



CITY OF SPARTANBURG

SOUTH CAROLINA

CITY COUNCIL AGENDA

**City Council Meeting
City Council Chambers
145 West Broad Street
Spartanburg, SC 29306
Monday, December 9, 2019**

- I. Moment of Silence**
- II. Pledge of Allegiance**
- III. Approval of the Minutes of the November 11, 2019 City Council Meeting**
- IV. Approval of the Agenda of the December 9, 2019 City Council Meeting**
- V. Public Comment**
*Citizen Appearance forms are available at the door and should be submitted to the City Clerk
- VI. Homeless Task Force Update**
Presenter: Mitch Kennedy, Assistant City Manager
- VII. Public Hearings**
 - A. Ordinance to Amend the City of Spartanburg, South Carolina Zoning Ordinance and Comprehensive Plan Land and Use Element, by Amending Section 206, Changes to District Boundaries, Specifically Parcel #7-17-01-002.00 Located on "0" Union Street at the Corner of Union Street and Ponce De Leon Avenue, Which is Zoned R-15, with a Land Use Designation of Single Family Residential District; to Zone R-8 SFD, with a Land Use Designation of Single Family District and Providing for Severability and an Effective Date (First Reading)**
Presenter: Rachel Grothe, Planner
 - B. Ordinance Accepting the Property Owned by Tiger Eye Holdings, LLC, and Being Located at 190 Gaskins Road, and is Further Identified On Spartanburg County Tax Map as 7-21-00=004.00 and 7-21-00-004.04 as a Part and Parcel of the City of Spartanburg and Declaring Said Property Annexed to and a Part and Parcel of the City of Spartanburg (First Reading)**
Presenter: Natalia Rosario, Planner

VIII. Ordinance

- A. Approving a Development Agreement Between the City of Spartanburg and Fenix Air Charter, LLC. (First Reading)
Presenter: Robert P. Coler, City Attorney**

IX. Consent Agenda

- A. Authorizing the City of Spartanburg, South Carolina, to Execute and Deliver An Equipment Lease Purchase Agreement in An Amount Not Exceeding \$2,600,000 Between The City and the Lessor Thereof To Defray The Cost of Acquiring Certain Equipment; And Other Matters Relating Thereto (Second Reading)
Presenter: Dennis R. Locke, Finance Director**

X. Executive Session

- A. Executive Session Pursuant to Section 30-4-70 (a) (5) of the South Carolina Code to Discuss Matters Relating to an Economic Development Project**

Council may take action on matters discussed in Executive Session after exiting Executive Session.

XI. Adjournment

** Non-Agenda Items*

City Code Sec. 2-57. Citizen Appearance. Any citizen of the City of Spartanburg may speak at a regular meeting on any matter pertaining to City Services and operations germane to items within the purview and authority of City Council, except personnel matters, by signing a Citizen's Appearance form prior to the meeting stating the subject and purpose for speaking. No item considered by Council within the past twelve (12) months may be added as an agenda item other than by decision of City Council. The forms may be obtained from the Clerk and maintained by the same. Each person who gives notice may speak at the designated time and will be limited to a two (2) minute presentation.

**Agenda Items*

City Code Sec. 2-56. Addressing Council, Comments or Remarks to Council on Agenda Items Not Requiring Public Hearing. On agenda items not requiring a Public Hearing, please provide to the City Clerk prior to the opening of the meeting, your desire to speak on an agenda item. Remarks shall be limited to five (5) minutes and total remarks on any agenda item shall not exceed twenty (20) minutes.



**City Council Meeting
City Council Chambers
145 West Broad Street
Spartanburg, SC 29306
Monday, November 11, 2019**

City Council met this date with the following Councilmembers present: Mayor White, Mayor pro tem Alan Jenkins, Councilmembers Erica Brown, Jerome Rice, Ruth Littlejohn, Sterling Anderson and Jamie Fulmer. City Manager Chris Story and City Attorney Robert Coler were also in attendance. Notice of the meeting was posted with the Media 24 hours in advance according to the Freedom of Information Act. All City Council meetings are recorded for a complete transcript.

I. Moment of Silence - observed

II. Pledge of Allegiance – recited with the help of Boy Scouts in Troop 2.

III. Approval of the Minutes of the October 28, 2019 City Council Meeting –
*Councilmember Littlejohn made a motion to approve the minutes as received.
Councilmember Fulmer seconded the motion, which carried unanimously 7 to 0.*

IV. Approval of the Agenda of the November 11, 2019 City Council Meeting –
*Mayor pro tem Jenkins made a motion to approve the agenda as received.
Councilmember Rice seconded the motion, which carried unanimously 7 to 0.*

V. Public Comment

*Citizen Appearance forms are available at the door and should be submitted to the City Clerk

1. Chris Jennings, retiring Director of Spartanburg Convention and Visitors Bureau, thanked Council for their support during the time he served as Director. Council thanked Mr. Jennings for his work championing Spartanburg, and wished him all the best as he retires and moves up north to be with his family.
2. Matt Spencer, 712 Brown Arrow Circle, Inman, SC, spoke regarding his concerns of Spartanburg Water's leadership, financial leadership and stewardship of user's money.
3. Don Bramblett, 185 Mills Avenue, Spartanburg, SC, spoke regarding his concerns of veteran's PTSD, suicide rate, and overall mental health.
4. Janeen Scott, 240 Carlisle St., Spartanburg, SC, spoke regarding reinforcing gratitude for 2017 resolution and asking council to remember and represent all residents.

VI. Resolutions

- A. To Certify that 127 W. Main Street is Eligible to Pursue the Special Tax Assessment for Rehabilitated Historic Property Pursuant to Chapter 18, Article III of the Code of the City of Spartanburg, South Carolina, 1988 as Amended**
Presenter: Patty Bock, Economic Development Director

Ms. Bock presented the item to Council as follows:

“On April 9, 2018, City Council approved by ordinance to enter into a development agreement with 127 W. Main, LLC. Terms in the Development Agreement includes the developer’s commitment to expend a minimum of \$3.5 Million and the City’s commitment to enable the property to benefit from Special Assessment for Rehabilitated Historic Property for a period of ten (10) years. With the developer’s investment commitment now fulfilled, passage of the attached resolution will fulfill the City’s commitment to authorize the special assessment.

We recommend your approval and welcome any questions you may have.”

Councilmember Fulmer made a motion to approve the resolution as presented.

Councilmember Littlejohn seconded the motion, which carried unanimously to 0.

- B. To Certify 970 South Pine Street as an Abandoned Building Site pursuant to the South Carolina Abandoned Buildings Revitalization Act, Title 12, Chapter 67, Section 12-67-100 et seq., of the South Carolina Code of Laws (1976), as amended, Tax Map Parcel# 7-17-05-095.00**

Presenter: Patty Bock, Economic Development Director

Ms. Bock presented the item to Council as follows:

“The Abandoned Building Revitalization Act (State Code 12-67-100) was put into effect by the state and serves as a mechanism that helps further encourage the redevelopment of vacant, underutilized properties. In order for an owner to obtain the credits that incentivize redevelopment, governing entities must certify by Resolution that a property qualifies for and meets the SC 12-67-100 definition of “abandoned”. 970 South Pine Street was recently leased and the Lessee plans to fully redevelop the property into a functional and contributing property in the city. Staff has verified that the property meets the criteria and qualifies for the Abandoned Building Revitalization Act (State Code 12-67-100).

The attached Resolution outlines the certification and allows the project to claim the state incentive that involves income tax credits. This does not involve any financial commitment or incentive by the city.

Councilmember Rice made a motion to approve the resolution as presented.

Councilmember Fulmer seconded the motion, which carried unanimously 7 to 0.

VII. Spartanburg Healthy Homes Initiative

Presenter: Martin Livingston, Neighborhood Services Director

Mr. Livingston presented the item to Council as follows:

“Lead is a highly toxic metal that may cause a range of health problems, especially in young children. When lead is absorbed into the body, it can cause damage to the brain and other vital organs, like the kidneys, nerves and blood. With over 70% of our housing stock being over forty years old, deteriorated lead-based paint remains a health concern.

In August 2019, the City of Spartanburg and its partners submitted a grant application to the U.S. Department of Housing and Urban Development (HUD) for a Healthy Homes and Lead Hazard Control Grant. On October 1, staff was notified that it was awarded \$1 million in Lead Hazard Control funding and \$300,000 in Healthy Homes funding. This grant funding will allow the City to work with property owners and community partners to address potential hazards. Staff is currently in the negotiation phase of the process and will share information on the grant.”

Council received the report as information.

VIII. Spartanburg Housing Authority Board Appointments

Presenter: Mitch Kennedy, Assistant City Manager

Mr. Kennedy presented the item to Council as follows:

“The Spartanburg Housing Authority (SHA) presently has 2 vacant board seats. City Staff has worked closely with SHA Staff to process the applications for their 2 remaining board seats. Spartanburg Housing Authority Board shall represent: A seven-(7) member board with each serving a five-(5) year term. Four (4) members shall be residents of the City of Spartanburg with one of these members being a tenant in a residence owned by the Authority. The other three (3) members are not required to be residents of the City of Spartanburg but if possible should represent a major Spartanburg County employer, a higher education facility and a foundation interested in the goals of the Spartanburg Housing Authority.

We received 5 applications seeking to fill the one open SHA Resident seat, and 1 application seeking to fill the one open seat that represents an employer, institution of higher education, or foundation. All of the applicants had an opportunity to speak directly with a SHA or City Staff member regarding the roles, responsibilities, and capabilities of SHA Board members in advance of submission to City Council.

Based on her qualifications, Staff recommends the appointment of Keisha Gray, Program Director at the Mary Black Foundation, to fill the open seat that represents an employer, education of higher education, or foundation. Keisha’s application is included. Staff request Council to review the applications of the 5 SHA Residents, and select one to serve as the Resident member.”

Councilmember Rice made a motion to appoint Keisha Gray to the Spartanburg Housing Authority Board. Councilmember Littlejohn seconded the motion, which carried unanimously 7 to 0.

Mayor White appointed Councilmembers Fulmer, Brown, and Littlejohn to serve on an interview committee to interview the applicants to fill the resident vacancy on the SHA board.

IX. Approval of 2020 City Council Meeting Schedule

Presenter: Connie McIntyre, City Clerk

Ms. McIntyre presented the item to Council for approval.

Councilmember Anderson made a motion to approve the 2020 calendar as presented.

Councilmember Rice seconded the motion, which carried unanimously 7 to 0.

X. City Council Updates - Each Councilmember gave updates on their activities since the previous council meeting.

XI. Executive Session – Mayor pro tem Jenkins made a motion to adjourn to Executive Session. Councilmember Brown seconded the motion, which carried unanimously 7 to 0. Council adjourned to Executive Session at 6:42 p.m.

A. Executive Session Pursuant to Section 3-4-40(2) Concerning a Personnel Matter Related to Annual Review of City Manager

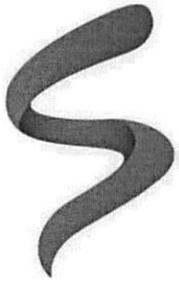
Council may take action on matters discussed in Executive Session after exiting Executive Session.

Council reconvened at 7:04 p.m. Mayor White stated that discussion was held with no decisions made.

XII. Adjournment - Mayor pro tem Jenkins made a motion to adjourn the meeting. Councilmember Rice seconded the motion, which carried unanimously 7 to 0. The meeting adjourned at 7:15 p.m.



Connie S. McIntyre, City Clerk



MEMORANDUM

TO: Chris Story, City Manager

FROM: Mitch Kennedy, Assistant City Manager

SUBJECT: Update – Homeless Task Force

DATE: December 4, 2019

In 2018, the City of Spartanburg brought together a group of downtown stakeholders to discuss issues and strategies to address street homelessness. United Way of the Piedmont, the City of Spartanburg, the Spartanburg Area Chamber of Commerce, SPIHN, and Catholic Charities of SC were identified as the lead partners, and a Memorandum of Understanding was created in 2019 to outline specific strategies to implement within the next five years. Strategies include dedicated case management and outreach for the street homeless, transitional housing, and day center for the homeless, a marketing and resource development campaign, and increasing collaboration among homeless service providers.

Staff and representatives of the Homeless Task Force briefed City Council of its efforts back in February, while committing to implement the strategies initially identified. Since, the task force has added the strategy of Homeless Court and operated the piloted Opportunity Center (Homeless Day Center) at Northwest Community Center for the past 4 months.

City Staff and representatives of the Homeless Task Force wish to update City Council on our current efforts, and have a discussion of next steps.



REQUEST FOR COUNCIL ACTION

TO: Chris Story, City Manager

FROM: Rachel Grothe & Natalia Rosario, Planning Staff

SUBJECT: The Planning Department has received a request to consider amending the City of Spartanburg, South Carolina Zoning Ordinance and Comprehensive Plan Land Use Element, by amending Section 206, changes to District Boundaries, of one property, Specifically Parcel #7-17-01-002.00 located on '0' Union Street at the corner of Union Street & Ponce de Leon Avenue, that is currently zoned R-15 (Single Family Residential District) to zone R-8: SFD, Single Family District in order to allow the Property Owner to subdivide the parcel into two lots and construct two new Habitat homes. Lee Close, Executive Director, Habitat for Humanity of Spartanburg, Owner.

DATE: December 4, 2019

SUMMARY: The above referenced property is being proposed to be split into two lots in order to construct one (1) single family home upon each lot. While much of the nearby residential area is zoned R-15: Single Family Residential, this is actually an inappropriate zone for this area, as the majority of the lots in the adjoining neighborhoods do not meet the standards for and R-15: SFD zoning category, and more closely match the standards for the R-8 and R-6 residential districts (smaller lot and setback requirements).

The proposal is in keeping with the 2004 Comprehensive Plan, which calls for this parcel and the surrounding parcels to be maintain Low Density Residential, with primarily single family residential use and a density no greater than four units per acre. Thusly, this lot is able to support 2 units (23,310 square foot lot). The present character of the area is single family residential, and the addition of two single family homes in keeping with the character, zoning, and conforming uses of nearby properties. The new lots will fall well within the range of what is currently found in the nearby residential area; one of 12,854 square feet and the other of 10,662 square feet. The majority of the lots on Ponce De Leon Avenue are approximately 70 linear feet in width, with the proposed lots exceeding this at 96.43 linear feet and 80 feet in width, respectively. The property is also suitable for a lot split if the zone change is approved – otherwise, it cannot meet the characteristics of an R-15 zoned property. Further development would require plat approval and building permit review and approval. The marketability of this property would likely increase with the zoning change, allowing a long-vacant lot to become low density housing for families otherwise unable to become homeowners – a stated need for our community's affordability and housing goals. Both water and sanitary sewer services are available to this site.

PLANNING COMMISSION RECOMMENDATION: The request was endorsed by the Planning Commission on November 21st, 2019 by a vote of 6 to 0. Staff's recommendation concerning this application is explained in detail in the attached staff report to the Planning Commission.

ADDITIONAL INFORMATION: Minutes from the November 21st, 2019 Planning Commission Meetings and Staff Report with attachments are included. In addition, enclosed is a proposed Ordinance in the event that Council approves the rezoning request.

BUDGET AND FINANCE DATA: N/A

AN ORDINANCE

ORDINANCE TO AMEND THE CITY OF SPARTANBURG, SOUTH CAROLINA ZONING ORDINANCE AND COMPREHENSIVE PLAN LAND USE ELEMENT, BY AMENDING SECTION 206, CHANGES TO DISTRICT BOUNDARIES, SPECIFICALLY PARCEL #7-17-01-002.00 LOCATED ON '0' UNION STREET AT THE CORNER OF UNION STREET & PONCE DE LEON AVENUE, WHICH IS ZONED R-15, WITH A LAND USE DESIGNATION OF SINGLE FAMILY RESIDENTIAL DISTRICT; TO ZONE R-8 SFD, WITH A LAND USE DESIGNATION OF SINGLE FAMILY DISTRICT AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Spartanburg now finds that, upon further review, it is in the public interest that the land use designation for the parcel identified on the Official Zoning Map of the City of Spartanburg, South Carolina, dated August 6, 1973, as amended, by changing the zone of Lot 002.00 as shown on Spartanburg County Block Map Sheet 7-17-01, from Zone R-15, Single Family Residential District to Zone R-8 SFD, Single Family District; and

WHEREAS, this zoning change would be compatible with surrounding land uses and neighborhood character, would not be detrimental to the public health, safety and welfare, and, further, would be in conformance with the Comprehensive Plan; and

WHEREAS, the Planning Commission held a public hearing on November 21, 2019, at which time a presentation was made by staff and an opportunity was given for the public to comment on the rezoning request; and

WHEREAS, the Planning Commission, after consideration of the staff report, public comments, and the criteria set forth in Section 605 of the Zoning Ordinance, subsequently voted at that meeting to recommend to City Council that the rezoning request be approved as recommended by City Staff.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Members of Council of the City of Spartanburg, South Carolina, in Council assembled:

Section 1. Amendment. That the official zoning map of the City of Spartanburg, as referenced by Section 206 of the Zoning Ordinance, be, and the same hereby amended as follows:

- The Lot currently identified as 002.00 as shown on Spartanburg County Block Map Sheet 7-17-01, shall be now designated as R-8 SFD, Single Family District.

(continued)

Section 2. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. Effective Date. This Ordinance shall be effective upon its adoption by the City Council of the City of Spartanburg, South Carolina.

DONE AND RATIFIED THIS _____ DAY OF _____, 2020.

Junie L. White, Mayor

ATTEST:

Connie S. McIntyre, City Clerk

APPROVED AS TO FORM:

Robert P. Coler, City Attorney

___/___/___ (First Reading)

___/___/___ (Second Reading)

Spartanburg City Planning Commission Meeting Minutes
Thursday, November 21, 2019

City Hall Council Chambers
Spartanburg, South Carolina

The City Planning Commission met in City Hall Council Chambers on Thursday, November 21, 2019 at 5:30 P.M. The following City Planning Commissioners attended this meeting: Jared Wilson, Howard Kinard, Bob Pitts, Dr. Phillip Stone, Reed Cunningham and Mike Epps. No Planning Commissioners were absent. Representing the Planning Department were Natalia Rosario, AICP, Planner III; Rachel Grothe, MCRP, Associate Planner; and Julie Roland, Administrative Assistant. City Attorney, Bob Coler and City Manager Chris Story also attended the meeting.

Roll Call

Mr. Wilson, the Chair, stated that notice of this meeting was posted and provided to the media 24 hours in advance as required by the Freedom of Information Act.

Mr. Wilson noted that all six Planning Commissioners of the current six member Board were present, constituting a quorum; and he went over the rules and procedures for conducting a public hearing.

Mr. Cunningham moved approval of the Agenda for tonight's meeting; and he was seconded by Dr. Stone. The motion was approved by a vote of 6 to 0.

No Meeting Minutes were ready for approval.

Old Business – None.

New Business

1. Rezoning Request to consider amending the City of Spartanburg Zoning Ordinance and Comprehensive Plan Land Use Element, by amending Section 206, changes to District Boundaries, of one parcel, Specifically Parcel #7-17-01-002.00 located on '0' Union Street at the corner of Union Street and Ponce de Leon Avenue, which is zoned R-15, Single Family Residential District, to zone R-8 SFD, Single Family District in order to be able to subdivide into two lots and construct two new Habitat Homes. Lee Close, Executive Director, on behalf of Habitat for Humanity of Spartanburg, Property Owner.

Ms. Rachel Grothe, Associate Planner came forward and was sworn; and she submitted the case into evidence that included the report the Planning Commissioners had previously received in their meeting packets, tonight's presentation and slides for this case as Exhibit A. She showed an aerial slide and location map slide of the property and said this was an application to rezone an R-15 zoned property to R-8 SFD with the intent of splitting the lot and constructing two houses. The project site is an approximately 23,310 square foot vacant lot on the corner of Union Street and Ponce de Leon Avenue; and the purpose of this rezoning request was for the applicant to eventually split the parcel into two parcels and develop each of the lots with a single family home. Ms. Grothe said the current single family zone designation had a minimum lot size of 15,000 square feet; and the owner could develop the lot with one home by a matter of right. However, the applicant, Habitat for Humanity hoped to obtain a rezone to R-8 SFD; and that designation had an 8,000 square foot lot size. The final intent would be to split the lot and construct two homes. This would allow Habitat to continue to provide safe, decent, and affordable homes for low income families in Spartanburg. A couple of slides were shown of the vacant lot as it was right now; and Ms. Grothe said any development on the lot would require removal of some of the trees, however; the applicant had asserted that their intent was to preserve as many trees as possible on the site. A slide of the survey was shown, and Ms. Grothe explained this showed the lot configuration the applicant hoped to achieve with the rezone. The interior lot would have the following characteristics: width of 80 feet and a square footage of 10,662 square feet. The corner lot would be 96 feet in width, with an area of 12,854 square feet. She said it was important to note that most of the lots in the vicinity do not meet the R-15 lot standards in terms of lot width and area. The minimum lot size for the R-15 designation was 15,000 square feet; and the majority of the lots in the neighborhood were between 10,500 square feet and 14,000 square feet. The minimum lot width for an R-15 zoned parcel was 90 feet. The majority of the lots in the vicinity were approximately 70 feet in width. Ms. Grothe said what this all really meant was these lots

could all be considered legal nonconforming; and from a policy standpoint, they should consider at some point a rezone of the entire neighborhood. Ms. Grothe went over the analysis of required findings and report the Planning Commissioners had previously received in their meeting packets that included the following list of criteria for the Planning Commission to consider when reviewing a rezoning request and Staff's analysis of those criteria as follows:

- 1) *Consistency (or lack thereof) with the Comprehensive Plan* – The 2004 Comprehensive Plan has the subject parcel and surrounding parcels on Ponce de Leon Drive listed as Low Density Residential. The Land Use element provides the following description of Low Density Residential: intended primarily for single family residential use, with a density no greater than four units per acre. With this description in mind, calculations reveal that the subject lot could support up to two units and be within the required density. Therefore, the proposed rezoning is consistent with the 2004 Comprehensive Plan.
- 2) *Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood* – The present character of this area surrounding the project site, is single family residential (along Ponce de Leon) and commercial uses along Union Street. Approval of the request would allow the property owner to ultimately construct two single family homes; one on each of the lots. The surrounding residential properties range in size from 10,500 square feet to 14,000 square feet, most of them having kept their original configuration from the 1924 subdivision. With the rezone, the new lots will fall well within the range of what currently exists within the neighborhood; one 12,854 square foot lot and one 10,662 square foot lot. The proposed widths of the lots will also be compatible with the existing neighborhood.
- 3) *Suitability of the property affected by the amendment for uses permitted by the district that would be made applicable by the proposed amendment* – If the zone change is granted, any subsequent lot split would require review and approval by the Planning Department. Similarly, the construction of any new homes would require submittal of a building permit with appropriate City review.
- 4) *Marketability of the property affected by the amendment for uses permitted by the district applicable to the properties at the time of the proposed amendment* – The marketability of the property would likely increase with the zoning change. The proposed zoning change will allow for additional lots in the neighborhood to be created from any existing oversized lots, much like the subject lot. This could help spur future development in an area that is in decline. Furthermore, additional units could be constructed and would help ease the existing housing shortage the City is experiencing. Specifically, this rezone will create two new affordable units that will serve to provide housing to some of Spartanburg's low income families.
- 5) *Availability of sewer, water and storm water facilities generally suitable and adequate for the proposed use* – Both water and sanitary sewer services are available to this site. The site will be reviewed by City staff during the building permit process for compliance with applicable regulations.

Staff's Recommendation:

Staff requests that the Planning Commission make a recommendation to City Council that the site be rezoned to R-8 SFD.

Planning Commission Questions:

- Mr. Pitts asked what was the R-8 description.
- Ms. Grothe said it was General Residential, but then it had the SFD which was Single Family District.
- Mr. Pitts asked that it had to be single family.
- Ms. Grothe said that was correct.
- Mr. Kinard said as he understood the request, the primary reason for the rezone was to accommodate the two houses, and otherwise they could only put one.
- Ms. Grothe said that was correct; and she said they also planned on retaining as many trees as possible along the Union Street frontage to act as a bit of a buffer.

- Dr. Stone asked if it was correct that both driveways would be on Ponce de Leon and not on Union Street.
- Ms. Grothe said that was correct.
- Mr. Kinard said looking at what appeared to be the site plan it looked like the side setback line was 10', and was that City Code.
- Ms. Grothe said according to the Zoning Ordinance, the interior side was 8', and the street side was 15'.
- Mr. Cunningham asked was that consistent with the other homes in the area.
- Ms. Grothe said they should meet based on what the zoning was they should be 15' setbacks, but she did not go out and measure those.
- Mr. Kinard asked had a structure ever been on the proposed property.
- Ms. Grothe said not that she was aware of; and when she had referenced an old map of the property, it looked like the lot had been cut into two lots that had originally both fronted on Union Street for some reason, but she did not know under what circumstances that could have been.
- Mr. Kinard referenced the location map and asked what was on the LOD lot.
- Ms. Grothe said it was a vacant lot.
- Mr. Kinard asked Ms. Grothe if she had received any written correspondence from the public regarding the rezoning request.
- Ms. Grothe said she knew there was an email exchange on Next Door.com that staff became aware of.
- Mr. Kinard said he did not think they really could consider that one; and he asked if there was anything that was sent directly to the City.
- Mr. Grothe read an email she received from Ms. Kaye Hyatt that indicated she was opposed to any trees being cut to build anything on the property regardless of whether it was for a business or residential; and had also indicated with the multiple rundown buildings and houses on Union Street the trees were one of the few things that were not an eyesore, and felt the property should be designated as a green space and be preserved. She also had an email from a Mrs. Bowers regarding the posting of the property and why some people had received letters and some had not, that sort of thing; and she entered both of those emails into the record as Exhibit B. Ms. Grothe said that was all she had received.
- Mr. Cunningham had a question regarding the location map about the parcel that was behind the proposed parcel that was also labeled as '0'.
- Mr. Epps said it was owned by another entity.
- Ms. Grothe said it was also vacant.
- Mr. Cunningham asked as that particular parcel was zoned could someone also build a home on that particular lot.
- Ms. Grothe explained that it was zoned for that, but it might take some engineering because there was a bit of a slope to it; but it was zoned for such.
- Ms. Rosario said that lot might have some dimensional issues regarding setbacks because of its width; but if it met the setbacks, that a single family home could be built on it.

Mr. Wilson, the Chair asked the applicant to come forward and address the Board.

Mr. Lee Close, of 685 Otis Boulevard, Executive Director of Habitat for Humanity came forward and he was sworn. He explained Habitat for Humanity had been working since 1987 in Spartanburg to provide an affordable path to home ownership for hardworking, low income families who could not otherwise qualify for a mortgage loan. They had completed and closed 136 homes to date, many of which were in the City

and some were in the County as well. Of those 136 homes, 129 building lots had been donated to them to help them keep construction costs low and serve more people. The parcel at the corner of Union Street and Ponce de Leon was given to them by the Spartanburg County Foundation in February, 2019. The original assumption was they would seek to subdivide the parcel into three building lots, which would be congruent with their typical Habitat lot size and almost perfectly mirror the three homes across the street on Ponce de Leon. However, when surveying the lot and considering the topography, Mr. Close said they decided to only seek to subdivide into two lots facing Ponce de Leon and leave a larger setback buffer on the Union Street Side. He said leaving more of a vegetation buffer on Union Street would help to maintain privacy and create a noise barrier for the corner home and family. Mr. Close said as to their petition, the parcel size was 23,516 square feet and zoned R-15, under which only one home could be constructed on the lot right now. In order to be true to their mission and provide safe, decent and affordable homes for as many low-income families living in substandard housing as possible; and to properly steward their resources; they petitioned the City to rezone the parcel to R-8 Single Family. He said their Site Development Plan called for the corner lot to have 96.43 feet facing Ponce de Leon and be sized at 12,854 square feet. In order to maintain a 40' side setback from Union Street the interior lot would have 80' facing Ponce de Leon and be sized at 10,662 square feet. The other three side setbacks would be 27' versus 10' required by Code, and the front setbacks would be 45' versus 35' as required by Code. Mr. Close said he knew the Board Members had received a copy of the site plan in their meeting packets; but he had a larger site plan he distributed for the Board Members that he said was easier to see all the details which he explained to the Board Members. He pointed out that almost the entire Duncan Park and Forest Hills area was zoned as R-15; and he said there were many lots in the neighborhood that were significantly less than 15,000 square feet (specifically for Ponce de Leon Avenue). There were 30 lots addressed as Ponce de Leon Avenue and 28 residents currently. Nine of those lots (only 30%) met the R-15 zoning standards with a range of 15,671 square feet to 28,000 square feet. Twenty-one of those lots (70%) did not meet the R-15 zoning standards, with a range of 7,910 square feet which was one of the lots across the street from their proposed lot, up to 14,000 square feet. Mr. Close informed the Planning Commissioners and the audience that Habitat for Humanity of Spartanburg had upgraded the aesthetics of the homes they build over the past few years which included the use of sim-plank or hardi-plank siding rather than vinyl; and shingles with slightly steeper roof angles; elevated slabs with brick foundations for a crawl space sort of look; larger front windows; upgraded front porch trim; concrete driveways, sidewalks and terraces; upgraded appliance packages and exterior storage rooms in the rear of the homes. He said they also construct their homes to have an Energy Star rating of 3.1 efficiency standards and certify each one. They believe that they not only build a solid home, but a home to compliment any neighborhood which included smaller homes. He distributed some photographs to the Planning Commissioners of homes that were a general indicator of homes Habitat had built over the past five years. Mr. Close said it was their practice when developing wooded lots, to maintain as many trees as were healthy and practical. The Union Street/Ponce de Leon property had many large, mature trees; but also there were many that had deteriorated and had fell and left old stumps behind. They also knew tree maintenance was expensive and they wished to create a stable situation for future home owners. He distributed two more photos of recent wooded lots they had developed two homes on a property to the Planning Commissioners; and he said the first one showed how they tried to preserve trees with a wooded property; and the second photo was one they had developed in an adjacent neighborhood on Salem Street. Mr. Close said Habitat homeowners worked hard in the process to qualify for one of their homes by meeting financial qualifications for a thirty year mortgage, and Habitat underwrites their loans at 0% interest. The applicants have to perform 350 hours of sweat equity and construction, and also includes classes and financial management and first time home buyer certification; participation in civic activities such as attending City/County Council meetings, and in some cases having completed the Citizens Academy. In closing he said they were before the Planning Commission because they wished to develop new homes and new home owners to be good neighbors in the community.

Planning Commission Questions:

- Mr. Kinard had a question about the interior lot width proposed at 80' and the outer lot width of 96' regarding the difference.

- Mr. Close said they wanted to create a larger buffer on the Union Street side than what was required, in order to maintain the vegetation on the Union Street side and seeking to preserve some of the aesthetics they knew the surrounding home owners wanted and also to preserve some level of privacy for the homeowner(s) that would live there.
- Mr. Kinard said he wanted to clarify that currently as the property was zoned, they could build one house on the property.
- Mr. Close said that was correct.
- Mr. Cunningham said regarding the buffer some of the trees were interspersed; and he asked if they planned to put anything in the landscape plan to plant something to buffer the noise and the view.
- Mr. Close said typically they provided a nice but cost effective landscape for Habitat homes; and what they did depended on which property they were developing. In this case they had not been through and staked out the location of where the two proposed homes would go; and they did not know exactly when they would start the development. He said depending on how many trees had to be removed; they would definitely come back and landscape. Mr. Close said he failed to mention earlier they had upgraded their landscaping; and they now put down sod in the front yards and always put shrubbery across the front of their homes to provide a nice attractive streetscape. They had not really discussed the possibility of creating an interior shrub line across the inside of that buffer space, which would be a nice idea if they have the money to do that.
- Mr. Pitts asked about the layout of the homes.
- Mr. Close explained their different types of floor plans, etc. to the Planning Commissioners; and their 3 bedroom, two bath homes were typically 1150 square feet; their 4 bedroom homes were typically 1250 square feet; and their story and a half home was 1200 to 1250 square feet.
- Mr. Cunningham asked about the time frame to build two homes on a lot.
- Mr. Close said once they started, approximately sixteen to twenty weeks for two homes, depending on the weather.
- Mr. Cunningham asked once the occupants moved into a Habitat home and became a homeowner, did Habitat have any role in the maintenance and upkeep of the homes.
- Mr. Close said they sold homes to families, so they became the homeowner, and they were limited to controlling their living situation. He said they did have in their mortgage documents and note a requirement that no business could be operated out of the homes, all vehicles on the premises had to be licensed and operable; and if for any reason a homeowner needed to sell the home, Habitat for Humanity had the First Right of Refusal to buy it back and place another Habitat family in it; so they did have that sense of control regarding their homes.
- Mr. Kinard asked whether or not there were any deed restrictions on the property.
- Ms. Rosario said not that Staff was aware of.
- Mr. Kinard asked if the properties would be titled in the homeowner's names, would they have to pay City taxes on the property.
- Mr. Close explained that even though Habitat was tax exempt; the home owner would not be tax exempt; and Habitat would lead the home owner through the process for 4% owner-occupied residency status; and those home owners would pay City taxes.
- Mr. Cunningham asked Mr. Close about Humanity's success rate regarding their homeowners.
- Mr. Close said they felt they did; and he said they went through a very rigorous process similar to what a bank would do to qualify a homeowner loan. However, they were not quite as restrictive because their people were low income, and would not be able to walk into a commercial bank and qualify for a loan. He explained with that said, 39 homeowners in Spartanburg had paid off their mortgages free and clear and now owned their homes; and now have a wealth asset they would not otherwise have

had, which could be passed down to their heirs. Habitat knew that behaviorally their homeowners took a massive step forward when they became owners of their own homes, and many of those benefits were accrued by the next generation. Mr. Close said they occasionally lost one and would have to foreclose just like anyone else; but their foreclosure rate was less than one per year.

- Mr. Epps asked was there a time restriction which a home owner could not sell their home or do anything to the property.
- Mr. Close said the restriction was only that Habitat had the Right of First Refusal; and he explained in the Note they had an equity share clause that said for the first 5 years if the homeowner wanted to sell the home, and if Habitat should allow that to happen; Habitat would get 100% of the accrued equity, and he said that was a declining scale out to 15 years. He said that meant the home owner would have to have lived in the home for 15 years before they could sell the home and keep all of the equity.
- Mr. Pitts asked wasn't there a fire station right across from the property; and if there would be any exiting issues.
- Mr. Close said there was a fire station approximately across the street; but the driveways they would construct would be on Ponce de Leon.

Mr. Wilson opened the public hearing and asked anyone who wished to comment on the request one way or another, to come forward and state their name and address for the record.

Dr. Stone suggested if anyone had any questions, the Board take note of them and then direct them to the petitioner after everyone had a chance to speak.

Mr. Wilson agreed with Dr. Stone.

- Mr. John Scherberger of 226 Ponce de Leon Avenue came forward and said he had lived there for 20 years. He said notices were only sent out to people within a 400' radius of the property, and there were only two or three homes that were within a 400' radius. He said Duncan Park was a very nice neighborhood that was quiet, child friendly and people friendly; and he took opposition to calling the Union Street area as "in decline". He had not seen the neighborhood decline during his 20 years there; and he felt it had remained essentially the same. He had no animus towards Habitat for Humanity, affordable housing or what might be called low income families. Mr. Scherberger said his opposition was three-fold: 1) It was a very nice neighborhood and was a nice wooded area. He did not know or care about the ethnic makeup, financial makeup, or the ownership of homes in the neighborhood; but knew there were renters and owners in the neighborhood. His point was exclusively to tear down trees that had been there for at least 100 years was criminal, and there was no reason for it. 2) His second opposition when he thought they were going to exit onto Union Street, had now been set aside by what he had heard tonight. However, because he had lived on Ponce de Leon for 20 years and Union Street was a 45 mph road; that making a right or left turn on Ponce de Leon was very dangerous because of the way cars tailed one another. He would oppose the request even if someone built a million dollar house on the property because he valued and cherished the woods and the wildlife on the property. If he could he would buy the property, in order to preserve it he would. 3) He did question why this particular lot had been chosen to have houses built upon it; and why they needed two houses. He was very opposed to tearing down the neighborhood. One reason he purchased his property twenty years ago was because it backed up to Duncan Park, and it had the nice wooded entrance. He felt if only one house was built on the property at the least, the least amount of trees would need to be cut down.
- Mr. David Bowers of 136 Ponce de Leon Avenue came forward and said he lived ten houses down from the proposed property and he objected to the rezoning because 1) it would set a precedent to allow the other properties to be rezoned and subdivided in an area that had been traditionally single family dwellings on fairly large lots; and 2) also the division of the lot would be done to maximize the revenue from the sale of the houses built on the two lots. He said it was reported on Go Upstate that originally three homes would be built on the property that was donated to Habitat; and now it had gone down to two homes, with the revenue of the sale of the homes to offset the cost of future construction. He felt that all of the property owners that had invested in the neighborhood should be protected by the zoning rules. He said rezonings changed neighborhoods; and although Planning Commissioners and

City Council Members would change from time to time; a rezoning would leave a lasting impression on their neighborhood.

- Ms. Jean Dunbar of 300 Rivermont Drive came forward and she lived near the far end near Ponce de Leon Avenue, and had lived there for over 40 years. She wanted to say for the record their area was not in decline, and she did not know the basis for the statement, however she took offense at the statement. She was opposed to the rezoning.
- Mr. Shawn Plummer of 105 North Park Drive came forward and said he had the following concerns with the development of this lot which were a) as far back as he could recall, and with the research he had done, the lot had never been developed upon; while there were multiple lots in Duncan Park that could be developed; and b) and the second concern was regarding the trees.
- Ms. Janice Doyle, who lived on Forest Avenue came forward, and said she had been President of the Forest Hills Neighborhood Association for approximately seven years; and said their property values had continued to escalate and they were not in a declining area. There were a lot of young people coming in to the neighborhood as well spending a lot of money on them. She was opposed to the request and asked if they could take the lot at the end of Ponce de Leon; what would keep them from taking the lot at their entrance on Forest Avenue which she said would be devastating for all of them. Ms. Doyle said it was important for the residents to be able to keep their park-like feel.
- Ms. Danielle Hampton of 840 Union Street came forward and said her property was next door to this lot, and her biggest concern was the trees and there had never been anything developed on this property. Ms. Hampton wished the County Foundation had donated the property to SPACE in order to keep the trees. She also felt if they had to build a house that just one would result in removing less trees.

Mr. Wilson, the Chair informed the audience they appreciated and wished to hear from everyone who wished to speak, but asked the public to please keep any additional comments to new comments if possible.

- Mr. Michael Green of 197 North Park Drive came forward and said he moved here from California to get away from all the density and now that he had purchased here, they were trying to take the trees away and space away. He said only noticing owners within a 400' radius was like noticing only 3 or 4 houses; and asked was that state law.

Ms. Rosario, Senior Planner said it was actually only 300 feet by law, but the Planning Department always sent notices to owners within a 400' radius of the property.

- Mr. Green said half of that was the Fire Department, and he just wanted to keep the trees. He also said the neighborhood was not in decline either, and he took great offense at that. He said the City was doing that because then they could have their way and push this through.

Mr. Wilson asked if there were any other comments. Being no more comments, Mr. Wilson asked the applicant if he wished to address the comments that had been made.

Mr. Close came forward and said to make two points in clarification relative to some of the comments that were made; and said first there was no profit – they were a non-profit institution. They do sell homes, but as he mentioned earlier they sell them for zero interest, and collect mortgage payments each month and use that money to further the Habitat's mission. Secondly, he apologized for not mentioning this in his initial comments, relative to property values – the method by which Habitat homes were priced was by accessing Fair Market Value through an appraisal process. He said they ordered an appraisal for every new Habitat home just like the banks did; and then whatever number that appraisal came back at was the selling price of the home, so they would not have any negative impact on surrounding property values.

Mr. Wilson said he would now close the public hearing and go to Board Deliberation, unless any of the Planning Commissioners had any questions for Staff.

Board Questions/Deliberation:

- Dr. Stone said he would like to ask the City Manager a policy type question; and he asked him if he would say that two of the big issues the City was dealing with were good quality housing and long-term inter-generational poverty.
- The City Manager said absolutely; those were two of the top concerns the City had.
- Mr. Wilson said to that point for some time now they had discussed and talked about the fact there was a real shortage of market rate housing within the City, and Habitat played an important role. He also thought many of the concerns that had been brought up by the public had been addressed tonight to the best of Habitat's ability. Mr. Wilson saw it as an unoccupied lot, and it provided a service that was needed in the City with a quality product.
- Mr. Epps asked Staff if they could pull up the proposed lot on the Assessor's page and zoom in on the parcels across the street to measure those.
- Dr. Stone said he had looked those up himself and wondered about them regarding the zone/smaller sized lots.
- Ms. Rosario measured the lot across the street and said it was roughly 8,000 square foot.
- Mr. Kinard said regarding the tree issue that just about everyone who spoke tonight had issue with; that he understood that concern. He said however, as the property stood currently it was private property, and any owner of the property could go in right now and cut every tree they wished on that property, and not even have to come before the Planning Commission. Mr. Kinard said Habitat for Humanity had committed to preserve as many of the trees that they possibly could; which was more than they were required to do.
- Mr. Wilson said he knew one or two people had commented they felt the Planning Commission should designate the area as green space and preserve it; and he said they did not have the ability to do that.
- Dr. Stone said he did not think Duncan Park was a declining neighborhood; nor did he think anyone else thought that. He thought Union Street looked kind of rough in spots, particularly between there and the downtown, and he hoped that was something the City was going to work on. He said what he used as a guide was the questions he had asked the City Manager earlier, which was would it provide more housing in the City and would it come on the books for the City where the resident would pay city taxes. Dr. Stone said the question regarding precedence which he felt was worth thinking about, to him a rezoning was a discretionary act of City Council, no one was automatically entitled to a rezoning; and that was why they were having a hearing. He explained if the request was passed at tonight's meeting, there would be another public hearing before the Mayor and Council and that was part of the democratic process. To him providing good quality housing in the City was of paramount importance; and it would be the same size as every other lot in the vicinity. He felt what the upcoming Comprehensive Plan would tell them was that perhaps all the rest of the lots in the area should have been zoned as R-8 SFD as well, as opposed to R-15 SFD.
- Mr. Cunningham said he had always been a big supporter of trees and had researched the issue as follows: 1) trees were finite (they lived for a certain amount of time and then they must be taken down because of safety issues; 2) if nothing was done to the trees on the proposed lot, they would become hazardous; 3) the developer or builders had to be careful which trees they leave, otherwise they would create an issue for any home owner. He felt the judicious use of the landscaping, and selection of the trees by Habitat was a real positive thing; and he did not think most developers would take the time to even consider that. He felt the barrier on Union Street was a good idea; and in his opinion it would be enhanced with some plantings. He said regarding the traffic comment, he lived near the site and he was very familiar with the area. He drove over there and made left and right hand turns out of Ponce de Leon Avenue, and although it was not during rush hours, there was some validity to the comment. He said with growth there were certain things that needed to be addressed like traffic flow which he felt the City would be able to address. Mr. Cunningham felt Habitat was a very worthwhile organization and he felt the homes as he saw them would enhance the street and the area.

- Dr. Stone asked Mr. Cunningham when he was over at the property if he saw any issues with site lines that would be enhanced by taking down some of the trees.
- Mr. Cunningham said possibly turning left he felt it could be enhanced by taking some back a bit on the corner.

Mr. Wilson moved to approve the request as presented by Staff; and he was seconded by Mr. Epps. The motion was unanimously approved by a vote of 6 to 0.

Mr. Wilson said Staff would schedule this request for another public hearing and First Reading of Ordinance before the Mayor and City Council on December 9, 2019 at 5:30 P.M.; and the property would be re-posted, re-advertised, and property owners would be re-noticed. He said if it passed First Reading on December 9th; it would go for a Second/Final Reading of Ordinance at the January 13, 2020 City Council Meeting.

Ms. Grothe, Associate Planner came forward and said she would like to clarify that she did not think the Duncan Park Neighborhood was in decline at all; and she felt it was a lovely neighborhood. She explained about her opinion regarding that part of Union Street; and she sincerely apologized if she had offended anyone.

[Editor's Note:] This is all I have done so far regarding the November 21, 2019 Meeting Minutes; which is just the first case from the Agenda. (Julie Roland, Admin. Asst.)



City of Spartanburg
Planning Department

Application for a Rezoning Change

RZC 19-01100004

LANDOWNER	APPLICANT	AGENT
Habitat for Humanity 2270 S. Pine Street Spartanburg, SC 29302	Same as owner	Leland Close, PhD Executive Director

PARCEL DATA	
Tax Map ID: ▪ 7-17-01 Address: ▪ 0 Union Street Existing Zoning Districts: ▪ R-15 (single family residential) Proposed Zoning Districts: ▪ R-8 SFD (general residential district- single family district)	Parcels: ▪ 002.00 Overlay District: ▪ N/A

APPLICATION SUMMARY

The project site is an approximately 23,310 square foot vacant lot on the corner of Ponce de Leon Avenue and Union Street. The purpose of this rezoning request is for the applicant to split the parcel into two and develop each of the lots with single family homes.

A search of County records revealed that the property and surrounding subdivision was originally platted in 1924. It appears that the subject parcel was at one time two lots with each of them measuring 66 feet by 190 feet (12,540 square feet) and fronting Union Street. The overall character of the original subdivision reflects lots ranging



from 10,500 square feet to 14,000 square feet with a width of 70 feet. Looking at the neighborhood, it appears to have kept most of its original layout with the exception of the subject parcel and another parcel within the immediate vicinity, both of which appear to have been merged to create larger lots. The existing

R-15 zoning would allow for one home to be placed on the lot and developed as a matter of right, without public engagement.

Currently Ponce de Leon Avenue is comprised of modest, single family homes with a zone designation of R-15. Union Street, a major arterial in and out of Spartanburg is in a state of decline with a number of vacant and abandoned parcels and buildings. The nearby zoning along Union Street is mostly commercial (B-1), with a small number of single family zoned properties. Nearby uses include a small commercial strip center, vacant single family zoned properties and the City fire station.

The applicant is seeking a rezone from R-15 to R-8 SFD in order to obtain the best and highest use of the existing parcel. With the rezone, the applicant is proposing to split the existing 23,310 square foot lot into two lots; one 12,854 square foot lot and one 10,662 square foot lot. The larger lot will be located nearest the corner and will have a frontage of 96.43 lineal feet and the interior lot a frontage of 80 lineal feet. The applicant, Habitat for Humanity, is an international, non-governmental and nonprofit organization whose mission is to bring people together to build homes, communities and hope. The two proposed homes will be built by Habitat volunteers and along with the new home owners who, after a rigorous background check and vetting process, are required to put "sweat equity" hours into building their future home.

REQUIRED FINDINGS

Historically, the City of Spartanburg has required rezoning applications to meet certain criteria and the Planning Commission must make the following findings of reasonable conformance in order to recommend a change of zoning:

Staff offers the following analysis relating to each of these required findings:

ANALYSIS OF REQUIRED FINDINGS

The Zoning Ordinance enables Council to change the Zoning Ordinance or Map following public notice and hearing. The Planning Commission reviews and recommends action on proposed zoning changes at its regularly scheduled meetings. The following comments are based on established criteria:

1. *Consistency (or lack thereof) with the Comprehensive Plan* – The 2004 Comprehensive Plan has the subject parcel and surrounding parcels on Ponce de Leon Drive listed as Low Density Residential. The Land Use element provides the following description of Low Density Residential: intended primarily for single family residential use, with a density no greater than for units per acre. With this description in mind, calculations reveal that the subject lot could support up to two units and be within the required density. Therefore, the proposed rezoning is consistent with the 2004 Comprehensive Plan.
2. *Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood* – The present character of the area surrounding the project site, is single family residential (along Ponce de Leon) and commercial uses along Union Street. Approval of the request would allow the property owner to ultimately construct two single family homes; one on each of the lots. The surrounding residential properties range in size from 10,500 square feet to 14,000 square feet, most of them having kept their original configuration from the 1924 subdivision. With the rezone, the new lots will fall well within the range of what currently exists within the neighborhood; one 12,854 square foot lot and one 10,662 square foot lot. The proposed widths of the lots will also be compatible with the existing neighborhood. The majority of the lots are approximately 70 feet in width. The proposed lots will be 96.43 feet in width and 80 feet in width.

It is important to note that the majority of the existing parcels along Ponce de Leon do not meet the district standards for the R-15 zone district. This district requires a minimum lot size of 15,000 square feet and a minimum lot width of 90 feet. Therefore, most of the lots could be considered legal non-conforming. It is staff's recommendation that from a policy standpoint, this particular neighborhood is a candidate for a rezone to R-8 SFD, which would make the non-conforming properties conforming as the minimum lot size is 8,000 square feet and the minimum lot width is 60 feet.

3. *Suitability of the property affected by the amendment for uses permitted by the district that would be made applicable by the proposed amendment* – If the zone change is granted, any subsequent lot split would require review and approval by the Planning department. Similarly, the construction of any new homes would require submittal of a building permit with appropriate City review.
4. *Marketability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment* – The marketability of the property would likely increase with the zoning change. The proposed zoning change will allow for additional lots in the neighborhood to be created from any existing oversized lots, much like the subject lot. This could help spur future development in an area that is in decline. Furthermore, additional units could be constructed and would help ease the existing housing shortage the City is experiencing. Specifically, this rezone will create two new affordable units that will serve to provide housing to some of Spartanburg's low income families.
5. *Availability of sewer, water and storm water facilities generally suitable and adequate for the proposed use* – Both water and sanitary sewer services are available to this site. The site will be reviewed by City staff during the building permit process for compliance with applicable regulations.

STAFF'S ANALYSIS & RECOMMENDATION

According to Section I Adoption and Interpretation of the City Of Spartanburg Zoning Ordinance, § 105 Purpose, "The purpose of the zoning ordinance is to implement the land use element of the comprehensive plan for those purposes set forth in S.C. Code § 6-29-710." This S.C. Code section states that the "Zoning ordinance must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare" of properties inside the City Limits.

One of the reasons for the Comprehensive Plan and City Zoning Ordinance is to have zoning classifications that allow certain uses in conjunction with adjacent properties that may be considered "less intense" uses. For this reason, the purpose is to protect the less intense uses from adverse impacts on their property with regard, but not limited to, noise and/or light pollution, traffic congestion, and any other adverse impact that a higher intense use could cause on a surrounding less intense use.

Based on the above findings, staff concludes and recommends that the proposed property be rezoned from R-15 to R-8 SFD with the intent to develop the site with two affordable housing units.

WRITTEN PUBLIC COMMENTS

Notices were sent to property owners within a 400 ft. radius of subject properties. There have not been any written arguments in favor or opposition to the request.

FUTURE PROCESS

Under State law, if the Planning Commission recommends approval of this application, staff will schedule the matter for another public hearing and First Reading of Ordinance by City Council on December 9, 2019. If the matter receives first reading approval, it will then go before the City Council for a Second and Final Reading on January 13, 2020. The public hearings will be publicly noticed.

If the Planning Commission recommends against the application, the negative recommendation will be forwarded to the City Council. In this case, a public hearing before the City Council will be conducted only if the applicant submits a written request within a two week period following the Planning Commission's action.

On November 21, 2019, the Planning Commission may act to support or oppose the application, with or without changes to the proposal. The Commission could also continue the matter if additional information, testimony or dialogue is deemed necessary.

ATTACHMENTS:

- A) Case Photos
- B) Hearing Maps
- C) Application

PREPARED BY:



Rachel E. Grothe, MCRP
Associate Planner/Planner II

11-15-2019

DATE



City of Spartanburg Planning Department
Zoning Map Amendment Supplemental
Application Form

Post Office Box 1749 O: (864) 596-2068
Spartanburg, SC 29304 F: (864) 596-2360
E: nrosario@cityofspartanburg.org

Name of Development Habitat for Humanity - Corner of Union St and Ponce de Leon
Current Zoning District R-15
Zoning District being Requested R-8

ALL OF THE FOLLOWING ITEMS MUST BE ATTACHED in order for this application to be complete.

- Narrative addressing reasons for rezoning
- A boundary map of subject property prepared and sealed by a registered land surveyor. A reproducible copy of this map, no larger than 11" x 17", along with a PDF format on a CD must also be submitted.
- Certification of owner(s) consent, if applicable
- Filing Fee:

Single-Family Rezoning	\$100
Multi-Family Rezoning	\$150
Business Rezoning	\$150
PDD Rezoning	\$200

For Official Use Only	
Date Received <u>10-29-19</u>	Time _____
Accepted by <u>Julie Pollard</u>	Master Tracking Number <u>RZSF 1901100004</u>

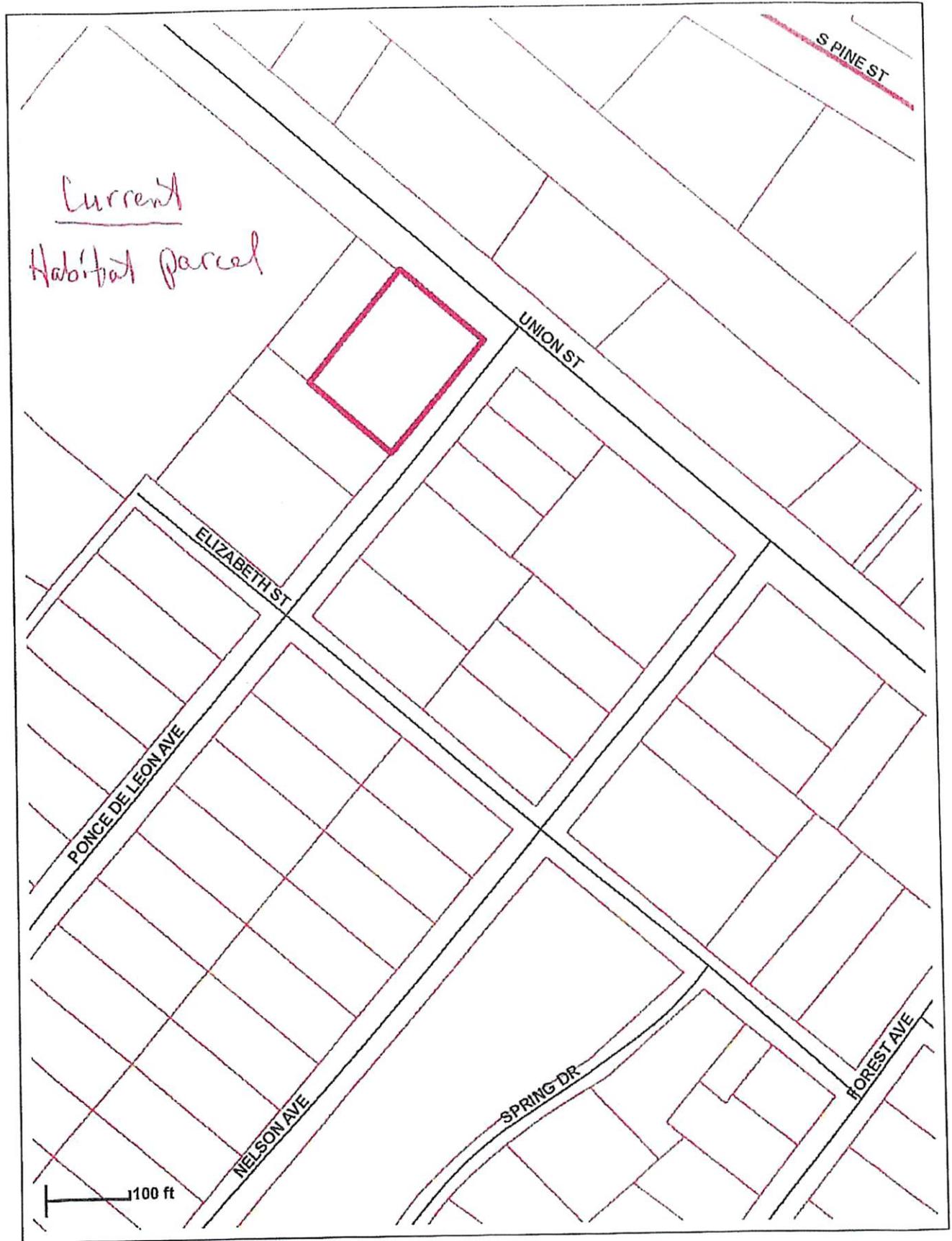


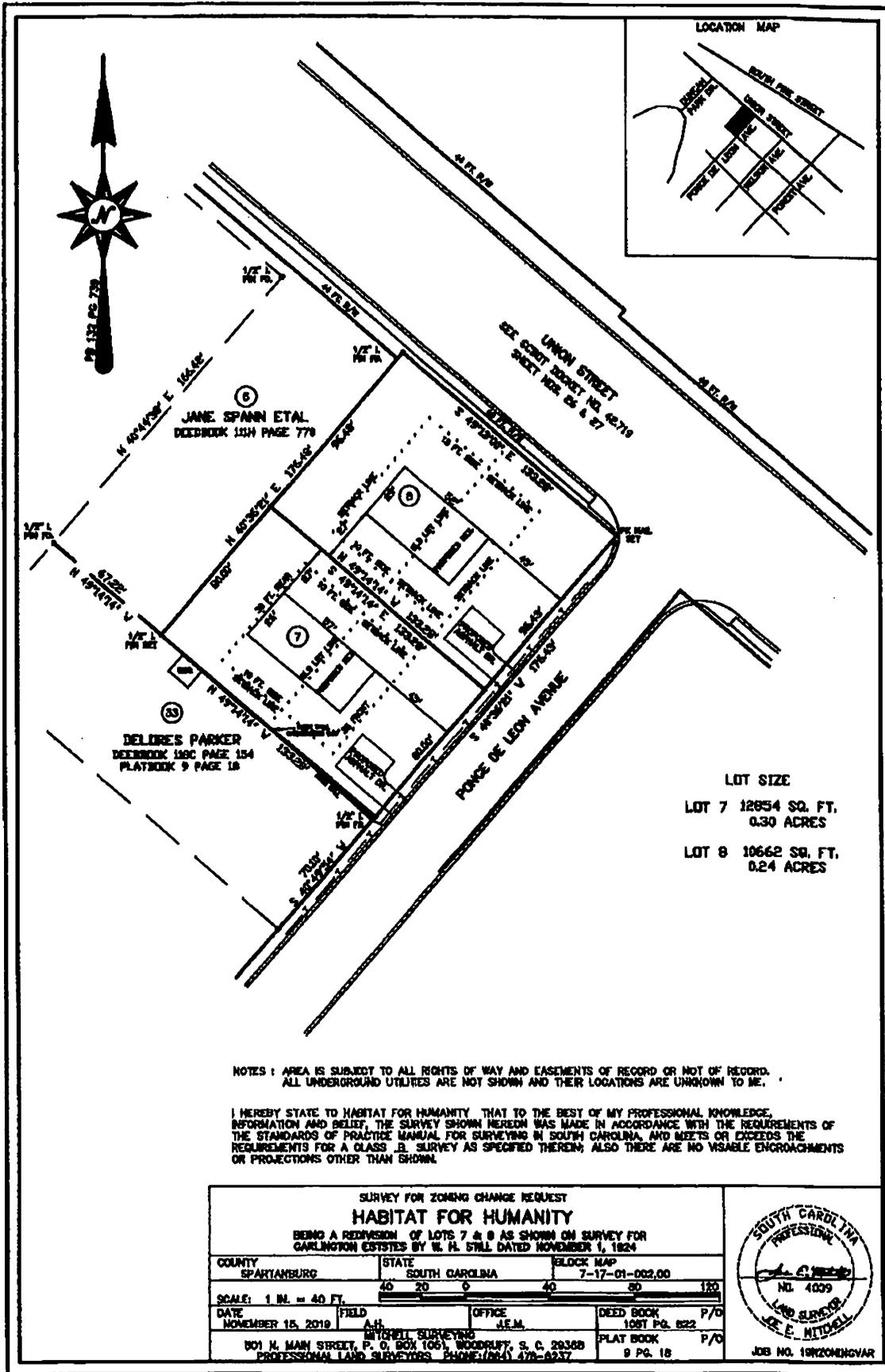
Date: October 23, 2019
To: City of Spartanburg Planning Department
From: Habitat for Humanity of Spartanburg
Subject: Request for Zoning Variance; Support Narrative

Habitat for Humanity of Spartanburg requests a variance from Zone R-15 to Zone R-8 SFD for the parcel of land at the corner of Union Street and Ponce de Leon Avenue; parcel ID 7-17-01-002.00. This parcel was donated to Habitat by the Spartanburg County Foundation for the purpose of constructing Habitat homes for qualified low income residents who complete the Habitat for Humanity Partnership Process.

Following are comments specific to the criteria of Zoning Ordinance 603.3 (A)(2):

- a) The parcel, measuring approximately 23,310 sq. ft., was gifted to Habitat for Humanity by The Spartanburg County Foundation for the purpose of constructing new, safe, energy efficient, affordable homes for low income families who qualify for home ownership through Habitat. Habitat builds attractive, bungalow style homes averaging 1150 sq. ft. and typically builds on lots approximately 50 feet wide. As the parcel is currently zoned R-15 (minimum lot size 15,000 sq. ft.) only one home could be built on the lot unless it is subdivided according to this request. With a variance to R-8 SFD (minimum lot size 8000 sq. ft.) we could subdivide into two lots and construct two new Habitat homes. We propose to subdivide the parcel into a corner lot measuring 96.43' frontage (12,854 sq. ft.) and an interior lot measuring 80.00' frontage (10,662 sq. ft.). We would then maintain a buffer of existing vegetation on the Union Street side for privacy and noise reduction.
- b) The parcel as it exists is 23,310 sq. ft. and while the surrounding neighborhood of Duncan Park is all zoned R-15, the preponderance of neighboring lots do not meet the minimum lot size requirement. Specifically, the lot next door is 14,000 sq. ft. and the lots directly across Ponce de Leon Avenue range from 7910 – 8540 sq. ft. Numerous lots farther down Ponce de Leon are 12,775 sq. ft.
- c) Our non-profit purpose is to serve as many families as possible with affordable housing, and the understanding with the donor, The Spartanburg County Foundation, was that we could construct multiple homes on this parcel of land. If we are only able to construct one home, the lot will be underutilized and fewer deserving families will be served in this very attractive residential area. Further, construction of a modest 1150 sq. ft. home on such a large lot would likely appear out of place relative to the other homes in the neighborhood.
- d) No. The two homes planned for this parcel, if the variance is granted, will be new, attractive, energy efficient bungalow style homes and the lot sizes will better reflect the existing homes along Ponce de Leon Avenue. Not only will this development not be detrimental to the nearby properties, the sizes and new construction will be complementary to the neighborhood.
- e) If the board wishes to attach particular conditions to the location, character, or other features of the development, we will certainly seek to comply. However, our purpose as a non-profit, affordable housing producer limits our ability to make large modifications. We are also limited in the number of available designs and floor plans we can build.

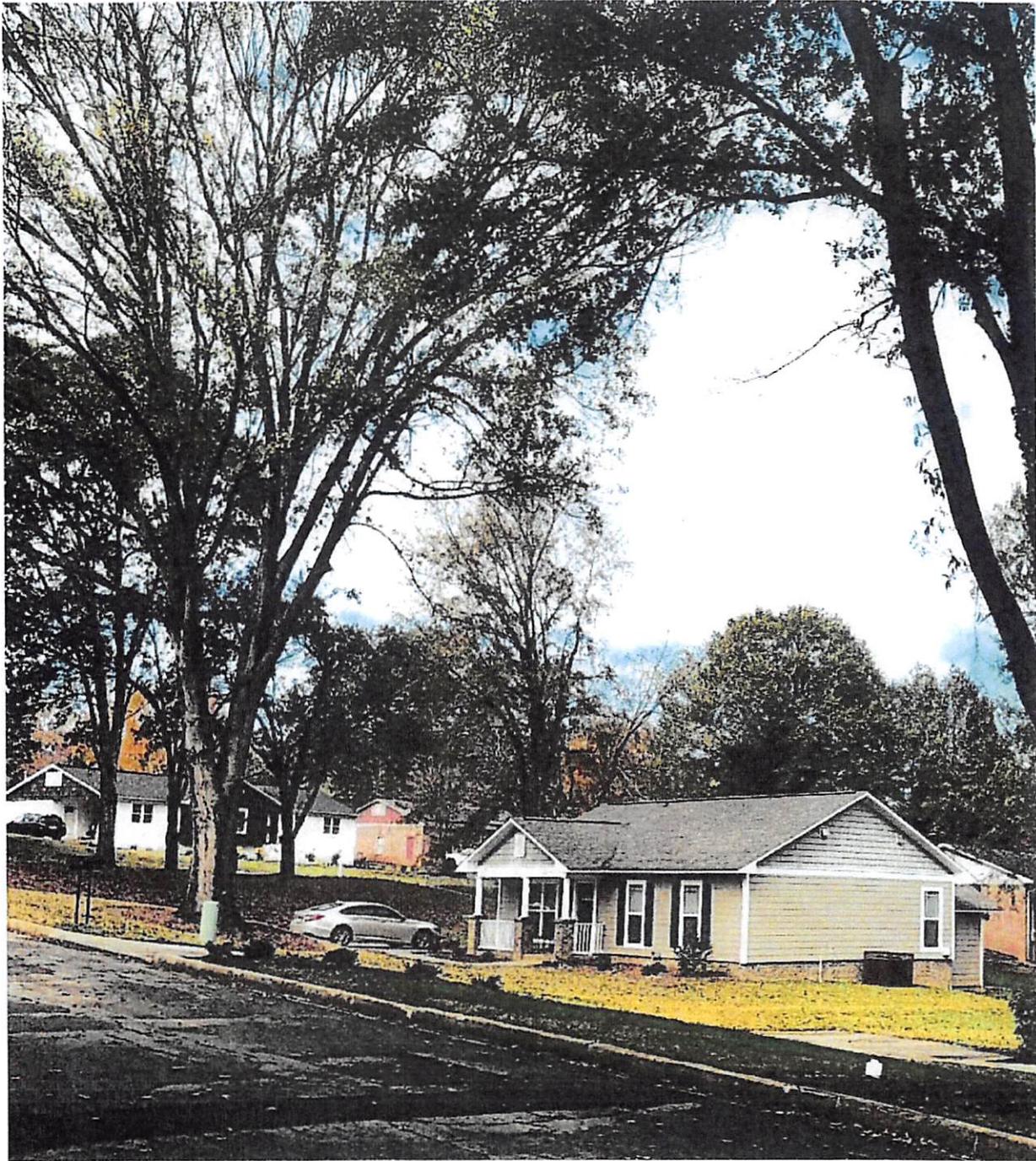








Recent Habitat project



Recent Habitat project

VII. B



REQUEST FOR COUNCIL ACTION

TO: Chris Story, City Manager

FROM: Natalia Rosario, Planning Staff

SUBJECT: The Planning Department has received a request to consider annexation and zoning of tax map parcel #'s 7-21-00-004.00 & 7-21-00-004.04, to be annexed into the City of Spartanburg as an R-8: General Residential Planned Development District. Phillip Day and Bob Barreto, Falcon Real Estate Development on behalf of Tiger Eye Holdings, LLC, Owner.

DATE: December 4, 2019

SUMMARY: Under South Carolina State Law relating to annexation, the Planning commission must “sign off” on the zoning of the properties that are proposed to be annexed into the City of Spartanburg if they are not being annexed in as R-15: Single Family. The City has received a 100% annexation petition from Tiger Eye Holdings LLC, developer and owner, in order to develop upon the property a single family housing subdivision of 202 units. The property is requested to be annexed and developed under the R-8: PDD code, which permits the development of the property at an approximate 6.3 units per acre, where the proposed development will have a unit density of 1.63 units per acre. This property is not contemplated by the 2004 Comprehensive Plan, although it is adjacent to the existing Meadowinds and Lakes of Canaan Subdivisions, also zoned R-8: PDD. The development of this property as a single family subdivision is therefore contextually appropriate with existing development. Surrounding tracts are currently vacant, and the development of this property is likely to spur additional development in this area/along the Southport Road corridor.

According to the SCDOT 2018 Traffic Counts, Old Canaan Road Ext. sees an average of 1,250 trips per day. The given assumption for number of trips produced by a single family household (the largest trip generator of any single use) is around ten trips per day, including mail delivery, trash pickup, and other services, as well as trips produced by the resident of the home. At full build out, this subdivision can be expected to add around 2,000 more trips per day along this corridor. A full traffic study would need to be undertaken in order to understand in which direction these trips will go – while that is not a requirement of the Planned Development District Ordinance, Planning Commission may request one as a condition on the project.

Staff is satisfied that the use of the property and those allowed under the R-8: PDD (Single Family Subdivision) are appropriate for this zone. Please note that the lot is currently vacant, and the developer has provided preliminary civil site plans, and intends to meet or exceed City of Spartanburg buffer, open space, and walkability standards.

PLANNING COMMISSION RECOMMENDATION: The request was endorsed by the Planning Commission on November 21st, 2019 by a vote of 6 to 0. Staff’s recommendation concerning this application is explained in detail in the attached staff report to the Planning Commission.

ADDITIONAL INFORMATION: Staff Report from the November 21st, 2019 Planning Commission with attachments are included. In addition, enclosed is a proposed Ordinance in the event that Council approves Annexation and Zoning Designation.

BUDGET AND FINANCE DATA: N/A

AN ORDINANCE

ACCEPTING THE PROPERTY OWNED BY TIGER EYE HOLDINGS, LLC, AND BEING LOCATED AT 190 GASKINS ROAD, AND IS FURTHER IDENTIFIED ON SPARTANBURG COUNTY TAX MAP AS 7-21-00-004.00 AND 7-21-00-004.04 AS A PART AND PARCEL OF THE CITY OF SPARTANBURG AND DECLARING SAID PROPERTY ANNEXED TO AND A PART AND PARCEL OF THE CITY OF SPARTANBURG.

WHEREAS, heretofore, the City of Spartanburg, on November 1, 2019, received an Annexation Agreement Covenant and Restriction Petition, filed by Falcon Real Estate Development, Applicant, on behalf of Tiger Eye Holdings, LLC, Owner, requesting that the property described in the Petition be annexed to the City of Spartanburg; and

WHEREAS, the City Council of Spartanburg has caused an investigation to be made of said property and has found that said property is contiguous to the City of Spartanburg and that it would be in the best interest of the City of Spartanburg if said property be annexed hereto in accordance with Section 5-3-150 of the Code of Laws of South Carolina, 1976; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Members of Council of the City of Spartanburg, South Carolina, in Council assembled:

Section 1: That the Petition of Falcon Real Estate Development, dated November 1, 2019, for the annexation of the property hereinafter described to the City of Spartanburg be accepted.

Section 2: That the property hereinafter described is hereby declared annexed to the City of Spartanburg and a part and parcel of said City with full privileges accorded to and responsibilities required of said area.

Section 3: That said property is described as follows:

Parcel One

All that certain piece, parcel or lot of land, lying situate and being in the State of South Carolina, County of Spartanburg, being shown and designated as 112.918 acres, more or less, on a Boundary Survey for First Baptist Church of Spartanburg prepared by Neil R. Phillips & Company, Inc., dated September 20, 2013 and recorded August 4, 2015 in Plat Book 170 at Page 141 in the Register of Deeds Office for Spartanburg County, South Carolina.

This being the same property conveyed to First Baptist Church of Spartanburg, S.C. by deed to Dr. A.D. Chudd dated December 31, 1954 and recorded in Deed Book 20-Y at Page 323 in the Register of Deeds Office for Spartanburg County, South Carolina, and by deed of Emily C. Creal dated November 18, 1965 and recoded in Deed Book 31-X at Page 320 in the Register of Deeds Office for Spartanburg County, South Carolina.

Block Map #7-21-00-004.00 (190 Gaskins Road)

Parcel 2

All that certain piece, parcel or lot of land, lying situate and being in the State of South Carolina, County of Spartanburg, being shown and designated as "Tract B" containing 10.857 more or less, on a Boundary Survey for First Baptist Church of Spartanburg prepared by Neil R. Phillips & Company, Inc., dated March 6, 2015 and recorded March 17, 2015 in Plat Book 169 at Page 604 in the Register of Deeds Office for Spartanburg County, South Carolina.

This being the same property conveyed to First Baptist Church of Spartanburg, S.C. by deed of Les McLean Development Company Inc. of South Carolina a/k/a Les McLean Development Company, Inc. of South Carolina,

dated March 13, 2015 and recorded in Deed Book 108-M at Page 165 in the Register of Deeds Office for Spartanburg County, South Carolina.

Block Map #7-21-00-004.04

Together with the right of ingress, egress and regress, in, over and through that certain 50 foot road right-of-way as shown on the aforesaid plat. See that certain Driveway Right of Way Agreement recorded in Deed Book 108-M at Page 167 in the Register of Deeds Office for Spartanburg County, South Carolina.

Block Map # P/O 7-21-00-005.01

TO HAVE AND TO HOLD all and singular the said premises before-mentioned unto the said Grantee(s), and the Grantee's(s') heirs (or successors) and assigns forever. And the Grantor(s) do(es) hereby bind the Grantor(s) and the Grantor's(s') heirs (or successors), executors and administrators to warrant and forever defend all and singular the said premises unto the Grantee(s) and the Grantee's(s') heirs (or successors) and assigns, against the Grantor(s) and the Grantor's(s') heirs (or successors) and against every person whomever lawfully claiming or to claim the same or any part thereof, except as to restrictions and easements of record, if any.

The County Block Map Number of the above tract of land is 7-21-00-004.00 and 7-21-00-004.04. (See attached plat).

Section 4: That upon annexation, the property shall be zoned as Zone R-8 PDD (General Residential Planned Development District).

Section 5: This Ordinance shall be effective upon its adoption by the City Council of the City of Spartanburg, South Carolina.

DONE AND RATIFIED THIS ____ DAY OF _____, 2020.

Junie L. White, Mayor

ATTEST:

Connie S. McIntyre, City Clerk

APPROVED AS TO FORM:

Robert P. Coler, City Attorney

__/__/__ (First Reading)

__/__/__ (Second Reading)



Planning Department

440 S Church St.
Rm 112 & 113, Suite A
Spartanburg, SC 29306
P.O. Drawer 1749
Spartanburg, SC 29304
(864) 596-2071
(864) 596-2068
(864) 596-2360
www.cityofspartanburg.org

DEPARTMENTAL MEMO

To: All Planning Commissioners
From: Natalia Rosario, Planning Staff
Planning Department
Subject: Zoning Classification/Annexation: TMS#7-21-00, Parcels 004.00 & 004.04.
Located on 'o' Old Canaan Road Extension.
Date: Monday, November 18, 2019

APPLICATION SUMMARY

Under South Carolina State Law relating to annexation, the Planning commission must "sign off" on the zoning of the properties that are proposed to be annexed into the City of Spartanburg if they are not being annexed in as R-15: Single Family. The City has received a 100% annexation petition from Tiger Eye Holdings LLC, developer and owner, in order to develop upon the property a single family housing subdivision of 202 units. The property is requested to be annexed and developed under the R-8: PDD code, which permits the development of the property at an approximate 6.3 units per acre, where the proposed development will have a unit density of 1.63 units per acre. This property is not contemplated by the 2004 Comprehensive Plan, although it is adjacent to the existing Meadowinds and Lakes of Canaan Subdivisions, also zoned R-8: PDD. The development of this property as a single family subdivision is therefore contextually appropriate with existing development. Surrounding tracts are currently vacant, and the development of this property is likely to spur additional development in this area/along the Southport Road corridor.

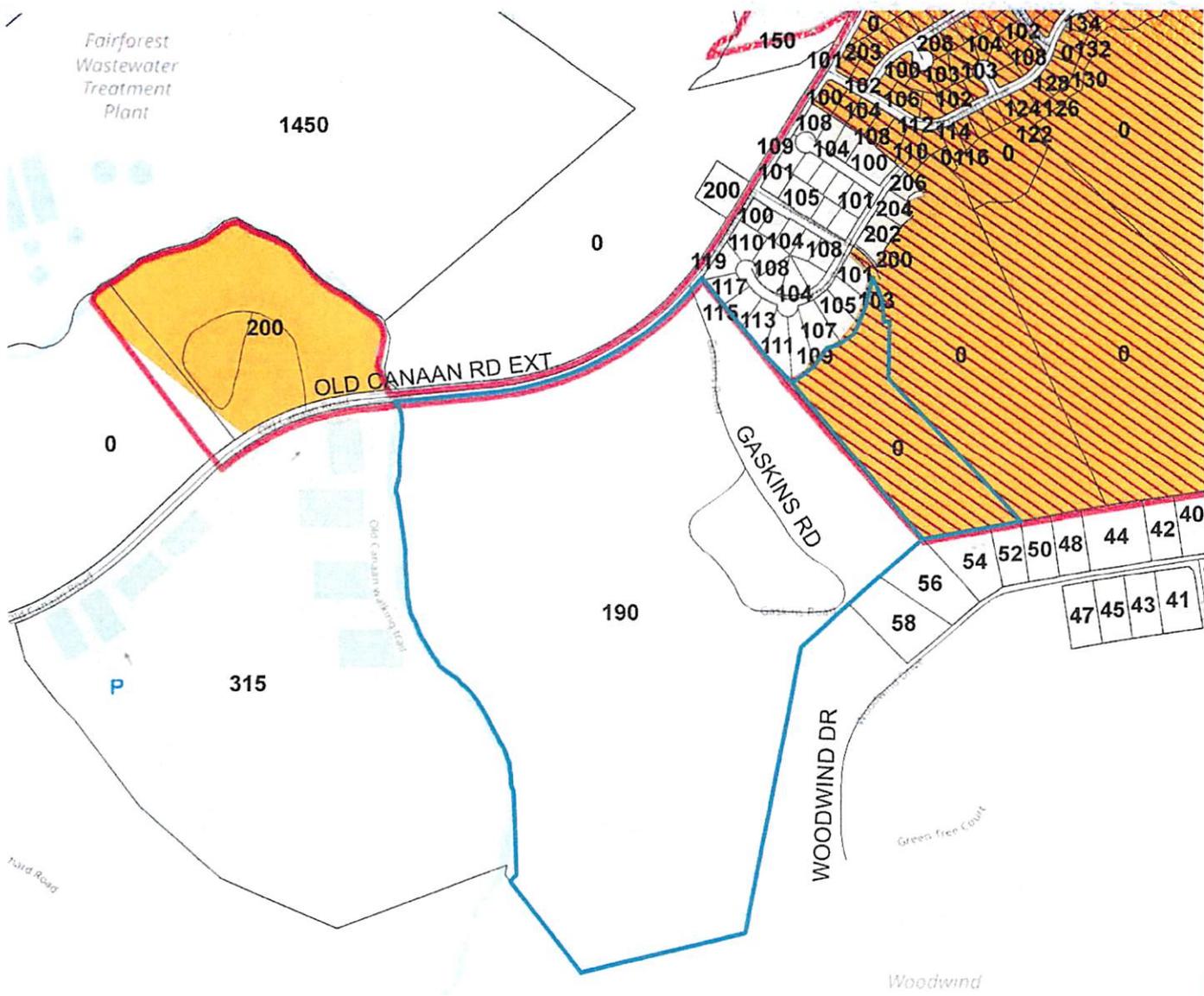
According to the SCDOT 2018 Traffic Counts, Old Canaan Road Ext. sees an average of 1,250 trips per day. The given assumption for number of trips produced by a single family household (the largest trip generator of any single use) is around ten trips per day, including mail delivery, trash pickup, and other services, as well as trips produced by the resident of the home. At full build out, this subdivision can be expected to add around 2,000 more trips per day along this corridor. A full traffic study would need to be undertaken in order to understand in which direction these trips will go - while that is not a requirement of the Planned

Development District Ordinance, Planning Commission may request one as a condition on the project.

Staff is satisfied that the use of the property and those allowed under the R-8: PDD (Single Family Subdivision) are appropriate for this zone. Please note that the lot is currently vacant, and the developer has provided preliminary civil site plans, and intends to meet or exceed City of Spartanburg buffer, open space, and walkability standards.

Should the Planning Commission choose to recommend this annexation and accompanying zone favorably to City Council, it will be heard on December 9th, 2019 and January 13th, 2020, with both hearings taking place in City Council Chambers in City Hall, at 145 W. Broad Street Spartanburg SC, at 5:30 PM.

CC:
FILES



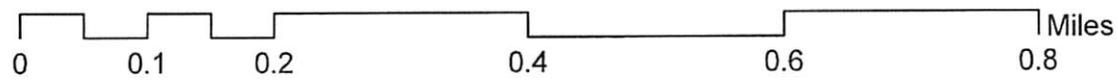
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- <all other values>
 - COLL
 - COUN
 - INTE
 - MAJO
 - MINO
 - City Limits
 - Parcel
 - HD
 - LW
 - PDD
 - SFD
 - DT-3: Sub-urban District
 - DT-4: General Urban District
 - DT-5: Urban Center District
 - DT-6: Urban Core District
 - B-1: Neighborhood Shopping District
 - B-3: General Business District
 - B-4: Heavy Commercial District
 - GID: General Institutional District
 - Civic: Civic/Landmark District
 - I-1: Light Industrial District
 - I-2: Heavy Industrial District
 - LC: Limited Commercial District
 - LOD: Limited Office District
 - R-6: General Residential District
 - R-8: General Residential District
 - R-12: General Residential District
 - R-15: Single Family Residential



© OpenStreetMap (and) contributors, CC-BY-SA

**City of Spartanburg
Planning Commission Hearing Notice**

**for NOVEMBER 21st 2019 at 5:30 PM
in City Council Chambers
145 W. Broad Street
Spartanburg SC 29304**



**Proposed Annexation and Planned Development
Single Family Neighborhood
TMS #7-21-00-004.00 & 7-21-00-004.04**

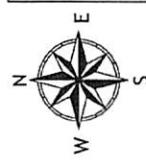
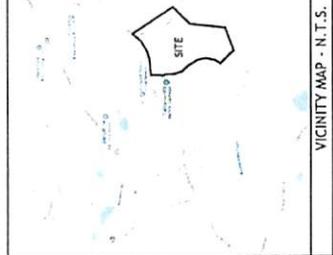
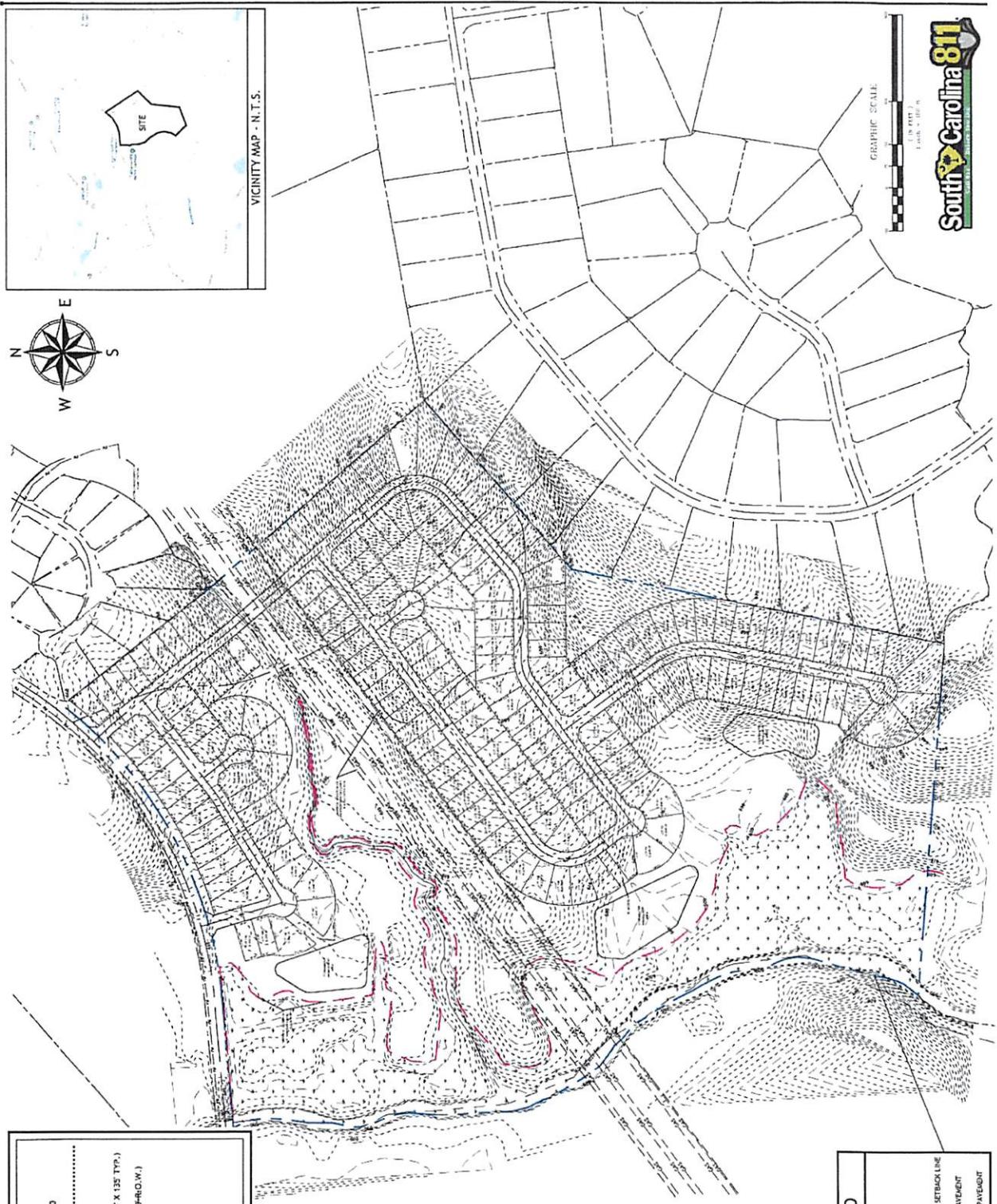
SITE DATA

TAX MAP NO.: 7-21-00-004.00
 TOTAL AREA:
 ZONING: UNCHECKED
 TOTAL UNITS: 190 UNITS (67' X 135' TYP.)
 PROPOSED ROADWAY:(66'-R.O.W.)
 SETBACKS:
 OLD CANAAN ROAD: 30'
 SIDE SETBACK: 15'
 SIDE SETBACK: 5'
 SECONDARY SIDE: 10'
 REAR SETBACK: 20'

*LAYOUT SUBJECT TO P.C. APPROVAL

SITE PLAN LEGEND

- OPEN SPACE
- PROPERTY LINE
- PROPOSED BUILDING SETBACK LINE
- EXISTING EDGE OF PAVEMENT
- PROPOSED EDGE OF PAVEMENT



GRAPHIC SCALE
 1" = 100 FT.
 1" = 200 FT.



OLD CANAAN ROAD TRACT
 Old Canaan Road & Gaskins Road
 Spartanburg, SC 29306

PRELIMINARY LAYOUT
OVR-2

blue WATER
 CIVIL design
 718 Lowndes Hill Road • Greenville, SC 29607
 www.bluewatercivil.com • info@bluewatercivil.com

© 2018 BLUE WATER CIVIL DESIGN, LLC

November 4, 2019

TO:
Spartanburg County Planning Department
Attn: Natalia Rosario
City Hall
145 W Broad Street
Spartanburg, SC 29306

RE:
Old Canaan Road Tract
"Annexation / Zoning to PDD"
Old Canaan Road, Spartanburg County, SC
BW Project # 2019-100

Natalia:

Please accept the document(s) attached for purposes of submitting the annexation & zoning packet on the above referenced project.

The ±123.78-acre property is located on the southern side of Old Canaan Road. TMS are # 7-21-00-004.00 and 7-21-00-004.04. The smaller parcel (7-21-00-004.04) is currently located within the city limits and zoned R-8 PDD. The larger parcel (7-21-00-004.00) is currently located in Spartanburg County and unzoned. We are requesting that the larger parcel be annexed into the City of Spartanburg utilizing the current zoning of the smaller adjoining property of R-8 PDD. Further, any and all prior approved or proposed planned development plans and its covenants shall be replaced by the planned development proposed by the current property owner. We believe the R-8 PDD zoning will best fit the proposed development due to density requirements as set forth in the City of Spartanburg Zoning Ordinance. The development planned for these tracts will be single-family residential lots with an average ±8,100 square feet each. The overall density as currently designed is 1.63 units per acre and approximately 41 acres of usable open space (±8,800 square feet per unit).

The items listed below are included in this submittal package. Please feel free to contact me at (864) 775-5624 or email me at melanie@bluewatercivil.com if you should have any questions or would like to discuss this submittal.

Sincerely,
BLUEWATER CIVIL DESIGN, LLC



Melanie Giles

Items Included in Submittal:

- Transmittal Letter Including Narrative (this document)
- Master Application Form
- Zoning Map Amendment Supplemental Application Form
- Boundary Map of Property
- Annexation Agreement Covenant and Restriction
- Filing Fee: \$200 Check #1347 Payable to Spartanburg County

SIR V. 2015
202 lots
PURPOSE IS
IMPROVING
SUBDIVISION
AND

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

ANNEXATION AGREEMENT
COVENANT AND RESTRICTION

WHEREAS, Tiger Eye Holdings LLC, whose address is - 508 Audabon Drive , Spartanburg , SC 29302 (hereinafter "Owner") is the owner of property described hereinafter which is located outside the City limits of the City of Spartanburg; and

WHEREAS, the City of Spartanburg ("hereinafter "City") cannot currently annex the property.

NOW, KNOW ALL BY THESE PRESENTS, that the Owner and the City, in consideration of the premises and the mutual covenants and agreements hereby contained, do hereby agree as follows:

1. That the property which is subject to this Agreement is described as follows:

TAX MAP PARCEL, ADDRESS, ACREAGE:

7-21-00-004.00 (+/-112.9 Acres)

190 Gaskins Road, Spartanburg, SC 29306

2. The Owner hereby consents to such annexation and agrees to take all actions necessary to annex same and authorizes the City Council to take action as will annex said property to the City.

3. That should the property be sold by acceptance of a Deed from the Owner, the future Owner of any lot or parcel of land included within the subject property agrees that the said property will be annexed to the City at some time in the future when such annexation becomes legally possible and the City requests that the property be annexed.

4. That the Owner agrees to take whatever steps are necessary to legally bind any future owner to comply with any procedures that will be required to annex the properties to the City and the Owner furthermore authorizes City Council to take any and all action necessary to effectuate the annexation.

5. That the Owner will include in each and every deed to a purchaser of this property or structure a restriction and covenant running with the land and building upon the heirs, administrators, successors and/or assigns of the Owner the fact that each building, parcel or lot is subject to annexation to the City at any time when requested by the City. The Owner hereby irrevocably appoints Lynn Flynn, or any subsequent City Attorney, as Attorney in Fact for the Owner of any lot or parcel of land within the property previously described, each with full power to sign a Petition for Annexation when requested by the City in the event the then Owner(s) fail(s) to meet the obligation imposed herein and does not sign the Petition upon request.

6. This Annexation Agreement shall be binding upon the heirs, executors, successors, administrators and assigns of the parties hereto and shall terminate upon annexation of the property to the City.

7. By their signatures below, the undersigned parties certify that they are authorized to execute this instrument on behalf of the respective party.

SIGNATURE PAGES FOLLOWS

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed
this 30th day of October, 2019.

OWNER(S):

Tiger Eye Holdings LLC


(Witness)

By 
Harry Clayton, Member


(Witness)

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF SPARTANBURG)

The foregoing instrument was acknowledged before me this 30th day of
October 30, 2019, by HARRY CLAYTON who is the owner of property..




Notary Public for South Carolina
My Commission expires: 07-20-28

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed
this ____ day of _____, 2019.

CITY OF SPARTANBURG

By: _____
~~Ed Memmott~~ *Chris Stoney (J. Palau)*
Its: City Manager

(Witness)

ATTEST:

By: _____
Connie S. McIntyre
Its: City Clerk

(Witness)

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF SPARTANBURG)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by ~~Ed Memmott~~ *Chris Stoney (J. Palau)*, the City Manager of the City of Spartanburg, South Carolina (the "City") a body politic and corporate, and a political subdivision of the State of South Carolina, and attested by the City Clerk of the City, on behalf of the City.

Notary Public for South Carolina
Commission Expires: _____



City of Spartanburg Planning Department

Master Application Form

Post Office Box 1749
Spartanburg, SC 29304

Phone: 864.596.2068
Fax: 864.596.2360

Name of Development Old Canaan Road Tract
 Street Address Old Canaan Road & Gaskins Road, Spartanburg, SC 29306
 Zoning District R-8 Overlay District PDD Tax Map Number 7-21-00-004.00 & 7-21-00-004.04

<p>Landowner</p> <p>Name <u>Tiger Eye Holdings, LLC</u></p> <p>Company <u>Tiger Ey Holdings, LLC</u></p> <p>Mailing Address <u>508 Audobon Dr</u></p> <p>City <u>Spartanburg</u> State <u>SC</u> Zip <u>29302</u></p> <p>Telephone _____ Fax _____</p> <p>Email _____</p>	<p>Applicant</p> <p>Bus License # _____</p> <p>Name <u>Phillip Day / Bob Barreto</u></p> <p>Company <u>Falcon Real Estate Development</u></p> <p>Mailing Address <u>7 Hindman Drive</u></p> <p>City <u>Greenville</u> State <u>SC</u> Zip <u>29609</u></p> <p>Telephone <u>864-907-6509</u> Fax _____</p> <p>Email <u>phillip@falcon.southcarolina.com</u></p>	<p>Agent</p> <p>Bus License # _____</p> <p>Name <u>Phillip Day / Bob Barreto</u></p> <p>Company <u>Falcon Real Estate Development</u></p> <p>Mailing Address <u>7 Hindman Drive</u></p> <p>City <u>Greenville</u> State <u>SC</u> Zip <u>29609</u></p> <p>Telephone <u>864-907-6509</u> Fax _____</p> <p>Email <u>phillip@falcon.southcarolina.com</u></p>
--	---	---

- | | |
|--|---|
| <input type="radio"/> Appeal | <input checked="" type="checkbox"/> Planned Development District* |
| <input type="radio"/> Special Exception* | <input checked="" type="checkbox"/> Subdivision* |
| <input type="radio"/> Variance | <input checked="" type="checkbox"/> Zoning Map Amendment* |

*** A Check-In Conference is required for these items. Attach the necessary supplemental**

To the best of my knowledge, the information on this application and all additional documentation is true, factual and complete. I hereby agree to abide by all conditions of any approvals granted by the City of Spartanburg. I understand that such conditions shall apply to the subject property only and are a right or obligation transferable by sale.

Signature

11-4-19
Date

For Official Use Only	
Date Received <u>11-1-19</u>	Time _____
Accepted by <u>Natalia Rosario</u>	Master Tracking Number <u>AX- 1900800001</u>



City of Spartanburg Planning Department
Zoning Map Amendment Supplemental
Application Form

Post Office Box 1749

Phone: 864.596.2068

Spartanburg, SC 29304

Fax: 864.596.2360

Name of Development Old Canaan Road Tract

Current Zoning District Unzoned & R-8 PDD

Zoning District being Requested R-8 PDD

ALL OF THE FOLLOWING ITEMS MUST BE ATTACHED in order for this application to be complete.

- Narrative addressing reasons for rezoning *Contained in transmittal letter*
- A boundary map of subject property prepared and sealed by a registered land surveyor. A reproducible copy of this map, no larger than 11" x 17", along with a PDF format on a CD must also be submitted.
- Certification of owner(s) consent, if applicable
- Filing Fee:

Single-Family Rezoning	\$100
Multi-Family Rezoning	\$150
Business Rezoning	\$150
PDD Rezoning	\$200

For Official Use Only

Date Received 11-1-19 Time _____

Accepted by Natalia Casais Master Tracking Number 17X 190180001



REQUEST FOR CITY COUNCIL ACTION

TO: Chris Story, Manager

FROM: Robert Coler, Attorney

SUBJECT: Ordinance to Enter into a Development Agreement with Fenix Air Charter, LLC.

DATE: December 4, 2019

BACKGROUND: Fenix Air Charter, LLC operates an air charter service out of the Spartanburg Downtown Memorial Airport and is in need of an airplane hangar. Currently there is a shortage of airplane hangars at the Airport that would meet the needs of Fenix Air Charter, LLC. Fenix has proposed to construct an airplane hangar at its own expense and transfer ownership to the City of Spartanburg after twenty years of use. This agreement would continue to further the City's goals of economic development and population growth.

ACTION REQUESTED: City Council to approve the Development Agreement between the City of Spartanburg and Fenix Air Charter, LLC.

BUDGET AND FINANCIAL DATA: Fenix Air Charter LLC will incur all expenses to construct the airplane hangar and maintain it for 20 years. City expects to incur nominal costs to install utility connections at a predetermined connection point (Fenix will be responsible for connecting utilities from pre-determined connection points to its new hangar). City will receive rent from Fenix for 20 years. City will take ownership of hangar after 20 years.

AN ORDINANCE

TO ENTER INTO A DEVELOPMENT AGREEMENT WITH FENIX AIR
CHARTER, LLC

WHEREAS, Fenix Air Charter, LLC (“Fenix”) operates an air charter service out of the Spartanburg Downtown Memorial Airport (the “Airport”); and

WHEREAS, Fenix has the need for an airplane hangar and there is currently a shortage of airplane hangars at the Airport that would meet Fenix’s needs; and

WHEREAS, Fenix proposes to lease a parcel of land from the City of Spartanburg (the “City”) at the Airport and construct the airplane hangar at its own expense and transfer ownership of the airplane hangar to City after twenty years of use; and

WHEREAS, the proposed project furthers the City’s goals of economic development and population growth.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SPARTANBURG, SOUTH CAROLINA:

Section 1. City Council approves entering into a Development Agreement with Fenix Air Charter, LLC in substantially the same form as that Development Agreement and its three attached Exhibits, which is attached hereto and incorporated herein by reference as Exhibit 1 (“Agreement”). Minor changes and modifications to the Development Agreement and attached Lease are authorized as may be necessary or appropriate to allow for a final version mutually acceptable to the parties; said minor changes and modifications shall be approved by the City Manager and the City Attorney. Should the City Manager or City Attorney, or both, determine that any modification of previously negotiated terms is significant and warrants further action by Council, then the matter shall be presented to Council for further review and further action before the final execution, if Council so chooses.

Section 2. This Ordinance shall become effective on the second and final reading.

DONE, RATIFIED AND PASSED THIS THE ____ DAY OF _____, 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED:

CITY MANAGER

Infrastructure Improvements shall be based on plans approved by the City, in accordance with this Agreement and in accordance with all applicable laws and regulations. The aforementioned Public Infrastructure Improvements, upon completion, shall be dedicated to City, who shall then maintain said Public Infrastructure Improvements.

- e. **Maintenance.** The Project Developer agrees to maintain at its sole expense the constructed Project for a period of twenty (20) years from date City issues a Certificate of Occupation. Said maintenance shall include keeping in good and working condition the roof and exterior walls, interior walls, ceiling, floor, hvac system(s), plumbing system(s), electrical system(s), a telecommunications system(s).
- f. **Ownership of Improvements.** The Project Developer and City hereby covenant and agree that, twenty (20) years from the date City issues a Certificate of Occupation for the Project, it shall become the property of City. Project Developer covenants to execute any documents necessary to accomplish the transfer of ownership. Project Developer shall have first right of refusal to occupy the Project as tenant at a rental rate to be then determined.
- g. **Compliance with Law.** Construction of the Public Improvements shall be performed in a good, safe and workmanlike manner and in accordance with all applicable laws, rules, orders, ordinances, regulations and legal requirements of all governmental entities, agencies or instrumentalities relating to the Public Improvements including, without limitation the Americans with Disabilities Act as well as all building code requirements then in effect.
- h. **Insurance Requirements.** The Project Developer shall procure and maintain insurance coverage for occurrences during the term of the Agreement against any claim for injuries to persons or damages to property which may arise from, or in connection with, the construction of the Public Improvements by the Project Developer, its employees, agents, contractors, or representatives. Such insurance shall be in the following minimum amounts:

A. Commercial General Liability	\$1,000,000.00 per occurrence
B. Comprehensive Motor Vehicle Liability	\$1,000,000.00 per occurrence
C. Workers Compensation -	Statutory limits
D. Employers Liability	\$500,000/\$500,000/\$500,000

The Project Developer shall deliver certificates of insurance to establish proof of current and ongoing coverage to the City's Risk Manager via email at cwright@cityofspartanburg.org

The City of Spartanburg must be shown as the certificate holder. Further, in the event the Project Developer receives notice of insurance cancellation in any form from an insurance provider or its agent, then the Project Developer must assure receipt of written notice within

two (2) days of the Project Developer's receipt of notice by delivery in one of the above referenced means of contact.

The General Liability Coverage must list the City, its officers, officials, and employees as additional insured's for activities arising under the Project Developer performance under the Agreement. The coverage shall be primary as to the Project Developer's negligent acts and omissions or willful misconduct. It shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability coverage.

The Workers' Compensation Coverage shall apply to all of the Project Developer's employees who are in any way connected with the Project Developer's performance under the Agreement. The coverage shall comply with all applicable state laws and provide a waiver of subrogation from the Project Developer against the City, its officers, officials, agents and employees, unless otherwise approved by the City.

The Project Developer must obtain insurance coverage from insurers with a current A. M. Best's rating of net less than A: VII. The insurers must be licensed to do insurance business in the State of South Carolina, unless otherwise approved by the City. The Project Developer cannot be a self-insured in order to meet these requirements, unless the City in writing consents for the particular named Project Developer for the specific Agreement.

The Project Developer shall be solely liable and the City in no way shall be responsible for any coverage deductible, co-insurance penalty, or self-insured retention (if applicable), including any loss sustained because of the operation of the deductible, penalty, or retention.

Further, the Project Developer has an affirmative duty, and shall carry out that duty, to see that any subcontractor performing on the Project Developer's behalf shall also have the same insurance obligations as are borne by the Project Developer under these general terms and conditions.

- i. **Damage to City Property.** Project Developer shall be responsible for the repair and/or replacement, within a reasonable time, of any real or personal property owned by City damaged by Project Developer, or any of its agents or assigns, during the construction and occupancy of Project.
2. **City Commitments**
 - a. **Utility Connections:** City shall ensure water, sewer, and electricity connections are available from the various utility providers at those locations set forth on **Exhibit B**. Project Developer shall be responsible for any necessary infrastructure, at its own cost, from the identified connection points to the airplane hangar.
 - b. The City shall maintain the Public Improvements of the Project Developer under upon completion, dedication and acceptance by the City.

- c. Upon the Project becoming the property of City, as contemplated in Paragraph 1(f) above, Project Developer shall have first right of refusal to lease the Project from City at terms and a rental rate to be then determined.

3. No Assignment Without Consent.

Prior to completion of the duties set forth herein, neither the City nor the Project Developer are authorized to assign its respective duties under the Agreement to third parties without first having received from the other party a written consent, which consent shall not be unreasonably withheld, executed with the same formality of the Agreement. Notwithstanding the foregoing, City does acknowledge and agree that Project Developer will be utilizing a general contractor to perform the work on the Project.

4. Modification.

No modification of the Agreement shall be binding upon the parties unless the same is first reduced to writing in a document having the same formality as the Agreement and executed by the duly authorized officer for each party. However, minor changes and modifications to the Development Agreement are authorized as may be necessary or appropriate to allow for a final version mutually acceptable to the parties, with said minor changes and modification being approved by the City Manager and the City Attorney. Should the City Manager or City Attorney, or both, determine that any modification of previously negotiated terms is significant and warrants further action by Council, then the matter shall be presented to and reviewed by City Council before the final execution.

5. Merger of Negotiations.

All prior negotiations and representations of both parties are merged into the Agreement, and no prior statement, whether written or oral, shall be binding upon either party unless reduced to writing and contained in the Agreement.

6. Applicable Law.

The Agreement is entered into under the laws of South Carolina, the City is a political subdivision of South Carolina, and the subject real property and improvements are located in South Carolina. The Agreement shall be construed in accordance with the laws of South Carolina.

7. No Joint Venture.

The parties acknowledge the City is acting solely in a governmental capacity in expanding/enhancing the City's public infrastructure and spaces, in approving the Agreement and in providing any other approvals related to the Project. Accordingly, the parties further acknowledge that no joint venture is intended or created between the Project Developer (or its affiliates or principals) and the City, and the parties expressly disclaim the same.

8. Indemnification.

The Project Developer shall indemnify, defend and hold harmless the City, as well as its officers, officials and employees, from and against all claims of any nature whatsoever, at law or in equity, arising out of, or related in any manner to the Agreement, the design and construction of the Public Improvements, or the Project Developer's maintenance obligations, excluding only those claims resulting from the breach of this Agreement by the City or the gross negligence or willful misconduct of the City, its officers, contractors, agents, officials and/or employees. This provision shall survive termination of the Agreement.

9. Notice.

All notices and communications hereunder shall be in writing and shall be delivered personally or sent by certified mail, return receipt requested, addressed to the parties as follows:

CITY:
City of Spartanburg
Attention: City Manager
P.O. Box 1749
Spartanburg, SC 29304

With a copy to:
City of Spartanburg
Attention: Airport Director
P.O. Box 1749
Spartanburg, SC 29301

PROJECT DEVELOPER:
Fenix Air Charter
Attention: Tim Lankford
500 Ammons Road
Suite 203
Spartanburg, SC 29306

With a copy to:

10. Miscellaneous.

If any part or provision of this Agreement is held invalid or unenforceable under applicable law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining parts and provisions of this Agreement. The waiver of a breach of this Agreement by either party shall not operate as a waiver of any subsequent breach, and no delay in acting with regard to any breach

WITNESSES:

CITY OF SPARTANBURG, SOUTH CAROLINA

By: _____
Name: Chris Story
Its: City Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this _____ day of _____, 2019
by the duly authorized officer for the City of Spartanburg, South Carolina.

Notary Public for South Carolina
My Commission Expires: _____

CITY OF SPARTANBURG AND FENIX AIR
CHARTER, LLC DEVELOPMENT AGREEMENT FOR
A PROJECT LOCATED AT SPARTANBURG
MEMORIAL AIRPORT

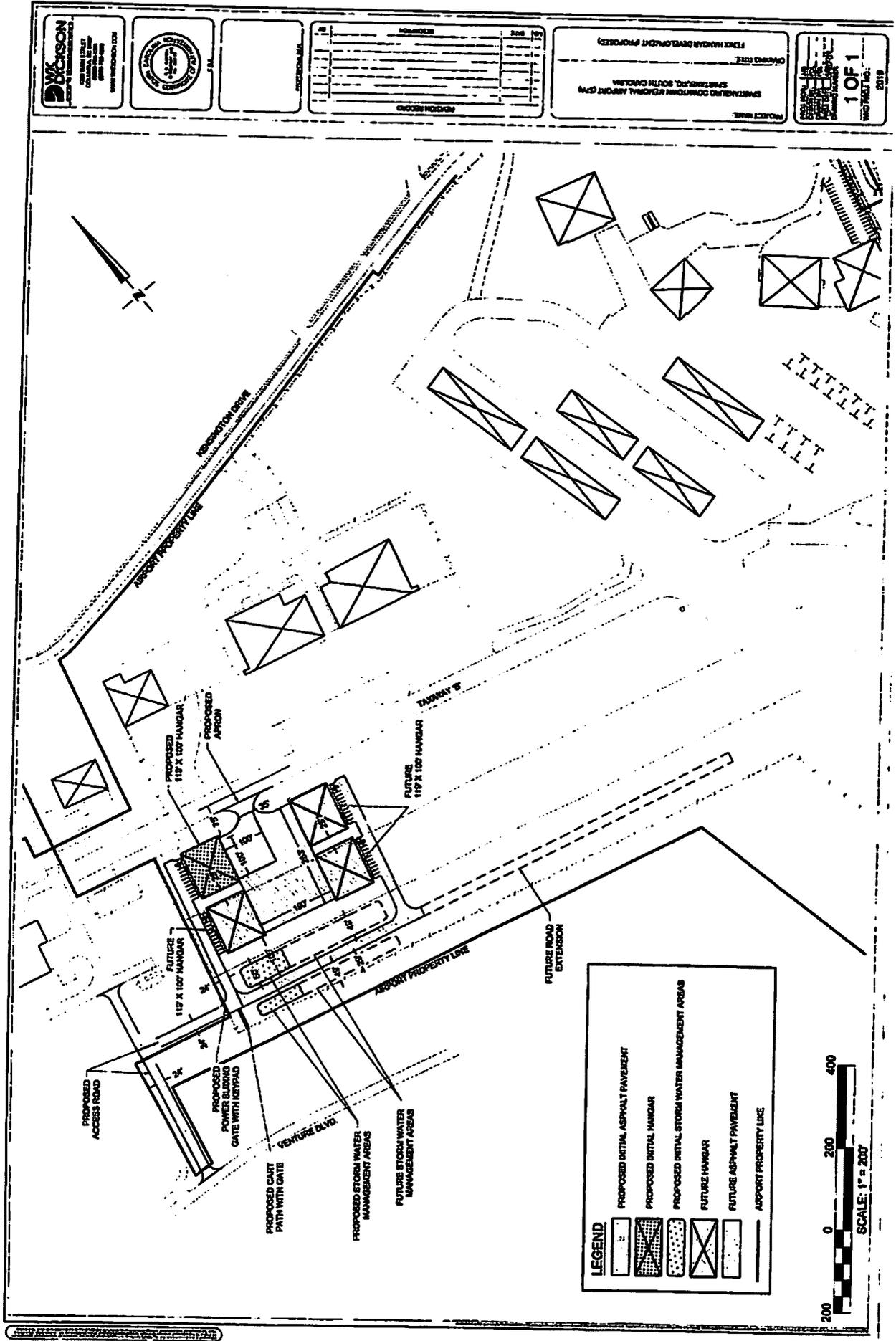
APPROVED AS TO FORM:

City Attorney

OMB Director

Risk Manager

Airport Director



STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) LEASE AGREEMENT

THIS LEASE AGREEMENT, hereinafter "Lease", made and entered into this ____ day of _____ 2020, herein after the "Effective Date", by and between the City of Spartanburg, a municipal corporation existing under the laws of South Carolina, herein after "Lessor" or "City" and Fenix Air Charter, LLC, a South Carolina Limited Liability Company, whose principal address is 500 Ammons Road, Suite 203, Spartanburg, South Carolina 29306, hereinafter "Lessee".

In consideration of the rentals, covenants and conditions herein set forth, Lessor and Lessee do hereby covenant and agree with each other as follows:

1. The Leased Property. Lessor leases to Lessee the real property with improvements presently constructed and planned for construction, located at Spartanburg Downtown Memorial Airport hereinafter described in **Exhibit A**, which is attached hereto and, by reference, made a part of this Lease together with such privileges and appurtenances as are set forth in this Lease. Lessee is planning to build an airplane hangar of approximately eleven thousand nine hundred (11,900) square feet for use by Lessee, entities related to Lessee, and for sub-lease to third party aircraft operators by Lessee.
2. Use of Leased Property. Lessee shall use the Leased Property as an airplane hangar for the needs of it and its affiliates, and to sublease to third party aircraft operators to use as an airplane hangar, herein after "Sub-tenants." Lessee shall obtain Lessor's consent, reasonable consent not withheld, for all subleases. Lessee shall not use the Leased Property for any purpose other than the foregoing without the written consent of Lessor. Lessee agrees not to occupy or use the Leased Property, or permit same to be occupied or used, contrary to any federal, state or city statutes or in a manner which would constitute a public or private nuisance. Lessee, its affiliates, and its Sub-tenants, shall enjoy all necessary ingress and egress to and from the Leased Property, but in no event shall Lessee, its affiliates, and Sub-tenants park or store any aircraft or any other equipment whatsoever outside the boundary of the Leased Property.
3. The Term. This Lease shall continue for a term of ten (10) years followed by two (2) five (5) year options which may be exercised by Lessee upon six months' prior written notice from Lessee to Lessor. This Lease shall commence on the Effective Date.
4. Lease Rate. Lessee will pay to Lessor, as consideration for this Lease, payments of \$_____ per year, payable in monthly installments beginning on the Effective Date and continuing for Ten (10) years. The lease rate for year (11) through year fifteen (15) shall be _____ per year, payable in monthly

installments. The lease rate for years sixteen (16) through twenty (20) shall be

_____.

5. Airport Rules and Regulations. Lessee agrees:

- A. To conduct its operation in accordance with the “Airport Rules and Regulations and Minimum Standards for Fixed Based Operators at Spartanburg Downtown Memorial Airport” and the “Standards for Corporation Aircraft Hangars on the Spartanburg Downtown Memorial Airport”, herein after the “Airport Regulations”, attached as Exhibit B, and by reference made a part of this Agreement. This Agreement shall be subordinate to the Airport Regulations. In the event of any conflict between the provisions of this Lease and the Airport Regulations, the Airport Regulations shall control.**
- B. That the leased space shall be used for the purpose of providing for aircraft storage and other non-commercial activities of Lessee, its affiliates, and its Sub-tenants.**
- C. That, in the interest of the public health, the use of lighted tobacco products will not be permitted in buildings upon the leased premises**
- D. That nothing herein contained shall be construed to grant or authorize the granting of exclusive rights within the meaning of Section 308(a) of the Federal Aviation Act of 1958, as amended; and Lessor shall have the right to enter into agreements with other businesses and fix base operators as well as the United States Army, Unites States Air Force, United States Navy or other federal agency relating to the governmental use of said airport.**
- E. That, in the operation and use of any facilities hereby leased, Lessee, its affiliates, or Sub-tenants will not, on the grounds of race, sex, color, national origin, or handicap discriminate or permit discrimination against any person or group of persons in a manner prohibited by 49 CFR Part 21. Lessor is hereby granted the right to take action as the federal government may direct to enforce such covenant of non-discrimination.**

6. That in the event the United States Government or any other duly authorized governmental agency acquires possession of the Leased Property hereby by virtue of any legal process and the result thereof is to substantially deny Lessee the use of the Leased Property for the purpose herein intended, then this Lease may be terminated or suspended for the period of time Lessee is deprived of the Leased Property; and, in the event this Lease is suspended, Lessee may resume its tenancy at the end of such suspension, and this Lease shall continue for the full term thereof plus the length of time this Lease was suspended. Rent shall be suspended during any such suspension refunded for any period during which Lessee is denied the benefits of this Lease.

7. Lessee assures that it will undertake an Affirmative Action program as required by CFR Part 152, Sup-part E, to insure that no person shall on the grounds of race, creed, color, national origin, handicap or sex be excluded from participating in any employment activities on the leased premises covering 14 CFR, Part 152, Sub-part E. Lessee assures that no person shall be excluded on these grounds from participating in, or receiving the services or benefits of, any program or activity on the leased premises covered by this sub-part. Lessee assures that it will require that its covered sub-organizations provide assurance that they similarly will undertake Affirmative Action programs, and that they will require assurance from their sub-organizations, as required by 14 13 CFR, Part 152, Sub-part E, to the same effect for their respective operations on the leased premises.

8. Maintenance, Good Condition and Repair. During the continuance of this Lease and Agreement, Lessee will, at its own expense, maintain and keep the premises in good condition and make all repairs, both interior and exterior, necessary to keep and maintain the leased property in good condition. CITY agrees to maintain all runways and taxiways serving the leased premises in good condition throughout the term of this Lease so as to allow Lessee use of the airport in accordance with this Lease, airport rules and regulations and federal law.

9. **Insurance.** Lessee agrees and obligates itself to carry public liability insurance in an amount of not less than One Million and no/100 (\$1,000,000.00) Dollars, primary liability coverage, and a Ten Million and no/100 (\$10,000,000.00) Dollar umbrella naming CITY OF SPARTANBURG as loss payee providing protection for invitees and other persons on the property. Lessee shall also maintain workers' compensation insurance for protection of its employees. Lessee agrees to indemnify, defend and hold harmless the CITY against any and all injuries, claims or damages related to Lessee's use of the Leased Property excepting injuries or damages caused by the negligence of CITY. Lessee shall also provide and keep in full force at its own expense during the term of this Lease and Agreement, property damage insurance coverage in the amount of the replacement value of the hangar buildings, including also those portions of said premises used for driveways, walkways and parking area. Any policy or policies of insurance required by this Lease and Agreement shall be issued by one or more insurance companies authorized to do business in Spartanburg, South Carolina. CITY shall be named as an insured under this policy or policies and, at least ten (10) days prior to the expiration term of any such policy or policies, Lessee shall supply CITY with a substitute policy with evidence of the payment of the premiums thereon.

In the event the building and/or other improvements erected on the premises are destroyed or damaged by fire or other casualty during the term of the Lease, Lessee agrees that it will cause said building and/or other improvements to be replaced or said damage to be repaired as rapidly as practical, and CITY shall have no claim against any insurance proceeds paid to Lessee on account of such damage and/or destruction. Lessee shall be solely responsible for the total costs of repair and/or replacement of the improvements so damaged and, if the insurance proceeds payable on account of such loss are insufficient, Lessee will be responsible for the difference between insurance proceeds and the cost of repair and/or replacement.

10. **Surrender of Leased Premises.** Lessee agrees to make all payments required herein promptly as they fall due and, at the expiration of the term hereby created, or, by forfeiture or otherwise, to surrender unto CITY the peaceable and quiet possession of the leased premises in good condition, ordinary wear and tear excepted.

11. **Improvement and Termination.** All permanent improvements made to the leased premises by Lessee will become the property of CITY upon completion of this Lease. All improvements shall comply with all applicable fire, building and zoning ordinances. All site grading, including compliance to CITY's requirements for storm water retention, is the responsibility of Lessee. All costs associated with the construction and development of the corporate storage hangar, including clearing, grading and pavement in compliance to the storm water discharge management, shall be at the expense of Lessee. All costs associated with the necessary infrastructure, including but not limited to electricity, natural gas, water, and sewer and civil engineering drawings associated with such infrastructure, shall be borne by Lessee. **LESEE MAY BE REQUIRED TO BEAR THE COST OF SAID INFRASTRUCTURE FOR DEVELOPMENT OF ITS HANGAR AND OTHER ANTICIPATED FUTURE HANGARS.** Lessee may be entitled to a prorated rebate of infrastructure costs allocated amongst future developers of future hangars.

12. All furniture, fixtures and equipment (besides HVAC) may be removed by Lessee and shall remain its sole property. Title to the improvements will be transferred to CITY on completion subject to this Agreement. Lessee may not place a mortgage on its leasehold interest. At conclusion of the Lease term, the improvements shall be turned over to, and become the property of, the CITY free and clear of any liens or encumbrances. CITY may direct the necessary instruments of transfer or deeds.

13. **Taxation.** The parties envision that the property will be exempt from ad valorem property tax. In the event that the property is subjected to ad valorem property tax, the portion of ad valorem taxes paid to CITY will be reimbursed back to Lessee. .

14. **Notice to Parties.** Any notice, demand or other communication between CITY and Lessee shall be sufficiently given or delivered if mailed, postage paid, or delivered personally to:

CITY OF SPARTANBURG
Attention: **City Manager**
Post Office drawer 1749
Spartanburg, SC 29304

LESSEE:

-
15. **Waiver of Strict Performance.** The failure of either party to insist upon strict performance of any of the terms, conditions or covenants herein set forth shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.
16. **No Subletting or Assignment.** This Agreement may not be assigned nor may any portion of the Leased Property be sublet by Lessee without the prior written approval and consent of CITY. Transfers to affiliates shall not require consent, and consent for all other transfers shall not be unreasonably withheld or delayed.
17. **Default.** In the event Lessee or CITY violates any material term or provision of this Agreement and fails to remedy the same after thirty (30) days written notice delivered by certified or registered mail, the party not in default may terminate the Agreement by the giving of written notice to the defaulting party by registered mail or certified mail. In the event Lessee is in default for the same material reason on more than one occasion or in the event Lessee files a petition in bankruptcy or receivership or makes a transfer or assignment for the benefit of creditors; then CITY may terminate this Agreement at its option; provided, however, that in the event of default for material reason on more than one occasion, Lessee shall be given a written notice to cure and an opportunity to cure the default within ten (10) days after written notice to cure and an opportunity to cure the default within ten (10) days after written notice.
18. In the event of the termination of the Agreement, Lessee will vacate the premises promptly but in no event will such period exceed thirty (30) days after written notice of termination. During such period, Lessee will not be relieved of any obligations to pay rent or any other fees required by this Agreement. After Lessee vacates the premises, any property or other trade fixtures not a part of the real estate left on the premises shall be deemed abandoned to CITY.
19. **South Carolina Law Controls.** This Agreement and the rights, obligations and remedies of the parties hereto, shall in all respects be governed by and construed in accordance with the laws of the State of South Carolina
20. **FAA Approval.** This Agreement is contingent upon approval by the Federal Aviation Administration.
21. **Miscellaneous.**

A. CITY will provide a site adjacent to the new hangar site for the disposal of excess soil removed from the new hangar site during construction. Lessee will be responsible for the proper placement of the soil, including silt fencing. Thereafter, the soil and its maintenance shall be the property and responsibility of the CITY.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands and seals and executed this Agreement the day and year first-above written.

IN THE PRESENCE OF:

CITY OF SPARTANBURG

Name: _____
Title: _____

LESSEE _____

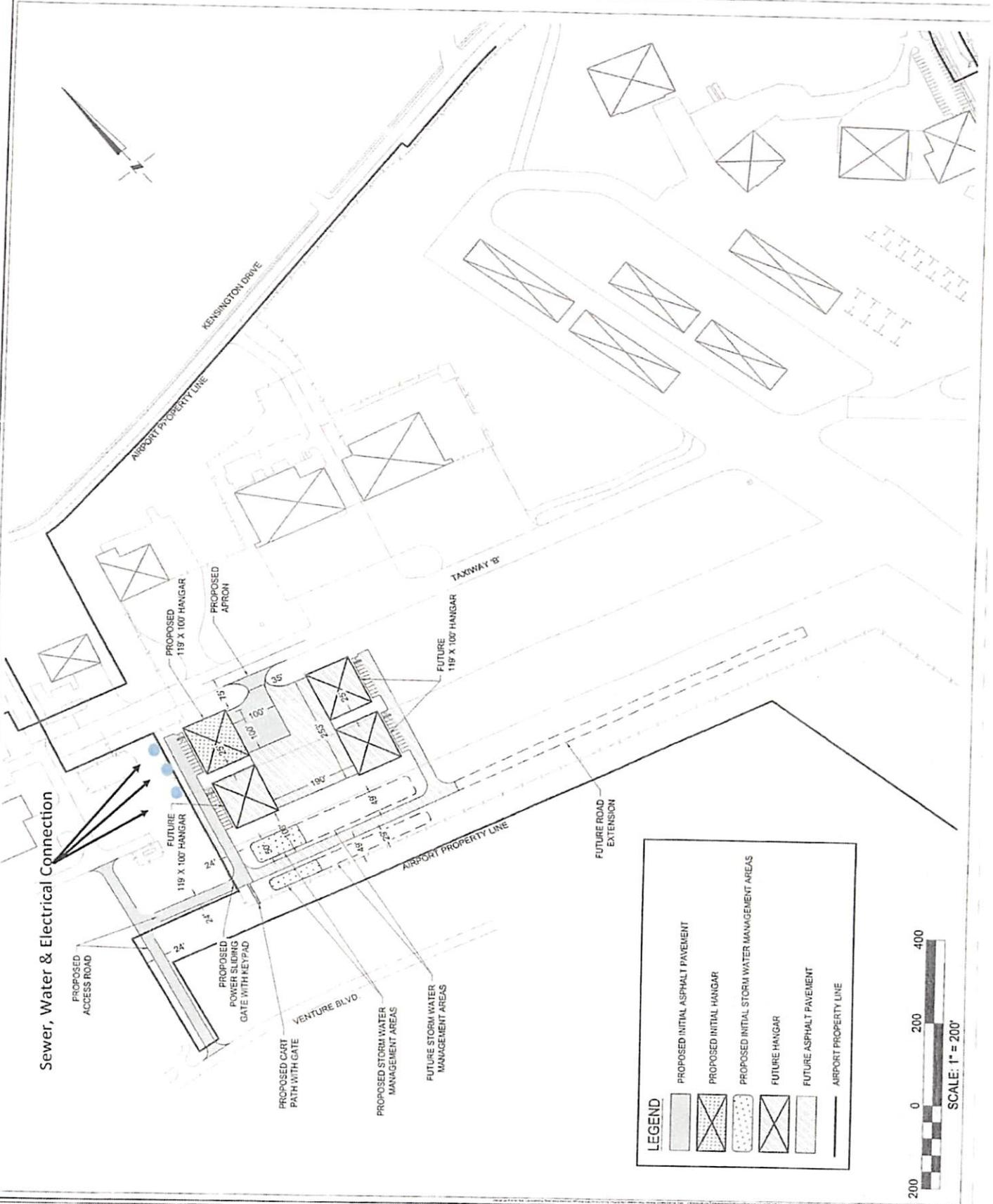
By: _____
Name: _____
Title: _____



NO.	DATE	DESCRIPTION

PROJECT NAME: SPARTANBURG DOWNTOWN MEMORIAL AIRPORT (SMA)
 SPARTANBURG, SOUTH CAROLINA
 DRAWING TITLE: FUTURE HANGAR DEVELOPMENT (PROPOSED)

PROJ. NO.: 100
 DESIGNED BY: JDE
 DRAWN BY: JDE
 PROJ. DATE: 1/20/2019
 DRAWING NUMBER: 1001
 W/D PROJ. NO.: 2019

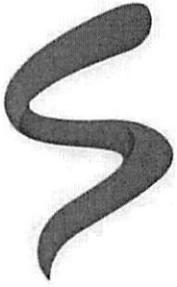


Sewer, Water & Electrical Connection

LEGEND

- PROPOSED INITIAL ASPHALT PAVEMENT
- PROPOSED INITIAL HANGAR
- PROPOSED INITIAL STORM WATER MANAGEMENT AREAS
- FUTURE HANGAR
- FUTURE ASPHALT PAVEMENT
- AIRPORT PROPERTY LINE





REQUEST FOR CITY COUNCIL ACTION

TO: Chris Story, City Manager
FROM: Dennis R. Locke, Finance Director
SUBJECT: Capital Lease Financing
DATE: November 20, 2019

BACKGROUND:

As part of our ongoing efforts to equip staff with the resources they need at the lowest possible cost over the long term, the City is committed to maintaining an annual equipment replacement schedule. Funds are appropriated through the annual budget into the equipment replacement fund from which these purchases are then made throughout the year.

Due in part to very low interest rates in recent years, staff had determined that the City could strengthen its financial position by bundling and leasing the major purchases within a master lease. This mechanism spreads the cost of these purchases over several years. The proposed action is to authorize this year's lease program.

ACTION REQUESTED:

Staff is recommending the replacement of 12 Police Vehicles, 80 Police Portable Radios, 10 Vehicles and 8 various pieces of equipment for Public Services, 1 Vehicle Inspections, 2 Vehicles for Fire, and 1 Vehicle for Property and Procurement Management

It is staff's recommendation that we use a capital lease to finance these purchases. If approved, we would accept bids from various financial institutions. The source of repayment would be the Equipment Replacement Fund

BUDGET AND FINANCIAL DATA:

The total will not exceed \$2,600,000 inclusive of closing costs. This amount may be reduced pending final review of acquisition specifications.

ORDINANCE NO. _____

AUTHORIZING THE CITY OF SPARTANBURG, SOUTH CAROLINA, TO EXECUTE AND DELIVER AN EQUIPMENT LEASE PURCHASE AGREEMENT IN AN AMOUNT NOT EXCEEDING \$2,600,000 BETWEEN THE CITY AND THE LESSOR THEREOF TO DEFRAY THE COST OF ACQUIRING CERTAIN EQUIPMENT; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED BY THE MAYOR AND MEMBERS OF COUNCIL OF THE CITY OF SPARTANBURG, SOUTH CAROLINA, IN COUNCIL ASSEMBLED, AS FOLLOWS:

SECTION 1. Findings and Determinations. The City Council (the "Council") of the City of Spartanburg, South Carolina (the "City"), hereby finds and determines:

(a) The City is an incorporated municipality located in Spartanburg County, South Carolina, and as such possesses all powers granted to municipalities by the Constitution and the laws of this State.

(b) Section 5-7-40 of the Code of Laws of South Carolina, 1976, as amended (the "S.C. Code"), empowers all municipalities to own and possess real and personal property and such municipalities may lease any such property.

(c) The City desires to enter into a lease-purchase agreement (the "Lease Agreement") with a bank or other financial institution selected by the City Manager for the purpose of financing the acquisition of equipment (the "Equipment") to replace the equipment set forth on Exhibit A hereto.

(d) The Lease Agreement will not constitute a "financing agreement" and the Equipment will not constitute an "asset" as such terms are defined in Section 11-27-110 of the S.C. Code. Thus, the amount of the Lease Agreement will not be included when calculating the City's constitutional debt limit under Article X, Section 14 of the Constitution of the State of South Carolina.

(e) The Lease Agreement will be subject to annual appropriation by the Council.

(f) It is in the best interest of the City to acquire the Equipment by entering into the Lease Agreement. The Lease Agreement will enable the City to purchase the Equipment which will provide services necessary or useful to the operations of the City government.

SECTION 2. Approval of Lease-Purchase Financing; Authorization to Determine Certain Matters Relating to the Lease-Purchase Financing. The Equipment shall be acquired pursuant to a lease-purchase financing which is hereby approved in a principal amount of not exceeding \$2,600,000. The Request for Proposals for the lease-purchase financing distributed to various banks and other financial institutions at the direction of the Finance Director of the City on November 19, 2019 is hereby approved and ratified. The Council hereby authorizes the City Manager to: (a) determine the payment schedule under the Lease Agreement; (b) modify the date and time for receipt of bids under the Request for Proposals; (c) award the sale of the lease-

purchase financing to the bidder (the "Bidder") who submits the proposal determined to be the most advantageous to the City in accordance with the terms of the Request for Proposals; and (d) make changes to the quantity, cost or description of the Equipment. To the extent the City Manager has conditionally awarded sale of the lease-purchase financing to a Bidder subject to enactment of this Ordinance, such award is hereby ratified and approved.

SECTION 3. Approval of Lease Agreement. Without further authorization, the City Manager is authorized to approve the form, terms and provisions of the Lease Agreement proposed by the Bidder. The City Manager is hereby authorized, empowered and directed to execute, acknowledge and deliver the Lease Agreement in the name and on behalf of the City. The Lease Agreement is to be in the form as shall be approved by the City Manager, the City Manager's execution thereof to constitute conclusive evidence of such approval.

SECTION 4. Execution of Documents; Written Procedures. The Mayor, Mayor Pro Tempore, City Manager, Finance Director, City Attorney and Municipal Clerk are fully empowered and authorized to take such further action and to execute and deliver such additional documents as may be reasonably requested by the Bidder to effect the delivery of the Lease Agreement, including any project fund or acquisition fund agreement, or any payment or draw request thereunder, in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby, and the action of such officers in executing and delivering any of such documents, in such form as the Mayor or City Manager shall approve, is hereby fully authorized. In addition, the City Manager and the Finance Director are further authorized to adopt written procedures on behalf of the City to ensure the City's compliance with federal tax matters relating to the Lease Agreement.

SECTION 5. Federal Tax Covenant. The City, as lessee, agrees and covenants that it will not take any action which will, or fail to take any action which failure will, cause interest components of the payments to be made under the Lease Agreement to become includable in the gross income of the Bidder or its successors or assignees for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of the Lease Agreement, and that it will comply with all applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder, to maintain the exclusion from gross income for federal income tax purposes of the interest portion of the payments to be made under the Lease Agreement; and to that end the City shall:

(a) comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as the Lease Agreement is outstanding;

(b) establish such funds, make such calculations and pay such amounts in the manner and at the times required in order to comply with the requirements of the Code relating to required rebates of certain amounts to the United States; and

(c) make such reports of such information at the times and places required by the Code.

The City will timely file Form 8038-G in accordance with the applicable regulations of the Internal Revenue Service.

The Lease Agreement is hereby designated as a “qualified tax-exempt obligation” for purposes of Section 265 of the Code relating to the ability of financial institutions to deduct from income for federal income tax purposes interest expense that is allocable to carrying and acquiring tax-exempt obligations.

SECTION 6. Filings with Central Repository. In compliance with Section 11-1-85 of the S.C. Code, the City covenants that it will file or cause to be filed with a central repository for further availability in the secondary bond market when requested: (a) a copy of the annual audit of the City within thirty (30) days of the City’s receipt thereof; and (b) within thirty (30) days of the occurrence thereof, relevant information of an event which, in the opinion of the City, adversely affects more than five (5%) of the City’s revenue or its tax base.

SECTION 7. Severability. All ordinances, orders, resolutions and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the execution of the Lease Agreement are, to the extent of such conflict, hereby repealed.

SECTION 8. Actions of the City’s Finance Director and City Manager undertaken in furtherance of the lease-purchase financing authorized hereby, including, but not limited to, the distribution of a Request for Proposals prior to the date of enactment of this Ordinance, are hereby ratified and approved.

SECTION 9. Effective Date. This Ordinance shall be effective upon its enactment.

[Execution Page Follows]

DONE AND RATIFIED this 9th day of December, 2019.

CITY OF SPARTANBURG, SOUTH CAROLINA

Mayor

(SEAL)

ATTEST:

City Clerk

Date of First Reading: November 25, 2019

Date of Second Reading: December 9, 2019

[Execution Page]

EXHIBIT A

List of Equipment

[see attached]

**Equipment Replacement Fund
Vehicle & Rolling Stock / Equipment Requests
To Be Financed thru Capital Financing
FY 2019 - 2020**

<u>Department / Division</u>	<u>Vehicle / Equip. Number</u>	<u>Model Year</u>	<u>Model or Manufacturer</u>	<u>Description</u>	<u>Estimated Cost FY 2019 - 2020</u>
PPM	Veh# 608	2010	Ford	Crown Victoria	38,000
Neighborhood Services	Add on (grant)		N/A	N/A	25,000
Inspections	Veh# 378	2007	Chevrolet	Trailblazer - 4x4	35,000
Construction Maintenance	Add on		N/A	N/A	38,000
Police / Patrol	Veh# 753	2011	Chevrolet	Impala	65,000
Police / Patrol	Veh# 773	2012	Dodge	Charger	65,000
Police / Patrol	Veh# 774	2012	Dodge	Charger	65,000
Police / Patrol	Veh# 776	2012	Dodge	Charger	65,000
Police / Patrol	Veh# 777	2012	Dodge	Charger	65,000
Police / Patrol	Veh# 778	2012	Dodge	Charger	65,000
Police / Patrol	Veh# 784	2013	Ford	Taurus	65,000
Police / Patrol	Veh# 785	2013	Ford	Taurus	65,000
Police / Patrol	Veh# 787	2013	Ford	Taurus	65,000
Police / Investigations	Veh# 750	2010	Chevrolet	Impala	45,000
Police / Investigations	Veh# 751	2010	Chevrolet	Impala	45,000
Police / Investigations	Veh# 769	2012	Chevrolet	Impala	45,000
			Motorola	80 Portable Radios	213,000
Subtotal Police					933,000
Fire Suppression	Veh# 418	2013	Ford	Explorer - 4x4	50,000
Fire Suppression	Veh# 197	2012	Ford	F-150 Extended Cab	50,000
Fire Suppression	NA		Thermal Cameras		30,000
Subtotal Fire					130,000
Ground Maintenance	Equip# 658	2007		Z Master Lawn Equipment	28,000
Ground Maintenance	Veh# 672	2008	Ford	F-350 Superduty	70,000
Ground Maintenance	Veh# 673	2008	Ford	F-350 Superduty	70,000
Ground Maintenance	Equip# 578	2010	Toro	40" Walk Behind	15,500
Ground Maintenance	Equip# 679	2010	Walker	52" Lawn Equipment	25,000
Ground Maintenance	Equip# 588	2013	Toro	60" Zero Turn Mower	15,500
Subtotal Grounds					224,000
Traffic Engineering	Veh# 175	1998	Chevrolet	C 6500	150,000
Street Maintenance	Veh# 55	1995	Ford	F-800 Dump Truck	120,000
					120,000
Fleet Maintenance	Equip# 28	1985	Weaver	Air Compressor	10,000
Solid Waste	Equip# 126	2001	Bobcat	Tractor	45,000
Solid Waste	Veh# 569	2008	Ford	F-150 XL Truck	35,000
Solid Waste	Veh# 803	2004	Ford	F-750 Truck	115,000
Solid Waste	Veh# 805	2004	Ford	F-750 Truck	115,000
Solid Waste	Veh# 810	2006	Ford	F-750 Truck	115,000
Solid Waste	Veh# 816	2008	Old Dominion	Leaf Machine	32,000
Solid Waste	Veh# 817	2008	Old Dominion	Leaf Machine	32,000
Solid Waste	Veh# 802	2008	Ford	Pickup	35,000
Solid Waste	Veh# 849	2016	Freightliner	Rear Loader	200,000
					724,000
				GRAND TOTAL	2,427,000