

**Town of Cary, North Carolina
Rezoning Staff Report
12-REZ-04 MacGregor Centre PDD Minor Amendment
Town Council Meeting
May 10, 2012**

REQUEST

To amend the Town of Cary Official Zoning Map to revise specific language associated with uses allowed on Lots 1 and 2A in the existing MacGregor Centre Planned Development District (PDD) document.

History

The MacGregor Centre Planned Development District (PDD) was initially approved in November 1996 with a mix of non-residential uses on approximately 19.4 acres. The PDD is located in the northeast quadrant of the intersection of US 64 and Lake Pine Drive.

In October 2009, the PDD was amended to increase the allowable amount of office use for Lot 2B by up to 1,590 square feet. The request removed individual use allocation amounts for vacant PDD Lots 3, 4 and 6, and allowed the property owner to distribute the overall maximum square footage among all three properties. That amendment also removed the original requirement to install an entry monument at the entrance to the development and revised the PDD Master Plan such that it reflected the current lot configurations.

Language on the original and amended Master Plan listed certain permitted uses in buildings and noted a number of uses that were “deemed undesirable by the homeowners.” When a day care operation applied for a sign permit for an established business on Lot 2A, town staff questioned the language and advised that an amendment was needed to clarify the permitted and prohibited uses within this PDD. Staff used this opportunity to correct other discrepancies between actual uses on the site and the language in the PDD Master Plan.

Current Proposal

The current proposal applies specifically to allowed uses and associated square footage for Lots 1 and 2A, and is intended to amend the PDD so that the Master Plan reflects existing conditions on these lots. Language with the zoning conditions has also been clarified to specify the allowed and prohibited uses for the entire PDD. No reductions to open space, buffers or setbacks are proposed as part of this amendment.

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
Luis Villalpando 59 Helen Jean Court Clayton, NC 27527	0752364003	0316158	2.21 +/-
MacGregor Square Partners c/o York Properties 3460 Ten Ten Road Ste 100 Cary, NC 27518	0752367108	0327176	2.44 +/-
Total Area			4.65 +/-

BACKGROUND INFORMATION

Applicants	Mark Herman, MSH Consultant Group 6801 Mt. Hermon Church Road Durham, NC 27705 (919) 201-3308		
	Henry C. Ward, York Properties, Inc. 1900 Cameron St. Raleigh, NC 27605		
Acreage	4.65 +/-		
General Location	1881 Lake Pine Drive and 100 MacGregor Pines Drive Northeast quadrant of the intersection of US 64 Highway and Lake Pine Drive		
Schedule	Town Council Public Hearing March 7, 2012	Planning & Zoning Board Meeting April 16, 2012	Town Council May 10, 2012
Land Use Plan Designation	Commercial (COM)		
Existing Zoning District(s)	Planned Development District Minor		
Proposed Zoning District(s)	Planned Development District Minor Amended		
Town Limits	Yes		
Valid Protest Petition	To be determined prior to the public hearing.		
Staff Contact	Debra Grannan (919) 460-4980 Debra.grannan@townofcary.org		

COMPARISON BETWEEN EXISTING AND PROPOSED ZONING CONDITIONS

Existing PDD Requirements and conditions mutually approved by the Town and the applicant for promoting public health, safety and the general welfare are:	Proposed PDD Amendments:
<i>Buildings shall be architecturally compatible in terms of building materials, roof materials and colors, building and trim colors, window size and scale and relationship of the buildings to the street front. Architectural guidelines will be established at first site plan submittal</i>	No Change Proposed
<i>East-West Public street will have sidewalks on both sides of the street</i>	No Change Proposed
<i>Street trees will be planted at 60 feet O.C. along both sides of the East-West Public street</i>	No Change Proposed
<i>There will be one full-service driveway servicing Lake Pine Drive along the north side of the site</i>	No Change Proposed
<i>Restaurant use on Lot 2B shall be limited to 20% of the building area or a maximum of 1,768 square feet.</i>	No Change Proposed

<p>Overall square footage allocations for lots 3, 4 and 6 shall adhere to the limits set by the PDD Master Plan; however, individual lot allocations may be determined by the property owner.</p>	<p>No Change Proposed</p>
<p>A minimum 30-foot-wide Greenway Easement, located along the northeast portion of the PDD, will be dedicated to the Town of Cary. The exact location of the Greenway Easement will be determined, and easement will be dedicated, at site plan submittal for development located on Tract 6 or as necessary to facilitate construction of the greenway trail by the Town of Cary, whichever shall occur first.</p>	<p>No Change Proposed</p>
<p>Permitted Uses in Buildings</p> <ol style="list-style-type: none"> 1. Hotel/Retail with Restaurant or office 2. Retail/Restaurant/office 3. Office/Retail Uses Permitted in accordance with the O&I Ordinance 4. Restaurant Retail Office 5. Office/Retail Use permitted in accordance with the O&I Ordinance 6. Office/ Retail Use Permitted in accordance with the O&I Ordinance <p>Uses such as life care communities retirement homes nursing homes, hospitals, churches, schools, colleges day care centers, social clubs and lodges, nightclubs convenience stores gas stations amusement establishments drive-thru restaurants, veterinary offices animal hospitals halfway houses, funeral homes repair radio and TV broadcasting and drug rehabilitation centers have been deemed undesirable by the homeowners.</p>	<p>Permitted Uses</p> <p>Lot 1: Hotel, retail, restaurant or office</p> <p>Lot 2A: Retail, restaurant or office. Personal Service establishments and day care centers allowed with an individual limit of 3,500 square feet per use.</p> <p>Lot 2B: Retail, restaurant or office.</p> <p>Lot 3. Office/Retail Uses permitted in accordance with the O&I Ordinance</p> <p>Lot 4: <i>Restaurant Retail Office</i></p> <p>5. Office/Retail Use permitted in accordance with the O&I Ordinance</p> <p>6. Office/ Retail Use Permitted in accordance with the O&I Ordinance</p> <p>Unless otherwise specified above, the following uses shall be prohibited: <i>Life care communities, retirement homes, nursing homes, hospitals, churches, schools, colleges, day care centers, social clubs and lodges, nightclubs, convenience stores, gas stations, amusement establishments, drive-thru restaurants, veterinary offices animal hospitals, halfway houses, funeral homes, repair, radio and TV broadcasting and drug rehabilitation centers.</i></p>
<p>Project Acres by Use</p> <ol style="list-style-type: none"> 1. Hotel (110 rooms) or Retail (7,800 square feet) and Office (14,100 square feet) 2 A. Restaurant/Retail (16,150 SF) 2B. Retail Office (8,840 SF) with up to 1,768 sf as 	<p>Project Acres by Use</p> <p>Lot 1. Hotel (Maximum of 110 rooms) or Retail (7,800 square feet) or Restaurant (maximum of 7,800 square feet) or Office (maximum of 14,100 square feet)</p> <p>Lot 2A. Maximum building area 16,150 square feet. May include Restaurant or retail use and up to one personal service establishment with a maximum of 3,500 square feet and up to one day care use, up to 3,500 square feet within the 16,150 square foot area limit.</p> <p>Lot 2B. Retail Office (8,840 SF) with up to 1,768</p>

<i>Restaurant</i>	<i>sf as Restaurant</i>
<i>3,4, & 6 Office (36,940 SF) or Office (30,340 SF) and Restaurant (6,600) SF</i>	<i>Lots 3,4, & 6 Office (36,940 SF) or Office (30,340 SF) and Restaurant (maximum area 6,600 SF)</i>
<i>5. Office (33,000 SF)</i>	<i>5. Office (Maximum area 33,000 SF)</i>

SITE CHARACTERISTICS

Streams: The subject property is impacted by a stream buffer. Field Determination is required at the time of site plan review.

Floodplain and Wetlands: Cary’s current GIS maps do not indicate any floodplains or wetlands on the subject property. Field Determination is required at the time of site plan review.

ADJACENT USES

North – Multi-family residential (Summit Lake Apartments) on opposite side of Lake Pine Drive (Apex jurisdiction)
 South – General Commercial, opposite side of US 64 Highway (Apex jurisdiction)
 East – Office and Commercial uses within the PDD; Low Density Residential beyond the PDD boundaries (MacGregor West subdivision)
 West- Commercial (Lake Pine Plaza Shopping Center) on opposite side of Lake Pine Drive (Apex jurisdiction)

CONSISTENCY WITH LAND DEVELOPMENT ORDINANCE

Density and Dimensional Standards	No reductions to standards specified in the LDO are proposed.
Landscape Buffer	No changes are proposed to the previously-approved 150-foot undisturbed buffer on the northeast corner of the subject property that separates the PDD from the MacGregor West residential subdivision.
Thoroughfare Buffer	No change is proposed to the 100-foot Thoroughfare Corridor Buffer located between the subject property and US 64 Highway.
Streetscape	A 30-foot streetscape provided in the previously approved PDD remains in place. The original PDD specified this area as a Type D Buffer. Since that term was no longer used to designate a streetscape, the PDD Master Plan revised in 2009 removed this label in order to be consistent with current ordinance terminology.
Open Space	The original PDD did not specify an overall amount of required open space in acres; however, specific areas were designated on the Master Plan as undisturbed buffers, streetscapes and Thoroughfare buffers. This area totals approximately six acres. This exceeds the LDO requirement for five acres of open space to be provided for developments between 10 to 49 acres in overall area. The applicants do not propose any reductions to these existing areas.
Traffic	A traffic study was completed for the original PDD. This proposal is to allow a day care in lot 2A that is already operating. To evaluate potential traffic impacts and determine if a traffic study would be required, the day care use was compared to a use that would be allowed based on the current zoning, a quality sit-down restaurant. The ITE Trip Generation manual for a 3,500 SF Day Care Use (565) would generate 43 am and 44 pm peak hour trips. The ITE Trip Generations manual for a 3,500 High Turn Over, Sit-Down Restaurant would generate 41 am and 40 pm peak hour trips. Cary’s APFO requires that a new traffic study would be required if the proposed use of day care generated 50 or

	more peak hour trips over the existing use. Since the difference between the two uses is minimal, no traffic study is required.
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SUMMARY OF PROCESS AND ACTIONS TO DATE

Changes Since the Planning and Zoning Board Meeting

None

Planning and Zoning Board Meeting

Staff presented the case and noted there had been no opposition to the request. One board member asked what the impact would be on existing businesses if the request was not granted. Staff explained that those businesses would be recognized as non-conforming use and it could negatively impact them. The board recommended the request for approval 8-0.

Changes Since Town Council Public Hearing

None

Town Council Public Hearing (March 7, 2012)

Staff presented the case and noted that there were no protest petitions. Henry Ward with York Properties spoke on behalf of the property owners of Lot 2A. Mr. Ward noted that he had not received notice of any opposition to the proposed amendment. No one representing the owners of Lot 1 was present at the meeting; however, staff noted that there had been communication with the property owners and they were in support of the amendment. No one spoke during the public hearing. There were no questions or issues raised and the Town Council forwarded the request to the Planning and Zoning Board.

Notification

On February 22, 2012 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 North Carolina General Statutes, was published in the Cary News on February 22 and 29, 2012. Notice of the public hearing was posted on the property on February 21, 2012.

Neighborhood Meeting

Henry Ward with York Properties conducted a neighborhood meeting on December 19, 2012 in the former Courtney’s restaurant space on Lot 2A. Town staff and the operators of the adjacent day care center attended the meeting. No other property owners attended.

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

Comprehensive Plan Element	Consistent	Not Consistent	Not Applicable
Land Use Plan	X		
Parks, Recreation, and Cultural Resources	X		

Facility Master Plan			
Growth Management Plan	X		
Affordable Housing Plan			X
Comprehensive Transportation Plan	X		
Open Space Plan	X		
Historic Preservation Master Plan			X

Land Use Plan

As per the Town of Cary Land Use Plan, the future land use designation of the subject parcels is Commercial (COM). This nonresidential use category may include commercial, office, and institutional uses.

Parks & Greenways Master Plan

According to the Parks, Recreation and Cultural Resources Facilities Master Plan a greenway is proposed to cross the PDD property near its northeastern end.

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.

Affordable Housing Plan

The Affordable Housing Plan is not applicable to this project.

Comprehensive Transportation Plan

Lake Pine Drive is designated as a Major Thoroughfare.

Existing Section: Approximately 90-foot ROW; 3 lanes

Future Section: 4-lane undivided

Sidewalks: Required on both sides

Bicycle Lanes: 14-foot-wide outside lands required

Transit: Not applicable

Status of Planned Improvements: None

Open Space Plan

According to the Open Space Plan, there are mixed upland hardwoods on a portion of this property. The site has not been designated as a priority for conservation.

Historic Preservation Master Plan

There are no historic structures on the subject property.

APPLICANT'S JUSTIFICATION STATEMENT

The following statements are provided by the applicant (shown below in italics) in response to the criteria established in the application (shown below in bold) and do not necessarily represent the views or opinions of the Town of Cary. Any statements as to the type, the quality, or the physical features are at the direction of the applicant and may be formulated into a condition:

1. Any issues with the size of the tract?

Response from York Properties: *None*

Response from Luis Villalpandro: *As this is an existing, successful restaurant in the neighborhood, the physical characteristics of the site (size, shape, resource areas and topography) have already been dealt with and present no issues with this tract.*

2. How is the request compatible with the comprehensive plan (i.e. Land Use, Transportation, Open Space and Historic Resources)?

Response from York Properties: *The proposed uses fit within the comprehensive plan.*

Response from Luis Villalpandro: *The comprehensive plan in regard to land use, transportation, open space and historic resources is compatible with the existing restaurant since:*

- *Existing restaurants exist on adjacent uses*
- *Location at intersection of US 64 HW and Lake Pines Drive*
- *Open space and resources already exist and are utilized*

3. What are the benefits and detriments to the owner, neighbors and the community?

Response from York Properties: *The proposed uses provide beneficial services to the neighboring residential communities.*

Response from Luis Villalpandro: *Benefits of the proposed rezoning for the owner, neighbors and community are that the restaurant already exists and is successful. By making the zoning "legal" and compliant with the PDD by amendment, the non-conforming aspect is removed and the continued operation of the facility is beneficial to all*

4. How are the allowable uses with the proposed rezoning compatible with, or how do they relate to, the uses currently present on adjacent tracts?

Response: *The proposed uses are typically found in retail centers and therefore are in character with uses on adjacent tracts*

Response from Luis Villalpandro: *The proposed amendment to the PDD Major Use is compatible with the existing use as well as the adjacent properties with restaurant commercial as they all exist and are successfully operating in conjunction with one another.*

5. What reductions/amendments and/or modifications to the development standards of the LDO are being requested and how are they justified? (PDD, new or amended) Applicants must list these items and/or clearly highlight them within the Planned Development document.

Response: *N/A*

ORDINANCE FOR CONSIDERATION

12-REZ-04 MACGREGOR CENTRE PDD AMENDMENT

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE TOWN OF CARY TO CHANGE THE ZONING OF APPROXIMATELY 4.65 ACRES LOCATED AT 100 MACGREGOR PINES DRIVE AND 1881 LAKE PINE DRIVE OWNED BY LUIS VILLALPANDO AND MACGREGOR SQUARE PARTNERS BY AMENDING THE PREVIOUSLY APPROVED PDD BY REZONING FROM PLANNED DEVELOPMENT DISTRICT (PDD) TO PLANNED DEVELOPMENT DISTRICT (PDD) AMENDMENT TO ALLOW DAY CARE AND PERSONAL SERVICE USE ON LOT 2A AND TO ALLOW A FREE-STANDING RESTAURANT ON LOT 1.

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)	Wake County Parcel Numbers (10 digit)	Wake County Real Estate ID(s)	Area ± (Acres)
Luis Villalpando 59 Helen Jean Court Clayton, NC 27527	0752364003	0316158	2.21 +/-
MacGregor Square Partners c/o York Properties 3460 Ten Ten Road Ste 100 Cary, NC 27518	0752367108	0327176	2.44 +/-
Total Acres			6.65 +/-

Section 2: That this Property is rezoned from Planned Development District to Planned Development District Amendment subject to the individualized development conditions set forth within the MacGregor Centre PDD Master Plan document dated May 10, 2012 and described 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 if 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 set forth in the MacGregor Center Planned Development District document dated May 10, 2012 on file in the Planning Department. These conditions address conformance of the development and use of the Property to ordinances and officially adopted plans and address impacts reasonably expected to be generated by the development and use of the Property.

Section 4: This ordinance shall be effective on the date of adoption.
Adopted and effective: May 10, 2012

Harold Weinbrecht, Jr.
Mayor

Date

Option 1 (if rezoning is approved):

CONSISTENCY AND REASONABLENESS STATEMENT

12-REZ-04 MacGregor Centre PDD Minor Amendment

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: Rezoning 12-REZ-04 is consistent with elements of the Comprehensive Plan.

Section 2: Based upon information presented at the public hearings and by the applicant, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the staff report, and considering the criteria of Section 3.4.1(E) of the Town of Cary Land Development Ordinance, Rezoning 12-REZ-04 is reasonable and in the public interest.

Approved: *DATE*

Harold Weinbrecht, Jr.
Mayor

Date

Option 2 (if rezoning is denied):

CONSISTENCY AND REASONABLENESS STATEMENT

12-REZ-04 MacGregor Centre PDD Minor Amendment

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: Rezoning 12-REZ-04 is consistent with elements of the Comprehensive Plan.

Section 2: Based upon information presented at the public hearings and by the applicant, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the staff report, and considering the criteria of Section 3.4.1(E) of the Town of Cary Land Development Ordinance, denial of Rezoning 12-REZ-04 is reasonable and in the public interest.

Approved: *DATE*

Harold Weinbrecht, Jr.
Mayor

Date