

## **Proposed Zoning Map Amendment Staff Report**

**Board of Commissioners Hearing: June 21, 2022**

**Rezoning Petition #: PLG-RZ-002881-2021**

**Request:** To rezone a 0.604-acre portion of the 2.934-acre property located at 9101 Falls of Neuse Road from Residential-40 Watershed (R-40W) to Conditional Use-Residential-40 (CU-R-40) to allow for a technical correction of the outermost watershed boundary based upon a field verified topographic survey, and to authorize staff to submit the requested change to the North Carolina Department of Environmental Quality for formal approval.

**Note:** A conditional use rezoning means that the petitioner has voluntarily offered several conditions that would run with the land and would apply to any subsequent development on the property. Conditions related to screening, placement of improvements, building height, lighting and limitations on future uses are offered in an attempt to mitigate potential impacts of development upon off-site properties. Please see the attached petitioner's conditions (including the list of over 20 uses or use categories that they have excluded from future consideration).

**Note:** This rezoning petition was submitted last year, prior to adoption of the new Comprehensive Plan. Because of this, staff's review and analysis of this petition is based on the former Wake County Land Use Plan and guiding materials. This analysis is reflected in this staff report. This approach is consistent with North Carolina General Statutes section 143-755 *Permit Choice*, whereby the applicant may choose which version of the "rule or ordinance" (i.e.--the former version or the new version) applies to the application and use of land. In this case, the petition does not benefit more or less from either the new Comprehensive Plan or the former Land Use Plan.

**Location:** The subject property is located at 9101 Falls of Neuse Road adjacent to the I-540 westbound on-ramp, Falls of Neuse Road, and the Muirfield Subdivision.

**Existing Zoning:** Residential-40 Watershed, R-40W (with Special Highway Overlay District, SHOD)

**Proposed Zoning:** Conditional Use-Residential-40, CU-R-40 (with Special Highway Overlay District, SHOD)

**Existing Land Uses:** Vacant, wooded

**Petitioner:** Mark Phillips, Pabst Design Group

**Owner:** Falls Ridge West, LLC, James Jackson, Manager

**PIN:** 1718527761

### **Surrounding Land Uses and Zoning Districts**

<b>Direction</b>	<b>Existing Land Use</b>	<b>Zoning District</b>
North	Single-family residential (Muirfield Subdivision)	Residential-40 Watershed
East	Falls of Neuse Road, commercial uses within Raleigh	City of Raleigh Corporate Limits
South	I-540 westbound on-ramp	City of Raleigh Extra-Territorial Jurisdiction (ETJ)
West	Single-family residential (Falls Ridge West Subdivision)	Residential-40 Watershed (with Special Highway Overlay District)

### **Land Use/Zoning History**

1970: General zoning was first applied to the northwestern portion of Wake County

1984: Residential-40 Watershed and Residential-80 Watershed zoning districts were created and applied to the Falls Lake area (as well as to other water supply watershed areas within Wake County's zoning jurisdiction)

### **Wake County Land Use Plan**

The Wake County Land Use Plan's General Classification map designates this area as Non-Urban Area/Water Supply Watershed (NUA/WSW). The Wake County Land Use Plan defines NUA/WSWs as areas within the county's jurisdiction that are not intended to be urbanized. Public utilities (i.e.--water and sewer) are generally not allowed to be extended into this water supply watershed area (thus its non-urban designation) except for public health and safety reasons (e.g.--contaminated groundwater or an unrepairable septic system). [While this submittal predated the adoption of the PLANWake Development Framework Map, staff wanted to note that this area has a Rural designation in that document.]

For ease of administering water supply watershed regulations most planning jurisdictions use a roadway as the dividing line between watershed and non-watershed areas, even though the staff knows that the actual ridgeline may meander back and forth across the roadway. The thought is that the plus and minus areas on either side of the roadway/ridgeline generally net out and the overall watershed protection objectives are achieved. The planning staff has confirmed the acceptability of this philosophy with the state's water supply watershed protection program staff and has processed several similar petitions over the last decade or so.

The purpose of this rezoning petition is to make a technical correction to the outermost boundary of the Falls Lake water supply watershed within the subject property based upon a field verified topographic survey. Please see the attached petition materials for the sealed survey by Ralph V. Pendergraph, Jr. of PTS Land Surveying and the

accompanying sealed engineer's letter, maps, aerial photographs, etc.... from the petitioner, Pabst Design Group.

These materials indicate that the topography has **not** been altered and that this 0.604-acre portion of this lot drains naturally out of the Falls Lake water supply watershed. Stormwater falling upon this 0.604-acre area sheet flows to the front roadside ditch where it enters a 24-inch drainage pipe near the southeastern corner of the property and flows under Falls of Neuse Road (i.e.—away from Falls Lake). This 24-inch pipe connects to a series of other increasingly larger drainage pipes, continuing to the southeast, for a total run of approximately 450 feet before exiting into an open channel.

The state law and the Wake County Unified Development Ordinance (UDO) indicate that any rezoning should be consistent with the Land Use Plan. Even through this rezoning petition is just a technical correction to the zoning map, the rezoning petition must be processed in the same manner as a regular rezoning case. The subject property's current zoning of R-40W is consistent with the Land Use Plan's General Classification map designation of this area as a Non-Urban Area/Water Supply Watershed (NUA/WSW). The NUA/WSW areas allow for low-density residential uses and a limited range of nonresidential uses (e.g.—daycare).

Dropping the water supply watershed designation of the front 0.604-acre portion of the subject property will not change the Non-Urban Area designation and would not significantly alter the allowable uses by-right (i.e.—administratively approvable by staff) on the property. Uses such as a library, school, place of religious assembly, governmental use, or a golf course as part of a subdivision would become uses by-right, however the petitioner has indicated that “none of these permitted uses is feasible due to the small size of the area being rezoned” (although they are not specifically excluded in the proposed conditions). The permissible range of uses, if the watershed declassification rezoning is approved, are reasonable for the area (as evidenced by their listing in the Permissible Use Table of section 4-11 of the UDO).

The petitioner has indicated that they do not “propose any specific use allowed by this rezoning, but simply requests a technical correction so that the zoning classification comports with the actual physical characteristics, topography, and natural drainage patterns of the property”. The petitioner notes that “This rezoning of 0.604-acres is in the nature of a technical correction so that the zoning designation does, in fact, comply with that implicit assumption of the Land Use Plan”,

The petitioner notes that “A small café along with an additional [multi-use] building that may someday be developed on this parcel—following satisfaction of multiple requirements” and “would be consistent with the adjacent transportation infrastructure, would create additional employment opportunities, and would provide goods or serves that are needed and would be enjoyed by the surrounding properties”.

The petitioner has indicated that other actions would be needed to significantly alter the allowable uses on the subject property. They have indicated their intent to pursue a

subsequent Land Use Plan Amendment (LUPA) to create a new activity center at this location (if the rezoning is approved). That LUPA process would be similar to a rezoning petition in that it would require a public meeting with, and recommendation from, the Planning Board and a public hearing before the Board of Commissioners. Each of those meetings would require the same notifications as a rezoning process. **If** the LUPA is approved, then most subsequent uses (such as the café and the retail/personal service uses that they have mentioned) would require a detailed site plan review by staff and a duly noticed public hearing before the Wake County Board of Adjustment for consideration of a Special Use Permit (SUP). SUPs include a test for Land Use Plan consistency, which for most uses would require that they be located within a designated activity center. There are other tests for a SUP that involve an evaluation of whether they fit with the harmony of the area, adverse impacts on adjoining property values, etc....).

The petitioner indicates that the rezoning request also complies with two of the goal statements of the Wake County Land Use Plan. The petitioner has noted that Goal # 2 “is to allow and “encourage growth close to municipalities” and discusses in the petition material the proximity of more intensive urban-type development across Falls of Neuse Road (a major arterial road). They also indicate that the rezoning petition is consistent with Goal # 10, “which is the County’s policy of “prevent[ing] contamination of and maintain[ing] the capacity of groundwater resources”. The petitioner notes that this goal also states that the County will use “groundwater monitoring and modeling to better understand the dynamics of groundwater movement in areas where groundwater is the primary source of drinking water”.

In accordance with the North Carolina General Statutes and the Wake County Unified Development Ordinance, any proposed rezoning should be consistent with the Wake County Land Use Plan. Since this survey represents a refinement of the data (i.e.—the watershed boundary) that is already represented on the General Classification Map, the staff has deemed that the rezoning petition is consistent with the Land Use Plan.

It is the planning staff’s professional opinion that the rezoning petition for Conditional Use-Residential-40 zoning, the retention of the Non-Urban Area designation, and the permissible range of uses would be consistent with the general Wake County Land Use Plan, are reasonable, appropriate for the area, and in the public interest.

If the rezoning/watershed boundary adjustment is approved by the Wake County Board of Commissioners (and then by the North Carolina Department of Environmental Quality), then the Planning staff would make a corresponding administrative amendment to the General Classifications Map to change the designation of the front 0.604-acre portion of this lot from Non-Urban Area/Water Supply Watershed to just Non-Urban Area (as the City of Raleigh has indicated that they have no intention of providing public water or sewer service to this property, or annexing it).

## **Required Statement of Consistency with the Land Use Plan and Public Interest**

North Carolina General Statute 160D-604, and Section 19-21-6 (C) of the Wake County Unified Development Ordinance, require that the Planning Board provides the Board of Commissioners with a statement of whether or not the proposed rezoning petition is consistent with the Land Use Plan, reasonable, and otherwise advances the public health, safety, and general welfare. In making a determination of whether or not to approve the rezoning petition, the Board of Commissioners must adopt a statement describing whether or not the proposed rezoning petition is consistent with the Land Use Plan, reasonable, and otherwise advances the public health, safety, and general welfare, or why it chose to deviate from the Land Use Plan and how that decision is reasonable and in the public interest.

The petitioner has provided several statements indicating (1) why they believe that the proposed rezoning and subsequent use is a public necessity, and (2) explaining its impact on the surrounding neighborhood and adjacent properties. They have also provided statements of (3) how the rezoning complies with the Land Use Plan; (4) how the rezoning benefits the adjacent and surrounding properties and (5) how it otherwise advances the public health, safety and general welfare. These statements are included in the attached petition package.

The planning staff has drafted a statement of consistency, reasonableness, and public interest for consideration by the Board of Commissioners (see attached draft statement). This is the same statement that was adopted by the Planning Board at their May 4, 2022 meeting.

#### **Input from the City of Raleigh**

As part of the Wake County Planning Staff's review of any rezoning request, a copy of the petition is forwarded to the relevant municipality whose Urban Services Area that the subject property lies within to allow them the opportunity to provide courtesy review comments. In this case the Falls Lake area is designated as a Non-Urban Area/Water Supply Watershed on the Wake County General Classifications Map and therefore is not located within any municipality's Urban Services Area. However, the City of Raleigh has annexed the areas on the eastern side of Falls of Neuse Road and the I-540 westbound on-ramp directly adjacent to the subject property to the south is located within the City's Extra-Territorial Jurisdiction (ETJ). Additionally, Falls Lake is the City's primary drinking water source.

Accordingly, the Wake County Planning staff provided a copy of the rezoning petition to the City of Raleigh's Planning staff on March 17, 2022 (after a detailed phone discussion) and requested their feedback. However, the Wake County Planning staff has received no comment from the City staff as of the date of the writing of this report.

In discussions with the petitioner, City staff has indicated that they will not extend water or sewer to the subject site and have no intent to annex the property.

#### **Input from the North Carolina Department of Environmental Quality (DEQ)**

Ultimately, any modification of Wake County's watershed boundaries must be reviewed and approved by the North Carolina Department of Environmental Quality's (DEQ) Division of Energy, Mineral, and Land Resources (DEMLR) before it can be finalized and implemented. The Wake County Planning Staff provided a copy of the rezoning petition to DEQ staff on March 16, 2022 (after a detailed phone discussion), to seek their feedback and is not aware of any issues or concerns that they have with the petition.

The county has processed several similar requests to the state over the last decade or so as minor adjustments to the local watershed boundaries. The DEQ Program Coordinator, Paul Clark, has indicated that the "request is developed at the local level and then submitted to the state for review". Procedurally, DEQ cannot formally act upon this request unless and until the Wake County Board of Commissioners has approved permission to submit the request. If the rezoning petition is approved, the Wake County Planning Staff will forward the relevant petition materials, staff report, and executed ordinance to the state for formal approval and incorporation into the state-recognized Wake County watershed boundaries.

### **Input from Neighboring Property Owners**

The proposed rezoning (and a pending Land Use Plan Amendment to create an activity center at this location and a possible subsequent development that would most likely require a Special Use Permit via a public hearing before the Board of Adjustment) has been known to many of the neighbors for quite some time as these discussions have been ongoing for almost three years. So there have been a great number of phone call and e-mail interactions with some of the neighbors during that time frame (with two residents of the adjacent Muirfield Subdivision serving as points of contact for the concerns of the neighbors).

The petitioner held a neighborhood meeting on Wednesday, November 13, 2019, to discuss the requested rezoning and the potential subsequent use of the property for "a café with personal services or office use". The meeting was attended by approximately 35 area residents. The petitioner held a second neighborhood meeting on Tuesday, January 7, 2020, that was attended by approximately 23 area residents.

Based upon the meeting minutes, the neighbors expressed concerns regarding:

- Current traffic issues in the area and increased traffic from the development.
- Possible speculative development of the property.
- Development of parking lot in the watershed.
- Whether the entire property should remain in the watershed.
- Light pollution from the parking lot lights.
- Hours of operation for the business on the property.
- Noise from the development.
- Loss of trees and buffer for noise and adverse visual impacts from I-540.
- Opportunity to express opinion about the rezoning and development to the County.
- Water runoff from the property onto neighboring parcels.

Since the neighborhood meetings were held there have been concerns/claims about:

- One or more abandoned wells on the site (one was determined to be a pit and not a well). [This would ordinarily be a site plan consideration.]
- The presence of contaminants on the site (some contaminated soils have been removed from the site). [This would ordinarily be a site plan consideration.]
- Concerns about an underground storage tank on the site and possible continued contamination (that tank was actually located on land where the I-540 westbound on-ramp is located, and the records included a reference to a “no further action” letter indicating that there were no further concerns with that site).

At the Planning Board meeting on May 4, 2022 an opposition petition was presented into the record by a nearby property owner on behalf of approximately 140 area residents. While some of the petition signers were from the two adjacent subdivisions, there were also some signers from the broader area and included residents from the opposite side of Falls of Neuse Road. A copy of the opposition petition is included in the Board’s agenda item packet.

The Planning staff has attempted to address the various concerns as they have been raised and has provided responses to the neighborhood representatives. The petitioner had voluntarily offered several conditions in an attempt to address some of the concerns that have been raised by the neighbors. These conditions would run with the land and would apply to any subsequent development on the property. Conditions related to screening, placement of improvements, building height, lighting and limitations on future uses are offered in an attempt to mitigate potential impacts of development upon off-site properties. Please see the petitioner’s conditions.

As per our normal process, the County planning staff mailed out letters to all property owners (91) within 1,000 feet of the perimeter of the subject property and posted a public hearing notice sign along the Falls of Neuse Road frontage. In response to those efforts to solicit neighborhood feedback, the planning staff has received a few additional phone call or e-mail inquiries.

### **Utilities**

The subject property is located within the Falls Lake water supply watershed. By policy the City of Raleigh does not extend water and/or sewer lines into the watershed except for public health and safety reasons (e.g.--contaminated groundwater or an unrepairable septic system). Therefore, any future development on the subject property will have to be served by an individual well and septic system. The petitioner has had discussions with the Raleigh Public Utilities staff, and they have indicated that they will not serve this site with public utilities even if a portion of the property is declassified from the watershed.

If the rezoning is approved by the Wake County Board of Commissioners (and then formally by the North Carolina Department of Environmental Quality), then the Planning staff would make a corresponding administrative amendment to the General Classifications Map to change the designation of the front 0.604-acre portion of this lot

from Non-Urban Area/Water Supply Watershed to Non-Urban Area (as the city has indicated that they will not extend water or sewer to the subject site and have no intent to annex the property).

### **Environmental Issues**

The Environmental layer in Wake County GIS does not show any Federal Emergency Management Agency (FEMA) regulatory floodplains, Wake County flood hazard soils, streams or drainage features, associated riparian buffers or wetlands within, or adjacent to, the subject property.

As shown on the field verified topographic survey, the front 0.604-acre portion of the subject property drains away from the Falls Lake water supply watershed. The associated ridgeline is approximately 10,000 feet (1.89 miles) from the lake surface as roughly measured in GIS. The ridgeline is approximately 1,240 feet (0.23 mile) from the nearest USGS blue line stream.

The state allows compliance with their water supply watershed regulations via either a density standard or an impervious surface limitation standard—Wake County uses both. Additionally, Wake County has wider 100-foot water supply watershed buffers than the state-required 50-foot buffers. Please note that any future development on the subject property will not be allowed to alter the topography or otherwise divert the drainage back into (or out of) the Falls Lake water supply watershed. County Planning and Environmental Services staff will ensure that the natural drainage pattern is adhered to during any subsequent site plan review process.

The Wake County Unified Development Ordinance includes provisions that would require any future development on the subject property to perform a stormwater analysis and install stormwater control measures to mitigate any potential off-site impacts of the development.

### **Transportation Plan**

NCDOT is currently working on a road improvement project (U-5826) to widen Falls of Neuse Road with construction expected to last for 1 ½ to 2 years. The project is proposed to widen Falls of Neuse Road from I-540 to Durant Road from four to six lanes (plus turn lanes at intersections). This would exceed what is listed in the Wake County Transportation Plan which calls for a five-lane facility.

In proximity to the subject property the plan is to provide for three northbound through lanes, a northbound left-turn lane onto Stonegate Drive, three southbound through lanes, a southbound left-turn lane onto Falls Valley Drive, and a southbound right-turn lane onto the westbound I-540 on-ramp. This right turn lane is proposed to begin approximately 200 feet south of Stonegate Drive and extend across the subject property's frontage, so that it would serve the I-540 westbound on-ramp and the subject property.

### **Traffic Generation**



The Wake County Unified Development Ordinance requires a formal Traffic Impact Analysis (TIA) for any development that is projected to generate more than 1,000 trips per day, or more than 100 trips during either the AM or PM peak-hour as determined by the Institute of Transportation Engineers' (ITE) Trip Generation Manual for specified proposed uses.

The planning staff required the petitioner/owner to prepare a traffic assessment statement to determine if a TIA would be required. The proposed uses that have been discussed include a 1,450 square foot café/coffee shop with a drive-through window and no indoor seating, and a 6,160 square foot neighborhood/convenience-oriented retail/personal services building. Via scoping discussions with NCDOT and Wake County staff, the petitioner's contracted traffic engineering firm, Wetherill Engineering, projected a total daily traffic volume of 828 trips, an AM peak hour volume of 71 trips and a PM peak hour volume of 55 trips. [Please note that a vehicle entering the site is counted as a trip and the same vehicle exiting the site counts as another trip.] The total daily trip generation from this site would increase traffic on the adjacent roadway by only 1.6%. The pending roadway improvements discussed above should help improve traffic conditions (especially if the ramp meters are not brought into service again).

Therefore, no TIA will be required by the Wake County UDO, however, NCDOT has indicated that they will require a TIA if and when the project progresses to the site plan review stage given its proximity to the I-540 westbound on-ramp. Wake County Planning staff will review the TIA at that time. The Planning staff has received complaints about traffic backing up from the westbound on-ramp onto Falls of Neuse Road and adversely affecting traffic flow. This back-up is reported to have been related to NCDOT's ramp meters that were installed in an attempt to control traffic entering I-540. NCDOT has indicated that due to a reduction in traffic volumes stemming from COVID-19 that the ramp meters are not currently in use.

### **Traffic Accidents**

Falls of Neuse Road is a heavily traveled road which is currently operating slightly above (approximately 8%) its design capacity (50,500 vehicles per day versus a design capacity of 46,700 vehicles per day). During the five-year period of July 1, 2013 through June 30, 2018 within the immediate vicinity of the Stonegate Drive intersection there were 30 accidents (an average of six per year). There were eight accidents during this five-year period that involved a total of 11 minor injuries and 22 accidents that were property damage only. The majority of the accidents (17 of 30 for 57%) involved rear end, slow or stopped conditions that are typical of heavily traveled roadways. The pending roadway improvements discussed above should help improve traffic safety (especially if the ramp meters are not brought into service again).

### **Planning Staff Findings**

1. The proposed Conditional Use-Residential-40 rezoning is a refinement of the data that is already represented on the General Classification Map (i.e.--the outermost water supply watershed boundary), therefore the staff has deemed that the rezoning petition is consistent with the Land Use Plan.

2. The petitioner noted that the proposed rezoning complies with two stated goals of the Wake County Land Use Plan.
3. A detailed traffic assessment statement prepared by a professional traffic engineer indicated that the proposed development would generate less traffic than the threshold for a formal Traffic Impact Analysis and would increase traffic on the adjacent roadway by only 1.6%.
4. There is an on-going NCDOT project to widen Falls of Neuse Road within this immediate area that should help improve traffic conditions.
5. Most subsequent uses of the subject property would require the petitioner to first obtain a Land Use Plan Amendment (LUPA) via a separate public hearing process to create a new activity center at this location and then a Special Use Permit (SUP) via a public hearing before the Board of Adjustment.
6. A detailed site plan must be approved by the appropriate county and state agencies prior to future development on the subject property to ensure compliance with all applicable regulations.
7. The City of Raleigh's planning staff has not returned any comments on the rezoning petition.
8. The Department of Environmental Quality staff has not indicated any issues or concerns with the proposed technical correction of the watershed boundary.
9. Wake County planning staff has received a number of concerns/objections from some of the surrounding property owners.

### **Planning Staff Recommendation**

That the Board of Commissioners holds a public hearing to consider rezoning petition PLG-RZ-002881-2021 and:

1. Adopts the drafted statement finding that the requested rezoning to Conditional Use-Residential-40 zoning (i.e.—technical correction of the watershed boundary), the retention of the Non-Urban Area designation, and the permissible range of uses are consistent with the Land Use Plan, reasonable, and otherwise advances the public health, safety, and general welfare;

*and by separate motion*

2. Approves the rezoning petition, PLG-RZ-002881-2021, as presented, and authorizes staff to submit the requested change to the North Carolina Department of Environmental Quality for formal approval.

### **Planning Board Recommendation**

1. The Planning Board, at their Wednesday, May 4, 2022 meeting, recommended by unanimous vote, that the Wake County Board of Commissioners adopts the drafted Statement of Consistency, Reasonableness, and Public Interest;

*and by separate motion*

2. The Planning Board, at the same meeting, recommended by unanimous vote that the Wake County Board of Commissioners approves the rezoning petition as presented and

authorizes staff to submit the requested change to the North Carolina Department of Environmental Quality for formal approval.

### **Rezoning Conditions Proposed by Petitioner**

1. An eight (8)-foot tall masonry wall or opaque fence, or two (2)-foot berm and six (6)-foot tall masonry wall or opaque fence, will be installed along the northern property line from Falls of the Neuse Road to the westernmost point of any building(s) or paved parking/vehicle circulation area(s).
2. Plants will be installed that will provide, at their maturity, year-round screening of at least 80% of the exterior face area of the masonry wall or opaque fence along the northern property line.
3. No structures will be constructed, or paving installed more than 350 feet from the Falls of the Neuse Road right-of-way other than as necessary for stormwater control, septic system, or well(s).
4. The maximum building height, as calculated pursuant to the UDO, shall be no greater than twenty-five (25) feet above post-construction grade.
5. Exterior lighting of the parking/vehicle circulation area(s) shall be limited to LED fixtures and will be fitted with shadow-box-type, full cut-off shielding to minimize light at the property line.
6. The following uses, as listed in the Wake County UDO Use Table, will not be permitted on the property:

#### **Residential Use Group:**

Mobile home  
Family care home  
Group care facility  
Group home  
Health/personal care facility  
All other group living

#### **Hospitals**

#### **Lodge or Private Club**

#### **Animal Services**

Kennel  
Shelter

#### **Gas Station**

#### **Lodging**

Campgrounds and recreational vehicle parks

#### **Office**

Conference center/retreat house

#### **Recreation and Entertainment, Outdoor**

(All uses in category)

#### **Retail Sales and Service**

Neighborhood/convenience-oriented retail (with gas sales)

Vehicle Sales and Service

Vehicle repair/service

Waste-Related Use

(all uses in category)

Other Use Group

Solar energy systems

Special Events

Static transformer stations, radio/TV and towers, relay station

Water Tower