

ORDINANCE NO. 1610

**AN ORDINANCE AMENDING ORDINANCE NO. 1253
KNOWN AS THE ZONING ORDINANCE**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIRHOPE, ALABAMA as follows:

The ordinance known as the Zoning Ordinance (No. 1253), adopted 27 June 2005, together with the Zoning Map of the City of Fairhope, be and the same hereby is changed and altered in respect to that certain property described below:

After the appropriate public notice and hearing of the Planning Commission of the City of Fairhope, Alabama has forwarded a **favorable** recommendation,

The property of Robert and Debra Green generally located 415 N. Greeno Road, Fairhope, Alabama.

**TAX PARCELS: 05-46-03-39-0-002-152.017
 05-46-03-39-0-002-152.018
 Portion of 05-46-03-39-0-002-152.010
 Portion of 05-46-03-39-0-002-152.000**

Legal Description: (Case number ZC 17.07)

BEGINNING AT THE NORTHWEST CORNER OF LOT 1 OF BLOCK 24, OF GREEN SUBDIVISION AS RECORDED IN DEED BOOK Y PAGE 740 IN JUDGE OF PROBATES OFFICE, BALDWIN COUNTY, ALABAMA, THENCE RUN SOUTH ALONG THE WEST LINE OF SAID BLOCK 24 A DISTANCE OF 350.8 FEET TO A POINT ON THE NORTHEASTERLY LINE OF A DRAINAGE EASEMENT, THENCE RUN SOUTH 30 DEGREES 00 MINUTES ALONG SAID NORTHEASTERLY LINE A DISTANCE OF 287.7 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF LIVE OAK AVENUE; THENCE RUN EAST, ALONG SAID NORTH RIGHT-OF-WAY LINE A DISTANCE OF 71 FEET, MORE OR LESS TO A POINT; THENCE RUN NORTH 45 DEGREES 00 MINUTES EAST, A DISTANCE OF 35 FEET, MORE OR LESS TO THE WEST RIGHT-OF-WAY LINE OF GREENO ROAD; THENCE RUN NORTH, ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 550 FEET, MORE OR LESS TO A POINT; THENCE RUN NORTH 45 DEGREES 00 MINUTES WEST, A DISTANCE OF 35 FEET, MORE OR LESS TO A POINT LYING ON THE SOUTH RIGHT-OF-WAY LINE OF HOYLE AVENUE; THENCE RUN WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE A DISTANCE OF 215 FEET, MORE OR LESS TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 2.8799, MORE OR LESS ACRES.

A map of the property to be zoned is attached as Exhibit A

The property is hereby rezoned from R-1 Low Density Single Family Residential District to B-2 General Business District. This property shall hereafter be lawful to construct on such property any structures permitted by Ordinance No. 1253 and to use said premises for any use permitted or building sought to be erected on said property shall be in compliance with the building laws of the City of Fairhope and that any structure shall be approved by the Building Official of the City of Fairhope and that any structure be erected only in compliance with such laws, including the requirements of Ordinance No. 1253. Notwithstanding the above statement of permitted uses, the following uses shall not be permitted on the subject property: convenience store, automotive repair facility or a dry cleaning business.

Ordinance No. 1610

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Severability Clause - if any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

Effective Date – This ordinance shall take effect immediately upon its due adoption and publication as required by law.

ADOPTED THIS 8TH DAY OF JANUARY, 2018



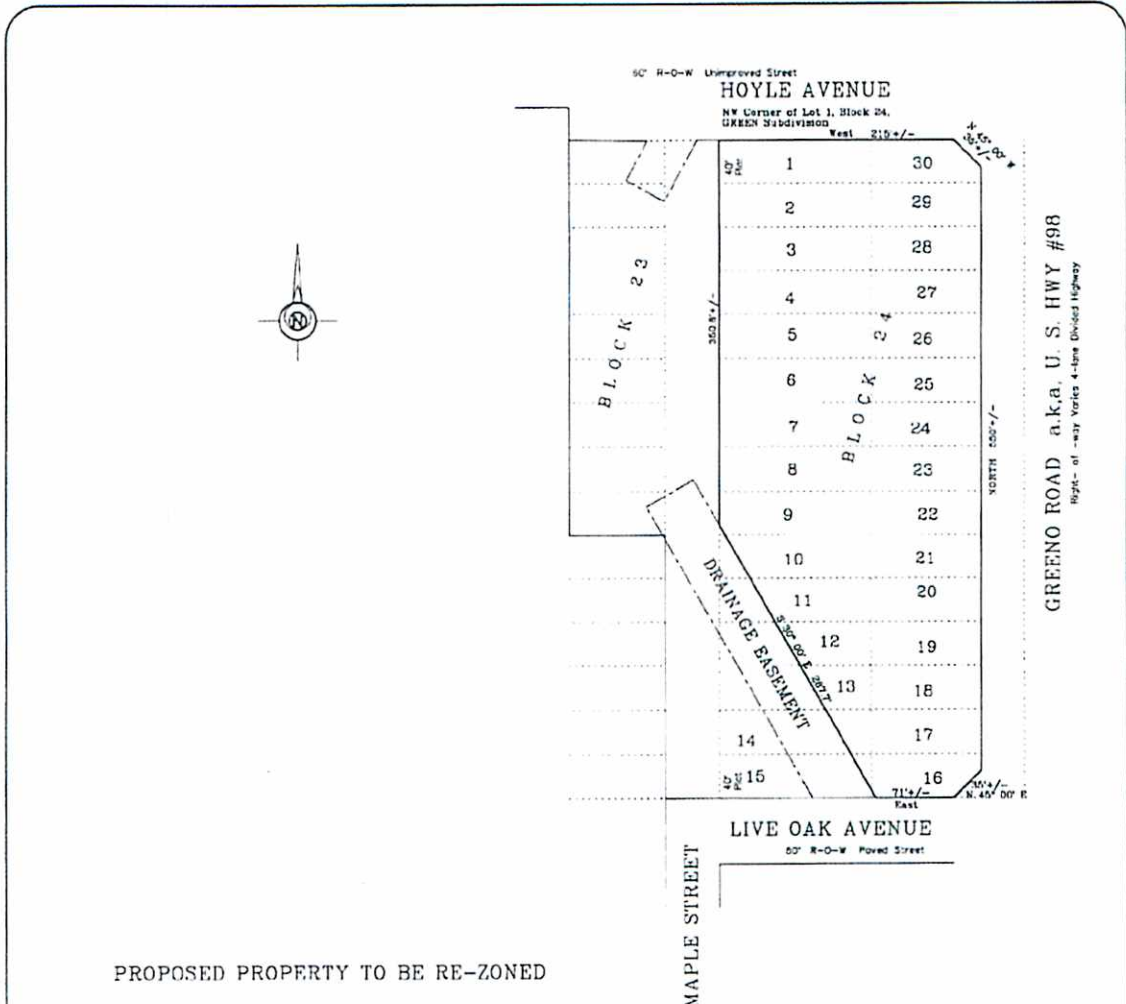
Karin Wilson, Mayor

ATTEST:



Lisa A. Hanks, MMC
City Clerk

Ord. No. 1610 Published in
FAIRHOPE COURIER
on Friday, January 19, 2018
L. Hanks City Clerk



PROPOSED PROPERTY TO BE RE-ZONED

LEGAL DESCRIPTION:
BEGINNING AT THE NORTHWEST CORNER OF LOT 1 OF BLOCK 24, OF GREEN SUBDIVISION AS RECORDED IN DEED BOOK Y PAGE 740 IN JUDGE OF PROBATES OFFICE, BALDWIN COUNTY, ALABAMA, THENCE RUN SOUTH ALONG THE WEST LINE OF SAID BLOCK 24 A DISTANCE OF 350.8 FEET TO A POINT ON THE NORTHEASTERLY LINE OF A DRAINAGE EASEMENT, THENCE RUN SOUTH 30 DEGREES 00 MINUTES ALONG SAID NORTHEASTERLY LINE A DISTANCE OF 287.7 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF LIVE OAK AVENUE; THENCE RUN EAST, ALONG SAID NORTH RIGHT-OF-WAY LINE A DISTANCE OF 71 FEET, MORE OR LESS TO A POINT; THENCE RUN NORTH 45 DEGREES 00 MINUTES EAST, A DISTANCE OF 35 FEET, MORE OR LESS TO THE WEST RIGHT-OF-WAY LINE OF GREENO ROAD; THENCE RUN NORTH, ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 550 FEET, MORE OR LESS TO A POINT; THENCE RUN NORTH 45 DEGREES 00 MINUTES WEST, A DISTANCE OF 35 FEET, MORE OR LESS TO A POINT LYING ON THE SOUTH RIGHT-OF-WAY LINE OF HOYLE AVENUE; THENCE RUN WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE A DISTANCE OF 215 FEET, MORE OR LESS TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 2.8799, MORE OR LESS ACRES.

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MOORE SURVEYING, INC.
PROFESSIONAL LAND SURVEYING
655 NORTH SECTION STREET,
FAIRHOPE, ALABAMA 36532
PHONE (251) 928 - 6777
Email mooresurveying@bellsouth.net

MR. BOB GREEN

LEGEND		SCALE	1" = 100'
PP	Power Pole	DATE	6/22/2017
PC	Centerline	FILED WORK	17
LD	Lot Line	DRAWN BY	SMW
PL	Property Line	JOB NO.	2017 01
BC	Boundary	REVISIONS	
CL	Centerline		
LS	Level Station		
FL	Fence		
AL	Asst. Landed		
IM	Iron Mark		
ED	Easement		
SL	Set Back		
FD	Ford Drive & Co.		
FL	Fixed Pin		

Exhibit A



City of Fairhope City Council

Case: ZC 17.07 Green Nurseries

Project Name:
Green Nurseries

Project Type:
Rezoning

Current Zoning District:
R-1 Low Density Single-Family
Residential District

Proposed Zoning District:
B-2 General Business District

PPIN Number:
17231, 114269, 200528, and
202819

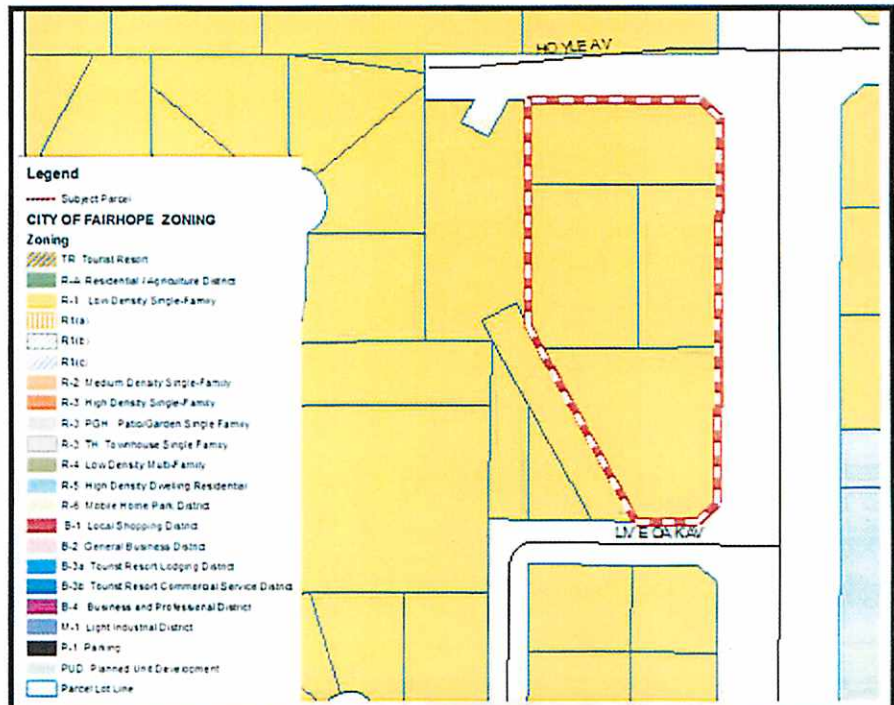
General Location:
415 N. Greeno Road

Owner:
Robert and Debra Green

School District:
Not Applicable

Staff Recommendation:
Approve as requested

PC Recommendation:
Unanimous favorable
recommendation to approve



Summary of Request:

Robert and Debra Green, owners of Green Nurseries, are requesting to rezone the subject property along Greeno Road, commonly known as Green Nursery, from R-1 Low Density Single-Family Residential District to B-2 General Business District. The site is currently occupied by an operating retail nursery.

The subject property is located at 415 North Greeno Road. It consists of 2.6 acres and currently has a retail nursery operation and has been a retail nursery operation historically.

Per the City Revenue Office, the subject properties have 3 business licenses issued:

1. Landscape Architecture
2. Landscape Retail
3. Misc. Retailer (this license code includes florist, gift, novelty, pet, art. Tobacco and used merchandise). This license has been issued by the City since the 1980's.





According to the Fairhope Zoning Ordinance, Article III, Section A, the purpose of the zoning district is as follows:

B-2 General Business District: This district is intended to provide opportunity for activities causing noise and heavy traffic, not considered compatible in the more restrictive business district. These uses also serve a regional as well as a local market and require location in proximity to major transportation routes. Recreational vehicle parks, very light production and processing activities are included.

The allowable uses in the B-2 District are as follows:

B-2 General Business District *
Permitted by Right
Single Family
Two Family
Mixed Use
Elementary School
Secondary School
Education Facility
Library
Public Open Space
Common Open Space
General Office
Professional Office
Grocery
General Merchandise
Shopping Center
General Personal Services
Automobile Repair
Indoor Recreation
Boarding House or Dormitory
Restaurant
Bar
Entertainment Venue
Permitted Subject to Special Conditions
Townhouse
Accessory Dwelling
Home Occupation
Convenience Store
Recreational Vehicle Park
Permitted Only on Appeal and Subject to Special Conditions
Cemetery
Hospital
Community Center or Club
Public Utility
Automobile Service Station
Outdoor Sales Limited
Outdoor Sales Lot

Garden Center
Convalescent or Nursing Home
Clinic
Outdoor Recreation Facility
Day Care
Mortuary or Funeral Home
Dry Cleaner / Laundry
Personal Storage
Hotel / Motel
Kennel or Animal Hospital
Limited Manufacturing

****Any free standing single use or tenant retail building in any other business zoning district shall not have a building footprint larger than 8,000 square feet.***

Comments:

Surrounding Properties

Directly south of the subject property and across Live Oak Street, fronting Greeno Road, is the Linwood Subdivision, platted in 1958. The Linwood Subdivision is zoned R-1 Low Density Single-Family Residential District and consists of 10 lots, 133'x118' in size, with 5 lots fronting Greeno Road and 5 lots fronting Maple Avenue. Of the 5 lots, fronting Greeno Road, 3 lots are vacant and 2 lots are occupied with residential structures. Of the 5 lots, fronting Maple Avenue, 4 lots are vacant and 1 lot is occupied with a residential structure.

South and east of the subject property is the Arbor Gates apartment community which was approved as a PUD. Directly east of the subject property, across Greeno Road are 3 lots zoned R-1 Low Density Single-Family Residential District. These lots are approximately 24,000 square feet each with 2 of 3 of the lots containing single residences of 1,680 square feet, built in 1945 (520 North Greeno Road - homesteaded) and single residences of 1,560 square feet, built in 1955 (546 North Greeno Road - not homesteaded) according to the Baldwin County Revenue Commission records.

Directly north of the subject property is approximately 16 acres of undeveloped property zoned R-1 Low Density Single-Family Residential District, fronting Greeno Road, owned by Seaman Capital, LLC, currently for sale.

Directly west of the subject property is the Deep Tree Forest 4th edition subdivision plat recorded in 1977 and Deep Tree Forest 3rd edition subdivision plat recorded in 1971. These lot sizes range from approximately 15,000 – 20,000 square feet and are zoned R-1 Low Density Single Family Residential District.

Zoning History

It appears that the subject property has been zoned single family residential since at least 1961, based on a 1961 City of Fairhope Zoning Map.

In 2002, the Greeno Road Professional Village PUD (Dyas PUD ZC 02.01) was approved. The property is located on the east side of Greeno Road, south of Gayfer Road extension. It was rezoned from R-1 Low Density Single Family Residential, R-3 High Density Single Family Residential and R-4 Multi-family to

Planned Unit Development (PUD). The PUD contains a series of lots fronting Greeno Road. The permitted uses shall be business and professional offices.

In 2007, the Greeno-Gayfer Medical Park PUD (ZC 06.18) was approved. The property is located on the west side of Greeno Road at the corner of Gayfer Avenue and Greeno Road. It was rezoned from R-1 Low Density Single Family Residential to PUD. The PUD contains 2 - 2 story buildings for a combined gross floor area of 48,900 square feet. The permitted uses are medical facilities and related uses.

In 1993, the Arbor Gates Apartments was approved as a PUD.

In 2016, Case No. ZC 15.11 was a request of Fred Hayek to rezone property from R-1 Low Density Single Family Residential District to PUD (Planned Unit Development) consisting of 4, 2-story buildings for office/professional, retail, medical and food service uses. The property is located on the east side of Greeno Road across from Hancock Road, at 848 N. Greeno Road (Parcel #: 05-46-03-08-0-003-062.000). The Planning Commission recommended approval of the PUD at their November 2, 2015 meeting. The Fairhope City Council approved the PUD on May 27, 2016.

In July of 2017, the Park Place PUD requested to rezone their property from R-1 Low Density Single-Family and R-4 Low Density Multi-family to Planned Unit Development (PUD). The property is located on the east side of Greeno Road across from the City Recreation Center/Volanta Park. The PUD consists of 11 buildings of 2 and 3 stories totaling 60,000 sq.ft. for office, retail, medical and residential mixed use component. The residential mixed use will be located on the 2nd and 3rd floors and will comprise 15,000 sq.ft. and an estimate of approximately 7 residential units (15,000 sq.ft. / 2,000 sq.ft. estimated average of a residential unit sq.ft.) or 25% of the total building area. The Planning Commission recommended approval of the PUD request, the case will be scheduled to be heard by the City Council.

Non-conforming

The subject Green Nursery property is currently non-conforming and is subject to Article VII of the Fairhope Zoning Ordinance. Essentially what non-conforming means is that the current use of the property fails to conform to current zoning which it is in. Therefore, the subject property's use cannot be enlarged or extended and no additional structures can be added. In this case, the subject property is occupied with a retail nursery, landscape architect office, and miscellaneous retail. The current zoning of the subject property is R-1 Low Density Single-Family Residential District, which only allows single family homes. No commercial or retail uses are allowed. Clearly, the current use is non-consistent with current zoning. Records indicate that subject property has been nonconforming since at least 1960 according to historical Planning and Zoning Commission minutes.

Comprehensive Plan

The City of Fairhope Comprehensive, Development Framework, provides the following guidance for commercial development along Greeno Road:

"Evaluate proposed development with careful consideration to the long term vitality of downtown and the other existing and potential villages¹."

¹ City of Fairhope Comprehensive Plan, Page 20

"Define the commercial growth of Greeno Rd. with edges, thus, ensuring an appropriate ending point²."

The Comprehensive Plan calls for a Greeno Road Village Center at the intersection of Greeno Road and Fairhope Avenue. The Comprehensive Plan acknowledged the long and controversial debate regarding the commercialization of Greeno Road³. The Comprehensive Plan says the following: "The people of Fairhope spoke loudly and clearly that it is the community's overwhelming desire to limit the north and south "commercial creep", thereby creating edges to the more automobile-oriented nature of the Greeno Road⁴. It also calls for "Edges - Greeno Road commercialization must have a clear edge--where it stops and where it begins⁵".

The current Plan clarified the location of the two existing villages on Greeno Road that affect the subject property. The "North Village", which is the site of the Fairhope Publix shopping center, is located north of the subject property and the "Greeno Road Village" located at intersection of Greeno Road and Fairhope Avenue, as depicted in Figure 1. City of Fairhope Preferred Plan Concept - Excerpt. Villages are contemplated to have between 30,000 to 180,000 sq.ft. of commercial area at each location.

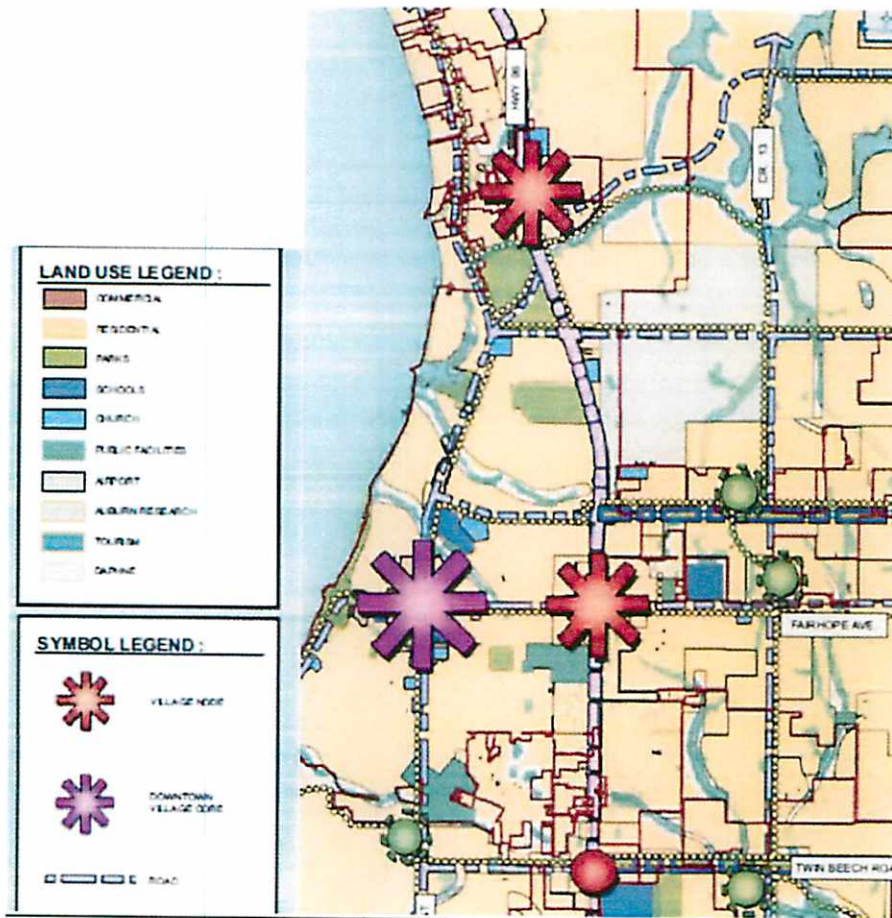


Figure 1. City of Fairhope Preferred Plan Concept – Excerpt

² City of Fairhope Comprehensive Plan, Page 20

³ City of Fairhope Comprehensive Plan, Page 36

⁴ City of Fairhope Comprehensive Plan, Page 36

⁵ City of Fairhope Comprehensive Plan, Page 36

Specific to Greeno Road/U.S. 98 corridor, the Comprehensive Plan calls to “limit the north and south commercial creep⁶” along Greeno Road and to create edges along Greeno to indicate “where it (commercial) stops and where it begins⁷”. The Zoning Ordinance goes so far to identify the Greeno Road Village Center and impose limits on the size of free standing “single use or tenant retail building⁸” along Greeno Road.

Further, under the 2016 Plan, the Development Framework, provides the following objective: “Guide commercial and high density growth to locations that can be efficiently and effectively served with utilities and public services such as police, fire, and public works.” A strategy under this objective calls for the City to “Define the commercial growth of Greeno Rd. with edges, thus, ensuring an appropriate ending point⁹”. The Greeno Road Village and North Village fulfills this goal by creating definable locations to accommodate commercial growth rather than creating an unplanned strip commercial corridor.

The Plan contains permissible language for commercial development along Greeno Road per the following: “Only approve commercial growth that is contiguous to existing commercial activity, thereby eliminating leap frog commercial development¹⁰.”

Approximately 600’ separates the subject property from the Greeno-Gayfer Medical Park PUD (ZC 06.18) on the south side of the subject property, the Arbor Gates PUD is contiguous to the subject property on the east side. In reviewing the historical development of the Linwood Subdivision, the age of the existing 2 homes located on Greeno Road, its apparent that single family residences are not desirable at this location. Additionally, the Greeno Road Professional Village PUD is located south Gayfer Road Extension.

Historically, commercial development along Greeno Road has been difficult and controversial. Concerns have been expressed through the years about Greeno Road development jeopardizing the viability of the downtown commercial district area. This concern has also been expressed in the City of Fairhope Comprehensive Plan update of 2015/16 through the Development Framework statements.

Although this may have been a valid concern many years ago, downtown Fairhope today is a vibrant shopping and entertainment experience, pedestrian and bike oriented, filled with cafes, restaurants and shops. Downtown is the center for community activity and cultural and civic events, which distinguishes it from other commercial/village center areas of the City. In many regards, this strategy worked. However, the significant change in population and visitors over the years has created larger proportionate demands for commercial goods and services in Fairhope.

Strip commercial development was also viewed as a threat to the aesthetics and viability of Greeno Road and neighboring properties and the fear that Fairhope would lose its unique identity. This has again been reflected in the City of Fairhope Comprehensive Plan with statements calling for clear edges and defining the perimeters of commercial development along Greeno Road.

⁶ City of Fairhope Comprehensive Plan, page 36

⁷ City of Fairhope Comprehensive Plan, page 36

⁸ City of Fairhope Zoning Ordinance, Article III, Section C.4., page 22

⁹ City of Fairhope Comprehensive Plan, Page 20

¹⁰ City of Fairhope Comprehensive Plan, Page 46, Goals and Tasks

However, it should be noted that the City has adopted measures to protect against the strip commercial development that many fear. For example, the Fairhope Zoning Ordinance, Article III, Section C. 4. Free-standing Commercial Structures states the following:

a. Any freestanding single use or tenant retail building in the Greeno Road Village Center as contemplated in the Comprehensive Plan shall not have a building footprint larger than 18,000 square feet.

b. Any free standing single use or tenant retail building in any other business zoning district shall not have a building footprint larger than 8,000 square feet.

This section of the Zoning Ordinance creates a hierarchy of commercial uses and sizes of those uses by establishing that the Village Center (in this area, the Greeno Road Village Center) is the dominant commercial area allowing up to 18,000 square feet of free standing non-contiguous building footprint and all other commercial areas are subordinate at 8,000 square feet of free standing non-contiguous building footprint. This subordinate role of non-village district commercial uses is validated further by dimensional and use tables of the village districts¹¹.

In addition, Ordinance No. 1444 (Tree Ordinance) requires a front perimeter 10' landscape strip adjacent to the right-of-way¹², at least 1 over story tree within the 30' setback per each 30 linear feet of frontage¹³.

Although there are more enhancements that could be made regarding curbing strip development, these measures combined have an impact and do provide safeguards against strip commercial development.

Traffic Data

According to the Alabama Department of Transportation, the 2015 annual average daily traffic (AADT) data for Greeno Road, very near the subject property is 23,610 trips per day on the section of Greeno Road north of Gayfer Avenue and south of Hoyle Avenue. As a frame of reference, the AADT for the commercial corridor in Daphne, slightly south of I-10 is 35,920 trips¹⁴.

Compatibility

The term "compatibility" is commonly defined as a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition. In reviewing the subject properties in terms of compatibility with the adjacent properties, several issues are evident.

The subject properties contain a gully to the rear (west side) of the property represented with a drainage easement. This gully serves as a natural physical barrier and buffer to the residential properties to the west. This gully is shown on the map in Figure 2. below through the topographic changes near Lillian Circle. In addition, a 20' landscape buffer is required by the Zoning Ordinance to

¹¹ City of Fairhope Zoning Ordinance, Article VI. Section B. table 5-2

¹² Tree Ordinance No. 1044, Section 20.5-4

¹³ Tree Ordinance No. 1044, Section 20.5-5

¹⁴ <https://aldotgis.dot.state.al.us/atd/default.aspx>

minimize impact between uses¹⁵. It is staff's opinion that the natural topographic features and the required buffers provides necessary measures to protect against potential negative impacts. However, this use has been in existence for many years, likely before the neighboring properties were developed and homes constructed.

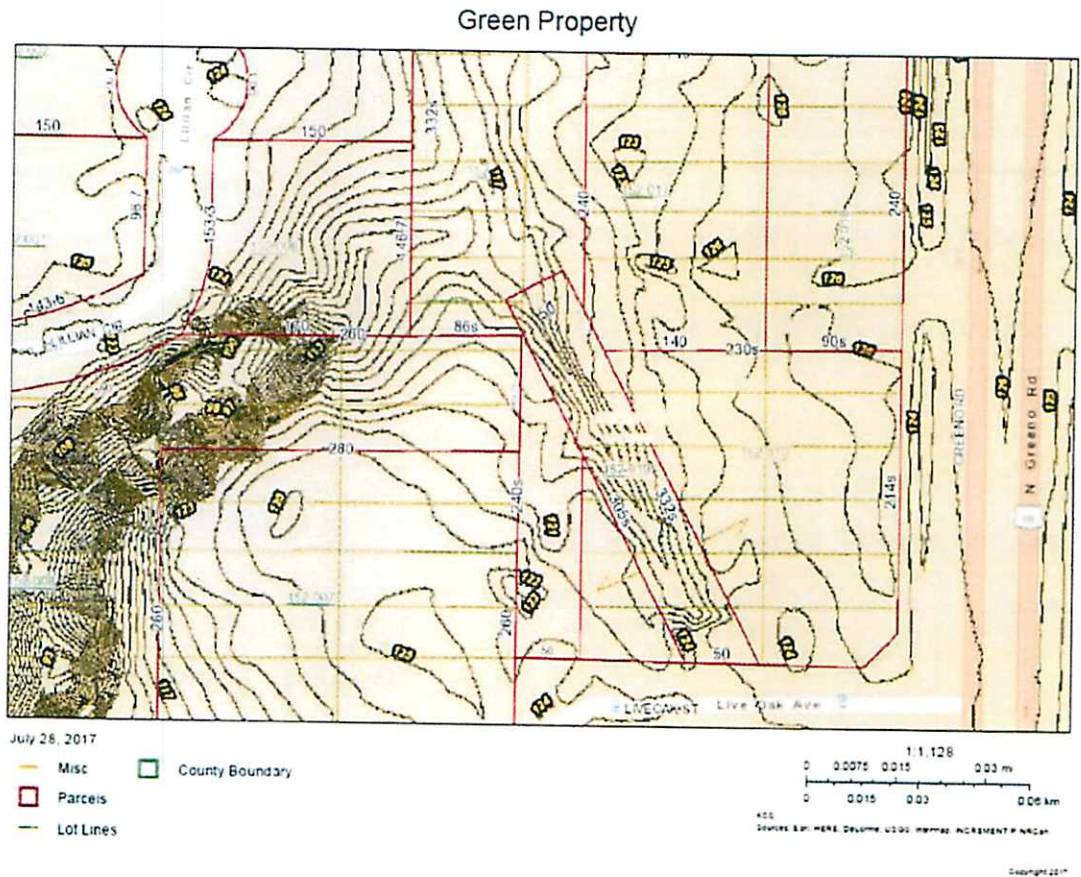


Figure 2.

The Linwood Subdivision south of the subject property is zoned residential. However, only 3 out of 10 lots have been developed since 1958, with 2 homes fronting Greeno Road built in the early 1960's. This subdivision separates the subject property from the PUD at the intersection of Greeno Road and Gayfer Avenue.

Commercial Creep

The Comprehensive Plan uses the term "commercial creep"¹⁶ and the need to establish clear edges of commercial development. This is an important and valid land use planning concept that must be addressed. However, it is clear from data on residential construction along Greeno Road, that single family residences are not desirable or marketable.

The Comprehensive Plan does not necessarily define the boundary or limits of commercial development along Greeno Road. However, it is staff's opinion that logical boundaries should be

¹⁵ City of Fairhope Zoning Ordinance, Article IV Section B, 2 (a)

¹⁶ City of Fairhope Comprehensive Plan, page 36

discussed and addressed at some point so that they can be effectively communicated to the public. In this case, a natural boundary already exists on the east of Greeno Road, north of Dyer Road, through the Auburn University Gulf Coast Research and Extension Center. This area is exclusively agriculture/open space which is not developed and not likely to be developed. On the west side of Greeno Road, north of Volanta Avenue, is the City of Fairhope Volanta Park property and the "triangle property". These two land use features establish a "gateway" into Fairhope and therefore naturally limits "commercial creep" and establishes a clear edge of commercial development. The subject property would not be beyond this "gateway".

Staff Recommendation:

Based on the comments herein, staff recommends case: ZC 17.07 Green Nurseries be approved.

Planning Commission Recommendation:

On August 7, 2017, the Planning Commission voted unanimously to approve the request and forward a **favorable** recommendation to the City Council to rezone the subject property from R-1 Low Density Single Family Residential District to B-2 General Business District.