



**Board of Adjustment
January 19, 2016
Staff Report**

DATE: January 14, 2016

TO: Board of Adjustment

FROM: Joshua Langen, Senior Planner, AICP

SUBJECT: Case# **BOA-2015-17**: Request for a Conditional Use Permit to allow for single-family attached homes and single-family attached townhomes in O-I-CZ (Office-Institutional-Conditional Zoning) Zoning district at 3773 Kannapolis Parkway.

A. Actions Requested by Board of Adjustment

1. Motion to accept the City's exhibits into the record.
2. Motion to approve Findings of Fact for the Conditional Use Permit.
3. Motion to approve, approve with conditions, or deny the issuance of the Conditional Use Permit.

B. Required Votes to Pass Requested Action

A majority vote is required to approve, approve with conditions, or deny the requested actions.

C. Background

The applicant, Robert W. Nixon, is requesting a Conditional Use Permit for single-family attached homes and single-family attached townhomes on parcels #5602-28-4977 and #5602-19-3677. These homes will be part of a larger development with includes parcel #5603-10-3716 which will include single-family detached homes and reserved areas for commercial development (see attached site plans for proposed site layout). The single-family attached homes and townhomes will both be built on dedicated lots, with the single-family attached homes located on 36' wide lots and the townhomes located on 22' lots. The homes on the 36' lots will be attached by means of adjoined storage facilities. The parcels to be developed are currently zoned C-2-CZ and O-I-CZ and are accompanied by a site plan (as approved by Planning & Zoning Commission on February 6, 2008) and a Development Agreement (as approved by City Council on January 28, 2008). However, the site plan and Development Agreement are both now null and void due to inaction. The applicant has concurrently

submitted a rezoning application to the Planning Department in order to change zoning, substitute a new site plan and to alter the previously adopted conditions for these parcels. The concurrent rezoning application is requesting an O-I-CZ district consistent with the single-family attached homes and single-family townhomes requested in this CUP application. Therefore, approval of this CUP application should be made contingent upon approval of Planning & Zoning Commission case Z-2018-01.

Preliminary plans for the residential subdivision have been prepared and include ingress, egress, and open-space which will be accessible to the attached/townhome portion and will, therefore, satisfy the open space requirements for the attached/townhome portion. An amenity center and/or amenities equaling the required value of construction improvements, as outlined in **Section 6.5.3.6. Required Improvements** of the UDO, will be incorporated as part of the larger proposed development and also be accessible to the attached/townhome portion.

The attached home/townhome area submitted for consideration consists of 16 acres and includes a 14 acre portion of parcel #5602-28-4977, zoned O-I-CZ, along with two (2) acres of the C-2-CZ portion of parcel #5602-19-3677. The entire residential subdivision will occupy approximately 90 acres of the three (3) parcels.

D. Fiscal Considerations

None

E. Policy Issues

Article 3.5 of the UDO requires that the Board of Adjustment shall only approve a conditional use permit if the applicant demonstrates that the criteria below have been met. Staff analysis of each criterion is noted.

Staff Findings of Fact - Based on application review

Yes No

The proposed conditional use will be in harmony with the area in which it is to be located and in general conformance with the City’s Land Use Plan.

The proposed use is for a mix of single-family attached homes and townhomes, which would be developed concurrently with single-family detached homes on connecting parcels. The proposed use would also be adjacent to commercially-zoned properties at the intersection of the Kannapolis Parkway and Rogers Lake Road. Amenities will be shared throughout the development, helping to integrate the entire project and allow future residents to access recreational and adjoining commercial uses through a series of connected sidewalks and trails. The proposed use would promote a mix of uses at this intersection and provide a transition between potential commercial uses and the surrounding single-family detached uses and zoning districts. The project area is surrounded by existing rural residential uses to the north and south and low density residential uses to the west. The proposed development area adjoins Kannapolis Parkway to the east.

The 2015 Land Use Plan designates the proposed project area as part of a large Mixed-Use land use district and adjacent to a Heavy Commercial Mixed-Use land use district. The proposed use would offer a complementary and integrated use which promotes mixed-use development. Therefore, the proposed conditional use is considered to be in harmony with the area in which it is to be located and is considered to be in general conformance with the City’s Land Use Plan.

Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads.

The proposed use is part of a larger plan to provide commercial uses at the intersection of Kannapolis Parkway and Rogers Lake Road as well as single-family development along the western portion of the site. The commercial uses are not defined or proposed. However, preliminary plans show a matching road cross-section, identical to the Rogers Lake Road section, to serve as access to the commercial parcels and the main entrance to the entire development. Furthermore, an alternate access point will be provided north of the main entrance to allow for additional access to the development and, specifically, to the single-family detached portion. Also, another access point will be provided along Kannapolis Parkway south of the main entrance to allow for additional access to the proposed attached single-family attached homes and townhomes, as well as for the entire development. The two (2) additional access points will be designated as right-in/right-out due to the median located along Kannapolis Parkway. NCDOT has also approved the additional access points at their general location. Therefore, the proposed measures to be taken to provide ingress and egress to the site and to minimize traffic hazards and congestion on public roads, are considered adequate.

The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.

Staff does not consider the proposed use to be noxious or offensive or that it will produce vibration, noise, odor, dust, smoke or gas beyond traditional residential uses.

The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.

The proposed use will further the goals of the 2015 Land Use Plan by providing an alternative use to planned detached single-family uses and existing commercial zoning. The use is part of a compact and walkable mixed-use development similar to the mixed-use development form envisioned for this section of Kannapolis Parkway. The proposed use provides a transition between the commercial zoning and existing rural residential uses to the south and will be served by an integrated transportation system. The development project is anticipated to be complemented by similar land uses within the Mixed-Use

district recommended by the 2015 Land Use Plan as surrounding properties are rezoned in the future to accommodate development pressures. Therefore, establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.

The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare.

There is no danger or detriment to the overall public safety, health and welfare anticipated to result from the proposed attached single-family attached homes and townhomes, provided that the site is constructed pursuant to the Unified Development Ordinance requirements and any conditions of approval.

Compliance with any other applicable Sections of this Ordinance.

The proposed use will be required to comply with Section 15.1. Coddle Creek Thoroughfare Protection (CCTP) Overlay District of the UDO. The CCTP Overlay affects development within 200 feet of Kannapolis Parkway. Nearly a third (1/3) of proposed attached single family attached homes and townhomes will be subject to the CCTP Overlay District requirements. The submitted Architectural Drawings show the proposed residential units to be in compliance with the provisions of the Overlay.

Therefore, the proposed development is anticipated to be able to conform with the remaining standards of the UDO and comply with all other applicable sections of the ordinance.

F. Legal Issues

Board's Findings of Fact - Based on application review and public hearing.

In order to determine whether a conditional use permit is warranted, the Board must decide that each of the six findings as outlined below has been met and that the additional approval criteria has been satisfactorily addressed. If the Board concurs completely with the findings of the staff, no additional findings of fact are necessary and the staff findings should be approved as part of the decision. However, if the Board wishes to approve different findings (perhaps as a result of additional evidence or testimony presented at the public hearing), alternate findings need to be included as part of the six criteria below. Should a conditional use permit be approved, the Board may impose such reasonable conditions as will ensure that the use of the property, to which the conditional use permit applies, will be as compatible as practicable with the surrounding properties.

Yes **No**

The proposed conditional use will be in harmony with the area in which it is to be

located and in general conformance with the City's Land Use Plan.

Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads.

The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.

The establishment of the proposed use will not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.

The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare.

Compliance with any other applicable Sections of this Ordinance.

G. Recommendation

Based on the above findings, staff recommends **approval with conditions** of the Conditional Use Permit based on the approved staff Findings of Fact, the conceptual site plan, and compliance with all local, state and federal requirements and regulations.

Conditions of Approval proposed by staff:

1. The proposed use shall be developed in conjunction with the overall development proposal, as outlined in the "Kannapolis Parkway" – "Site Plan", "Site Plan (Townhomes)", and "Phase Map" concept plans, as submitted. The entire development, to include the proposed single-family attached homes and townhomes, as submitted, as well as the detached single-family portion, shall be reviewed according to the "Phase Map".

2. A Traffic Impact Analysis (TIA) shall be required for the entire development, including all Phases, before Final Major Site Plan, Sketch Plat or Preliminary Plat review can begin. The TIA shall recognize the “Phase Map” and shall include recommendations accordingly. The applicant shall comply with the recommendations of the TIA as well as traffic circulation requirements of City of Kannapolis Public Works, City of Kannapolis Planning and NCDOT.

3. The main entrance at the intersection of the Kannapolis Parkway and Rogers Lake Road shall be designed and constructed to match the existing intersection eastern portion, or in conformance with any alternative design as required by City of Kannapolis Public Works, City of Kannapolis Planning and NCDOT. Construction of the designed intersection (including modifications to the existing traffic control signal) may be performed in phases, in accordance with the TIA as well as with City of Kannapolis and NCDOT requirements.

4. Sidewalk, curb and gutter shall be installed, where deficient, along the property frontage on Kannapolis Parkway, during Phase I, as shown on the “Site Plan (Townhomes)” map.

5. Approval of this CUP application should be made contingent upon approval of Planning & Zoning Commission case Z-2018-01.

Compliance with the conditions outlined above does not relieve the applicant from the responsibility to comply with any and all local, state, or federal regulations concerning this development.

The Board of Adjustment should consider all facts and testimony after conducting the Public Hearing and render a decision accordingly to approve, approve with conditions, or deny the Conditional Use Permit.

H. Attachments

1. Conditional Use Permit Application
2. Conceptual Site Plan
3. Architectural Elevations
4. Zoning Map
5. Aerial Map
6. 2015 Future Land Use Map
7. List of Adjacent Property Owners
8. Notice of Public Hearing to Property Owner
9. List of Applicant and Adjacent Property Owners
10. CUP Sign Notification Photo

I. Issue Reviewed By:

City Attorney	X
Planning Director	X
City Manager	X



Department of Planning

Board of Adjustment January 14, 2016 Staff Report

TO: Board of Adjustment

FROM: Zachary D. Gordon, AICP, Planning Director

SUBJECT: Case# **BOA-2015-16:** Request for a Certificate of Nonconformity Adjustment (CONA) to permit a non-conforming landscaping business to remain on property located at 817 Fisher Street (and the adjacent lot) and is more specifically identified as Cabarrus County Property Identification #5612-33-2551 and #5612-33-1437.

A. Action Requested by Board of Adjustment

1. Motion to accept the City's exhibits into the record
2. Motion to approve/revise findings of fact proposed by Planning Staff
3. Motion to approve (approve with conditions) (deny) the issuance of the Certificate of Nonconformity Adjustment

B. Required Votes to Pass Requested Action

A majority vote is required to approve or deny the requested actions.

C. Background

The applicant, Richard Raffaldt, is requesting a Certificate of Nonconformity Adjustment (CONA) to permit a non-conforming landscaping business to remain on site. The landscaping business under consideration for this CONA is located at 817 Fisher Street and on the adjacent lot to the west and is more specifically identified as Cabarrus County Parcel Identification #5612-33-2551 and #5612-33-1437 (see attached site map). The property is zoned RM-2 - Residential Medium Density. The landscaping business is considered "legally non-conforming" as it was established prior to the adoption of zoning regulations by the City in 1988.

In a letter dated August 19, 2015 (see attached) from Zachary D. Gordon, Planning Director to Richard Raffaldt, the applicant was advised that his landscaping business may continue to operate,

subject to the provisions of Section 13.1.1 of the Unified Development Ordinance (UDO), which states that:

“Any nonconforming uses or structures in existence at the time of the adoption of this Zoning Ordinance may be continued and shall not be subject to this Ordinance to the extent that the regulations, restrictions and requirements of this Ordinance would prohibit that use, or to the extent that such structure would not be permitted to remain.”

This letter also indicated that, “Based on a site investigation and the comparison of aerial photographs between 1986 and 2013, I have determined that an expansion of your legal non-conforming business at the above referenced property has occurred.” The details of this expansion are detailed in the August 19th letter. Based on the determination that an expansion of a non-conforming use had occurred, the applicant was advised of two (2) options to bring his business into conformity with the applicable terms of the UDO:

1. Restore the site to the conditions that existed in 1988. This would require the removal of structures, equipment and vehicles (except those allowed under the City’s ordinances and legally permitted) not in place in 1988;
2. Request a “Certificate of Nonconformity Adjustment” to allow expansion of your non-conforming landscape business. I have outlined the process for this second option below.

The applicant made the decision to request a CONA and submitted an application in support of this request.

D. Policy Issues

Section 13.1.6.1 of the UDO states: *A Certificate of Nonconformity Adjustment shall be required to enlarge, expand or otherwise alter any Nonconforming Use or Structure as set forth in this Section 13.1. A Certificate of Nonconformity Adjustment shall be issued by the Board of Adjustment subject to the requirements of this section.*

Section 13.1.6.3 of the UDO states that: *The decision to approve or deny will be made based on the following criteria:*

Noise - Does the nonconformity create noise above and beyond levels considered normal to the area?

Staff Assessment

The applicant has been operating his landscaping business since just prior to the adoption of zoning regulations in 1988. While there has been an expansion of this business since 1988, staff does not believe that any increase in noise has risen beyond levels that would be considered normal for the area.

Traffic - Does the nonconformity generate or have the potential to generate a significantly higher volume of traffic than surrounding land use?

Staff Assessment

The applicant's landscaping business generates a low volume of traffic (typically one truck travelling to and from the site on a daily basis) and that even with the expansion of this business, the volume of traffic has not changed significantly, nor does staff believe that there is a potential for traffic volumes higher than surrounding land uses.

Other measurable, physical effects - Does the nonconformity generate any other negative effects including but not limited to: dust, air pollution, foul smell, etc.?

Staff Assessment

It does not appear that the applicant's landscaping business generates any negative environmental effects City such as dust, air pollution or odor.

Surrounding property values - Does the nonconformity detract from the prevailing property values?

Staff Assessment

A review of the County tax assessor records does not appear to indicate that the existing landscaping business detracts from the values of adjoining properties.

Aesthetics - Does the nonconformity compliment or detract from the overall aesthetic character of the area?

The applicant has previously installed fencing and landscaping to screen his landscaping business from adjoining properties and is intending to supplement these improvements with additional screening as noted on the enclosed "Proposed Site Improvements" plan.

E. Legal Issues

Board's Findings of Fact - Based on application review and public hearing.

In order to determine whether to grant a Certificate of Nonconformity Adjustment, the Board must find that each of the five criteria noted above have been met. If the Board concurs with the staff assessments for each of the criteria, then no additional findings of fact are necessary and the staff findings should be approved as part of the decision. However, if the Board wishes to approve different findings (perhaps as a result of additional evidence or testimony presented at the public hearing), alternate findings need to be included as part of the five criteria below.

Should a certificate of nonconformity adjustment be approved, the Board may impose such reasonable conditions as will ensure that the use of the property to which the certificate applies will be as compatible as practicable with the surrounding properties. Any approval granted will "run with the land" and subject all future property owners to the same restrictions.

YesNo

Noise - Does the nonconformity create noise above and beyond levels considered normal to the area?

Traffic - Does the nonconformity generate or have the potential to generate a significantly higher volume of traffic than surrounding land use?

Other measurable, physical effects - Does the nonconformity generate any other negative effects including but not limited to: dust, air pollution, foul smell, etc.?

Surrounding property values - Does the nonconformity detract from the prevailing property values?

Aesthetics - Does the nonconformity detract from the prevailing property values?

F. Recommendation

Based upon an assessment of the criteria noted above, staff recommends approval of the Certificate of Nonconformity Adjustment requested by Richard Raffaldt, to retain the landscaping business located at 817 Fisher Street (and adjoining property as noted above) with all current site improvements, subject to the following conditions:

- 1. There be no further expansion of the applicant's landscaping business at this location without the necessary approvals;*
- 2. All enhancements shown on the "Proposed Site Improvements" plan, submitted as part of the applicant's CONA request, are installed within 6 months of any final order granted by the Board of Adjustment for this approval.*

However, the Board of Adjustment should consider all facts and testimony after conducting the public hearing and render a decision accordingly to affirm or reverse the decision of the Zoning Administrator.

G. Attachments

1. Application
2. Letter from Zachary D. Gordon, Planning Director to Richard Raffaldt, dated August 19, 2015.
3. Aerial Map
4. Zoning Map
5. Future Land Use Map
6. Proposed Site Improvements Plan
7. Letter to abutting property owners
8. Posted zoning sign.

H. Issue Reviewed By:

Planning Director	X
City Attorney	X

STATE OF NORTH CAROLINA

CITY OF KANNAPOLIS

IN RE: ATLANTIC AMERICAN PROPERTIES :
(FOOD LION) :
APPLICATION # 2015-15 BOA : ORDER FOR CERTIFICATE
: OF NON-CONFORMITY
: ADJUSTMENT

THE BOARD OF ADJUSTMENT for the City of Kannapolis, North Carolina having held a public hearing on December 1, 2015 to consider Application Number 2015-15 BOA submitted by Atlantic American Properties, a request for an Order for Certificate of Non-Conformity Adjustment for property located in the Oak Avenue Mall, Kannapolis, North Carolina.

The following were accepted into evidence to constitute a part of the record in this matter:

1. Application
2. Sign Rendering
3. Aerial Map
4. Zoning Map
5. Future Land Use Map
6. Letter to abutting property owners
7. Posted Zoning Sign

Having heard and reviewed all of the evidence and arguments presented at the hearing, makes the following **FINDINGS OF FACT** and draws the following **CONCLUSIONS**:

1. Does the nonconformity create noise above and beyond levels considered normal to the area?
 - (a) There are no anticipated noise impacts associated with the proposed sign.
2. Does the nonconformity generate or have the potential to generate a significantly higher volume of traffic than surrounding land use?
 - (a) The proposed sign will have no impact on the volume of traffic to and from the site.
3. Does the nonconformity generate any other negative effects including but not limited to dust, air pollution, foul smell, etc.?
 - (a) No negative effects are anticipated to result from the proposed sign.
4. Does the nonconformity detract from the prevailing property values?
 - (a) The proposed sign should not detract from (and perhaps enhance) adjoining

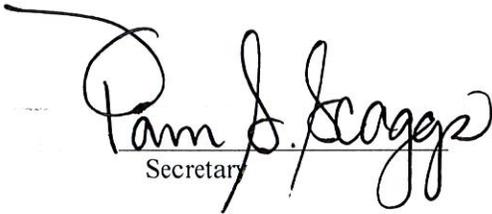
property values.

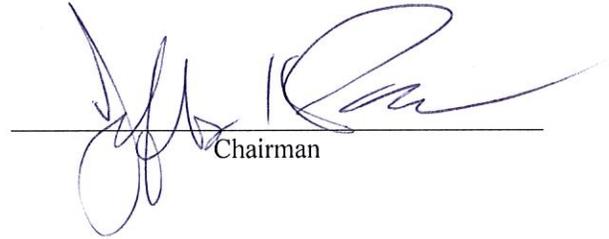
5. Does the nonconformity compliment or detract from the overall aesthetic character of the area?

(a) The proposed sign should complement the overall aesthetic character of the area.

Therefore, based upon an assessment of the criteria noted above, the Board recommends approval of the Certificate of Nonconformity Adjustment for a wall sign measuring 206 square feet, consistent with the sign plan submitted as part of the applicant's CONA request. However, the Board of Adjustment should consider all facts and testimony after conducting the public hearing and render a decision accordingly to affirm or reverse the decision of the Zoning Administrator.

This the 19 day of January, 2016.


Secretary


Chairman