#96

Late Backup

From: Rafiq B. Mohammad

Re: 753 Montopolis Dr. Re-zoning case: C14-2011-0043

To the Mayor and the Council Members,

First of all, I apologize for not personally appearing before the council to support my case but my demanding work schedule is preventing me from doing so. We are requesting this zoning change because we want to be able to sell liquor at 737 Montopolis Dr. Ste B. We want to essentially take the existing CS-1 zoning on the 800 sq. feet space located at 745 Montopolis Dr. to the 988 sq. feet space located at 737 Montopolis Dr. Ste. B. We are aware few of the people from the neighborhood are against having a liquor store in this area. We believe a liquor store will not increase crime or negatively affect the neighborhood or devalue any surrounding properties. In fact, there are liquor stores, varying in size, in many different neighborhoods in the city of Austin. The liquor stores have strict guidelines from the TABC that they have to follow and we are in good standing with the TABC. The few neighbors are opposed to the liquor store because they believe it is view of the children who are walking around and is close proximity to the three churches. The CS-1 zoning has been there since 1971 and the proposed location for the liquor store meets the distance rules and regulation. Beside the liquor store sign, we are not promoting outside about the liquor store or enticing anyone with promotional ads to come to our liquor store. We only sell closed package alcohol that is meant to be consumed onsite and we don't allow anyone to consume it outside of the store. In fact, we don't allow any suspicious drug related activities on the whole property of 753 Montopolis Dr. As far as children go, I have grown up around people consuming alcohol all my life from working at a C-Store to going to college to living in such a neighborhood, but I have not drank a sip of alcohol or even smoked a cigarette. I believe my family, my faith and my will had a lot to do with that. Just because alcohol is available across the street does not mean all people near it have to consume it. If a minor wants to consume alcohol illegally, there are many ways they can get it but it won't be directly from our liquor store. Anyway, I hope the council looks at the facts and rational thinking rather than giving into emotional and irrational thinking. I do hope the best for the neighborhood and in the future, we can have a more open communication with the neighbors to make the neighborhood a safer and better place to live.

My Best Regards,

Rafiq Mohammad

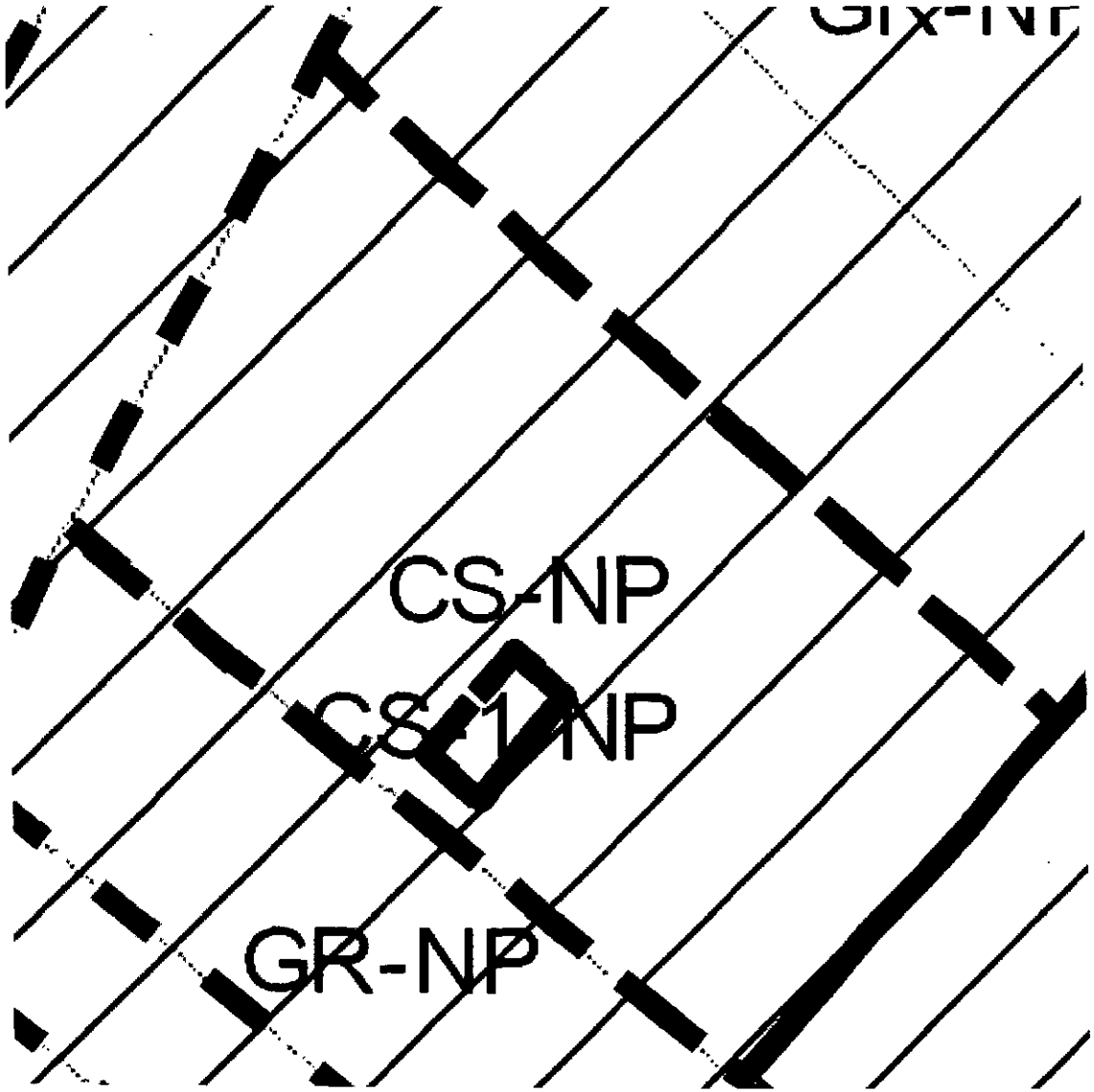
Re-Zoning Request

- What?
  - Re-zone 2 tracts inside 753 Montopolis Dr Lot
    - 737B Montopolis Dr (988 sq. ft): CS-NP -> CS-1-NP
    - 745 Montopolis Dr (804 sq. ft): CS-1-NP -> CS-NP
- Why?
  - So current Liquor Store (R&B Liquor) at 737B Montopolis Dr. can stay there

Background Information

- R&B Liquor was permitted by TABC and the zoning verified and approved by the City of Austin zoning dept.
- R&B Liquor opened on 12/2010
- 2/2011 City's Enforcement Dept. received complaint of Liquor Store too close to the church
  - The Liquor store was over 300 feet from the church and met the City's rules and regulation – Verified by TABC on the field
  - However, the Occupancy Permit of 737 Montopolis was not sufficient for a Liquor Store
  - Applied for Change of Use (Occupancy Permit) but was denied because zoning dept. found zoning to be different
  - Applied for Re-Zoning

Current Zoning Map L19 - Snapshot



- Based on orginal 1971 zoning case C14-71-241

- 804 sq. feet
- 745 Montopolis Dr.

- Updated in the GIS recently 3/2011

CITY OF AUSTIN, TEXAS

ORDINANCE NO. 720120-J

AN ORDINANCE AMENDING ORDINANCE NO. 711111-G, ENACTED BY THE CITY COUNCIL ON NOVEMBER 11, 1971, BY CORRECTING THE METES AND BOUNDS OF THE PROPERTY ZONED BY SAID ORDINANCE; SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THR SEPARATE DAYS; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Amend Part 1 of Ordinance No. 711111-G, Zoning Case C14-71-241, enact by the City Council on November 11, 1971, by deleting all of the metes and bounds of the property zoned by said ordinance and substituting in lieu thereo the following:

"An 804 square foot tract of land out of a 4116.48 square foot building located on Lot 4, Ponca Street Addition as recorded in Plat Book 47, Page 63, Plat Records of Travis County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING for reference at the southwest corner of said Lot 4; thenc southeasterly S 48° 10' E a distance of 144.40 feet; thence northeasterly N 41 50' E a distance of 15 feet which point is the southwest corner of the 4116.48 square foot building and also the southeast corner of the 804 square foot spac

THENCE continuing northeasterly N 41° 50' E a distance of 40.2 feet;

THENCE northwesterly N 48° 10' W a distance of 20 feet;

THENCE southwesterly S 41° 50' W a distance of 40.2 feet;

THENCE southeasterly S 48° 10' E a distance of 20 feet to the POINT BEGINNING."

PART 2. The rule requiring the reading of ordinances on three separate days i hereby suspended and the necessity to allow expedient development of the land herein affected creates an emergency requiring that this ordinance become effe tive immediately; therefore, upon the final passage of this ordinance as requi by law, this ordinance shall become effective immediately.

PASSED AND APPROVED

January 20, 1972

Ray Butler
Mayor

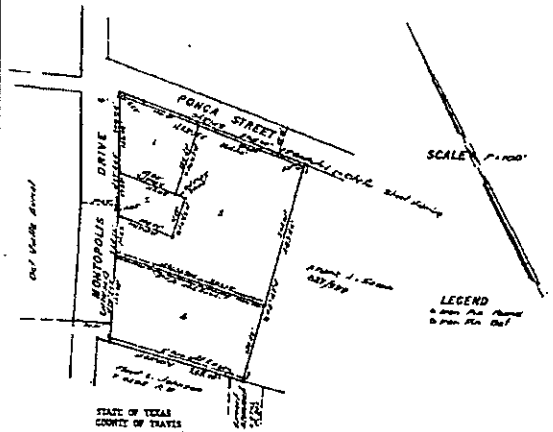
APPROVED: City Attorney

ATTEST: Elsie Wooldridge
City Clerk

04JAN72

Aug C-4 Rec'd B 5391 7.50

PONCA STREET ADDITION



STATE OF TEXAS
COUNTY OF TRAVIS

KNOW ALL MEN BY THESE PRESENTS:

THAT I, JAMES D. COLP, OWNER OF A PORTION OF THE SANTIAGO DEL VALLE GRANT, AS CONVEYED TO ME BY DEED RECORDED IN VOLUME 730, PAGE 587, OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, DO HEREBY SUBDIVIDE SAID TRACT OF LAND AS SHOWN HEREON, SUBJECT TO ANY EASEMENTS OR RESTRICTIONS HERETOFORE GRANTED, TO BE KNOWN AS PONCA STREET ADDITION, AND I DO HEREBY DEDICATE TO THE PUBLIC THE USE OF THE STREETS AND EASEMENTS AS SHOWN HEREON.

WITNESS MY HAND THIS THE 16th DAY OF July, 1969.

JAMES D. COLP

STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, THE UNDERSIGNED AUTHORITY, PERSONALLY APPEARED JAMES D. COLP, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 16th DAY OF July, 1969.

NOTARY PUBLIC IN AND FOR TRAVIS COUNTY, TEXAS

APPROVED FOR ACCEPTANCE August 5th 1969, A.D.,

DIRECTOR OF PLANNING Boyle H. DeVoto

ACCEPTED AND APPROVED FOR RECORD BY THE CITY PLANNING COMMISSION, CITY OF AUSTIN, TEXAS, August 5th, 1969, A.D.

CHAIRMAN

SECRETARY

FILED FOR RECORD AT 11:30 O'CLOCK A.M. THE 6 DAY OF Aug, 1969

MISS DELLIE LUNDERG, CLERK COUNTY COURT, TRAVIS COUNTY, TEXAS

DEPUTY

STATE OF TEXAS
COUNTY OF TRAVIS

I, MISS DELLIE LUNDERG, CLERK OF COUNTY COURT, WITHIN AND FOR THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT THE WITHIN AND FORE-GOING INSTRUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE 6 DAY OF Aug, 1969, A.D., AT 11:30 O'CLOCK A.M. AND DULY RECORDED ON THE 6 DAY OF Aug, 1969, A.D., AT 11:30 O'CLOCK A.M. IN THE PLAT RECORDS OF SAID COUNTY, IN PLAT BOOK 47 PAGE 63.

WITNESS MY HAND AND SEAL OF OFFICE OF THE COUNTY COURT OF SAID COUNTY, THE DATE LAST WRITTEN ABOVE.

MISS DELLIE LUNDERG, CLERK COUNTY COURT, TRAVIS COUNTY, TEXAS

DEPUTY

THIS IS TO CERTIFY THAT AUSTIN CITY CODE CHAPTER 23.17 of 1954, HAS BEEN COMPLIED WITH.

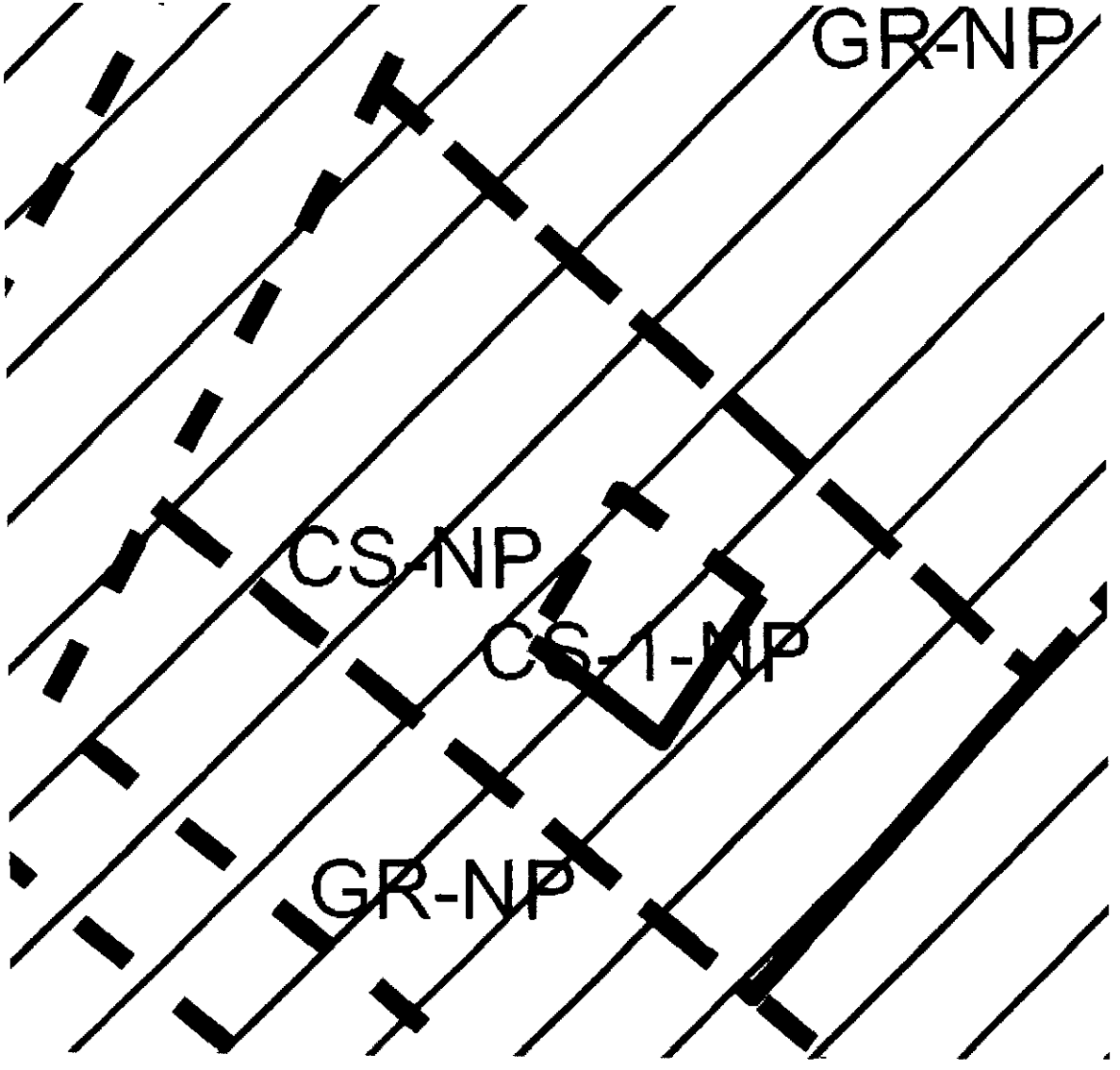
AS SURVEYOR

W. WAYNE HUGHES
REGISTERED PUBLIC SURVEYOR NO. 720
1214 LEFF
AUSTIN, TEXAS
MAY 23, 1969

JUL 1969
RECEIVED

C8-69-123

Zoning Map L19 – 1/5/11 snapshot



- Zoning covering 737B Montopolis Dr.
- Has been this zoning before 3/2011 in City's GIS system
- Published zoning documents showed this zoning before 3/2011

Application

L19

Tracking # 3116

CITY OF AUSTIN, TEXAS
Information Form in Connection With
Application For an
Alcoholic Beverage License

FANNIN LICENSE SERVICE
3001 NORTH LAMAR, SUITE 20
AUSTIN, TEXAS 78705
(512) 474-4159

Package Store
(BF P) Beer Retailer's Off Premise _____ Permit, License

Date: 9/10/10

THE STATE OF TEXAS
COUNTY OF Travis

Applicant is applying for a permit to operate past 12:00 a.m., midnight (late hours permit).
Yes ____ No X

In connection with the above named application, the applicant makes the following statements and representations:

1. Name of applicant Rafiq Mohammad
2. Name of proposed business R & B Liquor
3. Type of business package store
   (a) Is this an adult oriented business? Yes ____ No X
4. Tax Parcel I.D. Number 0305160240
5. Address of proposed business 737 Montopolis Dr. 'B', Austin 78741
6. Residence Address 10429 Indigo Broo Loop, Austin 78733
7. Applicant is holder of the following City permits or licenses:
   yes
8. Is the proposed location of the applicant's business at least 300 feet from any church, public school, or public hospital, or the 300 feet limitation has been waived by the City Council? The method of measuring distance between the place of business and a church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in a direct line across intersections. The method of measuring distance between the place of business and the public schools shall be in a direct line from the property line of the public school to the property line of the place of business, and in a direct line across intersections.
   Yes X No ____
9. (a) Is the proposed business to embrace the entire building, grounds, and appurtenances? Yes X No ____
   (b) If not, applicant is showing on the attached plan or diagram the portion of said premises to be used under the proposed permit.
10. Applicant will not engage in the proposed business until he has paid the occupation tax on such business levied by the ordinances of the City of Austin.
11. Applicant hereby declares that the premises for which application is made shall be used for the sale, storage, dispensing or otherwise handling of:

____ (a) beer or wine, as defined by State Law, in unopened containers for off-premise consumption, as part of the operation of a Grocery Store as that term is defined in the Land Development Code of the City of Austin, 1988.

____ (b) beer, wine or mixed beverage direct to the consumer for the consumption on the premises of a Restaurant as defined in the Land Development Code of the City of Austin, 1988, and at least fifty-one percent (51 %) of the gross income shall be derived from the sale of prepared food.

Applicant may be required to furnish within thirty (30) days of notification, a verified audit for each month of the previous calendar year, showing the gross income derived from the sale of alcoholic beverages and the gross income derived from the sale of food; and in addition any and all documents requested by the City including tax documents submitted to the State Taxing Authority.

____ (c) beer or wine, as defined by the State Law, in unopened containers for off premise consumption but NOT as a part of a Package Store as that term is defined in the Texas Alcoholic Beverage Code.

____ (d) by conditional use permit only, the sale, storage, dispensing or otherwise handling of malt, vinous and spirituous liquors for on-site consumption as a part of a Bar, Cocktail Lounge or Night as these terms are defined in the Land Development Code of the City of Austin, 1988.

X (e) Malt, vinous and spirituous liquor for off-site consumption as a part of the operation of a Package Store as that term is defined in the Texas Alcoholic Beverage Code.

____ (f) distributors or wholesale

Notary Statement on Reverse (Required)

Approval and or release of this application for alcoholic beverage permit by the City of Austin does not authorize the sale, transfer or distribution of alcoholic beverage at the location, or the occupation of the structure for which the permit is sought, prior to the issuance of a Certificate of Occupancy and a Food Permit by the City of Austin.

Occupation of the structure or the conduct of business prior to the issuance of a Certificate of Occupancy, or the serving of alcoholic beverage prior to the issuance of a Food Permit, are prohibited and will result in appropriate enforcement action by the City of Austin against the applicant.

Acknowledged:

Signature of Applicant _____ Date 9/10/10

Rafiq Mohammad
Printed Name

THE STATE OF TEXAS
COUNTY OF Travis

BEFORE ME, the undersigned authority, on this day personally appeared;
Rafiq Mohammad known to me to be the person(s) whose names) is/are subscribed to the foregoing statement and being duly sworn by me each state under oath that he/she has read the said statements and that all of the statements and representation therein set forth are true and correct.

SWORN TO before me this the 10 day of September 20 10

MICHAEL FANNIN
Notary Public, State of Texas
My Commission Expires 05-17-2013

Notary Public
Commission expires _____ 20 ____.

PLANNING & DEVELOPMENT REVIEW DEPARTMENT

ZONING VERIFICATION

The proposal business is currently located in the following "USE DISTRICT":
CS-1
9-13-10 _____
Date Document Sales Division (ISS)

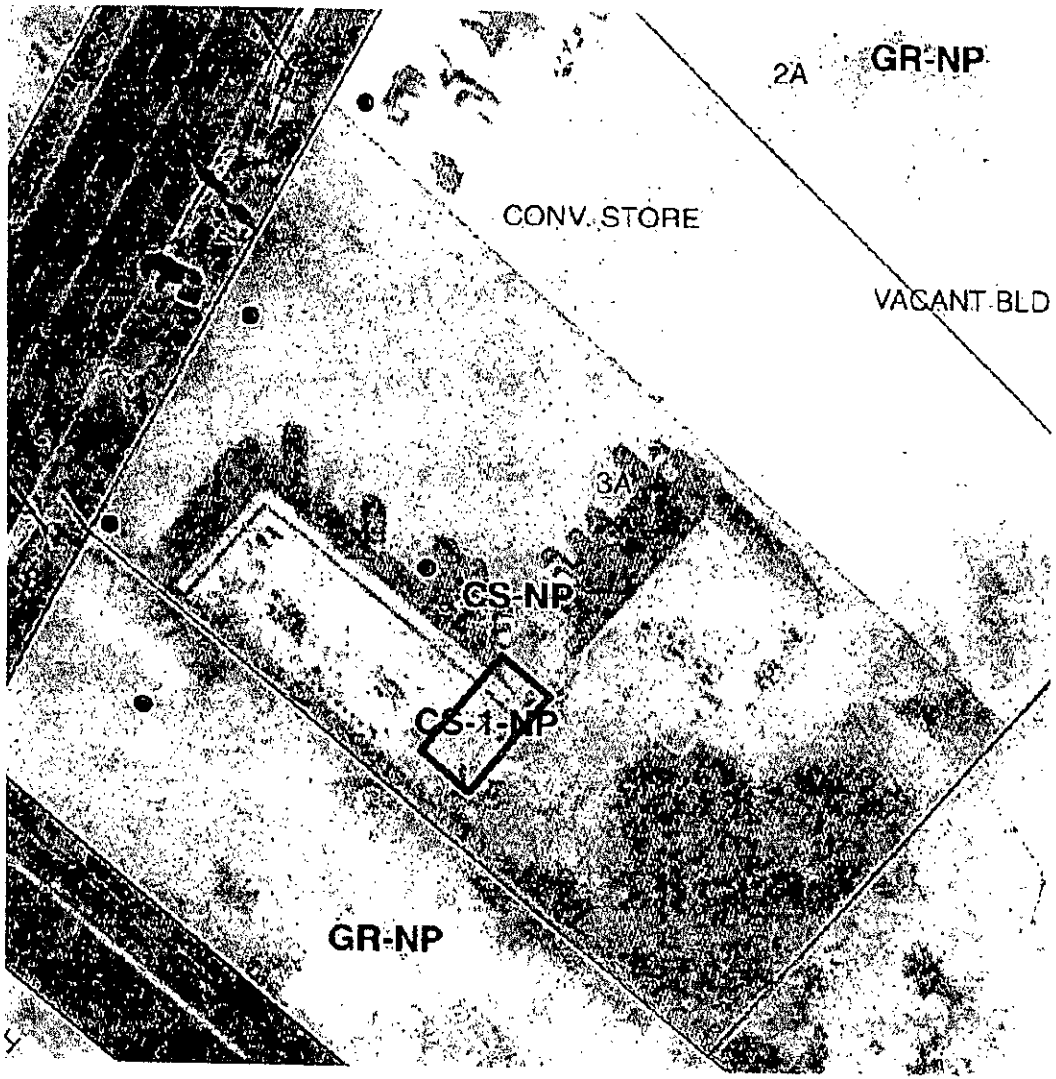
Applicant shall provide Zoning Review with a copy of a Use District Map which indicates location of site. If location of permit is within a "strip-center" or other building within a larger use district, applicant will be required to furnish a "Site Plan" or "Building Plan" showing exact location of business.

ZONING APPROVAL

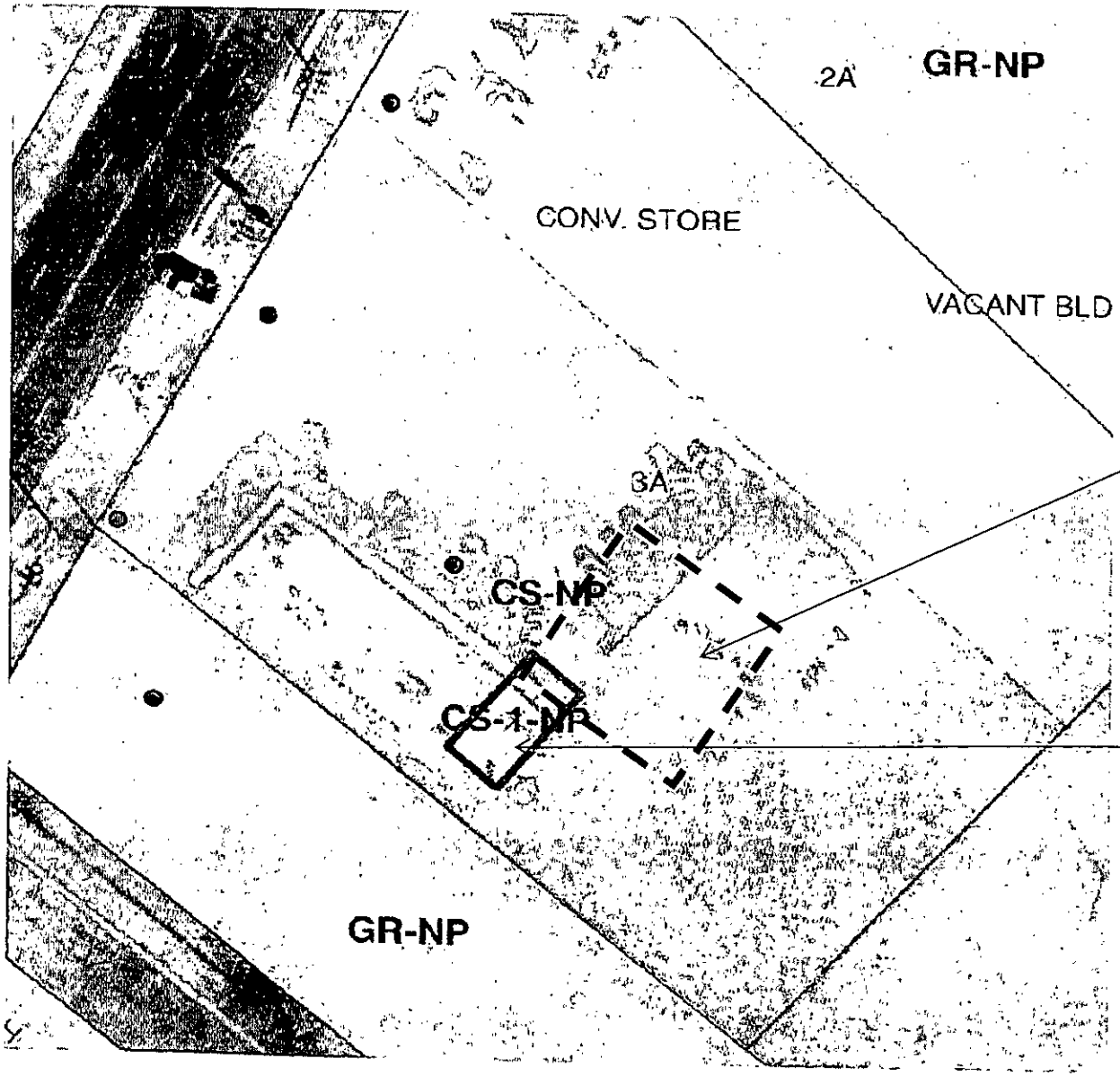
A. The "Use District" is appropriate for the type of business being applied for. Yes ✓ No ____
B. Proposed business is a restaurant (10. (b)) and is located across the street from or adjoining a lot used or zoned SF -5 or more restrictive; or within 540 feet of a lot zoned SF-5 or more restrictive. Yes ____ No ✓
C. If the answer to "B" is YES and applicant has applied for late hours permit (i.e. to serve until 2.00 am), a conditional use permit has been approved by the Planning Commission on

9-17-10 _____
Date Planning & Development Review Department

Current GIS Map with Bldg Snapshot



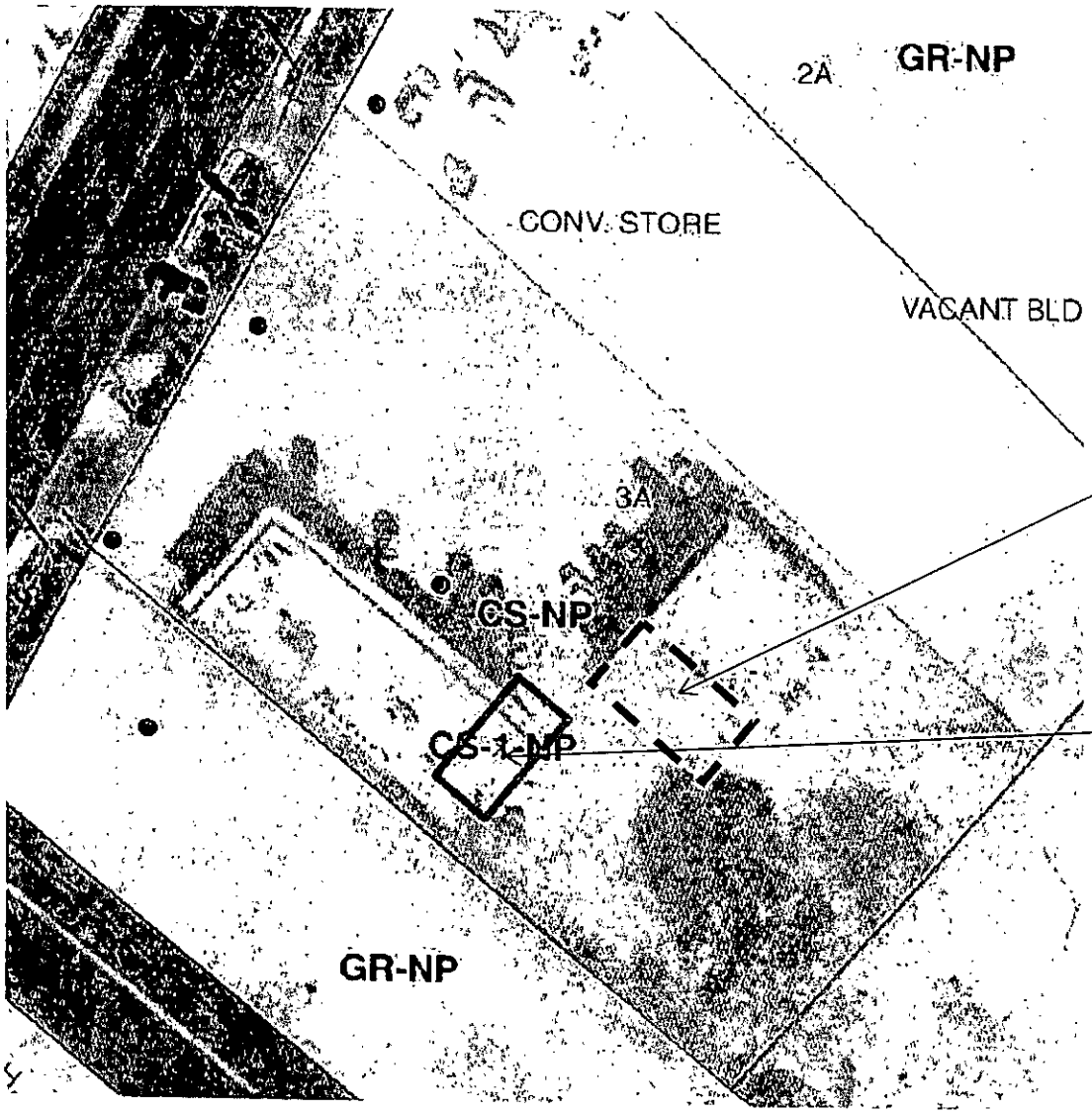
Old vs Current Zoning



Old CS-1-NP zone covering 737B Montopolis Dr

Current CS-1-NP zone Covering 745 Montopolis Dr

Proposed Zoning



CS-1-NP for 737B Montopolis Dr

Current CS-1-NP zone Change to just CS-NP

Result: Moving the zoning from 745 Montopolis Dr. to 737B Montopolis Dr.