

**Town of Cary, North Carolina  
Rezoning Staff Report  
13-REZ-14 Howell Tract  
Town Council Meeting  
January 30, 2014**

**REQUEST**

To apply initial Town of Cary zoning to approximately 14.66 acres located at the northwest corner of the Farmpond Road and Davis Drive intersection. The applicant has requested the zoning designation be changed from a Wake County zoning designation of Residential 40 (R-40W) to a Cary zoning designation of Residential 8 Conditional Use (R-8-CU). The zoning conditions proposed by the applicant are contained within this staff report, and include a condition which limits the maximum number of detached residential lots to 28.

There is a owner-initiated Annexation Petition, case number 13-A-20, associated with the rezoning. Annexation must be approved prior to application of a Cary zoning district.

If approved, the Watershed Protection Overlay District (Jordan Lake sub-area) will also be applied to the subject property.

NOTE: The purpose of the rezoning is to determine if 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(s) (10-digit)	Real Estate ID(s)	Deeded Acreage
Gary W. Howell 1401 Davis Drive Apex, 27523	0743630991	0166374	8.64 ±
Same as above	0743539444	0217191	4.02 ±
Same as above	0743631186	0166373	2.0 ±
<b>Total Area</b>			<b>14.66 ±</b>

**BACKGROUND INFORMATION**

Applicant	Steven J. Vining Raleigh Land Fund I, LLC 401 Glenwood Avenue, Suite 130 Raleigh, NC 27603		
Agent for Applicant	Adam Ashbaugh, LStar Management, LLC 401 Glenwood Avenue, Suite 130 Raleigh, NC 27603 (919) 256-1981 adam@lstarland.com		
Acreage	14.66 ±		
Location	1403 Davis Drive, 1401 Davis Drive and 5900 Farmpond Road		
Schedule	<b>Town Council Public Hearing</b> November 21, 2013	<b>Planning &amp; Zoning Board</b> December 16, 2013	<b>Town Council Meeting</b> January 30, 2014

Land Use Plan Designation	Low Density Residential (LDR)
Existing Zoning District(s)	Wake County Residential 40 (R-40W)
Existing Zoning Conditions	None
Proposed Zoning District(s)	Residential 8 Conditional Use (R-8-CU) and Watershed Protection Overlay District (Jordan Lake sub-area)
Proposed Zoning Conditions	<ol style="list-style-type: none"> <li>1. The use of the subject property shall be limited to single-family detached-residential homes.</li> <li>2. The maximum density shall be limited to two (2) dwelling units per acre and a maximum of 28 homes.</li> <li>3. A minimum 20-foot-wide perimeter buffer shall be provided along western and northern property lines. This buffer shall be located in common open space, outside of individual lots.</li> <li>4. Lots within 50 feet of Farm Pond Road Subdivision (adjacent to Wake County PINs 0743534823 and 0743535470) shall be a minimum of 20,000 square feet.</li> </ol>
Town Limits	The subject property is located outside the corporate limits and the Town of Cary ETJ. An owner-initiated annexation petition, 13-A-20, was submitted by the property owners in conjunction with this rezoning request.
Valid Protest Petition	Based on NC General Statutes, 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	Debra Grannan, Senior Planner (919) 460-4980 debra.grannan@townofcary.org

## SITE CHARACTERISTICS

**Streams:** According to Cary's most current GIS maps, the site is impacted by a stream buffer. Field determination will be required at the time of development plan review.

**Floodplain:** Cary's most current GIS maps do not identify any floodplains on the subject property. Field determination will be required at the time of development plan review.

**Wetlands:** Cary's most recent GIS maps indicate the presence of wetlands in the vicinity of the two existing ponds on the property located at 1403 Davis Drive. No wetlands are indicated on the other two parcels. Field determination will be required at the time of development plan review.

**Topography:** According to Cary's GIS maps, there is a gradual decrease of between 10 to 25 feet in elevation from the portions of the property adjacent to Farmpond Road and Davis Drive to the northern and western edges of the property furthest from the road.

**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.

**Adjacent Land Uses and (Zoning):**

North – Detached Residential (R-8-CU)

South – Detached Residential (Wake County R-40W)

East – Opposite side of Davis Drive; Detached Residential (Bishop's Gate PDD Major)

West – Detached Residential (Wake County R-40W)

**CONSISTENCY WITH LAND DEVELOPMENT ORDINANCE**

**Land Use**

The proposed use of detached residential and density limit of two dwelling units per acre are consistent with the Low Density Residential designation on Cary’s Land Use Plan.

**Density and Dimensional Standards**

	<b>Existing Zoning District Wake County (R-40W)</b>	<b>Proposed Zoning District Residential 8 Conditional Use (R-8 CU)</b>
<b>Max. Gross Density</b> (du/ac)	1	2 *
<b>Min. Lot Size</b> (sq. ft.)	40,000 or cluster or “Open Space Development” where lot size may be reduced and area is set aside as permanent open space	8,000 20,000 **
<b>Minimum Lot Width</b> (feet)	110	60 (70 for corner lot)
<b>Roadway Setback</b> (feet)	30	From thoroughfare: 50 From collector: 30 From other streets: 18 feet when parking is provided between the dwelling and the roadway; 10 feet when parking is not provided
<b>Side Yard Setback</b> (feet)	15 (30 at corner)	10
<b>Rear Yard Setback</b> (feet)	30	20
<b>Maximum Building Height</b> (feet)	35	35
<p>* Residential 8 (Conventional zoning) permits a maximum density of 5.44 du/ac. The applicant has proposed a condition that would limit the density to a maximum of two (2) du/ac.                      ** Residential 8 (Conventional zoning) district allows a minimum lot size of 8,000 square feet. The applicant has proposed a zoning condition that establishes minimum lot sizes ranging from 8,000 to 20,000 square feet depending on location.</p>		

**Landscape Buffer**

In accordance with Section 7.2.3 of the LDO, a 30-foot-wide landscape area planted to a Type-B (semi-opaque) standard is required between residential lots that are 8,000 square feet or greater in area. The applicant has proposed to provide a separately platted buffer between the existing Farmpond development and proposed development on the subject property.

**Streetscape**

Davis Drive is classified on the Town’s Comprehensive Transportation Plan as a thoroughfare. In accordance with Section 7.2.4 of the LDO, a 50-foot Type-A (opaque) streetscape is required.

**Traffic**

The proposed zoning of Residential 8 Conditional Use (R-8-CU), with a maximum density of 28 single-family units per acre, will generate 30 am and 34 pm peak hour trips using the ITE Single Family Detached Housing (210) Code. No traffic study is required at rezoning since this does not exceed the 100 peak hour trip threshold.

### Accident Analysis

The NCDOT Transportation Mobility and Safety Division have provided crash statistics that have been generated and are available through North Carolina's Crash Database. This database provides an inventory of reported crashes on record that have occurred at the location of Davis Drive at Farmpond Road. Please note that many traffic crashes go unreported for a variety of reasons, and this report simply provides a listing of all crashes on record that occurred within 150 feet of the intersection in the immediate vicinity from **January 2002 through October 2012**. Provided below is a brief summary of crash statistics:

<b><u>Accident Type Summary</u></b>	<b><u>Number of Crashes</u></b>
Animal	3
Overturn/Rollover	1
Ran Off Road – Left	2
Ran Off Road – Right	3
Rear End, Slow or Stop	1
Total Crashes	10

<b><u>Injury Summary</u></b>	<b><u>Number of Injuries</u></b>
Fatal	0
Class A Injury	0
Class B Injury	2
Class C Injury	5
Total Injuries	7
Total Non-Fatal Injuries	7

#### Definitions:

**Fatal** - deaths, which occur within 12 months of crash.

**Class A injury (disabling)** – Injury obviously serious enough to prevent the person from performing normal activities for at least one day beyond the day of the collision. Massive loss of blood, broken bones, unconsciousness of more than momentary duration are examples.

**Class B injury (evident)** – Obvious injury other than fatal or disabling, which is evident at the scene. Bruises, swelling, limping, soreness are examples. Class B injury would not necessarily prevent the person from carrying out normal activities.

**Class C injury (possible)** – No visible injury, but person complains of pain, or has been momentarily unconscious.

The complete crash report is attached that provides more detail.

### **SUMMARY OF PROCESS AND ACTIONS TO DATE**

#### **Neighborhood Meeting**

According to the applicant, a neighborhood meeting for the proposed rezoning was held on August 22, 2013. According to the information submitted by the applicant, five nearby property owners attended the meeting. According to the meeting minutes provided by the applicant, adjacent property owners had questions or concerns regarding: property values, traffic, stormwater management, compatibility to adjacent, existing subdivisions and general timing of the proposed future development.

#### **Notification**

On November 5, 2013 the Planning Department mailed notification of a public hearing on the request to property owners within 400 feet of the subject property. Notification consistent with General Statutes was published in the Cary News on November 6 and 13, 2013. Notice of the public hearing was posted on the property on November 7, 2013.

#### **Town Council Public Hearing (November 21, 2013)**

Staff presented an overview of the case and summarized feedback from nearby property owners. The applicant, Steve Vining, spoke briefly and stated that the proposed conditions regarding density and lot size addressed concerns previously expressed by the Farm Pond Road residents. Adam Ashbaugh, with LStar Management, described potential lot configurations. Mr. Ashbaugh presented a conceptual plan to the council; however, the plan is not a condition of the proposed rezoning and should not be considered

in evaluating the rezoning request. He further noted that because of the railroad location on the opposite side of the street, this site would be responsible for the full right of way dedication requirements on Davis Drive.

During the public hearing, four nearby property owners on Farm Pond Road expressed concerns regarding lot size and traffic safety. They described the rural nature of the area and indicated that they felt a 20,000-square-foot lot size was appropriate for the entire site. One neighbor referenced private deed restrictions on the Farm Pond properties. A resident in the Stonecrest neighborhood and the property owner, Gary Howell, spoke in support of the rezoning request.

Following the public hearing, council verified with staff that deed restrictions were private matters over which they had no authority.

### **Changes since the Town Council Meeting**

None

### **Planning and Zoning Board Meeting (December 16, 2013)**

Staff summarized the rezoning request. In reviewing the proposed zoning conditions, staff reported that the applicant is proposing a maximum of two (2) dwelling units per acre and a maximum of 28 lots. Staff explained that this was a reduction from the 43 lots and maximum density of three (3) dwelling units per acre that had been requested with a previous rezoning case for the same property. Due to the significance of the changes in the proposed development, the Town Council previously granted a waiver to the one-year waiting period for rezoning cases on the same property.

Adam Ashbaugh of LStar Management spoke on behalf of the applicant. He stated that the prior request proposed a Transitional Residential zoning district with smaller lots. The current request for Residential 8 Conditional Use (R-8-CU) addresses concerns expressed by adjacent property owners related to transitions, density and compatibility.

A board member asked staff to explain the proposed zoning condition regarding a 20-foot buffer. Staff explained that when there are two adjacent Class 2 land uses, a landscaped area rather than a separate buffer is required by the LDO. Staff noted that the applicant's proposed condition would exceed LDO standards.

One board member asked for verification of adjacent lot sizes, and raised the issue of road connectivity from the proposed development to Farmpond Road and asked if adjacent property owners could request to remove the connection. Staff explained that a request could only come from the applicant and would be subject to quasi-judicial review at the time of site plan review.

A majority of the board members indicated that the proposed zoning conditions addressed the concerns raised by adjacent property owners and supported the request.

The board voted 7-1 to forward the request to Town Council with a recommendation for approval.

## **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 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 property in the vicinity of the subject tract; and
6. The proposed zoning classification is suitable for the subject property.

## APPLICABLE COMPREHENSIVE OR AREA PLAN REQUIREMENTS

### Land Use Plan

The townwide Land Use Plan recommends Low Density Residential (LDR) uses for this property. LDR is defined as single-family housing at between one and three dwellings per acre. The land use designation for this area dates from the original adoption of the Land Use Plan in 1996.

The neighborhoods north and west of the subject site are also designated as LDR by the Land Use Plan (i.e., the Stonecrest and Farm Pond Road subdivisions, respectively). South of the site is another low density neighborhood, but under the Town of Apex's planning jurisdiction. East of the site is Davis Drive and a CSX Railroad corridor, both of which provide an effective buffer or transition to the Bishop's Gate single-family neighborhood further to the east.

Chapter 6, Section 6.5.2 of the [Land Use Plan Document](#) notes that "residential densities should transition gradually between high, medium, and low density." Thus, the specific density and/or housing type that might be appropriate for the subject parcels can also depend on context and transitions to adjacent residential properties. Historically, density transitions have been made either by providing a gradual change in density or lot size or by providing an appropriate vegetative buffer transition, or a combination of these.

**Analysis:** The applicant has offered zoning conditions intended to address the issues of compatibility with the adjacent neighborhoods, and the Farm Pond Road subdivision, west of the site, in particular. The applicants have proposed (a) to limit the overall density to 2 dwellings/acre, which is in the middle of the LDR 1-3 dwellings/acre range; (b) to provide a 20-foot perimeter buffer adjacent to the Farmpond Road and Stonecrest subdivisions; and (c) to provide minimum lot sizes of 20,000 square feet adjacent to the Farm Pond Road subdivision. These conditions support conformance with the Land Use Plan. However, the Planning and Zoning Board and Town Council may determine whether plan conformance has been achieved.

### Growth Management Plan

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

- Guiding Principle L1: Concentrate growth near existing and planned employment centers and available and planned infrastructure to minimize costly service-area extensions.

**Analysis:** The site is immediately adjacent to existing and planned infrastructure and utilities. While not technically an "infill site," the site is immediately adjacent to existing Town limits. The site is within about one mile of the Davis Drive Elementary and Middle Schools; and approximately two miles from the large activity center situated around the Davis Drive and High House Road intersection. The site is located approximately six miles from the southern edge of Research Triangle Park, via Davis Drive.

- Guiding Principle R1: Ensure that adequate infrastructure and services are available concurrently with new development.

**Analysis:** Utilities are available within this infill site location.

- Guiding Principle A1: Increase permitted densities in preferred growth areas to encourage desired forms of development.

**Analysis:** The site can be considered as a preferred growth area, since it is immediately adjacent to existing Town limits, relatively close to the center of Cary, and within a major transportation corridor.

### Affordable Housing Plan

The Affordable Housing Plan includes the following goals:

1. Provide for a full range of housing choices for all income groups, families of various sizes, seniors, and persons with special challenges.
2. Encourage the location of high density housing within walking and convenient commuting distance of employment, shopping, and other activities, or within a short walk of a bus or transit stop, through "mixed use" developments, residences created on the upper floors of nonresidential downtown buildings, and other creative strategies.

3. 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.

*Observations:* Based on the proposed rezoning request, the goals of the adopted Affordable Housing Plan are not applicable to, or supported by, this case.

### **Comprehensive Transportation Plan**

#### **Davis Drive is designated as a Major Thoroughfare**

**Existing Section:** 2-lane undivided section with swale ditches (24-foot roadway, 16 feet within 100-foot rail ROW; 25-foot roadway ROW outside of rail ROW)<sup>1</sup>

**Future Section:** 4-lane median-divided section with curb & gutter (78-foot roadway, 100-foot ROW)<sup>2</sup>

**Sidewalks:** None existing; both side future with street-side trail on west side; consideration of no sidewalk on east side alongside rail.<sup>3</sup>

**Bicycle Lanes:** None existing; future plans call for wide outside bike lanes and a street-side trail

**Status of Planned Improvements:** No planned improvements at this time

#### **Farmpond Road is designated as a Minor Collector Street (from Davis Drive to future alignment of Howell Drive, approximately 1,800 feet)**

**Existing Section:** 2-lane undivided (20-foot roadway; 60-foot ROW)

**Future Section:** 2-lane undivided (35-foot roadway; 62-foot ROW<sup>4</sup>; based on residential use)

**Sidewalks:** None existing; both side future with street-side trail on south side

**Bicycle Lanes:** None existing; future plans call for 4-foot striped bike lanes and a street-side trail

**Status of Planned Improvements:** No planned improvements at this time

**Bus Transit:** At present there is no C-Tran or Triangle Transit bus service along this section of Davis Drive. The nearest existing C-Tran service is provided via Route 4 along High House Road, approximately two miles north of the site. The nearest existing Triangle Transit bus service is provided along US Highway 64, approximately one mile south of the site, via TT Route 311.

### **Parks, Recreation & Cultural Resources Facilities Master Plan**

According to the Parks, Recreation and Cultural Resources Facilities Master Plan, street-side trails are proposed along the Davis Drive frontage and the Farmpond Road frontage, and will be required to be constructed by developer in accordance with the LDO.

A recreation fund payment will be required for residential development in accordance with the LDO.

These comments have been reviewed and approved by the Town's Greenway Committee and the Parks, Recreation and Cultural Resources Advisory Board.

### **Open Space Plan**

According to the Open Space Plan there were no significant natural resources associated with this site.

### **Historic Preservation Master Plan**

The subject property contains no known historic resources.

### **Summary Observations**

- The density requested by the rezoning is within the middle of the density range identified by the Land Use Plan. The applicants have further offered conditions intended to ensure that a compatible density transition is achieved.
- The requested rezoning seems to support 2-3 of the Guiding Principles from the Growth Management Plan.

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<sup>1</sup> CSX Transportation should be consulted, rail company may require entire road be moved west outside of rail ROW if widened

<sup>2</sup> Additional 75' needed beyond current ROW due to rail ROW.

<sup>3</sup> An additional 5' ROW (105' total) due to street side trail is not recommended. Recommend required ROW remain 100' by eliminating sidewalk from east side along rail, a placement that is undesirable.

<sup>4</sup> An additional 2' ROW (62' total) due to street side trail

- The site is not well-served by bus transit, with only marginal nearby service improvement expected in the future.

**OTHER REFERENCE INFORMATION**

<b>Schools</b> <i>This information is being provided for your review; however, the Wake County Board of Education controls capital projects for school capacities.</i>	Type <sup>1</sup>	Projected Range of Additional Students <sup>2</sup>
	Elementary School	8- 12
	Middle School	2 - 4
Total Projected range of additional students <sup>2</sup>		12 - 21

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

<sup>2</sup> The *Projected Number 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 28 three-bedroom homes could yield 12 additional students, while 28 homes with greater than three bedroom units could yield 21 students. The basis for making this calculation is based on multipliers provided from 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 rezoning 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**

**13-REZ-14 HOWELL TRACT**

AN ORDINANCE TO APPLY INITIAL TOWN OF CARY ZONING TO APPROXIMATELY 14.66 ACRES LOCATED AT THE NORTHWEST CORNER OF THE FARMPOUND ROAD AND DAVIS DRIVE INTERSECTION OWNED BY GARY W. HOWELL BY REZONING THE PROPERTY FROM WAKE COUNTY RESIDENTIAL 40 (R40-W) TO RESIDENTIAL 8 CONDITONAL USE (R-8-CU) AND WATERSHED PROTECTION OVERLAY DISTRICT (JORDAN LAKE SUB-AREA).

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(s) 10 digit	Real Estate ID(s)	Area ± (Acres)
Gary W. Howell 1401 Davis Drive Apex, 27523	0743630991	0166374	8.64 ±
Gary W. Howell 1401 Davis Drive Apex, 27523	0743539444	0217191	4.02 ±
Gary W. Howell 1401 Davis Drive Apex, 27523	0743631186	0166373	2.0 ±
<b>Total Acres</b>			14.66 ±



**Section 2:** That this Property is rezoned from Wake County Residential 40 (R-40W) to Residential 8 Conditional Use (R-8-CU) and Watershed Protection Overlay District (Jordan Lake Sub-area) subject to the individualized development conditions set forth herein, and 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. The use of the subject property shall be limited to single-family-detached residential homes.
2. The maximum density shall be limited to two (2) dwelling units per acre and a maximum of 28 homes.
3. A minimum 20-foot-wide perimeter buffer shall be provided along western and northern property lines. This buffer shall be located in common open space, outside of individual lots.
4. Lots within 50 feet of Farm Pond Road Subdivision (adjacent to Wake County PINs 0743534823 and 0743535470) shall be a minimum of 20,000 square feet.

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

Adopted and effective: *January 30, 2014*

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Harold Weinbrecht, Jr.  
Mayor

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Date