

**PLANNING COMMISSION REPORT**  
**Regular Agenda - Public Hearing Item**

PC Staff Report  
9/26/11

**ITEM NO. 5A CS TO RM32; .56 ACRES; 619 E. 8<sup>th</sup> STREET (MKM)**

**Z-8-22-11:** Consider a request to rezone approximately .56 acres from CS (Strip Commercial) to RM32 (Multi-Dwelling Residential) within the 8<sup>th</sup> & Pennsylvania Urban Conservation Overlay District, located at 619 E 8<sup>th</sup> Street. Submitted by Bartlett & West, Inc., for Ohio Mortgage Investors, LLC property owner of record.

**STAFF RECOMMENDATION:** Staff recommends approval of the request to rezone approximately .56 acres located at 619 E. 8<sup>th</sup> Street from CS to RM32 based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

**Reason for Request:** *“Rezoning of the existing property to make it compatible with the residential living intent of the structure.*

**KEY POINTS**

- The property is part of the East Lawrence Industrial District, State and National Register of Historic Places; therefore, the Historic Resources Commission (HRC) must review the rezoning request under the State Preservation Law (K.S.A. 75-2724, as amended).
- The subject property is regulated in part by the *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines* and was part of the *8<sup>th</sup> and Penn District Neighborhood Revitalization Plan*, which was adopted by the City Commission in 2007 with Ordinance 8093.
- The subject property and the area around the subject property has been master planned through the design guideline process. The use of on-street parking to support redevelopment of the area is permitted by the guidelines.
- The proposed 49-unit multi-dwelling structure is consistent with the planning to date except that the building will not be mixed use in nature. However, buildings surrounding the residential building will maintain CS zoning and will provide for nonresidential uses.

**ATTACHMENTS**

**Attachment A** Site Plan for the conversion of the 5 story Poehler building at 619 E 8<sup>th</sup> Street to a 49 unit multi-dwelling residential building. (SP-8-45-11)

**Attachment B** *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines*

**ASSOCIATED CASES/OTHER ACTION REQUIRED**

Other action required:

- Historic Resource Commission approval. The HRC confirmed the approval of the rezoning at their September 15, 2011 meeting.
- City Commission approval of the rezoning request and publication of Ordinance.

Associated cases:

- Administrative approval and recording of Minor Subdivision (MS-8-4-11) to divide the existing lot with the building and parking lot into two separate lots, one containing the building and one with the parking lot.
- Administrative approval of site plan (SP-8-45-11) for conversion of the building to a 49 unit multi-dwelling residence.
- Historic Resources Commission approval of minor subdivision (MS-8-4-11) and site plan (SP-8-45-11). Any conditions of approval placed on these items by the Historic Resources Commission must be met before the recording of the minor subdivision with the Register of Deeds or the release of the site plan to Development Services for building permits.

**PUBLIC COMMENT RECEIVED PRIOR TO PRINTING**

- No public comment was received prior to printing of this staff report.

**Project Summary:**

This request is for rezoning of one 24,394 sq ft lot located at 619 E. 8<sup>th</sup> Street from the CS (Commercial Strip) District to the RM32 (Multi-Dwelling Residential) District. (Figure 2, page 10) The existing Design Guidelines permit 34 dwelling units per acre reflecting the original concept proposed with the Urban Conservation Overlay District. The RM32 District is a 'high-density' district, permitting up to 32 dwelling units per acre. The proposed development includes 49 dwelling units on .56 acres for a density of 87.5 dwelling units an acre. This high density is, in part, a result of the decision to develop the entire building residentially rather than developing a portion of the building with retail uses. It is also a result of the reduction of the lot area resulting from the division of the existing lot into 2 lots to separate the parking lot from the residential building.

The lot is being divided to accommodate the financing of parking lot improvements and ownership. Prior to this subdivision, the lot contained 1.04 acres and developing the building with 49 units would have resulted in a density of 47.1 dwelling units per acre. A text amendment has been initiated to the *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines* to permit the Poehler Building to develop at any residential density that can be accommodated with the available parking. The development of the property will comply with the density requirements in place at the time and the text amendment is not necessary for the rezoning or residential development of this property.

The rezoning is intended to support a development proposal for a 49-unit multi-dwelling structure, of which 46 units are to be maintained as affordable units in order to qualify for the Low Income Housing Tax Credit program (LIHTC) which is administered by the Kansas Housing Resources Commission. The Kansas Housing Resources Commission states on their website ([www.kshousingcorp.org](http://www.kshousingcorp.org)) that in exchange for the financing provided through the credit, the property owners agree to keep rents affordable over a 30-year period for families with incomes at or below 60 percent of the local median income. Sixteen of the units will be one-bedroom and 33 of the units will be two-bedroom. Of these 49 units, 46 are proposed to be affordable, as defined by the Kansas Housing Resources Commission.

Parking requirements are proposed to be met with parking on the adjacent lot to the south and with on-street parking on 8<sup>th</sup> Street and Delaware Street. The use of on-street parking to meet the parking requirement is not typical but is permitted with the *8<sup>th</sup> and Penn Neighborhood*

*Redevelopment Zone Design Guidelines*. The site plan which has been submitted for this lot illustrates the proposed development and is included with this report as Attachment A.

## 1. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant's Response:

*"The proposed request is within conformance of allowable uses set by the 8<sup>th</sup> and Penn Neighborhood Design Guidelines and also Horizon 2020."*

*Horizon 2020* promotes a balanced mix of housing within the community which would allow for a wide range of housing types and residential densities. The plan offers descriptions and density ranges for very low-density to high-density residential development. The high-density residential development identifies an overall density of 16-21 dwelling units per acre. This property is unique in that on-street parking is permitted to be used to satisfy parking requirements. Because of this, less private land is needed to support the structure and use. The Poehler building is proposed to lie on .56 acres after completing a replat of the land to remove the adjacent parking lot and is proposed to be redeveloped with 49 units. This equates to a density of 88 dwelling units per net residential acre. At the time of adopting the 8<sup>th</sup> and Penn district and guidelines, *Horizon 2020* did not support the type of mixed use development proposed. The comprehensive plan was amended at the same time to include language in Chapter 6 that supports Mixed-Use Redevelopment Centers in areas of the city, "where existing structures are underutilized, have experienced a high turnover rate, or have remained vacant for an extended period of time." (Policy 3.4, Chapter 6) The 8<sup>th</sup> and Penn area is recognized as such an area. While the Poehler building may be converted to a single-use residential structure, the area will remain a mixture of uses. The proposal conforms to the comprehensive plan.

**Staff Finding** – The proposed RM32 zoning conforms to the recommendations in the comprehensive plan.

## 2. ZONING AND USE OF NEARBY PROPERTY, INCLUDING OVERLAY ZONING

Current Zoning and Land Use:	CS-UC (Commercial Strip and 8 <sup>th</sup> and Pennsylvania Urban Conservation Overlay) District; vacant building.
Surrounding Zoning and Land Use:	To the north and east: IG-UC (General Industrial and 8 <sup>th</sup> and Pennsylvania Urban Conservation Overlay) District; manufacturing, rail.  To the south and west: CS-UC (Commercial Strip and 8 <sup>th</sup> and Pennsylvania Urban Conservation Overlay) District; parking to the south; duplex units to the west.

The subject property and the property to the south and west are not only located within an Urban Conservation Overlay zone, but the base zoning C-5 [converted to CS] was conditioned via the adopting ordinance (Ord 8054). Per the conditions of the zoning, the following uses are prohibited in the CS district:

1. Bars [unless 55% of gross receipts are derived from food sales as outlined in 20-509(5)(i)]
2. Liquor Store
3. Ambulance Service
4. Car or Truck Wash
5. Auto Repair
6. External drive-through ATM or drive-through window [walk-up ATM's are allowed]
7. Furriers
8. Pawn Shop
9. Mobile Home Sales and Service
10. Golf Driving Range
11. Pet Store [animal sales]
12. Loan Office [short-term cash advance loans]
13. Convenience store with Gasoline Sales

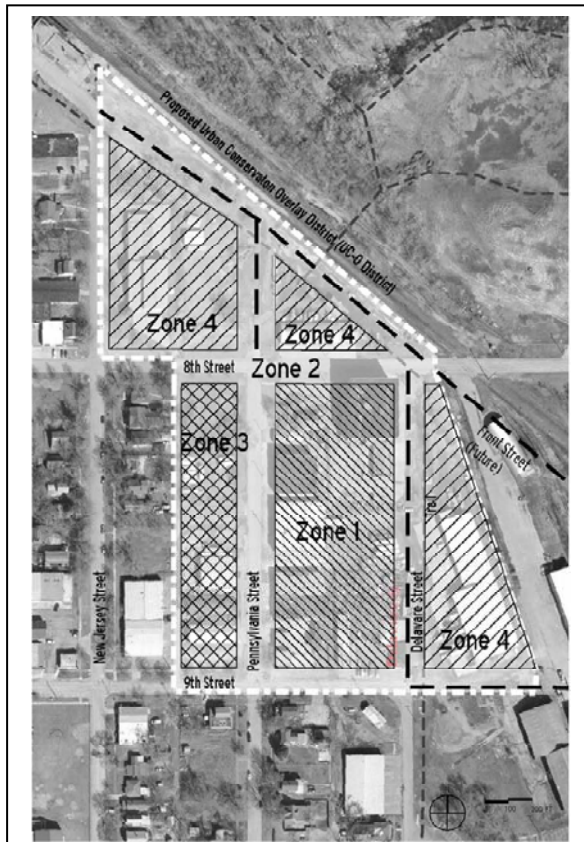
The building was rezoned C-5 (General Commercial) District prior to the adoption of the 2006 Development Code. The C-5 Zoning District converted to the CS with the 2006 Code. While the development proposal submitted with the rezoning request intended to develop the building with residential and retail uses, the current owner is attempting to use historic tax credits and other financing methods in order to convert the structure to a multi-dwelling use with 46 affordable units. "Affordable", for the purpose of this project is defined per the Kansas Housing Resources Commission definition as units with rents that are affordable over a 30-year period for families with incomes at or below 60 percent of the local median income.

Per Section 20-517(4) of the Development Code, the CS district permits multi-dwelling residential uses only when they are part of a mixed use project and at least 50% of the gross floor area is being developed with nonresidential uses. This limitation on multi-dwelling residential uses in the CS District was applied with the adoption of the 2006 Development Code but did not apply when the property was rezoned to the C-5 (General Commercial) District prior to 2006. The amount of residential development possible in the current zoning was reduced through the adoption of the 2006 Development Code to 50% of the gross building area. The rezoning to the RM32 District is being requested to regain the ability to develop the entire structure residentially.

The *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines*, adopted in January of 2007, was the result of a planning effort that included participation from the property owners, East Lawrence Neighborhood Association, and other stakeholders. It designates the subject property within Zone 1 of the district and notes:

***"The centerpiece of the redevelopment zone is the group of masonry manufacturing buildings bounded by East 8<sup>th</sup> Street on the north, Pennsylvania Street on the west, Delaware Street on the east, and East 9th Street on the south that is eligible for listing as a historic district in the National Register of Historic Places. These industrial buildings range from one story to four stories in height and date from the 1880's through the 1920s. The buildings are ideal candidates for rehabilitation into mixed adaptive uses that will allow them to retain the necessary level of historic architectural integrity to continue to contribute to an***

***understanding of the historic district's associations with commerce and architecture in Lawrence."***



**Figure 1.** The Urban Conservation Overlay District with zones as established in the *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines*

The zoning standards at the time precluded mixed-use type development. The *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines* states the following related to this issue:

***"The Lawrence Code recognized this problem and has provided a solution – the UC-O District. A UC-O District allows the City and a developer to tailor the development standards applicable to an area so that mixed-use development of appropriate size, orientation, and setting can be built within a neighborhood or area."***

The *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines* received intense public participation and staff and commission analysis. Through adoption they were found to be in compliance with the comprehensive plan and address very specific site issues in the 8<sup>th</sup> and Penn area.

The *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines* restricts retail uses to no more than 25% of the net floor area in the UC-O District. The Poehler Mercantile Company building is to serve as the anchor and focus of the UC-O District. The Plan states that:

***"Mixed-use development cannot easily meet the requirements of traditional zoning districts. Successful mixed-use development can only thrive in areas that not only allow for the mixture of land uses, but also allow development of adequate density so that "critical mass" may be achieved."***

The Guidelines recommend a maximum density of 34 dwelling units and states that this was "derived from the square footage of the Poehler Building divided by the number of residential units it is designed to hold." With the new design of the Poehler Building, the number of dwelling units it is intended to hold has increased to 49 and the Poehler Building will no longer be located on an acre. In order to achieve the "critical mass" necessary for a successful mixed use district and to accommodate the change in the Poehler Building's lot area and proposed dwelling units, a text amendment has been initiated to revise the density standards in the Design Guidelines. This amendment will accommodate the proposed development but is not necessary for the rezoning to the RM32 District.

The subject property is bounded on all sides by other lots within the 8<sup>th</sup> and Penn Redevelopment area. The proposed residential use was anticipated when the *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines* were written, but the proposed density is higher than recommended in the plan. The higher density is due to the fact that no retail is being proposed for this building and the parking lot is being divided from the Poehler lot and is therefore no longer included in the density calculations. The rezoning and the proposed residential use would be compatible with the mix of uses in the area and would maintain the "critical mass" necessary for a mixed use development to succeed.

**Staff Finding –** The subject property is located within the 8<sup>th</sup> and Pennsylvania Urban Conservation Overlay District and is regulated by the *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines*. The guidelines anticipated residential uses for the Poehler building. Given the current 50% limitation on residential development in the CS District, the CS District is not appropriate for a residential structure. The RM32 zoning is the most appropriate district to accommodate the proposed use.

### 3. CHARACTER OF THE NEIGHBORHOOD

Applicant's Response:

*"An old warehouse district with primarily low-use or vacant structures."*

The *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines* states the following about the character of the subject area:

***"As stated in the East Lawrence Neighborhood Revitalization Plan, the unique character of the East Lawrence residential neighborhood is, in part, the coexistence of commercial, manufacturing and residential uses of land. In other words, this neighborhood has traditionally been a mixed-use community. Redevelopment and new development within the East Lawrence neighborhood should respect and expand this mixed-use tradition. The redevelopment concept for the 8th and Penn Neighborhood Redevelopment Zone proposes to do that through creating a horizontal and vertical mixture of land uses including residential, professional offices, inner-neighborhood commercial uses, and retail operations."***

The surrounding area contains industrial, office and residential uses and clearly reflects the mixed use nature of East Lawrence. The 8<sup>th</sup> and Penn area is intended to be a transitional area between the residential areas to the south and west and the more intense industrial uses to the north and east.

**Staff Finding –** The East Lawrence Neighborhood is characterized as a mixed-use area. The Poehler Building is a character defining structure in the neighborhood and has been designated for multi-dwelling uses in the *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines*. The proposed rezoning and use are in keeping with the character of the neighborhood.

### 4. PLANS FOR THE AREA OR NEIGHBORHOOD, AS REFLECTED IN ADOPTED AREA AND/OR SECTOR PLANS INCLUDING THE PROPERTY OR ADJOINING PROPERTY

The subject property is located within the East Lawrence Neighborhood. A land use plan was adopted for the East Lawrence Neighborhood in 1979 designating the property for industrial uses. A more recent plan, the *East Lawrence Neighborhood Revitalization Plan*, was adopted in November of 2000. The Revitalization Plan is an action plan for maintaining and improving the vitality of the neighborhood rather than a land use plan; however, it references the East Lawrence Plan as the guide for land use decisions.

As mentioned above, the *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines* was adopted in 2006 and is considered by staff to be the land use plan for 8<sup>th</sup> and Pennsylvania Overlay District. With the exception of the proposed density, the subject request complies with the planning documents for the area. A text amendment increasing the maximum density for the Poehler Building has been proposed and if approved, the requested rezoning is compliant with the land use plan for the area. If the amendment is not approved, the development proposal would be revised to comply with the design guidelines.

**Staff Finding** – The proposed rezoning from CS to RM32 is consistent with the recommendations of the plans for the area.

## **5. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED UNDER THE EXISTING ZONING REGULATIONS**

Applicant's Response:

*"The area is no longer suitable for the proposed use of the existing structure which is designated as CS zoning. The area is changing and will be revitalized as a part of this rezoning process and overall development."*

The property is suitable for the uses to which it is restricted with the CS zoning; however, the CS zoning does not support the applicant's proposal to convert the structure to a multi-dwelling structure, which is also an appropriate use for the property. While the property could be developed as a mixed-use building within the CS zoning district the amount of residential development is limited to no more than 50% of the gross floor area. The RM32 would provide the opportunity to redevelop the vacant building with a residential use, as was possible prior to the adoption of the 2006 Development Code and the conversion of the rezoning from C-5 to CS. The zoning must be changed in order to permit the residential use proposed.

Given the mixed use nature of the area, the property is suited to the restrictions of several zoning districts. The property would be suited to the restrictions of the CS or the RM32 District, depending on the amount of residential or retail uses that are being proposed. The property was rezoned to the C-5 Zoning District to accommodate the earlier development proposal of a vertical mixed use structure containing both retail and multi-dwelling residential uses. The current proposal is to develop the building with multi-dwelling residential units and to have the retail uses in other locations in the overlay district.

**Staff Finding** – The *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines* anticipated all but the ground floor of the existing building to be developed residentially. The use restrictions of the CS District requires at least 50% of the building to be developed with non-residential uses. This restriction was the result of the conversion of the zoning designation following the adoption of the 2006 Development Code. Rezoning to the RM32 District would

result in a district with permitted uses that fit the design of the building and the intent of the overlay district.

## **6. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED**

Applicant's Response:

*"The property was previously zoned CS in 2006."*

The Poehler building has been vacant since 2005. The most recent plan to redevelop the building and construct the necessary infrastructure to support its development (SP-11-85-06) was adopted on September 11, 2007. The economy has hindered that development, and the building has remained vacant. Most agree that this area is in need of rehabilitation and that the Poehler building is valuable to the historic fabric of the area. This request is an opportunity to use the building for its purpose as intended in the *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines*.

**Staff Finding** – The property contains a 5-story structure that has been vacant for approximately 6 years. The structure is in need of repair and a viable zoning district is being requested to support its repair and reuse.

## **7. EXTENT TO WHICH APPROVING THE REZONING WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES**

Applicant's Response:

*"The modification of the current zoning from CS to a residential designation will not detrimentally affect nearby properties at all."*

Approving RM32 zoning should have no detrimental effects to nearby properties. To the contrary, the Poehler property should be a catalyst to redeveloping what is considered a partially blighted area. Some redevelopment in the area has occurred and improvements to property have been made, but other properties remain vacant and are deteriorating with the passage of time. Redeveloping what is considered the anchor building should spur development in the areas where blight is taking hold.

**Staff Finding** – The RM32 zoning is in keeping with the intent of the *8<sup>th</sup> and Penn Neighborhood Redevelopment Zone Design Guidelines* and will not detrimentally affect nearby properties. The proposed rezoning supports a development that should spur redevelopment of this partially blighted area.

## **8. THE GAIN, IF ANY, TO THE PUBLIC HEALTH, SAFETY AND WELFARE DUE TO THE DENIAL OF THE APPLICATION, AS COMPARED TO THE HARDSHIP IMPOSED UPON THE LANDOWNER, IF ANY, AS A RESULT OF DENIAL OF THE APPLICATION**

Applicant's Response:

*"The relative gain will be through a productive use of now mostly vacant property, which will benefit the local surrounding neighborhood and the entire community in general."*



Evaluation of this criterion includes weighing the benefits to the public versus the hardship imposed on the owners of the subject property if the rezoning were denied. Benefits are measured based on anticipated impacts of the rezoning request on the public health, safety, and welfare.

The denial of the rezoning request will maintain the current CS uses for the property. CS zoning does not support the development of this property with only residential uses, which is considered to be an appropriate use for the property. Because of this, the hardship to the applicant is that the structure could not be renovated to the desired use and the tax credits being used to complete the renovations would be lost.

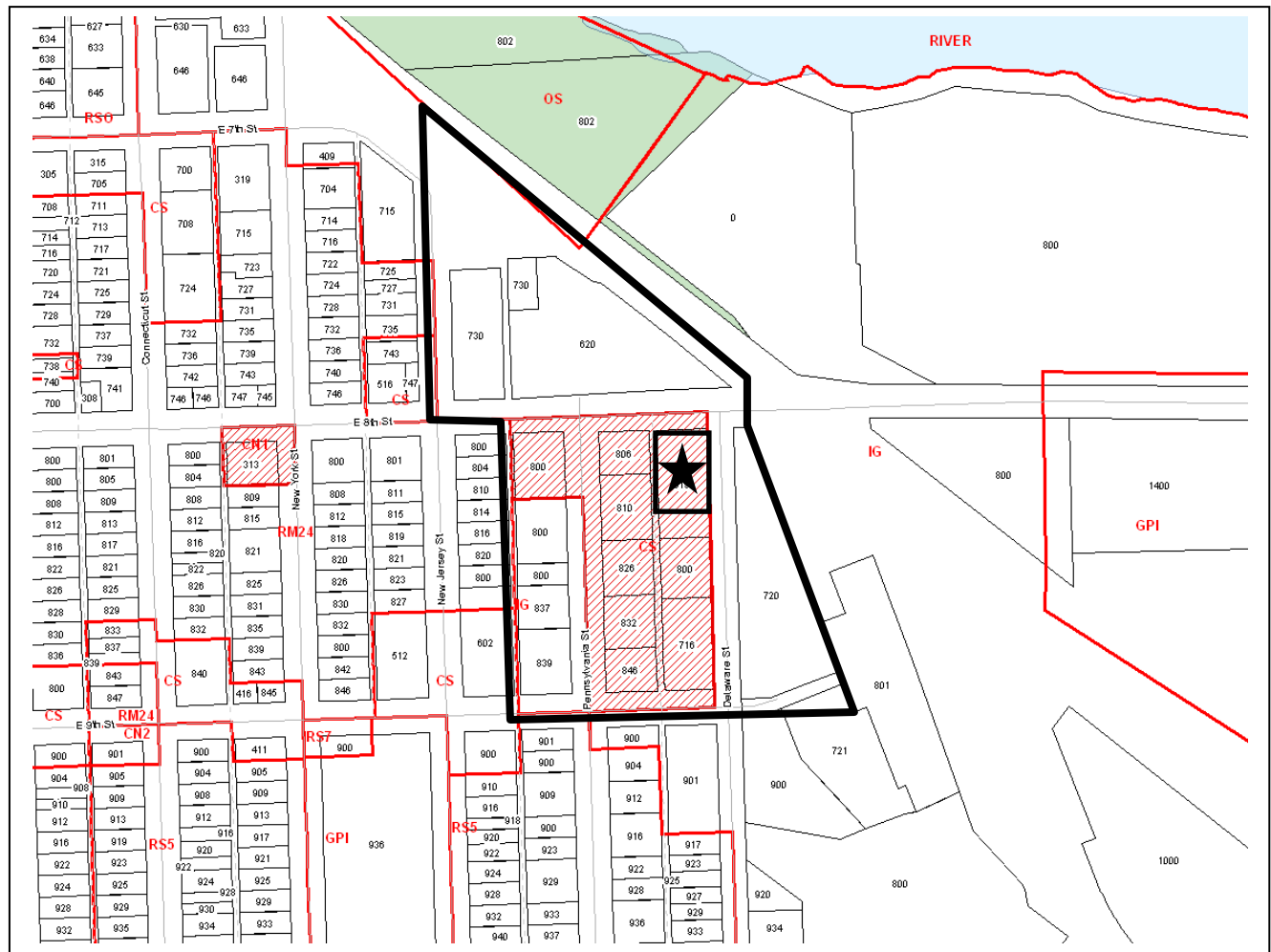
There is little gain to the public by restricting the uses to those of the CS district, including the limitation on residential uses, when the multi-dwelling uses permitted in the RM32 District are also appropriate for this property. The loss of the vertical mixing of uses is made up by the mixture of uses found elsewhere in the 8<sup>th</sup> and Penn District. In addition, if the rezoning to the RM32 District were denied, the 46 affordable housing units would not be developed. Affordable housing is a recognized need in the community and denial of the rezoning request would allow the developer to develop only 50% of the structure residentially; thereby reducing or eliminating the affordable housing units or preventing the redevelopment altogether. The hardship to the applicant and to the community at large if the rezoning were denied outweighs any gain the public would enjoy by the same denial.

**Staff Finding –** The denial of the rezoning request would be a hardship to the applicant. There is no significant gain to the public by denying the application and restricting the uses to those permitted in the CS district.

## **9. PROFESSIONAL STAFF RECOMMENDATION**

The 8<sup>th</sup> and Penn area has received a good deal of public process during the last decade. A very specific proposal for redeveloping the larger area was put forth and approved through the public zoning process in 2006. The project included an Urban Conservation Overlay District, conditional zoning, Historic Review, a Neighborhood Revitalization Act (NRA), a Developer Agreement, and public improvement plans to construct adjacent streets and alleys. A new owner desires to implement the formally approved plans with some revisions to the use of the Poehler Building. The current request attempts to work within this bundle of development rights afforded by the previous approvals, but much of the work needs to be revisited, including the zoning, NRA, Developer Agreement, financing of public improvements, etc. The use of the Poehler building as a multi-dwelling structure is appropriate and an important step in continuing to revitalize this part of the city.

**Staff recommends approval of the rezoning request based on the findings of this report.**



**Figure 2.** Location and Zoning of subject property, 619 E 8<sup>th</sup> Street.



8<sup>th</sup> and Penn Urban Conservation Overlay District boundary:



Conditional CS Zoning



Subject property