

Agenda
Work Session
Aberdeen Town Board

February 27, 2014
Thursday, 5:30 p.m.

Robert N. Page Municipal Building
Aberdeen, North Carolina

1. Aberdeen Police Department Promotional Process.
2. Barbara Allred and Alice Thomas – Discussion Regarding Library.
3. Update on Ray's Mill Pond Park. **Information Only**
4. Conditional Use Permit CU #14-01 Submitted by Concrete Service Company. **Public Hearing scheduled for 3/10/14.**
5. Town Sponsored Rezoning Request RZ #14-01 for Properties located along Keyser Street. **Public Hearing scheduled for 3/10/14.**
6. UDO Text Amendment UDO #14-01 Regarding Residential District Standards for Garages. **Public Hearing scheduled for 3/10/14.**
7. Conditional Zoning Request CZ #14-01 Submitted by Crossway Church of Worship, Inc. **Public Hearing scheduled for 3/10/14.**
8. Resolution Authorizing the Advertisement for Bids for the Sale of (3) 2010 Dodge Chargers. **Consider approval at Work Session**
9. Resolution Authorizing the Advertisement for Bids for the Sale of a Residential Structure located at 805 N. Poplar Street and a Residential Structure located at 804 Holly Street. **New Business on 3/10/14**
10. Other Business.
 - a. Land Use Plan Steering Committee meeting scheduled for Thursday, March 6, 2014 at 5:30 p.m. at the Aberdeen Recreation Station.
 - b. Budget Retreat scheduled for Saturday, March 8, 2014 from 8:30 a.m. – 2:30 p.m. at the EOC at the Fire Department.
11. Board Member Training with Town Attorney.
12. Adjournment.

SPECIAL ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES OR IMPAIRMENTS WILL BE MADE UPON
REQUEST TO THE EXTENT THAT REASONABLE NOTICE IS GIVEN TO THE TOWN OF ABERDEEN.



TOWN OF ABERDEEN AGENDA ITEM ACTION REQUEST FORM

This form must be completed and attached to all supporting documentation for items to be included on the Town of Aberdeen Board agenda. One (1) form per agenda item.

Submitted By: Leigh W. Baggs Department: Parks and Recreation

Contact Phone # 944-7275 Date Submitted: 2/24/2014

Agenda Item Title: Update on Ray's Pond Park

Work Session - Board Action (date of meeting should be filled in on line) :

Information Only _____

Public Hearing _____

Approval at work session - immediate action _____

Regular Board Meeting - Board Action (date of meeting should be filled in on line):

New Business _____

Information Only _____

Old Business _____

Consent Agenda _____

Public Hearing _____

Informal Discussion & Public Comment _____

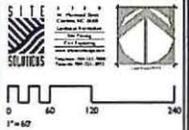
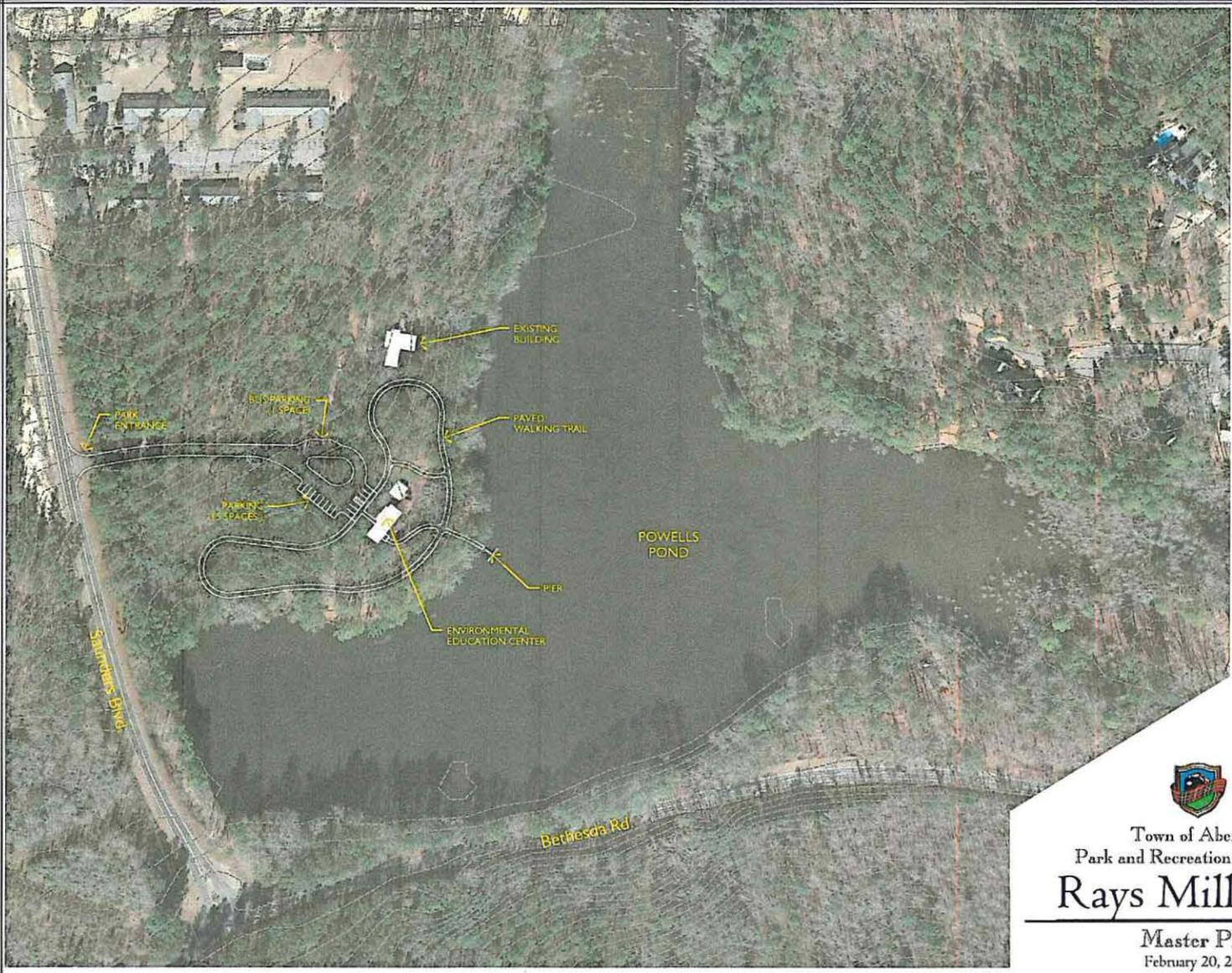
Other Business _____

Summary of Information:

A floor plan for the Environmental Education Center attached for your review. I have requested a meeting with Habitat and the Homeowners Association to inquiry about their assistance. I have contacted State Parks about plans and information recently used for outdoor exhibits.

The Architect needs a survey of a portion of Ray's Mill Pond Park. This has been scheduled

Special requests (i.e. Needs to be first on the agenda due to schedule of guest, etc.):

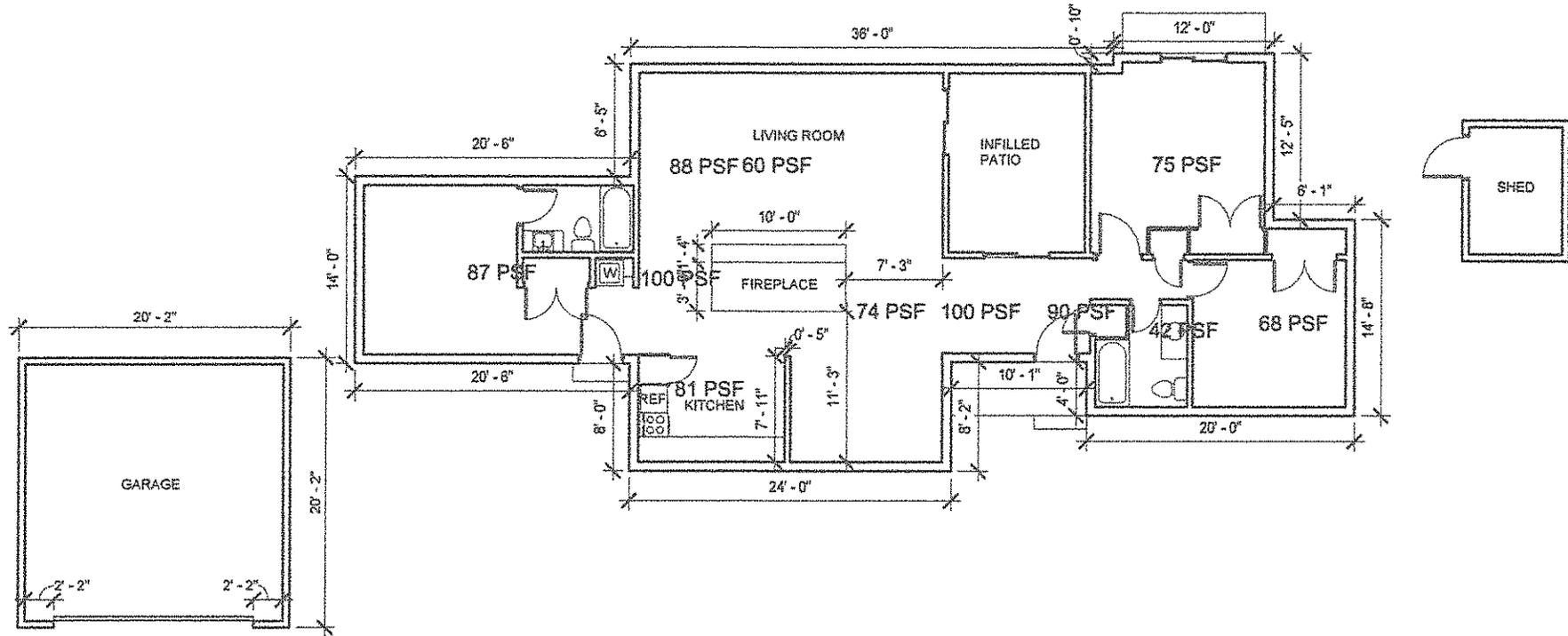


Town of Aberdeen
 Park and Recreation Department
Rays Mill Pond

Master Plan
 February 20, 2014

NOTE:

1. MAXIMUM ALLOWABLE FLOOR LIVE LOADS AS NOTED
2. EXISTING FLOOR FRAMING MATERIAL ASSUMED TO BE #2 SPRUCE PINE FIR.



Aberdeen - Ray's Mill Pond Park

HH PROJECT #13-047
PRELIMINARY FLOOR PLAN

1/8" = 1'-0"

A-1

12/19/2013



TOWN OF ABERDEEN AGENDA ITEM ACTION REQUEST FORM

This form must be completed and attached to all supporting documentation for items to be included on the Town of Aberdeen Board agenda. One (1) form per agenda item.

Submitted By: P Graham **Department:** Planning

Contact Phone # 944-4517 **Date Submitted:** 2/21/14

Agenda Item Title: Conditional Use Permit CU #14-01 Submitted by Concrete Service Company

Date of Board Meeting to hear this item: 2/27/14

Board Action Requested:

New Business	<input type="checkbox"/>	Information Only	<input type="checkbox"/>
Old Business	<input type="checkbox"/>	For Action at Future Meeting	<input checked="" type="checkbox"/> Date <u>3/10/14</u>
Public Hearing	<input type="checkbox"/>	Informal Discussion & Public Comment	<input type="checkbox"/>
Other Business	<input type="checkbox"/>	Consent Agenda	<input type="checkbox"/>

Summary of Information:

Concrete Service Company requests a CUP for the purposes of constructing a ready-mix concrete manufacturing plant at the intersection of Lockey Drive and Dollie Lane (I-H Heavy Industrial District).

This item may be scheduled for Public Hearing on 3/10/14.

Special requests (i.e. Needs to be first on the agenda due to schedule of guest, etc.):

MEMORANDUM TO THE BOARD OF COMMISSIONERS

FROM: Pamela Graham
DATE: February 27, 2014
SUBJECT: Conditional Use Permit CU#14-01 – Concrete Manufacturing
APPLICANT: Concrete Service Company

REQUEST: Concrete Service Company of Fayetteville, NC requests a Conditional Use Permit to allow for a ready mix concrete plant and office facility on property identified as PID #00050930 at the intersection of Lockey Drive and Dollie Lane. The parcel contains 4.68 acres. The proposed use includes a +/- 1,600 square foot office building with related parking, and storage silos with a conveyor to feed a truck loading area. The remainder of the facility will consist of mostly open paved area for adequate space for truck turn-arounds and off-duty parking. The property is currently vacant and is mostly cleared with some natural buffering in place with existing tree cover. The nearest residentially zoned property is immediately adjacent to the rear (southwest) property boundary with an occupied residence located approximately 225’ from the nearest structure for the proposed facility (storage silos).

SITE INFORMATION:

Zoning	I-H(Heavy Industry)
Adjacent Zoning	North: C-I (Commercial/Light Industry) South: MH (Manufactured Home) West: I-H East: I-H
Acreage	4.68 Acres Conceptual Site Layout provided
Watershed	Property is not located in a protected watershed
Existing Use	Vacant

ALLOWED USES: Currently, the I-H District categorizes uses of the type proposed by the applicant under Description 4.100 of the Table of Permissible Uses (§152-146): “Manufacturing, processing, creating or assembling of goods, merchandise and equipment.” Two sub categories, 4.110 and 4.120, differentiate the use according to whether any operations are conducted outside a fully enclosed building, and both of these require a Conditional Use Permit in the I-H District. Due to the conveying, off-loading, and intake of product by truck, staff believes that some operations are clearly conducted outside of the facility structures.

STAFF RECOMMENDATIONS: Staff recommends that the Board schedule Conditional Use Permit CU #14-01 for Public Hearing on March 10, 2014.



TOWN OF ABERDEEN AGENDA ITEM ACTION REQUEST FORM

This form must be completed and attached to all supporting documentation for items to be included on the Town of Aberdeen Board agenda. One (1) form per agenda item.

Submitted By: P Graham **Department:** Planning

Contact Phone # 944-4517 **Date Submitted:** 2/21/14

Agenda Item Title: Town Sponsored Rezoning Request RZ #14-01 for Properties Located Along Keyser Street

Date of Board Meeting to hear this item: 2/27/14

Board Action Requested:

New Business	<input type="checkbox"/>	Information Only	<input type="checkbox"/>
Old Business	<input type="checkbox"/>	For Action at Future Meeting	<input checked="" type="checkbox"/> Date <u>3/10/14</u>
Public Hearing	<input type="checkbox"/>	Informal Discussion & Public Comment	<input type="checkbox"/>
Other Business	<input type="checkbox"/>	Consent Agenda	<input type="checkbox"/>

Summary of Information:

Staff has recognized a potential need in the community for a transitional zoning district along the northern portion of Keyser Street, across from Aberdeen Elementary School, to provide services currently absent.

This item may be scheduled for Public Hearing on 3/10/14.

Special requests (i.e. Needs to be first on the agenda due to schedule of guest, etc.):

MEMORANDUM TO THE BOARD OF COMMISSIONERS

From: Pamela Graham, Planning Director
Date: February 27, 2014
Subject: Rezoning RZ#14-01

REQUEST

RZ #14-01 is a town-sponsored rezoning request to rezone properties along Keyser Street, identified by PID #s 00050820, 00992183, 00053087, and 00055370 from R10-10 to B-3 Neighborhood Transitional District.

BACKGROUND

Staff has been in discussion with the owner of a residence located at 311 Keyser Street, Mrs. Lillian Seagraves and her son Chauncey, regarding opportunities for permitting low volume retail uses at the property. As this section of Keyser Street is zoned R10-10, uses other than residential are limited, and retail uses are not allowed. However, the property's proximity to NC Highway 211, and to other non-residential uses including a church and public school, may make it a good candidate for a wider range of allowable uses by creating opportunities for available services to the neighborhood. Aberdeen's UDO provides for this type of range in our B-3 Neighborhood Transitional District, defined as: "a business district which provides adequate protection for adjacent or nearby established residential neighborhoods ... (and) serves to create a buffer of less dense business uses between established residential neighborhoods and areas of heavy commercialization. Uses in this district should be harmonious with nearby residential uses."

ANALYSIS

The four properties included in this request are all currently vacant with the exception of the Seagraves residence. The St. Joseph AME Church was formerly located on the parcel to the north of the Seagraves' property, but was demolished in 2012 following years of problems resulting from damage to the structure during Hurricane Fran in 1996. Sandhill United Church of Christ occupies property approximately 170' to the south, with two single family residences filling the space between. Immediately adjacent to the east is a 2.23 acre parcel owned by Sandhill United Church of Christ and two single family dwellings that front on Seagraves Street and accessed by Bethune Avenue. The area abuts R10-10 properties on all sides but includes a single O-I (Office & Institutional) zoned property approximately 650' to the south where Jones & Little Funeral Home operates, and vacant B-2 zoned properties approximately 200' to the north, which front on Highway 211. Though many residentially zoned properties still exist along 211, the future land uses and zoning along 211 will likely transition to commercial over time. The B-3 district may serve as an appropriate buffer between the more intense uses adjacent to the highway and land that is expected to remain residential as you move farther from the highway corridor.

Zoning considerations must address the potential for the decision to be classified as “spot zoning”. While not illegal in North Carolina, spot zoning must be clearly supported by a reasonable basis in order to withstand a legal challenge.

In the 1972 *Blades v. City of Raleigh* spot zoning case, the following definition offered some clarification to what constitutes spot zoning:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."

First among the Board’s decisions is if this rezoning request could be considered spot zoning according to the definition in the previous paragraph. If the answer is yes, or potentially yes, then the justification of a favorable decision on the rezoning must be considered. Professor and Attorney David Owens, considered a foremost authority on land use law in North Carolina, addresses spot zoning in depth in two articles/blog posts. A summary of relevant information is provided below.

A local government adopting a "spot" zone has an affirmative obligation to establish that there is a reasonable public policy basis for doing so. Thus the public hearing record should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in close proximity to the site that are different from most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?

If there is a reasonable basis for treating particular property differently from nearby or similar property, that should be enough to support the validity of the zoning. In cases where rezonings were not upheld by the courts, the rezoning was determined to have minimal benefit to the public and substantial detriment to neighbors.

In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.

Professor Owen also cites the 1988 *Chrismon v. Guilford County* in his advice for governing bodies when considering rezoning requests, stating that the burden is on the local government to make a case for the “reasonableness” of the rezoning:

Among the factors ... are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts.

Further analysis of the four criteria outlined in the *Chrismon* case are as follows:

1. *The size of the tract in question:* The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the

size of the tract in context: a 1-acre parcel may be considered large in an urban area developed in the 1920s, but very small in the midst of an undeveloped rural area.

The total acreage included in this rezoning request is 1.28 acres.

2. *Compatibility with the Land Development Plan:* The second factor in a spot zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land-use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses. To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

Consistency with the adopted plans are addressed further in the following section; however, staff recognizes the likelihood of the Keyser Street corridor transitioning to a mix of residential and non-residential uses over time and community related needs that will be addressed in our update to the Land Use Plan, currently being drafted.

3. *Benefits and Detriments:* The third factor in spot zoning analysis is who benefits and who is harmed by the rezoning and what the relative magnitude of each consequence is. If the rezoning is granted, will it greatly benefit the owner? Will he or she be seriously harmed if it is denied? The same questions must be asked for the neighbors and the community at large, and then the effects on all three must be balanced. In a spot zoning challenge the courts, rather than the governing board alone, review and weigh the balance of harm and benefit created by the rezoning. Although the court may be sympathetic to a situation in which there is considerable benefit to the owner and only modest harm to others, even a substantial benefit for the owner will not offset substantial harm to others.

The proposed rezoning can be expected to provide more benefit than harm to both the property owners directly affected by the decision as well as the immediately adjoining properties and the overall community. The increased range of allowable uses provided in the B-3 district allow for opportunities for businesses that offer services and needs to the community. Among those are nursing and day care facilities, offices, low volume retail and restaurants.

4. *Relationship of Uses:* The fourth factor in spot zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

Current uses on immediately adjoining properties are largely residential in character. The transitional type uses allowed in the B-3 district do not represent a substantial disparity from residential uses. A breakdown of the allowable uses in the B-3 district, as reflected in the UDO's Table of Permissible Uses is attached to this document. Only permitted uses are shown in the attachment, for a full list of both permitted and non-permitted uses, please refer to §152-146 Table of Permissible Uses, of the UDO.

CONSISTENCY WITH FUTURE LAND USE MAP AND LAND DEVELOPMENT PLAN

The Future Land Use Map identifies these parcels for residential use while recognizing commercial uses that currently exist in the vicinity. Though the B-3 District allows for residential uses, it additionally allows for a range of activities not available to R10-10 zoned properties, such as low-volume retail, offices, restaurants, and community centers.

Professor Owen specifically addresses instances where the rezoning proposal differs from a land use plan that calls for a different development pattern, stating that:

The board needs to discuss how this rezoning is justified when the land use plan calls for a different development pattern. The land use plan is not binding and does not prevent approval. But the inconsistency must be acknowledged and discussed. If the board decides to go forward with the rezoning, the board needs to explain why it considers this to be in the public interest, being careful to touch on all of the points mentioned by the court in the Chrismon case. Given that the plan calls for a different land use pattern, it will be particularly important for the county to make the case that rezoning the land is indeed reasonable. And it would probably be prudent to update the plan if they conclude the rezoning should be adopted.

IMPACT ON WATER, SEWER AND TRAFFIC

Rezoning these parcels will have a negligible impact on water and sewer, both of which are currently available. A transition from residential to a district that allows for additional uses will likely add traffic to Keyser Street, which is considered a collector street. A collector street is defined in the UDO as: “A street whose principal function is to carry traffic between minor, local, and subcollector streets and arterial streets but that may also provide direct access to abutting properties. It serves or is designed to serve, directly or indirectly, between 100 dwelling units to 400 dwelling units and is designed to be used or is used to carry more than 800 trips per day.”

STAFF RECOMMENDATION

Staff recommends that the Board schedule Rezoning RZ #14-01 for Public Hearing on March 10, 2014 so that input from the public can be accepted on the proposal.

Enclosures: B-3 Table of Permissible Uses
Vicinity Zoning Map
Vicinity Aerial Map

From Appendix A of the Land Development Plan

(C) The Aberdeen Planning Board and Board of Commissioners should consider the following during the deliberation of all zoning requests:

(1) All uses which are allowed in a zoning district must be considered. A decision to re-zone or not to re-zone a parcel or parcels of property cannot be based on consideration of only one use or a partial list of the uses allowed within a zoning district.

(2) Zoning decisions will not be based on aesthetic considerations.

(3) Requests for zoning changes will not be approved if the requested change will result in spot zoning. Spot zoning is a form of discriminatory zoning whose sole purpose is to serve the private interests of one or more landowners instead of furthering the welfare of the entire community as part of an overall zoning plan. Although changing the zoning classification of any parcel of land to permit a more intensive use could possibly constitute spot zoning, the test lies in its relationship to the existing zoning pattern and guidelines of the local land use plan. Spot zoning is based on the arbitrary and inappropriate nature of a re-zoning change rather than, as is commonly believed, on the size of the area being re-zoned.

(4) Zoning which will result in strip development will be discouraged. Strip development is a mélange of development, usually commercial, extending along either side of a major street. Strip development is often a mixture of auto-oriented enterprises (e.g., gas stations, motels, and food stands), truck-dependent wholesale and light industrial enterprises along with the once-rural homes and farms that await conversion to commercial use. Strip development may severely reduce traffic-carrying capacity of abutting streets by allowing for excessive and conflicting curb cuts.

(5) The concept of uniformity will be supported in all zoning deliberations. Uniformity is a basic premise of zoning which holds that all land in similar circumstances should be zoned alike; any different treatment must be justified by showing different circumstances.

(6) Zoning regulations will be made in accordance with the Town of Aberdeen Comprehensive Plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and

encouraging the most appropriate use of land throughout Aberdeen's planning jurisdiction.

(7) Specifically, the Planning Board and Board of Commissioners should ask the following questions:

- (a) Does Aberdeen need more land in the zone class requested?
- (b) Is there other property in the town that might be more appropriate for this use?
- (c) Is the request in accordance with the Town of Aberdeen land use plan?
- (d) Will the request have a serious impact on traffic circulation, parking space, sewer and water services, and other utilities?
- (e) Is there a good possibility that the request, as proposed, will result in lessening the enjoyment or use of adjacent properties?
- (f) Will the request, as proposed, cause serious noise, odors, light, activity, or unusual disturbances? Do standards exist to govern these disturbances?
- (g) Does the request raise serious legal questions such as spot zoning hardship, violation of precedents, or need for this type of use?

Section 152-146: Table of Permissible Uses

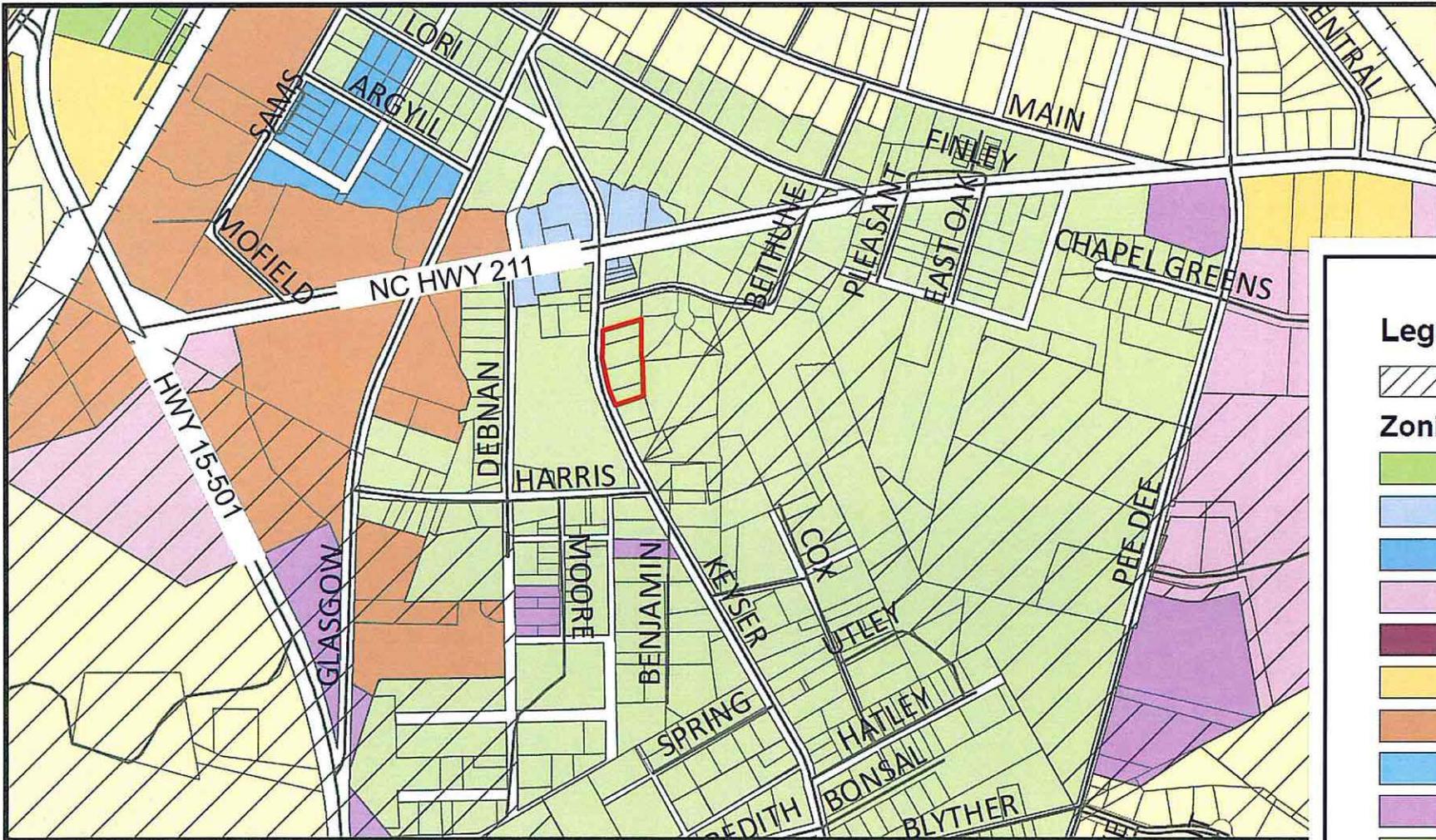
Description	B-3	* Z = Zoning by Right, C = Conditional Use Permit Required, S = Special Use Permit Required
2.140 Bulk petroleum stations	Z	
2.150 Drive-through windows	Z	
2.160 Retail sales with subordinate manufacturing and processing	Z	
3.000 RETAIL SERVICES AND OTHER OFFICE USES		
3.100 All operations conducted entirely within a fully enclosed building(s)		
3.110 Operations designed to attract and serve customers or clients on the premises, such as the offices of attorneys, physicians, other professions, insurance and stock brokers, travel agents, government office buildings, etc.	Z	
3.120 Operations designed to attract little or no customer or client traffic other than employees of the entity operating the principal use	Z	
3.130 Offices or clinics of physicians or dentists with not more than a 10,000 square foot building footprint	Z	
3.140 Governmental uses for or by the Town of Aberdeen only	Z	
3.200 Operations conducted within or outside a fully enclosed building(s)		
3.230 Banks	S	
5.000 EDUCATIONAL, CULTURAL, RELIGIOUS, PHILANTHROPIC- SOCIAL, AND FRATERNAL USES		
5.100 Schools		
5.100 Elementary and secondary (including associated grounds and athletic and other facilities)	C	
5.120 Trade or vocational schools	S	
5.200 Churches, synagogues, mosques, temples and other religious buildings (including associated residential structures for religious personnel and associated buildings but not including elementary school or secondary school buildings)	C	
5.300 Libraries, museums, art galleries, art centers, and similar uses (including associated educational and instructional activities)		

Section 152-146: Table of Permissible Uses

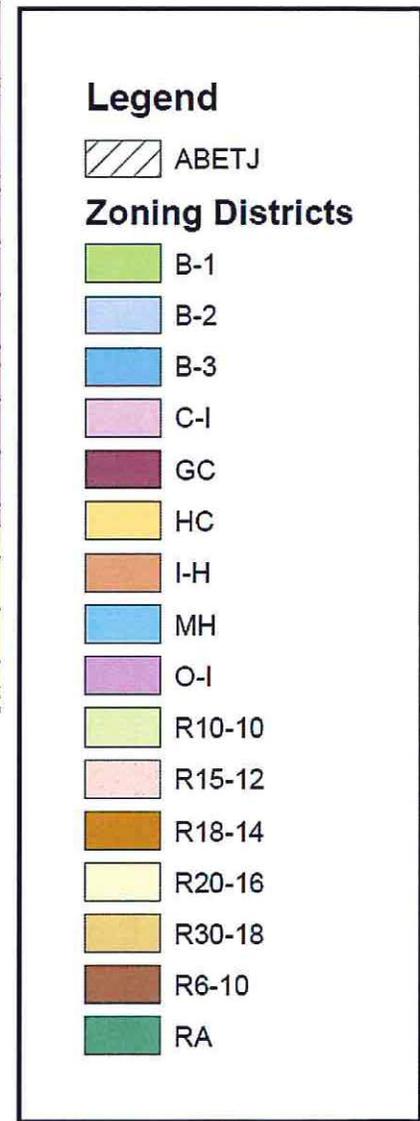
Description	B-3	* Z = Zoning by Right, C = Conditional Use Permit Required, S = Special Use Permit Required									
5.310 Located within a building designed and previously occupied as a residence or within a building having a building footprint not exceeding 3,500 square feet	Z										
5.320 Located within new building designed for this use	Z										
5.400 Social fraternal clubs and lodges, union halls, and similar uses	Z										
5.500 Camp, Therapeutic Wilderness											
6.000 RECREATION, AMUSEMENT, ENTERTAINMENT											
6.100 Activity conducted entirely within a building(s) or substantial structure(s)											
6.150 Community Center - stand alone indoor facility providing for one or several of various types of recreational uses, including but not limited to gymnasiums, swimming pools, indoor court areas, meeting and activity rooms, and other similar uses	Z										
6.200 Activity conducted primarily outside enclosed buildings or structures											
6.221 Town of Aberdeen owned and operated facilities	Z										
8.000 RESTAURANTS, BARS, NIGHT CLUBS											
8.100 Restaurants											
8.110 No substantial take-out or delivery service, no drive-in service, no service or consumption outside a fully enclosed structure	S										
8.120 No substantial take-out or delivery service, no drive-in service, service or consumption outside fully enclosed structure allowed	S										
8.200 Bars and nightclubs											
8.210 Neighborhood Bar	C										
8.220 All other bars and nightclubs											
10.000 STORAGE AND PARKING											

Section 152-146: Table of Permissible Uses

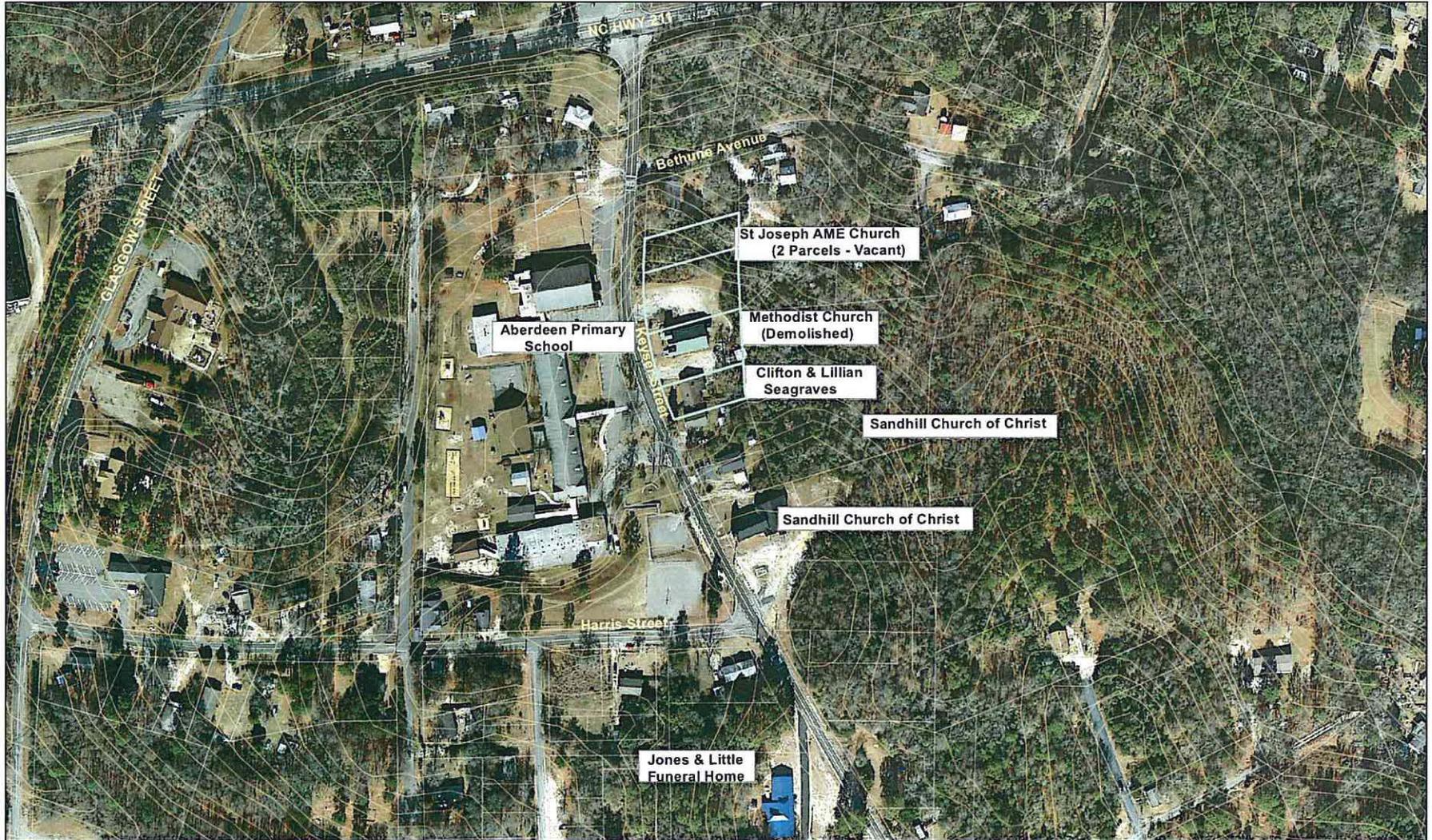
Description	B-3	* Z = Zoning by Right, C = Conditional Use Permit Required, S = Special Use Permit Required			
18.130 Towers and antennas owned and/or operated by a government agency	S				
18.200 Towers and antennas more than 50 feet tall					
18.220 Towers and antennas owned and/or operated by a government agency	C				
18.300 Wireless telecommunications facilities not located on a tower	Z				
19.000 OPEN AIR MARKETS AND HORTICULTURAL SALES					
19.200 Horticultural sales with outdoor display	S				
19.300 Roadside stands	S				
22.000 DAY CARE FACILITY					
22.100 Child day care facility	S				
22.200 Senior citizen day care	S				
23.000 TEMPORARY STRUCTURES USED IN CONNECTION WITH THE CONSTRUCTION OF A PERMANENT BUILDING OR FOR SOME NON-RECURRING PURPOSE	Z				
27.000 SUBDIVISIONS					
27.100 Major	C				
27.200 Minor	Z				
30.000 COMBINATION USES	ZSC				



Rezoning RZ #14-01



KEYSER STREET REZONING REQUEST



-  Properties Proposed for Rezoning
-  Parcel Boundaries
-  2' Contours

INTRODUCTION TO THE BOARD OF COMMISSIONERS FOR CU# 14-01

As a quasi-judicial matter, Conditional Use Permit application CU #14-01 will require a public hearing so that the Board may apply the policies of the town's UDO to the facts presented at the hearing and make their decision on the CUP accordingly. Following consultation with the town attorney, and in response to recent indications that staff should seek methods for improved efficiency in our processes, we are proposing that, for quasi-judicial matters only, an in-depth analysis of the proposal be reserved for the staff report provided to you in advance of the public hearing.

We have provided a summary for the Work Session of relevant facts currently available for the proposal. Staff has recommended to the applicant that they attend the Public Hearing and be prepared to provide additional information and respond to questions from the Board at that time. Staff will provide a more detailed memorandum with the packets that you will receive before the 3/10/14 regular meeting, and will also provide a copy to the applicant.



TOWN OF ABERDEEN AGENDA ITEM ACTION REQUEST FORM

This form must be completed and attached to all supporting documentation for items to be included on the Town of Aberdeen Board agenda. One (1) form per agenda item.

Submitted By: P Graham **Department:** Planning

Contact Phone # 944-4517 **Date Submitted:** 2/21/14

Agenda Item Title: UDO Text Amendment UDO #14-01 Regarding Residential District Standards for Garages

Date of Board Meeting to hear this item: 2/27/14

Board Action Requested:	
New Business <input type="checkbox"/>	Information Only <input type="checkbox"/>
Old Business <input type="checkbox"/>	For Action at Future Meeting <input checked="" type="checkbox"/> Date <u>3/10/14</u>
Public Hearing <input type="checkbox"/>	Informal Discussion & Public Comment <input type="checkbox"/>
Other Business <input type="checkbox"/>	Consent Agenda <input type="checkbox"/>

Summary of Information:

The proposed text amendment has been drafted to address issues related to the need for differentiating residential garages from other types of accessory structures in how they are placed on the property.

This item may be scheduled for Public Hearing on 3/10/14.

Special requests (i.e. Needs to be first on the agenda due to schedule of guest, etc.):

MEMORANDUM TO THE BOARD OF COMMISSIONERS

FROM: Pamela Graham, Planning Director
DATE: February 27, 2014
SUBJECT: UDO Text Amendment UDO #14-01 Regarding Residential District Standards for Garages

REQUEST: Staff has recognized a need for review of our current UDO standards regulating accessory structures, particularly in the manner of addressing vehicle garages in residential districts. The attached draft text amendment has been prepared to address these issues.

BACKGROUND: The Unified Development Ordinance currently includes standards for accessory buildings that do not differentiate residential garages from other types of accessory structures such as storage sheds. Staff has determined that garage uses may warrant separate treatment with regards to their placement on the property and requests Planning Board consideration of the revisions reflected in the draft amendment.

ANALYSIS: The UDO currently defines Accessory Buildings as: "A minor building that is located on the same lot as a principal building and that is used incidentally to a principal building or that houses an accessory use." As no distinct definition for garages exists, these uses have been treated identically to other types of accessory structures, the most common being storage sheds.

§152-187 of the UDO provides guidance for how all accessory buildings are to be placed on the property, the maximum height allowed for such structures (25'), and the method of calculating their maximum allowable dimensions. Two requirements in particular are considered by staff to be more appropriate for accessory structures other than garages; these are detailed below.

1) The minimum required setback for all accessory buildings is ten (10) feet from any lot line for interior lots and the standard side setback line for corner lots (15' in most residential districts). It is not uncommon for existing storage sheds that have been in place for some time to be located to a rear corner of a lot, often immediately adjacent to the property line or to a fence placed on the line. The UDO's adoption in 2011 imposed a minimal setback of ten (10) feet in most instances that provides some relief to adjoining properties and reduces the chance for property line disputes between neighbors. The typical storage shed footprint in the 10' x 12' range imposes a relatively low impact to neighboring properties and the current setback distance is considered reasonable. However, a standard two-car garage, at a minimum, would require a footprint of twice those dimensions, and is more likely to maximize the allowable height of 25'. A greater setback for garages may be more appropriate to minimize the impact to neighboring properties. The proposed text amendment would impose the standard principal building setback to garages. For most residential districts these setbacks are 35' in the front, 15' each side, and 30' to the rear.

2) Accessory buildings are required to be placed to the rear of the principal building. Restrictions of this type when present in an ordinance are typically applied to accessory

structures other than garages to provide a visual buffer from the street for storage sheds. By applying this restriction to garages, the UDO limits the design relationships between the residence and the garage in ways that may be unintended. It also imposes a restriction on detached garages that does not apply to attached garages, which are often to the side of the residence. When the garage is built after the home has been complete, a detached design is often a more reasonable and less costly option. Furthermore, some homeowners prefer a detached garage, and may or may not make a simple connection between the garage and the home such as a breezeway. The proposed amendment allows for residential garages, defined separately from other types of accessory buildings, to be located within a side yard, but not closer to the frontage street than the home.



This configuration is currently prohibited by the UDO



This configuration would not be permitted by the text amendment

LONG RANGE PLANS: This request is not inconsistent with the 2030 Land Development Plan, the Pedestrian Plan or the Bicycle Plan.

STAFF RECOMMENDATION: Staff recommends that the Board schedule UDO Text Amendment UDO #14-01 for Public Hearing on March 10, 2014.

**AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE
WITH REGARD TO ACCESSORY STRUCTURES**

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN THE FOLLOWING:

Section 1. Aberdeen Unified Development Ordinance § 152-15 is amended to add the following definition:

(64) **Garage, Residential.** A residential accessory building or accessory portion of the principal building which is intended for and used to store the private passenger vehicles of the family or families residing upon the premises. Residential garages are not intended for the storage of commercial vehicles associated with a business, including a home occupation, or other nonresidential use.

[The remaining definitions are renumbered accordingly.]

Section 2. Aberdeen Unified Development Ordinance § 152-150, "Accessory Uses, is amended is to add the following new subsection (E):

(E) No accessory use or structure will be permitted on a lot without an established principal use. An accessory use or structure shall not be located on a separate lot from the principal use to which it is incidental and subordinate.

Section 3. Town of Aberdeen Unified Development Ordinance § 152-187, "Accessory Building Setback Requirements," is amended as follows:

(A) Accessory buildings other than residential garages shall be located at least ten feet from any lot line. Residential garages shall meet all applicable building setbacks for the district in which the structure is proposed.

(B) Notwithstanding subsection (A), above, when an accessory building is located on a corner lot, the accessory building shall be set back from the side street lot line a distance at least equal to the minimum side yard setback required for the zoning district in which the lot is located. For example, an accessory building located on a corner lot in the R20-16 zoning district must be setback at least fifteen (15) feet from the side street lot line and ten (10) feet from all other lot lines.

(C) All accessory buildings other than residential garages shall be located to the rear of the principal building. A detached accessory building, designed and used as a residential garage, may be located within a side yard. No accessory building, including a residential garage, shall be located between the principal structure's front building wall and the front lot line.

[The remaining subsections have not been amended.]

Section 4. All provisions of any town ordinance or resolution in conflict with this

ordinance are repealed.

Section 5. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this _____ day of _____, 2014.

Ayes: _____

Noes: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

Attest:

Regina Rosy, Town Clerk



TOWN OF ABERDEEN AGENDA ITEM ACTION REQUEST FORM

This form must be completed and attached to all supporting documentation for items to be included on the Town of Aberdeen Board agenda. One (1) form per agenda item.

Submitted By: P Graham **Department:** Planning

Contact Phone # 944-4517 **Date Submitted:** 2/21/14

Agenda Item Title: Conditional Zoning Request CZ #14-01 Submitted by Crossway Church of Worship, Inc.

Date of Board Meeting to hear this item: 2/27/14

Board Action Requested:

New Business	<input type="checkbox"/>	Information Only	<input type="checkbox"/>
Old Business	<input type="checkbox"/>	For Action at Future Meeting	<input checked="" type="checkbox"/> Date <u>3/10/14</u>
Public Hearing	<input type="checkbox"/>	Informal Discussion & Public Comment	<input type="checkbox"/>
Other Business	<input type="checkbox"/>	Consent Agenda	<input type="checkbox"/>

Summary of Information:

Crossway Church requests a Conditional Zoning for property located on Sandpit Road to R6-10 for the purpose of permitting the construction of a church and related residence facility.

This item may be scheduled for Public Hearing on 3/10/14.

Special requests (i.e. Needs to be first on the agenda due to schedule of guest, etc.):

MEMORANDUM TO THE BOARD OF COMMISSIONERS

FROM: Pamela Graham
 Planning Director
DATE: February 27, 2014
SUBJECT: UDO Conditional Zoning Request CZ# 14-01
APPLICANT: Cross Way Church of Worship, Inc.
PROPERTY OWNER: Cross Way Church of Worship, Inc.

REQUEST:

Cross Way Church of Worship, Inc. requests conditional zoning for construction of a church and accessory residential facilities and uses on property identified by PIN #00050799 to be located approximately 330' south of the intersection of Ridgeline and Sandpit Roads. The request would rezone the property to R6-10-C.

BACKGROUND:

Conditional zoning districts allow for the establishment of certain uses, which, because of their nature or scale, have particular impacts on both the immediate area and the community as a whole. It is not a conditional use permit, but is a legislatively determined zoning district to which ordinance standards apply as well as rules, regulations and conditions imposed as part of the approval. The Planning Board acts as a recommending body to the Board of Commissioners and must make a determination regarding the positive or negative impact on the immediate area and community as a whole.

The applicant intends to develop a religious complex that includes six (6) single family residences to be made available to the congregation, multigenerational multifamily housing including four (4) buildings of four (4) units each, a barn, a church to be constructed in two phases, a cemetery, and all associated parking. Conditional zoning may authorize this mix of uses on property within the R6-10-C District.



LRK# 00050799 is a 25.167 acre parcel. The property demonstrates evidence of prior clearing and timbering activities and has been bisected by a dirt road network. On the aerial, a pond may be observed in the northwest corner. The property is zoned R20-16 and is subject to the Watershed

Water Supply Overlay District. A site plan has been attached depicting the proposed layout of the project.

CONDITIONAL ZONING DISTRICTS (C):

Conditional Zoning Districts are new districts under the Unified Development Ordinance. "Conditional zoning districts allow for the establishment of certain uses, which, because of their nature or scale, have particular impacts on both the immediate area and the community as a whole." It is not a conditional use permit, but is a legislatively determined zoning district in which the development and use of the property is subject to predetermined ordinance standards, rules, regulations and conditions imposed as part of the approval process. The Planning Board acts as a recommending body to the Board of Commissioners and must make a determination regarding the positive or negative impact on the immediate area and community as a whole. Conditional zoning can be used to add uses to districts.

A Conditional Zoning to an R6-10-C District allows for the multi-generational housing component of the project. This use, considered a variation of multifamily residential, is not permitted in the R20-16 district in which the property is currently located.

APPLICABILITY OF MULTI-FAMILY REGULATIONS:

The Unified Development Ordinance was adopted subsequent to completion of a multi-family study prepared by the town. As such, the current regulations require a different design concept as compared to the 1985 Zoning Code as amended. The supplemental regulations for duplexes and multi-family units are attached. The following summarizes requirements that would affect this project had it been submitted as a new multi-family development.

- Multi-family developments and duplexes are only allowed in the R6-10 and R10-10 zoning districts. *A new multifamily development would not be allowed on this property under the existing zoning.*
- The maximum dwelling units per acre are no more than eight, however the property's location in a protected watershed further restricts the units to one per acre. *The applicant proposes a maximum of twenty-two (22) units on the 25.167 acre parcel.*
- A semi-opaque screen a minimum of thirty feet in width is required along the perimeter of any multifamily development located adjacent to any residentially used or zoned property. *The proposal is committed to preserving a natural buffer to meet or exceed this requirement to the greatest extent possible, and to supplement with new plant material where required.*
- Parking lots shall be shaded. *Shade trees and supplemental landscaping is proposed for the parking areas.*
- Pedestrian improvements must be made interior to the development connecting units and destinations such as other units and mail boxes. *The preliminary plan seeks to balance this requirement with the requirements of the Watershed Overlay District by providing a sidewalk along one side of the interior (private) road. The Watershed Overlay District mandates that impervious surfaces be minimized to the greatest degree possible.*
- Plans must be submitted for stormwater management. *As the expected area of disturbance will exceed one acre, the applicant will be required to submit both a*

stormwater management plan and a sedimentation and erosion control plan to NCDENR for approval.

- Open space is required at the rate of 435 square feet per dwelling unit with a width not less than 40 feet or a radius of at least 26 feet. *Based on the proposed twenty-two dwelling units at final buildout, the open space requirement is 9,570 square feet. The applicant is proposing 284,434 square feet of open space in keeping with the Watershed Overlay District's requirement that areas not proposed for construction remain in a natural state.*

ADJACENT ZONING AND LAND USE:

The property is surrounded by C-I Commercial Light Industrial to the north and R20-16 to the west, east and partially on the south. Most of the southern border is Pinehurst ETJ and is classified in the Moore County Tax Registry as "Commercial Vacant;" however, it operates as a commercial nursery. A high transmission power line runs along the north side of the property separating it from commercial uses on Aquashed Court. Lots are built out in residential use across Sand Pit Road in Aberdeen's ETJ.

The applicant proposes to meet setbacks of 35 feet front, 15 feet side and 30 feet rear. The maximum building height is 35 feet.

WATERSHED:

The property is located in a WS-II watershed which limits all non-residential and residential other than single-family development to not more than 12% built upon area unless a Special Intensity Allocation is approved. As the proposed impervious area is 7.16 acres or 28.45% of the property, this allocation must be approved by the Planning Board sitting as the Watershed Review Board. The state requires that the entire allocation of 70% of the site be allocated which will encumber most of the town's watershed balance.

Additional requirements of developments in the WS-II Watershed include that projects minimize built-upon surface area, direct stormwater away from surface waters and incorporate best management practices to minimize water quality impacts.

The property is not located within any other Overlay District.

TRANSPORTATION:

The 2012 NCDOT Annual Average Daily Traffic Counts Map shows traffic volumes at 2000 trips per day on Sandpit Road. Nearby counts on Highway 5 range from 14,000 on the western extent and 9500 on the eastern extent. In estimating traffic volumes, the applicant has proposed the final build out of the church will include 700 seats. Vehicular use for parking purposes is tabulated as 4 seats per vehicle yielding 175 vehicles. During times of service, 350 vehicle trips would be anticipated. Church trips would more than likely be separate from the residential trips on site. These numbers fall below the required number to trigger a traffic impact analysis for the town. NCDOT may at their discretion require additional analysis before approving a driveway access permit.

UTILITIES:

Water and sewer are not currently available. The project would have to be developed on septic and water would need to be extended from Ridgeline Rd. Public Works has determined that adequate water capacity is available.

CONSISTENCY WITH ADOPTED PLANS:

The Town of Aberdeen has an adopted 2030 Land Development Plan, Pedestrian Plan, Bicycle Plan, and Hazard Mitigation Plan. The project is in general conformance with all plans except as follows.

The 2030 Plan encourages zoning to mixed-use. This particular project allows for mixed use, all directed towards supporting the religious use on the property. The Plan also recommends Conservation Subdivisions as an appropriate development pattern for the town's new development, offering the options for responding to growth pressures while preserving the rural character and open space evident in many areas within the town's jurisdiction. The property proposed for this low density development is classified as a Secondary Conservation Area in the 2030 Plan, recommended for a more sensitive approach in the design and development of the area.

Slightly over three acres in the far northwestern corner of the parcel is identified in the Green Growth Toolbox as "Sparsely Settled Habitat", defined below. This portion of the tract is indicated by the plan to include an undisturbed vegetative buffer and septic fields to serve the single family dwellings.

- Sparsely-settled habitats include a variety of non-developed habitats such as working farms and working forests. These areas provide important habitat and movement corridors for wide-ranging species such as bobcat and black bear. These animals can use a variety of habitats, but to persist, they need large blocks of habitat which are not divided by high-traffic roads or highways. Sparsely-settled areas support populations of many game species, such as deer and turkey, thereby providing hunting opportunities. This habitat type also helps to buffer intact, high-quality tracts of other important habitats from disturbance. Extensive development and major highways negatively affect the ability of sparsely-settled habitats to support healthy populations of wildlife and to buffer other important habitat types.

The 2009 amendment to the 2030 Plan directed a slow-down of multifamily development growth. This project incorporates multigenerational housing which is a form of multifamily. However, this multifamily use supports other uses on the property. The residential units are expected to remain under ownership of the church as opposed to being deeded over to individual ownership. The occupants of the housing facilities will be parishioners and/or employees of the church.

ANALYSIS OF IMPACT ON IMMEDIATE AREA AND COMMUNITY AS A WHOLE:

The mixed-use nature of the property will have an impact on reducing some of the vehicle trips that might otherwise be placed on the Aberdeen road network. Multigenerational housing will provide a level of senior housing which is in short supply in Moore County and will benefit the community as a whole.

The immediate impact of this operation should not have a negative impact on the community. Some traffic will be generated during church service times, but traffic volumes are not expected to result in significant impacts to the transportation network as long as NCDOT issues a driveway access permit.

The attached analysis page from Appendix A of the Land Development Plan may be used by the Board in analyzing this request. Please keep in mind that this request is not the typical type of "straight" rezoning experienced prior to the UDO. Each type of use may need to be considered by location on a case by case basis to ensure compatibility and to condition where appropriate.

PLANNING BOARD RECOMMENDATION:

The Planning Board will meet in their standard capacity and as the Watershed Review Board on February 26, 2014 and will consider a recommendation to the Board of Commissioners on Conditional Zoning CZ #14-01 subject to the following conditions: (conditions may be amended during the Planning Board's deliberations)

1. The applicant must conduct a community meeting with mailed notice complying with the requirements of the Unified Development Ordinance prior to the Public Hearing by the Board of Commissioners.
2. A conditional use permit for the uses on the property is not required. A final site plan and all construction documents must be approved through the interdepartmental review process and shall be in general conformance with the proposed site plan with the exception that all reasonable steps shall be taken to reduce parking levels to the minimum required by the UDO (219 spaces).
3. The project must be granted a Special Non-Residential Intensity Allocation by the Watershed Review Board before final approval of the site plan may be given.
4. A driveway access permit must be granted by NCDOT prior to construction. A requirement for a Traffic Impact Analysis will be determined by NCDOT.
5. The applicant shall coordinate with Public Works regarding the extension of water.
6. Any and all approvals from other regulatory agencies must be obtained prior to a notice to proceed by the Planning Department.
7. A copy of all septic tank approvals must be submitted to the Planning Department prior to submittal of final site plan.

8. The corners shall be established for the cemetery and placed on record with the Moore County Register of Deeds.
9. The applicant shall meet all setbacks and building heights as shown on the sketch plan.
10. The applicant shall retain existing vegetation in the buffer wherever possible and supplement with planted landscaping as needed.
11. Final approval of Conditional Zoning CZ #14-01 is contingent upon approval of an interdepartmental site plan review following the CZ process.
12. Staff is directed to enter Conditional Zoning District R6-10-C for property identified by LRK# 00050799 on the official zoning map and add a label for CZ#14-01 upon final approval.

STAFF RECOMMENDATION:

Staff recommends that the Board of Commissioners call for Public Hearing for March 10, 2014 to accept public input on the request.

Enclosures: Preliminary Plan and Cover Sheet
Vicinity Zoning Map

From Appendix A of the Land Development Plan

(C) The Aberdeen Planning Board and Board of Commissioners should consider the following during the deliberation of all zoning requests:

(1) All uses which are allowed in a zoning district must be considered. A decision to re-zone or not to re-zone a parcel or parcels of property cannot be based on consideration of only one use or a partial list of the uses allowed within a zoning district.

(2) Zoning decisions will not be based on aesthetic considerations.

(3) Requests for zoning changes will not be approved if the requested change will result in spot zoning. Spot zoning is a form of discriminatory zoning whose sole purpose is to serve the private interests of one or more landowners instead of furthering the welfare of the entire community as part of an overall zoning plan. Although changing the zoning classification of any parcel of land to permit a more intensive use could possibly constitute spot zoning, the test lies in its relationship to the existing zoning pattern and guidelines of the local land use plan. Spot zoning is based on the arbitrary and inappropriate nature of a re-zoning change rather than, as is commonly believed, on the size of the area being re-zoned.

(4) Zoning which will result in strip development will be discouraged. Strip development is a mélange of development, usually commercial, extending along either side of a major street. Strip development is often a mixture of auto-oriented enterprises (e.g., gas stations, motels, and food stands), truck-dependent wholesale and light industrial enterprises along with the once-rural homes and farms that await conversion to commercial use. Strip development may severely reduce traffic-carrying capacity of abutting streets by allowing for excessive and conflicting curb cuts.

(5) The concept of uniformity will be supported in all zoning deliberations. Uniformity is a basic premise of zoning which holds that all land in similar circumstances should be zoned alike; any different treatment must be justified by showing different circumstances.

(6) Zoning regulations will be made in accordance with the Town of Aberdeen Comprehensive Plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other

things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout Aberdeen's planning jurisdiction.

(7) Specifically, the Planning Board and Board of Commissioners should ask the following questions:

(a) Does Aberdeen need more land in the zone class requested?

(b) Is there other property in the town that might be more appropriate for this use?

(c) Is the request in accordance with the Town of Aberdeen land use plan?

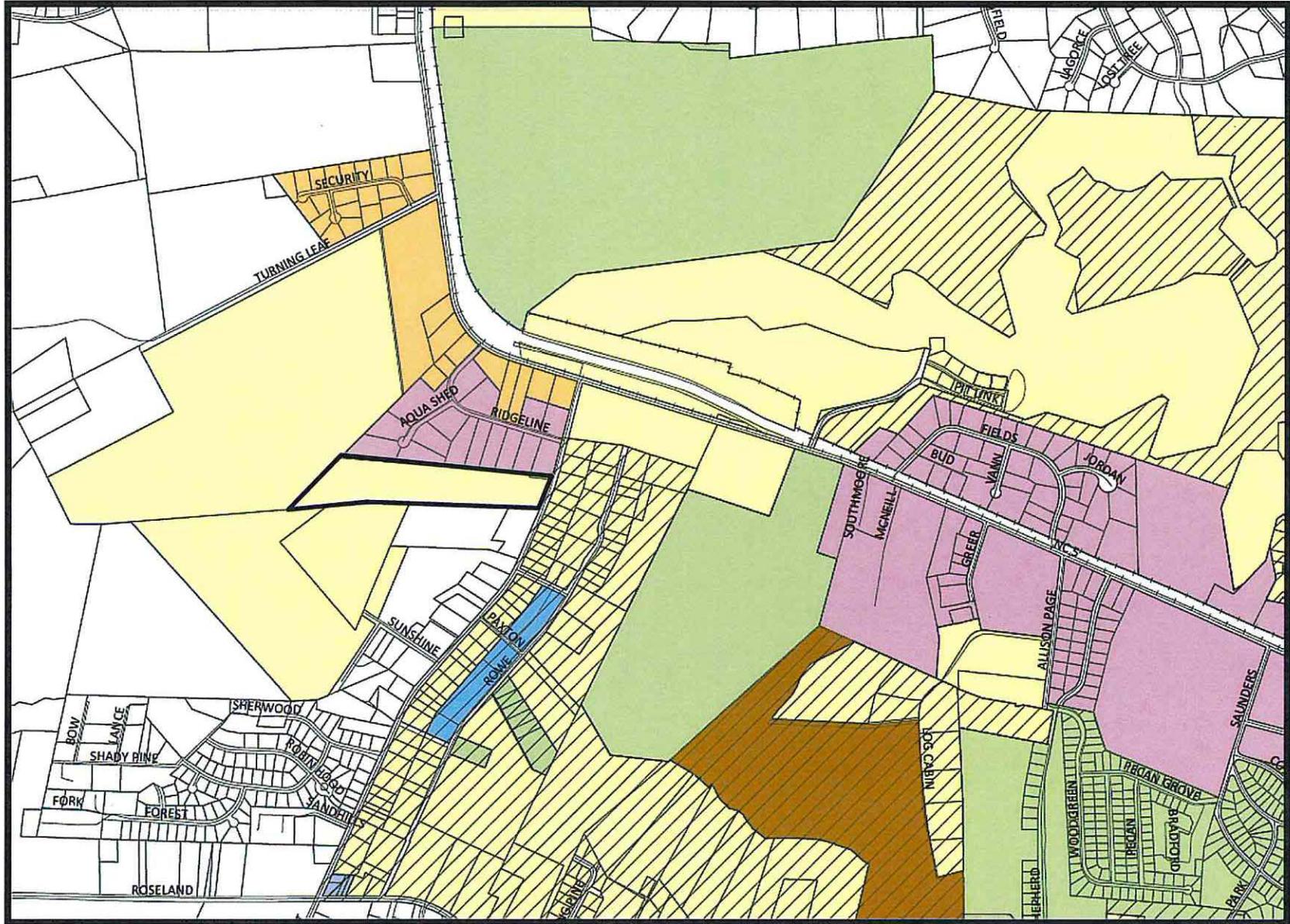
(d) Will the request have a serious impact on traffic circulation, parking space, sewer and water services, and other utilities?

(e) Is there a good possibility that the request, as proposed, will result in lessening the enjoyment or use of adjacent properties?

(f) Will the request, as proposed, cause serious noise, odors, light, activity, or unusual disturbances? Do standards exist to govern these disturbances?

(g) Does the request raise serious legal questions such as spot zoning hardship, violation of precedents, or need for this type of use?

Crossway Church Property – Vicinity Zoning



 B-1	 C-1	 I-H	 R10-10	 R20-16	 RA
 B-2	 GC	 MH	 R15-12	 R30-18	 ABETJ
 B-3	 HC	 O-1	 R18-14	 R6-10	 OTHER JURISDICTION

CROSS WAY CHURCH of WORSHIP

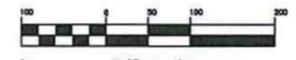


ABERDEEN, NORTH CAROLINA

CROSSWAY CHURCH OF WORSHIP
ABERDEEN, NORTH CAROLINA
FEB. 10, 2014



REVISIONS			
SYM	DESCRIPTION	DATE	BY



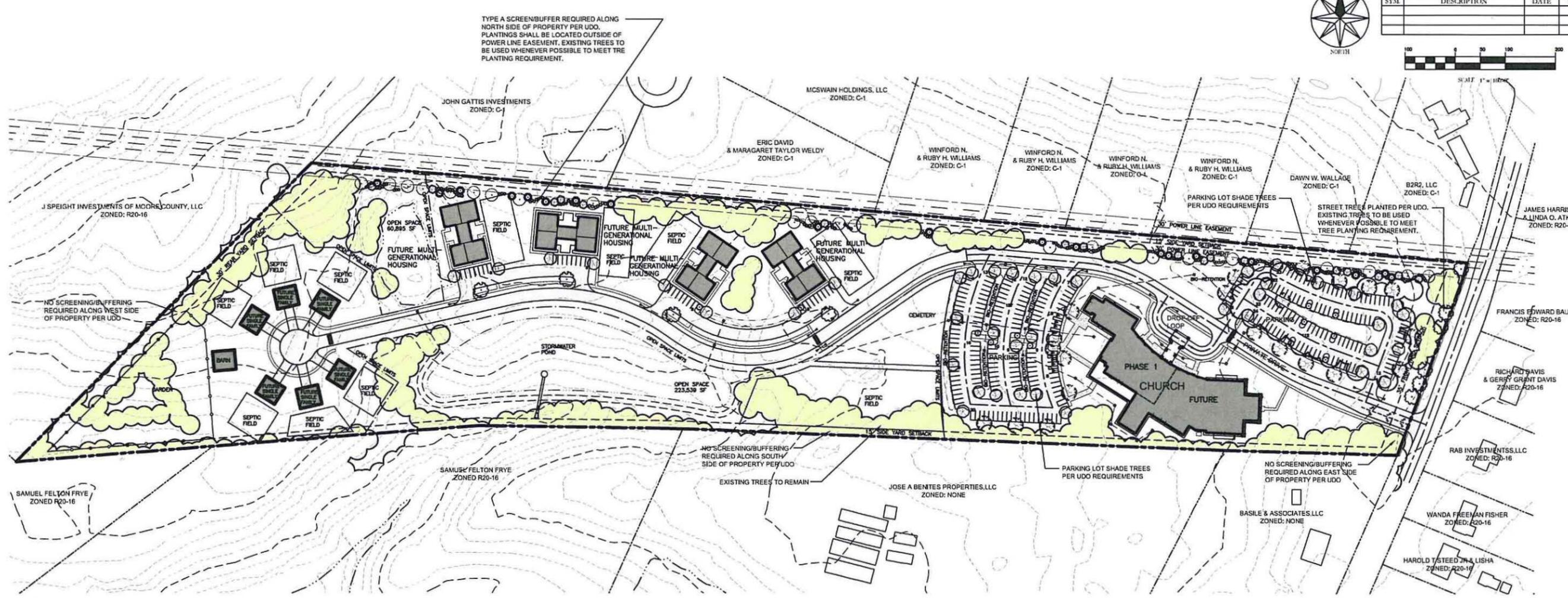
200B Westgate Drive
West End, NC 27376
O: 910.420.1437
F: 910.420.1438
lkceengineering.com
License No. P-1095



SKETCH PLAN

CROSS WAY CHURCH
of
WORSHIP
ABERDEEN, NORTH CAROLINA

DATE:	2-10-14
DESIGNED:	WLS
DRAWN:	WLS
CHECKED:	WLS
NO.:	L-1



1 SITE PLAN - TOTAL DEVELOPMENT

PROPERTY OWNER: CROSS WAY CHURCH OF WORSHIP, INC.
197D RIGGELINE DR.
ABERDEEN, NC, 28315
PARCEL ID NUMBER: 00050799
PIN NUMBER: 855012970347
DEED BOOK: 3875, PAGE: 488
TOTAL PROPERTY ACREAGE: 25.167 ACRES
PROPERTY ZONING: R20-16
HIGHWAY CORRIDOR: NONE
DELINEATED WETLANDS: NO WETLANDS ON SITE
WATERS OF THE U.S.: NO WATERS OF U.S. ON SITE
RIVER BASIN: LUMBER
WATERSHED: DROWNING CREEK WS-II-BW
100 YEAR FLOOD PLAIN: NOT IN 100 YEAR FLOOD PLAIN
PER FEMA MAP 3710857200J, PANEL 8572 EFFECTIVE OCTOBER 17, 2006
EXISTING PARKING: 0 SPACES
PROPOSED PARKING: 313 SPACES (305 STANDARD AND 8 HANDICAP)
REQUIRED PARKING: 219 SPACES (CHURCH = 175 SPACES, RESIDENTIAL = 44 SPACES)
EXISTING IMPERVIOUS SURFACE: 0 SF
PROPOSED IMPERVIOUS SURFACE: 7.16 AC (28.45%)
REQUIRED OPEN SPACE: 232,780 SF (20% OF SITE)
PROPOSED OPEN SPACE: 284,434 SF (24.4% OF SITE)
SETBACKS: FRONT- 35 FEET, SIDE- 15', REAR-30'
MINIMUM LOT WIDTH: 100'
MINIMUM LOT AREA: 20,000 SF (0.46 ACRES)
MINIMUM AREA PER DWELLING UNIT: 1,600 SF (22 DU x 1600, =35,300 SF REQUIRED)
MAXIMUM BUILDING HEIGHT: 35 FEET

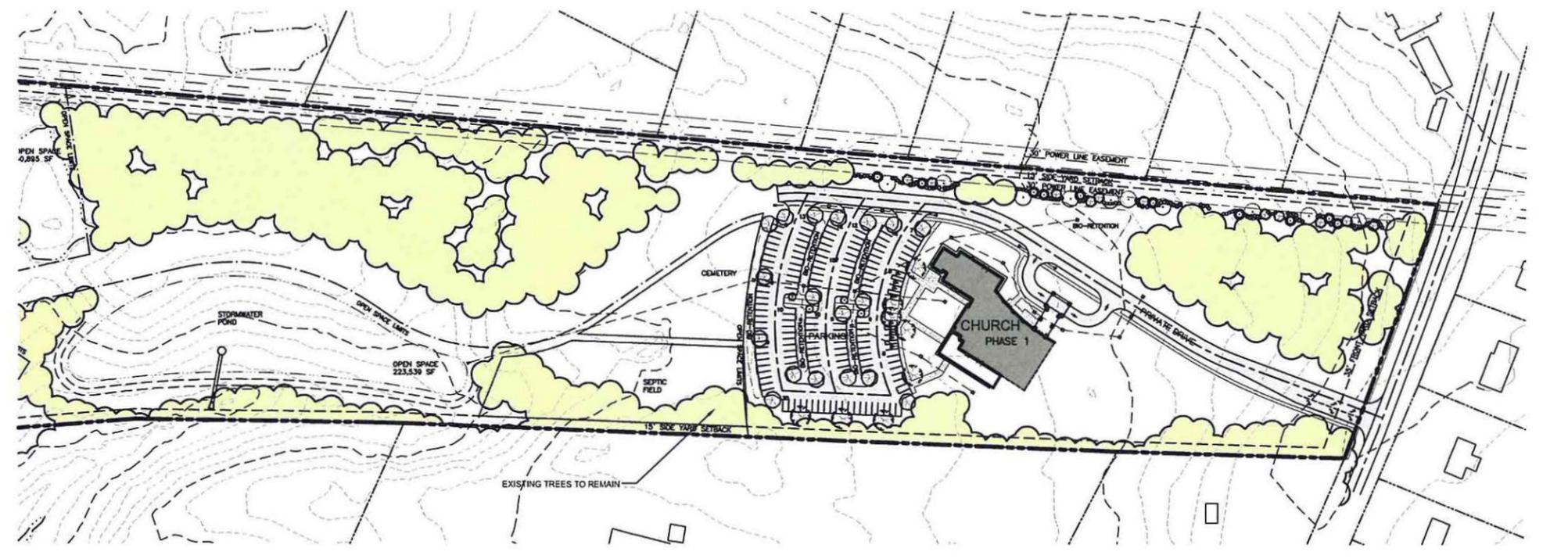
3 PROJECT DATA

- EXISTING CONDITIONS, BOUNDARY, AND TOPOGRAPHIC INFORMATION TAKEN FROM MOORE COUNTY GIS DATA.
- ADJACENT PROPERTY OWNER INFORMATION TAKEN FROM MOORE COUNTY GIS DATA.
- PROPOSED CHURCH BUILDING TAKEN FROM ARCHITECTURAL PLANS PREPARED BY STAGGARD & CHAO ARCHITECTS. PROPOSED MULTI-GENERATIONAL HOUSING AND SINGLE FAMILY BUILDINGS TAKEN FROM CONCEPTUAL PLANS FROM STAGGARD & CHAO ARCHITECTS AND ARE SUBJECT TO CHANGE BASED ON ACTUAL ARCHITECTURAL DESIGNS WHEN DEVELOPED.
- STORM WATER ELEMENTS ARE CONCEPTUAL. EXACT CALCULATIONS, SIZE AND LOCATIONS OF STORM WATER FEATURES TO BE DETERMINED.
- SEPTIC FIELD LOCATIONS AND SIZES ARE CONCEPTUAL. EXACT SIZE AND LOCATION TO BE DETERMINED BY SOILS ANALYSIS AND APPROVED BY MOORE COUNTY DEPT OF HEALTH.

4 SITE AND LAYOUT NOTES

REQUIRED TYPE A BUFFER: 2303.17' x 15' WIDE = 34,547.55 SF AREA
TREES: 34,547.55 / 500 = 69 TREES REQUIRED
SHRUBS: 34,547.55 / 200 = 173 SHRUBS REQUIRED
STREET TREES: 562LF / 30 = 19 TREES REQUIRED
PARKING SHADE TREES: 118,371SF x .20 = 23,675SF SHADED AREA REQUIRED
23675SF / 707 = 35 TREES REQUIRED

5 LANDSCAPE REQUIREMENTS



2 SITE PLAN - PHASE 1

L-1

L-1

L-1

COMMISSIONERS
JOE DANIELLEY
ELEASE GOODWIN
PAT ANN McMURRAY
BUCK MIMS
JAMES W. THOMAS

Town of Aberdeen

AGENDA
ITEM

8

ROBERT A. FARRELL, Mayor

BILL ZELL, Town Manager

REGINA M. ROSY, Town Clerk



Resolution Authorizing the Advertisement for Bids for the Sale of Certain Property

WHEREAS, the Board of Commissioners of the Town of Aberdeen desires to dispose of certain surplus property of the Town;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners that;

1. The following described property is hereby declared to be surplus to the needs of the Town:
 - 1 – 2010 Dodge Charger Vin 2B3AA4CT3AH161777
 - 1 – 2010 Dodge Charger Vin 2B3AA4CT5AH161778
 - 1 – 2010 Dodge Charger Vin 2B3AA4CT7AH161779
2. The Purchasing Agent is authorized and directed to receive on behalf of the Board of Commissioners bids for the purchase of the property described above.
3. The Purchasing Agent's office will accept bids through the use of GovDeals.com Auction Service scheduled to run from Friday February 28, 2014 through Tuesday, March 11, 2014. The Town Clerk shall cause a notice of this resolution to be published solely by electronic means in accordance with G.S. 160A-270.
4. The Board of Commissioners reserves the right to reject any or all bids.

Adopted this 27th day of February, 2014.

Jim Thomas, Mayor Pro-tem

Attest:

Regina M. Rosy, Town Clerk

(Seal)

Town of Aberdeen

COMMISSIONERS
JOE DANIELLEY
PAT ANN McMURRAY
BUCK MIMS
JAMES W. THOMAS

ROBERT A. FARRELL, Mayor
BILL ZELL, Town Manager
REGINA M. ROSY, Town Clerk



Resolution Authorizing the Advertisement for Bids for the Sale of Certain Property

WHEREAS, the Board of Commissioners of the Town of Aberdeen desires to dispose of certain surplus property of the Town;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners that;

1. The following described property is hereby declared to be surplus to the needs of the Town:
 - 1 – Residential Structure located at 805 N Poplar Street, Aberdeen, NC
 - 1 – Residential Structure located at 804 Holly Street, Aberdeen, NC
2. The Purchasing Agent is authorized and directed to receive on behalf of the Board of Commissioners bids for the purchase of the property described above.
3. The Purchasing Agent’s office will advertise electronically through the use of the Town of Aberdeen website, townofaberdeen.net and the local cable channel, scheduled to run Tuesday, March 11, 2014 through Friday, March 21, 2014.
4. The Town Clerk shall cause a notice of this resolution to be published solely by electronic means in accordance with G.S. 160A-270.
5. The Board of Commissioners reserves the right to reject any or all bids.

Adopted this 10th day of March, 2014.

Robert A. Farrell, Mayor

Attest:

Regina M. Rosy, Town Clerk

(Seal)

Regina Rosy

From: Kathy Liles <liles.katherine@gmail.com>
Sent: Friday, February 21, 2014 3:49 PM
To: Jamie Dockery; Regina Rosy
Cc: Pam Graham; Jae Kim
Subject: next meeting of the land use plan steering committee

Please post that the next meeting of the Land Use Plan Steering Committee will be March 6, 2014 at 5:30 PM at the Recreation Station at Aberdeen Lake Park. The purpose of the meeting will include training in the understanding and use of the Green Growth Tool Box, understanding the impact of Ft. Bragg's Joint Land Use Study, and a mapping exercise to project the placement of residential uses for development of a Future land Use Map.

Regina, would you inform the Board of this meeting? It is not a joint meeting, but some may be interested.

Pam, could Amy do the same for the Planning Board?

Thanks,
Kathy

Sent from my iPad

Agenda
Budget Retreat
Aberdeen Town Board

AGENDA
ITEM 10b

March 8, 2014
Saturday, 8:30 a.m.

Robert N. Page Municipal Building
Aberdeen, North Carolina

1. Call to Order
2. Budget Sessions
 - a. 8:30 a.m. – 9:00 a.m. – Public Works
 - b. 9:15 a.m. – 9:45 a.m. – Parks & Recreation
 - c. 10:00 a.m. – 10:30 a.m. – Planning
 - d. 10:45 a.m. – 11:15 a.m. – Fire
 - e. 11:30 a.m. – 12:00 p.m. – Police
 - f. 12:00 p.m. – 12:20 p.m. – Short Intercession for Lunch
 - g. 12:20 p.m. – 1:15 p.m. – Finance / Administration
 - h. 1:30 p.m. – 2:30 p.m. – Develop Priorities for Budget
3. Adjournment.

SPECIAL ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES OR IMPAIRMENTS WILL BE MADE UPON REQUEST TO THE EXTENT THAT REASONABLE NOTICE IS GIVEN TO THE TOWN OF ABERDEEN.

The Aberdeen Board of Commissioners

THE BROUGH LAW FIRM
T.C. MORPHIS
FEBRUARY 27, 2014



Overview

1. The Council-manager form of government.
2. What does the Board of Commissioners do?
3. Legislative decisions.
4. Conditional use permits.
5. The Board of Adjustment.
6. Quasi-judicial procedure.



Governing Law

- The Town of Aberdeen is governed by
 - Federal law;
 - State law, including state statutes and regulations and case law;
 - The Aberdeen Town Charter; and
 - Town ordinances.
- North Carolina local governments only have such authority as is granted to them by the North Carolina General Assembly.



Aberdeen Ordinances

- All Town ordinances are part of the Aberdeen Code of Ordinances, which includes
 - The Unified Development Ordinance,
 - The Minimum Housing Code,
 - Nuisance ordinances,
 - Ordinances governing streets and traffic,
 - The privilege license ordinance,
 - Other ordinances governing businesses, and
 - Other regulations.



Council-Manager Form of Government*

- Aberdeen operates under a Council-Manager form of government. *See*, Charter Sec. 3-3.
- The Board acts like a board of directors of a corporation
- The Town Manager acts like the CEO of the corporation.

* The General Statutes use "Town Council," "Board of Commissioners," and "Board of Aldermen" interchangeably.



What Does the Town Manager Do?

- The Manager runs the day-to-day operations of the Town, including the hiring, firing and disciplining of all Town employees, except the Town Attorney.
- The Town Manager prepares the budget.
- The Town Manger is the primary contact for Commissioners.



What Does the Board of Commissioners Do?

- G.S. § 160A-12: § 160A-12: "All powers, functions, rights, privileges, and immunities of the corporation shall be exercised by the" Board.
- The Board of Commissioners:
 - Passes Town legislation (f.e. rezonings and ordinance amendments);
 - Approves large contracts and the sale and purchase of property;
 - Makes major policy decisions such as adopting the personnel policy;
 - Considers major subdivision plats;
 - Considers other conditional use permit applications;
 - Acts as the Board of Adjustment; and
 - Along with Town staff, serves as the face of the Town of Aberdeen.



Voting

- The Mayor votes only to break a tie. *See*, Charter Sec. 3-2.
- G.S. § 160A-75: "No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or 160A-388(e)(2). In all other cases, a failure to vote by a member who is physically present . . . or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote."



Types of Local Government Decisions

- **Legislative**
 - This type of decision generally involves broad policy decisions.
 - The Board of Commissioners has broad discretion to approve or deny legislative requests.
 - Includes rezonings, zoning map and ordinance text amendments.
- **Quasi-judicial**
 - This type of decision typically involves the application of Town policy (f.e. ordinances) to a defined project.
 - These decisions are made by applying the Town's standards to unique facts and involve some discretion by the decision maker.
 - Includes variances, appeals of staff decisions, conditional use permits, and major subdivision plat approval. The Planning Board considers special use permit applications, the Historic Preservation Commission considers applications for certificates of appropriateness, and the Building Inspector conducts minimum housing hearings.



Types of Local Government Decisions

- **Administrative**
 - These are sometimes called ministerial decisions.
 - Town staff make these decisions; there is little discretion to approve or deny.
 - Includes certificates of zoning compliance, building permits, and minor subdivision plat approvals.
- **Advisory and Nonbinding Resolutions**
 - These decisions are nonbinding.
 - An advisory opinion is any recommendation given by a Town advisory board, for example zoning recommendations given by the Planning Board.
 - The Board of Commissioners can also adopt nonbinding resolutions.

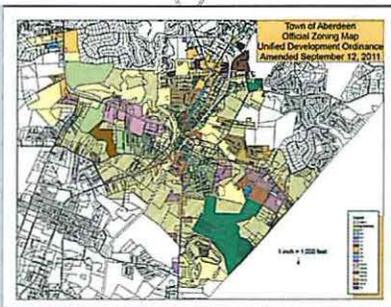


Zoning Map and Ordinance Text Amendments

- These decisions are legislative.
- A rezoning can be either a traditional rezoning or a conditional zoning.
- The Board has broad authority to approve or deny Zoning map amendments (i.e. rezonings) and text amendments, so long as the statutes authorize the change and the amendment is reasonable.
- Board members may talk freely with members of the public about these issues, both publicly and privately.
- State statutes mandate public hearings for some amendments and not others, but the Board is always free to gather information and receive comments from the public.



The Aberdeen Zoning Map



Conditional Zoning

- Authorized by G.S. 160A-382.
- Conditional zoning is legislative.
- But the Board can impose conditions, so long as the applicant agrees to them.
- *See also*, UDO § 152-139 and Art. XX, Part 2.



Conditional Use Permits

- Conditional use permits and special use permits have the same legal significance, but in Aberdeen uses requiring a conditional use permit are generally considered to have a greater impact on the community than uses requiring a special use permit.
- Both types of permit are quasi-judicial in nature.
- A conditional use permit is required for major subdivision plat approval.
- *See also*, UDO Sec. 152-54 through 152-60 and Arts. V and VI.



The Board of Adjustment

- The Board of Commissioners also sits as the Board of Adjustment. UDO Art. 3, Part 2; G.S. 160A-388.
- All decisions of the Board of Adjustment are quasi-judicial.
- The Board of Adjustment has five members, which include the five Commissioners. The Mayor does not sit on the Board. UDO § 152-30.
- The Mayor Pro Tem presides over Board of Adjustment meetings.



Duties of the Board of Adjustment

- Hear appeals of administrative decisions. See, UDO Sec. 152-31(A) and 152-91.
- Consider variance and special exception requests. See, UDO Sec. 152-31(B), 152-92, and 152-92.1.
- Interpret the Aberdeen Zoning Map and pass on disputed questions of lot lines or boundary lines. See, UDO Sec. 152-31(C) and 152-93.



The Rules for Voting Have Changed

- Previously, the Board of Adjustment could only take action with a 4/5 majority vote.
- Now a 4/5 majority is required only to grant a variance. All other decisions require only a simple majority. G.S. § 160A-388(e).



Appeals of Interpretations and Decisions

- G.S. § 160A-388(b1)(8): "The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision."
- The Board may only hear appeals of final decisions.



Is an Applicant Entitled to...

- The reversal or modification of an administrative decision?
 - Maybe. If the Board finds that the Town staff misinterpreted the ordinance, the Board must reverse or modify the decision.
- A favorable map or boundary line interpretation?
 - Maybe. These types of decisions are treated the same as appeals of administrative decisions.



Certificate of Appropriateness Appeals

- Appeals to the Board of Adjustment are in the nature of *certiorari*.
- This means that no new evidence may be added to the record.
- The Board considers issues of law *de novo*.



Rules for Ordinance Interpretation

- While the staff's interpretation is entitled to "due consideration," interpretation of an ordinance is *de novo*.*
- Rules of Ordinance Interpretation (in order of importance):
 1. The main goal is to give effect to the intent of the legislative body that enacted the ordinance (i.e. the City Council).
 2. Absent a definition in the ordinance, the plain meaning of a word controls.
 3. The ordinance should be construed as a whole.
 3. Ordinances should be interpreted to avoid absurd consequences.
 3. If conflicting provisions cannot be reconciled, the later adopted provision prevails.
 3. "[W]hen the ordinance restricts property rights, restrictions not clearly included within the ordinance should not be implied."⁴

*David W. Owens, *Land Use Law in North Carolina*, 2nd ed., p. 182-183 (UNC-School of Government 2011).



Variance and Special Exceptions

- The Board of adjustment may grant a variance if it finds that unnecessary hardships would result. UDO Sec. 152-92(c).
- Historically, the Board was not required to grant a variance except in rare cases when denying a variance would mean the person could make no use whatsoever of the property.



Variances

- Last year the Legislature significantly amended the Board of Adjustment statute.
- What Has Changed
 - It is no longer necessary for the applicant to show that no reasonable use of the property can be made.
- The Unanswered Questions
 - If the applicant presents substantial, competent and material evidence on each of the four criteria, must the Board grant a variance?
 - Do the standards in G.S. § 160A-388 replace the standards in the UDO § 152-92(c)?



The Variance Statutes Have Been Revised.

G.S. § 160A-388(d): "Variances. - When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.



Quasi-Judicial Procedure In General

- "Quasi-judicial decisions involve the application of ordinance policies to individual situations rather than the adoption of new policies."¹*
- These proceedings are like miniature court hearings. The applicant's due process rights must be protected, and the Board must base its decision only substantial, competent and material evidence in the record.
- Governing Authorities: UDO Art. V and VI Sec. 152-54 through 152-60; G.S. § 160A-3 and 160A-393.



Owens, p. 5.

Prior to the Hearing...

- Board members must disclose relevant information, including:
 - *Ex parte* communications;
 - Site visits;
 - Specialized relevant knowledge; and
 - Possible conflicts of interest including
 - Having a fixed opinion prior to the hearing that is not susceptible to change,
 - Undisclosed *ex parte* communications,
 - A close familial, business, or other associational relationship with an affected person, or
 - A financial interest in the outcome of the matter.

See, G.S. 160A-388(e1).

Responsibilities of the Chairperson

- The Chairperson presides over the hearing and recognizes speakers and members of the Board before they may be heard.
- The Chairperson rules on objections or requests.
- The Chairperson should allow every speaker to be heard, but may limit and/or cut off evidence or testimony that is irrelevant, repetitive, incompetent, inflammatory, or hearsay.

Responsibilities of the Chairperson

- The Chairperson may also place reasonable limitations on the presentation of evidence, arguments, and cross-examination. But the applicant must be given sufficient opportunity to present the evidence needed to support his/her application.
- **Practice Tip:** If the Chairperson knows that a particular hearing will be contentious, he or she may, with the advice of the Board's attorney, work with the parties to establish hearing guidelines prior to the hearing.



How Formal Does the Hearing Have to Be?

- Quasi-judicial decisions are similar to court hearings in that due process protections such as the rights to a hearing, present evidence and cross examination apply, but the rules of evidence do not apply.
- Exhibits and other evidence should be submitted prior to the hearing if possible, but evidence may also be submitted during the hearing.



Who May Appear at the Hearing

- Individual applicants, for themselves or through an attorney.
- Those opposed to an application, for themselves or through an attorney.
- Corporations and other business entities **must** be represented by an attorney.
- Engineers, architects, real estate agents, planners and other nonlawyers may only appear as expert witnesses; they may not represent an applicant or those opposed to an application.
- If the applicant desires to have a nonlawyer act as his or her representative at the hearing, the attorney advising the Board of Adjustment will advise the Board that it must vote on whether to allow the representation, and the request may be denied.



Evidence and Testimony

- All witnesses and presenting staff must be sworn in.
- Decisions must be based on **substantial, competent and material** evidence in the record.
- The applicant has the burden of proving compliance with the UDO. If the applicant meets this burden, the burden shifts to opponents to present substantial, competent and material contrary evidence.
- The parties can direct examine and cross-examine witnesses.
- After the public hearing has been closed, no new evidence may be introduced, but Board members may ask clarifying questions.




Lay Versus Expert Testimony

- General rule: Anyone with material knowledge can provide factual information, but only experts can provide opinion testimony.
- Lay witnesses can provide opinion testimony, but this testimony is generally incompetent unless it is corroborated by competent evidence.
- Even expert testimony must be competent and material before the Board can rely on it.
- Exception: G.S. § 160A-393(k)(3) now requires expert testimony in three cases, including the following:
 - The use of property in a particular way would affect the value of other property;
 - The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety; and
 - Matters about which only expert testimony would generally be admissible under the rules of evidence.



You don't have to be Matlock to cross-examine someone...

- The Board can only base its decision on what is in the record, so if you think evidence is missing on a key point, you should ask as many questions as necessary to get evidence in the record on that issue.




Rendering a Decision

- The Board must make findings of fact and render conclusions as to each standard for approvals. The better practice is to do the same for denials.
- Key factual findings **cannot** be based solely on nonexpert opinion evidence and/or unsupported allegations.



Rendering a Decision

- Precedent: "The general rule is that prior decisions are not legally binding on the board. However, similar cases should generally produce similar results, and it is incumbent on a board to know how and why prior cases have been decided."*
- *Res Judicata* applies. In other words, a denial may be reconsidered only if there is a material change in the applicable standards or conditions.

*Owens, p. 158.



Conditions

- G.S. § 160A-381(c) authorizes the Board to impose "reasonable and appropriate conditions and safeguards."
- A "court will normally defer to a board of adjustment so long as a condition
 - [1] is reasonably related to the proposed use,
 - [2] does not conflict with the zoning ordinance, and
 - [3] furthers a legitimate objective of the zoning ordinance."
- Conditions are generally not appropriate when interpreting an ordinance.

*Overton v. Camden County I, 155 N.C. App. 100, 574 S.E.2d 150 (2002).



Questions or Need More Information?

- Call or email Bill Zell, the Town Manager.
- You can reach me at (919) 929-3905 or morphis@broughlawfirm.com.