

**Town of Cary, North Carolina
Rezoning Staff Report
13-REZ-18 Ogburn Property
Town Council Meeting
December 19, 2013**

REQUEST

To amend the Town of Cary Official Zoning Map by rezoning approximately 18.49 acres located near the intersection of Penny Road and Greyfriars Lane from Residential 40 (R-40) and Residential 12 (R-12) to Residential 20 Conditional Use (R-20-CU). The Residential 20 (R-20) zoning district requires a minimum lot size of 20,000 square feet. Conditions proposed by the applicant would limit the maximum number of lots to 20, require a minimum 100-foot lot width and require a 35-foot roadway setback.

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(s) (10-digit)	Real Estate ID(s)	Deeded Acreage
Hugh D. Ogburn 11112 Penny Road Cary, NC 27518	0751749979	0197664	3.63 ±
	0751843939	0051890	10.00 ±
	0751847938	0051891	4.75 ±
Hugh D. and Merrill G. Ogburn 11112 Penny Road Cary, NC 27518	0751857286	0206368	0.07 ±
	0751848731	0197663	0.04 ±
Total Area			18.49 ±

HISTORY

A portion of the subject property was part of a 200-acre tract of land that was rezoned in 1993 from Residential 40 to Residential 8 Conditional Use (Case Number Z-677-93-1). When the Town of Cary replaced the Unified Development Ordinance (UDO) with the current Land Development Ordinance (LDO) in 2003, that land was rezoned to Residential 12 (R-12).

The current proposal to rezone the property to Residential 20 Conditional Use (R-20-CU) reflects the zoning conditions from 1993 with the exception of the 35-foot-wide streetscape along Penny Road. The current LDO standard requires a 50-foot-wide streetscape along Penny Road since it is classified as a major thoroughfare. The applicant would not be able to offer a condition that is less restrictive than the current LDO standards.

BACKGROUND INFORMATION

Applicants	Hugh D. Ogburn and Merrill G. Ogburn
Applicant's Contact	Robbie Bell Bass, Nixon & Kennedy, Inc 6310 Chapel Hill Road

	Raleigh, NC 27607 Robbie.Bell@Bnkinc.com (919) 851-4422		
Acreage	Approximately 18.49 acres		
General Location	11112 and 11116 Penny Road, one unaddressed parcel northeast of the intersection of Penny Road and Killingworth Drive, and two unaddressed parcels southwest of the intersection of Greyfriars Lane and Moreland Court		
Schedule	Town Council Public Hearing October 10, 2013	Planning & Zoning Board November 18, 2013	Town Council December 19, 2013
Land Use Plan Designation	Low Density Residential (LDR)		
Existing Zoning District(s)	Residential 40 (R-40) and Residential 12 (R-12)		
Existing Zoning Conditions	None		
Proposed Zoning District(s)	Residential 20 Conditional Use (R-20-CU)		
Proposed Zoning Conditions	<ol style="list-style-type: none"> 1. The minimum lot width shall be 100 feet 2. The minimum roadway setback shall be 35 feet 3. There shall be a maximum of 20 lots. 		
Town Limits	The 0.07-acre parcel, identified by Wake County PIN #0751857286, is inside Cary's Town limits. The remaining parcels are located outside the corporate limits but inside the Town of Cary ETJ. Annexation will be required prior to site plan approval.		
Protest Petition	None		
Staff Contact	Debra Grannan Senior Planner Debra.grannan@townofcary.org (919) 460-4980		

SITE CHARACTERISTICS

Streams: According to Cary's GIS maps, the subject property is potentially impacted by a stream buffer. Field determination of such features shall be required at the time of site plan review.

Floodplain or Wetlands: Cary's GIS maps do not indicate the presence of any floodplain or wetlands on the subject property. Field verification of such features is required at the time of site plan review.

Adjacent Uses and (Zoning)

North – Detached residential (R-20)

South – Detached residential (R-8) (Opposite side of Penny Road)

East -- Detached residential (R-20)

West – Detached residential (R-20) (Opposite side of Royal Glen Drive)

CONSISTENCY WITH LAND DEVELOPMENT ORDINANCE

Density and Dimensional Standards

	Existing Zoning District Residential 40 (R-40)	Existing Zoning District Residential 12 (R-12)	Proposed Zoning District Residential 20 Conditional Use (R-20-CU)
Max. Gross Density (Du/ac)	1.08	3.63	1.1 *
Minimum Lot Size (square feet)	40,000	12,000	20,000

Minimum Lot Width (feet)	150 (160 for corner lot) With public sewer 125 (135 for corner lot)	80 (90 for corner lot)	100**
Roadway setback (feet)	From thoroughfare: 50 From collector: 30 From other streets: 20	From thoroughfare: 50 From collector: 30 From other streets: 20	From thoroughfare: 50 All other streets: 35***
Side Yard (feet)	With septic tank/well: 20 With public sewer: 15	10	10
Rear Yard (feet)	30	25	25
Maximum Building Height (feet)	35	35	35

*Typical R-20 zoning districts allow a maximum gross density of 2.17 du/ac. The applicant has offered a zoning condition to limit the number of lots allowed on the subject property to 20; therefore limiting density to 1.1 du/ac.

**Typical R-20 zoning districts require a minimum lot width of 90 feet (100 feet for corner lots.) A zoning condition, proposed by the applicant, requires a minimum 100-foot width for all lots.

***Typical LDO requirement for roadway setbacks in R20 zoning requires a 30 foot setback from collector roads and 20 feet from other streets. A zoning condition, proposed by the applicant, requires a minimum 35-foot roadway setback from all streets.

Landscape Buffer: In accordance with Chapter 7 of Cary's LDO, a 20-foot-wide landscape area planted to a Type B (semi-opaque) standard is required between adjacent lots in separate developments when lot sizes are 8,000 square feet or greater.

Streetscape: In accordance with Chapter 7 of Cary's LDO, a 50-foot-wide streetscape planted to a Type-A (opaque) standard is required along Penny Road.

Traffic: This project proposes 18.49 acres be rezoned to R-20. A zoning condition offered by the applicant would allow up to 20 single-family homes to be built. The ITE Trip Generation Land Use Code (210) Single Family Detached Housing indicates that 38 am and 46 pm peak hour trips could be generated by this rezoning. Since this proposal does not generate 100 peak hour trips, no traffic study is 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

Notification

On September 24, 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 September 25 and October 2, 2013. Notice of the public hearing was posted on the property September 27, 2013.

On November 7, 2013 the Planning Department mailed notification of a second public hearing scheduled before the Planning and Zoning Board 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 November 6, 2013.

Neighborhood Meeting

According to the applicant, a neighborhood meeting for the proposed rezoning was held on June 20, 2013. According to the information submitted by the applicant, 36 people attended the meeting. According to the meeting minutes provided by the applicant, adjacent property owners raised questions regarding buffers, road improvements, building setbacks, the potential builder and whether or not future development would be part of the Wyndfall neighborhood.

Town Council Public Hearing (October 10, 2013)

Staff presented the case and noted that, although they had heard concerns from adjacent property owners regarding future development, no protest petitions were submitted. The applicant spoke and offered a new zoning condition to limit the number of dwelling units.

During the public hearing, two adjacent property owners expressed concern about road connectivity requirements. The council asked staff to clarify the process for determining road networks in a proposed development. Staff explained if a waiver to Ordinance requirements were requested, the council would have to consider that as part of a quasi-judicial process at the time of site plan review.

Changes Since The Town Council Public Hearing

The applicant has submitted an additional zoning condition that would limit the maximum number of dwelling units to 20.

Planning and Zoning Board Public Hearing (November 18, 2013)

Staff summarized the request and stated that a new condition had been offered by the applicant to limit the number of lots to 20, thus requiring a second public hearing before the Planning and Zoning Board.

During the public hearing, Mathew Danielson with KHovnanian Homes spoke on behalf of the applicant and stated that the requested zoning designation is compatible with adjacent properties. Two nearby property owners, who reside on Moreland Court, expressed concerns about street connectivity and asked that the integrity of the existing Moreland Court cul-de-sac be preserved.

The board asked for clarification on the Town's connectivity and buffer requirements and discussed the similarity between the proposed zoning and the surrounding neighborhood. Staff explained that questions regarding vehicular access points would need to be addressed during site plan review.

The board voted 8-0 to forward the case 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;
6. The proposed zoning classification is suitable for the subject property.

APPLICABLE COMPREHENSIVE OR AREA PLAN REQUIREMENTS

Land Use Plan

The subject property is governed by the Town of Cary Land Use Plan and is not in an Area Plan or subject to a Plan Note. The Land Use Designation is Low Density Residential which permits residential densities of 1-3 units per acre. The requested zoning of R-20 Conditional Use is entirely consistent with

the Land Use Designation.

Growth Management Plan

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

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

A2 Guiding Principle: Ensure that the overall amount of development in Cary is consistent with the Town's growth management goals.

Q1 Guiding Principle: Continue Cary's leadership role in quality growth and development.

Affordable Housing Plan

Based on the proposed land use, the goals of the Affordable Housing Plan are not relevant to this case.

Comprehensive Transportation Plan

Penny Road is designated as a Major Thoroughfare

Existing Section: 3 lanes in approximately 60- to 80-foot ROW

Future Section: 4 lanes with a median in 100-foot ROW

Sidewalks: Sidewalks existing on the south side; required on the north side

Bicycle Lanes: 14-foot-wide outside lanes required

Transit: There are no existing or proposed transit routes in the immediate vicinity of the subject property.

Status of Planned Improvements: N/A

Parks, Recreation & Cultural Resources Facilities Master Plan

According to the Parks, Recreation and Cultural Resources Facilities Master Plan, a street-side trail is proposed along the subject property's Penny Road frontage.

A recreation fund payment will be required for residential development in accordance with the Land Development Ordinance.

Open Space Plan

According to the Open Space Plan there is a small area (.78 acres) of bottomland forest/hardwood swamp in the northeastern corner of the larger parcel (PIN # 0751843939).

Historic Preservation Master Plan

There are no documented historic resources on this site.

OTHER REFERENCE INFORMATION

Schools	Type ¹	Projected Range of Additional Students ²
<i>This information is being provided for your review; however, the Wake County Board of Education controls capital projects for school capacities.</i>	Elementary School	6 – 8
	Middle School	1 - 3
	High School	1 - 4
Total Projected range of additional students ²		8 – 15

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

² The *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 20 three-bedroom homes could yield 16 additional students, while 40 homes with greater than three bedroom units could yield 30 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 can not 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

13-REZ-18 OGBURN PROPERTY

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE TOWN OF CARY TO CHANGE THE ZONING OF APPROXIMATELY 18.49 ACRES OWNED BY HUGH D. OGBURN AND MERRILL G. OGBURN, BY REZONING FROM RESIDENTIAL 12 (R-12) AND RESIDENTIAL 40 (R-40) TO RESIDENTIAL 20 CONDITIONAL USE (R-20-CU).

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)	Deeded Acreage
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	0751848731	0197663	0.04 ±
Total Area			18.49 ±

Section 2:

That this Property is rezoned from Residential 12 (R-12) and Residential 40 (R-40) to Residential 20 Conditional Use (R-20-CU) subject to the individualized development conditions set forth herein, if any, 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

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:

4. The minimum lot width shall be 100 feet.
5. The minimum roadway setback shall be 35 feet.
6. There shall be a maximum of 20 lots.

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

Adopted and effective: December 19, 2013

Harold Weinbrecht, Jr.
Mayor

Date