

EXECUTIVE SUMMARY

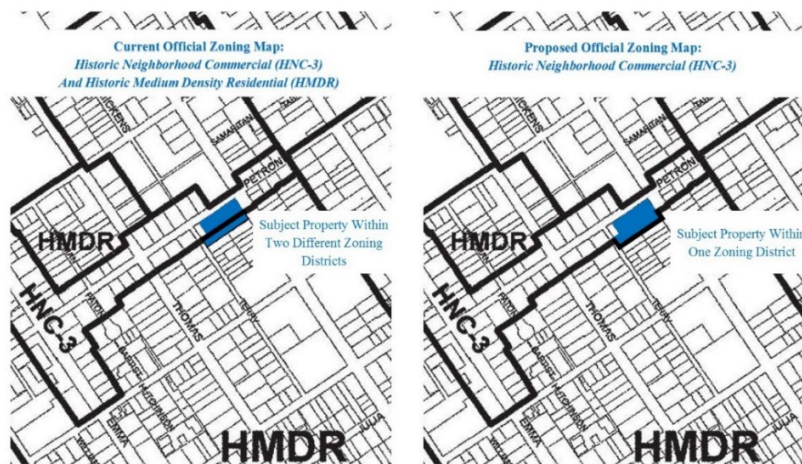


To: Patti McLauchlin, City Manager
Through: Katie P. Halloran, Planning Director
From: Jordan Mannix-Lachner, Planner
Meeting Date: March 7, 2023

RE: **Text Amendment of the Official Zoning Map** – An ordinance of the City of Key West, Florida, amending the boundaries of the Official Zoning Map, amending boundaries of the Historic Medium Density Residential (HMDR) and Historic Neighborhood Commercial (HNC-3) zoning districts for the parcel identified by RE# 00014010-000000, including addresses of 318 and 320 Petronia Street, and 802, 804 and 806 Whitehead Street, pursuant to Chapter 90, Article VI, Division 2 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida; providing for severability; providing for the repeal of inconsistent provisions; providing for concurrent and conditional adoption upon adoption of Comprehensive Plan amendments; providing for an effective date.

ACTION STATEMENT:

The applicant, Historic Tours of America, Inc., seeks to amend the Official Zoning Map (and Future Land Use Map, in a companion item) of Key West by rezoning 806 White Street from Historic Medium Density Residential (HMDR) to Historic Neighborhood Commercial – 3 (HNC-3).



Current Official Zoning Map and Proposed Official Zoning Map

BACKGROUND:

The subject property has a complex land use history, including major development plans, conditional use permits, special exceptions, and litigation. This rezoning request and its' companion future land use request were approved by the Planning Board in January 2020. In 2020, City Commission hearings associated with this item were postponed at the applicant's request and then by the City after the Covid pandemic delayed hearing of the item in person. On August 31, 2022, the applicant requested the item be placed back on the City Commission agenda. Planning Department staff, including the Director, has changed since the initial Planning review in 2019. The existing Planning Board staff report, and all versions of the Executive Summary (dated March 3, April 7 and May 5, 2020) were written by department employees no longer employed by the City under former Interim Planning Director Roy Bishop. Although the current director's name is on the May 5 version of this old report, she had no oversight of its content, given March 3 was her second full business day on the job. Given this situation, the Planning Department is providing this rewritten Executive Summary for your review.

The property at 806 Whitehead Street (which currently also includes City street addresses of 318 and 320 Petronia and 802 and 804 Whitehead) is part of a larger mixed-use site comprised of several lots owned by the Historic Tours of America, Inc. The site is on the corner of Whitehead Street and Petronia Street and includes:

Address	Zoning District
318-324 Petronia Street	HNC-3
804 Whitehead Street	HNC-3
806 Whitehead Street	HMDR
808 Whitehead Street	HMDR
809 Terry Lane	HMDR
811 Terry Lane	HMDR

The site contains Rams Head restaurant, as well as low-intensity retail (Bahama Village Market) and three residential units. A historic structure on 804 Whitehead Street site encroaches into 806 Whitehead Street.

The HNC-3 zoning district permits residential uses and some commercial uses. The Land Development Regulations (LDRs) define the intent of HNC-3 to promote a mixed-use corridor connecting Key West's central commercial core with surrounding residential neighborhoods. The commercial uses on the site are subject to a special exception and conditional use permit. The 806 Whitehead Street property is in the HMDR zoning district. Section 122-596 – Historic Medium Density Residential District states:

... The HMDR district shall provide a management framework for preserving the residential character and historic quality of the medium density residential areas within Old Town...

... the area shall not accommodate commercial office, retail, or other commercial uses. Lawfully existing office or commercial uses shall be permitted to continue to exist as lawful

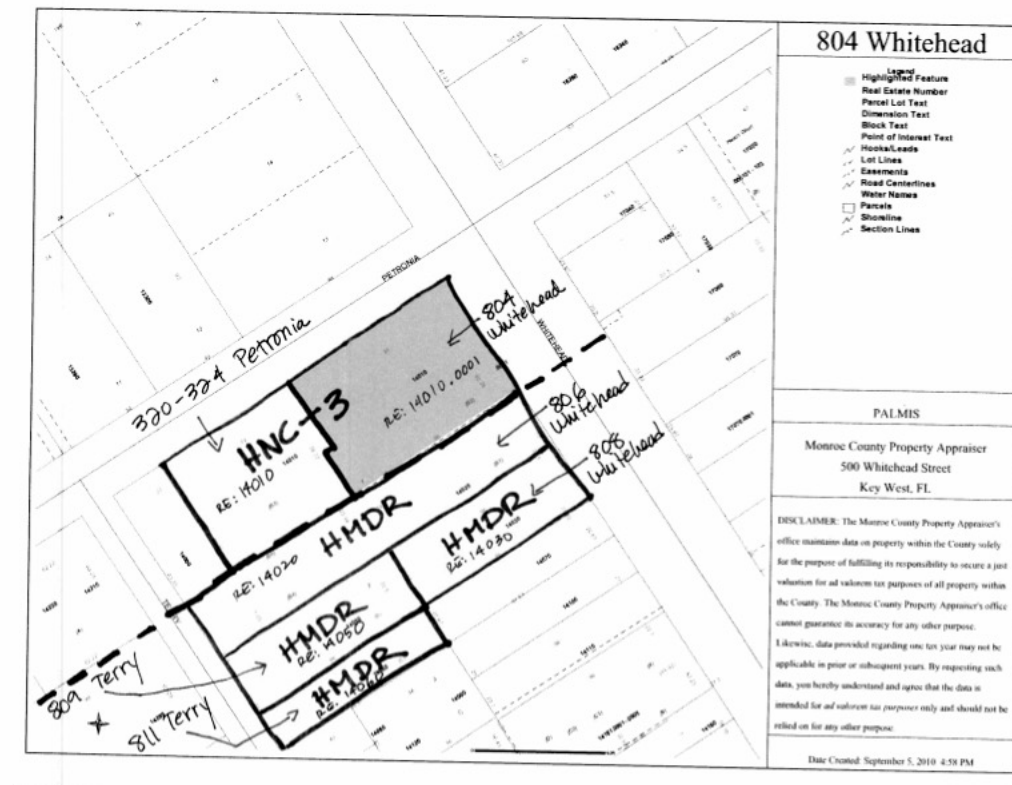
nonconforming uses if such uses continue to comply with conditions invoked when the respective uses were approved.”

The subject property is a corner lot with frontage on Whitehead Street, Petronia Street, and Terry Lane. A portion of the parcel, totaling 10,271-square-feet, is within the Historic Neighborhood Commercial (HNC-3) zoning district. The balance of the property, 6,048-square-feet, is within the Historic Medium Density Residential (HMDR) zoning district.

Historic Tours of America, Inc. (HTA) seeks to expand the boundary of HNC-3 to include 806 Whitehead Street. The application states that its intent is to correct a zoning error which resulted in the property being bisected by the zoning district boundary between HNC-3 and HMDR.

When the current zoning maps were adopted in 2013, the zoning boundaries did not bisect the subject parcels. The property at 806 Whitehead Street was one parcel, and 804 Whitehead Street was another. The zoning district boundary followed the parcel boundary of the two properties.

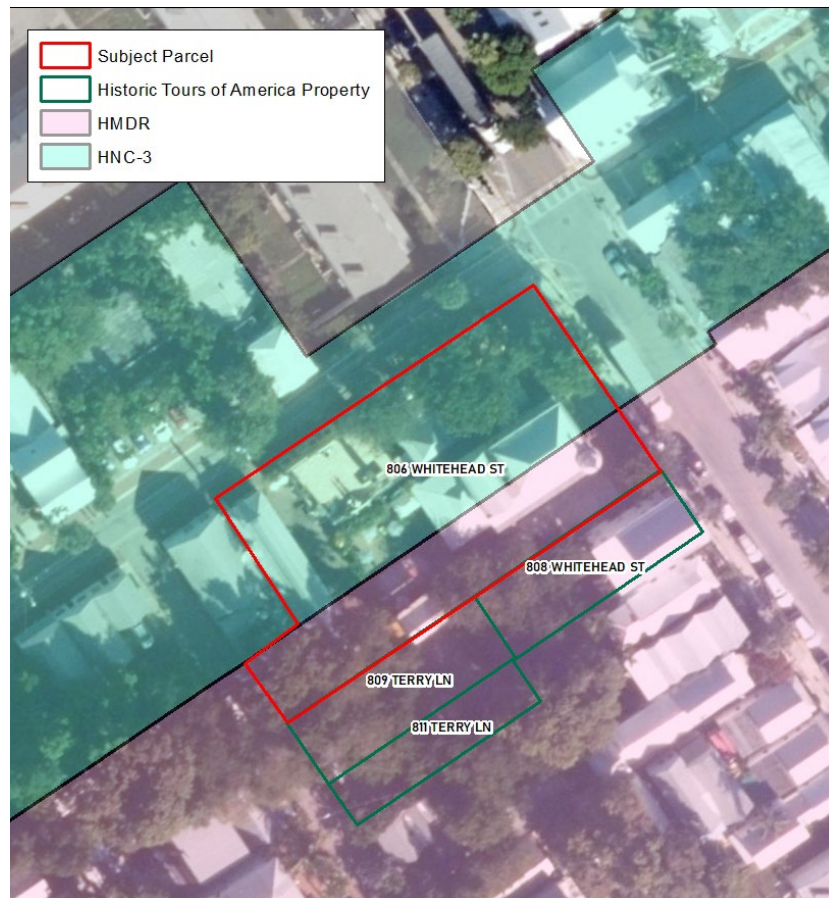
The image below is a 2010 map from the Monroe County Property Appraiser's office. The markups on the image are from 2010, and indicate the former RE#s of the various parcels. The dashed line reflects the zoning district boundary.



Parcel configuration as of 2010.

In 2018, the Monroe County Property Appraiser's Office combined several parcels into one. City staff cannot identify records to indicate the unification went through a boundary change procedure as provided in City of Key West Code Sec. 118-4, which requires City approval to change lot lines or boundaries defining land configurations. Prior to the boundary change, each

parcel was entirely located within one zoning district, i.e. there were no split-zoned parcels. The parcel unification resulted in a parcel that is now bifurcated by two zoning districts, HNC-3 and Historic Medium Density Residential (HMDR). The current parcel configuration can be seen below.



Parcel configuration and zoning districts as of September 2022.

The property at 804 Whitehead Street is subject to a special exception for commercial floor area, approved in 1990 (Resolution 90-69.) The resolution granted 960 square feet of commercial floor area for the Bahama Village Market.

In July 2016, the Planning Department received a letter from a law firm on behalf of HTA. The letter discussed HTA's request to transfer some of the commercial floor area from 804 Whitehead Street to 806 Whitehead Street. The letter requested an administrative boundary line determination that would designate 806 Whitehead Street as part of HNC-3 rather than HMDR. The letter stated that "doing so would reflect the commercial use of the entire parcel at 802-806 Whitehead."

This request was denied by the Planning Department on the basis that 806 Whitehead Street is within a residential zone that does not permit commercial use. The denial letter stated, in part:

"The entire parcel (RE# 00014020-000000) is encompassed within the HMDR Zoning District per the official zoning map. The parcel line and the HMDR boundary line are one

and the same. There is no uncertainty as to the district boundary... There is a portion of a building that encroaches from parcel (RE # 00014010-000100) onto the 806 Whitehead Street parcel. As I am sure you are aware building encroachments over property lines are not at all uncommon in the City of Key West. The Planning Department maintains the position that no uncertainty exists in reference to the current zoning map designation for this parcel.”

The Planning Department subsequently received a response letter from the firm which stated that they would either appeal the Planning Department’s determination or request a zoning determination from the City Commission . In 2019, the applicant submitted an application for a zoning map amendment to be heard by the City Commission.

The 2019 application provided a different justification for the request than was discussed with staff in 2016. The application states that the basis of the request is to correct a mapping error in the FLUM/OZM without expanding commercial uses. Regardless, the effect of the amendment would be to allow an expansion of commercial uses into a residential district. Planning records described above indicate that the applicant wished to create commercial floor area at 806 Whitehead Street. However, when considering a proposed rezoning, policy makers must consider not only current plans but all future land uses which may be proposed by future property owners of the affected parcel. Records also show that the Planning Department has maintained since 2016 that the zoning of the subject site is not an error, but rather the intentional result of the development of the HNC-3 and HMDR districts.

Recent land use and zoning related activity:

The property received a conditional use approval to operate a 150-seat restaurant through Resolution no. 2011-059. In 2015, a minor modification of the conditional use approval was granted to allow a reduction in outdoor consumption area (76-square-feet) and an increase in indoor consumption area (76-square-feet). Restaurant use is a conditional use of the HNC-3 zoning district and it is a prohibited use in the HMDR zoning district. On December 17, 2020, the City Planning Board approved Resolution #2020-44, further amending conditional use approval Resolution #2011-059. During this time period, City Staff conducted site visits, met multiple times with neighbors opposing the Conditional Use modification, met with lessees and their legal counsel, and convened a meeting with elected officials and all parties at City Hall to address the conflict surrounding this proposed conditional use amendment.

A group of neighbors filed an appeal associated with Resolution #2011-059 which was heard by the City Commission on February 17, 2021. City Commission denied the appeal through Resolution No. 21-025. These neighbors subsequently filed a lawsuit against the City and property owners which was denied by the Third District Court of Appeal on January 10, 2022.

A search of city licensing records revealed the following active licenses at the subject property:

License No.	Business Name	Location Address	Description	Comments
2019-000380	RH Southernmost LLC	804 Whitehead Street	Restaurant with 120 or more seats	Authorized for 150 seats-CUP # 29152
2019-000381	RH Southernmost LLC	804 Whitehead Street	Entertainment permit for live or	(none)

			recorded amplified music	
2019-000382	RH Southernmost LLC	804 Whitehead Street	Conditional use permit	Resolution #2011-059. There are several Code cases since the approval of the conditional use permit, mostly regarding trash disposal.
8507	Old Town Trolley Tours of Key West	804 Whitehead Street	Ticket booth	(none)
8543	Old Town Key West Development LTD	806 Whitehead Street	Parking lot	(none)
10188	Bahama Village Market LLC	804 Whitehead Street	Non-transient residential rental units	Three non-transient rental units
29294	Historic Tours	320 Petronia Street	Revocable license for awnings or signs	Awning at 320 Petronia

REQUEST / PROPOSED MAP AMENDMENT:

The applicant, Historic Tours of America, Inc., is requesting an amendment to the City's Official Zoning Map for the subject property. The current zoning map designations for the subject parcel are Historic Neighborhood Commercial (HNC-3) and Historic Medium Density Residential (HMDR). The proposed zoning map category is Historic Neighborhood Commercial (HNC-3). Concurrent with the Official Zoning Map amendment, the applicant is also requesting an amendment to the City's Comprehensive Plan Future Land Use Map (FLUM) for the subject properties. The current zonings are Historic Commercial (HC) and Historic Residential (HR). The proposed zoning is Historic Commercial (HC). If approved, the request would result in an expansion of the HC FLUM and the HNC-3 zoning district.

SURROUNDING ZONING DISTRICTS AND LAND USES:

Direction	Official Zoning Map Designation	Property Uses
North	Historic Neighborhood Commercial - 3	Commercial retail, multi-family public housing units, multi-family non-transient rental units
South	Historic Medium Density Residential	Single-family, two-family, and multi-family housing units
East	Historic Neighborhood Commercial – 3 & Historic Medium Density Residential	Commercial retail, multi-family housing units, and single-family housing units

West	Historic Neighborhood Commercial – 3 & Historic Medium Density Residential	26-seat restaurant, single-family housing units, commercial retail
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OFFICIAL ZONING MAP AMENDMENT PROCESS:

Development Review Committee:	May 23, 2019
Planning Board Meeting:	July 18, 2019 (postponed by the applicant) August 15, 2019 (tabled by the board) September 19, 2019 (postponed by staff) October 17, 2019 (postponed by staff) November 21, 2019 (postponed by board) January 16, 2020 (approved PB Res. 2020-02)
City Commission (1 st Reading / Transmittal):	October 6, 2022
City Commission (2 nd Reading / Adoption):	After DEO review of amendment
Local Appeal Period:	30 days
Render to DEO:	10 working days
DEO Review:	Up to 45 days
DEO Notice of Intent (NOI):	Effective when NOI posted to DEO site

PLANNING STAFF ANALYSIS:

The purpose of Chapter 90, Article VI, Division 2 of the Land Development Regulations (the “LDRs”) of the Code of Ordinances (the “Code”) of the City of Key West, Florida (the “City”) is to provide a means for changing the text of the land development regulations or the boundaries of the official zoning map. It is not intended to relieve particular hardships nor to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the City Commission shall consider, in addition to the factors set forth in this division, the consistency of the proposed amendment with the intent of the Comprehensive Plan.

CRITERIA FOR APPROVING AMENDMENTS TO THE OFFICIAL LAND USE MAP:

In evaluating proposed changes to the Official Zoning Map, the City shall consider the following criteria:

Sec. 90-516. Purpose and limitations.

The purpose of this subdivision is to provide a means for changing the text of the land development regulations or the boundaries of the official zoning map. It is not intended to relieve particular hardships nor to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions.

There has been no change in land development regulations or land use conditions since the adoption of the OZM/FLUM that would make this amendment necessary. The only changed conditions staff have observed are compatibility issues related to residential/commercial uses along the Petronia Street corridor; the balance between quality of life with respect to both residential and commercial uses in this historic area must be carefully observed to minimize nuisance to residents and to support local businesses.

The HNC-3 zoning district exists primarily on the Petronia Street corridor from Duval Street to

Emma Street. Properties that are directly adjacent to Petronia Street are part of the HNC-3 district. This amendment would confer special privileges or rights to the applicant that would be denied to other property owners in the same district. In order for this proposal to not constitute a special privilege or spot zoning, it would have to allow that HNC-3 also include other similar properties to the south that abut properties that are directly on the Petronia Street corridor.

Sec. 90-520. Contents of application.

- (6) Justification.** The need and justification for the proposed change shall be stated. The evaluation shall address but shall not be limited to the following issues:

- a. Comprehensive plan consistency.** Identifying impacts of the proposed change in zoning on the comprehensive plan. The zoning must be consistent with the comprehensive plan.

The intent of the zoning provisions of the Comprehensive Plan is to isolate incompatible uses from one another. Changing the zoning of one lot to allow commercial encroachment in a residential district is not compatible with the stated intent of Comprehensive Plan zoning policies; Policy 1-1.2.1 states “Stable residential areas and projected future residential areas as delineated on the Future Land Use Map shall be protected from encroachment by incompatible development.” This amendment would constitute an encroachment of incompatible development not because of plans currently proposed by the current owner, but given the long term entitlements which would result from the rezoning.

- b. Impact on surrounding properties and infrastructure.** The effect of the change, if any, on the particular property and all surrounding properties. Potential land use incompatibility and impacts on infrastructure shall be identified.

In recent years the City has received complaints from property owners on the Petronia Street corridor regarding quality-of-life concerns stemming from commercial uses in HNC-3; in particular, many concerns are related to food service establishments with bar service and amplified music. In the past, some neighboring property owners have submitted letters expressing their opposition to this amendment, citing concerns that it could result in an expansion of restaurant consumption space and could move amplified music closer to their residences.

- c. Avoidance of spot zoning.** The proposed change shall not constitute a spot zone change. Spot zoning occurs when:

- 1. A small parcel of land is singled out for special and privileged treatment;**

The request is for a portion of a small parcel of land that would allow a corporation to expand commercial use into a residential district. This privilege would be denied to other landowners in that district, and would be to the exclusive benefit of the applicant.

- 2. The singling out is not in the public interest but only for the benefit of the landowner; and**

This proposal would not serve the public interest. It would benefit the landowner who would be

allowed to expand commercial use.

3. The action is not consistent with the adopted comprehensive plan.

The intent of zoning regulations per the Comprehensive Plan are to isolate incompatible land uses. Policy 1-1.22.1 states “Stable residential areas and projected future residential areas as delineated on the Future Land Use Map shall be protected from encroachment by incompatible development.” The commercial use in question includes a 150-seat restaurant and bar that has an amplified music license. Allowing this use to expand into a residential district is counter to the intent of the City’s zoning regulations.

d. Undeveloped land with similar zoning. The amount of undeveloped land in the general area and in the city having the same zoning classification as that requested.

The City has very few parcels of undeveloped land. This consideration would not impact staff’s recommendations regarding this application.

Sec. 90-521. Criteria for approving amendments to official zoning map.

In evaluating proposed changes to the official zoning map, the city shall consider the following criteria:

(1) Consistency with plan. Whether the proposal is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

For reasons stated above, Planning staff maintains that this proposal is not consistent with the Comprehensive Plan objectives regarding zoning. Staff does not believe this proposal would create any issues with concurrency management.

(2) Conformance with requirements. Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.

The application is not consistent will all applicable requirements of the Code of Ordinances because the proposal constitutes spot zoning.

(3) Changed conditions. Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.

Land use and development conditions have not changed since the effective date of existing land development regulations in such a way that would support the proposed rezoning.

(4) Land use compatibility. Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.

The proposal would result in incompatible land uses by allowing the expansion of a restaurant and bar with an amplified music license into a residential district.

Changing the zoning of this parcel would allow expansion of the HNC-3 zoning district to the south.

- (5) Adequate public facilities.** Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to chapter 94.

In the past, the City has received Code complaints regarding the restaurant's solid waste disposal. The City's Code Enforcement Department is charged with responding to code enforcement matters including those related to conditional use permits.

- (6) Natural environment.** Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

Staff has not identified any potential adverse impacts this proposal may have on the natural environment.

- (7) Economic effects.** Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.

Staff is unable to determine whether the proposal would adversely impact property values in the area. Neighbors have expressed concerns about their investments, stating that they purchased their homes in a residential district because they wanted to be isolated from more commercial areas of the City. There are concerns that the proposal would adversely impact the general welfare of the surrounding area by increasing commercial presence in a residential district.

- (8) Orderly development.** Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

This proposal would not result in orderly development. Instead, it would allow for site-specific zoning changes that run counter to broad intent of zoning regulations as a way to ensure consistent development principles.

- (9) Public interest; enabling act.** Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.

Staff does not believe this proposal would serve the public interest. Staff does believe this proposal would serve the interests of a singular property owner.

(10) *Other matters.* Other matters which the planning board and the city commission may deem appropriate.

(Ord. No. 97-10, § 1(1-2.10(F)), 7-3-1997)

RECOMMENDATION

The proposed amendment would confer onto the applicant privileges that are denied to other property owners in the HMDR district. It would promote incompatible land use patterns by allowing for commercial encroachment into a residential area along Whitehead Street. The benefactor of this amendment would be the applicant; no other property owners would gain the same privileges, because this amendment applies solely to the applicant's property. For these reasons, Planning staff maintain that this amendment would be an unacceptable instance of spot zoning.

The application states that the purpose of this proposal is to fix a zoning 'error.' Since at least 2016, Planning staff have maintained that there is no zoning error. Any perceived error based on the current land configuration is merely the result of an unofficial parcel unification. Finally, Planning staff finds that this rezoning would be inconsistent with the Comprehensive Plan due to the incompatibility of higher intensity commercial use in the HMDR zoning district.

For the reasons stated above, Planning staff recommend DENIAL of the proposed amendments to the Official Zoning Map.