

**CITY-COUNTY PLANNING BOARD  
STAFF REPORT**

PETITION INFORMATION	
<b>Docket #</b>	W-3331
<b>Staff</b>	<a href="#">Gary Roberts, Jr. AICP</a>
<b>Petitioner(s)</b>	Stephen Craver, Trustee for the Trust of Zula Veigh Craver
<b>Owner(s)</b>	Same
<b>Subject Property</b>	PIN#s 6833-28-5349 and 6833-28-6412
<b>Address</b>	300 West Clemmons ville Road
<b>Type of Request</b>	Special use rezoning from RS9 to GB-S
<b>Proposal</b>	<p>The petitioner is requesting to amend the Official Zoning Maps for the subject property <b>from</b> RS9 (Residential, Single Family – 9,000 sf minimum lot size) <b>to</b> GB-S (General Business – special use zoning). The petitioner is requesting the following use:</p> <ul style="list-style-type: none"> <li>• Motor Vehicle, Repair and Maintenance</li> </ul>
<b>Neighborhood Contact/Meeting</b>	<p>According to the buyer of the subject property, Waqas Azam: “Mr. Azam held a community meeting at the Georgia Taylor Community Center for the property located on 300 West Clemmons ville Road on Tuesday, April 25, 2017 at 6pm. Mr. Azam sent out a flyer to every member within a five-hundred (500) foot radius. Mrs. Highsmith (President of the Konnoak Hills Neighborhood Association) was contacted to post the flyer on social media to encourage members of the community to go out and voice their opinion. Ten members were present at the meeting. Three voted yes, six voted no, and two did not vote. Mrs. Highsmith, was concerned with the aesthetic of the property on 300 West Clemmons ville Road. Azam Properties understands that the community is concerned that an auto shop is not aesthetically pleasing to the eye, but Mrs. Highsmith did understand that a vacant and unattended property is less appealing than an auto repair shop. The neighborhood watch was very concerned about the increase of criminal activity on the property. Mr. Azam assured them that the properties owned by Mr. Azam all have security systems that record in HD for up to six (6) months. Mr. Azam also let them know that his security systems have helped solve three (3) robberies, and helped determine the fault of two (2) automobile accidents. Attached, you will find a copy of the flier (Attachment B) and the sign in sheet (Attachment C). If you have any questions, please do not hesitate to give me a call.”</p>
<b>Zoning District Purpose Statement</b>	<p>The GB District is primarily intended to accommodate a wide range of retail, service, and office uses located along thoroughfares in areas which have developed with minimal front setbacks. However, the district is not intended to encourage or accommodate strip commercial development. The district would accommodate destination retail and service uses, characterized by either a larger single business use or the consolidation of numerous uses in a building or planned development, with consolidated access. This district is intended for application in GMAs 1, 2 and 3 and Metro Activity Centers.</p>

<b>Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(R)</b>	<b>(R)(1) - Is the proposal consistent with the purpose statement(s) of the requested zoning district(s)?</b>		
	Yes, the request would facilitate the reuse of a commercial site which is located on a relatively small parcel within the Urban Neighborhoods GMA.		
<b>GENERAL SITE INFORMATION</b>			
<b>Location</b>	Southwest corner of Clemmons ville Road and Konnoak Drive		
<b>Jurisdiction</b>	City of Winston-Salem		
<b>Ward(s)</b>	Southeast		
<b>Site Acreage</b>	± .48 acre		
<b>Current Land Use</b>	The site is currently developed with a 1,377 square foot one story building which is now unoccupied and was formerly used as an auto repair garage with gasoline sales.		
<b>Surrounding Property Zoning and Use</b>	<b>Direction</b>	<b>Zoning District</b>	<b>Use</b>
	North	RS9	Single family homes
	East	RS9	Single family homes
	South	RS9	Single family homes
	West	RS9	Single family homes
<b>Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(R)</b>	<b>(R)(2) - Is/are the use(s) permitted under the proposed classification/request compatible with uses permitted on other properties in the vicinity?</b>		
	The proposed use of Motor Vehicle, Repair and Maintenance is an intense use which is typically not compatible with single family homes. However, the corner lot nature of this site along with its relatively modest size, and the fact that it was previously used for this use, somewhat lessens the potential impacts of this use on the surrounding area.		
<b>Physical Characteristics</b>	The developed site is essentially flat and has one mature tree located in the southwestern corner of the site. This tree is shown as to remain on the proposed site plan.		
<b>Proximity to Water and Sewer</b>	Public water and sewer are available to the site.		
<b>Stormwater/ Drainage</b>	No known issues.		
<b>Watershed and Overlay Districts</b>	The site is not located within a water supply watershed.		
<b>Analysis of General Site Information</b>	The subject property is a corner lot with the majority of the site having been formerly used as an auto repair garage with gasoline sales. The underground fuel storage tanks have been removed and the site is being monitored for remaining soil contamination. Otherwise, the site appears to have no development constraints such as steep slopes, designated floodplains, or watersheds.		

SITE ACCESS AND TRANSPORTATION INFORMATION				
Street Name	Classification	Frontage	Average Daily Trip Count	Capacity at Level of Service D
Clemmonsville Road	Major Thoroughfare	160'	14,000	15,800
Konnoak Drive	Collector Street	126'	2,300	NA
Proposed Access Point(s)	The site will continue to be accessed from both Clemmonsville Road and Konnoak Drive.			
Trip Generation - Existing/Proposed	<u>Existing Zoning: RS9</u> .48 acre x 43,560sf / 9,000 = 2 units x 9.57 (Single Family Residential trip rate) = 19 Trips per Day.  <u>Proposed Zoning: GB-S</u> Two garage bays x 40 trips per bay (Quick Lubrication Vehicle Shop trip rate) = 80 Trips per Day.			
Sidewalks	Sidewalks are currently located along Clemmonsville Road and they will be required along the subject property frontage of Konnoak Drive.			
Transit	Route 101 runs along Clemmonsville Road.			
Analysis of Site Access and Transportation Information	The subject property is located at the intersection of a major thoroughfare which has extra capacity and a collector street. The site plan shows continued access onto both streets. The area is also served with transit and sidewalks are located along Clemmonsville Road.			
CONFORMITY TO PLANS AND PLANNING ISSUES				
Legacy 2030 Growth Management Area	Growth Management Area 2 - Urban Neighborhoods Relevant			
Relevant Legacy 2030 Recommendations	<ul style="list-style-type: none"><li>Encourage redevelopment and reuse of existing sites and buildings that is compatible and complementary with the surrounding area.</li><li>Promote quality design so that infill does not negatively impact surrounding development.</li></ul>			
Relevant Area Plan(s)	South Suburban Area Plan (2011). The South Suburban Area Plan Update is currently underway.			
Area Plan Recommendations	<ul style="list-style-type: none"><li>The South Suburban Area Plan (2011) recommends commercial use for the subject property. Specific recommendations include: rezone to a limited commercial or office zoning district, such as LB, NB, LO, or NO. Expansion of nonresidential zoning into adjacent residential parcels is not recommended. The Draft South Suburban Area Plan Update has essentially the same recommendation but with the nuance that the portion of the site which was previously used for commercial purposes, be rezoned to the least intensive district which would accommodate the previous use. The previous use was an auto repair garage with gasoline sales.</li></ul>			

Site Located Along Growth Corridor?	The site is not located along a growth corridor.					
Site Located within Activity Center?	The site is not located within an activity center.					
Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(R)	(R)(3) - Have changing conditions substantially affected the area in the petition?					
	No					
	(R)(4) - Is the requested action in conformance with Legacy 2030?					
	See comments below					
Analysis of Conformity to Plans and Planning Issues	The subject request is to rezone a .48 acre lot from RS9 to GB-S in order to accommodate the use of Motor Vehicle, Repair and Maintenance within the existing building. The majority of the site was previously used for this purpose (along with gasoline sales) for many years but it has been unoccupied for the last several years.					
	The <i>South Suburban Area Plan</i> (2011) recommends rezoning the portion of the site which was formerly used for commercial purposes to a limited commercial or office zoning district. The <i>Draft South Suburban Area Plan Update</i> recommends rezoning to the least intensive district which would accommodate the previous use. The petitioners are not requesting the use of Convenience Store which allows for gasoline sales. Considering the purpose statements of the more intensive zoning districts, GB is the most appropriate district in this instance that would allow for Motor Vehicle, Repair and Maintenance.					
	In order to minimize the impacts of the proposed use on the general area, staff recommends several conditions. These conditions include the standard lighting and signage conditions and also that there be no motor vehicle storage area permitted. As noted previously, the area plan does not recommend the 50 foot wide undeveloped lot on the western portion of the site be included in the rezoning. The request does include this lot and the proposed site plan shows 20' of this lot being used to satisfy the Type III bufferyard requirements. Staff recommends moving the parking spaces back flush with the building to minimize the impact on the house to the west. This could be done and still meet the spacing requirements for parking circulation.					
RELEVANT ZONING HISTORIES						
Case	Request	Decision & Date	Direction from Site	Acreage	Recommendation	
					Staff	CCPB
W-3156	RS9 to NB-L	Approved 11-5-12	1,200' southwest	.37	Approval	Approval

SITE PLAN COMPLIANCE WITH UDO REQUIREMENTS			
Building Square Footage	Square Footage		Placement on Site
	1,377		Eastern portion of the site.
Parking	Required	Proposed	Layout
	Because the site is located within GMA 2, it is nonconforming in regard to parking.	4 spaces	90° head end
Building Height	Maximum		Proposed
	60'		One story existing
Impervious Coverage	Maximum		Proposed
	NA		30.2%
UDO Sections Relevant to Subject Request	<ul style="list-style-type: none"><li>Chapter B, Article II, Section 2-1.3(J) General Business District</li><li>Chapter B, Article II, Section 2-5.54 Motor Vehicle, Repair and Maintenance Use Conditions</li></ul>		
Complies with Chapter B, Article VII, Section 7-5.3	(A) <i>Legacy 2030</i> policies:	See comments below.	
	(B) <i>Environmental Ord.</i>	NA	
	(C) Subdivision Regulations	NA	
Analysis of Site Plan Compliance with UDO Requirements	The proposed site plan shows the retention of the existing structure and a small expansion of the parking and circulation area as noted previously. Because the site is located with the Urban Neighborhoods GMA and said structure was constructed prior to 1988 and it is not proposed for restaurant use, no new parking spaces are required.		
CONCLUSIONS TO ASSIST WITH RECOMMENDATION			
Positive Aspects of Proposal		Negative Aspects of Proposal	
The request is generally consistent with the recommendations of the existing and the draft update area plans.		The request includes an adjacent undeveloped lot which is not recommended for commercial rezoning in the area plan.	
The site has historically been used for the same use which is being proposed plus the gasoline sales which is not included in the request.		The site is adjacent to RS9 zoning on three sides.	
The existing building would be retained and not expanded.			
The site is located along a major thoroughfare and a collector street.			
The request includes conditions regarding lighting, signage, and motor vehicle storage.			

#### **SITE-SPECIFIC RECOMMENDED CONDITIONS OF APPROVAL**

The following proposed conditions are from interdepartmental review comments and are proposed in order to meet codes or established standards, or to reduce negative off-site impacts.

- **PRIOR TO THE ISSUANCE OF BUILDING PERMITS:**

- a. An engineered lighting plan shall be submitted to Inspections for the proposed lighting demonstrating the use of full-cut off fixtures, light height of 25' or less and no more than 0.5 foot-candles at the property line.
- b. Developer shall obtain a driveway permit from the City of Winston-Salem Public Works Department.

- **PRIOR TO THE ISSUANCE OF OCCUPANCY PERMITS:**

- a. Lighting shall be installed per approved lighting plan and certified by an engineer.
- b. Developer shall complete all requirements of the driveway permit.

- **OTHER REQUIREMENTS:**

- a. Freestanding signage shall be limited to one (1) six (6) foot high monument sign with a maximum copy area of thirty-six (36) square feet. Electronic Message Board Signs shall not be permitted.
- b. There shall be no exterior storage of inoperative motor vehicles or motor vehicles that are under repair.
- c. There shall be no improvements on PIN 6833-28-5349 with the exception of the proposed bufferyard and fence as shown on site plan.

**STAFF RECOMMENDATION:** Approval

**NOTE:** These are **staff comments** only; final recommendations on projects are made by the City-County Planning Board, with final decisions being made by the appropriate Elected Body, who may approve, deny, table or request modification for any project. **THE APPLICANT OR REPRESENTATIVE IS STRONGLY ENCOURAGED TO ATTEND THE PUBLIC HEARINGS WHERE THE CASE WILL BE CONSIDERED BY THE PLANNING BOARD AND THE ELECTED BODY.**

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# **CITY-COUNTY PLANNING BOARD**

## **PUBLIC HEARING**

### **MINUTES FOR W-3331**

### **MAY 11, 2017**

Gary Roberts presented the staff report.

#### **PUBLIC HEARING**

FOR:

Waqas Azam, 2214 Cole Road, Winston-Salem, NC 27107

- I'm the manager of the property and am representing the buyers.
- We set up a neighborhood meeting to see if the neighbors had any issues they wanted to bring up, and if there were problems they wanted us to address. We got somewhere but some neighbors didn't want a service station.
- It's been a service station and a gas station since the 1960s with the same owner.
- It lost its grandfather status because the owners from Leonard Oil Company found out there was a leak in three of the tanks so they decided to go ahead and start the clean-up process which is handled by the State and an environmental company. While doing that you cannot rent the place out. The guy who was renting it moved out. There's no way to continue running a business when the tenant moved out. Even when they pull the gas tanks out you can't rent the place until you get clarification from the State saying you are clear to go ahead and install asphalt because they kept cleaning out the dirt because the ground water got contaminated. They just got the green light.
- The State says they will continue to monitor for as long as 10-20 years, but it's okay to go ahead and put asphalt and concrete back and run it as what you want.
- We planned to buy the lot beside it because the owner was selling it together. The expansion of the parking was a misunderstanding between me and the architect that the City regulation allowed 26 feet. That's why we went into the second lot. We want to follow the regulations but when we found the mistake, the plan was already turned in. So it's no problem to pull it back.
- We planned on fixing the gravel, putting in the Type III bufferyard and the fence. We don't want some neighbors to feel like they have a bad view so even though the fence wasn't required we planned on putting the fence in.

Jennifer Picardo, 2214 Cole Road, Winston-Salem, NC 27107

- This has previously been used as an auto service gas station and we're just trying to make it a service station.
- There were some reports that the area was saturated with several service gas stations and there are three that are currently less than a fourth mile away and the rest are gas stations or they're more than two miles away.

- The rezoning to General Business - Special Use repair is in accordance with the *Growth Management Plan* and *Legacy 2030* that promotes in Chapter 3 to encourage the balanced growth of business and community, in Chapter 6 to attract new businesses and expand existing businesses, and in Chapter 11 to locate commercial uses in and near neighborhoods to serve as focal points to reduce automotive trips for the community.
- Any signs will be on the building itself. We're trying to keep that neighborhood community look.
- It will also increase safety by including video cameras that will decrease illegal activity that currently goes on in vacant lots.
- The neighbors who decided to attend the meeting were made aware of all of this and that there will be a Type III bufferyard and the six foot fence that will increase aesthetics and decrease the noise for the neighbors.
- They're going to say the property was hazardous waste. Ms. Picardo submitted a Groundwater Monitoring Project report. Everything that has to be done for the State has been done. It will be continuously monitored by the State in order to decrease contamination.
- Azam Properties has met all guidelines, regulations, and requests that have been made by the City.
- This has been a service gas station since 1947 and we believe that this property should be legally rezoned to GB special use in order to serve the growing population in Winston-Salem. There will be no storage of vehicles on there. The only things we do in our service are anything you need done that takes little time: brakes, oil, inspections, things of that sort.
- We've also done the streetyard. We can definitely push the 26' back. Anything else that is requested by the City we will definitely take into consideration.

AGAINST:

**Jesse Adams, 3643 Hastings Avenue, Winston-Salem, NC 27127**

- **Please consider our neighborhood and this area where we live.**
- **Over the past five years many changes have been made in this area.**
- **They widened Clemmons Road from Main Street to Old Salisbury Road to three lanes. You would think that was a good thing, but it's not. That third lane is not being used as a turning lane as much as a passing lane. It's dangerous for those who are actually using it as a turn lane. That project also ruined a lot of people's yards.**
- **In another zoning case at 444 Clemmons Road, we made a bad decision to allow the owner to run three businesses out of that one building there. I say that because of the number of cars going in and out and the number of tractor trailers unloading on Hastings Avenue continues to be an ongoing problem. I say all that to remind you of the kind of business that is being run here at the corner of Konnoak Drive.**
- **This property has been RS9 for many, many years and has been designated as nonconforming for many, many years. No business has taken place on this property I've been told for approximately six years so it has lost its nonconforming status.**
- **The owner surely wants to sell the property to settle the estate.**

- **This property has contamination problems from leaking gas tanks from the years it was used as a gas station. I understand the environmental people are monitoring that. I understand that the petitioners have an option to purchase. They haven't bought the property yet. They're young people and they're trying to make some quick money by renovating this into the third auto repair thing in our area.**
- **If you allow this to be turned into commercial property now, there is no way to know how long these young people are going to stay in business at this location. Then what would happen? There's no telling what it may turn into in the future.**
- **I pray you might have enough wisdom to understand the community's concerns about our neighborhood and do this one right by leaving this property at RS9.**
- **Because of the contamination I do not know what's going to become of the property, but in time I would hope that some form of housing could be built on this area.**
- **There's other vacant property along Clemmons Road within a City block of this property that was made vacant because of the widening of the road. Until this can be accomplished, just tear it down until we can build something that is considered RS9 housing.**
- **I understand that the proponents of this thing make everything seem good, but I'm telling you that my experience about the things that have occurred along Clemmons Road is that they have not turned out the way it was proposed to.**

Carolyn Highsmith, 3335 Anderson Drive, Winston-Salem, NC 27127

- Representing the Konnoak Hills Community Association in opposition to this request to permit the opening of a Jiffy Lube type motor vehicle repair and maintenance business that would create a high intensity and high traffic spot zoning commercial entity. Such a business will negatively impact the surrounding long term residential neighborhoods and is directly across from the main entrance of the Konnoak Hills Community.
- The Konnoak Hills Community contests the Planning staff report that states "This nonconforming corner lot shall revert back to its previous use as a gas station and its former nonconforming usage will reduce the impacts to the surrounding area." And I say "really?" when the staff report also states that this proposed use is "an intense use which is typically not compatible with single family homes." FYI there are single family homes on all of the other three street corners that represent substantial housing plus single family homes adjacent to this corner property's south and west sides. So how can this zoning not be compatible with single family homes and at the same time would be compatible because of a previously out-of-date nonconforming spot zoning gas station business?
- Nonconforming commercial businesses are not historical. They are bad urban planning so what kind of urban planning is being promoted here? Our neighborhood community wants good urban planning and good aesthetics.
- When the original area plan was written, this corner lot was still an active gas station and it was assumed that the gas station would continue in business for the next ten years. However, the West Clemmons Road expansion project permanently changed the look of this corner lot. Its frontage became part of the expansion project and its gas tanks were permanently removed.
- The surrounding neighborhood community also no longer sees or wants another automotive business at this corner given the saturation of automotive businesses within 500 feet of this property, and within a 1.25 and 1.5 mile radius.

- Konnoak Hills and surrounding neighborhood along Clemmons Road want to maintain a residential and neighborhood look and feel and are opposed to the pressure to convert all of the existing housing stock to commercial use or to keep any of the nonconforming commercial uses still in place. We neighbors have been voicing this vision since the West Clemmons Road expansion project destroyed the character and charm of this road beginning in 2010.
- Konnoak Hills and surrounding neighbors are so adamant about having no high intensity commercial development on West Clemmons Road that 212 neighbors have signed either a door-to-door or an on-line petition opposing this rezoning case and have made 46 different comments in opposition to this zoning case that have been sent to the Planning Board members and staff.
- Adding to all the confusion about this zoning case is lack of clarity in the area plan update draft process about nonconforming and spot zoning that is so prevalent on West Clemmons Road and South Main Street. This zoning case has brought to light how bad the spot zoning is in this area plan update. Such that Konnoak Hills is now requesting an additional area plan update meeting to address the problem of spot zoning in this draft version.
- In conclusion, the Konnoak Hills and surrounding area neighborhoods are respectfully asking the Planning Board to protect our community by keeping this zoning residential and by voting not to approve this zoning case.

Jill Reich, 3330 Konnoak Drive, Winston-Salem, NC 27127

- My husband and I are both opposed to this.
- The former gas station we're speaking of was developed 70 years ago and in those 70 years the Konnoak Hills Community has changed.
- A lot of the founding residents have been aging out. We want to begin new with vital engaged residents who want to live in our quiet neighborhood that is close and convenient to downtown.
- I don't think this type of business is something that is complimentary to this vision of what we want in our neighborhood. This is nothing that anyone wants to walk to, to spend time at, or that's going to gather people in one place.
- In fact, we have two service stations one block away at the intersection of Main Street and Clemmons Road. There are additional ones over Highway 52 and then further on down is the Konnoak Brake Service. We're saturated with auto repair places.
- I attended the three working sessions for the *South Suburban Area Plan Update* and it was noted that further down Clemmons Road, the Black Sand should revert back to RS9 should it ever move out. I'm confused as to why they would suggest that should go back to RS9 when this has already gone to RS9 and here you want to turn it back to commercial.
- Since my husband and I moved here in 2010, this station has not functioned as a gas station or anything so I know it has been at least six years, maybe seven. The only thing which has been there is vegetable sales and so forth.
- I would ask that you do not approve this.

## **WORK SESSION**

During discussion by the Planning Board, the following points were made:

There will be a six (6) foot high wooden fence along the property line along with the twenty foot, Type III bufferyard. The plantings are not shown accurately on the site plan as they need to be moved back into the bufferyard, but that will be caught in the permitting process. The fence is along the property line.

Arnold King: With those plantings and that fence, why does staff want to move the parking area back? Gary Roberts: The area plan doesn't recommend including that lot. They are including that lot and we're okay with that but we don't want to see the parking extend into that. There is a significant amount of protection, but there is sufficient parking on the occupied lot without expanding into the vacant lot so we would just like to see it pulled back. Because this is in Growth Management Area 2 they will have to unify the parking surface which means putting concrete on the entire parking area.

Brenda Smith: What happens to the bufferyard when you pull the parking back in? Gary Roberts: The bufferyard stays where it is because it goes with the zoning. Staff is not recommending that the vacant lot be excluded from this request, just that the parking be pulled back.

Chris Leak: What are the repercussions? When I've seen service garages I've always seen cars parked outside. How do we regulate that? Gary Roberts: That would be, as most of our violations are, on a complaint basis. Chris Murphy: It would be an enforcement issue on a case by case basis. Certainly we can determine inoperative vehicles, but if someone drops off their vehicle in the morning for service and picks it up in the afternoon, that's fine. Obviously they will have cars parked outside during the day. What we are trying to prohibit is the overnight parking of vehicles that are under repair and/or inoperative vehicles being parked outside overnight. Essentially we're trying to get rid of the use Motor Vehicle Storage Yard and other unsightly parking of slightly dismantled vehicles.

The gas tanks have been removed and the soil is being monitored and remediated which is a long term process.

Melynda Dunigan: How long has it been since this functioned as a gas station? Gary Roberts: I could not say definitively but I have a feeling it has been four, five, or six years. Chris Murphy: It's been at least three years is my recollection. We have been having discussions with the property owner over the course of time. I believe it was either 2013 or 2014, but it was certainly beyond the one year limit. Melynda Dunigan: This has lost its nonconforming status. It's residential not commercial. And when the 2011 area plan was done apparently, I'm assuming the gas station was there? Gary Roberts: Yes. Melynda Dunigan: So the recommendation in the 2011 area plan was based on the gas station existing on that site? Gary Roberts: Existing and in operation.

Everything directly adjacent to this site, within the 500' notification area, is zoned residential although commercial property is just east of this area.

Melynda Dunigan: The allowance of that use expires if you abandon the use for one year. Chris Murphy: Correct which is why they are trying to get the property rezoned. Melynda Dunigan: I thought the public purpose behind that rule was that sometimes things are improperly zoned. They are not compatible with their surroundings. Therefore we have a way of at least accommodating the user of that property temporarily and not inconveniencing them but over time we expect that properties will be allowed to become more compatible with their environment which is why we have this expiration aspect. That is why I am trying to understand why you would want to continue that with rezoning. Paul Norby: In general that's the way zoning rules are: that if something is legally nonconforming but it's not zoned for that, when they lose their legal nonconforming status they have to conform to existing zoning unless it gets rezoned. In this case we had a recommendation in the area plan to zone that to commercial, recognizing at the time of the original zoning there was a service station there. It's a difficult situation when you have a former service station with site contamination and remediation there. How realistic is that for residential development when you're dealing with a site that is going to have significant constraints on development for residential purposes for upwards of 20 years or so? There is a reason why in some cases we do recommend in an area plan that a site that might be legal nonconforming be rezoned. We don't do that all the time. Kirk Ericson: This is a very deliberate process when we go through each area plan update and look at areas which we call SLUCAs (Special Land Use Consideration Areas). Sometimes these are nonconforming situations. Sometimes these are appropriately zoned situations. We look at these isolated commercial and industrial situations and think what is the best thing for the community going forward. With this site in particular we saw not only was this recommended in the last plan, but now you have some significant investment in a commercial structure. You have a remediation process that is going to be going on for at least ten years in the future. We felt that it would probably be too burdensome to expect someone to have to remediate this property over multiple years, tear down the commercial structure that was there, and then try and establish a residential use on this site much later on. Also, just to point out something regarding what Ms. Reich said about the Black Sand Company and why we treated that differently. That's an example of how we do this review on a site-by-site basis. The Black Sand Company which is probably half a mile to the west of this site has a much more residential type structure. It looks as if it were just a house which they used as the operations center for their business. Their business is basically selling sand and gravel and things of that nature so there isn't any contamination in the ground there. It's much easier to just clean up that site and put the house to right inside. Paul Norby reminded the Board of the recent rezoning case for Campus Gas on Polo Road, where the area plan recommended that for rezoning if the right type of plan came along.

Brenda Smith: I think there are some really unique features of this case from the historical use of it and the facility that is there. I don't know how you would make it a residential site unless you just took the structure down. I imagine the structure is interior designed for auto repair so to rehabilitate it would be a big investment. These clean ups go on all over the place. You may be surprised at where those types of clean ups go on. To be able to continue to use the property in a way it has been used historically, to me seems like a logical thing to do. Would they have started the neighborhood and put that there? I don't know but it was in the County so I presume it became residentially zoned when it came into the City? Paul Norby: There was no zoning in the County 70 years ago. The County didn't even institute zoning until the 1960s so it was developed without zoning restrictions there and then eventually got annexed and zoned to RS9 as was the surrounding area.

Clarence Lambe: I also hate to create a disincentive to clean up a property. You're really going to be wrestling with a one year provision to discover, decide on a plan of action, and remediate enough to be able to start the business again so a year is nothing, especially during an economic downturn. I think it could create a disincentive to report the leak. We don't know if this issue was caught and they were forced to begin this process or if they were just trying to do the right thing, but they jeopardize their grandfathering period by starting the clean up or remediation. As long as the monitoring is done properly and they are doing what the plan requires and the levels continue to drop, they should be able to do what they're trying to do.

Brenda Smith: I'm sure the wells and recovery systems or whatever methods they're using are set up for the building where it is and with the parking where it is. To try and change that really may not work. They may have to totally redesign the site remediation if you change the building and where things are on the site.

Jason Grubbs: Let's assume this is RS9, with the current clean-up that's going on could you even get a building permit to build a house there? Chris Murphy: We don't regulate the remediation. That's handled through the State and their inspectors. The simple answer is "yes, we could issue the permit". Now whether or not they could satisfy their requirements with the State under the current plan that they have or whether they would have to change their plan, that would be up to the State. Brenda Smith: It's different for residential versus commercial sites and you'd really have to know the details of the plan. Paul Norby: We've dealt with other brownfield sites that from a regulations standpoint the State would not allow residential. I don't know whether that applies in this case. Aaron King: That was the case with the old Hanes Plant on Stratford Road. We had an area plan that recommended high density residential and we pushed the developer toward that and they brought in their brownfield agreement which said you couldn't do residential here because of the type of cleanup that was happening.

Waqas Azam: That is exactly what we were trying to explain to the neighbors. From our understanding from the environmental company with the State regulations, they do not want residential. It's not like we are buying a piece of residential land and turning it into commercial. This has always been an auto service station, gas sales and service station. Same owner and same history. It's been rented out to different people but never had a change of use. From our understanding from the environmental company and their lawyers, they have told us it will never be residential from State regulations.

Chris Leak: So if we vote to leave it RS9, what happens to the site? Would it just be a vacant lot? Aaron King: You have a non-residential building on there. It's very unlikely that it would be adaptively used for residential purposes. There are some other uses in RS9 like churches that could potentially develop there but I don't know the likelihood of that. Chris Leak: So it would just go into a state of disrepair? Paul Norby: Or if it eventually got in bad enough shape, it could be required to be demolished.

Melynda Dunigan: I just want to say something about talking about two options. Keeping it RS9 and could it ever be residential versus an automobile repair and maintenance. Those are not the only two options that are possible for this piece of property. I don't know this but I would guess that the neighborhood would be more happy with something that was commercial but not this intense. My big concern is the intensity of automobile repair and maintenance so close to all this residential development and the impacts.

Brenda Smith: I would consider that too. If you look at the limitations that are put on it, in this case seem to address a lot of those concerns with it.

Melynda Dunigan: Definitely the non-storage of motor vehicles is important but it does not meet all of my concerns because you've got noise and you've got appearance issues beyond just the storage of cars and then you also have potential fumes and all that kind of stuff. I do see this as very intense for residential.

MOTION: Melynda Dunigan moved denial of the zoning petition.

MOTION FAILED FOR LACK OF A SECOND.

MOTION: Clarence Lambe moved approval of the zoning petition and certified that the site plan (including staff recommended conditions and with the revised conditions regarding the storage of inoperative vehicles and vehicles under repair and a revised site plan pulling parking back consistent with the recommendations) meets all code requirements if the petition is approved.

Waqas Azam confirmed his acceptance of those conditions.

SECOND: Brenda Smith

VOTE:

FOR: Jason Grubbs, Arnold King, Clarence Lambe, Chris Leak, Brenda Smith, Allan Younger

AGAINST: Melynda Dunigan

EXCUSED: None

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A. Paul Norby, FAICP  
Director of Planning and Development Services