

ORDINANCE NO. 1642

**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 Superb Foods, Inc. generally located on the south side of Nichols Avenue across from Hawthorne Glenn subdivision, Fairhope, Alabama.

PPIN #: 206820 and 214349

Legal Description: (Case number ZC 18.13)

FROM THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 6 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA, RUN THENCE SOUTH 89° 47' 14" WEST, ALONG THE NORTH LINE OF SAID SECTION 21, 850.00 FEET, FOR A POINT OF BEGINNING: THENCE CONTINUE SOUTH 89° 47' 14" WEST, 136.04 FEET TO A POINT; THENCE RUN SOUTH 00° 05' 17" WEST, 330.97 FEET TO A POINT; THENCE RUN NORTH 89° 46' 25" EAST, 136.56 FEET TO A POINT; THENCE RUN NORTH 00° 00' 07" WEST, 330.93 FEET, TO THE POINT OF BEGINNING. SUBJECT TO A RIGHT-OF-WAY EASEMENT OVER AND ACROSS THE NORTH 30 FEET THEREOF IN USE AS PART OF NICHOLS STREET EXTENSION. TRACT CONTAINS 1.04 ACRES, MORE OR LESS.

AND

FROM THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 6 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA, RUN SOUTH 89 DEGREES 47 MINUTES 14 SECONDS WEST, A DISTANCE OF 790.00 FEET TO THE POINT OF BEGINNING: THENCE RUN SOUTH 00 DEGREES 00 MINUTES 07 SECONDS EAST, A DISTANCE OF 331.0 FEET TO AN IRON PIN; THENCE RUN SOUTH 89 DEGREES 47 MINUTES 17 SECONDS WEST, A DISTANCE OF 60 FEET TO AN IRON PIN; THENCE RUN NORTH 00 DEGREES 00 MINUTES 07 SECONDS WEST, A DISTANCE OF 331.00 FEET TO A POINT; THENCE RUN NORTH 89 DEGREES 47 MINUTES 14 SECONDS EAST, A DISTANCE OF 60 FEET TO THE POINT OF BEGINNING. [SUBJECT TO THIRTY (30) FOOT RIGHT-OF-WAY PRESENTLY LOCATED ON THE NORTHERN END OF THE PROPERTY DESCRIBED ABOVE.]

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 M-1 Light Industrial 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.

Ordinance No. 1642

Page -2-

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 7TH DAY OF MARCH, 2019



Karin Wilson, Mayor

ATTEST:



Lisa A. Hanks, MMC
City Clerk

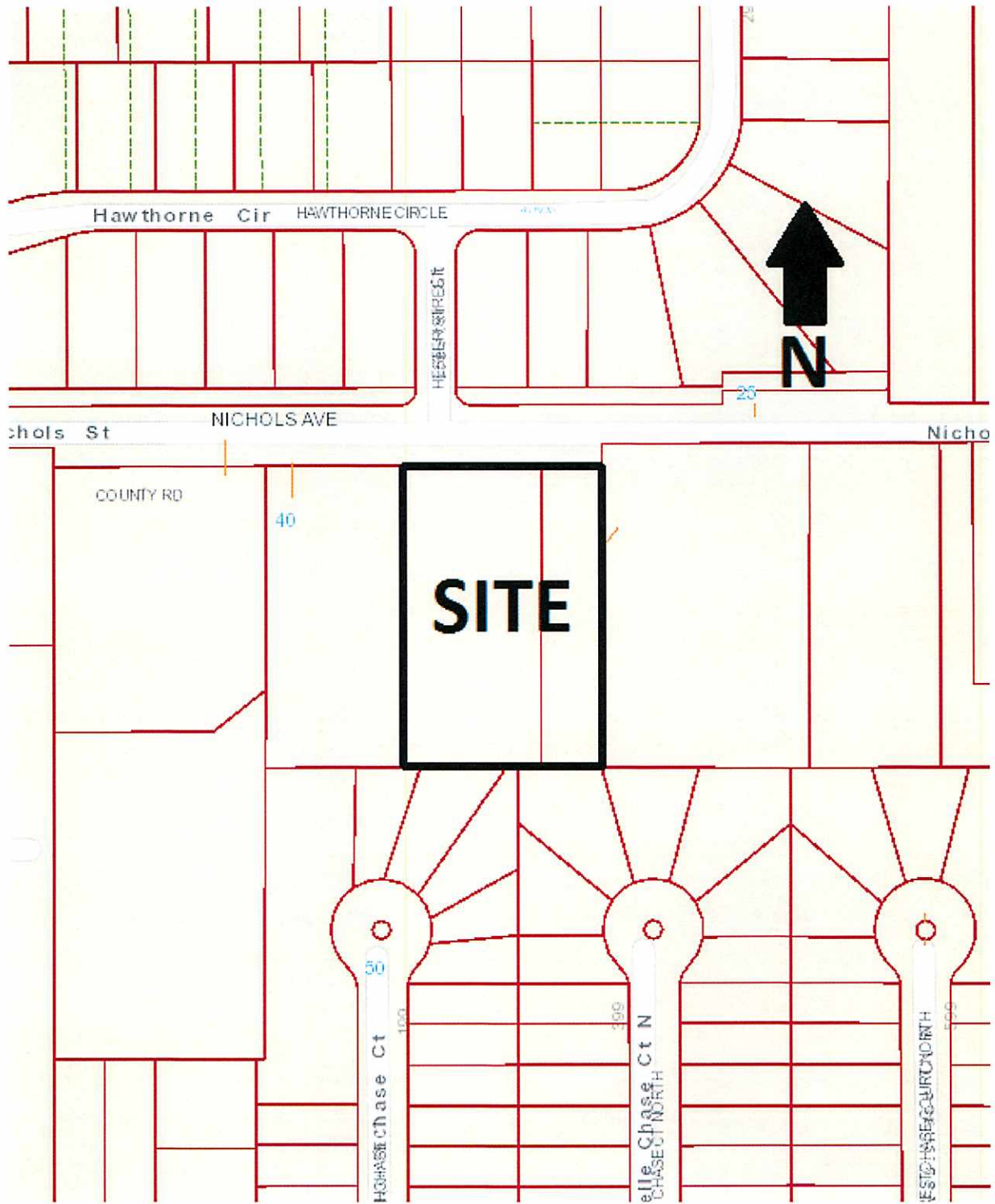


EXHIBIT A



City Council

February 25, 2019

Case Number: ZC 18.13 8330 Nichols Avenue

Project Name:

8330 Nichols Ave re-zoning

Property Owner /Applicant:

Joe Roszkowski

General Location:

8330 Nichols Ave 5/16 mile east of Greeno Road

Project Type:

Re-zoning-Request from R-1 (Low Density Single Family Residential)

To M-1 (Light Industrial)

Number of lots:

2

Project Acreage:

1.3 acres approximately

Zoning District:

City of Fairhope R-1 Low Density Single Family District

PPIN:

206820 and 214349

School District:

Fairhope Elementary, Middle and High School

Report prepared by:

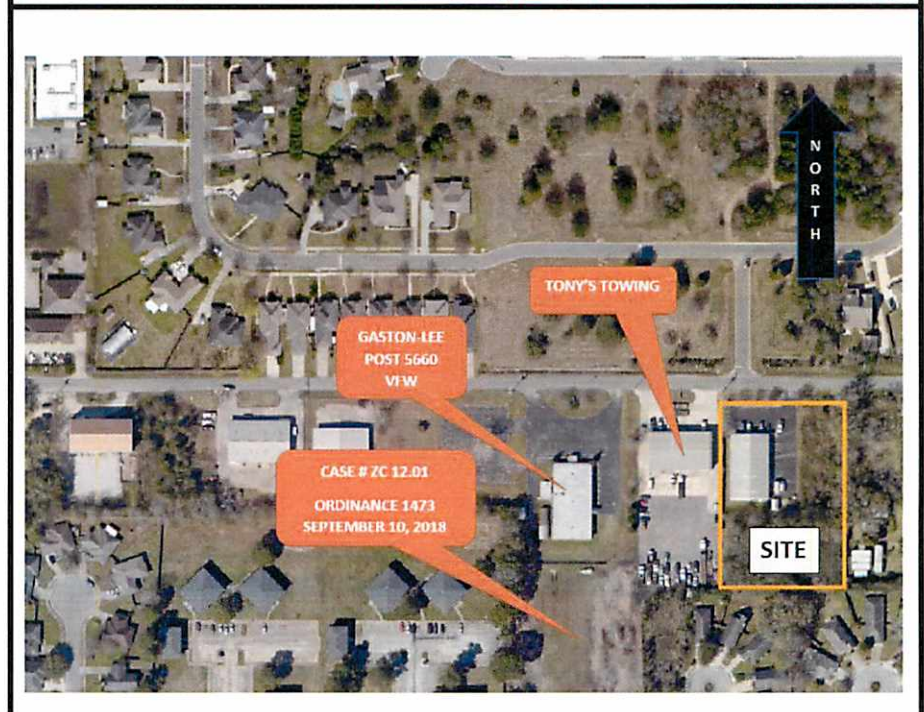
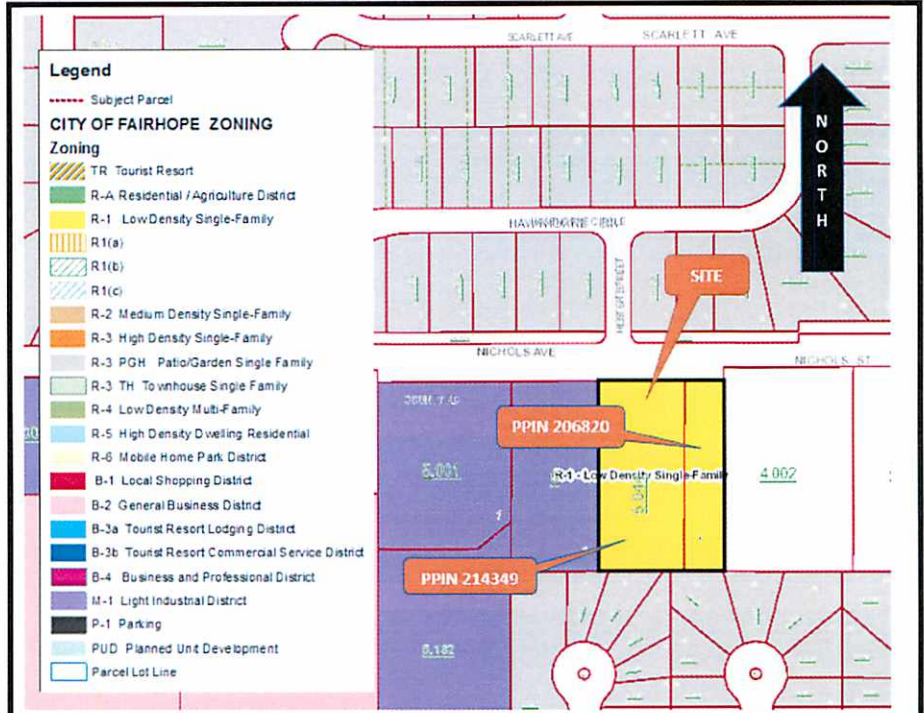
J. Buford King
City Planner

Staff Recommendation:

Approve with conditions

PC Recommendation:

Approve with conditions



Summary of Request: Public hearing to consider the request of Joe Roszkowski to rezone approximately 1.3 acres comprising PPIN 214349 and PPIN 206820 from R-1 Low Density Single Family Residential District to M-1 Light Industrial District. Subject property is located on Nichols Avenue approximately 5/16 mile east of Greeno Road, near the Gaston-Lee Post #5660 of the Veterans of Foreign Wars. The property is bordered to the west by the existing Tony's Towing Office and support facilities, zoned M-1 Light Industrial; to the south by the Belle Chase Phase I subdivision, zoned R-3 PGH High Density Single-Family Patio Garden Home Residential District; to the east by PPIN 36272 located within unzoned Baldwin County, and to the north by Hawthorne Glen subdivision zoned R-3 PGH High Density Single-Family Patio Garden Home Residential District. A replat of PPIN 214349 and 20371 is included as a supporting document reflecting the site plan required for zoning cases and is a proposed conveyance/common lot line movement of a portion of PPIN 214349 to PPIN 20371 for a possible expansion of the Tony's Towing facility.

Site Photos:



Subject property looking south along border between PPIN 20371 and PPIN 214349



Subject property looking south along border between PPIN 214349 and PPIN 206820



Subject property looking southwest from Nichols Ave



Looking toward subject property southeast from PPIN 20371

Comments: The City of Fairhope Zoning Ordinance in Article II Section "C" specifies the following Criteria regarding zoning amendments:

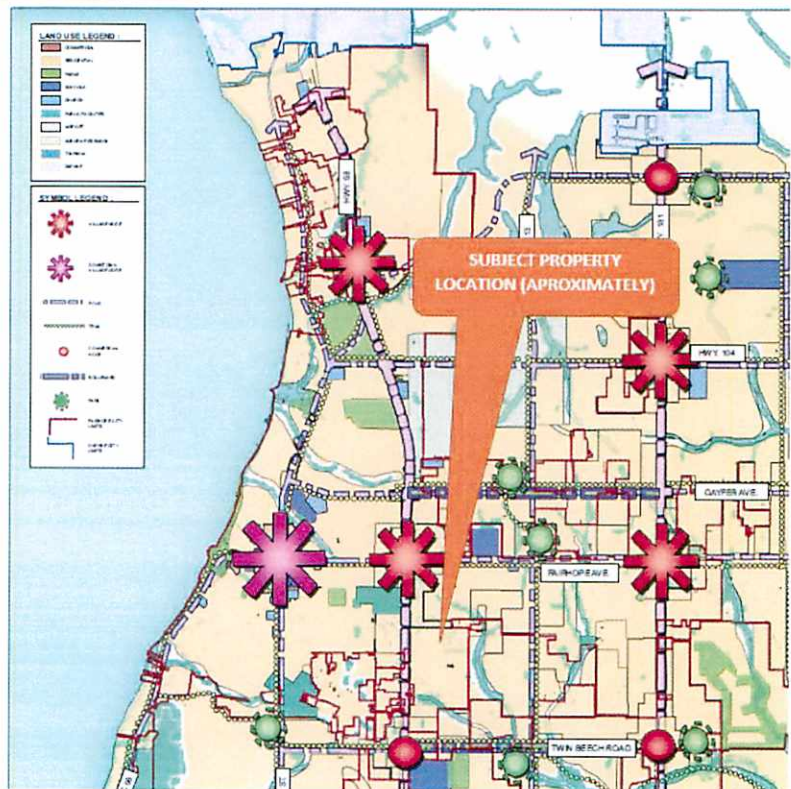
1. Zoning Amendments

e. *Criteria*- The application shall be reviewed based on the following criteria:

- (1) Compliance with the Comprehensive Plan;
- (2) Compliance with the standards, goals, and intent of this ordinance;
- (3) The character of the surrounding property, including any pending development activity;
- (4) Adequacy of public infrastructure to support the proposed development;
- (5) Impacts on natural resources, including existing conditions and ongoing post-development conditions;
- (6) Compliance with other laws and regulations of the City;
- (7) Compliance with other applicable laws and regulations of other jurisdictions;
- (8) Impacts on adjacent property including noise, traffic, visible intrusions, potential physical impacts, and property values; and,
- (9) Impacts on the surrounding neighborhood including noise, traffic, visible intrusions, potential physical impacts, and property values.

Article II Section C.1.e.(1) Comprehensive Plan Compliance

The major planning concept described by the City of Fairhope Comprehensive Plan is the “village” concept of commercial activity, with the most significant village occurring in downtown Fairhope. Another major village center is the Greeno Road Village Center, seen in the map excerpt at right from the Comprehensive Plan as a red starburst at the intersection of Greeno Road and Fairhope Avenue. Other villages include “North Village” built around the Publix Grocery store on North Greeno Road, and another village center at the intersection of Fairhope Ave/County Road 48 and AL HWY 181 near the existing Wal-Mart store. The Comprehensive Plan notes the Greeno Road Village Center is automobile-oriented and reflects commercial development that pre-dates the expansion of Greeno



Road/US HWY 98 into four lanes in the early 1980's. Though this analysis is by no means exhaustive, it is logical for commercial businesses and their associated uses supporting automobile traffic and transportation in general to exist in the M-1 zoned areas along Nichols Ave near subject property. Entities such as Thomas Hospital, Print Xcel, the commercial printing businesses near Thomas Hospital, and specialty companies such as Marine Exhaust rely upon the transportation industry to move supplies, materials, and people in this area. A towing company such as Tony's Towing is a service provider supporting both private and commercial transportation in Fairhope and surrounding areas and it appears the types of uses a towing company will include on a towing company's property are a logical extension of a village containing high levels of automobile traffic. In addition, the Comprehensive Plan contemplates “density transition” (page 34) in village centers whereby dense commercial activity transitions to higher density residential to lower density

residential or undeveloped property. The corridor of Nichols Ave containing subject property demonstrates the density transition contemplated by the Comprehensive Plan, transitioning from to M-1 Light Industrial to R-3 PGH High Density Single-Family Patio Garden Home Residential District. Areas zoned B-2 general business district as well as R-4 Low Density Multi-Family are also within the vicinity (650') of subject property. Subject property is the last remaining property along Nichols Ave zoned R-1 Low Density Single Family and adjoins property in unzoned Baldwin County containing a single family residence buffered by a heavily wooded area. It is possible that subject property, if re-zoned to M-1 will help to establish an "edge" to the commercial development within the village center along Nichols Ave also contemplated by the Comprehensive Plan, further demonstrating compliance with the Comprehensive Plan.

Article II Section C.1.e.(2) Goals and Intent of the City of Fairhope Zoning Ordinance

The purpose and intent of subject property's existing R-1 Zoning District is as follows: *R-1 Low Density Single-Family Residential District*: This district is intended to provide choices of low-density suburban residential environment consisting of single-family homes on large parcels of land. It is sub-classified into four categories (R-1, R-1a, R-1b, and R-1c) based on lot sizes, however no sub-classifications of R-1 are in existence at this time.

The purposes and intent of the proposed M-1 Light Industrial District is as follows; *M-1 Light Industrial District*: This district is intended to provide a suitable protected environment for manufacturing, research and wholesale establishments which are clean, quiet and free of hazardous or objectionable emissions, and generate little industrial traffic. Industrial parks should be encouraged. Locations should be in accordance with comprehensive plans.

Allowable Uses for M-1:

Allowed by Right: Elementary and Secondary Schools, Educational Facility, Library, Public or Common Open Space, General or Professional Office, Grocery Retail, General Merchandise, General Personal Services, Automobile Repair, Indoor Recreation, Boarding House or Dormitory, Warehouse, Limited Manufacturing, and Light Manufacturing.

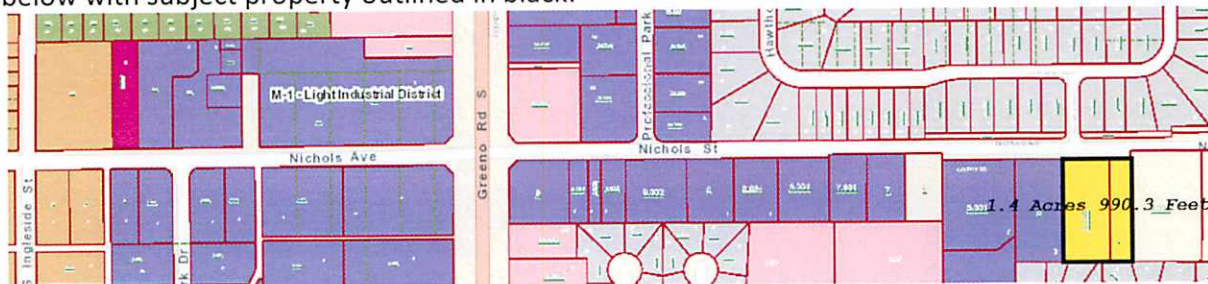
Permitted Subject to special conditions listed in the ordinance: Convenience Store, and Recreational Vehicle Park.

Permitted only on appeal and subject to special Condition: 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 Recreational Facility, Day Care, Mortuary or Funeral Home, Dry Cleaner or Laundry, Personal Storage, Junk Yard or Salvage Yard.

Article II Section C.1.e.(3) The character of the surrounding properties

The subject property is bordered to the west by the existing Tony's Towing Office and support facilities, zoned M-1 Light Industrial; to the south by the Belle Chase Phase I subdivision, zoned R-3 PGH High Density Single-Family Patio Garden Home Residential District; to the east by PPIN 36272 located within unzoned Baldwin County, and to the north by Hawthorne Glen subdivision, zoned R-3 PGH High Density Single-Family Patio Garden Home Residential District. A replat of PPIN 214349 and 20371 is included as a supporting document reflecting a proposed conveyance/common lot line movement of a portion of PPIN 214349 to PPIN 20371 for a possible expansion of the Tony's Towing facility and serves as the site plan for the proposed re-zoning. A re-zoning of PPIN 34502 was approved by the Fairhope City Council on September 10, 2012 which re-zoned PPIN 34502 from R-1 District to M-1 via ordinance number 1473. The character of the existing neighborhood is a combination of commercial and high-density residential properties, with a "corridor" of properties zoned M-1 following Nichols Avenue beginning near Ingleside Street and proceeding east along Nichols Avenue, crossing Greeno Road, and continuing to subject property. The Fairhope Avenue

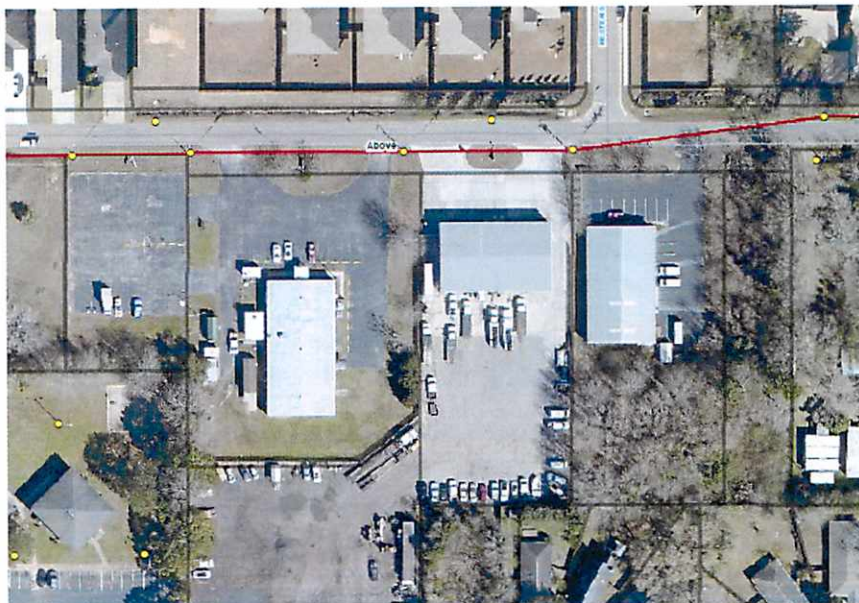
Village Center implications of this commercial corridor are more fully-described in the *Comprehensive Plan Compliance*, above. An excerpt of the zoning map depicting the Nichols Avenue M-1 “corridor” is shown below with subject property outlined in black:



The approval of subject application would complete the M-1 corridor south of Nichols Street and east of Greeno Road up to the adjoining unzoned PPIN 36272, with the exception of the western parking area of the Gaston-Lee VFW Post which remains unzoned Baldwin County. As discussed previously, it is possible the requested rezoning would serve as an “edge” of commercial development as contemplated by the Comprehensive Plan and then transition to residential development.

Article II Section C.1.e.(4) Adequacy of public infrastructure to support the proposed development Natural gas, water, sewer, and electrical service is available at this location. The applicant is encouraged to contact

City of Fairhope Planning, Public Utilities, and Public Works staff at the pre-development stage to become aware of any infrastructure improvements needed to provide service to a future development of subject property. It is not believed the site plan included with the subject application includes development activity that will require relocation of the existing overhead electrical utilities to underground. A sample image of the Fairhope Public Utilities overhead electrical service for subject property is included at right:



Article II Section C.1.e.(5) Natural Resources The USDA Web Soils Survey website (<https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>) was examined to determine the existing soil types of subject property. Non-hydric Marlboro and Carnegie Soils occur on the site, however hydric Grady soil appears on the site in the area of the proposed towing operation expansion.

Prior to conveyance of property, the future property owner is encouraged to contact the building official to determine if a wetland delineation will be required prior to land disturbance for the property to be conveyed onto which the towing company operation may be expanded. An excerpt of the Web Soil Survey map is included at right. Approximately half the property to be conveyed consists of Grady soils, per USDA web soils survey.



Article II Section C.1.e.(6) Compliance with other laws and regulations

Subject property falls within the police and permit jurisdictions of the City of Fairhope and the various ordinances (Tree/Landscape, Erosion Control, Signage, Greeno Road Buffers, etc.) will apply to any development activities. The proposed conveyance replat, which serves as the site plan supporting document for subject application, includes a note indicating compliance with ordinance 1444, Tree/Landscaping ordinance is required so that proper screening is included between the proposed M-1 zoning district and the existing adjacent R-3PGH zoning district.

Article II Section C.1.e.(7) Compliance with other applicable laws and regulations of other jurisdictions All State and Federal Regulations shall apply if the property is developed, such as ADEM NDPES/ALR registration if more than 1 acre of land disturbance occurs.

Article II Section C.1.e.(8 & 9) Impacts on adjacent and neighboring properties including noise, traffic, visible intrusions, potential physical impacts, and property values. As described in detail in the comments related to Article C.1.e.(3) above, the adjacent property to the west of subject property is the office and support facilities for Tony's Towing. PPIN 20371 that contains the Tony's Towing operation was annexed into the City of Fairhope, conditional upon establishment of M-1 zoning, in July 1997 via ordinance number 1016. The existing office space located upon PPIN 214349 is an existing non-conformity as it is located upon an area zoned R-1 low density residential. The approval of subject application will align the zoning of subject property to that of the adjacent western properties, as well as the M-1 zoned properties within 150' to the west and southwest of subject property. With the exception of an automobile repair facility, the most intense uses, such as automobile service centers, junk yards, salvage yards, outdoor sales yards, or personal storage facilities require approval by the Board of Adjustments prior to establishment of that type of land use. Staff's interpretation of the zoning ordinance is that the proposed use demonstrated by the included site plan is that of a junk yard or salvage yard in accordance with Article IX Section B.5.u. *Junk Yard or Salvage Yard*. As a result, an additional vetting process is required for the most intense uses that may potentially occur on the site. This same vetting process through the Board of Adjustments must occur for the intended use of the portion of subject property to be conveyed to the property containing the towing operation, because that towing operation will likely contain "a structure or lot where discarded or salvaged materials are bought, sold, exchanged, baled, packed, stored, accumulated, disassembled, or handled". The nature of the existing use of the adjacent property to subject property, the screening requirements of the tree/landscape ordinance, as well as the additional vetting required via a Board of Adjustments application will mitigate any impacts to the adjacent and surrounding properties.

Dimension Standards:

The dimensions standards for the existing R-1 zoning district and the proposed M-1 zoning district are summarized below.

Dimension District or use	Min. Lot Area/ Allowed Units Per Acre(UPA)	Min. Lot Width	Setbacks				Max. total lot coverage by principle structure	Max. height
			Front	Rear	Side	Street side		
R-1	15,000 s.f./-	100'	40'	35'	10' b	20'	40 %	30'
M-1	None / -	none	none g	none f	none e		none	45'

e. Where a lot abuts residential property, the side setback shall be 10'.

f. Where a lot abuts residential property to the rear, the rear setback shall be 20'

g. In the case of existing adjacent establishments, the setback shall be the average within 100 feet on either side of the proposed structure.

Traffic: Subject property's existing non-conforming use as an office facility will be maintained, and the application for rezoning does not request any change of use or development activity that would indicate a change in traffic patterns. The area to be conveyed to the towing company's property is approximately 18,700sf, or 0.4 acres, and no development activity is identified in the application for zoning change or on the proposed site plan that would affect traffic patterns. The conveyance is not a creation of a new lot, and therefore a subdivision application is not necessary for the conveyance to occur. The timeline for alterations or modifications of the property proposed for conveyance is not known at the time of this writing.

Compatibility Analysis: A full compatibility analysis examining the actual and allowable development densities of nearby properties has not been performed for the rezoning request because the applicant is proposing a zoning change that reflects the actual uses of subject property and will aligned subject property's uses with the adjoining uses.

Site Plan As stated previously, the site plan included with subject application proposes a conveyance of property from PPIN 214439 to PPIN 20371, likely to expand the area on which the uses associated with Tony's Towing occur. The applicant is advised a formal, stand-alone Site Plan review process as required by the Zoning Ordinance may be required if the development of the portion subject property conveyed to PPIN 20371 meets the following criteria of Article II Section C.2:

Site plan approval is required when any commercial building(s) located in a business-zoning district (industrial zoning excluded) or in the CBD overlay:

- (1) Has a gross floor area of 10,000 square feet or greater; or,
- (2) More than 30% of the lot (excluding the building) is impervious; or
- (3) All applications for zoning map amendments to rezone property to any of the Village Districts in Article VI. However, applicants for rezoning to the village districts may elect to use the special review procedures in Article VI, Section D for review of the rezoning application and site plans associated with a village development.
- (4) A mandatory site plan review application for all mixed-use projects electing to build to 35 feet height with 33% residential, regardless of whether or not it triggers site plan review approval, must make application to the Planning and Zoning Commission for approval.

Further, the applicant is reminded the screening/buffering requirements of Tree/Landscape ordinance 1444 must have compliance due to the adjoining R-3 PGH properties associated with the Belle Chase residential development. In addition, uses such as junk yard or salvage yard must be appealed to the Zoning Board of Adjustment for areas zoned M-1 Light Industrial. The aerial image below is representative of the portion of PPIN 214349 to be conveyed to PPIN 20371, outlined in orange:



Staff Recommendation:

Staff recommends **APPROVAL** of Case number ZC18.13, related to PPIN 214349 and PPIN 206820 located at 8330 Nichols Avenue and forwarding to the Fairhope City Council for final adoption, subject to the following condition:

- 1) Junk yard or salvage yard uses for the portion of subject property reflected in the included site plan must be appealed to the Zoning Board of Adjustment.

Planning Commission Recommendation:

The City of Fairhope Planning Commission, at its November 5, 2018 regular meeting recommended **APPROVAL** of Case number ZC18.13, related to PPIN 214349 and PPIN 206820 located at 8330 Nichols Avenue and forwarding to the Fairhope City Council for final adoption, subject to the following condition:

- 1) Junk yard or salvage yard uses for the portion of subject property reflected in the included site plan must be appealed to the Zoning Board of Adjustment.