

PAID

Katie

JUN 21 2018

Submit to the Planning Department, P.O. Box 8005, Cary, NC 27512

TOWN OF CARY
Planning Department

DEVELOPMENT SERVICES

For office use only:

Rezoning Case #

Payment Method: CASH CHECK CREDIT CARD Amount: \$ 3800 - P&Z HTE# 18-854

#14566

APPLICATION FOR REZONING

18-REZ-19

Associated Annexation Petition Yes No

Traffic Impact Study Yes TAR Number: 18-TAR-432
 No Staff confirmation: Initials _____ Date _____

This application is deemed sufficiently complete for purposes of submittal.

Planning Staff Signature Katie Dye Date 6-21-18

Submittal deadlines incorporate sufficiency review of rezoning/land use plan amendment applications. Signature by Planning Staff is required prior to payment of fees and final acceptance of application.

STAFF USE ONLY: Circle applicable Parts: (1) (2) (3A) (B1) (3B2) (3B3) (3B4) (3C1) (3C2) (3C3) (3C4) (3D) (3E1a) (3E1b) (3E2) (3E3)

Fees will not be accepted until the application is deemed sufficiently complete and signed by Planning Staff.

REZONING FEE:

- \$1,400.00 – General rezoning, or initial zoning associated with owner-initiated annexation petition, 5 acres or greater
- \$300.00 – Initial zoning associated with citizen-initiated annexation petition, less than 5 acres
- \$1,900.00 – Conditional use rezoning (per change of zoning classification requested)
- \$2,500.00 – Mixed Use District Rezoning (New MXD, or major amendment to existing PDP)
- \$500.00 – Mixed Use District Rezoning (Minor amendment to existing PDP - typically less than 50% of floor area, number of units, etc.)
- \$2,500.00 – New application or major amendments to approved Major PDD
- \$1,250.00 – Minor PDD or Minor Amendment to Existing PDD

2 zoning districts
\$3,800

NOTE: An additional fee of \$150 will be charged for each additional public hearing or neighborhood meeting required due to changes in the request made during the rezoning process.

Project Name		Intersection of Morrisville Parkway and NC Hwy. 55
Name of PDD (if applicable)		Assemblage
Location	Address	3753 and 3761 NC Hwy. 55, Cary, NC / 0 NC Hwy. 55, Cary ETJ
	General Location	White Oak Township, Intersection of Morrisville Parkway and NC Hwy. 55
	Jurisdiction (check one)	<input checked="" type="checkbox"/> Cary Corporate Limits <input checked="" type="checkbox"/> Cary ETJ <input type="checkbox"/> Wake Co.* <input type="checkbox"/> Chatham Co.* * Submittal of an annexation petition is required if rezoning is requested

Part 1: Applicant Information

Applicant		Applicant's Contact	
Name	M. Gray Styers, Jr.	Name	M. Gray Styers, Jr.
Firm	Smith Moore Leatherwood LLP	Firm	Smith Moore Leatherwood LLP
Address	434 Fayetteville Street, Ste 2800	Address	434 Fayetteville Street, Ste 2800
City, State, Zip	Raleigh, NC 27601	City, State, Zip	Raleigh, NC 27601
Phone (area code)	919-755-8741	Phone (area code)	919-755-8741
Email	Gray.Styers@smithmoorelaw.com	Email	Gray.Styers@smithmoorelaw.com

Part 2: Parcel & Owner Information

Property Owner(s) <i>Provide property owner name and address as it appears in the Wake or Chatham County Tax Records,</i>	County Parcel Number(s) (10 digit)	Real Estate ID(s)	Deeded Acres ¹
Russell W., Jr. and Dianne N. Tarlton 1109 Athens Drive Raleigh, NC 27606-2420	0735619230 ✓	0177716 ✓	4.0 ✓
Russell W., Jr. and Dianne N. Tarlton 1109 Athens Drive Raleigh, NC 27606-2420	0735714289 ✓	0024989 ✓	1.08 ✓ 3761 NC 55 Hwy
D. Cooke Properties, LLC 3305 Rockland Ridge Drive Cary, NC 27519-2530	0735724045 ✓	0406061 ✓	6.79 ✓ 0 NC 55 Hwy
Total Acres			11.87 ✓

¹ A property survey showing zoning district boundaries and acreages is required if multiple zoning districts are proposed or if the proposed rezoning applies to only a portion of a parcel.

Part 3B: Applicant's Rezoning Justification Statement(s)

Rezoning Justification Statement #1 *Required for all rezoning requests*

Describe how the proposed rezoning meets the criteria listed below.

Section 3.4.1(E) of the Land Development Ordinance states that Council should consider the following criteria when reviewing all proposed rezonings:

- (1) The proposed rezoning corrects an error or meets the challenge of some changing condition, trend, or fact;

Applicant's Comments: Please see the attached Rezoning Justification Statement.

- (2) The proposed rezoning is consistent with the Comprehensive Plan and the purposes set forth in Section 1.3 of this Ordinance;

Applicant's Comments: Please see the attached Rezoning Justification Statement.

- (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;

Applicant's Comments: Please see the attached Rezoning Justification Statement.

- (4) The proposed rezoning is unlikely to have significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation;

Applicant's Comments: Please see the attached Rezoning Justification Statement.

- (5) The proposed rezoning will not have significant adverse impacts on other property in the vicinity of the subject tract; and

Applicant's Comments: Please see the attached Rezoning Justification Statement.

- (6) The proposed zoning classification is suitable for the subject property.

Applicant's Comments: Please see the attached Rezoning Justification Statement.

REZONING JUSTIFICATION STATEMENT #1:

The Applicants' properties are located at the intersection of Highway 55 and the recently extended Morrisville Parkway, at the eastern end of the Morrisville Parkway Extension and NC 540 Interchange project ("Extension Project"). The Extension Project was initiated by Cary to provide increased connectivity and access within western Cary, and to address the existing deficiency in the connectivity of segments of existing Morrisville Parkway. This portion of the four-lane widening abutting the Applicants' property is now complete and provides added capacity to the area roadway network. This Extension Project has significantly changed the condition of the Applicants' properties by increasing the circulation of motor vehicles, making lower density uses allowed in the current R40, OI and ORD district no longer appropriate for these properties at an intersection of two multi-lane thoroughfares.

(1) The proposed rezonings conform these properties to the changed conditions of the new thoroughfare and resulting intersection constructed as part of the Morrisville Parkway Expansion, as well as the new residential developments in the area.

With the additional capacity from the Morrisville Parkway improvements and resulting new intersection with Highway 55, the conditions of the Applicants' properties have changed and it is necessary to rezone to a district that is more appropriate for the increased movement of motor vehicles on Morrisville Parkway. The General Commercial district is intended to "allow for uses that provide goods and services to residents of the community. Because these commercial uses are subject to the public view, they should provide an appropriate appearance, ample parking, controlled traffic movement, suitable landscaping, and protect abutting residential areas from potentially negative impacts associated with commercial activity." A General Commercial district in the intersection of the extended Morrisville Parkway and Highway 55 is the most appropriate zoning for the Applicants' properties that face these major thoroughfares.

In addition, the portion of the Applicants' property to be rezoned from R40 to R8-CU is proposed in response to the recent development of the Blakeley Subdivision that is abutting parcel number 735724045. The Blakeley Subdivision development plans to provide for 57 townhomes & 80 single-family lots. Consistent with those plans, the Applicants' property that is proposed to be rezoned R-8 will meet the same criteria and be consistent with that development. In addition, access to the R-8 property will be restricted, so there will be no ingress or egress from Highway 55, ensuring traffic safety and minimizing congestion at the intersection of Highway 55 and Morrisville Parkway. Given the increased traffic at the Highway 55 and Morrisville Parkway intersection, the current zoning of R40 is no longer appropriate for large residential lots facing a busy highway.

(2) The proposed rezoning is consistent with the Comprehensive Plan and the purposes set forth in Section 1.3 of the Land Development Ordinance.

See response to Rezoning Justification Statement #2 to the application, which is incorporated herein by reference. In addition, the proposed rezonings to General Commercial will foster convenient, compatible, and efficient relationships among land uses by allowing for uses of the land most appropriate for property that abuts a major thoroughfare, the Morrisville Parkway, and

its intersection with Highway 55. Additionally, the proposed rezoning to R-8 will similarly foster a compatible and convenient relationship to the Blakeley Subdivision on the adjoining land. (Purpose 1.3.2).

The proposed rezonings will include a public road across parcel number 735619230 allowing emergency vehicles to access the planned Blakeley Subdivision more easily. This will accomplish the purpose of the ordinance to ensure the provision of adequate fire safety (Purpose 1.3.4) and to facilitate the adequate and safe provision of transportation. (Purpose 1.3.6).

The proposed rezonings will result in minimal increased services from the Town and will ensure that service demands of new development will not exceed the capabilities of existing streets, utilities, or other public facilities and services. (Purpose 1.3.7). The General Commercial rezoning will accomplish this purpose by providing safe, public ingress and egress to the planned mix of uses and to the existing Blakeley Subdivision that does not currently have needed ingress and egress from Morrisville Parkway. The General Commercial rezoning will also most likely result in increased property taxes that will contribute to the Town's fund to provide additional municipal services.

The proposed R-8 rezoning will prevent the overcrowding of land and avoid undue concentrations of population by conditioning the lots to three dwelling units per acre. (Purpose 1.3.5). The R-8 rezoning will also preserve the character and quality of residential neighborhoods (Purpose 1.3.1) by developing additional residential lots consistent with the proposed residential development of the adjoining properties. The additional residential lots will not exceed the capabilities of existing streets, as the plans will include extending the streets from the development of the Blakeley Subdivision.

Both the General Commercial and R-8 proposed rezonings will lessen congestion in the streets (Purpose 1.3.3) by improving traffic circulation to and from the proposed residential development, Blakeley Subdivision, and Morrisville Parkway, and by providing certain improvements to Morrisville Parkway, Highway 55, and their intersection as set forth in the conditions to the application.

Given the recent extension of Morrisville Parkway, the proposed rezoning to General Commercial will maintain and enhance the character of the area, in light of the particular suitability for uses that are most appropriate and efficient to abut a major thoroughfare. (Purpose 1.3.8).

Finally, the rezonings will result in improvements to the property and increased property values. These improvements will conserve or enhance the value of buildings and land in the area. (Purpose 1.3.10).

(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.

The proposed rezoning to General Commercial will require minimal increase in services from the Town, while the rezoning to R-8 will be consistent with the proposed development on the adjoining property. The additional dwelling units on the R-8 rezoning will be limited to three units per acre, and access will be extended from the Blakeley Subdivision development.

The rezonings will improve the value of the property, resulting in more tax revenue for the Town to provide necessary municipal services. Additionally, the Applicants have included plans to provide a public access road across parcel no. 735619230 to access the Blakeley Subdivision development that is adjacent to the property, increasing the ability of the Town to access the planned development and to provide services. The roadway improvements set forth in the conditions to the rezoning application would not be constructed by a private party without this rezoning.

(4) The proposed rezonings are unlikely to have significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation.

The Applicants will comply with all of the requirements and standards of the ordinance and all applicable local, state, and federal laws to ensure that there will be no significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation. Further, with the expansion of the Morrisville Parkway, the environmental impacts associated with commercial uses have already occurred.

(5) The proposed rezonings will not have significant adverse impacts on other property in the vicinity of the subject tracts.

For the reasons stated above, the proposed rezonings will not have significant adverse impacts on other property in the vicinity. As previously noted, the General Commercial properties face the four-lane Morrisville Parkway and will improve the adjoining properties by providing public access to Morrisville Parkway. The R-8 rezoning will be consistent with the Blakeley Subdivision. The General Commercial district is most appropriate for land abutting major thoroughfares.

(6) The proposed zoning classification is suitable for the subject property.

For all of the reasons stated above, the proposed zoning classification of General Commercial is suitable for property that abuts major thoroughfares and is located at a major intersection. With the newly constructed and now existing road network, the property is not appropriate for low density, single-family residential development consistent with the current R40 classification, and is now equipped for commercial uses. (See responses above to other parts of this Rezoning Justification which are incorporated herein by reference.)

The proposed R-8 rezoning is suitable for the subject property because it will abut a planned, new subdivision and will be developed consistent with those proposed plans.

Rezoning Justification Statement #2 *Required for all rezoning requests*

Describe how the proposed rezoning is consistent with or supported by the visions and policies of the Cary Community Plan. *Attach additional sheet if necessary.*

Growth Framework Map

Please see the attached Rezoning Justification Statement

_____ Chapter, Policy _____

_____ Chapter, Policy _____

_____ Chapter, Policy _____

_____ Chapter, Policy _____

REZONING JUSTIFICATION STATEMENT #2:

CONSISTENCY STATEMENT

The proposed rezoning for Parcels Nos. 73561920, 735714289, 0735724045 is consistent with the Cary Community Plan and other existing and proposed land uses and zoning classifications in the area.. The properties are at the intersection of Highway 55 and the newly expanded Morrisville Parkway, on the edge of an area designated for Mixed Neighborhoods in the Future Growth Framework Map. The properties on the other side of Morrisville Parkway are designated in the Community Plan as a Business/Industrial Park. The properties on the other side of Highway 55 are designated as a Mixed Nonresidential Corridor in the Historic Carpenter Special Planning Area. In addition, DOT restrictions on curb cuts make single-family residential uses facing Highway 55 and Morrisville Parkway impractical.

Mixed Neighborhoods are mostly located within two miles of the Research Triangle Park and offer a variety of housing types and related nonresidential uses. The Cary Community Plan states that other uses in this area include commercial uses located on the edges of residential areas (such as the properties that are the subject of this application) that provide needed small business employment and neighborhood retail services – such as car washes and banks. The Community Plan also expressly includes General Commercial as an appropriate zoning for these other use types in Mixed Neighborhoods. The proposed rezonings to General Commercial are on the edges of a residential area, consistent with the recommendation of the Community Plan. The R-8 rezoning is also consistent with the Mixed Neighborhood designation by providing additional housing opportunities, consistent with the zoning of, and to be integrated as part of, the adjacent subdivision.

For the above reasons, the proposed rezonings is consistent with the Future Growth Framework Map.

VISIONS AND POLICIES

CHAPTER 1: FOUNDATIONS

The Foundations chapter highlights facts, trends and themes in Cary that are pertinent to the proposed rezonings. These highlights include but are not limited to: fostering strong and sustainable neighborhoods, providing top quality facilities and infrastructure, providing an efficient and well-designed transportation system, and fostering a prosperous economy. The proposed rezoning is consistent with and furthers the goals and themes in this chapter.

CHAPTER 2: LIVE

Policy 5: Support Residential Development on Infill and Redevelopment Sites

“Support residential development on infill and redevelopment sites that is designed to acknowledge the surrounding context, while supporting other LIVE policies.” The proposed rezonings comply with this policy because the parcels are currently vacant and underutilized and

Part 3C : Owner's Signature(s) Completion of the applicable sub-section(s) is required for all rezoning requests except requests to rezone to a General Use District

Check applicable sub-section(s)

- 3C(1) – Required where property owner is an Individual
- 3C(2) – Required where property owner is a Limited Liability Company (LLC)
- 3C(3) – Required where property owner is General Partnership (GP), Limited Partnership (LP) or Limited Liability Partnership (LLP)
- 3C(4) – Required where property owner is a Corporation

(Attach additional sheets if necessary)

Part 3C(1): Individual All owners must sign, including husband & wife, and all joint tenants.
(Notary not required)

Property Owner Printed Name Russell W. Tarlton, Jr.
 Property Owner Signature *Russell W. Tarlton, Jr.* Date 6/16/18

Property Owner Printed Name Dianne N. Tarlton
 Property Owner Signature *Dianne N. Tarlton* Date 6/19/18

Property Owner Printed Name _____
 Property Owner Signature _____ Date _____

Property Owner Printed Name _____
 Property Owner Signature _____ Date _____

Property Owner Printed Name _____
 Property Owner Signature _____ Date _____

Property Owner Printed Name _____
 Property Owner Signature _____ Date _____

Property Owner Printed Name _____
 Property Owner Signature _____ Date _____

Part 3C(2): LIMITED LIABILITY COMPANY - The area to be rezoned is owned by a limited liability company properly registered with the State of North Carolina. If 'member managed' all members must sign. If 'manager managed,' all managers must sign. (Must be notarized).

Manager-Managed

Manager(s) is/are:

Printed Name _____

Signature _____ Date _____

Printed Name Joy C. Futrell

Signature Joy C. Futrell Date 6-18-2018

Printed Name _____

Signature _____ Date _____

Member-Managed

Member(s) is/are:

Printed Name _____

Signature _____ Date _____

Printed Name _____

Signature _____ Date _____

Printed Name _____

Signature _____ Date _____

If member/manager is an individual:

STATE OF North Carolina

COUNTY OF Wake

I, Vickie S Ryals, a Notary Public, certify that Joy C. Futrell
(Name of Notary)

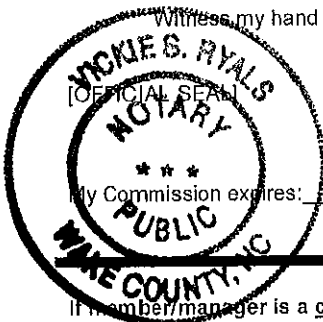
personally came before me this day and acknowledged that he/she is Member / Manager (Circle One) of

D. Cooke Properties, LLC and that he/she, as Member / Manager (Circle One)
(Name)

D. Cooke Properties, LLC and that he/she, as Member / Manager, being authorized voluntarily executed the
(Name of LLC) (Circle One)

foregoing on behalf of said limited liability company for the purposes stated therein.

Witness my hand and official seal, this the 18th day of June, 2018.



Vickie S Ryals
Notary Public
Vickie S. Ryals
Printed Name of Notary Public

My Commission expires: 5/23/21

If member/manager is a corporation:

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, certify that _____
(Name of Notary) (Name)

personally came before me this day and acknowledged that he/she is _____
(Title of Corporate Officer)

of _____, which is a, (Member / Manager) of _____
(Name of Corporation) (Circle One) (Name of LLC)

_____ of _____, (Member / Manager) of _____
(Title of Corporate Officer) (Name of Corporation) (Circle One)

_____ being authorized to do so, voluntarily executed the foregoing on
(Name of LLC)

behalf of said limited liability company for the purposes stated therein.

Witness my hand and official seal, this the ____ day of _____, 20 ____.

[OFFICIAL SEAL]

Notary Public

Printed Name of Notary Public

My Commission expires: _____

Part 3D: Authorized Agent Authorization (must be notarized, and signed by property owner(s) identified in Part 3C. Attach additional sheets if necessary)

Required if the owner(s) of property proposed to be rezoned to a Conditional Use, Planned Development, or Mixed Use Zoning District wish to authorize another individual or entity to represent them through the public hearing process, and make binding statements and commitments regarding the request.

One of the following must be included as an attachment to this application:

Power of Attorney stating that the agent is authorized to represent and bind the property on behalf of the property owner.

OR

If the agent is the contract purchaser of the property, a redacted copy of a fully executed sales contract containing a clause or clauses allowing an application to be filed.

I/We, Russell W., Jr. & Dianne N., the fee simple owner(s) of the following described property:
Property Owner Name(s) Tarlton
PIN: 0735619230 and 0735714289
PIN, Real ID Number or Legal Description

hereby petition the Town of Cary to amend the Zoning Map to: (check all that apply)

- Change the zoning district(s) from ORD & OI to General Commercial - Conditional Use Districts
- Amend zoning conditions applicable to an existing conditional use district
- Amend the PDD document and/or Master Plan for the _____ Planned Development District
- Amend the Preliminary Development Plan for the _____ Mixed Use District

and affirm that Smith Moore Leatherwood LLP is hereby designated to act as my/our agent
Authorized Agent

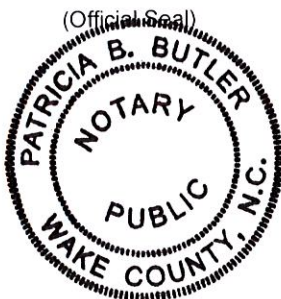
and to file the attached application for the stated amendment(s) and make binding statements and commitments regarding the amendment request(s).

I certify that I have examined the application and that all statements and diagrams submitted are true and accurate to the best of my knowledge. Further, I understand that this application, attachments and fees become part of the Official Records of the Town of Cary, North Carolina and are not returnable.

Russell W. Tarlton Dianne N. Tarlton 6/16/18
Owners' Signature (s) Date

Wake COUNTY, NORTH CAROLINA

SWORN TO AND SUBSCRIBED before me this 16th day of June, 2018



Patricia B. Butler
Signature of Notary Public

My Commission Expires: 3-10-2023

Part 3D: Authorized Agent Authorization (must be notarized, and signed by property owner(s) identified in Part 3C. Attach additional sheets if necessary)

Required if the owner(s) of property proposed to be rezoned to a Conditional Use, Planned Development, or Mixed Use Zoning District wish to authorize another individual or entity to represent them through the public hearing process, and make binding statements and commitments regarding the request.

One of the following must be included as an attachment to this application:

- Power of Attorney stating that the agent is authorized to represent and bind the property on behalf of the property owner.

OR

- If the agent is the contract purchaser of the property, a redacted copy of a fully executed sales contract containing a clause or clauses allowing an application to be filed.

I/We, D. Cooke Properties, LLC, the fee simple owner(s) of the following described property:
Property Owner Name(s)

PIN: 0735724045

PIN, Real ID Number or Legal Description

hereby petition the Town of Cary to amend the Zoning Map to: (check all that apply)

- Change the zoning district(s) from R-40 to Split Zone GC and R-8 Conditional Use Districts
- Amend zoning conditions applicable to an existing conditional use district
- Amend the PDD document and/or Master Plan for the _____ Planned Development District
- Amend the Preliminary Development Plan for the _____ Mixed Use District

and affirm that Smith Moore Leatherwood LLP is hereby designated to act as my/our agent
Authorized Agent

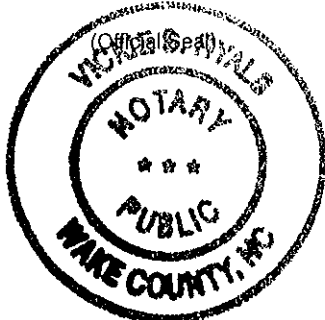
and to file the attached application for the stated amendment(s) and make binding statements and commitments regarding the amendment request(s).

I certify that I have examined the application and that all statements and diagrams submitted are true and accurate to the best of my knowledge. Further, I understand that this application, attachments and fees become part of the Official Records of the Town of Cary, North Carolina and are not returnable.

Joy C. Judd _____ 6-18-2018
Owners' Signature (s) Date

Wake COUNTY, NORTH CAROLINA

SWORN TO AND SUBSCRIBED before me this 18th day of June, 2018



Uckie S. Ryals
Signature of Notary Public

My Commission Expires: 5/23/21

Part 3E: Affidavit Signed by Property Owner or Authorized Agent

Completion of the applicable sub-section(s) is required for all rezoning requests except requests to rezone to a General Use District. Must be notarized

Check applicable sub-section(s)

3E(1a) – Required where the property owner maintains sole authority to make binding statements and commitments regarding the request, and the property owner is one or more individuals.

and/or

3E(1b) – Required where the property owner maintains sole authority to make binding statements and commitments regarding the request, and the property owner is a corporate or similar entity.

OR

3E(2) – Required where the property owner has authorized another individual or entity to represent him/her through the public hearing process and make binding statements and commitments regarding the request. *(Selection of this option requires submittal of Power of Attorney or redacted sales contract per Part 3D above)*

NOTE:

Each time proposed zoning conditions are revised after the initial submittal, a new affidavit must be provided to the case planner.

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

AFFIDAVIT OF RUSSELL W., JR. AND DIANNE N. TARLTON

We, Russell W., Jr. and Dianne N. Tarlton, being first duly sworn, hereby depose and say:

1. We are over the age of eighteen years and competent to make this Affidavit. All statements made herein are based upon our personal knowledge and belief.
2. We (“the Applicants”) are the owners of certain real property located at 3753 and 3761 NC Hwy. 55, Cary, NC, and identified as parcel numbers 0735619230 and 073514289 (“the Property”).
3. On or about June 18, 2018, M. Gray Styers, Jr., Smith Moore Leatherwood LLP, will submit, on our behalf, an Application for a rezoning of the Property (“the Application”) to the Town of Cary.
4. We have discussed the following zoning conditions or provisions and have agreed to volunteer the following zoning conditions or provisions in support of the Rezoning:

**CONDITIONAL USE DISTRICT ZONING CONDITIONS
TOWN OF CARY REZONING APPLICATION**

**Parcel Nos. 0735619230 and 0735714289
Existing Zoning: ORD and OI Respectively
Proposed Zoning: GC-CU**

NARRATIVE OF ZONING CONDITIONS OFFERED IN THE GC-CU DISTRICTS:

1. **The hours of mechanized car washing operations on the property will be limited to between 6:00 a.m. and 11:00 p.m.**
2. **The parcel with frontage only on Highway 55 and the parcel at the corner of Morrisville Parkway and Highway 55, (currently Parcel Nos. 735714289 and 0735724045) shall provide cross-access for ingress and egress to and from the other as generally shown on the Zoning Concept Plan included as an exhibit to this application.**

3. The following uses otherwise permitted in the General Commercial zoning district as provided in Section 5.1.2 of the LDO shall be prohibited:

- a) Dormitory
- b) Public Utility Facility
- c) Hospital
- d) Utility Substation, minor
- e) Special Event Center
- f) Nightclub/bar, indoor operation
- g) Amusement establishment
- h) Pool or billiard hall
- i) ABC store
- j) Crematorium
- k) Funeral Home
- l) Motor vehicle sales/rental
- m) Research laboratory
- n) Manufacturing, light
- o) Prototype process and production plant
- p) Outdoor storage

4. The following road / street construction shall be completed prior to the issuance of a certificate of occupancy of any structures:

A. Construction and dedication of Hayes Hill Place from Blakeley subdivision at Applicant's property line to Morrisville Parkway, and its intersection with Morrisville Parkway, as generally shown on the Zoning Concept Plan included with this application and as recommended by the Traffic Analysis Report (TAR).

B. Widening frontage, construction of pedestrian sidewalks along, and construction of one right-in/right-out access to/from and a deceleration lane on southbound N.C. Highway 55 at Parcel 0735-72-4045, as generally shown on the Zoning Concept Plan included with this application and as recommended by the TAR.

C. Widening frontage, construction of pedestrian sidewalks along, and construction of turn lanes to/from and deceleration/acceleration lanes on westbound Morrisville Parkway at Parcels 0735-71-4289 and 0735-61-5170, as generally shown on the Zoning Concept Plan included with this application and as recommended by the TAR.

End of Conditions

5. In addition to the zoning conditions or provisions listed above in paragraph 4 of the Affidavit, the Applicant, through counsel or otherwise, may offer or consent to any hearing before the Town of Cary Planning and Zoning Board or Town Council certain additional conditions of approval (which additional conditions of approval, along with the zoning conditions or provisions listed above, are collectively referred to hereinafter as the “Conditions of Approval”).

6. All Conditions of Approval that the Applicant offers in connection with the Rezoning are offered to address the conformance of the development and use of the site to Town ordinances and officially adopted comprehensive plan or other plan and to address the impacts reasonably expected to be generated by the development or use of the site.

7. We intend for the Town to rely on this Affidavit and in offering the Conditions of Approval, we hereby swear that:

- a. all zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the property owners'/applicants' independent judgment; and
- b. the property owners/applicants are not relying upon any statement by the Town staff or any member of the Town Council in connection with the decision to offer any zoning conditions or provisions; and
- c. the property owners/applicants understand that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions and provisions; and
- d. the property owners/applicants intend for all future owners of the property to be bound by the zoning conditions and provisions should the Town Council adopt them as part of the rezoning; and
- e. the property owners/applicants will take all appropriate measures to ensure that future property owners are aware of the zoning conditions and provisions.

Further the Affiant sayeth not.

This the 16th day of June, 2018.

Russell W. Tarlton, Jr.

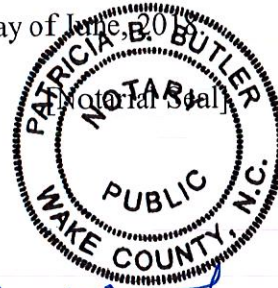
Russell W. Tarlton, Jr.

Sworn to and subscribed before me this 16th day of June, 2018.

Patricia B. Butler

Notary Public

My Commission Expires: 3-10-2023



Dianne N. Tarlton

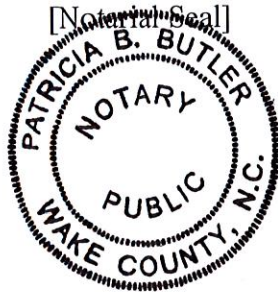
Dianne N. Tarlton

Sworn to and subscribed before me this 16th day of June, 2018.

Patricia B. Butler

Notary Public

My Commission Expires: 3-10-2023



**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

AFFIDAVIT OF D. COOKE PROPERTIES, LLC

I, Joy C. Futrell, being first duly sworn, hereby depose and say:

1. I am over the age of eighteen year and competent to make this Affidavit. All statements made herein are based upon my personal knowledge and belief.
2. D. Cooke Properties, LLC is the owner of certain real property located at 0 NC Hwy. 55, in the White Oak Township, Town of Cary ETJ, and identified as parcel number 0735724045 (“the Property”).
3. On or about June 18, 2018, M. Gray Styers, Jr., Smith Moore Leatherwood LLP, will submit, on behalf of D. Cooke Properties, LLC, an Application for a rezoning of the Property (“the Application”) to the Town of Cary.
4. I am the Member / Manager for the Applicant and I have been duly authorized to represent and bind the Applicant and execute this Affidavit.
5. The Applicant has agreed to volunteer the following zoning conditions or provisions in support the Rezoning:

**CONDITIONAL USE DISTRICT ZONING CONDITIONS
TOWN OF CARY REZONING APPLICATION**

**Parcel Nos. 0735724045
Existing Zoning: R40
Proposed Zoning: GC-CU, R-8-CU**

NARRATIVE OF ZONING CONDITIONS OFFERED IN THE GC DISTRICTS:

1. **The parcel with frontage only on Highway 55 and the parcel at the corner of Morrisville Parkway and Highway 55 (currently Parcel Nos. 735714289 and 0735724045) shall provide cross-access for ingress and egress to and from the other as generally shown on the Zoning Concept Plan included as an exhibit to this application.**
2. **The following uses otherwise permitted in the General Commercial zoning district as provided in Section 5.1.2 of the LDO shall be prohibited:**
 - a) **Dormitory**
 - b) **Public Utility Facility**
 - c) **Hospital**

- d) Utility Substation, minor
- e) Special Event Center
- f) Nightclub/bar, indoor operation
- g) Amusement establishment
- h) Pool or billiard hall
- i) ABC store
- j) Crematorium
- k) Funeral Home
- l) Motor vehicle sales/rental
- m) Research laboratory
- n) Manufacturing, light
- o) Prototype process and production plant
- p) Outdoor storage

NARRATIVE OF ZONING CONDITIONS OFFERED IN THE R-8 DISTRICT:

1. The maximum gross density shall not exceed 3.0 dwelling units per acre.
2. Ingress and egress to this area zoned R-8-CU for single family residential use (currently Parcel No. 735724045) shall only be from Hamilton Park lane and Hampton Hedge Lane and not from N.C. Highway 55, as generally shown on the Zoning Concept Plan included as an exhibit to this application.

End of Conditions

6. In addition to the zoning conditions or provisions listed above in paragraph 5, the Applicant, through counsel or otherwise, may offer or consent to any hearing before the Town of Cary Planning and Zoning Board or Town Council certain additional conditions of approval (which additional conditions of approval, along with the zoning conditions or provisions listed in paragraph 5, are collectively referred to hereinafter as the "Conditions of Approval").

7. All Conditions of Approval that the Applicant offers in connection with the Rezoning are offered to address the conformance of the development and use of the site to Town ordinances and officially adopted comprehensive plan or other plan and to address the impacts reasonably expected to be generated by the development or use of the site.

8. I intent for the Town to rely on this Affidavit and in offering the Conditions of Approval, I hereby swear that:

- a. all zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the property owner/applicant's independent judgment; and

- b. the property owner/applicant is not relying upon any statement by the Town staff or any member of the Town Council in connection with the decision to offer any zoning conditions or provisions; and
- c. the property owner/applicant understands that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions and provisions; and
- d. the property owner/applicant intends for all future owners of the property to be bound by the zoning conditions and provisions should the Town Council adopt them as part of the rezoning; and
- e. the property owner/ applicant will take all appropriate measures to ensure that future property owners are aware of the zoning conditions and provisions.

Further the Affiant sayeth not.

This the 18th day of June, 2018.

Joy C. Futrell
Joy C. Futrell
Manager

Sworn to and subscribed before me
this 18 day of June, 2018.

Vickie S Ryals
Notary Public

My Commission Expires: 5/23/21

