

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> March 25, 2014		<b>DATE SUBMITTED:</b> March 4, 2014	
<b>DEPARTMENT OF ORIGIN:</b> Development Services		<b>SUBMITTED BY:</b> Randy Haynes	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>	<b>STRATEGIC INITIATIVE:</b>
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input checked="" type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
<b>AGENDA ITEM DESCRIPTION:</b> Consideration of an ordinance to amend Chapter 130, Zoning, of the City of Bryan Code of Ordinances, to change the zoning classification from Residential District – 5000 (RD-5) to Retail District (C-2) on property at 909 W. 28th Street, being 4.43 acres of land out of Stephen F. Austin Survey #9 and adjoining the south side of W. 28 <sup>th</sup> Street between South Congress and Holt Streets in Bryan, Brazos County, Texas			
<b>SUMMARY STATEMENT:</b> The subject property is about 4.5 acres in size and located at 909 West 28 <sup>th</sup> Street between South Congress and Holt Streets. The subject property is currently occupied by buildings that served as auto repair garages at the time of the implementation of zoning in Bryan on December 11, 1989. Most recently the property was used as an auto salvage yard. Single-family residential uses adjoin the subject tract to the east and west, and a welding shop on property zoned RD-5 District is located on property across West 28 <sup>th</sup> Street to the north. South of the subject property is a 16-acre property zoned Office District (C-1) which is currently occupied by a charitable use (Twin City Mission).			
<p>The applicants, Sandra and Ronald Davis, recently purchased the property and operate a retail establishment dealing primarily in merchandise liquidation. The Zoning Ordinance allows a nonconforming (grandfathered) use to be changed to another nonconforming use provided that adverse impacts (such as more traffic, noise, vibration, etc.) are not increased. Prior to the purchase, staff had determined that the new retail use is less intense than the previously grandfathered use of auto repair, and that the Zoning Ordinance would permit conversion to the retail establishment. Since the property is still zoned RD-5 District, the new retail use remains legally nonconforming. The nonconforming zoning status prevents the restoration of the retail use should the structure be destroyed and makes expansion of the existing facility difficult. In order to convert the zoning status from nonconforming to one that is permitted by right, the applicants have requested to change the zoning on the subject property Retail District (C-2).</p> <p>The RD-5 zoning classification is intended to provide space for detached dwelling units and is designed primarily for residential use and does not easily lend itself to other types of nonresidential uses. Typically residential districts should only access local streets.</p> <p>The C-2 zoning classification is intended to provide opportunities of various types of general retail trade, business and service uses. The district allows shopping areas or uses which are generally compatible near or adjacent to, but not usually directly in, residential neighborhoods.</p> <p>West 28<sup>th</sup> Street is identified as a major collector roadway in Bryan’s Thoroughfare Plan. The complete reconstruction of West 28<sup>th</sup> Street has been in the planning phase for a number of years, and actual construction is scheduled to begin as early as later this year. The West 28<sup>th</sup> Street reconstruction, a City of Bryan capital improvement project, will address safety and utility capacity issues as well as provide an aesthetically enhanced gateway into Downtown Bryan from the west side of town.</p>			

**STAFF ANALYSIS AND RECOMMENDATION:** Staff contends that a change of the zoning designation to C-2 is appropriate for the subject tract and consistent with land use recommendations of Bryan's Comprehensive Plan. One of the plan's objectives is to encourage a sustainable mix of land uses types in suitable locations, densities and patterns and to identify areas for commercial development and preserve them with appropriate zoning. C-2 zoning on the subject property would allow general retail trade, business and services uses along this portion of West 28<sup>th</sup> Street and can support and complement adjacent residential uses along this major collector roadway. C-2 zoning here would allow expansion of small-scale commercial uses potentially beneficial to, and within walking distance of, the adjacent residential neighborhood. Land use policies included in the Comprehensive Plan suggest that low-density residential land uses should access only local streets.

During its regular meeting on February 20, 2014, the Planning and Zoning Commission **unanimously recommended approving** this rezoning request.

**OPTIONS (In Suggested Order of Staff Preference):**

1. approve the requested zone change;
2. deny the requested zone change.

**ATTACHMENTS:**

1. location map;
2. draft ordinance;
3. excerpt from P&Z meeting minutes; and
4. staff report to the Planning & Zoning Commission

**FUNDING SOURCE:** N/A

**APPROVALS:** Kevin Russell, 3-4-14; Joey Dunn, 3-4-14

**APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 03/04/2014**

**APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 03/10/14**



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF BRYAN, TEXAS, AMENDING CHAPTER 130, ZONING, OF THE CITY OF BRYAN CODE OF ORDINANCES, BY CHANGING THE ZONING CLASSIFICATION FROM RESIDENTIAL DISTRICT – 5000 (RD-5) TO RETAIL DISTRICT (C-2) ON PROPERTY AT 909 W. 28TH STREET, BEING 4.43 ACRES OF LAND OUT OF STEPHEN F. AUSTIN SURVEY #9 AND ADJOINING THE SOUTH SIDE OF W. 28TH STREET BETWEEN SOUTH CONGRESS AND HOLT STREETS IN BRYAN, BRAZOS COUNTY, TEXAS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH SAID ORDINANCE IS PASSED ARE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Bryan has adopted Chapter 130, Zoning, of the City of Bryan Code of Ordinances, as amended, which divides the City of Bryan into various zoning districts; and

**WHEREAS**, permanent zoning changes made after the date of passage of Chapter 130, as amended, are made by adopting ordinances amending Chapter 130 for each particular permanent zoning change; and

**WHEREAS**, this requested change to Chapter 130 for 4.43 acres of land out of the Stephen F. Austin Survey #9 and adjoining the south side of W. 28<sup>th</sup> Street between South Congress and Holt Streets in Bryan, Brazos County, Texas, was recommended for approval by the Bryan Planning and Zoning Commission during its regular meeting on February 20, 2014;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN:**

1.

That Chapter 130, Zoning, of the City of Bryan Code of Ordinances be amended by changing the zoning classification from Residential District – 5000 (RD-5) to Retail District (C-2) on property at 909 W. 28th Street, being 4.43 acres of land out of Stephen F. Austin Survey #9 and adjoining the south side of W. 28th Street between South Congress and Holt Streets in Bryan, Brazos County, Texas, said 4.43 acres of land being described more particularly by metes-and-bounds on attached Exhibit “A”.

2.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

3.

Should any section, paragraph, sentences, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby, and to this end the provisions of this ordinance are declared to be severable.

4.

The Code of the City of Bryan, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

5.

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public as required by Section 551.001 et seq., Texas Government Code, and that advance public notice of time, place and purpose of said meetings was given.

6.

This ordinance shall take effect immediately upon its second and final reading and passage.

PRESENTED AND GIVEN first reading the 25<sup>th</sup> day of March, 2014 at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, PASSED AND APPROVED on the 8<sup>th</sup> day of April, 2014 by a vote of \_\_\_ yeses and \_\_\_ noes at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

CITY OF BRYAN:

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

\_\_\_\_\_  
Jason P. Bienski, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Janis K. Hampton, City Attorney

**Exhibit "A"**

METES AND BOUNDS DESCRIPTION  
4.461 ACRES

Being a tract of land containing 4.461 acres, and being in the Stephen F. Austin League, A-62, in the City of Bryan, Brazos County, Texas. Being the same tract recorded in Vol. 6248, Page 51, of the Brazos County Official Records(B.C.O.R.) All bearings of this survey are referenced to the Texas State Plane Coordinate System, Central Zone, NAD83(2011) Epoch 2010, and boundary based on found 3/8" iron rod, and found 2" wide chain-link fenceposts called for in said previous deed. as surveyed on the ground on November 13th of 2013. This description is also referred to the plat prepared by ATM Surveying, Project No. 2013-0383, and being more particularly described as follows:

**BEGINNING** at a 3/8" iron rod found for the north corner of this tract, also being on the west right-of-way line of W. 28th Street(60' R.O.W.), also being the west corner of the Diana L. Ponzio tract, as recorded in Vol. 286, Page 742, of the Brazos County Deed Records(B.C.D.R.), and Vol. 623, Page 416, of the B.C.D.R.;

**THENCE** South 17°21'30" East, a distance of 183.48 feet along the common line between this tract and said Ponzio tract, and then along the John & Rosemary Espino tract, in the City of Bryan Townsite, Block 217, as recorded in Vol. 360, Page 389, of the B.C.D.R., and then along the Serna Maria Nieves, called 0.2318 acre tract, as recorded in Vol. 6345, Page 69, of the B.C.O.R., to a found 2" wide chain-link fencepost for a bend in this tract;

**THENCE** South 34°30'13" East, a distance of 261.97 feet along the common line between this tract and said Serna tract, and then along the Alicia Contreras 0.42 acre tract, as recorded in Vol. 413, Page 252, of the B.C.D.R. to a found 2" wide chain-link fencepost for an interior corner of this tract, also being the south corner of said 0.42 acre tract;

**THENCE** North 60°06'03" East, a distance of 16.15 feet along the common line between this tract and said 0.42 acre tract to a found 2" wide chain-link fencepost for a north corner of this tract, also being the west corner of the Leticia Resendiz De Ariaz tract, called Lot 4, Block 9, as recorded in Vol. 9538, Page 124, of the B.C.O.R.(called 0.26 acres in Vol. 123, Page 578);

**THENCE** South 45°17'08" East, a distance of 56.18 feet along the common line between this tract and said De Ariaz tract to a found 2" wide chain-link fencepost for the east corner of this tract, also being the south corner of said De Ariaz tract, also being a northwest corner of the Twin City Mission Inc., called Lot 1, Block 1, as recorded in Vol. 9197, Page 41, of the B.C.O.R.;

**THENCE** South 40°02'47" West, a distance of 523.27 feet along the common line between this tract and said Twin City Mission Inc. tract, to a found 2" wide chain-link fencepost for the south corner of this tract, also being the west corner of said Twin City Mission Inc. tract, also being a point on the northeast line of the Oliver Revised Addition, as recorded in Vol. 120, Page 59, of the B.C.D.R.;

**THENCE** North  $12^{\circ}28'42''$  West, a distance of 623.70 feet along the common line between this tract and said Oliver Revised Addition to a found 2" wide chain-link fencepost for a west corner of this tract, also being the north corner of the Manuel J. Portales, Lot 4, Block 3, as recorded in Vol. 10655, Page 289, of said Oliver Revised Addition, also being on the southeast line of the Charles J. Denman tract, 0.264 acre tract, as recorded in Vol. 5487, Page 238, of the B.C.O.R., from which a  $\frac{5}{8}$ " iron rod with orange cap marked "CARLOMAGNO - RPLS 1562" found bears S  $04^{\circ}43'09''$  E a distance of 0.19';

**THENCE** North  $76^{\circ}33'49''$  East, a distance of 77.11 feet along the common line between this tract and said Denman tract to a found 2" wide chain-link fencepost for an interior corner of this tract, also being the east corner of said Denman tract;

**THENCE** North  $13^{\circ}16'56''$  West, a distance of 133.16 feet along the common line between this tract and said Denman tract to a  $\frac{1}{2}$ " iron rod found with yellow plastic cap marked "GOODWIN LASITER" for a west corner of this tract, also being a point on the southeast line of said W. 28th Street, from which a  $\frac{1}{2}$ " iron rod found with a yellow cap marked "RPLS 2089" bears N  $78^{\circ}18'55''$  E, a distance of 1.94 feet for reference and for the north corner of said Denman tract, and a 1" pipe found for reference bears N  $78^{\circ}18'55''$  E, a distance of 1.94 feet;

**THENCE** along the common line between this tract and said right-of-way line of W. 28th Street for the following calls:

Around a curve to the left having a delta angle of  $03^{\circ}17'08''$ , an arc distance of 53.80 feet, a radius of 938.12 feet, and a chord of North  $67^{\circ}18'28''$  East, a distance of 53.79 feet to a  $\frac{1}{2}$ " iron rod found with yellow plastic cap marked "GOODWIN LASITER" for a bend in this tract;

North  $69^{\circ}09'07''$  East, a distance of 128.78 feet to the **PLACE OF BEGINNING** containing 4.461 acres.

Adam Wallace  
Texas Registered Professional Land Surveyor No. 6132  
13-0383-W 28th-909-LEGAL.doc  
11/13/13

**EXCERPT FROM PLANNING AND ZONING COMMISSION REGULAR MEETING  
MINUTES OF FEBRUARY 20, 2014:**

**8. REQUESTS FOR APPROVAL OF ZONING CHANGES – A PUBLIC HEARING WILL BE HELD FOR EACH ITEM (Commission makes recommendation; City Council has final approval).**

**a. Rezoning RZ14-02: Sandra and Ronald Davis**

*A request to change the zoning classification from Residential District – 5000 (RD-5) to Retail District (C-2) on property at 909 W. 28<sup>th</sup> Street, being 4.43 acres of land out of Stephen F. Austin Survey #9 and adjoining the south side of W. 28<sup>th</sup> Street between South Congress and Holt Streets in Bryan, Brazos County, Texas. (R. Haynes)*

Mr. Haynes presented the staff report (on file in the Development Services Department). Staff recommends approval of the proposed rezoning.

In response to questions from the Commission, Mr. Haynes stated that under the requested C-2 zoning, a salvage yard would not be allowed to return at this location. The public hearing was opened.

None came forward.

The public hearing was closed.

**Commissioner Hardeman moved to recommend approval of Rezoning RZ14-02 to the Bryan City Council, and to adopt the written staff report and analysis, as the report, findings and evaluation of this Commission. Commissioner Bienski seconded the motion and the motion passed unanimously.**

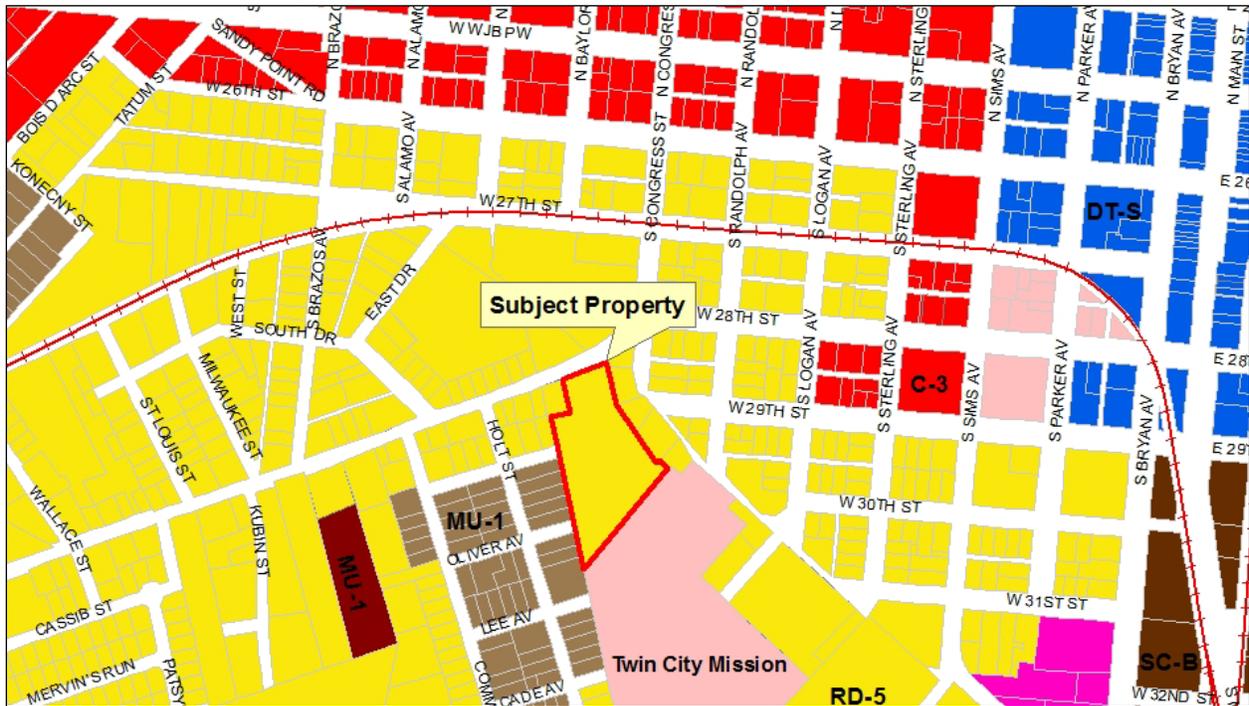
PLANNING AND ZONING COMMISSION  
STAFF REPORT

February 20, 2014



**Rezoning case no. RZ 14-02: Sandra and Ronald Davis**

- CASE DESCRIPTION:** a request to change the zoning classification from Residential District – 5000 (RD-5) to Retail District (C-2)
- LOCATION:** 909 West 28<sup>th</sup> Street, adjoining the south side of W. 28<sup>th</sup> Street between South Congress and Holt Streets
- LEGAL DESCRIPTION:** 4.43 acres of land out of Stephen F. Austin Survey #9
- EXISTING LAND USE:** retail business
- APPLICANT(S):** Sandra and Ronald Davis
- STAFF CONTACT:** Randy Haynes, Senior Planner
- SUMMARY RECOMMENDATION:** Staff recommends **approving** this rezoning request.



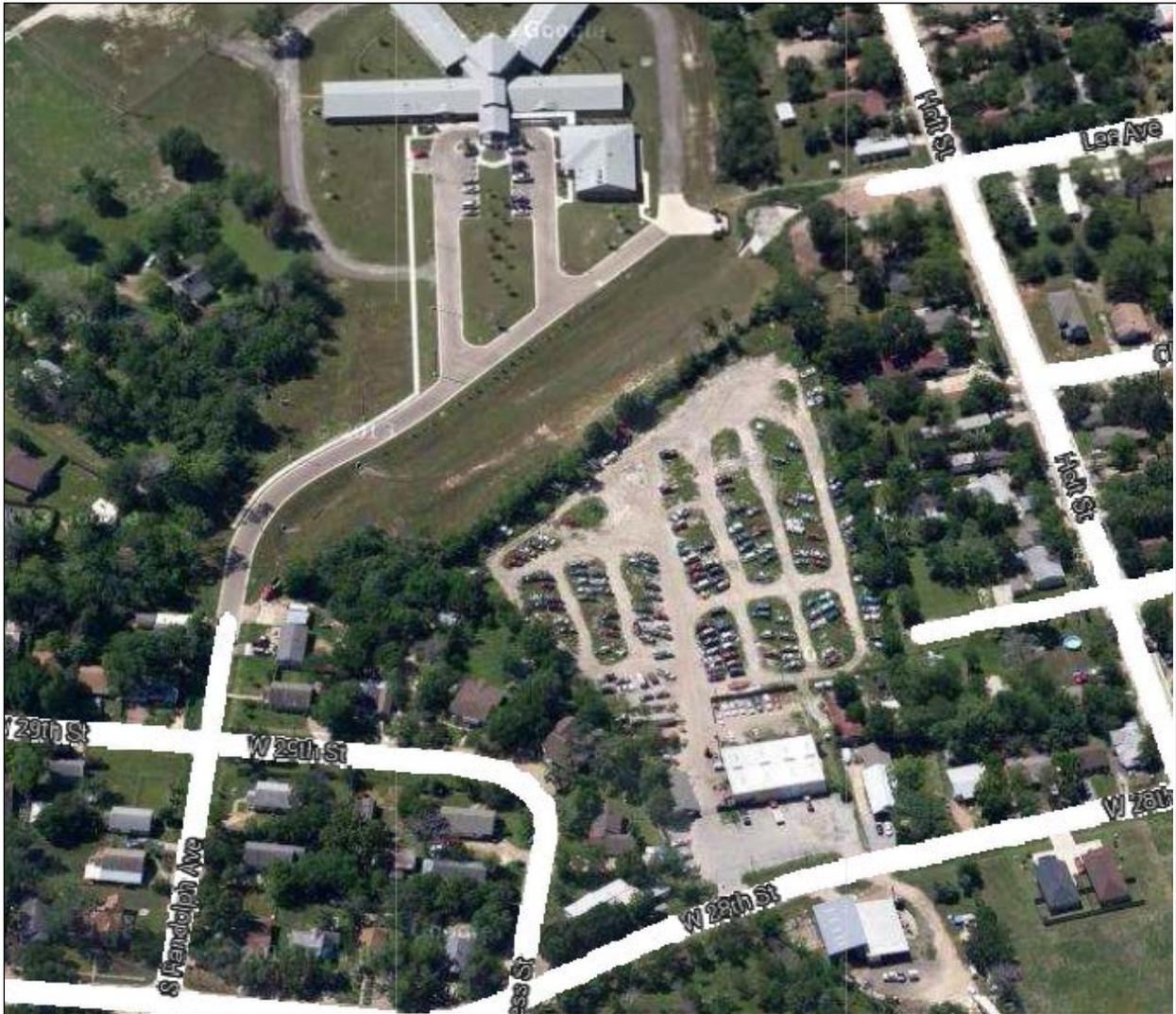
**AERIAL PHOTOGRAPH (2013):**



**SUBJECT PROPERTY LOOKING SOUTHEAST:**



**AERIAL LOOKING SOUTH:**



**ACROSS WEST 28<sup>TH</sup> FROM SUBJECT PROPERTY:**



## **AREA FORMERLY AUTO SALVAGE YARD:**



## **BACKGROUND:**

The subject property is about 4.5 acres in size and located at 909 West 28<sup>th</sup> Street between South Congress and Holt Streets. The subject property is currently occupied by buildings that served as auto repair garages at the time of the implementation of zoning in Bryan on December 11, 1989. Most recently the property was used as an auto salvage yard. Single-family residential uses adjoin the subject tract to the east and west, and a welding shop on property zoned RD-5 District is located on property across West 28<sup>th</sup> Street to the north. South of the subject property is a 16-acre property zoned Office District (C-1) which is currently occupied by a charitable use (Twin City Mission).

The applicants, Sandra and Ronald Davis, recently purchased the property and operate a retail establishment dealing primarily in merchandise liquidation. The Zoning Ordinance allows a nonconforming (grandfathered) use to be changed to another nonconforming use provided that adverse impacts (such as more traffic, noise, vibration, etc.) are not increased. Prior to the purchase, staff had determined that the new retail use is less intense than the previously grandfathered use of auto repair, and that the Zoning Ordinance would permit conversion to the retail establishment. Since the property is still zoned RD-5 District, the new retail use remains legally nonconforming. The nonconforming zoning status prevents the restoration of the retail use should the structure be destroyed and makes expansion of the existing facility difficult. In order to convert the zoning status from nonconforming to one that is permitted by right, the applicants have requested to change the zoning on the subject property Retail District (C-2).

The RD-5 zoning classification is intended provide space for detached dwelling units and is designed primarily for residential use and does not easily lend itself to other types of nonresidential uses. Typically residential districts should only access local streets.

The C-2 zoning classification is intended to provide opportunities for of various types of general retail trade, business and service uses. The district allows shopping areas or uses which are generally compatible near or adjacent to, but not usually directly in, residential neighborhoods.

West 28<sup>th</sup> Street is identified as a major collector roadway in Bryan's Thoroughfare Plan. The complete reconstruction of West 28<sup>th</sup> Street has been in the planning phase for a number of years, and actual construction is scheduled to begin as early as later this year. The West 28<sup>th</sup> Street reconstruction, a City of Bryan capital improvement project, will address safety and utility capacity issues as well as provide an aesthetically enhanced gateway into Downtown Bryan from the west side of town.

#### **RELATION TO BRYAN'S COMPREHENSIVE PLAN:**

The City of Bryan adopted a new Comprehensive Plan in January 2007. The plan includes policy recommendations related to various physical development aspects. The plan identified a number of issues that have been, according to the committee members, an impediment to the healthy growth of the community. Among the goals supported by the policies are the development of attractive entrances and corridors and encouraging and promoting compatible infill and redevelopment in areas where these activities will benefit the city as a whole and the area specifically. One of the plan's objectives is to encourage a sustainable mix of land uses types in suitable locations, densities and patterns and to identify areas for commercial development and preserve them with appropriate zoning. West 28<sup>th</sup> Street is classified by City Thoroughfare Plan as a major collector roadway. Land use policies in the comprehensive plan suggest that low-density residential land uses should access only local streets.

#### **ANALYSIS:**

In making its recommendation regarding a proposed zoning change, the Planning and Zoning Commission shall consider the following factors:

1. Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned; relationship to general area and the City as a whole.

**Staff contends that a cluster of nonresidential zoning that will allow general retail trade, business and services uses along this portion of West 28<sup>th</sup> Street can support and complement adjacent residential uses along this major collector roadway. Currently no such cluster exists between the subject property and North Harvey Mitchell Parkway / FM 2818, a distance of 1.5 miles. Due to the 4.5 acre size of the subject property, C-2 zoning here would allow expansion of small-scale commercial uses potentially beneficial to, and within walking distance of, the adjacent residential neighborhood.**

**Staff believes that adopted development standards for C-2 zoning can make commercial development opportunities at this location compatible with nearby residences and convenient for residents in the vicinity. Future development on the vacant portion of the subject property will be required to comply with adopted buffer area requirements established in the Zoning Ordinance and help mitigate noise, lighting, and other possible adverse impacts.**

2. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area and shall note the findings.

**The West 28<sup>th</sup> Street Reconstruction project, a \$4.3million capital improvement project, is scheduled to begin later this year and will provide ample transportation, water, and sewer infrastructure to support urban redevelopment and increased activity along and around this corridor. Any issues regarding utility capacity will be addressed at the time of redevelopment.**

3. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the City, and any special circumstances which may make a substantial part of such vacant land unavailable for development.

**Currently, there is no other land zoned specifically for retail use along this portion of West 28<sup>th</sup> Street. Retail land uses are permitted 0.1 mile east of the subject property on land zoned Commercial District (C-3), and a small neighborhood grocery exists on one of those lots. Property zoned for commercial use also exists approximately 0.2 miles from the subject tract along West William Joel Bryan Parkway, but due to the lack of rail crossings in the vicinity, the travel distance is closer to 0.5 miles. Staff believes that this zone change request, if approved, will not make land classified for similar development in the vicinity or elsewhere in the City unavailable for development.**

4. The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change.

**In the immediate area of the subject tract, residential development is at a moderate pace. A new single-family home was recently built immediately west of the subject property. To the northeast, reinvestment has been made in several single-family homes located in the area recently proposed as the Westside Historic District. The nearest boundary of that proposed district was on the east side of Congress Avenue. Development pressure for retail uses in the vicinity of the property has been light compared to other areas of the city.**

5. How other areas designated for similar development will be, or are unlikely to be affected if the proposed amendment is approved, and whether such designation for other areas should be modified also.

**Staff finds that other areas designated for retail use will be unaffected should the proposed zoning change be approved.**

6. Any other factors affecting health, safety, morals, or general welfare.

**Staff is unable to identify additional factors other than those mentioned above that might affect health, safety, morals, or general welfare if this rezoning were approved.**

#### **RECOMMENDATION:**

Based on all these considerations, staff recommends **approving** the requested zone change to C-2 District on the subject property.