



Planning Department

**City Council
January 25, 2016 Meeting**

Staff Report

DATE: January 19, 2016

TO: City Council

FROM: Zachary D. Gordon, Planning Director, AICP

SUBJECT: Z-2015-05 - Request by Bohler Engineering to rezone property owned by Charles S. Smith from C-2-CZ (Originally called "CU-C2" Conditional Use - General Commercial) to C-2-CZ (Amended) General Commercial - Conditional Zoning District. The property is approximately 4.09 acres, located at 901 Brentwood Court, Cabarrus County Parcel #5622-69-3764.

A. Actions Requested by City Council

1. Hold Public Hearing
2. Motion to approve (deny) a Resolution to Adopt a Statement of Consistency
3. Motion to approve (deny) a Resolution to Zone

B. Decision and Required Votes to Pass Requested Action

The Planning and Zoning Commission held a public hearing on this request on October 7, 2015 and continued the public hearing to November 4, 2015, at which meeting the Commission approved the applicant's request by a 4-2 (two-thirds) vote. Since this approval was by less than a three-fourths (3/4) vote of the Commission, per Section 3.3.4.2.4 of the UDO, the final decision on the requested rezoning must be made by the City Council. If a zoning amendment is forwarded to the City Council for review, the City Council shall hold a hearing and decide to approve or deny the zoning amendment. Approval of the amendment shall be by a majority vote.

C. Background

Summary

The subject property was rezoned from R-3, Residential, to Conditional Use Office and Institutional (CU-O&I) in April, 1998. The subject property was then subsequently rezoned from CU-O&I to “CU-C2” in March, 2003. The applicant is now requesting an amendment to the 2003 rezoning in order to alter conditions and allowable uses.

Timeline

- Rezoning Application/Case Z-150 for CU-O&I zoning approved April, 1998.
- Brentwood Court and Portion of Windingbrook Dr. closed October, 1998.
- Rezoning Application/Case Z-219 for CU C-2 zoning filed March, 2002.
- Planning and Zoning Commission table case September, 2002.
- Planning and Zoning Commission recommended approval November, 2002.
- Letter of appeal (Protest Petition) filed November (December), 2002.
- Conditions of the rezoning changed by Applicant in December, 2002.
- Case tabled by Council, December, 2002.
- Council approved March, 2003.
- Rezoning Application/Case Z-2008-12 for C-2-CZ zoning filed May, 2008.
- Planning and Zoning Commission denied case June, 2008.
- Planning and Zoning Commission approved the requested zoning November 4, 2015 by a 2/3 vote.

The property was originally rezoned to CU-O&I in anticipation of the re-alignment of Dale Earnhardt (DE) Blvd. The property was then rezoned to “CU-C2” in order to expand the allowable uses and to change the development restrictions placed on the property. No final site plan has been approved related to the latest rezoning.

The subject property is located in the “South Kannapolis Growth Area”, as designated in the City of Kannapolis 2015 Land Use Plan (LUP). The LUP identifies this property as being in a Light Commercial Future (Recommended) land use category and recommended a change to C-1 zoning. The LUP text states;

The current O-I, Office-Institutional, is not necessarily inappropriate, however, the C-1, Light Commercial, is recommended as it appears to be more appropriate given the trend for concentrated retail/heavy commercial along this portion of the DE Blvd. It is likely that projects to be considered for development along these tracts should be considered for the conditional use rezoning process due to the proximity of established single-family developments along the rear.

The recommended C-1 zoning would allow for a grocery store, however, the required landscape buffers would be smaller than those required for a C-2-CZ designation. The LUP also states an awareness of the proximity of residential uses on multiple occasions and encourages a

conditioned/flexible approach to rezoning, presumably to protect the adjoining residential neighborhood.

The applicant is requesting an amendment to the existing “CU-C2” designation to C-2-CZ (Amended) in order to allow for a different use and for new development restrictions and a revised site plan. Grocery Stores are permitted in C-2 and are not listed as a prohibited use in the current C-2-CZ zoning. However, the proposed Grocery Store would be a retail use and would not be allowed under the terms of the current zoning conditions prohibiting retail uses beyond 275’ of the front property line. By requesting an amendment to the current C-2-CZ designation and limiting the allowable uses, the project will provide higher landscaping standards and a more limited list of allowable uses than simply requesting a C-1 designation, as recommended by the LUP.

The applicant is proposing the following changes to the current development restrictions on Parcel #5622-69-3764;

- Allowing for principal building, greater than 3000 sq.ft., within 60’ of DE Blvd. and beyond 275’ of the front property line.
- Increasing the maximum building height to 35’ (which is lower than the max height of 48’ allowable under C-2 zoning).
- Providing flexibility in operating hours.
- Changing the buffer yard types, but not size, as the types have changed and are listed differently in the current UDO.

D. Planning and Zoning Commission Action

As noted above, the Planning and Zoning Commission held public hearings on this request at their October 7th and November 4th 2016 meetings and approved the request by a vote of 4-2 (two-thirds) vote. Since this approval was by less than a three-fourths vote, the final decision to approve or deny the request must be made by the City Council.

Minutes of the public hearings held by the Planning and Zoning Commission are attached for the City Council’s information.

D. Fiscal Considerations

None

E. Policy Issues

UDO Section 3.3.5 states that the City Council may consider the following questions, at a minimum, in reviewing an application for a rezoning:

1. The size of the tract in question.

The size of the subject tract is approximately 4.09 acres.

2. Does the proposal conform with and further the goals and policies of the Land Use Plan, other adopted plans, and the goals, objectives, and policies of this Ordinance?

The subject property is located in the “South Kannapolis Growth Area” as designated in the City of Kannapolis 2015 Land Use Plan (LUP). The LUP identifies this property as being in a Light Commercial Future (Recommended) Land Use category and recommends a change to C-1. LUP text states;

The current O-I, Office-Institutional, is not necessarily inappropriate, however, the C-1, Light Commercial, is recommended as it appears to be more appropriate given the trend for concentrated retail/heavy commercial along this portion of the DE Blvd. It is likely that projects to be considered for development along these tracts should be considered for the conditional use rezoning process due to the proximity of established single-family developments along the rear.

The LUP also recognizes the proximity of residential uses on multiple occasions and encourages a conditioned-flexible approach to rezoning, presumably to protect the adjoining residential neighborhood.

The proposed preliminary major site plan shows a site which slopes down to the north and needs to be graded with retaining walls and a higher than current elevation facing neighboring properties. Substantially larger buffer areas are to be provided along the northern/northeastern boundaries and will include landscaping, fencing and a retaining wall. With the elevated grade at this corner, the building may be visible through any existing and/or proposed trees on the applicant and neighbor properties. However, parking will be located over 100’ feet from the northern property line and the loading area will be located over 65’ from the property line. The applicant is requesting a use recommended within the LUP and has made efforts to minimize impacts on the neighboring properties. In addition, the building does conform to the standards set forth in the UDO and specifically with the Dale Earnhardt Boulevard Overlay (Article 15), Standards for Shopping Centers and Superstores (Article 11) as well as the Watershed Overlay District (Article 4).

Therefore, the proposal can be considered to be in conformance with the LUP and the UDO.

3. Is the proposed rezoning compatible with the surrounding area?

The property is located within the Dale Earnhardt Boulevard Thoroughfare Protection (DEBTP) Overlay District (measured 300’ from the DE Blvd. right-of-way line) and is subject to use, site and building design requirements. The project meets and, in some cases, exceeds these architectural and site standards as well as the Landscaping Requirements in Article 7.

Located in the DEBTP Overlay District, the property is subject to the requirements of Building Design standards, including the General Form and Exterior Building Material specifications in Section 15.2.8 of the UDO. The elevations, as submitted, show a

building with a barrel roof and building elevations which include articulation, recesses, awnings, fenestration and/or change of acceptable materials (depending upon the elevation) which meet the standards set forth in Section 15.2.8 of the UDO.

The property is also subject to Section 11.3, Standards for Shopping Centers and Superstores. This section includes Outdoor Space and Design Feature requirements, which are to be provided for by landscaped outdoor space along Windingbrook Drive. Sidewalks will be installed along DE Blvd., as well as a transit stop, if needed, and pedestrian connections will be made once need/location of a transit stop is determined. Building setbacks meet the 75' standard for the Windingbrook Dr. and DE Blvd. facades. These facades also meet the architectural requirements.

Access to the site will be gained through DE Blvd., with no connection to Windingbrook Dr., and no parking, other than loading, will be located between the building and neighboring parcels. Site elevations/cross-sections show the building roof to slope to its lowest point along the Northwest boundary, with minimal building exposure and no pedestrian or vehicular activity. The loading area is expected to incur minimal use with limited deliveries. Building visibility will be dependent upon landscaping, however, even with the proposed landscaping; some visual impact can be expected.

Therefore, the proposed rezoning can be considered compatible with the surrounding area.

4. Will there be adverse effects on the capacity or safety of the portion of street network influenced by the rezoning?

The proposed site plan calls for a shared entrance which aligns with Coldwater Ridge, with access currently being negotiated with the adjacent parcel owner. The applicant has submitted a Traffic Impact Study (TIS). The TIS shows the need for a traffic signal at this intersection and the North Carolina Department of Transportation (NCDOT) concurs that a signal at this intersection is warranted.

5. Will there be parking problems?

No parking problems are anticipated. The proposed grocery store use for 36,200 sq. ft. will require 120 spaces, with 141 proposed.

6. Will there be environmental impacts that the new use will generate, such as excessive storm water runoff, water, air or noise pollution, excessive nighttime lighting, or other nuisances?

Located in the Lake Concord Watershed Critical Area Overlay District, the property is limited to 24% impervious coverage. The applicant will need to have the Critical Area Overlay boundary adjusted so that the site is no longer regulated by Article 4.16. The applicant will need to alter the site to have stormwater runoff diverted from the Critical Area and then apply to the Board of Adjustment to adjust the boundary.

7. Has there been any change of character in the area due to installation of public facilities, other zone changes, new growth trends, deterioration, and development?

Dale Earnhardt Boulevard was re-aligned before the 2003 rezoning but since then no major public facilities have been installed. In addition, since 2003, while there have been some minor access improvements and limited commercial development, the character of the area has remained essentially the same.

8. Is there compliance with the adequate public facilities criteria?

Water and sewer facilities and capacity to serve the project have been confirmed by the Department of Public Works. The developer is responsible for the extension of those utilities to the subject property. The Traffic Impact Study (TIS) shows the need for striping Coldwater Ridge Dr., re-striping DE Blvd., and installation of a traffic signal. The traffic signal will need to be approved by NCDOT and is currently under review. Without approval, a new entrance configuration will need to be considered.

9. What are the zoning districts and existing land uses of the surrounding properties?

Properties to the North are zoned RE (Residential Estate) and host residential land uses. Properties to the South are zoned C-2 (General Commercial) and host various commercial land uses. Properties to the East are zoned C-2 as well and host a bank and other commercial land uses. Property to the West is Zoned O-I (Office-Institutional) and is occupied by a church.

10. Is the subject property suitable for the uses to which it has been restricted under the existing zoning classification?

The current zoning, "CU-C2", currently allows for a mix of uses, including office to the rear of the property and retail to the front and is tied to a specific site plan. Office and commercial markets can be assumed to have changed since 2003 and any potential developer can be assumed to have a specific tenant/use mix in mind for this site which will most likely not match the current site plan. Also, the current site plan has expired and would, therefore, not be a legal basis for obtaining development permits, unless re-approved. Finally, the current zoning does not reflect the need to adjust the Lake Concord Watershed Overlay Critical Area District boundary line.

Therefore, the subject property is not considered suitable for the uses to which it has been restricted.

11. Is the rezoning compatible with the adjacent neighborhood, especially residential neighborhood stability and character?

The requested rezoning to permit a grocery store would require modification of the rezoning approval granted in 2003. The proposed screening, landscaping and architectural design and layout of the building is intended to mitigate impacts on the adjacent residential neighborhood.

12. What length of time has the subject property remained vacant as zoned?

The subject property has been vacant since it was rezoned in 2003.

13. Is there an adequate supply of land available in the subject area and the surrounding community to accommodate the zoning and community needs?

There is a considerable amount of vacant property zoned C-2 along Dale Earnhardt Blvd., on the other side of the street and to the North of the property, which could accommodate the zoning and community needs for the proposed project.

14. Was the existing zoning in error at the time of adoption?

No.

F. Legal Issues

None

G. Finding of Compliance with Adopted Plans and Reasonableness

Staff finds that the 2015 Land Use Plan recommends rezoning this property from O-I to C-1 Conditional Zoning. As a grocery store has historically been allowed, and is currently a permitted use, within a C-1 zoning district, the proposed site plan restricting the use to grocery store or “similar use” would be reasonable as well as consistent and compliant with the Land Use Plan.

H. Attachments

1. Staff Report
2. Zoning/Vicinity Map
3. Aerial Map
4. 2015 Future Land Use Map
5. Rezoning Application
6. Site Plan
7. Preliminary Grading Plan
8. Cross-Sections
9. Building Elevations
10. Traffic Impact Study Executive Summary
11. Resident Letter (January 14, 2015)
12. List of Adjacent Property Owners
13. Legal Ad
14. Signs Posted on Property
15. Conditions for Approval
16. Resolution to Adopt a Statement of Consistency
17. Resolution to Zone
18. Staff Report to Planning and Zoning Commission
19. Planning and Zoning Commission Decision Letter – November 11, 2015
20. Planning and Zoning Commission minutes (October 7, 2016; November 4, 2015)

I. Staff Recommendation and Alternative Courses of Action

Staff Recommendation

The City Council may choose to approve or deny the petition as presented.

Based on the request being consistent with the goals and strategies of the City of Kannapolis, staff recommends **approval** of Conditional Use Zoning Z-2015-05 with the attached Conditions as well as conditioned upon completion of recommended items in the Traffic Impact Study.

Alternative Courses of Action

Motion to Approve (2 votes)

1. Should the City Council choose to **approve** Z-2015-05, a motion should be made to **adopt** the following Statement of Consistency:

Statement of Consistency: *The City Council finds this zoning map and conditional zoning amendment as represented in Case Z-2015-05 is **consistent** with the recommendations of the 2015 City of Kannapolis Land Use Plan which called for rezoning this property from Office Institutional (O-I) to Light Commercial (C-1) where a grocery store is a permitted use and is therefore approved based on consideration of the application materials, information presented at the Public Hearing, and recommendations provided by Staff.*

2. Should the Commission choose to **approve** Z-2015-05, a motion should be made to **adopt** the Resolution to Zone.

Motion to Deny (2 votes)

1. Should the Commission choose to recommend **denial** of Z-2015-05, a motion should be made to adopt the following Statement of Inconsistency:

Statement of Inconsistency: *The City Council finds this zoning map and conditional use zoning amendment as represented in Case Z-2015-05 is **not consistent** with the recommendations of the 2015 City of Kannapolis Land Use Plan because (state reason) and is neither reasonable nor in the public interest because (state reason) and is, therefore, denied based on consideration of the application materials, information presented at the Public Hearing, and recommendations provided by Staff.*

2. Should the Commission choose to **deny** Z-2015-05, a motion should be made to **deny** the Resolution to Zone.

J. Issue Reviewed By:

City Manager
City Attorney
Public Works Director
City Clerk
Planning Director