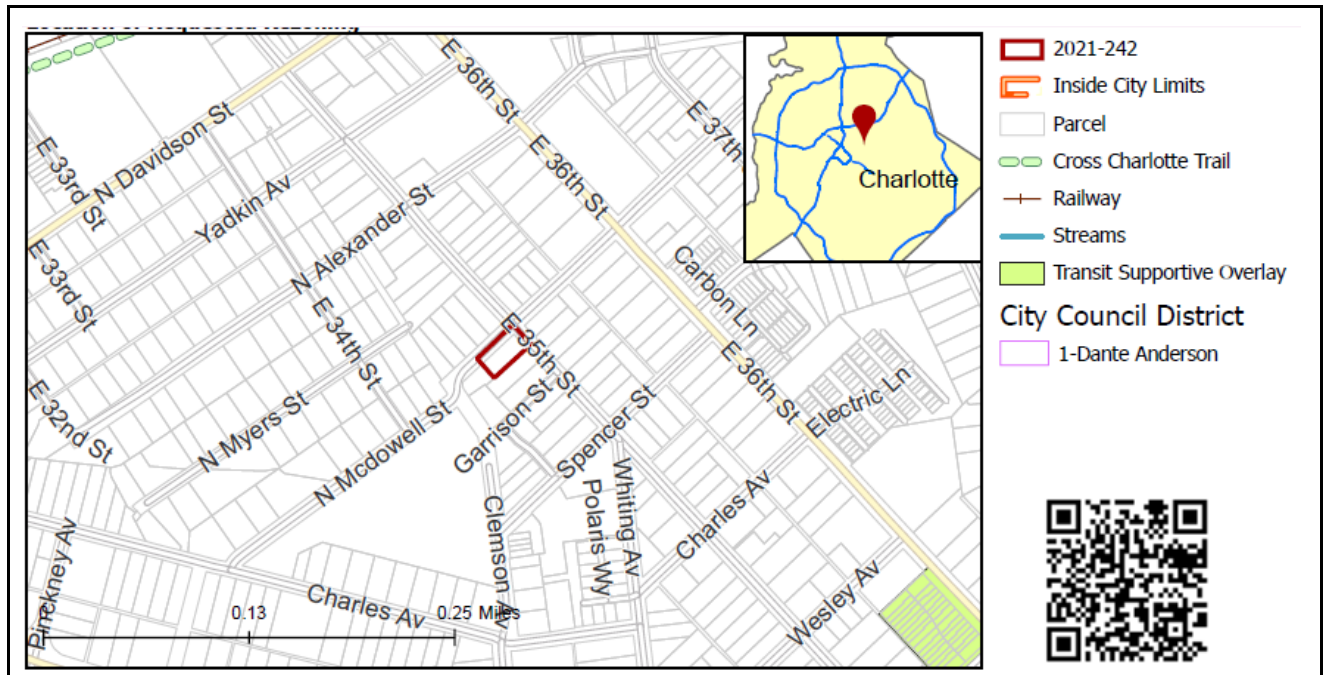


REQUEST

Current Zoning: R-5 (single family residential)
Proposed Zoning: MUDD-O (mixed use development-optional)

LOCATION

Approximately 0.19 acres located at the southwest intersection of East 35th Street and North McDowell Street, north of Charles Street.



SUMMARY OF PETITION

The petition proposes to allow an existing commercial building to have outdoor dining and optional provisions related to architectural standards, parking, and streetscape.

PROPERTY OWNER
PETITIONER
AGENT/REPRESENTATIVE

Patricia L. Dowdy, Robert D. Dowdy LLC
Robert D. Dowdy LLC
Russell Fergusson

COMMUNITY MEETING

Meeting is required and has been held. Report will be available online when received.
Number of people attending the Community Meeting: 6

STAFF
RECOMMENDATION

Staff recommends approval of this petition.

Plan Consistency

The petition is **consistent** with the *2040 Policy Map (2022)* recommendation for the Neighborhood 1 Place Type.

Rationale for Recommendation

- The petition is consistent with the Charlotte Future 2040 Comprehensive Plan Goals #1: 10-Minute Neighborhood, #4: Trail & Transit Oriented Development (2-TOD), #6: Healthy, Safe & Active Communities, and #9: Retain Our Identity & Charm.
- The petition attempts to balance the provision of service retail with protection of residential areas.

- Adaptive reuse of an existing building will protect and enhance the existing character.
- The petition is compatible with adjacent uses considering the existing building and character will be retained.
- The petition limits the number of uses to be allowed on the site by right and under prescribed conditions.
- A fence or landscaping is proposed to screen the rezoning site from the abutting single family residential lot.
- The N1 Place Type allows for continued and adaptive reuse of existing non-residential buildings for retail uses.

PLANNING STAFF REVIEW

• **Proposed Request Details**

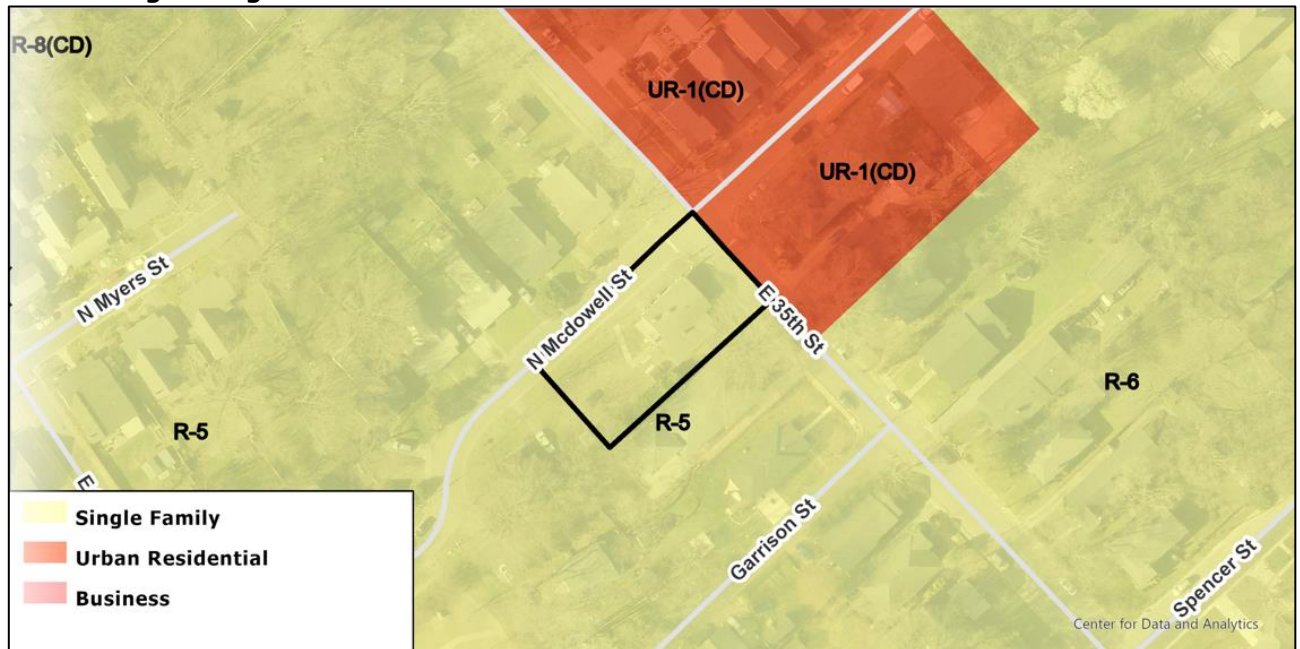
The site plan accompanying this petition contains the following provisions:

- Proposes expansion of an existing 2,046 square foot commercial building to not exceed 3,000 square feet.
- Proposes 600 square feet of outdoor seating area in front of the structure and bicycle amenity area, and 2,600 square feet of outdoor seating area in the rear.
- Notes petitioner may increase the size of the existing building, add additional floors or square footage to the building, subject to ordinance requirements and the restrictions of this rezoning plan.
- Specifies building updates and expansions will not increase the existing degree of non-conformity.
- Notes any additional or replacement hood vents shall remain in the same quadrant of the building as the existing hood vent. *Note added to site plan stating any ventilation/fan associated with food and beverage uses will not be located adjacent to single family uses.*
- Limits building height to 40.
- Proposes to allow the following uses by right and under prescribed conditions: EDEE Types 1 and 2; office; professional business and general office; retail sales as allowed in the B-1 district; single family residential; buildings for dramatic musical or cultural activities; outdoor produce markets; services such as beauty shops and barber shops; artist studios and/or galleries; bicycle services; bicycle sharing stations; small-scale class learning businesses; food establishments; and YMCS, buildings for social, fraternal, social service, union and civic organizations, and comparable.
- Restricts outdoor uses to 7:00 a.m. to 10:00 p.m.
- Limits outdoor music and entertainment to Sunday – Thursday from 8:00 a.m. until 8:30 p.m., and Friday – Saturday from 8:00 a.m. until 9:30 p.m.
- Notes live amplified outdoor performances shall be further limited to the hours of 12:00 p.m. (noon) until 8:30 p.m. and shall only be allowed on Friday – Sunday and weekdays that are designated as federal or state holidays.
- Notes that if on-site alcohol consumption is provided, then the must also include food service.
- Proposes 10-foot wide landscape screening along property lines abutting single family homes.
- Notes petitioner shall not install tents or tent-like canopies or other non-permanent structures in the rear-yard for more than 72 hours at a time or more than once a month, provided that sun-shades and shade umbrellas shall still be allowed, subject to applicable ordinance.
- Proposes the following optional provisions:
 - The existing building shall remain, and may be renovated, improved, expanded and replaced in the manner generally depicted on the rezoning plan. The destruction or substantial impairment of the building alone shall not require rezoning and the building may be replaced in a materially similar form in the manner generally depicted on the rezoning plan. In the event the building is permanently removed for redevelopment then the parcel shall be rezoned.
 - The parking requirements of the zoning ordinance shall be reduced to zero, and no parking shall be required for use of the existing building, building expansion and outdoor patio area.
 - To facilitate the retention of the existing building, the petitioner may preserve or remove the existing non-compliant parking in the manner generally depicted on the rezoning plan.
 - Petitioner shall not be required to meet the parking screening requirements of 12.303 and all other parking screening requirements for the existing parking as generally shown on the site plan.
 - In order to facilitate the rehabilitation and use of the existing building, the building and outdoor areas may be renovated, improved and expanded into the areas generally marked on the site plan as “Outdoor Seating Area” on the rezoning plan.
 - The existing sidewalks on E. 35th/ St shall remain and be maintained and petitioner shall not be required to include planting strips or modify the existing curbs.
 - No sidewalk or planting strip shall be required on N. McDowell Street.
 - The existing building is exempt from the MUDD setback requirements only to the extent necessary to allow the retention of the existing building and to allow reasonable minor changes

required for repairs to the building and its fixtures, however, any additions or new building shall comply with the applicable setbacks as set forth in the ordinance.

- In order to facilitate the retention of the existing building the petitioner shall have a setback of 10 feet from the back of the existing curbs on both 35th Street and N. McDowell Street.
- Transportation Improvements: Notes public related transportation improvements shall be approved and constructed at the time that the building or site is permitted for an expansion of greater than 25% of the building area and shall be completed before the issuance of a certificate of occupancy for the expansion project. The transportation improvements will not be triggered by minor permits or permitting necessary to repair or replace the building or premises, nor shall it be required by expansion of outdoor seating areas.
 - Construct an ADA compliant corner ramp and connect to the existing sidewalk as generally shown on the site plan.
 - Provide a six-foot wide sidewalk on the back of the curb on E. 35th Street as generally shown on the site plan when required by expansion of the building by more than 25% as set forth above.
 - ~~When the sidewalk on E. 35th Street is improved, the curb cut on E. 35th Street shall be removed or repurposed for bicycle use, subject to approval of CDOT.~~
 - ~~Provide a five foot wide planting strip behind the sidewalk where feasible on the E. 35th Street. Upon expansion of the building by more than 25% as set forth above, provided that in order to preserve the existing building, the existing mature oak tree on the adjacent residential lot and provide for bicycle parking area, the area indicated as bicycle amenity area shall not be required to have a planting strip.~~
 - Provide a six-foot wide sidewalk on the back of the curb on N. McDowell Street as generally shown on the site plan when required by expansion of the building by more than 25% as set forth above.
 - In order to preserve the existing building, the area between the building and sidewalk on N. McDowell shall not be required to have a planting strip, however this area shall not be exempt from perimeter tree calculations.
 - In order to preserve the existing mature oak tree on the adjacent residential lot and provide for bicycle parking area, the area indicated as bicycle amenity area shall not be required to have a planting strip or landscape screening, however this area shall not be exempt from perimeter tree calculations.
 - Petitioner shall provide a sidewalk utility easement set at two feet behind back of sidewalk where feasible, and shall update the sidewalk easement upon additional sidewalk completion.
 - Petitioner shall remove the non-compliant curb cuts on 35th Street.
 - The existing curbline is to remain on 35th street and N. McDowell Street, with the exception of changes to the corner necessary for installation of an ADA compliant corner ramp.
 - ~~Provide a five foot wide modified planting strip behind the sidewalk on N. McDowell upon expansion of the building by more than 25% as set forth above, provided that in order to preserve the existing building, the area between the building and sidewalk on N. McDowell shall not be required to have a planting strip in order to preserve the existing building, the existing mature oak tree on the adjacent residential lot and provide for bicycle parking areas, the area indicated as bicycle amenity area shall not be required to have a planting strip or landscape screening.~~
 - ~~Specifies existing sidewalks may remain until the building is expanded by more than 25%.~~

- **Existing Zoning and Land Use**



The rezoning site is developed with a one story commercial building constructed in 1942 and surrounded by residential and institutional uses zoned R-5, UR-1(CD), and R-8(CD).



The site is developed with a one story commercial building constructed in 1942.



The rezoning site directly abuts single family residential homes (above and below pics).

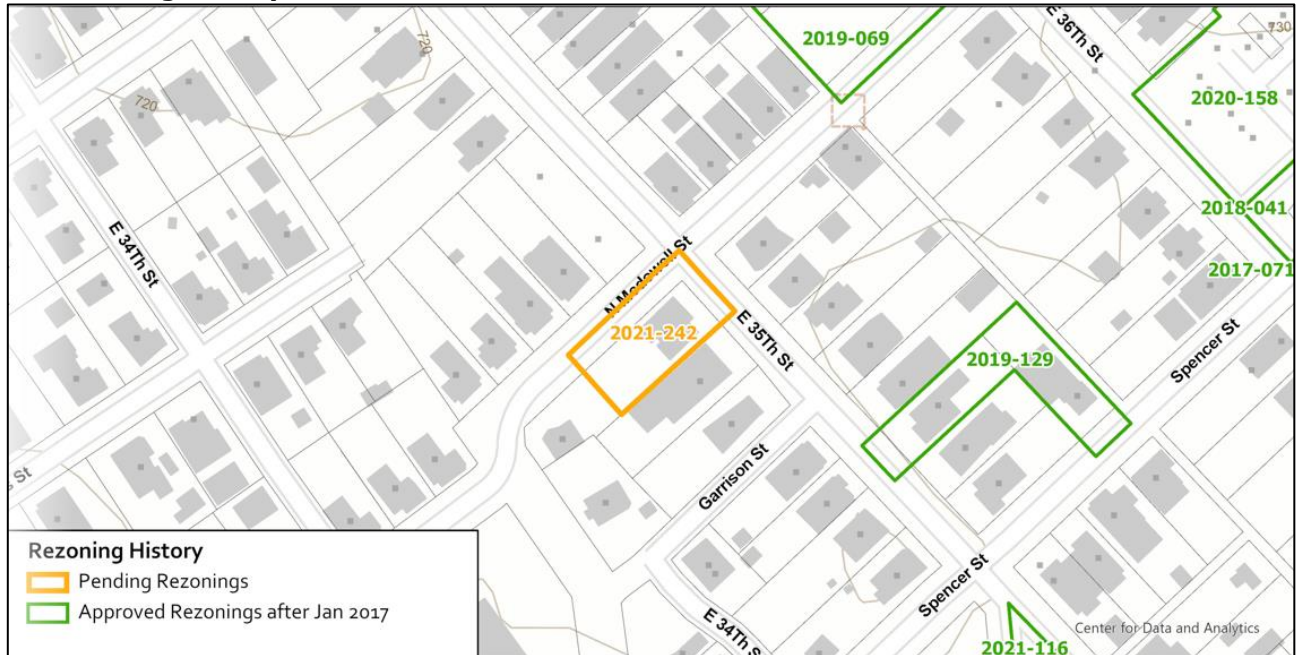




The rezoning site is surrounded by a mix of residential uses (above) and an institutional use (below – Highland Mill Montessori School).

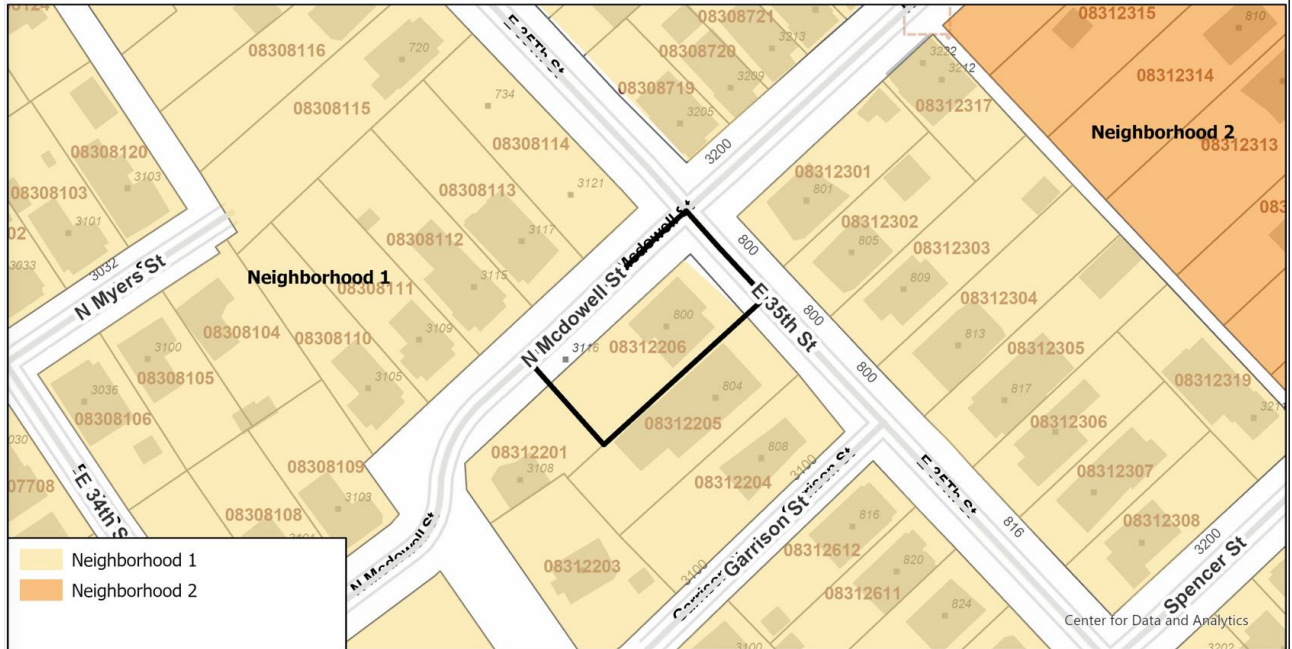


- Rezoning History in Area**



Petition Number	Summary of Petition	Status
2021-116	Rezoned 0.55 acre from R-5 to R-8(CD) to allow 4 detached residential dwelling units.	Approved
2020-158	Rezoned 0.618 from R-5 to MUDD(CD) to allow up to 16 townhomes.	Approved
2019-129	Rezoned 0.34 acres from R-5 to R-6.	Approved
2019-069	Rezoned 0.9 acres from R-5 to NS to allow a mix of residential and non-residential uses in a single building.	Approved
2018-041	Rezoned 1.27 acres from R-5 and UR-2(CD) to UR-2(CD) and UR-2(CD) SPA to allow up to 27 townhomes.	Approved
2017-071	Rezoned 1.5 acres from R-5 and R-22MF to UR-2(CD) to allow up to 22 townhome units and 2 single family residential units.	Approved

- **Public Plans and Policies**



The 2040 Policy Map (2022) recommends the Neighborhood 1 Place Type for this site.

- **TRANSPORTATION SUMMARY**

- The site is located on 35th St, a City-maintained local street, and McDowell St, a City-maintained local street. A Traffic Impact Study (TIS) is not needed for this site. The petitioner has committed to dedicating 25-feet of right-of-way along both 35th St and McDowell St, replacing the existing non-complaint ADA curb ramp at the intersection of 35th St at McDowell St, the existing driveway on 35th St and constructing a 6-foot sidewalk along 35th St and McDowell St. CDOT has no outstanding issues.
- Active Projects:
 - No projects near the site.
- **Transportation Considerations**
 - See Outstanding Issues, Notes 1-3. Addressed
- **Vehicle Trip Generation:**
 - Current Zoning:
 - Existing Use: 200 trips per day (based on 2,046 sq ft fast casual restaurant).
 - Entitlement: 10 trips per day (based on 1 single family dwelling).
 - Proposed Zoning: 200 trips per day (based on 2,046 sq ft fast casual restaurant).

DEPARTMENT COMMENTS (see full department reports online)

- **Charlotte Area Transit System:** No outstanding issues.
- **Charlotte Department of Housing and Neighborhood Services:** No comments submitted.
- **Charlotte Fire Department:** No comments submitted.
- **Charlotte-Mecklenburg Schools:** Not applicable
- **Charlotte Water:** Charlotte Water has accessible water system infrastructure for the rezoning boundary via an existing 6-inch water distribution main located along N McDowell Street. Charlotte Water has accessible sanitary sewer system infrastructure for the rezoning boundary via an existing 8-inch gravity sewer main located along N McDowell Street. See advisory comments at www.rezoning.org
- **City Arborist:** No comments submitted.
- **Erosion Control:** No outstanding issues.
- **Mecklenburg County Land Use and Environmental Services Agency:** See advisory comments at www.rezoning.org
- **Mecklenburg County Parks and Recreation Department:** No outstanding issues.
- **Stormwater Services Land Development Engineering:** No outstanding issues.

- **Storm Water Services:** No outstanding issues.
- **Urban Forestry:** See Outstanding Issues, Notes 12. **Addressed**

OUTSTANDING ISSUES

Transportation

1. The proposed zoning district has a setback measured from back of the existing or proposed future curbline. **Addressed**
~~**35th St and McDowell St:** Label and dimension the curb and gutter from the centerline for each road on the site plan.~~
~~**Update to Comment (New Site Plan, 7-21-2022):** Label and dimension curbline along 35th St or add a note that the curbline to stay in its existing location.~~
2. Revise site plan and conditional note(s) to commit to dedicate 25' of right-of-way from the road centerline along both 35th St and McDowell St. The site plan shall label and dimension the right-of-way from the road centerline. **Addressed**
~~**Update to Comment (New Site Plan, 7-21-2022):** Add conditional note(s) committing to the right-of-way dedication referenced above, specifying dedication and fee simple conveyance of all rights-of-way to the City before the site's first building certificate of occupancy is issued as needed.~~
3. ~~**New Comment (New Site Plan, 7-21-2022):** Revise conditional notes to commit to removing the specified non-compliant curb cut along 35th St and replacing non-compliant curb ramp at the intersection of 35th St and McDowell St prior to the sidewalk improvements being triggered.~~
Addressed

Site and Building Design

4. Clearly specify on site plan existing building square footage, proposed addition, and total square footage. **Addressed**
5. Update notes to commit to improve the existing ADA ramps without it being associated with improvements or expansion to the building. **Addressed**
6. Update note to say that any modifications and/or building additions will not increase the existing degree of non-conformity. **Addressed**
7. Provide additional screening through vegetation or fencing along the entire property line adjacent to the single family residence abutting to the south. **There is an existing fence and site plan calls out landscape screening.**
8. Label on site plan if sidewalks and plantings are existing or proposed. **Addressed**
9. If applicable, any ventilation/fan associated with food and beverage uses will not be located adjacent to single-family uses. Add note to site plan. **Addressed**
10. Additional language and detail need to be provided regarding location and proposed screening of refuse/recycling area as this is still a predominantly residential neighborhood. **Addressed**
11. Add notes stating that new or redevelopment on the site would comply with MUDD standards and remove notes regarding needing additional rezoning. **Addressed**

Environment

12. Be aware that a five-foot planting strip is not adequate for street trees, and will require tree pits to meet compliance. Also, some triggers in the tree ordinance would require compliance before the 25% threshold that has been identified. ~~**Not addressed. There is a conflict between Notes #1 and #3. If the site must come into compliance with the tree ordinance, there will be issues with keeping the sidewalks.**~~ **Addressed**

See Attachments (applications, department memos, maps etc.) Online at www.rezoning.org





Planner: Claire Lyte-Graham (704) 336-3782







Goals Relevant to Rezoning Determinations

Rezoning Petition # 2021-242

The following table represents an overview of the relationship between the **Charlotte Future 2040 Comprehensive Plan** and **Rezoning Petitions**. This is an evolving analysis that is expected to be refined when **Policy Mapping** is completed and adopted (anticipated early 2022).

Please note: not all goals will apply to all rezoning petitions.

Goals	Goal Description	Relationship to Charlotte Future 2040 Comprehensive Plan
	Goal 1: 10- Minute Neighborhoods All Charlotte households should have access to essential amenities, goods, and services within a comfortable and tree-shaded 10-minute walk, bike, or transit trip by 2040. Not all neighborhoods are expected to include every essential amenity, good, or service, but every resident should have access within a ½ mile walk or a 2-mile bike or transit ride.	✓
	Goal 2: Neighborhood Diversity & Inclusion Charlotte will strive for all neighborhoods to have a diversity of housing options by increasing the presence of middle density housing (e.g. duplexes, triplexes, fourplexes, townhomes, accessory dwelling units, and other small lot housing types) and ensuring land use regulations allow for flexibility in creation of housing within existing neighborhoods.	N/A
	Goal 3: Housing Access for All Charlotte will ensure opportunities for residents of all incomes to access affordable housing through the preservation of naturally occurring affordable and workforce housing and increasing the number of affordable and workforce housing units through new construction.	N/A
	Goal 4: Trail & Transit Oriented Development (2-TOD) Charlotte will promote moderate to high-intensity, compact, mixed-use urban development along high-performance transit lines and near separated shared-use paths or trails.	✓





	<p>Goal 5: Safe & Equitable Mobility</p> <p>Charlotte will provide safe and equitable mobility options for all travelers regardless of age, income, ability, race, where they live, or how they choose to travel. An integrated system of transit and tree-shaded bikeways, sidewalks, shared-use paths, and streets will support a sustainable, connected, prosperous, and innovative network that connects all Charlotteans to each other, jobs, housing, amenities, goods, services and the region.</p>	<p>N/A</p>
	<p>Goal 6: Healthy, Safe & Active Communities</p> <p>All Charlotteans will live and work in safe and resilient neighborhoods that enable healthy and active lifestyles by reducing exposure to harmful environmental contaminants, expanding and improving the quality of tree canopy, encouraging investment in walking, cycling, and recreation facilities, and providing access to healthy food options and healthcare services.</p>	<p>✓</p>
	<p>Goal 7: Integrated Natural & Built Environments</p> <p>Charlotte will protect and enhance its surface water quality, tree canopy, and natural areas with a variety of trees, plantings, green infrastructure, green building practices, and open space at different scales throughout the entire community as a component of sustainable city infrastructure that addresses the threat of climate change.</p>	<p>N/A</p>
	<p>Goal 8: Diverse & Resilient Economic Opportunity</p> <p>Charlotteans will have opportunity for upward economic mobility through access to a diverse mix of jobs and careers that align with education and skill levels of residents and the economic strengths of the region.</p>	<p>N/A</p>
	<p>Goal 9: Retain Our Identity & Charm</p> <p>Charlotte will cultivate community-driven placemaking and identity, while limiting displacement and retaining the essence of existing neighborhoods by intentionally directing redevelopment.</p>	<p>✓</p>
	<p>Goal 10: Fiscally Responsible</p> <p>Charlotte will align capital investments with the adopted growth strategy and ensure the benefit of public and private sector investments benefit all residents and limit the public costs of accommodating growth</p>	<p>N/A</p>







Goals Relevant to Rezoning Determinations

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	Goal 3: Housing Access for All Charlotte will ensure opportunities for residents of all incomes to access affordable housing through the preservation of naturally occurring affordable and workforce housing and increasing the number of affordable and workforce housing units through new construction.	N/A
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	<p>Goal 10: Fiscally Responsible</p> <p>Charlotte will align capital investments with the adopted growth strategy and ensure the benefit of public and private sector investments benefit all residents and limit the public costs of accommodating growth</p>	<p>N/A</p>