



City of Fayetteville

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

Meeting Agenda - Final Zoning Commission

Tuesday, January 9, 2024

6:00 PM

FAST Transit Center

1.0 CALL TO ORDER

2.0 APPROVAL OF AGENDA

3.0 CONSENT

- 3.01** A23-50 Order of Approval - Findings of Fact: Variance to reduce minimum rear yard setback, located at 1840 Ashton Road (REID 0416411779000), and being the property of Migdal Perez.
- 3.02** A23-51. Order of Approval - Findings of Fact: Variance to increase maximum fence height in the front yard and reduce minimum required setback for a fence in the front yard, located at 325 Cumberland Street (REID: 0437582772000), and being the property of Ira Neil Grant.
- 3.03** A23-54. Order of Approval - Findings of Fact: Variance to increase maximum fence height, located at 1010 Marlborough Road (REID 0427101984000), and being the property of Greg and Effie Kalevas.
- 3.04** Approval of Minutes: December 12, 2023

4.0 EVIDENTIARY HEARINGS

- 4.01** A24-04. Variance to reduce minimum setbacks, located at 2936 Mirror Lake Drive (REID 0417978540000), and being the property of Benjamin & Victoria Stout.
- 4.02** A24-05. Variance to increase maximum setbacks, located at 522 Person Street & two unaddressed parcels (REID 0437923505000, 0437923367000, and 0437923396000), and being the property of Second Baptist Church Inc, represented by Gordon Rose of Gradient PLLC.

5.0 PUBLIC HEARINGS (Public & Legislative)

- 5.01** P24-01. Rezoning from Office/Institutional (OI) and Community Commercial (CC) to Single Family Residential 10 (SF-10) located on unaddressed lots on Summer Hill Rd (0409214573000 & 0409215651000) totaling .67 acres ± and being the property of Rescue Rehab Resale LLC, represented by Jeremy Sparrow of Longitude Planning Group, PLLC.

- 5.02** P24-02. Rezoning from Agricultural Residential (AR) to Community Commercial (CC) located at 0 Stoney Point Road (9485667168000 & 9485750853000) totaling 9.77 acres ± and being the property of Margaret Nicole Ritter, represented by Mark Candler of Candler Development Group LLC...end
- 5.03** P24-03. Conditional Rezoning of six parcels from Neighborhood Commercial (NC) and Community Commercial (CC) to Neighborhood Commercial Conditional Zoning (NC/CZ) totaling 0.84 acres ± and being the property of Cape Fear Regional Theatre at Fayetteville Inc., represented by Danielle Hammond of Urban Design Partners.
- 5.04** P24-06. Rezoning from Single Family Residential 6 (SF-6) to Mixed Residential 5 (MR-5) located at 201 Rosemary Drive (0428489415000) totaling 9.66 acres ± and being the property of Fayetteville Metropolitan Housing Authority, represented by Fred Ford of Stogner Architecture, PA.

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: 24-3767

Agenda Date: 1/9/2024

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Consent

Agenda Number: 3.01

TO: Mayor and Members of City Council

THRU: Zoning Commission

FROM: Demetrios Moutos - Planner I

DATE: January 9, 2024

RE:

A23-50 Order of Approval - Findings of Fact: Variance to reduce minimum rear yard setback, located at 1840 Ashton Road (REID 0416411779000), and being the property of Migdal Perez.

COUNCIL DISTRICT(S):

5 - Lynne Bissette Greene

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 applicant is requesting a variance to reduce the minimum rear yard setback in the Single Family Residential 10 zoning district (SF-10) for a room addition that was built and connected to the existing building.

On December 12, 2023, the Zoning Commission held an Evidentiary Hearing regarding this case. After receiving all evidence and testimony, the Commission voted 4-1 to approve the Variance application.

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: Migdal Perez

Applicant: Migdal Perez

Requested Action: Reduce minimum rear yard setback

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

Property Address: 1840 Ashton Road

Size: .27 acres ±

Existing Land Use: Single Family Dwelling

Surrounding Zoning and Land Uses

- North: SF-10 - Single Family Dwelling
- South: SF-10 - Single Family Dwelling
- East: SF-10 - Single Family Dwelling
- West: SF-10 - Single Family Dwelling

Letters Mailed: 43

Issues/Analysis:

The house on the subject property was constructed in 1964, according to Cumberland County Tax records. There exists a 20-foot utility easement along the back of the property, according to the site survey that was conducted by Michael J. Adams of M.A.P.S. Surveying, Inc., and provided by the applicant. The Unified Development Ordinance outlines various standards regarding setbacks. The UDO requires that residential structures within the SF-10 zoning district must meet a minimum rear yard setback of 35 feet.

The applicant has requested a variance from 1 standard of the UDO. The requested change is as follows:

- **Reduction in the rear yard setback for the principle structure from 35 feet to 9.3 feet.**

The owner has requested this variance in order to bring the structure into compliance with the ordinance and obtain the proper after-the-fact residential building permit.

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 applicant is requesting to reduce the setback in order to obtain the proper after-the-fact residential building permit. There is no intended development or construction known to be associated with this variance request.

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 "I was unaware I had to obtain approval to connect my house to an existing building in the back yard, I built an added space which would create a physical and financial hardship for my family if the property had to be demolished."

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 "This is a residential area and the back of the property cannot be seen by surrounding houses. The structure at the back of the property line was pre-existing when I purchased the home."

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

The applicant states "The added space to the home will add square footage to the home which will increase the tax value."

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 planning department reviewed the plans and structure and stated a variance application was required."

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 "Issuing a variance will not cause any safety concerns as it is my personal property."

Budget Impact:

There is no immediate budgetary impact.

Options:

1. Approve Findings as submitted by staff.

2. Approve Findings with specific changes.

Recommended Action:

Staff recommends option 1 above.

Attachments:

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

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

To reduce rear yard setback minimum at 1840 Ashton Road (REID 0416411779000)

VARIANCE A23-50

Property Address: 1840 Ashton Road
REID Number: 0416411779000
Property Owner: Migdal Perez

The Zoning Commission for the City of Fayetteville, NC, held an evidentiary hearing on December 12, 2023, to consider a Variance request filed by Migdal Perez (“Applicant”/“Property Owner”) to reduce the required minimum rear yard setback for the property located at 1840 Ashton Road (REID 0416411779000) (“Subject Property”).

On December 1, 2023, a notice of public hearing was mailed to the Applicant and Property Owner and all the owners of property within 300 feet of the Subject Property. On November 27, 2023, a notice of public hearing sign was placed on the Subject Property. On December 1 and 8, 2023, a notice of public hearing advertisement was placed in the legal section of *The Fayetteville Observer*.

Having considered all 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 D.3 of the City of Fayetteville’s Code of Ordinances establishes the setback requirements for structures on lots within the Single-Family Residential 10 (SF-10) District.
2. Migdal Grusila Perez Sanchez is the owner of a residentially zoned property located at 1840 Ashton Road (REID 0416411779000), which contains approximately .27 acres ± in the City of Fayetteville.
3. The Applicant applied for a Variance on September 12, 2023.
4. The Subject Property is zoned Single-Family Residential 10 (SF-10).
5. The Applicant is requesting to reduce the minimum rear yard setback.
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 Single-Family Residential 10 (SF-10) zoned property that is surrounded by Single-Family Residential 10 (SF-10) zoned properties to the north, south, east, and west.
8. The Subject Property is approximately .27 acres located on the western side of Ashton Road, on the development block between Strathmore Avenue and Friar Avenue.
9. The Subject Property contains one house constructed in 1964.
10. This Variance addresses the Ordinance requirement for a minimum rear yard setback of 35 feet.
11. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardship because the accessory structure was already established on the property and in compliance with the ordinance before being connected to the principal structure.
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 lines existed when the home was purchased, and the accessory structure was already in place.
13. Variance represents the minimum necessary action to enable a reasonable use of the land or structures. Granting the variance would permit the existing accessory structure to remain integrated with the principal structure. Additionally, it would contribute to the square footage of the residence, thereby increasing its tax value.
14. The Variance aligns with the overarching purpose and intent of the Ordinance, preserving its spirit. Variance is the most appropriate course of action to maintain the structure in its current state.
15. There is no evidence that granting this Variance would compromise public safety and welfare, ensuring substantial justice.

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. 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 the Variance be APPROVED with no conditions.

VOTE: 4 to 1

This the 12th day of December, 2023.

PAVAN PATEL
Zoning Commission Chair

Project Overview

#1118402

Project Title: 1840 ASHTON RD**Jurisdiction:** City of Fayetteville**Application Type:** 5.4) Variance**State:** NC**Workflow:** Staff Review**County:** Cumberland**Project Location****Project Address or PIN:** 1840 ASHTON RD (0416411779000) **Zip Code:** 28304**GIS Verified Data****Property Owner: Parcel**

- 1840 ASHTON RD: SANCHEZ, MIGDAL GRUSILA PEREZ

Acreage: Parcel

- 1840 ASHTON RD: 0.27

Zoning District: Zoning District

- 1840 ASHTON RD: SF-10

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:** <100YearFlood>**500 Year Flood:** <500YearFlood>**Watershed:****Variance Request Information****Requested Variances:** Minimum yard/setback**Section of the City Code from which the variance is being requested.:** PLANNING DEPARTMENT**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.:**

A ROOM ADDITION WAS BUILT AND CONNECTED TO AN EXISTING BUILDING AT THE BACK OF THE PROPERTY. WHEN TRYING TO OBTAIN A BUILDING PERMIT, THE RESIDENTIAL PLAN REVIEW STATED THE BACK OF THE BUILDING WAS TOO CLOSE TO THE PROPERTY LINE AND A VARIANCE MUST BE OBTAINED.

ALL RESIDENTIAL PROPERTIES.

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.

Please describe how 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.:

UNAWARE I HAD TO OBTAIN APPROVAL TO CONNECT MY HOUSE TO AN EXISTING BUILDING IN THE BACK YARD, I BUILT AN ADDED SPACE WHICH WOULD CREATE A PHYSICAL AND FINANCIAL HARDSHIP FOR MY FAMILY IF THE PROPERTY HAD TO BE DEMOLISHED.

Please describe how 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 of the actions of the landowner, nor may hardships resulting from personal circumstances as well as hardships resulting from conditions that are common to the neighborhood or the general public be the basis for granting a variance.:

THIS IS A RESIDENTIAL AREA AND THE BACK OF THE PROPERTY CAN NOT BE SEEN BY SURROUNDING HOUSES. THE STRUCTURE AT THE BACK OF THE PROPERTY LINE WAS PRE-EXISTING WHEN I PURCHASED THE HOME.

Please describe how the Variance is the minimum action that will make possible a reasonable use of land or structures.:

THE ADDED SPACE TO THE HOME WILL ADD SQUARE FOOTAGE TO THE HOME WHICH WILL INCREASE THE TAX VALUE.

Please describe how the Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit.:

THE PLANNING DEPARTMENT REVIEWED THE PLANS AND STRUCTURE AND STATED A VARIANCE APPLICATION WAS REQUIRED.

Please describe how, in the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done.:

ISSUING A VARIANCE WILL NOT CAUSE ANY SAFETY CONCERNS AS IT IS MY PERSONAL PROPERTY

Height of Sign Face : 12

Height of Sign Face: 15

Square Footage of Sign Face: 450

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: 12

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

Migdal Perez

1840 Ashton Rd

Fayetteville , NC 28304

P:9105125369

Migdalysanchez02@gmail.com

Project Contact - Agent/Representative

Migdal Perez

1840 Ashton Rd

Fayetteville , NC 28304

P:9105125369

Migdalysanchez02@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. :

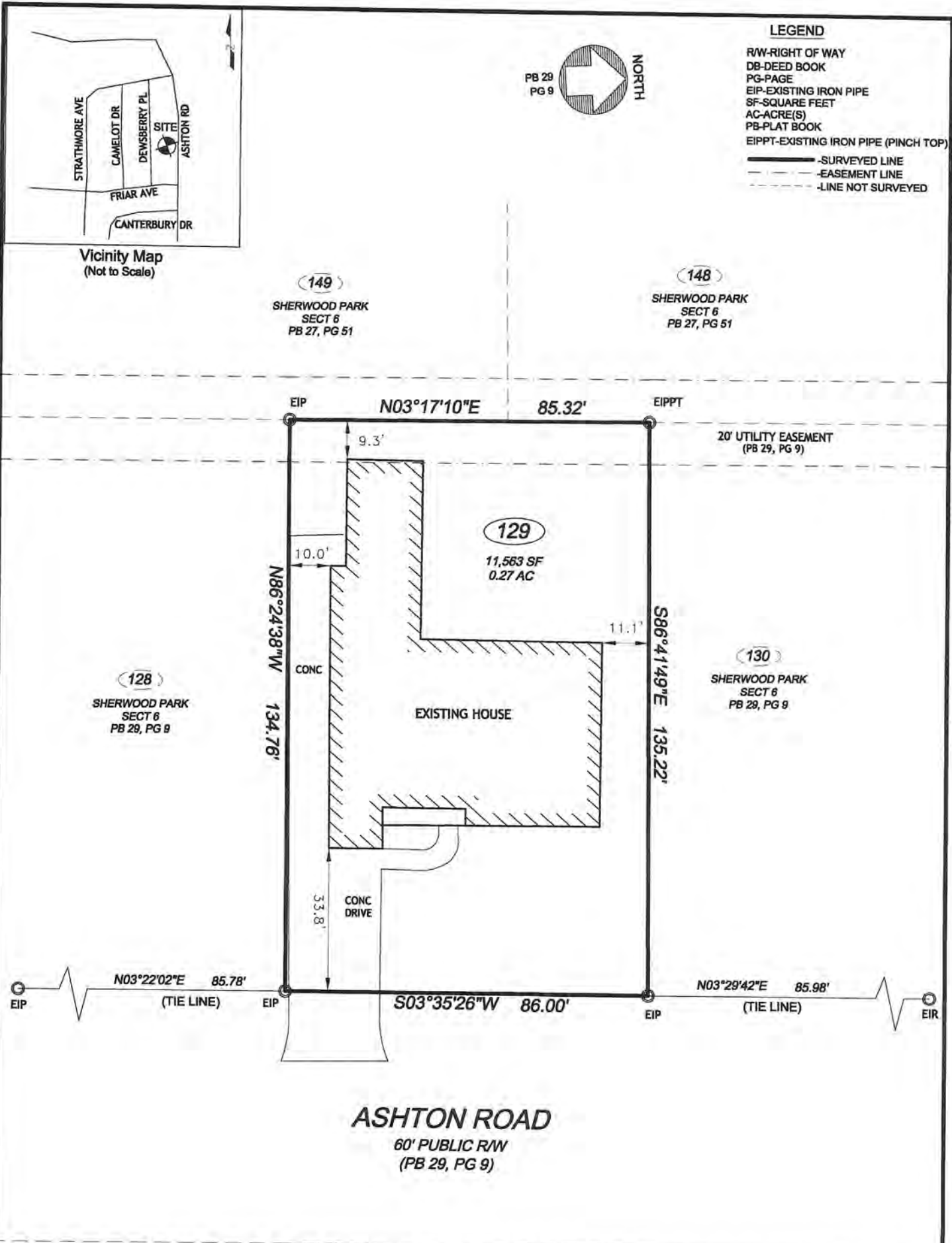
NC State General Contractor's License Number:

NC State Electrical Contractor #1 License Number:

NC State Mechanical Contractor's #1 License Number:

NC State Plumbing Contractor #1 License Number:

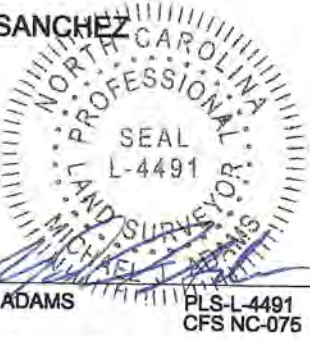
Indicate which of the following project contacts should be included on this project:



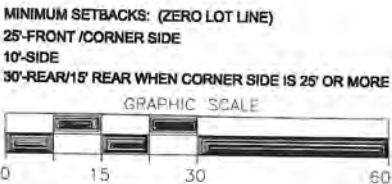
PHYSICAL SURVEY

PROPERTY OF: MIGDAL GRUSILA PEREZ SANCHEZ
ADDRESS: 1840 ASHTON ROAD
CITY: FAYETTEVILLE, NC
COUNTY: CUMBERLAND
TAX PIN: 0416411779000

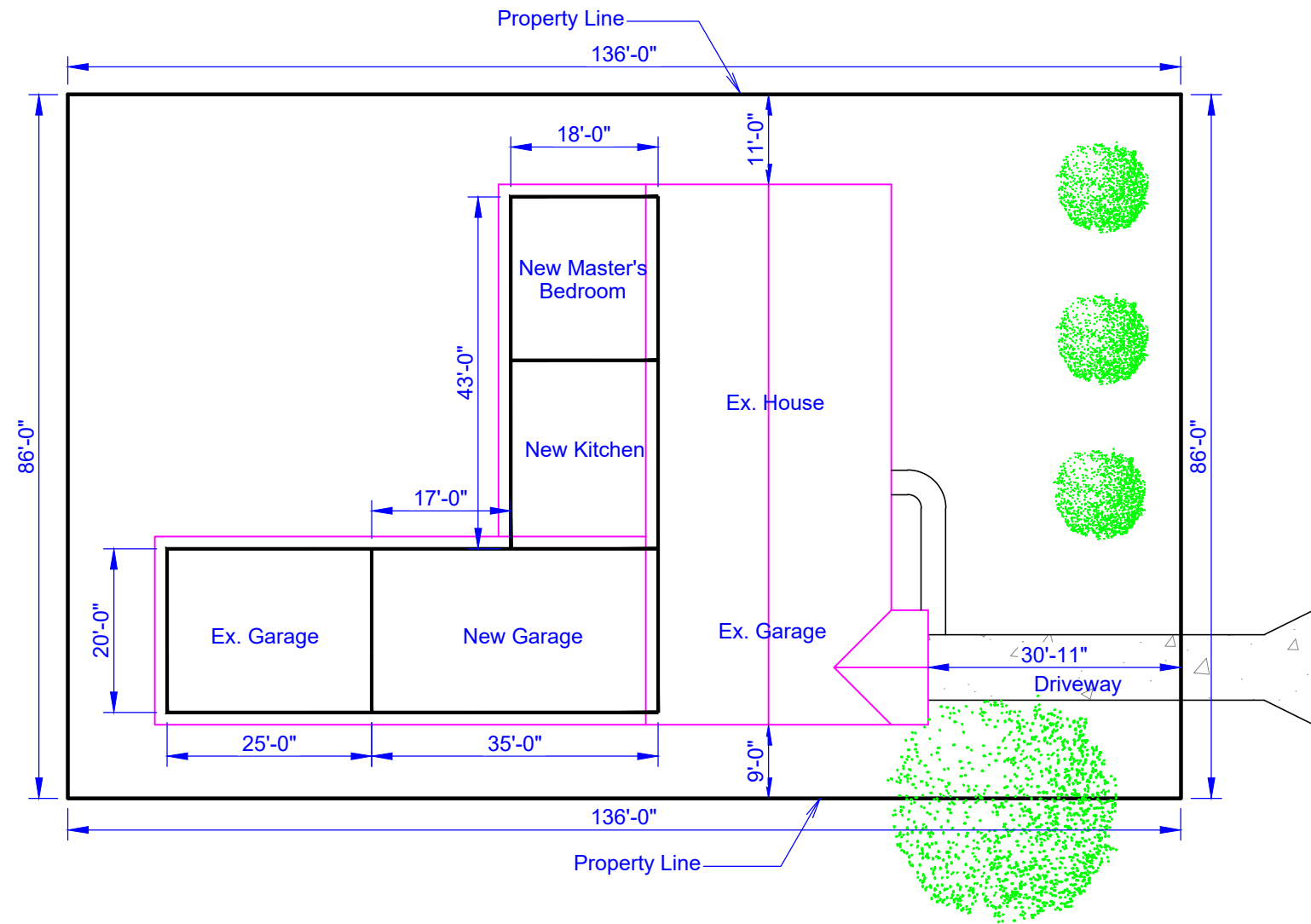
TOWNSHIP: ROCKFISH
DATE: NOVEMBER 8, 2023
SCALE: 1" = 30'
REFERENCE: LOT 129
SHERWOOD PARK
SECT 6
PB 29, PG 9



MICHAEL J. ADAMS
PLS-L-4491
CFS NC-075
M.A.P.S. SURVEYING, INC.
C-2589
216 MASON ST
FAYETTEVILLE, NC 28301
PHN: (910)484-8432
MAPS@MAPSSURVEYING.COM
DRAWN BY: MJA



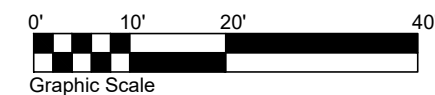
I CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION, DEED DESCRIPTION RECORDED IN PB 29, PG 9, THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS DRAWN FROM INFORMATION IN PB 29, PG 9; THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY IS GREATER THAN 1:10,000; AND THAT THIS MAP MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 NCAC 56.1600). THIS MAP IS NOT DRAWN IN ACCORDANCE WITH GS 47-30. THIS 8TH DAY OF NOVEMBER, 2023.



ASHTON ROAD

Parcel No. (APN) 0416-41-1779
Land Use RESIDENTIAL
SINGLE FAMILY RESIDENCE
Lot Area 11,761 SF (0.27 ACRES)

ADDRESS:
1840 ASHTON RD, FAYETTEVILLE, NC 2830
Scale: 1"=20'



THIS IS NOT A LEGAL SURVEY, NOR IS IT INTENDED TO BE OR REPLACE ONE
This work product represents only generalized locations of features, objects or boundaries and should not be relied upon as being legally authoritative for the precise location of any feature, object or boundary.

APPROVED BY	DATE



Frazier Designs
A Residential Design Company
(910) 818-2413
www.frazierplans.com

Project: Owners Suite, Kitchen, Bonus Room Addition
1840 Ashton Road Fayetteville NC

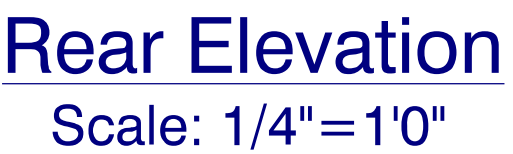
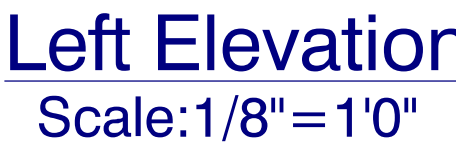
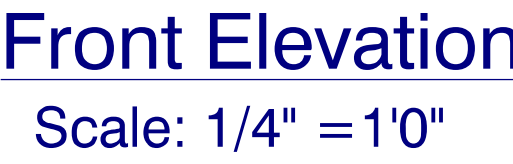
MODEL:
FD- 1959
BUILDER:

DATE PRINTED:
AUG2023

DRAWN BY:
ATF

Elevations

SHEET
1



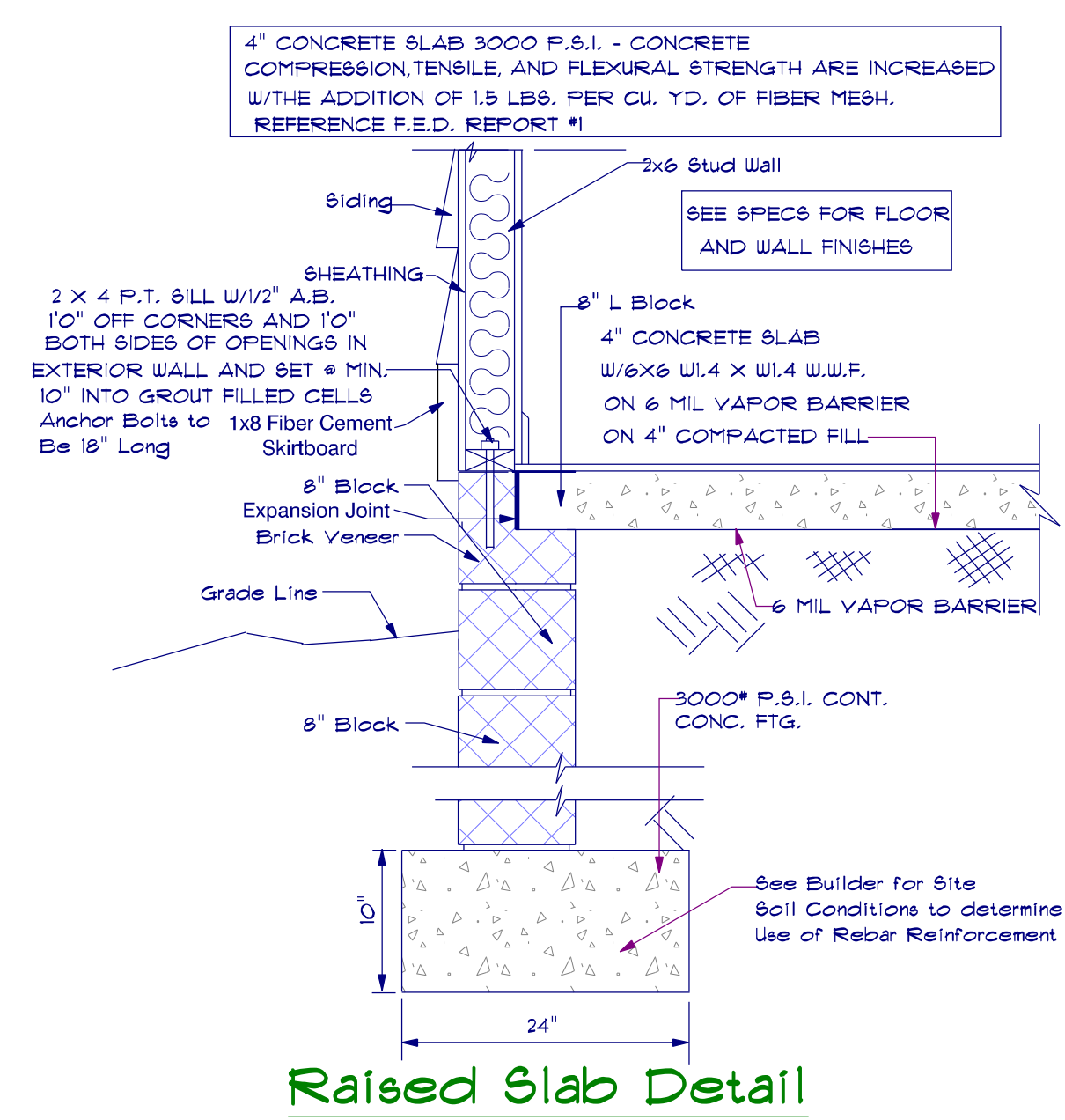
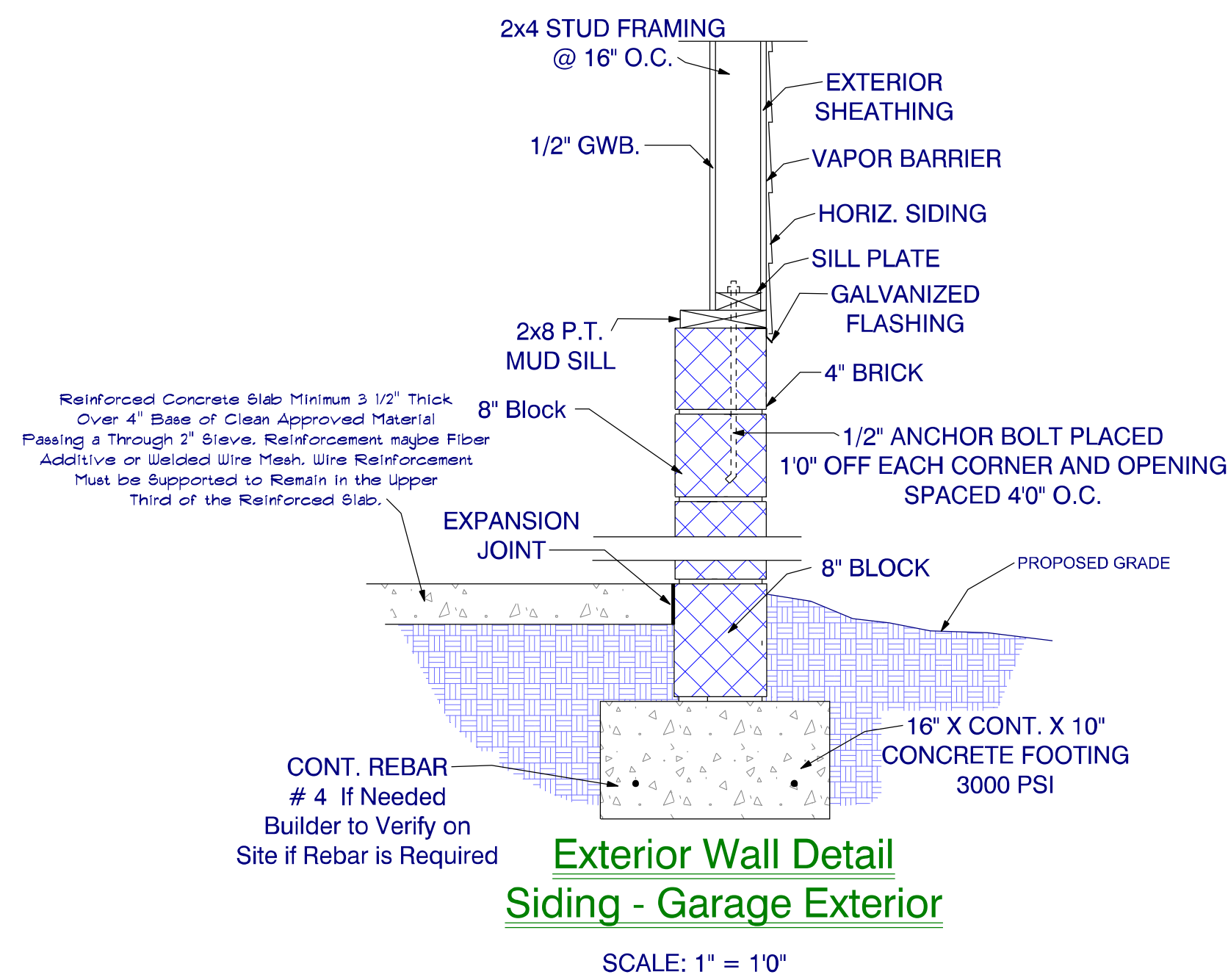
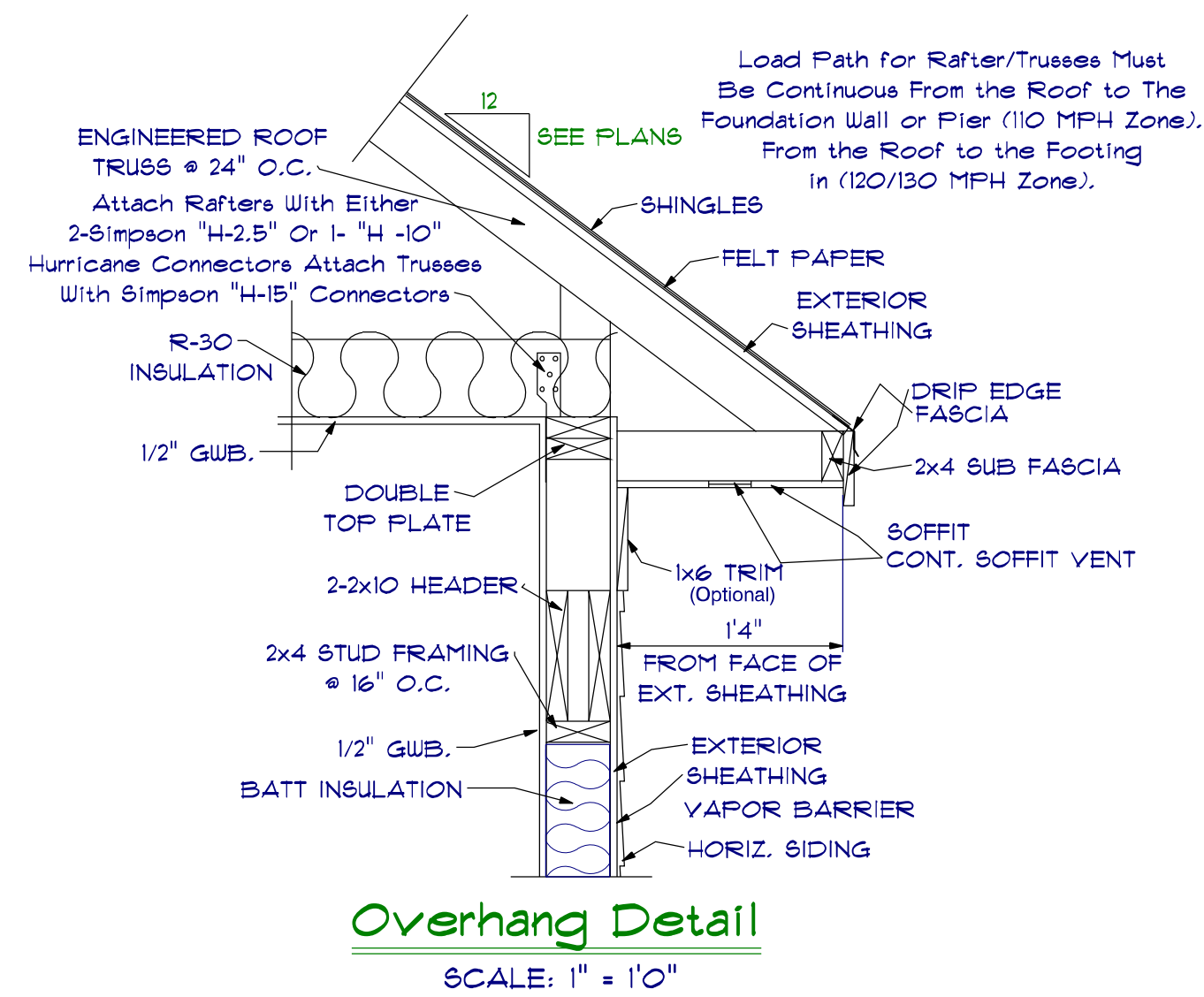
APPROVED BY	DATE

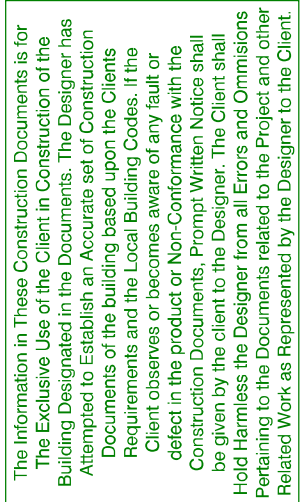


Project: Owners Suite, Kitchen, Bonus Room Addition 1840 Asnton Road Fayetteville NC
MODEL:
FD- 1959
BUILDER:

Construction Details

3







Aerial Notification Map



Case #: A23-50

Variance

Request: Minimum Yard/Setback

Location: 1840 Ashton Road

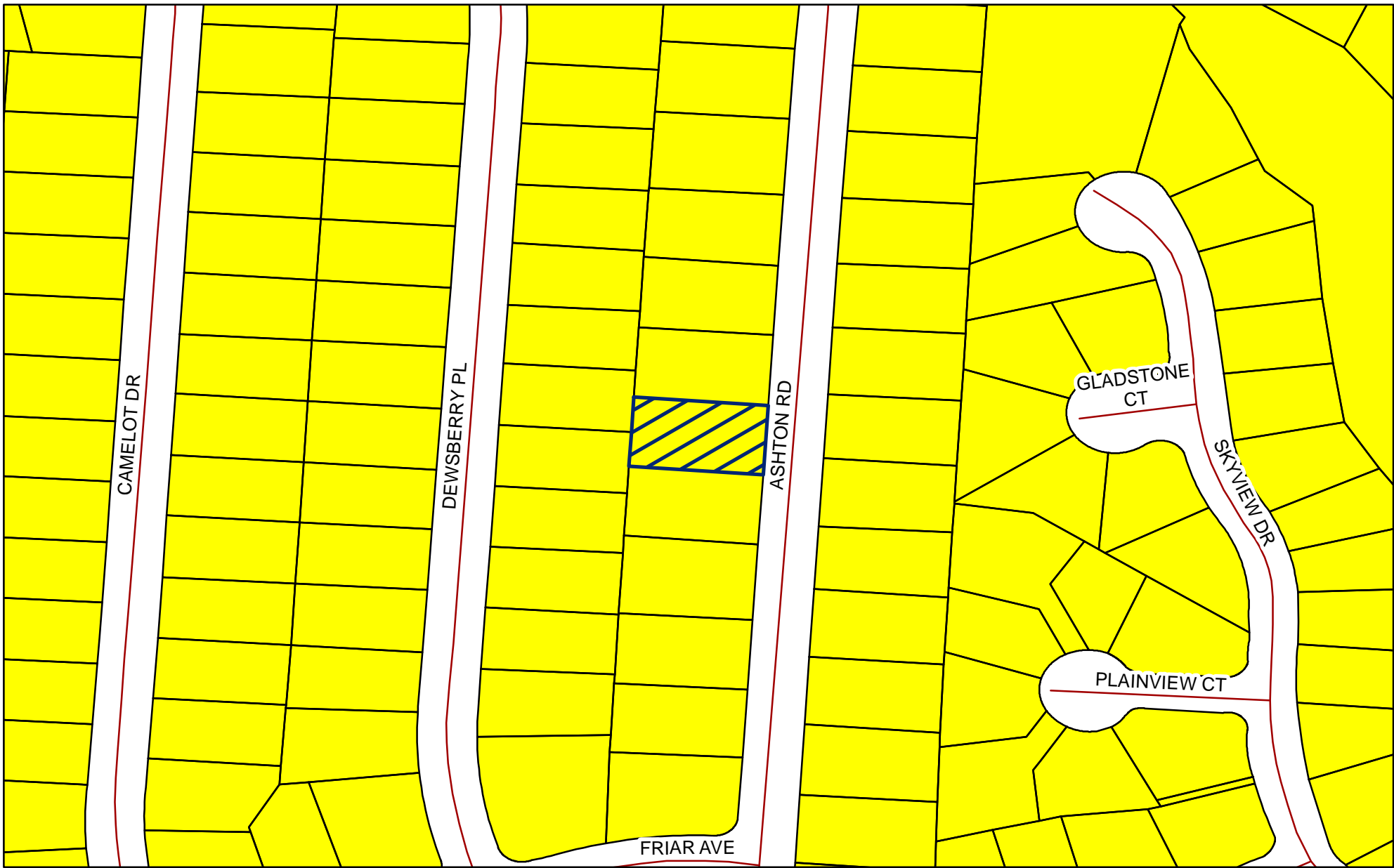
Legend

-  A23-50 Buffer
-  A23-50



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





Zoning Map
Case #: A23-50

Variance
Request: Minimum Yard/Setback

Location: 1840 Ashton Road

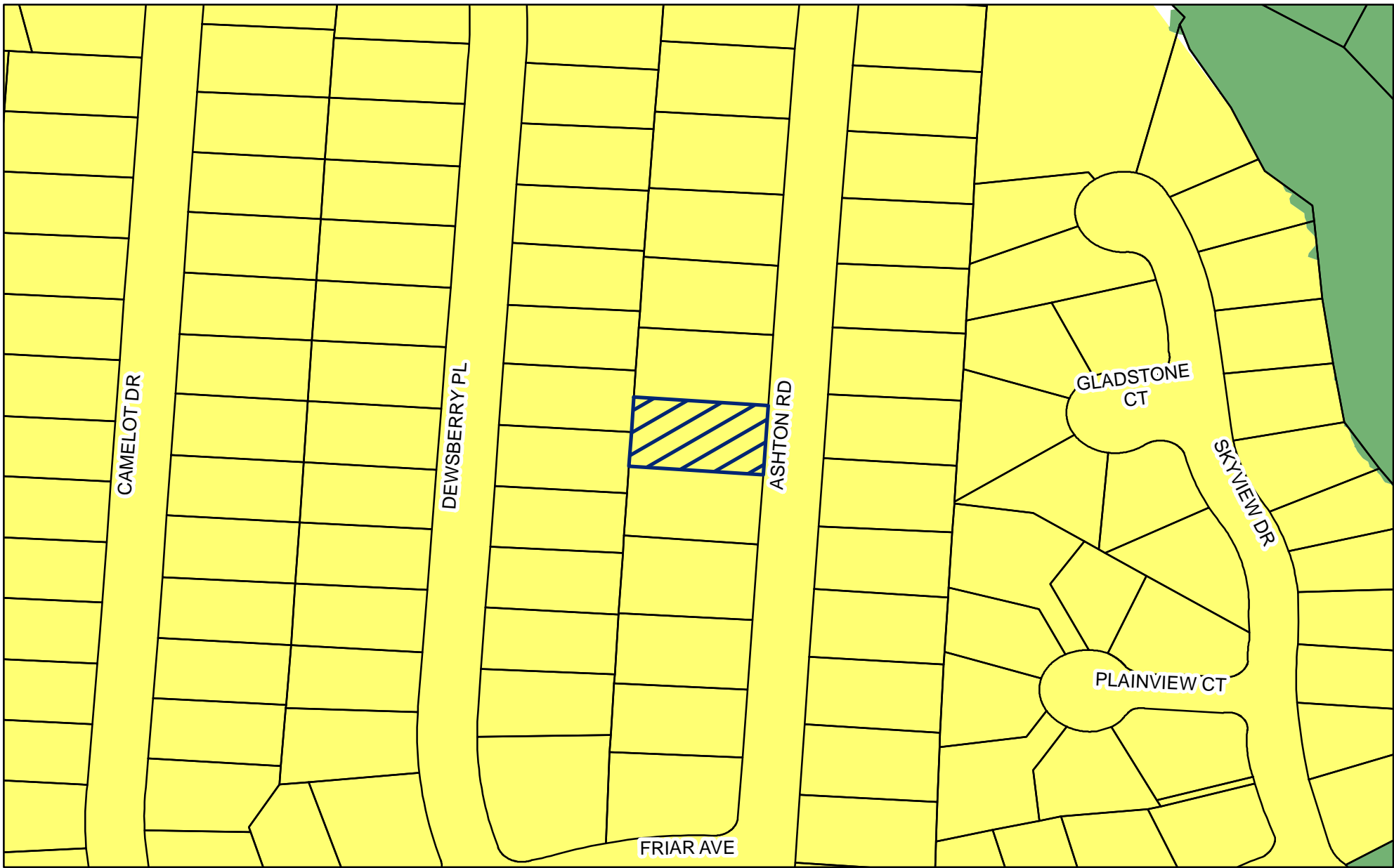
Legend

-  A23-50
-  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 #: A23-50

Variance
Request: Minimum Yard/Setback



Location: 1840 Ashton Road

Legend

 A23-50

Land Use Plan 2040

Character Areas

-  PARKOS - PARK / OPEN SPACE
-  LDR - LOW DENSITY

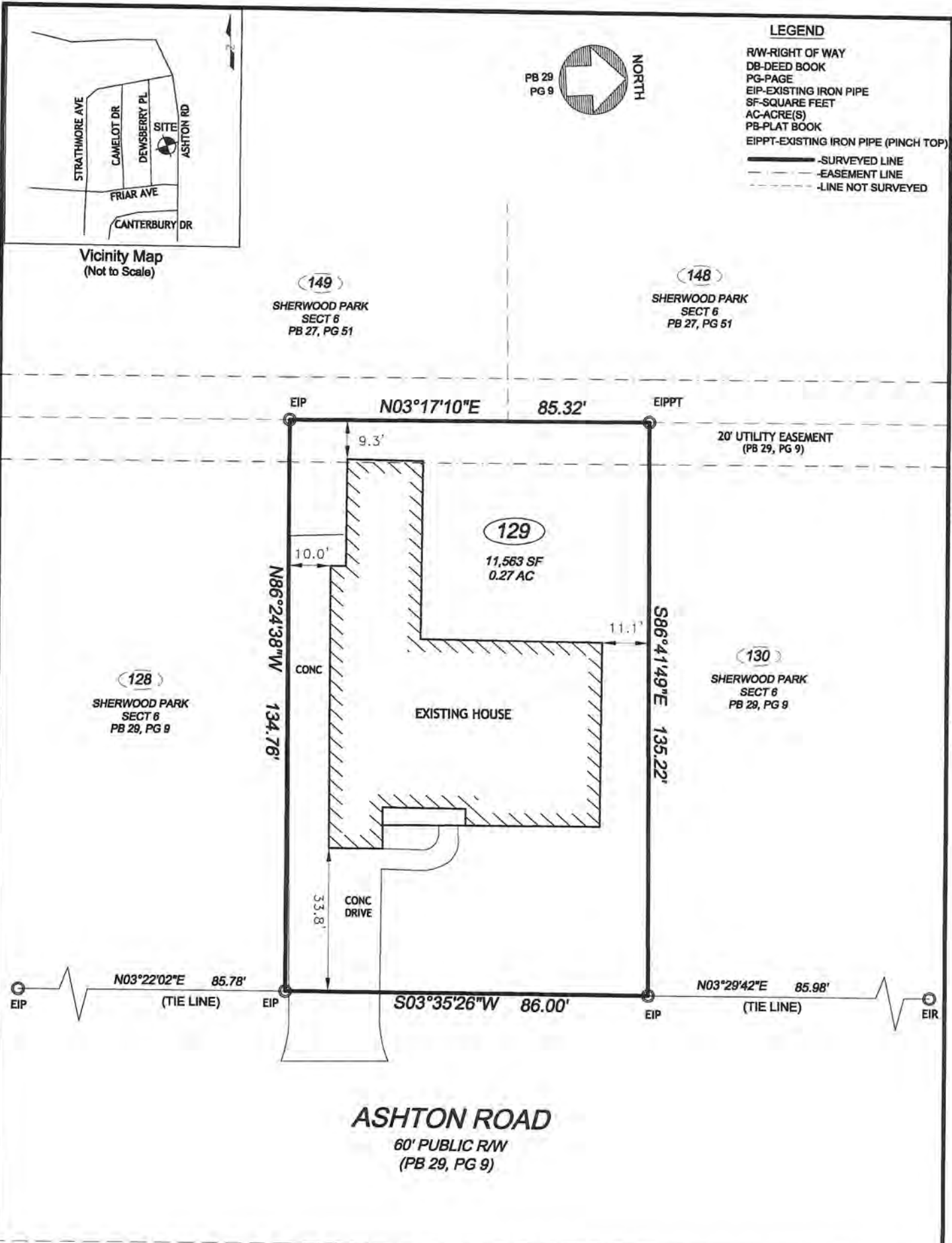


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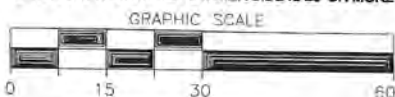
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CITY: FAYETTEVILLE, NC
COUNTY: CUMBERLAND
TAX PIN: 0416411779000

TOWNSHIP: ROCKFISH
DATE: NOVEMBER 8, 2023
SCALE: 1" = 30'
REFERENCE: LOT 129

SHERWOOD PARK
SECT 6
PB 29, PG 9

MINIMUM SETBACKS: (ZERO LOT LINE)
25'-FRONT /CORNER SIDE
10'-SIDE
30'-REAR/15' REAR WHEN CORNER SIDE IS 25' OR MORE



MICHAEL J. ADAMS

PLS-L-4491
CFS NC-075

M.A.P.S. SURVEYING, INC.
C-2589
216 MASON ST
FAYETTEVILLE, NC 28301
PHN: (910)484-8432
MAPS@MAPSSURVEYING.COM
DRAWN BY: MJA

I CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION, DEED DESCRIPTION RECORDED IN PB 29, PG 9, THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS DRAWN FROM INFORMATION IN PB 29, PG 9; THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY IS GREATER THAN 1:10,000; AND THAT THIS MAP MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 NCAC 56.1600). THIS MAP IS NOT DRAWN IN ACCORDANCE WITH GS 47-30. THIS 8TH DAY OF NOVEMBER, 2023.



City of Fayetteville

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

City Council Action Memo

File Number: 24-3768

Agenda Date: 1/9/2024

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Consent

Agenda Number: 3.02

TO: Mayor and Members of City Council

THRU: Zoning Commission

FROM: Demetrios Moutos - Planner I

DATE: January 9, 2024

RE:

A23-51. Order of Approval - Findings of Fact: Variance to increase maximum fence height in the front yard and reduce minimum required setback for a fence in the front yard, located at 325 Cumberland Street (REID: 0437582772000), and being the property of Ira Neil Grant.

COUNCIL DISTRICT(S):

2 - Malik Davis

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 applicant is requesting a variance to increase the minimum fence height in a front yard and to reduce the required setback for a fence in a front yard, in the Community Commercial zoning district (CC).

On December 12, 2023, the Zoning Commission held an Evidentiary hearing regarding this case. After receiving all evidence and testimony, the Commission voted 5-0 to approve the Variance application.

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: Ira Neil Grant

Applicant: Barry White

Requested Action: Increase minimum fence height in front yard; reduce required setback for fence in front yard.

Zoning District: Community Commercial (CC)

Property Address: 325 Cumberland Street

Size: 0.71 acres ±

Existing Land Use: Custom Concepts Body Works

Surrounding Zoning and Land Uses

- North: MR-5 - Vacant/Duplex
- South: SF-10 - Single Family Dwelling
- East: CC - Vacant
- West: CC - Burkhead-De Vane Printing Co

Letters Mailed: 33

Issues/Analysis:

The building on the subject property was constructed in 1976, according to Cumberland County Tax records. The Unified Development Ordinance outlines various standards regarding fences. The UDO requires that chain link fences serving development other than single-family (attached or detached) and two- to four-family dwellings maintain a maximum height of 4 feet in front and corner side yards and 6 feet in interior side and rear yards. The UDO also requires that these chain link fences maintain a minimum setback of 0 feet in interior side and rear yards, and 10 feet in the front and corner side yards.

The applicant has requested a variance from 2 standards of the UDO. The requested changes are as follows:

- **Increase maximum fence height in the front yard from 4 feet to 6 feet.**
- **Reduce minimum setback for fence in front yard from 10 feet to 0 feet.**

The owner has requested this variance in order to bring the site into compliance with the ordinance and obtain the proper permits.

Insufficient Justification for Variance

The following does not constitute grounds for a Variance:

1. The siting of other nonconforming or conforming uses of land or structures in the same or other districts;

2. The request for a particular use expressly, or by inference, prohibited in the district;
or
3. Economic hardship or the fact that property may be utilized more profitably with a
Variance.

Subsequent Development

There is no intended development or construction known to be associated with this variance request.

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 6-foot fence installed assists in doing business in this high crime area. Since I have owned the property, there has been numerous times prostitutes and individuals running from the law have entered my property. Most recent two shootings that took place on the corner of Hillsboro & Cumberland Street. I have installed cameras, purchased security dogs, secured a Trespassing Agreement with the City and have encouraged Police Officers and Sherriff Deputy's to complete paperwork on the property to discourage the criminal activity."

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 "The location of the body shop is in the center of criminal activity. Directly to my right on Orange Street is a shot house. To my left prostitutes align Chance and Frink Streets both day and night. Hillsboro Street has several Drug houses and homeless fill the area due to a close-by shelter. Since opening up the body shop after 2 years of it being vacant, I have invested in a lot of money and upgrades to better the neighborhood. The building is no longer an eyesore in the community but has uplifted and restored the surrounding area."

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

The applicant states "Approving the variance will help keep the intruders out and delay them from jumping the fence. My business has been frequented by questioned people, begging for money, stealing my power and water mainly by homeless and prostitutes."

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 "I understand the City's idea of having 4-foot fencing in neighborhoods so it can be more attractive and inviting. However, this part of the city is where mostly low-income families reside and the criminal activity may not be reported as it should."

- 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 “Granting the variance will help to ensure my employees and customers are safe while the shop is open. The fence will also help monitor who comes onto the property more closely.”

Budget Impact:

There is no immediate budgetary impact.

Options:

1. Approve Findings as submitted by staff.
2. Approve Findings with specific changes.

Recommended Action:

Staff recommends option 1 above.

Attachments:

1. Order of Findings of Fact
2. Application
3. Aerial Notification Map
4. Zoning Map
5. Land Use Map
6. Subject Property Photos
7. Surrounding Property Photos
8. Site Survey

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

To increase the maximum height of a fence in the front yard and reduce the minimum setback for a fence in the front yard at 325 Cumberland Street (REID 0437582772000)

VARIANCE A23-51

Property Address: 325 Cumberland Street
REID Number: 0437582772000
Property Owner: Ira Neil Grant

The Zoning Commission for the City of Fayetteville, NC, held an evidentiary hearing on December 12, 2023, to consider a Variance request filed by Barry White (“Applicant”) to increase the maximum height of a fence in the front yard and to reduce the minimum setback for a fence in the front yard for the property located at 325 Cumberland Street (REID 0437582772000) (“Subject Property”).

On December 1, 2023, a notice of public hearing was mailed to the Applicant and Property Owners and all of the owners of property within 300 feet of the Subject Property. On November 27, 2023, a notice of public hearing sign was placed on the Subject Property. On December 1 and 8, 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 5, Section D.4 of the City of Fayetteville’s Code of Ordinances establishes the height and setback requirements for fences and walls.
2. Ira Neil Grant is the owner of a commercially zoned property located at 325 Cumberland Street (REID 0437582772000), which contains approximately .71 acres ± in the City of Fayetteville.
3. The Applicant is the proprietor of the business located on the subject property and applied for a Variance on March 8, 2023.
4. The Subject Property is zoned Community Commercial (CC).
5. The Applicant is requesting to increase the maximum fence height in the front yard and reduce the minimum setback for a fence in the front yard.
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, zoned as Community Commercial (CC), is surrounded by Community Commercial (CC) zoned properties to the east and west, with Mixed Residential 5 (MR-5) zoned properties to the north and south.

8. The Subject Property is approximately .71 acres located at the southeast corner of Cumberland Street and Frink Street.

9. The Subject Property contains one pre-engineered steel frame building constructed in 1976, before the adoption of the current Unified Development Ordinance.

10. This Variance pertains to the Ordinance's specifications of a 4-foot height for a chain link fence in the front yard and a minimum front yard setback of 10 feet for a fence.

11. The strict application of Ordinance requirements leads to practical difficulties and unnecessary hardship. In this high-crime area, six-foot fences contribute to the safety of businesses. Despite the owner's efforts and engagement with law enforcement, preventative measures have yielded minimal results. Additionally, the applicant relied on information from the fencing company that all necessary permits had been obtained.

12. Practical difficulties or unnecessary hardships arise from unique circumstances related to the land, as the property is located in a high-crime area which is beyond the control of the Property Owners and business proprietors.

13. The Variance is the minimum action necessary to enable a reasonable use of land or structures, as maintaining a 6-foot fence around the property enhances security.

14. The Variance aligns with the general purpose and intent of the Ordinance, preserving its spirit given that the high crime rate in this part of the City, any measures the applicant can take to enhance security and contribute to community safety are positive steps in the right direction.

15. There is no evidence that granting this Variance would harm public safety and welfare; substantial justice would be ensured. The variance would contribute to making the entire area safer and more secure.

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.

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 12th day of December 2023.

PAVAN PATEL
Zoning Commission Chair

Project Overview

#970620

Project Title: 6 foot fence
Application Type: 5.4) Variance
Workflow: Staff Review

Jurisdiction: City of Fayetteville
State: NC
County: Cumberland

Project Location

Project Address or PIN: 325 CUMBERLAND ST
(0437582772000)

Zip Code: 28301

GIS Verified Data

Property Owner: Parcel
• 325 CUMBERLAND ST: GRANT, IRA NEIL

Acreage: Parcel
• 325 CUMBERLAND ST: 0.71

Zoning District: Zoning District
• 325 CUMBERLAND ST: CC

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: <100YearFlood>

500 Year Flood: <500YearFlood>

Watershed:

Variance Request Information

Requested Variances: Fence/wall

Section of the City Code from which the variance is being requested.: 30-5.D.4. Height Requirements for 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.:

The City's current code for the height of the front fence of the business is 4 feet with a setback of 10 feet. The business' surrounding 6 foot fence has been in place many years prior to me purchasing the property. The newly installed fence currently has 6 foot chain-link fencing with two sliding gates. The only installation that was completed was connecting the sides of the 6 foot fence to the front of the business.

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

The zoning district for the business is commercial. The entire Cumberland Street is commercial other than a few occupied homes. There adjacent property to the right is commercial in which I also own. At the time it is only a vacant lot which also has a 6 foot fence surrounding the proeprty. The property directly across the street is vacant land for sale and 1 refurbished home with a 6 foot fence.

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.

Please describe how 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.:

The 6 foot fence installed assists in doing business in this high crime area. Since I have owned the property, there has been numerous times prostitutes and individuals running from the law have entered my property. Most recent two shootings that took place on the corner of Hillsboro & Cumberland Street. I have installed cameras, purchased security dogs, secured a Trespassing Agreement with the City and have encouraged Police Officers and Sherriff Deputy's to complete paperwork on the property to discourage the criminal activity.

Please describe how 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 of the actions of the landowner, nor may hardships resulting from personal circumstances as well as hardships resulting from conditions that are common to the neighborhood or the general public be the basis for granting a variance.:

The location of the body shop is in the center of criminal activity. Directly to my right on Orange Street is a shot house. To my left prostitutes align Chance and Frink Streets both day and night. Hillsboro Street has several Drug houses and homeless fill the area due to a close-by shelter. Since opening up the body shop after 2 years of it being vacant, I have invested in a lot of money and upgrades to better the neighborhood. The building is no longer an eyesore in the community but has uplifted and restored the surrounding area.

Please describe how the Variance is the minimum action that will make possible a reasonable use of land or structures.:

Approving the variance will help keep the intruders out and delay them from jumping the fence. My business has been frequented by questioned people, begging for money, stealing my power and water mainly by homeless and prostitutes.

Please describe how the Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit.:

I understand the City's idea of having 4 foot fencing in neighborhoods so it can be more attractive and inviting. However, this part of the city is where mostly low-income families reside and the criminal activity may not be reported as it should.

Please describe how, in the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done.:

Granting the variance will help to ensure my employees and customers are safe while the shop is open. The fence will also help monitor who comes onto the property more closely.

Height of Sign Face : 6

Height of Sign Face: 6

Square Footage of Sign Face: 6

Height of Sign Face: 6

Square Footage of Sign Face : 6

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Square Footage of Sign Face: 6
Square Footage of Sign Face: 6

Primary Contact Information

Contractor's NC ID#:

Project Owner

Barry White
Custom Concepts Body Works
325 Cumberland Street
Fayetteville, NC 28301
P:9107480807
customconceptsbodyworks@gmail.com

Project Contact - Agent/Representative

Barry White
Custom Concepts Body Works
325 Cumberland Street
Fayetteville, NC 28301
P:9107480807
customconceptsbodyworks@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:

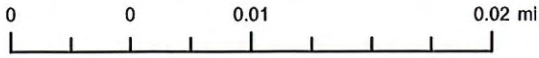
Indicate which of the following project contacts should be included on this project:



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DISCLAIMS ACCOUNTABILITY FOR THIS PRODUCT AND MAKES NO
WARRANTY EXPRESSED OR IMPLIED CONCERNING THE ACCURACY
THEREOF. RESPONSIBILITY FOR INTERPRETATION OF THIS
PRODUCT LIES WITH THE USER.

Current Time: 10/17/2023 12:51 PM

Parcels	Lot Line
Parcel Line	Addresses
	Streets







CUSTOM CONCEPTS

BODY WORKS



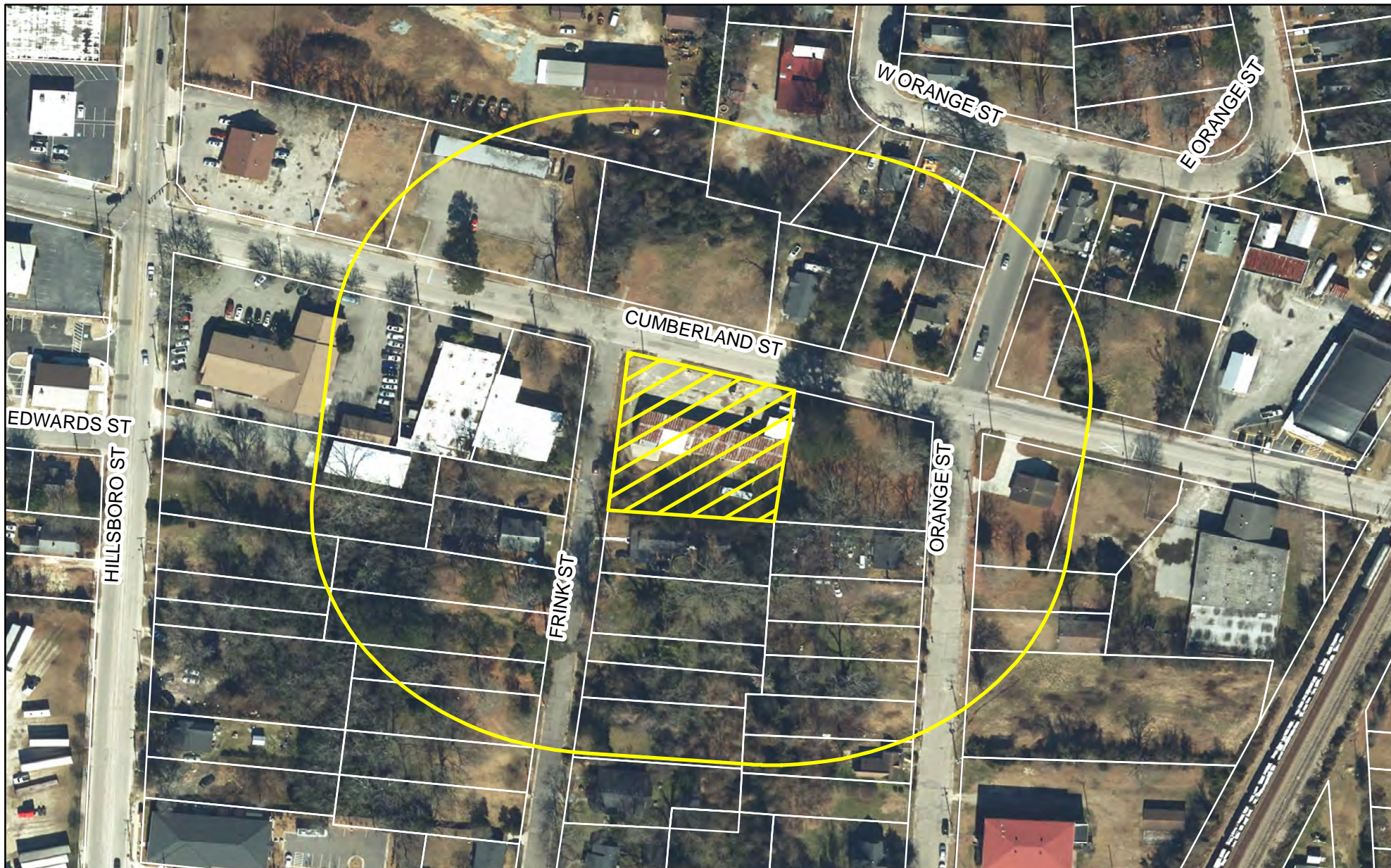






Frink St
Cumberland St







Aerial Notification Map

Case #: A23-51

Variance
Request: Fence Height/Location

Location: 325 Cumberland Street

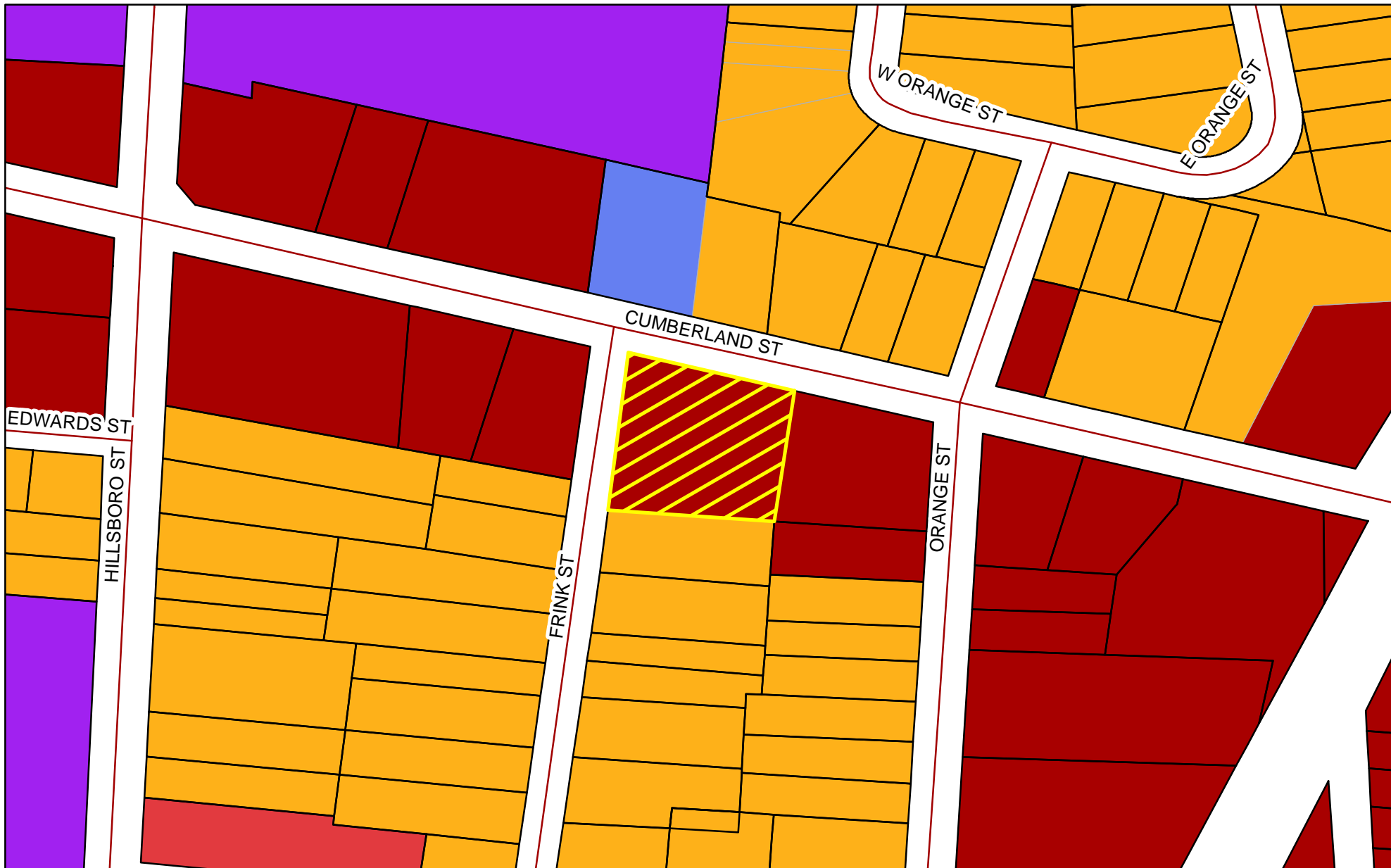
Legend

-  A23-51 Buffer
-  A23-51



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





Zoning Map







Case #: A23-51

Variance

Request: Fence Height/Location

Location: 325 Cumberland Street

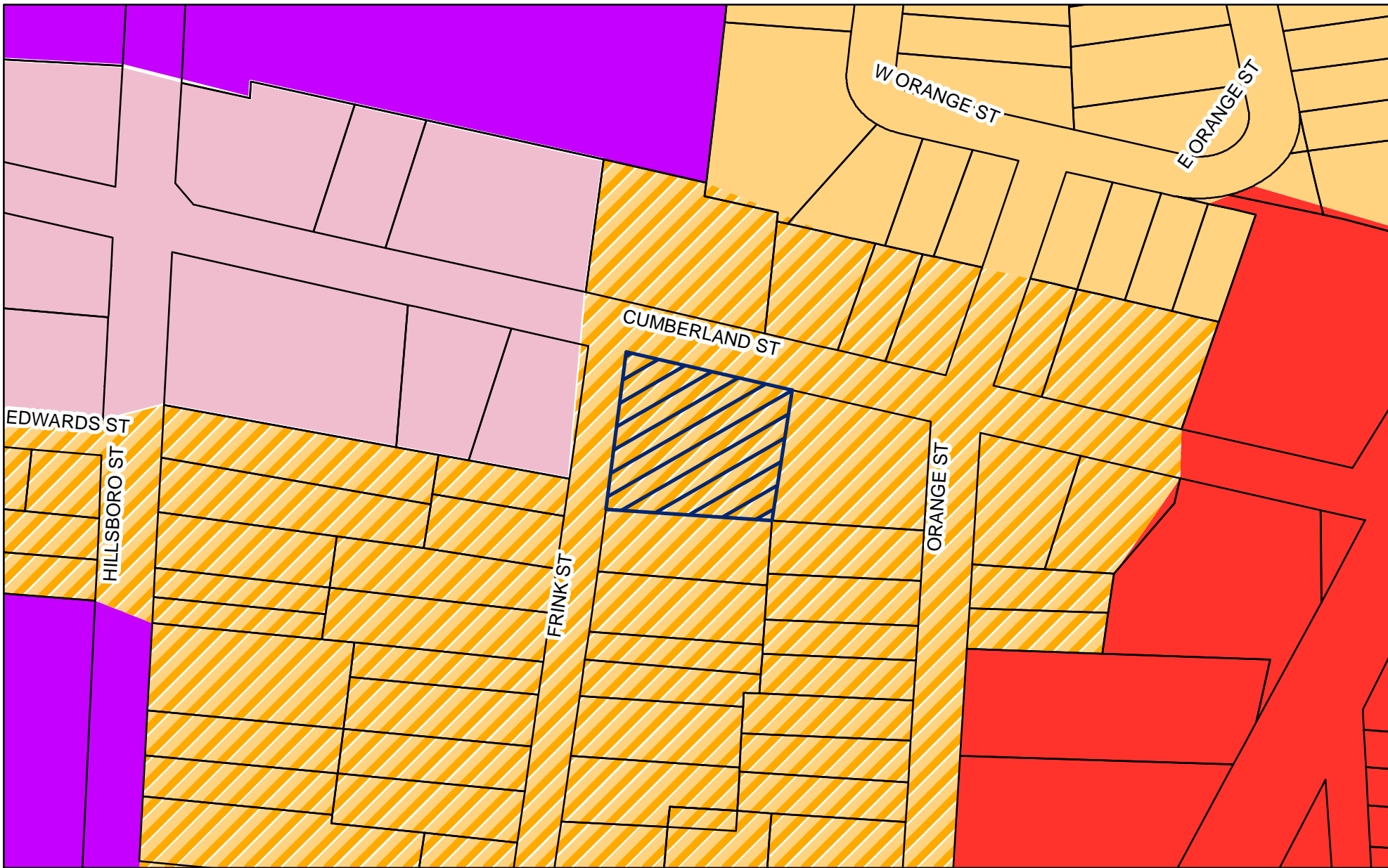
Legend

-  A23-51
-  CC - Community Commercial
-  HI - Heavy Industrial
-  MR-5 - Mixed Residential 5
-  NC - Neighborhood Commercial
-  OI - Office & Institutional



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 #: A23-51

Variance

Request: Fence Height/Location

Location: 325 Cumberland Street






Legend



A23-51

Land Use Plan 2040

Character Areas

-  MDR - MEDIUM DENSITY
-  NIR - NEIGHBORHOOD IMPROVEMENT
-  NMU - NEIGHBORHOOD MIXED USE
-  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.










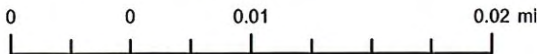




THE COUNTY OF CUMBERLAND AND ITS GIS DEPARTMENT DISCLAIMS ACCOUNTABILITY FOR THIS PRODUCT AND MAKES NO WARRANTY EXPRESSED OR IMPLIED CONCERNING THE ACCURACY THEREOF. RESPONSIBILITY FOR INTERPRETATION OF THIS PRODUCT LIES WITH THE USER.

Current Time: 10/17/2023 12:51 PM

	Parcels		Lot Line
	Parcel Line		Addresses
			Streets





City of Fayetteville

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

City Council Action Memo

File Number: 24-3769

Agenda Date: 1/9/2024

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Consent

Agenda Number: 3.03

TO: Mayor and Members of City Council

THRU: Zoning Commission

FROM: Demetrios Moutos - Planner I

DATE: December 12, 2023

RE:

A23-54. Order of Approval - Findings of Fact: Variance to increase maximum fence height, located at 1010 Marlborough Road (REID 0427101984000), and being the property of Greg and Effie Kalevas.

COUNCIL DISTRICT(S):

2 - Malik Davis

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 applicant is requesting a variance to increase the maximum fence height in the Community Commercial zoning district (CC).

On December 12, 2023, the Zoning Commission held an Evidentiary Hearing regarding this case. After receiving all evidence and testimony, the Commission voted 5-0 to approve the Variance application.

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: Greg and Effie Kalevas

Applicant: Bryan Fisher

Requested Action: Increase maximum fence height.

Zoning District: Community Commercial (CC)

Property Address: 1010 Marlborough Road

Size: 0.86 acres ±

Existing Land Use: Fishers Home Pros

Surrounding Zoning and Land Uses

- North: CC - Lindy's
- South: NC and LI - Salon 1026 and Saam's Party Tents
- East: CC - Single Family Dwelling and Preen Hair Boutique
- West: CC - William's Carpet Care

Letters Mailed: 20

Issues/Analysis:

The buildings on the subject property were constructed in 1984, according to Cumberland County Tax records. The Unified Development Ordinance outlines various standards regarding fences. The UDO requires that fences or walls that serve other individual development, apart from single family (attached or detached) and two- to four-family dwellings, maintain a maximum height of 4 feet in the front yard, 6 feet in corner side yards, and 6 feet in interior side and rear yards.

The applicant has requested a variance from 1 standards of the UDO. The requested changes are as follows:

- **Increase maximum fence height from 6 ft. to 8 ft.**

The owner has requested this variance in order to bring the site into compliance with the ordinance and obtain the proper permits.

Insufficient Justification for Variance

The following does not constitute grounds for a Variance:

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

Subsequent Development

There is no intended development or construction known to be associated with this

variance request.

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 "Commercial property, security measures, theft will be eliminated."

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 "Security measures, commercial building, eliminating theft."

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

The applicant states "I have lost 4k worth of equipment and had to spend money on tools, etc. I have nothing to lose than to complete this variance."

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 structure of the fence is nice gesture to the surrounding businesses within this area. The surrounding business owners have agreed that the safety of their establishment has or have improved."

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 "Not sure what this question is asking."

Budget Impact:

There is no immediate budgetary impact.

Options:

1. Approve Findings as submitted by staff.
2. Approve Findings with specific changes.

Recommended Action:

Staff recommends option 1 above.

Attachments:

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

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

To increase maximum fence height at 1010 Marlborough Road (REID 0427101984000)

VARIANCE A23-54

Property Address: 1010 Marlborough Road
REID Number: 0427101984000
Property Owners: Greg and Effie Kalevas

The Zoning Commission for the City of Fayetteville, NC, held an evidentiary hearing on December 12, 2023, to consider a Variance request filed by Bryan Fisher (“Applicant”) to increase the maximum height for a fence from 6 to 8 feet on the property located at 1010 Marlborough Road (REID 0427101984000) (“Subject Property”).

On December 1, 2023, a notice of public hearing was mailed to the Applicant and Property Owners and all the owners of property within 300 feet of the Subject Property. On November 27, 2023, a notice of public hearing sign was placed on the Subject Property. On December 1 and 8, 2023, a notice of public hearing advertisement was placed in the legal section of *The Fayetteville Observer*.

Having considered all 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 requirements for fence height.
2. Greg and Effie Kalevas are the owners of a commercially zoned property located at 1010 Marlborough Road (REID 0427101984000), which contains approximately .86 acres ± in the City of Fayetteville.
3. The Applicant applied for a Variance on October 17, 2023.
4. The Subject Property is zoned Community Commercial (CC).
5. The Applicant is requesting to increase the maximum fence height from 6 to 8 feet.
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. 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, commercially zoned, is surrounded by Community Commercial (CC) to the north and west, Office and Institutional to the east, and a mix of zones including Light Industrial (LI), Neighborhood Commercial (NC), Office and Institutional (OI), Single Family Residential 6 (SF-6), and Mixed Residential 5 (MR-5) to the south.

8. The Subject Property is approximately .86 acres located south of Raeford Road, on the western side of the intersection of Marlborough Road and Breezewood Avenue, adjacent to the railroad tracks.

9. The Subject Property contains two wood and light steel construction commercial buildings that were built in 1984, before the development of the current Unified Development Ordinance.

10. This Variance pertains to the ordinance stipulation that the maximum height of a fence or wall, serving developments other than single-family and two-to-four-family dwellings, should be 6 feet in the corner side, interior side, and rear yards.

11. The strict application of the ordinance requirements poses practical difficulties and unnecessary hardship for this commercial property. Despite its location on a busy street, the lack of activity around it at night makes it susceptible to unauthorized access and potential security threats. To address this concern, the Applicant is implementing additional security measures aimed at reducing the risk of theft.

12. Practical difficulties or unnecessary hardships arise due to unique circumstances related to the land and are not the result of the landowner's actions. Increased security measures are required in the area to protect the Applicant's property and prevent theft.

13. The Variance is essential to facilitate a practical utilization of the land or structures. Having already incurred losses totaling between Four to Five Thousand Dollars in equipment within this area, implementing a more secure fence, fortifying the property, and enhancing overall security measures are imperative.

14. The Variance is in harmony with the general purpose and intent of the Ordinance as the fence is an aesthetically pleasing and well-maintained fence and it serves as a positive contribution to the neighboring businesses, reflecting cleanliness and visual appeal. Nearby businesses and members of the community who have observed the fence have expressed admiration for its appearance.

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 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.

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 is the 12th day of December, 2023.

PAVAN PATEL
Zoning Commission Chair

Project Overview

#1149929

Project Title: fishers home pros fence

Jurisdiction: City of Fayetteville

Application Type: 5.4) Variance

State: NC

Workflow: Staff Review

County: Cumberland

Project Location

Project Address or PIN: 1010 MARLBOROUGH RD
(0427101984000)

Zip Code: 28304

GIS Verified Data

Property Owner: Parcel

- 1010 MARLBOROUGH RD: KALEVAS, GREG;KALEVAS, EFFIE L.

Acreage: Parcel

- 1010 MARLBOROUGH RD: 0.86

Zoning District: Zoning District

- 1010 MARLBOROUGH RD: CC

Subdivision Name:

Fire District:

Hospital Overlay District:

Cape Fear District:

Haymount Historic District:

100 Year Flood: <100YearFlood>

Watershed:

Airport Overlay District:

Coliseum Tourism District:

Downtown Historic District:

Floodway:

500 Year Flood: <500YearFlood>

Variance Request Information

Requested Variances: Fence/wall

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

Request to maintain 8 ft tall fence in lue of 6 ft requirements

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

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

The current zoning of the property is CC (Community Commercial) with CC to the North & NC to the south. Other zoning near is LI,OI, & some SF10 AND SF6.

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.

Please describe how 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.:

COMMERCIAL PROPERTY, SECURITY MEASURES , THEFT WILL BE ELIMINATED .

Please describe how 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 of the actions of the landowner, nor may hardships resulting from personal circumstances as well as hardships resulting from conditions that are common to the neighborhood or the general public be the basis for granting a variance.:

SECURITY MEASURES, COMMERCIAL BUILDING , ELIMINATING THEFT

Please describe how the Variance is the minimum action that will make possible a reasonable use of land or structures.:

I HAVE LOST 4K WORTH OF EQUIPMENT AND HAD TO SPEND MONEY ON TOOLS, ETC I HAVE NOTHING TO LOSE THAN TO COMPLETE THIS VARIANCE

Please describe how the Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit.:

THE STRUCTURE OF THE FENCE IS NICE GESTURE TO THE SURROUNDING BUSINESSES WITHIN THIS AREA . THE SURROUNDING BUSINESS OWNERS HAVE AGREED THAT THE SAFETY OF THERE ESTABLISHMENT HAS OR HAVE IMPROVED

Please describe how, in the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done.:

NOT SURE WHAT THIS QUESTION IS ASKING

Height of Sign Face : 8

Height of Sign Face: 8

Square Footage of Sign Face: 8

Square Footage of Sign Face: 8

Square Footage of Sign Face: 8

Square Footage of Sign Face: 8

Square Footage of Sign Face: 8

Square Footage of Sign Face: 8

Square Footage of Sign Face: 8

Height of Sign Face: 8

Square Footage of Sign Face : 8

Square Footage of Sign Face: 8

Square Footage of Sign Face: 8

Square Footage of Sign Face: 8

Square Footage of Sign Face: 8

Square Footage of Sign Face: 8

Primary Contact Information

Contractor's NC ID#:

Project Owner

bryan fisher

fishers home pros

1010 Marlborough dr
fayetteville, NC 28304
P:9107231576
fishershomepros@gmail.com

Project Contact - Agent/Representative

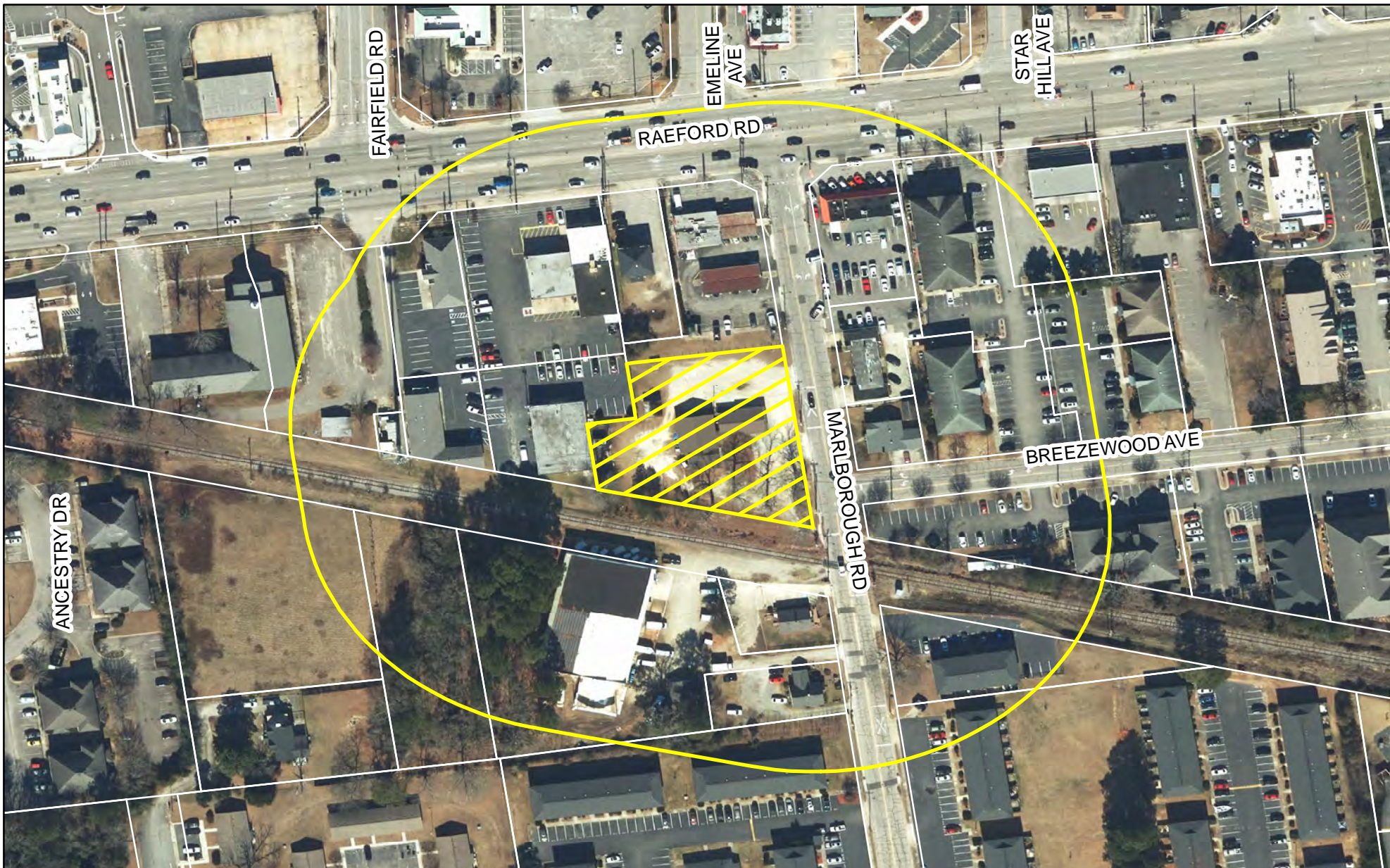
bryan fisher
fishers home pros
1010 Marlborough dr
fayetteville, NC 28304
P:9107231576
fishershomepros@gmail.com

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 #: A23-54

Variance

Request: Fence Height

Location: 1010 Marlborough Road

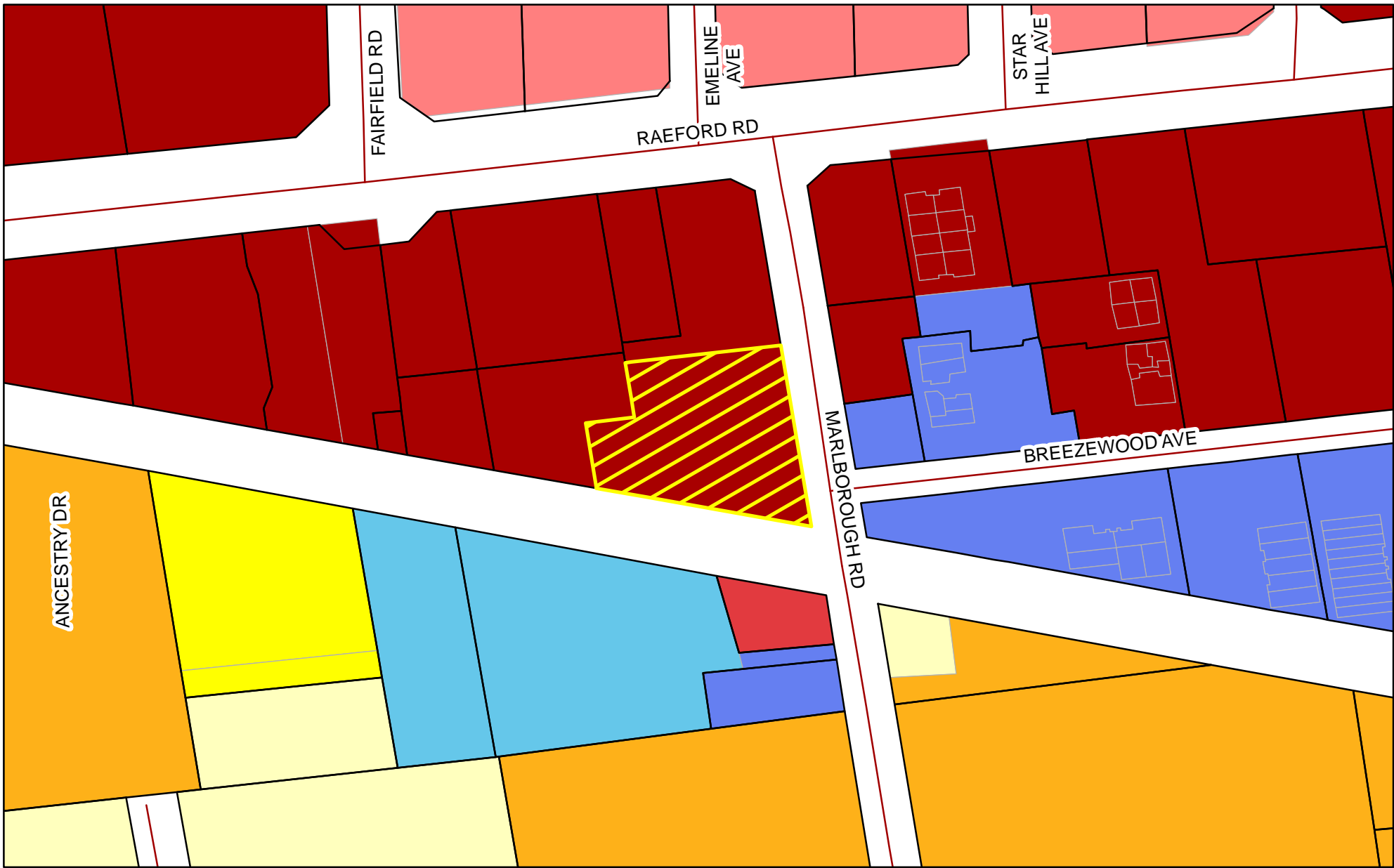
Legend

-  A23-54 Buffer
-  A23-54



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





Zoning Map


Case #: A23-54

Variance
Request: Fence Height

Location: 1010 Marlborough
Road

Legend


 A23-54

 CC - Community Commercial


 LC - Limited Commercial


 LI - Light Industrial

 MR-5 - Mixed Residential 5

 NC - Neighborhood Commercial

 OI - Office & Institutional

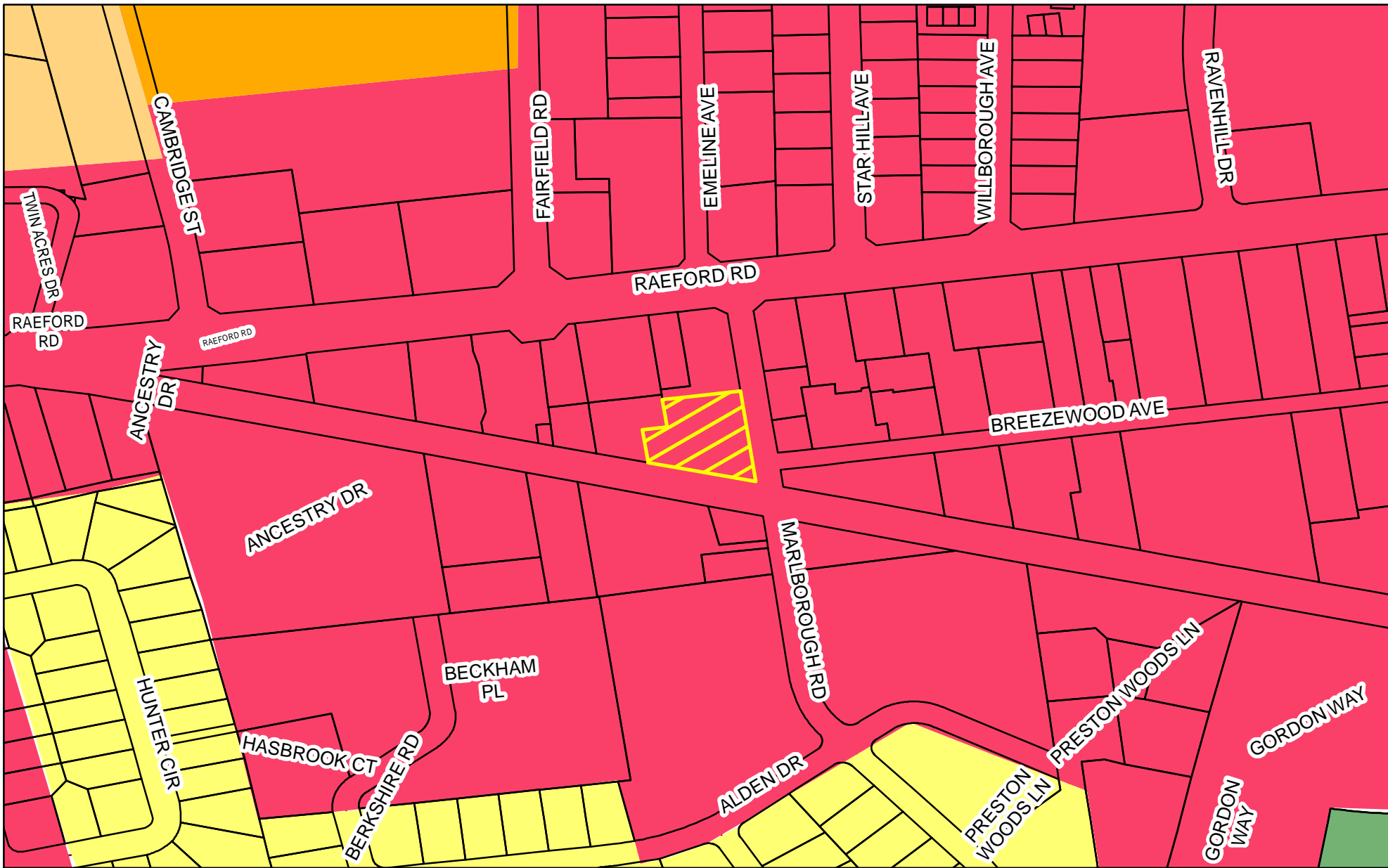
 SF-6 - Single-Family Residential 6

 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 #: A23-54

Variance

Request: Fence Height

Location: 1010 Marlborough
Road






Legend



A23-54

Land Use Plan 2040

Character Areas

-  PARKOS - PARK / OPEN SPACE
-  LDR - LOW DENSITY
-  MDR - MEDIUM DENSITY
-  HDR - HIGH DENSITY RESIDENTIAL
-  CC - COMMUNITY CENTER



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











City of Fayetteville

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

City Council Action Memo

File Number: 24-3763

Agenda Date: 1/9/2024

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Consent

Agenda Number: 3.04

TO: Zoning Commission

THRU: Will Deaton, AICP - Planning & Zoning Manager

FROM: Catina Evans - Office Assistant II

DATE: January 9, 2024

RE: Approval of Meeting Minutes: December 12, 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: December 12, 2023

**MINUTES
CITY OF FAYETTEVILLE
ZONING COMMISSION MEETING
FAST TRANSIT CENTER COMMUNITY ROOM
DECEMBER 12, 2023 @ 6:00 P.M.**

MEMBERS PRESENT

Pavan Patel, Chair
Stephen McCorquodale
Kevin Hight
Tyrone Simon
Justin Herbe

STAFF PRESENT

Clayton Deaton, Planning and Zoning Division Manager
Craig Harmon, Senior Planner
Heather Eckhardt, Planner II
Demetrios Moutos, Planner I
Lisa Harper, Assistant Attorney
Catina Evans, Office Assistant II

MEMBERS ABSENT

Alex Keith, Vice-Chair

The Zoning Commission Meeting on Tuesday, December 12, 2023, was called to order by Chair Pavan Patel at 6:01 p.m. The members introduced themselves.

I. APPROVAL OF THE AGENDA

MOTION: Stephen McCorquodale
SECOND: Tyrone Simon
VOTE: Unanimous (5-0)

II. APPROVAL OF CONSENT ITEMS TO INCLUDE THE MINUTES FOR THE NOVEMBER 14, 2023, MEETING

MOTION: Kevin Hight
SECOND: Clabon Lowe
VOTE: Unanimous (5--0)

III. EVIDENTIARY HEARING

Mr. Patel discussed the aspects of the evidentiary hearing. Mr. Patel asked if any of the Board members had any partiality (conflicts of interest) or any ex parte communication (site visits or conversations with parties to include staff members or the general public) to disclose regarding the case on the agenda for the evening. The commissioners did not have any partiality with the cases or ex parte communication to disclose regarding the cases. Ms. Harper had the speakers perform the oath.

Mr. Patel opened the evidentiary hearing for case A23-50.

A23-50. Variance to reduce minimum rear yard setback, located at 1840 Ashton Road (REID #0416411779000), and being the property of Migdal Perez.

Demetrios Moutos presented case A23-50. The owners requested a variance to reduce the rear yard setback. The Future Land Use Plan designates the area as low-density residential. The surrounding properties are single-family. The applicant is requesting a reduction in the rear yard setback to 9.3 feet. Mr. Moutos informed the Board of their voting options.

Mr. Patel opened the evidentiary hearing for case A23-50.

Speakers in favor:

Crystal Bilal, 429 Gadson Drive, Hope Mills, NC 28348

- Ms. Bilal said she works with a renovation company and the owner asked her to assist them with the process of the renovation.
- She said the owner received notice that the renovation violated City rules. They want the construction or renovation to be accepted. It would be a hardship for the renovation to be removed.
- The owner remodeled the house to connect an existing detached structure to the house.
- Ms. Bilal reiterated that it would be a hardship for the owners to tear the structure down.

Mr. Hight asked Ms. Bilal if the work was already complete and if they did it themselves. Ms. Bilal said yes to both questions. Mr. McCorquodale said the detached structure was in the back of the house for clarification and Ms. Bilal said yes. Mr. McCorquodale noted a picture of the property that the Board had in their binders. Mr. Patel asked if there were any further questions. Mr. Moutos said that they attached the structure to the main house which created the need for the variance.

Mr. Patel closed the evidentiary hearing for case A23-50.

MOTION: Patel made a motion to approve the variance to reduce the minimum yard setback at 1840 Ashton Road for case A23-50. According to the findings of fact:

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence: The evidence being that the structure was already established when the applicant added to their home. It was already in compliance.
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: The property lines were already existing when the home was purchased. The structure was already in place.
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 variance would allow for the existing structure to be added and to continue to be part of the permanent structure and as the applicant has mentioned increasing the footage of the resident would increase the tax value of the property.
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: According to the applicant and their best

guidance going forward with City Staff that this was the best course of action to apply for a variance in order for them to keep the building of the structure as is.

5. In the granting of the Variance, public safety and welfare have been assured and substantial justice has been done as shown by the following evidence: As the applicant has stated there is no issue with variance being issued that would cause any safety concerns.

SECOND: Clabon Lowe

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

A23-51. Variance to increase minimum fence height in the front yard and reduce minimum required setback for fence in the front yard, located at 325 Cumberland Road (REID #0437582772000), and being the property of Ira Neil Grant.

Demetrios Moutos presented case A23-51. The applicant requested to increase the maximum fence height in the front yard and to reduce the minimum front yard setback. Custom Concepts Body Works is currently zoned community commercial. The Future Land Use Plan designated the area for neighborhood mixed use. Mr. Moutos showed the Board a picture of the subject property. To the north is a vacant lot and to the south is single-family housing. To the east is a vacant lot. Mr. Moutos showed the Board a picture of the site plan. The request is to increase the maximum fence height in the front from 4 to 6 feet and to reduce the minimum setback of the front yard from 10 feet to 0 feet. He informed the Board of their voting options.

Mr. Patel opened the evidentiary hearing for case A23-51.

Speakers in favor:

Karen Townsend, Custom Concepts Body Works, 325 Cumberland Street, Fayetteville, NC 28301

- Ms. Townsend said they applied for and received the Corridor Grant to improve the appearance of their business.
- The business has a front lot where people park out front. In the evening cars are outside that customers have yet to pick up. There are existing 6-foot fences that the next fence was connected to. When they applied for the grant, they were told by the fencing company that the fencing company had acquired the necessary permits for the fence.
- Ms. Townsend said they are now having to possibly remove the fence. Due to the location, they need a fence that is taller than 4 feet to protect their items.
- Ms. Townsend had a fencing company come out to provide a quote based on the grant. The business that won the quote said they had procured the necessary permits, but she never received proof of this.

Mr. Patel asked Ms. Townsend about the contractor that came out to look at the fence, and Ms. Townsend said they had three fencing companies come out as part of the process of applying for the grant and the business that won the quote said they had acquired the permits. Mr. Hight asked Ms. Townsend if there was fencing in the front yard. She said there was no fencing in the front and Ms. Townsend said they are connected to the 6-foot fence in the side yard. She clarified for Mr. Simon that the fence is 6 feet in height and the Unified Development Ordinance only allows for a 4-foot fence.

MOTION: Kevin Hight made a motion to approve the variance for case A23-51 according to the findings of fact.

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence: The six-foot fence was installed due to the crime in the area. The owner has taken preventative steps. Mr. Hight said he is concerned about the fact that the owners were lied to by the contractor.
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: He does not think it is a geographical issue but the location near a crime area.
3. The Variance is the minimum action that will make possible a reasonable use of land or structures as shown by the following evidence: A six-foot fence will keep the property secure.
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: This is part of the City where a lot of crime occurs and any action that the owner can take to reduce crime and make the whole neighborhood safe is a positive step.
5. In the granting of the Variance, public safety and welfare have been assured and substantial justice has been done as shown by the following evidence: It will help make the whole area safer and more secure which is definitely good for his customers.

SECOND: Clabon Lowe

VOTE: Unanimous (5-0)

Mr. Harmon said the applicant for the next case needs to be sworn in because they just arrived, and Ms. Harper swore them in.

A23-54. Variance to increase minimum fence height, located at 1010 Marlborough Road (REID #0427101984000), and being the property of Greg & Effie Kalevas.

Demetrios Moutos presented case A23-54. The applicant is requesting an increase in the maximum fence height from 6 feet to 8 feet. The subject property is located off of Raeford Road right behind Lindy's restaurant. The Future Land Use Plan calls for the area to be designated a community center. Mr. Moutos showed the Board a picture of the subject property. To the north is Lindy's the south is Salon 1026 and Sam's Party Tents across the railroad tracks. To the east are single-family homes. To the west is Williams Carpet Care which is in the same general area as Chipotle restaurant. Mr. Moutos showed the Board the site plan and pointed out portions of where the fence is located on the property, noting where Marlborough Road is located near the train tracks. Mr. Moutos showed the Board a picture of the area. The owners want to increase the fence height from 6 feet to 8 feet. Mr. Moutos informed the Board of their voting options.

Mr. Patel opened the evidentiary hearing for case A23-54.

Speaker in favor:

Brian Fisher, 1010 Marlborough Drive, Fayetteville, NC 28304

- Mr. Fisher said he is a small business owner and he recently moved his business to this location from Hope Mills.
- Within the first two days after he moved onto the property, criminal activity was occurring in his backyard including the theft of equipment.
- Mr. Fisher said he has had expensive equipment worth over 5,000 dollars stolen from his property. He notes that he built the 8-foot fence without a permit but the fence is needed in the area due to crime.
- Mr. Fisher noted that the owner of Lindy's is happy with the protection provided by the current fence because he now does not have to carry his gun when he steps out of his car and enters his business.
- Mr. Fisher said he wants his business to continue to thrive in the City and he wants to do great things.
- Mr. McCorquodale asked Mr. Fisher how long he had been in business. Mr. Fisher said he started his business in 2010. Mr. Simon asked Mr. Fisher about the cameras he installed and Mr. Fisher said the cameras have helped a lot to reduce crime and the fence has helped as well. Mr. Lowe asked if other businesses have experienced crime on their property. Mr. Fisher said the surrounding businesses are experiencing crime as well. He said a shooting occurred in the area a month ago. Mr. McCorquodale noted where the land and the fence are located. Mr. Fisher said he has one access point into the building and there is a double gate where trucks enter the property.

Mr. Patel closed the evidentiary hearing for case A23-54.

MOTION: Kevin Hight made a motion to approve the variance according to findings of fact.

1. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships as shown by the following evidence: This is a property that is easily accessible, so the owner has added security measures to help eliminate theft.
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: This is not geographically related but due to the area, so security measures need to be taken to protect his property and eliminate theft.
3. The Variance is the minimum action that will make possible a reasonable use of land or structures as shown by the following evidence: Having a more secure fence (since he has already lost 4,00 to 5,000 dollars-worth of equipment), so he is securing this area to make it safer for him and the general area.
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 construction of the fence is clean and it looks well. The applicant mentioned that people in the community who pass the fence are impressed by it.
5. In the granting of the Variance, public safety and welfare have been assured and substantial justice has been done as shown by the following evidence: By securing the property hopefully the owner can prevent crime in the area.

SECOND: Stephen McCorquodale

VOTE: Unanimous (5-0)

IV. LEGISLATIVE HEARINGS

Mr. Patel discussed the aspects of the legislative hearing. Mr. Patel asked if any of the Board members had any partiality (conflicts of interest) or any ex parte communication (site visits or conversations with parties to include staff members or the general public) to disclose regarding the case on the agenda for the evening. The commissioners did not have any partiality with the cases or ex parte communication to disclose regarding the cases.

Mr. Patel opened the legislative hearing for case P23-52.

P23-52. Rezoning from Single-Family Residential 6 (SF-6) to Mixed Residential 5 (MR-5) located at 1319 Camden Road (REID #0436163935000) totaling .54 acres ± and being the property of Darren & LaAdah Demus represented by Lori Epler of Larry King & Associates.

Heather Eckhardt presented this case. She said this request is to rezone 1319 Camden Road from Single-family Residential 6 (SF-6) to Mixed Residential 5 (MR-5). The property is located on Camden Road just off the corner of Camden Road and Mayview Street. She said the subject property is currently zoned Single-Family 6 (SF-6) with Mixed Residential 5 (MR-5) to the west. The Future Land Use Plan designates the area as neighborhood mixed-use. Ms. Eckhardt showed the Board that the property is currently vacant. The surrounding areas have a variety of uses including single-family houses, churches, cemeteries, and nearby Massey Hill Classical School. The proposed zoning district would allow for single-family and 2-4 family dwellings which all fall in alignment with the neighborhood mixed-use designation that the Future Use Plan calls for. This residential development would be fitting in an area that is surrounded by a variety of nonresidential uses such as churches and cemeteries. The Staff is recommending approval of the rezoning to Mixed Residential 5 (MR-5).

Mr. Patel opened the hearing for case P23-52.

Speaker in favor:

Lori Epler, 1333 Morganton Road, Fayetteville, NC 28305

- Ms. Epler said the owner of the property has not yet developed the area and the property has been vacant since prior to 1968. The owner hopes to create affordable housing on this property which is needed in Fayetteville.
- The owner has plans for this property — they have a site plan that she is willing to share with the Board.
- The owner is planning to put four townhouse units on this property. Due to the shape of the property, it is hard to currently subdivide the property and build single-family dwellings on it. Therefore, the owner wants to build four townhouse units on the property.
- Ms. Epler said she is ready to answer any questions.

Mr. McCorquodale noted this is the least action to change that zoning to allow for development in the area. The Technical Review Committee (TRC) would have to review this. The minimum action by the Board would be to approve it.

MOTION: Stephen McCorquodale made a motion to approve case P23-52 to request the rezoning from Single-Family Residential 6 (SF-6) to Mixed Residential 5 (MR-5) located at 1319 Camden Road

totaling .54 acres based on the evidence presented and that the zoning is consistent with the Future Land Use Plan as demonstrated by the attached Consistency and Reasonableness Statements.

SECOND: Tyrone Simon
VOTE: Unanimous (5-0)

Mr. Patel opened the legislative hearing for case P23-53.

P23-53. Rezoning from Single-Family Residential 10 (SF-10) to Single-Family Residential 6 (SF-6) located at 1040 Stamper Road (REID #0428335880000) totaling .25 acres ± and being the property of Rockfish Run Land and Development LLC.

Heather Eckhardt presented case P23-53. The subject property is located on Stamper Road. The property is currently zoned Single-Family Residential 10 (SF-10). The area to the west is Mixed Residential 5 (MR-5). According to the Future Land Use Plan, the area is designated as medium-density residential. The property is currently vacant, and single-family residential homes reside in the area. If the owners decided to build anything other than single-family housing, they would have to adhere to further review by other Boards. The Staff recommends approval of this rezoning.

Mr. Patel opened the hearing for case P23-53.

Speaker in favor:

Tim Evans, 4239 Camden Road, Fayetteville, NC 28306

- Mr. Evans said he is the owner of the subject property and Long Leaf Properties in Fayetteville.
- He knows he has opposition. Mr. Evans said he has done a lot of research on Stamper Road and that a majority of the homes on that road are single-family rentals. Across the street and behind Stamper Road are duplexes.
- This project would be a two-story duplex and it will cost \$350,000 dollars to build it.
- Mr. Evans said he may sell or rent the duplexes. If he chooses to rent the townhomes, they will cost \$1,700 a month and include a garage.
- He realizes that when a piece of land goes undeveloped for a long period of time, people take for granted that it will eventually be used.
- Mr. Evans noted that if he builds a home on his property, residents will see a new structure that has not been there. If he builds a duplex most people who are renting a duplex will not be outside to disrupt the neighborhood.
- Mr. Evans said new construction can be helpful in an aging and older residential area.
- Mr. Evans said he has nothing to hide, and he would like to use the remainder of his speaking time to respond to any questions.
- Mr. Evans said they will have to clear the lot because there are trees in the area, and he would leave the larger trees on the property line bordering his property and the neighbor residing behind his property.
- Mr. Evans hopes the Board would see this as an improvement on Stamper Road.

Speakers in opposition:

Barbara Niemczyk, 1914 Manteo Street, Fayetteville, NC 28303

- Ms. Niemczyk would like to say for ten years she has cleaned rental homes.
- She said that the owner is not sure that the building will be sold. She has cleaned rentals and most of them are filthy.
- She said the structure will be two stories and it will look over the surrounding area. It would not leave people privacy. A tree would not give them privacy.
- She said they are part of Greenwood Homes. We are a different development for single-family homes. Ms. Niemczyk knows homeowners in the area.
- There are regulations that people keep the area clean. If it becomes a rental there is no guarantee that it will be clean. She has had to call code enforcement about the rental homes in the area because it was not clean. She showed a picture of a tree on a rental property with poison ivy.
- She has had to spray to keep the poison ivy at bay at a cost of \$100. Mr. Patel let her know her time was coming to a close. Ms. Niemczyk said if it becomes a rental they will have to worry about new people living in the area. Mr. Simon asked about the location of the poison ivy.
- Ms. Niemczyk clarified that she was providing the incident about the poison ivy as an example of a problem that has occurred with rentals.

Michaelene Flynn, 1919 Manteo Street, Fayetteville, NC 28303

- Ms. Flynn said she has lived on Manteo Street for 18 years.
- When she moved into the Greenwood Homes subdivision, it was quiet and as the neighborhood has grown people have moved on and the houses have become rentals.
- Now some of the houses are not kept up. Her concern is the need for privacy and also what will happen in the long run when new people move in. Ms. Niemczyk is concerned about what she will see when she looks out her backyard.

Elizabeth Vasser, 1924 Cherokee Drive, Fayetteville, NC 28303

- Ms. Vasser said the property is literally in her backyard. Her issue is the area is not Single-Family 6 (SF-6) as stated by the owner.
- Ms. Vasser said that although the property owner said that the special use fits in with the housing, Ms. Vasser said it does not. She said wildlife is an issue.
- The original Homeowners Association (HOA) covenant said the area is R10.
- Ms. Vasser requested that the buildings not be duplexes. She said Stamper Road is a cut-through road and parking can be dangerous in the area.
- Ms. Vasser added that \$1,700 dollars a month rent is not affordable for most people. In keeping with the original intent of the neighborhood and the current area, Ms. Vasser requested that the Board please keep the zoning Single Family Residential 10 (SF-10).

Mr. Patel asked her about the wildlife concerns. Ms. Vasser said there is a large bird population in her yard and she has seen rabbits.

Rick Bryant, 1803 Catawba Street, Fayetteville, NC 28303

- Mr. Bryant thinks the rezoning would open the property up to large multi-family construction at some point.
- He said the traffic is an issue on Stamper Road.
- They have a good area overall, and if they build rental properties they would send the message that they are open to additional rentals in the future. Mr. Bryant wants the Board to vote against this.

Mr. Lowe asked Mr. Bryant if they had done a traffic study and Mr. Bryant said no. Mr. Patel noted that he mentioned the single-family to multi-family units would be an issue, and he wanted Mr. Bryant to elaborate on this issue. Mr. Bryant said Single-Family 6 (SF-6) would allow for multi-family units and more rentals in the area.

Rafael Rivera, 1811 Manteo Street, Fayetteville, NC 28303

- Mr. Rivera pointed out that in the 1950s, when Greenwood Homes was built, all the properties were single-family homes under the Single-Family Residential 10 (SF-10) zoning.
- Mr. Rivera said a two-story duplex would not fit in the neighborhood because the houses across the street are SF-10s.

Alexei Shakhirav, 1923 Manteo Street, Fayetteville, NC 28303

- Mr. Shakhirav is opposed to this zoning.
- He suggested the owner construct under the current Single-Family 10 (SF-10). The only reason the owner would change the zoning to SF-6 would be to build multi-family units on the land. Under the Single-Family Residential 6 (SF-6) zoning the owner could develop multi-family large-scale construction.
- If you visit this area, you will see there is no room for parking. Mr. Shakhirav noted again that this zoning change would open the neighborhood to multi-family large units.
- Mr. Shakhirav said the owner could build his proposed development under the current SF-10 zoning.

Ellen Hollmann, 1717 Catawaba Street, Fayetteville, NC 28303

- Ms. Hollmann said she has lived in the neighborhood for 15 years. She questioned if the property owner built a duplex on his property, how would he get enough easement from the property line for garages or backyards.
- There is no way a homeowner would be able to back their car into a garage.
- Ms. Hollmann is concerned that there would not be enough space to build on this property. She said the land is not a good property for a duplex. Most of the homes have two cars, and most of the homes in the area do not have enough space on their lots. She asked the owner how he would develop his property safely enough for everyone.

Steven Garnier, 1905 Manteo Street, Fayetteville, NC 28303

- In 2015 he moved into the area. He has a family with children.
- Mr. Garnier said two-story buildings would be located around one-story houses. He noted that in the neighborhood there is a hill such that when you stand on top of it, the only thing you would see is the proposed building which would serve as visual pollution. Mr. Garnier said the property owner would not honor the promises he was making to the residents in this neighborhood.

Mr. Evans responded to the concerns of the speakers in opposition.

Mr. Simon asked Mr. Evans if the homes have parking for overnight guests. Mr. Evans said that foremost the property would have to meet City ordinances when they build. He said that in the future there may be an issue for someone living on the property who has a party without enough parking areas for guests.

Mr. Patel closed the hearing for case P23-53.

Ms. Eckhardt reiterated that there would need to be another hearing regarding the duplex issue that would require the applicant to apply for a special use permit and seek approval from the City Council. This matter presented to the Board concerns the rezoning to lower the density of that property. She added that parking is addressed in the Unified Development Ordinance and requires a minimum of two parking spaces per unit with a total of four parking spaces for the duplex would be required.

Mr. Patel stated for clarification that if there were no changes to the zoning of the property, the owner could build a two-story home on his property with no additional buffer requirements. He posed the question that if the owner were to require a buffer on this property, would the Board be able to decide and vote on this as well. Ms. Eckhardt stated that in that case, the owner would have to come back before the Board and request a conditional rezoning. She added that the maximum height in both cases would be 35 feet.

Mr. Harmon stated that if the case goes before the City Council as a special use permit request, the Council could add conditions, but not during this case. Mr. McCorquodale mentioned the owner would have to meet other requirements, and Mr. Evans would have to come before the Technical Review Committee (TRC) and perform other processes. The Board made additional comments before they voted on case P23-55. Mr. Hight and Mr. Patel agreed that the concerns of the citizens need to be taken into account. Mr. Simon clarified that if the zoning is kept the same, the owner can build a two-story structure on the property, and if he builds a duplex it could be two-story. Ms. Eckhardt confirmed these facts. The Board discussed and clarified what Mr. Evans could build if they approved the rezoning. The Board concluded that Mr. Evans would build a two-story structure on the property.

MOTION: Kevin Hight made a motion that the Board deny their request for the rezoning based on the change that would occur in the nature of the neighborhood and the change in the character of the neighborhood. He added that it is not consistent with the Future Land Use Plan for that area. Greenwood Homes is not Haymount. It is a different place.

Ms. Haper stated that Mr. Hight would have to look at the Future Land Use Plan and determine what about the proposed rezoning is inconsistent with this plan, since the Staff has determined that the rezoning is consistent with the Future Land Use Plan.

Mr. Hight added to his motion that the proposed designation as requested would permit uses that are incongruous to those existing on adjacent tracts.

SECOND: Pavan Patel

VOTE: 4-1 (Stephen McCorquodale opposed)

Mr. Harmon told the neighborhood participants that the applicant could appeal to the City Council.

P23-55. Conditional rezoning from Community Commercial (CC) to Light Industrial Conditional Zoning (LI/CZ) located at 716 Whitfield Street (REID #0436183799000) totaling 2.43 acres ± and being the property of Food Properties LLC.

Heather Eckhardt presented case P23-55. The property is located on Whitfield Street near the railroad tracks and the previous location of the Fayetteville Observer newspaper. The property is zoned Community Commercial. She pointed out that an area in light blue was light industrial. The Future Land Use Plan designated the area as an employment center. The property has existed for decades and has grown over time. The property falls on the edge of the Massey Hill area. To the east are single-family homes and to the south is an electrical contractor's office.

The property is one that Ms. Eckhardt showed the Board the site plan. Ms. Eckhardt informed the Board that the condition for rezoning is to reduce the setbacks to 1 foot all around the site. The lot has been around for a long time and has always been the same shape and size. The owners are requesting the rezoning because the setbacks constrict them from expanding their business on the property. Mr. Hight noted that the owners had previously brought a variance request before the Board and Ms. Eckhardt said they did have a variance case on this property. She said the owners have developed the area per the Unified Development Ordinance (UDO). Ms. Eckhardt pointed out that single-family homes have existed near the property without any previous issues. She said the Staff is recommending approval of this rezoning request to LI/CZ.

Speakers in favor:

Kelly Dodson, 3205 Jean Bullock Road, Fayetteville, NC 28312

- Ms. Dodson said it is a manufacturing company that manufactures food products.
- They have had a food storage business for about three decades. This would create jobs in the Fayetteville area. The area is currently zoned CC and cold storage is not permitted in that use, which was noted when the owner met with the Technical Review Committee. They are trying to fix this issue with this request.
- The request is in keeping with the Future Land Use Plan. They are working on a site plan and building plan. PWC has issued water and sewer taps and reviewed all permits. They will have all of their permits along with stormwater.

Mr. Hight asked the participants if they would like the Board to move to vote without hearing the other speakers in favor, and the speakers agreed to this suggestion.

Mr. Patel closed the hearing for case P23-55.

MOTION: Stephen McCorquodale made a motion to approve the conditional rezoning from Community Commercial (CC) to Light Industrial Conditional Zoning (LI/CZ) located at 716 Whitfield Street and totaling 2.43 acres ± and being the property of Food Properties LLC. because it is consistent with the Future Land Use Plan as demonstrated by the consistency and reasonableness statement as set forth in the packet.

SECOND: Kevin Hight

VOTE: Unanimous (5-0)

I. OTHER BUSINESS

II. ADJOURNMENT

MOTION: Kevin Hight made a motion to adjourn the December 12, 2023, meeting.

SECOND: Pavan Patel

VOTE: Unanimous (5-0)

The meeting adjourned at 7:45 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: 24-3756

Agenda Date: 1/9/2024

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Evidentiary Hearing

Agenda Number: 4.01

TO: Mayor and Members of City Council

THRU: Zoning Commission

FROM: Heather Eckhardt, CZO - Planner II

DATE: January 9, 2024

RE:

A24-04. Variance to reduce minimum setbacks, located at 2936 Mirror Lake Drive (REID 0417978540000), and being the property of Benjamin & Victoria Stout.

COUNCIL DISTRICT(S):

5 - Lynne Greene

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 applicant is requesting a variance to reduce the corner side yard and rear yard setbacks for the property located at 2936 Mirror Lake Drive.

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/Applicant: Benjamin & Victoria Stout

Requested Action: Reduction of corner side yard and rear yard setbacks

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

Property Address: 2936 Mirror Lake Drive

Size: .5 acres ±

Existing Land Use: Vacant

Surrounding Zoning and Land Uses

- North: SF-10 - Single family house
- South: SF-10 - Single family house
- East: SF-10 - Single family house
- West: SF-10 - Single family house

Letters Mailed: 29

Issues/Analysis:

The subject property was subdivided in 2000 as part of Vanstory Hills Section 9-D. The owner and applicant purchased the property in November 2023. The subject property was not altered in size or shape prior to the purchase or after.

Section 30-3.D.3 of the Unified Development Ordinance outlines the setbacks required for the Single Family Residential 10 (SF-10) zoning district. The UDO requires the following setbacks:

- Front: 30 feet
- Corner Side: 30 Feet
- Side: 10 feet
- Rear: 35 feet

The subject property is located at the corner of a short cul-de-sac. The subject property has an unusual shape due to its location on a corner and a cul-de-sac. The unusual shape results in 384.17 feet which are required to meet a front yard/corner side yard setback of 30 feet. Additionally, the subject property has a short rear lot line at only 49.33 feet in length.

The applicant is requesting to reduce the required setbacks to the following:

- Front: No change
- Corner Side: 15 feet along the cul-de-sac street and 10 feet on the bulb
- Side: No change
- Rear: 5 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 applicant intends to construct a house on the subject property in the future. The applicant does not have specific plans for the house at this time but would like to address the setback restrictions at this time.

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 "There are a number of issues that are contributing to our hardship. The primary difficulties are the lot has two "side yards" as it sit on a cul de sac creating an unusual lot shape. In addition it was subdivided with the old setbacks, prior to the UDO."

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 "As previously stated the lot faces two street being on Mirror Lake and Hartford Place being a cul de sac, thus creating challenging setback."

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

The applicant states "The shape creates difficulty building envelope and to resolve this is the only option."

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 "We plan on building a SFR home which will fit in with all the other homes in the area. By granting this variance it will allow the home to blend in better as it won't have weird angles and shapes."

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 "It will not impact the neighbors as we plan on being great neighbors."

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 to reduce the corner side yard setback to 10 feet and 15 feet and reduce the rear yard setback to 5 feet.

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

Project Overview

#1184652

Project Title: Mirror Lake Lot
Application Type: 5.4) Variance
Workflow: Staff Review

Jurisdiction: City of Fayetteville
State: NC
County: Cumberland

Project Location

Project Address or PIN: 2936 MIRROR LAKE DR
(0417978540000)

Zip Code: 28303

GIS Verified Data**Property Owner: Parcel**

- 2936 MIRROR LAKE DR: SMITH, TIMOTHY C JR;SMITH, JACQUELINE A

Acreage: Parcel

- 2936 MIRROR LAKE DR: 0.5

Zoning District: Zoning District

- 2936 MIRROR LAKE DR: SF-10

Subdivision Name:**Fire District:****Hospital Overlay District:****Cape Fear District:****Haymount Historic District:****100 Year Flood:** <100YearFlood>**Watershed:****Airport Overlay District:****Coliseum Tourism District:****Downtown Historic District:****Floodway:****500 Year Flood:** <500YearFlood>**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.:

Minimum sideyard setback

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

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

SF10 and all the adjoining lots are SFR homes

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.

Please describe how 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.:

There are a number of issues that are contributing to our hardship. The primary difficulties are the lot has two "side yards" as it sit on a cul de sac creating an unusual lot shape. In addition it was subdivided with the old setbacks, prior to the UDO.

Please describe how 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 of the actions of the landowner, nor may hardships resulting from personal circumstances as well as hardships resulting from conditions that are common to the neighborhood or the general public be the basis for granting a variance.:

As previously stated the lot faces two street being on Mirror Lake and Hartford Place being a cul de sac, thus creating challenging setback.

Please describe how the Variance is the minimum action that will make possible a reasonable use of land or structures.:

The shape creates diffiucly building envelope and to resolve this is the only option.

Please describe how the Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit.:

We plan on building a SFR home which will fit in with all the other homes in the area. By granting this variance it will allow the home to blend in better as it won't have weird angles and shapes.

Please describe how, in the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done.:

It will not impact the neighbors as we plan on being great neighbors.

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

Ben Stout

2507 Spring Valley Rd

Fayetteville, NC 28303

P:9104764502

ben@benstoutconstruction.com

As an unlicensed contractor, I am aware that I cannot enter into a contract that the total amount of the project exceeds \$40,000. :

NC State General Contractor's License Number:

NC State Electrical Contractor #1 License Number:

NC State Electrical Contractor #2 License Number:

NC State Mechanical Contractor's #1 License Number:

NC State Mechanical Contractor's #2 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 #: A24-04

Request: Variance

Location: 2936 Mirror Lake Drive

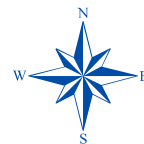
Legend



A24-04

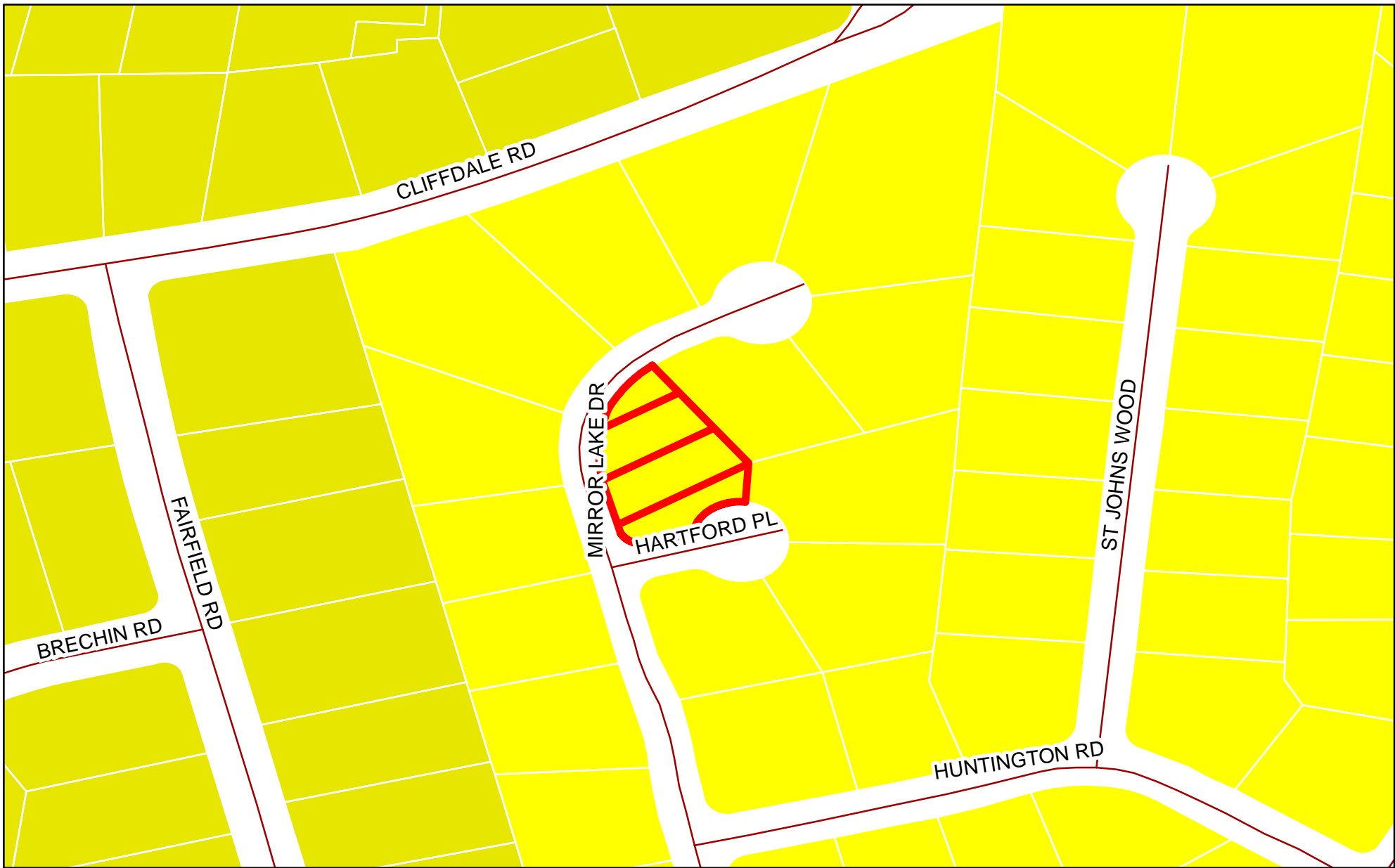


A24-04 Notification Buffer



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





Zoning Map
Case #: A24-04

Request: Variance

Location: 2936 Mirror Lake Drive

Legend



A24-04



SF-10 - Single-Family Residential 10

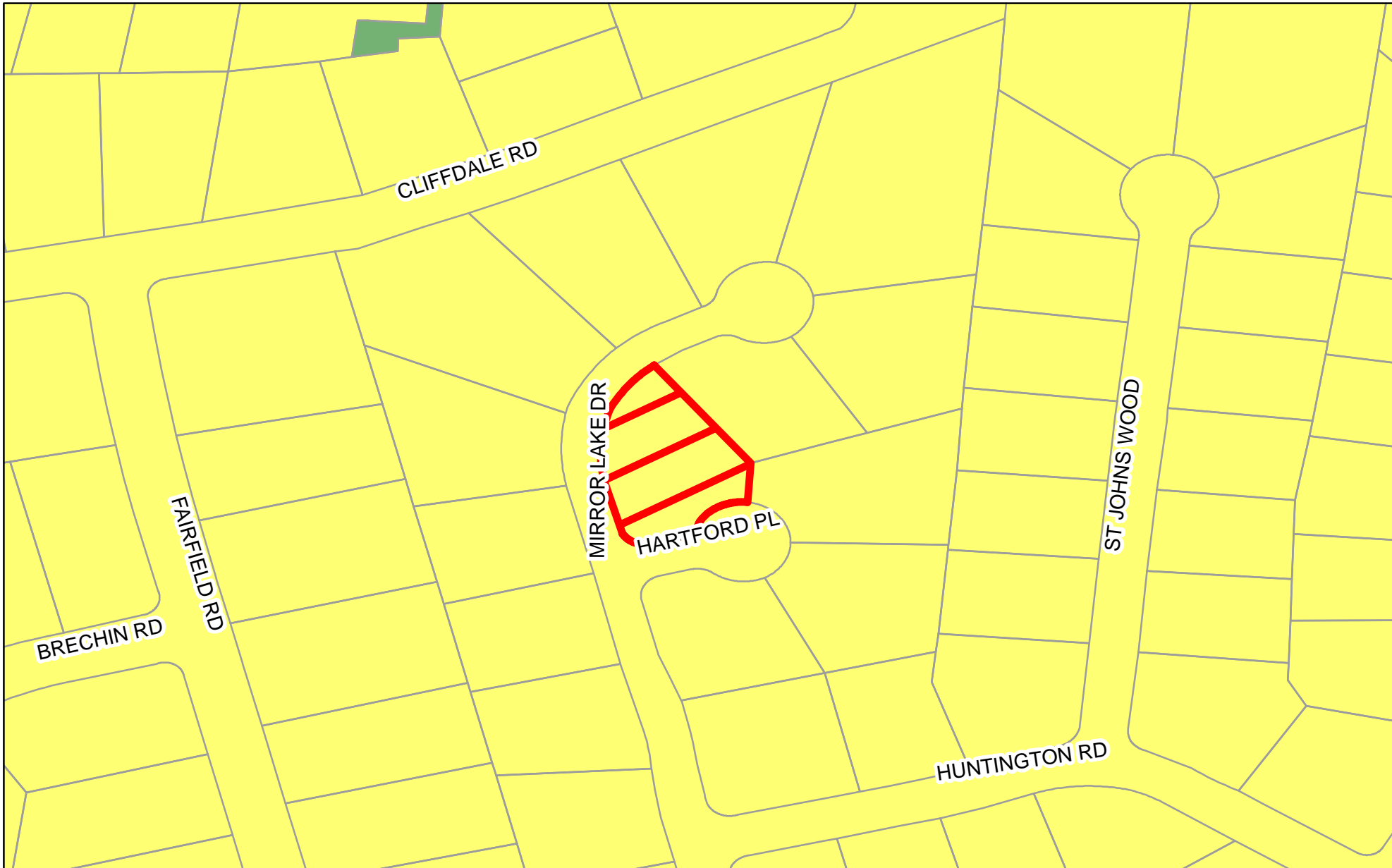


SF-15 - Single-Family Residential 15



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





Land Use Map

Case #: A24-04

Request: Variance

Location: 2936 Mirror Lake Drive

Legend



A24-04 Land Use Plan 2040

Character Areas



PARKOS - PARK / OPEN SPACE



LDR - LOW DENSITY



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





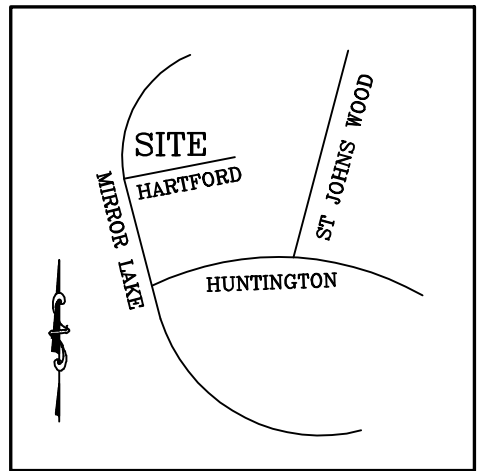


K:\data\proj\SMITH, JACQUELINE 2936 MIRROR LAKE DR\CADD\CIVIL\853 VANSTORY HILLS\BOUNDARY.dwg, 12/22/2023 8:55:30 AM, Isupler, 1:30

LEGEND

- O DENOTES IRON PIPE OR BREAK IN LINE
- △ DENOTES CONTROL CORNER
- CONCRETE MONUMENT
- SPOT ELEVATION
- EIR EXISTING IRON REBAR
- SIR SET IRON REBAR
- SSCO TELE/ELEC PEDESTAL
- WATER METER
- CATCH BASIN
- SEWER MANHOLE
- FIRE HYDRANT

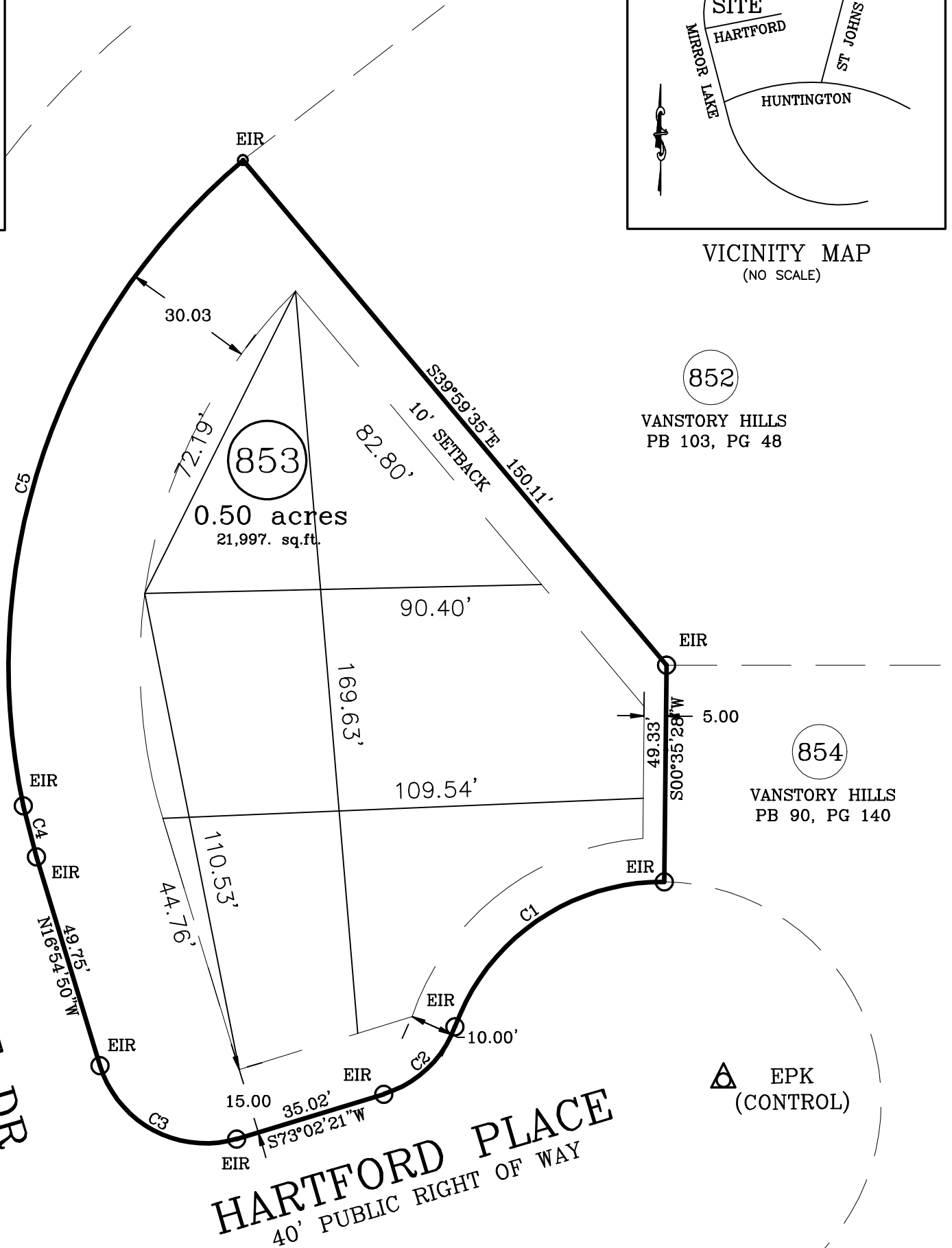
NOTE: 1/2" REBAR SET AT ALL
PROPERTY CORNERS FLUSH WITH THE
GROUND UNLESS OTHERWISE NOTED



VICINITY MAP
(NO SCALE)



MIRROR LAKE DR
40' PUBLIC RIGHT OF WAY



△ EPK
(CONTROL)

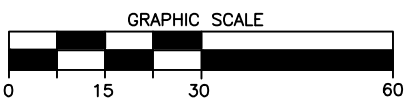
△ EPK
(CONTROL)

PHYSICAL SURVEY

CURVE TABLE				
CURVE	LENGTH	RADIUS	CHORD	DIST
C1	61.83	50.22	S55°17'33"W	57.99
C2	23.19	24.66	S46°34'42"W	22.35
C3	39.17	25.24	N61°50'59"W	35.35
C4	12.03	595.60	N14°30'43"W	12.03
C5	163.18	150.60	N18°49'03"E	155.31

PROPERTY OF: JACQUELINE & TIMOTHY SMITH
ADDRESS: 2936 MIRROR LAKE
CITY OF: FAYETTEVILLE
COUNTY OF: CUMBERLAND

TOWNSHIP OF: CROSS CREEK
DATE: DEC 22, 2023
SCALE: 1" = 30'
REFERENCE: LOT 853
VANSTORY HILLS
PB 103, PG 48



Larry King & Associates, R.L.S., P.A.
P.O. Box 53787
1333 Morganton Road, Suite 201
Fayetteville, NC 28305
Phone: (910)483-4300
Fax: (910)483-4052
www.LKandA.com
NC Firm License C-0887

"I certify that this map was drawn under my supervision from an actual survey made under my supervision (deed description recorded in PB 103, PG 48 or other reference source as shown); that the boundaries not surveyed are indicated as drawn from information in Book and page as referenced above that the ratio of precision or positional accuracy is > 1:10,000; and that this map meets the requirements of The Standards of Practice for Land Surveying in North Carolina (21 NCAC 56. 1600)."

PRELIMINARY
FOR REVIEW ONLY, NOT
FOR CONSTRUCTION

W. Larry King, Professional Land Surveyor L-1339



City of Fayetteville

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

City Council Action Memo

File Number: 24-3751

Agenda Date: 1/9/2024

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Evidentiary Hearing

Agenda Number: 4.02

TO: Mayor and Members of City Council

THRU: Zoning Commission

FROM: Heather Eckhardt, CZO - Planner II

DATE: January 9, 2024

RE:

A24-05. Variance to increase maximum setbacks, located at 522 Person Street & two unaddressed parcels (REID 0437923505000, 0437923367000, and 0437923396000), and being the property of Second Baptist Church Inc, represented by Gordon Rose of Gradient, PLLC.

COUNCIL DISTRICT(S):

2 - Malik Davis

Relationship To Strategic Plan:

Strategic Operating Plan FY 2022

Goals 2027

Goal 2: Responsive City Government Supporting a Diverse and Viable Economy

- Objective 2.2 - Invest in community places to ensure revitalization and increase quality of life

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 applicant is requesting a variance to increase the maximum corner side setback from 20 feet to 80 feet.

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: Second Baptist Church Inc

Applicant: Gordon Rose of Gradient, PLLC

Requested Action: Increase maximum corner side yard setback

Zoning District: Downtown 2 (DT-2)

Property Address: 522 Person Street and two unaddressed parcels

Size: .9 acres ±

Existing Land Use: Religious institution

Surrounding Zoning and Land Uses

- North: DT-2 - Office building
- South: DT-2 - Park and vacant commercial building
- East: DT-2 - Vacant lots
- West: DT-2 - Office building

Letters Mailed: 22

Issues/Analysis:

The subject property currently has three structures which were constructed between 1970 and 2003. The School of Hope, a private school, currently occupies the building at the center of the site (111 Burns Street). They would like to construct a separate building on the site specifically for the school.

The subject property is currently zoned Downtown 2 (DT-2). The Downtown zoning districts place *maximum* front and corner side yard setbacks instead of the *minimum* setback required for most other zoning districts. This is intended to bring structures to the street and contribute to the pedestrian feel of these areas. However, the proposed development would be located along Burns Street which is much more vehicle oriented than other streets in the DT-2 zoning district.

Due to the shape of the subject property and existing site conditions (parking lot), the maximum setback would require the removal of existing parking and create an inaccessible and undeveloped area at the rear of the property.

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 applicant is requesting to increase the maximum corner side setback from 20 feet to 80 feet. This would allow for the construction of a new structure to house an existing private school. If the variance is approved, the site will be reviewed by the Technical Review Committee to ensure that the site meets the requirements of the Unified Development 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 "1. Maintaining a maximum setback of 20 feet eliminates some of the existing parking spaces and renders the eastern portion of the property as essentially unusable.

2. The rear portion of this property is narrow such that, if the building is located in accordance with the ordinance, the rear (eastern) portion of the property is inaccessible.

3. This variance will make possible a reasonable use of the property and maintains the current use of the existing parking lot."

- 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 "The southeastern portion of this property is narrow such that the building cannot be rotated or relocated in such way as to comply with the maximum building setback without eliminating parking spaces and rendering that portion of the property as essentially inaccessible and unusable."

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

The applicant states "By approving this variance, the building can be located in such a way as to make the best use of the property and maintain existing parking spaces."

- 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 "This building will be located off of a narrow side street (Burns Street) and does not negatively impact the harmony of the surrounding parcels."

- 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 "By approving this variance the public safety and welfare will not be negatively affected."

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 to increase the maximum corner side yard setback from 20 feet to 80 feet.

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 Plans - UDO & Proposed

Project Overview

#1175587

Project Title: School of Hope
Application Type: 5.4) Variance
Workflow: Staff Review

Jurisdiction: City of Fayetteville
State: NC
County: Cumberland

Project Location

Project Address or PIN:

- 0437-92-3505 (Unverified)
- 522 PERSON ST (0437923505000)

Zip Code: 28301

GIS Verified Data

Property Owner: Parcel

- 522 PERSON ST: SECOND BAPTIST CHURCH INC

Acreage: Parcel

- 522 PERSON ST: 0.77

Zoning District: Zoning District

- 522 PERSON ST: CC

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: <100YearFlood>

500 Year Flood: <500YearFlood>

Watershed:

Variance Request Information

Requested Variances: Maximum building setback

Section of the City Code from which the variance is being requested.: 30-3.E.11

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.:

For the DT2 zone, there is a maximum building setback of 20 feet from the right-of-way. Placing the building in this location would eliminate a portion of the parking lot for the proposed facility and for Second Baptist Church (the owner of the property). Request this maximum building setback be waived such that the building can be sited to be at least 80 feet from the right-of-way of Burns Street.

This property and all surrounding properties are zoned DT2.

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.

Please describe how 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.:

1. Maintaining a maximum setback of 20 feet eliminates some of the existing parking spaces and renders the eastern portion of the property as essentially unusable.
2. The rear portion of this property is narrow such that, if the building is located in accordance with the ordinance, the rear (eastern) portion of the property is inaccessible.
3. This variance will make possible a reasonable use of the property and maintains the current use of the existing parking lot.

Please describe how 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 of the actions of the landowner, nor may hardships resulting from personal circumstances as well as hardships resulting from conditions that are common to the neighborhood or the general public be the basis for granting a variance.:

The southeastern portion of this property is narrow such that the building cannot be rotated or relocated in such way as to comply with the maximum building setback without eliminating parking spaces and rendering that portion of the property as essentially inaccessible and unusable.

Please describe how the Variance is the minimum action that will make possible a reasonable use of land or structures.:

By approving this variance, the building can be located in such a way as to make the best use of the property and maintain existing parking spaces.

Please describe how the Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit.:

This building will be located off of a narrow side street (Burns Street) and does not negatively impact the harmony of the surrounding parcels.

Please describe how, in the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done.:

By approving this variance the public safety and welfare will not be negatively affected.

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

Height 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

Mamo Meaza
M Square Construction
230 Donaldson Street, Suite 400A
Fayetteville, NC 28301
P:910-427-7777
mmeaza@msquareus.com

Project Contact - Agent/Representative

Gordon Rose
Gradient, PLLC
230 Donaldson Street, 500A
Fayetteville, NC 28301
P:9108247731
grose@gradientnc.com

As an unlicensed contractor, I am aware that I cannot enter into a contract that the total amount of the project exceeds \$40,000. :

NC State General Contractor's License Number:

NC State Electrical Contractor #1 License Number:

NC State Electrical Contractor #2 License Number:

NC State Mechanical Contractor's #1 License Number:

NC State Mechanical Contractor's #2 License Number:

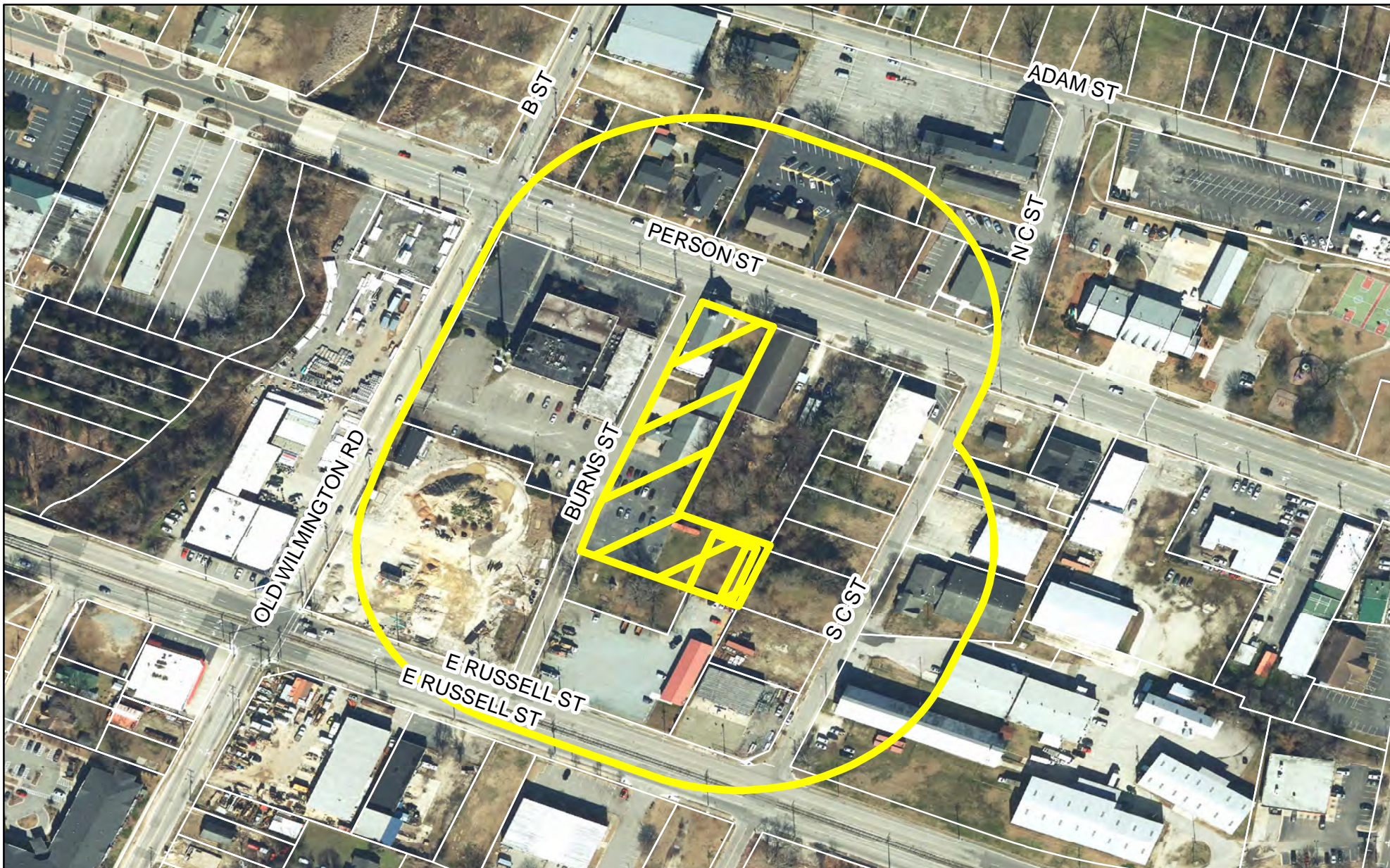
NC State Plumbing Contractor #1 License Number:

NC State Plumbing Contractor #2 License Number:

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



*Proposed
School of Hope
Second Baptist Church*



Aerial Notification Map

Case #: A24-05

Request: Variance

Location: 522 Person Street & 2 unaddressed parcels,
0437923505000, 0437923367000, & 0437923396000

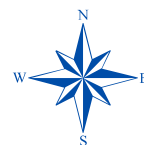
Legend



A24-05

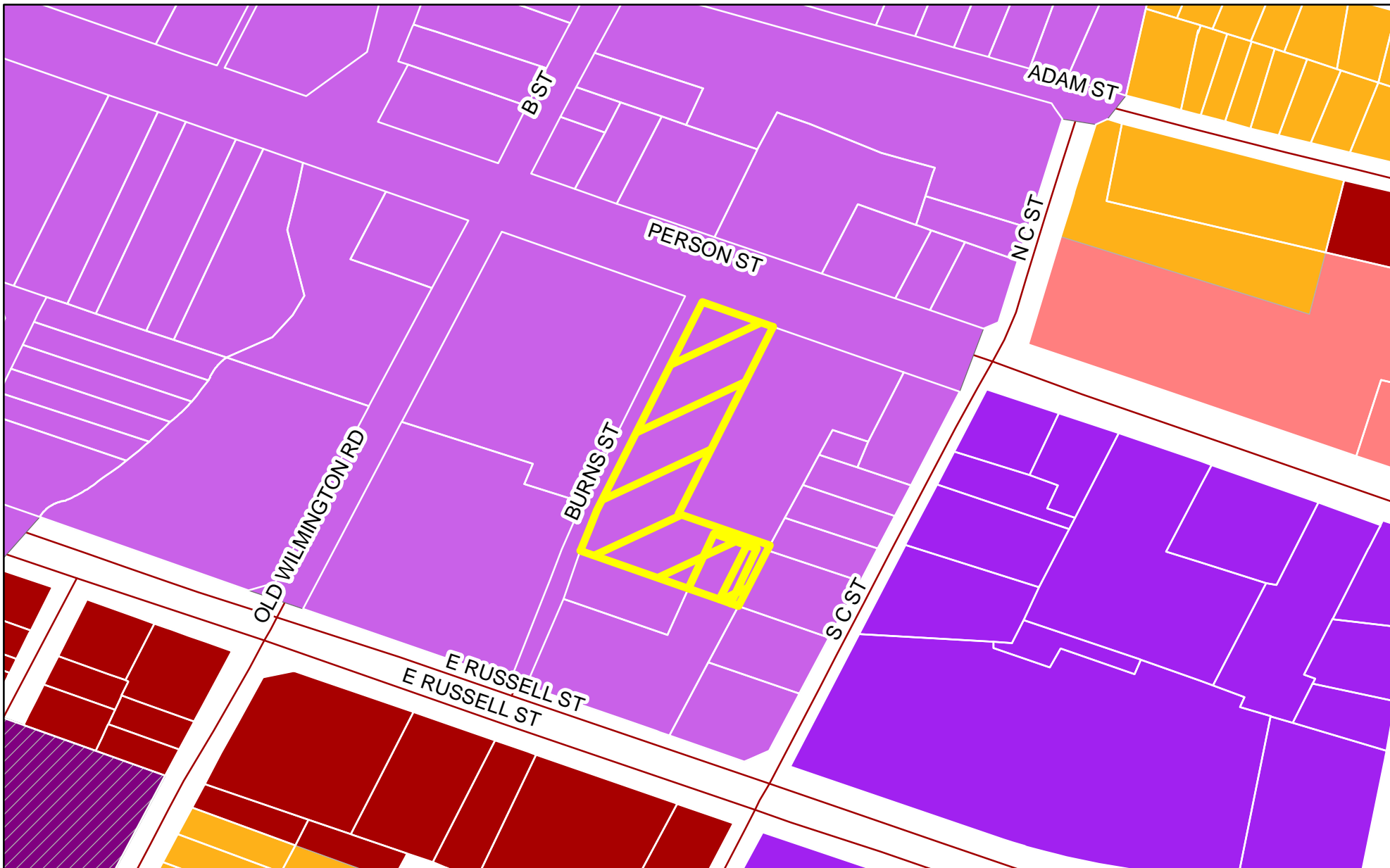


A24-05 Notification Buffer



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













Zoning Map

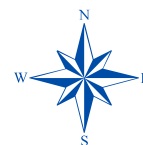
Case #: A24-05

Request: Variance

Location: 522 Person Street & 2 unaddressed parcels
0437923505000, 0437923367000, & 0437923396000

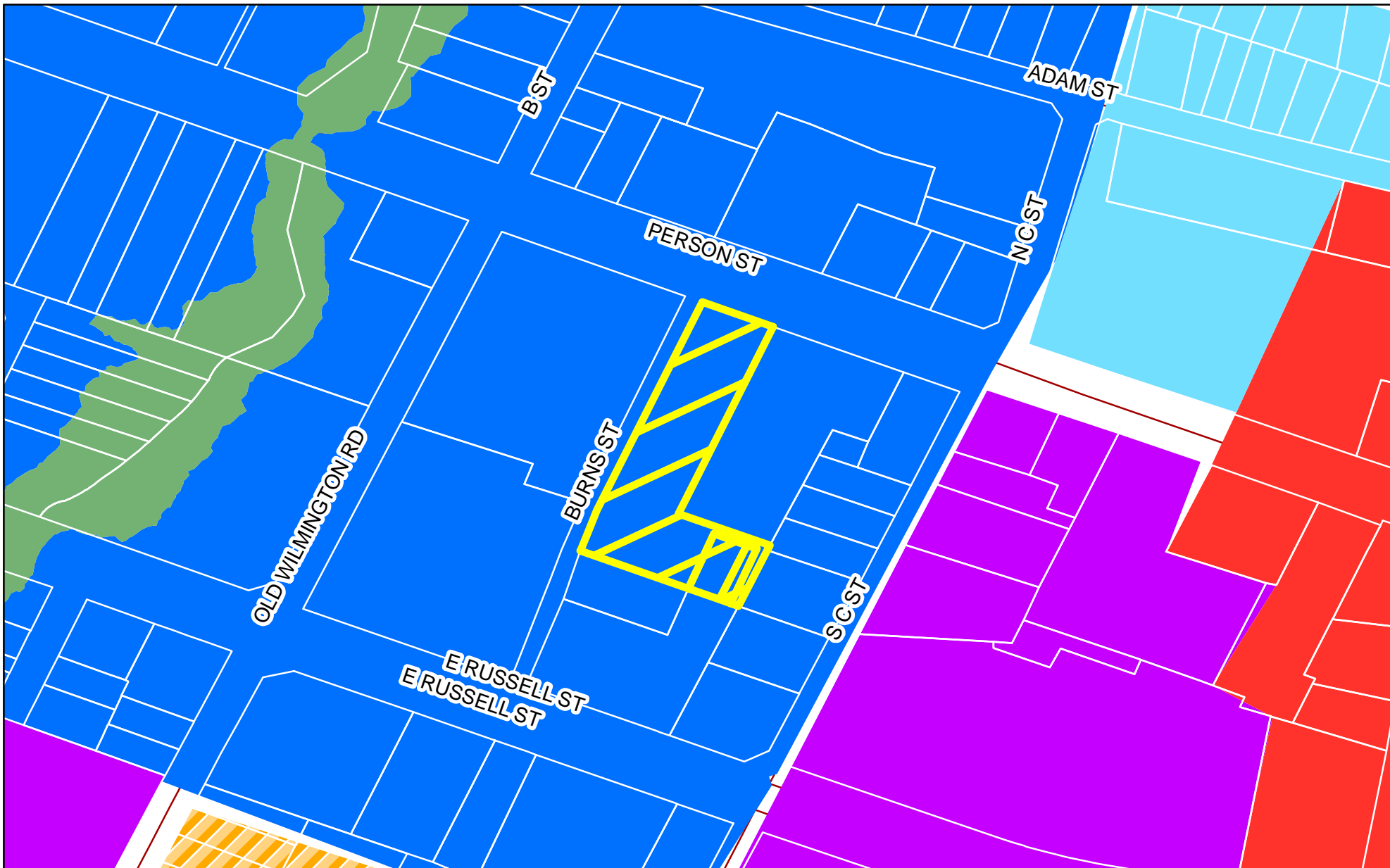
Legend

	A24-05		CC - Community Commercial
DT Zoning			DT - Downtown
Zoning			HI - Heavy Industrial
	DT-2		LC - Limited Commercial
			MR-5 - Mixed Residential 5
			MU/CZ - Conditional Mixed-Use



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





Land Use Map

Case #: A24-05

Request: Variance

Location: 522 Person Street & 2 unaddressed parcels
0437923505000, 0437923367000, & 0437923396000







Legend



A24-05

Land Use Plan 2040

Character Areas

-  PARKOS - PARK / OPEN SPACE
-  NIR - NEIGHBORHOOD IMPROVEMENT
-  DTMXU - DOWNTOWN
-  HC - HIGHWAY COMMERCIAL
-  OI - OFFICE / INSTITUTIONAL
-  EC - EMPLOYMENT CENTER



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







Setback required by UDO



Proposed Setback





City of Fayetteville

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

City Council Action Memo

File Number: 24-3749

Agenda Date: 1/9/2024

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: January 9, 2024

RE:

P24-01. Rezoning from Office/Institutional (OI) and Community Commercial (CC) to Single Family Residential 10 (SF-10) located on unaddressed lots on Summer Hill Rd (0409214573000 & 0409215651000) totaling .67 acres ± and being the property of Rescue Rehab Resale LLC, represented by Jeremy Sparrow of Longitude Planning Group, PLLC.

COUNCIL DISTRICT(S):

4- Haire

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

Goal III: City invested in Today and Tomorrow

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

Goal IV: Desirable Place to Live, Work, and Recreate

- Objective 4.5 - To ensure a place for people to live in great neighborhoods
- Objective 4.6 - To reduce poverty and homelessness

Goal VI: Collaborative Citizen and Business Engagement

- Objective 6.1 - To ensure collaborative relationships with the business community, local governments, military, and stakeholders

Executive Summary:

The applicant is seeking to rezone two parcels totaling 0.67 acres ± from Office and Institutional (OI) and Community Commercial (CC) to Single Family Residential 10 (SF-10).

Background:

Owner: Rescue Rehab Resale LLC

Applicant: Jeremy Sparrow

Requested Action: OI and CC to SF-10

REID #s: 0409214573000 and 0409215651000

Council District: 4 - D.J. Haire

Status of Properties: Vacant and wooded with a chain link fence along the front of the property.

Size: .67 acres ±

Adjoining Land Use & Zoning:

- North: CC - Marathon Convenience Store with Gas Sales and Military Surplus Store
- South: SF-10 - Vacant Land; Single Family Housing
- East: CC - Strip Style Retail
- West: SF-10 - Single Family Housing

Annual Average Daily Traffic: Yadkin Road: 18,500

Letters Mailed: 113

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). These areas predominantly consist of single-family homes, often with accessory dwellings, occasionally featuring isolated duplexes or townhomes. The average lot density ranges from 1 to 4 dwellings per acre, reflecting a suburban, auto-oriented character with essential utility services.

Issues/Analysis:

History:

The parcels in question were annexed into the City in 1998. Aerial photography from the Cumberland County GIS system reveals that these properties have remained undeveloped since at least 1968. Situated within the Summerhill Subdivision, the parcels have been platted as part of the subdivision since August 1964.

Surrounding Area:

To the northeast of the properties, there is CC-zoned land hosting a Marathon Convenience Store with Gas Sales, both with their main entrances fronting Yadkin Road. Along Summerhill Road to the south, vacant land zoned SF-10 is designated for single-family housing. On the eastern side, there is CC-zoned strip-style retail. To the

west, the area comprises SF-10-zoned single-family housing lots. The lots across and adjacent to the properties along Summerhill Road are also designated as single-family residential lots.

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 seeking to rezone two parcels currently zoned Office and Institutional (OI) and Community Commercial (CC) to Single Family Residential 10 (SF-10). The SF-10 District is designed for primarily low-density, single-family detached residential development. It allows for flexibly designed residential layouts, accommodating various housing types and arrangements responsive to environmental and site conditions. Uses within the district are governed by the design standards outlined in Article 30-5:

Development Standards.

This district is suitable for two- to four-family dwellings designed to resemble single-family detached homes and zero lot line development, following the requirements of this Ordinance. The regulations actively discourage any use that significantly disrupts the development of single-family dwellings or undermines the quiet residential nature of the district. Permitted complementary uses commonly found in residential zoning districts include parks, open space, minor utilities, accessory dwellings up to 800 square feet in size, schools, and places of worship.

Straight Zoning:

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

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:

The proposed amendment aims to align the properties with the Low Density Residential recommendation outlined in the Future Land Use Plan. With the exception of commercial development along Yadkin Road, the surrounding area predominantly features single-family development, with a few exceptions. These two parcels, along with the parcel to the south, represent some of the last remaining plots in the Summerhill Subdivision slated for development. Developing them aligns with the established neighborhood's intent and character, offering the property owner a chance to utilize the land productively and contribute much-needed housing to the community.

The proposed amendment is in harmony with the surrounding area, characterized by a mix of residential, commercial, and retail uses. It is structured to prevent premature and excessive development, given the current vacant status of the properties. The associated zoning designation and dimensional regulations provide safeguards against hasty development. The amendment is anticipated to establish a logical and orderly development pattern, enhancing the area's functionality and efficiency. It is unlikely to adversely impact property values significantly; in fact, the development of these parcels may have a positive effect. While the clearing of currently wooded land is inevitable, adherence to existing regulations through site and building plan reviews will mitigate

environmental impact, ensuring a thoughtful and responsible development process.

Consistency and Reasonableness Statements:

The Future Land Use Plan includes defined goals, policies, and strategies. This application aligns with the city's strategic growth strategies and fulfills the goals outlined in the attached Consistency and Reasonableness form.

Budget Impact:

While there won't be an immediate budgetary impact, this rezoning will have an economic impact in the future as it will lead to the collection of taxes.

Options:

1. Recommends approval of the map amendment to SF-10 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;
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 SF-10 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 the standards that apply to such uses are 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 Statement

Project Overview

#1183689

Project Title: Summerhill Road (Lots 21 and 22)
Application Type: 5.1) Rezoning (Map Amendment)
Workflow: Staff Review

Jurisdiction: City of Fayetteville
State: NC
County: Cumberland

Project Location

Project Address or PIN:

- 0 SUMMER HILL RD (0409214573000)
- 0 SUMMER HILL RD (0409215651000)

Zip Code: 28303

GIS Verified Data

Property Owner: Parcel

- 0 SUMMER HILL RD: RESCUE REHAB RESALE LLC
- 0 SUMMER HILL RD: RESCUE REHAB RESALE LLC

Acreage: Parcel

- 0 SUMMER HILL RD: 0
- 0 SUMMER HILL RD: 0

Zoning District: Zoning District

- 0 SUMMER HILL RD: CC
- 0 SUMMER HILL RD: CC

Subdivision Name:

Fire District:
Hospital Overlay District:
Cape Fear District:
Haymount Historic District:
100 Year Flood: <100YearFlood>
Watershed:

Airport Overlay District:
Coliseum Tourism District:
Downtown Historic District:
Floodway:
500 Year Flood: <500YearFlood>

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: 0.67
Water Service: Public
A) Please describe all existing uses of the land and existing structures on the site, if any:
N/A

Previous Amendment Approval Date:
Proposed Zoning District: SF10
Is this application related to an annexation?: No
Sewer Service: Public
B) Please describe the zoning district designation and existing uses of lands adjacent to and across the street from the subject site.:
To the northeast of the site is a military surplus store and a gas station, both with their main entrance fronting Yadkin road. The lots adjacent to and across the street from the site along Summerhill road are all single family residential lots.

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 2040 Comprehensive plan shows this site to be Low Density Residential which is what will be proposed for the site.

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

No

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

It will properly utilize lots according to their intended use in the 2040 Comprehensive Plan.

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.:

It integrates seamlessly with the adjoining residential uses and aligns with the 2040 Comprehensive Plan.

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

It coincides with the development already built along Summerhill Road which is Low Density Residential.

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

The surrounding areas are already developed.

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

N/A

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

It does not, the proposed zoning matches zoning adjacent to it along Summerhill Road

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

N/A

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

Jimmy Puczylo
Rescue Rehab Resale, LLC
PO Box 25640
Fayetteville, NC 28314
P:910-424-0455
regency@regencync.com

Project Contact - Agent/Representative

Jeremy Sparrow
Longitude Planning Group, PLLC
164 NW Broad Street
Southern Pines, NC 28387
P:734-47-1917
jsparrow@longitudeplanninggroup.com

As an unlicensed contractor, I am aware that I cannot enter

into a contract that the total amount of the project exceeds \$40,000. :

NC State General Contractor's License Number:

NC State Electrical Contractor #1 License Number:

NC State Electrical Contractor #2 License Number:

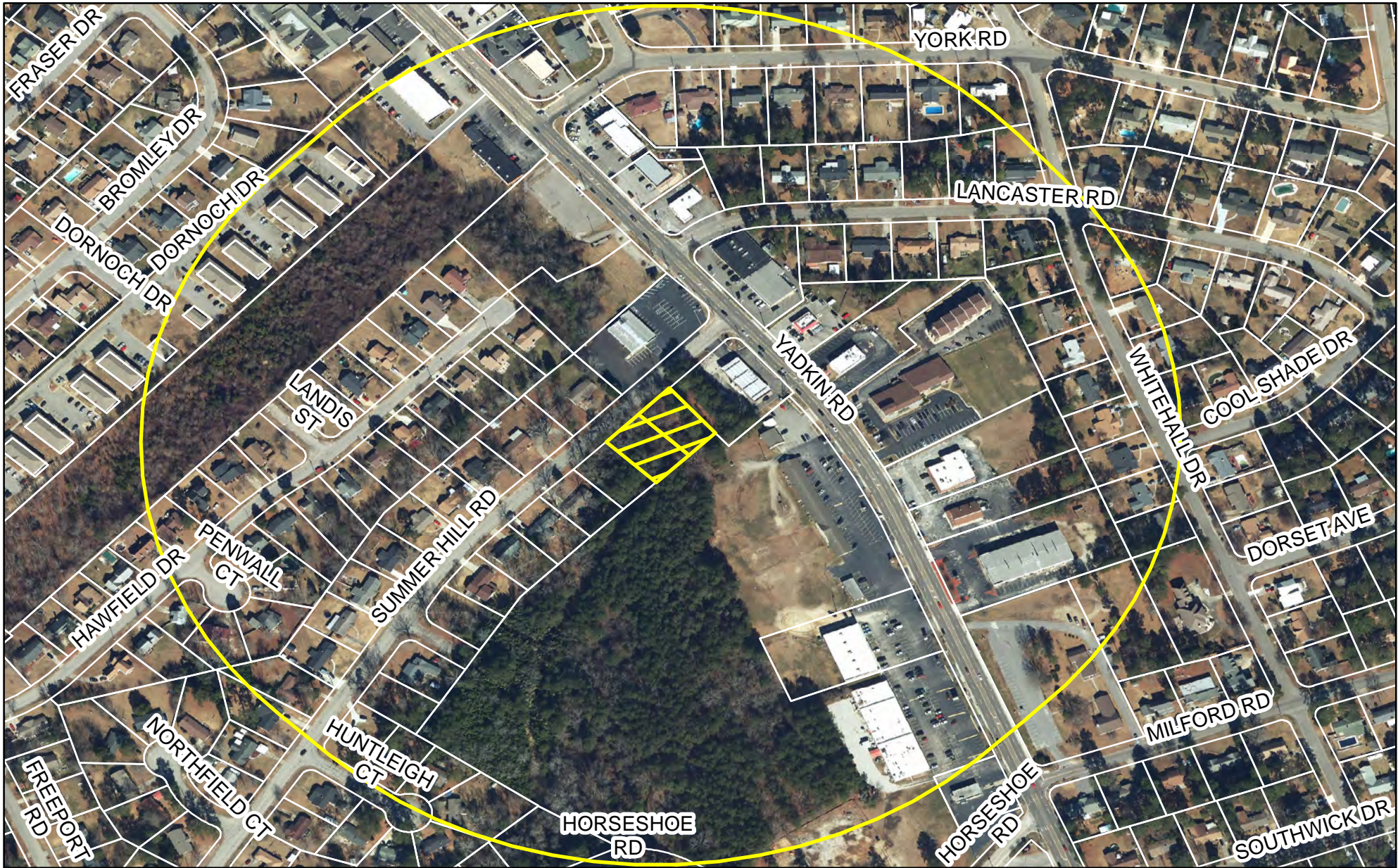
NC State Mechanical Contractor's #1 License Number:

NC State Mechanical Contractor's #2 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

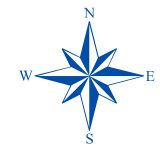
Case #: P24-01

Request: Rezoning Office/Institutional (OI)
and Community Commercial (CC)
to Single Family Residential 10 (SF-10)

Location: 0 Summer Hill Road

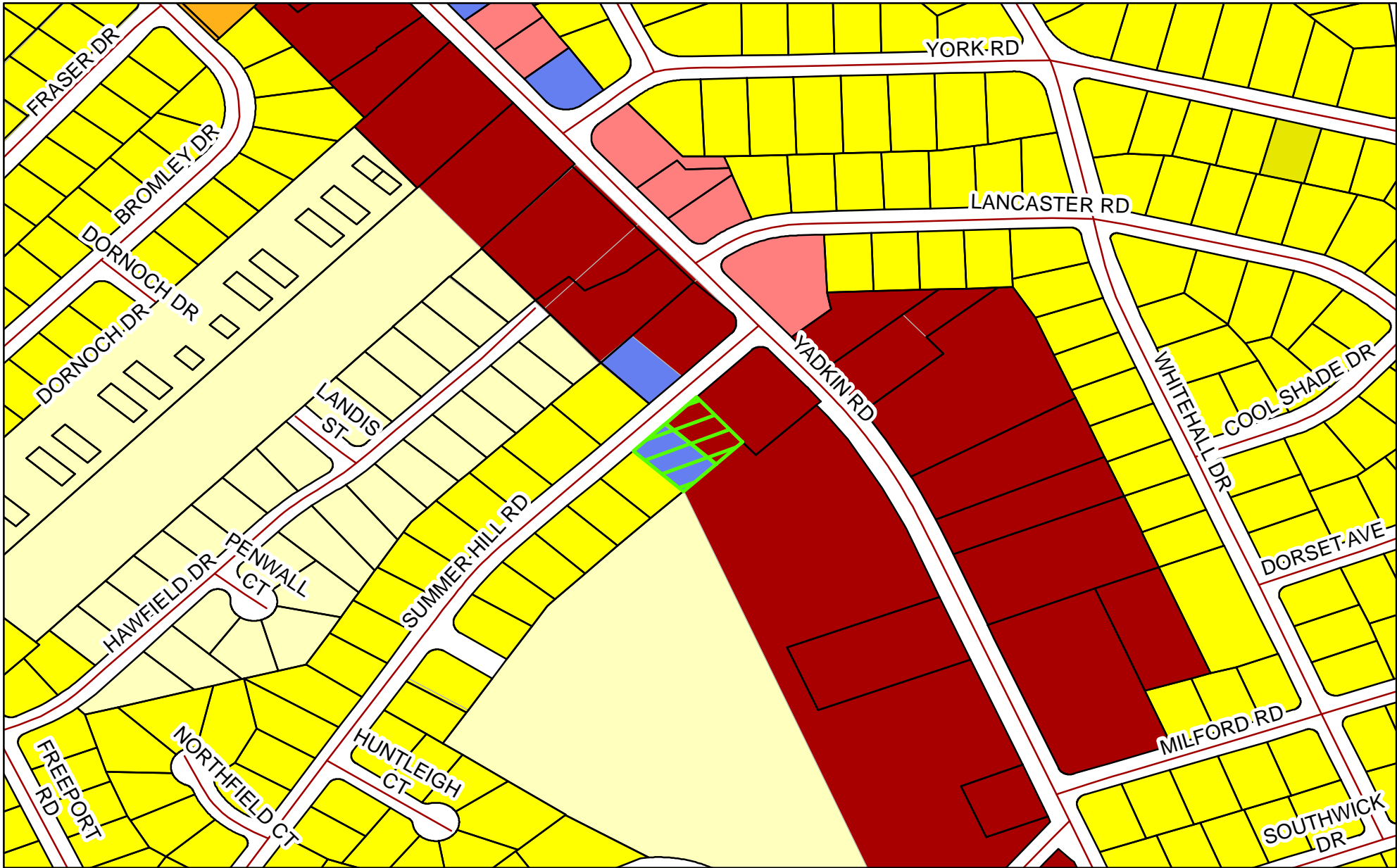
Legend

-  P24-01 Buffer
-  P24-01



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













Zoning Map

Case #: P24-01

Request: Rezoning Office/Institutional (OI) and Community Commercial (CC) to Single Family Residential 10 (SF-10)

Location: 0 Summer Hill Road

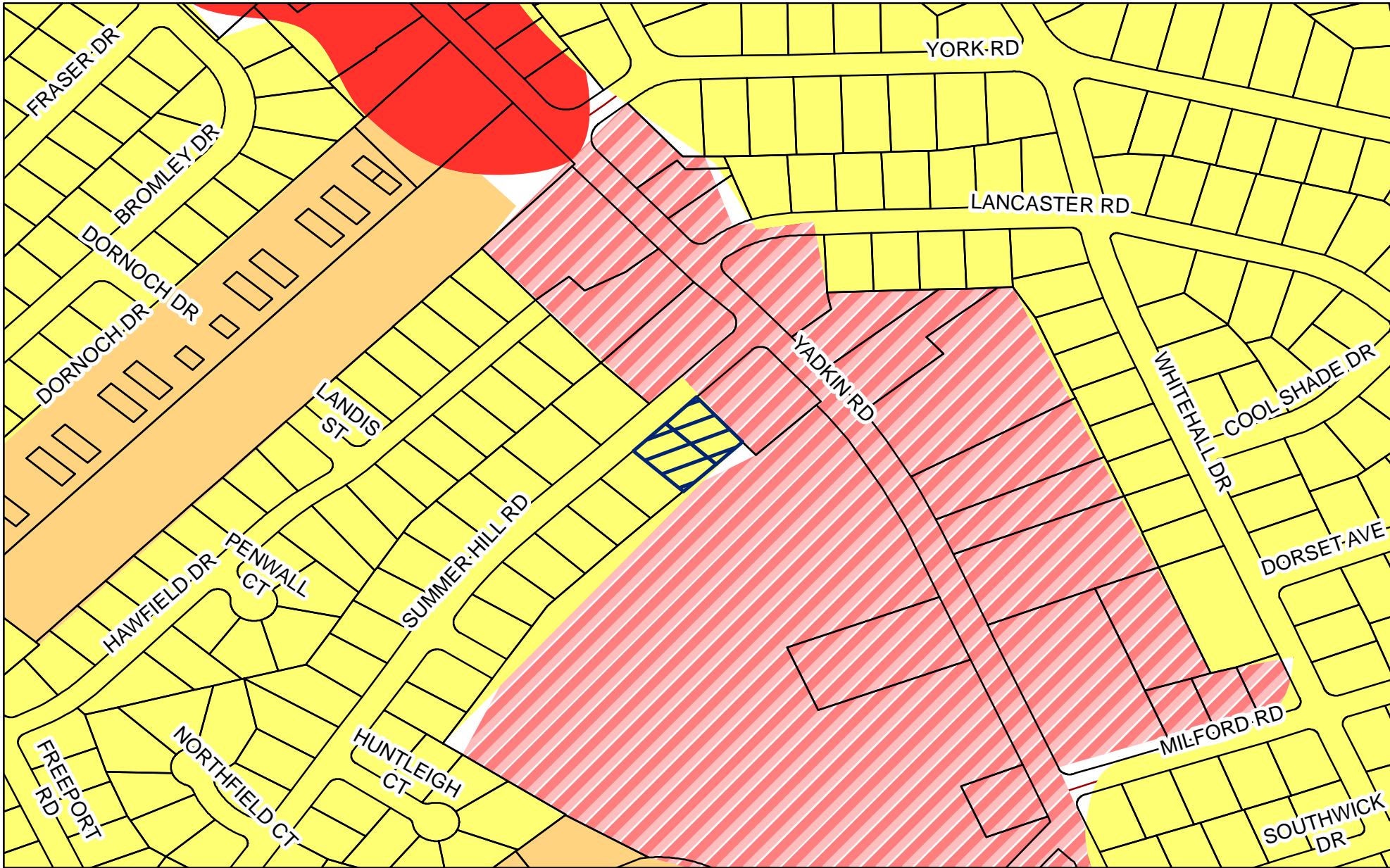
Legend

- | | |
|--|--|
|  P24-01 |  OI - Office & Institutional |
|  CC - Community Commercial |  SF-6 - Single-Family Residential 6 |
|  LC - Limited Commercial |  SF-10 - Single-Family Residential 10 |
|  MR-5 - Mixed Residential 5 |  SF-15 - Single-Family Residential 15 |



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





Future Land Use Map

Case #: P24-01

Request: Rezoning Office/Institutional (OI) and Community Commercial (CC) to Single Family Residential 10 (SF-10)


Location: 0 Summer Hill Road

Legend


 P24-01


Land Use Plan 2040

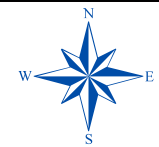
Character Areas

 LDR - LOW DENSITY

 MDR - MEDIUM DENSITY

 CSR - COMMERCIAL STRIP REDEVELOPMENT

 HC - HIGHWAY COMMERCIAL



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





Surrounding Properties



North



West



East

Consistency and Reasonableness Statement

Map Amendments

Pursuant N.C.G.S. Sections 160D-604 and -605, the Zoning Commission finds that the proposed zoning map amendment in case P24-01 is consistent/inconsistent with the City of Fayetteville's Future Land Use Map and Plan (Comprehensive Plan). The following analysis examines the proposed amendment relative to the goals and land-use policies and strategies of the Comprehensive Plan:

Consistency

1. GOALS

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

2. LAND USE POLICES AND STRATEGIES:

LAND USE POLICIES 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	
1.7: Encourage a logical progression of housing development and discourage "leapfrog" development.	X	
LUP 4: Create well designed and walkable commercial and mixed use districts	X	
4.1: Ensure new development meets basic site design standards.	X	
4.2: Encourage context-sensitive design.	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	

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):

January 9, 2024
Date

Chair Signature

Print



City of Fayetteville

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

City Council Action Memo

File Number: 24-3750

Agenda Date: 1/9/2024

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Public Hearing
(Public & Legislative)

Agenda Number: 5.02

TO: Mayor and Members of City Council

THRU: Zoning Commission

FROM: Demetrios Moutos - Planner I

DATE: January 9, 2024

RE:

P24-02. Rezoning from Agricultural Residential (AR) to Community Commercial (CC) located on unaddressed lots on Stoney Point Road (9485667168000 & 9485750853000) totaling 9.77 acres ± and being the property of Margaret Nicole Ritter, represented by Mark Candler of Candler Development Group LLC.

COUNCIL DISTRICT(S):

6 - Derrick Thompson

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

Goal III: City invested in Today and Tomorrow

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

Goal IV: Desirable Place to Live, Work, and Recreate

- Objective 4.5 - To ensure a place for people to live in great neighborhoods
- Objective 4.6 - To reduce poverty and homelessness

Goal VI: Collaborative Citizen and Business Engagement

Objective 6.1 - To ensure collaborative relationships with the business community, local governments, military, and stakeholders

Executive Summary:

The applicant is seeking to rezone two parcels totaling 9.77 acres ± from Agricultural Residential to Community Commercial.

Background:

Owner: Sandra Ayscue Ritter

Applicant: Mark Candler

Requested Action: AR to CC

REID #s: 9485667168000 and 9485750853000

Council District: 6 - Derrick Thompson

Status of Properties: Vacant

Size: 9.77 acres ±

Adjoining Land Use & Zoning:

- North: AR - Vacant/Farmland
- South: CC - Commercial Retail and Single Family
- East: CC - Vacant/Farmland
- West: LC, AR, SF-15 - Single Family

Annual Average Daily Traffic: Stoney Point Road: 14,500

Letters Mailed: 39

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 city portion be developed as Neighborhood Mixed Use (NMU). This designation supports neighborhood-scale commercial uses with a horizontal mix of uses, occasionally vertically in key locations, featuring buildings of 1-3 stories. The development includes smaller-scale multi-family, attached, and small lot single-family structures, with lower density towards the edges.

Issues/Analysis:

History:

The parcels in question were annexed into the City in 2005. Aerial photography from the Cumberland County GIS system reveals that these properties have remained undeveloped since at least 1968, except a small house that fronted Stoney Point Road in the 80s and has since been demolished.

Surrounding Area:

The adjoining land use and zoning of the subject property exhibit a diverse mix. To the north, the area is zoned AR, characterized by vacant land and farmland. The southern direction features a blend of CC zoning, encompassing both commercial retail and single-family developments. Moving east, the zoning transitions to CC, with vacant land and farmland prevalent. On the western side, the landscape is marked by a combination of LC, AR, and SF-15 zoning, primarily designated for single-family residential use.

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 aims to rezone two Agricultural Residential (AR) parcels to Community Commercial (CC). The Community Commercial (CC) District is designed for a mix of medium- to high-intensity retail, service, and office uses catering to the broader community. This includes shopping centers, convenience stores, and various retail establishments, with the possibility of heavier commercial uses (conditional upon Special Use Permit approval, as outlined in Section 30-2.C.7). Typically situated along major arterials, intersections, and growth corridors in City plans, the district encourages higher-density residential use on upper floors of nonresidential structures. This may take the form of stand-alone buildings or be part of larger horizontal mixed-use developments. Development within the district is guided by standards ensuring compatibility with surrounding uses and adhering to design standards outlined in Article 30-5: Development Standards.

Straight Zoning:

The request is for a straight rezoning from Agricultural Residential (AR) to Community Commercial.

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 does permit some uses in line with the character outlined in the Future Use Plan, it also allows for uses that deviate from that vision. Planning for heavier commercial development in an agricultural and low-density area appears somewhat incongruent. However, it's crucial to consider the future extension/rerouting of Barefoot Road, merging with the anticipated completion of a new section and interchange of I-295. Positioned directly off this future interchange, the prospect of establishing a true Neighborhood Mixed Use district along this corridor is significantly compromised by imminent changes in the land use pattern. Given the inevitability of this transformation, it is more fitting to develop this corridor with a character akin to Highway Commercial. The Community Commercial zoning designation aligns more appropriately with uses characteristic of Highway Commercial development than a Neighborhood Mixed Use designation.

According to NCDOT, the completion of the Fayetteville Outer Loop/I-295 is scheduled for 2026, indicating that the next significant phases of the project are approaching. It is crucial to plan accordingly for this impending development. The rezoning of this land will support a development pattern that, unfortunately, aligns with the traditional outcomes often seen in these scenarios.

Consistency and Reasonableness Statements:

The Future Land Use Plan includes defined goals, policies, and strategies. This application aligns with the city's strategic growth strategies and fulfills the goals outlined in the attached Consistency and Reasonableness form.

Budget Impact:

While there won't be an immediate budgetary impact, this rezoning will have an economic

impact in the future as it will lead to the collection of taxes.

Options:

1. Recommends approval of the map amendment to CC 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;
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 CC 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 (NMU).
- The uses permitted by the proposed change in zoning district classification and the standards that apply to such uses are appropriate in the immediate area of the land to be reclassified due to the impending completion of a major automotive corridor; 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 Statement

Project Overview

#1191539

Project Title: Vacant Land Stoney Point Rd.

Jurisdiction: City of Fayetteville

Application Type: 5.1) Rezoning (Map Amendment)

State: NC

Workflow: Staff Review

County: Cumberland

Project Location

Project Address or PIN: 9485-66-7168 & 9485-75-0853
(Unverified)

Zip Code: 28306

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: <100YearFlood>

500 Year Flood: <500YearFlood>

Watershed:

General Project Information

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

Previous Amendment Approval Date:

Previous Amendment Case #:

Proposed Zoning District: Community Commercial

Acreage to be Rezoned: 9.7

Is this application related to an annexation?: No

Water Service: Public

Sewer Service: Public

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

Currently Vacant Raw Land.

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

Adjacent to & across the street is Commercially Zoning as Community Commercial.

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.:

Meets the 2030 Land Use Plan.

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

NONE

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

Future Development will Meet the Demand of Commercial Conveniences.

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.:

Existing Land is compatible with surrounding Properties.

Zoning Classification CC.

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

Abutting Land including adjacent land is currently zoned CC.

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

Premature Development is Not the Case here.

Planning ahead of the Roadway Improvement of 295 includes the stoney point rd on-off ramp.

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

NCDOT Roadway Improvements allow for Commercial Development in the future four way intersection to include along linear property runs of Stony Point Rd / On-Off Ramp to 295.

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.:

Isolated Zoning is Not present in this case.

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

Surrounding Properties currently Zoning CC.

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

Minimal Impact on the Enviroment next to NCDOT Roadway Improvement impact.

Primary Contact Information

Contractor's NC ID#:

Project Owner

Mark Candler
Candler Development Group LLC.
171 Brooke Run
Lumber Bridge, NC 28357
P:19102630370
markcandler@live.com

Project Contact - Agent/Representative

Mark Candler
Candler Development Group LLC.
171 Brooke Run
Lumber Bridge, NC 28357
P:19102630370
markcandler@live.com

As an unlicensed contractor, I am aware that I cannot enter into a contract that the total amount of the project exceeds \$40,000. :

NC State General Contractor's License Number: 99318

Project Contact - General Contractor

Mark Candler
Candler Development Group LLC.
171 Brooke Run
Lumber Bridge, NC 28357
P:19102630370
markcandler@live.com

NC State Electrical Contractor #1 License Number:

NC State Electrical Contractor #2 License Number:

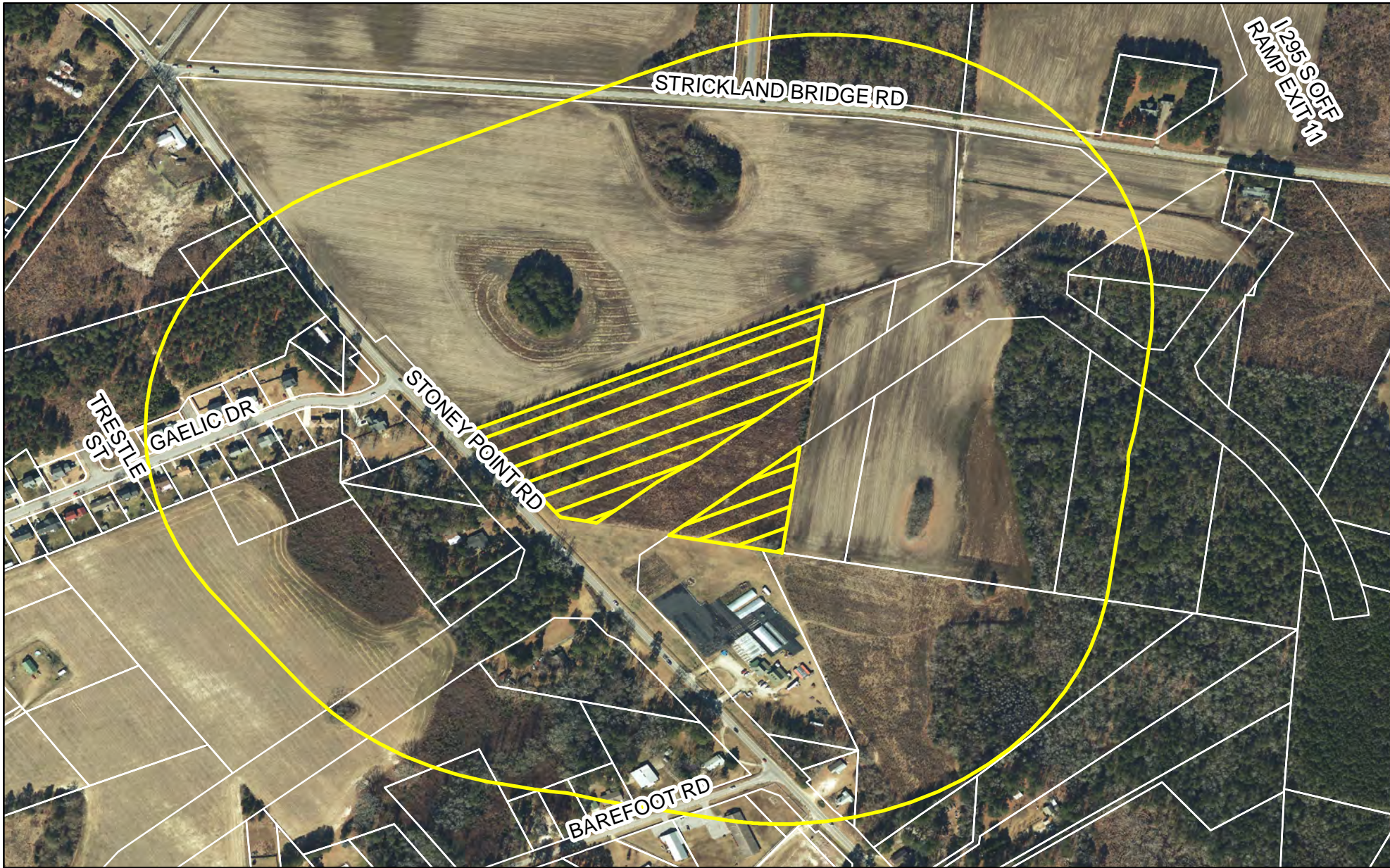
NC State Mechanical Contractor's #1 License Number:

NC State Mechanical Contractor's #2 License Number:

NC State Plumbing Contractor #1 License Number:

NC State Plumbing Contractor #2 License Number:

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





Aerial Notification Map

Case #: P24-02

Request: Rezoning Agricultural Residential (AR)
to Community Commercial (CC)

Location: 0 Stoney Point Road

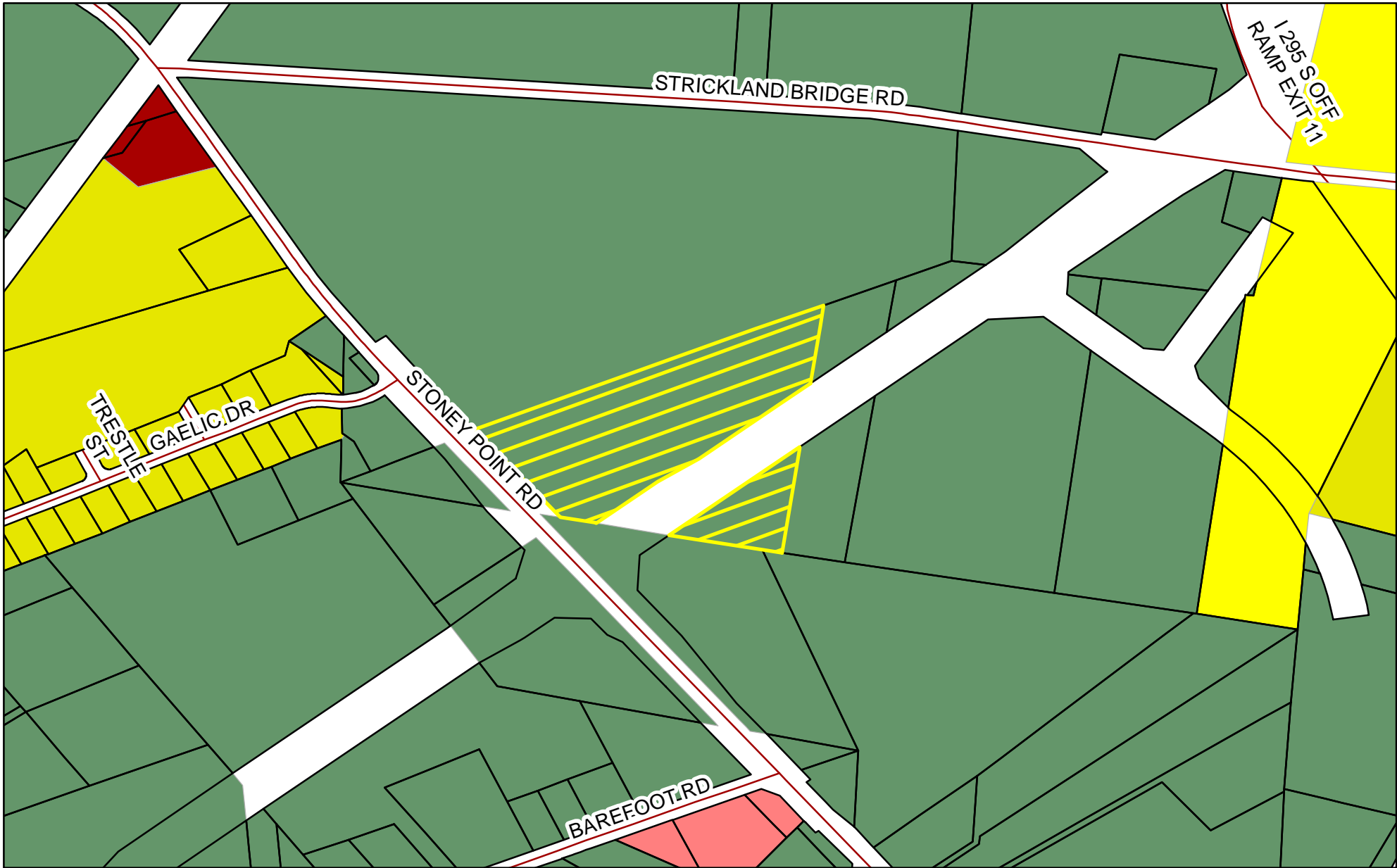
Legend

-  P24-02 Buffer
-  P24-02



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











Zoning Map

Case #: P24-02

Request: Rezoning Agricultural Residential (AR)
to Community Commercial (CC)

Location: 0 Stoney Point Road

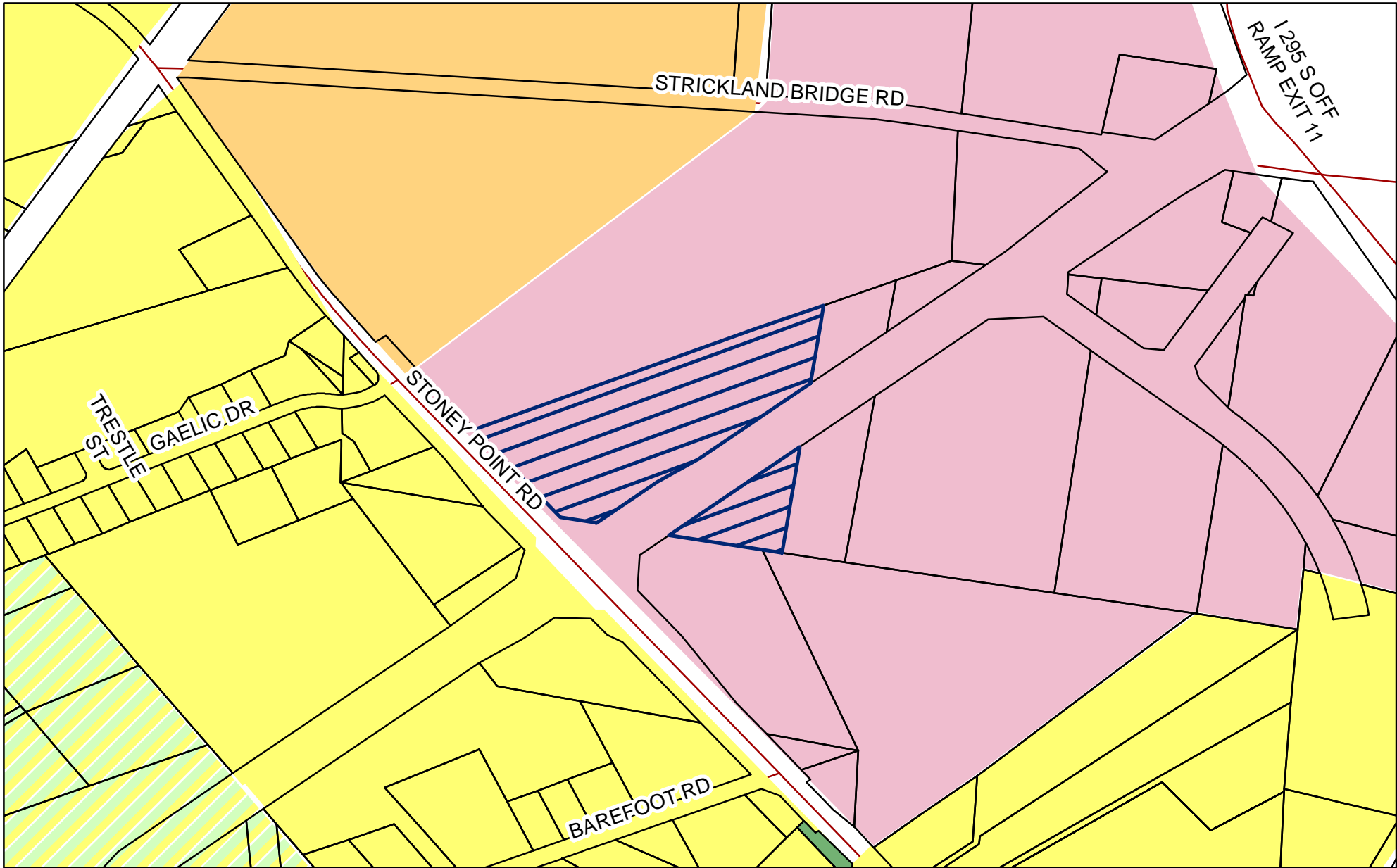
Legend

-  P24-02
-  AR - Agricultural-Residential
-  CC - Community Commercial
-  LC - Limited Commercial
-  SF-10 - Single-Family Residential 10
-  SF-15 - Single-Family Residential 15



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





Future Land Use Map

Case #: P24-02

Request: Rezoning Agricultural Residential (AR)
to Community Commercial (CC)






Location: 0 Stoney Point Road

Legend

 P24-02

Land Use Plan 2040

Character Areas

-  PARKOS - PARK / OPEN SPACE
-  OSS - OPEN SPACE SUBDIVISIONS
-  LDR - LOW DENSITY
-  MDR - MEDIUM DENSITY
-  NMU - NEIGHBORHOOD MIXED USE



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





Surrounding Properties



Consistency and Reasonableness Statement

Map Amendments

Pursuant N.C.G.S. Sections 160D-604 and -605, the Zoning Commission finds that the proposed zoning map amendment in case P24-02 is consistent/inconsistent with the City of Fayetteville's Future Land Use Map and Plan (Comprehensive Plan). The following analysis examines the proposed amendment relative to the goals and land-use policies and strategies of the Comprehensive Plan:

Consistency

1. GOALS

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

2. LAND USE POLICES AND STRATEGIES:

LAND USE POLICIES AND STRATEGIES	CONSISTENT	INCONSISTENT
LUP 2: Encourage strategic economic development	X	
2.1: Encourage economic development in designated areas	X	
LUP 4: Create well designed and walkable commercial and mixed use districts	X	
4.1: Ensure new development meets basic site design standards.	X	
4.2: Encourage context-sensitive design.	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):

January 9, 2024
Date

Chair Signature

Print



City of Fayetteville

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

City Council Action Memo

File Number: 24-3754

Agenda Date: 1/9/2024

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Public Hearing
(Public & Legislative)

Agenda Number: 5.03

TO: Mayor and Members of City Council

THRU: Zoning Commission

FROM: Demetrios Moutos - Planner I

DATE: January 9, 2024

RE:

P24-03. Conditional Rezoning of six parcels from Neighborhood Commercial (NC) and Community Commercial (CC) to Neighborhood Commercial Conditional Zoning (NC/CZ) totaling 0.84 acres ± and being the property of Cape Fear Regional Theatre at Fayetteville Inc., represented by Danielle Hammond of Urban Design Partners.

COUNCIL DISTRICT(S):

Council District 5 - Lynne Greene

Relationship To Strategic Plan:

Strategic Operating Plan FY 2022

Goals 2027

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

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

Goal III: City invested in Today and Tomorrow

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

Executive Summary:

The applicant is requesting to conditionally rezone 0.84 acres ± from Neighborhood Commercial (NC) and Community Commercial (CC) to Neighborhood Commercial Conditional Zoning (NC/CZ).

Background:

Applicant: Danielle Hammond

Owner: Cape Fear Regional Theatre at Fayetteville INC.

Requested Action: Conditional Rezoning from NC and CC to NC/CZ

REID: 0437051425000, 0437050465000, 0437050459000, 0437050501000,
0427959571000, 0427959482000

Council District: 5 - Lynne Greene

Status of Property: Cape Fear Regional Theatre in Haymount

Size: 0.84 ± total acres

Adjoining Land Use & Zoning:

- **North:** NC
- **South:** CC and MR-5
- **East:** NC, MR-5, and OI
- **West:** CC and NC

Letters Mailed: 257

Land Use Plans:

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

According to the Future Land Use Map, these parcels are designated for development under the Neighborhood Mixed Use designation. This allows for neighborhood-scale commercial uses, a horizontal mix of uses (with vertical elements in key locations), buildings of 1-3 stories, and features smaller-scale multi-family, attached, and small lot single-family developments, with lower density towards the edges.

Issues/Analysis:

History:

The Cape Fear Regional Theater has been a longstanding fixture in Fayetteville and the Haymount community since the latter half of the 20th century, with the last major renovation occurring in 1988. In February 2022, plans were revealed for a comprehensive renovation of the theatre. The initial phase, initiated in 2021, involved the replacement of aging seating, the installation of a custom sound system, new carpeting, and the addition of handrails on the lower half of the theater. This rezoning corresponds to the second phase of the project, representing a holistic reimagining of the entire building.

Surrounding Area:

The properties seeking conditional rezoning exhibit diverse characteristics. In the middle, the property is currently zoned Neighborhood Commercial (NC) and functions as a restaurant with indoor or outdoor seating. To the south, another property under Neighborhood Commercial (NC) zoning operates as a retail sales establishment. Moving further south, a property under Community Commercial (CC) zoning is dedicated to professional services. Westward, another property under Community Commercial (CC) zoning functions as a drug store or pharmacy with drive-through service. To the north, across Hay Street, a property under Neighborhood Commercial (NC) zoning operates as a retail sales establishment. Adjacent to it, another property under Neighborhood Commercial (NC) zoning is designated for gasoline sales. Additionally, a property north across Hay Street serves as a retail sales establishment within the Neighborhood

Commercial (NC) zone. Lastly, eastward across Highland Avenue, a property under Neighborhood Commercial (NC) zoning operates as a religious institution.

Conditional Zoning:

The request is to rezone the subject properties from NC and CC to NC/CZ.

The purpose of the CZ zoning district is “intended to provide a landowner and the City an alternative to rezoning the land to a standard base zoning district, where the base zoning allows certain uses and development that may be appropriate but also allow uses and development that may not conform to City plans or would have adverse impacts on public facilities or surrounding lands. Reclassification of land to a conditional zoning district allows a landowner to propose, and the City Council to consider, additional conditions or restrictions on the range of allowable uses, use standards, development intensities, development standards, and other regulations applicable in the parallel base zoning district. This enables the City to tailor a zoning classification to accommodate desirable development while avoiding or addressing anticipated problems that may arise from development otherwise allowed by the base zoning district.”

Specifics of this Conditional Zoning:

- 1. The maximum allowable lot coverage shall be 85%**
 - a. The current UDO standard for non-residential maximum lot coverage in the NC zoning district is 55%.
- 2. The minimum front setback and corner side setback for non-residential use shall be 0'**
 - a. The current UDO standard for non-residential front and corner side setbacks in the NC zoning district is a minimum of 10 feet.
- 3. The minimum side setback for non-residential use shall be 0'**
 - a. The current UDO standard for non-residential side setbacks in the NC zoning district is a minimum of 3'.
- 4. The minimum rear setback for non-residential use shall be 0'**
 - a. The current UDO standard for non-residential rear setbacks in the NC zoning district is a minimum of 20'.
- 5. The minimum building spacing for non-residential use shall be 0'**
 - a. The current UDO standard for non-residential building spacing in the NC zoning district is a minimum of 20'.
- 6. There shall be no minimum number of required parking spaces**
 - a. The UDO standard would require 1 space per every 4 seats within the theater.
- 7. No bicycle parking shall be required**
 - a. Article 30-5.A.9
- 8. No off-street loading spaces shall be required**
 - a. Article 30-5.A.10
- 9. Street trees shall not be required**
 - a. Article 30-5.B.4
- 10. Site and building landscaping shall not be required around the perimeter of the building**
 - a. 30-5.B.4.b
- 11. Commercial vehicular uses shall be separated from adjacent and adjoining commercial properties by a 3' wide landscape strip with a continuous visual screen of evergreen shrubs along the property line, with a minimum height**

of 24" at the time of planting or by a 6' tall screen fence

a. 30-5.B.4.c

Land Use Plan Analysis:

The City of Fayetteville's 2040 Comprehensive Plan and Future Land Use Map designate the parcels for Neighborhood Mixed Use (NMU). The proposed conditional rezoning is in harmony with this designation, facilitating an expansion of existing Neighborhood Commercial (NC) uses, as outlined in the proposed amendment. Owned by the non-profit organization Cape Fear Regional Theatre, the property plays a crucial role in the community, offering local entertainment and arts education. The proposed rezoning supports the continuation and expansion of these services, providing arts, culture, entertainment, and education to City residents. Notably, the rezoning preserves the current uses on the parcels, maintaining the existing Neighborhood Commercial (NC) or Community Commercial (CC) zoning. The objective is to introduce specific conditions allowing for the expansion of the theater building while retaining site features not necessarily permitted in the base zoning district. The proposed development aims to enhance the existing development pattern, creating a more cohesive neighborhood block and preserving the established urban form. Situated in an already developed area, the proposal is designed to integrate seamlessly with the current built environment, without encouraging premature development.

Consistency and Reasonableness Statements:

The Future Land Use Plan includes defined goals, policies, and strategies. This application aligns with the city's strategic growth strategies and fulfills the goals outlined in the attached Consistency and Reasonableness form.

Budget Impact:

While there won't be an immediate budgetary impact, this rezoning will have an economic impact in the future as it will lead to the collection of taxes.

Options:

1. Recommend approval of the map amendment to NC/CZ 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. Recommend 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;
3. Deny the map amendment request based on the evidence submitted and finds that the map amendment is inconsistent with the Future Land Use Plan.

Recommended Action:

The Professional Planning Staff recommends that the Zoning Commission move to recommend APPROVAL of the map amendment to NC/CZ 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 classification and standards apply to such uses are 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. District Standards
8. Article 30-5.A.9. Bicycle Parking
9. Article 30-5.A.10 Loading Spaces
10. Article 30-5.B.4 Street Trees
11. Article 30-5.B.4.b Site and Building Landscaping
12. Article 30-5.B.4.c Perimeter VUA Landscaping Strips
13. Consistency and Reasonableness Statement
14. Site Plan

Project Overview

#1083253

Project Title: Cape Fear Regional Theater
Application Type: 5.2) Conditional Rezoning
Workflow: Staff Review

Jurisdiction: City of Fayetteville
State: NC
County: Cumberland

Project Location

Project Address or PIN:

- 1209 HAY ST (0437051425000)
- 1209 HAY ST (0437050465000)
- 1213 HAY ST (0437050459000)
- 0 ? DR (0437050501000)
- 1221 HAY ST (0427959571000)
- 0 N/A DR (0427959482000)

Zip Code: 28305

GIS Verified Data

Property Owner: Parcel

- 1209 HAY ST: CAPE FEAR REGIONAL THEATRE AT FAYETTEVILLE INC
- 1209 HAY ST: CAPE FEAR REGIONAL THEATRE AT FAYETTEVILLE INC
- 1213 HAY ST: CAPE FEAR REGIONAL THEATRE AT FAY INC
- 0 ? DR: THE CAPE FEAR REGIONAL THEATRE AT FAYETTEVILLE INC
- 1221 HAY ST: THE CAPE FEAR REGIONAL THEATRE AT FAYETTEVILLE INC
- 0 N/A DR: CAPE FEAR REGIONAL THEATRE AT FAY INC

Acreage: Parcel

- 1209 HAY ST: 0.5
- 1209 HAY ST: 0.01
- 1213 HAY ST: 0.13
- 0 ? DR: 0.1
- 1221 HAY ST: 0.08
- 0 N/A DR: 0.03

Zoning District: Zoning District

- 1209 HAY ST: NC
- 1209 HAY ST: NC
- 1213 HAY ST: NC
- 0 ? DR: NC
- 1221 HAY ST: CC
- 0 N/A DR: NC

Subdivision Name:

Fire District:

Hospital Overlay District:

Cape Fear District:

Haymount Historic District:

100 Year Flood: <100YearFlood>

Airport Overlay District:

Coliseum Tourism District:

Downtown Historic District:

Floodway:

500 Year Flood: <500YearFlood>

Watershed:

General Project Information

Proposed Conditional Zoning District: NC/CZ - Conditional Neighborhood Commercial

Lot or Site Acreage to be rezoned: 0.84

Was a neighborhood meeting conducted?: No

Date of Neighborhood Meeting:

Number of Residential Units: 0

Nonresidential Square Footage: 40106

Landowner Information

Landowner Name: CAPE FEAR REGIONAL THEATRE AT FAYETTEVILLE INC

Deed Book and Page Number: 4267-0844, 4267-0841, 9364-0063, 11716-0030, 9364-0065

Written Description of Request - Answer all the questions under this section (upload additional sheets as needed).

A) Describe the proposed use of the rezoned land, including the proposed types of site improvements, buildings, uses, proposed activities, hours of operation, and operating characteristics.:

The current use of the land is Recreation/Entertainment, Indoor (Theater) and Other Retail Sales Establishments and will remain unchanged as part of the proposed amendment. The buildings on PINs: 0437-05-0459 & 0427-95-9571 will remain as is, the theater building (located on PINs: 0437-05-1425 & 0437-05-0465 is proposed to be expanded, and the site area to the rear of the buildings is proposed to be slightly re-worked due to the theater expansion. Cape Fear Regional Theatre has been bringing professional live theatre productions, arts education programs, and community building outreach to Fayetteville and Cumberland County for 62 years. Administrative Offices and Production Departments are in regular operation from 10am-6pm Monday-Friday, with some variation. Public Performances take place Tuesday-Sunday.

B) Describe the proposed conditions that should be applied.:

The proposed conditions that should be applied as follows:

1. The maximum allowable lot coverage shall be 85%
2. The minimum front setback and corner setback for non-residential use shall be 0.
3. The minimum side setback for non-residential use shall be 0.
4. The minimum rear setback for non-residential use shall be 0.
5. The minimum building spacing for non-residential use shall be 0.
6. There shall be no minimum number of required parking spaces.
7. No bicycle parking shall be required.
8. No off-street loading spaces shall be required.
9. Street trees shall not be required.
10. Site and building landscaping shall not be required around the perimeter of the building.
11. Commercial vehicular uses shall be separated from adjacent adjoining commercial properties by a 3 wide landscape strip with a continuous visual screen of evergreen shrubs along the property line, with a minimum height of 24 at the time of planting or by a 6 tall screen fence.

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

1. PIN 0437-05-0520 is located in the middle of the properties requesting conditional rezoning, is zoned Neighborhood Commercial (NC), and has an existing land use of Restaurant, with indoor or outdoor seating.
2. PIN 0437-05-1312 is located to the south, is zoned Neighborhood Commercial (NC), and has an existing land use of Retail Sales Establishment.
3. PIN 0427-95-9366 is located to the south, is zoned

Community Commercial (CC), and has an existing land use of Professional Services.

4. PIN 0427-95-9511 is located to the west, is zoned Community Commercial (CC), and has an existing land use of Drug Store or Pharmacy, with Drive-Through Service.
5. PIN 0427-95-9676 is located to the north across Hay Street, is zoned Neighborhood Commercial (NC), and has an existing land use of Retail Sales Establishment.
6. PIN 0437-05-0784 is located to the north across Hay Street, is zoned Neighborhood Commercial (NC), and has an existing land use of Gasoline Sales.
7. PIN 0437-05-2621 is located to the north across Hay Street, is zoned Neighborhood Commercial (NC), and has an existing land use of Retail Sales Establishment.
8. PIN 0437-05-4220 is located to the east across Highland Avenue, is zoned Neighborhood Commercial (NC), and has an existing land use of Religious Institution.

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 City of Fayetteville's 2040 Comprehensive Plan and Future Land Use Map identify the future land use for the parcels as Neighborhood Mixed Use (NMU). The project proposes to expand the existing use of The goal of NMU is to provide neighborhood-scale commercial, horizontal mix of uses. The proposed amendment is consistent with this as it will continue to allow uses permissible in the Neighborhood Commercial (NC).

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

Yes, there are proposed changed conditions associated with this amendment. The proposed conditions are as follows:

1. The maximum allowable lot coverage shall be 85%
2. The minimum front setback and corner setback for non-residential use shall be 0.
3. The minimum side setback for non-residential use shall be 0.
4. The minimum rear setback for non-residential use shall be 0.
5. The minimum building spacing for non-residential use shall be 0.
6. There shall be no minimum number of required parking spaces.
7. No bicycle parking shall be required.
8. No off-street loading spaces shall be required.
9. Street trees shall not be required.
10. Site and building landscaping shall not be required around the perimeter of the building.
11. Commercial vehicular uses shall be separated from adjacent adjoining commercial properties by a 3 wide landscape strip with a continuous visual screen of evergreen shrubs along the property line, with a minimum height of 24 at the time of planting or by a 6 tall screen fence.

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

The property owner, Cape Fear Regional Theatre, is a non-profit organization that provides local entertainment and arts education for the citizens of the City of Fayetteville. The proposed amendment will allow CFRT to continue and expand upon these community service to provide the needed arts, culture, entertainment, and education to the residents of 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.:

The existing uses on the parcels will not change under the proposed amendment. The parcels are currently zoned either Neighborhood Commercial (NC) or Community Commercial (CC); the nature of the zoning request will maintain the Neighborhood Commercial (NC) base zone for the parcels with the intent of adding proposed zoning conditions to allow expansion of the theater

building while maintaining existing conditions of the site that are not necessarily permissible in the base zoning district the theater is currently zoned under.

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

The proposed amendment and associated development propose to main the existing development pattern. The proposed development aims to create a more cohesive neighborhood block while maintaining the existing overall urban form.

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

The proposed amendment is located in an already developed area within the City. All parcels in the vicinity are developed and therefore will not encourage premature development.

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

The proposed amendment does not propose to change the existing urban development pattern of the property.

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.:

The zoning districts of the neighboring properties are Neighborhood Commercial (NC) and Community Commercial (CC); the proposed amendment of rezoning the parcels to Conditional Neighborhood Commercial (NC/CZ) is a compatible zoning district and will not create an isolated zoning district.

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

The parcels part of the proposed amendment are currently developed. The proposed amendment shows some parcels to remain as currently developed and the theater building to be redeveloped and expanded. The intent of the theater redevelopment is to enhance the guest experience and create a vibrant entertainment space for the neighborhood. Therefore, proposed amendment will not result in significant adverse impacts on the property values of surrounding lands.

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

The parcels that are part of the proposed amendment are already developed today. Therefore, redevelopment of portions of the parcels as shown in the proposed amendment will not result in significant adverse impacts on the natural environment.

Primary Contact Information

Contractor's NC ID#:

Project Owner

Mary Kate Burke
Cape Fear Regional Theater
1209 Hay Street
Fayetteville, NC 28305
P:9103234234
mburke@cfrt.org

Project Contact - Agent/Representative

Danielle Hammond
Urban Design Partners
555 Fayetteville St, 3rd Floor
Raleigh, NC 27601
P:9192755002
dhammond@urbandesignpartners.com

As an unlicensed contractor, I am aware that I cannot enter into a contract that the total amount of the project exceeds \$40,000. :

NC State General Contractor's License Number:

NC State Electrical Contractor #1 License Number:

NC State Electrical Contractor #2 License Number:

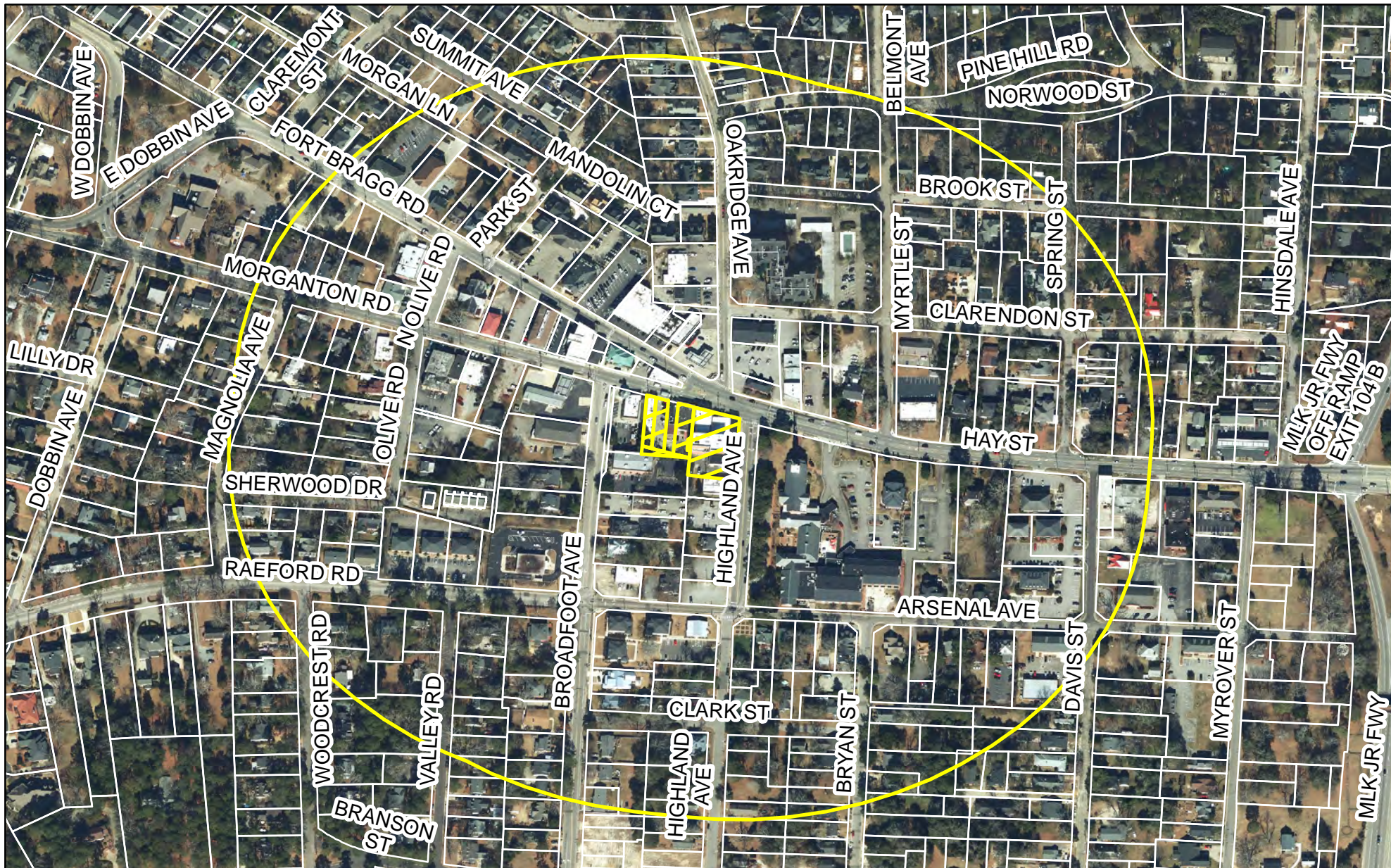
NC State Mechanical Contractor's #1 License Number:

NC State Mechanical Contractor's #2 License Number:

NC State Plumbing Contractor #1 License Number:

NC State Plumbing Contractor #2 License Number:

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





Aerial Notification Map

Case #: P24-03
Request: Rezoning Neighborhood Commercial (NC) and Community Commercial (CC) to Neighborhood Commercial Conditional Zoning

Location: 1209 HAY ST
1213 HAY ST
0 ? DR
1221 HAY ST
0 N/A DR

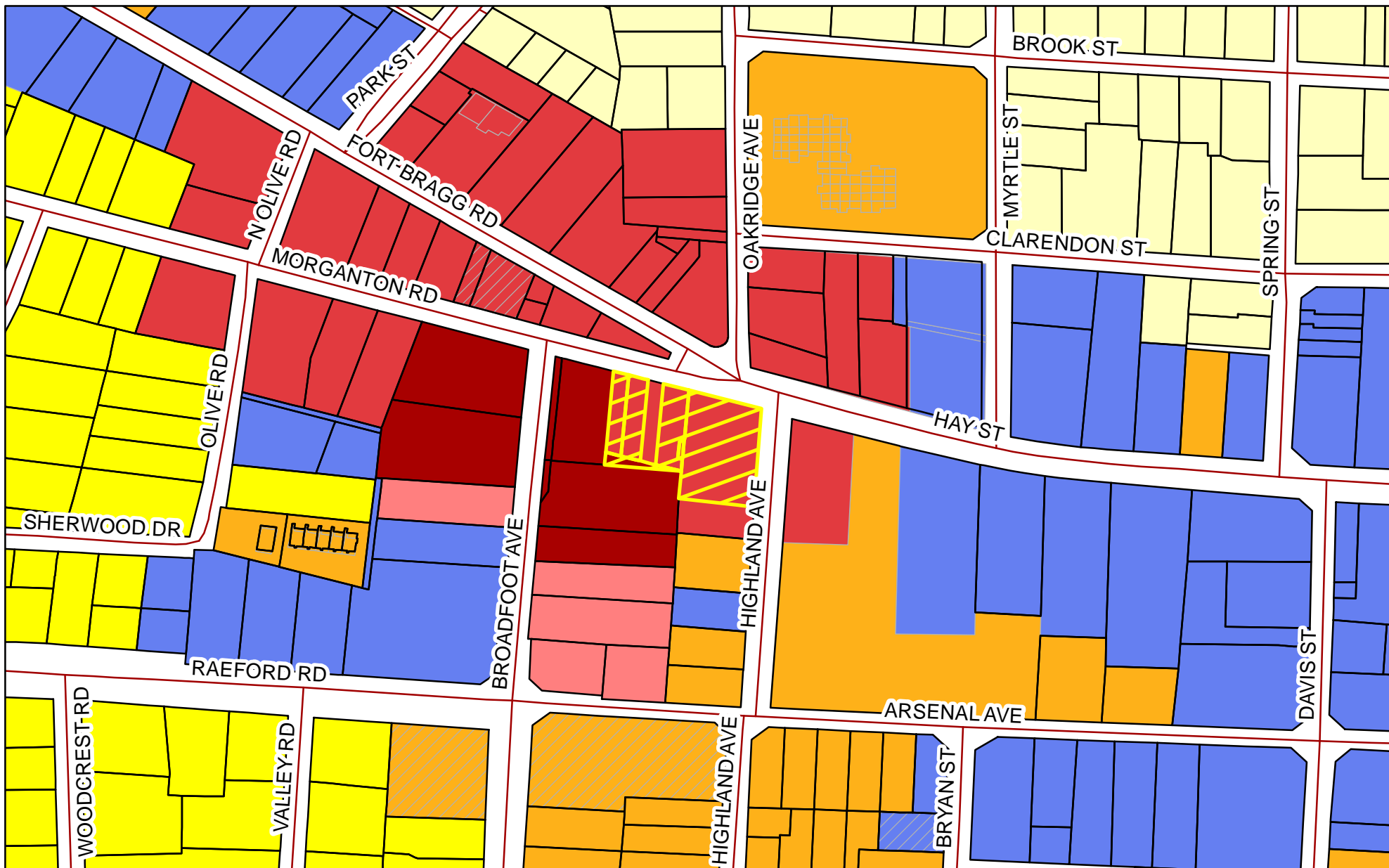
Legend

-  P24-03 Buffer
-  P24-03



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





Zoning Map

Case #: P24-03

Request: Rezoning Neighborhood Commercial (NC) and Community Commercial (CC) to Neighborhood Commercial Conditional Zoning

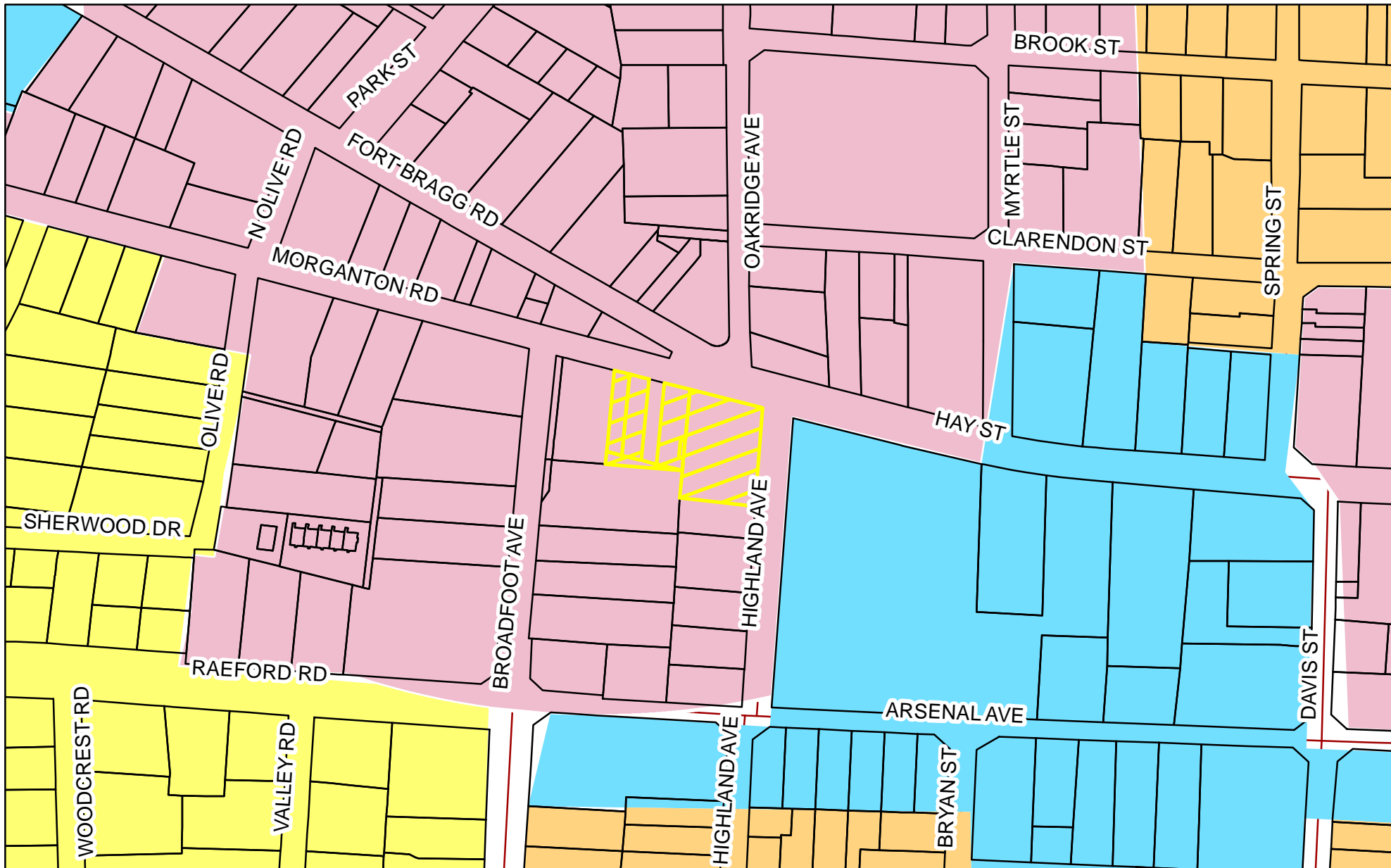
**Location: 1209 HAY ST
1213 HAY ST
0 ? DR
1221 HAY ST
0 N/A DR**

Legend

	P24-03		NC/CZ - Conditional Neighborhood Commercial
	CC - Community Commercial		OI - Office & Institutional
	LC - Limited Commercial		OI/CZ - Conditional Office & Institutional
	MR-5 - Mixed Residential 5		SF-6 - Single-Family Residential 6
	MR-5/CZ - Conditional Mixed Residential 5		SF-10 - Single-Family Residential 10
	NC - Neighborhood Commercial		

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





Future Land Use Map

Case #: P24-03

Request: Rezoning Neighborhood Commercial (NC)
and Community Commercial (CC) to
Neighborhood Commercial Conditional
Zoning





Location: 1209 HAY ST
1213 HAY ST
0 ? DR
1221 HAY ST
0 N/A DR

Legend

 P24-03

Land Use Plan 2040

Character Areas

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

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





Surrounding Properties



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.3. Neighborhood Commercial (NC) District

NC NEIGHBORHOOD COMMERCIAL DISTRICT	PURPOSE				
	The Neighborhood Commercial (NC) District is established and intended to accommodate small-scale, low-intensity, and "convenience" retail and service uses that provide goods and services serving the residents of the immediately surrounding neighborhood (e.g., personal service uses, small restaurants, and limited retail). Development in the district should not include uses of a size that is out of scale with a residential neighborhood, or that attracts traffic from outside the surrounding neighborhood. New construction shall not create individual retail uses over 2,500 square feet without obtaining a Special Use Permit (See Section 30-2.C.7.). Residential uses are encouraged on the upper floors of nonresidential establishments. The district is subject to standards intended to ensure development is consistent with the neighborhood scale and compatible with surrounding uses and the design standards in Article 30-5: Development Standards.				
DIMENSIONAL STANDARDS					
DIMENSIONAL STANDARD	NON RESIDENTIAL	MIXED- USE	SINGLE- FAMILY DWELLINGS	ALL OTHER RESIDENTIAL USES	ACCESSORY STRUCTURES
Lot area, min. (sq. ft.) [1]	10,000	8,000	5,000 per unit	15,000 per site	n/a
Lot width, min. (ft.)	45			60	n/a
Gross residential density, max. (dwelling units/acre)[4]	24	24	8	12	n/a
Lot coverage, max. (% of lot area)	55		45		[2]
Height, max. (ft.)	50		35		25; 15 where abutting a single- family zoning district or use with setback less than ten feet
Front and corner side setback, min. (ft.) [3]	10				Not allowed in front, side, or corner side yard areas
Side setback, min. (ft.) [3]	3; 15 when abutting single- family zoning or use		5	10	

Rear setback, min. (ft.)	20			5
Spacing between buildings, min. (ft.)	20	n/a	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. [3]			

NOTES:

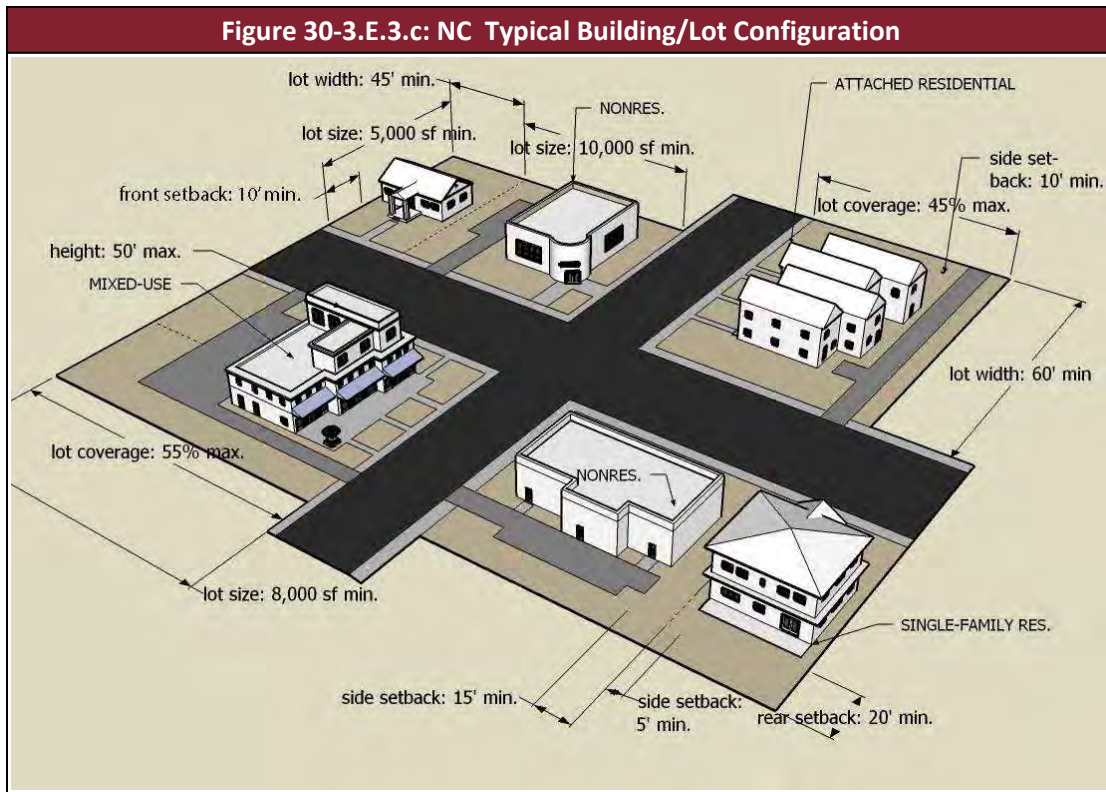
- [1] New construction of individual retail space larger than 2500 square feet in floor area shall first obtain a Special Use Permit (see Section 30-2.C.7). A single building may contain more than one such use, but a nonresidential or mixed-use building with a floor area larger than 7,500 square feet shall obtain a Special Use Permit and comply with the standards for a grocery store in an NC district (see Section 30-4.C.4.h).
- [2] Accessory structures/use areas shall not exceed the lesser of: 1,200 square feet in size or 25 percent of the allowable lot coverage.
- [3] Zero lot line development is subject to standards in Section 30-3.B.2 and, on a tract or site of three acres in area or less may require approval of a Neighborhood Compatibility Permit (see Section 30-2.C.21 Neighborhood Compatibility Permit).
- [4] A maximum density of 30 is allowed in priority redevelopment areas as may be designated by City Council.

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



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





(Ord. No. S2011-013, §§ 8.1, 8.2, 11-28-2011; Ord. No. S2012-001, Pt. 3, § 3.3, 1-23-2012; Ord. No. S2012-018, § 2.2, 9-10-2012; Ord. No. S2012-025, §§ 1, 16, 11-13-2012; Ord. No. S2014-003, § 1a, 1-13-2014; Ord. No. S2014-015, § 5, 8-11-2014; Ord. No. S2017-005, § 1, 6-26-2017.)

Effective on: 6/26/2017

PART II - CODE OF ORDINANCES

CHAPTER 30 – UNIFIED DEVELOPMENT ORDINANCE

Article 30-5: Development Standards

30-5.A. Off-Street Parking, Loading, and Circulation

30-5.A.9. Bicycle Parking

Within the Neighborhood Commercial (NC), Limited Commercial (LC), Mixed-Use (MU), and Downtown (DT) zoning districts, residential development with 30 or more dwelling units and nonresidential development with 5,000 or more square feet of gross floor area shall provide individual or shared bicycle parking facilities in accordance with the following standards. Nonresidential uses of up to 20,000 square feet in size may share bicycle parking facilities in accordance with this section.

a. **General Standards**

1. Bicycle parking facilities shall be conveniently located, but in no case shall such facilities be located more than 150 feet from the primary building entrance.
2. Bicycle parking spaces shall be provided at the rate of one bicycle parking space per every 30 residential dwelling units and/or every 5,000 square feet of nonresidential floor area.
3. Bicycle facilities shall include a rack or other device to enable bicycles to be secured.

b. **Shared Bicycle Parking**

Nonresidential uses of 20,000 square feet in size or less may share bicycle parking spaces provided:

1. Each use provides or is served by improved pedestrian access from the bicycle parking facility to the primary building entrance; and
2. The shared bicycle parking facility and improved pedestrian access is depicted on a Site Plan.

Effective on: 11/18/2013

PART II - CODE OF ORDINANCES

CHAPTER 30 – UNIFIED DEVELOPMENT ORDINANCE

Article 30-5: Development Standards

30-5.A. Off-Street Parking, Loading, and Circulation

30-5.A.10. Loading Space Standards

a. Number of Required Off-Street Loading Spaces

On-site loading spaces shall be provided in accordance with Table 30-5.A.10, Required Off-Street Loading Spaces, depending on the use or its gross floor area. The developer shall determine if the use requires a greater number of spaces than those required by this section. The intent of these standards is to prevent commercial loading and unloading activities from occurring on public or private streets or blocking other vehicular circulation.

Table 30-5.A.10: Required Off-Street Loading Spaces [1]		
USE OR ACTIVITY [2]	UNITS OR GROSS FLOOR AREA (GFA)	MINIMUM NUMBER OF LOADING SPACES
Offices and personal service establishments	15,000 sf or more	1
Visitor Accommodations [3]	50—149 units	1 plus 1 per each additional 100 units above 149 units
Space used by, designed for, or adaptable to a retail sales and services use	10,000—19,999 sf	1
	20,000—49,999 sf	2
	50,000—99,999 sf	3
	100,000 sf or more	4 + 1 per every 100,000 sf GFA above 100,000 sf GFA
Wholesale and manufacturing uses	Up to 15,000 sf	1
	15,000—49,999 sf	2
	50,000 sf or more	3 + 1 per every 50,000 sf GFA above 50,000 sf GFA
Mini-warehouse (internal access only)	50 units or more	1 per every 50 units [4]
All other Commercial and Industrial Uses	15,000—39,999 sf	1
	40,000—99,999 sf	2
	100,000—159,999 sf	3
	160,000—239,999 sf	4
	240,000—319,999 sf	5

Table 30-5.A.10: Required Off-Street Loading Spaces [1]

	320,000—399,999 sf	6
	400,000 sf or more	7 + 1 per every 100,000 sf GFA above 400,000 sf GFA

NOTES:

[1] DU = dwelling unit; sf = square feet; GFA = gross floor area

[2] See Table 30-4.A, Use Table.

[3] Loading space is not required if there is not a full service restaurant in the hotel in accordance with the Cumberland County Health Department standards and regulations.

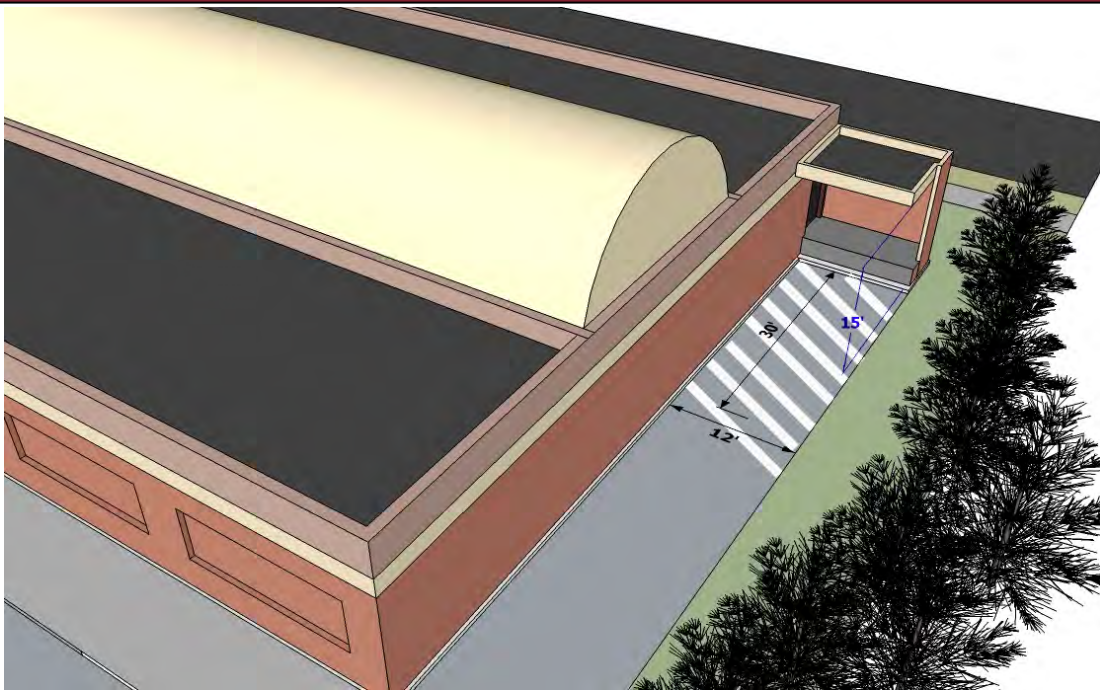
[4] Loading spaces shall be located near the entrance(s) to the building. If there is more than one entrance, the loading spaces should be evenly distributed among all entrances, as shown on the Site Plan (see Section 30-2.C.5, Site Plan.)

b. Standards

1. Minimum Dimensions

Each loading space required by this subsection shall be at least 12 feet wide by 25 feet long (or deep), with at least 14 feet of overhead clearance. Each off-street loading space shall have adequate, unobstructed means for the ingress and egress of vehicles (see Figure 30-5.A.10, Loading Spaces).

Figure 30-5.A.10: Loading Spaces



Loading zones shall be striped, landscaped, and located to the side or rear of a building, wherever possible.

2. Berths or Loading Docks

Except in the DT district, buildings required to provide three or more loading spaces or buildings with nonresidential uses on three or more floors shall provide a loading dock adjacent to a loading space.

3. Location

Where possible, loading areas shall be located to the rear of the use they serve. In addition,

the loading area shall be located adjacent to the building's loading doors, in an area that promotes their practical use.

4. *Delineation of Loading Spaces*

All loading spaces shall be delineated by signage and striping and labeling of the pavement.

5. *Access to a Street*

Every loading space shall be provided with safe and convenient access to a street, but in no case shall the loading space extend into the required aisle of the parking lot.

6. *Paving*

The ground surface of loading spaces shall be paved with a durable, dust free, and hard material, such as surface and seal treatment, bituminous hot mix, Portland cement, concrete, or some comparable material. Such paving shall be maintained for safe and convenient use at all times.

7. *Landscaping*

Loading spaces shall be screened around the perimeter in accordance with Section 30-5.B.4.e, Screening.

8. *Exterior Lighting*

Exterior lighting for loading areas shall comply with the standards in Section 30-5.E, Exterior Lighting.

(Ord. No. S2012-016, § 3.3, 9-10-2012; Ord. No. S2012-025, §§ 4, 5, 16, 11-13-2012; Ord. No. S2019-026, 1, 04/23/2019; Ord. No. S2021-035, § 1, 10/25/2021)

Effective on: 11/18/2013

PART II - CODE OF ORDINANCES

CHAPTER 30 – UNIFIED DEVELOPMENT ORDINANCE

Article 30-5: Development Standards

30-5.B. Landscaping and Tree Protection Standards*

30-5.B.4. Landscaping Requirements

a. **Street Trees**

Street trees shall be required to serve all development in the City in accordance with the following:

1. *Where Required*

Except where exempted in (b) below, street trees shall be required along both sides of all streets.

2. *Exemptions*

Street trees shall not be required for:

- a. Agricultural uses in the AR district, except when agricultural land is subdivided for new residential development; or
- b. Single-family lots, provided each lot includes one or more canopy trees between the dwelling and the right-of-way. Spacing shall be in accordance with Section 30-5.B.4.a.5, Maximum On Center Spacing, below. Existing healthy, well-formed trees located within 20 feet of the back of curb may be credited toward the requirement of this section, provided the trees meet the requirements of Section 30-5.B.7.a, Tree Preservation Credits and are adequately protected during construction (see Section 30-5.B.8, Tree Protection During Construction).

3. *Location*

- a. Except where authorized by an Alternative Landscape Plan (see Section 30-5.B.4.f), or indicated in the Engineering and Infrastructure Department's approved cross section diagrams for utility installations, all street trees shall be planted between the back of the curb and the sidewalk.
- b. In cases where street trees cannot be planted between the curb and the sidewalk, applicants shall contact the City Engineering and Infrastructure Department for utility installation cross sections which depict approved street tree locations in the public right-of-way.

- c. Street trees shall be located to avoid utilities (both overhead and underground), in accordance with the utility's requirements for clearance, unless specific written consent from the utility owner is provided.

4. *Configuration*

- a. Street trees shall be canopy trees except beneath overhead utilities or other projections into the public right-of-way, where understory trees shall be used instead.
- b. In locations directly under overhead utility lines, two understory trees may be substituted for each required canopy tree.
- c. Within the DT-1 district, other urban areas, or redevelopment areas, street trees may be located within reduced planting strips or tree pits with irrigation and drainage systems or as part of an adopted streetscape master plan. Tree pits may be located adjacent to the back of the curb.
- d. All trees planted along NCDOT right-of-way shall conform to NCDOT guidelines.

5. *Maximum On-Center Spacing*

- a. Understory trees shall be spaced between 15 to 25 feet on center, depending upon the species size at maturity.
- b. Canopy trees shall be spaced between 25 to 40 feet on center, depending upon the species size at maturity.
- c. Wherever possible, small and medium trees shall be placed between large trees to accommodate the canopy growth of large trees over time.
- d. Alternative layout may be considered through the Alternative Landscape Plan procedure in Section 30-5.B.4.f.

b. **Site and Building Landscaping**

Site and building landscaping material is intended to soften the visual impact of the building base and provide for the even dispersal of trees and other plantings across a development site.

1. *Standards*

Except for substations and lift stations, single-family detached dwellings and properties in the Downtown (DT) district, site and building landscaping shall be required for all development, and shall be supplied in the amounts identified in Table 30-5.B.4.b, Required Site Landscaping Plantings, below, and Figure 30-5.B.4.b, Site and Building Landscaping Placement. Site landscaping shall meet the minimum size standards for new planting specified in Section 30-5.B.3.e, Planting Standards.

Table 30-5.B.4.b: Required Site & Landscaping Plantings

TYPE OF USE [1]	REQUIRED PLANTINGS PER SITE [2]
Detached single-family residential uses	Exempt from the requirements of this Section 30-5.4.b, Site & Building Landscaping.
Other household living uses; group living uses	Four canopy trees (including at least one evergreen tree) per acre + at least one shrub per each five feet of outer building perimeter
All other uses	Two canopy trees (including at least one evergreen tree) per acre, + at least one shrub per each five feet of outer building perimeter

- c. Street trees shall be located to avoid utilities (both overhead and underground), in accordance with the utility's requirements for clearance, unless specific written consent from the utility owner is provided.

4. *Configuration*

- a. Street trees shall be canopy trees except beneath overhead utilities or other projections into the public right-of-way, where understory trees shall be used instead.
- b. In locations directly under overhead utility lines, two understory trees may be substituted for each required canopy tree.
- c. Within the DT-1 district, other urban areas, or redevelopment areas, street trees may be located within reduced planting strips or tree pits with irrigation and drainage systems or as part of an adopted streetscape master plan. Tree pits may be located adjacent to the back of the curb.
- d. All trees planted along NCDOT right-of-way shall conform to NCDOT guidelines.

5. *Maximum On-Center Spacing*

- a. Understory trees shall be spaced between 15 to 25 feet on center, depending upon the species size at maturity.
- b. Canopy trees shall be spaced between 25 to 40 feet on center, depending upon the species size at maturity.
- c. Wherever possible, small and medium trees shall be placed between large trees to accommodate the canopy growth of large trees over time.
- d. Alternative layout may be considered through the Alternative Landscape Plan procedure in Section 30-5.B.4.f.

b. **Site and Building Landscaping**

Site and building landscaping material is intended to soften the visual impact of the building base and provide for the even dispersal of trees and other plantings across a development site.

1. *Standards*

Except for substations and lift stations, single-family detached dwellings and properties in the Downtown (DT) district, site and building landscaping shall be required for all development, and shall be supplied in the amounts identified in Table 30-5.B.4.b, Required Site Landscaping Plantings, below, and Figure 30-5.B.4.b, Site and Building Landscaping Placement. Site landscaping shall meet the minimum size standards for new planting specified in Section 30-5.B.3.e, Planting Standards.

Table 30-5.B.4.b: Required Site & Landscaping Plantings

TYPE OF USE [1]	REQUIRED PLANTINGS PER SITE [2]
Detached single-family residential uses	Exempt from the requirements of this Section 30-5.4.b, Site & Building Landscaping.
Other household living uses; group living uses	Four canopy trees (including at least one evergreen tree) per acre + at least one shrub per each five feet of outer building perimeter
All other uses	Two canopy trees (including at least one evergreen tree) per acre, + at least one shrub per each five feet of outer building perimeter

Table 30-5.B.4.b: Required Site & Landscaping Plantings

NOTES:

[1] See Table 30-4.A, Use Table.

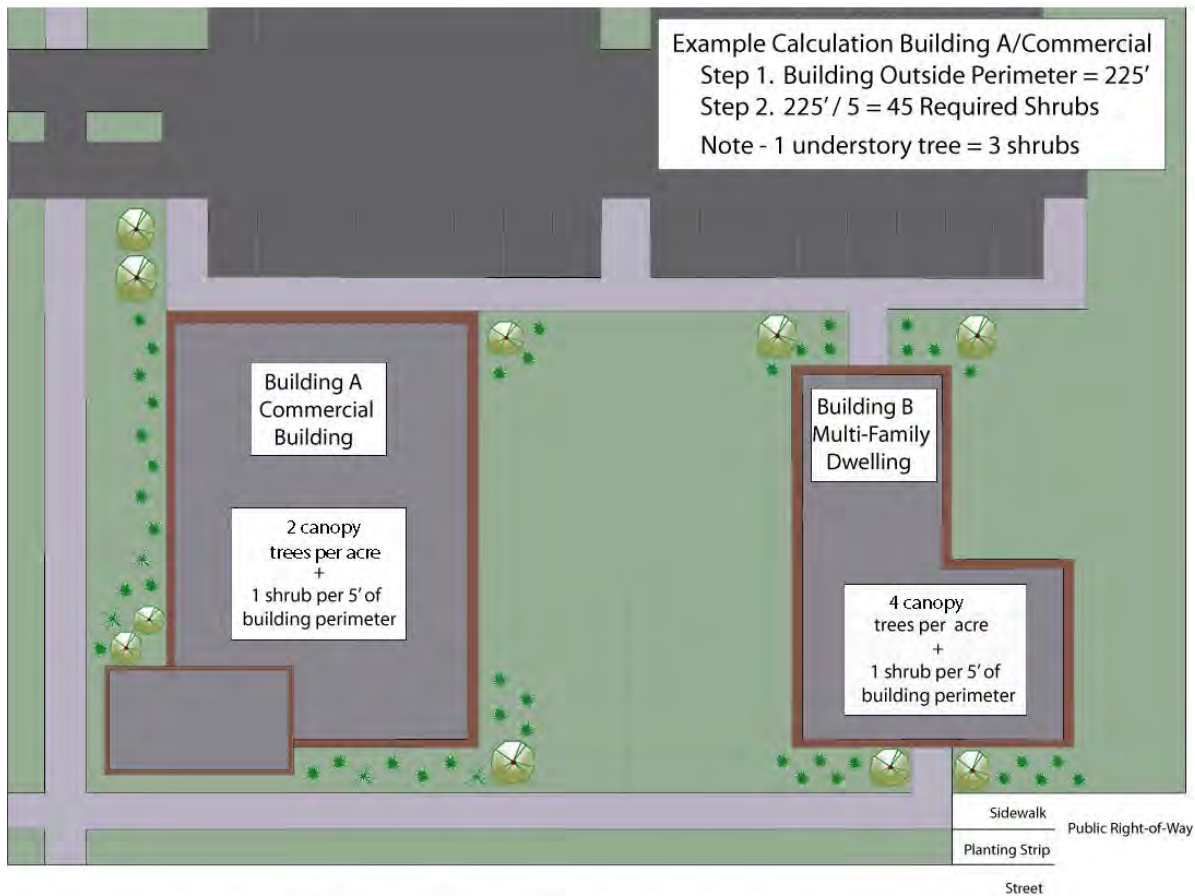
[2] At least one-half of the required shrubs shall be of an evergreen variety.

[3] Understory trees may be substituted for up to 50 percent of the required number of shrubs at the substitution rate of one understory tree for three shrubs.

2. Location

Required shrubs shall be planted around the building perimeter, with emphasis placed on building bases visible from the public right-of-way. Required shrubs may be planted within a five-foot planting strip adjacent to the building or up to 15 feet from the building provided there is a sidewalk located between the planting area and the building wall. Fifty percent of the required shrubbery may be dispersed around the site. The linear perimeter footage is exclusive of docks, bays and pedestrian entrances up to 50 percent of the total perimeter linear footage.

Figure 30-5.B.4.b: Site and Building Landscaping Placement



Site landscaping includes foundation plantings and trees dispersed across a development site.

c. Vehicular Use Area Landscaping

All vehicular use areas shall include landscaping, both within the interior of the vehicular use

Table 30-5.B.4.b: Required Site & Landscaping Plantings

NOTES:

[1] See Table 30-4.A, Use Table.

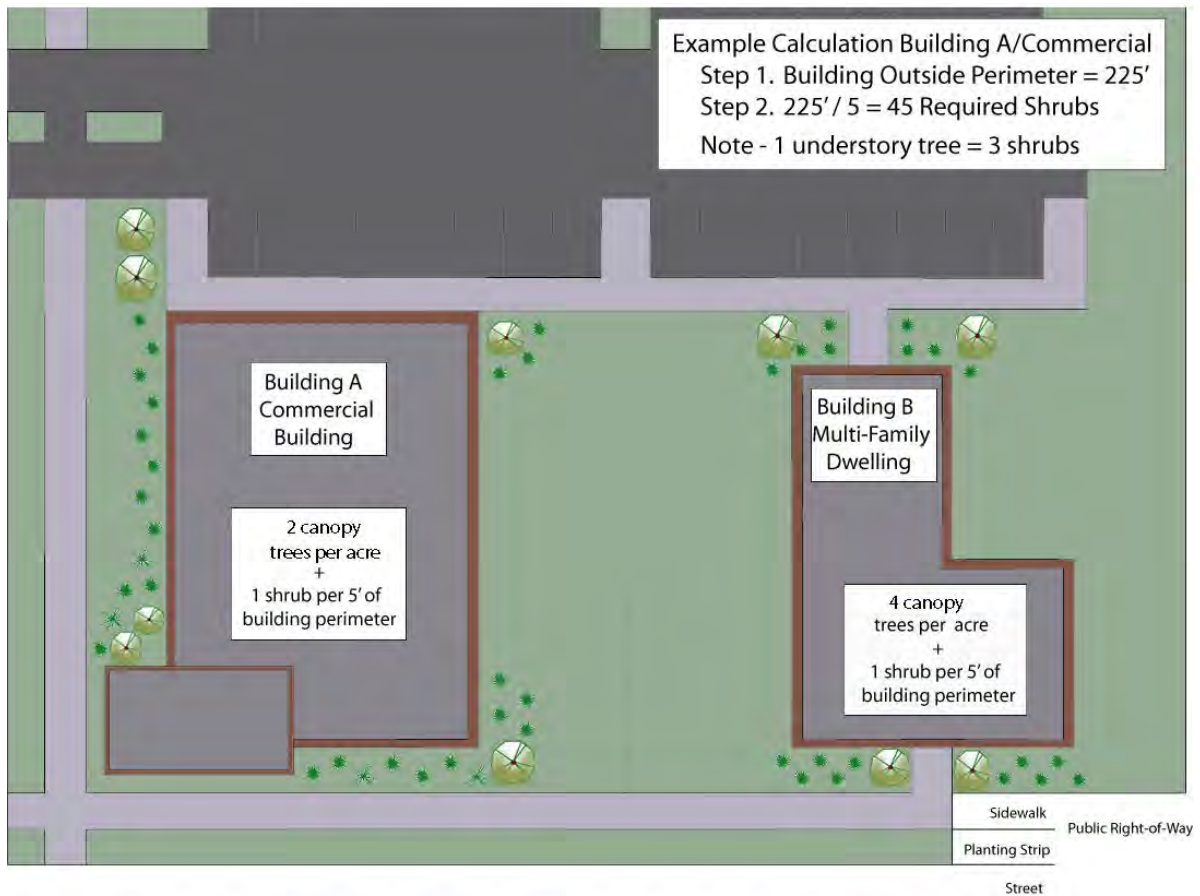
[2] At least one-half of the required shrubs shall be of an evergreen variety.

[3] Understory trees may be substituted for up to 50 percent of the required number of shrubs at the substitution rate of one understory tree for three shrubs.

2. Location

Required shrubs shall be planted around the building perimeter, with emphasis placed on building bases visible from the public right-of-way. Required shrubs may be planted within a five-foot planting strip adjacent to the building or up to 15 feet from the building provided there is a sidewalk located between the planting area and the building wall. Fifty percent of the required shrubbery may be dispersed around the site. The linear perimeter footage is exclusive of docks, bays and pedestrian entrances up to 50 percent of the total perimeter linear footage.

Figure 30-5.B.4.b: Site and Building Landscaping Placement



Site landscaping includes foundation plantings and trees dispersed across a development site.

c. Vehicular Use Area Landscaping

All vehicular use areas shall include landscaping, both within the interior of the vehicular use

area and around its perimeter (see Figure 30-5.B.4.c, Vehicular Use Area Landscaping), as a means of mitigating the parking area's microclimate and visual impacts.

1. *Purpose and Intent*

It is the intent of this section to visually modify the appearance and break the blight created by large expanses of vehicular use areas; filter and reduce the glare of reflected sunlight from parked automobiles onto adjacent properties and the public street right-of-way; separate the public from the ill effects of fumes and dust; and provide shade, noise attenuation, and filtering of the air of particulate and gaseous pollutants.

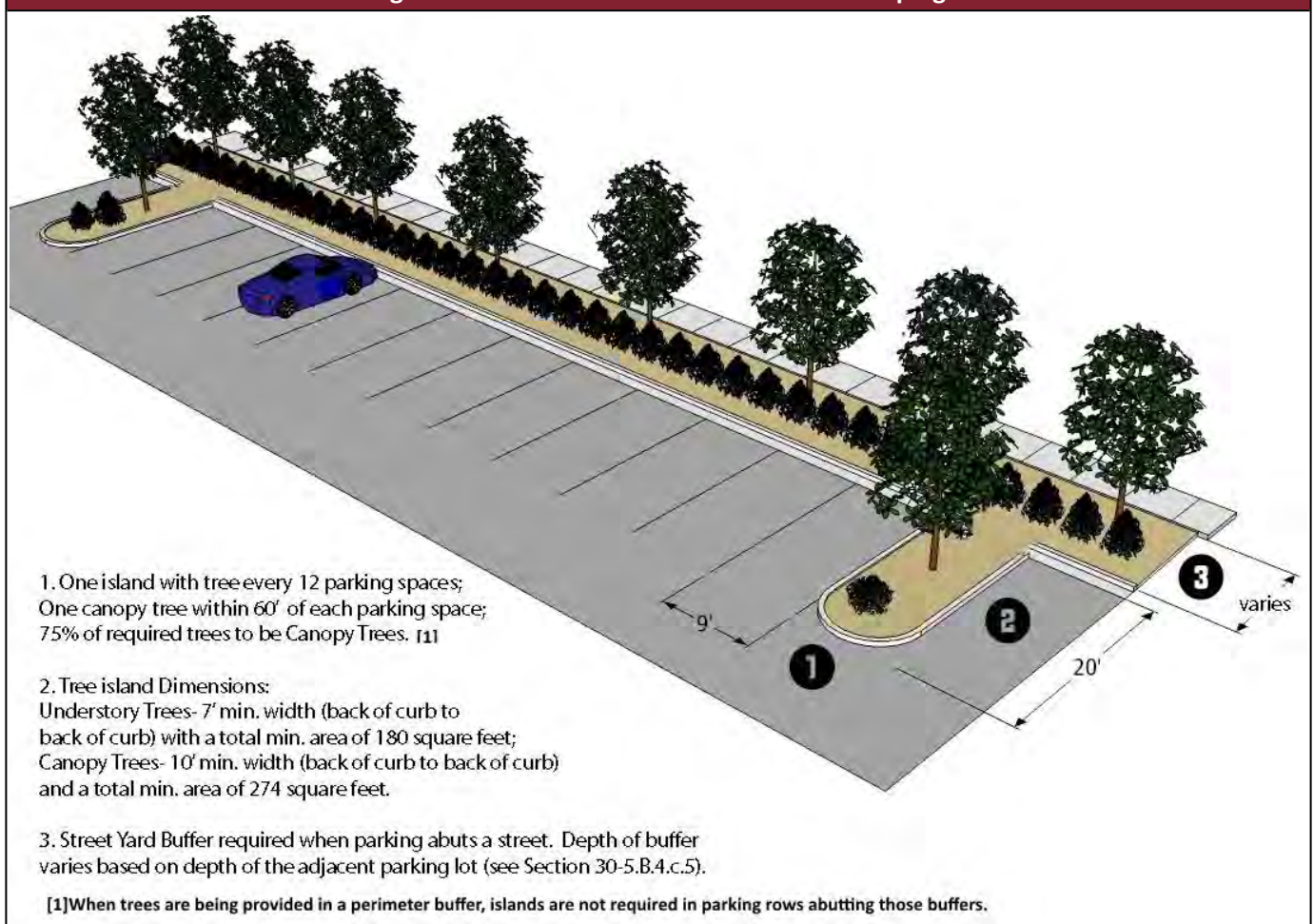
2. *Applicability*

These standards shall apply to all development in the City with on-site vehicular use areas, except single-family detached, and duplex, triplex or quadraplex dwellings on a single lot.

3. *Interior Vehicular Use Area Landscaping Standards*

All parking areas with 12 or more spaces shall provide and maintain landscaping areas within the interior of the parking lot in accordance with the standards in this subsection. These standards shall not apply to parking structures or automotive sales or display lots.

Figure 30-5.B.4.c: Vehicular Use Area Landscaping



- a. Landscaped planting areas shall be distributed throughout the parking area for the purpose of heat abatement.
- b. All rows of interior parking shall be terminated by a tree planted within a landscape island. Perimeter parking detailed in subparagraph c. does not require a landscape tree.
- c. One tree shall be required for every 12 parking spaces. All vehicular parking spaces must have at least one canopy tree within 60 feet of each parking space, or one understory tree within 30 feet. Trees planted within perimeter vehicular use landscaping strips may be used to satisfy this requirement.
- d. At least 50 percent of all trees required by this section shall be canopy trees.
- e. Each planting area shall contain sufficient area and backfill soil to accommodate the root growth of the plant material used as discussed in the General Requirements in Section 30-5.B.3.e.3.
- f. When a pedestrian pathway median (see Section 30-5.A.11.f, Pedestrian Pathways) is widened to accommodate trees and the minimum planting area referenced in Section 30-5.B.3.e.3 is observed, the adjacent tree islands that would otherwise be required every 12 parking spaces (see Section 30-5.B.4.c.3.c, above), may be eliminated in this area. Other requirements of this section still apply.
- g. All planting areas shall be protected from vehicle damage by the installation of curbing, wheel stops, or other comparable methods. The size of the planting area, size of plant material at maturity, and placement of plant material shall allow for a two-and-one-half-foot bumper overhang from the face of the curb when wheel stops are not used. This standard shall not prohibit the use of planting areas as stormwater management devices.
- h. For expansion or renovation projects where the application of these requirements is infeasible or unworkable, the applicant may propose an alternative landscape plan as outlined in Section 30-5.B.4.f, Alternative Landscape Plan.

(Ord. No. S2013-026, § 1, 11-18-2013)

4. *Perimeter Vehicular Use Area Landscaping Strips*

Vehicular use areas shall be separated and screened from all adjoining properties by a landscape strip.

a. *Continuous Visual Screen in Non-Residential Areas*

Commercial (non-residential) vehicular use areas shall be separated from adjoining commercial properties with a minimum five foot wide landscape strip. When head-in parking adjacent to the property line includes wheel stops, the minimum width of the landscape strip is reduced to three feet. The landscape strip shall be planted with a continuous visual screen of evergreen shrubs along the property line, with a minimum height of 24 inches at the time of planting. Required sight clearances at driveways and near intersections shall not be subject to this requirement. When a parking lot will be consolidated with an adjacent parcel, the landscaping strip may be eliminated (see Section 30-5.B.4c.4.c, below).

b. *Adjacent to Off-Street Surface Parking on Other Lots*

Parking lots should be consolidated and circulation systematized when possible with more creative and effective landscaping, pedestrian circulation, and lighting, rather than

having a series of smaller-sized parking lots divided by arbitrary lots lines with landscaped buffers. To this end, the vehicular use area landscape strip may be eliminated when the proposed parking lot will be combined with an existing or future adjoining parking lot. A recorded Cross Parking Agreement between the cooperating parties is required to provide non-exclusive access (for vehicles and pedestrians) to driveways, maneuvering areas, parking areas, and so on.

c. *Credit Towards Property Perimeter Landscape Buffer Requirements*

Perimeter landscape strips associated with a vehicular use area may be credited towards perimeter buffer standards (see Section 30-5.B.4.d, below), provided the minimum 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.

Table 30-5.B.4.c.5.d. Garden Wall Design Standards	
WIDTH OF STREET FRONTAGE	DESIGN STANDARDS
<70 feet of street frontage	<ul style="list-style-type: none"> Height & Opacity- Opaque at the ground level up to a minimum height of 32 inches; Maximum height of 48 inches. Height above 32 inches may be ornamental or semi-opaque. Pillars and posts may extend up to six inches beyond top of wall. (Adjacent grade to be considered so that screening is achieved.) No supplemental vegetation required. No jogs or offsets required. No setback required from street right-of-way/property line. Column spacing a maximum of every 20 feet and at terminii. If angled or 90 degree parking is adjacent to the wall, must include wheel stops or sufficient space between curb and wall for bumper overhang.
70+ feet of street frontage	<ul style="list-style-type: none"> Height & Opacity- Opaque at the ground level up to a minimum height of 32 inches; Maximum height of 48 inches. Height above 32 inches may be ornamental or semi-opaque. Pillars and posts may extend up to six inches beyond top of wall. (Adjacent grade to be considered so that screening is achieved.) If aligned with building façade, minimum five foot planting strip on the street side of the wall, planted with a variety of low shrubbery. If not aligned with a building façade, minimum three foot planting strip on the street side of the wall with five foot jogs or offsets required every 40 feet, planted with a variety of vegetation including understory trees. Each offset shall have a minimum width of ten feet. Column spacing a maximum of every 20 feet and at terminii. If angled or 90 degree parking is adjacent to the wall, must include wheel stops or sufficient space between curb and wall for bumper overhang.

Consistency and Reasonableness Statement

Map Amendments

Pursuant to N.C.G.S. Sections 160D-604 and -605, the Zoning Commission finds that the proposed zoning map amendment in case P24-03 is consistent/inconsistent with the City of Fayetteville's Future Land Use Map and Plan (Comprehensive Plan). The following analysis examines the proposed amendment relative to the goals and land-use policies and strategies of the Comprehensive Plan:

Consistency

1. GOALS

GOAL(S)	CONSISTENT	INCONSISTENT
GOAL #1: Focus value and investment around infrastructure and strategic nodes	X	
GOAL #2: Promote compatible economic and commercial development in key identified areas	X	
GOAL #4: Foster safe, stable, and attractive neighborhoods	X	

2. LAND USE POLICIES AND STRATEGIES:

LAND USE POLICIES AND STRATEGIES	CONSISTENT	INCONSISTENT
LUP 1: Encourage growth in areas well served by infrastructure and urban services, including roads, utilities, parks, schools, police, fire, and emergency services.	X	
1.2: Encourage more intense uses, a greater mix of uses, and denser residential types in key focal areas.	X	
LUP 2: Encourage strategic economic development	X	
2.1: Encourage economic development in designated areas	X	
LUP 3: Encourage redevelopment along underutilized commercial strip corridors and reinvestment in distressed residential neighborhoods	X	
3.2: Identify potential barriers to redevelopment and reinvestment and provide flexibility through modification to development regulations while maintaining high standards.	X	
LUP 4: Create well-designed and walkable commercial and mixed-use districts	X	
4.1: Ensure new development meets basic site design standards.	X	
4.2: Encourage context-sensitive design.	X	

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

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

Reasonableness

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

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

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

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

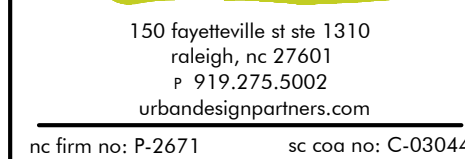
Additional comments, if any (write-in):

January 9, 2024

Date

Chair Signature

Print



nc firm no: P-2671 sc coa no: C-03044

12/12/2023

1209 Hay Street, Fayetteville, NC 28305

1209 Hay Street, Fayetteville, NC 28305

1" = 20'
DECEMBER 12, 2023
22-RDU-014



City of Fayetteville

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

City Council Action Memo

File Number: 24-3762

Agenda Date: 1/9/2024

Version: 1

Status: Agenda Ready

In Control: Zoning Commission

File Type: Public Hearing
(Public & Legislative)

Agenda Number: 5.04

TO: Mayor and Members of City Council

THRU: Zoning Commission

FROM: Craig Harmon - Senior Planner

DATE: January 9, 2024

RE:

P24-06. Rezoning from Single Family Residential 6 (SF-6) to Mixed Residential 5 (MR-5) located at 201 Rosemary Drive (0428489415000) totaling 9.66 acres ± and being the property of Fayetteville Metropolitan Housing Authority, represented by Fred Ford of Stogner Architecture, PA.

COUNCIL DISTRICT(S):

4 - Haire

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

Goal III: City invested in Today and Tomorrow

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

Goal IV: Desirable Place to Live, Work, and Recreate

- Objective 4.5 - To ensure a place for people to live in great neighborhoods
- Objective 4.6 - To reduce poverty and homelessness

Goal VI: Collaborative Citizen and Business Engagement

- Objective 6.1 - To ensure collaborative relationships with the business community, local governments, military, and stakeholders

Executive Summary:

The applicant is seeking to rezone 9.66 acres ±, just off of Murchison Road, from Single

Family Residential 6 (SF-6) to Mixed Residential 5 (MR-5). The owner seeks to redevelop property for multi-family use.

Background:

Owner: Dawn Weeks, Fayetteville Metropolitan Housing Authority

Applicant: Fred Ford, Stogner Architecture, PA

Requested Action: SF-10 to MR-5

REID #s: 0428489415000

Council District: 4 - D.J. Haire

Status of Properties: Developed Multi-Family.

Size: 9.66 acres ±

Adjoining Land Use & Zoning:

- North: CC - Commercial Businesses
- South: SF-6 - Vacant Land & Single Family Housing
- East: SF-6 - Single Family Housing
- West: SF-6 - Mobile Home Park

Annual Average Daily Traffic: Murchison Road: 18,500

Letters Mailed: 188

Land Use Plans:

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

According to the Plan, it is recommended that this portion of the city should be developed as Neighborhood Improvement (NIR). These areas allow higher-density redevelopment and "missing middle" housing to increase private reinvestment and revitalize neighborhoods. Target areas include clusters of vacant and/or underutilized parcels. Policies focus on neighborhood improvement and reinvestment.

Issues/Analysis:

History:

Aerial photography from the Cumberland County GIS system reveals that these properties were developed by the Housing Authority sometime between 1968 and 1982.

Surrounding Area:

To the north of the property, there is CC-zoned land hosting a variety of commercial uses including several auto repair and other businesses located along Rosemary Street and Murchison Road. To the south, vacant land zoned SF-6 with single-family housing and vacant parcels. On the eastern side, there is additional SF-6 zoning with single-family housing and vacant properties. To the west, the area comprises SF-6 zoned property that is currently used as a mobile home park, that is accessed from Pamalee Drive.

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 seeking to rezone property currently zoned Single Family 6 (SF-6) to Mixed Residential 5 (MR-5). The MR-5 District is intended to meet the diverse housing needs of City residents by accommodating a wide variety of residential housing types and arrangements at moderate to high densities, including single-family detached dwellings, two- to four-family dwellings, multi-family dwellings, and other residential development that may include single-family attached dwellings, and zero lot line development subject to the requirements of this Ordinance. All development in the district shall comply with the design standards in Article 30-5: Development Standards. MR-5 districts may also include centrally-located open space, complementary institutional uses (e.g., religious institutions, post offices, police sub-stations), day care facilities, and limited small-scale neighborhood-serving convenience retail uses (See 30-4.D. Accessory Uses).

Straight Zoning:

The request is for a straight rezoning to Mixed Residential 5 (MR-5).

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:

The proposed amendment is in line with the surrounding properties, the existing use of the property in question, and the recommendations outlined in the Future Land Use Plan. Except for commercial development along Murchison Road, the surrounding area predominantly features single-family and multi-family development. The redevelopment aligns with the established neighborhoods and offers the property owner a chance to utilize the land productively and contribute much-needed housing to the community. The proposed amendment is in harmony with the surrounding area, characterized by a mix of residential, commercial, and retail uses. It is structured to prevent premature and excessive development, given the current status of the property. It is unlikely to adversely impact property values significantly; in fact, the development of these parcels may have a positive effect.

Consistency and Reasonableness Statements:

The Future Land Use Plan includes defined goals, policies, and strategies. This application aligns with the city's strategic growth strategies and fulfills the goals outlined in the attached Consistency and Reasonableness form.

Budget Impact:

While there won't be an immediate budgetary impact, this rezoning will have an economic impact in the future as it will lead to the collection of taxes.

Options:

1. Recommends approval of the map amendment to MR-5 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;
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 MR-5 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 the standards that apply to such uses are 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 Statement

Project Overview**#1201048****Project Title:** Murchison Townhomes (Rosemary Drive)**Application Type:** 5.1) Rezoning (Map Amendment)**Workflow:** Staff Review**Jurisdiction:** City of Fayetteville**State:** NC**County:** Cumberland**Project Location****Project Address or PIN:** 201 ROSEMARY DR
(0428489415000)**Zip Code:** 28302**GIS Verified Data****Property Owner: Parcel**

- 201 ROSEMARY DR: FAYETTEVILLE METROPOLITAN HOUSING AUTHORITY

Acreage: Parcel

- 201 ROSEMARY DR: 9.66

Zoning District: Zoning District

- 201 ROSEMARY DR: CC

Subdivision Name:**Fire District:****Hospital Overlay District:****Cape Fear District:****Haymount Historic District:****100 Year Flood:** <100YearFlood>**Watershed:****Airport Overlay District:****Coliseum Tourism District:****Downtown Historic District:****Floodway:****500 Year Flood:** <500YearFlood>**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:** 9.66**Water Service:** Public**A) Please describe all existing uses of the land and existing structures on the site, if any:**

Subject property is Owned and Managed by the Fayetteville Metropolitan Housing Authority. Site is currently a Multi-Family Site with 60 Apartments in 11 townhouse style buildings. One daycare facility, serving the residents, is located on-site.

Previous Amendment Approval Date:**Proposed Zoning District:** MR-5**Is this application related to an annexation?:** No**Sewer Service:** Public**B) Please describe the zoning district designation and existing uses of lands adjacent to and across the street from the subject site.:**

Subject property is located just off of Murchison Road, with parcels zoned CC between the subject property and Murchison Road supporting business use. Parcels to the West are zoned SF-6 supporting business use (transmission service, auto tire and repair, beauty supply) and single-family detached residential use (mobile home park). Parcels to the South are zoned OI supporting a single, single-family residential. Parcels to the East are zoned SF-6 supporting single-family and multi-family residential.

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

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

Subject site a is key housing site for City of Fayetteville Choice Neighborhood Implementation grant application and long-term redevelopment plan.

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

Existing conditions have not changed. Re-zoning request is being made in preparation for the redevelopment of the site, being part of the greater revitalization plan.

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

The proposed re-zoning will make the site compliant for the proposed redevelopment, in order to provide much needed, improved affordable housing.

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.:

With close proximity to Pamalee Drive (401) to the west and directly south of Murchison Rd., the amendment will allow multi-family residential development within immediate proximity to both current and future commercial development that benefits from the two corridors.

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

The subject property is situated directly adjacent (to the east and south) to commercial development or what could be future community commercial. The proposed rezoning will effectively serve as a buffer or transitional zoning for future development to the south and east of the subject property.

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

We do not anticipate the rezoning to encourage premature development.

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

We do not anticipate the rezoning to result in strip-style commercial development.

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

Being positioned directly adjacent to a community commercial district, we do not anticipate the rezoning creating a negative, isolated zoning scenario.

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

Being a target site for the Choice Neighborhood Implementation, we do not anticipate the rezoning and proposed redevelopment having a negative impact on property values. The redevelopment is a strategic effort to enhance the lives of the residents currently living the community and neighborhood.

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

We do not anticipate the rezoning and the proposed redevelopment to have a negative impact on the natural environment. The proposed redevelopment will incorporate energy star and green building technologies to operate more efficiently than the existing development. Redevelopment on the existing site, at a higher density, is a good use and leveraging of existing land resources.

Primary Contact Information

Contractor's NC ID#:

Project Owner

Dawn Weeks

Fayetteville Metropolitan Housing Authority

1000 Ramsey Street
Fayetteville, NC 28301
P:9104833648
dweeks@fmhanc.org

Project Contact - Agent/Representative

Fred Ford
Stogner Architecture, PA
615 East Broad Avenue
Rockingham, NC 28379
P:9108956874
fford@stognerarchitecture.com

As an unlicensed contractor, I am aware that I cannot enter into a contract that the total amount of the project exceeds \$40,000. :

NC State General Contractor's License Number:

NC State Electrical Contractor #1 License Number:

NC State Electrical Contractor #2 License Number:

NC State Mechanical Contractor's #1 License Number:

NC State Mechanical Contractor's #2 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: Architect

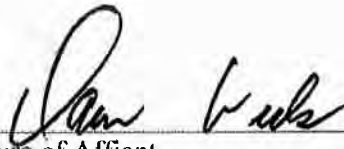
AFFIDAVIT OF OWNERSHIP

I, Dawn Weeks, Executive Director of Fayetteville Metropolitan Housing Authority, being duly sworn, deposes and says:

1. That I am the owner of the property/properties located at 201 Rosemary Street in the City of Fayetteville, a political subdivision of the State of North Carolina.

2. I do hereby give permission to Stogner Architecture, PA to submit a Conditional Rezoning/Rezoning/Variance/Special Use (circle one) application to the City of Fayetteville on my behalf for the above referenced property/properties.

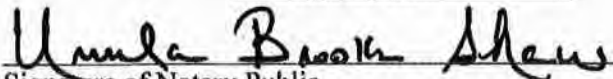
3. This authority is only granted for the application to be submitted on December 15, 2023.


Signature of Affiant

Signature of Affiant

Cumberland County, North Carolina

Sworn to and subscribed before me this day on the 19th day of December, 2023

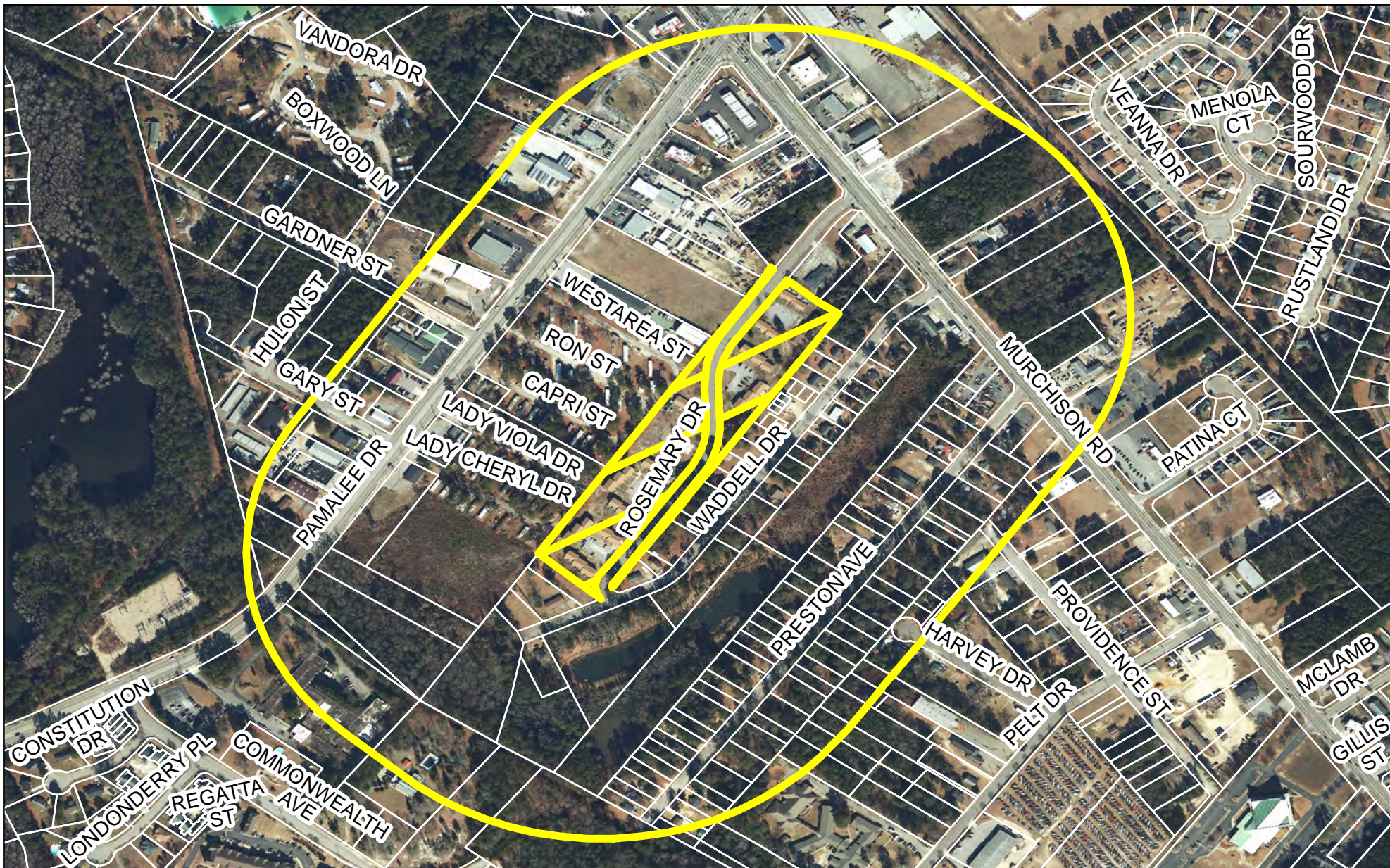

Signature of Notary Public

(Official Seal)

Ursula Brooks Shaw, Notary Public
Printed Name of Notary Public

My Commission Expires: 3/29/2025





Aerial Notification Map

Case #: P24-06

Request: Rezoning
Single Family Residential 6 (SF-6) to
Mixed Residential 5 (MR-5)

Location: 201 Rosemary Drive

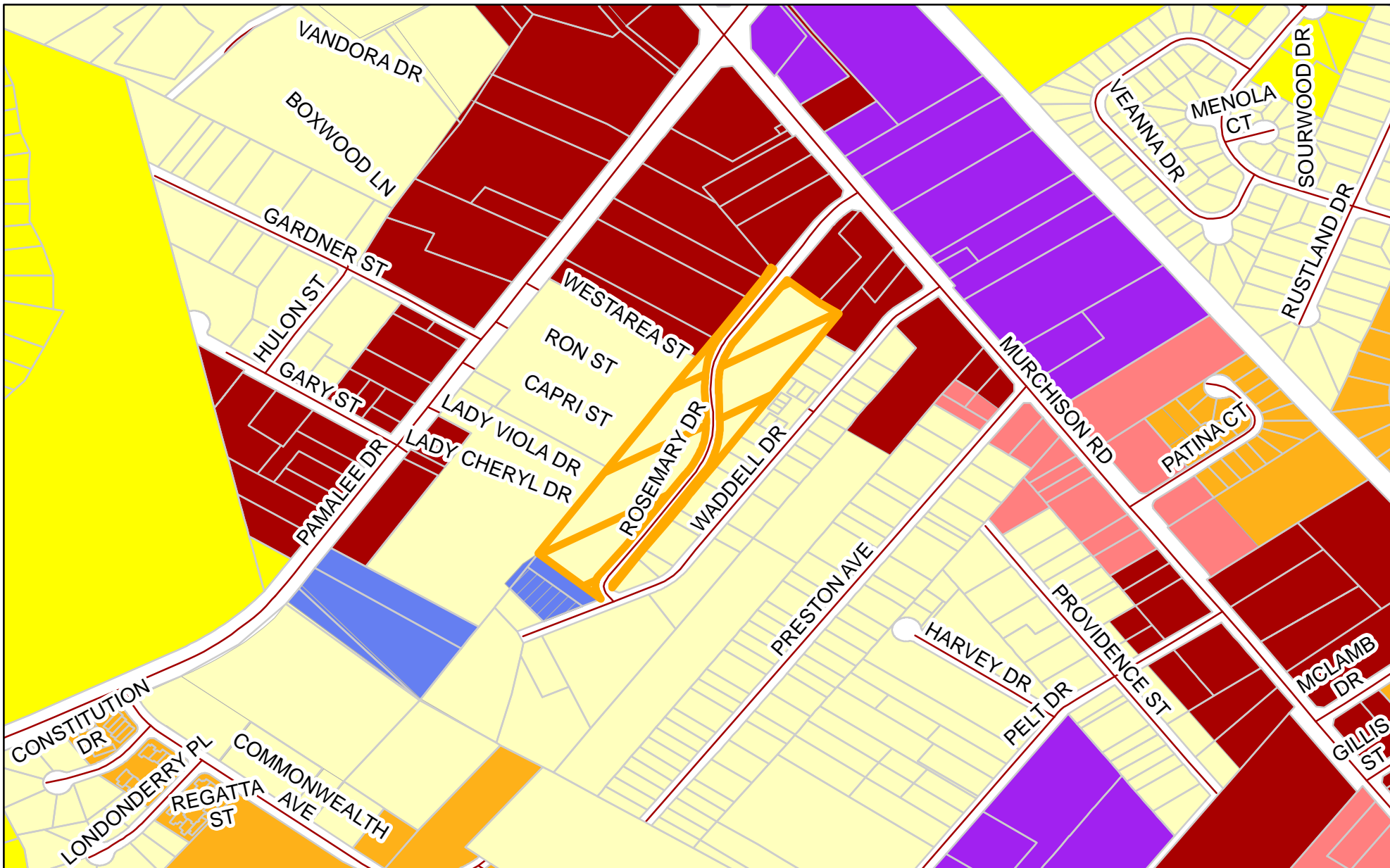
Legend

 P24-06  P24-06 Notification Buffer



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





Zoning Map

Case #: P24-06

Request: Rezoning

Single Family Residential 6 (SF-6)
to Mixed Residential 5 (MR-5)

Location: 201 Rosemary Drive

Legend



P24-06



CC - Community Commercial



HI - Heavy Industrial



LC - Limited Commercial



MR-5 - Mixed Residential 5



OI - Office & Institutional



OI/CZ - Conditional Office & Institutional



SF-6 - Single-Family Residential 6



SF-10 - Single-Family Residential 10

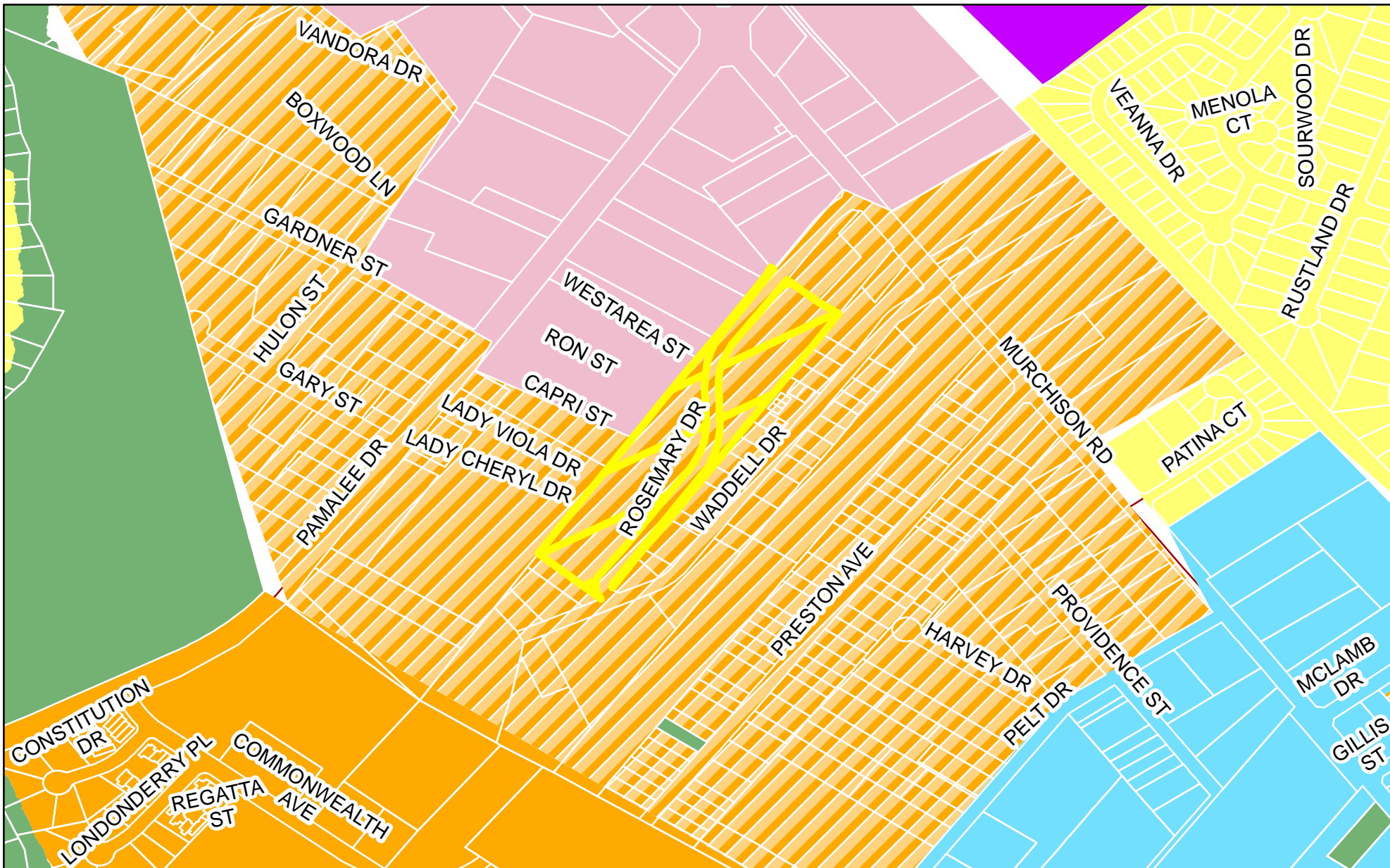


County



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





Land Use Map

Case #: P24-06

Request: Rezoning
Single Family Residential 6 (SF-6)
to Mixed Residential 5 (MR-5)

Location: 201 Rosemary Drive

Legend



P24-06

Land Use Plan 2040

Character Areas

- PARKOS - PARK / OPEN SPACE
- LDR - LOW DENSITY
- NIR - NEIGHBORHOOD IMPROVEMENT
- HDR - HIGH DENSITY RESIDENTIAL
- NMU - NEIGHBORHOOD MIXED USE
- OI - OFFICE / INSTITUTIONAL
- EC - EMPLOYMENT CENTER



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







Surrounding Property



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 P24-06 is consistent/inconsistent with the City of Fayetteville's Future Land Use Map and Plan (Comprehensive Plan). The following analysis examines the proposed amendment relative to the goals and land-use policies and strategies of the Comprehensive Plan:

Consistency

1. GOALS

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

2. LAND USE POLICES AND STRATEGIES:

LAND USE POLICIES AND STRATEGIES	CONSISTENT	INCONSISTENT
LUP 2: Encourage strategic economic development	X	
2.1: Encourage economic development in designated areas	X	
LUP 4: Create well designed and walkable commercial and mixed use districts	X	
4.1: Ensure new development meets basic site design standards.	X	
4.2: Encourage context-sensitive design.	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):

January 9, 2024
Date

Chair Signature

Print