

Semi-Monthly Zoning Meeting
Tuesday, January 13, 2015

CPC Deadline: 02/27/15
CC Deadline: 03/31/15
City Council District: D – Brossett

PRELIMINARY STAFF REPORT

To: City Planning Commission
Zoning Docket: 006/15

Prepared by: Stephen Kroll
Date: December 22, 2014

I. GENERAL INFORMATION:

Applicant: City Council Motion No. M-14-465

Request: This is a request for a zoning change from an RD-3 Two-Family Residential District to a B-1A Neighborhood Business District.

Location: The petitioned property is located on Square 1084, Lot T, in the Third Municipal District, bounded by Mazant, North Galvez, Bartholomew and North Miro Streets. The municipal addresses are 2138 Mazant Street and 4032 North Miro Street. (PD 7)

Description: The site, a rectangular parcel located at the intersection of North Miro and Mazant Streets, measures forty-three (43) feet and three (3) inches in width, eighty-one (81) feet and three (3) inches in depth, and approximately 3,515 square feet in area. The site is developed with a wood-frame structure built to the North Miro and Mazant Street property lines that occupies most of the site except for shallow rear and interior side yards. The structure stands one story in height at its front property line before rising to two stories. It contains an approximately 2,300 square foot ground floor unit that has historically been used for commercial purposes and is accessible from an entrance angled toward the intersection of North Miro and Mazant Streets. A residential unit occupies the structure's second floor. One (1) off-street parking space is provided on a paved driveway located in the Bartholomew Street side yard.

According to the Department of Safety and Permits, the ground floor commercial unit was most recently occupied by a package liquor store, which was a non-conforming use in the RD-3 Two-Family Residential District which includes the site. This non-conforming commercial use operated until Hurricane Katrina in 2005. The ground floor commercial unit has been vacant since then. Due to this period of extended vacancy, the commercial unit's legal non-conforming status was lost. The structure can now be used only as a single- or two-family residence in accordance with the site's RD-3 Two-Family Residential District zoning.

In 2010, the property owner intended to establish a grocery store selling fast food and alcoholic beverages within the ground floor commercial unit. To allow this, the property owner requested a zoning change of the site from the RD-3 Two-Family Residential District to a B-1A Neighborhood Business District, as well as

conditional uses and a moratorium appeal¹. The City Planning Commission recommended modified approval of the request, approving the zoning change request and the conditional use request to permit the sale of fast food, and denying the conditional use request to permit the sale of alcoholic beverages for off-premises consumption and the moratorium appeal. The City Council subsequently denied the request in its entirety.

In 2012, the property owner proposed to use the the ground floor commercial unit as a small grocery store, which was not to sell alcoholic beverages. To permit the grocery store, the property owner requested a zoning change of the site from the RD-3 Two-Family Residential District to a B-1A Neighborhood Business District². The City Planning Commission recommended approval of the request. The application died for lack of action by the City Council.

The current City Council motion calls for the City Planning Commission to again consider the rezoning of the site from an RD-3 District to a B-1A District to allow the structure's ground floor commercial unit to be used as a small grocery store.

Why is City Planning Commission action required?

The City Planning Commission is required to make a recommendation on all requests for zoning map amendments prior to City Council action, in accordance with **Article 16, Section 16.2.3.2 Planning Commission Recommendation** of the Comprehensive Zoning Ordinance.

II. ANALYSIS

A. What is the zoning of the surrounding areas? What is the existing land use and how are the surrounding areas used?

The petitioned site is located within a large RD-3 Two-Family Residential District that spans most of the Florida Area neighborhood, in which the site is located, and the adjacent Saint Claude neighborhood. These neighborhoods, which are located to the lake-side of Saint Claude Avenue, are comprised of rectangular lots that normally measure between thirty and forty feet in width and one hundred twenty feet in depth. The area was gradually developed across the first half of the 20th Century and was fully developed by 1949. The district features wood-frame, single-story single- and two-family residential structures of that era which are located beyond front setbacks ranging between ten and twenty feet in depth. Most of these residences provide off-street parking on paved driveways located in side yards, although some of the area's older structures do not provide off-street parking. Residential structures of this type surround the subject site, occupying the lot immediately adjacent to it to the Bartholomew Street side, as well as lots located opposite Mazant and North Miro Street from the site. There are also a substantial number of vacant lots in the area, including vacant lots directly to the rear of the subject site and directly opposite Mazant Street from the subject site.

¹ Zoning Docket 023/10

² Zoning Docket 063/12

The RD-3 District in which the subject site is located is interrupted by a B-1 Neighborhood Business District that extends along North Galvez Street between Bartholomew Street and Poland Avenue, and along France Street between North Galvez and North Tonti Streets. This B-1 District covers one parcel on the subject square, an auto repair facility that is located at the intersection of North Galvez and Mazant Streets. Other uses within that B-1 District include a vacant auto repair facility, a church, a vacant commercial structure, and several residential structures. Adjacent to both the RD-3 District and this B-1 District is a vast HI Heavy Industrial District that extends between Poland Avenue, to the west, and the Industrial Canal, to the east, North Claiborne Avenue, to the river side, and Lake Pontchartrain. This district is occupied by a wide variety of port-related uses, warehouses, and other industrial facilities.

B. What is the zoning and land use history of the site?

Zoning: 1929 – "E" Commercial District
1953 – "C" Four Family Residential District
1970 – RD-3 Two-Family Residential
Current – RD-3 Two-Family Residential

Land Use:
1929 – Commercial
1949 – Commercial
1999 – Commercial³

C. Have there been any recent zoning changes or conditional uses in the immediate area? If so, do these changes indicate any particular pattern or trend?

In the past five years, there has been the following land use actions for properties located within approximately five blocks of the petitioned site:

Zoning Docket 009/13 was a request for an Residential Planned Community (RPC) District overlay to permit a multi-family development in an RM-2 Multi-Family Residential District. There are multiple municipal addresses. The City Planning Commission recommended approval of the request, which was subsequently approved by the City Council. *This site, which is a portion of the Florida Avenue public housing site, is located approximately five (5) blocks from the subject site.*

In addition to these recent actions for nearby properties, the petitioned property has been the subject of the following two applications:

Zoning Docket 023/10 was a request for a zoning change from an RD-3 Two-Family Residential District to a B-1A Neighborhood Business District and a conditional use and moratorium appeal for a fast food restaurant and the sale of alcoholic beverages. The

³ The 1999 *Land Use Plan* designates the entirety of the subject square as being used for single- and two-family residential purposes. However, the Department of Safety and Permits' records indicate that the subject site was in fact used for commercial purposes in 1999.

municipal addresses are 2138 Mazant Street and 4032 North Miro Street. The City Planning Commission recommended modified approval, approving the requested zoning change from an RD-3 Two-Family Residential District to a B-1A Neighborhood Business District and the conditional use to permit the sale of fast food within that B-1A District, but denying the request for a conditional use to permit the sale of alcoholic beverages and the moratorium appeal. The request was subsequently denied by the City Council in its entirety.

Zoning Docket 063/12 was a request for a zoning change from an RD-3 Two-Family Residential District to a B-1A Neighborhood Business District. The municipal addresses are 2138 Mazant Street and 4032 North Miro Street. The City Planning Commission recommended approval of the request. The application died for lack of action by the City Council.

D. Are any major streets involved? What impact will the proposed zoning change have on the transportation system, if any?

The site is located at the intersection of Mazant and North Miro Streets, both of which are minor residential streets. Like most streets in the vicinity of the site, Mazant and North Miro Streets are narrow, single lane streets with a parking lane on each side. Mazant Street carries traffic in a river-bound direction only, while North Miro Street carries traffic traveling in both eastward and westward directions. These streets are used primarily by residents of the Saint Claude neighborhood as they travel within that neighborhood or to nearby arterial streets that connect with adjacent neighborhoods. These arterial streets include North Galvez Street, a two-way, two lane major street, which bounds the subject square, and Poland Avenue, a major street carrying four lanes of traffic traveling in both directions and featuring a neutral ground, which is located two blocks from the subject site⁴.

The applicant is requesting a zoning change to a B-1A Neighborhood Business District, which does not require off-street parking for commercial uses under five thousand square feet⁵. One off-street parking space is provided at the site. This space, located in the interior side yard, would likely be used exclusively by the operators of any commercial use that might operate at the site or by the occupant of the upper floor residential unit and would not be available for customer use.

The B-1A District allows for a variety of small scale, neighborhood-oriented commercial uses that would likely be patronized primarily by residents of the surrounding area. As such, it is likely that a significant portion of the customers of any use operating at the petitioned site would walk to that site. Some customers will drive to the site, however, which will result in a greater demand for on-street parking than would be expected to result from the residential use of the site that is allowed under the current zoning. This demand is likely to be greatest along those portions of Mazant and North Miro Streets that are adjacent to the site. Currently, there is low to moderate demand for on-street

⁴ North Galvez Street and Poland Avenue are both designated as major streets by the *Plan for the 21st Century's* existing streets map.

⁵ **Article 5, Section 5.5.8 *Special Regulations*** of the Comprehensive Zoning Ordinance

parking as, though most residences have off-street parking spaces, some residents park their vehicles on-street. There is a sufficient supply of on-street parking spaces to accommodate the modest additional demand for on-street parking that would result from the commercial use of the site.

E. What is the purpose of the proposed rezoning, and what effect would it have on the adjacent land uses?

The purpose of the proposed rezoning is to allow a structure that housed ground floor commercial uses from at least 1929 until 2005 and was zoned for commercial use from 1929 until 1970 to be occupied by a small grocery store. Because it lost its status as a legal non-conforming commercial use in the RD-3 District due to extended vacancy following Hurricane Katrina, the site can only be used for commercial purpose in the future if its zoning is changed to a commercial district. When previously applying for the rezoning of this site, the applicant proposed the B-1A Neighborhood Business District because it was developed specifically for small, neighborhood-serving commercial uses in older, developed neighborhoods, and that proposal has been carried forward in the current City Council motion. As the B-1A District allows only businesses that are generally considered to be compatible with surrounding residential uses, it has frequently been used in the rezoning of historic corner store-style commercial properties that are embedded within otherwise residential neighborhoods.

In addition to the grocery store use proposed by the applicant, the B-1A District would allow by right other retail uses, dry cleaning, laundromats, electronic equipment repair shops, barber shops, hardware stores, banks, medical offices, general retail, child care facilities, and standard restaurants, among other uses. All these uses would be limited to 5,000 square feet in floor area. Single-, two-, and multiple-family residential uses are also permitted. Some uses that are considered to be more intense because of their size or operational characteristics are allowed in the B-1A District only as conditional uses. These conditional uses include uses selling alcoholic beverages, such as cocktail lounges, retail stores selling packaged alcoholic beverages, and restaurants selling alcoholic beverages for on-premises consumption. Other conditional uses in the B-1A District include gas stations, fast food restaurants, and otherwise permitted uses that exceed 5,000 square feet in floor area. (The property owner has stated that he does not intend to sell alcoholic beverages or fast food at the proposed grocery store.)

The proposed grocery store and the other small retail and service uses that are permitted by right in the B-1A District would be more intensive in terms of pedestrian and vehicular traffic, demand for on-street parking, litter, and noise generated than those residential uses allowed under the current zoning. However, these levels of noise, traffic, and parking demand should nonetheless be fairly limited due to the small size of the commercial unit and comparable to the impacts that were likely produced by the past commercial uses of the site, including the most recent commercial use of the site as a package liquor store.

F. Can the request be considered a spot zone? Does it fall within the Historic Non-Conforming Use Policy?

The terms “spot zone” and “spot zoning” refer to zoning changes which have the effect of singling out a lot or other relatively small tracts of land for treatment different from similar surrounding parcels. These zoning changes have the effect of granting preferential treatment to those spot zoned parcels which is not also granted to similarly-situated surrounding properties.

Spot zoning can occur in two ways. First, it can be done by creating a new zoning district that is applied only to a limited number of properties which are similar to surrounding properties. The creation of the new zoning district has the effect of granting preferential treatment to those properties which is not also granted to surrounding similarly-situated properties. Second, spot zoning can occur through the expansion of existing zoning districts when the expansion has the effect of unjustifiably treating certain properties differently from similarly situated properties.⁶ This re-zoning proposal is considered to be the first type of spot zone, as it would create a new B-1A District for only this one property and would have the effect of treating this property differently from the surrounding properties.

Although the City Planning Commission generally looks upon spot zoning applications with disfavor, it can support those spot zoning applications in instances where the parcel to be rezoned is significantly different in physical character and historic use from the surrounding properties. For example, it may be appropriate to spot-zone a historic commercial, industrial, or institutional property located within an otherwise residential zoning district, because the difference between that commercial, industrial, or institutional property and the surrounding residential properties justifies it being treated differently from the surrounding properties. In these cases, the Commission may make an exception to its general policy against spot zoning to support the spot zoning of that particular property.

In determining whether the spot zoning of any particular property is appropriate, the Commission uses its Historic Non-Conforming Use Policy to guide its analysis. This policy contains criteria which are used to identify historic commercial, industrial/warehouse, and institutional properties which should be zoned differently from surrounding properties. It evaluates individual applications based on their compliance with general and specific criteria. The requirements for requests involving historic institutional structures are listed below in italicized font, while the staff's comments on the extent to which the site meets those requirements are listed in plain text.

⁶ For further discussion of the Commission's Spot Zoning Policy and Historic Non-Conforming Use Policy, see pages 52-54 of the Commission's Administrative Rules, Policies, & Procedures, adopted March 11, 2014.

General

A. The request is consistent with the Plan for the 21st Century.

The request meets this criterion. The proposal is consistent with the *Plan for the 21st Century*. As discussed at greater length in Section III, the site's future land use designation does allow for commercial use of this site because the site has historically been used for commercial purposes.

B. The petition is in harmony with the historic character of the surrounding neighborhood.

The request meets this criterion. This zoning change should be considered to be consistent with the character of the neighborhood, which historically featured small commercial uses within otherwise residential areas. These commercial uses were typically located at corner locations and served the daily needs of the neighborhood's residents. As this zoning change would allow such small commercial use of this site (as the B-1A District allows a broad range of small, neighborhood-serving commercial uses), this criterion is fulfilled.

C. The request serves a neighborhood need.

The request meets this criterion. The zoning change to a B-1A District would allow a broad variety of small commercial uses, including the proposed grocery store, that primarily serve customers from the surrounding neighborhood.

D. The property has a history of non-residential use.

The request meets this criterion, as the City's records indicate that the property was used for commercial purposes from at least 1929 until 2005.

Specific

Historically commercial properties are often developed with the following characteristics:

- a. The building is built to the sidewalk and frames the corner.*
- b. The building entrance is visible from both streets, typically at an angle at the corner.*
- c. The building has an overhang, gallery, balcony, or canopy over the sidewalks.*
- d. The building has display windows, rather than large blank walls.*

The structure located at the petitioned site features most of these characteristics. The structure is built to the sidewalk, framing the corner, with an entrance that is angled toward the intersection. It has a roof eave which extends over the Mazant Street sidewalk. However, it does not have display windows. Google Streetview photographs from September, 2007 indicate that the structure previously featured display windows, but they were covered during a recent renovation.

The petitioned zoning classification must be the most restrictive available to accommodate the class of uses to serve the neighborhood.

The requested B-1A District is the most restrictive zoning classification that allows small retail and service uses that are intended to serve the residents of surrounding residential neighborhoods primarily.

This analysis shows that the request meets most of the Historic Non-Conforming Use Policy and the spot zoning of the site to a B-1A Neighborhood Business District is justifiable under that policy.

III. Is the proposed action supported by or in conflict with the policies and strategies of the *Plan for the 21st Century*?

In accordance with the Home Rule Charter of the City of New Orleans, a land use action is consistent with the Master Plan if it furthers, or at least does not interfere with, the goals, policies, and guidelines in the Land Use Element of the Master Plan and is compatible with the uses, densities, and intensities of the designation of its site on the Future Land Use Map. “Chapter 14: Land Use Plan” of the Master Plan designates the future land use of the petitioned site as “Residential Low Density Pre-War.” The goal, range of uses, and development character for that designation are copied below:

RESIDENTIAL LOW DENSITY PRE-WAR

Goal: Preserve the scale and character of pre-war (WWII) residential neighborhoods of lower density where the predominant use is single and two-family residential and allow for compatible infill development. Discourage the development of additional multifamily housing that is out of scale with existing character.

Range of Uses: New development generally limited to single or two-family dwellings, and preservation of existing multi-family buildings. Businesses and traditional corner stores may be allowed where current or former commercial use is verified. Supporting public recreational and community facilities (e.g., schools and places of worship) also allowed. Conversion to multifamily may be allowed for certain existing historic institutional, commercial or other non-residential buildings.

Development Character: New development will fit with the character and scale of surrounding residential neighborhoods where structures are typically located on smaller lots and have minimal front and side setbacks. Maximum density of 24 units/acre.

The request is to change the RD-3 Two-Family Residential District to a B-1A Neighborhood Business District in order to allow a corner grocery store in a structure that has historically been used for commercial purposes. Given this history of commercial use, its future commercial use is allowable under the Residential Low Density Pre-War description’s specified range of uses. The proposal is therefore **consistent** with the Master Plan.

IV. SUMMARY

Zoning Docket 006/15 is a request for a zoning change from an RD-3 Two-Family Residential District to a B-1A Neighborhood Business District to allow a small grocery store to operate within a structure that was occupied by a package liquor store prior to Hurricane Katrina. In 2010, the property owner requested a zoning change to a B-1A District and conditional uses to allow a grocery store selling alcoholic beverages and fast food to occupy the site. That request was denied. In 2012, the property owner requested a zoning change to a B-1A District to allow the site to be occupied by a grocery store, which would be allowed by right in the B-1A District. The grocery store was not to sell alcoholic beverages or fast food, which would only be allowed as conditional uses. That request died for lack of action by the City Council. The current request, which is initiated by City Council motion, is identical to the 2012 request, as it would rezone the site to a B-1A District to allow the site to be occupied by a small grocery store which is not to sell alcoholic beverages or fast food.

The requested zoning change, a spot zone, is supported by the Historic Non-Conforming Use Policy, which allows for spot zones to be supported provided that they allow for low impact, neighborhood-oriented commercial uses in structures that have historically been occupied by such uses. The subject site meets most of the criteria of that policy, as the structure was clearly built for neighborhood-oriented commercial use of its ground floor unit and was used for such commercial purposes from 1929 to 2005. The intended future commercial use of the site as a grocery store, like most of the other uses allowed in the B-1A District, would be consistent with this historic use and should produce only minimal levels of noise, traffic, and demand for parking on surrounding streets. For these reasons, the staff supports the requested zoning change.

V. PRELIMINARY STAFF RECOMMENDATION⁷

The staff recommends **APPROVAL** of Zoning Docket 006/15, a request for a zoning change from an RD-3 Two-Family Residential District to a B-1A Neighborhood Business District.

VI. REASONS FOR RECOMMENDATION

1. The site meets the criteria of the Historic Non-Conforming Use Policy by which the zoning change can be supported.
2. The requested B-1A District allows only small-scale, low-intensity commercial uses that normally serve the residents of surrounding neighborhoods primarily and which are generally perceived as being compatible with adjacent residential uses.

⁷ Subject to modification by the City Planning Commission

MOTION
(LYING OVER)
NO. M-14-465

CITY HALL: November 6, 2014

BY: COUNCILMEMBERS ~~BROSSETT~~

SECONDED BY:

BE IT MOVED BY THE CITY COUNCIL OF THE CITY OF NEW ORLEANS,

That the City Planning Commission is hereby directed to conduct a public hearing to consider a zoning change from an RD-3 Two-Family Residential District to a B-1A Neighborhood Business District on Square 1084, Lot T, in the Third Municipal District, bounded by Mazant, North Galvez, Bartholomew and North Miro Streets. The municipal addresses are 2138 Mazant Street and 4032 North Miro Street.

BE IT FURTHER MOVED, That the clerk of council shall forward copies of this motion directly to all affected departments.

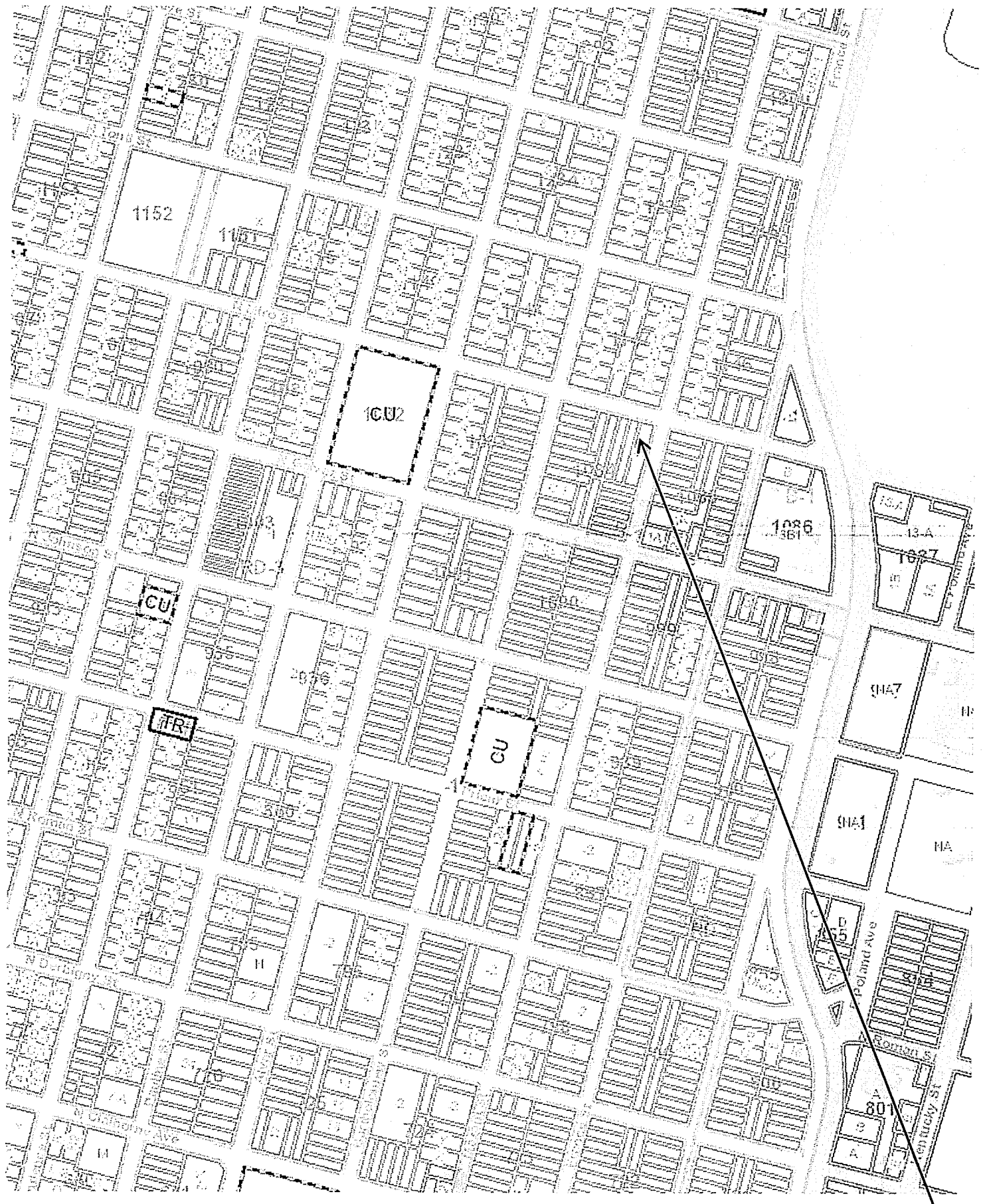
THE FOREGOING MOTION WAS READ IN FULL, THE ROLL WAS CALLED
ON THE ADOPTION OF THEREOF AND RESULTED AS FOLLOWS:

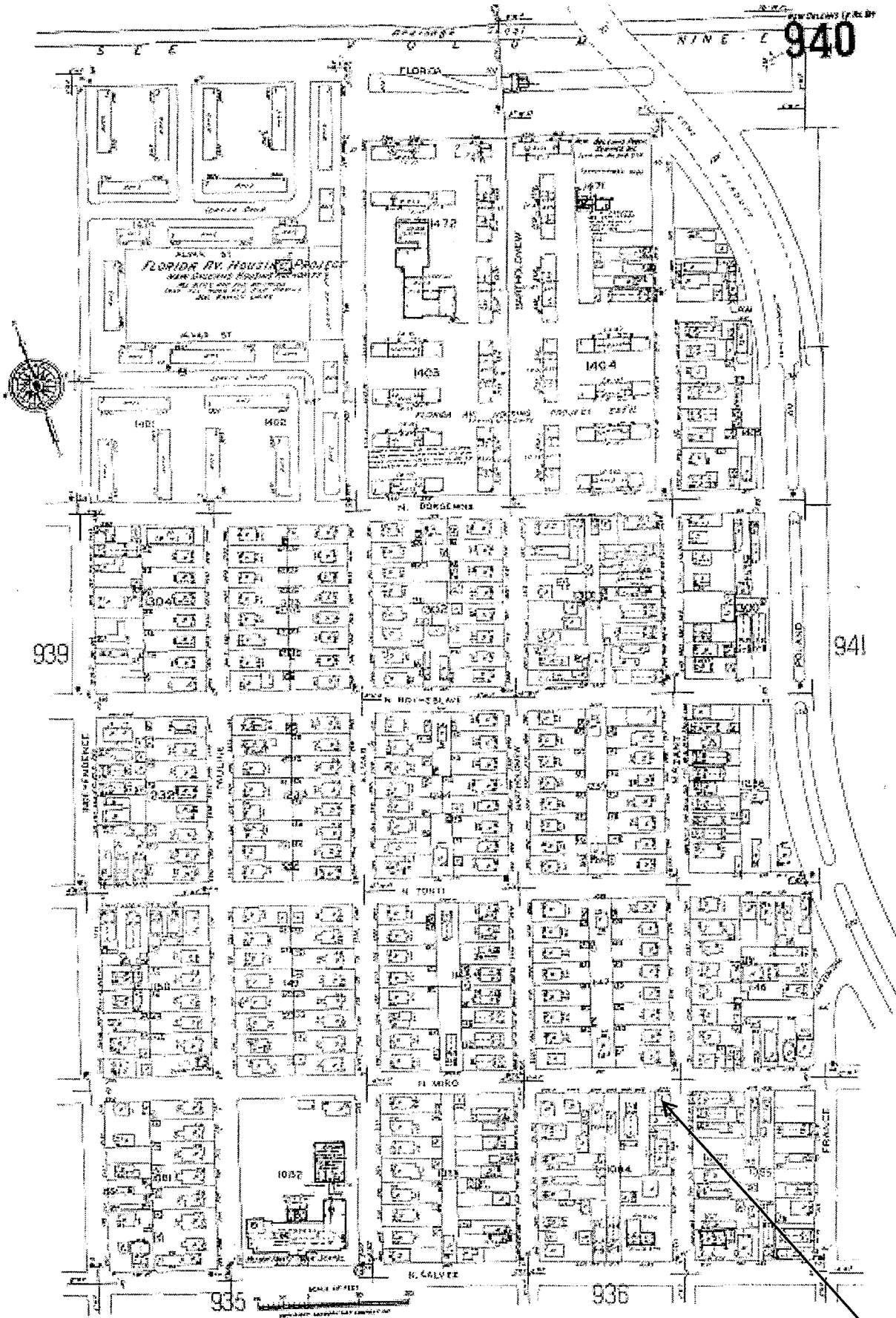
YEAS:

NAYS:

ABSENT:

AND THE MOTION WAS ADOPTED.





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