

Memorandum

To: Morganton Planning & Zoning Commission Members
From: Phillip Lookadoo, Director D&D Services
Date: September 30, 2020
Subject: P&Z meeting to be held October 8, 2020

The Morganton Planning & Zoning Commission will meet on **Thursday, October 8, at 5:15 pm** in the City Hall Council Chamber. Please contact Jackie Cain (828) 438-5260 to confirm your attendance

In response to the order issued by Governor Roy Cooper (phase 2.5), and to help mitigate the spread of COVID-19, the Planning & Zoning Commission will hold a meeting October 8, 2020 with the following guidelines. The Council Chamber will be open to the public with limitations. Listed below are ways to participate while remaining in compliance with the Governor's orders.

If citizens wish to address the commission during the meeting they may:

1. Send an email to: jcain@ci.morganton.nc.us
2. Send a letter to: City of Morganton, Attn: Jackie Cain, P.O. Box 3448, Morganton, NC 28680
3. Hand deliver a letter to City Hall: 305 East Union Street by 9:00 a.m. on Wednesday, October 7, 2020.
4. If a citizen would like to address the commission in person, they may attend the scheduled meeting. Limitation of fifty (50) individuals are allowed in the council chamber. Additional seating and live feed will be available in the lobby of city hall. Masks will be required. Please contact Jackie Cain (828) 438-5260 with any questions. Speakers during any public hearing shall be limited to three (3) minutes each. Citizens will be allowed into Council Chamber.

**All comments (emails or letters) must be received by 9:00 a.m.
on Thursday October 8, 2020.**

Morganton Planning & Zoning Commission
Agenda: October 8, 2020
City Hall Conference Room 4
305 East Union Street (Suite A100)

I. OLD BUSINESS:

Item 1: Review and approval of the July 9, 2020 minutes.

Item 2: Review of City Council action since last meeting.

- City Council met in August and approved a map amendment for a proposed rezoning located at 107 Old Jamestown Road (PIN 1793137357 and (1793138261) to reflect the intent of the 2030 Land Use Plan and to also match adjacent land uses.
- City Council met in September and appointed Kevin Kee to vacant position on Planning & Zoning. This term will expire June 3, 2023.

II. APPEARANCES

This Agenda time is reserved to provide citizens an opportunity to appear before the Planning Commission about issues other than those appearing on the agenda. Citizens may present their planning ideas, opinions or concerns for Commission consideration and discussion. Anyone wishing to speak should come to the podium, state their name, and address for the record.

III. NEW BUSINESS

Item 1: Application from William Andrews for consideration for an amendment to the Zoning Ordinance sections 3.2 Overlay Districts, 4.2 Density and Dimensional Standards, and 4.8 Building Design Standards. These changes are for the proposed addition of a new overlay zone “Restricted Residential Overlay (RR-O)” to the City of Morganton Zoning Ordinance.

Item 2: A public meeting will be held concerning a proposed rezoning of a 0.95+- acre tract (PIN# 2703156576), 0.44+- acre tract (PIN# 2703158591), 0.33+- acre tract (PIN# 2703159443) and 0.29+- acre tract (PIN#2703157369) located at 313 West Union Street, 101 Lyman Court, 103 Lyman Court and 104 Lyman Court from Conditional Use (CU) to Medium Intensity District & Restricted Residential Overlay (MID/RR-O) submitted by William F. Andrews.

Item 3: Application submitted by Nancy VanNoppen for consideration for an amendment to the Zoning Ordinance, Table of Permitted Uses, to allow Body Art Establishments (tattoos & body piercing) as a permitted use in the Central Business District with conditions.

OTHER ITEMS OF DISCUSSION

IV. ADJOURN

Next Scheduled P&Z Meeting:

Thursday November 12, 2020 at 5:15 PM
City Hall Council Chamber

Minutes
Morganton Planning & Zoning
July 9, 2020

Members Present:

Hank Dickens, Chairman
Bill Lennon, Vice-Chairman
Judy Francis
Rick Lingerfelt
Waits Gordon
Don Smith

Members Absent:

Eric Engstrom
Pete Wallace

Also present from the City staff were Phillip Lookadoo, Director Development Design Services; Louis Vinay, City Attorney; and Jackie Cain, Administrative Manager.

I. OLD BUSINESS:

Item 1: Review and approval of the June 18, 2020 minutes.

Mr. Dickens stated a copy of the minutes from the June 18, 2020 meeting were provided. Motion to adopt as submitted was approved unanimously (6-0).

Item 2: Review of City Council action since last meeting

Mr. Dickens asked Mr. Lookadoo to update commission on actions taken by city council.

Mr. Lookadoo stated City Council had no meeting in July and therefore there was no action taken.

II. APPEARANCES:

Mr. Dickens stated this time is set-aside for individuals to come before the planning board to express any planning related concerns to the planning board.

None.

III. NEW BUSINESS:

Item : Review proposal to rezone a parcel located at 107 Old Jamestown Road (PIN 1793137357) to reflect the intent of the 2030 Land Use Plan and to also match adjacent land uses.

Mr. Dickens asked Mr. Lookadoo to review the request.

Mr. Lookadoo stated this request was in effort to bring the property into compliance with the 2030 map. Mr. Lookadoo stated planning commission directed staff to prepare a rezoning application at the June 18, 2020 meeting.

Mr. Lookadoo reviewed the rezoning recommendation.

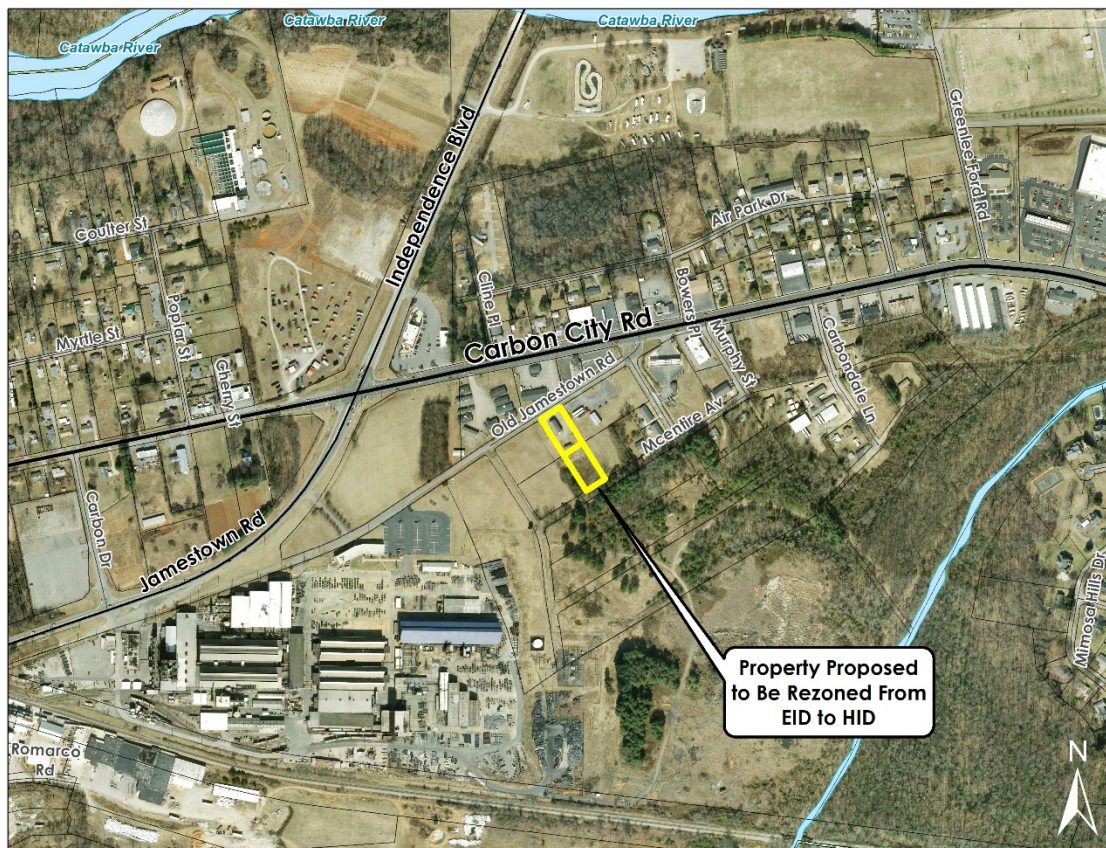
Case # 03-2020
107 Old Jamestown Road Rezoning Recommendation
NCPINS: 1793137357, 1793138261

Background

To cause the principles and goals, relative to a conducive and friendly environment to economic development, of the Mission 2030 Plan to be implemented; the City of Morganton redrafted and adopted its zoning code. Along with the new code came new and more simplified zoning districts from what was in place. It was therefore necessary to assign a new zoning designation to every parcel of property within the City's zoning jurisdiction.

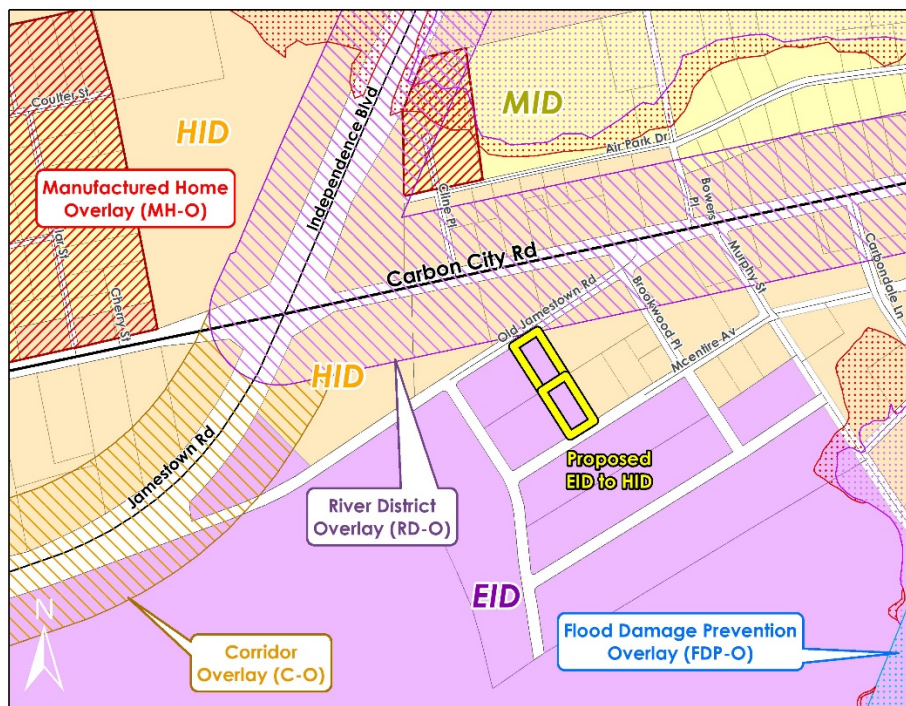
To assign zoning districts to parcels of land correctly, and part of the comprehensive planning process contained in the Mission 2030 plan, an evaluation had to take place. This evaluation involved an inventory of land uses (existing land use) for each parcel and the subsequent assigning of a proposed land use (future land use) to be consistent with the goals of the Mission 2030 plan. With the adoption of the Mission 2030 plan, the future land use for each parcel was assigned. New zoning designations for each parcel were then based on the parcel's future land use.

In the case of the parcels associated with 107 Old Jamestown Road, identified as NC PINS: 1793137357, 1793138261, the future land use of "General Business/Commercial" was assigned. This was appropriate as all the parcels in that block were designated as such. These two parcels and two others owned by SGL Carbon, LLC; however, were zoned "Exclusive Industrial District (EID)." Staff cannot verify but, it appears that the ownership of the parcels caused them to mistakenly be zoned EID as opposed to the "General Business/Commercial" zoning district of "High Intensity District (HID)."



Zone Comparison

EID zoning designation provides for industrial development only while HID provides for an array of general commercial, high density residential, and light industrial uses.



Public Services

Access – Through Old Jamestown Road to Carbon City Road.

Water – Lines are in Old Jamestown Road

Sewer – Lines are in Old Jamestown Road

Planned Land Use

As stated above, the future land use designation for these parcels is “General Business/Commercial.”

Future Rezoning

Future rezoning applications should fully take into consideration the analysis considered in determining future land use as part of the Mission 2030 Plan.

Spot Zoning

This request will not constitute spot zoning as adjacent parcels are currently zoned HID.

Impact to Surrounding Properties

The re-zoning consideration would allow for compatible uses to the adjacent parcels and the district.

Mr. Lookadoo stated staff recommends that the Planning and Zoning Commission approve map amendment for the parcels associated with 107 Old Jamestown Road and identified as NC PINS: 1793137357 and 1793138261.

Mr. Dickens asked commission if they had questions for Mr. Lookadoo.
None

Mr. Dickens opened public hearing.

Mr. Timothy Sutton, 107 Old Jamestown Road, stated he was an employee with SGL Carbon for the last 32 years. He stated since 2012 he had been the secretary/treasurer of the ICWUC for SGL Carbon. He stated the office for the union was located at 107 Old Jamestown Road A. He stated he would answer any questions from commission.

Mr. Dickens asked the level of activity for the ICWUC.

Mr. Sutton stated the union typically met the first Tuesday of the month. He stated in 1988 Rector Appliances occupied unit B, then in 2002 Carbon City Credit Union occupied the location. Lastly there was a thrift store at the location. He stated he has a new tenant interested in the location and found out everything wasn't right when the tenant completed their zoning permit application.

Mr. Dickens asked if he was in favor of the amendment.

Mr. Sutton agreed he was.

Mr. Dickens asked for any other inquiries from the audience. None

Mr. Dickens closed public hearing.

Mr. Lennon made a motion to approve the map amendment to be in compliant with Mission 2030 plan for the parcels associated with 107 Old Jamestown Road and identified as NC PINS: 1793137357 and 1793138261, seconded by Ms. Francis and passed unanimously (6-0).

OTHER ITEMS OF DISCUSSION

Ms. Francis questioned if the approved city budget included funds for comprehensive plan.

Mr. Lookadoo stated due to Covid-19 and budget restraints, funds were not appropriated for 20-21 budget year.

ADJOURN

**Next Scheduled P&Z Meeting: Thursday August 13, 2020 at 5:15 PM
City Hall Council Chamber**

SUBJECT:

Application from William Andrews for consideration of an amendment to the text of the Zoning Ordinance, specifically sections 3.2 Overlay Districts, 4.2 Density and Dimensional Standards, and 4.8 Building Design Standards. These changes are for the proposed addition of a new overlay zone “Restricted Residential Overlay (RR-O)” to the City of Morganton Zoning Ordinance.

SUMMARY:

See Detailed Handout attached for text amendment as proposed by the applicant.

Current Zoning Ordinance Relevant Information

- Overlay Zoning- Subject to underlying base zone district, but also additional requirements or permissions of the overlay zone. This is a tool to apply additional development standards to a district as well as exclude uses that would otherwise be permitted with the underlying base zoning district.
- As proposed, the RR-O would serve to restrict uses in the district to residential and similar uses while allowing higher densities associated with MID, HID and CBD zoning districts.
- The existing Neighborhood Conservation Overlay does not permit multi-family housing and therefore would not achieve the intended purpose of higher density.
-

TABLE 4.2: BASE RESIDENTIAL DENSITY AND DIMENSIONAL STANDARDS

District	A1 Base Max. Residential Density	A2 Residential Min. Lot Size (Square feet) ¹	B Min. Lot Width (feet)	C Front Setback (feet)	D Side Setback (feet)	E Rear Setback (feet)	F Max. Height (feet)
LID	2 DUA	20,000	80	30	10	25	35
MID	2 DUA	20,000	70	20	10	20	35
HID	4 DUA	6,000	60	20	10	20	35
CBD	4 DUA	N/A	N/A	0 min. 5 max.	N/A	N/A	35
EID	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SID	N/A	N/A	50	20	10	20	65

(See base maximum residential density, not much difference between LID to HID, a RR-O Overlay would allow a HID area to be set aside for housing only, with higher density)

- 4.3 Performance Standards-

TABLE 4.3: PERFORMANCE RESIDENTIAL DENSITY AND DIMENSIONAL STANDARDS

District	A Performance Max. Residential Density ¹	B Residential Min. Lot Width (feet) ²	C Front Setback (feet)	D Side Setback (feet)	E Rear Setback (feet)	F Max. Height (feet)
LID	6 DUA	60-detached 25-attached	25	5	20	35
MID	10 DUA	50-detached 25-attached	20	5-detached 0-attached	15	50
HID	20 DUA	40-detached 25-attached	20	5-detached 0-attached	5	65
CBD	N/A	N/A	0 min. 5 max.	N/A	N/A	65
EID	N/A	N/A	N/A	N/A	N/A	N/A
SID	N/A	40-detached 25-attached	20	5-detached 0-attached	5	65

STAFF RECOMMENDATION:

Staff analysis shows that there are benefits to adding this overlay. Benefits include the ability of reserving some MID or HID districts for denser housing options by adding more units per acre. This gives landowners the option to rezone properties while reassuring neighboring properties and City Council that commercial uses will not be permitted where they otherwise would be with the underlying base district. The City of Morganton is in need of housing and this is a way to set aside more intense uses of land for dense housing and/or gives landowners a better chance of successfully rezoning because adding RR-O would create added protection for bordering districts that have less intense land uses.

NECESSARY COMMISSION ACTION:

Motion to recommend denial or approval of this amendment for the addition of a new overlay zone, "Restricted Residential Overlay (RR-O)" with standards.



Zoning Ordinance Text Amendment Application

D & D Services
305 E. Union St A100
Morganton, NC 28655
P: 828.438.5260
F: 828.438.5264

Fee: \$300.00

Fees are subject to change without notice

All pages must be completely filled out before application is accepted. For assistance filling out this application, contact Development & Design Services.

To the Planning & Zoning Commission and City Council of Morganton:

I, William Andrews do hereby make an application to change the Zoning Ordinance of the City of Morganton as herein requested.

Amend Article 3 and 4 Section 3.2, 4.2 as follows: See attached proposed Restricted Residential Overlay District and amended Table 3.1 permitted uses

PLEASE USE AN ATTACHEMENT IF NECESSARY

Applicant Information

Name: William Andrews City/State/Zip: Boca Raton, FL 33434

Mailing Address: 4721 N.W. 27th Avenue Email: wfa4ds@yahoo.com

Phone: 561-715-5500

Alternate phone: n/a

Email addresses are only used by this office for correspondence with the applicant if needed.

Consultant Information

Name: Brian D. Gulden, The Van Winkle Law Firm

Address: 11 North Market Street, Asheville, NC 28801

Phone: 828-258-2991 ext 2410

Email: bgulden@vwlawfirm.com

Brian D. Gulden OBO APPLICANT
William F. Andrews

NEW PROVISIONS

3.2.6 Restricted Residential Overlay (RR-O)

3.2.6.1 Intent

The intent of this overlay is to provide an opportunity for infill development of residential units where such infill development is located within one-half mile from existing civic, institutional, office, professional service and retail uses. It is further the intent of this overlay district to promote residential use within these identified areas to allow people to live and work in close proximity, increase the presence of people in these areas during extended hours, hence increasing social and economic vitality in these areas. The benefits of this overlay district include greater housing variety and density, reduced distance between housing, workplaces, retail businesses and other destinations, more compact development, stronger neighborhood character, and pedestrian and bicycle-friendly environments. Nothing is intended in this Overlay District to allow for commercial expansion into residential base zoning districts.

3.2.6.2 Uses

In addition to the permitted uses in the underlying base zoning district, the Restricted Residential Overlay establishes residential use as a permitted use. Residential structures will be limited to Single-family dwellings, Two-family dwellings and Multi-family dwellings. Certain incompatible uses are excluded in the "Overlay Exceptions" column of the Permitted Uses Table 3.1 contained in Section 3.3. The restricted Residential Overlay district cannot be used in conjunction with the Neighborhood Conservation Overlay District.

3.2.6.3 Development Standards

Residential uses within the Restricted Residential Overlay are subject to the development standards contained throughout Article 4 according to the underlying base zoning district and are eligible to receive the density bonus outlined in Article 4.3. Further, such residential uses shall comply with the development standards for the Restricted Residential Overlay set forth in Articles 4.2.7 Restricted Residential Overlay Dimensional Standards.

All subsequent Overlay subsections to be renumbered as follows:

3.2.7 Flood Damage Prevention Overlay (FDP-O);

3.2.8 Watershed Protection Overlay (WP-O);

3.2.9 Phase II Stormwater Overlay (SW-O).

NEW PROVISIONS

4.2.7 Restricted Residential Overlay Dimensional standards

A) For infill lots in the Restricted Residential Overlay where lots located on either side of a center lot are improved with buildings, and the structures are no more than 200 feet apart, the required setback of the center lot shall be the average of the setback of the two (2) closest lots in either direction along the block.

B) For infill lots in the RR-O, the maximum wall height adjacent to the side property line is 35 feet or the average height of the two abutting neighboring wall planes, whichever is greater. The wall height may be increased one (1) foot for each foot of horizontal distance the wall is moved from the side setback line, not to exceed the maximum height allowed within the district.

NEW HEADING

4.8.4 Neighborhood Conservation Overlay and Restricted Residential Overlay Residential Design Standards

TABLE 3.1: PERMITTED USES

Agricultural Uses		Overlay Exceptions	LID	MID	HID	CBD	EID	SID	Conditions
Bona fide farms (excluding swine production, see Section 1.4.2 for ETJ exemption)		Not permitted in NC-O, RR-O	P	P	P		P	P	3.4.1 (C)
Equestrian uses (horseback riding, stables)			P	P	P		P	P	3.4.1 (A)
Livestock and fowl keeping (accessory to residential use)			P	P	P		P	P	3.4.1 (B)
Livestock and fowl keeping (principal use)		Not permitted in NC-O, RR-O	P						3.4.1 (C)
Greenhouse or horticultural nursery (no retail sales)		Not permitted in NC-O, RR-O	P		P		P	P	
Produce Stand (permanent)		Not permitted in NC-O, RR-O	P	P	P		P	P	3.4.1 (D)
Residential Uses		Overlay Exceptions	LID	MID	HID	CBD	EID	SID	Conditions
Accessory dwellings			P	P	P	P		P	3.4.2 (A)
Accessory structures (residential)			P	P	P	P		P	3.4.2 (B)
Bed & breakfast inns			P	P	P	P			3.4.2 (C)
Boarding and rooming houses		Not permitted in NC-O		P	P				
Family care homes			P	P	P	P		P	3.4.2 (D)
Home occupations, customary (includes daycare homes)			P	P	P	P		P	3.4.2 (E)
Home occupations, intensive		Not permitted in NC-O	P	P	P				3.4.2 (F)
Manufactured homes on individual lots-see Section 3.2.2		Only permitted in MH-O							
Multi-family dwellings (includes apartments & townhomes)		Not permitted in NC-O	P	P	P	P		P	3.4.2 (G)
Single-family dwellings (detached)			P	P	P	P		P	
Two-family dwellings (duplexes)		Not permitted in NC-O	P	P	P	P		P	
Civic, Government, & Institutional Uses		Overlay Exceptions	LID	MID	HID	CBD	EID	SID	Conditions

Cemeteries	Not permitted in NC-O, RR-O	P	P	P	P	P				P								3.4.3 (A)
Colleges, universities, & associated facilities							P	P										
Community outreach offices	Not permitted in NC-O	P	P	P	P	P	P	P										3.4.3 (A & B)
Correctional facilities	Not permitted in C-O, RD-O																	
Daycare centers, child and adult	Not permitted in NC-O	P	P	P	P	P	P	P										3.4.3 (A)
Emergency services (fire, police, EMT, & similar uses)	Not permitted in NC-O	P	P	P	P	P	P	P										3.4.3 (A)
Government office buildings	Not permitted in NC-O																	3.4.3 (A)
Hospitals, public and private																		

TABLE 3.1: PERMITTED USES

	Overlay Exceptions	LID	MID	HID	CBD	EID	SID	Conditions
Civic, Government, & Institutional Uses (continued)								
Libraries, museums, art galleries, & similar uses	Not permitted in NC-O, RR-O		P	P	P		P	3.4.3 (A)
Post offices	Not permitted in NC-O, RR-O		P	P	P		P	3.4.3 (A)
Religious institutions & related uses	Not permitted in NC-O, RR-O	P	P	P	P		P	3.4.3 (A)
Research facilities	Not Permitted in RR-O						P	
Residential care facilities	Not permitted in NC-O		P	P			P	3.4.3 (A)
Residential shelters	Not permitted in NC-O		P	P			P	3.4.3 (A)
Schools, instructional (music, dance, martial arts, etc.)	Not permitted in NC-O	P	P	P	P		P	3.4.3 (A)
Schools & associated facilities (public & private)	Not permitted in NC-O	P	P	P	P		P	3.4.3 (A)
Schools (trade & vocational)	Not permitted in NC-O		P	P	P		P	3.4.3 (A)
Social, fraternal, & philanthropic clubs & lodges, & similar uses operated on a non-profit basis	Not permitted in NC-O		P	P	P		P	3.4.3 (A)
Office & Service Uses	Overlay Exceptions	LID	MID	HID	CBD	EID	SID	Conditions
Animal services (no outdoor kennels)	Not permitted in NC-O		P	P	P	P	P	3.4.4 (A)

Animal services (with outdoor kennels)	Not permitted in NC-O		P	P	P	P	P	P	<u>3.4.4 (A & B)</u>
Artists, craftsmen	Not permitted in NC-O		P	P	P	P	P	P	<u>3.4.4 (A)</u>
Banks, financial services	Not permitted in NC-O, RR-O		P	P	P	P	P	P	<u>3.4.4 (A)</u>
Body art establishment (tattoos & body piercing)	Not permitted in C-O, RD-O, RR-O			P					
Crematories	Not Permitted in RR-O			P			P	P	<u>3.4.4 (C)</u>
Dry cleaning and laundry services (non-industrial)	Not permitted in NC-O, RR-O		P	P	P	P	P	P	<u>3.4.4 (A)</u>
Funeral homes and mortuaries	Not permitted in NC-O, RR-O		P	P	P	P	P	P	<u>3.4.4 (A)</u>
Hotels and motels	Not Permitted in RR-O			P			P		
Motion picture production	Not Permitted in RR-O			P			P	P	
Motor vehicle and boat services (with or without outdoor storage, includes gas stations and car washes)	Not Permitted in RR-O			P			P	P	<u>3.4.8 (C)</u>
Medical, dental, chiropractic, optical, psychiatric offices	Not permitted in NC-O, RR-O		P	P	P	P	P	P	<u>3.4.4 (A)</u>
Personal service uses	Not permitted in NC-O, RR-O		P	P	P	P	P	P	<u>3.4.4 (A)</u>
Professional offices	Not permitted in NC-O, RR-O		P	P	P	P	P	P	<u>3.4.4 (A)</u>
Services, other (no outdoor storage)	Not permitted in NC-O, RR-O		P	P	P	P	P	P	<u>3.4.4 (A)</u>
Services, other (with outdoor storage)	RR-O			P			P	P	<u>3.4.8 (C)</u>

TABLE 3.1: PERMITTED USES

Retail & Wholesale Uses	Overlay Exceptions	LID	MID	HID	CBD	EID	SID	Conditions
Auction Houses	Not permitted in RD-O, RR-O			P	P	P		
Farmers' markets	Not permitted in NC-O, RR-O		P	P	P	P	P	<u>3.4.5 (A)</u>
Microbreweries and wineries (with on-site sales)	Not permitted in NC-O, RR-O		P	P	P	P	P	<u>3.4.5 (A & B)</u>
Motor vehicle or boat sales or rental	Not Permitted in RR-O			P			P	<u>3.4.5 (C)</u>

Automobile parking lots or garages (principal use)	Not permitted in NC-O		P	P	P	P	P	P	3.4.7 (A)
Bus and train stations	Not permitted in NC-O, RR-O		P	P	P	P	P	P	3.4.7 (A)
Data centers	Not Permitted in RR-O			P				P	3.4.7 (D)
Distribution centers	Not Permitted in RR-O							P	
Electric transmission lines & appurtenances		P	P	P	P	P	P	P	
Junkyards, salvage yards, recycling operations and similar uses	Not permitted in C-O, RD-O, RR-O							P	3.4.8 (C)
Landfill (construction, demolition, land clearing & inert debris)	Not Permitted in RR-O								
Landfill (sanitary)	Not Permitted in RR-O								
Manufacturing, processing, & assembly (inside fully enclosed building)	Not Permitted in RR-O			P				P	
Manufacturing, processing, & assembly (outside fully enclosed building)	Not permitted in C-O, RD-O, RR-O							P	3.4.7 (E)
Mining & quarrying operations	Not Permitted in RR-O								
Natural gas distribution lines & related appurtenances	Not Permitted in RR-O	P	P	P	P	P	P	P	
Power generation/production facilities (not including wind and solar)	Not permitted in C-O, RD-O, RR-O				P			P	
Power generation/production, solar (individual use)	Not Permitted in RR-O	P	P	P	P	P	P	P	3.4.7 (F)

TABLE 3.1: PERMITTED USES

Industrial, Transportation, & Utility Uses (continued)	Overlay Exceptions	LID	MID	HID	CBD	EID	SID	Conditions
Power generation/production, solar (solar farm)	Not permitted in C-O, RD-O					P	P	3.4.7 (F)
Power generation/production, wind (individual use)	Not permitted in C-O, RD-O					P	P	3.4.7 (G)
Power generation/production, wind (wind farm)								
Rail terminals or yards	Not Permitted in RR-O						P	

Rezoning Evaluation

Case # 20-003

William Andrews Rezoning

Lyman Court

Parcel Information				
Address	PIN	Parcel Size	Current Zoning	Requested Zoning
313 West Union Street	2703156576	0.95	RH-CU	RR-O/MID
104 Lyman Court	2703157369	0.29	RH-CU	RR-O/MID
101 Lyman Court	2703158591	0.44	RH-CU	RR-O/MID
103 Lyman Court	2703159443	0.33	RH-CU	RR-O/MID

Background

An application has been submitted to rezone the properties referenced in the above table. The attached location map also illustrates that the properties begin at the intersection of West Union Street and extend along Lyman Court. The request would allow the current or any future owner to develop the properties residentially to the densities provided for Medium Intensity District (MID) without the ability to include any commercial uses as prescribed in the proposed Restricted Residential Overlay District (RR-O). The rezoning request, as submitted, would be contingent upon recommendation of the proposed RR-O by the Planning and Zoning Commission and ultimately upon adoption by City Council of the same.

These properties, on May 2, 2005, were rezoned from Residential Low (RL) to Residential High Conditional Use. A conditional use permit was issued for fourteen (14) dwelling units, to comprise twelve (12) single family detached units and two (2) attached units (See attachment). However, the plans under the conditional use permit have never been carried out. Ordinance 05-10Z stated that the plans could continue with “minor” changes, however, a “material” change required City Council approval. Section 1.4.2(C) of the current zoning ordinance states:

“Properties with existing Conditional Use District zoning shall retain their existing zoning with all conditions as approved unless the property owner requests a map amendment to one of the zoning designations as set forth in this Ordinance.”

Therefore, City Council cannot grant an amendment to the CU Permit and it is necessary for the property to be rezoned for it to be developed in a fashion that is a “material change” from what was originally approved.

On August 16, 2018 the Planning and Zoning Commission heard and recommended denial of a request for the properties to be rezoned to MID. Mr. Andrews then filed an appeal which placed the matter before City Council on September 10, 2018. That request ultimately failed.

Earlier this year, city staff was contacted by Brian Gulden, an attorney representing Mr. Andrews, about the possibility of creating a text amendment that would allow Mr. Andrews to develop the property in such a way as to restrict the permitted uses of his property to exclude commercial as Mr. Andrews felt that was the objection to his 2018 request.

The result of that effort was a proposal for a new overlay district (RR-O) that could be applied throughout the City of Morganton and its ETJ and not simply Mr. Andrews’ properties.

Zone Comparison

The Conditional Use District was a zoning tool available in the previous zoning ordinance. Its intent was to allow zoning districts in certain locations that would, absent special conditions, be inappropriately zoned. The conditional use district was attached to a standing zoning designation so that a property could be developed, with special conditions that ensured the intent of the zoning ordinance was realized. The current zoning ordinance does not provide for conditional use zoning and in fact, the state of North Carolina has removed Conditional Use Zoning as a tool effective July 1, 2021.

The Medium Intensity District (MID) is intended for a variety of medium to high density residential and low to medium intensity civic, institutional, office, service, and retail uses designed to keep the impact on adjacent residential areas at a minimum.

The Restricted Residential Overlay (RR-O) is crafted to restrict uses in the various underlying zoning districts while allowing the residential density of said districts.

Public Services

Access – The property at 313 West Union Street can be accessed by either West Union Street, a minor arterial, or Lyman Court, a fourteen (14) feet wide road used for residential access to properties fronting its borders. The other three properties are accessed only by Lyman Court. Because Lyman Court is substandard according to City street standards, it would have to be improved for development to occur.

Water – A 6 inch cast iron pipe waterline currently connects from West Union Street towards West Concord Street and as such, water is available.

Sewer – Sewer flows in two directions along Lyman Court, towards West Union Street and West Concord Street, leaving approximately a 150 feet gap between manholes. Upgrades will be necessary to serve certain portions of the property.

Planned Land Use

The City's 2030 Future Land Use map indicates Residential Low Density as the continued future use of the property. A review of the attached Future Land Use map illustrates that all the surrounding properties are designated for Residential Low Density.

Future Rezoning

Future rezoning considerations should fully take into consideration the analysis considered in determining future land use as part of the Mission 2030 Plan as well as the recently adopted Downtown Master Plan. Should future rezoning occur, it should be considered concurrently with a review of all relative plans for this area as adopted by City Council.

Spot Zoning

This request will not constitute spot zoning since these properties are adjacent to a property zoned CBD and the MID zoning district by its definition exists to allow residential uses, and other uses in a way that they are appropriate adjacent to residential uses.

Impact to Surrounding Properties

The primary impact to the surrounding land would be the increase of traffic, particularly for those residences located on or adjacent to Lyman Court. Other impacts are possible depending on the density and development type the current owner or any future owner would consider.

Staff Recommendation

This rezoning request is adverse to the goals as stated in the Mission 2030 Plan in that it proposes a higher residential density than the recommended 2 single family dwelling units per acre. However, a need for higher density residential density of recognized and recommended for the area within ½ mile of the intersection of Union Street and Sterling Street. Lyman Court is approximately 1/3 of a mile from that intersection. Further, an MID/RR-O would provide a transition from the Central Business District with a density potentially limited only by height to the existing single family neighborhood that fronts West Union Street. All development standards that apply within the MID zoning district would apply along with additional dimensional standards related to height and setbacks for infill lots.

Considering the above, staff recommends approval of this request.



Zoning Map Amendment Application

D & D Services
305 E. Union St.
Suite A100
Morganton, NC
28655P:
828.438.5260F:
828.438.5264

Fee: \$750.00

Fees are subject to change without notice

All pages must be completely filled out before application is accepted. For assistance filling out this application, contact the Development & Design Services Office.

To the Planning & Zoning Commission and City Council of Morganton:

I (we), the undersigned, do hereby respectfully make application and request the City Planning and Zoning Commission and the City Council to amend the Zoning Map of the City of Morganton as hereinafter requested, and in support of this application, the following facts are shown:

1) It is desired and requested that the property described below be rezoned from its current classification of CU to the classification of Mid & Overlay, RR-O

2) The property sought to be rezoned is located at (street address or description of location)
101 Lyman Court

(You may access Burke County Parcel information at www.gis.burkenc.org to obtain the information requested below.)

Parcel #1

Size of tract .44 acres

Deed Book 1413 page 306

Tax parcel REID # 2656

PIN EXT # 2703-15-8591

The property sought to be rezoned is owned by:

Owners name(s) and address William Andrews, 4721 NW 27th Avenue, Boca Raton, FL 33434

Mailing address (if different than above) _____

(For additional tracts to be rezoned please attach additional sheets with the same information as for parcel 1.)

3) Attach a legal description of all property for which rezoning is requested.

(Copies of deeds are available online from the Burke County Register of Deeds Office

Link: www.burkenc.org/departments/register-of-deeds

See attached Deed for such parcel sought to be rezoned

Applicant Information

Name: William Andrews **City/State/Zip:** Boca Raton, FL 33434
Mailing Address: 4721 NW 27th Avenue **Email:** wfa4ds@yahoo.com
Phone: 561-715-5500
Alternate phone: n/a

Email addresses are only used by this office for correspondence with the applicant if needed.

Consultant Information

Name: Brian D. Gulden, The Van Winkle Law Firm
Address: 11 North Market Street, Asheville, NC 28801
Phone: 828-258-2991 ext. 2410
Email: bgulden@vwlawfirm.com

FOR REGISTRATION REGISTER OF DEEDS
ELIZABETH T. COOPER
BURKE COUNTY NC
2004 NOV 10 11:00:48 AM
BK: 1413 P-G-306-308 FEE: \$17.00
NC REV STAMP \$200.00
INSTRUMENT # 2004016519



2004016519

NORTH CAROLINA GENERAL WARRANTY DEED

Tax Lot No _____ Parcel Identifier No 46-12-1-9
Verified by _____ County on the _____ day of _____, 2004
by _____

Mail after recording to _____

This instrument was prepared by THOMAS M. STARNES, 118 N. Sterling St., Morganton, NC 28655

Brief description for the index H/L 101 Lyman Court, Morganton

THIS DEED made this 10th day of November, 2004, by and between

GRANTOR	GRANTEE
Elva B. Strickland	William F. Andrews D+E+S+I+G+N SOLUTIONS 4721 NW 27 th Avenue Boca Raton, FL 33434

Enter in appropriate block for each party name, address, and, if appropriate, character of entity, e.g. corporation or partnership

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context

Witnesseth, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Morganton, Morganton Township, BURKE County, North Carolina, and more particularly described as follows

BEGINNING on an existing iron pipe at the East right of way boundary line of Lyman Court in the City of Morganton, the same being the Southwest corner of the Charles R. Wakefield property (Book 761, Page 312, Burke County Registry), and runs with the South lines of the Wakefield property and the Stephen P. Daniels, Jr property (Book 518, Page 973, Burke County Registry), North 56° 8' 30" East 164.41 feet to an existing 3/4 inch iron pipe; thence with the West line of the Giant Genie Corporation Tract I property (Book 772, Page 665, Burke County Registry), South 35° 79' 57" East 109.76 feet to an existing 3/4 inch iron pipe, the Northeast corner of the Deward W. Powell property (Book 407, Page 309, Burke County Registry) thence with the North line of the Powell property, South 56° 8' 30" West 174.63 feet to an existing 3/4 inch iron pipe at the East right of way boundary line of Lyman Court, thence with the East right of way boundary line of Lyman Court, North 30° West 109.97 feet to the point of BEGINNING, and containing 0.43 acres more or less

The same being that certain property described by Deed to Elva B. Strickland from Larry L. Crowder and wife, Kathy P. Crowder dated and recorded January 2, 2003 in Book 1192, Page 262, Burke County Register of Deeds

The property hereinabove described was acquired by Grantor by instrument recorded in _____

A map showing the above described property is recorded in Plat Book _____, Page _____.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated
Title to the property hereinabove described is subject to the following exceptions

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized Board of Directors, the day and year first above written

USE BLACK INK ONLY

(Corporate Name) Elva B. Strickland (SEAL)
ELVA B STRICKLAND

By _____ (SEAL)

President

ATTEST _____ (SEAL)

Secretary _____ (SEAL)



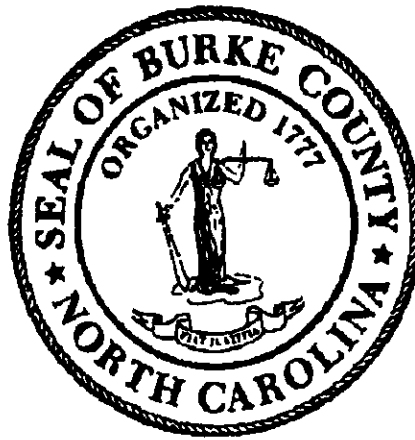
NORTH CAROLINA, Burke County
I, a Notary Public of the County and State aforesaid, certify that Elva B. Strickland
Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument
Witness my hand and official stamp or seal, this 25th day of June, 2004

My commission expires 11/22/06 James L. Rogers Notary Public

SEAL - STAMP NORTH CAROLINA, _____ County
I, a Notary Public of the County and State aforesaid, certify that _____
personally came before me this day and acknowledged that _____ he is _____ Secretary of
_____ a North Carolina corporation,
and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its
name by its _____ President, and attested by _____ as its
_____ Secretary Witness my hand and official stamp or seal, this _____
day of _____, 2004

My commission expires _____ Notary Public

The foregoing Certificates of _____
_____ is/are certified to be correct This instrument and
this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof
REGISTER OF DEEDS FOR BURKE COUNTY
By _____ Deputy/Assistant - Register of Deeds



ELIZABETH T COOPER
REGISTER OF DEEDS, BURKE
JUDICIAL BUILDING
201 SOUTH GREEN STREET
MORGANTON, NC 28655

.....
Filed For Registration: 11/10/2004 11:00:48 AM
Book: RE 1413 Page: 306-308
Document No.: 2004016519
DEED 3 PGS \$17.00
NC REAL ESTATE EXCISE TAX: \$200.00
Recorder: JBRISTOL
.....

State of North Carolina, County of Burke

The foregoing certificate of JANIS K ROGERS Notary is certified to be correct. This 10TH of November 2004
ELIZABETH T COOPER, REGISTER OF DEEDS

By: *Jennifer E Bristol*
Deputy/Assistant Register of Deeds
.....

2004016519

2004016519

308



Zoning Map Amendment Application

D & D Services
305 E. Union St.
Suite A100
Morganton, NC
28655P:
828.438.5260F:
828.438.5264

Fee: \$750.00

Fees are subject to change without notice

All pages must be completely filled out before application is accepted. For assistance filling out this application, contact the Development & Design Services Office.

To the Planning & Zoning Commission and City Council of Morganton:

I (we), the undersigned, do hereby respectfully make application and request the City Planning and Zoning Commission and the City Council to amend the Zoning Map of the City of Morganton as hereinafter requested, and in support of this application, the following facts are shown:

1) It is desired and requested that the property described below be rezoned from its current classification of CU to the classification of Mid & Overlay, RR-O

2) The property sought to be rezoned is located at (street address or description of location)
103 Lyman Court

(You may access Burke County Parcel information at www.gis.burkenc.org to obtain the information requested below.)

Parcel #1

Size of tract .33 acres

Deed Book 1413 page 309

Tax parcel REID # 6736

PIN EXT # 2703-15-9443

The property sought to be rezoned is owned by:

Owners name(s) and address William Andrews, 4721 NW 27th Avenue, Boca Raton, FL 33434

Mailing address (if different than above) _____

(For additional tracts to be rezoned please attach additional sheets with the same information as for parcel 1.)

3) Attach a legal description of all property for which rezoning is requested.

(Copies of deeds are available online from the Burke County Register of Deeds Office

Link: www.burkenc.org/departments/register-of-deeds

See attached Deed for such parcel sought to be rezoned

Applicant information

Name: William Andrews

City/State/Zip: Boca Raton, FL 33434

Mailing Address: 4721 N.W. 27th Avenue

Email: wfa4ds@yahoo.com

Phone: 561-715-5500

Alternate phone: n/a

Email addresses are only used by this office for correspondence with the applicant if needed.

Consultant information

Name: Brian D. Gulden, The Van Winkle Law Firm

Address: 11 North Market Street, Asheville, NC 28801

Phone: 828-258-2991 ext 2410

Email: bgulden@vwlawfirm.com

FOR REGISTRATION REGISTER OF DEEDS
 ELIZABETH T. COOPER
 BURKE COUNTY, NC
 2004 NOV 10 11:03:41 AM
 BK-1413 PG-309-311 FEE-\$17.00
 NC REV STAMP-\$200.00
 INSTRUMENT # 2004016520



NORTH CAROLINA GENERAL WARRANTY DEED

Tax Lot No _____ Parcel Identifier No 46-12-1-10
 Verified by _____ County on the _____ day of _____, 2004
 by _____

Mail after recording to _____

This instrument was prepared by **THOMAS M. STARNES, 118 N. Sterling St., Morganton, NC 28655**

Brief description for the index H/L 103 Lyman Court, Morganton

THIS DEED made this 10th day of November, 2004, by and between

GRANTOR	GRANTEE
Elva B. Strickland	William F. Andrews D+E+S+I+G+N SOLUTIONS 4721 NW 27 th Avenue Boca Raton, FL 33434

Enter in appropriate block for each party name, address, and, if appropriate, character of entity, e.g. corporation or partnership

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context

Witnesseth, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Morganton, Morganton Township, **BURKE** County, North Carolina, and more particularly described as follows

BEGINNING at a nail in Lyman Court, the Northwest corner of Tract One conveyed to Mitzi Strickland Hendrix by Deed recorded in Book 972, Page 490, and runs thence within Lyman Court North 28° 32' 57" West 77 94 feet to a nail, thence, North 56° 59' 49" East 7.50 feet to an iron in the East margin of Lyman Court, thence, the same course, North 56° 59' 49" East 175 94 feet to an iron in the West boundary of Burke Charitable Properties, Inc (Book 919, Page 1511), thence, with the boundary of Burke Charitable Properties, Inc., South 34° 29' 17" East 80 feet to an iron, thence, with the new line established as the Northerly boundary of Tract One conveyed to Mitzi Strickland Hendrix by Deed recorded in Book 972, Page 490, South 57° 40' 32" West 191 58 feet to the Beginning, containing 0 34 acres and being the property conveyed to Elva B. Strickland recorded in Book 871, Page 685, after excepting and excluding a small portion along the Southerly boundary thereof conveyed to Mitzi Strickland Hendrix by Deed recorded in Book 972, Page 490.

The same being that certain property described by Deed to Elva B. Strickland from Nora Louise Powell dated and recorded November 4, 1996 in Book 871, Page 685, Burke County Register of Deeds

The property hereinabove described was acquired by Grantor by instrument recorded in _____

A map showing the above described property is recorded in Plat Book _____, Page _____

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated Title to the property hereinabove described is subject to the following exceptions

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized Board of Directors, the day and year first above written

USE BLACK INK ONLY

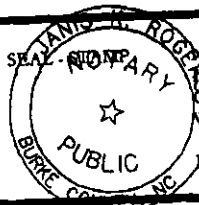
(Corporate Name) Elva B. Strickland (SEAL)
ELVA B STRICKLAND

By _____ (SEAL)

President

ATTEST _____ (SEAL)

Secretary _____ (SEAL)



NORTH CAROLINA, Burke County
I, a Notary Public of the County and State aforesaid, certify that Elva B. Strickland
Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument
Witness my hand and official stamp or seal, this 25th day of June, 2004
My commission expires 10/22/06 Jamie L. Rogers Notary Public

SEAL - STAMP

NORTH CAROLINA, _____ County
I, a Notary Public of the County and State aforesaid, certify that _____
personally came before me this day and acknowledged that _____ he is _____ Secretary of
_____ a North Carolina corporation,
and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its
name by its _____ President, and attested by _____ as its
Secretary Witness my hand and official stamp or seal, this _____
day of _____, 2004
My commission expires _____ Notary Public

The foregoing Certificates of _____
_____ is/are certified to be correct This instrument and
this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof
REGISTER OF DEEDS FOR BURKE COUNTY
By _____ Deputy/Assistant - Register of Deeds



ELIZABETH T COOPER
REGISTER OF DEEDS, BURKE
JUDICIAL BUILDING
201 SOUTH GREEN STREET
MORGANTON, NC 28655

.....
Filed For Registration: 11/10/2004 11:03:41 AM
Book: RE 1413 Page: 309-311
Document No.: 2004016520
DEED 3 PGS \$17.00
NC REAL ESTATE EXCISE TAX: \$200.00
Recorder: JBRISTOL

.....
State of North Carolina, County of Burke

The foregoing certificate of JANIS L ROGERS Notary is certified to be correct. This 10TH of November 2004

ELIZABETH T COOPER, REGISTER OF DEEDS

By: Janis L. Rogers
Deputy/Assistant Register of Deeds

2004016520

2004016520

311



Zoning Map Amendment Application

D & D Services
305 E. Union St.
Suite A100
Morganton, NC
28655P:
828.438.5260F:
828.438.5264

Fee: \$750.00

Fees are subject to change without notice

All pages must be completely filled out before application is accepted. For assistance filling out this application, contact the Development & Design Services Office.

To the Planning & Zoning Commission and City Council of Morganton:

I (we), the undersigned, do hereby respectfully make application and request the City Planning and Zoning Commission and the City Council to amend the Zoning Map of the City of Morganton as hereinafter requested, and in support of this application, the following facts are shown:

1) It is desired and requested that the property described below be rezoned from its current classification of CU to the classification of Mid & Overlay, RR-O

2) The property sought to be rezoned is located at (street address or description of location)
104 Lyman Court

(You may access Burke County Parcel information at www.gis.burkenc.org to obtain the information requested below.)

Parcel #1

Size of tract .29

Deed Book 1373 page 758

Tax parcel REID # 9142

PIN EXT # 2703-15-7369

The property sought to be rezoned is owned by:

Owners name(s) and address William Andrews, 4721 NW 27th Avenue, Boca Raton, FL 33434

Mailing address (if different than above) _____

(For additional tracts to be rezoned please attach additional sheets with the same information as for parcel 1.)

3) Attach a legal description of all property for which rezoning is requested.

(Copies of deeds are available online from the Burke County Register of Deeds Office

Link: www.burkenc.org/departments/register-of-deeds

See attached Deed for such parcel sought to be rezoned

Applicant Information

Name: William Andrews City/State/Zip: Boca Raton, FL 33434

Mailing Address: 4721 N.W. 27th Avenue Email: wfa4ds@yahoo.com

Phone: 561-715-5500

Alternate phone: n/a

Email addresses are only used by this office for correspondence with the applicant if needed.

Consultant Information

Name: Brian D. Gulden, The Van Winkle Law Firm

Address: 11 North Market Street, Asheville, NC 28801

Phone: 828-258-2991 ext 2410

Email: bgulden@vwlawfirm.com



FOR REGISTRATION REGISTER OF DEEDS
 ELIZABETH T COOPER
 BURKE COUNTY, NC
 2004 JUN 25 12 09:50 PM
 BK: 1373 PG: 758-760 FEE: \$17 00
 NC REV STAMP: \$170 00
 INSTRUMENT # 2004089299

NORTH CAROLINA GENERAL WARRANTY DEED

Tax Lot No _____ Parcel Identifier No 46-12-1-14
 Verified by _____ County on the _____ day of _____, 2004
 by _____

Mail after recording to _____

This instrument was prepared by THOMAS M. STARNES, 118 N. Sterling St., Morganton, NC 28655

Brief description for the index H/L 104 Lyman Court,

THIS DEED made this 25th day of June, 2004, by and between

GRANTOR	GRANTEE
<p>Frank Cooper</p>	<p>William F. Andrews 4721 NW 27th Avenue Boca Raton, FL 33434</p>

Enter in appropriate block for each party name, address, and, if appropriate, character of entity, e.g. corporation or partnership

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context

Witnesseth, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Morganton, Morganton Township, BURKE County, North Carolina, and more particularly described as follows

BEGINNING at a point in the center of Lyman Court, the same being the Southeast corner of the property heretofore conveyed to William F. Andrews by Deed from Claude Edgar Hoyle, Jr., et al recorded in Book 1367, Page 681, Burke County Register of Deeds and runs thence with the boundary of Andrews South 60° 00' 00" West 8 75 feet to the West edge of the paved surface of Lyman Court, thence, the same course, South 60° 00' 00" West 138 75 feet to an iron pipe in the East boundary of Bonfield (Book 942, Page 657) thence, with the East boundary of Bonfield South 30° 00' 00" East 89 27 feet to a nail set in a pipe, the Northwest corner of McGimsey (Book 794, Page 1118), thence, with the Northerly boundary of McGimsey North 59° 08' 30" East 145 89 feet to the center of Lyman Court, thence, with the center of Lyman Court North 28° 55' 38" West 87 09 feet to the Beginning, the same constituting that certain property heretofore conveyed to Frank Cooper by Deed from Delene B. Clarke recorded October 8, 1987 in Book 733, Page 344, Register of Deeds for Burke County, North Carolina

The foregoing description was made from a survey by David J. Wilson Surveying, Inc. dated June 21, 2004 titled "Survey of Property for William Andrews"

1373-758

The property hereinabove described was acquired by Grantor by instrument recorded in _____

A map showing the above described property is recorded in Plat Book _____, Page _____

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated
Title to the property hereinabove described is subject to the following exceptions

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized Board of Directors, the day and year first above written

USE BLACK INK ONLY

(Corporate Name) Frank Cooper (SEAL)
FRANK COOPER

By _____ (SEAL)

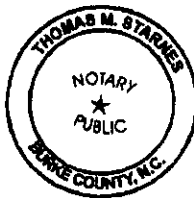
President

ATTEST _____ (SEAL)

Secretary _____ (SEAL)

SEAL - STAMP

NORTH CAROLINA, Burke County
I, a Notary Public of the County and State aforesaid, certify that Frank Cooper
Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument
Witness my hand and official stamp or seal, this 25th day of June, 2004
My commission expires 1/31/05 Thomas M. Starnes Notary Public



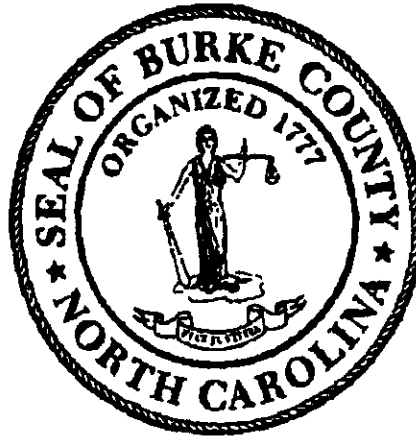
SEAL - STAMP

NORTH CAROLINA, _____ County
I, a Notary Public of the County and State aforesaid, certify that _____
personally came before me this day and acknowledged that _____ he is _____ Secretary of
_____, a North Carolina corporation,
and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its
name by its _____ President, and attested by _____ as its
_____, Secretary Witness my hand and official stamp or seal, this _____
day of _____, 2004
My commission expires _____ Notary Public

The foregoing Certificates of _____

_____, is/are certified to be correct This instrument and
this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof

REGISTER OF DEEDS FOR BURKE COUNTY
By _____ Deputy/Assistant - Register of Deeds



ELIZABETH T COOPER
REGISTER OF DEEDS, BURKE
JUDICIAL BUILDING
201 SOUTH GREEN STREET
MORGANTON, NC 28655

.....
Filed For Registration: 06/25/2004 12:09:50 PM
Book: RE 1373 Page: 758-760
Document No.: 2004009299
DEED 3 PGS \$17.00
NC REAL ESTATE EXCISE TAX: \$170.00
Recorder: BTHOMAS

.....
State of North Carolina, County of Burke

The foregoing certificate of THOMAS M STARNES Notary is certified to be correct. This 25TH of June 2004
ELIZABETH T COOPER, REGISTER OF DEEDS

By: Brenda Thomas
Deputy/Assistant Register of Deeds

.....
2004009299

2004009299



Zoning Map Amendment Application

D & D Services
305 E. Union St .
Suite A100
Morganton, NC
28655P:
828.438.5260F:
828.438.5264

Fee: \$750.00

Fees are subject to change without notice

All pages must be completely filled out before application is accepted. For assistance filling out this application, contact the Development & Design Services Office.

To the Planning & Zoning Commission and City Council of Morganton:

I (we), the undersigned, do hereby respectfully make application and request the City Planning and Zoning Commission and the City Council to amend the Zoning Map of the City of Morganton as hereinafter requested, and in support of this application, the following facts are shown:

1) It is desired and requested that the property described below be rezoned from its current classification of CU & Overlay NC-O to the classification of Mid & Overlay RR-O

2) The property sought to be rezoned is located at (street address or description of location)
313 W. Union Street

(You may access Burke County Parcel information at www.gis.burkenc.org to obtain the information requested below.)

Parcel #1

Size of tract .95 acres

Deed Book 1367 page 681

Tax parcel REID # 5193

PIN EXT # 2703-15-6576

The property sought to be rezoned is owned by:

Owners name(s) and address William Andrews, 4721 NW 27th Avenue, Boca Raton, FL 33434

Mailing address (if different than above) _____

(For additional tracts to be rezoned please attach additional sheets with the same information as for parcel 1.)

3) Attach a legal description of all property for which rezoning is requested.

(Copies of deeds are available online from the Burke County Register of Deeds Office

Link: www.burkenc.org/departments/register-of-deeds

See attached Deed for such parcel sought to be rezoned

Applicant information

Name: William Andrews **City/State/Zip:** Boca Raton, FL 33434
Mailing Address: 4721 N.W. 27th Avenue **Email:** wfa4ds@yahoo.com
Phone: 561-715-5500
Alternate phone: n/a

Email addresses are only used by this office for correspondence with the applicant if needed.

Consultant information

Name: Brian D. Gulden, The Van Winkle Law Firm
Address: 11 North Market Street, Asheville, NC 28801
Phone: 828-258-2991 ext 2410
Email: bgulden@vwlawfirm.com

Brian D. Gulden OBO APPLICANT
WILLIAM F. ANDREWS



FOR REGISTRATION REGISTER OF DEEDS
 ELIZABETH T COOPER
 BURKE COUNTY, NC
 2004 JUN 04 11:09:49 AM
 BK-1367 PG:681-685 FEE:\$23 00
 NC REV STAMP:\$488.00
 INSTRUMENT # 2004008132

Prepared by: Martha McMurray-Russ, Attorney,
 P. O. Box 753,
 Morganton, N. C. 28680-0753

NORTH CAROLINA
 BURKE COUNTY

BENEFICIARIES' DEED

THIS DEED, made this the 25th day of May, 2004, by and between CLAUDE EDGAR HOYLE, JR., AS EXECUTOR OF THE ESTATE OF MYRTLE HUDSON HOYLE, DECEASED, AND CLAUDE EDGAR HOYLE, JR., INDIVIDUALLY, AND WIFE, NANCY K. HOYLE, DAVID HUDSON HOYLE, SINGLE, LINDA HOYLE BRASWELL AND HUSBAND, FRED H. BRASWELL, parties of the first part, hereinafter called "GRANTORS"; and WILLIAM F. ANDREWS, of 4721 NW 27th Avenue, Boca Raton, Florida 33434., party of the second part, hereinafter called "Grantee":

WITNESSETH:

WHEREAS, MYRTLE HUDSON HOYLE died testate on March 9, 2002, and her estate is being administered and is recorded in the office of the Clerk of Burke County Superior Court, Estate File 02 E 225; and

WHEREAS, CLAUDE EDGAR HOYLE, JR. has qualified as the Executor of this estate and was appointed as such on April 15, 2002, and at this time is acting as Executor in this estate; and

WHEREAS, at the time of her death MYRTLE HUDSON HOYLE was seized of the fee simple ownership in the lands hereinafter described; and

WHEREAS, under the Last Will and Testament of Myrtle Hudson Hoyle, she willed and devised all of her property to her husband, Claude Edgar Hoyle, Sr., if he were then living, or if he should predecease her, then to her children, Claude Edgar Hoyle, Jr., David Hudson Hoyle and Linda Hoyle Christenberry, now Linda Hoyle Braswell, to be divided equally; and

WHEREAS, Claude Edgar Hoyle, Sr. predeceased his wife; and

WHEREAS, Claude Edgar Hoyle, Jr., David Hudson Hoyle, and Linda Hoyle Braswell now own the full simple interest in the

6501

hereinafter described real property and have the authority to convey the same; and

WHEREAS, the first Notice to Creditors was published on April 19, 2002; and

WHEREAS, the Executor has paid all estate indebtedness or has made satisfactory arrangement to pay all indebtedness; and

WHEREAS, the Executor has joined in the execution of this deed to show his consent to this transfer; and

WHEREAS, more than two years have passed since the death of MYRTLE HUDSON HOYLE, however the estate has remained open.

NOW, THEREFORE, Grantors, as hereinabove stated for and in consideration of TEN DOLLARS and other good and valuable consideration, the receipt of which is hereby acknowledged, have given, granted, bargained, sold and conveyed and by these presents do give, grant, bargain, sell, convey and confirm unto WILLIAM F. ANDREWS, the Grantee, his heirs and assigns, the following described tract or parcel of land located in the City of Morganton, Morganton Township, Burke County, North Carolina:

BEGINNING at a nail set in concrete in the southwest right of way limit boundary line of West Union Street, this beginning point being the northeast corner of the Kenneth R. Bonfield and wife, Rhonda C. Bonfield tract of land described in Book 942, Page 657, Burke Registry, and runs thence from this point of beginning with the southwest right of way limit boundary line of West Union Street North 60° 21' 35" East 146.00 feet to a p.k. nail in the centerline of Lyman Court; thence with the centerline of Lyman Court South 30° 07' 57" East 295.60 feet to a point, corner with tract of land now owned by Frank Cooper, see Book 733, Page 344, Burke Registry; thence with the boundary line of the tract of land now owned by Frank Cooper the following two (2) courses and distances: South 60° 00' 00" West 8.75 feet to a ½" rod in the westerly margin of pavement of Lyman Court, and (2) the same course, South 60° 00' 00" West 138.75 feet to a 1" pipe found, a control corner in the boundary line of the tract of land owned by Bonfield; thence with the Bonfield's boundary line North 29° 50' 30" West 296.52 feet to the point of beginning, containing 1.00 acre, more or less, and being subject to the right of way for Lyman Court.

This description is according to plat prepared by David J. Wilson Surveying, Inc., captioned "Survey of Property for William Andrews", dated February 24, 2004, drawing number 04-13.

The above described tract of land is that described in deed by Dorothy W. Francis and husband, Spencer W. Francis, Lois W. Cox and husband, Eugene Cox, Marion M. Maddrey, unmarried, Evelyn M. Nolan and husband Louis C. Nolan, heirs at law and collateral next of kin of Mrs. Lois W. Wynkoop, to Claude E. Hoyle and Myrtle L. Hoyle, as husband and wife, dated June 16, 1962, and recorded in Book 213, Page 662, Burke Registry.

The above described tract of land is also identified on the Burke

682

County tax maps by tax parcel identification number 46-12-1-15.

TO HAVE AND TO HOLD the above described premises, together with all privileges and appurtenances thereunto belonging unto the Grantee, his heirs and assigns in fee simple.

And the Grantors covenant that they are seized of said premises in fee simple, and have the right to convey the same in fee simple; that said premises are free from all encumbrances; and that they will warrant and defend the said title to the same against the lawful claims of all persons whomsoever; and CLAUDE EDGAR HOYLE, JR. as Executor of the estate of MYRTLE HUDSON HOYLE does hereby covenant that he has not placed or suffered to be placed any presently existing lien or encumbrance on said premises and that he will warrant and defend the title to the same against the lawful claims of all persons claiming by, through or on account of the Estate of MYRTLE HUDSON HOYLE.

IN WITNESS WHEREOF, Grantors as above set forth, have hereunto set their hands and seals, the day and year first above written.

ESTATE OF MYRTLE HUDSON HOYLE
By: Claude Edgar Hoyle, Jr. (SEAL) *Executor*
CLAUDE EDGAR HOYLE, JR., Executor
Claude Edgar Hoyle, Jr. (SEAL)
CLAUDE EDGAR HOYLE, JR.
Nancy K. Hoyle (SEAL)
NANCY K. HOYLE
David Hudson Hoyle (SEAL)
DAVID HUDSON HOYLE
Linda Hoyle Braswell (SEAL)
LINDA HOYLE BRASWELL
Fred H. Braswell (SEAL)
FRED H. BRASWELL

NORTH CAROLINA

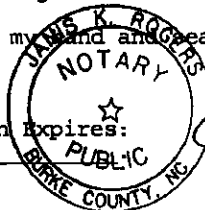
BURKE COUNTY

I, Janis K. Rogers, Notary Public, do hereby certify that CLAUDE EDGAR HOYLE, JR., AS EXECUTOR AND CLAUDE EDGAR HOYLE, JR., INDIVIDUALLY, AND WIFE, NANCY K. HOYLE, personally appeared before me and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal, this the 25 day of May, 2004.

My Commission Expires:

10/22/06



Janis K. Rogers
Notary Public

NORTH CAROLINA

BURKE COUNTY

I, Janis K. Rogers, Notary Public, do hereby certify that DAVID HUDSON HOYLE, SINGLE, personally appeared before me and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal, this the 25 day of May, 2004.

My Commission Expires:

10/22/06

NORTH CAROLINA
BURKE COUNTY NC.

BURKE COUNTY

I, Janis K. Rogers, Notary Public, do hereby certify that LINDA HOYLE BRASWELL AND HUSBAND, FRED H. BRASWELL personally appeared before me and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal, this the 25 day of May, 2004.

My Commission Expires:

10/22/06

NORTH CAROLINA
BURKE COUNTY NC.

Janis K. Rogers
Notary Public

Janis K. Rogers
Notary Public



ELIZABETH T COOPER
REGISTER OF DEEDS, BURKE
JUDICIAL BUILDING
201 SOUTH GREEN STREET
MORGANTON, NC 28655

.....
Filed For Registration: 06/04/2004 11:09:49 AM
Book: RE 1367 Page: 681-685
Document No.: 2004008132
DEED 5 PGS \$23.00
NC REAL ESTATE EXCISE TAX: \$480.00
Recorder: STAFF

.....
State of North Carolina, County of Burke

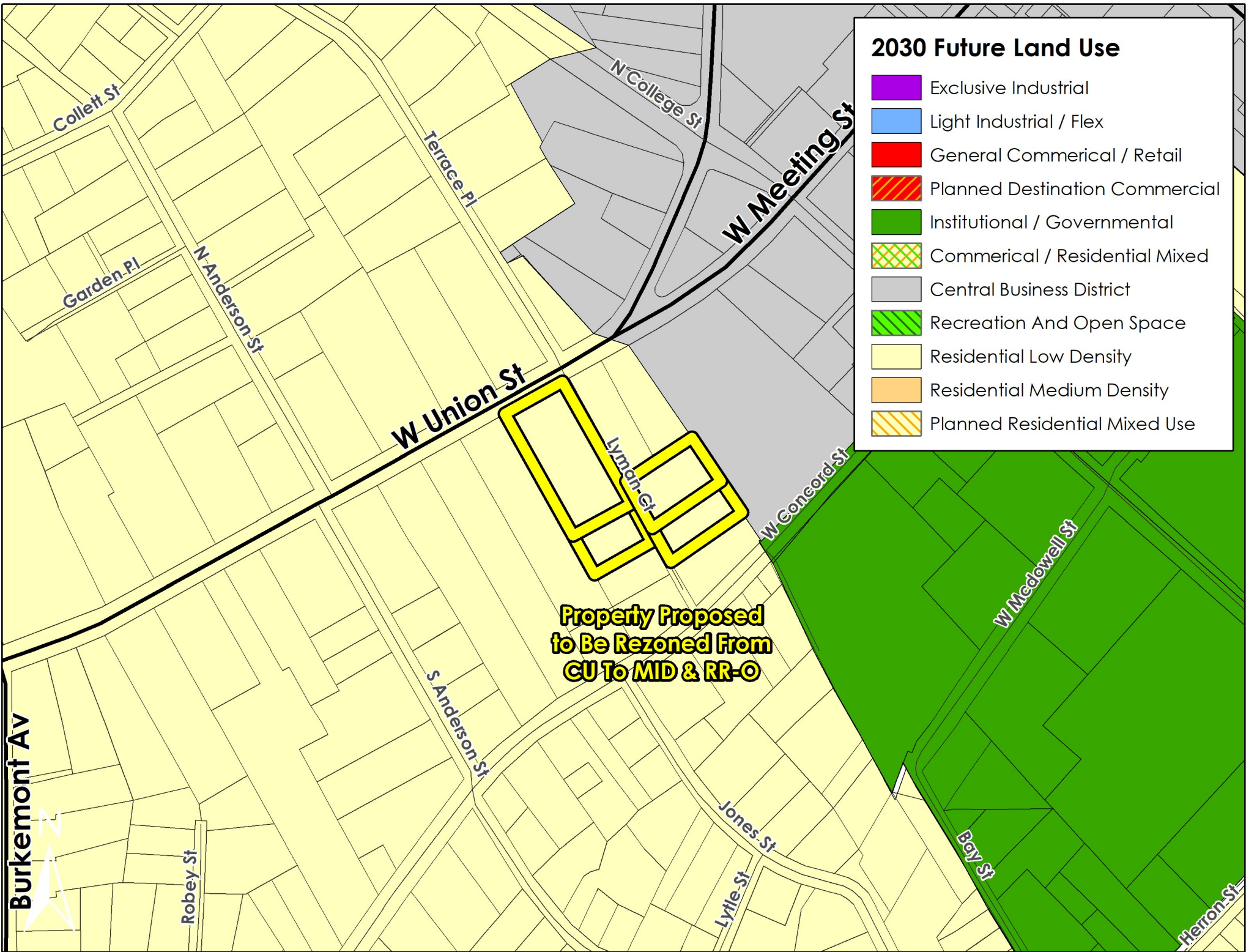
The foregoing certificate of JANIS K ROGERS Notary is certified to be correct. This 4TH of June 2004
ELIZABETH T COOPER, REGISTER OF DEEDS

By *Janis K Rogers*
Deputy Assistant Register of Deeds

2004008132

2004008132

1685



**Property Proposed
to Be Rezoned From
CU To MID & RR-O**

Burkmont Av



Collett St

Garden Pl

Robey St

N Anderson St

S Anderson St

Terrace Pl

W Union St

Lyman St

Jones St

Lytle St

N College St

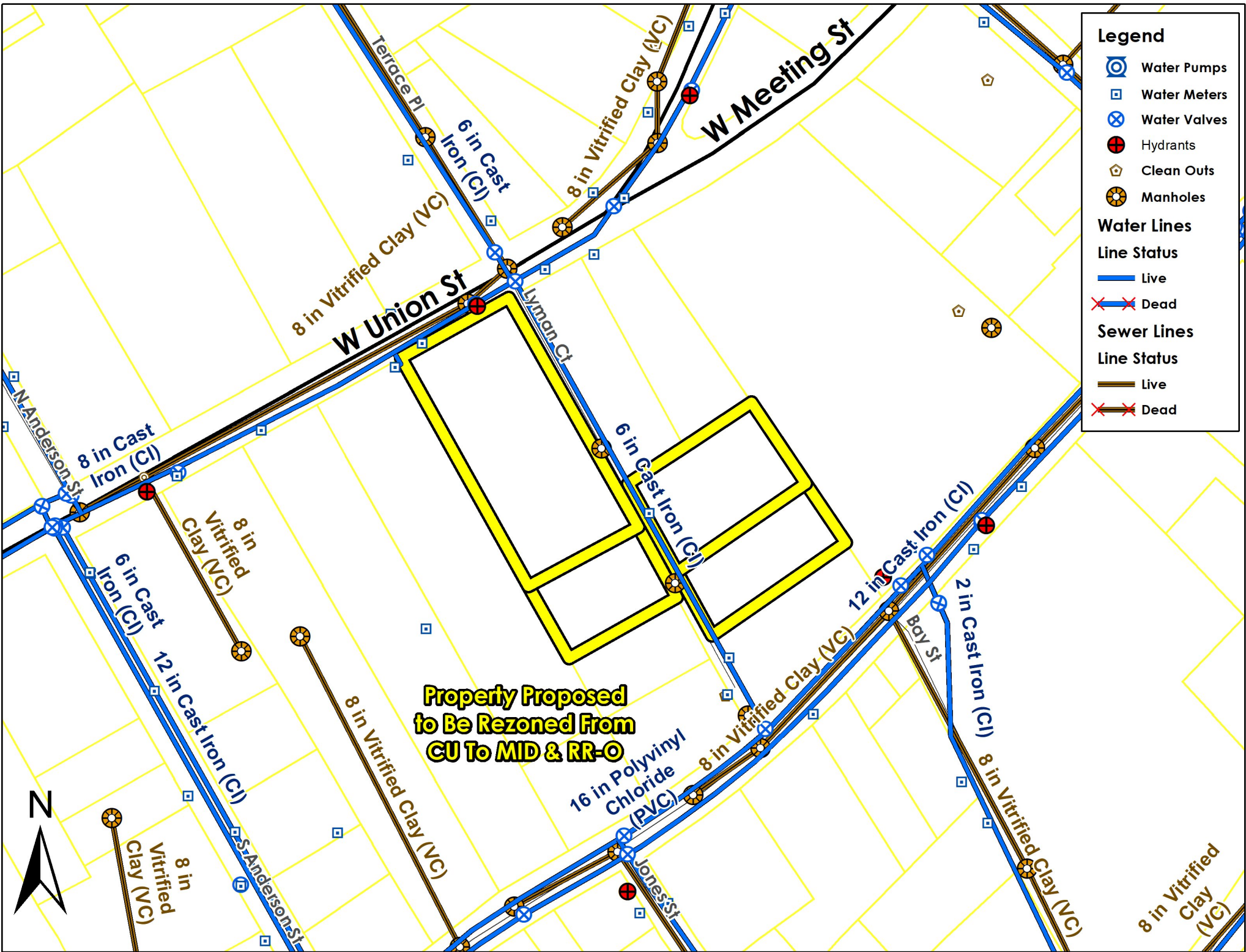
W Meeting St

W Concord St

W Medowell St

Bay St

Herron St



Legend

- Water Pumps
- Water Meters
- Water Valves
- Hydrants
- Clean Outs
- Manholes

Water Lines

Line Status

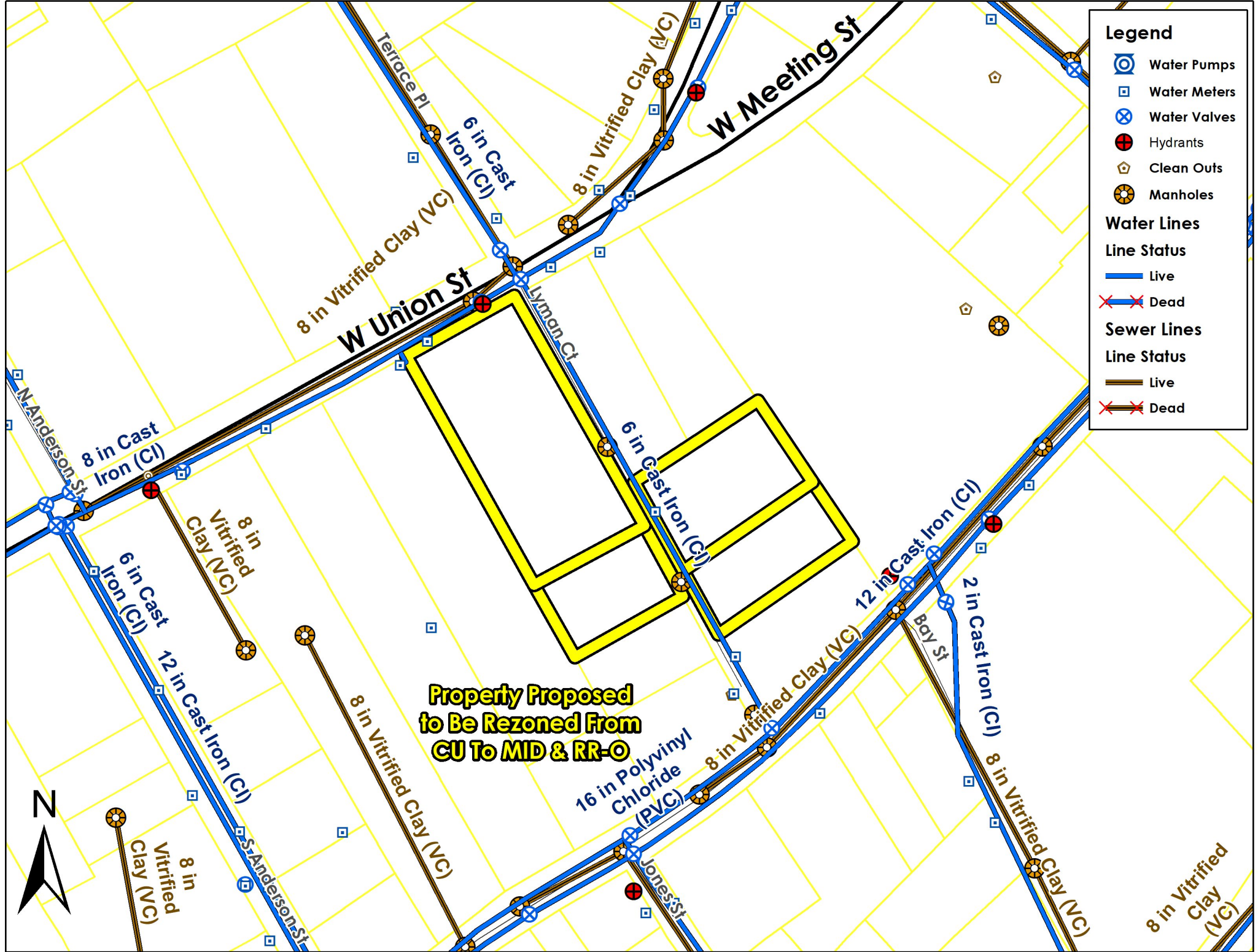
- Live
- Dead

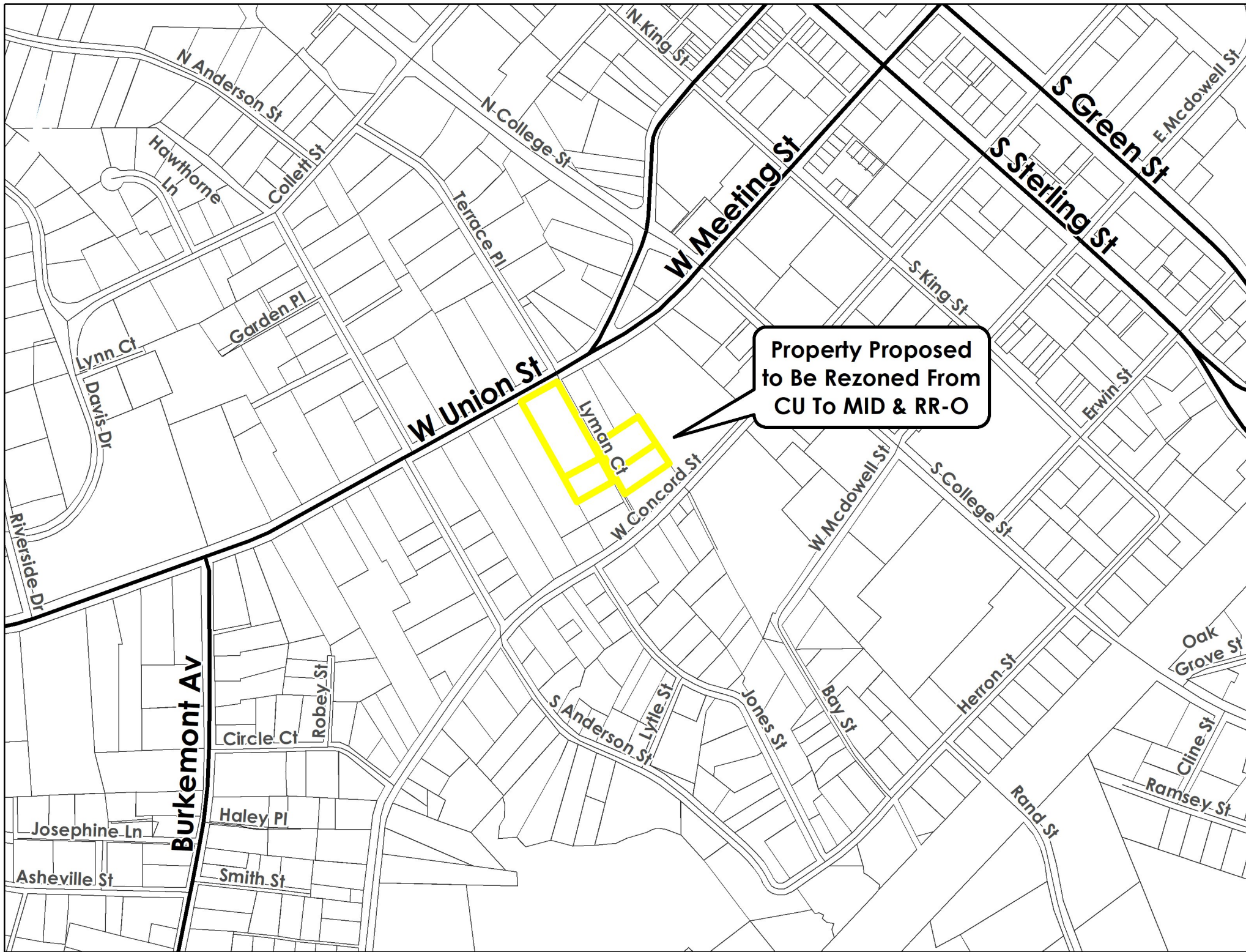
Sewer Lines

Line Status

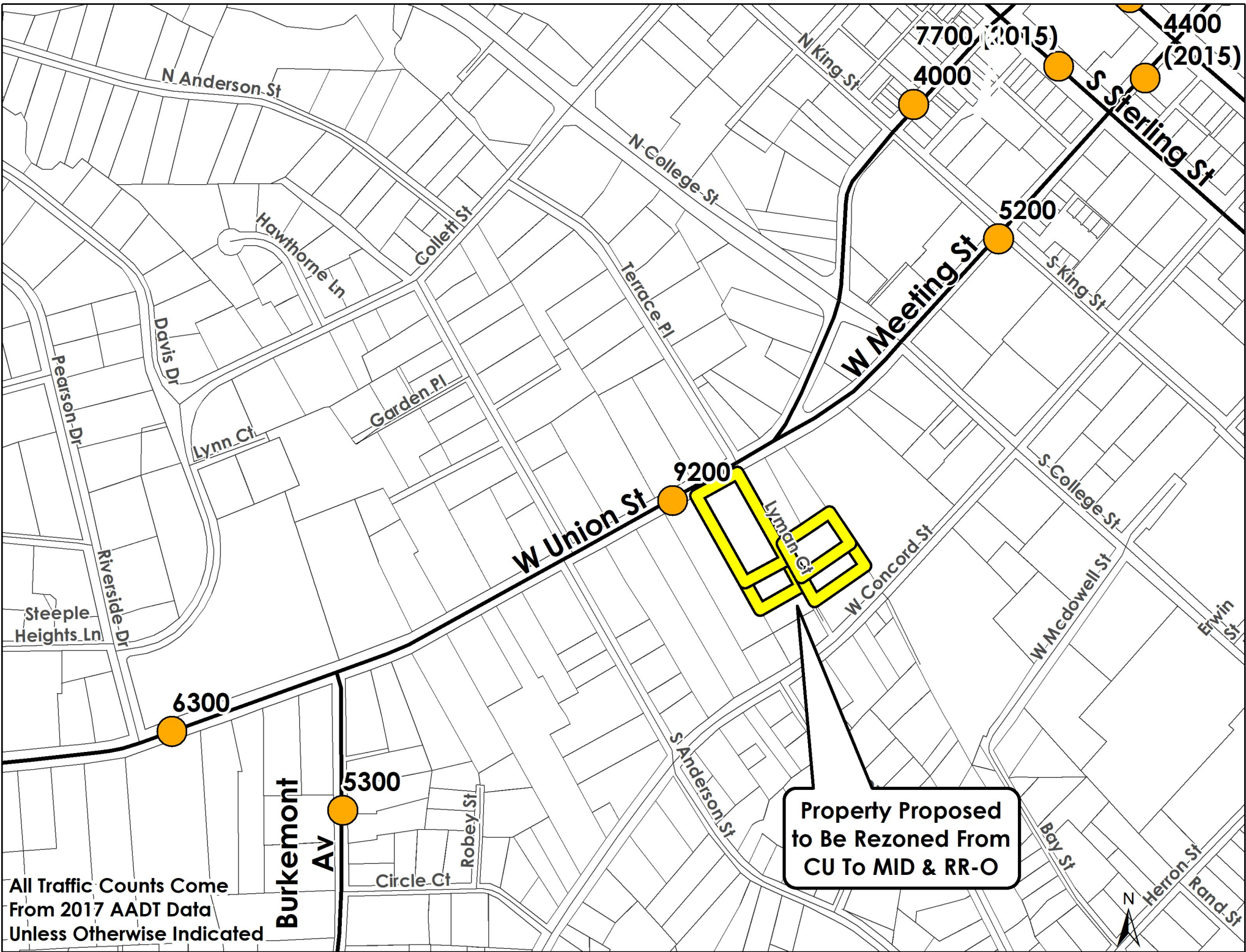
- Live
- Dead

**Property Proposed
to Be Rezoned From
CU To MID & RR-O**





Property Proposed
to Be Rezoned From
CU To MID & RR-O



All Traffic Counts Come From 2017 AADT Data Unless Otherwise Indicated

Property Proposed to Be Rezoned From CU To MID & RR-O



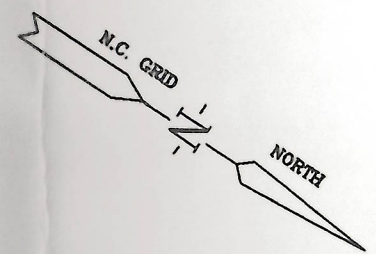
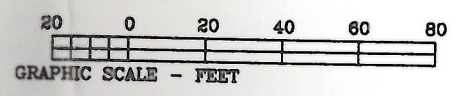
KENNETH R. & RHONDA C. BONFIELD
942-857

MITZI S. HENDRIX
972-490

ROBERT M. & JUDY T. MCGIMSEY -
794-1118

OPEN SPACE PLAN
SCALE 1" = 50'-0"

OPEN SPACE CALCULATIONS	
PROPERTY AREA	= 84,344.67 SQ.FT.
OPEN SPACE AREA	= 52,194.47 SQ.FT.
PERCENTAGE OF OPEN SPACE	= 61.88%



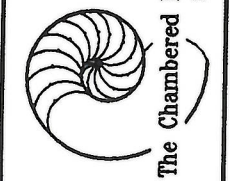
BURKE CHARITABLE PROPERTIES, INC.
919-1511

OPEN SPACE	STRUCTURES
PRIVATE DRIVE	CARRAGE HOUSE
YARD AREA	

216 Union Square
Hickory, NC 28601
828 - 322 - 3125

110 B West Union St
Morganton, NC 28655
(cell) 828-302-0600
(fax) 828-493-8559

Folger and Harrell
ARCHITECTS



The Chambered Nautilus
nature's most perfect habitat

PROPOSED CARRIAGE HOUSE PROJECT FOR
WILLIAM F. ANDREWS
WEST UNION STREET AT LYMAN COURT, MORGANTON, NC

SCALE:	DATE:	REVISIONS
1"=50'-0"	2 MAY. 05	

AN ORDINANCE TO REZONE APPROXIMATELY 1.934 ACRES LOCATED AT 101, 103, & 104 LYMAN COURT AND 313 W. UNION ST FROM RESIDENTIAL LOW (RL) AND RESIDENTIAL HIGH (RH) TO RESIDENTIAL HIGH CONDITIONAL USE (RH-CU)

BE IT ORDAINED by the City Council of the City of Morganton that the following described properties be rezoned from Residential Low (RL) and Residential High (RH) to Residential High Conditional Use (RH-CU):

BEGINNING at a point in the southern right-of-way limit boundary line of West Union Street, said point being the point of intersection of the centerline of Lyman Court and the southern right-of-way limit boundary line of West Union Street; thence, from said point South 28 degrees 54' 09" East 249.09 feet to a point; thence, North 57 degrees 06' 59" East 70.90 feet; thence North 57 degrees 04' 44" East 93.74 feet to the southeastern property corner of Warren T. and Lydia F Daniel property; thence South 34 degrees 29' 17" East 109.42 feet; thence, South 34 degrees 24' 28" East 153.09 feet to a point in the northern right-of-way limit boundary line of West Concord Street; thence, westerly with the northern right-of-way limit boundary line of West Concord Street 10 feet; thence, North 34 degrees, 24' 28" West 73 feet; thence, South 57 degrees 41' 56" West 191.67 feet; thence North 29 degrees 22' 47" West 54.36 feet to the north eastern property corner of Robert M. and Judy T McGimsey; thence South 59 degrees 56' 25" West 145.92 feet to a point in the eastern property line of Kenneth R. and Rhonda C. Bonfield; thence, North 29 degrees 00' 24" West 89.66 feet; thence, North 28 degrees 52' 29" West 296.45 feet to a point in the southern right-of-way limit boundary line of West Union Street; thence, North 61 degrees 19' 34" East 145.91 feet to the point of BEGINNING and containing 1.934 acres more or less and being two (2) separate, noncontiguous tracts of land, one tract being located on the East side and a separate tract being located on the West side of Lyman Court owned by William F. Andrews and/or others and illustrated on a set of plans entitled "Proposed Carriage House Project for William F. Andrews dated May 2, 2005," prepared by Folger and Harrell, Architects.

IT IS FURTHER ORDAINED that the property described above may hereafter be developed and used for Residential High - Commercial uses subject to the normal development rules and regulations, but also subject to the following special conditions, to which the property owner has agreed:

1. The development, construction and all improvements made to the property described above shall be in accordance to and consistent with the plans entitled Proposed Carriage House Project for William F. Andrews Plans prepared by Folger and Harrell, Architects, ("Project Plans") now on file with the City of


Morganton's Development and Design Services Department and a copy of which is incorporated into this Ordinance by reference.

2. Changes to the Project Plans and the construction of the improvements shown thereon, shall be submitted to the Development and Design Services Department. If such changes are minor in nature for architectural enhancement purposes or necessary in order to comply with the various building codes, then the Development and Design Services Department may approve the change. However, material changes in the Project Plans and related construction, including any changes denied by the Development and Design Services Department shall be submitted to the City Council for its review and approval or denial except that changes that do not affect the overall quality and integrity of the Project shall not be denied except for just cause.

3. Any waivers necessary to carry out the Project Plans as presented and as shown on the Project Plans are granted, but any variances, waivers or other permissions caused by any changes to the Project Plans shall require the further approval of the City Department, Agency or Commission having jurisdiction to grant such matters.

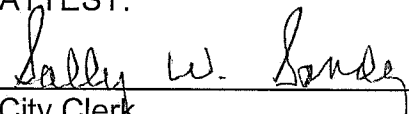
4. The conditions set forth herein shall apply to the property described above and to William F. Andrews and any other person acquiring an interest in the property described above including all assigns and successors in interest to the property.

Adopted this the 2nd day of May, 2005.



Mayor

ATTEST:



City Clerk

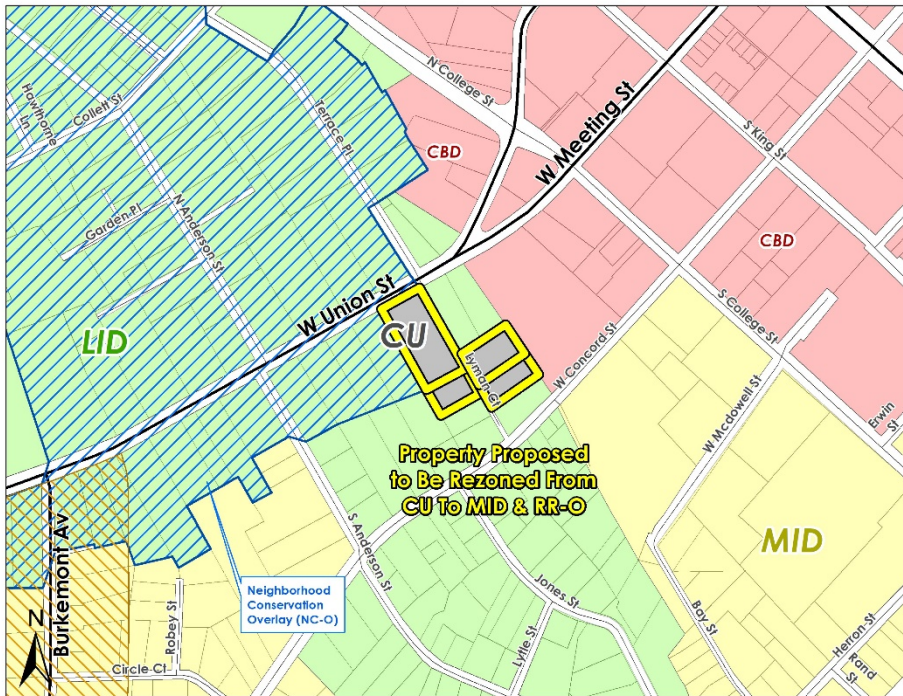
CITY OF MORGANTON NORTH CAROLINA

September 29, 2020

Dear Property Owner:

Public Notice

The Morganton Planning and Zoning Commission will hold its meeting on Thursday, **October 8, 2020 at 5:15 p.m.** in the City Hall Council Chambers located at 305 East Union Street Suite A100. A public meeting will be held concerning a proposed rezoning of a 0.95+- acre tract (PIN# 2703156576), 0.44+- acre tract (PIN# 2703158591), 0.33+- acre tract (PIN# 2703159443) acre track and 0.29 acre tract (PIN# 2703157369) located at 313 West Union Street, 101 Lyman Court, 103 Lyman Court and 104 Lyman Court from Conditional Use (CU) to Medium Intensity District & Restricted Residential Overlay (MID/RR-O) submitted by William F. Andrews.



In response to the order issued by Governor Roy Cooper (phase 2.5), and to help mitigate the spread of COVID-19, the Planning & Zoning Commission will hold a meeting October 8, 2020. The Council Chamber will be open to the public with limitations. Listed below are ways to participate and remain in compliance with the Governor's orders.

If citizens wish to address the commission during the meeting they may:

1. Send an email to: jcain@ci.morganton.nc.us

2. Send a letter to: City of Morganton, Attn: Jackie Cain, P.O. Box 3448, Morganton, NC 28680
3. Hand deliver a letter to City Hall: 305 East Union Street by 9:00 a.m. on Wednesday, October 7, 2020.
4. If a citizen would like to address the commission in person, they may attend the scheduled meeting. Limitation of fifty (50) individuals are allowed in the council chamber. Additional seating and live feed will be available in the lobby of city hall. Masks will be required. Please contact Jackie Cain (828) 438-5260 with any questions. Speakers during any public hearing shall be limited to three (3) minutes each.

**All comments (emails or letters) must be received by 9:00 a.m.
on Thursday October 8, 2020.**

For more information please call the City's Development & Design Services Department at (828) 438-5260. Interpreter services for the hearing impaired will be provided upon request. Please call TDD at 1-800-676-3777 at least seventy two (72) hours prior to the scheduled meeting. For other special needs services please call (828) 438-5260 at least 48 hours prior to the scheduled meeting.

Sincerely,
Phillip Lookadoo
Director D&D Services
City of Morganton

SUBJECT:

Application submitted by Nancy VanNoppen for consideration of an amendment to the text of the Zoning Ordinance, Table of Permitted Uses, to allow Body Art Establishments (tattoos & body piercing) as a permitted use in the Central Business District with conditions.

SUMMARY:

Applicant Proposal- Add "P" for Permitted Use for Body Art Establishment (tattoos & body piercing) under CBD with Conditions under 3.4.4, add new subsection 3.4.4 (D) Tattoo & Body Piercing within CBD.

Conditions-

- 1) Business occupies either a back space not on street level (upper or lower floor).
- 2) Business has no marketing materials or signage on front of building or storefront windows (Primary Façade) beyond directional sign or incidental signage (business name/logo and where they are located in the building).
- 3) Business services no more than one customer at a time ("service" meaning actually having a customer in a chair and performing a service).

STAFF RECOMMENDATION:

Staff recommends that the use is permitted in the CBD as a permitted use outright without additional conditions. If P&Z chooses to approve the text amendment with conditions as proposed by the applicant; staff recommends adding the following:

- 4) Permitted as a secondary/accessory use to the existing or proposed principle use.

NECESSARY COMMISSION ACTION:

Options:

1. Motion to recommend approval or denial of proposed text amendment.
2. Motion to recommend to approval with additional conditions
3. Motion to recommend approval as a permitted use with no conditions.



Zoning Ordinance Text Amendment Application

D & D Services
305 E. Union St A100
Morganton, NC 28655
P: 828.438.5260
F: 828.438.5264

Fee: \$750.00
Fees are subject to change without notice

All pages must be completely filled out before application is accepted. For assistance filling out this application, contact Development & Design Services.

To the Planning & Zoning Commission and City Council of Morganton:


I, Nancy VanNoppen **do hereby make an application to change the Zoning Ordinance of the City of Morganton as herein requested.**

Amend Article 3.3 **Section** 3.3.3 & 3.4.4 **as follows:**

Add P for Permitted Use for Body art establishment (tattoos & body piercing) under CBD with Conditions under 3.4.4 add new subsection 3.4.4 (D) Tattoo & Body Perceiving within CBD 1) Business occupies either a back space or space not on street level (upper or lower floor). 2) Business has no marketing materials or signage on front of building or storefront windows (Primary Façade) beyond a directional sign or incidental signage (business name/logo and where they are located in building). 3) Business services no more than 1 customer at a time ("service" meaning actually having customer in a chair and performing a service).

PLEASE USE AN ATTACHEMENT IF NECESSARY

Applicant Information

Name: Nancy VanNoppen  **City/State/Zip:** Morganton, NC 28655

Mailing Address: 103 Hemlock Dr. **Email:** nancy@vannoppen.co

Phone: 828-443-6633

Alternate phone: _____

Email addresses are only used by this office for correspondence with the applicant if needed.

Consultant Information

Name: _____

Address: _____

Phone: _____

Email: _____

