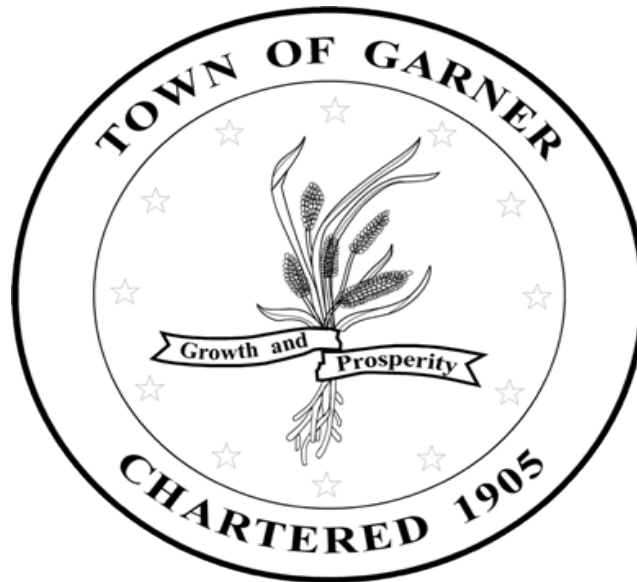


TOWN OF GARNER



TOWN COUNCIL MEETING

July 2, 2018
7:00 P.M.

Garner Town Hall
900 7th Avenue
Garner, NC 27529

**Town of Garner
Town Council Agenda
July 2, 2018**

Dinner will be served for town officials in the Conference Room at 6:15 p.m.

The Council will meet in regular session at 7:00 p.m. in the Garner Town Hall located at 900 7th Avenue.

- A. CALL MEETING TO ORDER/ROLL CALL: Mayor Ronnie Williams

The Council will call for a brief recess at 9:00 p.m.

- B. PLEDGE OF ALLEGIANCE: Mayor Ronnie Williams

- C. INVOCATION: Mayor Ronnie Williams

- D. PETITIONS AND COMMENTS

This portion of the meeting is to receive comments from the public on items not included in this agenda. Citizens should sign up with the Town Clerk to speak prior to the start of the meeting. The Board is interested in hearing your concerns, but may not take action or deliberate on subject matter brought up during the Petitions and Comments segment. Topics requiring further investigation will be referred to the appropriate town officials or staff and may be scheduled for a future agenda.

- E. ADOPTION OF AGENDA

- F. PRESENTATIONS

- G. CONSENT

All items on the Consent Agenda are considered routine, to be enacted by one motion and without discussion. If a member of the governing body requests discussion of an item, the item will be removed from the Consent Agenda and considered separately.

1. Governmental Relations Services Agreement FY2018/2019 Page 4
Presenter: Rodney Dickerson, Town Manager

Mr. Sam Bridges has been retained to represent the Town and its interests at the General Assembly, CAMPO, and other governmental agencies.

Action: Authorize Execution of Agreement

H. PUBLIC HEARINGS

1. Special Use Permit SUP SP 18-01, Project Axis Page 7
Presenter: Jeff Triezenberg, Planning Director

Request for Special Use Permit for proposed use of Warehouse and Freight Movement - Storage with Accessory Office for the former ConAgra site. The site is located at 4851 Jones Sausage Road.

Action: Approve SUP-SP-18-01

2. Conditional Use Rezoning CUD-Z-18-02 (C201) & Special Use Permit SUP-SP-18-03, Sommerville Park Page 20
Presenter: Het Patel, Senior Planner and Alison Jones, Planner II

Request for conditional use rezoning from Office and Institutional (O&I) to Service Business with conditions (SB C201). The proposed use for the site is light industrial flex space business center. A companion conditional use site plan for three buildings with a total square footage of 28,800 sq. ft. accompanies this conditional use rezoning request. The site is located at the intersection of Old Stage Road and Sommerville Park Road.

Action: Adopt Ordinance (2018) 3921; Approve SUP-SP-18-03

I. NEW/OLD BUSINESS

1. General use Rezoning Z-18-02, 5200 Old Stage Road Page 40
Presenter: Het Patel, Senior Planner

Request to change zoning for 1.0 +/- acres from Residential 20 (R-20) to Residential 40 (R-40) General Use. The site is located at 5200 Old Stage Road.

Action: Adopt Ordinance (2018) 3922

2. Hazmat Agreement with City of Raleigh Page 51
Presenter: Mike Franks, Budget and Special Projects Manager

The Town of Garner and the City of Raleigh are establishing a service level agreement regarding the delivery of hazardous materials response team services. Previously, Wake County facilitated this agreement between the City of Raleigh and local municipalities. Moving forward, the City of Raleigh is establishing agreements directly with municipalities.

Action: Authorize Execution of Agreement

J. COMMITTEE REPORTS

K. MANAGER REPORTS

1. garner info

L. ATTORNEY REPORTS

M. COUNCIL REPORTS

N. ADJOURNMENT

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: July 2, 2018		
Subject: Lobbyist Contract		
Location on Agenda: Consent		
Department: Legislative		
Contact: Rodney Dickerson, Town Manager		
Presenter: Rodney Dickerson, Town Manager		
Brief Summary: Authorize execution of Governmental Relations Services Agreement for FY2018/2019. Mr. Sam Bridges has been retained to represent the Town and its interests at the General Assembly, CAMPO, and other governmental agencies.		
Recommended Motion and/or Requested Action: Authorize Execution of Agreement		
Detailed Notes: Funding for lobbyist activities was approved in the FY2018/2019 budget.		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations: 		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	RD	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

NORTH CAROLINA
WAKE COUNTY

GOVERNMENTAL SERVICES RELATIONS AGREEMENT-FY 2018-19

The parties to this Agreement, being the Town of Garner, a municipal corporation, hereinafter "Town," and the Samuel L. Bridges, hereinafter "Bridges," agree that the Town hereby retains Bridges to provide governmental relations services on behalf of the Town as set forth herein:

The purpose of this Agreement includes representation of the Town regarding issues important to the Town at the North Carolina General Assembly and at other State and local boards and agencies including the Wake County Public School System, NC DOT and the Wake County Commission, developing working relationships with individuals at the North Carolina General Assembly and at other state and local boards and agencies, monitoring the general activities of these agencies, developing a stronger understanding of the manner in which these entities are making decisions, and relaying such information to our Mayor, Town Council, and Town Manager.

Bridges agrees to be present at the North Carolina General Assembly as needed each week that they are in session and to attend general sessions and committee meetings as appropriate and to work with the governmental relations staff of the NC League of Municipalities and to interact with Congressional Representatives as directed by the Town.

Bridges agrees to be present at the monthly CAMPO Executive Board meeting in Raleigh and to attend portions of Garner Town Council meetings as necessary, to attend other state and local board and agency meetings and to contact individuals that serve in all these agencies by phone and in person, as needed, as directed by Town officials.

Bridges shall register as a lobbyist for the Town of Garner with the North Carolina Secretary of State and pay the required registration fee. (Town will pay the fee required of a principal, upon advice from Bridges regarding the payment procedure.) Bridges agrees to provide a monthly statement of services rendered. Town agrees to pay Bridges a monthly retainer of \$2,500.00 for each of the 12 months of the 2018-19 fiscal year for a total compensation of \$30,000.00 for the fiscal year 2018-2019. Town also agrees to reimburse expenses up to an additional \$3,000.00 for the fiscal year 2018-19. The parties will continue to discuss what expenses, if any, might properly be reimbursable in the governmental relations context.

Bridges and Town agree to abide by all statutes, rules and regulations promulgated by the State of North Carolina for lobbying at the General Assembly and at other state and local boards and agencies. To facilitate that agreement, Bridges will continue to inform the Town Manager of all such rules and regulations applicable to a lobbyist and applicable to a principal, including instructions regarding the lobbyist and principal filings and paying fees to the Secretary of State or other agencies. Bridges shall continue to prepare documents necessary for the lobbyist and

principal to remain compliant with the regulations promulgated by the NC Secretary of State.

This the 2nd day of July, 2018.

(Town Seal)

TOWN OF GARNER

Ronnie S. Williams, Mayor

Samuel L. Bridges

ATTEST:

Stella Gibson, Town Clerk

PRE-AUDIT CERTIFICATE

This Agreement has been pre-audited in conformity with the applicable government finance laws of the State of North Carolina. This the ____ day of June, 2018.

Pam Wortham, Finance Director

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: July 2, 2018		
Subject: Special Use Permit SUP-SP-18-01, Project Axis		
Location on Agenda: Public Hearings		
Department: Planning		
Contact: Jeff Triezenberg, Planning Director		
Presenter: Jeff Triezenberg, Planning Director		
Brief Summary: Hillwood is requesting a Special Use Permit for proposed use of Warehouse and Freight Movement - Storage with Accessory Office for the former ConAgra site. The site is located at 4851 Jones Sausage Road and can be further identified by portion of Wake County PIN 1721-26-5080. The site plan for request includes development of 87.86 +/- acres of the 97.91 +/- tract with a single four-story building with a footprint of 680,000 sq. ft. and a total area of 2,600,000 sq. ft., which will house office space and warehouse with loading docks. The Planning Commission approved this request at their June 18, 2018, meeting.		
Recommended Motion and/or Requested Action: Staff recommends approval of SUP-SP-18-01		
Detailed Notes: Please refer to Motion Worksheets at the end of the staff report for assistance in making a motion.		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations: N/A		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	JT	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

TO: Mayor and Town Council Members

FROM: Jeff Triezenberg, AICP, GISP; Planning Director

SUBJECT: *Special Use Site Plan - SUP-SP-18-01, Project Axis*

DATE: July 2, 2018

I. PROJECT AT A GLANCE

Project Number: SUP-SP-18-01, Project Axis

Applicant: Hillwood

Owner: Garner Economic Development Corp.

Plan Prepared by: WithersRavenel

General Description -

Proposed Use: Warehouse and Freight Movement – Storage (including Outdoor) with Accessory Office

Project Location: 4851 Jones Sausage Road, formerly known as ConAgra site

Wake Count PIN(s): 1721-26-5080 (portion of)

Zoning Classification: Heavy Industrial (I-2) w/in the I-40 Overlay (O-40)

Key Meeting Dates -

Planning Commission: June 18, 2018

Town Council Public Hearing: July 2, 2018

II. LAND USE

The requested specific use is “Storage (including Outdoor)” which is part of the larger use category of “Warehouse and Freight Movement”. This specific use is allowed in the Heavy Industrial (I-2) district as well as the I-40 Overlay (O-40) district subject to standards.

Characteristics of this use category are that warehouse firms are involved in the storage or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present. Accessory uses may include offices, truck fleet parking and maintenance areas.

Express exceptions to this classification are firms involved in the transfer or storage of solid or liquid wastes, mini (self-storage) warehouses and flex space.

In addition to meeting the additional standards of the I-40 Overlay (O-40) district, the other additional standard for the requested use as allowed by the Heavy Industrial (I-2) district is that: “All outdoor storage areas shall be screened from view from any public right-of-way or adjacent property with a six-foot opaque fence, wall or other methods that achieve the screening objective that are acceptable to the permit-issuing authority”.

III. SITE PLAN PROJECT DATA

Acreage:	87.858 acres of a 97.908 tract, which will require a formal subdivision prior to issuance of a building permit.
Building Size:	One four-story building with a footprint of 680,000 square feet and a total area of 2,600,000 square feet, which will house office space and warehouse with loading docks.
Building Material and Color:	<p>The building is constructed with concrete panels painted three different shades of gray with accents in yellow and blue. Several vertical elements painted a dark gray break up the horizontal expanse of the building and bands of light gray break up the vertical expanse of the building. The front of the building has storefront windows and metal canopies identifying the main entrances and office area.</p> <p>Screen walls – A variable height stone wall is proposed between the south truck entrance, off Jones Sausage Road, and the residence to the south. Another stone wall of varying height is proposed around the service area on the northside of the building. These walls serve two purposes - screening and noise attenuation.</p>

Retaining walls – Keystone Century Wall® retaining walls, brown in color, are proposed along the southern and eastern part of the developed area. These retaining walls vary in height from approximately 1 to 16 feet.

Water tower – On the southeast corner of the building a water tower, approximately 30 feet in height and 17 feet in diameter is proposed.

Landscape and Buffer Requirements:

The plan as proposed meets the requirements of the Landscape Ordinance; both the general standards and the I-40 Overlay requirements apply.

Tree Cover: Requirements met with existing vegetation within required perimeter buffers and Neuse River Buffers on site.

Street Buffers: A 15-foot street buffer along Jones Sausage Road reflects proposed street trees and shrubs for screening VSA as required.

A 50-foot undisturbed buffer is shown along the I-40 frontage, as required. All, except for about 330 feet, is covered by existing vegetation. Proposed vegetation to screen the service area, typically planted within the 50-foot buffer, is proposed closer to the service area due to topography. In addition to an 8-foot chain link fence with slats and evergreen plant material for screening the service area, the disturbed area between this and I-40 shall be planted with Pine seedlings.

Perimeter Buffers: Sheet L2.0 identifies the various perimeter buffers. The buffers along the south side vary from 15 feet to 65 feet wide. The southern area remains mostly undisturbed; therefore, between the existing vegetation and the distance from the developed area of the site, no additional vegetation was required. The buffers along the east and north property line are 15 feet; here it is unclear if existing vegetation will meet screening requirements until grading is complete; therefore, a planting plan has been developed to meet buffer requirements.

Deviations: Due to the more restrictive landscape requirements of the overlay district, the Planning Director granted the following deviations, as allowed by Section 7.1 P:

- A 10% deviation was granted in the number of trees and shrubs required by the overlay district to meet VSA requirements in the truck loading and storage area. The

perimeter area is heavily landscaped to meet the intent of the requirement and the deviation allowed a wider spacing of trees and shrubs for growth.

- A 10% deviation was granted in the requirement for a landscape island every 13 spaces. As a result of the more restrictive shade tree requirement of the overlay district, which is one within 50 feet as opposed to the general standard of one within 65 feet, more islands with trees were proposed; therefore, the intent of the requirement was met.
- A deviation was granted in the six rows of parking allowed before a 10-foot landscape island is required for parking areas greater than 75,000 square feet. The correct number of long landscape islands have been provided, the distribution varies; the southern section of parking proposes two areas with eight rows of parking while the western section has two or four rows before an island is proposed.

Environmental Features:

This site does not contain a FEMA designated floodplain; however, there are features subject to Neuse River riparian buffer rules traversing the property. Several encroachments into these buffers are proposed and will require documentation of State approval prior to issuance of a building permit.



Fire Protection:

The Inspections Department and Fire Department reviewed the plan for fire protection and have given their approval.

Parking Spaces:

Number - Parking is based on the number of bays and number of employees.

- Required: 628 (13 accessible)
- Proposed: 1800 (28 accessible)

Lighting:

Proposed lighting, including wall packs, meets the requirements of the Lighting Ordinance as well as meeting staff recommendations for LED fixtures. All fixtures have zero uplight, low glare and a warm white light exhibiting a color temperature of no more than 4,000 K (Kelvin).

Infrastructure:

Stormwater Management – Project Axis is subject to nitrogen as well as water quantity requirements. The developer is proposing two underground sand filters to handle detention of the 1, 10 and 25-year storm events. With the amount of existing impervious surface on the site, payment to a private mitigation bank for nitrogen will **not be** required for compliance with the Neuse Rules.

Water/Sewer – Connections to public water and sewer proposed. Public sewer extension to serve the use is shown; however, the City of Raleigh is also requesting per Raleigh policy that a public sewer extension be constructed to serve the properties to the south. A condition is recommended to address this during the City’s construction drawing approval process.



Frontage Improvements – The site has approximately 3,045 feet of frontage along Jones Sausage Road. Jones Sausage Road in this vicinity is a 2-lane facility which is a NCDOT maintained road with right-of-way ranging from approximately 60 feet to 145 feet. It is classified as an Existing Major Thoroughfare in the 2010 Garner Transportation Plan. This section of the roadway has approximately 15,000 vehicle trips per day (NCDOT 2015).

Road improvements as part of this development are required along Jones Sausage Road. The development of the site includes improving Jones Sausage Road to a minimum of half of a 4-lane divided roadway with sidewalks and bike lanes along the entire frontage of the property.

Site Access – Per the site plan, the proposed development will provide six (6) points of access:

1. Access #1 – right-out (RO) only access, approximately 485 feet north of Calebar Street (restricted to truck traffic only)
2. Access #2 – full-movement, signalized access directly across from Calebar Street
3. Access #3 – unsignalized right-in/right-out (RIRO) access, approximately 600 feet south of Calebar Street
4. Access #4 – full-movement, signalized access, approximately 600 feet south of Access #3
5. Access #5 – unsignalized RIRO access, approximately 600 feet south of Access #4
6. Access #6 – unsignalized RIRO access with leftover, approximately 600 feet south of Access #5 (restricted to truck traffic only)

As identified above, Access #1 and Access #6 will be restricted to serve truck traffic only and the other four access points will serve the rest of the vehicular traffic in and out of the site. Access #2 and Access #4 are proposed as signalized full-movement access points for the development. The driveway access spacing meets the standards for Town's Access to Major Thoroughfares in the Unified Development Ordinance (no closer than 400 feet). The driveway spacing was also reviewed by NCDOT District Office to ensure that the driveway spacing meets NCDOT standards.

Traffic Impact Analysis – A Traffic Impact Analysis (TIA) was required for the proposed development in accordance with the Unified Development Ordinance. The report has been reviewed by the NCDOT District Office, NCDOT Congestion Management Unit and Town of Garner staff. The Executive Summary of the TIA is provided as an attachment to this staff report.

Based on the data provided and assumptions identified in the TIA, the proposed development is anticipated to generate 1,142 AM peak hour trips (1,130 entering, 12 exiting) and 2,298 PM peak hour trips (1,097 entering, 1,201 exiting). The findings of the TIA indicate that the proposed development is anticipated to have moderate impact on the study area intersections.

The recommended improvements within the TIA are being reviewed separately and will be required to be completed by the developer as agreed to by NCDOT and the Town of Garner. This would include improvements for the length of the property's frontage that would bring Jones Sausage Road to its full cross-section as identified in the 2010 Garner Transportation Plan and the 2018 Draft Garner Forward Transportation Plan.

IV. SITE PLAN CONFORMITY WITH APPLICABLE ADOPTED TOWN PLANS AND POLICIES

2018 Garner Forward Transportation Plan (Adopted June 19, 2018):

A review of the Garner Forward Transportation Plan identified Jones Sausage Road as a Major Thoroughfare. This project, with improvements described above, may be considered in conformance with the 2018 Draft Garner Forward Transportation Plan.

Parks & Recreation, Open Space & Greenways Master Plan:

A review of the Parks and Recreation, Open Space and Greenways Master Plan revealed no plan recommendations in the project area; therefore, this project, as proposed, may be considered consistent with the Parks & Recreation, Open Space & Greenways Master Plan.

Unified Development Ordinance Regulations:

After sufficient review and plan revisions, staff finds this project, as now proposed, to be in conformance with the regulations of the Unified Development Ordinance.

V. PLANNING COMMISSION NOTES AND RECOMMENDATION

The Planning Commission reviewed this request at their June 18, 2018 meeting and on a vote of 4 (***Fox, Brignac, Moua, Hogan***) to 1 (***Blasco***), confirmed staff's findings in Section IV of this report that SUP-SP-18-01, Project Axis, is in conformity with applicable adopted town plans and policies so long as the following conditions are met:

1. Prior to issuance of a building permit, a subdivision plat shall be recorded;
2. Prior to issuance of a building permit, documentation of State approval for Neuse River Buffer encroachments shall be required;
3. Recommendations for road improvements reported in the TIA, approved by NCDOT and Town of Garner, shall be the responsibility of the developer.

VI. COUNCIL MOTION WORKSHEET

SPECIAL USE PERMIT ACTION WORKSHEET

Approve: I move that the Council accept the staff statements regarding plan consistency in Section IV of this report as our own and find the application meets the 10 permit criteria in Section 3.14.D. and therefore approve SUP-SP-18-01, Project Axis, with the three standard conditions and three site specific conditions listed on the attached permit.

Optional (conditions – mark, fill in and read all that applies): ...and including the following reasonable conditions necessary to address the impacts of the proposed development on:

- ___ adjoining property,
- ___ the existing natural and man-made features of the site,
- ___ off-site and on-site traffic flow,
- ___ public utilities,
- ___ such other public services or goals of the Comprehensive Growth Plan or the Transportation Plan that may be negatively impacted by the proposed development (*enumerate plan services/goals*):

Condition #1:

Condition #2:

Condition #3, (etc.):

or

Deny: I move that the Council find the application does not meet one or more of the criteria in Section 3.14.D. for granting a special use permit,

(Check and read all that apply – include stated reason/evidence)

- ___ 1. The proposed use will endanger the public health or safety because/as evidenced by _____;

- ___ 2. The proposed use will substantially injure the value of adjoining or abutting property;
because/as evidenced by _____;
- ___ 3. The proposed use does not comply with all applicable provisions of this UDO;
because/as evidenced by _____;
- ___ 4. If completed as proposed, the development will not comply with all requirements of this section;
because/as evidenced by _____;
- ___ 5. The proposed use will not be compatible with the proximate area in which it is to be located;
because/as evidenced by _____;
- ___ 6. The proposed use is inconsistent with the Transportation Plan, other relevant adopted plans and policies, and the stated purpose and intent of this UDO (the fact that the use is permitted under certain circumstances in the zoning district creates a rebuttable presumption that the proposed use is in harmony with the intent of the UDO as relates to the general zoning plan);
because/as evidenced by _____;
- ___ 7. The proposed use is incompatible with adjacent uses in terms of building scale, site design, buffering and screening, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts);
because/as evidenced by _____;
- ___ 8. Any significant adverse impacts resulting from the use will not be mitigated or offset, including impacts on the natural environment;
because/as evidenced by _____;
- ___ 9. The public safety, transportation and utility facilities and services will not be available to serve the subject property while maintaining sufficient levels of service for existing development;
because/as evidenced by _____;
- ___ 10. Adequate assurances of continuing maintenance have not been provided;
because/as evidenced by _____;

and therefore, deny Special Use Permit for Project Axis – SUP-SP-18-01.

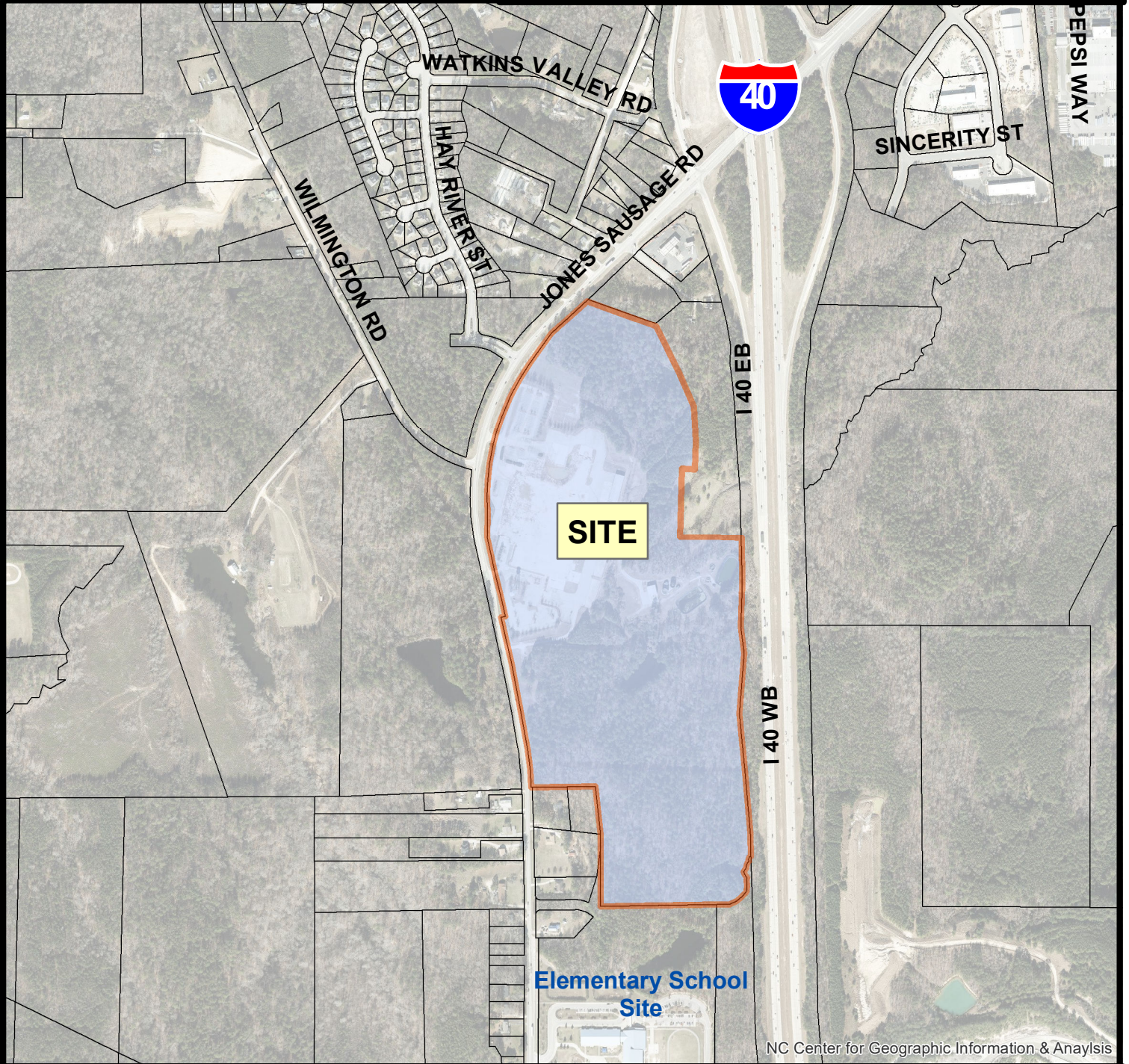


Town of Garner Planning Department

Conditional Use Permit

SUP-SP-18-01

0 300 600 1,200
Feet



NC Center for Geographic Information & Analysis

Project: Project Axis
 Applicant: Hillwood / Withers & Ravenel
 Owner: Garner Economic Development Corp
 Location: 4851 Jones Sausage Road
 Pin: 1721265080

Proposed Use: Warehouse / Distribution
 Current Zoning: I-2 (Industrial)
 Overlay: I-40
 Acreage: 97.9

**TOWN OF GARNER
SUP-SP-18-01 – PROJECT AXIS
SPECIAL USE PERMIT**

APPLICANT	Hillwood Attn: Scott Martin 7000 Central Parkway, Suite 970 Atlanta, GA 30328
LOCATION	4851 Jones Sausage Road
USE	Storage (including outdoor)
DATE ISSUED	July 2, 2018

I. COMPLETENESS OF APPLICATION

The application is complete.

II. COMPLIANCE WITH ORDINANCE REQUIREMENTS

The application complies with all applicable requirements of the Unified Development Ordinance.

III. GRANTING THE APPLICATION

The application is granted, subject to the following conditions:

- 1) The applicant shall complete the development strictly in accordance with the plans submitted to and approved by this Town Council, a copy of which is filed in the Town Hall. Any deviations from or changes in these plans must be pointed out specifically to the administrator in writing and specific written approval obtained as provided in the Unified Development Ordinance;
- 2) If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of no effect; and
- 3) All applicable permit approvals shall be obtained by the applicant.

IV. SPECIFIC TO THE PROJECT

1. Prior to issuance of a building permit, a subdivision plat shall be recorded;
2. Prior to issuance of a building permit, documentation of State approval for Neuse River Buffer encroachments shall be required;
3. Recommendations for road improvements reported in the TIA, approved by NCDOT and Town of Garner, shall be the responsibility of the developer.

c: Garner Economic Development Corp.
Attn: Bruce Andrews
401 Circle Dr.
Garner, NC 27529

WithersRavenel
Attn: Dan Miller, PE
115 Mackenan Dr.
Cary, NC 27511

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: July 2, 2018		
Subject: Conditional Use Rezoning and Site Plan: CUD-Z-18-02 (C201) & SUP-SP-18-03, Sommerville Park		
Location on Agenda: Public Hearings		
Department: Planning		
Contact: Het Patel, Senior Planner and Alison Jones, Planner II		
Presenter: Het Patel, Senior Planner and Alison Jones, Planner II		
Brief Summary: Underfoot Engineering, Inc. is requesting conditional use rezoning from Office and Institutional (O&I) to Service Business with conditions (SB C201). The proposed use for the site is light industrial flex space business center. A companion conditional use site plan for three buildings with a total square footage of 28,800 sq. ft. accompanies this conditional use rezoning request. The site is located at the intersection of Old Stage Road and Sommerville Park Road and can be further identified as portion of Wake County PIN 1700-37-8789. The Planning Commission recommended approval of this request at their June 18, 2018, meeting.		
Recommended Motion and/or Requested Action: Adopt Ordinance (2018) 3921; Approve CUP-SP-18-03		
Detailed Notes: Please refer to Motion Worksheets at the end of the staff report for assistance in making a motion.		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations: N/A		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	JT	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

TO: Chairman and Members of the Planning Commission

FROM: Het Patel, AICP; Senior Planner
Alison Jones; Planner II

SUBJECT: *CUD-Z-18-02, Conditional Use Rezoning*
CUP-SP-18-03, Conditional Use Site Plan – Sommerville Park

DATE: July 2, 2018

I. PROJECT AT A GLANCE

Project Number(s): CUD-Z-18-02 Conditional Use Rezoning
CUP-SP-18-03 Conditional Use Site Plan

Applicant: Underfoot Engineering, Inc.

Owner: Cencar Properties, LLC.

General Description -

Project Area & Location: 5.02 +/- acres located on the west side of Old Stage Road south of Sommerville Park Road.

Wake Count PIN(s): Portion of 1700-37-8789

Current Zoning: O&I (Office and Institutional)

Requested Zoning: SB C201 (Service Business Conditional Use)

Proposed Use(s): Flex Space, Other Office, Storage (including outdoor)

Key Meeting Dates:

Planning Commission: June 11, 2018

Public Hearing & Action: July 2, 2018

II. BACKGROUND / REQUEST SUMMARY

The rezoning (CUD-Z-18-02) and associated site plan (CUP-SP-18-03) have been submitted to develop the site into a light industrial flex space business center. The current uses include a service garage and wooded area south of Sommerville Park Road along Old Stage Road. The applicant is requesting to rezone the site from Office and Institutional (O&I) to Service Business (SB C201). Use restrictions are proposed to limit the range of SB uses as well as limitations on where outdoor storage can be located.

III. ZONING ANALYSIS

Existing: The existing zoning of the 5.02-acre site is **Office & Institutional (O&I)**. The purpose of this district is to accommodate more intense professional and service occupations than permitted in the Neighborhood Office (NO) district and to ensure that the environmental effects (including noise, odor, glare, heat, vibration and air pollution) resulting from conduct of such operations shall not interfere with the quality of any surrounding district. This district serves as a transition between residential districts and more intense districts, including commercial districts.

The following is a list of permitted uses in the OI District:

- | | |
|--|---|
| 1. Townhouse | 21. Medical clinic |
| 2. Condominium | 22. Mental health facility |
| 3. Community center | 23. Group care facility |
| 4. Library, museum, art gallery, art center | 24. Handicapped institution |
| 5. Other community service | 25. Intermediate care institution |
| 6. Civil, service fraternal clubs, lodges and similar uses | 26. Nursing care institution |
| 7. Adult day care | 27. Cemetery |
| 8. Day care center | 28. Public park, swimming pool, open space |
| 9. Business school, college or university satellite in single building | 29. Religious institution |
| 10. College/university | 30. Minor utility, elevated water tank |
| 11. School, public or private | 31. Golf course, country club |
| 12. Trade/vocational school | 32. Indoor gym, spa, pool, tennis courts |
| 13. Music, dance, art instruction | 33. Medical office, individual |
| 14. Funeral home, crematorium | 34. Other general office |
| 15. Ambulance, police, fire station | 35. Bed and breakfast |
| 16. Government office | 36. Hair salons, barber shops |
| 17. Continuing care, retirement facility | 37. Banks or financial institutions |
| 18. Hospice | 38. Repair oriented use (no outdoor operations) |
| 19. Hospital | 39. Veterinarian/kennel, indoor |
| 20. Ambulatory health, emergency care | 40. Commercial parking |

Proposed: The proposed zoning of the 5.02-acre site is **Service Business Conditional Use (SB C201)**. The SB zoning district has been established to accommodate commercial activities that are more intense in nature than those permitted in the Neighborhood Commercial (NC) or Community Retail (CR) districts. The SB general use district also allows for the storage of merchandise or equipment and allows operations to be conducted outside of a building. Use restrictions are proposed as part of this request.

The following is a list of permitted uses in the SB C201 district (uses not highlighted are prohibited)

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Security or caretaker's quarters 2. Community Center 3. Library, museum, art center 4. Other Community service 5. Civil, service fraternal club, lodges and similar uses 6. Adult Day Care 7. Day Care Center 8. Business School, college or university satellite 9. College / university 10. Trade / vocational schools 11. Music / dance / art instruction 12. Ambulance, rescue squad, police, fire station 13. Government, utility with outdoor storage 14. Government office 15. Medical Clinic 16. Cemetery 17. Funeral home / crematorium 18. Parks, swimming pools, tennis courts, golf courses 19. Bus passenger terminals 20. Taxi or limo operations/facility 21. Religious institutions 22. Minor utility, elevated water tank 23. Telecommunication facility 24. Other major utility 25. Bars and nightclubs (prohibited within 500 feet of residential use/zoning) 26. Private golf or country club 27. Private gym, spa, indoor tennis, pool 28. Indoor entertainment facility 29. Electronic gaming center | <ol style="list-style-type: none"> 30. Outdoor entertainment facility, private athletic 31. Sexually oriented business (prohibited within 1,000 feet of residential use/zoning) 32. Movie Theater 33. Drive-in Theaters 34. Water-slides, golf driving ranges, miniature golf, batting cages or similar uses 35. Bank, financial institution 36. Medical office, individual 37. General office use 38. Bed and breakfast 39. Extended stay facility (prohibited within 500 feet of residential use/zoning) 40. Hotel and motels 41. Commercial Parking 42. Restaurant, curb or drive-in service 43. Restaurant, indoor with seating only 44. Restaurant, indoor with drive-through window 45. Restaurant, take out only, drive-through or walk up 46. Convenience store without fuel sales 47. Convenience store with fuel sales 48. Open air market 49. Repair oriented use (indoor only) 50. Personal service use (indoor operations) 51. Barber shops / salons 52. Sales oriented use (indoor operations only) |
|---|--|

- 53. Sales oriented use (outdoor operations)
- 54. Veterinarian/kennel indoor
- 55. Veterinarian/kennel outdoor (prohibited within 500 feet of residential use/zoning)
- 56. Self-service storage
- 57. Car wash (prohibited within 500 feet of residential use/zoning)
- 58. Vehicle repair (storage restricted to rear of building, 30-day storage limit)
- 59. Vehicle sales and rental (storage restricted to rear of building)
- 60. Vehicle service-limited
- 61. Vehicle towing, storage (prohibited within 500 feet of residential use/zoning)
- 62. Flex space
- 63. Light Industrial use indoor
- 64. Light Industrial use with outdoor storage of tenant supplies
- 65. Light Industrial use with outdoor operations
- 66. Warehouse and freight movement with indoor storage
- 67. Warehouse and freight movement with outdoor storage
- 68. Recyclable materials collection center
- 69. Wholesale sales
- 70. Manufacturing indoor operations

Additionally, the applicant has identified the following conditions for any uses within the **SB C201** conditional use district:

- A. Any outside storage shall be in areas designated on the Conditional Use Site Plan as “Laydown Yard” and shall be enclosed inside a minimum 6’ tall chain link fence providing full privacy, by slat inserts or other means, as needed to ensure 100% opacity.
- B. Any outside storage shall be in areas designated on the Conditional Use Site Plan as “Laydown Yard” and shall be setback a minimum of 60’ from the southern property line and abutting parcel zoned R40
- C. The developer shall be responsible for all roadway improvements along Old Stage Road and Sommerville Park Road, as required by the NCDOT.

Zoning History: The Planning Department’s rezoning database contains the following rezoning cases in the vicinity of this property. Many of the properties in this area were rezoned between the late 1980s and the 1990s. More recent cases are listed below.

Case	Applicant	Location	Zoning Change
Z-84-18	Smith/Sommerville	Old Stage Road	I-1 to SB
CUD-Z-88-6	Tally/Smith	Vandora Springs Road	R-40 to R-12 C18
CUD-Z-89-3	Longbranch Development Company	Old Stage Road	R-40 W & 80 W to SB C30
CUD-Z-98-06	Don C. Kennedy	Vandora Springs Road	R-40 to R-9 C80

Adjacent Zoning and Land Use:

North:	Service Business (SB)	Heavy commercial
South:	Single-Family Residential 40 (R-40)	Vacant
East:	Single-Family Residential 40 (R-40)	Vacant
West:	Single-Family Residential 40 (R-40)	Vacant



Overall Neighborhood Character:

This area along Old Stage Road located south of Sommerville Park Road contains existing light industrial and service garage land uses. The predominant zoning in this area is Single-Family Residential (R-40). Majority of the parcels along Old Stage Road in this area are vacant wooded land.

IV. TRAFFIC IMPACTS

Old Stage Road is classified as a Major Thoroughfare in the 2010 Transportation Plan. The NCDOT average daily traffic count history on Old Stage Road is as follows:

- Year 2007 – 8,700
- Year 2009 – 10,000
- Year 2011 – 11,000
- Year 2013 – 11,000
- Year 2015 – 11,000

Due to the additional movements into and out of the proposed development, NCDOT is recommending widening of Old Stage Road north of Somerville Park Road to accommodate a dedicated left turn lane from southbound Old Stage onto Somerville Park.

V. STATEMENTS OF ZONING CONSISTENCY WITH THE COMPREHENSIVE PLAN

2018 Garner Forward Plan (Adopted on June 19, 2018):

On the current Garner Forward Plan's Future Land Use Plan, the site along Old Stage Road is designated as **Light Industrial** and the surrounding tracts in this area are designated as either Heavy Industrial, Civic and Institutional, or Medium-Density Residential.



The **Light Industrial** land use category encompasses small to medium-scale, on-site manufacturing and production uses including warehousing, light manufacturing, distribution, medical research/laboratory, and assembly operations.

2006 Comprehensive Growth Plan (Background Information):

The site (falls within the boundary of a $\frac{1}{2}$ Mile **Neighborhood**. A $\frac{1}{2}$ Mile Neighborhood (Primary Residential) recommends a residential density of 3 to 9 units per acre and retail /service commercial uses. Suggested zoning districts include: NO, MF1, R9, R12, TND, PRD, PUD.



In summary, the request for a Service Business Conditional Use (SB C201) zoning district is consistent with the recently adopted *2018 Garner Forward Plan*. The *Garner Forward Plan* recognizes the existing industrial development in this area. It does not suggest expanding this industrial area outside of its current boundaries. This rezoning request may be considered reasonable due to the changing conditions in the area as currently reflected in the *Garner Forward Comprehensive Plan*, so long as outdoor storage uses are restricted appropriately.

VI. SITE PLAN PROJECT DATA

- Acreage:** Total project acres 12.09 acres (rezoning portion = 5.02 acres)
- Building Size:** There are 3 buildings being proposed on this site with a building height no greater than 22'. Building #1 is 12,800 sqft, building #2 is 9,600 sqft and building #3 is 6,400. Total square footage for all the buildings is 28,800 sqft.
- Building Materials:** Each building will have brick façade for the front elevation with metal siding for the rear and sides.
- Landscape and Buffer Requirements:** The plan as proposed meets the requirements of the Landscape Ordinance.
- **Tree Cover:** Requirements are met with a combination of existing vegetation and replacement plantings but is planned at a maximum requirement of 12% of the lot area as if the requirement were being met exclusively by replacement plantings.
 - **Street Buffers:** Buffers along Old Stage Road and Sommerville Park Road requirements have been met by adding new plant material.
 - **Perimeter Buffers:** Perimeter buffers vary from 15' to 45' depending on adjacent uses and zoning. The 15' buffer is adjacent to the existing service business zoning district. While the 45' buffers are adjacent to R-20 zoning district.
- Parking Spaces:** Parking is based on 1 parking space per every 400 square feet. The ordinance requires 1 space for every 500 square feet. The developer is imposed more strict parking requirements than what is required.
- Required: 72 (3 accessible)
 - Proposed: 73 (3 accessible)

Environmental Features: This site does not contain a FEMA designated floodplain and slopes generally to the southwest towards the flood zone west of Old Stage Road. There is a protected riparian buffer along the eastern boundary of the site.



Fire Protection: The Inspections Department has reviewed the plan for fire protection and given their approval.

Infrastructure: **Stormwater Management** – This project is subject to nitrogen and water quantity requirements. The developer is proposing one wet detention pond and underground detention to handle detention of the 1, 10 and 25-year storm events. Payment to a private mitigation bank will be required to bring the overall project into compliance with the Neuse Rules.

Transportation/Access – The site has approximately 275 feet of road frontage on Old Stage Road. Old Stage Road is a 22-foot wide Town-maintained facility within a 60-foot right of way. This road currently lacks curb, gutter and sidewalks, but will be improved along the parcel's frontage. Sommerville Park Drive, an NCDOT maintained road, will remain as a ditch section per an exception identified in the UDO for commercial subdivisions and where that road section was approved at the time of initial construction.

Water/Sewer – Public Water is not currently available. However, the 12" water line at the intersection of Vandora Springs Road will be extended north to the site. Construction drawing approval for this extension is required from the City of Raleigh. Sewer service will be provided by an existing private pump station and force main and shall be modified if necessary to serve the proposed new development. Improvements to the private pump station must be approved by the State of North Carolina.



VII. SITE PLAN CONFORMITY WITH ADOPTED TOWN PLANS AND POLICIES

2018 Garner Forward Transportation Plan:

Old Stage Road is designated as a major thoroughfare in the *2010 Garner Transportation Plan*. It is also identified as a future 2-lane divided road in *2018 Garner Forward Transportation Plan*. This project includes the recommended cross-section improvements along its frontage, and therefore, may be found in conformity with the *2018 Garner Forward Transportation Plan* as well as the preceding *2010 Garner Transportation Plan*.

Parks & Recreation, Open Space & Greenways Master Plan:

A review of the Parks and Recreation, Open Space and Greenways Master Plan revealed no other plan recommendations in the project area; therefore, this project, as proposed, may be found in conformity with the Parks & Recreation, Open Space & Greenways Master Plan.

Swift Creek Land Management Plan:

This site is classified as existing New Urban and is subject to the impervious limits of the Plan. Without public sewer, limits are capped at 12%. With sewer, impervious limits may be increased to 30% and 70% if ½" or 1" rainfall is retained respectively. This project, as proposed, is found to be in conformity with the Swift Creek Land Management Plan.



Unified Development Ordinance Regulations:

After sufficient review and plan revisions, staff finds that this project, as now proposed, conforms to the regulations of the Unified Development Ordinance.

VIII. PLANNING COMMISSION NOTES AND RECOMMENDATION

The Planning Commission reviewed this request at their June 11, 2018 meeting. The Planning Commission tabled their action for the project to their June 18, 2018 meeting to get answers from staff on some questions regarding sidewalks and curb and gutter. On a vote of 4 (**Fox, Brignac, Moua, Hogan**) to 1 (**Blasco**), the Planning Commission confirmed staff's findings in Section VII that CUP-SP-18-03, Sommerville Park, is in conformity with adopted town plans and policies, and further accepted the staff statements regarding zoning consistency with the Comprehensive Growth Plan, being detailed in Section V of this report, as their own, and recommended approval of CUD-Z-18-02.

IX. COUNCIL MOTION WORKSHEETS

NOTE: Two separate motions and vote are required.

REZONING ACTION MOTION WORKSHEET

Choose one (1) of the following three (3) options:

- () 1. Find **Consistent** with the Comprehensive Plan and **Approve**:

“I move that the Town Council accept staff’s statements regarding zoning consistency with the Comprehensive Growth Plan, detailed in Section V of this report, as our own; and I therefore move further that the Town Council accept the recommendation of the Planning Commission and adopt Ordinance No. _____ approving rezoning request number CUD-Z-18-02.”

- () 2. Find **Inconsistent** with the Comprehensive Plan and **Deny**:

“I move that the Town Council find the rezoning request inconsistent with the Comprehensive Growth Plan for the following reason(s):

(1) _____
_____;

(2) _____
_____;

(3) _____
_____;

and therefore, I move further that the Town Council reject the recommendation of the Planning Commission and deny rezoning request number CUD-Z-18-02.”

- () 3. Find **Inconsistent** with the Comprehensive Plan and **Approve**:

“I move that the Town Council find that although the rezoning request is inconsistent with the Comprehensive Growth Plan for the following reason(s):

(1) _____
_____;

(2) _____
_____;

(3) _____
_____;

it is reasonable and in the public interest because it will likely (*check as many as appropriate*)

() allow the development of an appropriate density of housing in the area in which it is located;

() allow appropriate types of business at the described location which will provide opportunities for access to goods and/or services useful to the surrounding area;

() allow appropriate types of business at the described location which will provide employment opportunities for citizens;

() allow the types of businesses at the described location which will enhance the Town's economic development;

() allow the types of businesses at the described location which will likely enhance the Town's tax base;

() _____
_____;

() _____
_____;

and therefore, I move further that the Town Council adopt Ordinance No. _____ approving rezoning request number CUD-Z-18-02, and in so doing, also amend the Town's Comprehensive Growth Plan from designating the subject property as ½ Mile Neighborhood to Light Industrial.

(*fill in with appropriate area designation*) _____."

CONDITIONAL USE PERMIT ACTION WORKSHEET

Approve: I move that the Council accept the staff statements regarding plan consistency in Section VII of this report as our own and find the application meets the 10 permit criteria in Section 3.14.D. and therefore approve CUP-SP-18-03, Sommerville Park, with the three standard conditions and four site specific conditions listed on the attached permit.

Optional (conditions – mark, fill in and read all that applies): ...and including the following reasonable conditions necessary to address the impacts of the proposed development on:

- adjoining property,
- the existing natural and man-made features of the site,
- off-site and on-site traffic flow,
- public utilities,
- such other public services or goals of the Comprehensive Growth Plan or the Transportation Plan that may be negatively impacted by the proposed development (*enumerate plan services/goals*):

Condition #1:

Condition #2:

Condition #3, (etc.):

or

Deny: I move that the Council find the application does not meet one or more of the criteria in Section 3.14.D. for granting a special use permit,

(Check and read all that apply – include stated reason/evidence)

- 1. The proposed use will endanger the public health or safety because/as evidenced by _____;
- 2. The proposed use will substantially injure the value of adjoining or abutting property; because/as evidenced by _____;

- ___ 3. The proposed use does not comply with all applicable provisions of this UDO;
because/as evidenced by _____;
- ___ 4. If completed as proposed, the development will not comply with all requirements of this section;
because/as evidenced by _____;
- ___ 5. The proposed use will not be compatible with the proximate area in which it is to be located;
because/as evidenced by _____;
- ___ 6. The proposed use is inconsistent with the Transportation Plan, other relevant adopted plans and policies, and the stated purpose and intent of this UDO (the fact that the use is permitted under certain circumstances in the zoning district creates a rebuttable presumption that the proposed use is in harmony with the intent of the UDO as relates to the general zoning plan);
because/as evidenced by _____;
- ___ 7. The proposed use is incompatible with adjacent uses in terms of building scale, site design, buffering and screening, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts);
because/as evidenced by _____;
- ___ 8. Any significant adverse impacts resulting from the use will not be mitigated or offset, including impacts on the natural environment;
because/as evidenced by _____;
- ___ 9. The public safety, transportation and utility facilities and services will not be available to serve the subject property while maintaining sufficient levels of service for existing development;
because/as evidenced by _____;
- ___ 10. Adequate assurances of continuing maintenance have not been provided;
because/as evidenced by _____;

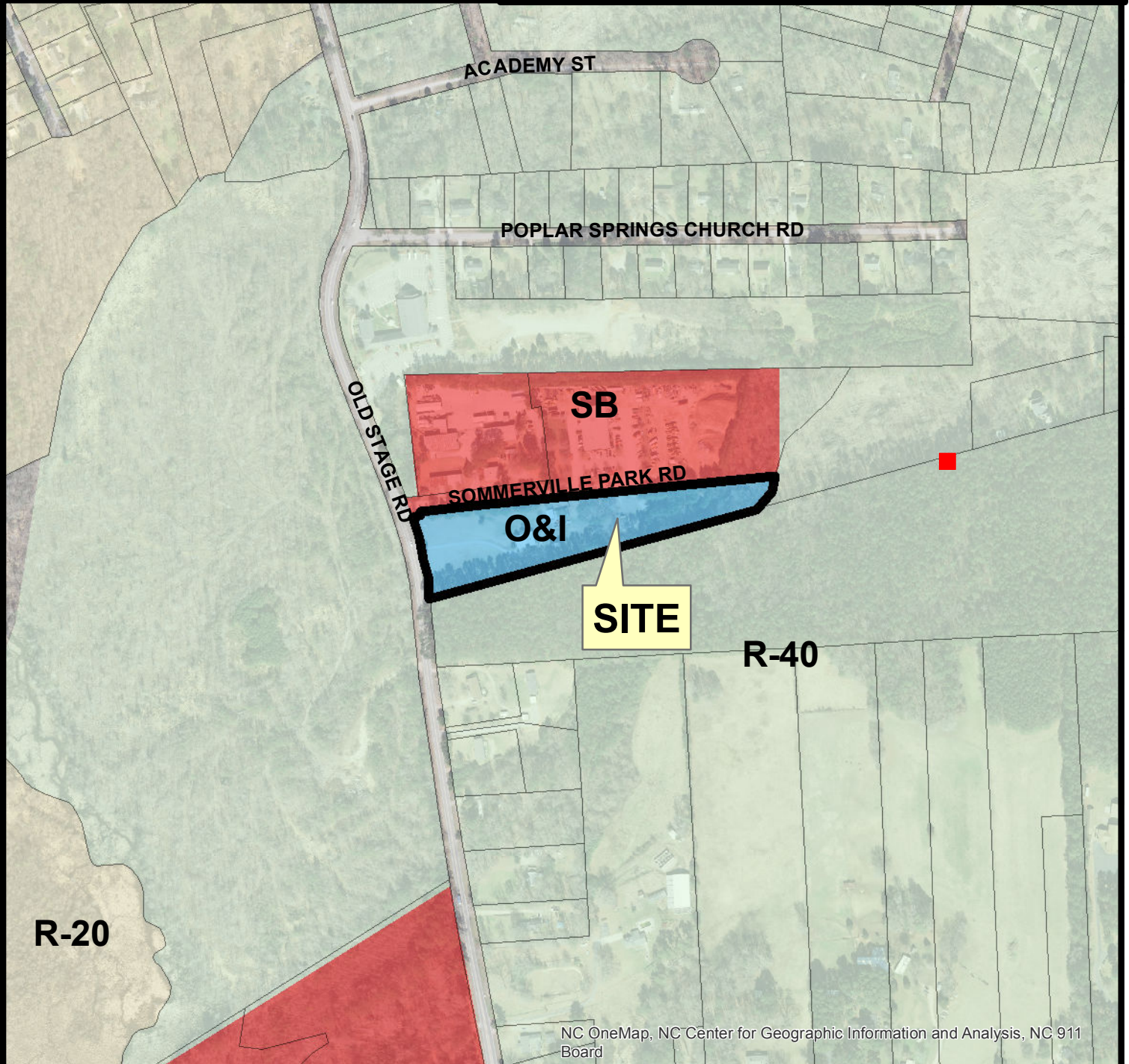
and therefore, deny Conditional Use Permit for Sommerville Park – CUP-SP-18-03.



Town of Garner Planning Department

Conditional Use Applications CUP-SP-18-03 & CUD-Z-18-02

0 250 500
Feet



NC OneMap, NC Center for Geographic Information and Analysis, NC 911 Board

Project: Sommerville
 Applicant: Underfoot Engineering
 Owner: Cencar Properties LLC
 Location: 165 Sommerville Park Rd
 Pin: 5.02-acre portion of 1700378789

Proposed Use: Office / Warehouse flex space
 Current Zoning: Office & Institutional
 Proposed Zoning: Service Business C 201
 (Conditional Use)
 Overlay: None
 Acreage: 5.02
 Site Plan Case: CUP-SP 18-03

Return to:
Stella Gibson
Town of Garner
900 7th Avenue
Garner, NC 27520

ORDINANCE NO. (2018) 3921

AN ORDINANCE AMENDING THE TEXT OF THE GARNER UNIFIED DEVELOPMENT ORDINANCE TO CREATE A NEW CONDITIONAL USE ZONING DISTRICT AND TO AMEND THE OFFICIAL ZONING MAP TO APPLY THE NEW ZONING CLASSIFICATION

WHEREAS, The Town Council has received a petition requesting that a new conditional use zoning district be established and that this new district classification be applied to the applicant's property.

WHEREAS, the Town Council is authorized by the Town Charter to establish conditional use zoning districts:

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF GARNER ORDAINS:

Section 1. That the Official Zoning Map of the Town of Garner and Extraterritorial Jurisdiction be amended by changing the zoning classification of the property described below from its present zoning to that requested by Underfoot Engineering, Inc. in Rezoning Application No. CUD-Z-18-02 (SB C201).

Section 2. There is hereby created a new conditional use zoning district, to be known as the Service Business Conditional Use (SB C201); within this district, all of the regulations that apply to property within the Service Business (SB C201) zoning district shall be applicable and that all other uses are prohibited except those that are listed as permissible shall require a conditional use permit:

The following is a list of permitted uses in the Service Business Conditional Use (SB C201) district.

- | | |
|---|---|
| 1. Civil, service fraternal club, lodges and similar uses | 8. General office use |
| 2. Business School, college or university satellite | 9. Restaurant, indoor with seating only |
| 3. Trade / vocational schools | 10. Restaurant, indoor with drive-through window |
| 4. Medical Clinic | 11. Restaurant, take out only, drive-through or walk up |
| 5. Indoor entertainment facility | 12. Convenience store without fuel sales |
| 6. Bank, financial institution | |
| 7. Medical office, individual | |

- | | |
|--|--|
| <ul style="list-style-type: none"> 13. Repair oriented use (indoor only) 14. Personal service use (indoor operations) 15. Sales oriented use (indoor operations only) 16. Veterinarian/kennel indoor 17. Self-service storage | <ul style="list-style-type: none"> 18. Vehicle repair (storage restricted to rear of building, 30-day storage limit) 19. Flex space 20. Light Industrial use indoor 21. Light Industrial use with outdoor operations 22. Warehouse and freight movement with indoor storage |
|--|--|

Section 3. The official Zoning Map of the Town of Garner is amended by changing the zoning classification of the property identified below and as shown on a map in application file:

Owner(s)	Tract No.	Existing Zoning	New Zoning
Cencar Properties, LLC	Portion of 1700-37-8789	Office & Institutional (O&I)	Service Business Conditional Use (SB C201)

Section 4. The Planning Department shall change the Official Zoning Map displayed for the public to reflect this change immediately following adoption of this ordinance. In addition, a copy of this ordinance shall be filed in the Planning Department.

Section 5. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 6. That the Town Clerk shall cause a duly certified copy of this ordinance to be recorded in the office of the Wake County Register of Deeds.

Section 7. This ordinance shall become effective upon adoption.

Duly adopted this 2nd day July 2018.

Ronnie S. Williams, Mayor

ATTEST: _____
Stella L. Gibson, Town Clerk

**TOWN OF GARNER
CUP-SP-18-03 – SOMMERVILLE PARK
CONDITIONAL USE PERMIT**

APPLICANT	Underfoot Engineering, Inc. Attn: Landon Lovelace, PE 1146 Executive Circle, Suite C-1 Cary, NC 27511
LOCATION	165 Sommerville Park Road
USE	Flex Space, Other Office, Storage (including outdoor)
DATE ISSUED	July 2, 2018

I. COMPLETENESS OF APPLICATION

The application is complete.

II. COMPLIANCE WITH ORDINANCE REQUIREMENTS

The application complies with all applicable requirements of the Unified Development Ordinance.

III. GRANTING THE APPLICATION

The application is granted, subject to the following conditions:

- 1) The applicant shall complete the development strictly in accordance with the plans submitted to and approved by this Town Council, a copy of which is filed in the Town Hall. Any deviations from or changes in these plans must be pointed out specifically to the administrator in writing and specific written approval obtained as provided in the Unified Development Ordinance;
- 2) If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of no effect; and
- 3) All applicable permit approvals shall be obtained by the applicant.

IV. SPECIFIC TO THE PROJECT

1. Prior to issuance of a building permit, a petition for annexation shall be submitted to the Planning Department;
2. The developer will be the responsible party for any improvements as required by NCDOT;
3. Prior to issuance of a building permit, construction drawing approval for public water main extension shall be required; and

4. Prior to issuance of a building permit, approval from the State of North Carolina shall be required for the private pump station.

c: Cencar Properties, LLC
Attn: Lee Smith
165 Sommerville Park Rd.
Raleigh, NC 27603

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: July 2, 2018		
Subject: General Use Rezoning: Z-18-02, 5200 Old Stage Road		
Location on Agenda: Old/New Business		
Department: Planning		
Contact: Het Patel, Senior Planner		
Presenter: Het Patel, Senior Planner		
Brief Summary: Larry Mack is requesting a change in zoning for 1.0 +/- acres from Residential 20 (R-20) to Residential 40 (R-40) General Use. The site is located at 5200 Old Stage Road and can be further identified as Wake County PIN 1701-12-7648. This is a general use request with no conditions proposed. The Public Hearing was held on June 4, 2018, with no concerns from the public. The Planning Commission recommended approval of this request at their June 11, 2018, meeting.		
Recommended Motion and/or Requested Action: Adopt Ordinance (2018) 3922		
Detailed Notes: Please refer to Motion Worksheet at the end of the staff report for assistance in making a motion in conformance with revised state statute.		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations: N/A		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	JT	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

Planning Department Staff Report

TO: Chairman and Planning Commission Members

FROM: Het Patel, AICP; Senior Planner – Transportation and Land Use

SUBJECT: *General Use Rezoning – Z-18-02, Old Stage Road*

DATE: July 2, 2018

I. PROJECT AT A GLANCE

Rezoning Application:	Z-18-02 General Use Rezoning
Applicant:	Larry D. Mack
Owner:	Larry D. Mack
Property Location:	5200 Old Stage Road
Wake Count PIN(s):	1701-12-7648
Area:	1.00 +/- acres
Town Limits:	No
Present Zoning:	Residential 20 (R-20)
Requested Zoning:	Residential 40 (R-40) Note: This is a general use request. No conditions are proposed.
Key Meeting Dates:	
Town Council Public Hearing:	June 4, 2018
Planning Commission:	June 11, 2018
Town Council Action Hearing:	July 2, 2018

II. BACKGROUND / REQUEST SUMMARY

The rezoning Z-18-02 has been submitted to allow construction of a storage garage along with residential use of the property. It is our understanding the proposed use would include a single-family residence and a garage to house personal classic cars. The applicant is requesting to rezone the site from Single-Family Residential (R-20) to Single-Family Residential (R-40).

The reason for the zoning request is that building of storage garage larger than the heated square footage of the house would not be allowed in Single-Family Residential (R-20). This use is however allowed in a Single-Family Residential (R-40) zoned property.

III. ZONING ANALYSIS

Existing: The existing zoning of the 1.00-acre site is **Residential 20 (R-20)**. Residential districts are designed to create and maintain residential neighborhoods composed primarily of single-family dwellings and, as special uses, such institutional, public, and other compatible uses that are designed, constructed and maintained so as not to detract from the quality of each district. R-20 district allows single-family lots of at least 20,000 square feet (.45 acres).

The following is a list of permitted uses in the R-20 district:

- | | |
|---|--|
| 1. Single-family site built and modular homes | 10. Public safety facilities (fire, police, rescue, ambulance) |
| 2. Residential Cluster | 11. Cemetery |
| 3. Family Care home | 12. Public parks, swimming pools, tennis and golf courses |
| 4. Group care home | 13. Religious institutions |
| 5. Intermediate care home | 14. Minor utility—elevated water tank |
| 6. Community center | 15. Private golf course or country club |
| 7. Child day care up to 3 as home occupation | 16. Bed and breakfast |
| 8. Family child day care up to 8 in home | 17. Agriculture or silviculture |
| 9. School public or private | |

Proposed: The proposed zoning of the 1.00-acre site is **Residential 40 (R-40)**. Residential districts are designed to create and maintain residential neighborhoods composed primarily of single-family dwellings and, as special uses, such institutional, public, and other compatible uses that are designed, constructed and maintained so as not to detract from the quality of each district. R-40 district allows single-family lots of at least 40,000 square feet (.92 acres).

The following is a list of permitted uses in the R-40 district.

- | | |
|---|---------------------------|
| 1. Single-family site built and modular homes | 4. Family Care home |
| 2. Residential Cluster | 5. Group care home |
| 3. Manufactured Home | 6. Intermediate care home |
| | 7. Community center |

- 8. Civil, service fraternal clubs, lodges and similar uses
- 9. Child day care up to 3 as home occupation
- 10. Family child day care up to 8 in home
- 11. School public or private
- 12. Public safety facilities (fire, police, rescue, ambulance)
- 13. Cemetery
- 14. Public parks, swimming pools, tennis and golf courses
- 15. Religious institutions
- 16. Minor utility—elevated water tank
- 17. Solar farms
- 18. Telecommunication facility
- 19. Other major utility
- 20. Private golf course or country club
- 21. Horse stables and related facilities
- 22. Bed and breakfast
- 23. Agriculture or silviculture

Adjacent Zoning and Land Uses:

North:	Single-Family Residential (R-20)	Single-Family Residential
South:	Single-Family Residential (R-20)	Single-Family Residential
East:	Single-Family Residential (R-20)	Single-Family Residential
West:	Single-Family Residential (R-20)	Single-Family Residential



Zoning History: The Planning Department’s rezoning database contains the following rezoning cases in this area.

Case	Applicant	Location	Zoning Change
Z-17-01	Town of Garner	ETJ Expansion (west & east side of US 401)	Various from Wake County to Town of Garner
CUD-Z-17-06	Bannister Properties	Fayetteville Road (US 401)	NO to SB C199
CUD-Z-08-02	Homestead Developer	Maxwell Drive	R40 to R9

Overall Neighborhood Character: This area along Old Stage Road is located between Ranch Farm Road and Sunny Lane. This area contains single-family residential land uses. The predominant zoning in this area is Single-Family Residential (R-20). There is a small parcel along Ranch Farm Road, which is zoned Single-Family Residential (R-40). Additionally, parcels to the west along US 401 have a mix of NO, SB, and I-1 zoning.

Infrastructure: **Water/Sewer** – The property does not have access to water or sewer.



Environment – This site is not located within the 100-year flood plain as delineated by the FEMA Flood Insurance Rate Maps.

Transportation – The site has approximately 155 feet of road frontage on Old Stage Road. Old Stage Road is a 22-foot wide NCDOT-maintained facility within a 60-foot right of way. This road lacks curb and gutter and sidewalks. Old Stage Road is classified as a Major Thoroughfare in the

2010 Transportation Plan. The NCDOT average daily traffic count history on Old Stage Road is as follows:

- Year 2009 – 12,000
- Year 2013 – 11,000
- Year 2015 – 11,000

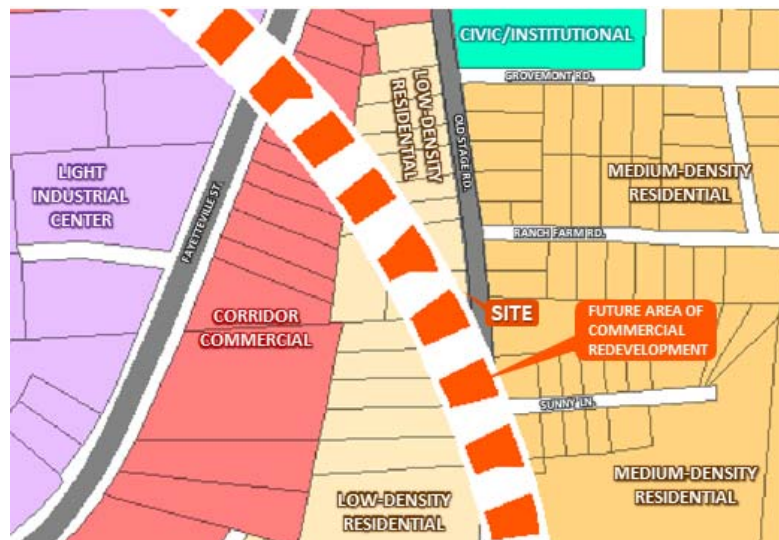
The site is already developed so road improvements will not be required as part of this rezoning. However, if this site is re-developed in the future, road improvements would apply (curb / gutter / sidewalks). We also do not anticipate additional traffic impacts as a result of this rezoning.

IV. STATEMENTS OF ZONING CONSISTENCY WITH THE COMPREHENSIVE PLAN

2018 Garner Forward Plan (Adopted June 19, 2018):

Additionally, on the current draft Plan map, the site and tracts along Old Stage Road in this area are designated as **Low-Density Residential** on the west side of Old Stage Road and Medium-Density Residential on the east side.

The **Low-Density Residential** land use category would be mostly traditional county-approved subdivisions – anything that could be sustained on individual well and septic – with less than two and half (2.5) units per acre.



The site also falls on the edge of **Future Area of Commercial Redevelopment** designation. The Future Land Use Map identified areas of potential redevelopment and activity centers along the US 401 corridor. While this area could re-develop in the future, the timing is uncertain, so the Draft Plan shows the existing conditions and future land use designation as low-density residential for this rezoning site (5200 Old Stage Rd) until such time as conditions change.

2006 Comprehensive Growth Plan (Background Information): This area of Garner was brought into the ETJ in 2017. Unfortunately, the 2006 Comprehensive Growth Plan does not properly account for this area.

According to the *Town of Garner 2006 Comprehensive Growth Plan* map, the rezoning site is entirely within the boundary of the **1/2 Mile Neighborhood Primary Residential Area** which surrounds the



Neighborhood Activity Center at Old Stage Road and Fayetteville Road. A 1/2 Mile Neighborhood (Primary Residential) recommends a residential density of 3 to 9 units per acre and retail /service commercial uses. Suggested zoning districts include: NO, MF1, R09, R12, TND, PRD, PUD.

Since this is a general use rezoning, all allowable Single-Family Residential (R-40) uses must be considered when evaluating this rezoning request.

In summary, the request for R-40 (1.08 units per acre) can be considered consistent with the recently adopted 2018 Garner Forward Comprehensive Plan which suggests Low-Density Residential, and may be considered reasonable due to the existing residential development pattern in this area on large lots with well & septic.

V. RECOMMENDATIONS:

Based on the preceding statements regarding consistency with Town plans and which is being forwarded to the Town Council as their own, the Planning Commission voted unanimously to recommend approval of this request to Town Council.

Staff has no objections to rezoning application Z-18-02 and recommends approval as submitted. Please refer to the Motion Worksheet on the following pages for assistance.

VI. COUNCIL MOTION WORKSHEET:

REZONING ACTION MOTION WORKSHEET

Choose one (1) of the following three (3) options:

- () 1. Find **Consistent** with the Comprehensive Plan and **Approve**:

“I move that the Town Council accept staff’s statements regarding zoning consistency with the Comprehensive Growth Plan, detailed in Section IV of this report, as our own; and I therefore move further that the Town Council accept the recommendation of the Planning Commission and adopt Ordinance No. _____ approving rezoning request number Z-18-02.”

- () 2. Find **Inconsistent** with the Comprehensive Plan and **Deny**:

“I move that the Town Council find the rezoning request inconsistent with the Comprehensive Growth Plan for the following reason(s):

(1) _____
_____;

(2) _____
_____;

(3) _____
_____;

and therefore, I move further that the Town Council reject the recommendation of the Planning Commission and deny rezoning request number Z-18-02.”

- () 3. Find **Inconsistent** with the Comprehensive Plan and **Approve**:

“I move that the Town Council find that although the rezoning request is inconsistent with the Comprehensive Growth Plan for the following reason(s):

(1) _____
_____;

(2) _____
_____;

(3) _____
_____;

it is reasonable and in the public interest because it will likely (*check as many as appropriate*)

() allow the development of an appropriate density of housing in the area in which it is located;

() allow appropriate types of business at the described location which will provide opportunities for access to goods and/or services useful to the surrounding area;

() allow appropriate types of business at the described location which will provide employment opportunities for citizens;

() allow the types of businesses at the described location which will enhance the Town's economic development;

() allow the types of businesses at the described location which will likely enhance the Town's tax base;

() _____
_____;

() _____
_____;

and therefore, I move further that the Town Council adopt Ordinance No. _____ approving rezoning request number Z-18-02, and in so doing, also amend the Town's Comprehensive Growth Plan from designating the subject property as ½ Mile Neighborhood to Low-Density Residential.

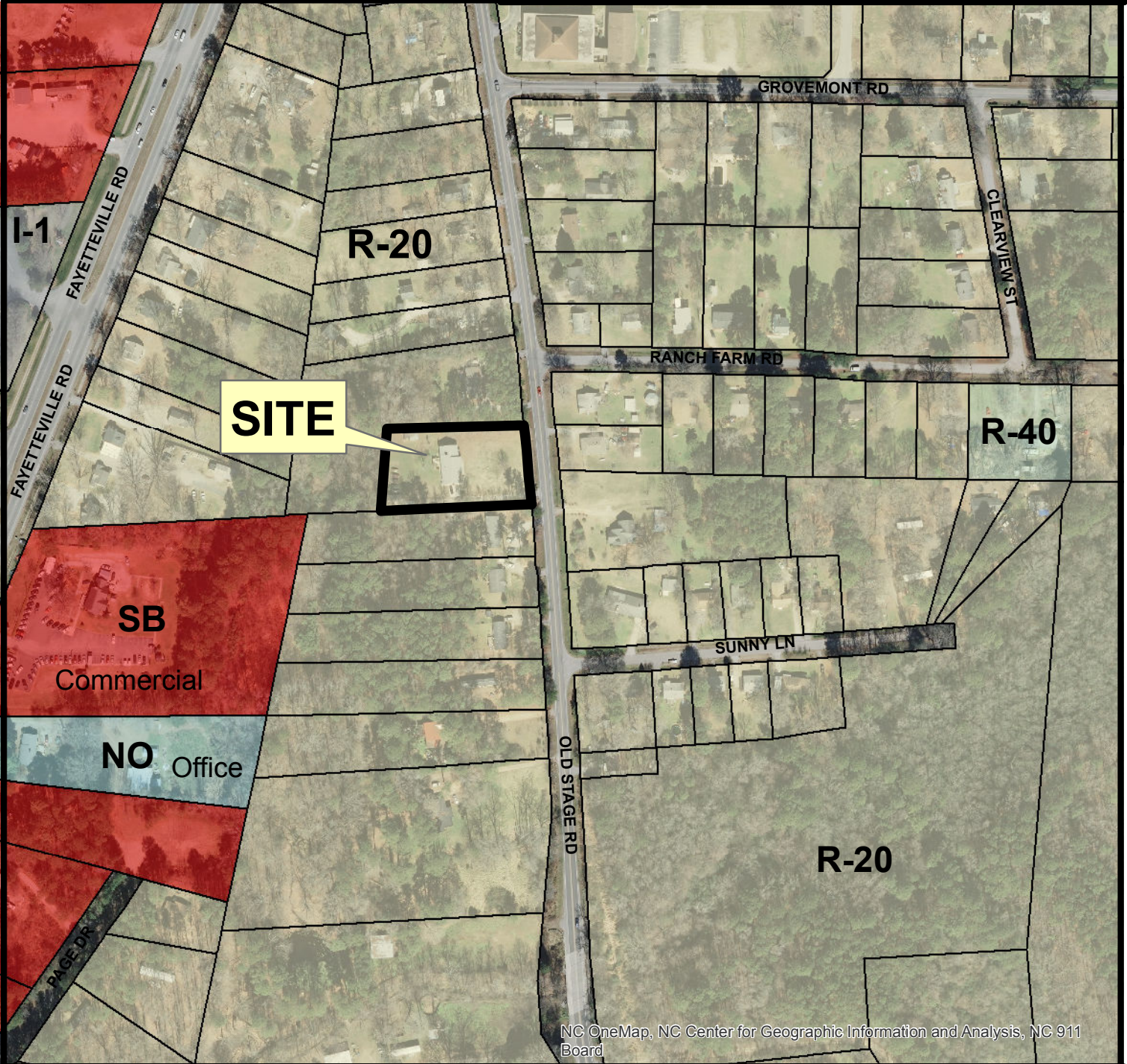
(*fill in with appropriate area designation*) _____."



Town of Garner Planning Department

General Use Applications Z 18-02

0 250 500
Feet



NC OneMap, NC Center for Geographic Information and Analysis, NC 911 Board

Applicant: Larry Mack
Owner: Larry Mack
Location: 5200 Old Stage Road
Pin: 1701127648

Current Zoning: R-20 (residential)
Proposed Zoning: R-40 (residential)
Overlay: Noney
Acreage: 1

Return to:
Stella Gibson
Town of Garner
900 7th Avenue
Garner, NC 27529

ORDINANCE NO. (2018) 3922

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE TOWN OF GARNER AND ITS EXTRATERRITORIAL JURISDICTION

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GARNER:

Section 1. That the Official Zoning Map of the Town of Garner and Extraterritorial Jurisdiction be amended by changing the zoning classification of the property described below from its current zoning of Single-Family Residential 20 (R-20) to Single-Family Residential 40 (R-40) general use district as requested in Rezoning Application No. Z-18-02 by Larry Mack.

1.00 +/- acres further identified as Wake County PIN # 1701-12-7648

Section 2. That all ordinances or portions thereof in conflict with this ordinance are hereby repealed.

Section 3. That this ordinance shall become effective upon its adoption.

Section 4. That the Planning Department shall change the Official Zoning Map displayed for the public to reflect this change immediately following adoption.

Section 5. That the Town Clerk shall cause a duly certified copy of this ordinance to be recorded in the office of the Wake County Register of Deeds.

Duly adopted this 2nd day of July, 2018.

Ronnie S. Williams, Mayor

ATTEST: _____
Stella L. Gibson, Town Clerk

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: July 2, 2018		
Subject: HAZMAT Agreement		
Location on Agenda: Old/New Business		
Department: Garner Volunteer Fire Department		
Contact: Mike Franks, Budget and Special Projects Manager		
Presenter: Mike Franks, Budget and Special Projects Manager		
Brief Summary: The Town of Garner and the City of Raleigh are establishing a service level agreement regarding the delivery of hazardous materials response team services. Previously, Wake County facilitated this agreement between the City of Raleigh and local municipalities. Moving forward, the City of Raleigh is establishing agreements directly with municipalities.		
Recommended Motion and/or Requested Action: Authorize Execution of Agreement		
Detailed Notes: N/A		
Funding Source: Currently budgeted for.		
Cost:	One Time: <input type="radio"/>	Annual: <input checked="" type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations: 		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	MR	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

**SERVICE LEVEL AGREEMENT
BETWEEN
THE CITY OF RALEIGH AND TOWN OF GARNER
REGARDING THE DELIVERY OF
HAZARDOUS MATERIALS RESPONSE TEAM SERVICES**

This Service Level Agreement (the “Agreement” or “Service Level Agreement”), is entered into upon the execution date of this Agreement, (the “Effective Date”), by and between the **CITY OF RALEIGH, NORTH CAROLINA**, a municipal corporation organized under the laws of the State of North Carolina (hereinafter “City of Raleigh” or “City”) and **GARNER, NORTH CAROLINA**, a public body politic and corporate (hereinafter “Garner” or “Jurisdiction”); collectively referred to herein as “the Parties”;

WITNESSETH

WHEREAS, the JURISDICTION’S Governing Body desires to provide the highest level of emergency services possible to the citizens of Garner in the most effective and efficient means possible; and

WHEREAS, the JURISDICTION does not maintain a hazardous materials response team to serve incorporated areas in the JURISDICTION; and

WHEREAS, the CITY maintains a hazardous materials response team to serve areas within its jurisdictional limits; and

WHEREAS, CITY is party to an agreement with the State of North Carolina, through which CITY's hazardous materials response team has been designated as a "Regional Response Team" by the State of North Carolina Department of Public Safety ("Regional Hazardous Materials Emergency Response Team Agreement" executed on July 1, 2016); and

WHEREAS, in the JURISDICTION’S authority, there exists a need to provide a team of competent personnel with adequate equipment and training to respond to emergencies involving chemical, hazardous, radioactive and other toxic or highly dangerous materials in areas under the authority of the JURISDICTION and the CITY that are in addition to the specific class of emergencies for the CITY’s regional hazardous materials response team; and

WHEREAS, it is neither effective nor efficient for each unit of government to create and maintain the full response capacity required for response to such emergencies solely within its own jurisdiction, but it is both effective and efficient to provide for such responses within both jurisdictions using combined resources; and

WHEREAS, the CITY has such an existing hazardous material response capacity and is willing to provide hazardous material response services to and in the JURISDICTION; and

WHEREAS, the Parties pursuant to the authority of Chapter 160A-461 *et seq.* of the North Carolina General Statutes, are authorized to enter into this Interlocal Agreement in order to pursue the above stated goals.

NOW, THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the CITY and JURISDICTION agree as follows:

**ARTICLE I
PURPOSE**

1.01 The purpose of this Agreement is to define the rights and obligations of the JURISDICTION and CITY with respect to the delivery of hazardous materials response team services by CITY to JURISDICTION.

**ARTICLE II
COOPERATION**

2.01 The JURISDICTION and CITY will cooperate and use their best efforts to ensure that the various provisions of this Agreement are fulfilled. The Parties agree in good faith to undertake resolutions of disputes, if any, in an equitable and timely manner and in accordance with the provisions of this Agreement.

**ARTICLE III
DEFINITIONS**

3.01 **AGREEMENT.** “Agreement” means this document as approved by appropriate action through ordinance, resolution, or other method, pursuant to the ordinances, resolutions, or charter of the governing bodies of the JURISDICTION and City.

3.02 **CITY OF RALEIGH MANAGER.** “City of Raleigh Manager” means the Manager of the City of Raleigh, duly appointed by the City of Raleigh Council.

3.03 **FIRE CHIEF.** “Fire Chief” means the Fire Chief of the City of Raleigh Fire Department, duly appointed by the City of Raleigh Manager.

3.04 **FISCAL YEAR.** “Fiscal Year” means the period commencing on July 1 of any calendar year and concluding on June 30 of the following calendar year.

- 3.05 JURISDICTION FIRE CHIEF. “JURISDICTION Fire Chief” means the Fire Chief of the JURISDICTION’s fire department, duly appointed by the JURISDICTION Governing Body.
- 3.06 MATERIAL BREACH. “Material Breach” means a failure by either Party to perform a term of the Agreement which is an essential bargained-for element of the Agreement.
- 3.07 RFD. “RFD” means the City of Raleigh Fire Department.
- 3.08 REGIONAL RESPONSE TEAM. “Regional Response Team” means a team comprised of State of North Carolina Fire & Rescue Commission Certified Hazardous Materials Level 2 or Level II responders (formerly Hazardous Materials Technician) under contract with the State to provide response to a hazardous materials or terrorist emergency at the direction of the Department of Public Safety, Division of Emergency Management.
- 3.09 STATE AUTHORIZED MISSION. “State Authorized Mission” means a hazardous materials incident which has been authorized to respond to by a Regional Response Team by authority of the State Secretary of the Department of Public Safety or his/her designee pursuant to the N.C. Guidelines for tiered response or for emergency response when it meets the guidelines for a tiered response.

ARTICLE IV TERM

- 4.01 INITIAL TERM. The term of this Agreement shall begin on the Effective Date and shall continue through June 30, 2019 (the “Initial Term”).
- 4.02 RENEWAL TERM(S). Upon the expiration of the Initial Term, this Agreement shall automatically be renewed for up to ten (10) successive additional one (1) year terms running concurrent with the fiscal year (July 1-June 30), unless either Party terminates this Agreement in accordance with Article V.

ARTICLE V TERMINATION AND AMENDMENT

- 5.01 TERMINATION BECAUSE OF MATERIAL BREACH. In the event that either Party materially breaches this Agreement; the other Party shall deliver written notice of the breach and request to cure. If such breach is not cured within thirty (30) days of the written notice thereof, the non-breaching Party may, without further notice or demand, in addition to all other rights and remedies provided in this Agreement, at law or in equity, terminate this Agreement and recover any damages to which it is entitled as a result of said breach.

- 5.02 **TERMINATION UPON SIX (6) MONTH'S NOTICE.** Either Party may terminate its participation in this Agreement, with or without breach, by giving written notice to the other Party of intent to terminate, at least six (6) months prior to the termination date, or effective date of the renewal term.
- 5.03 **TERMINATION UPON FAILING TO MAKE FINANCIAL COMMITMENTS.** In the event that either Party fails to properly authorize and appropriate any necessary financial commitments, including execution of an Amendment as required, the other Party may, but is not required, to deliver written notice of intent to terminate within thirty (30) days. The Parties agree to exercise good faith efforts to participate in the Amendment process. If the required Amendment is not executed, then the termination is effective upon the expiration of the thirty (30) days, unless extended by agreement of the Parties. This provision is intended to be used to ensure a pre-audited funding commitment from each party.
- 5.04 **BANKRUPTCY/INSOLVENCY.** If any Party applies for or consents to the appointment of a receiver, trustee or similar officer for it or any substantial part of its property or assets, or any such appointment is made without such application or consent by such Party and remains undischarged for sixty (60) days, or files a petition in bankruptcy or makes a general assignment for the benefit of creditors, then such action shall constitute a material breach of this Agreement not requiring notice and opportunity to cure, and the other Party may terminate effective immediately.
- 5.05 **COOPERATION.** In the event of termination pursuant to any subsection hereunder, the terminating Party shall **not** be relieved of any existing and unperformed obligations, including funding obligations, incurred up until the effective date of termination.
- 5.06 **NON-EXCLUSIVE REMEDIES.** No remedy provided in this Agreement shall be considered exclusive of any other remedy in law or in equity.
- 5.07 **NOTICE.** Any written or electronic notice required by this section shall be delivered to the Parties at the following addresses:

For City of Raleigh: City Manager
City of Raleigh
Post Office Box 590
Raleigh, NC 27602

With a copy to City Attorney
City of Raleigh
Post Office Box 590
Raleigh, NC 27602

For Garner: Garner Town Manager
900 7th Avenue
Garner, NC 27527

With a copy to Garner Town Attorney
900 7th Avenue
Garner, NC 27527

- 5.08 Notices shall be deemed delivered on the date sent if addressed as set forth herein. Either party may notify the other of a change of address, which will only be effective by written notice. As necessary, day to day communication may occur between the JURISDICTION and City. All issues of concern discussed by either party must be resolved within 30 business days or in a mutually agreed time in writing.
- 5.09 AMENDMENT. If any Party desires to amend the terms or conditions of this Agreement, then the proposed amendment and the reasons for the proposed amendment shall be communicated in writing to the other Party. If the Parties agree to the proposed amendment, then the amendment shall be effected by entering a written amendment to the Agreement. An amendment that does not change the substantive or financial commitments of the Agreement may be executed by the JURISDICTION Fire Chief and the City of Raleigh Manager. Any other amendment to the terms of this Agreement to be effective must be in the form of a written instrument properly authorized and executed by the governing boards of each Party to this Agreement. Any amendment to this Agreement to be effective must be in writing and signed by both Parties.
- 5.10 This amendment shall be authorized and executed by the governing boards of the Parties, and pre-audited by the respective Finance Officers of each Party making a financial commitment.

ARTICLE VI PERSONNEL STATUS

- 6.01 FIRE CHIEF and all RFD personnel referred to in this Agreement shall be employees of the City, shall be under the direction and control of the City, and subject to all City personnel policies and ordinances. The City shall follow its standard procedures in employing RFD personnel.

ARTICLE VII VEHICLES AND EQUIPMENT

- 7.01 The CITY shall purchase and equip all necessary hazardous materials response team vehicles and equipment to ensure proper operation as a Regional Response

Team, and that all such property purchased by the CITY shall remain the property of the CITY.

- 7.02 Any vehicles or equipment owned by the JURISDICTION prior to and during this agreement shall remain the property of the JURISDICTION.
- 7.03 Both Parties shall be responsible for the maintenance and replacement of vehicles and equipment in which they own.

**ARTICLE VIII
ANNUAL PAYMENT OF SERVICES**

- 8.01 The annual payment of services to be paid to the CITY by the JURISDICTION is for the CITY to maintain the readiness, appropriate manpower, available equipment and vehicles, and training of personnel to adequately respond and mitigate hazardous materials incidents outside of the CITY, but within the JURISDICTION's authority.
- 8.02 The JURISDICTION shall pay to the CITY an annual amount cost share based on the current annual hazardous materials program costs of the CITY and a pro rata share of the JURISDICTION's population as compared to the population of Wake County as a whole. The annual population figure shall be provided and updated annually by the Wake County Planning Department. The CITY shall provide updated annual amounts to the JURISDICTION before the start of each fiscal year with an updated Exhibit B.
- 8.03 The JURISDICTION shall remit payment to the CITY for the current fiscal year in one (1) lump payment, due before the end of July, OR in two (2) increments, with the first payment due before the end of July and the second payment due before the end of January. If the JURISDICTION utilizes two (2) payments, the first payment shall be 50% of the total annual amount due to the CITY. The second payment shall be the remaining balance due of the annual payment to the CITY.

**ARTICLE IX
PER INCIDENT PAYMENT OF SERVICES**

- 9.01 The per incident payment of services to be paid to the CITY by the JURISDICTION is to reimburse the CITY for when the following costs are incurred by the CITY as result of an actual incident that requires a hazardous materials team response:
 - a. For incidents exceeding eight (8) hours in duration that do not meet the requirements of a state-authorized mission, per the fee schedule detailed in

Exhibit C. The billable rates are per hour per person dispatched to the incident. When such instances occur, the CITY will invoice the JURISDICTION for the amount due.

- b. For incidents that require the use of supplies and equipment that must be replaced to maintain program readiness. When such instances occur, the CITY will invoice the JURISDICTION for the amount due, regardless of the incident duration, if not declared a state-authorized mission.
 - c. For any municipality/jurisdiction that does not participate in an annual payment of services. When this occurs, the billable hours begin at time of dispatch to the in-service time of the hazmat units, per hour per person as detailed in Exhibit C, unless declared a state-authorized mission.
- 9.02 Any per incident payment of services due to the CITY from the JURISDICTION as result of a hazardous materials response incident shall be separate and apart from the annual payments due to the CITY by the JURISDICTION pursuant to Article VIII of this Agreement.
- 9.03 The JURISDICTION may attempt to collect reimbursement for per incident costs for when a responsible party exists that is deemed responsible for the incident, however any amount due to the CITY shall be paid directly by the JURISDICTION.
- 9.04 The CITY shall notify the JURISDICTION of any reimbursement of the CITY from the State of North Carolina for any authorized regional hazardous materials team response in the JURISDICTION but outside the CITY's corporate limits. The CITY shall request STATE mission numbers for any incident that may be covered.
- 9.05 The CITY shall reimburse JURISDICTION for the JURISDICTION's portion of revenues received from the State of North Carolina for regional hazardous materials emergency response services. In no event shall the CITY receive compensation from the State of North Carolina and the JURISDICTION for the same services without reimbursing the JURISDICTION for the JURISDICTION's proportional share of revenues qualifying for the reimbursement.
- 9.06 The Parties shall each provide to the other any requested copies of documentation of payment or reimbursements of fees for services or expenses from a third party.

ARTICLE X
SCOPE OF SERVICES

- 10.01 The CITY agrees that, pursuant to its designation as a state "Regional Response Team," and for the duration of this Agreement, it shall (a) take such action(s) as required to maintain and retain "Regional Response Team" status, and (b) diligently pursue all reimbursements to which CITY is entitled by its agreement with the State of North Carolina in connection with its "Regional Response Team" status.
- 10.02 The CITY shall maintain a trained hazardous materials team and appropriate levels of supporting equipment and personnel as required by CITY's agreement with the State of North Carolina in connection with its "Regional Response Team" status.
- 10.03 The CITY shall allow designated JURISDICTION officials to activate the hazardous materials team for incidents occurring outside the CITY and within their respective territorial boundaries.
- 10.04 The CITY shall utilize the National Incident Management System and supporting standard operating procedures when responding to hazardous materials incidents, provided that control of conditions associated with containment of hazardous material and directions for reduction of public exposure will be under the authority of the hazardous materials team.
- 10.05 The CITY shall ensure that RFD employees responding to hazardous materials incidents are trained to the appropriate level of response as required by CITY's agreement with the State of North Carolina in connection with its "Regional Response Team" status.
- 10.06 The CITY shall assist, to the extent possible, in the identification of persons, or entities responsible for hazardous materials incidents so that JURISDICTION and/or the State of North Carolina may pursue collection of funds from the responsible parties.
- 10.07 The CITY shall designate a representative to meet and confer with JURISDICTION representatives to discuss the overall management of hazardous material response operations and to serve as a central point of contact with the JURISDICTION.
- 10.08 The CITY shall complete and submit a hazardous materials response form at the conclusion of each response to the JURISDICTION but outside the corporate limits of the CITY. The form attached hereto and incorporated herein as Exhibit A, ("Hazardous Materials Response Form") will detail supplies and equipment consumed during the response.

- 10.09 To extent permitted by North Carolina law, the CITY shall defend, indemnify and hold harmless the JURISDICTION from all loss, liability, claims or expenses arising out of bodily injury, including death, to any person or persons or property damage caused solely by the negligence or willful misconduct of the CITY, except to the extent the same are caused by the negligence or willful misconduct of the JURISDICTION. Notwithstanding the above, nothing herein shall be construed to be a waiver of the CITY’S defense of governmental immunity. Notwithstanding the foregoing, to the extent that CITY does not purchase a contract of insurance to meet this requirement, CITY shall not be deemed to have waived its governmental immunity as otherwise provided by law.
- 10.10 The JURISDICTION shall serve as the liaison between the CITY’s hazardous materials response team and any responding agency within the JURISDICTION, so that in the event of an incident, a coordinated working relationship for the safety of the public and all personnel involved will be enhanced.
- 10.11 The JURISDICTION shall participate in joint training sessions at JURISDICTION’s discretion with the CITY to build a stronger working relationship.
- 10.12 The CITY and JURISDICTION AGREE that the following compensation received by the CITY from the State of North Carolina for regional hazardous materials response services are subject to proportional reimbursement by the CITY to the JURISDICTION during the end-of-year reconciliation only to the extent that such compensation is actually received by CITY:
- a. Compensation for training, workers compensation, program administration, or any other administrative compensation excluding “response costs” as defined by the State of North Carolina as “expenses resulting from the activation, demobilization, administrative activities and costs incurred by the regional response team in responding to, mitigating, and the recovery from an authorized hazmat or terrorist incident.”
 - b. “Response costs” as defined by the State of North Carolina for any authorized regional hazardous materials team response to a hazmat or terrorist incident in JURISDICTION but outside the corporate limits of CITY.

ARTICLE XI COMPLAINTS AND APPEALS

- 11.01 Complaints from the parties to this Agreement shall be forwarded to the FIRE CHIEF or his/her designee, as soon as possible. In the event that the complaint

pertains to the FIRE CHIEF, complaint should be filed with City Manager or his/her designee.

- 11.02 In the event that either (or both) of the parties to this Agreement disagree with the action of the FIRE CHIEF or his/her designee, the parties to this Agreement may appeal the directive or action to the City OR JURISDICTION Fire Chief as appropriate.
- 11.03 The parties further agree not to take or support any action that would impair the delivery of hazardous materials services, including (but not limited to) actions that would unnecessarily slow the response of said services or create confusion among the parties.

ARTICLE XII MODIFICATION

- 12.01 Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement and signed by the parties hereto.

ARTICLE XIII RECORDS AND INSPECTION

- 13.01 The JURISDICTION and the City agree that each party hereto, will cooperate with the State, JURISDICTION, or municipal Auditor, or any of their duly authorized representatives, at any time during normal business hours; and further, that such auditor shall have access to, and the right to examine, audit, excerpt, and transcribe any books, documents, papers, and records, which are pertinent to the accounting practices and procedures of the other party hereto and involve transactions relating to this Agreement.
- 13.02 The JURISDICTION and the City agree to maintain all records relative to this Agreement during the period in which hazardous materials response services are used as defined in this Agreement, and for an additional period as prescribed by law, or absent such prescription, for five (5) years beyond the expiration date of the Agreement.
- 13.03 In the event that legislation is passed by either the United States Congress or the North Carolina General Assembly delimiting public access to the financial, operational, or other relevant records of public safety systems, the State, JURISDICTION, or municipal auditor conducting such review shall, to the extent permitted by law, agree to maintain as confidential any information or data permitted to be excluded from public access and review. Such protected information and data shall, to the extent permitted by law, not be included in

written findings of an auditor nor discussed in any forum open to the public. The JURISDICTION Attorney, shall identify, in writing, the information or data excluded from public access and review, and shall provide the list of exclusions to each party to this Agreement and to the City Attorney of the City of Raleigh. The JURISDICTION and the City agree to include such restrictions in any public solicitations or contracts for audit services.

ARTICLE XIV DATA PRIVACY

- 14.01 City and JURISDICTION agree to abide by all applicable Federal and State laws and regulations and confidential information concerning individuals and/or data including, but not limited to information made non-public by such laws or regulation.

ARTICLE XV RELATIONSHIP OF PARTIES

- 15.01 Wake JURISDICTION and the City of Raleigh are, and shall remain, independent contractors with respect to any service or function performed under this Agreement. Except as provided for in this Agreement, each Party shall select the means, method, and manner of performing their respective services herein. Each party is an independent contractor and shall not represent itself or be deemed as an officer, agent or employee of the other party for any purpose. Nothing under this Agreement is intended or should be construed in any manner to create a partnership or venture between the Parties.
- 15.02 Each party agrees that it will obey all State and Federal statutes, rules, and regulations which are applicable to any responsibility or duty outlined herein. The JURISDICTION represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement. Any personnel of the JURISDICTION, the City, or other persons engaged in the performance of any work or services under this Agreement, shall have no contractual relationship with any other party, and shall not be employees of any other party. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind whatsoever from the other party, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Re-Employment Insurance, disability, severance pay, or retirement.
- 15.03 Any claims that might arise under the Unemployment Compensation Act, the Worker's Compensation Act of the State of North Carolina, or any other applicable Federal or State law, rule, or regulation on behalf of said personnel, arising out of employment or alleged employment, including, without limitation,

claims of discrimination against either party, its officers, agents, contractors, or employees, shall in no way be the responsibility of the other party. To the extent permitted, and as limited by North Carolina law, each party shall defend, indemnify, and hold the other party, its officers, agents, and employees harmless from any and all such claims.

**ARTICLE XVI
NON-ASSIGNMENT**

16.01 Neither party shall assign any portion of this Agreement or the rights and responsibilities hereunder to another person or entity who is not a party to this Agreement without the prior written consent of the other party to this Agreement.

**ARTICLE XVII
NON-APPROPRIATION**

17.01 Wake JURISDICTION and the City of Raleigh are governmental entities, and the Agreement validity is based upon the availability of public funding under the authority of their respective statutory mandates.

17.02 In the event that funds are not available and not appropriated to the program specified in this Agreement, then this Agreement shall automatically expire without penalty to either party.

17.03 It shall be the duty of the CITY to inform the JURISDICTION in the event of non-appropriation or if program funding changes plus or minus 10%.

17.04 In the event of a legal change in either party's statutory authority, mandate, and mandated functions which adversely affects the authority to continue performing obligations under this Agreement, then this Agreement shall automatically expire without penalty to either party.

**ARTICLE XVIII
NO THIRD-PARTY BENEFICIARIES**

18.01 This Agreement is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the Parties hereto, and shall not confer any rights or remedies upon any person or entity other than the Parties hereto.

**ARTICLE XIX
NO WAIVER OF SOVEREIGN IMMUNITY**

19.01 Nothing in this Agreement shall be construed to mandate purchase of insurance by JURISDICTION pursuant to N.C.G.S. 153A-435; or to be inconsistent with JURISDICTION's "Resolution Regarding Limited Waiver of Sovereign Immunity" enacted October 6, 2003; or to in any other way waive either Party's defense of sovereign or governmental immunity from any cause of action alleged or brought against JURISDICTION or City of Raleigh for any reason if otherwise available as a matter of law.

**ARTICLE XX
NO WAIVER OF QUALIFIED IMMUNITY**

20.01 No officer, agent or employee of either Party shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

**ARTICLE XXI
ENTIRE AGREEMENT, MERGER, MODIFICATION**

21.01 The entire Agreement between the parties is contained herein and that this Agreement supersedes all oral arguments, previous written agreements, and negotiations between the JURISDICTION and the City regarding hazardous materials response services. Notwithstanding the above, it is the intent of the parties that the rights and obligations of this Agreement shall be applicable solely to the hazardous materials response services outlined herein.

21.02 Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement and signed by the parties hereto.

**ARTICLE XXII
SEVERABILITY**

22.01 If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.

**ARTICLE XXIII
COUNTERPARTS**

23.01 This Agreement may be executed in several counterparts, each of which shall be deemed an original.

**ARTICLE XXIV
NON-DISCRIMINATION**

24.01 To the extent permitted by North Carolina law, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Agreement. The parties further agree, to the extent permitted by law, to conform with the provisions and intent of City of Raleigh Ordinance 1969-889, as amended. This provision is hereby incorporated into this Agreement for the benefit of the City of Raleigh and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as provided by law. This provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this Agreement.

**ARTICLE XXV
APPLICABLE LAW**

25.01 All matters relating to this Agreement shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Agreement shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

25.02 The JURISDICTION and the City agree to comply with all applicable Federal and State laws, as well as local ordinances relating to non-discrimination, affirmative action, public purchases, contracting, employment including worker's compensation and state labor wage provisions, and surety deposits required for construction contracts.

**ARTICLE XXVI
E-VERIFY**

26.01 The Parties shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly

hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq.

**ARTICLE XXVII
IRAN DIVESTMENT**

27.01 Any vendor hired by the City to perform work related to this agreement shall comply with the requirements of the Iran Divestment Act by certifying that 1) it does not appear on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143-6A-4 and published on the State Treasurer's website at www.nctreasurer.com/Iran and 2) it will not utilize any subcontractor that appears on the Final Divestment List in the performance of duties under this Agreement.

**ARTICLE XXVIII
FORCE MAJEURE**

28.01 Neither the JURISDICTION nor the City shall be liable for any failure, delay or interruption in service or for any failure or delay in the performance of any obligation under this Agreement due to strikes, walkouts, acts of God, governmental restriction, enemy action, civil commotion, unavoidable casualty, unavailability, or other similar acts beyond the reasonable control of either Party.

**ARTICLE XXIX
INCORPORATION OF DOCUMENTS/COMPLETE AGREEMENT**

29.01 This Agreement, and any documents incorporated by reference, including specifically Exhibit A, Exhibit B, and Exhibit C, represents the entire Agreement between the parties and supercedes all prior oral or written statements, or agreements between the parties for hazardous materials response team services for any incorporated or unincorporated area of Wake County. The City of Raleigh may enter into separate agreements for hazardous materials response team services for any incorporated areas of Wake County directly with the municipalities served.

29.02 Specifically incorporated into this Agreement are the following attachments, or if not physically attached, are incorporated fully herein by reference:

- Exhibit A – Hazardous Materials Response Form
- Exhibit B – Hazardous Materials Response Distribution of Costs
- Exhibit C – Hazardous Materials Response Fee Schedule

In cases of conflict between this Agreement and any of the above incorporated attachments or exhibits, the terms of this Agreement shall prevail.

[THE REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, intending to be legally bound hereby, and with the authority vested in them by resolution of their respective governing boards, the parties have caused this Interlocal Agreement to be executed and delivered as of the date first above written.

<p>CITY OF RALEIGH, NORTH CAROLINA</p> <p>By: _____ City Manager</p>	<p>This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Finance Officer City of Raleigh, North Carolina</p>
<p>ATTEST:</p> <p>By: _____</p> <p>Clerk</p> <p>[Seal]</p>	<p>This instrument is approved as to form and legal sufficiency.</p> <p>_____</p> <p>City Attorney</p>
<p>GARNER, NORTH CAROLINA</p> <p>By: _____ Town Manager</p>	<p>This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Finance Director Garner, North Carolina</p>
<p>[Seal]</p> <p>ATTEST:</p> <p>_____</p> <p>Clerk</p>	<p>This instrument is approved as to form and legal sufficiency.</p> <p>_____</p> <p>Town Attorney</p>