

REVISED STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT

MAR 2012-12: GREER LAND CO. – SMYRNA #2, LLC

DESCRIPTION

Zone Change: From an Agricultural Urban (A-U) zone
To a Neighborhood Business (B-1) zone

Acreage: 2.79 net (5.05 gross) acres

Location: 3939 Tates Creek Road

EXISTING ZONING & LAND USE

<u>Properties</u>	<u>Zoning</u>	<u>Existing Land Use</u>
Subject Property	A-U	Vacant
To North	R-2	Duplex Residential
To East	R-4	Multi-Family Residential
To South	P-1 & B-6P	Professional Offices, Banks, & Shopping Center
To West	A-U & R-2	Utility Sub-Station & Duplex Residential

URBAN SERVICES REPORT

Roads – Tates Creek Road (US 1974) is a four-lane urban, major arterial highway at this location, and bounds the subject property to the east. Wilson Downing Road is a minor arterial roadway that borders the property to the south. Tates Creek Road and Wilson Downing Road intersect along the property's frontage, and the intersection is controlled with a traffic signal that also serves Appian Way. The applicant is proposing access to Wilson Downing Road to serve the development of the property.

Curb/Gutter/Sidewalks – No curb, gutters or sidewalks exist along either the Tates Creek Road or Wilson Downing Road frontage of the property. These facilities will be required internal to the site if any construction is permitted to occur on the property.

Storm Sewers – The subject property is located within the West Hickman watershed, and the West Hickman Creek crosses the western portion of the property, flowing to the southwest from this location. The current FEMA Digital Flood Insurance Rate Maps (D-FIRM) indicate that a Special Flood Hazard Area exists on the subject property (covering 100% of the site). The applicant has received a Conditional Letter of Map Revision based on Fill (CLOMR–F) from FEMA, which indicates that it has been proven mathematically, utilizing hydraulic modeling, that virtually the entire property can be removed from the floodplain using fill on the site without increasing the base flood elevation. Known flooding occurs all along this creek within the community. The proposed development on the subject property remains questionable due to existing Local and State regulations.

Sanitary Sewers – The subject property is located within the West Hickman watershed, and would be serviced by the West Hickman Wastewater Treatment facility in northern Jessamine County. An existing gravity trunk line runs along the West Hickman Creek in the floodway, which crosses the western part of the property. Due to the existing sewer line on the property, service should be able to be extended at the time of development. There are no known sanitary sewer service problems associated with this portion of the Urban Service Area.

Refuse – The Urban County Government provides refuse collection to this portion of the Urban Service Area on Mondays.

Police – The property is located within Police Sector 3 and is served by the East Sector Roll Call Center. This police station is located on Centre Parkway in the Gainesway neighborhood, approximately 1 mile to the northeast of the property.

Fire/Ambulance – The nearest fire station (# 22) is located approximately 1 mile southwest of the subject property along Clearwater Way, within Veterans Park.

Utilities – All utilities, including electric, gas, water, telephone, and cable service are available in the immediate area and should be able to be extended to serve the subject property if development occurs.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 10) recommends Medium Density Residential future land use for the subject property, defined as 5–10 dwelling units per net acre. The petitioner proposes a Neighborhood Business (B-1) zone to develop a branch bank and a coffee shop, both with a drive-through and associated off-street parking.

CASE REVIEW

The petitioner has requested a zone change from an Agricultural Urban (A-U) zone to a Neighborhood Business (B-1) zone for 2.79 acres of property located at 3939 Bates Creek Road.

The subject property is located at the northwest corner of Bates Creek Road and Wilson Downing Road, which is a signalized intersection. The site is bordered to the north and west by a Windstream facility (zoned A-U), and a portion of the Roman Soldier subdivision, which is zoned R-2 and developed with duplexes. Across Bates Creek Road is a multi-family apartment complex (zoned R-4), and across Wilson Downing Road is the Bates Creek Shopping Center, which is anchored by Kroger (zoned P-1 and B-6P). Several offices and banks are also located along the Wilson Downing Road frontage in this vicinity.

The subject property is currently designated as a Special Flood Hazard Area by the FEMA Digital Flood Insurance Rate Maps (D-FIRM), which are used for regulatory purposes by the Urban County Government. The West Hickman Creek at this location is also considered an impaired stream by the Federal EPA. A Conditional Letter of Map Revision based on Fill (CLOMR-F) has been received for the subject property from FEMA, which indicates that the applicant has proven mathematically, utilizing hydraulic modeling, that virtually the entire property can be removed from the floodplain using fill on the site without increasing the base flood elevation.

The petitioner proposes developing a branch bank and coffee shop/restaurant, each with a drive-through facility, and associated off-street parking. They are proposing an entrance/exit across from the entrance to the Bates Creek Shopping Center located on Wilson Downing Road, and propose an emergency access closer to the intersection of Bates Creek and Wilson Downing Roads.

This proposed development would only be possible with extensive grading and filling within the regulatory floodplain. Article 19-7 of the Zoning Ordinance prohibits construction of principal or accessory buildings for commercial (among other) uses, as well as excavation, grading or filling that disturbs the natural grade of the floodplain, unless a special use permit or floodplain variance has been granted. At this time, no special use permit has been issued to the applicant for the subject property. Additional state and federal requirements would also need to be met prior to development of this property. Although FEMA has issued a CLOMR-F for the property, which indicates that the property can be engineered so a majority of the site is developable and out of the regulatory floodplain, that letter does not grant the applicant permission under the local regulations and is not final. The property is wholly located in an environmentally sensitive area that should not be entirely filled to provide a small developable area for uses that can easily locate in almost any business zone. Such a proposal is directly contrary to the Zoning Ordinance and policy statements recently incorporated into the 2013 Comprehensive Plan (Theme B: Protecting the Environment, Goal #3 Support the funding, planning and management of a green infrastructure program). Theme B, Goal #3 has two objectives listed:

- a) Identify and protect natural resources and landscapes *before* development occurs (emphasis added).
- and
- b) Incorporate green infrastructure principles in new plans and policies, including, but not limited to, land use and transportation.

The applicant's proposal does not support either of these community supported policy statements. Additionally, the staff has no evidence of State agency support of development in the floodplain located on the property, adjacent to an EPA-designated impaired stream.

The 2007 Comprehensive Plan recommends Medium Density Residential future land use for the subject property, defined as 5–10 dwelling units per acre. Since the petitioner proposes a B-1 zone for the property, it cannot be found to be in agreement with the land use recommendation of the Comprehensive Plan. Additionally, there have been no unanticipated changes in the immediate area of an economic, social or physical nature since the Comprehensive Plan was adopted in 2007. Given this, the Planning Commission should consider the appropriateness of the requested zone change.

The existing Agricultural Urban (A-U) zoning for this site remains appropriate, given that the property is located within a Special Flood Hazard Area (either floodway or floodplain) unless significantly physically altered; and it is compatible with the existing residential zoning of the surrounding neighborhood, as well as the agricultural zoning of the utility sub-station to the west of the subject property. The proposed B-1 zone is inappropriate at this location because it will require significant physical alteration of the property in the way of constructing a retaining wall and filling the property with eight feet of fill in order to make it developable for commercial use that includes drive-through facilities. Multiple drive-through facilities, and the traffic impact of such uses, are also a significant concern to the staff at this location, as well as the access spacing along Wilson Downing Road. The applicant has modified the access so that it is solely

off of Wilson Downing Road, but the location of this access point remains in the floodplain; and during a major flood event, the roadway is expected to be covered. An emergency access point is depicted on the development plan, but that access point does not meet spacing requirements.

Lastly, there is no compelling need for the commercial development proposed in this area, given that extensive development in environmentally sensitive areas is being proposed without approval by Local or State agencies, and that the Bates Creek Shopping Center exists immediately to the south and has several vacancies.

The Staff Recommends: **Disapproval**, for the following reasons:

1. The existing Agricultural-Urban (A-U) zoning for the subject property is appropriate for the subject property, given that 100% of the property is currently located within a Special Flood Hazard Area (either floodway or floodplain); and it is compatible with the existing residential zoning of the surrounding neighborhood, as well as the agricultural zoning of the utility sub-station to the west of the subject property. The proposed B-1 zone is inappropriate at this location because it will require significant physical alteration of the property through construction of a retaining wall, as well as re-grading the property by adding eight feet of fill in order to make it developable for commercial use that includes drive-through facilities.
2. There have been no unanticipated changes in the immediate area of an economic, social or physical nature since the Comprehensive Plan was adopted in 2007.
3. There is no compelling need for the commercial development proposed in this area, given that extensive development in environmentally sensitive areas is being proposed without approval by Local or State agencies, and that the Bates Creek Shopping Center exists immediately to the south and has numerous vacancies.
4. The request to rezone property that is wholly in the FEMA Special Flood Hazard Area (100-year floodplain) is directly contrary to the recently adopted 2013 Comprehensive Goals and Objectives, Theme B. Protecting the Environment. The subject property is an environmentally sensitive area, adjacent to an EPA-designated impaired stream, West Hickman Creek. Development and grading within the floodplain are not permitted by the Zoning Ordinance, unless there is a special circumstance, and none has been identified in this location.

TLW/BJR/JWE

12/3/12, revised 12/4/13

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