



Asheboro Planning Board
Asheboro City Hall (146 N. Church Street)
Monday, November 1, 2021
7:00 PM
AGENDA

- I. Call to Order
- II. Approval of Minutes from October 4, 2021
- III. Review of Cases
- IV. Old Business
- V. New Business
 - a. RZ-21-14: Request to rezone property located at 481 and 539 Veterans Loop totaling approximately 4.1 acres +/- of 5.4 acres +/- and more specifically identified by Randolph County Parcel Identification Number 7659370575 from R10 Medium-Density Residential zoning to I2 General Industrial zoning
 - b. Discussion of and recommendation concerning text amendments to Asheboro Code of Ordinances, pertaining to local planning and development regulation as a result of recently enacted state law (Senate Bill 300)
- VI. Items not on the agenda
- VII. Adjournment

MEETING OF THE ASHEBORO PLANNING BOARD
CITY COUNCIL CHAMBERS, 146 N. CHURCH ST.
MONDAY, OCTOBER 4, 2021
7:00 p.m.

This being the time and place for the regular meeting of the Asheboro Planning Board, a meeting was held with the following officials and members present:

Michael O'Kelley) – Vice Chair

Harold Anderson)
Ritchie Buffkin)
David Henderson) - Members Present
Thomas Rush)
Pamela Vuncannon)

Van Rich) – Member Absent

John Evans, Assistant Community Development Division Director
Brad Morton, Planner/Deputy City Clerk
Trevor Nuttall, Community Development Division Director
Jeff Sugg, City Attorney

CALL TO ORDER

Mr. O'Kelley called the Asheboro Planning Board to order.

APPROVAL OF MINUTES FROM SEPTEMBER 13, 2021

Mr. O'Kelley inquired if there were any corrections or additions to the minutes presented. Hearing no corrections or additions, the minutes were approved as presented.

REVIEW OF CASES

Mr. Nuttall reviewed the cases. He also noted that certification of the service of the final decision document for Case No. BOA-21-03 was included in the board packet.

OLD BUSINESS

- a. **RZ-21-07 AND SUB 12-01: REQUEST TO REZONE PROPERTY LOCATED WEST OF 1591 EAST ALLRED STREET, APPROXIMATELY 100 FEET EAST OF RIDGEWOOD CIRCLE, FROM RA6 (CZ) HIGH-DENSITY RESIDENTIAL (CONDITIONAL ZONING) TO AN AMENDED RA6 (CZ) HIGH-DENSITY RESIDENTIAL (CONDITIONAL ZONING) TO ALLOW A RESIDENTIAL PLANNED UNIT AND APPROVE A SUBDIVISION SKETCH DESIGN**

Mr. Evans gave a visual presentation on the above referenced rezoning case. He gave a brief overview:

Applicant: Davidson Land Development LLC
Location: North side of East Allred Street
Request: Planned Unit Development (Amend RA6 (CZ))
Randolph County Parcel ID: 7762740259

Size: 4.04 acres +/-
Existing Land Use: Undeveloped

He stated that he would briefly focus on responding to board inquiries from the last regular meeting. He stated that he would present the approved plan from 2018 and compare it to the proposal now being requested. He briefly explained that the 2018 plan consisted of 10 units within three (3) structures (four (4) units in the structure closest to Allred Street, four (4) units in the middle structure, and two (2) units in the structure to the rear of the property). He showed building elevations of the 2018 plan, which consisted of one-story units with a single-car garage for each unit. He then showed the site plan of the current proposal, which includes 16 units (seven (7) units in the structure closest to Allred Street, six (6) units in the middle structure, and three (3) units in the structure to the rear of the property). He also mentioned the solid fence screening which may be substituted for the proposed hedges in locations where utilities may be impacted by vegetation.

Mr. O'Kelley inquired if anything had changed since the last regular meeting, to which Mr. Evans stated that only minor clerical errors have been addressed but no new significant changes have been made to the proposal.

He then gave the Land Development Plan (LDP) Recommendations:

Proposed Land Use Map: Neighborhood Residential

Small Area Plan: East

Growth Strategy Map: Primary Growth

Goals/Policies Supporting Request (4):

- Checklist Item 5: Compatible with Growth Strategy Map
- Checklist Item 11: Development described in Design Principles
- Checklist Item 12: Outside of watershed
- Policy 4.1.6: Discourage development in flood prone areas

Goals/Policies Not Supporting Request (3):

- Checklist Item 1: Not compliant with LDP Proposed Land Use Map
- Checklist Item 13-14: Location in flood area and on steep slopes

He then provided the board with suggested conditions, noting that condition (E)(i) has been updated on the site plan by the applicant's engineer:

- (A) The site plan shows preservation of existing vegetation, outside of areas of necessary site disturbance, along the western and northern portions of the property. If the vegetation is not preserved in this area, a Type A Buffer or Screen shall be installed by the developer.
- (B) The site plan shows a combination of preservation of existing vegetation and planted vegetation, outside of areas of necessary site disturbance, within the front yard along East Allred Street. At a minimum, vegetation required by Chapter 6 of the zoning ordinance shall be installed and maintained within the front yard along East Allred Street.
- (C) Enclosure of concrete pads to the rear of dwellings or other additions to the rear of residential dwellings outside the common area shall not be considered a modification of the permit requiring City Council review.
- (D) Prior to a Preliminary Plat, the applicant shall submit details on the sewer connection involving the adjoining property to the north.
- (E) The site plan contains labeling errors and omitted information that shall be corrected on the Preliminary Plat. These include:
 - i. Site note related to the average size of lots.
 - ii. Additional details on recreation area, including identification of proposed play equipment/structure(s), and labeling of sidewalk between Cane Creek Court and recreation area.

- (F) Area within public right-of-way for turnaround at the end of Cane Creek Drive shall be prohibited from parking in such a way that interferes with emergency or sanitation vehicles in compliance with Chapter 71 of the Asheboro Code of Ordinance.
- (G) The site plan indicates mail delivery through two cluster mailboxes. If the postal service requires a different facility(s) for mail delivery, such a change will not be considered a modification of the Conditional Zoning district requiring Council action. If required within the public right-of-way shall, at a minimum, provide an area that is adequate for one (1) drop off space for a motor vehicle including any maneuvering area. Any drop off area shall be designed in accordance with commonly accepted traffic engineering practices. Construction of this area shall be the responsibility of the developer and is subject to approval of the City of Asheboro Public Works Division and/or Engineering Department. Alternatively, should the developer choose to construct the community mailbox and any associated vehicular areas in a location completely on private property, this shall not be considered a modification, subject to Section 4.05 of the Asheboro Zoning Ordinance.
- (H) The developer shall ensure that no portion of structure located on Lot 16 encroaches into a City of Asheboro sanitary sewer easement.
- (I) Any water meter located outside the public right-of-way shall be located within a City of Asheboro waterline easement.
- (J) Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the applicant shall submit documentation detailing the following approvals:
 - i. Driveway permit from NCDOT
 - ii. Erosion control approval from NC Department of Environmental Quality
 - iii. Information required to determine compliance with Flood Damage Prevention Ordinance requirements, including any required certifications for utility construction or other development within Special Hazard Flood Areas (floodplains, floodways). A no-rise certification for utilities, such as sewer mains, constructed within the floodway shall be required prior the issuance of a zoning compliance permit or construction activity within the floodway. If a no-rise certificate cannot be obtained due to forecasted rises as a result of the project, a CLOMR will have to be required from FEMA by the developer.
- (K) Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the owner(s) of the Zoning Lot shall properly execute, and deliver to the Zoning Administrator for recordation in the office of the Randolph County Register of Deeds a Memorandum of Land Use Restrictions prepared by the City Attorney for the purpose of placing notice of the conditions attached to this Conditional Zoning district in the chain of title for the Zoning Lot.

He also stated that notices of the request were re-mailed to adjoining property owners on September 20th, 2021 due to previous concerns brought up that some owners may have changed since notices were first mailed.

He then explained how staff believes the request is consistent with adopted plans, reasonable and in the public interest:

- Conditional zoning allows review of design elements such as sidewalks and open/recreation space not required conventional subdivisions.
- Allows less disturbance of flood areas/steep slopes and other environmentally sensitive features.

He stated that staff's recommendation is to approve the zoning amendment.

He then went over the Subdivision Sketch Design portion of the case, briefly highlighting that the average lot sizes have been updated on the sketch and that no new development issues have been reported. He stated that engineering and public works have reviewed the sketch design for compliance with city codes and noted conditions recommended to ensure code compliance.

He again stated that staff recommends approval of the rezoning request noting the suggested conditions as well as the subdivision sketch design. He stated that the next steps would be for City Council to hear

the rezoning and subdivision sketch design requests on Thursday, October 7, 2021. He stated that if there were any questions from the board he would answer them. There were no questions for Mr. Evans at this time.

Mr. O'Kelley inquired if there was anyone else to speak in favor of the case.

Mr. Tom Wright, Attorney, spoke in favor of the request on behalf of the applicant. Mr. Wright addressed several items pertaining to the rezoning and subdivision request. He stated that the road construction would remain the same with 10 or 16 units. He stated that the footprint of the development is less with 16 units than it is with 10. He stated that the flood prone areas of the property will remain the same as they have been and there will not be an increase in the risk of flooding. He stated that the proposed development is consistent with the land uses in the surrounding area. He stated that NCDOT has determined that there will be no significant impact on traffic with the proposed new units. He mentioned that there were concerns with one car garages, to which he stated that this should not be considered negative to the determination of the rezoning and subdivision request as many people will utilize the one car garage and their driveway for parking. He stated that the price point of the proposed development is about \$205,000. He stated that there would be a homeowner's association to ensure upkeep of the development with HOA fees. He stated that the developers have answered all objections with respect to environmental impacts and they feel that this is the most reasonable use for the property in question and asked the board to consider in favor of the request. He stated that if there were any questions he would answer them. The board had no questions for Mr. Wright at this time.

Mr. O'Kelley inquired if there was anyone in opposition to the case.

There were concerns with the development proposal from members of the audience regarding the environmental impacts and protection of the ecosystem, financial and property value impacts, concerns with higher density of the proposal, increased traffic, the lack of two-car garages, and that the development will be out of character with the surrounding area and adjoining developments. There were also some general comments and concerns regarding the 2018 case, to which Mr. Sugg, City Attorney, advised the board and members of the audience that the hearing from 2018 is not to be considered in the current request.

At this time Mr. O'Kelley asked the board if there was any discussion. Mr. Buffkin inquired if the spillover parking would be sufficient for guests and excess vehicles, to which Mr. Christian Vestal, Summey Engineering, stated that the requirements for parking have been addressed by the plan. Ms. Vuncannon inquired if the garages and driveways would be sufficient in size to hold multiple vehicle, to which Mr. Vestal stated that the garages would house one vehicle and the driveways are sufficient for a second vehicle.

Mr. Buffkin moved to recommend approval of the rezoning request including the suggested conditions. Mr. Henderson seconded the motion and the motion carried with a vote of four to two. Mr. Buffkin, Mr. Henderson, Mr. Rush, and Ms. Vuncannon voted aye. Mr. Anderson and Mr. O'Kelley voted nay.

Mr. Henderson moved to approve the staff's consistency statement of the rezoning request. Mr. Rush Seconded the motion and the motion carried with a vote of five to one. Mr. Anderson, Mr. Buffkin, Mr. Henderson, Mr. Rush and Ms. Vuncannon voted aye. Mr. O'Kelley voted nay.

Mr. Henderson moved to approve the subdivision sketch design as presented. Mr. Buffkin seconded the motion and the motion carried unanimously.

NEW BUSINESS

- a. **RZ-21-13: REQUEST TO REZONE PROPERTY LOCCATED AT 1809 US HWY. 64 EAST AND A PORTION OF 1801 US HWY. 64 EAST, TOTALLING APPROXIMATELY 1.93 ACRES +/- AND MORE SPECIFICALLY IDENTIFIED BY RANDOLPH COUNTY PARCEL IDENTIFICATION NUMBERS 7761837268, 7761837067, AND 7761827912 FROM R10**

MEDIUM-DENSITY RESIDENTIAL AND R40 LOW-DENSITY RESIDENTIAL TO B2 GENERAL COMMERCIAL

Mr. Evans gave a visual presentation on the above referenced rezoning case. He gave a brief overview:

Applicant: HR Gallimore

Location: 1801 US Hwy.64 East (Portion) 1819 US Hwy. 64 East

Request: Rezone from R10 Medium-Density Residential and R40 Low-Density Residential to B2 General Commercial

Randolph County Parcel ID: 7761837268, 7761837067, 7761827912

Size: 1.93 acres +/-

Existing Land Use: Single-family dwelling

He then showed overview, rezoning, topographic/utilities, and aerial maps, as well as photos of the subject property from all directions. He then gave the analysis:

1. The property is outside of the city limits.
2. US Hwy. 64 East is considered a state-maintained boulevard, which is classified as a type of major thoroughfare.
3. The requested B2 district is described by the zoning ordinance as "intended to serve the convenience goods, shopper's goods retail and service needs of the motoring public, both local and transient. This district should always be located with access directly to minor thoroughfares or higher classification streets, but never local residential streets." The request would allow any use allowed by right in the B2 zoning district.
4. The area, including properties adjacent to the subject property, have seen a transition to primarily commercial uses.
5. The western portion of the property is subject to an access easement (Ragsdale Road).
6. Along with other zoning requirements (including but not limited to paving of required parking, landscaping, etc.), new commercial construction requiring a Building Permit and located on a street with curb and gutter generally requires the owner or developer to sidewalk along the property's public street frontage.

He then gave the Land Development Plan (LDP) Recommendations:

Proposed Land Use Map: Commercial

Small Area Plan: East

Growth Strategy Map: Economic Development

Goals/Policies Supporting Request (6):

- Checklist Item 1: Compliance with LDP proposed land use map
- Checklist Item 3: Compatible with Growth Strategy Map
- Checklist Item 7: Compatible with small area plan
- Checklist Items 12-14: Outside of watershed and flood areas, areas of steep slopes

Goals/Policies Not Supporting Request (1):

- 2.1.5: Lack of transition from commercial to residential

He then gave the consistency with adopted plans, reasonableness and public interest statement:

- Consistent with commercial designation of subject and adjoining properties.
- East Small Area Plan advocates for commercial expansion on US Hwy. 64 East.
- Designation on Growth Strategy map as Economic Development area.
- Adjacent residential property is currently vacant and required buffers mitigate compatibility concerns.

He stated that staff recommends approval of the rezoning request. He stated that the City Council will consider the rezoning request on Thursday, November 4, 2021. He stated that if there were any questions from the board he would answer them. There were no questions for Mr. Evans at this time.

Mr. O'Kelley inquired if there was anyone in favor of the rezoning request.

Mr. HR Gallimore, applicant, spoke in favor of the request. He stated that he is representing the Ragsdale estate. He listed various current and future commercial projects that have or potentially will occur near the site of the proposed rezoning request. He stated that rezoning this property would be consistent with the Land Development Plan and long range planning goals. He also pointed out that mailed notices to adjoining property owners were sent within the required timeframe. He then stated that if there were any questions from the board he would answer them. There were no questions from the board for Mr. Gallimore at this time.

Mr. O'Kelley inquired if there was anyone in opposition to the case. There was no one in opposition to the case.

Mr. Anderson moved to recommend approval of Case No. RZ-21-13 based on staff's recommendation and consistency statement. Ms. Vuncannon seconded the motion and the motion carried unanimously.

ITEMS NOT ON THE AGENDA

Mr. Nuttall mentioned that the public survey for the Land Development Plan update is available online at the City of Asheboro website and has now been mailed out to a citizen group of more than 150 recipients. He stated that staff is already receiving surveys back via the prepaid return envelope. He encouraged the Planning Board members to spread the word.

ADJOURNMENT

With no further business to come before the board, Mr. O'Kelley adjourned the meeting.

Bradley Morton, Planning Board Secretary

Van Rich, Planning Board Chair



RZ-21-14: Request to rezone property located at 481 and 539 Veterans Loop totaling approximately 4.1 acres +/- of 5.4 acres +/- and more specifically identified by Randolph County Parcel Identification Number 7659370575 from R10 Medium-Density Residential zoning to I2 General Industrial zoning

Staff Report

Rezoning Staff Report

RZ Case # RZ-21-14

Date 11/1/2021 Planning Board

General Information

Applicant David Bergmark, The McAdams Company

Address 2905 Meridian Parkway

City Durham NC 27713

Phone 919-449-4005

Location 481 & 539 Veterans Loop Road

Requested Action Rezone from R10 Medium-Density Residential to I2 General Industrial

Existing Zone R10

Existing Land Use Undeveloped

Size 4.1 acres +/- of 5.4 acres +/-

Pin # 7659370575

Applicant's Reasons as stated on application

See attached application. [Staff note: the application's reference to R10-CU is erroneous. Current zoning is R10].

Surrounding Land Use

North Developing Industrial

East Undeveloped Industrial

South Undeveloped Industrial

West Undeveloped Industrial

Zoning History See Number 5 of Staff Analysis below

Legal Description

The property of Duke Energy Progress, LLC, located at 481 and 539 Veterans Loop Road, totaling approximately 4.1 acres +/- of 5.4 acres +/-, and more specifically identified by Randolph County Parcel Identification Number 7659370575.

Analysis

1. The property is outside the city limits. Connection to city utilities will require annexation of the property in accordance with city policies.
2. Veterans Loop Road is a state-maintained road. In 2017, of New Century Drive was extended to connect with Veterans Loop Road.
3. The request is for an I2 General Industrial classification. As described by the zoning ordinance, "the intent of the I2 Industrial Development District is to produce areas for intensive manufacturing, warehousing, processing and assembly uses, controlled by performance standards to limit the effect of such uses on adjacent districts." As a general district request, this application does not propose any specific use.
4. Since 2010, six (6) parcels along Veterans Loop Road have been rezoned from residential or commercial classifications (R10, R40, B2) to the I2 General Industrial zoning district.
5. In 2010, a portion of the subject property was rezoned from R10 to I2 (Case No. RZ-10-12). This occurred when that land was part of two adjoining parcels; it has since been recombined with the subject PIN.
6. The property is designated as an "Employment Center" by the Land Development Plan. The intent of the Employment Center is "to integrate a mixture of commercial, office & institutional, industrial, and open space uses into the fabric of the community, with ample sidewalks, street trees, on-street parking, public amenities & open space."

Rezoning Staff Report

RZ Case # RZ-21-14

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Consistency with the 2020 LDP Growth Strategy designations

In reviewing this request, careful consideration is given to each Goal and Policy as outlined in the Land Development Plan. Some Goals and Policies will either support or will not support the request, while others will be neutral or will not apply. Only those Goals and Policies that support or do not support the request will be shown.

Proposed Land Use Map Designation	Employment Center
Small Area Plan	Southeast
Growth Strategy Map Designation	Economic Development

LDP Goals/Policies Which Support Request

Checklist Item 1: Complies with LDP proposed land use map

Checklist Item 3: The property on which the rezoning district is proposed fits the description of the Zoning Ordinance. (*Article 200, Section 210, Schedule of Statements of Intent*)

Checklist Item 5: Complies with Growth Strategy Map

Checklist Item 9: Rezoning will benefit the economic vitality of the City's designated Economic Development Area.

Checklist Items 12 and 13: 12.) Property is located outside of watershed 13.) The property is located outside of Special Hazard Flood Area.

Rezoning Staff Report

RZ Case # RZ-21-14

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LDP Goals/Policies Which Do Not Support Request

Checklist Item 14: Rezoning is located on steep slopes of greater than 20%.

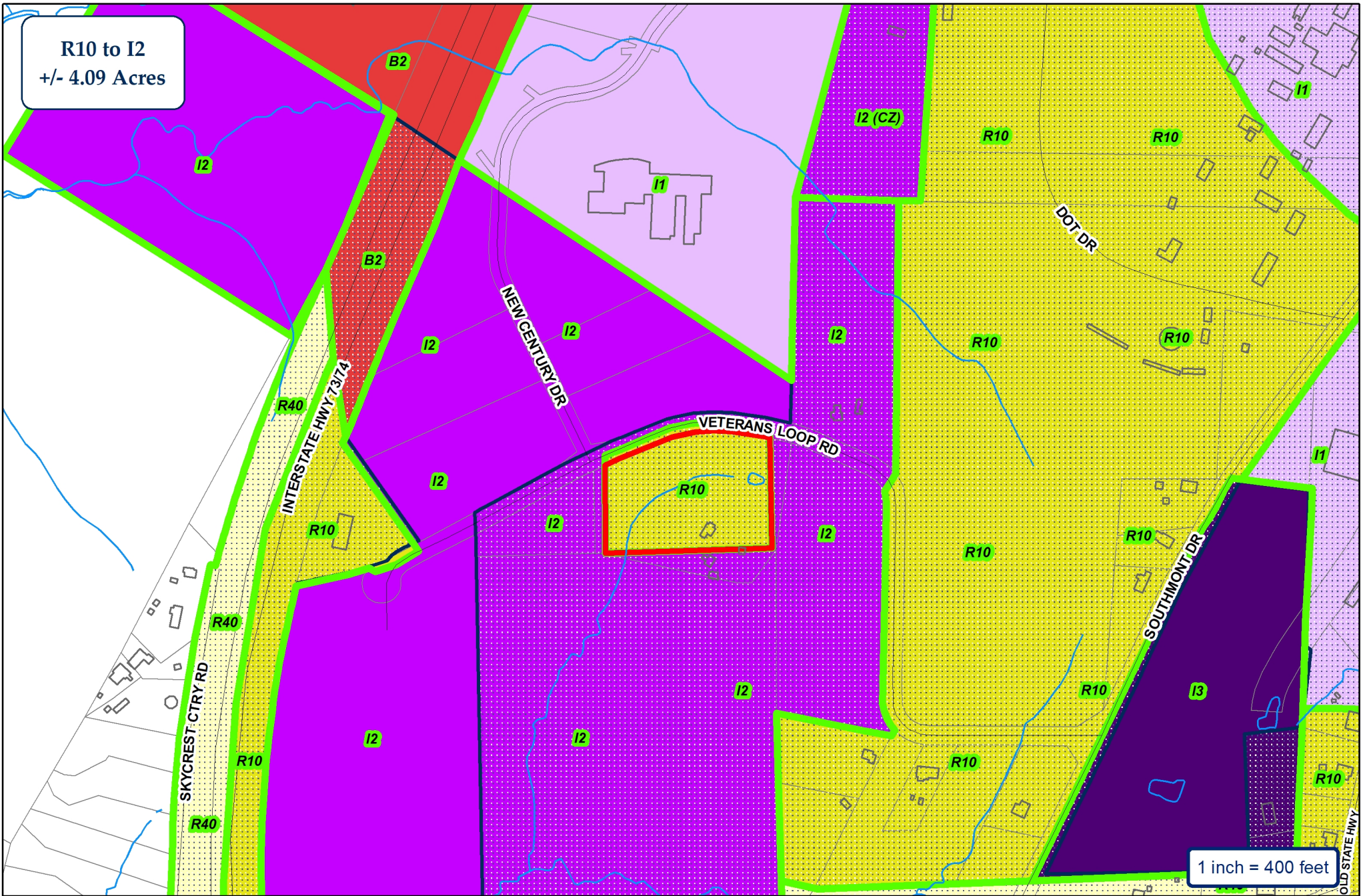
Staff's Final Analysis Concerning Consistency with Adopted Comprehensive Plans, Reasonableness and Public Interest

The requested I2 General Industrial zoning designation will allow economic development opportunities envisioned by the LDP. The plan designates the property as an Employment Center and, on the Growth Strategy map, identifies the region as an Economic Development Area.

The recent extension of New Century Drive to Veterans Loop Road improved the area's access to the I-73/I-74 corridor. A rezoning of this property will help to support additional industrial development opportunities as all of the adjacent property is already zoned I2. It also will diminish the potential for future conflict between industrially and residentially zoned property by removing residential development potential from a property completely surrounded by industrial zoning.

Considering these factors, staff believes the requested I2 district is consistent with the adopted LDP and is therefore reasonable and in the public's interest.

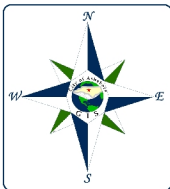
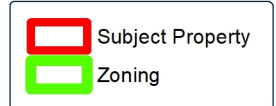
Recommendation In light of the above analysis, staff's recommendation is to approve the request.



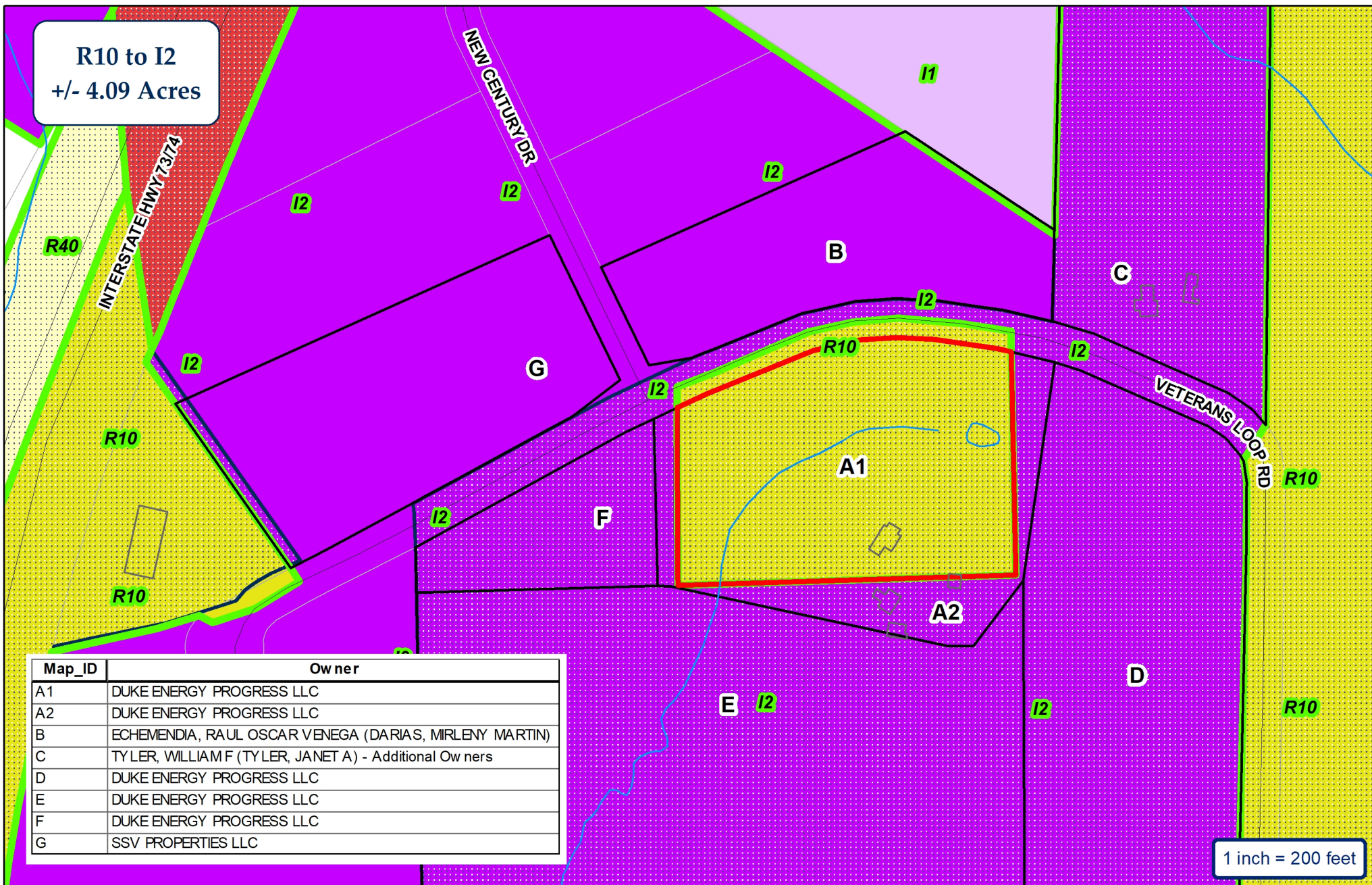
City of Asheboro Planning & Zoning Department

Rezoning Case: RZ-21-14

Parcel: 7659370575



R10 to I2
+/- 4.09 Acres



Map_ID	Owner
A1	DUKE ENERGY PROGRESS LLC
A2	DUKE ENERGY PROGRESS LLC
B	EHEMENDIA, RAUL OSCAR VENEGA (DARIAS, MIRLENY MARTIN)
C	TYLER, WILLIAM F (TYLER, JANET A) - Additional Owners
D	DUKE ENERGY PROGRESS LLC
E	DUKE ENERGY PROGRESS LLC
F	DUKE ENERGY PROGRESS LLC
G	SSV PROPERTIES LLC

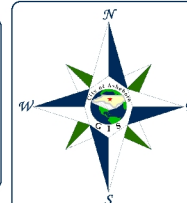
City of Asheboro Planning & Zoning Department

Rezoning Case: RZ-21-14

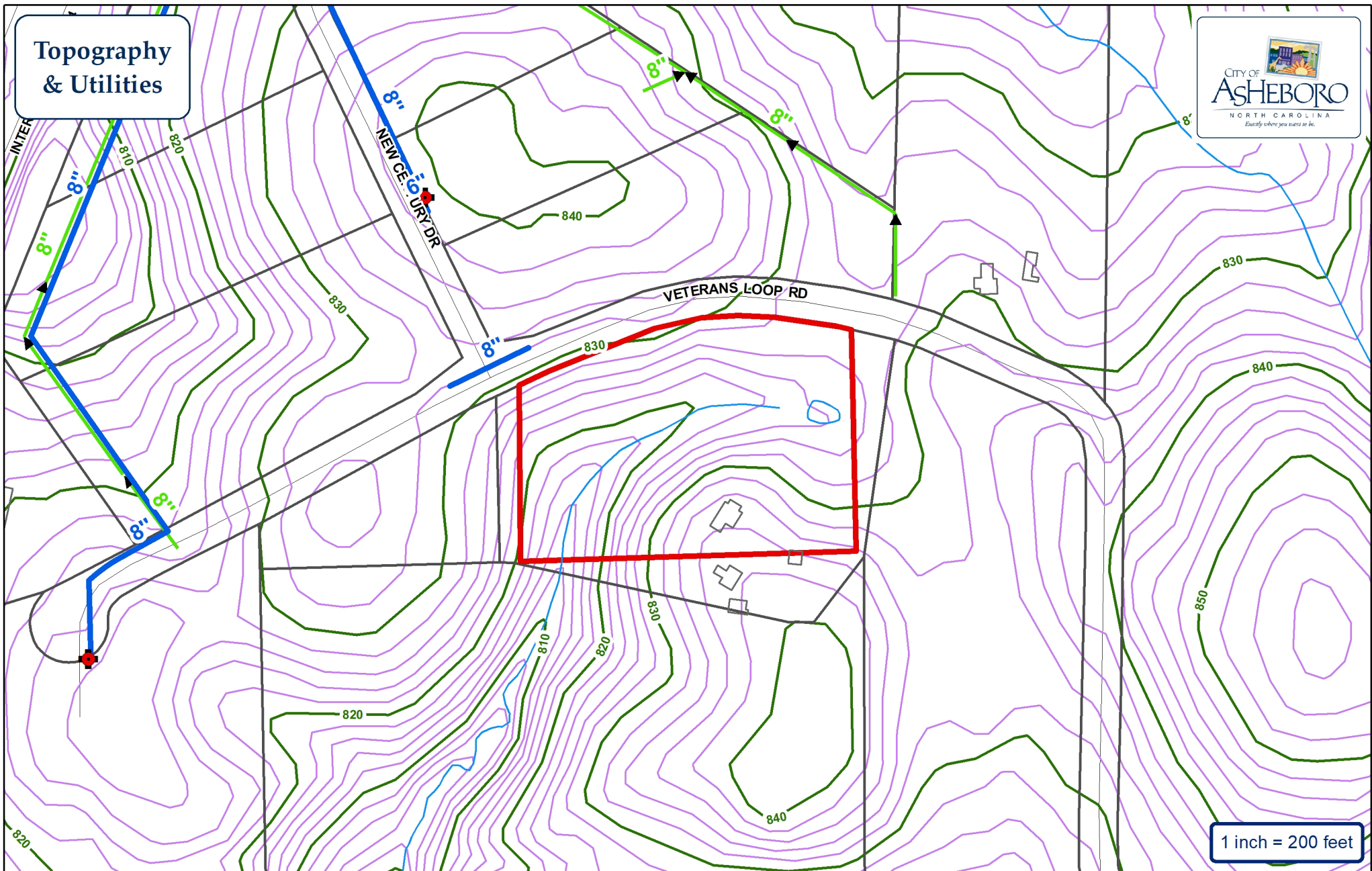
Parcel: 7659370575



- Subject Property
- Adjoining Properties
- Zoning



Topography & Utilities



- | | |
|---|---|
|  Water Main |  Fire Hydrant |
|  Sewer Main |  PS Pump Station |
|  Force Main |  Watershed |

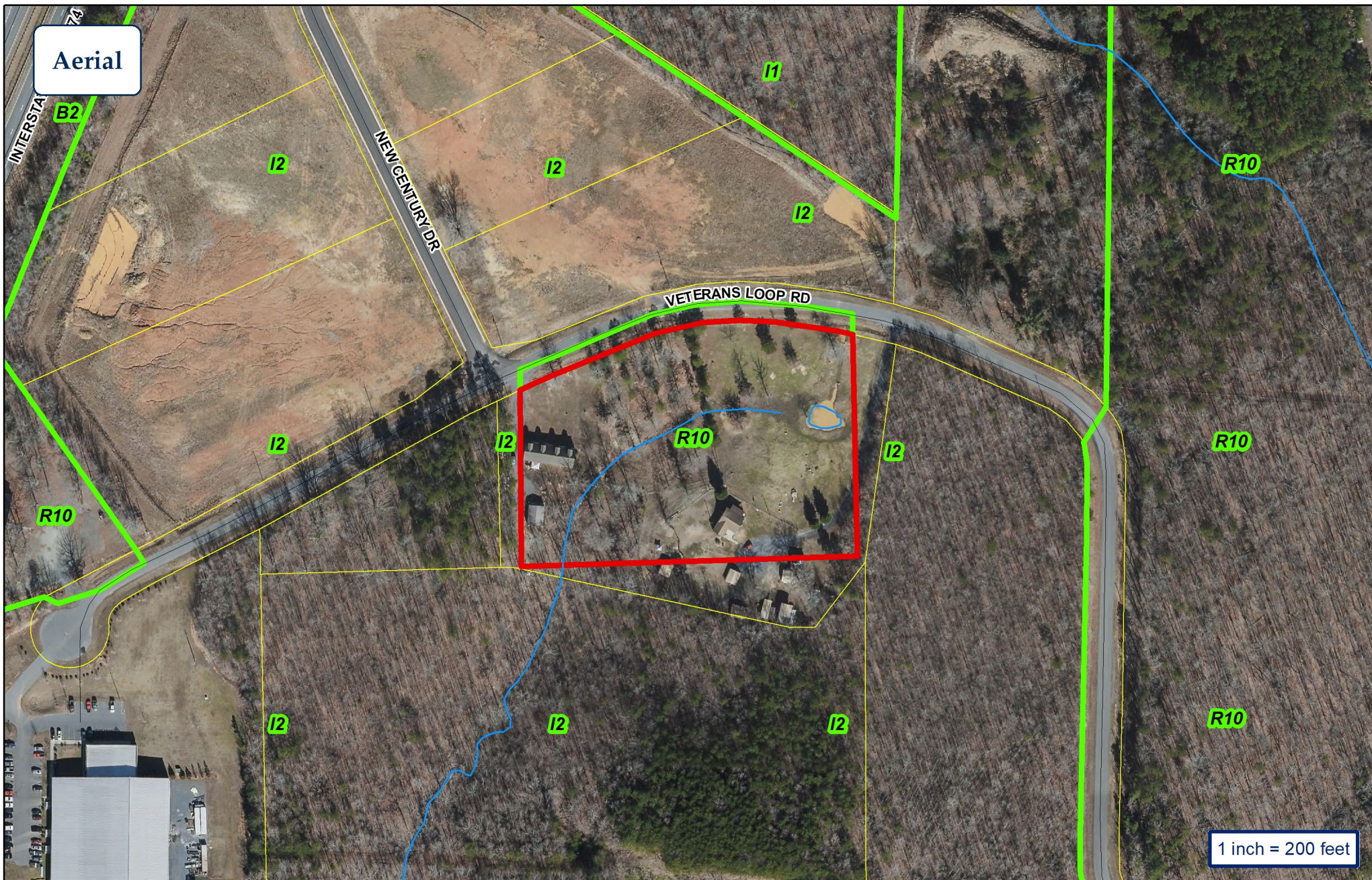
City of Asheboro Planning & Zoning Department

Rezoning Case: RZ-21-14

Parcel: 7659370575

 Subject Property

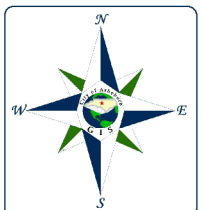
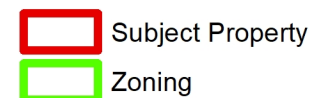




City of Asheboro Planning & Zoning Department

Rezoning Case: RZ-21-14

Parcel: 7659370575



Application for Zoning Ordinance/Map Amendment

APPLICANT INFORMATION

Applicant David Bergmark, The McAdams Company
Applicant's Phone # 919-449-4005
Applicant's Address 2905 Meridian Parkway
Durham, NC 27713
Applicant Email Address bergmark@mcadamsco.com

PROPERTY INFORMATION FOR MAP AMENDMENTS

Property Owner's Name DUKE ENERGY PROGRESS LLC
Location of Property 481 VETERANS LOOP RD
Property Size (ac. or s.f.) 5.4 AC
Randolph County Property Identification Number (PIN#) 7659370575
Current Zoning District R10-CU
Requested Zoning District I2
Date Property Title Acquired _____
Deed Book 2772 Page 1466 -1471
Subdivision N/A Section N/A Lot # N/A
Plat Book 139 Page 20

ORDINANCE AMENDMENT INFORMATION

Section 1011.2 of the Asheboro Zoning Ordinance requires the applicant to answer the following questions. The application may not be accepted unless all questions are completed.

1. Are there alleged errors in this Ordinance that would be corrected by the proposed amendment? If so, give a detailed explanation of such error and detailed reasons how the proposed amendment will correct the errors.

To our knowledge, there are no alleged errors in this Ordinance that would be corrected by the
proposed zoning amendment of the subject property.

2. What are the changed or changing conditions, if any, in the jurisdiction of the City of Asheboro generally, which would make the proposed amendment reasonably necessary to the promotion of the public health, safety, and general welfare?

The subject parcel is the only parcel remaining along Veterans Loop that remains residentially zoned.

It is no longer in the best interest of the public health, safety, and general welfare for the property to develop for residential purposes, as it will not be harmonious with the surrounding area.

3. In what manner will the proposed amendment carry out the intent of the Land Development Plan?

The I2 General Industrial District was created to accommodate a mixture of intensive manufacturing, processing, assembly and warehousing uses, while limiting potential negative effects on adjacent and surrounding properties. The subject property is currently surrounded by I2 zoning - this is not the appropriate place for a residential zoning designation. One of the goals of the Land Development Plan is "To have Development that is located in Appropriate Locations". This rezoning allows that goal to be realized.

4. Are there any other circumstances, factors, or reasons that the applicant offers in support of the proposed amendment?

As previously stated, the current development surrounding the subject parcel does not create an appropriate

environment for residential development. By rezoning to I2, the goal of appropriate and consistent zoning can be achieved.

APPLICATION SIGNATURES

It is understood by the undersigned that while this application will be carefully reviewed and considered, the burden of proving the need for the proposed amendment rests with the applicant. The applicant for rezoning to any district other than a conditional use district shall be prohibited from offering any testimony or evidence concerning the specific manner in which he or she intends to use or develop the property.

Applicant Signature

David Bergmark

Owner Signature (if different than Applicant)

Zach Huett

Printed Name of Authorized Signatory (if different from Applicant)

Owner Address

411 Fayetteville St.

Raleigh, NC 27601

Position/Relationship of Authorized Signatory to Applicant

Telephone Number

252-220-9417

Printed Name of Authorized Signatory (if different from Owner)

Zach Huett

Position/Relationship of Authorized Signatory to Owner

Real Estate Portfolio Manager

STAFF USE

Received by: JLE Date: 10-6-21 Case Number: RZ-21-14



Discussion of and recommendation concerning text amendments to Asheboro Code of Ordinances, pertaining to local planning and development regulation as a result of recently enacted state law (Senate Bill 300)

The information below is related to the following agenda item for the Asheboro Planning Board meeting on Monday, November 1, 2021. Additional information will be presented at the meeting.

Discussion of and recommendation concerning text amendments to Asheboro Code of Ordinances, pertaining to local planning and development regulation as a result of recently enacted state law (Senate Bill 300)

Introduction: Text amendments are proposed to the Asheboro Code of Ordinances on matters that affect land use to ensure compliance with recent state legislation.

Staff will be presenting related amendments to the zoning ordinance during the Planning Board's regular meeting on Monday, December 6, 2021.

An overview summary of the changes, published by the UNC School of Government, is attached. Additional information will be presented during the November 1, 2021 Planning Board meeting.

Code of Asheboro Text Amendments Legal Description: In order to act upon amendments designed to conform existing ordinance references/citations to the enactment of Chapter 160D of the North Carolina General Statutes, and in order to implement the decriminalization of certain ordinances in compliance with Session Law 2021-138 (Senate Bill 300), the Asheboro City Council will hold a legislative hearing on the question of amending the following Chapters in the Code of Asheboro pertaining to local planning and development regulation; Chapter 10 (extraterritorial jurisdiction), Chapter 34 (community appearance commission and planning board), Chapter 94 (fair housing and the redevelopment commission), Chapter 95 (fire prevention), Chapter 150 (buildings), Chapter 151 (housing code), Chapter 152 (nonresidential building maintenance code), Chapter 153 (subdivisions) and Chapter 154 (zoning).

Publish Thursdays, October 22, 2021 and October 29, 2021

Staff Consistency Statement: These amendments are proposed to comply with recent changes in state law. While all changes to the Asheboro Code of Ordinance are not directly addressed in the Land Development Plan, the Plan generally supports keeping regulations related to land use periodically updated.

The City's Charter also states that "the City of Asheboro shall have and may exercise all powers which are granted to municipal corporations by the general laws of North Carolina and all powers which, under the Constitution of North Carolina, it would be competent for this Charter specifically to enumerate." The proposed amendments are to help ensure the Asheboro Code of Ordinances are not in conflict with state law.

Given these factors, and to ensure local compliance with state law, staff believes that the proposed text amendments are consistent with the Land Development Plan and are therefore reasonable and in the public interest. Therefore staff recommends approval of the proposed amendments.



Coates' Canons Blog: Legislature Decriminalizes Local Ordinances

By Frayda Bluestein

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For some time, under North Carolina law, violations of city and county ordinances have been treated as misdemeanors or infractions unless the ordinance explicitly said that they were not. Starting in 2018, the General Assembly embarked on a project to decriminalize local government ordinances. Some of you may remember the call for a list of your ordinances that were criminally enforceable to be sent to two joint legislative committees. This was no small feat, as described here and here. The law at the time (GS 153A-123, counties; 160A-175, cities) held that unless the city or county provided otherwise, a violation of an ordinance was a misdemeanor or infraction as provided by G.S. 14-4. So, by default, if city or county didn't take action otherwise, ordinances were enforced criminally. The result for some units, is that the majority of ordinances were criminally enforced. This year the legislature removed the default criminal penalty, and modified local governments' authority to enforce ordinances criminally. This blog post summarizes the changes. These provisions become effective on December 1, 2021.

The changes were part of an omnibus law focusing on law enforcement and policing issues. This part is at [Part XIII] of the law.

The first part of the provision is a rewrite of the authority under GS 153A-123 and 160A- 175 regarding ordinance enforcement. These parallel sections now read:

*Except for the types of ordinances listed in subsection (b1) of this section, violation of a [county/city] ordinance may be a misdemeanor or infraction as provided by G.S. 14-4**only if the [county/city] specifies such in the ordinance.** An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4. Notwithstanding G.S. 153A-45, no ordinance specifying a criminal penalty may be enacted at the meeting in which it is first introduced.*

The law also adds a new subsection (b1) to the statutes, which lists types of ordinances that local governments are prohibited to enforce criminally. These lists are set out at the bottom this blog.

To implement these changes, cities and counties will have to review each ordinance and make any changes, specifically those that they want to continue as enforced criminally, and to comply with the prohibitions listed under (b1). These changes must be specified and modified in each ordinance, and these amendments must be done by ordinance. See this blog post for more about amending ordinances.

Finally, the legislature revised GS 14-4, by adding a new subsection (c) provision as set out below.

"§ 14-4. Violation of local ordinances misdemeanor.

(a) Except as provided in subsection (b) or (c) of this section, if any person shall violate an ordinance of a county, city, town, or metropolitan sewerage district created under Article 5 of Chapter 162A, he shall be guilty of a Class 3 misdemeanor and shall be fined not more than five hundred dollars (\$500.00). No fine shall exceed fifty dollars (\$50.00) unless the ordinance expressly states that the maximum fine is greater than fifty dollars (\$50.00).

(b) If any person shall violate an ordinance of a county, city, or town regulating the operation or parking of vehicles, he shall be responsible for an infraction and shall be required to pay a penalty of not more than fifty dollars (\$50.00).



(c) A person may not be found responsible or guilty of a local ordinance violation punishable pursuant to subsection (a) of this section if, when tried for that violation, the person produces proof of compliance with the local ordinance through any of the following:

(1) No new alleged violations of the local ordinance within 30 days from the date of the initial alleged violation.

(2) The person provides proof of a good-faith effort to seek assistance to address any underlying factors related to unemployment, homelessness, mental health, or substance abuse that might relate to the person's ability to comply with the local ordinance.

Here are the Lists of ordinances that may not be enforced criminally

For Counties:

153A-12 (b1): No ordinance of the following types may impose a criminal penalty:

- (1) Any ordinance adopted under Article 18 of this Chapter, Planning and Regulation of Development or, its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings;
- (2) Any ordinance adopted pursuant to G.S. 153A-134, Regulating and licensing businesses, trades, etc.;
- (3) Any ordinance adopted pursuant to G.S. 153A-138, Registration of mobile homes, house trailers, etc.;
- (4) Any ordinance adopted pursuant to G.S. 153A-140.1, Stream-clearing programs
- (5) Any ordinance adopted pursuant to G.S. 153A-143, Regulation of outdoor advertising or, its successor, G.S. 160D-912, Outdoor advertising;
- (6) Any ordinance adopted pursuant to G.S. 153A-144, Limitations on regulating solar collectors or, its successor, G.S. 160D-914, Solar collectors;
- (7) Any ordinance adopted pursuant to G.S. 153A-145, Limitations on regulating cisterns and rain barrels;
- (8) Any ordinance regulating trees.

For Cities:

GS 160A-175(b1): No ordinance of the following types may impose a criminal penalty:(

- 1) Any ordinance adopted under Article 19 of this Chapter, Planning and Regulation of Development, or its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings;
- (2) Any ordinance adopted pursuant to G.S. 160A-193.1, Stream-clearing programs;
- (3) Any ordinance adopted pursuant to G.S. 160A-194, Regulating and licensing businesses, trades, etc.;
- 4) Any ordinance adopted pursuant to G.S. 160A-199, Regulation of outdoor advertising or, its successor, G.S. 160D-912, Outdoor advertising;
- (5) Any ordinance adopted pursuant to G.S. 160A-201, Limitations on regulating solar collectors or, its successor, G.S. 160D-914, Solar collectors;



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- (6) Any ordinance adopted pursuant to G.S. 160A-202, Limitations on regulating cisterns and rain barrels;
 - (7) Any ordinance adopted pursuant to G.S. 160A-304, Regulation of taxis;
 - (8) Any ordinance adopted pursuant to G.S. 160A-306, Building setback lines;
 - (9) Any ordinance adopted pursuant to G.S. 160A-307, Curb cut regulations
 - (10) Any ordinance regulating trees.

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_14/GS_14-4.html
- www.ncleg.gov/Sessions/2021/Bills/Senate/PDF/S300v8.pdf