



## Legislation Details (With Text)

**File #:** 22-2902      **Version:** 1      **Name:** P22-36. Conditional rezoning  
**Type:** Consent      **Status:** Agenda Ready  
**File created:** 8/12/2022      **In control:** City Council Regular Meeting  
**On agenda:** 9/26/2022      **Final action:**  
**Title:** P22-36. Conditional rezoning from Single-Family 6 (SF-6) to Mixed-Residential 5 Conditional Zoning (MR-5/CZ), for no more than 160 units, located at the following properties: 7009 Fillyaw Road (REID# 9499918931000), containing a total of 15.14 acres ± and being the property of Alternative Investment Holdings, INC and represented by R. Jonathan Charleston, Esq.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. P22-36 Complete Application, 2. P22-36 Notification Map, 3. P22-36 Zoning Map, 4. P22-36 Land Use Map, 5. Subject Property, 6. Surrounding Properties, 7. RLUAC Courtesy Review - 7009 Fillyaw Townhomes, 8. Consistency and Reasonableness Statement

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

**TO:** Mayor and Members of City Council

**THRU:** Telly C. Whitfield, Ph.D. - Assistant City Manager  
Dr. Gerald Newton, AICP - Development Services Director  
Jennifer C Baptiste, CZO - Planning and Zoning Division Manager

**FROM:** Craig M. Harmon, CZO - Senior Planner

**DATE:** September 26, 2022

**RE:**  
**P22-36.** Conditional rezoning from Single-Family 6 (SF-6) to Mixed-Residential 5 Conditional Zoning (MR-5/CZ), for no more than 160 units, located at the following properties: 7009 Fillyaw Road (REID# 9499918931000), containing a total of 15.14 acres ± and being the property of Alternative Investment Holdings, INC and represented by R. Jonathan Charleston, Esq.

**COUNCIL DISTRICT(S):**

4 - D.J. Haire

**Relationship To Strategic Plan:**

Strategic Operating Plan FY 2022

Goals 2026

Goal II: Responsive City Government Supporting a Diverse and Viable Economy

- Objective 2.1 - To ensure a diverse City tax base
- Objective 2.4 - To sustain a favorable development climate to encourage business growth.

Goal III: City invested in Today and Tomorrow

- Objective 3.2 - To manage the City's future growth and strategic land use.
- Objective 3.3 - To sustain a favorable development and business climate through timely and accurate construction review and building inspection services

Goal IV: Desirable Place to Live, Work and Recreate

- Objective 4.3 - To improve mobility and connectivity through sidewalk, trail, and bike lane investments
- Objective 4.4 - To provide a clean and beautiful community with increased green spaces
- Objective 4.5 - To ensure a place for people to live in great neighborhoods

### **Executive Summary:**

The owners have submitted a request to conditionally rezone 15.14 acres from Single-Family 6 (SF-6) to Mixed Residential 5 Conditional (MR-5/CZ).

The various owners have submitted rezonings for this property twice in the past. Both of these rezoning, first in 2012 and again in 2014, both were denied.

In 2019, the owners once again tried unsuccessfully to rezone this property to MR-5, however, the City Council did approve a rezoning to SF-6 at that time.

The MR-5 zoning district is established and intended to meet the diverse housing needs of City residents by accommodating a wide variety of residential housing types.

On August 9, the Zoning Commission held a legislative hearing regarding this case. There was two speakers in favor and two in opposition. Those in opposition cited the following concerns:

- Fillyaw is the only way in and out of the proposed development.
- There are currently traffic issues regarding this property being in a double-blind curve.
- There is a creek on the west side of the property and flooding occurs from this creek on roads in the neighborhood.
- The additional density will have an effect on traffic and flooding.
- There are four apartment complexes already on Fillyaw.
- During freeze rain and snow the Fillyaw is sometimes closed from Dandridge to Jones Park.

At the close of the hearing, a motion to deny the request failed 2-3. After discussions the owner offered to amend the conditions of the application, lowering the proposed density from 160 units to 125 units. A motion to recommend approval with the amended condition was then made and passed 5-0.

### **Background:**

This property is located on the south side of the intersection of Fillyaw Road and Danish Drive.

Applicant: R. Jonathan Charleston, Esq.

Owner: Darrin Collins, Alternative Investment Holdings, Inc.

Attorney Point of Contact: Catherine R. Iwashita Bamba, Esq.

Requested Action: Rezoning from SF-6 to MR-5/CZ

Property Address: 7009 Fillyaw Road

Council District: 4

Status of Property: Vacant

Size: 15.14 acres ±

Adjoining Land Use & Zoning:

- North: SF-10 - Single Family Residential
- South: SF-6 -Multi Family Residential
- East: SF-10 - Single Family Residential
- West: SF-10 - Single Family Residential

Letters Mailed: 171

Traffic Count: AADT 8,800 on Fillyaw Road

Land Use Plans:

With the adoption of the 2040 Comprehensive Plan: Future Land Use Map & Plan on May 26, 2020. All properties within the city limits as well as properties identified as being in the Municipal Influence Area (MIA) are subject to this plan.

According to the Plan, it is recommended that this portion of the city should be developed as Medium Density Residential (MDR).

Medium Density Residential (MDR) is best described as primarily single-family residential neighborhoods with small lots (3-6 dwellings per acre), duplexes or townhomes interspersed, and low-rise apartments possible. Located in areas that are mostly auto-oriented, but also some walkable neighborhoods and destinations.

## **Issues/Analysis:**

### **History:**

Prior to annexation, this area was zoned by Cumberland County as residential properties. Since being annexed into the City, this area has seen little to no development or redevelopment.

Prior Zoning Cases:

**P11-52F** - The requested action was to rezone to MR-5/CZ. There were two Conditions offered by the applicant/owner:

1. Attached site plan.

2. Reduction in allowed number of units to 120.

This case was heard and denied by the Zoning Commission on December 13th of 2011. The owners then filed an appeal and the case was sent to the City Council on February 13, 2012. Prior to the meeting, owners in the surrounding neighborhood filed a valid protest petition for this case. When a valid protest petition was filed, a super majority vote of the City Council was required (8 votes) for the case to be approved. This case was denied by the City Council.

**P14-19F** - The requested action was to rezone to MR-5/CZ. There were three Conditions offered by the applicant/owner:

1. Attached landscaping plan along Fillyaw.
2. Reduction in allowed number of units to 96.
3. Increase the east side setback by an additional 10 feet.

This case was heard and denied by the Zoning Commission on June 8, 2014. The owner's attorney, J. Thomas Neville, filed an appeal of the Zoning Commission's denial. The case was placed on the City Council's September 22, 2014 agenda. The owners of property in the surrounding neighborhood filed a valid protest petition for this case as well. The City Council denied the application 10-0.

**P19-42F** - This case was heard by the Zoning Commission on December 10, 2019. The Commission recommended a more restrictive Single Family 6 (SF-6) zoning. On January 27, 2020 the City Council voted to rezone this property to SF-6.

### **Surrounding Area:**

The properties on three sides of this lot are developed and zoned for low density, single-family housing. The residential development to the south is zoned and developed as medium-density residential.

### **Rezoning Request:**

The owners of this property have submitted a request to rezone 15.14 acres  $\pm$  to MR-5/CZ. Under a straight MR-5 zoning request, approximately 292 units could be developed on the property. This property is surrounded by a mix of zoning districts including SF-10 (Single-Family), MR-5 (Designated open space for the apartments to the northeast), and SF-6 (Apartments).

Land within the City is generally classified by the Unified Development Ordinance (UDO) to be within one of many base zoning districts. Land may be reclassified to one of several comparable zoning districts in accordance with Section 30-2.C.

### **Conditional Zoning:**

The request is for a conditional zoning from SF-6 to MR-5/CZ.

The purpose of the CZ zoning district is "intended to provide a landowner and the City an alternative to rezoning the land to a standard base zoning district, where the base zoning allows certain uses and development that may be appropriate but also allow uses and development that may not conform to City plans or would have adverse impacts on public facilities or surrounding lands. Reclassification of land to a conditional zoning district allows a landowner to propose, and the City Council to consider, additional conditions or restrictions on the range of allowable uses, use standards, development intensities, development standards, and other regulations applicable in the parallel base zoning district. This enables the City to tailor a zoning classification to accommodate desirable development while avoiding or addressing anticipated problems that may arise from development otherwise allowed by the base zoning district."

### **Specifics of this Conditional Zoning:**

The applicant is requesting a revised condition to develop this property with a limitation of not exceeding 125 residential townhome style units.

The MR-5 District is established and intended to meet the diverse housing needs of City residents by accommodating a wide variety of residential housing types and arrangements at moderate to high densities, including single-family detached dwellings, two- to four-family dwellings, multi-family dwellings, and other residential development that may include single-family attached dwellings, and zero lot line development subject to the requirements of this Ordinance. All development in the district shall comply with the design standards in Article 30-5: Development Standards. MR-5 districts may also include centrally-located open space, complementary institutional uses (e.g., religious institutions, post offices, police sub-stations), day care facilities, and limited small-scale neighborhood-serving convenience retail uses (see 30-4.D. Accessory Uses).

### **Land Use Plan Analysis:**

According to Future Land Use Map & Plan, this area is recommended to be developed as Medium Density Residential (MDR). MDR is best described as primarily single-family residential neighborhoods with small lots (3-6 dwellings per acre), duplexes or townhomes interspersed, and low-rise apartments possible. MDR is best located in areas that are mostly auto-oriented, but also have some walkable neighborhoods and destinations.

The revised condition placed on this application would allow a density comparable to the current SF-6 zoning (130 units in SF-6 with a Special Use Permit (SUP) verses the conditioned 125 units without a SUP). Both of the previous conditional rezoning attempts on this property would have restricted development to less units than what is conditioned in this application as shown below.

P11-52F - Conditioned to 120 units (denied)

P14-19F - Conditioned to 96 units (denied)

P22-36 - Conditioned to 160 units (current application) Revised to 125

As part of the last two rezoning attempts on this property, a Transportation Impact Analysis (TIA), dated February 12, 2014, was submitted. The TIA called for 100-foot tapered turn lanes coming from both directions. Additionally, a minimum of 1.49 acres of open space would be required per the Unified Development Ordinance.

Even with the TIA that was submitted in the past, traffic remained a major factor in the denial of the previous rezonings. In each of the past rezoning attempts, many residents have expressed concern about the traffic along Fillyaw and the fact this property lies in a double bend and the low spot in the road.

The issues that lead to rezonings being denied or approved to a more restrictive district have not changed over the years:

1. The uses and zoning district to two sides and across Fillyaw are low density single family residential.
2. Land Use Plan calls for medium density residential development, matching the current SF-6.
3. There is no substantial difference to the rezonings that were denied by the City Council on three

other occasions.

4. Amount of new traffic at a blind spot on Fillyaw Road remains a problem.

### **Consistency and Reasonableness Statements:**

The Future Land Use Plan also sets forth written goals, policies, and strategies. This application looks to follow the City's strategic, compatible growth strategies by meeting the goals of the Land Use Plan found on the attached Consistency and Reasonableness Statements form.

### **Budget Impact:**

There is not an immediate budgetary impact but there will be an economic impact associated with this rezoning that will occur due to taxes collected in the future.

### **Options:**

1. Recommend approval of the conditional rezoning to MR-5/CZ with the revised condition of no more than 125 units (recommended) ;
2. Recommend approval of the conditional rezoning with additional conditions; or
3. Recommend denial of the rezoning request.

### **Recommended Action:**

Zoning Commission recommends approval of the map amendment to MR-5/CZ with the amended condition to limit density to no more than 125 units and based on the following:

- The Future Land Use Plan calls for Medium Density Residential (MDR). The applicant has conditioned to no more than 125 units, five less than could currently be built in the SF-6 district with a Special Use Permit.
- The uses permitted by the proposed change in zoning district classification and standards apply to such use and will be appropriate in the immediate area of the land to be reclassified due to the location of this property and its surrounding uses; and
- There are no other factors that will substantially affect public health, safety, morals, or general welfare.

### **Attachments:**

1. Plan Application
2. Aerial Notification map
3. Zoning Map
4. Land Use Plan Map
5. Subject Property
6. Surrounding Property Photos
7. RLUAC Courtesy Review - 7009 Fillyaw Townhomes

## 8. Consistency and Reasonableness Statements