

1. Agenda Packet

Documents:

[JANUARY 15, 2019 AGENDA PACKET.PDF](#)

2. Meeting Materials

Documents:

[AFTER ACTION MEMORANDUM.PDF](#)

AGENDA



CITY OF LENOIR
CITY COUNCIL MEETING
905 WEST AVENUE
TUESDAY, JANUARY 15, 2019
6:00 P.M.



I. CALL TO ORDER

- A. Moment of Silence & Pledge of Allegiance

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

- A. No Through Trucks; Bradford Street and Lutz Street: A public hearing will be held to consider a request as submitted by City Staff, Public Works and the Police Department to consider designating a portion of Bradford Street SW and Lutz Street SW (in its entirety) with “No Through Truck” signage. The public right-of-way width of Bradford Street is twenty-five feet, and the public right-of-way width of Lutz Street is sixteen feet. These streets are located in the R-6 Residential Zoning District. A portion of Bradford Street is used as the primary truck access for an industry. The posting would not include this portion of Bradford Street. **Note:** The City of Lenoir’s Charter Code of Ordinances, Appendix B, Traffic, Section 123 – “No through Trucks” will be amended to include this portion of Bradford Street SW and Lutz Street SW (in its entirety) as “No through Trucks”.
- B. Conditional Use Permit; Resurrection Hope Church of God: A quasi-judicial public hearing will be held to consider a Conditional Use Permit for property located at 732 Stacey Place, NCPIN#2758052325, for a proposed youth day care with the following conditions:
1. Student attendance is limited to a maximum of 23 students on site at any given time.
 2. Any new lighting for the daycare use shall be fully cut-off and shielded so as to eliminate and minimize light spill-over onto adjacent residential properties.
 3. Traffic flow of the student drop off line must allow for five stacking spaces before the drop off point, as well as an adequate turn radius for cars exiting the parking lot. This may be accomplished through temporary setup of cones and barriers, in order to allow the parking lot to function normally during off-hours and church use.
 4. Additional ground-mounted signage is allowed for one sign no taller than 3-feet and limited to 3.2 square-feet of sign copy area. Reconfiguration of copy area on the existing church monument sign to include day care signage is allowed. Signs of corrugated plastic are prohibited.
 5. Valid permits and inspections must be obtained for this use, including and any other federal, state, or local regulation that applies.
 6. If the use has not been established within 24 months of the adoption of the Conditional Use Permit, the approval shall be considered null and void.

- C. Ordinance; Conditional Zoning District; 211 Arrowood Street: A public hearing will be held to consider adoption of an Ordinance designating 211 Arrowood Street comprised of 48.5 acres, more or less, as Conditional Zoning District #5 (CZ-5) on the City's Official Zoning Map; directing amendment of the Official Zoning Map; providing for severability, and an effective date.
- D. Ordinance; Communication Towers and Small Wireless Facilities: A public hearing will be held to consider adoption of an Ordinance which contains language for the regulation of small wireless facilities, as well as a modification to the existing regulations for communication towers to allow for tower heights up to 165-feet (an increase from the current maximum height of 110-feet) in the City limits. **Note:** These changes are proposed in order to ensure consistency with federal and state law and to provide better opportunities for cell coverage for the citizens of Lenoir-especially related to the expansion of 5G technology.
- E. Zoning Request; 515 Realty Street: A public hearing will be held to consider a Zoning Request for property located at 515 Realty Street, NCPIN#2749638920, to be rezoned from General Business (B-2) to Heavy Industrial (I-2) for the purpose of industrial development.

III. CONSENT AGENDA ITEMS

- A. Minutes: Approval of the minutes of the City Council Meeting of Tuesday, December 4, 2018, as submitted.
- B. Capital Project Ordinance; Fire Station III: Approval of a Capital Project Ordinance in the amount of \$1,635,615.00 for the Fire Station III Capital Project.
- C. FY2018-2019 Budget Amendments: Approval of Budget Amendment Ordinance 2019-01 in the amount of \$528,560.00 for the FY2018-2019 Fiscal Year.
- D. FY2018-2019 Annual Audit Contract: Approval of the FY2018-2019 Annual Audit Contract in the amount of \$31,533.00 as submitted by S. Eric Bowman, PA.
- E. City Council Meeting Time Change: Due to the 2019 Caldwell Chamber of Commerce Annual Dinner being held on February 5, 2019, it is requested that City Council begin their regular meeting at 5:00 p.m., in lieu of 6:00 p.m. The meeting will be held at the City/County Chambers located at 905 West Avenue.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

- 1. City offices will be closed on Monday, January 21 in observance of the Martin Luther King, Jr. Holiday.
- 2. The Committee of the Whole will meet on Tuesday, January 22 at 8:30 a.m. at City Hall, Third Floor, former Council Chambers.
- 3. The Planning Board will meet on Monday, January 28 at 5:30 p.m.
- 4. The Foothills Regional Airport₂Authority will meet on Wednesday, January 30 at noon.

5. City Council will conduct its annual Planning Retreat on Friday, February 15 at 8:00 a.m. at Blue Ridge Electric Corporation's Meeting Room.

B. Items for Council Action

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

- A. Announcement; Planning Board Vacancy: Mayor Gibbons will announce for the general public that a vacancy exists on the Lenoir Planning Board due to Merlin Perry's retirement off of the Board. Interested individuals may apply online at www.cityoflenoir.com or pick up an application at City Hall located at 801 West Avenue.

IX. REPORT AND RECOMMENDATIONS OF COUNCIL MEMBERS

- A. Closed Session: Pursuant to N.C.G.S. §143-318.11(a), (6), City Council will enter into closed session to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee.

X. ADJOURNMENT

CITY OF LENOIR
COUNCIL ACTION FORM

I. Agenda Item:

Call for Public Hearing: Amendment of the City of Lenoir Charter Code of Ordinances, Appendix B, Traffic, Section 123. – “No through trucks”. The Public Hearing date will be January 15, 2019.

II. Background Information:

Due to an increase in heavy vehicular traffic on and around Bradford Street SW and Lutz Street SW, and traffic related incidents resulting in damage to public and private property, City staff with the Public Works Department and Police Department wish to post a portion of Bradford Street SW and Lutz Street SW (in its entirety) with “No Through Trucks” signage. The public right-of-way width of Bradford Street is twenty-five feet, and the public right-of-way width of Lutz Street is sixteen feet. These streets are located in the R-6 Residential Zoning District. A portion of Bradford Street is used as the primary truck access for an industry. The posting would not include this portion of Bradford Street.

III. Staff Recommendation:

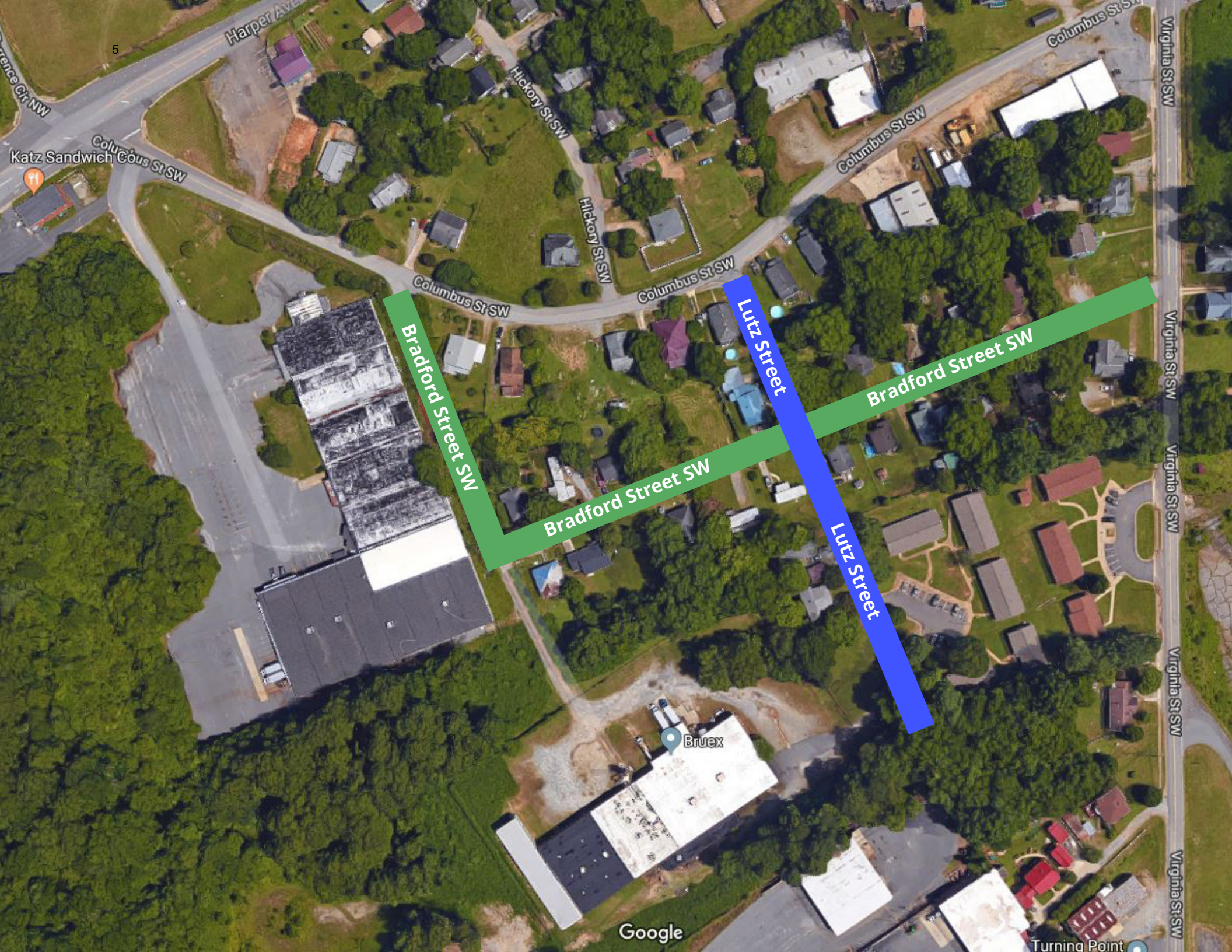
Call for a public hearing to consider amending Appendix B, Traffic, Section 123, on December 04, 2018

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Planning Director: _____



5

Harper Ave

Katz Sandwich Co

Columbus St SW

Hickory St SW

Hickory St SW

Columbus St SW

Columbus St SW

Columbus St SW

Columbus St SW

Virginia St SW

Virginia St SW

Virginia St SW

Virginia St SW

Virginia St SW

Bradford Street SW

Lutz Street

Bradford Street SW

Bradford Street SW

Lutz Street

Bruex

Google

Turning Point



6

Harper Ave

ence Cr NW

Katz Sandwich Co

Columbus St SW

Hickory St SW

Hickory St SW

Columbus St SW

Columbus St SW

Columbus St SW

Virginia St SW

Virginia St SW

Virginia St SW

Virginia St SW

Virginia St SW

Bradford Street SW

Lutz Street

Bradford Street SW

Lutz Street

Bradford Street SW

Bruex

Google

Turning Point

CITY OF LENOIR**COUNCIL ACTION FORM: Jan 15, 2019****I. Agenda Item:**

Conditional Use Permit for a Day Care use inside Resurrection Hope Church of God in the Multi-Family (R-9) zoning district.

II. Background Information:

Staff report is attached.

III. Staff and Planning Board Recommendation:

Planning staff and the Planning Board recommend that City Council approval of the Conditional Use Permit, with the conditions as presented.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Planning Director:  _____



Staff Report

Conditional Use Permit

CASE NUMBER CUP #2/18

LOCATION MAP/AERIAL PHOTOGRAPH



Subject Property

732 Stacey Place



Proposed Use
will be in building
marked with red.



SUMMARY

Owner

Church of Resurrection Hope

Applicant

Angie Meadows

Location

732 Stacey Pl, off of Walt
Arney Road, north of South-
west Blvd

NC PIN

2758052325

Project Planner

Hannah Williams

Updated Dec 4, 2018

Applicant's Request:

The applicant is requesting a Conditional Use Permit for a Nursery Schools & Day Care Facility in the Medium-Density Residential (R-9) zoning district, in order to establish a Montessori school on an existing church property.

Staff Recommendation:

Approval of the request, subject to the conditions in this report.

Planning Board Recommendation:

Approval of the request subject to the conditions of the report, on page 4 and 5.

Public Comment:

Planning Board Meeting: Scheduled for December 17, 2018.

City Council (Public Hearing): Scheduled for January 15, 2019. Notices were mailed to property owners within 100 ft. of the subject property on January 3, 2019.

*****This request is considered quasi-judicial. You should not discuss this case with decision makers outside of the scheduled public meeting*****

BACKGROUND AND ANALYSIS

Intent of Conditional Use Permits

Conditional uses are recognized in the zoning ordinance as uses which may be compatible with an area depending on the specific details of the project, its surroundings, and the level of services available to the site, but are not permitted "by right" in the zoning district. The conditional use permit process gives the City sufficient flexibility to determine whether a specific land use on a given site will be compatible with the environment and the Comprehensive Plan. Through the approval of a Conditional Use Permit, the Planning Board and City Council may set conditions or use limitations, thereby establishing a realm of acceptability for the particular use that will be neither arbitrary nor capricious, and will promote the spirit and character of the surrounding neighborhood. The process requires the Planning Board to review and make a recommendation to the City Council on the request. The City Council must then decide whether or not to issue a Conditional Use Permit following a quasi-judicial hearing.

Intent of the Zoning District

The R-9 Multi-family Residential District is intended to accommodate medium density single-family residential and multi-family residential, double wide manufactured homes and compatible land uses. Multi-family complexes of three (3) or more units are allowed as conditional uses. Other listed conditional uses are Libraries, Museums, Art Galleries, Adult Day Cares, Extended Care Facilities, and Group Dwellings.

Any uses which would adversely affect or interfere with the residential character and development of these areas are excluded.

Subject and Surrounding Properties

The subject property is owned by and used as a church. The property is intersected by Stacey Place. The church property on the north side of Stacey Place is zoned R-9 (Multi-Family), and is developed with the principal church buildings, the sanctuary and the social hall. The church property on the southern side of Stacey Place is zoned B-2 (General Business), and has some storage buildings, extra parking, and a playground with open space. There is a striped crosswalk across Stacey Place that provides pedestrian access to both sides of the property.

The subject property is located in a residential neighborhood, adjacent to single family dwellings. Most of the homes on Walt Arney Rd are zoned R-9. The homes along Stacey Place are zoned B-2 (General Business). The development behind the church is zoned I-2 (Heavy Industrial), and is a plastics manufacturing facility. The industrially-zoned development is required to have a 40' residential buffer and a 15' vegetated buffer when side and rear property lines abut a residential zone. Bufferyards are the responsibility of the use necessitating the buffer, and the I-2 property exceeds these buffer requirements.

The non-residential daycare use in the R-9 multi-family residential district is also required by code to have a 15' wide landscaped buffer between its property line and residential uses. The existing church building is legally non-conforming because it does not meet this standard. However, the retaining wall on site between the church and the adjacent single-family dwelling meets the intent of this buffer (please see photos on page 9). Since the proposed use will not expand the development in any way, and the installation of additional buffering is challenging, staff finds the existing conditions will continue to satisfy the intent of the code.

Proposed Use

The applicant proposes to use a large classroom in the social hall of the church during the week as a Montessori-style preschool. The applicant proposes no changes to the existing buildings or any kind of improvements. There is off-street parking on-site. The church does not have other uses during the hours the daycare will operate, besides minor office and grounds-keeping activities. The classroom in the social hall of the church is about 1200 sq. ft. The day care currently has 15 students enrolled, with a potential maximum of 23 students in the proposed location.

Transportation and Access

Stacey Place is a dead-end street, with four residential driveways intersecting the street. Institute of Transportation Engineer's 9th edition report on Trip Generation states that single family homes generate 1 trip per unit in the PM peak hour, while day cares with

BACKGROUND AND ANALYSIS

a unit of 1000 sq. ft. generate 12.46 trips per unit in the peak PM hour. There are over 30 parking spaces in the off street parking on the north side of Stacey Place, which is large enough to contain the trips generated in the busiest hours. Along with the secondary lot on the south side of Stacey Place, the day care traffic should not impede the flow of traffic along Stacey Place or Walt Arney Road. This is not a significant impact on existing infrastructure. No traffic study is needed.

The proposed use on this site will have a drop-off line for students entering the school under staff supervision. The drop off line will be required to have five stacking spaces before the drop off point (Sec. 1000 of Lenoir Zoning Code). To accommodate this, the day care will block off parking areas on the north side of Stacey Place to accommodate five 9x18' stacking spaces. Please see map on page 7. Typically, morning drop off will occur around 8 am, and afternoon pickup will occur between 12 pm and 3 pm. During the drop off time, there is parking available on the property on the south side of Stacey Place. During other hours, the primary parking lot will be available for parking.

Signage

Non-residential conditional uses with an approved conditional use permit located within residential zoning districts are permitted some signage. The applicant proposes to use the allowed directional signage less than 3 ft. in height and 3.2 sq. ft. in copy area to show location of proposed day care. Reconfiguration of copy area on the existing church monument sign to include day care signage is also allowed. The signage will be located on-site and will meet all other locational requirements.

Consistency with the Comprehensive Plan

All decisions of the Planning Board and City Council should be based on consistency of the proposal with the comprehensive plan and any other officially adopted plan that is applicable. The comprehensive plan does not specifically discuss churches or day-cares, but it does encourage expanding the use of existing buildings. This proposed project is located at a church that is built out in a residential area. The proposed use will adhering to the plan's recommendations for protecting residential character of neighborhoods by ensuring that the area will not become more congested with traffic through off-street parking and loading.

FINDINGS

No Conditional Use Permit shall be approved unless the Planning Board and City Council find that:

1. The proposed conditional use will comply with all height, yard, lot and area requirements and other regulations of the district in which it is located unless otherwise specified. *The development will comply with most requirements of non-residential uses in the R-9 district, with the exception of the 15' wide vegetated bufferyard for a use that abuts a residence, in which a 3-5' retaining wall on site will accommodate. Because the existing development will not expand, this legally non-forming condition is allowed to remain.*
2. All driveways will be designed with respect to such matters as proper ingress and egress for automobiles in order to minimize traffic congestion and increase pedestrian safety and conveniences. *There is one existing driveway into the church parking lot, and the limited size of the use ensures that it will not cause congestion.*
3. Off-street parking and loading areas will be provided in compliance with the Zoning Ordinance. *There are over 25 parking spaces in the primary parking lot adjacent to the social hall, as well as a paved parking area on the southern section of the property across the street. This more than complies with the required 3 spaces per the Zoning Ordinance. The applicant has also shown how the drop off line will flow through the primary parking lot to allow for 5 stacking spaces before the drop-off point.*
4. The establishment of the conditional use will not hinder the normal and orderly development and improvement of surrounding property for uses already permitted in the district. *The subject property is on a dead-end street. Only four single-family dwellings use the street to access Walt Arney Road. The large parking areas and walkways can contain the pick-up and drop-off traffic that the day-care will generate.*
5. Any required screening and landscaping will be designed or planted with full consideration of the effectiveness of individual plant types, dimensions, and characteristics in minimizing the noise, glare, visual impacts and other economic effects on adjoining properties. *A landscape plan was not submitted. The church buildings are positioned on a lower elevation than the adjacent single-family residence. An on-site retaining wall between the primary parking lot and the single family residence shields lights and noise created by parking traffic.*
6. Any permitted signs and proposed exterior lighting will be designed to reduce glare and to mitigate any adverse effects of sign size and height; so as to make the signs aesthetically pleasing and compatible with adjoining properties. *This development is currently planning to use a directional sign less than 3 ft. in height and less than 3.2 sq. ft. in copy area. Any exterior lighting will be incidental to the needs of the day care use, and will be designed to be fully cut-off and shielded from neighboring residential property.*
7. The exterior architectural appearance and functional plan of any proposed building or structure will not vary greatly from any buildings or structures already construction or in the course of construction in the immediate vicinity or from the character of the applicable district, so as to cause a substantial depreciation in the property values of the immediate vicinity. *The subject property is developed as a church, and the proposed use will be inside the existing social hall of the church. There are no proposed changes to the exterior of the social hall to accommodate this use.*
8. The type, size, hours of operations, location of the use upon the site, and intensity of the proposed conditional use will not be harmful or annoying to surrounding properties. *The proposed use of the property is accessory to the church. The applicant has stated that the day care will operate Mondays through Fridays during the school year, with some summer activities between the hours of 8am and 3pm. While this applicant proposes an intensification of the existing use, the impacts of 15-23 children will be minor and should not have overly adverse impacts on the few residences nearby.*

STAFF RECOMMENDATIONS

Staff recommends approval of the requested Conditional Use Permit for the proposed youth day care, with the following conditions:

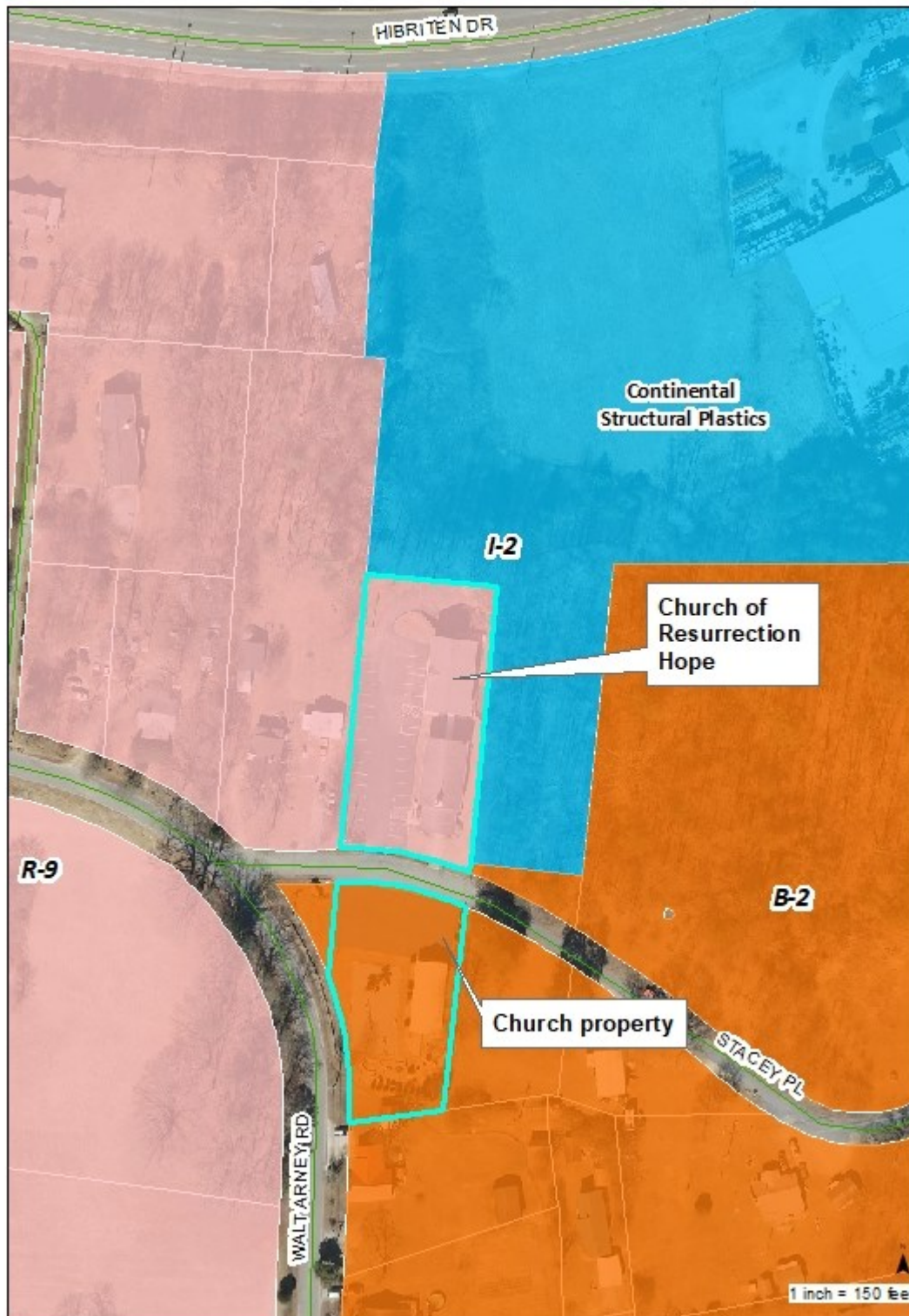
1. ~~Student enrollment is limited to 23 students.~~ Student attendance is limited to a maximum of 23 students on site at any given time.
2. Any new lighting for the daycare use shall be fully cut-off and shielded so as to eliminate and minimize light spill-over onto adjacent residential properties.
3. Traffic flow of the student drop off line must allow for five stacking spaces before the drop off point, as well as an adequate turn radius for cars exiting the parking lot. This may be accomplished through temporary setup of cones and barriers, in order to allow the parking lot to function normally during off-hours and church use.
4. Additional ground-mounted signage is allowed for one sign no taller than 3 ft and limited to 3.2 sq. ft. of sign copy area. Reconfiguration of copy area on the existing church monument sign to include day care signage is also allowed. Signs of corrugated plastic are prohibited.
5. Valid permits and inspections must be obtained for this use, including and any other federal, state, or local regulation that applies.
6. If the use has not been established within 24 months of the adoption of the Conditional Use Permit, the approval shall be considered null and void.

PLANNING BOARD RECOMMENDATIONS

The Planning Board recommends approval of the requested Conditional Use Permit for the proposed 58 unit multi-family development, known as Bluford Greene, based on the findings on pages 4-5 of this report, with the conditions recommended by staff along with the following additional condition:

1. Student attendance is limited to 23 students on site at any given time

ZONING MAP



732 Stacey Place

Subject Property

PROPOSED DROP OFF PLAN

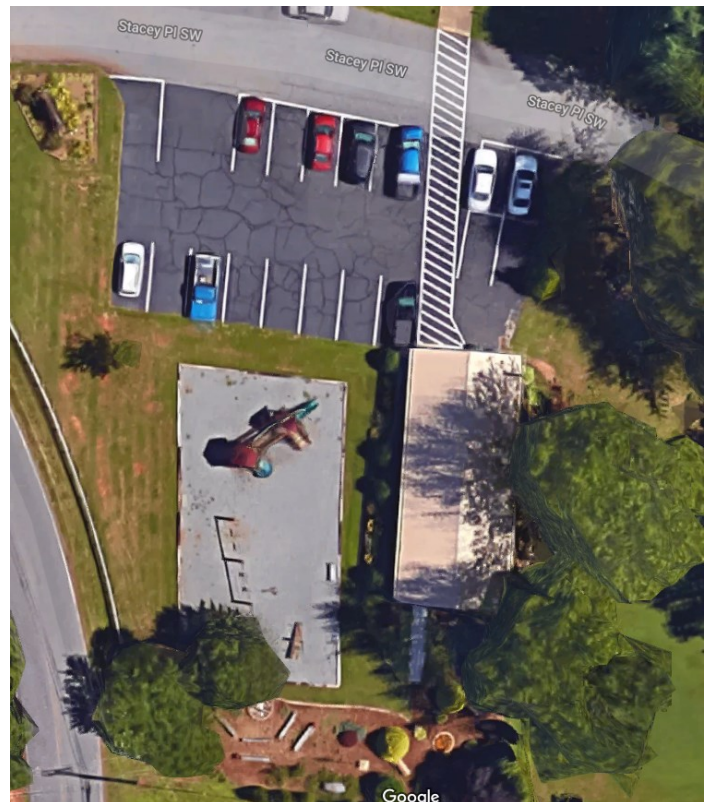


DETAILED AERIAL MAP



Left: Aerial image of Resurrection Hope Church. Social Hall is the proposed location for the day care. There is sidewalk in front of social hall, but not across parking lot to the front cross-walk.

Right: Updated aerial image of southern section of church property, shows striped crosswalk for access to outdoor playground and more parking.



EXISTING CONDITIONS ON SITE



Above: View of church social hall from main parking lot

Below: Retaining wall with plantings on top. along primary parking lot adjacent to residence.



EXISTING CONDITIONS ON SITE



Above: Striped sidewalk across Stacey Place



Above: Outdoor playground on southern section of property.

CITY OF LENOIR**COUNCIL ACTION FORM: Jan 15, 2019****I. Agenda Item:**

An ordinance designating 211 Arrowood Street comprised of 48.5 acres, more or less, as Conditional Zoning District #5 (CZ-5) on the City's Official Zoning Map; directing amendment of the Official Zoning Map; providing for severability, and an effective date.

II. Background Information:

Staff report is attached.

III. Staff and Planning Board Recommendation:

Planning staff and the Planning Board recommend that City Council approval of the Conditional Zoning District 5 (CZ5) ordinance as presented.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Planning Director: _____



Staff Report

CONDITIONAL ZONING REQUEST

CASE NUMBER CZ #5/18



LOCATION MAP/AERIAL PHOTOGRAPH



SUMMARY

Owner

Camelot Golf Center LLC

Applicant

Gail Greer

Location

211 Arrow St SE, across from entrance to Hibriten High School. (+/- 48.5 acres).

NC PIN

2860225868

Project Planner

Hannah Williams

Jenny Wheelock, AICP, CZO

Updated January 3, 2018

Applicant's Request:

The applicant is requesting a Conditional Zoning District for a property with an existing (inactive) restaurant and clubhouse, to accommodate multi-family developments at low to medium densities, along with allowances to re-use the existing restaurant building. The base zoning district for this request is proposed as R-12.

Staff Recommendation:

Approval of the requested conditional zoning district (CZ-5) ordinance, which is attached for reference.

Planning Board Recommendation:

Approval of CZ-5

Public Comment:

One member of the public asked questions of the board and of the applicant. One member of the public disapproved of the ordinance.

Planning Board Meeting: December 17, 2018.

City Council (Public Hearing): Scheduled for January 15, 2019. Notices were mailed to property owners within 100 ft. of the subject property on January 3, 2019.

BACKGROUND AND ANALYSIS

Intent of Conditional Zoning

The City of Lenoir's Zoning Ordinance establishes an official zoning map/atlas for the City of Lenoir. The zoning map may be amended from time to time by the City Council when public necessity, convenience, general welfare, or good zoning practice justifies the amendment. The Conditional Zoning process is a process to amend the zoning map and associated district regulations intended for use in unique development scenarios when a development proposal does not fit into a conventional zoning district, but may be desirable and compatible with an area depending on the specific details of the project and its surroundings. The conditional zoning process gives the City sufficient flexibility to determine whether a specific project on a given site will be compatible with the environment and the Comprehensive Plan. In considering a request for a Conditional Zoning District, the Planning Board and City Council may approve conditions or use limitations that are mutually agreeable to the applicant, property owner, and the City, thereby establishing a realm of acceptability for the particular use that will be neither arbitrary nor capricious, and will address the interests of the landowners, neighbors, and the public. Conditional Zoning is a legislative process requiring the Planning Board to review and make a recommendation to the City Council on the request. The Conditional Zoning District is adopted as a map amendment and by ordinance.

Subject and Surrounding Properties

The subject property is a large 48.5 acre tract, located in the R-15 and R-12 (Single Family) zoning districts, south of Wilkesboro Boulevard, off of Arrowood Street. The restaurant building and a storage building are the only structures on the property. There are two sections to this property: the 32 acres of floodplain area that contains a pond and the two structures, and the 16 upland acres that are accessible from Falls Street. This property has been a golf course, driving range, and restaurant, but is currently inactive.

This property is in a primarily residential area. The properties south of the subject property are zoned R-R (Rural Residential) and R-15. There is a small mobile home park off of Falls Street, and several single family dwellings. Hibriten High School to the west of Arrowood is zoned R-9. Properties along Wilkesboro Boulevard that border the subject property are zoned B-2 (General Business), R-R (Rural Residential), and B-6 (Exclusive Business). Along Wilkesboro Boulevard there are some active businesses, unused commercial buildings, and single family dwellings.

Previous Approvals

This property was initially developed under the R-15 zoning district as a Country Club/Golf Club, which was a Conditional Use. The building that exists today was approved as a clubhouse/country club building for the golf course use. However, when the golf course use was discontinued, the building (with a full commercial kitchen) was leased several times for various restaurant uses, even though the R-15 zoning district does not permit restaurants.

In 2003, the upland portion of the site was re-zoned from R-15 to R-12, in order to allow for the owner to request a Conditional Use Permit for a "Planned Residential Development," which may include multi-family dwelling units. In that same year, a Conditional Use Permit for a Planned Residential Development was approved for a townhome-style apartment complex with 108 units. Conditions of that approval included bufferyards along the east, south, and west property lines, a stipulation that the existing private driveway from Arrowood Street be maintained as access for the residential development, and that a secondary point of access be constructed from Fall St. At that time, it was stipulated that Fall St. be widened to meet public standards and dedicated to the City as a public road. The development was never actualized, and the Conditional Use Permit expired after 24 months of inactivity.

Proposed Development

There are two factors driving this request — the desire to re-use the existing building immediately, and the desire to market the upland portion of the property for higher density residential development than is allowed "by right" under the code. Through the Conditional Zoning process, we can legalize appropriate uses for the existing building, without opening up the parcel to inappropriate uses or too intense of development. Uses that are proposed include restaurant (with or without alcohol, which is regulated in accordance with ABC rules), office, day care, and residential amenities such as a club house, community room, or computer lab.

BACKGROUND AND ANALYSIS

For the upland portion, the Conditional Zoning district would create “by right” multi-family uses, with overall density caps, and program in the same types of conditions that would typically be applied to a specific development proposal through the Conditional Use process. This allows for very similar outcomes in the ultimate build-out, but creates a lasting flexibility for a property that is currently on the market. The proposed zoning district would allow for a variety of residential developments to occur on the upland portion of the property, but will limit the overall density consistent with best zoning practices and previous approvals on the site. Proposed uses to be permitted on this site are multi-family developments from garden apartments and patio homes to assisted living facilities with graduated care.

Density and Trip Generation Analysis

Intensification of development rights on properties should be analyzed both on their overall impact to the community as well as their specific intensification of impact over what might be allowed “by right” on the site. In this example, although any development will increase traffic and density, the R-12 zoning carries with it a certain available density that anyone can currently “max out.” For this site, the most intense development allowed “by right” today would be a residential subdivision with minimum lot sizes of 12,000 sq. ft. For our analysis, we used the 15 acres referenced in previous CUP application and excluded all of the low-lying areas. Here is a break down of density and project trip generation rates:

By-Right	2003 Approval	Current Proposal
54 dwelling units (single family homes on 12,000 sq. ft. lots)	108 dwelling units	Up to 10 du/acre, with a traffic impact analysis required for any density above 7.2 du/acre
3.6 du/acre	7.2 du/acre	
363 daily trips*	726 daily trips (increase of 363 trips)	Without TIA: 726 daily trips (Increase of 363 trips) With a TIA: 1008 daily trips (increase of 645 trips)
*To ease comparison, a standard generation rate of 6.72 daily trips was used, based on the ITE’s trip generation handbook’s rate for multi-family apartments. Single family homes actually have a slightly higher trip generation rate, on average, than apartments, so the actual “base” trip generation rate may actually be a little higher than what’s shown here.		

The above table illustrates this site as having a “base” trip generation of about 363 daily trips, so the allowance for additional densities for multi-family certainly increases potential traffic from the site. The 2003 approval would have created about 363 additional trips. The 7.2 du/acre threshold for requiring a Traffic Impact Analysis is consistent with the previous approvals, with a maximum density proposed that’s consistent with the densities approved recently for other multi-family projects around Lenoir. At the maximum, the current proposal could generate 672 daily trips over the “by right” development.

For comparison, Viridian (the new apartment complex built in 2014 off Linkside Place) has an approximate density of 10.6 dwelling units/acre, and Arbor Glen (the senior apartment complex built in 2015 off Abington Rd) has an approximate density of 8.2 dwelling units/acre. The recently permitted but not yet constructed Crescent Pointe at Greenhave (the senior apartment complex next to Bo’s near Walmart) will be approximately 18 du/acre, and Trillium (an apartment complex approved 3 years ago and never developed across the street from Hibriten High School) was approved at 9.2 du/acre.

Given the densities commonly approved around the City for apartment complexes falling within a range of 8-10 dwelling units (Crescent Pointe is an outlier, but is located in a more intensely developed area than the other projects), the base densities and trip generation of the site today, and the previous approval, staff is recommending two density caps for the development: a cap at 7.2 du/acre that would not be required to do additional traffic analysis, and an ultimate cap of 10 du/acre that would allow for some

BACKGROUND AND ANALYSIS

additional units, but only if a traffic analysis is completed and the impacts mitigated.

Transportation

Access to the development would be primarily through the existing driveway off of Arrowood Street (seen on page 1). A secondary access off of Falls Street would remain private, which allows the improvement of the road by the developer within the existing 30 ft. right-of-way (public dedication of this street would require acquiring additional right-of-way). Staff does not find a need for a new public road to serve this location, and a standard section of 26-ft (2 12-ft lanes plus a shoulder/gutter area) can be accommodated within the existing right-of-way.

At higher densities, a traffic impact analysis will be required. If the TIA reveals that traffic generated will cause surrounding intersections or streets to fail, the developer shall be required to mitigate those impacts. If a mitigation strategy cannot be reached, the development will be treated as a Conditional Use Permit instead of “by right,” and the public, Planning Board, and City Council will have the ability at that time to weigh-in on what improvements are necessary or how the development can be modified.

Other Development Standards

The attached CZ-5 ordinance contains references to other development regulations and how they might apply to the subject property. Specific design standards are proposed, and locations of bufferyards established. Standard code provisions related to parking, plantings, landscaping, open space requirements, etc., continue to apply, as well as standard requirements related to development in flood-prone areas and the process by which the property would be subdivided.

One notable change is an allowance for platted lots to have private road frontage instead of public frontage, as long as the overall residential parent parcel meets the frontage requirements on Arrowood Street. This is to facilitate townhomes, patio homes, and other fee-simple developments that have both common areas and privately owned lots — in this location, public roads don’t necessarily make sense, and provided that a homeowner’s association is created for the ongoing maintenance of common areas, including driveways and roadways, staff supports these roads remaining private.

Consistency with the Comprehensive Plan

All decisions of the Planning Board and City Council should be based on consistency of the proposal with the Comprehensive Plan and any other officially adopted plan that is applicable. The Comprehensive Plan calls for progressive and sound land use policies that take stakeholder interests into consideration in order to ensure that the City grows fairly, effectively, and efficiently. Additionally, the Comprehensive Plan calls for the promotion of housing for people in all stages of life, and the protection of environmentally sensitive areas. The proposed CZ-5 district is consistent with the Comprehensive Plan because it allows for intensification of development on this property outside of flood-prone areas, with a variety of housing types to meet the changing needs of Lenoir’s residents of all ages.

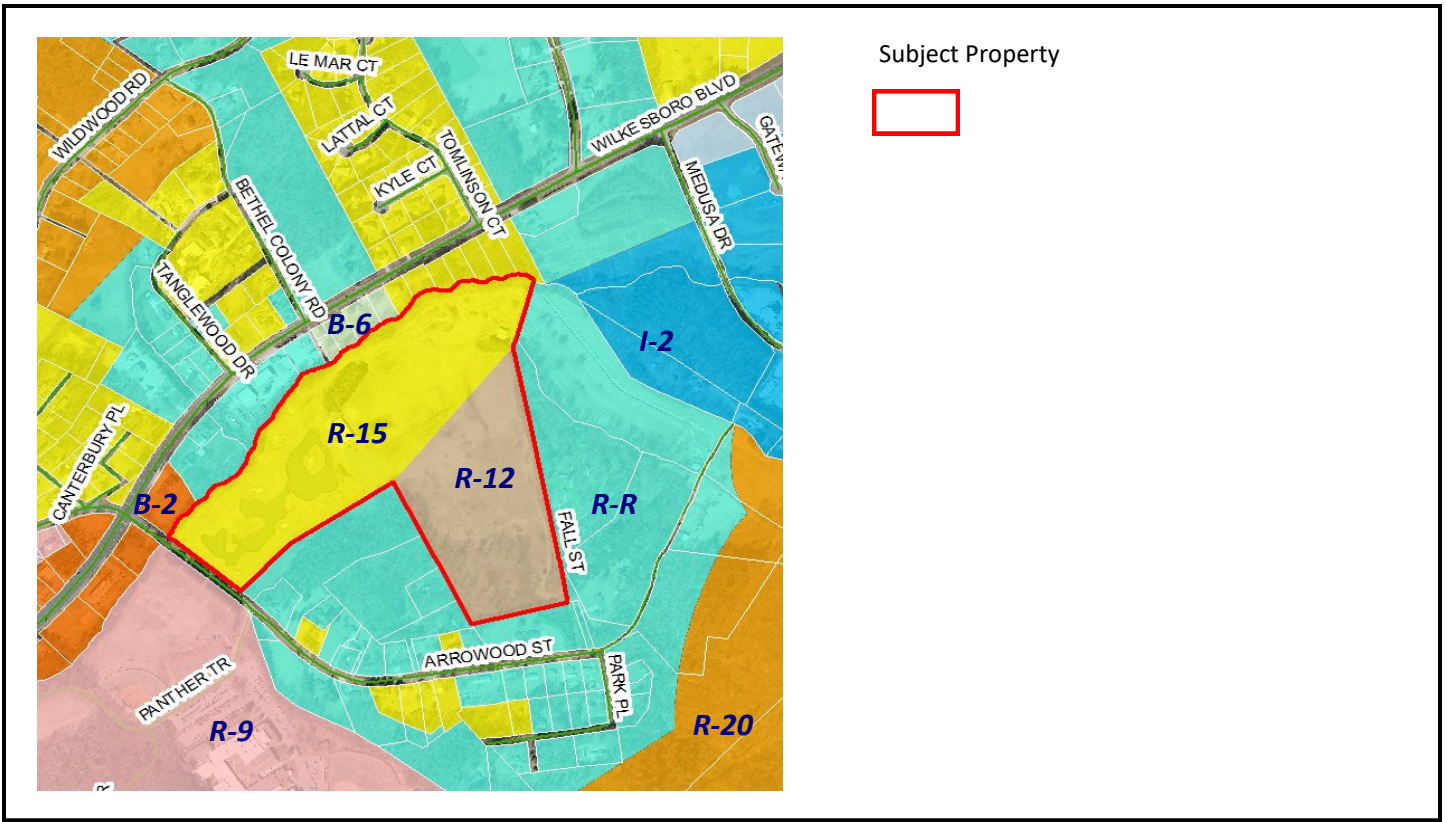
STAFF RECOMMENDATIONS

Staff recommends approval of the attached Conditional Zoning District (CZ-5) ordinance.

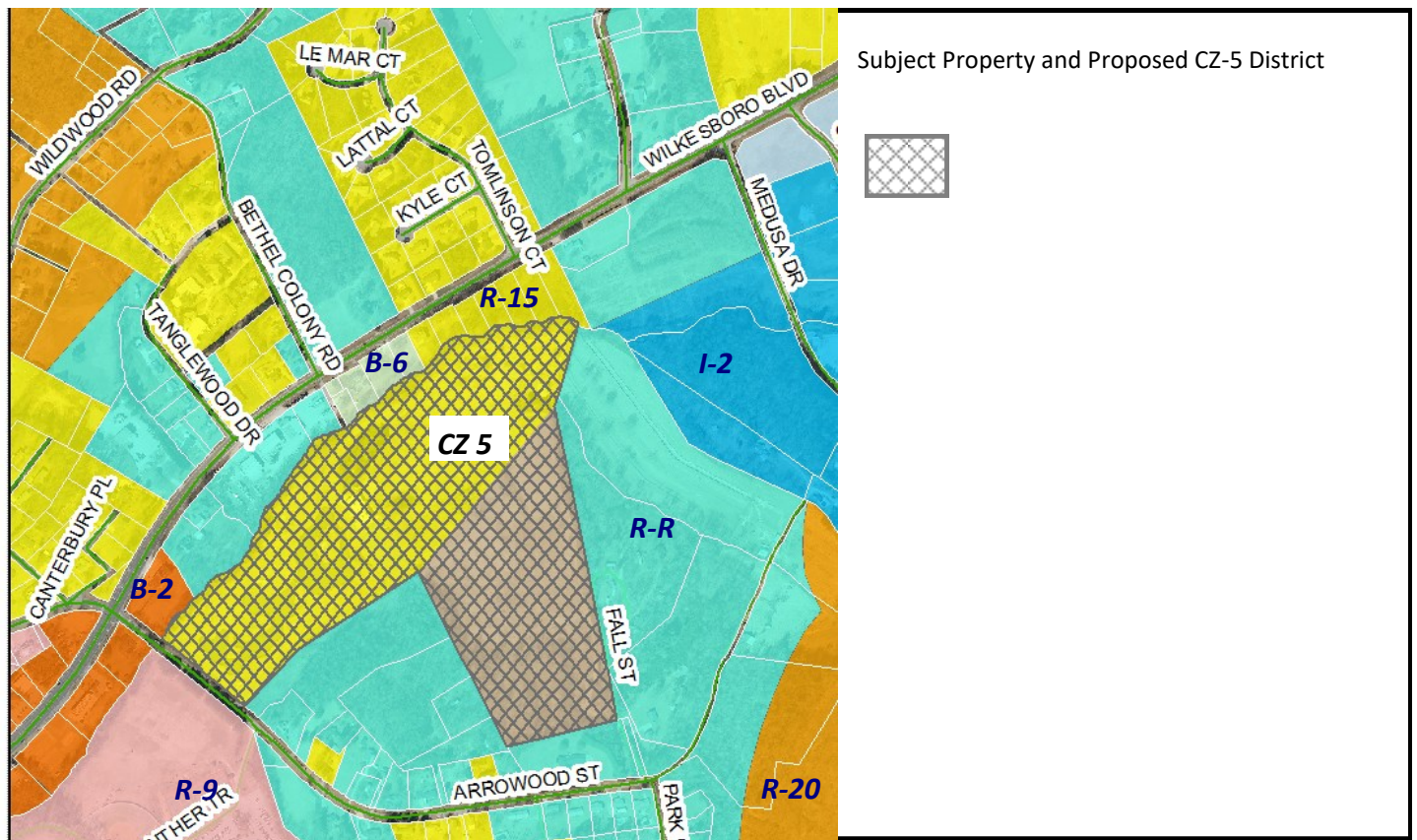
PLANNING BOARD RECOMMENDATIONS

The planning board recommends approval of the Conditional Zoning District 5 (CZ5) ordinance.

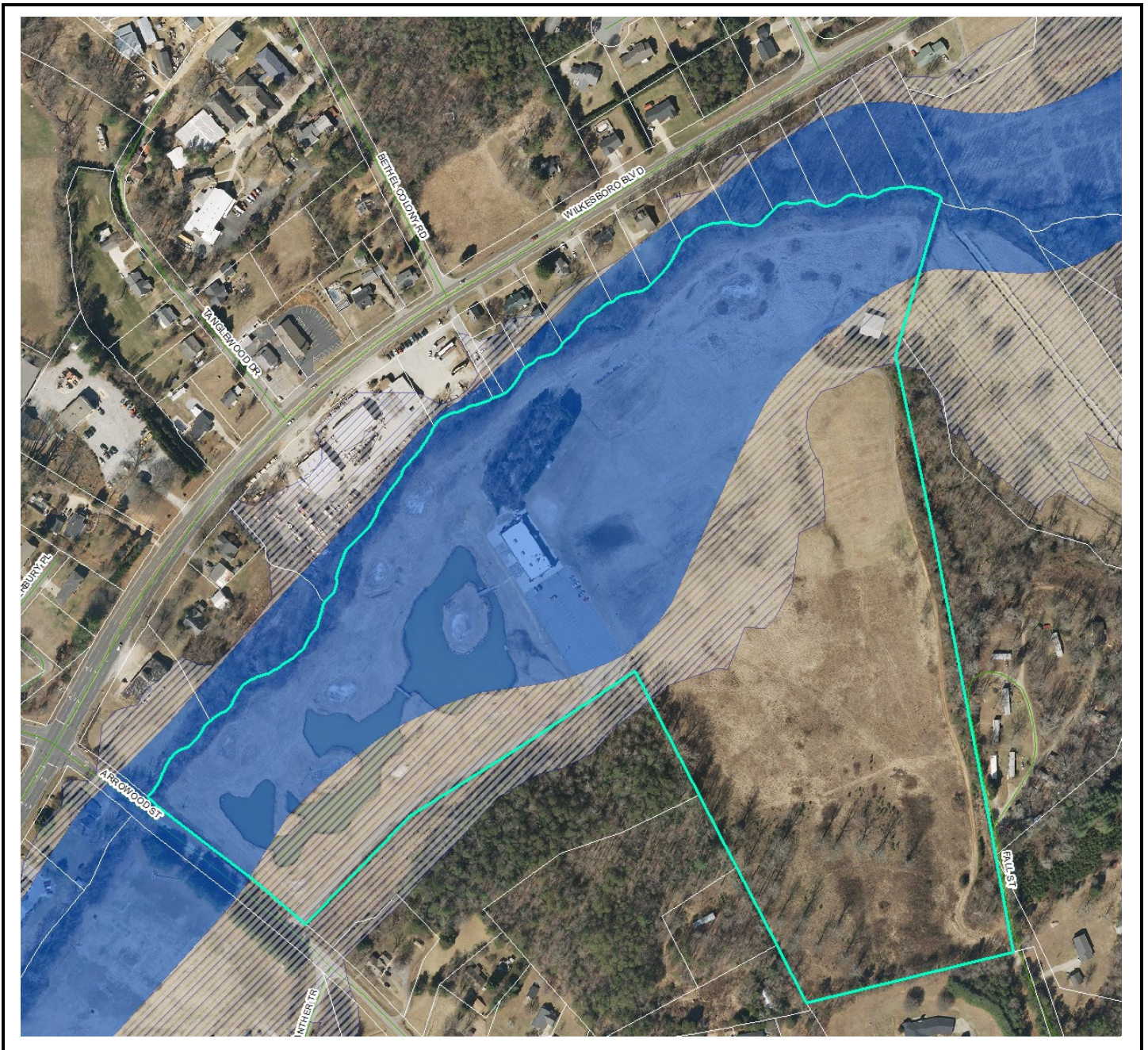
EXISTING ZONING



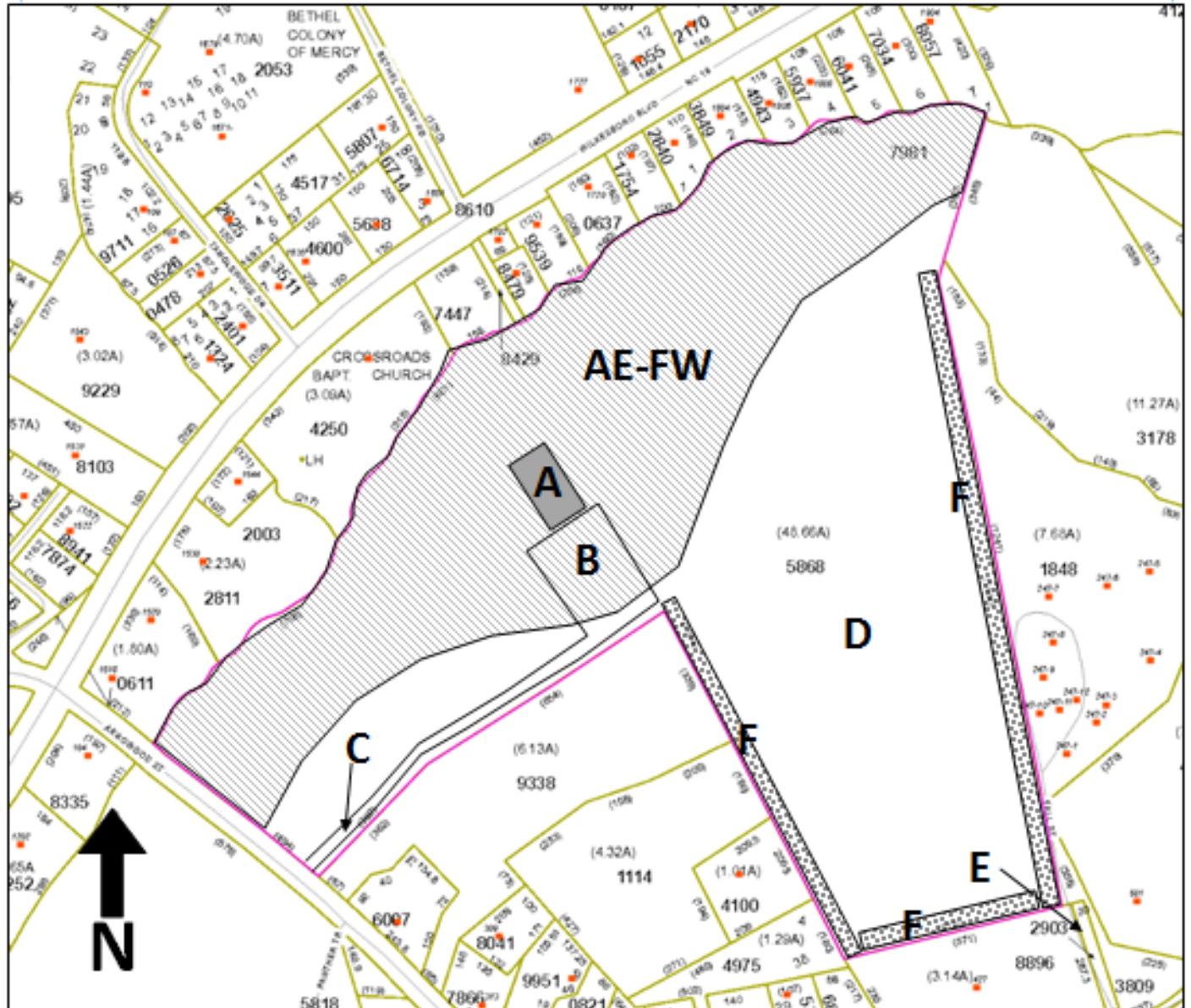
PROPOSED ZONING



FLOODPLAIN MAP



CONCEPT PLAN



Concept Plan Legend:

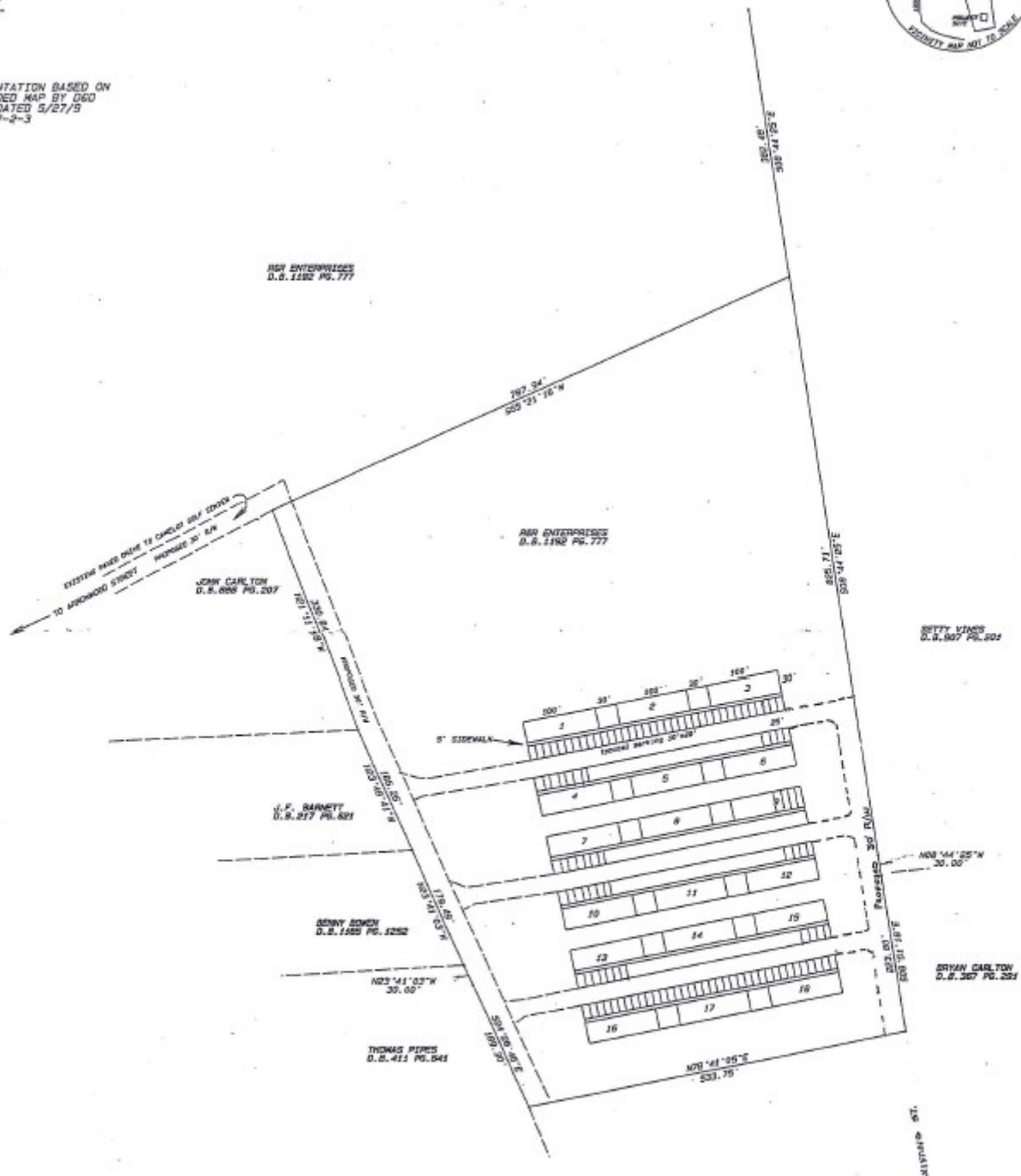
- A: Existing building, originally developed as a club house for Camelot Golf Club
- B: Existing Parking lot developed for Camelot Golf Club
- C: Primary ingress/egress
- D: Upland property reserved for permitted residential uses in accordance with CZ-5
- E: Private road to be opened to provide secondary access point for residential development
- F: Bufferyard areas — to be maintained and/or installed with residential development

(AE-FW is the non-encroachment floodway area)

2003 PLANNED RESIDENTIAL DEVELOPMENT (CONCEPT PLAN)

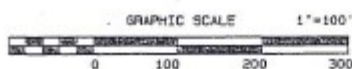


NORTH ORIENTATION BASED ON
AN UNRECORDED MAP BY D&D
SURVEYORS DATED 5/27/93
TAX MAP: 97-2-3



PRELIMINARY SKETCH FOR TOWNHOUSES AT CAMELOT GOLF CENTER

NO SURVEY MADE AT THIS TIME. BOUNDARY INFORMATION TAKEN
FROM AN UNRECORDED MAP BY "D&D" SURVEYORS.
REFERENCE DEED BOOK 1192 PAGE 777



SURVEY FOR: RICHARD GREER			
SCALE: 1" = 100'	APPROVED BY:	DRAWN BY	
DATE: 5/13/2003		REVISED	
TOTAL AREA 15.00 ACRES			
DRAWING NUMBER		FILE: UPTOWN	

CITY OF LENOIR
COUNCIL ACTION FORM: January 15, 2019

I. Agenda Item:

Approval of an ordinance amending the Lenoir Zoning Ordinance related to communication towers and small wireless facilities.

II. Background Information:

The attached ordinance contains language for the regulation of small wireless facilities, as well a modification to the existing regulations for communications towers to allow for tower heights up to 165 ft (an increase from the current maximum height of 110 ft) in the City limits. These changes are proposed in order to ensure consistency with federal and state law and to provide better opportunities for cell coverage for the citizens of Lenoir – especially related to the expansion of 5G technology.

This ordinance was developed in consultation with industry professionals, the City Attorney, and recommendations on small wireless facilities provided by the National League of Cities. For more information about small wireless facilities, the NLC has an overview of the issues as well as the model ordinance available here: <https://www.nlc.org/resource/small-cell-wireless-technology-in-cities>

Federal and State laws pre-empt local governments from being overly restrictive with regulation of small cell facilities, which are usually installed on existing utility infrastructure in the public right-of-way. The attached ordinance will establish a process for administrative review and approval of such facilities, consistent with the federal and state legislation. Small Cells help provide additional network capacity for “5G” technology, which will be focused on high-speed data for smart devices. This technology is less about “coverage” (how many bars of signal you have) and more about “capacity” (allowing more users to transfer more data on the network at fast speeds).

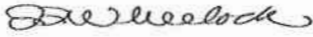
III. Staff and Planning Board Recommendation:

Adoption of the attached ordinance.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Planning Director:  _____

**AN ORDINANCE OF THE CITY COUNCIL OF LENOIR,
NORTH CAROLINA, AMENDING APPENDIX A OF THE
LENOIR CITY CODE RELATED TO THE PERFORMANCE
STANDARDS FOR COMMUNICATION TOWERS,
ESTABLISHING REVIEW PROCEDURES FOR SMALL
WIRELESS FACILITIES, PROVIDING FOR SEVERABILITY,
CODIFICATION, AND AN EFFECTIVE DATE.**

Whereas, Sections 910-2 of the Lenoir Zoning Ordinance contain performance standards for communication towers, which always require a Conditional Use Permit; and

Whereas, the intent of these regulations is stated as “to allow...towers...while minimizing adverse visual and operational effects of towers through careful siting, design, and screening; to avoid potential damage to adjacent properties through proper setbacks; and to maximize the use of communication towers and existing structures to reduce the number of towers necessary to provide for the communication needs of Lenoir and surrounding areas;” and

Whereas, the current height limitation of 110 ft. limits opportunities for co-location (where multiple providers locate equipment on a single tower), increasing the need for additional towers in order to meet the growing demand for cellular service; and

Whereas, as cell phone use has dramatically increased since these regulations were first adopted, and towers have become more commonplace in our landscape, the general public has grown more accepting of towers within the community because it allows for more comprehensive cellular service; and

Whereas, Caldwell County recently amended their regulations to allow for towers at a maximum height of 195 ft., citing the need to increase cell coverage in Caldwell County; and

Whereas, allowing additional height on cell towers will increase the opportunities for co-location as well as provide better coverage in hilly areas, reducing the number of towers needed to provide continuous cellular coverage for multiple providers within the City limits; and

Whereas, the City desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interest of the public health, safety and welfare; and

Whereas, the City recognizes that small wireless facilities are critical to delivering wireless access to advanced technology, broadband and 9-1-1 services to homes, businesses, and schools within the City; and

Whereas, the City recognizes that small wireless facilities, including facilities commonly referred to as small cells and distributed antennae systems, often may be deployed most effectively in the public rights-of-way; and

Whereas, the City intends to fully comply with state and federal law to the extent it preempts local municipal control; and

Whereas, the Lenoir Planning Board finds and declares that this ordinance and these amendments consistent with the City's adopted Comprehensive Plan, which calls for limiting the number of new towers as well as for the ongoing accommodation of infrastructure upgrades to support growth and quality of life for Lenoir's residents; and

Whereas, the Lenoir City Council hereby finds and declares that this ordinance and these amendments are in the best interest of the public health, safety, and welfare, particularly considering the use of wireless communication by public safety officials; and

NOW, THEREFORE, LET IT BE ENACTED BY THE CITY COUNCIL OF THE CITY OF LENOIR, NORTH CAROLINA, AS FOLLOWS:

SECTION 1. Appendix A, Article IX of the Code of Ordinances, City of Lenoir, North Carolina, "Special Review Procedures for Conditional Uses" is hereby amended to read as follows:

910 Communication Towers

It is the intent of this Ordinance to allow communication towers for mobile telephone services and other radio and television information services, while minimizing adverse visual and operational effects of towers through careful siting, design, and screening; to avoid potential damage to adjacent properties through proper setbacks; and to maximize the use of communication towers and existing structures to reduce the number of towers necessary to provide for the communication needs of Lenoir and surrounding areas.

Communication towers shall be a conditional use in all zoning districts except the B-5, B-6 and B-7 zoning districts, and shall be subject to approval by the Lenoir City Council, following review and recommendation by the Lenoir Planning Board, provided that the structure adheres to all of the following conditions in addition to those specified by Section 900 (Conditional Uses) of this Ordinance.

910.1 Communication towers shall at all times comply with Federal Communications Commission (FCC) standards for radio frequency emissions.

910.2 Prior to the issuance of a Conditional Use Permit, the applicant shall be required to provide certificates of insurance demonstrating it has a minimum of \$1,000,000 in general liability insurance covering any liability arising out of its construction or operation of the communication facility. The applicant shall be required to maintain such coverage in full force and effect until such time as all above-

ground portions of the facility have been removed and all other conditions of its Maintenance & Removal Agreement have been satisfied.

910.3 Applicants shall first consider properties owned by the City of Lenoir or other government entity before considering private properties as locations for communication towers. The Planning Department will provide an inventory of City-owned properties. Public properties shall be subject to the same restrictions as private properties. If suitable public properties cannot be located, justification shall be provided which clearly explains why the public properties are not suitable and what alternatives were considered.

910.4 An application for a Conditional Use Permit shall be accompanied by a copy of an executed lease requiring the applicant to remove all above-ground portions of communication towers no later than ninety (90) days after cessation of operations. In addition, each applicant for a communication tower shall execute a facility maintenance/removal agreement prior to issuance of the Conditional Use Permit. Said agreement shall bind the applicant and the applicant's successors-in-interest to properly maintain the exterior appearance of and ultimately remove the facility in compliance with the provisions of this Ordinance and any conditions of approval. It shall further bind them to pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the City for all costs incurred to perform any work required of the applicant by the agreement that the applicant fails to perform. Such costs shall include, but not be limited to, administrative and job supervision costs. It shall also specifically authorize the City and/or its agents to enter onto the property and undertake said work so long as the City has first provided the applicant the following written notices at the applicant's last known address:

- A. An initial compliance request identifying the work needed to comply with the agreement and providing the applicant at least thirty (30) days to complete the work; and
- B. A follow-up notice of default specifying the applicant's failure to comply with the work within the time period specified and indicating the City's intent to commence the required work within ten (10) days.
- C. All portions of abandoned or unused communication towers located above ground that are not removed within ninety (90) days of the cessation of operations, the facility may be removed as provided in the applicant's Maintenance/Removal Agreement by the City and the costs of removal recovered from the applicant's bond or other security.

910.5 Any communication tower in existence on the date of enactment of this Ordinance which does not comply in all respects with these provisions shall be deemed a nonconforming use. In the event such facility shall be destroyed, or suffer damage in excess of 50% of the tax value of the facility's improvements, such facility shall not be repaired or replaced and shall be removed unless any replacement facility complies in all respects with the provisions of this Ordinance. Except in the case of destruction or damage in excess of 50% of the tax value of the facility's improvements, technological upgrades of electronics and antennas are permitted, consistent with this ordinance.

910.6 Applications shall require payment of a nonrefundable \$2500 fee. This fee may be reduced to \$1000 when applicant is utilizing existing publicly- owned structures or land.

910.7 An applicant for a Conditional Use Permit for a communication tower that includes a new or additional tower or increase in tower height, shall be required to post a \$10,000 cash bond, or other security satisfactory to the City, to secure costs of removing all above ground portions of a communication tower (not including any part of the foundation) in the event the applicant shall fail to do

so within ninety (90) days of cessation of operation of the facility. The applicant shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of its Maintenance/Removal Agreement have been satisfied.

910.8 No communication tower shall be approved if an electric transmission tower is located within a one quarter mile radius (1320 feet) laterally of the proposed telecommunications tower site and if road access and necessary utilities can be obtained within a one quarter mile radius (1320 feet) of the existing electric transmission tower, unless the applicant can demonstrate that sufficient easements or other interests in real property cannot be obtained to accommodate the communication facilities, or that the electric utility owning the electric transmission tower is unwilling to allow its use for communication facilities, or if the planned equipment would exceed the structural capacity of the existing electrical transmission tower.

910.9 Electric transmission towers less than one hundred ten (110) feet in height may be replaced by metal electric transmission towers up to one hundred ten (110) feet in height. Such replacement shall be at the discretion of the electric utility which owns or operates the electric transmission tower, taking into account safety, service disruptions, structural capacity and structure life or duty cycle. For purposes of this Section, such replacement electric transmission tower shall be deemed to be an existing structure.

910.10 The tower shall be of a monopole design, engineered and constructed to permit the co-location of at least three additional users.

910.11 The exterior appearance of all buildings associated with the tower shall be similar to residences in the general area.

910.12 No tower shall exceed the height of 165 feet, which is measured from base of tower to top of tower.

910.13 The City Council may require that the applicant apply to the Federal Aviation Administration (FAA) for compliance with FAA standards for a dual lighting system rather than a red and white marking pattern, when such marking pattern is determined to be aesthetically blighting due to the visibility of the tower.

910.14 The base of the tower shall be surrounded by a fence or wall at least eight feet (8') in height unless the tower co-locates on a structure that makes such fence or wall impractical, as determined by the City. Such fences or walls shall be screened in accordance with Section 712 (Buffering and Screening) of this Ordinance.

910.15 No advertising or signage is permitted on any tower or antenna.

910.16 The City Council may require any other conditions, such as tower height or appearance, to mitigate the impact of the tower on adjacent properties and land uses.

910.17 Modifications that are otherwise consistent with this ordinance and do not substantially change existing towers shall be allowed without requiring additional review as a Conditional Use when the modifications:

- A. Do not increase the height of the tower by more than 10 percent;
- B. Will not extend more than 20 ft. from the tower;
- C. Will add no more than one equipment shelter or four equipment cabinets; and
- D. Will not involve excavation outside the tower site or existing utility or access easements

Modifications that do not meet the above standards may be allowed, but require review and approval as a Conditional Use and must meet all standards for such uses.

911 Communication towers in residential zoning districts:

911.1 The tower shall be setback from any property line or structure not associated with the tower by a distance of not less than 200 feet, unless the Planning Board and City Council find that due to existing topography, vegetation, adjacent commercial or industrial development, or technical practicality, a lesser setback would still be harmonious with the surrounding area and meet the intent of this Ordinance. In no case shall the setback be less than 50% of the height of the tower, and towers must be designed to collapse within a radius of half the tower height. In no case shall a tower be approved that is located within 200 ft. of any off-site residential structure.

911.2 Buildings associated with communication towers located in residential zoning districts may not be used as an employment center for any worker. This provision does not prohibit periodic maintenance or monitoring of equipment and instruments. Such buildings shall have brick veneer and a pitched roof.

912 Communication towers located in non-residential zoning districts (excluding B-5, B-6 & B-7):

912.1 The tower shall be setback from any property line or structure not associated with the tower by a distance not less than 50% of the tower's height.

912.2 The exterior appearance of all buildings associated with the tower shall be compatible with structures in the general area.

913 Small Wireless Facilities

913.1 Purpose and Scope

(a) Purpose. The purpose of this Section is to establish policies and procedures for the placement of small wireless facilities in rights-of-way within the City's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual characteristics of the City rights-of-way and the City as a whole. This ordinance is not intended to prohibit or regulate small cell systems based on factors outside the City's authority, as established by State or Federal Law.

(b) Intent. In enacting this Chapter, the City is establishing uniform standards to address issues presented by small wireless facilities, including, without limitation, to:

- (1) Prevent interference with the use of, or damage to, streets, sidewalks, alleys, parkways, public utilities, public views, certain City corridors, and other public ways and places;
- (2) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (3) Prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or on public property;
- (4) Protect against environmental damage, including damage to trees;
- (5) Preserve the character of the neighborhoods in which facilities are installed; and

(6) Facilitate rapid deployment of small cell facilities to provide the benefits of advanced Wireless Services.

(c) Conflicts with Other Sections. This Section supersedes all Sections or parts of Sections adopted prior hereto that are in conflict herewith, to the extent of such conflict.

913.2 Definitions. The following definitions shall apply to this Section:

(a) “Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of Wireless Services.

(b) “Applicable Codes” means any uniform code such as building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to Persons, to the extent consistent with the terms of this Chapter.

(c) “Applicant” means any Person who submits an application and is a Wireless Provider.

(d) “Application” means a request submitted by an Applicant (i) for a Permit to collocate small wireless facilities or (ii) to approve the installation or modification of a Utility Pole, City Utility Pole, or Wireless Support Structure.

(e) “City” refers to the City of Lenoir.

(f) “City-Owned Pole” means (i) a Utility Pole owned or operated by the City in City right-of-way, including a Utility Pole that provides lighting or traffic control functions, such as light poles and traffic signals and (ii) a pole or similar structure owned or operated by the City in City right-of-way that supports only Wireless Facilities.

(g) “City Code” means the City of Lenoir Municipal Code, as amended from time to time.

(h) “Collocate” means to install, mount, maintain (other than routine maintenance), modify, operate, repair, or replace Wireless Facilities on or adjacent to a Wireless Support Structure, City-Owned Pole, or Utility Pole. “Collocation” has a corresponding meaning.

(i) “Day” means calendar day.

(j) “Emergency” is a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public or (2) has caused or is likely to impair the use of facilities in the right-of-way and/or result in loss or impairment of the services provided.

(k) “Facility(ies)” means wireless telecommunication facilities.

(l) “FCC” means the Federal Communications Commission of the United States.

(m) “Fee” means a one-time charge.

(n) “Law” means federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.

(o) “Modification” means a change to an existing wireless facility that involves any of the following: expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. “Modification” does not include repair, replacement or routine maintenance, if those actions do not involve a change to the existing facility involving any of the following: expansion, alteration, enlargement, intensification, reduction, or augmentation.

(p) “Monopole” means a structure composed of a pole or tower used to support Antennae or related equipment. A monopole also includes a monopine, monopalm, and similar structures, camouflaged to resemble faux trees or other faux objects.

(q) “Permit” means a written authorization required by the City to perform an action or initiate, continue, or complete a project.

(r) “Pole” means a single shaft of wood, steel, concrete, or other material capable of supporting the equipment mounted thereon in a safe and sufficient manner, as the City, in its sole and absolute discretion shall determine, and as required by provisions of the City Code and other Applicable Codes.

(s) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, and includes the City.

(t) “Rate” means a recurring charge.

(u) “Rights-of-Way” or “ROW” means the area on, below, or above a roadway, highway, street, sidewalk, alley, utility easement, or similar property, but does not include federal interstate highways.

(v) “Small Wireless Facility” means a Wireless Facility that meet(s) both of the following qualifications: (i) each Antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the Wireless Facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, stealth or concealment elements, telecommunications demarcation boxes, ground-based enclosures/cabinets, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(w) “Utility Pole” means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines, cables, or wires for telecommunication, cable, or electric service, or for lighting. Such term shall not include structures supporting only Wireless Facilities.

(x) “Wireless Facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications and (ii) radio transceivers, Antennae, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes Small Wireless Facilities. The term does not include the Wireless Support Structure or improvements on, under, or within which the equipment is collocated, to which the equipment is attached or within which the equipment is enclosed.

(y) “Wireless Infrastructure Provider” means any Person, including a Person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, or Wireless Support Structures, but that is not a Wireless Services Provider.

(z) “Wireless Provider” means a Wireless Infrastructure Provider or a Wireless Services Provider.

(aa) “Wireless Services” means any services, whether at a fixed location or mobile, provided using Wireless Facilities.

(bb) “Wireless Services Provider” means a Person who provides Wireless Services.

(cc) “Wireless Support Structure” means a freestanding structure, such as a monopole or tower, either guyed or self-supporting, a billboard, or other existing or proposed structure designed to support or capable of supporting Wireless Facilities. Such term shall not include a Utility Pole or City-Owned Pole.

All terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

913.3 Permitted Use; Application and Fees

(a) Permitted Use: Collocation of a Small Wireless Facility or a new or modified Utility Pole or Wireless Support Structure for the collocation of a Small Wireless Facility, that meet the height requirements of § 160A-400.55(c)(2), shall be classified as permitted uses and subject only to administrative review under Section 913.4 if they are collocated (i) in a City right-of-way, within any zoning district or (ii) outside of City rights-of-way, on property zoned other than as single-family residential property.

(b) Permit Required. No Person shall place or collocate a Small Wireless Facility in the public rights-of-way, without first filing the appropriate Application and obtaining a Permit therefore, except as otherwise provided in this Chapter.

(c) Permit Application. Applications for Permits filed pursuant to this Chapter shall be on a form, paper or electronic, provided by the City. The Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential”, by clearly marking each page of such materials accordingly.

(d) Application Requirements. Applications shall be made by the Wireless Provider or its duly authorized representative and shall contain the following:

(1) A sealed plan, prepared by a Professional Engineer, Architect, Landscape Architect or other Professional authorized to practice land development in North Carolina.

(2) The Applicant’s current name, address, telephone number, and e-mail address, as well as current contact information for responsible parties

(3) All Applications shall be submitted to the City’s Public Works Department, which shall be the sole source of communications to and from the City (other than when Council or its committees consider an Application).

(4) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the application.

(5) A general description of the proposed work and the purposes and intent of the Small Wireless Facility, provided that, per N.C.G.S. § 160A-400.54 (d)(2), a Wireless Provider shall not be required to provide more information to obtain a Permit than communications service providers that are not Wireless Providers and provided, furthermore, that, pursuant to § 160A-400.52 (c), with respect to an

Application for the placement or construction of a new Wireless Support Structure or the substantial modification of an existing Wireless Support Structure, a Wireless Provider shall not be required to provide information pertaining to the Wireless Provider's designed service, customer demand for its service, the specific need for the Wireless Support Structure, including whether the Wireless Support Structure is intended to add additional wireless coverage or capacity, the quality of the Wireless Provider's service to or from a particular site or area, or any proprietary, confidential, or other business information to justify the need for the Wireless Support Structure, including propagation maps and telecommunications traffic studies. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.

(6) A site plan, with sufficient detail to show the proposed location of items the Applicant seeks to install, modify, or collocate in the right-of-way, including any manholes or poles and the size, type, and depth of any conduit, enclosure, or other equipment.

(7) Provide certification that the Wireless Facilities, Wireless Support Structures, any new or modified Utility Poles and City-Owned Poles, and all other system components will not interfere with any existing public or private utilities, public safety, and other systems.

(8) Provide certification that the Small Wireless Facility, Wireless Support Structure, and new or modified Utility Pole or City-Owned Pole shall comply with the City Code and all Applicable Codes, approved plans, and prior and existing conditions of approval.

(9) A Wireless Provider shall demonstrate and certify that they have or will have access to power at the site of the proposed Wireless Facility, Wireless Support Structure, or new or modified Utility Pole or City-Owned Pole within thirty (30) calendar days of the Permit's issuance, and that power will be maintained to the site until the Wireless Facility is activated.

(10) An Application must include an attestation that Small Wireless Facilities will be collocated on the Utility Pole, City-Owned Pole, or Wireless Support Structure within six (6) months of approval, and that the Small Wireless Facilities will be activated for use by a Wireless Services Provider, in order to provide service, no later than one year from the Permit issuance date, unless the City and the Wireless Provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(11) An Applicant seeking to collocate Small Wireless Facilities at multiple locations within the City's jurisdiction shall be allowed, at the Applicant's discretion, to file a consolidated application for no more than twenty-five (25) separate facilities and receive a single Permit for the collocation of all the Small Wireless Facilities meeting the requirements of the ordinance, Applicable Codes, the City Code, and all other applicable federal and state laws and regulations. The City may remove Small Wireless Facility collocations from a consolidated application and treat separately those for which incomplete information has been provided or which the City will deny. The City may issue a separate Permit for each collocation the City approves.

(12) The Applicant asserts, to the best of the Applicant's knowledge, and under penalty of perjury, the truth of the information contained in the Application.

(13) Photo depictions of the proposed installation, modification, or collocation from the four (4) cardinal directions.

(14) Copies of any previously issued Permits for the Small Wireless Facilities, Wireless Support Structures, Utility Poles, City-Owned Poles, or other components of the system.

(e) Permit Conditions. A Permit for the collocation of the Small Wireless Facility shall provide that the collocation must commence (begin field construction) within six (6) months of approval and that the Small Wireless Facility shall be activated no later than one (1) year from the Permit issuance date, unless the City and the Wireless Provider agree to extend this period or a delay is caused by a lack of commercial power at the site. In addition, the Applicant shall be required to obtain all otherwise applicable work Permits including, by way of example and not by way of limitation, Permits for work that will involve ~~excavation in the right-of-way, affect traffic patterns or obstruct vehicular traffic in the right-of-way~~. All Permits shall be conditioned on: (i) the Applicant's continuous compliance with the City Code and all Applicable Codes, approved plans, and prior and existing conditions of approval and (ii) the City's right to inspect and monitor the Small Wireless Facility, Wireless Support Structure, Utility Pole, and/or City-Owned Pole for compliance.

(f) Applicant. Applicant shall maintain compliance with the City Code, all Applicable Codes, all approved plans, all prior and existing conditions of approval, and all other applicable laws, regulations, rules, and codes. The City shall have the right, but not the obligation, to inspect and monitor all Small Wireless Facilities, Wireless Support Structures, Utility Poles, and City-Owned Poles for compliance.

(g) Routine Maintenance and Replacement. An Application shall not be required for: (i) routine maintenance or (ii) the replacement of a Small Wireless Facility with another Small Wireless Facility that is substantially similar or smaller in size, weight, and height, and that does not defeat or alter any concealment, stealth, or camouflage elements present on the Small Wireless Facility. Otherwise, an application is required and any replacement shall be in accordance with the provisions of this ordinance.

(h) Information Updates. Any amendment to information contained in an Application shall be submitted, in writing, to the City within thirty (30) days after the change necessitating the amendment. If the information is submitted before the Application has been approved, the City shall have another thirty (30) days from the date on which the new information was submitted to review the revised Application.

(i) Fees. The fee for submitting an application shall be one hundred dollars (\$100.00) per Small Wireless Facility for the first five Small Wireless Facilities addressed in an Application, plus fifty dollars (\$50.00) for each additional Small Wireless Facility addressed in the Application.

913.4 – Administrative Review and Approval Process

This Section applies to applications for Permits that meet the requirements specified in Subsection 3(A).

(a) Review for completeness. An Application subject to this Administrative Review section shall be deemed complete, unless the City provides notice, in writing, to the Applicant within thirty (30) days of submission or within some other mutually agreed-upon timeframe. The notice shall identify the deficiencies in the Application which, if cured, would make the application complete. The Application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

(b) Applications. Applicants who/which intend to submit application with more than ten (10) proposed location sites shall be required to schedule and attend a pre-application conference with staff from the City's Public Works Department to discuss the application prior to its submission.

(c) Time Limits for Review of Completed Applications. An Application for a collocation, which is neither an eligible facilities request, per subsection 913.4 (e), below, nor the installation of a new Wireless

Support Structure, Utility Pole, or City-Owned Pole, and is subject to this Administrative Review section shall be processed on a non-discriminatory basis and shall be deemed approved if the City fails to approve or deny the Application within forty-five (45) days from the time the Application is deemed complete or, alternatively, within some other mutually agreed-upon timeframe, to which the City and the Applicant agree.

(d) Denial of Permit. The City may deny an Application for a Permit, subject to this Administrative Review section, on the basis that it does not meet: 1) the Applicable Codes or the City Code, 2) local code provisions or regulations that concern public safety, objective design standards for decorative Utility Poles, Utility Poles, generally, or reasonable and non-discriminatory stealth and concealment requirements, including screening and landscaping for ground-mounted equipment (ground cabinets, etc.), 3) public safety and reasonable spacing requirements for poles and ground-mounted equipment in the right-of-way, or 4) local, state, and federal historic district laws and regulations in and/or enacted pursuant to or consistent with Part 3C of Article 19 of Chapter 160A of the North Carolina General Statutes, 47 U.S.C. 332(c)(7), 47 U.S.C. 1455(a), or the National Historic Preservation Act of 1966, 54 U.S.C. 300101 et seq. The City shall (i) document the basis for a denial, including the specific code provisions on which the denial was based, and (ii) send the documentation to the Applicant on or before the day the City denies an Application. The Applicant may cure the deficiencies identified by the City and resubmit the Application within thirty (30) days of the denial, without paying an additional Application fee. The City shall approve, deny, or identify any continuing deficiencies in, the revised Application within thirty (30) days of the date on which the Application was re-submitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial. If the cited deficiencies are not cured within one-hundred-twenty (120) calendar days of the date of the City's written notice to the Applicant, thereof, the Application shall automatically be deemed withdrawn on the one-hundred-twentieth (120th) calendar day.

(e) Review of Eligible Facilities Requests. Notwithstanding any other provision of this Chapter, the City shall approve and may not deny qualifying applications for eligible facilities requests, which meet the requirements of federal and state law, within sixty (60) days from the date of the Application's submission or forty-five (45) days from the date the Application is deemed complete, whichever comes first, or, alternatively, within some other mutually-agreed time frame, to which the City and the Applicant agree. The City shall process and review all qualifying eligible facilities requests according to the requirements and procedures established in 47 CFR 1.40001(c) and N.C.G.S. § 160A-400.53.

913.5 Small Wireless Facilities in the ROW; Maximum Height; Other Requirements

(a) Maximum Size of Permitted Use. A Wireless Provider may collocate Small Wireless Facilities along, across, upon, and under any City right-of-way, subject to the requirements of this ordinance and applicable federal and state laws, rules, and regulations. Subject to this ordinance and applicable federal and state laws, rules, and regulations, a Wireless Provider may also place, maintain, modify, operate and replace associated Utility Poles, City-Owned Poles, conduit, cable, and related appurtenances and facilities along, across, upon, and under any City right-of-way. The placement, maintenance, modification, operation and replacement of Utility Poles and City-Owned Poles associated with the collocation of Small Wireless Facilities, along, across, upon, and under any City right-of-way shall be classified as Permitted uses and subject only to administrative review or approval under subsection 913.4 if the Wireless Provider meets the following requirements:

- (1) Each new Utility Pole and each modified or replacement Utility Pole or City-Owned Pole installed in the right-of-way shall not exceed fifty (50) feet above ground level.
- (2) Each new Small Wireless Facility in the right-of-way shall not extend more than ten (10) feet above the Utility Pole, City-Owned Pole or Wireless Support Structure on which it is collocated.

(3) Nothing in this section shall be construed to prohibit the City from allowing Utility Poles, City-Owned Poles, or Wireless Facilities that exceed the limits set forth herein.

(4) Relay towers and other towers taller than fifty (50) feet shall be considered communication towers for purposes of this ordinance and, regardless of whether the towers are located within the public right-of-way or no, all relay and other towers taller than fifty (50) feet shall be treated as Conditional Uses under Appendix A, Section 910 of the City Code.

(b) Other Requirements. Any Wireless Provider that seeks to construct or modify a Utility Pole, Wireless Support Structure, or Wireless Facility shall be subject to the following requirements:

(1) Collocations of Small Wireless Facilities are preferred on existing poles, where feasible.

(2) Installations of Small Wireless Facilities are preferred at property lines and street corners where feasible.

(3) Wireless Facilities shall be located such that they do not interfere with public health or safety facilities, equipment, or operations, such as, but not limited to, a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility or equipment. New Wireless Facilities shall not be installed directly over any water, sewer, refuse, drainage, gas, steam, power, or electrical main, service line, or other infrastructure, without the City's and the line owner's express, prior, written consent.

(4) New, modified/alterd, and replacement Wireless Support Structures, erected, modified/alterd, or replaced for the installation or collocation of Small Wireless Facilities shall be made of the same type of material as existing poles in the immediate area. Applicant may request a variance of this provision from the City Manager.

(5) Any tree-disturbing activity necessary for the installation or collocation of Small Wireless Facilities shall comply with the City's landscaping requirements for streetscapes, parking lot landscaping, bufferyards, and other landscaping provisions of Appendix A of the Lenoir City Code.

(6) Wireless Support Structures shall not be lighted or marked by artificial means, except when mounted on an existing light pole or where illumination is specifically required by the Federal Aviation Administration or other federal, state, or local laws, rules, or regulations. Notwithstanding the preceding sentence, the mounting of Small Wireless Facilities on light poles is Permitted, subject to the requirements of this ordinance, Applicable Codes and the City Code.

(7) A Wireless Provider shall repair, at its sole cost and expense, any damage, including, but not limited to, subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to state, City, public, and private streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, above- and below-ground utility lines and systems (including, but not limited to, water, sewer, drainage, gas, and power/electricity), and all other public and private improvements of any kind or nature, that result from any activities performed in connection with the occupation, installation, collocation, maintenance, inspection, repair, or replacement of a Wireless Facility, Wireless Support Structure, City-Owned Pole, or Utility Pole in the public right-of-way. The Wireless Provider shall restore such areas, structures, and systems to the same functional equivalence that existed prior to the activity that necessitated the repairs. The Wireless Provider shall maintain all Wireless Facilities, Wireless Support Structures, and other facilities and system elements in a neat and clean manner.

(8) Small Wireless Facilities shall not be permitted in historic districts, except in compliance with the FCC's Nationwide Programmatic Agreement for the Collocation of Wireless Antennae Executed by the FCC, the National Conference of State Historic Preservation Officers, and the Advisory Council on Historic Preservation.

(9) All Small Wireless Facilities, Wireless Support Structures, new or replacement Utility Poles and City-Owned Poles, and their associated Wireless Facilities shall be camouflaged, disguised, hidden, and blended in with the surrounding environment to the maximum extent practicable.

(10) No Wireless Facility may bear any signs or advertising devices other than certifications, warnings, or other information, as required by federal or state law and/or regulation or by the City Code.

(11) New Wireless Facilities on existing poles shall comply with otherwise applicable rules imposed by the pole owner and City including, when applicable, the National Electric Safety Code.

(c) Undergrounding Provisions. Applicants for use of a City right-of-way shall comply with the City's undergrounding requirements, prohibiting the installation of above-ground structures in the City rights-of-way, without prior zoning approval, provided the City's requirements (i) are non-discriminatory with respect to the type of utility, (ii) do not prohibit the replacement of structures existing at the time of the requirements' adoption, and (iii) allow for a waiver process. Applicants may seek a special use permit to place above-ground structures in areas where the undergrounding requirements apply.

Notwithstanding anything to the contrary herein, in no instance shall a utility pole, City-Owned Pole, or Wireless Support Structure exceed forty (40) feet above ground level in any area zoned single-family residential, where the existing utilities are installed underground, unless the City grants a waiver or variance approving a taller Utility Pole, City-Owned Pole, or Wireless Support Structure. Such waiver shall be requested in writing by the applicant, and shall be approved by the City Manager, in consultation with the Planning Director and the Public Works Director.

913.6 – Effect of Permit

(a) Authority Granted; No Property Right or Other Interest Created. A Permit from the City authorizes an Applicant to undertake only certain activities in accordance with, and subject to, this Chapter and any other party's pre-existing rights in the right-of-way. A Permit from the City does not create a property right or grant authority to the Applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

(b) Duration. Construction of a collocation of a Small Wireless Facility shall commence within six (6) months of approval and shall be activated for use (operational) no later than one (1) year from the Permit issuance date, unless the City and the Applicant agree to extend this period or a delay is caused by a lack of commercial power at the site. If construction of the collocation is not commenced within six (6) months of approval, the Permit will automatically expire six (6) months following approval. If the Small Wireless Facility is not activated/placed into operation within one (1) year from the date of the Permit's issuance, the Permit will automatically expire one [1] year from the date of the Permit's issuance.

(c) Post Construction. The Applicant must submit as-built drawings in an acceptable GIS format, as determined by City staff, in its sole and absolute discretion, as soon as reasonably practicable, but no later than one-hundred-twenty (120) days after the completion of the installation or collocation and, in no

event, later than fifteen (15) months following the date of the Permit's issuance. The Applicant shall submit and maintain current contact information for the party responsible for the Wireless Facility, on a form to be supplied by the City.

913.7 Removal, Relocation or Modification of Small Wireless Facility in the ROW

(a) Notice. Within ninety (90) calendar days following written notice from the City, the Wireless Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of any Small Wireless Facilities within the right-of-way, if the City has determined, in its sole and absolute discretion, that such protection, support, disconnection, removal, relocation, change, or alteration, is necessary for the construction, installation, operation, inspection, maintenance, repair, rehabilitation, expansion, relocation, or removal of any City improvement or the provision or continuation of the City's operations or services in, upon, over, or under the City's right-of-way.

(b) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to disconnect, cut, modify/alter, move, or remove any Small Wireless Facility, Wireless Support Structure, Utility Pole, or City-Owned Pole located within the rights-of-way of the City, as the City, in its sole and absolute discretion, determines is necessary, appropriate, or useful in response to any public health or safety need or emergency. If circumstances permit, as the City, in its sole and absolute discretion shall determine, the City shall notify the Wireless Provider and afford the Wireless Provider an opportunity to move its own facilities prior to disconnecting, cutting, modifying/altering, moving, or removing a facility. The City shall, in any event, notify the Wireless Provider after disconnecting, cutting, modifying/altering, moving, or removing a Small Wireless Facility if the City has not already notified the Wireless Provider.

(c) Abandonment of Facilities. The City may require a Wireless Services Provider to remove an abandoned Wireless Facility within one-hundred-eighty (180) days of abandonment. Should the Wireless Services Provider fail to timely remove the abandoned Wireless Facility, the City may cause such Wireless Facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the Wireless Services Provider. A Wireless Facility shall be deemed abandoned at the earlier of the date that the Wireless Services Provider indicates, in any way, that it is abandoning such facility or the date that is one-hundred-eighty (180) days after the date that such Wireless Facility ceases to transmit a signal, unless the Wireless Services Provider gives the City reasonable evidence that it is diligently working to place such Wireless Facility back in service.

(d) Liability; Assumption of the Risk. Applicant, by applying for and accepting a Permit, assumes all risk of liability for damages that may occur to Persons or property on account of the collocation, installation, occupation, presence, existence, operation, maintenance, modification, repair, replacement, relocation, or removal of the facilities covered by the Permit, or the proposed work, whether completed by the Applicant or the Applicant's agent or contractor. Applicant shall procure and maintain in continuous effect, for the duration of the encroachment, liability insurance to protect the City from liability and damages on account of injuries to workers, as provided by law, and to protect the City from liability and damages occasioned by the collocation, installation, presence, existence, occupation, operation, maintenance, modification, repair, replacement, relocation, or removal of the facilities covered by the Permit, or the proposed work, whether completed by the Applicant or the Applicant's agent or contractor, and from any liability or damages pertaining to the City's disconnection, cutting, modification/alteration, removal, or relocation of any Wireless Facilities, Wireless Support Structures, Utility Poles, or City-Owned Poles Applicant has installed or modified or on which Applicant has collocated. Applicant shall provide the City, together with the Application and, thereafter, within ten (10) calendar days of demand, original, signed certificates of insurance to show that the Applicant carries insurance in the required levels and coverages, as specified by the City's Risk Management Office. Applicant shall also provide the City certificates of insurance from any subcontractors the Applicant engages to perform work pursuant to the

Permit. Both the Applicant's and its subcontractors' insurance certificates shall name the City an additional insured (in the Applicant's case, for the duration of the encroachment; in the Applicants' subcontractors' cases, for the duration of the work the subcontractors perform and for one (1) year thereafter).

(e) Release, Indemnification, and Covenant Not to Sue. By applying for and accepting a Permit, Applicant agrees to release, defend, indemnify, and hold harmless the City and its Council, boards, commissions, officials, officers, agents, volunteers, and employees from and against any and all losses, damages, liabilities, claims, demands, suits, costs, and expenses, including, but not limited to, court costs and reasonable attorneys' fees, resulting from the Applicant's alleged and actual acts or omissions, or those of its officers, agents, or employees, in connection with the permitted work or the collocation, installation, occupation, presence, existence, operation, maintenance, modification, repair, replacement, relocation, or removal of the facilities covered by the Permit. This indemnity provision shall be applicable regardless of the merit or outcome of such claim or suit. By applying for accepting a Permit, Applicant also covenants not to sue over mater released herein.

913.8 Attachment to City-Owned Poles in the Rights-of-Way

(a) Exclusivity. Any arrangement with any Person for the right to collocate on City-Owned Poles shall not be exclusive.

(b) Collocation on City-Owned Poles. Any Wireless Provider may collocate on City-Owned Poles on just, reasonable, and non-discriminatory rates, terms, and conditions, subject to the requirements of this Ordinance, the Applicable Codes, City Code, and other applicable federal and state laws, rules, and regulations. A request to collocate under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the City, to be reimbursed by the wireless provider. In granting a request under this section, the City shall require the requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration.

(c) Rates, Terms, and Conditions. Following receipt of the first request from a Wireless Provider to collocate on a City-Owned Pole, the City Manager or the City Manager's designee shall, within sixty (60) days, establish the rates, terms, and conditions for the use of, or attachment to, City-Owned Poles. Notwithstanding anything else in this section, the rate for collocation of Small Wireless Facilities on City-Owned Poles shall not exceed fifty dollars (\$50) per City-Owned Pole, per year.

(d) Make-Ready Work. The City will provide a good-faith estimate for any make-ready work necessary to enable the City-Owned Pole to support the requested collocation, including pole replacement, if necessary, and to meet the City Code, Applicable Codes, or industry standards, within sixty (60) days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within sixty (60) days of the written acceptance of the good-faith estimate by the Applicant. Fees for make-ready work shall not include costs related to pre-existing or prior damage or non-compliance or any consultant fees or expenses.

SECTION 2. SEVERABILITY. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 3. CODIFICATION. The City Clerk shall cause the Code of Ordinances of Lenoir, North Carolina to be amended as provided by this ordinance and may renumber, re-letter, and rearrange the codified parts of this ordinance if necessary to facilitate the finding of the law.

SECTION 4. EFFECTIVE DATE. This ordinance takes effect upon adoption.

DONE, THE PUBLIC NOTICE, in a newspaper of general circulation in the City of Lenoir, North Carolina, by the City Clerk of the City of Lenoir, North Carolina, this _____ day of _____ and this _____ day of _____, 2019.

DONE, THE PUBLIC HEARING, AND ENACTED ON FINAL PASSAGE, by an affirmative vote of the a majority of a quorum present of the City Council of the City of Lenoir, North Carolina, at a regular meeting, this _____ day of _____, 2019.

BY THE MAYOR/MAYOR PRO TEMPORE OF THE CITY OF LENOIR, NORTH CAROLINA:

Mayor/Mayor Pro Tempore

ATTEST, BY THE CLERK OF THE CITY COUNCIL OF THE CITY OF LENOIR, NORTH CAROLINA:

City Clerk

****[Remainder of page intentionally left blank.]****

CITY OF LENOIR
COUNCIL ACTION FORM: Jan 15, 2019

I. Agenda Item:

Rezoning request for 515 Realty Street from General Business (B-2) to Heavy Industrial (I-2).

II. Background Information:

Staff report is attached.

III. Staff and Planning Board Recommendation:

Planning staff and the Planning Board recommend that City Council approval of the Rezoning request as presented.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Planning Director:  _____



Staff Report

Zoning Amendment

CASE NUMBER R #3/18

LOCATION MAP/AERIAL PHOTOGRAPH



Address: 515 Realty St

Left: Aerial Image of subject property

Below: View from Realty Street



SUMMARY

Owner/Applicant

Ben Griffin

Location

515 Realty St at northeast intersection with Pennton Ave, in transitional area between Lerinco and Morganton Blvd

NC PIN

2749638920

Project Planner

Hannah Williams

Updated January 3, 2018

Description of Request:

The applicant requests that the City re-zone the subject property from B-2 (General Business) to I-2 (Heavy Industrial), for industrial development.

Staff Recommendation:

Approval of the request, based on the consistency statement on page 6.

Planning Board Recommendation:

Approval of rezoning

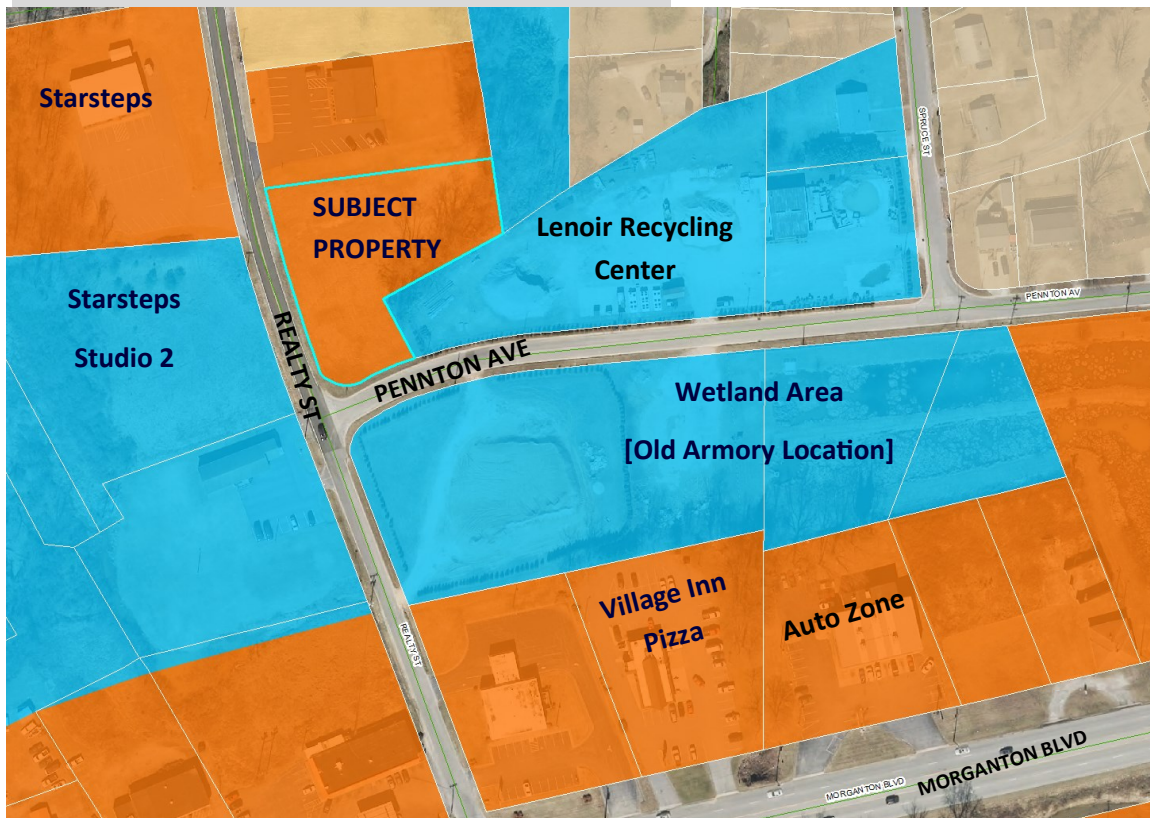
Public Comment:

Planning Board Meetings: December 17, 2018.

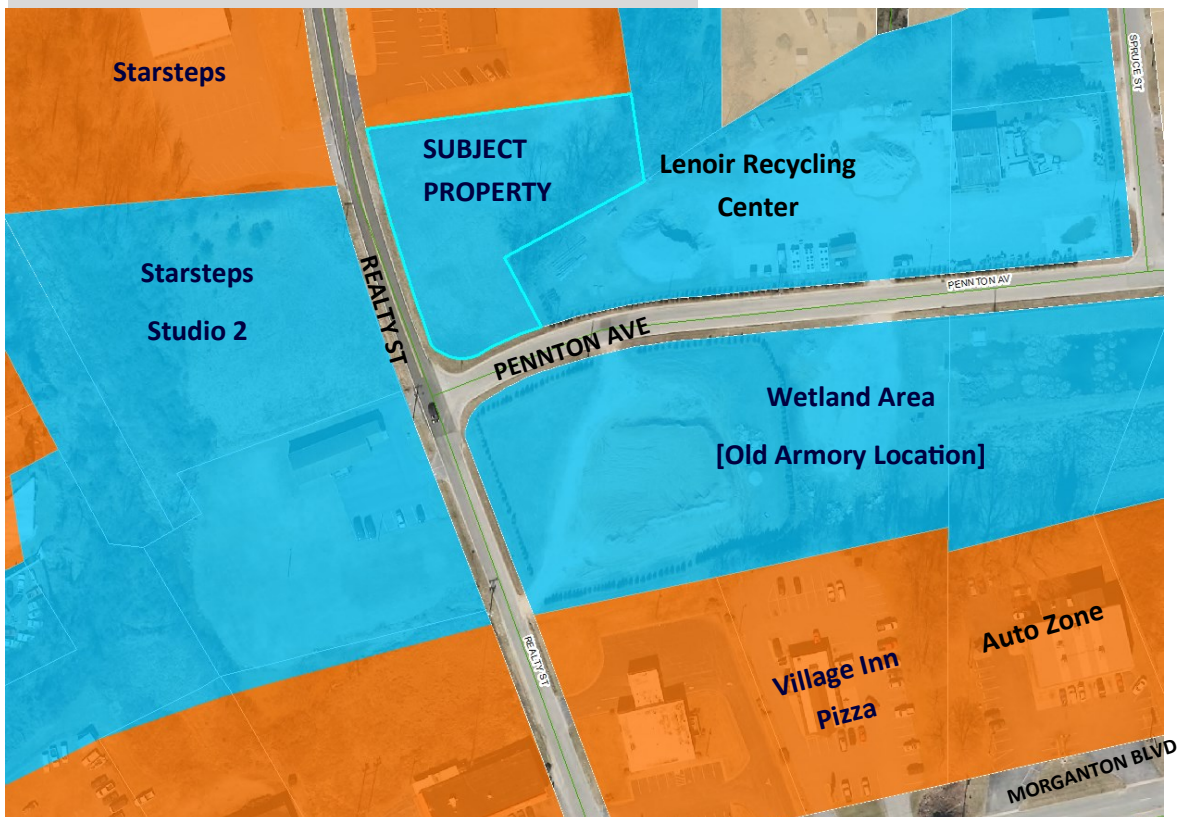
City Council (Public Hearing): Scheduled for January 15, 2019. Notices were mailed to property owners within 100 fr. of the subject property on January 3, 2019.

EXISTING AND PROPOSED ZONING MAPS

Existing Zoning: B-2



Proposed Zoning: I-2



BACKGROUND AND STAFF ANALYSIS

Zoning Map Amendments

The City of Lenoir Ordinance establishes an official zoning map/atlas for the City of Lenoir. The zoning map may be amended from time to time by the City Council when public necessity, convenience, general welfare, or good zoning practice justifies the amendment. The zoning map cannot be changed until the Planning Board reviews the request and makes a report to City Council on the proposed change and the City Council holds a public hearing to consider the request.

Intent of the Zoning Districts

The I-2 Heavy Industrial District is intended to produce areas for intensive manufacturing processing and assembly uses, controlled by performance standards to limit the effect of such uses on adjacent districts. Industrial zoning is established to provide for uses that might require location near or adjacent to major thoroughfares.

The B-2 General Business zoning district is intended to provide for a wide variety of retail, service and other activities, controlled by performance standards, at locations along major transportation routes, to the motoring public both local and transient.

Subject and Surrounding Properties

The subject property is located in the B-2 General Business district and is currently undeveloped. The property is north of Morganton Boulevard commercial area, and south of the Lerinco/Cotton Mill Hill neighborhood. There is some floodplain delineation on the southern corner of the subject property, but the corner is heavily vegetated and steep. Should development occur in the floodplain corner of the property, a floodplain development permit will be needed.

The property borders I-2 zoned properties. It is adjacent from the Lenoir Recycling Center to the east. It is across the street from the constructed wetland of the former armory location. The Startsteps Dance Studios are split-zoned I-2 and B-2. There is a doctors office building, zoned B-2, on the property to the north off Realty Street. The subject property is close to the Bernhardt Furniture Plants, the Google Data Center, and other heavy industrial uses.

Request

The rezoning request comes at the same time as a development proposal for a modular office. Although current plans should have limited influence over the decision to rezone, it should be noted that this property has sat undeveloped for many years. Rezoning this property to I-2 would bring an infill lot into commercial use without the development needing to meet the strict design standards of the B-2 district. The type of building proposed would match the other low density buildings and uses in the immediate vicinity. It should be noted that the other nearby developments that are zoned B-2 do not meet the design standards that the property is currently subjected to.

Consistency with the Comprehensive Plan

All decisions of the Planning Board and City Council should be based on consistency of the proposal with the comprehensive plan and any other officially adopted plan that is applicable. The comprehensive plan establishes a future land use map, which identifies the subject property as "existing nonresidential" and does not propose a different future land use. However, the comprehensive plan also encourages the development of industrial uses in areas with appropriate access and infrastructure; the subject property is undeveloped and adjacent to industrial uses. The Comprehensive plan also encourages opportunities for infill development when possible. The subject property is an undeveloped lot in a transitional area, ideal for new development within the City Limits. Staff finds the proposed re-zoning to be consistent with the goals and policy concepts of the Comprehensive Plan.

Transportation

This property is at the corner of Realty Street and Pennton Avenue. Any development to this property could be accessed by either city-maintained street.

BACKGROUND AND STAFF ANALYSIS CONTINUED

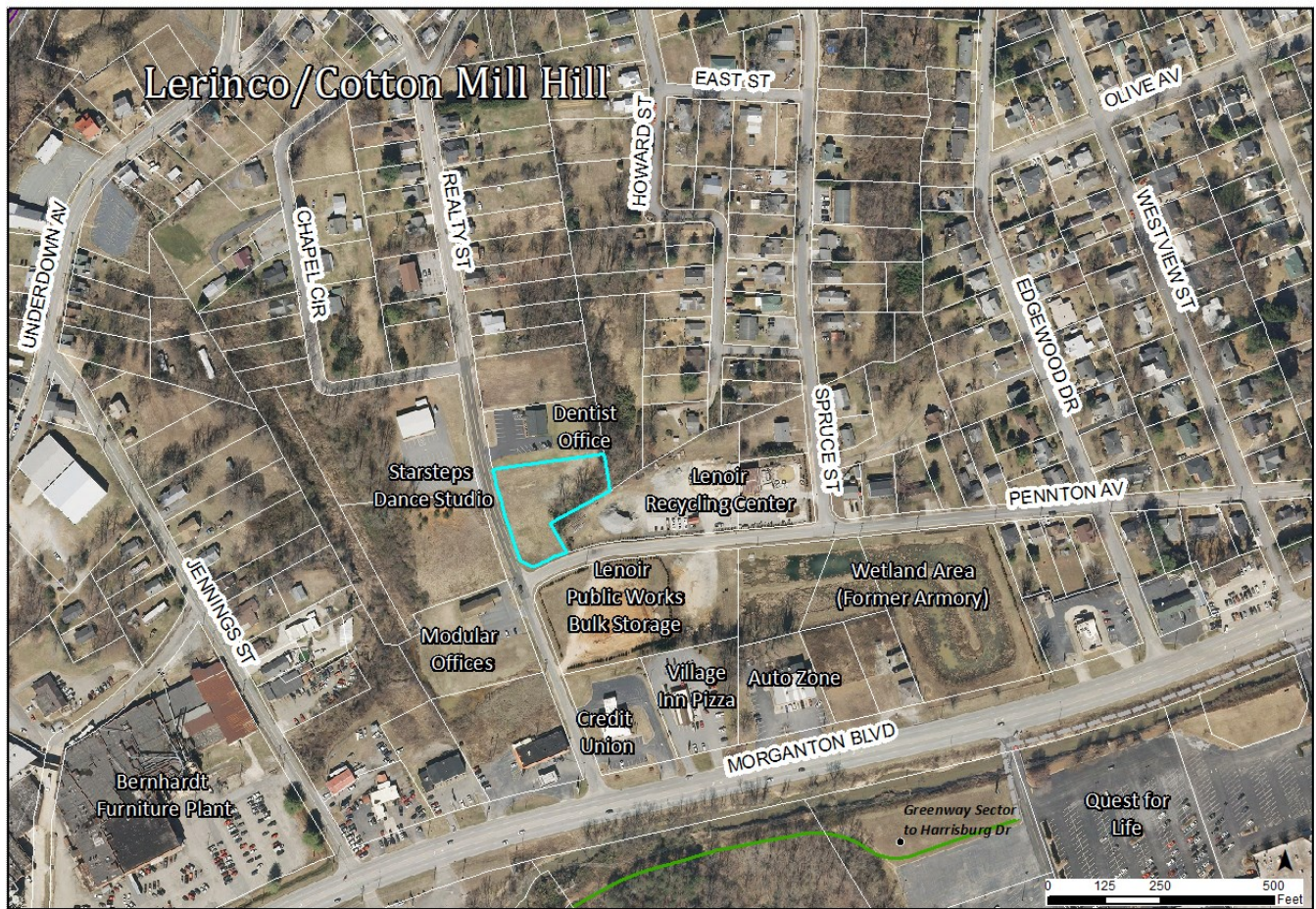
Comparison of Allowable Uses

Sec. 600 of the Lenoir Zoning Ordinance establishes a chart of permitted and conditional uses for each zoning district. The B-2 zoning district allows a wide range of residential, commercial, and other non-residential uses. There is some overlap with uses allowed in the I-2 district, however the I-2 allows for intensive industrial uses. The change to I-2 would eliminate the design standards requirement.

Comparison of Zoning Districts

	B-2	I-2
Development Standards	Min Lot Size - None Setbacks Front— With side and rear parking - 40' from the centerline of street, right-of-way or 10' from street right-of-way whichever distance is greater. Side Yard— None for nonresidential Abutting residential - 30 feet Rear Yard— None for nonresidential Abutting residential - 30 feet Max Building Height - 65 feet	Minimum Lot Size - 20,000 square feet Minimum Front Yard - 25 feet from right-of-way Minimum Side Yard - Abutting residential or office: 40 ft; Abutting commercial or industrial: None; Abutting side Street: 25 ft Minimum Rear Yard - Abutting residential or office - 40 feet; Abutting commercial or industrial district - None Max Building Height - 65 feet
Summary of Permitted Uses	Accessory Use Or Accessory Bldg. (Nonresidential) Accessory Use Or Accessory Bldg. (Residential) Commercial Business Dwelling, Group Dwelling, Single-Family Detached Dwelling, Two-Family Offices/Clinics Restaurants Supermarkets	Accessory Use Or Accessory Bldg. (Nonresidential) Accessory Use Or Accessory Bldg. (Residential) Small Businesses Commercial Businesses Contractors Office and Equipment Storage Furniture Manufacturing Public Service Facilities Truck Terminals **For further uses see section 814 in Lenoir Zoning Ordinance

AERIAL PHOTO/SURROUNDING DEVELOPMENT



Southern view of property, facing Pennton Ave and Realty St intersection



SURROUNDING DEVELOPMENT



Left: Across the street to the north of subject property, Starsteps Dance Studio.

Right: Across the street to the south of subject property, Mmdular offices.



Left: Adjacent to the north of the subject property, medical office building.

STAFF RECOMMENDATION AND CONSISTENCY STATEMENT

Staff recommends that the Planning Board recommend approval of the request, based on the following consistency statement, and call for a Public Hearing for City Council to consider the request on January 15, 2019:

The proposed zoning map amendment is consistent with the adopted Comprehensive Plan because it facilitates the development of an unused property in a transitional area that is already served by existing infrastructure. The proposed amendment is reasonable and in the public interest because it allows for construction in the area between a large commercial corridor and a residential neighborhood, supporting future growth.

PLANNING BOARD RECOMMENDATION

Planning Board recommends approval of the proposed property for rezoning based on the consistency statement and staff recommendations.

**LENOIR CITY COUNCIL
TUESDAY, DECEMBER 4, 2018
5:00 P.M.**

PRESENT: Mayor Gibbons presiding. Councilmembers present were Beal, Perdue, Perkins, Rohr, Stevens, Thomas and Willis. Also in attendance were City Manager Hildebran, and City Attorney Blair.

ABSENT: City Clerk Shirley Cannon.

I. CALL TO ORDER

- A. The meeting was opened by a moment of silence followed by the Pledge of Allegiance led by Mayor Gibbons.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

III. CONSENT AGENDA ITEMS

- A. Upon a recommendation by City Manager Hildebran, the following Consent Agenda items were submitted for approval:
1. Minutes: Approval of the minutes of the City Council Meeting of Tuesday, November 20, 2018, as submitted.
 2. Minutes: Approval of the minutes of the Committee of the Whole Meeting of Tuesday, November 27, 2018, as submitted.
 3. Minutes: Approval of closed session minutes of Tuesday, November 20, 2018 and Tuesday, November 27, 2018 as reviewed by the city Attorney, City Council and City Manager.

Upon a motion by Councilmember Stevens, Council voted 7 to 0 to approve the above listed items on the Consent Agenda as presented and as recommended by City Manager Hildebran.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

- A. Items of Information

LUMINARY

- DISPLAY:** 1. The annual Luminary Display is scheduled for Friday, December 7 from 6:00 p.m. – 10:00 p.m. at Blue Ridge Memorial Park. A rain date will be held on Friday, December 14.

FABULOUS FILM

- NIGHT:** 2. Fabulous Film Night is scheduled for Saturday, December 8 with the movie “Christmas with the Kranks” being shown at the LHS Auditorium at 7:00 p.m. Santa is scheduled to greet everyone from 6:00 p.m. – 7:00 p.m.

MEETING CANCELLATION:

3. The City Council Meeting of Tuesday, December 18 has been cancelled. The next City Council Meeting will be held on Tuesday, January 15 at 6:00 p.m.

HOLIDAY

- CLOSING:** 4. City offices will be closed on December 24, 25, & 26 for the Christmas Holidays and also on Tuesday, January 1 in observance of New Year’s Day.

B. ITEMS FOR COUNCIL ACTION**NO-THROUGH TRUCKS; BRADFORD STREET SW AND LUTZ STREET:**

1. Due to an increase on and around Bradford Street SW and Lutz Street SW, and traffic related incidents resulting in damage to public and private property, City Staff along with the Public Works Department and Police Department, wish to post a portion of Bradford Street SW and Lutz Street SW (in its entirety with “No Through Truck” Signage). The public right-of-way width of Bradford Street is twenty-five feet and the public right-of-way width of Lutz Street SW is sixteen-feet. A portion of Bradford Street is used as the primary truck access for an industry. The posting would not include this portion of Bradford Street.

City Staff recommends that Council call for a public hearing to be held on Tuesday, January 15, 2019, to consider amending the City Of Lenoir’s Charter Code of Ordinances, Appendix B, Traffic, Section 123, “No through Trucks” to include this portion of Bradford Street SW and Lutz Street SW (in its entirety) as “No through Trucks”.

Public Works Director Jared Wright addressed Council and explained there were a number of traffic issues with this portion of Bradford Street. Director Wright showed a map of the location to be designated as “No Through Trucks” and stated a tractor trailer truck that was traveling to Bruex Industries missed the turn for Bradford Street and attempted to turn onto Lutz Street. Director Wright pointed out that Lutz Street was too narrow for the tractor trailer which ran over the stop sign and encroached eight-feet onto private property causing property damage. He emphasized the area needs to be posted.

In addition, Director Wright clarified the City of Lenoir was seeking restitution for damages caused by the truck and the property owner would also be seeking restitution from the owner of the vehicle. He further clarified on the map the area on Bradford Street that would remain as a primary entrance for Bruex, Inc. Director Wright also mentioned he has spoken with officials at Duke Energy and others about fixing this street in order to make it more accessible. Mayor Gibbons also noted he has spoken with Mr. Johnson at Bruex, Inc. and he is in agreement with Staff’s recommendation.

Upon a motion by Councilmember Rohr, Council voted 7 to 0 to schedule a public hearing on Tuesday, January 15 to consider designating a portion of Bradford Street SW and Lutz Street SW (in its entirety with “No Through Truck” signage) as recommended by City Staff.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

IX. REPORT AND RECOMMENDATIONS OF COUNCIL MEMBERS

COMMENDED; CITY

STAFF: A. Councilmember Crissy Thomas commended City Staff and others who volunteered during the annual Turkey Tuesday event held on Tuesday, November 20. The event was a huge success with over 400 frozen turkeys given out to families in need.

X. ADJOURNMENT

A. There being no further business, the meeting was adjourned at 6:13 p.m.

Shirley M. Cannon, City Clerk

Joseph L. Gibbons, Mayor

CITY OF LENOIR
COUNCIL ACTION FORM

- I. Agenda Item:** Fire Station III Capital Project Ordinance
- II. Background Information:** The project to authorize activities for Fire Station III Capital Project to include the expenditure of loan funds and local funds for the purchase of the facility, as well as the design, construction, and project administration for Fire Station III. The project is to be funded utilizing the Rural Development Revolving Loan Fund through Blue Ridge Electric Membership Corporation and local funds
- III. Staff Recommendation:** Staff recommends approval of the proposed Capital Project Ordinance to appropriate funds.
- IV. Reviewed by:**
- City Attorney:
- Finance Director: *Danna Bean*
- Public Works/Public Utilities Director:
- Planning Director:
- Recreation Director:

Capital Project Ordinance for the City of Lenoir

FIRE STATION III CAPITAL PROJECT

BE IT ORDAINED by the City Council Members of the City of Lenoir, North Carolina that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1: The project to authorize activities for Fire Station III Capital Project to include the expenditure of loan funds and local funds for the purchase of the facility, as well as the design, construction, and project administration for Fire Station III. The project is to be funded utilizing the Rural Development Revolving Loan Fund through Blue Ridge Electric Membership Corporation and local funds.

Section 2: The officers of this unit are hereby directed to proceed with the capital project within the terms of the budget contained herein.

Section 3: The following amounts are appropriated for the project:

Purchase of Facility	\$ 1,028,615.00
Upfit/Renovations	\$ 400,000.00
Furnishings/Equipment	<u>\$ 207,000.00</u>
Total Expenditures	\$ 1,635,615.00

Section 4: The following revenues are anticipated to be available to complete this project:

Rural Development Revolving Loan Fund (0% interest)	\$ 1,360,000.00
Local funding	<u>\$ 275,615.00</u>
Total Revenue	\$ 1,635,615.00

Section 5: The Finance Officer is hereby directed to maintain within the Capital Project Fund sufficient specific detailed accounting records to satisfy the requirements of the Project Ordinance.

Section 6: The Finance Officer is directed to report, on a quarterly basis, on the financial status of each project element in Section 3.

Section 7: The Budget Officer is directed to include a detailed analysis of past and future costs and revenues on this capital project in every budget submission made to this Board.

Section 8: Copies of this capital project ordinance shall be furnished to the Budget Officer and the Finance Officer for direction in carrying out this project.

Adopted this _____ day of January, 2019.

Mayor

Clerk

CITY OF LENOIR
COUNCIL ACTION FORM

I. Agenda Item:

Budget Amendments - Request for amendments to be made to the annual budget ordinance for the fiscal year ending June 30, 2019

II. Background Information:

Request for amendments to be made to the annual budget ordinance for the fiscal year ending June 30, 2019 as follows:

- **Budget Amendment 2019-01:**
 - Allocate funds for the purchase of Servco Property on Morganton Blvd, Lenoir NC - 150,000
 - Allocate funds for the FNI (Stormwater) Plan - 102,945
 - Allocate funding for Fire Station III Capital Project – 275,615

Staff Recommendation:

Approve as requested

III. Reviewed by:

City Attorney:

Finance Director:

Donna Bean

Public Works/Public Utilities Director:

Planning Director:

Recreation Director:

**2018-2019 Fiscal Year
Budget Amendment Ordinance 2019-01
15-Jan-19**

Request for amendments to be made to the annual budget ordinance for the fiscal year ending June 30, 2019 as follows:

Section 1. To amend the General Fund - the appropriations are to be changed as follows:

Item 1: Allocate funds for the purchase of Servco Property on Morganton Blvd, Lenoir NC.

Acct. No.		Increase - Budgeted Amount
10-00-4110-570	Purchase of Land	150,000.00
10-00-3991-901	Budget Amendment from Fund Balance	150,000.00
	Net increase in appropriation to the General Fund for this item	150,000.00

Item 2: Appropriate funds for the FNI (Stormwater) Plan.

Acct. No.		Increase - Budgeted Amount
10-40-4910-440	Contracted Services - Planning	102,945.00
10-00-3991-901	Budget Amendment from Fund Balance	102,945.00
	Net increase in appropriation to the General Fund for this item	102,945.00

Item 3: Allocate funding for Fire Station III Capital Project

Acct. No.		Increase - Budgeted Amount
40-20-3982-900	Fire Station III -General Fund Transfer	275,615.00
10-00-3991-901	Budget Amendment from Fund Balance	275,615.00
	Net increase in appropriation to the General Fund for this item	275,615.00

	Total Change to the General Fund	Decrease Balance
		528,560.00

CITY OF LENOIR
COUNCIL ACTION FORM

I. Agenda Item:

Approve the Contract To Audit Accounts as submitted by S. Eric Bowman, PA

II. Background Information:

S. Eric Bowman, PA has submitted the Contract To Audit Accounts agreement to the City of Lenoir. The agreed upon cost for the audit is \$95.00 per hour with a 75% cap for interim invoice approval of \$ 31,533, which is 75% of the prior year's audit fee.

Staff Recommendation:

Approve as requested

III. Reviewed by:

City Attorney:

Finance Director: Donna Bean

Public Works/Public Utilities Director:

Planning Director:

Recreation Director:

The of and	Governing Board City Council
	Primary Government Unit City of Lenoir
	Discretely Presented Component Unit (DPCU) (if applicable)

Primary Government Unit, together with DPCU (if applicable), hereinafter referred to as Governmental Unit(s)

and	Auditor Name S. Eric Bowman, PA
	Auditor Address PO Box 1476, Morganton, NC 28680

Hereinafter referred to as Auditor

for	Fiscal Year Ending	Audit Report Due Date
	06/30/19	10/31/19

Must be within four months of FYE

hereby agree as follows:

1. The Auditor shall audit all statements and disclosures required by U.S. generally accepted auditing standards (GAAS) and additional required legal statements and disclosures of all funds and/or divisions of the Governmental Unit(s). The non-major combining, and individual fund statements and schedules shall be subjected to the auditing procedures applied in the audit of the basic financial statements and an opinion shall be rendered in relation to (as applicable) the governmental activities, the business- type activities, the aggregate DPCUs, each major governmental and enterprise fund, and the aggregate remaining fund information (non-major government and enterprise funds, the internal service fund type, and the fiduciary fund types).
2. At a minimum, the Auditor shall conduct his/her audit and render his/her report in accordance with GAAS. The Auditor shall perform the audit in accordance with *Government Auditing Standards* if required by the State Single Audit Implementation Act, as codified in G.S. 159-34. If required by OMB *Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) and the State Single Audit Implementation Act, the Auditor shall perform a Single Audit. This audit and all associated audit documentation may be subject to review by Federal and State agencies in accordance with Federal and State laws, including the staffs of the Office of State Auditor (OSA) and the Local Government Commission (LGC). If the audit requires a federal single audit performed under the requirements found in Subpart F of the Uniform Guidance (§200.501), it is recommended that the Auditor and Governmental Unit(s) jointly agree, in advance of the execution of this contract, which party is responsible for submission of the audit and the accompanying data collection form to the Federal Audit Clearinghouse as required under the Uniform Guidance (§200.512).

If the audit and Auditor communication are found in this review to be substandard, the results of the review may be forwarded to the North Carolina State Board of CPA Examiners (NC State Board).

County and Multi-County Health Departments: The Office of State Auditor will require Auditors of these Governmental Units to perform agreed upon procedures (AUPs) on eligibility determination on certain programs. Both Auditor and Governmental Unit agree that Auditor shall complete and report on these AUPs on

eligibility determination as required by OSA and in accordance with the instructions and timeline provided by OSA.

3. If an entity is determined to be a component of another government as defined by the group audit standards, the entity's auditor shall make a good faith effort to comply in a timely manner with the requests of the group auditor in accordance with AU-6 §600.41 - §600.42.

4. This contract contemplates an unmodified opinion being rendered. If during the process of conducting the audit, the Auditor determines that it will not be possible to render an unmodified opinion on the financial statements of the unit, the Auditor shall contact the LGC staff to discuss the circumstances leading to that conclusion as soon as is practical and before the final report is issued. The audit shall include such tests of the accounting records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances. Any limitations or restrictions in scope which would lead to a qualification should be fully explained in an attachment to this contract.

5. If this audit engagement is subject to the standards for audit as defined in *Government Auditing Standards*, 2011 revisions, issued by the Comptroller General of the United States, then by accepting this engagement, the Auditor warrants that he/she has met the requirements for a peer review and continuing education as specified in *Government Auditing Standards*. The Auditor agrees to provide a copy of the most recent peer review report to the Governmental Unit(s) and the Secretary of the LGC prior to the execution of an audit contract. Subsequent submissions of the report are required only upon report expiration or upon auditor's receipt of an updated peer review report. If the audit firm received a peer review rating other than pass, the Auditor shall not contract with the Governmental Unit(s) without first contacting the Secretary of the LGC for a peer review analysis that may result in additional contractual requirements.

If the audit engagement is not subject to *Government Accounting Standards* or if financial statements are not prepared in accordance with U.S. generally accepted accounting principles (GAAP) and fail to include all disclosures required by GAAP, the Auditor shall provide an explanation as to why in an attachment to this contract or in an amendment.

6. It is agreed that time is of the essence in this contract. All audits are to be performed and the report of audit submitted to LGC staff within four months of fiscal year end. If it becomes necessary to amend this due date or the audit fee, an amended contract along with a written explanation of the delay shall be submitted to the Secretary of the LGC for approval.

7. It is agreed that GAAS include a review of the Governmental Unit's (Units') systems of internal control and accounting as same relate to accountability of funds and adherence to budget and law requirements applicable thereto; that the Auditor shall make a written report, which may or may not be a part of the written report of audit, to the Governing Board setting forth his/her findings, together with his recommendations for improvement. That written report shall include all matters defined as "significant deficiencies and material weaknesses" in AU-C 265 of the *AICPA Professional Standards (Clarified)*. The Auditor shall file a copy of that report with the Secretary of the LGC.

8. All local government and public authority contracts for audit or audit-related work require the approval of the Secretary of the LGC. This includes annual or special audits, agreed upon procedures related to internal controls, bookkeeping or other assistance necessary to prepare the Governmental Unit's (Units') records for audit, financial statement preparation, any finance-related investigations, or any other audit-related work in the State of North Carolina. Invoices for services rendered under these contracts shall not be paid by the Governmental Unit(s) until the invoice has been approved by the Secretary of the LGC. (This also includes any progress billings.) [G.S. 159-34 and 115C-447] All invoices for Audit work shall be submitted in PDF format to the Secretary of the LGC for approval. The invoice marked 'approved' with approval date shall be returned to

the Auditor to present to the Governmental Unit(s) for payment. Approval is not required on contracts and invoices for system improvements and similar services of a non-auditing nature.

9. In consideration of the satisfactory performance of the provisions of this contract, the Governmental Unit(s) shall pay to the Auditor, upon approval by the Secretary of the LGC, the fee, which includes any costs the Auditor may incur from work paper or peer reviews or any other quality assurance program required by third parties (federal and state grantor and oversight agencies or other organizations) as required under the Federal and State Single Audit Acts. This does not include fees for any pre-issuance reviews that may be required by the NC Association of CPAs (NCACPA) Peer Review Committee or NC State Board of CPA Examiners (see Item 12).

10. If the Governmental Unit(s) has/have outstanding revenue bonds, the Auditor shall submit to LGC staff, either in the notes to the audited financial statements or as a separate report, a calculation demonstrating compliance with the revenue bond rate covenant. Additionally, the Auditor shall submit to LGC staff simultaneously with the Governmental Unit's (Units') audited financial statements any other bond compliance statements or additional reports required by the authorizing bond documents, unless otherwise specified in the bond documents.

11. After completing the audit, the Auditor shall submit to the Governing Board a written report of audit. This report shall include, but not be limited to, the following information: (a) Management's Discussion and Analysis, (b) the financial statements and notes of the Governmental Unit(s) and all of its component units prepared in accordance with GAAP, (c) supplementary information requested by the Governmental Unit(s) or required for full disclosure under the law, and (d) the Auditor's opinion on the material presented. The Auditor shall furnish the required number of copies of the report of audit to the Governing Board upon completion.

12. If the audit firm is required by the NC State Board, the NCACPA Peer Review Committee, or the Secretary of the LGC to have a pre-issuance review of its audit work, there shall be a statement in the engagement letter indicating the pre-issuance review requirement. There also shall be a statement that the Governmental Unit(s) shall not be billed for the pre-issuance review. The pre-issuance review shall be performed prior to the completed audit being submitted to LGC Staff. The pre-issuance review report shall accompany the audit report upon submission to LGC Staff.

13. The Auditor shall submit the report of audit in PDF format to LGC Staff when (or prior to) submitting the final invoice for services rendered. The report of audit, as filed with the Secretary of the LGC, becomes a matter of public record for inspection, review and copy in the offices of the LGC by any interested parties. Any subsequent revisions to these reports shall be sent to the Secretary of the LGC along with an Audit Report Reissued Form (available on the Department of State Treasurer website). These audited financial statements, excluding the Auditors' opinion, may be used in the preparation of official statements for debt offerings by municipal bond rating services to fulfill secondary market disclosure requirements of the Securities and Exchange Commission and for other lawful purposes of the Governmental Unit(s) without requiring consent of the Auditor. If the LGC Staff determines that corrections need to be made to the Governmental Unit's (Units') financial statements, those corrections shall be provided within three business days of notification unless another deadline is agreed to by LGC staff.

If the OSA designates certain programs to be audited as major programs, as discussed in Item 2, a turnaround document and a representation letter addressed to the OSA shall be submitted to LGC Staff.

14. Should circumstances disclosed by the audit call for a more detailed investigation by the Auditor than necessary under ordinary circumstances, the Auditor shall inform the Governing Board in writing of the need for such additional investigation and the additional compensation required therefore. Upon approval by the

Secretary of the LGC, this contract may be modified or amended to include the increased time, compensation, or both as may be agreed upon by the Governing Board and the Auditor.

15. If an approved contract needs to be modified or amended for any reason, the change shall be made in writing, on the Amended LGC-205 contract form and pre-audited if the change includes a change in audit fee (pre-audit requirement does not apply to charter schools). This amended contract shall be completed in full, including a written explanation of the change, signed and dated by all original parties to the contract. It shall then be submitted to the Secretary of the LGC for approval. No change to the audit contract shall be effective unless approved by the Secretary of the LGC, the Governing Board, and the Auditor.

16. A copy of the engagement letter, issued by the Auditor and signed by both the Auditor and the Governmental Unit(s), shall be attached to this contract, and shall be incorporated by reference as if fully set forth herein as part of this contract. In case of conflict between the terms of the engagement letter and the terms of this contract, the terms of this contract shall take precedence. Engagement letter terms that conflict with the contract are deemed to be void unless the conflicting terms of this contract are specifically deleted in Item 26 of this contract. Engagement letters containing indemnification clauses shall not be accepted by LGC Staff.

17. Special provisions should be limited. Please list any special provisions in an attachment.

18. A separate contract should not be made for each division to be audited or report to be submitted. If a DPCU is subject to the audit requirements detailed in the Local Government Budget and Fiscal Control Act and a separate audit report is issued, a separate audit contract is required. If a separate report is not to be issued and the DPCU is included in the primary government audit, the DPCU shall be named along with the parent government on this audit contract. DPCU Board approval date, signatures from the DPCU Board chairman and finance officer also shall be included on this contract.

19. The contract shall be executed, pre-audited (pre-audit requirement does not apply to charter schools), and physically signed by all parties including Governmental Unit(s) and the Auditor, then submitted in PDF format to the Secretary of the LGC.

20. The contract is not valid until it is approved by the Secretary of the LGC. The staff of the LGC shall notify the Governmental Unit and Auditor of contract approval by email. The audit should not be started before the contract is approved.

21. Retention of Client Records: Auditors are subject to the NC State Board of CPA Examiners' Retention of Client Records Rule 21 NCAC 08N .0305 as it relates to the provision of audit and other attest services, as well as non-attest services. Clients and former clients should be familiar with the requirements of this rule prior to requesting the return of records.

22. This contract may be terminated at any time by mutual consent and agreement of the Governmental Unit(s) and the Auditor, provided that (a) the consent to terminate is in writing and signed by both parties, (b) the parties have agreed on the fee amount which shall be paid to the Auditor (if applicable), and (c) no termination shall be effective until approved in writing by the Secretary of the LGC.

23. The Governmental Unit's (Units') failure or forbearance to enforce, or waiver of, any right or an event of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.

24. There are no other agreements between the parties hereto and no other agreements relative hereto that shall be enforceable unless entered into in accordance with the procedure set out herein and approved by the Secretary of the LGC.

25. E-Verify. Auditor shall comply with the requirements of NCGS Chapter 64 Article 2. Further, if Auditor utilizes any subcontractor(s), Auditor shall require such subcontractor(s) to comply with the requirements of NCGS Chapter 64, Article 2.
26. All of the above paragraphs are understood and shall apply to this contract, except the following numbered paragraphs shall be deleted (See Item 16 for clarification).
27. The process for submitting contracts, audit reports and invoices is subject to change. Auditors and units should use the submission process and instructions in effect at the time of submission. Refer to the N.C. Department of State Treasurer website at <https://www.nctreasurer.com/slg/Pages/Audit-Forms-and-Resources.aspx>.
28. All communications regarding audit contract requests for modification or official approvals will be sent to the email addresses provided on the signature pages that follow.

FEES FOR AUDIT SERVICES

For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct and *Governmental Auditing Standards* (as applicable). Bookkeeping and other non-attest services necessary to perform the audit shall be included under this contract. However, bookkeeping assistance shall be limited to the extent that the Auditor is not auditing his or her own work or making management decisions. The Governmental Unit shall designate an individual with the suitable skills, knowledge, and/or experience necessary to oversee the services and accept responsibility for the results of the services. Financial statement preparation assistance shall be deemed a "significant threat" requiring the Auditor to apply safeguards sufficient to reduce the threat to an acceptable level. The Auditor shall maintain written documentation of his or her compliance with these standards in the audit work papers.

Fees may not be included in this contract for work performed on Annual Financial Information Reports (AFIRs), Form 990s, or other services not associated with audit fees and costs. Such fees may be included in the engagement letter, but may not be included in this contract or in any invoices requiring approval of the LGC. See Items 8, 9, and 12 for details on other allowable and excluded fees.

Prior to submission of the completed audited financial report, applicable compliance reports and amended contract (if required) the Auditor may submit invoices for approval for services rendered, not to exceed 75% of the total of the stated fees below. If the current contracted fee is not fixed in total, invoices for services rendered may be approved for up to 75% of the prior year audit fee. Should the 75% cap provided below conflict with the cap calculated by LGC staff based on the prior year audit fee on file with the LGC, the LGC calculation prevails.

20 NCAC 03 .0505: All invoices for services rendered in an audit engagement as defined in 20 NCAC 3 .0503 shall be submitted to the Commission for approval before any payment is made. Payment before approval is a violation of law.

PRIMARY GOVERNMENT FEES

Primary Government Unit	City of Lenoir
Audit	\$ 95 per hour per person
Writing Financial Statements	\$ 95 per hour per person
All Other Non-Attest Services	\$ 95 per hour per person
75% Cap for Interim Invoice Approval	\$31,533.00

DPCU FEES (if applicable)

Discretely Presented Component Unit	
Audit	\$
Writing Financial Statements	\$
All Other Non-Attest Services	\$
75% Cap for Interim Invoice Approval	\$

SIGNATURE PAGE

AUDIT FIRM

Audit Firm S. Eric Bowman, PA	
Authorized Firm Representative (typed or printed) S. Eric Bowman	Signature 
Date 12-10-18	Email Address sericbowmanpa@bellsouth.net

GOVERNMENTAL UNIT

Governmental Unit City of Lenoir	
Date Primary Government Unit Governing Board Approved Audit Contract (Ref: G.S. 159-34(a) or G.S. 115C-447(a))	
Mayor/Chairperson (typed or printed) Joe L. Gibbons	Signature
Date	Email Address

Chair of Audit Committee (typed or printed, or "NA") N/A	Signature
Date	Email Address

GOVERNMENTAL UNIT – PRE-AUDIT CERTIFICATE

(Pre-audit certificate not required for charter schools)

Required by G.S. 159-28(a1) or G.S. 115C-441(a1)

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act.

Primary Governmental Unit Finance Officer (typed or printed) Donna Bean	Signature
Date of Pre-Audit Certificate	Email Address dbean@ci.lenoir.nc.us

SIGNATURE PAGE – DPCU
(complete only if applicable)

DISCRETELY PRESENTED COMPONENT UNIT

DPCU	
Date DPCU Governing Board Approved Audit Contract (Ref: G.S. 159-34(a) or G.S. 115C-447(a))	
DPCU Chairperson (typed or printed)	Signature
Date	Email Address

Chair of Audit Committee (typed or printed, or "NA")	Signature
Date	Email Address

DPCU – PRE-AUDIT CERTIFICATE
(Pre-audit certificate not required for charter schools)

Required by G.S. 159-28(a1) or G.S. 115C-441(a1)

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act.

DPCU Finance Officer (typed or printed)	Signature
Date of Pre-Audit Certificate	Email Address

Remember to print this form, and obtain all
required signatures prior to submission.

PRINT

CITY OF LENOIR

AFTER ACTION MEMO

To: Department Heads/Division Superintendents

From: Scott Hildebran, City Manager

Date: Wednesday, January 16, 2019

Subject: Action taken by City Council on Tuesday, January 15, 2019.
Review all information to ensure that your department maintains
action taken by City Council.

- ✓ City Council approved the minutes of the City Council Meeting of Tuesday, December 4, 2018, as submitted.
- ✓ City Council approved the FY2018-19 Annual Audit Contract in the amount of \$31,533.00 as submitted by S. Eric Bowman, PA.
- ✓ City Council approved a Capital Project Ordinance in the amount of \$1,635,615.00 for the Fire Station III Capital Project.
- ✓ City Council approved an FY2018-2019 Budget Amendment Ordinance in the amount of \$526,560.00 for the FY2018-19 Fiscal Year.
- ✓ City Council approved a request as submitted by City Staff, the Public Works Department and the Lenoir Police Department to designate a portion of Bradford Street SW and Lutz Street SW (in its entirety) with “No Through Truck” signage. The public right-of-way width of Bradford Street of twenty-five is twenty-five feet, and the public right-of-way width of Lutz Street is sixteen feet. These streets are located in the R-6 Residential Zoning District. A portion of Bradford Street is used as the primary truck access for an industry. The posting would not include this portion of Bradford Street. The City’s Code of Ordinances Appendix B, Traffic, Section 123-“No through Trucks” will be amended to include this portion of Bradford Street SW and Lutz Street SW (in its entirety) as “No through Trucks”.
- ✓ City Council approved a Conditional Use Permit for property located at 732 Stacey Place, NCPIN #2758052325, for a proposed youth day care center with the following conditions:
 - 1) Student attendance is limited to a maximum of 23 students on site at any given time.
 - 2) Any new lighting for the daycare use shall be fully cut-off and shielded so as to eliminate and minimize light spill-over onto adjacent residential properties.
 - 3) Traffic flow of the student drop off line must allow for five stacking spaces before the drop off point, as well as an adequate turn radius for cars exiting the parking lot. This may be accomplished through temporary setup of cones and barriers, in order to allow the parking lot to function normally during off-hours and church use.
 - 4) Additional ground-mounted signage is allowed for one sign no taller than 3-feet and limited to 3.2 square-feet of sign copy area. Reconfiguration of copy area on the existing church monument sign to include day care signage is allowed. Signs of corrugated plastic are prohibited.

5) Valid permits and inspections must be obtained for this use, including and any other federal, state, or local regulation that applies.

6) If the use has not been established within 24 months of the adoption of the Conditional Use Permit, the approval shall be considered null and void.

- ✓ City Council tabled an Ordinance designating 211 Arrowood Street comprised of 48.5 acres, more or less, as Conditional Zoning District #5 (CZ05) on the City's Official Zoning Map until the next City Council meeting of Tuesday, February 5 to allow Staff the opportunity to present an amended ordinance as requested by Council.
- ✓ City Council adopted an Ordinance which contains language for the regulation of small wireless facilities, as well as a modification to the existing regulations for communication towers to allow for tower heights up to 165-feet (an increase from the current maximum height of 110-feet) in the City limits. These changes are proposed in order to ensure consistency with federal and state law and to provide better opportunities for cell coverage for the citizens of Lenoir-especially related to the expansion of 5G technology.
- ✓ City Council approved a Zoning Request for property located at 515 Realty Street, NCPIN#2749638920, to be rezoned from General Business (B-2) to Heavy Industrial (I-2).
- ✓ On behalf of City Council, Mayor Gibbons extended sympathy to City Clerk Shirley Cannon upon the passing of her husband, Rex Cannon in December. Mayor Gibbons also asked everyone to remember Lester Whittington, MLK Center Manager, as he recovers from a recent illness.
- ✓ On behalf of City Council, Mayor Gibbons commended the Lenoir Fire Department for the great job they did at controlling the recent fire at the former Broyhill Occasional Furniture plant located on Virginia Street. Mayor Gibbons also thanked the surrounding Fire Departments and other City personnel that assisted during this incident.
- ✓ Mayor Gibbons announced for the general public that a vacancy exists on the Lenoir Planning Board due to the retirement of Merlin Perry off of the Board. Interested individuals may apply online at www.cityoflenoir.com or pick up an application at City Hall located at 801 West Avenue.
- ✓ Mayor Gibbons commended Bernhardt Furniture Company for being chosen as one of the top six corporations that received the 2018 Governor's Exports Award.
- ✓ Mayor Gibbons announced that Automated Solutions received the Industry of the Year Award at the Caldwell County Economic Development Celebration Luncheon while Aiken Controls received the Innovation Award. Mr. Alvin Daughtridge, Vice-President, Fairfield Chair, received the Legacy Award and Mrs. Laura Easton, President and Chief Executive Officer, UNC Healthcare, received the Herman Anderson Award.
- ✓ Councilmember Crissy Thomas thanked City Staff for the sign placed in the gym at West Caldwell in honor of the West Caldwell Lady Warriors winning the 3A State Basketball Championship in 1985 and 1986.
- ✓ Pursuant to N.C. G.S. §143-318.11(a), (6), City Council entered into closed session to discuss the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee.
- ✓ The following events for the month of January & February were highlighted:

- City offices will be closed on Monday, January 21 in observance of the Martin Luther King, Jr. holiday.
- The Committee of the Whole will meet on Tuesday, January 22 at 8:30 a.m. at City Hall, Third Floor, former Council Chambers.
- The Planning Board will meet on Monday, January 28 at 5:30 p.m.
- The Foothills Regional Airport Authority will meet on Wednesday, January 30 at noon.
- City Council will conduct its annual Planning Retreat on Friday, February 15 at 8:00 a.m. at Blue Ridge Energy Corporation's Meeting Room.
- The Martin Luther King, Jr. Center is hosting the 5th Annual Martin Luther King, Jr. Breakfast on Saturday, January 19. Mayor Pro-Tem Jillian Johnson with Durham will be the speaker. Tickets are \$10 and will not be sold at the door.
- The Lenoir Chapter of the NAACP along with the City of Lenoir Recreation Department is hosting an MLK Memory March and Celebration on Monday, January 21 at 1:30 p.m. The March will begin at the J. E. Broyhill Park and end at the Martin Luther King, Jr. Center.
- February is 2019 Black History Month. The following events are scheduled to be held at the Martin Luther King, Jr. Center located at 313 Greenhaven Drive:
 - Jazz Show (The Groove Masters Band) – Saturday, February at 7:00 p.m.
 - Movie Night ("Green Book") – Saturday, February 9 at 5:00 p.m.
 - MLK Blood Drive – Saturday, February 12 from 2:00-6:30 p.m.
 - Quiz Bowl/Essay Contest – Thursday, February 21 at 6:00 p.m.