



City of Fayetteville

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

Meeting Agenda - Final Zoning Commission

Tuesday, February 14, 2023

6:00 PM

FAST Transit Center

1.0 CALL TO ORDER

2.0 APPROVAL OF AGENDA

3.0 CONSENT

- 3.01 A22-54. Order of Approval - Finding of Facts - 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.
- 3.02 A23-05. Order of Approval - Finding of Facts. 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 \pm , located at 367 N. Reilly Road (REID # 9498686280000) and being the property of Eid Abudayya, represented by George M. Rose, P.E.
- 3.03 Approval of Minutes: December 13, 2022
- 3.04 Approval of Minutes: January 10, 2023

4.0 EVIDENTIARY HEARINGS

- 4.01 A23-06. Variance to reduce the corner side yard setback for an accessory use/structure and a privacy fence in a Single-Family Residential 10 (SF-10) zoning district, to be located at 1917 Partridge Court (REID #9496761688000), containing 0.59 acres \pm and being the property of Eric & Tracy Bass.
- 4.02 A23-07. Variance to reduce the front, rear, and southern side yard setback for a principal structure located at 105 S Broad Street (REID # 0447126041000), containing 0.63 acres \pm and being the property of Hudson & Hudson Investments LLC, represented by Mickey Hudson.

5.0 PUBLIC HEARINGS (Public & Legislative)

- 5.01 P23-08. Rezoning from Single-Family Residential 10 (SF-10) to Office & Institutional (OI), located at 3017 Ramsey Street (REID #0439614406000), totaling 0.46 acres \pm and being the property of Paul and Theresa Williams, represented by Greg Spears of Grant Murray Real Estate LLC.

6.0 OTHER ITEMS OF BUSINESS

7.0 ADJOURNMENT



City of Fayetteville

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

City Council Action Memo

File Number: 23-3201

Agenda Date: 2/14/2023

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Consent

Agenda Number: 3.01

TO: Zoning Commission

THRU: Craig Harmon, CZO - Senior Planner

FROM: Heather Eckhardt, CZO - Planner II

DATE: February 14, 2023

RE: A22-54. Order of Approval - Finding of Facts - 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 # 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

± or 15,681.6 square feet ±. 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
10. Order of Finding of Facts

Project Overview

#891609

Project Title: Foxfire
Application Type: 5.4) Variance
Workflow: Staff Review

Jurisdiction: City of Fayetteville
State: NC
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

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

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

VARIANCE A22-54

Property Address: 5200 Sundown Drive
REID Number: 0408835557000
Property Owner: Black Door Properties 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 Jenna Milan ("Applicant") for Black Door Properties LLC ("Property Owner").

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 property. On November 28, 2022, a notice of public hearing sign was placed on the subject property. 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 5, Section D.4., of the City of Fayetteville's Code of Ordinances establishes the permitted fencing heights and styles for residential properties.

2. Black Door Properties LLC is the owner of a residentially zoned property located at 5200 Sundown Drive ("subject property") which contains approximately 0.36 acres ± in the City of Fayetteville.

3. The Applicant filed an application for a Variance on November 1, 2022.

4. The subject property is zoned Single-Family Residential 10 (SF-10).

5. The Property Owner is requesting to increase the permitted fence height in the front yard from 4 feet to 6 feet.

6. The Property Owner is requesting that a solid fence be permitted where the code allows picket, shadow box, or other partially open fences.

7. 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.

8. The subject property is a Single-Family Residential 10 (SF-10) zoned property that is adjacent to other Single-Family Residential 10 (SF-10) properties to the north, south, and west. The property to the east is zoned Community Commercial (CC).

9. The subject property is a residential lot with a single-family house that was constructed in 1992.

10. The existing lot was developed in the 1990s prior to the adoption of the City of Fayetteville's Unified Development Ordinance and prior to the subject property being annexed into the City of Fayetteville.

11. The Property Owner erected a 6-foot fence in the front and rear yard on the right side of the subject property prior to obtaining a permit as required by the UDO. The Property Owner erected the fence to facilitate privacy from her neighbor.

12. The UDO allows a 4-foot picket, shadow box, or other partially open fences in the front yard and a 6-foot fence in the rear yard of residential properties. Additionally, the UDO requires that "if one side of the fence . . . appears more 'finished' than the other . . . , then the more 'finished' side of the fence shall face the perimeter of the lot rather than the interior of the lot."

13. Following a verbal notice from the Code Enforcement Division, the Applicant obtained a Zoning Compliance Permit to erect a fence that meets the standards of the ordinance.

14. The construction of the fence was complete at the time the Variance application was submitted.

15. Two motions were made at the December 13, 2022, Zoning Commission meeting. Commissioner Roger Shah made the first motion to approve the Variance with the condition that the fencing in the front yard be reduced to 4 feet in height and made into a picket style as permitted by the ordinance. This motion was seconded but was not voted upon. Commissioner Shah made a second motion to deny the Variance. This motion was seconded and the motion passed (4 to 1).

16. At the January 10, 2023, Zoning Commission meeting, the Commission voted to reconsider the December 13, 2022, motion in this case. After discussion, the Commission voted to deny the Variance request because the Applicant failed to meet the five required conditions for a variance.

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 a 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. The Applicant failed to show that all of the following general and specific conditions precedent to the issuance of a Variance were satisfied:

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.

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 DENIED.

VOTE: 4 to 1

This the _____ day of _____, 2023.

PAVAN PATEL, Zoning Commission Chair

Print Name

Cumberland County, North Carolina

Sworn to and subscribed before me this day by _____ on the _____ day of _____, 2023.

Signature of Notary Public

_____, Notary Public
Printed Name of Notary Public

My Commission Expires: _____



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 # 040883557000) 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.

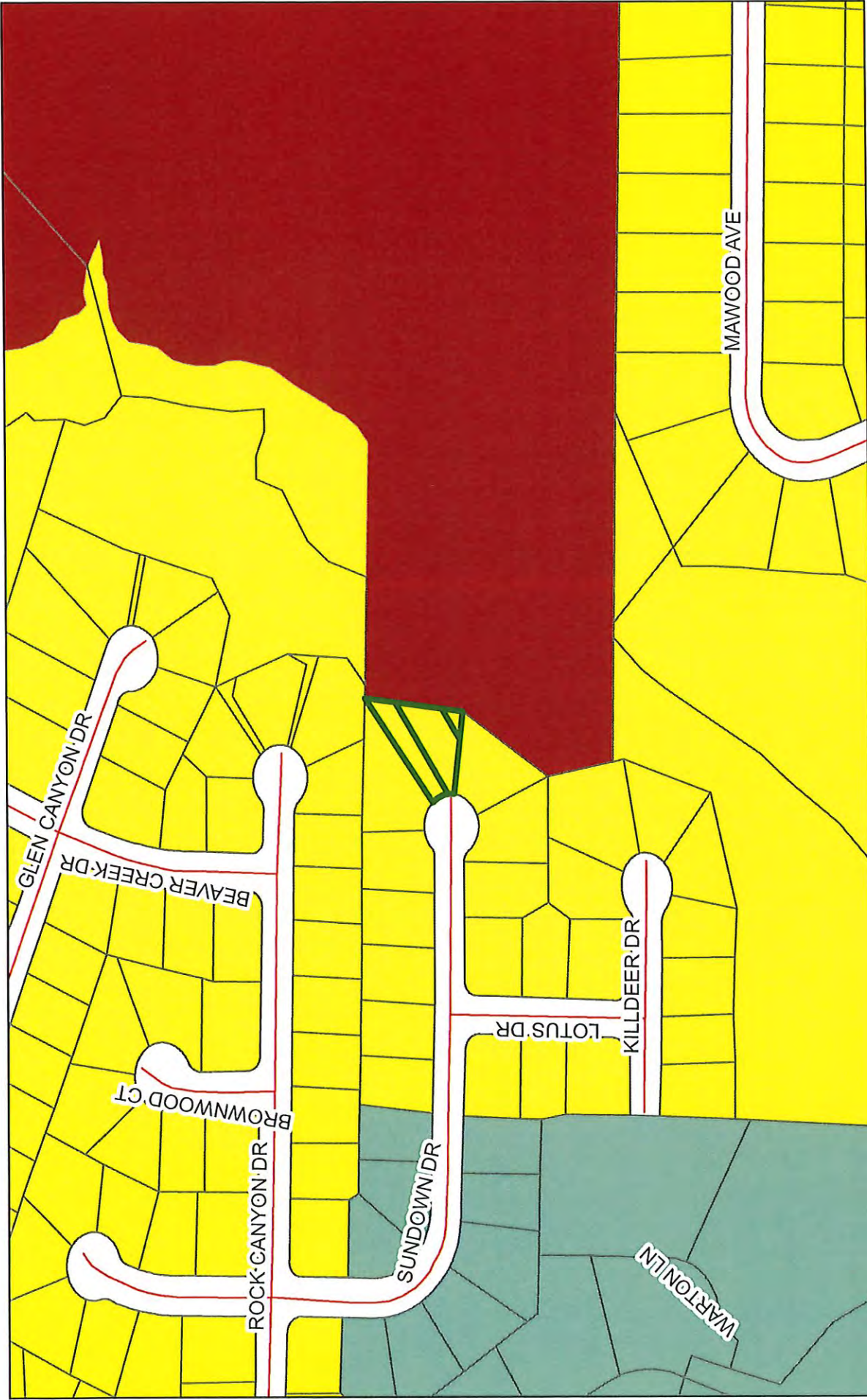


Legend

 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

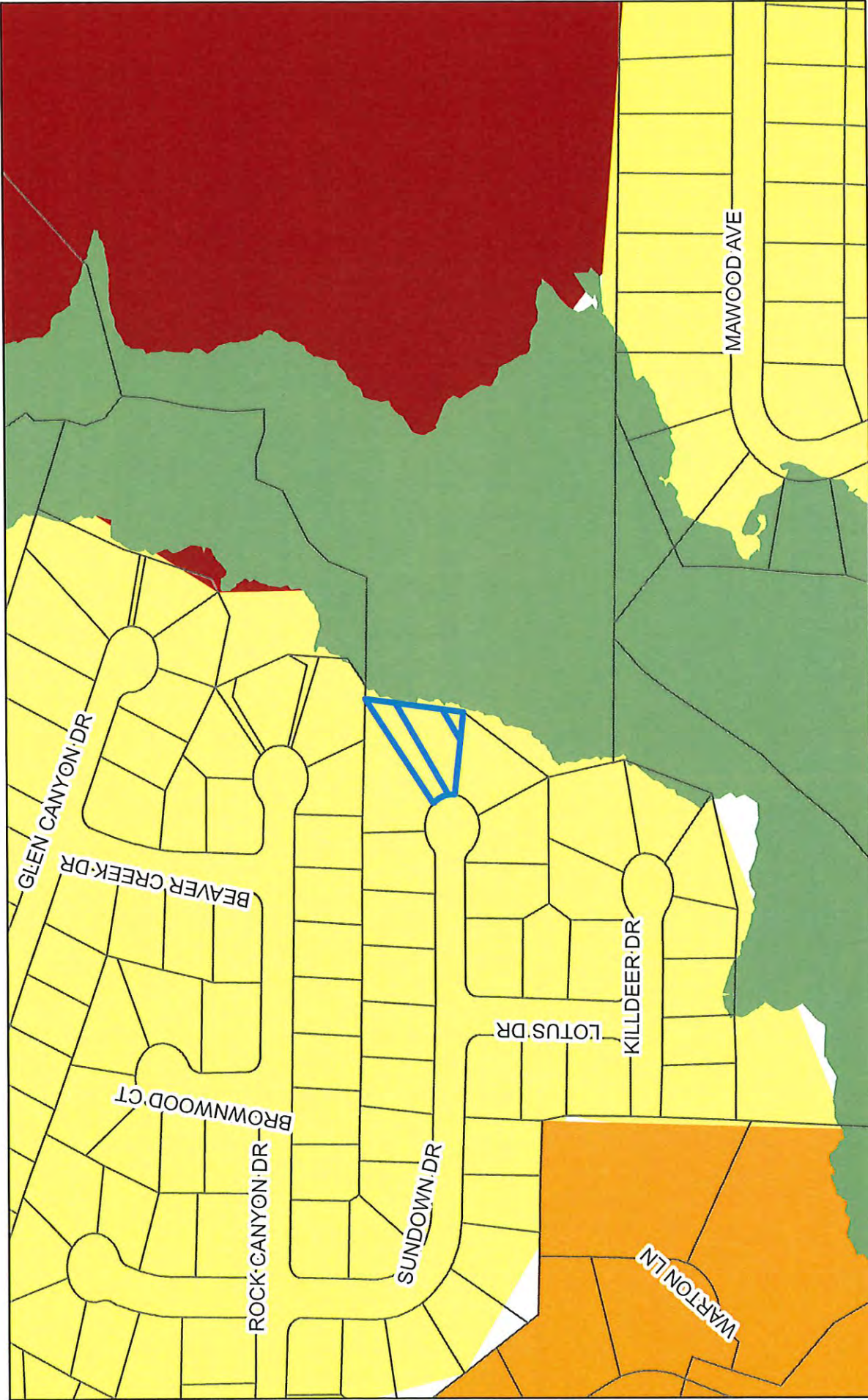
SF-10 - Single-Family Residential 10



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



FAYETTEVILLE
AMERICA'S CAN DO CITY



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 \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



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.

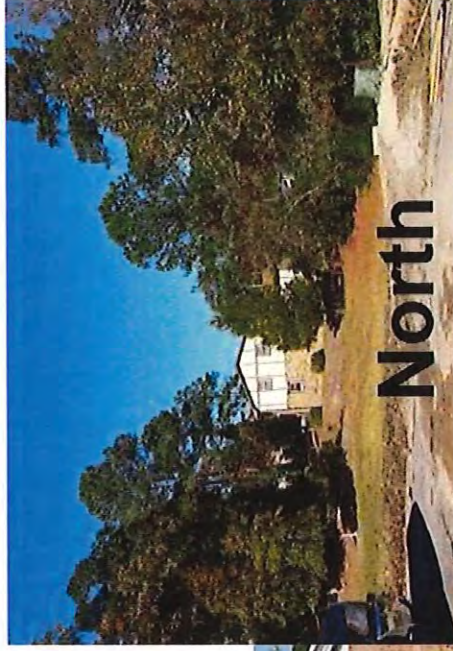


Subject Property





West



North



South



Subject Property

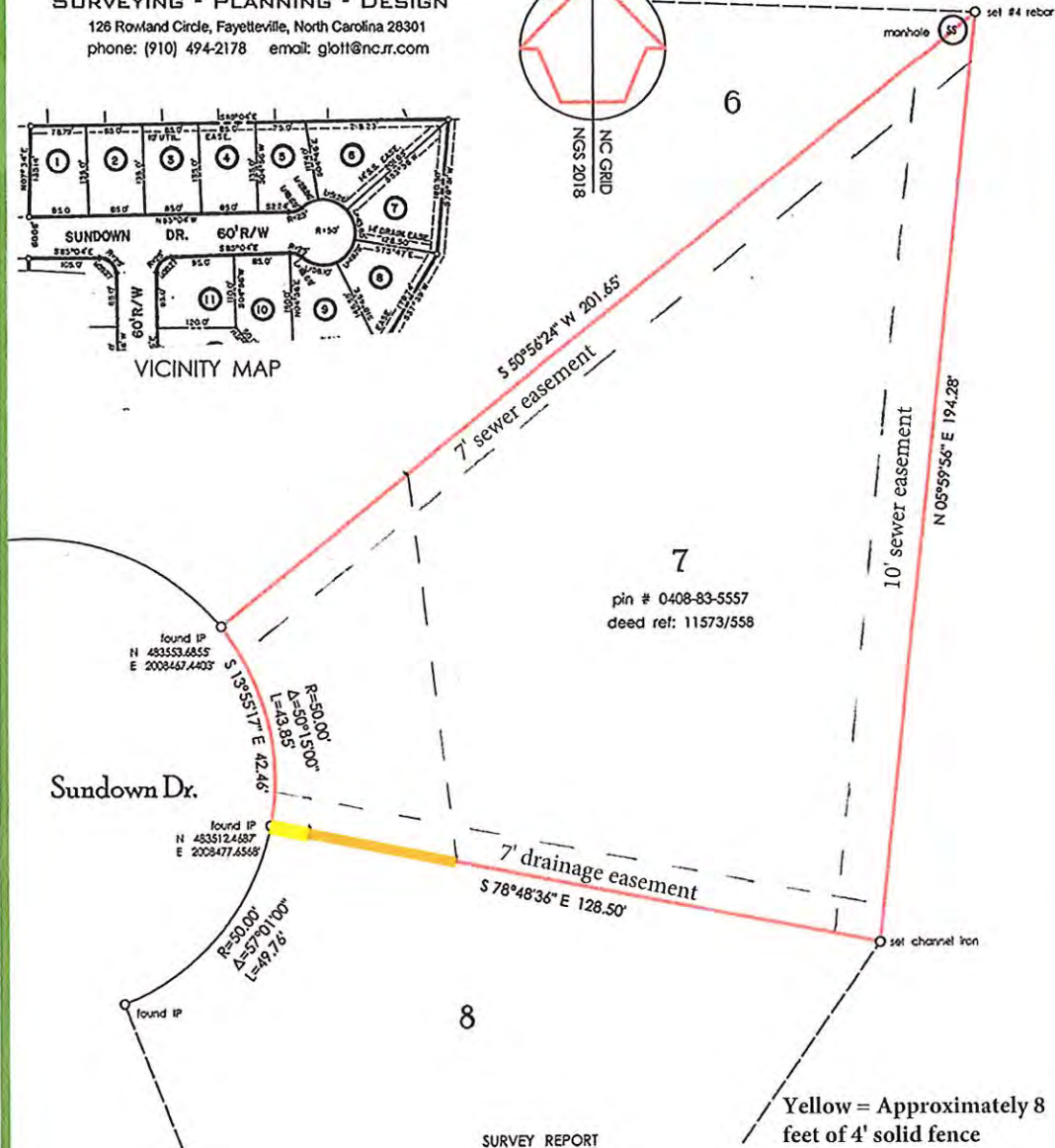
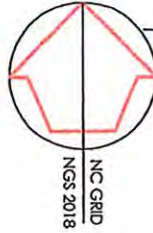
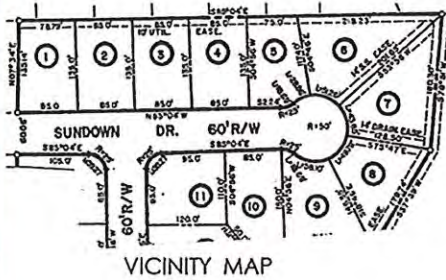


Lott Surveying

Est. 1972

SURVEYING - PLANNING - DESIGN

126 Rowland Circle, Fayetteville, North Carolina 28301
phone: (910) 494-2178 email: glott@nc.rr.com



SURVEY REPORT

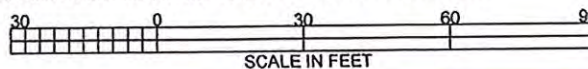
Yellow = Approximately 8 feet of 4' solid fence

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.



PART II - CODE OF ORDINANCES

CHAPTER 30 – UNIFIED DEVELOPMENT ORDINANCE

Article 30-5: Development Standards

30-5.D. Fences and Walls

30-5.D.4. Height Requirements for Fences and Walls

a. General

Fences and walls shall meet the standards in Table 30-5.D.4, Maximum Fence and Wall Height and Minimum Setback, except as provided in Section 30-5.D.5 Exemptions:

Table 30-5.D.4: Maximum Fence and Wall Height and Minimum Setback

FENCE OR WALL TYPE [1][6]		MAXIMUM HEIGHT BY LOCATION [1], [3]			MINIMUM SETBACK [7]	
	IN FRONT AND CORNER SIDE YARDS (FEET) [4]	IN INTERIOR SIDE AND REAR YARDS (FEET)	IN SIGHT TRIANGLES	IN FRONT, INTERIOR SIDE AND REAR YARDS (FEET)	IN CORNER SIDE YARDS (FEET)	
Fence or wall serving individual single-family (attached or detached) and two- to four-family dwellings [5]	4 Front yard; 6 Corner side yard	6	30 inches	0	0 for a fence or wall 36" or less in height. For others, the lesser of 5 feet or in line with corner side of dwelling	
Fence or wall serving other individual development	4 Front yard; 6 Corner side yard	6		0	10	
Chain link fence serving other development	4	6		0 interior and side 10 front	10	
Fence or wall serving a development perimeter	6	6		0 interior and side 10 front	10	
Screening fence or wall in accordance with Section 30-5.B.4.e, Screening	Minimum height necessary to achieve screening function up to 8 feet or as approved through site plan review			As approved through site plan review		
Recreational fencing [2]	N/A	N/A		As approved through site plan review		

NOTES:

1. Measurement of Height: Fence and wall height shall be measured taking into account the purpose for the fence or wall. For example, a buffer fence erected on the top of a retaining wall shall have its height measured from the adjoining property, not the base of the retaining wall. Similarly, a fence or wall erected as a buffer between the property being developed at a lower elevation from the property being buffered shall have its height measured from the property being buffered, not the lower property being developed. Fences erected for security purposes shall have that purpose taken into account when determining how they are measured. Nothing herein, however, shall allow or require the erection of a buffer fence or wall taller than twelve feet as measured from the lower property side, unless erected on a retaining wall. Safety fencing required by the North Carolina building code is not regulated by these height provisions.
2. Only allowed as part of an approved tennis court, athletic field, or similar recreational amenity.
3. Reserved for future use.
4. Single-family (attached or detached) and two- to four-family dwellings on through lots shall be considered as having two front yards

Table 30-5.D.4: Maximum Fence and Wall Height and Minimum Setback

FENCE OR WALL TYPE [1][6]		MAXIMUM HEIGHT BY LOCATION [1], [3]			MINIMUM SETBACK [7]
	IN FRONT AND CORNER SIDE YARDS (FEET) [4]	IN INTERIOR SIDE AND REAR YARDS (FEET)	IN SIGHT TRIANGLES	IN FRONT, INTERIOR SIDE AND REAR YARDS (FEET)	IN CORNER SIDE YARDS (FEET)
<p>except as follows:</p> <ul style="list-style-type: none"> ▪ Where the lot adjoins a road with four or more lanes, the frontage adjoining this road may be considered a corner side yard with regard to fence height and setback ▪ Where the fence or wall is part of a development perimeter. <p>5. For single-family (attached or detached) and two- to four-family dwellings, the following fence and wall materials are allowed for fences erected in the front yard:</p> <ul style="list-style-type: none"> a. Wrought iron or similar open-style metal fence (for these fences, the front yard height may be increased to five feet); b. Picket, shadow box or other partially open fences (50% or more open); or c. Solid fences or walls (less than 50% open) containing a minimum of three horizontal elements and two vertical elements if made of wood or a minimum of two vertical and horizontal elements if of masonry construction. d. Chain link or other wire fences with or without slats or screens are not allowed. <p>6. For all properties having road frontage, a garden wall (Sec. 30-5.B.4(c)(5) d.) may be substituted for a fence or wall allowed in this section.</p> <p>7. Where property lines extend into the right-of-way, the setback for fences and walls in front and corner side yards shall be measured from the edge of the sidewalk (if any) or 10 feet from the edge of the pavement, as applicable.</p> <p>8. For development other than single-family, wrought iron or similar open-style fence, the height may be increased to five feet.</p>					

b. Exemption for Safety

Major utilities, wireless communication towers, government facilities, and other public safety uses shall be allowed to increase maximum fence heights to eight feet in front, side, and rear yards, unless further increased through an approved Security Plan (see Section 30-5.D.5 Exemptions).

(Ord. No. S2012-016, § 5.1, 9-10-2012; Ord. No. S2013-002, § 3, 2-11-2013; Ord. No. S2014-021, § 1c, 11-24-2014; Ord. S2015-008, § 2, 8-10-2015; Ord. No. S2019-019, 1, 04/23/2019; Ord. No. S2020-009, § 1, 09/28/2020)

Effective on: 9/28/2020



City of Fayetteville

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

City Council Action Memo

File Number: 23-3203

Agenda Date: 2/14/2023

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Consent

Agenda Number: 3.02

TO: Mayor and Members of City Council

THRU: Craig Harmon, CZO - Senior Planner

FROM: Demetrios Moutos - Planner I

DATE: February 14, 2023

RE:

A23-05. Order of Approval - Finding of Facts. 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
10. Order of Finding of Facts

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@gmrpe.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@gmrpe.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

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

To reduce the rear yard setback to ten (10) feet in a Limited Commercial (LC) zoning district, and to reduce the width of the required street yard buffer to ten (10) feet on Overbrook Drive and six (6) feet on N. Reilly Road.

VARIANCE A23-05

Property Address: 367 N. Reilly Road
REID Number: 9498686280
Property Owner: Eid Abudayya

The Zoning Commission for the City of Fayetteville, NC, held an evidentiary hearing on January 10, 2023, to consider a Variance request filed by George Rose, George Rose Builder, Inc., (Applicant) on behalf of Eid Abudayya (Owner) to reduce the rear yard setback to ten (10) feet, and to reduce the width of the required street yard buffer to ten (10) feet on Overbrook Drive and six (6) feet on N. Reilly Road.

On December 22, 2022, a notice of public hearing was mailed to Eid Abudayya and all of the owners of property within 300 feet of the subject property. On December 19, 2022, a notice of public hearing sign was placed on the subject property. On December 30, 2022, and January 6, 2023, 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.4., of the City of Fayetteville's Code of Ordinances establishes the required setbacks for structures in the Limited Commercial (LC) zoning district.
2. Eid Abudayya is the Owner of a commercially zoned property located at 367 N. Reilly Road, which contains approximately 0.34 acres ± in the City of Fayetteville.
3. The Applicant filed an application for a Variance on December 13, 2022.
4. The subject property is zoned Limited Commercial (LC).
5. The Owner is requesting to reduce the rear yard setback from 20 feet to 10 feet, and to reduce the width of the required street yard buffer from 15 feet to 10 feet on Overbrook Drive and from 15 feet to 6 feet on N. Reilly Road.
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 Limited Commercial (LC) zoned property that is adjacent to a Single-Family Residential 10 (SF-10) zoned property to the west and another Limited Commercial (LC) zoned property to the North.
8. This property is currently vacant.
9. The property is approximately 0.34 acres and is on the corner of Overbrook Drive and N. Reilly Road across from American Flag Storage and Valero Gas Station.
10. This Variance addresses the Ordinance requirement for a structure to meet a 20-foot setback from the rear property line and for a 15-foot street yard buffer to be placed along Overbrook Drive and N. Reilly Road. This Variance will allow for a reduction to a 10-foot rear

yard setback for a structure and a reduction in the width of the required street yard buffer to 10 feet along Overbrook Drive and 6 feet along N. Reilly Road.

11. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardship because the property was platted prior to being annexed into the city, prior to the adoption of the UDO, and was originally meant for a residential property; whereas the development along N. Reilly Road is more commercialized and the subject property is not suitable for single-family development.

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 property retains the dimensions of its original platting from the late 60s with a narrow depth from N. Reilly Road to the rear most portion of the property, thus the landowner is not the cause of the hardship.

13. The Variance is the minimum action that will make possible a reasonable use of land or structures because the proposed development will be a light commercial structure and the style of building is the minimal footprint that will allow the building to meet the other UDO requirements with the assistance of the requested setbacks.

14. The Variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because the variance will allow the developer to build a structure that will be in harmony with the neighborhood, to include the setbacks and buffers along with the six-foot fencing.

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.e.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 14th day of February, 2023.

PAVEN PATEL
Zoning Commission Chair

Cumberland County, North Carolina

Sworn to and subscribed before me this day by Paven Patel

on the ____ day of _____, 2023.

(Official Seal)

Signature of Notary Public

_____, Notary Public
Printed Name of Notary Public

My Commission Expires: _____



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 \pm , located at 361 N. Reilly Rd. (REID# 949868280000) and being the property of Eid Abudayya, represented by George Rose.

Location: 367 N. Reilly Rd.

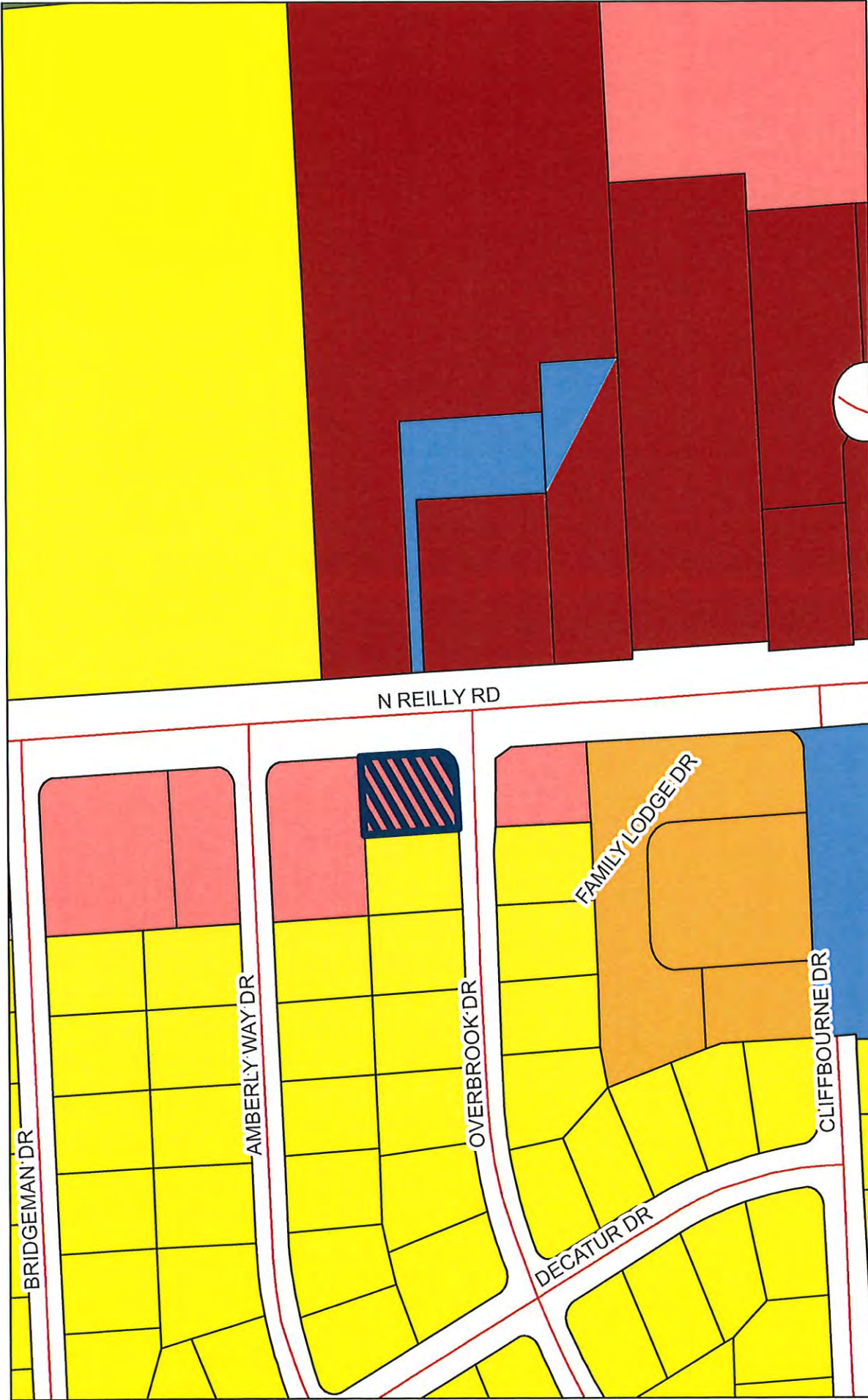


Legend



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# 9498686280000) and being the property of Eid Abudayya, represented by George Rose.

Location: 367 N. Reilly Rd.

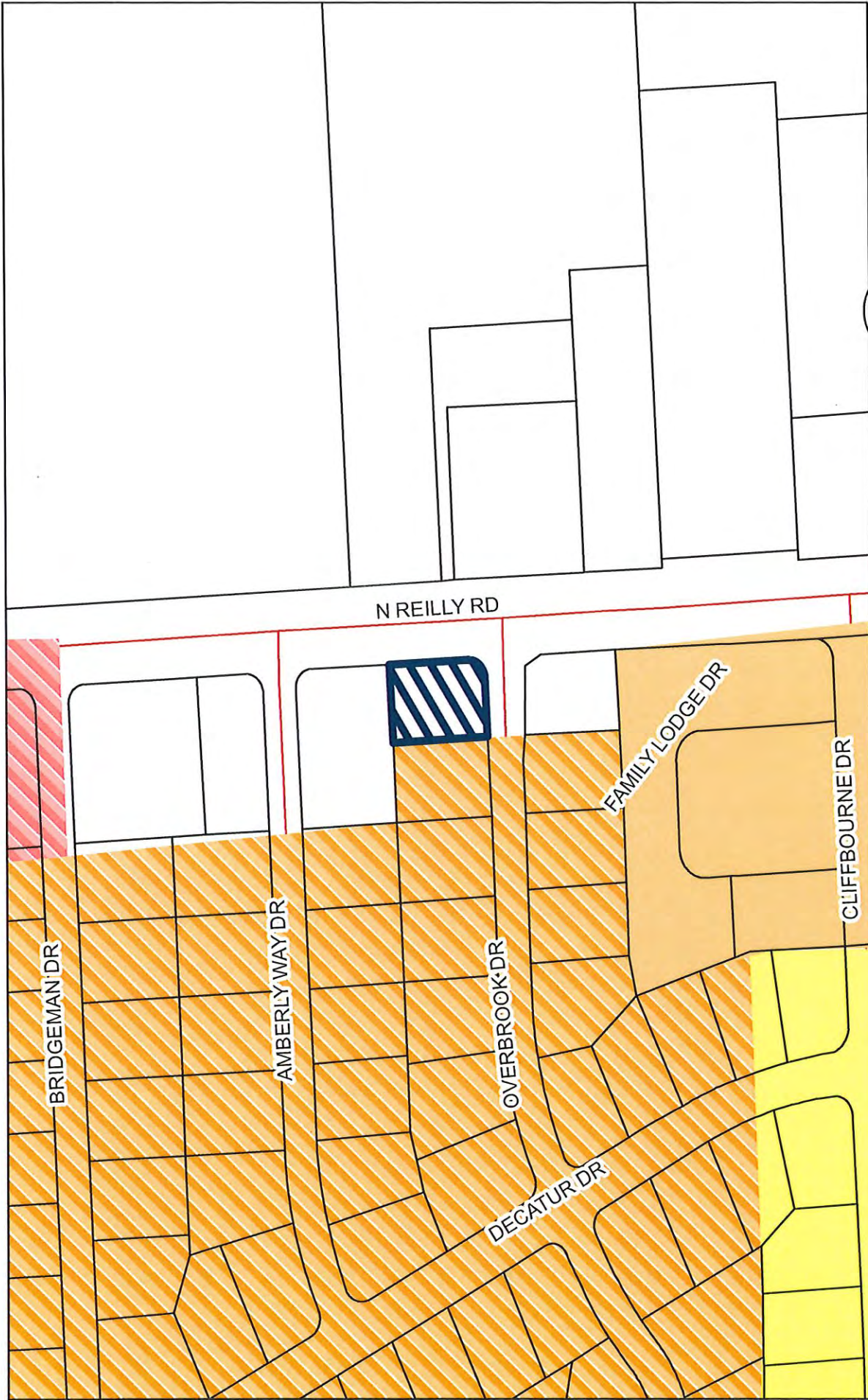
Legend

- 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 \pm , 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



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.











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.4. Limited Commercial (LC) District

LC LIMITED COMMERCIAL DISTRICT	PURPOSE			
	The Limited Commercial (LC) District is established and intended to accommodate a wider range of moderate-intensity general retail, business, and service uses that serve groups of neighborhoods instead of just an individual neighborhood—e.g., grocery stores, drugstores, large restaurants, gas stations, and higher order retail uses like specialty stores. The district is not intended to accommodate intensive commercial or other business uses. Residential uses are encouraged on the upper floors of nonresidential establishments. The district is subject to standards intended to ensure development is compatible with surrounding residential neighborhoods.			
DIMENSIONAL STANDARDS				
DIMENSIONAL STANDARD	NONRESIDENTIAL	MIXED-USE	ALL OTHER RESIDENTIAL	ACCESSORY STRUCTURES
Lot area, min. (sq. ft.)	20,000	15,000	8,000	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)	55		45	[2]
Height, max.	the greater of four stories or 55 ft.		the lesser of three stories or 40 ft.	25; 15 where abutting a single-family zoning district or use with setback less than 10 feet
Front setback, min. (ft.) [3]	The lessor of 25 ft. or 50 ft. from centerline of private streets			Not allowed in front, corner side, or side yard areas
Side setback, min. (ft.)	3; 15 where abutting a single-family zoning district or use			
Corner side setback, min. (ft.) [2]	15			

Rear setback, min. (ft.)	10; 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: 1,300 square feet in size or 30 percent of the allowable lot coverage.

[3] Minimum front 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.

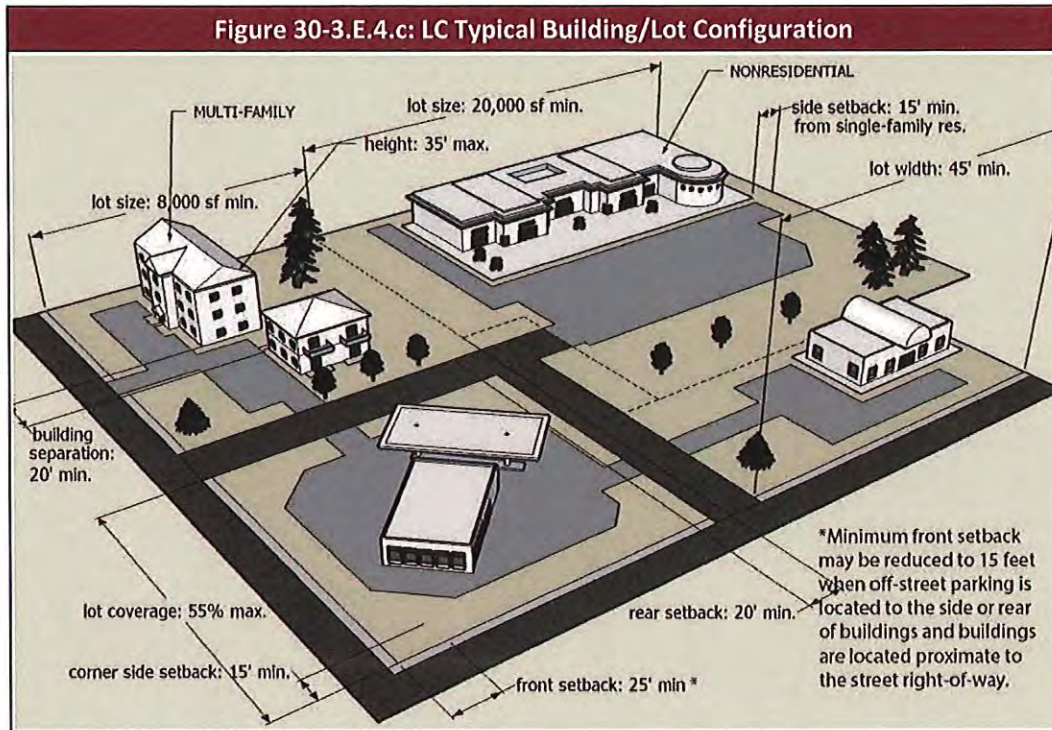
[4] Zero lot line development is subject to standards in Section 30-3.B.2 and, on a tract or site of three acres in area or less may require approval of a Neighborhood Compatibility Permit (see Section 30-2.C.21 Neighborhood Compatibility Permit).

**Figure 30-3.E.4.a:
LC Typical Lot Pattern**



**Figure 30-3.E.4.b:
LC Typical Building Form**





(Ord. No. S2011-008, §§ 6, 14.1, 7-25-2011; Ord. No. S2011-014, § 1.3, 11-28-2011; Ord. No. S2012- 001, Pt. 3, § 3.3, 1-23-2012; Ord. No. S2012-018, § 2.3, 9-10-2012; Ord. No. S2014-003, § 1b, 1-13-2014; Ord. No. S2014-015, § 5, 8-11-2014.)

Effective on: 11/18/2013

applicable buffer standards are met, and provided the vehicular use area perimeter landscaping is within the area to be occupied by the property perimeter landscape buffer.

d. *Parking Lot Entrance Aisles and Stacking Lanes*

Driveways into parking areas shall include a landscape strip at least ten feet wide along each side of the driveway. At a minimum, the driveway landscape strip shall include one canopy tree for every 25 to 40 linear feet of drive or one understory tree for every 15 to 25 linear feet of drive. A minimum of one shrub shall be planted for every five linear feet of driveway entrance. Plant material may be grouped as an entrance feature rather than planted as a linear border.

5. *Street Yard Buffer*

a. *Purpose and Intent*

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 material. Existing vegetation should be used to satisfy these planting requirements where possible.

b. *Applicability*

A street yard buffer shall be required for all vehicular use areas that are established within 50 feet of any street right-of-way (including controlled access highways) unless separated by an intervening building. When buildings are moved up to the street, the street yard requirement is eliminated.

c. *Minimum Requirements*

The depth of the street yard varies, based upon the size of the adjacent parking lot as described below:

Table 30-5.B.4.c.5.c: Street Yard Buffer Requirements		
Street Yard Depth	Application	Materials A mix of species may be used to create visual interest and diversity
5 Feet	Downtown (DT-1) Zoning District with < 70 feet of street frontage	Continuous evergreen hedge planted with min. 24 inch height above grade at time of planting
10 Feet	Downtown (DT-1) Zoning District with > 70 feet of street frontage; Constrained Redevelopment Sites; Automobile Sales or Display Lots	Continuous evergreen hedge planted with min. 24 inch height above grade at time of planting + canopy trees spaced 25 to 40 feet apart or understory trees 15 to 25 feet apart, depending upon mature size of species
15 Feet	1-2 rows of parking [one bay] or pavement with a depth less than 70 feet	35 shrubs per 100 linear feet (75 percent evergreen) + 3 canopy trees and 1 understory tree per 100 linear feet
25 Feet	>2 rows of parking [one bay] or pavement with a depth more than 70 feet	55 shrubs per 100 linear feet (75 percent evergreen) + 5 canopy trees and 3 understory trees per 100 linear feet

d. *Alternative Option for Constrained Sites - Garden Walls*

Masonry garden walls may be constructed on constrained sites in lieu of the vegetated street yard buffer (described above in Table 30-5.B.4.c.5.c) as determined by the city manager. DOT approval may also be required. The garden wall option is particularly well-suited in the Downtown and Hospital Overlay Districts as well for redevelopment sites. Such walls shall comply with the design standards established below.



City of Fayetteville

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

City Council Action Memo

File Number: 23-3220

Agenda Date: 2/14/2023

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
Kevin Hight
Roger Shah
Alex Keith
Clabon Lowe – Alternate

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

None

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 foot (4') and six foot (6') solid fence where a four foot (4') open style picket fence is allowed on 0.36 acres ±, 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 Foxfire subdivision. The property is currently zoned 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 dimensions of the fencing in the front yard. 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 finish the unfinished side of the fence if necessary.

Mr. Hight asked how far back from the street 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 after the fence was complete.

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 in an easement.
- The fence is not built in the proper orientation so 42 feet of fence would have to be rebuilt.
- 30 feet of the 42-foot fence 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-link fences lower property values.
- The fence would need to be 10 or 12 feet to provide privacy.
- There was a chain-link fence to the back of the property.
- He showed the Board additional photos of the fence that show a storm drain which is located in an easement.

- Beaver Creek 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 in 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 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 and that the fencing will lower property values. 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 traffic is more 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. 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.

Mr. Fejerang 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 after the fence was installed. She said the City approved the 4-foot fence in the front and the 6-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 and a 6-foot solid fence in the rear 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 4-foot solid fence in the front yard and a 6-foot solid fence in the backyard. To demolish the entire fence would be a difficulty and an unnecessary hardship—4-feet as per code in front.
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 lot does slope a lot in the back yard.
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, it would be the minimum action and will meet the standards of the Unified Development Ordinance.
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 and meeting code, everyone will be happy.
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: With conditions, welfare is assured.

SECOND: Kevin Hight

VOTE: No vote

Ms. Baptiste asked for clarification of the motion. Mr. Shah said the 4-foot fence would be reconstructed as a picket fence—not talking about the fence in the backyard.

Mr. Harmon said that the 4-foot fence in the front yard should be option #3—denial.

MOTION: Roger Shah made a motion to deny 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 fence is constructed as 4-foot solid fence in the front yard and a 6-foot solid fence in the backyard. To demolish the entire fence would be a difficulty and an unnecessary hardship—4-feet as per code in front.
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 lot does slope a lot in the back yard.

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, it would be the minimum action and will meet the standards of the Unified Development Ordinance.
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 and meeting code, everyone will be happy.
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: With conditions, welfare is assured.

SECOND: Kevin Hight

VOTE: 4-1 (Alex Keith opposed)

A22-55. Variance to increase the required right-of-way setback maximums from 20 feet to 68 feet along Ramsey Street and 73 feet 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 showed 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. 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.

There were no speakers in opposition.

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. 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.

There were no speakers in opposition.

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)

IV. LEGISLATIVE HEARINGS

P22-46. Request to amend the previously approved conditions for a Community Commercial/Conditional Zoning (CC/CZ) zoned property consisting of 7.11 acres \pm , 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. The applicant 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 2022, 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. Good Homes is in the business of buying hotels and remodeling them.
- They met with Fort Bragg regarding their housing needs.
- He said there is a massive need for studio and one-bedroom housing in Fayetteville.
- Mr. Mitchell is seeking the Board's recommendation of approval 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. 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.

There were no speakers in opposition.

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 Reasonable 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 consistent 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 received City Council approval for the rezoning of Phase I of the development.
- Mr. Brown stated this would be a gated community.

- Mr. Brown noted that an appraiser had a letter stating there would be no impact on the property values.
- The applicant is working on a traffic study.

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 the area.

Mr. Lamero said it depended on the flow of traffic but it is most often when people are dropping off and picking 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 Resonable Statements outlined in the staff report and option 1. Recommendation approval of the map amendment to MR-5/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.

There were no speakers in opposition.

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 Resonable Statements. The proposed zoning map amendment to Heavy Industrial Conditional Zoning (HI/CZ) 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 used for 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 was available to answer questions.

Mr. Hight asked Mr. Sharpe 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.

There were no speakers in opposition.

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 Resonable 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 in order 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 a storage facility 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.

There were no speakers in opposition.

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.

There were no speakers in opposition.

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

MOTION: Alex Keith made a motion to approve the rezoning from Light 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. The subject property is across the street from the hospital and is currently zoned Office Institutional/Conditional Zoning.

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 stated they would like to add new building to further assist SRAHEC customers.
- The project has already been reviewed by the Technical Review Committee.
- Buffering will be installed as part of the development.

There were no speakers in opposition.

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

MOTION: Stephen McCorquodale made a motion to approve the rezoning based on the conditions 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 \pm , 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 space. 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 Gooden Drive.
- The development 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.

There were no 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 Planning 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: Roger Shah
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: 23-3184

Agenda Date: 2/14/2023

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Consent

Agenda Number: 3.04

TO: Zoning Commission

THRU: Development Services, Planning and Zoning Division

FROM: Catina Evans - Office Assistant II

DATE: February 14, 2023

RE: Approval of Meeting Minutes: January 10, 2023

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: January 10, 2023

**MINUTES
CITY OF FAYETTEVILLE
ZONING COMMISSION MEETING
FAST TRANSIT CENTER COMMUNITY ROOM
JANUARY 10, 2023 @ 6:00 P.M.**

MEMBERS PRESENT

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

STAFF PRESENT

Craig Harmon, Senior Planner
Heather Eckhardt, Planner II
Lauren Long, Planner II
Demetrios Moutos, Planner I
Lisa Harper, Assistant City Attorney
Catina Evans, Office Assistant II
David Winstead, Zoning Administrator

The Zoning Commission Meeting on Tuesday, January 10, 2023, was called to order by Chair Pavan Patel at 6:01 p.m.

I. APPROVE THE AGENDA

MOTION: Alex Keith made a motion to approve the agenda.
SECOND: Roger Shah
VOTE: Unanimous (5-0)

II. APPROVAL OF CONSENT ITEMS TO INCLUDE THE MINUTES FOR THE DECEMBER 13, 2022, MEETING

MOTION: Stephen McCorquodale made a motion to approve the consent items 3.01 and 3.02 while tabling item 3.03 (December 13, 2022, meeting minutes) due to discrepancies in the minutes regarding case A22-54.
SECOND: Roger Shah
VOTE: Unanimous (5-0)

The members of the Board stated their names for the record. 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. Alex Keith stated he had a conflict of interest with case P23-04 and requested to be recused from this case.

III. EVIDENTIARY HEARINGS

A23-05. Variance to reduce the rear yard setback in a Limited Commercial (LC) zoning district and reduce the width of the required street yard buffer, to be located at 367 N. Reilly Road (REID #9498686280000), containing 0.34 acres ± and being the property of Eid Abudayya, represented by George M. Rose, P.E.

Demetrios Moutos presented case A23-05. George Rose represented the applicant and owner Eid Abudayya. The property is a half mile south Fillyaw Road and half mile north of Morganton Road. The property is zoned Limited Commercial, and there are Single-Family residential properties to the west and northeast. There are some Mixed-Residential 5 (MR-5) zoned lands to the south, Residential to the north, and Office Institutional to the east. The

land is a vacant lot. This property was initially platted in 1967 and it was annexed into the City in 2005. There was a house and a barber shop on the property prior to it being annexed into the City. Mr. Moutos showed the Commission photos of the surrounding properties.

Mr. Moutos said the Variance is to reduce the rear setback to 10 feet from the 20 feet that is normally required in Limited Commercial Districts. The street yard buffer that is normally required for this proposed development is 15-feet. The owner is requesting to reduce the required buffers from 15 feet to 10 feet on Overbrook Drive and from 10 feet to 6 feet on North Reilly Road. Mr. Moutos stated that the applicant is requesting a reduction in the rear-yard buffer and he will provide landscaping in the street yard buffer. The applicant wants to reduce the width of the street yard buffer. Mr. Moutos said the Board can vote as follows:

Mr. Moutos conveyed that the Variance is to reduce the rear yard setback to 10 feet, from the 20 feet that is normally required in Limited Commercial Districts, and to reduce the required street yard buffer widths on Overbrook Drive and North Reilly Road from the required 15 feet to 10 feet and 6 feet, respectively. Mr. Moutos stated that while the applicant is requesting a reduction in the rear yard setback and street yard buffer widths, the applicant intends on providing the requisite landscaping for a 15 foot street yard buffer as well as a 10 foot type D buffer along the rear property line. Mr. Moutos appraised the board of their options as follows:

1. Motion to approve a variance for a 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 from 10' to 6' on N. Reilly Road.
2. 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 from 10' to 6' on N. Reilly Road.
3. Motion to approve the variance(s) as requested, but with added conditions.
4. Motion to deny the variance as requested.

Mr. Patel opened the evidentiary hearing for case A23-05.

Speakers in favor:

George Rose, 1204 Longleaf Drive, Fayetteville, NC 28305

Mr. Rose stated the following:

- He is representing the owner. He stated that the owner was not able to make it to the meeting, and he will refer to some correspondence between the owner and the adjacent property manager. Mr. Rose said he will be available to answer any questions.
- The property was annexed in 2005 and it was platted prior to the adoption of the Unified Development Ordinance and before it was annexed into the City.
- It was originally a residential lot for the LeGrange subdivision. There was a residential structure on the property that was used as a barbershop, but it has been torn down. It is currently a vacant lot. It is not a large lot. It is a narrow lot in depth when measured from Reilly Road.
- The site plan shows a 38-foot-deep commercial building which he considers extremely liberal in terms of a workable depth for a commercial building. The depth of a lot in that direction is 100 ft. If you take 100 feet minus the 10-foot setback that we are requesting instead of the 20-foot setback, minus the 38-foot building minus the 4-foot sidewalk in front of the building minus 20-feet for parking minus 22 feet for an

access isle, it leaves 6 feet for the landscape strip in the front. This is why they are requesting the Variance. There is still a 15 ft. left for landscaping although 10 feet of that is in the right-of-way.

- The owners contacted the adjacent property owner before they started this process. The neighbor wrote a letter that stated that they do not have any opposition to the applicant. He noted that the neighbors were not able to come to the meeting because they are elderly. Mr. Hight asked for the letter but Ms. Harper said it would be hearsay because there is no proof of the person who wrote the letter.
- Mr. Rose said the only appropriate use is commercial.
- He said the depth is the minimum workable depth for this property.

Mr. Patel closed the evidentiary hearing for case A23-05.

MOTION: Stephen McCorquordale made a motion to allow the Variance in case A23-05 to reduce the rear yard setback from 20ft to 10 ft. and to reduce the street yard buffer from 15 feet to 10 feet along Overbrook Drive and from 15 feet to 6 feet on North Reilly Road based on the following findings of fact:

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships because the property was platted prior to being annexed into the city, prior to the adoption of the UDO, and was originally meant for a residential property; whereas the development along N. Reilly Road is more commercialized and the subject property is not suitable for single-family development.
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 because the property retains the dimensions of its original platting from the late 60s with a narrow depth from N. Reilly Road to the rear most portion of the property, thus the landowner is not the cause of the hardship.
3. The Variance is the minimum action that will make possible a reasonable use of land or structures because the proposed development will be a light commercial structure and the style of building is the minimal footprint that will allow the building to meet the other UDO requirements with the assistance of the requested setbacks.
4. The Variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because the variance will allow the developer to build a structure that will be in harmony with the neighborhood, to include the setbacks and buffers along with the six-foot fencing.
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: By granting this variance there is no evidence that it would adversely affect the public safety and welfare.

SECOND: Roger Shah

VOTE: Unanimous (5-0)

IV. LEGISLATIVE HEARINGS

Mr. Patel asked if any of the Board members had any conflict with any of the cases. Alex Keith stated that he had to recuse himself from case P23-04. Ms. Harper advised Mr. Patel he could call for a motion to allow Mr. Keith to recuse himself from the case.

MOTION: Kevin Hight made a motion to allow Alex Keith to recuse himself from case P23-04

SECOND: Roger Shah

VOTE: (4-0)

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.

Heather Eckhardt presented case P23-01. The subject property is located at the corner of Fort Bragg Road and Park Street. This is across the street from a Fayetteville Fire Station and the one-hour cleaners, which is located to the south. To the west is primarily office space. The Future Land Use Plan calls for the area to be developed as neighborhood mixed-use. She showed the property that was once a single-family home, but it now serves as a business that sells soap, lotion, and other items. It is part of a commercial corridor on Fort Bragg Road.

The Staff recommended approval of the 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 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.
- There are no other factors that will substantially affect public health, safety, morals, or general welfare.

Mr. Patel opened the legislative hearing for case P23-01. He reminded the speakers that they had a total of 15 minutes to speak.

Speakers in favor:

Leslie Pearson, 1302 Fort Bragg, Road, Fayetteville, NC 28305

- Ms. Pearson owns a business that is unique because they make soaps, lotions, and other items.
- They have a community garden and Ms. Pearson hopes to teach classes on the property as well.

Mr. Patel closed the legislative hearing for case P23-01.

MOTION: Alex Keith made a motion to approve the rezoning for case P23-01 for the .32 acres on Fort Bragg Road from Office Institutional (OI) to Neighborhood Commercial (NC) based on the fact that it meets the Consistency Statement policies and strategies as well as reasonableness and the strategic plan.

SECOND: Roger Shah

VOTE: Unanimous (5-0)

Mr. Patel opened the legislative hearing for case P23-02.

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

Craig Harmon presented case P23-02. Mr. Harmon stated that it is a rezoning of property off Dundle Road. This same property came before the Zoning Commission last year for a Variance to reduce the required road frontage. That request was denied. The owners are now looking to rezone the property. The land is currently zoned Agricultural Residential (AR). The two properties to the north are zoned for commercial use. Although the property to the west is zoned Agricultural Residential, its use is a large dog kennel. The property in question is a vacant flat piece of property. Single-family residential properties are to the west and south of the subject property. The property is 1 acre in size is in keeping with the Future Land Use Plan.

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 uses permitted by the proposed change in zoning district and the standards that apply to such uses and will be appropriate in the immediate area.
- There are no other factors that will substantially affect public health, safety, morals, or general welfare.

Mr. Patel opened the legislative hearing for case P23-02.

Speakers in favor:

Scott Brown, 409 Chicago Drive, Suite 112, Fayetteville, NC 28306

- The request aligns with the Land Use Plan. Single-family Residential properties surround the property.
- They are asking for the Commission to allow Neighborhood Commercial zoning so they can split up the property or do something with it more than what they can currently accomplish with Agricultural (AR) zoning.

Mr. Patel closed the legislative hearing for case P23-02.

Mr. Shah asked the staff if the North Carolina Department of Transportation would require them to do a study. Mr. Harmon said the applicants would be required to go through the City's Technical Review Committee before approval.

MOTION: Roger Shah made a motion to approve rezoning for case P23-02 to approve the rezoning from Agricultural Residential (AR) to Neighborhood Commercial (NC) located at 3459 Dundle Road based on the Consistency Statement that is provided by the City which is consistent with the goals and land use policies and strategies and reasonableness.

SECOND: Pavan Patel

VOTE: Unanimous (5-0)

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.

Ms. Eckhardt presented case P23-03. The applicant is requesting to rezone part of this property. Across the street is a Fayetteville fire station and there is a residential area to the south. The Cliffdale Pointe subdivision lies to the west of the property. To the east is Neighborhood Commercial zoning. To the north is Office Institutional and to the south, residential. The Future Land Use Plan calls for the property to be High-Density Residential. The property is currently vacant. Ms. Eckhardt showed the Board the area surrounding the property. The applicant is requesting that the area be zoned Neighborhood Commercial.

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-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.
- There are no other factors that will substantially affect public health, safety, morals, or general welfare.

Mr. Patel opened the legislative hearing for case P23-03.

Speakers in favor:

Michael Adams, 1306 Ft Bragg Rd, Fayetteville NC 28305

- Mr. Adams is representing the owner.
- He plans to build a mini-mall in the area.

Mr. Shah asked about the need for a 20-foot buffer from the rear of the property. Mr. Adams said they are 140-feet deep. Mr. Shah wanted to make sure they have building space with the 20-foot buffer. Mr. Adams asked if the buffer is within the setbacks, and Ms. Eckhardt said the landscape buffer is generally located within the building setbacks.

Louis Frangos, 3057 N Main Street, Hope Mills, NC 28348

- Mr. Frangos wants to put a small commercial shopping center on the property.
- He is looking to put townhouses in the area in the future.

Mr. Patel asked if this was part of the existing acreage. Mr. Adams said this is separate. Mr. Shah asked if this area would allow enough room for them to build. Mr. Adams stated how they estimated the size. Mr. Shah wanted to make sure they had enough room so they would not have to come back to request another Variance.

Gary Futch, 2538 N Edgewater Drive, Fayetteville, NC

- Mr. Futch said they felt they had enough area to build a small shopping center.
- They want to add a couple of stores like a barber shop or salon.

Mr. Hight asked if they rezone it Commercial, how would they access the rest of the property from Cliffdale Road. Mr. Futch said Branchwood is accessible because it abuts the property.

Debbie Artiz, 4141 Artwood Drive Fayetteville, NC 28303

- Ms. Artiz has a piece of land in the area. She asked about the location of the gas station and where the commercial development will be located in relation to the gas station. Mrs. Eckhardt showed her where the development will be located in relation to the gas station.

Mr. Patel asked Mr. Futch if the land would be subdivided, and Ms. Eckhardt said it will be subdivided in the future.

Mr. Hight asked Ms. Eckhardt if the applicant could rezone other areas in the future and she said yes. Mr. Hight noted that the development could affect residential areas.

Mr. Patel closed the legislative hearing for case P23-03.

MOTION: Mr. Shah made a motion to approve the 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 based on the Consistency and Reasonableness Statement that has been provided which shows it being consistent with the goals of the City and with the Land Use (Future Land Use Plan) policies and strategies.

SECOND: Stephen McCorquodale

VOTE: 4-1 (Kevin Hight opposed)

P23-04. Rezoning from Single-Family Residential 6 (SF-6), Agricultural Residential (AR), and Neighborhood Commercial (NC) to Mixed Residential 5 (MR-5) of 19.02 acres ±, 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.

Lauren Long presented case P23-04. Ms. Long stated that the applicant, Alex Keith, had submitted a request to amend his initial application. The amended request is to rezone 17.2 acres of the site to MR-5 and retain approximately 2 acres of existing NC. Originally the request had been to rezone the entire site. The property is located in District 4 at the intersection of Bonanza Drive and Morganton Road. The site is currently split-zoned between AR, SF-6, and NC. The current configuration of the zoning districts are the result of several parcel recombinations that have taken place over time—the most recent occurring in 2001. The Future Land Use Map designates the area as Medium Density Residential as well as Parks and Open Space. The area designated Parks and Open Space is also designated as floodway and flood hazard area by FEMA where Persimmon Creek runs through the westernmost boundary of the site. There is also a conservation easement adjacent to the westernmost parcel line.

Ms. Long showed the board a current picture of the property and surrounding areas. She stated that the Regional Land Use Advisory Commission had reviewed the case and requested that planning staff notify the applicants of the proximity of the Sandhills Area Land Trust as well as of the potential noise advisory due to the site's proximity to Fort Bragg.

Staff recommended approval of this rezoning based on the following:

- The proposed zoning map amendment adheres to the policies and goals adopted in the Future Land Use Plan and would expand the types of residential development that would be allowed by-right.

Mr. Patel opened the legislative hearing for case P23-04. Mr. Hight stated that the Consistency and Reasonableness Statement was not in the packet for this case. Mr. Patel had a copy that was passed around for the Board members to read.

Speakers in favor:

Alex Keith, 121 S. Cool Spring Street, Fayetteville, NC 28301

- Mr. Keith is the listing agent on the property.
- The rezoning is not conditional. The land is split-zoned.
- Mr. Keith said there are 12.5 acres roughly of the 19 acres on the eastern side of the site that could be developed.
- Mr. Keith said a creek and an easement were located on the property.
- Mr. Keith presented an apartment index study. The study included data collected since 1976 in the Fayetteville, Hope Mills, and Spring Lake areas.
- Mr. Keith showed the Commission a chart of recent rental rates for apartments and discussed multi-family development trends in the area.

Stan Bowles, 607 Curtis Road, Warsaw, NC 28398

- Mr. Bowles stated that he was one of the owners of the property and that he was present to answer any questions.

Mr. Patel closed the legislative hearing on case P23-04.

Mr. McCorquodale asked staff how many acres would be rezoned after the amended application request. Ms. Long confirmed that the requested rezoning was for 17 acres of a 19 acre site, retaining 2 acres of existing NC.

MOTION: Pavan Patel made a motion to approve case P23-04 with the rezoning of 17.2 acres from Single-Family Residential 6 (SF-6), Agricultural Residential (AR) to Mixed Residential 5 (MR-5), retaining 2 acres of existing Neighborhood Commercial (NC) of a 19.02 acre parcel, located at 0 Morganton Road. The project and rezoning would be consistent with the goals and policies of the Future Land Use Plan.

SECOND: Philip McCorquodale

VOTE: Unanimous (5-0)

V. OTHER BUSINESS

A22-54.

Ms. Harper told Mr. Patel that during the last meeting, the board discussed case A22-54, which was regarding a request for a Variance at 5200 Sundown Drive. She stated that at the end of the case, there was a question about the final motion that was approved. Ms. Harper said they could not come to a consensus about what happened that day in the matter. Staff said they would go back and listen to the tape to see what had occurred.

Ms. Harper said that Staff did go back and listen to see what had occurred in that case, and apparently when Ms. Eckhardt listened to the tape there were two motions that were made. Both of them were made by Mr. Shah. The first motion was for an option two, which allowed the Variance with conditions. That motion was seconded by Mr. Hight. However, the motion was not voted on. The second motion after some discussion was also made by Mr. Hight. It was a denial of the Variance. That motion was seconded by Mr. Hight. That motion was voted 4-1.

Mr. Hight asked if he had made and seconded the same motion. Ms. Harper clarified that he had seconded the second motion and he did not make that motion. She said Mr. Shah made both motions and Mr. Hight seconded them.

Ms. Harper said that the records show that the tape indicated that when Mr. Shah made the first motion he listed some findings. However, it is not clear in the tape. It is not clear as to which findings (as you know you have to satisfy all five findings). It is not clearly expressed—those findings. The second motion that Mr. Shah made which was approved 4-1 only says based on the finding previously, which is somewhat contradictory in that the first motion approved the Variances with conditions and the second motion denied the Variance. Ms. Harper said the reason for the second motion is based on the same reasons of the first motion, which is inconsistent. Ms. Harper said that the matter has been brought back today for the Board to reconsider. She said there would need to be made a motion to reconsider. That could only be made by those who voted in favor of the approved motion, which would be everyone but Mr. Keith because Mr. Keith voted against the motion.

The motion can stand with clarifications on the findings. She said they could clarify the findings based on the first motion or someone can make a different motion based on those options that were presented to the Board at the hearing last month. Ms. Harper noted that this was not a time for new evidence to be heard. The evidentiary hearing was open and it was closed. The purpose of this coming back on the agenda today is merely for some clarification and so that the record can be clear on what the Commission intended regarding the Variance.

Mr. Hight asked if she said the second motion was to deny the Variance. Ms. Harper said the recording shows that the second motion was a denial of the Variance which was seconded by Mr. Hight, which was approved 4-1. The first motion was option 2 which would have been—Ms. Harper said she thought it was in the Board's packet. Ms. Harper asked Ms. Eckhardt if she had the options on a slide to show the Board. Ms. Harper said the first motion was option 2, but it was not voted on, so the Board is just dealing with option 1 at this point.

Mr. Shah clarified that there were two motions. He said the first motion was made and he guessed there were some technical problems with it. The second motion was the denial made by Mr. Hight, but that did not get approved. Mr. Shah said he made the third motion to approve the Variance with the condition to meet the guidelines of the City code on the front yard fence.

Ms. Harper asked Ms. Eckhardt if that is on the recording. Ms. Eckhardt said no. Mr. Shah said that he kept on saying City code, front fence, City code front fence. Mr. Hight said that he cannot recall ever wanting to deny the Variance. He said he wanted the fence to stay. Mr. Hight said what he remembers voting for was that the four-foot fence that existed in the front yard would be slanted and the rest of the fence would stay in place. Mr. Hight said that was what he voted for. He never thought he voted to deny the Variance because he wanted the fence to be built.

Ms. Harper said that when Ms. Eckhardt listened to the tape, what she heard was only those two motions. Ms. Harper said that just to clarify then someone needs (with the exception of Mr. Keith)—there needs to be another motion to reconsider. Ms. Harper said these were the options that were presented before the Board. So there needs

to be another motion for reconsideration and that motion needs to be voted upon. Then, there needs to be a new motion stating what the Commission wants and based on the facts as the Board would recall them to support their motion.

Mr. Shah asked which option would state that the front fence would come down according to the City code-not come down, but it would be adjusted to 4 feet and the rear fence would stay as is. Ms. Harper went over the options.

1. She said the first option is to allow the fence to remain as is (confirmed by Eckhardt).
2. Allow the fence to stay as is, but in the front yard the fence would---she asked Staff to explain it.

Ms. Eckhardt said option two would allow the 4-foot front solid fence to remain but deny the 6-foot fence. The 6-foot fence would have to be reduced to 4 feet. Ms. Harper clarified that the 4-foot fence would still be in violation of the UDO code because it would not be a picket fence. Ms. Eckhardt agreed.

Ms. Harper asked Ms. Eckhardt to explain option 2 using a picture. Ms. Eckhardt said that a portion would remain as is and a portion back to the corner of the house would have to be brought down to 4 feet of height and made into a picket fence. Mr. Shah asked if that would be in the back yard and Ms. Eckhardt said it was in the front yard. Mr. Hight asked if these were new pictures and Ms. Harper said they were the same pictures the Board previously saw during the last meeting.

Mr. Shah asked for clarification if the fence had to be up to City code. Ms. Harper clarified that the fence in the front yard had to be 4 feet and picketed. Ms. Eckhardt said yes to this inquiry. Ms. Harper said that this is in violation of the code because it is 4 feet and 6 feet in some portions of the front yard and it is a solid fence. Ms. Eckhardt conferred with this. Ms. Harper asked Ms. Eckhardt to explain option three to the Board.

Ms. Eckhardt said this option would allow the 6-foot solid fence to remain, but the 4-foot portion would be made into a picket fence. Ms. Harper asked what would happen to the portion of the 4-foot fence in the front yard. It would be removed or brought into compliance by making it a picket fence.

Mr. Shah said that the Variance would allow a 6-foot solid fence in the front yard setback, but deny a 4-foot solid fence in the setback. Ms. Eckhardt showed Mr. Shah what would remain and what would be removed. Mr. Shah clarified that the 6-foot fence they were looking at was in the front yard and Ms. Eckhardt conferred with this. Ms. Harper said the other option is to deny the Variance and make the fence comply with the UDO guidelines. Ms. Eckhardt clarified that this would mean that the 6-foot portion of the fence would be made 4-feet.

Mr. McCorquodale clarified that the Board wanted to determine what was the front yard versus the distance of the side yard. Ms. Eckhardt clarified the 4 and 6-foot portion of the front yard.

Ms. Harper said that the Board would need to make a motion to reconsider.

MOTION: Pavan Patel made a motion to reconsider the motion for A22-54.

SECOND: Roger Shah

Ms. Harper clarified that the Board does not have to reconsider the motion, but the motion will remain as is and the Variance will be denied.

The findings of fact would state that the applicant failed to meet the standard and satisfy the five findings of fact.

Mr. Hight asked if they reconsider the motion do they still have the option to deny it. Ms. Harper stated that if they do not reconsider the motion (as of now it is 4-1). As we show in the record the motion is 4-1 denial. Mr. Shah said that was the third motion. Ms. Harper said that she recalled that Ms. Baptiste asked for clarification on the motion. At some point, Mr. Patel asked Ms. Eckhardt if she understood the motion and Ms. Eckhardt repeated the motion but what she repeated was not the denial of the motion.

Mr. Hight said yes but Ms. Eckhardt does not recall there being a vote on the motion. Ms. Harper said the cleanest thing to do whether you deny or approve it (with one of the options explained) is to reconsider the previous motion and make a new motion. Therefore, it will be clear what the Board's intent is. Mr. Shah asked if he could make a motion that the front yard with the 4-foot fence stays. If there is a 6-foot fence in the front yard it must be 4 feet, but if there is a rear fence at 6 or 7 feet it can stay. Mr. Shah clarified that a portion of the fence would be 4-feet according to the city code. Ms. Harper stated that he is saying that the front yard must comply with the Unified Development Ordinance. Mr. Shah is saying that you must comply with the Unified Development Ordinance which is a denial of the motion.

Ms. Harper asked Mr. Shah if he understood what she is saying and he said yes. Ms. Harper asked if the backyard fence is compliant other than the fact that it is a solid fence. The fence in the back is compliant other than the fact that the finished side is facing the wrong direction. Ms. Harper added that the applicant made it known that she would do what is necessary to make the portion of the fence that was unfinished comply. Ms. Harper said that the Board can stipulate in the motion so that it is in the findings of fact that the applicant will finish the unfinished portion of the fence in accordance with the UDO guidelines.

The question is if you want to make the front yard fence in compliance with the UDO, then you are saying that you are denying this Variance and it has to comply with the UDO. Ms. Harper said they must make a motion to reconsider and then open it back up to vote. The Board said they made the motion to reconsider and Ms. Harper said they need to vote.

VOTE: (4-1) (Kevin Hight opposed)

Ms. Harper said that denying the Variance means that it would have to be in compliance with the Unified Development Ordinance. Ms. Harper said they must make the motion, and they can discuss it before they do so.

Mr. Shah had questions about denying the Variance, and Ms. Harper said denying the Variance means it would need to be in compliance with the UDO. Mr. Shah asked if the owner would have to take the whole fence down. Ms. Harper said denying the fence does not require her to take the entire fence down.

Mr. Patel agrees they should deny the Variance because that would force the applicant to fix everything. Ms. Harper said they need to make a motion. Ms. Harper said that the law requires that if the evidence does not meet

all of the five findings of facts, then the Variance has to be denied. The Board can go through all of the five findings or they can say the applicant failed to meet all five facts of finding to meet the Variance.

MOTION: Pavan Patel made a motion to deny the Variance because the applicant failed to meet all 5 findings of fact.

SECOND: Roger Shah

Mr. McCorquodale and Mr. Shah had a few questions that were clarified by Ms. Harper. Then they made the final vote.

VOTE: (4-1) (Kevin Hight opposed)

VI. ADJOURNMENT

MOTION: Roger Shah made a motion to adjourn the January 10, 2023, meeting.

SECOND: Pavan Patel

VOTE: (5-0)

The meeting adjourned at 7:47 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: 23-3197

Agenda Date: 2/14/2023

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Evidentiary Hearing

Agenda Number: 4.01

TO: Zoning Commission

THRU: Craig Harmon - Senior Planner

FROM: Demetrios Moutos - Planner I

DATE: February 14, 2023

RE: **A23-06.** Variance to reduce the corner side yard setback for an accessory

use/structure and a privacy fence in a Single Family Residential 10 (SF-10) zoning

district, located at 1917 Partridge Court (REID # 9496761688000), containing 0.59 acres

± and being the property of Eric & Tracy Bass.

COUNCIL DISTRICT(S):

6 - Derrick Thompson

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:

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: Eric S. Bass, Tracy M. Bass

Applicant: Eric S. Bass

Requested Action: Reduction in corner side yard setback for both an accessory use/structure and a fence in a Single Family Residential 10 (SF-10) zoning district.

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

Property Address: 1917 Partridge Court

Size: 0.59 acres ± or 25,700.4 square feet

Existing Land Use: Single Family Dwelling

Surrounding Zoning and Land Uses

- North: Single Family Residential 10 (SF-10) - Single Family Dwelling
- South: Single Family Residential 10 (SF-10) - Single Family Dwelling
- East: Single Family Residential 10 (SF-10) - Single Family Dwelling
- West: Single Family Residential 10 (SF-10) - Single Family Dwelling

Letters Mailed: 29

Issues/Analysis:

The property is 0.59-acres ± and is located at 1917 Partridge Court. The site is currently a single family dwelling and is located in the Wells subdivision. The current Unified Development Ordinance (UDO) was adopted in 2011. The property was platted in 1981, the house was built in 1982, and the property was annexed into the City of Fayetteville in 2005.

According to Article 30-3.D.3 of the UDO, accessory structures are "not allowed in front, side, or corner side setbacks". This means that any accessory uses/structures in a corner side yard area need to meet the same setbacks that are required of a principle structure. In the Single Family Residential 10 (SF-10) zoning district, the setbacks for a principle structure are 30 feet on the front and corner side, 10 feet on the side, and 35 feet at the rear (or 20 feet when the corner side setback is 30 feet or more). Setbacks are measured from property lines. Permits for the pool were sought after at the same time as the excavation of the site took place. Permits were denied because the pool did not meet the minimum setback requirements. The applicant is requesting to reduce the setback minimum for the pool from 30 feet to 15 feet from the property line.

Additionally, a six foot wood privacy fence was permitted along the corner side and side yard property lines in June of 2022. Article 30-5.D.4 of the UDO states that the "minimum setback for a fence or wall serving individual single-family (attached or detached) and two-to four-family dwellings in the corner side yard is 0 feet for a fence or wall 36 inches or less in height, and for others the lesser of 5 feet or in line with the corner side of the dwelling". The approved permit application showed the fence being 25 feet off the corner side property line, but due to a misunderstanding on the location of the property line that wasn't made apparent until after a survey was conducted, the fence was erected 3 feet from the corner side property line. The applicant is requesting a reduction in the required 5 foot setback to a 3 foot setback to rectify this mistake and bring the property into compliance.

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 area for a single family house in the SF-10 zoning district is 10,000 square feet. This lot is 0.59 acres \pm or 25,700.4 square feet \pm . This lot meets the minimum square footage for the SF-10 district and is comparable to other properties in the Wells 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 "We obtained 3 quotes for a pool installation on the north east corner of our lot. We hired Green State Landscaping to install a pool on our property with the understanding they would be obtaining the necessary permits before beginning the construction of the pool. We were first notified of an issue after the pool was installed (AUG 2022): The permit had not been approved. We were informed that our septic had to be brought up to code via nitrate line relocation or connection to city sewer. We connected to city sewer to meet that requirement code. Work was completed in OCT 2022 and passed inspection. After that, we were informed of the setback issue by Green State Landscaping. At this point, construction has halted with 75% of the pool complete and installed. We are unable to finish the pool, fence to go around the pool, or remove the dirt piled up on our property."

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, "We are a corner lot with very limited backyard space. After we factor in the 30ft set back we lose 5520 sq. ft. Our property already has an existing building on the same side area. Shown in attachment."

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, "No other neighboring property affects the regulation in request."

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 "There was no intent to violate the code in the process of the pool construction. We believed Green State Landscaping did their dual diligence before beginning the project and followed proper procedure with the city of Fayetteville. There is no safety or rain water concerns for decreasing the setback to 15ft."

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 impact to surrounding areas for decreasing to a 15ft set back. We will still have the 20ft right of way plus the additional 15ft setback distance from the property line."

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 a reduction in the corner side yard setback for an accessory use/structure in SF-10 from 30' to 15' and a reduction in the corner side yard setback for a fence from 5' to 3'.

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 corner side yard setback in SF-10 for an accessory use/structure from 30' to 15'**
2. **Reduce the corner side yard setback for a fence from 5' to 3'.**

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. SF-10 Dimensional Standards Table



Planning & Zoning

433 Hay Street
Fayetteville, NC 28301
910-433-1612
www.fayettevillenc.gov

Project Overview

#924008

Project Title: Wells Place Pool
Application Type: 5.4) Variance
Workflow: Staff Review

Jurisdiction: City of Fayetteville
State: NC
County: Cumberland

Project Location

Project Address or PIN: 1917 PARTRIDGE CT
(9496761688000)

Zip Code: 28304

GIS Verified Data

Property Owner: Parcel

- 1917 PARTRIDGE CT: BASS, ERIC S;BASS, TRACY M

Acreage: Parcel

- 1917 PARTRIDGE CT: 0.59

Zoning District: Zoning District

- 1917 PARTRIDGE CT: SF-10

Subdivision Name:

Fire District:

Hospital Overlay District:

Cape Fear District:

Haymount Historic District:

100 Year Flood:

Watershed:

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 property falls under the SF-10 District requiring a front and corner side setback of 30 ft. We are requesting a variance to have a pool permit approved to complete construction that was done by Green State Landscaping. We are requesting a 15ft setback to complete this project.

Section of the City Code from which the variance is being requested.: 30.3.D

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

This neighborhood is zoned for SF-10 and all properties have the same requirements.

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

Expiration - Variance

30-2.C.14.e.5.- Variance approval 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.

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.:

We obtained 3 quotes for a pool installation on the north east corner of our lot. We hired Green State Landscaping to install a pool on our property with the understanding they would be obtaining the necessary permits before beginning the construction of the pool. We were first notified of an issue after the pool was installed (AUG 2022): The permit had not been approved. We were informed that our septic had to be brought up to code via nitrate line relocation or connection to city sewer. We connected to city sewer to meet that requirement code. Work was completed in OCT 2022 and passed inspection. After that, we were informed of the setback issue by Green State Landscaping. At this point, construction has halted with 75% of the pool complete and installed. We are unable to finish the pool, fence to go around the pool, or remove the dirt piled up on our property.

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.:

We are a corner lot with very limited backyard space. After we factor in the 30ft set back we loose 5520 sq.ft. Our property already has an existing building on the same side area. Shown in attachment.

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?:

No other neighboring property affects the regulation in request.

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

There was no intent to violate the code in the process of the pool construction. We believed Green State Landscaping did their dual diligence before beginning the project and followed proper procedure with the city of Fayetteville. There is no safety or rain water concerns for decreasing the setback to 15ft.

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.:

There is no impact to surrounding areas for decreasing to a 15ft set back. We will still have the 20ft right of way plus the additional 15ft setback distance from the property line.

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

Eric Bass

1917 Partridge Ct

Fayetteville, NC 28304

P: (Phone)2542588523

ericsbass@gmail.com

Project Contact - Agent/Representative

Eric Bass

1917 Partridge Ct

Fayetteville, NC 28304

P: (Phone)2542588523

ericsbass@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. :

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:

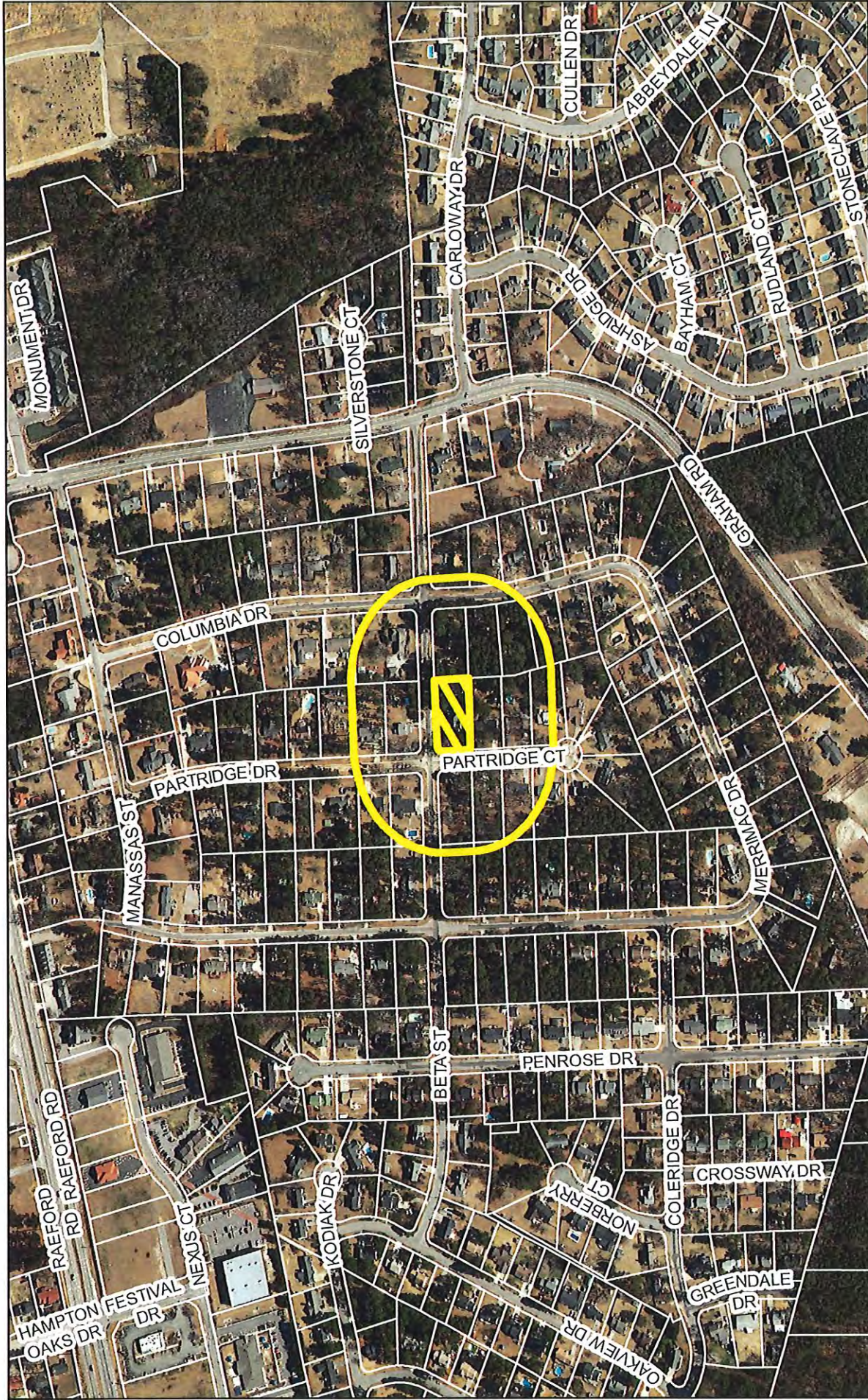
NC State Electrical Contractor #2 License Number:

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 #: A23-06

Request: Variance to reduce required setbacks.

Location: 1917 Partridge Ct.

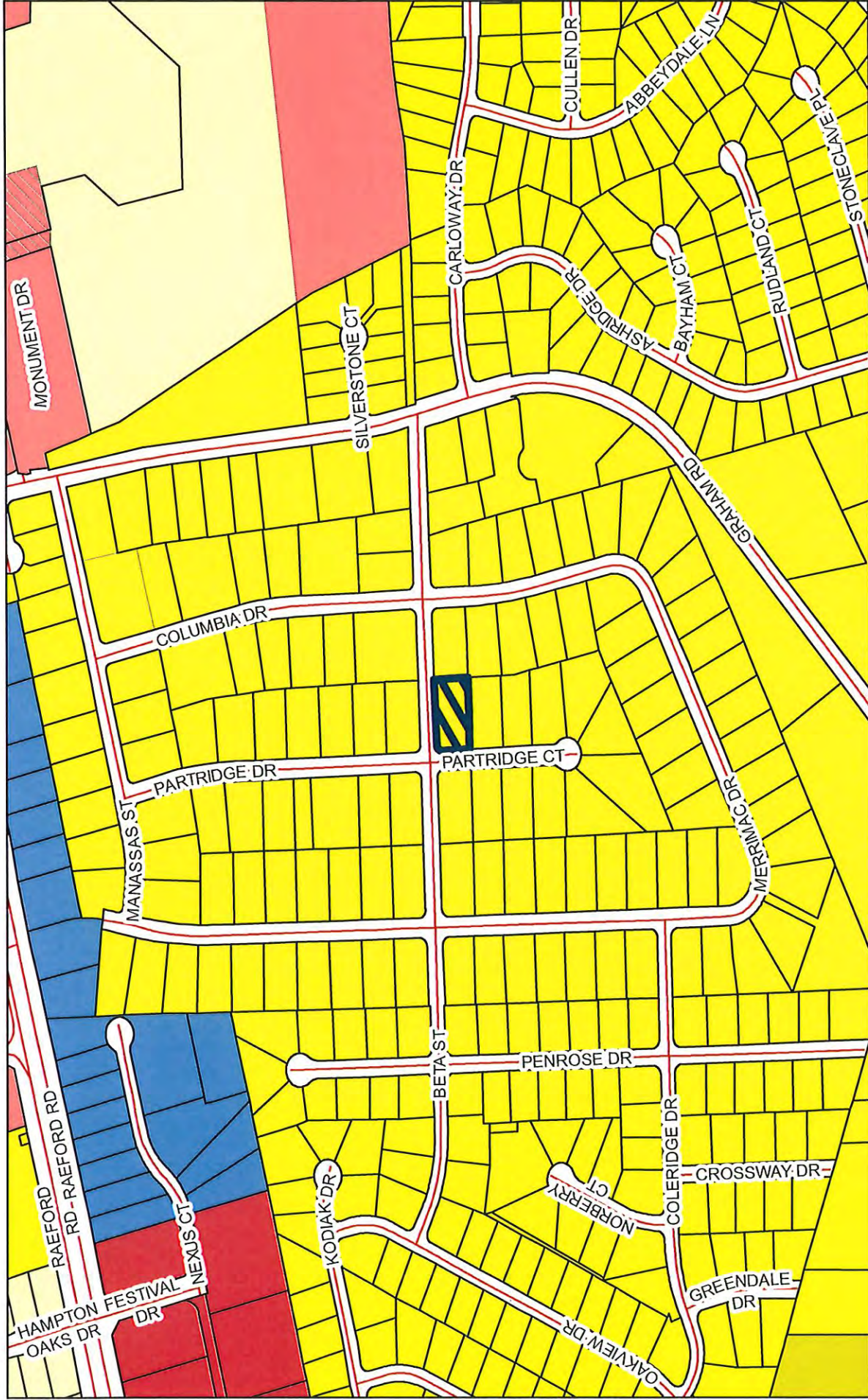


Legend

	A23-06 Buffer
	A23-06

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













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



Legend

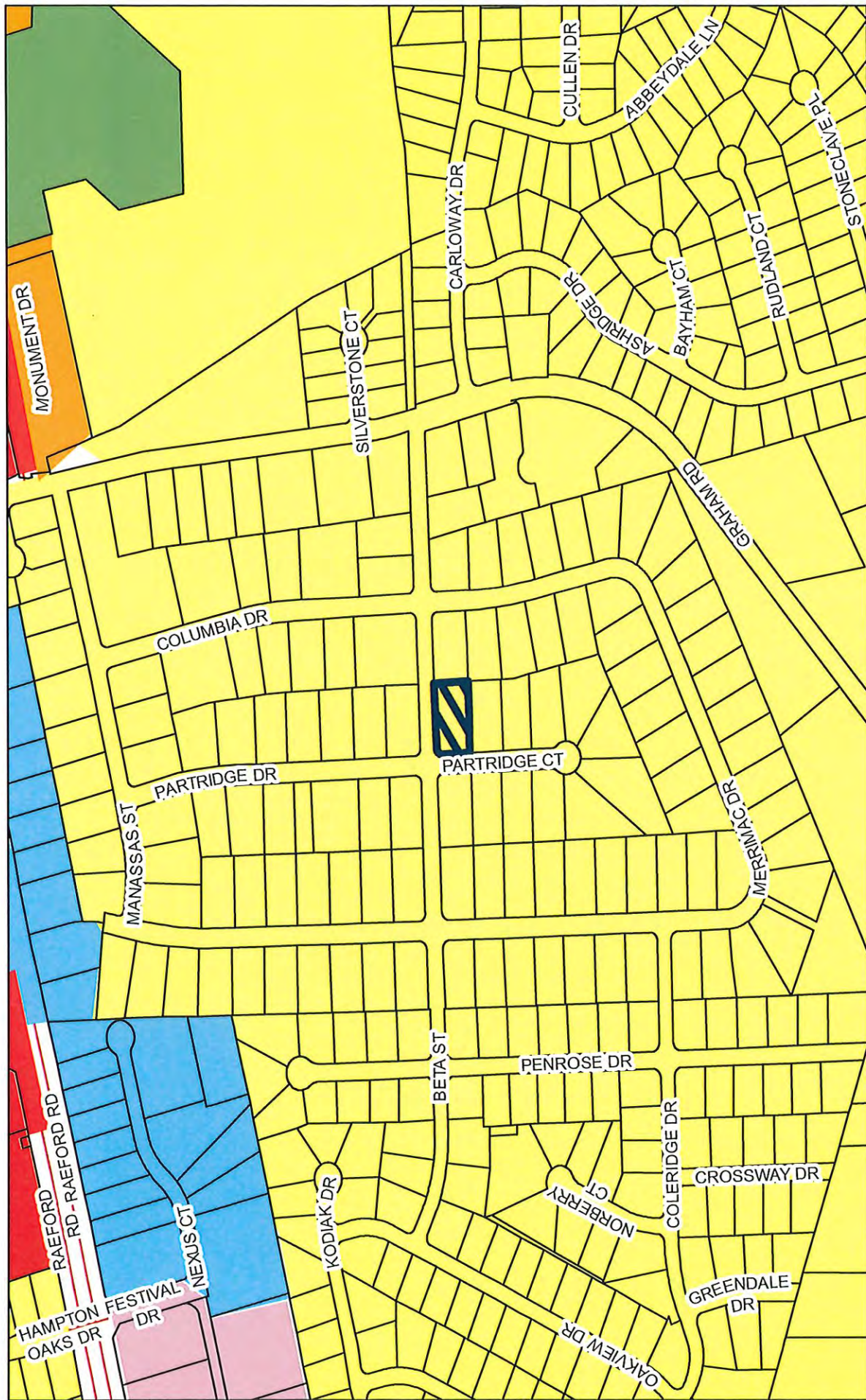
-  A23-06
-  LC - Limited Commercial
-  LC/CZ - Conditional Limited Commercial
-  NC - Neighborhood Commercial
-  OI - Office & Institutional
-  SF-6 - Single-Family Residential 6
-  SF-10 - Single-Family Residential 10
-  SF-15 - Single-Family Residential 15

Zoning Map Case #: A23-06

Request: Variance to reduce required setbacks.

Location: 1917 Partridge Ct.



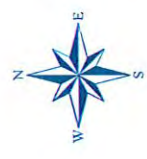


Future Land Use Map Case #: A23-06

Legend
 A23-06
Land Use Plan 2040

- Character Areas**
- PARKOS - PARK / OPEN SPACE
 - LDR - LOW DENSITY
 - HDR - HIGH DENSITY RESIDENTIAL
 - NMU - NEIGHBORHOOD MIXED USE
 - HC - HIGHWAY COMMERCIAL
 - OI - OFFICE / INSTITUTIONAL

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

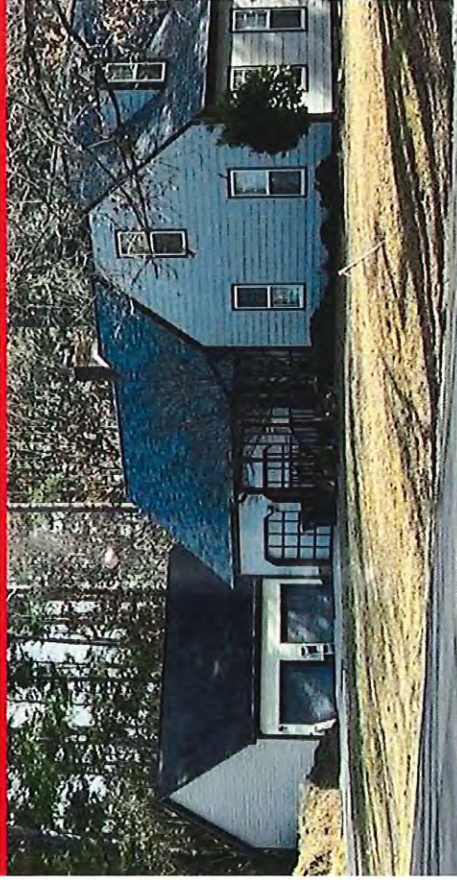


Request: Variance to reduce required setbacks.
Location: 1917 Partridge Ct.





Subject Property



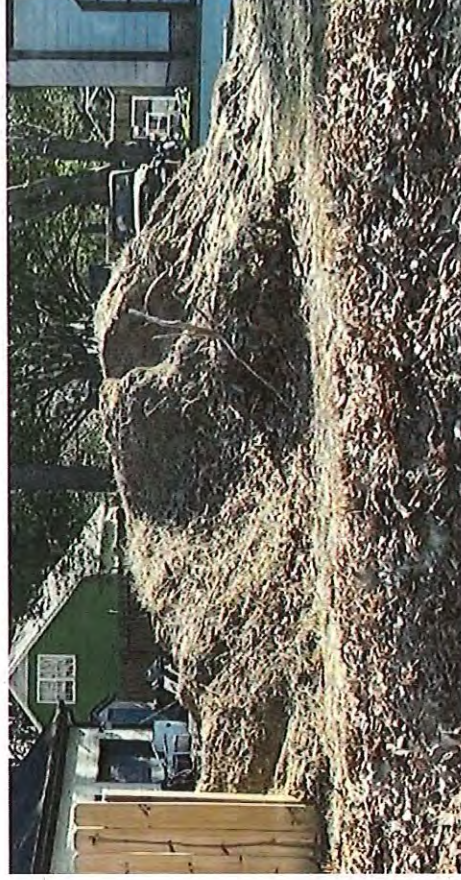


Subject Property





Subject Property







Surrounding Properties

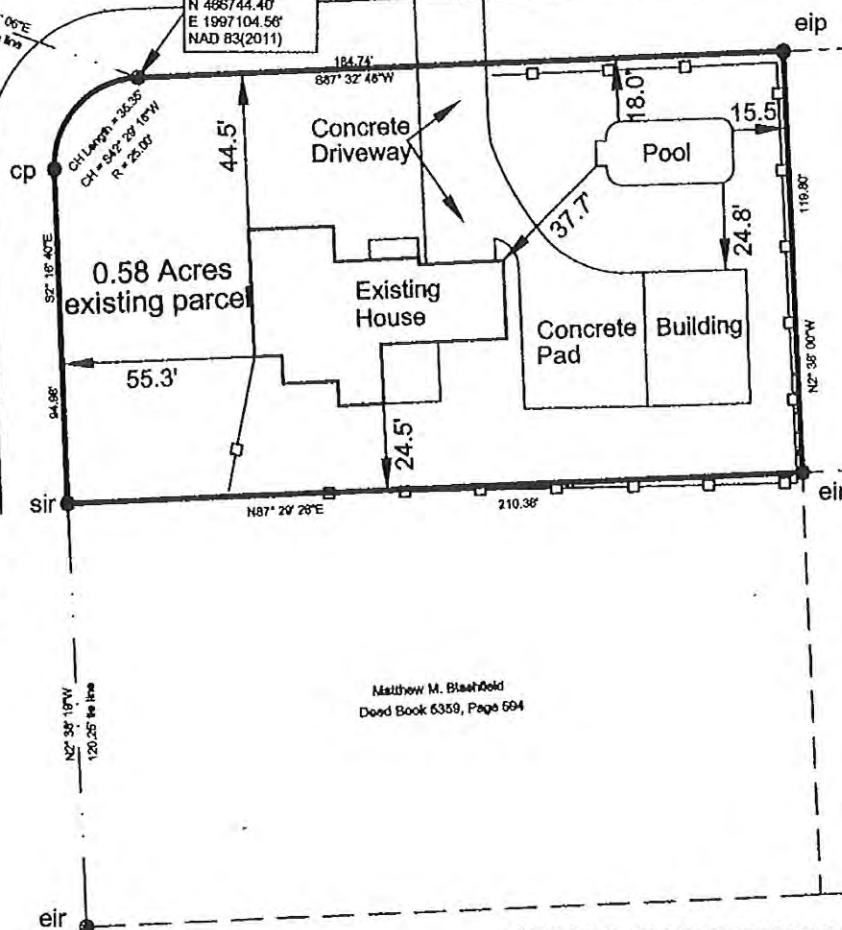


EMN at PI
N 488765.27'
E 1997045.106'
NAD 83(2011)

Control Corner EIP
N 488744.40'
E 1997104.56'
NAD 83(2011)

Partridge Court 60' Right-of-Way

Beta Street 60' Right-of-Way



Derrick Luron and
Tanya Sabrina Broughton
Deed Book 10477, Page 366

Andrew C. Gatchel
Deed Book 10152, Page 266

Matthew M. Blackfield
Deed Book 6359, Page 694

SITE PLOT PLAN PREPARED FOR

Eric Bass

CITY OF FAYETTEVILLE

CUMBERLAND COUNTY NORTH CAROLINA

AUGUST 1, 2022 SCALE 1"= 50'

TITLE REFERENCE: DEED BOOK 9771, PAGE 529

LOT 54, PLAT BOOK 49, PAGE 67

REID: 9496761688000

I, JOHN D. POWERS JR., PLS L-3719, CERTIFY THAT
THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL
SURVEY MADE UNDER MY SUPERVISION, DEED AND DESCRIPTION
RECORDED IN PLAT BOOK 49, PAGE 67, THAT THE RATIO OF
PRECISION AS CALCULATED BY LATITUDE AND DEPARTURES IS 1/10,000+-
THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES
PLOTTED FROM INFORMATION FOUND IN BOOKS REFERENCED, THAT THIS
MAP WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED
WITNESS MY HAND AND SEAL THIS 1ST DAY OF AUGUST, A.D., 2022

LEGEND

- sir - set iron rod
- eir - existing iron rod found
- cp - calculated point (no stake set)
- eip - existing iron pipe found
- — — — — tie line surveyed
- — — — — right of way line plotted
- — — — — surveyed line
- — — — — line plotted (not surveyed)

GRAPHIC SCALE



(IN FEET)

JOHN D. POWERS JR. PROFESSIONAL LAND SURVEYOR L-3719

PART II - CODE OF ORDINANCES

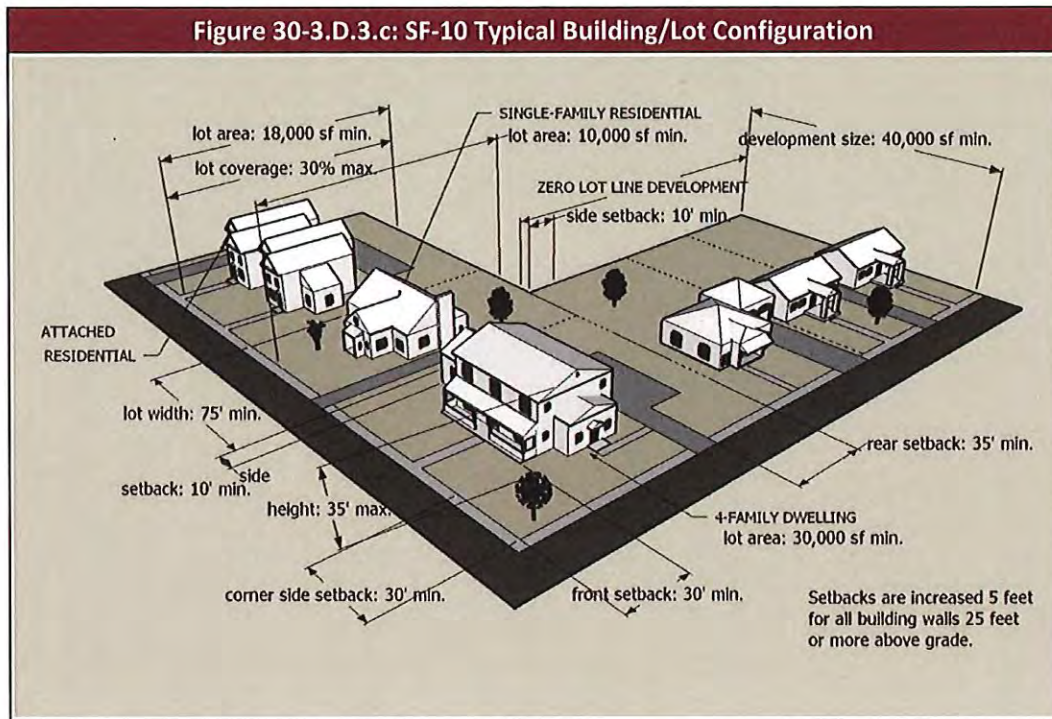
CHAPTER 30 – UNIFIED DEVELOPMENT ORDINANCE

Article 30-3: Zoning Districts

30-3.D. Residential Base Zoning Districts

30-3.D.3. Single-Family Residential 10 (SF-10) District

SF-10 SINGLE-FAMILY RESIDENTIAL 10 DISTRICT	PURPOSE				
	The Single-Family Residential 10 (SF-10) District is established to accommodate principally single-family detached residential development at low densities, and to accommodate flexibly-designed residential development that provides variable housing types and arrangements that respond to environmental and site conditions. Uses within the district are subject to the design standards in Article 30-5: Development Standards. The district accommodates two- to four-family dwellings designed to appear as single-family detached homes and zero lot line development subject to the requirements of this Ordinance. District regulations discourage any use that substantially interferes with the development of single-family dwellings and that is detrimental to the quiet residential nature of the district. Also allowed are complementary uses usually found in residential zoning districts, such as parks, open space, minor utilities, accessory dwellings of up to 800 square feet in size, schools, and places of worship.				
DIMENSIONAL STANDARDS					
DIMENSIONAL STANDARD	SINGLE- FAMILY DETACHED DWELLINGS	SINGLE- FAMILY ATTACHED DWELLINGS	TWO- TO FOUR- FAMILY DWELLINGS	ALL OTHER PRINCIPAL USES	ACCESSORY STRUCTURES
Lot area per unit, min. (sq. ft.)	10,000	9,000	7,500	10,000	n/a
Lot width, min. (ft.)	75				n/a
Lot coverage, max. (% of lot area)	30				[2]
Height, max. (ft.)	35				25; 15 where abutting a single- family district or use and the setback is less than 10'
Front and corner side setback, min. (ft.) [3]	30 feet or 55 feet from centerline of private streets				Not allowed in front, side, or corner side setbacks
Side setback, min. (ft.) [3]	10				



(Ord. No. S2011-014, § 1.2, 11-28-2011; Ord. No. S2012-001, Pt. 3, § 3.1, 1-23-2012; Ord. No. S2012-025, § 9, 11-13-2012; Ord. No. S2014-015, § 5, 8-11-2014; Ord. No. S2014-005, § 3, 1-27-2014; Ord. No. S2014-015, § 5, 8-11-2014; Ord. No. S2015-008, § 4, 8-10-2015; Ord. No. S2021-038, § 2, 10/25/2021)

Effective on: 8/10/2015



City of Fayetteville

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

City Council Action Memo

File Number: 23-3196

Agenda Date: 2/14/2023

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Evidentiary Hearing

Agenda Number: 4.02

TO: Zoning Commission

THRU: Craig Harmon, CZO - Senior Planner

FROM: Heather Eckhardt, CZO - Planner II

DATE: February 14, 2013

RE: A23-07. Variance to reduce the front, rear, and southern side yard setback for a principal structure located at 105 S Broad Street (REID # 0447126041000), containing 0.63 acres ± and being the property of Hudson & Hudson Investments LLC, represented by Mickey Hudson.

COUNCIL DISTRICT(S):

2 - Shakeyla Ingram

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: Hudson & Hudson Investments LLC

Applicant: Mickey Hudson

Requested Action: Reduce front yard, rear yard, and southern side yard setback

Zoning District: Heavy Industrial (HI)

Property Address: 105 S Broad St

Size: 0.63 acres \pm or 27,442.8 square feet

Existing Land Use: Light Manufacturing

Surrounding Zoning and Land Uses

- North: HI - Vacant
- South: HI - Heating and air contractor
- East: HI - Heating and air contractor
- West: CC & DT - Church

Letters Mailed: 11

Issues/Analysis:

The property is 0.63-acres \pm and is located at 105 S Broad Street. The site is a manufacturing facility for Morty Pride located near the corner of Person Street and S Broad Street. According to aerial photography, the development of the site began before 1982. The site was inside the city limits of Fayetteville at the time development began and was initially developed prior to the adoption of the Unified Development Ordinance (UDO) in 2011. There have been numerous additions to the building over the last 30 years.

According to Article 30-3.E.9, Heavy Industrial District, of the UDO, principal structures must meet a front yard setback of 50 feet, a side yard setback of 15 feet, and a rear yard setback of 20 feet. These setbacks can differ if the property abuts a residential zoning district. However, the subject property does not abut residential and is surrounded by other industrially zoned properties.

The structure on the subject property does not meet the front, side, or rear setbacks required by the UDO. However, the initial development of the site and many additions took place prior to the adoption of the UDO. The adoption of the UDO resulted in the site becoming nonconforming. There have been other additions to the building which have taken place since the adoption of the UDO and those additions do meet the required setbacks. The subject property obtained a variance for the front yard setback in 2006. The front yard setback is being addressed in this variance for cohesiveness.

The rear portion of the building has suffered foundation damage due to erosion. The variance is needed in order for the applicant to remove and replace this damaged section of the building. Approval of the variance for the front, rear, and side yard setbacks will allow the applicant to address the damage and also bring the site into compliance.

The specific measurements for the requested variances are as follows:

1. Reduction in front yard setback from 50 feet as required by the UDO to 22.79 feet
2. Reduction in southern side yard setback from 15 feet as required by the UDO to .64 feet
3. Reduction in rear yard setback from 20 feet as required by the UDO to 1.29 feet

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 HI zoning district is 40,000 square feet. This lot is 0.63 acres \pm or 27,442.8 square feet \pm . This lot does not meet the minimum square footage for the HI district. However, the lot is comparable to other properties in the area regarding lot size and shape. The site was initially developed between 1968 and 1982 long before the adoption of the UDO. The initial development of the site would have met the standards of the previous ordinance. Additional development has taken place since the adoption of the UDO and those developments have been compliant with the ordinance. The site is currently non-conforming due to changes in the ordinance.

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 existing "buildings are over setbacks".

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 states that there is an "erosion problem in rear of building. Existing walls and floor on right rear need taking down and rebuilding". The applicant "would like existing building to be conforming with set backs and to be in compliance."

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 application, there is "ground erosion in the rear of existing building" and the applicant "would like to correct problem with retaining wall and replace existing rear wall and floor."

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 variance "will allow property to be conforming with city setbacks."

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 the public safety and welfare will be assured.

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 a reduction in front, rear, and side yard setbacks.

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 a variance for any combination of the following

1. **Reduce front yard setback**
2. **Reduce southern side yard setback**
3. **Reduce rear yard setback**

Findings of Fact Required to Approve this Request:

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:
-

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. Applicant Photos

**Planning & Zoning**

433 Hay Street
 Fayetteville, NC 28301
 910-433-1612
www.fayettevillenc.gov

Project Overview

#930413

Project Title: 105 S. Broad St Fayetteville NC 28301**Jurisdiction:** City of Fayetteville**Application Type:** 5.4) Variance**State:** NC**Workflow:** Zoning Commission Hearing**County:** Cumberland**Project Location****Project Address or PIN:** 105 S BROAD ST
(0447126041000)**Zip Code:** 28301**GIS Verified Data****Property Owner:** Parcel

- 105 S BROAD ST: HUDSON & HUDSON INVESTMENTS LLC

Acreage: Parcel

- 105 S BROAD ST: 0.63

Zoning District: Zoning District

- 105 S BROAD ST: HI

Subdivision Name:**Fire District:****Airport Overlay District:****Hospital Overlay District:****Coliseum Tourism District:****Cape Fear District:** Cape Fear District**Downtown Historic District:**

- 105 S BROAD ST: 0

Haymount Historic District:**Floodway:****100 Year Flood:****500 Year Flood:****Watershed:****Variance Request Information****Requested Variances:** Minimum yard/setback**Section of the City Code from which the variance is being requested.:** 30-3 section E of section 9**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 variance on existing building to be in compliance .

HI,CC,

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

Expiration - Variance

30-2.C.14.e.5.- Variance approval 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.

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.:

Present adjacent buildings are over set backs. requesting variance to be in compliance .

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.:

Have ground erosion in rear of existing building. Would like correct problem with retaining wall and replace existing rear wall and floor.

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?:

Erosion Problem in rear of building, Existing walls and floor on right rear need taking down and rebuilding . Also would like existing building to be conforming with set backs and to be in compliance.

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

Will allow property top be conforming with to city set backs .

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

Height of Sign Face : 0

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

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

Primary Contact Information

Contractor's NC ID#:

Project Owner

Mickey Hudson
Morty Pride Meats Inc
3603 Clinton Rd
FAYETTEVILLE, NC 28312
P: (Phone)9104836004
mhudson@mortypride.com

Project Contact - Agent/Representative

Mickey Hudson
Morty Pride Meats Inc
3603 Clinton Rd
FAYETTEVILLE, NC 28312
P: (Phone)9104836004
mhudson@mortypride.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 #: A23-07

Request: Variance to reduce required setbacks

Location: 105 S Broad Street

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





Zoning Map Case #: A23-07

Request: Variance to reduce required setbacks

Location: 105 S Broad Street

Legend

- A23-07
- CC - Community Commercial
- DT - Downtown
- HI - Heavy Industrial
- MR-5 - Mixed Residential 5



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





Future Land Map **Case #: A23-07**

Request: Variance - Setbacks - Front Yard, Southern Side Yard, and Rear Yard

Location: 105 S Broad Street

Legend



A23-07

Land Use Plan 2040

Character Areas

- PARKOS - PARK / OPEN SPACE
- NIR - NEIGHBORHOOD IMPROVEMENT
- HC - HIGHWAY COMMERCIAL
- EC - EMPLOYMENT CENTER



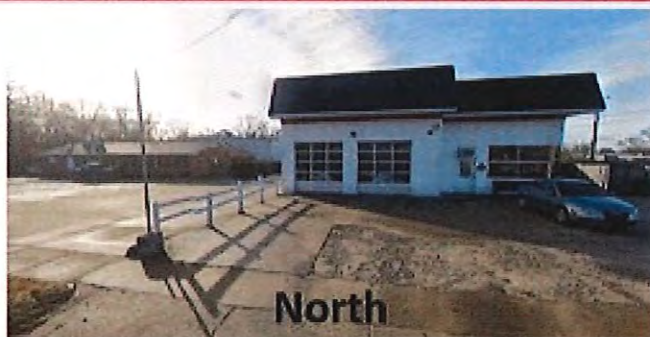
Letters are being sent to all property owners within the 300' buffer. Subject property is shown in the hatched pattern.





Subject Property













City of Fayetteville

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

City Council Action Memo

File Number: 23-3198

Agenda Date: 2/14/2023

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

FROM: Demetrios Moutos - Planner I

DATE: February 14, 2023

RE:

P23-08. Rezoning from Single Family Residential 10 (SF-10) to Office & Institutional (OI), located at 3017 Ramsey Street (0439614406000), totaling 0.46 acres ± and being the property of Paul and Theresa Williams, represented by Greg Spears of Grant Murray Real Estate LLC.

COUNCIL DISTRICT(S):

3 - Mario Benavente

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 2.2 - To invest in community places to ensure revitalization and increase quality of life.
- 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.

Goal IV: The City of Fayetteville will be a highly desirable place to live, work, and recreate.

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

Executive Summary:

The applicant is seeking to rezone one property from Single Family Residential 10 (SF-10) to Office and Institutional (OI). The acreage to be rezoned is 0.46 acres ±. The property is located to the west of Ramsey Street and is just north of Hillview Avenue, across from Reid Ross Classical School. There is currently a single family dwelling on the property.

Background:

Applicant: Greg Spears

Owner: Paul & Theresa Williams

Requested Action: SF-10 to OI

REID #: 0439614406000

Council District: 3 - Mario Benavente

Status of Property: Vacant single family dwelling

Size: 0.46 acres

Adjoining Land Use & Zoning:

- North: SF-10 - Single Family Dwelling
- South: OI - Vacant Property
- East: SF-10 - Reid Ross Classical School - Educational Institution
- West: SF-10 - Single Family Residences

Annual Average Daily Traffic: Ramsey Street: 30,500 (AADR2021)

Letters Mailed: 98

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 Low Density Residential (LDR).

Low Density Residential is best described as mainly single family residential with some accessory dwellings; occasionally with duplexes (if isolated) or townhomes. Lots are typically meant for 1-4 dwellings per acre and have a suburban, auto-oriented character with utility services.

According to the Plan, the parcels situated to the east of the subject property are recommended to be developed as Office/Institutional, the area to the north is recommended to be developed as Low Density Residential, the area to the west is to be developed as Low Density Residential and Office/Institutional, and the area to the south is to be developed as Office/Institutional.

Issues/Analysis:

History:

The subject property was annexed into the city in 1961 and based on Cumberland County tax records and available aerial photography has always been a single family dwelling. There are no open code enforcement or building violations associated with the subject property.

Surrounding Area:

Peace Presbyterian Church is on the other side of Plantation Road to the north of the subject property, with single family housing in between. Single family housing and Lucile Souders Elementary school are to the west. Riverbark Veterinary Hospital is across Hillview Avenue to the south and Reid Ross Classical School is to the east and northeast.

Rezoning Request:

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.

The applicant is requesting to rezone an area currently zoned Single Family Residential 10 (SF-10) to Office and Institutional (OI) which would allow the development of professional and business offices, limited personal services, single family, and multifamily residential uses.

This rezoning would not constitute a spot rezoning due to the adjacent parcel being zoned OI. Additionally, the parcels across Hillview Avenue, where Riverbark Veterinary Hospital is located, are also zoned OI.

Rezoning this parcel to OI will ensure the level of future development does not reach an intensity incompatible with the surrounding area, and is the least intense upzoning for the property. OI zoning classifications are not conducive to strip style development, which would not be suitable on this section of Ramsey Street.

Straight Zoning:

The request is for a straight zoning from Single Family Residential 10 (SF-10) to Office and Institutional (OI).

The Office and Institutional (OI) District is established and intended to accommodate a mix of small-scale, low-intensity professional and business offices and institutions, together with limited personal service and supporting retail uses (See 30-4.D Accessory Uses), single-family detached, single-family attached, and multi-family residential uses in close proximity to one another, subject to design and compatibility standards. The districts are generally near residential neighborhoods and often serve as a buffer or transition between neighborhoods and more intense business districts. Uses in the district are subject to the design standards in Article 30-5: Development Standards. In many cases, OI districts are evolving from land that was once primarily residential in character, and as such, office and institutional uses should be configured for consistency with surrounding residential uses in physical design, scale, and character.

The reclassification of land to a base zoning district without conditions allows all of the uses that are shown on the attached Use Table taken from the UDO. The Zoning Commission 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:

While the proposed zoning district isn't precisely what the Future Land Use Plan proposes for this property, which is Low Density Residential (LDR), it is in line with what is called for directly to the south and east of the subject property (Office and Institutional). It is also the least intense business based zoning that is possible for the property.

According to the Future Land Use Map & Plan, this general area is recommended to be developed as Low Density Residential (LDR) and Office/Institutional (OI). Low Density Residential is best described as mainly single family residential with some accessory dwellings; occasionally with duplexes (if isolated) or townhomes. Lots are typically meant for 1-4 dwellings per acre and have a suburban, auto-oriented character with utility services. Office/Institutional is best described as medium intensity nonresidential uses such as light industrial, offices, flex spaces, warehousing, large schools/institutions, businesses, or buildings that are sometimes grouped in business parks. This area also includes utilities and city services. The proposed rezoning coincides with 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 OI 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 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 OI 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 Low Density Residential (LDR).
- 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



Planning & Zoning

433 Hay Street
Fayetteville, NC 28301
910-433-1612
www.fayettevillenc.gov

Project Overview

#932020

Project Title: 3017 Ramsey St, Fayetteville NC 28301

Application Type: 5.1) Rezoning (Map Amendment)

Workflow: Staff Review

Jurisdiction: City of Fayetteville

State: NC

County: Cumberland

Project Location

Project Address or PIN: 3017 RAMSEY ST
(0439614406000)

Zip Code: 28301

GIS Verified Data

Property Owner: Parcel

- 3017 RAMSEY ST: WILLIAMS, PAUL; WILLIAMS, THERESA

Acreage: Parcel

- 3017 RAMSEY ST: 0.46

Zoning District: Zoning District

- 3017 RAMSEY ST: SF-10

Subdivision Name:

Fire District:

Hospital Overlay District:

Cape Fear District:

Haymount Historic District:

100 Year Flood:

Watershed:

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: 0.46

Water Service: Public

Previous Amendment Approval Date:

Proposed Zoning District: OI

Is this application related to an annexation?: No

Sewer Service: Public

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

The property is currently a single family home/apartment that was rented to two separate tenants in the past. The tenants were evicted. The property is currently zoned SF-10.

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

The adjacent is a vacant OI. The other side (across the street) is zoned SF-10. Reid Ross school is across the street from the property.

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 zoned OI is consistent with existing zoning next door property which is already zoned OI. The proposed use is to switch it from residential to OI so a day care business can meet the requirements and commence operation.

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

None known

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

A day care facility is much needed due to shortage of day cares in the city.

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.:

There is a school across the street, and an elementary school behind the property. There is a need for an after school program/day care.

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

A consultant in the day care industry mentioned the property would be suitable for a day care. A list of items would need to be addressed for the property to be up to mark for a day care. Also, the property is surrounded by several houses, schools (high school and elementary school) a day care would make a great addition to the surrounding area/neighborhood.

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

N/A

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

A strip zoning would not be allowed in OI zoning areas. Moreover the parcel is only 0.46 acres which would not accommodate a strip center.

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.:

Adjacent property is zoned OI

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

Property zoned OI would increase the value of the property in this area, especially because of its frontage on Ramsey St.

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

N/A

Primary Contact Information

Contractor's NC ID#:

Project Owner

Paul Williams

812 SOUTHERN AVE

Fayetteville , NC 28306

P: (Phone) 910-624-7530

greg@grantmurrayre.com

Project Contact - Agent/Representative

Greg Spears

Grant Murray Real Estate LLC

150 N. McPherson Church Rd.

Fayetteville, NC 28303

P: (Phone) 910-987-3242

greg@grantmurrayre.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 #: P23-08

Request: Rezoning from Single Family 10 (SF-10) to
Office and Institutional (OI) on .46 acres ±.

Location: 3017 Ramsey Street (REID # 0439614406)

Legend

 P23-08 Buffer

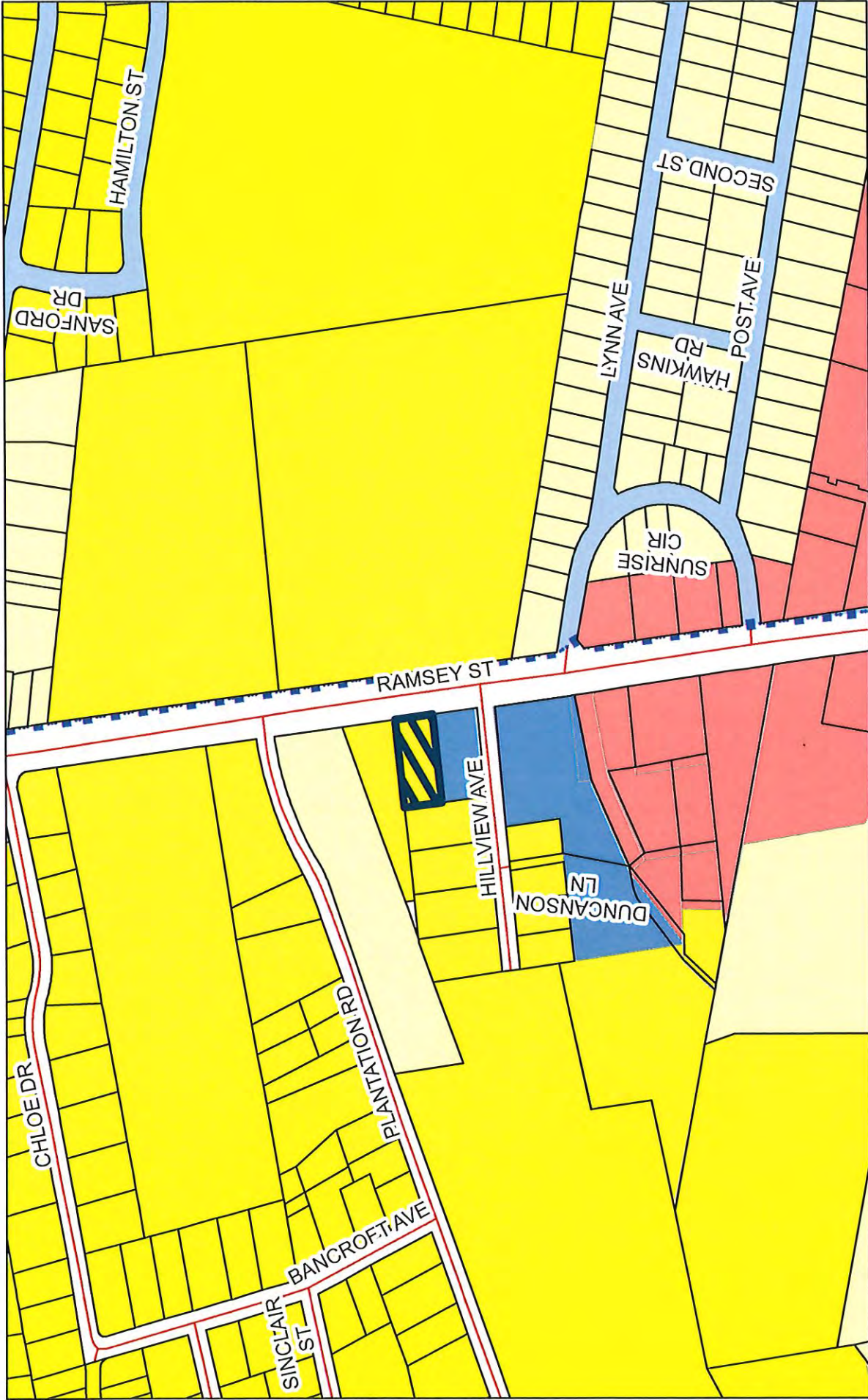
 P23-08

 Cape Fear River District Overlay



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





Zoning Map

Case #: P23-08

Request: Rezoning from Single Family 10 (SF-10) to Office and Institutional (OI) on .46 acres ±.

Location: 3017 Ramsey Street (REID # 0439614406)

Legend



P23-08

LC - Limited Commercial

OI - Office & Institutional

SF-6 - Single-Family Residential 6

SF-10 - Single-Family Residential 10

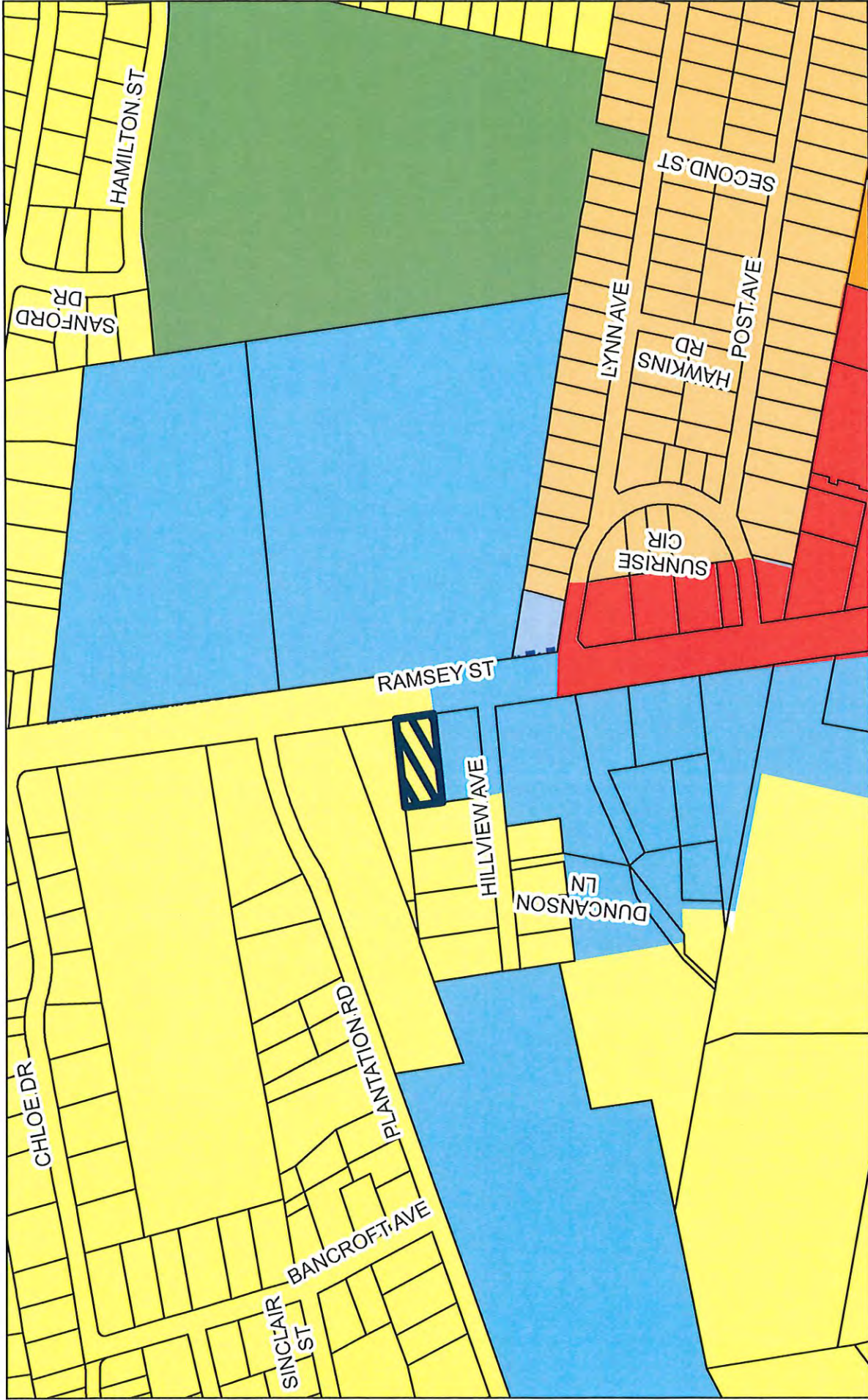
County

Cape Fear River District Overlay



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





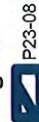
Future Land Use Map

Case #: P23-08

Request: Rezoning from Single Family 10 (SF-10) to Office and Institutional (OI) on .46 acres ±.

Location: 3017 Ramsey Street (REID # 0439614406)

Legend



P23-08

Land Use Plan 2040

Character Areas

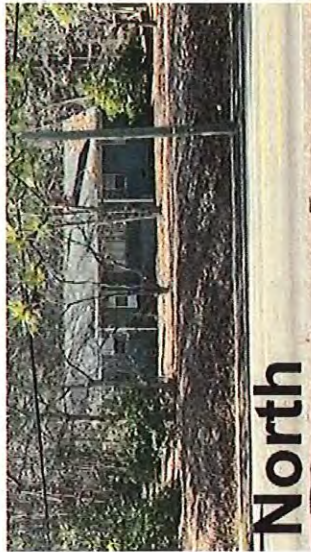
- PARKS - PARK / OPEN SPACE
- LDR - LOW DENSITY
- MDR - MEDIUM DENSITY
- HDR - HIGH DENSITY RESIDENTIAL
- HC - HIGHWAY COMMERCIAL
- OI - OFFICE / INSTITUTIONAL



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







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 P23-08 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 #4: Foster safe, stable, and attractive neighborhoods.	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. This includes road infrastructure such as roads, turn lanes, and sidewalks as well as public services such as parks, schools, water/sewer, police, fire, and emergency services.	X	
1.7: Encourage a logical progression of housing development and discourage "leapfrog" development. Leapfrog development is development that occurs in areas away from existing development and in areas currently not served by infrastructure or adjacent to services, esp. water/sewer. This type of growth can lead to higher costs of providing urban services.	X	
LUP 6: Encourage Development Standards that Result in Quality Neighborhoods	X	
6.1: Encourage quality neighborhood design through maintaining and improving standards for streets, sidewalks, storm water, and open space.	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	

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

X	The proposed land use is consistent and aligns with the area's designation on the FLU Map.	OR		The proposed land use is inconsistent and does not align with the area's designation on the FLU Map.
X	The proposed designation, as requested, would permit uses that are complimentary to those existing on adjacent tracts.	OR		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]

- X 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.
- X The proposed uses address the needs of the area and/or City.
- X 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]

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

Additional comments, if any (write-in):

Date

Print

Chair Signature