



**PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT  
AGENDA  
ROSE ROOM  
CREEKMORE PARK COMMUNITY CENTER  
5:30 P.M.  
AUGUST 12, 2014**

**I. ROLL CALL**

**II. APPROVAL OF MINUTES FROM JULY 8, 2014 AND AUGUST 5, 2014  
SPECIAL MEETING**

**III. STAFF COMMENTS AND PROCEDURES**

1. Final Plat – Horseshoe Ridge – Lots 1 thru 24 and Tracts A & B – Mickle-Wagner-Coleman
2. A request by Ron Brixey, agent for Thomas & Nancy Spahn, for a Master Land Use Plan Amendment from Residential Detached to General Commercial located at 9900 Highway 71 South. (companion item to items #3 & #4)
3. Rezoning #18-8-14; A request by Ron Brixey, agent for Thomas & Nancy Spahn, for a zone change from Residential Estate One (RE-1) to Commercial Heavy (C-5) by Extension located at 9900 Highway 71 South. (companion item to items #2 & #4)
4. A request by Ron Brixey, agent for Thomas & Nancy Spahn, for development plan approval for a mini-storage development located at 9900 Highway 71 South. (companion item to items #2 & #3)
5. Conditional Use #9-8-14; A request by The Hill Firm, agent for River of Life Fellowship, for a conditional use for a new sanctuary for a church located at 6101 Kinkead Avenue.
6. UDO Amendments

623 Garrison Avenue  
P.O.Box 1908  
Fort Smith, Arkansas 72902  
(479) 784-2216  
FAX (479) 784-2462

**RECESS PLANNING COMMISSION  
CONVENE BOARD OF ZONING ADJUSTMENT**

7. Variance #22-8-14; A request by Fred Kirkwood, agent for Arkansas Oklahoma Gas, for a variance from Section 27-602-5 commercial and outdoor lighting located at 4315 Savannah Street.

**PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT  
MINUTES  
ROSE ROOM  
CREEKMORE PARK COMMUNITY CENTER  
5:30 P.M.  
JULY 8, 2014**

On roll call, the following Commissioners were present: Brandon Cox, Marshall Sharpe, Vickie Newton, Bob Cooper, Jr., Don Keesee, Rett Howard, Jennifer Parks, Michael Redd and Richard Spearman.

Chairman Sharpe called for the vote on the minutes from the June 10, 2014, Planning Commission meeting. Motion was made by Commissioner Parks, seconded by Commissioner Howard and motion carried by a vote of 8 in favor and 0 opposed to approve the minutes as written. Commissioner Redd did not vote on these minutes due to the fact that he is a newly appointed Planning Commissioner and was not present at the June 10<sup>th</sup> meeting.

Mr. Wally Bailey spoke on the procedures.

**1. Preliminary Plat – Oak Bower Addition, Lots 1-4 – Mickle-Wagner-Coleman  
(companion item to items #2 and #3)**

Ms. Brenda Andrews read the staff report indicating that this would provide locations for a mixture of light manufacturing, office park, research and development and limited retail/service land uses in an attractive, business park setting. Ms. Andrews noted that this proposed use is for a contractor office and light industrial uses.

Mr. Pat Mickle was present to speak on behalf of this request.

No one was present to speak in opposition to the proposed plat.

Motion was then made by Commissioner Parks, seconded by Commissioner Howard and carried unanimously to amend this request to make approval subject to the following:

- The developer must agree to meet all franchise and City utility easement requirements.
- Compliance with the City's Subdivision Design and Improvement Standards and the Standard Specifications for Public Works Construction.

- Future development within the subdivision will require compliance with the City's 2011 Storm Drainage Standards, including water quality treatment.

Chairman Sharpe then called for the vote on the preliminary plat as amended. The vote was 9 in favor and 0 opposed.

**2. Final Plat – Oak Bower Addition, Lot 2 – Mickle-Wagner-Coleman (companion item to items #1 & #3)**

Ms. Brenda Andrews read the staff report indicating that the purpose of this plat is to provide for a contractor's office.

Mr. Pat Mickle was present to speak on behalf of this final plat.

No one was present to speak in opposition to the proposed final plat.

After discussion by the Planning Commission, motion was then made by Commissioner Parks, seconded by Commissioner Howard and carried unanimously to amend this request to make approval subject to the following:

- Filing of this plat shall be subject to the elimination of the building encroachment by relocation of the sanitary sewer or the requirements set out in a Covenant between the City and the property owner regarding same.
- After all required approvals of the plat and the affixing of all required signatures on the original tracing and other copies and associated documents, the plat will be filed with the County Recorder.

Chairman Sharpe called for the vote on the final plat as amended. The vote was 9 in favor and 0 opposed.

**3. A request by Mickle-Wagner-Coleman, Inc., agent for Oak Bower, for a development plan approval for a contractor's office located at 8200 Chad Colley Blvd. (companion item to items #1 and #2)**

Ms. Brenda Andrews read the staff report indicating that the purpose of this request is to allow for the development of a contractor's office that complies with the Unified Development Ordinance.

Ms. Andrews stated that a neighborhood meeting was held on Monday, June 30<sup>th</sup> at 7020 Taylor Avenue with no neighboring property owners attending the meeting.

No one was present to speak in opposition to this request.

Following a discussion by the Commission, motion was made by Commissioner Newton, seconded by Commissioner Spearman and carried unanimously to amend this request to make approval subject to the following:

- All construction must be built in accordance with the submitted development plan.
- The development shall receive approval from the Chaffee Crossing Design Review Committee. Development standards approved by the committee shall not be less than what is required by the Fort Smith Unified Development Ordinance.

Chairman Sharpe then called for the vote on the development plan as amended. The vote was 9 in favor and 0 opposed.

**4. Rezoning #17-7-14; A request by Mickle Wagner Coleman, Inc., agent, for a zone change from Not Zoned to a Planned Zoning District located at 11701 Custer Boulevard, 7201 Fort Chaffee Boulevard and 12201 Roberts Boulevard.**

Ms. Brenda Andrews read the staff report indicating that the purpose of this rezoning request is to allow this area to be utilized for recreational uses such as baseball field, soccer fields, sport complex/athletic fields, playgrounds, country clubs and amusement centers.

Ms. Andrews stated that a neighborhood meeting was held on Monday, June 30, 2014, at 10:00 a.m. at 7020 Taylor Avenue which is the Fort Chaffee Redevelopment Authority offices with three (3) representatives of the Learning Fields/Master Gardeners in attendance. Ms. Andrews noted that there were no objections to the proposed Planned Zoning District.

Chairman Sharpe then called for the vote on the rezoning request. The vote was 8 in favor, 0 opposed and 1 abstention (Cooper).

**5. Rezoning #16-7-14; A request by Mickle Wagner Coleman, Inc., agent for RUM, Inc. for a rezoning from Not Zoned (NZ) to Commercial Light (C-2) by Classification located at 8801 Wells Lake Road. (companion item to item #6)**

**6. A request by Mickle-Wagner-Coleman, Inc., agent for RUM, Inc. for development plan approval for a restaurant located at 8801 Wells Lake Road. (companion item to item #5)**

Ms. Maggie Rice read the staff reports indicating that the purpose of these requests is to allow for the addition and renovation of the existing vacant building into a restaurant.

Ms. Rice stated that a neighborhood meeting was held on Monday, June 30, 2014, at the Fort Chaffee Redevelopment Authority Offices (7020 Taylor Avenue) with no surrounding property owners attending the meeting.

Mr. Pat Mickle was present to speak on behalf of this request.

No one was present to speak in opposition to these requests.

Following a discussion by the Commission, Chairman Sharpe called for the vote on these items separately.

**5. Rezoning #16-7-14; A request by Mickle-Wagner-Coleman, Inc., agent for RUM, Inc. for a rezoning from Not Zoned (NZ) to Commercial Light (C-2) by Classification located at 8801 Wells Lake Road. (companion item to item #6)**

Chairman Sharpe called for the vote on the rezoning request. Motion was made by Commissioner Parks, seconded by Commissioner Howard and carried unanimously to amend this request to make approval subject to the submitted development plan.

Chairman Sharpe then called for the vote on the rezoning request as amended. The vote was 9 in favor and 0 opposed.

**6. A request by Mickle-Wagner-Coleman, Inc., agent for RUM, Inc. for development plan approval for a restaurant located at 8801 Wells Lake Road. (companion item to item #5)**

Chairman Sharpe called for the vote on the development plan. Motion was made by Commissioner Parks, seconded by Commissioner Howard and carried unanimously to amend this request to make approval subject to the following:

- All construction must be built in accordance with the submitted development plan. The final landscaping plan will be approved by staff at the building permit phase.

- Provide preliminary traffic information.
- Stormwater management, including detention and water quality treatment in accordance with the 2011 Storm Drainage Standards is required when total land disturbance is greater than one acre.
- The development plan shall comply with the Chaffee Crossing Design Guidelines and construction shall not be less than what is required by the Unified Development Ordinance.

Chairman Sharpe then called for the vote on the development plan as amended. The vote was 9 in favor and 0 opposed.

**7. Home Occupation #6-7-14; A request by Robert Miller for a home occupation for a web development and graphics design business located at 2519 North 41<sup>st</sup> Street.**

Ms. Maggie Rice read the staff report indicating that the purpose of the home occupation request is to allow the applicant to operate a web design business out of his residence.

Ms. Rice noted that he will be designing web sites, graphics and print media design and no one site printing of documents will be done. Ms. Rice also noted that parking for the home occupation will be in the applicant's driveway where he has room for four (4) cars.

Mr. Robert Miller, 2519 North 41<sup>st</sup> Street, was present to speak on behalf of this request.

Mr. Phil Sisco, 2521 North Albert Pike, was present to voice his opposition to allow any type of business to be operated in a residential neighborhood.

Following a discussion by the Commission, motion was made by Commissioner Cox, seconded by Commissioner Parks, and carried unanimously to amend this request to make approval subject to the following:

- All vehicles shall be parked in compliance with the Fort Smith Parking Regulations.
- The business license cannot be transferred to another residence without a new Home Occupation Application.
- No commercial trash container will be placed at the residence.
- No sale of any retail or wholesale item or items shall take place on the premises.

Chairman Sharpe then called for the vote on the home occupation request as amended. The vote was 9 in favor and 0 opposed.

**RECESS PLANNING COMMISSION  
CONVENE BOARD OF ZONING ADJUSTMENT**

- 8. Variance #21-7-14; A request by Ramiro Espinosa, agent for Trixie Nguyen, for a variance from 120 days to 240 days maximum length of time for a special temporary use permit (seasonal food trailer) (Section 27-327) located at 3939 North "O" Street.**

Ms. Maggie Rice read the staff report indicating that the purpose of this variance request is to allow for the temporary food trailer to operate 240 days a year at this location.

Mr. Ramiro Espinosa was present to speak on behalf of this request.

No one was present to speak in opposition.

Following a discussion by the Commission, Chairman Sharpe called for the vote on the variance request. Motion was made by Commissioner Howard, seconded by Commissioner Parks and carried unanimously to amend this request to make approval subject to the following:

- The food trailer shall remain located on the west side of the building at the furthest point from the residence.
- The business shall only be operated on Friday, Saturday and Sunday as stated in the variance application.
- The time extension shall expire on November 27, 2014.

Chairman Sharpe then called for the vote on the variance request as amended. The vote was 9 in favor and 0 opposed.

**Meeting Adjourned!**

**CITY PLANNING COMMISSION  
SPECIAL MEETING  
MINUTES  
CREEKMORE PARK COMMUNITY CENTER  
11:30 A.M.  
AUGUST 5, 2014**

**I. ROLL CALL**

On roll call, the following Commissioners were present: Brandon Cox, Marshall Sharpe, Vickie Newton, Bob Cooper, Jr., Don Keesee, Rett Howard, Michael Redd and Richard Spearman. Commissioner Jennifer Parks was absent.

**II. ELECTION OF OFFICERS**

For the office of Chairman, motion was made by Commissioner Howard, seconded by Commissioner Spearman and carried unanimously to nominate Marshall Sharpe for Planning Commission Chairman.

For the office of Vice-Chairman, motion was made by Commissioner Howard, seconded by Commissioner Newton and carried unanimously to nominate Brandon Cox for Planning Commission Vice-Chairman.

For the office of Secretary, motion was made by Commissioner Howard, seconded by Commissioner Spearman and carried unanimously to nominate Jennifer Parks for Planning Commission Secretary.

**Meeting Adjourned!**

**SUBDIVISION COMMENTS**

**August 12, 2014**

1. **Horseshoe Ridge, Lots 1-24 & Tracts A & B - Final Plat – Mickle-Wagner-Coleman**

**Zoning Designation:** Residential Single Family Medium Density (RS-2)

**Land Use:** Provides for detached homes in low to medium density single family neighborhoods where adequate public services and facilities are available.

**Proposed Use:** Single-family dwellings

We recommend approval of the final plat and the subdivision's Protective Covenants and Bill of Assurance. After all required approvals of the plat and the affixing of all required signatures on the original tracing and other copies and associated documents, the plat will be filed with the county recorder.

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**HORSESHOE RIDGE ADDITION  
TO THE CITY OF FORT SMITH, ARKANSAS  
PROTECTIVE COVENANTS AND BILL OF ASSURANCE**

These Protective Covenants and Bill of Assurance (“Covenants”) for Horseshoe Ridge Addition to the City of Fort Smith, Arkansas are made by R.A. Young Properties, Limited Partnership, (the “Developer”).

The Developer hereby imposes the following limitations, restrictions, and uses on lots 1 through 24, of the subdivision known as Horseshoe Ridge Addition (the “Addition”), a platted subdivision filed of record in the Fort Smith District of Sebastian County, Arkansas on the \_\_\_\_ day of \_\_\_\_\_, 2014 in Plat Book \_\_\_\_\_ (the “Plat”). The legal description for the said Addition is more particularly described on Exhibit “A” attached hereto and a plat of the Addition is set out on Exhibit “B” attached hereto. These Covenants shall run with the land for the period of time hereinafter set out and shall be binding upon all purchasers of lots in the Addition. These Covenants are for the benefit of and are limitations upon all future owners in the Addition and have been designated as such in order to provide for the orderly development of the Addition and for the purpose of making the Addition desirable, uniform, and suitable for the uses herein specified.

These Covenants shall be binding upon all parties and all persons claiming tinder them through \_\_\_\_\_, 2034, at which time they shall be automatically extended for an additional ten (10) years, unless by vote of at least two-thirds of the then owners of the lots in the Addition (the term “lots” being defined herein), it is agreed that these Covenants should be changed, amended, or terminated in whole or in part.

It shall be lawful for the Horseshoe Ridge Property Owners Association, an Arkansas non-profit corporation (hereinafter referred to as the “Association”), and any other person or persons owning a lot in the Addition to initiate proceedings at law or in equity against parties or persons violating or attempting to violate any of these Covenants and to recover damages for such violations. The Association and/or any owner of lots situated in the Addition, either individually or collectively may also exercise any rights reserved hereunder to the Developer. The invalidation of any one or more of these Covenants by a court order shall not invalidate any of the other provisions, which shall remain in full force and effect.

**ARTICLE I  
Concepts and Definitions**

The following words, when used in these Covenants or any amendments or supplements thereto (unless the context shall otherwise clearly indicate or prohibit), shall have the respective concepts and meanings set forth below.

(A) “**Addition**” shall mean and refer to the property described in Exhibit “A” and as reflected on the plat set out on Exhibit “B” and any additions or amendments thereto.

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(B) **“Assessment”** shall mean and refer to the charges levied by the Board against a Lot for the items described in Article IV.

(C) **“Association”** shall mean and refer to the entity, which will have the power duty, and responsibility for maintaining, administering, and enforcing, these Covenants and collecting and disbursing the assessments and charges hereinafter prescribed. The Association shall chartered and shall function as a non-profit corporation under the name of “Horseshoe Ridge Property Owners Association, Inc.”, for the purposes set forth herein.

(D) **“Architectural Control Committee”** or **“Committee”** shall mean and refer to a independent body composed of the three (3) individuals or business entities selected by the Developer until such time as twenty (20) dwellings have been constructed within the Addition at which time the Committee shall resign and three (3) members shall be elected by the Association at a specially called meeting held for that purpose. Each member of the Committee shall be generally familiar with residential and community development design matters and knowledgeable about the Developer’s concern for a high level of taste and design standards within the Addition. Other matters pertaining to the governments and administration of the Committee is set forth in these Covenants.

(F) **“Board”** or **“Board of Directors”** shall mean and refer to the Board of Directors of the Association elected in accordance with the provisions of the articles of incorporation and bylaws of the Association.

(G) **“Common Properties”** shall mean and refer to any and all areas of land together with all improvements located therein within the Addition which are known, described, or designated on the Plat as a common area as well as all public and private thoroughfares, or streets as designated on the Plat; sidewalks, street lights, gates and structures associated therewith; fencing and gates; private or public utility easements as reflected on the Plat; landscape easements as reflected on the Plat; and any other property (whether real or personal) intended for or devoted to the common use and enjoyment of the members of the Association. The Association shall hold such title to the Common Properties as shall be consistent with the objectives envisioned herein and subject to the easement rights herein of the members to use and enjoy the Common Properties. The Developer reserves the right to affect minor redesigns or reconfigurations of the Common Properties and execute any open space declarations applicable to the Common Properties.

(H) **“Developer”** shall mean R.A. Young Properties, Limited Partnership, an Arkansas Limited Partnership, and its successor(s) and assign(s).

(I) **“Lot”** or **“lot”** shall mean and refer to any plot or tract of land which is designated as a lot on the Plat attached hereto and labeled as Exhibit “B.” No lot as set forth on Exhibit “B” may be further subdivided or split; provided, however, minor adjustments to lot lines or boundaries may be made from time to time to cure title problems or resolve problems related to encroachments so long as such adjustments are first approved by the Board.

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(J) “Member” or “member” shall mean and refer to each owner of a lot.

(K) “Owner” or “owner” shall mean and refer to each and every person or business entity who or which is a record owner or subsequently becomes a record owner of a fee or undivided fee interest in any lot in the Addition. If more than one person or entity owns an interest in a Lot, then the voting rights and membership shall be divided among the Owners of a Lot as they see fit. In the event multiple Owners of one Lot fail to designate a proxy to vote for all interested parties, the Association shall designate one of the owners to represent and vote the interest of all owners of the Lot.

**ARTICLE II**  
**Membership and Voting Rights in the Association**

**Section 1. Membership.** Every owner of a lot shall automatically be, and must remain, a member of the Association in good standing.

**Section 2. Voting Rights.** The Association shall have one class of membership for purposes of voting. There shall be a total of twenty four (24) votes. The owner of each lot (regardless of how many persons or entities own an interest in the lot) shall be entitled to one vote per lot. Notwithstanding the foregoing, the owner of a lot shall not be entitled to vote during any time in which the lot owner is found by the Developer or the Board to be in violation of these Covenants. The owner of more than one lot shall have one vote for each lot.

**Section 3. Quorum, Notice and Voting Requirements.** The quorum, notice, and voting requirements of and pertaining to the Association are set forth within the articles of incorporation and by-laws of the Association, as the same may be amended from time to time. Subject to the provisions of Section 2 above and any other provision to the contrary set out in these Covenants, any action by or on behalf of the Association may be taken by the Board or with the assent given in writing and signed by members who correctively hold or control a majority of the outstanding votes of the Association

**ARTICLE III**  
**Property Rights in the Common Properties**

**Section 1. Members’ Easements of Enjoyment.** Subject to the provisions of Section 3 of this Article, every member and each individual within a member’s family shall have a non-exclusive right and easement of ingress, egress, access, use, recreation, and enjoyment in and to the Common Properties and their respective lot, such easement shall be appurtenant to and shall pass with the title of each lot, PROVIDED, HOWEVER, such easement shall not give such person (excluding the Developer and the Association), the right to make alterations, additions, or improvements to any portion of the Common Properties.

**Section 2. Title to the Common Properties.** The Association shall hold title to the Common Properties for an indefinite period of time, subject to any public or private easements as

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set forth on the Plat or as set forth in Section I of this Article as is necessary to accomplish the purposes and effects of these Covenants.

**Section 3. Maintenance of Common Properties.** The Association shall have the duty to design, redesign, reconfigure, alter, repair, improve, landscape, and maintain the Common Properties.

**Section 4. Extent of Members' Easements.** The rights and easements created hereby shall be subject to the following provisions:

(A) The Board shall prescribe reasonable regulations and policies governing, and to charge fees and/or deposits related to, the use, operation, and maintenance of the Common Properties and all lots.

(B) The Board, with the input and assistance of the Developer, if requested, shall prescribe reasonable regulations, rules, and policies governing the operation and distribution of any utility services the Developer or the Board contracts to provide including the charging of fees or deposits related thereto and the collection of such fees or deposits in a timely manner.

(C) The Board, on behalf of the Association, may enter into and execute contracts with any party for the purpose of providing maintenance, utility services, or such other materials or services consistent with the purposes of the Association and/or these Covenants.

(D) The Board shall suspend the voting rights of any member and suspend the right of any member to use or enjoy any of the Common Properties for any period during which any assessment (including without limitation "fines") against a lot owned by such member remains unpaid, and otherwise for any period deemed reasonable by the Board for any infraction of the then existing rules and regulations.

(E) The Board, on behalf of the Association, may dedicate or transfer all or any part of the Common Properties to any municipal corporation, county government, political subdivision, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by the Board.

**Section 5. Emergency Easement.** A general easement is hereby granted to all police, fire, ambulance, and all other similar emergency agencies or persons to enter upon all streets, rights of way or Common Properties of the Addition in the proper performance of their duties.

**ARTICLE IV**  
**Covenants for Assessments**

IF

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Developer, for each lot owned by it within the Addition, hereby covenants and agrees, and each owner of any lot, by acceptance of a deed therefore, whether from the Developer or some subsequent grantor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the lot), to pay to the Association the following Assessments:

(A) Regular assessments for maintenance, yard and landscape maintenance (both in and on any of the Common Properties and on each lot) repairs, utility expenses, taxes and insurance on the Common Properties including private streets, alleys, street lights, gates, fencing, utility lines not dedicated to the general public, and sidewalks located within the Addition; provided, however, the owner of each lot shall be responsible for replacing dead or decaying plants within a landscaping area on an owner's lot or sod in any grass area.

(B) Special assessments for capital improvements or unusual or emergency matters, such assessments to be fixed, established, and collected by the Board from time to time as hereinafter provided.

(C) Special individual assessments levied against individual lot owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual owner, his or her family, guests or invitees, and not caused by ordinary wear and tear, including, but not limited to, (i) maintenance and repair of sprinkler systems located on the lot; and (ii) replacement of plants or shrubbery within a landscaped area or sod within a grass area if the owner refuses to so act after reasonable notice has been given to the owner.

(D) Special group assessments levied against the owners of Lots 10 through 14 and Lots 16 through 22 for maintenance, improvement and repair of alleys serving these Lots.

(E) Assessments for fines levied against individual lot owners for violation of regulations pertaining to the Association and/or the Common Properties.

All Assessments, including regular, special, special individual, special group and fine or penalty assessments, together with such late charges, interest and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each lot against which each such Assessment is made and shall also be the continuing personal obligation of the then existing owner of such lot at the time when the assessment fell due.

**Section 2. Purpose of Assessments.** The assessments levied by the Board on behalf of the Association shall be used exclusively for the purposes of: (i) maintaining the Common Properties and replacing certain elements thereof when necessary; (ii) enhancing the natural environment, appearance, and beauty of the Addition; and (iii) promoting the health, recreation, safety, and general welfare of all members and residents of the Addition.

**Section 3. Basis and Amount of Regular Maintenance Assessments.**

(A) The Board shall determine the regular base assessments for each of the lots at least annually. Each lot (except with regard to special individual assessments) shall be assessed the same amount and in an equal uniform manner.

(B) The Board shall give notice to all members at least thirty (30) days in advance of the date all regular or special assessments are due. The Board may prescribe from time to time that the regular base assessments are to be collected on an annual, semi-annual, quarterly, or monthly basis, and accordingly, the Board shall prescribe the appropriate due dates. All regular base assessments shall be collected in advance. The due date or dates (if it is to be paid in installments) of any other assessments or special assessment under Sections 3 and 4 hereof, shall be fixed in a resolution by the Board authorizing such assessment.

**Section 4. Special Group Assessments.** In addition to the regular assessments authorized by Section 3 hereof, the Board may levy in any fiscal year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement in the Addition.

**Section 5. Rate of Assessments.** Except as noted herein, regular and special assessments shall be fixed at a uniform rate for all lots owned by members, unless otherwise approved by the Board. Special Group Assessments and Individual Assessments shall be fixed for each Lot subject to Assessment. The failure to pay the assessment by the owner of a lot within the required time period shall constitute a lien only against the lot assessed.

**Section 6. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; and Remedies of Association.**

(A) If any assessment or fine or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment shall be considered delinquent and shall, together with any late charge and interest thereon at the maximum rate allowed under applicable law and costs of collection thereof, thereupon become a continuing debt secured by a self-executing lien on the lot of the non-paying owner which shall bind such lot in the hands of the owner and owner's heirs, executors, administrators, devisees, personal representatives, successors, and assigns. The Board shall have the right to reject partial payments of any unpaid assessment(s) and demand the full payment thereof. The personal obligation of the then-existing owner for the assessment, however, shall remain the owner's personal obligation and shall not pass to owners successors in title unless expressly assumed by them. However, the lien for unpaid assessments shall be unaffected by any sale or assignment of a lot and shall continue in full force and effect as a lien against the lot until satisfied in full. No owner may waive or otherwise escape liability for any assessment provided herein by non-use of the Common Properties or abandonment of the lot.

(B) The Board may also give written notification to the holder(s) of a mortgage on lot of a non-paying owner of such owner's default in paying any assessment when such default has not been cured within 30 days of the original date due, provided that the Board has, theretofore,

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been furnished in writing with the correct name and address of the holder(s) of such mortgage and a request to receive such notification.

(C) The Board may, at its election, retain the services of an attorney or other third parties to review, monitor, and collect unpaid assessments and delinquent accounts, and there shall also be added to the amount of any unpaid assessment or to any delinquent account any and all attorneys' fees and other costs of collection incurred by the Association.

**Section 7. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate and inferior to the lien of any bona fide purchase money first mortgage or deed of trust now or hereafter placed upon the lots subject to assessment.

**ARTICLE V**  
**General Powers and Duties of the**  
**Board of Directors of the Association**

**Section 1. Powers and Duties.** The affairs of the Association shall be conducted by its Board of Directors (sometimes referred to as the "Board").

(A) The Board, for the benefit of the Association, the Addition, and the Owners, may provide and may pay for, out of the assessment fund(s) provided for in Article IV above, any or all of the following:

- (1) Care, preservation, repair and maintenance of the Common Properties and the furnishing and upkeep of any desired personal property and fixtures for use in or on the Common Properties;
- (2) Yard and landscape maintenance within each lot;
- (3) Private trash and garbage collection service, if any, which pertain to the Common Properties only or the Addition as a whole or any part thereof;
- (4) Utility services (including water) to any or all of the lots and the billing and collection of all fees and costs associated therewith;
- (5) Taxes, insurance and utilities (including, without limitation, electricity, gas, water and sewer charges), if any;
- (6) The services of any person or firm (including the Developer and any affiliates of the Developer) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by a manager hired by the Board;

(7) Legal and accounting services; and

(8) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations, taxes and assessments or other costs and expenses which the Board is required to obtain or pay for pursuant to the terms of these Covenants or which in its opinion shall be necessary or proper for the operation or protection of the Association and the Addition or for the enforcement of these Covenants.,

(B) The Board shall have the following additional rights, powers and duties:

(1) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;

(2) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association;

(3) To make reasonable rules and regulations for the operation of the Common Properties and delivery of any utility services to the Addition and to amend them from time to time; and

(4) To make, execute and deliver deeds, easements, rights-of-way, bills of sale and other conveyances on behalf of the Association.

**Section 2. Maintenance Contracts.** The Board shall have full power and authority to contract with any owner (including, without limitation, the Developer) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable, and in the best interests of the Association.

**Section 3. Liability Limitations.** No member or the directors and officers of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or otherwise. The Developer or the Association, its directors, offices, agents, or employees, shall not be liable for any incidental or consequential damages for failure to inspect any premises, improvements, or portion thereof or for failure to repair or maintain the same.

## **ARTICLE VI**

### **Use and Division of Lots**

No lot may be divided or split. The Addition (and each lot situated therein) shall be constructed, developed, occupied and used as follows:

**Section 1. Residential Lots.** All lots within the Addition shall be used, known and described as residential lots and shall be used for residential purposes and for no other purposes. Only one (1) single family detached residential dwelling consisting of not less than the number of square feet of heated and cooled finished space set forth in Section 3 below, and the customary and usual necessary structures may be constructed on each lot. No building or structure intended for or adopted to business purposes shall be erected, placed, permitted or maintained on any lot, This covenant shall be construed as prohibiting the engaging in or practice of any commerce, industry, business, trade, or profession within the Addition, and/or within any lot. The restrictions on use herein contained shall be cumulative of, and in addition to, such restrictions on usage as may from time to time be applicable under and pursuant to the statutes, rules, regulations, and ordinances of the City of Fort Smith, Sebastian County, Arkansas, or any other governmental authority or political subdivision having jurisdiction over the Addition.

**Section 2. Residential Purposes.** By acquisition of any lot within the Addition, each owner (excluding bona fide home-builders) covenants with and represents to the Developer and to the Association that the lot is being specifically acquired for the specific and singular purpose of constructing a single-family residential dwelling thereon and for no other purpose.

**Section 3. Owner's On-Going Maintenance Responsibilities.** Except as provided otherwise in these Covenants, or by written agreement with the Board, all maintenance of each of the lots and all structures, landscaping, parking areas, and other Improvements thereon shall be the sole responsibility of the owner thereof, who shall maintain the lot in accordance with the community-wide standards adopted by the Developer for the Addition. The Association shall, in the discretion of the Board, assume the maintenance responsibilities of such owner if, in the opinion of the Board, the level and quality of maintenance being provided by such owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Board shall notify the owner in writing of its intention to do so, and if such owner has not commenced and diligently pursued remedial action within ten (10) days after mailing of such written notice, then the Board shall proceed. The expenses of such maintenance by the Board shall be reimbursed to the Association by the owner, together with interest at the maximum legal rate, or such other rate set by the Board, from the date of expenditure. Such charges shall be a default assessment and lien on the lot of the owner as provided in Article IV, Section 6 above.

## **ARTICLE VII**

### **Easements**

**Section 1. In General.** Other than primary service in the Addition and within platted easements, there shall be no above- ground service for utilities except those lines or poles that shall be approved, in writing by a majority vote of the Committee. The owner of each lot shall be responsible for the protection of underground facilities located on his or her lot and shall prevent any alteration of grade or construction activity that may interfere with said utility lines.

**Section 2. Utility Easements.** Underground service cables to all residences which may be located in the Addition shall run from the nearest service pedestal to the point of use and upon the installation of such service cable to a particular residence, the supplier of service shall

thereafter be deemed to have an effective right of way easement covering a five (5) foot strip extending two and one-half (2 1/2) feet on each side of the service cable from the service transformer to the service entrance to the residence. This easement shall also be available to all of the suppliers of public utilities and quasi-public utilities.

**Section 3. Gas Lines.** For gas meters and gas lines to the structures in the Addition, all yard lines will be plastic pipe of the size and material approved by the public utility servicing the Addition and an approved tracer wire will be installed in the trench with the plastic pipe and attached to the meter eyes in accordance with the public utility specifications. No yard line will be installed under concrete or asphalt except in a casing approved by the public utility. All gas meters shall be installed within five (5) feet of the corner of the residence it services and may not be located in any portion of the front of the residence.

**Section 4. Fencing.** Fencing around the boundary of the Development shall be considered an element of the Common Properties and maintained as such.

**Section 5. Approval of Easements.** No portion of any lot shall be used for a driveway or passageway or easement of any type to service or benefit property or owners of property adjoining the Horseshoe Ridge Addition unless such usage is approved by two-thirds (2/3) of the voting members of the Association and the Developer.

**ARTICLE VIII**  
**Architectural Control Committee - Approval**  
**of Plans, Control of Development Activities**

**Section 1. Submission of Plans.** In order to maintain a beautiful and pleasing setting in a the Addition, two (2) sets of all building and site improvement plans and specifications (including color schemes, roofing materials, and exterior surfacing materials) must be submitted to the Committee for its approval prior to the commencement of construction or rebuilding any structure located on a lot. The Committee shall act to enforce the requirements of these Covenants in a reasonable manner. The Committee has the authority to maintain the architectural conformity of the Addition and, in consideration thereof, shall determine that the proposed construction shall not detract from the development and shall enhance the purpose of the development to provide a beautiful and pleasing setting in the Addition. Any deviation from the approved color scheme and exterior surface for each of the lots shall result in disapproval by the Committee. The Committee shall consider such matters as the proposed square footage, location, materials, exterior style and landscaping. The Committee will adopt rules or by-laws explaining the mechanics of its operation and providing for a twenty-one (21) day maximum time within which plans must be reviewed and approved or disapproved after submission and, if not approved or disapproved in that period, that the same shall be considered as automatically approved.

**Section 2. Diversion of Drainage.** All plans or schemes shall include plans for how surface water for the diversion of drainage shall be addressed, and the Committee prior to the commencement of construction must approve such plans.

**Section 3. Temporary Structures.** No trailer, mobile home, tent, construction shack, or other out building shall be erected on any lot in the Addition except for temporary use by construction contractors for a reasonable period of time and only in such location and for such time as may be designated by the Committee. Automobiles, boats, recreational vehicles, and vehicles used for recreational purposes shall be kept in a garage.

**Section 4. Setback Lines.** The Committee shall have authority to establish all setback lines within the Addition recognizing that some of the lots will share a common wall with an adjoining lot., Measurements for set backs shall be made or determined from the centerline of the private or public street servicing the lot in question.

**Section 5. Foundations/Fences.** No concrete block foundation for any structure in the Addition may be exposed. Subject to the general prohibition against fencing set forth in Article VII, Section 4, any

**Section 6. Design Guidelines.** It is intended that a basic harmony of architecture will prevail among the residences so that no residence will detract from the attractiveness of the overall environment. The architectural character of each proposed residence or structure must be compatible with the character of other buildings in the overall theme of the Addition.

**a. Minimum Square Footage.** Each single-family residence constructed on a lot shall contain a minimum of 2,200 square feet of heated and cooled finished space. The decision by the Committee regarding the computation of the amount of square footage a residence contains shall be final. A single residence may be located on more than one lot, and access to that residence may be provided across a separate lot.

**b. Garage and Detached Structures.** Each dwelling unit constructed on any lot in the Addition shall have a private garage to accommodate a minimum of two (2) automobiles. Carports are prohibited. Every garage must present an entrance from the side or rear. Garage entrances that present directly from the street are prohibited. The interior walls of all garages must be finished (tape, bed and paint as a minimum). No garage may be enclosed for living space or used for purposes other than storage of automobiles and other vehicles.

**c. Architectural Style.** The architectural style of all structures shall be Tudor, Edwardian, Country French, Empire or similar styles. Modern, Transitional, Neo-Eclectic, Ranch, Prairie, Spanish and Mediterranean styles are prohibited.

**d. Roof.** The main roof of the Residence will have a pitch of not less than eight in twelve. Roofing material shall be architectural shingle, cedar shake or slate. Metal roofing material is prohibited. Other roofing materials such as concrete and ceramic are subject to the discretion of the Architectural Committee. Vents and pipes shall not be exposed to the front side of the roofline and will be painted the same color as the roof.

**e. Windows.**

**f. Irrigation.** An irrigation system of approved design shall be installed to maintain landscape areas on all building sites and along street frontage.

**g. Height.** No residence may exceed two stories of living space in height, except that any residence may include a basement with living areas, and an attic as well, so long as the attic is not used as living space.

**h. Walls.** No residential structure may be placed behind a wall.

**i. Trees and Landscaping.** Written permission from the Committee is required before any tree 4" (four inches) or over may be removed and that are situated in the front or side yards of the residence. In the side and back yards of the residence, trees more than 8" in diameter and 60 inches from ground level may not be felled unless dead or dying. Any tree that is removed from the front or side yard with approval of the Committee must be replaced by another tree in the same or difference location that will achieve a mature growth of not less than twelve (12) feet.

**j. Exposed Foundations.** All exposed foundations shall be of brick or stone. No concrete block foundation may be exposed.

**k. Exterior Surfaces.** All exterior surfaces that are not part of the roof or foundation shall be of natural material (native stone, brick, stucco or wood). Vinyl and steel siding is prohibited.

**l. Fencing.** Plans for fencing, whether on lot lines or surrounding patios, pools, barns or other areas of the lot must be submitted to, and approved by, the Committee prior to the construction thereof. In the approval of the fencing, the Committee shall give consideration to the need for such fencing as expressed by the lot owner, as well as the location, height, material conformity with neighboring areas, and the obstruction of views. Notwithstanding the foregoing, no chain link fencing or metal poles will be allowed.

**Section 7. Alley Entry.** Driveways accessing Lots 10 through 14 and Lots 16 through 22 shall run from the alley at the rear of each Lot to the garage. Driveway access from the street to these Lots is prohibited.

**Section 8. Administration.** The Committee shall be an independent body composed of the three (3) individuals or business entities selected by the Developer until such time as twenty (20) dwellings have been constructed within the Addition. At that time the Committee shall resign. Thereafter, Committee members shall be elected by the Association at a regular or special meeting. Committee members shall serve a two-year term and may be re-elected or removed at the pleasure of the Developer, until twenty (20) dwellings have been constructed within the Addition and, thereafter, by the Association members. Each member of the Committee shall be generally familiar with residential and community development design matters and knowledgeable about the Developer's concern for a high level of taste and design standards within the Addition.

IN

**ARTICLE IX**  
**No Offensive Trade or Activity**

No obnoxious or offensive trade or activity including the discharge of firearms or fireworks shall be permitted on any lot, nor shall any activity be undertaken on any lot that shall become an annoyance or nuisance to the neighborhood. Home occupations in which customers or suppliers travel to or from a residence in the Addition are prohibited. The development of minerals of any kind or nature is prohibited within the Addition; provided, however, underground hydrocarbon minerals may be captured by wells located outside of the Addition.

**ARTICLE X**  
**Animals**

**Section 1.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot in the Addition for commercial purposes. No animals, livestock, or poultry may be raised, bred, or kept on any lot for any other purpose without the approval of the Board, which approval, when granted, must be initiated by the owner and renewed in writing by the Board, within three (3) years from the date of first approval. If the Board fails to approve the renewal, then the owner must remove the animals, livestock, or poultry within thirty (30) days of the expiration of the approval.

**Section 2.** Notwithstanding the provisions set forth in Section 1 above, dogs, cats, or other common household pets may be kept or raised within a dwelling and will be allowed as long as they are not kept, bred, or maintained for commercial purposes, they are not obnoxious or offensive, they do not violate animal control laws or regulations and they do not constitute a danger or nuisance to other residents within the Addition. Violations of this provision may be brought before the Board, and, after considering the same, the Board may order the violation to cease or be remedied in some fashion. The failure to heed the Association's directive shall result in a lien being filed against the property and the Board being able to take such other legal and/or equitable action as it deems necessary and proper.

**ARTICLE XI**  
**Parking/Motor Vehicles and Motorized Recreation Vehicles**

It is the intent and purpose of these Covenants to restrict the parking of all motor vehicles or motorized recreation vehicles to the designated garage for each lot. Unless otherwise provided, all motor vehicles and motorized recreation vehicles shall be parked in a garage unless in use. Except as set forth below, all guests and invitees of each lot's owner shall only park in the driveway area of the lot he or she is visiting. There shall be no parking on any of the interior streets of the Addition for a period of time exceeding four (4) hours per day. Under no circumstances may commercial vehicles or work vehicles be parked in the driveway or on an interior street overnight.

Motor vehicles and motorized recreational vehicles including, but not limited to, motorbikes, motorcycles, scooters, mopeds, trail bikes, and any other similar mechanical device

emitting noise, smoke or other environmental pollutants shall not be operated within the Addition except for the sole and exclusive purpose of ingress and egress to and from lots. Such vehicles shall not use the roadways within the Addition for recreational purposes. The purpose of this restriction is to reduce noise and other pollution so as to permit maximum enjoyment of the surroundings in the Addition. This restriction shall not apply to equipment normally used for lawn or garden maintenance so long as said equipment is operated in the ordinary and usual manner intended.

## **ARTICLE XII**

### **Signs**

Unless approved in writing by the Committee, signs shall be prohibited on all lots except that one sign, not exceeding six (6) square feet in size, advertising a particular lot for sale shall be permitted.

## **ARTICLE XIII**

### **Additional Design and Construction Criteria**

**Section 1. Storage of Construction Materials.** Construction materials may be stored within the building setback lines of a lot for thirty (30) days prior to the commencement of construction. Following commencement of construction, construction is to be completed within a reasonable period of time.

**Section 2. Garbage; Dumping.** Dumping is prohibited in the Addition. All trash, garbage or other waste shall be kept at all times in sanitary containers located within the garage of each residential unit. All lots shall be maintained in a neat and orderly condition at all times.

**Section 3. Accessory Buildings.** Under no circumstances shall accessory buildings or storage units be constructed or placed on any lot.

**Section 4. Antenna, Aerial and Other Devices.** The Committee must approve all antenna or other types of aerial transmitting or receiving devices (including without limitation, radio or television transmitting or receiving antenna) prior to installation. The approval of antenna may be denied if, in the sole discretion of the Committee, the antenna or other receiving device would impede the view or otherwise distract from the overall image of the Addition.

**Section 5. Appearance of Lot.** All owners shall be required to keep their lot in a clean and sanitary condition whether or not they have constructed a residence on the Lot. All open areas on lots shall be kept mowed to a height of not more than twelve (12) inches. The Board shall promulgate rules and regulations regarding the maintenance of lots and adequate enforcement mechanisms in the event a lot is not properly maintained.

**Section 6. Mailboxes.** All mailboxes shall be located within ten (10) feet of the driveway servicing the lot.

**ARTICLE XIV**  
**Landscaping**

Each owner will be required to maintain, repair, and replace, as need be, the landscaping (including plants and bedding materials) placed on the owner's lot. It is the owner's responsibility to promptly water and otherwise maintain, the landscaping for proper visual affect and to protect the property values of the lot owner and those lots around lot.

**ARTICLE XV**  
**Damage or Destruction**

**Section 1. Association as Attorney in Fact.** Each and every owner hereby irrevocably constitutes and appoints the Association acting by and through the Board as such owners true and lawful attorney-in-fact in such owners name, place, and stead for the purpose of dealing with any improvements on the Common Properties upon damage or destruction as provided in this Article or a complete or partial taking as provided in Article XV. Acceptance by any grantee of a deed or other instrument of conveyance from the Developer or from any owner shall constitute appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Board acting on behalf of the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.

**Section 2. Estimate of Damages or Destruction.** As soon as practical after an event causing damage to or destruction of any part of the Common Properties in the Addition, the Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Common Properties so damaged or destroyed. "Repair and reconstruction" as used in this Article XV shall mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

**Section 3. Repair and Reconstruction.** As soon as practical after obtaining estimates, the Board shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the owners, the Board acting by and on behalf of the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

**Section 4. Funds for Repair and Reconstruction.** The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may, pursuant to Article III, Section 4 above, levy, assess, and collect in advance from all owners, without the necessity of a special vote of the owners, a special Assessment sufficient to provide funds to pay such estimated or

actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

**Section 6. Disbursement of Funds for Repair and Reconstruction.** The insurance proceeds held by the Association and the amounts received from the special Assessments provided for in Article IV, Section 4 above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the owners in proportion to the contributions each owner made as a special Assessment to the Association under Article IV, Section 4 above, or, if no special Assessments were made, then in equal shares per lot, first to the mortgagees and then to the each of the owners, as their interests appear.

**Section 6. Decision Not to Rebuild.** If owners representing at least sixty-seven percent (67%) of the total allocated votes in the Association (other than Developer agree in writing not to repair and reconstruct and no alternative improvements are authorized, then and in that event the Addition shall be restored to its natural state and maintained as an undeveloped portion of the Common Properties by the Association in a neat and attractive condition, and any remaining insurance proceeds shall be distributed in equal shares per lot to any mortgage holder of each lot and then to each of the owner, as their interests appear.

**Section 7. Damage or Destruction Affecting Lots.** In the event of damage or destruction to improvements located on any one or more lots, the owner thereof shall promptly repair and restore the damaged Improvements to their condition prior to such damage or destruction. If such repair or restoration is not commenced within ninety (90) days from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than forty-five (45) days, then the Board may, after notice and hearing if the same is provided for in the bylaws of the Association, impose a fine of not less than \$50 per day on the owner of the lot until repair and reconstruction is commenced, unless the owner can prove to the satisfaction of the Association that such failure is due to circumstances beyond the owner's control. Such fine shall be a default assessment and lien against the lot as provided in Article IV, Section 6 above.

## **ARTICLE XVI** **Condemnation**

**Section 1. Rights of Owners.** Whenever all or any part of the Common Properties shall be taken or conveyed in lieu of and under threat of condemnation by the Board acting as attorney-in-fact for all owners under instructions from any authority having the power of condemnation or eminent domain, each owner shall be entitled to notice of the taking, but the Association, by and through its Board, shall act as attorney-in-fact for all owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

**Section 2. Partial Condemnation; Distribution of Award; Reconstruction.** The award made for such taking shall be payable to the Association as Trustee for all owners to be disbursed as follows:

If the taking involves a portion of the Common Properties on which Improvements have been constructed, then, unless within sixty days after such taking Developer and owners representing at least seventy-five percent (75%) of members of the Association shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the Common Properties to the extent lands are available there for, in accordance with plans approved by the Board and the Committee. If such Improvements are to be repaired or restored, the provisions in Article XV above regarding the disbursement of funds in respect to casualty damage or destruction that is to be repaired shall apply. If the taking does not involve any Improvements on the Common Properties, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per The lot, first to the Mortgagees and then to the owners, as their interests appear.

## **ARTICLE XVII**

### **Enforcement of Covenants**

**Section 1. Violations Deemed a Nuisance.** Every violation of any of these Covenants is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or equity against anyone in violation of these Covenants shall be available.

**Section 2. Compliance.** Each owner or other occupant of any part of the Addition shall comply with the provisions of these Covenants as the same may be amended from time to time.

**Section 3. Failure to Comply.** Failure to comply with these Covenants shall be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the Bylaws shall be given to the delinquent party prior to commencing any legal proceedings.

**Section 4. Who May Enforce.** Any action to enforce these Covenants may be brought by the Developer or the Board in the name of the Association on behalf of the owners. If, after a written request from an aggrieved owner, none of the foregoing persons or entities commence an action to enforce these Covenants, then the aggrieved owner may bring such an action.

**Section 5. Remedies.** In addition to the remedies set forth above in this Article XVII, any violation of these Covenants shall give to the Board or the Developer, on behalf of the owners or the Association, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify, or replace, at the expense of the offending owner, any structure, thing or condition that may exist thereon contrary to the interest and meaning of these Covenants. If the offense occurs on any easement, walkway, Common Properties, or the like, the cure shall be at the expense of the owner or other person responsible for the offending condition.

**Section 6. Nonexclusive Remedies.** All the remedies set forth herein are cumulative and not exclusive.

**Section 7. No Waiver.** The failure of the Board, the Developer, the Committee, or any aggrieved owner to enforce these Covenants shall not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of these Covenants at any future time.

**Section 8. No Liability.** No member of the Board, the Developer, the Committee, the Association, or any owner shall be liable to any other owner for the failure to enforce any of these Covenants at any time.

**Section 9. Recovery of Costs.** If legal assistance is obtained to enforce any of the provisions of these Covenants, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of these Covenants or the restraint of violations of these Covenants, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees as may be incurred, or if suit is brought, as may be determined by the court.

## **ARTICLE XVIII** **Resolution of Disputes**

If any dispute or question arises between members or between members and the Association or the Committee relating to the interpretation, performance or nonperformance, violation, or enforcement of these Covenants, such dispute or violation may be subject to a hearing and determination by the Board in accordance with the procedures set forth in the Bylaws.

## **ARTICLE XIX** **Principles of Interpretation**

**Section 1. Severability.** These Covenants, to the extent possible, shall be construed or reformed so as to give validity to all of its provisions. Any provision of these Covenants found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating any either part hereof.

**Section 2. Construction.** In interpreting words in these Covenants, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

**Section 3. Headings.** The headings are included only for purposes of convenient reference, and they shall not affect the meaning or interpretation of these Covenants.

**Section 4. Registration of Mailing Address.** Each member shall register his, her, or its mailing address with the Secretary of the Association from time to time, and notices or demands intended to be served upon or given to a member shall be personally delivered to or sent by mail, postage prepaid, addressed in the name of the member at such registered mailing address.

**Section 5. Notice.** All notices or requests required shall be in writing. Notice to any member shall be considered delivered and effective upon personal delivery, or three days after posting, when sent by certified mail, return receipt requested, to the address of such Member on file in the records of the Association at the time of such mailing. Notice to the Association, the Board, the Developer, or the Committee shall be considered delivered and effective upon personal delivery, or three days after posting, when sent by certified mail, return receipt requested, to the Association, the Board, the Developer, or the Committee, at such address as shall be established by the Association from time to time by notice to the members. General notices to all members or any classification thereof need not be certified, but may be sent regular first class mail.

**Section 6. Waiver.** No failure on the part of the Association, the Board, or the Committee to give notice of default or to exercise or to delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above in the event the Board or Committee fails to respond to certain requests. No waiver shall be effective unless it is in writing, signed by the President or Vice President of the Board on behalf of the Association, or by the Chairman of the Committee on behalf of the Committee.

**Section 7. Limitation of Liability.** Neither the Association, the Committee, nor any officer or member of the Board shall be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under these Covenants if the action or failure to act was made in good faith. The Association shall indemnify all of the Committee members, all officers, agents, and employees of the Board as well as Board members with respect to any act taken in their official capacity to the extent provided in these Covenants and by law and in the Articles and Bylaws of the Association.

**Section 8. Conflicts Between Documents.** In case of conflict between these Covenants and the Articles of Incorporation or the Bylaws, these Covenants shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control. In case of conflict between these Covenants and any design guidelines promulgated by the Committee, the design guidelines shall control.

**Section 9. Assignment.** Developer may assign all or any part of its rights and reservations hereunder to any successor who takes title to all or part of the Addition in a bulk purchase for the purpose of development and sale. Such successor shall be identified, the particular rights being assigned shall be specified, and, to the extent required, concomitant obligations shall be expressly assumed by such successor, all in a written instrument duly



**Master Land Use Plan  
Amendment**

# Memo

**To:** City Planning Commission

**From:** Planning Staff

**Date:** July 25<sup>th</sup>, 2014

**Re:** Proposed Master Land Use Plan Amendment by Ron Brixey, agent for Thomas and Nancy Spahn, at 9900 Hwy 71 South from Residential Detached to General Commercial (Companion to items #3 & #4)

The Planning Department is receipt of an application from Ron Brixey, agent for Thomas and Nancy Spahn, at 9900 Highway 71 South to amend the Master Land Use Map from Residential Detached to General Commercial to accommodate a proposed Commercial Heavy (C-5) zoning request.

The property is currently zoned Residential Estate One (RE-1). A companion zoning application requests a Commercial Heavy (C-5) zoning district. The Master Land Use Plan is a guide to zoning and development and must be considered with the companion application.

## **PROPERTY LOCATION AND SIZE**

The subject property is on the west side of Hwy 71 South between Didier Road and Brooken Hill Drive. The tract contains an area of 1.4 acres with approximately 100 feet of street frontage along Hwy 71 South.

## **ADJACENT LAND USE CLASSIFICATIONS AND USES**

Land Use classification and uses contiguous to the subject lot are as follows:

The area to the north is classified as Residential Detached and General Commercial and is developed as retail sales for floors and lights.

The area to the east is classified as General Commercial and is developed as retail sales of pools and spas.

The area to the south is classified as General Commercial and Residential Detached and is developed as greenhouse sales.

The area to the west is classified as Residential Detached and is also developed as Greenhouse sales.

2A

**Characteristics and Use:**

**Criteria for Designation:**

**Compliance Noted**

- |  |            |
|--|------------|
| • Compatible with and complimentary to surrounding uses.   | <b>YES</b> |
| • Located on high volume arterials and collectors  | <b>YES</b> |
| • Located as a cluster of like services  | <b>YES</b> |
| • Accessible by most modes of transportation   | <b>YES</b> |
| • Appropriately located for minimum impact of adjacent uses, and, by volume of activity and trips generated by use | <b>YES</b> |

**MASTER STREET PLAN CLASSIFICATION**

The Master Street Plan classifies Hwy 71 South as a Boulevard Classification.

**STAFF COMMENTS AND RECOMMENDATIONS**

A neighborhood meeting was held Thursday, August 7<sup>th</sup> on site. Two people were present at the meeting. One neighboring property owner had no issues or problems with the development. The other neighbor had questions regarding the limited lighting for the facility and the requirement for a wood fence. The neighbor indicated that chainlink fencing would provide better security so that neighbors could see what activities occurred at the mini-storages. The neighbor also stated that more lighting for security would be beneficial to the development. A copy of the attendance record and meeting summary are enclosed.

Based on compatibility with surrounding land use classifications and land uses, staff recommends approval of the application contingent upon approval of the companion zoning application.

2B

## Application Type

Minor Amendment  
  Standard Amendment  
  Major Amendment  
 (See Section 27-328-5 C. (Criteria))

Request to Amend Map     
 Request to Amend Text  

Applicant Name: THOMAS SPAHN	
Firm Name:	
Address: 9900 HIGHWAY 71 S, FORT SMITH	
Phone # (day): 479.648.1213	Phone # (cell):                      Fax #:
Owner Name: THOMAS & NANCY SPAHN	
Owner Address: 9900 HIGHWAY 71 S FORT SMITH AR 72916	
Phone # (day): 479.648.1213	Phone # (cell):                      Fax #:
Property Address (subject property): 9900 HIGHWAY 71 S	
<b>Subject Property</b>	
Current Land Use: VACANT	
Existing MLUP Classification: GENERAL COMMERCIAL & RES. DETACHED	
Proposed MLUP Classification: GENERAL COMMERCIAL	
Existing Zoning Classification: RE-1 & C-5	
Proposed Zoning Classification: C-5	
<b>Surrounding Property</b>	
Current Land Use: north- VACANT	
south- SHARUM'S GARDEN CENTER	
east- RETAIL (POOL STORE/BEST FLOORS)	
west- SHARUM'S GARDEN CENTER	
Existing MLUP Classification: north: RESIDENTIAL DETACHED & GEN COMMERCIAL	
south: RES. DETACHED & GEN. COMMERCIAL	
east: GENERAL COMMERCIAL	
west: RESIDENTIAL DETACHED	
Existing Zoning Classification: north: C-5	
south: RE-1	
east: RE-1 & C-5	
west: RE-1	
Pre-Application Meeting Date: June 19, 2014	

**For a Minor, Standard or Major Master Land Use Plan Amendment,** please attach the following information and answer the questions below. You may provide answers on a separate sheet and attach it to this application:

20

1. A legal description of the subject property that is to be amended (reclassified). *SEE EXHIBIT 'A'*
2. A map of the property which includes the scaled distance, legal description, and general vicinity map inset showing the property's location. *SEE ATTACHED*
3. The area dimensions of the property in square feet or acres. *1.4 AC TOTAL*
4. Describe existing road conditions and new roads to be included in the development and the effect of the proposed development on existing roads and traffic conditions:

THE PROPERTY TO BE AMENDED IS A PORTION OF A TRACT  
LOCATED ON U.S. HIGHWAY 71 S. A MINI STORAGE  
COMPLEX IS PROPOSED BEHIND AN EXISTING COMMERCIAL  
STRUCTURE WITH EXISTING CONC. DRIVEWAYS TO BE  
UTILIZED. THE IMPACT TO EXISTING ROADS & TRAFFIC IS  
EXPECTED TO BE MINIMAL

5. Describe the existing public utility services and infrastructure (such as water, sewer, fire/police) which are available to the property and the source/method of providing additional utilities and infrastructure to the property if necessary:

ALL NECESSARY UTILITIES ARE EXISTING  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

6. Provide a statement of the proposed build-out density and maximum potential build-out density (units per acre) permitted by the proposed land use classification:

PROPOSED ONE COMMERCIAL BUILDING - NO RESIDENTIAL  
BEING 72% PROPOSED DENSITY  
MAXIMUM PERMITTED: 75%  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

7. Identify any known or anticipated environmental concerns:

NONE  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**For a Standard or Major Master Land Use Plan Amendment only**, please attach the following additional information and answer the questions below. You may provide answers on a separate sheet and attach it to this application:

8. An analysis of the impact of the amendment on surrounding properties and plans in terms of: *N/A*

*2D*

a. Describe potential changes to development patterns in terms of local and regional impacts:

N/A

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b. Describe the consistency in zoning between existing and planned uses:

N/A

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c. Provide explanation of the need for and demand in the proposed uses:

N/A

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9. Provide an analysis of the long term development plan for the area (10-20 years) which incorporates a review of the land use, transportation, and infrastructure impact to both the City of Fort Smith and the property owner:

N/A

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**For a Comprehensive Plan-Text Amendment only**, please attach the following information. Provide answers on a separate sheet and attach it to this application:

1. A typewritten copy of the proposed changes to the text in underline/strikeout (also known as "track changes") format. N/A
2. A description of the reasons supporting the amendment and the special circumstances requiring the change: N/A

**AUTHORIZATION OF AGENT**

QE

If an agent (i.e., contractor) is acting on behalf of the owner(s), all owners must sign in the space provided. This form is necessary only when the person representing this request does not own all the property.

We the undersigned, being owners of real property, and requesting a rezoning by application do hereby authorize HON BRIXEY to act as our agent in the matter.  
(Print Name of Agent)

(Type or clearly print)

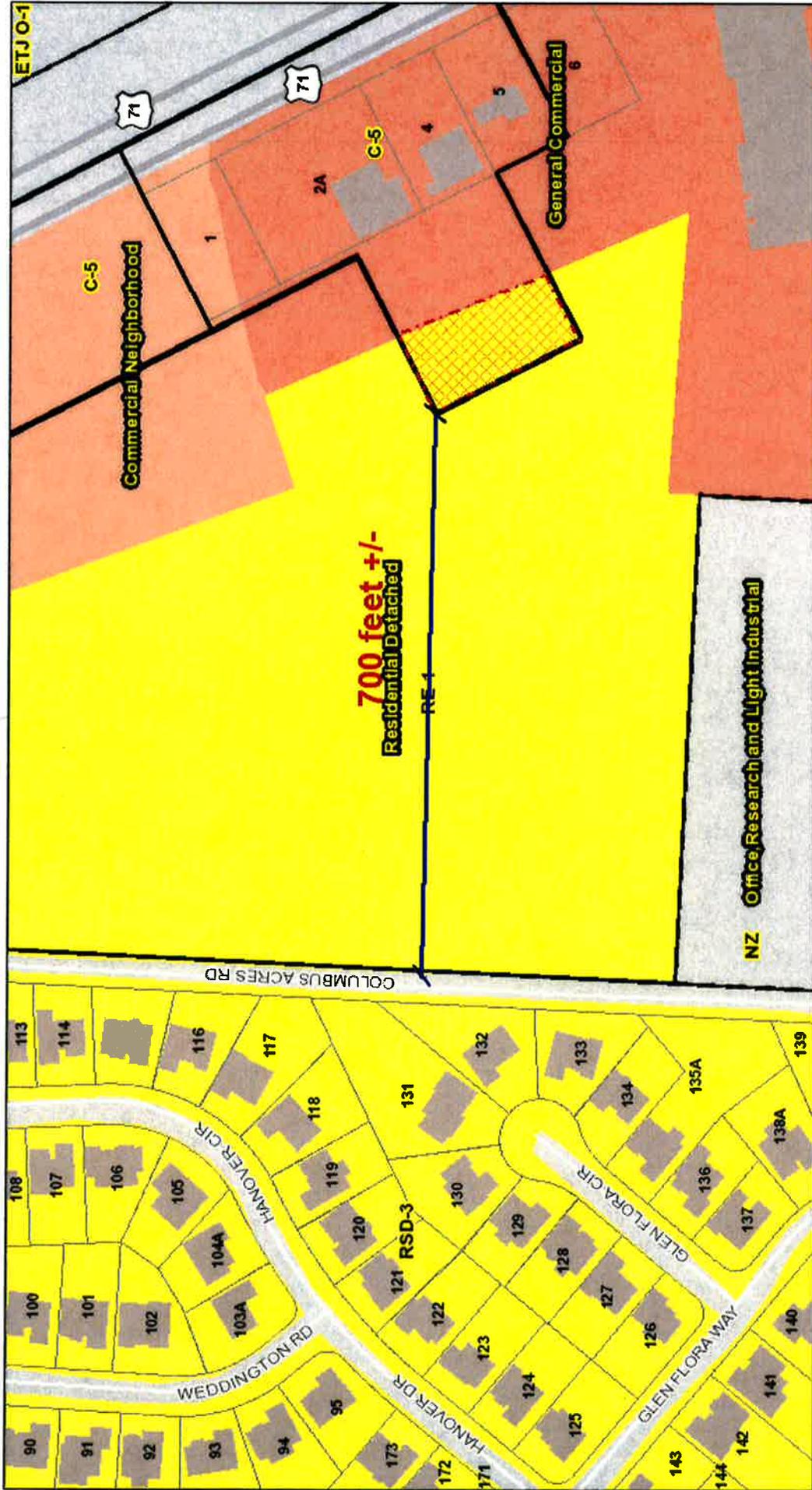
NAMES OF ALL OWNERS.

SIGNATURE OF ALL OWNERS.

- 1. NANCY SPAHN Nancy Spahn
- 2. THOMAS SPAHN Thomas Spahn
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_
- 6. \_\_\_\_\_
- 7. \_\_\_\_\_
- 8. \_\_\_\_\_
- 9. \_\_\_\_\_
- 10. \_\_\_\_\_

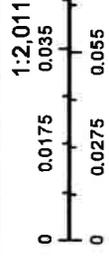
*This form is necessary only when the person representing this request does not own all property.*

# Master Land Use Plan Amendment: From Residential Detached to General Commercial 9900 US Highway 71



August 7, 2014

- Fort Smith City Limits
- Zoning
- Subdivisions
- Building Footprints



*229*

# Memo

**To:** City Planning Commission

**From:** Planning Staff

**Date:** July 25, 2014

**Re:** Rezoning #18-8-14 - A request by Ron Brixey, agent for Thomas and Nancy Spahn, for Planning Commission consideration of a zoning request from Residential Estate One (RE-1) to Commercial Heavy (C-5) by extension at 9900 Hwy 71 South (Companion to items #2 & #4)

## **PROPOSED ZONING**

The requested zone change will allow an undeveloped portion of the site to be utilized for climate controlled mini-storages.

## **LOT LOCATION AND SIZE**

The subject property is on the west side of Hwy 71 South between Didier Road and Brooken Hill Drive. The tract contains an area of 1.4 acres with approximately 100 feet of street frontage along Hwy 71 South.

## **REQUESTED ZONING**

The requested zoning on this tract is Commercial Heavy (C-5). Characteristics of this zone are as follows:

### **Purpose:**

To provide adequate locations for retail uses and services that generate moderate to heavy automobile traffic. The C-5 zoning district is designed to facilitate convenient access, minimize traffic congestion, and reduce visual clutter. The C-5 zoning district is appropriate in the General Commercial, Office, Research, and Light Industrial, Mixed Use Residential, and Mixed Use Employment classification of the Master Land Use Plan.

### **Permitted Uses:**

A wide variety of retail uses including clothing stores, specialty shops and restaurants. Commercial-5 zones also allow professional offices and multi-family apartments, community residential facility and neighborhood group homes are examples of permitted uses.

**Conditional Uses:**

Orphanage, dormitory, sorority, fraternity, auto vehicle impoundment or holding yard, auto body shop, medical laboratory, beer garden, restaurants with outdoor dining, pet cemetery, bus station, utility substations, museum, parks, educational facilities, police station, community food service, nursing home and churches are examples of uses permitted as conditional uses.

**Area and Bulk Regulations:**

- Minimum Lot Size – 14,000 square feet
- Maximum Height - 45 feet (1+1)
- Maximum Lot Coverage - 75%
- Minimum Parcel/Lot Size for Rezoning – New District (By Classification) - 2 acres
- Existing District (By Extension) – 14,000 square feet
- Minimum Lot Width – 100 feet
- Front Yard Setback - 25 feet
- Side Yard on Street Side of Corner Lot - 15 feet
- Side Yard Setback – 20 feet
- Rear Yard Setback - 20 feet
- Side/Rear (adjoining SF Residential District/Development) – 30 feet
- Minimum building separation – to be determined by current City building and fire code.
- Required street access – Minor Arterial or higher

**EXISTING ZONING**

The existing zoning on this tract is Residential Estate One (RE-1).  
Characteristics of this zone are as follows:

**Purpose:**

The purpose of the Residential Estate One zoning district is to provide areas for low-density, large lot single family residential development. Property zoned RE-1 should include tracts that abut or are in close proximity to existing or approved large-lot single family development, making RE-1 an appropriate transition between rural and suburban uses.

Where public facilities and services are not yet available, development in this district shall be designed to allow for the future planned expansion of utilities and services where necessary. RE-1 zoning is appropriate in the Residential Detached, Mixed use Residential, and Mixed use Employment future land use classification of the Master Land Use Plan.

**Permitted Uses:**

Single-family dwellings and family group homes are examples of permitted uses.

**Conditional Uses:**

Commercial communication towers, utility substation, country club, parks, college, primary and secondary schools, preschool, nursery schools, police and fire stations, daycare homes and churches are examples of uses permitted as conditional uses.

**Area and Bulk Regulations:**

Minimum Lot Size – 1 acres	Maximum Height - 35 feet (1+1)
Maximum Density – 1 Dwelling Units/Acre	Maximum Lot Coverage - 20%
Minimum Lot Width of Building Line – 100 feet	
Minimum Street Frontage – 50 feet	
Front Yard Setback - 40 feet	
Side Yard on Street Side of Corner Lot - 40 feet	
Side Yard Setback – 15 feet	
Rear Yard Setback - 20 feet	
Minimum building separation – 15 feet	

**SURROUNDING ZONING AND LAND USE**

The areas to the north are zoned Residential Estate One (RE-1) and Commercial Heavy (C-5) and contain areas that are undeveloped and developed as retail sales.

The area to the east is zoned Extraterritorial Jurisdiction Open-1(ETJ Open-1) and is undeveloped.

The areas to the south and west are zoned Residential Estate One (RE-1) and contain areas that are undeveloped and developed as retail sales.

**LAND USE PLAN COMPLIANCE**

The *Master Land Use Plan Map* classifies the site as Residential Detached. A Companion Master Land Use Application to change the Land Use to General Commercial has been submitted. The General Commercial classification is intended to provide opportunities for business transactions and activities to meet the consumer needs of the community. Approval of the zone change will not conflict with the goals and objectives of the Master Land Use Plan.

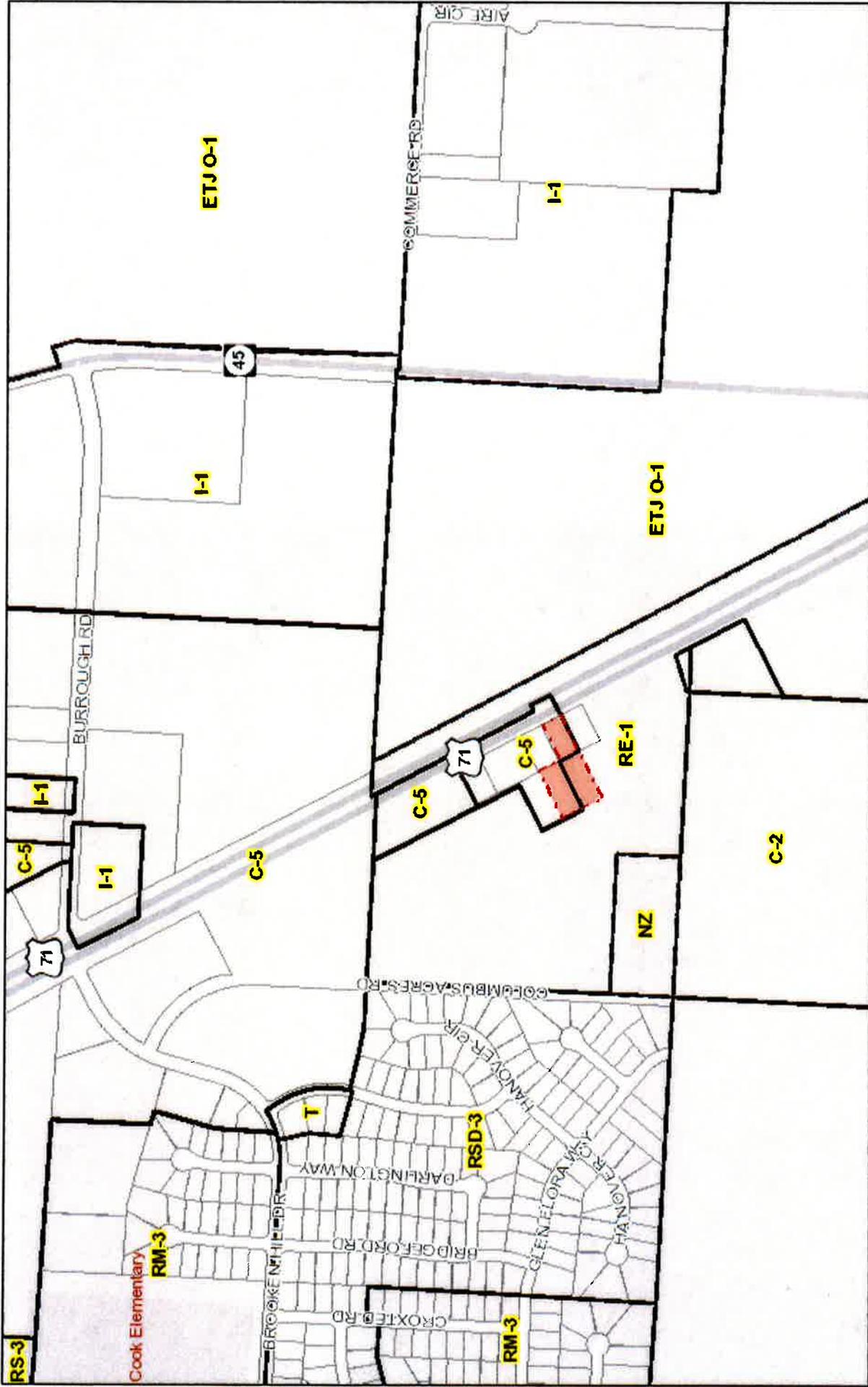
**STAFF COMMENTS AND RECOMMENDATIONS**

A neighborhood meeting was held Thursday, August 7<sup>th</sup> on site. Two people were present at the meeting. One neighboring property owner had no issues or problems with the development. The other neighbor had questions regarding the limited lighting for the facility and the requirement for a wood fence. The neighbor indicated that chainlink fencing would provide better security so that neighbors could see what activities occurred at the mini-storages. The neighbor also stated that more lighting for security would be beneficial to the development. A copy of the attendance record and meeting summary are enclosed.

Based on compatibility with surrounding zoning districts, staff recommends approval of the application.

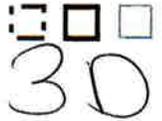
30

# Master Land Use Plan Amendment: From Residential Detached to General Commercial 9900 Hwy 71 S



July 21, 2014

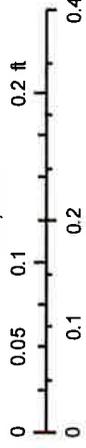
Fort Smith City Limits



Zoning

Subdivisions

1:7,139



**PETITION FOR CHANGE IN ZONING MAP**

Before the Planning Commission of the City of Fort Smith, Arkansas

The undersigned, as owner(s) or agent for the owner(s) of the herein described property, makes application for a change in the zoning map of the City of Fort Smith, Arkansas, pursuant to Ordinance No. 3391 and Arkansas Statutes (1974) 19-2830, representing to the Planning Commission as follows:

- 1. The applicant is the owner or the agent for the owner(s) of real estate situated in the City of Fort Smith, Sebastian County, Arkansas, described as follows: (Insert legal description)

SEE ATTACHED EXHIBIT **A**

- 2. Address of property: Property behind and adjacent to 9900 Hwy 71 S
- 3. The above described property is now zoned: RE-1 & C-5
- 4. Application is hereby made to change the zoning classification of the above described property to C-5 by Extension  
(Extension or classification)
- 5. Why is the zoning change requested?

Request is made in order to CORRECT the Zone classification to include the entire property and facilitate future development

- 6. Submit any proposed development plans that might help explain the reason for the request.

Signed:

Ron Brixey - Brixey Engineering  
Owner or Agent Name  
(please print)

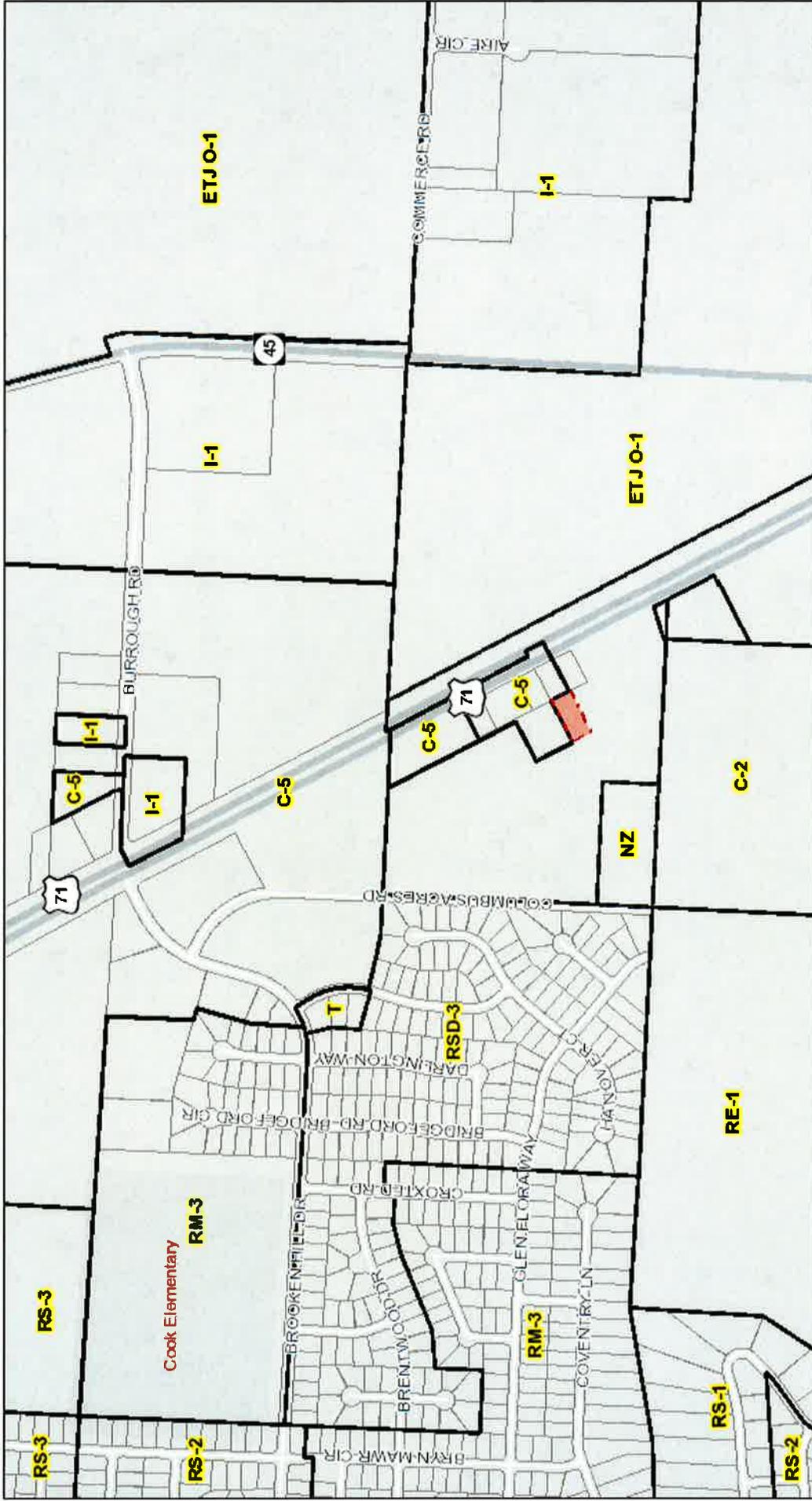
\_\_\_\_\_  
Owner

P.O. Box 6180 Fort Smith AR 72906  
Owner or Agent Mailing Address

\_\_\_\_\_  
Agent <sup>or</sup> *Ron Brixey*

479-646-6394  
Owner or Agent Phone Number

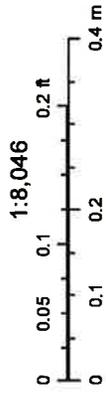
# Rezoning #18-8-14: From Residential Estate One Acre (RE-1) to Commercial Heavy (C-5) 9900 US Highway 71



August 5, 2014

Fort Smith City Limits

- Zoning
- Subdivisions



BT

# Memo

**To:** City Planning Commission

**From:** Planning Staff

**Date:** August 8, 2014

**Re:** Development Plan Review - A request by Ron Brixey, agent for Thomas and Nancy Spahn, for Planning Commission consideration of a Development Plan request to develop climate controlled mini-storages at 9900 Hwy 71 South (Companion to items #2 & #3)

## **PROPOSED DEVELOPMENT PLAN**

Approval of the requested development plan will allow an undeveloped portion of the site to be utilized for a 13,260 s.f. mini storage facility containing 78 storage units.

## **LOT LOCATION AND SIZE**

The subject property is on the west side of Hwy 71 South between Didier Road and Brooken Hill Drive. The tract contains an area of 1.4 acres with approximately 100 feet of street frontage along Hwy 71 South.

## **PROPOSED ZONING**

The requested zoning on this tract is Commercial Heavy (C-5). Characteristics of this zone are as follows:

### **Purpose:**

To provide adequate locations for retail uses and services that generate moderate to heavy automobile traffic. The C-5 zoning district is designed to facilitate convenient access, minimize traffic congestion, and reduce visual clutter. The C-5 zoning district is appropriate in the General Commercial, Office, Research, and Light Industrial, Mixed Use Residential, and Mixed Use Employment classification of the Master Land Use Plan.

### **Permitted Uses:**

A wide variety of retail uses including clothing stores, specialty shops and restaurants. Commercial-5 zones also allow professional offices and multi-family apartments, community residential facility and neighborhood group homes are examples of permitted uses.

4A

**Conditional Uses:**

Orphanage, dormitory, sorority, fraternity, auto vehicle impoundment or holding yard, auto body shop, medical laboratory, beer garden, restaurants with outdoor dining, pet cemetery, bus station, utility substations, museum, parks, educational facilities, police station, community food service, nursing home and churches are examples of uses permitted as conditional uses.

**Area and Bulk Regulations:**

- Minimum Lot Size – 14,000 square feet
- Maximum Height - 45 feet (1+1)
- Maximum Lot Coverage - 75%
- Minimum Parcel/Lot Size for Rezoning – New District (By Classification) - 2 acres
- Existing District (By Extension) – 14,000 square feet
- Minimum Lot Width – 100 feet
- Front Yard Setback - 25 feet
- Side Yard on Street Side of Corner Lot - 15 feet
- Side Yard Setback – 20 feet
- Rear Yard Setback - 20 feet
- Side/Rear (adjoining SF Residential District/Development) – 30 feet
- Minimum building separation – to be determined by current City building and fire code.
- Required street access – Minor Arterial or higher

**SURROUNDING ZONING AND LAND USE**

The areas to the north are zoned Residential Estate One (RE-1) and Commercial Heavy (C-5) and contain areas that are undeveloped and developed as retail sales for floors and lights.

The area to the east is zoned Commercial Heavy and developed as retails sales of pools and spas.

The areas to the south and west are zoned Residential Estate One (RE-1) and contain areas that are undeveloped and developed as Greenhouse retail sales.

**SITE DESIGN FEATURES**

**Ingress/egress/traffic circulation** – All ingress and egress will occur on the existing driveways located on Hwy 71 South.

**Easement/utilities** – The developer must agree to meet all franchise and city utility easement requirements. Additionally, the development must comply with the City’s Subdivision Design and Improvement Standards and the Standard Specification for Public Works Construction.

**Drainage** – Drainage ditches exist on both the south side of the property and on the east side parallel to Highway 71South. The applicant also proposes a drainage ditch on the north side of the proposed development. All drainage improvements must be approved by the city’s engineering department.

**Right-of-way dedication** – No right-of-way dedication is required.

4B

**Landscaping** – The plans indicate that landscaping with shrubs and trees will be placed in the 10 foot landscaping strip adjacent to the right-of-way along Hwy 71 South. Interior landscaping will be placed along the drive aisles around the new mini-storage complex.

**Screening** – A six foot privacy fence is proposed on the north, south and west sides of the development.

**Parking** – 10 parking spaces have been provided for the new development. This exceeds the UDO requirements.

**Signage** – No new sign information has been submitted for the new development. The owner intends to utilize the existing sign for advertising the storage units.

**Lighting** – The applicant proposes to install 30 watt LED flood lights on poles surrounding the mini storage and also on the mini-storage facility. No lighting plan was submitted. All lighting must be shielded and comply with the Commercial and Outdoor Lighting Requirements.

**Architectural features** – The facades of the building will contain split face concrete blocks, Hardy board siding, and garage doors. The amount of high quality materials for the façade exceeds the UDO requirements that 51% of all facades must contain high-quality materials.

**Height and Area** –The mini-storage will have a maximum height of 12 feet. The area dimensions will be 102 feet wide by 130 feet deep having a total of 13,260 s.f. of building area. The facility will contain 78 storage units of which approximately 52 units will be climate controlled.

### **STAFF COMMENTS AND RECOMMENDATIONS**

A neighborhood meeting was held Thursday, August 7<sup>th</sup> on site. Two people were present at the meeting. One neighboring property owner had no issues or problems with the development. The other neighbor had questions regarding the limited lighting for the facility and the requirement for a wood fence. The neighbor indicated that chainlink fencing would provide better security so that neighbors could see what activities occurred at the mini-storages. The neighbor also stated that more lighting for security would be beneficial to the development. A copy of the attendance record is enclosed.

Staff recommends approval of the development plan with the following comments:

1. A lighting plan shall be submitted with the building permit plans verifying that the proposed exterior comply with the Commercial and Outdoor Lighting Requirements – UDO Section 27-602-5.
2. All drainage improvements shall be approved by the Engineering Department.

4C

**DEVELOPMENT PLAN REVIEW APPLICATION**

Before the Planning Commission of the City of Fort Smith, Arkansas

The undersigned, as owner(s) or agent for the owner(s) of the herein described property, makes application for a change in the zoning map of the City of Fort Smith, Arkansas, pursuant to Ordinance No. 3391 and Arkansas Statutes (1974) 19-2830, representing to the Planning Commission as follows:

1. The applicant is the owner or the agent for the owner(s) of real estate situated in the City of Fort Smith, Sebastian County, Arkansas, described as follows: (Insert legal description)

SEE EXHIBIT 'A'

2. Address of property: 9900 Highway 71 S

3. The above described property is now zoned: RE-1 and C-5

4. Does the development plan include a companion rezoning request?

Yes X No \_\_\_\_\_

5. If yes, please specify the companion application submitted:

- Conventional Rezoning
- Planned Rezoning
- Conditional Use
- Master Land Use Plan Amendment
- Variance

6. If applicable, a companion rezoning application is proposed to change the zoning classification of the above described property to:

C-5 by Extension  
(Zoning Classification) (Extension or classification)

7. Existing zoning, structures and driveways on surrounding properties within 300 feet of subject property:

See attached Zone Exhibit and Aerial Exhibit drawings  
\_\_\_\_\_  
\_\_\_\_\_

8. Total acreage of property 1.4 Ac

HD

Signed:

Thomas Spahn

Owner or Agent Name  
*(please print)*

  
Owner

9900 Hwy 71 S, Fort Smith ArR 72916  
Owner or Agent Mailing Address

or

479-648-1213  
Owner or Agent Phone Number

\_\_\_\_\_  
Agent

4E

**ATTENDANCE LIST FOR NEIGHBORHOOD MEETING**

List the names, addresses & telephone numbers of all residents/property owners who attended the meeting.

Meeting Location 9900 Hwy 71 S

Meeting Time & Date AUG 7, 2014 4:30pm

Meeting Purpose LOT SA DIDIER PLACE

	<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE #</u>
1.	<u>Bob Cooper</u>	<u>4611 Rogers St. 200</u>	<u>478-6161</u>
2.	<u>KATHI JAMES</u>	<u>9814 Hwy 71 So.</u>	<u>479-883-0415</u>
3.	<u>Wally Bailey</u>	<u>CFS</u>	<u>784-2216</u>
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			

August 08, 2014

MINUTES OF NEIGHBORHOOD MEETING  
LOT 5A DIDIER PLACE

On August 7, 2014 at 4:30 p.m. a Neighborhood meeting was held at 9900 Highway 71 South, Fort Smith, Arkansas to discuss the proposed development with neighboring property owners.

In attendance was: Tommy & Nancy Spahn - Owners/Developers  
Wally Bailey - City of Fort Smith  
Rebecca Aird - Brixey Engineering & Land Surveying  
Bob Cooper - Stephens Production  
Patti Janes - Lites Etc.

General questions regarding what type of facility was proposed, the proposed lighting and the type of perimeter fence were discussed.

There were no objections voiced by anybody in attendance.

46

EXHIBIT A

SURVEY DESCRIPTION (9900 Highway 71 S)

Lot 5 Didier Place and Part of the Southwest Quarter (SW1/4) of the Northwest Quarter (NW1/4) of Section 14, Township 7 North, Range 32 West, Sebastian County, Arkansas, more particularly described as follows:

Beginning at an existing iron pin on the Westerly right of way line of U.S. Highway 71 being the Southeast corner of said Lot 5; thence S  $61^{\circ}48'42''$  W, 392.80 feet along the South line of said Lot 5 and said line extended to an existing iron pin; thence N  $27^{\circ}59'01''$  W, 200.00 feet to an existing iron pin; thence N  $61^{\circ}48'42''$  E, 217.80 feet to an existing iron pin on the West line of Didier Place; thence S  $27^{\circ}59'01''$  E, 100.00 feet to an existing iron pin being the Northwest corner of said Lot 5; thence N  $61^{\circ}48'42''$  E, 175.00 feet along the Northerly line of said Lot 5 to an existing iron pin on the Westerly right of way line of U.S. Highway 71; thence S  $27^{\circ}59'01''$  E, 100.00 feet along said right of way line to the point of beginning, containing 1.40 Acres, more or less, being subject to public road rights of way and any easements of record.

© BRIXEY ENGINEERING & LAND SURVEYING 2014

Any unauthorized use of this drawing or data by others is at the sole risk of the user. Brixe Engineering & Land Surveying, Inc. shall be held harmless and without liability from claims, costs or damages of any nature including costs of defense arising from improper use of this drawing or data, or by another party.



**BRIXEY ENGINEERING &  
LAND SURVEYING, INC.**

CONSULTING ENGINEERS -- LAND SURVEYORS

5223 East Highway 48 (479) 646-6384  
P.O. Box 6180 Fort Smith, Arkansas 72906

### AERIAL EXHIBIT

9900 HIGHWAY 71 SOUTH  
PART SW/4 OF THE NW/4  
FORT SMITH, ARKANSAS

Prepared For: Thomas & Nancy Spahn

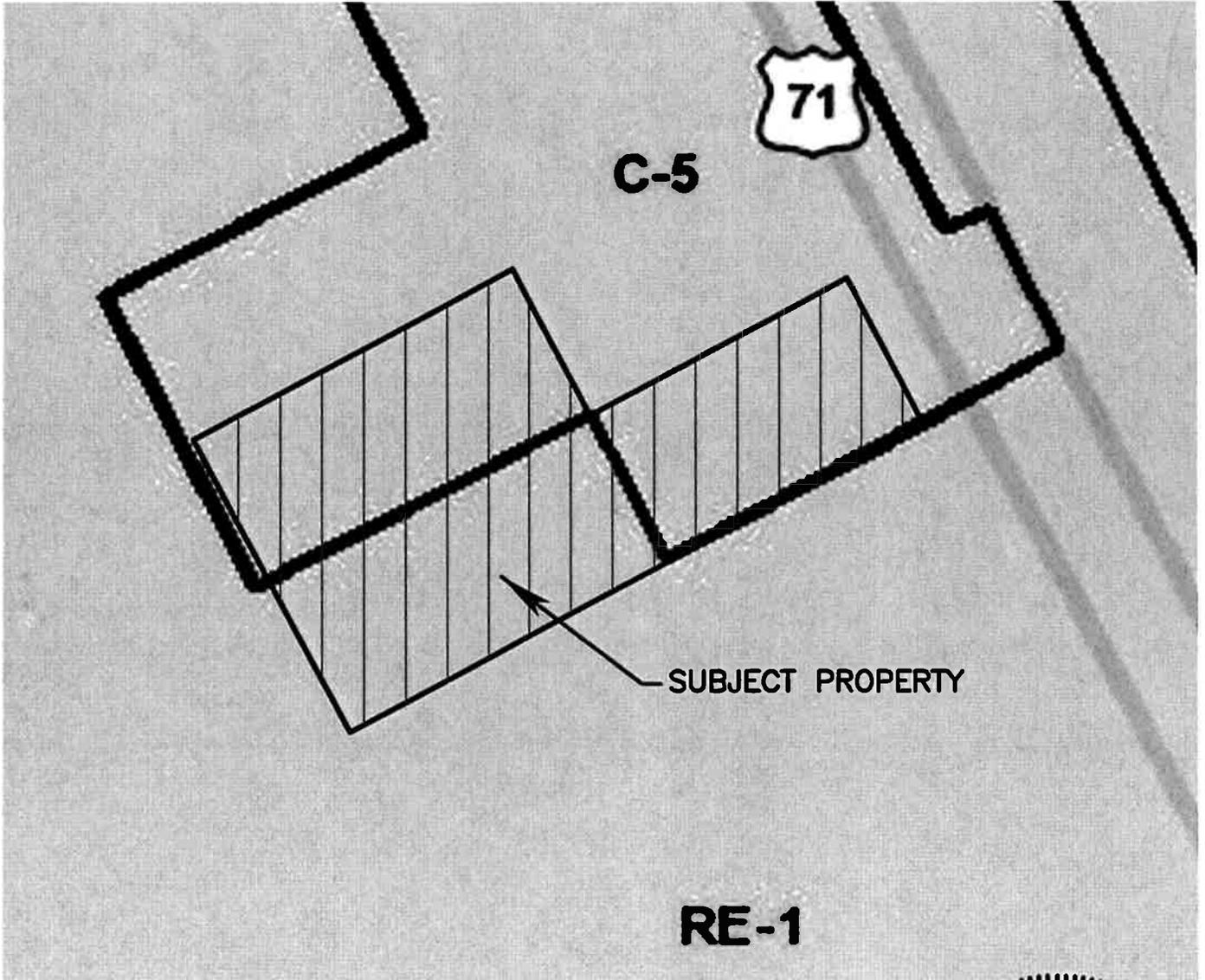
Scale: 1" = 200'

Date: Feb. 18 2014

Drawn By: RJA

Job No. 13-0321

Any unauthorized use of this drawing or data by others is at the sole risk of the user. Brixey Engineering & Land Surveying, Inc. shall be held harmless and without liability from claims, costs or damages of any nature including costs of defense arising from improper use of this drawing or data, or by another party.



**BRIXEY ENGINEERING &  
LAND SURVEYING, INC.**

CONSULTING ENGINEERS -- LAND SURVEYORS  
5223 East Highway 45 (479) 646-8394  
P.O. Box 6160 Fort Smith, Arkansas 72906

### ZONE EXHIBIT

9900 HIGHWAY 71 SOUTH  
PART SW/4 OF THE NW/4  
FORT SMITH, ARKANSAS

Prepared For: Thomas & Nancy Spahn

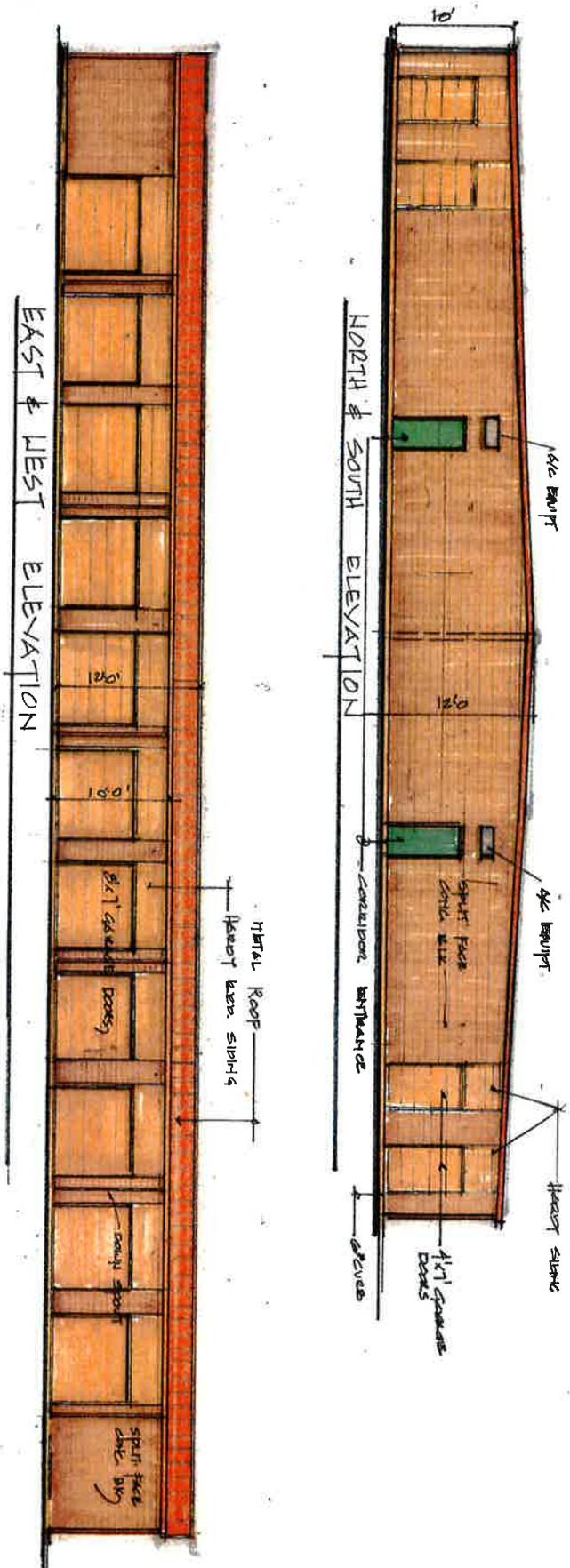
Scale: 1" = 100'

Date: Feb. 18 2014

Drawn By: RJA

Job No: 13-0321





<p>Sheet <b>1-1</b></p>	<p>preliminary for <b>PRESTIGIOUS STORAGE</b> 9900 hwy 71 south Fort Smith, Arkansas</p>		<p>42</p>
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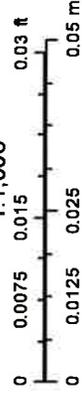
# Aerial showing distance from mini-storage to nearest residential area 9900 US Highway 71



August 7, 2014

-  Fort Smith City Limits
-  Zoning
-  Subdivisions
-  Building Footprints

1:1,006



FM

LOT 5 DIDIER



OUTSIDE VIEW AC UNIT

4N

P<sub>2</sub> 2 HVAC

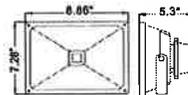


HOME    PRODUCTS    ABOUT US    WHERE TO BUY    SALES REP    WHOLESALER LOGIN

Home » 120V LIGHTING » LED FLOOD LIGHT » LED FLOOD LIGHT

### Category

- WEATHERPROOF PRODUCTS
- CONDUIT BODIES
- ELECTRICAL FITTINGS
- WIRING DEVICES
- CORDS
- FISH TAPES
- WIRES AND CABLES
- COMMUNICATION ENCLOSURES
- 120V LIGHTING
- ENERGY SAVING OUTDOOR
- LANDSCAPE LIGHTING
- LED DECORATIVE
- LIGHTING EXIT SIGNS
- LED LIGHTBULBS



**LEI**

- LF-30
- Cate
- Spe
- Watt
- Oper
- Mate
- Color
- Color
- Dime
- Lume
- Std p
- #In

### Resources

- [Specs Sheet](#)
- [PDF Library](#)
- [Forms](#)

Description	Features	Specs
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LED FLOOD LIGHT, 30W, IP65, 2400 LUMEN,

110-277v/50/60Hz  
 Die-casting aluminium+PC,  
 Power Factor(PF) 0.9  
 WARM WHITE

40

**PLANNING COMMISSION APPROVAL**

Chairman \_\_\_\_\_ Date \_\_\_\_\_  
 Secretary \_\_\_\_\_

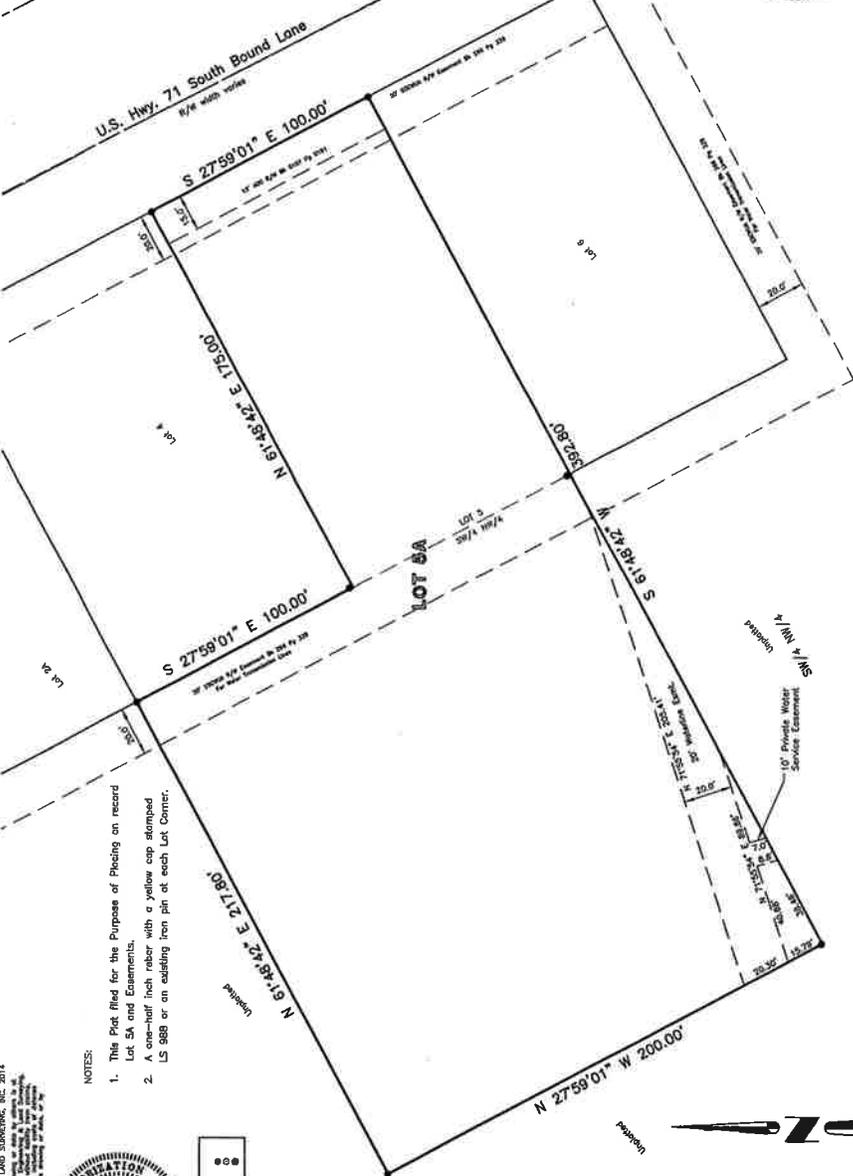
**ALLOTTERS:**

Thomas Spain  
 Henry Spain

**STATE OF ARKANSAS  
 COUNTY OF SEBASTIAN**

Sworn to and subscribed before me this day \_\_\_\_\_  
 Notary Public \_\_\_\_\_  
 My Commission Expires \_\_\_\_\_

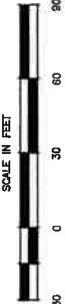
**FILED FOR RECORD** this \_\_\_\_\_ day of \_\_\_\_\_  
 2014 at \_\_\_\_\_  
 Clerk and Ex-Officio Recorder \_\_\_\_\_



- NOTES:**
- This Plat filed for the Purpose of Pleading on record Lot 5A and Easements.
  - A one-half inch rebar with a yellow cap stamped LS 888 or an existing iron pin at each Lot Corner.



**LEGEND**  
 Iron Pin  
 Stake  
 Existing Iron Pin



**SCALE IN FEET**  
 0 30 60 90

**DEDICATION**  
 The right-of-way on this plat is hereby dedicated to the City of Fort Smith, Arkansas, for use as a public thoroughfare, drainage, access and other purposes. Any easement, designated utility, cable TV, operated by utility companies and other utilities, including cable TV, operated by utility companies and other utilities, shall be located within the right-of-way and shall be subject to the jurisdiction and control of the City of Fort Smith, Arkansas. The City of Fort Smith, Arkansas, shall have the right to install, maintain, repair, replace, and remove such utilities, including cable TV, operated by utility companies and other utilities, within the right-of-way. The City of Fort Smith, Arkansas, shall be responsible for the cost of such utilities. The City of Fort Smith, Arkansas, shall be responsible for the cost of such utilities. The City of Fort Smith, Arkansas, shall be responsible for the cost of such utilities.

**SURVEYOR'S CERTIFICATE**

I, Ronald N. Shroy, hereby certify that this plat correctly represents a boundary of the subdivision shown hereon based on record data.



Ronald N. Shroy  
 Registered Professional Engineer  
 Arkansas Reg. No. 4455

**OWNER/DEVELOPER:**  
 THOMAS SPAIN  
 9800 HIGHWAY 71 S  
 Fort Smith, AR 72916  
 479-648-1213

**DIDIER PLACE  
 LOT 5A**

**BEING PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER SECTION 14, TOWNSHIP 7 NORTH, RANGE 32 WEST, FORT SMITH, SEBASTIAN COUNTY, ARKANSAS**

JULY 2014

**BRINLEY ENGINEERING & LAND SURVEYING INC.**  
 P.O. Box 6180 Ft. Smith, AR 72508 (479)648-0334

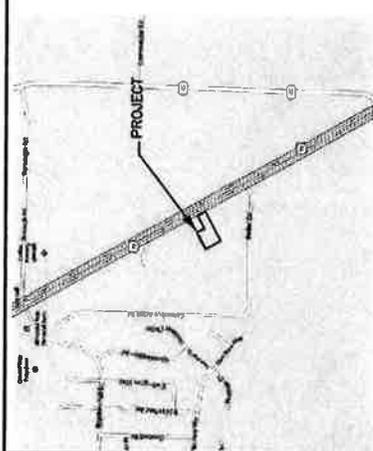


**PROPERTY DESCRIPTION**  
 Lot 5 Didier Place and Part of the Southwest Quarter (SW1/4) of the Northwest Quarter (NW1/4) of Section 14, Township 7 North, Range 32 West, Sebastian County, Arkansas, more particularly described as follows:

Beginning at an existing iron pin on the Western right of way line of U.S. Highway 71 being the Southwest corner of said Lot 5; thence S 61°46'42" W, 352.80 feet along the South line of said Lot 5 to an existing iron pin; thence N 61°46'42" W, 281.00 feet to an existing iron pin; thence N 61°46'42" E, 271.00 feet to an existing iron pin; thence S 27°59'01" E, 100.00 feet to an existing iron pin being the Northwest corner of said Lot 5; thence N 61°46'42" E, 175.00 feet along the Northernly line of said Lot 5 to an existing iron pin; thence S 61°46'42" W, 100.00 feet along the Westernly line of said Lot 5 to an existing iron pin; thence S 27°59'01" E, 100.00 feet along the solid right of way line to the point of beginning; containing 1.40 Acres, more or less, being subject to public road rights of way and any easements of record.

The Name: 01\NCSURFENR13\13-0331.SPAIN THOMAS SEBASTIAN COUNTY ARKANSAS

40



VICINITY MAP  
1" = 1000'

CURRENT ZONING: RE-1 AND C-5  
 PROPOSED ZONING: C-5  
 AREA: 61060 Sq. Ft. or 1.40 Acres  
 LOT COVERAGE: 43,720 Sq. Ft. = 72%

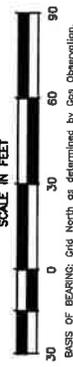
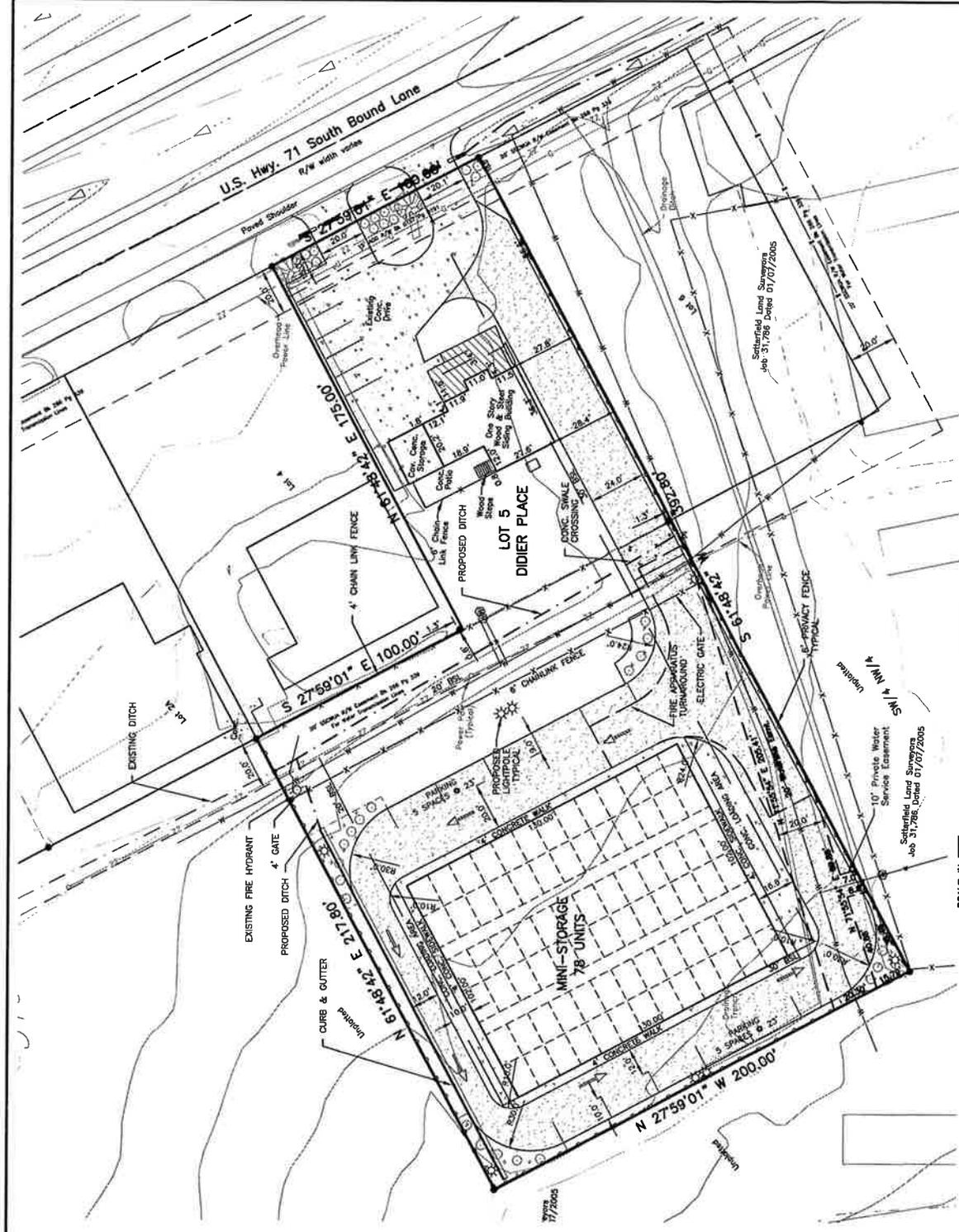
LEGEND

- WATERLINE
- WATER METER
- FIRE HYDRANT
- SAN. SEWER SERVICE
- SEWERLINE
- WATER SERVICE
- EASEMENT LINE
- BUILDING SETBACK LINE
- OVERHEAD ELECTRIC
- CONCRETE CURB
- SIDEWALK
- CONCRETE PARKING
- GRAVEL DRIVE
- PROPOSED LANDSCAPING/SCREENING
- >2" PIN CREPE MYRTLE
- & 3 GAL. BOXWOOD SHRUBS
- LANDSCAPE ISLANDS

TRASH RECEPTACLES - No trash receptacles are proposed.

INTERIOR PARKING - Less than 150 Units @ 4 Spaces Required - 10 spaces Provided  
 INTERIOR PARKING LANDSCAPING - 24,247 Sq.Ft. Vehicle Use Area / 1738 Sq.Ft. Interior Landscape Provided (1213 Sq.Ft. required)

Interior Landscaping will be vegetated in Grasses and be in peninsula form between parking areas.  
 Parking Entry Landscaping shall consist of shrubs of evergreen nature, providing a continuous row of vegetation that is equally effective in winter and summer and be a minimum of 24" at planting.



SCALE IN FEET  
 0 30 60 90  
 BASIS OF BEARINGS: Grid North as determined by GPS Observation.  
 FLOOD ZONE STATEMENT  
 THE PROPERTY IS LOCATED IN ZONE "X", BEING OUTSIDE THE 500 YEAR FLOOD ZONE AS GRAPHICALLY DEPICTED ON F.I.R.M. MAP NO. 05131C0120F, DATED MARCH 2, 2012.

SIDEWALKS - All sidewalks will be elevated 6" above adjacent grade.  
 MECHANICAL EQUIPMENT SCREENING - Mechanical equipment will be well mounted on building, not on detached pad. No screening proposed.

OWNER & DEVELOPER:  
 THOMAS & NANCY SPAHN  
 9500 HIGHWAY 71 SOUTH  
 FORT SMITH, ARKANSAS 72916  
 479-648-1213

**BRIXEY ENGINEERING & LAND SURVEYING, INC.**  
 CONSULTING ENGINEERS -- LAND SURVEYORS  
 5223 East Highway 45 P.O. Box 6180 Fort Smith, Arkansas 72906 (479) 646-6394



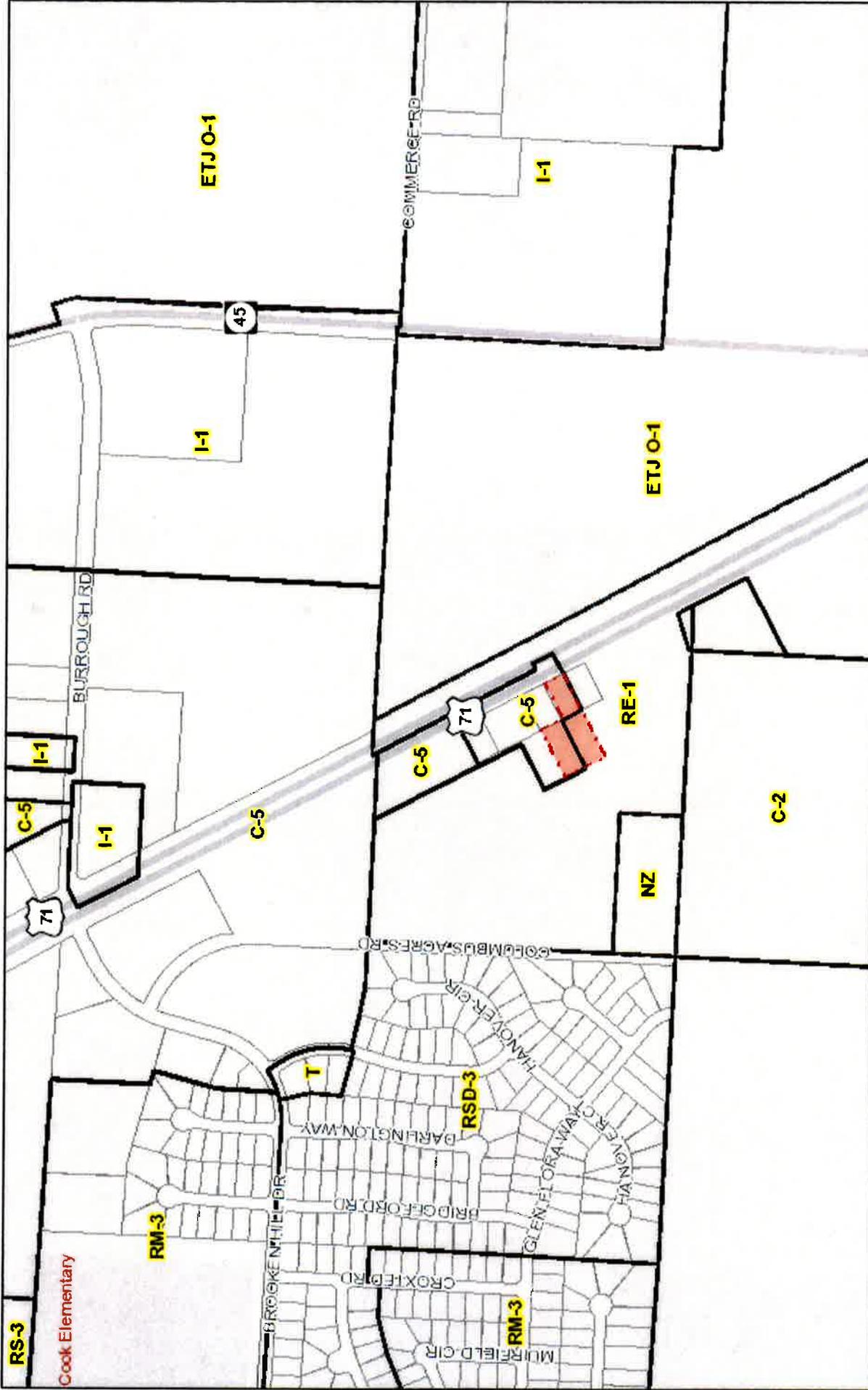
Revisions:

07/15/2014	Add Weathering Emtl. notes

**SITE PLAN**  
 LOT 5A DIDIER PLACE  
 FORT SMITH  
 SEBASTIAN COUNTY, ARKANSAS  
 Prepared For: Tommy Spahn

Date: 8/09/2014
Drawn By: RNB
Checked: RNB
Job No. 13-0231
Sheet
Filed

# Development Plan Review: Mini Storage 9900 Hwy 71 S



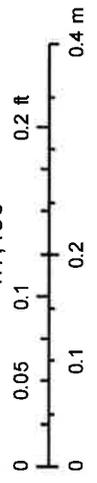
July 21, 2014

Fort Smith City Limits

Zoning

Subdivisions

1:7,139



# Memo

**To:** City Planning Commission

**From:** Planning Staff

**Date:** August 8, 2014

**Re:** Conditional Use #9-8-14 - A request by The Hill Firm, agent for River of Life Church and Arkansas District Pentecostal Church, for Planning Commission consideration of a Conditional Use request to develop a New Church Sanctuary at 6101 Kinkead Avenue

## PROPOSED CONDITIONAL USE

The approval of this Conditional Use request will allow the construction of a new 6,515 square foot sanctuary located south of the existing church facilities.

## LOT LOCATION AND SIZE

The subject property is on the north side of Kinkead Avenue, between North 62<sup>nd</sup> Street and Jeffrey Way. The tract contains an area of 5.51 acres with approximately 400 feet of street frontage along Kinkead Avenue.

## EXISTING ZONING

The existing zoning on this tract is Residential Single Family – Duplex Low/Medium Density (RSD-2). Characteristics of this zone are as follows:

### Purpose:

To provide for attached and detached homes in low-to-medium density neighborhoods where adequate public services and facilities are available. The RSD-2 zoning district is appropriate in suburban areas and primarily applies to the Residential Attached, Mixed Use Residential, and Mixed Use Employment category of the Master Land Use Plan.

### Permitted Uses:

Single-family, duplex dwellings and family group homes are examples of permitted uses.

### Conditional Uses:

Commercial communication towers, amateur radio transmitting towers, golf course, utility substation, country club, parks, college, primary and secondary schools, preschool, nursery schools, police and fire stations, daycare homes and churches are examples of uses permitted as conditional uses.

5A

**Area and Bulk Regulations:**

Minimum Lot Size – 10,500 square feet	Maximum Height - 35 feet (1+1)
Maximum Density – 4 Dwelling Units/Acre	Maximum Lot Coverage - 50%
Minimum Lot Width at Building Line – 75 feet	
Minimum Street Frontage – 50 feet	
Front Yard Setback - 30 feet	
Side Yard on Street Side of Corner Lot - 30 feet	
Side Yard Setback – 7.5 feet	
Rear Yard Setback - 10 feet	
Minimum building separation – 10 feet	

**SURROUNDING ZONING AND LAND USE**

The areas to the north are zoned Commercial Light (C-2 SPL) and are undeveloped.

The area to the east is zoned Residential Single Family Duplex Low/Medium Density and is developed as a single family residence.

The areas to the south are zoned Residential Single Family Low Density and is undeveloped.

The area to the west is zoned Transitional (T SPL) and is undeveloped.

**PURPOSE OF CONDITIONAL USE**

Certain uses are defined as conditional uses because of the potential harmful effects the use can cause to nearby properties and because the requirements to eliminate harmful effects vary from site to site. In considering conditional uses, the Planning Commission will review the overall compatibility of the planned use with the surrounding property as well as specific items such as screening, parking, and landscaping to make sure that no harmful effects occur to nearby properties.

**CONDITIONS FOR A CONDITIONAL USE**

All requirements for a Conditional Use must be met before any part of the use may be utilized. If any specific condition is not met, the Conditional Use authorization may be revoked by the City of Fort Smith pursuant to Section 27-314.

Requirements for a Conditional Use must begin to be met within one (1) year of the authorization unless a special time limit has been imposed by the Planning Commission. An extension of time beyond one (1) year or that imposed by the Planning Commission may be granted by the Director one (1) time for up to ninety (90) days.

**LAND USE PLAN COMPLIANCE**

The *Master Land Use Plan Map* classifies the site as Residential Detached. This classification is intended to create and maintain stable neighborhoods, provide safe, attractive family environments, and protect property values.

5B

## **SITE DESIGN FEATURES**

**Ingress/egress/traffic circulation** – Access to the site will occur on the existing twenty foot wide driveways, which are proposed as one-way.

**Easement/utilities** – The developer must agree to meet all franchise and city utility easement requirements. Additionally, the development must comply with the City's Subdivision Design and Improvement Standards and the Standard Specification for Public Works Construction.

**Drainage** – No drainage improvements are proposed.

**Right-of-way dedication** – A 30-foot right-of-way dedication on Kinkead Avenue is proposed.

**Landscaping** – A 10-foot wide perimeter landscaping buffer with parking lot screening is proposed.

**Screening** – The north and west sides of the property are screened by natural vegetation. Approximately 169 linear feet of 6' privacy fencing is proposed at northerly edge of the east property line, which will connect to existing 6' privacy fencing. The applicant plans to submit a variance application to request that the elimination of approximately 226 linear feet of privacy fencing on the southern portion of the eastern property line. This application will be submitted for consideration at the BZA's September meeting. Mechanical equipment is shown with screening.

**Parking** – The number of parking spaces complies with the parking requirements for churches. There are 60 existing parking spaces and 16 new parking spaces are proposed for a total of 76 spaces. The minimum parking spaces required is 63.

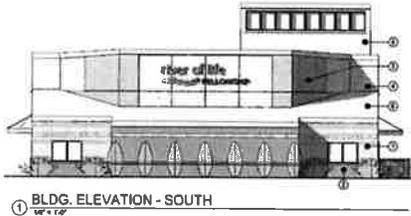
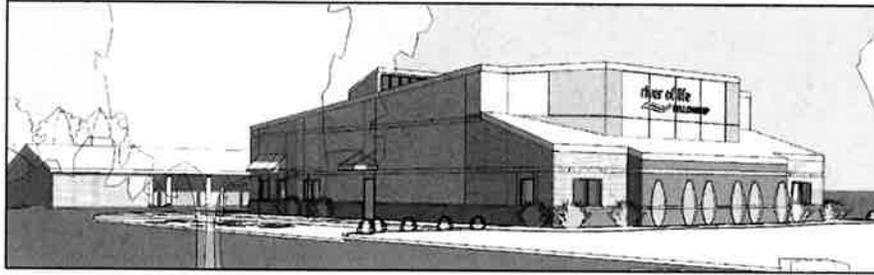
**Signage** – A wall sign is proposed on the new sanctuary and shows compliance with the maximum allowed size of 5% of the wall façade.

**Lighting** – No lighting plan was submitted; however, the plan notes that all site lighting will comply with the UDO and will not create any light trespass, glare or unnecessary sky glow.

**Setbacks** – The proposed new construction will comply with the setback requirements.

**Architectural features** – The structure will consist of brick and stone with stucco/EIFS on the main building. The covered drive through will consist of stone and metal panels above. The proposed building materials comply with the UDO requirement that all facades have a minimum of 51% high-quality materials.

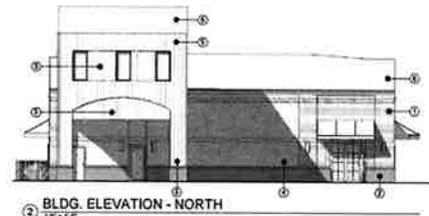
**Height and Area** – The new construction will be 6,515 square feet in area and a maximum height of approximately 27'.



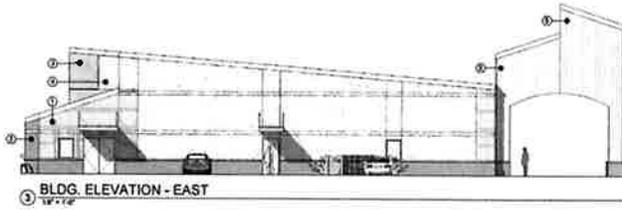
1 BLDG. ELEVATION - SOUTH  
16' x 16'

MATERIAL LEGEND	
①	BRICK VENEER
②	STONE VENEER
③	STUCCO/EIFS 1
④	STUCCO/EIFS 2
⑤	FINISHED METL. PANEL
⑥	P.L.S.M. METAL ROOFING

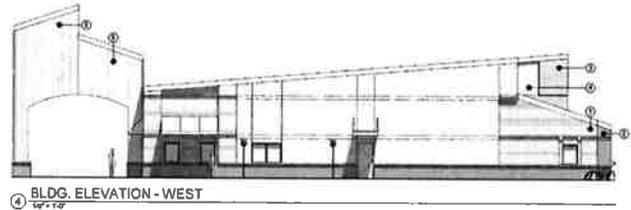
MATERIAL LEGEND	
MESSORY	23%
- BRICK	18%
- STONE	17%
EXT. FINISH SYSTEM 1	4%
EXT. FINISH SYSTEM 2	7%
METAL WALL PANEL	18%
TOTAL	100%



2 BLDG. ELEVATION - NORTH  
16' x 16'



3 BLDG. ELEVATION - EAST  
16' x 16'



4 BLDG. ELEVATION - WEST  
16' x 16'

**STAFF COMMENTS AND RECOMMENDATIONS**

A neighborhood meeting was held Monday, August 4, 2014 at 6101 Kinkead Avenue. Two neighboring property owners attended the meeting. There were no objections to the proposed project. A copy of the attendance record and meeting summary are enclosed.

Staff recommends approval of the application with the following comments:

1. All construction must be built in accordance with the approved Development Plan.
2. A variance application requesting the elimination of approximately 226 feet of privacy fencing along with southern portion of the eastern property line shall be submitted for the BZA's consideration at the September 2014 meeting
3. A lighting plan shall be submitted with the building permit plans verifying that all proposed exterior lights comply with the Commercial and Outdoor Lighting Requirements – UDO Section 27-602-5.
4. Any proposed trash receptacles shall be completely screened from adjoining properties and street right-of-ways.

# THE HILL FIRM

# Architect

6609 ROGERS AVE.  
OFFICE SUITE A  
FORT SMITH, AR 72903  
479 494 1808  
FAX 479 494 1843



## MEMO

**DATE:** August 5<sup>th</sup>, 2014

**TO:** Brenda Andrews - [bandrews@FortSmithAR.gov](mailto:bandrews@FortSmithAR.gov)  
Phil Redding - [philredding@cox.net](mailto:philredding@cox.net)  
Houston Beckham - [Houston@bcincorp.com](mailto:Houston@bcincorp.com)  
Jay Hill - [jay@hillfirm.net](mailto:jay@hillfirm.net)  
File

**FROM:** Kevin Clauson

**SUBJECT:** Neighborhood Meeting Minute

**PROJECT:** River of Life – Sanctuary Addition

**COMMENTS** See below

Meeting started at approximately 5:35 p.m. in the River of Life sanctuary.

- THF gave overall description of the scope of the project.
- Location of project on the site was given.
- Proposed approximate square feet were given.
- Proposed seating capacity was mentioned.
- Traffic flow and site circulation was discussed.
- Exterior finishes were mentioned (brick, stone, E.I.F.S, etc...)
- Proposed landscaping was covered (street buffer & around building)

### Question(s):

Would a privacy fence be required to be installed the full length on the property on the Eastern side with the adjacent property? It was mentioned that this is a City requirement.

Does the chain link fence have to be removed and replaced with a privacy fence? It was mentioned that this is a City requirement.

Attendees discussed not installing a privacy fence along the front half of the property. Adjacent property owner agreed and is willing to provide written documentation stating that they do not wish to have the privacy fence installed on the Southeastern side of the site. All parties are in agreement and would like to request that this portion of fencing not be installed.

The adjacent property owner stated that they would like to address the replacement of the chain link fence between the back (North) portion of the property. Parties discussed possibly splitting the cost of this portion of the fence replacement.

Meeting closed at approximately 5:50.

END OF MEMO

**Kevin Clauson**

The Hill Firm, Inc.  
6609 Rogers Ave., Ste A  
Fort Smith, AR 72903

o. (479) 494-1808  
f. (479) 494-1843  
[kevin@hillfirm.net](mailto:kevin@hillfirm.net)

Enclosure

ATTENDANCE LIST FOR NEIGHBORHOOD MEETING

List the names, addresses & telephone numbers of all residents/property owners who attended the meeting.

Meeting Location 6101 KINKHEAD Ave.

Meeting Time & Date 8/4/14 @ 5:30

Meeting Purpose C.V. CHURCH

	<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE #</u>
1.	<u>Tom Monaco</u>	<u>CITY</u>	<u>784-2218</u>
2.	<u>Kenn Clauson</u>	<u>6609 ROGERS AVE.</u>	<u>494-1808</u>
3.	<u>Hairston Beckham</u>	<u>1535 Construction way VB</u>	<u>479-295-7669</u>
4.	<u>Robert Schibbelius</u>	<u>191 Juniper, Greenwood</u>	<u>479-653-1773</u>
5.	<u>E.L. Redding</u>	<u>918 Skyline Dr. Van Buren</u>	<u>479-474-4256</u>
6.	<u>Jarthur</u>	<u>6609 Rogers Ave</u>	<u>494-1808</u>
7.	<u>Phil Redding</u>	<u>505 Ledanna Dr Van Buren</u>	<u>650-7452</u>
8.	<u>Debra Smith</u>	<u>6105 Kinkhead Fort Smith</u>	<u>648-9494</u>
9.	<u>Alan Smith</u>	<u>6105 " " "</u>	<u>" "</u>
10.	_____	_____	_____
11.	_____	_____	_____

Conditional Use # 9-8-14

**APPLICATION FOR CONDITIONAL USE**

Name of Property Owner: River of Life Church and Arkansas District Pentacostal Church

Name of Authorized Agent (if applicable) The Hill Firm - Architect

Legal Description of property included in the conditional use request:

Part of the West Half (W1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter  
(NW1/4) of Section 13, Township 8 North, Range 32 West, Sebastian County, Arkansas,  
Refer to Survey for continuation.

Street Address of Property:

6101 Kinkead Ave., Fort Smith, Arkansas 72903

Existing Zoning Classification:

R-2-SF-DP

Proposed Zoning Classification (if applicable):

R-2-SF-DP

Describe Proposed Conditional Use Request, including the development of any construction proposed of the property:

The Conditional Use Request is for a proposed expansion/addition to the existing Church  
to include the construction of a new 6515 S.F. (approx.) freestanding sanctuary w/ services.

What amenities are proposed such as landscaping and screening?

Planned amenities include buffer areas, screening and landscaping in compliance with  
the UDO. These amenities include street frontage landscaping and privacy fence extension.

THE HILL FIRM - ARCHITECT  
Owner or Agent Name (please print)

Signed:

6609 ROGERS AVE. STE-A FORT SMITH,  
Owner or Agent Mailing Address ARKANSAS Owner

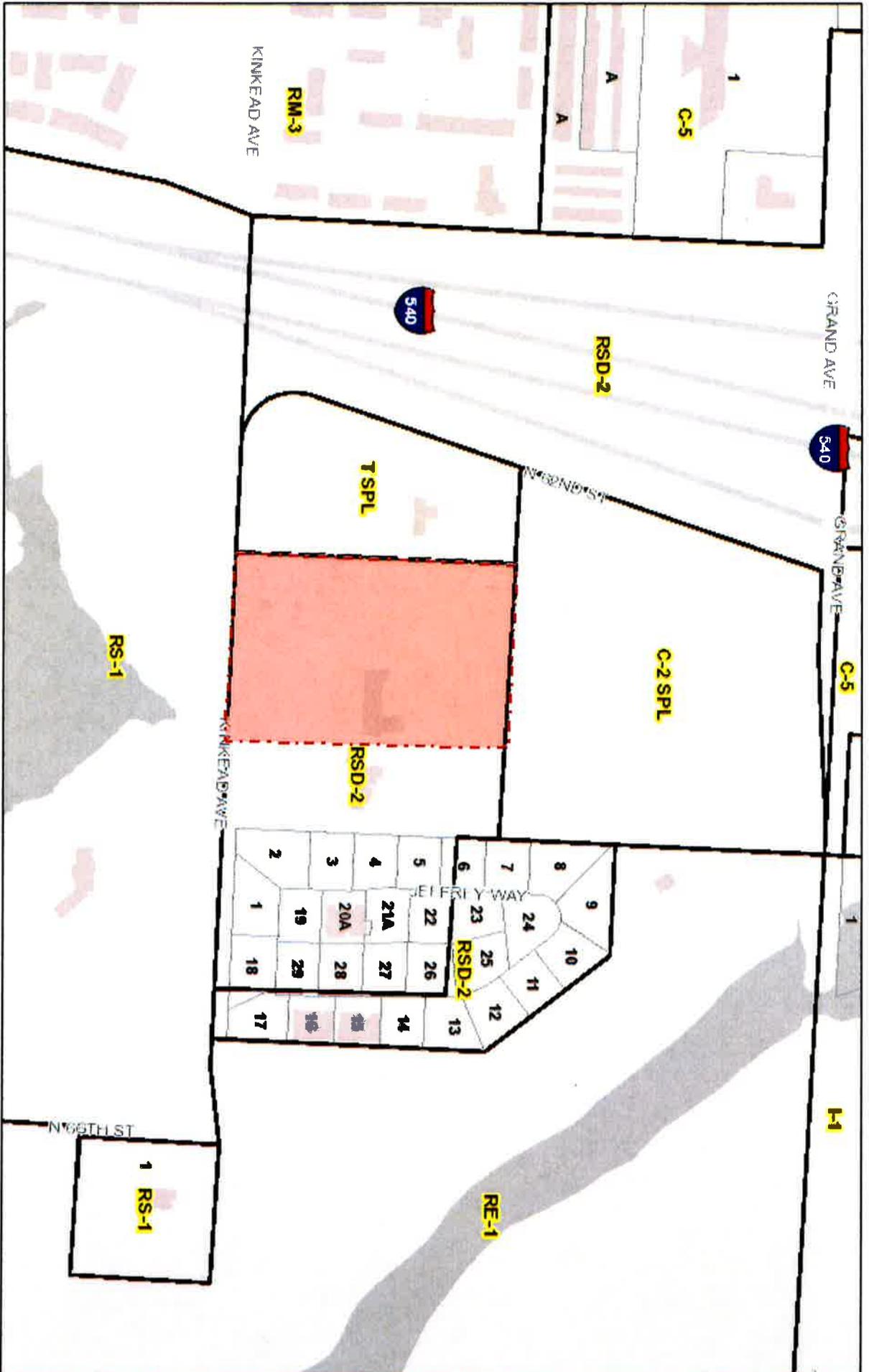
Or

(479) 494-1808  
Owner or Agent Phone Number

[Signature]  
Agent

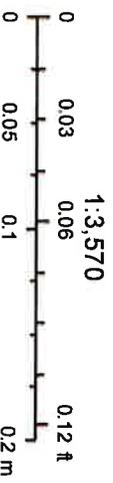
5H

# Conditional Use #9-8-14: New sanctuary for Church 6101 Kinkead Avenue



July 21, 2014

-  Fort Smith City Limits
-  Building Footprints
-  Zoning
-  Subdivisions









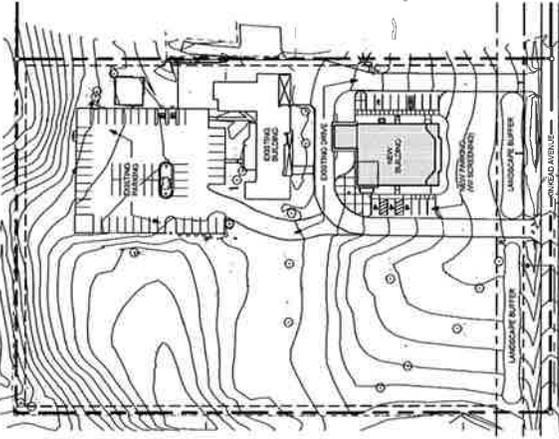
# river of life FELLOWSHIP



4907 79th Ave.  
Denton, Texas 76201  
Phone: 479.684.1800  
Fax: 479.684.1803

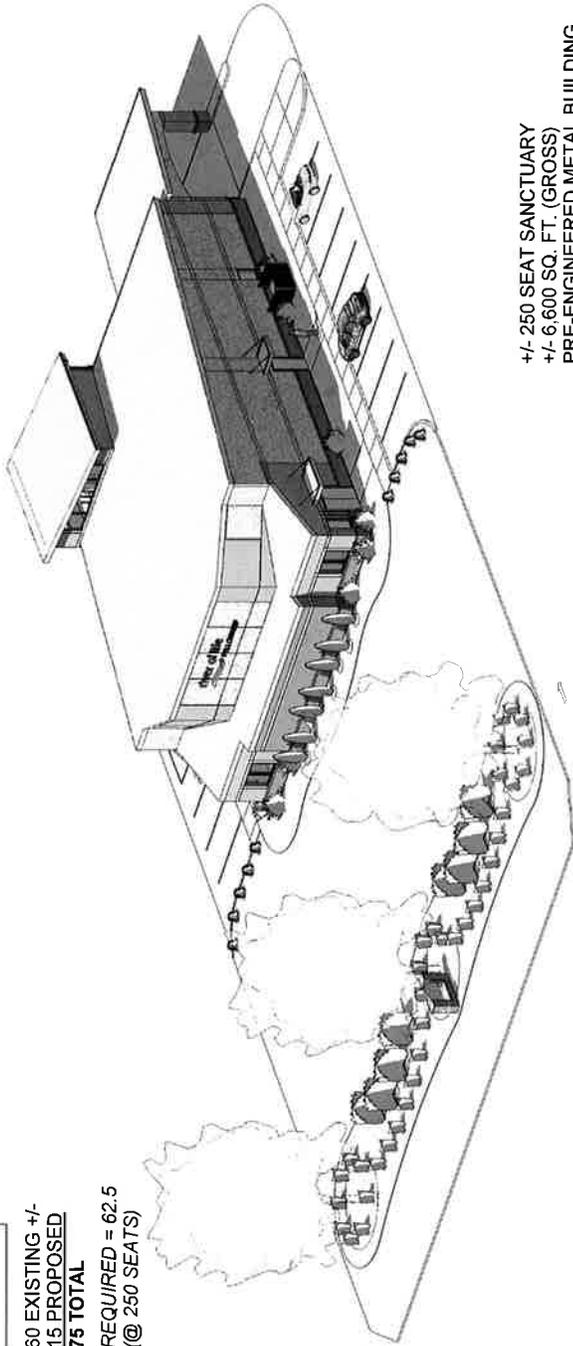
THF #: 2014-11

DATE: 08/08/2014



### PARKING

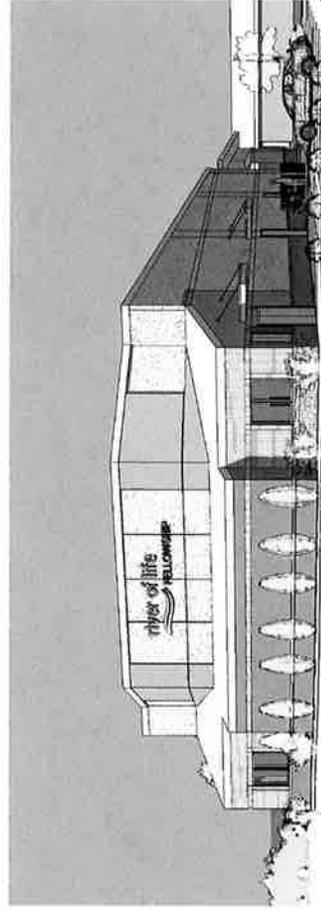
60 EXISTING +/-  
15 PROPOSED  
**75 TOTAL**  
REQUIRED = 62.5  
(@ 250 SEATS)

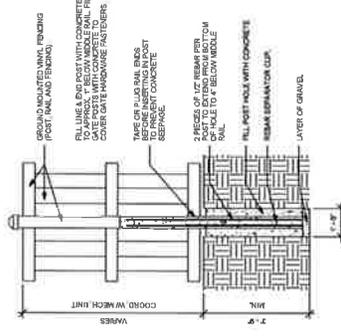
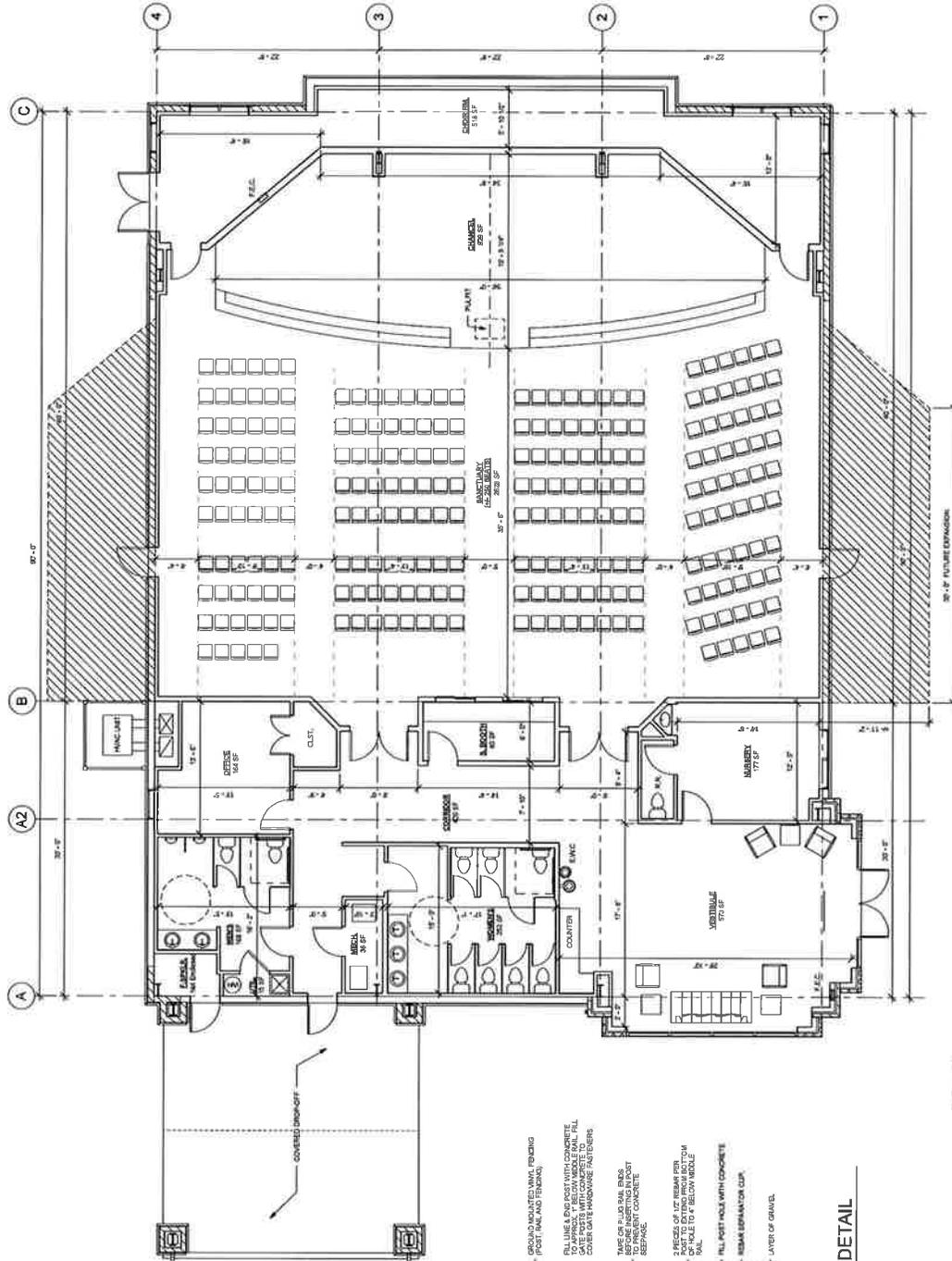


+/- 250 SEAT SANCTUARY  
+/- 6,600 SQ. FT. (GROSS)  
PRE-ENGINEERED METAL BUILDING

(A) OVERALL SITE PLAN  
THF # 110

(1) 3D VIEW - SOUTH EAST





1 FLOOR PLAN (F.F.E)  
3/16" = 1'-0"

2 MECH. SCREEN DETAIL  
1/2" = 1'-0"

6,600 S.F. (GROSS)

30'-0" FUTURE EXPANSION

4'-0" GATE (C.A. 200)

5M



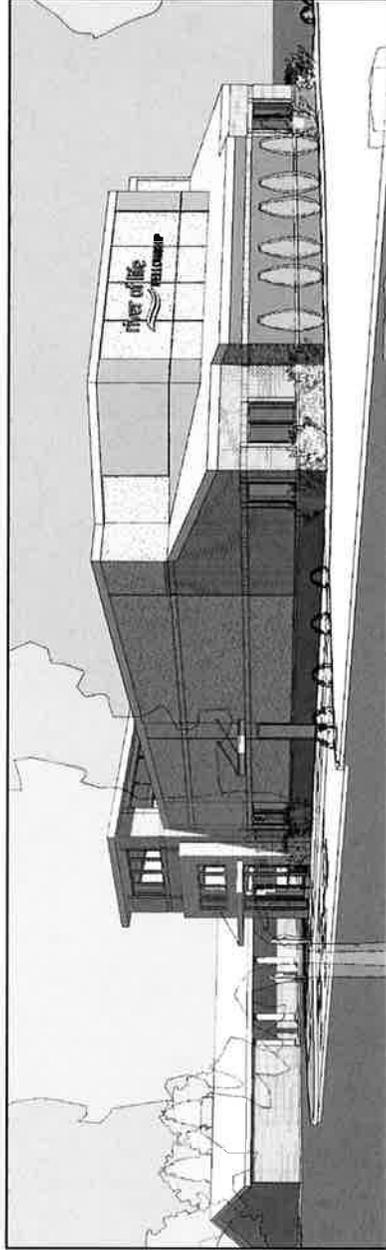
# river of life FELLOWSHIP



6807 PARKWAY AVE  
FARMERS BRANCH, TX 75042  
P.O. BOX 148 75003  
479.454.1000  
FAX 479.454.1803

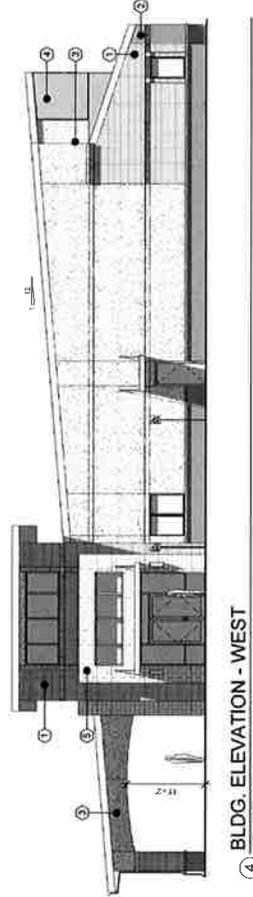
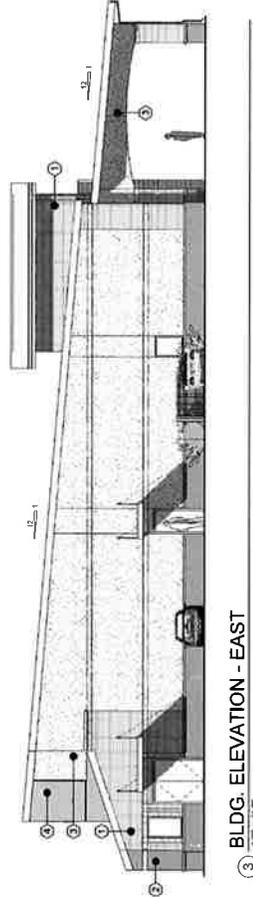
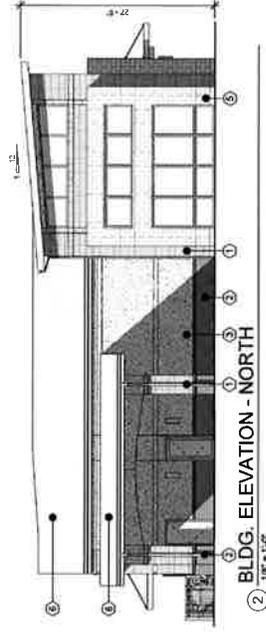
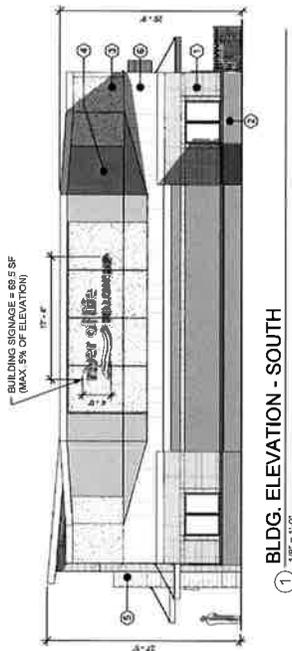
THF #: 2014-11

DATE: 08/08/2014



MATERIAL LEGEND	
①	BRICK VENEER
②	STONE VENEER
③	STUCCOEIFS 1
④	STUCCOEIFS 2
⑤	CONCRETE MASONRY UNIT
⑥	P.E.M.B METAL ROOFING

MATERIAL LEGEND	
MASONRY	51%
- BRICK	26%
- STONE	17%
EXT. FINISH SYSTEM 1	46%
EXT. FINISH SYSTEM 2	7%
CONC. MASONRY UNIT	5%
TOTAL	100%



52

# Memo

To: City Planning Commission  
From: Planning Staff  
Date: August 8, 2014  
Subject: Zoning Ordinance Amendments – Unified Development Ordinance

Planning staff proposes the following amendments:

1. When the UDO was adopted the section exempting the Commercial Downtown (C-6) zone from the parking requirements was inadvertently omitted. This amendment includes that section in the UDO.
2. The proposed amendment makes it clear that this section only applies to residential subdivisions.
3. For consistency, this amendment makes the standard for landscaping Industrial properties the same as it is for architectural design standards.
4. This amendment simply corrects an incorrect section reference.
5. The proposed amendment allows residential subdivisions to have two signs per entrance.
6. The land use change permits by right bicycle sales and service with no outdoor storage in all commercial zoning districts as well as the Industrial Light zoning district.

All of the proposed changes are highlighted on the attached pages. If the Planning Commission agrees with staff we request you recommend approval of these amendments.

6A

1. Vehicle servicing and equipment assembly as part of a sales operation shall be conducted within an enclosed building unless adequate visual screening from the public and adjoining properties
2. All areas unoccupied by buildings, parking lots or used as traffic ways shall be maintained in a safe and orderly condition.
3. No display of merchandise shall be permitted on public sidewalks or rights-of-way.
4. Special sales merchandise may be temporarily displayed outdoor, but not to exceed a period for more than 14 days or no more than two occasions per year (total of 28 days per year) provided:
  - a. The display shall be limited to the private walk in front of the store.
  - b. No required parking area shall be used as a display or sales area.
5. There shall be no open display in the first twenty (20) feet of the required front yard setback.

<b>27-427      COMMERCIAL DOWNTOWN (C-6)</b>
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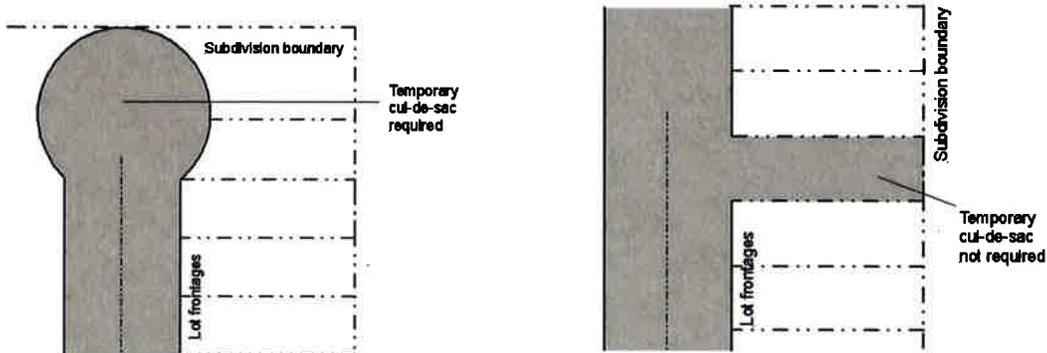
- A. Purpose** To provide for the orderly development of the original downtown area of Fort Smith and the areas immediately adjacent to it. The Commercial Downtown (C-6) Zoning District establishes guidelines and controls that allow for retail and residential development which is compatible with existing and expanding governmental, financial, professional, cultural, historic, and entertainment facilities. Commercial, governmental, and professional uses that serve the metropolitan area are allowed in this zone.
- B. Land Uses.** Permitted, Conditional and Accessory land uses in the C-6 District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the list are subject to classification pursuant to Section 27-336.
- C. Area and Bulk Regulations**

<b>Max. Lot Size/Max. Bldg (s.f.)</b>	<b>Min. Lot Width</b>	<b>Max Lot Coverage</b>	<b>Minimum Street Frontage</b>	<b>Max Height</b>
n/a	n/a	100%	n/a	n/a
<b>Setbacks (feet)</b>				
<b>Front Setback</b>	<b>Side Setback</b>	<b>Street Side</b>	<b>Rear Setback</b>	
		206		





- 3. Dead-end streets shall be designed according to Fort Smith Street Standards.



**27-503-11 Landscaping**

A. Applicability

The Residential subdivisions shall include perimeter frontage landscaping and subdivision entry landscaping as provided below. Replats of existing residential lots and residential subdivisions with no more than five (5) lots are exempt from perimeter frontage landscaping and subdivision entry landscaping. This requirement does not include residential for multifamily development.

B. Perimeter Frontage Landscaping

Perimeter frontage landscaping shall comply with the following:

1. Perimeter landscaping shall be located along the entire perimeter of the subdivision that fronts the right-of-way of a public street. The perimeter landscaping shall be located on the subdivision property. The landscaping shall be parallel and adjacent to the public right-of-way line.
2. The perimeter landscaping area shall have a minimum width of ten (10) feet.
3. At a minimum, the perimeter landscaping planting strip shall be planted with one (1) tree and ten (10) shrubs for every fifty (50) linear feet of right-of-way frontage.

C. Subdivision Entry Landscaping

1. Applicability. Proposed developments subject to this requirement shall provide subdivision entry landscaping. Subdivision entry landscaping must conform to the standards in subsection (b), below.
2. Standards

6 E

5. Parking lots should be divided into blocks of 40-50 spaces. Where blocks are not easily defined, groups of 20 spaces should be divided by a landscaped median island at least the size of one stall.
6. Accessible parking must be provided according to the City of Fort Smith requirements
7. Parking lots should include appropriately marked locations with racks for bicycle parking.
8. Dead-end parking (parking without a clear turn-around area) should be avoided and shall not be permitted on any non-infill or redevelopment projects.
9. Structured parking (e.g., parking decks or ramps) shall conform to the following:
  - a. Structured parking adjacent to a street shall provide an active front with pedestrian-oriented uses.
  - b. Structured parking shall integrate with adjacent buildings by using similar materials, alignments, and architectural finishes.

**F. Phased Development.** If a development is to be built in phases, each phase shall include an appropriate share of the proposed streets and circulation system, landscaping and outdoor spaces, screening, and other site and architectural amenities of the entire project. The extent of these improvements shall be determined for each phase of a specific project during the time of project development approval, but may not be based solely upon a proportional or equal share of the entire site. Requirements for a phased project may include off-site improvements

## **27-602-3 Landscaping and Screening**

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### **A. Applicability.**

1. The Landscaping and Screening requirements of the Design Guidelines apply to all new multifamily, non-residential development in residential zones, transitional, commercial, and industrial development within the City of Fort Smith. In areas where the Downtown or Belle Grove design standards apply, those standards will control over these in the case of conflict.
2. The Design Guidelines apply to existing multifamily, transitional, commercial, and industrial development within the City of Fort Smith when rehabilitation (renovation, restoration, modification, addition, or retrofit) is proposed to the exterior of a structure or site will: (1) increase the gross square footage of the structure by 50% or greater and (2) shall also

include any cumulative building additions from the effective date of this ordinance that over a five year period amount to a 50% or greater increase in square footage.

3. Rehabilitation projects shall conform to the guidelines to the greatest extent possible.
4. ~~Industrial subdivisions are required to provide perimeter landscaping only.~~

Industrial, storage and distribution buildings when constructed along major arterial or boulevard streets as classified by the master street plan, or adjacent to residential zoning districts or single family development, and/or those buildings at the perimeter of an industrial subdivision shall provide perimeter landscaping only.

5. Parking lots used solely for the display of vehicles at an approved auto and vehicle dealer are required to provide perimeter landscaping only.
6. Development or properties in compliance with these regulations shall not be renovated, remodeled, altered, or repaired so that the site will be in noncompliance with these regulations.

**B. Perimeter Landscaping** Perimeter landscaping requirements along public rights-of-way are as follows:

1. A ten-foot wide landscaped area is required and shall be located on the property parallel and adjacent to the public street right-of-way line.
2. The minimum requirement for a planting strip will be one (1) tree and ten (10) shrubs for every fifty (50) linear feet of right-of-way frontage.
3. To insure that landscape materials do not constitute a sight hazard, a clear sight visibility triangle shall be observed at all street intersections or intersections of driveways with streets. Within the designated sight visibility triangle, no landscape material exceeding twenty-four (24) inches in height shall be permitted; provided, trees may be permitted as long as only the tree trunk is visible between the ground and eight (8) feet above the ground and the tree does not otherwise present a traffic visibility hazard. The dimensions of the sight visibility triangle are as indicated in the attached diagram for driveways for street intersections.

**C. Parking Lot Screening.**

Parking lot screening shall be placed in the ten-foot landscaped area reserved for the perimeter landscaping. The parking lot screening can satisfy the perimeter landscaping requirements, when the parking lot screening is installed in compliance

**Street Classification**

**Major Arterial/Boulevard**

**Freeway**

Grand

I-540

Rogers

I-49

Zero

Phoenix Avenue

Wheeler

North 6<sup>th</sup>

North 10<sup>th</sup> & 11<sup>th</sup>

Riverfront

Waldron (Rogers to Grand)

North 50<sup>th</sup>

South 74<sup>th</sup> (Phoenix to Dallas)

Massard Road (from Dallas South)

Rye Hill Road East (from Hwy. 71 to Massard)

Custer

Roberts Boulevard

North 23<sup>rd</sup> (Kelley Highway to Spradling Avenue)

Kelley Highway

Garrison Avenue (Dodson to Rogers)

Taylor Avenue

Highway 71

Highway 271

Towson

Highway 253

Chad Colley

Highway 45

Old Greenwood Road

6H

2. The Design Guidelines apply to existing multifamily, commercial and industrial development within the City of Fort Smith when rehabilitation (renovation, restoration, modification, addition, or retrofit) is proposed to the exterior of a structure or site will: (1) increase the gross square footage of the structure by 50% or greater and (2) shall also include any cumulative building additions from the effective date of this ordinance that over a five year period amount to a 50% or greater increase in square footage.
3. Rehabilitation projects shall conform to the guidelines to the greatest extent possible.
4. Buildings in compliance with these regulations shall not be renovated, remodeled, altered, or repaired so that the building will be in noncompliance with these regulations.

### **C. Transitional and Commercial Building Design Standards.**

1. Any development that contains more than one building shall incorporate a recurring, unifying and identifiable theme for the entire development.
2. The predominant (fifty-one (51) percent of the gross wall area or greater) exterior building facade of all commercial buildings must be of high quality materials such as brick, wood, native stone, tinted glass, stucco, exterior insulated finished systems (EIFS), cementitious siding (e.g., Hardie Board), tinted/textured concrete masonry units, or other siding materials as approved by the Director. Smooth-faced concrete block, plain or untextured tilt-up panels and prefabricated steel panels are prohibited as the predominant facade. Applicants with commercial development adjacent to residential development may incorporate residential materials on the side of the development that faces the residential development.
3. All facades of a building that are visible from the finished grades of adjoining properties or public streets shall have design characteristics similar to the building's front facade. This shall be implemented by requiring the same treatment as discussed in **B C.2** above.
4. All mechanical equipment, heating/cooling systems, trash receptacles and utility boxes shall be completely screened from adjoining properties and street right-of-way.
  - a. For ground-mounted equipment, the screening shall consist of a wall, fence, or approved landscaping or the equipment must be enclosed within a building.

b. Signs required for public health and safety or identification may be displayed on security fencing if placed in conformity with section 27-704-5.

(5) Subdivisions, developments signs: ~~One~~ **Two** (4 ~~2~~) signs per entrance, **Signage shall** not ~~to~~ exceed twenty-four (24) square feet in area per sign.  
 (Ord. No. 3391, as amended, § 10-10(B), 11-1-76; Ord. No. 64-99, § 2, 10-5-99)

**27-704-2 Permitted business signs in transitional zones**

The following types of signs are permitted and the following regulations shall apply to all signs in transitional zones:

- (1) Flat, single-faced signs may be mounted directly on the facade of a structure, provided that the total sign area does not exceed five (5) percent of the building facade area (building elevation area) as measured from the adjacent street right-of-way.
- (2) Pedestal or monument type signs are permitted and shall conform to the following regulations:
  - a. Such signs, if illuminated, shall be illuminated with indirect lighting only;
  - b. The maximum size of a pedestal or monument sign for a lot or parcel fronting on any local street, identified from time to time by the City of Fort Smith Master Street Plan, shall not exceed twelve (12) square feet;
  - c. The maximum size of a pedestal or monument sign for a lot or parcel fronting on any collector street and arterial street, identified from time to time by the City of Fort Smith Master Street Plan, shall be based upon the length of lot or parcel frontage as outlined as follows:

TABLE INSET:

Frontage Length	Maximum Signage Area
0--99 ft.	18 sq. ft.
100--199 ft.	24 sq. ft.
200 ft. or greater	32 sq. ft.

d. If directional sign(s) are utilized within a development on a lot or parcel, the size of the directional signage shall be considered as part of the maximum sign area for the lot or parcel which contains the directional sign(s) and shall



# Memo

**To:** City Planning Commission

**From:** Planning Staff

**Date:** August 1<sup>st</sup>, 2014

**Re:** Variance #22-8-14 - A request by Fred Kirkwood, agent for AOG, for Board of Zoning Adjustment consideration of a zoning variance request from Section 27-602-5 Commercial and Outdoor Lighting requirements located at 4315 Savanna Street.

## REQUESTED VARIANCE

The variance if approved will allow for two (2) street light type fixtures to be installed at the entrance of 4315 Savannah Street.

## LOT LOCATION AND SIZE

The subject property is on the north side of Savannah Street between South 46<sup>th</sup> Street and Old Greenwood Street. The tract contains an area of 2.2 acres with approximately 278 feet of street frontage along Savannah Street.

## EXISTING ZONING

The existing zoning on this tract is Industrial Light (I-1).  
Characteristics of this zone are as follows:

### Purpose:

To provide for a mixture of light manufacturing, office park, research and development, and limited retail/service retail land uses in an attractive, business park setting. The Industrial Light district may be used as a zoning buffer between mixed uses, commercial uses and heavier industrial uses. The I-1 zoning district is appropriate with the Office, Research, and Light Industrial (ORLI) and Industry classifications of the Master Land Use Plan.

### Permitted Uses:

Auto and boat related businesses, a wide variety of retail businesses, indoor flea market, pawnshop, financial services, offices, bar or tavern, restaurant, animal and pet services, manufacturing and commercial communication towers are examples of permitted uses.

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**Conditional Uses:**

Homeless shelter, truck stop, outdoor flea market, beer garden, restaurant with outdoor dining, pet cemetery, animal food processing, petroleum distribution facility, bus station, recycling center, sports complex, educational facilities and police station are examples of uses permitted as conditional uses.

**Area and Bulk Regulations:**

Minimum Lot Size – 20,000 square feet  
(1+1)

Maximum Height - 45 feet

75%

Maximum Lot Coverage -

Minimum Parcel/Lot Size for Rezoning – New District (By Classification) - 2 acres

Existing District (By Extension) – 20,000 square feet

Minimum Lot Width – 100 feet

Front Yard Setback - 25 feet

Side Yard on Street Side of Corner Lot - 15 feet

Side Yard Setback – 10 feet

Rear Yard Setback - 10 feet

Side/Rear (adjoining SF Residential District/Development) – 100 feet (may be reduced to 60 feet with Planning Commission approval of screening and/or landscaping through the Development Plan approval process)

Minimum building separation – to be determined by current City building and fire code.

Required street access – Major Arterial or higher

**SURROUNDING ZONING AND LAND USE**

The areas to the north are zoned Industrial Light (I-1) and are developed as a plumbing contractor shop and storage and another undeveloped developed tract.

The area to the east is zoned Industrial Light (I-1) and is developed as light manufacturing facility.

The area to the south is zoned Industrial Light (I-1) and is developed as the Fort Smith Regional Airport.

The area to the west is zoned Industrial Light (I-1) and is undeveloped with an existing concrete foundation.

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## **MASTER STREET PLAN CLASSIFICATION**

The Master Street Plan classifies Savannah Street as a local road.

## **LAND USE PLAN COMPLIANCE**

The *Master Land Use Plan* map currently classifies the site as Office, Research and Industrial. This classification is intended to provide opportunities for clean, indoor, minimum impact, research, development, assembly, manufacturing, warehousing, distribution, and supportive goods and services. Approval of the variance will not conflict with the goals and objectives of the Unified Development Ordinance.

## **APPLICANT HARDSHIP**

The applicant has stated that the light locations at the entrances of the driveways will allow for a more safe entrance and exit to and from the site after dark. The application also mentioned that no existing street lights are close to this location.

## **STAFF COMMENTS AND RECOMMENDATIONS**

The Planning Commission previously approved the development and three other variance requests for the site during the October 2013 Planning Commission meeting. Planning Staff believe that this approval will have minimal changes to the previously approved development and will not affect the surrounding property owners. Please see the supplied FAA letter verifying that the lighting will have no affect on air navigation.

### Staff Comments

If the BZA approves this variance, staff requests that it substantiate its reason for approval in accordance with Section 27-337-2 of the Unified Development Ordinance, which permits the granting of a variance only when it is demonstrated that such action is in keeping with the spirit and intent of the provisions of the zoning chapter.

Staff recommends approval of the application contingent upon the following.

- All construction must comply with the submitted development plan with any planning commission amendments.

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**APPLICATION FOR VARIANCE**

Notice is hereby given that the undersigned, as owner(s) of the following property in the Fort Smith District of Sebastian County, Arkansas, to-wit: (Legal Description)

Address of property 4315 Savannah Street, Existing or Proposed

Zoning Classification Industrial Light, has filed with the Planning Department a written application pursuant to Article 5-6 of Ordinance 2324 of the City of Fort Smith, Arkansas, to secure a variance from the literal provisions of the zoning ordinance as follows:

<b><u>Office Use Only-List the Specific Variance Requested and Applicant Stated Hardship</u></b>

**FROM**

**TO**

\_\_\_\_\_ - \_\_\_\_\_ Front Yard Setback or Minimum Distance from Right-of-Way

\_\_\_\_\_ - \_\_\_\_\_ Exterior Side Yard Setback

\_\_\_\_\_ - \_\_\_\_\_ Interior Side Yard Setback

\_\_\_\_\_ - \_\_\_\_\_ Rear Yard Setback

\_\_\_\_\_ - \_\_\_\_\_ Maximum Height of Structure

\_\_\_\_\_ - \_\_\_\_\_ Minimum Distance Between Structures on the Same Lot

\_\_\_\_\_ - \_\_\_\_\_ Minimum Lot Area (Square Feet)

\_\_\_\_\_ - \_\_\_\_\_ Minimum Lot Frontage

\_\_\_\_\_ - \_\_\_\_\_ Maximum Size of a Sign

\_\_\_\_\_ - \_\_\_\_\_ Other: Section 27-602-5 commercial 3' outdoor lighting

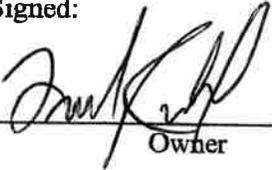
The undersigned will present said application to the Board of Zoning Adjustment at the first regular City Planning Commission meeting following the expiration of seven (7) days from the date of this publication, at which meeting the Board of Zoning Adjustment will conduct a public hearing on

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said application. All interested persons are invited to attend and are entitled to be heard. This notice is published this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Arkansas Oklahoma GAS  
Fred Kirkwood  
Owner or Agent Name (please print)

Signed:

  
\_\_\_\_\_  
Owner

or

4797833187  
Owner or Agent Phone Number

\_\_\_\_\_  
Agent

P.O. Box 2414 72902  
Owner or Agent Mailing Address

Variance # \_\_\_\_\_

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**VARIANCE INFORMATION FORM**

The following paragraph (Section 27-337-2) of the Fort Smith Unified Development Ordinance defines the criteria for granting a variance:

The Board of Zoning Adjustment shall hear requests for variances from the literal provision of the zoning chapter in instances where strict enforcement of the zoning chapter would cause undue hardship due to circumstances unique to the individual property under consideration, and shall grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the zoning chapter. The Board of Zoning Adjustment shall not permit, as a variance, any use in a zone that is not permitted under the chapter. The Board of Zoning Adjustment may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

1. To aid the Board of Zoning Adjustment in arriving at a decision on your application, please note the lot information requested and check the appropriate answer to each of the questions that follow.

<u>Yes</u>	<u>No</u>	
_____	<input checked="" type="checkbox"/>	Is this variance needed because of previous actions taken by yourself?
_____	<input checked="" type="checkbox"/>	Is this variance needed because of previous actions taken by a prior owner?
<input checked="" type="checkbox"/>	_____	A zoning hardship is present only when a property has no reasonable use without a variance. Do you have use of your property without a variance?
<input checked="" type="checkbox"/>	_____	Is the variance needed due to the unique circumstances of the property (such as lot area, lot width, setbacks, yard requirements, or building height)? If yes, please explain on the following page.
_____	<input checked="" type="checkbox"/>	Is the lot of an odd or unusual shape?
_____	<input checked="" type="checkbox"/>	Does the lot have "radical" topography (steep, unbuildable slopes - streams or bodies of water - unstable or eroded area)?
<input checked="" type="checkbox"/>	_____	Does the lot contain required easements other than those that might be located on its perimeter?
_____	<input checked="" type="checkbox"/>	Is any part of the lot in a flood plain or flood way?
_____	<input checked="" type="checkbox"/>	Is the lot smaller than minimum lot area or minimum frontage for its zoning classification?
_____	<input checked="" type="checkbox"/>	Is the lot developed with structures in violation of current zoning requirements?
_____	<input checked="" type="checkbox"/>	Does the lot front any street classified as an arterial or collector on the Master Street Plan?

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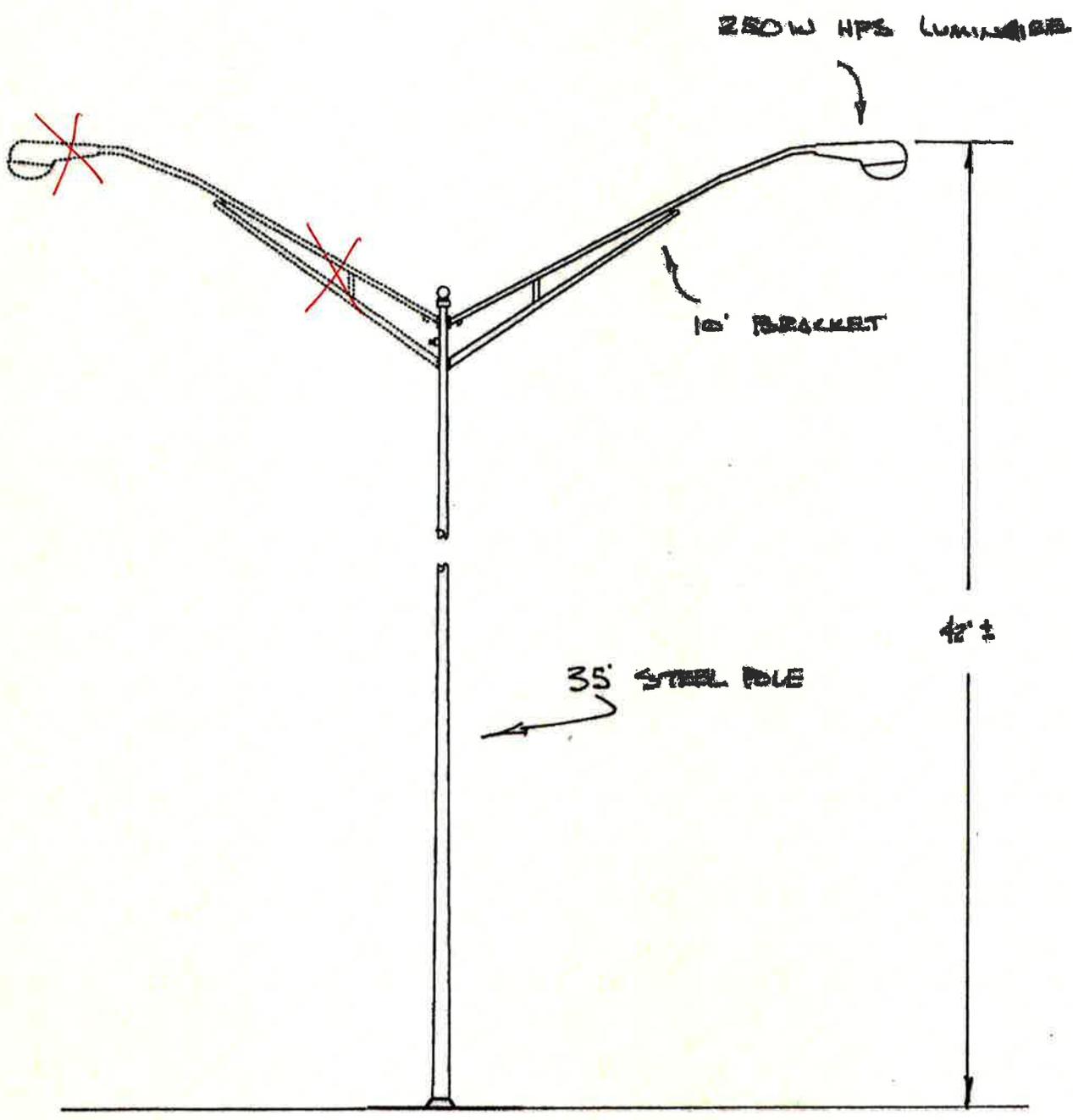
**Explanation of question #4 (if applicable)**

There is no street lighting on Savannah Street. AOG is requesting to install lighting at driveway entrances to provide customers with safe access after dark.

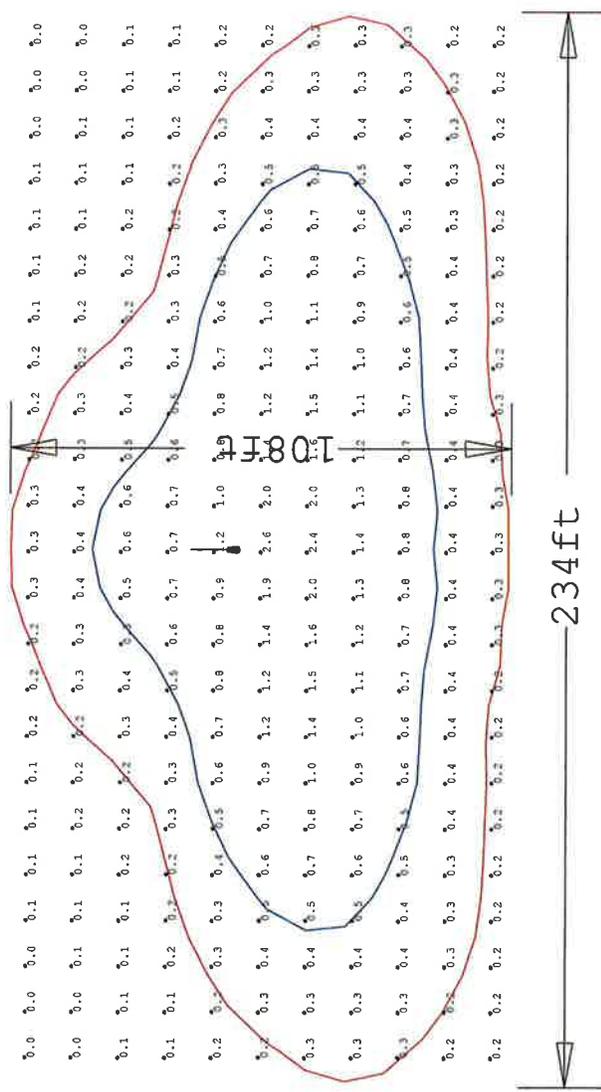
2. Describe how the strict enforcement of the zoning code causes an undue hardship for your project:

The light trespassing ordinance restricts AOG from providing safe entrance for our customers after dark.

3. List any special circumstances/conditions which exist that have not been created by the owner/applicant and do not apply to other properties in your area:

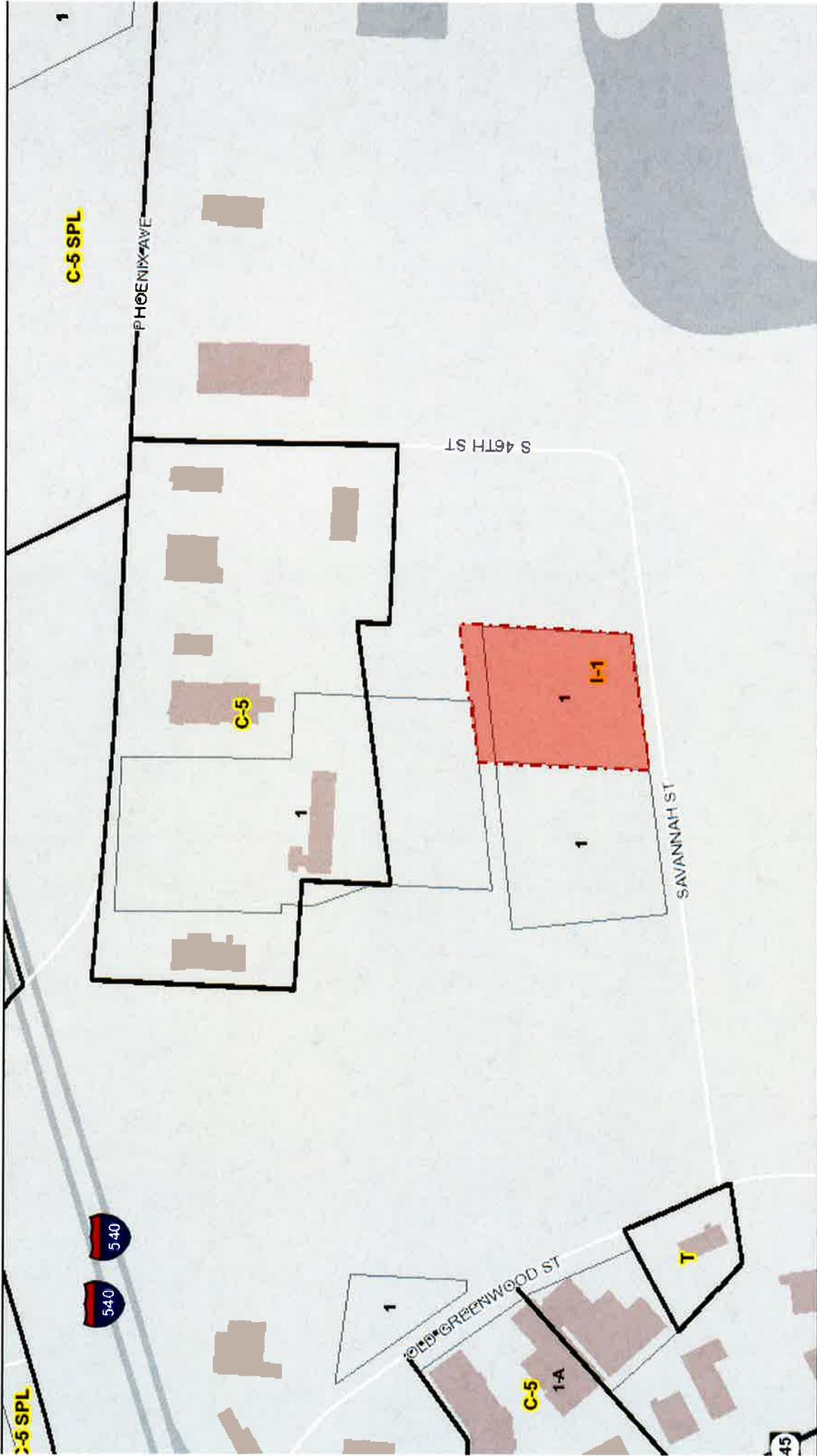


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# Variance #22-8-14: From Section 27-602-5 Commercial and Outdoor Lighting 4315 Savannah Street



August 1, 2014

- Fort Smith City Limits
- Building Footprints
- Zoning
- Subdivisions



**MORRISON SHIPLEY**  
ENGINEERS & SURVEYORS  
6701 Super Lane, Suite 250 • Fort Smith, AR 72204 • 479.651.1555 • www.morrisonshipley.com

AGG / CNG FILLING STATION  
4466 SAVANNAH STREET  
FORT SMITH, ARKANSAS

ARCHITECTURE PLUS, INC.  
607 South 21st Street  
Fort Smith, Arkansas 72204-6200  
SITE DIMENSION AND LANDSCAPING PLAN

PROJECT: 13-58  
DATE: 04-04-14  
C.I.1



**LEGEND**

	Existing City, Gas, Water
	Proposed Street Driveway
	Approx. Limits of Soil
	Existing Gravel Colours
	Existing Planting
	Existing Overhead Telephone
	Existing Overhead Electric
	Existing Meter/Manhole
	Existing Sewer
	Existing Night-lighting
	Existing Threshold of Driveway
	Existing Asphalt Pavement
	Existing Gravel

**LEGAL DESCRIPTION**  
Parcel 1, Parcel-Johnson Subdivision, As Platted For Record On March 2, 1984.

**LEGISLATIVE REFERENCES**  
Title 10A, Arkansas Code Annotated, Section 10A-2-1-1, Subsection (b), Paragraph 1, Item 1, and Paragraph 2, Item 1, of the Arkansas Code Annotated, which relate to the regulation of the practice of landscape architecture.

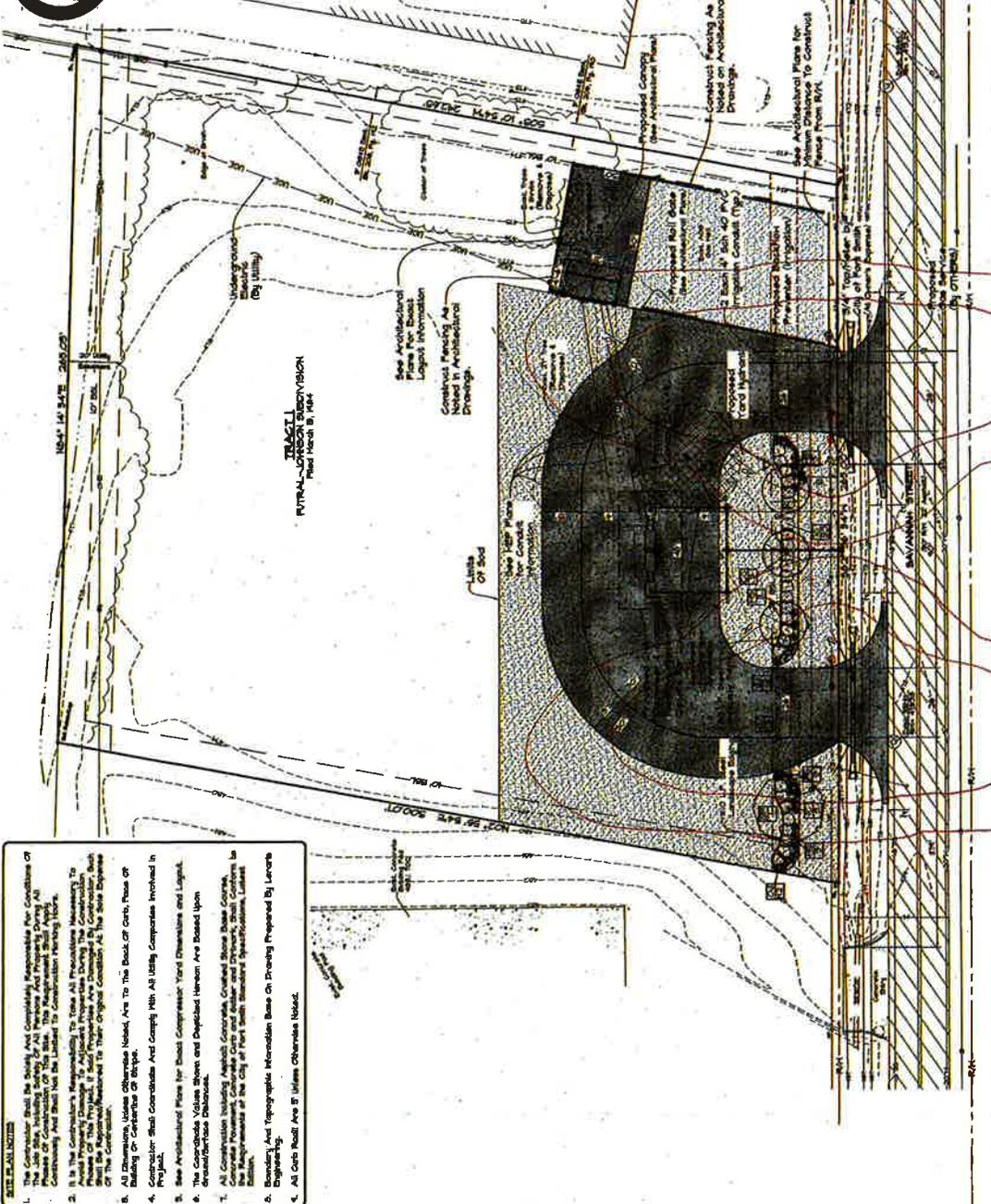
**PERMITS AND REGULATORY AGENCIES**  
Permit Application: 13-58  
Permit Number: 13-58  
Permit Issued: 04/04/14

**LANDSCAPE ARCHITECTURE NOTES**

- The Contractor shall provide all labor, materials, tools, equipment, and facilities required for the completion of the work.
- All trees to be removed shall be removed in accordance with the American Nursery and Landscape Association's (ANLA) Best Management Practices (BMP) for Tree Removal.
- All trees to be removed shall be removed in accordance with the American Nursery and Landscape Association's (ANLA) Best Management Practices (BMP) for Tree Removal.
- Contractor shall provide a one-year maintenance program for all plants, trees, and shrubs installed.
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**PLANT SCHEDULE**

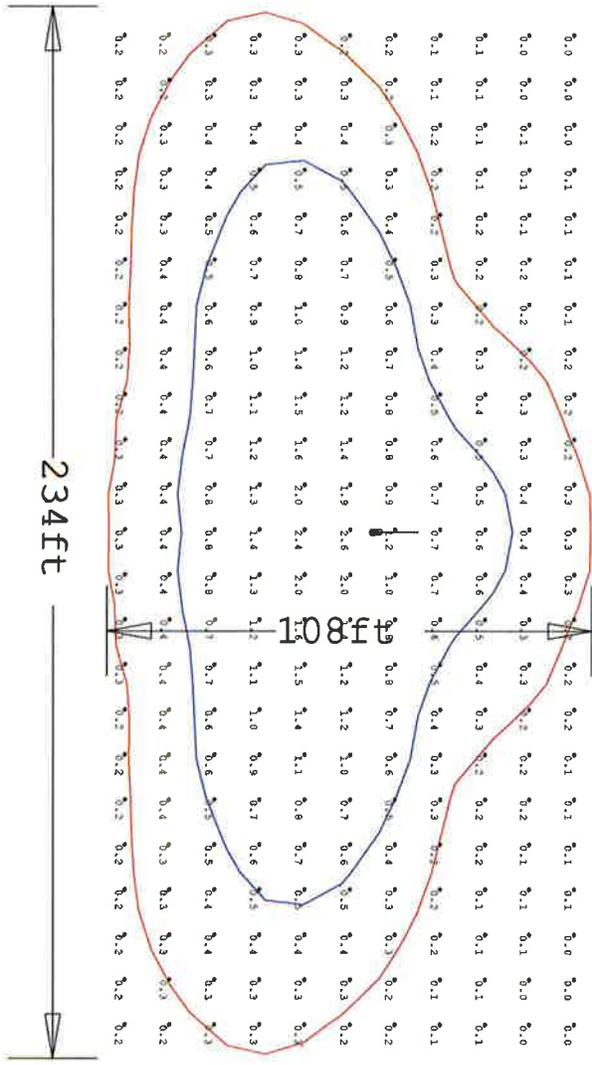
Qty	COMMON NAME	Botanical Name	Size	Spacing	Quantity
01	UNIDENTIFIED LOROTE	Quercus laevis	1 gallon	8' O.C.	30
02	UNIDENTIFIED LOROTE	Quercus laevis	3 gallon	4' O.C.	12
03	UNIDENTIFIED LOROTE	Quercus laevis	4' O.C.	8' O.C.	28
04	UNIDENTIFIED LOROTE	Quercus laevis	2' Gal. 8-10"	As Shown	8
05	UNIDENTIFIED LOROTE	Quercus laevis	2-4" Gal. 8-10"	As Shown	1



**NOTES**

- The Contractor shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities.
- The Contractor shall be responsible for providing all labor, materials, and equipment required for the completion of the work.
- The Contractor shall be responsible for maintaining the site in a safe and secure condition at all times.
- The Contractor shall be responsible for protecting all existing utilities and structures on the site.
- The Contractor shall be responsible for providing a one-year maintenance program for all plants, trees, and shrubs installed.
- The Contractor shall be responsible for providing a detailed landscape maintenance plan.
- The Contractor shall be responsible for providing a detailed site plan showing the location of all plants, trees, and shrubs.
- The Contractor shall be responsible for providing a detailed site plan showing the location of all parking spaces and driveways.
- The Contractor shall be responsible for providing a detailed site plan showing the location of all existing utilities and structures.
- The Contractor shall be responsible for providing a detailed site plan showing the location of all existing trees and shrubs.
- The Contractor shall be responsible for providing a detailed site plan showing the location of all existing ground cover and hardscape.
- The Contractor shall be responsible for providing a detailed site plan showing the location of all existing site furniture and signage.
- The Contractor shall be responsible for providing a detailed site plan showing the location of all existing site lighting.
- The Contractor shall be responsible for providing a detailed site plan showing the location of all existing site drainage.
- The Contractor shall be responsible for providing a detailed site plan showing the location of all existing site erosion control.

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a period not to exceed six (6) months to bring the use into complete conformity with the provisions of this section.

6. All areas unoccupied by buildings, parking lots or used as traffic ways shall be maintained in a safe and orderly condition.
7. Areas used for outdoor storage or display shall be maintained so that excessive dust, fumes or odors will not be produced by continued use.
8. Buffering, landscape, and fence screening shall be required when abutting residentially zoned properties. The minimum buffering requirements shall consist of a six-foot high screen fence, landscaping (trees, shrubs, and groundcover,) or a berm. All buffer areas shall be a minimum of ten (10) feet in width. The Planning and Zoning Department shall approve location, size, plant species, and number. The buffering shall be in addition to minimum open space requirements.
9. Auto impoundment or holding yards shall be screened with a minimum six (6) to eight (8) foot opaque fence constructed of wood or masonry.

#### **27-602-5 Commercial and Outdoor Lighting**

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- A. **Purpose.** The City of Fort Smith finds that the regulation of outdoor lighting is necessary to prevent misdirected or excessive artificial light caused by inappropriate or misaligned light fixtures that produce glare, light trespass (nuisance light) and/or unnecessary skyglow; and also that such regulation is necessary to discourage the waste of electricity and to improve or maintain nighttime public safety, utility, and security.
- B. **Requirements.** All outdoor lighting fixtures installed and thereafter maintained, other than those serving one and two family dwellings, shall comply with the following requirements:
  1. Where used for security purposes or to illuminate walkways, roadways, and parking lots, only shielded light fixtures shall be used.

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2. Where used for commercial and industrial purposes, such as in merchandise display areas, work areas, platforms, signs, architectural, landscape, or sports/recreation facilities, all light fixtures shall be equipped with automatic timing devices and comply with the following:
  - a. Light fixtures used to illuminate flags, statues, or any other object mounted on a pole, pedestal, or platform, shall use a narrow cone beam of light that will not extend past the illuminated object.
  - b. Other upward directed architectural, landscape or decorative direct light emissions shall have at least 90% of their total distribution pattern within the profile of the illuminated structure.
  - c. Recreational and sports facility lighting shall be shielded whenever possible. Such lighting shall have directional and glare control devices, when necessary to comply with the following section.
  - d. Externally illuminated signs including commercial billboard, building identification or other similar illuminated signs shall comply with the following:
    1. Top mounted light fixtures that are shielded;
    2. When top mounted fixtures are not feasible, illumination from other positioned light fixtures shall be restricted to the sign area. Visors or other directional control devices shall be used to keep spill light to an absolute minimum.
  - e. All other outdoor lighting shall use shielded light fixtures.
3. All floodlight type fixtures, once properly installed, shall be permanently affixed in the approved position.

**C. Light Trespass.** All light fixtures, except street lighting and those used on one or two family dwellings, shall be designed, installed, and maintained to prevent light trespass, as specified below:

1. At a height of five feet above the property line of the subject property, illuminations from light fixtures shall not exceed 0.1 foot candles in a vertical plane on residentially zoned property.
2. Outdoor light fixtures properly installed and thereafter maintained shall be directed so that there will not be any objectionable direct glare source visible from any property. Light fixtures near adjacent property may require special shielding devices to prevent light trespass.

- D. Illuminance and Luminance Requirements.** Illuminance and luminance requirements shall be as set forth in the current edition of the Illuminating Engineering Society of North America (IESNA) Lighting Handbook.
- E. Outdoor Lighting Energy Conservation.**
  - 1. All outdoor lighting not necessary for security purposes shall be reduced, activated by motion sensor devices, or turned-off during non-operating hours. Illuminated signs are excluded from this requirement.
  - 2. All lighting shall be designed to prevent misdirected or excessive artificial light and to maximize energy efficiency.

<b>27-603</b>	<b>Access Management</b>
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**27-603-1 Generally**

- A. The Fort Smith Engineering Department shall administer the Access Management standards and regulations.
- B. The preliminary subdivision plat or development plan must identify the location of proposed driveways in conformance with these regulations. No additional driveways may be identified as part of the final plat process. Compliance with these provisions for infill or redevelopment will be determined on a case-by-case basis.

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**27-603-2 Driveway Separation Standards**

- A. Driveway access must conform to the specifications outlined in Table 27-603-1A (Minimum Separation Between Driveways and Street Intersections) and Table 27-603.1B (Minimum Separation Between Adjacent Driveways). For purposes of measuring driveway separation, the separation standards apply to driveways on lots adjacent to the subject lot as well as to those on the subject lot itself.
- B. Offset driveways must be spaced at a sufficient distance from other driveways to allow for safe and efficient traffic flow.
- C. The preliminary subdivision plat and development plans must include information regarding existing driveways for adjacent and opposite sides of street properties.
- D. Where necessary for the safe and efficient movement of traffic, driveway access points must be limited to restricted turning movements (e.g. right turns only).

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## Miller, Perry

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**From:** John Parker [john@fortsmithairport.com]  
**Sent:** Wednesday, July 30, 2014 4:27 PM  
**To:** Miller, Perry  
**Subject:** RE: FAA Permit

Yes we do.

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**From:** Miller, Perry [mailto:PMiller@FortSmithAR.gov]  
**Sent:** Wednesday, July 30, 2014 4:22 PM  
**To:** John Parker  
**Subject:** RE: FAA Permit

John,

Based off of this letter does the Fort Smith Airport approve the lights?

Thank you,

Tyler Miller  
Planner City of Fort Smith  
623 Garrison Avenue  
Fort Smith, AR 72901  
479-784-2241

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**From:** John Parker [mailto:john@fortsmithairport.com]  
**Sent:** Wednesday, July 30, 2014 3:49 PM  
**To:** 'John Ware'  
**Cc:** Miller, Perry  
**Subject:** RE: FAA Permit

Thank you for the FAA determinations and there are no restrictions noted to the light poles.

John Parker

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**From:** John Ware [mailto:JWare@aogc.com]  
**Sent:** Wednesday, July 30, 2014 3:41 PM  
**To:** John Parker; Fred Kirkwood; Eddie Fox; pmiller@fortsmithar.gov; Andrews, Brenda  
**Subject:** Fwd: FAA Permit

See attached documentation from the FAA.

Thank you,

John Ware

----- Original Message -----

JP



*Internal Correspondence*

**DATE:** July 23, 2014  
**TO:** Mitch Sykes, Reta Gilbreath, Terry Robbins  
**FROM:** Rae Anne Lawrence *RAL*  
**SUBJECT:** FAA Determination  
**OG&E Work Order 7353051**

Attached is the "Final Determination" letter from the FAA for the above referenced project. The FAA has determined the proposed light poles are **no hazard** and we may proceed with construction.

**As a condition of our approval, please comply with the requirements set forth in FAA Advisory Circular 150/5370-2, "Operational Safety on Airports During Construction." This determination expires on 1/23/2016.**

Please retain these letters in the project file for our records. If you have any questions or need additional information concerning this project, please do not hesitate to contact me.

cc: File



U.S. Department of Transportation

Federal Aviation Administration

July 23, 2014

Oklahoma Gas & Electric  
Attn: Rae Anne Lawrence M109  
P.O. Box 321  
Oklahoma City, OK 73101-0321

Edward Agnew  
AR/OK AIRPORTS DEVELOPMENT OFFICE  
Federal Aviation Administration  
Fort Worth, Texas, TX 76137

RE: (See attached Table 1 for referenced case(s))  
\*\*FINAL DETERMINATION\*\*

Table 1 - Letter Referenced Case(s)

ASN	Prior ASN	Location	Latitude (NAD83)	Longitude (NAD83)	AGL (Feet)	AMSL (Feet)
2014-ASW-5139-NRA		FORT SMITH, AR	35-20-07.20N	94-23-03.50W	41	517
2014-ASW-5140-NRA		FORT SMITH, AR	35-20-07.30N	94-23-02.60W	41	516

Description: New construction of light poles on the north side of Savannah Street adjacent to the airport

We do not object to the construction described in this proposal provided:

You comply with the requirements set forth in FAA Advisory Circular 150/5370-2, "Operational Safety on Airports During Construction."

A separate notice to the FAA is required for any construction equipment, such as temporary cranes, whose working limits would exceed the height and lateral dimensions of your proposal.

This determination does not constitute FAA approval or disapproval of the physical development involved in the proposal. It is a determination with respect to the safe and efficient use of navigable airspace by aircraft and with respect to the safety of persons and property on the ground.

In making this determination, the FAA has considered matters such as the effects the proposal would have on existing or planned traffic patterns of neighboring airports, the effects it would have on the existing airspace structure and projected programs of the FAA, the effects it would have on the safety of persons and property on the ground, and the effects that existing or proposed manmade objects (on file with the FAA), and known natural objects within the affected area would have on the airport proposal.

This determination expires on January 23, 2016 unless:

- (a) extended, revised or terminated by the issuing office.
- (b) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of

7R

this determination. In such case, the determination expires on the date prescribed by the FCC for the completion of construction, or the date the FCC denies the application.

NOTE: Request for extension of the effective period of this determination must be obtained at least 15 days prior to expiration date specified in this letter.

If you have any questions concerning this determination contact Kathy Franklin (817) 222-5697  
katherine.franklin@faa.gov.

Katherine Franklin  
ADO