



PLANNER'S REPORT

TO: Adrienne Senter
FROM: Lynn Patterson
RE: Administrative Appeal for 612 College Street – Gateway Christian Academy
DATE: June 20, 2019

BACKGROUND

On April 26, 2019, the City of Hapeville received an application from Gateway Christian Academy to operate a school in a portion of an existing church at 612 College Street. The property is zoned RMU, Residential Mixed-Use. Schools are not listed as a permitted use of the RMU zone, per Sec. 93-11.5-3 – *Permitted Uses*, nor are they listed as a nonpermitted use, per Sec. 93-11.5-4 – *Nonpermitted Uses*. Per Sec. 93-1-3 – *Application of Regulations*, the “Building Official” shall permit a non-listed use only if it is “substantially like” a use permitted in the zone, as printed below:

Sec. 93-1-3. - Application of regulations.

- (a) *Use*. Except as hereinafter provided, no building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered except in conformity with the use regulations herein specified for the zone in which it is located.
- (1) Where a use is applied for in a zone and such use is not listed in the list of specifically permitted uses allowed per zone, the building official may exercise his/her discretion to:
- a. Deny the use as unpermitted in accordance with subsection (a)(1) above and the list of permitted uses per zone; or
 - b. Allow the use if such use is substantially like a use which is already listed in the permitted use section per zone.

Staff determined schools were not “substantially like” any permitted uses in RMU, and further, that schools were instead listed as a permitted use in the adjacent U-V, Urban Village district. The application was therefore denied.

Gateway Christian Academy has filed an Administrative Appeal Application to challenge the decision of the Building Official. To determine if the Building Official has made an error in their decision, Sec. 93-1-3(a)(4) instructs the Board of Appeals to consider “whether or not the building official erred in his decision based upon the purposes of the zone as stated in the ordinance and the consistency of the proposed use as compared to other allowed uses.” To assist this consideration, the Board may consider the criteria used by the Building Official in making their determination, which are presented in this report.

CODE

ARTICLE 1. - TITLE, DEFINITIONS AND APPLICATION OF REGULATIONS

Sec. 93-1-3. - Application of regulations.

- (a) *Use.* Except as hereinafter provided, no building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered except in conformity with the use regulations herein specified for the zone in which it is located.
- (4) A decision of the building official to deny a previously nonlisted use is appealable to the board of appeals pursuant to subsection 87-3-3(a)(1). The standard of review used by the board of appeals shall be a determination of whether or not the building official erred in his decision based upon the purposes of the zone as stated in the ordinance and the consistency of the proposed use as compared to other allowed uses.

ARTICLE 11.5. - RMU ZONE (RESIDENTIAL MIXED USE)

Sec. 93-11.5-1. - Intent.

The RMU district is established in order to:

- (1) Ensure development that is consistent with neo-traditional planning practices, which are often defined by pedestrian-oriented buildings, interconnected streets, a mix of uses and housing types, and a compact walkable scale.
- (2) Help create a compact, dense, and distinguishable core area;
- (3) Provide for an urban form allowing mid-rise structures;
- (4) Encourage multiple uses within the same structure; and
- (5) Include street oriented activity and pedestrian amenities at the street level of structures.

FINDINGS

ARTICLE 1. - TITLE, DEFINITIONS AND APPLICATION OF REGULATIONS

Sec. 93-1-3. - Application of regulations.

- (a) *Use.* Except as hereinafter provided, no building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered except in conformity with the use regulations herein specified for the zone in which it is located.

...

- (2) The building official shall consider the following factors to determine substantial similarities between the nonpermitted uses and permitted uses in occupations, residences, types of businesses, and other uses by applying the following standard, based upon the following considerations:
- a. The proposed use generates the same or similar amounts in type of vehicular and pedestrian traffic as permitted uses in the desired zone;

Schools have the potential to generate substantial increases in traffic at the beginning and end of the school day. However, the proposed school is small, with only 60 students and 13 employees. Further, it operates with limited hours as students are only on-site part-time. It is unlikely the proposed use will generate traffic above other

permitted uses in the district.

- b. The proposed use is aesthetically similar in design, construction, and street facade presentation as permitted uses in the desired zone;

Schools typically have a distinct street-facing presentation that separates them from other permitted uses. School campuses can be large facilities with extended stretches of featureless enfronting façade, creating an environment that does not encourage the walkable environments identified in the stated intent of the RMU zone. However, the proposed school would reside in an existing church, which is a permitted use in the RMU zone.

- c. The proposed use is no more taxing on city services and infrastructure than permitted uses in the desired zone;

Schools have the potential to be large facilities and can place higher demands on city infrastructure. However, the proposed school will reside in an existing church and would not further impact city services or infrastructure.

- d. The proposed use provides the same or similar activity, work, or business as permitted uses in the desired zone;

Even with the limited size and small scope of the services provided, the business would still operate using a business model where individuals gather for group instruction multiple times per week, which had been interpreted as not substantially like any activity, work, or business permitted in the RMU zone.

- e. The proposed use comports with the listed purposes in the intent section of the desired zone;

The intent of the RMU zone is to create a distinguishable urban core area for the City by encouraging development defined by walkability, density, and a distinct sense of place. Schools do not always encourage density or walkability like the conditions desired in the zone and are therefore permitted in other lower density zones in the city. However, the proposed school would be entirely contained within an existing church, which is a permitted use and conforms to the intent of the RMU zone. Further, it would provide for mixed uses within one property, which is another stated intent of the RMU zone. In addition, it utilizes the existing infrastructure – Church and parking lot, during times when the property would typically be vacant.

- f. The proposed use will not introduce activity at times of the day or week that are incompatible with normal hours associated with permitted uses in the desired zone; and

The proposed use would operate during normal business hours and would be compatible with permitted uses in the desired zone.

- g. The proposed use is consistent with the goals and objectives of the comprehensive plan.

The City's 2017 Comprehensive Plan/LCI Study Update identifies the property as being located in the Eastern Gateway Node. The goal of this node is to "provide for a walkable, urban environment, with buildings fronting the street, improved streetscapes, and a mix of uses, including higher density residential, office, hotel, and retail." These goals are reflected in the intent and regulations of the RMU zone, and the same comments apply.

RECOMMENDATION

Schools are not a permitted use in the RMU zone as many typical schools do not contribute to the density and walkability desired in the district. Schools are permitted in U-V, a neighboring district with less strict density requirements. This was the basis of the decision to deny the proposed use by the Building Official, who must operate within the guidance provided by the code. The information provided by the Applicant suggests the school will operate as an accessory to the First Baptist Church, operating out of spare rooms in the existing facility and providing educational services to a limited number of students. In practice, due to its scale and location within an existing church, the proposed school will likely not negatively impact the surrounding area or substantially hinder the objectives of the district.

