



City of Fayetteville

433 Hay Street
Fayetteville, NC
28301-5537
(910) 433-1FAY (1329)

Meeting Agenda - Final Zoning Commission

Tuesday, January 10, 2023

6:00 PM

FAST Transit Center

1.0 CALL TO ORDER

2.0 APPROVAL OF AGENDA

3.0 CONSENT

- 3.01 A22-55. Order of Approval to increase the required right-of-way setback maximums from twenty feet (20') to sixty-eight feet (68') along Ramsey Street and Seventy-three feet (73') along Rowan Street, for property located at 108 Rowan Street (REID# 0437666097000), containing 1.75 acres ± and being the property of AABC-W ROWAN, LLC.
- 3.02 A22-57. Order of Approval - Findings of Fact: Variance to reduce the front yard setbacks in a Community Commercial (CC) zoning district, to be located at 716 Whitfield Street (REID #0436183799000), totaling 2.43 acres ± and being the property of Charles Manis, Vanguard Culinary, represented by Ben Stout, Benjamin Stout Real Estate Services, Inc
- 3.03 Approval of Minutes: December 13, 2022

4.0 EVIDENTIARY HEARINGS

- 4.01 A23-05. Variance to reduce the rear yard setback in a Limited Commercial (LC) zoning district adjacent to single family residential from 20 ft. to 10 ft. and reduce the width of the required street yard buffer from 15 ft. to 10 ft. on Overbrook Drive and 6 ft. on N. Reilly Road on .34 acres ±, located at 367 N. Reilly Road (REID # 9498686280000) and being the property of Eid Abudayya, represented by George M. Rose, P.E.

5.0 PUBLIC HEARINGS (Public & Legislative)

- 5.01 P23-01. Rezoning from Office and Institutional (OI) to Neighborhood Commercial (NC) zoning district of .32 acres ±, located at 1302 Fort Bragg Road (REID #0427965185000) and being the property of Leslie K. and Justin D. Pearson.
- 5.02 P23-02. Rezoning from Agricultural Residential (AR) to Neighborhood Commercial (NC) on 1 acre ±, located at 3459 Dundle Rd. (REID # 9495105082000) and is the property of Lorraine Mohler, MOHLER HOMES, INC, represented by Scott Brown, 4D Site Solutions, Inc.

- 5.03 P23-03. Rezoning from Single-Family Residential 6 (SF-6) to Neighborhood Commercial (NC) zoning district of .53 acres \pm portion of total 2.98 acres \pm parcel, located at 7510 Cliffdale Road (REID #9487353248000) and being the property of F&F Investments of Fayetteville LLC, represented by Michael Adams of MAPS Surveying Inc.
- 5.04 P23-04. Rezoning from Single-Family-6 (SF-6), Agricultural Residential (AR), and Neighborhood Commercial (NC) to Mixed-Residential-5 (MR-5) of 19.02 acres \pm , located at 0 Morganton Road (REID# 0408149306000), and being the property of Alan Smith, et al., represented by Alex Keith of Tom J. Keith & Associates.

6.0 OTHER ITEMS OF BUSINESS

- 6.01 A22-54. Variance to allow a four (4) foot and six (6) foot solid fence where a four (4) foot open style picket fence is allowed on .36 acres \pm , located at 5200 Sundown Drive (REID # 0408835557000) and being the property of Black Door Properties LLC, represented by Jenna Milan.

7.0 ADJOURNMENT



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-3132

Agenda Date: 1/10/2023

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Evidentiary Hearing

Agenda Number: 3.01

TO: Zoning Commission

THRU: Jennifer C. Baptiste, CZO - Planning and Zoning Manager

FROM: Lauren Long - Planner II

DATE: January 10, 2022

RE: A22-55. Order of Approval to increase the required right-of-way setback maximums

from twenty feet (20') to sixty-eight feet (68') along Ramsey Street and Seventy-three feet

(73') along Rowan Street, for property located at 108 Rowan Street (REID# 0437666097000),

containing 1.75 acres ± and being the property of AABC-W ROWAN, LLC.

COUNCIL DISTRICT(S):

2- Shakeyla Ingram

Relationship to Strategic Plan:

Strategic Operating Plan FY 2022

Goals 2026

Goal II: Responsive City Government Supporting a Diverse and Viable Economy

- Objective 2.4 - To sustain a favorable development climate to encourage business growth.

Goal III: City invested in Today and Tomorrow

- Objective 3.2 - To manage the City's future growth and strategic land use.

Executive Summary:

The purpose of a variance is to allow certain deviations from the dimensional standards of this Ordinance (such as height, yard setback, lot coverage, or similar numeric standards) when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner's control (such as exceptional topographical conditions, narrowness, shallowness, or the shape of a specific parcel of land), the literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest.

Variances are to be sparingly exercised and only in rare instances or under exceptional circumstances to relieve undue and unique hardships to the landowner.

No change in permitted uses or applicable conditions of approval may be authorized by variance.

On December 13, 2022 the Zoning Commission voted to approve this variance request. During the evidentiary hearing there was one speaker in favor. The Commission voted 5-0 to approve the request.

Background:

Owner: AABC-W ROWAN, LLC

Applicant: Tiffany Bray, Harrison French & Associates

Requested Action: Increase the required right-of-way setback maximums from twenty feet (20') to sixty-eight feet (68') along Ramsey Street and Seventy-three feet (73') along Rowan Street, for a property located at 108 Rowan Street.

Zoning District: Downtown-2 (DT-2)

Property Address: 108 Rowan Street

Size: 1.75 acres ±

Existing Land Use: Commercial, previously a Drug Store/Pharmacy

Surrounding Zoning and Land Uses

- North: DT-2 and LC - Downtown-2 and Limited Commercial
- South: DT-2 - Downtown-2
- East: DT-2 - Downtown-2
- West: OI - Downtown-2

Letters Mailed: 17

Issues/Analysis:

The property is 1.75 acres ± and is located at 108 Rowan Street. It was previously the site of a Drug Store/ Pharmacy that was constructed in 2004, according to the Cumberland County Tax Assessor's Office. The building is currently vacant and another developer has undergone the Pre-Application review process with the Technical Review Committee where it was determined that the current layout of the site would require a variance from the front and corner setback maximum in the Downtown-2 District.

According to UDO Section 30-3.E.11, new development in the Downtown 2 (DT-2) requires the front and corner-side façade of a building to be located no more than twenty (20) feet from the a public street, or forty (40) feet from the centerline of a private street. The applicant is requesting to increase the setback maximum from 20 feet to 68 feet along Ramsey Street and from 20 feet to 73 feet along Rowan Street. This is a deviation of 48 feet on Ramsey Street and a deviation of 53 feet along Rowan Street from the standard.

Insufficient Justification for Variance

The following does not constitute grounds for a Variance:

1. The siting of other nonconforming or conforming uses of land or structures in the same or other districts;
2. The request for a particular use expressly, or by inference, prohibited in the district; or

3. Economic hardship or the fact that property may be utilized more profitably with a Variance.

Subsequent Development

There are no minimum lot size requirements for the Downtown-2 (DT-2) District. The lot is 76,230 square feet±, or 1.75 acres±. The following findings are based on the responses submitted in the application by the applicant and best available information of the proposal without the benefit of testimony provided at the evidentiary hearing.

Findings of Fact Statements as reviewed by the Planning Staff:

1. **There is sufficient evidence that the strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence:**

The applicant states that strict interpretation of the code would force the building in a very small portion of the property on an unusually shaped and tight corner at a busy street intersection. The property is a corner lot with a great deal of frontage relative to the size of the building. The applicant also states that the nature of drive-thru restaurants also requires the building to be away from the street for traffic circulation around the building and to allow for a safe 'bale-out' lane.

2. **There is sufficient evidence that any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and are not the result of the actions of the landowner as shown by the following evidence:**

The applicant reiterates that this particular parcel is a corner lot with a large amount of frontage in relation to the size of the proposed building. The intersection of Rowan and Rowan is also a tight angle.

3. **There is sufficient evidence that the Variance is the minimum action that will make possible a reasonable use of land or structures as shown by the following evidence:**

The applicant states that efforts in the design layout have been made to shift the buildings as close to the street as possible to allow the use of existing drainage infrastructure, the use of existing shared drives and entrances, as well as to allow the proper vehicle stacking requirements for the State Department of Transportation.

4. **There is sufficient evidence that the Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit as shown by the following evidence:**

The applicant states that in order to meet the spirit and intent of the ordinance, the two properties are proposing to install a series of walls and public seating areas along the property frontage. These walls and seating areas will be designed with similar materials to the building. The applicant has also attached an architectural detail of the wall with this application.

The applicant also states that additional landscaping, trees, and shrubs, in addition to those required by the code, will be installed along the perimeter. The applicant states that the intent is to soften the sites aspect from the street and liven the pedestrian experience along the property frontage.

5. **There is sufficient evidence that in the granting of the Variance, the public safety and welfare has been assured and substantial justice has been done**

as shown by the following evidence:

The applicant states that the intent of the developer is to provide an aesthetically pleasing, safe, and functional property for both the City of Fayetteville, Starbucks, and Bojangles. The proposed site plan was the result of the work of a design team that understand the functions of a restaurant and their respective needs. The proposed site plan has been reviewed by the North Carolina Department of Transportation and has been designed to safely maneuver pedestrians and cars.

Budget Impact:

There is no immediate budgetary impact

Options:

1. Approve Order of Approval for A22-55 (Recommended)
2. Remand to staff for modifications

Recommended Action:

1. Approve Order of Approval and Findings of Fact as submitted by staff.

Attachments:

1. Application
2. Aerial Notification Map
3. Zoning Map
4. Land Use Map
5. Subject Property Photos
6. Surrounding Property Photos
7. Site Plan
8. Wall Plan Architectural Detail
9. Downtown-2 (DT-2) District Standards
10. Order of Approval and Findings of Fact for A22-47

Project Overview

#895622

Project Title: 108 Rowan - Starbucks Bojangles

Application Type: 5.4) Variance

Workflow: Staff Review

Jurisdiction: City of Fayetteville

State: NC

County: Cumberland

Project Location

Project Address or PIN: 108 ROWAN ST (0437666097000)

Zip Code: 28301

GIS Verified Data

Property Owner: Parcel

- 108 ROWAN ST: AABC-W ROWAN LLC

Acreage: Parcel

- 108 ROWAN ST: 1.75

Zoning District:

Subdivision Name:

Fire District: Fire District

- 108 ROWAN ST: Secondary Fire Zone

Airport Overlay District:

Hospital Overlay District:

Coliseum Tourism District:

Cape Fear District:

Downtown Historic District:

Haymount Historic District:

Floodway:

100 Year Flood:

500 Year Flood:

Watershed:

Variance Request Information

Requested Variances: Minimum yard/setback, Maximum yard/setback

Section of the City Code from which the variance is being requested.: Article 30-3.E.11. Downtown 2 (DT-2) Maximum front setback

Describe the nature of your request for a variance and identify the standard(s)/requirement(s) of the City Code proposed to be varied.:

We are proposing a variance from the maximum building setback of 20'. Buildings within DT-2 districts are required to be within 20' of the right-of-way.

Identify the zoning district designation and existing use of land for all adjacent properties, including those across the street.:

DT-2

Justification for Variance Request - Use this and the following pages to answer the questions (upload additional sheets if necessary).

The Variance Standards states: A variance application shall be approved only upon a finding that all of the following standards are met.

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships; it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
2. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, such as location, size, or

topography, and are not the result from conditions that are common to the neighborhood or the general public be the basis from granting a variance;

3. The Variance is the minimum action that will make possible a reasonable use of land or structures;
4. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
5. In the granting of this Variance, the public safety and welfare have been assured and substantial justice has been done.

Please complete the following five (5) questions to verify the evidence that all the required standards are applicable to your property and/or situation.

Provide a written description of any hardship(s) and how such hardship(s) is not self-imposed.:

Strict interpretation of the code would force the building in a very small portion of the property on an unusually shaped, tight corner of the property on a busy street intersection. The property is a corner lot with a great deal of frontage relative to the size of the building.

The nature of drive-thru restaurants also require the building to be away from the street for traffic circulation around the building to order, pay and pick up and allow for a safe bale out lane.

Indicate if the property has exceptional topographic conditions or some other extraordinary situation or condition that makes it unlike other properties in the immediate vicinity.:

As previously mentioned in item one, the lot is a corner lot with a lot of frontage relative to the size of the building. There is also a tight angle at the intersection of Rowan & Rowan.

There are existing shared drives and NC DoT driveway entrances we are trying to keep and connect to.

Is there some particular condition, situation, or development on the property immediately adjacent to the subject property that affects the subject property's ability to comply with the regulations?:

There is a shared driveway with the property to the west and an existing driveway entrance within the NC DoT right-of-way we are trying to keep.

The buildings have been shifted to the street with enough room left to allow use of the existing drainage infrastructure as well as existing driveway entrances while keeping the separation necessary from the entrance to allow proper stacking for the State Department of Transportation.

Describe how the variance is in harmony with the general purpose and intent of the City Code, and preserves the spirit.:

To meet the intent and spirit of the ordinance the two properties are proposing to install a series of walls and public seating areas along the property frontage. These walls and seating areas will be designed in materials similar to the building as shown in the Wall detail on the Landscape Plan submitted with this request. They will work with the existing sidewalk infrastructure to create a pleasant pedestrian experience along the frontage.

Additional landscaping, trees, and shrubs, above that required by the code, will also be installed along the perimeter. The intent of all this is to soften the streetscape and liven the pedestrian experience.

Explain any potential negative external impacts that may result from the proposed variance, and how they will be mitigated. Financial hardship cannot be considered for a reason to grant a variance.:

Height of Sign Face : 0

As mentioned under item 4, our intent is to provide an aesthetically pleasing, safe and functional property for both the City, Starbucks and Bojangles. The site plan presented to you all today was the work teams internal to their respective clients that understand the function of the restaurants needs and how to safely maneuver pedestrians and cars. The site has also been worked through the North Carolina DOT for safety and been reoriented for their safety concerns.

In closing, the process for this site between Bojangles, Starbucks and the Landlord was started several months ago, and while we understand the desire of the recent rezoning as far as the City is concerned, it was somewhat unforeseen.

Thank you all and please reach out with any need for clarification

or additional information.

Height of Sign Face: 0
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Height of Sign Face: 0
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Square Footage of Sign Face: 0

Primary Contact Information

Contractor's NC ID#:

Project Owner

John Wilson
Carolina Capital
500 E. Morehead St, Suite 230
Charlotte, NC 28202
P: 980-270-2308
jwilson@carolinacapitalre.com

Project Contact - Agent/Representative

Tiffany Bray
Harrison French
1705 S WALTON BLVD, 3
BENTONVILLE, AR 72712
P: 479-273-7780 498
tiffany.bray@hfa-ae.com

Project Contact - Primary Point of Contact for Engineer

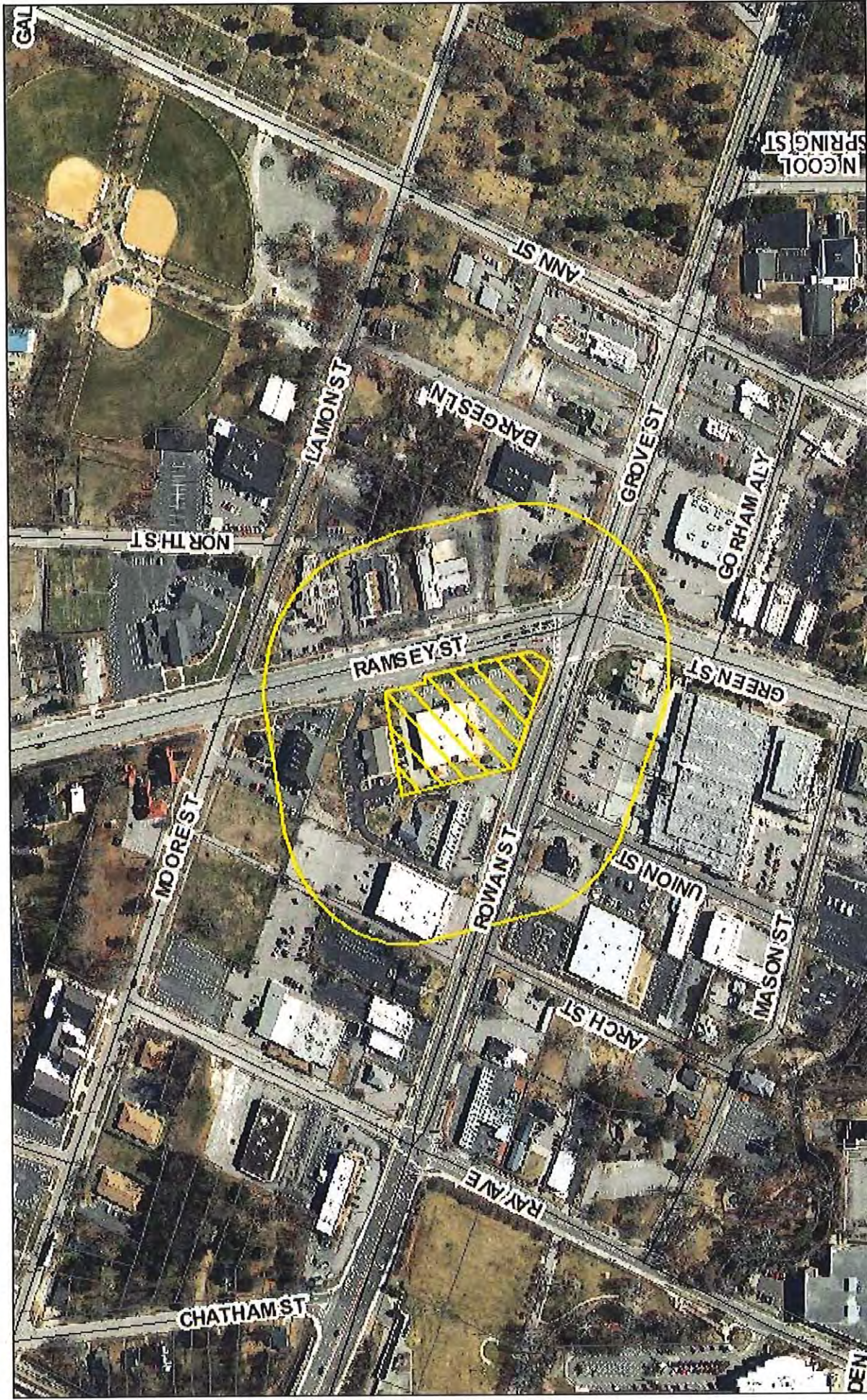
Evan Niehues
Harrison French & Assoc
1705 S Walton Blvd, Suite 3
Bentonville, AR 72712
P: 479-273-7780 x485
evan.niehues@hfa-ae.com

As an unlicensed contractor, I am aware that I cannot enter into a contract that the total amount of the project exceeds \$30,000. :

NC State General Contractor's License Number:

NC State Mechanical Contractor's #1 License Number:
NC State Mechanical Contractor's #2 License Number:
NC State Mechanical Contractor's #3 License Number:
NC State Electrical Contractor #1 License Number:
NC State Electrical Contractor #2 License Number:
NC State Electrical Contractor #3 License Number:
NC State Plumbing Contractor #1 License Number:
NC State Plumbing Contractor #2 License Number:

Indicate which of the following project contacts should be included on this project: Engineer



Aerial Notification Map



Case #: A22-55

Request: Variance to increase the required right-of-way setback maximum from twenty feet (20') to sixty-eight feet (68') along Ramsey Street and seventy-three feet (73') along Rowan Street, for a property located at 108 Rowan Street (REID# 0437666097000), containing 1.75 acres \pm and being the property of AABC-W ROWAN, LLC.

Location: 108 Rowan Street



Legend

-  108 Rowan Street
-  300' Public Notification Area

Letters are being sent to all property owners within the 300' buffer. Subject property is shown in the hatched pattern.









Zoning Map

Case #: A22-55





Request: Variance to increase the required right-of-way setback maximum from twenty feet (20') to sixty-eight feet (68') along Ramsey Street and seventy-three feet (73') along Rowan Street, for a property located at 108 Rowan Street (REID# 0437666097000), containing 1.75 acres \pm and being the property of AABC-W ROWAN, LLC.

Location: 108 Rowan Street

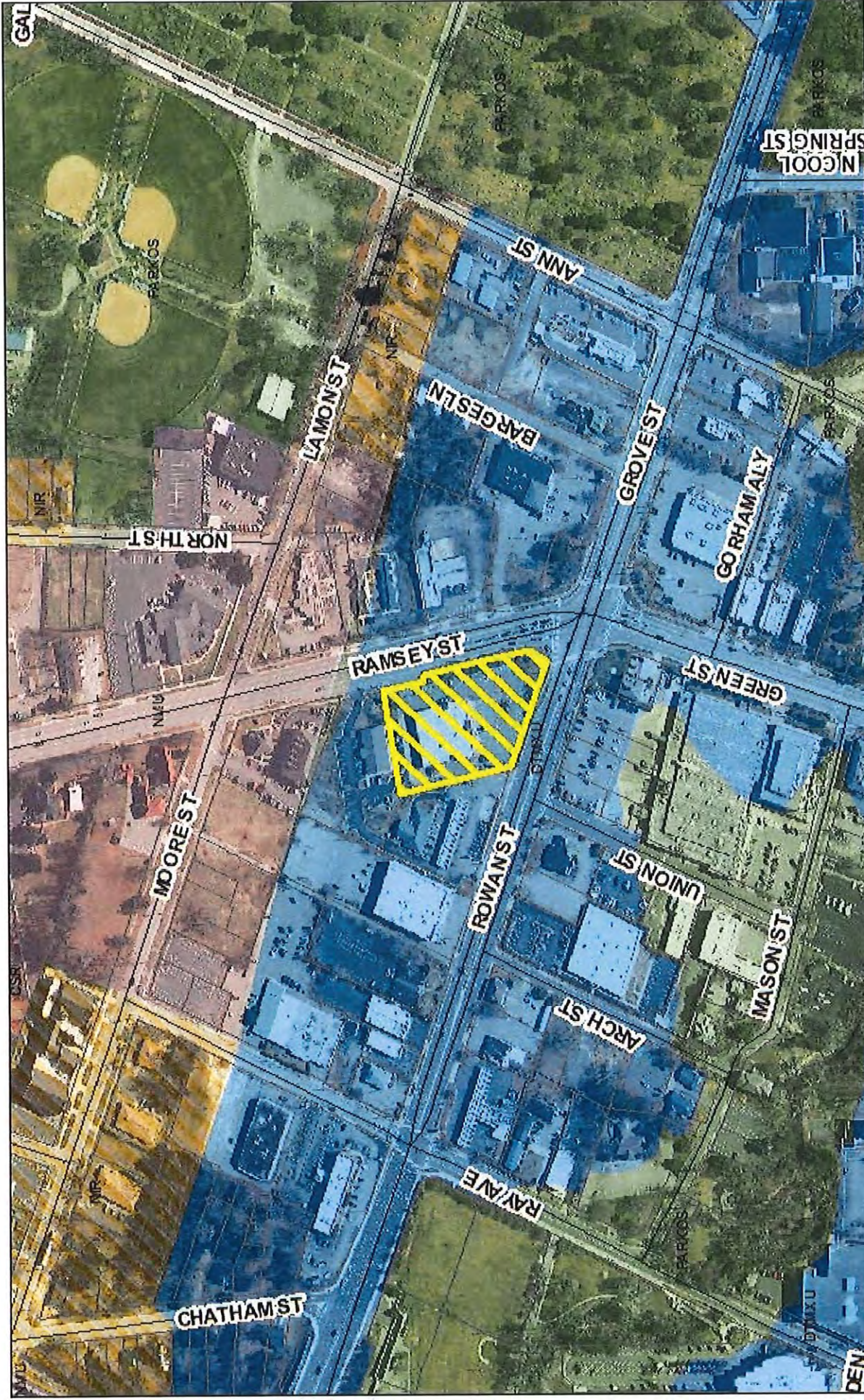
Legend

-  108 Rowan Street
-  CC - Community Commercial
-  DT - Downtown
-  DT/CZ - Conditional Downtown



-  HI - Heavy Industrial
-  LC - Limited Commercial
-  MR-5 - Mixed Residential 5
-  OI - Office & Institutional





Land Use Map

Case #: A22-55

Request: Variance to increase the required right-of-way setback maximum from twenty feet (20') to sixty-eight feet (68') along Ramsey Street and seventy-three feet (73') along Rowan Street, for a property located at 108 Rowan Street (REID# 0437666097000), containing 1.75 acres \pm and being the property of AABC-W ROWAN, LLC.

Location: 108 Rowan Street

Legend



108 Rowan Street

Land Use Plan 20-40

Character Areas



NIR - NEIGHBORHOOD IMPROVEMENT



NMU - NEIGHBORHOOD MIXED USE



CSR - COMMERCIAL STRIP REDEVELOPMENT



DTMXU - DOWNTOWN

PARKOS - PARK / OPEN SPACE



AMERICA'S CAN DO CITY



Subject Property



West



North

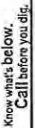


South



East





PART II - CODE OF ORDINANCES

CHAPTER 30 – UNIFIED DEVELOPMENT ORDINANCE

Article 30-3: Zoning Districts

30-3.E. Business Base Zoning Districts

30-3.E.11. Downtown 2 (DT-2) District

PURPOSE			
DT-2 Downtown 2 District	The Downtown 2 (DT-2) District is established and intended to encourage the urban form and character found in the traditional downtown area as well as promote redevelopment that will make the downtown area a more diverse and vibrant mixed-use urban center. The district is intended to create a downtown district by expanding the Hay Street experience. Establish downtown's identity at its gateways. Foster downtown living by promoting residential development to create a pedestrian-oriented downtown neighborhood. Strategically located cultural venues to maximize their contribution to downtown's vitality. Improve Mobility and Streetscapes by promoting a well-connected and beautiful downtown, improving walkability and bikeability, managing parking, and enhancing streets-capes and public spaces. Enhance Parks and Trail Connections, improve stormwater management. The district is subject to flexible and incentive-based standards intended to foster such urban development and redevelopment.		
DIMENSIONAL STANDARDS			
DIMENSIONAL STANDARD	NONRESIDENTIAL, MULTI-FAMILY, & MIXED-USE	SINGLE-FAMILY ATTACHED & DETACHED & TWO TO FOUR FAMILY	ACCESSORY STRUCTURES
Lot area, min. (sq. ft.)	None	5,000 for 1st unit, then 4,000	n/a
Lot width, min. (ft.)	45		n/a
Gross residential density, max. (dwelling units/acre)	20 (24 when retail is on first floor)	20	n/a
Lot coverage, max. (% of lot area)	75		[2]
Height, max. (ft.)	SF Residential 35; 75 for others (can be increased to 130 feet for buildings with street-level restaurants or retail)		25; 15 where abutting a single-family district or use with setback less than 10 feet
Front and corner setback, max.	The greater of 20 ft. or 40 ft. from centerline of private streets		Not allowed in front, side, or corner side yard areas
Side setback, min. (ft.)	3; 10 when abutting single-family zoning or use	10	
Rear setback, min. (ft.)	3; 20 where abutting an alley or single-family zoning district or use		
Spacing between buildings, min. (ft.)	10		

PURPOSE	
DT-2 Downtown 2 District	The Downtown 2 (DT-2) District is established and intended to encourage the urban form and character found in the traditional downtown area as well as promote redevelopment that will make the downtown area a more diverse and vibrant mixed-use urban center. The district is intended to create a downtown district by expanding the Hay Street experience. Establish downtown's identity at its gateways. Foster downtown living by promoting residential development to create a pedestrian-oriented downtown neighborhood. Strategically located cultural venues to maximize their contribution to downtown's vitality. Improve Mobility and Streetscapes by promoting a well-connected and beautiful downtown, improving walkability and bikeability, managing parking, and enhancing streets-capes and public spaces. Enhance Parks and Trail Connections, improve stormwater management. The district is subject to flexible and incentive-based standards intended to foster such urban development and redevelopment.
DIMENSIONAL STANDARDS	
Zero lot line	Zero lot line development shall comply with the applicable maximum gross residential density standards. Setbacks and lot area for lots abutting the perimeter of the development shall meet the district minimums; otherwise no setbacks, lot area, lot coverage, or building spacing requirements shall apply.
Glazing - fenestration minimum for walls abutting the street	Minimum of forty percent (40%) of the first floor and twenty percent (20%) of the upper floors on the front facade shall have window/door fenestration. Tinted or mirrored glass is prohibited on the front facade. Side elevations which can be seen from the public view shall have a minimum of twenty percent (20%) window/door fenestration These requirements shall not apply to residential uses.
Notes: [1] [Reserved] [2] Accessory structures/use areas shall not exceed the lesser of: 1,200 square feet in size or 25 percent of the allowable lot coverage. [3] Zero lot line development is subject to standards in Section 30-3.B.2 and, on a tract or site of three acres in area or less may require approval of a Neighborhood Compatibility Permit (see Section 30-2.C.21 Neighborhood Compatibility Permit).	

(Ord. No. S2022-007, § 3, 05/23/2022)

**CITY OF FAYETTEVILLE
STATE OF NORTH CAROLINA
ORDER TO APPROVE A VARIANCE**

To increase the required front and corner-side setback maximums from twenty feet (20') to sixty-eight feet (68') along Ramsey Street and seventy-three feet (73') along Rowan Street, for property located at 108 Rowan Street (REID # 0437666097000), containing 1.75 acres \pm and being the property of AABC-W ROWAN, LLC.

VARIANCE A22-55

Property Address: 108 Rowan Street
REID Number: 0437666097000
Property Owner: AABC-W ROWAN, LLC

The Zoning Commission for the City of Fayetteville, NC, held an evidentiary hearing on December 13, 2022, to consider a Variance request filed by Tiffany Bray of Harrison French & Associates, on behalf of John Wilson of AABC-W ROWAN, LLC. The variance request submitted was to increase the required front and corner-side setback maximums from twenty feet (20') to sixty-eight feet (68') along Ramsey Street and seventy-three feet (73') along Rowan Street, for a parcel located at 108 Rowan Street.

On November 28, 2022, a notice of public hearing was mailed to the property owner and all of the owners of property within 300 feet of the subject parcel. On December 2, 2022, a notice of public hearing sign was placed on the subject parcel. On November 25 and December 9, 2022, a notice of public hearing advertisement was placed in the legal section of *The Fayetteville Observer*.

Having considered all of the sworn testimony, evidence, and oral arguments submitted at the hearing by the parties, the Zoning Commission makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

Findings of Fact

1. Chapter 30, Article 3, Section E, number 11 of the City of Fayetteville's Code of Ordinances establishes the requirement for all new development in the Downtown 2 (DT-2) District to locate all building facades facing front or corner-side yard frontages must be located no further than twenty (20) feet from the property line.
2. AABC-W ROWAN, LLC, is the owner of a commercially zoned property located at 108 Rowan Street, zoned Downtown-2 (DT-2), which contains approximately 1.75 acres \pm in the City of Fayetteville.

3. Tiffany Bray of Harrison French & Associates filed an application on behalf of John Wilson, registered agent of AABC-W ROWAN, LLC, for a Variance on November 7, 2022.

4. The property owner is requesting to increase the required front and corner-side setback maximums from twenty feet (20') to sixty-eight feet (68') along Ramsey Street and seventy-three feet (73') along Rowan Street, for new development located at 108 Rowan Street.

5. The applicant has the burden of proof to show that the variance meets the following statutory requirements:

- a. Strict application of the Ordinance results in practical difficulties and unnecessary hardship.
- b. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land and are not the result of the actions of the landowner as shown.
- c. The Variance is the minimum action that will make possible a reasonable use of land or structures.
- d. The Variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.
- e. In granting of the Variance, the public safety and welfare have been assured and substantial justice has been done.

6. Strict application of the ordinance results in practical difficulties and unnecessary hardship as the lot is an unusually shaped corner lot with an extensive amount of frontage. Strict application of the ordinance would result in a buildable area isforced into a tight corner at a busy intersection, impeding traffic circulation on the site.

7. The hardship results from circumstances that were not taken by the landowner because the site is unusually shaped and located on a busy intersection with a large ratio of front and corner yard frontage along public streets in proportion to the total perimeter of the parcel.

8. Granting a variance to the existing development is the minimum action that will make use of the site because the proposed development is an adaptive re-use of existing infrastructure for a vacant parcel. The site designers have also made a good faith effort to comply with the setback maximums in 30-3.E.11 by siting the buildings as close to the front and corner-side setbacks while meeting other development standards.

9. The variance is in harmony with the general purpose and intent of the ordinance because the site designers have provided additional landscape and hardscaping features to create a pedestrian oriented frontage to comply with the intent of the setback maximums in the DT-2 District.

10. If a variance is granted, the public safety and welfare will be assured and substantial justice will be done because the site has been designed to comply with the ordinance's development standards as well as the standards of the North Carolina Department of Transportation.

Conclusions of Law

1. The City of Fayetteville adopted the Unified Development Ordinance (UDO), codified under Chapter 30 of the City Code, to establish that "This Ordinance consolidates the City's zoning and subdivision regulatory authority as authorized by the North Carolina General Statutes".

2. Tiffany Bray, on behalf of John Wilson, submitted a timely application in compliance with the UDO.

3. Notice was properly given and a public hearing was held by the City of Fayetteville's Zoning Commission in compliance with the laws of North Carolina.

4. The Development Services Department for the City of Fayetteville is responsible for the coordination and enforcement of the UDO.

5. All of the general and specific conditions precedent to the issuance of a Variance HAVE been satisfied as:

- a. The strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships.
- b. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and are not the result of the actions of the landowner.
- c. The Variance is the minimum action that will make possible a reasonable use of land or structures.
- d. The Variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.
- e. The granting of the Variance assures the public safety and welfare and that substantial justice has been done.

6. Pursuant to Section 30-2.C.14.5, this Variance shall automatically expire if the Applicant does not record the Variance with the Cumberland County Register of Deeds within 30 days after the date the Variance is approved.

WHEREFORE, BASED ON THE FOREGOING FINDINGS OF FACTS AND CONCLUSIONS OF LAW, it is ORDERED by the City of Fayetteville's Zoning Commission that the application for the issuance of a Variance be APPROVED with no conditions.

VOTE: 5 to 0

This the _____ day of _____, 2022.

PAVEN PATEL, Zoning Commission Chair



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-3138

Agenda Date: 1/10/2023

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Consent

Agenda Number: 3.02

TO: Zoning Commission

THRU: Jennifer Baptiste, Planning & Zoning Division Manager

FROM: Craig Harmon, Senior Planner

DATE: January 10, 2022

RE: A22-57. Order of Approval - Findings of Fact: Variance to reduce the front yard setbacks in a Community Commercial (CC) zoning district, to be located at 716 Whitfield Street (REID #0436183799000), totaling 2.43 acres \pm and being the property of Charles Manis, Vanguard Culinary, represented by Ben Stout, Benjamin Stout Real Estate Services, Inc.

COUNCIL DISTRICT(S):
2 - Shakeyla Ingram

Relationship to Strategic Plan:

Strategic Operating Plan FY 2021
Goals 2026

Goal 3: City Investment in Today and Tomorrow

- Objective 3.2 - Manage the City's future growth and strategic land use.

Goal 4: Desirable Place to Live, Work and Recreate

- Objective 4.5 - Ensure a place for people to live in great neighborhoods.

Executive Summary:

30.2. C.14 Variance:

The purpose of a variance is to allow certain deviations from the dimensional standards of this Ordinance (such as height, yard setback, lot coverage, or similar numeric standards) when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner's control (such as exceptional topographical conditions, narrowness, shallowness, or the shape of a specific parcel of land), the literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest.

Variances are to be sparingly exercised and only in rare instances or under exceptional circumstances to relieve undue and unique hardships to the landowner. No change in permitted uses or applicable conditions of approval may be authorized by variance. On December 13, 2022, the Zoning Commission held an evidentiary hearing regarding this case. There was one speaker in favor and none in opposition. After hearing all evidence, the Commission voted 5-0 to approve the variance.

Background:

Owner: Charles ManisVanguard Culinary
Applicant: Ben Stout, Benjamin Stout Real Estate Services, Inc
Requested Action: Request to reduce front yard setback and allow a commercial addition in the front yard.
Zoning District: Community Commercial (CC)
Property Address: 716 Whitfield St
Size: 2.43 acres ±
Existing Land Use: Commercial Food Processing
Surrounding Zoning and Land Uses

- North: SF-6 - Residential
- South: CC - Commercial
- East: CC & SF-6 - Residential & Commercial
- West: LI - Industrial property and Rail Road Tracks

Letters Mailed: 19

Issues/Analysis:

The property is approximately two and a half acres and is located at the intersection of Whitfield Street and the Rail Road Tracks. The site is a commercial lot. According to the applicant, the current usage is food production. In order to meet the growing needs of the business, the facility needs to expand. This is being hindered by the railroad line that is directly to the west of the plant. The current front yard setback is preventing the plant from expanding in a manner that doesn't impact public safety. Due to the previous expansion and constraints related to the existing parking, the applicant states that the front is the only location available for expansion.

The majority of the surrounding zoning is CC, Community Commercial, and LI, Light Industrial. There are some older properties still zoned as single-family residential nearby, some of which are being used for commercial purposes.

This variance request is to cover various site deviations:

- a) Reduction of the front yard setback to one foot;

The applicant has submitted a site plan showing a proposed location for the structure. Currently, the proposed structure is sited approximately 25 feet from the Rail Road Right-of-Way. If the variance is approved, the proposed structure will be allowed to be built within one foot of the Whitfield Street Right-of-Way, which is 100 feet wide. A fence would also be located between the new building and the property line. This would result in a 24-foot reduction in the front yard setback.

Insufficient Justification for Variance

The following does not constitute grounds for a Variance:

1. The siting of other nonconforming or conforming uses of land or structures in the same or other districts;
2. The request for a particular use expressly, or by inference, prohibited in the

district; or

3. Economic hardship or the fact that property may be utilized more profitably with a Variance.

Subsequent Development

The minimum lot size for the CC zoning district is 10,000 square feet for commercial uses.

This lot is almost two and a half acres.

The following findings are based on the responses submitted in the application by the applicant and best available information of the proposal without the benefit of testimony provided at the evidentiary hearing.

Findings of Fact Statements as reviewed by the Planning Staff:

1. **There is sufficient evidence that the strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence:**

According to the applicant, the front setback in this case makes it impractical to maximize the building envelope. With the constraints of the railroad and surrounding properties there is no other areas the plant can expanded. This plant is located in an industrial corridor which includes a railroad track. This eliminates the expansion on the left side of the plant. In addition, the proposed expansion would be approximately 30 feet from the edge of pavement on Whitfield Street. The owner is requesting the least amount of expansion based on the needs to grow the business. With shape of the land this expansion will have no impact on the traffic or safe travel along Whitfield Street.

2. **There is sufficient evidence that any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and are not the result of the actions of the landowner as shown by the following evidence:**

According to the applicant, the railroad track dynamically impacts the property to the west. In addition, the property to the east is a closed gas station that has remediation issues preventing it from being a viable alternative for expansion.

3. **There is sufficient evidence that the Variance is the minimum action that will make possible a reasonable use of land or structures as shown by the following evidence:**

According to the applicant, the front setback in this case makes it impractical to maximize the building envelope. With the constraints of the railroad and surrounding properties there is no other areas the plant can expanded. This plant is located in an industrial corridor which includes a railroad track. This eliminates the expansion on the left side of the plant. In addition, the proposed expansion would be approximately 30 feet from the edge of pavement on Whitfield Street. The owner is requesting the least amount of expansion based on the needs to grow the business. With shape of the land this expansion will have no impact on the traffic or safe travel along Whitfield Street.

4. **There is sufficient evidence that the Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit as shown by the following evidence:**

The applicant states that the variance it will allow for the growth of an existing business within the City. Each property and location is unique and in this case its a win/win for all parties. The safety of the public will be secured with the distance from the proposed building to the edge of street pavement. Vanguard will increase its capacity and thus pay more in taxes. More importantly the City secures a business that is looking to grow.

5. There is sufficient evidence that in the granting of the Variance, the public safety and welfare has been assured and substantial justice has been done as shown by the following evidence:

The applicant states There is no negative impact on the public or surrounding businesses.

Budget Impact:

There is no immediate budgetary impact

Options:

1. Approve Findings as presented.
2. Approve Findings with amendments.

Recommended Action:

Approve the order of approval - findings of fact as presented.

Attachments:

1. Application
2. Aerial Notification Map
3. Zoning Map
4. Land Use Map
5. Subject Property Photos
6. Surrounding Property Photos
7. Site Plan
8. District Information
9. Order of Approval - Findings of Fact

Project Overview

#897163

Project Title: Vanguard Culinary

Application Type: 5.4) Variance

Workflow: Staff Review

Jurisdiction: City of Fayetteville

State: NC

County: Cumberland

Project Location

Project Address or PIN: 716 WHITFIELD ST (0436183799000) **Zip Code:** 28306

GIS Verified Data

Property Owner: Parcel

- 716 WHITFIELD ST: FOOD PROPERTIES LLC

Acreage: Parcel

- 716 WHITFIELD ST: 2.43

Zoning District:

Fire District:

Hospital Overlay District:

Cape Fear District:

Haymount Historic District:

100 Year Flood:

Watershed:

Subdivision Name:

Airport Overlay District:

Coliseum Tourism District:

Downtown Historic District:

Floodway:

500 Year Flood:

Variance Request Information

Requested Variances: Minimum yard/setback

Describe the nature of your request for a variance and identify the standard(s)/requirement(s) of the City Code proposed to be varied.:

The current usage is food production. In order to meet the growing needs of the business the facility needs to be expanded. This is being hindered by the railroad that is directly to the East of the plant. The current front yard setback is preventing the plant from expanding in a manner that doesn't impact the public safety in any way. With previous expansion and constraints with parking the front area is the only location left for growth.

Section of the City Code from which the variance is being requested.: Variance

Identify the zoning district designation and existing use of land for all adjacent properties, including those across the street.:

The majority of surrounding zoning is CC and LI. There are some older SFR homes near by, some being used for commercial uses.

Justification for Variance Request - Use this and the following pages to answer the questions (upload additional sheets if necessary).

The Variance Standards states: A variance application shall be approved only upon a finding that all of the following standards are met.

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships; it shall not be

- necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
2. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, such as location, size, or topography, and are not the result from conditions that are common to the neighborhood or the general public be the basis from granting a variance;
 3. The Variance is the minimum action that will make possible a reasonable use of land or structures;
 4. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
 5. In the granting of this Variance, the public safety and welfare have been assured and substantial justice has been done.

Please complete the following five (5) questions to verify the evidence that all the required standards are applicable to your property and/or situation.

Provide a written description of any hardship(s) and how such hardship(s) is not self-imposed.:

1. The front setback in this case makes it impractical to maximize the building envelope. With the constraints of the railroad and surrounding properties there is no other areas the plant can expand.
2. As noted earlier this plant is located in a industrial corridor which includes a railroad track. This eliminates the expansion on the left side of the plant. In addition the radius of the land allows for the variance to be granted and still have considerable distance to the public right of way for traffic.
3. We are requesting the least amount of expansion based on the needs to grow the business.
4. With shape of the land it will have NO impact on the traffic or the safe travel along Whitfield Street.
5. As noted in #4 there is NO risk to the safety of the public .

Indicate if the property has exceptional topographic conditions or some other extraordinary situation or condition that makes it unlike other properties in the immediate vicinity.:

The railroad track dynamically impacts the property. In addition the property to the "East" is a closed gas station that has remediation issues preventing it from being a viable alternative for expansion.

Is there some particular condition, situation, or development on the property immediately adjacent to the subject property that affects the subject property's ability to comply with the regulations?:

Just noted in previous comments.

Describe how the variance is in harmony with the general purpose and intent of the City Code, and preserves the spirit.:

In allowing the variance it will allow for the growth of an existing business within the City. Each property and location is unique and in this case its a win/win for all parties. The safety of the public is going to secured with the amount of space as it relates to the right of way. Vanguard will increase its capacity and thus pay more in taxes. More importantly the City secures a business that is looking to grow and thus genrate more taxable basis.

Explain any potential negative external impacts that may result from the proposed variance, and how they will be mitigated. Financial hardship cannot be considered for a reason to grant a variance.:

None. There is no negative impact on the public or surrounding businesses.

Height of Sign Face : 0

Height of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

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Height of Sign Face: 0

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Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Primary Contact Information

Contractor's NC ID#:

Project Owner

Charles Manis
Vanguard Culinary
716 Whitfield Street
Fayetteville, NC 28306
P: 9104848999
charlesgmanis@vanguardculinary.com

Project Contact - Agent/Representative

Ben Stout
Benjamin Stout Real Estate Services, Inc
409 Chicago Dr, Suite 103, Fayetteville
Fayetteville, NC 28306
P: 9107790019
ben@benstoutconstruction.com

As an unlicensed contractor, I am aware that I cannot enter into a contract that the total amount of the project exceeds \$30,000. :

Project Contact - General Contractor

Ben Stout
Benjamin Stout Real Estate Services, Inc
409 Chicago Dr, Suite 103, Fayetteville
Fayetteville, NC 28306
P: 9107790019
ben@benstoutconstruction.com

NC State General Contractor's License Number: 69633

NC State Mechanical Contractor's #1 License Number:
NC State Mechanical Contractor's #2 License Number:
NC State Mechanical Contractor's #3 License Number:
NC State Electrical Contractor #1 License Number:
NC State Electrical Contractor #2 License Number:
NC State Electrical Contractor #3 License Number:
NC State Plumbing Contractor #1 License Number:
NC State Plumbing Contractor #2 License Number:

Indicate which of the following project contacts should be included on this project: General Contractor



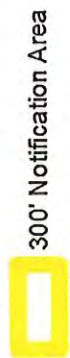
Aerial Notification Map

P22-57

Request: Variance to Reduce Frontyard Setback

Address: 716 Whitfield Street

Legend



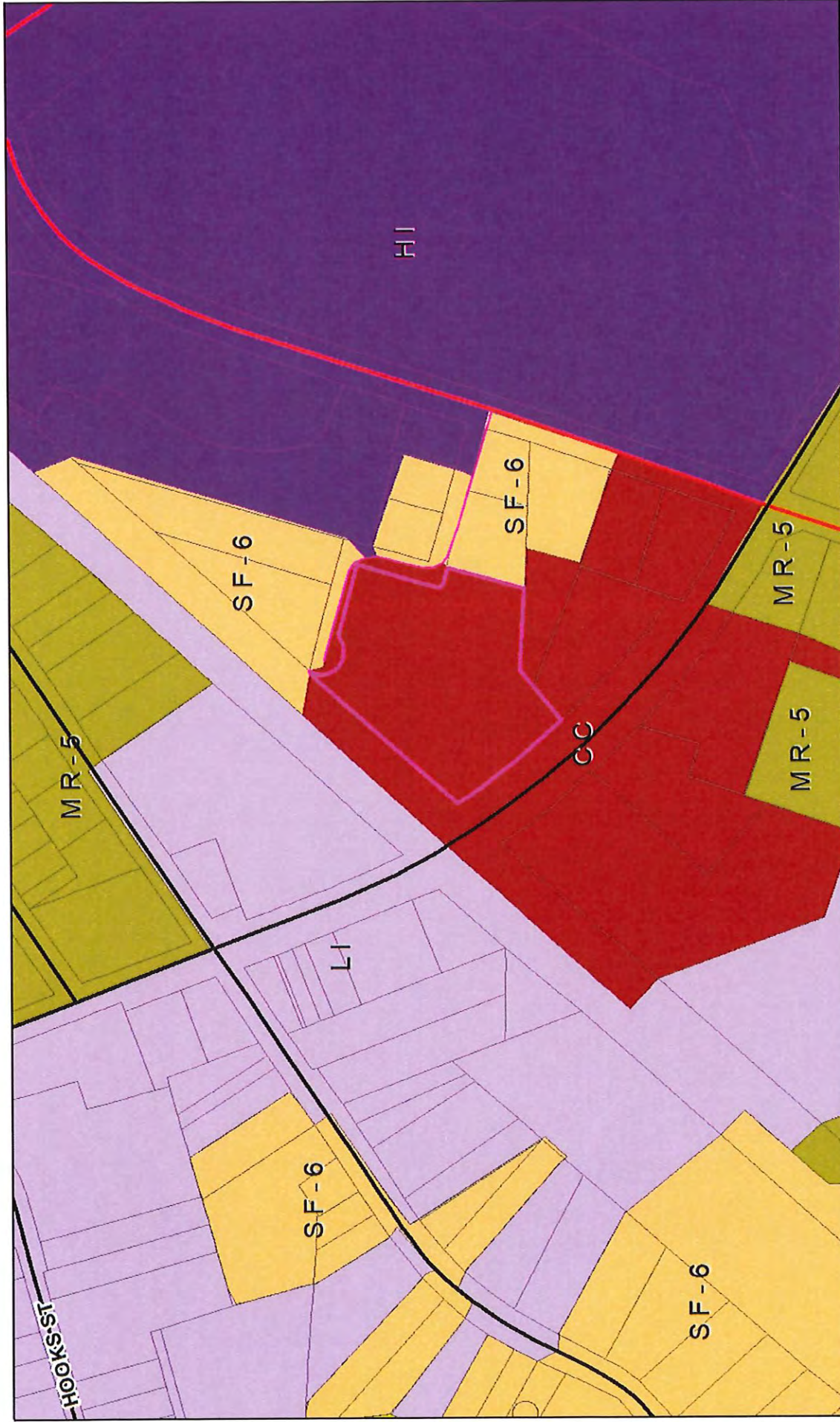
300' Notification Area

Parcels



Letters are being sent to all property owners within the 300' buffer. Subject property is shown in the hatched pattern.







Zoning Map

A22-57

Request: Variance to Reduce Frontyard Setback

Address: 716 Whitfield Street

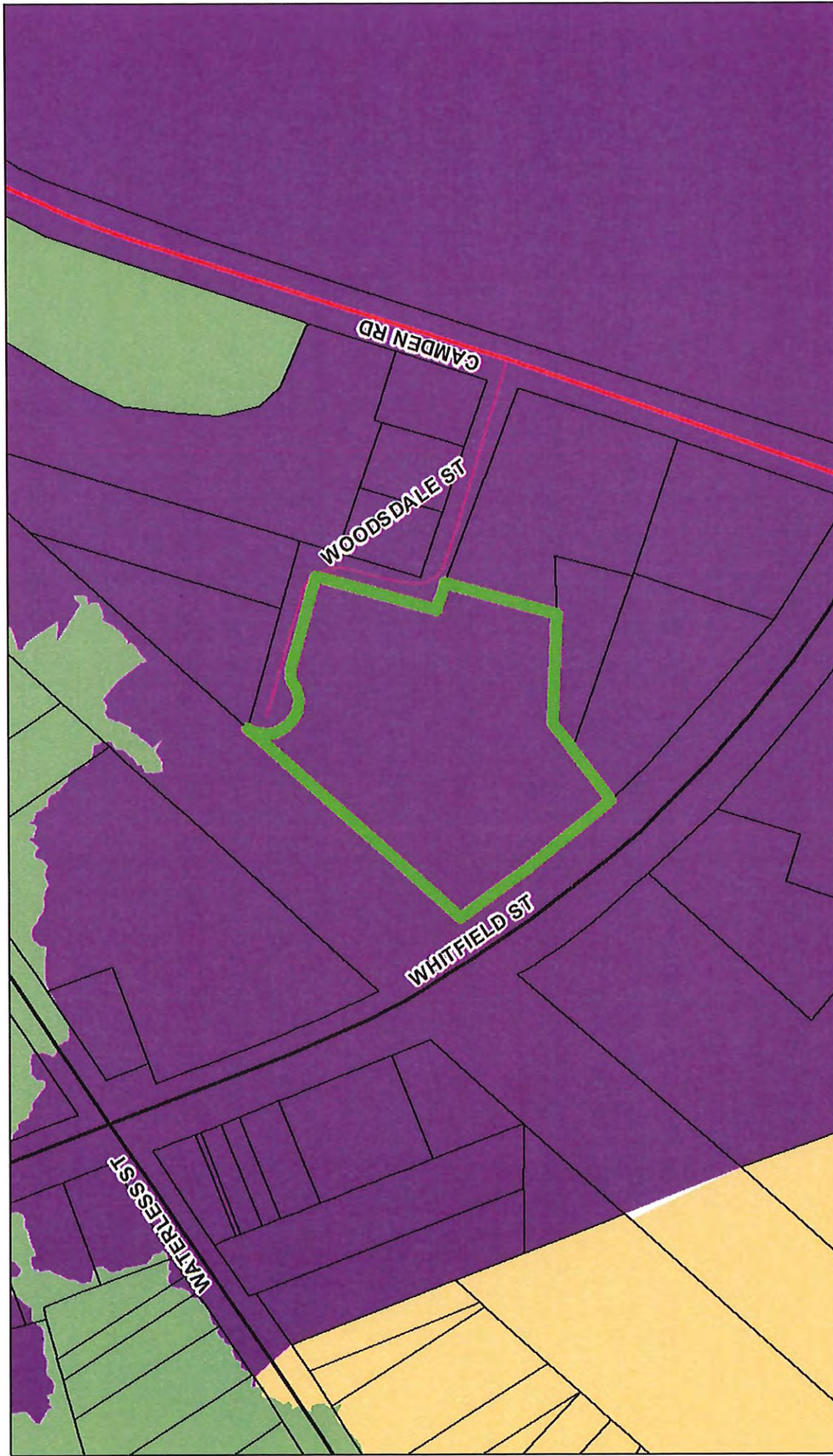
Legend

	CC		MR-5
	HI		SF-10
	LI		SF-6



Letters are being sent to all property owners within the 300' buffer. Subject property is shown in the hatched pattern.





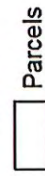
Land Use Plan Map

A22-57

Request: Variance to Reduce Frontyard Setback

Address: 716 Whitfield Street

Legend



Future Land Use 2040

Character Areas

- PARKOS - PARK / OPEN SPACE
- MDR - MEDIUM DENSITY
- EC - EMPLOYMENT CENTER



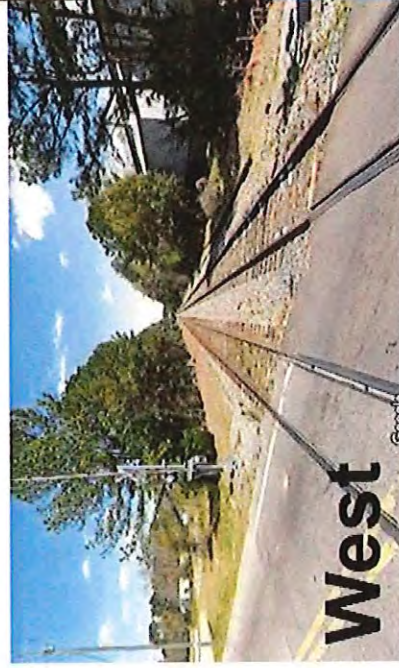
Letters are being sent to all property owners within the 300' buffer. Subject property is shown in the hatched pattern.



Subject Property



North



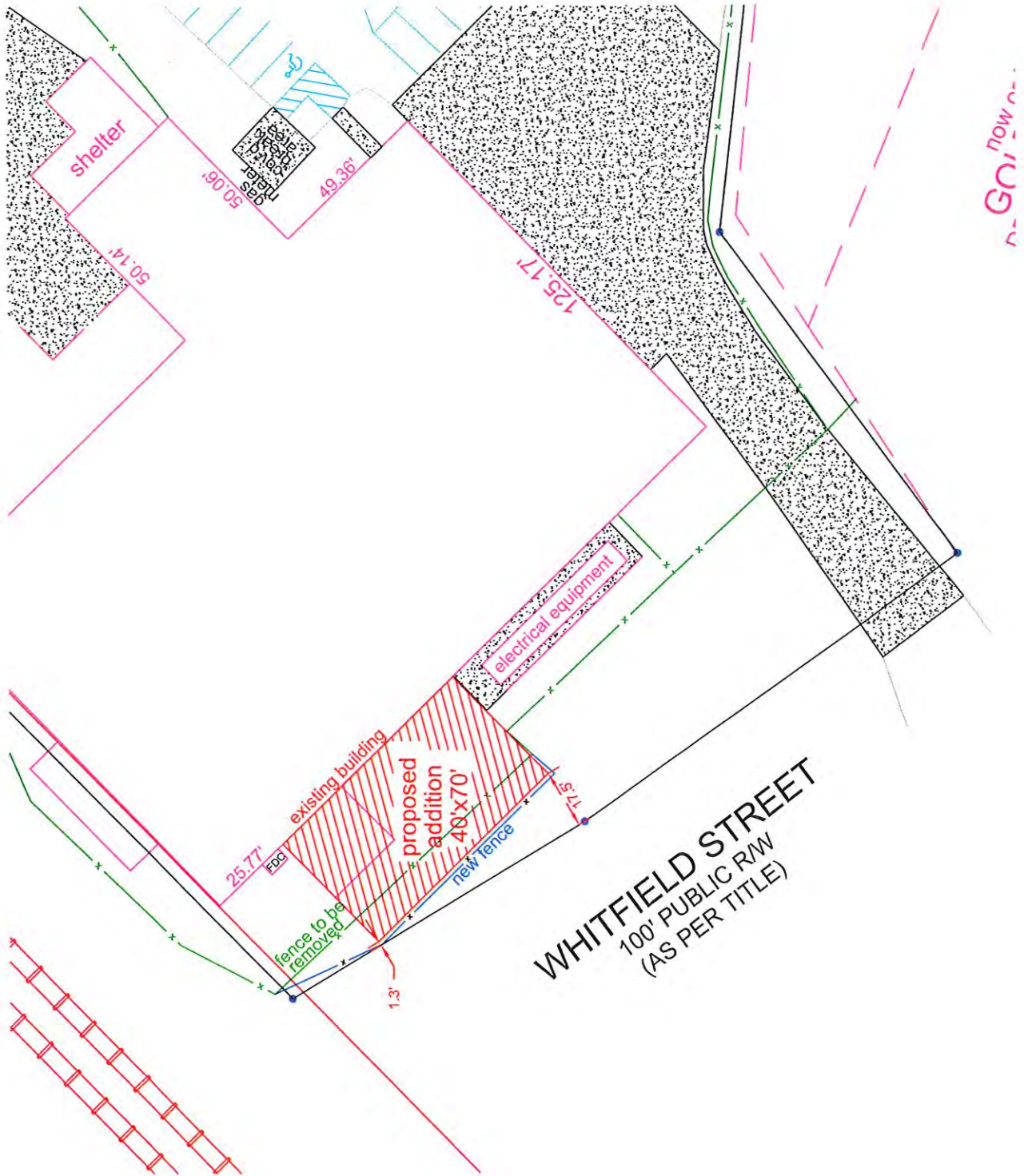
West



East

South





PART II - CODE OF ORDINANCES

CHAPTER 30 – UNIFIED DEVELOPMENT ORDINANCE

Article 30-3: Zoning Districts

30-3.E. Business Base Zoning Districts

30-3.E.5. Community Commercial (CC) District

CC COMMUNITY COMMERCIAL DISTRICT	PURPOSE			
	The Community Commercial (CC) District is established and intended to accommodate a diverse range of medium- to high-intensity retail, service, and office uses that provide goods and services serving the residents and businesses in the community at large—e.g., shopping centers, convenience stores, retail sales establishments, and heavier commercial uses (subject to approval of a Special Use Permit (see Section 30-2.C.7)). The district is typically located along major arterials, at the intersection of arterials, and along growth corridors identified in City plans. Higher-density residential uses are encouraged on the upper floors of nonresidential establishments, and may exist as stand-alone buildings as part of a larger horizontal mixed- use development. The district is subject to standards intended to ensure development is compatible with surrounding uses as well as the design standards in Article 30-5: Development Standards .			
DIMENSIONAL STANDARDS				
DIMENSIONAL STANDARD	NONRESIDENTIAL	MIXED-USE	ALL OTHER USES	ACCESSORY STRUCTURES
Lot area, min. (sq. ft.)	10,000	8,000	15,000	n/a
Lot width, min. (ft.)	45			n/a
Gross residential density, max. (dwelling units/acre)[1]	24			n/a
Lot coverage, max. (% of lot area)	65			[2]
Height, max.	the greater of six stories or up to 75 feet			25; 15 where abutting a single-family zoning district or use with setback less than 10 feet
Front and corner side setback, min. (ft.) [3]	The lessor of 25 ft. or 60 ft. from centerline of private streets			Not allowed in front, corner side, or side yard areas
Side setback, min. (ft.)				
Rear setback, min. (ft.)	3; 20 where abutting an alley or single-family zoning district or use			5
Spacing between buildings, min. (ft.)	20			5

Zero lot line development standards	Zero lot line development shall comply with the applicable maximum gross residential density standards. Setbacks and lot area for lots abutting the perimeter of the development shall meet the district minimums; otherwise no setbacks, lot area, lot coverage, or building spacing requirements shall apply. [4]
-------------------------------------	---

NOTES:

- [1] A maximum density of 36 is allowed in priority redevelopment areas as may be designated by City Council.
- [2] Accessory structures/use areas shall not exceed the lesser of: 1,500 square feet in size or 30 percent of the allowable lot coverage.
- [3] Minimum front (and corner side) setbacks for nonresidential, multi-family, and mixed-uses may be reduced to 15 feet when off-street parking is located to the side or rear of buildings and buildings are located proximate to the street (or corner) rights-of-way.
- [4] Zero lot line development is subject to standards in Section 30-3.B.2 and, on a tract or site of three acres in area or less may require approval of a Neighborhood Compatibility Permit (see Section 30-2.C.21 Neighborhood Compatibility Permit).

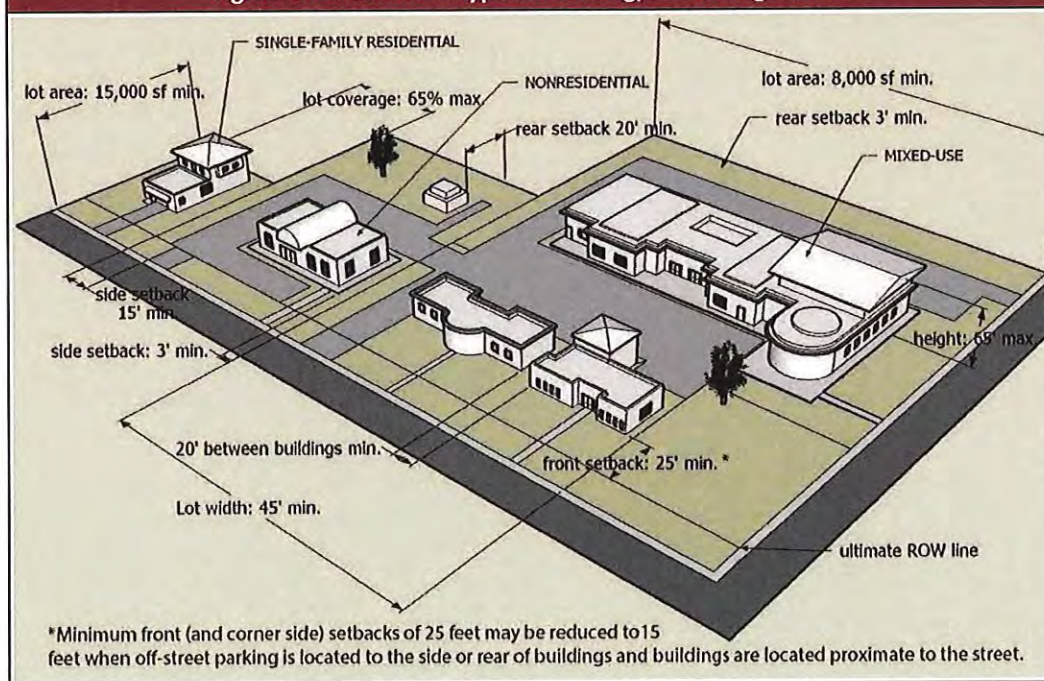
**Figure 30-3.E.5.a:
CC Typical Lot Pattern**



**Figure 30-3.E.5.b:
CC Typical Building Form**



Figure 30-3.E.5.c: CC Typical Building/Lot Configuration



(Ord. No. S2011-008, §§ 6, 14.2, 7-25-2011; Ord. No. S2011-014, §§ 1.3, 1.4, 11-28-2011; Ord. No. S2012-001, Pt. 3, § 3.3, 1-23-2012; Ord. No. S2012-018, § 2.4, 9-10-2012; Ord. S2014-003, § 1c, 1-13-2014; Ord. No. S2014-015, § 5, 8-11-2014; Ord. No. S2021-040, § 1, 10/25/2021)

Effective on: 11/18/2013

**CITY OF FAYETTEVILLE
STATE OF NORTH CAROLINA
ORDER TO APPROVE A VARIANCE**

To reduce the front yard setback to one (1) foot in a Community Commercial (CC) zoning district.

VARIANCE A22-57

Property Address: 716 Whitfield Street
REID Number: 0436183799000
Property Owners: Charles Manis, Vanguard Culinary

The Zoning Commission for the City of Fayetteville, NC, held an evidentiary hearing on December 13, 2022, to consider a Variance request filed by Ben Stout, Benjamin Stout Real Estate Services, Inc., (Applicant) on behalf of Charles Manis, Vanguard Culinary, (Owner) to reduce the front yard setback to one (1) foot.

On November 28, 2022, a notice of public hearing was mailed to Vanguard Culinary and all of the owners of property within 300 feet of the subject property. On November 30, 2022, a notice of public hearing sign was placed on the subject property. On December 2 and 9, 2022, a notice of public hearing advertisement was placed in the legal section of *The Fayetteville Observer*.

Having considered all of the sworn testimony, evidence, and oral arguments submitted at the hearing by the parties, the Zoning Commission makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

Findings of Fact

1. Chapter 30, Article 3, Section E.5., of the City of Fayetteville's Code of Ordinances establishes the required setbacks for structures in the Community Commercial (CC) zoning district.
2. Vanguard Culinary is the Owner of a commercially zoned property located at 716 Whitfield Street, which contains approximately 2.43 acres ± in the City of Fayetteville.
3. The Applicant filed an application for a Variance on November 9, 2022.

4. The subject property is zoned Community Commercial (CC).
5. The Owner is requesting to reduce the front yard setback from 25 feet to 1 foot.
6. The applicant has the burden of proof to show that the Variance meets the following statutory requirements:
 - a. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardship.
 - b. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land and are not the result of the actions of the landowner as shown.
 - c. The Variance is the minimum action that will make possible a reasonable use of land or structures.
 - d. The Variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.
 - e. In granting of the Variance, the public safety and welfare have been assured and substantial justice has been done.
7. The subject property is a Community Commercial (CC) zoned property that is adjacent to other Community Commercial (CC) property on three sides.
8. This property is a commercial food production, warehousing and shipping business.
9. The property is approximately two and a half acres and is located at the intersection of Whitfield Street and the Rail Road Tracks.
10. This Variance addresses the Ordinance requirement for a structure to meet a 25-foot setback from the front property line. This Variance will allow for a reduction to a 1-foot front yard setback for a structure.
11. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardship because the front setback on this property makes it impractical to maximize the building envelope. With the constraints of the railroad and surrounding properties, there are no other areas the plant can be expanded. This plant is located in an industrial corridor which includes a railroad track. This eliminates the expansion on the left side of the plant. In addition, the proposed expansion would be approximately 30 feet from the edge of pavement on Whitfield Street. The Owner is requesting the least amount of expansion based on the needs to grow the business. With the shape of the land, this expansion will have no impact on the traffic or safe travel along Whitfield Street.
12. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land and are not the result of the actions of the landowner because the railroad track dynamically impacts the property to the west. In addition, the property to the

east is a closed gas station that has remediation issues preventing it from being a viable alternative for expansion.

13. The Variance is the minimum action that will make possible a reasonable use of land or structures because without the Variance, the front setback makes it impractical to maximize the building envelope. With the constraints of the railroad and surrounding properties, there are no other areas the plant can be expanded. This plant is located in an industrial corridor which includes a railroad track. This eliminates the expansion on the left side of the plant. In addition, the proposed expansion would be approximately 30 feet from the edge of pavement on Whitfield Street. The Owner is requesting the least amount of expansion based on the needs to grow the business. With the shape of the land, this expansion will have no impact on the traffic or safe travel along Whitfield Street.

14. The Variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because it will allow for the growth of an existing business within the City. The subject property's shape and location is unique. The safety of the public will be secured with the distance from the proposed building to the edge of street pavement. The Owner will increase its capacity and thus pay more in taxes and the City secures a business that is growing.

15. There is no evidence that the granting of this Variance would harm public safety and welfare, and substantial justice would be ensured.

Conclusions of Law

1. The City of Fayetteville adopted the Unified Development Ordinance (UDO), codified under Chapter 30 of the City Code, to establish that "This Ordinance consolidates the City's zoning and subdivision regulatory authority as authorized by the North Carolina General Statutes".

2. The Applicant, submitted a timely application in compliance with the UDO.

3. Notice was properly given and an evidentiary public hearing was held by the City of Fayetteville's Zoning Commission in compliance with the laws of North Carolina.

4. The City Development Services Department is responsible for the coordination and enforcement of the UDO.

5. All of the general and specific conditions precedent to the issuance of the requested Variance HAS been satisfied as:

a. The strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships.

b. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and are not the result of the actions of the landowner.

- c. The Variance is the minimum action that will make possible a reasonable use of land or structures.
- d. The Variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.
- e. The granting of the Variance assures the public safety and welfare and that substantial justice has been done.

6. Pursuant to Section 30-2.C.14.5, this Variance shall automatically expire if the Applicant does not record the Variance with the Cumberland County Register of Deeds within 30 days after the date the Variance is approved.

WHEREFORE, BASED ON THE FOREGOING FINDINGS OF FACTS AND CONCLUSIONS OF LAW, it is ORDERED by the City of Fayetteville's Zoning Commission that the application for the issuance of the Variance be APPROVED with no conditions.

VOTE: 5 to 0

This the 10th day of January, 2022.

PAVEN PATEL
Zoning Commission Chair



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-3141

Agenda Date: 1/10/2023

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Consent

Agenda Number: 3.03

TO: Zoning Commission

THRU: Development Services, Planning and Zoning Division

FROM: Catina Evans - Office Assistant II

DATE: January 10, 2023

RE: Approval of Meeting Minutes: December 13, 2022

COUNCIL DISTRICT(S):

All

Relationship to Strategic Plan:

Strategic Operating Plan FY 2022

Goals 2026

Goal VI: Collaborative Citizen & Business Engagement

- Objective 6.2 - Ensure trust and confidence in City government through transparency & high-quality customer service.

Executive Summary:

The City of Fayetteville Zoning Commission conducted a meeting on the referenced date, which they considered items of business as presented in the draft.

Background:

NA

Issues/Analysis:

NA

Budget Impact:

NA

Options:

1. Approve draft minutes;

2. Amend draft minutes and approve draft minutes as amended; or
3. Do not approve the draft minutes and provide direction to Staff.

Recommended Action:

Option 1: Approve draft minutes.

Attachments:

Draft Meeting Minutes: December 13, 2022

**MINUTES
CITY OF FAYETTEVILLE
ZONING COMMISSION MEETING
FAST TRANSIT CENTER COMMUNITY ROOM
DECEMBER 13, 2022 @ 6:00 P.M.**

MEMBERS PRESENT

Pavan Patel, Chair
Stephen McCorquodale, Vice-Chair
Clabon Lowe
Kevin Hight
Roger Shah
Alex Keith

STAFF PRESENT

Jennifer C. Baptiste, Planning and Zoning Manager
Craig Harmon, Senior Planner
Heather Eckhardt, Planner II
Demetrios Moutos, Planner I
Lisa Harper, Assistant City Attorney
Catina Evans, Office Assistant II

MEMBERS ABSENT

The Zoning Commission Meeting on Tuesday, December 13, 2022, was called to order by Chair Pavan Patel at 6:03 p.m.

I. APPROVE THE AGENDA

MOTION: Stephen McCorquodale made a motion to approve the agenda with the revision that case P22-59 be postponed until the meeting on Tuesday, January 10, 2022.

SECOND: Alex Keith

VOTE: Unanimous (5-0)

II. APPROVAL OF CONSENT ITEMS TO INCLUDE THE MINUTES FOR THE NOVEMBER 8, 2022, MEETING

MOTION: Kevin Hight made a motion to approve the consent items.

SECOND: Stephen McCorquodale

VOTE: Unanimous (5-0)

The members of the Board stated their names for the record. The speakers and applicants took the oath from Jennifer Baptiste.

Mr. Patel asked if any of the Commission members had any conflicts to disclose regarding any of the cases on the agenda for the evening, and the Board members did not have any conflict of interest regarding the cases.

III. EVIDENTIARY HEARINGS

A22-54. Variance to allow a four feet (4') and six feet (6') solid fence where a four feet (4') foot open style picket fence is allowed on 0.36 acres \pm , located at 5200 Sundown Drive (REID #0408835557000), and being the property of Black Door Properties LLC, represented by Jenna Milan.

Heather Eckhardt presented case A22-54. The property is located in District Four in the Fox Fire subdivision. The property is SF-10. The Future Land Use Plan calls for the area to be low-density residential. Ms. Eckhardt showed the Board pictures of the fence and the site plan with the proximity of the fencing in the front and rear yards. The Board was presented with the following voting options.

1. To approve as is
2. To approve with conditions
3. To deny the request

Mr. Patel opened the evidentiary hearing for case A22-54

Speakers in favor:

Jenna Milan, 3536 Chagford Lane, Fayetteville, NC 28306

- Ms. Milan purchases properties from Veterans who are facing foreclosure.
- She provides homes for veterans and first responders.
- The previous owner of the property told her about the neighborhood.
- Ms. Singleton, a neighbor, told her that her property was on the opposite side of an easement.
- Ms. Milan sought a surveyor to assess her property lot line.
- Ms. Milan decided to put up a fence after receiving multiple complaints from Ms. Singleton.
- She had the fence built so that there would be privacy on her property.
- She wants the Board to approve the Variance and she is willing to do a staggered fence line if necessary.

Mr. Hight asked how far back her fence was located. Ms. Milan said the fence line was behind the stake mark on her property. Mr. Shah asked if she constructed the fence before the permit was issued for the fence. Ms. Milan said that she paid someone to build the fence and she obtained a permit to construct a 6-foot solid fence.

Speakers in opposition:

John Fejerang, 6084 Rosser Pittman Road, Sanford, NC 27332

- Mr. Fejerang is speaking on behalf of his mother whose second language is English. She is the owner of the property that is in the neighborhood where the applicant's property is located.
- He noted that there are rules that everyone must obey.
- He stated that the Unified Development Ordinance codes are for establishing harmony in our communities.
- The codes should not be used to relieve a self-imposed hardship by the applicant.
- The property in question has a fence that is built on the property with an easement.
- The fence is on an easement.
- The fence is not built in the proper orientation so 42 feet of fence would have to be rebuilt.
- Thirty feet of the 42-foot fencing contains the 6-foot solid fence.
- The applicant obtained the permit after the fence was built.
- Mr. Fejerang noted an article that contained information regarding the fact that chain-length fences lower property values.
- The 6-foot fence has a five-foot deck.
- The fence would need to be 10 or 12 feet to provide privacy.
- There is a chain-length fence to the back of the property.
- He showed the Board additional photos of the fence that show drainage and an easement.
- The Beaver Creek subdivision is located behind the property.
- Mr. Fejerang wants the variance denied and the fence rebuilt due to the fact that the City should not pay for their error.

Ms. Milan asked if Mr. Fejerang had sat on the deck of the property since the fence was built. He said he had not. Ms. Milan said she spoke to the City and they approved the fence construction with the easement. Ms. Milan asked Mr. Fejerang if he was aware of this and he said no. She asked if he was aware that there are exceptions for sloping of fences and Mr. Fejerang said he said no. Mr. Hight stated that Mr. Fejerang did not state what the burden was to him and the community. Mr. Fejerang said the burden was financial. Mr. Shah said that his understanding was that the fence was not constructed correctly. Mr. Fejerang said the front of the fence is not built in accordance with the Unified Development Ordinance guidelines. Ms. Harper asked for a copy of his documents for the record. Mr. Fejerang stated that the information came from several sources.

Mr. Hight asked for clarification about the fence from Ms. Milan. Ms. Harper said Mr. Hight and Mr. Fejerang could ask Ms. Milan additional questions when she is called back up to speak.

Lizzie Lewis, 5204 Sundown Drive, Fayetteville, NC 28303

- Ms. Lewis said she lives in a cul de sac where more traffic is evident.
- She said the fence is out of place with the well-maintained cul de sac.
- Ms. Lewis does not like how the fence looks.
- She is worried about an increase in traffic because children live in the area.
- Ms. Lewis stated that she heard the applicant's testimony, but she is concerned about the increase in traffic in the area.

Ms. Milan asked Ms. Lewis if she was aware that fences increase property value. Ms. Lewis said that the fence was odd due to its placement in the cul de sac.

Lola Lewis, 5212 Sundown Drive, Fayetteville, NC 28303

- Ms. Lewis stated that the fence looks odd in the area. It makes the area look unfriendly.
- She said people in the neighborhood know each other. The fence sends a "leave me alone" message to residents, which is not the mentality of their neighborhood.

Ms. Milan asked Ms. Lewis how long she had lived in the area and if she had met her before. Ms. Lewis said she has resided in the neighborhood for 14 years and she had previously met Ms. Milan. Ms. Milan said she had not previously met Ms. Lewis.

Mr. Patel closed and reopened the evidentiary hearing for case A22-54 so that Ms. Milan could return to the podium to speak and answer questions.

A guest in the audience asked if there was a permit in place prior to Ms. Milan building the fence. Ms. Milan said the permit was obtained after the fence was built. Ms. Harper briefly interrupted the hearing to tell everyone that they must wait for the Chairman to acknowledge them before they speak. Mr. Patel asked if there were any more questions.

Ms. Eckhardt said the applicant is permitted to have a 4-foot fence that is 50% open. The applicant can construct a wrought iron fence up to 5 feet high. Ms. Eckhardt confirmed that the permit was obtained prior to the fence being installed. She said the City approved the 6-foot fence in the front and the 4-foot fence in the back yard and the City Stormwater Division approved the easement. The fence in the front yard is what is in question. Ms. Eckhardt said that the City ordinance allows for a 4-foot fence in the front yard, but she is unaware of the County guidelines.

Mr. Patel closed the evidentiary hearing for case A22-54.

MOTION: Mr. Shah made a motion to approve the Variance with the added condition that the applicant places the 4-foot picket fence in the front yard based on the following findings of fact:

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence: The fence is constructed as a 6-foot solid fence in the backyard. To demolish the entire fence would be a hardship to the applicant if a 4-foot picket fence is not allowed in the front yard.
2. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and they are not the result of the actions of the landowner as shown by the following evidence: The land does slope a lot in the back yard which is the reason the applicant had the fence constructed.
3. The Variance is the minimum action that would make possible a reasonable use of land or structures as shown by the following evidence: With the added condition, this would be the minimum action that would make the land useful.
4. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit as shown by the following evidence: With the added condition, the front yard fence if changed to a picket fence would be in harmony with the neighborhood.
5. In the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done as shown by the following evidence: Public safety and welfare would be established.

SECOND: Kevin Hight

VOTE: 4-1 (Keith opposed)

IV. LEGISLATIVE HEARINGS

A22-55. Variance to increase the required right-of-way setback maximums from twenty feet (20') to sixty-eight feet (68') along Ramsey Street and Seventy-three feet (73') along Rowan Street, for property located at 108 Rowan Street (REID# 0437666097000), containing 1.75 acres ± and being the property of AABC-W ROWAN, LLC.

Lauren Long presented case A22-55. She showed the Board the site plan which revealed that the property was at the intersection of Ramsey Street and Rowan Street. The Future Land Use Map calls for the area to be zoned Downtown mixed-use. She showed a view of the site from Rowan Street.

Ms. Baptiste swore in additional speakers who were late to the meeting due to a passing train.
Mr. Patel opened the evidentiary hearing for case A22-55.

Speakers in favor:

John Wilson, Carolina Capital, 500 E. Morehead Street, Suite 230 Charlotte, NC 28202

- Mr. Wilson said the property was a former Rite Aid.
- He plans to add landscaping and put new businesses there.
- Mr. Wilson wants to make the area more attractive.

Evan Niehues, 1705 S. Walton Boulevard, Suite 3, Bentonville, AR 72712

- Mr. Niehues said they had tried to make the property a drive-through restaurant.
- He said they have put in trees and shrubs and added seating areas.
- Mr. Niehues said they have had some hardships that are outlined in the information he gave to the Board members.

Mr. Keith asked Ms. Long if there was a practical reason for the setbacks. Ms. Long said that the setbacks were established to make the area accessible to pedestrians. Ms. Long stated that she could not make recommendations but could explain the standard under the Unified Development Ordinance.

Mr. Patel closed the evidentiary hearing for case A22-55.

MOTION: Kevin Hight made a motion to approve the Variance based on the following findings of fact:

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence: The slope of the intersection makes it hard for the owner to do what he needs to do with the land.
2. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and they are not the result of the actions of the landowner as shown by the following evidence: The applicant said it is a corner lot. The lot is positioned at a tight angle.
3. The Variance is the minimum action that will make possible a reasonable use of land or structures as shown by the following evidence: Efforts have been made to shift the area to allow for the area to meet the proper North Carolina Department of Transportation requirements along with the landscaping.
4. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit as shown by the following evidence: In order to meet the spirit (of the ordinance), the applicant established walls and additional trees. They are going beyond what is necessary with the landscaping.
5. In the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done as shown by the following evidence: The changes are aesthetically pleasing. It is in the City's best interest to put the area and land to good use.

SECOND: Roger Shah

VOTE: Unanimous (5-0)

A22-57. Variance to reduce the front yard setbacks in a Community Commercial (CC) zoning district, to be located at 716 Whitfield Street (REID #0436183799000), totaling 2.43 acres ± and being the property of Charles Manis, Vanguard Culinary, represented by Ben Stout, Benjamin Stout Real Estate Services, Inc.

Mr. Harmon presented case A22-57. The property is located at the intersection of Whitfield Street and where the railroad tracks are located. The Fayetteville Observer is at the right-hand corner. Residential developments are nearby. The Future Land Use Plan calls for the property to be an Industrial Employment Center. On the right-hand side is the back portion of the building, and commercial buildings are located to the east of the building.

Mr. Patel opened the evidentiary hearing for case A22-57.

Speakers in favor:

Ben Stout, 409 Chicago Drive, Suite 103, Fayetteville, NC 28306

- The width of the expansion makes sure that there is enough space.
- The applicant wants to expand the area where he does his business of making food for various businesses.
- Mr. Stout said he has made sure not to impede on the residential area behind them.
- He is asking that the Board grant the Variance.

Mr. Patel closed the hearing for case A22-57.

MOTION: Alex Keith made a motion to approve the Variance based on the following findings of fact:

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence: The setbacks and easement create hardship for the applicant.
2. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and they are not the result of the actions of the landowner as shown by the following evidence: The hardship of the easement and the setbacks were not created by the applicant.
3. The Variance is the minimum action that will make possible a reasonable use of land or structures as shown by the following evidence: The applicant is not building more than what is needed for future use.
4. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit as shown by the following evidence: The applicant worked in accordance with the North Carolina Department of Transportation regulations.
5. In the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done as shown by the following evidence: They worked with the North Carolina Department of Transportation to make sure the safety and well-being of the community were maintained.

SECOND: Roger Shah

VOTE: Unanimous (5-0)

P22-46. Request to amend the previously approved conditions for a Community Commercial/ Conditional Zoning (CC/CZ) zoned property consisting of 7.11 acres±, located at 1707 Owen Drive (REID # 0426155731000), and being the property of Brandon Smith, HI Fayetteville LLC, represented by Tarek Shaer, Urbanest Group, Inc. and Akhil Hari, Good Homes.

Mr. Harmon presented case P22-46. The applicant is seeking to amend the previously approved conditions to match what the City Council recently approved that allows for a density increase of 50% if the amount of required parking for the multi-family use meets or exceeds the minimum amount identified in the Unified Development Ordinance. The land is Community Commercial with Limited Commercial properties nearby. The Future Land Use Plan calls for the property to be designated as a Community Center. The applicant has asked for the three conditions as follows:

Condition 1. Density is limited to 36 Units per Acre (255 maximum) in a mixed-use application in the CC zone by the UDO. This is the maximum density allowed in the CC district with the UDO text amendments for the adaptive reuse of hotels/motels into multi-family dwellings.

Condition 2. The current Multi-Family CC code allows for a maximum of 220 linear feet for any multi-family facade. The East and West facades of the multi-family portion of the existing building are estimated at 280'. Mixed-use of the common area on the South side complies with mixed-use requirements. The owner is requesting a condition to allow the existing width to remain as this is not a new development and there is no ability to shorten the building.

Condition 3. Reduction in required parking by 5% or reduced to a minimum of 554 spaces. Attached as part of your case packet, the applicant has submitted a Parking Demand Analysis, which was prepared by the Urbanest Group Inc. (This request is 26 spaces less than the standard UDO requirements).

Staff recommended approval of this rezoning based on the following:

- The proposed amendments to the existing conditional zoning implement policies adopted in the Future Land Use Plan and the Unified Development Ordinance. The three conditions placed on this approval by the owners assure that the conversion of this hotel to multi-family use will be appropriate for the area in question.
- The uses permitted by the proposed change in zoning district classification and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified due to the proposed number of units and the required number of parking spaces associated with this type of use.
- The proposed change is in accordance with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other public services and utilities to the area.

Mr. Patel opened the hearing for case P22-46.

Speakers in favor:

Tarek Shaer, 1007 N. Sepulveda Boulevard #23, Manhattan Beach, CA 90267

- Mr. Shaer is here to represent case P22-46.
- The project was approved in August 2022 to allow the conversion of a hotel.
- In May 2020, the text amendment 30-4.b allowed for a density increase of 50%. This equated to 215 units and they are not planning to build this many units.

- The owner had a Technical Review Committee (TRC) meeting with the City staff.

David Mitchell, 600 Madison Avenue, 24th Floor, New York, NY 10022

- Mr. Mitchell thanked the staff for being so responsive to his requests.
The company (Good Homes) is in the business of buying hotels and remodeling them.
- They met with the housing on Fort Bragg.
- He said there is a massive need for studio and one-bedroom housing in Fayetteville.
- Mr. Mitchell is seeking the Board's recommendation for this project.
- The apartment complex will have a swimming pool, laundry, tenant lounges, and game rooms.
- Mr. Mitchell is offering affordable housing. It will be a place that has a tremendous community feel.
- He wants to build quality housing.

Mr. Lowe asked Mr. Mitchell how, in light of the mold situation on Fort Bragg, would these units serve the soldiers. Would they be able to rent these units? Mr. Mitchell said the units would be accessible to the soldiers. Mr. Hight asked if they would build only studio or one-bedroom apartments. Mr. Mitchell said they only build studio and one-bedroom apartments because there are few options for these apartments in Fayetteville.

Mr. Patel closed the legislative hearing for case P22-46.

MOTION: Stephen McCorquodale made a motion to approve the conditional rezoning based on the Consistency and Resonable Statements as follows:
Pursuant N.C.G.S. Sections 160D-604 and -605, the Zoning Commission finds that the proposed zoning map amendment in case P22-46 is consistent with the City of Fayetteville's Future Land Use Map and Plan (Comprehensive Plan). The following analysis examines the proposed amendment relative to the goals and land-use policies and strategies of the Comprehensive Plan:
Consistency

1. Goals

Goal #2: Promote compatible economic and commercial development in key identified areas
Goal #4: Foster safe, stable, and attractive neighborhoods.

2. Land Use Policies and Strategies:

Land use Policies and Strategies

LUP 2: Encourage strategic economic development.

2.1: Encourage economic development in designated areas.

LUP 3: Encourage redevelopment along underutilized commercial strip corridors and reinvestment in distressed residential neighborhoods.

3.1: Examine and identify targeted redevelopment and infill areas throughout the city.

LUP 4: Create well-designed and walkable commercial and mixed-use districts.

4.1: Ensure new development meets basic site design standards.

LUP 5: Improve gateways

5.1: Continue to require perimeter landscaping and planting islands in significant renovations and redevelopment along commercial corridors.

3. The proposed amendment is inconsistent with the Future Land Use Map as follows:

- The proposed land use is consistent and aligns with the area's designation on the FLU Map.

- The proposed designation, as requested, would permit uses that are complimentary to those existing on adjacent tracts.

Reasonableness

The proposed zoning amendment is reasonable and in the public interest because it supports the policies of the Comprehensive Plan as stated above and the Strategic Plan as stated in the Staff Report, and because:

- The size, physical conditions, and other attributes of the proposed use(s) will benefit the surrounding community.
- The amendment includes conditions that limit potential negative impacts on neighboring uses.
- The proposed uses address the needs of the area and/or City.
- The proposal adapts the zoning code to reflect modern land-use trends and patterns.

The amendment is also in the public interest because it:

- Improves consistency with the long-range plan.
- Improves the tax base.
- Preserves environmental and/or cultural resources.
- Facilitates a desired kind of development.
- Provides needed housing/commercial area.

SECOND: Alex Keith
VOTE: Unanimous (5-0)

P22-49. Rezoning to amend the Conditions of a Mixed-Residential 5/Conditional Zoning (MR-5/CZ) district and add four additional properties currently zoned Single-Family Residential 10 (SF-10), located at 0 Cliffdale Road, 0 Olted Road, 8506 Olted Road, 8510 Olted Road, 8541 Olted Road, 0 Rim Road (REID #s 9487343260000, 9487339006000, 94874310116000, 9487432996000, 9487337848000, 9487434555000, 9487339796000, 9487543570000), totaling 59.9 acres ± and being the property of K & G Developers LLC, Doris Bunnells, Michael Bunnells, represented by Scott Brown, 4D Site Solutions, Inc.

Craig Harmon presented case P22-49. The property is located near Cliffdale Road. There are apartment complexes to the east. About a year ago these three properties came before the City and were approved for conditional zoning. The owner seeks to revise this conditional zoning and add five more properties (300 units) on the land. Townhomes would make up 139 units. Residents are concerned about property values. Therefore, the property owner got an appraiser to show how property values would be affected. The Future Land Use Plan calls for Medium Density Residential. Single-family Residential neighborhoods reside to the east and west of the area.

Staff recommended approval of this rezoning based on the following:

- The proposed zoning map amendment implements the policies adopted in the Future Land Use Plan (FLUP), and those policies found in the Unified Development Ordinance (UDO). The Future Land Use Plan calls for the subject property to be developed as High and Low-Density Residential (HDR & LDR). The conditions offered by the owner assure that these properties will be developed similarly to the surrounding residential developments.
- The uses permitted by the proposed change in zoning district classification and standards apply to such use and will be appropriate in the immediate area of the land to be reclassified due to the existing zoning and uses surrounding this property. There are no other factors that will substantially affect public health, safety, morals, or general welfare.

Mr. Patel opened the hearing for case P22-49.

Speakers in favor:

Scott Brown 4D Site Solutions, Inc 409 Chicago Drive, Suite 112, Fayetteville, NC 28306

- Mr. Brown stated that they have developed Phase I of the development.
- Mr. Brown discussed the entrance to the development.
- He said it would be a gated community.
- Mr. Brown noted that an appraiser had a letter stating there would be no impact on the property values.
- He is working on a traffic study with the North Carolina Department of Transportation.

Mr. Shah asked Mr. Brown what type of apartments he is planning to build. Mr. Brown said they would construct one-bedroom apartments.

Speakers in opposition:

Raymond Lamero, 1314 Saltwell Place, Fayetteville, NC

- Mr. Lamero lives on the east side of the property.
- He said that building townhomes behind their homes would lower their property value.
- Mr. Lamero is concerned about the traffic that would increase in the area.

Mr. Lowe asked Mr. Lamero what time of day did he have problems driving out of area.

Mr. Lamero said it depended on the flow of traffic. Mr. Lowe reiterated what time of day and Mr. Lamero said that there is traffic when people drop off and pick up their children.

Mr. Patel closed the legislative hearing for case P22-49.

MOTION: Roger Shah made a motion to approve the conditional rezoning based on the Consistency and Reasonable Statements outlined in the staff report and option 1. Recommendation approval of the map amendment to HI/CZ) in case P22-49 that is consistent with the City of Fayetteville's Future Land Use Map and Plan (Comprehensive Plan).

SECOND: Alex Keith

VOTE: 4-1 (Kevin Hight opposed)

P22-50. Conditional Rezoning from Heavy Industrial (HI) to Heavy Industrial/Conditional Zoning (HI/CZ) to allow retail and wholesaling on 0.39 acres ±, located at 203 Blount Street (REID #0437419899000), and being the property of City Property, LLC, represented by Ali Abdo.

Ms. Eckhardt presented case P22-50. The property is located on Blount Street and is a block from Gillespie Street. The Cumberland County Detention Center is nearby. To the west and north are Heavy Industrial and Community Commercial zoned properties. The Future Land Use Map calls for the area to be zoned as an Industrial/Employment Center. The applicant is requesting to build wholesale and retail businesses in this area. The owner wants to maintain the Heavy Industrial zoning and add further uses.

Staff recommended approval of this rezoning based on the following:

- The Future Land Use Plan recommends an Industrial/Employment Center (EC). Industrial/Employment Center is described as having high-intensity uses with high impact.
- The uses permitted by the proposed change in zoning district classification and standards apply to such use and will be appropriate in the immediate area of the land to be reclassified due to the location of this property and its surrounding uses.
- There are no other factors that will substantially affect public health, safety, morals, or general welfare.

Mr. Patel opened the hearing for case P22-50.

Speakers in favor:

Ali Abdo, 500 Blount Street, Fayetteville, NC 28301

- Mr. Abdo has owned property in the area since 2016.
- He is looking to add retail businesses in the area.
- Mr. Abdo wants to have an online and wholesale business.

Mr. Hight asked Mr. Abdo what type of businesses he will have on the property. Mr. Abdo said he wants to house wholesale goods.

Mr. Patel closed the hearing for case P22-50.

MOTION: Kevin Hight made a motion to approve the conditional rezoning based on the Consistency and Reasonable Statements. The proposed zoning map amendment to Limited Commercial (LC) in case P22-50 is consistent with the City of Fayetteville's Future Land Use Map and Plan (Comprehensive Plan).

SECOND: Stephen McCorquodale

VOTE: Unanimous (5-0)

P22-51. Rezoning of three properties from Mixed-Residential 5 (MR-5) to Limited Commercial (LC), located at 1103, 1105 Murchison Road and 1209 Coley Drive (REID #s 0438105842000, 0438105807000, and 0438104800000), containing a total of 0.54 acres ± and being the property of the Board of Trustees of the Endowment Fund of Fayetteville State University and Fayetteville State University Development Corporation, represented by Victor Sharpe.

Demetrios Moutos presented case P22-51. There are Office Institutional (OI) and Limited Commercial (LC) properties nearby. To the west are Single-Family Residential 6 (SF-6) homes. The Future Land Use Plan calls for the area to be zoned Commercial Strip Redevelopment. To the north is Mount Sinai Missionary Baptist Church and to the south is Bronco Square.

Staff recommended approval of this rezoning based on the following:

- The proposed zoning map amendment implements the policies adopted in the Future Land Use Plan (FLUP), and those policies found in the Unified Development Ordinance (UDO). The Future Land Use Plan calls for the subject properties to be developed as Commercial Strip Redevelopment.
- The uses permitted by the proposed change in zoning district classification and standards apply to such use and will be appropriate in the immediate area of the land to be reclassified due to the existing zoning and uses surrounding this property.
- There are no other factors that will substantially affect public health, safety, morals, or general welfare.

Mr. Patel opened the legislative hearing for case P22-51.

Speakers in favor:

Victor Sharpe, 421 Hilliard Drive, Fayetteville, NC 28311

- Mr. Sharpe is representing FSU as a consultant.
- He is here to answer questions.

Mr. Hight asked him why wasn't this process done before the announcement was made about the project.

Mr. Sharpe stated that they have not done any building and they are obtaining permits. He noted that this Chick-fil-A would not be a drive-through.

Mr. Patel closed the legislative hearing for case P22-51.

MOTION: Stephen McCorquodale made a motion to approve the conditional rezoning based on the Consistency and Reasonable Statement and the staff presentation. It meets all of the goals of the City. The proposed zoning map amendment to Limited Commercial (LC) in case P22-51 is consistent with the City of Fayetteville's Future Land Use Map and Plan (Comprehensive Plan).

SECOND: Roger Shah

VOTE: Unanimous (5-0)

P22-52 . Rezoning from Single-Family Residential 6 (SF-6) and Single-Family Residential 10 (SF-10) to Community Commercial (CC) zoning district, located at 2314 Hope Mills Road (REID #0405997654000), totaling 11.77 acres ± and being the property of Turtle Run LLC, represented by Terry Wethington, Lampe Management and Matthew Prokop, Rivers & Associates, Inc.

Mr. Harmon presented case P22-52. The property used to be a YMCA. The owner wants to rezone the area to a commercial district. They want to build a mini storage complex. Mr. Harmon showed where an easement was located on the property. The Future Land Use Plan calls for the area to be medium density with commercial on the front. He showed a picture of the undeveloped land where there are some single-family homes.

Staff recommended approval of this rezoning based on the following:

- The proposed zoning map amendment is consistent with the policies adopted in the Future Land Use Plan (FLUP), and the Future Land Use Map. The proposed designation, as requested, would permit uses that are complimentary to those existing on adjacent tracts, and the size, physical conditions, and other attributes of the proposed use(s) will benefit the surrounding community. The proposal also adapts the zoning code to reflect modern land-use trends and patterns.
- The uses permitted by the recommended change to CC zoning classification and the standards that apply to such uses will be appropriate in the immediate area of the land to be reclassified due to the existing zoning and uses surrounding this property.
- There are no other factors that will substantially affect public health, safety, morals, or general welfare.

Mr. Patel opened the legislative hearing for case P22-52.

Speakers in favor:

Terry Wethington, 225 E. Peedin Road, Smithfield, NC 27577

- Mr. Wethington wants to develop an office on this site.
- He said there were five mobile homes on the property.
- Mr. Wethington said the mobile homes were an issue because use they were broken into several times.
- He showed the community the plan.
- The property is completely fenced with only one way inside.
- They will offer a reduced price to police officers who would live there.

Mr. Patel closed the legislative hearing for case P22-52.

MOTION: Kevin Hight made a motion to approve the rezoning in case P22-52 for all of the reasons listed in the packet.

SECOND: Stephen McCorquodale

VOTE: Unanimous (5-0)

P22-53. Rezoning from Light Industrial (LI) to Community Commercial (CC) zoning district of 2.08 acres ±, located at 0 Middle Road (REID 0447553348000), and being the property of Middle Road Properties, LLC, represented by Lori Epler of Larry King & Associates.

Lauren Long presented case P22-53. The property is near I-95 north, and the River Bluff subdivision is nearby. Community Commercial is south and east of the area. This parcel was annexed in 1966. The Future Land Use Map calls for the area to be Industrial. The site is undeveloped.

Staff is recommending approval of this rezoning based on the following:

- The proposed zoning map amendment adheres to the policies adopted in the Future Land Use Plan and those policies found in the Unified Development Ordinance (UDO). The Future Land Use Plan calls for the subject parcel to be developed as Industrial/Employment Center (EC) and a rezoning from Light Industrial (LI) to Community Commercial (CC) would not exclude these types of development but would allow other transitional uses of less intensity that are compatible with the adjacent Community Commercial zoning.
- The uses and standards of the Community Commercial (CC) district will allow compatible infill development on an undeveloped parcel that would result in logical and orderly development that would not negatively impact the surrounding development and focus private investment around exiting infrastructure.
- The proposed zoning district already exists south and east of the site and results in no substantial impact upon the public health, safety, or general welfare. The proposed zoning also allows for an expanded range of uses that will be more compatible with the trending development in the area that includes more residential and moderate intensity commercial.

Mr. Patel opened the legislative hearing for case P22-53.

Speakers in favor:

Ben Stout, 409 Chicago Dr, Suite 103, Fayetteville, NC 28306

- They worked with the City staff on this project.
- Mr. Stout said he is here for questions.

Mr. Patel closed the legislative hearing for case P22-53.

MOTION: Alex Keith made a motion to approve the rezoning from Industrial to Community Commercial based on what the Staff presented in the packet. It meets all of the goals of the City. The proposed zoning map amendment to Community Commercial (CC) in case P22-53 is consistent with the City of Fayetteville's Future Land Use Map and Plan (Comprehensive Plan).

SECOND: Stephen McCorquodale

VOTE: Unanimous (5-0)

P22-56. Request to amend the previously approved conditions for an Office and Institutional/Conditional Zoning (OI/CZ) zoned property consisting of 3.29 acres±, located at 529 Terry Circle and 1601 Owen Drive (REID #s 0426077666000 and 0426077416000), and being the property of Fayetteville Area Health Education Foundation Inc., represented by Larry King & Associates.

Heather Eckhardt presented case P22-56. It is across the street from the hospital. It is already office institutional. Future Land Use Office institutional and low-density residential. Medical and retail to west and south.

Staff recommended approval of this rezoning based on the following:

- The Future Land Use Plan recommends Office and Institutional and Low-Density Residential. While Low-Density Residential is not intended for offices or medical clinics, this property is immediately adjacent to an area intended for Office and Institutional and the proposed use will complement the area and existing uses.
- The uses permitted by the proposed change in zoning district classification and standards apply to such use and will be appropriate in the immediate area of the land to be reclassified due to the location of this property and its surrounding uses.
- There are no other factors that will substantially affect public health, safety, morals, or general welfare.

Mr. Patel opened the legislative hearing for case P22-56.

Speakers in favor:

Ben Stout, 409 Chicago Drive, Suite 103, Fayetteville, NC 28306

- Mr. Stout They are going to improve on the area they had a TRC Meeting with Staff.
- They are here to answer questions.
- They are putting up a proxy fence with buffering.

Mr. Patel closed the legislative hearing for case P22-56.

MOTION: Stephen McCorquodale made a motion to approve the rezoning based on the conditons stated by the applicant along with the goals in the Consistency Statements as presented by staff. The proposed zoning map amendment to Office Institutional/Conditional Zoning (OI/CZ) in case P22-56 is consistent with the City of Fayetteville's Future Land Use Map and Plan (Comprehensive Plan).

SECOND: Kevin Hight

VOTE: Unanimous (5-0)

P22-58. Rezoning from Agricultural-Residential (AR) to Single Family-10 (SF-10) zoning district of 3.0 acres ±, located at 9755 Gooden Drive (REID #9487827927000), and being the property of Mohler Investments, LLC, represented by Scott Brown of 4D Site Solutions, INC.

Lauren Long presented case P22-58. The property falls between the Lake Rim and Little River subdivisions. The Future Land Use map designates this area as Low-Density Residential (LDR). The property is surrounded by parks and open spaces. Ms. Long showed the Board pictures of the area.

Staff recommended approval of this rezoning based on the following:

- The proposed zoning map amendment adheres to the policies adopted in the Future Land Use Plan and those policies found in the Unified Development Ordinance (UDO). The Future Land Use Plan calls for the subject parcel to be developed as Low-Density Residential (LDR) and the proposed zoning district allows for uses that fit this category of land classification.
- The uses and standards of the Single Family-10 (SF-10) district will allow infill development that would result in logical and orderly development that would not negatively impact the surrounding development.
- The proposed zoning district already exists to the south of the site and results in no substantial impact upon the public health, safety, or general welfare.

Mr. Patel opened the legislative hearing for case P22-58.

Speakers in favor:

Scott Brown, 4D Site Solutions, Inc, 409 Chicago Drive, Suite 112 Fayetteville, NC 28306

- They want to extend Gooding Drive.
- Mr. Gooding said the property will have sewer services.

Mr. Shah asked Mr. Brown how many homes will be built on the land. Mr. Brown said they will build 4 or 5 homes on the land.

Speakers in opposition:

Ms. Long read a statement from the Regional Land Use Advisory Committee (RLUAC) stating their concern regarding an increase in noise levels. The Committee wanted the developers to understand that there will be a possible increase in the noise levels in this area if they choose to build houses on their property.

Mr. Patel closed the legislative hearing for case P22-58.

MOTION: Roger Shah made a motion to approve the rezoning based on the Consistency and Reasonable Statements provided in the packet. It meets all of the goals of the City. The proposed zoning map amendment to Single-Family Residential 10 (SF-10) in case P22-48 is consistent with the City of Fayetteville's Future Land Use Map and Plan (Comprehensive Plan).

SECOND: Alex Keith

VOTE: Unanimous (5-0)

V. OTHER BUSINESS

Ms. Baptiste announced that she is leaving her position with the City after December 28, 2022, to start a position as a Planning and Zoning Director in Siler City. She said there will be one Variance and three rezoning cases during the meeting on Tuesday, January 10, 2023. Ms. Baptiste told the Board members that no one will need to reapply for their position in the Spring. Mr. Shah's term is up in September and he will not be able to reapply since he has served his second term. Stephen McCorquodale and Pavan Patel will have to reapply in September.

VI. ADJOURNMENT

MOTION: Pavan Patel made a motion to adjourn the December 13, 2022, meeting.

SECOND:

VOTE: Unanimous (5-0)

The meeting adjourned at 9:23 p.m.

Respectfully submitted by Catina Evans



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-3150

Agenda Date: 1/10/2023

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Evidentiary Hearing

Agenda Number: 4.01

TO: Mayor and Members of City Council

THRU: Jennifer C. Baptiste, CZO - Planning & Zoning Manager

FROM: Demetrios Moutos - Planner I

DATE: January 10, 2023

RE:

A23-05. Variance to reduce the rear yard setback in a Limited Commercial (LC) zoning district adjacent to single family residential from 20 ft. to 10 ft. and reduce the width of the required street yard buffer from 15 ft. to 10 ft. on Overbrook Drive and 6 ft. on N. Reilly Road on .34 acres ±, located at 367 N. Reilly Road (REID # 9498686280000) and being the property of Eid Abudayya, represented by George M. Rose, P.E.

COUNCIL DISTRICT(S):

4 - D.J. Haire

Relationship To Strategic Plan:

Strategic Operating Plan FY 2022

Goals 2027

Goal 4: Desirable Place to Live, Work and Recreate

- Objective 4.5 - Ensure a place for people to live in great neighborhoods.

Executive Summary:

30.2. C.14 Variance:

The purpose of a variance is to allow certain deviations from the dimensional standards of this Ordinance (such as height, yard setback, lot coverage, or similar numeric standards) when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner's control (such as exceptional topographical conditions, narrowness, shallowness, or the shape of a specific parcel of land), the literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest.

Variances are to be sparingly exercised and only in rare instances or under exceptional circumstances to relieve undue and unique hardships to the landowner.

No change in permitted uses or applicable conditions of approval may be authorized by variance.

Background:

Owner: Eid Abudayya

Applicant: George M. Rose, P.E.

Requested Action: Reduction in rear yard setback in a Limited Commercial zoning district and reduction in width of required street yard buffer.

Zoning District: Limited Commercial (LC)

Property Address: 367 N. Reilly Road

Size: 0.34 acres \pm or 14810.4 square feet

Existing Land Use: Vacant

Surrounding Zoning and Land Uses

- North: Limited Commercial (LC) - Vacant
- South: Limited Commercial (LC) - Vacant
- East: Community Commercial & Office Institutional - Valero Gas Station & American Flag Storage
- West: Single Family Residential 10 (SF-10) - Single-Family Residential

Letters Mailed: 24

Issues/Analysis:

The property is 0.34-acres \pm and is located at 367 N. Reilly Road. The site is currently vacant and is located in the Lagrange subdivision. The current Unified Development Ordinance was adopted in 2011. This property was annexed into the City of Fayetteville in 2005. The property was platted before the adoption of the UDO and before being annexed into the city limits of Fayetteville.

According to Articles 30-3.E.4 of the UDO, the minimum rear yard setback in the Limited Commercial zoning district is 10 feet or 20 feet where the property abuts an alley or single-family district or use. Table 30-5.B.4.c.5.c of the UDO states that development with 1-2 rows of parking (one bay) or pavement with a depth of less than 70 feet shall have a street yard depth of 15 feet and have a prescribed number of flora planted.

The purpose of setbacks is to ensure one building does not infringe on another building's right to sunlight, ventilation, greenery, and vehicular access. The applicant is requesting a reduction in the required rear yard setback to 10 feet instead of the 20 feet that is required when abutting a single family district or use. However, according to the site plan that accompanied the application, a 10 foot type D buffer with one 6-foot-high solid fence, 6 canopy trees, and 25 shrubs per 100 linear feet would still be provided along the rear property line between the subject property and the single family housing. According to Table 30-5.B.4.d.4 of the UDO, Type D (Opaque) buffers function as an opaque screen from the ground to a height of at least six feet. This type of buffer prevents visual contact between uses and creates a strong impression of total separation.

As stated in the UDO, the purpose of the street yard buffer is to enhance the streetscape and public environment by abating glare and moderating temperatures of impervious areas; filtering air of fumes and dust; providing shade; attenuating noise;

and reducing the visual impact of large expanses of pavement through the provision of a visually modifying screen of plants. The intent is to provide at a minimum an opaque buffer at the ground level up to three feet, with open views available through and between taller plant materials. The applicant has affirmed their intent to still plant the flora typically required by a 15 foot street yard buffer, albeit in the requested buffer width of 10 feet on Overbrook Drive and 6 feet on N. Reilly Road instead.

Insufficient Justification for Variance

The following does not constitute grounds for a Variance:

1. The siting of other nonconforming or conforming uses of land or structures in the same or other districts;
2. The request for a particular use expressly, or by inference, prohibited in the district; or
3. Economic hardship or the fact that property may be utilized more profitably with a Variance.

Subsequent Development

The minimum lot size for the LC zoning district is 20,000 square feet for nonresidential development, 15,000 square feet for mixed-use development, and 8,000 square feet for all other residential development. This lot is 0.34 acres \pm or 14,810.4 square feet \pm . This lot only meets the minimum square footage for all other residential in the LC district and is comparable to other properties in the Lagrange subdivision regarding lot size and shape.

The following findings are based on the responses submitted in the application by the applicant and the best available information about the proposal without the benefit of testimony provided at the evidentiary hearing.

Findings of Fact Statements as reviewed by the Planning Staff:

1. There is sufficient evidence that the strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence:

The applicant states "The hardship for this lot is not self-imposed in that the lot was originally created as a residential lot as part of La Grange, Section 8 as recorded in Plat Book 33 Page 1 (the platted depth of the lot is just under 100'). Subsequent changes in the land use of the area make the lot not suitable for residential use but appropriate for limited commercial uses as a buffer between the residential properties and N. Reilly Road. The depth of the proposed building is only 38' which is considered extremely minimal for a commercial building with retail uses. When appropriate distances are given for the 10' Type D buffer, a minimal 4' sidewalk, 20' parking spaces and a 22' drive aisle, only 6' remains for the landscape strip between the curb and the N. Reilly Road right-of-way where 15' is normally required."

2. There is sufficient evidence that any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and are not the result of the actions of the landowner as shown by the following evidence:

According to the application, "Depth of the lot was originally created for residential as part of La Grange subdivision. Rezoning of the property to LC and subsequent changes in the land use of the N. Reilly Road corridor to more commercial uses make the property appropriate for commercial development. The shallow depth of the lot when required setbacks are applied does not allow for a workable depth for a commercial building."

3. There is sufficient evidence that the Variance is the minimum action that will

make possible a reasonable use of land or structures as shown by the following evidence:

According to the applicant, "Shallow depth of the lot as previously explained."

4. There is sufficient evidence that the Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit as shown by the following evidence:

The applicant states "Property is zoned for limited commercial use which would serve as a buffer between heavily traveled N. Reilly Road and the residential properties on Overbrook Drive. A previous building on the property was constructed closer to the rear property line than is being proposed for this project."

5. There is sufficient evidence that in the granting of the Variance, the public safety and welfare has been assured and substantial justice has been done as shown by the following evidence:

The applicant states "No negative external impacts will result from the granting of the variance. The adjacent property owner has been contacted and has signed a letter expressing no opposition to the reduced rear yard setback. As previously stated, a prior building on the site was constructed closer to the property line than what is being requested with this variance."

Budget Impact:

There is no immediate budgetary impact.

Options:

The Board's Authority: The board has the authority to approve or deny the request and must base its decision on the answers to the following five required findings of fact:

If a member believes that the evidence presented is substantial, competent, and sufficient to meet the required findings of fact then the member may make a motion to approve the variance and the members must state all of the following five findings of fact along with the evidence that was presented to satisfy each finding.

If the members cannot find specific supporting facts under all five findings of fact, the members must consider a motion of denial. A motion of denial should indicate which of the five (5) of the findings of fact cannot be met.

The board can also place reasonable conditions on any variance approval.

If a member wishes to make a motion to approve the variance they should make a brief statement that recaps the evidence showing each of the five findings of fact. Any discussion by the Board following a motion may include a recap of the evidence supporting each of the five (5) factual findings.

Possible Motions and Factual Findings:

Motion to approve a variance for reduction in the rear yard setback in LC adjacent to single family residential from 20' to 10' and a reduction in the required landscape strip width adjacent to street rights-of-way from 15' to 10' on Overbrook Drive and 6' on N. Reilly Road.

Findings of Fact Required to Approve this Request:

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence:

2. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and are not the result of the actions of the landowner as shown by the following evidence:

3. The Variance is the minimum action that will make possible a reasonable use of land or structures as shown by the following evidence:

4. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit as shown by the following evidence:

5. In the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done as shown by the following evidence:

Motion to approve any combination of the standards below:

1. **Reduce the rear yard setback in LC adjacent to single family residential from 20' to 10'**
2. **Reduce the required landscape strip width adjacent to street rights-of-way from 15' to 10' on Overbrook Drive and 6' on N. Reilly Road.**

Findings of Fact Required to Approve this Request:

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence:

2. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and are not the result of the actions of the landowner as shown by the following evidence:

-
3. The Variance is the minimum action that will make possible a reasonable use of land or structures as shown by the following evidence:
-

4. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit as shown by the following evidence:
-

5. In the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done as shown by the following evidence:
-

Motion to approve the variance(s) as requested but with added conditions

Findings of Fact Required to Approve this Request with added conditions:

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence:
-

2. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and are not the result of the actions of the landowner as shown by the following evidence:
-

3. The Variance is the minimum action that will make possible a reasonable use of land or structures as shown by the following evidence:
-

4. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit as shown by the following evidence:
-

5. In the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done as shown by the following evidence:
-

Motion to deny the variance as requested.

Findings of Fact Statements Required to Deny this Request:

1. There is not sufficient evidence that the strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence:

2. There is not sufficient evidence that any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and are not the result of the actions of the landowner as shown by the following evidence:

3. There is not sufficient evidence that the Variance is the minimum action that will make possible a reasonable use of land or structures as shown by the following evidence:

4. There is not sufficient evidence that the Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit as shown by the following evidence:

5. There is not sufficient evidence that in the granting of the Variance, the public safety and welfare has been assured and substantial justice has been done as shown by the following evidence:

Recommended Action:

Attachments:

1. Application
2. Aerial Notification Map
3. Zoning Map
4. Land Use Map
5. Subject Property Photos

6. Surrounding Property Photos
7. Site Plan
8. Limited Commercial Dimensional Standards Table
9. Street Yard Buffer Requirements Table

Project Overview

#916612

Project Title: Property of Eid Abudayya

Jurisdiction: City of Fayetteville

Application Type: 5.4) Variance

State: NC

Workflow: Staff Review

County: Cumberland

Project Location

Project Address or PIN: 367 N. REILLY ROAD (Unverified)

Zip Code: 28314

GIS Verified Data

Property Owner:

Acreage:

Zoning District:

Subdivision Name:

Fire District:

Airport Overlay District:

Hospital Overlay District:

Coliseum Tourism District:

Cape Fear District:

Downtown Historic District:

Haymount Historic District:

Floodway:

100 Year Flood:

500 Year Flood:

Watershed:

Variance Request Information

Requested Variances: Minimum yard/setback, Width of landscape strip at right-of-way

Section of the City Code from which the variance is being requested.: 30-3.E.4

Describe the nature of your request for a variance and identify the standard(s)/requirement(s) of the City Code proposed to be varied.:

Identify the zoning district designation and existing use of land for all adjacent properties, including those across the street.:

Requesting a reduction in the rear yard setback in LC zoning adjacent to single family residential from 20' to 10'. Also requesting a reduction in the required landscape strip width adjacent to street rights-of-way from 15' to 10' on Overbrook Drive and 6' on N. Reilly Road.

Subject property is zoned LC. Property is bordered by Overbrook Drive to the south and N. Reilly Road to the east. Adjacent property to the north is zoned LC and adjacent properties to the west are zoned SF-10. Property to the east across N. Reilly is zoned CC and property to the south across Overbrook is zoned LC.

Justification for Variance Request - Use this and the following pages to answer the questions (upload additional sheets if necessary).

The Variance Standards states: A variance application shall be approved only upon a finding that all of the following standards are met.

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships; it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
2. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, such as location, size, or topography, and are not the result from conditions that are common to the neighborhood or the general public be the basis from

granting a variance;

3. The Variance is the minimum action that will make possible a reasonable use of land or structures;
4. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
5. In the granting of this Variance, the public safety and welfare have been assured and substantial justice has been done.

Please complete the following five (5) questions to verify the evidence that all the required standards are applicable to your property and/or situation.

Provide a written description of any hardship(s) and how such hardship(s) is not self-imposed.:

The hardship for this lot is not self-imposed in that the lot was originally created as a residential lot as part of La Grange, Section 8 as recorded in Plat Book 33 Page 1 (the platted depth of the lot is just under 100'). Subsequent changes in the land use of the area make the lot not suitable for residential use but appropriate for limited commercial uses as a buffer between the residential properties and N. Reilly Road. The depth of the proposed building is only 38' which is considered extremely minimal for a commercial building with retail uses. When appropriate distances are given for the 10' Type D buffer, a minimal 4' sidewalk, 20' parking spaces and a 22' drive aisle, only 6' remains for the landscape strip between the curb and the N. Reilly Road right-of-way where 15' is normally required.

Indicate if the property has exceptional topographic conditions or some other extraordinary situation or condition that makes it unlike other properties in the immediate vicinity.:

Depth of the lot was originally created for residential as part of La Grange subdivision. Rezoning of the property to LC and subsequent changes in the land use of the N. Reilly Road corridor to more commercial uses make the property appropriate for commercial development. The shallow depth of the lot when required setbacks are applied does not allow for a workable depth for a commercial building.

Is there some particular condition, situation, or development on the property immediately adjacent to the subject property that affects the subject property's ability to comply with the regulations?:

Shallow depth of the lot as previously explained.

Describe how the variance is in harmony with the general purpose and intent of the City Code, and preserves the spirit.:

Property is zoned for limited commercial use which would serve as a buffer between heavily traveled N. Reilly Road and the residential properties on Overbrook Drive. A previous building on the property was constructed closer to the rear property line than is being proposed for this project.

Explain any potential negative external impacts that may result from the proposed variance, and how they will be mitigated. Financial hardship cannot be considered for a reason to grant a variance.:

No negative external impacts will result from the granting of the variance. The adjacent property owner has been contacted and has signed a letter expressing no opposition to the reduced rear yard setback. As previously stated, a prior building on the site was constructed closer to the property line than what is being requested with this variance.

Height of Sign Face : 0

Height of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Height of Sign Face: 0

Square Footage of Sign Face : 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Primary Contact Information

Contractor's NC ID#:

Project Owner

Eid Abudayya

4059 Westfield Road
Fayetteville, NC 28314
P: 910-258-3880

worldwideauto19@gmail.com

Project Contact - Agent/Representative

George Rose

George M. Rose, P.E.

P.O. Box 53441

Fayetteville, NC 28305

P: 910-977-5822

george@gmpe.com

Project Contact - Primary Point of Contact for Engineer

George Rose

George M. Rose, P.E.

P.O. Box 53441

Fayetteville, NC 28305

P: 910-977-5822

george@gmpe.com

As an unlicensed contractor, I am aware that I cannot enter into a contract that the total amount of the project exceeds \$30,000. :

NC State General Contractor's License Number:

NC State Mechanical Contractor's #1 License Number:

NC State Mechanical Contractor's #2 License Number:

NC State Mechanical Contractor's #3 License Number:

NC State Electrical Contractor #1 License Number:

NC State Electrical Contractor #2 License Number:

NC State Electrical Contractor #3 License Number:

NC State Plumbing Contractor #1 License Number:

NC State Plumbing Contractor #2 License Number:

Indicate which of the following project contacts should be included on this project: Engineer



Aerial Notification Map

Case #: A23-05

Request: Variance to reduce minimum rear yard setback from 20' to 10' and reduce width of street yard landscape buffer from 15' to 10' on .34 acres ±, located at 361 N. Reilly Rd. (REID# 949868280000) and being the property of Eid Abudayya, represented by George Rose.

Location: 367 N. Reilly Rd.

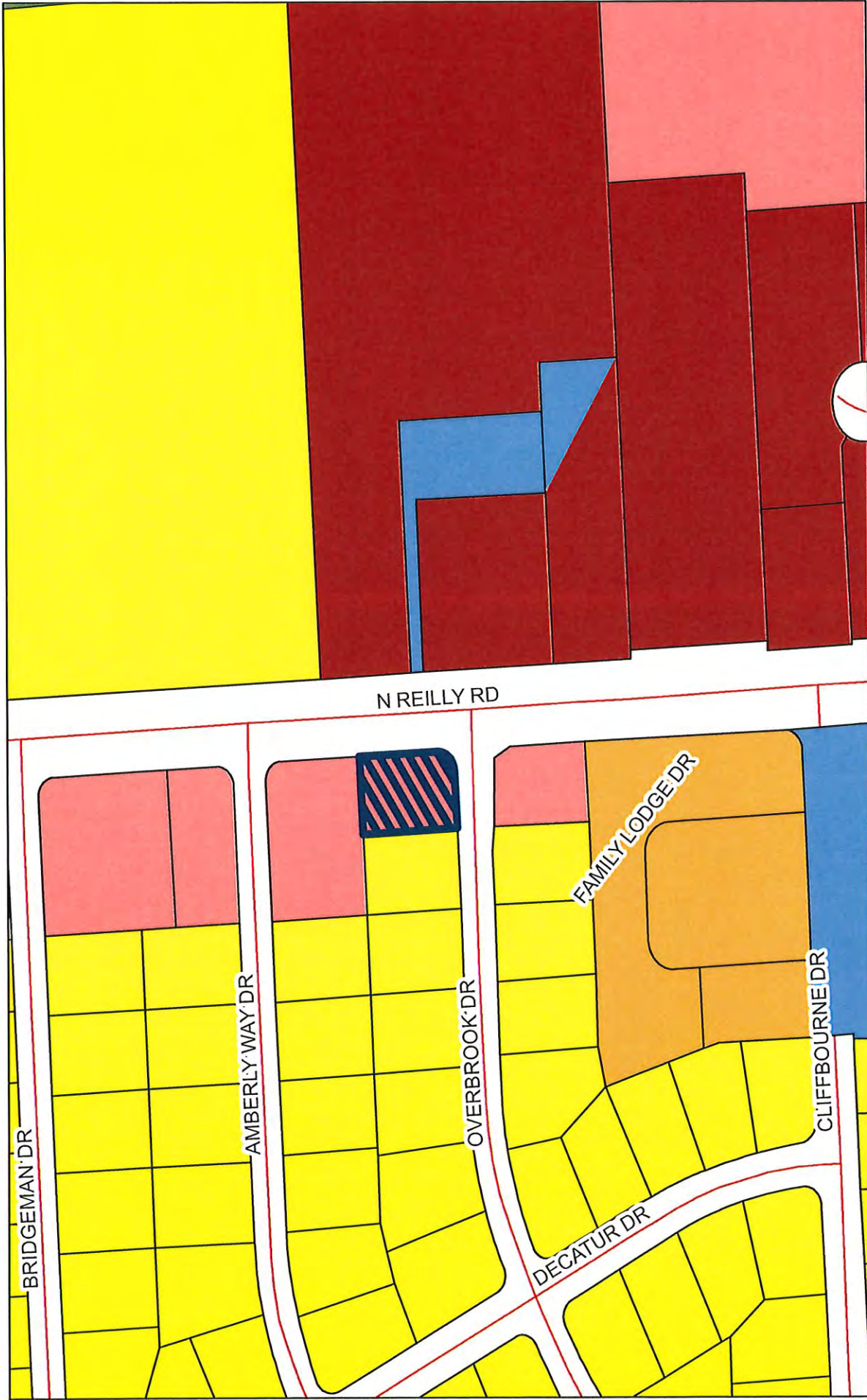
Legend

-  A23-05 Buffer
-  A23-05



Letters are being sent to all property owners within the 300' buffer. Subject property is shown in the hatched pattern.





Zoning Map Case #: A23-05

Request: Variance to reduce minimum rear yard setback from 20' to 10' and reduce width of street yard landscape buffer from 15' to 10' on .34 acres ±, located at 361 N. Reilly Rd. (REID# 949868280000) and being the property of Eid Abudayya, represented by George Rose.

Location: 367 N. Reilly Rd.

Legend

- A23-05
- AR - Agricultural-Residential
- CC - Community Commercial
- LC - Limited Commercial
- MR-5 - Mixed Residential 5
- OI - Office & Institutional
- SF-10 - Single-Family Residential 10



Letters are being sent to all property owners within the 300' buffer. Subject property is shown in the hatched pattern.





Future Land Use Map Case #: A23-05

Request: Variance to reduce minimum rear yard setback from 20' to 10' and reduce width of street yard landscape buffer from 15' to 10' on .34 acres ±, located at 361 N. Reilly Rd. (REID# 9498686280000) and being the property of Eid Abudayya, represented by George Rose.

Location: 367 N. Reilly Rd.

Legend



Land Use Plan 2040

Character Areas

- LDR - LOW DENSITY
- MDR - MEDIUM DENSITY
- NIR - NEIGHBORHOOD IMPROVEMENT
- CSR - COMMERCIAL STRIP REDEVELOPMENT
- OI - OFFICE / INSTITUTIONAL



Letters are being sent to all property owners within the 300' buffer. Subject property is shown in the hatched pattern.











City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-3149

Agenda Date: 1/10/2023

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Public Hearing
(Public & Legislative)

Agenda Number: 5.01

TO: Mayor and Members of City Council

THRU: Zoning Commission
Jennifer C. Baptiste, CZO - Planning and Zoning Manager

FROM: Heather Eckhardt, CZO - Planner II

DATE: January 10, 2023

RE:

P23-01. Rezoning from Office and Institutional (OI) to Neighborhood Commercial (NC) zoning district of .32 acres ±, located at 1302 Fort Bragg Road (REID #0427965185000) and being the property of Leslie K. and Justin D. Pearson.

COUNCIL DISTRICT(S):

5 - Mayor Pro Tem Johnny Dawkins

Relationship To Strategic Plan:

Strategic Operating Plan FY 2022

Goals 2027

Goal II: Responsive City Government Supporting a Diverse and Viable Economy

- Objective 2.1 - To ensure a diverse City tax base
- Objective 2.4 - To sustain a favorable development climate to encourage business growth.

Goal III: City invested in Today and Tomorrow

- Objective 3.2 - To manage the City's future growth and strategic land use.

Executive Summary:

The subject property is currently zoned Office and Institutional (OI). The applicant would like to rezone the property to Neighborhood Commercial (NC) to accommodate a retail sales business.

The NC zoning district is "established and intended to accommodate small-scale, low-intensity, and "convenience" retail and service uses that provide goods and services serving the residents of the immediately surrounding neighborhood (e.g., personal service uses, small restaurants, and limited retail).

Background:

Owner: Leslie K. and Justin D. Pearson

Requested Action: OI to NC

REID: 0427965185000

Council District: 5 - Mayor Pro Tem Johnny Dawkins

Status of Property: Single-family house converted to retail business

Size: .32 acres ±

Adjoining Land Use & Zoning:

- North: SF-6 - Single-family subdivision
- South: NC - Fire station
- East: NC - Office
- West: OI - Office

Annual Average Daily Traffic: Fort Bragg Road: 12,500 (2021)

Letters Mailed: 249

Land Use Plans:

With the adoption of the 2040 Comprehensive Plan: Future Land Use Map & Plan on May 26, 2020, all properties within the city limits as well as properties identified as being in the Municipal Influence Area (MIA) are subject to this plan.

According to the Plan, it is recommended that this portion of the city should be developed as Neighborhood Mixed Use. Neighborhood Mixed Use is intended for neighborhood-scale commercial uses with buildings that are one to three stories. Smaller-scale multi-family, attached and small lot single-family are intermixed.

Issues/Analysis:

History:

The subject property and surrounding area have been part of the City of Fayetteville since 1923. The structure on the property was built in 1914 as a single-family house. The property is currently zoned OI which allows for single-family residences as well as low-intensity professional and business offices. In recent years, the area around the subject property has become an extension of the Hay Street commercial corridor area with businesses like District House of Taps and Leclair's. The subject property is currently occupied by Curate Essentials, a retail sales business. Retail sales are not permitted in the OI zoning district.

Surrounding Area:

The subject property is located in the center of Haymount. The area is host to a large variety of uses including single-family detached houses, business offices, churches, retail shops, and Fire Station 2. The Pershing Heights subdivision (General Lee Avenue area) to the north is currently zoned Single Family Residential 6 (SF-6) while the area to the west is zoned Office and Institutional (OI) and home to an assortment of offices. The properties to the south and east are zoned Neighborhood Commercial (NC) with uses such as Fayetteville Fire Station 2, One Hour Cleaners, and additional office spaces. The properties at 1318 and 1320 Fort Bragg Road were rezoned in recent years to accommodate the recent commercial growth in the area.

Rezoning Request:

The applicant is requesting to rezone .32 acres ± from Office & Institutional (OI) to Neighborhood Commercial (NC). The applicant owns Curate Essentials, a retail business, which currently occupies the property. The applicant is looking to bring the property into compliance regarding the use type and zoning district. Retail sales are not permitted in OI however, it is permitted in the proposed NC zoning district. The property is currently in use as a retail business selling soaps, lotions, and other handmade products. The business is of a scale and intensity which is in keeping with the businesses and residences in the area.

Land within the City is generally classified by the Unified Development Ordinance (UDO) to be within one of many base zoning districts. Land may be reclassified to one of several comparable zoning districts in accordance with Section 30-2.C.

Straight Zoning:

The request is for a straight zoning from Office & Institutional (OI) to Neighborhood Commercial (NC).

The NC zoning district is "established and intended to accommodate small-scale, low-intensity, and "convenience" retail and service uses that provide goods and services serving the residents of the immediately surrounding neighborhood (e.g., personal service uses, small restaurants, and limited retail)."

The proposed zoning district is compatible with the area and this district is in keeping with the City's Future Land Use Plan.

The reclassification of land to a straight zoning district allows all of the uses that are shown on Use Table in the Unified Development Ordinance. The City Council may not consider conditions or restrictions on the range of allowable uses, use standards, development intensities, development standards, and other applicable regulations.

Land Use Plan Analysis:

According to Future Land Use Map & Plan, this area is recommended to be developed as Neighborhood Mixed Use (NMU). Neighborhood Mixed Use areas are intended to accommodate neighborhood-scale commercial uses as well as smaller-scale multi-family, attached, and small-lot single-family houses with low density at the edges.

The proposed use of the property as a small retail business is in line with the Neighborhood Mixed Use land use character area recommended by the Future Land Use Plan.

Consistency and Reasonableness Statements:

The Future Land Use Plan also sets forth written goals, policies, and strategies. This application looks to follow the City's strategic, compatible growth strategies by meeting the goals of the Land Use Plan found on the attached Consistency and Reasonableness form.

Budget Impact:

There is not an immediate budgetary impact but there will be an economic impact associated with this rezoning that will occur due to taxes collected in the future.

Options:

1. Recommends approval of the map amendment to NC as presented based on the evidence submitted and finds that the rezoning is consistent with the Future

- Land Use Plan as demonstrated by the attached consistency and reasonableness statement. (recommended);
2. Recommends approval of the map amendment to a more restrictive zoning district based on the evidence submitted and finds that the map amendment would be consistent with the Future Land Use Plan and an amended consistency and reasonableness statement; or
 3. Denies the map amendment request based on the evidence submitted and finds that the map amendment is inconsistent with the Future Land Use Plan.

Recommended Action:

The Professional Planning Staff recommends that the Zoning Commission move to recommend APPROVAL of the map amendment to NC based on the following:

- The proposed zoning map amendment implements the policies adopted in the Future Land Use Plan (FLUP), and those policies found in the Unified Development Ordinance (UDO). The Future Land Use Plan calls for the subject property to be developed as Neighborhood Mixed Use.
- The uses permitted by the proposed change in zoning district classification and standards apply to such use and will be appropriate in the immediate area of the land to be reclassified due to the existing zoning and uses surrounding this property; and
- There are no other factors that will substantially affect public health, safety, morals, or general welfare.

Attachments:

1. Plan Application
2. Aerial Notification Map
3. Zoning Map
4. Land Use Plan Map
5. Subject Property
6. Surrounding Property Photos
7. Consistency and Reasonableness Statements

Project Overview

#905788

Project Title: Curate Essentials**Application Type:** 5.1) Rezoning (Map Amendment)**Workflow:** Staff Review**Jurisdiction:** City of Fayetteville**State:** NC**County:** Cumberland**Project Location****Project Address or PIN:** 1302 FORT BRAGG ROAD
(Unverified)**Zip Code:** 28305**GIS Verified Data****Property Owner:****Zoning District:****Fire District:****Hospital Overlay District:****Cape Fear District:****Haymount Historic District:****100 Year Flood:****Watershed:****Acreage:****Subdivision Name:****Airport Overlay District:****Coliseum Tourism District:****Downtown Historic District:****Floodway:****500 Year Flood:****General Project Information****Has the land been the subject of a map amendment application in the last five years?:** No**Previous Amendment Case #:****Acreage to be Rezoned:** 1**Water Service:** Public**A) Please describe all existing uses of the land and existing structures on the site, if any:**

Currently zoned Office Institution want to rezone to mercantile/retail

Previous Amendment Approval Date:**Proposed Zoning District:** Office Institution**Is this application related to an annexation?:** No**Sewer Service:** Public**B) Please describe the zoning district designation and existing uses of lands adjacent to and across the street from the subject site.:**

Currently zoned Office Institution want to rezone to mercantile/retail

Across the street are offices on both sides of the building. Across the other street is Fire station and convenience store and laundry service.

Amendment Justification - Answer all questions on this and all pages in this section (upload additional sheets as needed).**A) State the extent to which the proposed amendment is consistent with the comprehensive plan and all other applicable long-range planning documents.:**

We are not making any changes to the existing building or anything else that will affect the current footprint of the property

B) Are there changed conditions that require an amendment? :

Not that I know of

C) State the extent to which the proposed amendment addresses a demonstrated community need.:

We are an herbal apothecary serving the community through herbal education, preventative health care products (all natural balms, salves, bath and body), and classes.

D) State the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land, and why it is the appropriate zoning district for the land.:

We are currently zoned OI but other businesses along the street are retail

E) State the extent to which the proposed amendment results in a logical and orderly development pattern.:

To allow us to be retail, we are able to offer the community affordable, preventable health care products and learn about herbalism in the form of plant care, tea blending, etc. We are not changing anything in regards to the building or exterior space so changing the zoning does not change anything about the logic or development pattern.

F) State the extent to which the proposed amendment might encourage premature development.:

I can't think of anything

G) State the extent to which the proposed amendment results in strip-style commercial development.:

It will not

H) State the extent to which the proposed amendment results in the creation of an isolated zoning district unrelated to adjacent and surrounding zoning districts.:

It does not

I) State the extent to which the proposed amendment results in significant adverse impacts on the property values of surrounding lands.:

It will not

J) State the extent to which the proposed amendment results in significantly adverse impacts on the natural environment.:

It will not

Primary Contact Information

Contractor's NC ID#:

Project Owner

Leslie Pearson
Curate Essentials
1302 Fort Bragg Road
Fayetteville, NC 28305
P: 9104940690
leslie@curateessentials.com

As an unlicensed contractor, I am aware that I cannot enter into a contract that the total amount of the project exceeds \$30,000. :

NC State General Contractor's License Number:

NC State Mechanical Contractor's #1 License Number:

NC State Mechanical Contractor's #2 License Number:

NC State Mechanical Contractor's #3 License Number:

NC State Electrical Contractor #1 License Number:

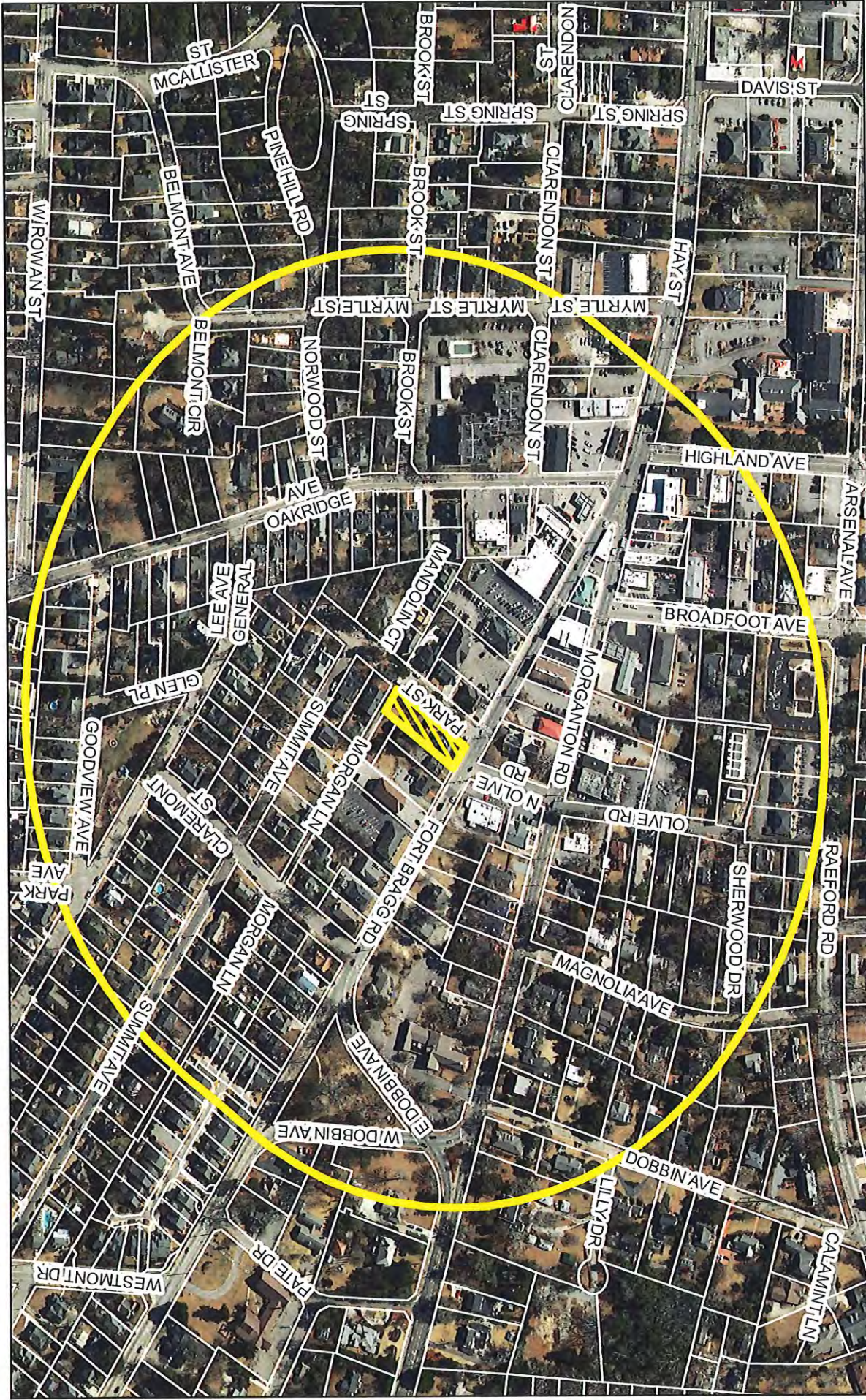
NC State Electrical Contractor #2 License Number:

NC State Electrical Contractor #3 License Number:

NC State Plumbing Contractor #1 License Number:

NC State Plumbing Contractor #2 License Number:

Indicate which of the following project contacts should be included on this project:



Letters are being sent to all property owners within the 1000' buffer. Subject property is shown in the hatched pattern.



Aerial Notification Map Case #: P23-01

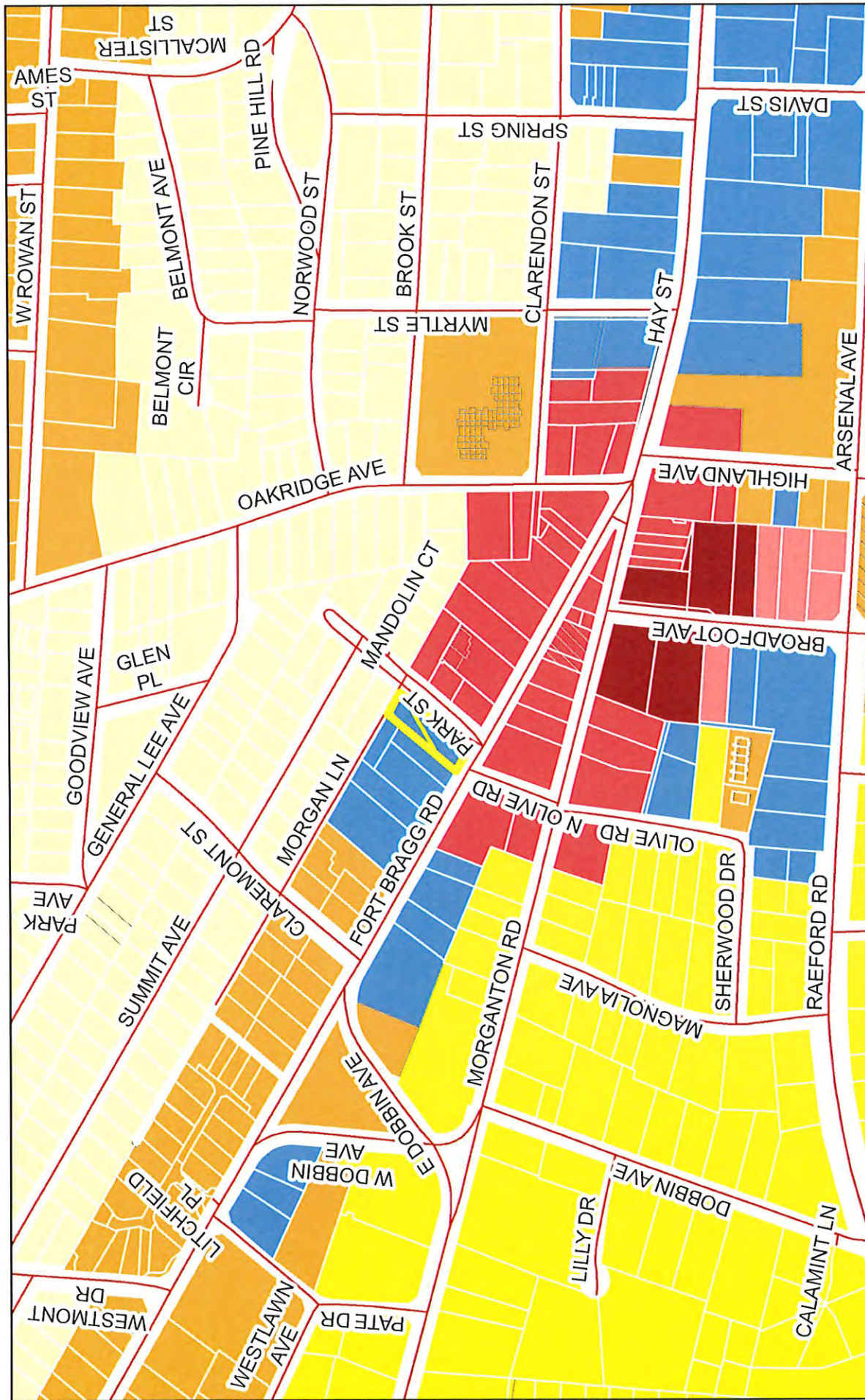
Request: Rezoning from Office and Institutional to Neighborhood Commercial.

Location: 1302 Fort Bragg Road

Legend

-  P23-01 Buffer
-  P23-01





Zoning Map Case #: P23-01

Request: Rezoning from Office and Institutional
to Neighborhood Commercial.

Location: 1302 Fort Bragg Road

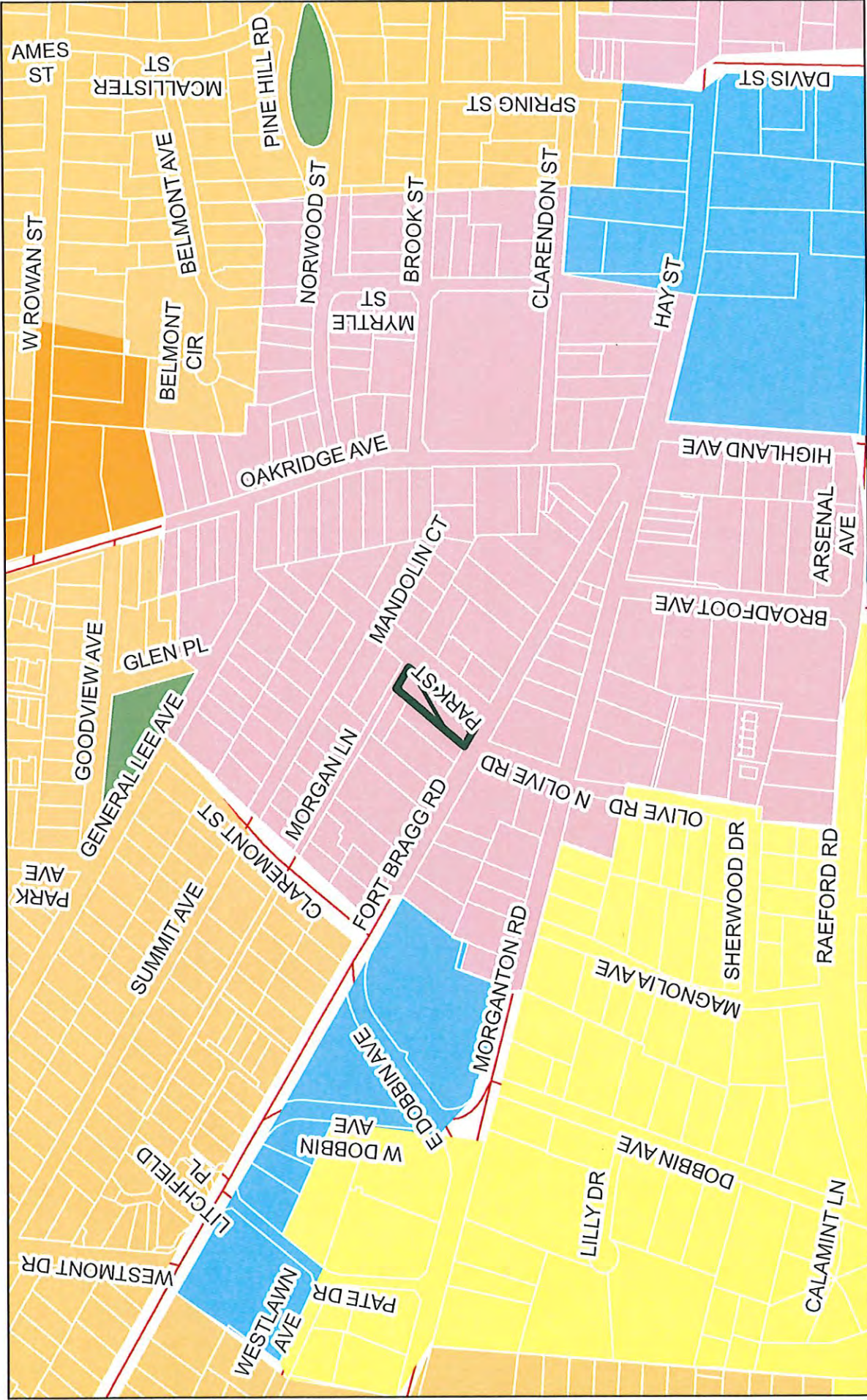
Legend

- P23-01
- CC - Community Commercial
- LC - Limited Commercial
- MR-5 - Mixed Residential 5
- MR-5/CZ - Conditional Mixed Residential 5
- NC - Neighborhood Commercial
- NC/CZ - Conditional Neighborhood Commercial
- OI - Office & Institutional
- SF-6 - Single-Family Residential 6
- SF-10 - Single-Family Residential 10
- County



Letters are being sent to all property owners within the 1000' buffer. Subject property is shown in the hatched pattern.





Letters are being sent to all property owners within the 1000' buffer. Subject property is shown in the hatched pattern.



- Legend**
- P23-01
 - MDR - MEDIUM DENSITY
 - HDR - HIGH DENSITY RESIDENTIAL
 - NMU - NEIGHBORHOOD MIXED USE
 - OI - OFFICE / INSTITUTIONAL
 - PARKOS - PARK / OPEN SPACE
 - LDR - LOW DENSITY
- Land Use Plan 2040**
- Character Areas**

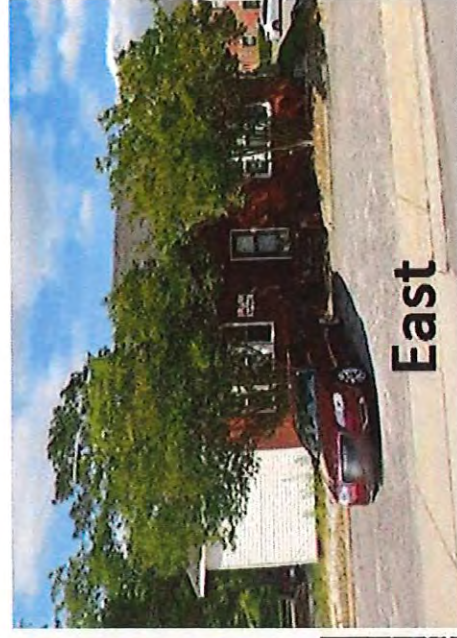
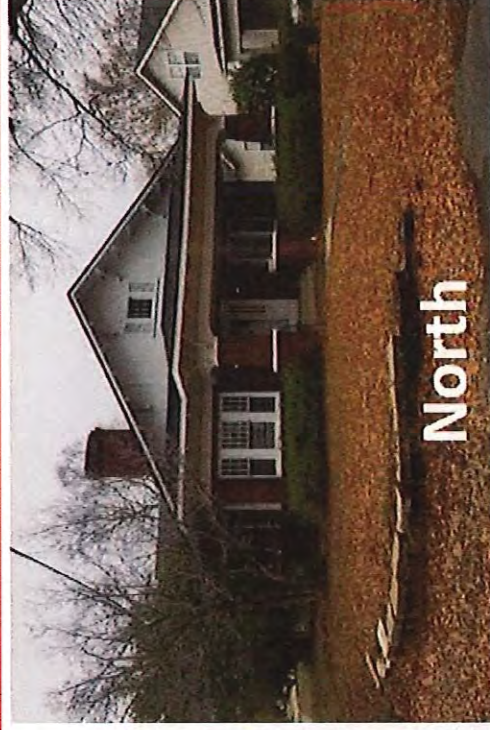
Future Land Use Map Case #: P23-01

Request: Rezoning from Office and Institutional to Neighborhood Commercial.

Location: 1302 Fort Bragg Road



Surrounding Properties



Consistency and Reasonableness Statement

Map Amendments

Pursuant N.C.G.S. Sections 160D-604 and -605, the Zoning Commission finds that the proposed zoning map amendment in case P23-01 is consistent/inconsistent with the City of Fayetteville's Future Land Use Map and Plan (Comprehensive Plan). The following analysis examines the proposed amendment relative to the goals and land-use policies and strategies of the Comprehensive Plan:

Consistency

1. GOALS

GOAL(S)	CONSISTENT	INCONSISTENT
GOAL #1: Focus value and investment around infrastructure and strategic nodes	X	
GOAL #2: Promote compatible economic and commercial development in key identified areas	X	

2. LAND USE POLICES AND STRATEGIES:

LAND USE POLICES AND STRATEGIES	CONSISTENT	INCONSISTENT
LUP 1: Encourage growth in areas well-served by infrastructure and urban services, including roads utilities, parks, schools, police, fire, and emergency services.	X	
1.2: Encourage more intense uses, greater mix of uses and denser residential types in key focal areas.	X	
LUP 4: Create well-designed and walkable commercial and mixed-use districts.	X	
4.2: Encourage context-sensitive site design	X	
LUP 5: Improve gateways	X	
5.1: Continue to require perimeter landscaping and planting islands in significant renovations and redevelopment along commercial corridors.	X	

3. The proposed amendment is consistent with the Future Land Use Map as follows:

<input checked="" type="checkbox"/>	The proposed land use is consistent and aligns with the area's designation on the FLU Map.	OR	<input type="checkbox"/>	The proposed land use is inconsistent and does not align with the area's designation on the FLU Map.
<input checked="" type="checkbox"/>	The proposed designation, as requested, would permit uses that are complimentary to those existing on adjacent tracts.	OR	<input type="checkbox"/>	The proposed designation, as requested, would permit uses that are incongruous to those existing on adjacent tracts.

Reasonableness

The proposed zoning amendment is reasonable and in the public interest because it supports the policies of the Comprehensive Plan as stated above and the Strategic Plan as stated in the Staff Report, and because: [select all that apply]

- ☒ The size, physical conditions, and other attributes of the proposed use(s) will benefit the surrounding community.
- ☐ The amendment includes conditions that limit potential negative impacts on neighboring uses.
- ☒ The proposed uses address the needs of the area and/or City.
- ☐ The proposal adapts the zoning code to reflect modern land-use trends and patterns.

The amendment is also in the public interest because it: [select all that apply]

- ☒ improves consistency with the long-range plan.
- ☒ improves the tax base.
- ☐ preserves environmental and/or cultural resources.
- ☒ facilitates a desired kind of development.
- ☐ provides needed housing/commercial area.

Additional comments, if any (write-in):

Date

Signature

Print



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-3135

Agenda Date: 1/10/2023

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Public Hearing
(Public & Legislative)

Agenda Number: 5.02

TO: Mayor and Members of City Council

THRU: Zoning Commission
Jennifer C Baptiste, CZO - Planning and Zoning Division Manager

FROM: Craig M. Harmon, CZO - Senior Planner

DATE: January 10, 2023

RE:

P23-02. Rezoning from Agricultural Residential (AR) to Neighborhood Commercial (NC) on 1 acre ±, located at 3459 Dundle Rd. (REID # 9495105082000) and is the property of Lorraine Mohler, MOHLER HOMES, INC, represented by Scott Brown, 4D Site Solutions, Inc.

COUNCIL DISTRICT(S):

6 - Derrick Thompson

Relationship To Strategic Plan:

Strategic Operating Plan FY 2022

Goals 2026

Goal II: Responsive City Government Supporting a Diverse and Viable Economy

- Objective 2.1 - To ensure a diverse City tax base
- Objective 2.4 - To sustain a favorable development climate to encourage business growth.

Goal III: City invested in Today and Tomorrow

- Objective 3.2 - To manage the City's future growth and strategic land use.
- Objective 3.3 - To sustain a favorable development and business climate through timely and accurate construction review and building inspection services

Goal IV: Desirable Place to Live, Work and Recreate

- Objective 4.3 - To improve mobility and connectivity through sidewalk, trail, and bike lane investments
- Objective 4.4 - To provide a clean and beautiful community with increased green spaces

- Objective 4.5 - To ensure a place for people to live in great neighborhoods

Executive Summary:

The applicant is seeking to rezone one acre \pm of Agricultural Residential (AR) to Neighborhood Commercial (NC). The parcel is currently undeveloped and is located near the intersection of Dundle and Stoney Point Roads.

The NC District is intended to accommodate small-scale, low-intensity, and convenience retail and service uses that provide goods and services serving the residents of the immediately surrounding neighborhood (e.g., personal service uses, small restaurants, and limited retail).

Background:

On May 10, 2022, the Zoning Commission denied a variance request for this property to reduce the minimum lot width of two proposed lots from 100 feet to 88 feet.

- Owner: Lorraine Mohler, Mohler Homes
- Applicant: Scott Brown, 4D Site Solutions, Inc
- Zoning District: Agricultural Residential (AR)
- Property Address: 3459 Dundle Rd
- Size: 1.0 acres \pm
- Existing Land Use: Single-Family Residential Home
- Surrounding Zoning and Land Uses
 - North: NC - Single-Family Residential
 - South: AR - Single-Family Residential
 - East: AR - Single-Family Residential
 - West: AR - Single-Family Residential

Letters Mailed: 70

Traffic Counts: Average Daily Traffic 2018 Dundle Rd - 1,800

Land Use Plans:

With the adoption of the 2040 Comprehensive Plan: Future Land Use Map & Plan on May 26, 2020. All properties within the city limits as well as properties identified as being in the Municipal Influence Area (MIA) are subject to this plan.

According to the Plan, it is recommended that this portion of the city should be developed as Neighborhood Mixed Use (NMU).

Neighborhood Mixed Use (NMU) is best described as neighborhood-scale commercial uses, with a mix of horizontal uses and vertically built-in key locations. Buildings of 1-3 stories are appropriate. Smaller scale multi-family, attached single-family, and small lot single-family residential is appropriate. Lower-density construction should be located along the edges.

Issues/Analysis:

History:

The property is 1.0 acres \pm and is located at 3459 Dundle Road. The site is a single-family residential site, but is currently vacant. The current Unified Development Ordinance was adopted in 2011. This property was not developed prior to the

adoption to the UDO.

This is a single frontage lot facing Dundle Road. The UDO requires that lots within the AR zoning district be at least 20,000 square feet and have a minimum of 100 feet of road frontage.

Surrounding Area:

The applicant's proposal is congruous with the types of zoning in this area. The property directly to the north is zoned NC. While the property to the east is zoned AR, its use as an outdoor dog kennel is commercial. It is also in keeping with the recommended zoning of the 2040 Future Land Use Plan, Neighborhood Mixed Use. The properties to the north and east are already either zoned commercially or have commercial uses on them. To the west is over eight acres of undeveloped property that is designated for Neighborhood Mixed Use as well. To the south is all single-family residential.

Rezoning Request:

The applicant is requesting to rezone an area currently zoned Agricultural Residential (AR) to Neighborhood Commercial (NC) which would allow the development of commercial, office, or multi-family or single-family. The zoning purpose of the NC District is to "accommodate small-scale, low-intensity, and "convenience" retail and service uses that provide goods and services serving the residents of the immediately surrounding neighborhood (e.g., personal service uses, small restaurants, and limited retail)." In the existing zone, AR, uses are intended to accommodate rural uses, including agricultural uses, uses that complement or support agricultural uses, and very low-density residential uses. It encourages residential development that preserves farmland and other open space through flexibly-designed conservation subdivisions.

Land within the City is generally classified by the Unified Development Ordinance (UDO) to be within one of many base zoning districts. Land may be reclassified to one of several comparable zoning districts in accordance with Section 30-2.C.

Straight Zoning:

The request is for a straight zoning from Agricultural Residential (AR) to Neighborhood Commercial (NC).

The NC District is established and intended to accommodate small-scale, low-intensity, and "convenience" retail and service uses that provide goods and services serving the residents of the immediately surrounding neighborhood (e.g., personal service uses, small restaurants, and limited retail). Development in the district should not include uses of a size that is out of scale with a residential neighborhood, or that attracts traffic from outside the surrounding neighborhood. New construction shall not create individual retail uses over 2,500 square feet without obtaining a Special Use Permit (See Section 30-2.C.7.). Residential uses are encouraged on the upper floors of nonresidential establishments. The district is subject to standards intended to ensure development is consistent with the neighborhood scale and compatible with surrounding uses and the design standards in Article 30-5: Development Standards.

The proposed zoning district is compatible with the area and this district is in keeping with the City's Future Land Use Plan. This rezoning would be a complement to the commercial zoning districts around this parcel.

The reclassification of land to a straight zoning district allows all of the uses that are shown on the attached Use Table taken from the UDO. The City Council may not

consider conditions or restrictions on the range of allowable uses, use standards, development intensities, development standards, and other applicable regulations.

Land Use Plan Analysis:

According to Future Land Use Map & Plan, this area is recommended to be developed as a Neighborhood Mixed Use (NMU). Neighborhood Mixed Use (NMU) is best described as neighborhood-scale commercial uses, with a mix of horizontal uses and vertically built-in key locations. Buildings of 1-3 stories are appropriate. Smaller scale multi-family, attached single-family, and small lot single-family residential is appropriate. Lower-density construction should be located along the edges.

The applicant's proposal is congruous with the types of zoning in this area. The property directly to the north is zoned NC. While the property to the east is zoned AR, its use as an outdoor dog kennel is commercial. It is also in keeping with the recommended zoning of the 2040 Future Land Use Plan, Neighborhood Mixed Use. The properties to the north and east are already either zoned commercially or have commercial uses on them. To the west is over eight acres of undeveloped property that is designated for Neighborhood Mixed Use as well. To the south is all single-family residential.

Consistency and Reasonableness Statements:

The Future Land Use Plan also sets forth written goals, policies, and strategies. This application looks to follow the City's strategic, compatible growth strategies by meeting the goals of the Land Use Plan found on the attached Consistency and Reasonableness form.

Budget Impact:

There is not an immediate budgetary impact but there will be an economic impact associated with this rezoning that will occur due to taxes collected in the future.

Options:

1. Zoning Commission moves to recommend the map amendment/rezoning as presented based on the evidence submitted and finds that the map amendment/rezoning is consistent with the Future Land Use Plan as demonstrated by the attached consistency and reasonableness statement.
2. Zoning Commission moves to recommend the map amendment/rezoning to a more restrictive zoning district based on the evidence submitted and finds that the map amendment/rezoning would be consistent with the Future Land Use Plan and an amended consistency and reasonableness statement.
3. Zoning Commission moves to deny the map amendment/rezoning based on the evidence submitted and finds that the map amendment/rezoning is inconsistent with the Future Land Use Plan.

Recommended Action:

The Professional Planning Staff recommends that the Zoning Commission move for approval of the map amendment to NC based on:

- The proposed zoning map amendment implements the policies adopted in the Future Land Use Plan (FLUP), and those policies found in the Unified Development Ordinance (UDO). The Future Land Use Plan calls for the subject property to be developed as Neighborhood Mixed Use.
- The uses permitted by the proposed change in zoning district classification and standards apply to such use and will be appropriate in the immediate area of the land to be reclassified due to the existing zoning and uses surrounding this property; and
- There are no other factors that will substantially affect public health, safety, morals, or general welfare.

Attachments:

1. Plan Application
2. Aerial Notification map
3. Zoning Map
4. Land Use Plan Map
5. Subject Property
6. Surrounding Property Photos
7. Consistency and Reasonableness Statements

Project Overview

#899236

Project Title: Dundle Road Property**Jurisdiction:** City of Fayetteville**Application Type:** 5.1) Rezoning (Map Amendment)**State:** NC**Workflow:** Staff Review**County:** Cumberland**Project Location****Project Address or PIN:** 3459 DUNDLE RD (9495105082000) **Zip Code:** 28306**GIS Verified Data****Property Owner:** Parcel

- 3459 DUNDLE RD: MOHLER HOMES, INC.

Acreage: Parcel

- 3459 DUNDLE RD: 1

Zoning District:**Subdivision Name:****Fire District:****Airport Overlay District:****Hospital Overlay District:****Coliseum Tourism District:****Cape Fear District:****Downtown Historic District:****Haymount Historic District:****Floodway:****100 Year Flood:****500 Year Flood:****Watershed:****General Project Information****Has the land been the subject of a map amendment application in the last five years?:** No**Previous Amendment Approval Date:****Previous Amendment Case #:****Proposed Zoning District:** NC**Acreage to be Rezoned:** 1**Is this application related to an annexation?:** No**Water Service:** Public**Sewer Service:** Private**A) Please describe all existing uses of the land and existing structures on the site, if any:****B) Please describe the zoning district designation and existing uses of lands adjacent to and across the street from the subject site.:**

Property is vacant

Property is currently zoned AR. The property to the north is zoned NC. Most the surrounding property is being used for residential.

Amendment Justification - Answer all questions on this and all pages in this section (upload additional sheets as needed).**A) State the extent to which the proposed amendment is consistent with the comprehensive plan and all other applicable long-range planning documents.:**

The proposed amendment is consistent with the comprehensive plan. There is NC zoned property to the north.

B) Are there changed conditions that require an amendment? :

No

C) State the extent to which the proposed amendment addresses a demonstrated community need.:

There is a need in the community for residential housing. Rezoning from AR to NC will allow for an additional home to be constructed on the property.

D) State the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land, and why it is the appropriate zoning district for the land.:

The property to the north is zoned NC. The proposed request will be consistent with the property to the north and compatible with the surrounding property.

E) State the extent to which the proposed amendment results in a logical and orderly development pattern.:

The rezoning request is logical. The property to the north is zoned NC. NC is compatible with the surrounding AR zoning.

F) State the extent to which the proposed amendment might encourage premature development.:

Premature development is not anticipated as a result of the rezoning request.

G) State the extent to which the proposed amendment results in strip-style commercial development.:

N/A

H) State the extent to which the proposed amendment results in the creation of an isolated zoning district unrelated to adjacent and surrounding zoning districts.:

An isolated zoning district will not be created. The property to the north is also zoned NC.

I) State the extent to which the proposed amendment results in significant adverse impacts on the property values of surrounding lands.:

No significant adverse impacts on the surrounding property value is anticipated.

J) State the extent to which the proposed amendment results in significantly adverse impacts on the natural environment.:

No significant adverse impact to environment are anticipated. The property will be developed in accordance with the UDO and all federal and state requirements.

Primary Contact Information

Contractor's NC ID#:

Project Owner

Lorraine Mohler
Mohler Investments
2148 Rim Road
Fayetteville, NC 28314
P: 910-221-9901
lorrainemohler@mohlerinvestments.com

Project Contact - Agent/Representative

Scott Brown
4D Site Solutions, Inc
409 Chicago Drive, Suite 112
Fayetteville, NC 28306
P: (910) 4266777
sbrown@4dsitesolutions.com

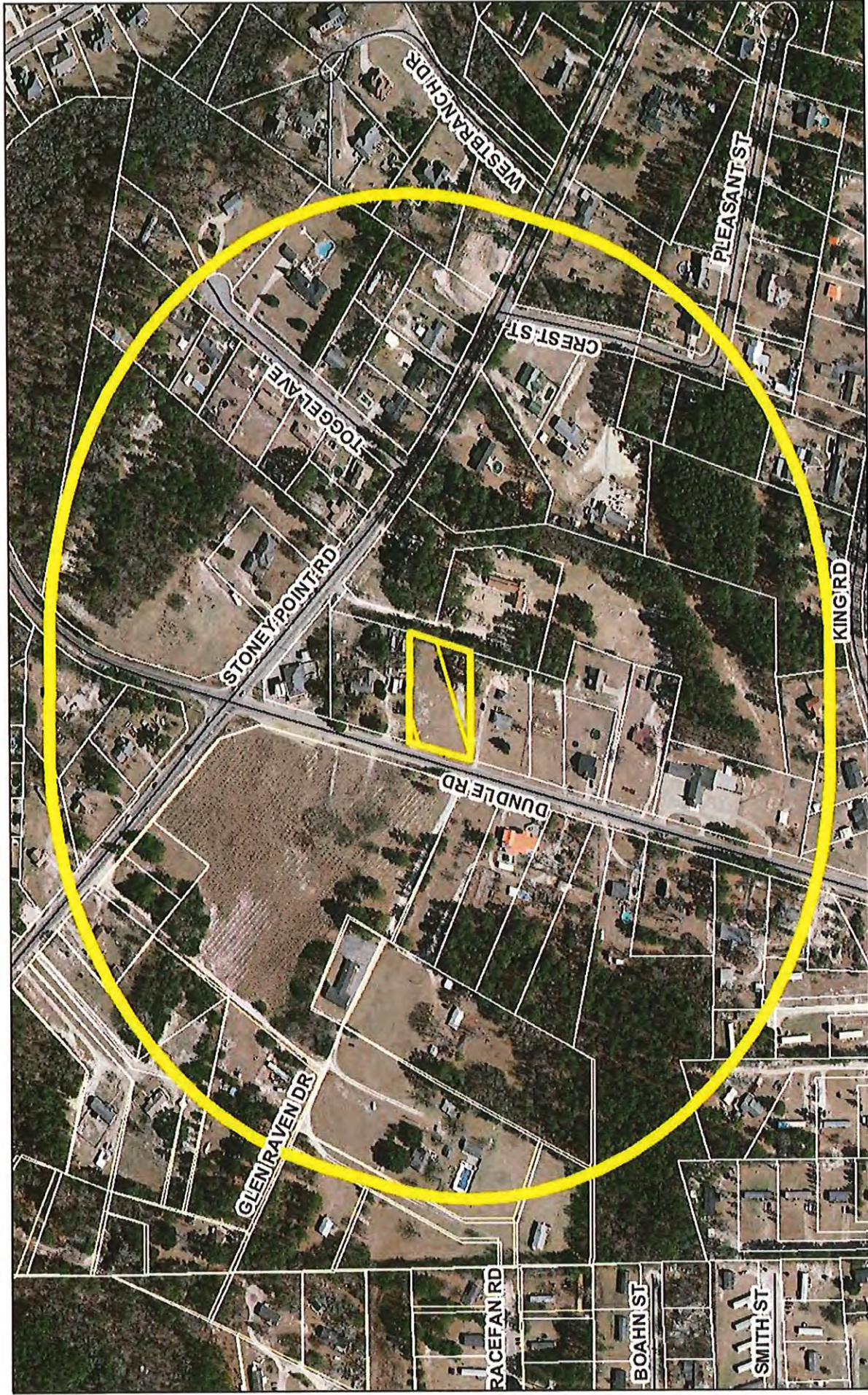
As an unlicensed contractor, I am aware that I cannot enter into a contract that the total amount of the project exceeds \$30,000. :

NC State General Contractor's License Number:

NC State Mechanical Contractor's #1 License Number:

NC State Mechanical Contractor's #2 License Number:
NC State Mechanical Contractor's #3 License Number:
NC State Electrical Contractor #1 License Number:
NC State Electrical Contractor #2 License Number:
NC State Electrical Contractor #3 License Number:
NC State Plumbing Contractor #1 License Number:
NC State Plumbing Contractor #2 License Number:

Indicate which of the following project contacts should be included on this project:



Aerial Notification Map

Case #:P23-02

Request: Rezoning
AR to NC

Location: 3459 Dundle Road

Legend



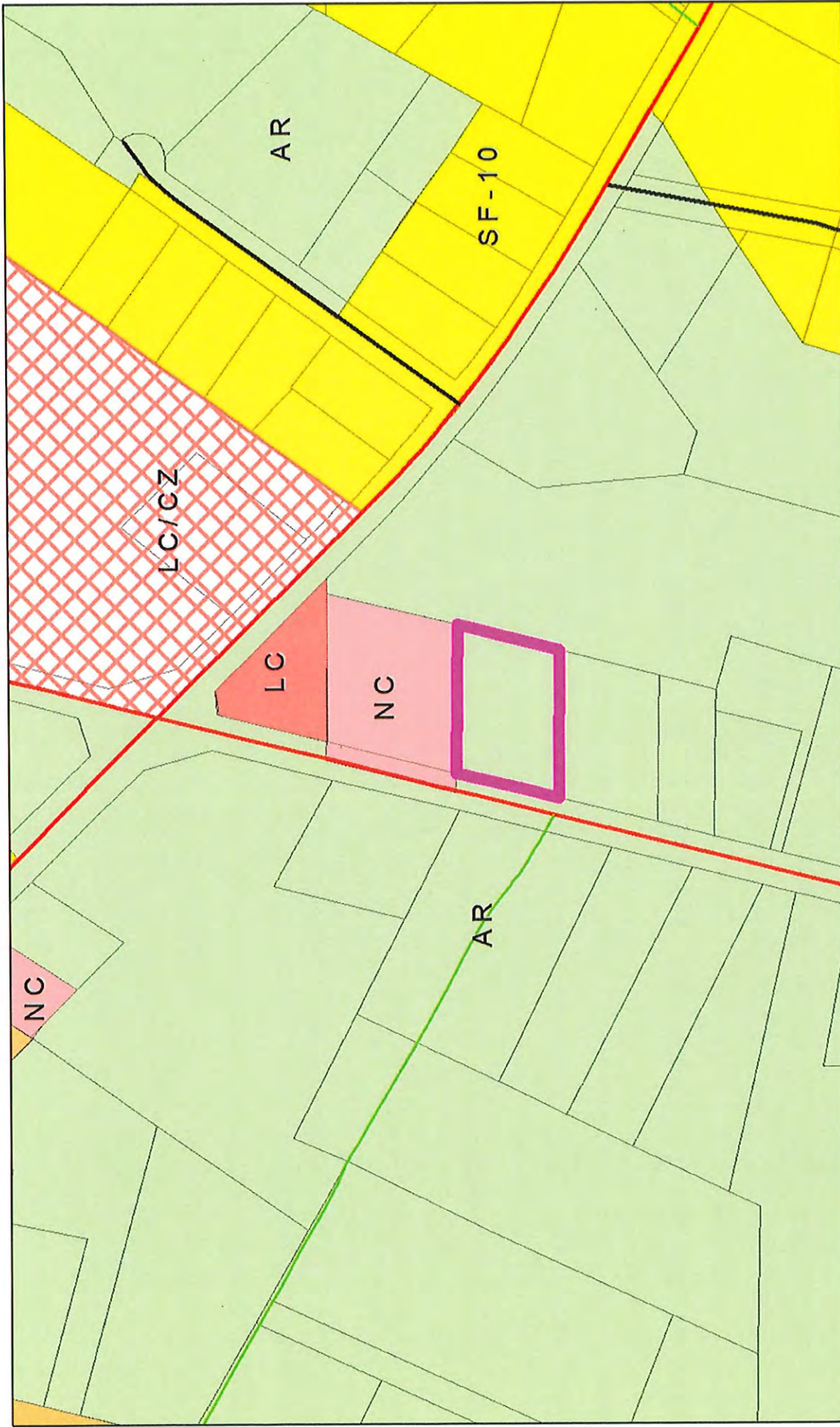
1,000' Notification Area



Parcels



Letters are being sent to all property owners within the 1,000' buffer. Subject property is shown in the hatched pattern.



Zoning Map

Case #:P23-02

Request: Rezoning
AR to NC

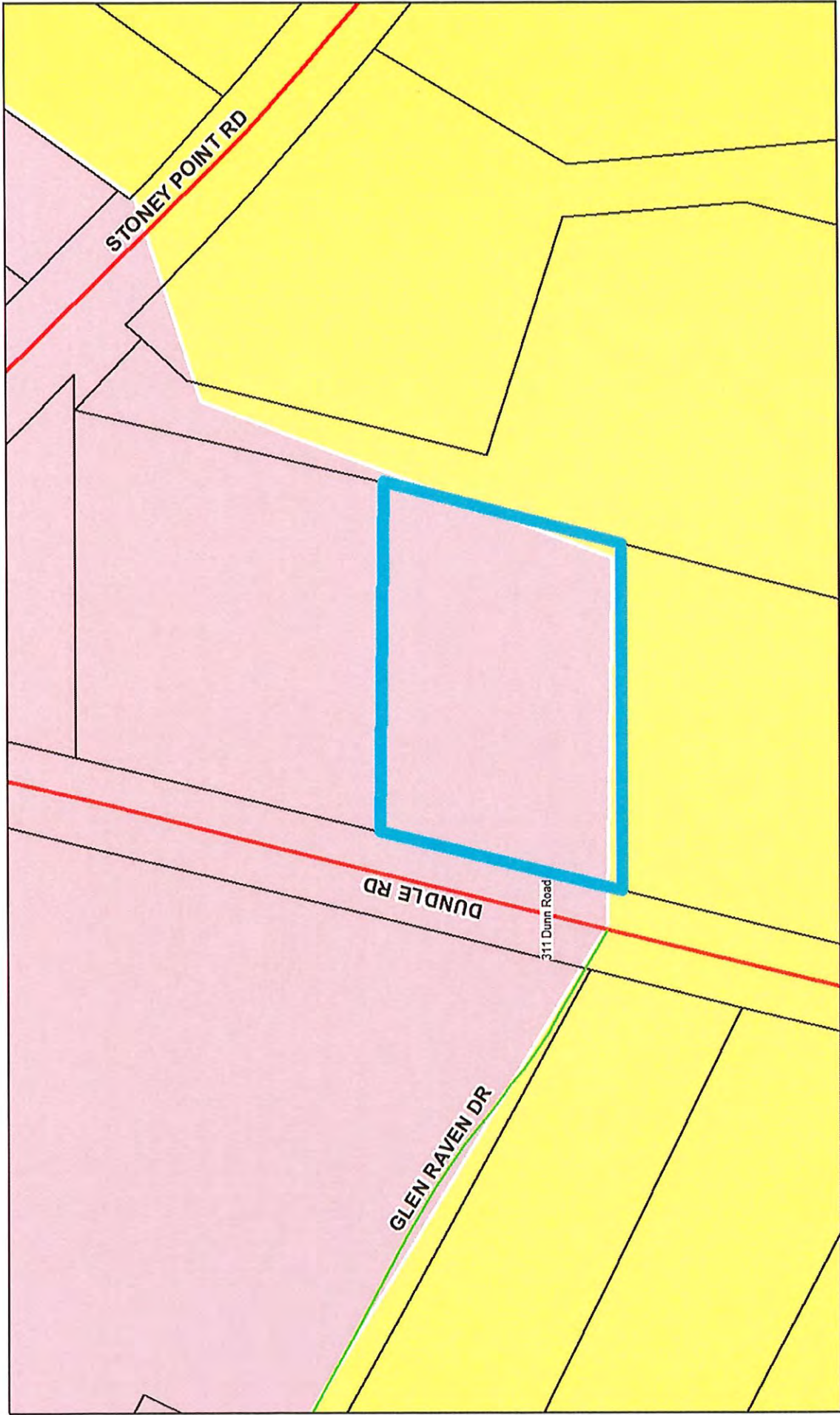
Location: 3459 Dundle Road

Legend

AR	NC
LC	SF-10
LC/CZ	SF-6



Letters are being sent to all property owners within the 1,000' buffer. Subject property is shown in the hatched pattern.



Land Use Map

Case #:P23-02

Request: Rezoning
AR to NC

Location: 3459 Dundle Road

Legend

Parcels

Future Land Use 2040

Character Areas

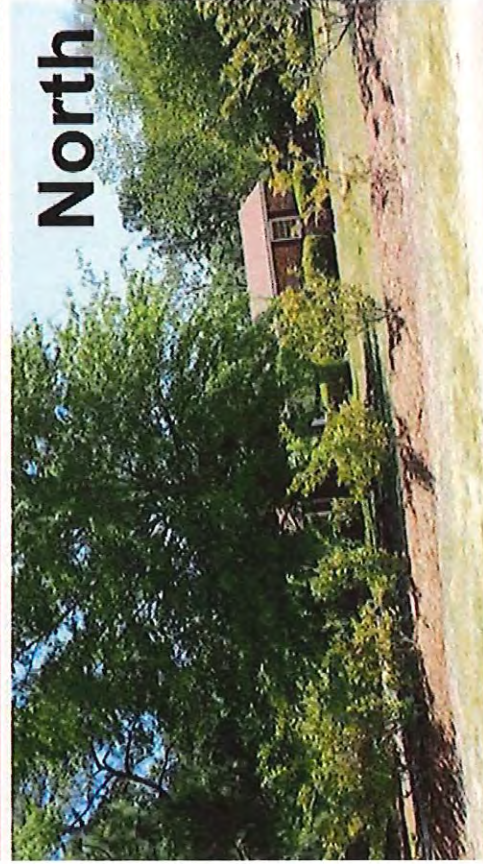
LDR - LOW DENSITY

NMU - NEIGHBORHOOD MIXED USE



Letters are being sent to all property owners within the 1,000' buffer. Subject property is shown in the hatched pattern.





North



East



South

Consistency and Reasonableness Statement

Map Amendments

Pursuant N.C.G.S. Sections 160D-604 and -605, the Zoning Commission finds that the proposed zoning map amendment in case P23-02 is consistent with the City of Fayetteville's Future Land Use Map and Plan (Comprehensive Plan). The following analysis examines the proposed amendment relative to the goals and land-use policies and strategies of the Comprehensive Plan:

Consistency

1. GOALS

GOAL(S)	CONSISTENT	INCONSISTENT
GOAL #1: Focus value and investment around infrastructure and strategic nodes	X	
GOAL #2: Promote compatible economic and commercial development in key identified areas	X	

2. LAND USE POLICES AND STRATEGIES:

LAND USE POLICES AND STRATEGIES	CONSISTENT	INCONSISTENT
LUP 1: Encourage growth in areas well-served by infrastructure and urban services, including roads utilities, parks, schools, police, fire, and emergency services.	X	
1.2: Encourage more intense uses, greater mix of uses and denser residential types in key focal areas.	X	
LUP 2: Encourage strategic economic development.	X	
2.1: Encourage economic development in designated areas.	X	
LUP 3: Encourage redevelopment along underutilized commercial strip corridors and reinvestment in distressed residential neighborhoods.	X	
3.1: Examine and identify targeted redevelopment and infill areas throughout the city.	X	
LUP 4: Create well-designed and walkable commercial and mixed use districts.	X	
4.1: Ensure new development meets basic site design standards.	X	

3. The proposed amendment is consistent with the Future Land Use Map as follows:

<input checked="" type="checkbox"/>	The proposed land use is consistent and aligns with the area's designation on the FLU Map.	OR	<input type="checkbox"/>	The proposed land use is inconsistent and does not align with the area's designation on the FLU Map.
<input checked="" type="checkbox"/>	The proposed designation, as requested, would permit uses that are complimentary to those existing on adjacent tracts.	OR	<input type="checkbox"/>	The proposed designation, as requested, would permit uses that are incongruous to those existing on adjacent tracts.

Reasonableness

The proposed zoning amendment is reasonable and in the public interest because it supports the policies of the Comprehensive Plan as stated above and the Strategic Plan as stated in the Staff Report, and because: [select all that apply]

- ☒ The size, physical conditions, and other attributes of the proposed use(s) will benefit the surrounding community.
- ☐ The amendment includes conditions that limit potential negative impacts on neighboring uses.
- ☒ The proposed uses address the needs of the area and/or City.
- ☒ The proposal adapts the zoning code to reflect modern land-use trends and patterns.

The amendment is also in the public interest because it: [select all that apply]

- ☒ improves consistency with the long-range plan.
- ☒ improves the tax base.
- ☐ preserves environmental and/or cultural resources.
- ☒ facilitates a desired kind of development.
- ☒ provides needed housing/commercial area.

Additional comments, if any (write-in):

Jan. 10, 2023

Date

Signature

Print



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-3151

Agenda Date: 1/10/2023

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Public Hearing
(Public & Legislative)

Agenda Number: 5.03

TO: Mayor and Members of City Council

THRU: Zoning Commission
Jennifer C. Baptiste, CZO - Planning and Zoning Manager

FROM: Heather Eckhardt, CZO - Planner II

DATE: January 10, 2023

RE:

P23-03. Rezoning from Single-Family Residential 6 (SF-6) to Neighborhood Commercial (NC) zoning district of .53 acres ± portion of total 2.98 acres ± parcel, located at 7510 Cliffdale Road (REID #9487353248000) and being the property of F&F Investments of Fayetteville LLC, represented by Michael Adams of MAPS Surveying Inc.

COUNCIL DISTRICT(S):

8 - Courtney Banks-McLaughlin

Relationship To Strategic Plan:

Strategic Operating Plan FY 2022

Goals 2027

Goal II: Responsive City Government Supporting a Diverse and Viable Economy

- Objective 2.1 - To ensure a diverse City tax base
- Objective 2.4 - To sustain a favorable development climate to encourage business growth.

Goal III: City invested in Today and Tomorrow

- Objective 3.2 - To manage the City's future growth and strategic land use.

Executive Summary:

The subject property is currently zoned Single Family Residential 6 (SF-6) and the applicant would like to rezone .53 acres or 23,229 square feet of the 2.98-acre parcel to Neighborhood Commercial (NC).

The NC zoning district is "established and intended to accommodate small-scale, low-intensity, and "convenience" retail and service uses that provide goods and

services serving the residents of the immediately surrounding neighborhood (e.g., personal service uses, small restaurants, and limited retail)."

Background:

Owner: F&F Investments of Fayetteville LLC

Applicant: Michael Adams, MAPS Surveying Inc

Requested Action: SF-6 to NC of .53 acres

REID: 9487353248000

Council District: 8 - Courtney Banks-McLaughlin

Status of Property: One detached structure

Size: .53 acres ± of 2.98 acres ±

Adjoining Land Use & Zoning:

- North: SF-6 - Fire station and vacant lot
- South: SF-6 - Single-family houses
- East: NC - Gas station
- West: SF-6 - Single family subdivision

Annual Average Daily Traffic: Cliffdale Road: 27,000 (2021)

Letters Mailed: 117

Land Use Plans:

With the adoption of the 2040 Comprehensive Plan: Future Land Use Map & Plan on May 26, 2020, all properties within the city limits as well as properties identified as being in the Municipal Influence Area (MIA) are subject to this plan.

According to the Plan, it is recommended that this portion of the city should be developed as High Density Residential. High Density Residential is described as having townhomes and apartments in 3-5 story buildings with some very small single-family lots possible typically with 5-16 dwellings per acre. These areas should be active, compact neighborhoods that are walkable to adjacent commercial centers.

Issues/Analysis:

History:

The subject property and surrounding area were annexed into the City of Fayetteville in 2005 as part of the Phase 5 Annexation project. A single-family house was located on the property until the early 2000s when the house was removed. A detached structure remains on the property.

Surrounding Area:

The subject property is located at the corner of Cliffdale Road and Branchwood Circle roughly 3/8ths of a mile west of the Cliffdale Road and Rim Road intersection. The areas to the north, south, and west are primarily residential in nature with a combination of single-family subdivisions, apartments, and mobile home parks.

Mayflower Subdivision, which was reviewed by the Zoning Commission in December 2022, is located to the south of the property. A lower-intensity commercial corridor is located to the east of the subject property. This lower-intensity commercial corridor is currently zoned Neighborhood Commercial and contains uses such as a gas station and a car wash. This commercial area goes from the corner of Cliffdale Road and Branchwood Circle to the corner of Cliffdale Road and Rim Road. At this intersection,

the zoning district (LC) and commercial uses become more intense.

Rezoning Request:

The applicant is requesting to rezone .53 acres ± of a larger 2.98 acre parcel from Single Family Residential 6 (SF-6) to Neighborhood Commercial (NC). The Land within the City is generally classified by the Unified Development Ordinance (UDO) to be within one of many base zoning districts. Land may be reclassified to one of several comparable zoning districts in accordance with Section 30-2.C.

Straight Zoning:

The request is for a straight zoning of .53 acres ± of a larger 2.98 acre parcel from Single Family Residential 6 (SF-6) to Neighborhood Commercial (NC).

The NC zoning district is "established and intended to accommodate small-scale, low-intensity, and "convenience" retail and service uses that provide goods and services serving the residents of the immediately surrounding neighborhood (e.g., personal service uses, small restaurants, and limited retail)."

The proposed zoning district is compatible with the area and this district is in keeping with the City's Future Land Use Plan.

The reclassification of land to a straight zoning district allows all of the uses that are shown on Use Table in the Unified Development Ordinance. The City Council may not consider conditions or restrictions on the range of allowable uses, use standards, development intensities, development standards, and other applicable regulations.

Land Use Plan Analysis:

According to Future Land Use Map & Plan, this area is recommended to be developed as High Density Residential (HDR). High Density Residential calls for townhomes and apartments in 3-5 story buildings with some single-family lots possible. These developments should be active, compact neighborhoods that are walkable to adjacent commercial centers. The NC zoning district is in keeping with the Future Land Use Plan as it allows for a variety of high-density residential uses by right.

Consistency and Reasonableness Statements:

The Future Land Use Plan also sets forth written goals, policies, and strategies. This application looks to follow the City's strategic, compatible growth strategies by meeting the goals of the Land Use Plan found on the attached Consistency and Reasonableness form.

Budget Impact:

There is not an immediate budgetary impact but there will be an economic impact associated with this rezoning that will occur due to taxes collected in the future.

Options:

1. Recommends approval of the map amendment to NC as presented based on the evidence submitted and finds that the rezoning is consistent with the Future Land Use Plan as demonstrated by the attached consistency and reasonableness statement. (recommended);
2. Recommends approval of the map amendment to a more restrictive zoning district based on the evidence submitted and finds that the map amendment would be consistent with the Future Land Use Plan and an amended consistency and reasonableness statement; or

3. Denies the map amendment request based on the evidence submitted and finds that the map amendment is inconsistent with the Future Land Use Plan.

Recommended Action:

The Professional Planning Staff recommends that the Zoning Commission move to recommend APPROVAL of the map amendment to NC based on the following:

- The proposed zoning map amendment implements the policies adopted in the Future Land Use Plan (FLUP), and those policies found in the Unified Development Ordinance (UDO). The Future Land Use Plan calls for the subject property to be developed as High Density Residential.
- The uses permitted by the proposed change in zoning district classification and standards apply to such use and will be appropriate in the immediate area of the land to be reclassified due to the existing zoning and uses surrounding this property; and
- There are no other factors that will substantially affect public health, safety, morals, or general welfare.

Attachments:

1. Plan Application
2. Aerial Notification Map
3. Zoning Map
4. Land Use Plan Map
5. Subject Property
6. Surrounding Property Photos
7. Consistency and Reasonableness Statements

Project Overview

#910372

Project Title: F&F Investments of Fayetteville**Jurisdiction:** City of Fayetteville**Application Type:** 5.1) Rezoning (Map Amendment)**State:** NC**Workflow:** Staff Review**County:** Cumberland**Project Location****Project Address or PIN:** 9487353248000 (Unverified)**Zip Code:** 28314**GIS Verified Data****Property Owner:****Acreage:****Zoning District:****Subdivision Name:****Fire District:****Airport Overlay District:****Hospital Overlay District:****Coliseum Tourism District:****Cape Fear District:****Downtown Historic District:****Haymount Historic District:****Floodway:****100 Year Flood:****500 Year Flood:****Watershed:****General Project Information****Has the land been the subject of a map amendment application in the last five years?:** No**Previous Amendment Approval Date:****Previous Amendment Case #:****Proposed Zoning District:** NC**Acreage to be Rezoned:** 0.53**Is this application related to an annexation?:** No**Water Service:** Public**Sewer Service:** Public**A) Please describe all existing uses of the land and existing structures on the site, if any:****B) Please describe the zoning district designation and existing uses of lands adjacent to and across the street from the subject site.:**

Vacant land currently zoned SF-6

Property to the west and south is SF-6

Requesting the front portion along Cliffdale Rd to be rezoned

Property to the east across Branchwood Circle is NC

Property to the north across Cliffdale Rd is SF-6

Amendment Justification - Answer all questions on this and all pages in this section (upload additional sheets as needed).**A) State the extent to which the proposed amendment is consistent with the comprehensive plan and all other applicable long-range planning documents.:**

Consistent with the commercial zoning already in place on the south side of Cliffdale.

Properties along the south side of Cliffdale are zoned commercial with residential located immediately behind them.

B) Are there changed conditions that require an amendment? :

no

C) State the extent to which the proposed amendment addresses a demonstrated community need.:

With the addition of over 200 proposed units in the immediate area of this property, this would help address the commercial needs for the additional units under construction.

D) State the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land, and why it is the appropriate zoning district for the land.:

Its an extension of the currently zoned commercial properties along the south side of Cliffdale

E) State the extent to which the proposed amendment results in a logical and orderly development pattern.:

Continues the commercial development along the south side of Cliffdale with residential homes located behind it.

F) State the extent to which the proposed amendment might encourage premature development.:

None. Most of area is currently already developed or is under review for additional residential units

G) State the extent to which the proposed amendment results in strip-style commercial development.:

Doesnt result in strip style commercial development. Its a continuation of the existing zonings already established along Cliffdale Rd.

H) State the extent to which the proposed amendment results in the creation of an isolated zoning district unrelated to adjacent and surrounding zoning districts.:

Does not create an isolated zoning district

I) State the extent to which the proposed amendment results in significant adverse impacts on the property values of surrounding lands.:

No adverse affects.

J) State the extent to which the proposed amendment results in significantly adverse impacts on the natural environment.:

All development measures needed for construction that may affect the natural environment will be regulated and require approval of a professional engineers design through various state and county agencies

Primary Contact Information

Contractor's NC ID#:

Project Owner

Louis Frangos
F&F Investments of Fayetteville LLC
3057 N Main St
Hope Mills , NC 28348
P: 910-322-1496
aaaglassnc@gmail.com

Project Contact - Agent/Representative

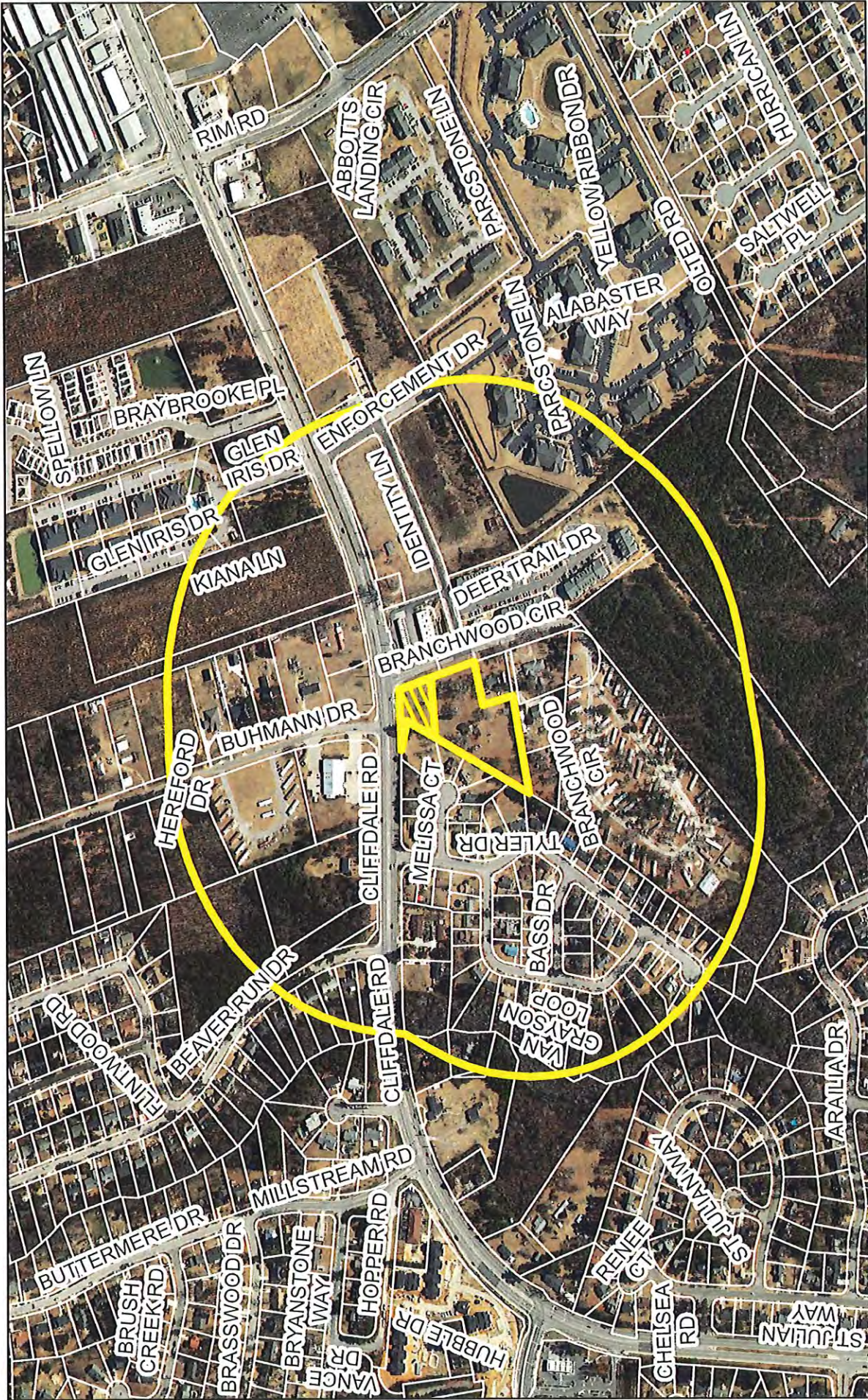
Michael Adams
MAPS Surveying Inc.
1306 Fort Bragg Road
Fayetteville, NC 28305
P: 910-484-6432
maps@mapssurveying.com

As an unlicensed contractor, I am aware that I cannot enter into a contract that the total amount of the project exceeds \$30,000. :

NC State General Contractor's License Number:

NC State Mechanical Contractor's #1 License Number:
NC State Mechanical Contractor's #2 License Number:
NC State Mechanical Contractor's #3 License Number:
NC State Electrical Contractor #1 License Number:
NC State Electrical Contractor #2 License Number:
NC State Electrical Contractor #3 License Number:
NC State Plumbing Contractor #1 License Number:
NC State Plumbing Contractor #2 License Number:

Indicate which of the following project contacts should be included on this project:



Letters are being sent to all property owners within the 1,000' buffer. Subject property is shown in the hatched pattern.



Legend

-  P23-03 (Area to be Rezoned)
-  P23-03
-  P23-03 Buffer

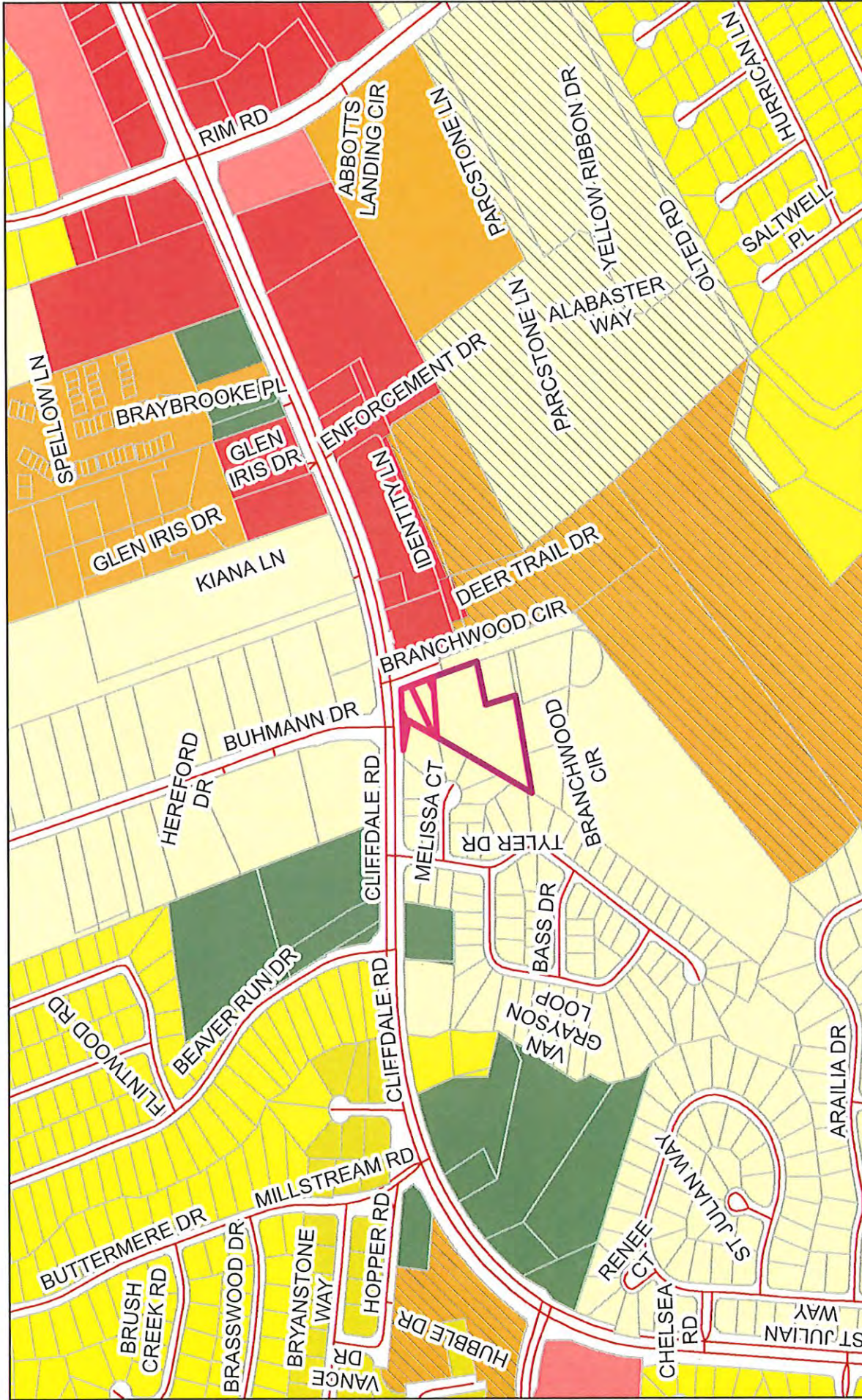
Aerial Notification Map

Case #: P23-03

Request: Rezoning 0.53 acres of 2.98 acres
SF-6 to NC

Location: 7510 Cliffdale Road (9487353248000)





Letters are being sent to all property owners within the 1,000' buffer. Subject property is shown in the hatched pattern.



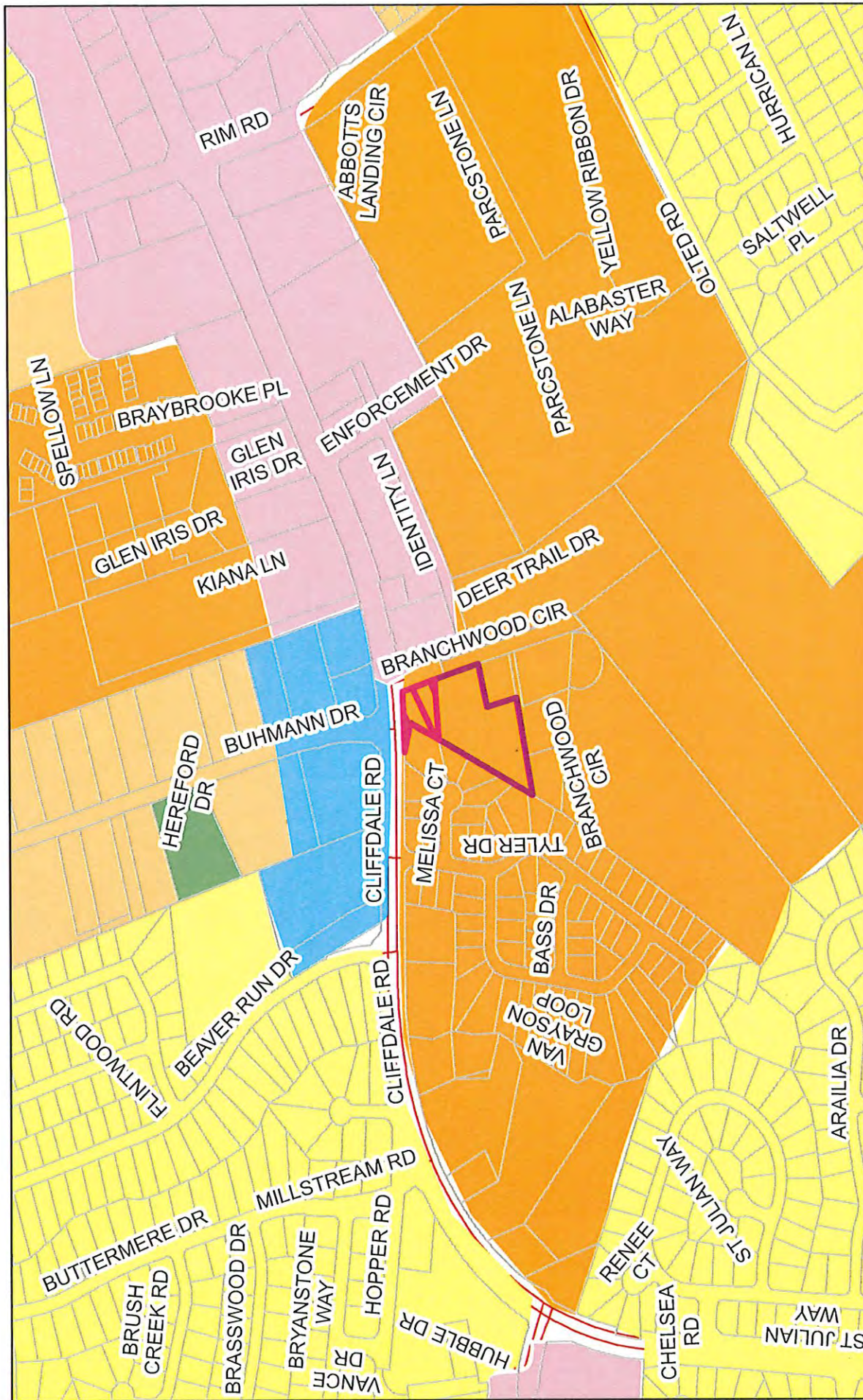
Zoning Map

Case #: P23-03

Request: Rezoning 0.53 acres of 2.98 acres
SF-6 to NC

Location: 7510 Cliffdale Road
9487353248000



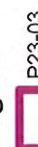


Letters are being sent to all property owners within the 1,000' buffer. Subject property is shown in the hatched pattern.



- LDR - LOW DENSITY
- MDR - MEDIUM DENSITY
- HDR - HIGH DENSITY RESIDENTIAL
- NMU - NEIGHBORHOOD MIXED USE
- OI - OFFICE / INSTITUTIONAL

Legend



P23-03
P23-03 (Area to be Rezoned)

Land Use Plan 2040

Character Areas

- PARKOS - PARK / OPEN SPACE

Land Use Map

Case #: P23-03

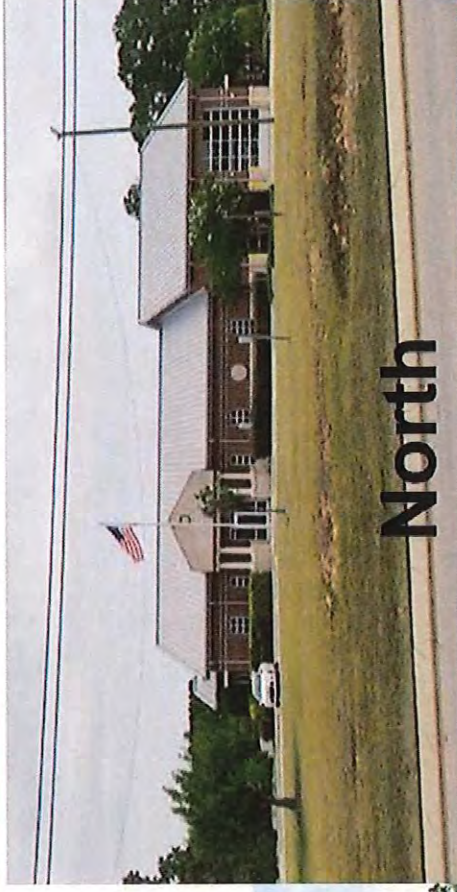
Request: Rezoning 0.53 acres of 2.98 acres
SF-6 to NC

Location: 7510 Cliffdale Road
9487353248000





West



North



South



East

Consistency and Reasonableness Statement

Map Amendments

Pursuant N.C.G.S. Sections 160D-604 and -605, the Zoning Commission finds that the proposed zoning map amendment in case P23-03 is consistent/inconsistent with the City of Fayetteville's Future Land Use Map and Plan (Comprehensive Plan). The following analysis examines the proposed amendment relative to the goals and land-use policies and strategies of the Comprehensive Plan:

Consistency

1. GOALS

GOAL(S)	CONSISTENT	INCONSISTENT
GOAL #1: Focus value and investment around infrastructure and strategic nodes	X	
GOAL #2: Promote compatible economic and commercial development in key identified areas	X	

2. LAND USE POLICES AND STRATEGIES:

LAND USE POLICES AND STRATEGIES	CONSISTENT	INCONSISTENT
LUP 1: Encourage growth in areas well-served by infrastructure and urban services, including roads utilities, parks, schools, police, fire, and emergency services.	X	
1.6: Require adequate infrastructure to be in place prior to or in tandem with new development.	X	
LUP 4: Create well-designed and walkable commercial and mixed-use districts.	X	
4.1: Ensure new development meets basic site design standards	X	
4.2: Encourage context-sensitive site design	X	
LUP 5: Improve gateways	X	
5.1: Continue to require perimeter landscaping and planting islands in significant renovations and redevelopment along commercial corridors.	X	

3. The proposed amendment is consistent with the Future Land Use Map as follows:

<input checked="" type="checkbox"/>	The proposed land use is consistent and aligns with the area's designation on the FLU Map.	OR	<input type="checkbox"/>	The proposed land use is inconsistent and does not align with the area's designation on the FLU Map.
<input checked="" type="checkbox"/>	The proposed designation, as requested, would permit uses that are complimentary to those existing on adjacent tracts.	OR	<input type="checkbox"/>	The proposed designation, as requested, would permit uses that are incongruous to those existing on adjacent tracts.

Reasonableness

The proposed zoning amendment is reasonable and in the public interest because it supports the policies of the Comprehensive Plan as stated above and the Strategic Plan as stated in the Staff Report, and because: [select all that apply]

☐ The size, physical conditions, and other attributes of the proposed use(s) will benefit the surrounding community.

☐ The amendment includes conditions that limit potential negative impacts on neighboring uses.

☒ The proposed uses address the needs of the area and/or City.

☒ The proposal adapts the zoning code to reflect modern land-use trends and patterns.

The amendment is also in the public interest because it: [select all that apply]

☒ improves consistency with the long-range plan.

☒ improves the tax base.

☐ preserves environmental and/or cultural resources.

☒ facilitates a desired kind of development.

☐ provides needed housing/commercial area.

Additional comments, if any (write-in):

Date

Signature

Print



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-3148

Agenda Date: 1/10/2023

Version: 2

Status: Agenda Ready

In Control: Zoning Commission

File Type: Public Hearing
(Public & Legislative)

Agenda Number: 5.04

TO: Mayor and Members of City Council

THRU: Zoning Commission;
Jennifer C. Baptiste, CZO - Planning and Zoning Manager

FROM: Lauren Long - Planner II

DATE: January 10, 2023

RE:

P23-04. Rezoning from Single-Family-6 (SF-6), Agricultural Residential (AR), and Neighborhood Commercial (NC) to Mixed-Residential-5 (MR-5) of 19.02 acres \pm , located at 0 Morganton Road (REID# 0408149306000), and being the property of Alan Smith, et al., represented by Alex Keith of Tom J. Keith & Associates.

COUNCIL DISTRICT(S):

4 - D.J. Haire

Relationship To Strategic Plan:

Strategic Operating Plan FY 2022

Goals 2026

Goal II: Responsive City Government Supporting a Diverse and Viable Economy

- Objective 2.1 - To ensure a diverse City tax base
- Objective 2.4 - To sustain a favorable development climate to encourage business growth.

Goal III: City invested in Today and Tomorrow

- Objective 3.2 - To manage the City's future growth and strategic land use.

Executive Summary:

Alex Keith of Tom J. Keith & Associates is seeking to rezone a parcel currently zoned Single-Family-6 (SF-6), Agricultural Residential (AR), and Neighborhood Commercial (NC) to Mixed-Residential-5 (MR-5) on behalf of the property owner Alan Smith, et al. The parcel is an undeveloped 19.02 \pm acre site.

Background:

Applicant: Alex Keith

Owner: Stancil and Melba Bowles; Alan and Betsy Smith; Elizabeth Hugh; Scott and Natalie Clark; John and Kristina Enlow; Heather and Brittany Snyder

Requested Action: Rezoning from Single-Family-6 (SF-6), Agricultural Residential (AR), and Neighborhood Commercial (NC) to Mixed-Residential-5 (MR-5)

REID: 0408149306000

Council District: 4 - D.J. Haire

Status of Property: Undeveloped

Size: 19.02 ± acres

Adjoining Land Use & Zoning:

- North: Single Family -10 (SF-10)
- South: Single Family -10 (SF-10)
- East: Single Family -10 (SF-10); Neighborhood Commercial (NC)
- West: Agricultural Residential (AR)

Letters Mailed: 80

Land Use Plans:

With the adoption of the 2040 Comprehensive Plan: Future Land Use Map & Plan on May 26, 2020, all parcels within the city limits as well as parcels identified as being in the Municipal Influence Area (MIA) are subject to this plan.

According to the Future Land Use Map, this parcel has been identified for development with Medium-Density Residential (MDR). The MDR designation is designed for primarily single-family residential at a density of 3-6 dwellings per acre. The adjacent parcel to the north is designated as Office and Institutional (OI). The parcels to the east are designated as Parks and Open Space (PARKOS) and Neighborhood Mixed-Use (NMU). The parcels to the south are designated as Low-Density Residential (LDR) and PARKOS.

Issues/Analysis:

History:

This parcel was annexed into the corporate limits of the City in 1994. The current configuration of the parcel lines are the result of several re-combinations from the estate of Aileen Bowles-Owen, most recently in 2001, according to the Cumberland County Register of deeds. Ownership of the parcel described in Deed Book 8929, Page 21 transferred from the Bowles Farm Limited Partnership to the present owners in 2012. According to the property tax summary, administered by the Cumberland County Tax Office, no buildings or structures have been erected on the parcel.

Surrounding Area:

The site is bordered to the north by a secondary school and medium-density residential; to the west is an agricultural operation. East of the site is a recreational facility as well as a strip mall with a grocery store. South of the site are retail sales and service as well as medium density residential. It is worth noting that Persimmon Creek runs from the parcels north of the site as well as through the western half of the site itself, leaving a significant area of these tracts in the floodway and flood hazard area.

Rezoning Request:

The applicant is requesting to rezone the parcel from Single-Family-6 (SF-6),

Agricultural Residential (AR), and Neighborhood Commercial (NC) to Mixed-Residential-5 (MR-5). MR-5 is designed to allow development of various housing types at moderate to high densities to include single-family detached, two-to four- family dwellings, multi-family dwellings as well as limited institutional, childcare, and small-scale neighborhood convenience retail uses. Please see attached development standards.

Straight Zoning:

Land within the corporate limits of the city as well as land that falls within the municipal area of influence is classified under at least one of the base zoning districts established by the Unified Development Ordinance (UDO). Land may be reclassified to one of several zoning districts through a map amendment, by way of a legislative public hearing, in accordance with Section 30-2.C.1 of the UDO. This rezoning request is for the rezoning of a split-zoned parcel designated as Single-Family-6 (SF-6), Agricultural Residential (AR), and Neighborhood Commercial (NC) to Mixed-Residential-5 (MR-5). The re-classification of land under a rezoning without conditions allows all of the uses that are identified as permissible for that district in the use table found in 30-4.A of the UDO. The City Council may not consider conditions or restrictions on the range of allowable uses, use standards, development intensities, development standards, and other applicable regulations.

The Mixed-Residential-5 (MR-5) district was established to create a flexible residential district that would allow public or private development to address changes in housing stock, based on the needs of the market, by allowing almost all housing types as by-right uses. The district also supports complimentary institutional uses such as religious institutions, post offices, police substations, as well as day care facilities and neighborhood oriented retail uses. Parcels zoned MR-5 make up 11.75% of the 67,088 residentially zoned parcels (to exclude parcels zoned AR) in the municipal limits of Fayetteville. The districts that comprise the majority of the city's residential base zoning designation are Single-Family-10, which is currently 61.9% of all residentially zoned parcels, and Single-Family-6 (SF-6) at 19.08%.

The requested rezoning of this parcel from Single-Family-6 (SF-6), Agricultural Residential (AR), and Neighborhood Commercial (NC) to Mixed-Residential-5 (MR-5) would create more flexibility for developers intending to address shortages in the area's housing stock. MR-5 is the only residential base zoning district that allows multi-family dwellings as by-right development. Additionally, rezoning this parcel to a single zoning district as opposed to the three it is currently designated under would simplify development standards for future development on the site.

Land Use Plan Analysis:

According to the Future Land Use Map, this parcel has been identified for development under the Medium Density Residential (MDR) designation. The MDR designation was intended for single-family residential at a density of 3-6 dwellings per acre, duplexes, townhomes, and low rise-apartments. The rezoning of a parcel that is primarily zoned Single-Family-6 (SF-6) to Mixed-Residential-5 (MR-5) would bring the parcel into closer alignment with the Land Use Plan by expanding the by-right development of various residential housing types.

Consistency and Reasonableness Statements:

The Future Land Use Plan establishes goals, policies, and strategies. This application looks to follow the City's strategic compatible growth strategies by meeting the goals of the Land Use Plan found on the attached Consistency and Reasonableness form.

Budget Impact:

There are no immediate budgetary impacts but there may be an economic impact associated with the future tax base as a result of this rezoning.

Options:

1. Recommends approval of the map amendment to MR-5 (recommended);
2. Recommends approval of the map amendment to a more restrictive zoning district; or
3. Denies the map amendment request.

Recommended Action:

The Professional Planning Staff recommends that the Zoning Commission move to recommend APPROVAL of the proposed map amendment of Single-Family-6 (SF-6), Agricultural Residential (AR), and Neighborhood Commercial (NC) to Mixed-Residential-5 (MR-5) based on the following:

- The proposed zoning map amendment adheres to the policies adopted in the Future Land Use Plan and those policies found in the Unified Development Ordinance (UDO). The Future Land Use Plan calls for the parcel to be developed as Medium Density Residential (MDR) and the proposed zoning district allows for uses that fit this category of land classification; and
- The uses and standards of the Mixed Residential-5 (MR-5) district will allow logical and orderly development that would not negatively impact the surrounding development; and
- The proposed zoning district expands the types of residential development that would be allowed by-right and would increase the opportunity for diverse housing options to strengthen the area's housing stock; and
- The proposed zoning results in no substantial impact upon the public health, safety, or general welfare.

Attachments:

1. Plan Application
2. Aerial Notification map
3. Zoning Map
4. Land Use Plan Map
5. Subject Property
6. Surrounding Property Photos
7. Consistency and Reasonableness Statements

Project Overview

#895187

Project Title: Westover Multi-Family Site

Jurisdiction: City of Fayetteville

Application Type: 5.1) Rezoning (Map Amendment)

State: NC

Workflow: Staff Review

County: Cumberland

Project Location

Project Address or PIN: 0 MORGANTON RD
(0408149306000)

Zip Code: 28303

GIS Verified Data

Property Owner: Parcel

- 0 MORGANTON RD: BOWLES, STANCEL DEB JR; SMITH, BETSY B; SNYDER, HEATHER LAUREN; SNYDER, BRITTANY ALLEN; HIGH, ELIZABETH L; CLARK, NATALIE H; ENLOE, KRISTINA R

Acreage: Parcel

- 0 MORGANTON RD: 19.02

Zoning District:

Fire District:

Hospital Overlay District:

Cape Fear District:

Haymount Historic District:

Subdivision Name:

Airport Overlay District:

Coliseum Tourism District:

Downtown Historic District:

Floodway: FloodWay

- 0 MORGANTON RD: AE

100 Year Flood:

500 Year Flood:

Watershed:

General Project Information

Has the land been the subject of a map amendment application in the last five years?: No

Previous Amendment Case #:

Acreage to be Rezoned: 18.83

Water Service: Public

A) Please describe all existing uses of the land and existing structures on the site, if any:

This site is used as an investment property for future commercial or multi-family use. The property is also entirely wooded and has been used for harvesting timber in the interim. The subject is improved with a PWC sewer easement and line running through the center of the property..

Previous Amendment Approval Date:

Proposed Zoning District: MR-5

Is this application related to an annexation?: No

Sewer Service: Public

B) Please describe the zoning district designation and existing uses of lands adjacent to and across the street from the subject site.:

North: SF-10 / Westover High School and Middle School

South: SF-10 & NC / Strip Retail Center and Single Family Residences

East: NC / Compare Foods Shopping Center & Westover High School and Middle School

Amendment Justification - Answer all questions on this and all pages in this section (upload additional sheets as needed).

A) State the extent to which the proposed amendment is consistent with the comprehensive plan and all other applicable long-range planning documents.:

Based on Goal 1: "Focus value & investment around infrastructure and strategic nodes" and LU:1: Encourage growth in areas well served by infrastructure and urban services seen in the 2040 Comprehensive Plan, the proposed zoning change will promote maximum potential for large investment is higher density residential along a major strategic node with compatible infrastructure. This proposed zoning change will also help to increase walkability for adjacent Compare Foods shopping center and potential retail on a 0.86-acre vacant commercial lot to the east side of the subject, which would align with LU-4: Create well-designed and walkable commercial and mixed-use districts and Goal #3: Promote compatible economic and commercial development in key identified areas. The proposed zoning change to MR-5 would make the site most adequate for apartment development, which based on previous engineering plans would leave over half the property for clear-space, preserving the area by Persimmons Creek. This would make this zoning change request also meet Goal #5: Preserve and enhance environmental features through open space protection. and LU-8: Require the reservation of open space and unique natural features in new developments. The proposed area would make optimal use of the natural creek frontage by the public due to the large number of potential residence located directly adjacent to a de-facto conserved area.

B) Are there changed conditions that require an amendment? :

No.

C) State the extent to which the proposed amendment addresses a demonstrated community need.:

N/A

D) State the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land, and why it is the appropriate zoning district for the land.:

The proposed zoning change is located directly adjacent to an existing shopping center, vacant commercial land, Westover High School and Westover Park. Based on the Unified Development Ordinance Article 30-3.D.5, MR-5 districts may also include centrally-located open space, complementary institutional uses (e.g., religious institutions, post offices, police substations), day care facilities, and limited small-scale neighborhood-serving convenience retail uses, thus the surrounding uses are considered to compliment the proposed zoning change to MR-5.

E) State the extent to which the proposed amendment results in a logical and orderly development pattern.:

The proposed amendment is designed to help the adjacent shopping center and retail sites gain in traffic and customers along Morganton Rd. The proposed transition of commercial to multi-family to recreational and single-family residential is common and desired by most when planning development.

F) State the extent to which the proposed amendment might encourage premature development.:

The amendment will not likely promote "premature development", but it will allow for the property to be utilized for its true highest and best use, which is for multi-family development. This site is in the center of the a fully developed area and due to lack of desire to sell and other reasons this site has not been property zoned and developed.

G) State the extent to which the proposed amendment results in strip-style commercial development.:

The proposed amendment and site will not likely be developed for strip-style commercial development.

H) State the extent to which the proposed amendment results in the creation of an isolated zoning district unrelated to adjacent and surrounding zoning districts.:

It will not likely do so.

I) State the extent to which the proposed amendment results in significant adverse impacts on the property values of surrounding lands.:

None.

J) State the extent to which the proposed amendment results in significantly adverse impacts on the natural environment.:

None.

Primary Contact Information

Contractor's NC ID#:

Project Owner

Alan Smith

12600 Deerfield Parkway, Suite 400

Alpharetta, GA 30004

P: 678-518-3614

atk@keithvaluation.com

Project Contact - Agent/Representative

Alex Keith

Tom J. Keith & Associates

121 S. Cool Spring Street

Fayetteville, NC 28301

P: (910) 323-3222

atk@keithvaluation.com

As an unlicensed contractor, I am aware that I cannot enter into a contract that the total amount of the project exceeds \$30,000. :

NC State General Contractor's License Number:

NC State Mechanical Contractor's #1 License Number:

NC State Mechanical Contractor's #2 License Number:

NC State Mechanical Contractor's #3 License Number:

NC State Electrical Contractor #1 License Number:

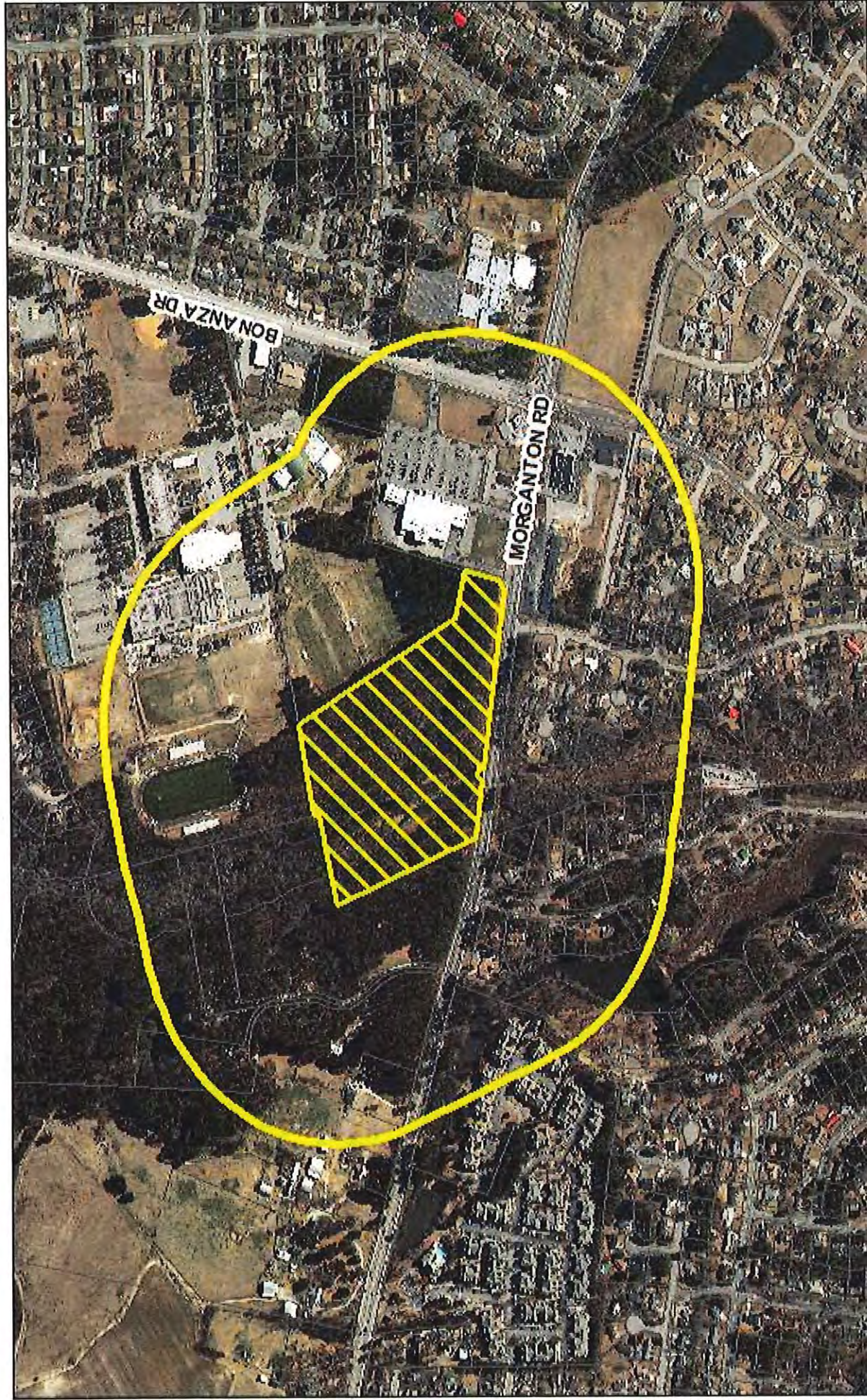
NC State Electrical Contractor #2 License Number:

NC State Electrical Contractor #3 License Number:

NC State Plumbing Contractor #1 License Number:

NC State Plumbing Contractor #2 License Number:

Indicate which of the following project contacts should be included on this project:



Aerial Notification Map

Case #: P23-04

Request: Rezoning from Single-Family-6 (SF-6), Agricultural Residential (AR), and Neighborhood Commercial (NC) to Mixed-Residential-5 (MR-5) of 19.02 acres \pm , located at 0 Morganton Road (REID# 0408149306000), and being the property of Alan Smith, represented by Alex Keith of Tom J. Keith & Associates.

Location: 0 Morganton Road



Letters are being sent to all property owners within the 1000' buffer. Subject property is shown in the hatched pattern.

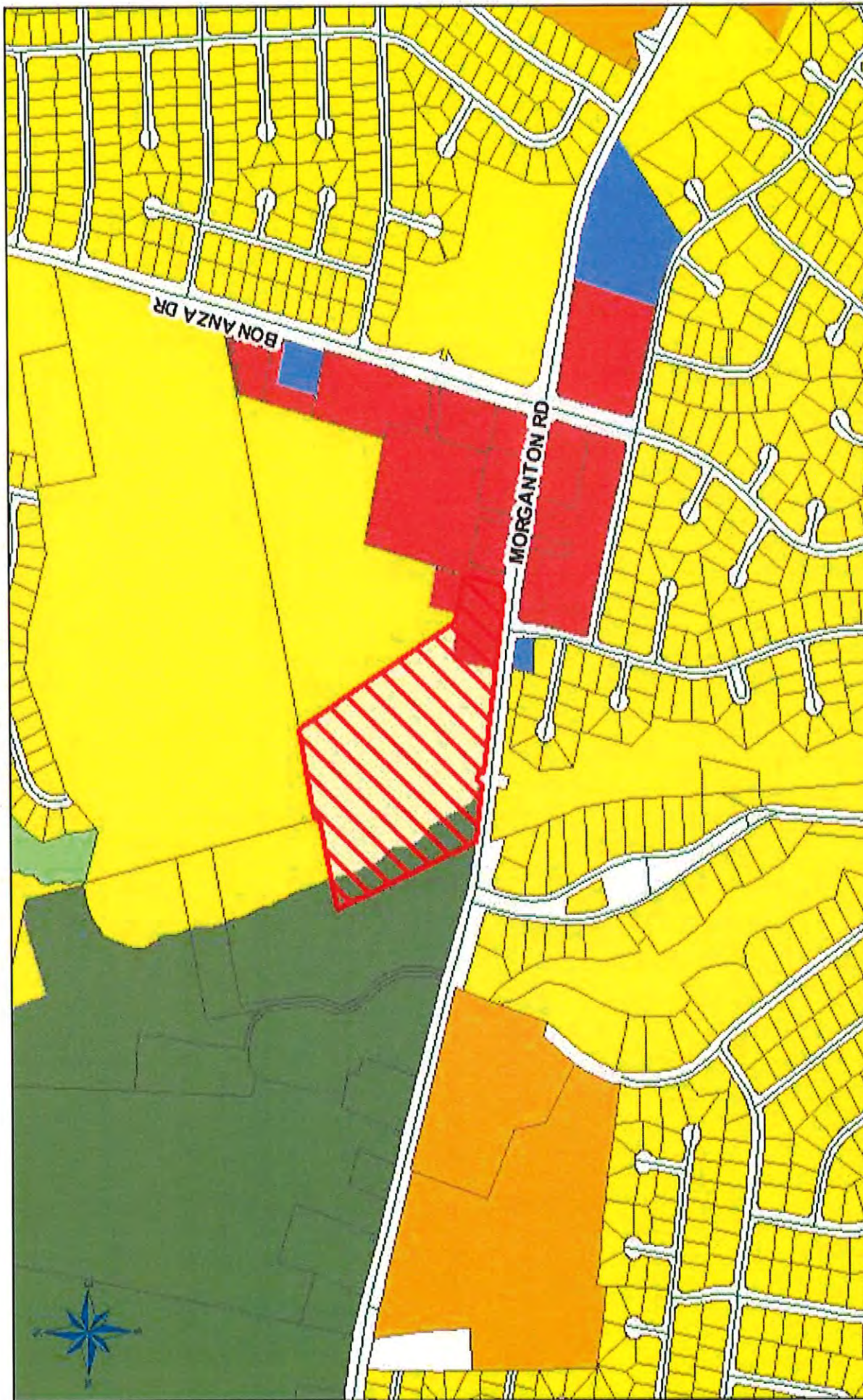
Legend

Parcels selection



1000' Public Notification Area





Zoning Map

Case #: P23-04

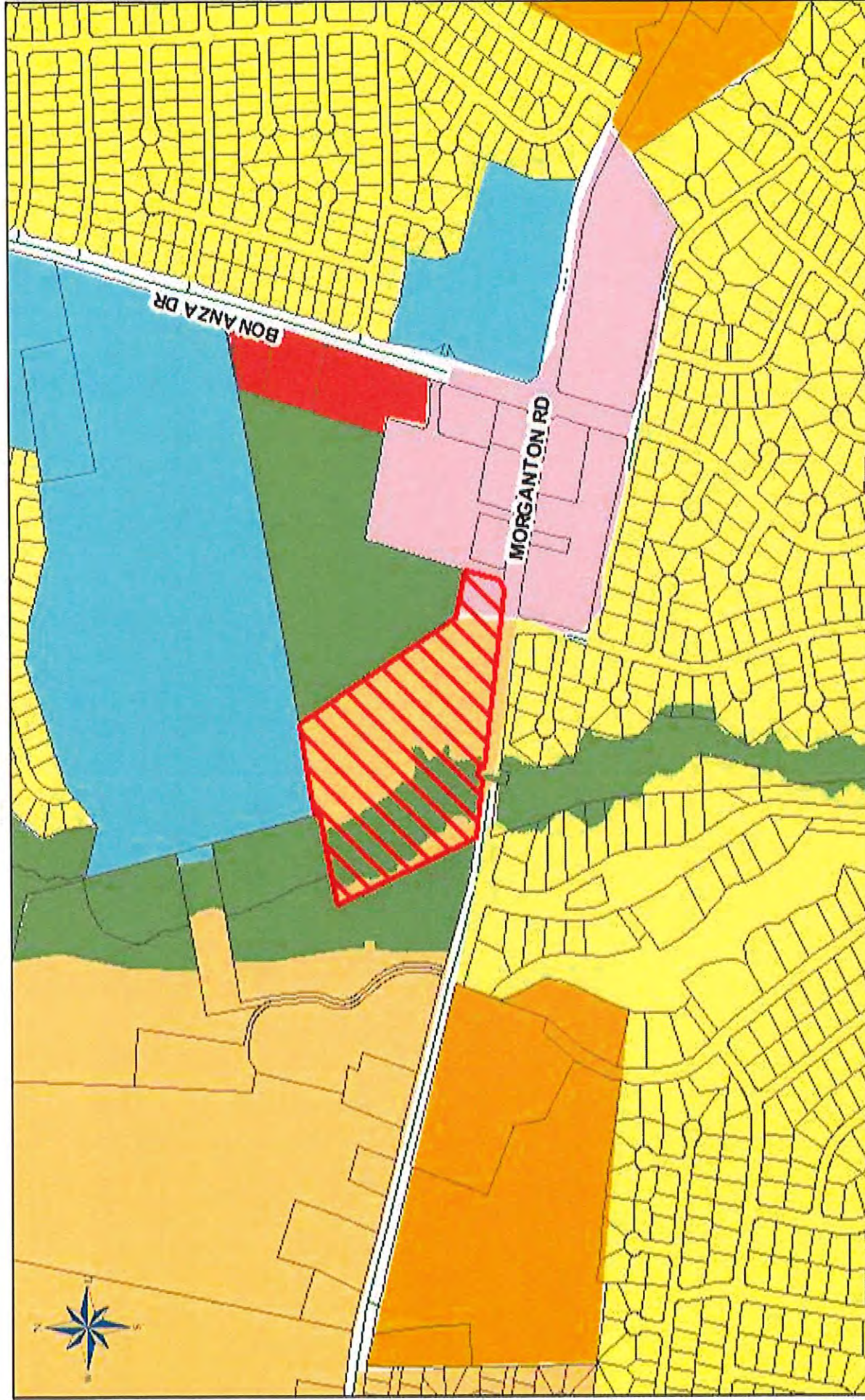
Request: Rezoning from Single-Family-6 (SF-6), Agricultural Residential (AR), and Neighborhood Commercial (NC) to Mixed-Residential-5 (MR-5) of 19.02 acres \pm , located at 0 Morganton Road (REID # 0408149306000), and being the property of Alan Smith, represented by Alex Keith of Tom J. Keith & Associates.

Location: 0 Morganton Road



Legend

- AR - Agricultural Residential
- CD - Conservation District
- MR-5 - Mixed Residential 5
- NC - Neighborhood Commercial
- OI - Office & Institutional
- SF-6 - Single-Family Residential 6
- SF-10 - Single-Family Residential 10
- County



Land Use Map

Case #: P23-04

Request: Rezoning from Single-Family-6 (SF-6), Agricultural Residential (AR), and Neighborhood Commercial (NC) to Mixed-Residential-5 (MR-5) of 19.02 acres \pm , located at 0 Morganton Road (REID# 0408149306000), and being the property of Alan Smith, represented by Alex Keith of Tom J. Keith & Associates.

Location: 0 Morganton Road



Legend

Land Use Plan 2040

Character Areas

PARKOS - PARK / OPEN SPACE

LDR - LOW DENSITY

MDR - MEDIUM DENSITY

HDR - HIGH DENSITY RESIDENTIAL

NMU - NEIGHBORHOOD MIXED USE

HC - HIGHWAY COMMERCIAL

OI - OFFICE / INSTITUTIONAL







CITY COUNCIL CALENDAR OF EVENTS AND ACTIVITIES

- City Hall will be **CLOSED** on Friday, December 23, 2022 and Monday, December 26, 2022 in observance of Christmas.
- A **Council Work Session** is scheduled for Tuesday, January 3, 2023 in the Council Chambers at 5:00 p.m.
- A **regular City Council** meeting is scheduled for Monday, January 9, 2023 in the Council Chambers at 7:00 p.m. Council will hold a dinner meeting prior to the regular meeting to discuss agenda items

2022 Community Watch Meetings

For more info on Community Watch Groups in Fayetteville, please contact the Crime Prevention Unit at 910-433-1033.

Dates, meeting locations and times may change without notification.

<https://www.fayettevillenc.gov/our-city/common/upcoming-events>

<u>District</u>	<u>Community Watch Group</u>	<u>Location</u>	<u>Meeting Date/Time</u>
6	Wells Place	Church of Nazarene; 1844 Rayconda Rd.	01/03/2023; 1900
3	Eccles Park	Smith Rec Center; 1520 Slater Ave.	1/05/2023; 1800
8	Cliffdale West	EE Miller Rec Center; 1347 Rim Rd.	01/05/2023; 1900
8	Bone Creek	Fire Station 15; 8434 Cliffdale Rd.	01/07/2023; 0900
2	Hillsboro Area	St. Luke AME Church; 522 Hillsboro St.	01/09/2023; 1800
4	La Grange	Village Baptist Church; 7502 Ascot Rd.	01/10/2023; 1900
2	JD Fuller Apartments	Leasing Office; 2808 Kingdom Way	01/12/2023; 1100
7	Hollywood Heights	Community Center; 691 Pritchett Rd.	01/12/2023; 1900
3	Cottonade	Westover Rec Center; 267 Bonanza Dr.	01/17/2023; 1830
2	Orange Street	Smith Rec Center; 1520 Slater Ave.	01/18/2023; 1800
4	Seabrook Hills	Mount Sinai Church; 1217 Murchison Rd.	01/19/2023; 1800
4	Summerhill	Westover Rec Center; 267 Bonanza Dr.	01/25/2023; 1800
3/4	Broadell/Seabrook	Smith Rec Center; 1520 Slater Ave.	01/25/2023; 1800
3	Tiffany Pines	Meeting ID: 426 357 3606 Passcode: 7X3i2s	01/26/2023; 1800
4	New Ponderosa	Westover Rec Center; 267 Bonanza Dr.	01/26/2023; 1800
2/3	Murchison Road Business	https://us02web.zoom.us/j/87459081913?pwd=LzM5TmxnNEFmdHB5Uzh6dGx0SWd3dz09 Meeting ID: 874 5908 1913 Passcode: 998957	01/31/2023; 1800
4	Foxfire	Westover Rec Center; 267 Bonanza Dr.	01/31/2023; 1830

Fayetteville Boards, Commissions, and Committees

To see up to the minute changes copy and paste link below into your browser

<https://fayettevillenc.gov/government/common/upcoming-meetings/-selcat-6>

<u>Event</u>	<u>Date/Time</u>
Airport Commission Meeting	12/27/2022 2:00 PM Not
Linear Park, Inc.	01/03/2023 4:00 PM
Joint City & County Parks and Recreation Advisory Commission	01/03/2023 5:30 PM
Stormwater Advisory Board	01/03/2023 5:30 PM
Fayetteville Redevelopment Commission	01/04/2023 12:00 PM
Board of Appeals	01/05/2023 6:00 PM
Fayetteville - Cumberland Economic Development Corporation Board	01/10/2023 8:00 AM - 10:00 AM
Joint City & County Senior Citizens Advisory Commission	01/10/2023 2:30 PM
Zoning Commission	01/10/2023 6:00 PM
Public Works Commission	01/11/2023 8:30 AM
Metropolitan Housing Authority	01/12/2023 9:00 AM
Historic Resources Commission	01/17/2023 4:00 PM
Fayetteville Advisory Committee on Transit	01/17/2023 5:30 PM

Planning Commission	01/17/2023 6:00 PM
Millennial Commission	01/18/2023 6:00 PM
Community Police Advisory Board	01/18/2023 6:00 PM
Public Works Commission	01/25/2023 8:30 AM
Audit Committee	01/26/2023 3:00 PM
Fayetteville Cumberland Human Relations Commission Executive Board Meeting	01/26/2023 5:30 PM
Airport Commission Meeting	01/31/2023 2:00 PM

Festival Park Events

Date	Event	Point of Contact	Event Time
December 31	New Year's Eve Event	TBD	TBD
April 7, 2023	Hop in the Park	Ian O'Brien 910-485-8855	6pm - midnight
April 15, 2023	Step Up for Health	Kristen Sellen; 910-615-1514	9:30am – 2pm
April 22, 2023	As One Prayer Walk	Jeremy Wright; 910-703-7504	10am-9pm
April 28-30	Dogwood Festival	Sarahgrace Snipes; 910-323-1934	TBD



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-3153

Agenda Date: 1/10/2023

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Other Items of
Business

Agenda Number: 6.01

TO: Zoning Commission

THRU: Jennifer C. Baptiste, CZO - Planning & Zoning Manager

FROM: Heather Eckhardt, CZO - Planner II

DATE: January 10, 2023

RE: A22-54. Variance to allow a four (4) foot and six (6) foot solid fence where a four (4) foot open style picket fence is allowed on .36 acres \pm , located at 5200 Sundown Drive (REID # 0408835557000) and being the property of Black Door Properties LLC, represented by Jenna Milan.

COUNCIL DISTRICT(S):

4 - D.J. Haire

Relationship to Strategic Plan:

Strategic Operating Plan FY 2022

Goals 2027

Goal 4: Desirable Place to Live, Work and Recreate

- Objective 4.5 - Ensure a place for people to live in great neighborhoods.

Executive Summary:

This variance request was heard at the December 13, 2022, Zoning Commission meeting. The evidentiary hearing was closed at the December meeting. Due to conflicting motions, clarification of the final motion is needed. This item is only on the agenda for reconsideration of the motion. No new evidence will be accepted as the evidentiary hearing has been closed.

30.2. C.14 Variance:

The purpose of a variance is to allow certain deviations from the dimensional standards of this Ordinance (such as height, yard setback, lot coverage, or similar numeric standards) when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner's control (such as exceptional topographical conditions, narrowness, shallowness, or the shape of a specific parcel of land), the literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest.

Variances are to be sparingly exercised and only in rare instances or under exceptional circumstances to relieve undue and unique hardships to the landowner. No change in permitted uses or applicable conditions of approval may be authorized by variance.

Background:

Owner: Black Door Properties LLC

Applicant: Jenna Milan

Requested Action: Allow a four (4) foot and six (6) foot solid fence where a four (4) foot open style picket fence is allowed

Zoning District: Single-Family Residential 10 (SF-10)

Property Address: 5200 Sundown Drive

Size: 0.36 acres \pm or 15,681 square feet

Existing Land Use: Single-Family Residential House

Surrounding Zoning and Land Uses

- North: SF-10 - Single-Family Residential
- South: SF-10 - Single-Family Residential
- East: CC - Movie theater
- West: SF-10 - Single-Family Residential

Letters Mailed: 29

Issues/Analysis:

The property is 0.36-acre \pm and is located at 5200 Sundown Drive. The site is a single-family residential house located in the Foxfire subdivision. According to the Cumberland County Tax Assessor's Office, the house was constructed in 1992 and has approximately 1,188 square feet of living area. The current Unified Development Ordinance was adopted in 2011. This property was annexed into the City of Fayetteville between 1993 and 1994. The property was developed before the adoption of the UDO and before being annexed into the city limits of Fayetteville.

According to Article 30-5.D.4 of the UDO, fencing in the front yard of a single-family dwelling can be a maximum of 4 feet tall and must be at least 50% open picket, shadow box, or another partially open fencing style. The applicant has installed a 4-foot and 6-foot solid fence extending into the property's front yard. The fencing was installed without obtaining the required Zoning Compliance Permit. The required permit was issued under the premise that the fence height would be corrected. The applicant has decided to request a Variance to keep the fence at it's current height.

There is an open Code Enforcement violation to address the height of the fence. The case is currently on hold due to the pending Variance request.

Insufficient Justification for Variance

The following does not constitute grounds for a Variance:

1. The siting of other nonconforming or conforming uses of land or structures in the same or other districts;
2. The request for a particular use expressly, or by inference, prohibited in the district; or
3. Economic hardship or the fact that property may be utilized more profitably with a Variance.

Subsequent Development

The minimum lot size for the SF-10 zoning district is 10,000 square feet. This lot is 0.36 acres \pm or 15,681.6 square feet \pm . This lot meets the minimum square footage for the SF-10 district

and is comparable to other properties in the Foxfire subdivision regarding lot size and shape. However, the subject property does have a grade change from the front property line to the rear property line.

The following findings are based on the responses submitted in the application by the applicant and the best available information about the proposal without the benefit of testimony provided at the evidentiary hearing.

Findings of Fact Statements as reviewed by the Planning Staff:

1. **There is sufficient evidence that the strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence:**

The applicant states "Property is situated on a steep grade/slope and sits below street level on a cul de sac creating a lack of privacy and quiet enjoyment from adjacent neighbors."

2. **There is sufficient evidence that any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and are not the result of the actions of the landowner as shown by the following evidence:**

According to the application, "The property sits below street level and the lot has a steep slope/grade which causes a fence not be tall enough due to the slope of the lot. Property sits down below the street level and on cul de sac where the setback and corner of house is further back than other homes on the street."

3. **There is sufficient evidence that the Variance is the minimum action that will make possible a reasonable use of land or structures as shown by the following evidence:**

According to the applicant, "The owner of 5201 next door has built an illegal addition onto her home that allows her to see into my home due to the slope of my lot. My house sits lower than hers."

4. **There is sufficient evidence that the Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit as shown by the following evidence:**

The applicant states "The fence is esthetically pleasing and allow me to have some privacy and quiet enjoyment of my property with the extension going past the corner of my house and the height reduces visibility from the neighbors."

5. **There is sufficient evidence that in the granting of the Variance, the public safety and welfare has been assured and substantial justice has been done as shown by the following evidence:**

The applicant states "I feel the neighbor will continue to try to use my lot for her dogs

toilet and constantly peer into the happenings of my home with scrutiny and judgement

and harassing behaviour."

Budget Impact:

There is no immediate budgetary impact.

Options:

The Board's Authority: The board has the authority to approve or deny the request and must base its decision on the answers to the following five required findings of fact:

If a member believes that the evidence presented is substantial, competent, and

sufficient to meet the required findings of fact then the member may make a motion to approve the variance and the members must state all of the following five findings of fact along with the evidence that was presented to satisfy each finding.

If the members cannot find specific supporting facts under all five findings of fact, the members must consider a motion of denial. A motion of denial should indicate which of the five (5) of the findings of fact cannot be met.

The board can also place reasonable conditions on any variance approval.

If a member wishes to make a motion to approve the variance they should make a brief statement that recaps the evidence showing each of the five findings of fact. Any discussion by the Board following a motion may include a recap of the evidence supporting each of the five (5) factual findings.

Possible Options:

1. Approval of the variances as requested allowing a 4' in height solid fence and a 6' in height solid fence in the front yard setback.
2. Approval of the variance allowing a 4' in height solid fence in the front yard setback, but denial of the 6' in height solid fence in the front yard setback. (This will require that the 6' portion in the front yard setback be removed or brought into compliance).
3. Approval of the variance allowing a 6' in height solid fence in the front yard setback, but denial of the 4' in height solid fence in the front yard setback (This will require that the 4' portion in the front yard setback be removed or brought into compliance).
4. Denial of the variance (This will require that the fence be brought into compliance or removed).

Possible Motions and Factual Findings:

Approval of the variances as requested allowing a 4' in height solid fence and a 6' in height solid fence in the front yard setback.

Findings of Fact Required to Approve this Request:

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence:

2. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and are not the result of the actions of the landowner as shown by the following evidence:

3. The Variance is the minimum action that will make possible a reasonable use of land or structures as shown by the following evidence:

4. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit as shown by the following evidence:

5. In the granting of the Variance, the public safety and welfare have been assured

and substantial justice has been done as shown by the following evidence:

Approval of the variance allowing a 4' height solid fence in the front yard setback, but denial of the 6' in height solid fence in the front yard setback. (This will require that the 6' portion in the front yard setback be removed or brought into compliance).

Findings of Fact Required to Approve this Request with added conditions:

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence:
-

2. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and are not the result of the actions of the landowner as shown by the following evidence:
-

3. The Variance is the minimum action that will make possible a reasonable use of land or structures as shown by the following evidence:
-

4. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit as shown by the following evidence:
-

5. In the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done as shown by the following evidence:
-

Approval of the variance allowing a 6' in height solid fence in the front yard setback, but denial of the 4' in height solid fence in the front yard setback. (This will require that the 4' portion in the front yard setback be removed or brought into compliance).

Findings of Fact Required to Approve this Request with added conditions:

6. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence:
-

7. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and are not the result of the actions of the landowner as shown by the following evidence:
-

8. The Variance is the minimum action that will make possible a reasonable use of land or structures as shown by the following evidence:
-

9. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit as shown by the following evidence:
-

10. In the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done as shown by the following evidence:
-

Denial of the variance (This will require that the fence be brought into compliance or removed).

Findings of Fact Statements Required to Deny this Request:

1. There is not sufficient evidence that the strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence:

2. There is not sufficient evidence that any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and are not the result of the actions of the landowner as shown by the following evidence:

3. There is not sufficient evidence that the Variance is the minimum action that will make possible a reasonable use of land or structures as shown by the following evidence:

4. There is not sufficient evidence that the Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit as shown by the following evidence:

5. There is not sufficient evidence that in the granting of the Variance, the public safety and welfare has been assured and substantial justice has been done as shown by the following evidence:

Recommended Action:

Attachments:

1. Application
2. Aerial Notification Map
3. Zoning Map
4. Land Use Map
5. Subject Property Photos
6. Surrounding Property Photos
7. Subject Property Fence
8. Site Plan
9. Fence Height Table

Project Overview

#891609

Project Title: Foxfire

Jurisdiction: City of Fayetteville

Application Type: 5.4) Variance

State: NC

Workflow: Staff Review

County: Cumberland

Project Location

Project Address or PIN: 5200 SUNDOWN DR
(0408835557000)

Zip Code: 28303

GIS Verified Data

Property Owner: Parcel

- 5200 SUNDOWN DR: BLACK DOOR PROPERTIES LLC

Acreage: Parcel

- 5200 SUNDOWN DR: 0.36

Zoning District:

Subdivision Name:

Fire District:

Airport Overlay District:

Hospital Overlay District:

Coliseum Tourism District:

Cape Fear District:

Downtown Historic District:

Haymount Historic District:

Floodway:

100 Year Flood:

500 Year Flood:

Watershed:

Variance Request Information

Requested Variances: Fence/wall

Section of the City Code from which the variance is being requested.: 30-5.D.4 Fences and Walls

Describe the nature of your request for a variance and identify the standard(s)/requirement(s) of the City Code proposed to be varied.:

Identify the zoning district designation and existing use of land for all adjacent properties, including those across the street.:

Greetings, my property sits below street level and sits downhill. I have a 6 foot fence the reduces to a 4 ft fence near the front of the house but because the fence goes downhill with the grade of the lot, there's still not much privacy from the harassing neighbor next door with her 2 story, non permitted addition (verified no permits with the city)

Residential zoning in a residential neighborhood in the community of Foxfire

I'd like to request the fence to go past the corner of my house to where I currently have in built and allow the height past the front of my house due to the shape of the lot on the cul de sac and the deep slope/grade of my lot. I'd like to have it stay where it is currently is built as her driveway is very close to the front of the house.

Prior to the fence installation, she'd just sit in her car and stare

trying to think of something to complain about and say to me.
application I don't occupy the property as the previous owner is in the process of moving. However, every time I go by to fix up the exterior of the property, the previous owner has let me know the issues she has had with the neighbor for the past 20+ yrs and they seem to be continuing.

When I'm there, she harasses me and tells me that I'm on her property. I've since had to pay for a survey which actually was further into her yard and then built the fence to reduce her coming onto my property being nosey and allowing her dog to poop in my yard without cleaning up.

She even went as far as asking other neighbors what's going on at my property as she wasn't being informed. I've been by fixing up the exterior and she has to make a point of coming out and saying something or just staring and asking my workers to do things for her while their working on my property. I don't pay them for them to work for her but they feel bad since she is older.

Both neighbors on either side of Ms. Singleton, (previous owner of my house & Ms. Dionne on the other side), has informed me of her being a nuisance and claiming to own their property. Ms. Dionne also had to get a survey and owned more than what she thought was hers.

I just want to nip this rear prior to occupying the property so that I don't have issues with her for the next 20 + yrs.

Thank you for your consideration,

Jenna Milan, Black Door Properties, LLC

Justification for Variance Request - Use this and the following pages to answer the questions (upload additional sheets if necessary).

The Variance Standards states: A variance application shall be approved only upon a finding that all of the following standards are met.

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships; it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
2. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, such as location, size, or topography, and are not the result from conditions that are common to the neighborhood or the general public be the basis from granting a variance;
3. The Variance is the minimum action that will make possible a reasonable use of land or structures;
4. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
5. In the granting of this Variance, the public safety and welfare have been assured and substantial justice has been done.

Please complete the following five (5) questions to verify the evidence that all the required standards are applicable to your property and/or situation.

Provide a written description of any hardship(s) and how such hardship(s) is not self-imposed.:

Property is situated on a steep grade/slope and sits below street level on a cul de sac creating a lack of privacy and quiet enjoyment from adjacent neighbors.

Indicate if the property has exceptional topographic conditions or some other extraordinary situation or condition that makes it unlike other properties in the immediate vicinity.:

The property sits below street level and the lot has a steep slope/grade which causes a fence not be tall enough due to the slope of the lot. Property sits down below the street level and on cul de sac where the setback and corner of house is further back than other homes on the street.

Is there some particular condition, situation, or development on the property immediately adjacent to the subject property that affects the subject property's ability to comply with the regulations?:

The owner of 5201 next door has built an illegal addition onto her home that allows her to see into my home due to the slope of my lot. My house sits lower than hers.

Describe how the variance is in harmony with the general purpose and intent of the City Code, and preserves the spirit.:

The fence is esthetically pleasing and allow me to have some privacy and quiet enjoyment of my property with the extension going past the corner of my house and the height reduces visibility from the neighbors.

Explain any potential negative external impacts that may result from the proposed variance, and how they will be mitigated. Financial hardship cannot be considered for a reason to grant a variance.:

I feel the neighbor will continue to try to use my lot for her dogs toilet and constantly peer into the happenings of my home with scrutiny and judgement and harassing behaviour.

Height of Sign Face : 6

Height of Sign Face: 4

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Height of Sign Face: 0

Square Footage of Sign Face : 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Square Footage of Sign Face: 0

Primary Contact Information

Contractor's NC ID#:

Project Owner

Black door Properties, LLC
Black door properties llc
3536 Chagford Ln
Fayetteville, NC 28306
P: 7049051717
ncgypsyinc@gmail.com

Project Contact - Agent/Representative

Jenna Milan
Black door properties llc
3536 Chagford Ln
Fayetteville, NC 28306
P: 7049051717
ncgypsyinc@gmail.com

Project Contact - Primary Point of Contact for the Unlicensed Contractor (under \$30,000 of total construction cost)

Black door Properties, LLC
Black door properties llc
3536 Chagford Ln
Fayetteville, NC 28306
P: 7049051717
ncgypsyinc@gmail.com

As an unlicensed contractor, I am aware that I cannot enter into a contract that the total amount of the project exceeds \$30,000. : No

NC State General Contractor's License Number:

NC State Mechanical Contractor's #1 License Number:

NC State Mechanical Contractor's #2 License Number:

NC State Mechanical Contractor's #3 License Number:

NC State Electrical Contractor #1 License Number:

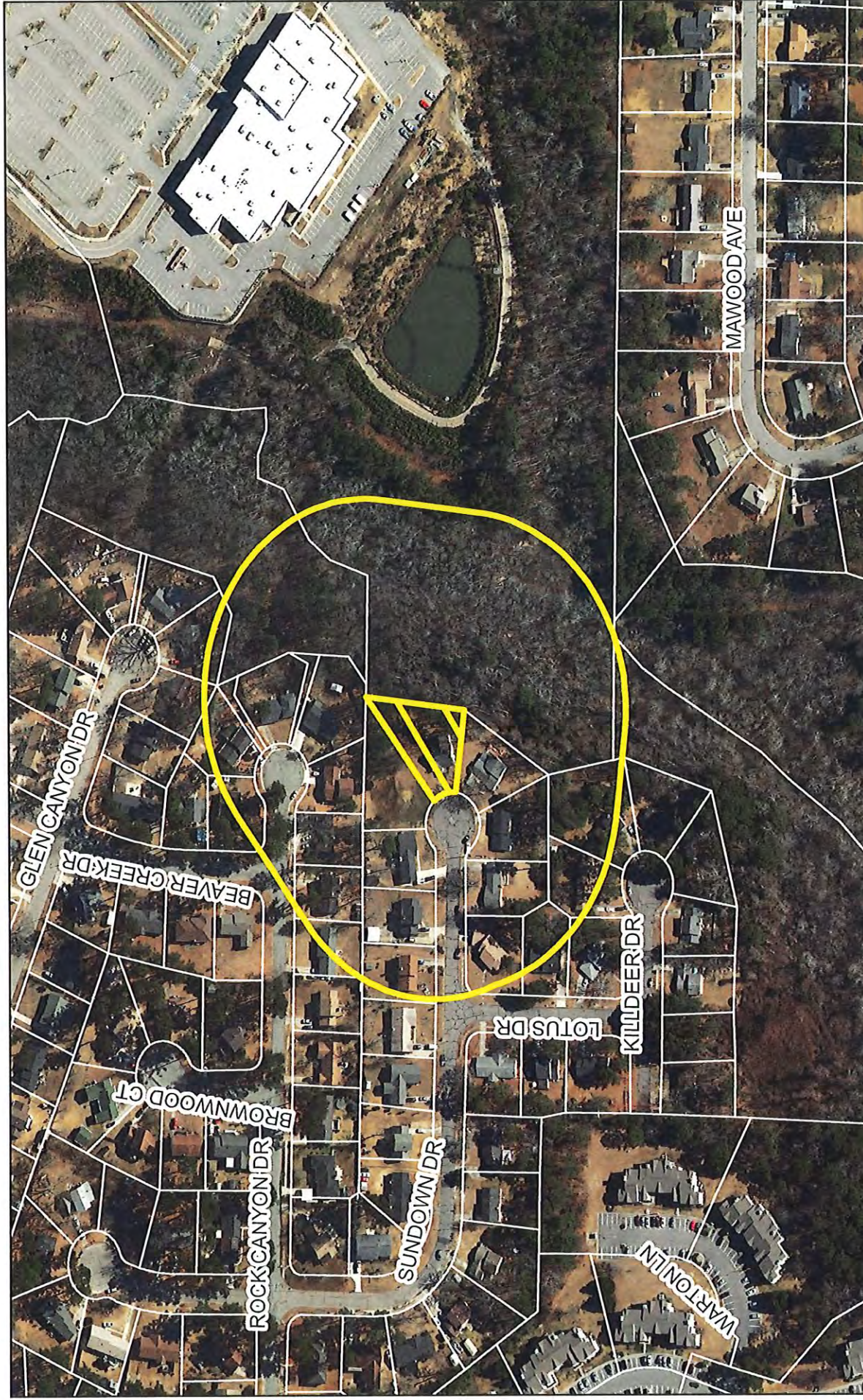
NC State Electrical Contractor #2 License Number:

NC State Electrical Contractor #3 License Number:

NC State Plumbing Contractor #1 License Number:

NC State Plumbing Contractor #2 License Number:

Indicate which of the following project contacts should be included on this project: Unlicensed Contractor



Aerial Notification Map

Case #: A22-54

Request: Variance to allow a four (4) foot and six (6) foot solid fence where a four (4) foot open style picket fence is allowed on .36 acres \pm , located at 5200 Sundown Drive (REID # 0408835557000) and being the property of Black Door Properties LLC, represented by Jenna Milan.

Location: 5200 Sundown Drive

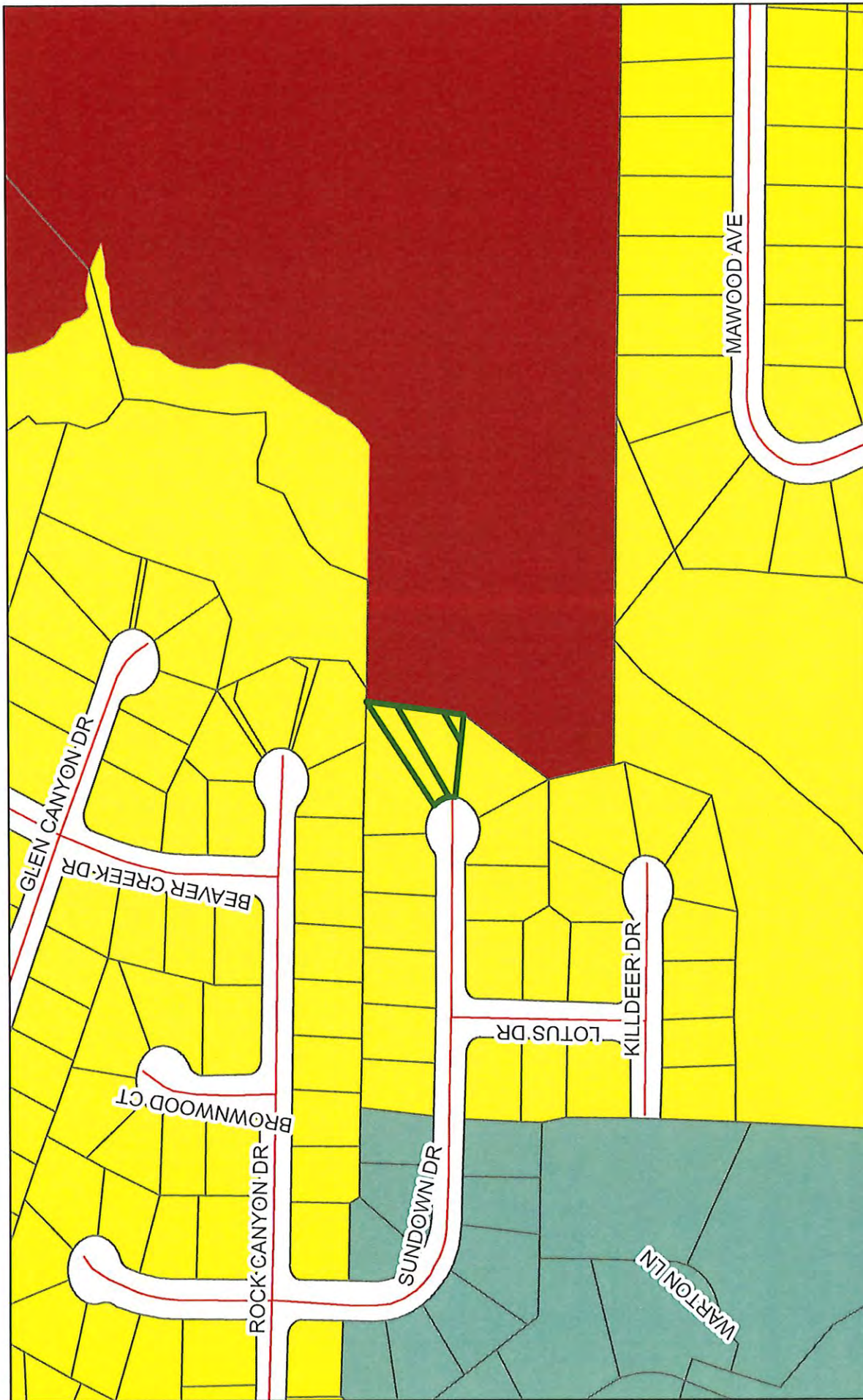
Letters are being sent to all property owners within the 300' buffer. Subject property is shown in the hatched pattern.



Legend

-  A22-54
-  A22-54 Notification Buffer





Zoning Map

Case #: A22-54

Request: Variance to allow a four (4) foot and six (6) foot solid fence where a four (4) foot open style picket fence is allowed on .36 acres \pm , located at 5200 Sundown Drive (REID # 040883557000) and being the property of Black Door Properties LLC, represented by Jenna Milan.

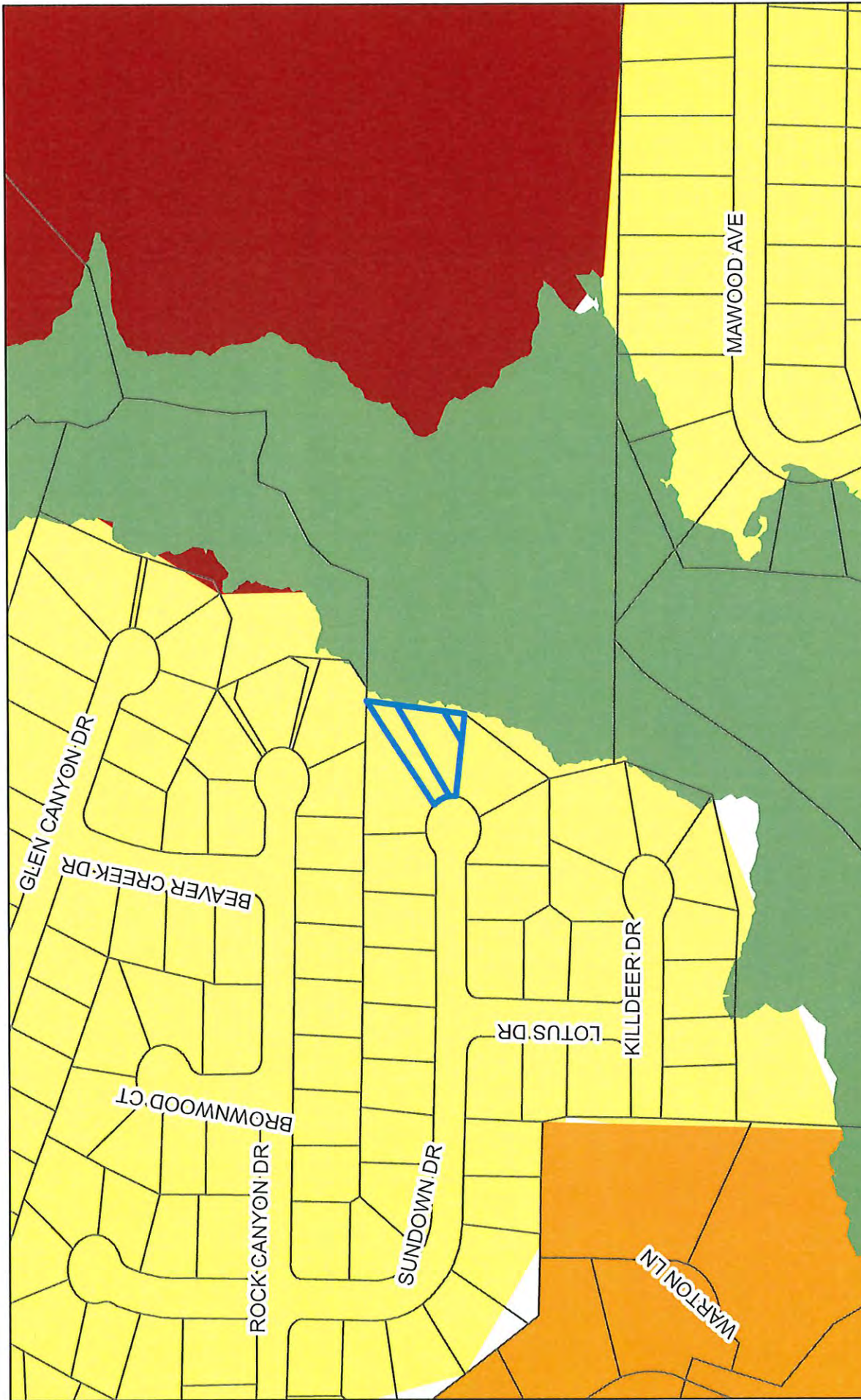
Location: 5200 Sundown Drive



Legend

- A22-54
- PND - Planned Neighborhood Development
- CC - Community Commercial
- SF-10 - Single-Family Residential 10





Land Use Map

Case #: A22-54

Request: Variance to allow a four (4) foot and six (6) foot solid fence where a four (4) foot open style picket fence is allowed on .36 acres ±, located at 5200 Sundown Drive (REID # 040883557000) and being the property of Black Door Properties LLC, represented by Jenna Milan.

Location: 5200 Sundown Drive

Legend



Land Use Plan 2040

Character Areas

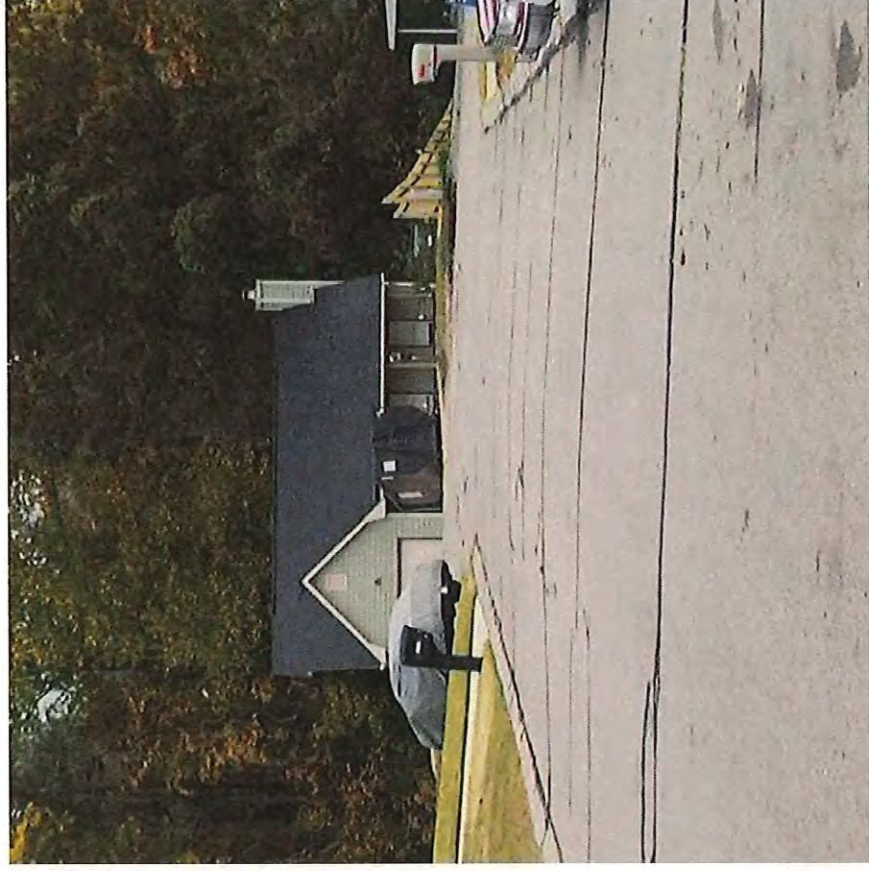
- PARKOS - PARK / OPEN SPACE
- LDR - LOW DENSITY
- HDR - HIGH DENSITY RESIDENTIAL
- RC - REGIONAL CENTER

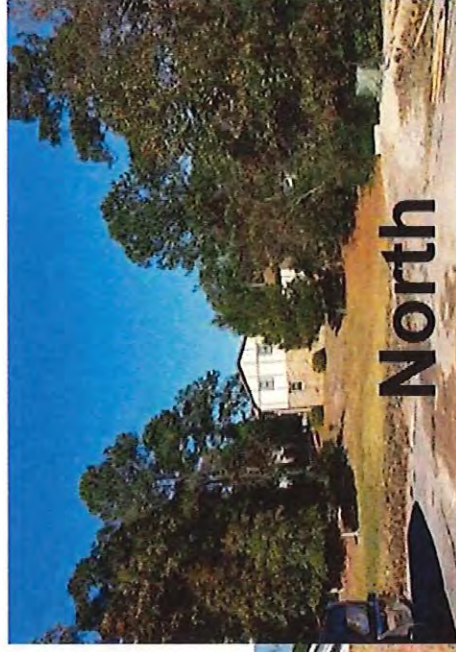


Letters are being sent to all property owners within the 300' buffer. Subject property is shown in the hatched pattern.



Subject Property





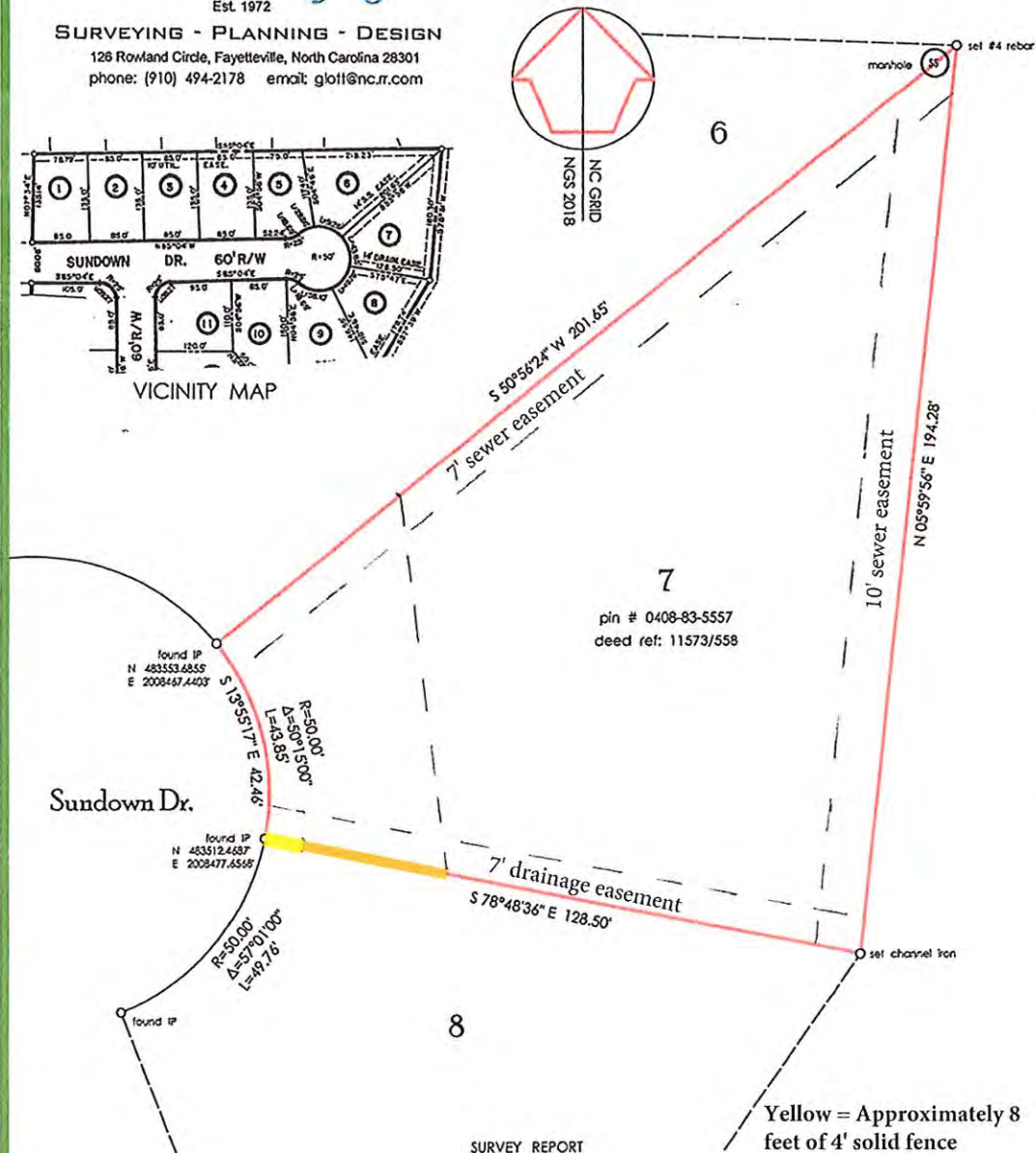
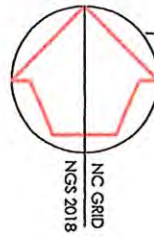
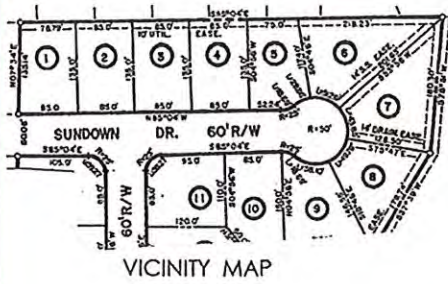


Lott Surveying

Est. 1972

SURVEYING - PLANNING - DESIGN

126 Rowland Circle, Fayetteville, North Carolina 28301
phone: (910) 494-2178 email: glott@ncr.com



SURVEY REPORT

Yellow = Approximately 8 feet of 4' solid fence

Orange = Approximately 31 feet of 6' solid fence

5200 Sundown Drive
Foxfire Sec. 7 plat book 40 page 78
Seventy First Township
Cumberland County N.C.
Scale 1" = 30' Oct. 12, 2022

I, George L. Lott, PLS L-1379 Certify that the control for this survey was established from an actual GPS survey under my supervision. This GPS survey was performed to C-211 FGCC specifications RTK GPS with VRS field procedures were used. The GPS system used is a Spectra Precision SP80 UNIT.

I, George L. Lott, PLS certify that this plot was drawn under my supervision from an actual survey made under my supervision, that the ratio of precision is 1:20,000 that this plot is not drawn in accordance with G.S.47-30 as amended. That this plot not be used for recordation or attached to a deed to be recorded.

