



DOCKET #: F1413

PROPOSED ZONING:
LI

EXISTING ZONING:
RS40

PETITIONER:
Herbert G. Myers and
Marty L. Myers for
property owned by Same

SCALE: 1" represents 600'

STAFF: Roberts

GMA: 5

ACRE(S): 15.86

MAP(S): 564858, 570858



DRAFT ZONING STAFF REPORT

DOCKET # F-1413
STAFF: Gary Roberts

Petitioner(s): Herbert G. Myers and Marty Myers
Ownership: Same

REQUEST

From: RS-40 Single Family Residential District; 40,000 sf minimum lot size
To: LI Limited Industrial

Both general and special use district zoning were discussed with the applicant(s) who decided to pursue the zoning as requested.

NOTE: This is a general use zoning petition; therefore, ALL uses permitted in the above requested district should be considered.

Acreage: 15.86 acres

LOCATION:

Street: North side of Shallowford Road east of Dorse Road.
Jurisdiction: Forsyth County.

PROPERTY SITE/IMMEDIATE AREA

Existing Structures on Site: Transmission tower along with one small utility building used in conjunction with the existing LCID.

Adjacent Uses:

North- Low density single family residential zoned RS-40.

East- Low density single family residential zoned RS-40.

South- Low density single family residential zoned RS-40.

West- Low density single family residential zoned RS-40.

GENERAL AREA

Character/Maintenance: Moderate to well maintained single family homes in a low density, semi rural setting.

Development Pace: Slow.

HISTORY

Relevant Zoning Cases:

1. F-1045; R-6 to I-3-S (Auto wrecking yards, building material salvage yards, general salvage yards, scrap metal processing yards); denied February 22, 1993; northeast side of Shallowford Road southeast of Dorse Road (subject property); 15.94 acres; Planning Board and staff recommended denial.

PHYSICAL FEATURES/ENVIRONMENTAL REVIEW

Impact on Existing Features: Because this is a general use petition, the impact of this proposal to the site's existing physical features cannot be determined at this time.

Topography: The subject property experiences a total elevation change of approximately 77 feet, rising from about 800 feet in the northwestern corner of the site up to 877 feet in the southern section of the site along Shallowford Road. City-County topographic maps identify the southern two-thirds sections of this property as a landfill.

Streams: An intermittent stream is located in the northern section of the subject property.

Vegetation/habitat: The subject property has some significant amounts of vegetation located in the northern section of the site.

Floodplains: None

Wetlands: A wetland is identified on the subject property and an additional wetland is identified just to the north of the property's northern boundary.

Environmental Resources Beyond The Site: Because this is a general use petition, the impact of this proposal to the environmental resources beyond this site cannot be determined at this time.

Water Supply Watershed: The subject property is located in the Yadkin River WS-IV watershed.

Compliance with Watershed Protection Regulations: The petitioner is responsible for complying with all corresponding WS-IV watershed protection regulations.

TRANSPORTATION

Direct Access to Site: Shallowford Road.

Street Classification: Shallowford Road – Minor Thoroughfare.

Average Daily Traffic Count/Estimated Capacity at Level of Service D (Vehicles per Day):

Shallowford Road between US 421 and Conrad Road = 2,500 / 11,100

Planned Road Improvements: None.

Sidewalks: None.

Bicycle Route: Mountains to Sea Cross-State Route along Shallowford Road.

CONFORMITY TO PLANS

GMP Area (*Legacy*): Rural Area (GMA 5).

Relevant Comprehensive Plan Recommendation(s): *Legacy* calls for limited development in the Rural Area. Lack of sewer and other services make this area generally unsuitable for non-residential development.

Area Plan/Development Guide: The subject property is not within the boundaries of an area plan or development guide.

INCORPORATED AREA COMMENTS

Incorporated Jurisdiction: Town of Lewisville

Expressed Concern: The Town of Lewisville is considering its recommendation regarding the subject request as of this writing.

SPOT ZONE OPINION

The County Attorney is of the opinion that the subject request, if approved, could be considered by the courts to be an illegal spot zone, based on current case law. **Note: This is the anticipated yet still pending opinion.**

ANALYSIS

The subject request is to rezone 15.86 acres located on the north side of Shallowford Road, one half mile west of the Lewisville corporate limits, from RS-40 to LI. With the exception of a transmission tower and a few small utility buildings, the property is not developed. The site is however, currently used as Land Clearing and Inert Debris Landfill, LCID.

The surrounding development pattern is primarily large lot, single family residential in a semi-rural setting. No non-residential zoning exists for a three quarter mile radius around the subject property. The site is located within *Legacy's* Rural Area which discourages industrial development. The County Attorney has analyzed the request and is of the preliminary opinion that the subject request, if approved, could be considered by the courts to be an illegal spot zone, based on current case law.

The site does have a history of landfill related activities and was in operation prior to the adoption of the UDO's new LCID requirements. Therefore it was exempt from the 2 acre size limitation and the three year renewable permit requirements. However, the property owner was required to obtain a one time LCID approval from the Planning Board. This approval was obtained in 1997 and the site is in compliance with the other requirements placed upon it at that time. It is staff's opinion however, that this activity is in no way grounds for a further intensification such as could occur under the requested LI zoning. For example some of the permitted uses within the LI district include: Building Contractor, Heavy; Motor Vehicle Storage Yard and Motor Vehicle Paint and Body Shop; Construction and Demolition Landfill; Solid Waste Transfer Facility and a Recycling Center. Staff sees these uses as clearly incompatible with the surrounding development pattern. In addition, the LI zoning would establish a precedent for other non-residential uses in the surrounding area.

The property owner is currently permitted to continue the operation of said LCID for an indefinite period of time provided the site remains in compliance with the applicable state and local ordinances. The proposed LI zoning is inconsistent with the surrounding single family residential development pattern, the adopted objectives of *Legacy's* Rural Growth Management Area. In addition, if the request was to be approved and then subsequently challenged, it could possibly be overturned by the courts as an illegal spot zone. Staffs recommendation therefore is for denial.

FINDINGS

1. *Legacy* calls for limited development in the Rural Area. Lack of sewer and other services make this area generally unsuitable for non-residential development.
2. The subject property is not within the boundaries of an area plan or development guide.
3. The County Attorney is of the preliminary opinion that the subject request, if approved, could be considered by the courts to be an illegal spot zone, based on current case law.
4. The proposed Limited Industrial District is completely incompatible with the surrounding low density residential development pattern and would establish a negative precedent for additional non-residential development in the general area.

STAFF RECOMMENDATION

Zoning: **DENIAL**

PUBLIC HEARING

FOR: None

AGAINST: None

WORK SESSION

MOTION: Dara Folan moved withdrawal of the zoning map amendment.

SECOND: Jerry Clark

VOTE:

FOR: Clark, Eickmeyer, Folan, Glenn, King, Lambe, Mullican, Norwood, Smith

AGAINST: None

EXCUSED: None

There was discussion concerning the waiver of fees contingent upon special use being pursued.

MOTION: Carol Eickmeyer moved that the fees be waived if they come back as special use.

SECOND: Clarence Lambe

VOTE:

FOR: Clark, Eickmeyer, Folan, Glenn, King, Lambe, Mullican, Norwood, Smith

AGAINST: None

EXCUSED: None

A. Paul Norby, AICP
Director of Planning