

▶ **FILE #:** 12-D-09-RZ **AGENDA ITEM #** 37
 POSTPONEMENT(S): 12/10/09 **AGENDA DATE:** 1/14/2010

▶ **APPLICANT:** JACQUELINE WHITESIDE
 OWNER(S): JACQUELINE WHITESIDE

TAX ID NUMBER: 82 O N 003

JURISDICTION: City Council District 6

▶ **LOCATION:** South side E. Magnolia Ave., east side N. Kyle St.

▶ **APPX. SIZE OF TRACT:** 0.55 acres

SECTOR PLAN: Central City

GROWTH POLICY PLAN: Urban Growth Area (Inside City Limits)

ACCESSIBILITY: Access is via E. Magnolia Ave., a major arterial street with 4 lanes and a center turning lane within 100' of right of way, or N. Kyle St., a local street with 15-16' of pavement width within 35' of right of way.

UTILITIES: Water Source: Knoxville Utilities Board
 Sewer Source: Knoxville Utilities Board

WATERSHED: First Creek

▶ **PRESENT ZONING:** C-3 (General Commercial)

▶ **ZONING REQUESTED:** C-4 (Highway and Arterial Commercial)

▶ **EXISTING LAND USE:** Formerly Regions Bank

▶ **PROPOSED USE:** Car lot

EXTENSION OF ZONE: No

HISTORY OF ZONING: MPC approved a sector plan amendment to allow consideration of C-4 on December 10, 2009 (12-C-09-SP).

SURROUNDING LAND USE AND ZONING: North: E. Magnolia Ave. - Business / MU-SD-CC05 / C-3 (General Commercial)

South: House / LDR / R-2 (General Residential)

East: Tribe One - Service business / MU-SD-CC05 / C-3 (General Commercial)

West: N. Kyle St. - Vacant lot, parking / MU-SD-CC05 / C-3 (General Commercial)

NEIGHBORHOOD CONTEXT: This section of E. Magnolia Ave. is developed with commercial uses under C-3 zoning.

STAFF RECOMMENDATION:

▶ **RECOMMEND that City Council DENY C-4 (Highway and Arterial Commercial) zoning.**

C-4 zoning is not consistent with the established commercial and office development pattern and C-3 zoning found along this section of E. Magnolia Ave. The request is not consistent with the original proposal of the recently adopted Magnolia Avenue Corridor Study, which was amended last month by MPC to allow consideration of C-4 zoning. The applicant has reasonable use of the property with the current C-3 zoning.

COMMENTS:

MPC staff maintains its previous recommendation from the December 10, 2009 meeting to deny this

rezoning request, despite the accompanying sector plan amendment (12-C-09-SP) being approved by MPC last month. Staff had also recommended denial of that request. If MPC opts to deny this rezoning request, as recommended, staff would also recommend that MPC move to reconsider the accompanying sector plan amendment (12-C-09-SP) at the February meeting, as it would no longer be necessary if the zoning is not changed. However, if MPC opts to approve the rezoning request to C-4, staff has provided six recommended conditions to be placed on the rezoning (See attached Exhibit 'A'). MPC commissioners had requested that staff develop conditions that would assist in keeping the C-4 development more consistent with the principles of the recently adopted Magnolia Avenue Corridor Plan.

Another issue that was mentioned at the December meeting with this request was whether the State of Tennessee requires a garage to be located on-site. Documentation is attached, provided by the applicant, with regulations of the State of Tennessee Department of Commerce and Insurance Motor Vehicle Commission. A garage is not required on-site. The applicant has provided documentation showing service agreements with two car repair service businesses in the area, which appear to meet that requirement. If the C-4 zoning is approved, the applicant will also meet the minimum requirement on zoning compliance for a Tennessee Motor Vehicle Dealer License.

REZONING REQUIREMENTS:

NEED BASED ON SUBSTANTIALLY CHANGED/CHANGING CONDITIONS IN THE AREA OR THE COUNTY GENERALLY:

1. The proposed car lot use, as well as other uses permitted under C-4 zoning, would not be compatible with the scale and intensity of the surrounding land uses and zoning pattern. There are only four instances of C-4 zoning along Magnolia Ave. between downtown and Chilhowee Park, a stretch of a little over two miles. Two are individual properties, being used for outdoor display of vehicles for sale, at 2901 and 3200 Magnolia Ave. There is also a car lot at 1420 Magnolia Ave. which is zoned C-3 and is not in conformance with zoning. Photos of these three properties are attached. There is conditional C-4 zoning at 2350 Magnolia Ave., that was rezoned in 2008. It is conditioned to allow C-3 uses plus truck/trailer rentals (4-D-08-RZ). It appears that the property is not being used for truck/trailer rentals at this time. The final area of C-4 zoning is located about a mile to the northeast, containing 6 parcels at N. Hembree St. Three parcels appear to be vacant or used for parking. The other three parcels are developed with a McDonald's and two other businesses.
2. Properties located along this section of Magnolia Ave. are developed with office and business uses consistent with the current C-3 zoning.
3. The C-4 zone will permit uses that are not consistent with the recently adopted Magnolia Avenue Corridor Plan for the redevelopment of this arterial street. The plan proposes office, residential and retail businesses along this street that will complement and encourage the redevelopment of established historic structures in the area and provide a pleasant, pedestrian-friendly streetscape. The C-4 zone allows sale of merchandise that is expected and encouraged to be displayed outside, contrary to this plan.
4. The closest C-4 zoning is located about 1000 feet to the northeast on the same side of Magnolia Ave. This site's C-4 zoning was approved on appeal by City Council on 6/3/08 with a condition that uses be limited to those in C-3 plus truck/trailer rentals. MPC staff had recommended denial of the request and MPC voted to deny the request on 4/10/08. The MPC file number for this case was 4-D-08-RZ. This application was filed before the adoption of the Magnolia Avenue Corridor Plan.

CONSISTENCY WITH INTENT AND PURPOSE OF THE ZONING ORDINANCE:

1. The requested C-4 zone is established to provide areas in which the principal use of land is devoted to commercial establishments which cater specifically to the needs of motor vehicle oriented trade.
2. Based on the above description, the current C-3 zoning is more appropriate and compatible with surrounding development and zoning and gives the applicant reasonable use of the property. Approval of C-4 would allow uses on this property that would not be permitted on adjacent properties.

THE EFFECTS OF THE PROPOSAL:

1. Public water and sewer utilities are available to serve the site. The proposal will not have an impact on schools.
2. The effect on adjacent properties will be minimal to the extent that commercial businesses are already located on both sides of E. Magnolia Ave. in this area. However, C-4 zoning would introduce a form of commercial use with the option for outside storage and display of merchandise that would be incompatible with the long term planning objectives for this corridor. The applicant has reasonable use of the property under the current C-3 zoning.

CONFORMITY OF THE PROPOSAL TO ADOPTED PLANS:

1. The City of Knoxville One Year Plan proposes general commercial uses for the subject property, consistent with the proposal. However, during the upcoming 2010 One Year Plan update, staff anticipates proposing changes that will bring the One Year Plan into consistency with the recently adopted Magnolia

Avenue Corridor Plan.

2. The Central City Sector Plan, as amended by the Magnolia Avenue Corridor Plan shows this property within a mixed use special district (MA7). In the MA7 area, the three recommended zones are C-3, O-3, RP-1 and RP-2. C-4 is not included, which is why a sector plan amendment was required in order for C-4 zoning to be considered. MPC voted in December to approve the sector plan amendment to allow consideration of C-4 zoning.

3. According to members of MPC's Comprehensive Planning staff, who conducted public meetings for the Magnolia Avenue Corridor Plan study, the Magnolia Avenue business association supported the proposed policies of the plan, which clearly excluded C-4 zoning from consideration.

4. Approval of this plan amendment and rezoning could lead to additional requests for C-4 zoning in this area.

ESTIMATED TRAFFIC IMPACT: Not calculated.

ESTIMATED STUDENT YIELD: Not applicable.

If approved, this item will be forwarded to Knoxville City Council for action on 2/9/2010 and 2/23/2010. If denied, MPC's action is final, unless the action to deny is appealed to Knoxville City Council. The date of the appeal hearing will depend on when the appeal application is filed. Appellants have 15 days to appeal an MPC decision in the City.

EXHIBIT 'A'

If MPC opts to approve the Jacqueline Whiteside rezoning request from C-3 to C-4, the following is the language and recommended conditions that should be attached to the C-4 zoning.

RECOMMEND that City Council APPROVE C-4 (Highway and Arterial Commercial) zoning, subject to the following 6 conditions.

1. Uses are limited to those within the C-3 zoning district plus a new and used car lot with no more than 15 vehicles on display at any one time.
2. The vehicular access drive to Magnolia Ave. must be eliminated and replaced with vegetation. Vehicular access shall be from N. Kyle St. only and must be placed at least 40 feet from its intersection with Magnolia Ave. In addition, vehicular access is permitted to the alley in the rear of the site.
3. Maintain vegetated buffer area (no structures, paving or parking of vehicles) within the front 35 feet of the property and the rear 30 feet of the property.
4. No perimeter fencing in the yards adjacent to Magnolia Ave. and N. Kyle St. shall be permitted.
5. Ground or monument signage is limited to one indirectly illuminated monument sign along Magnolia Ave. The total square footage of the monument sign face may not exceed 50 square feet and the height may not exceed 5 feet as measured from the natural or finished grade, whichever is lower.
6. Any freestanding lighting within the site shall be designed at a pedestrian scale. Maximum height of all lighting structures shall be 15 feet. All outdoor site lighting must be full cutoff luminaire, meaning the luminaire/light fixture shall allow no direct light emissions above a horizontal plane through the luminaire's lowest light-emitting part.

12-14-09

12-C-09-SP

12-D-09-RZ



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF REGULATORY BOARDS
MOTOR VEHICLE COMMISSION
500 JAMES ROBERTSON PARKWAY, 2ND FLOOR
NASHVILLE, TENNESSEE 37243-1153
615-741-2711
FAX (615) 741-0651

MINIMUM REQUIREMENTS FOR
TENNESSEE MOTOR VEHICLE DEALER LICENSE

The following requirements must be met (or exceeded) to complete the Application Form for submission to the Commission office for review and final approval.

- 1. Established Place of Business-** Applicants must have a permanent facility used exclusively for the motor vehicle dealership. The facility must be physically separate and apart from other business operations and shall not include a private residence of any sort. The facility may be connected to another business provided there is a permanent wall from floor to ceiling between the two businesses and the motor vehicle facility has a separate, outside entrance and exit. Any doors between the businesses shall be permanently sealed. Temporary facilities are prohibited. Please send picture of the place of business. A minimum of 288 square feet of office space, and shall also contain restroom accommodations. Must have a land line phone (number must be posted on window or sign). All motor vehicle dealers shall be open at their established place of business during reasonable business hours, and these hours shall be posted either on the door to the dealership or on the dealership sign. Reasonable business hours means at least three days a week for a minimum of twelve hours total during the week. These hours must be between 8:00 a.m. and 7:00 p.m. and at least 8 of the hours must be Monday thru Friday. Must have room for 15 motor vehicles, and 3 parking spots dedicated for customer parking.

2. **Sign Requirements-** Minimum of eight (8) inch letters, or as per local ordinance, displaying the motor vehicle dealer name. The sign must be **permanently installed** and clearly visible from the road.
3. **Insurance-** Garage liability with a minimum of \$250,000.00 must be submitted with each application. Evidence of coverage must be provided by a certificate of insurance or affidavit from the insurance provider in the name of the entity to be licensed. Effective January 30, 2001, coverage must be continued in force for the life of the license. The address on the certificate must be that of the site of the dealership. The certificate holder is to be the Tennessee Motor Vehicle Commission at the above address. Applicable worker's compensation insurance may be shown on the same certificate.
4. **Business Tax-** A current business tax license issued by the County clerk must be obtained in the name of License the entity to be licensed. A copy of license must be provided with application.
5. **Sales Tax-** A current sales tax identification number as a motor vehicle dealer must be obtained in the name of License the entity to be licensed. Either a copy of the Certificate of Registration for Tennessee State Sales Tax or a Letter Exemption from the Department of Revenue must be provided with application.
6. **Background-** The designated dealer-operator must complete the personal and/or financial background disclosure **Form** provided by this Commission. All other owners must apply for a salesperson license if an active participant in vehicle buying, selling, and/or the solicitation of sales. **NOTE:** All salesperson license applications should be submitted immediately following receipt of dealer license.
7. **Financial Statement-** Must be prepared in accordance with the attached Commission memorandum of minimum acceptable financial statement instructions dated January, 2001.
8. **Corporation/LLC/LLP-** If applicable, a copy of the charter of the entity as filed with the Tennessee Secretary of State must be provided, or if out-of-state corporation or LLC provide a copy of Certificate of Authority to do business in Tennessee.
9. **Zoning Compliance-** Written approval from the local zoning/land-use Authority must be provided. In localities without zoning requirements, a

written statement to this effect must be obtained from the authorized county or municipal official. Typically, these statements are prepared by the Office of the County Executive, or Office of the Municipality Mayor.

10. **Surety Bond** - The surety bond minimum is \$ 50,000.00 and must have a duration of two (2) years beginning in the month of the expected license issuance and **expiring on the last day of the same month two (2) years later**. The original surety bond must be submitted to this Commission with the license application. The name on the bond **MUST be the same as the entity to be licensed and the dealer address MUST be the physical address of the dealership.**

11. **Conviction Record**- The applicant must furnish a copy of any court records involving a felony or crime of moral turpitude previously committed by any owner, partner, or financial participant in the corporation/LLC/LLP.



12. **Garage Facility**- If no mechanical repair facility is on-site, a **Service Agreement** (Form provided) with an operational repair garage within a reasonable distance from the licensee location must be provided and maintained during the licensing period. Any change in the designation facility must be reported to the Commission within 30 days of the change.

13. **New Vehicle Dealer**- A letter of acknowledgement sent from the motor vehicle manufacturer(s) of the awarding of the Franchise agreement(s) must be provided. A sworn statement containing the labor rate to be charged retail customers and the labor rate to be charged to the manufacturer(s) for warranty repairs must be provided. Thereafter, any change in the labor rated must be reported in writing to the Commission within 10 days after the change.

14. **Dealer License Fees-**

New vehicle dealer license fees-----	\$200.00 per line make
Used vehicle dealer license fees-----	\$200.00
New motorcycle dealer license fees-----	\$200.00 per line make
Used motorcycle dealer license fees-----	\$200.00
Salesperson license fees-----	\$ 35.00

Applicable licensing fees are payable by cash, check, money order, or certified check. Checks are to be payable to **Tennessee Motor Vehicle**

Commission. NOTE: Cash must be paid by the applicant to the Cashier's Office of the Department of Commerce and Insurance at the Davy Crockett Tower, First Floor, 500 James Robertson Pkwy, Nashville, TN 37243-1153. **DO NOT MAIL CASH.** Field Investigators will **NOT** accept any payments. With proper documentation of the requirements and the completed application, the dealer license is typically issued within five (5) days following receipt in the Commission office. To expedite license issuance, express parcel delivery service is recommended.



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
MOTOR VEHICLE COMMISSION
500 JAMES ROBERTSON PARKWAY - 2ND FLOOR
NASHVILLE, TENNESSEE 37243-1153
(615) 741-2711
FAX (615) 741-0651

SERVICE AGREEMENT *

DATE: 12/11/09

Jacqueline Whiteside
(Dealer Applicant)
2104 E. Magnolia Ave. Knox
(Street) (County)
Knoxville, TN 37917
(City) (State) (Zip)

In accordance with Tennessee Code Annotated 55-17-111(a)(7), if a motor vehicle dealer does not have repair facilities at the established place of business to service or repair motor vehicles, then a duly executed service agreement with a factory authorized service or repair garage within a reasonable distance from the applicant's established place of business must be provided to the Commission

Therefore, I/we agree to provide repairs on the above referenced dealer's vehicles as stipulated in Tennessee Code Annotated 55-17-111(a)(7).

Estimated distance from dealer facility: _____
(Location in miles)

R+S Auto Collision
(Garage/Repair Facility)
2029 Magnolia Av.
(Street) (County)
Knoxville TN 37918
(City) (State) (Zip)
[Signature]
Signature
Garage/Repair Facility Principal

*Form should be typed or printed in ink

TMVC 94-1115 (Rev 12-03)



STATE OF TENNESSEE
 DEPARTMENT OF COMMERCE AND INSURANCE
 MOTOR VEHICLE COMMISSION
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Therefore, I/we agree to provide repairs on the above referenced dealer's vehicles as stipulated in Tennessee Code Annotated 55-17-111(a)(7).

Estimated distance from dealer facility: 1
 (Location in miles)

RTC Lapp of Knoxville
 (Garage/Repair Facility)

2045 E. Magnolia Ave Knox
 (Street) (County)

Knoxville TN 37917
 (City) (State) (Zip)

[Signature]
 Signature
 Garage/Repair Facility Principal

*Form should be typed or printed in ink



Magnolia Avenue Corridor Plan

May 2009

Prepared by the Knoxville-Knox County Metropolitan Planning Commission

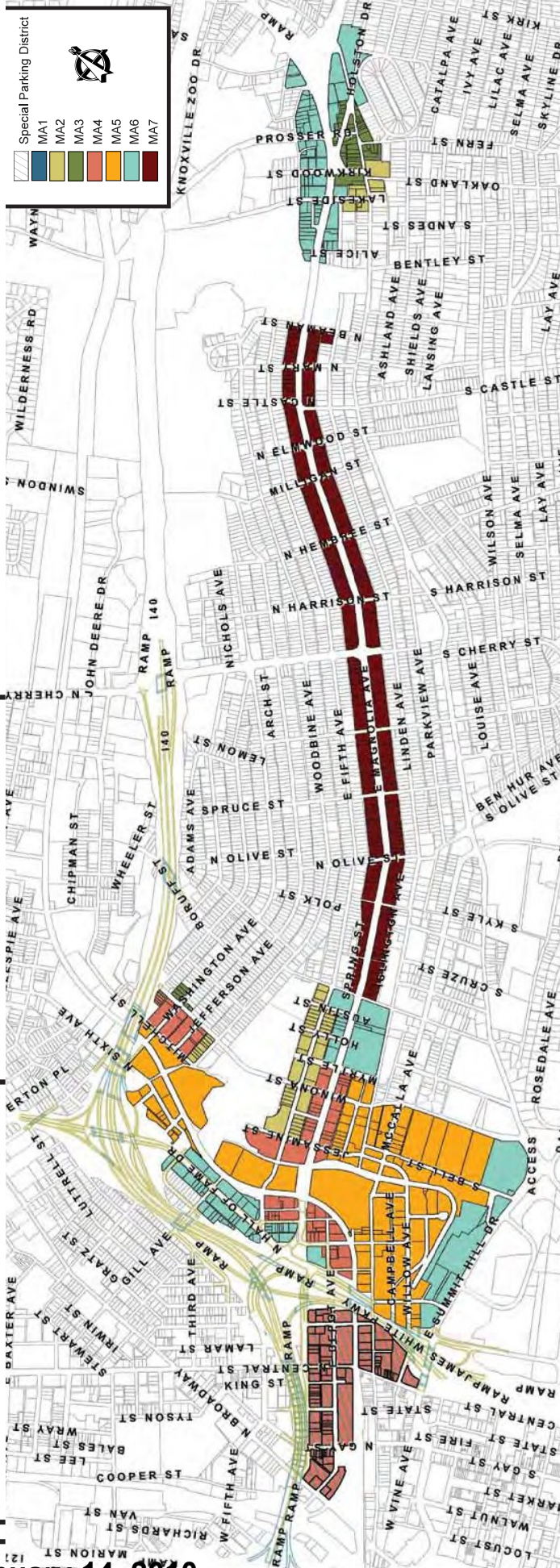


Magnolia Avenue Corridor Plan

May 2009

Adopted by:
the Knoxville-Knox County Metropolitan Planning Commission on July 9, 2009
and
the Knoxville City Council on August 25, 2009

Appendix A: Land Use Plan Proposed Form Code Concepts



Form Code	Description
MA1	A residential district that allows detached and attached single-family structures. The structures will have setbacks similar to detached single-family structures common in the historic grid areas and a maximum height of 35 feet. Office uses may be allowed by use-on-review and other uses like bed and breakfasts may be allowed. There are currently no areas planned for this land classification in the corridor.
MA2	This is primarily a residential district that allows any MA1 form, but also allows for more intense multi-story mixed use structures. Office and commercial uses will be restricted to the first floor. The front setback will be 5 to 15 feet.
MA3	This low intensity mixed use district is primarily intended for historic commercial centers like Downtown Burlington. Buildings will be allowed to be 1 to 3 stories in height and will be required, in most cases, to be located at the front property line (or back edge of sidewalk). The allowed uses will be residential, commercial/retail or office.
MA4	This district allows for the most intense development. It requires in most cases that buildings be built to the front property line (or back edge of sidewalk). The minimum height of a structure will be 2 stories, with a maximum height ranging from 3 to 7 stories depending on location. The allowed uses will be residential, commercial/retail, office, warehouse, wholesale and light industrial.
MA5	This district is intended for areas where the current land uses are mainly industrial, warehouse and wholesale. The required building form and uses will be essentially the same as the MA4 district except this district will allow one story buildings.
MA6	This district is meant for areas of intense development that will have a boulevard setting, like Hall of Fame Drive and parts of Magnolia Avenue. There will be a front setback of 10 to 25 feet. The minimum height of a structure will be 2 stories and the maximum may range from 3 to 7 stories depending on location. The allowed uses will be residential, office and commercial/retail.
MA7	This district is intended to be an interim overlay district that continues to allow similar uses that exist on Magnolia Avenue but also requires new structures and extensively renovated structures to create setbacks and orientation of the MA6 district. Also, mixed use buildings that meet the MA6 district standards would be allowed.
Special Parking District	The area west of Hall of Fame Drive and south of I-40 currently has many properties that are zoned C-2 which does not require any parking. Also, many public parking spaces will be available under the I-40 and HOF viaducts. Because of the uniqueness of this area as an extension of downtown, no minimum parking should be required and a shared parking program should be developed.

Appendix A:

Recommendations for an Interim Zoning Overlay

Form code zoning districts will be created in conjunction with stakeholders in several sections along the corridor. That process takes time; therefore form districts for the whole corridor cannot reasonably be created at once. An interim zoning overlay is an alternative that is recommended to guide new development and building reuse that are in keeping with the plan's goals of creating pedestrian-friendly streets and expanding options for the use of land, including vertical mixed use.

The following zones are recommended for each of the subareas while the form code is being developed. It is recommended that the City's One-Year Plan be amended following adoption of this Magnolia Avenue Corridor Plan to foster the flexibility to achieve the plan's goals. The map that is entitled "Land Use Plan: Proposals for Form Code Concepts" contains the references to specific areas (for example, MA 2, MA3, etc.)

Magnolia Avenue 2 Area (MA 2)

- O-3 Office Park District
- RP-1 and RP-2 Planned Residential Districts

Magnolia Avenue 3 Area (MA 3)

- C-1 Neighborhood Commercial District

Magnolia Avenue 4 Area (MA 4)

- C-2 Central Business District
- I-2 Restricted Manufacturing and Warehousing District

Magnolia Avenue 5 Area (MA 5)

- C-6 General Commercial Park District
- I-2 Restricted Manufacturing and Warehousing District
- O-3 Office Park District
- RP-1 and RP-2 Planned Residential Districts

Magnolia Avenue 6 Area (MA 6)

- C-3 General Commercial District
- O-3 Office Park District
- RP-1 and RP-2 Planned Residential Districts

Magnolia Avenue 7 Area (MA 7)

- C-3 General Commercial District
- O-3 Office Park District
- RP-1 and RP-2 Planned Residential Districts



1420 Magnolia Avenue



2901 Magnolia Avenue



3200 Magnolia Avenue