

**Town of Cary, North Carolina
Rezoning Staff Report
13-REZ-29 Howard-Emerson Tracts
Town Council Meeting
April 10, 2014**

REQUEST

To amend the Town of Cary Official Zoning Map to apply initial zoning to 58.89 acres located on the south side of Morrisville Parkway and the east and west sides of White Oak Church Road. The property is currently zoned Wake County Residential 40 Watershed (R-40W). The proposed zoning district is Residential 40 Conditional Use (R-40-CU), with (a) Watershed Protection Overlay District, Jordan Lake Watershed; and (b) Conservation Residential Overlay District, Very Low Density Conservation Residential Sub-district, with zoning conditions offered by the applicant to limit land use to residential use and religious assembly.

There is an Owner-Initiated Annexation Petition (**13-A-24**) associated with this case.

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.amlegal.com/library/nc/cary.shtml>.

SUBJECT PARCELS

Property Owner(s)	County Parcel Number(s) (10-digit)	Real Estate ID(s)	Deeded Acreage
Kaye Mangum Howard Charles A. Howard Andrew M. Howard Angela K. Howard	0724236305 Portion	0080143 Portion	45.21
Scott A Westwood Sandra B. Emerson	0724221707	0360622	1.06
	0724224623	0360623	4.98
	0724220573	0360624	1.02
	0724220336	0360625	0.59
	0724223238	0360626	3.76
	0724222025	0360627	2.27
Estate of Billy James Howard, c/o Kaye M. Howard, Executrix	0724341025	0210601	0.10
Total Area			58.89

BACKGROUND INFORMATION

Applicant	Brian Eisner, Northwest Community Church 7712 Carpenter Fire Station Road Cary, NC 27519		
Agent	Ed Tang, PE, Withers & Ravenel 115 MacKenan Drive Cary, NC 27511		
Acreage	58.89		
General Location	1101, 1105, 1113, 1117, 1121 and 1129 White Oak Church Road, and 10109 Morrisville Parkway		
Schedule	Public Hearing February 27, 2014	Planning & Zoning Board March 17, 2014	Town Council April 10, 2014

Land Use Plan Designation	Very Low Density Conservation Residential (VLCR)
Existing Zoning District(s)	Wake County Residential 40 Watershed (R-40W)
Existing Zoning Conditions	None
Proposed Zoning District(s)	Residential 40 Conditional Use (R-40-CU), with (a) Watershed Protection Overlay District, Jordan Lake Watershed; and (b) Conservation Residential Overlay District, Very Low Density Conservation Residential Sub-district
Proposed Zoning Conditions	<ol style="list-style-type: none"> 1. Land use shall be limited to residential and/or religious assembly uses. 2. Residential use shall be limited to a maximum of 48 detached dwellings. 3. Religious assembly use shall not exceed 20,000 square feet. 4. Any religious assembly accessory day care or school use shall be limited to no more than 38 children or students.
Town Limits	The subject property is located outside the corporate limits and the Town of Cary ETJ. An owner-initiated annexation petition, 13-A-24 , has been submitted by the property owners in conjunction with this rezoning request.
Valid Protest Petition	Protest petitions are not applicable to a map amendment (rezoning) that initially zones property that is being added to the Town's jurisdiction by annexation.
Staff Contact	Mary Beerman, Senior Planner (919) 469-4342 mary.beerman@townofcary.org

SITE CHARACTERISTICS

Streams: According to Town of Cary GIS maps, the site is impacted by stream buffers. Field determination of these features will be required at the time of site plan review.

Floodplain: According to Town of Cary GIS maps, no floodplain area is present on the property. Field determination of these features will be required at the time of site plan review.

Adjacent Zoning and Land Use:

- North – Wake County Residential 40 Watershed (R-40W); detached residential, agriculture
- South – Wake County Residential 40 Watershed (R-40W); detached residential, forestry/agriculture
- East – Planned Development District, Major (Copperleaf PDD) and Resource/Recreation (R/R); open space, future Raftery Park site, and American Tobacco Trail
- West – Wake County Residential 40 Watershed (R-40W); detached residential, forestry/agriculture

CONSISTENCY WITH LAND DEVELOPMENT ORDINANCE

Land Use

COMPARISON OF USES ALLOWED IN (EXISTING) WAKE COUNTY R-40 DISTRICT AND (PROPOSED) R40-CU DISTRICT			
P=PERMITTED USE S= SPECIAL USE		P=PERMITTED USE S= SPECIAL USE P/Z= PERMITTED USE REQUIRING ZONING COMPLIANCE PERMIT	
Uses Allowed in Wake County R-40 District*		Uses Allowed in Proposed R40-CU District	
Single-family detached	P	Detached dwelling	P
Single-family attached	P	Religious Assembly	S/P
School	P		
Library	P		
Museum	P		
Art gallery	P		
Church	P		
Day care center	S		
Community center	S		
Government buildings	S		

various outdoor recreation facilities	S		
Convenience stores	S		
Automotive service and repair	S		
Banks	S		
Drugstores	S		
Bookstores	S		
Antique shops	S		
Hardware stores	S		
Other indoor retail and service establishments	S		
Barbershops	S		
Beauty salons	S		
Shoe repair shops	S		
Self-service laundries	S		
Cemeteries	S		
Mining	S		
Landfills	S		
* Information provided in this table is a summary of information available on Wake County's website at the following link: http://www.wakegov.com/planning/zoning/Pages/districts.aspx#r30			

Density and Dimensional Standards

	Proposed Zoning District R-40-CU	
	Residential Use	Religious Assembly use
Max. Dwelling Units	48 detached dwellings (proposed zoning condition)	N/A
Max. Square Footage	N/A	20,000 square feet (proposed zoning condition)
Min. Lot Size	40,000 square feet	None
Minimum Lot Width	150 feet (160 feet for corner lots)	None
Roadway Setback	50 feet from Morrisville Parkway and White Oak Church Road	30 feet
Side Yard Setback	20 feet (with septic tank/well) 15 feet (with public sewer)	None
	<i>Building location must also comply with Landscape Buffer requirements listed below.</i>	
Rear Yard Setback	30 feet	None
	<i>Building location must also comply with Landscape Buffer requirements listed below.</i>	
Maximum Building Height	35 feet	
	May be increased by one foot for every additional foot provided between the building footprint and the minimum required setback.	

Landscape Buffer

A 50-foot Type A buffer is required adjacent to the American Tobacco Trail.

For Residential Use: A 20-foot Type B semi-opaque perimeter buffer is required along the remainder of the perimeter.

For Religious Assembly Use: A 40-foot Type A opaque buffer is required along the remainder of the perimeter.

Streetscape

A 50-foot opaque streetscape is required adjacent to Morrisville Parkway and White Oak Church Road.

Traffic

The applicant placed limits on the proposed uses. Using the ITE Trip Generation Manual, 48 SF homes would generate 44 am and 55 pm peak hour trips, a 20,000 SF church would generate 12 am and 11 pm peak hour trips, and 38 day care or school children would generate 31 am and 32 pm peak hour trips. Based on these proposed uses, the total trips for this proposed rezoning would be 87 am and 98 pm peak hour trips. A traffic study is not required since it does not generate 100 peak hour trips or more as prescribed by the Land Development Ordinance.

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.

SUMMARY OF PROCESS AND ACTIONS TO DATE

Neighborhood Meeting

According to the applicant, a neighborhood meeting for the proposed rezoning was held on November 7, 2013. According to the information submitted by the applicant, four residents attended the meeting. According to the meeting minutes, resident questions and concerns related to road connections to adjoining property, and extension of sewer service. The applicant also confirmed that the proposed rezoning would not allow high density uses on the property.

Notification

On February 12, 2014, the Planning Department mailed notification of a public hearing on the request to property owners within 400 feet of the subject property. Notification was duly published on the Town's website on February 14 and 21, 2014. Notice of the public hearing was posted on the property on February 14, 2014.

Town Council Public Hearing (*February 27, 2014*)

There were no speakers at the public hearing other than the applicant. Council Member Yerha noted the presence of the historic farm complex on the subject property and asked that the potential for preservation be discussed at the Planning and Zoning Board meeting.

Planning and Zoning Board Meeting (*March 17, 2014*)

The applicant pointed out that the historic farm buildings were in the future right-of-way of White Oak Church Road. He also noted that one of the buildings had recently been dismantled and repurposed by the property owners, and other buildings would likely follow. The Planning and Zoning Board recommended approval of the request by a vote of 6-2. Concerns expressed by those casting dissenting votes included changing the rural character of the area, and failure to meet the intent of the Historic Preservation Master Plan by preserving the historic farm structures.

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 subject property is located within the **Southwest Area Plan** where it is designated as appropriate for Very Low Density Conservation Residential (VLCR) development. A VLCR designation means the property can be designed using either conventional R-40 subdivision design with a minimum lot size of 40,000 square feet, or conservation subdivision design, which allows lot sizes to be reduced in proportion to the amount of additional permanent open space provided, with gross density capped at 1.5 dwelling units per acre.

At present, the subject parcels are outside of Cary's ETJ, and are zoned R-40 by Wake County. The rezoning request includes an associated annexation request, that the subject parcels be annexed into Cary's corporate limits, and zoned R-40 Conditional Use. The proposed conditions would limit uses to residential or religious assembly uses. In addition, the parcels would receive two Cary overlay zoning districts:

- Watershed Protection Overlay District, Jordan Lake Watershed
- Conservation Residential Overlay District, Very Low Density Conservation Residential Subdistrict

Analysis: The proposed rezoning conforms to the standard practice for bringing parcels outside of Cary's ETJ into conformance with the Southwest Area Plan, namely to apply R-40 District base zoning, and then to apply the Conservation Residential District overlay zoning. Thus, the residential uses that would be permitted under the proposed rezoning will clearly conform with the area plan.

Regarding the proposed religious assembly use, the Southwest Plan does not specifically note that such uses are consistent with the definition for VLCR. In most of Cary's area plans, the residential land use categories state that certain neighborhood-compatible institutional uses – such as places of worship – may be considered within the residential category. (For example, the definition for "Very Low Density Residential" (VLDR) in the Southwest Plan includes the statement "*Institutional uses such as churches, schools, libraries, and daycare facilities that are compatible and complementary to the surrounding neighborhood may be considered.*") However, the Southwest Plan's definitions for VLCR and LCR do not explicitly include such a provision. Nevertheless, the Plan Document does include a sidebar text box that explains that the standard R-40 base zoning district does allow a number of uses other than single-family residential, either by right or as special uses, and that such uses include churches, schools, daycare, and others.

Growth Management Plan

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

- Guiding Principle L1: Concentrate growth near existing and planned employment centers and available and planned infrastructure to minimize costly service-area extensions.

Analysis: Development within the Very Low Density Conservation Residential portion of Cary's planning area is not intended to be an area where intense development is concentrated. Rather, through the plan and the Conservation Residential Overlay District, the intent is foster lower-intensity development. The requested rezoning conforms to that intent.

- Guiding Principle L2: Ensure that future growth protects sensitive natural resources and protects open space.

Analysis: Residential development within the Conservation Residential Overlay District provides deliberate incentives to encourage the preservation of additional open space, and to conserve significant natural resources.

- Guiding Principle R1: Ensure that adequate infrastructure and services are available concurrently with new development.

Analysis: Utilities are available just east of the subject parcel, at the Copperleaf PDD.

Affordable Housing Plan

The Affordable Housing Plan includes the following goals:

1. Provide for a full range of housing choices for all income groups, families of various sizes, seniors, and persons with special challenges.
2. Encourage the location of high density housing within walking and convenient commuting distance of employment, shopping, and other activities, or within a short walk of a bus or transit stop, through "mixed

use" developments, residences created on the upper floors of nonresidential downtown buildings, and other creative strategies.

3. Facilitate the creation of a reasonable proportion of the Town of Cary's housing as affordable units through additional homeownership opportunities for individuals and families earning between 60% and 80% of area median income and affordable apartments for individuals and families earning up to 60% of the area median income.

Observations: Based on the proposed rezoning request, the goals of the adopted Affordable Housing Plan are not applicable to, or likely to be supported by, this case.

Comprehensive Transportation Plan

Morrisville Parkway

Designation: Major/Minor Thoroughfare (see future section below)

Existing Section: 2-lane undivided swale section in approximately 6-foot ROW

Future Section: 4-lane median-divided "rural" cross-section in 115-foot ROW east of County Line Road and 2-lane undivided "rural" cross-section in 9-foot ROW west of County Line Road.

Sidewalks: Not required with rural section

Bicycle Lanes: Not required; 4-foot paved shoulder with future cross-section

Transit: N/A

Status of Planned Improvements: N/A

White Oak Church Road/County Line Road (ext. of Yates Store Road)

Designation: Major Thoroughfare

Existing Section: 2-lane undivided section in approximately 60-foot ROW

Future Section: 4-lane median-divided "rural" cross-section in 115-foot ROW

Sidewalks: Not required with rural section

Bicycle Lanes: Not required; 4-foot paved shoulder with future cross-section

Transit: N/A

Status of Planned Improvements: N/A

White Oak Church Road

Designation: A local road

Existing Section: 2-lane undivided section in approximately 60-foot ROW

Future Section: 2-lane undivided

Sidewalks: N/A

Bicycle Lanes: N/A

Transit: N/A

Status of Planned Improvements: N/A

Transit: At present, the site is not served by any proximate fixed-route transit service. The nearest existing C-Tran and Triangle Transit fixed-route service is located about 4 miles east of the site (at the closest point) at NC 55 Highway. The long-range expansion plan for C-Tran does anticipate future fixed-route service along Green Level Church Road, approximately 1.5 miles east of the site. However, neither the date of such service, nor its funding, has yet been established.

Parks, Recreation & Cultural Resources

According to the Parks, Recreation and Cultural Resources Facilities Master Plan, a portion of the eastern property line of the subject property is adjacent to the American Tobacco Trail, and the property's southeast corner abuts the Raftery Park site. The master plan proposes no additional recreational land or facilities at this site.

A recreation payment-in-lieu will be required for residential development in accordance with the Land Development Ordinance.

These comments were reviewed and approved by the Town's Parks, Recreation & Cultural Resources Advisory Board at its February 3, 2014 meeting.

Open Space Plan

According to the Open Space Plan, a majority of the site east of White Oak Church Road as well as roughly 40% of the site on the west side of the road was identified as having agricultural uses and mixed hardwood and conifer forests.

Historic Preservation Master Plan

A goal of the Town's adopted 2010 Historic Preservation Master Plan is to "Preserve, protect and maintain Cary's historic resources." The subject property contains the historic Yates Farm, with its buildings straddling both sides of White Oak Church Road where it terminates at Morrisville Parkway. The land containing this farm has been in the Yates family for several generations. The earliest known owner of the land was Hinton Yates (1821-1891). It is likely that the house and most of the outbuildings (Attachment A) were built when James Roy Yates (1909-1987) and wife Lucille Vandiver Yates (1905-2002) owned the property since the buildings appear to date to their tenure. Heirs of Lucille Yates are the current owners of the property. The Yates Farm is included in the Cary/Wake County Architectural and Historic Inventory and is considered one of the best preserved Depression-era farm complexes in this part of Wake County. In 2007, the North Carolina National Register Advisory Committee (NRAC) determined that the property appears to be eligible for nomination to the National Register. The NRAC subsequently placed the property on the State's Study List for the National Register of Historic Places, and notified the property owners so they could pursue National Register listing if they desired. (A property may not be nominated to the National Register over the objection of its private owner.) Placement on the Study List is not a guarantee of National Register eligibility, but rather a preliminary indication that a property appears to be potentially eligible for listing in the Register. Listing in the National Register makes a property eligible for an investment tax credit for approved historic rehabilitations.

The survey report provides the following architectural notes: The c.1938 farmhouse sits on the east side of White Oak Church Road. The farmhouse is a one-and-a-half-story brick house with a one-story rear wing and an enclosed side-porch likely altered around 1960. A pair of front-gabled dormers sheathed in synthetic siding is located on the front slope of the side-gabled roof. An open, gabled-roof well house is attached to the southeast (rear) corner of the house. Directly behind the house are three c. 1940 outbuildings: a garage, a shed, and a ruinous chicken house. Additional c.1940 outbuildings stand on the west (opposite) side of White Oak Church Road and include a tenant house, tobacco barn, smokehouse and packhouses. The frame tenant house stands on stone foundation piers, and is a modest side-gabled dwelling with rear shed rooms and a partial-width front porch supported by round wood supports. Windows, where remaining, are two-over-two and six-over-six. Doors are simple batten types with horizontal braces. The tenant house appears to have been built in two or more stages.

OTHER REFERENCE INFORMATION

Schools	Type ¹	Projected Range of Additional Students ²
<i>This information is being provided for your review; however, the Wake County Board of Education controls capital projects for school capacities.</i>	Elementary School	14-20
	Middle School	3-7
	High School	3-9
Total Projected range of additional students ²		20-36

¹Information regarding specific Wake County Public School assignment options may be found by visiting the following: <http://assignment.wcpss.net/preview/myplan.html>

² The *Projected Range of Additional Students* is a rough approximation. The actual number of students will vary depending on variables, such as the number of bedrooms, dwelling size, and other factors. For example: a site with 12 three-bedroom homes could yield six additional students, while 12 homes with greater than three bedroom units could yield 10 students. The basis for making this calculation is based on multipliers provided by the Wake County Schools Office of Student Assignment. At rezoning, student yield can not be accurately determined due to unknown variables.

APPLICANT'S JUSTIFICATION STATEMENT

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.

**ORDINANCE FOR CONSIDERATION
13-REZ-29 Howard-Emerson Tracts**

AN ORDINANCE TO ESTABLISH INITIAL TOWN OF CARY ZONING FOR APPROXIMATELY 58.89 ACRES ON THE SOUTH SIDE OF MORRISVILLE PARKWAY ON THE EAST AND WEST SIDES OF WHITE OAK CHURCH ROAD BY APPLYING RESIDENTIAL 40 CONDITIONAL USE (R-40-CU), WATERSHED PROTECTION OVERLAY DISTRICT, (JORDAN LAKE WATERSHED), AND CONSERVATION RESIDENTIAL OVERLAY DISTRICT, (VERY LOW DENSITY CONSERVATION RESIDENTIAL SUB-DISTRICT) ZONING TO PROPERTY CURRENTLY ZONED WAKE COUNTY RESIDENTIAL 40 (R-40).

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
Kaye Mangum Howard Charles A. Howard Andrew M. Howard Angela K. Howard	0724236305 Portion	0080143 Portion	45.21
Scott A Westwood Sandra B. Emerson	0724221707	0360622	1.06
	0724224623	0360623	4.98
	0724220573	0360624	1.02
	0724220336	0360625	0.59
	0724223238	0360626	3.76
	0724222025	0360627	2.27
Estate of Billy James Howard, c/o Kaye M. Howard, Executrix	0724341025	0210601	0.10
Total Area			58.89

Section 2: That this Property is rezoned from Wake County R-40 to: R-40-CU; Watershed Protection Overlay District, Jordan Lake Watershed; and Conservation Residential Overlay District, Very Low Density Conservation Residential Sub-district, subject to the individualized development conditions set forth herein, and 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:

1. Land use shall be limited to residential and/or religious assembly uses.
2. Residential use shall be limited to a maximum of 48 detached dwellings.
3. Religious assembly use shall not exceed 20,000 square feet.

4. Any religious assembly accessory day care or school use shall be limited to no more than 38 children or students.

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

Adopted and effective: April 10, 2014

Harold Weinbrecht, Jr.
Mayor

Date