



Town of Elon Planning Board Agenda

**August 20, 2019
6:00 PM
Town Hall
104 S. Williamson Ave.**

Agenda Items

A. Call to Order

B. New Business

- i. Approval of Minutes from the March 19, 2019 and April 16, 2019 Regular Meetings
- ii. Rezoning Request RZ #2019-05 Submitted by Peggy Sue Huffines Page for 20.765 Acres Located Southwest of the Intersection of University Drive and N. O'Kelly Avenue

C. Items from Board Members

D. Board of Aldermen Updates

E. Motion to Adjourn

**Minutes
Regular Meeting of the
Elon Planning Board**

**March 19, 2019
Tuesday, 6:00 p.m.**

**Elon Municipal Building
Elon, North Carolina**

Attendees: Jim Beasley, Ralph Hardwood, Diane Gill, Mark Podolle, Monti Allison, Clark Bennett

Staff Present: Pamela Graham

Item A - Chairman Beasley called meeting to order at 6:00 pm and welcomed the attendees.

Item B-i – Review and Recommendation of Rezoning Request #2019-03 Submitted by Paul Sparks Sr. and Paul Sparks Jr. for Property Located 514 and 522 E. College Avenue and an Adjacent Unaddressed Parcel on N. Oak Avenue

Item B-ii - Review and Recommendation of Elon Land Development Ordinance Text Amendment LDO #2019-01 Regarding Performance Guarantees

Chairman Beasley introduced the item. Ms. Graham began by stating that she and the Town Manager have discussed on several occasions the need for updates to the LDO and because the project to rewrite the LDO is planned for, many of the updates were put on hold for incorporation into that project. She stated that there have been some more pressing needs, and it was decided that this item should be brought forward immediately due to the protection that it provides to the Town that is currently lacking. She then presented a series of slides describing the proposed amendment to address performance guarantees for subdivisions. Information in the presentation included:

1. The text amendment will provide a framework for the acceptance of performance guarantees, a process by which the Town may require that a developer provide funds to the Town for the completion of subdivision infrastructure in case the developer is unable or unwilling to complete the work.
2. When a subdivision is approved and the work to develop the land has begun, the developer cannot sell lots or commence the use until a final plat has been approved by staff. However, we can give them an option to guarantee some of this work. Ms. Graham described a common scenario where the construction of sidewalks may be scheduled on a lot-by-lot basis to prevent damage during construction of the lots. If the developer wished to sell the lot to a builder and pass on the responsibility of installing the sidewalk to the builder, who most likely would schedule this as one of the last items for construction, he could put up a guarantee that would allow the Town to complete the sidewalk construction if for some reason the builder does not. She went on to state that another common use for performance guarantees is for the final coat of asphalt on the roads because heavy construction activity can be tough on the roads and the developer may want to clean things up a bit with delaying this work until later in the project. Also, stormwater and erosion control measures are

sometimes converted to a post-construction condition and the performance guarantee would insure that the conversion takes place per the approved plans.

3. Elon has accepted performance guarantees in the past, but there are no specific provisions in the LDO that guide their use. The proposed amendment is guided by statutory standards and create the necessary provisions and guide staff and the governing board in the procedures.
4. Ms. Graham then referenced the draft amendment that was in the packet, and described the red, underlined text as the new language that is being proposed. She summarized the text as follows:
 - a. The guarantee shall cover a period not to exceed twelve (12) months from the date of acceptance. The Board may opt to renew the guarantee if requested at that time.
 - b. The guarantee shall be payable to or in favor of the Town and shall be in an amount equal to 125% of the estimated cost of the improvement(s).
 - c. The guarantee may be in any form allowed by statute (surety bond, letter of credit, or any other form that provides equivalent security to a surety bond or letter of credit).
 - d. The guarantee is to be used only for the completion of the required improvement(s) and not for repairs or maintenance after completion.
5. Regarding Plan Consistency, Elon's Future Comprehensive Land Use Plan, adopted in February, lists among its Goals and Objectives on page 27 the following:
 - a. Goal: Promote and ensure quality governance, stewardship of public resources, and sustainability of services.
 - i. Objective: Provide adequate public services and public infrastructure.
 - b. Goal: Ensure adequate plans are in place to support existing and future development.
 - c. Goal: Promote wellness, active living, and multi-modal transportation opportunities throughout the Town of Elon community.
 - d. Additionally, the Plan recommends that the Town's Bicycle, Pedestrian, and Lighting Plan be implemented. This Plan highlights existing Town ordinances that require the dedication of right-of-way and sidewalk construction for new and infill development.
 - e. Based on these factors, the proposal is considered by staff to be consistent with the Land Use Plan.

Ms. Graham then pointed out that she had left a comment in the right margin of the draft text amendment that she needed a decision from the Planning Board on. In Section #2 on the first page, the draft shows that our existing language includes the following: "the final plat must constitute all portions of the approved preliminary plat. No final plat will be approved unless and until the applicant has installed all improvements required by this ordinance ...". The new language goes on to say: "... or until a performance guarantee has been offered and accepted by the LDO Administrator, with authorization from the Board of Aldermen". Ms. Graham then stated that she discussed this portion of the ordinance with Town Attorney Joe Kalo, who reviewed the amendment. She stated that her experience was that her governing board always accepted, released, and/or renewed performance guarantees, and Joe advised her that he has seen this handled by the governing board and by the LDO Administrator, but that he thinks in larger communities it is most often handled at the staff level so that the board's agendas are not tied up. She told the

Board that this item is a decision point for them before making a recommendation, and she would revise the language accordingly before taking the amendment to the Board of Aldermen.

Chairman Beasley asked for opinions from Planning Board members regarding the Board of Aldermen delegating this duty to a staff member. Mr. Bennett stated that because staff works with the developers more often, so perhaps it could go to staff. Ms. Gill pointed out that the language includes “with authorization from the Board of Aldermen”, so would they still weigh in? Chairman Beasley and Mr. Bennett clarified that the language would mean that the Board of Aldermen gives the authorization to staff to make the decision. Chairman Beasley discussed a scenario such as in 2008, where a developer might pull out of a project and turns it over to the Town. He would think that an elected official would want to make that decision. Mr. Allison stated that it is more transparent and takes the burden off of staff if the Board makes the decision. It puts it in the court of the people who were elected to make financial decisions for the Town. Ms. Graham stated that the ultimate decision will be for the Board of Aldermen, and they may make a change. Mr. Podolle said that he had complete faith and with the language about authorization from the Board of Aldermen would she still go to them. Ms. Graham replied that she reads the phrase as meaning the Board is giving blanket authority to her, but that she has no problem with the responsibility being on the Board. She further stated that the draft could remove the words “the LDO Administrator, with authorization from” and the offer and acceptance would be for the Board of Aldermen instead, with a recommendation from staff. Ultimately, if we don’t have something in place, we could be stuck with an unfinished development. Mr. Bennett stated that in his experience with developers, a letter of credit means a lot, and it protects the Town. He added that banks don’t like to hold up capital with letters of credit. Ms. Graham said that she would take to the Board of Aldermen any language that the Planning Board suggested.

Chairman Beasley then addressed the motions provided, as follows.

Motion #1 – LDO #2019-01 is or is not consistent with comprehensive plans adopted by the Town of Elon. The proposal is considered by staff to be consistent with the adopted Land Development Plan. Mr. Allison made the motion that the amendment is consistent with the plan. Mr. Bennett seconded the motion. Vote was 6-0 in favor of this motion.

Motion #2 – LDO #2019-01 is or is not reasonable and in the public interest. Mr. Allison made the motion that the amendment is reasonable and in the public interest. The motion was seconded by Ms. Gill. Vote on the motion was 6-0 in favor of this motion.

Motion #3 - The Town of Elon Planning Board recommends approval or denial of the LDO #2019-01. Mr. Bennett moved to recommend approval of the request. Ms. Graham clarified if they wished the amendment to state that the Board of Aldermen has the decision authority on accepting or releasing the guarantees and Mr. Bennett stated “yes”. The motion was seconded by Ms. Gill. Vote was 6-0 in favor of a recommendation for approval of the request.

Motion #4 – Ms. Graham read the consistency statement recommended by staff, in order to comply with NC General Statutes, as follows: “The proposal is consistent with the Future Comprehensive Land Use Plan, including Goals and Objectives in the Plan that address the need for adequate public infrastructure to support development projects, and to the sustainability of

services that promote wellness and multi-modal transportation. Additionally, the Plan calls for implementation of the Bicycle, Pedestrian, and Lighting Plan, which specifically references the Town's requirements for dedication of right-of-way and sidewalk construction for new and infill development". Ms. Graham stated that this language from the Plan support a recommendation of approval. A motion to adopt the provided statement was offered by Mr. Bennett, and seconded by Mr. Harwood. The motion was approved by unanimous vote.

Item C – Items from Board Members

There were no items from Planning Board Members for discussion.

Item D – Items from Alderman Davis Montgomery

Ms. Graham noted that an update of action taken by the Board of Aldermen was included in the packet. She stated that she was so glad to see that Planning Board members were able to attend the Retreat sessions to discuss the upcoming LDO project, especially since they will be tasked with putting the new ordinances to work once it is adopted. She also advised that she has received an application from someone from the Ball Park Community for service to the Planning Board. She added that she expects to bring that to the Planning Board for their April meeting and will invite the applicant to attend if the Board wishes. The Planning Board expressed pleasure and asked that she be invited. Ms. Graham then gave a brief update of activities related to the Shallowford Church Road subdivision and the neighboring Spanish Oak community. She stated that a public hearing is being scheduled with the Board of Aldermen on April 1st. Mr. Harwood asked about the gas station on University Drive and was that coming back to them. Ms. Graham stated that it does not because the square footage was below the threshold for a major development plan. She assured the Planning Board that the project had been thoroughly reviewed by the TRC.

Item E – Motion to Adjourn

A motion to adjourn was offered by Mr. Harwood and seconded by Mr. Bennett. The motion was approved by unanimous vote.

Meeting was adjourned at 7:28 p.m.

Pamela Graham, Planning Director
Minutes were completed in
Draft form on May 3, 2019

Jim Beasley, Planning Board Chair
Minutes were approved on
August 20, 2019

**Minutes
Regular Meeting of the
Elon Planning Board**

**April 16, 2019
Tuesday, 6:00 p.m.**

**Elon Municipal Building
Elon, North Carolina**

Attendees: Jim Beasley, Ralph Hardwood, Diane Gill, Monti Allison, Clark Bennett

Member Absent: Mark Podolle

Staff Present: Pamela Graham

Item A - Chairman Beasley called meeting to order at 6:00 pm and welcomed the attendees.

Item B-i – Approval of Minutes from the November 7, 2018 Special Called Meeting and the February 19, 2019 Regular Meeting

Mr. Allison made a motion to approve the minutes from the November 7, 2018 Special Called Meeting. The motion was seconded by Mrs. Gill and was approved by unanimous vote. Mr. Bennett made a motion to approve the minutes from the February 19, 2019 Regular Meeting. The motion was seconded by Mr. Harwood and was approved by unanimous vote.

Item B-ii – Recommendation: Appointment of Karla Leath to the Elon Planning Board

Ms. Leath addressed the Planning Board and described her history with the Town as a resident of the Ball Park community and as an alumna of Elon College. She stated that she is a Family Nurse Practitioner and has been a nurse for thirty years. She also spoke about her family and her vested interest in the Town of Elon and her excitement at being able to serve the Town. The Planning Board members introduced themselves and Ms. Graham described the remainder of the process for approval of Ms. Leath to the Planning Board. Mr. Bennett made a motion to recommend that the Board of Aldermen appoint Karla Leath as a member of the Elon Planning Board, with a term to expire in 2021. The motion was seconded by Mrs. Gill and received a unanimous vote. The Planning Board members thanked Ms. Leath for her interest.

Item B-iii – Review and Recommendation: Rezoning Request RZ #2019-03 Submitted by Paul Sparks Sr. and Paul Sparks Jr. for Property Located at 514 and 522 E. College Avenue and an Adjacent Unaddressed Parcel on N. Oak Avenue (continued from March meeting)

Chairman Beasley introduced the item as a continuation from the previous meeting. Ms. Graham began by stating that her presentation is virtually identical to the previous one with the exception of a few street view images of the area in the vicinity of the subject properties. She described the request as a rezoning of three parcels totaling 1.63 acres from Suburban Residential to Urban Residential. There are single family residences on two of the parcels and the third one is vacant. She added that the application describes the intended uses as “duplex designed for future expansion for multi-family housing”. She stated that the Urban Residential district allows duplexes as a use

by right but a conversion to multi-family residential uses will require approval of a special use permit issued by the Board of Aldermen. Ms. Graham then provided descriptions from the LDO of the existing and proposed districts. She showed an enlargement of the Town's zoning map that focuses on the area of the subject properties, and a comparative list of allowable uses for the two districts. She pointed out that the list aligns fairly well between the two districts. She then went on to show a series of slides providing both aerial and street view images of the immediate area and described the existing uses in the area as single family residential with rental properties and owner-occupied residences. Ms. Graham then gave a brief overview of the spot zoning question and reminded the Board that this topic was covered in more detail at the previous meeting and additional detail was provided in the Board's packets. She next covered the consistency with plans issue, stating that the General Assembly has been very specific about whether decisions like this are in keeping with your plan or not, and if they are not, that you provide a statement about why you made that deviation; although you can approve something that is not in keeping with the plan, you must provide a justification for doing so. She further stated that in this case, the Future Land Use Map that is associated with the Comprehensive Land Use Plan adopted in February shows these properties to be Institutional, indicating that they would ultimately become associated with the University. She added that this map is not a zoning map, but it is a long-term view of how the area might evolve. She also stated that there are people in the audience tonight that will have an opportunity to address the Board. Ms. Graham also mentioned that the nearest properties on the Future Land Use Map that would allow multi-family residential uses are north of Haggard Avenue, approximately 350 feet away. Chairman Beasley pointed out that the Institutional category allows dormitories, and would that be considered multi-family? Ms. Graham responded that it is categorized differently, and when we look at the Institutional category, in order for the proposal to be entirely compatible with the Map, the multi-family use would need to be a dormitory-type setting as opposed to a privately owned multi-family structure. Ms. Graham then summarized goals and objectives found in the Plan that are relevant to this proposal. She then stated that based on her assessment of the proposal, the request is not consistent with the Land Use Plan, primarily due to the inconsistency with the Future Land Use and Conservation Map, though the Board may determine that consistency can be found in some of the goals and objectives. She pointed out that the Map does not match up with either the proposed or the existing use on the properties. Ms. Graham then concluded her presentation, asked if there were any questions for her, and informed the Board that Mrs. Sparks wished to address the Board with a presentation that she has prepared.

Following a brief break, Mrs. Sparks introduced herself and stated that she and her husband live in one of the homes involved in the request, and her husband's parents live in the other. She also informed the Board that she is a staff member at the University. She explained that their intent is to start with a duplex and then expand. She mentioned that there were questions at the last meeting regarding what the development would look like and that they don't know yet. She stated that their first step was to get the property rezoned, and then they would go to an architect that would look at the surrounding area, the ordinances, and everything so that they could make it look nice and that they want it to be modest. She showed some slides of the property and also of the adjoining property where the new residence halls are located, which now surround their house. She provided a color-coded slide that showed the properties that contain permanent residents (people who are not renting or are not Institutional). She wanted to show that when we talk about zoning, sometimes we assume that everyone is living there and are happy neighbors and sometimes that is not the case. She stated that it is not that they are not happy living there, but that Thursday, Friday,

Saturday, and Sundays are pretty noisy and there are a lot of students walking back and forth. She stated that looking at the current zoning from the Town's website, she showed that the existing multi-family is not that far and though they are not adjacent to the UR, they are really close to the UR. She further stated that when you look at the use of the places, that multi-family houses are all around them. Mrs. Gill asked Mrs. Sparks to show where the multi-family is located that she described. Mrs. Sparks replied that she is referring to the Institutional that is all around them. Mr. Bennett offered that the dorms hold 300 beds. Mr. Sparks clarified that the multi-family is across the street and to the right. Mrs. Sparks pointed out that there are three houses with permanent residents besides them and everything else is rental and that the zoning says one thing but the use says something different. She then provided more details on some of the specific properties and that even though the zoning is SR, pretty much everything is rental. She stated that this is why they are looking at this with a philosophy of "if you can't beat them, join them". She continued by reminding the Board that one of their questions from the last meeting was, what was the University planning to do with this, and she offered the University's Master Plan and described the Plan's depiction of proposed dormitories on and immediately surrounding the properties being proposed for rezoning. She then made her closing points, including the need for additional housing, and though they will not provide the number of units that the dormitories would, they would be providing some housing with this proposal. She also mentioned the Town's plan calling for sustainability, noting that she bikes to work from home. She mentioned that the area is already connected with sidewalks. She also stated that for them, one of the selling points is that it also preserves Elon's small town character, as mentioned in the Town's plan. Additionally, they are not planning on bulldozing the houses, but they do want to have it open enough so that later on, they could think of something to do with the land that would be good for the family and their future investments.

Chairman Beasley thanked Mrs. Sparks and opened the floor to comments from the public. Mr. Don Scott addressed the Board, introducing himself as a resident of 601 E. College, adjacent to the subject properties. Mr. Scott stated that before this Board makes any type of recommendation, they need to see plans for exactly what the Sparks are talking about. He added that if you zone it for townhomes, it leaves the property open for them selling and someone coming in and building apartments. He stated that he feels that this opens Pandora's Box. He again stated that we should see some plans. He said that though there are a lot of renters on the street, it is still home to them. He finished by saying that he is not in favor of this at this time. Mr. Sparks Jr. asked Mr. Scott if he would like for them to sell the property to the University. Mr. Scott stated that it wouldn't bother him, because the University takes care of their property, maintaining and policing it. He has a problem with not knowing. Mrs. Gill reminded that the request is for rezoning, and then whoever owns the property can do whatever is allowed under the new zoning. She followed by saying that as much as we would all like to know what would happen, we can't consider a plan while we are trying to rezone. Mr. Scott responded that he would like to see a little more of what they plan to do. Mr. Sparks stated that the houses mean something to him and that his plan is not to sell or bulldoze it. He added that at this time his plan is to put something small in, and the zoning would allow him to put in a single family house. He is not interested in a big monstrosity. Mr. Allison spoke to his concern that they are trying to have it both ways. With the land being 1.63 acres, his concern is spot zoning. The applicant is proposing to keep the houses there and putting in a duplex and he wonders if it would even be worth their while with the parking requirements. If they were to tear the buildings down, you could do a lot with 1.63 acres. He stated that he commends the

applicant on wanting to keep the homes, which are beautiful and that Elon needs more of them. He stated he appreciates what they are trying to do, but he also appreciates Mr. Scott's position. Things could change if the University changed their mission and their requirements. Mrs. Sparks responded that this was discussed at the Neighborhood Coalition meeting, and the future of the housing situation for the University is that a Junior class requirement that they live on campus is not expected in the next ten years. She added that if the University acquired all of the property that they want to acquire, they are still adding more students every year. She stated that there will always be a market, no matter what. Mr. Scott stated that the property will be rented to students, because no faculty will want to live there. Mr. Harwood added that at some point the property is going to change hands and though he takes them at their word that, while they are there, they will look after it, but they won't be there forever, and we will have to live with how they zoned the property forever. Chairman Beasley stated that of all of the property in the area, this property is halfway surrounded by dorms and looks like multi-family property. When you look at the street it looks like a residential district, but right behind it are dormitories. He added that he concurs with everybody's concern that with a change to the UR District, Mr. Sparks may not be the one to build on it. Ms. Graham stated that she wanted to touch on Mr. Scott's comments and explained that Elon only allows straight rezoning, not conditional zoning. This means that once it is rezoned, the applicant can build anything that is allowed within that district as a use by right. She also mentioned that the multi-family option requires a special use permit, and that process would require more detailed information on the proposal, including plans. She stated that though we sometimes we do see more detail on a rezoning proposal, that no matter what you have seen, that same developer could build that or something different, or they could sell to someone else who had a completely different idea in mind and as long as it met the requirements of the new district, they could build it. Mr. Allison asked about the recently adopted plan and the ordinance updates that have just begun. Ms. Graham clarified that the adopted plan showing it as Institutional is saying that this is how the property is envisioned by the year 2040, but it does not rezone the property. Mr. Allison asked that if they wanted to do something with the property years down the road, they still have the opportunity even though it says Institutional; would they have to do something to have it rezoned if they wanted to build duplexes, for example. Ms. Graham responded that the property is currently zoned SR, and that no matter what happens with the Plan, it remains SR unless they rezone it or the Town rezones it. She further stated that the Institutional category shown on the Plan is more of a vision, but is not regulatory, and in order to change it, a rezoning request would have to be initiated either by the property owners or the Town.

The Board engaged in additional discussion regarding the potential for spot zoning in this case, particularly with the nearest UR zoned properties being 200 yards to the north. Mrs. Sparks asked the Board if an NR designation would make them more comfortable. Chairman Beasley responded that NR would not allow multi-family, only duplexes. He also pointed out the differences between the allowable uses in the SR and UR Districts and Ms. Graham offered some clarifications on specific requirements and special use permits. Mrs. Sparks addressed the Board regarding the changes to the area over the years and the University's Master Plan. She asked why is the University allowed to invest in property, but not them? And is there an assumption that they would not take care of the property? Ms. Graham noted that if the University wished to build dormitories on this property, they would have to request a rezoning as well. Joel Brown then addressed the Board. He stated that 3-4 years ago we were discussing something similar for other nearby properties and, as he said then, he hears both sides. He added that if the Town zones in favor of

the Sparks, then you need to be ready for 4 or 5 more. He also stated that the problem students are a small percentage. Mrs. Sparks asked if it is a bad thing if others want to do it too because everything around them is rental? She stated that she knows it is zoned single-family, but it no longer is single-family. It is a bunch of rental properties, so would it even be spot zoning anymore? She added that this is very similar to what we have in the 2040 Vision Plan, close to the Schar Center location. Mr. Brown responded by saying that he couldn't answer that; there are good landlords and bad landlords. Mrs. Sparks said that it is already on its way to flipping. Mr. Sparks added that one of the things that made him consider it was looking out at his backyard when the dorms went up. He said that if there is any block in town for multi-family housing, this should be it. Ms. Graham stated that the question regarding spot zoning is worth looking at again. One of the factors is about size. This property, with the exception of the University parcels, is relatively large in relation to the other properties in the district. She also reminded the Board that spot zoning is not a problem unless it is challenged in court. If an aggrieved party challenges a zoning decision, you need to be able to say that you looked at all of these things and determined that our decision was still reasonable. A spot zoning would perhaps be more easily challenged if it was a small piece of property in the context of a larger area of dissimilarly zoned properties. Then, the courts will ask, was your decision compatible with the land development plan. The answer is no, and yet, you still can approve or recommend approval as long as you justify it, and that is what the table at the end of our motion format is for. It includes the statements that justify a deviation from the land development plan. Third, the benefits and detriments (who benefits and who is harmed), and lastly, the relationship of the uses. She stated that Mrs. Sparks is correct in that these properties are still single-family and technically, the uses are still single-family. They don't become multi-family unless you have more than one kitchen or cooking facility and they are separated into separate units. We know that, with the exception of the few that are owner-occupied, many of the properties are occupied by a number of individuals. She reminded that whether this would stand up to a spot zoning challenge would be for a court to decide.

Chairman Beasley asked if there were any more questions or comments. Hearing none, he asked if any member of the Board was prepared to make a motion. Ms. Graham reminded the Board that the motions include recommended statements; however, the statements are at the Board's discretion as to what they want to say.

Motion #1 – Rezoning Request RZ #2019-03 is or is not consistent with plans adopted by the Town of Elon Board of Aldermen. The proposal is considered by staff to be inconsistent with the adopted Land Development Plan. Mrs. Gill made the motion that the request is not consistent with adopted plans. Mr. Bennett seconded the motion. Vote was 5-0 in favor of this motion.

Motion #2 – Based on information presented by staff and other interested parties, Rezoning Request RZ #2019-03 does or does not have an acceptable level of impact on both the immediate area and the community as a whole. Mr. Allison made the motion that the amendment does not have an acceptable level of impact. The motion was seconded by Mr. Bennett. Vote on the motion was 4-1 in favor of this motion, with Mr. Harwood dissenting.

Motion #3 - The Town of Elon Planning Board recommends approval or denial of Rezoning Request RZ #2019-03. Mr. Beasley made a motion for a recommendation of approval of the request and the motion was seconded by Mr. Harwood. The motion failed on a vote of 2 to 3. Mr.

Bennett made a motion for a recommendation of denial and Mr. Allison seconded. The motion was approved on a 3 to 2 vote with Mr. Beasley and Mr. Harwood dissenting.

Motion #4 – Ms. Graham read the consistency statement recommended by staff, in order to comply with NC General Statutes, as follows: “The proposal is determined to be inconsistent with the adopted Comprehensive Land Use Plan based on the Plan’s designated future use for the properties as Institutional, as well as inconsistencies with Goals and Objectives provided in the Plan. Additionally, the action is considered to be reasonable and in the public interest based on the proposed use’s deviation from the predominant uses in the vicinity of the subject properties, and due to the proposal being considered to be inconsistent with the adopted Comprehensive Land Use Plan. A motion to adopt the provided statement was offered by Mrs. Gill, and seconded by Mr. Bennett. The motion was approved by unanimous vote.

Item C – Items from Board Members

Mrs. Gill advised the Board that she has heard from some citizens regarding the deterioration of Summerbell Avenue, she believes on the side of the Elon Homes for Children. The complaints are about student behaviors, including vomiting and other bodily fluids. Ms. Graham stated that some of the activities being described warrant a 911 call and can be considered a health and safety issue.

Item D – Items from Alderman Davis Montgomery

Ms. Graham noted that a recap of the most recent meeting was provided in the packet. She added that the process to renew the regional transportation plan has begun and will look for opportunities for input from Board members and citizens. Chairman Beasley noted from the recap that the Shallowford Church Road development has been approved. Ms. Graham advised that the project is in the final stages of TRC review, but the development was approved by the Board of Aldermen.

Item E – Motion to Adjourn

A motion to adjourn was offered by Mr. Harwood and seconded by Mr. Bennett. The motion was approved by unanimous vote.

Meeting was adjourned at 7:42 p.m.

Pamela Graham, Planning Director
Minutes were completed in
Draft form on August 16, 2019

Jim Beasley, Planning Board Chair
Minutes were approved on
August 20, 2019



MEMORANDUM TO THE PLANNING BOARD – August 20, 2019

Applicant:

Peggy Sue Huffines
Page

Request:

Rezoning Request
RZ #2019-05

Location:

608 N O’Kelly Ave.

Parcel ID:

115251

Site Acreage:

20.758

Existing Zoning:

Public Institutional (PI)

Requested Zoning:

Suburban Residential
(SR)

Prepared by:

Pamela Graham

Background and Description of Zoning Request

Mrs. Peggy Sue Huffines Page, legal owner of the property located at 608 N. O’Kelly Avenue, has submitted an application for a planning district reclassification for the 20.758 acre parcel. The property is currently zoned Public Institutional (PI); the Suburban Residential (SR) District is being requested in the application. Based on staff research, the property appears to have been zoned PI in November 2004, as a result of the adoption of the Elon Land Development Ordinance (LDO). The rezoning replaced the RA-15 Zoning that was previously applied to the property. The RA-15 District was removed as a zoning classification, as were most others, in the newly adopted LDO. Most RA-15 properties were reclassified to the Suburban Residential District in the zoning map adopted with the LDO due to the similarities in the standards between the two districts. However, this parcel, likely due to its proximity to Elon University-owned and developed properties, was reclassified to the Public Institutional District that encompasses the University campus.

The Page Family has expressed their desire for the property to maintain its single-family residential use, and is in the process of dividing the property so that a second home can be constructed. Because the PI District does not permit single-family residential uses, the LDO disallows the existing use from being expanded, increased, extended, or enlarged in any way, thereby prohibiting the owner from constructing an additional home on the property. Approval of the request would remove the nonconforming status of the existing home and permit the owner to expand the single-family residential use. The property is located in Elon’s ETJ and the property owner is not requesting annexation at this time.

Zoning (Exhibit Attached)

The property is adjoined by PI-zoned properties to the west and south, Suburban Residential properties to the north (across University Drive), and a Commercial-zoned property to the east (the site of the Inn at Elon, currently under construction). The following table details the District designation of adjacent properties.

| | |
|-------------------------|---|
| Requested Zoning | Suburban Residential (SR) |
| Adjacent Zoning | North: Suburban Residential (SR) South: Public Institutional (PI) West: Public Institutional (PI) East: Commercial (C) |

The existing Public Institutional District is described in the LDO as follows:

The Public Institutional Planning District is intended to accommodate primarily large-scale public, educational and institutional uses. Uses permitted by right include churches, civic, cultural, club, fraternal, and community facilities, children’s homes, college or university administrative and classroom uses, hospitals, live/work units, and Level 1 solar energy systems. Dormitories are referred to as “group quarters housing” are permitted with specific requirements; however, single-family residential uses are not permitted.

The requested Suburban Residential District is described as being intended to accommodate most of the Town’s existing conventional single-family residential subdivisions and providing for some residential infill development within and surrounding existing neighborhoods. Single-family detached homes are permitted as a use by right in this district. The pre-2004 zoning category of the property (RA-15) was described in the ordinance active at that time as being intended to provide a place for agriculture and a low density residential use. Single-family residential uses were a use by right in the RA-15 District.

Procedural Information

Rezoning are treated as amendments to the Land Development Ordinance and Map, and are referred to the Planning Board for consideration in advance of a public hearing and final decision by the Board of Aldermen. Zoning considerations must address the potential for the decision to be classified as “spot zoning”. While not illegal in North Carolina, spot zoning must be clearly supported by a reasonable basis in order to withstand a legal challenge. Upon review of the issues relevant to spot zoning, staff does not consider the proposal to be vulnerable to a challenge of the proposed zoning category. Those issues, as provided by UNC Professor and Land Use Attorney David Owens, are listed below, followed by summary assessments by staff.

1. The size of the tract in question. The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a 1-acre parcel may be considered large in an urban area developed in the 1920s, but very small in the midst of an undeveloped rural area.

The total area proposed for rezoning is 20.76 acres. The smallest adjoining parcel south of University Drive is the site of The Inn at Elon, at 18.11 acres, and the largest is the parcel immediately to the south, at 58.37 acres. Immediately to the north, across University Drive, is a 4.1 acre parcel owned by the applicant. This property was once contiguous to the subject property and of the same parcel, but was split by the construction of University Drive. The area proposed for rezoning is not incongruous in size with other properties in the general vicinity, and the proposed district designation is well represented by developed and vacant properties to the north.

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

Elon's Comprehensive Land Use Plan indicates Residential Low Density with redevelopment potential as the existing use on the subject parcel. When evaluated for Residential vs. Commercial Suitability, the majority of the property was considered more suitable for residential uses, with the exception of the University Drive frontage.

The Future Land Use and Conservation Map included in the adopted Comprehensive Land Use Plan indicates an expansive area, including this parcel, in the Mixed Use future land use category. Because a larger area surrounding this property is shown with this future land use, any use, or a range of uses, common to a mixed use setting may be considered to be appropriate for the property. The Plan's description of the Mixed Use Classification proposes a mix of retail, restaurant, service, and office uses in addition to a variety of housing types. The proposed category of Suburban Residential is represented in the Plan as Low-Density Residential, where single-family detached homes are complemented by natural areas as well as formal and informal open space amenities. When compared to the Mixed Use category, this category is more aligned with the existing use of the property.

Among the Plan's Goals and Objectives are the following:

- Protect environmental resources and preserve open space (the property is mostly undeveloped and contains a pond and protected stream buffer);*
- Carefully preserve the Town of Elon's small town character;*
- Make "smart growth" decisions that maintain our small-town characteristics.*

The goals and objectives listed above are consistent with the property owner's desire to maintain the existing use and not develop the property to a higher density, with the exception of one additional single family dwelling. Additionally, though the intended uses for the property comprise of only a single component of a mixed use scenario, at a larger scale the ability of the property to contribute to a mixed use category will not be lessened by the approval of the rezoning request. Staff supports a finding that the proposal is compatible with the Comprehensive Land Use Plan.

3. Benefits and Detriments. The third factor in spot zoning analysis is who benefits and who is harmed by the rezoning and what the relative magnitude of each consequence is. If the rezoning

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

The property owner desires to construct one additional single family dwelling on the property. Because single family residential uses are not permitted in the Public Institutional District, the existing and historical residential use is considered nonconforming and the expansion of the use is not allowed. Approval of the request would remove the nonconforming status of the existing use and would permit the family to construct a second home on the property. The benefits to the property owner from the approval of the request are considerable.

The existing Public Institutional zoning is well represented on the Elon University campus and in the Twin Lakes Community. Neither of these entities has expressed to staff any interest in the property and the University's 2017 Master Plan Update excludes the property from its Near, Mid, and Long Term Project list. There is no indication at this time of any harm to neighbors or the community at large resulting from approval of the request.

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

Existing uses of adjacent properties to the west and south are as support facilities for Elon University, including student housing and sports facilities. The adjoining property to the east is currently being developed by the University as an Inn, and is zoned Commercial. The adjoining property to the north, directly across University Drive, is vacant and is zoned Suburban Residential. Though some disparity exists between the subject property use and the adjoining University-owned properties, the largely vacant nature of the subject property is reflected in other properties in the vicinity, including the 63 acre Elon University Forest, located less than 600 feet to the north.

Existing Site Conditions (Exhibit attached)

The subject property is largely vacant and contains a single dwelling unit with a construction date of 1957 per Alamance County Tax records. The existing owner-occupied home fronts N. O'Kelly Avenue; however, the parcel contains two additional street frontages: University Drive to the north, and Phoenix Drive to the south. Elon University sports facilities, including the football stadium, occupy property to the west. A nearly one-acre pond is located near the center of the site, contributing to a protected stream buffer for the northwest portion of the property. The predominant condition of the site is wooded, with a number of outbuildings associated with the farming uses that had once existed on the property still present. The property does not contain floodplain and slopes towards the pond, with the highest ground being the location of the home. At the southwest corner

of the property is a +/- 3,000 square foot maintenance building operated by the University, including associated parking and outdoor materials storage. As this use is not permitted in the requested SR zoning category, the area will be excluded from the rezoning request and will remain PI.

Consistency with Plans

A more in-depth analysis of the proposal's consistency with the Town's Comprehensive Land Use Plan begins on page 3 of this document. Plans of this type are intended to guide governmental decisions and are periodically updated as conditions and overall vision for the community change over time.

The proposal is considered by staff to be consistent with the Elon Envision 2040 Land Use Plan, including the Plan's Future Land Use and Conservation Map. This determination is supported by the potential for the existing uses to contribute to a large-scale mixed use setting, and the proposal's consistency with several of the Plan's goals and objectives.

Recommendations and Suggested Motions

Staff recommends that the Planning Board consider this application, accept public comment during the scheduled meeting, and consider a recommendation on the proposal at their earliest convenience. The motions should proceed as follows.

Motion 1: Rezoning Request RZ #19-05 (is/is not) consistent with adopted plans of the Town of Elon Board of Aldermen.

The proposal is considered by staff to be consistent with the Town's Land Development Plan. Statement options are offered as part of Motion #4.

Motion 2: Based on information presented by staff and other interested parties, Rezoning Request RZ #19-05 (does/does not) have an acceptable level of impact on both the immediate area and the community as a whole.

Motion 3: The Town of Elon Planning Board recommends (approval/denial) of Rezoning Request RZ # 19-05.

Motion 4: In order to fully comply with N.C. General Statutes, use the table on the following page to choose from one of the options and provide the appropriate statement(s). Staff has provided recommended statement(s) that may be accepted, rejected, or amended by the Planning Board at their discretion.



| <u>PROPOSAL IS CONSISTENT</u> | | <u>PROPOSAL IS INCONSISTENT</u> | |
|---|---|--|--|
| <u>Recommend Approval</u> | <u>Recommend Denial</u> | <u>Recommend Approval</u> | <u>Recommend Denial</u> |
| <i>State why the action is reasonable and in the public interest?</i> | <i>State why the action is reasonable and in the public interest?</i> | <i>Declare that the approval is also deemed an amendment to the Land Use Plan</i> | <i>Describe proposal's inconsistency with the Land Use Plan</i> |
| | | <i>Explain the change in conditions taken into account in amending the zoning ordinance to meet the development needs of the community</i> | <i>Explain why the action is reasonable and in the public interest</i> |
| | | <i>State why the action is reasonable and in the public interest</i> | |

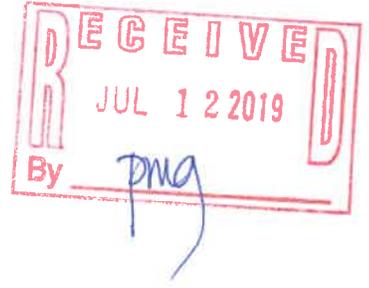
Recommended Statement (If Determined to be Consistent): *The action is considered to be reasonable and in the public interest as the return of the property's zoning category to a residential category is consistent with the existing, long-term uses on the property, represents a low-intensity use that does not place burdens on the infrastructure, and potentially preserves a significant green space in a prominent location that balances more intense uses on nearby properties.*

Declaration or Description (If Determined to be Inconsistent):

Explanation (If Determined to be Inconsistent):

Statement (If Determined to be Inconsistent yet Recommended for Approval):

- Enclosures:
- Reclassification Application
 - Vicinity Planning District Map
 - Aerial Imagery
 - 2002 Existing Land Use Map
 - 2002 Existing Zoning Map
 - 2002 Proposed Land Use Map
 - 2019 Proposed Land Use Vicinity Map
 - Elon University Master Plan Map



**TOWN OF ELON
RECLASSIFICATION**

APPLICANT INFORMATION

Name of Applicant/Property Owner: Peggy Sue Huffines Page

Date Request Submitted: 7/12/19 Property Owner Signature: Peggy Sue Huffines Page

Parcel ID: 115251 Street Address: 608 N O'Kelly Ave

Current Classification: PI
Type of Use: Residential

New Classification: Residential (SR)
Type of Use: Residential

Description of Use Requested:
Subdivide build single family house

Date of Planning Board Meeting: 8/20/19

Date of Public Hearing before the Board of Aldermen: _____

Date of Vote for Approval or Denial before the Board of Aldermen: _____

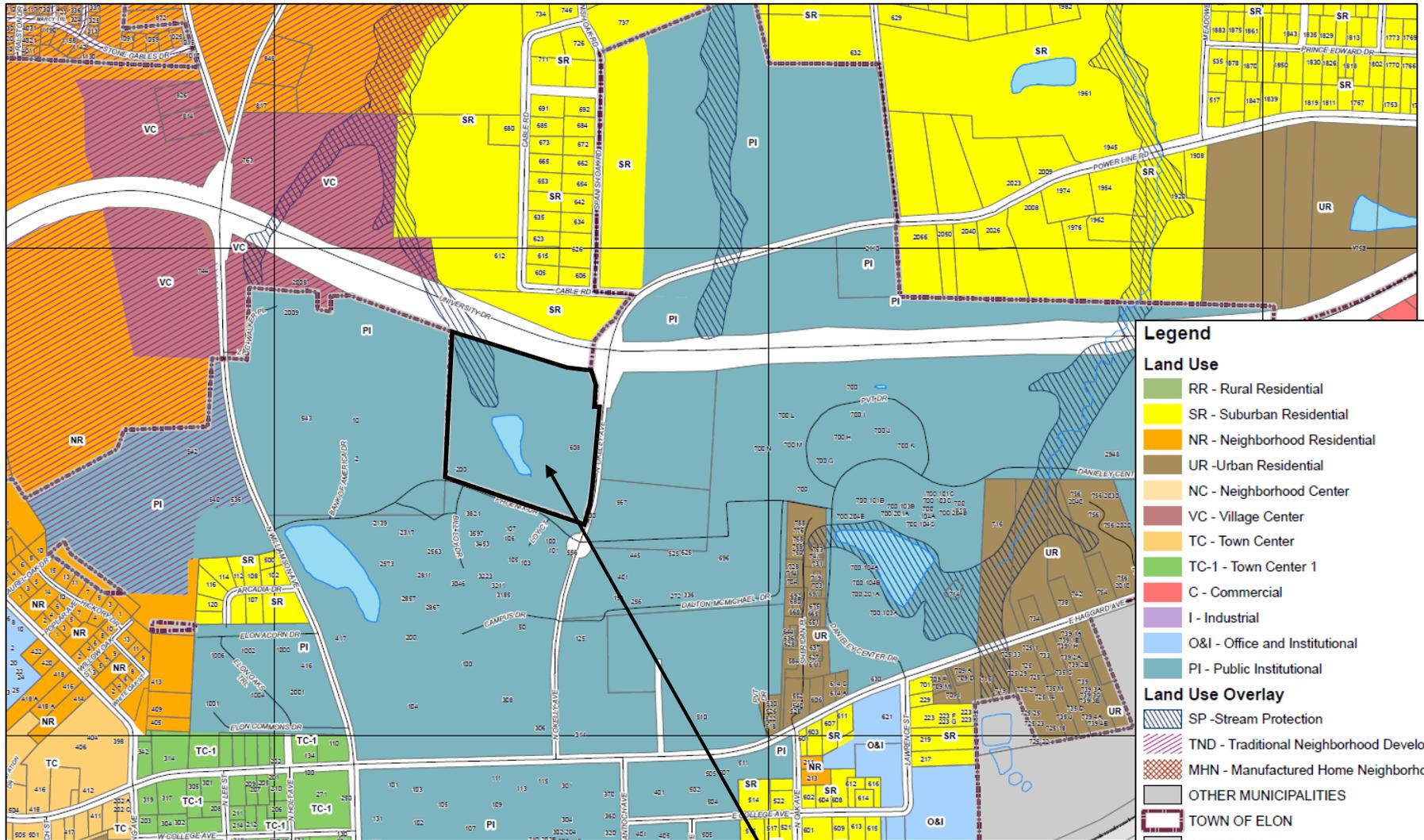
ACTION BY THE BOARD OF ALDERMEN:

Having heard all the evidence and arguments presented at the public hearing, the Board of Aldermen of the Town of Elon finds that the foregoing petition has been:

- Approved
- Denied

Town Mayor

Distribution: Alamance County Inspections
Department Applicant
Town Clerk and Manager
File



Legend

Land Use

- RR - Rural Residential
- SR - Suburban Residential
- NR - Neighborhood Residential
- UR - Urban Residential
- NC - Neighborhood Center
- VC - Village Center
- TC - Town Center
- TC-1 - Town Center 1
- C - Commercial
- I - Industrial
- O&I - Office and Institutional
- PI - Public Institutional

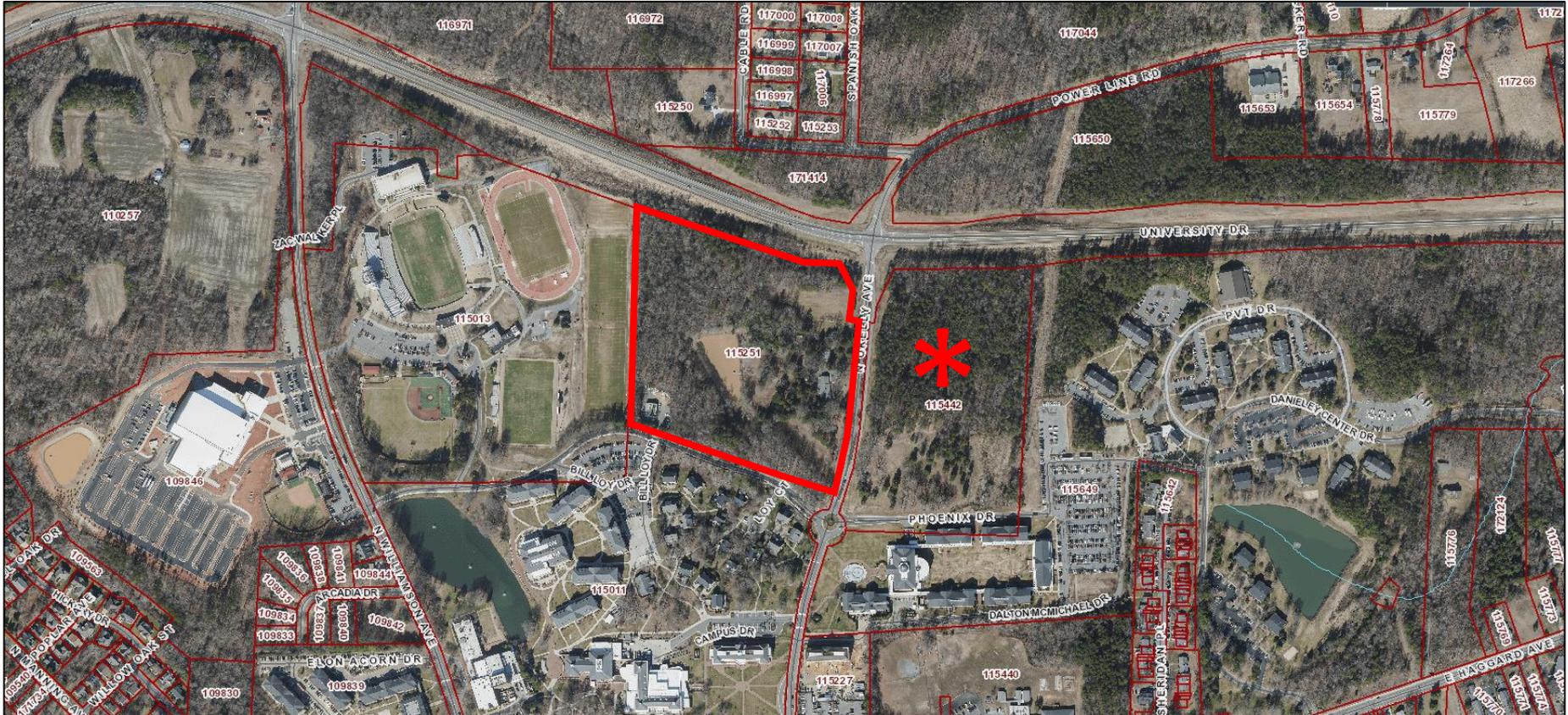
Land Use Overlay

- SP - Stream Protection
- TND - Traditional Neighborhood Development
- MHN - Manufactured Home Neighborhood
- OTHER MUNICIPALITIES
- TOWN OF ELON
- OTHER ETJs
- ELON ETJ
- PARCELS
- GRID
- STREETS
- RAILROAD
- LAKES, PONDS
- RIVERS, CREEKS

Subject Property

Existing District = PI
 Requested District - SR

**Rezoning Request RZ 2019-05
 Elon Planning District Vicinity Map**



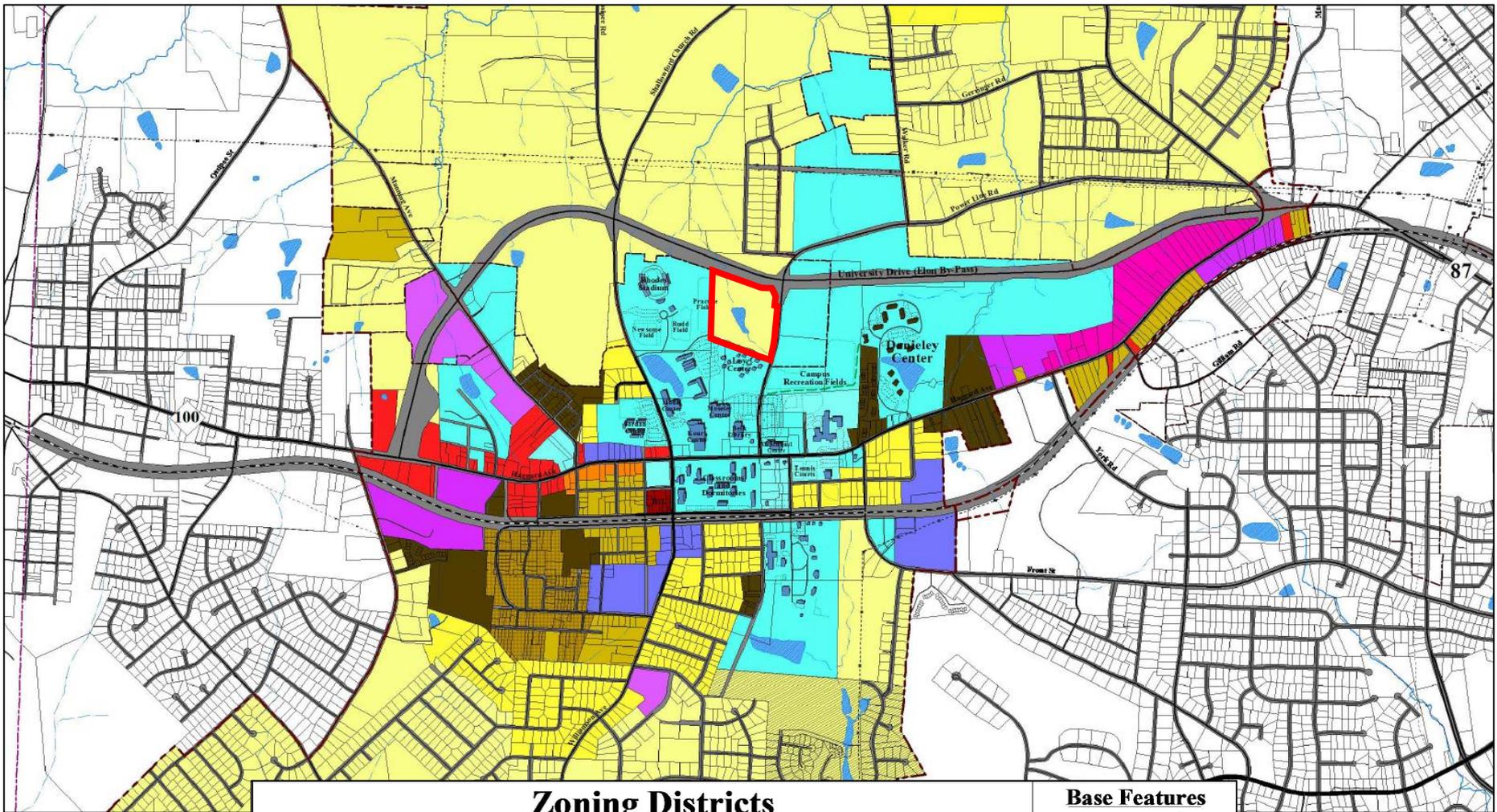
**Rezoning Request RZ #2019-05
Aerial Image - Vicinity
(Subject Property Outlined in Red)**

***** This property is currently developed
as the Inn at Elon



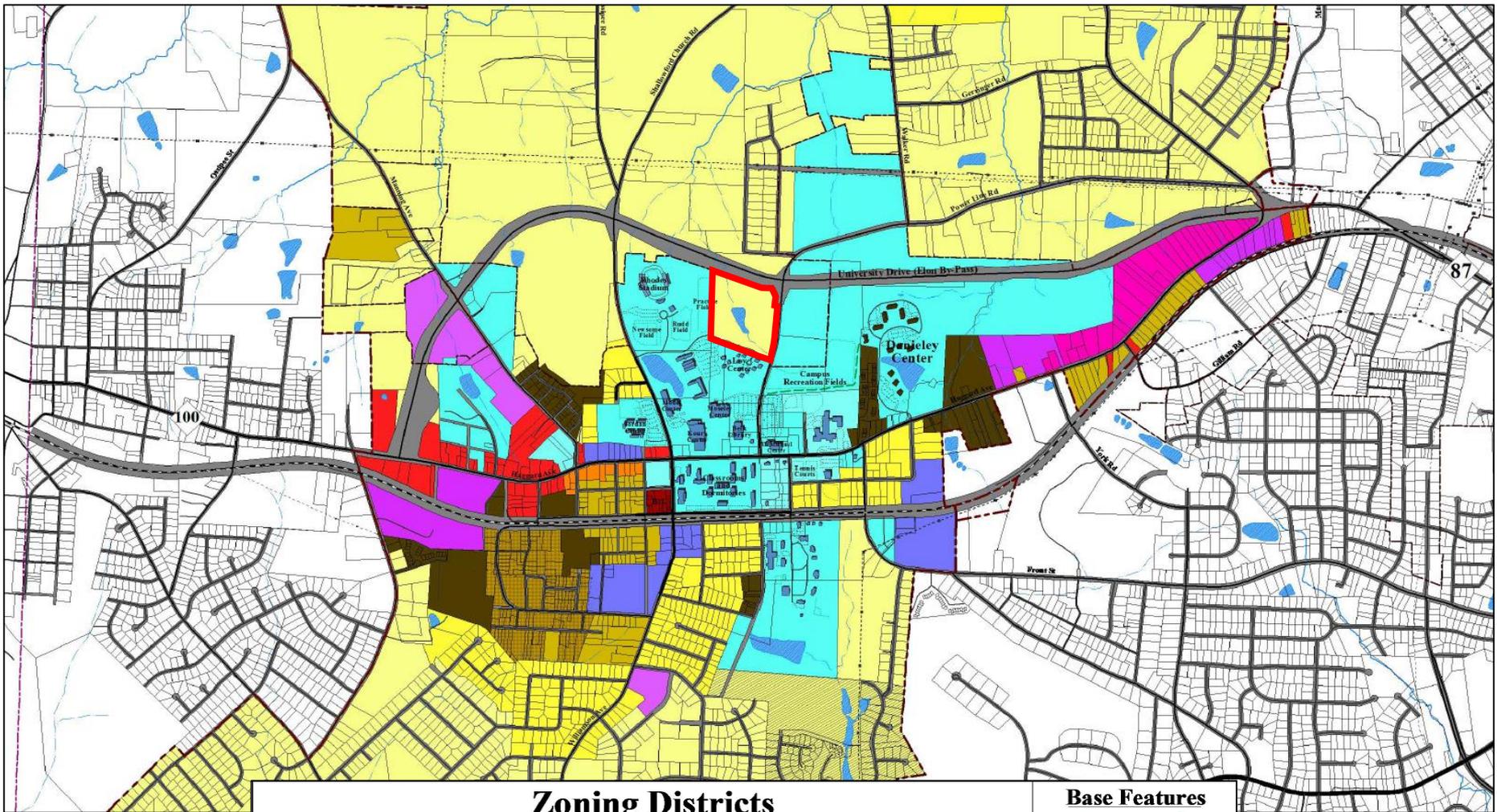
Rezoning Request RZ #2019-05
Aerial Image
(Subject Property Outlined in Red)

* This property is currently developed
as the Inn at Elon



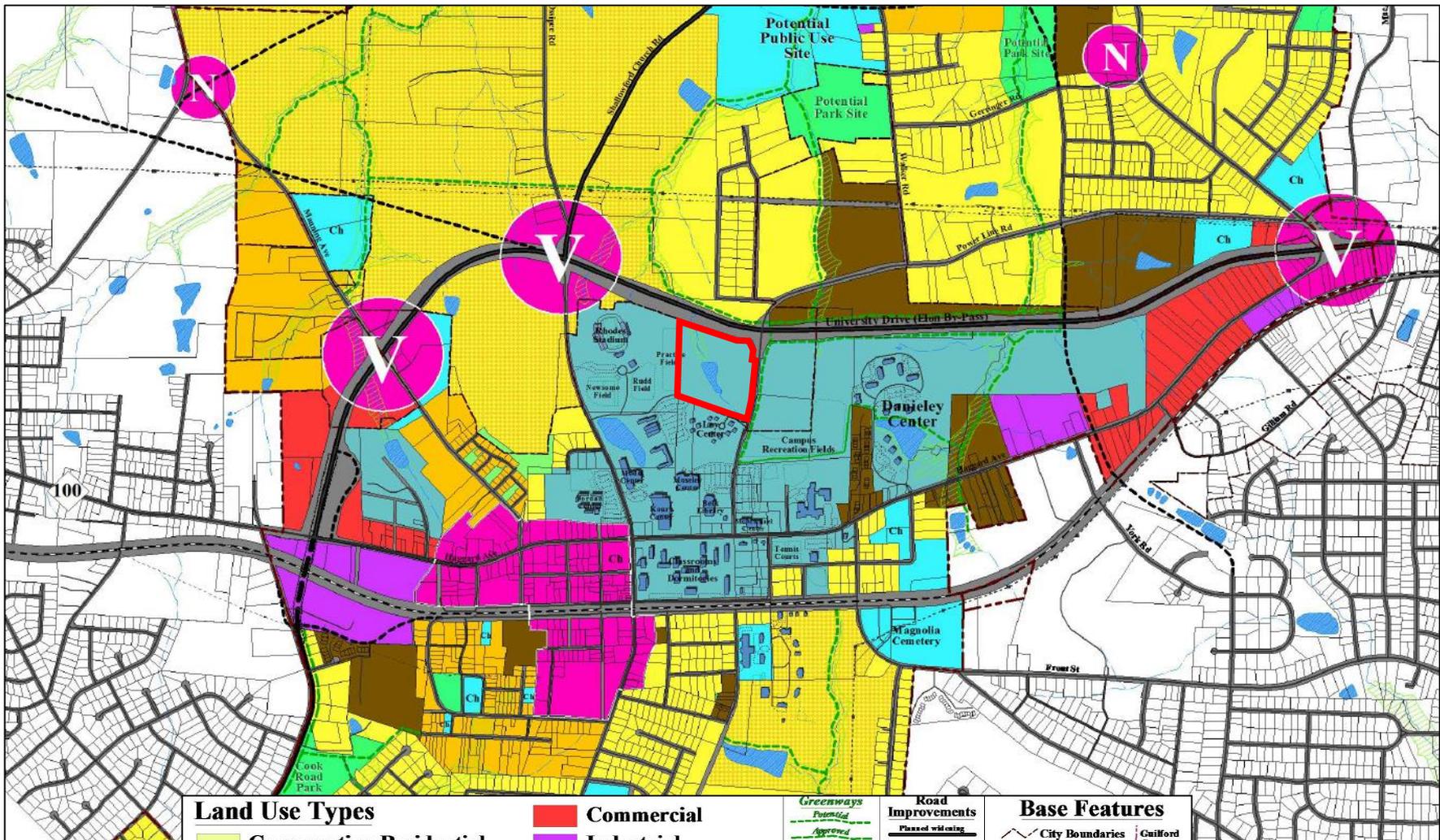
| Zoning Districts | | | | | Base Features | | | | | | | | | |
|------------------|------------|--|------|--|---------------|-----------------------------------|-----------------------|-----|--|-----------------|--|---------------------------|--------------------------|--|
| | RA-15 | | RS-6 | | | B-4 | | O&I | | City Boundaries | | Gulford County Line | | |
| | RA-15(PRD) | | RM | | | X-1 | | I-1 | | ETJ Boundaries | | North Study Area Boundary | | |
| | RS-12 | | MR | | | X-2 | | I-2 | | US Highway | | NC Highway | | |
| | | | | * B-1 District located in only one block | | * PRD applies only in Mill Pointe | | | | | | | | |
| | | | | | | | USGS Perennial Stream | | | | | | USGS Intermittent Stream | |
| | | | | | | | Railroad | | | | | | Major Power Line | |

Rezoning Request RZ #2019-05
2002 Existing Zoning Map
(Subject Property Outlined in Red)



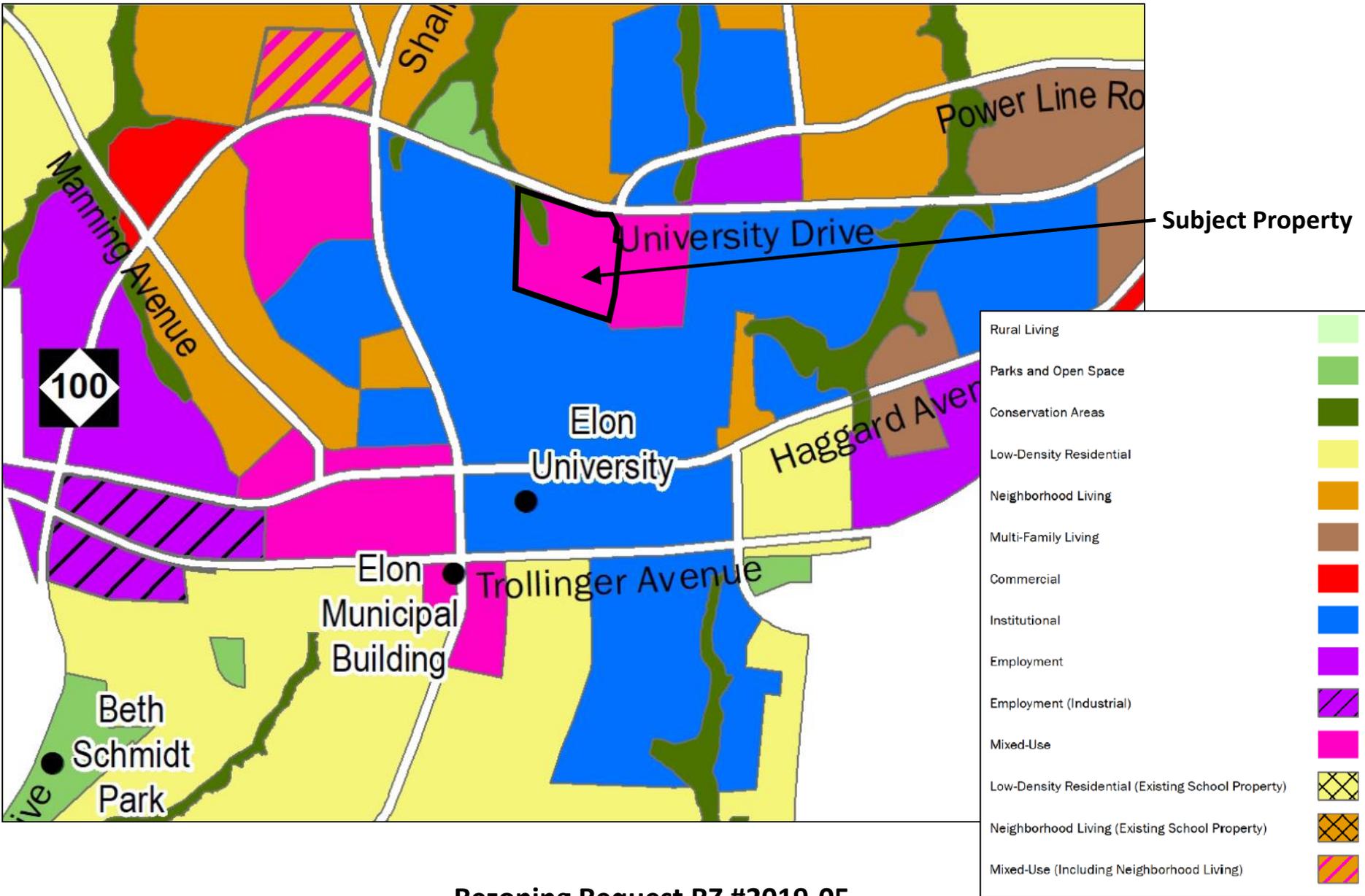
| Zoning Districts | | | | | Base Features | |
|--|--|---|--|---|---|---|
|  RA-15 |  RS-6 |  B-1 |  B-4 |  O&I |  City Boundaries |  Guilford County Line |
|  RA-15(PRD) |  RM |  B-2 |  X-1 |  I-1 |  ETJ Boundaries |  North Study Area Boundary |
|  RS-12 |  MR |  B-3 |  X-2 |  I-2 |  US Highway |  NC Highway |
| * B-1 District located in only one block | | | | | * PRD applies only in Mill Pointe | |
| | | | | |  USGS Perennial Stream |  USGS Intermittent Stream |
| | | | | |  Railroad |  Major Power Line |

Rezoning Request RZ #2019-05
2002 Existing Zoning Map
(Subject Property Outlined in Red)



| Land Use Types | | Commercial | Greenways | Road Improvements | Base Features | |
|----------------|--------------------------|------------|-----------|-------------------|---------------|---------------------------|
| | Conservation Residential | | | | | City Boundaries |
| | Suburban Residential | | | | | Guilford County Line |
| | Neighborhood Residential | | | | | ETJ Boundaries |
| | Urban Residential | | | | | North Study Area Boundary |
| | Traditional Neighborhood | | | | | US Highway |
| | | | | | | NC Highway |
| | | | | | | USGS Perennial Stream |
| | | | | | | USGS Intermittent Stream |
| | | | | | | Railroad |
| | | | | | | Major Power Line |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

Rezoning Request RZ #2019-05
2002 Future Land Use Map
(Subject Property Outlined in Red)



Rezoning Request RZ #2019-05
Proposed Land Use Map from Land Development Plan – Vicinity Enlargement
(Subject Property Outlined in Black)

Implementation Plan

