

**City of Fayetteville Staff Review Form**

**2015-0464**

**Legistar File ID**

**10/20/2015**

City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Jeremy Pate

10/2/2015

City Planning /  
Development Services Department

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

ADM 15-5205: Administrative Item (SW CORNER VAN ASCHE & STEELE BLVDS./CMN BUSINESS PARK, LOT 6, 212): Submitted by BATES & ASSOCIATES, INC. for property located at SW CORNER OF VAN ASCHE & STEELE BLVDS. The property is zoned C-1, NEIGHBORHOOD COMMERCIAL and contains approximately 2.24 acres. The request is for an amendment to the CMN Bill of Assurance, to allow a restaurant near the Centerbrook Subdivision.

**Budget Impact:**

Account Number	Fund
Project Number	Project Title
<b>Budgeted Item?</b> <u>NA</u>	Current Budget            \$                            -
	Funds Obligated            \$                            -
	Current Balance            \$                            -
<b>Does item have a cost?</b> <u>No</u>	Item Cost
<b>Budget Adjustment Attached?</b> <u>NA</u>	Budget Adjustment
	Remaining Budget            \$                            -

V20140710

Previous Ordinance or Resolution # \_\_\_\_\_

Original Contract Number: \_\_\_\_\_

Approval Date: \_\_\_\_\_

Comments:

**MEETING OF OCTOBER 20, 2015**

**TO:** Fayetteville City Council

**FROM:** Jesse Fulcher, Senior Planner

**THRU:** Andrew Garner, Planning Director

**DATE:** October 2, 2015

**SUBJECT:** **ADM 15-5205: Administrative Item (SW CORNER VAN ASCHE & STEELE BLVDS./CMN BUSINESS PARK, LOT 6, 212):** Submitted by BATES & ASSOCIATES, INC. for property located at SW CORNER OF VAN ASCHE & STEELE BLVDS. The property is zoned C-1, NEIGHBORHOOD COMMERCIAL and contains approximately 2.24 acres. The request is for an amendment to the CMN Bill of Assurance, to allow a restaurant near the Centerbrook Subdivision.

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**RECOMMENDATION:**

The Planning Commission recommends approval of a request for an amendment to the CMN Bill of Assurance, to allow a restaurant near the Centerbrook Subdivision. Staff did not support the request.

**BACKGROUND:**

The subject property is located at the southwest corner of Steele Boulevard and Van Asche Drive. The property is a part of Lot 6 of the CMN Subdivision. In 1995 the City Council rezoned the property to C-1, Neighborhood Commercial, subject to a Bill of Assurance offered by the developers and agreed to by the property owners in the Centerbrook Subdivision, which is located to the southwest of the subject property.

The Bill of Assurance applies to multiple properties to the north and east sides of the Centerbrook Subdivision, and includes requirements for additional screening and setbacks from the subdivision boundary. The Bill of Assurance also provides a list of prohibited land uses, including restaurants.

The applicant is requesting an amendment to the Bill of Assurance for CMN Business Park, to allow Use Unit 13 – Eating Places on the subject 2.24 acres of Lot 6. The applicant has already submitted large scale development plans for a 13,533 square foot building that will contain 7,547 square feet for a restaurant and brewery, 4,619 square feet for office space and 1,367 square feet for a mechanical room. The Planning Department cannot process the plans unless the Bill of Assurance is amended by the City Council.

Staff recommends denial of **ADM 15-5205**, finding that the land use restrictions placed on CMN Business Park in 1995 are still warranted today. The Centerbrook Subdivision was platted in 1972, over 20 years before the business park was rezoned. Rezoning the CMN property to C-1,

Neighborhood Commercial was only recommended when many of the higher intensity commercial uses were removed through the Bill of Assurance, as worked out between the neighbors and developers at the time. Amending the Bill of Assurance to allow land uses which were already determined to be incompatible with the neighborhood is not appropriate in staff's opinion.

**DISCUSSION:**

Some of the discussion of the Planning Commission centered on whether the land use restrictions in the Bill of Assurance even apply to this property, as the subject property has been subsequently split off from the parent tract and no longer technically directly abuts the nearby neighborhood. Staff's analysis, in conjunction with the City Attorney's office, concludes that all of the property south and west of the Van Asche/Steele Boulevard intersection were clearly included in the restricted uses when it was rezoned C-1. A formal letter of interpretation was forwarded to the applicant stating the city's position, and it is included in the packet for your information.

On September 28, 2015 the Planning Commission forwarded this item to the City Council with a recommendation for approval with a vote of 6-2-0. Five residents from the Centerbrook Subdivision spoke at the meeting, with one neighbor in favor of the request and four opposed.

**BUDGET/STAFF IMPACT:**

N/A

**Attachments:**

CC Ordinance


Exhibit A

Exhibit B

Planning Commission Staff Report

**TO:** City Planning Division File

**CC:** W. Asa Hutchinson II, Roberts Law Firm, P.A.

**FROM:** Andrew Garner, City Planning Director/Zoning and Development Administrator 

**DATE:** September 11, 2015

**SUBJECT:** Zoning Determination for CMN Business Park Lot 6

**ATT:**

- Ordinance No. 3936
- City Council Meeting Minutes November 7, 1995 (Pages 479-480)
- Pages from the Bill of Assurance Booklet "Rezoning Requests R95-24 & R95-25 Mutual Agreement"

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**ZONING DETERMINATION:**

The zoning for CMN Business Park Lot 6 established with Ordinance No. 3936 is restricted by a Bill of Assurance/agreements offered by the applicant to City Council. These agreements are tied to the zoning of the property and among other things, do not permit a restaurant or brewery at Lot 6 of CMN Business Park.

**POSSIBLE SOLUTIONS:**

As previously communicated with the applicant and their attorney, this zoning determination may be appealed the Board of Adjustment within 10 working days, then the Circuit Court. An alternative is to request the City Council amend to the Bill of Assurance to accommodate the proposed development. Still another alternative is to rezone the property to accommodate the proposed development.

**DISCUSSION:**

An official zoning determination has been requested for Lot 6 of CMN Business Park because of a pending development application for a restaurant/brewery at this location.

The City Council rezoned the subject property to C-1, Neighborhood Commercial with restrictions on November 7, 1995 with Ordinance No. 3936. The ordinance specifically states that the zoning is "...with restrictions."

The applicant for the rezoning submitted booklets of information to the City Council titled "Mutual Agreement" as part of the rezoning request. These booklets describe detailed agreements between the owners of the Centerbrook Subdivision adjacent to the west and the property owner/developer. The booklets were signed by representatives of the neighborhood and the property owner/developer. These restrictions were then submitted to the Planning Commission

and City Council for consideration as part of the rezoning request and referred to as a Bill of Assurance.

The legislative record is a little unclear regarding the enforcement of the Bill of Assurance. Review of the meeting minutes and the documents submitted by the applicant include some of the following key points on pages 479-480 of the City Council meeting minutes from November 7, 1995:

- Fayetteville City Attorney Jerry Rose stated "...that the document presented to the Council is not a legal Bill of Assurance, but is a legally enforceable document."
- "Mayor Hanna explained that the items in the Bill of Assurance presented will be addressed at Large Scale Development."
- "City Attorney Rose stated that the Council was certainly taking that (the offer made by the petitioner in the document referred to as 'Amended Bill of Assurance C-1 Rezoning R95-25') into consideration because it has been offered by the petitioner voluntarily."
- Fayetteville City Attorney Rose ended his discussion of the Bill of Assurance as follows: "In response to a question from Mayor Hanna, City Attorney Rose stated that it is correct that the council will have the opportunity to bring any large scale development that comes through with this property back before the Council at the request of any Council member. If the petitioners do not do what they have said they will do, the request for large scale development can be turned down."

The discussion noted above was completed prior to the Council's vote on the rezoning ordinance R95-25. In reviewing the record of the rezoning request it is apparent that the City would enforce the Bill of Assurance's terms, including removing Use Unit 13 – Eating Places that was shown as being stricken from the list of uses in the Bill of Assurance.

Rezoning Ordinance No. 3936 that refers to "...with restrictions" clearly refers to the Bill of Assurance offered by the applicant that includes a list of restricted uses and a map showing areas that are subject to the restrictions, including what is now CMN Lot 6.



## PLANNING COMMISSION MEMO

**TO:** Fayetteville Planning Commission

**FROM:** Jesse Fulcher, Senior Planner

**THRU:** Andrew Garner, Planning Director

**MEETING DATE:** ~~September 28, 2015~~ Updated October 1, 2015

**SUBJECT:** **ADM 15-5205: Administrative Item (SW CORNER VAN ASCHE & STEELE BLVDS./CMN BUSINESS PARK, LOT 6, 212):** Submitted by BATES & ASSOCIATES, INC. for property located at SW CORNER OF VAN ASCHE & STEELE BLVDS. The property is zoned C-1, NEIGHBORHOOD COMMERCIAL and contains approximately 2.24 acres. The request is for an amendment to the CMN Bill of Assurance, to allow a restaurant near the Centerbrook Subdivision.

**RECOMMENDATION:**

Staff recommends denial of **ADM 15-5205**.

**BACKGROUND:**

The subject property is located at the southwest corner of Steele Boulevard and Van Asche Drive. The property is a part of Lot 6 of the CMN Subdivision. In 1995 the City Council rezoned the property to C-1, Neighborhood Commercial, subject to a Bill of Assurance offered by the developers and agreed to by the property owners in the Centerbrook Subdivision, which is located to the southwest of the subject property.

The Bill of Assurance applies to multiple properties to the north and east sides of the Centerbrook Subdivision, and includes requirements for additional screening and setbacks from the subdivision boundary. The Bill of Assurance also provides a list of prohibited land uses, including restaurants. Surrounding land use and zoning is depicted in Table 1.

**Table 1  
Surrounding Land Use and Zoning**

Direction from Site	Land Use	Zoning
North	Undeveloped	C-1, Neighborhood Commercial
South	Undeveloped	C-1, Neighborhood Commercial
West	Office	C-1, Neighborhood Commercial
East	Office	C-2, Thoroughfare Commercial

**DISCUSSION:**

*Request:* The applicant is requesting an amendment to the Bill of Assurance for CMN Business Park, to allow Use Unit 13 – Eating Places on the subject 2.24 acres of Lot 6. The applicant has already submitted large scale development plans for a 13,533 square foot building that will contain 7,547 square feet for a restaurant and brewery, 4,619 square feet for office space and 1,367

square feet for a mechanical room. The Planning Department cannot process the plans unless the Bill of Assurance is amended by the City Council.

**RECOMMENDATION:**

Staff recommends denial of **ADM 15-5205**, finding that the land use restrictions placed on CMN Business Park in 1995 are still warranted today. The Centerbrook Subdivision was platted in 1972, over 20 years before the business park was rezoned. Rezoning the CMN property to C-1, Neighborhood Commercial was only recommended when many of the higher intensity commercial uses were removed through the Bill of Assurance. Amending the Bill of Assurance to allow land uses which were already determined to be incompatible with the neighborhood is not appropriate in staff's opinion.

Some types of food service business are actually still allowed on the subject property. These include a bakery, delicatessen and specialty food store. Based on the Bill of Assurance documents, the neighborhood was not concerned with small-scale food businesses, but rather with larger restaurants with late-night hours of operation. The large scale development application submitted to the Planning Division proposes a 13,000 square foot restaurant and brewery, as well as areas for outdoor games and a stage for live music. This is not a neighborhood-scale cafe that can be compatible with residential properties. Rather it's a large-scale restaurant and entertainment venue that should be adequately separated from residential land uses. However, the applicant's proposed development should not be considered with this request, which is a zoning decision.

Staff also has concerns with supporting the proposed amendment, since the applicant also needs a conditional use permit for outdoor music. Staff does not see any way to support an outdoor music permit on this property given the proximity of the site to the Centerbrook Subdivision. A decision to allow Use Unit 13 will lead to the applicant's subsequent request for outdoor music.

**Should the Planning Commission recommend in favor of the request, staff recommends the following conditions of approval:**

1. The Bill of Assurance from 1995 contains several sheets from the zoning chapter of the Unified Development Code. These sheets are very outdated and don't contain many use unit listings that are necessary for the applicant to process the large scale development. For example, Use Unit 35, Outdoor Music Establishments was not a use unit in 1995 and is not even listed in the Bill of Assurance. Consequently, an outdoor music establishment cannot even be requested. Staff has attached a new listing of use units that we recommend adopting if the applicant's request is approved. The intent of this update is to add Use Unit 13 as a permitted use and use Unit 35 as a conditional use.
2. The amendments to the original Bill of Assurance shall only apply to the highlighted 2.24 acres shown in Exhibit "A" attached hereto.

3. All of the remaining conditions of the Bill of Assurance shall remain in force.

<b>PLANNING COMMISSION ACTION: Required</b>			
Date: <u>September 28, 2015</u>	<input type="checkbox"/> Approved	<input checked="" type="checkbox"/> Forwarded	<input type="checkbox"/> Denied
Motion: <b>Hoskins</b>	Second: <b>Selby</b>	Vote: <b>6-2-0</b>	
Notes: <b>The Planning Commission forwarded the request with a recommendation for approval.</b>	<b>(Chesser and Brown voted 'no')</b>		

**BUDGET/STAFF IMPACT:**

None

**ATTACHMENTS:**

- Original Bill of Assurance
- Use Unit Exhibits
- Written Request
- Survey
- Close Up Map
- One Mile Map



FILED FOR RECORD  
'95 NOV 17 PM 2 36

WASHINGTON CO AR  
K. HARNESS

**MICROFILMED**

**ORDINANCE NO. 3936**

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION R95-25 FOR A PARCEL CONTAINING APPROXIMATELY A TOTAL OF 40.68 ACRES LOCATED EAST OF GREGG, NORTH OF 71 BYPASS AND WEST OF 71 BUSINESS, SOUTH OF JOYCE STREET AS REQUESTED BY MEL MILHOLLAND ON BEHALF OF MARJORIE S. BROOKS AND NANCHAR, INC.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the zone classification of the following described property is hereby changed as follows:

R95-25 for the real property described in Exhibit "A" attached hereto and made a part hereof.

From A-1, Agricultural District to C-1 Neighborhood Commercial District and A-1, Agricultural District and R-1 Low Density Residential District, to C-1 Neighborhood Commercial District with restrictions.

Section 2. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

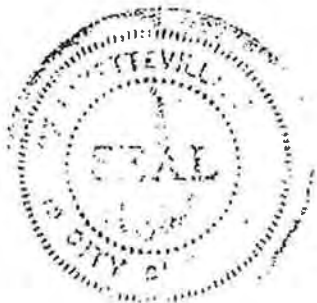
**PASSED AND APPROVED** this 7th day of November, 1995.

**APPROVED:**

By: Fred Hanna  
Fred Hanna, Mayor

**ATTEST:**

By: Traci Paul  
Traci Paul, City Clerk



**95062334**



## EXHIBIT "A"

## LEGAL DESCRIPTION FOR R95-25

A part of the SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ , Section 26, T-17-N, R-30-W, more particularly described as commencing at the West  $\frac{1}{4}$  corner of Section 26, Thence N 02-28-46 E 272.02 feet to the Point of Beginning; Thence along the West boundary of Section 26 N 02-28-46 E 1049.53 feet to the Northwest corner of the SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ , Section 26, Thence along the north line of said 40-acre tract S 87-10-11 E 440.01 feet, Thence S 02-28-46 W 1051.54 feet, Thence N 86-54-28 W 440.03 feet to the Point of Beginning, Containing 10.61 acres more or less, all in the City of Fayetteville, Washington County, Arkansas.

## ALSO:

A part of the West  $\frac{1}{2}$  of Section 26 and a point part of the East  $\frac{1}{2}$  of Section 27, all lands located in T-17-N, R-30-W, and more particularly described as commencing at a State Monument at the SE corner of said Section 27; Thence along the East boundary of said Section 27 N 02-28-46 E 1385.54 feet to a point on the North Right-of-Way of U.S. 71 Bypass and continuing thence along said Right-of-Way N 69-22-49 E 1.56 feet to a point at the SE corner of Centerbrook Subdivision, said point being the Point of Beginning; Thence along the East boundary of the Centerbrook Subdivision N 02-34-19 E 1088.91 feet to a Concrete Monument at the NE corner of said subdivision, Thence along the North boundary of the Centerbrook and Johnson Road Subdivisions N 86-54-28 W 1549.37 feet to the East Right-of-Way of the Arkansas-Missouri Railroad (St. Louis and San Francisco Railroad), Thence along said railroad Right-of-Way N 01-33-44 E 440.16 feet, Thence S 86-54-28 E 1993.24 feet, Thence S 02-28-46 W 1337.18 feet to the North Right-of-Way of U.S. 71 Bypass, Thence along said Right-of-Way S 69-22-37 W 368.58 feet to a Concrete Right-of-Way Marker, Thence S 69-22-49 W 108.22 feet to the Point-of-Beginning, Containing 30.07 acres, more or less, all in the City of Fayetteville, Washington County, Arkansas.

**95062335**

*Melvin L. Milholland*

*Milholland Company  
Engineering and Surveying*

205 WEST CENTER  
FAYETTEVILLE, ARKANSAS 72701  
(501) 443-4724  
FAX 443-4707

AR. R.L.S. NO. 648  
AR. P.E. NO. 3825  
OKLA. P.E. NO. 10740  
OKLA. R.L.S. NO. 1038

July 7, 1995

Fayetteville Planning Commission  
Fayetteville City Council  
Fayetteville City Staff

PROJECT: NANCHAR, INC. & MARJORIE S. BROOKS PROPERTIES  
BETWEEN FULBRIGHT EXPRESSWAY AND NWA MALL

AGENDA ITEMS: REZONING REQUESTS R95-24 AND R95-25

RE: MUTUAL AGREEMENT BETWEEN OWNERS & DEVELOPERS

Attached hereto is a mutual agreement between the RESIDENTS OF "CENTERBROOK SUBDIVISION" and NANCHAR, INC. & MARJORIE S. BROOKS, relative to said rezoning request. The agreement depicts a restricted C-2 zoning for properties adjacent to said subdivision, as described in EXHIBIT "A" of the agreement. Both parties trust that the efforts put forth to develop this agreement will be of assistance in your review process.

Your consideration of the attached is very much appreciated.

Sincerely,



Melvin L. Milholland, P.E., R.L.S.  
Project Engineer

cc: file  
RESIDENTS  
DEVELOPERS

I am a resident/owner of a lot in the Centerbrook Subdivision. I agree to be represented by the following persons in negotiations with NANCHAR, INC. and MARJORIE S. BROOKS, the developers of the property adjacent to the east and north of Centerbrook Subdivision, which is being considered for rezoning.

Jay Ellis  
2441 Northwood Ave.  
521-6592

Linda Hatcher  
3532 Northwood  
443-5294

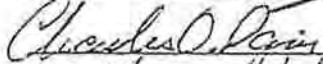
Charles Davis  
3359 Sandpiper  
444-7562

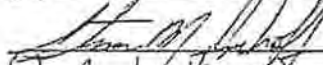
LaGayle McCarty  
3504 Northwood  
444-7183


Glenn Clancy  
3549 Sandpiper  
443-9445


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Signature/Print Name                      Address                      Phone Number

 Glenn D. Clancy 3547 Sandpiper - Fay 72004

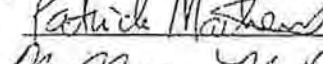
 CHARLES O. DAVIS 3359 SANDPIPER 444-7562

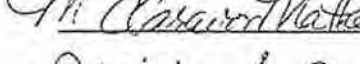
 STEVEN M. IMHOFF 3541 SANDPIPER 521-4839

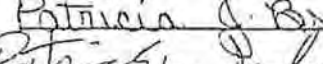
 John Hollowell 3524 Northwood 521-3381

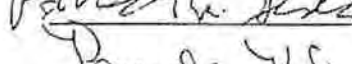
 WILLIAM MOORE 3504 SANDPIPER 444-8342

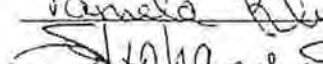
 BONNIE MOORE 3509 SANDPIPER 444-8342

 Patrick Mathews 3517 Northwood 587-0502

 M. Caravon Mathews 3517 Northwood 587-0502

 PATRICIA J. BRACK 3457 SANDPIPER 575-0881

 Patricia J. Sandlin 3441 Sandpiper 444-8156

 Pamela Kluge 3423 Sandpiper 442-0851

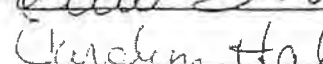
S. PHANIE SMITH

 Stephanie Smith 3497 Sandpiper Fay 521-8160

? AL A IMHOFF

 Pamela Imhoff 3541 Sandpiper Jay 521-4839

2016 Hollowell

 John Hollowell 3524 Northwood 521-3381

 Carolyn Hall 3480 Sandpiper 442-0932

Carolyn Hall

Signature/Print Name                      Address                      Phone Number

David Kienzle      DAVID KIENZLE      3525 NORTHWOOD FAY.      521-0076

Janelle Davis      Janelle Davis      3359 Sandpiper Fay      444-7562

Michael W. Walker      Michael W Walker      3509 Northwood      FAY - 442-6795

Lisa R. Clancy      Lisa R. Clancy      3549 Sandpiper Fay.      443-9445

Jay Ellis      Jay Ellis      3441 Northwood, Fay      521-6592

Timothy L. Ware      3556 Northwood, Fay      444-8095

W.J. Simmons      W.J. SIMMONS      3472 NORTHWOOD AVE. FAY.      521-2071

Janice Jones      <sup>Janice Jones</sup> 3448 Northwood Fayetteville      442-4083

Jody Holland      Jody Holland      3448 Northwood, Fay.      442-4083

Jahvie Williams      Jahvie Williams      3544 Northwood Fay      443-5393

Linda M. Hatcher      Linda M. Hatcher      3532 Northwest Ave Fay.      443-5274

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Timothy L.  
Ware

Present at 6-27-95 meeting with  
Milholland Company & Residents of  
Centertown Subdivision

RE: Rezoning & Development of 315  
Acres South of NW Ark. Mall

	<u>name</u>	<u>address</u>	<u>phone</u>
1	Jay Elti	3441 Northwood Ave	521-6592
2	CHRISTOPHER DAVIS	3359 SANDPIPER	444-7562
3	Glenn Clancy	3549 Sandpiper	443-9445
4	Linda Hatcher	3532 Northwood Ave	443-5294
5	Ronald McCarley	3504 Northwood	444-7183
6	<del>Mike Hatcher</del>	205 W. Center	443-4724
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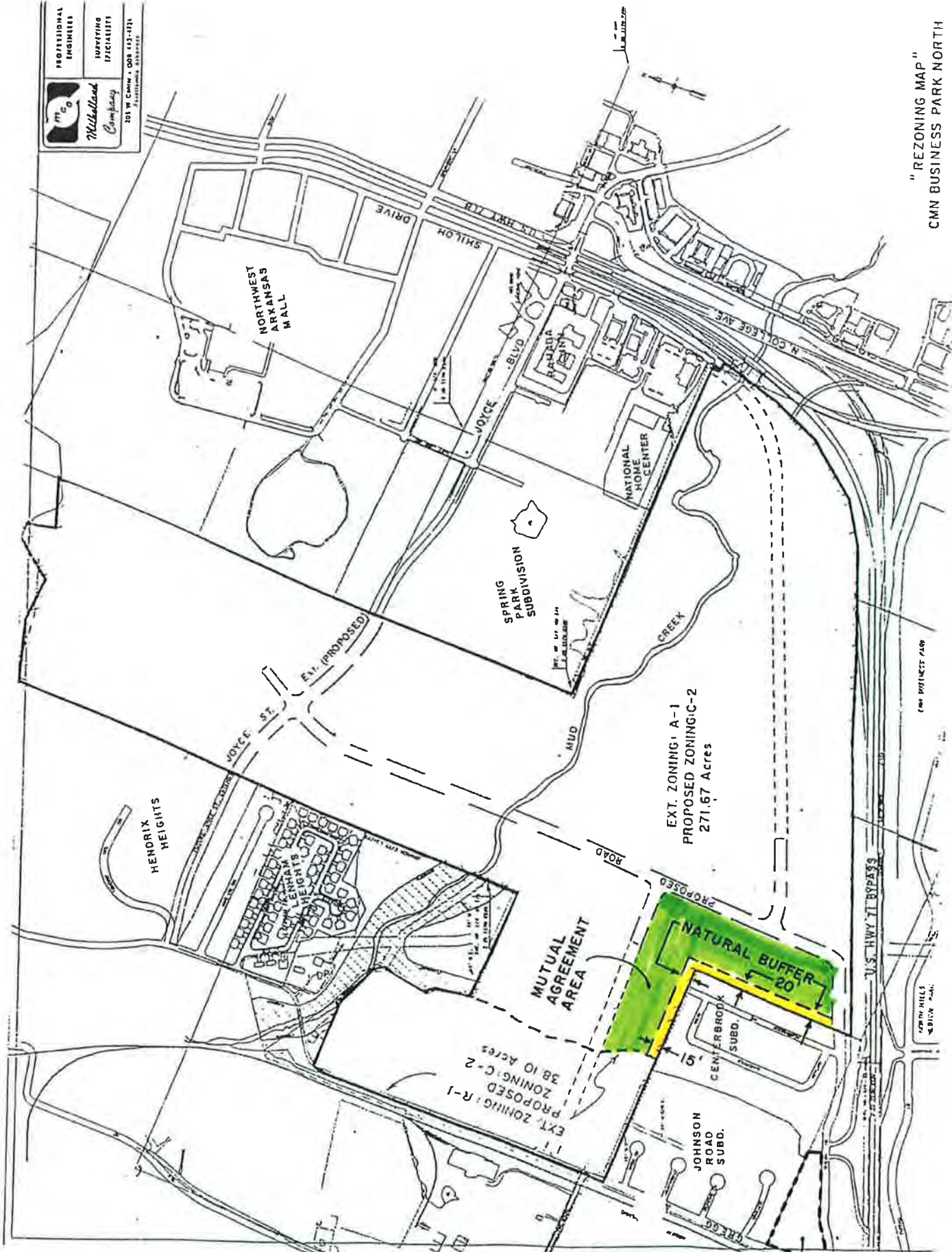
MEMO

TO: MILHOLLAND COMPANY AND NANCAR, INC.  
FROM: CENTERBROOK SUBDIVISION RESIDENTS  
DATE: JUNE 27, 1995  
SUBJECT: Concerns of residents of Centerbrook S/D with respect to a request for rezoning of property adjacent to the Centerbrook Subdivision.

The following is a list of initial concerns from the residents of Centerbrook Subdivision (as a result of a June 19, 1995 meeting) with respect to the proposed rezoning of property adjacent to Centerbrook Subdivision, and may be amended as additional information is obtained:

1. That Northwood Avenue not be opened.
2. Buffer zone/fencing/vegetation
3. Drainage
4. Proximity of proposed North/South road.
5. Type of development: Compatible materials (not metal).  
No apartments or duplexes (maybe upscale condos).  
Businesses that operate within normal business hours,  
ie. Monday through Friday, 8:00am to 5:00. (No target  
or K-Mart, etc.)


**PROFESSIONAL ENGINEER**  
**INSURANCE**  
 201 W. Center - OOR 433-4224  
 Fayetteville, Arkansas



EXT. ZONING: A-1  
 PROPOSED ZONING: C-2  
 271.67 Acres

EXT. ZONING: R-1  
 PROPOSED ZONING: C-2  
 38.10 Acres

EXT. C-2  
 & I-1

"REZONING MAP"  
 CMN BUSINESS PARK NORTH



TO: THE FAYETTEVILLE PLANNING COMMISSION  
AND THE FAYETTEVILLE CITY COUNCIL

This 7<sup>TH</sup> day of JULY, 1995, the RESIDENTS OF CENTERBROOK SUBDIVISION, hereinafter referred to as "Residents" and NANCHAR, INC. and MARJORIE S. BROOKS, hereinafter referred to as "Developers" hereby submit the following for consideration:

I. BACKGROUND.

1. The Developers have submitted an application for the rezoning of certain real property immediately adjacent to the east and north boundaries of Centerbrook Subdivision.

2. The Residents, through their designated representatives, have expressed to the Developers their concerns in regard to such development and their desires to preserve the character of their neighborhood.

3. Through negotiation, the Residents and Developers have reached certain agreements in regard to the property described in Exhibit "A", attached hereto and made a part hereof.

II. AGREEMENT.

1. RESIDENTS: Contingent upon approval by the Planning Commission and the City Council of all sections and clauses of this agreement, the Residents hereby express their support of rezoning requests R95-24 and R95-25.

2. DEVELOPERS: Contingent upon approval by the Planning Commission and the City Council of rezoning requests R95-24 and R95-25, the developers agree as follows:

a. The Developers agree they shall not request or pursue the opening of Northwood Avenue. Further, they agree to support the residents and advocate to the Planning Commission and the City Council that Northwood Ave. shall remain closed.

b. The Developers shall reserve on the final plat and in the subdivision covenants a 20' strip running adjacent to and along the entire east boundary and a 15' strip running adjacent to and along the entire north boundary of Centerbrook Subdivision as a "natural buffer". Such buffer shall serve as a noise and sight buffer between the two zoning districts and shall remain in its natural state.

c. Developers shall require the placement of a solid fence or a masonry wall not less than 6 feet in height along the east boundary and the north boundary of the natural buffer. The materials used shall be consistent and compatible with the

materials used for the building construction. Such requirements shall be reflected on the final plat and in the subdivision covenants.

d. Developers hereby agree to calculate the rear setback from the fence provided for in c. above, instead of the rear property line. This yields a minimum of a 40' building setback, in lieu of a 20' setback from the subdivision boundary, on the east, and yields a minimum on a 35' building setback, in lieu of a 20' setback from the subdivision boundary, on the north. These building setbacks will be reflected on the final plat and in the subdivision covenants.

e. Developers agree to calculate the height regulations set forth in the Code of Fayetteville from the placement of the fence instead of the subdivision boundary, and such shall be reflected on the final plat and in the subdivision covenants.

f. Developers agree to impose restrictive covenants, in regard to the construction material allowed, which are consistent with those covenants imposed in the CMN Business Park-South.

g. Developers shall design and construct a drainage system in compliance with the Drainage Control Ordinance and the Drainage Design Manual of the City of Fayetteville. The drainage plan shall address all drainage adjacent to the Centerbrook Subdivision and shall provide for a system to relocate the drainage onto the Developers' property. The system shall be approved by the City Engineer of the City of Fayetteville.

h. Developers agree to restrict the following uses which may otherwise be allowed in a C-2 zone for that area described in Exhibit "A": (those areas stricken are designated below with the letter, word or phrase stricken out).

#### USES BY RIGHT:

##### Unit 1 - City-Wide Uses by Right

- consists of public uses, essential services, agricultural uses, open land uses, and similar uses which are either subject to other public controls or which do not have significantly adverse effects on other permitted uses and are, therefore, permitted as uses of right in all districts.

Includes:

-Agricultural, forestry, and fishery:  
fields crop farms  
fishery

forest  
fruit, tree, and vegetable farm

-Essential services located in public rights-of-way:  
fire alarm box  
fire hydrant  
passenger stop for bus  
police alarm box  
sidewalk  
street, highway, and other thoroughfare street  
signs, traffic signs and signals  
utility main line, local transformer and station  
and similar facilities customarily located in  
public right-of-way

-Recreation and related use:  
arboretum  
historical marker  
park area  
parkway  
wildlife preserve

-Water facilities:  
reservoir (open)  
watershed conservation or flood control project

#### Unit 4 - Cultural and Recreational Facilities

- consists of cultural and recreational uses to serve the residents of the community.

includes:

-art gallery, library, museum  
-child care center, nursery school  
-church  
-college or-university  
-dermitery  
-auditorium  
-stadium  
-community center  
-detention-home  
-golf courses  
-hospital  
-park  
-playfield, playground  
-private-club-or-ledge  
-riding stables  
-school (elementary, junior high, senior high)  
-swimming pool  
-tennis court  
-theater (legitimate)  
-zee

## Unit 12 - Offices, Studios and Related Services

-consists of offices, studios, medical and dental labs, and other compatible or supporting services and sales.

includes:

- advertising agency
- artist's studio
- barber and beauty shops with six or few chairs
- computing service
- data processing service
- drafting service
- dental clinic
- financial institution
- funeral home
- medical clinic
- office buildings
- social and welfare agencies
- studio for teaching any of the fine arts
- sales of supplies and equipment:
  - architects and artists supplies
  - business machines
  - dental supplies
  - medical and optical supplies
  - office furnishings
  - scientific instruments
- services:
  - ~~auto-parking-garage~~
  - blue printing
  - employment agency
  - photo copying
  - printing
  - ticket office (transportation and amusement)
  - travel agency
  - veterinary small animal out-patient clinic

## ~~Unit 13 - Eating Places~~

~~established so that eating places can be located as needed without necessarily introducing other commercial uses.~~

~~includes:~~

- ع.د.  
ع.د.
- ~~eating places, other than drive-ins, which do not provide~~
  - ~~dancing or entertainment.~~

\* NOTE: No Fast Food

~~Unit-14---Hotel,-Motel-and-Amusement-Facilities~~

~~-----consists-of-hotels,-motels-and-certain-types-of-amusement facilities-~~

~~-----includes:~~

~~-----auditorium  
-----dance-hall  
-----hotel  
-----membership-lodge  
-----motel  
-----motion-picture-theater  
-----night-club  
-----restaurant-providing-dancing-and/or-entertainment  
-----tavern~~

Unit 15 - Neighborhood Shopping Goods

- variety of frequently purchased commercial goods, where convenience of location is more important than comparative shopping. These uses are grouped in limited areas while prohibiting all others not necessary near the residential areas.

includes:

-retail trade:

    - bookstores

        food:

            bakery  
            food specialties store  
            dairy products  
            GC  
            C.P. ~~grocery~~  
            Lit ~~super markets~~  
            delicatessen  
            health food store  
            drug store  
            florist  
            hardware store  
            home furniture store  
            service establishment :  
                dry-cleaning  
                barber and beauty shop  
                laundry  
            news and magazine stand  
            laundry-(coin-operated)  
            service-station  
            picture framing (retail)

## Unit 16 - Shopping Goods

-stores selling retail goods which are ordinarily purchased less frequently and often have a community-wide or regional market.

includes:

-retail trade establishment:

- antique shop
- apparel and accessory
- clothing
- fur apparel
- liquor-store
- millinery
- shoe
- tailoring

-automotive-marine craft establishment:

- auto-accessory-store
- auto-sales
- boat-and-accessories
- bicycle shop
- book store
- camera shop
- dry goods
- garden supply

-general merchandise establishment:

- department store
- mail order
- trading stamp redemption store
- hardware store
- hobby shop
- home furniture:
  - appliances
  - china
  - glassware
  - draperies
  - curtains
  - floor coverings
  - furniture
  - music instruments
  - radio and television store
  - record and tape shop
  - jewelry
  - leather goods and luggage
  - optical goods
  - pet shop
  - sporting goods
  - stationery store
  - toy shop

-service establishment:

- branch community facility

library  
 post office  
 -personal service:  
   ~~auto-rental-agency-office~~  
   barber and beauty shops with more than 4 chairs  
   costume rental service  
   detective service  
   dry-cleaning service  
   interior decorating  
   optician-optometrist  
   photofinishing  
   photographic studio  
   picture framing  
   reading rooms  
   reducing salon  
   ~~sign-painting~~  
   social and welfare agencies  
   gun smith  
   lock smith  
   watch and jewelry repair  
 -~~transportation-service:~~  
   -----~~bus-station~~  
   -----~~express-service~~  
   -----~~helistop~~  
   -----~~railway-terminal~~  
   -----~~taxicab-station~~  
   -----

Unit 17 - Trades and Services

-engaged primarily in providing household and automotive maintenance and similar services which fulfill recurrent needs of residents of nearby areas, but are generally incompatible with primary retail districts because they break the continuity of retail frontage.

includes:

-~~retail-trade-establishment,-general-~~  
 -----~~automotive-sales,-service-and-repair,-~~  
 -----~~including-body-shop~~  
 -----~~buses~~  
 -----~~mobile-home~~  
 -----~~motor-cycle,-including-service-and-repair~~  
 -----~~trucks,-including-service-and-repair,-~~  
 -----~~trailers,-camping,-hauling,-travel~~  
 -----~~used-car-lots~~  
 -----~~farm-supplies-and-equipment,-~~  
 -----~~including-service-and-repair~~  
 -----~~general-merchandise-establishment-(direct-selling)~~  
 -----~~merchandise-vending-machine-operations~~  
 -----~~institutional-furniture-and-furnishings~~  
 -----~~marine-craft,-sales-and-service-~~

~~-----boats-and-accessories~~  
 medical and orthopedic appliances  
 personal help:  
     ~~animal-hospital~~  
~~-----auctioneer~~  
     barber and beauty shops  
     bindery  
~~-----cabinet-maker~~  
~~-----frozen-food-locker~~  
     drapery service  
     dry cleaning  
     laundry  
     ~~linen-supply-and-industrial-laundry~~  
~~-----packing-and-crating~~  
     rug cleaning  
     taxidermist  
~~-----tool-sharpening~~  
~~-----repair-service-~~  
~~-----armature-rewinding~~  
~~-----auto-repair~~  
~~-----auto-wash~~  
~~-----electrical-repair-service~~  
~~-----furniture~~  
~~-----mattresses~~  
~~-----motors~~  
     radio and television repair  
     shoe  
     tailoring  
~~-----reupholstery~~  
~~-----rug-repair~~

**Unit-18---Gasoline-Service-Stations-and-Drive-In-Restaurants**

~~-----gasoline-service-stations-and-drive-in-restaurants-can-be~~  
~~significantly-objectionable-to-nearby-uses,-so,-therefore,-have~~  
~~been-allowed-only-in-districts-where-necessary-to-provide-this~~  
~~use-~~

~~-----included-~~

~~-----gasoline-service-station~~  
~~-----self-service-auto-wash-in-conjunction-with-~~  
~~-----a-gasoline-service-station~~  
~~-----drive-in-restaurant~~

**Unit-19--Commercial-Recreation**

~~-----commercial-amusements-which-ordinarily-do-not-require-large~~  
~~sites-and-often-seek-location-in-or-near-developed-commercial~~  
~~areas-~~



-----included+

-----billiard-and-pool-parlor  
-----bowling-alley  
-----domino  
-----slot-car-track  
-----skating-rink  
-----penny-arcade  
-----indoor-theater

#### Unit-20---Commercial-Recreation,-Large-Sites

-----commercial-recreation-facilities-which-are-usually  
conducted-out-of-doors,-on-large-sites,-and-in-undeveloped,  
outlying-parts-of-the-city,-uses-in-the-unit-have-an-adverse  
effect-on-certain-other-uses,-in-that-they-are-often-noisy-and  
are-large-traffic-generators-

-----included+

-----amusement-park  
-----drag-strip  
-----drive-in-theater  
-----fairgrounds  
-----fishing-dock  
-----go-cart-track  
-----golf-range  
-----miniature-golf  
-----race-track

#### Unit-24---Outdoor-Advertising

-----consists-of-outdoor-advertising-signs-(billboards)-on-which  
space-is-leased-or-rented-by-the-owners-thereof-to-others-for-the  
purpose-of-conveying-a-commercial-or-noncommercial-message--  
outdoor-advertising-is-set-forth-as-a-single-use-unit-in-order-to  
provide-maximum-control-over-the-location-of-outdoor-advertising  
signs-

\* NOTE: It is our understanding that Use Unit 25 is also an  
allowed use in a C-2 zoning district.

#### Unit 25 - Professional Offices

-small professional offices that are compatible with medium  
and high density residential areas.

includes:

-office for no more than four doctors  
-office for no more than four dentists  
-insurance sales

- studio for teaching any of the fine or liberal arts
- photography studio
- welfare agencies
- architect
- engineer
- attorney
- accountant
- business or management consultant
- realtor
- broker
- interior decorator
- veterinary small animal out-patient clinic

**CONDITIONAL USES:**

**Unit 2 - City Wide Uses by Conditional Use Permit**

-uses which may be conducted anywhere in the territorial jurisdiction, but which can be objectionable to nearby uses and are therefore permitted subject to conditional use permits in all district.

includes:

-public and private facilities:

- antique shop
- ~~airport, flying fields and heliport~~
- bed and breakfast facilities
- campground
- plant nursery
- ~~sewage disposal facility~~
- ~~solid waste disposal facility~~
- ~~water recreation area~~

-temporary facilities:

- ~~carnival, circus and tent revival~~
- ~~construction facility~~
- real estate sales office located at a specific location in an underdeveloped or partially developed subdivision and operated for the purpose of developing said subdivision
- ~~sanitary landfill area~~

**Unit 3 - Public Protection and Utility Facilities**

-primarily of public protection and utility equipment which a) is ordinarily not located in the street right-of-way and can be significantly objectionable to nearby residential, commercial, and light industrial uses, and

- b) have requirements for specific locations or are needed to serve residential neighborhood or other local areas, and
- c) are, therefore, permitted only on review.

includes:

- facilities of public service corporation
  - electric-regulating-station
  - pressure-control-station
  - transmitting-station-or-tower,-radio,-telegraph,-telephone,-television
  - other-utility-and-protective-facilities
  - airway-beacon
    - fire protection
    - police protection
  - public-utility-maintenance-building,-warehouse,-or-storage-building-
  - water-pipeline-rights-of-way,-treatment-plant,-water-storage-facility
  - railroad-rights-of-way-communication-and-utility--transmission-line-rights-of-way

\* NOTE: the above restricted uses are applicable to above ground facilities, not those located below the ground.

#### Unit 21 - Warehousing and Wholesale

-includes warehousing, wholesaling and trucking of the type which is usually located to serve the central business district and is easily served by rail and highway transportation.

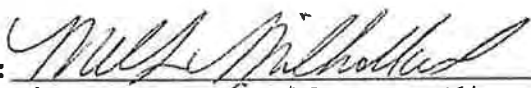
includes:

- warehouses
  - wholesale-establishments
  - trucking-establishments
  - building-material-establishments
  - air-conditioning
  - building-materials
  - electrical-supply
  - glass
  - heating-equipment
  - lumber
  - paint
  - plumbing-supplies
  - wall-paper
  - fuel-and-ice-establishments
  - bottled-gas
  - fuel-dealer
  - fuel-oil
  - ice-house
  - monument,-including-processing

~~-----vending-machines~~  
~~-----service-establishments+~~  
~~-----disinfecting-and-exterminating-services~~  
~~-----janitorial-services~~  
~~-----window-cleaning-service~~  
~~-----contract-construction-service+~~  
~~-----air-conditioning~~  
~~-----building-construction~~  
~~-----carpentry~~  
~~-----cesspool-cleaning~~  
~~-----concrete~~  
      decorating  
      electrical  
~~-----furnace-cleaning~~  
~~-----heating~~  
~~-----heavy-construction~~  
~~-----masonry~~  
~~-----oil-well-drilling~~  
~~-----painting~~  
      paper hanging  
~~-----plastering~~  
~~-----plumbing~~  
~~-----roofing~~  
~~-----sheet-metal~~  
~~-----stonework~~  
~~-----tile-setting~~  
~~-----water-well-drilling~~  
~~-----housing-for-caretakers---~~

**Unit-28---Center-for-Collecting-Recyclable-Materials**

DEVELOPERS:  
NANCHAR INC. AND MARJORIE S. BROOKS

BY:   
Signature for "DEVELOPERS"

MELVIN L. MILHOLLAND  
Print Name

PROJECT ENGINEER  
Title

205 W. CENTER, FAYETTEVILLE  
Address

501-443-4724  
Phone Number

RESIDENTS:

Charles O. Davis  
Signature

CHARLES O. DAVIS  
Print Name

3359 SANDPIPER, FAY.  
Address

(501) 444-7562  
Phone Number

Lagayle D. McCarty  
Signature

Lagayle D. McCarty  
Print Name

3504 NORTHWOOD, FAY  
Address

(501) 444-7183  
Phone Number

Jay Ellis  
Signature

Jay Ellis  
Print Name

3441 Northwood Ave., Fay  
Address

(501) 521-6592  
Phone Number

Linda M. Hatcher  
Signature

Linda m. Hatcher  
Print Name

3532 Northwood Ave.  
Address

(501) 443-5294  
Phone Number

(501) 443-5294  
Phone Number

  
Signature

Glenn D. Clancy  
Print Name

3549 Sandpiper ST  
Address

443-9445  
Phone Number

402

*Melvin L. Milholland*

*Milholland Company  
Engineering and Surveying*

205 WEST CENTER  
FAYETTEVILLE, ARKANSAS 72701  
(501) 443-4724  
FAX 443-4707

AR. R.L.S. NO. 648  
AR. P.E. NO. 3825  
OKLA. P.E. NO. 10740  
OKLA. R.L.S. NO. 1038

October 31, 1995

CITY OF FAYETTEVILLE  
PLANNING DEPARTMENT  
ATTN: ALETT LITTLE, DIRECTOR  
113 WEST MOUNTAIN STREET  
FAYETTEVILLE, ARKANSAS 72701

RE: AMENDED BILL OF ASSURANCES  
C-1 REZONING R95-25  
NANCHAR, INC. AND MARJORIE S. BROOKS, OWNERS

Dear Alett,

On July 7, 1995, the "RESIDENTS" of CENTERBROOK SUBDIVISION and the "LAND OWNERS", NANCHAR, INC. And MARJORIE S. BROOKS, entered into an agreement, or a Bill of Assurances, relative to the rezoning request by the LAND OWNERS to restrict certain uses in the units allowed in the C-2 zoning requested by the LAND OWNERS. The lands within this agreement were adjacent to the said subdivision boundary. This was accomplished in the form of striking out undesired uses in each UNIT as depicted in Exhibit "A" of said agreement. The C-2 UNITS that were listed in said agreement are as follows:

USES PERMITTED:

- UNIT 1 - City-Wide Uses by Right
- UNIT 4 - Cultural and Recreational Facilities
- UNIT 12 - Offices, Studios and Related Services
- UNIT 13 - Eating Places (Total Unit Stricken)
- UNIT 14 - Hotel, Motel and Amusement Facilities (Total Unit Stricken)
- UNIT 15 - Neighborhood Shopping Goods
- UNIT 16 - Shopping Goods

- UNIT 17 - Trades and Services
- UNIT 18 - Gasoline Service Stations and Drive-In Restaurants  
(Total Unit Stricken)
- UNIT 19 - Commercial Recreation (Total Unit Stricken)
- UNIT 20 - Commercial Recreation, Large Sites (Total Unit  
Stricken)
- UNIT 24 - Outdoor Advertising (Total Unit Stricken)
- UNIT 25 - Professional Offices (Not Allowed by C-2 Zoning but  
recommended by Residents)

USES PERMISSIBLE ON APPEAL TO THE PLANNING COMMISSION:

- UNIT 2 - City-Wide Uses by Conditional Use Permit
- UNIT 3 - Public Protection and Utility Facilities
- UNIT 21 - Warehousing and Wholesale
- UNIT 28 - Center for Collecting Recyclable Materials (Total  
Unit Stricken)

The Planning Commission Recommended the lands adjacent to said CENTERBROOK SUBDIVISION to be rezoned C-1, instead of C-2. The Residents have requested and the LAND OWNERS respectfully concurred with their request to use the same restrictions on Uses in Units allowed in C-1 that were also allowed in C-2, which are the following:

USES PERMITTED:

- UNIT 1 - City-Wide Uses by Right
- UNIT 12 - Offices, Studios and Related Services
- UNIT 13 - Eating Places (Total Unit Stricken)
- UNIT 15 - Neighborhood Shopping Goods
- UNIT 18 - Gasoline Service Stations and Drive-In Restaurants  
(Total Unit Stricken)
- UNIT 25 - Professional Offices



USES PERMISSIBLE ON APPEAL TO THE PLANNING COMMISSION:

UNIT 2 - City-Wide Uses by Conditional Use Permit

UNIT 3 - Public Protection and Utility Facilities

UNIT 4 - Cultural and Recreational Facilities

All other parts of said agreement shall remain the same.

Please accept this as the LAND OWNERS and the RESIDENTS request to AMEND their agreement, or Bill of Assurances, as stated above.

Respectfully submitted,

LAND OWNERS: NANCHAR, INC. AND MARJORIE S. BROOKS:

by:

  
Melvin L. Milholland, P.E. for LAND OWNERS

cc: file  
Charles Davis for RESIDENTS

**REZONING REQUESTS**

**R95-24 & R95-25**

**MUTUAL AGREEMENT**

**SUBMITTED TO:**

**FAYETTEVILLE PLANNING COMMISSION  
FAYETTEVILLE CITY COUNCIL  
FAYETTEVILLE CITY STAFF**

**DEVELOPERS:**

**NANCHAR, INC. &  
MARJORIE S. BROOKS**

**July 7, 1995**

**ENGINEER:**

**Melvin L. Milholland, P.E., R.L.S.  
MILHOLLAND COMPANY  
ENGINEERING & SURVEYING  
205 West Center Street  
Fayetteville, Arkansas 72701  
Telephone: (501) 443-4724  
Facsimile: (501) 443-4707**

PROPOSED USE UNIT RESTRICTIONS  
IF THE CITY COUNCIL RECOMMENDS  
IN FAVOR.

## 161.18 District C-1, Neighborhood Commercial

(A) *Purpose.* The Neighborhood Commercial District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 5	Government Facilities
Unit 13	Eating places
Unit 15	Neighborhood shopping
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 25	Offices, studios, and related services
Unit 44	Cottage Housing Development
Unit 45	Small scale production

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 16	Shopping goods
Unit 34	Liquor stores
Unit 35	Outdoor music establishments*
Unit 36	Wireless communications facilities*
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and area regulations.* None.

(E) *Setback regulations.*

Front	15 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.
Side	None
Side, when contiguous to a residential district	10 ft.
Rear	20 ft.

(F) *Building height regulations.*

Building Height Maximum	56 ft.*
-------------------------	---------

\*Any building which exceeds the height of 20 feet shall be setback from any boundary line of any residential district a distance of one foot for each foot of height in excess of 20 feet.

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

**TITLE XV UNIFIED DEVELOPMENT CODE  
CHAPTER 162: USE UNITS**

**162.01 ESTABLISHMENT/LISTING.....3**

**162.02 INTERPRETATION .....7**

**162.03 CONDITIONS OF USE.....7**

**162.04 ENCLOSURE OF USES .....7**

**162.05-162.99 RESERVED.....7**

Fayetteville Code of Ordinances

**CHAPTER 162: USE UNITS**

**162.01 Establishment/Listing**

The various use units referred to in the zoning district provisions are herein listed in numerical order. Within the use units, the permitted uses are ordinarily listed in alphabetical order. In these use units where there is a preliminary descriptive statement (which may mention specific uses) in addition to the detailed list of uses, the detailed list shall govern. The asterisk (\*) next to a specific use indicates that the use has special conditions as required by Chapter 163, Use Conditions and Chapter 164 Supplemental Regulations.

Unit 1	City-wide uses by right
Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 6	Agriculture
Unit 7	Animal husbandry
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 11	Manufactured home park
Unit 12	Limited business
Unit 13	Eating places
Unit 14	Hotel, motel and amusement facilities
Unit 15	Neighborhood shopping goods
Unit 16	Shopping goods
Unit 17	Transportation Trades and services
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 19	Commercial recreation, small sites
Unit 20	Commercial recreation, large sites
Unit 21	Warehousing and wholesale
Unit 22	Manufacturing
Unit 23	Heavy industrial
Unit 24	Home occupation
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 27	Wholesale bulk petroleum storage facilities with underground storage tanks
Unit 28	Center for collecting recyclable materials
Unit 29	Dance halls
Unit 30	Extractive uses
Unit 31	Facilities emitting odors & facilities handling explosives
Unit 32	Sexually oriented business
Unit 33	Adult live entertainment club or bar
Unit 34	Liquor stores
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities
Unit 37	Manufactured homes
Unit 38	Mini-storage units
Unit 39	Auto salvage and junk yards
Unit 40	Sidewalk Cafes
Unit 41	Accessory dwellings
Unit 42	Clean technologies
Unit 43	Animal boarding and training
Unit 44	Cottage Housing Development
Unit 45	Small scale production

(A) *Unit 1. City-wide uses by right.*

- (1) *Description.* Unit 1 consists of public uses, essential services, agricultural uses, open land uses, and similar uses which are subject to other public controls or which do not have significantly adverse effects on other permitted uses and are, therefore, permitted as uses of right in all districts.
- (2) *Included uses.* Public facilities of the types embraced within the recommendations of the Comprehensive Land Use Plan.

Agricultural, forestry, and fishery:	<ul style="list-style-type: none"> <li>•Field crop farms</li> <li>•Fishery</li> <li>•Forest</li> <li>•Fruit, tree, and vegetable farm</li> </ul>
Essential services located in public right-of-way:	<ul style="list-style-type: none"> <li>•Fire alarm box</li> <li>•Fire hydrant</li> <li>•Passenger stop for bus</li> <li>•Police alarm box</li> <li>•Sidewalk</li> <li>•Street, highway, and other thoroughfare</li> <li>•Street signs, traffic signs, and signals</li> <li>•Utility mainline, local transformer and station, and similar facilities customarily located in public right-of-way</li> </ul>
Recreation and related use:	<ul style="list-style-type: none"> <li>•Arboretum</li> <li>•Historical marker</li> <li>•Park area</li> <li>•Parkway</li> <li>•Wildlife preserve</li> </ul>
Water facilities:	<ul style="list-style-type: none"> <li>•Reservoir, open</li> <li>•Watershed</li> <li>•Conservation or flood control project</li> </ul>

(B) *Unit 2. City-wide uses by conditional use permit.*

- (1) *Description.* Unit 2 consists of uses which may be conducted anywhere in the territorial jurisdiction, but which can be objectionable to nearby uses and are therefore permitted subject to conditional use permits in all districts.
- (2) *Included uses.*

Public and private facilities:	<ul style="list-style-type: none"> <li>• Airport, flying fields and heliport</li> <li>• Bed and breakfast facilities*</li> <li>• Campground</li> <li>• Community Recycling Drop-off Facility</li> <li>• Landscape contracting business</li> </ul>
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Fayetteville Code of Ordinances

	<ul style="list-style-type: none"> <li>• Plant nursery</li> <li>• RV sewage disposal facility</li> <li>• Solid waste disposal facility</li> <li>• Water recreation area</li> </ul>
Temporary facilities:	<ul style="list-style-type: none"> <li>• Carnival, circus, and tent revival*</li> <li>• Commercial facilities</li> <li>• Real estate sales office (located at a specific location in an underdeveloped subdivision and operated for the purpose of developing said subdivision)</li> <li>• School and church facility</li> </ul>

(C) Unit 3. Public protection and utility facilities.

(1) *Description.* Unit 3 consists primarily of public protection and utility equipment which:

- (a) Is ordinarily not located in the street right-of-way and can be significantly objectionable to nearby residential, commercial, and light industrial uses;
- (b) Have requirements for specific locations or are needed to serve residential neighborhood or local areas; and
- (c) Are, therefore, permitted only on review.

(2) *Included uses.*

Facilities of Public Service Corporations:	<ul style="list-style-type: none"> <li>•Electric regulating station</li> <li>•Pressure control station</li> <li>•Transmission station for tower, radio, telegraph, telephone, television</li> </ul>
Other utility and protective facilities:	<ul style="list-style-type: none"> <li>•Airway beacon</li> <li>•Public utility maintenance building, warehouse, or storage building</li> <li>•Water pipeline rights-of-way, sewer or water treatment plant, water storage facility</li> </ul>
Railroad rights-of-way	
Communications and utility transmission line rights-of-way	

(D) Unit 4. Cultural and recreational facilities.

(1) *Description.* Unit 4 consists of cultural and recreational uses to serve the residents of the community.

(2) *Included uses.*

Auditorium, -stadium	
Art gallery, museum	
Cemetery	
Child care center, nursery school *	
Church	
College or university	
Community center	
Crematorium	
Dormitory	
Eldercare	
Hospital	
Mausoleum	
Playfield, playground	
Private club or lodge	
School:	<ul style="list-style-type: none"> <li>•Elementary</li> <li>•Junior High</li> <li>•Senior High</li> </ul>
Swimming pool	
Tennis court	
Theater (legitimate)	

**Cross-reference(s)**--Parking and Loading, Ch. 172.

~~(E) Unit 5. Government facilities.~~

~~(1) *Description.* Unit 5 consists of the main facilities of government agencies.~~

~~(2) *Included uses.*~~

City or county jail
Courts of law
Fire station
Governmental agencies and offices
Library
Police station
Post office
Detention Home

(M) Unit 13. Eating places.

(1) *Description.* Unit 13 is established that eating places, excluding drive-ins and those that provide dancing and entertainment, can be located as needed without necessarily introducing other commercial uses.

(2) *Included uses.*

Eating places, other than drive-ins, which do not provide dancing or entertainment
Restaurants
Café's

(O) Unit 15. Neighborhood shopping goods.

(1) *Description.* Unit 15 includes a variety of frequently purchased commercial goods, where convenience of location is more



TITLE XV. UNIFIED DEVELOPMENT CODE

important than comparative shopping. These uses are grouped in limited areas while prohibiting all others not necessary near the residential districts. All uses classified under Use Unit 15 must be within a building containing 25,000 square feet or less.

(2) *Included uses.*

Personal services	<ul style="list-style-type: none"> <li>• Barber/Salon</li> <li>• Dry cleaning</li> <li>• Laundry facility</li> <li>• Tailoring</li> </ul>
Retail	<ul style="list-style-type: none"> <li>• Apparel and accessory</li> <li>• Bakery, pastry shops</li> <li>• Bicycle shop</li> <li>• Bookstores</li> <li>• Coffee shop</li> <li>• Delicatessen</li> <li>• Drugstore</li> <li>• Electronics</li> <li>• Florists</li> <li>• Food specialty stores</li> <li>• Furniture and Home Decor</li> <li>• Grocery</li> <li>• Hardware store</li> <li>• Health food store</li> <li>• Hobby/craft shop</li> <li>• Ice cream</li> <li>• Jewelry/watch sales and repair</li> <li>• Meat market</li> <li>• Music instruments</li> <li>• News and magazine stand</li> <li>• Optical goods</li> <li>• Pet shop</li> <li>• Photography Studio</li> <li>• Picture framing</li> <li>• Shoe store</li> <li>• Sporting goods</li> <li>• Stationary store</li> <li>• Toy store</li> <li>• Video rental</li> </ul>
Vehicular Sales (interior display only)	<ul style="list-style-type: none"> <li>• Automobile</li> <li>• ATV/Motorcycle</li> <li>• Boat/Personal Watercraft (PWC)</li> </ul>

~~(R) Unit 18. Gasoline service stations and drive-in/drive through restaurants~~

~~(1) Description. Gasoline service stations and drive-in restaurants can be significantly objectionable to nearby uses, so, therefore, have been allowed only in districts where necessary to provide this use.~~

~~(2) Included uses.~~

<del>Gasoline service station*</del>
<del>Self-service auto wash (in conjunction with a gasoline service station)*</del>
<del>Drive-in/drive through restaurant*</del>

(Y) Unit 25. Offices, studios and related services.

(1) *Description.* Unit 25 consists of offices, studios, medical and dental labs, and other supporting services and sales.

(2) *Included uses.*

Medical Clinic:	<ul style="list-style-type: none"> <li>• Dental office/clinic</li> <li>• Medical office/clinic</li> </ul>
Professional office:	<ul style="list-style-type: none"> <li>• Accountant</li> <li>• Architect</li> <li>• Attorney</li> <li>• Broker</li> <li>• Engineer</li> <li>• Realtor</li> </ul>
Sale of supplies and equipment	<ul style="list-style-type: none"> <li>• Architecture, drafting, and art supplies</li> <li>• Office furnishings and supplies</li> <li>• Medical, optical, and dental supplies</li> <li>• Scientific instruments</li> </ul>
Services:	<ul style="list-style-type: none"> <li>• Advertising agency</li> <li>• Animal daycare (10 animals or less)</li> <li>• Auto parking garage</li> <li>• Bail bonding agency</li> <li>• Business or management consultant</li> <li>• Computing service</li> <li>• Consultant</li> <li>• Data processing service</li> <li>• Drafting service</li> <li>• Employment agency</li> <li>• Financial institution</li> <li>• Funeral home</li> <li>• Insurance sales</li> <li>• Interior decorator</li> <li>• Photocopying or printing</li> <li>• Social and welfare agencies</li> <li>• Travel agency</li> <li>• Veterinary small animal out-patient clinic</li> </ul>
Studios:	<ul style="list-style-type: none"> <li>• Artist's studio</li> <li>• Photography studio</li> <li>• Studio for teaching any of the fine or liberal arts</li> </ul>

(II) Unit 35. Outdoor music establishments.\*

(1) *Description.* Unit 35 includes any business or establishment that has a garden, patio, rooftop or premises not wholly enclosed by solid walls and fully roofed in which amplified

Fayetteville Code of Ordinances

or loud music is played that could be audible at nearby residences or businesses.

(2) *Included uses.*

Outdoor music establishments *
--------------------------------

~~(JJ) Unit 36. Wireless Telecommunications Facilities.~~

~~(1) Description. A land use facility that transmits and/or receives electromagnetic signals for the purpose of transmitting analog or digital voice or data communications.~~

~~(2) Included uses.~~

Wireless telecommunications facilities *	Antennas Accessory buildings Accessory development Cellular towers Horns Microwave dishes Monopoles
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~~(NN) Unit 40. Sidewalk Cafes.~~

~~(1) Description. Unit 40 is provided in order that sidewalk cafes may be located in appropriate commercial areas.~~

~~(2) Included uses.~~

Unit 42. Clean technologies	All uses within Unit 42 are permitted with a maximum gross floor area of 5,000 square feet
Microbrewery; microwinery; microdistillery	Maximum gross floor area of 10,000 square feet for the manufacturing portion of the facility and production of less than 15,000 barrels per year
Boutique/specialty manufacturing (maximum gross floor area of 5,000 square feet)	<ul style="list-style-type: none"> <li>•Specialty food manufacturers with or without a retail store front</li> <li>•Coffee roasting facility</li> <li>•Other specialty manufacturers that have minimal impacts to adjoining properties compared with what is typically generated by similar uses within the designated zoning district, as determined by the Zoning and Development Administrator</li> </ul>
Sidewalk Cafes	

~~(PP) Unit 42 Clean Technologies~~

~~(1) Description. Unit 42 consists of uses that fabricate or produce goods and services that greatly reduce or eliminate negative~~

~~environmental impacts, create new technologies or improve the productive and responsible use of natural resources.~~

Alternative Energy Fabrication and Storage Components:	<ul style="list-style-type: none"> <li>•Wind</li> <li>•Solar</li> <li>•Fuel cells</li> <li>•Batteries</li> <li>•Hybrid systems</li> </ul>
Fabrication or Production of Materials:	<ul style="list-style-type: none"> <li>•Nano Technologies</li> <li>•Solar panels</li> <li>•Computer components, such as microchips</li> <li>•Advanced packaging</li> </ul>
Research and Development:	<ul style="list-style-type: none"> <li>•Monitoring and control systems</li> <li>•Energy infrastructure management</li> <li>•Energy efficiency management</li> <li>•Materials and recycling management</li> <li>•Transportation logistics</li> <li>•Environmental cleanup and safety</li> <li>•Scientific or high tech research laboratories</li> </ul>

~~(RR) Unit 44. Cottage Housing Development.~~

~~(1) Description. Unit 44 is provided in order that cottage housing developments are permitted by right in multi-family zoning districts and by Conditional Use Permit in single family zoning districts.~~

~~(2) Included uses.~~

Cottage Housing Developments
------------------------------

~~(SS) Unit 45. Small scale production~~

~~(1) Description. Unit 45 is provided in order that increased variety and flexibility of non-residential goods, services, and employment centers may be provided in close proximity to residences and commercial uses. These uses may have adverse impacts because of high traffic, delivery vehicles, noise, or odors and may pose compatibility issues if they are not limited in size.~~

~~(2) Included uses~~

~~(Code 1965, App. A., Art. 6 (A), (F); Ord. No. 329, 10-1-85; Ord. No. 3165, 2-4-86; Ord. No. 3341, 3-15-88; Ord. No. 1747, 6-29-70; Code 1991, §§118.01, 160.055; Ord. No. 3546, 4-19-91; Ord. No. 3792, §§2, 3, 5-17-94; Ord. No. 3870, §1 (Ex. A), 2-21-95; Ord. No. 3909, §1, 7-18-95; Ord. No. 3971, §§3, 4, 5-21-96; Ord. No. 4024, §3, 3-18-97; Ord. No. 4034, §1, 2, 4-15-97; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4376, §5 (Ex. E), §6 (Ex. F), 3-5-02; Ord. No.~~

## TITLE XV. UNIFIED DEVELOPMENT CODE

4423, §1 (Ex. A), 10-02-02, Ord. 4728, 7-19-05; Ord. 4913, 8-15-06; Ord. No. 4919, 09-05-06; Ord. 4930, 10-03-06; Ord. 4946, 11-21-06; Ord. 5028, 6-19-07; Ord. 5128, 4-15-08; Ord. 5203, 12-2-08; Ord. 5195, 11-6-08; Ord. 5226, 3-3-09; Ord. 5238, 5-5-09; Ord. 5312, 4-20-10; Ord. 5312, 4-20-10; Ord. 5338, 8-3-10; Ord. 5339, 8-3-10; Ord. 5352, 9-7-10; Ord. 5462, 12-6-11, Ord. 5668, 3-18-14; Ord. 5735, 1-20-15; Ord. 5772, 5-19-15)

**Cross reference(s)**--Use Conditions, Ch. 163; Supplementary District Regulations, Ch. 164.

### **162.02 Interpretation**

- (A) In each use unit division, permitted uses are set forth in the division entitled "Included uses." In the event of a conflict between such divisions and the "description" divisions, the former shall prevail.
- (B) In any case where there is a question as to whether or not a particular use is included in a particular use unit, the Zoning and Development Administrator shall decide. A use shall not be interpreted as being in any use unit if it is specifically listed in another unit in this chapter.

(Code 1965, App. A., Art. 6(B); Ord. No. 1747, 6-29-70; Ord. No. 2181, 1-6-76; Code 1991, §160.056; Ord. No. 4100, §2 (Ex. A), 6-16-98)

### **162.03 Conditions Of Use**

- (A) A use shall be subject to the provisions of the district in which the use is permitted. Certain uses shall be subject to additional conditions set forth separately herein. Reference will be made in the chapter to conditions applicable to a particular use in the unit where the use is listed.
- (B) Uses which are permitted both as principal and accessory uses shall be subject to the conditions set forth for the use as a principal use.

(Code 1965, App. A., Art. 6 (C); Ord. No. 1747, 6-29-70; Code 1991, §160.057; Ord. No. 4034, §6, 4-14-97; Ord. No. 4100, §2 (Ex. A) 6-16-98)

### **162.04 Enclosure Of Uses**

Where so specified in a use unit listing, a use shall be operated only within a fully enclosed structure. The excepting of certain districts from this requirement with respect to certain uses does not indicate that such uses are necessarily permitted in such districts. In districts where enclosure of use is required, accessory off-street parking and loading shall be exempted from this enclosure requirement.

(Code 1965, App. A., Art. 6 (E); Ord. No. 1747, 6-29-70; Code 1991, §160.059; Ord. No. 4100, §2 (Ex. A), 6-16-98)

### **162.05-162.99 Reserved**



**Bates &  
Associates, Inc.**

**Civil Engineering · Land Surveying · Landscape Architecture**

7230 Pleasant Ridge Dr. / Fayetteville, AR 72704  
PH: 479-442-9350 \* FAX: 479-521-9350

September 2, 2015

City of Fayetteville  
113 West Mountain Street  
Fayetteville, AR 72701

**RE: JJ's Beer Garden & Brewery – ordinance #3936**

Dear City Staff,

The owners of JJ's Grill and Brewing Company would like to amend the Bill of Assurance approved with the rezoning of the property back in 1995 and remove the restrictions to Lot 6 and allow eating places.

There was an agreement between the neighbors and the developers that eating places would not be allowed on the lots adjacent to the subdivision. However, this lot has been split and the JJ's property would not be adjacent to the subdivision.

If you have any questions or require additional information, please feel free to contact me at your convenience.

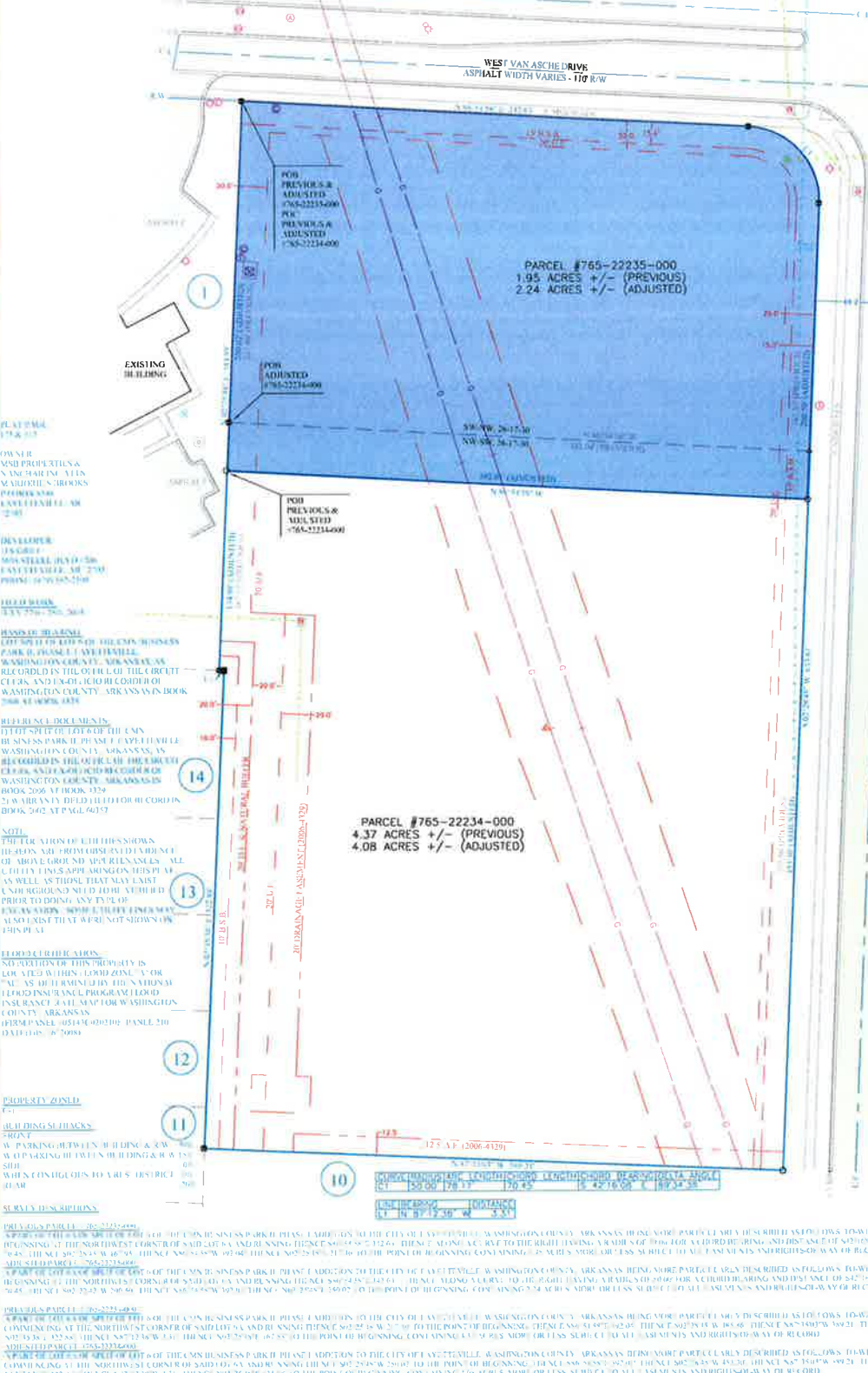
Sincerely

**Bates & Associates, Inc.**

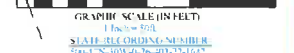
Evan Niehues, RLA

# PROPERTY LINE ADJUSTMENT

TOTAL ACREAGE  
 PARCEL #765-22235-000  
 PARCEL #765-22234-000  
 6.31 ACRES



- ADJACENT OWNERS**
- 1180 S. 2nd St. SHELLE CROSSING INVESTMENT LLC
  - 1370 W. 1st St. SHELLE CROSSING INVESTMENT LLC
  - 1400 S. 1st St. SHELLE CROSSING INVESTMENT LLC
  - 1500 S. 1st St. SHELLE CROSSING INVESTMENT LLC
  - 1600 S. 1st St. SHELLE CROSSING INVESTMENT LLC
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  - 10000 S. 1st St. SHELLE CROSSING INVESTMENT LLC



GRAPHIC SCALE (IN FEET)  
 1 inch = 50 feet  
 STATE RECORD NUMBER  
 7941-25-030-03-10102

I HEREBY CERTIFY THIS TO BE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF ON THIS THE 28th DAY OF MAY, 2015.



IF THE SIGNATURE ON THIS SEAL IS NOT AN ORIGINAL AND NOT BLUE IN COLOR THEN IT SHOULD BE ASSUMED THAT THIS SEAL MAY HAVE BEEN ALTERED. THE ABOVE CERTIFICATION SHALL NOT APPLY TO ANY COPY THAT DOES NOT BEAR AN ORIGINAL SEAL AND SIGNATURE.



**PROPERTY ZONING:**  
 (C)  
**BUILDING SETBACKS:**  
 FRONT - 5 FT  
 SIDE - 5 FT  
 REAR - 5 FT

**Bates & Associates, Inc.**  
 Civil Engineering, Land Surveying, Land Use, Architecture  
 1000 N. Main Street, Suite 100, Fayetteville, Arkansas 72701  
 Phone: 479-483-8200 Fax: 479-483-8201

**LEGEND:**

—	Property Line
- - -	Proposed Property Line
---	Right-of-Way Line
---	Utility Line
---	Survey Line
---	Reference Line
---	Other Line

**RECORDING SCHEDULE**

1. This plat shall be recorded in the public records of the State of Arkansas within 30 days of the date of the survey.

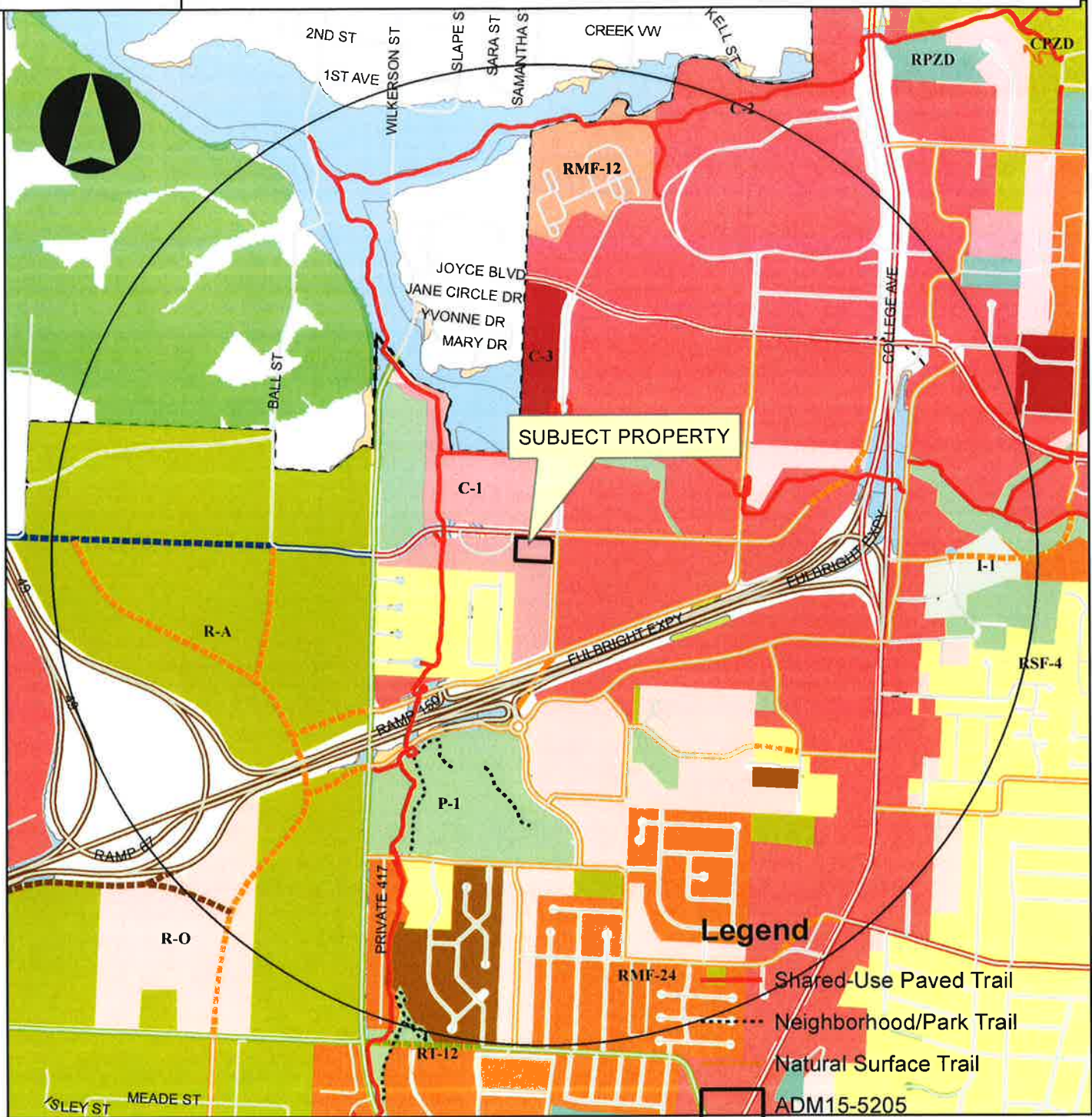
2. This plat shall be recorded in the public records of the State of Arkansas within 30 days of the date of the survey.

3. This plat shall be recorded in the public records of the State of Arkansas within 30 days of the date of the survey.

ADM15-5205

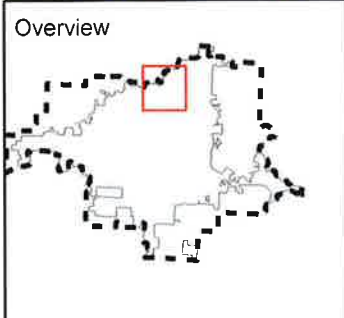
# CMN BUSINESS PARK, LOT 6

One Mile View







### Legend

-  Shared-Use Paved Trail
-  Neighborhood/Park Trail
-  Natural Surface Trail
-  ADM15-5205




Legend

-  Hillside-Hilltop Overlay District
-  Design Overlay District
-  Planning Area
-  Fayetteville

Subject Property

Boundary

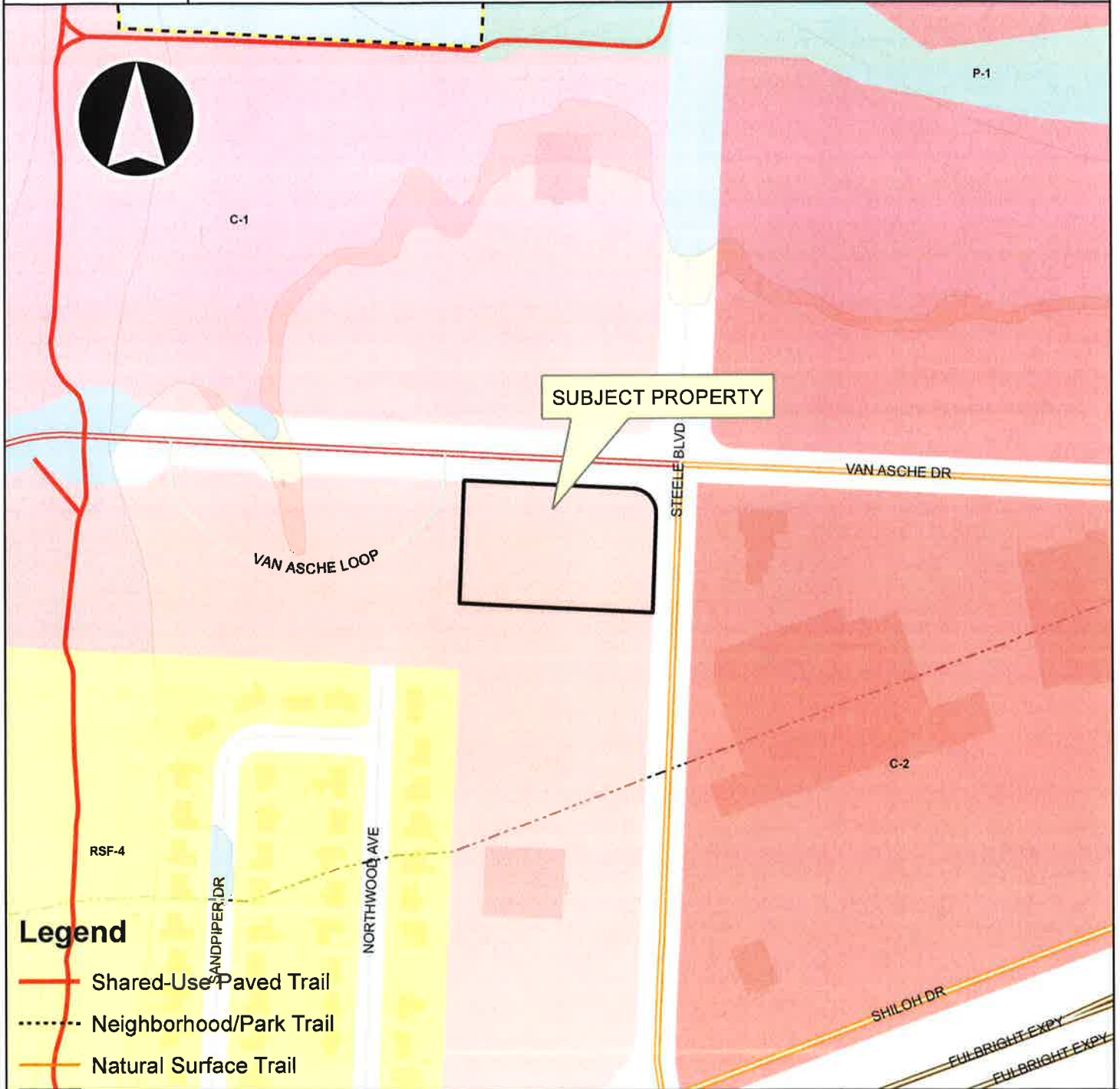
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 Miles




ADM15-5205







# CMN BUSINESS PARK, LOT 6

Close Up View



## Legend

-  Shared-Use Paved Trail
-  Neighborhood/Park Trail
-  Natural Surface Trail

-  Overview ADM15-5205
-  Fayetteville City Limits
-  Footprints 2010
-  Hillside-Hilltop Overlay District
-  Design Overlay District
-  Planning Area



## EXHIBIT "B"

A PART OF LOT 6A OF SPLIT OF LOT 6 OF THE CMN BUSINESS PARK II, PHASE I ADDITION TO THE CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 6A AND RUNNING THENCE N02°25'48"E 250.02', THENCE S86°54'58"E 342.63', THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 50.00' FOR A CHORD BEARING AND DISTANCE OF S42°16'08"E, 70.45', THENCE S02°22'42"W 200.50', THENCE N86°55'01"W 392.36' TO THE POINT OF BEGINNING, CONTAINING 2.24 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.



ADM15-5205

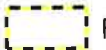
# CMN BUSINESS PARK, LOT 6

Current Land Use



### Overview

ADM15-5205



Fayetteville City Limits



Footprints 2010



Hillside-Hilltop Overlay District



Design Overlay District



Planning Area

