

Motion and
Statement of Consistency with Comprehensive Plan
F-1564

I move that the following statement be adopted in support of a **Motion to Approve** Zoning Map Amendment F-1564:

The proposed Special Use District – No Site Plan zoning petition of Bill Katsis and Dina Katsis from RS-30 (Residential, Single Family; 30,000 square feet minimum lot size) to HB-L (Highway Business-special use limited no site plan zoning) with its added conditions is not consistent with the Legacy Comprehensive Plan or the Southeast Forsyth County Area Plan Update (Adopted 2013), however, it is reasonable and in the public interest because:

1. the petitioner and the neighbor who expressed opposition at the Planning Board hearing are in agreement with deleting all proposed uses with the exception of Services B, which would allow petitioner to have an office and park trucks on the subject property, but will not allow sales or storage of materials outside, which reduces the potential negative impact on nearby residences;
2. the petitioner also agreed to a reversion clause, such that if this specific uses of the property cease for a period of one year, the petitioner would lose the right to use the property in this manner, and the zoning would return to RS30; and
3. a Type III buffer would be required around the subject property adjacent to residential zoning, and Streetyard plantings along the frontage to further reduce negative impacts on nearby residences.

Based on the foregoing Statement, I move adoption of F-1564.

Second:

Vote:

Motion and
Statement of Consistency with Comprehensive Plan
F-1564

I move that the following statement be adopted in support of a **Motion to Deny** Zoning Map Amendment F-1564:

The proposed Special Use District – No Site Plan zoning petition of Bill Katsis and Dina Katsis from RS-30 (Residential, Single Family; 30,000 square feet minimum lot size) to HB-L (Highway Business-special use limited no site plan zoning) with its added conditions is not consistent with the Legacy Comprehensive Plan or the Southeast Forsyth County Area Plan Update (Adopted 2013), therefore, it is not reasonable or in the public interest because:

1. the proposed HB-L (Highway Business – special use limited no site plan zoning) represents a potential negative impact on surrounding single family homes in regard to noise, dust, lighting, and traffic;
2. approval of this request may lead to additional commercial rezoning petitions in the general area; and
3. the County Attorney is of the opinion that if challenged, the request could be considered to be an illegal spot zoning.

Based on the foregoing Statement, I move denial of F-1564.

Second:

Vote:

COUNTY ORDINANCE -
SPECIAL USE DISTRICT - NO SITE PLAN

Zoning Petition of Bill Katsis and Dina Katsis, Docket F-1564

AN ORDINANCE AMENDING THE
FORSYTH COUNTY ZONING ORDINANCE
AND THE OFFICIAL ZONING MAP OF
FORSYTH COUNTY, N.C.

BE IT ORDAINED by the Board of Commissioners of Forsyth County as follows:

Section 1. The Forsyth County Zoning Ordinance and the Official Zoning Map of the County of Forsyth, N.C. are hereby amended by changing from RS30 to HB-L (Services, B) the zoning classification of the following described property:

PIN# 6884-40-7744

Section 2. This Ordinance is adopted after approval of the Special Use District - No Site Plan Permit issued by the Board of Commissioners the _____ day of _____, 20__ to Bill Katsis and Dina Katsis.

Section 3. The Board of Commissioners hereby directs the issuance of a Special Use District - No Site Plan Permit pursuant to the Zoning Ordinance of the *Unified Development Ordinances* for a development to be located on the property described in Section One above. Said Special Use District - No Site Plan Permit with conditions is attached hereto and incorporated herein.

Section 4. This Ordinance shall be effective from and after its adoption.

COUNTY

SPECIAL USE DISTRICT - NO SITE PLAN PERMIT

Issued by the Board of Commissioners

of Forsyth County, NC

The Board of Commissioners of Forsyth County, NC issues a Special Use District - No Site Plan Permit for the zoning petition of Bill Katsis and Dina Katsis, (Zoning Docket F-1564). The site shall be developed in accordance with the conditions approved by the Board and the following use: Services B, approved by the Forsyth County Board of Commissioners the _____ day of _____, 20____" and signed, provided the property is developed in accordance with requirements of the HB-L zoning district of the Zoning Ordinance of the *Unified Development Ordinances*, the Erosion Control Ordinance, and other applicable laws, and the following additional conditions be met:

- **PRIOR TO THE ISSUANCE OF BUILDING PERMITS:**
 - a. Developer shall obtain a Watershed Permit.
 - b. Developer shall obtain a driveway permit from NCDOT.
 - c. Developer shall obtain building/zoning permits for all commercial buildings on the site.

- **PRIOR TO THE ISSUANCE OF OCCUPANCY PERMITS:**
 - a. All requirements of the NCDOT driveway permit shall be completed.

- **OTHER REQUIREMENTS:**
 - a. Freestanding signage shall be limited to one monument sign with a maximum height of six (6) feet and a maximum copy area of thirty-six (36) square feet.
 - b. Developer shall install a streetyard along the frontage of NC 66.
 - c. If the property ceases to be used for the use of Services B for one year or more the zoning of the property shall revert to RS30.
 - d. There shall be no new buildings constructed on the site and no additions to existing buildings.
 - e. There shall be no outdoor storage of materials outside of trucks and trailers.



December 19, 2016

Bill Katsis and Dina Katsis
7493 Watkins Ford Road
Kernersville, NC 27284

Re: Zoning Petition F-1564

Bryce A. Stuart Municipal Building
100 E. First Street
P.O. Box 2511
Winston-Salem, NC 27102
CityLink 311 (336.727.8000)
Fax 336.748.3163
www.cityofws.org/planning

Dear Petitioners:

The attached report of the Planning Board to the Forsyth County Board of Commissioners is sent to you at the request of the Commissioners. You will be notified by the Board of Commissioners' Office of the date on which the Commissioners will hear this petition.

Sincerely,

A. Paul Norby, FAICP
Director of Planning

pc: Clerk to the Board of Commissioners, Forsyth County Government Center - 5th Floor,
201 N. Chestnut Street, Winston-Salem, NC 27101
Theodora Katsis, 7493 Watkins Ford Rd, Kernersville, NC 27284
Craig Taylor, 503 Julian Avenue, Archdale, NC 27263
Ricky Shelton, 2259 Venus Drive, Kernersville, NC 27284



Call 311 or 336-727-8000
citylink@cityofws.org

City Council: Mayor Allen Joines; Vivian H. Burke, Mayor Pro Tempore, Northeast Ward; Denise D. Adams, North Ward; Dan Besse, Southwest Ward; Robert C. Clark, West Ward; John C. Larson, South Ward; Jeff MacIntosh, Northwest Ward; Derwin L. Montgomery, East Ward; James Taylor, Jr., Southeast Ward; City Manager: Lee D. Garnity

Forsyth County Commissioners: David R. Plyler, Chairman; Don Martin, Vice Chair; Ted Kaplan; Richard V. Linville; Walter Marshall; Gloria D. Whisenhunt; Everette Witherspoon; County Manager: Dudley Watts, Jr.

City-County Planning Board: Arnold G. King, Chair; Allan Younger, Vice-Chair; George M. Bryan, Jr.; Melynda Dunigan; Tommy Hicks; Clarence R. Lamb, Jr.; Darryl Little; Paul W. Mullican; Brenda J. Smith

**CITY-COUNTY PLANNING BOARD
STAFF REPORT**

PETITION INFORMATION	
Docket #	F-1564
Staff	Gary Roberts, Jr. AICP
Petitioner(s)	Bill Katsis and Dina Katsis
Owner(s)	Same
Subject Property	PIN # 6884-40-7744
Address	The site does not currently have an assigned address.
Type of Request	Special use limited no site plan rezoning from RS30 to HB-L
Proposal	<p>The petitioner is requesting to amend the Official Zoning Maps for the subject property <u>from</u> RS30 (Residential, Single Family – 30,000 sf minimum lot size) <u>to</u> HB-L (Highway Business – special use limited no site plan zoning). The petitioner is requesting the following uses:</p> <ul style="list-style-type: none"> • Arts and Crafts Studio; Building Contractor, General; Church or Religious Institution, Community; Church or Religious Institution, Neighborhood; Nursery, Lawn and Garden Supply Store, Retail; Offices; Police or Fire Station; Services, A; and Services, B <p>NOTE: General, special use limited, and special use district zoning were discussed with the petitioner(s) who decided to pursue the rezoning as presented.</p>
Neighborhood Contact/Meeting	The application indicates that the petitioners “have talked to the surrounding neighbors on 10-29-16.”
Zoning District Purpose Statement	The HB District is primarily intended to accommodate retail service and distributive uses. The district is established to provide locations for establishments which require high visibility and good road access, or which cater primarily to passing motorists. However, the district is not intended to encourage or accommodate strip commercial development. Developments in this district generally have substantial front setbacks. This district is intended for application in GMAs (Growth Management Areas) 2 (Urban Neighborhoods), 3 (Suburban Neighborhoods), and 4 (Future Growth Area).
Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(R)	<p>(R)(1) - Is the proposal consistent with the purpose statement(s) of the requested zoning district(s)?</p> <p>The site has good access being located along a major thoroughfare and it is located within GMA 3. However, approval of the subject request could encourage or accommodate strip commercial development along NC 66.</p>
GENERAL SITE INFORMATION	
Location	West side of NC 66 South, south of Yorktown Road
Jurisdiction	Forsyth County
Site Acreage	± 3.52 acres

Current Land Use	The site is currently used for the parking of vehicles for a landscaping business which falls under the Services B use and the property owners have been cited for a zoning violation. See additional comments in the Analysis of Conformity to Plans and Planning Issues section below.			
Surrounding Property Zoning and Use	Direction	Zoning District	Use	
	North	RS30	Single family homes	
	East			
	South			
West				
Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(R)	(R)(2) - Is/are the use(s) permitted under the proposed classification/request compatible with uses permitted on other properties in the vicinity?			
	No, some of the proposed commercial uses are intense in nature and not compatible with the low density residential uses permitted on the adjacent properties. This is of particular concern as the relatively large subject property (3.52 acres) if rezoned to HB-L, could have significant impacts on the surrounding residential properties.			
Physical Characteristics	The western portion of the site appears to be covered in grass/underbrush and has a gentle slope downward to the northwest.			
Proximity to Water and Sewer	The site has access to public water but does not have access to public sewer.			
Stormwater/ Drainage	No known issues.			
Watershed and Overlay Districts	The site is located within the balance area of the Abbotts Creek WS III water supply watershed which limits the amount of impervious coverage to 24%.			
Analysis of General Site Information	The site has very good topography and the rectangular configuration of the property lends itself well to development. However, it does lack access to public sewer and the watershed requirements limit the amount of impervious coverage to 24%.			
SITE ACCESS AND TRANSPORTATION INFORMATION				
Street Name	Classification	Frontage	Average Daily Trip Count	Capacity at Level of Service D
NC 66	Major Thoroughfare	250'	9,800	15,300
Venus Road	Local street	30'	NA	NA
Proposed Access Point(s)	Because this is a special use limited no site plan request with no access conditions, the exact location of access points is unknown. The site is currently accessed from NC 66.			
Planned Road Improvements	The 2012 <i>Comprehensive Transportation Plan</i> recommends a three lane section for NC 66 with wide outside lanes, curb and gutter, and sidewalks.			

Trip Generation - Existing/Proposed	<p><u>Existing Zoning: RS30</u> 3.52 acres x 43,560 / 30,000 = 5 units x 9.57 (SFR Trip Rate) = 48 Trips per Day</p> <p><u>Proposed Zoning: HB-L</u> No trip generation is available for the proposed special use limited zoning which has no site plan.</p>
Sidewalks	There are no sidewalks located in the general area.
Analysis of Site Access and Transportation Information	The site has good access onto a major thoroughfare. A NCDOT driveway permit will be required prior to any change of use. In regard to potential trip generation, staff is unable to provide an accurate estimate because there is no site plan associated with this rezoning. However, due to the commercial nature of some of the requested uses, a significant number of additional trips could occur depending upon the extent to which the site is developed.
CONFORMITY TO PLANS AND PLANNING ISSUES	
Legacy 2030 Growth Management Area	Growth Management Area 3 – Suburban Neighborhoods
Relevant Legacy 2030 Recommendations	<ul style="list-style-type: none"> • Encourage commercial and office uses (along with residential and institutional uses) in Activity Centers and in carefully planned Growth Corridors. <u>This site is not located in an Activity Center or Growth Corridor.</u> • Discourage inappropriate commercial encroachment into neighborhoods.
Relevant Area Plan(s)	<i>Southeast Forsyth County Area Plan Update</i> (Adopted by the County Commissioners in 2013)
Area Plan Recommendations	<ul style="list-style-type: none"> • The site is located in an area designated for low-density residential development.
Site Located Along Growth Corridor?	The site is not located along a growth corridor.
Site Located within Activity Center?	The site is not located within an activity center.
Other Applicable Plans and Planning Issues	The County Attorney is of the opinion that if challenged, the request could be considered by the courts to be illegal spot zoning (See Attachment B).
Comments from the Town of Kernersville	The Planning Director for the Town of Kernersville has been contacted in regard to the proposed rezoning and has stated that he supports the recommendation of Planning Staff.
Addressing	A building site plan (which also shows the driveway access) is required in order to assign an address for this property.

Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(R)	(R)(3) - Have changing conditions substantially affected the area in the petition?
	No
Analysis of Conformity to Plans and Planning Issues	(R)(4) - Is the requested action in conformance with <i>Legacy 2030</i>?
	No, <i>Legacy 2030</i> discourages inappropriate commercial encroachment into residential neighborhoods.
	<p>The subject request is to rezone 3.52 acres of RS30 zoned property located within the Abbotts Creek Watershed to HB-L. In 1992, affidavits were received and accepted regarding the establishment of a nonconforming (lawn and garden) nursery established in 1966 on the subject property. Aerial photography appears to indicate the continued use of the site for this purpose into the late 1990's. Images taken after 1998 appear to show the property as being vacant until a February 2012 photo begins to show some activity. According to a neighbor, commercial vehicles began appearing on the site in the fall of 2012. The April 2013 photo shows significant parking improvements and an improvement to an existing structure. It therefore appears that permits were required for these activities. An electrical permit for a new meter was issued for the property in February of 2013. Several security lights have also been installed and it appears that these lights do not use cutoff fixtures and could cast light onto adjacent residential properties and impact motorists travelling along NC 66.</p> <p>After a determination that the site had lost its nonconforming status, the property owners filed a request to rezone the site from RS30 to HB-L in August of 2013 (F-1543). That request was withdrawn at the September 2013 Planning Board after an opinion by the County Attorney that if challenged, the request could be considered to be illegal spot zoning. At present, the site is illegally used for the parking of vehicles associated with a landscaping business (Services B). Inspections staff received a complaint in regard to this operation and the owners have been cited with a Notice of Violation.</p> <p>The site is surrounded by low density residential uses and zoning. The closest commercial zoning is an LB zoned site located over one half of a mile to the south along NC 66. The <i>Southeast Forsyth County Area Plan Update</i> recommends low-density residential development for the general area. <i>Legacy 2030</i> discourages inappropriate commercial encroachment into residential neighborhoods. The proposed HB district is one of the more intense districts in the UDO.</p> <p>The County Attorney is again of the opinion that if challenged in a Court, based on the current interpretation of the law, the rezoning, if approved, would <u>not</u> successfully withstand a legal challenge and would constitute an illegal spot zoning (See Attachment B). Planning staff consistently defers to such an opinion in making its recommendations on</p>

proposed rezonings but in addition to that, the rezoning proposal is not consistent with both *Legacy 2030* and the adopted area plan. Planning staff recommends denial of the request.

RELEVANT ZONING HISTORIES

Case	Request	Decision & Date	Direction from Site	Acreage	Recommendation	
					Staff	CCPB
F-1543	RS30 to HB-L	Withdrawn at 9-12-13 Planning Board	Subject property	3.52	Denial	Withdrawn

CONCLUSIONS TO ASSIST WITH RECOMMENDATION

Positive Aspects of Proposal	Negative Aspects of Proposal
The request would allow for new commercial activity.	The County Attorney is of the opinion that if challenged, the request could be considered to be illegal spot zoning.
	The request is inconsistent with the <i>Southeast Forsyth County Area Plan Update</i> .
	The request is inconsistent with the recommendations of <i>Legacy 2030</i> .
	The proposed zoning district and requested uses are incompatible with the surrounding low density residential development pattern and could have negative impacts on the adjacent single family homes in regard to noise, dust, lighting and traffic.
	If approved, the request could lead to other commercial rezoning petitions in the general area.

SITE-SPECIFIC RECOMMENDED CONDITIONS OF APPROVAL

The following proposed conditions are from interdepartmental review comments and are proposed in order to meet codes or established standards, or to reduce negative off-site impacts.

- **PRIOR TO THE ISSUANCE OF BUILDING PERMITS:**
 - a. Developer shall obtain a Watershed Permit.
 - b. Developer shall obtain a driveway permit from NCDOT.
 - c. Developer shall obtain building/zoning permits for all commercial buildings on the site.

- **PRIOR TO THE ISSUANCE OF OCCUPANCY PERMITS:**
 - a. All requirements of the NCDOT driveway permit shall be completed.

- **OTHER REQUIREMENTS:**
 - a. Freestanding signage shall be limited to one monument sign with a maximum height of six (6) feet and a maximum copy area of thirty-six (36) square feet.

- b. Developer shall install a streetyard along the frontage of NC 66.
- c. If the property ceases to be used for the use of Services B for one year or more the zoning of the property shall revert to RS30.
- d. There shall be no new buildings constructed on the site and no additions to existing buildings.
- e. There shall be no outdoor storage of materials outside of trucks and trailers.

STAFF RECOMMENDATION: Denial

NOTE: These are **staff comments** only; final recommendations on projects are made by the City-County Planning Board, with final decisions being made by the appropriate Elected Body, who may approve, deny, table or request modification for any project. **THE APPLICANT OR REPRESENTATIVE IS STRONGLY ENCOURAGED TO ATTEND THE PUBLIC HEARINGS WHERE THE CASE WILL BE CONSIDERED BY THE PLANNING BOARD AND THE ELECTED BODY.**

**CITY-COUNTY PLANNING BOARD
PUBLIC HEARING
MINUTES FOR F-1564
DECEMBER 8, 2016**

Gary Roberts presented the staff report.

PUBLIC HEARING

FOR:

Theodora Katsis, 7493 Watkins Ford Road, Kernersville, NC 27284

- I am the daughter of the petitioners.
- By getting this rezoning we want to keep the property free of rodents, snakes, etc.
- Craig Taylor, who is here with us, owns a landscaping business. He simply wants to park his vehicles on this site. In return he will be cleaning and maintaining the property.
- There will not be any noises or any type of environmental pollution. There will simply be lights, power, and water at this site.
- We are not looking to build any buildings on this site.
- Once it is zoned HB-L we will have to put trees and bushes around it which will make the property be very beautiful.
- I don't think it will cause any trouble for anybody that lives around this property.
- We do have fruit trees on the property. A church comes and gathers them throughout the year to make pies.
- My parents would like to add a condition that if they sell the property, the zoning reverts to residential status.
- We respect our neighbors, their rights and their space.
- This shouldn't be this complicated. It's a simple request.
- We are doing this because we were fined \$100 and because we want to legally keep Mr. Taylor there and not have any trouble because we want to be in accordance with the regulations.
- In response to a question from Allan Younger about discussions with the neighbors, Theodora Katsis stated that one neighbor was concerned about Mr. Taylor parking his trucks there. It is only three vehicles, small trucks not tractor trailers. It's confusing as to why this neighbor saw this as a problem. I talked with a bunch of neighbors. They wanted to know why we were changing it to HB-L, but were not opposed to it.
- This site used to be a nursery.

Chairman King noted that this is not a simple request as multiple uses were being requested. However, that point will be discussed later.

Craig Taylor, 503 Julian Avenue, Archdale, NC 27263

- I park three of my trucks here. This has been a landscaping business for a long time. It has framework for greenhouses. There was an old barn there and a small building that had been moved in.
- When I leased this land I repaired the buildings and painted them and the framework, bringing it back up to a neat appearance.
- My guys come in in the mornings. It's usually about five vehicles. They get in their trucks and leave. Then they return at the end of the day, get in their vehicles and leave.
- There is very little activity at this site. Occasionally I will go up there and get a piece of equipment from one of the buildings.
- There is no retail and no customers coming in to select rock or mulch.
- When I came in, I met with some of the neighbors. They were warm and receptive to the idea of someone being there and keeping the property mowed and in good condition.
- All we're asking is to park our trucks there.

AGAINST:

Ricky Shelton, 2259 Venus Road, Kernersville, NC 27284

- I have not complained and am not complaining.
- My concern is the rezoning.
- This is a residential neighborhood, surrounded by houses and farmland.
- I've lived here for 49 years.
- Rezoning this allows business which we do not need in our neighborhood.
- When they close down, what is going to happen to this property?
- Commercial rezoning can bring crime and break-ins. When the sweepstakes which were mentioned earlier went in about a mile up the road, crime went up 26% according to the Sheriff's Office.
- They keep a nice looking area.
- It's frustrating getting on Highway 66 right now. Adding trucks and trailers brings added frustration. The land we're talking about is in a curve on Highway 66.
- If someone opens Venus Road up, we have more trouble with traffic.
- My biggest concern is the safety of my neighborhood. If this is rezoned, we can't protect our neighborhood with what happens next.
- For 25 years this land sat vacant due to the ill health of the property owner at that time.

WORK SESSION

During discussion by the Planning Board, the following points were made:

As far as staff can determine this site has been operated as a nursery from at least from 1966 to around 1997 or 1998.

There is no agriculture zoning district which would allow what the tenant wants to do.

There is nothing in the ordinance which prohibits parking three trucks at a residence in a residentially zoned district. However, a landscaping business, which is classified

as a Services B use, cannot be run from the site unless the owner lives in the home and has a legal home occupation permit. In addition, no sales could be conducted from the site, the people driving the trucks from the site would have to be residents of the home, have to work for the company, and have to be related to the owner.

Paul Norby noted that if you have residentially zoned property but say your regulations allow the owner to lease their land to someone else to run a portion of their business out of it, then you really don't have residential zoning anymore.

There is no Board of Adjustment provision for property that has lost its nonconforming status to a change to a less intense use.

Aaron King explained that when Ms. Katsis came to the counter to talk with staff, they stated as they do to all petitioners, that if she only asks for one use and that use goes out of business for more than a year, she might be back before the Planning Board again to repeat this process for another use with an additional cost of another \$1,000 for rezoning. Staff suggests that a petitioner consider other options they may wish to have in the future and include those in the request. That's how that list of uses got there. Clarence Lambe stated that the reason he suggested limiting it so severely is that then it would represent no change from the way it's been used for 40 years.

Paul Norby explained a reversion clause that means land reverts back to current zoning if the approved use ceases for more than one year. Chris Murphy noted it applies only to use and not to ownership.

Paul Norby: As planners, we have to consider that if you incrementally make decisions along the way to add a commercial spot here because that by itself won't harm anything and add another commercial spot there, that's how a commercial strip gets established over a period of time. That's how Stratford Road became a strip, and how Highway 66 north of I-40 became a strip.

Chris Murphy noted that the site is not being used as a Nursery, Lawn, and Garden Supply, Retail. It was simply a Services B as a jumping off point but they do keep supplies there occasionally.

Arnold King noted that even if the uses were limited it would still be an illegal spot zoning if it was rezoned. However, parking three trucks there doesn't bother me. It looks like it has been a more intense use over the years and it looks a lot better than it did years ago. He asked staff to assist the board in determining their options concerning approving the rezoning for this limited use.

Aaron King: The first question is uses. The petitioner would have to agree to what uses will be allowed. Clarence Lambe asked the petitioner if she was in agreement with deleting all those uses except Services B? He explained this would still allow the storage of materials but would not allow sales. She indicated her agreement. Aaron King reiterated that the implication of the reversion clause is that if the use ceases sometime down the road, if any other use is needed they will have to come back with a rezoning request to allow that use.

Paul Norby stated that the next point to consider is the reversion clause. Clarence Lambe asked the petitioner if she was willing to include the reversion clause. He explained that the clause

would mean if this specific use ceased for a period of one year, the zoning would return to RS30. However, if the property owners found another person wanting to use the site for the same use within that one year period, the zoning would remain in effect. He explained that the petitioner would lose the right to use this property in this manner if it ceased operation for more than one year. The petitioner indicated her agreement with the reversion clause.

Chris Murphy noted that Mr. Taylor can have an office there, store his materials there and park his trucks as long as he isn't doing retail sales. Outside storage is allowed under Services B. A Type three buffer would be required. He also noted that the allowed use runs with the property and cannot be restricted by user.

Melynda Dunigan stated that she is concerned this sets a terrible precedent. I understand the concerns to accommodate the petitioner here but this is a blatant spot zone. I don't see how we can justify doing this at all.

Arnold King: The way I could justify it is I know what the property used to look like and I know what it looks like now. I would like Mr. Shelton's opinion. Ricky Shelton replied that he would be fine if the restrictions the Board is discussing are applied and the site it kept clean and looking nice. His only concern is allowing business.

Melynda Dunigan: But it would be HB. You can't go back. Arnold King: It would be HB-L and it would still be subject to spot zone if it were challenged.

Clarence Lambe: It's not unprecedented for us to approve situations like this when it gets rural.

Brenda Smith: I think the history of the site is what is influencing my decision. I grew up out in the country and every once in a while there would be a store and we were glad they were there. The absolute separation of things is not real life sometimes.

Arnold King: Some neighbors would even be happy if they could pick up their mulch there. We're not going to allow that though.

Paul Mullican: I appreciate what Mr. Shelton said. If this site goes vacant it will probably just grow up and become a bunch of weeds again. You're limiting them so much in what they can do.

George Bryan: I'm still concerned about storage of stuff, bringing a dump truck in, bring a loader which is what we've had in our letter to us. If it was just vehicles there I'd be okay with the low impact, but I don't think you can prescribe it enough to keep those kinds of things happening under that Services B.

Arnold King: Can you restrict Outdoor Storage? Chris Murphy: You could do a condition but you have to be careful. If you have any equipment on trailers that aren't enclosed, that would be outdoor storage. Generally when you have anything heavier than a light truck or a loaded car, when you start storing other types of vehicles and equipment and that sort of thing, it gets into Outdoor Storage as well.

Clarence Lambe stated that he is making a motion to approve because it's been that way for as long as he has been in Kernersville. The way we are limiting it, it will be less intensively used moving forward than it was six years ago. I would expect that the neighbors have an expectation that it will be there. The sole opposition has expressed that they will be okay with it under the conditions I'm going to propose. As far as setting a precedent, if you can't distinguish this case from a Dollar General going in next door, you've got a problem. I think this will be a very easily distinguishable case so I think it doesn't do anything with regards to setting a precedent.

MOTION: Clarence Lambe moved approval of the zoning petition with the following additional conditions:

- If the property ceases to be used for the use of Services B for one year or more the zoning of the property shall revert to RS30.
- There shall be no new buildings constructed on the site and no additions to existing buildings.
- There shall be no outdoor storage of materials outside of trucks, trailers and equipment.

SECOND: Darryl Little

VOTE:

FOR: Tommy Hicks, Arnold King, Clarence Lambe, Darryl Little, Paul Mullican,
Brenda Smith, Allan Younger

AGAINST: George Bryan, Melynda Dunigan

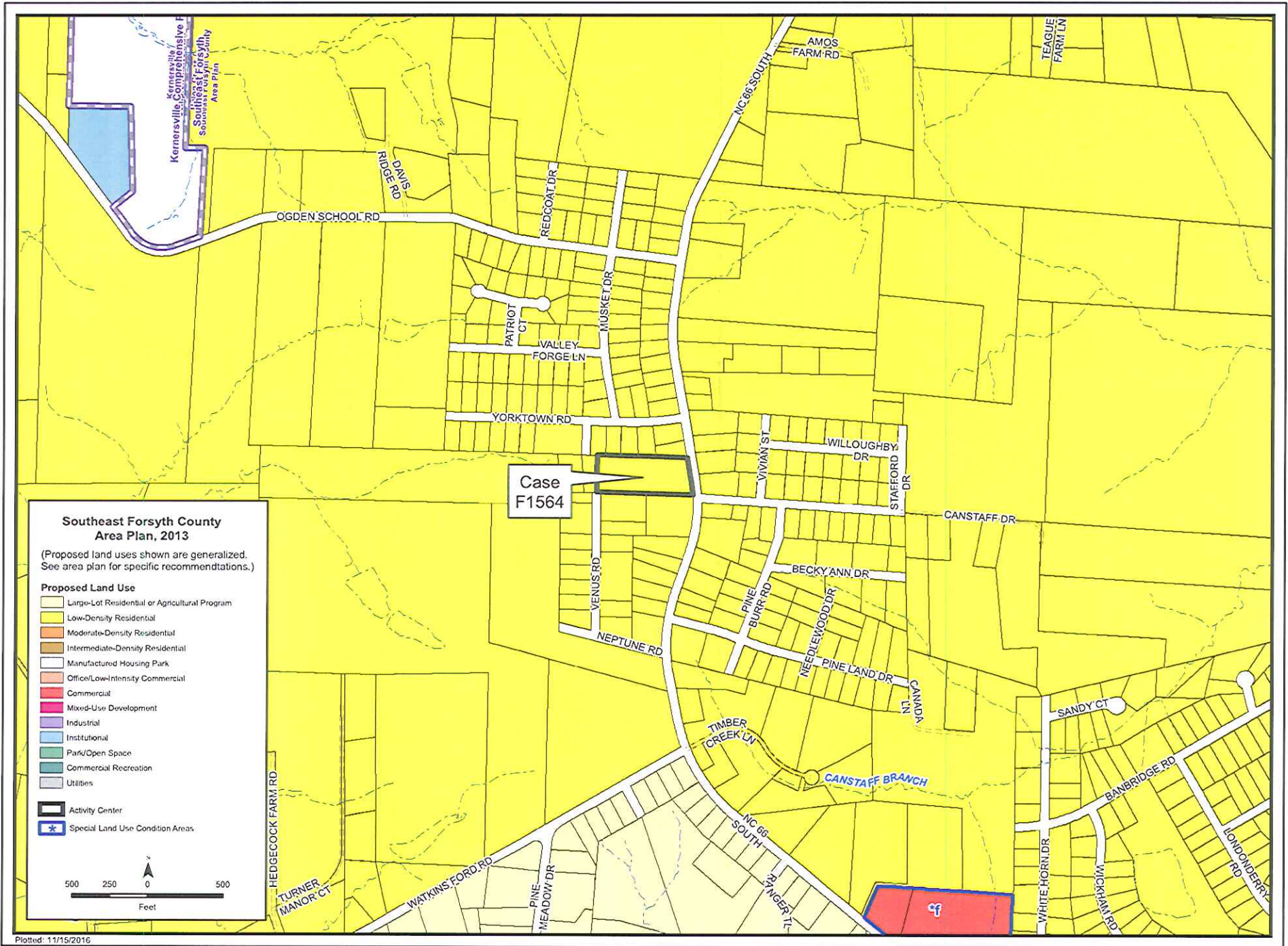
EXCUSED: None

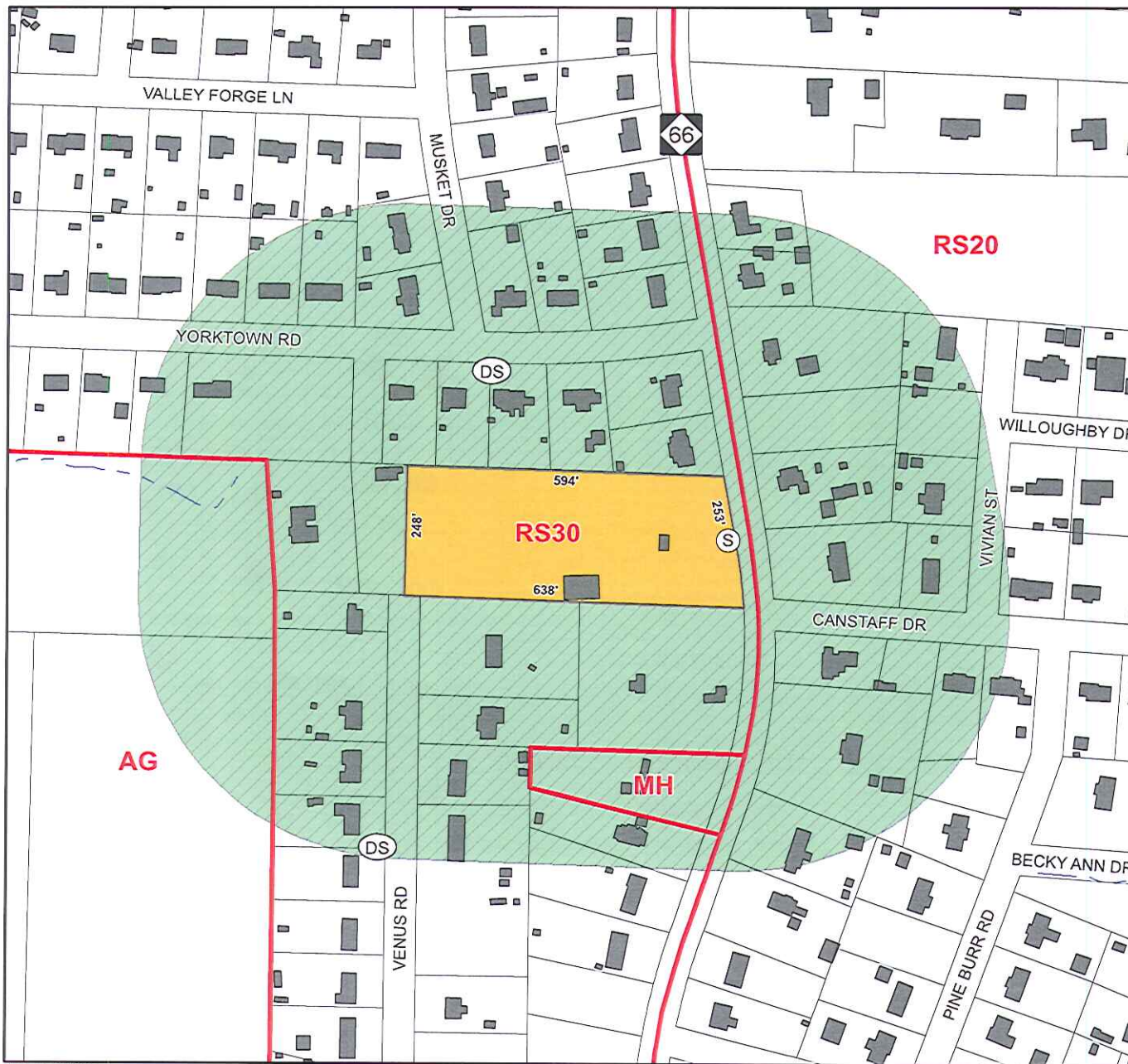
Paul Norby explained that the Planning Board's action is a recommendation. Staff will put together the staff report along with the minutes and the motion with the conditions. That will all go forward to the County Commissioners with a copy to you all as the petitioners and to Mr. Shelton who spoke. The County Commissioners will then schedule a public hearing where they will make the final decision on this.

According to information furnished by the Office of the Tax Assessor, the subject property was in the name of Bill and Dina Katsis as of December 19, 2016.

A. Paul Norby, FAICP

Director of Planning and Development Services






DOCKET #: F1564

PROPOSED ZONING:
HB-L

EXISTING ZONING:
RS30

PETITIONER:
Bill Katsis and Dina Katsis

 Property included in zoning request.

 500' mail notification radius. Property not in zoning request.

SCALE: 1" represents 300'

STAFF: Roberts

GMA: 3

ACRES: 3.52

NEAREST BLDG: 3' north

MAP(S): 6884.03, 6884.04



F-1564 ATTACHMENT A
EXISTING RS30 USES ALLOWED
Forsyth County Jurisdiction Only

USES ALLOWED WITH A PERMIT FROM THE ZONING OFFICER (Z)

Adult Day Care Home
Agricultural Production, Crops
Agricultural Production, Livestock
Child Day Care, Small Home
Church or Religious Institution, Neighborhood
Family Group Home A
Police or Fire Station
Recreation Facility, Public
Residential Building, Single Family
Swimming Pool, Private
Transmission Tower (see UDO)

USES ALLOWED WITH REVIEW BY THE PLANNING BOARD (P)

Cemetery
Church or Religious Institution, Community
Golf Course
Landfill, Land Clearing/Inert Debris, 2 acres or less
Library, Public
Planned Residential Development
School, Private
School, Public
Utilities

USES ALLOWED WITH SPECIAL USE PERMIT FROM ZONING BOARD OF ADJUSTMENT (A)

Bed and Breakfast
Borrow Site
Campground
Child Day Care, Large Home
Dirt Storage
Fishing, Fee Charged
Habilitation Facility A
Kennel, Outdoor
Manufactured Home, Class A
Manufactured Home, Class B
Manufactured Home, Class C
Nursing Care Institution
Park and Shuttle Lot
Recreational Vehicle Park
Riding Stable

F-1564 ATTACHMENT A
EXISTING RS30 USES ALLOWED
Forsyth County Jurisdiction Only

Shooting Range, Outdoor
Transmission Tower

**USES ALLOWED WITH SPECIAL USE PERMIT FROM ELECTED
BODY (E)**

Access Easement, Private Off-Site
Landfill, Land Clearing/Inert Debris, greater than 2 acres
Parking, Off-Site, for Multifamily or Institutional Uses

MEMORANDUM

TO: Gary Roberts, City-County Planning Department

FROM: Davida W. Martin, Forsyth County Attorney



DATE: November 22, 2016

RE: Zoning Opinion on F-1564

This is in response to your request for a spot zoning opinion in the above referenced case. Based upon the information provided regarding the proposed rezoning, the surrounding properties, the map and comprehensive plan, as well as the applicable ordinances and law, I conclude the following:

The subject property fits the North Carolina Supreme Court definition of a spot zoning in that it seeks a zoning ordinance or amendment which "singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to ... relieve the small tract from restrictions to which the rest of the area is subjected."

According to the law, a spot zoning per se is not invalid and, if there exists a reasonable basis for the spot zoning, it is legal and valid. In order to determine whether there is a reasonable basis, the Court directs that we look at several factors, including but not limited to the following:

- a. The size of the tract in question;
- b. The compatibility of the disputed action with an existing comprehensive zoning plan;
- c. The benefits and detriments for the owner, his neighbors and the surrounding community; and
- d. The relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts.

This case involves a relatively small tract of land consisting of 3.52 acres, which is surrounded by a much larger area (hundreds of acres) uniformly zoned low density Residential (primarily RS-20 and RS-30) and Agricultural (AG), in examining a one half mile radius around the subject property. The nearest business zoned properties are located in an area which is part of a planned activity center approximately one half mile from the site and there are two other business zonings, which represent small isolated pockets of property. The subject site "must be examined relative to the vast majority of the land immediately surrounding it, not just a small isolated pocket of property", according to the case of Mahaffey v. Forsyth County, 99 N.C.App. 676, 394 S.E.2d 203 (1990). The vast majority of the land immediately surrounding the subject site is uniformly zoned as stated above. These isolated pieces of property do not destroy the uniformity of zoning in the area under current North Carolina law. In my opinion, this factor does not provide a reasonable basis for the spot zoning.

The second factor is the compatibility of the proposed rezoning with the existing comprehensive zoning plan. The subject site is located in Growth Management Area 3, which is the Suburban Neighborhoods area. The Growth Management Plan states that the Suburban Neighborhoods area consists of neighborhoods built after World War II, with a more separated growth pattern of different land uses with subdivisions that cater to specific housing styles and price ranges featuring streets that often lack connectivity. In this case, the subject property is currently zoned RS-30. The RS-30 district is primarily intended to accommodate single family detached dwellings on three quarter acre lots in areas without access to public water and sewer services. The proposed uses of this property, if rezoning is permitted from RS-30 to HB-L, are Nursery, Lawn and Garden Supply, Retail; Arts and Crafts Studio; Building Contractor, General; Church or Religious Institution, Community; Church or Religious Institution, Neighborhood; Offices; Police or Fire Station; Services, A; and Services B. This proposed Highway Business-Limited zoning in a residential area is inconsistent with the Legacy Comprehensive Zoning Plan, the Southeast Forsyth County Area Plan, and the Unified Development Ordinances (UDO). The UDO states that the Highway Business-Limited District is established to provide locations for retail service and distributive uses in Growth Management Areas (GMA) 2, 3 and 4. Because the proposed uses are more intense and thus incompatible with the uses encouraged under both the comprehensive zoning plan, the adopted area plan, and the UDO, this factor does not provide a reasonable basis for the spot zoning.

The third factor relates to the benefits and detriments for the property owner, his neighbors and the surrounding community. The information available shows that the benefit to the owner is that proposed rezoning would allow him to operate a limited highway business use on property currently zoned low density Residential. While rezoning the property for the uses Church or Religious Institution, Community; Church or Religious Institution, Neighborhood; or Police or Fire Station could provide additional benefits to the neighbors and the surrounding community, it remains inconsistent with surrounding area. The potential harm to the neighbors and the surrounding community associated with the requested uses are noise, increased traffic, odors from the mulching operation, diesel fumes, and lighting at night. No information has been provided that the proposed rezoning would generate any new jobs, increase neighboring property values or provide other benefits to the surrounding community. The law is clear that in determining the existence of a reasonable basis for spot zoning based upon this factor, the exclusive and preferential benefit to a particular landowner, with no relation to the community as a whole, is not a valid exercise of sovereign power. The law looks at benefits, such as jobs or services provided, which specifically benefit the community as a whole. In the case of Good Neighbors of South Davidson, et. al vs. Town of Denton, 355 N.C. 254, 559 S.E.2d 768(2002), the North Carolina Supreme Court stated that a "reasonable basis" is established when a zoning authority "clearly shows" that the potential benefits to the property owner, his neighbors and/or the surrounding community outweigh the potential detriments to those neighbors and/or the surrounding community as a whole. In this case, the potential detriments to the neighbors and the surrounding community outweigh the benefits. Therefore, I conclude that this factor does not support a reasonable basis for the spot zoning.

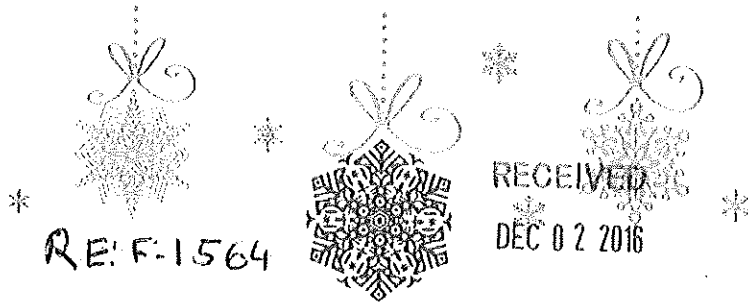
The fourth and final factor to be considered is the relationship between the uses envisioned under the proposed rezoning and the uses currently present in adjacent tracts. In contrast to the residential purposes and objectives of the RS-30 zoning district as listed above, the UDO states that the HB-L zoning district, which is proposed for the subject site, is primarily intended to accommodate retail service and distributive uses. The HB-L zoning district is established to provide locations for establishments which require high visibility and good road access, or which cater primarily to passing motorists. The proposed zoning district is not intended to encourage or accommodate strip commercial development and is intended for application in GMAs 2, 3 and 4. While the church, law enforcement and fire protection uses requested under the proposed HB-L rezoning of the subject site could provide a benefit to the surrounding residential development present in adjacent and surrounding tracts, they are still inconsistent with the surrounding low density residential development. This factor, therefore, does not support a reasonable basis for the spot zoning.

In conclusion, based upon the analysis herein, it is my opinion that there is not a reasonable basis for the spot zoning. Therefore, if challenged in a Court based on the current interpretation of the law, I believe the proposed rezoning would not successfully withstand a legal challenge. In summary, I believe that the proposed rezoning would constitute an illegal spot zoning.

F-1564 ATTACHMENT C
USES ALLOWED UNDER PROPOSED “SERVICES, B”

SERVICES, B. An establishment primarily engaged in providing services to commercial and business establishments. Operations may include large scale facilities and storage of merchandise and equipment outside enclosed buildings. Services B includes the following list of uses (including SIC groups and all subcategories not elsewhere listed):

- 721 Laundry, Cleaning, and Garment Services Except those listed under Services A
- 7312 Outdoor Advertising Services
- 734 Services to Dwellings and Other Buildings
- 735 Equipment Rental and Leasing (with outside storage of equipment)
- 7623 Refrigeration Service and Repair
- 7692 Welding Repair
- 7694 Armature Rewinding Shops
- 7699 Establishments from SIC 7699 primarily engaged in providing repair and other services to businesses and to a lesser extent, individuals, that by the nature of their operation could impact adjoining property due to noise, odor, vibration, and/or air or water pollution. Uses include repair or servicing of large or heavy machinery, such as engines and appliances, and welding, blacksmith or gunsmith shops, and septic tank or sewer cleaning services, but not to include agriculture and farm equipment, industrial truck repair, and motorcycle repair.



RE: F-1564

Rezoning request -
We are very much opposed
to having this request for
rezoning approved. We have
lived here for over 46 years
and it has always been
residential.

I feel like they should have
gone to a business zone to
start with.

Sincerely,

Frank Overman & wife

Learn more about the Lakota (Sioux) culture at stjo.org/culture
2245 NC Hwy 66, 27284

* * * * * Kernersville * * *