

**Town of Cary, North Carolina  
Rezoning Staff Report  
13-REZ-08 Fairview Village Planned Development District Amendment  
Town Council Meeting  
October 10, 2013**

**REQUEST**

To amend a 1.37-acre portion of the commercial tract in the existing Fairview Village Planned Development District (PDD), located at 4420 Ten Ten Road, to allow "Light Vehicle Service" as a permitted use.

Since the proposed rezoning is located within the Mixed Use Overlay District, the request is accompanied by a Preliminary Development Plan which, if approved, would limit future development to a 5,000-square-foot building. Additional dimensional standards, building location and proposed buffers are as indicated on the plan. The applicant has also proposed specific architectural conditions for the appearance of the future building on the property.

NOTE: The purpose of the rezoning is to determine whether or not the land uses and densities allowed in the proposed zoning district are appropriate for the site. Technical design standards of the Land Development Ordinance are addressed during review of the site or subdivision plan and can be found at <http://www.amleforgal.com/library/nc/cary.shtml>.

**SUBJECT PARCELS**

Property Owner(s)	County Parcel Number(s) (10-digit)	Real Estate ID(s)	Deeded Acreage
Fairview Center, LLC Casto 191 W. Nationwide Blvd. Suite 200 Columbus, OH 43215-2558	0760778538	0414151	1.37 ±
<b>Total Area</b>			1.37 ±

**BACKGROUND INFORMATION**

Applicant	Jonathan Wakefield Christian Brothers Automotive Corporation 15995 N. Bakers Landing Suite 145 Houston, TX 77079 (832) 598-0420 jwakefield@cbac.com		
Applicant's Contact	Eric Hampton, PE Kimley-Horn and Associates, Inc. 2000 South Blvd. Suite 440 Charlotte, NC 28203 704 333-5131 Eric.hampton@kimley-horn.com		
Acreage	1.37 ± Acres		
Location	4420 Ten Ten Road (Southeast of the Ten Ten Road and Holly Springs Road intersection)		
Schedule	<b>Town Council Public Hearing</b>  August 8, 2013	<b>Planning &amp; Zoning Board Public Hearing</b>  September 16, 2013	<b>Town Council Meeting</b>  October 10, 2013
Land Use Plan Designation	Commercial (within a Neighborhood Activity Center)		

Existing Zoning District(s)	Planned Development District (PDD) Minor (within the Mixed Use Overlay District)
Existing Zoning Conditions	The existing PDD limits the commercial uses on the subject property
Proposed Zoning District(s)	Planned Development District (PDD) Minor (Amendment to Table of Permitted Uses)
Proposed Zoning Conditions	Proposed building size, placement on the property and the size and locations of streetscapes and perimeter buffers are as indicated on the Preliminary Development Plan.
Town Limits	Yes
Valid Protest Petition	No
Staff Contact	Debra Grannan, CZO Senior Planner 919 460-4980 Debra.grannan@townofcary.org

**SUMMARY**

**Existing Fairview Village PDD**

The Fairview Village PDD was approved on May 12, 2005. The entire site consists of 19.26 acres located at the SE quadrant of the Holly Springs Road and Ten Ten Road intersection. The plan provided for 122,000 square feet of specific commercial and retail uses and up to 20,000 square feet of office/institutional uses or 42 dwelling units. An Activity Center Concept Plan was included as part of the PDD to provide a conceptual layout for future buildings and road networks.

**Table of Permitted Uses**

Uses permitted within the existing Fairview Village PDD are currently limited to the following:

<i>Animal Service</i>	<i>Kennel, indoor only</i>
	<i>Veterinary hospital/office, with indoor kennels</i>
<i>Financial Institution</i>	<i>Bank with drive through service</i>
	<i>Bank without drive through service</i>
<i>Food and Beverage Service</i>	<i>Nightclub/bar with or without outdoor operation</i>
	<i>Restaurant with or without outdoor operation</i>
<i>Office</i>	<i>Office, business or professional</i>
	<i>Office, flex-space</i>
<i>Retail Sales and Service</i>	<i>Convenience Store</i>
	<i>Farm market</i>
	<i>Retail Store</i>
<i>Vehicle and Equipment</i>	<i>Car wash</i>
	<i>Vehicle filling Station</i>
<i>Day Care</i>	<i>Child day care center</i>
<i>Clinic</i>	<i>Clinic, Doctor</i>
<i>Residential (Mixed Use Tract)</i>	<i>Limit of 42 Multi-Family Residential Units</i>

**Request**

The applicant has proposed to add Light Vehicle Service Automotive Repair as a permitted use to a 1.37-acre portion of the Commercial Tract within the PDD.

## SITE CHARACTERISTICS

**Streams, Floodplain and Wetlands:** According to Cary’s most current GIS maps, the subject property is not impacted by any streams, floodplain or wetlands. Field determination of such features shall be required at the time of site plan review.

**Topography:** There is a gradual elevation change of 10 to 15 feet from the portion of the property adjacent to Ten Ten Road to the southwestern corner of the property. Portions of the existing site, adjacent to internal travel ways, have been graded to allow installation of infrastructure.

**Adjacent Uses and Zoning:**

North – Single-Family Residential and well lot for Wyndtree Subdivision (R40-W, Wake County)  
 South – Vacant; Tract 5 of Fairview Center (PDD Minor with Commercial and Mixed designation)  
 East – Single-Family Residential; Orchard Knoll Subdivision (R40-W, Wake County)  
 West – Service Station/Convenience Store; Fairview Village out parcel (PDD Minor with Commercial designation)

<b>CONSISTENCY WITH LAND DEVELOPMENT ORDINANCE</b>
--

The proposed PDD amendment would add “Light Vehicle Service” to the list of uses permitted within one parcel in the Fairview PDD. Chapter 12 of the LDO defines “Light Vehicle Service” as follows:

**Vehicle Service, Light**

*Any building, structure or lot used for one or more of the following: (1) dispensing, selling or offering for retail sale items such as gasoline, kerosene, lubricating oil or grease for the operation and maintenance of automobiles, including the sale and installation of tires, batteries and other minor accessories and services for automobiles; or (2) the business of repairing automobiles. This shall not include car washes or the retreading and/or recapping of tires or convenience stores which sell gasoline or lubricating oil but not other automotive accessories or services.*

**Dimensional Standards and Measurements**

	<b>Land Development Ordinance Standard</b>	<b>Existing Fairview Village PDD</b>	<b>Proposed Fairview Village PDD Amendment</b> (applicable only to portion of commercial tract subject to Preliminary Development Plan)
Roadway Setback	30’ from thoroughfare or collector	Minimum of 10 feet	Minimum of 20 feet
Side Yard Setback	None	None	No change
Rear Yard Setback	None	None	No change
Maximum Building Height	35 feet when within 100 feet of a residential zoning district	Not specified; governed by LDO	24 feet
Streetscape Width and Type	30-foot Type C	10 to 15 feet for buildings; 20-feet for parking areas	20-foot Type C
Perimeter Buffer (along western property line)	65-foot Type A (Opaque)	40-foot-wide, Type-A buffer with an opaque fence; no additional setback from buffer	55-foot Type A with a 10-foot setback off the buffer
Building Materials	75% Masonry	Not Specified	90% Masonry

### **Open Space**

Per **Table 4.2-4** of the LDO (**Common Open Space Provisions in Planned Development**) PDD's with 10 to 49 acres are required to provide 5% of the property as common open space. The previously approved PDD provides approximately 10% open space. By offering an additional 15 feet of perimeter buffer area along the western property line and a 20-foot streetscape along Ten Ten Road, the current proposal adds approximately 6,400 additional feet of open space to the PDD.

**Landscape Buffer:** The applicant has proposed a 55-foot-wide perimeter buffer planted to a Type-A standard adjacent to the single-family-detached residential neighborhood to the east. The plan also offers a 10-foot building setback from the buffer. The existing PDD provides a 40-foot-wide Type-A Buffer and a wooden privacy fence. Since the Town Council public hearing, the applicant has offered to provide a wooden privacy fence in addition to the 55-foot buffer.

The LDO standard between the proposed Class 6 use and the adjacent Class 2 use is 65-foot-wide Type A Buffer.

### **Streetscape**

The existing Fairview Village PDD was approved in 2005 with a 20-foot-wide streetscape buffer along Ten Ten Road when adjacent to parking and a 10- to 15-foot streetscape when adjacent to buildings. The current plan offers a 20-foot streetscape adjacent to buildings and parking and takes into consideration that this streetscape area must be located outside utility easements.

### **Traffic**

The proposed use did not require a traffic study.

### **Stormwater**

At the time of site plan review, the future plan must meet all stormwater management and detention requirements. Peak flow from the one-, two-, five- and 10-year storm events must be determined and must be attenuated back to pre-development conditions from the discharge point leaving the development.

## **TOWN OF CARY CODE OF ORDINANCES**

The following regulations from Cary's Code of Ordinances pertain to the type of activity that might occur on the subject property if the proposed use (Light Vehicular Service) is approved.

### **Sec. 22-104. Noise measurement.**

For the purpose of determining decibels, db(A)s, as referred to in this article, sound levels shall be measured on the A-weighting scale on a sound level meter of standard design and quality having characteristics established by the American National Standards Institute (ANSI) or its successor body.

### **Sec. 22-105 Particular sounds prohibited.**

The following acts and activities, among others, are hereby declared to be unreasonable loud and disturbing levels in violation of section 22-102.

(5) The use of any mechanical device operated by compressed air unless the sound created are effectively muffled and reduced.

### **Section 22-106 Sounds impacting residential life**

(a) The following acts and activities shall be unlawful in any residentially zoned area of the town or within 300 feet of any occupied residential structure in all zoning districts of the town:

(3) Operating any garage or service station so as to cause unreasonable loud, disturbing sound to be emitted between the hours of 9:00 p.m. and 7:00 a.m. on any day.

(5) Creating or causing any sounds to be created or emitted which sounds register more than 60 db(A) at any point on or within the nearest complainant's property line.

## SITE CHARACTERISTICS

**Streams, Floodplain and Wetlands:** According to Cary's most current GIS maps, the subject property is not impacted by any streams, floodplain or wetlands. Field determination of such features shall be required at the time of site plan review.

**Topography:** There is a gradual elevation change of 10 to 15 feet from the portion of the property adjacent to Ten Ten Road and the southwestern corner of the property. Portions of the site adjacent to internal travel ways have been graded to allow installation of infrastructure.

**Adjacent Uses and Zoning:**

North – Single-Family Residential and well lot for Wyndtree Subdivision (R40- W, Wake County)

South – Vacant; Tract 5 of Fairview Center (PDD Minor with Commercial and Mixed designation)

East – Single-Family Residential; Orchard Knoll Subdivision (R40-W, Wake County)

West – Service Station/Convenience Store; Fairview Village Out parcel (PDD Minor with Commercial designation)

## SUMMARY OF PROCESS AND ACTIONS TO DATE

### Notification

On July 23, 2013 the Planning Department mailed notification of a public hearing on the request to property owners within 400 feet of the subject property. Notification consistent with General Statutes was published in the Cary News on July 24 and 31, 2013. Notice of the Town Council public hearing was posted on the property July 26, 2013.

On September 5, 2013 the Planning Department mailed notification of the Planning and Zoning Board public hearing to property owners within 400 feet of the subject property. Notice of the Planning and Zoning Board public hearing was published in the Cary News on September 4 and 11, 2013 and the property was posted on September 5, 2013.

### Neighborhood Meeting

According to the applicant, a neighborhood meeting for the proposed rezoning was held on May 13, 2013. According to the information submitted by the applicant, one adjacent property owner attended the meeting. According to the meeting minutes, the neighbor's questions and concerns pertained to sidewalk connections, storm drainage and potential noise impacts.

### Town Council Public Hearing (August 8, 2013)

Staff presented an overview of the request and a summary of the proposed Preliminary Development Plan. Staff reported that three nearby property owners had expressed concerns about the proposed use. The one protest petition submitted was beyond the distance limits to be considered valid.

The applicant, Jonathan Wakefield, provided more specific details about the proposed use.

During the public hearing, two citizens asked that the fence shown as part of the previously PDD be returned to the plan. Both citizens also expressed concerns about noise and light. One citizen spoke in opposition to the proposed ten-foot wide streetside trail proposed on the subject property.

One council member had specific questions regarding the daily operations of the business and another expressed concern regarding the close proximity to a residential neighborhood. The council asked for verification on the noise ordinance regulations. One council member stated that if approved, the zoning goes with the land and not the particular business, and added that the council must consider what might be on the land in the future by rezoning to allow the light automotive service use.

In response to a question from the council, staff provided examples of the currently approved uses for the subject property.

The applicant offered to address the concerns of the adjacent property owners by proposing to add an opaque fence back to the plan.

### **Changes Since the Town Council Public Hearing**

The applicant has modified the PDP to show an opaque fence between the subject property and the adjacent residential neighborhood.

Information regarding Cary's Noise Ordinance has been added to this report.

### **Planning and Zoning Board Public Hearing (September 16, 2013)**

Staff presented an overview of the case and noted that, following the Town Council public hearing, the applicant revised the PDP by adding an opaque fence to the buffer area between the subject property and the adjacent residential property to the east. Staff also noted that, in response to concerns expressed by an adjacent neighbor, the applicant indicated that they would be willing to remove a previously proposed condition to provide a 10-foot-wide multi-use trail along Ten Ten Road. Staff explained that while the Planning and Zoning Board and Town Council could consider whether or not the condition was acceptable, the applicant could not remove a condition once it had been proposed.

The applicant provided additional information regarding the nature of the proposed business and the proposed architectural elements of the future building.

During the public hearing, an adjacent property owner spoke regarding potential noise impacts and potential loss of vegetation. A second neighbor expressed similar concerns and spoke against the proposed 10-foot-wide multi-use trail along Ten Ten Road.

During their discussion, the board asked Parks, Recreation and Cultural Resources staff to explain Cary's plans for expansion of a multi-use trail system in the vicinity of the site. Staff provided an explanation on the advantages of the multi-use trail system.

One board member indicated that the proposed use provided an essential service to the area. Several board members stated that they believed the potential noise impacts were not greater than what might occur with uses currently allowed under the PDD. One member noted that the proposed design and orientation of the future building provided an aesthetic improvement to the shopping center and may provide further protection from noise and light impacts.

The board voted 7-0 to forward the case to Town Council with a recommendation for approval.

## **APPROVAL CRITERIA FOR PRELIMINARY DEVELOPMENT PLANS**

Section 4.5.2(E) of the Land Development Ordinance sets forth the following development standards to be considered in reviewing Preliminary Development Plans associated with MXD rezoning requests:

### **(E) Approval Criteria for Mixed Use District Rezoning**

In addition to the criteria for a general rezoning specified in Section 3.4.1(E), rezoning requests to a MXD district (or PDD amendment following the MXD process) shall be reviewed for compliance with the following criteria, as applicable (i.e., it may not be reasonable or practical to expect that some existing or partially-built mixed use districts [formerly activity center concept plans or mixed use sketch plans] to achieve certain design standards):

#### **(1) Intensity, Type, and Mix of Uses**

The preliminary development plan includes an appropriate intensity, type, and mix of land uses, as outlined by the guidelines contained in the Land Use Plan. This shall be assessed in relation to the scale of the activity center and the mix and relationship of existing and planned uses in the activity center, including residential, commercial, office, and institutional uses;

#### **(2) Site Design**

The preliminary development plan shows how the proposed mixed use development will meet or exceed Town site design guidelines and other established Town standards, including connections and linkages to immediately adjacent properties;

#### **(3) Expected Land Uses**

The extent to which the proposed development provides the expected land uses, including medium- and higher-density housing, outlined by the numerical and other guidelines contained in the Land Use Plan;

**(4) Public Spaces**

The preliminary development plan includes some formal outdoor space(s) for public use, such as a park, village green, or plaza, with larger mixed use centers including more such space than smaller centers; and

**(5) Scale and Context**

The preliminary development plan demonstrates that the proposed development is appropriate for the context and location, responds to the unique conditions of the area, and provides reasonable transitions within and adjacent to the district.

**CRITERIA FOR CONSIDERATION IN REVIEWING REZONINGS**

Section 3.4.1(E) of the Land Development Ordinance sets forth the following criteria that should be considered in reviewing rezonings:

1. The proposed rezoning corrects an error or meets the challenge of some changing condition, trend or fact;
2. The proposed rezoning is consistent with the Comprehensive Plan set forth in Section 1.3 (LDO);
3. The Town and other service providers will be able to provide sufficient public safety, educational, recreational, transportation and utility facilities and services to the subject property while maintaining sufficient levels of service to existing development;
4. The proposed rezoning is unlikely to have significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife and vegetation;
5. The proposed rezoning will not have significant adverse impacts on property in the vicinity of the subject tract;
6. The proposed zoning classification is suitable for the subject property.

**APPLICABLE COMPREHENSIVE OR AREA PLAN REQUIREMENTS**

**Land Use Plan**

The future land use designation of the subject property is Commercial (COM), and the subject request is consistent with the Commercial (COM) land use category. This property is located within the Fairview Mixed Use Overlay District, which is a Neighborhood Activity Center (NAC). A NAC should provide the commercial and institutional uses necessary to support the common day-to-day demands of the surrounding neighborhood for goods, services, and facilities. In a NAC, the recommended maximum building height for single-use buildings at the street shouldn't exceed three stories (approximately 45 feet), and the typical range of commercial/retail floor space within the overall NAC is 125,000 to 300,000 square feet. Currently, the Fairview NAC contains about 60,000 square feet of commercial/residential floor space, so the addition of a single-story, 5,000-square-foot automotive repair center will not exceed these standards.

**Growth Management Plan**

The Growth Management Plan includes the following two Guiding Principles which are relevant to this case:

1. R1 Guiding Principle: Ensure that adequate infrastructure and services are available concurrently with new development.
2. L1 Guiding Principle: Concentrate growth near existing and planned employment centers and available and planned infrastructure to minimize costly service-area extensions.

**Affordable Housing Plan** The Affordable Housing Plan is not applicable to this case.

**Comprehensive Transportation Plan**

**Ten Ten Road is designated as a Major Thoroughfare.**

**Existing Section:** Approximately 90-foot ROW; two through lanes with a west-bound right and left turn lane

**Future Section:** 4 lanes with landscaped median in 100-foot ROW

**Sidewalks:** Required on both sides

**Bicycle Lanes:** 14-foot-wide outside lanes required

**Transit:** There are no existing or proposed transit routes adjacent to the subject property

**Status of Planned Improvements:** None proposed by the Town

**Parks, Recreation & Cultural Resources Facilities Master Plan**

According to the Parks, Recreation and Cultural Resources Facilities Master Plan the Ten Ten Road Street-Side Trail is part of the larger Town of Cary greenway network providing pedestrian and bicycle access to citizens in the southern part of Town, and linking to the larger townwide greenway system connecting neighborhoods to parks, shopping and employment areas. The Ten Ten Road Street-Side Trail connects to the 3-mile Churchill Estates/Dutchman’s Branch Greenway corridor (One (1) mile existing), and ultimately to the 3-mile Optimist Farm Greenway (0.44 miles existing).

Only approximately 0.2 miles of the Ten Ten Road Street-Side Trail exist currently along the frontage of the Churchill Estates subdivision, stopping approximately 340 feet east of the subject parcel. The Ten Ten Road Street-Side trail however, will ultimately extend another 1.17 miles east.

The continuation of this street-side trail to the Fairview Village shopping area would provide pedestrian and bicycle access between the residences along this existing and future 7.4-mile trail system and the Fairview Village retail area and businesses.

The ultimate goal is to amend the PRCR Master Plan to show the 450-foot connection to the Fairview Village Shopping Center, and eventually connect the two 10-foot-wide trail sections. However, when that construction would take place is uncertain. Ultimately, Ten Ten Road will be widened in accordance with the Comprehensive Transportation Plan though the Town has not appropriated funding for that construction, nor for further construction of the Ten Ten Road Street-Side Trail. Construction of this trail segment would not be eligible for the Town’s sidewalk request program as the properties it fronts are not within the Town’s corporate limits. In the absence of a Town capital project or an NCDOT project, the road work and trail connection would only be constructed if and when the Orchard Knoll subdivision ever re-develops.

**Open Space Plan**

According to the Open Space Plan there are no significant natural resources associated with this site.

**Historic Preservation Master Plan**

There are no known historic resources on this site.

<b>STAFF EVALUATION - CONSISTENCY WITH THE DESIGN GUIDELINES FOR MIXED USE CENTERS</b>
--

**Create a Sense of Place**

The proposed preliminary development plan includes conditions for architectural elements in the building façade design that aid in creating a sense of place.

**Create Human Scale**

The proposed building with a maximum area of 5,000 square feet and a maximum height of 24 feet contributes to a comfortable human scale.

**Connect Uses**

The proposed PDP provides interconnectivity for pedestrian and vehicular uses within the shopping center and provides connects to the public sidewalk.

**Provide Transitions**

A proposed 55-foot-wide perimeter buffer to the east provides a transition element to the adjacent single-family residential neighborhood.

**Reduce Parking Impacts**

The nature of the proposed use limits the opportunities for situating parking behind the building; however, the plan shows sufficient area for landscape screening of vehicular use areas

**Plan for Pedestrians, Bicyclists, and Transit Users**

Private sidewalks are shown with connectivity to public sidewalks and a 10-foot-wide street side trail has been proposed by the applicant along Ten Ten Road. Bicycle parking will be required by the LDO at the time of site plan review.

**Provide Open Space**

The proposed PDP offers a 55-foot-wide Type-A buffer adjacent to the residential subdivision to the west and a 20-foot-wide streetscape along Ten Ten Road.

**APPLICANT’S JUSTIFICATION STATEMENT & SUPPORT MATERIAL**

Attached are the applicant’s responses to the justification questions contained in the application form. Please note that these statements are that of the applicant and do not necessarily represent the views or opinions of the Town of Cary. Also, to address concerns regarding potential noise levels, attached is an acoustic study commissioned by the applicant for an existing Christian Brothers Automotive Store.

**ORDINANCE FOR CONSIDERATION**

**13-REZ-08 FAIRVIEW VILLAGE PDD AMENDMENT**

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE TOWN OF CARY TO CHANGE THE ZONING OF APPROXIMATELY 1.37 ACRES OWNED BY FAIRVIEW CENTER, LLC AND CASTO, BY AMENDING THE FAIRVIEW VILLAGE PDD TO ALLOW LIGHT VEHICLE SERVICE AS A PERMITTED USE ON A PORTION OF THE COMMERCIAL TRACT.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CARY:

**Section 1:** The Official Zoning Map is hereby amended by rezoning the area described as follows:

**PARCEL & OWNER INFORMATION**

Property Owner(s)	County Parcel Number(s) (10-digit)	Real Estate ID(s)	Deeded Acreage
Fairview Center LLC Casto 191 W. Nationwide Blvd. Suite 200 Columbus, OH 43215-2558	0760778538	0414151	1.37 ±
<b>Total Area</b>			1.37 ±

**Section 2:**

That this Property is rezoned, subject to the individualized development conditions set forth in the “Fairview Village Planned Development District” document dated May 12, 2005 and on file in the Planning Department, as amended by the Fairview Village Planned Development District Document and the associated Fairview Village Preliminary Development Plan approved by the Town Council as of this date and on file in the Planning Department, and subject to all the requirements of the Cary Land Development Ordinance (LDO) and other applicable laws, standards, policies and guidelines, all of which shall constitute the zoning regulations for the approved district and are binding on the Property.

**Section 3:**

The conditions proposed by the applicant to address conformance of the development and use of the Property to ordinances and officially adopted plans, to address impacts reasonably expected to be generated by the rezoning, and to promote the public health, safety and general welfare, and accepted and approved by the Town are set forth in the "Fairview Village Planned Development District" document dated May 12, 2005 and on file in the Planning Department, as amended by the "Fairview Village Planned Development District Amendment" document and associated Fairview Village Preliminary Development Plan approved by the Town Council as of this date and on file in the Planning Department.

**Section 4:** This ordinance shall be effective on the date of adoption.

Adopted and effective: *DATE*

---

Harold Weinbrecht, Jr.  
Mayor

---

October 10, 2013