

MEMORANDUM

TO: Roger L. Stancil, Town Manager

FROM: J.B. Culpepper, Planning Director
Gene Poveromo, Development Manager
Kendal Brown, Principal Planner

SUBJECT: Elementary School #11 at 350 Caldwell Street Extension – Rezoning Application

DATE: October 28, 2009

INTRODUCTION

Tonight the Town Council continues the public hearing from September 21, 2009 for a rezoning of an 8-acre site located at 350 Caldwell Street Extension from Residential-3 (R-3) to Office/Institutional-3 (OI-3). The site is identified as Orange County Parcel Identifier Number 9788-18-1797.

The school system has also requested a modification to the site's Special Use Permit, proposing a three-story 100,000-square-foot elementary school with 84 parking spaces. (See accompanying Special Use Permit Modification memorandum.)

Adoption of the attached ordinance would enact a zoning atlas amendment for a general use rezoning for 350 Caldwell Street Extension.

DISCUSSION

At the September 21, 2009 public hearing, two issues were raised. Each is discussed below.

1. **Impetus for Rezoning:** At the September 21, 2009 public hearing, a Council member asked the developer and staff to state why a rezoning was necessary.

Staff Comment: An elementary school is a permitted use in both the existing Residential-3 and proposed Office/Institutional-3 zoning districts. The developer has revised the Statement of Justification to clearly state that rezoning to Office/Institutional-3 would provide a floor area ratio of .566 (versus the floor area ratio of .166 in Residential-3) that would allow construction of a 100,000 square foot elementary school on this 8-acre site, as proposed in the accompanying Special Use Permit Modification application.

2. **Linking School Use to Office/Institutional-3 (OI-3):** A Council member asked if there was a way to stipulate that if at some point in the future the school were no longer in use, the property could revert to its previous zoning.

Staff Response: The proposed zoning is Office/Institutional-3 (OI-3), a general use district which allows a variety of uses including day care facilities, different types of businesses, banks, offices, cemeteries, educational and medical facilities, multi-family dwellings, and hotels. (Please refer to the attached Use Matrix from the Land Use Management Ordinance.)

In a conditional use district zoning district, a rezoning would require a special use permit for any use. In addition, in a conditional use district, the rezoning could limit the uses from among those otherwise permitted in a general use zoning district. However, in a general use district, the property would be available for all uses permitted in the district.

There is no current provision in the Land Use Management Ordinance for OI-3 conditional use district zoning. In this case, if the school were to be abandoned at some point in the future, the underlying general use zoning would remain and permit all the uses allowed in OI-3. If the Council were to enact the rezoning and issue the special use permit and the School Board were to not construct an elementary school on this site, the property would be available and marketable under its new zoning category, OI-3.

Rezoning back to a residential district would be a legislative option available to the Council at some point in the future if the school were to be no longer in use, or if the School Board did not build a school on this site. In order to preserve as much flexibility for the Council on this issue as possible, given the general use zoning district, we recommend that the Council stipulate as a condition of the special use permit a provision stating that the School Board, for itself and any successors in title to this property, waives any objection to a future rezoning of this property back to Residential-3 (R-3). This would preclude a possible protest petition filed by the property owner in opposition to such a rezoning.

If it appears, in the next few years, that the School Board will not be using this site for a new school, we would recommend that the Council initiate the steps to rezone the property back to Residential-3 (R-3). If a school is built, the stipulation contained in the special use permit would run with the land and be binding on the School Board and successors in interest. In either case, the stipulation could make a rezoning of the property in the future a matter that could be accomplished by simple majority vote of a future Council, unless a protest petition were to be filed by another person or persons and determined to be valid and sufficient in which case a three-fourths vote would be needed.

In the accompanying Special Use Permit Modification application, the attached Revised Resolution A includes a stipulation which provides that the School Board, for itself and any successors in title to this property, waives any objection to a future rezoning of this property back to Residential-3 (R-3). The developer has agreed to this stipulation.

PROTEST PETITION

Citizens opposed to this rezoning proposal were provided an opportunity to file a protest petition. Such a petition would be subject to the provisions of North Carolina General Statutes Sections 160A-385 and 386, as may be amended from time to time. As of the deadline specified we did not receive a valid protest petition for the Zoning Atlas Amendment application.

ZONING ATLAS AMENDMENT ANALYSIS

As stated above, a rezoning is considered a Zoning Atlas Amendment. Article 4.4 of the Land Use Management Ordinance establishes the intent of Zoning Amendments (including both atlas and text amendments to the Ordinance) by stating that, “In order to establish and maintain sound, stable, and desirable development within the planning jurisdiction of the Town it is intended that this chapter shall not be amended except:

- a) To correct a manifest error in the chapter; or
- b) Because of changed or changing conditions in a particular area or in the jurisdiction generally; or
- c) To achieve the purposes of the Comprehensive Plan.

Article 4.4 further indicates:

It is further intended that, if amended, this chapter be amended only as reasonably necessary for the promotion of the public health, safety, or general welfare, and in conformance with the Comprehensive Plan.

Analysis of an application to amend the zoning atlas is organized around the requirement of the Land Use Management Ordinance as stated in Article 4.4. To evaluate the application as a request for rezoning to the Office/Institutional-3 (OI-3) zoning district, please see the following section and the applicant’s revised Statement of Justification (attached).

A) A zoning atlas amendment (rezoning) to the Land Use Management Ordinance is necessary to correct a manifest error in the chapter (zoning atlas).

Staff Comment: We believe the information in the record to date can be summarized as follows:

- Argument in Support: The applicant has not offered arguments to support this circumstance. We were unable to identify any arguments in support of a manifest error.
- Argument in Opposition: To date no arguments in opposition have been submitted.

B) A zoning atlas amendment (rezoning) to the Land Use Management Ordinance is necessary because of changed or changing conditions in a particular area or in the jurisdiction generally.

Staff Comment: We believe the information in the record thus far can be summarized as follows:

- Argument in Support: Arguments in support of this finding are offered in the applicant’s statement of justification, attached. Excerpts from this statement include:

- "...as residential properties in the neighborhood have begun to be more highly valued as rental property than as owner-occupied residences or family homes, a more transient neighborhood demographic has evolved. This transition has resulted in a noticeable loss of neighborhood cohesion and identity, and has begun to diminish Northside's traditional family-oriented character. These changes run contrary to the Town's intentions to protect and preserve the historic character of the Northside neighborhood. The location of a new elementary school in the heart of this community will strengthen the traditional neighborhood character in several important ways...." *[Applicant's Statement]*

- Arguments in Opposition: To date, no arguments in opposition have been submitted.

C) An amendment to the Land Use Management Ordinance is necessary to achieve the purposes of the Comprehensive Plan.

Staff Comment: We believe the information in the record thus far can be summarized as follows:

- Arguments in Support: Arguments in support of this finding are offered in the applicant's statement of justification, which references several themes in the Comprehensive Plan:
 - "Conserve and protect existing neighborhoods: The new elementary school will provide a protective effect within the Northside neighborhood by increasing the attractiveness of the neighborhood for families and owner-occupants, and encouraging longer-term residents to occupy the neighborhood residences, naturally leading to a neighborhood population that is more stable and invested..." *[Applicant's Statement]*

"The proposed school will reinstate the historic educational usage of the property and will support the historic family-oriented composition of the neighborhood." *[Applicant's Statement]*

"In accordance with the neighborhood preservation objectives of the Comprehensive Plan, the Northside Neighborhood Conservation District was adopted by Town Council. The Vision Statement contained in the Plan outlines several objectives to be accomplished by development in the neighborhood." *[Applicant's Statement]*
 - "Encourage desirable forms of non-residential development: The new school... will serve vital public educational purposes, express leadership in sustainability and environmental responsibility, and provide a valuable neighborhood venue for secondary activities that will contribute to neighborhood identity and quality." *[Applicant's Statement]*
 - "Provide quality community facilities and services: "...the new school facility will continue the CHCCS record of providing a high level of service to the local community, within a facility that will be recognized for leadership in sustainability." *[Applicant's Statement]*

Please refer to the applicant's Revised Statement of Justification for more detail.

Arguments in Opposition: To date, no arguments have been submitted indicating that this development would not be consistent with the Comprehensive Plan.

Additional Information: We note that the Land Use Plan, another component of the Comprehensive Plan, adopted on May 8, 2000, indicates this area as "Institutional."

RECOMMENDATIONS

Planning Board Recommendation: The Planning Board met on August 4, 2009 and voted 6-0 to recommend approval of the rezoning.

Staff Recommendation: We recommend enactment of Ordinance A. We believe the rezoning could be justified based on Finding C regarding compliance with the Comprehensive Plan, in accordance with the statements offered by the applicant.

Please find attached for Council consideration an ordinance to enact the rezoning request and a resolution to deny the rezoning request.

ATTACHMENTS

1. Use Matrix from the Land Use Management Ordinance (p. 8).
2. Applicant's Revised Statement of Justification (p. 14).
3. Exhibit 1(legal description) (p. 18).