

**CASE # RZ-19-04-003**

Commission District: #5

**GENERAL INFORMATION**

<b>APPLICANT</b>	Ossama Salama, Sam's Towing, Inc.
<b>OWNER</b>	Sam's Towing, Inc.
<b>HEARING TYPE</b>	Planning and Zoning Commission
<b>REQUEST</b>	C-2 (General Commercial District) to C-3 (Wholesale Commercial District)
<b>LOCATION</b>	6139 E. Colonial Drive, generally located northwest of E. Colonial Drive, north of Old Cheney Highway, west of Commerce Boulevard, east of June Street, and south of Cornelia Avenue.
<b>PARCEL ID NUMBER</b>	22-22-30-0000-00-029
<b>TRACT SIZE</b>	2.04 gross acres
<b>PUBLIC NOTIFICATION</b>	The notification area for this public hearing was 1,000 feet [Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet]. One hundred sixty-three (163) notices were mailed to those property owners in the mailing area. A community meeting was not required for this application.
<b>PROPOSED USE</b>	Automobile towing and junk yard

**STAFF RECOMMENDATION**

**PLANNING**

**Make a finding of inconsistency with the Comprehensive Plan and recommend DENIAL of the requested C-3 (Wholesale Commercial District) zoning.**

**IMPACT ANALYSIS**

**Land Use Compatibility**

The C-3 (Wholesale Commercial District) zoning would allow for development that is incompatible with the character of the surrounding area and may adversely impact adjacent properties.

In 1961, the property owner of the southern portion of the current subject property submitted an affidavit to the Orange County Zoning Division identifying that the property had been used for auto parts storage and sale (junk yard) since 1954. Board minutes indicate that the northern portion of the current subject property, which were originally Lots 1 and 2 of the Leawood residential subdivision to the north have been an extension of the existing junk yard use since at least the early 1980s. The subject property has consistently been used alternatively as an auto parts storage and sale, aluminum recycling center, and junk yard since 1954. Although none of these uses are permitted in the existing C-2 zoning district, they have been permitted as non-conforming uses.

Orange County Code Section 38-36 provides that the lawful use of any building, structure or land existing at the time of adoption of or amendments to Orange County Code Chapter 38 (Zoning) may be continued although such use, building or structure does not conform with the provisions of Chapter 38 or amendments thereto. However, Orange County Code Section 38-50 states that buildings, structures, or uses of land which are nonconforming shall not be extended or enlarged, unless the use can be extended in a way which will make such use conform to current regulations for the district in which it is located.

The applicant has applied to rezone the subject property to C-3 (Wholesale Commercial District) in order to add an automobile towing use to the existing junk yard use. While an automobile towing service use is permitted as a special exception on lands zoned C-3 (Wholesale Commercial District), there are several restrictions for this use in the C-3 District. These include the limitation that wrecked or inoperable vehicles may not be stored onsite for more than thirty (30) days; that no vehicles may be stored on site for more than fifty (50) days; that vehicle stacking is prohibited; and that a Type B landscape buffer is required if the use is adjacent to any residential use or residentially zoned lands. If the requested C-3 zoning were approved for this property, the property would also need to get approval of a special exception as well as variances for these restrictions. If either were not granted then the proposed automobile towing, plus junk yard use, would require I-4 (Industrial District) zoning, which is not consistent with the subject property's Commercial (C) FLUM designation. In this scenario, in order to accommodate the proposed use, the applicant would need a small scale Comprehensive Plan amendment to change the subject property's FLUM designation to Industrial (IND) and to rezone to I-4 (Industrial District).

Staff maintains that both the I-4 (Industrial District) and C-3 (Wholesale Commercial District) are incompatible with the adjacent residential neighborhood. Orange County Code defines areas zoned C-3 as composed of land and structures where more intense commercial activity is located, and states that this district must be located away from residential districts. The subject property does abut properties with residential zoning, which are occupied with single-family dwelling units.

**Comprehensive Plan (CP) Consistency**

The underlying CP Future Land Use Map (FLUM) designation of the subject property is Commercial (C). The requested C-3 (Wholesale Commercial District) zoning is consistent with the Commercial FLUM designation, but inconsistent with the following Comprehensive Plan provisions:

**FLU1.4.4** states that the disruption of residential areas by poorly located and designed commercial activities shall be avoided.

**OBJ FLU8.2** states that compatibility will continue to be the fundamental consideration in all land use and zoning decisions.

**FLU8.2.1** states that land use changes shall be required to be compatible with existing development and development trend in the area. Performance restrictions and/or conditions may be placed on property through the appropriate development order to ensure compatibility. No restrictions or conditions shall be placed on a Future Land Use Map change.

**FLU8.2.11** states that compatibility may not necessarily be determined to be a land use that is identical to those uses that surround it. Other factors may be considered, such as the design attributes of the project, its urban form, the physical integration of a project and its function in the broader community, as well its contribution toward the Goals and Objectives in the CP. The CP shall specifically allow for such a balance of considerations to occur.

**GOAL N1** states that the County shall maintain the residential character of neighborhoods through land use regulations.

**GOAL N3** states the County shall improve the quality and appearance of existing and new neighborhoods.

**OBJ N3.1** states the integrity of neighborhoods shall be protected the integrity of neighborhoods through the enforcement of County codes.

**SITE DATA**

<b>Existing Use</b>	Junk yard
<b>Adjacent Zoning</b>	N: C-2 (General Commercial District) (1987) E: C-2 (General Commercial District) (1989) and R-1A (Single-Family Dwelling District) (1957) W: C-3 (General Commercial District) (1965) and R-1A (Single-Family Dwelling District) (1957) S: C-2 (General Commercial District) (1971) (1979) and C-3 (General Commercial District) (1987)
<b>Adjacent Land Uses</b>	N: Church E: Collision Repair Center W: Plumbing Business and Single-Family Residences

S: Auto Sales and Auto Repair

**C-3 (Wholesale Commercial District) Development Standards**

Min. Lot Area:	12,000 sq. ft.
Min. Lot Width:	100 ft. (on major streets, see Article XV) 100 ft. (on all other streets)
Max. Height:	75 ft. 35 ft. (within 100 feet of all residential districts)
Min. Floor Area:	500 sq. ft.

**Minimum Building Setbacks**

Front:	25 ft. (except on major streets as provided in Art. XV)
Rear:	15 ft. 20 ft. (when abutting residential district)
Side:	5 ft. 25 ft. (when abutting residential district)

**Intent, Purpose, and Uses**

The intent and purpose of the C-3 district is to implement and be consistent with the Commercial land use designation of the Future Land Use Map (FLUM). The C-3 district is composed of land and structures where more intense commercial activity is located. This district must be located away from residential districts because it allows uses that are not compatible with residential districts.

Specific uses shall be identified by the letter "P" in the use table set forth in Section 38-77 of the Orange County Code and includes storage yards for operable automobiles, trucks, boats, and commercial vehicles (regardless if for sale, lease, or not), new and used automobile sales, recreational and commercial vehicle sales and storage, auto part and tire dealers, outside storage, lumber and building material yards, and the wholesale distribution of goods including industrial machinery equipment, electronics, farm and garden equipment, and furniture.

**SPECIAL INFORMATION**

**Subject Property Analysis**

The subject property is located at 6139 E. Colonial Drive, generally northwest of E. Colonial Drive, north of Old Cheney Highway, and west of Commerce Boulevard. The Future Land Use Map (FLUM) designates the subject property and adjacent parcels to the north and southwest as Commercial (C) and the area north and west of the subject property as Low Density Residential (LDR). The parcels adjacent to the subject property are developed with auto sales and repair uses along E. Colonial Drive, and residential uses to the north and west. There have been several commercial rezonings that have affected the subject property and the surrounding area over the past several decades, although the area to the northwest has remained a stable residential neighborhood.

**History of the Subject Property**

In June 1961 the existing sale and storage of used auto parts and junk cars on Parcel 22-22-30-0000-00-029 was recognized as a nonconforming use that has been in

operation on the property since 1954, prior to the October 1957 establishment of the zoning code. At the time, this parcel was zoned C-1 (Retail Commercial District) and was an approximately 0.81-acre area portion of the parcel as it exists today.

In 1986, this 0.81-acre parcel and the parcel to the north, Parcel 15-22-30-5024-00-010, which included Lots 1 and 2 of the Leawood Subdivision (Plat Book S, Page 52), were rezoned from R-1A (Single-Family Dwelling District) and C-1 (Retail Commercial District) to C-2 (General Commercial District). The purpose of the rezoning was to allow for a retail auto parts store and service center where the salvage yard was currently doing business. On appeal, the BCC approved the C-2 zoning with the requirement of a six foot high concrete wall adjacent to the residentially zoned properties.

The subject property was issued a use permit by the County for an aluminum collection and recycling use in 1991 and 1992, for a junk yard and wholesale recycling center use in 1997, and for a junk yard use, "East Colonial U Pull & Pay", after the site's purchase by the current owner in 2016, which is active as of 2018. Also, in 2016, Parcel 15-22-30-5024-00-010 was combined with Parcel 22-22-30-0000-00-029 to create the current 2.04 acre parcel.

North

The parcel immediately to the north of the subject property was rezoned in 1987 from R-1A (Single-Family Dwelling District) to C-2 (General Commercial District) to allow the existing outdoor storage use to remain. The PZC recommended approval with the requirement of a six foot high concrete wall adjacent to the residentially zoned properties. This parcel is currently undeveloped and has been combined with the church property to the north, which received approval as a special exception in 1986 and now has split R-1A (Single Family Dwelling District) and C-2 (General Commercial District) zoning.

West

The parcel immediately to the west of the subject property (PID 22-22-30-0000-00-030) was rezoned from C-2 (General Commercial District) to C-3 (Wholesale Commercial District) in June 1965 to allow for the sales, service, and storage of heating and air conditioning equipment and television repair. A vehicle repair and used vehicle sales use is currently operating on the property. The parcel west of this property (PID 22-22-30-0000-00-173) was rezoned in February 1987 from R-1A (Single-Family Dwelling District) to C-2 (General Commercial District) to expand the existing plumbing business next door, which was rezoned from R-1A (Single-Family Dwelling District) to C-2 (General Commercial District) in May 1981. A plumbing business still operates on the property.

East

The property to the east, across Commerce Boulevard, was rezoned to from C-1 (Retail Commercial District) and R-1A (Single-Family Dwelling District) to C-2 (General Commercial District) in 1989 with a restriction limiting one access point onto Commerce Boulevard and one access onto E. Colonial Drive. The applicant had originally requested C-3 (Wholesale Commercial District) zoning; however, staff

argued that the extension of heavy commercial uses along Commerce Boulevard would be incompatible with the residentially zoned lots to the west.

South

The property to the southwest of the subject property, between E. Colonial Drive and Old Cheney Highway, was rezoned from R-1A (Single-Family Dwelling District) to C-2 (General Commercial District) in 1979, and an auto sales business currently operates on the property. The parcels to the southeast of the subject property, across E. Colonial Drive, were rezoned in 1971 and 1976 from C-1 (Retail Commercial District) to C-2 (General Commercial District) and C-3 (Wholesale Commercial District), and vehicle repair establishments are currently operating on the properties.

**Comprehensive Plan (CP) Amendment**

A CP amendment is not required for this application, as the requested zoning is consistent with the underlying Commercial (C) Future Land Use Map (FLUM) designation. However, the proposed use of automobile towing and junk yard is only permitted in the I-4 (Industrial District) zoning classification, which would require a concurrent submittal and approval of a FLUM amendment to change the designation of the subject property to Industrial (IND).

**State of Florida Notice**

Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.

**Community Meeting Summary**

A community meeting was not required for this request.

**Rural Settlement**

The subject property is not within a Rural Settlement.

**Joint Planning Area (JPA)**

The subject property is not within a Joint Planning Area.

**Overlay District Ordinance**

The subject property is located within the S.R. 436 / S.R. 50 Corridor Overlay District which prohibits several land uses such as labor pools, check cashing businesses, tattoo/body art shop, pawnshops, bail bond agencies, fortune tellers, and bottle clubs. Junk yards and auto related uses are not prohibited uses within this Overlay District.

**Airport Noise Zone**

The subject property is located in Airport Noise Zone "D". However, airport noise mitigation criteria would not apply to non-residential development if the proposed rezoning request is approved.

**Environmental**

The Environmental Protection Division (EPD) reviewed this request, but did not provide any objections or comments.

**Transportation / Access**

This project is in the Alternative Mobility Area and is exempt from transportation concurrency. Transit service is available within a quarter-mile walking distance along E. Colonial Drive. However, the sidewalk adjacent to the subject parcel along Commerce Boulevard is incomplete and does not connect to sidewalk along E. Colonial Drive. There is no signed bicycle route in the area.

**Code Enforcement**

There are no active Code Enforcement violations on the subject property.

**Utilities**

Water:	Orlando Utilities Commission	
Wastewater:	Orange County Utilities	An 18-inch gravity sewer main is located within the Commerce Boulevard right-of-way.
Reclaimed Water:	Orange County Utilities	Not currently available.

**Schools**

Orange County Public Schools (OCPS) did not comment on this case, as it does not involve an increase in residential units or density.

**Parks and Recreation**

Orange County Parks and Recreation reviewed this request, but did not provide any objections or comments.

**Specific Project Expenditure Report and Relationship Disclosure Form**

The original Specific Project Expenditure Report and Relationship Disclosure Form are currently on file with the Planning Division.

**ACTION REQUESTED**

**Planning and Zoning Commission (PZC) Recommendation – (August 15, 2019)**

Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the requested C-3 (Wholesale Commercial District), subject to the following restrictions:

- 1) New billboards and pole signs shall be prohibited;
- 2) Vehicle stacking shall be prohibited;

- 3) The applicant / developer shall provide a 6' concrete wall, with a gate, and 4' hedges on the southern property line between the existing building and the western property boundary; and
- 4) The applicant / developer shall provide a 6' concrete wall on the southern 50' of the property line along Commerce Boulevard.

**PLANNING AND ZONING COMMISSION (PZC) PUBLIC HEARING SYNOPSIS**

The staff report was presented to the PZC with the recommendation that they make a finding of inconsistency with the Comprehensive Plan and recommend denial of the requested C-3 (Wholesale Commercial District) zoning.

Staff indicated that one hundred sixty-three (163) notices were mailed to surrounding property owners within a buffer of 1,000 feet from the subject property, with three (3) commentaries received in opposition to the request and zero (0) in favor. No reasons were given for those in opposition. Staff detailed the history of the subject property and the surrounding area and explained that the requested C-3 zoning would not permit the proposed use outright. The applicant will be required to apply for a special exception and several variances to the Board of Zoning Adjustment (BZA). If the special exception or variances are denied, the applicant would need to change the Future Land Use Map (FLUM) designation of the property to Industrial (IND) and rezone to I-4 (Industrial District). Staff further explained that at the direction of the PZC at the previous month's hearing, staff and the applicant met and drafted four restrictions to address compatibility and code compliance concerns. The applicant was present for the hearing and disagreed with the staff recommendation of denial but indicated support for the additional restrictions. No members of the public were present to speak on this request.

After a discussion regarding compatibility, non-conforming history of the use, and precedent setting, a motion was made by Commissioner Spears to find the request to be inconsistent with the Comprehensive Plan and recommend denial of the requested C-3 (Wholesale Commercial District) zoning. The motion failed for a lack of a second. After further discussion, a motion was made by Commissioner Cantero to find the request consistent with the Comprehensive Plan and recommend approval of the requested C-3 (Wholesale Commercial District) zoning subject to the four restrictions proffered by the applicant. Commissioner Velazquez seconded the motion, which carried on a 7-1 vote, with Commissioner Spears voting in opposition.

**Motion / Second**

*Jose Cantero / Diane Velazquez*

**Voting in Favor**

*Jose Cantero, Diane Velazquez, Yog Melwani, Carlos Nazario, Jimmy Dunn, Mohammed Abdallah, and Eddie Fernandez*

**Voting in Opposition**

*Gordon Spears*

**Absent**

*JaJa Wade*





