Certified Recommendation

Raleigh Planning Commission

CR# 11402

Case Information Z-24-10 / Poole Road at Norwood Street

Location	Northeast quadrant of Poole Road/Norwood Street intersection
Size	1.2 acres
Request	Rezone property from Residential-6 to Neighborhood Business Conditional Use District.

Comprehensive Plan Consistency

Future Land Use Designation	Low Density Residential
Applicable Policy Statements	Policy LU 1.3 - Conditional Use District Consistency Policy LU 6.4 - Bus Stop Dedication Policy LU 7.6 – Pedestrian Friendly Development Policy LU 8.12—Infill Compatibility Policy LU 10.6 – Retail Nodes Policy UD 2.3 – Activating the Street

☐ Consistent ☒ Inconsistent

Summary of Conditions

Submitted Conditions	1. The following uses are excluded: sale of drug paraphernalia, agricultural uses, recreational uses, cemeteries, correctional/penal facilities, special care facilities, residential transitional housing (with the exception of supportive housing residence), bars, nightclubs, taverns, lounges, adult establishments, eating establishments, alcohol sales for on-site consumption, hotel/motel, commercial parking facilities, movie theater, pest exterminating services, kennel, cattery, riding stable, outdoor stadium, reservoirs, water control structures, landfills, utilities, telecommunication tower, mini-warehouses, airfield, landing strip, heliport, veterinary hospital 2. Residential density not to exceed 6 dwellings per acre 3. Building height no higher than 35’ 4. Minimum 30’ setback from future rights-of-way 5. Building ground floor not to exceed 5,500 square feet 6. Building second floor will be composed of dwellings 7. Driveways limited to one on Poole Road and one on Norwood Street 8. Building materials and colors to match Poe Elementary School 9. Alcohol and tobacco product advertisements cannot be seen from Poe Elementary School 10. A transit easement, bus shelter and concrete pad will be provided 11. Screening of trash containers 12. Roof construction to be either hip or gable, maximum pitch 5:12 13. The petitioner will contribute $500 annually to Poe Elementary School, for 20 years

Issues and Impacts

Outstanding Issues	1. The proposed zoning is inconsistent with the Comprehensive Plan 2. Nonresidential uses could be incompatible with surrounding uses. 3. The rezoning would create a spot zoned property 4. Conditions related to sale and advertisement of items should be removed	*Suggested Conditions*	1. The applicant should consider a condition that addresses compatibility with the existing residential uses.
Impacts Identified	No significant impacts identified	*Proposed Mitigation*	N/A

Public Meetings

Neighborhood Meeting	***Public Hearing***	***Committee***	***Planning Commission***
7/29/10	10/19/10	none	11/23/10, deferral; 12/14/10, denial

☒ ***Valid Statutory Protest Petition***

Attachments
1. Staff report
2. Existing Zoning/Location Map
3. Future Land Use Map

Planning Commission Recommendation

Recommendation	Denial
Findings & Reasons	1. The proposal is inconsistent with the Comprehensive Plan, particularly the future land use map. 2. The proposal would constitute a spot zoning. 3. Rezoning would permit some uses that are incompatible with the existing Elementary School.
Motion and Vote	Motion: Fleming Second: Bartholomew In favor: Bartholomew, Butler, Harris Edmisten, Fleming, Schuster, Sterling Lewis Oppose: Haq, Mattox

This document is a true and accurate statement of the findings and recommendations of the Planning Commission. Approval of this document incorporates all of the findings of the attached Staff Report.

_____ 12/14/10

Planning Director Date Planning Commission Chairperson Date

Staff Coordinator: James Brantley james.brantley@raleighnc.gov

Zoning Staff Report – Z-24-10

Conditional Use District

Request

Location	Northeast quadrant of Poole Road/Norwood Street intersection
Request	Rezone property from R-6 to Neighborhood Business Conditional Use
Area of Request	1.2 acres
Property Owner	Longview Acre LLC
PC Recommendation Deadline	February 16, 2011

Subject Property

	Current	***Proposed***
Zoning	R-6	NB Conditional Use
Additional Overlay	N/A	N/A
Land Use	Food store - retail	Retail uses and residential uses of up to 6 dwellings per acre are permitted.
Residential Density	6 Units per acre (max. of 7 units)	6 Units per acre (max. of 7 units)

Surrounding Area

	North	***South***	***East***	***West***
Zoning	Residential-4 with Neighborhood Conservation Overlay District	Residential-10	Residential-4 with Neighborhood Conservation Overlay District	Residential-10
Future Land Use	Low density residential	Public facilities	Low density residential	Low density residential
Current Land Use	Low density residential	Institutional (Poe Montessori Magnet Elementary School)	Low density residential	Low density residential, medium density residential

Comprehensive Plan Guidance

Future Land Use	Low density residential
Area Plan	N/A
Applicable Policies	Policy LU 1.3 - Conditional Use District Consistency Policy LU 6.4 - Bus Stop Dedication

	Policy LU 7.6 – Pedestrian Friendly Development Policy LU 8.12—Infill Compatibility Policy LU 10.6 – Retail Nodes Policy T 5.1 – Enhancing Bike/Pedestrian Circulation Policy UD 2.3 – Activating the Street

Contact Information

Staff	James Brantley – (919) 516-2651, james.brantley@raleighnc.gov
Applicant	Dan Coleman – (919) 832-8293 buildcon@bellsouth.net
Citizens Advisory Council	East – Mark Turner

Case Overview

The request is to rezone the property from Residential-6 to Neighborhood Business Conditional Use. The existing Residential-6 zoning district allows up to 6 dwellings per acre. This zoning district does not allow retail uses. The proposed zoning district, Residential Business, is intended for neighborhood-scale retail in close proximity to residential development, though residential uses are allowed.

The site is surrounded on the west, north and east by single family housing. To the south is Poe Elementary. There are no retail uses adjacent or in proximity to this site. The property has existed as a commercial use and structure for over 50 years. The existing commercial use is currently non-conforming.

Conditions attached to the application prohibit several more intense land uses, restrict building height and setbacks and limit curb cuts.

Exhibit C & D Analysis

Staff examines consistency with the Comprehensive Plan, compatibility with the surrounding area, public benefits and detriments of the proposal, and summarizes any associated impacts of the proposal.

1. Consistency of the proposed rezoning with the Comprehensive Plan and any applicable City-adopted plan(s)

1.1 Future Land Use

The proposed rezoning is inconsistent with the Future Land Use Map of the Comprehensive Plan. The site is designated on the Future Land Use Map for low density residential uses, that is, up to six dwellings per acre. The rezoning would permit retail uses.

1.2 Policy Guidance

The following policy guidance is applicable with this request

Policy LU 1.3 - Conditional Use District Consistency All conditions proposed as part of a conditional use district (CUD) should be consistent with the Comprehensive Plan

The proposal is inconsistent with this policy. Conditions do not assure compatibility of the site with the surrounding single family neighborhood. Particularly, see LU 8.12, LU 10.6 below.

Policy LU 6.4 - Bus Stop Dedication
The City shall coordinate the dedication of land for the construction of bus stop facilities within mixed-use centers on bus lines as part of the development review and zoning process.

The proposal is consistent with this policy. A stop and shelter have been offered in the conditions.

Policy LU 7.6 – Pedestrian Friendly Development
New commercial developments and redeveloped commercial areas should be pedestrian-friendly.

The proposal is consistent with this policy. It provides a retail use that is small-scaled and easily accessed by pedestrians. A recently approved text change would require that, upon redevelopment, sidewalk connections to the public right-of-way be made.

Policy LU 8.12 - Infill Compatibility
Vacant lots and infill sites within existing neighborhoods should be developed consistently with the design elements of adjacent structures, including height, setbacks, and massing through the use of zoning tools including Neighborhood Conservation Overlay Districts

The proposal is inconsistent with this policy. The conditions do not address matters of parking placement, building massing or ground sign height. The applicant might want to offer conditions to address compatibility with surrounding context.

Policy LU 10.6 – Retail Nodes
Retail uses should concentrate in mixed-use centers and should not spread along thoroughfares in a linear "strip" pattern unless ancillary to office or high-density residential use.

The proposal is inconsistent with this policy as the proposal is for a "spot zoning" of one property for retail uses. The subject property is not contiguous with other retail zoning or uses.

Policy UD 2.3 – Activating the Street
New retail and mixed-use centers should activate the pedestrian environment of the street frontage in addition to internal pedestrian networks and connections.

The proposal is consistent with this policy, since it provides retail uses that are easily accessible to pedestrians and bicyclists.

1.3 Area Plan Guidance

Future site development at the Poole/ Norwood intersection will be subject to provisions of the Southeast Raleigh Streetscape Master Plan. The Plan text explains that there will need to be a "landscape easement to be acquired at each quadrant of the intersection for a planting consisting of medium shade trees and a hedgerow of shrubs," adding "that shrubs shall be placed outside of a triangular sight distance area measured 20 feet along each right-of-way line from the intersection…" The proposal is conditioned to provide a landscape easement at the corner.

2. Compatibility of the proposed rezoning with the property and surrounding area

All properties within the immediate vicinity (i.e., one-eighth mile) are zoned residential, with the exception of a funeral home located 700 feet from the subject site, on the opposite side of Poole Road. The subject site is abutted on two sides by the King Charles Neighborhood Conservation Overlay District. Poe Montessori Magnet Elementary School is located across Poole Road from the site, but the majority of nearby properties are built out with single-family residences. The proposed rezoning would create an isolated instance of shopping center zoning within this residential environment. The site's present R-6 zoning allows a minimum setback of 20 feet from the street, and at that setback a maximum building height of 40 feet. The adjoining King Charles Neighborhood Conservation Overlay District provides that buildings within the district be set back a minimum of 76 feet from the street right-of-way, and be limited to two stories in height. The proposal provides a maximum building height of 35 feet, and specifies a minimum front yard setback of 30 feet.

3. Public benefits of the proposed rezoning

The proposed zoning could provide additional goods or services to the area. However, adjacent residences are already in close proximity to existing commercial areas, on both Poole Road and New Bern Avenue.

4. Detriments of the proposed rezoning

Permitted uses could result in increased traffic, and elevated levels of lighting and noise.

5. The impact on public services, facilities, infrastructure, fire and safety, parks and recreation, etc.

5.1 Transportation

Primary Streets	Classification	Current Volume (ADT)	2035 Future Volume (ADT)		
Poole Road	Minor Thoroughfare	7,200	15,315		
Norwood Road	Collector Street	N/A	N/A		
Street Conditions					
Poole Road	Lanes	Curb and Gutter	Right-of-Way	Sidewalks	Bicycle Accommodations
Existing	4	Back-to-back curb and gutter section	84'	Yes, both sides	None
City Standard	3	Back-to-back curb and gutter section	80'	minimum 5' sidewalks on both sides	4' striped bicycle lanes on both sides
Meets City Standard?	**YES**	**YES**	**YES**	**YES**	**NO**
Norwood Road	Lanes	Curb and Gutter	Right-of-Way	Sidewalks	Bicycle Accommodations
Existing	2	Back-to-back curb and gutter section	50'	5' sidewalk on east side of street	None
City Standard	2	Back-to-back curb and gutter section	60'	minimum 5' sidewalks on one side	N/A
Meets City Standard?	**YES**	**YES**	**NO**	**YES**	**N/A**
Expected Traffic Generation [vph]	Current Zoning	Proposed Zoning	**Differential**		

AM PEAK	5	35	**30**		
PM PEAK	7	135	**128**		
Suggested Conditions/Impact Mitigation:		None			
Additional Information:	Neither NCDOT nor the City of Raleigh have any projects scheduled in the vicinity of this case.				

5.2 Transit

Impact Identified: The rezoning could result in a more intense land use, thereby increasing the need for transit services. The applicant has offered a condition to grant a transit easement to the City.

5.3 Hydrology

Floodplain	None
Drainage Basin	Walnut Creek
Stormwater Management	Site is subject to Part 10, Chapter 9, Stormwater Control and Watercourse Buffer Regulations
Overlay District	No buffer, no WSPOD.

Impact Identified: No impact

5.4 Public Utilities

	Maximum Demand (current)	***Maximum Demand (proposed)***
Water	4,200 gpd	7,500 gpd
Waste Water	4,200 gpd	7,500 gpd

Impact Identified: The proposed rezoning will add approximately 3,300 gpd to the wastewater collection and water distribution systems of the City. There is an existing six (6") inch water main in Norwood Street and an existing twelve (12") water main in Poole Road rights-of way and an existing eight (8") inch sanitary sewer in Norwood Street and Poole Road rights-of-way.

5.5 Parks and Recreation

The property is not located adjacent to any proposed greenway areas. There are no park search areas in this vicinity

Impact Identified: No impacts to the level of recreation service.

5.6 Urban Forestry

The site is smaller than the two acre threshold for tree conservation.

Impact Identified: None

5.7 Wake County Public Schools

School name	Current Enrollment	Current Capacity	Future Enrollment	Future Capacity
Wiley	386	100.3%	386	100.3%
Daniels	1,162	101.5%	1,162	101.5%
Enloe	368	78.0%	368	78.0%

Impact Identified: No impact; the number of dwellings allowed in the current zoning is the same as the number of dwellings allowed in the proposed zoning.

5.8 Designated Historic Resources

The site is not a designated landmark and is not in either a National Register or local historic district.

Impact Identified: No impact.

5.9 Impacts Summary

No significant impacts identified.

5.10 Mitigation of Impacts

N/A

6. Appearance Commission

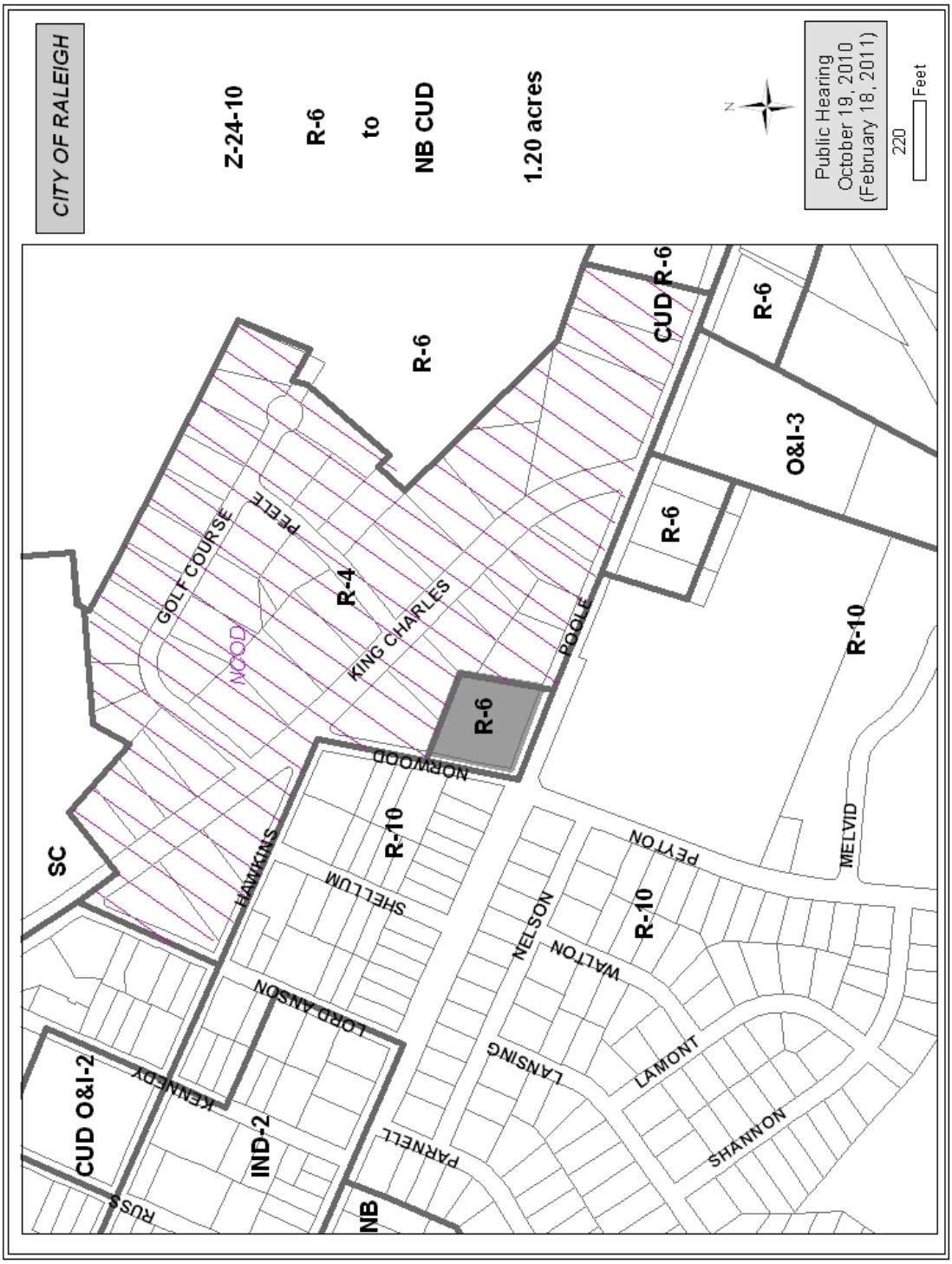
Not subject to Appearance Commission review.

7. Conclusions

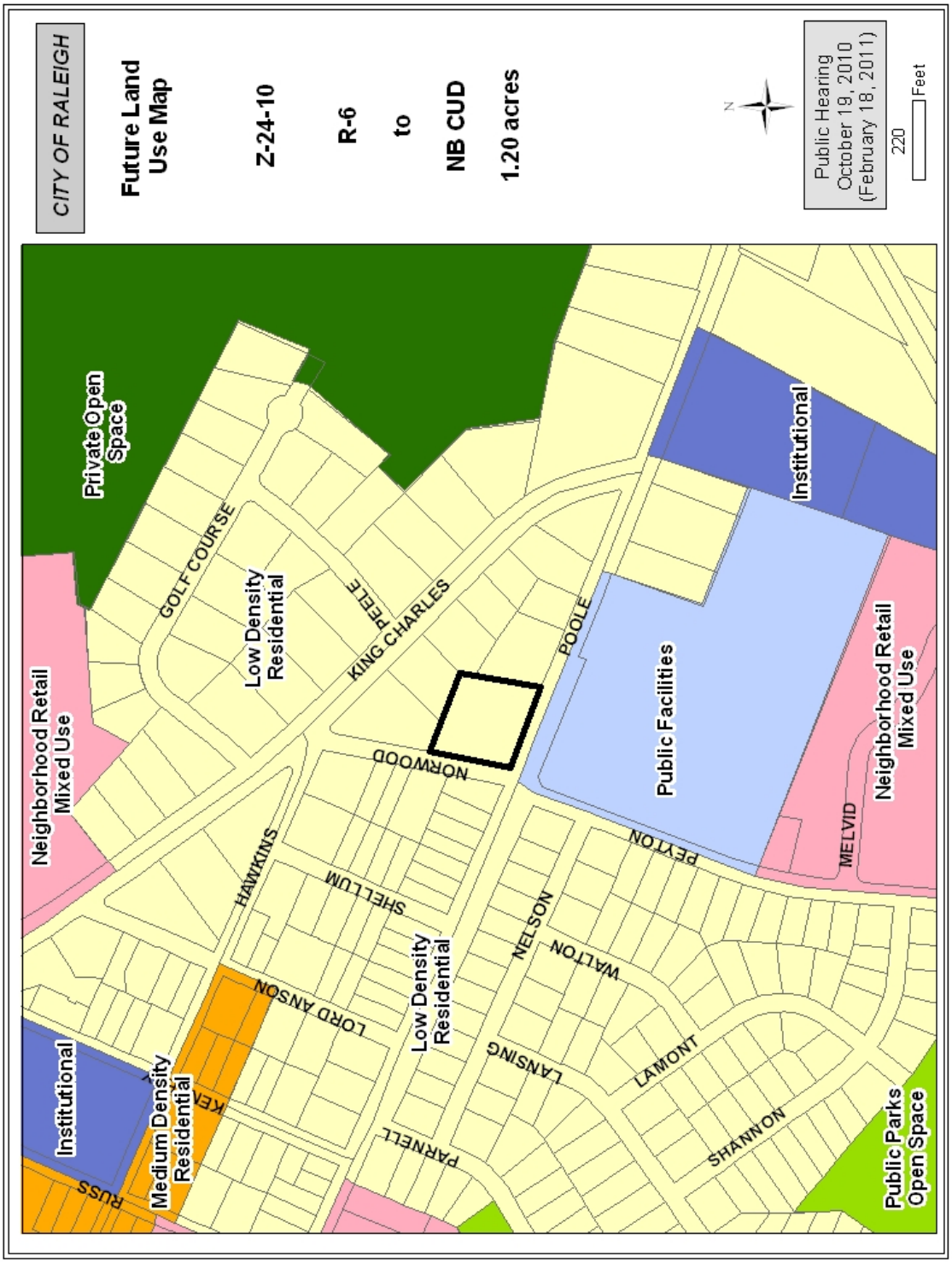
The proposed rezoning is inconsistent with the Comprehensive Plan. The site is designated for low density residential uses; the proposed rezoning would allow retail uses. The proposal would be “spot zoning,” as there is no adjacent retail zoning.

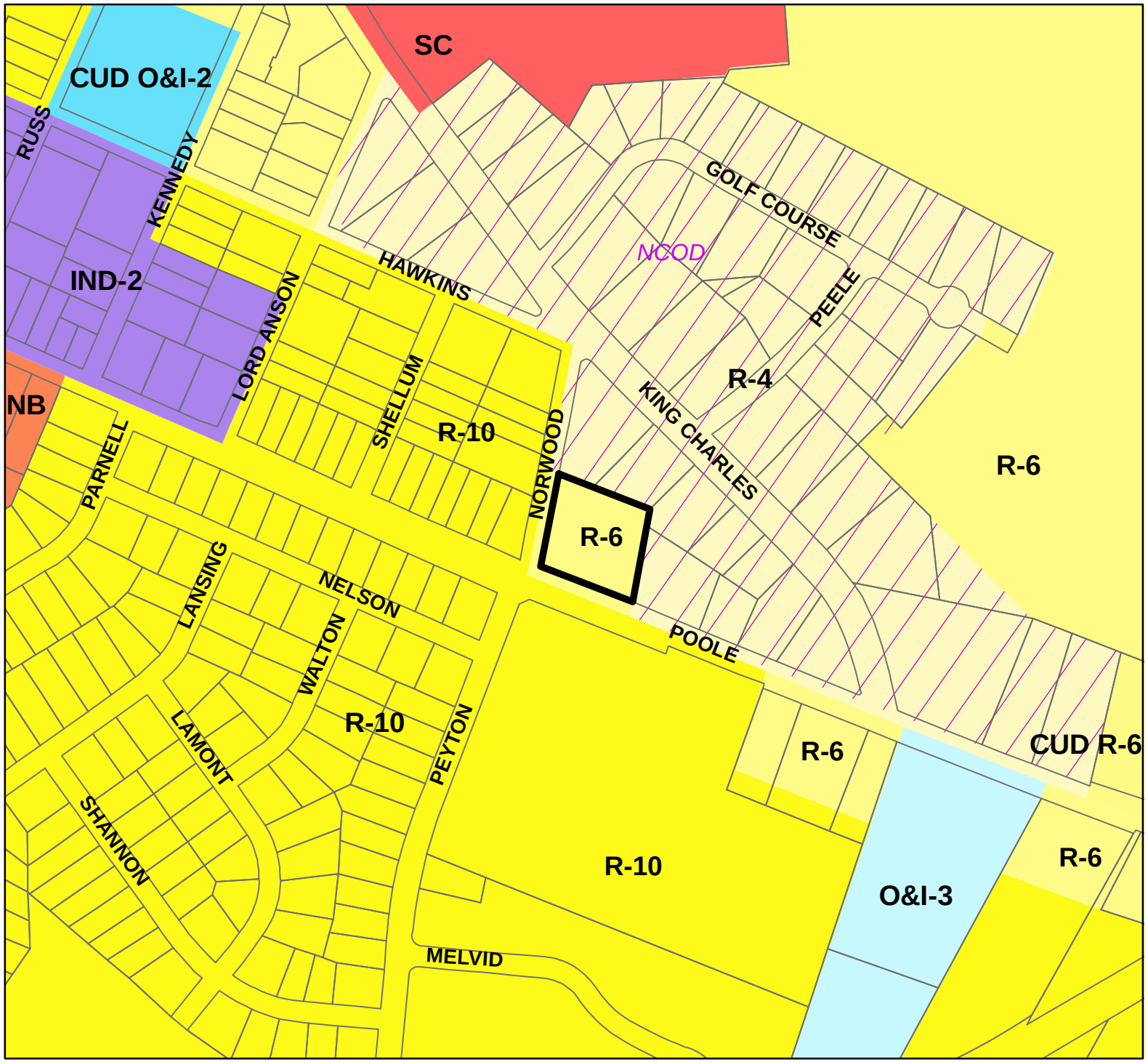
The petitioner may wish to consider conditions that address compatibility and buffering to the adjacent neighborhood. The petitioner has offered conditions that relate to the sale and advertisement of certain items. The City cannot enforce these conditions; they should be removed.

Existing Zoning Map



Future Land Use Map





CITY OF RALEIGH

Existing Zoning Map

Z-24-10

R-6

to

NB CUD

1.20 acres

Public Hearing
October 19, 2010
(February 18, 2011)

220
Feet

Office Use Only
Petition No. Z-24-10

Petition to Amend the Official Zoning Map

Before the City Council of the City of Raleigh, North Carolina

The petitioner seeks to show the following:

1. That, for the purposes of promoting health, morals, or the general welfare, the zoning classification of the property described herein must be changed.

2. That the following circumstance(s) exist(s):

Please check boxes where appropriate

- ☐ City Council has erred in establishing the current zoning classification of the property by disregarding one or a combination of the fundamental principles of zoning as set forth in the enabling legislation, North Carolina General Statutes Section 160A-381 and 160A-383.

- ☐ Circumstances have so changed since the property was last zoned that its current zoning classification could not properly be applied to it now were it being zoned for the first time.

- ☐ The property has not heretofore been subject to the zoning regulations of the City of Raleigh.

3. That the requested zoning change is or will be consistent with the Raleigh Comprehensive Plan.

4. That the fundamental purposes of zoning as set forth in the N.C. enabling legislation would be best served by changing the zoning classification of the property. Among the fundamental purposes of zoning are:

1) to lessen congestion in the streets;
2) to provide adequate light and air;
3) to prevent the overcrowding of land;
4) to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements;
5) to regulate in accordance with a comprehensive plan;
6) to avoid spot zoning; and
7) to regulate with reasonable consideration to the character of the district, the suitability of the land for particular uses, the conservation of the value of buildings within the district and the encouragement of the most appropriate use of the land throughout the City.

CITY OF RALEIGH
CITY PLANNING DEPT
2010 JUN 16 AM 11:21

THEREFORE, petitioner requests that the Official Zoning map be amended to change the zoning classification of the property as proposed in this submittal, and for such other action as may be deemed appropriate.

Signature(s) **Date:**

Heba Issa — June 16th, 2010

Please type or print name(s) clearly:

Heba Issa — June 16th, 2010

Office Use Only
Petition No. Z-24-10
Date Filed: 6-16-10
Filing Fee: pd 1028. by CK 1326

EXHIBIT B. Request for Zoning Change

Please use this form only – form may be photocopied. Please type or print

See instructions, page 9

	Name(s)	Address	Telephone / E-Mail
1) Petitioner(s): Note: Conditional Use District Petitioner(s) must be owner(s) of petitioned property.	Longview Acre, LLC	2405 Poole Road	
		Raleigh, NC 27610	
2) Property Owner(s):	Longview Acre, LLC.	2405 Poole Road	
		Raleigh, NC 27610	
3) Contact Person(s):	Dan Coleman	517 Rock Quarry Rd	919.832.8293
		Raleigh, NC 27610	buildcon@bellsouth.net

4) Property Description: Please provide surveys if proposed zoning boundary lines do not follow property lines.

Wake County Property Identification Number(s) (PIN): 1713770253

General Street Location (nearest street intersections):

Northeast quadrant of the intersection of Poole Road and Norwood Street

5) Area of Subject Property (acres): 1.20 Acres

6) Current Zoning District(s) Classification: Include Overlay District(s), if Applicable

Residential - 6

7) Proposed Zoning District Classification: Include Overlay District(s) if Applicable. If existing Overlay District is to remain, please state.

Neighborhood Business Conditional Use

No existing Overlay District

Exhibit B. continued

Office Use Only
Petition No. Z-24-10

8) Adjacent Property Owners

The following are all of the person, firms, property owners, associations, corporations, entities or governments owning property adjacent to and within one hundred (100) feet (excluding right-of-way) of (front, rear, all sides and across any street) the property sought to be rezoned.

(Important: Include PIN Numbers with names, addresses and zip codes.) Indicate if property is owned by a condominium property owners association. Please complete ownership information in the boxes below in the format illustrated in the first box. Please use this form only – form may be photocopied – please type or print.

Name(s):	Street Address(es):	City/State/Zip:	Wake Co. PIN #'s:
Vivian Smith	2313 Nelson St.	Raleigh, NC 27610-2719	1713677046
Maurillo & Francis Anota	2309 Nelson St.	Raleigh, NC 27610-2719	1713676079
Willie Carl Barham	2305 Nelson St.	Raleigh, NC 27610-2719	1713676102
Wake County Bd of Ed	Betty Parker RE Director 1551 Rock Quarry Road	Raleigh, NC 27610-4185	1713761631
Emma Jean Fort	2413 Poole Rd	Raleigh, NC 27610-2748	1713772142
Evelyn Stanley	2216 Hillock Dr.	Raleigh, NC 27612-3968	1713677299
Russell & Lynn Dement, Jr.	PO Box 58161	Raleigh, NC 27658-8161	1713678246
Lisa & Marcelina Hodge	312 Norwood St	Raleigh, NC 27610-2743	1713678422
Lisa & Marcelina Hodge	1804 Cynthia Place	Raleigh, NC 27610-3534	1713678477
Lisa & Marcelina Hodge	1804 Cynthia Place	Raleigh, NC 27610-3534	1713678544
Veda Nicole Price	316 S. King Charles Rd	Raleigh, NC 27610-2739	1713770566
Jennifer Leigh Bumgarner	318 S. King Charles Rd	Raleigh, NC 27610-2739	1713771379
Robin W. Westbrook	3906 Carnegie Lane	Raleigh, NC 27612-4385	1713772269
Sherron A McGilberry	322 S. King Charles Rd	Raleigh, NC 27610-2739	1713773262

For additional space, photocopy this page.

EXHIBIT C. Request for Zoning Change

Office Use Only
Petition No. Z-24-10
Original Date Filed:
Amended Date:
Pg 1 of 9

Please use this form only – form may be photocopied – please type or print. See instruction, page 8.

1) Conditional Use Zone Requested: Neighborhood Business Conditional Use

2) Narrative of conditions being requested:

1. The following land uses will be prohibited:
   A. Disallow the possession of drug paraphernalia as defined by the North Carolina General Statute § 90-113.21 in any commercial or retail use.
   B. All agricultural land uses "listed in the Schedule of Permitted Land Uses In Zoning Districts (Raleigh City code §10-2017)"
   C. All recreational uses "listed in the Schedule of Permitted Land Uses In Zoning Districts (Raleigh City code §10-2017)"
   D. Institutional/civic services
      i. Cemeteries
      ii. Correctional/penal facilities
      iii. Special care facility
      iv. Residential transitional housing, with the exception of supportive housing residence.
      v. Veterinary hospital
   E. Commercial uses
      i. Bars, nightclubs, taverns, lounges
      ii. Adult establishments
      iii. Eating establishments with drive-through and/or alcohol sales with on-premise consumption
      iv. Hotel/motel

CITY OF RALEIGH
CITY PLANNING DEPT
2010 DEC 23 AM 10:19

I acknowledge that these restrictions and conditions are offered voluntarily and with knowledge of the guidelines of the Zoning Application Instructions.

Printed Name: Heba Issa

Signature: Heba Issa Date: Dec. 22nd, 2010

Printed Name:

Signature: Date:

Exhibit C (cont.)

v. Retail sales – highway retail

vi. Indoor and outdoor movie theater

vii. Parking facility

- Residential institution (off-site)

-All Parking decks/garages, parking lots, motorpool used as a principal use

viii. Pest exterminating services

ix. Kennel, cattery

x. Riding stable

xi. Outdoor stadium

F. Industrial uses

i. Accessory structures "for the following subsections"

ii. Reservoirs and water control structures

iii. Landfills (debris from offsite)

iv. Utilities

v. Telecommunications tower

vi. Mini-warehouse storage facility

vii. Airfield, landing strip, heliport

viii. Landfills (debris from offsite)

ix. Utilities

x. Telecommunications towers

2. The maximum floor area gross of all building located on the rezoned property shall not exceed 25,000 square feet.

3 Residential density shall not exceed 6 dwellings per acre.

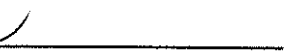
4 Building height shall not exceed 35'.

5 Building(s) shall be set back from future right-of-way lines a minimum of 30'.

6 Building ground floor shall not exceed 5,500 square feet.

I acknowledge that these restrictions and conditions are offered voluntarily and with knowledge of the guidelines of the Zoning Application Instructions.

Printed Name: Heba Issa

Signature:  Date: Dec. 22nd, 2010

Printed Name:

Signature: Date:

Exhibit C (cont.)

7 All six (6) new dwelling units' Certificates of Occupancies shall be on file before the issuance of Certificates of Occupancies for any new retail or commercial uses.

8 Driveway entrances shall be limited to no more than one entrance on Poole Road and no more than one entrance on Norwood Street.

9 Building materials and colors shall match those of Poe Elementary School.

10 Alcohol and tobacco product advertisements shall be prohibited from view on the Poe Elementary School property.

11. The sale of alcoholic beverages for off-premise consumption is permitted as an accessory use..

12 A 20' x 15' transit easement shall be provided. Furthermore the City of Raleigh transit administrator is to approve the location of the transit easement and that a transit easement deed, approved by the City attorney, will be deeded to the City prior to the issuance of any building permit or recording of any plat.

13 A bus shelter , bench and concrete pad will be installed by the owner prior to the issuance of any certificate of occupancy of any redevelopment project on the property

14 Trash containers shall be screened from the right-of-way **180** days following the adoption of this zoning ordinance. Screening shall be done in accordance with 10-2082.8.

15 Roof construction shall be restricted to either hip or gable, not to exceed a pitch of 5:12.

16 The subject property shall be maintained to prevent and eliminate it's surface water from draining onto 2413 Poole Road and to mitigate 2-year storm water flooding.

17 No beer, wine or intoxicating liquor shall be sold for on-premise consumption.

18 A permanent solid wooden fence 7'high constructed of redwood, cedar, or treated pine shall be constructed and maintained along the boundary dividing the subject property from the lot located at 2413 Poole Road. **180** days following the adoption of this zoning ordinance.

I acknowledge that these restrictions and conditions are offered voluntarily and with knowledge of the guidelines of the Zoning Application Instructions.

Printed Name: Heba Issa

Signature: Heba Issa Date: Dec. 22nd , 2010

Printed Name:

Signature: Date:

Z-24-10

pg 4 of 4

Exhibit C (cont.)

19 All businesses located on the subject property shall not open earlier than 7:00 a.m. nor remain open past 11:00 p.m. on Monday through Saturday, On Sunday, it shall not open earlier than 11:00 a.m. nor remain open after 11:00 p.m.

20. A Memorandum of Understanding and a Memorandum of Agreement shall be entered into between Wake County Public Schools and the property owner of the subject property to construct reasonable mitigation strategies to address any pedestrian concerns in regards to the general public walking on the grounds of Clarence Poe Elementary School campus located at 400 Peyton Street **180** days following the adoption of this zoning ordinance or before the submission of any site plan for approval by the City of Raleigh, which ever occurs first. Any site plan for the subject property shall contain the mitigation strategies approved in the memorandum of understand and a memorandum of agreement.

I acknowledge that these restrictions and conditions are offered voluntarily and with knowledge of the guidelines of the Zoning Application Instructions.

Printed Name: Heba Issa

Signature: Heba Issa Date: Dec. 22nd, 2010

Printed Name:

Office Use Only	
Petition No.	Z-24-10
Date Filed:	

EXHIBIT D. Petitioner's Argument on Behalf of The Zoning Change Requested

Please use this form only – form may be photocopied – please type or print.

This section is reserved for the applicant to state factual information in support of the rezoning request.

Required items of discussion:

The Planning Department is instructed not to accept any application for amending the official zoning map without a statement prepared by the applicant analyzing the reasonableness of the rezoning request. This statement *shall* address the consistency of the proposed rezoning with the Comprehensive Plan and any other applicable *City*-adopted plan(s), the compatibility of the proposed rezoning with the *property* and surrounding area, and the benefits and detriments of the proposed rezoning for the landowner, the immediate neighbors and the surrounding community.

Recommended items of discussion (where applicable):

1. An error by the City Council in establishing the current zoning classification of the property.
2. How circumstances (land use and future development plans) have so changed since the property was last zoned that its current zoning classification could not properly be applied to it now were it being zoned for the first time.
3. The public need for additional land to be zoned to the classification requested.
4. The impact on public services, facilities, infrastructure, fire and safety, parks and recreation, topography, access to light and air, etc.

PETITIONER'S STATEMENT:

I. Consistency of the proposed map amendment with the Comprehensive Plan (www.raleighnc.gov).

A. Please state the recommended land use(s) for this property as shown on the Future Land Use Map and discuss the consistency of the proposed land uses:

East District Plan. (no particular Area Plan). Residential

d" of our

B. Please state whether the subject property is located within any Area Plan or other City Council-adopted plans and policies and discuss the policies applicable to future development within the plan(s) area.

The site was omitted from the adjacent South King Charles Road Small Area Plan. According to the then CAC Chair it was omitted because everyone thought the site was in the Southeast CAC area.

There are no applicable policies per se for this site; Policies AP-KC1 and 2 are policies for the immediately adjacent parcels with accompanying action plans AP-KC-1-8

I think the improvements we are proposing would indeed satisfy protecting the residential integrity and historic charter of the neighborhood especially if you take into account the topic titled Keep the Corner Store, in the Chapter titled Communities, not subdivisions in Raleigh's New Development Code Diagnostic & Approach Report.

There are NO action plans for this particular parcel in the King Charles area plan.

C. Is the proposed map amendment consistent or inconsistent with the Comprehensive Plan and other City Council-adopted plans and policies? All references to Comprehensive Plan policies should include both the policy number (e.g. LU 4.5) and short title (e.g. "Connectivity").

In as much as there is no policy in the Comprehensive Plan that deals with non-conformities nor does the King Charles Area Plan include this site it could be argued that the site is only bound by the underlying R-6 zoning density.

I would further offer that LU 5.3 supports this zoning request is as much a stated purpose of LU 5.3 is to "...Reduce Conflicts". This rezoning request and the final conditions will address each of the 5 bullets in this section.

- We will define and install the appropriate buffering, screening and landscaping along the edges between residential and our commercial area;
- We will identify and condition as a part of this rezoning request, working with the adjoining neighborhood leaders, appropriate urban design treatments for managing transitions in this mixed-use urban setting;
- We will more effectively manage the non-residential uses that are permitted as a matter of right within our commercial and residential zones to protect the neighborhood from new uses which would generate external impacts, including institutions such as schools, churches, and daycares;
- We will ensure that the height, density, and bulk requirements will protect the scale and character of adjacent residential neighborhoods; and
- We are providing and will continue to provide ground-level retail while retaining the residential zoning along Poole Road.

II. <u>Compatibility of the proposed map amendment with the property and the surrounding area.</u>

A. Description of land uses within the surrounding area (residential housing types, parks, institutional uses, commercial uses, large parking lots, thoroughfares and collector streets, transit facilities):

- To the south, Poe International Montessori School (WCPSS), single and multifamily residences (rental and owner occupied) and retail.
- To the west, single and multifamily residences (rental and owner occupied) and retail.

- To the north, single family (rents and owner occupied w/some home businesses) and retail (shopping center)
- To the east, single family residences (rental and owner occupied), funeral home.

Finally and most important of all is the current site retail and has been retail since before the site was annexed into Raleigh in 1955.

B. Description of existing Zoning patterns (zoning districts including overlay districts) and existing built environment (densities, building heights, setbacks, tree cover, buffer yards):

The intersection of Poole Road, Norwood Street and Peyton Street zoning patterns are R-10, R-6 (subject site) and King Charles NCOD. The built environment typifies the zoning districts except for the subject property which was built has a store in 1948 and has remained as such ever since. The store and the residential units are typically 1 and 2 stories with set backs commensurate with the zoning districts. The tree canopy is well established due to the age of the area. Buffer yards, specific to this site, do not exist in relation to the eastern and northern edge with the other edges being the public right-of-way.

C. Explanation of how the proposed zoning map amendment is compatible with the suitability of the property for particular uses and the character of the surrounding area:

The proposed zoning map amendment is compatible with the suitability of the property for particular uses and the character of the surrounding area because it has been a retail store for the past 50 years. The proposed zoning just resolves the non-conformity that was create when the city annexed the property. Furthermore addresses the 5 issues in LU 5.3, as this rezoning will accomplish further demonstrates the future suitability of the property for the particular uses and character of the surrounding area.

III. Benefits and detriments of the proposed map amendment.

A. For the landowner(s):

The proposed map amendment benefits the landowner by permitting the subject property to be redeveloped for its highest and best use while providing a safe, friendly and sustainable service center for the pedestrian community. This has had a beneficial relationship with the surrounding community for the past 62 years.

B. For the immediate neighbors:

Resolving the conflict between the use and the underlying zoning allows everyone to have predictability and equity going forward. The actions in LU 5.3 that will be put in place will protect the neighbors in how the property will be built out providing definable measures that will address buffering, screening, landscaping, design treatment, height, density, and bulk requirement.

Also this is a very pedestrian community with a well used transit stop that serves 3 routes. Those cold mornings, or hot summer afternoon, the transit riders, while waiting under the transit shelter will be able to purchase either a hot cup of coffee or a cold soda, and other items they will need they will need.

C. For the surrounding community:

In addition to the addressing the need for redesigning and placement of the existing use upon the subject property the community will benefit with this portion of Poole Road finally attracting Urban Corridor characteristics where the residents can live, work and play. This redeveloped site will offer goods and services for the neighborhood; in addition it will create jobs for neighborhood residents.

IV. Does the rezoning of this property provide a significant benefit which is not available to the surrounding properties? Explain:

No, the significant benefit of this rezoning is available only to this site because the surrounding properties do not have non-conforming uses that have been in existence for as long as the property has been in the city of Raleigh.

Explain why the characteristics of the subject property support the proposed map amendment as reasonable and in the public interest.

This subject property is at the historical gateway to the Apollo Heights subdivision. This subdivision was one of the first affordable housing developments at its time. With the reliance upon mass transit by these early settlers the intersection of Peyton and Poole Road was always busy with people living, working and playing. 2405 Poole Road was and still is an integral part of this community's infrastructure because of its proximity to this intersection. As we move forward with enhance mass transit as a reasonable, efficient and effective way to move about the triangle for work, play and other reasons enhancing these transit intersections with goods and services targeting this pedestrian market is appropriate and good business cents. Without a doubt this rezoning helps in sustaining this walk-able community.

V. Recommended items of discussion (where applicable).

a. An error by the City Council in establishing the current zoning classification of the property.

This writer feels that the City Council erred when it did not create a zoning district that reflected the actual use of the property when it was annexed in 1955.

b. How circumstances (land use and future development plans) have so changed since the property was last zoned that its current zoning classification could not properly be applied to it now were it being zoned for the first time.

First and foremost Barney and Andy would not know Raleigh today if there point of reference was the 1955 snapshot that created this current zoning district.

Who knows why we create these non-conformities other than to say that we assume that our Municipal Code § 10-2146 can handle the issues that may arise from time to

time in addressing the changing economic and design challenges these non-conformities create. But I would submit that today § 10-2146 can not handle the following:

- Appropriate buffering, screening, and landscaping requirements along the edges between residential and commercial uses;
- Permit appropriate urban design treatments for managing transitions in mixed-use urban settings;
- More effectively manage non-residential uses that are permitted as a matter of right within commercial and residential zones;
- Ensure that the height, density and bulk requirements balance the business needs with the need to protect the scale and character of adjacent neighborhoods; and
- Provide for appropriate retail while retaining the residential context.

c. The public need for additional land to be zoned to the classification requested.

The subject site is already retail and the public needs this zoning non-conforming use to be settled to reduce the conflict that is inherent in situations like this.

d. The impact on public services, facilities, infrastructure, fire and safety, parks and recreation, topography, access to light and air, etc.

The existing impact will remain the same. There will be no additional impact because the **USE** is not changing

e. How the rezoning advances the fundamental purposes of zoning as set forth in the N.C. enabling legislation.

No argument at this time. Will provide later.

VI. Other arguments on behalf of the map amendment requested.

None at this time.

2-24-10

[1]§ 90-113.21. General provisions.

(a) As used in this Article, "drug paraphernalia" means all equipment, products and materials of any kind that are used to facilitate, or intended or designed to facilitate, violations of the Controlled Substances Act, including planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, and concealing controlled substances and injecting, ingesting, inhaling, or otherwise introducing controlled substances into the human body. "Drug paraphernalia" includes, but is not limited to, the following:

(1) Kits for planting, propagating, cultivating, growing, or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits for manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(3) Isomerization devices for increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of controlled substances;

(5) Scales and balances for weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose, and lactose for mixing with controlled substances;

(7) Separation gins and sifters for removing twigs and seeds from, or otherwise cleaning or refining, marijuana;

(8) Blenders, bowls, containers, spoons, and mixing devices for compounding controlled substances;

(9) Capsules, balloons, envelopes and other containers for packaging small quantities of controlled substances;

(10) Containers and other objects for storing or concealing controlled substances;

(11) Hypodermic syringes, needles, and other objects for parenterally injecting controlled substances into the body;

(12) Objects for ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

b. Water pipes;

c. Carburetion tubes and devices;

d. Smoking and carburetion masks;

e. Objects, commonly called roach clips, for holding burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

f. Miniature cocaine spoons and cocaine vials;

g. Chamber pipes;

h. Carburetor pipes;

i. Electric pipes;

j. Air-driven pipes;

k. Chillums;

l. Bongs;

m. Ice pipes or chillers.

(b) The following, along with all other relevant evidence, may be considered in determining whether an object is drug paraphernalia:

(1) Statements by the owner or anyone in control of the object concerning its use;
(2) Prior convictions of the owner or other person in control of the object for violations of controlled substances law;
(3) The proximity of the object to a violation of the Controlled Substances Act;
(4) The proximity of the object to a controlled substance;
(5) The existence of any residue of a controlled substance on the object;
(6) The proximity of the object to other drug paraphernalia;
(7) Instructions provided with the object concerning its use;
(8) Descriptive materials accompanying the object explaining or depicting its use;
(9) Advertising concerning its use;
(10) The manner in which the object is displayed for sale;
(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a seller of tobacco products or agricultural supplies;
(12) Possible legitimate uses of the object in the community;
(13) Expert testimony concerning its use;
(14) The intent of the owner or other person in control of the object to deliver it to persons whom he knows or reasonably should know intend to use the object to facilitate violations of the Controlled Substances Act. (1981, c. 500, s. 1.)