

RICHLAND COUNTY PLANNING COMMISSION



December 2, 2019

***Council Chambers
2020 Hampton Street
Columbia, SC 29202***

RICHLAND COUNTY PLANNING COMMISSION



Monday, December 2, 2019
Agenda
3:00 PM
2020 Hampton Street
2nd Floor, Council Chambers

Chairman – Stephen Gilchrist

Vice Chairman – Heather Cairns

Christopher Yonke • Mettauier Carlisle • Gary Dennis
David Tuttle • Wallace Brown • Jason Branham

- I. PUBLIC MEETING CALL TO ORDER** Stephen Gilchrist, Chairman
- II. PUBLIC NOTICE ANNOUNCEMENT** Stephen Gilchrist, Chairman
- III. CONSENT AGENDA [ACTION]**

- a. PRESENTATION OF MINUTES FOR APPROVAL** – November 2019
- b. ROAD NAMES**
- c. MAP AMENDMENTS**

- 1. Case # 19-045 MA District 7
Gwendolyn Kennedy
Karim Johnson
RU to GC (4.07 acres)
9930 Wilson Boulevard
TMS# R14800-04-37
PDS Recommendation – Disapproval
Page 1
- 2. Case # 19-046 MA District 1
Bill Malinowski
Vicki Brooks
RU to RM-HD (12 acres)
Canterfield Road & Freshly Mill Road
TMS# R01700-04-39
PDS Recommendation – Disapproval
Page 9
- 3. Case # 19-047 MA District 1
Bill Malinowski
Vicki Brooks
RU to GC (17.79 acres)
Broad River Road, Canterfield Road & Freshly Mill Road
TMS# R01700-04-36 & 61
PDS Recommendation – Disapproval
Page 17

d. ADMINISTRATIVE REVIEW 19-006AR

The applicant is appealing the provision of section 26-224 which prevents the further subdivision of land and staff's requirement that the owners of the land on which the existing easement crosses, Rufus Miles Road, grant permission for the change in use of the easement prior to the proposed subdivision of land.
Page 25

IV. OTHER BUSINESS [ACTION]

V. CHAIRMAN'S REPORT

VI. PLANNING DIRECTOR'S REPORT

A. Report of Council

Page 51

VII. ADJOURNMENT

NOTES:

MEETING FORMAT

The Planning Commission uses the consent agenda to approve non-controversial or routine matters by a single motion and vote. If a member of the Planning Commission, the Planning Staff or the general public wants to discuss an item on the consent agenda (at the beginning of the meeting), that item is removed from the consent agenda and considered during the meeting. The Planning Commission then approves the remaining consent agenda items.

Persons wishing to speak on an agenda item are requested to sign the item's sign-in sheet located at the back of County Council Chambers. Meeting attendees are usually given two (2) minutes to speak; the time limit is at the discretion of the Chair of the meeting and may be limited when appropriate.

Speakers' comments should be addressed to the full body. Requests to engage a Commission Member, County staff or applicants in conversation will not be honored. Abusive language is inappropriate.

After persons have spoken, the hearing is closed and brought back to Commission level for discussion and action. There is no further comment permitted from the audience unless requested by the Commission.

ZONING PUBLIC HEARING

The Planning Commission is a recommending body to Richland County Council. Recommendations for "Approval" or "Disapproval" are forwarded to County Council for their consideration at the next Zoning Public Hearing. The Zoning Public Hearing is another opportunity to voice your opinion for or against a rezoning or amendment to the Land Development Code and is open to the public. The County Council Zoning Public Hearing is usually scheduled for the 4th Tuesday of the month at 7:00 p.m. Check the County's website for dates and times.

**RICHLAND COUNTY
COMMUNITY PLANNING & DEVELOPMENT**

2020 Hampton Street
Columbia, SC 29204



To: Planning Commission Members, Interested Parties
From: Alfreda W. Tindal, E9-1-1 Addressing Coordinator
Date: November 22, 2019
Subject: December '2019 Street Name (s) Approval Request List

Pursuant to section 6-29-1200 (A) of the SC Code of Laws, the Planning Commission is required to approve street names. Specifically, it states "...A local planning commission created under the provisions of this chapter shall, by proper certificate, approve and authorize the name of a street or road laid out within the territory over which the commission has jurisdiction..."

The proposed street names have been reviewed and are in compliance with Richland County & State Statute Road Naming Standards.

Action Requested: The Planning Commission's approval of the following street name(s):

Proposed Street Name (s)	Applicant/ Contact	Development Name/Location	Property TMS #	Council District (Honorable)
1. Filbert Road	Kimberly Swygert, Civil Engineering of Cola	The Falls 5-8	R20400-01-05	Calvin "Chip" Jackson (9)
2. Sweet Gardenia Lane				
3. Berkman				
4. Loose Leaf Lane				
5. Sapphire Drop Lane	Elissa Filson, Civil Engineering of Cola	The Cottages	R25716-02-03	Calvin "Chip" Jackson (9)
6. Magnolia Petal Drive				
7. Spotted Fawn Lane				
8. Pumpkin Blossom Lane				
9. Jack Pine Court	Anna Fonseca Hilburn	Summer Pines, Ph 7A	R14800-04-13,14	Gwendolyn Kennedy (7)
10. Belgrave	Keith Utheim, Hussey Gay Bell	Belgrave	R14800-05-22	Gwendolyn Kennedy (7)



**Richland County
Planning & Development Services Department**

Map Amendment Staff Report

PC MEETING DATE: December 2, 2019
RC PROJECT: 19-045MA
APPLICANT: Karim Johnson

LOCATION: 9930 Wilson Boulevard

TAX MAP NUMBER: R14800-04-37
ACREAGE: 4.07 acres
EXISTING ZONING: RU
PROPOSED ZONING: GC

PC SIGN POSTING: November 15, 2019

Staff Recommendation

Disapproval

Background

Zoning History

The original zoning as adopted September 7, 1977 was Rural District (RU).

Zoning History for the General Area

The Planned Development District (PDD) zoned parcels (Stonington Subdivision) located to the west of the site along Wilson Boulevard was rezoned under Ordinance Number 044-00HR (case 00-38MA). The Planned Development District (PDD) zoned parcel located to the northwest of the subject parcel was approved under Ordinance Number 010-05HR (case 05-028MA). The Neighborhood Commercial District (NC) zoned parcels located to the south of the site along Wilson Boulevard were rezoned under Ordinance Number 058-04HR (case 05-01MA).

Zoning District Summary

The General Commercial (GC) District is intended to accommodate a variety of commercial and non-residential uses characterized primarily by retail, office, and service establishments oriented primarily to major traffic arteries or extensive areas of predominantly commercial usage and characteristics.

No minimum lot area, except as required by DHEC. The maximum allowed density for residential uses is sixteen (16) dwelling units per acre.

Based upon a gross density calculation, the maximum number of units for this site is approximately: 65 dwelling units*.

Direction	Existing Zoning	Use
<u>North:</u>	RU	Residences
<u>South:</u>	RU	Residences
<u>East:</u>	RS-HD	Residential Subdivision (Summer Pines)
<u>West:</u>	RU	Residences

Discussion

Parcel/Area Characteristics

The subject site has frontage along Wilson Boulevard, a two-lane minor arterial without sidewalks or streetlights. The parcel consists of a residential and an accessory structure on the front third of the property. The rear two thirds of the property contains some accessory structures and is largely undeveloped with significant tree canopy near the rear. The area is characterized by residential uses varying between large lot rural residential properties and residential subdivisions. East of the subject property is the Summer Pines residential subdivision.

Public Services

The subject parcel is within the boundaries of Richland School District Two. Westwood High School is located approximately 1.03 miles north of the subject parcel off Turkey Farm Road. Records indicate that the parcel is served by septic sewer and well for water, but is within the City of Columbia’s water and sewer service areas. There is a fire hydrant located approximately 0.15 miles south of the subject site on Wilson Boulevard. The Killian fire station (station number 27) is located on Farrow Road, approximately 2.1 miles southeast of the subject parcel.

Being within a service area is not a guarantee that services are available to the parcel.

Plans & Policies

The 2015 Richland County Comprehensive Plan, **“PUTTING THE PIECES IN PLACE”**, designates this area as **Neighborhood (Low-Density)**.

Land Use and Design

Areas where low-density residential is the primary use. These areas serve as a transition between rural and Neighborhood (Medium-Density) areas, and are opportunities for low-density traditional neighborhood development and open space developments that preserve open spaces and natural features. Commercial development should be located within nearby Neighborhood Activity Centers, and may be considered for location along main road corridors and within a contextually appropriate distance from the intersection of a primary arterial. Places of worship and parks are appropriate institutional uses, but should be designed to mitigate impacts on surrounding neighborhoods. Industrial development with significant community impacts is discouraged in these areas.

Desired Development Pattern

Lower-density, single-family neighborhood developments are preferred. Open space developments that provide increased densities in trade for the protection of open spaces and recreational areas are also encouraged. Residential developments that incorporate more open spaces and water protection of natural areas through the use of natural stormwater management techniques, such as swales, are encouraged. Homes in neighborhoods can be supported by small-scale neighborhood commercial establishments located at primary arterial intersections, preferably within Neighborhood Activity Centers.

Traffic Characteristics

The 2018 SCDOT traffic count (Station #135) located south of the subject parcel on Wilson Boulevard identifies 9,700 Average Daily Trips (ADT). Wilson Boulevard is classified as a two lane undivided minor arterial, maintained by SCDOT with a design capacity of 10,800 ADTs. This portion of Wilson Boulevard is currently operating at Level of Service (LOS) “C”.

The ADTs are the total volume of traffic passing a point on a roadway during a 24-hour period. ADT data is collected by SCDOT.

There are no planned or programmed improvements for this section of Wilson Boulevard through the SCDOT or the County Penny Sales Tax program.

Conclusion

This map amendment would be inconsistent with the objectives outlined in the Comprehensive Plan.

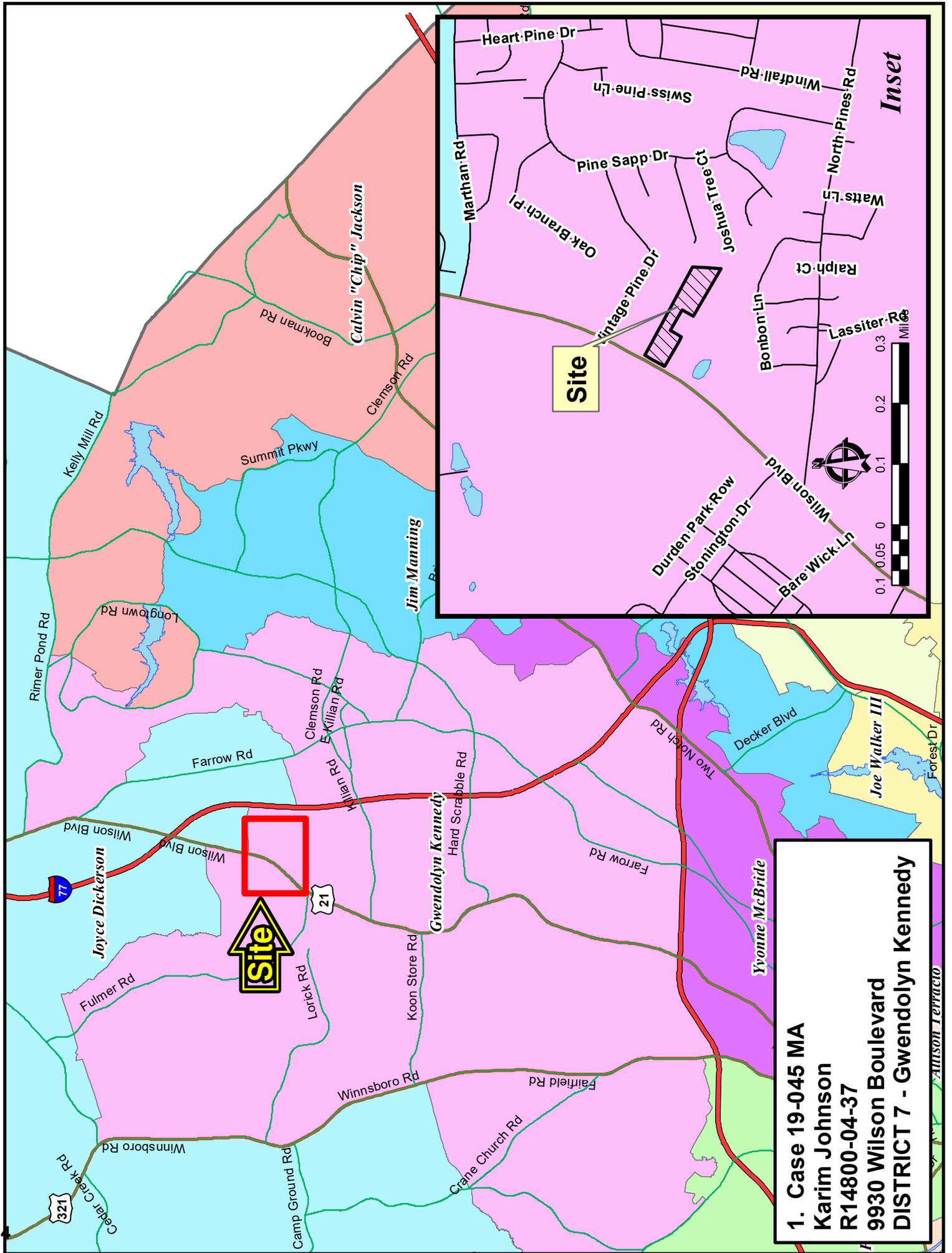
The Neighborhood (Low-Density) future land use designation recommends a primary land use of residential uses. Per the plan, “commercial development should be located within nearby Neighborhood Activity Centers, and may be considered for location along main road corridors and within a contextually appropriate distance from the intersection of a primary arterial.” The subject parcel is not located within a neighborhood activity center nor within a contextually appropriate distance of an intersection with a primary arterial.

Additionally, the Comprehensive Plan recommends against commercial development that “promote[s] a strip commercial development pattern or fragmented ‘leap frog’ development pattern along road corridors,” as this request would create.

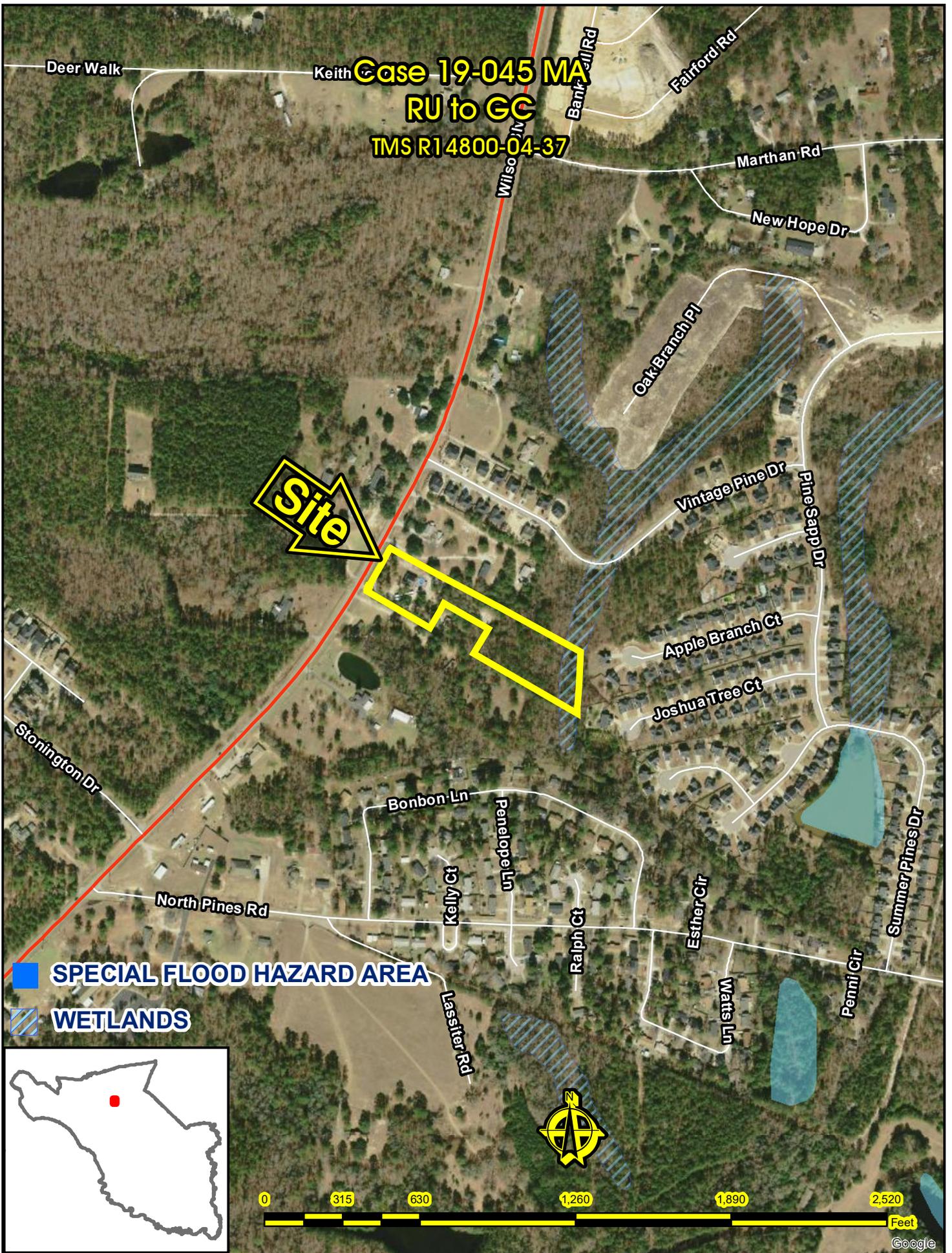
For these reasons, staff recommends **Disapproval** of this map amendment.

Zoning Public Hearing Date

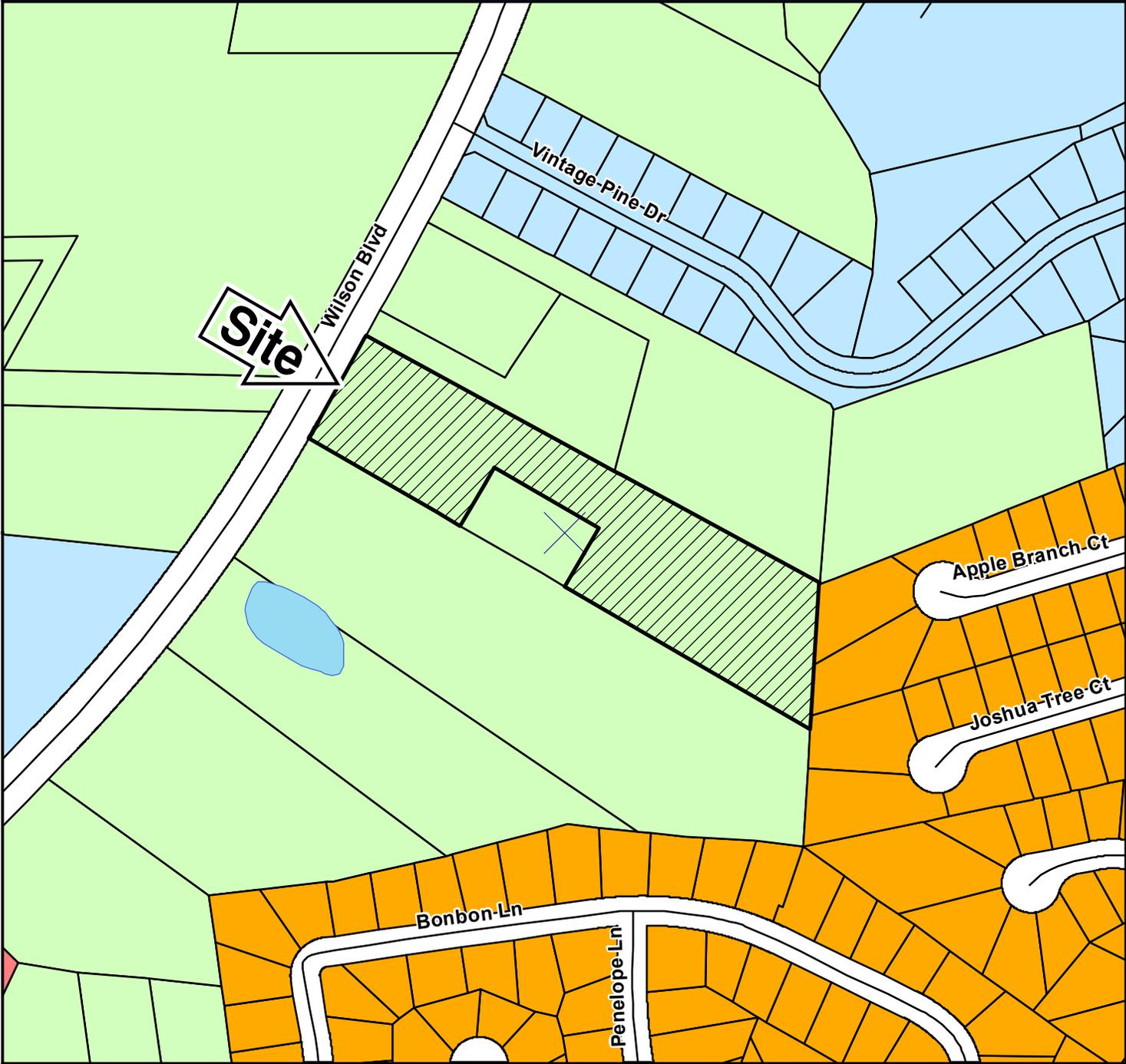
December 17, 2019.



1. Case 19-045 MA
Karim Johnson
R14800-04-37
9930 Wilson Boulevard
DISTRICT 7 - Gwendolyn Kennedy



Case 19-045 MA RU to GC



ZONING CLASSIFICATIONS

CC-1	C-1	RS-E	MH	NC	LI	TROS
CC-2	C-3	RS-LD	RM-MD	GC	HI	Subject Property
CC-3	RG-2	RS-MD	RM-HD	RC	PDD	
CC-4	RR	RS-HD	OI	M-1	RU	



NORTHEAST PLANNING AREA

FUTURE LAND USE & PRIORITY INVESTMENT AREAS

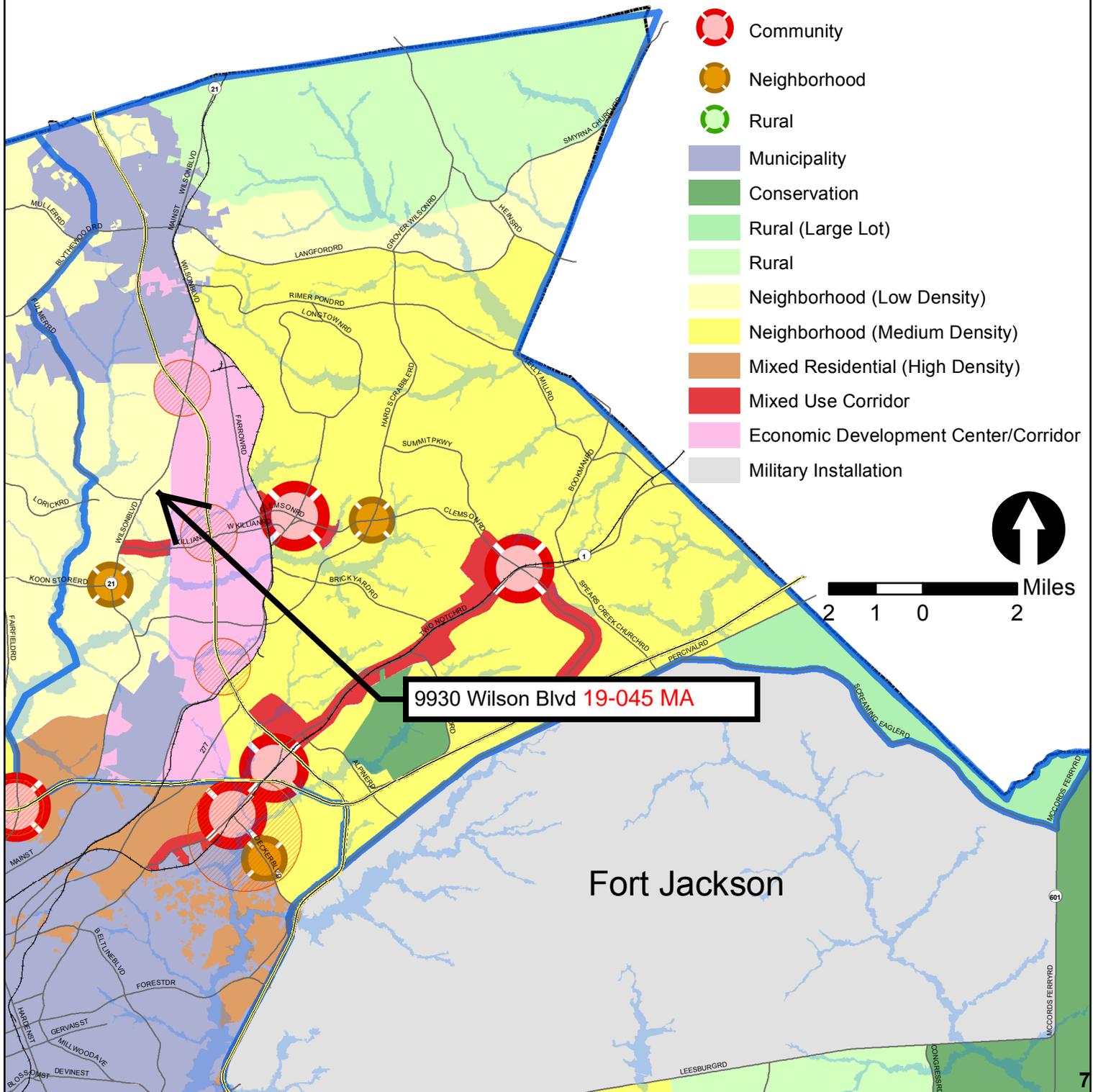


For more information on Priority Investment Areas, refer to the Priority Investment Element in Section 12 of the Comprehensive Plan.

Adopted March 17, 2015

Legend

- 100 Year Floodplain
- Priority Investment Area
- Planning Area Boundary
- Activity Center**
- Community
- Neighborhood
- Rural
- Municipality
- Conservation
- Rural (Large Lot)
- Rural
- Neighborhood (Low Density)
- Neighborhood (Medium Density)
- Mixed Residential (High Density)
- Mixed Use Corridor
- Economic Development Center/Corridor
- Military Installation





**Richland County
Planning & Development Services Department**

Map Amendment Staff Report

PC MEETING DATE: December 2, 2019
RC PROJECT: 19-046 MA
APPLICANT: Vicki Brooks

LOCATION: Canterfield Road & Freshly Mill Road

TAX MAP NUMBER: R01700-04-39
ACREAGE: 12 acres
EXISTING ZONING: RU
PROPOSED ZONING: RM-HD

PC SIGN POSTING: November 15, 2019

Staff Recommendation

Disapproval

Background

Zoning History

The original zoning as adopted September 7, 1977 was RU District.

Zoning History for the General Area

The Planned Development District (PDD) property northwest of the subject parcel was rezoned under case number 04-041MA.

Zoning District Summary

The RM-HD District is established to provide for high-density residential development in Richland County, allowing compact development consisting of the full spectrum of residential unit types where adequate public facilities are available. This district is intended to allow a mix of residential unit types to provide a balance of housing opportunities while maintaining neighborhood compatibility. This district may serve as a transitional district between lower density residential and low intensity commercial uses.

Minimum lot area/maximum density. Minimum lot area: no minimum lot area requirement except as required by DHEC. Maximum density standard: no more than sixteen (16) units per acre.

Based upon a gross density calculation*, the maximum number of units for this site is approximately: 192 dwelling units.

*Gross density calculations do not consider site characteristics or land set aside for infrastructure or opens space.

Direction	Existing Zoning	Use
<u>North:</u>	RU / RU	Undeveloped / Residences
<u>South:</u>	RU / RU	Residences / Undeveloped
<u>East:</u>	RU / RU	Undeveloped / Residences
<u>West:</u>	RU / RU	Residences / Undeveloped

Discussion

Parcel/Area Characteristics

The site has frontage along Canterfield Road and Freshly Mill Road. Canterfield Road is a two lane local road. Freshly Mill Road is a two-lane collector road. There are no sidewalks or streetlights along this section of Canterfield Road or Freshly Mill Road. The site is undeveloped and wooded. The immediate area is characterized by residential uses of a rural nature with some undeveloped parcels in the vicinity, with the immediate area zoned RU.

Public Services

The Spring Hill/White Rock fire station (station number 21) is located at 11809 Broad River Road, approximately 1.3 miles northwest of the subject parcel. The Spring Hill High School is located approximately 0.3 miles southwest of the subject parcel on Broad River Road. Records indicate that the parcel is located within the City of Columbia’s water service area. Records also indicate that the parcel is located within Richland County’s sewer service area.

Being within a service area is not a guarantee that services are available to the parcel.

Plans & Policies

The 2015 Richland County Comprehensive Plan, **“PUTTING THE PIECES IN PLACE”**, designates this area as **Rural (Large Lot)**.

Land Use and Design

These are areas of mostly active agricultural uses and some scattered large-lot rural residential uses. Limited rural commercial development occurs as Rural Activity Centers, located at rural crossroads and does not require public wastewater utilities. Some light industrial and agricultural support services are located here. These areas are targets for future land conservation efforts, with a focus on prime and active agricultural lands and important natural resources. Historic, cultural, and natural resources are conserved through land use planning and design that upholds these unique attributes of the community.

Desired Development Pattern

Active working lands, such as farms and forests, and large lot rural residential developments are the primary forms of development that should occur in Rural (Large Lot) areas. Residential development should occur on very large, individually-owned lots or as family subdivisions. Master planned, smaller lot subdivisions are not an appropriate development type in Rural (Large Lot) areas. These areas are not appropriate for providing public wastewater service, unless landowners are put at risk by failing septic systems. Commercial development is appropriately located within rural activity centers.

Traffic Characteristics

The 2018 SCDOT traffic count (Station #456) located north of the subject site on Freshly Mill Road identifies 1,000 ADTs. This section of Freshly Mill Road is classified as at two-lane

undivided major collector with a design capacity of 8,600 ADTs. This segment of Freshly Mill Road is currently operating at a Level of Service (LOS) "A".

The ADTs are the total volume of traffic passing a point on a roadway during a 24-hour period. ADTs data is collected by SCDOT.

SCDOT has a Rehab & Resurfacing project listed under construction with anticipated completion in October of 2019. There are no planned or programmed improvements for this section of Freshly Mill Road through the County Penny Sales Tax program.

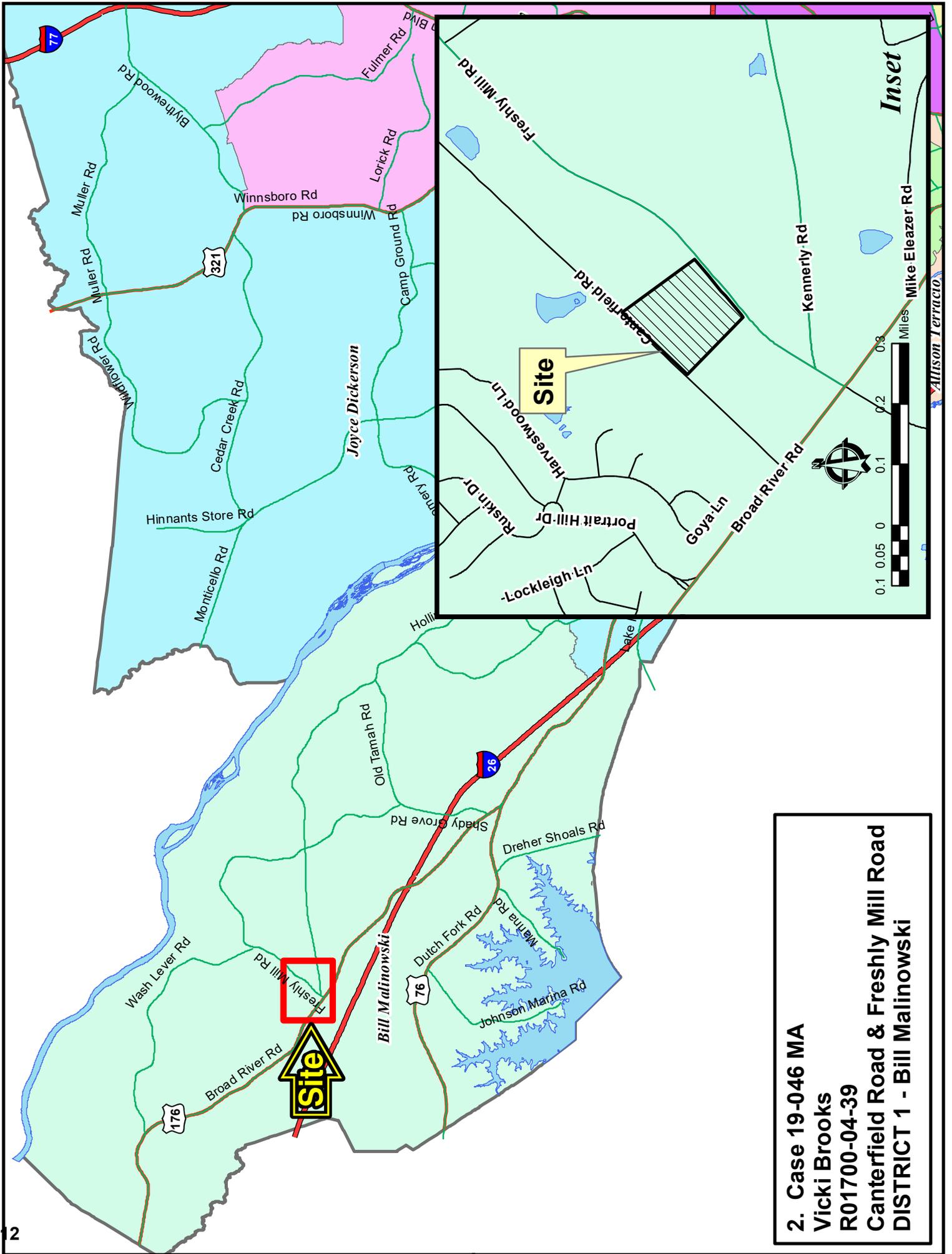
Conclusion

The proposed rezoning does not meet the objectives or desired development pattern of the Comprehensive Plan for the Rural (Large Lot) land use designation. The proposed request permits residential densities and uses that would be out of character with the Comprehensive Plan's recommendations for "scattered large-lot rural residential uses" and a desired development pattern where "master planned, smaller lot subdivisions are not appropriate." Likewise, the rezoning request is not in character with the existing residential uses and zoning districts in the immediate area.

For these reasons, staff recommends **Disapproval** of this map amendment.

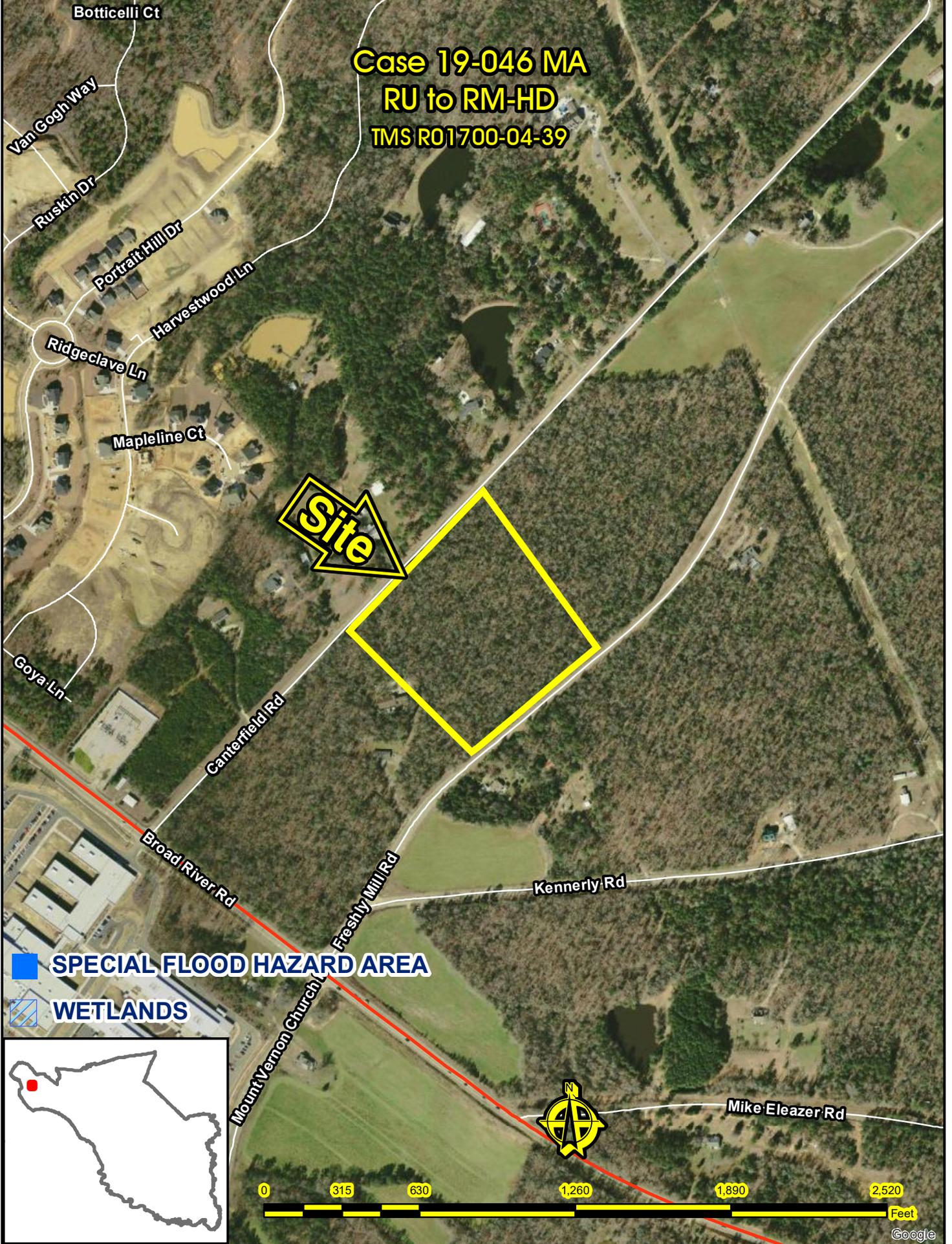
Zoning Public Hearing Date

December 17, 2019.



2. Case 19-046 MA
Vicki Brooks
R01700-04-39
Canterfield Road & Freshly Mill Road
DISTRICT 1 - Bill Malinowski

Case 19-046 MA
RU to RM-HD
TMS R01700-04-39



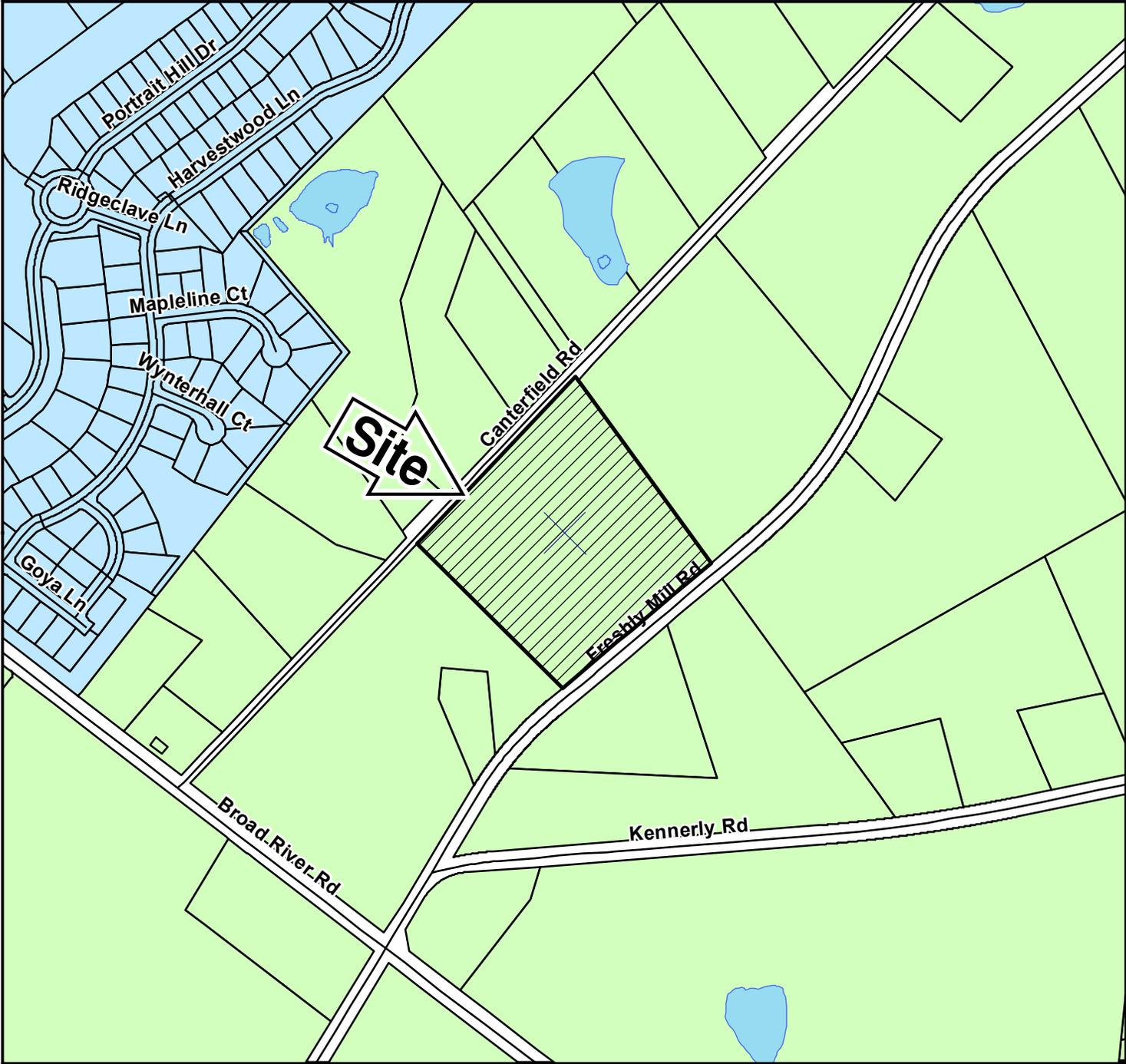
Site

SPECIAL FLOOD HAZARD AREA
WETLANDS



Google

Case 19-046 MA RU to RM-HD



ZONING CLASSIFICATIONS

CC-1	C-1	RS-E	MH	NC	LI	TROS
CC-2	C-3	RS-LD	RM-MD	GC	HI	Subject Property
CC-3	RG-2	RS-MD	RM-HD	RC	PDD	
CC-4	RR	RS-HD	OI	M-1	RU	

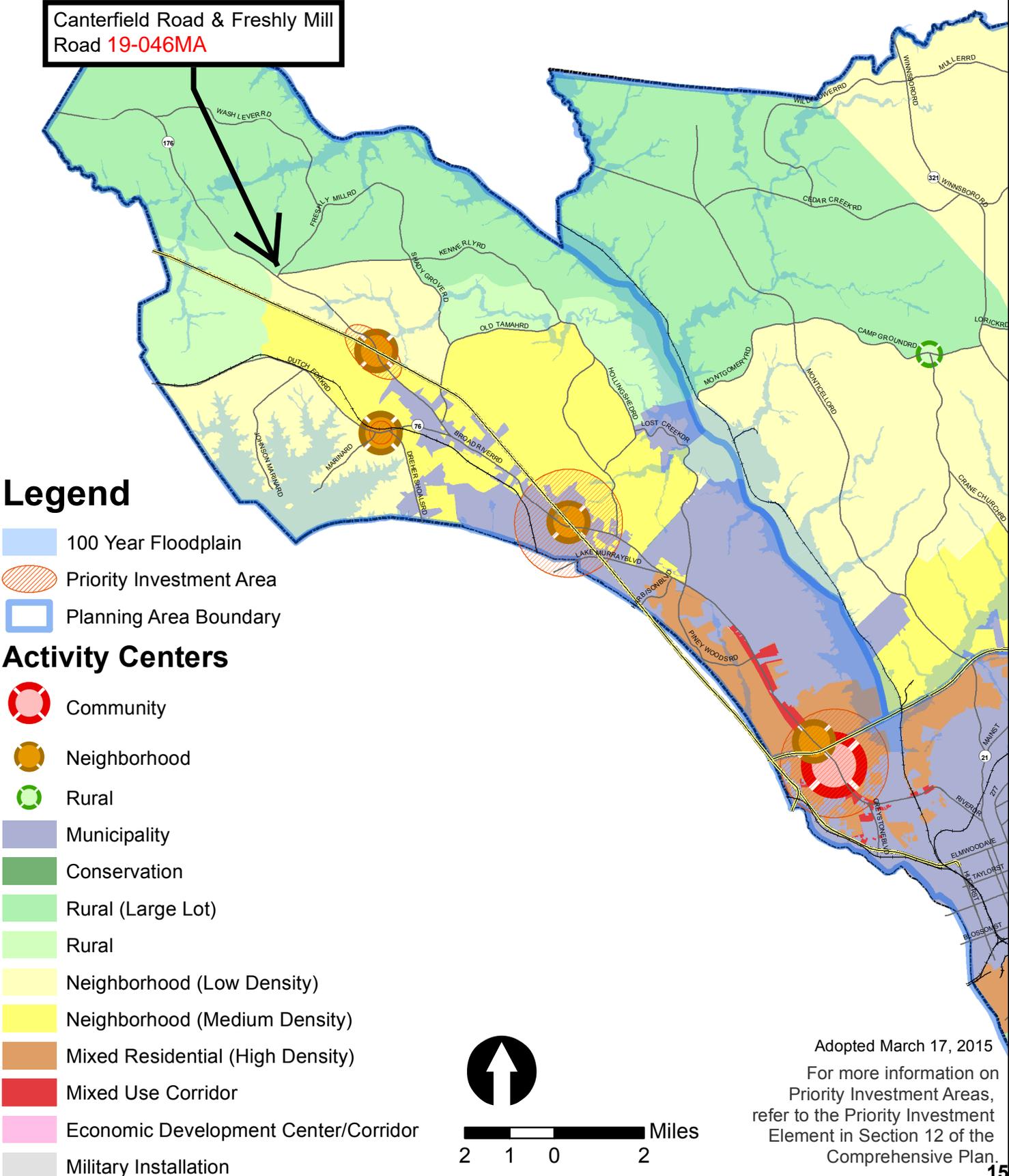


NORTHWEST PLANNING AREA

FUTURE LAND USE & PRIORITY INVESTMENT AREAS



Canterfield Road & Freshly Mill Road 19-046MA

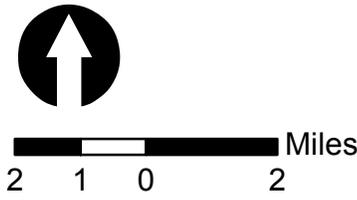


Legend

- 100 Year Floodplain
- Priority Investment Area
- Planning Area Boundary

Activity Centers

- Community
- Neighborhood
- Rural
- Municipality
- Conservation
- Rural (Large Lot)
- Rural
- Neighborhood (Low Density)
- Neighborhood (Medium Density)
- Mixed Residential (High Density)
- Mixed Use Corridor
- Economic Development Center/Corridor
- Military Installation



Adopted March 17, 2015
 For more information on Priority Investment Areas, refer to the Priority Investment Element in Section 12 of the Comprehensive Plan.



**Richland County
Planning & Development Services Department**

Map Amendment Staff Report

PC MEETING DATE: December 2, 2019
RC PROJECT: 19-047 MA
APPLICANT: Vicki Brooks

LOCATION: Broad River Road, Canterfield Road & Freshly Mill Road

TAX MAP NUMBER: R01700-04-36 & 61
ACREAGE: 17.79 acres
EXISTING ZONING: RU
PROPOSED ZONING: GC

PC SIGN POSTING: November 15, 2019

Staff Recommendation

Disapproval

Background

Zoning History

The original zoning as adopted September 7, 1977 was RU District.

Zoning History for the General Area

The Planned Development District (PDD) property northwest of the subject parcel was rezoned under case number 04-041MA.

Zoning District Summary

The General Commercial (GC) District is intended to accommodate a variety of commercial and non-residential uses characterized primarily by retail, office, and service establishments oriented primarily to major traffic arteries or extensive areas of predominantly commercial usage.

No minimum lot area, except as required by DHEC. The maximum allowed density for residential uses is sixteen (16) dwelling units per acre.

Based upon a gross density calculation*, the maximum number of units for this site is approximately: 284 dwelling units.

*Gross density calculations do not consider site characteristics or land set aside for infrastructure or opens space.

Direction	Existing Zoning	Use
<u>North:</u>	RU / RU	Undeveloped / Residences
<u>South:</u>	RU / RU	Residences / Undeveloped
<u>East:</u>	RU / RU	Undeveloped / Residences
<u>West:</u>	RU / RU / RU	Residences / Undeveloped / Institutional (Primary/Secondary School)

Discussion

Parcel/Area Characteristics

The site has frontage along Canterfield Road, Freshly Mill Road, and Broad River Road. Canterfield Road is a two lane local road. Freshly Mill Road is a two-lane collector road. Broad River Road is a two lane minor arterial. There are no sidewalks or streetlights along this section of Canterfield Road or Freshly Mill Road, with limited sidewalks along Broad River Road near the school. The subject site is comprised of two parcels which are heavily wooded with two structures. The immediate area is characterized by residential uses of a rural nature with some undeveloped parcels and an institutional use, all zoned RU.

Public Services

The Spring Hill/White Rock fire station (station number 21) is located at 11809 Broad River Road, approximately 1.15 miles northwest of the subject parcel. The Spring Hill High School is located approximately 0.15 miles southwest of the subject parcel on Broad River Road. Records indicate that the parcel is located within the City of Columbia’s water service area. Records also indicate that the parcel is located within Richland County’s sewer service area.

Being within a service area is not a guarantee that services are available to the parcel.

Plans & Policies

The 2015 Richland County Comprehensive Plan, ***“PUTTING THE PIECES IN PLACE”***, designates this area as ***Rural (Large Lot)***.

Land Use and Design

These are areas of mostly active agricultural uses and some scattered large-lot rural residential uses. Limited rural commercial development occurs as Rural Activity Centers, located at rural crossroads and does not require public wastewater utilities. Some light industrial and agricultural support services are located here. These areas are targets for future land conservation efforts, with a focus on prime and active agricultural lands and important natural resources. Historic, cultural, and natural resources are conserved through land use planning and design that upholds these unique attributes of the community.

Desired Development Pattern

Active working lands, such as farms and forests, and large lot rural residential developments are the primary forms of development that should occur in Rural (Large Lot) areas. Residential development should occur on very large, individually-owned lots or as family subdivisions. Master planned, smaller lot subdivisions are not an appropriate development type in Rural (Large Lot) areas. These areas are not appropriate for providing public wastewater service, unless landowners are put at risk by failing septic systems. Commercial development is appropriately located within rural activity centers.

Traffic Characteristics

The 2018 SCDOT traffic count (Station #178) located south of the subject site on Broad River Road identifies 11,100 ADTs. This section of Broad River Road is classified as at two-lane undivided minor arterial with a design capacity of 10,800 ADTs. This segment of Broad River Road is currently operating at a Level of Service (LOS) "D".

The 2018 SCDOT traffic count (Station #456) located north of the subject site on Freshly Mill Road identifies 1,000 ADTs. This section of Freshly Mill Road is classified as at two-lane undivided major collector with a design capacity of 8,600 ADTs. This segment of Freshly Mill Road is currently operating at a Level of Service (LOS) "A".

The ADTs are the total volume of traffic passing a point on a roadway during a 24-hour period. ADTs data is collected by SCDOT.

There are no planned or programmed improvements for this section of Broad River Road through SCDOT or the County Penny Sales Tax program.

SCDOT currently has a Rehab & Resurfacing project for Freshly Mill Road listed under construction with anticipated completion in October of 2019. There are no planned or programmed improvements for this section of Freshly Mill Road through the County Penny Sales Tax program.

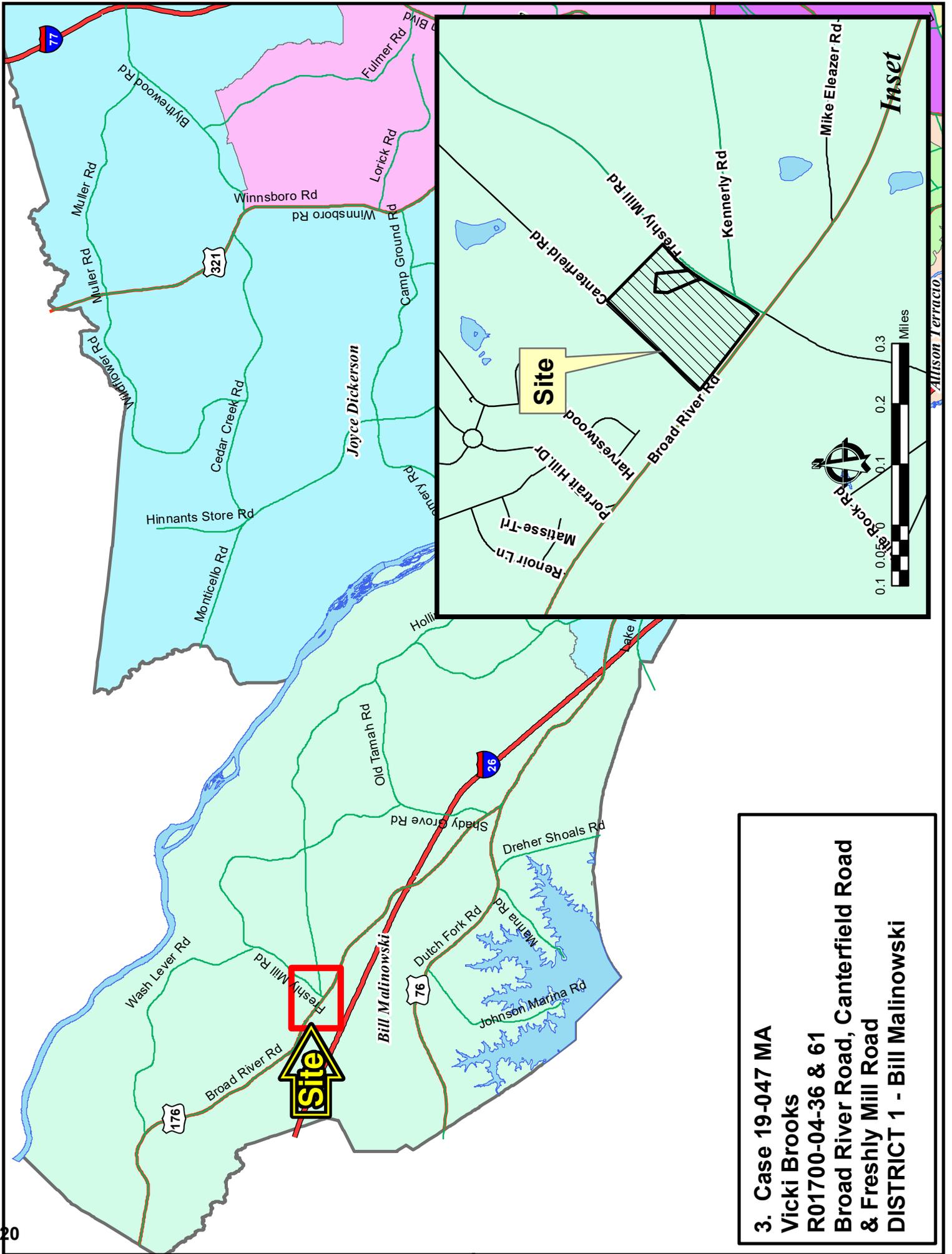
Conclusion

The proposed rezoning does not meet the objectives or desired development pattern of the Comprehensive Plan for the Rural (Large Lot) land use designation. The proposed request permits commercial, along with residential, uses of an intensity and scale that would be out of character with the Comprehensive Plan's recommendations to limit commercial development to Rural Activity Centers and rural crossroads without requiring wastewater systems, as well as uses that are out of context to the future land use designation. In addition, the rezoning request is not in character with the existing residential uses and zoning districts in the immediate area.

For these reasons, staff recommends **Disapproval** of this map amendment.

Zoning Public Hearing Date

December 17, 2019.



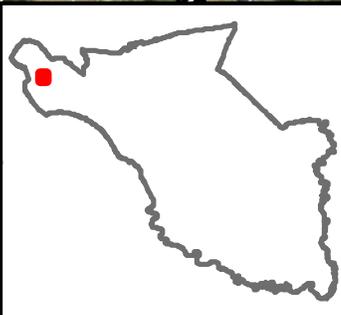
3. Case 19-047 MA
Vicki Brooks
R01700-04-36 & 61
Broad River Road, Canterfield Road
& Freshly Mill Road
DISTRICT 1 - Bill Malinowski

**Case 19-047 MA
RU to GC
TMS R01700-04-36 & 61**

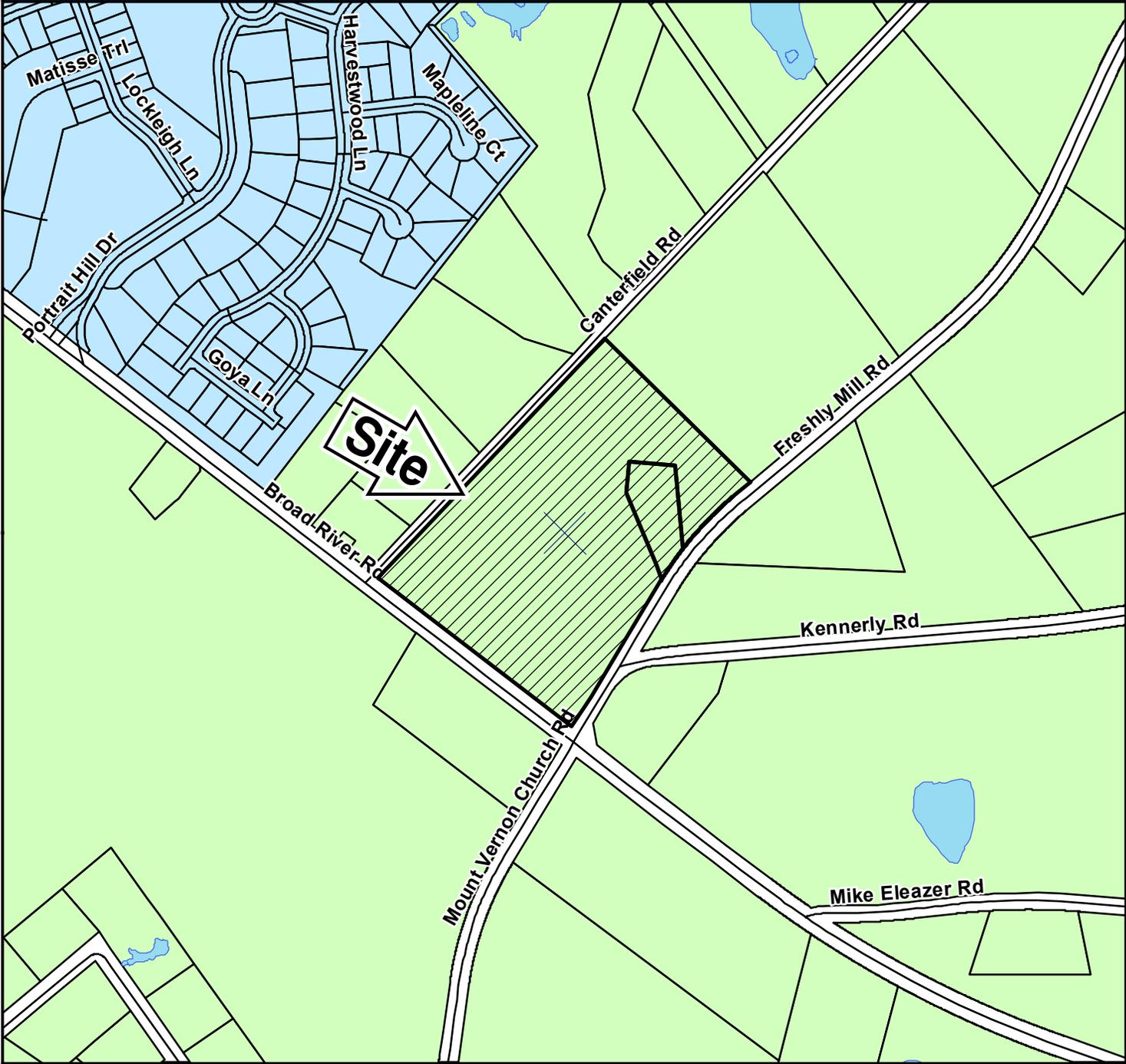


Site

-  **SPECIAL FLOOD HAZARD AREA**
-  **WETLANDS**



Case 19-047 MA RU to GC



ZONING CLASSIFICATIONS

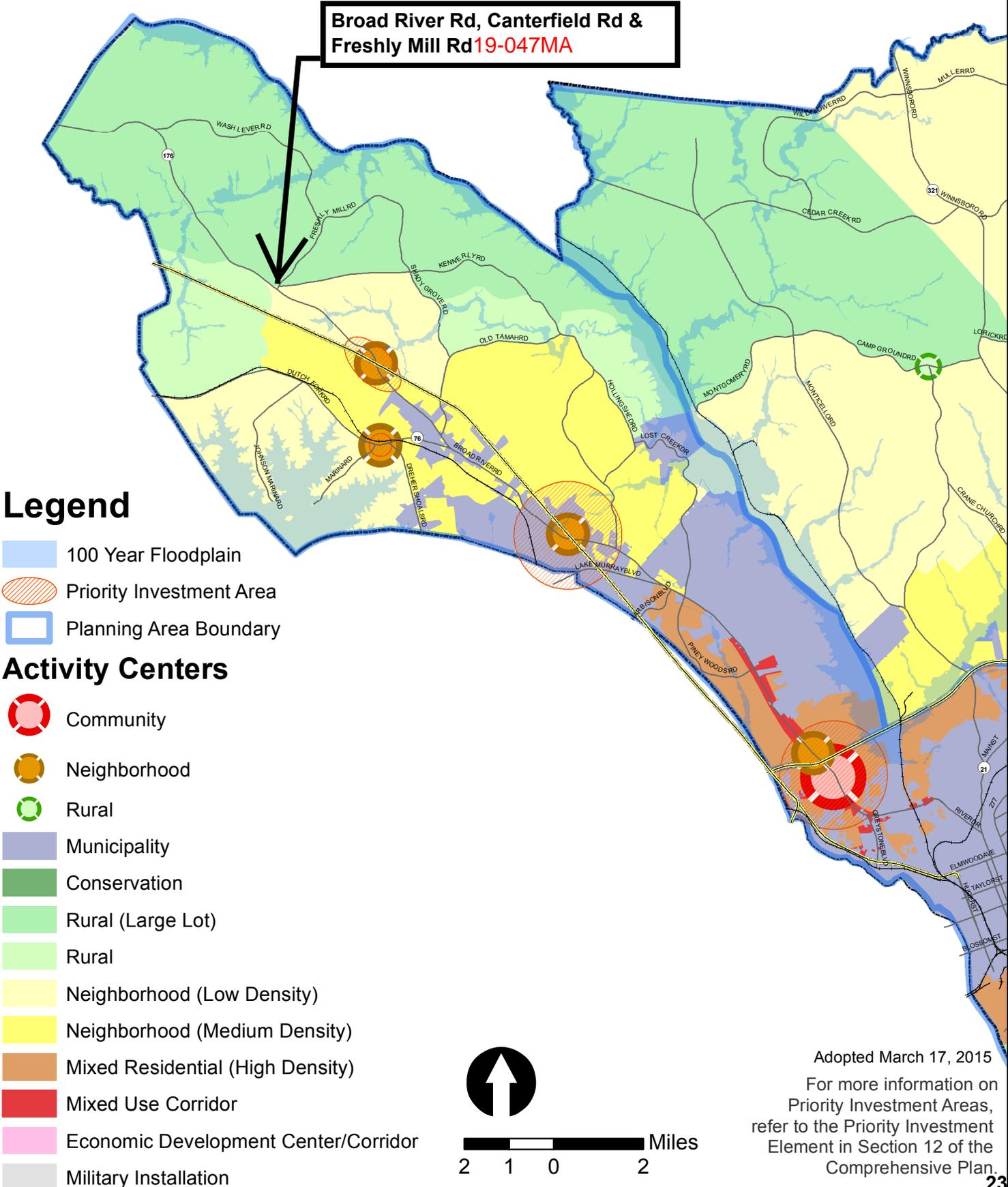
 CC-1	 C-1	 RS-E	 MH	 NC	 LI	 TROS	 N  Subject Property
 CC-2	 C-3	 RS-LD	 RM-MD	 GC	 HI		
 CC-3	 RG-2	 RS-MD	 RM-HD	 RC	 PDD		
 CC-4	 RR	 RS-HD	 OI	 M-1	 RU		

NORTHWEST PLANNING AREA

FUTURE LAND USE & PRIORITY INVESTMENT AREAS



Broad River Rd, Canterfield Rd & Freshly Mill Rd
19-047MA

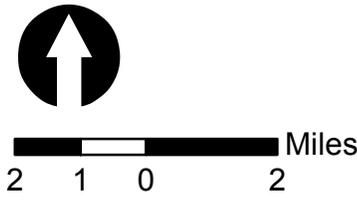


Legend

- 100 Year Floodplain
- Priority Investment Area
- Planning Area Boundary

Activity Centers

- Community
- Neighborhood
- Rural
- Municipality
- Conservation
- Rural (Large Lot)
- Rural
- Neighborhood (Low Density)
- Neighborhood (Medium Density)
- Mixed Residential (High Density)
- Mixed Use Corridor
- Economic Development Center/Corridor
- Military Installation



Adopted March 17, 2015
 For more information on Priority Investment Areas, refer to the Priority Investment Element in Section 12 of the Comprehensive Plan.



2 December 2019
Planning Commission

Administrative Review

CASE:

19-006 Administrative Review

REQUEST:

Section 26-224, *Certain subdivisions exempt from road standards*, of the Richland County Land Development Code (LDC) permits the subdivision of parcels without having to meet the construction requirements of section 26-181, *Road standards*, of the LDC. The provisions of this section allow for the access to the newly created parcels by way of an easement. Per sub-section (d) of section 26-224, the plat shall contain the following information:

A note stating “THESE LOTS/PARCELS MAY NOT BE FURTHER SUBDIVIDED UNTIL ROAD ACCESS IS PROVIDED AND A REVISED PLAT IS APPROVED BY RICHLAND COUNTY”

The applicant is requesting to use the existing easement, Rufus Miles Road, as access for the proposed parcels. Staff has no objections to the use of Rufus Miles Road, provided the owners of the land on which the easement crosses grant permission for the change in use of the easement prior to proposed subdivision of land.

In addition, the applicant states that he wants “cannot subdivide” removed from the plat.

GENERAL INFORMATION:

Applicant: Michael J. Polk

ZONING ORDINANCE CITATION (S):

Sec. 26-58. Appeals of administrative decisions.

The board of zoning appeals shall hear and decide appeals when it is alleged that there is any error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter. Provided, however, the planning commission shall hear and decide appeals from staff decisions on land development permit applications and subdivision applications.

Sec. 26-224. Certain subdivisions exempt from road standards.

The planning director, or his/her designee, may exempt subdivisions from the road construction requirements of Sec. 26-181 of this chapter only if the property is being given, for no monetary compensation or any other consideration, to the owners' immediate family members or is being transferred by will or intestate succession or forced division decreed by appropriate judicial authority. The subdivider must submit legal documentation satisfactory to the planning director, or his/her designee, in order to establish eligibility for this exemption. In addition, the subdivider must submit a “Hold Harmless Agreement” as to Richland County. This exemption shall apply only to initial division of property, not to subsequent sale or further subdivision by the heirs, devisees, or transferees. Plats of subdivisions so exempted shall show an ingress/egress easement providing access to all parcels. This easement may be an existing easement maintained by Richland County. The plat shall contain the following information:

- (a) Names of owners of each parcel being created; and
- (b) Purpose of the subdivision; and

- (c) A note stating that “ROAD ACCESS NOT PROVIDED”; and
- (d) A note stating “THESE LOTS/PARCELS MAY NOT BE FURTHER SUBDIVIDED UNTIL ROAD ACCESS IS PROVIDED AND A REVISED PLAT IS APPROVED BY RICHLAND COUNTY”.
- (e) Should the planning director, or his/her designee, exempt a proposed subdivision from the construction of the private roadway, the property shall also be exempt from delineation of jurisdictional and non-jurisdictional wetlands (for purposes of approving the plat for recordation only; this section shall not supersede any state and/or federal requirement for construction in, around or through a jurisdictional wetland or flood zone). In the situation that a property owner requests exemption from road construction as outlined in this section, the property owner shall sign a statement that he/she understands that the proposed subdivision of land shall not be exempted from any other minimum standard set forth in this chapter; provided, however, all Planning Department subdivision plan review fees shall be waived.

FORMAL REVIEW:

26-58 (e) Upon receiving the application, the board of zoning appeals or planning commission (as applicable) shall conduct a public hearing on the appeal. Any party may appear in person or be represented by an agent. After conducting the public hearing, the board of zoning appeals or planning commission (as applicable) shall adopt an order reversing or affirming, wholly or in part, or modifying the order requirements, decision, or determination in question. These boards shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issuance of a permit. These boards in the execution of the duties specified herein may subpoena witnesses and in case of contempt may certify this fact to the circuit court having jurisdiction. The decision of these boards must be in writing and permanently filed in the planning department as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of these boards, which must be delivered to parties of interest by certified mail.

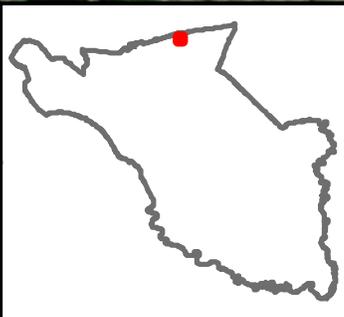
Case 19-006 AR
OPAL W. WRIGHT ESTATE
TMS R18000-02-06 & 05

Site

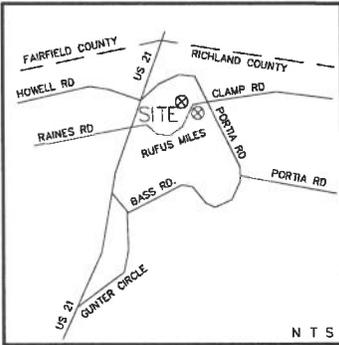
Clamp Rd

 SPECIAL FLOOD HAZARD AREA

 WETLANDS



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



LOCATION MAP

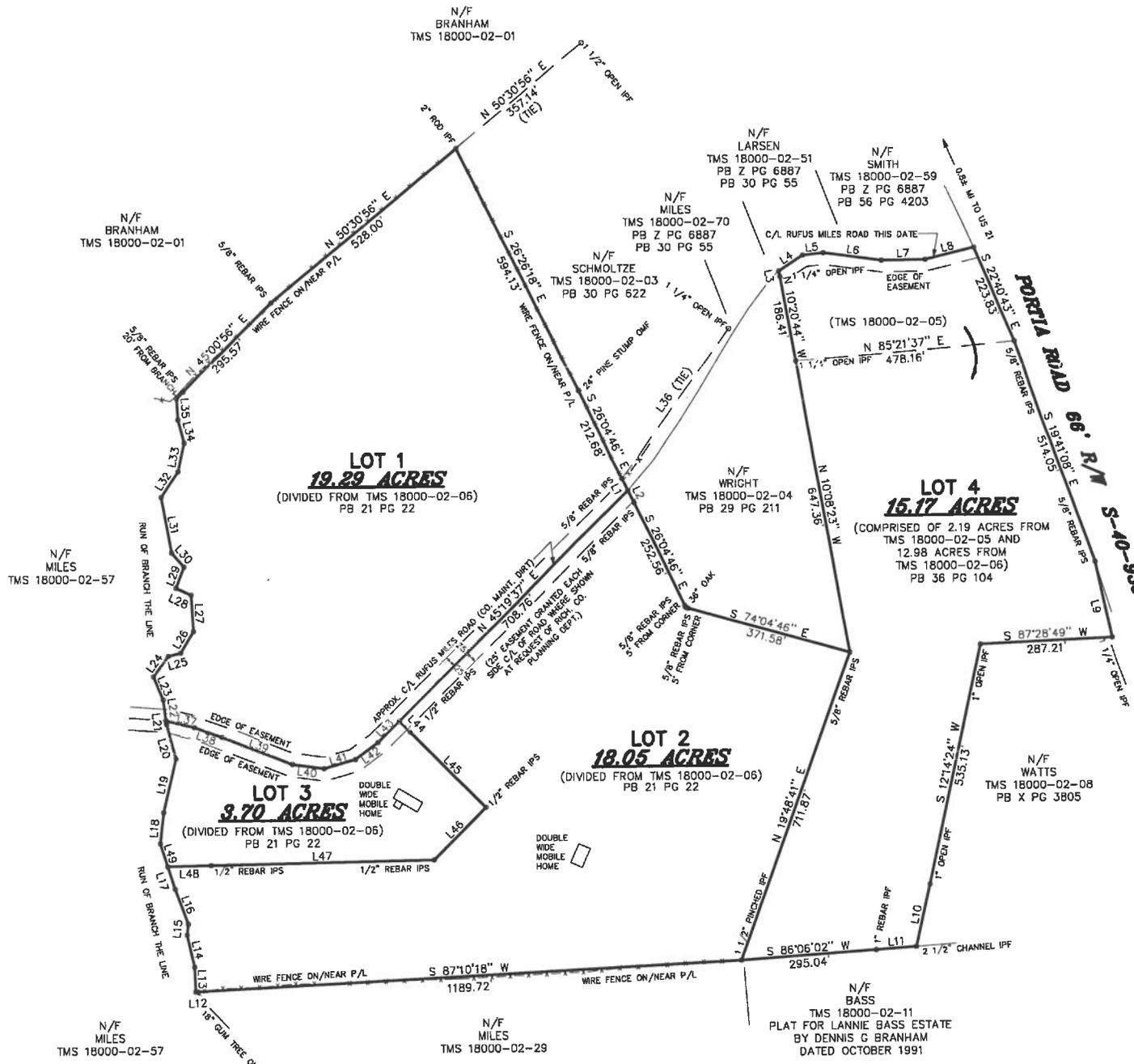
2903



NOTES:

- 1 - ROAD ACCESS NOT PROVIDED
- 2 - LOT 1 TO BE DEEDED TO TERESA LANCASTER
- 3 - LOT 2 TO BE DEEDED TO BRENDA TIMME
- 4 - LOT 3 AND 4 TO BE DEEDED TO MAXINE COOPER
- 5 - THESE LOTS/PARCELS MAY NOT BE FURTHER SUB-DIVIDED UNTIL ROAD ACCESS IS PROVIDED AND A REVISED PLAT IS APPROVED BY RICHLAND COUNTY.

NUMBER	DIRECTION	DISTANCE
L1	S 26°04'46" E	30.00'
L2	S 26°04'46" E	30.00'
L3	N 10°20'44" W	12.44'
L4	N 56°42'45" E	62.59'
L5	N 83°20'25" E	45.21'
L6	S 82°08'16" E	128.33'
L7	N 89°16'28" E	95.26'
L8	N 76°05'58" E	109.61'
L9	S 12°27'53" E	167.95'
L10	S 12°52'32" W	139.13'
L11	S 85°50'15" W	87.80'
L12	S 87°10'18" W	5.19'
L13	N 02°35'20" W	53.51'
L14	N 12°44'44" W	71.73'
L15	N 06°30'14" E	23.91'
L16	N 20°12'15" W	81.23'
L17	N 17°46'02" E	52.31'
L18	N 06°38'23" E	68.21'
L19	N 13°32'11" E	120.34'
L20	N 15°31'32" W	77.90'
L21	N 06°54'52" W	7.74'
L22	N 06°54'52" W	45.22'
L23	N 22°49'30" W	54.96'
L24	N 36°07'32" E	55.83'
L25	N 75°34'13" E	27.92'
L26	N 31°08'22" E	54.77'
L27	N 03°12'55" W	78.86'
L28	N 65°36'05" W	35.78'
L29	N 21°21'58" E	47.66'
L30	N 41°14'49" W	40.36'
L31	N 10°11'47" W	124.18'
L32	N 32°56'18" E	68.26'
L33	N 11°49'43" E	62.56'
L34	N 15°07'27" W	52.41'
L35	N 03°40'41" W	45.19'
L36	N 35°48'45" E	402.09'
L37	S 76°06'31" E	64.04'
L38	S 70°10'31" E	64.16'
L39	S 68°49'13" E	165.04'
L40	S 82°23'03" E	69.92'
L41	N 74°29'14" E	71.12'
L42	N 53°40'53" E	61.10'
L43	N 45°19'37" E	66.00'
L44	S 45°00'00" E	34.00'
L45	S 45°00'01" E	232.92'
L46	S 45°00'00" W	181.27'
L47	S 89°00'20" W	488.51'
L48	S 89°00'20" W	95.00'
L49	N 17°46'02" W	52.31'



ACCORDING TO FEMA FIRM MAP NO. 45079C0130L DATED DECEMBER 21, 2017 ALL PARCELS REPRESENTED HEREON ARE IN AN UNSHADED ZONE X WHICH IS NOT SUBJECT TO THE 100 YEAR FLOOD.

I HEREBY CERTIFY THAT THE PLAN SHOWN AND DESCRIBED HEREIN IS A TRUE AND CORRECT SURVEY TO THE ACCURACY REQUIRED BY THE RICH. CO. SUBD. REGULATIONS AND THE MONUMENTS SHOWN HAVE BEEN PLACED TO THE SPECIFICATIONS SET FORTH IN THOSE REGULATIONS.

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

FAMILY/HEIR LAND SUBDIVISION
 FOR
OPAL W. WRIGHT ESTATE
 (TMS 18000-02-06, AND 05)
 NORTH OF BLYTHEWOOD
 RICHLAND COUNTY, SC
 SURVEYED JANUARY 27, 2018
 REVISED MARCH 8, 2018 TO ADD NOTES FOR COUNTY



Scale 1" = 200'

**RICHLAND COUNTY GOVERNMENT
ADMINISTRATION**

2020 Hampton Street, Suite 4069, Columbia, SC 29204
P 803-576-2050 | F 803-576-2137 | TDD 803-576-2045
richlandcountysc.gov



April 22, 2019

Theresa Lancaster
121 Governor Pond Road
Columbia, SC 29203

Ms. Lancaster,

Thank you for contacting the offices of Richland County Government in regards to the subdivision of property located at 220 Rufus Miles Road, TMS # 18000-02-06 and 05.

As indicated in a letter from the County's Community Planning & Development Department on May 15, 2018, attached, the plat submitted for "**Opal W. Wright Estate**" dated **January, 2018 last revised March 8, 2018** was reviewed and disapproved in accordance with Chapter 26 of the Richland County Land Development Code.

The below are the items that must be addressed:

1. Note to add "Purpose of subdivision" must be added to the plat.
2. Rufus Miles Road is a County maintained road with no dedicated ROW. The County has an easement for maintenance only. The proposed lots along this road will need to be served via one of the two following options: 1) an easement from Portia Road or 2) all of the land owners from lots 1 and 2 along Rufus Miles Road to Portia Road will have to grant an easement for ingress/egress with the right to subdivide TMS 18000-02-06 and 05 into 4 lots.

Per Sec.26-222. General requirements

Access requirements.

Access requirements for residential subdivisions. All residential subdivisions, and/or subdivision lots, shall have direct access to a public or private right-of-way, which conforms to the requirements of Section 26-181(b)(2) and which has been approved by the County Engineer's office. Except for minor subdivisions, all subdivision lots shall have access only to interior subdivision roads.

Richland County Zoning, a division of the Community Planning and Development Department, stands ready to further assist you upon the establishment of an easement to service the property at 220 Rufus Miles Road.

Thank you,



John M. Thompson, Ph.D., MBA, CPM
Acting County Administrator

CC: Councilwoman Joyce Dickerson; Council District 2
Ashley M. Powell, Assoc. AIA; Assistant County Administrator
Clayton Voignier; Community Planning & Development Director
Geonard Price; Zoning Administrator/ Zoning Division Manager

Attachment: 03.15.2018 Heir Property Disapproval Letter



DEPARTMENT OF PLANNING & DEVELOPMENT SERVICES
2020 Hampton Street • Columbia, S.C. 29204
(803) 576-2190

May 15, 2018

Belser & Belser
Attn: Michael J. Polk
PO Box 96
Columbia, SC 29202

Re: Opal W. Wright Estate Plat
TMS# 18000-02-06 and 05
RCF# Heir18-002

Dear Sir or Madam:

The above referenced plat prepared for "Opal W. Wright Estate" dated January , 2018 last revised March 8, 2018 have been reviewed and disapproved in accordance with Chapter 26 of the Richland County Land Development Code.

The following shall be addressed:

Sean Busbee, Land Development Planner- 803-576-2171:

1. Note to add "Purpose of subdivision " must be added to the plat.
2. Rufus Miles Road is a county maintained road with no dedicated ROW the county has an easement for maintenance only. The new lots along this road will need to either be served with an easement from Portia Road or all of the land owners from lots 1 and 2 along Rufus Miles Road to Portia Road will have to grant an easement for ingress / egress with the right to subdivide TMS 18000-02-06 and 05 into 4 lots.

Heather Brown, Floodplain Coordinator - 803-576-2158:

3. Approved.

Alfreda Tindal, Addressing Coordinator Specialist-803-576-2147

4. Approved.

Please provide our office with 6 signed and sealed originals of the revised plats along with one 11x 17 copies. All revisions require revision date and source.

It has been my pleasure to assist you. If you have any further questions or concerns, please feel free to contact me at (803) 576-2171 or busbeesean@rcgov.us.



DEPARTMENT OF PLANNING & DEVELOPMENT SERVICES
2020 Hampton Street • Columbia, S.C. 29204
(803) 576-2190

Yours Truly,

A handwritten signature in blue ink that reads "Sean A. Busbee".

Sean A. Busbee
Land Development Planner II



PLANNING COMMISSION ADMINISTRATIVE APPEAL



Receipt #	Application # 19-006 AR	Fee Paid \$
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1. Applicant hereby appeals to the Planning Commission from the action of the Zoning Official affecting the property described in the Notice of Appeals on the grounds that:

(CHECK ONE) GRANTING **OR** DENIAL

of an application for a permit to approve a plat dividing property in the Estate of Opal Wright, 2015 ES 40 1725.

was erroneous and contrary to provisions of the zoning ordinance in Section 26-222(d) and 224 or other action or decision of the Zoning Official was erroneous as follows:

The Zoning Official erred by failing to recognize that the heirs who are attempting to divide the inherited property, as well as the other residents along that road, have an easement or right of way along Rufus Miles Road. The residents have used that road openly and freely for decades, it is from a common grantor, and there is no valid reason for the County to require needless documentation. We believe the County also has a maintenance right of way.

2. Applicant is aggrieved by the action or decision in that:

The heirs of the estate cannot divide the property in a fair and equitable manner, and will be forced to court because the county refuses to recognize the easement and right of way.

The proper administration of the probate case is being delayed.

3. Applicant contends that the correct interpretation of the zoning ordinance as applied to the property is:

The residents and owners along Rufus Miles Road have rights of way/easements to use it as they have for decades, and the plat should be approved.

4. Applicant requests the following relief:

The plat should be approved as submitted.

12 S.C. Jur. Easements § 5

South Carolina Jurisprudence September 2019 Update

Easements

John B. McArthur, Esq., Sinkler & Boyd, P.A.

III. Creation of Easements

A. Methods of Creation

§ 5. Generally

References

An easement may be created by grant or reservation, by implication because of necessity, through the act of recording a plat, by dedication, by prescription, or by condemnation.¹ Courts also sometimes refer to easements as created by estoppel or implication.²

CUMULATIVE SUPPLEMENT

Cases:

Installment contract for sale of property did not create an easement in favor of vendor who owned adjoining tract, since vendor retained legal title to both adjoining tract and sold property until purchaser paid off purchase price. *Windham v. Riddle*, 672 S.E.2d 578 (S.C. 2009).

An easement is a right to use the land of another for a specific purpose; this right of way may arise by grant, from necessity, by prescription, or by implication by prior use. *Town of Kingstree v. Chapman*, 747 S.E.2d 494 (S.C. Ct. App. 2013).

An easement for a right of way may arise by grant, from necessity, by prescription, or by implication by prior use. *Rhett v. Gray*, 736 S.E.2d 873 (S.C. Ct. App. 2012).

An easement may arise in three ways: (1) by grant; (2) from necessity; and (3) by prescription.

Kelley v. Snyder, 396 S.C. 564, 722 S.E.2d 813 (Ct. App. 2012).

An easement may arise in three ways: (1) by grant; (2) from necessity; and (3) by prescription. Ward v. Evans, 387 S.C. 401, 693 S.E.2d 7 (Ct. App. 2010).

Easement was not void ab initio, despite suspect “straw purchaser” nature of conveyances, creating the easement, from original landowners to landowner’s mother and then immediately to a third-party, who later conveyed the property to current dominant estate owners, where initial transfer conformed to the regulations relevant to intra-family conveyances, and both the subdivision and the easement were properly platted and recorded. Plott v. Justin Enterprises, 649 S.E.2d 92 (S.C. Ct. App. 2007).

An easement for a right of way over land may arise in three ways: (1) from necessity; (2) by grant; and (3) by prescription. Frierson v. Watson, 636 S.E.2d 872 (S.C. Ct. App. 2006).

A description of an easement in a recorded document is sufficient to give notice of the easement when it contains language that acts as a guide to the location of the easement on the land such that the easement is capable of being rendered to a certainty by reference to something extrinsic to which it refers. Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn, 348 S.C. 58, 558 S.E.2d 902 (Ct. App. 2001).

[END OF SUPPLEMENT]

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Footnotes

1 See ¹Brasington v. Williams, 143 S. C. 223, 141 S. E. 375 (1927).

2 Id.

End of Document

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12 S.C. Jur. Easements § 7

South Carolina Jurisprudence September 2019 Update

Easements

John B. McArthur, Esq., Sinkler & Boyd, P.A.

III. Creation of Easements

A. Methods of Creation

§ 7. Easement by necessity

References

When a grantor conveys land to another that is entirely surrounded by the grantor's land, or partly by the grantor's land and partly by the land of a third person, leaving the grantee without an express easement or right of way to a public highway, the law implies a grant of a right of way of necessity across the grantor's land to a public highway.¹ The law presumes in such cases that the grantor intended to grant all rights essential to the enjoyment of the land, including access.² Thus, the establishment of an easement by necessity requires that the dominant and servient tenements were at one point part of one tract under common ownership and that the dominant tenement would not otherwise have access to a public road.³

The necessity for such an easement must exist at the time the tracts are divided, and the party claiming the easement cannot create the necessity when it would not otherwise exist.⁴ The easement need not be absolutely necessary; "reasonable necessity" will suffice.⁵ For example, one South Carolina case held that when property abutted a public road, but an obstacle such as a deep gully along the road made direct access unreasonable, access over another's land was reasonably necessary.⁶ An easement by necessity is often described by the courts as "implied" by the grant itself and thus the terms "easement by necessity" and "easement by implication" are sometimes used interchangeably.

It is unclear whether an easement by necessity can be established for uses other than access. In one case the Supreme Court of South Carolina at least considered a claim of a drainage easement by necessity.⁷

CUMULATIVE SUPPLEMENT

Cases:

The party asserting the right of an easement by necessity must demonstrate: (1) unity of title, (2) severance of title, and (3) necessity. *Boyd v. Bellsouth Telephone Telegraph Co., Inc.*, 633 S.E.2d 136 (S.C. 2006).

The necessity required for easement by necessity must be actual, real, and reasonable as distinguished from convenient, but need not be absolute and irresistible. *Boyd v. Bellsouth Telephone Telegraph Co., Inc.*, 633 S.E.2d 136 (S.C. 2006).

The necessity element of easement by necessity must exist at the time of the severance and the party claiming the right to an easement must not create the necessity when it would not otherwise exist. *Boyd v. Bellsouth Telephone Telegraph Co., Inc.*, 633 S.E.2d 136 (S.C. 2006).

For an easement implied by prior use, “necessity” means there could be no other reasonable mode of enjoying the dominant tenement without this easement. *Boyd v. Bellsouth Telephone Telegraph Co., Inc.*, 633 S.E.2d 136 (S.C. 2006).

The legal requirements of an easement by necessity are: (1) unity of title, (2) severance of title, and (3) necessity. *Kennedy v. Bedenbaugh*, 352 S.C. 56, 572 S.E.2d 452 (2002).

To establish unity of title, for purposes of meeting legal requirements of easement by necessity, the owner of the dominant estate must show that his land and that of the owner of the servient estate once belonged to the same person. *Kennedy v. Bedenbaugh*, 352 S.C. 56, 572 S.E.2d 452 (2002).

Owner of land-locked parcel of property could not establish easement by necessity over neighbor’s land arising from time when both parcels of land were owned by same party, although unity of title existed at that time, as deed conveying land-locked tract from original owner to subsequent owner mentioned that subsequent owner’s interest included right of way to a road, and thus subsequent owner had access to road from land-locked tract. *Kennedy v. Bedenbaugh*, 352 S.C. 56, 572 S.E.2d 452 (2002).

Unity of title needed to establish an easement by necessity does not exist where a person owns one tract of land in fee simple and an adjoining tract of land with another person as tenants in common. *Kennedy v. Bedenbaugh*, 352 S.C. 56, 572 S.E.2d 452 (2002).

”Severance of title,” as an element of an easement by necessity, means that title to a larger tract was severed by conveyance of a part to the plaintiff’s predecessor in title and of a part to the defendant’s predecessor in title; they both claim, from a common source, different parts of the

integral tract, which necessarily assumes a severance. *Paine Gayle Properties, LLC v. CSX Transp., Inc.*, 400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012).

Access road across servient estate that connected to the north side of dominant estate was “necessary” to the enjoyment of dominant estate, as required to constitute an appurtenant easement, absent any showing that the option of building a bridge across creek was either reasonable or affordable, where dominant estate was bisected by a creek emanating from a pond on servient estate, and on either side of the creek was a ravine that prevented vehicular access to the north side of the dominant estate. *Proctor v. Steedley*, 398 S.C. 561, 730 S.E.2d 357 (Ct. App. 2012).

”Severance of title” means that title to a larger tract was severed by conveyance of a part to the predecessor in title of the plaintiff and of a part to the predecessor in title to the defendant; they both claim, from a common source, different parts of the integral tract, which necessarily assumes a severance. *Proctor v. Steedley*, 398 S.C. 561, 730 S.E.2d 357 (Ct. App. 2012).

Evidence was sufficient to support finding that prior use of road that encroached on servient tenement was necessary, as an element of an easement implied by prior use, in action by dominant tenement owners seeking declaratory judgment for either an easement by prescription or prior use, even though the road could have been constructed in another location, where the road was the only one in existence when the original tract of property was divided into dominant and servient tenements, remained the only route a vehicle could take from the access road to the dominant tenement over 30 years later, road’s location was dictated by high land areas in marsh, and its choice of location was economically efficient. *Pendarvis v. Cook*, 706 S.E.2d 520 (S.C. Ct. App. 2011).

The necessity element of easement implied by prior use must be determined at the time of the severance. *Pendarvis v. Cook*, 706 S.E.2d 520 (S.C. Ct. App. 2011).

Doctrine of easement by necessity only provides reasonable access to the dominant estate when there is none; it does not provide a means for ensuring a preferred method of access to a particular portion of a tract when access to the tract is otherwise available. ■ *Body v. BellSouth Telephone Telegraph Co., Inc.*, 597 S.E.2d 161 (S.C. Ct. App. 2004), reh’g denied, (June 25, 2004).

The doctrine of easement by necessity is based upon the presumption that the grantor intended the grantee of a landlocked parcel to have access to his property, a right recognized as essential to the enjoyment of the land. ■ *Body v. BellSouth Telephone Telegraph Co., Inc.*, 597 S.E.2d 161 (S.C. Ct. App. 2004), reh’g denied, (June 25, 2004).

The third element of an easement by necessity, that of necessity, requires a showing of more than convenience. ■ *Body v. BellSouth Telephone Telegraph Co., Inc.*, 597 S.E.2d 161 (S.C.

Ct. App. 2004), reh'g denied, (June 25, 2004).

A party claiming to be benefited by an easement by necessity must demonstrate the existence of the following three elements: (1) unity of title, (2) severance of the title, and (3) necessity of the easement. ■ Body v. BellSouth Telephone Telegraph Co., Inc., 597 S.E.2d 161 (S.C. Ct. App. 2004), reh'g denied, (June 25, 2004).

Owner of antiques business did not have easement by necessity over adjacent parcel; business premises were bounded by public streets, giving reasonable access. ■ Body v. BellSouth Telephone Telegraph Co., Inc., 597 S.E.2d 161 (S.C. Ct. App. 2004), reh'g denied, (June 25, 2004).

Genuine issue of material fact, whether driveway giving access to rear of premises of antiques business was reasonably necessary for enjoyment of business owner's property, precluded summary judgment on her claim of easement by pre-existing use. Rules Civ.Proc., Rule 56. ■ Body v. BellSouth Telephone Telegraph Co., Inc., 597 S.E.2d 161 (S.C. Ct. App. 2004), reh'g denied, (June 25, 2004).

[END OF SUPPLEMENT]

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Footnotes

- 1 ■ Brasington v. Williams, 143 S. C. 223, 141 S. E. 375 (1927).
- 2 Id.; Richards v. Trezvant, 185 S. C. 489, 194 S. E. 326 (1937).
- 3 See generally Annotation, What constitutes unity of title or ownership sufficient for creation of an easement by implication or way of necessity, 94 A.L.R. 3d 502.
- 4 ■ Clemson Univ. v. First Provident Corp., 260 S. C. 640, 197 S. E. 2d 914 (1973), later appeal sub nom., Douglas v. First Provident Corp. of South Carolina, 263 S. C. 199, 209 S. E. 2d 49 (1974).
- 5 Hayes v. Tompkins, 287 S. C. 289, 337 S. E. 2d 888 (Ct. App. 1985); Jowers v. Hornsby, 292 S. C. 549, 357 S. E. 2d 710 (1987). See generally Annotation, Way of necessity over another's land, where a means of access does exist, but is claimed to be inadequate, inconvenient, difficult or costly, 10 A.L.R. 4th 447.
- 6 Hayes v. Tompkins, 287 S. C. 289, 337 S. E. 2d 888 (Ct. App. 1985).
- 7 ■ Clemson Univ. v. First Provident Corp., 260 S. C. 640, 197 S. E. 2d 914 (1973), later appeal sub nom., Douglas v. First Provident Corp. of South Carolina, 263 S. C. 199, 209 S. E. 2d 49 (1974).

12 S.C. Jur. Easements § 10

South Carolina Jurisprudence | September 2019 Update

Easements

John B. McArthur, Esq., Sinkler & Boyd, P.A.

III. Creation of Easements

A. Methods of Creation

§ 10. Prescriptive easement

References

A prescriptive easement is analogous to adverse possession. A prescriptive easement arises not from an express grant or reservation or by implication, but is established by conduct of the owner of the dominant tenement contrary to the fee simple interest of the owner of the servient tenement. One claiming a prescriptive easement must establish the continued and uninterrupted use or enjoyment of the right for 20 years, the identity of the thing enjoyed, and that the use or enjoyment was adverse or under claim of right.¹

The 20-year rule for a prescriptive easement was adopted from the English common law rule.² The period of possession required for adverse possession of fee simple is 10 years under section 15-67-210 of the South Carolina Code,³ and one might argue that in light of such statute a 10-year period should be sufficient for a prescriptive easement as well, but no South Carolina case has considered this issue.

When the claimant has established that the use was open, notorious, continuous and uninterrupted, the use will be presumed to have been “adverse,” such that the owner of the servient tenement will bear the burden of rebutting the presumption.⁴ Use with the permission of the owner is not adverse, however.⁵ The use must be exclusive and different from the right which could be asserted by members of the general public. *Cleland v. Westvaco Corp.*, 314 S.C. 508, 431 S.E.2d 264 (Ct. App. 1993). See also *Nelums v. Cousins*, 304 S.C. 306, 403 S.E.2d 681 (Ct. App. 1991) (criticized in *Revis v. Barrett*, 321 S.C. 206, 467 S.E.2d 460 (Ct. App. 1996)) (the plaintiff’s claim of right to get to his property was asserted independently of any use by others, and was therefore exclusive despite the fact that others used the road). In that the elements of a prescriptive easement are essentially similar to the elements of adverse possession,

cases concerning adverse possession may amplify and further define the elements of a prescriptive easement.⁶ Where more than one inference is raised by the evidence, the jury must decide the issue of whether an easement was acquired under the doctrine of prescription. *Horry County v. Laychur*, 315 S.C. 364, 434 S.E.2d 259 (1993).

The public can acquire a prescriptive easement to a private road under *County of Darlington v. Perkins*, 269 S.C. 572, 239 S.E.2d 69 (1977) (criticized in *Revis v. Barrett*, 321 S.C. 206, 467 S.E.2d 460 (Ct. App. 1996)); *Cleland v. Westvaco Corp.*, 314 S.C. 508, 431 S.E.2d 264 (Ct. App. 1993). The long-term use by the public of a road through unenclosed and unimproved woodland, however, does not give rise to a right-of-way by prescription under *Tyler v. Guerry*, 251 S.C. 120, 160 S.E.2d 889 (1968); *Cleland v. Westvaco Corp.*, 314 S.C. 508, 431 S.E.2d 264 (Ct. App. 1993). Where the public character of the road is clearly established through additional evidence of extensive long-term public maintenance, however, the area is considered “improved,” and the rule of *Tyler v. Guerry* does not apply. *County of Darlington v. Perkins*, 269 S.C. 572, 239 S.E.2d 69 (1977) (criticized in *Revis v. Barrett*, 321 S.C. 206, 467 S.E.2d 460 (Ct. App. 1996)); *Cleland v. Westvaco Corp.*, 314 S.C. 508, 431 S.E.2d 264 (Ct. App. 1993). Under such circumstances, the public acquires rights in the road through prescriptive use. *Cleland v. Westvaco Corp.*, 314 S.C. 508, 431 S.E.2d 264 (Ct. App. 1993).

CUMULATIVE SUPPLEMENT

Cases:

A party claiming a prescriptive easement has the burden of proving all elements by clear and convincing evidence. *Simmons v. Berkeley Electric Cooperative, Inc.*, 797 S.E.2d 387 (S.C. 2016).

Adverse use and claim of right cannot exist as separate methods of proving element of a prescriptive easement as the two terms are, in effect, one and the same; overruling *Jones v. Daley*, 363 S.C. 310, 609 S.E.2d 597; *Hartley v. John Wesley United Methodist Church of Johns Island*, 355 S.C. 145, 584 S.E.2d 386; *Loftis v. S.C. Elec. & Gas Co.*, 361 S.C. 434, 604 S.E.2d 714; and *Revis v. Barrett*, 321 S.C. 206, 467 S.E.2d 460. *Simmons v. Berkeley Electric Cooperative, Inc.*, 797 S.E.2d 387 (S.C. 2016).

Claimant’s belief regarding the permissiveness of his use of property is irrelevant when determining the existence of a prescriptive easement; courts should only determine whether the claimant’s use was indeed adverse. *Simmons v. Berkeley Electric Cooperative, Inc.*, 797 S.E.2d 387 (S.C. 2016).

Evidence of permissive use defeats the establishment of a prescriptive easement because use that is permissive cannot also be adverse or under a claim of right; state another way, when a claimant uses property with the permission of the owner, he or she acknowledges the owner's rights and uses the property without an affirmative, hostile act toward the owner's rights. *Bundy v. Shirley*, 772 S.E.2d 163 (S.C. 2015).

A prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner; however, easements by prior use and by necessity are implied by law. *Boyd v. Bellsouth Telephone Telegraph Co., Inc.*, 633 S.E.2d 136 (S.C. 2006).

In addition to physical barriers, verbal threats which convey to the dominant landowner the impression the servient landowner does not acquiesce in the use of the land, are also sufficient to interrupt the prescriptive period. *Pittman v. Lowther*, 610 S.E.2d 479 (S.C. 2005), reh'g denied, (Apr. 7, 2005).

Actions are sufficient to interrupt the prescriptive period when the servient landowner engages in overt acts, such as erecting physical barriers, which cause a discontinuance of the dominant landowner's use of the land, no matter how brief. *Pittman v. Lowther*, 610 S.E.2d 479 (S.C. 2005), reh'g denied, (Apr. 7, 2005).

To establish an easement by prescription, one need only establish either a justifiable claim of right or adverse and hostile use; the party claiming a prescriptive easement bears the burden of proving all of the elements. ■ *Simmons v. Berkeley Elec. Co-op. Inc.*, 404 S.C. 172, 744 S.E.2d 580 (Ct. App. 2013).

Use by express or implied permission or license, no matter how long continued, cannot ripen into an easement by prescription, since user as of right, as distinguished from permissive user, is lacking, if permissive in its inception, such permissive character will continue of the same nature, and no adverse user can arise, until there is a distinct and positive assertion of a right hostile to the owner, and brought home to him. *Paine Gayle Properties, LLC v. CSX Transp., Inc.*, 400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012).

A prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner. *Kelley v. Snyder*, 396 S.C. 564, 722 S.E.2d 813 (Ct. App. 2012).

To establish an easement by prescription, one need only establish either a justifiable claim of right or adverse and hostile use; there is no requirement of exclusivity of use to establish a prescriptive easement. *Kelley v. Snyder*, 396 S.C. 564, 722 S.E.2d 813 (Ct. App. 2012).

The party claiming a prescriptive easement bears the burden of proving all of the elements. *Kelley v. Snyder*, 396 S.C. 564, 722 S.E.2d 813 (Ct. App. 2012).

In order to satisfy the continual use requirement for a prescriptive easement, the use must only be of a reasonable frequency as determined from the nature and needs of the claimant; when the claimant has established that the use was open, notorious, continuous, and uninterrupted, the use will be presumed to have been adverse. *Kelley v. Snyder*, 396 S.C. 564, 722 S.E.2d 813 (Ct. App. 2012).

The servient owner may interrupt the prescriptive period necessary to establish a prescriptive easement by engaging in overt acts, such as erecting physical barriers, which cause a discontinuance of the dominant landowner's use of the land, no matter how brief; in addition to physical barriers, verbal threats which convey to the dominant landowner the impression the servient landowner does not acquiesce in the use of the land, are also sufficient to interrupt the prescriptive period. *Kelley v. Snyder*, 396 S.C. 564, 722 S.E.2d 813 (Ct. App. 2012).

Evidence was sufficient to support adjacent landowners' belief that they had the right to use a road across record owner's land, as required to claim a prescriptive easement under a claim of right; adjacent landowners' deed indicated their predecessor in title had a right of ingress and egress over the road and were conveying the right to adjacent landowners, adjacent landowners improved and maintained the road, and prior to purchasing their property, had rented the land from their predecessor in title and used the road to hunt the land. *Kelley v. Snyder*, 396 S.C. 564, 722 S.E.2d 813 (Ct. App. 2012).

A party claiming a prescriptive easement under a claim of right must demonstrate a substantial belief that he had the right to use the parcel or road based upon the totality of the circumstances surrounding his use. *Kelley v. Snyder*, 396 S.C. 564, 722 S.E.2d 813 (Ct. App. 2012).

The law granting a prescriptive easement under claim of right does not mandate a party to believe that he holds actual title or that he intends to acquire it. *Kelley v. Snyder*, 396 S.C. 564, 722 S.E.2d 813 (Ct. App. 2012).

Record owner failed to rebut presumption that use of road across record owner's land by adjacent landowners and their predecessors in title for over 20 years was adverse, for purposes of establishing a prescriptive easement across his land, absent any showing that he gave permission to either adjacent landowners or their predecessors in title to use or maintain the road. *Kelley v. Snyder*, 396 S.C. 564, 722 S.E.2d 813 (Ct. App. 2012).

Once a claimant for a prescriptive easement has established that the use was open, notorious, continuous, and uninterrupted, the use is presumed to have been adverse; the burden shifts to the title owner of the servient tenement to rebut the presumption that the use was adverse. *Kelley v. Snyder*, 396 S.C. 564, 722 S.E.2d 813 (Ct. App. 2012).

An intent by a claimant for a prescriptive easement to claim adversely may be inferred from the acts and conduct of the claimant. *Kelley v. Snyder*, 396 S.C. 564, 722 S.E.2d 813 (Ct. App.

2012).

Evidence was sufficient to support finding that prior use of road that encroached on servient tenement was apparent or known to original tenement owner at the time he divided property into dominant and servient tenements, as an element of an easement implied by prior use, in action by dominant tenement owners seeking declaratory judgment for either an easement by prescription or prior use, where original owner used, maintained and improved the road. *Pendarvis v. Cook*, 706 S.E.2d 520 (S.C. Ct. App. 2011).

Evidence was sufficient to find original tenement owner intended for dominant tenement owners to continue to use road after severance of dominant tenement from original tenement, as an element of an easement implied by a prior use, in action by dominant tenement owners seeking declaratory judgment for either an easement by prescription or prior use, even if original tenement owner did not know road encroached on servient tenement at the time of its creation, where access to dominant tenement was an integral part of what original tenement owner wanted dominant tenement owners to enjoy from their use and ownership of the dominant tenement, and original tenement owner's conveyance of title to the dominant tenement and help in improving road and building dock to which road led, demonstrated an intent that dominant tenement owners be able to continue to use road to access dock. *Pendarvis v. Cook*, 706 S.E.2d 520 (S.C. Ct. App. 2011).

While there was some evidence that small tract of land conveyed by deed to trust as a recreation center was not in use as a ballpark for two consecutive years, there was no evidence that the property ceased to be used as a recreational center for two consecutive years, as required to revert title to and reinvest it in original grantor, along with thirty-foot easement that was expressly granted by the deed. *Ward v. Evans*, 387 S.C. 401, 693 S.E.2d 7 (Ct. App. 2010).

Evidence supported special referee's finding that owners of alleged dominant estate had used road continuously and without interruption during prescriptive period, as element of claim that prescriptive easement existed, although road was conveyed to owners of alleged servient estate during prescriptive period; owners of alleged dominant estate had used road continuously, openly, and without interruption for ingress and egress to property for at least 20 years, and 20-year prescriptive period ran long before initial attempt to barricade road. *Matthews v. Dennis*, 616 S.E.2d 437 (S.C. Ct. App. 2005).

Evidence supported special referee's finding that owners of alleged dominant estate had used road under a claim of right, as element of claim that prescriptive easement existed; evidence indicated that family members of one owner of alleged dominant estate had always used road for access, and owners of alleged dominant estate had always believed that they had right to use road for ingress and egress. *Matthews v. Dennis*, 616 S.E.2d 437 (S.C. Ct. App. 2005).

Party claiming a prescriptive easement under a claim of right must demonstrate a substantial

belief that he had the right to use the parcel or road based upon the totality of circumstances surrounding his use. *Matthews v. Dennis*, 616 S.E.2d 437 (S.C. Ct. App. 2005).

Fact that owners of alleged dominant estate and owners of alleged servient estate were members of same extended family did not preclude finding that right to prescriptive easement had been established. *Matthews v. Dennis*, 616 S.E.2d 437 (S.C. Ct. App. 2005).

Once a right of way by prescription has been established by twenty years of continuous use, a later diminishment in the frequency of that use does not necessarily nullify the established right by prescription. *Jones v. Daley*, 609 S.E.2d 597 (S.C. Ct. App. 2005).

Landowner was not required to establish exclusivity of use of path she used for ingress and egress to her property in order to prove a prescriptive easement across the servient estate, rather, landowner merely had to establish that her claim of a prescriptive easement was independent of claims by other users. *Jones v. Daley*, 609 S.E.2d 597 (S.C. Ct. App. 2005).

Landowner adequately demonstrated a substantial belief that she had the right to use a path across the servient estate for ingress and egress to her land that originated from her family's prior use of the access, as required element for easement by prescription; landowner testified that her family had used the path to get to her parcel for as long as she could remember, and landowner's uncles testified that they openly asserted their perceived right to use the path with full knowledge and acquiescence of the owner of the servient estate. *Jones v. Daley*, 609 S.E.2d 597 (S.C. Ct. App. 2005).

To establish an easement by prescription, one need only establish either a justifiable claim of right or adverse and hostile use. *Jones v. Daley*, 609 S.E.2d 597 (S.C. Ct. App. 2005).

To establish a prescriptive easement, one must show continued use for 20 years, identity of thing enjoyed, and use which is either adverse or under a claim of right. *Morrow v. Dyches*, 328 S.C. 522, 492 S.E.2d 420 (Ct. App. 1997).

A party may "tack" period of use of prior owners in order to satisfy the 20-year requirement for prescriptive easement. *Morrow v. Dyches*, 328 S.C. 522, 492 S.E.2d 420 (Ct. App. 1997).

Party claiming a prescriptive easement has burden of proving all elements. *Morrow v. Dyches*, 328 S.C. 522, 492 S.E.2d 420 (Ct. App. 1997).

A party's use must meet all requirements throughout 20-year period for there to be a prescriptive easement, and if tacking is used, use by previous owners must also meet requirements of prescriptive easement. *Morrow v. Dyches*, 328 S.C. 522, 492 S.E.2d 420 (Ct. App. 1997).

Finding that easement was used under claim of right, needed to establish private right of way by prescription, was supported by testimony that party claiming the prescription thought she had right to use right-of-way which was former state road, that claimant's parents used access, participated in prior lawsuit disputing use of right-of-way, and had used right-of-way for access since moving to property. ■ Revis v. Barrett, 467 S.E.2d 460 (S.C. App. 1996).

[END OF SUPPLEMENT]

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Footnotes

- 1 Poole v. Edwards, 197 S. C. 280, 15 S. E. 2d 349 (1941); Williamson v. Abbott, 107 S. C. 397, 93 S. E. 15 (1917). See generally Volume 8 Adverse Possession § 14 (1991); Annotation, Acquisition by user or prescription of right of way over unenclosed land, 46 A.L.R. 2d 1140; Horry County v. Laychur, 315 S.C. 364, 434 S.E.2d 259 (1993).
- 2 ■ Lawton v. Rivers, 13 S. C. L. (2 McCord) 445 (1823).
- 3 ■ S.C. Code Ann. § 15-67-210 (Law. Co-op. 1976).
- 4 Poole v. Edwards, 197 S. C. 280, 15 S. E. 2d 349 (1941); Williamson v. Abbott, 107 S. C. 397, 93 S. E. 15 (1917).
- 5 State v. Murphy, 124 S. C. 274, 117 S. E. 529 (1923).
- 6 See ■ S.C. Code Ann. §§ 15-67-210 to ■ 15-67-260 (Law. Co-op. 1976) and cases annotated thereunder.

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12 S.C. Jur. Easements § 13

South Carolina Jurisprudence : September 2019 Update

Easements

John B. McArthur, Esq., Sinkler & Boyd, P.A.

III. Creation of Easements

A. Methods of Creation

§ 13. Implication

References

Courts often refer to easements as created by “implication.” An analysis of these cases reveals that they usually concern either an easement by necessity or an express grant or reservation. In the first context, when one sells a portion of his land and the grantee otherwise would have no access, the law “implies” an easement by necessity.¹ In the second context, a South Carolina court has held that an agreement may create an easement by “plain and unmistakable implication.”² In this second context, the law does not imply the easement; it is implied in the agreement, or perhaps in some cases by the actions of the parties. This type of easement by “implication” is nothing more than the construction of the intent of the parties.

CUMULATIVE SUPPLEMENT

Cases:

The presumption of an implied easement, which arises when a deed references a plat that contains an easement, endures even where the general policy is to disfavor implied easements because the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself. *Gooldy v. Storage Center-Platt Springs, LLC*, 811 S.E.2d 779 (S.C. 2018).

Deed’s reference to plat, which depicted road along southern boundary of property owner’s

land, raised presumption of implied easement in favor of owner over the road that was located on neighboring property, although plat did not include the metes and bounds of neighbor's parcel, where both owner's parcel and neighbor's parcel were originally owned by one party, and parcels were subdivided when property was sold to owner. *Gooldy v. Storage Center-Platt Springs, LLC*, 811 S.E.2d 779 (S.C. 2018).

Mere reference to plat in deed conveying property from owners to state was insufficient to create presumption that grantors intended to convey easement over nearby road owned by grantors for unrestricted access to the property, and thus, did not create implied easement for state to use road for residential purposes in accessing land it intended to subdivide. *Inlet Harbour v. South Carolina Dept. of Parks, Recreation and Tourism*, 659 S.E.2d 151 (S.C. 2008).

"Implied easements" ask the court to take a deed between grantor and grantee which is silent regarding any grant or reservation of a right to cross one party's land to access the other's and imply what the parties must have meant to include in the deed but did not. *Inlet Harbour v. South Carolina Dept. of Parks, Recreation and Tourism*, 659 S.E.2d 151 (S.C. 2008).

Whatever easements are created by implication must be determined as of the time of the severance of the ownership of the tracts involved. *Boyd v. Bellsouth Telephone Telegraph Co., Inc.*, 633 S.E.2d 136 (S.C. 2006).

A presumption of implied easement arises when an owner subdivides his land and has the land platted into lots and streets. *Gooldy v. Storage Center-Platt Springs, LLC*, 415 S.C. 287, 781 S.E.2d 720 (Ct. App. 2015).

Three elements for implied easement by necessity are unity of title, severance of title, and necessity. *Morrow v. Dyches*, 328 S.C. 522, 492 S.E.2d 420 (Ct. App. 1997).

Only reasonable necessity is required for an implied easement by necessity; thus, easement must be more than merely convenient, but it does not need to be absolutely essential. *Morrow v. Dyches*, 328 S.C. 522, 492 S.E.2d 420 (Ct. App. 1997).

Whole point of easement by necessity doctrine is to ensure that landlocked parcels have access to a public road; thus, doctrine presumes or implies that grantor intended for grantee of landlocked parcel to have access, which is one of rights essential to enjoyment of land. *Morrow v. Dyches*, 328 S.C. 522, 492 S.E.2d 420 (Ct. App. 1997).

Easement by necessity doctrine only provides reasonable access to dominant estate when there is none; it does not provide a means for ensuring a preferred method of access to a particular portion of a tract when access to tract is otherwise available. *Morrow v. Dyches*, 328 S.C. 522, 492 S.E.2d 420 (Ct. App. 1997).

For there to be an easement by necessity, necessity must exist at time of severance, and grantee cannot so change uses of land as to convert a way of convenience into a way of necessity.

☉Morrow v. Dyches, 328 S.C. 522, 492 S.E.2d 420 (Ct. App. 1997).

[END OF SUPPLEMENT]

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Footnotes

1 ☉Brasington v. Williams, 143 S. C. 223, 141 S. E. 375 (1927).

2 ☉Butler v. Sea Pines Plantation Co., 282 S. C. 113, 120, 317 S. E. 2d 464, 468 (Ct. App. 1984). But see Hamilton v. CCM, Inc., 274 S. C. 152, 263 S. E. 2d 378 (1980).

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RICHLAND COUNTY COUNCIL ZONING PUBLIC HEARING



Thursday, November 21, 2019

Agenda

7:00 pm

*2020 Hampton Street
2nd Floor, Council Chambers*

I. STAFF:

Clayton Voignier Community Planning and Development Director
Geonard Price Division Manager/Zoning Administrator

II. CALL TO ORDER..... Honorable Paul Livingston
Chair of Richland County Council

III. ADDITIONS / DELETIONS TO THE AGENDA

IV. ADOPTION OF THE AGENDA

V. MAP AMENDMENTS

OPEN PUBLIC HEARING

1. Case # 19-025 MA District 9
Calvin Jackson
Patrick S. Noh
RU to GC (6.26 acres)
10668 Two Notch Road
TMS# R25900-07-01 & R25800-03-04
Planning Commission – Disapproval (4 - 1)
PDSD Recommendation – Disapproval
Council unanimously accepted the applicant’s request to withdraw.

2. Case # 19-041 MA District 11
Chakisse Newton
Gerald K. James
RU to RC (5.6 acres)
4008 Leesburg Road
TMS# R25000-01-04F & R25000-01-04A (Portion of)
Planning Commission – Approval (6 - 0)
PDSD Recommendation – Disapproval
Council unanimously approved the rezoning request.

3. Case # 19-042 MA District 2
Joyce Dickerson
Lenny Williams
OI to RS-MD (.4 acres)
1221 Inland Drive
TMS# R06015-01-16
Planning Commission – Approval (6 - 0)
PDSD Recommendation – Approval
Council unanimously deferred the rezoning request.

4. Case # 19-043 MA
Odell Flemming
RU to LI (2 acres)
13081 Garners Ferry Road
TMS# R39400-02-02
Planning Commission – Disapproval (5 - 1)
PDSD Recommendation – Disapproval
Council unanimously deferred the rezoning request.

District 10
Dalhi Myers

5. Case # 19-044 MA
Shirley Ann Montgomery
RU to GC (5.14 acres)
Lib Lucas Road
TMS# R14781-01-50 & 51
Planning Commission – Disapproval (6 - 0)
PDSD Recommendation – Approval
Council unanimously disapproved the rezoning request.

District 7
Gwendolyn Kennedy

VI. OTHER BUSINESS

VII. ADJOURNMENT



Richland County Government
2020 Hampton Street
Columbia, SC 29204

Phone (803) 576-2180
Fax (803) 576-2182
