

STAFF REPORT

Cary Town Council, March 12, 2015

Herndon Property Rezoning PL15-036 (14-REZ-33)

Consideration of a proposed rezoning request.

Speaker: Ms. Mary Beerman

From: Jeffery G. Ulma, AICP, Planning Director

Prepared by: Mary Beerman, Senior Planner

Approved by: Benjamin T. Shivar, Town Manager

Approved by: Russ Overton, Assistant Town Manager

REQUEST

To amend the Town of Cary Official Zoning Map to apply initial Town of Cary zoning of Transitional Residential Conditional Use (TR-CU) to 15.78 acres located at the northwest corner of the NC 55 Highway and Turner Creek Road intersection, with zoning conditions that include limiting land use to a maximum of 48 detached dwellings (3.0 du/acre).

There is a citizen-initiated annexation petition, case number 14-A-17, associated with the rezoning.

NOTE: The purpose of the rezoning is to determine whether or not the land uses and densities allowed in the proposed zoning district are appropriate for the site. Technical design standards of the Land Development Ordinance are addressed during review of the site or subdivision plan and can be found at <http://www.amlegal.com/library/nc/cary.shtml>.

SUBJECT PARCELS

Property Owner(s)	County Parcel Number (10-digit)	Real Estate ID	Current Zoning (Wake County)	Deeded Acreage
Leon W. & Shirley W. Herndon 6828 Turner Creek Road Cary, NC	0733772367	0288461	R-40(W) HD	12.74
Kathleen Lassiter Burt 6824 Turner Creek Road Cary, NC	0733763757	0288460	R-40(W) HD	3.04
Total Area				15.78

BACKGROUND INFORMATION

Applicant	Jeremy Medlin, MI Homes 1511 Sunday Drive Raleigh, NC 27607		
Agent	Jason Barron, Morningstar Law Group 630 Davis Drive, Suite 200 Durham, NC 27560		
Acreage	15.78 ±		
General Location	Northwest corner of the NC 55 Highway and Turner Creek Road intersection		
Schedule	Public Hearing December 11, 2014	Planning & Zoning Board January 26, 2015	Town Council March 12, 2015
Land Use Plan Designation	Medium Density Residential (MDR)		
Existing Zoning District(s)	Wake County Residential 40 Watershed District [R-40(W)] (± 5.42 ac); Wake County Highway District (HD) (± 10.36 ac)		
Existing Zoning Conditions	None		

Proposed Zoning District(s)	Transitional Residential Conditional Use (TR-CU); Watershed Protection Overlay District (Jordan Lake sub-area)
Proposed Zoning Conditions	<ol style="list-style-type: none"> 1. Permitted uses shall be limited to detached dwellings. 2. The maximum development density permitted shall be 48 total dwelling units. 3. Development of the property shall not be permitted to include an eastbound left turn movement from the site directly onto NC 55 Highway. Any access directly onto NC 55 Highway from the property shall be limited to a right-in/right-out turn movement (and may include a left-over movement for northbound traffic on NC 55 Highway). All access to NC 55 Highway is subject to approval by the NC Department of Transportation and the Town of Cary. 4. A 100-foot building and parking setback shall be provided along the northern boundary of the property. 5. The following setbacks shall apply to the property: <ol style="list-style-type: none"> a. Minimum side yard setbacks shall be five (5) feet. b. Minimum rear yard setbacks shall be twenty (20) feet. c. Minimum front yard setbacks shall be eighteen (18) feet.
Town Limits	The subject property is located outside the corporate limits and the Town of Cary ETJ. An owner-initiated annexation petition, 14-A-17, has been submitted by the property owners in conjunction with this rezoning request.
Valid Protest Petition	Protest petitions are not applicable to a map amendment (rezoning) that initially zones property that is being added to the Town's jurisdiction by annexation.
Staff Contact	Mary Beerman, AICP (919) 469-4342 mary.beerman@townofcary.org

SITE CHARACTERISTICS

Streams: According to Town of Cary GIS maps, there is a stream buffer on the northeast portion of the property. Field determination of such features is required at the time of site plan review.

Floodplain: According to Town of Cary GIS maps, there is no floodplain area on the subject property. Field verification of such features is required at the time of site plan review.

Wetlands: According to information provided by the applicant, wetlands have been mapped in the northeast portion of the property where a farm pond was previously located (pond was drained a number of years ago). Field verification of such features is required at the time of site plan review.

Adjacent Zoning and Land Use:

North – Residential-8 Conditional Use (R-8-CU); detached dwellings (Chesney Glen Subdivision)
South (*opposite side of Turner Creek Road*) – Residential 40 (R-40); Turner Creek Elementary School
East (*opposite side of NC 55 Highway*) – Residential 40 (R-40), Highway District (HD) (*Wake County*) and Office/Institutional Conditional Use (OI-CU); vacant, detached residential, and day care
West – Residential-8 Conditional Use (R-8-CU); detached dwellings

CONSISTENCY WITH LAND DEVELOPMENT ORDINANCE

Land Use

Detached dwellings are permitted in the proposed Transitional Residential zoning district.

The current zoning of the property is R-40 (Residential 40) and HD (Highway District), both of which are Wake County zoning districts. The land uses allowed in these districts are indicated in Article 4 (Use Regulations) of the Wake County Unified Development Ordinance.

Density and Dimensional Standards

	Conventional TR Zoning District	Proposed Zoning District (TR-CU)
Max. Gross Density	6.0 du/acre	3.0 du/acre
Min. Lot Size	5,000 square feet	
Minimum Lot Width	40 feet per dwelling unit	
Roadway Setback	From Turner Creek Road: 30 feet From internal streets: 18 feet, or 10 feet if no parking in front	From Turner Creek Road: 30 feet From internal streets: 18 feet
Side Yard Setback	combined setback for both side yards: 6 feet. firewall required where setback on either side is less than 3 feet.	5 feet (each side)
Rear Yard Setback	Minimum 3 feet, with combined front and rear setback of at least 20 feet	20 feet
Additional Setbacks	N/A	100-foot building and parking setback from northern property line
Maximum Building Height	35 feet <i>(May be increased by one foot for every additional foot provided between the building footprint and the minimum required setback).</i>	

Perimeter Buffer

Segment of Perimeter	Buffer Type Required by LDO	Applicant's Proposal
Northern Boundary (<i>adjacent to Chesney Glen</i>)	30-foot Type B (semi-opaque)	Per LDO
Western Boundary	30-foot Type B (semi-opaque)	Per LDO

Streetscape

Road Frontage	Buffer Type Required by LDO	Applicant's Proposal
Turner Creek Road	30' Type A (opaque)	Per LDO
NC 55 Highway	50' Type A (opaque)	Per LDO

Traffic

The proposed zoning density of 3.0 dwelling units per acre would result in a maximum of 48 dwelling units. Based on the ITE Trip Generation Manual, Land Use Code 210 – Single Family Detached Housing Units, the proposed rezoning is anticipated to generate approximately 43 am and 54 pm peak hour trips. The threshold for a traffic study is 100 peak hour trips, therefore a traffic study is not required.

Stormwater

At the time of site plan review, the future plan must meet all stormwater management and detention requirements. Peak flow from the one-, two-, five- and 10-year storm events must be determined and must be attenuated back to pre-development conditions from the discharge point leaving the development.

SUMMARY OF PROCESS AND ACTIONS TO DATE

Neighborhood Meeting

According to the applicant, a neighborhood meeting for the proposed rezoning was held on September 23, 2014. According to the information submitted by the applicant, seven residents attended the meeting. Questions and concerns expressed at the meeting are provided in the meeting minutes submitted by the applicant.

Notification

Consistent with NC General Statutes, notice of the public hearing on the proposed rezoning was mailed

to property owners within 800 feet of the subject property, published on the Town's website and posted on the subject property.

Town Council Public Hearing (December 11, 2014)

There were four speakers at the public hearing in addition to the applicant. One speaker was an adjoining property owner in the Chesney Glen Subdivision, with questions regarding setbacks and buffers along the northern property line. Three speakers expressed concern related to recent action by council to table a different rezoning request in the western portion of Cary, due to potential impact on schools, and requested that consideration of this rezoning request be consistent with other rezoning cases. There were no comments from council members.

Planning and Zoning Board Meeting (January 26, 2015)

The Planning and Zoning Board recommended approval of the rezoning request by a vote of 8-0. In response to questions from a board member, staff clarified buffers and setbacks required along the northern property line. It was also noted that at the time of site plan review, the road network would be required to connect to a right-of-way reservation located on the parcel to the west, and that the road connection between NC 55 and the Harmony Subdivision would be completed upon redevelopment of that adjacent parcel. Board members also commented on a previous rezoning request for the subject property (Case Number 12-REZ-20) that was withdrawn in February, 2014, noting concerns expressed by neighbors at that time regarding traffic and pedestrian access to the adjacent school.

CRITERIA FOR CONSIDERATION IN REVIEWING REZONINGS

Section 3.4.1(E) of the Land Development Ordinance sets forth the following criteria that should be considered in reviewing rezonings:

1. The proposed rezoning corrects an error or meets the challenge of some changing condition, trend or fact;
2. The proposed rezoning is consistent with the Comprehensive Plan and the purposes set forth in Section 1.3 (LDO);
3. The Town and other service providers will be able to provide sufficient public safety, educational, recreational, transportation and utility facilities and services to the subject property while maintaining sufficient levels of service to existing development;
4. The proposed rezoning is unlikely to have significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife and vegetation;
5. The proposed rezoning will not have significant adverse impacts on other property in the vicinity of the subject tract; and
6. The proposed zoning classification is suitable for the subject property.

APPLICABLE COMPREHENSIVE PLAN REQUIREMENTS

Southwest Area Plan

The Southwest Area Plan is the governing document for the subject property. The future land use designation of this site is Medium Density Residential (MDR), which is defined as single-family attached or detached housing at three to eight units per acre. Note 6b, found on the Southwest Area Plan Future Land Use Map, is applicable to this property: *Medium Density Residential development shall be at least 100 feet from the existing single-family neighborhood.*

Analysis: The proposed density of three units per acre falls within the low range of the Medium Density Residential (MDR) land use designation.

Parks, Recreation & Cultural Resources

According to the Parks, Recreation and Cultural Resources Facilities Master Plan there are no issues related to this site.

A recreation fund payment or park land dedication will be required in accordance with the Land Development Ordinance. Staff has recommended that a recreation fund payment be made for this site in lieu of a land dedication.

These comments were reviewed and approved by the Town's Parks, Recreation and Cultural Resources Advisory Board at its October 1, 2012 meeting during consideration of a previous rezoning request for the subject property. The PRCR issues associated with the site have not changed since that time.

Growth Management Plan

The Growth Management Plan includes the following Guiding Principles which are relevant to this case:

1. R1 Guiding Principle: Ensure that adequate infrastructure and services are available concurrently with new development.
2. L1 Guiding Principle: Concentrate growth near existing and planned employment centers and available and planned infrastructure to minimize costly service-area extensions.

Analysis: Adequate infrastructure and services appear to be available within or around the subject property. Potential development on this property would infill between a school and existing neighborhoods along the NC 55 Highway corridor.

Affordable Housing Plan

The Affordable Housing Plan includes the following goals that may be applicable to this case:

1. Provide for a full range of housing choices for all income groups, families of various sizes, seniors, and persons with special challenges.
2. Facilitate the creation of a reasonable proportion of the Town of Cary's housing as affordable units through additional homeownership opportunities for individuals and families earning between 60% and 80% of area median income and affordable apartments for individuals and families earning up to 60% of the area median income.
3. Assure a quality living environment and access to public amenities for all residents, present and future, of the Town of Cary, regardless of income.

Analysis: A medium density residential housing product may have the potential to support the goals of the Affordable Housing Plan.

Comprehensive Transportation Plan

NC 55 is designated as a Major Thoroughfare.

Existing Section: 5 lanes in approximately 150-foot ROW

Future Section: 4-lane, median-divided road in a minimum 100-foot ROW

Sidewalks: Required on both sides

Bicycle Lanes: 14-foot-wide outside lanes required

Transit: No transit requirements

Status of Planned Improvements: None

Turner Creek Rd. is designated as a local road.

Existing Section: 2 lanes with turn lane in approximately 70-foot ROW

Future Section: Same as existing

Sidewalks: Existing on the southern side, partially constructed on the northern side

Bicycle Lanes: N/A

Transit: No transit requirements

Status of Planned Improvements: None

Open Space Plan

According to the Open Space Plan, there are patches of bottomland forest / hardwood swamps near the northern end of the property, and near the central/eastern side of the property.

Historic Preservation Master Plan

There are no historic structures or historic landscapes associated with the subject property.

OTHER REFERENCE INFORMATION

Schools	Type ¹	Projected Range of Additional Students ²
<i>This information is being provided for your review;</i>		

<i>however, the Wake County Board of Education controls capital projects for school capacities.</i>	Elementary School	14-20
	Middle School	3-7
	High School	3-9
Total Projected range of additional students ²		20-36

¹Information regarding specific Wake County Public School assignment options may be found by visiting the following: <http://assignment.wcpss.net/preview/myplan.html>

²The *Projected Range of Additional Students* is a rough approximation. The actual number of students will vary depending on variables, such as the number of bedrooms, dwelling size, and other factors. For example: a site with 12 three-bedroom homes could yield six additional students, while 12 homes with greater than three bedroom units could yield 10 students. The basis for making this calculation is based on multipliers provided by the Wake County Schools Office of Student Assignment. At rezoning, student yield cannot be accurately determined due to unknown variables.

APPLICANT'S JUSTIFICATION STATEMENT

Attached are the applicant's responses to the justification questions contained in the application form. Please note that these statements are that of the applicant and do not necessarily represent the views or opinions of the Town of Cary.

ORDINANCE FOR CONSIDERATION

14-REZ-33 Herndon Burt Property

AN ORDINANCE TO ESTABLISH INITIAL TOWN OF CARY ZONING FOR APPROXIMATELY 15.78 ACRES LOCATED AT THE NORTHWEST CORNER OF THE NC 55 HIGHWAY AND TURNER CREEK ROAD INTERSECTION BY APPLYING TRANSITIONAL RESIDENTIAL CONDITIONAL USE (TR-CU) AND WATERSHED PROTECTION OVERLAY DISTRICT (JORDAN LAKE SUB-AREA) ZONING TO PROPERTY CURRENTLY ZONED WAKE COUNTY RESIDENTIAL 40 WATERSHED DISTRICT [R-40(W)] AND WAKE COUNTY HIGHWAY DISTRICT (HD)

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CARY:

Section 1: The Official Zoning Map is hereby amended by rezoning the area described as follows:

PARCEL & OWNER INFORMATION

Property Owner(s)	County Parcel Number (10-digit)	Real Estate ID	Current Zoning (Wake County)	Deeded Acreage
Leon W. & Shirley W. Herndon 6828 Turner Creek Road Cary, NC	0733772367	0288461	R-40(W) HD	12.74
Kathleen Lassiter Burt 6824 Turner Creek Road Cary, NC	0733763757	0288460	R-40(W) HD	3.04
Total Area				15.78

Section 2:

That this Property is rezoned from Wake County R-40 and HD, to TR-CU, subject to the individualized development conditions set forth herein, and to all the requirements of the Cary Land Development Ordinance (LDO) and other applicable laws, standards, policies and guidelines, all of which shall constitute the zoning regulations for the approved district and are binding on the Property.

Section 3:

The conditions proposed by the applicant to address conformance of the development and use of the Property to ordinances and officially adopted plans, to address impacts reasonably expected to be generated by the rezoning, and to promote the public health, safety and general welfare, and accepted and approved by the Town are:

1. Permitted uses shall be limited to detached dwellings.
2. The maximum development density permitted shall be 48 total dwelling units.
3. Development of the property shall not include an eastbound left turn movement from the site directly onto NC 55 Highway. Any access directly onto NC 55 Highway from the property shall be limited to a right-in/right-out turn movement (and may include a left-over movement for northbound traffic on NC 55 Highway). All access to NC 55 Highway is subject to approval by the NC Department of Transportation. ▸
4. A 100-foot building and parking setback shall be provided along the northern boundary of the property.
5. The following setbacks shall apply to the property:
 - a. Minimum side yard setbacks shall be five (5) feet.
 - b. Minimum rear yard setbacks shall be twenty (20) feet.
 - c. Minimum front yard setbacks shall be eighteen (18) feet.

Section 4: This ordinance shall be effective on the date of adoption.

Adopted and effective: March 12, 2015

Harold Weinbrecht, Jr.
Mayor

Date