrist Pharmacy, 2805 Cahaba Road
Cahaba River Walk, 3503 Overton Road



City Clerk

Proposed Amendment to the Professional District (Article X)

Recent Background

On March 25, the city council held a public hearing on the proposed amendment to the professional district, and voted to carry it over the its meeting of April 23, 2019. The city council requested that language be added to the amendment to require notification of property owners within a 500-foot radius of any property requesting approval of a conditional use. Language was also added as to the type of materials that may be submitted with such a conditional use request, and what the submittal deadline would be.

On February 25, 2019, the city council held a public hearing on the proposed amendment to the professional district, and voted to carry it over the its meeting of March 25, 2019. Minor changes were made to the draft amendment, which was re-noticed for the meeting of March 25, 2019.

The planning commission, on January 7, 2019, and February 4, 2019 held public hearings on a pending rezoning proposal of the Knesseth Israel property on Overton Road, which has been further postponed the planning commission meeting of May 6, 2019. The proposal is to rezone the property from Res-A district to Professional district.

The rezoning proposal involves the conversion of the existing KI facility to an outpatient plastic surgery practice; a professional office for physicians specializing in plastic surgery – not to be used as a clinic. Proposed hours of operation are from 7:30a-5:00p M-F.

While it is noted that there is a good deal of community opposition to the rezoning case, some members of the planning commission (and some of the neighboring residents) expressed concern, perhaps not so much about the proposed use, itself, but about potential future uses allowed in the professional district, should the property be rezoned and the applicant vacate the premises in the future.

Proposed Amendment to the Professional District

The on-going rezoning case at KI has shed some light on the professional district regulations, and caused staff and the planning commission to take a closer look at these regulations. A 2-pronged approach to revisions to the professional district regulations has been recommended for approval by the planning commission:

Prong #1: Eliminate the antiquated uses (1. and 2.) noted below.

In addition to professional offices, the district regulations currently allow for:

1. Private schools for the teaching of dance, music and other courses, and;
2. The assembling of frames.

Both of these uses were added to the professional district to accommodate previous businesses which were located in the professional district; these are no longer located on any lot zoned professional district in the city.

The idea behind allowing professional offices in a zoning category separate from the local business district is to provide transitional areas between the villages and the surrounding residential areas. Private schools and the assembling of frames don't necessarily lend themselves to transitional characteristics, and so it is proposed to remove these uses from the professional district regulations.

Prong #2: Make the remaining permitted uses (professional offices) subject to the city council conditional use process going forward.

The ordinance is proposed to be amended such that any properties zoned to the professional district after the effective date of the amendment would be subject to city council approval of a conditional use for any proposed professional office use in said district. Conditional use approval would ensure the implementation of appropriate measures to mitigate potential negative effects on adjoining properties (such as landscape buffers, hours of operation, parking, lighting restrictions, etc.) This is similar to the process outlined for conditional uses in the local business district.

As drafted, properties that are currently zoned professional district would not be subject to the conditional use process. There are currently 15 properties that fall into this zoning category in the city (see attached maps for locations):

Crestline Village: 6 lots, all in transitional locations

English Village: 6 lots, all in transitional locations

Overton Village: 2 lots, in transitional locations

Hwy 280: 1 lot in transitional location

None of the businesses on these lots has changed in the past 11 years.

City Council Action

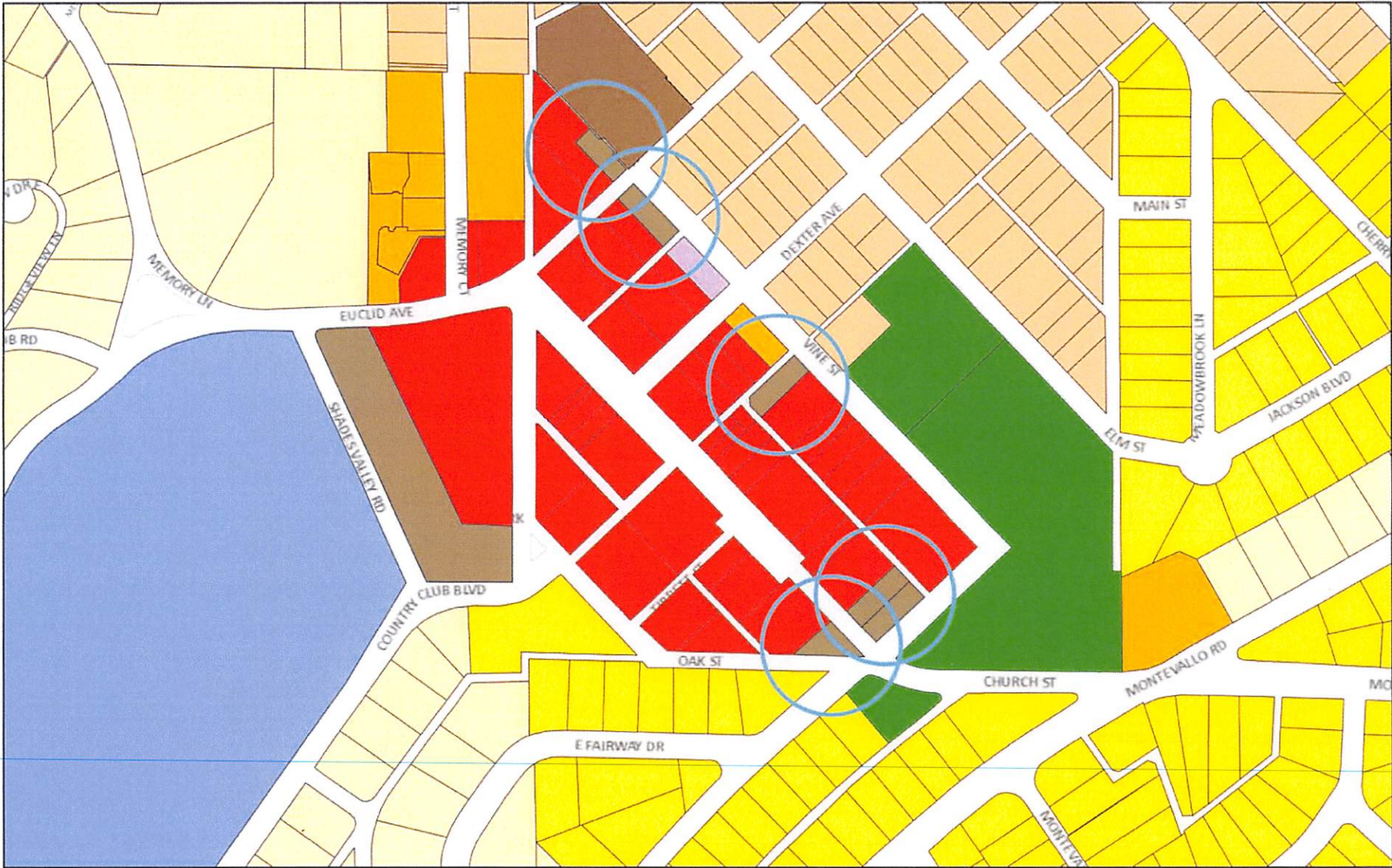
If it be the wish of the city council, it could approve the changes to the professional district as drafted, approve one of the two "prongs," reject the proposed changes in its entirety, or recommend revisions to the changes.

Relationship of the Proposed Amendment to the KI Rezoning Case

Should the council approve Prong-2 (conditional use process), the KI rezoning case would be subject to the new regulations; and the planning commission would carry on with its review of the case and make a recommendation to the city council on the rezoning (the applicant for the rezoning case requested at the February, March and April PC meetings that the case be carried over until such a time that the city council took action on the proposed revisions to the professional district).

It is important to note that any city council approval of the proposed professional district revisions would in no way bind the city council to an approval of a future rezoning request of the KI property to the professional district.

Crestline Professional Lots



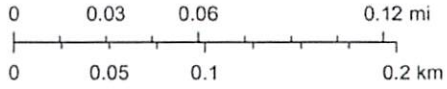
1/23/2019, 7:56:36 AM

1:4,514

Tax_Parcel

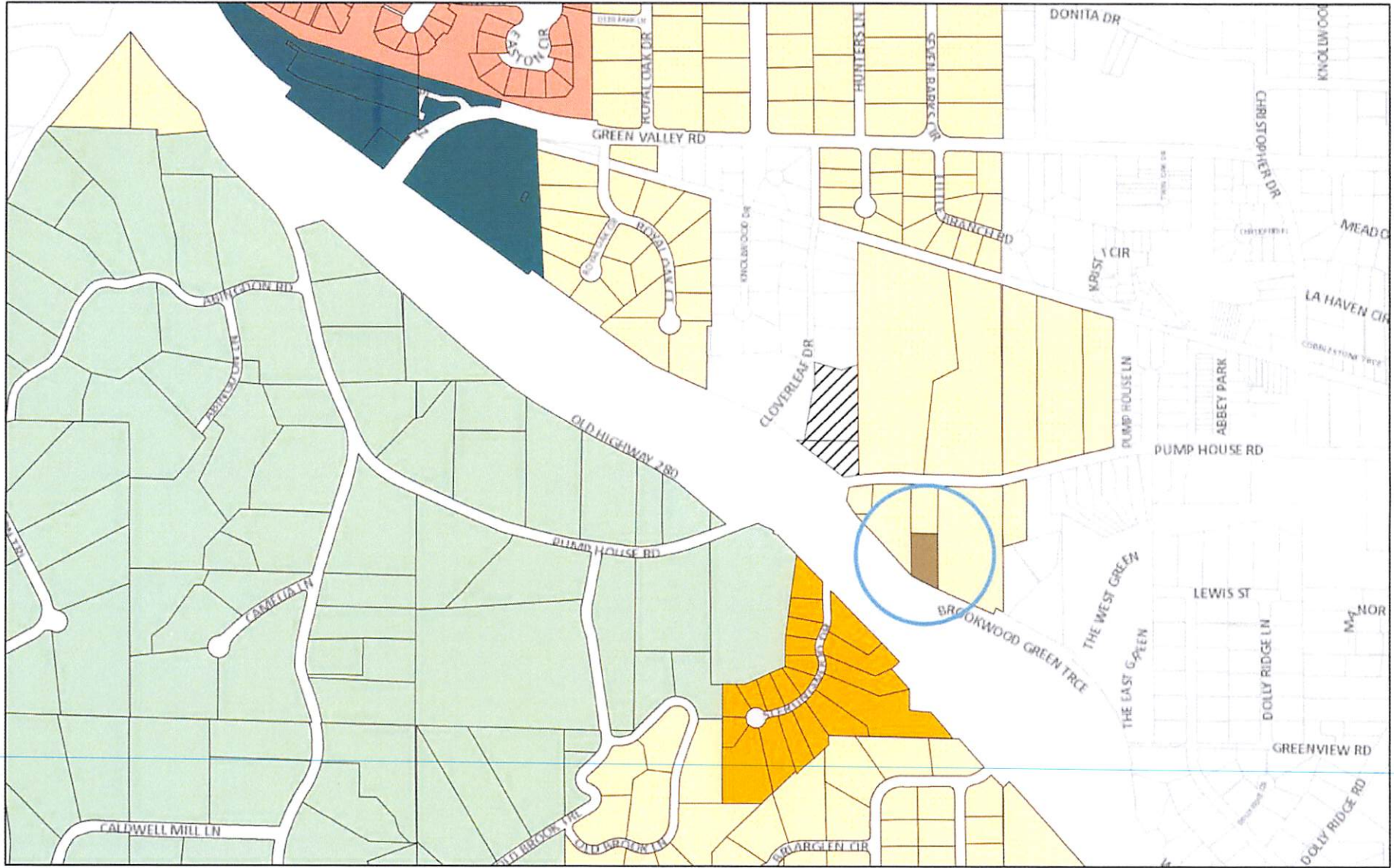
0

- Professional District
- Residence C District
- Recreation District
- Residence A District
- Residence D District
- Rec-2
- Local Business District
- Residence B District
- Residence E District
- Vine Street Transitional



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA | Hunter Simmons |
 Web AppBuilder for ArcGIS

Hwy 280 Professional Lot



1/23/2019, 8:09:10 AM

Tax_Parcels

0

Clustered Residential

Estate Residence District

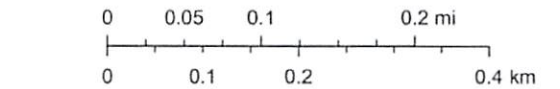
MXD

Professional District

PUD

Residence A District

Residence D District



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS.

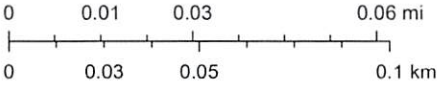
Overton Village Professional Lots



1/23/2019, 2:28:13 PM

1:2,257

- SiteAddressPoints
- LotLines
- BuildingFootprints
- Tax_Parcels
- 0
- Local Business District
- MXD
- Professional District
- Residence A District
- Residence C District



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS,

Web AppBuilder for ArcGIS
Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA | Hunter Simmons |



Steve Boone <boones@mtnbrook.org>

Fwd: Knesseth Israel Rezoning

1 message

Dana Hazen <hazend@mtnbrook.org>

Tue, Apr 23, 2019 at 2:25 PM

To: Virginia Smith <wood967@aol.com>, Billy Pritchard <BillyP@pm-j.com>, Philip Black <Phil@bgrouparch.com>, Alice Womack <alicewomack14@gmail.com>, Lloyd Shelton <lshelton@go2cpa.com>, Stewart Welch <Stewart@welchgroup.com>, Steve Boone <boones@mtnbrook.org>

----- Forwarded message -----

From: **Sreenan, Catherine M** <ksreenan@uab.edu>

Date: Tue, Apr 23, 2019 at 9:52 AM

Subject: RE: Knesseth Israel Rezoning

To: gastons@mtnbrook.org <gastons@mtnbrook.org>, hazend@mtnbrook.org <hazend@mtnbrook.org>, reidt@mtnbrook.org <reidt@mtnbrook.org>, simmonsh@mtnbrook.org <simmonsh@mtnbrook.org>

Dear Sirs and Madams:

I am writing to express my opposing position on the Proposed Amendment to Article X of the Mountain Brook City Code ("Amendment"), which would allow rezoning of the Knesseth Israel Synagogue property to professional/commercial office zoning within a residential neighborhood. Our neighborhood and property values would be negatively impacted by the approval of this amendment.

Please forward my message to the Planning Board Members, Mayor and the City Council Members:

1. The Amendment should not be approved *as drafted*.
2. The City Council should delay a vote on the Amendment until it is further revised to address the following concerns:
 - a. Professional Districts are designed as a transition from residential to business. The Amendment should codify that intent by stating that Professional Districts must border another business district (the "Contiguity Requirement"). This will prevent Professional Districts from being considered within a neighborhood, or between residential uses. In this manner these districts will be limited, as designed, to transition between residential and business uses.
 - b. In the event a Professional District exists currently or is created through rezoning, and the use subsequently changes in any manner, the Amendment gives the zoning staff alone the power, without public notice of any kind, to determine whether such change qualifies as "expanded" (129-151(c)) or "non-material" (129-151(d)) and then, upon the unilateral determination that it is not "expanded" or "material" may allow the new use. If that decision is made, and then appealed, not only the applicant but also the appellant will look to the City for a remedy. The Amendment should discourage that result by requiring notice and an opportunity to be heard prior to approval of *any* (i) change, modification, expansion in use or (ii) change in ownership of a property within a Professional District ("Change in Use Notice Requirement").

Thank you.

Kate Sreenan

Resident – Crosby Dr.

--

Dana O. Hazen, MPA, AICP
Director of Planning, Building & Sustainability

205/802-3816 phone
205/879-6913 fax
City of Mountain Brook
56 Church Street
Mountain Brook, AL 35213



SYLVION S. MOSS, ESQ.
LAW WORKS, LLC
THE LANDMARK CENTER, SUITE 600
2100 FIRST AVENUE NORTH
BIRMINGHAM, ALABAMA 35203
T (205) 328-9445
F (800) 856-9028
WWW.REDMOUNTAINLAWGROUP.COM
SYLVION@LAWWORKSLLC.COM

April 22, 2019

Via Email to stewart@welchgroup.com

The Honorable Steward H. Welch III
Mayor, City of Mountain Brook

Via Email to hazend@mtnbrook.org

Virginia C. Smith
Council President, City of Mountain Brook

Via Email to hazend@mtnbrook.org

Alice Womack
Councilmember, City of Mountain Brook

Via Email to hazend@mtnbrook.org

Philip Black
Councilmember, City of Mountain Brook

Via Email to hazend@mtnbrook.org

Billy Pritchard
Councilmember, City of Mountain Brook

Via Email to hazend@mtnbrook.org

Lloyd Shelton
Councilmember, City of Mountain Brook

Via Email to hazend@mtnbrook.org

Dana O. Hazen, MPA, AICP

Via Email to gastons@mtnbrook.org

Sam Gaston, City Manager

Re: Proposed Amendment to Article X of the Mountain Brook City Code ("Amendment")
Rezoning Application Number P-19-02 ("KI Rezoning Application")

Ladies and Gentlemen:

This firm has been retained by Mr. Raheel Farough in connection with the above-referenced Amendment and the KI Rezoning Application. This letter reflects and represents the position and opinion not only of Mr. Farough, but of a sizeable group of neighbors in the Overton Road area of Mountain Brook, specifically in the vicinity of the Kneseth Israel Synagogue property (collectively, the "Overton Community"), who have authorized Mr. Farough to represent their concerns.

The Amendment is set for public hearing tomorrow, April 23, 2019, and the purpose of this letter is to express the position of Mr. Farough and the Overton Community as follows:

1. The Amendment should not be approved *as drafted*.
2. The City Council should delay a vote on the Amendment until it is further revised to address the following concerns:
 - a. Professional Districts are designed as a transition from residential to business. The Amendment should codify that intent by stating that Professional Districts must border another business district (the "Contiguity Requirement"). This will prevent Professional Districts from being considered within a neighborhood, or between residential uses. In this manner these districts will be limited, as designed, to transition between residential and business uses.
 - b. In the event a Professional District exists currently or is created through rezoning, and the use subsequently changes in any manner, the Amendment gives the zoning staff alone the power, without public notice of any kind, to determine whether such change qualifies as "expanded" (129-151(c)) or "non-material" (129-151(d)) and then, upon the unilateral determination that it is not "expanded" or "material" may allow the new use. If that decision is made, and then appealed, not only the applicant but also the appellant will look to the City for a remedy. The Amendment should discourage that result by requiring notice and an opportunity to be heard prior to approval of *any* (i) change, modification, expansion in use or (ii) change in ownership of a property within a Professional District ("Change in Use Notice Requirement").

I, along with other members of the Overton Community, will discuss further the rationale behind these requests at the Public Hearing tomorrow. In the interim I hope this letter will provide sufficient basis for the Mayor, Council Members, the Planning Director, and City Manager to incorporate the Contiguity and Change in Use Notice Requirements in the Amendment prior to that time. I will attend the pre-meeting tomorrow, should you have specific questions. Please email me at sylvion@lawworksllc.com or call 205.421.9077 if you need additional information or would like to discuss these matters.

Best Regards,



Sylvion S. Moss

/ssm

c: Whit Colvin, Esq. (via email only to whitcolvin@bishopcolvin.com)



Steve Boone <boones@mtnbrook.org>

Fwd: Proposed Amendment to Article X of the Mountain Brook City Code

1 message

Dana Hazen <hazend@mtnbrook.org>
To: Steve Boone <boones@mtnbrook.org>

Tue, Apr 23, 2019 at 9:52 AM

----- Forwarded message -----

From: **Collins Wise** <collinswise@hotmail.com>

Date: Tue, Apr 23, 2019 at 7:25 AM

Subject: Proposed Amendment to Article X of the Mountain Brook City Code

To: gastons@mtnbrook.org <gastons@mtnbrook.org>, hazend@mtnbrook.org <hazend@mtnbrook.org>, reidt@mtnbrook.org <reidt@mtnbrook.org>, simmonsh@mtnbrook.org <simmonsh@mtnbrook.org>

I am writing to express my position on the Proposed Amendment to Article X of the Mountain Brook City Code ("Amendment"). Please forward my message to the Planning Board Members, Mayor and the City Council Members.

1. The Amendment should not be approved *as drafted*.
2. The City Council should delay a vote on the Amendment until it is further revised to address the following concerns:
 - a. Professional Districts are designed as a transition from residential to business. The Amendment should codify that intent by stating that Professional Districts must border another business district (the "Contiguity Requirement"). This will prevent Professional Districts from being considered within a neighborhood, or between residential uses. In this manner these districts will be limited, as designed, to transition between residential and business uses.
 - b. In the event a Professional District exists currently or is created through rezoning, and the use subsequently changes in any manner, the Amendment gives the zoning staff alone the power, without public notice of any kind, to determine whether such change qualifies as "expanded" (129-151(c)) or "non-material" (129-151(d)) and then, upon the unilateral determination that it is not "expanded" or "material" may allow the new use. If that decision is made, and then appealed, not only the applicant but also the appellant will look to the City for a remedy. The Amendment should discourage that result by requiring notice and an opportunity to be heard prior to approval of *any* (i) change, modification, expansion in use or (ii) change in ownership of a property within a Professional District ("Change in Use Notice Requirement").

Thank you,
Joseph Wise

--

Dana O. Hazen, MPA, AICP
Director of Planning, Building & Sustainability

205/802-3816 phone
205/879-6913 fax
City of Mountain Brook
56 Church Street
Mountain Brook, AL 35213