

**SEPTEMBER 13, 2007**

**1805, 1807, 1809 W PARRISH AV**

**ZONE CHANGE**

<b>From:</b> R-4DT		
<b>To:</b> B-4 General Business		
<b>Proposed Use:</b> Commercial		
<b>Acreage:</b> 0.56		
<b>Applicant:</b> West Parrish Plaza, LLC; David S. & Mary Lou Haycraft; John W. Ray (0709.1690)		
<b>Property Zone Existing Use</b>	<b>to North</b> R-4DT Residential	
<b>to West</b> R-4DT Residential	<b>Subject</b> R-4DT → B-4 Residential	<b>to East</b> B-4 Commercial
	<b>to South</b> R-1A Residential	

**GENERAL LAND USE CRITERIA**  
Apply, if marked below:

*Described in Comprehensive Plan on pages 445-448*

**Environmental** ☒

- E1** Flood Plains
- E2** Steep Slope
- E3** Historical & Archaeological Sites
- E4** Soils
- E5** Plant & Animal Life

**Urban Services** ☒

- ☒ **U1** Roadway Capacity
- ☒ **U2** Electricity Supply
- ☒ **U3** Water Supply
- ☒ **U4** Stormwater Disposal
- ☒ **U5** Sanitary Sewage Disposal

**Development Patterns** ❖

- D1** Land-Use Intensity, Clusters and Buffers
- D2** Land Use versus Street Function
- ❖ **D3** Intersection & Driveway Spacing
- ❖ **D4** Roadway Buffer Standards
- D5** Lot Sizes & Proportions
- D6** Residential Development
- ❖ **D7** Non-Residential Development
- D8** Building Quality

**Proposed Zone & Land Use Plan**

The applicant is seeking a B-4 General Business zone. The subject property is located in a Central Residential Plan Area where general business uses are appropriate in limited locations.

**SPECIFIC LAND USE CRITERIA**

- (a) Building and lot patterns; outdoor storage areas -** Building and lot patterns should conform to the criteria for “**Nonresidential Development**” (D7), and outdoor storage yards, with “**Buffers for Outdoor Storage Yards**” (D1).
- (c) Expansions across intervening streets -** In Central Residential plan areas, the expansion of an existing General Business zone across an intervening street should be at least **one-and-one-half (1.5)** acres in size, but should not occur if this would significantly increase the extent of the zone in the vicinity.

**Applicant's Findings**

Type I Findings

Background

This application for rezoning includes three parcels of land on West Parrish Avenue, Lot Number One in the McFarland Addition located at 1805 West Parrish Avenue; Lot Number Two in the McFarland Addition located at 1807 West Parrish Avenue, and Lot Number Three in the McFarland Addition located at 1809 West Parrish Avenue.

The property located at 1805 West Parrish Avenue is a very old, dilapidated house in substandard condition which will be torn down after this rezoning is approved. There will be no interest for any prospective purchaser of this lot to construct a single family dwelling.

The property located at 1807 West Parrish Avenue is an older two-story duplex.

The property located at 1809 West Parrish Avenue is an older single family residence.

Findings

I. The proposed rezoning is in substantial compliance with applicable criteria as set forth in the Comprehensive Land Use Plan.

The rezoning proposal meets all of the requirements of the criteria as set out under Section 11 General Business of the Land Use Plan with the exception of the 1.5 acre expansion across intervening streets requirement as set out

in Section C. The subject property is located in a Central Residential plan area where commercial activities are appropriate in limited locations.

a) Building and lot patterns; outdoor storage yards. The subject property is large enough to accommodate a commercial development with proper screening.

b) Logical zoning expansions of proportional scope. The subject property is contiguous with B-4 Commercial property and a shopping center is directly across the street. The expansion of a General Business zone should not significantly increase extent of the zone in the vicinity of the expansion and should not overburden the capacity of roadways and other necessary urban services that are available in the affected area.

c) Expansions across intervening streets. In Central Residential, Urban Residential, Future Urban, and Professional Service plan areas, the expansion of an existing General Business zone across an intervening street should be at least one-and-one-half (1.5) acres in size, but should not occur if this would significantly increase the extent of the zone in the vicinity.

The application for rezoning includes .5 of an acre.

The keyword in the criteria in the above paragraph is should. Certainly, there is significant meaning between the words "should" and "shall". If the composers of the above criteria did not want any exceptions they would have used the word "shall" so the criteria would be mandatory. The word "should" implies flexibility. The 1.5 acre requirement is only a guideline and not a mandatory requirement. Therefore, the 1.5 acre requirement should not be followed in this case because of the reasons set out below:

d) New locations in Central Residential plan areas. The rezoning of the subject property is not a new location because the zoning proposal is expanding a commercial development across the street and it is "arterial-street-oriented".

Why the 1.5 acre requirement should not be followed.

1. The rezoning proposal meets the "arterial-street-oriented" requirement. West Parrish Avenue is a major arterial street. The intersection at West Parrish Avenue and Frederica Street is probably the most traveled intersection in Daviess County. West Parrish Avenue from Bosely Road west has been five-laned to the Beltline. There are highway plans to widen West Parrish Avenue from a three lane to a five lane from Frederica Street to Bosley Road. When houses on West Parrish Avenue become dilapidated from Frederica Street to Bosley Road the houses will be torn down and there will be vacant lots. Several houses have been recently demolished on the north

side of the 1600 block of West Parrish Avenue, and the lots remain vacant in anticipation of new growth commercial activity. New proposed purchasers would not think of building a new residential dwelling along West Parrish Avenue.

2. All three lots which are the subject of this rezoning have double frontage, which includes frontage along West Parrish Avenue and James David Court. The corner lot at 1805 W. Parrish Avenue is located at the intersection of West Parrish Avenue and Independence Avenue and has triple frontage, which includes frontage along West Parrish, James David Court and Independence Avenue. In addition, all three lots are "arterial-street-oriented", thereby making these lots more suitable for non-residential development.

3. The subject properties are contiguous and adjacent to B-4 zoning directly across the street. (Independence Avenue) B-4 zoning is a shopping center and the rear of the shopping center is right in the front door of the property located at 1805 West Parrish Avenue.

4. At the OMPC meeting, on November 9, 2006, this Board, by unanimous vote, approved a rezoning of two properties in this same subdivision and same block (1911 and 1915 W. Parrish Avenue) from R-4DT - Residential to B-4 - General Business.

Taking into consideration the special circumstances set out above 1) West Parrish Avenue is "arterial-street-oriented"; 2) there is double frontage on all three lots and triple frontage on the corner lot; 3) that there is B-4 Commercial shopping center across the street; 4) a major rezoning of two lots in this same subdivision and same block. It is the applicant's contention that we have made a very strong case to show why the 1.5 acre requirement should not be followed.

Additional information to support the rezoning proposal.

The proposed rezoning application is in substantial compliance with the criteria of the 1.5 acre requirement.

Not only does the zoning proposal substantially comply with the 1.5 acre requirement, the application meets the "logical expansion criteria" of Article 15.3 of the Zoning Ordinance. Article 15.3 reads as follows:

15.4 Expansion of General Business Areas. In order to assure and to accommodate the logical expansion of existing General Business Areas, any lot or tract proposed for new B-4 Zoning must meet at least one of the following criteria to be eligible for consideration:

15.41 Such lot or tract must be contiguous to an existing boundary of a B-4 Zone and located generally on the same street or highway frontage; or

15.42 Such lot or tract must be adjacent to a street or highway of arterial status within the Owensboro Beltline (US 60 Bypass).

The proposed rezoning tract is contiguous to an existing boundary of B-4 Zone (the West Parrish Stop-N-Shop Shopping Center) which is located on the same street or highway as the proposed rezoning.

In addition, the proposed rezoning tract is adjacent to West Parrish Avenue which is an arterial street.

#### Type II Findings

II. IN THE ALTERNATIVE, the existing zoning classification given to the subject property is inappropriate and the proposed zoning classification is appropriate.

The entire north side of the 1800 and 1900 block of West Parrish Avenue should have been given a B-4 General Business classification.

The Comprehensive Land Use Plan and corresponding land uses did not fully take into consideration the existing B-4 commercial uses already existing in this block and throughout this immediate area.

Parrish Avenue West is now the major east-west arterial street through Owensboro. Parrish Avenue West from Bosley Road West has been five-laned to the Beltline. All four corners of the property located at Bosley Road and Parrish Avenue West are major commercial centers consisting of two filling stations, Rite-Aid Pharmacy, a travel center and an express lube.

Adjacent to and across the street from the property located at 1805 Parrish Avenue West is a shopping center known as Stop-n-Shop Shopping Center consisting of approximately 2.5 acres. No one will build residential houses adjacent and across from a 2.5 acre shopping center. Houses were demolished on the north side of West Parrish Avenue in the 1700 block to enlarge part of this shopping center. Several houses have been recently demolished on the north side of the 1600 block of West Parrish Avenue and the lots remain vacant in anticipation of new growth commercial activity. Houses on the north side of West Parrish Avenue in the 800 block have been demolished and the vacant lots rezoned in anticipation of commercial growth.

The house located at 1805 Parrish Avenue (which is part of the property of this rezoning) is dilapidated and will be torn down. Certainly a single-family dwelling will not be rebuilt on this lot based upon the other changes that have taken place in the neighborhood.

All three lots which are the subject of this rezoning have double frontage, which includes frontage along West Parrish Avenue and James David Court. The corner lot at 1805 W. Parrish Avenue is located at the intersection of West Parrish Avenue and Independence Avenue and has triple frontage, which includes frontage along West Parrish, James David Court and Independence Avenue. In addition, all three lots are “arterial-street-oriented”, thereby making these lots more suitable for non-residential development.

Four houses in this same subdivision and same block were demolished in November, 2006. The OMPC Board, by unanimous vote on November 9, 2006, approved the rezoning of the properties located at 1911 and 1915 West Parrish Avenue from R-4DT-Residential to B-4 - General Business.

III. There have been major changes of an economic, physical or social nature within the area involved which were not anticipated in the adoptive comprehensive plan and those changes have substantially altered the basic character of the area involved.

At the OMPC meeting, on November 9, 2006, this Board, by unanimous vote, approved a rezoning of two properties in this same subdivision and same block (1911 and 1915 W. Parrish Avenue) from R-4DT - Residential to B-4 - General Business.

#### Argument

I. If the 1.5 acre requirement would have been mandatory the rezoning of the RiteAid lot on the northeast corner of Bosley Road and West Parrish Avenue would not have been approved because it is a 1.2 acre tract of ground. This would not make sense to deny a rezoning at a busy intersection because it liked .3 of an acre meeting the guideline requirements.

II. You rezoned the Tea Room on 24th Street which did not meet the requirements of the Logical Expansion requirements. There was no commercial property in the block or across the street. This Board should be flexible in this case just as they were in the Tea Room rezoning. The subject case is a lot stronger case because we have B-4 across the street and there is a recent rezoning case in the same block.

III. This is a corner lot with existing commercial within the same block and same subdivision. The applicants are not making a new encroachment into a new subdivision or block.

IV. Nothing magic about the 1.5 acre requirement.

V. Vacant lots up and down West Parrish Avenue where older homes have been demolished.

VI. If the Board does what they have done in the past, they should approve it (Tea Room).

VII. It is a larger residential lot than the rest of the lots in the subdivision.

## Planning Staff Review

The subject property is located in the 1801 block of W Parrish Avenue. Land use criteria applicable to this proposal are reviewed below.

### GENERAL LAND USE CRITERIA

#### Environment

According to a study prepared by the US Department of Agriculture Soil Conservation Service dated March 6, 1990, it appears that the subject property is not located in a wetlands area. The subject property is not located in a special flood hazard area per FIRM Map 21059CO120 C. Based on the preliminary FIRM maps dated July 7, 2007, the subject property is not located in a special flood hazard area per map 21059CO119 D. The developer is responsible for obtaining permits as may be required by the Division of Water, The Army Corp of Engineers, FEMA or other state and federal agencies as may be applicable.

It appears that the subject property is outside the Owensboro Wellhead Protection area according to a map created by the GRADD office dated March 1999.

#### Urban Services

All urban services, including sanitary sewers, are available to the site.

#### Development Patterns

The subject property is located in an area of mixed residential and commercial property. The property to the north, west and south is zoned residential with primarily single-family residential uses. The property to the east across Independence Avenue is zoned commercial and is a strip shopping center with a vacant grocery store and other small shops.

There are currently residences on the three subject properties. Two of the residences currently have driveways to W Parrish Avenue. With the potential redevelopment of the parcels, access to W Parrish Avenue should be eliminated. With only approximately 188 feet of roadway frontage along W Parrish Avenue, access spacing of 500 feet cannot be met along this arterial roadway. There is a 50 foot roadway buffer from the street centerline on W Parrish Avenue. The subject property also has road frontage on Independence Avenue and James David Court,

both of which are classified as local streets with no access requirements except that driveways should be located a minimum of 50 feet from the corner property line and should not exceed 40% of the lot frontage.

Within a Central Residential Plan Area, the proposed zoning change to B-4 does not meet all the specific criteria of the Comprehensive Plan. The subject property will be used in a non-residential manner and it will be arterial-street oriented; however, it is not one and a half acres in size. At 0.56 acres, it is approximately a third of the size stipulated in the Comprehensive Plan. If the site qualified as a new location of general business zoning, it would meet the criteria of arterial street orientation and being sited at the corner of intersecting streets. However, it would still not meet the requirement of 1.5 acres.

Based on recent activity in the area, there have been changes within this block front that have altered the essential character of the neighborhood. At the other end of the block, rezonings have been approved to expand B-4 zoning along W Parrish Avenue adjacent to the Rite-Aid store on the corner of W Parrish Avenue and Bosley Road. Those properties were located within a Central Residential Plan Area and expanded the contiguous commercial zoning. There is a significant commercial entity across Independence Avenue from the subject property. With the previous expansion of commercial zoning into a Central Residential Plan Area in the same blockfront, and the existing commercial zoning across Independence Avenue, the zoning of the subject property for commercial prospects does not seem out of character within the neighborhood. However, since there are still existing residences in the blockfront and in the neighborhood, the concerns of the adjoining property owners should be taken into considering when determining the appropriateness of the proposed zoning change.

If the zoning is approved, a 10 landscape buffer with a six foot element and one tree every 40 linear feet will be required along the west boundary of the subject property. Also, due to the proximity to existing residences, any lighting on the property should be directed away from the residences to reduce the impact of commercial lighting and glare from the commercial use.

### SPECIFIC LAND USE CRITERIA

The applicant's proposal is in substantial compliance with the Comprehensive Plan. The property will be used for nonresidential purposes and is adjacent to B-4 zoning across Independence Avenue. Although not 1.5 acres in size, there have been other commercial zonings within this W Parrish Avenue blockfront in conformance with the Comprehensive Plan has altered the character of the neighborhood from mainly residential in nature to a developing commercial blockfront and that altered the character of the neighborhood.

## Planning Staff Recommendations

Staff recommends approval because the proposal is in substantial compliance with the community's adopted Comprehensive Plan. The conditions and findings of fact that support this recommendation include the following:

### Conditions:

1. No access shall be permitted to W Parrish Avenue;
2. A 10 landscape buffer with a six foot element and one tree every 40 linear feet shall be installed along the west property line abutting residential zoning; and,
3. Due to the proximity to existing residential zones, all lighting for the subject property shall be directed away from the residential property to reduce the glare and impact of the lighting on the residential uses.

### Findings of Fact:

1. The subject property is located in a Central Residential Plan Area where general business uses are appropriate in limited locations;
2. The proposed use of the property for commercial purposes will be nonresidential in nature;
3. Commercial zoning is located across Independence Avenue to the east ;
4. Expansion of commercial zoning within the same W Parrish Avenue blockfront has recently occurred within this Central Residential Plan Area in conformance with the Comprehensive Plan has altered the residential character of the neighborhood;
5. With no access permitted to W Parrish Avenue, the proposed zoning change should not overburden roadways or other necessary urban services that are available in the affected area; and,
6. The proposed zoning change will not significantly increase the extent of the zone in the vicinity.