



## AGENDA

### Board of Adjustment Meeting

March 2, 2015

3:45 PM

113 W. Mountain, Room 111

**Members:** Matthew Hoffman (chair), Jeff Hagers, Kristen Knight, Tim Stein, Evan Niehues

**City Staff:** Andrew Garner, City Planning Director; Quin Thompson, Current Planner

#### Call to Order

#### Roll Call

1. Approval of the minutes from the February 2, 2015 meeting.

#### Old Business:

No items

#### New Business

**1. BOA 15-4984: Board of Adjustment Item (1777 W. MLK BLVD./SOUTHLAND GROUP; 520/559):** Submitted by JORGENSEN & ASSOCIATES for property located at the 1777 W. MLK BLVD. The property is zoned CS, COMMUNITY SERVICES and contains approximately 1.48 acres. The request is for a variance of the build-to-zone. Planner: Quin Thompson

**2. Election of Board of Adjustment Chair for 2015**

#### Announcements

#### Adjourn

#### *NOTICE TO MEMBERS OF THE AUDIENCE*

*All interested parties may appear and be heard at the public hearings. A copy of the proposed amendments and other pertinent data are open and available for inspection in the office of City Planning (479-575-8267), 125 West Mountain Street, Fayetteville, Arkansas. All interested parties are invited to review the petitions. Interpreters or TDD (Telecommunication Device for the Deaf) are available for all public hearings; 72 hour notice is required. For further information or to request an interpreter, please call 479-575-8330. As a courtesy please turn off all cell phones and pagers.*



**Board of Adjustment**

February 2, 2015

3:45 PM

City Administration Building in Fayetteville, AR, Room 111

**Members:** Matthew Hoffman – Chair, Jeff Hagers, Evan Niehues, Kristin Knight, and Tim Stein

**City Staff:** Andrew Garner – City Planning Director, Jesse Fulcher – Senior Planner, Quin Thompson – Planner, and Blake Pennington – Assistant City Attorney

**Call to Order:** 3:50 PM, Matthew Hoffman

**In Attendance:** Evan Niehues, Jeff Hagers, Matthew Hoffman, Kristin Knight

**Absent:** Tim Stein

**Staff:** Andrew Garner, Quin Thompson, and Blake Pennington

**1. Approval of the minutes from the January 5, 2015 meeting.**

**Motion:**

**Commissioner Knight** made a motion to **approve the minutes from the January 5, 2015 meeting**. **Commissioner Hagers** seconded the motion. **Upon roll call the motion passed with a vote of 4-0-0.**

## 2. New Business

**ADM 15-4950: Administrative Item (502 WEST MAPLE ST./PI BETA PHI HOUSE; 445):** Submitted by DEVELOPMENT CONSULTANTS for property located at 502 WEST MAPLE ST. The property is zoned RMF-40, RESIDENTIAL MULTI-FAMILY, 40 UNITS PER ACRE and contains approximately 1.62 acres. The request is for a modification to the condition of approval for BOA 14-4925.

**Quin Thompson**, Current Planner, read the staff report.

**No public comment was presented.**

**Andrew Garner**, City Planning Director, advised the Board to consider the building as shown on the submitted site plan, rather than make an attempt to craft a motion.

**Jay Young**, applicant, discussed background and reasons for the request.

**Robert Brown**, applicant, said that his team had explored additions to the building façade, extending a porch to meet the build-to-zone (BTZ), and was now considering a 'garden wall' to meet the requirement.

**Young** said that according to his measurement, the building was meeting the requirement for building in the BTZ.

**Brown** said that the entire west façade of the building would be placed in the BTZ.

**Young** asked if the [minimum buildable street frontage] requirement should force the architect to redesign the building to be literally on the corner, or whether the important thing was the amount of building in the BTZ, and discussed the impact this would have on the building appearance.

**Matthew Hoffman**, Chair, said that the BOA is an appointed board, charged with deciding cases of hardship, not design preference. This case is about preference to place and has not met a test for hardship.

**Young** said the team was trying to meet the spirit and intent of the ordinance.

**Garner** noted that the intent of the ordinance is to place buildings in the BTZ and specifically at corners to create a pedestrian friendly urban environment.

**Hoffman** asked staff whether it was the case or not that the building was required to be at the corner as indicated by the BOA decision.

**Staff** responded that the specific language in the previous BOA condition required that the building be located at the corner.

**Brown** discussed fire department access, saying that the loop drive was a requirement of the Fire Marshal. [This is not consistent with Fire Marshal view.]

**Hagers** asked if the applicant had explored opportunity to add 'garden wall' to the plan in order to meet the location requirement.

**Brown** and **Young** commented on design attempts to do so.

**Melissa Hawkins**, Pi Beta Phi Alumna, discussed the history of the property and house. She said that the sorority wanted to work with the City to provide a building to house the members.

**Janessa Bailey**, Pi Beta Phi Alumna, said she understood the decision made at the last [BOA] meeting, and said that their intention is to beautify Fayetteville, and the UARK campus with this proposed improvement.

**Tim Stein**, Board Member, asked if the building could be extended, would that meet the intent of the code [UDC].

**Garner** said that the simply extending the building would not meet the intent of the zoning code, which seeks to create pedestrian friendly urban settings, because the plan is an auto-oriented design.

**Hoffman** said that he agreed with Mr. Garner and added that the design in his view is not appropriate in this downtown location.

**Jeff Hagers**, Board Member, said that he disagreed, and added that this is not a commercial property like the recently completed First Security Bank on Meadow and College. He said that the applicant had tried to meet development requirements.

**Stein** said that he agreed with Mr. Hagers, and said that in his opinion the design would meet the intent of the zoning code. He added that meeting the letter of the code would make the building look funny, and noted that the previous BOA decision had in part created a hardship.

**Hoffman** said he disagreed.

**Motion:**

**Board Member Hagers** made a motion to approve **ADM 15-4950** as proposed by the applicant adding a condition that the porch be moved to the build-to line as described by the applicant and that a garden wall be added to the north edge of the building extending 26 feet to the north of the building. **Board Member Stein** seconded the motion. **Upon roll call the motion failed with a vote of 2-2-0 (Members Hoffman and Niehues voted 'no')**.

**BOA 15-4949: Board of Adjustment Item (940 WEST MAPLE ST./CHI OMEGA HOUSE; 444):** Submitted by DEVELOPMENT CONSULTANTS. for property located at the 940 W. MAPLE STREET. The property is zoned RMF-40, RESIDENTIAL MULTI-FAMILY, 40 UNITS PER ACRE and contains approximately 0.81 acres. The request is for a variance of the build-to-zone.

**Andrew Garner**, City Planning Director, gave the staff report.

**Jay Young**, applicant, discussed the background for the request. The historic preservation office that reviewed the proposed plans discussed concerns that this addition may compromise the historical integrity of the existing structure. He discussed that adding a gate as recommended by staff may further compromise the integrity historic designation. The applicant does not want anyone being able to access this porch for safety reasons. The patio doors would be kept shut.

**Board Member Hoffman** discussed that there is plenty of precedent for non-functioning facade decoration being put to use. I am thinking about the parking garage design requirements. I am not generally in favor of long stretches of garden wall as proposed. I appreciate all the discussion but the argument of adding a gate to the wall compromising the historic preservation is not valid. A gate would help the street as proposed by staff.

**Board Member Hagers** asked about the security issue of the gate.

**Jay Young**, applicant, discussed concerns that if the gate were not locked it would be a security risk.

**Board Member Hoffman** asked about the height of the wall.

**Jay Young**, applicant, discussed the height of the wall.

**Board Member Niehues** asked about the height of the sidewalk to the base of the wall.

**Jay Young**, applicant, discussed that there is about 18 inches of drop from wall down to the sidewalk.

**Board Member Hoffman** discussed that he felt the variance is warranted with the condition recommended by staff.

**No public comment was presented.**

**Motion:**

**Board Member Niehues** made a motion to approve **BOA 15-4949** as recommended by staff. **Board Member Knight** seconded the motion. **Upon roll call the motion passed with a vote of 4-0-0.**

3. **Reports:** No reports
4. **Announcements:** Next meeting is March 2, 2015
5. **Adjournment Time:** 4:50 PM
6. **Submitted by:** City Planning Division





## BOARD OF ADJUSTMENTS MEMO

**TO:** Board of Adjustment

**FROM:** Quin Thompson, Current Planner

**THRU:** Andrew Garner, City Planning Director

**MEETING DATE:** March 02, 2015

**SUBJECT:** **BOA 15-4984: Board of Adjustment Item (1777 W. MLK BLVD./SOUTHLAND GROUP; 520/559):** Submitted by JORGENSEN & ASSOCIATES for property located at the 1777 W. MLK BLVD. The property is zoned CS, COMMUNITY SERVICES and contains approximately 1.48 acres. The request is for a variance of the build-to-zone.

**RECOMMENDATION:**

Staff recommends approval of the request **BOA 15-4984** with conditions of approval.

**BACKGROUND:**

The subject property is located south of Martin Luther King Boulevard near Beechwood Avenue and contains approximately 1.48 acres within the CS zoning district. The property also contains a Dunkin Donuts on the western portion of the property. Both developments are served by a single shared access from Martin Luther King Boulevard. Surrounding land use and zoning is depicted in *Table 1*.

**Table 1  
Surrounding Land Use and Zoning**

Direction from Site	Land Use	Zoning
North	Drive-through Restaurant	C-2
South	Multi-family Housing	CS
East	Commercial/Retail	I-1
West	Drive-through Restaurant	I-1

**DISCUSSION:**

The applicant proposes to develop the site with a new 2,480 square foot commercial building with two tenant spaces, including one space for a Jimmy John's fast food franchise with drive-through lane. The form based CS zoning district requires that the building be located within a 0-25 foot build-to-zone (BTZ) measured from the Master street Plan right-of-way. The proposed building cannot be located within the 0-25 foot build-to zone along Martin Luther King Boulevard due to an existing (32 foot wide) utility easement along the entire length of the property that extends past the boundary of the 0-25 foot build-to-zone. The easement is in use and contains City water, sewer, and franchise utility services.



## FINDINGS:

### City of Fayetteville Unified Development Code Section 156.02 ZONING REGULATIONS.

Certain variances of the zoning regulations may be applied for as follows:

(B) *Requirements for variance approval.*

- (1) Where strict enforcement of the zoning ordinance would cause undue hardship due to circumstances unique to the individual property under consideration;

**Finding: Staff finds that it is not possible to reconcile two conflicting ordinances on this site, and that this condition causes undue hardship. A large 32' wide general utility easement containing a variety of public and franchise utilities covers the entire length of the site street frontage. The easement extends beyond the 25 foot boundary of the build-to-zone and ordinance (UDC 166.12) prohibits construction of structures within an easement.**

- (2) Where the applicant demonstrates that the granting of the variance will be in keeping with the spirit and intent of the zoning ordinance; and

**Finding: While redevelopment of this site as proposed would not be in the urban form prescribed by the zoning, the building cannot be placed in a platted easement. To address this issue and meet the intent of the build-to zone to create interaction between the street, sidewalk, and buildings, staff recommends conditions of approval that would require that the proposed drive-through lane be relocated to an area that does not come between the Martin Luther King Boulevard and the front of the building, and that the building should meet all other ordinances and design standards of buildings within the build-to-zone. Staff has drafted an alternative site plan showing how the site could be developed to meet this condition.**

(C) *Minimum necessary variance.* The Board of Adjustment may only grant the minimum variance necessary to make possible the reasonable use of the applicant's land, building or structure.

**Finding: Staff finds that a variance is necessary to redevelop the site and that the variance is the minimum necessary to make a reasonable use of the land. The building has been placed on the edge of the utility easement and could not be located any farther north without violating UDC 166.12.**

(D) *Special Conditions.* In granting a zoning regulation variance, the Board of Adjustment may impose whatever special conditions found necessary to ensure compliance and to protect adjacent property.

**Finding: Staff recommends conditions of approval to mitigate the impact of the variance along Martin Luther King Boulevard. These conditions of approval would require that the proposed drive-through lane be relocated to an area that does not come between Martin Luther King Boulevard and the front of**

**the building, and the building should meet all other ordinances and Non-Residential Design Standards for buildings within a build-to-zone.**

(E)*Non-permitted Uses.* The Board of Adjustment may not grant, as a variance, any use in a zone that is not permitted under the zoning ordinance.

**Finding: The CS zoning district allows restaurant with drive-through development.**

**BUDGET/STAFF IMPACT:**

None.

**Attachments:**

UDC 161.19 (CS, Community Services zoning district)

UDC 166.12 (Structures not allowed within public easements)

Request Letter

Proposed Site Plan

Proposed Site Plan (Enlarged)

Alternative Site Plan Meeting Conditions

Dunkin Donuts Site Plan and BOA Approval

One Mile Map

Close Up Map

**CITY OF FAYETTEVILLE UNIFIED DEVELOPMENT CODE**

**161.19 Community Services**

(A) *Purpose.* The *Community Services* district is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas and is intended to provide for adaptable mixed use centers located along commercial corridors that connect denser development nodes. There is a mixture of residential and commercial uses in a traditional urban form with buildings addressing the street. For the purposes of Chapter 96: Noise Control, the *Community Services* district is a commercial zone. The intent of this zoning district is to provide standards that enable development to be approved administratively.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 13	Eating places
Unit 15	Neighborhood Shopping goods
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 24	Home occupations
Unit 25	Offices, studios and related services
Unit 26	Multi-family dwellings
Unit 44	Cottage Housing Development

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation, trades and services
Unit 19	Commercial recreation, small sites
Unit 28	Center for collecting recyclable materials
Unit 34	Liquor stores
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities*
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Dwelling	18 ft.
All others	None

(2) *Lot area minimum.* None

(E) *Setback regulations.*

Front:	A build-to zone that is located between 10 feet and a line 25 feet from the front property line.
Side and rear:	None
Side or rear, when contiguous to a single-family residential district:	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	56 ft.
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(G) *Minimum buildable street frontage.* 50% of the lot width.

(Ord. 5312, 4-20-10; Ord. 5339, 8-3-10; Ord. 5462, 12-6-11; Ord. 5592, 6-18-13; Ord. 5664, 2-18-14)

## **CITY OF FAYETTEVILLE UNIFIED DEVELOPMENT CODE**

### **166.12 Structures Not Allowed Within Public Easements**

- (A) No portion of any building, pool (in-ground or above ground) or other immovable structure shall be built within a public utility easement.
- (B) Walls, brick or stone fences (with or without metal portions), monument or pole signs, and other difficult to move structures may only be built within public easements if permitted by the Zoning and Development Administrator after receiving written approval by all utility providers that could access the easement. The written documentation shall be filed of record in the Washington County Circuit Clerk's office. Any related damage or relocation of utilities or the structure in the easement shall be at the owner/developer's expense. The owner shall be responsible at his or her own expense to promptly remove any permitted structure or portion of such structure within the easement if a utility company or the City needs access. A utility company or the City may remove such structure or portion of a structure itself to avoid delaying necessary installation, maintenance or repair work without liability to the property owner who may reinstall the permitted structure at his or her own expense once the installation, repair or maintenance work is finished.
- (C) Readily movable fences (field fence, barbed wire, chain link, woodboard privacy, etc.) may encroach upon non-drainage public easements. Although the property owner is legally responsible to remove a fence blocking an easement, the City or utility company may remove such fence blocking an easement if access to the easement is necessary. The City or utility company will reinstall the fence to its approximate pre-removal condition after the maintenance, installation, removal or repair of mains or utility structures is finished. Neither the City nor any utility company shall be liable for damages to any property owner as a result of this subsection.
- (D) No fences may be installed in any drainage easement if such installation could impede the drainage through the easement.
- (E) No item may be installed within a public easement that could restrict the function, visibility, or access to a utility structure such as a manhole, meter, electrical, phone, or cable box, or other structure as may be built for utility function. No item shall be placed within three feet of a fire hydrant or in any way that may restrict visibility, access or use of the hydrant, which includes the clear space around the hydrant from which a pressurized hose may extend when in use.

(Ord. 5233, 4-21-09)



# JORGENSEN & ASSOCIATES

## CIVIL ENGINEERS • SURVEYORS

124 WEST SUNBRIDGE, SUITE 5 • FAYETTEVILLE, ARKANSAS 72703 • (479) 442-9127 • FAX (479) 582-4807

DAVID L. JORGENSEN, P.E., P.L.S.

JUSTIN L. JORGENSEN, P.E.

BLAKE E. JORGENSEN, P.E.

February 9<sup>th</sup>, 2015

City of Fayetteville  
113 W. Mountain  
Fayetteville, AR 72701

Attn: Board of Adjustments  
Re: Variance at 1777 Martin Luther King Blvd

This letter is in regards to a variance request for property located at 1777 Martin Luther King Blvd. just east of the Dunkin Donuts. Currently this site has no structures on it and is dirt, grass and some gravel. It does have two bus stop shelters on the front part along MLK as well as an ADA access ramp along the east side.

The developer of this property is proposing to put roughly 2,840 sq ft of Commercial space along with associated parking as shown on the attached pdf. This site is zoned CS – Community Services and per the **Unified Development Code Chapter 161:19(E)** the principal facade of the building shall be built within a build-to zone that is located between 10 feet and a line 25 feet from the property line. The reason for the requested variance to this code is there is an existing Utility Easement south of this build-to zone that prohibits the ability to build in the build to zone. The proposed location of the building will be 6' outside of the build-to zone.

We thank you for your consideration of this proposal and please call with any questions,

Thank you.

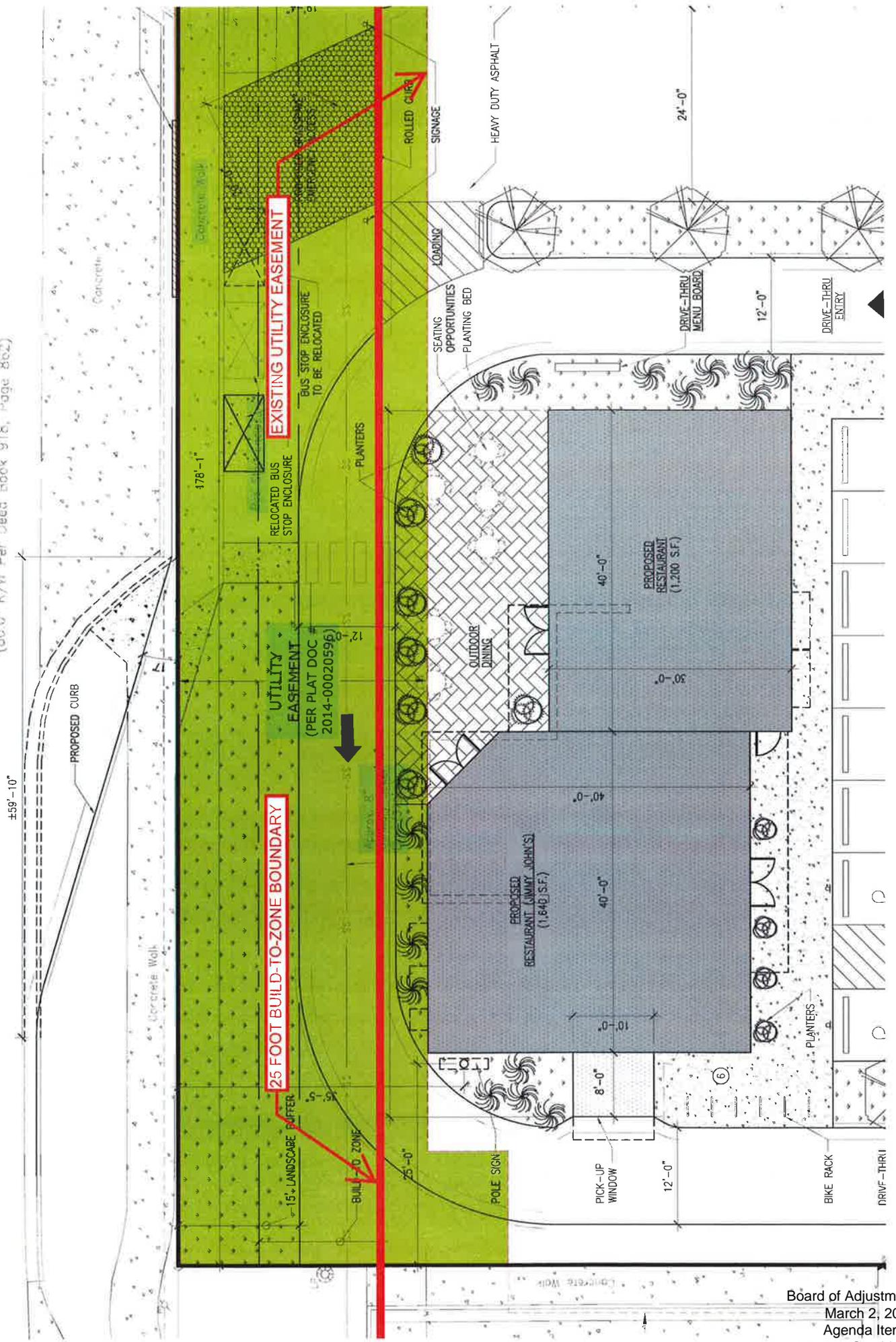
Sincerely;

Justin L. Jorgensen, P.E.



# WEST MARTIN LUTHER KING JR. BOULEVARD

(Var. Width Public R/W, Asphalt w/Curb & Curb) (80.0' R/W Per Deed Book 918, Page 862)



# DUNKIN DONUTS SITE PLAN

# APPROVED

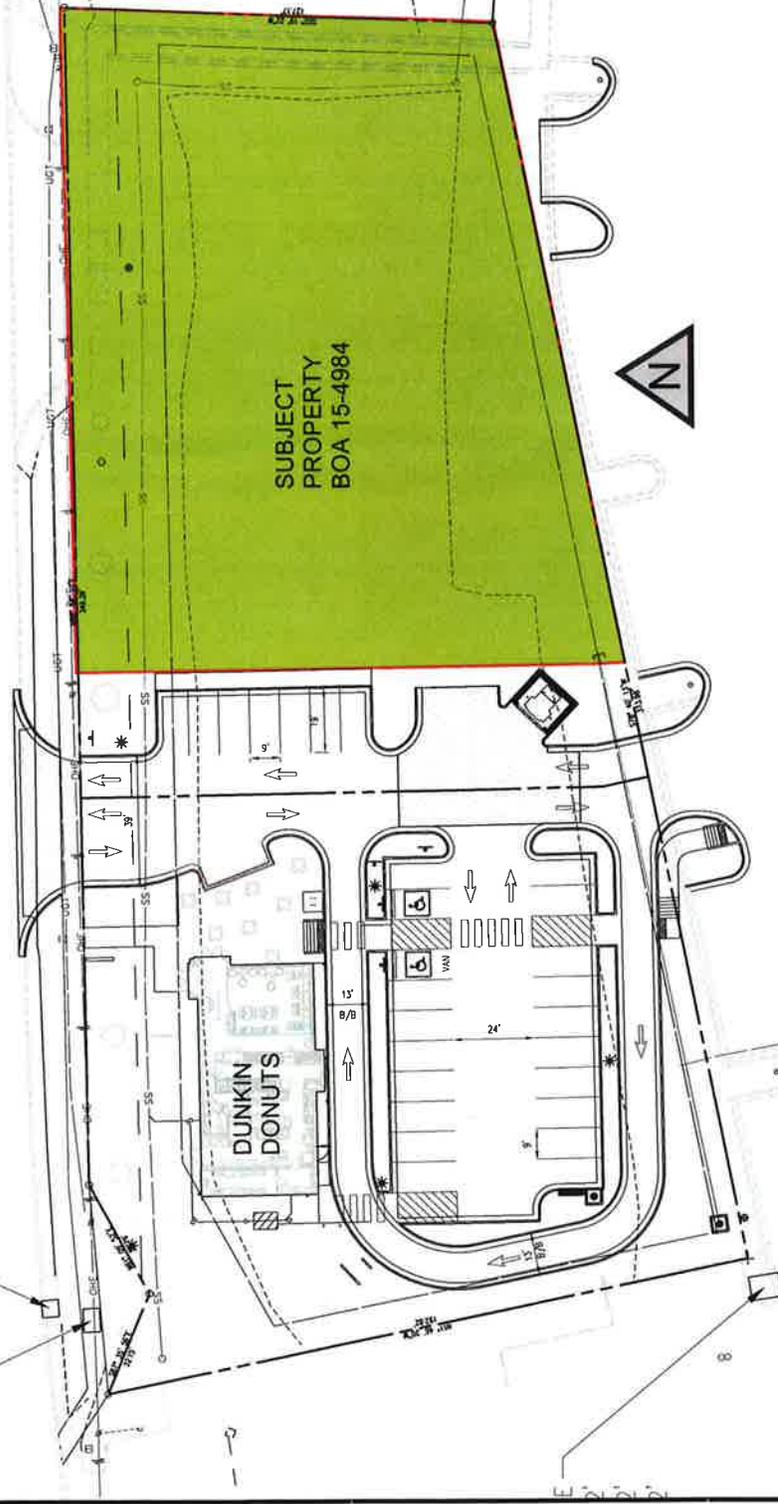
STORM SEWER MANHOLE  
LID 1287.43'

NORTH 36" R.C.P. 1280.54'  
SOUTH 36" R.C.P. 1280.54'

MARTIN LUTHER KING BLVD



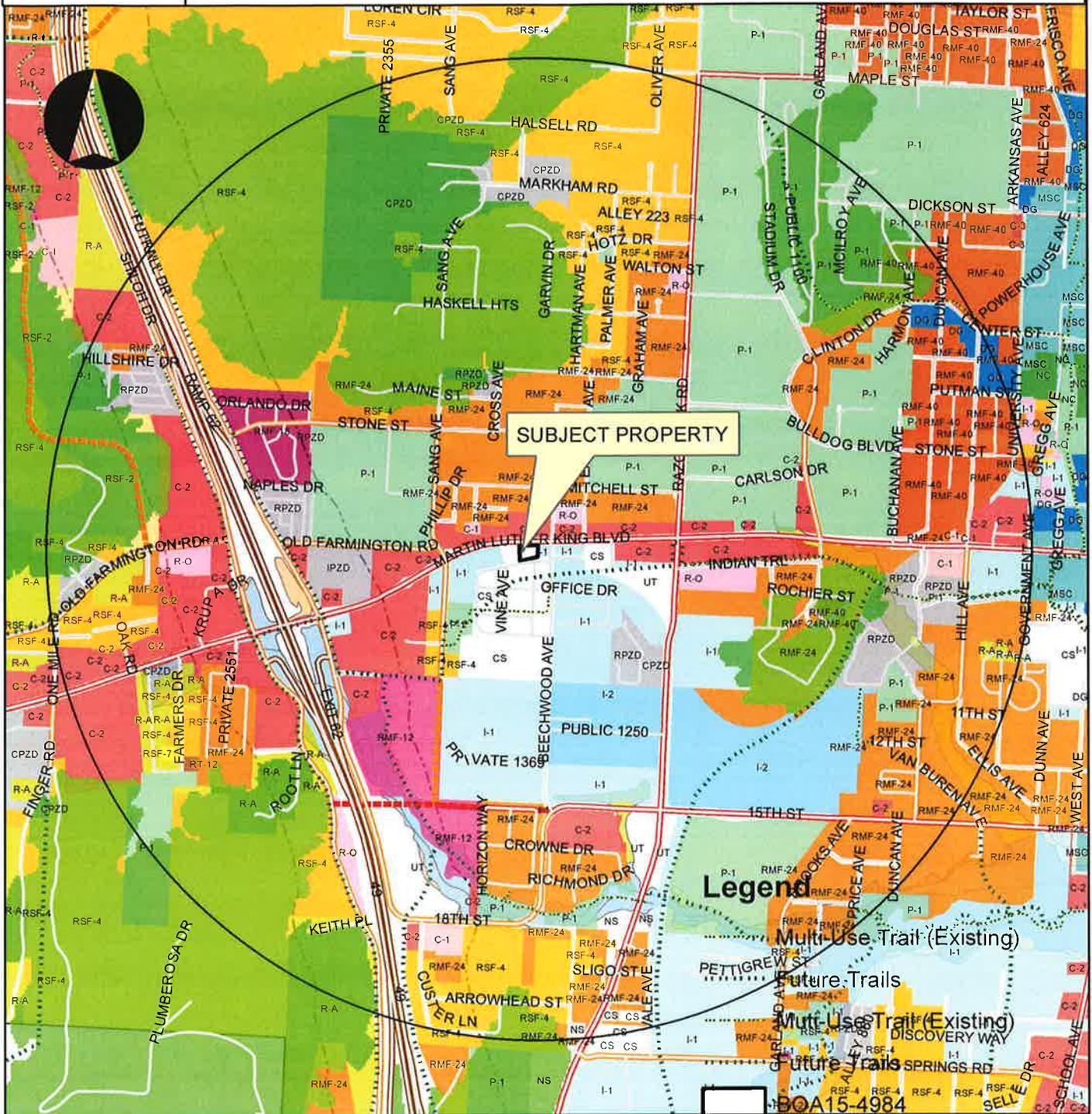
OLE  
34'  
34'  
34'





# SOUTHLAND GROUP

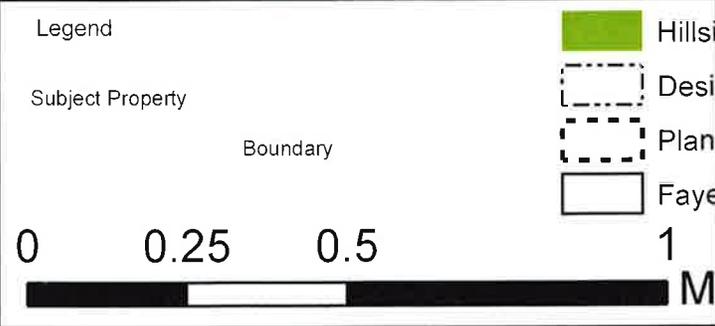
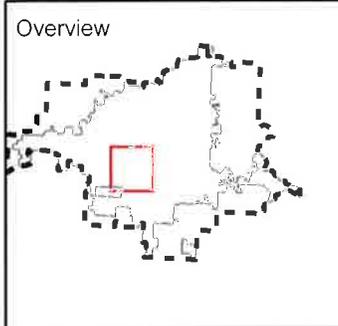
One Mile View



SUBJECT PROPERTY

### Legend

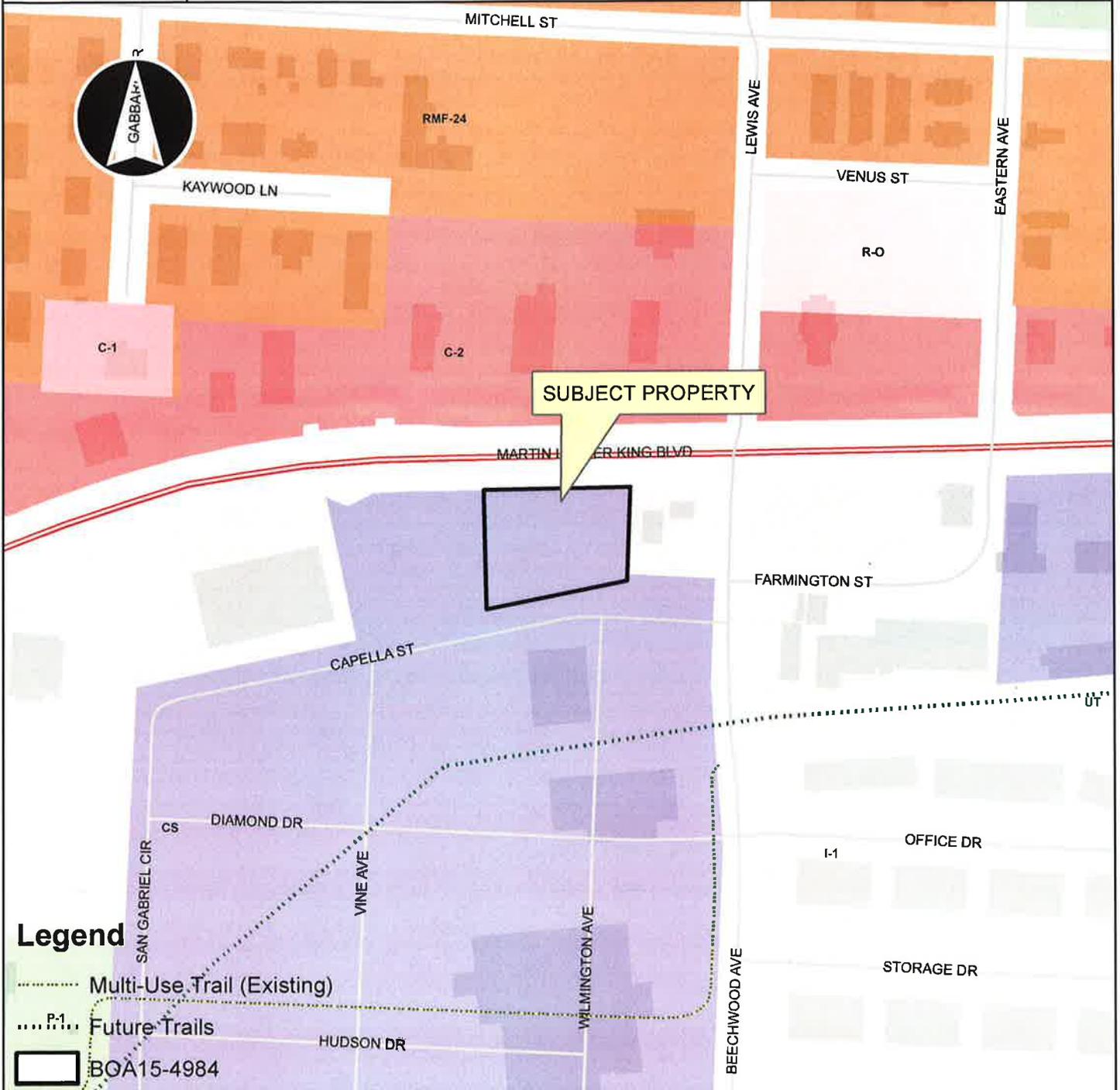
- Hillside-Hilltop Overlay District
- Design Overlay District
- Planning Area
- Fayetteville
- Multi-Use Trail (Existing)
- Future Trails
- Multi-Use Trail (Existing)
- Future Trails



BOA15-4984

# SOUTHLAND GROUP

Close Up View



## Legend

- Multi-Use Trail (Existing)
- Future Trails
- BOA15-4984

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

