

City of Fayetteville, Arkansas

113 West Mountain Street

Fayetteville, AR 72701

(479) 575-8267



Planning Commission Tentative Agenda

Thursday, May 9, 2024

4:30 PM

City Hall Room 111

Planning Commission Members

Andrew Brink, Chair

Mary McGetrick, Vice Chair

Brad Payne, Secretary

Matthew Cabe

Nick Castin

Jimm Garlock

Fred Gulley

Mary Madden

Nick Werner

Senior Assistant City Attorney Blake Pennington

Call to Order**Roll Call****Consent****1. MINUTES:**

Approval of the minutes from the April 22, 2024 Planning Commission. - Mirinda Hopkins, Development Coordinator

2. VAR-2024-0018: Planning Commission Variance (2843 S. LEO AMMONS RD/MADEWELL, 698):

Submitted by BATES & ASSOCIATES for property located at 2843 S. LEO AMMONS RD. The property is in the FAYETTEVILLE PLANNING AREA and contains approximately 4.72 acres. The request is for a variance to road frontage requirements. - Donna Wonsower, Planner

Unfinished Business**New Business****3. ADM-2024-0013: Administrative Item (Amend UDC Chapters 166.01, Development Categories, 166.02, Development Review Process, 166.23, Urban Residential Design Standards, 167.04 Tree Preservation And Protection, 169.03, Review And/Or Permits Required, 155, Appeals):**

Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 166.01, 166.02, 166.23, 167.04, 169.03, and 155. The proposed code changes would modify development review requirements associated with project type, tree preservation, architectural design standards, and appeals. - Jessica Masters, Development Review Manager

4. VAR-2024-0019: Planning Commission Variance (37 W. TRENTON BLVD/KOSKI, 445):

Submitted by DEMX ARCHITECTURE PA for property located at 37 W. TRENTON BLVD. The property is zoned RMF-24, RESIDENTIAL MULTI-FAMILY, 24 UNITS PER ACRE and contains approximately 0.22 acres. The request is for a variance to the flood damage prevention code. - Alan Pugh, Staff Engineer

5. VAR-2024-0020: Planning Commission Variance (2517 N. SHILOH DR/LEWIS BROTHERS LEASING CO. INC, 286):

Submitted by NABHOLZ CONSTRUCTION for property located at 2517 N.

SHILOH DR. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 3.50 acres. The request is for a variance to commercial design standards. - Gretchen Harrison, Senior Planner

6. CUP-2024-0013: Conditional Use Permit (2630 E. BAYSIDE XING/SRBINOVSKI, 137):

Submitted by ALEK SRBINOVSKI for property located at 2630 E. BAYSIDE XING. The property is zoned NC, NEIGHBORHOOD CONSERVATION and contains approximately 0.20 acres. The request is to use the property as a short-term rental. - Kylee Cole, Planner

7. CUP-2024-0014: Conditional Use Permit (4165 W. MARLOWE LN/HENDLEY, 439):

Submitted by BRIAN HENDLEY for property located at 4165 W. MARLOWE LN. The property is zoned RPZD, RESIDENTIAL PLANNED ZONING DISTRICT and contains approximately 0.10 acres. The request is to use the property as a short-term rental. - Gretchen Harrison, Senior Planner

8. CUP-2024-0015: Conditional Use Permit (215 W. DICKSON ST/THE GARDEN ROOM AT PURITAN, 484):

Submitted by KEVIN FREY for property located at 215 W. DICKSON ST. The property is zoned MSC, MAIN STREET CENTER and contains approximately 0.22 acres. The request is for an outdoor music establishment. - Gretchen Harrison, Senior Planner

9. CUP-2024-0016: Conditional Use Permit (1629 N. CROSSOVER RD/SMYTH REVIVAL LLC, 410):

Submitted by COMMUNITY BY DESIGN for property located at 1629 N. CROSSOVER RD. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 1.93 acres. The request is for a cluster housing development with 14 dwelling units. - Kylee Cole, Planner

10. CUP-2024-0017: Conditional Use Permit (10 S. PALMER AVE/BEYKIRCH, 521):

Submitted by KEY ARCHITECTURE INC for property located at 10 S. PALMER AVE. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 0.40 acres. The request is to use the residence for a cultural and recreational facility for international student housing. - Jessica Masters, Development Review Manager

11. RZN-2024-0019: Rezoning (1830 E. 13TH ST/KELLAR, 565):

Submitted by ANGEL KELLAR for property located at 1830 E. 13TH ST. The

property is zoned I-2, GENERAL INDUSTRIAL and C-2, THOROUGHFARE COMMERCIAL, and contains approximately 1.86 acres. The request is to rezone the property to CS, COMMUNITY SERVICES. - Donna Wonsower, Planner

Items Administratively Approved by Staff

12. LSP-2024-0012: Lot Split (2913 N. OLD WIRE RD/CARDEN, 254):

Submitted by BATES & ASSOCIATES for property located at 2913 N. OLD WIRE RD. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 4.03 acres. The request is to divide the property into four lots containing approximately 0.66, 1.04, 1.75 and 0.58 acres. - Donna Wonsower, Planner

13. LSIP-2024-0003: Large Site Improvement Plan (NORTH OF 3420 W. MOUNT COMFORT RD/GODDARD SCHOOL, 323):

Submitted by BATES & ASSOCIATES for property located NORTH OF 3420 W. MOUNT COMFORT RD. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and CS, COMMUNITY SERVICES and contains approximately 3.03 acres. The request is for an 11,616-square-foot school building and associated parking. - Gretchen Harrison, Senior Planner

14. FPL-2024-0002: Final Plat (NORTH OF W. WEIR RD AND N. SWEET CADDO HL/BLACKBERRY RIDGE PH 2, 201):

Submitted by CRAFTON TULL for property located NORTH OF W. WEIR RD AND N. SWEET CADDO HL. The property is in the FAYETTEVILLE PLANNING AREA and contains approximately 50.49 acres. The request is for the final plat of 19 residential lots. - Kylee Cole, Planner

Agenda Session Items

Announcements

Adjournment

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard at the public hearings. If you wish to address the Planning Commission on an agenda item, please queue behind the podium when the Chair asks for public comment. Once the Chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate appointed official, staff, or others for response. Please keep your comments brief, to the point, and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters of TDD, Telecommunications Device for the Deaf, are available for all public

hearings, 72 hour notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

(pg. 1) Planning Commission		Monday, 04/22/2024				
Time:	5:30 PM					
Staff :	☒ Melissa Evans □ John Scott ☒ Jessie Masters ☒ Gretchen Harrison ☒ Donna Wonsower ☒ Kylee Cole ☒ Zach Foster ☒ Alison Jumper					
	□ Britin Bostick □ Sherry Smith □ Josh Boccaccio □ Melissa Boyd □ Fire Marshal/Andrew Horton □ Chris Brown □ Alan Pugh					
	Roll Call	1) Minutes (04/08/2024)	2) PPL-2024-0002 (HARPER SUBDIVISION)	3) ADM-2024-0019 (AMEND CHAPT. 166.04 PARKLAND DEDICATION)	4) VAR-2024-0017 (SOUTH CATO HOLDINGS)	5) PPL-2024-0003 (ELEMENT PH 5)
Payne	1	1	1	1	1	1
Castin	1	1	1	1	1	1
Gulley	1			1	1	1
Cabe	1	1	1	1	RECUSE	1
Werner	1	1	1	1	1	1
Garlock	1	1	1	1	1	1
Madden	1	1	1	1	1	1
McGetrick	0			1	1	1
Brink	1	1	1	1	0	1
Agenda		Consent	Consent	New	New	New
Motion By		Garlock	Garlock	Madden	Gulley	Payne
Motion 2nd		Castin	Castin	Werner	Garlock	Werner
Vote		7-0-0	7-0-0	9-0-0	7-1-1	9-0-0
Action		Approve	Approve	Forward	Approve	Approve
Time		5:33 PM	5:33 PM	5:45 PM	6:09 PM	6:16 PM
Motion Detail				With a recommendation of approval.	With all conditions as recommended by staff.	With all conditions as recommended by staff.
Public Comment		0	0	0	0	0

(pg. 2) Planning Commission		Monday, 04/22/2024				
	6) RZN-2024-0015 (STONE STREET RENTALS LLC)	7) RZN-2024-0016 (FAYETTEVILLE NATURE SCHOOL)	8) RZN-2024-0017 (ZWEIG)	9) RZN-2024-0018 (SUBTEXT ACQUISITIONS LLC)		
Payne	1	1	1	1		
Castin	1	1	1	1		
Gulley	1	1	1	1		
Cabe	1	1	0	1		
Werner	1	1	1	0		
Garlock	1	1	1	1		
Madden	1	1	1	1		
McGetrick	1	1	1	1		
Brink	1	1	1	1		
Agenda	New	New	New	New		
Motion By	Werner	Madden	McGetrick	Payne		
Motion 2nd	Garlock	McGetrick	Brink	Cabe		
Vote	9-0-0	9-0-0	8-1-0	8-1-0		
Action	Forward	Forward	Forward	Forward		
Time	6:21 PM	6:25 PM	6:38 PM	7:10 PM		
Motion Detail	With a recommendation of approval.	With a recommendation of approval.	With a recommendation of approval.	With a recommendation of approval.		
Public Comment	0	1	1	5		



TO: City of Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Donna Wonsower, Planner

MEETING DATE: May 13, 2024

SUBJECT: **VAR-2024-0018: Planning Commission Variance (2843 S. LEO AMMONS RD./MADEWELL, 698):** Submitted by BATES & ASSOCIATES for property located at 2843 S. LEO AMMONS RD. The property is in the FAYETTEVILLE PLANNING AREA and contains approximately 4.72 acres. The request is for a variance to the road frontage requirements.

RECOMMENDATION:

Staff recommends approval of **VAR-2024-0018**, with conditions.

RECOMMENDED MOTION:

*"I move to approve **VAR-2024-0018**, determining:*

- *In favor of the requested variance to 166.05(A)(3); and*
- *In favor of all other conditions recommended by staff."*

BACKGROUND:

The subject property is southeast of the City limits in Washington County near the boundary of the Fayetteville Planning Area approximately 800 feet southwest of the intersection of S. Leo Ammons Rd. and S. Mally Wagon Rd. / S. Van Hoose Dr. The property has currently has no existing street frontage but is accessed from S. Leo Ammons Rd through an existing driveway. Containing approximately 4.72 acres, the property is largely undeveloped. A 1,452 square foot single-family home was constructed on the property in 1956 and a 2,190 square foot mobile home was built in 2004 per the Washington County Assessor. No portions of the property are within any overlay districts. A lot split is under review for the subject property (LSP-2024-0007). Surrounding land uses and zoning are depicted in *Table 1*.

Table 1 - Surrounding Land Use and Zoning

Direction	Land Use	Zoning
North	Rural Residential/Agricultural	Washington County - Ag/SF 1 (Agricultural/Single-family Residential, One Unit per Acre)
South	Rural Residential/Agricultural	Washington County - Ag/SF 1 (Agricultural/Single-family Residential, One Unit per Acre)
East	Rural Residential/Agricultural	Washington County - Ag/SF 1 (Agricultural/Single-family Residential, One Unit per Acre)
West	Rural Residential/Agricultural	Washington County - Ag/SF 1 (Agricultural/Single-family Residential, One Unit per Acre)

Request: The applicant is requesting a variance to 166.05(A)(3) which requires that any lot in the planning area shall have direct frontage to a public street, with the minimum frontage required by

Washington County pursuant to residential lot and block standards (typically 75 feet). The property is currently without public street frontage, and the applicant intends to create two lots where there is currently one.

DISCUSSION:

Staff recommends approval of the applicant's request. One intent of the ordinance is to maintain a consistent lot and block pattern in developments outside the City limits in the event they are ever annexed into the City. Another is to create lots that are developable in a manner consistent with City standards. There is not a consistent lot and block pattern in this area, and it has historically been used as a low-density agricultural use. The property is approximately ½ mile from Fayetteville city limits. While the eastern property line is approximately 30 feet from county ROW, it is fully enclosed within the adjacent owner's property line and would require either the applicants to purchase additional land in order to have frontage or for the adjacent property owners to dedicate right-of-way. Staff finds this likely exceeds the rough proportionality for the proposed subdivision of land. There is a pre-existing driveway from S. Leo Ammons Rd. that provides access to all of the proposed lots from the public street of N. Double Springs Rd. Though this driveway also crosses the adjacent owner's parcel without a known easement, staff finds that the applicant has been using this driveway since construction and that an additional parcel utilizing this existing drive is unlikely to substantially increase traffic or negatively affect the adjacent property owner. Per the applicant team, they are coordinating with the adjacent property owner to dedicate an access easement over the existing driveway to the right-of-way.

Public Comment: Staff has not received any public comment regarding this request.

RECOMMENDATION: Staff recommends approval of VAR-2024-0018, with the following conditions of approval;

Conditions of Approval:

- 1. Planning Commission determination of a variance to §166.05(A)(3), which states that any lot created in the Planning Area shall have direct frontage to a public street, with the minimum frontage required by Washington County pursuant to residential lot and block standards. Staff recommends approval of the request for the reasons stated above.**
2. Approval of this variance does not constitute approval for any associated lot split, concurrent plat, or constitute approval for any future development;
3. Approval from Washington County Planning must be received prior to recordation of any associated lot split or concurrent plat.

PLANNING COMMISSION ACTION:			
Required	<u>YES</u>		
Date: <u>May 13, 2024</u>	☐ Tabled	☐ Approved	☐ Denied
Motion:			
Second:			
Vote:			

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Code:
 - §166.05 Required Infrastructure Improvements and Subdivision Regulations - Development In Planning Area
 - Applicant Request letter
 - Site Plan
 - Staff Exhibit: Property Lines
 - One Mile Map
 - Close-up Map
 - Current Land Use Map
-

166.05 Required Infrastructure Improvements and Subdivision Regulations - Development In Planning Area

(A) *Required Infrastructure Improvements and Subdivision Regulations Outside the City.*

- (1) *Within 1 Mile of City Limits.* On and off-site improvements and subdivision regulations for development outside the city limits and within one mile of the city are the same as for those developments within the city limits, with the exception of park land dedication requirement which is not required.
- (2) *Beyond 1 Mile of City Limits.* On- and off-site improvements and subdivision regulations for development outside 1 mile of the city limits shall meet Washington County standards.
- (3) **All lots in the planning area shall have direct frontage to a public street, with the minimum frontage required by Washington County pursuant to residential lot and block standards.**

(B) *Developments Outside City Developed to All Inside the City Standards.* If the City Council grants access to the City's sewer system pursuant to §51.115. (C) and the owner/developer agrees to petition for annexation as soon as legally possible and develop the subdivision in accordance with all city development requirements including payment of all impact fees, the bulk and area requirements for this subdivision shall conform to those within the RSF-4 Zoning District or as otherwise designated by the City Council rather than those within the planning area.

(Code 1965, App. A., Art. 8(11), App. C., Art. IV; Ord. No. 1747, 6-29-70; 1750, 7-6-70; Ord. No. 1999, 5-7-74; Code 1991, §§159.54, 160.120; Ord. No. 3925, §6, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4753, 9-6-05; Ord. No. 5215, 1-20-09; Ord. No. 5270, 9-1-09; Ord. No. 5296, 12-15-09; Ord. No. 5546, 12-04-12)



BATES

Engineers • Surveyors

7230 S. Pleasant Ridge Dr. Fayetteville, AR 72704

PH: 479-442-9350 * FAX: 479-521-9350

www.nwabatesinc.com

March 28, 2024

To the City of Fayetteville Planning Commission:

Our clients, Lonnie & Lura Madewell are requesting a variance for the lack of public road frontage on their property at 2865 & 2843 South Leo Ammons Road, Fayetteville, AR. The reason for this request is that they are trying to split their property into two tracts. The subject property involved is parcel 001-11017-000 and contains 4.72 acres. Tract 1 to contain 2.36 acres and tract 2 to contain 2.36 acres. The City of Fayetteville's Unified Development Code 166.05 (A)(3) states "*All lots in the planning area shall have direct frontage to a public street, with the minimum frontage required by Washington County pursuant to residential lot and block standards.*"

There is hardship with the parent parcel having no road frontage due to the shape of the parcel in relation to the road and the neighboring property in which the road runs through. Lonnie & Lura were unaware of the separation between the road and their front property line, and have been accessing their property through the existing driveway since they bought it in 1976. We are proposing to access tract 2 via a variable width access easement per a separate document across the existing driveway between our east property line and South Leo Ammons Road. This split is between family members and the reason for the split is so the Madewells (owners of the property) can split off the existing house located on tract 2 to Eric & Melissa Davenport (daughter & son-in-law) to use as their primary residence.

If you have any questions, comments or concerns, feel free to contact us.

Sincerely,

Blaine Atchley

Project Manager

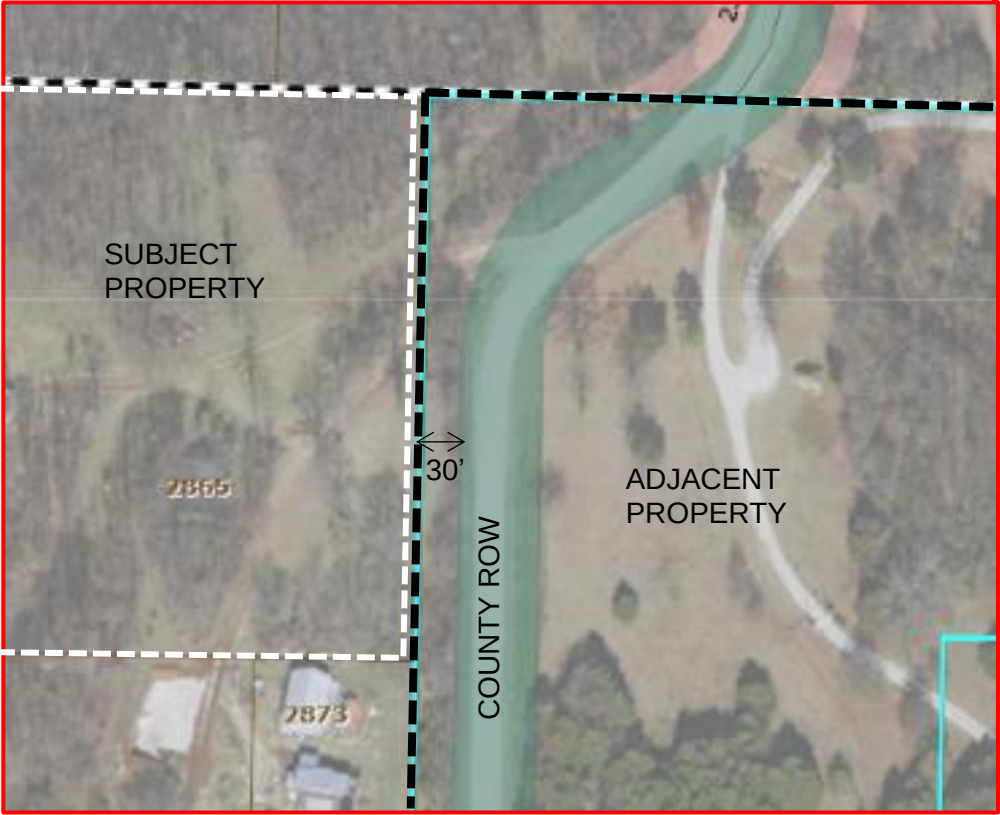
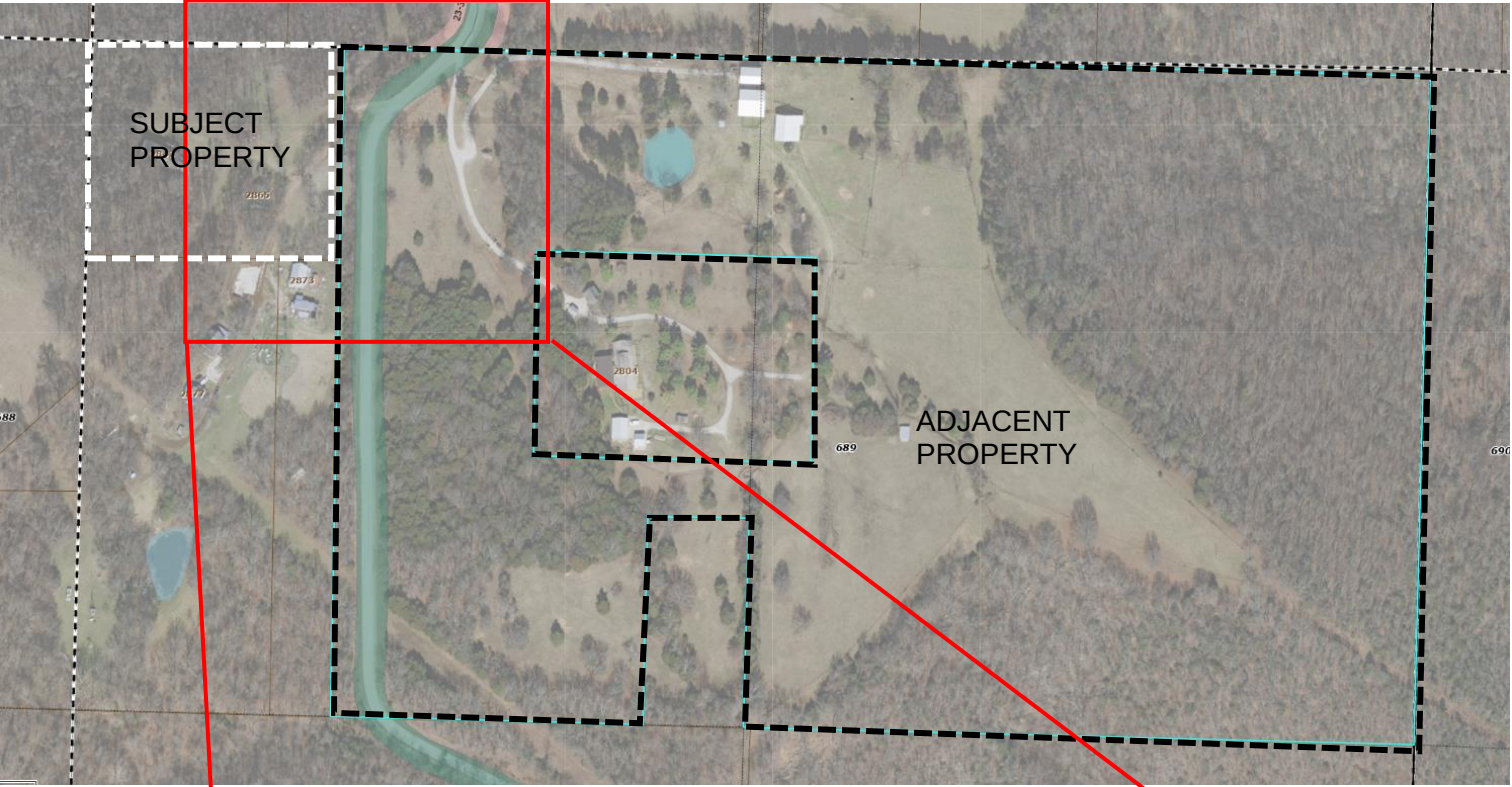
Phone: 479-442-9350

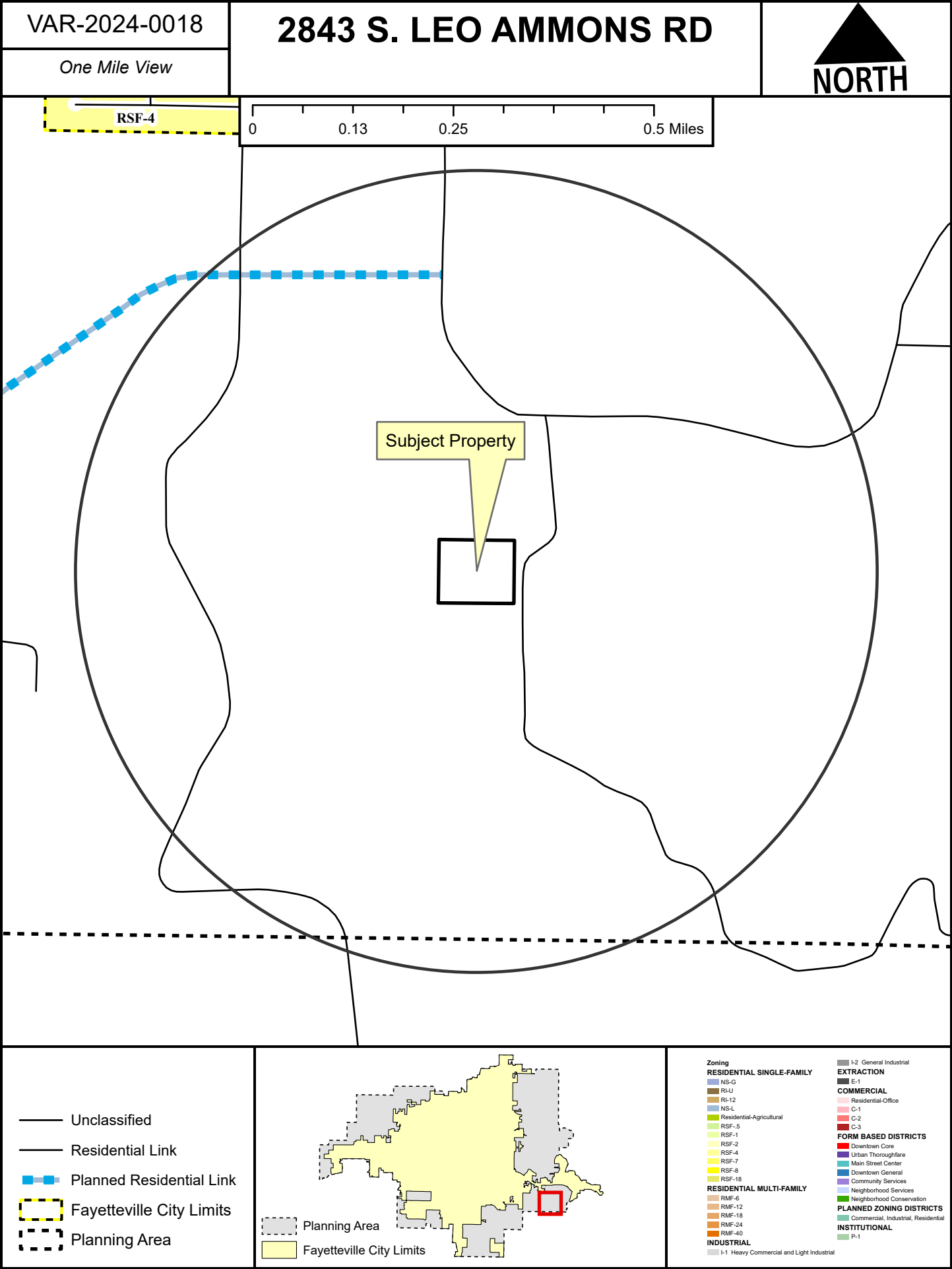
Email: blaine@batesnwa.com

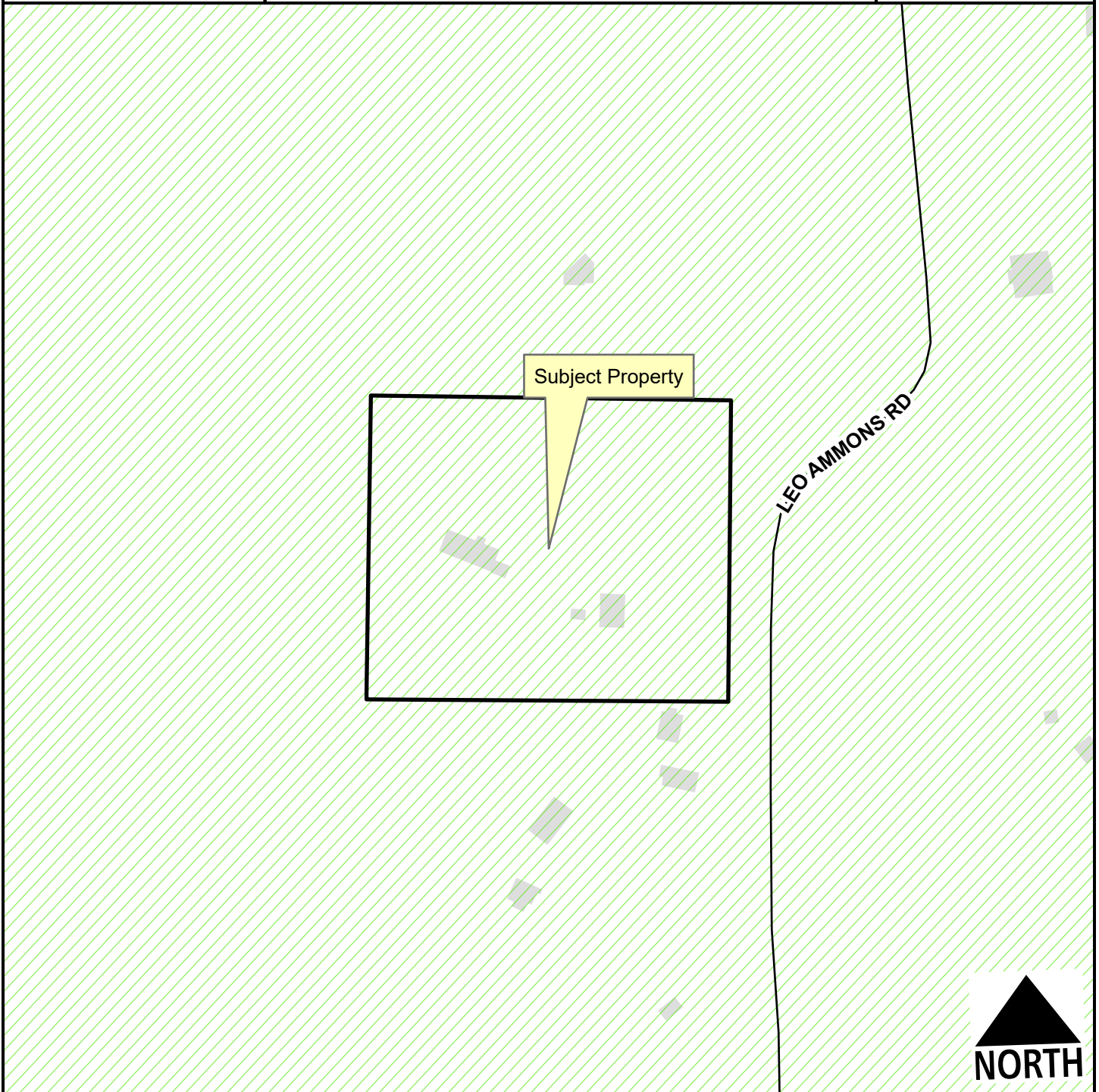
7230 S Pleasant Ridge Drive

Fayetteville, AR 72704

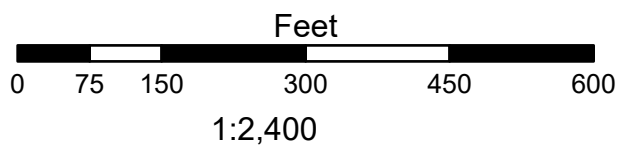
STAFF EXHIBIT
PROPERTY LINES







— Unclassified
Hillside-Hilltop Overlay District
Planning Area







TO: Fayetteville Planning Commission

FROM: Jessie Masters, Development Review Manager

MEETING DATE: May 13, 2024

SUBJECT: **ADM-2024-0013: Administrative Item (Amend UDC Chapters 166.01, Development Categories, 166.02, Development Review Process, 166.23, Urban Residential Design Standards, 167.04 Tree Preservation and Protection, 169.03, Review and/or Permits Required, 155, Appeals):** Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 166.01, 166.02, 166.23, 167.04, 169.03, and 155. The proposed code changes would modify development review requirements associated with project type, tree preservation, architectural design standards, and appeals.

RECOMMENDATION:

Staff recommend forwarding **ADM-2024-0013** to the City Council with a recommendation of approval.

RECOMMENDED MOTION:

*"I move to forward **ADM-2024-0013** to the City Council with a recommendation of approval."*

BACKGROUND:

In 2021, major ordinance changes were approved by City Council to revamp drainage and development standards, with a secondary goal of incentivizing infill. The changes that were approved required new green stormwater practices on a sliding scale of added impervious surface, and decoupled certain requirements from a question of use and tied those requirements instead to the overall impact to stormwater. This introduced three new levels of development threshold and shifted the requirement of a large-scale development plan or a site improvement plan to be triggered only after the addition of 10,000 sq. ft. of added, new impervious surface. In the intervening period since 2021, staff audited the outcomes of these changes, and identified several areas that require revision and clarification.

- **Parkland Dedication**
 - Certain project types were no longer subject to parkland dedication, even though the impact of added units is significant.
- **Project Classification**
 - Projects adding less than 10,000 sq. ft. still often require a coordinated, cross-divisional round of review/comment leading to delays unforeseen issues at permitting.
- **Application of Tree Preservation standards**
 - Certain projects are no longer subject to tree preservation requirements.
- **Timeliness of Variances and Appeals**
 - Variances are only permitted to be appealed with an overall project, rather than piecemeal. This becomes an issue when certain development types are no longer subject to large-scale development or site improvement plan.

Recognizing immediate financial implications, staff proposed changes to the parkland dedication ordinance already, which were forwarded by the Planning Commission to the City Council. Those changes are scheduled to be heard by the City Council on May 21, 2024.

DISCUSSION:

Staff is proposing the following remaining changes to code to address the other issues. To address the lack of a coordinated review leading to delays at permitting, staff proposes two major changes. The first is to shift the threshold of a large-scale development or small/large site improvement plan from the *addition* of 10,000 sq. ft. of impervious surface to the *development or redevelopment* of 10,000 sq. ft. of impervious surface. Staff finds that by keeping the requirement tied to impervious surface, this captures the goal and intent of the original changes by improving stormwater performance within the City, while also moving certain, larger project types back into the development entitlement process. Certain projects that may be *adding* less than 10,000 sq. ft. to an overall site still often require a coordinated, cross-divisional round of review through the Tech Plat process, such as a review for fire code, solid waste provision, parking, addressing, landscape, and design standards. By skipping that process, staff has found that architecture/landscape architecture/engineering drawings are getting their first round of review and comment through a permit submittal when drawings have been completed to 100% construction drawings, rather than getting feedback during the schematic design process. The second proposal is to require projects that are developing or redeveloping between 6,000-10,000 sq. ft of impervious surface to submit a concept plan for review through the Tech Plat process so that they receive a coordinated round of comments and feedback prior to submitting for permitting. Staff finds that these preliminary rounds of review are necessary to provide feedback at a critical time in a project's overall design phase.

To address tree preservation concerns, staff proposes requiring an abbreviated tree preservation plan to projects developing or redeveloping between 1,200 and 6,000 sq. ft. of impervious surface. Urban Forestry staff have found that larger, multi-unit structures on smaller infill sites are no longer required to perform any tree preservation, mitigation, or even escrow, even if the impact to the canopy is significant. To help alleviate concerns about requiring additional tree preservation to smaller sites, staff also recommends an option for projects within this threshold to be evaluated for a tree escrow contribution.

Finally, the City Attorney's office recommends changes to the appeals section of code. Variances, as current written in the appeals portion of code, can only be appealed with the overall project, such as an SIP, LSIP, or LSD. As certain projects no longer require these preliminary project approvals before permitting, variances can only be appealed once a permit is issued. Staff is recommending that variances can be appealed independently from an overall project, in those instances where an SIP, LSIP, or LSD, or other preliminary development entitlement approval is not required.

Public Comment: Staff distributed these ordinance changes to key stakeholders within the development community. Feedback was received in relation to vested interest of projects that may already be in the pipeline, and feedback was received in relation to parkland dedication requirements. The City Attorney's office confirmed that vested interest in this or is any ordinance change happens at the time of an approved or issued permit. One Planning Commissioner suggested that the threshold could be shifted to the overall size of a structure rather than the amount of impervious surface. No additional written comment was offered, or alternative code changes suggested at this time.

RECOMMENDATION: Staff recommend forwarding ADM-2024-0013 to City Council with a recommendation of approval.

PLANNING COMMISSION ACTION: Required <u>YES</u>			
Date: <u>May 13, 2024</u>	☐ Tabled	☐ Forwarded	☐ Denied
Motion:			
Second:			
Vote:			

BUDGET/STAFF IMPACT:

None

Attachments:

- **Current Regulations:**
 - UDC §155, Appeals
 - UDC §166.01, Development Categories
 - UDC §166.02, Development Review Process
 - UDC §166.23, Urban Residential Design Standards
 - UDC §167.04, Tree Preservation and Protection
 - UDC §169.03, Review and/or Permits Required
- **Proposed Ordinance (Clean):**
 - UDC §155, Appeals
 - UDC §166.01, Development Categories
 - UDC §166.02, Development Review Process
 - UDC §166.23, Urban Residential Design Standards
 - UDC §167.04, Tree Preservation and Protection
 - UDC §169.03, Review and/or Permits Required
- **Proposed Ordinance (Strikethrough):**
 - UDC §155, Appeals
 - UDC §166.01, Development Categories
 - UDC §166.02, Development Review Process
 - UDC §166.23, Urban Residential Design Standards
 - UDC §167.04, Tree Preservation and Protection
 - UDC §169.03, Review and/or Permits Required
- Public Comment

CHAPTER 155: APPEALS

155.01 Circuit Court

Unless set forth otherwise below, all appeals from final actions taken by the City Council, Planning Commission, Board of Adjustment, Construction Board of Adjustment and Appeals, and the Zoning and Development Administrator shall be taken to the Circuit Court of Washington County.

(Code 1965, App. A., Art. 9(6); Ord. No. 1747, 6-29-70; Ord. No. 2323, 4-5-77; Ord. No. 2538, 7-3-79; Code 1991, §160.175; Ord. No. 3925, §7, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04))

155.02 Form/Time/Place

Unless an appeal is filed with the court, the following requirements shall be met:

- (A) *Form.* All appeals shall be submitted in writing referencing the applicable UDC section(s) and setting out the reasons the applicant contends the decision was in error.
- (B) *Time.*
 - (1) *Appeals.* Appeals shall be submitted within ten (10) working days from the date of the final action taken.
 - (2) *Hearings.* The entity hearing the appeal shall fix a reasonable time for hearing an appeal.
- (C) *Place.* Appeals shall be filed with the following:
 - (1) *City Clerk.* Appeals made to the City Council shall be filed with the City Clerk.
 - (2) *Zoning and Development Administrator.* Appeals made to the Planning Commission or Board of Adjustment shall be filed with the Zoning and Development Administrator.
 - (3) *Building Safety Division Director.* Appeals made to the Board of Adjustment, [for inspecting purposes] shall be filed with the Building Safety Division Director.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04)

155.03 Stay

An appeal shall stay all proceedings in furtherance of the action appealed from unless the person in charge of administration of the chapter certified that a stay would, in their opinion cause imminent peril to life or property.

(Code 1965, App. A., Art. 13(3); Ord. No. 1747, 6-29-70; Code 1991, §160.173; Ord. No. 4100, §2 (Ex. A), 6-16-98)

155.04 Council Member Appeal On Behalf Of Resident

A Council Member may bring an appeal on behalf of any resident of the city of a decision by the Planning Commission to approve subdivision requests (plats, lot splits), and development requests (large scale developments and large or small site improvement plans). Variances, compliance with applicable design standards, tree preservation plans and conditions of approval for any development shall be appealed as part of the approval of a development proposal.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 6342 , §1, 8-4-20)

155.05 Appeals From Planning Commission Decisions

(A) Appeals to City Council

- (1) Owners of record of the property being considered may appeal a decision by the Planning Commission to deny the following requests in accordance with the procedure set forth in §155.02:
 - (a) Annexation;
 - (b) Rezoning;
 - (c) Required dedication and improvements of §155.06(C);
 - (d) Subdivision (plats, lot splits, lot line adjustments);
 - (e) Development (large scale development, large and small site improvement plans);
 - (f) Vacations of street right-of-way.
- (2) *Conditions of Approval/Variances, etc.* An owner of record may appeal the conditions of approval determined by the Planning Commission and any adverse decision by the Planning Commission concerning applicable design standards, tree preservation requirements, streamside protection requirements and variance requests as part of the conditions of an approved development request or the denial of such development request.
- (3) *Conditional Use Request.* Three Council Members may in unison appeal a decision of the Planning Commission approving or denying a conditional use request.

(Code 1965, §13A-40, App. C., Art. II, Art. V., §B; Ord. No. 1509, 8-8-66; Ord. No. 1750, 7-6-70; Code 1991, §§156.017, 159.12, 159.54(F)(1), (2), 159.66; Ord. No. 3781, §1, 4-19-94; Ord. No. 3925, §6, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4334, 9-4-01; Ord. No. 4340, 10-2-01; Ord. No. 6342 , §2, 8-4-20)

155.06 Appeals From Staff Interpretations And Actions

(A) Appeals to City Council.

- (1) The City Engineer's decision to issue a violation notice or stop work order may be appealed to the City Council by an owner of record of the property in question or a council member on behalf of a resident of the city.
- (2) The Development Review Manager's decision to deny a vacation of any public easement (whether constructed or not) or portion thereof may be appealed by the owner of record of the property.

(B) Appeals to the Board of Adjustment. The following interpretations and decisions may be appealed by an owner of record of the property in question or a council member on behalf of a resident of the city to the Board of Adjustment:

- (1) *Development Review Manager—Zoning.* An interpretation or decision regarding zoning matters.
- (2) *Building Safety Officer—Airport Zone.* Any person aggrieved, or any taxpayer affected by any decision of the Building Safety Officer, made in the administration of Airport Zone, Chapter 165.

(C) Appeals to the Planning Commission.

- (1) *Development Review Manager's Required Dedications and Improvements.*

- (a) An owner or developer who is aggrieved by the requirements of the Unified Development Code for land, right-of-way or easement dedications, construction of on-site or off-site improvements, or payments in lieu of any dedication or improvement, which are in excess of the "rough proportionality" of the impact of the development upon the city's infrastructure or services may appeal such requirement to the Planning Commission as a part of the submission of the preliminary plat, large scale development, subdivision, building permit, lot split, grading permit, floodplain development permit, or otherwise within ten (10) days of notification of such development requirements. The appeal must be presented to the Planning Division in writing and state the grounds, or reasons for the appeal.
 - (b) The Planning Commission shall determine after public hearing whether the required dedications, improvements, and fees meet the "rough proportionality" of the impact of the development on city infrastructure and services. If the requirements are in excess of the "rough proportionality," the Planning Commission is empowered to modify or reduce such requirements to achieve "rough proportionality."
 - (c) Any potential reduction of impact fees must be approved by the City Council.
- (2) *Administrative Approvals and Interpretations by Development Review Manager.*
- (a) A resident of the city or an owner/developer who is aggrieved by a decision of the Development Review Manager regarding development matters that are approved administratively (as required by Chapter 166.02(C)) may appeal the final development approval decision affected by this matter to the Planning Commission. The appeal shall be submitted in writing to the Planning Division within ten (10) working days of the final decision. The appeal shall be limited to the applicable approval or denial criteria as follows:
 - (i) The development plan is not submitted in accordance with the requirements of Chapter 166 of the Fayetteville Unified Development Code.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by Chapter 166 of the Fayetteville Unified Development Code.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development or preliminary plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with UDC Ch. 166 pertaining to required on-site and off-site improvements.
 - (b) The appellant must include in the letter of appeal the specific code section with which the development application does not comply.
 - (c) The Planning Commission shall determine after public hearing whether the interpretation or discretionary decision should be upheld or modified in part or in whole.

- (d) Any staff recommendation to approve or deny some or all of a requested street right-of-way vacation shall be considered by the Planning commission with recommendations to the City Council.
- (3) *City Engineer and Flood Plain Administrator.*
 - (a) *Development Matters.* An interpretation or decision of the City Engineer or Floodplain Administrator regarding development matters, including grading, drainage, water and sanitary sewer systems, and storm drainage systems.
 - (b) *Floodplain Regulations.* The decision of the Floodplain Administrator, provided that the Planning Commission shall hear and decide an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of Chapter 168.
 - (c) *Streamside Protection Zones.* An interpretation or decision of the City Engineer concerning the regulated uses, structures and activities, streamside boundary location or land use exemptions.
- (4) *Development Review Manager's Interpretation or Decision of Other Development Matters.* An interpretation or decision of the Development Review Manager regarding development matters including subdivisions, large scale developments, parking and loading, outdoor lighting, compliance with applicable design standards, or any other development matters.
- (5) *Urban Forester—Landscape and Tree Preservation and Protection requirements.* Decisions of the Urban Forester related to landscape and tree preservation and protection requirements.
- (D) *Appeals to the Construction Board of Adjustment and Appeals.* When the administrative authority under Chapter 173 shall disapprove an application, or the applicant is aggrieved by the interpretation of the administrative authority, the applicant may appeal the decision to the Construction Board of Adjustment and Appeals.

(Code 1965, §17B-11.2(d), (e), App. A., Art. 10(6), 19(2), App. B, §III, App. C., Art. 10(6), 19(2), App. B, §III, App. C., Art. V, §A; Ord. No. 1747, 6-29-70; Ord. No. 1750, 7-6-70; Ord. No. 2109, 6-375; Ord. No. 2252, 7-6-76; Ord. No. 2538, 7-3-79; Ord. No. 2585, 12-4-79; Ord. No. 2697, 1-20-81; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-14-88; Code 1991, §§150.03, 158.67(B), 158.68(A), (B), 159.65, 160.048, 160.172, 160.176(A), (B), 161.11, 162.03(B), (C), 163.10(D); Ord. No. 3551, 6-4-91; Ord. No. 3587, §1, 1-7-92; Ord. No. 3699, §3, 4-20-93; Ord. No. 3716, §2, 6-15-93; Ord. No. 3806, §1, 6-28-94; Ord. No. 3895, §1, 6-20-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3925, §7, 10-3-95; Ord. No. 3963, §9, 4-16-96; Ord. No. 4100, §2 (Exh. A), 6-16-98; Ord. No. 4368, §2, 2-5-02; Ord. No. 4377, §§1, 2, 3-5-02; Ord. No. 4652, 12-07-04; Ord. No. 5206, 12-16-08; Ord. No. 5296, 12-15-09; Ord. 5390, 3-1-11; Ord. No. 6343, §1(Exh. A), 8-4-20; Ord. No. 6446, §5, 6-15-21)

155.07 Appeals To The Housing Board—Mobile Homes And Mobile Home Parks

- (A) *Permit Denied.* Any person whose application for a permit under Chapter 175 has been denied may request and shall be granted a hearing on the matter before the Housing Board.
- (B) *Permit Suspended.* Any person whose permit has been suspended, or who has received notice from the enforcement officer that his permit will be suspended unless certain conditions or practices at the mobile home park are corrected, may request and be granted a hearing on the matter before the Housing Board.
- (C) *Petition Deadline.* When no petition for hearing shall have been filed within ten (10) days following the day on which notice of suspension was served, such permit shall be deemed to have been automatically revoked at the expiration of such ten (10) days.

(Code 1965, §17B11.2(e); Ord. No. 2109, 6-3-75; Ord. No. 2583, 12-4-79; Ord. No. 3152, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-15-88; Code 1991, §158.67; Ord. No. 4100, §2 (Exh. A), 6-16-98)

(Code 1965, §§13A-40, 13A-43; Ord. No. 1509, 8-8-66; Code 1991, §§156.017, 156.029; Ord. No. 4100, §2 (Exh. A), 6-16-98; Ord. No. 4652, 12-07-04).

155.08 Appeals From The Construction Board Of Adjustments And Appeals

If the Construction Board of Adjustments and Appeals refuses to extend a building permit pursuant to §173.02 (B)(8) or to issue a new building permit for property for which a building permit has expired pursuant to §173.02 (B)(8), the owner may appeal to the City Council.

(Ord. No. 5019, 5-15-07)

155.09—155.99 Reserved

166.01 Development Categories

- (A) *Property Line Adjustment*. A property line adjustment is a transfer or adjustment of a property line or lines between adjoining property owners which does not create a separate, new lot. A property line adjustment cannot dedicate new easements or right-of-way.
- (B) *Subdivision of Land*.
- (1) *Lot Split*. When a property is to be subdivided into two (2), three (3) or four (4) lots, parcels the application may be processed as a lot split. Except for lot splits created pursuant §164.22 Cluster Housing Development, (C) *Development Review Process*, after the creation of more than four (4) lots from an original parent tract as established under Washington County's countywide 1985 reappraisal. Any subsequent subdivision of the parent or resulting tracts is required to be processed as a preliminary/final plat or concurrent plat. A lot split may dedicate new easements or right-of-way and may be combined with an easement plat.
 - (2) *Preliminary Plat*. When a property is to be subdivided into more than four (4) lots or when a parent or resulting tract has been subdivided three (3) or more times and is proposed to be further subdivided, the application shall be processed as preliminary plat. A preliminary plat establishes the preliminary location of lot lines, streets, and utility infrastructure, and allows for the applicant to request construction plan approval and install required improvements.
 - (3) *Final Plat*. After completion of the required infrastructure (water, sewer, storm drainage, utilities, street improvements, etc.) for a preliminary plat, the entity subdividing may submit an application for approval of the final plat. The final plat application may not be submitted until the final inspection for the required infrastructure has been scheduled with City Engineering staff.
 - (4) *Concurrent Plat*. A concurrent plat combines the preliminary and final plat into one (1) step. A concurrent plat is permitted when a property is to be subdivided into more than four (4) lots, or when a parent or resulting tract has been subdivided three (3) or more times and is proposed to be further subdivided, and the existing and new parcels do not require construction of new infrastructure.
- (C) *Site Plan*.
- (1) *Large Scale Development*. A large scale development is generally intended for development on a site of 1 acre or greater in size and proposes to create more than 10,000 square feet of impervious area and where a corresponding subdivision of land is not proposed.
 - (a) *Requirement*. The development of the following must be processed in accordance with the requirements for a large-scale development:
 - (i) A site 1 acre or greater in size and creating more than 10,000 square feet of new impervious area;
 - (ii) Facilities emitting odors or handling explosives; and
 - (b) *Excluded Developments*. Developments creating less than 10,000 square feet of new impervious area or a development on a lot or parcel in a zoning district subject to administrative approval.
 - (2) *Large Site Improvement Plan*. A large site improvement plan review is intended for a large scale development that is located on a site within a zoning district that permits administrative approval. A large site improvement plan is subject to the requirements and excluded developments for a large scale development listed in Fayetteville Unified Development Code §166.01(C)(1).
 - (3) *Small Site Improvement Plan*. A small site improvement plan review is intended for development on a site that is less than 1 acre in size with greater than 10,000 square feet of new impervious area.

- (a) *Requirement.* The development of the following must be processed in accordance with the requirements for a small site improvement plan:
 - (i) A development that is excluded from large scale development or large site improvement plan review and requires review by multiple city divisions;
 - (ii) The creation of more than 10,000 square feet of impervious area for a development on site of less than 1 acre within any zoning district.
- (b) *Excluded Developments.* The construction of less than or equal to 10,000 square feet of new impervious area shall be exempt from the site improvement plan requirements and shall be submitted in accordance with the requirements of §166.02(E) and §166.15.
- (4) *Concept Plan.* When a developer intends to subdivide property within the city or city's planning area boundary, he/she shall submit a concept plan to obtain feedback and recommendations from city staff prior and the Planning Commission to submitting a fully engineered development plan for review. When a developer intends to develop greater than 10,000 square feet of new impervious area within the city or city's planning area boundary, they may submit a concept plan to obtain feedback and recommendations from city staff prior to submitting a fully engineered development plan for review.
- (D) *Modifications.*
 - (1) *Minor Modifications.* The Zoning and Development Administrator may authorize minor modifications in an approved subdivision of land or site plan. Minor modifications shall include, but are not limited to, substitutions of one approved structural type for another, minor variations in placement of buildings in such a way that the overall limits of approved floor area, open space, or rooms per acre are not increased, and minor shifts in property line locations.
 - (2) *Major Modifications.* In the event that a developer wishes to make major modifications to an approved development, such modifications shall be submitted to the approving body of the subdivision or site plan, whether staff, Subdivision Committee, or the Planning Commission. After submission, the approving body shall approve or disapprove the requested modification.

(Code 1965, App. C., Art. II, §§A—D; Ord. No. 1750, 7-6-70; Ord. No. 2581, 12-4-79; Ord. No. 2789, 1-18-82; Code 1991, §§159.010; 159.11(C), 159.12, 159.13; 159.14; Ord. No. 3781, §1, 4-19-94; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4350, §1, 11-20-01; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 5945, §16, 1-17-17; Ord. No. 6067, §1, 5-1-18; Ord. No. 6446, §8(Exh. C), 6-15-21)

166.02 Development Review Process

(A) *Application Submittal*

- (1) *Submittal.* All development applications shall be submitted to the Planning Division and will be processed for review in accordance with Planning Division operating procedures.

(B) *Public Meetings.* Development applications are required to be processed through the Technical Plat Review Committee, Subdivision Committee, and Planning Commission as follows:

- (1) *Technical Plat Review Committee.* The following development applications are required to be reviewed by the Technical Plat Review Committee: Lot split, small site improvement plans, large site improvement plans, large scale development, planned zoning district, preliminary plat, final plat, and concurrent plat. After the Technical Plat Review Committee meeting staff may administratively approve lot splits, final plats, small site improvement plans, and large site improvement plans after review for compliance with all applicable codes subject to UDC 166.02(C).
- (2) *Subdivision Committee.* The following development applications are required to be reviewed by the Subdivision Committee: Large scale development, planned zoning district with development, preliminary plat, and concurrent plat. From these applications, the Subdivision Committee may approve only large scale developments. Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Subdivision Committee.
- (3) *Planning Commission.* The following development applications are required to be reviewed by the Planning Commission. Preliminary plat, concurrent plat, and planned zoning district with development. The Planning Commission may approve, deny, table, or approve development applications with conditions. A planned zoning district cannot be approved by the Planning Commission, but may be forwarded to City Council. Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Planning Commission.

(C) *Approval and Denial Criteria*

- (1) *Administrative Approval.* The following applications shall be approved administratively by the Planning Division as long as the proposal meets all requirements of the Unified Development Code: Property line adjustment, lot split, final plat, small site improvement plan, and large site improvement plan. Approval by the Planning Commission for these applications is not required unless an appeal is filed in accordance with Ch. 156 of the UDC.
 - (a) *Reasons for Denial.* The Planning Division may refuse administrative approval based on the following criteria:
 - (i) *Property Line Adjustment; Lot Split.* The application does not comply with zoning and development requirements including, but not limited to: Lot width, lot area, setback requirements, buildable area, required parking, impervious surface, dedication of required right-of-way or easements, etc., or the requested action would make an existing non-conforming property or structure more non-conforming.
 - (ii) *Final Plat.* The conditions of approval of the preliminary plat have not been met, the proposed plat does not meet the zoning and development requirements of the UDC, and/or the required improvements have not been completed or guaranteed in accordance with Fayetteville Unified Development Code Chapter 158.
 - (iii) *Small or Large Site Improvement Plans.* The Planning Division may refuse to approve a small or large site improvement plan for any of the following reasons:

- (a) The development plan is not submitted in accordance with the requirements of this chapter.
 - (b) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (c) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (d) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factor such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (e) City water and sewer is not readily available to the property within the site improvement plat area and the developer has made no provision for extending such service to the development.
 - (f) The developer refused to comply with ordinance requirements or condition of approval for on-site and off-site improvements.
- (2) *Subdivision Committee and Planning Commission Approval.* The following applications shall be approved by the Subdivision Committee or Planning Commission, subject to the criteria listed below: Large scale development, preliminary plat and concurrent plat.
 - (a) *Reasons For Denial.* The Subdivision Committee or Planning Commission may refuse to approve a large scale development, preliminary plat or concurrent plat for any of the following reasons:
 - (i) The plat or development plan is not submitted in accordance with the requirements of this chapter.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development, preliminary plat, or concurrent plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with ordinance requirements or conditions of approval for on-site and off-site improvements.
- (D) *Plat Recordation or Construction Plan Approval.* After obtaining approval by the appropriate governing body, the applicant shall follow the procedures set forth below in order to record the plat or obtain construction plan approval.
 - (1) *Property Line Adjustment, Lot Split, Building Permit, Final Plat, Concurrent Plat.* The applicant shall submit copies of the approved plats containing all required signatures to the Planning Division for final

approval. The plats shall be recorded by the applicant and copies of the recorded plats provided to the Planning Division as required.

(2) *Preliminary Plat, Large Scale Development and Small or Large Site Improvement Plan.* Receipt of the approval authorizes the applicant to proceed with:

- (a) The preparation of plans, reports and specifications in accordance with City Engineering requirements including but not limited to:
 - (i) Street plans, profiles and specification accompanied by soil analyses and design calculations;
 - (ii) Storm drainage plans, profiles and specifications accompanied by soil analyses and design calculations; and
 - (iii) Water and sewer plans, profiles and specifications, accompanied by design calculations, to be reviewed and approved by City Engineering.
 - (iv) Final site plans, landscape plans, and other plans, reports and specifications required by the city to obtain approval.
- (b) Once all approvals that are required have been obtained, the applicant may proceed with site preparation and construction in accordance with the permitted plans.

(E) *Building Permits.*

(1) Before a building permit is issued the developer shall:

- (a) Dedication of Right-of-Way. Dedicate right-of-way in compliance with the city's Master Street Plan, and in compliance with the requirements for on or off-site improvements.
- (b) Dedicate all easements necessary to serve the development as required by the utility providers and the city. This may be completed by easement plat or separate easement document(s), with approval of the Planning Division.
- (c) Comply with all applicable zoning and development codes.
- (d) In addition, for small site improvement plans, large site improvement plans and large scale developments, the developer shall:
 - (i) Obtain approval from the appropriate governing body.
 - (ii) On and Off-Site Improvements. Construct or guarantee required on- and off-site improvements in accordance with UDC Chapter 158.
 - (iii) Complete applicable conditions of approval.

(2) In addition to §166.02(E), before a building permit is issued for site that creates between 1,201 and 10,000 square feet of new impervious area, where a corresponding subdivision of land is not proposed, the developer shall complete, and receive approval of, appropriate grading and drainage documentation demonstrating compliance with UDC Chapters 169 and 170 as well as the current City Drainage Criteria Manual per the table below. Impervious areas will be considered as existing only if they are in place on March 3, 2021 which corresponds with the City of Fayetteville 2021 imagery.

Required Mitigation Measures and Documentation by Development Threshold			
Development Threshold	City-wide Standard	Grading and Drainage/ Stormwater Documentation	Water Quality, Flood, and Tree Mitigation Measures

Level 1	< or = 1,200 sf of IA	Exempt from Grading and Drainage provisions except for those still associated with the Building Permit process such as HHOD	Exempt
Level 2	1,201— 6,000 sf of IA	- Completed Green Stormwater Practice (GSP) Worksheet, demonstrating Runoff Reduction via Better Site Design. - GSP Operation & Maintenance (O & M) Agreement to ensure the long-term functionality of these practices.	2 or more measures from Step 1 of Table 2 that Reduce Runoff via Better Site Design 1 or more Green Stormwater Practices (GSPs) measures from Step 2 of Table 2 as required to treat 100% of the proposed additional impervious and gravel areas.
Level 3	6,001— 10,000 sf of IA	Same as Level 2.	- Same as Level 2. - As needed GSP measures from Step 3 to further reduce runoff referred to as extended detention - Abbreviated Tree Preservation Plan

(F) *Completion of Development/Certificate of Occupancy.* No certificate of occupancy for a large-scale development, large site improvement plan, or small site improvement plan shall be issued, and no final plat or concurrent plat shall be signed for recordation until the following have been completed:

- (1) The requirements for on and off-site improvements have been completed, and maintenance bonds/guarantees deposited to city specifications.
- (2) An "as built" plot plan has been approved by the City Engineer (where applicable) showing:
 - (a) The location of all buildings and the setback distance for said buildings from street right-of-way and adjoining property lines;
 - (b) The location of any freestanding signs and the setback distance of said signs from street right-of-way and adjoining property lines;
 - (c) The location, number, dimensions, and surfacing of all parking spaces and of all screens or fences;
 - (d) The location and size of all water, sewer, gas, electric, telephone, and television cable lines;
 - (e) The location and size of all stormwater features with associated drainage easements demarcated, where applicable; and
 - (f) The location and quantity of existing and new impervious area on the property.
- (3) The development has been inspected and approved by all applicable city divisions.
- (4) All applicable conditions of approval have been completed.

(Code 1965, App. C., Art. II, §§F—H; Ord. No. 2581, 12-4-79; Code 1991, §§159.16—159.18; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 6061, §2, 4-17-18; Ord. No. 6446, §8(Exh. C), 6-15-21; Ord. No. 6539, §5(Exh. A), 3-1-22)

166.23 Urban Residential Design Standards

(A) *Purposes.*

- (1) To protect and enhance Fayetteville's appearance, identity, and natural and economic vitality.
- (2) To create appealing street scenes so that development enhances the image of the city and provides safe, pedestrian-friendly neighborhood environments.
- (3) To minimize service and parking impacts in order to preserve surrounding property values and scenic resources that contribute to the city's economic development.
- (4) To compose attractive residential facades that enhance the economic viability of and provide compatibility with surrounding property.

(B) *Applicability.* All references to urban residential design standards shall include the following uses as permitted by right or conditional use in all zoning districts:

- (1) Two (2) family dwellings
- (2) Three (3) and four (4) family dwellings
- (3) Multi-family dwellings

(C) *Site Development Standards.* The following site development standards shall apply for all urban residential development.

- (1) *Intent.* The intent of these site development standards is to create a pedestrian-friendly streetscape.
- (2) *Vehicular Access/Circulation/Parking.*
 - (a) Site access and internal circulation should promote pedestrian safety, efficiency, and convenience and minimize conflicts between vehicles and pedestrians. Continuous circulation shall be provided throughout the site to the greatest extent possible creating a complete, compact, and connected transportation network both within the development and to the surrounding neighborhood. The visual impact of parking areas should be minimized by locating parking behind buildings and internal to the site.
 - (i) Garage entries and carports shall not protrude forward from the principal facade. Driveways shall extend at least 18 feet into the property from the Master Street Plan right-of-way to allow parking to occur without encroaching into the right-of-way.
 - (ii) Parking areas should be accessed by mid-block alleys whenever possible. Developments should minimize multiple driveways and should utilize a shared access to reduce the number of vehicle conflicts at the street.
 - (iii) On-street parallel parking may be provided on at least one (1) side of the street in front of all multi-family buildings where feasible. Each on-street parking space provided along the project frontage shall count toward the total required spaces for the development.
- (3) *[Reserved.]*
- (4) *Pedestrian Circulation.*
 - (a) Ground floor dwelling units adjacent to a public street shall have a primary pedestrian entry that is visible from the street. This entry shall connect unobstructed to the public sidewalk where sidewalk exists in a manner to allow occupants to access from the interior of the structure to the city sidewalk. The connection shall match the sidewalk in material type and shall be at least 3 feet in width unless otherwise approved by the Zoning and Development Administrator in writing. The

entry may be gated and shared but must occur at a spacing of no fewer than one (1) entrance for every two (2) street level dwellings. The pedestrian connection to the street may run from the door along the façade of the building parallel to the street for a maximum of 12 feet from the door before connecting directly to the public sidewalk.

- (b) Urban residential projects shall incorporate pedestrian connections to adjacent residential and commercial properties where sidewalks exist unless this requirement is otherwise waived by the Planning Commission.
- (5) *Screening Requirements if Visible from the Highway/Street Right-of-Way.*
 - (a) *Mechanical and Utility Equipment.* All mechanical and utility equipment located on the wall and/or on the ground shall be screened, except for air conditioning window units. All roof mounted utilities and mechanical equipment shall be screened by incorporating screening into the structure utilizing materials compatible with the supporting building. Mechanical and utility equipment over 30 inches in height shall meet building setbacks, unless located in a utility easement.
 - (b) *Recycling and Trash Containers.* Adequate space and screening shall be provided for the placement of recycling and trash containers in urban residential developments.
 - (i) Urban residential developments are required to provide adequate space to provide both recycling and trash services for residents. The Recycling and Trash Collection Division Director may exercise discretion in approving the dimensional size of the required enclosure or dedicated space for servicing recycling and trash containers. Large multi-family urban residential developments typically will be required to provide adequate space for the placement of two (2) front-end load dumpsters that are easily accessible with a minimum enclosure dimension of 24 feet wide and 12 feet deep.
 - (ii) Recycling and trash containers shall be screened by enclosures with materials that are complementary to the principal structure, with access to the refuse containers not visible from the public right-of-way.
 - (c) *Screening.* Screening shall mean a view obscuring fence, berm, vegetation, architectural treatment consistent with the residential architecture, or a combination of the four of sufficient height to prevent the view of the screened items from the public right-of-way. Vegetation shall be planted at a density sufficient to become view obscuring within two years from the date of planting.
- (6) *Fencing.* The following types, height, and location of fences shall be prohibited:
 - (a) *Razor and/or Barbed Wire.* Razor and/or barbed wire fences are prohibited, unless and except barbed wire fences are used for agricultural purposes.
 - (b) *Chain Link.* Chain link fence is prohibited if closer to the street than the front of the building.
 - (c) *Height of Fences in Front of Buildings.* Fences in the front yard area shall have a maximum height of 42 inches subject to visibility requirements in Chapter 164.09 and 164.17.
- (D) *Architectural Design Standards.*
 - (1) *Intent.* The intent of these building design standards is:
 - (a) To ensure that urban residential buildings add to the character and quality of the community, offer a sense of security, and make a positive contribution to the life of the street.
 - (b) To maximize the quality, value and longevity of urban residential neighborhoods.
 - (c) To make housing appealing and comfortable for its inhabitants.

(2) *Construction and Appearance Design Standards for Urban Residential Development.*

(a) *Building Form and Design.*

- (i) In order to provide a variety in form and design, one (1) building type may not be utilized more than three (3) times in a development. Each building type shall be differentiated by variations in materials, colors and roof forms.
- (ii) Ancillary structures such as carports, garages, recreational buildings and storage structures shall be designed as an integral part of the project architecture.
- (iii) The following architectural elements shall be required of all principal façades that are greater than 48 feet wide along the street frontage:
 - (a) Variations in materials;
 - (b) Insets or other relief in the wall plane;
 - (c) Incorporation of two or more of the following:
 - (1) Balconies;
 - (2) Bays or bay windows;
 - (3) Porches;
 - (4) Dormers;
 - (5) Porticoes;
 - (6) Turrets; or
 - (7) Other architectural feature approved by the Zoning Development Administrator that meets the intent of the code.
- (iv) One (1) or more of the following architectural elements shall be required of all principal façades that are 48 feet wide or less along the street frontage:
 - (a) Balconies;
 - (b) Bays or bay windows;
 - (c) Porches;
 - (d) Dormers;
 - (e) Porticos;
 - (f) Turrets; or
 - (g) Other architectural feature approved by the Development Review Manager that meets the intent of the Code.

- (E) *Planning Commission Approval.* An applicant may request approval from the Planning Commission of a variance from the maximum requirements where unique circumstances exist and the effect will not adversely impact adjoining or neighboring property owners. The applicant shall provide notification to adjacent property owners prior to the date of the meeting.

(Ord. No. 5118, 3-18-08; Ord. No. 5262, 8-4-09; Ord. No. 5679, 4-15-14; Ord. No. 6170 , §1, 4-2-19; Ord. No. 6357 , §§1, 2, 9-15-20; Ord. No. 6508 , §1, 11-16-21; Ord. No. 6658 , §10, 5-2-23)

167.04 Tree Preservation And Protection During Development

- (A) *Applicability.* The provisions of this section shall apply to proposed developments as defined by the Unified Development Code as follows:
- (1) *Large Scale Developments.*
 - (2) *Large Site Improvement Plan.*
 - (3) *Small Site Improvement Plan.*
 - (4) *Preliminary Plat.*
 - (5) *Final Plat.*
 - (6) *Concurrent Plat.*
 - (7) *Planned Zoning Districts.*
 - (8) *Parking Lots.* Tree preservation requirements apply to all permit applications for the construction of parking lots with five (5) or more spaces. An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for permits on projects that are required to go through the subdivision or large scale development process.
 - (9) *Hillside/Hilltop Overlay District.* Undeveloped land located within the Hillside/Hilltop Overlay District shall submit a tree preservation plan with the preliminary plat or site plan. Single and two (2) family residential development shall submit an abbreviated tree preservation and site plan at the time of applying for a building permit.
 - (10) *Grading Permit.* A tree preservation plan or an abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for grading permits on projects that are not required to go through the development process.
 - (11) *Building Permits.* Tree preservation requirements apply to all permit applications for developments of greater than 6,000 square feet of impervious area. An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for building permits on projects that are not required to go through the subdivision or large scale development process. There shall be no land disturbance, grading, or tree removal until an abbreviated tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.
 - (12) *Exemptions.* Projects not listed above or not impacting tree canopy are not required to submit a tree preservation plan or review from Urban Forestry.
 - (a) Persons seeking to construct 6,000 square feet or less of impervious area are specifically exempt from the provisions of this section except when the land is located within the Hillside/Hilltop Overlay District; then all the provisions of this ordinance shall apply.
 - (b) Structural changes to buildings located in the Hillside/Hilltop Overlay District that do not result in an enlargement of the building footprint or roof dripline shall not require an abbreviated tree preservation plan.
- (B) *Tree Preservation Criteria.* The Urban Forester shall consider the following factors, and any other relevant information, when evaluating tree preservation plans:
- (1) The desirability of preserving a tree or group of trees by reason of age, location, size, or species.
 - (2) Whether the design incorporates the required tree preservation priorities.

- (3) The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.
- (4) The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or group of trees is located.
- (5) Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.
- (6) Whether the size or shape of the lot reduces the flexibility of the design.
- (7) The general health and condition of the tree or group of trees, or the presence of any disease, injury, or hazard.
- (8) The placement of the tree or group of trees in relation to utilities, structures, and the use of the property.
- (9) The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.
- (10) Whether proposed roads and proposed utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.
- (11) Construction requirements of on-site and off-site drainage.
- (12) The effects of proposed on-site mitigation or off-site alternatives.
- (13) The effect other chapters of the Unified Development Code, or city policies have on the development design.
- (14) The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations.
- (15) The impact a substantial modification or rejection of the application would have on the applicant.

***Note**—The above items are not presented in any particular order of importance. The weight each is given will depend in large part on the individual characteristics of each project.

- (C) *Canopy Area.* In all proposed developments that are required to submit a tree preservation plan or abbreviated tree preservation plan, trees shall be preserved as outlined in Table 1 under Percent Minimum Canopy, unless the applicant has been approved for on-site mitigation or off-site alternatives as set forth in §167.04(I) and (J) below. The square foot percentage of canopy area required for preservation in new development is based on the total area of the property for which the applicant is seeking approval, less the right-of-way and park land dedications. An applicant shall not be required to plant trees in order to reach the percent minimum canopy requirement on land where less than the minimum exists prior to development.

Table 1	
Minimum Canopy Requirements	
ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
R-A, Residential — Agricultural (nonagricultural uses)	25%
RSF-.5, Single-family Residential — One-Half Unit per Acre	25%
RSF-1, Single-family Residential — One Unit per Acre	25%
RSF-2, Single-family Residential — Two Units per Acre	20%
RSF-4, Single-family Residential — Four Units per Acre	25%
RSF-7, Single-family Residential — Seven Units per Acre	20%

RSF-8, Single-family Residential — Eight Units per Acre	20%
RSF-18, Single-family Residential — Eighteen Units per Acre	20%
R-O, Residential — Office	20%
RI-12, Residential Intermediate — Twelve Units Per Acre	20%
RI-U, Residential Intermediate — Urban	15%
RMF-6, Multi-family Residential — Six Units per Acre	20%
RMF-12, Multi-family Residential — Twelve Units per Acre	20%
RMF-18, Multi-family Residential — Eighteen Units per Acre	20%
RMF-24, Multi-family Residential — Twenty-Four Units per Acre	20%
RMF-40, Multi-family Residential — Forty Units per Acre	20%
NS-L, Neighborhood Services — Limited	20%
NS-G, Neighborhood Services — General	20%
C-1, Neighborhood Commercial	20%
CS, Community Services	20%
C-2, Thoroughfare Commercial	15%
UT, Urban Thoroughfare	15%
C-3, Central Business Commercial	15%
DC, Downtown Core	10%
MSC, Main Street Center	10%
DG, Downtown General	10%
NC, Neighborhood Conservation	20%
I-1, Heavy Commercial and Light Industrial	15%
I-2, General Industrial	15%
P-1, Institutional	25%
PZD, Planned Zoning District (HHOD)	25% (30%)

All residential zoning districts and C-1 districts within the Hillside/Hilltop Overlay District shall have their percent minimum canopy requirements increased by 5% to a total requirement of either 30% or 25%.

(D) *Prior Tree Removal.*

- (1) If trees have been removed below the required percent minimum canopy within the five (5) years preceding application for a development, the site must be forested to meet the Percent Minimum Canopy requirements set forth in Table 1, plus an additional 10% of the total area of the property for which the applicant is seeking approval, less the right-of-way and park land dedications. The number of trees required to be planted shall be calculated using the base density for high priority trees.
- (2) *Waiver.* If an applicant is able to demonstrate to the Planning Commission's satisfaction that the trees were removed for a bona fide agricultural purpose, and not with the intent to thwart enforcement of this chapter, the additional 10% reforestation requirement shall be waived.

(E) *Tree Preservation Priorities.*

- (1) *Percent Minimum Canopy.* Proposed designs must meet the percent minimum canopy requirements for the particular zoning designation, emphasizing the preservation and protection of high priority trees on the site. Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement and such utilities shall be routed, wherever possible, to avoid existing canopy.

- (2) *Existing Natural Features.* Each design shall consider the existing natural features of the site, the preservation priorities for the trees, and the impact their proposed removal may have both on and off-site.
 - (3) *Priority Trees.* The preservation and protection of high priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. High priority trees are alive, healthy, greater than or equal to an 8-inch diameter at breast height for large and medium species of trees. High priority for small species of trees is greater than or equal to a 4-inch diameter. Low priority trees are invasive species or unhealthy as determined by a tree care professional pursuant to §167.07. Low priority trees are less than an 8-inch diameter at breast height for larger and medium species and less than a 4-inch diameter at breast height for smaller trees species.
- (F) *Tree Preservation Requirements for Proposed Residential and Non-Residential Developments.*
- (1) *Residential Developments.* The percent minimum canopy in residential developments shall be located in areas that have the least possibility of impact as public infrastructure and proposed utilities are installed and homes built. The intent is to leave undisturbed as many existing trees as possible for the use and enjoyment of prospective lot owners. Residential developments requesting tree removal below the percent minimum canopy requirement may choose either residential on-site mitigation, or to contribute to the Tree Escrow Account as set forth in §167.04(J)(4)(a). Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement, and such proposed utilities shall be routed to avoid existing canopy and shall count toward the percent minimum canopy requirement.
 - (2) *Nonresidential Developments.* Two (2) options are available for establishing a tree preservation plan for the development of nonresidential developments. The Urban Forester shall recommend to the Planning Commission the option that will potentially preserve the largest amount of high priority canopy based upon the tree preservation criteria set forth in §167.04(B) above.
 - (a) *Preservation Plan for Entire Development.* The developer may choose to preserve the percent minimum canopy required for the entire development. With this option, the preserved canopy shall be located in areas that will not be impacted by future development of the individual lots. Canopy to be preserved shall be noted on the final plat, and shall be protected as set forth in §167.04(L) below. Should the entire percent minimum canopy requirement for the site be so protected, the preserved canopy shall be placed in a tree preservation easement and the final plat shall include a statement that the individual lots, as represented thereon, shall not require separate tree preservation plans.
 - (b) *Preservation Plan for Infrastructure Only.* The developer, in consultation with city staff, shall delineate the area required for the construction of the infrastructure and improvements for the development. This area should include street rights-of-way, and utility and drainage easements. Proposed lot lines, streets, and easements shall be located to avoid placing a disproportionate percentage of existing canopy in any one (1) proposed lot. This option shall not allow the removal of trees during the grading of individual lots, unless shown by the developer to be essential to the project's engineering design. The developer will be required to compensate for the canopy removed from defined individual lots by making the appropriate payment into the Tree Escrow Account. On all other areas of the development, the developer shall protect the existing canopy during the construction phase in accordance with §167.05 below. The final plat shall include a statement that the individual lots shall require separate tree preservation plans.
 - (3) *Hillside/Hilltop Overlay District.* Individual parcels or lots located within the Hillside/Hilltop Overlay District boundary shall submit a tree preservation plan or an abbreviated tree preservation plan as set forth in §167.04(H)(3) indicating the location of the structure and the preservation of the minimum tree canopy requirement.

- (4) Developers have the option of creating cluster development, such as a Planned Zoning District, which would encourage more open space and tree preservation. In this pattern of development, the trees preserved or open space on each lot can be transferred to a larger Tree Preservation Easement instead of individual lots required to meet minimum percent requirements. The Tree Preservation Easements shall be clearly depicted on easement plats or final plats.
- (G) *Initial Review.*
- (1) *Meeting with the Urban Forester.* It is strongly recommended that prospective applicants meet with the Urban Forester for an initial review of the proposed tree preservation plan for the site prior to submitting a proposed development to the city. During the initial review, the Urban Forester shall make recommendations to ensure the proposed subdivision or development complies with the requirements of this chapter. These recommendations shall be nonbinding. However, applicants proceed at the risk of higher costs and longer approval times due to changes required by a noncompliant submittal should they choose not to have the initial review or to disregard the recommendations of the Urban Forester.
- (2) *Confirmation.* The Urban Forester shall document whether the applicant participated in the initial review meeting in the Tree Preservation and Protection staff report given to applicants going through the development review process. If the applicant chooses to attend an initial review meeting, the staff report shall also document any recommendations made. The Urban Forester shall ensure that a copy of the report or email becomes part of the permanent file for the project.
- (H) *Submittal of Plans.* Applicants should bear in mind that all plans will be evaluated according to the tree preservation criteria and percent minimum canopy requirements as set forth under §167.04(B) and (C).
- (1) *Tree Preservation Plan.* On sites with existing tree canopy, the applicant shall conduct a tree preservation analysis to determine the approximate age, health, size and species distribution of the trees, noting each on a tree preservation plan, and clearly showing the locations and types of all natural features on a site, including features 100 feet beyond the property lines. The tree preservation plan shall also specifically depict the applicable preservation priority level for each tree or group of trees on the site. The plan should include, but not be limited to, delineation of the following features as they exist on the site:
- (a) The existing topography of the site highlighting slopes of 15% or greater, and indicating the natural drainage patterns;
 - (b) The property line boundaries of the site;
 - (c) Soils identified according to the Unified Soil Classification System;
 - (d) Any significant trees, as defined in the City of Fayetteville's Tree Preservation, Protection and Landscape Manual, existing on the site, and the location of trunks, spread of the canopy, species, diameter at breast height (DBH), and the overall health of each significant tree;
 - (e) Groupings of trees, delineating the edges of the overall canopy, noting the predominate species, average height, diameter at breast height (DBH), and general health of the trees.
 - (f) All existing utilities and utility easements;
 - (g) All features, including trees, buildings, perennial and intermittent streams and creeks that exist on the site or within 100 feet of the limits of disturbance;
 - (h) Floodplains and floodways on the site;
 - (i) All existing rights-of-way within and surrounding the project site, including any designated trails or bike paths; and,

- (j) Any other factors that may impact the design of the site.
- (2) *Additional Tree Preservation Plan Content.* The applicant shall indicate all proposed site improvements, and delineate in the tree preservation plan the trees to be retained on-site, and the measures to be implemented for their protection. These measures shall include, but need not be limited to, fencing, limits of root pruning, as well as restrictions on traffic and material storage. The plan shall also clearly depict the limits of soil disturbance to include all areas to be graded both on and off-site, as well as the proposed location of utilities. The applicant should consult the City of Fayetteville Tree Preservation, Protection and Landscape Manual for details, examples and specific checklists. Examples can be provided upon request to the Urban Forester.
- (3) *Abbreviated Tree Preservation Plan.* Applicants requesting approval of development projects for between 6,001 to 10,000 square feet of impervious area that require building permits, grading, or parking lot permits, but that do not fall under the requirements for developments required to go through the development review process of Technical Plat Review Committee, Subdivision Committee and Planning Commission, shall prepare and submit an abbreviated tree preservation plan. The information for an abbreviated tree preservation plan may be combined with the site plan, plat drawing, or grading plan. The applicant is expected to show the general location of all existing groups of trees, individual significant trees, and to clearly depict the limits of soil disturbance to include all areas to be graded, both on and off-site, as well as the proposed location of utilities. Protective measures such as fencing, limits of root pruning, restriction on traffic and materials storage shall be depicted on the plan. A preliminary site visit with the Urban Forester is highly recommended before applying for any of the above-mentioned permits. The applicant should consult the City of Fayetteville Tree Preservation, Protection, and Landscape Manual for details, and specific checklists. Applicants submitting abbreviated tree preservation plans shall not be required to submit an analysis report, nor shall they be required to hire architects, engineers, or landscape architects to prepare the abbreviated tree preservation plan.
- (4) *Analysis Report.* The applicant shall submit an analysis report when minimum percent canopy is not met. The report shall detail the design approaches used to minimize damage to or removal of existing canopy that were considered in arriving at the proposed design. Written justification shall be presented as to why individual trees or canopy must be removed. The report shall also detail proposed on-site mitigation options or off-site alternatives, as detailed below.
- (5) *Grading and Utility Plans.* All subsequent grading and utility plans shall depict Tree Preservation Areas, preserved trees, and the physical limits of all protective measures on site required during construction.
- (6) *Submittal Requirements.* The applicant shall submit a tree preservation plan. Development plans with removal of tree canopy below percent minimum canopy shall submit an analysis report to the Urban Forester, concurrently with their tree preservation plan. Applicants submitting abbreviated tree preservation plans shall not be required to submit analysis report.
- (7) *Tree Preservation Easements.* The City of Fayetteville shall encourage the use of Tree Preservation Easements for the added protection of trees preserved to meet percent minimum canopy requirements or trees planted, in those instances where such would be of mutual benefit to the applicant and the City of Fayetteville.
- (i) *Request for On-Site Mitigation.*
 - (1) *Timing of Request for On-Site Mitigation.* Requests to remove trees below the percent minimum canopy requirement must be incorporated with the applicant's tree preservation plan.
 - (2) *Plan Requirements.* The tree preservation plan must graphically represent the species and location for all existing trees on-site. It shall also include a chart clearly stating the following information:
 - (a) The number of trees requested for removal;

- (b) The percentage below the percent minimum canopy requirement they represent; and
- (c) The species and number of trees to be planted based on the forestation requirements below.
- (3) *Planting Details and Notes.* Planting details and notes shall be included on the tree preservation plan or landscape plan as set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.
- (4) *Forestation Requirements.* The number and species of trees required for forestation shall be based upon the quality of the canopy lost:
 - (a) *High Priority Canopy.* When removing high priority canopy below the percent minimum canopy required, the canopy square footage removed shall be forested at a base density of two hundred (200), 2-inch caliper trees per acre removed.
 - (b) *Low Priority Canopy.* When removing low priority canopy below the percent minimum required, the canopy square footage removed shall be forested at a base density of one hundred (100), 2-inch caliper trees per acre removed.
- (5) *Base Density.* Compensating for the environmental damage caused by removing tree canopy shall be accomplished by forestation on a per acre basis. The base density formula used above is based on 2-inch caliper trees. However, the urban forester may approve the use of trees with less than 2-inch caliper for the planting of smaller tree species required by spatial constraints on the site. In such cases, the number of trees to be planted may be adjusted in accordance with the species table to be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.
- (6) *Preferred Species.* All trees to be planted shall be species native to the Ozark region or native cultivars, when available, or selected from the list of preferred tree species set forth in the City of Fayetteville Tree Preservation, Protection and Landscape Manual. Species selection shall be based upon the amount of space available for proper growth on the site, and must be approved by the Urban Forester.
- (7) *Placement of Trees.* The applicant is expected to plant trees in locations on the site where the environmental benefits of canopy cover are most likely to offset the impact of development. Trees shall not be placed within utility easements, or in other locations where their future protection cannot be assured.
- (8) *Residential On-Site Mitigation.* Applicants requesting on-site mitigation for residential developments shall comply with all the provisions of §167.04(I), as well as the following:
 - (a) The applicant's mitigation plan shall meet or exceed the required number of mitigation trees based on the forestation requirements as set forth at §167.04(I)(4).
 - (b) All plans requesting residential on-site mitigation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.
 - (i) Approval of a plan requesting residential on-site mitigation shall be contingent upon the applicant depositing with the city an irrevocable letter of credit in an amount equal to the estimated cost of materials and labor for all trees at the time of planting. The irrevocable letter of credit must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Urban Forester for approval.
 - (ii) Upon completion of the three (3) year landscape establishment period, the Urban Forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the city shall release the letter of credit.

- (iii) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Urban Forester. If the applicant does not take remedial steps to bring the property into compliance, the city shall use the necessary moneys from the landscape establishment guarantee to do so.
 - (iv) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.
 - (c) Developers requesting mitigation trees be planted along the street right-of-way of residential developments shall submit a landscape plan that complies with the standards outlined in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual in order to ensure that new trees planted are of the highest quality, require low maintenance, and do not interfere with public safety. The species of trees to be planted shall be selected from the approved street tree species list, or be otherwise specifically approved by the Urban Forester. The applicant's mitigation plan for planting street trees shall describe in detail the method for tracking the development of the individual lots, which shall best ensure that required number and species of mitigation trees are planted.
- (9) *Request for On-Site Mitigation Alternatives (Green Roofs or Green Façades).*
 - (a) *Intent.* The intent is to allow previously developed sites with at least 50% existing impervious area and limited space for planting trees to use on-site mitigation alternatives to meet the mitigation requirements and still contribute beneficial plant materials that provide positive ecosystem services.
 - (b) *Applicability.* On-Site Mitigation Alternatives shall only be allowed as alternatives to planting trees in form-based zoning districts that allow for mixed-use and do not have a building area maximum requirement. On-Site Mitigation Alternatives may not be utilized on sites that have adequate space to meet landscape requirements.
 - (c) *Timing of Request for On-Site Mitigation Alternatives.* Requests for on-site alternatives must be incorporated and submitted concurrently with the applicant's tree preservation plan.
 - (d) *Intensive Green Roof.* A green roof with 6 inches or great soil medium that can sustain plant species with deeper root systems.
 - (e) *Extensive Green Roof.* A green roof with 2 to 5 inches of soil medium that can sustain plant species with shallow root systems.
 - (f) *Green Façade.* A green façade is created by growing climbing plants up and across the façade of a building, either from plants grown directly in the ground or a large container of at least 12 inches of soil medium. Plants can attach directly to the building or be supported with a 12-inch by 12-inch trellis system connected to the building.
 - (g) *Mitigation Alternative Calculations.* The applicant's plan to install an extensive green roof, intensive green roof, and green façade in lieu of a mitigation tree shall be based from square footage of tree canopy.
 - (i) The calculation for an extensive green roof shall be based from a ratio of 1 square foot of tree canopy to 2.5 square feet of extensive green roof.
 - (ii) The calculation for an intensive green roof shall be based from a ratio of 1 square foot of tree canopy to 1.4 square feet of intensive green roof.

- (iii) The calculation for a green façade shall be done based from a ratio of 1 square foot of tree canopy to 2.5 square feet of green façade.

(J) *Request for Off-Site Alternatives.*

- (1) *Timing of Request for Off-Site Alternatives.* Requests for off-site alternatives must be incorporated in, and submitted concurrently with the applicant's tree preservation plan.
- (2) *Off-Site Preservation.* The applicant may seek approval of the Urban Forester to preserve an equal or greater amount of canopy cover at a site within the city limits.
- (3) *Off-Site Forestation.*
 - (a) If off-site preservation cannot be achieved, the applicant may seek approval from the Urban Forester to plant the required number of trees on another site owned by the applicant and located within the city limits. A tree preservation easement must be conveyed concurrently with or prior to submission of a final plat by the applicant to the city to protect any off-site preservation or forestation and the legal description of the tree preservation easement shall also appear on the final plat.
 - (b) An applicant may plant and maintain mitigation trees needed for the applicant's development as to fulfill the obligation set forth in Chapter 167, Tree Preservation and Protection, in a nearby city park or public right-of-way if expressly approved by City Council resolution. The City Council shall seek advice from the Urban Forester, Parks and Recreation Department staff and citizens about the advisability of forestation of the nearby city park and may apply express conditions including requiring irrigation to be installed and regular maintenance to be performed by the applicant.
- (4) *Tree Escrow Account.* Tree preservation on-site is always the preferred option, with on-site mitigation, off-site preservation, off-site forestation, and on-site mitigation alternatives to be considered in descending order only if the more preferred option cannot be fully achieved. If none of these options can completely fulfill a developer's obligation under this Tree Preservation and Protection Chapter, the developer shall pay into the City Tree Escrow Account \$250.00 for each tree required to meet the Base Density requirements which fairly represents the costs of material and labor to plant a tree. The developer shall also pay into the Tree Escrow Fund \$425.00 as three (3) years of maintenance costs to ensure each tree survives for that period of time. Tree planting and maintenance costs should be reviewed at least every four (4) years to ensure it remains the fair market costs for tree planting and maintenance for three (3) years.
 - (a) Residential developments which cannot achieve the base density tree requirements through preservation or mitigation shall contribute to the Tree Escrow Account. The city shall use the money paid into the Tree Escrow Account to plant trees within the development along rights-of-way, detention ponds, common areas or other areas where trees can be protected and have a high probability of survival to a mature tree. This shall be accomplished once the development is built out or as approved by the Urban Forester.
 - (b) Money contributed in lieu of on-site mitigation or off-site forestation shall be paid prior to issuance of a building permit on all commercial, industrial, or multi-family residential buildings and prior to final plat acceptance for all residential and non-residential subdivisions.
 - (c) Money contributed under this section:
 - (i) May be used for canopy mitigation, including planting site identification, tree acquisition, planting, and maintenance, utilizing either city staff or contract labor;
 - (ii) Shall not revert to the general fund for ongoing operations.

- (d) If it is not possible to plant trees within the development, planting locations will be sought in appropriate sites within a 1 mile radius of where the original project is located, but if this cannot be achieved, the moneys shall be used to plant the trees in the park quadrant in which the development took place, or pursuant to §167.04(J)(2) and (3). Data extracted from the urban forest analysis should be consulted when identifying appropriate locations to plant escrow funded trees.
 - (e) The City of Fayetteville shall refund the portion of the money contributed under this section, including the accrued interest that has not been expended seven (7) years from the date of the contribution. Interest shall be based on a 4% annual rate.
 - (f) Refunds shall be paid to the applicant who made the original contribution.
 - (g) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the applicant no later than thirty (30) days after the date which the refund becomes due. The sending by regular mail of the notices to the applicant shall be sufficient to satisfy the requirement of notice.
 - (h) The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.
 - (i) At the time of the contribution to the Tree Escrow Account, the Urban Forester shall provide the applicant with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any contribution to the Tree Escrow Account under this ordinance.
- (K) *Tree Preservation Plan Review Form.* The Urban Forester shall use a standardized form for all recommendations or administrative determinations made regarding an applicant's tree preservation plan.
- (1) The form shall clearly indicate whether the Urban Forester is making a final administrative determination, or a recommendation to the Planning Commission or City Council.
 - (2) The form shall also clearly indicate the applicant's plan is "APPROVED," "DISAPPROVED," or "CONDITIONALLY APPROVED," and explain the reasoning therefore.
 - (3) A statement shall appear on the form explaining the process by which a final administrative determination may be appealed in accordance with Chapter 155 of the Unified Development Code.
 - (4) The Urban Forester shall sign and date the form, and ensure that a copy becomes part of the permanent file for the project.
- (L) *Continuing Preservation and Protection Under Approved Tree Preservation Plans and Tree Preservation Easements.*
- (1) Large scale developments, large scale site improvements, and commercial preliminary plats are required to dedicate a tree preservation easement, if any existing tree are to be preserved. The tree preservation easement shall be the size of the minimum canopy preservation requirement, if possible. If the minimum tree preservation canopy is not available, the applicant will not be required to dedicate the minimum canopy preservation. The applicant will have to dedicate a tree preservation easement that is agreed upon with The Urban Forester. In order to ensure that an applicant's heirs, successors, assigns, or any subsequent purchasers of the subject property are put on notice as to the existence and extent of approved tree preservation easements which shall be clearly depicted and noted on the easement plats for large scale developments, large scale site improvements, commercial final plats, and any plats with a tree preservation easement. This shall be accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the Urban Forester. If it is impractical to include the actual depiction of the canopy in a tree preservation easement on the easement plat, or final plat itself, a note cross referencing an accompanying document shall suffice.

- (2) The geographic extent and location of tree preservation easements, once recorded, may only be modified, or abolished with the express approval of the City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest of the City of Fayetteville. Such requests shall be submitted to the urban forester, who shall ask the City Clerk to place it on the agenda of the next regularly scheduled City Council meeting.
- (3) Property owners wishing to remove diseased or dead trees from within a recorded tree preservation easement shall seek prior approval from the Urban Forester, who shall determine if such removal is consistent with sound arboricultural and horticultural practices, as well as the intent of this chapter. Any tree so removed shall be replaced with a tree of like or similar species, unless the Urban Forester determines that natural replacements of sufficient health and vigor are already present in the tree preservation easement.

(Code 1991, §162.10; Ord. No. 2699, §10, 4-20-93; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §6, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01; Ord. No. 4539 02-03-04; Ord. No. 4855, 4-18-06; Ord. No. 4930, 10-03-06; Ord. No. 5308, 3-16-10; Ord. No. 5312, 4-20-10; Ord. No. 5427, 8-2-11; Ord. No. 5513, 7-17-12; Ord. No. 5773, 5-19-15; Ord. No. 5818, 10-20-15; Ord. No. 5824 , §3, 11-17-15; Ord. No. 5945 , §17, 1-17-17; Ord. No. 5986 , §§4(Exh. A), 5—35, 7-6-17; Ord. No. 6442 , §§1(Exh. A1), 2(Exh. B), 5(Exh. E), 6(Exh. F), 6-1-21; Ord. No. 6446 , §9(Exh. D), 6-15-21)

169.03 Review And/Or Permits Required; Exceptions

- (A) *Grading Review Required.* (Reference §166.02(E).)
- (1) When located within the Hillside/Hilltop Overlay District boundaries. Parcels of land divided by the Hillside/Hilltop Overlay District boundary shall only be subject to the requirements of this chapter on that portion of land lying within the boundary;
 - (2) Construction of greater than 1,200 square feet of impervious area on a single site;
- (B) *Grading Permit Required.* Unless exempted by §169.03(C), all grading, clearing, filling, excavation, or land alteration of any kind shall require:
- (1) Prior development approval as specified in Chapter 166, except for general grading to an existing developed site that does not impact trees or floodplains and does not significantly alter the natural landform;
 - (2) Construction of new impervious area greater than 10,000 square feet;
 - (3) A grading permit pursuant to this chapter; and
 - (4) An Arkansas Department of Environmental Quality Stormwater Construction Permit and incorporated Stormwater Pollution Prevention Plan, if required by state law.
- (C) *Exceptions to Permit Requirements.* Grading permits are not required for the following however the Minimum Erosion Control Requirements in §169.04 still apply:
- (1) *Excavation Below Finish Grade.* Excavations below finished grade for basements, swimming pools, hot tubs, septic systems, retaining walls under 4 feet in height, and like structures authorized by a valid building permit.
 - (2) *Cemetery Graves.* Cemetery graves.
 - (3) *Refuse Disposal.* Refuse disposal sites controlled by other regulations.
 - (4) Other minor fill, clearing or grading for maintenance purposes such as landscaping that do not require the use of heavy construction equipment, French drains, yard grading, maintenance, farming, gardens, and similar activities.
- (D) *Grading Permit Application and Approval.* No grading permit shall be issued until the Grading and Erosion & Sediment Control Plan, endorsed by an architect, landscape architect, or engineer licensed in the state of Arkansas, is approved by the City Engineer. A separate permit shall be required for each site. Grading permits may be issued jointly for parcels of land that are contiguous, so long as erosion control measures are in place until project completion. Any application for a required grading permit under this chapter shall be submitted concurrently with the application and calculations for a drainage permit if such a drainage permit is required by §170.03. Tree Preservation and Protection is required in accordance with Chapter 167.
- (E) *Permit Posted.* A copy of the grading permit cover page shall be posted at or near the street right-of-way line and shall be clearly visible from the street.

(Code 1991, §161.03; Ord. No. 3551, 6-5-91; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4113, §1, 8-18-98; Ord. No. 4313, 5-15-01; Ord. No. 4855, 4-18-06; Ord. No. 5336, 8-3-10; Ord. No. 5702, Repealed & Replaced Chp. 169, 8-5-14; Ord. No. 5945, §18, 1-17-17; Ord. No. 6061, §4, 4-17-18; Ord. No. 6446, §11(Exh. F), 6-15-21)

CHAPTER 155: APPEALS

155.01 Circuit Court

Unless set forth otherwise below, all appeals from final actions taken by the City Council, Planning Commission, Board of Adjustment, Construction Board of Adjustment and Appeals, and the Zoning and Development Administrator shall be taken to the Circuit Court of Washington County.

(Code 1965, App. A., Art. 9(6); Ord. No. 1747, 6-29-70; Ord. No. 2323, 4-5-77; Ord. No. 2538, 7-3-79; Code 1991, §160.175; Ord. No. 3925, §7, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04))

155.02 Form/Time/Place

Unless an appeal is filed with the court, the following requirements shall be met:

- (A) *Form.* All appeals shall be submitted in writing referencing the applicable UDC section(s) and setting out the reasons the applicant contends the decision was in error and how the applicant is adversely impacted.
- (B) *Time.*
 - (1) *Appeals.* Appeals shall be submitted within ten (10) working days from the date of the final action taken.
 - (2) *Hearings.* The entity hearing the appeal shall fix a reasonable time for hearing an appeal.
- (C) *Place.* Appeals shall be filed with the following:
 - (1) *City Clerk.* Appeals made to the City Council shall be filed with the City Clerk.
 - (2) *Zoning and Development Administrator.* Appeals made to the Planning Commission or Board of Adjustment shall be filed with the Zoning and Development Administrator.
 - (3) *Building Safety Division Director.* Appeals made to the Construction Board of Adjustment and Appeals , [for inspecting purposes] shall be filed with the Building Safety Division Director.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04)

155.03 Stay

An appeal shall stay all proceedings in furtherance of the action appealed from unless the person in charge of administration of the chapter certified that a stay would, in their opinion cause imminent peril to life or property.

(Code 1965, App. A., Art. 13(3); Ord. No. 1747, 6-29-70; Code 1991, §160.173; Ord. No. 4100, §2 (Ex. A), 6-16-98)

155.04 Council Member Appeal On Behalf Of Resident

A Council Member may bring an appeal on behalf of any resident of the city of a decision by the Planning Commission to approve subdivision requests (plats, lot splits), and development requests (large scale developments and large or small site improvement plans). Variances, compliance with applicable design standards, tree preservation plans and conditions of approval for any development shall be appealed as part of the approval or denial of a development proposal. Variances, compliance with applicable design standards, tree preservation

plans and conditions of approval for any development not requiring approval by the Planning Commission or administrative approval by the Planning Division may be appealed independently.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 6342 , §1, 8-4-20)

155.05 Appeals From Planning Commission Decisions

(A) *Appeals to City Council*

- (1) Owners of record of the property being considered may appeal a decision by the Planning Commission to deny the following requests in accordance with the procedure set forth in §155.02:
 - (a) Annexation;
 - (b) Rezoning;
 - (c) Required dedication and improvements of §155.06(C);
 - (d) Subdivision (plats, lot splits, lot line adjustments);
 - (e) Development (large scale development, large and small site improvement plans);
 - (f) Vacations of street right-of-way.
- (2) *Conditions of Approval/Variances, etc.* An owner of record may appeal the conditions of approval determined by the Planning Commission and any adverse decision by the Planning Commission concerning applicable design standards, tree preservation requirements, streamside protection requirements and variance requests as part of the conditions of an approved development request or the denial of such development request. Variances, compliance with applicable design standards, tree preservation plans and conditions of approval for any development not requiring approval by the Planning Commission or administrative approval by the Planning Division may be appealed independently.
- (3) *Conditional Use Request.* Three Council Members may in unison appeal a decision of the Planning Commission approving or denying a conditional use request.

(Code 1965, §13A-40, App. C., Art. II, Art. V., §B; Ord. No. 1509, 8-8-66; Ord. No. 1750, 7-6-70; Code 1991, §§156.017, 159.12, 159.54(F)(1), (2), 159.66; Ord. No. 3781, §1, 4-19-94; Ord. No. 3925, §6, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4334, 9-4-01; Ord. No. 4340, 10-2-01; Ord. No. 6342 , §2, 8-4-20)

155.06 Appeals From Staff Interpretations And Actions

(A) *Appeals to City Council.*

- (1) The City Engineer's decision to issue a violation notice or stop work order may be appealed to the City Council by an owner of record of the property in question or a council member on behalf of a resident of the city.
 - (2) The Development Review Manager's decision to deny a vacation of any public easement (whether constructed or not) or portion thereof may be appealed by the owner of record of the property.
- (B) *Appeals to the Board of Adjustment.* The following interpretations and decisions may be appealed by an owner of record of the property in question or a council member on behalf of a resident of the city to the Board of Adjustment:
- (1) *Development Review Manager—Zoning.* An interpretation or decision regarding zoning matters.

- (2) *Building Safety Officer—Airport Zone.* Any person aggrieved, or any taxpayer affected by any decision of the Building Safety Officer, made in the administration of Airport Zone, Chapter 165.
- (C) *Appeals to the Planning Commission.*
- (1) *Development Review Manager's Required Dedications and Improvements.*
- (a) An owner or developer who is aggrieved by the requirements of the Unified Development Code for land, right-of-way or easement dedications, construction of on-site or off-site improvements, or payments in lieu of any dedication or improvement, which are in excess of the "rough proportionality" of the impact of the development upon the city's infrastructure or services may appeal such requirement to the Planning Commission as a part of the submission of the preliminary plat, large scale development, subdivision, building permit, lot split, grading permit, floodplain development permit, or otherwise within ten (10) days of notification of such development requirements. The appeal must be presented to the Planning Division in writing and state the grounds, or reasons for the appeal.
- (b) The Planning Commission shall determine after public hearing whether the required dedications, improvements, and fees meet the "rough proportionality" of the impact of the development on city infrastructure and services. If the requirements are in excess of the "rough proportionality," the Planning Commission is empowered to modify or reduce such requirements to achieve "rough proportionality."
- (c) Any potential reduction of impact fees must be approved by the City Council.
- (2) *Administrative Approvals and Interpretations by Development Review Manager.*
- (a) A resident of the city or an owner/developer who is aggrieved by a decision of the Development Review Manager regarding development matters that are approved administratively (as required by Chapter 166.02(C)) may appeal the final development approval decision affected by this matter to the Planning Commission. The appeal shall be submitted in writing to the Planning Division within ten (10) working days of the final decision. The appeal shall be limited to the applicable approval or denial criteria as follows:
- (i) The development plan is not submitted in accordance with the requirements of Chapter 166 of the Fayetteville Unified Development Code.
- (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
- (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by Chapter 166 of the Fayetteville Unified Development Code.
- (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
- (v) City water and sewer is not readily available to the property within the large scale development or preliminary plat and the developer has made no provision for extending such service to the development.
- (vi) The developer refused to comply with UDC Ch. 166 pertaining to required on-site and off-site improvements.
- (b) The appellant must include in the letter of appeal the specific code section with which the development application does not comply.

- (c) The Planning Commission shall determine after public hearing whether the interpretation or discretionary decision should be upheld or modified in part or in whole.
- (d) Any staff recommendation to approve or deny some or all of a requested street right-of-way vacation shall be considered by the Planning commission with recommendations to the City Council.
- (3) *City Engineer and Flood Plain Administrator.*
 - (a) *Development Matters.* An interpretation or decision of the City Engineer or Floodplain Administrator regarding development matters, including grading, drainage, water and sanitary sewer systems, and storm drainage systems.
 - (b) *Floodplain Regulations.* The decision of the Floodplain Administrator, provided that the Planning Commission shall hear and decide an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of Chapter 168.
 - (c) *Streamside Protection Zones.* An interpretation or decision of the City Engineer concerning the regulated uses, structures and activities, streamside boundary location or land use exemptions.
- (4) *Development Review Manager's Interpretation or Decision of Other Development Matters.* An interpretation or decision of the Development Review Manager regarding development matters including subdivisions, large scale developments, parking and loading, outdoor lighting, compliance with applicable design standards, or any other development matters.
- (5) *Urban Forester—Landscape and Tree Preservation and Protection requirements.* Decisions of the Urban Forester related to landscape and tree preservation and protection requirements.
- (D) *Appeals to the Construction Board of Adjustment and Appeals.* When the administrative authority under Chapter 173 shall disapprove an application, or the applicant is aggrieved by the interpretation of the administrative authority, the applicant may appeal the decision to the Construction Board of Adjustment and Appeals.

(Code 1965, §17B-11.2(d), (e), App. A., Art. 10(6), 19(2), App. B, §III, App. C., Art. 10(6), 19(2), App. B, §III, App. C., Art. V, §A; Ord. No. 1747, 6-29-70; Ord. No. 1750, 7-6-70; Ord. No. 2109, 6-375; Ord. No. 2252, 7-6-76; Ord. No. 2538, 7-3-79; Ord. No. 2585, 12-4-79; Ord. No. 2697, 1-20-81; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-14-88; Code 1991, §§150.03, 158.67(B), 158.68(A), (B), 159.65, 160.048, 160.172, 160.176(A), (B), 161.11, 162.03(B), (C), 163.10(D); Ord. No. 3551, 6-4-91; Ord. No.3587, §1, 1-7-92; Ord. No. 3699, §3, 4-20-93; Ord. No. 3716, §2, 6-15-93, Ord. No. 3806, §1, 6-28-94;Ord. No. 3895, §1, 6-20-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3925, §7, 10-3-95; Ord. No. 3963, §9, 4-16-96; Ord. No. 4100, §2 (Exh. A), 6-16-98; Ord. No. 4368, §2, 2-5-02; Ord. No. 4377, §§1, 2, 3-5-02; Ord. No. 4652, 12-07-04; Ord. No. 5206, 12-16-08; Ord. No. 5296, 12-15-09; Ord. 5390, 3-1-11; Ord. No. 6343 , §1(Exh. A), 8-4-20; Ord. No. 6446 , §5, 6-15-21)

155.07 Appeals To The Housing Board—Mobile Homes And Mobile Home Parks

- (A) *Permit Denied.* Any person whose application for a permit under Chapter 175 has been denied may request and shall be granted a hearing on the matter before the Housing Board.
- (B) *Permit Suspended.* Any person whose permit has been suspended, or who has received notice from the enforcement officer that his permit will be suspended unless certain conditions or practices at the mobile home park are corrected, may request and be granted a hearing on the matter before the Housing Board.

(C) *Petition Deadline.* When no petition for hearing shall have been filed within ten (10) days following the day on which notice of suspension was served, such permit shall be deemed to have been automatically revoked at the expiration of such ten (10) days.

(Code 1965, §17B11.2(e); Ord. No. 2109, 6-3-75; Ord. No. 2583, 12-4-79; Ord. No. 3152, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-15-88; Code 1991, §158.67; Ord. No. 4100, §2 (Exh. A), 6-16-98)

(Code 1965, §§13A-40, 13A-43; Ord. No. 1509, 8-8-66; Code 1991, §§156.017, 156.029; Ord. No. 4100, §2 (Exh. A), 6-16-98; Ord. No. 4652, 12-07-04).

155.08 Appeals From The Construction Board Of Adjustments And Appeals

If the Construction Board of Adjustments and Appeals refuses to extend a building permit pursuant to §173.02 (B)(8) or to issue a new building permit for property for which a building permit has expired pursuant to §173.02 (B)(8), the owner may appeal to the City Council.

(Ord. No. 5019, 5-15-07)

155.09—155.99 Reserved

166.01 Development Categories

- (A) *Property Line Adjustment.* A property line adjustment is a transfer or adjustment of a property line or lines between adjoining property owners which does not create a separate, new lot. A property line adjustment cannot dedicate new easements or right-of-way.
- (B) *Subdivision of Land.*
- (1) *Lot Split.* When a property is to be subdivided into two (2), three (3) or four (4) lots, parcels the application may be processed as a lot split. Except for lot splits created pursuant §164.22 Cluster Housing Development, (C) *Development Review Process*, after the creation of more than four (4) lots from an original parent tract as established under Washington County's countywide 1985 reappraisal. Any subsequent subdivision of the parent or resulting tracts is required to be processed as a preliminary/final plat or concurrent plat. A lot split may dedicate new easements or right-of-way and may be combined with an easement plat.
 - (2) *Preliminary Plat.* When a property is to be subdivided into more than four (4) lots or when a parent or resulting tract has been subdivided three (3) or more times and is proposed to be further subdivided, the application shall be processed as preliminary plat. A preliminary plat establishes the preliminary location of lot lines, streets, and utility infrastructure, and allows for the applicant to request construction plan approval and install required improvements.
 - (3) *Final Plat.* After completion of the required infrastructure (water, sewer, storm drainage, utilities, street improvements, etc.) for a preliminary plat, the entity subdividing may submit an application for approval of the final plat. The final plat application may not be submitted until the final inspection for the required infrastructure has been scheduled with City Engineering staff.
 - (4) *Concurrent Plat.* A concurrent plat combines the preliminary and final plat into one (1) step. A concurrent plat is permitted when a property is to be subdivided into more than four (4) lots, or when a parent or resulting tract has been subdivided three (3) or more times and is proposed to be further subdivided, and the existing and new parcels do not require construction of new infrastructure.
- (C) *Site Plan.*
- (1) *Large Scale Development.* A large scale development is generally intended for development on a site of 1 acre or greater in size and proposes to develop and/or redevelop more than 10,000 square feet of total impervious area and where a corresponding subdivision of land is not proposed.
 - (a) *Requirement.* The development of the following must be processed in accordance with the requirements for a large-scale development:
 - (i) A site 1 acre or greater in size and developing and/or redeveloping more than 10,000 square feet of total impervious area;
 - (ii) Facilities emitting odors or handling explosives; and
 - (b) *Excluded Developments.* Developments developing and/or redeveloping less than 10,000 square feet of new impervious area or a development on a site in a zoning district subject to administrative approval.
 - (2) *Large Site Improvement Plan.* A large site improvement plan review is intended for a large scale development that is located on a site within a zoning district that permits administrative approval. A large site improvement plan is subject to the requirements and excluded developments for a large scale development listed in Fayetteville Unified Development Code §166.01(C)(1).

- (3) *Small Site Improvement Plan.* A small site improvement plan review is intended for development on a site that is less than 1 acre in size with greater than 10,000 square feet of total impervious area.
- (a) *Requirement.* The development of the following must be processed in accordance with the requirements for a small site improvement plan:
- (i) A development that is excluded from large scale development or large site improvement plan review and requires review by multiple city divisions;
- (ii) The development and/or redevelopment of more than 10,000 square feet of impervious area for a development on site of less than 1 acre within any zoning district.
- (b) *Excluded Developments.* The construction of less than or equal to 10,000 square feet of total impervious area shall be exempt from the site improvement plan requirements and shall be submitted in accordance with the requirements of §166.02(E) and §166.15.
- (4) *Concept Plan.* When a developer intends to develop or redevelop greater than 6,000 square feet and less than 10,000 square feet of total impervious area within the city limits, they shall submit a concept plan to obtain feedback and recommendations from city staff prior to submitting a fully engineering development plan for review. Developments below or above this threshold, or in the city's planning area boundary, may submit a concept plan to obtain feedback and recommendations prior to submitting a fully engineered development plan for review.
- (D) *Modifications.*
- (1) *Minor Modifications.* The Zoning and Development Administrator may authorize minor modifications in an approved subdivision of land or site plan. Minor modifications shall include, but are not limited to, substitutions of one approved structural type for another, minor variations in placement of buildings in such a way that the overall limits of approved floor area, open space, or rooms per acre are not increased, and minor shifts in property line locations.
- (2) *Major Modifications.* In the event that a developer wishes to make major modifications to an approved development, such modifications shall be submitted to the approving body of the subdivision or site plan, whether staff, Subdivision Committee, or the Planning Commission. After submission, the approving body shall approve or disapprove the requested modification.
- (Code 1965, App. C., Art. II, §§A—D; Ord. No. 1750, 7-6-70; Ord. No. 2581, 12-4-79; Ord. No. 2789, 1-18-82; Code 1991, §§159.010; 159.11(C), 159.12, 159.13; 159.14; Ord. No. 3781, §1, 4-19-94; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4350, §1, 11-20-01; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 5945, §16, 1-17-17; Ord. No. 6067, §1, 5-1-18; Ord. No. 6446, §8(Exh. C), 6-15-21)

166.02 Development Review Process

(A) *Application Submittal*

- (1) *Submittal.* All development applications shall be submitted to the Planning Division and will be processed for review in accordance with Planning Division operating procedures.

(B) *Public Meetings.* Development applications are required to be processed through the Technical Plat Review Committee, Subdivision Committee, and Planning Commission as follows:

- (1) *Technical Plat Review Committee.* The following development applications are required to be reviewed by the Technical Plat Review Committee: Lot split, small site improvement plans, large site improvement plans, large scale development, planned zoning district with or without concurrent development, preliminary plat, final plat, concurrent plat, and concept plan. After the Technical Plat Review Committee meeting staff may administratively approve lot splits, final plats, small site improvement plans, and large site improvement plans after review for compliance with all applicable codes subject to UDC 166.02(C). No approval is necessary for concept plans.
- (2) *Subdivision Committee.* The following development applications are required to be reviewed by the Subdivision Committee: Large scale development, planned zoning district with concurrent development, preliminary plat, and concurrent plat. From these applications, the Subdivision Committee may approve only large scale developments.
- (3) *Planning Commission.* The following development applications are required to be reviewed by the Planning Commission. Large scale development, preliminary plat, concurrent plat, and planned zoning district with concurrent development. The Planning Commission may approve, deny, table, or approve development applications with conditions. A planned zoning district cannot be approved by the Planning Commission, but may be forwarded to City Council.

(C) *Approval and Denial Criteria*

- (1) *Administrative Approval.* The following applications shall be approved administratively by the Planning Division as long as the proposal meets all requirements of the Unified Development Code: Property line adjustment, lot split, final plat, small site improvement plan, and large site improvement plan. Approval by the Planning Commission for these applications is not required unless an appeal is filed in accordance with Ch. 156 of the UDC. Concept plans are not subject to approval or denial.
 - (a) *Reasons for Denial.* The Planning Division may refuse administrative approval based on the following criteria:
 - (i) *Property Line Adjustment; Lot Split.* The application does not comply with zoning and development requirements including, but not limited to: Lot width, lot area, setback requirements, buildable area, required parking, impervious surface, dedication of required right-of-way or easements, etc., or the requested action would make an existing non-conforming property or structure more non-conforming.
 - (ii) *Final Plat.* The conditions of approval of the preliminary plat have not been met, the proposed plat does not meet the zoning and development requirements of the UDC, and/or the required improvements have not been completed or guaranteed in accordance with Fayetteville Unified Development Code Chapter 158.
 - (iii) *Small or Large Site Improvement Plans.* The Planning Division may refuse to approve a small or large site improvement plan for any of the following reasons:
 - (a) The development plan is not submitted in accordance with the requirements of this chapter.

- (b) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (c) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (d) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factor such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (e) City water and sewer is not readily available to the property within the site improvement plat area and the developer has made no provision for extending such service to the development.
 - (f) The developer refused to comply with ordinance requirements or condition of approval for on-site and off-site improvements.
- (2) *Subdivision Committee and Planning Commission Approval.* The following applications shall be approved by the Subdivision Committee or Planning Commission, subject to the criteria listed below: Large scale development, preliminary plat and concurrent plat.
 - (a) *Reasons For Denial.* The Subdivision Committee or Planning Commission may refuse to approve a large scale development, preliminary plat or concurrent plat for any of the following reasons:
 - (i) The plat or development plan is not submitted in accordance with the requirements of this chapter.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development, preliminary plat, or concurrent plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with ordinance requirements or conditions of approval for on-site and off-site improvements.
- (D) *Plat Recordation or Construction Plan Approval.* After obtaining approval by the appropriate governing body, the applicant shall follow the procedures set forth below in order to record the plat or obtain construction plan approval.
 - (1) *Property Line Adjustment, Lot Split, Building Permit, Final Plat, Concurrent Plat.* The applicant shall submit copies of the approved plats containing all required signatures to the Planning Division for final approval. The plats shall be recorded by the applicant and copies of the recorded plats provided to the Planning Division as required.

- (2) *Preliminary Plat, Large Scale Development and Small or Large Site Improvement Plan.* Receipt of the approval authorizes the applicant to proceed with:
- (a) The preparation of plans, reports and specifications in accordance with City Engineering requirements including but not limited to:
 - (i) Street plans, profiles and specification accompanied by soil analyses and design calculations;
 - (ii) Storm drainage plans, profiles and specifications accompanied by soil analyses and design calculations; and
 - (iii) Water and sewer plans, profiles and specifications, accompanied by design calculations, to be reviewed and approved by City Engineering.
 - (iv) Final site plans, landscape plans, and other plans, reports and specifications required by the city to obtain approval.
 - (b) Once all approvals that are required have been obtained, the applicant may proceed with site preparation and construction in accordance with the permitted plans.
- (E) *Building Permits.*
- (1) Before a building permit is issued the developer shall:
 - (a) Dedication of Right-of-Way. Dedicate right-of-way in compliance with the city's Master Street Plan, and in compliance with the requirements for on or off-site improvements.
 - (b) Dedicate all easements necessary to serve the development as required by the utility providers and the city. This may be completed by easement plat or separate easement document(s), with approval of the Planning Division.
 - (c) Comply with all applicable zoning and development codes.
 - (d) In addition, for small site improvement plans, large site improvement plans and large scale developments, the developer shall:
 - (i) Obtain approval from the appropriate governing body.
 - (ii) On and Off-Site Improvements. Construct or guarantee required on- and off-site improvements in accordance with UDC Chapter 158.
 - (iii) Complete applicable conditions of approval.
 - (2) In addition to §166.02(E), before a building permit is issued for site that develops and/or redevelops between 1,201 and 10,000 square feet of total impervious area, where a corresponding subdivision of land is not proposed, the developer shall complete, and receive approval of, appropriate grading and drainage documentation demonstrating compliance with UDC Chapters 169 and 170 as well as the current City Drainage Criteria Manual per the table below. Impervious areas will be considered as existing only if they are in place on March 3, 2021 which corresponds with the City of Fayetteville 2021 imagery.

Required Mitigation Measures and Documentation by Development Threshold			
Development Threshold	City-wide Standard	Grading and Drainage/ Stormwater Documentation	Water Quality, Flood, and Tree Mitigation Measures
Level 1	< or = 1,200 sf of IA	Exempt from Grading and Drainage provisions except for those still	Exempt

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		associated with the Building Permit process such as HHOD	
Level 2	1,201—6,000 sf of IA	- Completed Green Stormwater Practice (GSP) Worksheet, demonstrating Runoff Reduction via Better Site Design. - GSP Operation & Maintenance (O & M) Agreement to ensure the long-term functionality of these practices.	2 or more measures from Step 1 of Table 2 that Reduce Runoff via Better Site Design 1 or more Green Stormwater Practices (GSPs) measures from Step 2 of Table 2 as required to treat 100% of the proposed additional impervious and gravel areas. - Abbreviated Tree Preservation Plan
Level 3	6,001—10,000 sf of IA	Same as Level 2.	- Same as Level 2. - As needed GSP measures from Step 3 to further reduce runoff referred to as extended detention - Abbreviated Tree Preservation Plan

(F) *Completion of Development/Certificate of Occupancy.* No certificate of occupancy for a large-scale development, large site improvement plan, or small site improvement plan shall be issued, and no final plat or concurrent plat shall be signed for recordation until the following have been completed:

- (1) The requirements for on and off-site improvements have been completed, and maintenance bonds/guarantees deposited to city specifications.
- (2) An "as built" plot plan has been approved by the City Engineer (where applicable) showing:
 - (a) The location of all buildings and the setback distance for said buildings from street right-of-way and adjoining property lines;
 - (b) The location of any freestanding signs and the setback distance of said signs from street right-of-way and adjoining property lines;
 - (c) The location, number, dimensions, and surfacing of all parking spaces and of all screens or fences;
 - (d) The location and size of all water, sewer, gas, electric, telephone, and television cable lines;
 - (e) The location and size of all stormwater features with associated drainage easements demarcated, where applicable; and
 - (f) The location and quantity of existing and new impervious area on the property.
- (3) The development has been inspected and approved by all applicable city divisions.
- (4) All applicable conditions of approval have been completed.

(Code 1965, App. C., Art. II, §§F—H; Ord. No. 2581, 12-4-79; Code 1991, §§159.16—159.18; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 6061, §2, 4-17-18; Ord. No. 6446, §8(Exh. C), 6-15-21; Ord. No. 6539, §5(Exh. A), 3-1-22)

166.23 Urban Residential Design Standards

(A) *Purposes.*

- (1) To protect and enhance Fayetteville's appearance, identity, and natural and economic vitality.
- (2) To create appealing street scenes so that development enhances the image of the city and provides safe, pedestrian-friendly neighborhood environments.
- (3) To minimize service and parking impacts in order to preserve surrounding property values and scenic resources that contribute to the city's economic development.
- (4) To compose attractive residential facades that enhance the economic viability of and provide compatibility with surrounding property.

(B) *Applicability.* All references to urban residential design standards shall include the following uses as permitted by right or conditional use in all zoning districts:

- (1) Two (2) family dwellings
- (2) Three (3) and four (4) family dwellings
- (3) Multi-family dwellings

(C) *Site Development Standards.* The following site development standards shall apply for all urban residential development.

- (1) *Intent.* The intent of these site development standards is to create a pedestrian-friendly streetscape.
- (2) *Vehicular Access/Circulation/Parking.*
 - (a) Site access and internal circulation should promote pedestrian safety, efficiency, and convenience and minimize conflicts between vehicles and pedestrians. Continuous circulation shall be provided throughout the site to the greatest extent possible creating a complete, compact, and connected transportation network both within the development and to the surrounding neighborhood. The visual impact of parking areas should be minimized by locating parking behind buildings and internal to the site.
 - (i) Garage entries and carports shall not protrude forward from the principal facade. Driveways shall extend at least 18 feet into the property from the Master Street Plan right-of-way to allow parking to occur without encroaching into the right-of-way.
 - (ii) Parking areas should be accessed by mid-block alleys whenever possible. Developments should minimize multiple driveways and should utilize a shared access to reduce the number of vehicle conflicts at the street.
 - (iii) On-street parallel parking may be provided on at least one (1) side of the street in front of all multi-family buildings where feasible. Each on-street parking space provided along the project frontage shall count toward the total required spaces for the development.
- (3) *[Reserved.]*
- (4) *Pedestrian Circulation.*
 - (a) Ground floor dwelling units adjacent to a public street shall have a primary pedestrian entry that is visible from the street. This entry shall connect unobstructed to the public sidewalk where sidewalk exists in a manner to allow occupants to access from the interior of the structure to the city sidewalk. The connection shall match the sidewalk in material type and shall be at least 3 feet in width unless otherwise approved by the Zoning and Development Administrator in writing. The

entry may be gated and shared but must occur at a spacing of no fewer than one (1) entrance for every two (2) street level dwellings. The pedestrian connection to the street may run from the door along the façade of the building parallel to the street for a maximum of 12 feet from the door before connecting directly to the public sidewalk.

- (b) Urban residential projects shall incorporate pedestrian connections to adjacent residential and commercial properties where sidewalks exist unless this requirement is otherwise waived by the Planning Commission.
- (5) *Screening Requirements if Visible from the Highway/Street Right-of-Way.*
 - (a) *Mechanical and Utility Equipment.* All mechanical and utility equipment located on the wall and/or on the ground shall be screened, except for air conditioning window units. All roof mounted utilities and mechanical equipment shall be screened by incorporating screening into the structure utilizing materials compatible with the supporting building. Mechanical and utility equipment over 30 inches in height shall meet building setbacks, unless located in a utility easement.
 - (b) *Recycling and Trash Containers.* Adequate space and screening shall be provided for the placement of recycling and trash containers in urban residential developments.
 - (i) Urban residential developments are required to provide adequate space to provide both recycling and trash services for residents. The Recycling and Trash Collection Division Director may exercise discretion in approving the dimensional size of the required enclosure or dedicated space for servicing recycling and trash containers. Large multi-family urban residential developments typically will be required to provide adequate space for the placement of two (2) front-end load dumpsters that are easily accessible with a minimum enclosure dimension of 24 feet wide and 12 feet deep.
 - (ii) Recycling and trash containers shall be screened by enclosures with materials that are complementary to the principal structure, with access to the refuse containers not visible from the public right-of-way.
 - (c) *Screening.* Screening shall mean a view obscuring fence, berm, vegetation, architectural treatment consistent with the residential architecture, or a combination of the four of sufficient height to prevent the view of the screened items from the public right-of-way. Vegetation shall be planted at a density sufficient to become view obscuring within two years from the date of planting.
- (6) *Fencing.* The following types, height, and location of fences shall be prohibited:
 - (a) *Razor and/or Barbed Wire.* Razor and/or barbed wire fences are prohibited, unless and except barbed wire fences are used for agricultural purposes.
 - (b) *Chain Link.* Chain link fence is prohibited if closer to the street than the front of the building.
 - (c) *Height of Fences in Front of Buildings.* Fences in the front yard area shall have a maximum height of 42 inches subject to visibility requirements in Chapter 164.09 and 164.17.
- (D) *Architectural Design Standards.*
 - (1) *Intent.* The intent of these building design standards is:
 - (a) To ensure that urban residential buildings add to the character and quality of the community, offer a sense of security, and make a positive contribution to the life of the street.
 - (b) To maximize the quality, value and longevity of urban residential neighborhoods.
 - (c) To make housing appealing and comfortable for its inhabitants.

(2) *Construction and Appearance Design Standards for Urban Residential Development.*

(a) *Building Form and Design.*

- (i) In order to provide a variety in form and design, one (1) building type may not be utilized more than three (3) times in a development. Each building type shall be differentiated by variations in materials, colors and roof forms.
- (ii) Ancillary structures such as carports, garages, recreational buildings and storage structures shall be designed as an integral part of the project architecture.
- (iii) The following architectural elements shall be required of all principal façades that are greater than 48 feet wide along the street frontage:
 - (a) Variations in materials;
 - (b) Insets or other relief in the wall plane;
 - (c) Incorporation of two or more of the following:
 - (1) Balconies;
 - (2) Bays or bay windows;
 - (3) Porches;
 - (4) Dormers;
 - (5) Porticoes;
 - (6) Turrets; or
 - (7) Other architectural feature approved by the Zoning Development Administrator that meets the intent of the code.
- (iv) One (1) or more of the following architectural elements shall be required of all principal façades that are 48 feet wide or less along the street frontage:
 - (a) Balconies;
 - (b) Bays or bay windows;
 - (c) Porches;
 - (d) Dormers;
 - (e) Porticos;
 - (f) Turrets; or
 - (g) Other architectural feature approved by the Zoning and Development Administrator that meets the intent of the Code.

- (E) *Planning Commission Approval.* An applicant may request approval from the Planning Commission of a variance from the maximum requirements where unique circumstances exist and the effect will not adversely impact adjoining or neighboring property owners. The applicant shall provide notification to adjacent property owners prior to the date of the meeting.

(Ord. No. 5118, 3-18-08; Ord. No. 5262, 8-4-09; Ord. No. 5679, 4-15-14; Ord. No. 6170 , §1, 4-2-19; Ord. No. 6357 , §§1, 2, 9-15-20; Ord. No. 6508 , §1, 11-16-21; Ord. No. 6658 , §10, 5-2-23)

167.04 Tree Preservation And Protection During Development

- (A) *Applicability.* The provisions of this section shall apply to proposed developments as defined by the Unified Development Code as follows:
- (1) *Large Scale Developments.*
 - (2) *Large Site Improvement Plan.*
 - (3) *Small Site Improvement Plan.*
 - (4) *Preliminary Plat.*
 - (5) *Final Plat.*
 - (6) *Concurrent Plat.*
 - (7) *Planned Zoning Districts.*
 - (8) *Parking Lots.* Tree preservation requirements apply to all permit applications for the construction of parking lots with five (5) or more spaces. An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for permits on projects that are required to go through the subdivision or large scale development process.
 - (9) *Hillside/Hilltop Overlay District.* Undeveloped land located within the Hillside/Hilltop Overlay District shall submit a tree preservation plan with the preliminary plat or site plan. Single and two (2) family residential development shall submit an abbreviated tree preservation and site plan at the time of applying for a building permit.
 - (10) *Grading Permit.* A tree preservation plan or an abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for grading permits on projects that are not required to go through the development process.
 - (11) *Building Permits.* Tree preservation requirements apply to all permit applications for developments of greater than 1,200 square feet of impervious area. An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for building permits on projects that are not required to go through the subdivision, large scale development, or site improvement plan process. There shall be no land disturbance, grading, or tree removal until an abbreviated tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.
 - (12) *Exemptions.* Projects not listed above or not impacting tree canopy are not required to submit a tree preservation plan or review from Urban Forestry.
 - (a) Persons seeking to construct 1,200 square feet or less of impervious area are specifically exempt from the provisions of this section except when the land is located within the Hillside/Hilltop Overlay District; then all the provisions of this ordinance shall apply.
 - (b) Structural changes to buildings located in the Hillside/Hilltop Overlay District that do not result in an enlargement of the building footprint or roof dripline shall not require an abbreviated tree preservation plan.
- (B) *Tree Preservation Criteria.* The Urban Forester shall consider the following factors, and any other relevant information, when evaluating tree preservation plans:
- (1) The desirability of preserving a tree or group of trees by reason of age, location, size, or species.
 - (2) Whether the design incorporates the required tree preservation priorities.

- (3) The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.
- (4) The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or group of trees is located.
- (5) Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.
- (6) Whether the size or shape of the lot reduces the flexibility of the design.
- (7) The general health and condition of the tree or group of trees, or the presence of any disease, injury, or hazard.
- (8) The placement of the tree or group of trees in relation to utilities, structures, and the use of the property.
- (9) The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.
- (10) Whether proposed roads and proposed utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.
- (11) Construction requirements of on-site and off-site drainage.
- (12) The effects of proposed on-site mitigation or off-site alternatives.
- (13) The effect other chapters of the Unified Development Code, or city policies have on the development design.
- (14) The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations.
- (15) The impact a substantial modification or rejection of the application would have on the applicant.

***Note**—The above items are not presented in any particular order of importance. The weight each is given will depend in large part on the individual characteristics of each project.

- (C) *Canopy Area*. In all proposed developments that are required to submit a tree preservation plan or abbreviated tree preservation plan, trees shall be preserved as outlined in Table 1 under Percent Minimum Canopy, unless the applicant has been approved for on-site mitigation or off-site alternatives as set forth in §167.04(I) and (J) below. The square foot percentage of canopy area required for preservation in new development is based on the total area of the property for which the applicant is seeking approval, less the right-of-way and park land dedications. An applicant shall not be required to plant trees in order to reach the percent minimum canopy requirement on land where less than the minimum exists prior to development.

Table 1	
Minimum Canopy Requirements	
ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
R-A, Residential — Agricultural (nonagricultural uses)	25%
RSF-.5, Single-family Residential — One-Half Unit per Acre	25%
RSF-1, Single-family Residential — One Unit per Acre	25%
RSF-2, Single-family Residential — Two Units per Acre	20%
RSF-4, Single-family Residential — Four Units per Acre	25%
RSF-7, Single-family Residential — Seven Units per Acre	20%

RSF-8, Single-family Residential — Eight Units per Acre	20%
RSF-18, Single-family Residential — Eighteen Units per Acre	20%
R-O, Residential — Office	20%
RI-12, Residential Intermediate — Twelve Units Per Acre	20%
RI-U, Residential Intermediate — Urban	15%
RMF-6, Multi-family Residential — Six Units per Acre	20%
RMF-12, Multi-family Residential — Twelve Units per Acre	20%
RMF-18, Multi-family Residential — Eighteen Units per Acre	20%
RMF-24, Multi-family Residential — Twenty-Four Units per Acre	20%
RMF-40, Multi-family Residential — Forty Units per Acre	20%
NS-L, Neighborhood Services — Limited	20%
NS-G, Neighborhood Services — General	20%
C-1, Neighborhood Commercial	20%
CS, Community Services	20%
C-2, Thoroughfare Commercial	15%
UT, Urban Thoroughfare	15%
C-3, Central Business Commercial	15%
DC, Downtown Core	10%
MSC, Main Street Center	10%
DG, Downtown General	10%
NC, Neighborhood Conservation	20%
I-1, Heavy Commercial and Light Industrial	15%
I-2, General Industrial	15%
P-1, Institutional	25%
PZD, Planned Zoning District (HHOD)	25% (30%)

All residential zoning districts and C-1 districts within the Hillside/Hilltop Overlay District shall have their percent minimum canopy requirements increased by 5% to a total requirement of either 30% or 25%.

(D) *Prior Tree Removal.*

- (1) If trees have been removed below the required percent minimum canopy within the five (5) years preceding application for a development, the site must be forested to meet the Percent Minimum Canopy requirements set forth in Table 1, plus an additional 10% of the total area of the property for which the applicant is seeking approval, less the right-of-way and park land dedications. The number of trees required to be planted shall be calculated using the base density for high priority trees.
- (2) *Waiver.* If an applicant is able to demonstrate to the Planning Commission's satisfaction that the trees were removed for a bona fide agricultural purpose, and not with the intent to thwart enforcement of this chapter, the additional 10% reforestation requirement shall be waived.

(E) *Tree Preservation Priorities.*

- (1) *Percent Minimum Canopy.* Proposed designs must meet the percent minimum canopy requirements for the particular zoning designation, emphasizing the preservation and protection of high priority trees on the site. Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement and such utilities shall be routed, wherever possible, to avoid existing canopy.

- (2) *Existing Natural Features.* Each design shall consider the existing natural features of the site, the preservation priorities for the trees, and the impact their proposed removal may have both on and off-site.
 - (3) *Priority Trees.* The preservation and protection of high priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. High priority trees are alive, healthy, greater than or equal to an 8-inch diameter at breast height for large and medium species of trees. High priority for small species of trees is greater than or equal to a 4-inch diameter. Low priority trees are invasive species or unhealthy as determined by a tree care professional pursuant to §167.07. Low priority trees are less than an 8-inch diameter at breast height for larger and medium species and less than a 4-inch diameter at breast height for smaller trees species.
- (F) *Tree Preservation Requirements for Proposed Residential and Non-Residential Developments.*
- (1) *Residential Developments.* The percent minimum canopy in residential developments shall be located in areas that have the least possibility of impact as public infrastructure and proposed utilities are installed and homes built. The intent is to leave undisturbed as many existing trees as possible for the use and enjoyment of prospective lot owners. Residential developments requesting tree removal below the percent minimum canopy requirement may choose either residential on-site mitigation, or to contribute to the Tree Escrow Account as set forth in §167.04(J)(4)(a). Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement, and such proposed utilities shall be routed to avoid existing canopy and shall count toward the percent minimum canopy requirement.
 - (2) *Nonresidential Developments.* Two (2) options are available for establishing a tree preservation plan for the development of nonresidential developments. The Urban Forester shall recommend to the Planning Commission the option that will potentially preserve the largest amount of high priority canopy based upon the tree preservation criteria set forth in §167.04(B) above.
 - (a) *Preservation Plan for Entire Development.* The developer may choose to preserve the percent minimum canopy required for the entire development. With this option, the preserved canopy shall be located in areas that will not be impacted by future development of the individual lots. Canopy to be preserved shall be noted on the final plat, and shall be protected as set forth in §167.04(L) below. Should the entire percent minimum canopy requirement for the site be so protected, the preserved canopy shall be placed in a tree preservation easement and the final plat shall include a statement that the individual lots, as represented thereon, shall not require separate tree preservation plans.
 - (b) *Preservation Plan for Infrastructure Only.* The developer, in consultation with city staff, shall delineate the area required for the construction of the infrastructure and improvements for the development. This area should include street rights-of-way, and utility and drainage easements. Proposed lot lines, streets, and easements shall be located to avoid placing a disproportionate percentage of existing canopy in any one (1) proposed lot. This option shall not allow the removal of trees during the grading of individual lots, unless shown by the developer to be essential to the project's engineering design. The developer will be required to compensate for the canopy removed from defined individual lots by making the appropriate payment into the Tree Escrow Account. On all other areas of the development, the developer shall protect the existing canopy during the construction phase in accordance with §167.05 below. The final plat shall include a statement that the individual lots shall require separate tree preservation plans.
 - (3) *Hillside/Hilltop Overlay District.* Individual parcels or lots located within the Hillside/Hilltop Overlay District boundary shall submit a tree preservation plan or an abbreviated tree preservation plan as set forth in §167.04(H)(3) indicating the location of the structure and the preservation of the minimum tree canopy requirement.

- (4) Developers have the option of creating cluster development, such as a Planned Zoning District, which would encourage more open space and tree preservation. In this pattern of development, the trees preserved or open space on each lot can be transferred to a larger Tree Preservation Easement instead of individual lots required to meet minimum percent requirements. The Tree Preservation Easements shall be clearly depicted on easement plats or final plats.
- (G) *Initial Review.*
- (1) *Meeting with the Urban Forester.* It is strongly recommended that prospective applicants meet with the Urban Forester for an initial review of the proposed tree preservation plan for the site prior to submitting a proposed development to the city. During the initial review, the Urban Forester shall make recommendations to ensure the proposed subdivision or development complies with the requirements of this chapter. These recommendations shall be nonbinding. However, applicants proceed at the risk of higher costs and longer approval times due to changes required by a noncompliant submittal should they choose not to have the initial review or to disregard the recommendations of the Urban Forester.
- (2) *Confirmation.* The Urban Forester shall document whether the applicant participated in the initial review meeting in the Tree Preservation and Protection staff report given to applicants going through the development review process. If the applicant chooses to attend an initial review meeting, the staff report shall also document any recommendations made. The Urban Forester shall ensure that a copy of the report or email becomes part of the permanent file for the project.
- (H) *Submittal of Plans.* Applicants should bear in mind that all plans will be evaluated according to the tree preservation criteria and percent minimum canopy requirements as set forth under §167.04(B) and (C).
- (1) *Tree Preservation Plan.* On sites with existing tree canopy, the applicant shall conduct a tree preservation analysis to determine the approximate age, health, size and species distribution of the trees, noting each on a tree preservation plan, and clearly showing the locations and types of all natural features on a site, including features 100 feet beyond the property lines. The tree preservation plan shall also specifically depict the applicable preservation priority level for each tree or group of trees on the site. The plan should include, but not be limited to, delineation of the following features as they exist on the site:
- (a) The existing topography of the site highlighting slopes of 15% or greater, and indicating the natural drainage patterns;
 - (b) The property line boundaries of the site;
 - (c) Soils identified according to the Unified Soil Classification System;
 - (d) Any significant trees, as defined in the City of Fayetteville's Tree Preservation, Protection and Landscape Manual, existing on the site, and the location of trunks, spread of the canopy, species, diameter at breast height (DBH), and the overall health of each significant tree;
 - (e) Groupings of trees, delineating the edges of the overall canopy, noting the predominate species, average height, diameter at breast height (DBH), and general health of the trees.
 - (f) All existing utilities and utility easements;
 - (g) All features, including trees, buildings, perennial and intermittent streams and creeks that exist on the site or within 100 feet of the limits of disturbance;
 - (h) Floodplains and floodways on the site;
 - (i) All existing rights-of-way within and surrounding the project site, including any designated trails or bike paths; and,

- (j) Any other factors that may impact the design of the site.
- (2) *Additional Tree Preservation Plan Content.* The applicant shall indicate all proposed site improvements, and delineate in the tree preservation plan the trees to be retained on-site, and the measures to be implemented for their protection. These measures shall include, but need not be limited to, fencing, limits of root pruning, as well as restrictions on traffic and material storage. The plan shall also clearly depict the limits of soil disturbance to include all areas to be graded both on and off-site, as well as the proposed location of utilities. The applicant should consult the City of Fayetteville Tree Preservation, Protection and Landscape Manual for details, examples and specific checklists. Examples can be provided upon request to the Urban Forester.
- (3) *Abbreviated Tree Preservation Plan.* Applicants requesting approval of development projects for between 1,201 to 10,000 square feet of total impervious area that require building permits, grading, or parking lot permits, but that do not fall under the requirements for developments required to go through the development review process of Technical Plat Review Committee, Subdivision Committee and/or Planning Commission, shall prepare and submit an abbreviated tree preservation plan. The information for an abbreviated tree preservation plan may be combined with the site plan, plat drawing, or grading plan. The applicant is expected to show the general location of all existing groups of trees, individual significant trees, and to clearly depict the limits of soil disturbance to include all areas to be graded, both on and off-site, as well as the proposed location of utilities. Protective measures such as fencing, limits of root pruning, restriction on traffic and materials storage shall be depicted on the plan. A preliminary site visit with the Urban Forester is highly recommended before applying for any of the above-mentioned permits. The applicant should consult the City of Fayetteville Tree Preservation, Protection, and Landscape Manual for details, and specific checklists. Applicants submitting abbreviated tree preservation plans shall not be required to submit an analysis report, nor shall they be required to hire architects, engineers, or landscape architects to prepare the abbreviated tree preservation plan.
- (4) *Analysis Report.* The applicant shall submit an analysis report when minimum percent canopy is not met. The report shall detail the design approaches used to minimize damage to or removal of existing canopy that were considered in arriving at the proposed design. Written justification shall be presented as to why individual trees or canopy must be removed. The report shall also detail proposed on-site mitigation options or off-site alternatives, as detailed below.
- (5) *Grading and Utility Plans.* All subsequent grading and utility plans shall depict Tree Preservation Areas, preserved trees, and the physical limits of all protective measures on site required during construction.
- (6) *Submittal Requirements.* The applicant shall submit a tree preservation plan. Development plans with removal of tree canopy below percent minimum canopy shall submit an analysis report to the Urban Forester, concurrently with their tree preservation plan. Applicants submitting abbreviated tree preservation plans shall not be required to submit analysis report.
- (7) *Tree Preservation Easements.* The City of Fayetteville shall encourage the use of Tree Preservation Easements for the added protection of trees preserved to meet percent minimum canopy requirements or trees planted, in those instances where such would be of mutual benefit to the applicant and the City of Fayetteville.
- (i) *Request for On-Site Mitigation.*
 - (1) *Timing of Request for On-Site Mitigation.* Requests to remove trees below the percent minimum canopy requirement must be incorporated with the applicant's tree preservation plan.
 - (2) *Plan Requirements.* The tree preservation plan must graphically represent the species and location for all existing trees on-site. It shall also include a chart clearly stating the following information:
 - (a) The number of trees requested for removal;

- (b) The percentage below the percent minimum canopy requirement they represent; and
- (c) The species and number of trees to be planted based on the forestation requirements below.
- (3) *Planting Details and Notes.* Planting details and notes shall be included on the tree preservation plan or landscape plan as set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.
- (4) *Forestation Requirements.* The number and species of trees required for forestation shall be based upon the quality of the canopy lost:
 - (a) *High Priority Canopy.* When removing high priority canopy below the percent minimum canopy required, the canopy square footage removed shall be forested at a base density of two hundred (200), 2-inch caliper trees per acre removed.
 - (b) *Low Priority Canopy.* When removing low priority canopy below the percent minimum required, the canopy square footage removed shall be forested at a base density of one hundred (100), 2-inch caliper trees per acre removed.
- (5) *Base Density.* Compensating for the environmental damage caused by removing tree canopy shall be accomplished by forestation on a per acre basis. The base density formula used above is based on 2-inch caliper trees. However, the urban forester may approve the use of trees with less than 2-inch caliper for the planting of smaller tree species required by spatial constraints on the site. In such cases, the number of trees to be planted may be adjusted in accordance with the species table to be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.
- (6) *Preferred Species.* All trees to be planted shall be species native to the Ozark region or native cultivars, when available, or selected from the list of preferred tree species set forth in the City of Fayetteville Tree Preservation, Protection and Landscape Manual. Species selection shall be based upon the amount of space available for proper growth on the site, and must be approved by the Urban Forester.
- (7) *Placement of Trees.* The applicant is expected to plant trees in locations on the site where the environmental benefits of canopy cover are most likely to offset the impact of development. Trees shall not be placed within utility easements, or in other locations where their future protection cannot be assured.
- (8) *Residential On-Site Mitigation.* Applicants requesting on-site mitigation for residential developments shall comply with all the provisions of §167.04(I), as well as the following:
 - (a) The applicant's mitigation plan shall meet or exceed the required number of mitigation trees based on the forestation requirements as set forth at §167.04(I)(4).
 - (b) All plans requesting residential on-site mitigation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.
 - (i) Approval of a plan requesting residential on-site mitigation shall be contingent upon the applicant depositing with the city an irrevocable letter of credit in an amount equal to the estimated cost of materials and labor for all trees at the time of planting. The irrevocable letter of credit must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Urban Forester for approval.
 - (ii) Upon completion of the three (3) year landscape establishment period, the Urban Forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the city shall release the letter of credit.

- (iii) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Urban Forester. If the applicant does not take remedial steps to bring the property into compliance, the city shall use the necessary moneys from the landscape establishment guarantee to do so.
 - (iv) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.
 - (c) Developers requesting mitigation trees be planted along the street right-of-way of residential developments shall submit a landscape plan that complies with the standards outlined in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual in order to ensure that new trees planted are of the highest quality, require low maintenance, and do not interfere with public safety. The species of trees to be planted shall be selected from the approved street tree species list, or be otherwise specifically approved by the Urban Forester. The applicant's mitigation plan for planting street trees shall describe in detail the method for tracking the development of the individual lots, which shall best ensure that required number and species of mitigation trees are planted.
- (9) *Request for On-Site Mitigation Alternatives (Green Roofs or Green Façades).*
 - (a) *Intent.* The intent is to allow previously developed sites with at least 50% existing impervious area and limited space for planting trees to use on-site mitigation alternatives to meet the mitigation requirements and still contribute beneficial plant materials that provide positive ecosystem services.
 - (b) *Applicability.* On-Site Mitigation Alternatives shall only be allowed as alternatives to planting trees in form-based zoning districts that allow for mixed-use and do not have a building area maximum requirement. On-Site Mitigation Alternatives may not be utilized on sites that have adequate space to meet landscape requirements.
 - (c) *Timing of Request for On-Site Mitigation Alternatives.* Requests for on-site alternatives must be incorporated and submitted concurrently with the applicant's tree preservation plan.
 - (d) *Intensive Green Roof.* A green roof with 6 inches or great soil medium that can sustain plant species with deeper root systems.
 - (e) *Extensive Green Roof.* A green roof with 2 to 5 inches of soil medium that can sustain plant species with shallow root systems.
 - (f) *Green Façade.* A green façade is created by growing climbing plants up and across the façade of a building, either from plants grown directly in the ground or a large container of at least 12 inches of soil medium. Plants can attach directly to the building or be supported with a 12-inch by 12-inch trellis system connected to the building.
 - (g) *Mitigation Alternative Calculations.* The applicant's plan to install an extensive green roof, intensive green roof, and green façade in lieu of a mitigation tree shall be based from square footage of tree canopy.
 - (i) The calculation for an extensive green roof shall be based from a ratio of 1 square foot of tree canopy to 2.5 square feet of extensive green roof.
 - (ii) The calculation for an intensive green roof shall be based from a ratio of 1 square foot of tree canopy to 1.4 square feet of intensive green roof.

- (iii) The calculation for a green façade shall be done based from a ratio of 1 square foot of tree canopy to 2.5 square feet of green façade.

(J) *Request for Off-Site Alternatives.*

- (1) *Timing of Request for Off-Site Alternatives.* Requests for off-site alternatives must be incorporated in, and submitted concurrently with the applicant's tree preservation plan.
- (2) *Off-Site Preservation.* The applicant may seek approval of the Urban Forester to preserve an equal or greater amount of canopy cover at a site within the city limits.
- (3) *Off-Site Forestation.*
 - (a) If off-site preservation cannot be achieved, the applicant may seek approval from the Urban Forester to plant the required number of trees on another site owned by the applicant and located within the city limits. A tree preservation easement must be conveyed concurrently with or prior to submission of a final plat by the applicant to the city to protect any off-site preservation or forestation and the legal description of the tree preservation easement shall also appear on the final plat.
 - (b) An applicant may plant and maintain mitigation trees needed for the applicant's development as to fulfill the obligation set forth in Chapter 167, Tree Preservation and Protection, in a nearby city park or public right-of-way if expressly approved by City Council resolution. The City Council shall seek advice from the Urban Forester, Parks and Recreation Department staff and citizens about the advisability of forestation of the nearby city park and may apply express conditions including requiring irrigation to be installed and regular maintenance to be performed by the applicant.
- (4) *Tree Escrow Account.* Tree preservation on-site is always the preferred option, with on-site mitigation, off-site preservation, off-site forestation, and on-site mitigation alternatives to be considered in descending order only if the more preferred option cannot be fully achieved. If none of these options can completely fulfill a developer's obligation under this Tree Preservation and Protection Chapter, the developer shall pay into the City Tree Escrow Account \$250.00 for each tree required to meet the Base Density requirements which fairly represents the costs of material and labor to plant a tree. The developer shall also pay into the Tree Escrow Fund \$425.00 as three (3) years of maintenance costs to ensure each tree survives for that period of time. Tree planting and maintenance costs should be reviewed at least every four (4) years to ensure it remains the fair market costs for tree planting and maintenance for three (3) years.
 - (a) Developments proposed as building permits developing and/or redeveloping 1,201 – 6000 square feet of total impervious surface under Level 2 as outlined in §166.02(E)(2) are eligible for contribution to the tree escrow account as an option.
 - (b) Residential developments which cannot achieve the base density tree requirements through preservation or mitigation shall contribute to the Tree Escrow Account. The city shall use the money paid into the Tree Escrow Account to plant trees within the development along rights-of-way, detention ponds, common areas or other areas where trees can be protected and have a high probability of survival to a mature tree. This shall be accomplished once the development is built out or as approved by the Urban Forester.
 - (c) Money contributed in lieu of on-site mitigation or off-site forestation shall be paid prior to issuance of a building permit on all commercial, industrial, or multi-family residential buildings and prior to final plat acceptance for all residential and non-residential subdivisions.
 - (d) Money contributed under this section:
 - (i) May be used for canopy mitigation, including planting site identification, tree acquisition, planting, and maintenance, utilizing either city staff or contract labor;

- (ii) Shall not revert to the general fund for ongoing operations.
 - (e) If it is not possible to plant trees within the development, planting locations will be sought in appropriate sites within a 1 mile radius of where the original project is located, but if this cannot be achieved, the moneys shall be used to plant the trees in the park quadrant in which the development took place, or pursuant to §167.04(J)(2) and (3). Data extracted from the urban forest analysis should be consulted when identifying appropriate locations to plant escrow funded trees.
 - (f) The City of Fayetteville shall refund the portion of the money contributed under this section, including the accrued interest that has not been expended seven (7) years from the date of the contribution. Interest shall be based on a 4% annual rate.
 - (g) Refunds shall be paid to the present owner of the property that was the subject of new development and against which the fee was assessed and collected.
 - (h) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the applicant no later than thirty (30) days after the date which the refund becomes due. The sending by regular mail of the notices to the applicant shall be sufficient to satisfy the requirement of notice.
 - (i) The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.
 - (j) At the time of the contribution to the Tree Escrow Account, the Urban Forester shall provide the applicant with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any contribution to the Tree Escrow Account under this ordinance.
- (K) *Tree Preservation Plan Review Form.* The Urban Forester shall use a standardized form for all recommendations or administrative determinations made regarding an applicant's tree preservation plan.
- (1) The form shall clearly indicate whether the Urban Forester is making a final administrative determination, or a recommendation to the Planning Commission or City Council.
 - (2) The form shall also clearly indicate the applicant's plan is "APPROVED," "DISAPPROVED," or "CONDITIONALLY APPROVED," and explain the reasoning therefore.
 - (3) A statement shall appear on the form explaining the process by which a final administrative determination may be appealed in accordance with Chapter 155 of the Unified Development Code.
 - (4) The Urban Forester shall sign and date the form, and ensure that a copy becomes part of the permanent file for the project.
- (L) *Continuing Preservation and Protection Under Approved Tree Preservation Plans and Tree Preservation Easements.*
- (1) Large scale developments, large site improvements, and commercial preliminary plats are required to dedicate a tree preservation easement, if any existing tree are to be preserved. The tree preservation easement shall be the size of the minimum canopy preservation requirement, if possible. If the minimum tree preservation canopy is not available, the applicant will not be required to dedicate the minimum canopy preservation. The applicant will have to dedicate a tree preservation easement that is agreed upon with The Urban Forester. In order to ensure that an applicant's heirs, successors, assigns, or any subsequent purchasers of the subject property are put on notice as to the existence and extent of approved tree preservation easements which shall be clearly depicted and noted on the easement plats for large scale developments, large and small site improvements, commercial final plats, and any plats with a tree preservation easement. This shall be accompanied by a narrative statement describing

the nature of the protection afforded, and bearing the signature of the Urban Forester. If it is impractical to include the actual depiction of the canopy in a tree preservation easement on the easement plat, or final plat itself, a note cross referencing an accompanying document shall suffice.

- (2) The geographic extent and location of tree preservation easements, once recorded, may only be modified, or abolished with the express approval of the City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest of the City of Fayetteville. Such requests shall be submitted to the urban forester, who shall ask the City Clerk to place it on the agenda of the next regularly scheduled City Council meeting.
- (3) Property owners wishing to remove diseased or dead trees from within a recorded tree preservation easement shall seek prior approval from the Urban Forester, who shall determine if such removal is consistent with sound arboricultural and horticultural practices, as well as the intent of this chapter. Any tree so removed shall be replaced with a tree of like or similar species, unless the Urban Forester determines that natural replacements of sufficient health and vigor are already present in the tree preservation easement.

(Code 1991, §162.10; Ord. No. 2699, §10, 4-20-93; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §6, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01; Ord. No. 4539 02-03-04; Ord. No. 4855, 4-18-06; Ord. No. 4930, 10-03-06; Ord. No. 5308, 3-16-10; Ord. No. 5312, 4-20-10; Ord. No. 5427, 8-2-11; Ord. No. 5513, 7-17-12; Ord. No. 5773, 5-19-15; Ord. No. 5818, 10-20-15; Ord. No. 5824 , §3, 11-17-15; Ord. No. 5945 , §17, 1-17-17; Ord. No. 5986 , §§4(Exh. A), 5—35, 7-6-17; Ord. No. 6442 , §§1(Exh. A1), 2(Exh. B), 5(Exh. E), 6(Exh. F), 6-1-21; Ord. No. 6446 , §9(Exh. D), 6-15-21)

169.03 Review And/Or Permits Required; Exceptions

- (A) *Grading Review Required.* (Reference §166.02(E).)
- (1) When located within the Hillside/Hilltop Overlay District boundaries. Parcels of land divided by the Hillside/Hilltop Overlay District boundary shall only be subject to the requirements of this chapter on that portion of land lying within the boundary;
 - (2) Construction of greater than 1,200 square feet of impervious area on a single site;
- (B) *Grading Permit Required.* Unless exempted by §169.03(C), all grading, clearing, filling, excavation, or land alteration of any kind shall require:
- (1) Prior development approval as specified in Chapter 166, except for general grading to an existing developed site that does not impact trees or floodplains and does not significantly alter the natural landform;
 - (2) Construction of total impervious area greater than 10,000 square feet;
 - (3) A grading permit pursuant to this chapter; and
 - (4) An Arkansas Department of Environmental Quality Stormwater Construction Permit and incorporated Stormwater Pollution Prevention Plan, if required by state law.
- (C) *Exceptions to Permit Requirements.* Grading permits are not required for the following however the Minimum Erosion Control Requirements in §169.04 still apply:
- (1) *Excavation Below Finish Grade.* Excavations below finished grade for basements, swimming pools, hot tubs, septic systems, retaining walls under 4 feet in height, and like structures authorized by a valid building permit.
 - (2) *Cemetery Graves.* Cemetery graves.
 - (3) *Refuse Disposal.* Refuse disposal sites controlled by other regulations.
 - (4) Other minor fill, clearing or grading for maintenance purposes such as landscaping that do not require the use of heavy construction equipment, French drains, yard grading, maintenance, farming, gardens, and similar activities.
- (D) *Grading Permit Application and Approval.* No grading permit shall be issued until the Grading and Erosion & Sediment Control Plan, endorsed by an architect, landscape architect, or engineer licensed in the state of Arkansas, is approved by the City Engineer. A separate permit shall be required for each site. Grading permits may be issued jointly for parcels of land that are contiguous, so long as erosion control measures are in place until project completion. Any application for a required grading permit under this chapter shall be submitted concurrently with the application and calculations for a drainage permit if such a drainage permit is required by §170.03. Tree Preservation and Protection is required in accordance with Chapter 167.
- (E) *Permit Posted.* A copy of the grading permit cover page shall be posted at or near the street right-of-way line and shall be clearly visible from the street.

(Code 1991, §161.03; Ord. No. 3551, 6-5-91; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4113, §1, 8-18-98; Ord. No. 4313, 5-15-01; Ord. No. 4855, 4-18-06; Ord. No. 5336, 8-3-10; Ord. No. 5702, Repealed & Replaced Chp. 169, 8-5-14; Ord. No. 5945, §18, 1-17-17; Ord. No. 6061, §4, 4-17-18; Ord. No. 6446, §11(Exh. F), 6-15-21)

CHAPTER 155: APPEALS

155.01 Circuit Court

Unless set forth otherwise below, all appeals from final actions taken by the City Council, Planning Commission, Board of Adjustment, Construction Board of Adjustment and Appeals, and the Zoning and Development Administrator shall be taken to the Circuit Court of Washington County.

(Code 1965, App. A., Art. 9(6); Ord. No. 1747, 6-29-70; Ord. No. 2323, 4-5-77; Ord. No. 2538, 7-3-79; Code 1991, §160.175; Ord. No. 3925, §7, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04))

155.02 Form/Time/Place

Unless an appeal is filed with the court, the following requirements shall be met:

- (A) *Form.* All appeals shall be submitted in writing referencing the applicable UDC section(s) and setting out the reasons the applicant contends the decision was in error and how the applicant is adversely impacted.
- (B) *Time.*
 - (1) *Appeals.* Appeals shall be submitted within ten (10) working days from the date of the final action taken.
 - (2) *Hearings.* The entity hearing the appeal shall fix a reasonable time for hearing an appeal.
- (C) *Place.* Appeals shall be filed with the following:
 - (1) *City Clerk.* Appeals made to the City Council shall be filed with the City Clerk.
 - (2) *Zoning and Development Administrator.* Appeals made to the Planning Commission or Board of Adjustment shall be filed with the Zoning and Development Administrator.
 - (3) *Building Safety Division Director.* Appeals made to the Construction Board of Adjustment and Appeals Board of Adjustment, [for inspecting purposes] shall be filed with the Building Safety Division Director.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04)

155.03 Stay

An appeal shall stay all proceedings in furtherance of the action appealed from unless the person in charge of administration of the chapter certified that a stay would, in their opinion cause imminent peril to life or property.

(Code 1965, App. A., Art. 13(3); Ord. No. 1747, 6-29-70; Code 1991, §160.173; Ord. No. 4100, §2 (Ex. A), 6-16-98)

155.04 Council Member Appeal On Behalf Of Resident

A Council Member may bring an appeal on behalf of any resident of the city of a decision by the Planning Commission to approve subdivision requests (plats, lot splits), and development requests (large scale developments and large or small site improvement plans). Variances, compliance with applicable design standards, tree preservation plans and conditions of approval for any development shall be appealed as part of the approval or denial of a development proposal. Variances, compliance with applicable design standards, tree preservation

plans and conditions of approval for any development not requiring approval by the Planning Commission or administrative approval by the Planning Division may be appealed independently.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 6342 , §1, 8-4-20)

155.05 Appeals From Planning Commission Decisions

(A) *Appeals to City Council*

- (1) Owners of record of the property being considered may appeal a decision by the Planning Commission to deny the following requests in accordance with the procedure set forth in §155.02:
 - (a) Annexation;
 - (b) Rezoning;
 - (c) Required dedication and improvements of §155.06(C);
 - (d) Subdivision (plats, lot splits, lot line adjustments);
 - (e) Development (large scale development, large and small site improvement plans);
 - (f) Vacations of street right-of-way.
- (2) *Conditions of Approval/Variances, etc.* An owner of record may appeal the conditions of approval determined by the Planning Commission and any adverse decision by the Planning Commission concerning applicable design standards, tree preservation requirements, streamside protection requirements and variance requests as part of the conditions of an approved development request or the denial of such development request. Variances, compliance with applicable design standards, tree preservation plans and conditions of approval for any development not requiring approval by the Planning Commission or administrative approval by the Planning Division may be appealed independently.
- (3) *Conditional Use Request.* Three Council Members may in unison appeal a decision of the Planning Commission approving or denying a conditional use request.

(Code 1965, §13A-40, App. C., Art. II, Art. V., §B; Ord. No. 1509, 8-8-66; Ord. No. 1750, 7-6-70; Code 1991, §§156.017, 159.12, 159.54(F)(1), (2), 159.66; Ord. No. 3781, §1, 4-19-94; Ord. No. 3925, §6, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4334, 9-4-01; Ord. No. 4340, 10-2-01; Ord. No. 6342 , §2, 8-4-20)

155.06 Appeals From Staff Interpretations And Actions

(A) *Appeals to City Council.*

- (1) The City Engineer's decision to issue a violation notice or stop work order may be appealed to the City Council by an owner of record of the property in question or a council member on behalf of a resident of the city.
 - (2) The Development Review Manager's decision to deny a vacation of any public easement (whether constructed or not) or portion thereof may be appealed by the owner of record of the property.
- (B) *Appeals to the Board of Adjustment.* The following interpretations and decisions may be appealed by an owner of record of the property in question or a council member on behalf of a resident of the city to the Board of Adjustment:
- (1) *Development Review Manager—Zoning.* An interpretation or decision regarding zoning matters.

- (2) *Building Safety Officer—Airport Zone.* Any person aggrieved, or any taxpayer affected by any decision of the Building Safety Officer, made in the administration of Airport Zone, Chapter 165.
- (C) *Appeals to the Planning Commission.*
- (1) *Development Review Manager's Required Dedications and Improvements.*
- (a) An owner or developer who is aggrieved by the requirements of the Unified Development Code for land, right-of-way or easement dedications, construction of on-site or off-site improvements, or payments in lieu of any dedication or improvement, which are in excess of the "rough proportionality" of the impact of the development upon the city's infrastructure or services may appeal such requirement to the Planning Commission as a part of the submission of the preliminary plat, large scale development, subdivision, building permit, lot split, grading permit, floodplain development permit, or otherwise within ten (10) days of notification of such development requirements. The appeal must be presented to the Planning Division in writing and state the grounds, or reasons for the appeal.
- (b) The Planning Commission shall determine after public hearing whether the required dedications, improvements, and fees meet the "rough proportionality" of the impact of the development on city infrastructure and services. If the requirements are in excess of the "rough proportionality," the Planning Commission is empowered to modify or reduce such requirements to achieve "rough proportionality."
- (c) Any potential reduction of impact fees must be approved by the City Council.
- (2) *Administrative Approvals and Interpretations by Development Review Manager.*
- (a) A resident of the city or an owner/developer who is aggrieved by a decision of the Development Review Manager regarding development matters that are approved administratively (as required by Chapter 166.02(C)) may appeal the final development approval decision affected by this matter to the Planning Commission. The appeal shall be submitted in writing to the Planning Division within ten (10) working days of the final decision. The appeal shall be limited to the applicable approval or denial criteria as follows:
- (i) The development plan is not submitted in accordance with the requirements of Chapter 166 of the Fayetteville Unified Development Code.
- (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
- (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by Chapter 166 of the Fayetteville Unified Development Code.
- (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
- (v) City water and sewer is not readily available to the property within the large scale development or preliminary plat and the developer has made no provision for extending such service to the development.
- (vi) The developer refused to comply with UDC Ch. 166 pertaining to required on-site and off-site improvements.
- (b) The appellant must include in the letter of appeal the specific code section with which the development application does not comply.

- (c) The Planning Commission shall determine after public hearing whether the interpretation or discretionary decision should be upheld or modified in part or in whole.
 - (d) Any staff recommendation to approve or deny some or all of a requested street right-of-way vacation shall be considered by the Planning commission with recommendations to the City Council.
 - (3) *City Engineer and Flood Plain Administrator.*
 - (a) *Development Matters.* An interpretation or decision of the City Engineer or Floodplain Administrator regarding development matters, including grading, drainage, water and sanitary sewer systems, and storm drainage systems.
 - (b) *Floodplain Regulations.* The decision of the Floodplain Administrator, provided that the Planning Commission shall hear and decide an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of Chapter 168.
 - (c) *Streamside Protection Zones.* An interpretation or decision of the City Engineer concerning the regulated uses, structures and activities, streamside boundary location or land use exemptions.
 - (4) *Development Review Manager's Interpretation or Decision of Other Development Matters.* An interpretation or decision of the Development Review Manager regarding development matters including subdivisions, large scale developments, parking and loading, outdoor lighting, compliance with applicable design standards, or any other development matters.
 - (5) *Urban Forester—Landscape and Tree Preservation and Protection requirements.* Decisions of the Urban Forester related to landscape and tree preservation and protection requirements.
 - (D) *Appeals to the Construction Board of Adjustment and Appeals.* When the administrative authority under Chapter 173 shall disapprove an application, or the applicant is aggrieved by the interpretation of the administrative authority, the applicant may appeal the decision to the Construction Board of Adjustment and Appeals.
- (Code 1965, §17B-11.2(d), (e), App. A., Art. 10(6), 19(2), App. B, §III, App. C., Art. 10(6), 19(2), App. B, §III, App. C., Art. V, §A; Ord. No. 1747, 6-29-70; Ord. No. 1750, 7-6-70; Ord. No. 2109, 6-375; Ord. No. 2252, 7-6-76; Ord. No. 2538, 7-3-79; Ord. No. 2585, 12-4-79; Ord. No. 2697, 1-20-81; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-14-88; Code 1991, §§150.03, 158.67(B), 158.68(A), (B), 159.65, 160.048, 160.172, 160.176(A), (B), 161.11, 162.03(B), (C), 163.10(D); Ord. No. 3551, 6-4-91; Ord. No.3587, §1, 1-7-92; Ord. No. 3699, §3, 4-20-93; Ord. No. 3716, §2, 6-15-93, Ord. No. 3806, §1, 6-28-94;Ord. No. 3895, §1, 6-20-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3925, §7, 10-3-95; Ord. No. 3963, §9, 4-16-96; Ord. No. 4100, §2 (Exh. A), 6-16-98; Ord. No. 4368, §2, 2-5-02; Ord. No. 4377, §§1, 2, 3-5-02; Ord. No. 4652, 12-07-04; Ord. No. 5206, 12-16-08; Ord. No. 5296, 12-15-09; Ord. 5390, 3-1-11; Ord. No. 6343 , §1(Exh. A), 8-4-20; Ord. No. 6446 , §5, 6-15-21)

155.07 Appeals To The Housing Board—Mobile Homes And Mobile Home Parks

- (A) *Permit Denied.* Any person whose application for a permit under Chapter 175 has been denied may request and shall be granted a hearing on the matter before the Housing Board.
- (B) *Permit Suspended.* Any person whose permit has been suspended, or who has received notice from the enforcement officer that his permit will be suspended unless certain conditions or practices at the mobile home park are corrected, may request and be granted a hearing on the matter before the Housing Board.

(C) *Petition Deadline.* When no petition for hearing shall have been filed within ten (10) days following the day on which notice of suspension was served, such permit shall be deemed to have been automatically revoked at the expiration of such ten (10) days.

(Code 1965, §17B11.2(e); Ord. No. 2109, 6-3-75; Ord. No. 2583, 12-4-79; Ord. No. 3152, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-15-88; Code 1991, §158.67; Ord. No. 4100, §2 (Exh. A), 6-16-98)

(Code 1965, §§13A-40, 13A-43; Ord. No. 1509, 8-8-66; Code 1991, §§156.017, 156.029; Ord. No. 4100, §2 (Exh. A), 6-16-98; Ord. No. 4652, 12-07-04).

155.08 Appeals From The Construction Board Of Adjustments And Appeals

If the Construction Board of Adjustments and Appeals refuses to extend a building permit pursuant to §173.02 (B)(8) or to issue a new building permit for property for which a building permit has expired pursuant to §173.02 (B)(8), the owner may appeal to the City Council.

(Ord. No. 5019, 5-15-07)

155.09—155.99 Reserved

166.01 Development Categories

- (A) *Property Line Adjustment.* A property line adjustment is a transfer or adjustment of a property line or lines between adjoining property owners which does not create a separate, new lot. A property line adjustment cannot dedicate new easements or right-of-way.
- (B) *Subdivision of Land.*
- (1) *Lot Split.* When a property is to be subdivided into two (2), three (3) or four (4) lots, parcels the application may be processed as a lot split. Except for lot splits created pursuant §164.22 Cluster Housing Development, (C) *Development Review Process*, after the creation of more than four (4) lots from an original parent tract as established under Washington County's countywide 1985 reappraisal. Any subsequent subdivision of the parent or resulting tracts is required to be processed as a preliminary/final plat or concurrent plat. A lot split may dedicate new easements or right-of-way and may be combined with an easement plat.
 - (2) *Preliminary Plat.* When a property is to be subdivided into more than four (4) lots or when a parent or resulting tract has been subdivided three (3) or more times and is proposed to be further subdivided, the application shall be processed as preliminary plat. A preliminary plat establishes the preliminary location of lot lines, streets, and utility infrastructure, and allows for the applicant to request construction plan approval and install required improvements.
 - (3) *Final Plat.* After completion of the required infrastructure (water, sewer, storm drainage, utilities, street improvements, etc.) for a preliminary plat, the entity subdividing may submit an application for approval of the final plat. The final plat application may not be submitted until the final inspection for the required infrastructure has been scheduled with City Engineering staff.
 - (4) *Concurrent Plat.* A concurrent plat combines the preliminary and final plat into one (1) step. A concurrent plat is permitted when a property is to be subdivided into more than four (4) lots, or when a parent or resulting tract has been subdivided three (3) or more times and is proposed to be further subdivided, and the existing and new parcels do not require construction of new infrastructure.
- (C) *Site Plan.*
- (1) *Large Scale Development.* A large scale development is generally intended for development on a site of 1 acre or greater in size and proposes to ~~create-develop and/or redevelop~~ more than 10,000 square feet of total impervious area and where a corresponding subdivision of land is not proposed.
 - (a) *Requirement.* The development of the following must be processed in accordance with the requirements for a large-scale development:
 - (i) A site 1 acre or greater in size and ~~creating-developing and/or redeveloping~~ more than 10,000 square feet of ~~new-total~~ impervious area;
 - (ii) Facilities emitting odors or handling explosives; and
 - (b) *Excluded Developments.* Developments ~~creating-developing and/or redeveloping~~ less than 10,000 square feet of new impervious area or a development on a ~~site lot or parcel~~ in a zoning district subject to administrative approval.
 - (2) *Large Site Improvement Plan.* A large site improvement plan review is intended for a large scale development that is located on a site within a zoning district that permits administrative approval. A large site improvement plan is subject to the requirements and excluded developments for a large scale development listed in Fayetteville Unified Development Code §166.01(C)(1).

- (3) *Small Site Improvement Plan.* A small site improvement plan review is intended for development on a site that is less than 1 acre in size with greater than 10,000 square feet of ~~new~~ total impervious area.
- (a) *Requirement.* The development of the following must be processed in accordance with the requirements for a small site improvement plan:
- (i) A development that is excluded from large scale development or large site improvement plan review and requires review by multiple city divisions;
- (ii) The ~~creation-development and/or redevelopment~~ of more than 10,000 square feet of impervious area for a development on site of less than 1 acre within any zoning district.
- (b) *Excluded Developments.* The construction of less than or equal to 10,000 square feet of ~~new~~ total impervious area shall be exempt from the site improvement plan requirements and shall be submitted in accordance with the requirements of §166.02(E) and §166.15.
- (4) *Concept Plan.* ~~When a developer intends to subdivide property within the city or city's planning area boundary, he/she shall submit a concept plan to obtain feedback and recommendations from city staff prior and the Planning Commission to submitting a fully engineered development plan for review. When a developer intends to develop or redevelop greater than 6,000 square feet and less than 10,000 square feet of total impervious area within the city limits, they shall submit a concept plan to obtain feedback and recommendations from city staff prior to submitting a fully engineering development plan for review. Developments below or above this threshold, or in the city's planning area boundary, may submit a concept plan to obtain feedback and recommendations prior to submitting a fully engineered development plan for review. When a developer intends to develop greater than 10,000 square feet of new impervious area within the city or city's planning area boundary, they may submit a concept plan to obtain feedback and recommendations from city staff prior to submitting a fully engineered development plan for review.~~

(D) *Modifications.*

- (1) *Minor Modifications.* The Zoning and Development Administrator may authorize minor modifications in an approved subdivision of land or site plan. Minor modifications shall include, but are not limited to, substitutions of one approved structural type for another, minor variations in placement of buildings in such a way that the overall limits of approved floor area, open space, or rooms per acre are not increased, and minor shifts in property line locations.
- (2) *Major Modifications.* In the event that a developer wishes to make major modifications to an approved development, such modifications shall be submitted to the approving body of the subdivision or site plan, whether staff, Subdivision Committee, or the Planning Commission. After submission, the approving body shall approve or disapprove the requested modification.

(Code 1965, App. C., Art. II, §§A—D; Ord. No. 1750, 7-6-70; Ord. No. 2581, 12-4-79; Ord. No. 2789, 1-18-82; Code 1991, §§159.010; 159.11(C), 159.12, 159.13; 159.14; Ord. No. 3781, §1, 4-19-94; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4350, §1, 11-20-01; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 5945, §16, 1-17-17; Ord. No. 6067, §1, 5-1-18; Ord. No. 6446, §8(Exh. C), 6-15-21)

166.02 Development Review Process

(A) Application Submittal

- (1) *Submittal.* All development applications shall be submitted to the Planning Division and will be processed for review in accordance with Planning Division operating procedures.

(B) Public Meetings. Development applications are required to be processed through the Technical Plat Review Committee, Subdivision Committee, and Planning Commission as follows:

- (1) *Technical Plat Review Committee.* The following development applications are required to be reviewed by the Technical Plat Review Committee: Lot split, small site improvement plans, large site improvement plans, large scale development, planned zoning district with or without concurrent development, preliminary plat, final plat, ~~and concurrent plat, and concept plan.~~ After the Technical Plat Review Committee meeting staff may administratively approve lot splits, final plats, small site improvement plans, and large site improvement plans after review for compliance with all applicable codes subject to UDC 166.02(C). No approval is necessary for concept plans.
- (2) *Subdivision Committee.* The following development applications are required to be reviewed by the Subdivision Committee: Large scale development, planned zoning district with concurrent development, preliminary plat, and concurrent plat. From these applications, the Subdivision Committee may approve only large scale developments. Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Subdivision Committee.
- (3) *Planning Commission.* The following development applications are required to be reviewed by the Planning Commission. Large scale development, p Preliminary plat, concurrent plat, and planned zoning district with concurrent development. The Planning Commission may approve, deny, table, or approve development applications with conditions. A planned zoning district cannot be approved by the Planning Commission, but may be forwarded to City Council. Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Planning Commission.

(C) Approval and Denial Criteria

- (1) *Administrative Approval.* The following applications shall be approved administratively by the Planning Division as long as the proposal meets all requirements of the Unified Development Code: Property line adjustment, lot split, final plat, small site improvement plan, and large site improvement plan. Approval by the Planning Commission for these applications is not required unless an appeal is filed in accordance with Ch. 156 of the UDC. Concept plans are not subject to approval or denial.
 - (a) *Reasons for Denial.* The Planning Division may refuse administrative approval based on the following criteria:
 - (i) *Property Line Adjustment; Lot Split.* The application does not comply with zoning and development requirements including, but not limited to: Lot width, lot area, setback requirements, buildable area, required parking, impervious surface, dedication of required right-of-way or easements, etc., or the requested action would make an existing non-conforming property or structure more non-conforming.
 - (ii) *Final Plat.* The conditions of approval of the preliminary plat have not been met, the proposed plat does not meet the zoning and development requirements of the UDC, and/or the required improvements have not been completed or guaranteed in accordance with Fayetteville Unified Development Code Chapter 158.

- (iii) *Small or Large Site Improvement Plans.* The Planning Division may refuse to approve a small or large site improvement plan for any of the following reasons:
 - (a) The development plan is not submitted in accordance with the requirements of this chapter.
 - (b) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (c) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (d) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factor such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (e) City water and sewer is not readily available to the property within the site improvement plat area and the developer has made no provision for extending such service to the development.
 - (f) The developer refused to comply with ordinance requirements or condition of approval for on-site and off-site improvements.
- (2) *Subdivision Committee and Planning Commission Approval.* The following applications shall be approved by the Subdivision Committee or Planning Commission, subject to the criteria listed below: Large scale development, preliminary plat and concurrent plat.
 - (a) *Reasons For Denial.* The Subdivision Committee or Planning Commission may refuse to approve a large scale development, preliminary plat or concurrent plat for any of the following reasons:
 - (i) The plat or development plan is not submitted in accordance with the requirements of this chapter.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development, preliminary plat, or concurrent plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with ordinance requirements or conditions of approval for on-site and off-site improvements.
- (D) *Plat Recordation or Construction Plan Approval.* After obtaining approval by the appropriate governing body, the applicant shall follow the procedures set forth below in order to record the plat or obtain construction plan approval.

- (1) *Property Line Adjustment, Lot Split, Building Permit, Final Plat, Concurrent Plat.* The applicant shall submit copies of the approved plats containing all required signatures to the Planning Division for final approval. The plats shall be recorded by the applicant and copies of the recorded plats provided to the Planning Division as required.
 - (2) *Preliminary Plat, Large Scale Development and Small or Large Site Improvement Plan.* Receipt of the approval authorizes the applicant to proceed with:
 - (a) The preparation of plans, reports and specifications in accordance with City Engineering requirements including but not limited to:
 - (i) Street plans, profiles and specification accompanied by soil analyses and design calculations;
 - (ii) Storm drainage plans, profiles and specifications accompanied by soil analyses and design calculations; and
 - (iii) Water and sewer plans, profiles and specifications, accompanied by design calculations, to be reviewed and approved by City Engineering.
 - (iv) Final site plans, landscape plans, and other plans, reports and specifications required by the city to obtain approval.
 - (b) Once all approvals that are required have been obtained, the applicant may proceed with site preparation and construction in accordance with the permitted plans.
- (E) *Building Permits.*
- (1) Before a building permit is issued the developer shall:
 - (a) Dedication of Right-of-Way. Dedicate right-of-way in compliance with the city's Master Street Plan, and in compliance with the requirements for on or off-site improvements.
 - (b) Dedicate all easements necessary to serve the development as required by the utility providers and the city. This may be completed by easement plat or separate easement document(s), with approval of the Planning Division.
 - (c) Comply with all applicable zoning and development codes.
 - (d) In addition, for small site improvement plans, large site improvement plans and large scale developments, the developer shall:
 - (i) Obtain approval from the appropriate governing body.
 - (ii) On and Off-Site Improvements. Construct or guarantee required on- and off-site improvements in accordance with UDC Chapter 158.
 - (iii) Complete applicable conditions of approval.
 - (2) In addition to §166.02(E), before a building permit is issued for site that ~~creates develops and/or redevelops~~ between 1,201 and 10,000 square feet of ~~new-total~~ impervious area, where a corresponding subdivision of land is not proposed, the developer shall complete, and receive approval of, appropriate grading and drainage documentation demonstrating compliance with UDC Chapters 169 and 170 as well as the current City Drainage Criteria Manual per the table below. Impervious areas will be considered as existing only if they are in place on March 3, 2021 which corresponds with the City of Fayetteville 2021 imagery.

Required Mitigation Measures and Documentation by Development Threshold

Development Threshold	City-wide Standard	Grading and Drainage/ Stormwater Documentation	Water Quality, Flood, and Tree Mitigation Measures
Level 1	< or = 1,200 sf of IA	Exempt from Grading and Drainage provisions except for those still associated with the Building Permit process such as HHOD	Exempt
Level 2	1,201— 6,000 sf of IA	- Completed Green Stormwater Practice (GSP) Worksheet, demonstrating Runoff Reduction via Better Site Design. - GSP Operation & Maintenance (O & M) Agreement to ensure the long-term functionality of these practices.	2 or more measures from Step 1 of Table 2 that Reduce Runoff via Better Site Design 1 or more Green Stormwater Practices (GSPs) measures from Step 2 of Table 2 as required to treat 100% of the proposed additional impervious and gravel areas. Abbreviated Tree Preservation Plan
Level 3	6,001— 10,000 sf of IA	Same as Level 2.	- Same as Level 2. - As needed GSP measures from Step 3 to further reduce runoff referred to as extended detention - Abbreviated Tree Preservation Plan

(F) *Completion of Development/Certificate of Occupancy.* No certificate of occupancy for a large-scale development, large site improvement plan, or small site improvement plan shall be issued, and no final plat or concurrent plat shall be signed for recordation until the following have been completed:

- (1) The requirements for on and off-site improvements have been completed, and maintenance bonds/guarantees deposited to city specifications.
- (2) An "as built" plot plan has been approved by the City Engineer (where applicable) showing:
 - (a) The location of all buildings and the setback distance for said buildings from street right-of-way and adjoining property lines;
 - (b) The location of any freestanding signs and the setback distance of said signs from street right-of-way and adjoining property lines;
 - (c) The location, number, dimensions, and surfacing of all parking spaces and of all screens or fences;
 - (d) The location and size of all water, sewer, gas, electric, telephone, and television cable lines;
 - (e) The location and size of all stormwater features with associated drainage easements demarcated, where applicable; and
 - (f) The location and quantity of existing and new impervious area on the property.
- (3) The development has been inspected and approved by all applicable city divisions.
- (4) All applicable conditions of approval have been completed.

(Code 1965, App. C., Art. II, §§F—H; Ord. No. 2581, 12-4-79; Code 1991, §§159.16—159.18; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 6061 , §2, 4-17-18; Ord. No. 6446 , §8(Exh. C), 6-15-21; Ord. No. 6539 , §5(Exh. A), 3-1-22)

166.23 Urban Residential Design Standards

(A) *Purposes.*

- (1) To protect and enhance Fayetteville's appearance, identity, and natural and economic vitality.
- (2) To create appealing street scenes so that development enhances the image of the city and provides safe, pedestrian-friendly neighborhood environments.
- (3) To minimize service and parking impacts in order to preserve surrounding property values and scenic resources that contribute to the city's economic development.
- (4) To compose attractive residential facades that enhance the economic viability of and provide compatibility with surrounding property.

(B) *Applicability.* All references to urban residential design standards shall include the following uses as permitted by right or conditional use in all zoning districts:

- (1) Two (2) family dwellings
- (2) Three (3) and four (4) family dwellings
- (3) Multi-family dwellings

(C) *Site Development Standards.* The following site development standards shall apply for all urban residential development.

- (1) *Intent.* The intent of these site development standards is to create a pedestrian-friendly streetscape.
- (2) *Vehicular Access/Circulation/Parking.*
 - (a) Site access and internal circulation should promote pedestrian safety, efficiency, and convenience and minimize conflicts between vehicles and pedestrians. Continuous circulation shall be provided throughout the site to the greatest extent possible creating a complete, compact, and connected transportation network both within the development and to the surrounding neighborhood. The visual impact of parking areas should be minimized by locating parking behind buildings and internal to the site.
 - (i) Garage entries and carports shall not protrude forward from the principal facade. Driveways shall extend at least 18 feet into the property from the Master Street Plan right-of-way to allow parking to occur without encroaching into the right-of-way.
 - (ii) Parking areas should be accessed by mid-block alleys whenever possible. Developments should minimize multiple driveways and should utilize a shared access to reduce the number of vehicle conflicts at the street.
 - (iii) On-street parallel parking may be provided on at least one (1) side of the street in front of all multi-family buildings where feasible. Each on-street parking space provided along the project frontage shall count toward the total required spaces for the development.
- (3) *[Reserved.]*
- (4) *Pedestrian Circulation.*
 - (a) Ground floor dwelling units adjacent to a public street shall have a primary pedestrian entry that is visible from the street. This entry shall connect unobstructed to the public sidewalk where sidewalk exists in a manner to allow occupants to access from the interior of the structure to the city sidewalk. The connection shall match the sidewalk in material type and shall be at least 3 feet in width unless otherwise approved by the Zoning and Development Administrator in writing. The

entry may be gated and shared but must occur at a spacing of no fewer than one (1) entrance for every two (2) street level dwellings. The pedestrian connection to the street may run from the door along the façade of the building parallel to the street for a maximum of 12 feet from the door before connecting directly to the public sidewalk.

- (b) Urban residential projects shall incorporate pedestrian connections to adjacent residential and commercial properties where sidewalks exist unless this requirement is otherwise waived by the Planning Commission.
- (5) *Screening Requirements if Visible from the Highway/Street Right-of-Way.*
- (a) *Mechanical and Utility Equipment.* All mechanical and utility equipment located on the wall and/or on the ground shall be screened, except for air conditioning window units. All roof mounted utilities and mechanical equipment shall be screened by incorporating screening into the structure utilizing materials compatible with the supporting building. Mechanical and utility equipment over 30 inches in height shall meet building setbacks, unless located in a utility easement.
 - (b) *Recycling and Trash Containers.* Adequate space and screening shall be provided for the placement of recycling and trash containers in urban residential developments.
 - (i) Urban residential developments are required to provide adequate space to provide both recycling and trash services for residents. The Recycling and Trash Collection Division Director may exercise discretion in approving the dimensional size of the required enclosure or dedicated space for servicing recycling and trash containers. Large multi-family urban residential developments typically will be required to provide adequate space for the placement of two (2) front-end load dumpsters that are easily accessible with a minimum enclosure dimension of 24 feet wide and 12 feet deep.
 - (ii) Recycling and trash containers shall be screened by enclosures with materials that are complementary to the principal structure, with access to the refuse containers not visible from the public right-of-way.
 - (c) *Screening.* Screening shall mean a view obscuring fence, berm, vegetation, architectural treatment consistent with the residential architecture, or a combination of the four of sufficient height to prevent the view of the screened items from the public right-of-way. Vegetation shall be planted at a density sufficient to become view obscuring within two years from the date of planting.
- (6) *Fencing.* The following types, height, and location of fences shall be prohibited:
- (a) *Razor and/or Barbed Wire.* Razor and/or barbed wire fences are prohibited, unless and except barbed wire fences are used for agricultural purposes.
 - (b) *Chain Link.* Chain link fence is prohibited if closer to the street than the front of the building.
 - (c) *Height of Fences in Front of Buildings.* Fences in the front yard area shall have a maximum height of 42 inches subject to visibility requirements in Chapter 164.09 and 164.17.
- (D) *Architectural Design Standards.*
- (1) *Intent.* The intent of these building design standards is:
- (a) To ensure that urban residential buildings add to the character and quality of the community, offer a sense of security, and make a positive contribution to the life of the street.
 - (b) To maximize the quality, value and longevity of urban residential neighborhoods.
 - (c) To make housing appealing and comfortable for its inhabitants.

(2) *Construction and Appearance Design Standards for Urban Residential Development.*

(a) *Building Form and Design.*

- (i) In order to provide a variety in form and design, one (1) building type may not be utilized more than three (3) times in a development. Each building type shall be differentiated by variations in materials, colors and roof forms.
- (ii) Ancillary structures such as carports, garages, recreational buildings and storage structures shall be designed as an integral part of the project architecture.
- (iii) The following architectural elements shall be required of all principal façades that are greater than 48 feet wide along the street frontage:
 - (a) Variations in materials;
 - (b) Insets or other relief in the wall plane;
 - (c) Incorporation of two or more of the following:
 - (1) Balconies;
 - (2) Bays or bay windows;
 - (3) Porches;
 - (4) Dormers;
 - (5) Porticoes;
 - (6) Turrets; or
 - (7) Other architectural feature approved by the Zoning Development Administrator that meets the intent of the code.
- (iv) One (1) or more of the following architectural elements shall be required of all principal façades that are 48 feet wide or less along the street frontage:
 - (a) Balconies;
 - (b) Bays or bay windows;
 - (c) Porches;
 - (d) Dormers;
 - (e) Porticos;
 - (f) Turrets; or
 - (g) Other architectural feature approved by the ~~Development Review Manager~~ Zoning and Development Administrator that meets the intent of the Code.

- (E) *Planning Commission Approval.* An applicant may request approval from the Planning Commission of a variance from the maximum requirements where unique circumstances exist and the effect will not adversely impact adjoining or neighboring property owners. The applicant shall provide notification to adjacent property owners prior to the date of the meeting.

(Ord. No. 5118, 3-18-08; Ord. No. 5262, 8-4-09; Ord. No. 5679, 4-15-14; Ord. No. 6170 , §1, 4-2-19; Ord. No. 6357 , §§1, 2, 9-15-20; Ord. No. 6508 , §1, 11-16-21; Ord. No. 6658 , §10, 5-2-23)

167.04 Tree Preservation And Protection During Development

- (A) *Applicability.* The provisions of this section shall apply to proposed developments as defined by the Unified Development Code as follows:
- (1) *Large Scale Developments.*
 - (2) *Large Site Improvement Plan.*
 - (3) *Small Site Improvement Plan.*
 - (4) *Preliminary Plat.*
 - (5) *Final Plat.*
 - (6) *Concurrent Plat.*
 - (7) *Planned Zoning Districts.*
 - (8) *Parking Lots.* Tree preservation requirements apply to all permit applications for the construction of parking lots with five (5) or more spaces. An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for permits on projects that are required to go through the subdivision or large scale development process.
 - (9) *Hillside/Hilltop Overlay District.* Undeveloped land located within the Hillside/Hilltop Overlay District shall submit a tree preservation plan with the preliminary plat or site plan. Single and two (2) family residential development shall submit an abbreviated tree preservation and site plan at the time of applying for a building permit.
 - (10) *Grading Permit.* A tree preservation plan or an abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for grading permits on projects that are not required to go through the development process.
 - (11) *Building Permits.* Tree preservation requirements apply to all permit applications for developments of greater than ~~6,000~~ 1,200 square feet of impervious area. An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for building permits on projects that are not required to go through the subdivision, ~~or~~ large scale development, or site improvement plan process. There shall be no land disturbance, grading, or tree removal until an abbreviated tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.
 - (12) *Exemptions.* Projects not listed above or not impacting tree canopy are not required to submit a tree preservation plan or review from Urban Forestry.
 - (a) Persons seeking to construct ~~6,000~~ 1,200-square feet or less of impervious area are specifically exempt from the provisions of this section except when the land is located within the Hillside/Hilltop Overlay District; then all the provisions of this ordinance shall apply.
 - (b) Structural changes to buildings located in the Hillside/Hilltop Overlay District that do not result in an enlargement of the building footprint or roof dripline shall not require an abbreviated tree preservation plan.
- (B) *Tree Preservation Criteria.* The Urban Forester shall consider the following factors, and any other relevant information, when evaluating tree preservation plans:
- (1) The desirability of preserving a tree or group of trees by reason of age, location, size, or species.
 - (2) Whether the design incorporates the required tree preservation priorities.

- (3) The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.
- (4) The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or group of trees is located.
- (5) Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.
- (6) Whether the size or shape of the lot reduces the flexibility of the design.
- (7) The general health and condition of the tree or group of trees, or the presence of any disease, injury, or hazard.
- (8) The placement of the tree or group of trees in relation to utilities, structures, and the use of the property.
- (9) The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.
- (10) Whether proposed roads and proposed utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.
- (11) Construction requirements of on-site and off-site drainage.
- (12) The effects of proposed on-site mitigation or off-site alternatives.
- (13) The effect other chapters of the Unified Development Code, or city policies have on the development design.
- (14) The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations.
- (15) The impact a substantial modification or rejection of the application would have on the applicant.

***Note**—The above items are not presented in any particular order of importance. The weight each is given will depend in large part on the individual characteristics of each project.

- (C) *Canopy Area*. In all proposed developments that are required to submit a tree preservation plan or abbreviated tree preservation plan, trees shall be preserved as outlined in Table 1 under Percent Minimum Canopy, unless the applicant has been approved for on-site mitigation or off-site alternatives as set forth in §167.04(I) and (J) below. The square foot percentage of canopy area required for preservation in new development is based on the total area of the property for which the applicant is seeking approval, less the right-of-way and park land dedications. An applicant shall not be required to plant trees in order to reach the percent minimum canopy requirement on land where less than the minimum exists prior to development.

Table 1	
Minimum Canopy Requirements	
ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
R-A, Residential — Agricultural (nonagricultural uses)	25%
RSF-.5, Single-family Residential — One-Half Unit per Acre	25%
RSF-1, Single-family Residential — One Unit per Acre	25%
RSF-2, Single-family Residential — Two Units per Acre	20%
RSF-4, Single-family Residential — Four Units per Acre	25%
RSF-7, Single-family Residential — Seven Units per Acre	20%

RSF-8, Single-family Residential — Eight Units per Acre	20%
RSF-18, Single-family Residential — Eighteen Units per Acre	20%
R-O, Residential — Office	20%
RI-12, Residential Intermediate — Twelve Units Per Acre	20%
RI-U, Residential Intermediate — Urban	15%
RMF-6, Multi-family Residential — Six Units per Acre	20%
RMF-12, Multi-family Residential — Twelve Units per Acre	20%
RMF-18, Multi-family Residential — Eighteen Units per Acre	20%
RMF-24, Multi-family Residential — Twenty-Four Units per Acre	20%
RMF-40, Multi-family Residential — Forty Units per Acre	20%
NS-L, Neighborhood Services — Limited	20%
NS-G, Neighborhood Services — General	20%
C-1, Neighborhood Commercial	20%
CS, Community Services	20%
C-2, Thoroughfare Commercial	15%
UT, Urban Thoroughfare	15%
C-3, Central Business Commercial	15%
DC, Downtown Core	10%
MSC, Main Street Center	10%
DG, Downtown General	10%
NC, Neighborhood Conservation	20%
I-1, Heavy Commercial and Light Industrial	15%
I-2, General Industrial	15%
P-1, Institutional	25%
PZD, Planned Zoning District (HHOD)	25% (30%)

All residential zoning districts and C-1 districts within the Hillside/Hilltop Overlay District shall have their percent minimum canopy requirements increased by 5% to a total requirement of either 30% or 25%.

(D) *Prior Tree Removal.*

- (1) If trees have been removed below the required percent minimum canopy within the five (5) years preceding application for a development, the site must be forested to meet the Percent Minimum Canopy requirements set forth in Table 1, plus an additional 10% of the total area of the property for which the applicant is seeking approval, less the right-of-way and park land dedications. The number of trees required to be planted shall be calculated using the base density for high priority trees.
- (2) *Waiver.* If an applicant is able to demonstrate to the Planning Commission's satisfaction that the trees were removed for a bona fide agricultural purpose, and not with the intent to thwart enforcement of this chapter, the additional 10% reforestation requirement shall be waived.

(E) *Tree Preservation Priorities.*

- (1) *Percent Minimum Canopy.* Proposed designs must meet the percent minimum canopy requirements for the particular zoning designation, emphasizing the preservation and protection of high priority trees on the site. Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement and such utilities shall be routed, wherever possible, to avoid existing canopy.

- (2) *Existing Natural Features.* Each design shall consider the existing natural features of the site, the preservation priorities for the trees, and the impact their proposed removal may have both on and off-site.
 - (3) *Priority Trees.* The preservation and protection of high priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. High priority trees are alive, healthy, greater than or equal to an 8-inch diameter at breast height for large and medium species of trees. High priority for small species of trees is greater than or equal to a 4-inch diameter. Low priority trees are invasive species or unhealthy as determined by a tree care professional pursuant to §167.07. Low priority trees are less than an 8-inch diameter at breast height for larger and medium species and less than a 4-inch diameter at breast height for smaller trees species.
- (F) *Tree Preservation Requirements for Proposed Residential and Non-Residential Developments.*
- (1) *Residential Developments.* The percent minimum canopy in residential developments shall be located in areas that have the least possibility of impact as public infrastructure and proposed utilities are installed and homes built. The intent is to leave undisturbed as many existing trees as possible for the use and enjoyment of prospective lot owners. Residential developments requesting tree removal below the percent minimum canopy requirement may choose either residential on-site mitigation, or to contribute to the Tree Escrow Account as set forth in §167.04(J)(4)(a). Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement, and such proposed utilities shall be routed to avoid existing canopy and shall count toward the percent minimum canopy requirement.
 - (2) *Nonresidential Developments.* Two (2) options are available for establishing a tree preservation plan for the development of nonresidential developments. The Urban Forester shall recommend to the Planning Commission the option that will potentially preserve the largest amount of high priority canopy based upon the tree preservation criteria set forth in §167.04(B) above.
 - (a) *Preservation Plan for Entire Development.* The developer may choose to preserve the percent minimum canopy required for the entire development. With this option, the preserved canopy shall be located in areas that will not be impacted by future development of the individual lots. Canopy to be preserved shall be noted on the final plat, and shall be protected as set forth in §167.04(L) below. Should the entire percent minimum canopy requirement for the site be so protected, the preserved canopy shall be placed in a tree preservation easement and the final plat shall include a statement that the individual lots, as represented thereon, shall not require separate tree preservation plans.
 - (b) *Preservation Plan for Infrastructure Only.* The developer, in consultation with city staff, shall delineate the area required for the construction of the infrastructure and improvements for the development. This area should include street rights-of-way, and utility and drainage easements. Proposed lot lines, streets, and easements shall be located to avoid placing a disproportionate percentage of existing canopy in any one (1) proposed lot. This option shall not allow the removal of trees during the grading of individual lots, unless shown by the developer to be essential to the project's engineering design. The developer will be required to compensate for the canopy removed from defined individual lots by making the appropriate payment into the Tree Escrow Account. On all other areas of the development, the developer shall protect the existing canopy during the construction phase in accordance with §167.05 below. The final plat shall include a statement that the individual lots shall require separate tree preservation plans.
 - (3) *Hillside/Hilltop Overlay District.* Individual parcels or lots located within the Hillside/Hilltop Overlay District boundary shall submit a tree preservation plan or an abbreviated tree preservation plan as set forth in §167.04(H)(3) indicating the location of the structure and the preservation of the minimum tree canopy requirement.

- (4) Developers have the option of creating cluster development, such as a Planned Zoning District, which would encourage more open space and tree preservation. In this pattern of development, the trees preserved or open space on each lot can be transferred to a larger Tree Preservation Easement instead of individual lots required to meet minimum percent requirements. The Tree Preservation Easements shall be clearly depicted on easement plats or final plats.
- (G) *Initial Review.*
- (1) *Meeting with the Urban Forester.* It is strongly recommended that prospective applicants meet with the Urban Forester for an initial review of the proposed tree preservation plan for the site prior to submitting a proposed development to the city. During the initial review, the Urban Forester shall make recommendations to ensure the proposed subdivision or development complies with the requirements of this chapter. These recommendations shall be nonbinding. However, applicants proceed at the risk of higher costs and longer approval times due to changes required by a noncompliant submittal should they choose not to have the initial review or to disregard the recommendations of the Urban Forester.
- (2) *Confirmation.* The Urban Forester shall document whether the applicant participated in the initial review meeting in the Tree Preservation and Protection staff report given to applicants going through the development review process. If the applicant chooses to attend an initial review meeting, the staff report shall also document any recommendations made. The Urban Forester shall ensure that a copy of the report or email becomes part of the permanent file for the project.
- (H) *Submittal of Plans.* Applicants should bear in mind that all plans will be evaluated according to the tree preservation criteria and percent minimum canopy requirements as set forth under §167.04(B) and (C).
- (1) *Tree Preservation Plan.* On sites with existing tree canopy, the applicant shall conduct a tree preservation analysis to determine the approximate age, health, size and species distribution of the trees, noting each on a tree preservation plan, and clearly showing the locations and types of all natural features on a site, including features 100 feet beyond the property lines. The tree preservation plan shall also specifically depict the applicable preservation priority level for each tree or group of trees on the site. The plan should include, but not be limited to, delineation of the following features as they exist on the site:
- (a) The existing topography of the site highlighting slopes of 15% or greater, and indicating the natural drainage patterns;
 - (b) The property line boundaries of the site;
 - (c) Soils identified according to the Unified Soil Classification System;
 - (d) Any significant trees, as defined in the City of Fayetteville's Tree Preservation, Protection and Landscape Manual, existing on the site, and the location of trunks, spread of the canopy, species, diameter at breast height (DBH), and the overall health of each significant tree;
 - (e) Groupings of trees, delineating the edges of the overall canopy, noting the predominate species, average height, diameter at breast height (DBH), and general health of the trees.
 - (f) All existing utilities and utility easements;
 - (g) All features, including trees, buildings, perennial and intermittent streams and creeks that exist on the site or within 100 feet of the limits of disturbance;
 - (h) Floodplains and floodways on the site;
 - (i) All existing rights-of-way within and surrounding the project site, including any designated trails or bike paths; and,

- (j) Any other factors that may impact the design of the site.
- (2) *Additional Tree Preservation Plan Content.* The applicant shall indicate all proposed site improvements, and delineate in the tree preservation plan the trees to be retained on-site, and the measures to be implemented for their protection. These measures shall include, but need not be limited to, fencing, limits of root pruning, as well as restrictions on traffic and material storage. The plan shall also clearly depict the limits of soil disturbance to include all areas to be graded both on and off-site, as well as the proposed location of utilities. The applicant should consult the City of Fayetteville Tree Preservation, Protection and Landscape Manual for details, examples and specific checklists. Examples can be provided upon request to the Urban Forester.
- (3) *Abbreviated Tree Preservation Plan.* Applicants requesting approval of development projects for between ~~6,001~~ 1,201 to 10,000 square feet of total impervious area that require building permits, grading, or parking lot permits, but that do not fall under the requirements for developments required to go through the development review process of Technical Plat Review Committee, Subdivision Committee and /or Planning Commission, shall prepare and submit an abbreviated tree preservation plan. The information for an abbreviated tree preservation plan may be combined with the site plan, plat drawing, or grading plan. The applicant is expected to show the general location of all existing groups of trees, individual significant trees, and to clearly depict the limits of soil disturbance to include all areas to be graded, both on and off-site, as well as the proposed location of utilities. Protective measures such as fencing, limits of root pruning, restriction on traffic and materials storage shall be depicted on the plan. A preliminary site visit with the Urban Forester is highly recommended before applying for any of the above-mentioned permits. The applicant should consult the City of Fayetteville Tree Preservation, Protection, and Landscape Manual for details, and specific checklists. Applicants submitting abbreviated tree preservation plans shall not be required to submit an analysis report, nor shall they be required to hire architects, engineers, or landscape architects to prepare the abbreviated tree preservation plan.
- (4) *Analysis Report.* The applicant shall submit an analysis report when minimum percent canopy is not met. The report shall detail the design approaches used to minimize damage to or removal of existing canopy that were considered in arriving at the proposed design. Written justification shall be presented as to why individual trees or canopy must be removed. The report shall also detail proposed on-site mitigation options or off-site alternatives, as detailed below.
- (5) *Grading and Utility Plans.* All subsequent grading and utility plans shall depict Tree Preservation Areas, preserved trees, and the physical limits of all protective measures on site required during construction.
- (6) *Submittal Requirements.* The applicant shall submit a tree preservation plan. Development plans with removal of tree canopy below percent minimum canopy shall submit an analysis report to the Urban Forester, concurrently with their tree preservation plan. Applicants submitting abbreviated tree preservation plans shall not be required to submit analysis report.
- (7) *Tree Preservation Easements.* The City of Fayetteville shall encourage the use of Tree Preservation Easements for the added protection of trees preserved to meet percent minimum canopy requirements or trees planted, in those instances where such would be of mutual benefit to the applicant and the City of Fayetteville.
- (i) *Request for On-Site Mitigation.*
 - (1) *Timing of Request for On-Site Mitigation.* Requests to remove trees below the percent minimum canopy requirement must be incorporated with the applicant's tree preservation plan.
 - (2) *Plan Requirements.* The tree preservation plan must graphically represent the species and location for all existing trees on-site. It shall also include a chart clearly stating the following information:
 - (a) The number of trees requested for removal;

- (b) The percentage below the percent minimum canopy requirement they represent; and
 - (c) The species and number of trees to be planted based on the forestation requirements below.
- (3) *Planting Details and Notes.* Planting details and notes shall be included on the tree preservation plan or landscape plan as set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.
- (4) *Forestation Requirements.* The number and species of trees required for forestation shall be based upon the quality of the canopy lost:
 - (a) *High Priority Canopy.* When removing high priority canopy below the percent minimum canopy required, the canopy square footage removed shall be forested at a base density of two hundred (200), 2-inch caliper trees per acre removed.
 - (b) *Low Priority Canopy.* When removing low priority canopy below the percent minimum required, the canopy square footage removed shall be forested at a base density of one hundred (100), 2-inch caliper trees per acre removed.
- (5) *Base Density.* Compensating for the environmental damage caused by removing tree canopy shall be accomplished by forestation on a per acre basis. The base density formula used above is based on 2-inch caliper trees. However, the urban forester may approve the use of trees with less than 2-inch caliper for the planting of smaller tree species required by spatial constraints on the site. In such cases, the number of trees to be planted may be adjusted in accordance with the species table to be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.
- (6) *Preferred Species.* All trees to be planted shall be species native to the Ozark region or native cultivars, when available, or selected from the list of preferred tree species set forth in the City of Fayetteville Tree Preservation, Protection and Landscape Manual. Species selection shall be based upon the amount of space available for proper growth on the site, and must be approved by the Urban Forester.
- (7) *Placement of Trees.* The applicant is expected to plant trees in locations on the site where the environmental benefits of canopy cover are most likely to offset the impact of development. Trees shall not be placed within utility easements, or in other locations where their future protection cannot be assured.
- (8) *Residential On-Site Mitigation.* Applicants requesting on-site mitigation for residential developments shall comply with all the provisions of §167.04(I), as well as the following:
 - (a) The applicant's mitigation plan shall meet or exceed the required number of mitigation trees based on the forestation requirements as set forth at §167.04(I)(4).
 - (b) All plans requesting residential on-site mitigation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.
 - (i) Approval of a plan requesting residential on-site mitigation shall be contingent upon the applicant depositing with the city an irrevocable letter of credit in an amount equal to the estimated cost of materials and labor for all trees at the time of planting. The irrevocable letter of credit must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Urban Forester for approval.
 - (ii) Upon completion of the three (3) year landscape establishment period, the Urban Forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the city shall release the letter of credit.

- (iii) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Urban Forester. If the applicant does not take remedial steps to bring the property into compliance, the city shall use the necessary moneys from the landscape establishment guarantee to do so.
 - (iv) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.
 - (c) Developers requesting mitigation trees be planted along the street right-of-way of residential developments shall submit a landscape plan that complies with the standards outlined in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual in order to ensure that new trees planted are of the highest quality, require low maintenance, and do not interfere with public safety. The species of trees to be planted shall be selected from the approved street tree species list, or be otherwise specifically approved by the Urban Forester. The applicant's mitigation plan for planting street trees shall describe in detail the method for tracking the development of the individual lots, which shall best ensure that required number and species of mitigation trees are planted.
- (9) *Request for On-Site Mitigation Alternatives (Green Roofs or Green Façades).*
 - (a) *Intent.* The intent is to allow previously developed sites with at least 50% existing impervious area and limited space for planting trees to use on-site mitigation alternatives to meet the mitigation requirements and still contribute beneficial plant materials that provide positive ecosystem services.
 - (b) *Applicability.* On-Site Mitigation Alternatives shall only be allowed as alternatives to planting trees in form-based zoning districts that allow for mixed-use and do not have a building area maximum requirement. On-Site Mitigation Alternatives may not be utilized on sites that have adequate space to meet landscape requirements.
 - (c) *Timing of Request for On-Site Mitigation Alternatives.* Requests for on-site alternatives must be incorporated and submitted concurrently with the applicant's tree preservation plan.
 - (d) *Intensive Green Roof.* A green roof with 6 inches or great soil medium that can sustain plant species with deeper root systems.
 - (e) *Extensive Green Roof.* A green roof with 2 to 5 inches of soil medium that can sustain plant species with shallow root systems.
 - (f) *Green Façade.* A green façade is created by growing climbing plants up and across the façade of a building, either from plants grown directly in the ground or a large container of at least 12 inches of soil medium. Plants can attach directly to the building or be supported with a 12-inch by 12-inch trellis system connected to the building.
 - (g) *Mitigation Alternative Calculations.* The applicant's plan to install an extensive green roof, intensive green roof, and green façade in lieu of a mitigation tree shall be based from square footage of tree canopy.
 - (i) The calculation for an extensive green roof shall be based from a ratio of 1 square foot of tree canopy to 2.5 square feet of extensive green roof.
 - (ii) The calculation for an intensive green roof shall be based from a ratio of 1 square foot of tree canopy to 1.4 square feet of intensive green roof.

- (iii) The calculation for a green façade shall be done based from a ratio of 1 square foot of tree canopy to 2.5 square feet of green façade.

(J) *Request for Off-Site Alternatives.*

- (1) *Timing of Request for Off-Site Alternatives.* Requests for off-site alternatives must be incorporated in, and submitted concurrently with the applicant's tree preservation plan.
- (2) *Off-Site Preservation.* The applicant may seek approval of the Urban Forester to preserve an equal or greater amount of canopy cover at a site within the city limits.
- (3) *Off-Site Forestation.*
 - (a) If off-site preservation cannot be achieved, the applicant may seek approval from the Urban Forester to plant the required number of trees on another site owned by the applicant and located within the city limits. A tree preservation easement must be conveyed concurrently with or prior to submission of a final plat by the applicant to the city to protect any off-site preservation or forestation and the legal description of the tree preservation easement shall also appear on the final plat.
 - (b) An applicant may plant and maintain mitigation trees needed for the applicant's development as to fulfill the obligation set forth in Chapter 167, Tree Preservation and Protection, in a nearby city park or public right-of-way if expressly approved by City Council resolution. The City Council shall seek advice from the Urban Forester, Parks and Recreation Department staff and citizens about the advisability of forestation of the nearby city park and may apply express conditions including requiring irrigation to be installed and regular maintenance to be performed by the applicant.
- (4) *Tree Escrow Account.* Tree preservation on-site is always the preferred option, with on-site mitigation, off-site preservation, off-site forestation, and on-site mitigation alternatives to be considered in descending order only if the more preferred option cannot be fully achieved. If none of these options can completely fulfill a developer's obligation under this Tree Preservation and Protection Chapter, the developer shall pay into the City Tree Escrow Account \$250.00 for each tree required to meet the Base Density requirements which fairly represents the costs of material and labor to plant a tree. The developer shall also pay into the Tree Escrow Fund \$425.00 as three (3) years of maintenance costs to ensure each tree survives for that period of time. Tree planting and maintenance costs should be reviewed at least every four (4) years to ensure it remains the fair market costs for tree planting and maintenance for three (3) years.
 - (a) Developments proposed as building permits developing and/or redeveloping 1,201 – 6000 square feet of total impervious surface under Level 2 as outlined in §166.02(E)(2) are eligible for contribution to the tree escrow account as an option.
 - (ba) Residential developments which cannot achieve the base density tree requirements through preservation or mitigation shall contribute to the Tree Escrow Account. The city shall use the money paid into the Tree Escrow Account to plant trees within the development along rights-of-way, detention ponds, common areas or other areas where trees can be protected and have a high probability of survival to a mature tree. This shall be accomplished once the development is built out or as approved by the Urban Forester.
 - (cb) Money contributed in lieu of on-site mitigation or off-site forestation shall be paid prior to issuance of a building permit on all commercial, industrial, or multi-family residential buildings and prior to final plat acceptance for all residential and non-residential subdivisions.
 - (de) Money contributed under this section:
 - (i) May be used for canopy mitigation, including planting site identification, tree acquisition, planting, and maintenance, utilizing either city staff or contract labor;

- (ii) Shall not revert to the general fund for ongoing operations.
 - (ed) If it is not possible to plant trees within the development, planting locations will be sought in appropriate sites within a 1 mile radius of where the original project is located, but if this cannot be achieved, the moneys shall be used to plant the trees in the park quadrant in which the development took place, or pursuant to §167.04(J)(2) and (3). Data extracted from the urban forest analysis should be consulted when identifying appropriate locations to plant escrow funded trees.
 - (fe) The City of Fayetteville shall refund the portion of the money contributed under this section, including the accrued interest that has not been expended seven (7) years from the date of the contribution. Interest shall be based on a 4% annual rate.
 - (gf) Refunds shall be paid to ~~the applicant who made the original contribution~~ the present owner of the property that was the subject of new development and against which the fee was assessed and collected.
 - (hg) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the applicant no later than thirty (30) days after the date which the refund becomes due. The sending by regular mail of the notices to the applicant shall be sufficient to satisfy the requirement of notice.
 - (ih) The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.
 - (ii) At the time of the contribution to the Tree Escrow Account, the Urban Forester shall provide the applicant with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any contribution to the Tree Escrow Account under this ordinance.
- (K) *Tree Preservation Plan Review Form.* The Urban Forester shall use a standardized form for all recommendations or administrative determinations made regarding an applicant's tree preservation plan.
- (1) The form shall clearly indicate whether the Urban Forester is making a final administrative determination, or a recommendation to the Planning Commission or City Council.
 - (2) The form shall also clearly indicate the applicant's plan is "APPROVED," "DISAPPROVED," or "CONDITIONALLY APPROVED," and explain the reasoning therefore.
 - (3) A statement shall appear on the form explaining the process by which a final administrative determination may be appealed in accordance with Chapter 155 of the Unified Development Code.
 - (4) The Urban Forester shall sign and date the form, and ensure that a copy becomes part of the permanent file for the project.
- (L) *Continuing Preservation and Protection Under Approved Tree Preservation Plans and Tree Preservation Easements.*
- (1) Large scale developments, large ~~scale~~ site improvements, and commercial preliminary plats are required to dedicate a tree preservation easement, if any existing tree are to be preserved. The tree preservation easement shall be the size of the minimum canopy preservation requirement, if possible. If the minimum tree preservation canopy is not available, the applicant will not be required to dedicate the minimum canopy preservation. The applicant will have to dedicate a tree preservation easement that is agreed upon with The Urban Forester. In order to ensure that an applicant's heirs, successors, assigns, or any subsequent purchasers of the subject property are put on notice as to the existence and extent of approved tree preservation easements which shall be clearly depicted and noted on the easement plats for large scale developments, large ~~scale~~ and small site improvements, commercial

final plats, and any plats with a tree preservation easement. This shall be accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the Urban Forester. If it is impractical to include the actual depiction of the canopy in a tree preservation easement on the easement plat, or final plat itself, a note cross referencing an accompanying document shall suffice.

- (2) The geographic extent and location of tree preservation easements, once recorded, may only be modified, or abolished with the express approval of the City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest of the City of Fayetteville. Such requests shall be submitted to the urban forester, who shall ask the City Clerk to place it on the agenda of the next regularly scheduled City Council meeting.
- (3) Property owners wishing to remove diseased or dead trees from within a recorded tree preservation easement shall seek prior approval from the Urban Forester, who shall determine if such removal is consistent with sound arboricultural and horticultural practices, as well as the intent of this chapter. Any tree so removed shall be replaced with a tree of like or similar species, unless the Urban Forester determines that natural replacements of sufficient health and vigor are already present in the tree preservation easement.

(Code 1991, §162.10; Ord. No. 2699, §10, 4-20-93; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §6, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01; Ord. No. 4539 02-03-04; Ord. No. 4855, 4-18-06; Ord. No. 4930, 10-03-06; Ord. No. 5308, 3-16-10; Ord. No. 5312, 4-20-10; Ord. No. 5427, 8-2-11; Ord. No. 5513, 7-17-12; Ord. No. 5773, 5-19-15; Ord. No. 5818, 10-20-15; Ord. No. 5824 , §3, 11-17-15; Ord. No. 5945 , §17, 1-17-17; Ord. No. 5986 , §§4(Exh. A), 5—35, 7-6-17; Ord. No. 6442 , §§1(Exh. A1), 2(Exh. B), 5(Exh. E), 6(Exh. F), 6-1-21; Ord. No. 6446 , §9(Exh. D), 6-15-21)

169.03 Review And/Or Permits Required; Exceptions

- (A) *Grading Review Required.* (Reference §166.02(E).)
- (1) When located within the Hillside/Hilltop Overlay District boundaries. Parcels of land divided by the Hillside/Hilltop Overlay District boundary shall only be subject to the requirements of this chapter on that portion of land lying within the boundary;
 - (2) Construction of greater than 1,200 square feet of impervious area on a single site;
- (B) *Grading Permit Required.* Unless exempted by §169.03(C), all grading, clearing, filling, excavation, or land alteration of any kind shall require:
- (1) Prior development approval as specified in Chapter 166, except for general grading to an existing developed site that does not impact trees or floodplains and does not significantly alter the natural landform;
 - (2) Construction of ~~new~~total impervious area greater than 10,000 square feet;
 - (3) A grading permit pursuant to this chapter; and
 - (4) An Arkansas Department of Environmental Quality Stormwater Construction Permit and incorporated Stormwater Pollution Prevention Plan, if required by state law.
- (C) *Exceptions to Permit Requirements.* Grading permits are not required for the following however the Minimum Erosion Control Requirements in §169.04 still apply:
- (1) *Excavation Below Finish Grade.* Excavations below finished grade for basements, swimming pools, hot tubs, septic systems, retaining walls under 4 feet in height, and like structures authorized by a valid building permit.
 - (2) *Cemetery Graves.* Cemetery graves.
 - (3) *Refuse Disposal.* Refuse disposal sites controlled by other regulations.
 - (4) Other minor fill, clearing or grading for maintenance purposes such as landscaping that do not require the use of heavy construction equipment, French drains, yard grading, maintenance, farming, gardens, and similar activities.
- (D) *Grading Permit Application and Approval.* No grading permit shall be issued until the Grading and Erosion & Sediment Control Plan, endorsed by an architect, landscape architect, or engineer licensed in the state of Arkansas, is approved by the City Engineer. A separate permit shall be required for each site. Grading permits may be issued jointly for parcels of land that are contiguous, so long as erosion control measures are in place until project completion. Any application for a required grading permit under this chapter shall be submitted concurrently with the application and calculations for a drainage permit if such a drainage permit is required by §170.03. Tree Preservation and Protection is required in accordance with Chapter 167.
- (E) *Permit Posted.* A copy of the grading permit cover page shall be posted at or near the street right-of-way line and shall be clearly visible from the street.

(Code 1991, §161.03; Ord. No. 3551, 6-5-91; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4113, §1, 8-18-98; Ord. No. 4313, 5-15-01; Ord. No. 4855, 4-18-06; Ord. No. 5336, 8-3-10; Ord. No. 5702, Repealed & Replaced Chp. 169, 8-5-14; Ord. No. 5945, §18, 1-17-17; Ord. No. 6061, §4, 4-17-18; Ord. No. 6446, §11(Exh. F), 6-15-21)

From: Matt Hoffman <matt@mbi-arch.com>
Sent: Tuesday, May 7, 2024 10:35 AM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Cc: James Dibble <jdibble@mce.us.com>
Subject: Re: Proposed Ordinance Changes - ADM-2024-0013 - Planning Commission May 13, 2024

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Jessie,

The instructions we've received from our client are to reduce risk on this entitlement process in any way possible. Accordingly, we have been working hard to eliminate any requests for variances. Based on the feedback that we've received through the CPL process and our meeting with you recently, I think we're just about there.

Our client has quite a bit tied up in soft costs already to design this project to meet current standards. If the city were to change the rules half way through that process, I think there would be a great deal of frustration and perhaps some financial damages associated depending on the extent of the changes and related schedule delays. I'm confident that everyone wants to avoid any unpleasanties; I hope the city can find a way for us to move forward with a process that we started in good faith.

My understanding is that we have two separate permits related to this project: a Site Grading Permit, and a Building Permit. Can you comment on if one or both of these would be required to be approved by the possible July 5 deadline?

Best,

Matt

Matthew Hoffman AIA
president

City + Site + Building

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On May 6, 2024, at 2:06 PM, Masters, Jessica <jmasters@fayetteville-ar.gov> wrote:

Matt,

Thank you for the question. If the Planning Commission forwards the changes on Monday, the earliest the City Council would hear it would be June 4. Ordinances then have a 31-day period prior to their adoption. The very earliest the changes could go into effect would likely be July 5.

This may require further discussion from the City Attorney's office, but from what I've heard, a permit needs to be **approved** in order for a project to be fully vested in previous ordinances, and not just submitted. I understand there has been a setback from the easement/ROW application, but also from what I understand is that the project in question still is potentially seeking variances as well that have not yet been applied for to my knowledge. Do you know what the status is of those requests?

Please let me know if you have any other questions or comments for the Commission, and I will be happy to share.

Jessie

Jessie Masters, AICP

Development Review Manager

City of Fayetteville, Arkansas

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<image001.png>

From: Matt Hoffman <matt@mbi-arch.com>

Sent: Monday, May 6, 2024 1:48 PM

To: Masters, Jessica <jmasters@fayetteville-ar.gov>

Cc: James Dibble <jdibble@mce.us.com>

Subject: Re: Proposed Ordinance Changes - ADM-2024-0013 - Planning Commission May 13, 2024

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you for the heads up Jessie, I know I speak for our whole team when I say we really appreciate you making sure we're aware of stuff like this.

Given the schedule these changes are on, **what is the latest possible date that we would be able to submit our project on Spring Street under the current rules?**

Also, I'm sure you're aware of the situation with the "ROW easement" vacation and that timeline being extended quite a bit. Our intention is to submit for permits as soon as possible, even if that isn't yet resolved, with the understanding that permits could be conditionally approved. This development with the ordinance change may make that even more critical depending on your timeline.

Best,

Matt

Matthew Hoffman AIA

president

City + Site + Building

479.313.6832

2397 N. Green Acres Rd.

Fayetteville, Arkansas 72703

www.mblplanning.com | www.patternzones.com

<image002.png>

On May 6, 2024, at 11:23 AM, Masters, Jessica <jmasters@fayetteville-ar.gov> wrote:

Good morning,

I am reaching out to you today to inform you of some ordinance changes that staff will be bringing forward to Planning Commission on Monday, May 13, that propose to have an impact on our current standards for the development review process. Following the stormwater ordinance changes that were adopted in 2021, staff identified key issues that have arisen due to those changes, and will be proposing ordinance changes to address them.

Required Mitigation Measures and Documentation by Development Threshold			
Development Threshold	City-wide Standard	Grading and Drainage/ Stormwater Documentation	Water Quality, Flood, and Tree Mitigation Measures
Level 1	< or = 1,200 sf of IA	Exempt from Grading and Drainage provisions except for those still associated with the Building Permit process such as HHOD	Exempt

Level 2	1,201— 6,000 sf of IA	- Completed Green Stormwater Practice (GSP) Worksheet, demonstrating Runoff Reduction via Better Site Design. - GSP Operation & Maintenance (O & M) Agreement to ensure the long-term functionality of these practices.	2 or more measures from Step 1 of Table 2 that Reduce Runoff via Better Site Design 1 or more Green Stormwater Practices (GSPs) measures from Step 2 of Table 2 as required to treat 100% of the proposed additional impervious and gravel areas.
Level 3	6,001— 10,000 sf of IA	Same as Level 2.	- Same as Level 2. - As needed GSP measures from Step 3 to further reduce runoff referred to as extended detention - Abbreviated Tree Preservation Plan

Background:

Major changes in 2021 required new green stormwater practices on a sliding scale of impervious surface. This introduced three new levels of development threshold, and moved a requirement of a large-scale development plan or a site improvement plan to be triggered only after the addition of 10,000 sq. ft. of added impervious surface:

4 main issues:

- Parkland Dedication
 - Certain project types were no longer subject to parkland dedication, even though the impact of added units is significant.
- Project Classification
 - Projects adding less than 10,000 sq. ft. still often require a coordinated, cross-divisional round of review/comment leading to delays unforeseen issues at permitting.
- Application of Tree Preservation standards
 - Certain projects are no longer subject to tree preservation requirements
- Timeliness of Variances and Appeals
 - Variances are only permitted to be appealed with an overall project, rather than piecemeal.

Proposed Changes:

Staff already forwarded separately a consideration for Parkland Dedication requirements, which will be heard at the May 7 City Council meeting.

The changes that are being proposed are relatively straightforward, but will shift the threshold of a large-scale development/site improvement plan from 10,000 sq. ft. of **added** impervious surface to 10,000 sq. ft. of **TOTAL** developed and/or redeveloped impervious surface. Further, staff is proposing to bring an abbreviated tree preservation plan requirement to Level 2, with an added potential that these types of developments could have a different level or criteria or provision for contribution into tree escrow. Further, staff proposes to require a concept plan for projects developing or redeveloping more than 6000 sq. ft. of impervious surface. This would not be required to receive any form of approval prior to submitting to permits, but would allow for a coordinated review of projects that may have multi-divisional issues.

On Monday, May 13, staff will be proposing changes to the following ordinances:

- 166.01, Development Categories
- 166.02, Development Review Process
- 166.23, Urban Residential Design Standards
- 167.04, Tree Preservation and Protection During Development
- 169.03, Review and or Permits Required

There may also be some additional language from the appeals chapter (155) forthcoming from the City Attorney's office.

The attached language is still considered to be in **DRAFT** mode, and our final proposed changes will be presented at the Planning Commission agenda session on Thursday, May 9 beginning at 4:30 PM. We wanted to make sure to share this information with you so you had the opportunity to review and provide comment, either in writing ahead of the meeting, or at the meeting itself, since we believe this will have a direct impact on the work that you do in Fayetteville.

Feel free to forward any comments directly to myself, and I will make sure to include them in staff's packet on the item for the Planning Commission for consideration.

Thank you, and look forward to hearing from you on Monday.

Jessie

Jessie Masters, AICP

Development Review Manager

City of Fayetteville, Arkansas

(479) 575-8239

www.fayetteville-ar.gov

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

<image001.png>

-----Original Message-----

From: Garlock, Jimm <jimm.garlock@fayetteville-ar.gov>

Sent: Monday, March 25, 2024 11:35 AM

To: Jordan, Lioneld <ljordan@fayetteville-ar.gov>

Cc: Curth, Jonathan <jcurth@fayetteville-ar.gov>; Madden, Mary <mary.madden@fayetteville-ar.gov>;

Masters, Jessica <jmasters@fayetteville-ar.gov>

Subject: Code Revision

Mayor Jordan,

You may only hear complaints or issues as they arise. I feel it's important to also recognize great work and commitment to their roles and moving the city forward. Ms. Masters and her department has always been so helpful when a question comes up or a concern is expressed.

Ms Masters is currently working to close some of the gaps in the city code with regard to storm water management and the need to have better oversight for proportionate collection of park fees in lieu, urban forestry and other lost fees.

I hope that her work can go through long range planning and city council quickly as not to lose more revenue. (Just one large project could cost the city over \$200,000 in lost fees).

Good luck in the weeks ahead with the housing crisis resolution...

Respectfully,
Jimm Garlock



TO: City of Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager
Chris Brown, Public Works Director

FROM: Alan Pugh, Staff Engineer

MEETING DATE: May 13, 2024

SUBJECT: **VAR-2024-0019: Planning Commission Variance (37 W. TRENTON BLVD./KOSKI, 445):** Submitted by DEMX ARCHITECTURE PA for property located at 37 W. TRENTON BLVD. The property is zoned RMF-24, RESIDENTIAL MULTI-FAMILY, 24 UNITS PER ACRE and contains approximately 0.22 acres. The request is for a variance to the flood damage prevention code.

RECOMMENDATION:

Staff recommends approval of **VAR-2024-0019**, based on the findings contained in this report.

RECOMMENDED MOTION:

*"I move to approve **VAR-2024-0019** with conditions, determining:*

- The improvements are located outside of the FEMA defined floodway.*
- The improvements are generally minor in nature and include an open-air carport and new steps for the structure.*
- Compensatory storage is provided.*
- In favor of all other conditions as recommended by staff."*

BACKGROUND:

The subject property is located on the south side of W Trenton Blvd in between N Park Ave. and N College Ave. The property totals approximately 0.22 acres and is currently developed with a single-family residence. The original home was constructed in 1946 according to county records which pre-dates Fayetteville's first flood insurance rate map (FIRM) which was adopted in 1982. Scull Creek flows generally east to west just south of W Trenton Blvd. The creek is on the list of protected streams as identified in the streamside protection map adopted in 2011 along with the streamside protection ordinance. The current building and improvements are located outside of the adopted streamside zones and within the current regulatory floodplain. Surrounding land uses and zoning is depicted in *Table 1*.

Table 1
Surrounding Land Use and Zoning

Direction	Land Use	Zoning
North	Commercial	R-O, RMF-24, P-1, see attached project maps
South	Residential	
East	Residential	
West	Residential/Institutional	

Public Comment: Staff has received no public comment concerning this request.

DISCUSSION:

The applicant desires to construct covered parking and walkway to new steps that enter the front of the home to replace the existing steps. The proposed steps are slightly larger than the existing steps for the home. The steps and columns for the covered carport are proposed to be within the 100-year floodplain but outside of the floodway defined in the area. The total obstruction is shown to be approximately 55 cubic feet with approximately 85 cubic feet of storage/flow area created by reconstructing the driveway and sidewalk accessing the structure.

While an obstruction of this nature is not allowed by ordinance without a flood study, for comparison, accessory structures of up to 150 square feet in size are allowed within the floodplain with no requirement for a flood study. Assuming a flood depth of approximately 1 foot around the accessory structure, it would equate to 150 cubic feet. The applicant is proposing an obstruction approximately 1/3 the size of a similar accessory structure and is also proposing to provide compensatory storage more than the proposed obstruction. The proposal would not violate federal floodplain regulations and the variance sought would be from the higher standard Fayetteville has implemented. Given the nature of the improvements, staff would not anticipate negative impacts to surrounding properties.

Staff reviewed the small encroachment into the streamside zones that is being proposed with the covered parking area and determined this would not be an enlargement of an existing non-conformance. The area is currently being used for parking and storage of vehicles as it is the driveway to the residence. The proposed cover is considered an accessory structure that would otherwise be allowed within the maintenance zone given the amount of encroachment proposed.

RECOMMENDATION: Staff recommends approval of **VAR-2024-0019** with the following conditions of approval:

Conditions of Approval:

1. The applicant will obtain all necessary permits prior to the construction of the improvements including, but not limited to, a floodplain development permit or floodplain review associated with a building permit.
2. The constructed improvements match those shown on the attached exhibit. Any variations will be subject to additional approvals or variances as required by the City of Fayetteville Unified Development Code (UDC).
3. No additional encroachments within the floodplain including, but not limited to, additions or accessory structures would be allowed without a flood study being performed.
4. Applicant shall not encroach further into the streamside zones than that shown on this plan.
5. Applicant shall abide by all other conditions of Chapter 168 with regard to both floodplain and streamside provisions.

PLANNING COMMISSION ACTION: Required <u>YES</u>			
Date: <u>May 13, 2024</u>	☐ Tabled	☐ Approved	☐ Denied
Motion:			
Second:			
Vote:			

FINDINGS OF THE STAFF

Section 156.03 Development Variances

Certain variances of the development regulations may be applied for as follows:

(C) *Consideration by the Planning Commission*

(7) Flood Damage Prevention Code. The Planning Commission shall hear and decide requests for variances from the requirement of this ordinance.

(a) In passing upon such applications, the Planning Commission shall consider all technical evaluations, all relevant factors, and standards specified in other sections of this ordinance.

(b) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed in the National Register of Historic Places, without regard to the procedures identified in the remainder of this ordinance. Variances may only be issued for such repair, or rehabilitation if strict enforcement of the ordinance would preclude the structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure.

(c) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot ½ acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items listed in §168.05(B)(4) have been fully considered. As the lot size increases beyond half acre, the technical justification required for issuing the variance increases.

(d) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(e) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(f) Floodplain variances shall only be issued if:

(i) There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property, which do not apply generally to other property in the same flood zone;

As stated, except for the use proposed other properties would be allowed similar amounts of encroachment without the requirement of a flood study. If the conditions as stated are approved, the applicant will be replacing any future accessory structures with the use proposed.

(ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,

While staff feels the encroachment is minor in nature as stated in the memo, it is ultimately up to the Planning Commission to determine if the conditions would meet the threshold of hardship. Staff does feel that the proposal is in keeping with the goal of protecting floodplains within the City from being indiscriminately modified/filled and reducing the overall floodplain storage.

(iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with the other provisions of the Code of Fayetteville.

Given the nature of the encroachment and the offsetting storage created, staff would not anticipate any negative impacts from the development on surrounding properties.

(g) Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the provisions of §168.05(B)(4) are considered and that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

These items were taken into consideration when outlining this memorandum and included conditions.

(h) Upon consideration of the factors in this section, and the purpose of this ordinance, the Planning Commission may impose conditions to the granting of floodplain variances as it deems necessary to further the purpose of this ordinance.

See staff recommended conditions listed above

(i) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the regulatory flood elevation surcharge and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. A copy of the notice shall be recorded by the floodplain administrator in the office of the Washington County Clerk and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

N/A to this project.

(9) *Streamside Protection Zones*

- (a) *Undue hardship.* If the provisions of the Streamside Protection Ordinance are shown by the owner or developer to cause undue hardship as strictly applied to the owner or developer's property because of its unique characteristics, the Planning Commission may grant a variance on a permanent or temporary basis from such provision so that substantial justice may be done and the public interest protected, provided that the variance will not have the effect of nullifying the intent and purpose of the Streamside Protection regulations.

N/A to this project.

- (b) *Consideration of alternative measures.* The applicant for the variance shall establish that a reasonable rezoning by the City Council or variance request from the Board of Adjustment will not sufficiently alleviate the claimed undue hardship caused by the Streamside Protection regulations.

N/A to this project.

- (c) *Conditions and safeguards.* In granting any variance, the Planning Commission may prescribe appropriate conditions and safeguards to substantially secure the objectives and purpose for the regulations so varied and to mitigate any detrimental effects the variance may cause. The Planning Commission should consider the Streamside Protection Best Management Practices Manual and any mitigation recommendations from the City Engineer.

N/A to this project.

BUDGET/STAFF IMPACT:

None

Attachments:

- Applicant Request Letter
- Proposed variance request exhibit
- One Mile Map
- Close Up Map
- Current Land Use Map

April 11, 2024

DEM~~X~~

City of Fayetteville, Arkansas
Planning Commission
21 W. Mountain, Suite 300
Fayetteville, AR 72701

Dear Fayetteville Planning Staff and Planning Commission,

On behalf of our client and property owner at 37 W. Trenton Boulevard, please consider this correspondence as an official request for a variance of the Flood Damage Prevention Code in Title XV of the City's Unified Development Code, specifically Chapter 168.10 (U), which reads:

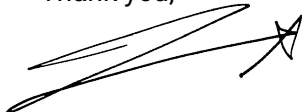
Any new construction, addition or other development may be approved in a special flood hazard area only if:

- 1) The applicant has provided a detailed hydrologic and hydraulic study performed by a professional engineer licensed in the state of Arkansas which delineates the floodway, 1% annual chance (100-year) floodplain boundary, and base flood elevations and demonstrates through a hydrologic and hydraulic analysis, that the development will not increase flood flows (0.0 cubic feet per second), flood heights (0.00 feet) or flood channel velocities (0.0 feet per second) on the subject property or any property upstream or downstream, and*
- 2) The proposed development does not increase flood damage to off-site properties during the occurrence of the regulatory flood (1% annual chance/100-year) or any flood of more frequent occurrence, and*
- 3) The proposed development provides compensatory storage for any measurable loss of flood storage capacity.*
- 4) Provided that this shall not apply for a single accessory structure per lot placed on existing grade (no proposed fill material), without a foundation and no larger than 150 square feet, including storage sheds, playground equipment, gazebos, etc., that is not located within a regulatory floodway and constructed in compliance with the remainder of this Code.*

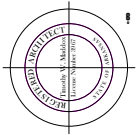
DEM~~X~~ architecture is requesting this variance for the proposed addition of a small carport to be added to the exterior of an existing home. This addition would require removing aging front steps and deteriorating driveway and sidewalk and adding new steps to the entry, a carport/entrance canopy with eight support columns, and a new concrete driveway and sidewalk. These changes would decrease the existing fill on site by approximately 31 cubic feet resulting in better drainage for the property.

Overall, the plan is for a modest exterior renovation that will not adversely impact existing conditions and in fact will improve drainage for the front yard of the property. The estimated cost of providing the study required by the above code is \$15,000. This is a significant sum that would increase the total cost of the project by 50% and would be a financial burden on the property owner. Obtaining the study would also substantially delay completion of the project and its associated drainage improvement. Therefore, we respectfully request your approval of this variance.

Thank you,



Tim Maddox, AIA
Principal Architect
DEM~~X~~ architecture

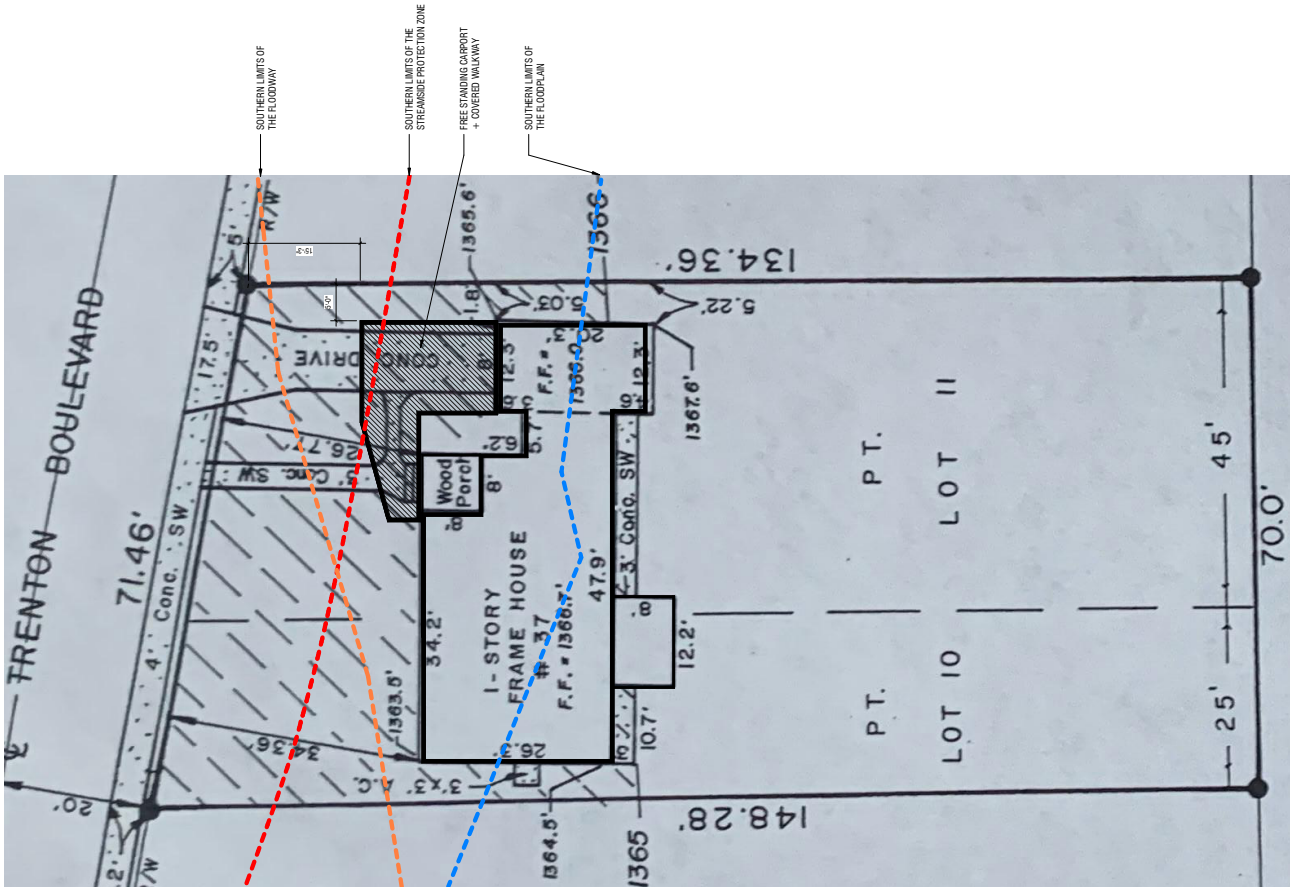


KOSKI CARPORT ADDITION

37 TRENTON BLVD, FAYETTEVILLE, AR 72704

A100

CONSTRUCTION SET
04.05.2023
48917



1 SITE PLAN
A100 10' = 1' = 1"

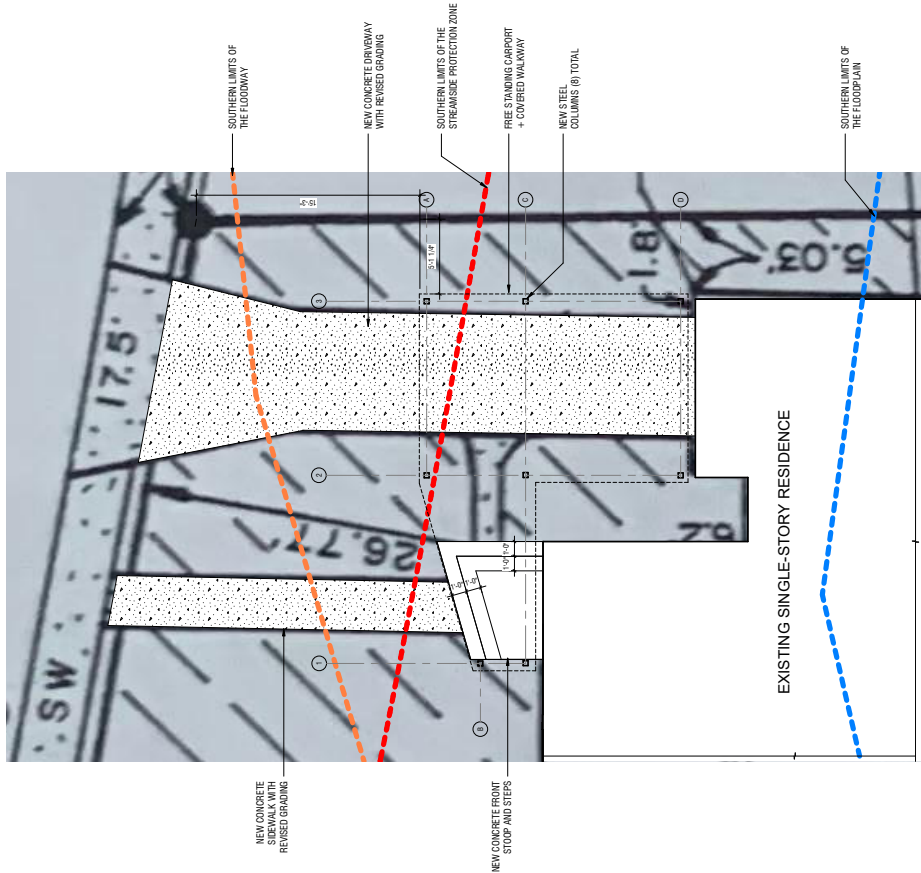
GIS Approved
04/23/2024 9:42:02 AM

PROPERTY LEGAL DESCRIPTION:

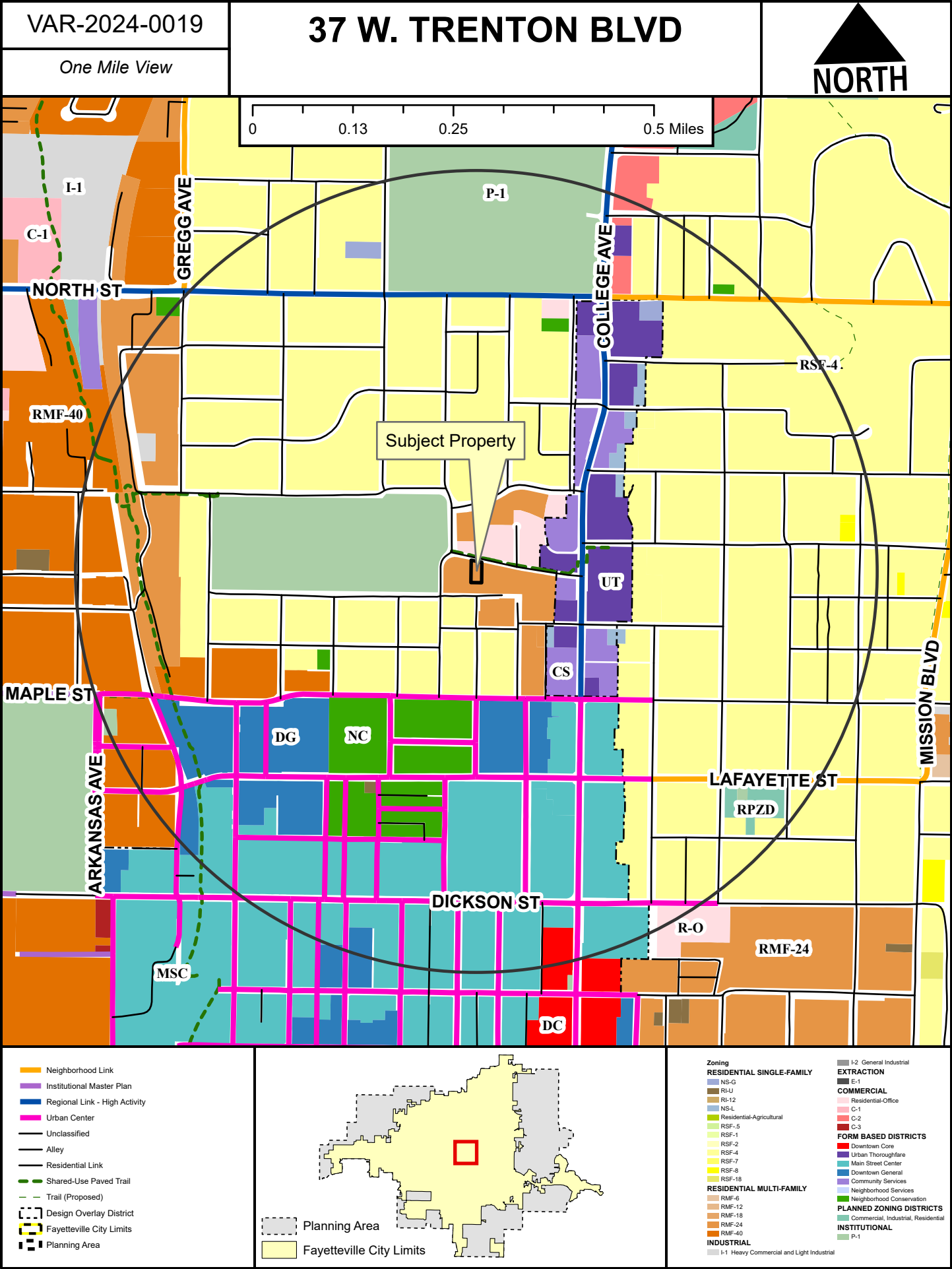
TWENTY-FIVE (25) FEET OF EQUAL AND UNIFORM WIDTH OFF THE EAST SIDE OF LOT TEN (10) AND FORTY-FIVE (45) FEET OF EQUAL AND UNIFORM WIDTH OFF THE WEST SIDE OF LOT ELEVEN (11), ALL IN BLOCK FIFTEEN (15) OF THE RE-PLAT OF BLOCKS FOURTEEN (14) AND FIFTEEN (15) IN ALL TRENTS REVISED PLAT OF CITY PARK ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS.

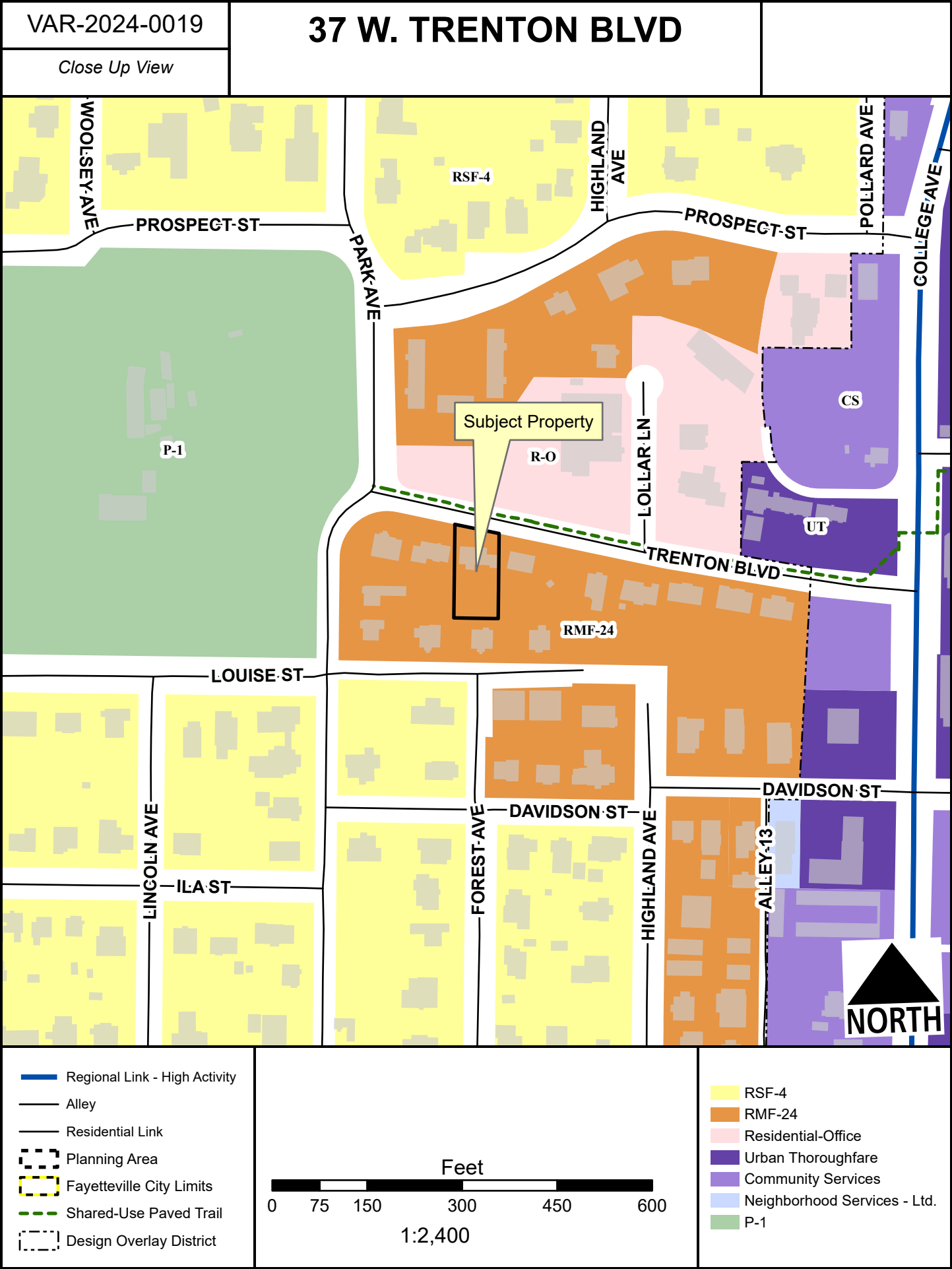
VOLUME CALCULATIONS, SITE ELEMENTS:

NEW FRONT STOOP AND STEPS: +53.70 CF
NEW CONCRETE DRIVEWAY: +45.00 CF
REVISED DRIVEWAY PROFILE: -28.87 CF
REVISED DRIVEWAY PROFILE: -81.53 CF
TOTAL VOLUME: (-31.22 CF)



2 ENLARGED SITE PLAN
A100 10' = 1' = 1"

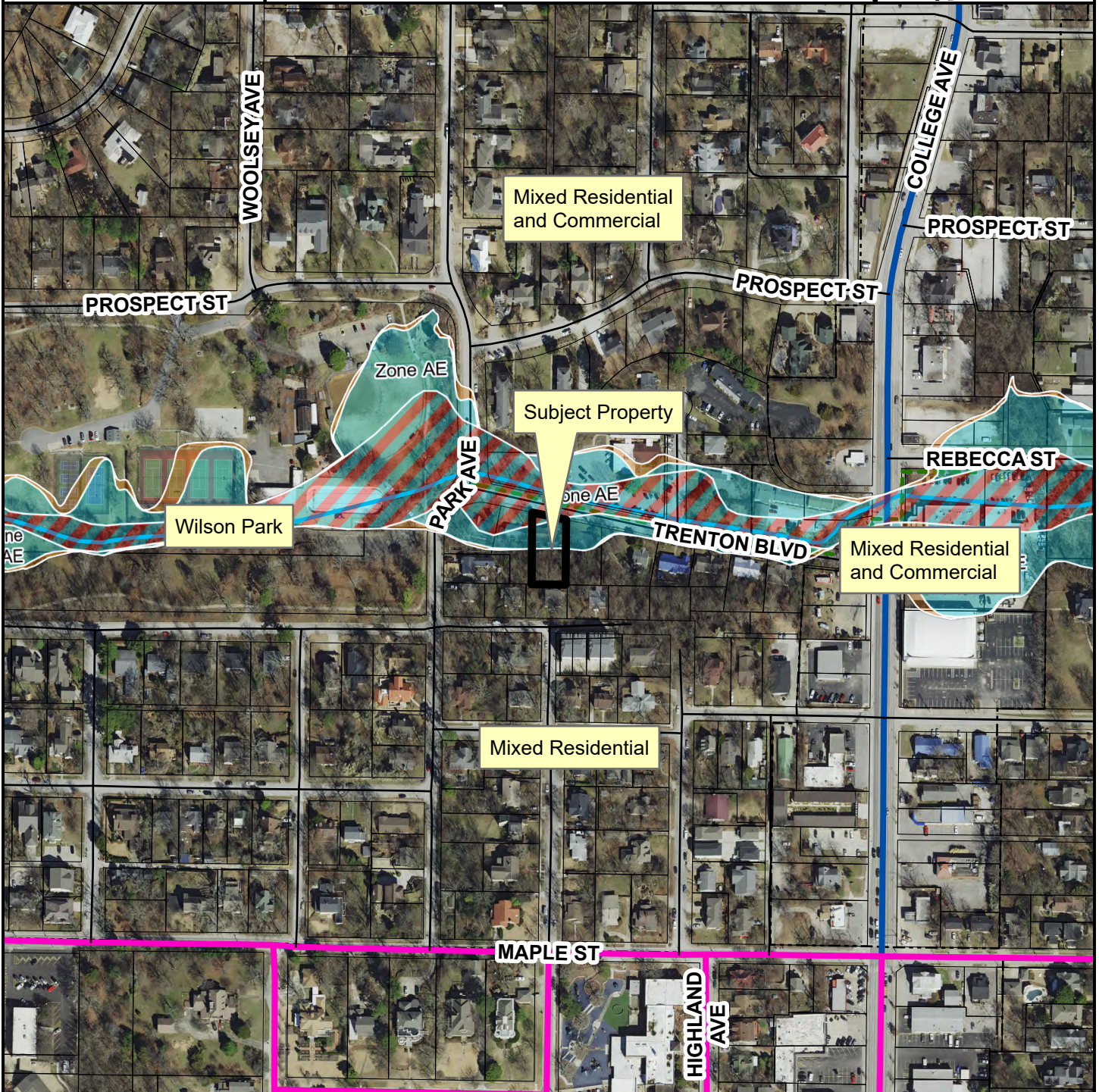




VAR-2024-0019

37 W. TRENTON BLVD

Current Land Use



- Regional Link - High Activity
- Urban Center
- Alley
- Residential Link
- Planning Area
- Fayetteville City Limits
- Design Overlay District



FEMA Flood Hazard Data

- 100-Year Floodplain
- Floodway



TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Gretchen Harrison, Senior Planner

MEETING DATE: May 13, 2024

SUBJECT: **VAR-2024-0020: Planning Commission Variance (2517 N. SHILOH DR./LEWIS BROTHERS LEASING CO. INC, 286):** Submitted by NABHOLZ CONSTRUCTION for property located at 2517 N. SHILOH DR. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 3.50 acres. The request is for a variance to commercial design standards.

RECOMMENDATION:
Staff recommends denial of **VAR-2024-0020**.

RECOMMENDED MOTION:
"I move to deny VAR-2024-0020."

BACKGROUND:

The subject property is located in northwest Fayetteville just southwest of the intersection of Shiloh Drive and Moore Lane. The property includes one parcel totaling roughly 3.50 acres which constitutes a portion of the new Lewis Automotive Mall. The project received large scale development approval in April 2022 and is still under construction.

In August 2023, the project engineer and architect contacted city planning staff to inquire about installing a vehicle display tower on the property at the intersection of Shiloh Drive and Moore Lane. Staff initially told them that the structure would be classified as a monument sign, since it would be used to display vehicles and advertise a car dealership, and it would not be allowed since monument signs are limited to a maximum height of six feet. After further discussing the proposal with the project engineer, project architect, and city attorney staff, planning staff determined that the vehicle display tower would be considered an accessory commercial building. As an accessory commercial building, the vehicle display tower is subject to compliance with the City's commercial design standards which are outlined in Unified Development Code §166.25. Existing land uses and zoning surrounding the property are depicted below in *Table 1*.

Table 1:
Surrounding Land Uses and Zoning

Direction	Land Use	Zoning
North	Automotive Sales	C-2, Thoroughfare Commercial
South	Automotive Sales	C-2, Thoroughfare Commercial
East	Interstate 49 Washington County Fairgrounds	R-A, Residential-Agricultural
West	Automotive Sales	C-2, Thoroughfare Commercial I-1, Heavy Commercial and Light Industrial

Request: UDC §166.25(C)(4) requires that all commercial structures be architecturally designed to include at least one prominent entryway on the principal façade(s). The applicant is requesting a variance to construct an accessory commercial building that does not have a prominent entryway on its principal façade. The applicant has stated that a prominent entryway is not necessary since the building will only be used for vehicle storage and display and is not intended for customers to enter.

Public Comment: To date, staff has received no public comment on this item.

DISCUSSION:

Staff is not supportive of this variance request. While the proposed structure is only intended to be used to display and store vehicles, staff finds that requiring a primary pedestrian entryway on its principal façade would not result in undue hardship. A pedestrian-oriented space, such as a showroom, sales office, or storage room, could be incorporated into the structure to lengthen its principal façade and provide space to install an entryway without obstructing the view, or requiring a pedestrian entrance into, the portion of the building reserved for the vertical display of vehicles. Alternatively, a vehicle display tower could be incorporated into the principal façade of a larger dealership building on the property. Since the requested variance only appears to be necessary based on the proposed design and use of the structure, and there are no other regulations or site-specific conditions that would prevent the installation of a prominent entryway on the structure's principal façade, staff recommends denial of it. Should the Planning Commission choose to approve this variance, staff recommends a condition requiring that a human-scale element, such as a planting bed, bench, or other feature, be installed along the property's Shiloh Drive frontage near the proposed structure to enhance the pedestrian realm.

RECOMMENDATION: Staff recommends denial of VAR-2024-0020. Should the Planning Commission choose to approve this variance, staff recommends the following conditions:

Conditions of Approval:

1. **Planning Commission determination of a variance to UDC §166.25(C)(4) requiring a primary entryway to be located on a building's principal façade(s).** *Staff is not supportive of this request based on the findings herein,*
2. A human-scale element, such as a planting bed, bench, or other feature, shall be installed along the property's Shiloh Drive frontage near the proposed structure to enhance the pedestrian realm, and
3. Approval of this variance does not constitute approval of the associated building permit application. Review and approval of the building permit shall be required in accordance with city code.

Planning Commission Action:	☐ Approved	☐ Tabled	☐ Denied
Meeting Date: <u>May 13, 2024</u>			
Motion:			
Second:			
Vote:			

BUDGET/STAFF IMPACT:

None

ATTACHMENTS:

- UDC §166.25 Commercial, Office and Mixed Use Design and Development Standards
- Applicant Request Letter
- Building Plans and Elevations
- Site Plan
- One Mile Map
- Close-Up Map
- Current Land Use Map

166.25 Commercial, Office and Mixed Use Design And Development Standards

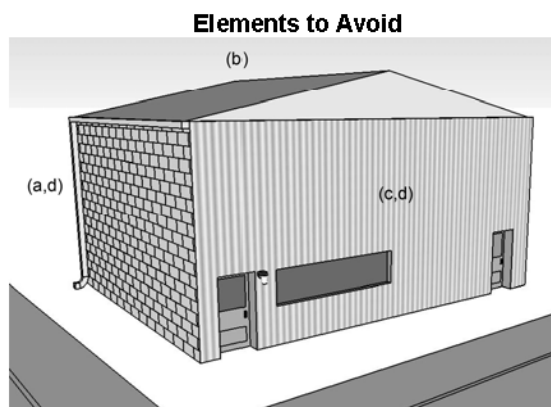
(A) Purposes.

- (1) To protect and enhance Fayetteville's appearance, identity, and natural and economic vitality.
- (2) To address environmental concerns which include, but are not limited to, soil erosion, vegetation preservation, and drainage.
- (3) To protect and preserve the scenic resources distributed throughout the city which have contributed greatly to its economic development, by attracting tourists, permanent part-time residents, new industries, and cultural facilities.
- (4) To preserve the quality of life and integrate the different zones and uses in a compatible manner.
- (5) To address the issues of traffic, safety, and crime prevention.
- (6) To preserve property values of surrounding property.
- (7) To provide good civic design and arrangement.

(B) Applicability. These design and development standards apply to commercial developments, office developments, small scale production, those parts of a planned zoning district or other mixed use developments with commercial and office elements and to industrial developments within the I-540 Overlay District.

(C) Building Exterior Appearance and Design Standards. The following exterior development standards and design element guidelines shall be followed:

- (1) The elements to avoid or minimize include:
 - (a) Unpainted concrete precision block walls;
 - (b) Square "boxlike" structures;
 - (c) Metal siding which dominates the principal facade;
 - (d) Large blank, unarticulated wall surfaces;



- (2) A development which contains more than one (1) building should incorporate a recurring, unifying, and identifiable theme for the entire development site, without replicating the building multiple times.
- (3) A development should provide compatibility and transition between adjoining developments.
- (4) All structures shall be architecturally designed to have front facades facing all adjacent street and highway rights-of-way, and shall include at least one prominent entry-way on the principal façade(s).
- (5) All buildings should be constructed of wood, masonry, or other similar durable material.

(D) Site Development and Design Standards.

- (1) **Site Coverage.** A maximum of 80% of the development site may be covered by the ground floor of any structure, parking lots, sidewalks, and private streets and drives or any other impermeable surface. Properties located within the Downtown Master Plan boundary are exempt from this requirement.
- (2) **Cross Access.** Cross access shall be required to adjacent developed and undeveloped properties.
- (3) Mechanical and utility equipment and refuse containers shall be screened if visible from the highway/street right-of-way or from residential property as set forth below:

- (a) *Mechanical and Utility Equipment.*
 - (i) All mechanical and utility equipment located on the wall and/or on the ground shall be screened with vegetation, by incorporating screening into the structure, or by utilizing paint schemes that complement the building and screen the equipment.
 - (ii) All roof mounted utilities and mechanical equipment shall be screened by incorporating screening into the principal structure utilizing materials and colors compatible with the supporting building.
- (b) *Recycling and Trash Containers.* Adequate space and screening shall be provided for the placement of recycling and trash containers in commercial, office, and mixed-use developments.
 - (i) Commercial, office, and mixed-use developments are required to provide adequate space for the placement of two (2) front-end load dumpsters, easily accessible for collection services. The minimum free and clear dimensional requirements for placing two (2) front-end load dumpsters in an enclosure is 24 feet wide and 12 feet deep. The Recycling and Trash Collection Division Director may exercise discretion in approving the dimensional size of the required enclosure if the applicant can demonstrate that a smaller enclosure is adequate for the development's anticipated needs due to the nature of the proposed business, the modest size or scale of the development or site access, or if they have the ability to share trash and recycling enclosure facilities with adjoining or nearby properties that have additional trash and recycling storage capacity.
 - (ii) Recycling and trash containers shall be screened by enclosures with materials that are compatible with and complementary to the principal structure, with access to the refuse containers not visible from the street. Containers may be screened from view by the principal structure; by a permanent walled or fenced enclosure; or with appropriate vegetation, planted at a density and size sufficient to be view obscuring immediately from the date of planting; so long as the screening is maintained and loose trash does not litter the ground or become an environmental nuisance.
- (4) Outdoor storage of material and equipment shall be screened if visible from the highway/street right-of-way or from residential property as set forth below:
 - (a) At the expense of the owner or lessee of the property, and in all zones, the following uses shall be completely surrounded by a view obscuring fence or by view obscuring vegetation, or a combination of the two, of sufficient height to prevent the view of the premises from vehicular and pedestrian traffic on adjacent streets: outdoor storage yards, including but not limited to, auto salvage yards, scrap metal yards, used furniture yard and garbage dumps.
 - (b) Where vegetation is used to meet the requirements of this subsection, the vegetation shall be planted at a density sufficient to become view obscuring within two years from the date of planting. If vegetation planted under this subsection does not become view-obscuring within two years, a view-obscuring fence shall be installed.
 - (c) *Exceptions:* The outdoor display of materials or equipment solely for sale or lease, such as automobiles, seasonal garden supplies, etc. shall not be required to be screened as set forth in subsection (a) above.
- (5) *Non-Residential Uses Adjacent to Residential Uses.* The Planning Commission or Planning Division may require non-residential uses, including parking lots associated with said uses, to be screened from adjacent residential uses, as set forth below:
 - (a) A buffer strip, fence, or screen wall that is required shall be constructed and maintained on the zoning lot containing or proposed to contain such use, in accordance with provisions of this chapter.
 - (b) *Buffer Strip.* The purpose of the buffer strip is to provide separation and enclosure of uses. The landscaped buffer strip shall consist of a strip of land at least 8 feet wide adequately landscaped with approval of the Urban Forester, entirely on the zoning lot which is required to provide the buffer strip, and so located as to serve as an effective buffer between the use required to provide the buffer strip and other property for whose protection the buffer strip is required. The buffer strip should extend along the full length of the boundary separating the zoning lot from such other property, or from the street, as the case may be.
 - (c) *Fence Required.* The purpose of the fence is to enclose uses. Required fences shall not be less than 6 feet high, constructed of good, substantial material, of first-class workmanship, and so erected as to resist wind pressure, ensure public safety, and present a neat, attractive uniform appearance.

- (d) *Screen Required.* The purpose of the screen is to conceal uses. Screening shall mean a view obscuring fence, view obscuring berm, view obscuring architectural treatment, or view obscuring vegetation, or combination thereof, of sufficient height to prevent the view of the screened items from vehicular and pedestrian traffic on adjacent streets, and from residential property. Vegetation shall be planted at a density sufficient to become view obscuring within two (2) years from the date of planting.
 - (6) *Mini-Storage.* At the expense of the owner of the property, all storage units and storage yards for mini-storage created under Use Unit 38 shall be required to be screened by view obscuring vegetation when the storage yards or the storage units have common property lines with any residential use or zone and when they have frontage on any public street. Vegetation used for screening purposes shall be planted at a density sufficient to become view obscuring within two (2) years from the date of planting and it shall be the responsibility of the property owner to maintain the screening throughout the life of the use of the property as mini-storage.
- (E) *Design Review.*
- (1) *Submittals.* The following drawings, information, and plans shall be submitted to the Planning Commission or Planning Division for design review and approval with the associated development application, when applicable;
 - (a) *Elevations.* Color rendered elevation drawings of all building facades and a description of external building materials. Labels and dimensions, where applicable, shall accompany changes in texture, plane, material or color.
 - (b) *Materials Sample.* A sample of exterior materials to be used for the proposed structure that indicates texture, color and type of materials.
 - (c) *Landscaping.* Proposed landscaping to be used as screening shall be shown on the tree preservation plan and landscape plan.
 - (2) *Build Out.* Upon approval of a development, or issuance of a building permit, build-out of the project shall conform to the drawings, information, and plans approved.
 - (a) *Amendments.* Amendments to the drawings, information, and plans shall be submitted to the Planning Division. Amendments which are determined to be insignificant or minor may be approved by the Planning Division. Significant amendment shall be approved by the Planning Commission when approval was given through the large scale development process, or by the Planning Division when approval was given through the building permit process.
 - (b) *Review.* Amendments shall be considered using the same standards as the initial design approval.
 - (c) *Noncompliance.* Failure to build-out the project according to the approved drawings, information, and plans, or approved amendments thereto, shall render the large scale development approval, or the building permit approval void.
- (F) *Variances.* (See Chapter 156.)
- (Ord. No. 5526, 9-18-12; Ord. No. 5735, 1-20-15; Ord. No. 6091 , §1, 9-18-18; Ord. No. 6667 , §1, 6-6-23)

April 15, 2024

City of Fayetteville
Planning Commission
113 W. Mountain Street
Fayetteville, AR 72701



B L A C K
C O R L E Y
O W E N S +
H U G H E S

RE: **The Lewis Display Tower**
Request for Variance

Dear Planning Commission,

I am the project architect for the Lewis Auto Group project, currently being built on Shiloh Drive in Fayetteville. We have designed a new glass tower, which will display four vehicles vertically near the road. I've attached the proposed Site Plan, Floor Plan, and Elevations for your reference, along with a sample photo of a similar tower. We submitted our construction documents to the City of Fayetteville for review in November 2023, and have been working with staff to achieve a building permit. Unfortunately, there is one comment that we are having difficulty complying with:

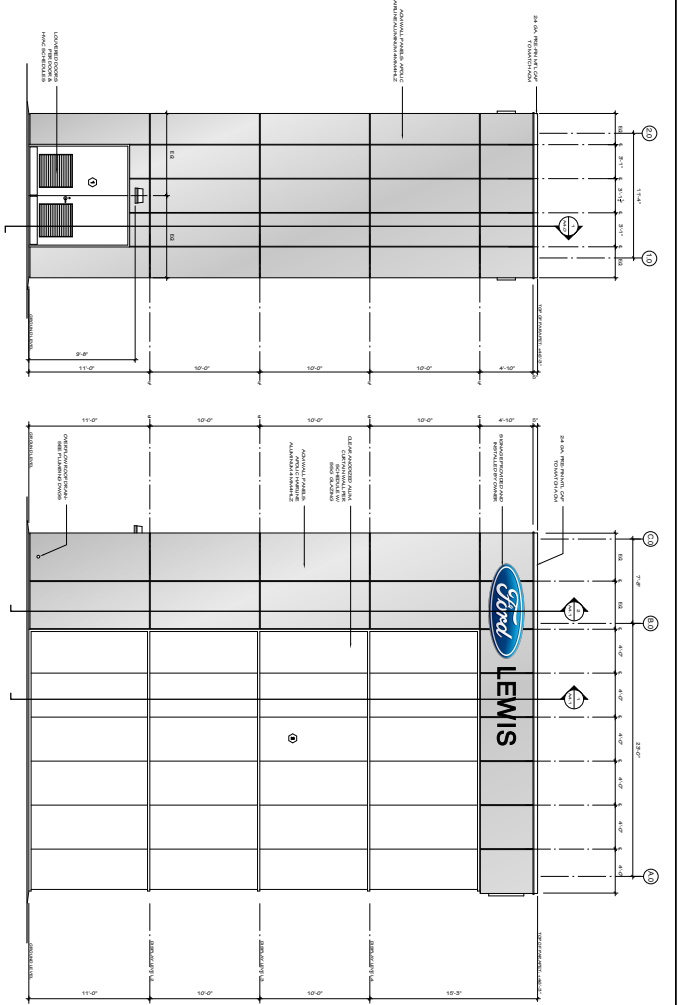
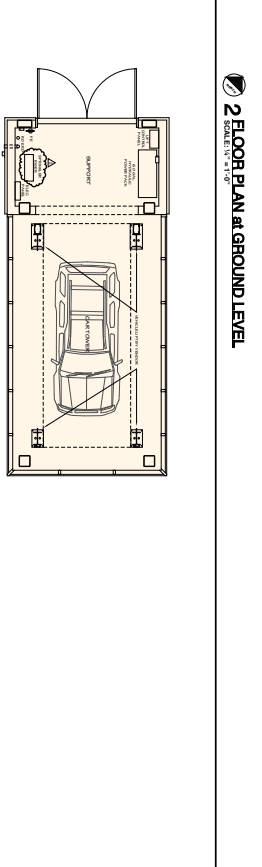
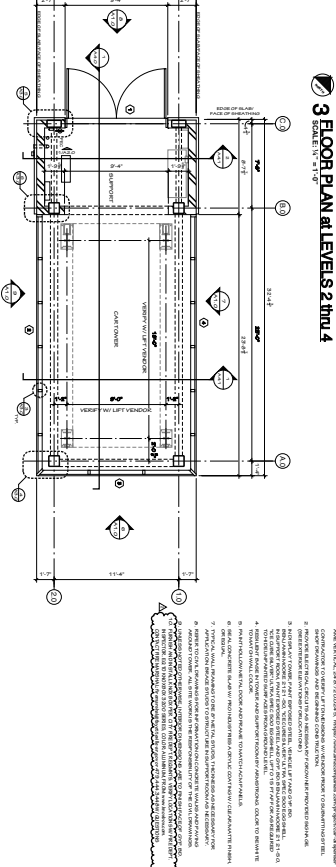
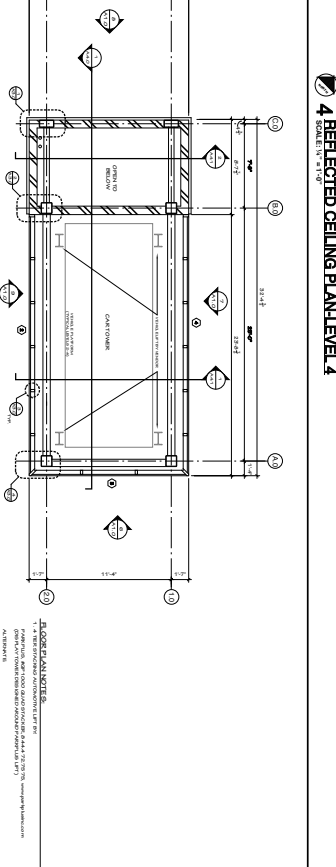
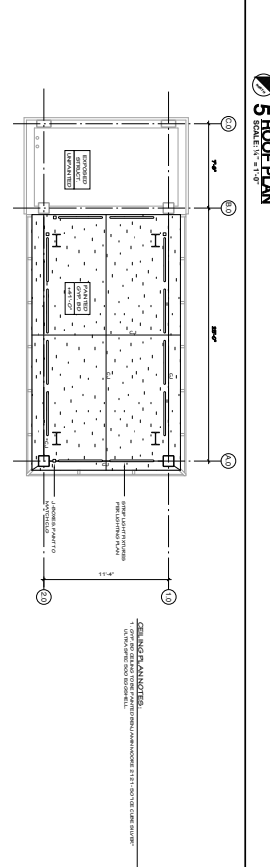
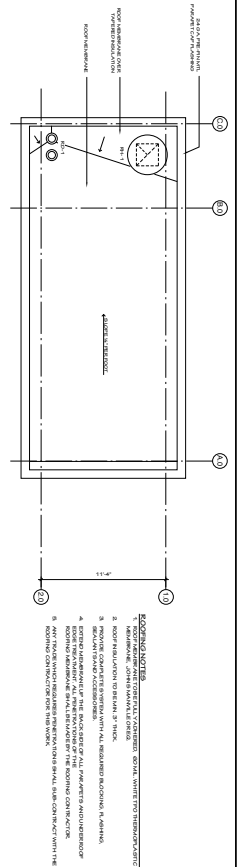
ALL STRUCTURES ARE REQUIRED TO BE ARCHITECTURALLY DESIGNED TO HAVE FRONT FACADES FACING ADJACENT STREET AND HIGHWAY RIGHTS-OF-WAY AND SHALL INCLUDE AT LEAST ONE PROMINENT ENTRY-WAY ON THE PRINCIPAL FACADE(S) (UDC §166.25(C)(4)). IF A PROMINENT ENTRY-WAY CANNOT BE PROVIDED ON THIS STRUCTURE SINCE IT WILL FUNCTION AS A DISPLAY TOWER FOR VEHICLES, THEN YOU WILL NEED TO REQUEST A VARIANCE FROM THAT SECTION OF CODE.

Our building is intended for storage and display. It is not intended for customers to enter. We respectfully request a variance from this requirement, and sincerely appreciate your consideration.

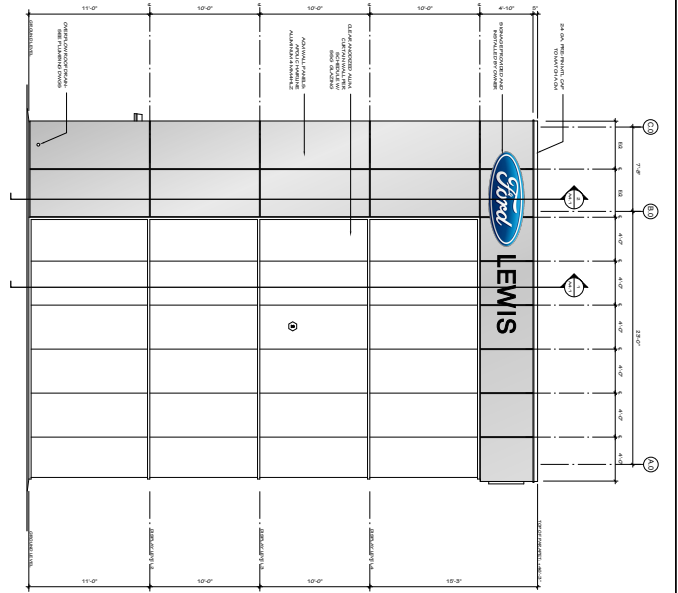
Best Regards,

Brian Black, AIA, LEED AP

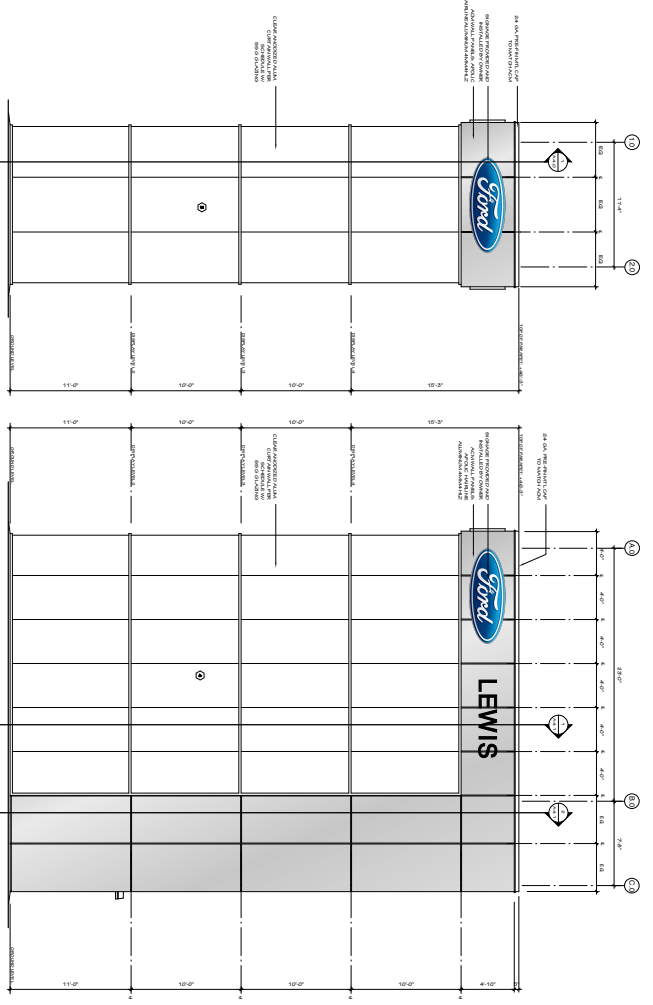




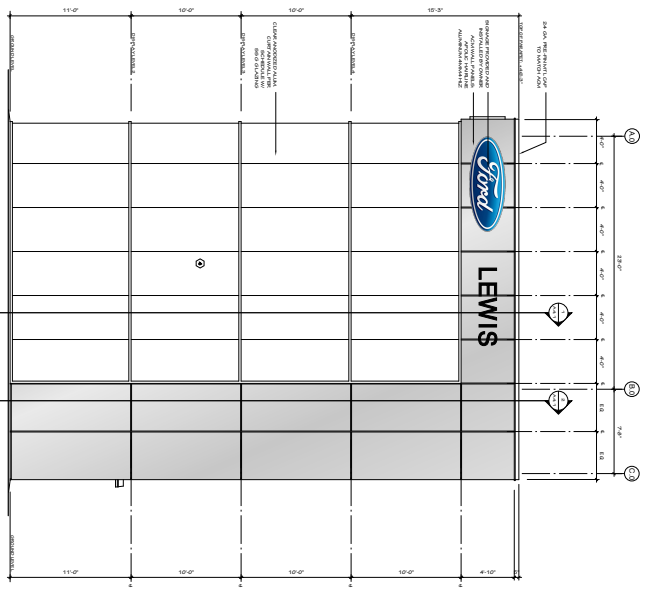
8 REAR ELEVATION
SCALE: 1/4" = 1'-0"



9 SIDE ELEVATION
SCALE: 1/4" = 1'-0"



6 FRONT ELEVATION
SCALE: 1/4" = 1'-0"



7 SIDE ELEVATION
SCALE: 1/4" = 1'-0"

[illegible][illegible]

GENERAL SITE NOTES

- [illegible]

- [illegible]

EXISTING LEGEND

- [illegible]

PIANO SCALE

(IN FEET)
1 inch = 66ft.

Planning Commission

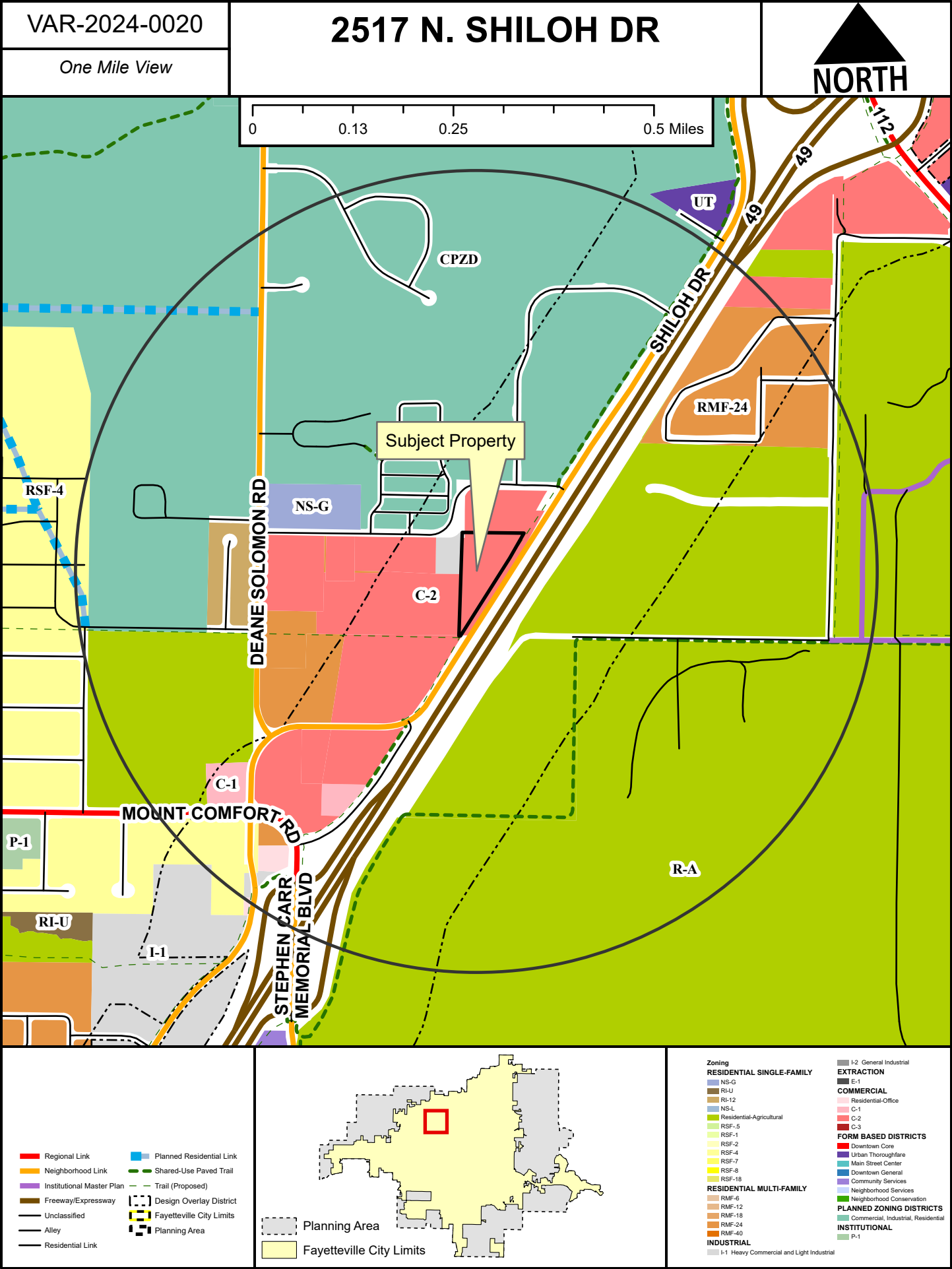
VAR-2024-0020 (LEWIS BROTHERS TRADING CO) Page 126 of 276

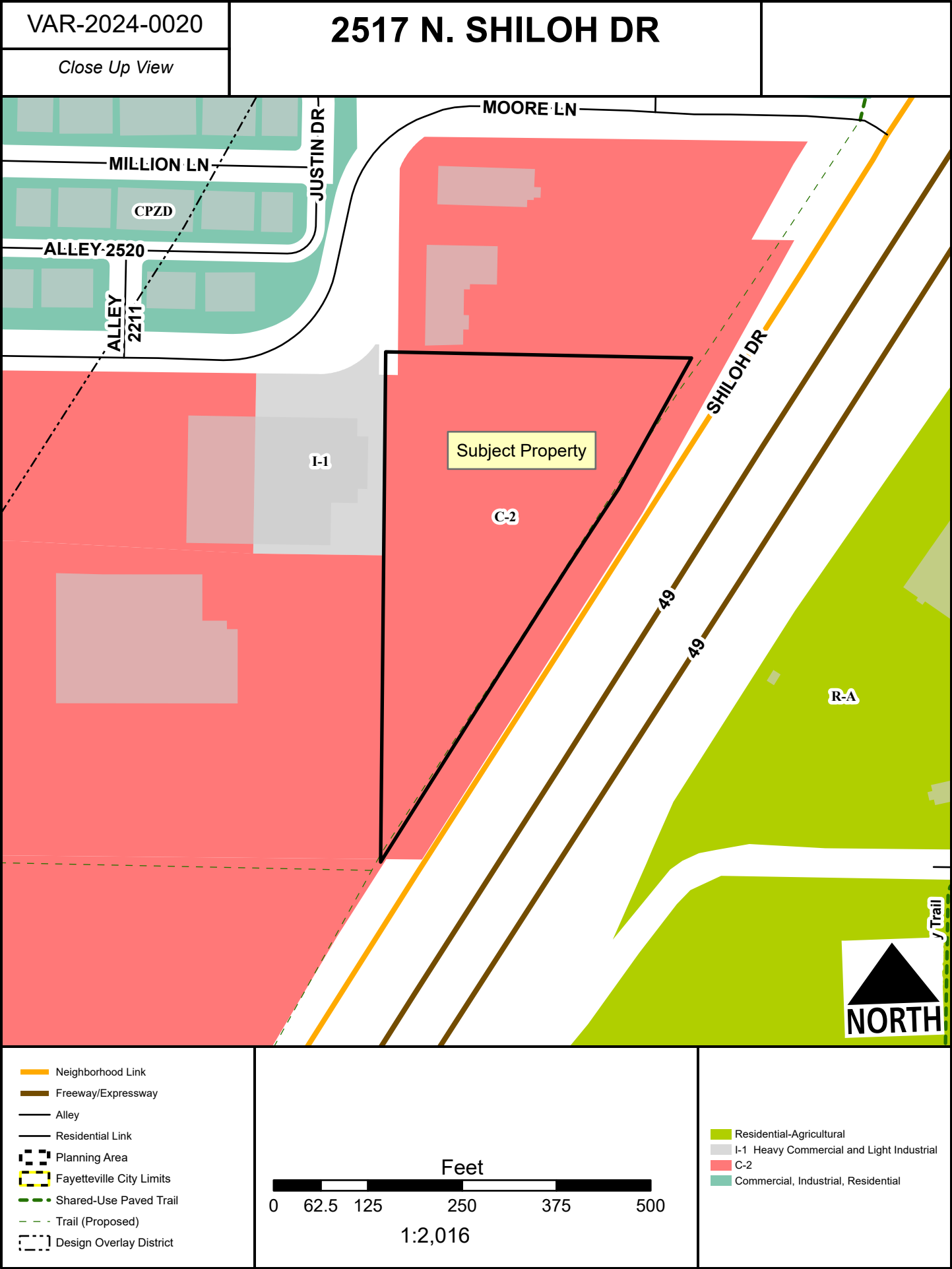
Page 10 of 13

A New Development for:
LEWIS AUTOMOTIVE GROUP
Fayetteville, Arkansas

OVERALL SITE
PLAN

OVERALL SITE
PLAN





VAR-2024-0020

2517 N. SHILOH DR

Current Land Use



- Neighborhood Link
- Freeway/Expressway
- Unclassified
- Alley
- Residential Link
- Trail (Proposed)
- Planning Area
- Fayetteville City Limits
- Design Overlay District



FEMA Flood Hazard Data

- 100-Year Floodplain
- Floodway



TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Kylee Cole, Planner

MEETING DATE: May 13, 2024

SUBJECT: **CUP-2024-0013: Conditional Use Permit (2630 E. BAYSIDE XING./SRBINOVSKI, 137):** Submitted by ALEK SRBINOVSKI for property located at 2630 E. BAYSIDE CROSSING. The property is zoned NC, NEIGHBORHOOD CONSERVATION and contains approximately 0.20 acres. The request is to use the property as a short-term rental.

RECOMMENDATION:

Staff recommends approval of **CUP-2024-0013** with conditions.

RECOMMENDED MOTION:

*"I move to approve **CUP-2024-0013**, determining:*

- In favor of compatibility with adjacent properties, and*
- In favor of all other conditions as recommended by staff."*

BACKGROUND:

The subject property is in north Fayetteville, approximately 0.28 miles west of the intersection of E. Zion Rd. and N. Crossover Rd. The property contains approximately 0.20 acres and is developed with a 2,350 square-foot single-family dwelling constructed in 2018. On April 20, 2021, City Council adopted an ordinance to regulate short-term rentals operating within its limits. On December 20, 2022, City Council amended the ordinance to enact new requirements for short-term rentals, and on July 6, 2023, City Council amended the Type 2 short-term rental density cap from two percent of all dwelling units to 475 units city wide. This report reflects those new changes for consideration. Surrounding land uses and zoning are depicted in *Table 1*.

Table 1:
Surrounding Land Uses and Zoning

Direction	Land Use	Zoning
North	Single-Family Residential	RPZD (Zion Gardens)
South	Single-Family Residential	NC, Neighborhood Conservation
East	Single-Family Residential	NC, Neighborhood Conservation
West	Single-Family Residential	NC, Neighborhood Conservation

City Plan 2040 Future Land Use Designation: **City Neighborhood**

Proposal: The applicant requests conditional use permit approval to use the property as a Type 2 short-term rental, which are those not occupied by a permanent resident. Type 2 short-term rentals are subject to density limitations, including a city-wide cap of 475 units, and restrictions on the number of units that may be used as a short-term rental in multi-family dwelling complexes.

Public Comment: To date, staff has received no public comment.

RECOMMENDATION: Staff recommends approval of **CUP-2024-0013** with the following conditions:

Conditions of Approval:

1. **Planning Commission determination of compatibility.** *Staff finds the proposed short-term rental to be compatible based on the findings contained herein;*
2. Approval of the conditional use permit does not ensure approval of a business license application. The applicant must still be able to comply with all other applicable requirements in city code;
3. Per UDC §166.20, Expiration of Approved Plans and Permits, a business license must be obtained within one year of conditional use permit approval;
4. The applicant has limited occupancy to eight guests;
5. Special events including, but not limited to, weddings, receptions, anniversaries, private parties, fundraisers, and business seminars are prohibited from occurring in the short-term rental;
6. No recreational vehicle, trailer, other vehicle, or structure not classified as a permanent residential dwelling may be used as a short-term rental;
7. All trash receptacles shall be screened from view of the right-of-way;
8. All outdoor lighting shall meet requirements as outlined in UDC Chapter 176, Outdoor Lighting;
9. Any signage shall meet the requirements as outlined in UDC Chapter 174, Signs; and
10. Per Business Regulations §120.02(A), the owners of only short-term rentals shall be required to designate and register their landlord's representative into the Landlord's Representative Registry.

PLANNING COMMISSION ACTION:			
Required	<u>YES</u>		
Date: <u>May 13, 2024</u>	☐ Tabled	☐ Approved	☐ Denied
Motion:			
Second:			
Vote:			

FINDINGS OF THE STAFF

§163.02. AUTHORITY; CONDITIONS; PROCEDURES.

B. Authority; Conditions. The Planning Commission shall:

1. Hear and decide only such special exemptions as it is specifically authorized to pass on by the terms of this chapter;
2. Decide such questions as are involved in determining whether a conditional use should be granted; and,
3. Grant a conditional use with such conditions and safeguards as are appropriate under this chapter; or
4. Deny a conditional use when not in harmony with the purpose and intent of this chapter.

C. Procedures. A conditional use shall not be granted by the Planning Commission unless and until:

1. A written application for a conditional use is submitted indicating the section of this chapter under which the conditional use is sought and stating the grounds on which it is requested.

Finding: The applicant has submitted a written application requesting a conditional use permit for a Type 2 short-term rental in NC zoning.

2. The applicant shall pay a filing fee as required under Chapter 159 to cover the cost of expenses incurred in connection with processing such application.

Finding: The applicant has paid the required filing fee.

3. The Planning Commission shall make the following written findings before a conditional use shall be issued:
 - (a.) That it is empowered under the section of this chapter described in the application to grant the conditional use; and

Finding: The Planning Commission is empowered under Business Regulations §118.01(E)(2) to grant the requested conditional use permit.

- (b.) That the granting of the conditional use will not adversely affect the public interest.

Finding: Staff finds that granting the requested conditional use is unlikely to adversely affect the public interest given the applicable business license requirements, including a required building safety inspection, and applicable density caps on Type 2 short-term rentals.

- (c.) The Planning Commission shall certify:
 - (1.) Compliance with the specific rules governing individual conditional uses; and

Finding: There are specific rules governing short-term rentals, as follows:

§163.18. SHORT-TERM RENTALS.

- A. Residential Zoning Districts.** Type 2 short-term rentals may be permitted as a conditional use in the following residential zoning districts: R-A, RSF-.5, RSF-1, RSF-2, RSF-4, RSF-7, RSF-8, RSF-18, RI-12, RI-U, RMF-6, RMF-12, RMF-18, RMF-24, RMF-40, and NC. Short-term rentals may be permitted by right or by conditional use in planned zoning districts subject to the zoning regulations enacted by the City Council for each district. Short-term rentals in non-residential zoning districts, mixed use zoning districts, or other zoning districts not listed above are not required to apply for a conditional use permit.

Finding: The request is to operate a Type 2 short-term rental in NC zoning, which requires a conditional use permit.

- B. Occupancy.** Maximum of two (2) people per bedroom, plus two (2), for the entire unit when operated as a short-term rental.

Finding: The property contains a total of four bedrooms which would limit occupancy to a maximum of ten guests per ordinance. However, the applicant has chosen to self-limit to a maximum of eight guests.

- C. Parking.** Parking is limited to the maximum number of vehicles as allowed by the underlying zoning district for the residential building on the property.

Finding: Parking for single-family homes is required to be provided at a rate of two spaces per unit. The applicant indicated in their submittal that there is space to park up to four vehicles on the property, two in an attached garage and two in the driveway.

- D.** Special events are not permitted in a short-term rental. Example of special events include, but are not limited to, weddings, receptions, anniversaries, private parties, fundraisers and business seminars.

Finding: The applicant's request letter suggests that the property will comply with the City's regulations for a short-term rental. As a condition of approval, staff recommends a prohibition on special events.

- E.** Short-term rental units are allowed in any structure established as a permanent residential dwelling including an accessory dwelling unit. No recreational vehicle, trailer, other vehicle or structure not classified as a permanent residential dwelling may be used as a short-term rental.

Finding: The application is for use of the property at 2630 E. Bayside Crossing. Staff recommends a condition confirming that no recreational vehicle, trailer, other vehicle or structure not classified as a permanent residential dwelling may be used as a short-term rental.

- F. Exceptions.** Exceptions to the short-term rental standards, except proposals that would exceed the city-wide density maximum, may be granted by the Planning Commission as a conditional use permit.

Finding: Type 2 short-term rentals are subject to a city-wide density cap at 475 units. As of May 7, 2024, the City had issued 469 Type 2 short-term rental licenses, and 6 remain in the queue for processing. An additional 24 are on the waitlist. Granting a conditional use permit for this location would give the applicant the zoning entitlement necessary to apply for a business license, but it would not guarantee approval of a business license.

G. Short-term rentals must comply with all applicable codes under City Code §118.01 and successfully obtain a business license prior to operation.

Finding: This short-term rental would be subject to all codes in Business Regulations §118.01 that apply to Type 2 short-term rentals in residential zoning districts. Applicable business licensing requirements will be reviewed by staff and confirmed by the applicant at the time of licensing.

H. Short-term rentals in residential zoning districts may be subject to denial or additional conditions based upon the Planning Commission's findings on the following factors:

1. Adequate parking infrastructure;
2. Adequate adjoining or nearby streets for on-street parking;
3. Frequency or concentration of nearby licensed Type 2 short-term rentals;
4. Prior zoning or code violations; and
5. Proximity to public or private K-12 schools when the proposed property is within 1,000 feet of the school boundary line.

Finding: There appears to be adequate parking available to support the use of the property as a short-term rental based on the applicant's submittal. Four off-street parking spaces will be available for guests on site. City records indicate that one other unit within a quarter-mile radius of the property has an active Type 2 short-term rental business license. There are no zoning or code violations for this property. The property is not within 1000 feet of a public or private K-12 school.

§163.02. AUTHORITY; CONDITIONS; PROCEDURES. (continued)

(2.) That satisfactory provisions and arrangements have been made concerning the following, where applicable:

(a.) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;

Finding: A driveway with access onto E. Bayside Crossing is available to accommodate vehicular ingress and egress to the subject property. E. Bayside Crossing is a private alley that does not have sidewalks. However, N. Harbor Isle and E. Zion Rd. are both immediately adjacent to the property

and are fully improved with sidewalks to facilitate pedestrian access. Staff finds that the proposal to use the property as a short-term rental will not adversely affect vehicular traffic flows considering the use of the property would be limited to a maximum of eight guests which would not be out of character with the use of the property for residential purposes.

- (b.) Off-street parking and loading areas where required, with particular attention to ingress and egress, economic, noise, glare, or odor effects of the special exception on adjoining properties and properties generally in the district;

Finding: Four off-street parking spaces are available in a driveway and garage. The short-term rental ordinance limits the number of guest vehicles to the maximum number of vehicles as allowed by the underlying zoning district.

- (c.) Refuse and service areas, with particular reference to ingress and egress, and off-street parking and loading;

Finding: The applicant proposes to utilize residential trash service.

- (d.) Utilities, with reference to locations, availability, and compatibility;

Finding: Utilities are currently available to the property and its use as a short-term rental is not expected to impact the provision of utilities.

- (e.) Screening and buffering with reference to type, dimensions, and character;

Finding: No recommendation.

- (f.) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;

Finding: Any proposed signage will be subject to Unified Development Code Chapter 174, Signs, and all regulations therein.

- (g.) Required yards and other open space; and

Finding: Based on the applicant’s submittal, the house appears to be meeting relevant setbacks.

- (h.) General compatibility with adjacent properties and other property in the district.

Finding: Staff finds the proposed use to be compatible with surrounding properties. The property is primarily surrounded by residential uses and there is one other licensed Type 2 short-term rental is within a quarter-mile radius. There

appears to be adequate parking to accommodate the number of permitted guests and staff does not anticipate any adverse traffic impacts with this request.

- (i.) General compatibility with the goals and intent of the city's adopted land-use, transportation, and other strategic plans.

Finding: Staff finds the proposed use to be somewhat incompatible with the goals and intent of the City's adopted land use, transportation, and other strategic plans since it does not clearly support any of the stated goals in those plans. However, there are safeguards in place that limit how short-term rentals operate to ensure that the City can still meet those goals, including a city-wide density cap and restrictions on the number of units that may be used as a short-term rental in multi-family dwelling complexes.

BUDGET/STAFF IMPACT:

None

ATTACHMENTS:

- Business Regulations
 - §118.01 Applicability
- Unified Development Code
 - §163.18 Type 2 Short-Term Rentals in Residential Zoning Districts
 - §161.29 Neighborhood Conservation
- Applicant Request Letter
 - Building Elevations
 - Site Plan
 - Building Floor Plans
- Exhibit: School Proximity
- One Mile Map
- Close-Up Map
- Current Land Use Map
- STRs within ¼ Mile Map

118.01 Applicability

- (E) *Short-Term Rentals.* A residential dwelling unit, portion of a dwelling unit, or bedroom within a residential dwelling unit, leased and/or rented to a guest(s), for a period of less than thirty consecutive (30) days.
- (1) *Short-Term Rental, Type 1.* A short-term rental where the principal use of the property remains as a full-time residence. The occupants or owner rent their primary residence as a short-term rental. A copy of the Homestead Tax Credit or long-term lease agreement for the subject property is required to be classified as a Type 1 rental. The occupant or owner must occupy the residence for nine (9) months of the year. Accessory dwelling units (ADUs) as defined in Unified Development Code Chapter 151 shall be considered a Type 1 short-term rental.
- (2) *Short-Term Rental, Type 2.* A short-term rental that is not occupied by a permanent resident. The owner lists this property full-time as a short-term rental and has no intention of having permanent residents living in the property. A conditional use permit is required for a Type 2 short-term rental in a residential zoning district prior to the city issuing a business license.
- (3) *License Required.* No dwelling unit in the city shall be used as a short-term rental unless:
- (a) The owner of the dwelling unit or operator of the short-term rental possess a valid and current business license for the dwelling unit, and fully complies with all legal requirements and duties imposed herein with respect to each and every short-term rental; and

- (b) The owner has designated an agent, where said agent fully complies with all legal requirements and duties imposed herein with respect to every short-term rental. The owner may serve as their own agent.
- (c) The owner of the dwelling unit or operator of the short-term rental provides proof of a valid and current homeowners insurance rider policy which fully covers each unit when operated as short-term rental unit.
- (4) A separate business license shall be required for each dwelling unit used as a short-term rental.
- (5) Any change in ownership requires a new or amended business license.
- (6) If any required contact information changes for the associated business license, the person to whom the license was issued shall immediately notify the Development Services Department in writing.
- (7) *License Application.* The application for a business license shall include at minimum, the following information from applicants:
 - (a) The property owner's information including legal name, mailing address, immediate contact phone number, and immediate contact E-mail address.
 - (b) Information for the dwelling unit subject to the application, inclusive of the physical street address assigned by the city.
 - (c) The type and total number of dwelling units located on the lot of record containing the dwelling unit subject to the application.
 - (d) If the owner is not their own agent, the owner designated agent's information including legal name, mailing address, immediate contact phone number and immediate contact E-mail address.
 - (e) Documentation of approval of a life safety and egress inspection by the City Building Safety Division for the dwelling unit subject to the application.
 - (f) Proof of application for remittance of hotel, motel and restaurant tax to the City of Fayetteville, and verification that all sales, use, and hotel, motel and restaurant taxes are current.
 - (g) Any additional data as deemed necessary or desirable for permit approval by the Development Services Director.
- (8) *License Renewals.* Business licenses for short-term rentals shall be renewed in accordance with Chapter 118 of the Business Regulations (Business Registry and Licenses).
- (9) *Legal Duties of License Holders.* An owner possessing a short-term rental license shall comply at all times with the following requirements:
 - (a) *Occupancy.* Short-term rentals shall be subject to, and may not exceed, the occupancy limits approved with the business license.
 - (b) *Advertisements.* A short-term rental shall not be advertised if it violates occupancy, density, safety, and any of the other provisions of the Fayetteville Code. No short-term rental unit shall be advertised prior to having obtained a business license and the business license number shall be included in the advertisement listing.
 - (c) *Information and Posting.* Business licensees shall provide to guests and post conspicuously in the common area of the short-term rental unit the city phone number to report a safety complaint.
- (10) *Owner or Agent Accessibility.* The property owner shall ensure that they or a designated agent are available at all times during guest occupancy, including nights and weekends, in order to facilitate compliance with this section. For the purposes of these regulations, 'availability' means that the owner or agent is accessible by telephone, and, able to be physically present at the short-term rental within three (3) hours of being contacted.
- (11) *Guest Records.* The owner shall maintain summary guest registration records, which shall contain the actual dates of occupancy, total number of guests per party per stay, and the rate(s) charged, but shall not contain any personally identifiable information about guests. Such records shall be maintained for three (3) years and shall be provided to the City upon request.
- (12) *Health and Safety.* The owner shall ensure that each dwelling unit governed by this section complies with the applicable provisions of the Unified Development Code Chapter 173, Building Regulations.
- (13) *Criminal Activity.* The owner shall timely report any known or reasonably suspected criminal activity by a guest to the Fayetteville Police Department within twelve (12) hours maximum.
- (14) *Taxes and Fees.* Except for those instances in which a hosting platform bears the responsibility for collecting and remitting taxes and fees applicable to short-term rentals, the property owner shall timely remit in full Fayetteville Hotel, Motel and Restaurant tax and other applicable local, state, and federal taxes and city fees owed in connection with any short-term rental. The failure of a hosting platform to collect and remit taxes and fees shall not relieve an owner of the obligation to pay taxes and fees owed pursuant to this section.

- (15) *Authorization to Occupy, Use, and Operate.* Authorization to operate a short-term rental may be granted by the Development Services Director through the issuance of a City of Fayetteville Business Registry and License (Business License).
- (16) *Density For Type 2 Short-Term Rentals.* A city-wide density cap of 475 dwelling units may be Type 2 rentals. A conditional use permit may not permit:
- (a) More Type 2 short-term rentals than what is allowed by the city-wide density cap.
 - (b) More than 10% or a single unit whichever is greater; of total dwelling units as Type 2 rentals within a multi-family dwelling complex.
 - (c) Individual 2-, 3- and 4-family buildings that are owned by the same person or entity and are not a part of a multi-family complex shall have no more than one (1) Type 2 short-term rental unit per building complex.
 - (d) Where attached residential units are held separately through condominium association, horizontal property regime, fee simple, or similar ownership structure, no cap shall be applied to buildings with attached residential dwellings. Structures of attached residential dwellings where applicants seek more than 10% of total units for licensing as Type 2 rentals shall be evaluated by the Building Safety Director and/or Fire Marshal for adequate fire protection as defined by the adopted Arkansas Fire Prevention Code. Where inadequate fire protection is identified, improvements may be required prior to issuance of a business license.
- (17) *Suspension and Revocation.* If the Development Services Director has reason to believe that any of the grounds specified in §118.03(A) of the Fayetteville Code exist, or that any rental unit was rented for less than one (1) full night, or to more than one (1) part of guests for the same period of time, or otherwise failed to comply with all terms and conditions of this section, the Development Services Director may suspend or revoke the short-term rental's business license pursuant to the procedures detailed in §118.03 and in §118.04 of the Fayetteville Code.
- (18) Short-term rentals must comply with all applicable codes under Unified Development Code §163.18 and § 164.26 successfully obtain a business license prior to operation.

163.18 Type 2 Short-Term Rentals in Residential Zoning Districts

- (A) *Residential Zoning Districts.* Type 2 short-term rentals may be permitted as a conditional use in the following residential zoning districts:

- 1) R-A
- 2) RSF-.5
- 3) RSF-1
- 4) RSF-2
- 5) RSF-4
- 6) RSF-7
- 7) RSF-8
- 8) RSF-18
- 9) RI-12
- 10) RI-U
- 11) RMF-6
- 12) RMF-12
- 13) RMF-18
- 14) RMF-24
- 15) RMF-40
- 16) NC

Short-term rentals may be permitted by right or by conditional use in planned zoning districts subject to the zoning regulations enacted by the City Council for each district.

Short-term rentals in non-residential zoning districts, mixed use zoning districts, or other zoning districts not listed above are not required to apply for a conditional use permit.

- (B) *Occupancy.* Maximum of two (2) people per bedroom, plus two (2), for the entire unit when operated as a short-term rental.
- (C) *Parking.* Parking is limited to the maximum number of vehicles as allowed by the underlying zoning district for the residential building on the property.
- (D) Special events are not permitted in a short-term rental. Example of special events include, but are not limited to, weddings, receptions, anniversaries, private parties, fundraisers and business seminars.
- (E) Short-term rental units are allowed in any structure established as a permanent residential dwelling including an accessory dwelling unit. No recreational vehicle, trailer, other vehicle or structure not classified as a permanent residential dwelling may be used as a short-term rental.
- (F) *Exceptions.* Exceptions to the short-term rental standards, except proposals that would exceed the city-wide density maximum, may be granted by the Planning Commission as a conditional use permit.
- (G) Short-term rentals must comply with all applicable codes under City Code §118.01 and successfully obtain a business license prior to operation.
- (H) Short-term rentals in residential zoning districts may be subject to denial or additional conditions based upon the Planning Commission's findings on the following factors:
- 1) Adequate parking infrastructure;
 - 2) Adequate adjoining or nearby streets for on-street parking;
 - 3) Frequency or concentration of nearby licensed Type 2 short-term rentals;
 - 4) Prior zoning or code violations; and
 - 5) Proximity to public or private K-12 schools when the proposed property is within 1,000 feet of the school boundary line.

161.29 Neighborhood Conservation

(A) *Purpose.* The Neighborhood Conservation zone has the least activity and a lower density than the other zones. Although Neighborhood Conservation is the most purely residential zone, it can have some mix of uses, such as civic buildings. Neighborhood Conservation serves to promote and protect neighborhood character. For the purposes of Chapter 96: Noise Control, the Neighborhood Conservation district is a residential zone.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 41	Accessory dwellings
Unit 46	Short-term rentals

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 9	Two (2) family dwellings
Unit 10	Three (3) and four (4) family dwellings
Unit 12a	Limited business*
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 28	Center for collecting recyclable materials
Unit 36	Wireless communication facilities
Unit 44	Cluster Housing Development

(C) *Density.* Ten (10) Units Per Acre.

(D) *Bulk and Area Regulations.*

(1) *Lot Width Minimum.*

All dwelling types	40 feet
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(2) *Lot Area Minimum.* 4,000 square feet

(E) *Setback Regulations.*

Front	A build-to zone that is located between the front property line and a line 25 feet from the front property line.
Side	5 feet
Rear	5 feet
Rear, from center line of an alley	12 feet

(F) *Building Height Regulations.*

Building Height Maximum	3 stories
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Request Letter

Complete written description of this request (what is proposed by the applicant) to include:

We are applying for a conditional use permit (type 2 short-term rental) from the city of Fayetteville for a property we purchased and made our primary residence since September, 2018. We will be placing the property on AIRBNB and VRBO and will not be residing in the residence starting on July 1st, 2024.

(a) Building size in square feet; existing and proposed

2350 sqft

(b) Color elevations of all exterior sides of the structure

Gray Siding with Light Brown brick

(c) Number of off-street parking spaces to be provided / number required

4 - (2 car garage parking and 2 car parking in the driveway)

No on street parking will be allowed; there is guest parking provided in the neighborhood; however, guests will not be permitted to park there; in addition, they will not be allowed the use of the pool, unless they stay 30 days or more.

(d) Outdoor lighting

THREE (TWO FRONT PORCH AND ONE TO THE SIDE) LIGHTS

TWO OUTDOOR LIGHTS IN BACK DRIVEWAY

ONE LIGHT ON THE BALCONY

(e)noise

MINIMAL ON INSIDE OF PROPERTY

- Quiet hours on the property will be from 10:30pm - 8am**
- No parties or events**
- Guest must be considerate of neighbors**
- no unregistered guest**

(f) Screening or buffering from adjacent properties

Fenced in side yard on RIGHT side of home

(g) Trash and refuse service (with particular reference to visibility from the street and adjacent properties)

TRASH IS PLACED IN BACK DRIVEWAY IN FRONT GARAGE DOOR OFF TO THE SIDE

(h) Ingress and egress to the property; traffic impacts

PROPERTY HAS FRONT DOOR AS WELL AS AN ENTRANCE THROUGH THE GARAGE THAT IS EASILY ACCESSIBLE FROM THE BACK STREET

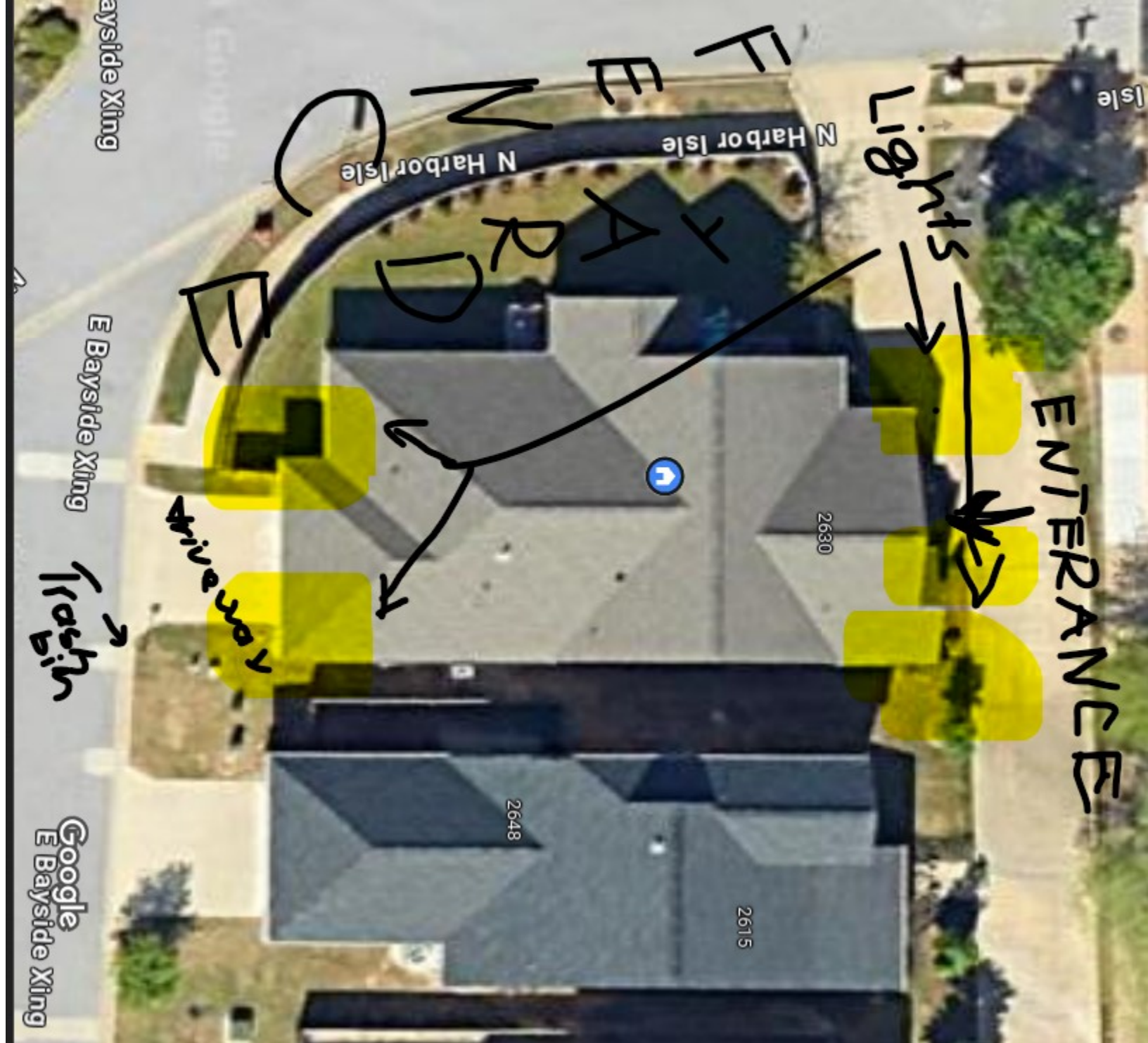
(i) A response discussing the general compatibility of the proposed use with adjacent properties and other property in the neighborhood

Accommodating more tourists from different areas brings more cultural diversity and drives new customers to businesses in local areas. We are experienced in the short-term rental business, as we already manage one of the highest ranked short-term rentals (The Kiss, 314 E. Granada St, Fayetteville, AR 72703) in the city with zero complaints from neighbors and a clean police record. Our goal is to continue the same trend, promote NWA and the city of Fayetteville with zero negative impact to our great neighbors. This is a very quiet neighborhood and we plan to keep it as such.

The property in the neighborhood is a mix of long term rentals and owner occupied homes with possibly one additional short-term rental. We are anticipating having 6 guests (no more than 8 guests) per stay on our property. The property is a 4 bedroom home, which would allow for 2 people per room.







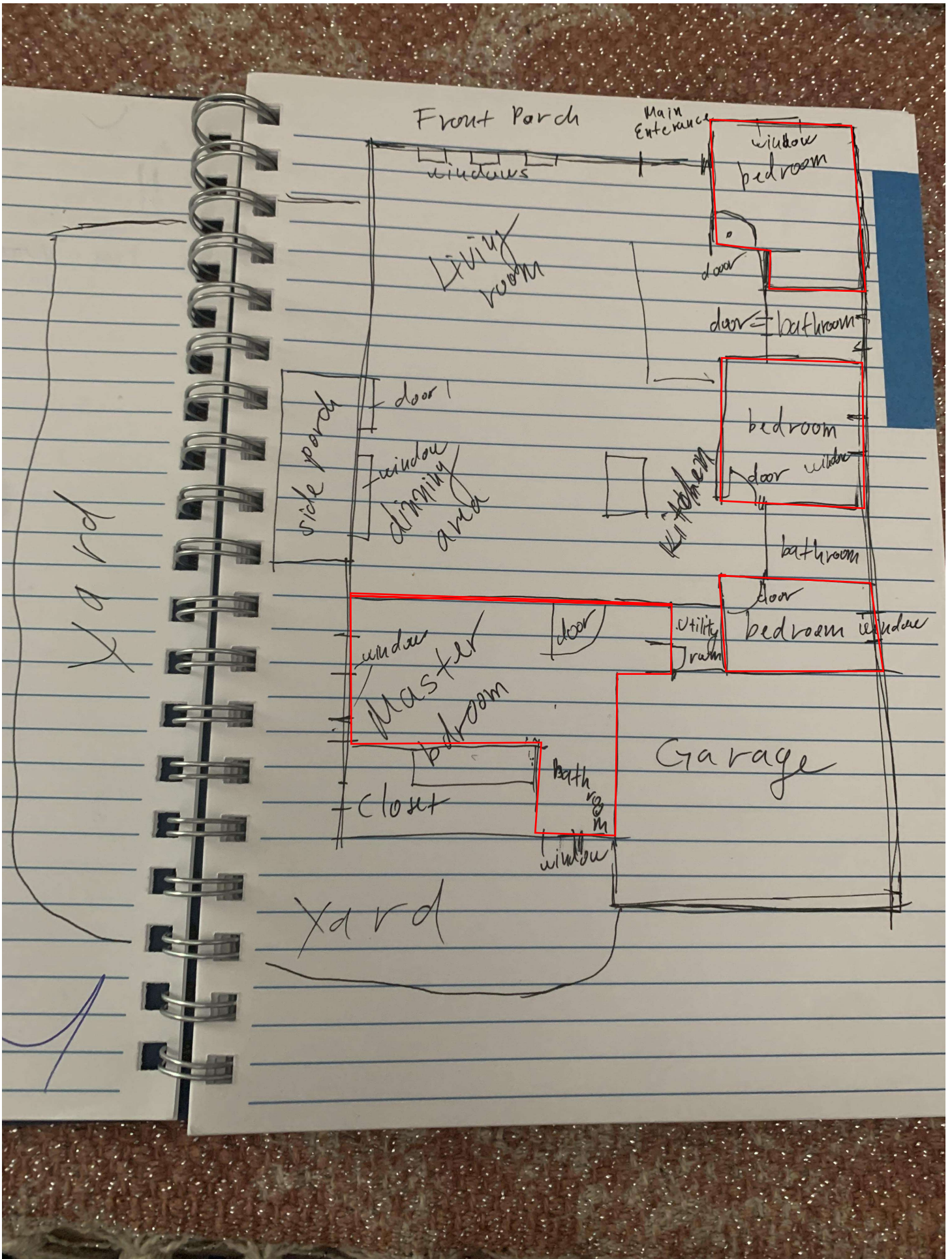
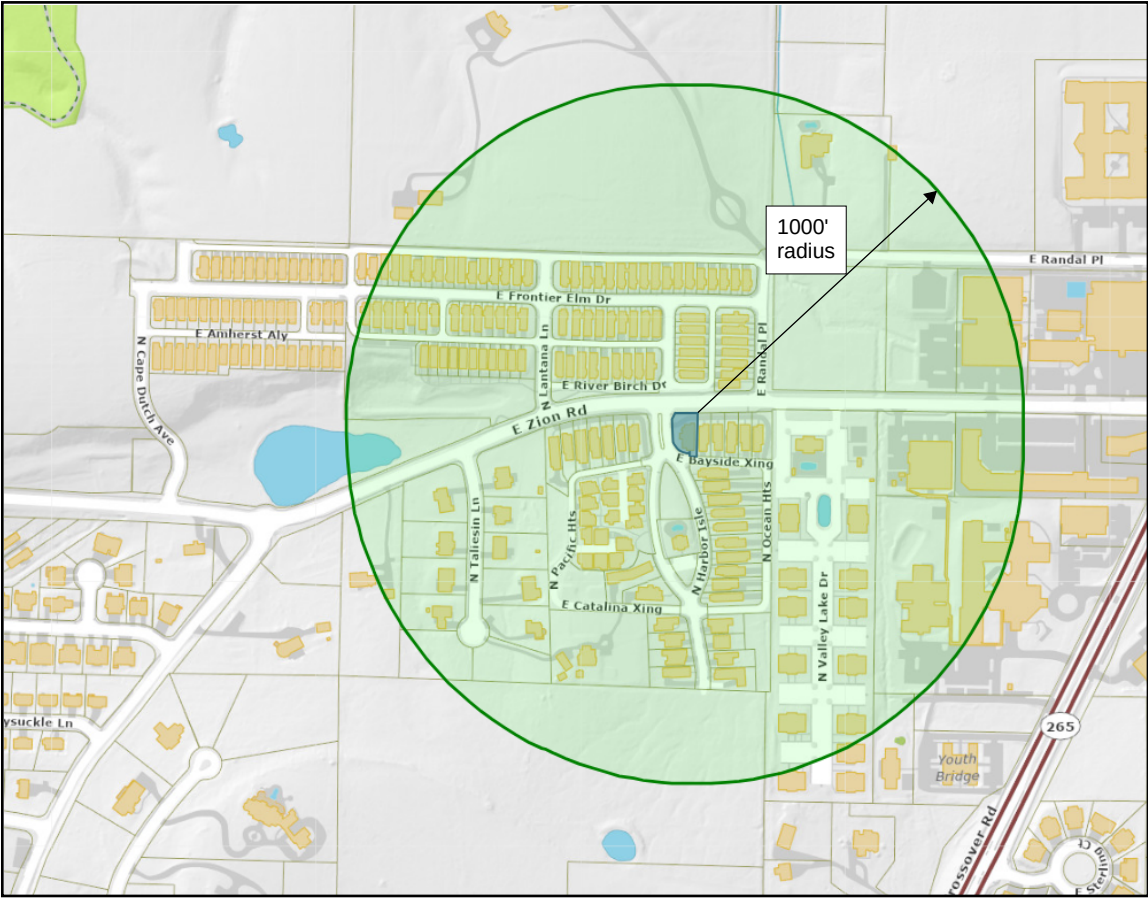
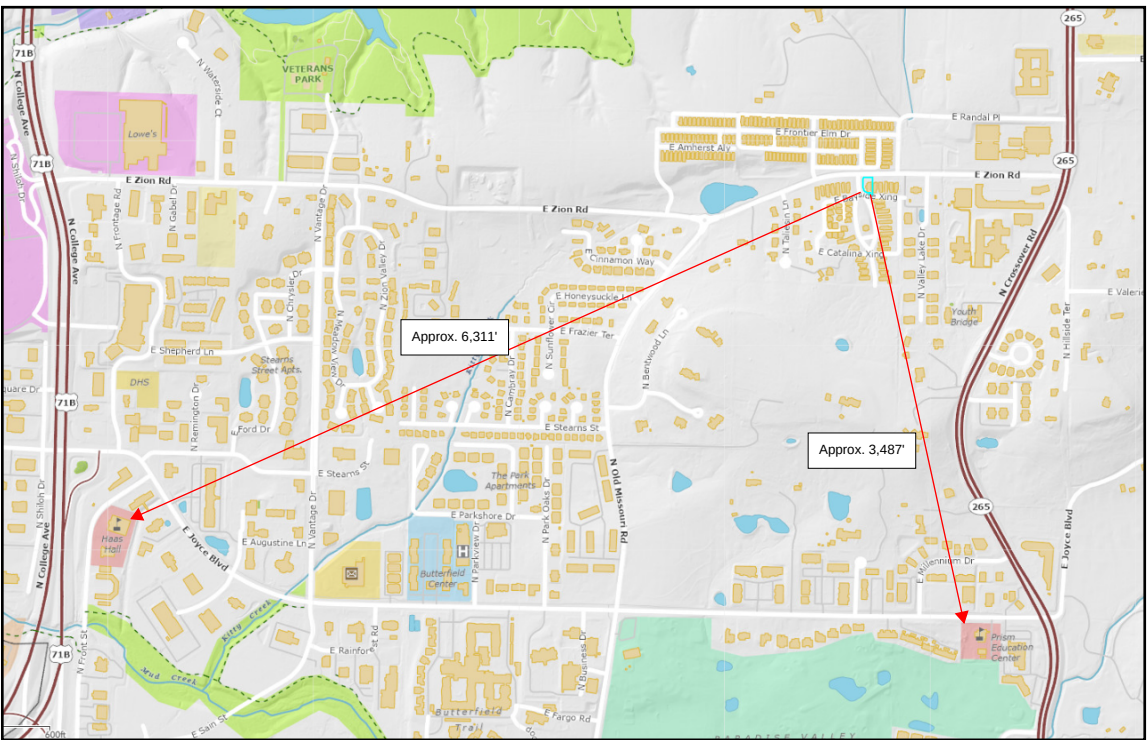
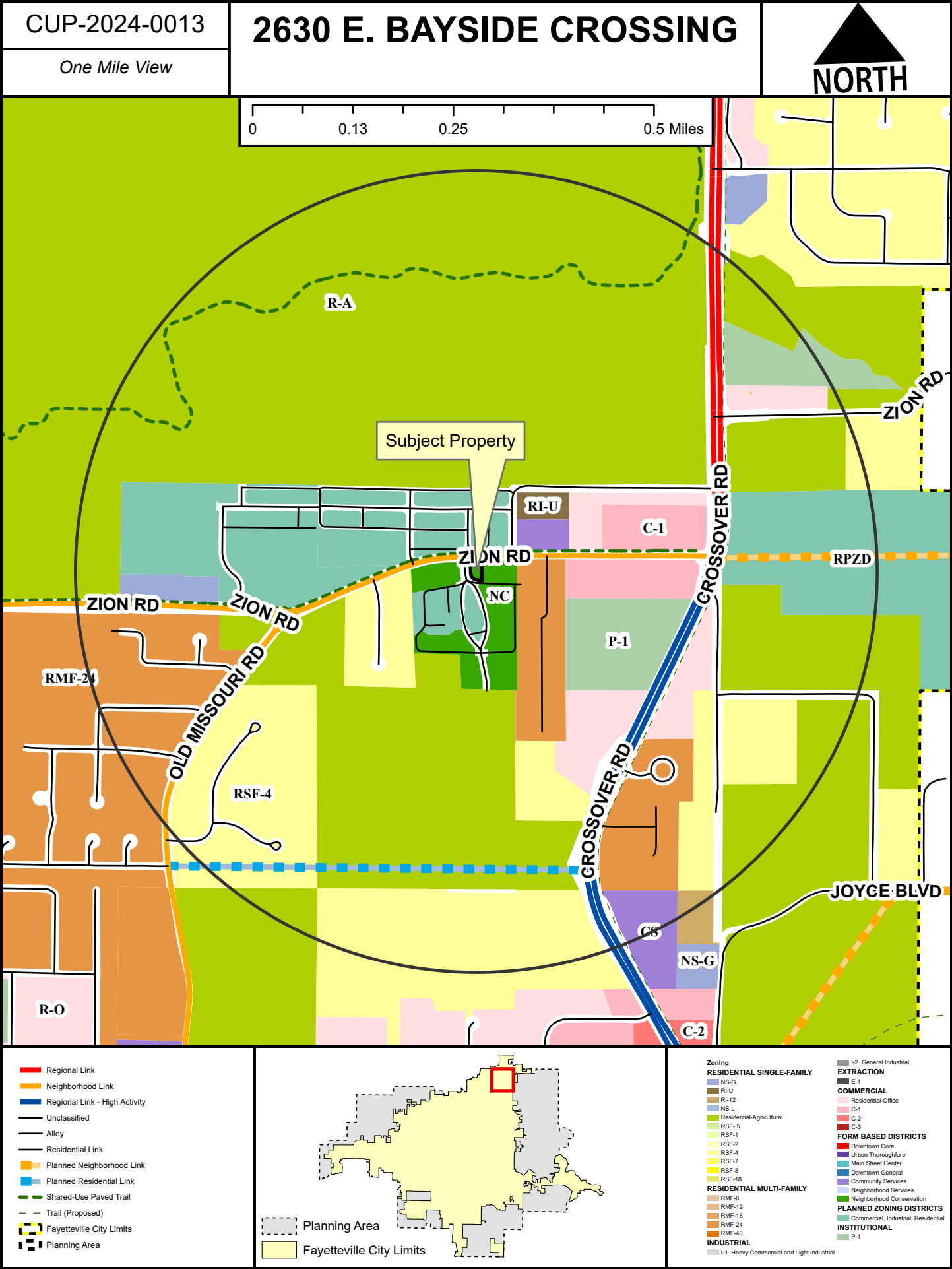


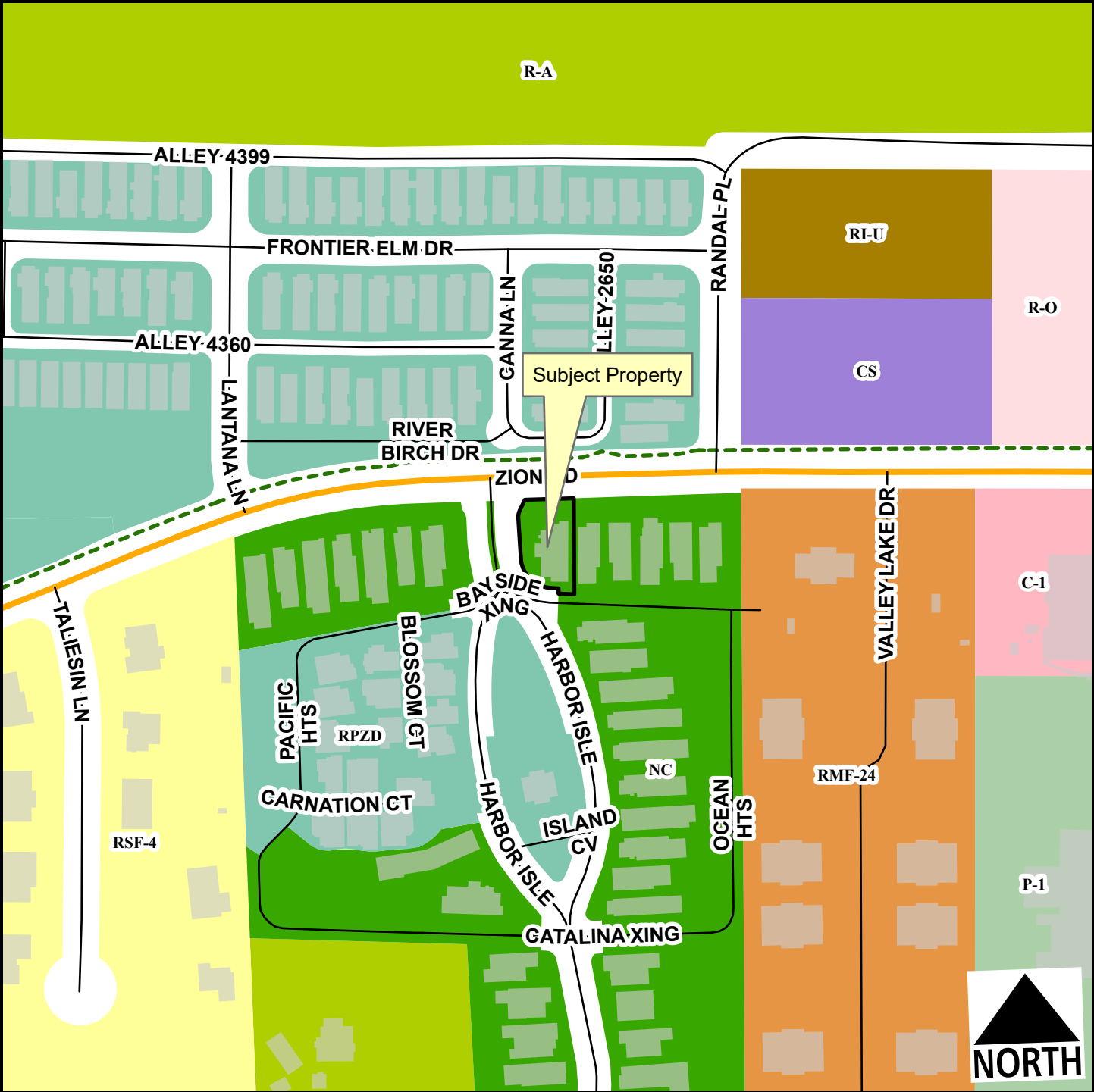
Exhibit: School Proximity



Above: No public or private schools within 1000' radius of the subject property.
Below: Approximate distances to nearest public or private schools.







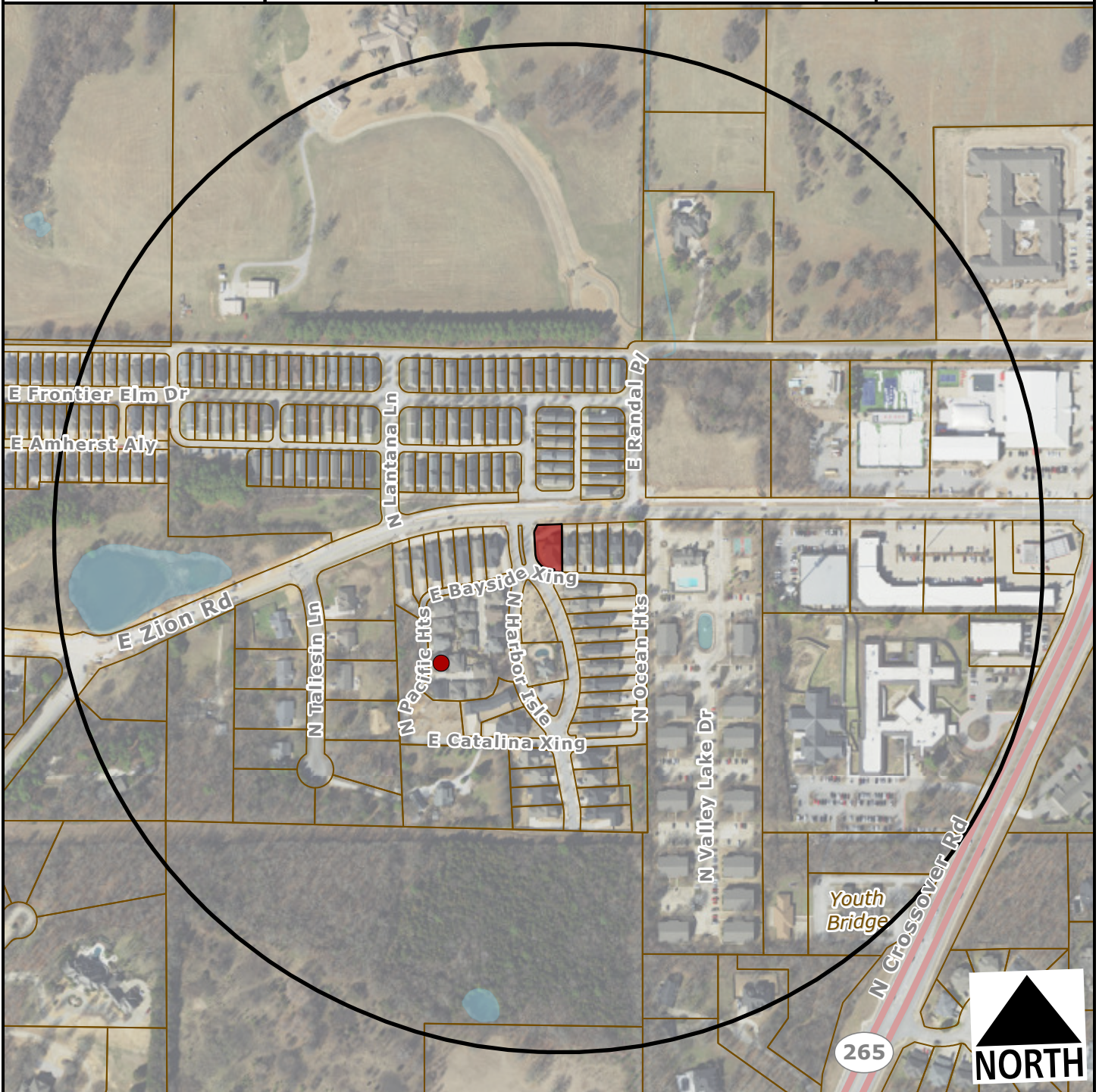
 Neighborhood Link Unclassified Alley Residential Link Planning Area Fayetteville City Limits Shared-Use Paved Trail	Feet 0 75 150 300 450 600 1:2,400	 Residential-Agricultural RSF-4 RI-U RMF-24 Residential-Office C-1 Community Services Neighborhood Conservation Commercial, Industrial, Residential P-1
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CUP-2024-0013

2630 E. BAYSIDE CROSSING

STRs Within 1/4 Mile



-  Subject Property
-  Short Term Rental, Type 2



Within 1/4 Mile

Type 2 STRs: 1

Occupiable
Residential
Addresses
(Estimated
Housing Units): 329

Planning Commission

May 13, 2024

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TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Gretchen Harrison, Senior Planner

MEETING DATE: May 13, 2024

SUBJECT: **CUP-2024-0014: Conditional Use Permit (4165 W. MARLOWE LN./HENDLEY, 439):** Submitted by BRIAN HENDLEY for property located at 4165 W. MARLOWE LN. The property is zoned RPZD, RESIDENTIAL PLANNED ZONING DISTRICT and contains approximately 0.10 acres. The request is to use the property as a short-term rental.

RECOMMENDATION:

Staff recommends approval of **CUP-2024-0014** with conditions.

RECOMMENDED MOTION:

*"I move to approve **CUP-2024-0014**, determining:*

- In favor of compatibility with adjacent properties and*
- In favor of all other conditions as recommended by staff."*

BACKGROUND:

The subject property is located one-tenth of a mile west of the intersection of Ruppel Road and Persimmon Street in the Ruppel Row Subdivision. It contains one parcel totaling 0.10 acres which is developed with a 2,033-square-foot single-family home that was built in 2017. On April 20, 2021, City Council adopted an ordinance to regulate short-term rentals operating within its limits. On December 20, 2022, City Council amended the ordinance to enact new requirements for short-term rentals, and on July 6, 2023, City Council amended the Type 2 short-term rental density cap from two percent of all dwelling units to 475 units city wide. This report reflects those new changes for consideration. Surrounding land uses and zoning are depicted in *Table 1*.

Table 1:
Surrounding Land Uses and Zoning

Direction	Land Use	Zoning
North	Single-Family Residential	RPZD, Residential Planned Zoning District
South	Preschool and Day Care Center	P-1, Institutional
East	Single-Family Residential	RPZD, Residential Planned Zoning District
West	Single-Family Residential	RPZD, Residential Planned Zoning District

City Plan 2040 Future Land Use Designation: **Residential Neighborhood**

Proposal: The applicant requests conditional use permit approval to use the property as a Type 2 short-term rental, which are those not occupied by a permanent resident. Type 2 short-term rentals are subject to density limitations, including a city-wide cap of 475 units, and restrictions on the number of units that may be used as a short-term rental in multi-family dwelling complexes.

Public Comment: To date, staff has not received any public comment regarding this request.

RECOMMENDATION: Staff recommends approval of **CUP-2024-0014** with the following conditions:

Conditions of Approval:

1. **Planning Commission determination of compatibility.** *Staff finds the proposed short-term rental to be compatible based on the findings contained herein;*
2. Approval of the conditional use permit does not ensure approval of a business license application. The applicant must still be able to comply with all other applicable requirements in city code;
3. Per UDC §166.20, Expiration of Approved Plans and Permits, a business license must be obtained within one year of conditional use permit approval;
4. Per ordinance, the number of occupants is limited to a maximum of two people per bedroom, plus two, for the entire unit when the property is operated as a short-term rental;
5. Special events including, but not limited to, weddings, receptions, anniversaries, private parties, fundraisers, and business seminars are prohibited from occurring in the short-term rental;
6. No recreational vehicle, trailer, other vehicle, or structure not classified as a permanent residential dwelling may be used as a short-term rental;
7. All trash receptacles shall be screened from view of the right-of-way;
8. All outdoor lighting shall meet requirements as outlined in UDC Chapter 176, Outdoor Lighting;
9. Any signage shall meet the requirements as outlined in UDC Chapter 174, Signs; and
10. Per Business Regulations §120.02(A), the owners of only short-term rentals shall be required to designate and register their landlord's representative into the Landlord's Representative Registry.

PLANNING COMMISSION ACTION:			
Required	<u>YES</u>		
Date: <u>May 13, 2024</u>	☐ Tabled	☐ Approved	☐ Denied
Motion:			
Second:			
Vote:			

FINDINGS OF THE STAFF

§163.02. AUTHORITY; CONDITIONS; PROCEDURES.

B. Authority; Conditions. The Planning Commission shall:

1. Hear and decide only such special exemptions as it is specifically authorized to pass on by the terms of this chapter;
2. Decide such questions as are involved in determining whether a conditional use should be granted; and,
3. Grant a conditional use with such conditions and safeguards as are appropriate under this chapter; or
4. Deny a conditional use when not in harmony with the purpose and intent of this chapter.

C. Procedures. A conditional use shall not be granted by the Planning Commission unless and until:

1. A written application for a conditional use is submitted indicating the section of this chapter under which the conditional use is sought and stating the grounds on which it is requested.

Finding: The applicant has submitted a written application requesting a conditional use permit for a Type 2 short-term rental in an RPZD.

2. The applicant shall pay a filing fee as required under Chapter 159 to cover the cost of expenses incurred in connection with processing such application.

Finding: The applicant has paid the required filing fee.

3. The Planning Commission shall make the following written findings before a conditional use shall be issued:
 - (a.) That it is empowered under the section of this chapter described in the application to grant the conditional use; and

Finding: The Planning Commission is empowered under Business Regulations §118.01(E)(2) to grant the requested conditional use permit.

- (b.) That the granting of the conditional use will not adversely affect the public interest.

Finding: Staff finds that granting the requested conditional use is unlikely to adversely affect the public interest given the applicable business license requirements, including a required building safety inspection, and applicable density caps on Type 2 short-term rentals.

- (c.) The Planning Commission shall certify:

- (1.) Compliance with the specific rules governing individual conditional uses; and

Finding: There are specific rules governing short-term rentals, as follows:

§163.18. SHORT-TERM RENTALS.

- A. Residential Zoning Districts.** Type 2 short-term rentals may be permitted as a conditional use in the following residential zoning districts: R-A, RSF-.5, RSF-1, RSF-2, RSF-4, RSF-7, RSF-8, RSF-18, RI-12, RI-U, RMF-6, RMF-12, RMF-18, RMF-24, RMF-40, and NC. Short-term rentals may be permitted by right or by conditional use in planned zoning districts subject to the zoning regulations enacted by the City Council for each district. Short-term rentals in non-residential zoning districts, mixed use zoning districts, or other zoning districts not listed above are not required to apply for a conditional use permit.

Finding: The request is to operate a Type 2 short-term rental in the Ruppel Row RPZD. Since the RPZD is a residential zoning district, a conditional use permit is required.

- B. Occupancy.** Maximum of two (2) people per bedroom, plus two (2), for the entire unit when operated as a short-term rental.

Finding: The house contains a total of four bedrooms which would limit occupancy to a maximum of ten guests per ordinance. Occupancy limitations are confirmed by the applicant during licensing.

- C. Parking.** Parking is limited to the maximum number of vehicles as allowed by the underlying zoning district for the residential building on the property.

Finding: Parking for single-family dwellings is required to be provided at a rate of two spaces per unit and up to four vehicles are permitted to be parked outdoors at any given time. The applicant indicated that there is space to park four vehicles on site with two spaces in an attached garage and two spaces in a driveway. On-street parking is also available nearby.

- D.** Special events are not permitted in a short-term rental. Examples of special events include, but are not limited to, weddings, receptions, anniversaries, private parties, fundraisers and business seminars.

Finding: The applicant's request letter suggests that the property will comply with the City's regulations for a short-term rental. As a condition of approval, staff recommends a prohibition on special events.

- E.** Short-term rental units are allowed in any structure established as a permanent residential dwelling including an accessory dwelling unit. No recreational vehicle, trailer, other vehicle or structure not classified as a permanent residential dwelling may be used as a short-term rental.

Finding: The application is for use of the property at 4165 W. Marlowe Ln. Staff recommends a condition confirming that no recreational vehicle, trailer, other vehicle or structure not classified as a permanent residential dwelling may be used as a short-term rental.

- F. **Exceptions.** Exceptions to the short-term rental standards, except proposals that would exceed the city-wide density maximum, may be granted by the Planning Commission as a conditional use permit.

Finding: Type 2 short-term rentals are subject to a city-wide density cap at 475 units. As of May 7, 2024, the City had issued 469 Type 2 short-term rental business licenses and 6 remain in the queue for processing. An additional 24 are on the waitlist. Granting a conditional use permit for this location would give the applicant the zoning entitlement necessary to apply for a business license, but it would not guarantee approval of a business license.

- G. Short-term rentals must comply with all applicable codes under City Code §118.01 and successfully obtain a business license prior to operation.

Finding: This short-term rental would be subject to all codes in Business Regulations §118.01 that apply to Type 2 short-term rentals in residential zoning districts. Applicable business licensing requirements will be reviewed by staff and confirmed by the applicant at the time of licensing.

- H. Short-term rentals in residential zoning districts may be subject to denial or additional conditions based upon the Planning Commission's findings on the following factors:

1. Adequate parking infrastructure;
2. Adequate adjoining or nearby streets for on-street parking;
3. Frequency or concentration of nearby licensed Type 2 short-term rentals; and
4. Prior zoning or code violations; and
5. Proximity to public or private K-12 schools when the proposed property is within 1,000 feet of the school boundary line.

Finding: There appears to be adequate parking available to support the use of the property as a short-term rental based on the applicant's submittal. Four off-street parking spaces are available on site and a maximum of ten guests would be permitted. On-street parking is also available nearby. City records indicate that seven other units, or roughly 2.3% of estimated housing units, within a quarter-mile radius of the property have a business license to operate as a Type 2 short-term rental. While the number of licensed Type 2 short-term rentals is high relative to the previously considered 2% city-wide density cap, staff finds the applicant's request to be suitable since there are no other licensed Type 2 short-term rentals along Marlowe Lane. No prior or active zoning or code violations have been reported on the property. The property is, however, within 200 feet of Owl Creek Elementary. Since city records indicate that there are seven Type 2 short-term rentals and approximately 265 housing units within a 1,000-foot radius of Owl Creek Elementary, staff finds that the addition of the proposed short-term rental is not likely to adversely affect surrounding neighborhoods given the relatively low concentration of other short-term rentals nearby.

§163.02. AUTHORITY; CONDITIONS; PROCEDURES. (continued)

(2.) That satisfactory provisions and arrangements have been made concerning the following, where applicable:

(a.) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;

Finding: One driveway with access onto a public alley is available to accommodate vehicular ingress and egress. Staff finds that the proposal to use the property as a short-term rental would not adversely affect vehicular traffic flows when considering that the use of the property would be limited to a maximum of ten guests which would not be out of character with the use of the property for residential purposes.

(b.) Off-street parking and loading areas where required, with particular attention to ingress and egress, economic, noise, glare, or odor effects of the special exception on adjoining properties and properties generally in the district;

Finding: A total of four off-street parking spaces are available in a paved driveway and attached garage. The short-term rental ordinance limits the number of guest vehicles to the maximum number of vehicles as allowed by the underlying zoning district.

(c.) Refuse and service areas, with particular reference to ingress and egress, and off-street parking and loading;

Finding: The applicant proposes to utilize existing residential trash cart services. Staff recommends a condition confirming that the containers are stored in a location that is screened from public view when not placed at the curb for pick-up.

(d.) Utilities, with reference to locations, availability, and compatibility;

Finding: Utilities are currently available to the property and its use as a short-term rental is not expected to impact the provision of utilities.

(e.) Screening and buffering with reference to type, dimensions, and character;

Finding: Staff recommends that residential carts be screened so that they are not visible from the public right-of-way.

(f.) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect,

and compatibility and harmony with properties in the district;

Finding: Any proposed signage will be subject to Unified Development Code Chapter 174, Signs, and all regulations therein.

(g.) Required yards and other open space;

Finding: Based on the applicant's submittal, the house appears to be meeting relevant setbacks.

(h.) General compatibility with adjacent properties and other property in the district; and

Finding: Staff finds the proposed use to be compatible with surrounding properties. There are seven other licensed Type 2 short-term rental within a quarter-mile radius with none currently operating along Marlowe Lane. There appears to be adequate parking to accommodate the number of permitted guests and staff does not anticipate any adverse traffic impacts with this request.

(i.) General compatibility with the goals and intent of the city's adopted land-use, transportation, and other strategic plans.

Finding: Staff finds the proposed use to be somewhat incompatible with the goals and intent of the City's adopted land use, transportation, and other strategic plans since it does not clearly support any of the stated goals in those plans. However, there are safeguards in place that limit how short-term rentals operate to ensure that the City can still meet those goals, including a city-wide density cap and restrictions on the number of units that may be used as a short-term rental in multi-family dwelling complexes.

BUDGET/STAFF IMPACT:

None

ATTACHMENTS:

- Business Regulations
 - §118.01 Applicability
- Unified Development Code
 - §163.18 Type 2 Short-Term Rentals in Residential Zoning Districts
- Ruppel Row RZPD Zoning Regulations
- Applicant Request Letter
- Site Plan
- Building Floor Plans
- Exhibit: School Proximity
- One Mile Map
- Close-Up Map
- Current Land Use Map
- STRs within ¼ Mile Map

118.01 Applicability

- (E) *Short-Term Rentals.* A residential dwelling unit, portion of a dwelling unit, or bedroom within a residential dwelling unit, leased and/or rented to a guest(s), for a period of less than thirty consecutive (30) days.
- (1) *Short-Term Rental, Type 1.* A short-term rental where the principal use of the property remains as a full-time residence. The occupants or owner rent their primary residence as a short-term rental. A copy of the Homestead Tax Credit or long-term lease agreement for the subject property is required to be classified as a Type 1 rental. The occupant or owner must occupy the residence for nine (9) months of the year. Accessory dwelling units (ADUs) as defined in Unified Development Code Chapter 151 shall be considered a Type 1 short-term rental.
 - (2) *Short-Term Rental, Type 2.* A short-term rental that is not occupied by a permanent resident. The owner lists this property full-time as a short-term rental and has no intention of having permanent residents living in the property. A conditional use permit is required for a Type 2 short-term rental in a residential zoning district prior to the city issuing a business license.
 - (3) *License Required.* No dwelling unit in the city shall be used as a short-term rental unless:
 - (a) The owner of the dwelling unit or operator of the short-term rental possess a valid and current business license for the dwelling unit, and fully complies with all legal requirements and duties imposed herein with respect to each and every short-term rental; and
 - (b) The owner has designated an agent, where said agent fully complies with all legal requirements and duties imposed herein with respect to every short-term rental. The owner may serve as their own agent.
 - (c) The owner of the dwelling unit or operator of the short-term rental provides proof of a valid and current homeowners insurance rider policy which fully covers each unit when operated as short-term rental unit.
 - (4) A separate business license shall be required for each dwelling unit used as a short-term rental.
 - (5) Any change in ownership requires a new or amended business license.
 - (6) If any required contact information changes for the associated business license, the person to whom the license was issued shall immediately notify the Development Services Department in writing.
 - (7) *License Application.* The application for a business license shall include at minimum, the following information from applicants:
 - (a) The property owner's information including legal name, mailing address, immediate contact phone number, and immediate contact E-mail address.
 - (b) Information for the dwelling unit subject to the application, inclusive of the physical street address assigned by the city.
 - (c) The type and total number of dwelling units located on the lot of record containing the dwelling unit subject to the application.
 - (d) If the owner is not their own agent, the owner designated agent's information including legal name, mailing address, immediate contact phone number and immediate contact E-mail address.
 - (e) Documentation of approval of a life safety and egress inspection by the City Building Safety Division for the dwelling unit subject to the application.
 - (f) Proof of application for remittance of hotel, motel and restaurant tax to the City of Fayetteville, and verification that all sales, use, and hotel, motel and restaurant taxes are current.
 - (g) Any additional data as deemed necessary or desirable for permit approval by the Development Services Director.
 - (8) *License Renewals.* Business licenses for short-term rentals shall be renewed in accordance with Chapter 118 of the Business Regulations (Business Registry and Licenses).
 - (9) *Legal Duties of License Holders.* An owner possessing a short-term rental license shall comply at all times with the following requirements:
 - (a) *Occupancy.* Short-term rentals shall be subject to, and may not exceed, the occupancy limits approved with the business license.
 - (b) *Advertisements.* A short-term rental shall not be advertised if it violates occupancy, density, safety, and any of the other provisions of the Fayetteville Code. No short-term rental unit shall be advertised prior to having obtained a business license and the business license number shall be included in the advertisement listing.
 - (c) *Information and Posting.* Business licensees shall provide to guests and post conspicuously in the common area of the short-term rental unit the city phone number to report a safety complaint.
 - (10) *Owner or Agent Accessibility.* The property owner shall ensure that they or a designated agent are available at all times during guest occupancy, including nights and weekends, in order to facilitate compliance with this section. For the purposes of these regulations, 'availability' means that the owner or agent is accessible

- by telephone, and, able to be physically present at the short-term rental within three (3) hours of being contacted.
- (11) *Guest Records.* The owner shall maintain summary guest registration records, which shall contain the actual dates of occupancy, total number of guests per party per stay, and the rate(s) charged, but shall not contain any personally identifiable information about guests. Such records shall be maintained for three (3) years and shall be provided to the City upon request.
 - (12) *Health and Safety.* The owner shall ensure that each dwelling unit governed by this section complies with the applicable provisions of the Unified Development Code Chapter 173, Building Regulations.
 - (13) *Criminal Activity.* The owner shall timely report any known or reasonably suspected criminal activity by a guest to the Fayetteville Police Department within twelve (12) hours maximum.
 - (14) *Taxes and Fees.* Except for those instances in which a hosting platform bears the responsibility for collecting and remitting taxes and fees applicable to short-term rentals, the property owner shall timely remit in full Fayetteville Hotel, Motel and Restaurant tax and other applicable local, state, and federal taxes and city fees owed in connection with any short-term rental. The failure of a hosting platform to collect and remit taxes and fees shall not relieve an owner of the obligation to pay taxes and fees owed pursuant to this section.
 - (15) *Authorization to Occupy, Use, and Operate.* Authorization to operate a short-term rental may be granted by the Development Services Director through the issuance of a City of Fayetteville Business Registry and License (Business License).
 - (16) *Density For Type 2 Short-Term Rentals.* A city-wide density cap of 475 dwelling units may be Type 2 rentals. A conditional use permit may not permit:
 - (a) More Type 2 short-term rentals than what is allowed by the city-wide density cap.
 - (b) More than 10% or a single unit whichever is greater; of total dwelling units as Type 2 rentals within a multi-family dwelling complex.
 - (c) Individual 2-, 3- and 4-family buildings that are owned by the same person or entity and are not a part of a multi-family complex shall have no more than one (1) Type 2 short-term rental unit per building complex.
 - (d) Where attached residential units are held separately through condominium association, horizontal property regime, fee simple, or similar ownership structure, no cap shall be applied to buildings with attached residential dwellings. Structures of attached residential dwellings where applicants seek more than 10% of total units for licensing as Type 2 rentals shall be evaluated by the Building Safety Director and/or Fire Marshal for adequate fire protection as defined by the adopted Arkansas Fire Prevention Code. Where inadequate fire protection is identified, improvements may be required prior to issuance of a business license.
 - (17) *Suspension and Revocation.* If the Development Services Director has reason to believe that any of the grounds specified in §118.03(A) of the Fayetteville Code exist, or that any rental unit was rented for less than one (1) full night, or to more than one (1) part of guests for the same period of time, or otherwise failed to comply with all terms and conditions of this section, the Development Services Director may suspend or revoke the short-term rental's business license pursuant to the procedures detailed in §118.03 and in §118.04 of the Fayetteville Code.
 - (18) Short-term rentals must comply with all applicable codes under Unified Development Code §163.18 and § 164.26 successfully obtain a business license prior to operation.

163.18 Type 2 Short-Term Rentals in Residential Zoning Districts

- (A) *Residential Zoning Districts.* Type 2 short-term rentals may be permitted as a conditional use in the following residential zoning districts:

- 1) R-A
- 2) RSF-.5
- 3) RSF-1
- 4) RSF-2
- 5) RSF-4
- 6) RSF-7
- 7) RSF-8
- 8) RSF-18
- 9) RI-12
- 10) RI-U
- 11) RMF-6
- 12) RMF-12
- 13) RMF-18
- 14) RMF-24
- 15) RMF-40
- 16) NC

Short-term rentals may be permitted by right or by conditional use in planned zoning districts subject to the zoning regulations enacted by the City Council for each district.

Short-term rentals in non-residential zoning districts, mixed use zoning districts, or other zoning districts not listed above are not required to apply for a conditional use permit.

- (B) *Occupancy.* Maximum of two (2) people per bedroom, plus two (2), for the entire unit when operated as a short-term rental.
- (C) *Parking.* Parking is limited to the maximum number of vehicles as allowed by the underlying zoning district for the residential building on the property.
- (D) Special events are not permitted in a short-term rental. Example of special events include, but are not limited to, weddings, receptions, anniversaries, private parties, fundraisers and business seminars.
- (E) Short-term rental units are allowed in any structure established as a permanent residential dwelling including an accessory dwelling unit. No recreational vehicle, trailer, other vehicle or structure not classified as a permanent residential dwelling may be used as a short-term rental.
- (F) *Exceptions.* Exceptions to the short-term rental standards, except proposals that would exceed the city-wide density maximum, may be granted by the Planning Commission as a conditional use permit.
- (G) Short-term rentals must comply with all applicable codes under City Code §118.01 and successfully obtain a business license prior to operation.
- (H) Short-term rentals in residential zoning districts may be subject to denial or additional conditions based upon the Planning Commission's findings on the following factors:
- 1) Adequate parking infrastructure;
 - 2) Adequate adjoining or nearby streets for on-street parking;
 - 3) Frequency or concentration of nearby licensed Type 2 short-term rentals; and
 - 4) Prior zoning or code violations

Proposal: The applicant requests a rezoning and preliminary plat approval for a residential subdivision within a unique R-PZD zoning district. The proposed use of the site is for a “neo-traditional” development consisting of 182 single-family residential dwelling units and 78 two-family residential units, for a total of 260 dwelling units. The proposed density for the R-PZD is **6.24 DU/acre.**

Proposed Uses: *R-PZD, Residential Planned Zoning District*

	Proposed Land Use
Lots 1-144	Single Family Residential Use Unit 8
Lots 145-183	Two-family Residential Use Unit 9
Lots 164, 165, 171	Two-family, Three-family Use Unit 9, 10
Lots 184-221	Single Family Residential Use Unit 8
Lots 222-226	Common Areas Maintained by POA

The project site is currently zoned RSF-4 and RT-12, allowing for single, two and three family dwelling units, in their respective districts. The developer proposes an unconventional residential subdivision, with all access and services to be from rear alleys, and dwelling units to be sited close to the street (a 5-foot front building setback is proposed). Lot sizes and setbacks are proposed to be much smaller than those allowed in typical zoning districts, thus the need for processing a Planned Zoning District. The typical lot size for single family use ranges from approximately 40-45 feet wide x 115-120 feet deep. The designated two/three family lots are proposed to be approximately 75 feet wide by 101 feet deep.

Access: Access is proposed in all four cardinal directions:

- North: Two (2) connections to existing stub-outs from Meadowlands S/D
- South: Two (2) new access points from Persimmon Street, to be constructed
- East: One (1) connection onto Ruppel Road
- West: One (1) connection into the approved Cross Keys PZD subdivision

Ruppel Road is a newly constructed street south of Wedington Drive. A new traffic signal was recently installed at the intersection of Ruppel Road and Wedington, the primary means of access to the subject property. The developer of the Ruppel Row PZD is also required to construct Persimmon Street east of the Cross Keys development, coordinating with the adjacent developer of Cross Keys to eventually complete an improved, through connection from 46th Avenue east to Ruppel Road.

Adjacent Master Street Plan Streets: Ruppel Road, Minor Arterial; Persimmon Street, Collector

Street Improvements Proposed: Six-foot sidewalks are required to be constructed along Ruppel Road and Persimmon Street, at the right-of-way line. Persimmon Street is to be constructed to city standards, with a 28-foot width including curb/gutter and storm drains. The developer is proposing to construct parallel parking spaces along Ruppel Road, interspersed with tree

March 29, 2024

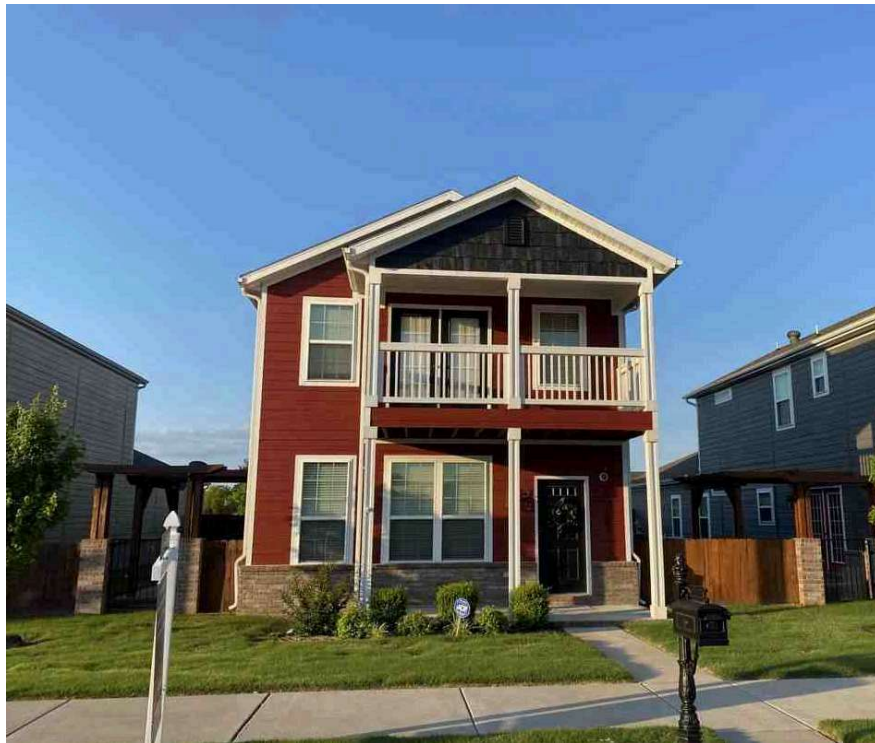
My property is located at 4165 W Marlowe Ln in Fayetteville. I have been the owner of this home since July 2021. The first year I owned the home it was used as a short term rental. The last 2 years my son has lived in the home while attending the University of Arkansas. He will be graduating in May and I'm wanting to use it again as a short term rental and place for us to stay when we come in town for events and games.

I've included a floor plan of the home. It sits on approximately $\frac{1}{8}$ of an acre and is a 2023 square foot two story home. The home has 4 bedrooms and 3 $\frac{1}{2}$ bathrooms. It has a two car garage and a large, wide driveway on the back of the house. The backyard is on the side of the house and has a private covered porch.

The neighborhood is a nice, quiet planned development with all homes a different color of siding, mine is Razorback Red! The neighborhood has an HOA and the HOA maintains the front and back (side) yards as well as the flowerbeds for each home.

Below are answers to questions for Request Letter

- (a) 2023 square feet
- (b) Red
- (c) 2 in garage and 2 in driveway
- (d) Front porch, side porch and driveway
- (e) Very quiet neighborhood
- (f) Private side yard
- (g) Trash and recycling picked up weekly from back driveway
- (h) About $\frac{1}{2}$ mile or less to Weddington
- (i) This has been a STRI in the past without an issues from neighborhood.



front of house



back of house



street scene



view from balcony of

street

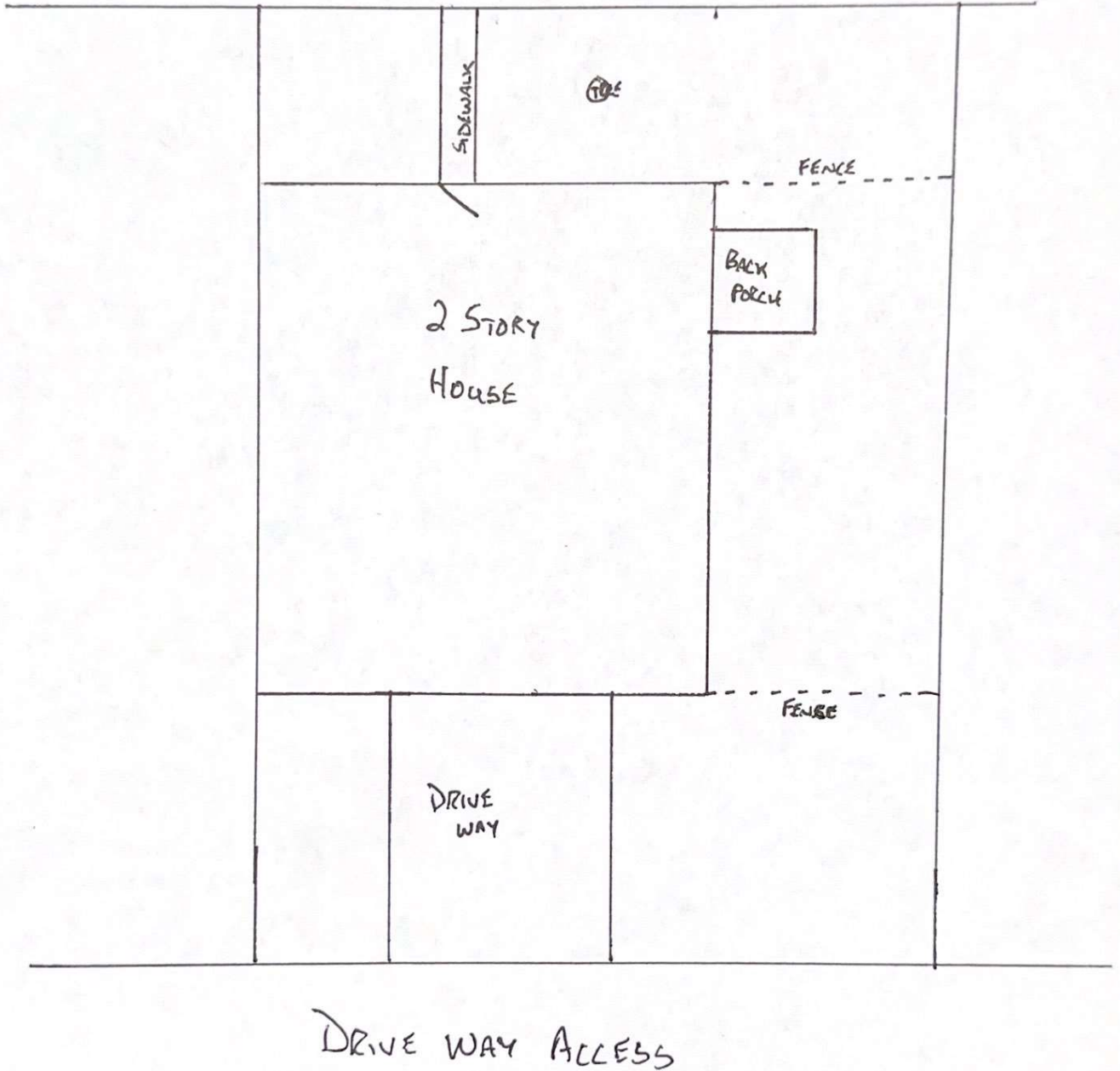


side yard

Thank you,

Brian Hendley

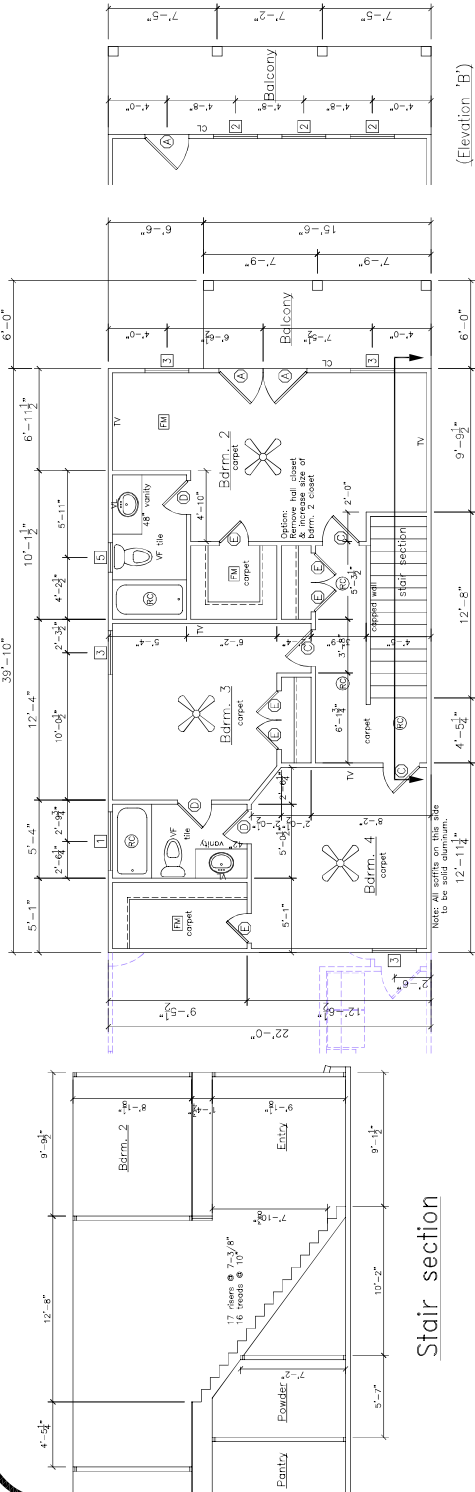
W. MARLOWE LN



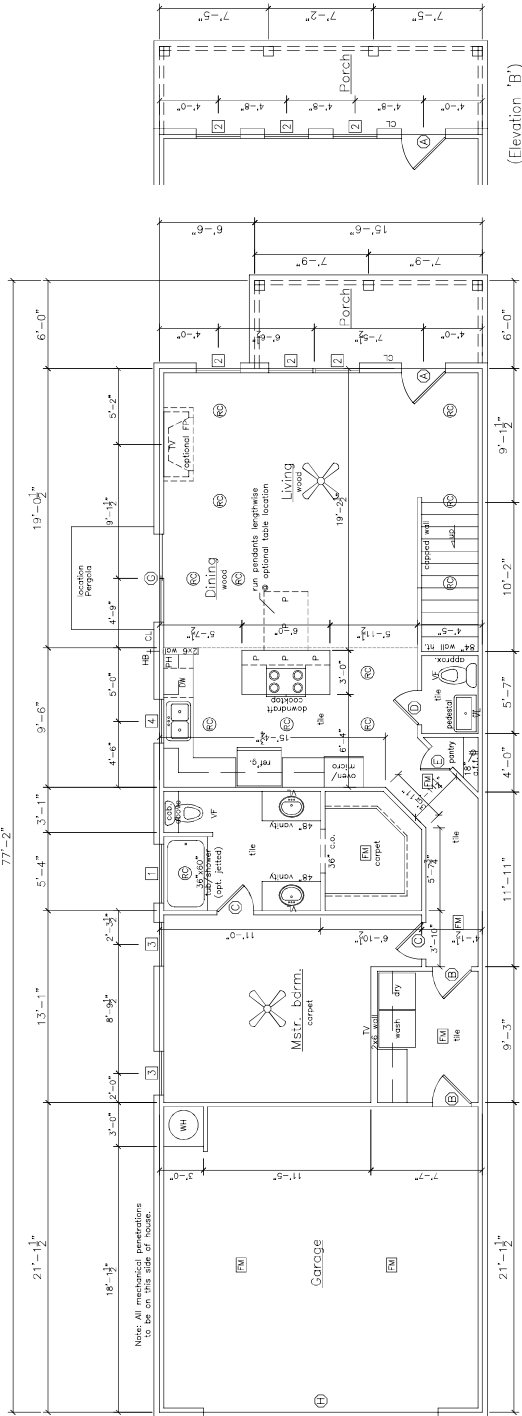
Door schedule	mark	size
	(A)	3'-0"x6'-8"
	(B)	2'-8"x6'-8"
	(C)	2'-6"x6'-8"
	(D)	2'-4"x6'-8"
	(E)	2'-0"x6'-8"
	(F)	1'-8"x6'-8"
	(G)	6'-0"x6'-8" s.g.
	(H)	16'-0"x7'-0" ovnd.
	(I)	

Window schedule	
mark	size
1	4'-0"x1'-0"
2	3'-0"x6'-0"
3	3'-0"x5'-0"
4	3'-0"x3'-0"
5	2'-0"x3'-0"
6	
7	

Electrical schedule	
mark	type
	c.g. fan w/ light
CL	ceiling light
FM	flush mount
P	pendant light
PH	telephone
RC	recessed can light
TV	cable drop
VF	vent fan w/ light
VL	vanity light



2nd Floor plan
(Elevation 'A')



1st Floor plan
(Elevation 'A')

Square footage	(sq. ft.)
1st floor (hld.)	1554
2nd floor (hld.)	820
Garage	458
Cov. porches	186**
Total under roof	2571
Total under roof	2647

General Notes

Structural integrity Design is a residential design service not a registered architectural firm. The purchaser of this set of plans should consult a building professional prior to construction. The purchaser and builder of this plan releases Structural Integrity Design from any liability and/or claims that may arise during construction or anytime thereafter. Therefore, the builder must carefully inspect all aspects of these drawings, including but not limited to dimensions, details, accuracy and overall integrity, and assumes all responsibility. This plan may need to be modified to comply with local end/or governing codes.

No.	Revision/Issue	Date

Design Services
Residential design & drafting
LLC
8107 685-1880

Project Name and Address

Baumann & Crosno
'Alder' plan
Fayetteville, AR.

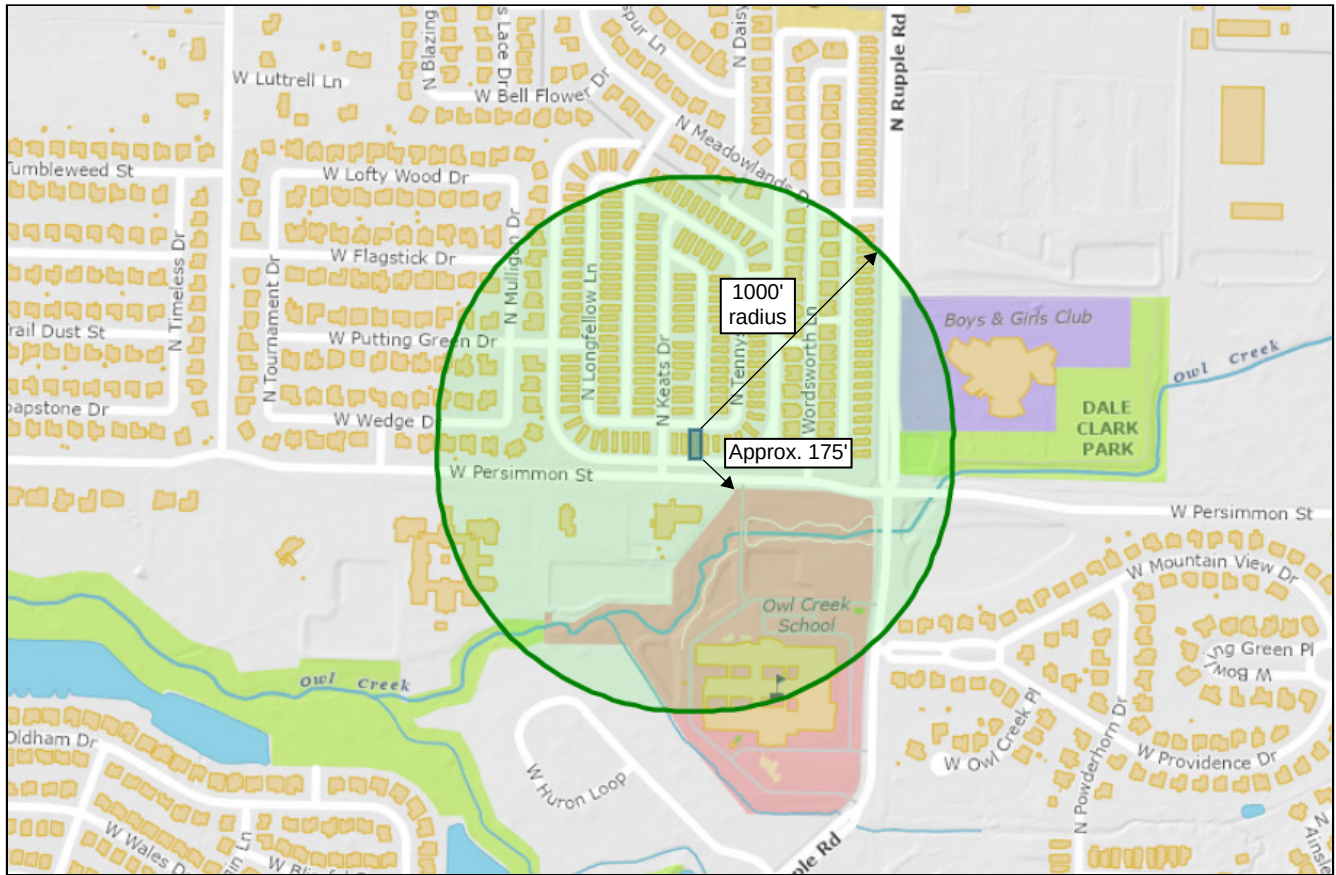
Sheet

1 of 2

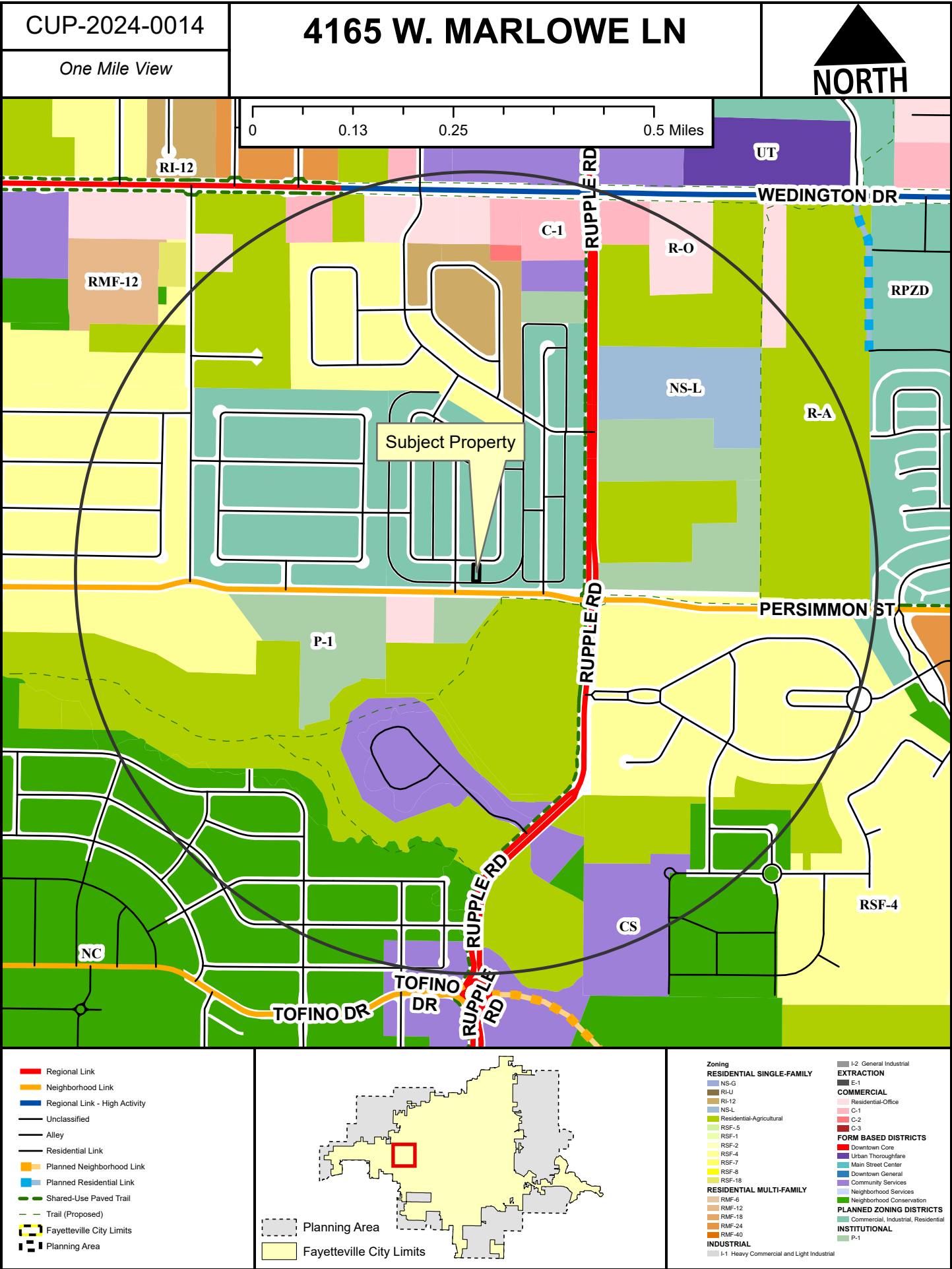
Scale

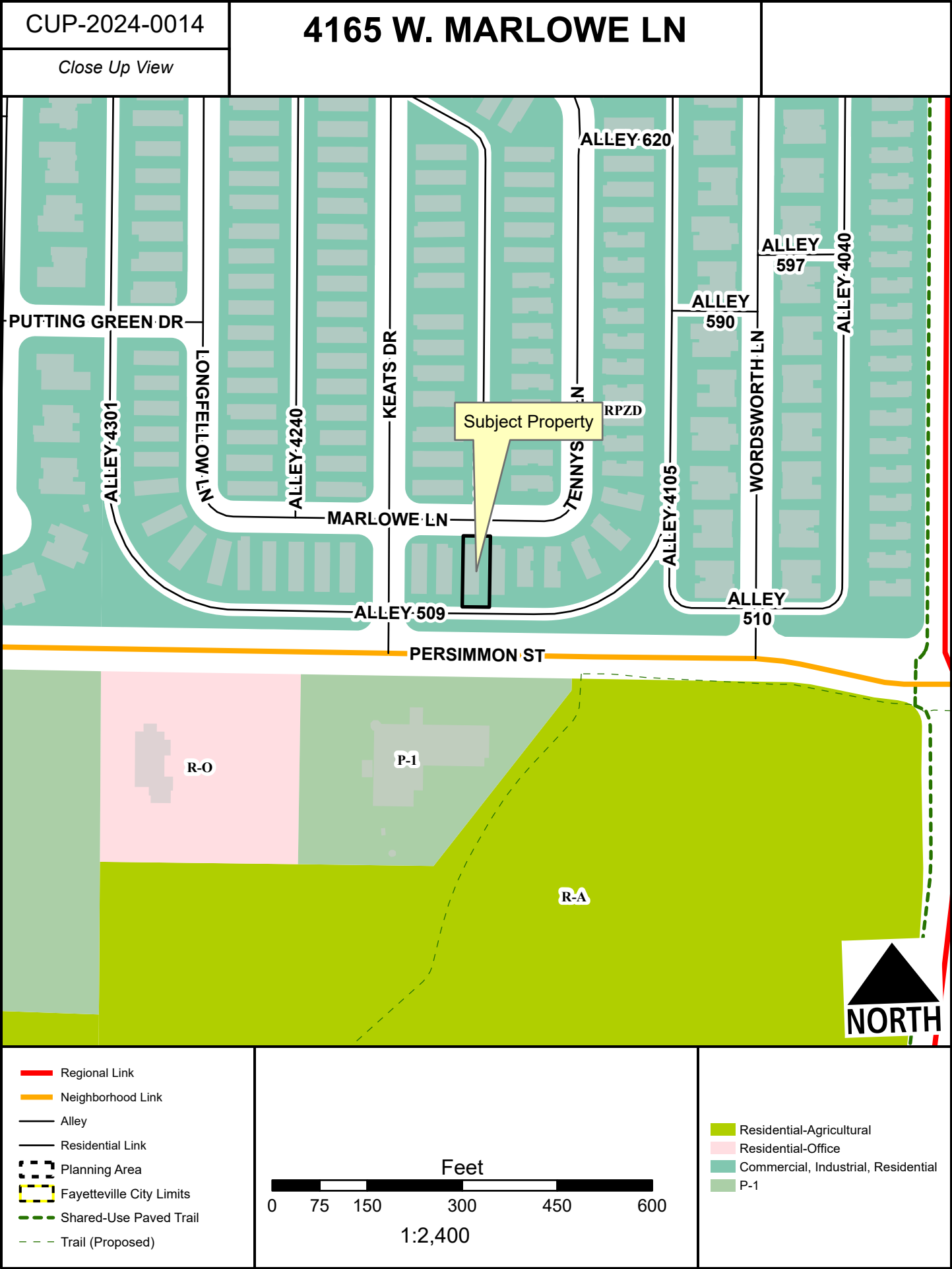
1/4" = 1'-0"

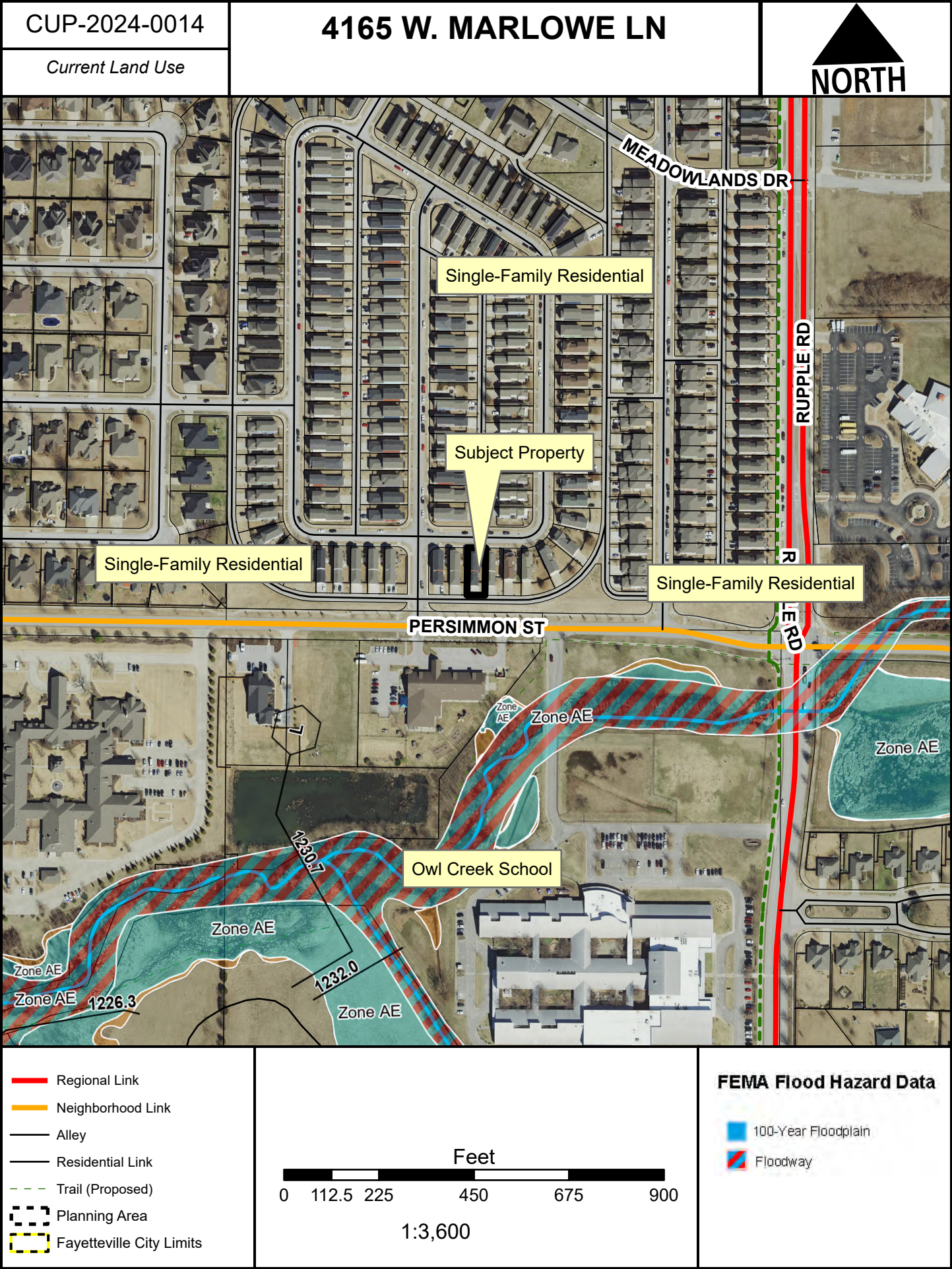
Exhibit: School Proximity



Above: 1000' radius of the subject property. Nearest school is 175' away.



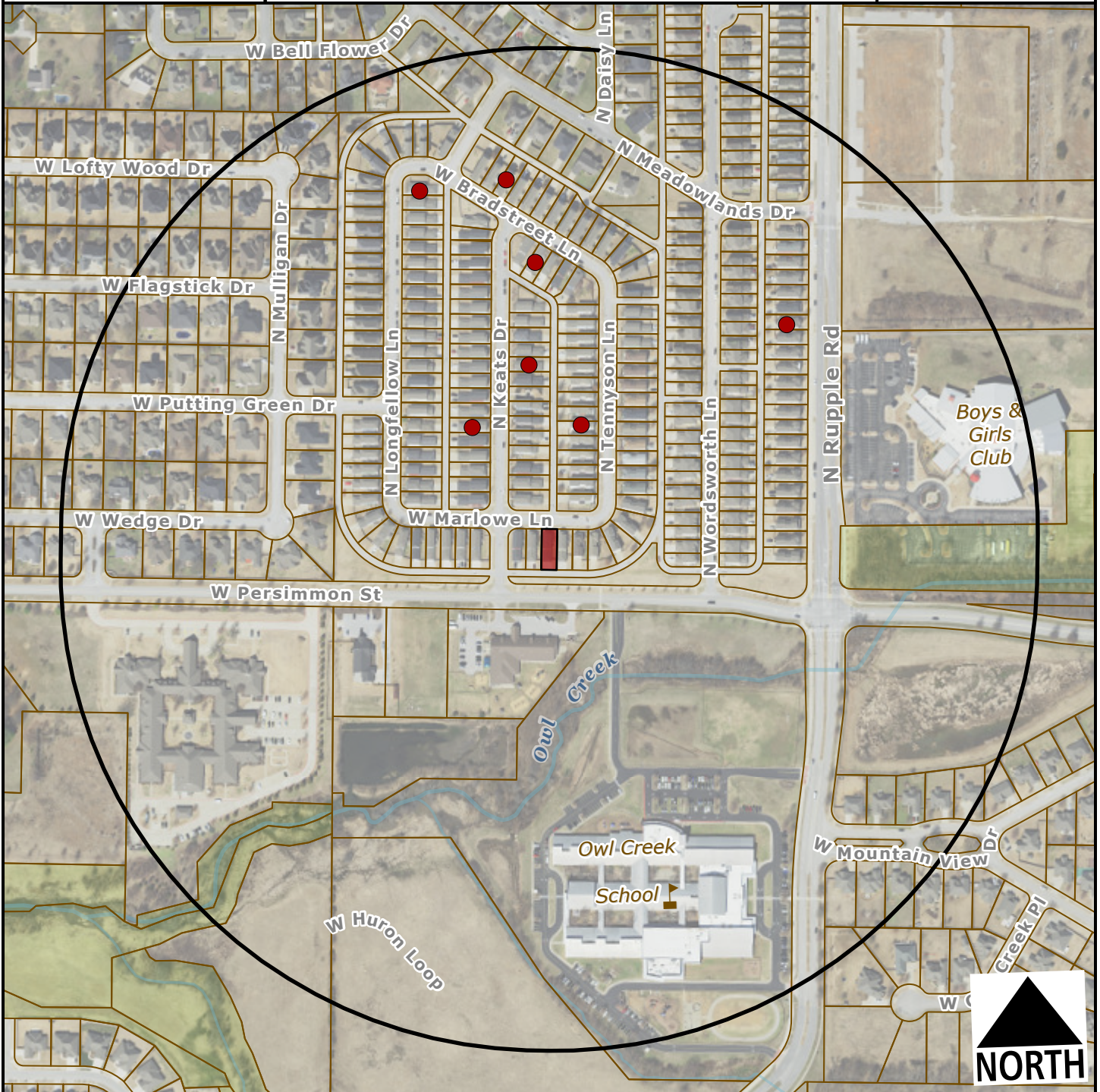




CUP-2024-0014

4165 W. MARLOWE LN

STRs Within 1/4 Mile



-  Subject Property
-  Short Term Rental, Type 2



Within 1/4 Mile

Type 2 STRs: 7

Occupiable
Residential
Addresses
(Estimated
Housing Units): 310



TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Gretchen Harrison, Senior Planner

MEETING DATE: May 13, 2024

SUBJECT: **CUP-2024-0015: Conditional Use Permit (215 W. DICKSON ST./THE GARDEN ROOM AT PURITAN, 484):** Submitted by KEVIN FREY for property located at 215 W. DICKSON ST. The property is zoned MSC, MAIN STREET CENTER and contains approximately 0.22 acres. The request is for an outdoor music establishment.

RECOMMENDATION:

Staff recommends approval of **CUP-2024-0015** with conditions.

RECOMMENDED MOTION:

*"I move to approve **CUP-2024-0015**, determining:*

- In favor of compatibility with adjacent properties; and*
- In favor of all other conditions as recommended by staff."*

BACKGROUND:

The property under consideration with this request is the former site of The Garden Room which is located southwest of the intersection of Dickson Street and Church Avenue. The property contains approximately 0.22 acres and is developed with an event venue containing 3,552 square feet of indoor space and 4,908 square feet of outdoor space. Ownership of the property recently changed. Surrounding land use and zoning is depicted on *Table 1*.

Table 1:
Surrounding Land Uses and Zoning

Direction	Land Use	Zoning
North	Bar/Single-Family Residential	MSC, Main Street Center
South	Multi-Family Residential	MSC, Main Street Center
East	Puritan Coffee & Beer	MSC, Main Street Center
West	Art Court Single-Family Residential	MSC, Main Street Center DG, Downtown General

City Plan 2040 Future Land Use Designation: **City Neighborhood**

Proposal: The applicant requests a conditional use permit to allow Use Unit 35, Outdoor Music Establishments within the MSC, Main Street Center zoning district. The applicant proposes to use the subject property as an event venue with occasional amplified outdoor music for special events. The applicant has described the business as follows:

- Approximately 8,460-square-foot venue*

- 3,552 square feet indoors
- 4,908 square feet outdoors
- Number of employees: 3 full time, 5 part time
- Number of guests per event: 100 on average, 200 maximum
- Off-street parking: 18 spaces
- Hours of operation: Seven days a week, 8:00 a.m. - 12:00 a.m.

Public Comment: To date, staff has not received any public comment regarding this request.

RECOMMENDATION: Staff recommends approval of **CUP-2024-0015** with the following conditions:

Conditions of Approval:

1. **Planning Commission determination of compatibility.** *Staff finds that the proposed use is compatible based on the findings contained herein;*
2. Hours of operation are limited from 8:00 a.m. to 12:00 a.m. as indicated in the applicant's request letter;
3. Three documented violations of the City's noise ordinance shall also be considered a violation of this conditional use permit subject to revocation by the Planning Commission. The project shall comply with the City's noise ordinance, as enforced by the Police Department. All music (acoustic or electronically amplified) shall be subject the commercial regulations as follows:
 - (A) No person shall operate or cause to be operated, or permit, contract or allow to be operated on premises on public or private property any identifiable source of sound in such a manner as to create a sound level within the use districts in Table 2 below which exceeds the maximum noise levels as set forth in Table 2 as measured at any point on the boundary of the property from which the sound or noise was emanating. Except between the hours of 10:00 p.m. and 1:00 a.m., a complaint under this section must be brought by a property owner or leaseholder affected by excessive noise on their property.

**Table 2:
Noise Limitations by Land Use Category**

Use Districts	Maximum Time	Noise Levels
All residential zones	7:00 a.m. to 11:00 p.m.	60 dB(A)
All residential zones	11:00 p.m. to 7:00 a.m.	55 dB(A)
All commercial zones	7:00 a.m. to 11:00 p.m.	75 dB(A)
All commercial zones	11:00 p.m. to 7:00 a.m.	70 dB(A)
All industrial zones	7:00 a.m. to 11:00 p.m.	80 dB(A)
All industrial zones	11:00 p.m. to 7:00 a.m.	75 dB(A)

All measurements shall be taken with a sound level meter in its fast or peak level setting.

4. A business license shall be obtained for the proposed business at this location within one year of this permit's approval;
5. All outdoor lighting on site must comply the requirements of Unified Development Code Chapter 176, Outdoor Lighting; and
6. Per Unified Development Code §166.20, Expiration of Approved Plans and Permits, conditional use permit approval is valid for one year.

PLANNING COMMISSION ACTION:				Required	<u>YES</u>
Date: <u>May 13, 2024</u>	☐ Tabled	☐ Approved	☐ Denied		
Motion:					
Second:					
Vote:					

FINDINGS OF THE STAFF

§163.02. AUTHORITY; CONDITIONS; PROCEDURES.

- B. Authority; Conditions.** The Planning Commission shall:
 1. Hear and decide only such special exemptions as it is specifically authorized to pass on by the terms of this chapter.
 2. Decide such questions as are involved in determining whether a conditional use should be granted; and,
 3. Grant a conditional use with such conditions and safeguards as are appropriate under this chapter; or
 4. Deny a conditional use when not in harmony with the purpose and intent of this chapter.
- C. Procedures.** A conditional use shall not be granted by the Planning Commission unless and until:
 1. A written application for a conditional use is submitted indicating the section of this chapter under which the conditional use is sought and stating the grounds on which it is requested.

Finding: **The applicant has submitted a written application requesting a conditional use permit for an outdoor music establishment in the MSC, Main Street Center, zoning district. The use is proposed to occupy the existing building on the subject property.**

2. The applicant shall pay a filing fee as required under Chapter 159 to cover the cost of expenses incurred in connection with processing such application.

Finding: **The applicant has paid the required filing fee.**

3. The Planning Commission shall make the following written findings before a conditional use shall be issued:

 (a.) That it is empowered under the section of this chapter described in the application to grant the conditional use; and

Finding: **The Planning Commission is empowered under Unified Development Code §161.27 to grant the requested conditional use permit.**

 (b.) That the granting of the conditional use will not adversely affect the public interest.

Finding: **Staff finds that granting the requested conditional use permit is not likely to adversely affect the public interest. The property's location at the intersection of Dickson Street and Church Avenue makes it ideally situated for the proposed use. Further, the property is in the planning area for the Downtown Master Plan and within the boundary of the entertainment district which is intended to encourage outdoor music where appropriate. The proposed use would also be subject to compliance with the City's noise ordinance. If multiple violations are reported, the Planning Commission would have the opportunity to reconsider, and potentially revoke, this conditional use permit.**

 (c.) The Planning Commission shall certify:

 (1.) Compliance with the specific rules governing individual conditional uses; and

Finding: **There are specific rules governing outdoor music establishments, as follows:**

§163.10. OUTDOOR MUSIC ESTABLISHMENTS.

A. **Site Plan.** A site plan showing the proposed location and size of the outdoor music area; location and direction of the speakers; noise absorbing walls, structures or devices; proposed days and hours of operation of the outdoor music area; and measures proposed to lessen or eliminate any adverse affects upon nearby residences and businesses.

Finding: **The applicant has submitted a site plan showing the general layout of the event venue indicating that speakers will be located in the outdoor garden room facing west into a fence or north into a building. However, the location of speakers will vary since clients have the ability to choose their setup for events. In their request letter, the applicant indicated that outdoor music will be limited to ambient and live music at varying hours on different days when events are booked. Some events will utilize speakers to play music either indoors or outdoors and some events will have no music at all. The applicant also indicated that a privacy fence is installed around the perimeter of the property which helps reduce noise.**

- B. Planning Commission Review.** In addition to all normal considerations for a conditional use, the Planning Commission may require noise reducing measures and structures be incorporated into an outdoor music area, may limit the size, power, number and direction of speakers, and may limit the hours of outdoor music generation from the establishment.

Finding: Should the Commission choose to approve the applicant's request, staff does not recommend that any additional measures be taken to reduce the impact of the proposed use on adjacent properties. Staff recommends that three violations of the City's noise ordinance be considered a violation of this conditional use permit.

- C. Fayetteville Noise Ordinance Violation.** If the establishment or any band or any person operating at such establishment is convicted of violating the Fayetteville noise ordinance (§96.06 of the *Code of Fayetteville*), such violation may constitute grounds for revocation of this conditional use to operate an outdoor music establishment.

Findings: All sound complaints are inspected and measured by the Fayetteville Police Department. Violations of the noise ordinance may result in the conditional use approval being brought back to the Planning Commission for review, amendment, or revocation. A condition has been included mandating compliance with the City's noise ordinance. Another condition has been included to recommend that three violations of the City's noise ordinance be considered a violation of this conditional use permit.

- D. Fayetteville Entertainment District.** The City Council's policy is to encourage outdoor music establishments along Dickson Street from Block Avenue to Arkansas Avenue and on West Avenue from Spring Street to Lafayette Street as long as such establishments are reasonably compatible with adjoining neighborhoods.

Findings: The subject property is in the entertainment district described above and staff finds the proposed establishment to be reasonably compatible with adjoining properties. The property is located on Dickson Street between Art Court and Puritan Coffee & Beer. While there are residences to the south and west, fencing has been installed along the perimeter of the property to buffer the proposed use from those residences.

§163.02. AUTHORITY; CONDITIONS; PROCEDURES. (continued)

- (2.)** That satisfactory provisions and arrangements have been made concerning the following, where applicable:

- (a.)** Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;

Finding: The subject property has frontage along Dickson Street which is a fully improved Urban Center Street. Sidewalk is available to accommodate

pedestrian access and an existing driveway is available to provide vehicular access to a parking lot on site. The applicant also indicated in their request letter that there are controlled access gates on every side of the building that will be unlocked during events.

- (b.) Off-street parking and loading areas where required, with particular attention to ingress and egress, economic, noise, glare, or odor effects of the special exception on adjoining properties and properties generally in the district;

Finding: A parking lot is available on site which contains a total of 18 spaces. While that parking lot is shared with other businesses, the applicant has indicated that it will be reserved during special events. The south lot shown on the provided site plan is reserved for tenants that live in the apartments to the south and will not be used by the proposed business. The applicant indicated in their request letter that most guests utilize on-street parking, which is readily available nearby.

- (c.) Refuse and service areas, with particular reference to ingress and egress, and off-street parking and loading;

Finding: The applicant indicated that they will utilize existing trash and recycling services. Dumpsters and recycling containers appear to be located in the south parking lot and shared with other businesses. Containers are not currently screened from the public right-of-way.

- (d.) Utilities, with reference to locations, availability, and compatibility;

Finding: The property currently has access to public water and sewer and the addition of outdoor music is not expected to impact the provision of utilities.

- (e.) Screening and buffering with reference to type, dimensions, and character;

Finding: Staff is not recommending additional screening for the proposed conditional use.

- (f.) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;

Finding: Any proposed signage will be subject to permitting and compliance with Unified Development Code Chapter 174, Signs.

- (g.) Required yards and other open space;

Finding: It appears that existing structures on the property do not conform with the build-to zone and setbacks associated with the MSC zoning district. Any

alterations or additions to existing structures would be subject to compliance with the City’s regulations for nonconforming structures.

- (h.) General compatibility with adjacent properties and other property in the district; and

Finding: Staff finds the requested conditional use to be compatible with adjacent properties. The subject property is located along Dickson Street in an area where outdoor music establishments are encouraged. Further, the applicant has indicated that some events will be held indoors or have no music at all, so impacts on adjacent residential properties will be limited when compared to other outdoor music establishments.

- (i.) General compatibility with the goals and intent of the city’s adopted land-use, transportation, and other strategic plans.

Finding: Staff finds the requested conditional use to be compatible with the goals and intent of the City’s adopted plans. The City’s Downtown Master Plan identifies this site as being within an area where cultural and entertainment venues are encouraged. The City Plan 2040 Future Land Use Map also designates this site as City Neighborhood Area, and those areas are intended to support the widest spectrum of land uses with nonresidential uses primarily located along major corridors such as Dickson Street.

BUDGET/STAFF IMPACT:

None

ATTACHMENTS:

- Unified Development Code
 - §161.27 MSC, Main Street/Center
 - §163.10 Outdoor Music Establishments
- Site Plan
- One Mile Map
- Close-Up Map
- Current Land Use Map

161.27 Main Street/Center

(A) *Purpose.* A greater range of uses is expected and encouraged in the Main Street/Center. The Center is more spatially compact and is more likely to have some attached buildings than Downtown General or Neighborhood Conservation. Multi-story buildings in the Center are well-suited to accommodate a mix of uses, such as apartments or offices above shops. Lofts, live/work units, and buildings designed for changing uses over time are appropriate for the Main Street/Center. The Center is within walking distance of the surrounding, primarily residential areas. For the purposes of Chapter 96: Noise Control, the Main Street/Center district is a commercial zone.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three (3) and four (4) family dwellings
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores
Unit 40	Sidewalk Cafes
Unit 41	Accessory dwellings
Unit 44	Cluster Housing Development
Unit 45	Small scale production
Unit 46	Short-term rentals

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 18	Gasoline service stations and drive-in/drive-through restaurants
Unit 28	Center for collecting recyclable materials
Unit 29	Dance halls
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and Area Regulations.*

(1) *Lot Width Minimum.*

Dwelling (all unit types)	18 feet
---------------------------	---------

(2) *Lot Area Minimum.* None.

(E) *Setback Regulations.*

Front	A build-to zone that is located between the front property line
-------	---

	and a line 25 feet from the front property line.
Side	None
Rear	5 feet
Rear, from center line of an alley	12 feet

(F) *Minimum Buildable Street Frontage.* 75% of lot width.

(G) *Building Height Regulations.*

Building Height Maximum	5 stories/7 stories*
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* A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of five (5) stories. A building or a portion of a building that is located greater than 15 feet from the master street plan right-of-way line shall have a maximum height of seven (7) stories.

(Ord. No. 5028, 6-19-07; Ord. No. 5029, 6-19-07; Ord. No. 5042, 8-07-07; Ord. No. 5195, 11-6-08; Ord. No. 5312, 4-20-10; Ord. No. 5339, 8-3-10; Ord. No. 5462, 12-6-11; Ord. No. 5592, 6-18-13; Ord. No. 5664, 2-18-14; Ord. No. 5735, 1-20-15; Ord. No. 5800 , §1(Exh. A), 10-6-15; Ord. No. 5921 , §1, 11-1-16; Ord. No. 5945 , §§5, 7—9, 1-17-17; Ord. No. 6015 , §1(Exh. A), 11-21-17; Ord. No. 6223 , §1, 9-3-19; Ord. No. 6427 , §§1(Exh. C), 2, 4-20-21)

163.10 Outdoor Music Establishments

Outdoor music establishments operating during May or June of 2002 may continue to operate at the same location without this conditional use even if the ownership or name of the outdoor music establishment changes in the future as long as the establishment does not terminate its outdoor music for twelve (12) consecutive months or longer. All other outdoor music establishments may be allowed as conditional uses where they are permitted subject to the following additional conditions:

- (A) *Site Plan.* A site plan showing the proposed location and size of the outdoor music area; location and direction of the speakers; noise absorbing walls, structures or devices; proposed days and hours of operation of the outdoor music area; and measures proposed to lessen or eliminate any adverse effects upon nearby residences and businesses.
- (B) *Planning Commission Review.* In addition to all normal considerations for a conditional use, the Planning Commission may require noise reducing measures and structures be incorporated into an outdoor music area, may limit the size, power, number and direction of speakers, and may limit the hours of outdoor music generation from the establishment.
- (C) *Fayetteville Noise Ordinance Violation.* If the establishment or any band or any person operating at such establishment is convicted of violating the Fayetteville noise ordinance (§96.06 of the *Code of Fayetteville*), such violation may constitute grounds for revocation of this conditional use to operate an outdoor music establishment.
- (D) *Fayetteville Entertainment District.* The City Council's policy is to encourage outdoor music establishments along Dickson Street from Block Avenue to Arkansas Avenue and on West Avenue from Spring Street to Lafayette Street as long as such establishments are reasonably compatible with adjoining neighborhoods.

(Ord. No. 4409, §2, 8-6-02; Ord. No. 5271, 9-1-09)

The Garden Room at Puritan Conditional Use Permit

215 West Dickson Street, Fayetteville, AR 72701

The Garden Room has been a staple of Dickson Street for the last 20 years. It has a great reputation of being a beautiful event venue right in the heart of Fayetteville. Recently ownership changed and we are really looking forward to continuing that legacy and improving on what has already been built.

(2) Legal Description of Property:

Parcel: 765-01686-000

PT LOTS 2-3 BLOCK 4 (66 X 159 1/2) FURTHER DESCRIBED FROM 920-546 AS: That part of Lots 2 and 3, Block 4, Original Town (now City) of Fayetteville, Arkansas, as designated upon the plat of the Subdivision of said Block recorded in Deed Record Book W at Page 139 and described as follows: Beginning at a point which is 15 feet South of the Northeast corner of said Lot 2, which point is the intersection of the South line of Dickson Street and the west line of Church Street as now located, run thence West 100 feet for point of beginning; run thence South 159 1/2 feet; thence West 66 feet, more or less, to the East line of the 12 foot alley as shown on the plat afore said; thence North 159 1/2 feet; thence East 66 feet or to the point of beginning.

Parcel: 765-01690-000

S/2 LOT 3 BLOCK 4 (50 FT x 160 FT)

(3)

(a) Building Square Footage: Three thousand five hundred and fifty two SF (3,552) inside and four thousand nine hundred eight (4,908) outside

(b) Elevation Photos –
North Entrance



West Wall



Looking South East



Looking North East



(c) We have 18 spots in our West parking lot (please refer to site plan) reserved during event hours. The South parking lot is reserved for tenants that live in the apartments off Church St.

(d) Business use:

- Hours are determined by the client booking the event but clients may have access from 8am-12am on their event day.
- 3 Full time and 5 part time
- Average patrons per event is about 100 but we can have up to 200.

(e) Outdoor lighting to include ambient string lighting, all necessary emergency and required safety lighting.

(f) Ambient and live music proposed at varying hours on different days when events are booked. Some events will utilize speakers to play music for the dance floor, can be inside or outside. Some events will have no music at all.

(g) We have a privacy fence around the parameter of the garden that helps reduce noise.

(h) Trash and refuse will continue to be handled in accordance with city code. Our dumpster has been in the space place for over a decade.

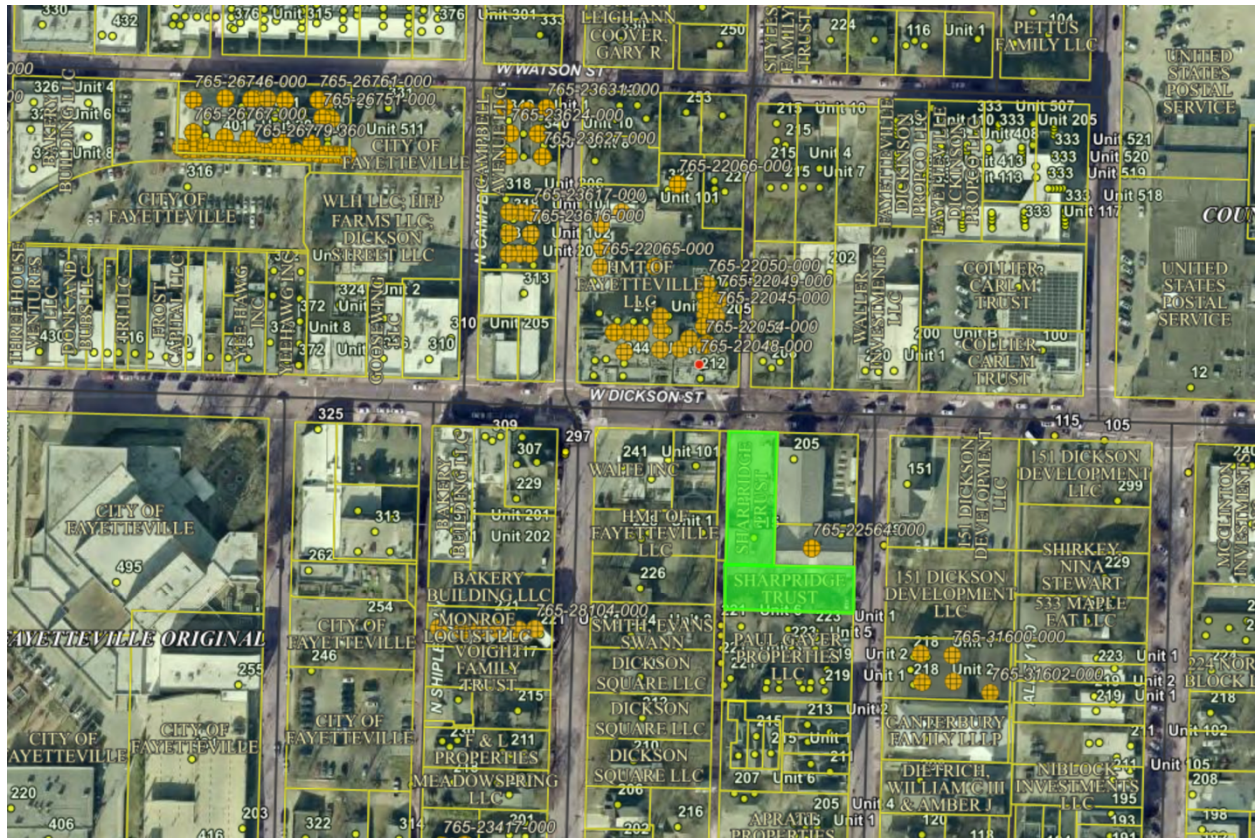
(i) ingress and egress – Main entrance faces Dickson Street. We have controlled access gates on every side of the building that are unlocked during events. Most event guests will park on the street when the parking lot is full, minimal traffic impact.

(j) Compatibility with adjacent Properties- As the area is zoned for entertainment The Garden Room, will comply with any and all restrictions established. Having been an event venue of the same nature for the last two decades, all existing businesses and residents are familiar with the operation.

(4) Site Plan

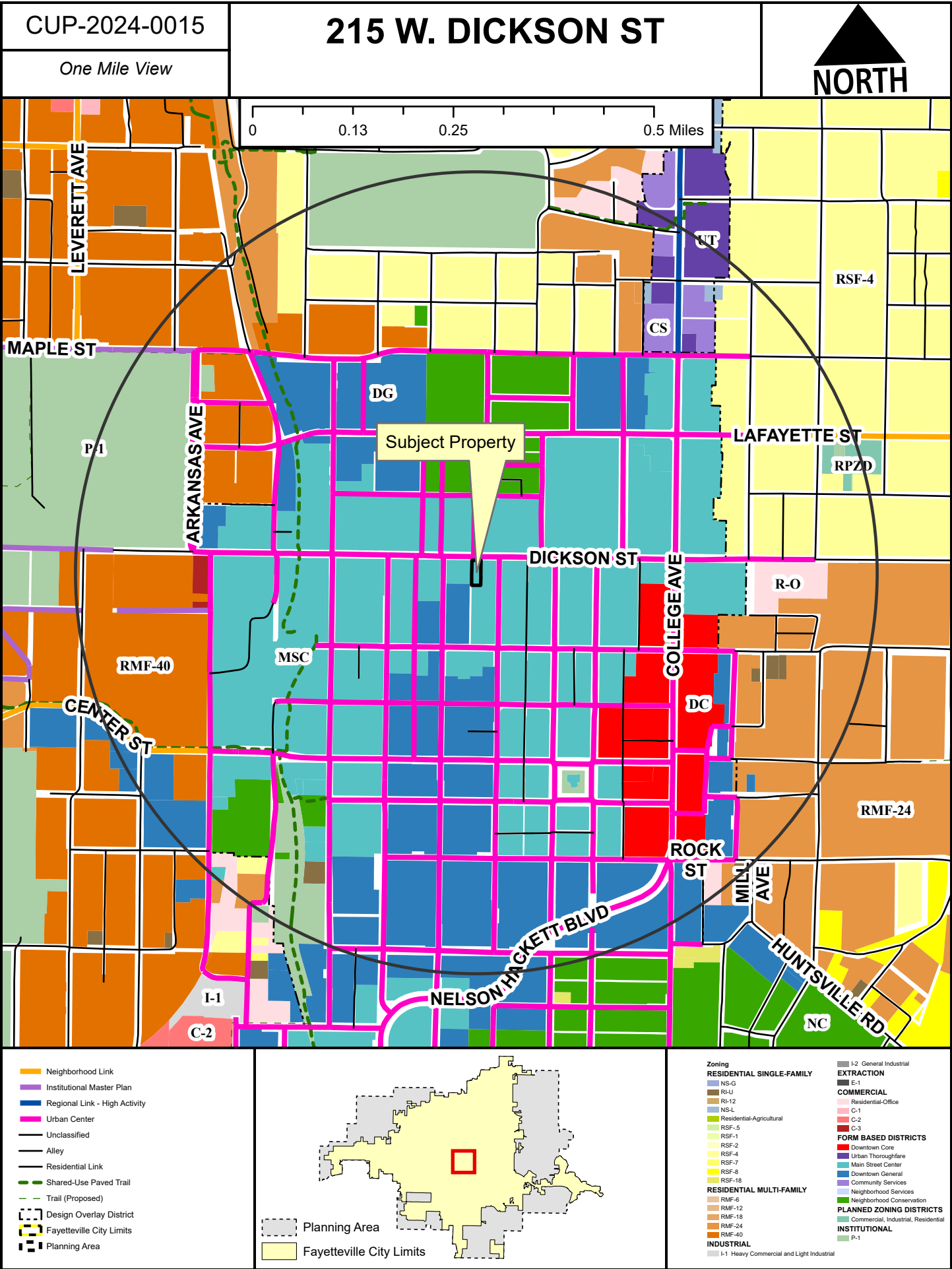


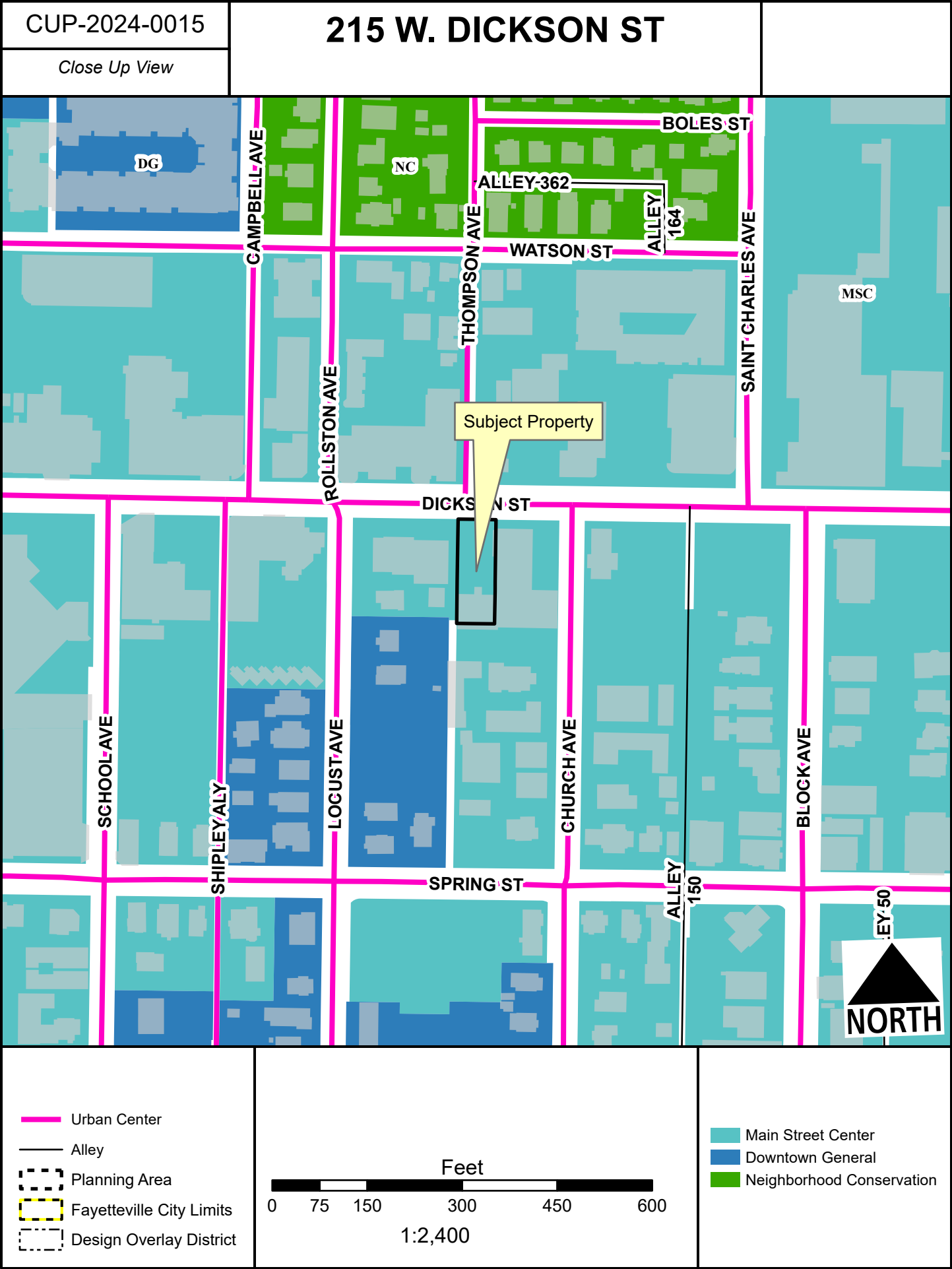
(6) County Parcel Map

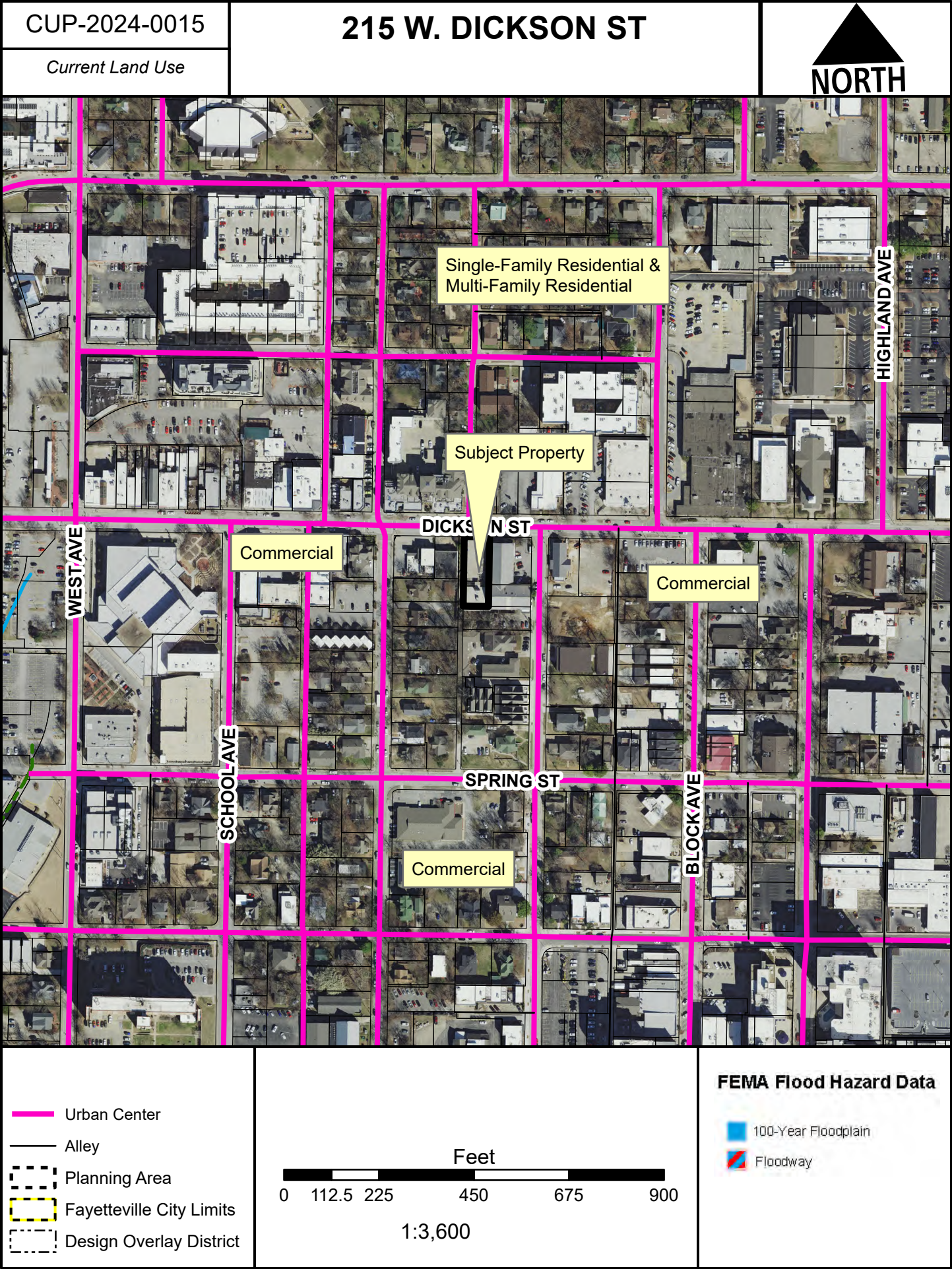


(7) Consent of Owner form - Attached to application

(8) Public notification requirement.









TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Kylee Cole, Planner

MEETING DATE: May 13, 2024

SUBJECT: **CUP-2024-0016: Conditional Use Permit (1629 N. CROSSOVER RD./ SMYTH CLUSTER HOUSING, 410):** Submitted by COMMUNITY BY DESIGN for property located at 1629 N. CROSSOVER RD. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 1.93 acres. The request is for Use Unit 44: Cluster housing for a development with 14 dwelling units and Use Unit 41: Accessory dwelling units for 6 accessory dwelling units.

RECOMMENDATION:

Staff recommends approval of **CUP-2024-0016** with conditions as outlined by staff.

RECOMMENDED MOTION:

*"I move to approve **CUP-2024-0016** with conditions, determining:*

- In favor of compatibility of Use Unit 44: Cluster Housing Development with adjacent properties;*
- In favor of compatibility of Use Unit 41: Accessory Dwelling Units with adjacent properties;*
- In favor of a variance to UDC §164.22 with conditions; and*
- In favor of all other conditions as recommended by staff."*

BACKGROUND:

The subject property is located in west Fayetteville, on the west side of N. Crossover Road about 1/3 mile south of the intersection of N. Crossover Road and E. Mission Boulevard. The site totals approximately 1.93 acres and is zoned RSF-4, Residential Single-family, Four Units per Acre. The property is the site of the ca. 1886 Peter Smyth House, a residence listed in the National Register of Historic Places (architecturally significant as an example of sandstone construction with Greek Revival detailing). A conditional use permit for fifteen single-family units was approved for this property in 2021, but the approval has expired (CUP-2021-000053), and an affiliated large-scale development approved in 2022 is also expired (LSD-2022-0021). Surrounding land uses and zoning are depicted in Table 1.

Table 1:
Surrounding Land Use and Zoning

Direction	Land Use	Zoning
North	Single-Family Residential	RSF-4, Residential Single-Family, 4 Units per Acre
South	Single-Family Residential	RSF-4, Residential Single-Family, 4 Units per Acre
East	Single-Family Residential	RSF-4, Residential Single-Family, 4 Units per Acre
West	Single-Family Residential	RSF-4, Residential Single-Family, 4 Units per Acre

City Plan 2040 Future Land Use Designation: **Residential Neighborhood**

Proposal: The applicant requests conditional use permit approval to develop the property with a cluster housing development containing fourteen detached single-family units. Classified under the UDC as Use Unit 44, a cluster housing development is a conditional use in the RSF-4 zoning district. Additionally, accessory dwelling units are permitted in cluster housing developments as a conditional use (§164.19(E)(7)). Conformance with development requirements, including drainage, tree preservation, and fire apparatus access will be reviewed with the resubmission of a large scale development proposal.

As part of the proposal, the applicant has requested a variance to the UDC:

Variance #1: UDC §164.22(D), Dwellings Permitted. A cluster housing shall contain a maximum of 12 dwelling units. The applicant requested to vary from this standard to allow fourteen units.

Staff recommendation: Staff is supportive of this variance request. The request is below the threshold of what is typically permitted under the density allowances for cluster housing. Zoning districts that allow cluster housing developments as a conditional use are permitted a density of two times that of the underlying zoning district. Thus, RSF-4 – zoned properties are allowed a density of up to 8 units per acre. The subject property is 1.93 acres, which would allow 7.77 units per acre as cluster housing, the applicant's proposal is for approximately 7.25 units per acre. Accessory dwelling units do not contribute to a site's density.

Public Comment: To date, staff has received two general inquiries and met with a member of the public who had concerns about the site's retaining wall, detention pond location, and addition of accessory dwelling units in this proposal. Another member of the public had concerns about the site's elevation and the impact of two-story dwellings on the privacy of existing homes.

RECOMMENDATION: Staff recommends approval of **CUP-2024-0016** with the following conditions:

Conditions of Approval:

1. **Planning Commission determination of compatibility for Use Unit 44: Cluster Housing Development.** *Staff finds the proposed cluster housing development to be compatible with the neighborhood based on the findings in this report;*
2. **Planning Commission determination of compatibility for Use Unit 41: Accessory Dwelling Units.** *Staff finds the proposed accessory dwelling units on six lots to be compatible with the neighborhood based on the findings in this report;*
3. **Planning Commission determination of a variance to UDC §164.22(D), Dwellings Permitted.** *Staff recommends approval of this variance for the reasons stated above;*
4. Additional screening in the form of vegetation, hedge row, or light blocking fence shall be installed along exterior property lines where parking courts abut existing single-family residences (Lots 1, 2, 6-8, and 11-14);
5. Conditional use permit approval of the conditional use permit does not ensure approval of a development application. The conditional use grants the applicant rights to submit a development proposal based on the conceptual layout included herein. However, the applicant must still be able to comply with all other development requirements, including but not limited to, tree preservation, drainage, utility installation and Fire Department access. These details shall be reviewed with the development application.

The final project design shall follow the general layout and design of the conditional use concept plan;

6. A condominium association, homeowner's association, or similar mechanism to maintain the common amenities shall be established prior to issuance of construction permits. The City of Fayetteville does not enforce these private agreements, but will require that this agreement be in place prior to issuing building permits;
7. Prior to receiving a certificate of occupancy for the first home, all shared drives and bike racks shall be installed. All development requirements, such as detention facilities, utilities, required landscaping, etc. shall be installed prior to any building permits being issued. The exact phasing of improvements will be determined at development review;
8. The maximum number of unrelated persons in any dwelling unit is three, pursuant to the underlying single-family zoning district. A maximum of two people are permitted to reside in an accessory dwelling unit;
9. Any signage shall meet the requirements as outlined in UDC Chapter 174, Signs;
10. Exterior lighting package must be provided to the Planning Division prior to building permit approval. Any outdoor lighting on this property shall comply with UDC Chapter 176, Outdoor Lighting;
11. Upon receiving a valid complaint that the holder of the conditional use is violating any condition of this permit, the Planning Department may refer the conditional use to the Planning Commission for review. The Planning Commission may amend or add conditions to the permit, may reaffirm the conditional use, or revoke the conditional use in its entirety; and
12. Per §166.20, Expiration of Approved Plans and Permits, conditional use permit approval is for one year.

PLANNING COMMISSION ACTION:				Required	<u>YES</u>
Date: <u>May 13, 2024</u>	☐ Tabled	☐ Approved	☐ Denied		
Motion:					
Second:					
Vote:					

FINDINGS OF THE STAFF

§163.02. AUTHORITY; CONDITIONS; PROCEDURES.

B. Authority; Conditions. The Planning Commission shall:

1. Hear and decide only such special exemptions as it is specifically authorized to pass on by the terms of this chapter.
2. Decide such questions as are involved in determining whether a conditional use should be granted; and,
3. Grant a conditional use with such conditions and safeguards as are appropriate under this chapter; or
4. Deny a conditional use when not in harmony with the purpose and intent of this chapter.

C. Procedures. A conditional use shall not be granted by the Planning Commission unless and until:

1. A written application for a conditional use is submitted indicating the section of this chapter under which the conditional use is sought and stating the grounds on which it is requested.

Finding: The applicant has submitted a written application requesting conditional use approval for Use Unit 44: Cluster Housing Development and Use Unit 41: Accessory Dwelling Units, in the RSF-4 zoning district, including a variance request to develop fourteen single-family dwelling units and six accessory dwelling units.

2. The applicant shall pay a filing fee as required under Chapter 159 to cover the cost of expenses incurred in connection with processing such application.

Finding: The applicant has paid the required filing fee.

3. The Planning Commission shall make the following written findings before a conditional use shall be issued:
 - (a.) That it is empowered under the section of this chapter described in the application to grant the conditional use;

Finding: The Planning Commission is empowered under Unified Development Code §161.07 to grant the requested conditional use permit.

- (b.) That the granting of the conditional use will not adversely affect the public interest;

Finding: Staff finds that granting the requested conditional use permit is not likely to adversely affect the public interest. The detached, single-family dwellings are of a type and scale that is comparable to the surrounding homes. Developing the property as a cluster housing development will subject it to the extent of Fayetteville's tree preservation and drainage criteria, which are both intended to minimize off-site impacts and protect the public interest. Cluster housing developments also carry heightened design requirements for the structures. Most parking courts are proposed to be enclosed within the development which serves to further minimize potential negative impacts on neighboring properties. However, given that some parking courts are

proposed to abut adjacent properties, staff recommends a condition requiring screening where those lots are located near exterior property lines.

(c.) The Planning Commission shall certify:

(1.) Compliance with the specific rules governing individual conditional uses; and

Finding: There are specific rules governing Use Unit 41: Accessory Dwelling Units and Use Unit 44: Cluster Housing Development, as follows:

§164.19, ACCESSORY DWELLING UNITS

C.

1. The property shall have infrastructure (water, sewer, gas, electric, etc.) that meets City standards to serve the accessory dwelling unit.

Finding: Infrastructure will be evaluated with the submission of a large scale development proposal.

2. A two (2) story accessory dwelling unit shall limit the major access stairs, decks, entry doors, and major windows to the walls facing the principal dwelling, or to the alley if applicable. Windows that impact the privacy of the neighboring side or rear yard shall be minimized.

Finding: As proposed, access stairs and entries are on the first floor facing the principal dwelling. There are no windows facing adjacent properties outside of the subject property.

3. The orientation and location of buildings, structures, open spaces and other features of the site should protect and maintain natural resources including significant trees and shrubs to the extent feasible and minimize alteration of natural land forms. Building profiles, location and orientation should relate to natural land forms.

Finding: Common and private open spaces are proposed. As proposed, ADUs are oriented toward the primary dwelling or private open space. Tree preservation shall be evaluated with the submission of a large scale development.

D. 1. *Maximum Square Feet.* The accessory dwelling unit(s) shall not be greater than 1,200 square feet of habitable space per lot.

Finding: As proposed, each ADU has approximately 480 square feet of habitable space.

2. **Zoning.** The accessory dwelling unit shall comply with all underlying zoning requirements including but not limited to building area, bulk and area, and setbacks with the exception of density limits.

Finding: Review of the provided site plan indicates that bulk and area regulations are being met. Lot widths, lot areas, and setbacks will be considered with the associated development review.

3. **Parking.** For accessory dwelling unit(s) with individual or combined habitable space greater than 800 square feet, one (1) parking space shall be provided on-site. Required parking for the accessory dwelling unit is in addition to the required parking for the principal dwelling unit. On-street parking may be counted towards the total parking requirement where it is allowed in the public right-of-way adjacent to the subject property.

Finding: As proposed, each ADU is approximately 480 square feet and would not be required to provide on-site parking.

4. **Maximum Number of Accessory Dwelling Units per Lot.** A maximum of one (1) detached and one (1) attached or interior accessory dwelling unit provided the combined square footage does not exceed 1,200 square feet.

Finding: As proposed, one detached ADU with approximately 480 square feet is being provided on 6 of the lots.

5. **Other Code Requirements.** The accessory dwelling unit shall comply with the requirements of the Arkansas Fire Prevention Code as adopted in Section 173.02 of the Unified Development Code.

Finding: Other development and building safety requirements will be reviewed at the time of large scale development review and building permit review.

6. **Maximum Occupancy of the Accessory Dwelling Unit.** A maximum of two (2) persons shall be permitted to reside in an accessory dwelling unit. If two (2) accessory dwelling units are on the same lot, only two (2) additional persons total for the lot shall be permitted to occupy these units unless one (1) accessory dwelling is occupied by a person who is a member of the related "family" (see §151.01) occupying the primary house.

Finding: Staff recommends a condition of approval stating that a maximum of two people shall be permitted to reside in each ADU.

7. **Building Height and Stories.**
 - (a) A detached accessory dwelling unit shall be a maximum of two (2) stories.

Finding: The proposed ADUs are located over a detached garage, the building is two stories.

§164.22, CLUSTER HOUSING DEVELOPMENT

D. Dwellings Permitted.

1. **Number of Cluster Housing Units Permitted.** A cluster housing development shall contain a maximum of twelve (12) dwelling units. In multi-family zones where the proposed cluster housing development

exceeds the minimum open space requirements of 164.22(G)(3)(a) by at least 20%, and in which at least 75% of the planned units are attached dwellings, there shall be no maximum number of dwelling units, except to conform to the density limitations herein.

Finding: **The proposal is for fourteen single-family, detached dwellings in one cluster housing development. The applicant has requested a variance to this requirement which staff supports based on the findings above.**

2. *Existing Nonconforming Structures.* On a lot to be used for a cluster housing development, existing detached single-family residential structures, which may be nonconforming with respect to the standards of this section, shall be permitted to remain, but the extent of the nonconformity may not be increased. Such nonconforming dwelling units shall be included in the maximum permitted cluster density.

Finding: **The Peter Smyth House is a 1,590 square-foot single-family residence on the subject which will remain. The applicant does not offer an expressed interest in expanding the dwelling. Instead, the applicant proposes for the house to be used as common space for future residents and therefore will not contribute to the maximum permitted density.**

E. Zoning Regulations.

1. *Permitted and Conditional Use.* Cluster housing development is permitted as identified in Chapter 161, Zoning Regulations, as a permitted or conditional use.

Finding: **Use Unit 44 is conditional use in the RSF-4 zoning district.**

2. *Density.* Cluster housing development permitted as a use by right shall be allowed a density in conformance with the underlying zoning district. Zoning districts that allow cluster housing developments as a conditional use shall be allowed a density not to exceed two (2) times the maximum density allowed in the underlying zoning district.

Finding: **The subject property is 1.93 acres, which would allow 7.77 units per acre as cluster housing, the applicant's proposal is for approximately 7.25 units per acre.**

3. Bulk and Area Regulations.
 - (a.) Lot Width Minimum. There is no lot width requirement for individual cluster housing lots.
 - (b.) Lot Area Minimum. The lot area minimum for cluster housing lots is 750 square feet.
 - (c.) Land Area per Dwelling Unit. The land area per dwelling unit requirement is 750 square feet.

Finding: **Review of the provided site plan indicates that bulk and area regulations are being met. Lot widths, lot areas, and land area per dwelling unit will be considered with the associated development review.**

4. Setback Requirements. All structures shall meet setback and separation requirements of the International Building Code, as applicable. For zoning purposes:
 - (a.) In single family districts, all cluster housing units shall have a minimum separation from one another of ten feet measured from exterior wall to exterior wall, not counting eaves or other architectural projections.
 - (b.) In multi-family districts, there are no separation requirements from one cluster housing structure to another.
 - (c.) The setbacks from the exterior property lines of the original parent tract shall be set by the underlying zoning district.

Finding: Separation and setback requirements for the RSF-4 zoning district will apply between buildings and exterior property lines. Lot widths, lot areas, and land area per dwelling have been reviewed conceptually and appear to meet these requirements. Standards will be considered with the associated development review.

5. Building Height Regulations. The height for all structures in a cluster housing development shall not exceed the permitted height requirement of the underlying zoning district.

Finding: The RSF-4 zoning district permits three-story buildings, the applicant is proposing two-story dwellings.

6. Building Area. None.

Finding: Building area will be considered with the associated development review.

7. Accessory Dwelling Units. Accessory dwelling units are permitted in cluster housing developments by conditional use. Where a cluster housing development is permitted as a conditional use, accessory dwelling units may be requested within the same application.

Finding: ADUs are proposed for six lots and are detailed above.

- F. **Common Property Maintenance.** Community buildings, parking areas and common open space shall be owned and maintained commonly by the cluster housing development residents, through a condominium association, a homeowners' association or a similar mechanism, and shall not be dedicated to the city unless accepted by the City Council.

Finding: Proof of Common Property Maintenance regulations will be required during the development process.

- G. **Development Standards.** The UDC outlines specific development standards for Cluster Housing Developments.

Finding: Development standards including floor area, building orientation, open space, parking, bicycle racks, Fire Department access, pedestrian

connectivity, utilities, and recycling and trash collection will be considered at the time of large scale development review.

H. Building Design Standards.

1. *Variety in Detached Cluster Housing Units Floor Plans and Architectural Treatments.* These standards are intended to avoid the overly repetitive use of the same building design, structural features, detailing or finishes among detached units within the cluster housing development. In cluster housing developments no two (2) structures shall be identical in terms of exterior finishes. All cluster housing units shall differ from each other by utilizing at least two (2) of the following options:
 - (a.) Variations in building material finishes such as clapboard, shake shingles, stone, brick, etc., and building color;
 - (b.) Variations in adjacent cluster housing unit floor plans that alter the location of exterior windows and doors;
 - (c.) Variations in the size of main floor area and/or building height of adjacent structures; or
 - (d.) A front porch with a minimum width no less than 50% of the front building façade. Front porches shall have a minimum depth of six feet. No structurally identical front porches shall be located on adjacent cluster housing units.
 - (e.) Variations in roof shapes or gables between adjacent structures.
 - (f.) Other variations as approved by the Zoning and Development Administrator.

Finding: In cluster housing developments no two structures shall be identical in terms of exterior finishes and must vary in building height, main floor size, location of windows and doors, porches, and/or roof shape. Building elevations and the submitted site plan appear to show instances where an identical floor plan will be used. As proposed, the development will require a variance to 164.22(H)(1) Building Design Standards. The projects design standards will be fully considered at the time of large scale development review. To date, a variance to the building design standards has not been requested.

§163.02, AUTHORITY; CONDITIONS; PROCEDURES. (continued)

- (2.) That satisfactory provisions and arrangements have been made concerning the following, where applicable:
 - (a.) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;

Finding: The cluster housing development will access N. Crossover Rd. by way of an existing drive. N. Crossover Road is a Regional Link Street designed to accommodate up to 17,600 vehicle trips per day. Annual Average Daily Traffic near the property is estimated to be roughly 30,000 vehicles per day, 3% of which is truck traffic. The segment of N. Crossover Road near the

existing curb cut experienced four vehicle accidents in 2017 and 2018. Though N. Crossover Road is heavily traveled, staff contends that this proposal will not adversely affect traffic flows given the relatively low number of units being proposed. Ultimately, compliance with the City's access management requirements and the need for street improvements will be fully considered at the time of large scale development review.

- (b.) Off-street parking and loading areas where required, with particular attention to ingress and egress, economic, noise, glare, or odor effects of the special exception on adjoining properties and properties generally in the district;

Finding: The submitted site plan includes on-site parking in garages, parking courts, and parking along the internal shared drive. In cluster housing developments, the applicant may choose to supply 1 parking space per bedroom, as this applicant has done. The development proposed 58 bedrooms and 46 parking spaces, with reductions provided for additional bike racks and scooter parking. Where parking abuts adjacent properties, fencing is either existing or proposed to limit glare and light intrusion.

- (c.) Refuse and service areas, with particular reference to ingress and egress, and off-street parking and loading,

Finding: Solid Waste will review the proposed site plan at the time of large scale development review. Ingress and egress is currently proposed through a looped private drive.

- (d.) Utilities, with reference to locations, availability, and compatibility;

Finding: Utilities are currently available to the site. An eight-inch sanitary sewer main and twenty-four-inch water main is available to the property along N. Crossover Road. Another six-inch water main is present in an easement along the west property line. Determinations of capacity or the need for improvements will be made with development submittal.

- (e.) Screening and buffering with reference to type, dimensions, and character;

Finding: Given the single-family residential nature of the proposal and surrounding areas, staff recommends only limited screening and buffering. Because parking courts serving lots 1, 2, 6-8, and 11-14 are proposed to abut adjoining residences, a condition requiring screening is included in staff's recommendations.

- (f.) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;

Finding: All signage shall be reviewed separately in accordance with UDC Chapter 174.

(g.) Required yards and other open space; and

Finding: Review of the submitted site plan suggests, conceptually, that the open space requirement for cluster housing can be provided. All separation and setback requirements will be considered with the associated development review.

(h.) General compatibility with adjacent properties and other property in the district.

Finding: Staff finds that the proposal is compatible with adjacent properties, which consists of single-family dwellings. To the north and south, homes within the Boardwalk Subdivision range from 2,188 to 2,913 square feet. The Boardwalk Subdivision clubhouse, pool, and tennis court is located to the west. To the east, across N. Crossover Rd., there are additional single-family dwellings ranging in size from approximately 2,800 to 2,450 square feet. As proposed, dwellings within this development shall be approximately 1,860 to 2,400 square feet.

(i.) General compatibility with the goals and intent of the city's adopted land-use, transportation, and other strategic plans.

Finding: Staff finds that the proposal is compatible with the goals and intent of City Plan 2040. Although a cluster housing development differs from a typical lot-and-block neighborhood, the proposal can exist in harmony with surrounding uses and contribute to the City's goals of appropriate infill development and creating attainable housing. Additionally, the property is proximate to groceries, retail, and other services which may limit the impact of vehicle traffic generated by the development.

BUDGET/STAFF IMPACT:

None

ATTACHMENTS:

- Unified Development Code
 - §161.07 – District RSF-4, Residential Single-Family, Four Units per Acre
 - §164.19 – Accessory Dwelling Units (ADU)
 - §164.22 – Cluster Housing Development
- Applicant Request Letter
- Variance Request Letter
- Applicant Site Plan
- Floor Plans & Elevations
- Public Comment
- One Mile Map
- Close-Up Map
- Current Land Use Map

161.07 District RSF-4, Residential Single-Family - Four (4) Units Per Acre

(A) *Purpose.* The RSF-4 Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 41	Accessory dwellings
Unit 46	Short-term rentals

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 9	Two-family dwellings
Unit 12a	Limited business
Unit 24	Home occupations
Unit 36	Wireless communications facilities
Unit 44	Cluster Housing Development

(C) *Density.*

	Single-family dwellings	Two (2) family dwellings
Units per acre	4 or less	7 or less

(D) *Bulk and Area Regulations.*

	Single-family dwellings	Two (2) family dwellings
Lot minimum width	70 feet	80 feet
Lot area minimum	8,000 square feet	12,000 square feet
Land area per dwelling unit	8,000 square feet	6,000 square feet
Hillside Overlay District Lot minimum width	60 feet	70 feet
Hillside Overlay District Lot area minimum	8,000 square feet	12,000 square feet
Land area per dwelling unit	8,000 square feet	6,000 square feet

(E) *Setback Requirements.*

Front	Side	Rear
15 feet	5 feet	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	3 stories
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- (G) *Building Area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot. Accessory ground mounted solar energy systems shall not be considered buildings.

164.19 Accessory Dwelling Units (ADU)

- (A) *Purpose.* Accessory dwelling units are allowed in certain situations to:
- Create new housing units while respecting the character and pattern of small scale traditional town form;
 - Increase the housing stock of existing neighborhoods in a manner that is compatible with established massing, scale, and development patterns;
 - Allow more efficient use of existing housing stock and infrastructure;
 - Provide a means for residents, particularly seniors, single parents, and families with grown children, to remain in their homes and neighborhoods, and obtain extra income, security, companionship and services; and
 - Provide a broader range of accessible and more attainable housing.
- (B) *Intent.* Planning staff shall evaluate the following criteria for the review and approval of an accessory dwelling unit application:
- (C) (1) The property shall have infrastructure (water, sewer, gas, electric, etc.) that meets City standards to serve the accessory dwelling unit.
- (2) A two (2) story accessory dwelling unit shall limit the major access stairs, decks, entry doors, and major windows to the walls facing the principal dwelling, or to the alley if applicable. Windows that impact the privacy of the neighboring side or rear yard shall be minimized.
- (3) The orientation and location of buildings, structures, open spaces and other features of the site should protect and maintain natural resources including significant trees and shrubs to the extent feasible and minimize alteration of natural land forms. Building profiles, location and orientation should relate to natural land forms.
- (D) *Administrative Design Review and Approval.* All accessory dwelling units shall meet the following standards for administrative approval by the Zoning and Development Administrator. Prior to approval of an accessory dwelling unit, the Zoning and Development Administrator shall find that:
- (1) *Maximum Square Feet.* The accessory dwelling unit(s) shall not be greater than 1,200 square feet of habitable space per lot.
- (2) *Zoning.* The accessory dwelling unit shall comply with all underlying zoning requirements including but not limited to building area, bulk and area, and setbacks with the exception of density limits.
- (3) *Parking.* For accessory dwelling unit(s) with individual or combined habitable space greater than 800 square feet, one (1) parking space shall be provided on-site. Required parking for the accessory dwelling unit is in addition to the required parking for the principal dwelling unit. On-street parking may be counted towards the total parking requirement where it is allowed in the public right-of-way adjacent to the subject property.
- (4) *Maximum Number of Accessory Dwelling Units per Lot.* A maximum of one (1) detached and one (1) attached or interior accessory dwelling unit provided the combined square footage does not exceed 1,200 square feet.
- (5) *Other Code Requirements.* The accessory dwelling unit shall comply with the requirements of the Arkansas Fire Prevention Code as adopted in Section 173.02 of the Unified Development Code.
- (6) *Maximum Occupancy of the Accessory Dwelling Unit.* A maximum of two (2) persons shall be permitted to reside in an accessory dwelling unit. If two (2) accessory dwelling units are on the same lot, only two (2) additional persons total for the lot shall be permitted to occupy these units unless one (1) accessory dwelling is occupied by a person who is a member of the related "family" (see §151.01) occupying the primary house.
- (7) *Building Height and Stories.*
- (a) A detached accessory dwelling unit shall be a maximum of two (2) stories.
- (b) An attached accessory dwelling unit may occupy a basement, first or second story of a principal dwelling unit.

- (E) *Planning Commission Approval.* An applicant may request approval from the Planning Commission of a variance to the number of detached accessory dwellings on a lot to a maximum of two (2) and the requirements for size (square feet), height, and materials for an accessory dwelling unit, where unique circumstances exist and the effect will not adversely affect adjoining or neighboring property owners. The applicant shall provide notification to adjacent property owners prior to the date of the meeting.
- (F) *Existing Detached Second (Accessory) Dwelling Units.* Existing detached second dwelling units approved by the Planning Commission by conditional use and constructed shall be considered a legal conforming accessory dwelling on the property.

164.22 Cluster Housing Development

- (A) *Purpose.* The purpose of the cluster housing development ordinance is to encourage innovation and variety in housing while ensuring compatibility with established neighborhoods, and to provide housing opportunities for a population diverse in age, income and household size.
- (B) *Applicability.* The provisions of this section shall apply to proposed cluster housing development proposals, as defined in Chapter 162, Use Units, and authorized by Chapter 161, Zoning Regulations of the Unified Development Code, however zoning and development regulations such as density, bulk and area, building area, street frontage requirements, lot splits and other standards for cluster housing development are enforced subject to the criteria adopted in this chapter.
- (C) *Development Review Process.* For the purpose of development review, cluster housing developments less than one (1) acre shall be processed as a site improvement plan. Cluster housing development on lots one (1) acre or larger shall be processed as a large scale development. If individual cluster housing unit lots are proposed and the proposal meets all of the requirements in this section, the subdivision shall be processed through the subdivision platting process as a lot split regardless of the number of lots created.
- (D) *Dwellings Permitted.*
 - (1) *Number of Cluster Housing Units Permitted.* A cluster housing development shall contain a maximum of twelve (12) dwelling units. In multi-family zones where the proposed cluster housing development exceeds the minimum open space requirements of 164.22(G)(3)(a) by at least 20%, and in which at least 75% of the planned units are attached dwellings, there shall be no maximum number of dwelling units, except to conform to the density limitations herein.
 - (2) *Existing Nonconforming Structures.* On a lot to be used for a cluster housing development, existing detached single-family residential structures, which may be nonconforming with respect to the standards of this section, shall be permitted to remain, but the extent of the nonconformity may not be increased. Such nonconforming dwelling units shall be included in the maximum permitted cluster density.
- (E) *Zoning Regulations.* The parent tract prior to development shall conform to the zoning criteria of the underlying zoning district.
 - (1) *Permitted and Conditional Use.* Cluster housing development is permitted as identified in Chapter 161, Zoning Regulations, as a permitted or conditional use.
 - (2) *Density.* Cluster housing development permitted as a use by right shall be allowed a density in conformance with the underlying zoning district. Zoning districts that allow cluster housing developments as a conditional use shall be allowed a density not to exceed two (2) times the maximum density allowed in the underlying zoning district.
 - (3) *Bulk and Area Regulations.*
 - (a) *Lot Width Minimum.* There is no lot width requirement for individual cluster housing lots.
 - (b) *Lot Area Minimum.* The lot area minimum for cluster housing lots is 750 square feet.
 - (c) *Land Area per Dwelling Unit.* The land area per dwelling unit requirement is 750 square feet.
 - (4) *Setback Requirements.* All structures shall meet setback and separation requirements of the International Building Code, as applicable. For zoning purposes:
 - (a) In single family districts, all cluster housing units shall have a minimum separation from one another of ten feet measured from exterior wall to exterior wall, not counting eaves or other architectural projections.
 - (b) In multi-family districts, there are no separation requirements from one cluster housing structure to another.
 - (c) The setbacks from the exterior property lines of the original parent tract shall be set by the underlying zoning district.
 - (5) *Building Height Regulations.* The height for all structures in a cluster housing development shall not exceed the permitted height requirement of the underlying zoning district.

- (6) *Building Area.* None.
- (7) *Accessory Dwelling Units.* Accessory dwelling units are permitted in cluster housing developments by conditional use. Where a cluster housing development is permitted as a conditional use, accessory dwelling units may be requested within the same application.
- (F) *Common Property Maintenance.* Community buildings, parking areas and common open space shall be owned and maintained commonly by the cluster housing development residents, through a condominium association, a homeowners' association or a similar mechanism, and shall not be dedicated to the city unless accepted by the City Council.
- (G) *Development Standards.* All cluster housing developments are subject to the following standards:
 - (1) *Floor Area.* The total conditioned floor area of any individual cluster housing unit shall not exceed 2,500 square feet.
 - (2) *Building Orientation.* A minimum of 75% of dwelling units in a cluster housing development shall be oriented around and face the common open space, a public trail or towards the street, having pedestrian access to the common open space and the street. Where a cluster housing unit fronts onto a public trail, the façade facing the public trail shall be considered a principal façade for the purposes of meeting design standards.
 - (3) *Open Space.*
 - (a) For units up to 1,500 square feet, a minimum of 250 square feet of common open space shall be provided per unit. For units exceeding 1,500 square feet and up to 2,000 square feet, 500 square feet of common open space shall be required per unit. For units exceeding 2,000 square feet, 750 square feet of common open space shall be required per unit. Common open space is subject to the following performance criteria:
 - (i) No dimension of a common open space area used to satisfy the minimum square footage requirement shall be less than ten feet.
 - (ii) Required common open space shall be divided into no more than two (2) separate areas per cluster of dwelling units.
 - (iii) Common open space shall be improved for passive or active recreational use, garden/food production, social gathering spaces or landscaped areas. Examples may include but are not limited to courtyards, orchards, landscaped picnic areas, plazas or gardens. A detailed site plan of the common open space depicting the design and amenities of the space shall be reviewed with the site plan for approval.
 - (iv) Amenities such as permanent or movable seating, landscaping, trails and paths, barbeque or eating facilities, covered shelters or water features shall be included within the common open space. Low Impact Development stormwater management facilities may be placed within the common open space when they are integrated with the amenities listed above.
 - (b) Each cluster housing unit shall be provided with a private open space of 250 square feet with no dimension of less than ten feet. Private open space should be contiguous to each dwelling unit, for the exclusive use of each respective resident. In multi-family zones in which at least 75% of the planned units are attached dwellings, private open space shall not be required where the development exceeds the minimum open space requirements of (G)(3)(a) by at least 20% and it can be demonstrated that each unit has easily available access to open space amenities.
 - (c) Parking areas and driveways shall not be counted as open space.
 - (4) *Fences.* Fencing located between a cluster housing unit and a public street or trail or the common open space shall not exceed 48 inches in height.
 - (5) *Parking Requirements and Standards.* Parking areas should be located within the cluster housing development in such a way as to maintain the character along the public street and to minimize the noise and light impacts on private residences and public spaces. Reductions in parking space allowances are permitted in cluster housing developments as described in Chapter 172, Parking and Loading. Permitted on-street parking spaces adjacent to a project's frontage may count towards the parking requirements of the development. Parking standards for cluster housing developments shall be as follows:
 - (a) The owner/developer may choose to supply one (1) parking space per bedroom for his or her entire cluster housing development. Otherwise, the required number of parking spaces shall be determined according to the square footage of the cluster housing unit as described below:
 - (i) Dwelling units less than 1,000 square feet shall have one and one-half (1.5) parking spaces provided.
 - (ii) Dwelling units over 1,000 square feet shall have two (2) parking spaces provided.
 - (b) Shared covered parking shall be designed to be similar and compatible to the design, materials and roof pitches used for the cluster housing units.

- (6) Cluster housing developments shall provide at least one (1) bicycle parking rack per cluster housing unit.
 - (7) *Fire Department Access.* Fire Department access shall be determined at the time of development review.
 - (8) *Pedestrian Connectivity.* All buildings and common spaces shall be served by a pedestrian circulation system that connects to an existing or planned sidewalk or trail system.
 - (9) *Utilities.* Individual cluster housing lots shall have a unique connection to the main water and sewer lines. Main water and sewer lines on private property servicing cluster housing unit developments shall be located in a dedicated easement.
 - (10) *Community Buildings.* Indoor or covered common areas less than 2,000 square feet are permitted by right in cluster housing development. These structures shall be architecturally integrated with the architectural style of the cluster housing development.
 - (11) *Recycling and Trash Collection Service.* For the purposes of recycling and trash collection cluster housing developments are considered a residential use and should receive residential recycling and trash collection service (individual carts and recycling bins) where possible. In certain instances, it may be necessary to service cluster housing developments with commercial trash collection equipment (dumpsters). This may occur when a project is located in a predominately commercial area serviced by commercial trash pickup. It is incumbent on the developer to design recycling and trash collection facilities into the cluster housing development plan early in the process. The final determination of recycling and trash collection service and pick-up areas will be made at the time of development review by the city. Specific requirements for residential and commercial trash and recycling pick-up shall be as follows:
 - (a) Residential trash and recycling collection service requires a designated location near the street curb for trash carts and recycling bins. This location shall be kept clear of obstructions on the designated pick-up day. If this location is also used for on-street parking it shall be clearly marked and a sign posted restricting use for the designated pick-up day. An appropriate linear distance is required to accommodate each cluster housing unit's trash cart and recycling bin, subject to city approval.
 - (b) Commercial trash collection service requires a dumpster location that is freely accessible for front end loading and screened from public view.
 - (c) Recycling and trash facilities shall be located behind the front building setback line and shall be screened from the right-of-way and adjacent property owners by either architectural treatments or vegetative screening.
- (H) *Building Design Standards.*
- (1) *Variety in Detached Cluster Housing Units Floor Plans and Architectural Treatments.* These standards are intended to avoid the overly repetitive use of the same building design, structural features, detailing or finishes among detached units within the cluster housing development. In cluster housing developments no two (2) structures shall be identical in terms of exterior finishes. All cluster housing units shall differ from each other by utilizing at least two (2) of the following options:
 - (a) Variations in building material finishes such as clapboard, shake shingles, stone, brick, etc., and building color;
 - (b) Variations in adjacent cluster housing unit floor plans that alter the location of exterior windows and doors;
 - (c) Variations in the size of main floor area and/or building height of adjacent structures; or
 - (d) A front porch with a minimum width no less than 50% of the front building façade. Front porches shall have a minimum depth of six feet. No structurally identical front porches shall be located on adjacent cluster housing units.
 - (e) Variations in roof shapes or gables between adjacent structures.
 - (f) Other variations as approved by the Zoning and Development Administrator.
 - (2) All attached cluster housing units shall comply with §166.23, Urban Residential Design Standards. Where a cluster housing unit fronts onto a public trail or open space, the façade facing the public trail or open space shall be considered a principal façade, for the purposes of meeting this section.
- (I) *Variances From the Minimum Cluster Housing Development Requirements.* Variances of this section, Cluster Housing Development, shall be administered as normal development regulations for variances of General Design Standards, except that (E) Zoning Regulations shall be administered as zoning regulations for variance purposes.

May 6, 2024

Via Email: kcole@fayetteville-ar.gov

Ms. Kylee Cole
Planner
City of Fayetteville
125 West Mountain Street
Fayetteville, Arkansas 72701

RE: CUP 2024 0016 – 1629 N. Crossover Road Cluster Development

Ms. Cole,

As a representative of the owner of Washington County Parcels 765-14186-000 and 765-14186-001, I am writing to provide clarification in regards to the requested CUP 2024 0016. A previous Conditional Use Permit was approved by the City of Fayetteville Planning Commission on January 10, 2022, CUP 2021 000053, which was very similar in plan. CUP 2021 000053 has expired and approval of CUP 2024 0016 is being requested.

General - The property is zoned RSF4 and contains approximately 1.93 acres. The property contains the Peter Smyth House which was constructed in 1886 and has been placed on the National Register of Historic Places. The plan is to renovate the Smyth House for use by the neighborhood as a common and development the remaining property with cluster single family housing. A color master plan is attached which should present a proposal that meets all of the zoning and site requirements of UDC 164.22 Cluster Housing Development. The request is for the zoning approval of a cluster housing development containing 14 total residential units.

Fire, Solid Waste, Vehicular Access and Parking – Fire, solid waste, and vehicular access is proposed along a new looped shared street or private drive. The concept is for the shared private street or drive to incorporate the principles of a “woonerf”, which is a shared space for use of pedestrians and vehicles. The shared drive will maintain a minimum clear width of 20’ to meet requirements for fire and solid waste access. In addition to the “off-street” parking spaces planned, other parking spaces are also planned along the shared drive to accommodate more parking.

Architectural Floor Plans and Elevations – Each of the houses are proposed to be range between approximately 1,860 and 2,500 square feet and contain between 3 and 5 bedrooms each. Floor plans and elevations for each of the 14 proposed houses have been provided in previous submittals. The houses have been designed using massing and detailing that is characteristic of traditional Ozark vernacular farmhouse. As proposed each house has a large front porch and also a private courtyard. 10 of the 14 houses include 2-car garages. 6 of the detached garages are programmed as traditional carriage houses that include guest quarters above the garage. Since the guest quarters include a kitchen, technically it will most likely be an accessory dwelling per the Unified Development Code. Common open space is provided in two locations, the central green and the common area around the Smyth House. Elevation variation is provided focusing on roof structure massing or projected gables, window and door placement, window trim detailing, porch column and beam detailing, paint color, and roof shingle color.

Compatibility and Traffic Impact -

The proposal is compatible with adjacent properties and the neighborhood primarily by maintaining a detached single-family house type when single family, two and three family or townhomes, and commercial retail exists nearby and within

100 West Center Street Suite 300
Fayetteville, AR 72701

479.790.6775
Planning Commission

May 13, 2024

May 6, 2024

the neighborhood. By incorporating Ozark farmhouse vernacular architecture into the house designs, the proposal adds to the formerly rural character of this neighborhood.

The proposal will not have a measurable impact on vehicular traffic in the area. The proposal utilizes an existing curb cut onto Crossover Road. Proximity to everyday shopping is also less than a 5 minute walk away with retail shops and restaurants along Crossover Road and Mission Boulevard to the north of the property.

General Changes From the Original Approved CUP –

To work better with the changing development economy and create a more feasible project, the following general changes have been made to the original approved CUP plans:

- 1 house has been removed while additional bedrooms and parking have been added to proposed houses 1-10.
- Pavement has been changed to impermeable and a detention pond added in the northwest corner of the site.
- The proposed sanitary sewer main alignment has shifted in the northwest corner of the site.
- A public water main is now proposed.

Proposed fire and solid waste access has not changed except that the proposed fire hydrant has been moved to a more central location. Proposed tree preservation has not changed.

A variance was approved with the original CUP, CUP 2021 000053, that allowed for 15 dwelling units in a cluster development when the maximum allowed by code is 12. If determined that the conditions of the previous variance approval are being met with the revised CUP, we request that the previous variance stand. If not, a variance request letter is also attached / included requesting approval of 14 dwelling units in a cluster development.

Thank you for your consideration of this request. Please let me know if you have any questions or if you need additional information.

Sincerely,



Brian Teague
Community By Design

May 6, 2024

Via Email: kcole@fayetteville-ar.gov

Ms. Kylee Cole
Planner
City of Fayetteville
125 West Mountain Street
Fayetteville, Arkansas 72701

RE: CUP 2024 0016 – 1629 N. Crossover Road Cluster Development

As a representative of New Buildings LLC, owner of Washington County Parcels 765-14186-000 and 765-14186-001, I am requesting a variance from UDC 164.22(D)(1) to allow a cluster housing development that contains 14 dwelling units when the maximum allowed by code is 12.

A variance was approved with the original CUP, CUP 2021 000053, that allowed for 15 dwelling units in a cluster development when the maximum allowed by code is 12. If determined that the conditions of the previous variance approval are being met with the revised CUP, we request that the previous variance stand. If it is determined that the original variance approval does not stand, the request is approval of 14 dwelling units in a cluster development when the maximum allowed by code is 12.

The property contains 1.93 acres and is zoned RSF4. In accordance with UDC 164.22(E)(2), the density allowed shall not exceed two times the maximum density of the underlying zoning district or 8.00 dwelling unit per acre. The proposed density is 7.25 dwelling units per acre.

It is possible to break the project into two separate cluster developments. The first cluster development would contain houses clustered around the east common open space while the second would contain houses clustered around the west common open space. However, a variance for one cluster development containing 14 houses would be the most straight forward approach if the variance is granted. Benefits would include the requirement of more variation in the house plans and elevation.

Thank you for your consideration of this request. Please let me know if you have any questions or if you need additional information.

Sincerely,



Brian Teague
Community By Design



Master Plan Key

- A Smyth House
- B Bent House
- C Prow House
- D Carriage House
- E Stormwater Retention
- F Woonert or Shared Space
- G Vehicular Access
- H Private Courtyards / Patios
- I Private Courtyards / Patios
- J Private Central Green
- K Tree Preservation

- G
- F
- H

Crossover Road

Smyth House

Master Development Plan

Revised 4/3/24

Elevation and Color Summary

SW 9144

Moonmist

SW 7007

Ceiling Bright White



BENT HOUSE ELEVATION 2

SMYTH DEVELOPMENT LOT 1

38-FT WIDE PLAN

SW 6450

Easy Green

SW 7007

Ceiling Bright White



BENT HOUSE ELEVATION 1

SMYTH DEVELOPMENT LOT 2

38-FT WIDE PLAN

SW 6680

Friendly Yellow

SW 7007

Ceiling Bright White



PROW HOUSE ELEVATION 1

SMYTH DEVELOPMENT LOT 3

PRICING SET

SW 6450

Easy Green

SW 7007

Ceiling Bright White



BENT HOUSE ELEVATION 4

SMYTH DEVELOPMENT LOT 4

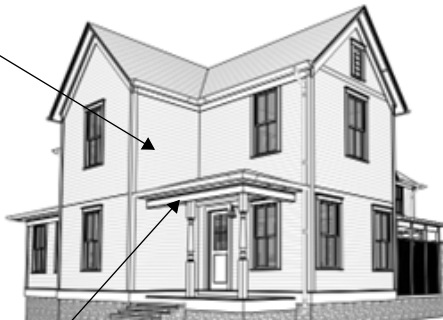
38-FT WIDE PLAN

SW 6680

Friendly Yellow

SW 7007

Ceiling Bright White



PROW HOUSE ELEVATION 2

SMYTH DEVELOPMENT LOT 5

PRICING SET

SW 7008

Alabaster

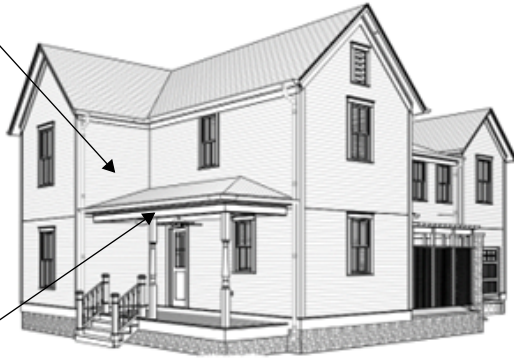


PROW HOUSE ELEVATION 3

SMYTH DEVELOPMENT LOT 6
PRICING SET

SW 9144

Moonmist



SW 7007

Ceiling Bright White

BENT HOUSE ELEVATION 3

SMYTH DEVELOPMENT LOT 7

38-FT WIDE PLAN

SW 9144

Moonmist



SW 7007

Ceiling Bright White

PROW HOUSE ELEVATION 4

SMYTH DEVELOPMENT LOT 8

PRICING SET

SW 6450

Easy Green



SW 7007

Ceiling Bright White

PROW HOUSE ELEVATION 5

SMYTH DEVELOPMENT LOT 9

PRICING SET

SW 7008

Alabaster



PROW HOUSE ELEVATION 6

SMYTH DEVELOPMENT LOT 10

PRICING SET

SW 6450

Easy Green



SW 7007

Ceiling Bright White

BENT HOUSE - ELEVATION 1

SMYTH DEVELOPMENT - LOT 11

34-FT WIDE PLAN

SW 6680

Friendly Yellow



SW 7007

Ceiling Bright White

BENT HOUSE - ELEVATION 2

SMYTH DEVELOPMENT - LOT 12

34-FT WIDE PLAN

SW 9144

Moonmist



SW 7007

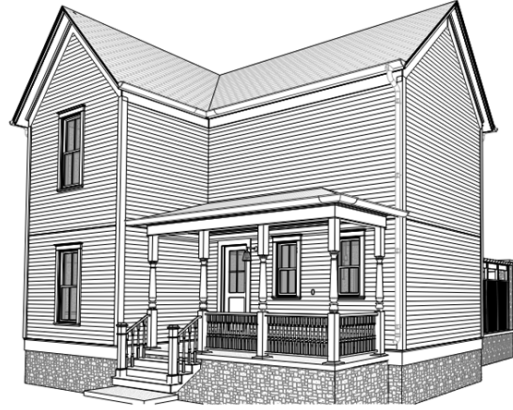
Ceiling Bright White

BENT HOUSE - ELEVATION 3

SMYTH DEVELOPMENT - LOT 13
34-FT WIDE PLAN

SW 7008

Alabaster



BENT HOUSE - ELEVATION 4

SMYTH DEVELOPMENT - LOT 14
34-FT WIDE PLAN

Cole, Kylee

From: Kim Petrone <kkpetrone@yahoo.com>
Sent: Wednesday, May 8, 2024 11:31 AM
To: Cole, Kylee
Cc: Jill Dickerson; Lou Petrone
Subject: CUP 2024-0016

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I respect the Beldens and Old Buildings. I appreciated their efforts with the initial CUP two years ago. I appreciate their communication with the present CUP request. However, I believe the current CUP proposal is not suited to this site or environment.

This is an unusual lot. It is not walkable to any businesses as it is adjacent to a five-laned state highway with cars often exceeding the stated 45 mph speed limit. It is a narrow, sloped peninsula surrounded on three sides by Boardwalk POA homeowners and property. On the west side (downhill) are amenities that Boardwalk POA has invested hundreds of thousands of dollars in maintaining through the decades: a pool, tennis court, playground, pond. All of these structures are aging and require significant upkeep.

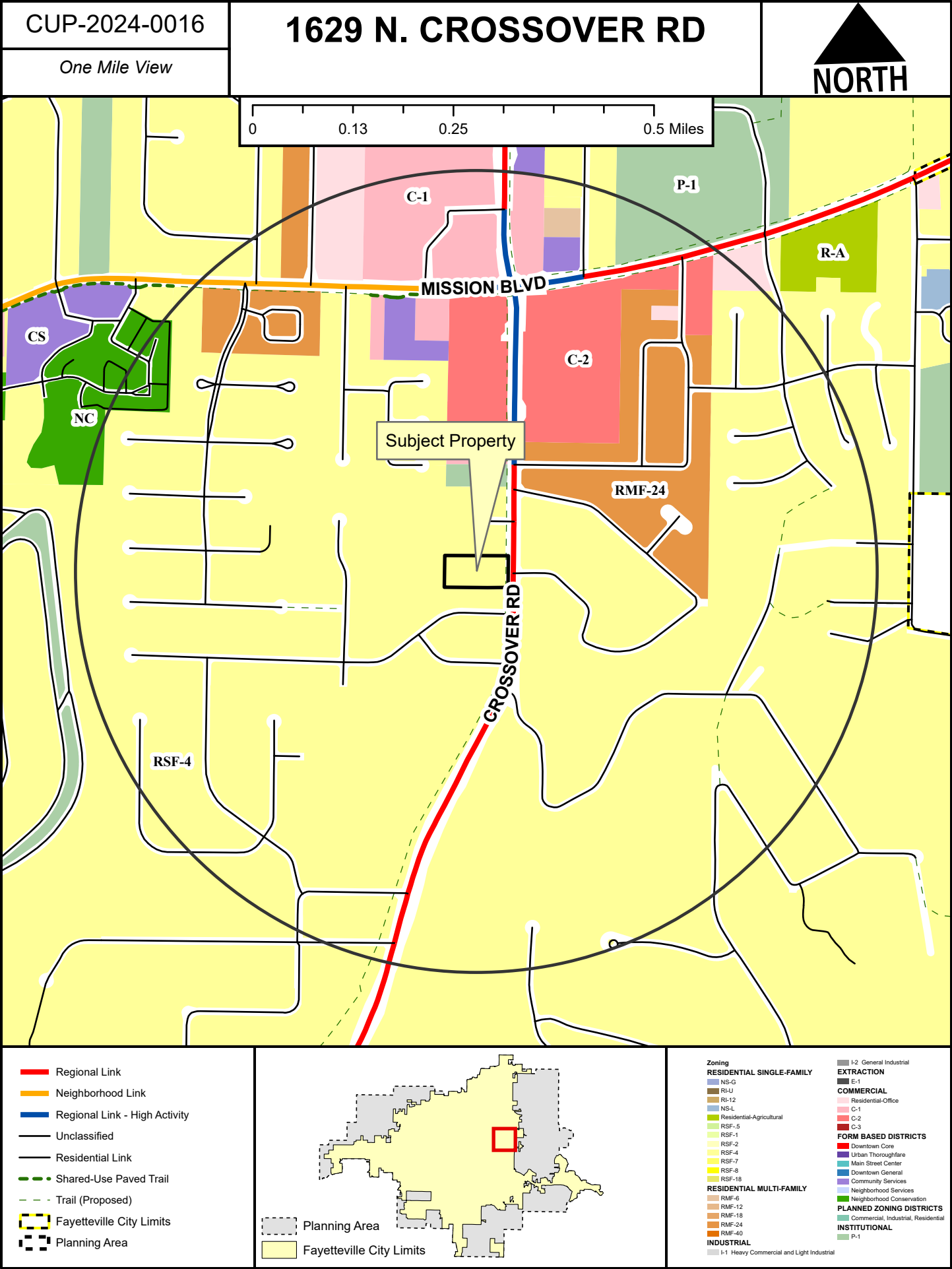
Is the CUP, as amended, suitable for this specific site? I think not for the following reasons:

1. the CUP must consider the current situation—vulnerable and costly neighborhood amenities, sloped lot, homes built in the 1990 (or earlier).
2. the new, dramatic engineering (dozens of meters of retaining wall, some reaching 6 or more feet) spotlights the high risk of flooding—can it truly be engineered out of the picture? should such a risk be taken?

The original CUP respected the lot and worked with the unique features of the lot. The new CUP shoehorns in a partially elevated plateau surrounded on three sides by homes more than 30 years old. The old CUP was a more gentle neighbor easing the transition between traditional RSF-4 neighborhood and cluster housing with one-story structures on the perimeter. The new CUP is an imposing giant with two story structures built on top of tall retaining walls as close to the edges of property as possible.

Please reject this CUP and give time for a new CUP to be created which more equitably balances the needs of the developer and the existing environment (both land and neighbors).

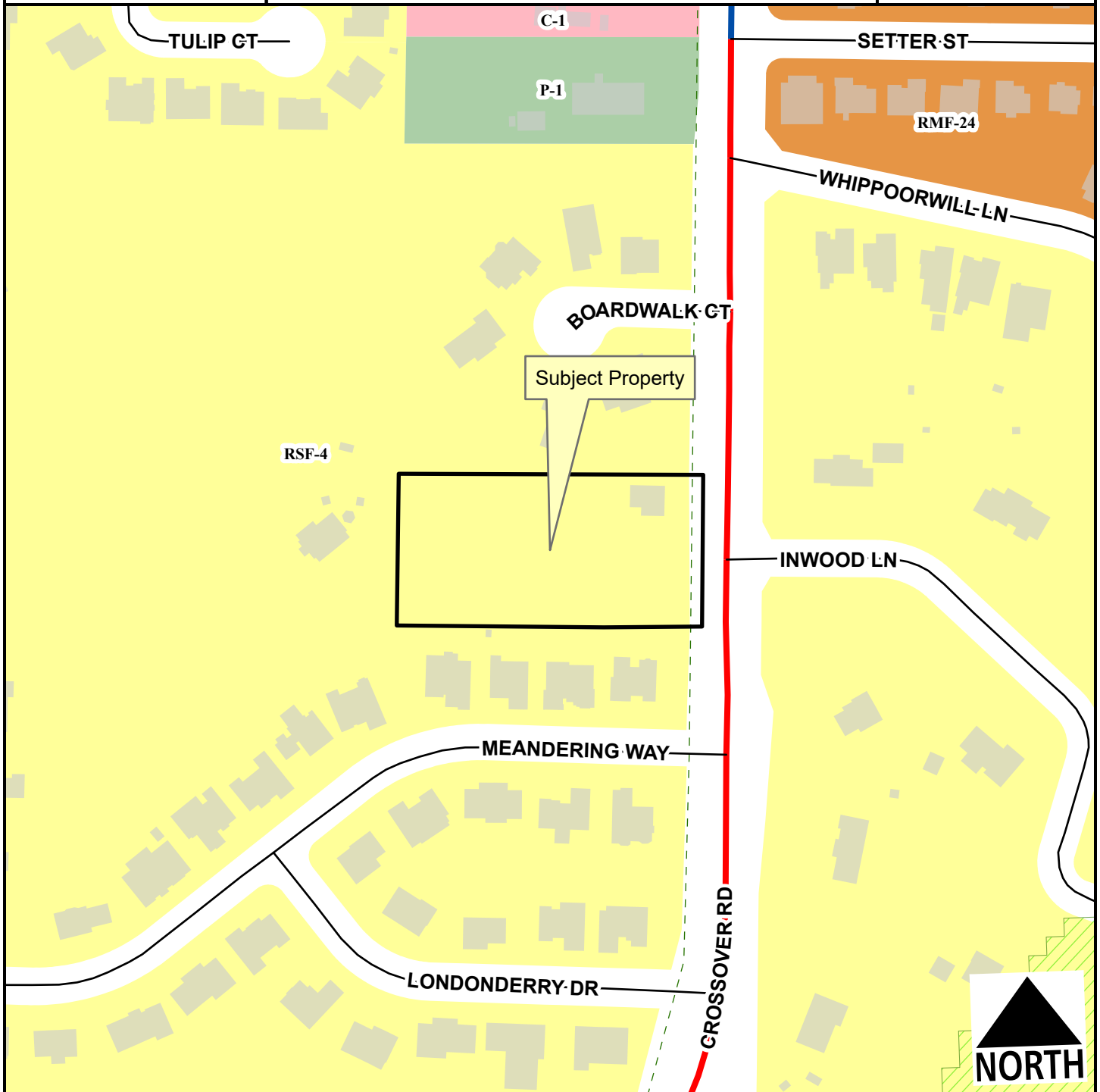
Thank you for your consideration.
Kim Petrone



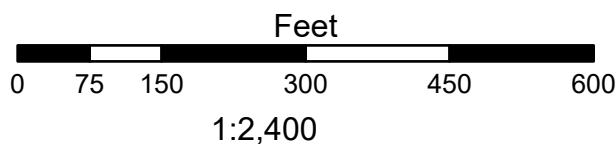
CUP-2024-0016

1629 N. CROSSOVER RD

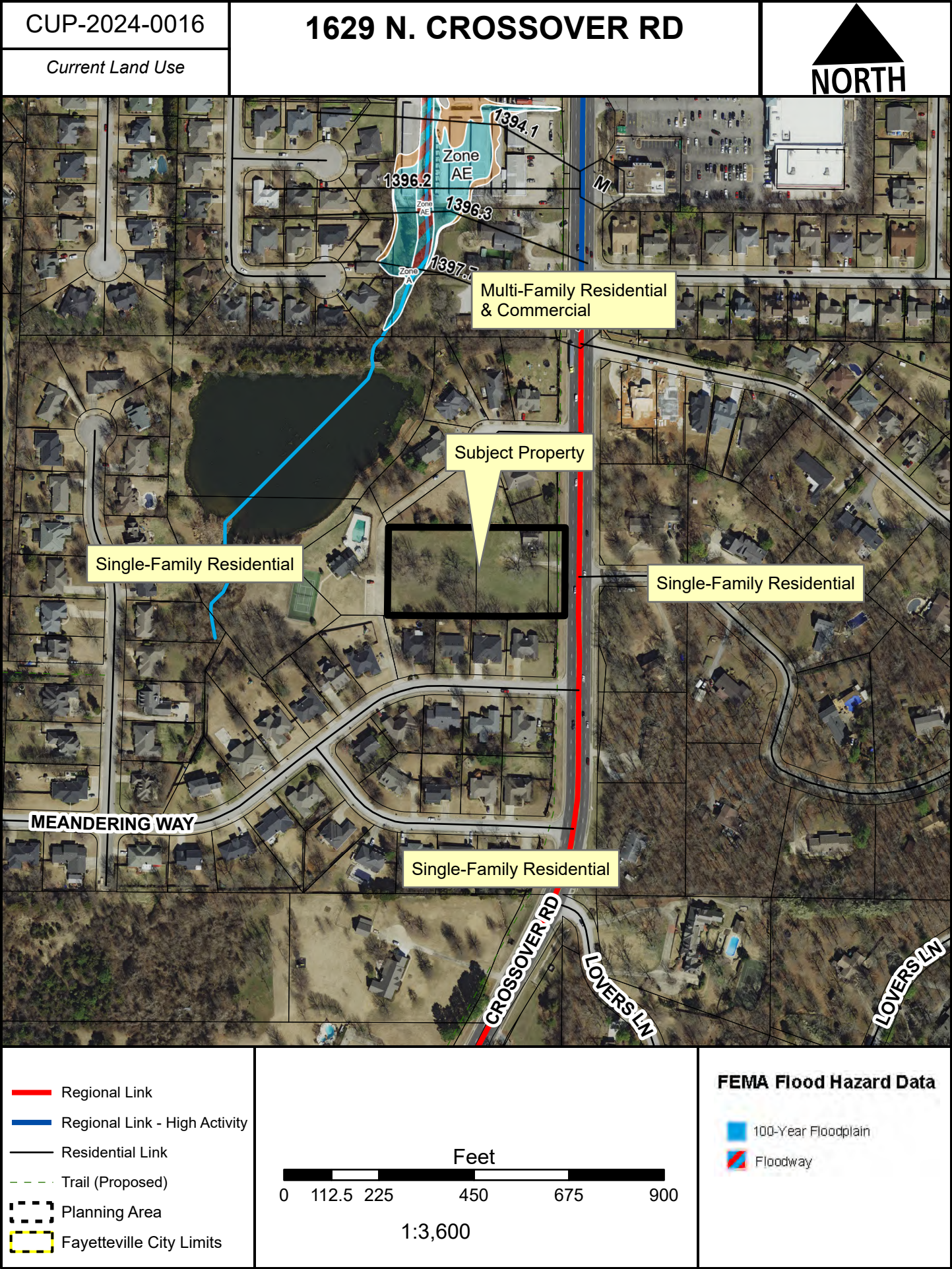
Close Up View



- Regional Link
- Regional Link - High Activity
- Residential Link
- Hillside-Hilltop Overlay District
- Planning Area
- Fayetteville City Limits
- Trail (Proposed)



- RSF-4
- RMF-24
- C-1
- P-1





TO: Fayetteville Planning Commission

FROM: Jessie Masters, Development Review Manager

MEETING DATE: May 13, 2024

SUBJECT: **CUP-2024-0017: Conditional Use Permit (10 S. PALMER AVE/BEYKIRCH, 521):** Submitted by KEY ARCHITECTURE INC for property located at 10 S. PALMER AVE. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 0.40 acres. The request is to use the residence for a cultural and recreational facility for international student housing.

RECOMMENDATION:

Staff recommends approval of **CUP-2024-0017** with conditions, based on the findings contained in this report.

RECOMMENDED MOTION:

*"I move to approve **CUP-2024-0017** with conditions, determining:*

- In favor of compatibility with adjacent properties; and*
- In favor of all other conditions as recommended by staff.*

BACKGROUND:

The subject property is in the University Heights neighborhood at 10 S. Palmer Avenue, which is approximately 800 feet west of the University of Arkansas' John McDonnell Field and situated at the southeast corner of W. Center Street and S. Palmer Avenue. The property is developed with an approximately 3000 sq. ft. single-family home that was built in 1966. The current property owner previously requested a conditional use permit for the home to be used as a Type 2 short-term rental, but that request was denied by Planning Commission and ultimately City Council following an appeal (CUP-2023-0073). Surrounding land uses and zoning is depicted in *Table 1*.

Table 1
Surrounding Land Use and Zoning

Direction	Land Use	Zoning
North	Single-family Residential	RSF-4, Residential Single-family, 4 Units per Acre
South	Single-family Residential	RSF-4, Residential Single-family, 4 Units per Acre
East	Multi-family Residential	RMF-24, Residential Multi-family, 24 Units per Acre
West	Single-family Residential	RSF-4, Residential Single-family, 4 Units per Acre

FUTURE LAND USE DESIGNATION: Residential Neighborhood Area

Request: The applicant requests approval of a conditional use permit to allow for a 3,750 sq. ft. group home facility for graduate students with additional supportive services through the International Student Christian Association (ISCA). Staff has determined that this use classifies as Use Unit 4, a cultural and recreational facility, in the Unified Development Code, which includes uses such as dormitories, institutional uses, care facilities.

Public Comment: Staff has received comments in opposition to the request, as well as inquiries from the public with no direct opposition or support of the proposal. All written comments are included in the attachments.

RECOMMENDATION: Staff recommends approval of **CUP-2024-0017**, subject to the following conditions:

Conditions of Approval:

1. **Planning Commission determination of compatibility.** *Staff finds the proposed cultural and recreational facility is compatible for the reasons outlined in this report;*
2. **This conditional use permit is limited to the use as described in the applicant's request letter. The following specifications apply:**
 - Size of the facility: Approximately 3,750 square feet
 - Parking: Limited to 4 outdoor vehicles on the property
 - Frequency of events: **Weekly:** Small groups (Maximum of 10)
Quarterly: Large groups (Maximum of 30, or dependent on fire code allowance, whichever is greater)
3. **Due to the change of use from a single-family home to an assembly/multi-family occupancy, this project will need to conform to the International Building Code to meet the needs of fire protection/separation.**
4. **Maximum number of full-time residents shall be limited to one per bedroom, or a maximum of 6.**
5. **Parking on the property shall be subject to the requirements outlined in §172.11-Driveway and Parking Standards for Four (4) or Less Spaces to ensure compatibility to the single-family nature of the neighborhood.**
6. **On-street parking is not permitted along S. Palmer Avenue or W. Center Street.**
7. **Trash carts are kept out of view from the public and screened when not at the curb for typical pick-up days.**
8. **Any proposed signage will be subject to the City's sign ordinance and all the regulations therein.**
9. **Approval of this conditional use permit does not constitute approval of associated permits or development entitlements not fully reviewed at this time. A building permit will be required for the applicant's proposed addition.**

PLANNING COMMISSION ACTION:				Required	<u>YES</u>
Date:	<u>May 13, 2024</u>	☐ Tabled	☐ Approved	☐ Denied	
Motion:					
Second:					
Vote:					

FINDINGS OF THE STAFF

Section 163.02. **AUTHORITY; CONDITIONS; PROCEDURES.**

B. Authority; Conditions. The Planning Commission shall:

1. Hear and decide only such special exemptions as it is specifically authorized to pass on by the terms of this chapter.
2. Decide such questions as are involved in determining whether a conditional use should be granted; and,
3. Grant a conditional use with such conditions and safeguards as are appropriate under this chapter; or
4. Deny a conditional use when not in harmony with the purpose and intent of this chapter.

C. A conditional use shall not be granted by the Planning Commission unless and until:

1. A written application for a conditional use is submitted indicating the section of this chapter under which the conditional use is sought and stating the grounds on which it is requested.

Finding: **The applicant has submitted a written application requesting a conditional use permit for a cultural and recreational facility as a group home for international students.**

2. The applicant shall pay a filing fee as required under Chapter 159 to cover the cost of expenses incurred in connection with processing such application.

Finding: **The applicant has paid the required filing fee.**

3. The Planning Commission shall make the following written findings before a conditional use shall be issued:

(a.) That it is empowered under the section of this chapter described in the application to grant the conditional use; and

Finding: The Planning Commission is empowered under §161.07 to grant the requested conditional use permit.

(b.) That the granting of the conditional use will not adversely affect the public interest.

Finding: Staff finds that granting the requested conditional use permit will not likely negatively affect the public interest. Cultural and recreational facilities are included as a conditional use in the RSF-4 zoning district because they have the potential of generating traffic, noise, or other disturbance beyond what is typically expected in a single-family district. One thing that staff takes into consideration on a balance of recommendations for conditional uses is the aspect of scale, visual, and traffic impacts on the surroundings. Given the applicant's proposal, staff finds that the property, though with the possibility to house up to 6 students at a time, is likely to function primarily as a residence under one household, and secondly as a traffic-generating facility for the use of assembly and gathering. The residence, even with a proposed addition, is of a similar size and scale to the surrounding neighborhood.

(c.) The Planning Commission shall certify:

(1.) Compliance with the specific rules governing individual conditional uses; and

Finding: There are no specific rules governing this type of use.

(2.) That satisfactory provisions and arrangements have been made concerning the following, where applicable:

(a.) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;

Finding: The applicant supplied a site plan that indicates that there are three separate driveways to this property. Code requires a minimum separation distance of 30 feet for single-family dwellings with multiple driveways, and the existing driveways appear to meet that minimum requirement. However, with the proposed change in use, staff finds that curb cuts would typically need to meet a minimum separation distance of 50 feet, since the property would no longer be classified as a single-family residence. An evaluation of whether those driveways would be required to be brought into compliance with that standard would be evaluated at the time of a building permit under 166.08(G). The applicant's request letter indicates that the students are not likely to have access to vehicles due to their inability to hold outside work given their existing visa statuses. Though the use of the property is changing from a strictly single-family residence to a group home, staff recommends a condition that the location be subject to single-family parking requirements to ensure physical compatibility with the single-family surroundings. These requirements limit outdoor parking to a maximum of 4 vehicles at any given time. Further, given the narrowness of both W. Center Street and S. Palmer Avenue, staff recommends an additional condition indicating that on-street parking will not be permitted in association with this facility. There is

currently a sidewalk along W. Center Street, but S. Palmer Avenue does not have sidewalk.

- (b.) Off-street parking and loading areas where required, with particular attention to ingress and egress, economic, noise, glare, or odor effects of the special exception on adjoining properties and properties generally in the district;

Finding: Three separate driveways that could potentially accommodate up to 6 vehicles currently exist on the property. As stated above, staff recommends a condition of approval limiting the number of vehicles to a maximum of 4 to be parked outside at any given time to maintain compatibility with the existing surrounding single-family dwellings.

- (c.) Refuse and service areas, with particular reference to ingress and egress, and off-street parking and loading;

Finding: The applicant has not provided any specific additional information regarding refuse and service, but it is likely that only residential carts will be necessary to serve the facility. Staff recommends a condition that trash carts are kept out of view from the public and screened when not at the curb for typical pick-up days.

- (d.) Utilities, with reference to locations, availability, and compatibility;

Finding: An existing 16-inch water main and a 2.25-inch water main are present in W. Center Street. An existing 8-inch sewer main is in S. Palmer Avenue and a 6-inch sewer main is in W. Center Street. Capacity or any necessary utility upsizing will be evaluated with any subsequent permits.

- (e.) Screening and buffering with reference to type, dimensions, and character;

Finding: Staff recommends screening of any trash receptacles from view of the public right-of-way when not at the curb for scheduled retrieval days.

- (f.) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;

Finding: Any proposed signage will be subject to the City's sign ordinance and all the regulations therein. Where a conditional use permit has been approved for a nonresidential use within the RSF-4 zoning district, a wall sign is typically limited to a display surface area of 8 square feet.

- (g.) Required yards and other open space; and

Finding: The applicant has provided a preliminary site plan that appears to be compliant with typical setbacks as required by the RSF-4 zoning district.

- (h.) General compatibility with adjacent properties and other property in the district.

Finding: Staff finds that the proposal is compatible with adjacent properties given the overall scale of the request, and the limited amount of outside events the

organization intends to host at the property. The majority of the time, this property will be operating like a typical residential use, and staff finds that limiting the number of residents to one per bedroom is consistent with the size and scale of the facility. Staff does recommend conditions of approval that should help maintain that compatibility to limit disruptions to the neighborhood. Given this property's vicinity to the University and other University-oriented facilities and services, staff finds that the use of this property as a group home for graduate students and occasional assemblies serves as a reasonable transition between the higher intensity University uses and the residential nature of the surrounding property.

- (i.) General compatibility with the goals and intent of the city's adopted land-use, transportation, and other strategic plans.

Finding: Staff finds that the proposal is compatible with the City's adopted land use plans. City 2040 plan encourages a range of housing types to encourage housing affordability and diversity of choice. Staff finds that the provision of an alternative housing type is in line with this goal, and is in line with the goal of creating opportunities for attainable housing.

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Code
 - §161.07 District RSF-4, Residential Single-Family - Four (4) Units Per Acre
- Applicant Request Letter and supplemental information
- Site Plan, Floor Plan, and Elevations
- One Mile Map
- Close-Up Map
- Current Land Use Map

161.07 District RSF-4, Residential Single-Family - Four (4) Units Per Acre

(A) *Purpose.* The RSF-4 Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 41	Accessory dwellings
Unit 46	Short-term rentals

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 9	Two-family dwellings
Unit 12a	Limited business
Unit 24	Home occupations
Unit 36	Wireless communications facilities
Unit 44	Cluster Housing Development

(C) *Density.*

	Single-family dwellings	Two (2) family dwellings
Units per acre	4 or less	7 or less

(D) *Bulk and Area Regulations.*

	Single-family dwellings	Two (2) family dwellings
Lot minimum width	70 feet	80 feet
Lot area minimum	8,000 square feet	12,000 square feet
Land area per dwelling unit	8,000 square feet	6,000 square feet
Hillside Overlay District Lot minimum width	60 feet	70 feet
Hillside Overlay District Lot area minimum	8,000 square feet	12,000 square feet
Land area per dwelling unit	8,000 square feet	6,000 square feet

(E) *Setback Requirements.*

Front	Side	Rear
15 feet	5 feet	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	3 stories
-------------------------	-----------

(G) *Building Area*. On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot. Accessory ground mounted solar energy systems shall not be considered buildings.

(Code 1991, §160.031; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. No. 4858, 4-18-06; Ord. No. 5028, 6-19-07; Ord. No. 5128, 4-15-08; Ord. No. 5224, 3-3-09; Ord. No. 5312, 4-20-10; Ord. No. 5462, 12-6-11; Ord. No. 5921, §1, 11-1-16; Ord. No. 5945, §8, 1-17-17; Ord. No. 6015, §1(Exh. A), 11-21-17; Ord. No. 6245, §2, 10-15-19; Ord. No. 6427, §§1(Exh. C), 2, 4-20-21)

Editor's note(s)—Ord. No. 6625, §1 adopted December 6, 2022, "determines that Section 2 of Ordinance 6427 (Sunset Clause) be amended so that Ordinance 6427 and all amendments to Code Sections ordained or enacted by Ordinance 6427 shall automatically sunset, be repealed and become void on December 31, 2023, unless prior to that date the City Council amends this ordinance to repeal or further amend this sunset, repeal and termination section."



KEY ARCHITECTURE, INC. P.O. BOX 748 FAYETTEVILLE, ARKANSAS 72702 PH: 479.444.6066 FAX: 479.444.1445

Request for Conditional Use

April 3, 2024

The City of Fayetteville
125 W. Mountain
Fayetteville, Arkansas 72701

Dear Planners;

Through this conditional use, the property, which is currently designated as a single-family residence, would serve as the home base for ISCA's outreach program that provides fundamental resources to international graduate students pursuing advanced degrees. ISCA aids its members, many of which are coming from politically sensitive nations, through the provision of housing, meals, and transportation as well as spiritual, social, and educational guidance and support services.

Legal Description:

Lot 6, Block 2, in Leflar's Addition to the City of Fayetteville, Washington County, Arkansas.

Description of Request:

- (a) Existing square footage – 3,000
Addition square footage – 750
Total square footage – 3,750
- (b) See attached plans and elevations
- (c) 6 off-street parking spaces, 2 gravel parking spaces off of S. Palmer and 4 concrete parking spaces off of W. Center St.
- (d) N/A
- (e) Outdoor lighting – existing outdoor lighting consists of a wall sconce at the rear deck. No additional lighting is being proposed.
- (f) Noise- No significant source of noise. Gatherings consist of a family atmosphere of cooking, socializing, and studying scripture.
- (g) Screening – There is no buffering from adjacent properties
- (h) Residential trash service is provided by the City of Fayetteville.
- (i) This site will be utilizing the existing off-street parking spaces. It is not anticipated that this will impact the existing traffic of this neighborhood.
- (j) See attached letter from owner.

April 12, 2024

RE: #10 S. Palmer Ave. – Conditional Use Permit Request

City of Fayetteville Development Services
125 W. Mountain St.
Fayetteville, AR 72701

We are pleased to submit our request for a conditional use permit (Use Unit 4 - cultural and recreational facilities) on behalf of the International Student Christian Association (ISCA.) The subject property is located on the southeast corner of S. Palmer Ave. and W. Center St. and is zoned RSF-4.

Through this conditional use, the property, which is currently designated as a single-family residence, would serve as the home base for ISCA's outreach program that provides fundamental resources to international graduate students pursuing advanced degrees. ISCA aids its members, many of which are coming from politically sensitive nations, through the provision of housing, meals, and transportation as well as spiritual, social, and educational guidance and support services.

Recently renovated to function as a high-volume short-term rental, #10 S. Palmer is ideally suited to serve as a communal living space for up to historically 6 graduate students and would also serve as a bridge helping them gain independence as they earn their advanced degrees. We believe this potential utilization of the premise is in alignment with the "policies, standards and regulations designed to ensure that infill development is appropriate and desirable for the neighborhood and larger community." (City Plan 2040 pg. 8)

This request would invite a small group of education-driven and community-oriented individuals to the neighborhood while also providing a preferred solution for the future of #10 S. Palmer that is far superior to a short-term rental or a revolving residence for underclassmen attending the university.

Compatibility with City Plan 2040

Goal 1 - We will make appropriate infill and revitalization our highest priorities: encouraging the development or redevelopment of vacant, mostly vacant, and underdeveloped property.

This proposal answers the call for appropriate use of a currently vacant property and encourages infill by repurposing a requested and denied short-term rental into the nest of a benevolent nonprofit organization with a 30+ year respected track record of being good neighbors and in meeting the neighborhood expectations. It also functions as a housing unit. It will invite small groups of education-seekers that cohere with each other and those that offer the essential supportive services for their highly specialized needs as international graduate students.

Goal 3 - Require new growth that results in neighborhoods, districts and corridors that are:

- *Compact – via denser housing; meaningful open spaces and preserves; small blocks*
- *Complete – via housing; mixed uses; civic uses; jobs-housing mix in the neighborhoods*
- *Connected – via street-oriented buildings; interconnected streets; interconnected greenways and trails*

A longer-term graduate student accommodation promotes both housing variety and density. Residents of the property will make use of and encourage the growth of existing amenities such as Razorback Transit bus routes 11 and 48 and has direct connectivity to the Razorback side path which gives them coveted options for active transportation. They could choose to head north to the 9' foot wide cycle track or the 8' wide sidewalk where both will travel along west Maple St. connecting them with the Razorback Greenway and Downtown Fayetteville.

They could also travel south along the Razorback side path to the Tsi La Gi Trail which provides another connection to downtown and the Razorback Greenway. In short, #10 S. Palmer is well suited as the location for this conditional use as Use Unit 4 (cultural and recreational facilities.)

#10 S. Palmer is also situated within close proximity to open spaces and preserves like Hotz Park and the conservation areas on and around Markham Hill.

Goal 4 - We will grow a livable transportation network

The Growth Concept Map “reflects city-wide policies to create diverse, efficient, and well-connected communities that are affordable and rich in local employment, access to transportation, services, and culture.” (City Plan 2040 pg. 13.) Encouraging establishment in a neighborhood located near a Tier 2 Center, a Special District and a High Activity Corridor in turn stimulates public trail and transit use and promotes the further development of existing infrastructure and amenities such as the nearby Razorback bus routes and pedestrian trail accesses.

The potential influence of the requested use of this property is in keeping with goals specific to Special Districts and High Activity Corridors as their growth should “develop to become more pedestrian and bicycle friendly,” and “improve mobility for pedestrian, bicycle, and transit use.” (City Plan 2040 pg. 16.)

Goal 6 - We will create opportunities for attainable housing.

As students coming from often impoverished countries, many of the prospective tenants face challenges in procuring attainable housing. ISCA helps to alleviate some of these issues by providing affordable accommodations and coordinated services at below market cost to their international graduate students.

The university is at the core of our city and creating solutions for student housing is vital to progress. City Plan 2040 submits that “in economic expansionary periods, the construction of modest housing for low- to moderate- income households is negligible due to market forces that direct developers to meet the housing needs of middle- and upper-income households where profit margins are higher.” Adapting vacant properties to be utilized as graduate student housing relieves some of the strain of low supply and high demand in accommodating more modest earners.

Due to the very low income that graduate students receive from the university they must have below market rental rates and other essential subsidies in order to meet their daily needs. International graduate students are not allowed to work or earn income in any way or their visa will be subjected to relocation for violating their immigration status guidelines, resulting in deportation.

Compatibility with Neighborhood

The neighborhood is comprised of 17 single family residential homes occupied by a mix of individuals, families and college students. One letter of opposition to #10 S. Palmer’s former short-term rental application request stated their concern that the property’s proximity to Donald W. Reynolds Stadium and Bud Walton Arena would promote the property’s use as primarily a tailgating location. Its use as such did not align with the ideals and community standards of the surrounding residents. This newly proposed use as the ISCA home base would alleviate concerns involving a “revolving door of strangers” as the occupants would be highly involved graduate students with longer term tenures, rather than an undergrad party hub.

While some of ISCA’s educational outreach takes place on campus, examples of unobtrusive communal activities that could be hosted at the residence include small group bible studies, collective tutoring, welcome dinners, ice cream socials and barbecues.

Conclusion

We thank you for your consideration of this request on behalf of ISCA as they work toward carrying forward their existing reputation as respectful, community-cognizant neighbors to a property that better aids in the facilitation of the coordinated services that respond to the individual needs of these international graduate students.



CITY OF
FAYETTEVILLE
ARKANSAS

To whom it may concern:

For the address of 89 S. Duncan Ave. Let it be known that the Code Compliance Department for the City of Fayetteville, AR does not have any open code violations against the property. This property has been and continues to be a good neighbor to the City, and its residents.

Sincerely,

Billy Bryant
Senior Code Compliance Officer

A handwritten signature in black ink, appearing to be 'B. Bryant', written over a horizontal line.

Mailing Address:
113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



April 16, 2024

To whom it may concern,

Please accept this letter as acknowledgement that the Fayetteville Police Department has received no complaints whatsoever with regards to 89 S. Duncan Ave, Fayetteville, AR, including its owner, International Student Christian Association, and Kevin Michael Smith, ISCA's President, who resides at 2299 Gooseberry Lane, Fayetteville, AR 72204, and the International Student Christian Association organization. It has and has no opposition to its request for a Conditional Use Permit at 10 S. Palmer Ave in Fayetteville.

Should you have further question regarding this matter, please do not hesitate to contact the Fayetteville Police Department's Records Division 479-587-3567.

AbiGrace Diaz

Police Support Specialist

1800 N. Stephen Carr Memorial Blvd.

Fayetteville, Arkansas 72704

adiaz@fayetteville-ar.gov

T 479.587.3571 | F 479.587.3570

Please provide answers to the following questions:

1) How many students will live there at any given time? Based on the floor plans, staff would anticipate no more than 1 per bedroom. Does that seem accurate?

- Yes, there will be up to six residents each with their own bedroom.

2) How many people are expected to attend for assembly / gatherings (barbecue, ice cream socials, bible studies?) How often are these intended to occur?

Assemblies will range from small groups (4-10) for activities like bible studies with maximum attendance for larger events such as barbecues being 20-30 occupants. Small groups would be weekly occurrences and ice cream socials and gatherings would be on a quarterly basis.

The fire department has noted that assembly uses will trigger the need to meet additional fire code requirements, and their interpretation is that this proposal will meet those triggering factors.

We are in communication with the fire marshal and are in agreement with their findings.

3) What external/supportive services come to the property, and how often?

- a) ISCA's Shared Support Services

i) Full Time Campus Minister - ISCA is led by its campus minister who provides many services and support for its residents, as outlined below:

(1) Transportation-

ISCA provides transportation to ISCA students for shopping and personal needs. Transportation is also provided for any special or programmed events.

(2) Enhanced Housing and related Services -

(a) Not for Profit - ISCA is a 501(c)3 nonprofit organization.

(b) Convenient - ISCA housing is convenient to the University of Arkansas and other necessary services such as active transportation.

Most international graduate students are forced to live far from campus yet they do not drive (think Leverett and North.) Providing housing within a reasonable and walkable distance to the University of Arkansas is a challenge that the ISCA house answers for these international graduate students.

(c) Affordable - Far below market rents

(d) Community - Community living in a private setting

(e) Inviting - "At ISCA we don't rent rooms, we invite people into our community."

(f) Inclusive - Being a Christian is not a requirement of residents of ISCA and no specific religious beliefs are required.

(g) Home - ISCA serves as a "home away from home" for international graduate students that require assistance with daily needs, local assimilation and cultural awareness and enlightenment.

(h) Open - Bedrooms are not under lock and key. The ISCA house functions as a residential home.

(2) Teaching -

(a) Full time ISCA Campus Minister Providing Chaplain Services:

- (i) Leads weekly Bible studies
- (ii) Facilitates cultural discussions
- (iii) Ministers to students on an as necessary basis

(3) Events -

(a) Dinners

(b) Cookouts

(c) Breakfast at the Park

(d) ISCA Cycling Club

(e) Futbol

(f) Weekly Bible Study

ii) ISCA Cultural Services -

(1) Cultural Learning -

(a) ISCA's Campus Minister teaches resident students about cultural life and customary behavior in the United States

(b) Students learn about each other's cultures and customs and grow in understanding and tolerance for other cultures including that of the United States.

(2) Delivered a Prepared Foods -

Sharing food is essential to creating community. Most ISCA meetings begin with a meal, normally cooked by its students or a staff member in order to help the international graduate students to learn about each other's origins and typical dietary preferences.

(a) Facilitated Conversation - Students engage in lively dialogue about food preferences, typical dining styles and cooking methods of their cultures, and traditions surrounding food preparation and dining.

(b) Programmed Debates- Exciting exchanges result over the merits of each country's cuisine.

(3) Diversity -

(a) ISCA residents are commonly native to a variety of countries and this medley fosters inclusion and acceptance which will serve them well into the future.

(4) Learning -

By living with students from other counties, ISCA residents are able to learn not only about the United States, but also about other cultures.

iii) Recreational activities-

(1) Minister led- ISCA's Full time Campus Minister leads residents in many recreational activities, including:

(a) Breakfast in the Park

(b) Cookouts

(c) Dinners

(d) Bible Studies

(e) ISCA Cycling Club

(f) Hiking

(g) Futbol

(h) Programmed activities that encourage cultural awareness such as learning popular games, recreational activities, typical greetings as well as the customary birthday songs and traditions of each resident's native country.

4) Without the wrap-around services, staff struggles to classify this as a group home in a manner that is separate from just classifying this as a dormitory, which is typically UU 26, and not permitted in RSF-4. Please let me know what you intend to pursue. RSF-4 permits up to 3 unrelated people to live together in a single-family home.

- Dormitories are also an included use in UU4. We do not intend to pursue a UU26 as there are many substantial differences. We find that the ISCA House's standing and reputation as a non-profit organization rather than a commercial entity is meaningful for community integration. The ISCA House will operate as a clubhouse and lodging that promotes the common objectives of both accessible higher education and the furthering of spiritual development for international graduate students in a home-like setting.

5) How/where is parking handled? Staff would recommend that no more than 4 vehicles are parked outside at any given time, in a manner consistent with 172.11 for single-family homes.

- Most, if not all, residents and ISCA members do not have cars nor driver's licenses. Historically, ISCA students will likely not own vehicles nor possess driver's licenses due to cost and visa requirements (International graduate students are not permitted to be gainfully employed off campus, *which makes the cost burden of owning and operating a vehicle out of their reach*). Parking needs will be minimal and the property already has four concrete parking stalls off of Center Street.

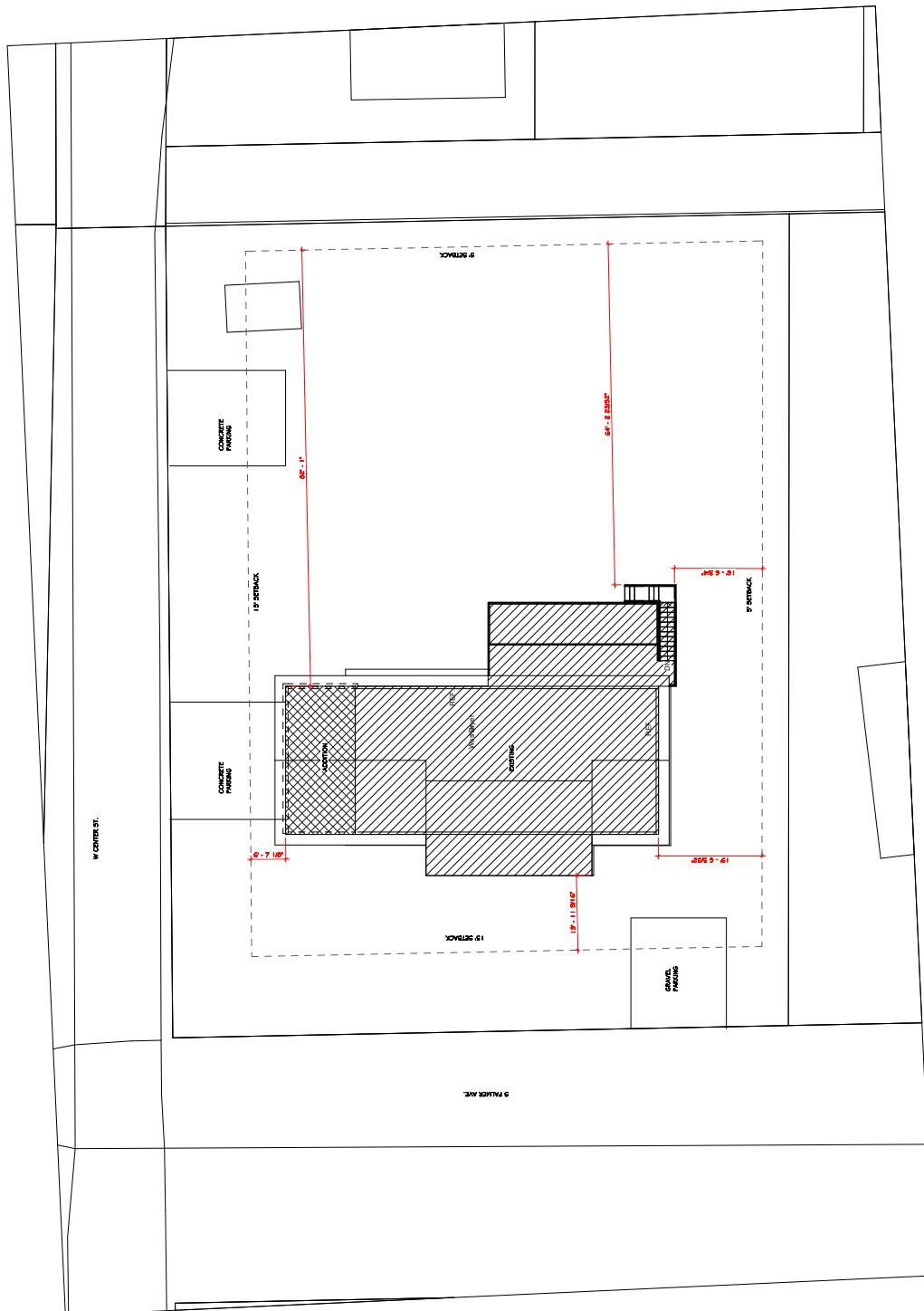
Revision Schedule		
Rev. #	Date	Description

PALMER NEW ADDITION
10 S PALMER AVE.
FAYETTEVILLE, AR 72701

DATE	DRAWN BY
04/03/24	ELP
PROJECT #	CHECKED BY
2344	JTK
SHEET	

A0.1

SITE PLAN



1 SITE PLAN
SCALE = 1" = 10'-0"

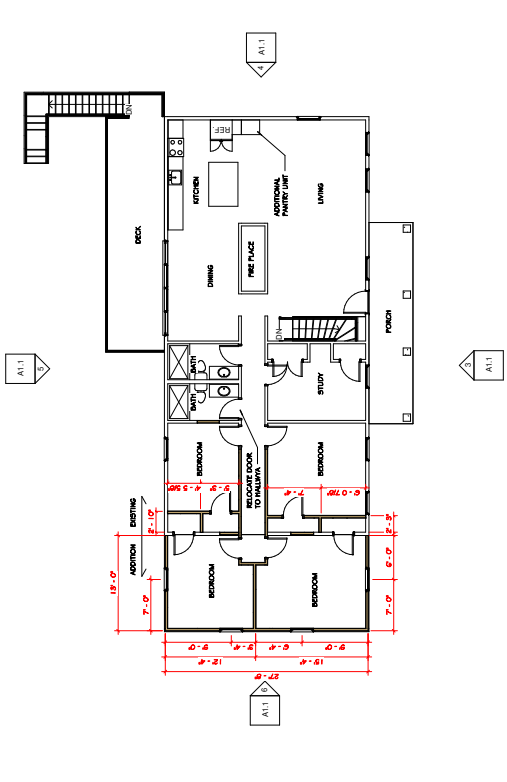
FOR REVIEW

Revision Schedule	
Rev. #	Description

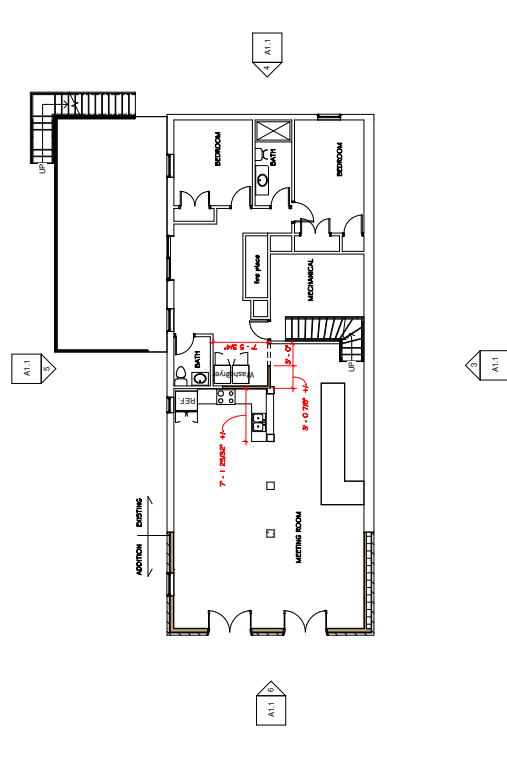
PALMER NEW ADDITION
10 S PALMER AVE.
FAYETTEVILLE, AR 72701
STEPHEN BEYKIRSCHE
312 S BROOKLYN CT
FRONTENAC, KS 66763

DATE	DRAWN BY	ELP
04/03/24	PROJECT #	2344
	CHECKED BY	JTK
	SHEET	A1.1

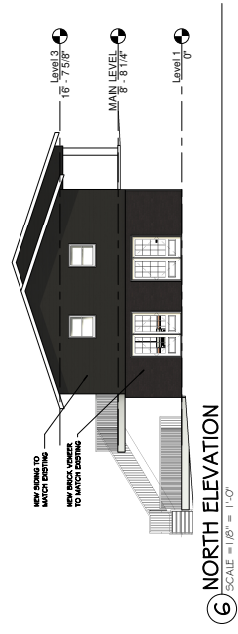
PLANS AND ELEVATIONS
This drawing is to be used in accordance with the provisions of the Arkansas Building Code, Chapter 10, Section 10.1.1. It is not to be used for any other purpose without the written consent of the architect.



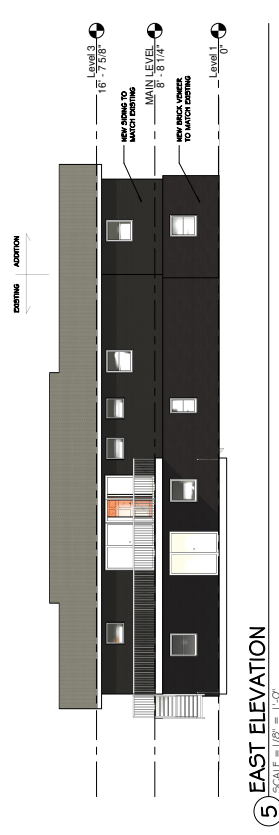
2 MAIN LEVEL
SCALE = 1/8" = 1'-0"



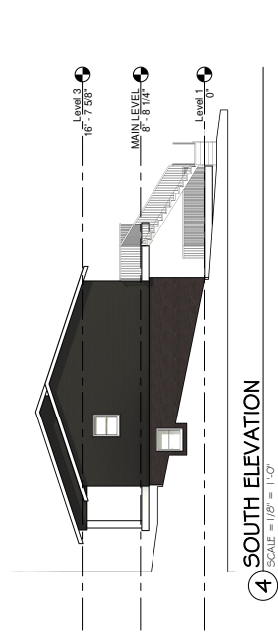
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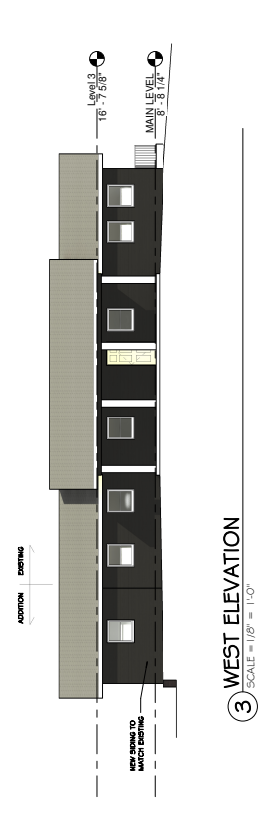
6 NORTH ELEVATION
SCALE = 1/8" = 1'-0"



5 EAST ELEVATION
SCALE = 1/8" = 1'-0"



4 SOUTH ELEVATION
SCALE = 1/8" = 1'-0"



3 WEST ELEVATION
SCALE = 1/8" = 1'-0"



To: Jesse Masters, Planner
CC: Battalion Chief Jeremy Ashley, Fire Marshal
From: Captain Andrew Horton, Deputy Fire Marshal
Date: 4/22/2024

CUP-2024-0017: 10 S Palmer Ave Fayetteville AR 72701

During the review of this CUP, determined to be a change of occupancy from a single-family dwelling to a multi-family dwelling / assembly occupancy. Due to the change in use, this project will need to conform to the International Building Code (IBC) meeting the needs of fire protection/ separation. The applicant will need to submit formal plans for review.

From: Werner, Nick <nick.werner@fayetteville-ar.gov>
Sent: Tuesday, May 7, 2024 1:13 PM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Subject: Fwd: (CUP-2024-0017) 10 S Palmer - venue use

I got some feedback on, I believe, CUP-2024-0017 that's included below.

-Nick

Get [Outlook for iOS](#)

From: Tom Pears <@gmail.com>
Sent: Monday, May 6, 2024 11:50
To: Werner, Nick <nick.werner@fayetteville-ar.gov>
Cc: Karen Pears <@gmail.com>
Subject: Re: 10 S Palmer - venue use

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you so much for your great service on our behalf - it is appreciated!

My wife and I bought our home with the promise by the City of Fayetteville that we were buying a home in a single family residence neighborhood - SF4.... And, we love living in Fayetteville because of the thought going into grouping life into use areas.... We rely on this thoughtful planning...

FYI - the application states the intended use for 10 S Palmer is for "...assemblies and gatherings..." making it a venue - in a single family residence zone.... This is a conference center/meeting hall - a Venue...

This location was turned down previously by both the planning commission and the city council - primarily because fire and ambulance access is limited for this neighborhood due to unenforceable parking.... Nothing has changed...

So first - the request is for a commercial use in a residential zone....

And second - venues bring more parking problems not less - limiting access for fire and ambulance services to the neighborhood...

Third - it doesn't seem that anyone is thinking about the demand these commercial use place on what was planned as a neighborhood - meaning this commercial use of sewer, water, roads, electrical, etc is of higher demand than was built into our neighborhood...

If you see it differently, would love your perspective...

Thanks again for all you do!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas

On May 5, 2024, at 7:06 PM, Werner, Nick <nick.werner@fayetteville-ar.gov> wrote:

Hi Tom,

I appreciate you reaching out about this item. It looks like the conditional use permit (CUP-2024-0017) for 10 S Palmer Ave is scheduled for the next Planning Commission meeting on the 13th. For now, I don't know much about this project but I'd be happy to get the documents that the City's planning staff has to review while they're preparing the final report for the commission.

In the meantime, I'd love to hear your thoughts on the project or help track down answers to any of your questions.

Have a great night,

-Nick Werner

Get [Outlook for iOS](#)

From: Tom Pears <@gmail.com>
Sent: Tuesday, April 30, 2024 2:08:13 PM
To: Werner, Nick <nick.werner@fayetteville-ar.gov>
Subject: 10 S Palmer - venue use

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon good public servant!

I live at 1634 W Hotz - if you have time to talk about the conditional use permit for 10 S Palmer.... As a good neighbor, I would like to understand your thoughts on this request...

Thank you!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas

From: Masters, Jessica
Sent: Friday, May 3, 2024 11:35 AM
To: Tom Pears <pearsconsulting@gmail.com>
Subject: RE: 10 S Palmer - venue use - CUP-2024-0017

Tom,

Any and all requirements for ADA will be fully evaluated at the time of a building permit submittal, and are typically handled by the Building Safety Division.

Thank you,

Jessie

Jessie Masters, AICP
Development Review Manager
City of Fayetteville, Arkansas
(479) 575-8239
www.fayetteville-ar.gov
[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Tom Pears <pearsconsulting@gmail.com>
Sent: Thursday, May 2, 2024 6:02 PM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Subject: Fwd: 10 S Palmer - venue use - CUP-2024-0017

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

In addition to fire (sprinklers and detectors) - Into "...compliance..." would include ADA - doorways, bath access, ramps, lifts-elevators...right?

Thanks!
T pears

PS You and yours are the best!

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

From: Tom Pears <pearsconsulting@gmail.com>
Sent: Thursday, May 2, 2024 4:50 PM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Subject: Re: 10 S Palmer - venue use - CUP-2024-0017

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Honestly - part of our thankfulness related to living here is that Fayetteville takes serious the covenant/assurance that this city groups purposes together for good living...

I am confused why we seem to be continually challenged for obvious uses that don't fit in this neighborhood...this use...

This is a request to put a venue in a neighborhood.... With this in mind, I am good to be a wedding venue, right?

Or said another way - pls defend the city's promise that 10 S Palmer is to be used as a single family residence...

Thank you so much for your work...it is appreciated!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

Begin forwarded message:

From: "Masters, Jessica" <jmasters@fayetteville-ar.gov>
Date: May 2, 2024 at 4:40:23 PM CDT
To: Tom Pears <pearsconsulting@gmail.com>
Subject: RE: 10 S Palmer - venue use - CUP-2024-0017

Tom,

They will be required to bring anything into compliance with existing and applicable building codes. They've already been notified by the Fire Department that in order to operate as an assembly space, sprinklers will be necessary.

The previous request was for the use of the property as a short-term rental (AirBNB), which is classified as a different use, which different items for consideration. That item was ultimately appealed to and denied by the City Council on September 5. For more information about the City Council discussion, I recommend viewing the video at this link: <https://reflect-fayetteville-ar.cablecast.tv/CablecastPublicSite/show/7955?seekto=7126&site=1>

Let me know if you have any additional questions.

Jessie

Jessie Masters, AICP

Development Review Manager

City of Fayetteville, Arkansas

(479) 575-8239

www.fayetteville-ar.gov

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

<image001.png>

From: Tom Pears <pearsconsulting@gmail.com>

Sent: Wednesday, May 1, 2024 10:37 AM

To: Masters, Jessica <jmasters@fayetteville-ar.gov>

Subject: Re: 10 S Palmer - venue use - CUP-2024-0017

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Ok...thanks....

Since this is a conference center - are they proposing to bring it up to a commercial use code - ADA and fire code compliance...lifts and ramps access, sprinkler systems, fire extinguishers, exits, etc...?

Also - as to the question of how many would be housed was addressed in the last denial - impact on public safety.... Fire and ambulance access during gatherings and resident occupation (with guests).... As well as, undue strain on neighborhood public services - roads, water, sewer, etc was designed for the number of users...

Am I right in this thinking?

Tom Pears

Pears Consulting

Fayetteville, Arkansas

337-322-9260 cell

From: Masters, Jessica
Sent: Wednesday, May 1, 2024 10:28 AM
To: Tom Pears <pearsconsulting@gmail.com>
Subject: RE: 10 S Palmer - venue use - CUP-2024-0017

Tom,

Yes, I believe that is more or less what the request is, but again, we are still waiting for specifics from the applicant on how many people they intend to house at this location and how often they intend to meet.

Thank you,

Jessie

Jessie Masters, AICP
Development Review Manager
City of Fayetteville, Arkansas
(479) 575-8239
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[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Tom Pears <pearsconsulting@gmail.com>
Sent: Wednesday, May 1, 2024 9:00 AM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Cc: Curth, Jonathan <jcurth@fayetteville-ar.gov>; Karen Pears <lovingt3andt4@gmail.com>; Jordan, Lioneld <ljordan@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>; Mulford, Patti <pmulford@fayetteville-ar.gov>
Subject: Re: 10 S Palmer - venue use - CUP-2024-0017

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Thank you for clarity...

Again - the request is for a venue/conference center for “assemblies and gatherings”...and it appears to be for multiple residents beyond the 3-4 unrelated as applied previously....

So I am correct to understand that - the request is for a VENUE/CONFERENCE CENTER for assemblies and gatherings...in a neighborhood....

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

On May 1, 2024, at 8:32 AM, Masters, Jessica <jmasters@fayetteville-ar.gov> wrote:

Tom,

We are still waiting on specifics from the applicant, but from what we are able to understand, they intend to use the space to house international students and also host assemblies and gatherings. So, it will not be a strictly residential use, which is why they are requesting the conditional use permit in the RSF-4 zoning district for a cultural and recreational facility, under which things like certain dormitories, churches and other institutional uses are held.

If this use is permitted, they would not be subject to the same limitation of number of residents as if it were a single-family home. The definition of "family" does not extend to clubs or institutional groups in our zoning code. Their plans indicate 6 bedrooms, so an assumption may be, without further clarification yet from the applicant, may be that they intend to have 6 students living at the facility at any given time. When making a recommendation on the overall compatibility of the request, this is certainly information that staff would need to help make a recommendation.

If you have further questions, please feel free to contact me directly, or if you have comments that you wish for the Planning Commission to consider, I am happy to receive that as well. I've left the full definition of family below.

"Family (zoning). In R-A, Neighborhood Conservation and all single family districts including single family Planned Zoning Districts, a "family" is no more than three (3) persons unless all are related and occupy the dwelling as a single housekeeping unit. In all other zoning districts where residential uses are permitted, a "family" is no more than four (4) persons unless all are related and occupy the dwelling as a single housekeeping unit with the exception that the City Council may permit a definition of "family" as no more than five (5) persons unless all are related and occupy the dwelling as a single housekeeping unit in a specific Planned Zoning District with proper safeguards for the surrounding neighborhood such as applying the parking requirements of §172.11 (even though this is a multifamily PZD), requiring that each five (5) person unit must be placed within a freestanding structure of not more than two (2) stories and be buffered from other residential districts outside the Planned Zoning District. The City Council shall consider whether an applicant's PZD with one (1) or more five (5) unrelated person structures would cause unreasonable traffic into an adjoining residential neighborhood before approving any such PZD. Persons are "related" for purposes of this definition if they are related by blood, marriage, adoption, guardianship, or other duly-authorized custodial relationship. **The definition of "family" does not include fraternities, sororities, clubs or institutional groups."**

Thank you,

Jessie

Jessie Masters, AICP

Development Review Manager
City of Fayetteville, Arkansas
(479) 575-8239

www.fayetteville-ar.gov

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Tom Pears <pearsconsulting@gmail.com>

Sent: Tuesday, April 30, 2024 5:06 PM

To: Masters, Jessica <jmasters@fayetteville-ar.gov>

Cc: Curth, Jonathan <jcurth@fayetteville-ar.gov>; Jordan, Lioneld <ljordan@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>; Mulford, Patti <pmulford@fayetteville-ar.gov>; Karen Pears <lovingt3andt4@gmail.com>

Subject: Re: 10 S Palmer - venue use - CUP-2024-0017

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Again thank you for your kind responsiveness...it is so appreciated!

Respectfully - "...additional supportive events..." means in laymen terms - a venue...a commercial use.... Right?

Further - housing would be limited to 3 unrelated renters?

Pls advise if I am clear in my understanding...

Thank you!

T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

On Apr 30, 2024, at 4:57 PM, Masters, Jessica <jmasters@fayetteville-ar.gov> wrote:

Tom,

Staff's assumption right now is that they intend to use the property for housing international students with additional supportive events for those living at the residence. We do not yet have any additional information about how often they intend to have outside events, but they have been

informed by the Fire department that if they intend to use this as an event center they may/will need to make modifications to the structure to meet applicable fire code.

As far as neighborhood compatibility, which is what is being evaluated with the conditional use permit, staff has requested additional information to be provided by the applicant to answer questions about how many people they intend to live at this facility, how often they intend to host events, and how they intend to provide parking.

Please let me know if you have any additional questions. Thank you,

Jessie

Jessie Masters, AICP

Development Review Manager

City of Fayetteville, Arkansas

(479) 575-8239

www.fayetteville-ar.gov

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

<image001.png>

From: Tom Pears <pearsconsulting@gmail.com>

Sent: Tuesday, April 30, 2024 4:24 PM

To: Masters, Jessica <jmasters@fayetteville-ar.gov>

Cc: Curth, Jonathan <jcurth@fayetteville-ar.gov>; Jordan, Lioneld <ljordan@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>; Mulford, Patti <pmulford@fayetteville-ar.gov>; Karen Pears <lovingt3andt4@gmail.com>

Subject: Re: 10 S Palmer - venue use - CUP-2024-0017

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Jessica;

Thank you so much for the quick response - and the great work you and your staff do to make Fayetteville a great place to live and work....

Also thank you for the back up materials...much appreciated!

So to be clear from the first line of the request " Through this conditional use, the property, which is currently designated as a single-family residence, would serve as the home base for ISCA's outreach program..":

1. They acknowledge this is an SF4 zone,
2. They wish to run an outreach business from the location - a commercial use?

Meaning the request is to convert a single family residence into an outreach meeting place and venue...a commercial use...right?

Pls advise...

Thank you!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

On Apr 30, 2024, at 4:13 PM, Masters, Jessica <jmasters@fayetteville-ar.gov> wrote:

Good afternoon,

Thank you for the inquiry on the proposed conditional use permit for a cultural and recreational facility at 10 S. Palmer. I did receive your voicemail as well, but figured it may be just as easy to respond via email.

I've attached the applicant's materials for your consideration for CUP-2024-0017. Staff is still evaluating the request in its entirety, and working with the applicant to understand the full scope of the request, so we do not yet have an initial recommendation on the item. A final staff report will be published at the 4:30 PM agenda session on Thursday, May 9.

The item is scheduled to be heard at the May 13 Planning Commission meeting, beginning at 5:30 PM. Members of the public are invited to attend the meeting either in-person in room 219 in City Hall (113 W. Mountain Street), or virtually via zoom. Information about how to attend virtually can be found [here](#).

Staff is also available to answer questions, or take public comment either over the phone or via email. All comments we receive are forwarded to the Planning Commission for their consideration as well.

Many thanks,

Jessie

Jessie Masters, AICP
Development Review Manager
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(479) 575-8239
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[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)
<image001.png>

From: Mulford, Patti <pmulford@fayetteville-ar.gov>
Sent: Tuesday, April 30, 2024 2:56 PM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Cc: Curth, Jonathan <jcurth@fayetteville-ar.gov>; Jordan, Lioneld <ljordan@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>
Subject: FW: 10 S Palmer - venue use

fyi

From: Tom Pears <pearsconsulting@gmail.com>
Sent: Tuesday, April 30, 2024 2:49 PM
To: Mulford, Patti <pmulford@fayetteville-ar.gov>
Cc: Karen Pears <lovingt3andt4@gmail.com>
Subject: Re: 10 S Palmer - venue use

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First - thank you for the quick response!

Second - pls thank the mayor for his great work!

Third - have reached out to planning - waiting for a callback from Ms. Masters...

As an fyi - it seems the CUP is to operate a venue/meeting place in the midst of a single family residence 4 zone.... Wanted the mayors take - but certainly wanted him to be aware....

Thank you!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

On Apr 30, 2024, at 2:36 PM, Mulford, Patti <pmulford@fayetteville-ar.gov> wrote:

Hi Tom,

Thank you for your email. Mayor Jordan would like to refer you to our Planning staff for any additional information you may need. Thanks.

Patti Mulford

Compiled Public Comment
CUP-2024-0017

Assistant to Mayor
113 W. Mountain St.
Fayetteville, AR 72701
479.575.8330

From: Tom Pears <pearsconsulting@gmail.com>
Sent: Tuesday, April 30, 2024 2:13 PM
To: Mayor <Mayor@fayetteville-ar.gov>
Cc: Karen Pears <lovingt3andt4@gmail.com>
Subject: 10 S Palmer - venue use

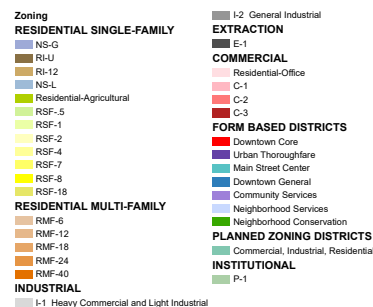
CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon good public servant!

I live at 1634 W Hotz - if you have time to talk about the conditional use permit for 10 S Palmer.... As a good neighbor, I would like to understand your thoughts on this request...

Thank you!
T pears

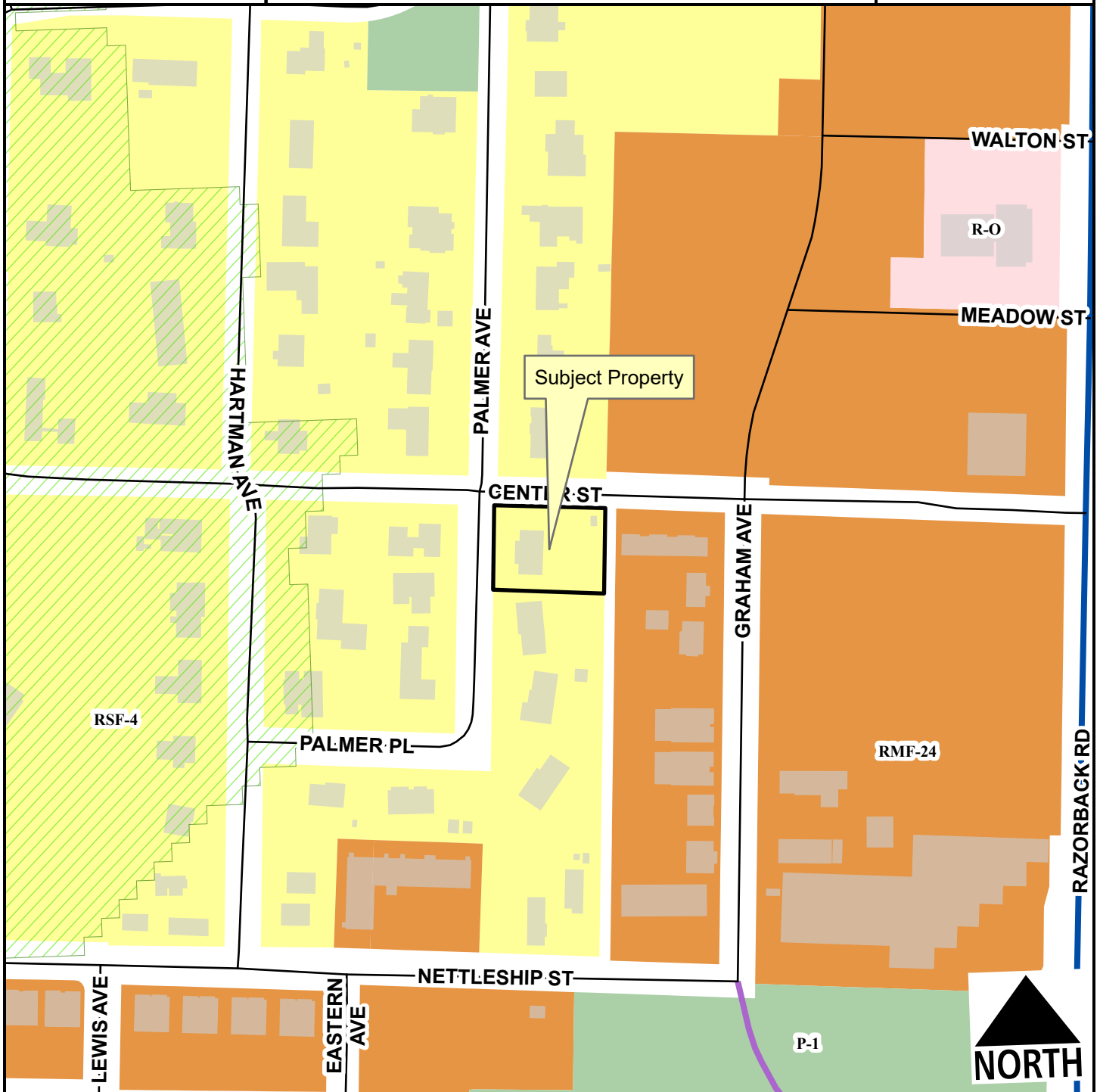
Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell



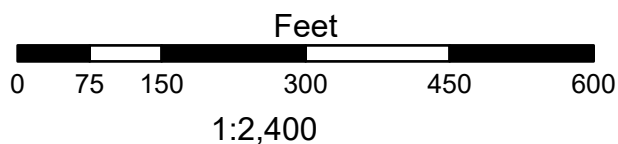
CUP-2024-0017

10 S. PALMER AVE

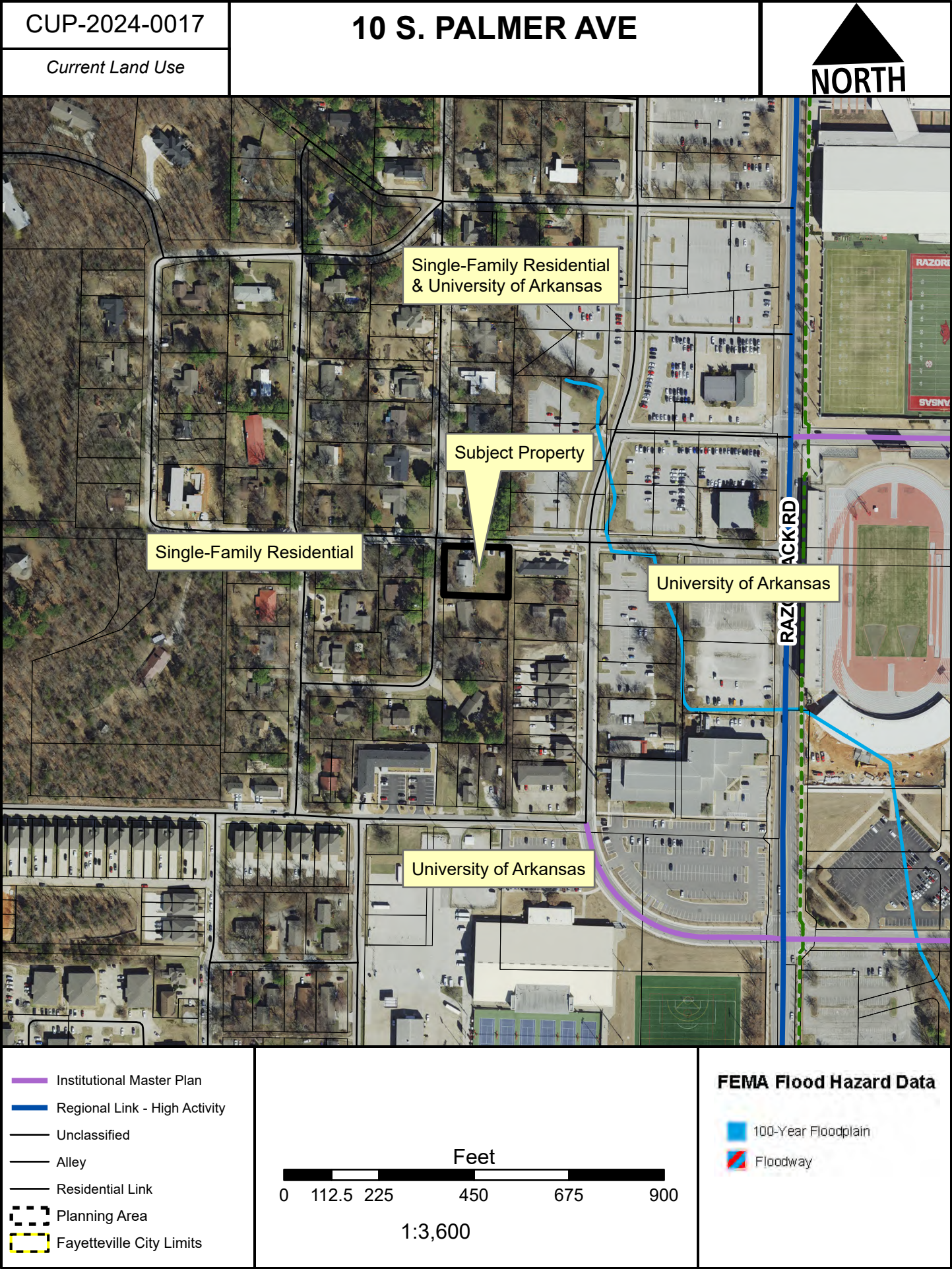
Close Up View



- Institutional Master Plan
- Regional Link - High Activity
- Unclassified
- Residential Link
- Hillside-Hilltop Overlay District
- Planning Area
- Fayetteville City Limits



- RSF-4
- RMF-24
- Residential-Office
- P-1





TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Donna Wonsower, Planner

MEETING DATE: May 13, 2024

SUBJECT: **RZN-2024-0019: Rezoning (1830 E. 13TH ST./KELLAR, 565):** Submitted by BOBBY, PAUL, AND ANGEL KELLAR for property located at 1830 E. 13TH ST. The property is zoned C-2, THOROUGHFARE COMMERCIAL AND I-2 GENERAL INDUSTRIAL and contains approximately 1.86 acres. The request is to rezone the property to CS, COMMUNITY SERVICES

RECOMMENDATION:

Staff recommends **RZN-2024-0019** be forwarded to the City Council with a recommendation for approval.

RECOMMENDED MOTION:

*"I move to forward **RZN-2024-0019** to the City Council with a recommendation of approval."*

BACKGROUND:

The subject area is in southeast Fayetteville at the intersection of E. 13th ST. and S. Warford Dr. It is approximately 1/10 of a mile northeast of a large complex of city institutions including transportation and fleet operations, the parks and recreation offices, the animal shelter, and trash, recycling, and composting facilities. The subject area contains four parcels containing roughly 1.86 acres. The parcels are currently split between C-2, Thoroughfare Commercial and I-2, General Industrial. The property is currently developed with a 1,296 square foot single-family dwelling constructed in 1922. The property received its current designation with the passage of Fayetteville's original zoning map in 1970 (ORD 1747). It does not fall within any overlay districts or Master Plan areas. Surrounding land uses and zoning is depicted in *Table 1*.

Table 1
Surrounding Land Use and Zoning

Direction	Land Use	Zoning
North	Retail	I-1, Heavy Commercial and Light Industrial
South	Automotive Repair Shop	I-2, General Industrial
East	Undeveloped	I-2, General Industrial C-2, Thoroughfare Commercial
West	Undeveloped	I-2, General Industrial C-2, Thoroughfare Commercial

Request: The request is to rezone the property from I-2, General Industrial to CS, Community Services.

Public Comment: Staff has not received any public comments.

INFRASTRUCTURE AND ENVIRONMENTAL REVIEW

Streets: The subject area has frontage along E. 13th St., a partially improved residential link with asphalt paving and open ditches. Any street or drainage improvements required in these areas would be determined at the time of the development proposal.

Water: Public water is available to the subject area. An existing 2.25-inch water main is present on the south side of E. 13th St.

Sewer: Sanitary sewer is not available to the subject area.

Fire: Fire apparatus access and fire protection water supplies will be reviewed for compliance with the Arkansas Fire Prevention Code at the time of development. Station 3, located at 1050 S. Happy Hollow Rd., protects this site. The property is located approximately 0.3 miles from the fire station with an anticipated drive time of approximately 1 minute using existing streets. The anticipated response time would be approximately 3.2 minutes. Fire Department response time is calculated based on the drive time plus 1 minute for dispatch and 1.2 minutes for turn-out time. Within the City Limits, the Fayetteville Fire Department has a response time goal of 6 minutes for an engine and 8 minutes for a ladder truck.

Police: The Police Department expressed no concerns with this request.

Drainage: No portion of the property is within a FEMA floodplain, the Hillside-Hilltop Overlay District or includes a protected stream.

Hydric soils are present on the property. Hydric soils are a known indicator of wetlands. However, for an area to be classified as wetlands, it may also need other characteristics such as hydrophytes (plants that grow in water), and shallow water during parts of the year. Hydric Soils can be found across many areas of Fayetteville, including valleys, floodplains, and open prairies. It's important to identify these natural resources during development, so when these soils are identified on a property, further environmental studies will be required at the time of development. Before permits are issued for the property a statement/report from an environmental professional must be provided summarizing the existence of wetlands on the property. If this statement/report indicates that wetlands may be present on site, a USACE Determination of Jurisdictional Wetlands will be required at the time of development submittal.

Tree Preservation:

The proposed zoning district of CS, Community Services requires **20% minimum canopy preservation**. The current zoning district of I-2, General Industrial requires **15% minimum canopy preservation**.

CITY PLAN 2040 FUTURE LAND USE PLAN: City Plan 2040 Future Land Use Plan designates the property within the proposed rezone as **City Neighborhood**.

City Neighborhoods are more densely developed than residential neighborhood areas and provide a mix of non-residential and residential uses. This designation supports the widest spectrum of uses and encourages density in all housing types, from single family to multi-family.

Non-residential and commercial uses are primarily located at street intersections and along major corridors. Ideally, commercial uses would have a residential component and vary in size, variety, and intensity. The street network should have a high number of intersections creating a system of small blocks with a high level of connectivity between neighborhoods. Building setbacks and landscaping are urban in form with street trees typically being located within the sidewalk zone.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates a ranging score of 5-6 for this site, with a weighted score of 7. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station #3, 1050 S. Happy Hollow Rd.)
- Near Sewer Main (12" Sewer Main, S. Happy Hollow Rd. and a portion of E. 13th St.)
- Near Water Main (12" Water Main, S. Happy Hollow Rd. | 2.25" Water Main, E. 13th St.)
- Near City Park (White River Park and Combs Park)
- Near ORT Bus Stop (E. 15th St. and S. Happy Hollow Rd. intersection)
- Appropriate Future Land Use

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: ***Land Use Compatibility:*** On the balance of considerations, staff finds the request to be somewhat compatible with the surrounding context and recent development patterns. Staff finds that the rezoning request is effectively a downzoning given the intensity of uses permitted in the I-2 district. While the applicant has indicated an intent for single-family dwelling(s) to remain the primary use, staff finds that CS would also permit more intensive development and mixed uses in the future while allowing the applicant to meet their immediate needs to improve or expand the existing structure.

The subject area is composed of four parcels of 0.1, 0.1, 0.8, and 0.8 acres. While there are no bulk and area requirements under the I-2 districts, this district has some of the largest setbacks of any of Fayetteville zoning districts. The two smaller parcels are rendered effectively unbuildable due to overlapping front and rear setbacks. While a property line adjustment could increase the buildable area of the affected parcels, staff finds that the small size of the subject area and presence of hydric soils over nearly the entire subject area could limit potential industrial development on these parcels. While the surrounding area has been primarily developed with industrial uses, staff finds that these uses are generally geared towards provision of critical city services such as trash collection and recycling and the operation of city fleets, which would also be permitted city-wide under Use Unit 2: City-Wide Uses by Conditional Use Permit. Staff notes that these city facilities are unlikely to be relocated or sold and that undeveloped industrial parcels are generally small, which limits their potential for intensive industrial uses that could be disruptive to adjacent residents.

Additionally, while the insertion of residential uses in the area may not be strictly compatible, the future land use plan indicates this area as a city neighborhood and City Plan 2040 specifically calls for industrial zones that

are inconsistent with the Future Land Use Plan to be rezoned. Staff notes that the area is beginning to see redevelopment. Several properties have been rezoned to mixed use districts such as CS, Community Services and NS-G, Neighborhood Services – General, and more intensive residential districts such as RI-U. Residential Intermediate – Urban and RMF-24, Residential Multifamily, 24 Units per Acre since 2015, including a current request to NS-L and RI-U approximately ¼ mile to the northeast (RZN-2024-0012). This indicates the area is beginning to shift away from strictly low-density residential or industrial uses. Staff finds that, although this rezoning is relatively small and is disconnected from other recent rezonings, it is in line with this gradual shift to more mixed-use, permissive zoning districts.

Neither the existing I-2 nor proposed CS zoning districts have bulk and area regulations for non-residential uses, though CS requires a minimum lot frontage of 18 feet for residential dwellings. I-2 has no building height limitation but provides additional setback requirements for buildings over 2 stories in height. CS has a straight building height maximum of 5 stories. I-2 has restrictive setbacks depending on adjacent zoning districts. The proposed rezoning would reduce the existing 50- or 100-foot front setback to a build-to-zone between 10-25 feet. Current rear setbacks are 25 feet, with variable 25- or 50-foot side setbacks. The rear and side setbacks for CS are both 15 feet when adjacent to a residential zoning and zero feet when located next to nonresidential districts.

Land Use Plan Analysis: Staff finds that the request is consistent with adopted land use policies, the Future Land Use Map designation, and goals of City Plan 2040. The property received its current industrial zoning designation approximately 54 years ago with the passage of an amended zoning ordinance in 1970. This area was designated as a “City Neighborhood” rather than an “Industrial” area in the development of City Plan 2040, indicating that industrial uses are no longer considered an appropriate use in this area of the city and that the area should begin to transition away from industrial zoning districts. In fact, City Plan 2040 specifically calls for industrial zones that are inconsistent with the Future Land Use Plan to be rezoned.

The parcel is approximately 1/3 of a mile north of White River Park and just over ½ mile north of Combs Park as the bird flies. Based on the existing sidewalk network, the property is approximately 2/3 mile from White River Park. The city is currently completing community outreach regarding potential improvements to Combs Park. Per the city’s website, “Combs Park will become Fayetteville’s first true river access park designed for water recreation and nature appreciation. It will provide access for picnicking, hiking, swimming, wading, fishing, and paddling.” While the parcels’ infill scores are generally low (5-6), staff finds that it is likely to increase with the construction of park improvements such as trails and increased demand for services in the vicinity of the park. The closest Tier Center is located approximately ¼ mile north at the intersection of S. Happy Hollow Rd. and E. Huntsville Rd (Tier 3).

Staff also notes that although the property does not currently have access to sewer, there is a 12" sewer main approximately 140 feet to the west which could potentially support a future main extension.

Staff finds that the proposed rezoning will bring the area in closer alignment with the future land use plan and that allowing the existing zoning to remain runs counter to the future land use designation. City Plan 2040 calls for the city to "encourage new development that supports and compliments the unique characteristics and economic values of employment clusters in and around downtown, the U of A, the north end, the rail corridor, Drake Field and the Industrial Park" as a Goal 1 objective. Staff finds that the uses permitted by right in I-2 and CS have little overlap and that the provision of these additional uses around the existing industrial park could better support both existing residents and employees in the area, which has one of the larger clusters of jobs located in southeast Fayetteville (see attached exhibit). The addition of uses could help contribute to city goals to create complete, compact, and connected neighborhoods.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: Staff finds the proposed zoning is justified and necessary at this time. Under the existing zoning, no residential uses are permitted. The future land use plan calls for this area to be developed as a "City Neighborhood" which is not feasible under existing zoning. City Plan 2040 specifically calls for industrial zones that are inconsistent with the Future Land Use Plan to be rezoned. Further, staff finds the existing residential structure pre-dated the original zoning ordinance and that rezoning to CS would allow the property to be developed with mixed uses while also permitting the current property owner expand their existing dwelling.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: A rezoning from I-2 to CS is unlikely to increase traffic at this location when considering typical trip generation rates for industrial uses (0.12 - 2.27 per 1,000 gross square feet) to those for residential uses (0.16 – 0.69 per 1,000 gross square feet) as defined by the Institute of Transportation Engineers Trip Generation Manual. The lots under consideration have direct access to a short, dead end public street which connects to a Regional Link – High Activity Street. Regional Link – High Activity streets have a design service volume of 17,600 vehicles per day. S. Happy Hollow Rd. currently has 14,000 vehicles per day based on the most recent counts, indicating the street can likely support additional traffic. Any necessary street improvements and potential traffic impacts would be determined at the time of development.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The proposed rezoning has the potential to alter the population density since no residential uses are currently permitted. However, the property is in close proximity to public streets and existing water and sewer mains. Any necessary upgrades or improvements to the existing infrastructure would be determined at the time of development. Fayetteville Public Schools did not comment on this request.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
 - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

RECOMMENDATION: Planning staff recommends forwarding RZN-2024-0019 to City Council with a recommendation of approval.

PLANNING COMMISSION ACTION: Required <u>YES</u>			
Date: <u>May 13, 2024</u>	☐ Tabled	☐ Forwarded	☐ Denied
Motion:			
Second:			
Vote:			

BUDGET/STAFF IMPACT:
None

Attachments:

- Unified Development Code:
 - §161.31 I-2 General Industrial
 - §161.22 CS, Community Services
- Applicant Request Letter
- Staff Exhibits
 - 1970 Zoning Map
 - Current Setback Analysis
 - City Plan 2040 Excerpts
 - Residential Density and Job Map
- One Mile Map
- Close-up Map
- Current Land Use Map
- Future Land Use Map

161.31 District I-2, General Industrial

(A) *Purpose.* The General Industrial District is designed to provide areas for manufacturing and industrial activities which may give rise to substantial environment nuisances, which are objectionable to residential and business use.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 3	Public protection and utility facilities
Unit 5	Government Facilities
Unit 6	Agriculture
Unit 7	Animal husbandry
Unit 13	Eating places
Unit 16	Shopping goods
Unit 18	Gasoline service stations and drive-in/drive-through restaurants
Unit 20	Commercial recreation, large sites
Unit 21	Warehousing and wholesale
Unit 22	Manufacturing
Unit 23	Heavy industrial
Unit 25	Offices, studios, and related services
Unit 28	Center for collecting recyclable materials
Unit 42	Clean technologies
Unit 43	Animal boarding and training
Unit 46	Short-term rentals
Unit 47	Data centers

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 31	Facilities emitting odors and facilities handling explosives.
Unit 36	Wireless communications facilities
Unit 38	Mini-storage Units
Unit 39	Auto salvage and junk yards

(C) *Density.* None.

(D) *Bulk and area regulations.* None.

(E) *Setback Regulations.*

Front, when adjoining A or R districts	100 feet
Front, when adjoining C, I or P districts	50 feet
Side, when adjoining A or R districts	50 feet
Side, when adjoining C, I or P districts	25 feet
Rear	25 feet

(F) *Height Regulations.* There shall be no maximum height limits in I-2 Districts, provided, however, that if a building exceeds the height of two (2) stories, the portion of the building that exceeds two (2) stories shall have an additional setback from any boundary line of an adjacent residential district. The amount of additional setback for the portion of the building over two (2) stories shall be equal to the difference between the total height of that portion of the building, and two (2) stories.

(G) *Building Area.* None.

(Code 1965, App. A., Art. 5(IX); Ord. No. 2351, 6-21-77; Ord. No. 2516, 4-3-79; Ord. No. 1747, 6-29-70; Code 1991, §160.040; Ord. No. 3971, §2, 5-21-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. No. 4992, 3-06-07; Ord. No. 5028, 6-19-07; Ord. No. 5195, 11-6-08; Ord. No. 5312, 4-20-10; Ord. No. 5339, 8-3-10; Ord. No. 5353, 9-7-10; Ord. No. 5800 , §1(Exh. A), 10-6-15; Ord. No. 5945 , §§5, 7, 1-17-17; Ord. No. 5982 , §1, 6-20-17; Ord. No. 6015 , §1(Exh. A), 11-21-17; Ord. No. 6521 , §7, 1-18-22; Ord. No. 6678 , §3, 9-5-23)

161.22 Community Services

(A) *Purpose.* The Community Services District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas and is intended to provide for adaptable mixed-use centers located along commercial corridors that connect denser development nodes. There is a mixture of residential and commercial uses in a traditional urban form with buildings addressing the street. For the purposes of Chapter 96: Noise Control, the Community Services district is a commercial zone. The intent of this zoning district is to provide standards that enable development to be approved administratively.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three (3) and four (4) family dwellings
Unit 13	Eating places
Unit 15	Neighborhood Shopping goods
Unit 24	Home occupations
Unit 25	Offices, studios and related services
Unit 26	Multi-family dwellings
Unit 40	Sidewalk Cafes
Unit 41	Accessory dwellings
Unit 44	Cluster Housing Development
Unit 45	Small scale production
Unit 46	Short-term rentals

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation, trades and services
Unit 18	Gasoline service stations and drive-in/drive-through restaurants
Unit 19	Commercial recreation, small sites
Unit 28	Center for collecting recyclable materials
Unit 34	Liquor stores
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities*
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and Area Regulations.*(1) *Lot Width Minimum.*

Dwelling	18 feet
All others	None

(2) *Lot Area Minimum.* None.(E) *Setback regulations.*

Front:	A build-to zone that is located between 10 feet and a line 25 feet from the front property line.
Side and rear:	None
Side or rear, when contiguous to a single-family residential district:	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	5 stories
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(G) *Minimum Buildable Street Frontage.* 50% of the lot width.

(Ord. No. 5312, 4-20-10; Ord. No. 5339, 8-3-10; Ord. No. 5462, 12-6-11; Ord. No. 5592, 6-18-13; Ord. No. 5664, 2-18-14; Ord. No. 5735, 1-20-15; Ord. No. 5800 , §1(Exh. A), 10-6-15; Ord. No. 5921 , §1, 11-1-16; Ord. No. 5945 , §§5, 7—9, 1-17-17; Ord. No. 6015 , §1(Exh. A), 11-21-17; Ord. No. 6223 , §1, 9-3-19; Ord. No. 6409 §1, 2-2-21; Ord. No. 6427 , §§1(Exh. C), 2, 4-20-21; Ord. No. 6497 , §1, 10-19-21)

Editor's note(s)—Ord. No. 6710 , §1, adopted November 21, 2023, determines that Ordinance 6427 (Sunset Clause) and Ord. No. 6625 (extending Sunset Clause) be amended so that Ordinance 6427 and all amendments to Code Sections ordained or enacted by Ordinance 6427 shall automatically sunset, be repealed and become void on December 31, 2024, unless prior to that date the City Council amends this ordinance to repeal or further amend this sunset, repeal and termination section.

March 22, 2024

Updated April 19, 2024

We are writing this letter on behalf of our family, The Kellar Family.

The property in consideration for rezoning has been a part of our family for generations. Bobby Kellar is the current owner and he has lived on the property his entire life. He was married to his wife Rita and they raised two children on the property.

Bobby's son Paul grew up on the property through his childhood and early adult years. Paul was married to his wife Angel and they had two children while living on the property. Unfortunately, Paul and Angel, with their children had to move due to the size of home and no option to expand or build.

Currently Bobby is the only one residing in the home because there is not adequate space for the additional family members. The reasoning for the rezoning request is to bring the family back together. Bobby has been residing alone since October 2021 when his wife unfortunately passed away. He has experienced some medical issues and it would be beneficial for him to have family there if they are needed.

With a rezoning, we would be able to apply for a permit to add additional space to the current home, or in the future build an additional home as the family grows. Having that opportunity would be so much more dynamic for the family.

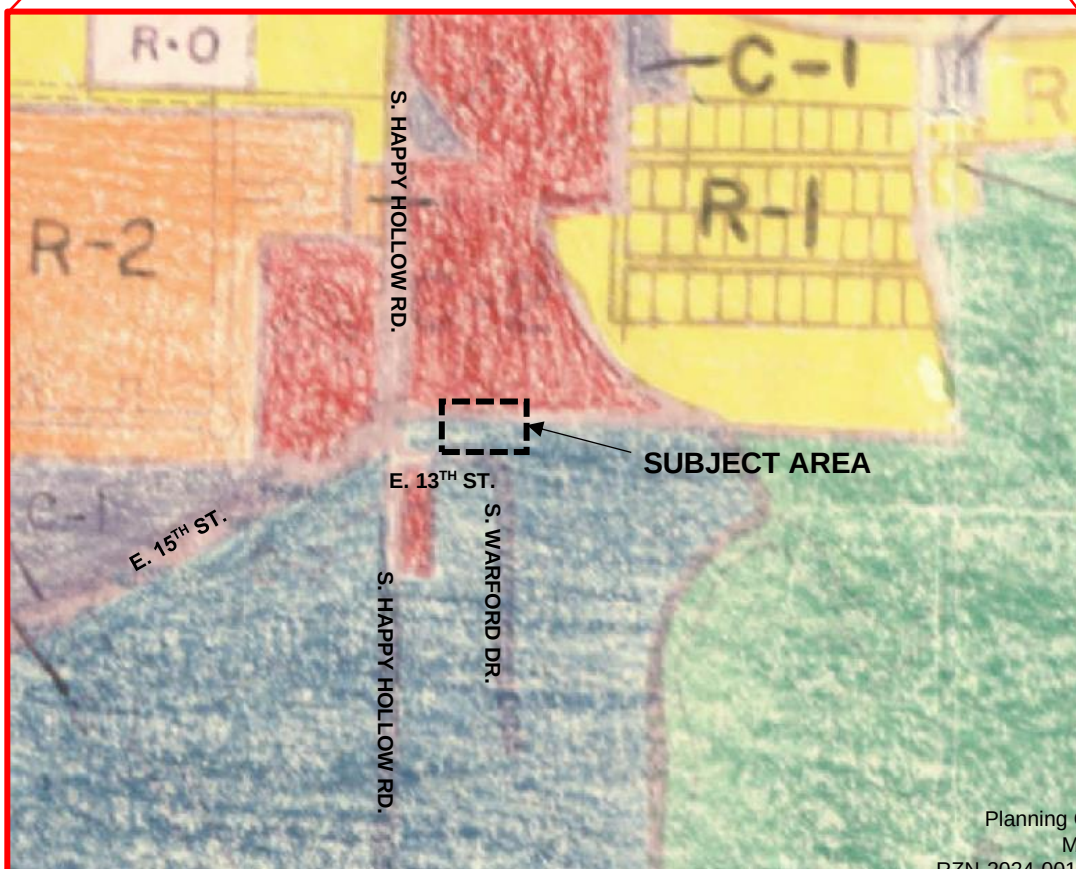
We are requesting that the property be rezoned to CS, Community Services.

We appreciate your time and consideration in helping us move toward our future.

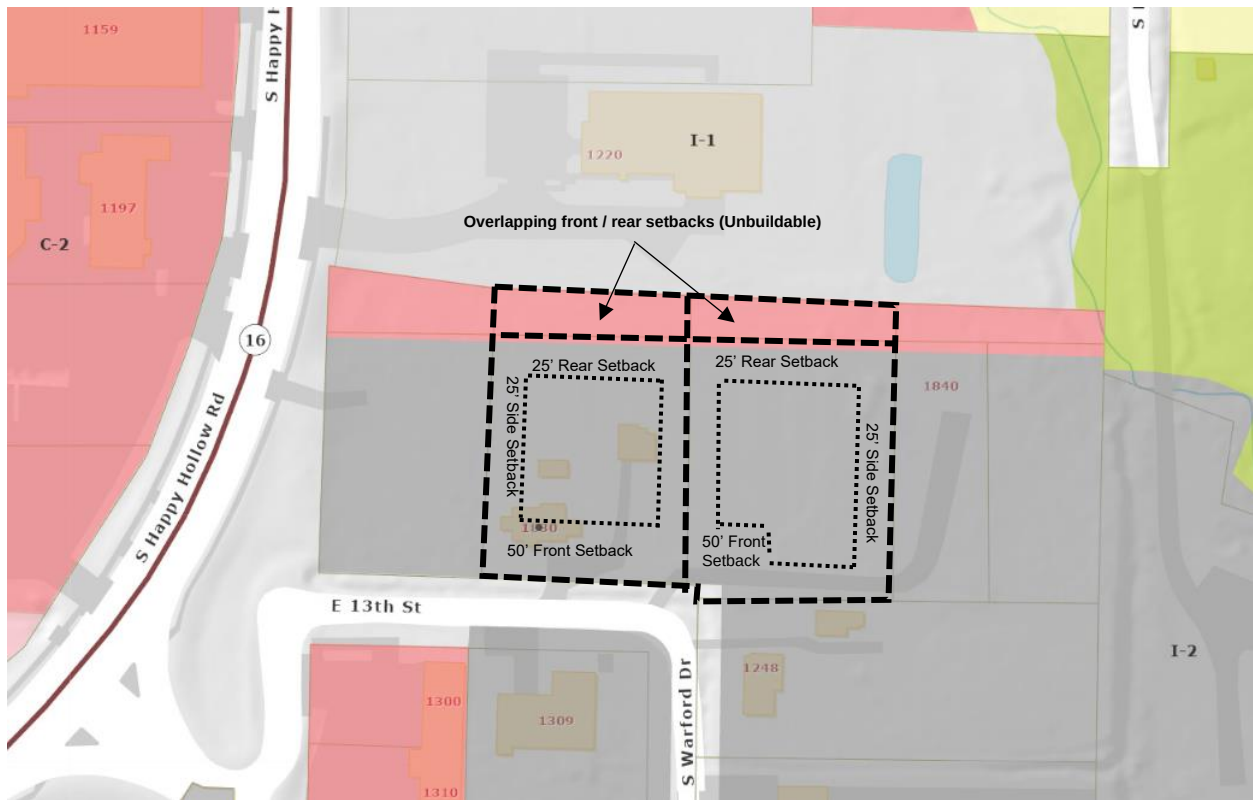
Sincerely,

The Kellar Family

**STAFF EXHIBIT:
ORIGINAL ZONING MAP**



**STAFF EXHIBIT:
CURRENT SETBACK ANALYSIS**



STAFF EXHIBIT: CITY PLAN 2040 EXCERPTS

Introduction

3.1.8 Encourage new development that supports and compliments the unique characteristics and economic values of employment clusters in and around downtown, the U of A, the north end, the rail corridor, Drake Field and the Industrial Park.

There are two emerging central places in Fayetteville that contain a mixture of residential and commercial land uses, alternative transportation linkages, and employment centers in proximity to each other. At a neighborhood scale, this mixture of uses is often described as a “complete, compact and connected” place. The downtown/university area of the central city is rapidly redeveloping with residential and commercial activities and the uptown area is filling-in with medium-density residential to complement some of the existing commercial and office uses. Both districts have street network needs that should be addressed to encourage the efficient use of land and transportation improvements for each are described as recommendations in the Fayetteville Mobility Plan.

The Infill Assessment Map tool that staff developed as part of this plan update

provides a general locational framework for identifying parcels and areas that have proximity to existing utilities, infrastructure and services. Undeveloped or underutilized lands that score highly on the Infill Assessment Map should be considered prime candidates for future development with uses and building forms that are complementary to the existing neighborhood.

The Growth Concept Map is also useful for encouraging the development of mixed-use and neighborhood-scaled central places that provide nearby residents with some of their daily needs in proximity.

3.1.9 Determine feasibility of a tiered impact fee system.

A tiered impact fee system requires new development to pay its proportionate share

of the costs to the municipality associated with providing necessary public services to the development based on its location. Tiered impact fees are based on the general acknowledgement that parcels and locations that are near the core of the city would have less impact, and areas on the urban fringe have more impact. Development on the fringe of the city will cost the City more over time to provide street infrastructure, water and sewer, and life-safety services. Therefore, development on the fringe should pay a higher impact fee upfront for these utilities, infrastructure and services. Phoenix, Arizona, Bellevue, Washington, Kansas City, Missouri and Conway, Arkansas have all implemented an impact fee system where the fee varies depending on where the development is proposed.



Photo 3.8 - Construction in Downtown Fayetteville



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Guiding Policies



Photo 12.29 - Industrial Complex



Future Land Use Map Designations (contd.)

Industrial Areas are those areas where buildings by their intrinsic functions, disposition or configuration, cannot conform to one of the other designated areas and/or its' production process requires the area to be separated from other uses. The guiding policies of Industrial Areas are:

1. Noise, visual, air, water and other pollution shall be minimized through performance standards.
2. New industry shall be recruited and encouraged to locate within the existing industrial park unless rail access is necessary to the industry.
3. Industrial zones that are not consistent with the Future Land Use map should be rezoned to more appropriate uses.
4. Encourage the use of “green” technologies to minimize noise, air and water pollution.



Photo 12.30 - Tyson Plant



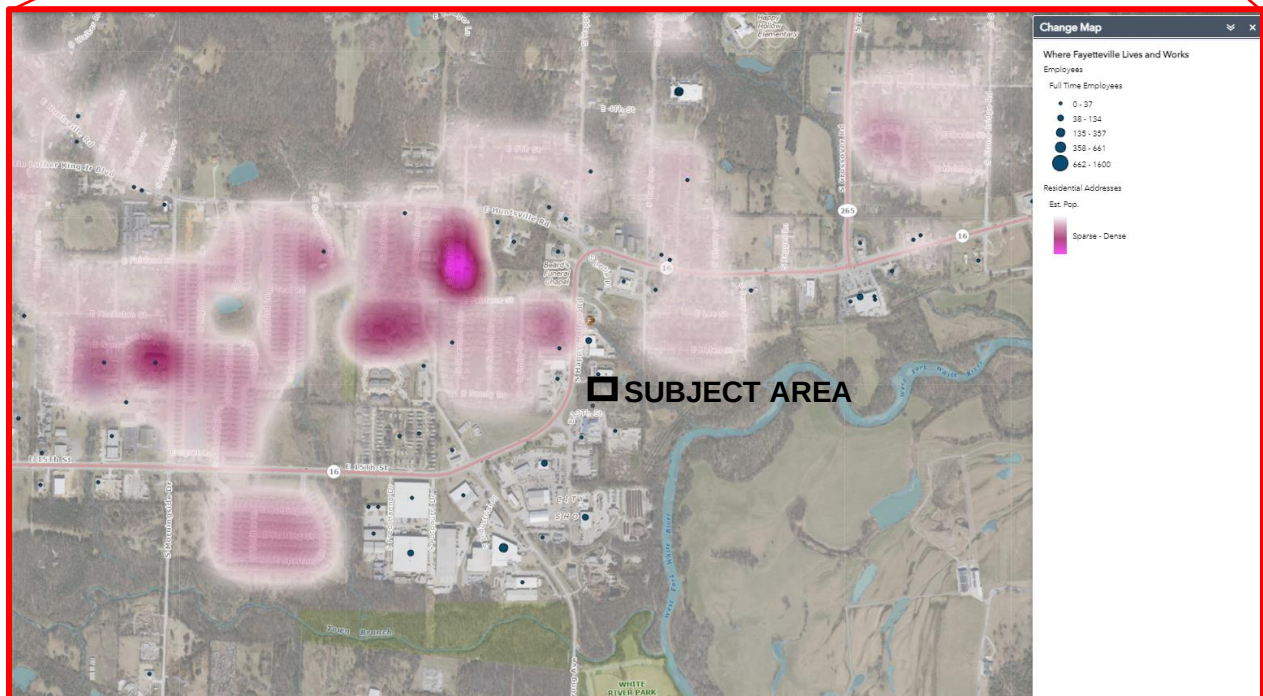
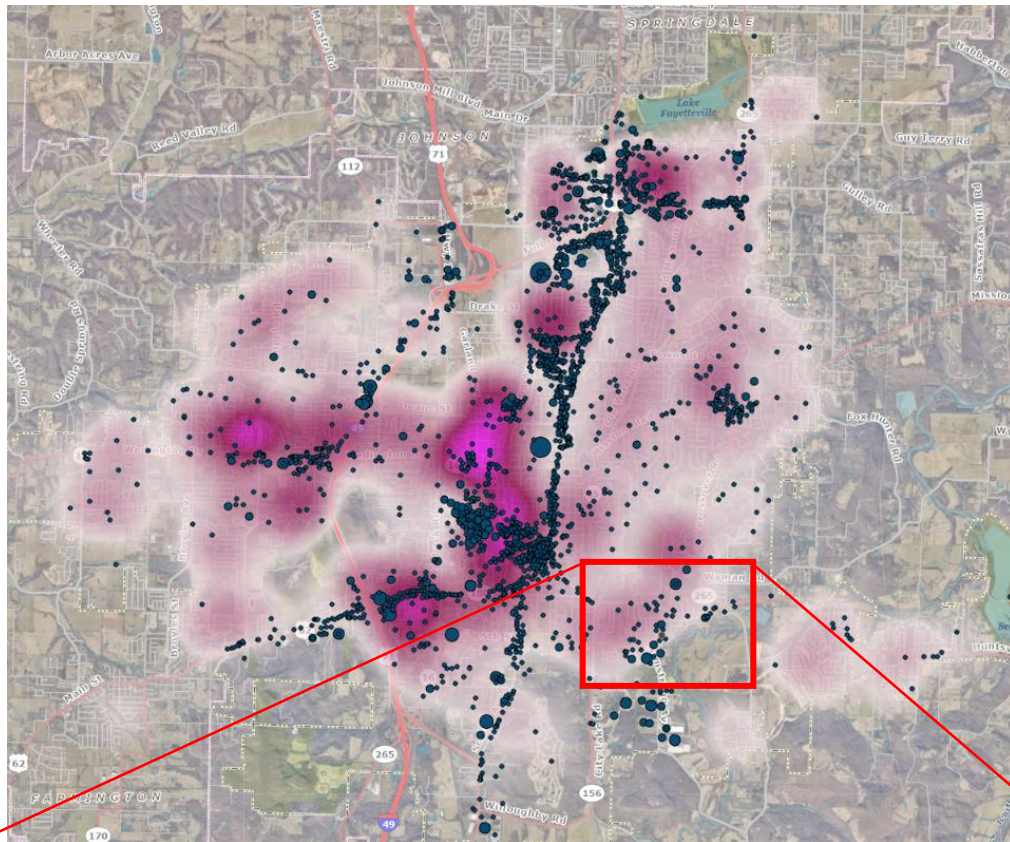
Photo 12.31 - Clean Technology Building



Photo 12.32 - Arkansas Research and Technology Park (ARTP)



**STAFF EXHIBIT:
RESIDENTIAL DENSITY AND JOBS**

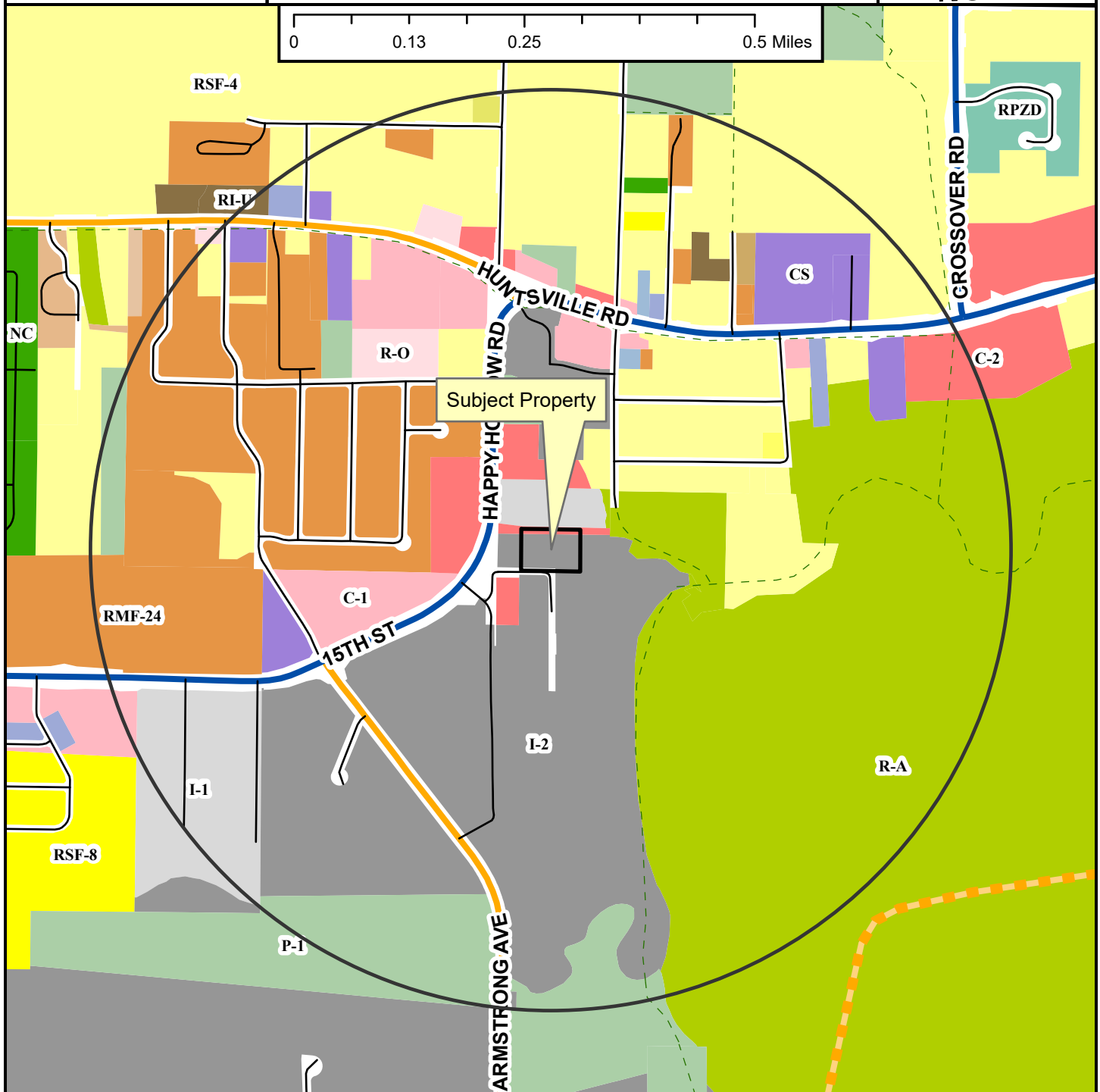
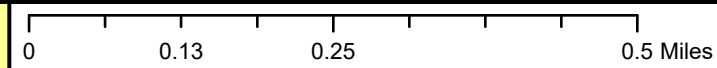


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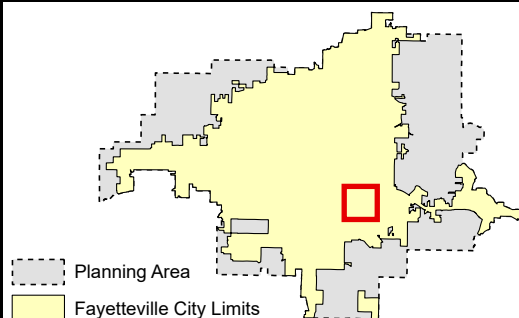
One Mile View

1830 E. 13TH ST

NORTH



-  Neighborhood Link
-  Regional Link - High Activity
-  Unclassified
-  Residential Link
-  Planned Neighborhood Link
-  Trail (Proposed)
-  Fayetteville City Limits
-  Planning Area



-
- Zoning**
- I-2 General Industrial
 - E-1
 - COMMERCIAL**
 - Residential-Office
 - C-1
 - C-2
 - C-3
- FORM BASED DISTRICTS**
- Downtown Core
 - Urban Thoroughfare
 - Main Street Center
 - Downtown General
 - Community Services
 - Neighborhood Services
 - Neighborhood Conservation
- PLANNED ZONING DISTRICTS**
- Commercial, Industrial, Residential
 - INSTITUTIONAL**
 - P-1
- RESIDENTIAL SINGLE-FAMILY**
- NS-G
 - RI-U
 - RI-12
 - NS-L
 - Residential-Agricultural
 - RSF-5
 - RSF-1
 - RSF-2
 - RSF-4
 - RSF-7
 - RSF-8
 - RSF-18
- RESIDENTIAL MULTI-FAMILY**
- RMF-6
 - RMF-12
 - RMF-18
 - RMF-24
 - RMF-40
- INDUSTRIAL**
- I-1 Heavy Commercial and Light Industrial

