



**PLANNING & ZONING COMMITTEE MEETING
VALERIE ABBOTT, CHAIR
WEDNESDAY, AUGUST 10, 2022
3:30 PM
CITY COUNCIL CHAMBERS
<https://www.facebook.com/citycouncilbham>**

AGENDA

- I. CALL TO ORDER**
- II. APPROVAL OF THE MINUTES**
- III. REZONING CASES**
 - 1. ZAC2022-00001.....Oxmoor Neighborhood**

Application to change zone district boundaries from MXD (Planned Mixed Use District) to C-1 (Neighborhood Commercial District) in order to allow for the construction of a new convenience store and quick service restaurant, filed by Charles Beavers on behalf of the owner, United States Steel Corporation, for the properties located at 3100 and 3060 Shannon Oxmoor Road and situated in the NE ¼ of Section 06, Township 19-S, Range 3-West, 35022 (Council District 7).

Proposed Use: A convenience store and quick service restaurant.

Property and Abutting Land Uses: The subject property sits on approximately 2.92 acres of land, currently zoned **MXD (Planned Mixed-Use District)**. Abutting the subject property to the North, South, and West is undeveloped land also zoned MXD (Planned Mixed-Use District). To the East of the property is a Circle K convenience store that also houses Smith K Cleaners, zoned **C1 (Neighborhood Commercial District)**.

The current zoning, MXD Planned Mixed-Use District is designed to allow for a compatible and complementary mixture of residential, office, commercial, cultural, institutional, governmental, and industrial uses in large, planned developments. *This property does not have a subgroup zoning.*

Applicant's Proposal: The applicant's proposal is to construct a convenience store that will have a quick service restaurant with a drive-thru and indoor dining on one side and a typical convenience store on the other side.

The applicant is seeking C-1, Neighborhood Commercial District, this district is designed to allow for areas of neighborhood retail and services that meet the day-to-day needs of residents and workers of surrounding neighborhoods (typically within a 1-mile radius) Uses in this district include: smaller grocery stores, banks, restaurants and services such as small professional and health offices, barber/beauty shops, dry cleaners, small- to medium-scale offices, schools, churches, and neighborhood-serving public uses. This district is intended to be accessible both by automobile with sufficient parking, but also designed to accommodate pedestrian and bicycle access.

The City's ***Adopted Long-Range Land Use Plan*** identifies the property ***as I-1, Light Industrial District***. This Industrial district is designed to allow for light manufacturing and office uses. Uses in this district include: warehouse and distribution uses, urban agriculture, and supporting uses, such as minor retail and services to support the major uses. No residential uses are allowed in this district.

Zoning Ordinance.

The proposed uses are Permitted with conditions in C-1:

Convenience Store. A retail establishment selling primarily food products household items, newspapers, and magazines, candy, and beverages and in which gasoline and other motor fuels, are dispensed at retail, by use of fixed approved dispensers. Convenience stores may include an automated car wash for washing one automobile at a time, within an enclosed building.

Drive-In/Drive-Through. Any establishment where services are rendered or items are sold, for consumption on-site or off-site, and orders are made from a car to a server at a window, or via a speaker and receiver, or via an automated device.

Conditions:

In C-1 a drive-in or drive-through shall be permitted provided that any drive-in or drive-through shall be located 50 feet from any dwelling district.

In C-1 a convenience store shall be permitted provided that the following conditions are met:

- 1. All pumps shall not be closer than 50 feet to any dwelling district, and not closer than 15 feet to a right-of-way line.*
- 2. Any building shall be setback 25 feet from a dwelling district.*
- 3. Automated carwashes in the C-1 districts shall be allowed as an accessory use by special exception pursuant to Chapter 4, Article III, Section 6.*

Stormwater: All storm water, flood plain, and soil erosion ordinances apply.

- City of Birmingham Soil Erosion control permit will be required.
- City of Birmingham Civil Construction permit will be required.
- City of Birmingham Stormwater Permit requirements will apply, including certifications from the design engineer.
- Post construction runoff shall not exceed pre-project runoff for the 1,2,10, and 25-year storm events.
- The 100-year storm shall safely pass the system.
- Compliance with the Post Construction Stormwater Ordinance is required.

Birmingham Department of Transportation: BDOT has looked over and approved the applicant's plan to restripe the turn lane on Oxmoor Road. BDOT is not concerned about any increase in traffic.

The applicant's proposed site plan shows 16 parking spaces, 10 fuel pump spaces, and 9 stacking spaces in the drive thru. The parking requirement for a general retail business is 1 space per 300 sq. ft. of GFA ($5,000/300=16 \times 1=16$); for a drive-thru it is 4 stacking spaces per each drive through order window or pickup window ($1 \times 4=4$); therefore, the total number of parking spaces required is 16 spaces with 4 stacking spaces. The applicant's proposed site plan shows a total of 16 spaces, with 10 fueling spaces, and 9 stacking spaces; therefore, ***the applicant's proposal meets the parking requirement for the site.***

Landscaping: This project requires an evergreen shrub hedgerow between the gas station and the street, as well as 1 canopy tree per 40' of street frontage between the gas station and the right-of-way. The landscaping plan meets the requirements.

"Q" Conditions That May Be Considered. If the Committee recommends approval of the rezoning request the following "Q" Conditions may be considered:

1. Compliance with all requirements in the Oxmoor Steering Committee Guidelines.

Neighborhood Recommendation. The Oxmoor Neighborhood Association met at its regularly scheduled meeting on **February 14, 2022**, to review the proposed project and voted to *not support* the proposed rezoning request. The vote was **5-** support and **32-** not support. The neighborhood is not supportive of the rezoning request because there are five gas stations in the area, three are in Oxmoor and one of those three already serves hot food. The new gas station would also cause more traffic problems on Shannon/ Oxmoor Road.

Framework Plan. This property is located within the Southwest Framework Plan Area. This framework plan was adopted in May 2017. The Southwest Framework Plan Implementation Committee was established in 2017. They did not have any comments to add.

Zoning Advisory Committee.

The Zoning Advisory Committee met at its regularly scheduled meeting on **June 7, 2022** and voted to *continue* the case to the next ZAC meeting so the applicant could present more information to the committee.

The Zoning Advisory Committee met at its regularly scheduled meeting on **August 2, 2022** and voted to *recommend* the case to the Planning and Zoning Committee. **3** votes to recommend. **2** votes to not recommend. The committee recommends the following “Q” Conditions:

“Q” Conditions:

1. Compliance with all requirements in the Oxmoor Steering Committee Guidelines.
2. Any future development on the properties requires submittal of a site plan to the Zoning Advisory Committee and the committee must approve the site plan prior to any construction.

2. ZAC2022-00006.....Ensley Highlands Neighborhood

3.

Application to change zone district boundaries from B2 (General Business District) to I-1(Light Manufacturing District) in order to use this parcel as a parking lot for commercial vehicles awaiting repair, filed by Don Cosper on behalf of the owner, Steven Bailey, for the property located at 2509 Ensley Avenue West and situated in the NE ¼ of Section 06, Township 18-S, Range 3-West, 35218 (Council District 8)

Proposed Use: A parking lot for commercial vehicles in line for repair and those waiting to be picked up after repairs or tires are completed by Tire Tech.

Property and Abutting Land Uses:

The subject property sits on approximately .14 acres of land, currently zoned **C-2 (General Commercial District)**. Properties abutting the subject property to the north, south, and east are also zoned C-2. The properties to the west are zoned **D3 (Single Family District)**.

The current zoning, **General Commercial (C-2) District** allows for large supermarkets, department stores, movie theaters, big box stores, supporting retail and other services, leisure and entertainment uses, high density multi-family, schools, churches, and neighborhood-serving public uses. Office uses with ground floor retail are encouraged. This district is intended to be accessible by auto, but should be designed to accommodate pedestrians and bicyclists, provide interior circulation between properties, and appropriate landscaping to counter heat island and stormwater impacts.

Applicant's Proposal:

The applicant's proposal is to use the lot as a parking lot for commercial vehicles that are waiting to be repaired and those that have already been repaired and are waiting to be picked up. Repairs and tire replacements are performed across the street in Tire Tech's building located at 2400 Ensley Avenue West.

The City's **Adopted Long-Range Land Use Plan** identifies the property as **General Commercial**. This **Commercial** district is designed to allow for areas serving a citywide or regional trade area, including shopping and entertainment centers that offer a range of retail and service establishments. Uses in this district include: large supermarkets, department stores, movie theaters, big box stores, supporting retail and other services, leisure and entertainment uses, high density multi-family, schools, churches, and neighborhood-serving public uses. Office uses with ground floor retail are encouraged. This district is intended to be accessible by auto, but should be designed to accommodate pedestrians and bicyclists, provide interior circulation between properties, and appropriate landscaping to counter heat island and stormwater impacts. The proposed rezoning request is ***not consistent*** with the **Adopted Long-Range Land Use Plan**.

*The applicant is requesting to rezone to I-1, this **Light Manufacturing District** is designed to allow for light manufacturing and office uses. Uses in this district include: warehouse and distribution uses, urban agriculture, and supporting uses, such as minor retail and services to support the major uses. No residential uses are allowed in this district.*

Zoning Ordinance:

Truck Repair, Heavy. Any building or land used for the general repair or reconditioning of heavy trucks and equipment and engines, including but not limited to body, frame or fender straightening or repair, the reconditioning, repairing, sale, mounting, or installing of any used tires, painting, or upholstery work, collision repair, vehicle steam cleaning, but excluding the assembly, disassembly, dismantling or salvage of any vehicle, in whole or in part. **No abandoned or inoperable vehicles shall be stored on the premises.**

The applicant has admitted to the Zoning Advisory Committee that some of these commercial trucks parked on the lot being rezoned are abandoned and inoperable. This is not allowed in I-1 or C-2.

Special screening regulations.

Screening of unsightly areas and landscaping of residential areas shall be accomplished as follows:

D. Parking areas servicing multifamily and non-residential uses which have ten or more parking spaces and are located abutting residentially zoned properties shall be screened by a permanent opaque fence or wall at least six feet in height, in addition to the parking area perimeter landscaping or buffer required.

E. The exterior service area of a commercial, manufacturing or industrial building, if oriented toward a public street, shall be screened as follows:

1. When oriented to a street with 2 or 3 lanes, screen with a Standard C buffer.

F. In addition to the requirements imposed by Articles II and III of this chapter, areas used for the temporary or permanent storage of inoperable or damaged vehicles shall be screened from properties zoned residential and from public streets by means of an opaque fence or wall not less than eight feet in height.

Previous Actions

ZBA2018-00002. In 2018 the applicant went before the Zoning Board of Adjustment to seek a variance to allow an electrified fence pursuant to Title 1, Chapter 4, Article IV, Subsection 7.D.5 (pg. 183), and a variance to allow a fence height greater than 8 FT, but not to exceed 12 FT pursuant to Title 1, Chapter 4, Article IV, Section 5, Subsection 4.A.2 (pg. 183).

Conditions of ZBA2018-00002

1. Review by the appropriate zoning inspector to ensure compliance with the decision of the Zoning Board of Adjustment.
2. Receipt of all permits associated with approval of the variances authorized by the Board must be obtained within two years from the date of approval.
3. Must be approved by the city's Building Official.
4. Owner must install a solid fence barrier no less than 8 feet in height on the subject property facing the residential areas along Avenue Q and 26th Street.

In 2021 the State of Alabama passed the following laws pertaining to electric fences:

1. Interfaces with a monitored alarm device in a manner that enables the alarm system to transmit a signal intended to summon the business or law enforcement, or both, in response to an intrusion or burglary.
2. Is located on property that is not designated by a municipality or county exclusively for residential use.
3. Has an energizer that is driven by a commercial storage battery that is not more than 12 volts of direct current.

4. Produces an electric charge on contact that does not exceed energizer characteristics established for electric fence energizers by the current standards of the International Electrotechnical Commission.
5. Is surrounded by a nonelectric perimeter fence or wall that is not less than five feet in height.
6. Is at least 10 feet in height.
7. Is at least two feet higher than the height of the non-electric perimeter fence or wall.
8. Is marked with conspicuous warning signs that are located on the battery charged fence at not more than 30-foot intervals and that read: "WARNING-ELECTRIC FENCE.
9. Notwithstanding any other law, a municipality or county may not adopt or enforce an ordinance, resolution, order, or rule that does any of the following:
 - a. Requires a permit or fee for the installation or use of a battery-charged fence that is in addition to any fee or alarm system permit required for any other alarm system by the municipality or county. No additional permit or fee shall be required for the battery-charged fence.
 - b. Imposes installation or operational requirements for the battery-charged fence that are inconsistent with the requirements and standards described in this section.
 - c. Prohibits the installation or use of a battery-charged fence.

The applicant has not met the conditions of the ZBA2018-00002 case and is not in compliance with Alabama State Law.

BLD2019-02090. The applicant applied for a building permit to wrap the interior of a building in metal to secure it for a warehouse. The permit was denied because the plans examiner sent a comment letter on 8/12/2019 and no response was received. ***The applicant has since cut a second bay in the building without a building permit.***

Illegal Fence. The applicant has installed an illegal chain-link fence with barbed wire along Avenue Q and Pike Road in the front yard. This fence was not permitted by the city and is not allowed per the City's Ordinance. The applicant is aware that they will need to remove this fence.

Ordinance Section 5. Walls and Fences

D. All fences shall be made of the following material and be allowed in the yards: 1. Natural wood permitted at front, side and rear. 2. Brick or stucco over masonry permitted at side and rear only. 3. Chain link permitted inside and rear only. 4. Barbed and razor wire permitted in rear only, in commercial, manufacturing and industrial districts. 5. Electrified fences are prohibited in all yards.

ZEN2021-00155. In 2021 the applicant received a zoning violation after a resident complained about 18-wheelers being parked on the subject property that is in the rezoning process. ZEN: VIOALTES THE ZONING ORDINANCE BY OPERATING A BUSINESS IN A C2, GENERAL COMMERCIAL DISTRICT THAT IS NOT ALLOWED {TITLE 2, CHAPTER 1, ARTICLE II, SECTION 2.2}; OPERATING A BUSINESS WITHOUT A BUSINESS LICENSE {TITLE 1, CHAPTER 1, ARTICLE I, SECTION 6}; NOT MEETING ZONING BOARD OF ADJUSTMENT CONDITIONS {TITLE 1, CHAPTER 9, ARTICLE II, SECTION 7}:

The applicant has continued to park 18-wheelers on the property despite being aware that it is illegal to do so.

Business License. The applicant's original business license, a 215-B allows for work to be performed on commercial vehicles indoors and does not allow work to be done outdoors. In 2019 the applicant obtained a 215-C business license that allows work on commercial vehicles to be performed indoors and outdoors. This violated the applicants legal non-conforming status.

As of June 2022 the applicant has obtained the correct business license.

Landscape Review: If this rezoning were to be approved the applicant is required to install a C standard buffer where the I-1 (Light Manufacturing District) is abutting D-3 (Single Family Residential District).

To bring the rest of the applicant's business into compliance with the current Zoning Ordinance a C standard buffer is recommended where C-2 (General Commercial District) is abutting any D-3 (Single Family Residential District).

All landscaping must comply with the requirements in Title 1, Chapter 6 of the Zoning Ordinance (Landscaping, Buffering and Screening). Prior to permit issuance a fully developed detailed landscape plan will be required, per the City's Landscape Architect.

Stormwater:

Stormwater did not have any comments to add.

Birmingham Department of Transportation:

BDOT did not have any comments to add.

"Q" Conditions That May Be Considered.

If the Committee recommends approval of the rezoning request the following "Q" Conditions may be considered:

1. Uses are limited to those allowed in I-1, Light Manufacturing District, excluding the following:

1. Adult Establishment
2. Animal Kennel
3. Arena
4. Automobile Sales
5. Automobile Service
6. Automobile/ Light Truck Repair
7. Broadcast Tower
8. Contractor Yard
9. Convention Center
10. Dairy, Factory
11. Distillery
12. Distillery, Artisanal
13. Drive-In Movie
14. Drive-In/Drive- Through
15. Driving Range Free-Standing
16. Dwelling, Caretaker
17. Event Center
18. Funeral Home
19. Heavy Equipment, Sales and Service
20. Heliport
21. Manufacturing, Light
22. Manufacturing, Specialized
23. Medical Lab
24. Micro-Brewery
25. Mini-Storage Warehouse
26. Motor Freight, Distribution
27. Opioid Replacement Therapy Treatment Facility
28. Payday Loan
29. Private Club
30. Railroad Station
31. Recreation Equipment Sales/ Services
32. Recycling Collection Center
33. Scientific Lab
34. Stadium
35. Title Loan/ Pawnshop
36. Truck Plaza

37. Truck Repair, Heavy
38. Warehouse
39. Warehouse/ Office
40. Water Treatment Plant
41. Water/Sewer Pumping Station
42. Wrecker Impound Lot

2.No work is to be performed outdoors.

Neighborhood Recommendation:

The ***Ensley Highlands Neighborhood Association*** met on **April 25, 2022**, to review the proposed project and voted to **not support** the proposed rezoning request. The vote was **4-not support** and **2- support**. The neighborhood is not supportive of the rezoning request because neighbors do not want trucks parked on that parking lot at all. The traffic of trucks will mess up their streets, especially Pike Road. Neighbors are concerned with the presentation, high traffic of trucks, and the overall look entering the neighborhood. They do not see this business as being good neighbors. They do not want a junkyard off Ensley Avenue.

If the rezoning request were to be approved the neighborhood has requested the following:

1. More lighting
2. Well-kept landscaping
3. A neighborhood welcome sign installed at the Ensley 5 Points West Avenue entrance

Additional neighborhood residents have contacted staff with the following concerns:

1. The applicant is performing work outdoors, specifically sandblasting and painting. Residents have said that it is hard to breathe outside during business hours.
2. The applicant is storing tires in the open elements.
3. The applicant is storing commercial truck scrap outdoors (Outdoor storage is not allowed).
4. Per ADEM scrap tires must be stored in the proper dumpsters. Per the City Ordinance these dumpsters must be notated on a site plan.
5. No scrap tires may be exposed to the elements for more than 30 days and they should be disposed of within that time frame. Anyone exposing scrap tires to the elements for more than 7 days must develop and implement a Vector Control Plan (scheduled spraying, larvicide briquettes, etc.) which must be approved by ADEM.
6. There are no other industrial properties anywhere in Ensley Highlands. This is a quiet family neighborhood with homes and businesses, we do not want pollution in our neighborhood.
7. Why does this business need to rezone in our neighborhood? Why is it not already somewhere that allows this industrial use? Our elderly people do not deserve this health hazard.

The applicant is aware of ADEM's regulations.

Framework Plan:

This property is located within the Western Framework Plan Area. This framework plan was adopted in August 2017 and an Implementation Committee was formed. The Implementation Committee did not have any comments to add.

Zoning Advisory Committee. The Zoning Advisory Committee met at its regularly scheduled meeting on August 2, 2022 to review the rezoning request and voted to send it to the Planning and Zoning Committee ***with no recommendation.*** 3 votes for *no recommendation* and 2 votes to *not recommend*.

4. ZAC2022-00009.....Druid Hills Neighborhood

Application to downzone from MU-D (Mixed-Use Downtown District) to D-4 (Medium Density Residential District) in order to allow for single-family housing to be built on BLOCK E of the Carraway Redevelopment, Filed by Becky Carpenter with Corporate Realty Development, on behalf of the owner, Northside Redevelopment LLC; for the property located at 1710 26th Street North and situated in the SW ¼ of Section 24, Township 17-S, Range 3-West, 35234, Council District 5.

Proposed Use: Single-family residential homes.

Property and Abutting Land Uses

The subject property sits on approximately 2.89 acres of land, currently zoned MU-D (Mixed-Use Downtown District). Abutting the subject property to the north is vacant land, zoned D-4, Medium Density Residential District. To the South and West is the old Carraway Hospital site that is being redeveloped, currently zoned MU-D, Mixed-Use Downtown District. To the East are single-family homes, zoned R-3, Single-Family Residential.

Applicant's Proposal

The applicant's proposal is to downzone this parcel, referred to as "Block E" from MU-D (Mixed-Use Downtown) to D-4 (Medium Density Residential) in order to construct single-family homes on sixteen individual lots. The construction and design of the homes will be contracted out to a third-party home builder. These will be wood-frame construction and slab-on-grade. Most single-family residential products are expected to be one or two stories.

Long Range Land Use Plan

The City's ***Long-Range Land Use Plan*** identifies the property as ***MU-D, Mixed-Use Downtown District.*** This land use category is designed to accommodate Medium- to high-density office, residential, retail and entertainment areas that create vibrant 18–24-hour, 7-day a week live-work-play environments, typically mid-rise to high-rise; artisanal industries and small warehouses that may be characterized as light industry that do not have noise,

odor, illumination, trucking, or other adverse impacts on adjacent land uses. This district is focused in the downtown area and should be transit accessible. Uses in this district include high density multi-family, loft, townhouse, retail and services, offices, hotels, large entertainment facilities, and live/work structures.

Previous Actions

In 2019 this parcel was a part of ZAC2019-00012. It was rezoned CB-2, (Contingency General Business District), B-6, (Health and Institutional District) and CO&I, (Contingency Office and Institutional District) to MU-D, Mixed-Use Downtown District in order to allow a new mixed-use development on the old Carraway Hospital site.

Zoning Ordinance

1. Minimum setback requirements for Single-Family homes in D-4 (Medium Density Residential District)
 - a. Lot Area: 4,500 sq. ft.
 - b. Lot Width: 40 ft.
 - c. Front Setback: 20 ft.
 - d. Rear Setback: 15 ft.
 - e. Side Setback: 5/14 ft.
 - f. Maximum Height: 35 ft.

The property would also have to be resurveyed into 16 lots, it is currently one lot

Landscape Review

All landscaping must comply with the requirements in the City's Zoning Ordinance.

Stormwater and Birmingham Department of Transportation

No comments regarding this request.

Neighborhood Recommendation

The ***Druid Hills Neighborhood Association*** met at its regularly scheduled meeting on **May 23, 2022**, to review the proposed project and voted to ***support*** the proposed rezoning request. The vote was **19**- approved and **0**- denied. They are supportive of the request because it is a continuous construction of new residential homes.

As a courtesy the applicant took the rezoning request to the Evergreen and Norwood Neighborhoods as well. The ***Evergreen Neighborhood Association*** met at its regularly scheduled meeting on **May 17, 2022** and voted to unanimously ***support*** the request. The ***Norwood Neighborhood Association*** met at its regularly scheduled meeting on **June 22, 2022** and voted to unanimously ***support*** the request.

Framework Plan.

This property is located within the Northside Southside Area Framework Plan. This plan has not been adopted and an Implementation Committee has not been formed.

Zoning Advisory Committee.

The Zoning Advisory Committee met at its regularly scheduled meeting on **August 2, 2022** and were unanimous in their decision to recommend the request to the Planning and Zoning Committee. (5 votes to support).

IV. OLD & NEW BUSINESS

V. ADJOURN

If accommodation is required for an event or meeting, please contact: Kimberly Garner, Director of Public Information, with reasonable advance notice by e-mailing her at Kimberly.Garner@birminghamal.gov or calling her at (205) 254-2036.