

**Town of Cary, North Carolina  
Rezoning Staff Report  
12-REZ-12 Howell Tract  
Town Council Meeting  
January 24, 2013**

**REQUEST**

To amend the Town of Cary Official Zoning Map by applying initial zoning to property currently located outside Cary's Extraterritorial Jurisdiction (ETJ). There is a citizen-initiated Annexation Petition, case number 12-A-09, associated with the rezoning. Annexation must be approved prior to application of a Cary zoning district.

The applicant has requested to rezone approximately 14.66 acres located at the northwest corner of the Farmond Road and Davis Drive intersection from a Wake County zoning designation of Residential 40 (R-40W) to a Cary zoning designation of Transitional Residential Conditional Use (TR-CU). The zoning conditions proposed by the applicant would limit the use to single-family detached residential and limit the allowed density to three (3) dwelling units per acre.

If approved, the Jordan Lake Watershed Protection Overlay District 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>			14.66 ±

**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>  September 27, 2012	<b>Planning &amp; Zoning Board</b>  December 17, 2012	<b>Town Council Meeting</b>  January 24, 2013
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)	Transitional Residential Conditional Use (TR-CU) and Jordan Lake Watershed Protection Overlay District		
Proposed Zoning Conditions	<ol style="list-style-type: none"> <li>1. The maximum density shall be limited to three (3) dwelling units per acre.</li> <li>2. The use of the subject property shall be limited to 43 single-family-detached residential dwelling units.</li> <li>3. The minimum lot size shall be 7,250 square feet. Single-family residential lots immediately adjacent to the existing Stonecrest and Farm Pond Road subdivisions north and west of the subject property will be a minimum of 8,000 square feet in size.</li> </ol>		
Town Limits	The subject property is located outside the corporate limits and the Town of Cary ETJ. A citizen-initiated annexation petition, 12-A-09 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**

North – Single-family Residential (Stonecrest Subdivision)  
South – Single-family Residential

East – Single-family Residential (Weathersby subdivision; opposite side of Davis Drive)  
 West – Single-family Residential

**CONSISTENCY WITH LAND DEVELOPMENT ORDINANCE**

**Density and Dimensional Standards**

	<b>Existing Zoning District Wake County (R-40W)</b>	<b>Proposed Zoning District Transitional Residential Conditional Use (TR-CU)</b>
<b>Max. Gross Density</b> du/ac	1	3 *
<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	7,250 ** 8,000 **
<b>Minimum Lot Width</b> feet	110	60
<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)	Minimum 5 Aggregate 16
<b>Rear Yard Setback</b> feet	30	The width of the roadway and rear setbacks combined shall equal at least 40 feet and any individual setback shall be a minimum of 5 feet
<b>Maximum Building Height</b> feet	35'	35'

\*Transitional Residential (Conventional Zoning) permits a maximum density of 6 du/ac.  
 \*\* Conventional Transitional Residential zoning district allows a minimum lot size of 6,000 square feet. The applicant has proposed a zoning condition that establishes minimum lot sizes ranging from 7,250 to 8,000 square feet depending on location.

**Landscape Buffer**

In accordance to Section 7.2.3 of the LDO, a 30-foot Type-B (semi-opaque) buffer required between lots that are less than 8,000 square feet and existing, adjacent development.

**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 existing zoning of Wake County Residential 40 (R-40W) for 14.66 acres has the potential of generating 20 am and 19 pm peak hour trips. The proposed zoning of Transitional Residential Conditional Use (TR-CU), with a maximum density of three single-family units per acre, could generate 41 am and 51 pm peak hour trips. Since this is an increase of 21 am and 32 pm peak hour trips, no traffic

study is required at rezoning since this does not exceed the Adequate Public Facilities Ordinance threshold of 50 or more trips. A traffic study may, however, be required at site plan depending on the final unit count.

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 Farpond 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 attached intersection from **January 2002 through October 2012**. Provided below is a brief summary of crash statistics:

<b>Accident Type Summary</b>	<b>Number of Crashes</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>Injury Summary</b>	<b>Number of Injuries</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**

The initial application, submitted by Glenda S. Toppe and Associates, reported that a neighborhood meeting was conducted on May 16, 2012. Issues raised by adjacent property owners included concerns regarding traffic, road design and connectivity, stormwater management, lot size, density and preservation of buffers and open space.

The new applicant, LStar Management, scheduled a second neighborhood meeting for September 11, 2012. Results of that meeting were not available at the time of this report and will be summarized at a later date.

**Application Submittal**

An application for initial zoning was submitted on May 24, 2012 by Glenda S. Toppe and Associates. On August 29, 2012 the property owner submitted an authorization statement to the Planning Department granting permission to LStar Management to handle the rezoning request.

## **Notification**

On September 11, 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 General Statutes was published in the Cary News on September 12 and 19, 2012. Notice of the public hearing was posted on the property on September 12, 2012.

## **Town Council Public Hearing (September 27, 2012)**

Staff presented the case and noted that since the subject property was outside Cary's ETJ, NC General Statutes did not allow the case to be eligible for a protest petition. The applicant asked for support of the project and noted that the request was consistent with Cary's Land Use Plan. A representative from the homeowners association of the Stonecrest subdivision, north of the subject property, spoke in support of the proposed rezoning. Several property owners along Farm Pond Road voiced opposition to the project. The Town Council asked for information about the lot sizes of the adjacent properties. Staff verified that the zoning to the north called for 8,000 square-foot lots and that the properties along Farm Pond Road ranged in size from 1.5 to approximately six acres. The council also asked for more information regarding restrictive covenants on the Farm Pond Road Subdivision properties and for a report on traffic accidents at the intersection of Farm Pond Road and Davis Drive.

The council referred the case to the Planning and Zoning Board

## **Actions Since the Town Council Public Hearing**

The applicant has offered a zoning condition to require a minimum lot size of 8,000 square feet for lots adjacent to the Farmpond Road and Stonecrest subdivisions and 7,250 square feet for the lots internal to the site.

Regarding the question of restrictive covenants raised by the Farmpond Road residents, the applicant has reported that no such restrictions apply to the subject property.

The Cary Police Department has requested an accident report from NCDOT for the intersection of Farmpond Road and Davis Drive.

## **Planning and Zoning Board Meeting (December 17, 2013)**

Staff presented the applicant's request and noted that a new zoning condition regarding lot sizes was contained in the staff report. Staff added that the applicant had offered an additional condition to limit the number of dwelling units to 43. Based on current LDO standards, setting this limit would remove the requirement for a traffic study at the time of site plan. The applicant, Adam Ashbaugh, spoke briefly about the consistency of the request with the Town's Land Use Plan and reported that LStar Management had met with neighbors on three occasions to work toward addressing concerns. The applicant reported that there were no deed restrictions on the subject property that required a specific lot size.

During the public hearing, three residents of Farmpond Road, spoke in opposition to the request. They expressed concerns about safety and noted that the proposed lot size for the Howell Property was not compatible with the character of the existing Farmpond neighborhood and that larger lot sizes were needed to provide a good transition between neighborhoods.

The president of the Stonecrest Homeowner's Association spoke in support of the request. He indicated that a continuation of the Stonecrest subdivision and opportunity for a secondary access point to the neighborhood would improve safety.

The board asked staff to clarify regulations regarding buffers and connectivity between the proposed development and Farmpond Road. Staff replied that connectivity to public roads is a requirement, and that the applicant could not offer a zoning condition to prohibit this.

The board discussed the consistency of the request with the Land Use Plan because of the density limits, but some members felt the proposed lot size, while compatible with the Stonecrest subdivision, was not compatible with the Farmpond Road neighborhood. A motion to recommend the case for approval failed due to a tie vote; therefore, the board forwarded the case to the Town Council with no recommendation.

## Changes since the Planning and Zoning Board Meeting

None

### 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

Comprehensive Plan Element	Consistent	Not Consistent	Not Applicable
Land Use Plan	✓		
Growth Management Plan	✓		
Affordable Housing Plan			✓
Comprehensive Transportation Plan	✓		
Parks, Recreation, and Cultural Resources Facility Master Plan	✓		
Open Space Plan			✓
Historic Preservation Master Plan			✓

#### 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 LDR 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. 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.

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

#### 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.

- 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.

Based on the proposed rezoning request, the goals of the adopted Affordable Housing Plan are not applicable to this case.

**Comprehensive Transportation Plan**

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

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

**Future Section:** 4-lane median-divided section with curb & gutter (78' roadway, 100' 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

**Transit:** None existing or future

**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' roadway; 60' ROW)

**Future Section:** 2-lane undivided (35' roadway; 62' 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' striped bike lanes and a street-side trail

**Transit:** None existing or future

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

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

According to the Parks, Recreation and Cultural Resources Facilities Master Plan, multi-use trails are proposed along the Davis Drive frontage and the Farmpond Road frontage.

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

**Open Space Plan**

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

**Historic Preservation Master Plan**

The subject property contains no known historic resources.

**OTHER REFERENCE INFORMATION**

<b>Schools</b>	Type <sup>1</sup>	Projected Range of Additional Students <sup>2</sup>
<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	12-18
	Middle School	2-7
	High School	3 - 8
<b>Total Projected range of additional students<sup>2</sup></b>		<b>17 - 33</b>

<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

<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 43 three-bedroom homes could yield 17 additional students, while 43 homes with greater than three bedroom units could yield 33 students. The basis for making this calculation is based on multipliers provided from 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 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**

**12-REZ-12 Howell Tract**

AN ORDINANCE 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 OWNED BY GARY W. HOWELL BY REZONING THE PROPERTY FROM WAKE COUNTY RESIDENTIAL 40 (R40W) TO TRANSITIONAL RESIDENTIAL CONDITONAL USE (TR-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**

<b>Property Owner(s)</b>	<b>County Parcel Number(s) 10 digit</b>	<b>Real Estate ID(s)</b>	<b>Area ± (Acres)</b>
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>			<b>14.66 ±</b>

**Section 2:** That this Property is rezoned from Wake County Residential 40 (R-40W) to Transitional Residential Conditional Use (TR-CU) 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 shall be limited to 43 single-family-detached residential units.
2. The maximum density shall be limited to three (3) dwelling units per acre.
3. The minimum lot size shall be 7,250 square feet. Single-family residential lots immediately adjacent to the existing Stonecrest and Farm Pond Road subdivisions north and west of the subject property will be a minimum of 8,000 square feet in size.

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

Adopted and effective: *DATE*

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Harold Weinbrecht, Jr.  
Mayor

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Date