



## Legislation Text

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**File #:** 2018-0219, **Version:** 1

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**RZN 18-6125 (4550 N. CROSSOVER RD./KESNER):**

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 18-6125 FOR APPROXIMATELY 6.64 ACRES LOCATED AT 4550 NORTH CROSSOVER ROAD FROM R-A, RESIDENTIAL AGRICULTURAL TO P-1, INSTITUTIONAL

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby changes the zone classification of the property shown on the map (Exhibit A) and the legal description (Exhibit B) both attached to the Planning Department's Agenda Memo from R-A, Residential Agricultural to P-1, Institutional.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby amends the official zoning map of the City of Fayetteville to reflect the zoning change provided in Section 1.



**JORGENSEN  
+ASSOCIATES**  
Civil Engineering · Surveying  
Landscape Architecture Services

**RECEIVED**

**APR 10 2018**

**CITY OF FAYETTEVILLE  
CITY CLERK'S OFFICE**

124 W Sunbridge Drive, Suite 5  
Fayetteville, AR 72703

Office: 479.442.9127

Fax: 479.582.4807

[www.jorgensenassoc.com](http://www.jorgensenassoc.com)

April 10, 2018

Sondra Smith  
City Clerk  
City of Fayetteville  
113 W Mountain Street, Room 308  
Fayetteville, AR 72701

Re: RZN 18-6125

Please accept this appeal of the decision of the Planning Commission on April 9<sup>th</sup>, 2018, to deny the rezoning request for RZN 18-6125.

This appeal is made pursuant to Section 155.05 of the Uniform Development Code. We understand that Planning Commission has to make a lot of tough decisions and we certainly appreciate their hard work and time. However, in this instance, we feel that the applicant has presented a reasonable zoning request that is in conformity with the surrounding properties. We are kindly asking that the City Council please place this item on the next agenda, so that we can further discuss this matter.

Sincerely;  
Jorgensen + Associates



## CITY COUNCIL AGENDA MEMO

### MEETING OF MAY 1, 2018

**TO:** Mayor, Fayetteville City Council

**THRU:** Garner Stoll, Development Services Director

**FROM:** Harry Davis, Planner

**DATE:** April 13, 2018

**SUBJECT:** **RZN 18-6125: Rezone (4550 N. CROSSOVER RD./KESNER, 099):** Submitted by JORGENSEN & ASSOCIATES, INC. for property located at 4550 N. CROSSOVER RD. The property is zoned R-A, RESIDENTIAL AGRICULTURAL and contains approximately 6.64 acres. The request is to rezone the property to P-1, INSTITUTIONAL.

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### RECOMMENDATION:

The Planning Commission denied the request to rezone property as depicted in Exhibits 'A' and 'B'. Staff recommends approval of the request. The applicant has appealed the Planning Commission's decision to the City Council.

### BACKGROUND:

The subject proposal totaling approximately 6.64 acres is located northeast of the intersection of Crossover Road and Zion Road. The parcel is zoned R-A, Residential Agricultural and contains one single-family home. The eastern portion of the overall parcel is encompassed with the riparian corridor and floodplain of Hilton Creek, but is not part of the rezoning request.

*Request:* The request is to rezone 6.64 acres to P-1, Institutional. The applicant stated the rezoning is needed for a future church at this location. Approximately 1.59 acres of the overall 8.23 acre parcel is not part of this request and would remain zoned R-A within the Hilton Creek corridor.

*Public Comment:* Staff did receive public comment at the March 23, 2018 Planning Commission meeting opposed to development in terms of flooding issues in the area.

*Land Use Plan Analysis:* Staff identifies that the proposal is compatible with the goals in City Plan 2030, adopted land use policies, and the future land use designation for this location. This property, designated as a City Neighborhood Area, is intended to have the widest spectrum of residential and non-residential development. The existing pattern of multiple institutional uses in the immediate area with buildings set back from high-speed Highway 265 is complimented by the proposed P-1 zoning. Institutional and civic uses are a key component to creating complete neighborhoods which is encouraged by the City Neighborhood designation. Furthermore, the area

on the overall parcel designated as Natural Area has been intentionally left out of the rezoning proposal to ensure its protection in the existing R-A district.

*Land Use Compatibility:* Staff notes how the proposed zoning is compatible with the other properties in the area, including a funeral home and Elks Lodge to the south, single-family neighborhoods across the street to the east, Fayetteville Athletic Club and a nursing home to the southwest, and a large estate home and Lake Fayetteville Park to the west and northwest. P-1 includes a different set of uses from R-A, but staff sees that uses allowed in R-A can be comparable and compatible in intensity and area impact to nearby properties. R-A is maintained on the far eastern side, ensuring that any development in that area will be smaller and more compatible with the rural character transitioning into Washington County unincorporated area and Fayetteville's Planning Area. The institutional uses will be compatible with other similar institutions in the neighborhood.

**DISCUSSION:**

At the March 23, 2018 Planning Commission meeting, this item was tabled to allow the applicant some time to meet with staff and discuss alternative zoning districts for the property. Staff and the applicant discussed the proposal and the applicant decided to remain with the proposed P-1 zoning for the property. Staff recommend in favor of the request. On April 9, 2018, the Planning Commission failed to forward the proposal to City Council with a recommendation for approval of the applicant's request by a vote of 4-5-0 (Commissioners Hoffman, Scroggin, Belden, Niederman, and Johnson voted 'no'). The Commissioners that voted 'no' stated a desire for a form-based zoning district.

**BUDGET/STAFF IMPACT:**

N/A

**Attachments:**

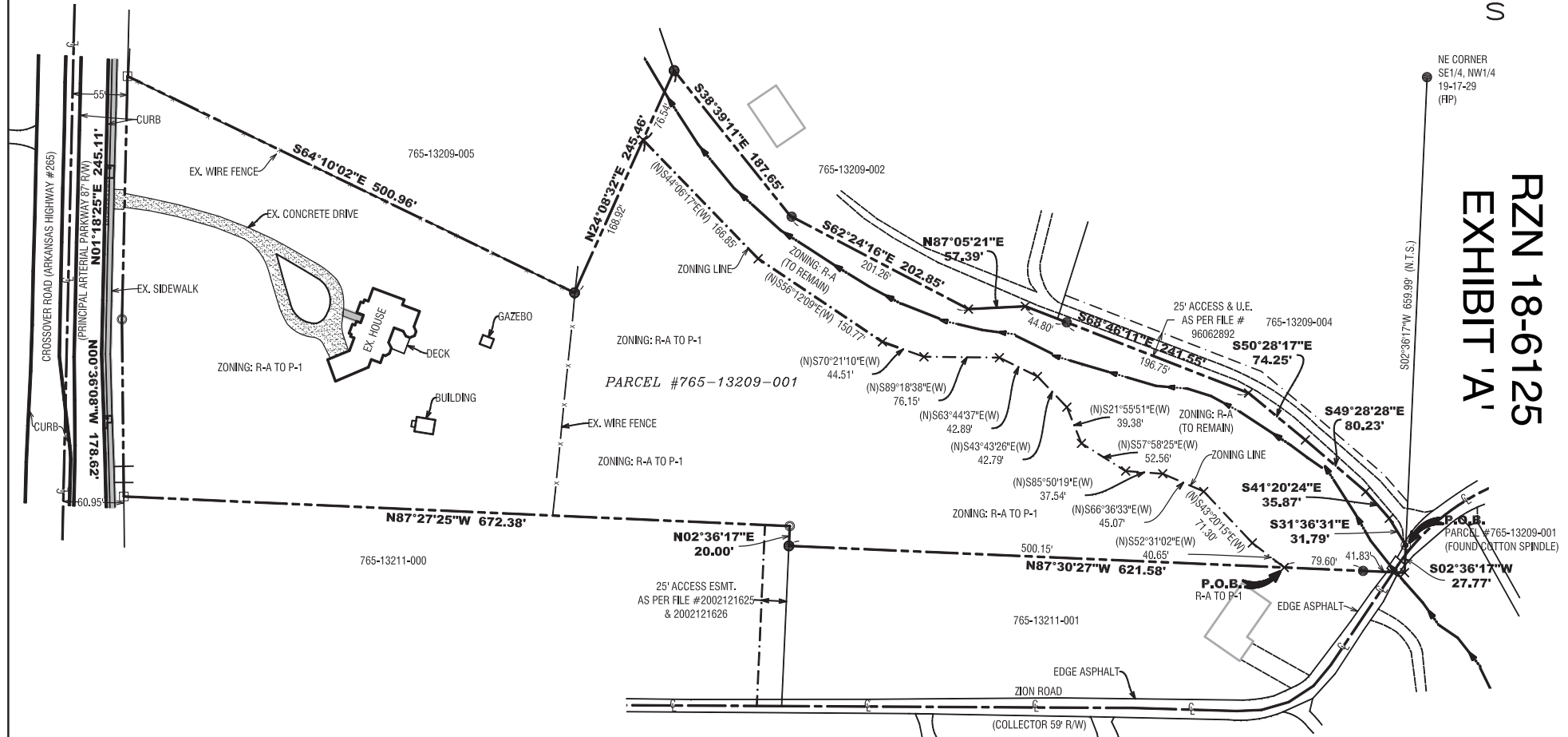
- Exhibit A
- Exhibit B
- Application
- Planning Commission Staff Report

# LEGAL DESCRIPTION: (PARCEL #765-13209-001)

A part of the SE1/4 of the NW1/4 of Section 19, T17N, R29W in Washington County, Arkansas, and being described as follows: Commencing at the NE Corner of said SE1/4, NW1/4, thence S02°36'17"W 659.99 feet to the POINT OF BEGINNING; thence S02°36'17"W 27.77 feet, thence N87°30'27"W 621.58 feet, thence N02°36'17"E 20.00 feet, thence N87°27'25"W 672.38 feet, thence N00°36'08"W 178.62 feet, thence N01°18'25"E 245.11 feet, thence S64°10'02"E 500.96 feet, thence N24°08'32"E 245.46 feet, thence S38°39'11"E 187.65 feet, thence S62°24'16"E 202.85 feet, thence N87°05'21"E 57.39 feet, thence S68°46'11"E 241.55 feet, thence S50°28'17"E 74.25 feet, thence S49°28'28"E 80.23 feet, thence S41°20'24"E 35.87 feet, thence S31°36'31"E 31.79 feet to the POINT OF BEGINNING; Containing 8.2337 acres more or less subject to easements and right of way of record.

# LEGAL DESCRIPTION: (R-A TO P-1)

A part of the SE1/4 of the NW1/4 of Section 19, T17N, R29W in Washington County, Arkansas, and being described as follows: Commencing at the NE Corner of said SE1/4, NW1/4, thence S02°36'17"W 687.76 feet, thence N87°30'27"W 121.43 feet to the POINT OF BEGINNING; thence N87°30'27"W 500.15 feet, thence N02°36'17"E 20.00 feet, thence N87°27'25"W 672.38 feet, thence N00°36'08"W 178.62 feet, thence N01°18'25"E 245.11 feet, thence S64°10'02"E 500.96 feet, thence N24°08'32"E 168.92 feet, thence S44°06'17"E 166.85 feet, thence S56°12'09"E 150.77 feet, thence S70°21'10"E 44.51 feet, thence S89°18'38"E 76.15 feet, thence S63°44'37"E 42.89 feet, thence S43°43'26"E 42.79 feet, thence S21°55'51"E 39.38 feet, thence S57°58'25"E 52.56 feet, thence S85°50'19"E 37.54 feet, thence S66°36'33"E 45.07 feet, thence S43°20'15"E 71.30 feet, thence S52°31'02"E 40.65 feet to the POINT OF BEGINNING; Containing 6.6378 acres more or less subject to easements and right of way of record.



×	CALCULATED POINT	—	FLOWLINE CREEK	—	ACCESS EASEMENT
●	FOUND IRON PIN	—	BOUNDARY LINE	—	EXISTING WIRE FENCE
○	FOUND COTTON SPINDLE	—	ZONING LINE	—	
□	FOUND ALUMINUM MONUMENT	—	CENTERLINE STREET	—	
○	SET IRON PIN & CAP	—		—	



**JORGENSEN + ASSOCIATES**  
Civil Engineering + Surveying

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[www.jorgensenassoc.com](http://www.jorgensenassoc.com)

PROJECT TITLE: KESSNER REZONE  
LOCATION: FAYETTEVILLE, AR.  
SHEET TITLE: EXHIBIT "A"  
DRAWN BY: BJR  
SHEET SCALE: 1"=100'  
DATE: MARCH 28, 2018  
PROJECT FILE: Z/LSD/2018019/REZONE

RZN 18-6125

EXHIBIT 'B'

LEGAL DESCRIPTION: (R-A TO P-1)

A part of the SE1/4 of the NW1/4 of Section 19, T17N, R29W in Washington County, Arkansas, and being described as follows: Commencing at the NE Corner of said SE1/4, NW1/4, thence thence S02°36'17"W 687.76 feet, thence N87°30'27"W 121.43 feet to the POINT OF BEGINNING; thence N87°30'27"W 500.15 feet, thence N02°36'17"E 20.00 feet, thence N87°27'25"W 672.38 feet, thence N00°36'08"W 178.62 feet, thence N01°18'25"E 245.11 feet, thence S64°10'02"E 500.96 feet, thence N24°08'32"E 168.92 feet, thence S44°06'17"E 166.85 feet, thence S56°12'09"E 150.77 feet, thence S70°21'10"E 44.51 feet, thence S89°18'38"E 76.15 feet, thence S63°44'37"E 42.89 feet, thence S43°43'26"E 42.79 feet, thence S21°55'51"E 39.38 feet, thence S57°58'25"E 52.56 feet, thence S85°50'19"E 37.54 feet, thence S66°36'33"E 45.07 feet, thence S43°20'15"E 71.30 feet, thence S52°31'02"E 40.65 feet to the POINT OF BEGINNING: Containing 6.6378 acres more or less subject to easements and right of way of record.



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE



Kit Williams  
City Attorney

Blake Pennington  
Assistant City Attorney

Rhonda Lynch  
Paralegal

TO: Mayor Jordan  
City Council

CC: Don Marr, Chief of Staff  
Garner Stoll, Development Services Director  
Andrew Garner, Planning Director

FROM: Kit Williams, City Attorney

DATE: April 16, 2018

RE: Rezoning land for church

The owner of a large R-A zoned parcel desires convey this parcel to a church and thus has requested the majority to be rezoned to P-1, Institutional. The portion of the lot near the creek is properly to remain as R-A as a buffer to the creek. The Planning Department recommended approval to the Planning Commission.

This rezoning request complies with express "*Purpose*" the City Council approved for the P-1, Institutional zoning district.

*"Purpose.* The Institutional District is designed to protect and facilitate use of property owned by larger public institutions and **church related organizations.**" § 161.29 of the Unified Development Code (emphasis added).

The Institutional District was created expressly for churches, is the only zoning district to expressly refer to churches, and is the most logical and reasonable zoning district within which to place a church on a large site on Highway 265.

The Planning Commission on a 4 - 5 vote recommended denial of P-1, Institutional. Those Commissioners voting "No" favored a rezoning to UT,

Urban Thoroughfare or CS, Community Services because these were “form based” zoning districts and thus five commissioners believed that these districts would provide better aesthetics for pedestrians and drivers passing by. (Aesthetic concerns which restrict a church’s development are constitutionally suspect as shown later in this memo.) These form based districts’ “*Purpose*” sections not only fail to mention churches, but show they are really not as appropriate for development of a local church serving Fayetteville residents. For example, the “*Purpose*” of UT, Urban Thoroughfare states:

“*Purpose.* The Urban Thoroughfare District is designed to provide good and services for persons living in **surrounding communities**. This district encourages a **concentration of commercial and mixed use development...**” § 161.21 of the Unified Development Code (emphasis added).

There is no indication that the church will serve “persons living in surrounding communities,” as opposed to Fayetteville residents. Rather than providing “a concentration of commercial and mixed use development,” this church will provide church related services only. Thus, Urban Thoroughfare’s purposes are at odds with the development of this church.

Similarly CS, Community Services is not the right zoning district for this church. Its “*Purpose*” section like Urban Thoroughfare does not even refer to churches, but to commercial or residential development.

“*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.” § 161.22 of the Unified Development Code.

Thus, the “*Purpose*” sections of the zoning districts preferred by the five commissioners who voted against the requested P-1, Institutional zoning do not reflect the P-1, Institutional Zoning District *Purpose* which “is designed to **protect and facilitate use of property owned by...church related organizations.**” *Id.* Their rejection of the landowner/developers’ requested rezoning was based solely upon their desire that the building be built close to and address the street, an aesthetic consideration.

In 2010, I provided a departmental correspondence memo in which I opined that **applying Design Standards to churches might be illegal or unconstitutional**. My advice was accepted at that time and aesthetic standards have not been applied to churches by City Staff. From a legal and constitutional perspective, I appreciate that the Planning Department properly recommended approval of a rezoning from R-A, Residential Agriculture to P-1, Institutional for the parcel desired for church construction on Highway 265.

Health and safety based development requirements (drainage and grading; building codes such as electrical, water, sewer, gas, etc.) can be applied to churches as long as they are treated no worse than meeting halls and other similar facilities. However, I am concerned that if the government (at any level) tries to impose its aesthetic beliefs upon the design of churches including where the building must be sited based upon aesthetic concerns, such required government approval may run afoul of the First Amendment's special protection of religious expression from government interference.

A church in Cypress, California needed a larger building, but was denied permission by a city agency. (City Council members made up its board). The City of Cypress then filed a condemnation action (to remove "blight") on the property upon which the Cottonwood Christian Center Church wanted to build. The city intended to sell this property to Cosco for a new store. The church sued under the First Amendment and RLUIPA which prohibits any government agency, including cities, from imposing or implementing:

"a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution-(A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §2000 cc(a)(1)

The Federal District Court in California granted a Preliminary Injunction against the City of Cypress and its Cypress Redevelopment Authority.

First the Court held that "RLUIPA provides a strict scrutiny standard for review of land use cases." *Cottonwood Christian Center v. City of Cypress, et. al*, 218 F.Supp 2d 1203, 1220 (Central District of California, 2002). "RLUIPA also

requires the application of a strict scrutiny standard because the City's ... practices ... permit the government to make individualized assessments." *Id.* at 1222. The more detailed, mandatory and restrictive our zoning districts' scheme becomes with new more narrow zoning districts continually being designed and enacted with new aesthetical requirements such as where and how the building addresses the street, the more such zoning is susceptible to challenge by church related organizations under the First Amendment and RLUIPA.

"Even in the absence of RLUIPA, a strict scrutiny standard of review is appropriate in this case under the Free Exercise Clause, U.S. Const. Amend. I." *Id.*

I believe that attempting to force a church to move its building and "address the street" by refusing to zone its parcel to Institutional which is the only zoning district "designed to protect and facilitate use of property owned by . . . church related organizations," (§161.29 UDC) could violate federal law (RLUIPA) and the Free Exercise Clause of the First Amendment of the United States Constitution. A church congregation should not need a governmental seal of aesthetic approval to build their church where they want on their parcel as long as they comply with normal zoning rules such as setbacks which are expressly authorized by state law and instituted to protect the safety of neighboring property owners rather than just for aesthetics.

City Councils are granted substantial deference by the Courts when making rezoning decisions. However, such deference is limited so that a rezoning decision may not be made arbitrarily and unreasonably. To require that a church related organization must rezone its desired new land Commercial (UT, Urban Thoroughfare or CS, Community Services) rather than to P-1, Institutional, which the City Council expressly enacted "to protect and facilitate use of properly owned by...church related organizations" could be found to be unreasonable by the Courts.

No adjoining or nearby property owners have expressed any opposition to this rezoning. Its immediate neighbor is a modern large funeral home built traditionally along Highway 265. A new church built within an Institutional zoning district would be very compatible with this funeral home. Planning Staff supports this simple rezoning to P-1, Institutional for this church related organization as such zoning appears to completely conform with the Unified Development Code regulations and the purposes of the zoning districts.

## CONCLUSION

The City of Fayetteville has never had a rezoning decision reversed in Court during my 17 years as Fayetteville City Attorney. If the City Council denies this church related organization its requested rezoning to P-1, Institutional, that perfect record could be broken. As opposed to applicants for most rezoning requests, this church related organization which is seeking this rezoning to build its new church is also protected by the Free Exercise of Religion Clause of the First Amendment and federal law. An improper denial of the requested rezoning to P-1, Institutional could result in the assessment of attorney fees and costs against the City of Fayetteville.

The City of Fayetteville Board of Directors allowed political considerations and/or personal preferences to control a couple of decision in the late 80's which eventually stung our taxpayers for several million dollars of attorney fees when the Arkansas Supreme Court ruled against us in both cases in the 90's. Because the Fayetteville City Councils have consistently followed my legal advice and cautions (sometimes in the face of substantial political pressure), our taxpayers have not suffered further multimillion dollar losses in the last 17 years. Please help me maintain our good record of protecting our taxpayer revenues from excessive attorney fee awards by approving the church's request to be rezoned into our only zoning district expressly designed for churches.

CITY OF FAYETTEVILLE, ARKANSAS

# REZONING

**FOR STAFF USE ONLY**

Date Application Submitted:

Date Accepted as Complete:

Case / Appeal Number:

Public Hearing Date:

FEE: \$325.00

Sign Fee: \$5.00

S-T-R:

PP#:

Zone:

330

Please fill out this form completely, supplying all necessary information and documentation to support your request. Your application will not be placed on the Planning Commission agenda until this information is furnished.

## Application:

Indicate one contact person for this request: \_\_\_\_\_ Applicant ☒ Representative

Applicant (person making request):

Name: Johnny Kosner

Address: 4550 Crossway Rd  
Fayetteville, Ar 72703

E-mail: \_\_\_\_\_

Phone: \_\_\_\_\_  
( ) \_\_\_\_\_

( ) \_\_\_\_\_

Fax: \_\_\_\_\_  
( ) \_\_\_\_\_

Representative (engineer, surveyor, realtor, etc.):

Name: Jorgensen & Assoc

Address: 124 W. Sunbridge  
Fayetteville, Ar 72703

E-mail: dave@jorgensenassoc.com

Phone: \_\_\_\_\_  
( ) 442-9127

( ) \_\_\_\_\_

Fax: \_\_\_\_\_  
( ) \_\_\_\_\_

Site Address / Location: \_\_\_\_\_

Current Zoning District: R-A

Requested Zoning District: P-1

Assessor's Parcel Number(s) for subject property: 765-13209-001

## FINANCIAL INTERESTS

The following entities and / or people have financial interest in this project:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**APPLICANT / REPRESENTATIVE:** I certify under penalty of perjury that the foregoing statements and answers herein made all data, information, and evidence herewith submitted are in all respects, to the best of my knowledge and belief, true and correct. I understand that submittal of incorrect or false information is grounds for invalidation of application completeness, determination, or approval. I understand that the City might not approve what I am applying for, or might set conditions on approval.

Name (printed): \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**PROPERTY OWNER(S) / AUTHORIZED AGENT:** I/we certify under penalty of perjury that I am/we are the owner(s) of the property that is the subject of this application and that I/we have read this application and consent to its filing. (If signed by the authorized agent, a letter from each property owner must be provided indicating that the agent is authorized to act on his/her behalf.)

*Property Owners of Record (attach additional info if necessary):*

Name (printed): Johanny A. Kerner Address: 4550 CROSSOVER RD  
Signature: Johanny A. Kerner FAYETTEVILLE, AR 72764  
Date: 2-13-18 Phone: 479 931-2539

Name (printed): JANET KERNER Address: 4550 CROSSOVER RD  
Signature: JANET KERNER FAYETTEVILLE, AR 72764  
Date: 2/13/18 Phone: 479 931-2539

#### Rezoning Checklist:

Attach the following items to this application:

- (1) Payment in full of applicable fees for processing the application:
  - \$325.00 application fee
  - \$5.00 public notification sign fee
- (2) A legal description of the property to be rezoned. A survey may be required if the property description can not accurately be platted or if it is described by referring to other deeds.
- (3) CD containing a copy of the legal description in MS Word and all required submittal items should be also included on the CD in PDF format.
- (4) A copy of the county parcel map from the Washington County Assessor's office or from the Washington County website ([www.co.washington.ar.us](http://www.co.washington.ar.us)). The subject property and all adjacent parcels should be identified on this parcel map. The owner's name, official mailing address, and the parcel number for every adjacent property shall be shown on this map.



## PLANNING COMMISSION MEMO

**TO:** City of Fayetteville Planning Commission

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

**FROM:** Harry Davis, Planner

**MEETING DATE:** April 9, 2018 **UPDATED W PC RESULTS**

**SUBJECT:** **RZN 18-6125: Rezone (4550 N. CROSSOVER RD./KESNER, 099):**  
Submitted by JORGENSEN & ASSOCIATES, INC. for property located at 4550 N. CROSSOVER RD. The property is zoned R-A, RESIDENTIAL AGRICULTURAL and contains approximately 8.30 acres. The request is to rezone the property to P-1, INSTITUTIONAL.

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### RECOMMENDATION:

Staff recommends forwarding **RZN 18-6125** to City Council with a recommendation for approval based upon the findings herein.

**APRIL 9, 2018 PLANNING COMMISSION MEETING:** At the March 23, 2018 Planning Commission meeting, this item was tabled to allow the applicant some time to meet with staff and discuss alternative zoning districts for the property. Staff and the applicant have discussed the proposal and the applicant has decided to remain with the proposed P-1 zoning for the property. Staff still recommends in favor of the request. The legal description has been amended and is sufficient for this proposal to move forward. The conditions of approval reflect this update.

### BACKGROUND:

The subject property totaling approximately 8.30 acres is located northeast of the intersection of Crossover Road and Zion Road. The parcel is zoned R-A, Residential Agricultural and contains one single-family home. The eastern portion of the site is encompassed with the riparian corridor and floodplain of Hilton Creek. The surrounding land use and zoning is in *Table 1*.

**Table 1**  
**Surrounding Land Use and Zoning**

Direction from Site	Land Use	Zoning
North	Residential; Undeveloped	R-A, Residential Agricultural
South	Funeral home; Residential	R-O, Residential Office; R-A, Residential Agricultural
East	Residential; Floodplain	R-A, Residential Agricultural; Washington County
West	Residential; Undeveloped;	R-A, Residential Agricultural

*Request:* The request is to rezone approximately 7.09 acres to P-1, Institutional leaving the remaining area on the property as R-A, Residential Agricultural within the floodplain. The applicant stated the rezoning is needed for a future church at this location.

*Public Comment:* No public comment has been received as of writing this report.

## INFRASTRUCTURE:

- Streets:** The subject parcel has access to Crossover Road and Zion Rd. Crossover Road is an improved four-lane asphalt street with sidewalk, curb and gutter, and storm drains. Any street improvements required in these areas would be determined at the time of development proposal.
- Water:** Public water is available to the site. There is an existing 8-inch main along Crossover Road
- Sewer:** Sanitary Sewer is available to the site. There is an existing 6- and 8-inch main along Crossover Road
- Drainage:** A portion of the parcel is identified as FEMA regulated floodplains. No part of the parcel lies within the HHOD. There are protected streams on this parcel identified as Hilton Creek. There are hydric soils identified on these parcels. Any additional improvements or requirements for drainage will be determined at time of development.
- Fire:** The site will be protected by Ladder 5, located at 2979 N. Crossover Road. The property is located approximately 2.0 miles from the fire station with an anticipated response time of approximately 4 minutes. The Fayetteville Fire Department has a 6-minute response time goal for all development. Since this site is within the Fire Department's response time goal, the Fire Department does not feel this development will negatively impact response time averages for this area.
- Police:** The Police Department expressed no concerns with this request.

**CITY PLAN 2030 FUTURE LAND USE PLAN:** *City Plan 2030 Future Land Use Plan designates the properties within the proposed rezone as **City Neighborhood Area**. City Neighborhood Areas are more densely developed than residential neighborhood areas and provide a varying mix of nonresidential and residential uses. This designation supports the widest spectrum of uses and encourages density in all housing types, from single family to multi-family. City Neighborhood Areas encourage complete, compact and connected neighborhoods and non-residential uses are intended to serve the residents of Fayetteville, rather than a regional population. While they encourage dense development patterns, they do recognize existing conventional strip commercial developments and their potential for future redevelopment in a more efficient urban layout.*

The eastern portion of this site is classified as **Natural Area**. Although this portion of the site is not proposed for rezoning, these areas consist of lands approximating or reverting to a wilderness condition, including those with limited development potential due to topography, hydrology, vegetation or value as an environmental resource. These resources can include stream and wildlife corridors, as well as natural hubs and cores, as identified in the FNHA study, many of which make up the backbone of the enduring green network. A **Natural Area** designation would encourage a development pattern that requires conservation and preservation, prevents degradation of these areas, and would utilize the principles of low impact development for all construction.

## FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

**Finding:** ***Land Use Compatibility:*** The proposed zoning is compatible with the other properties in the area, including a funeral home and Elks Lodge to the south, single-family neighborhoods across the street to the east, a nursing home to the southwest, and a large estate home and Lake Fayetteville Park to the west and northwest. P-1 includes a different set of uses from R-A, but staff sees that uses allowed in R-A can be comparable and compatible in intensity and area impact to nearby properties. R-A is maintained on the far eastern side, ensuring that any development in that area will be smaller and more compatible with the rural character transitioning into Washington County unincorporated area and Fayetteville's Planning Area. The institutional uses will be compatible with other similar institutions in the neighborhood.

***Land Use Plan Analysis:*** The proposal is compatible with the goals in City Plan 2030, adopted land use policies, and the future land use designation for this location. This property, designated as a City Neighborhood Area, is intended to have multiple types of residential and non-residential development, which the combination of surrounding zoning and the proposed zoning accomplishes different land uses. Furthermore, the area designated as Natural Area is protected best when left under the existing R-A district, which requires large areas of land and street frontage per dwelling to develop. There are similar situations across Fayetteville where R-A has been used to limit development in floodplains. While the applicant could fill the floodplain and develop it under the existing R-A zoning district, they propose to protect this environmentally sensitive portion of the site and concentrate development in the least sensitive areas.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

**Finding:** The property could be developed for a church with a conditional use permit in R-A zoning, so this proposal does not appear to be fully justified in staff's opinion.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

**Finding:** Rezoning the property to P-1 will increase traffic in this area as the site develops, but staff believes that the surrounding road network can handle the influx of potential new residents. Crossover Road has been recently improved as a divided arterial. If the site develops with access to Zion Road, substantial improvements to this unimproved road are likely.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

**Finding:** Rezoning this property from R-A to P-1 would potentially increase the use of city services at this location, but staff does not believe this would have a burdensome impact given the existing infrastructure in the area.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
  - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

**Finding:** N/A

**RECOMMENDATION:** Planning staff recommends forwarding RZN 18-6125 to City Council with a recommendation for approval:

**RECOMMENDED MOTION:** "I move to forward RZN 18-6125 to City Council with a recommendation for approval."

<b>PLANNING COMMISSION ACTION:</b>		<b>Required</b>	<b><u>YES</u></b>
Date: <u>April 9, 2018</u>	<input type="checkbox"/> Tabled	<input type="checkbox"/> Forwarded	<input checked="" type="checkbox"/> Denied
Motion: <b>Autry</b>	Motion to forward to CC		
Second: <b>Scroggin</b>	Motion failed; Commissioners Hoffman, Scroggin, Belden, Niederman, Johnson dissenting		
Vote: <b>4-5-0</b>			

**BUDGET/STAFF IMPACT:**

None

**Attachments:**

- Unified Development Code sections 161.03 and 161.32
- Request letter
- Rezone exhibit
- One Mile Map
- Close-Up Map
- Current Land Use Map
- Future Land Use Map

### 161.03 - District R-A, Residential-Agricultural

(A) *Purposes* . The regulations of the agricultural district are designed to protect agricultural land until an orderly transition to urban development has been accomplished; prevent wasteful scattering of development in rural areas; obtain economy of public funds in the providing of public improvements and services of orderly growth; conserve the tax base; provide opportunity for affordable housing, increase scenic attractiveness; and conserve open space.

(B) *Uses* .

(1) *Permitted Uses*.

Unit 1	City-wide uses by right
Unit 3	Public protection and utility facilities
Unit 6	Agriculture
Unit 7	Animal husbandry
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 37	Manufactured homes
Unit 41	Accessory dwellings
Unit 43	Animal boarding and training

(2) *Conditional Uses* .

Unit 2	City-wide uses by conditional use permit
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 20	Commercial recreation, large sites
Unit 24	Home occupations
Unit 35	Outdoor Music Establishments

Unit 36	Wireless communications facilities
Unit 42	Clean technologies

(C) *Density*.

Units per acre	One-half (½)
----------------	--------------

(D) *Bulk and Area Regulations*.

Lot width minimum	200 feet
Lot Area Minimum:	
Residential:	2 acres
Nonresidential:	2 acres
Lot area per dwelling unit	2 acres

(E) *Setback Requirements*.

Front	Side	Rear
35 feet	20 feet	35 feet

(F) *Height Requirements*. There shall be no maximum height limits in the R-A District, provided, however, that any building which exceeds the height of 15 feet shall be setback from any boundary line of any residential district a distance of 1.0 foot for each foot of height in excess of 15 feet. Such setbacks shall be measured from the required setback lines.

(G) *Building area*. None.

### 161.32 - District P-1, Institutional

*Purpose.* The Institutional District is designed to protect and facilitate use of property owned by larger public institutions and church related organizations.

(B) *Uses.*

(1) *Permitted Uses .*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 26	Multi-family dwellings
Unit 36	Wireless communications facilities
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and Area Regulations.* None.

(E) *Setback Regulations.*

Front	30 feet
Front, if parking is allowed between the right-of-way and the building	50 feet
Side	20 feet
Side, when contiguous to a residential district	25 feet
Rear	25 feet
Rear, from center line of public alley	10 feet

(F) *Height Regulations.* There shall be no maximum height limits in P-1 Districts, provided, however, if a building exceeds the height of two (2) stories, the portion of the building that exceeds two (2) stories shall have an additional setback from any boundary line of an adjacent residential district. The amount of additional setback for the portion of the building over two (2) stories shall be equal to the difference between the total height of that portion of the building, and two (2) stories.

(G) *Building Area.* On any lot the area occupied by all buildings shall not exceed 60% of the total area of such lot.



**JORGENSEN**  
**+ASSOCIATES**  
Civil Engineering · Surveying  
Landscape Architecture Services

124 W Sunbridge Drive, Suite 5  
Fayetteville, AR 72703

Office: 479.442.9127  
Fax: 479.582.4807  
[www.jorgensenassoc.com](http://www.jorgensenassoc.com)

February 16, 2018

City of Fayetteville  
113 W. Mountain  
Fayetteville, AR 72701

Attn: Development Services  
Re: Rezoning

This letter is in regards to a proposed rezoning and the following required information:

- A. The current owner of this site is as follows:
  - a. 765-13209-001 (Johnny and Janet Kessner)
- B. Currently this property is zoned RA. The reason for the requested *P-1* zoning is to allow this property to be suitable for a church.
- C. The property due west is zoned R-A. The property to the north is RSF-4 and due south is R-O. The compatibility of *P-1* seems to fit well with the adjacent uses (athletic center, assisted living, funeral home, botanical gardens, residential).
- D. Existing water and sewer are on 265.
- E. We feel the requested zonings are in line with the goals of the City Plan 2030 for rezoning and development.
- F. *P-1* is the appropriate zoning for the intended use.
- G. HWY 265 has ample capacity to handle any additional traffic.
- H. The potential to increase the population density in this area as a result of this rezoning would not undesirably increase load on public services.
- I. R-A is not the appropriate zoning for a church.

Please review this application and let us know if there are any questions that we may be able to answer.

Thanks.

Jorgensen + Associates



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2/12/18

City of Fayetteville  
113 W Mountain  
Fayetteville, AR 72701

Att: Planning Dept.  
Re: Rezone Property at 4550 Crossover Rd  
(Parcel # 765-13209-001)

Attached please find information pertaining to the rezoning request for property at 4550 Crossover Rd. This property is currently zoned R-A and the request is P-1 for a church. Access will be off of Hwy 265. Water and sewer service is located on Hwy 265.

Please review this information and call concerning any questions you may have.

Thank you.

Sincerely;

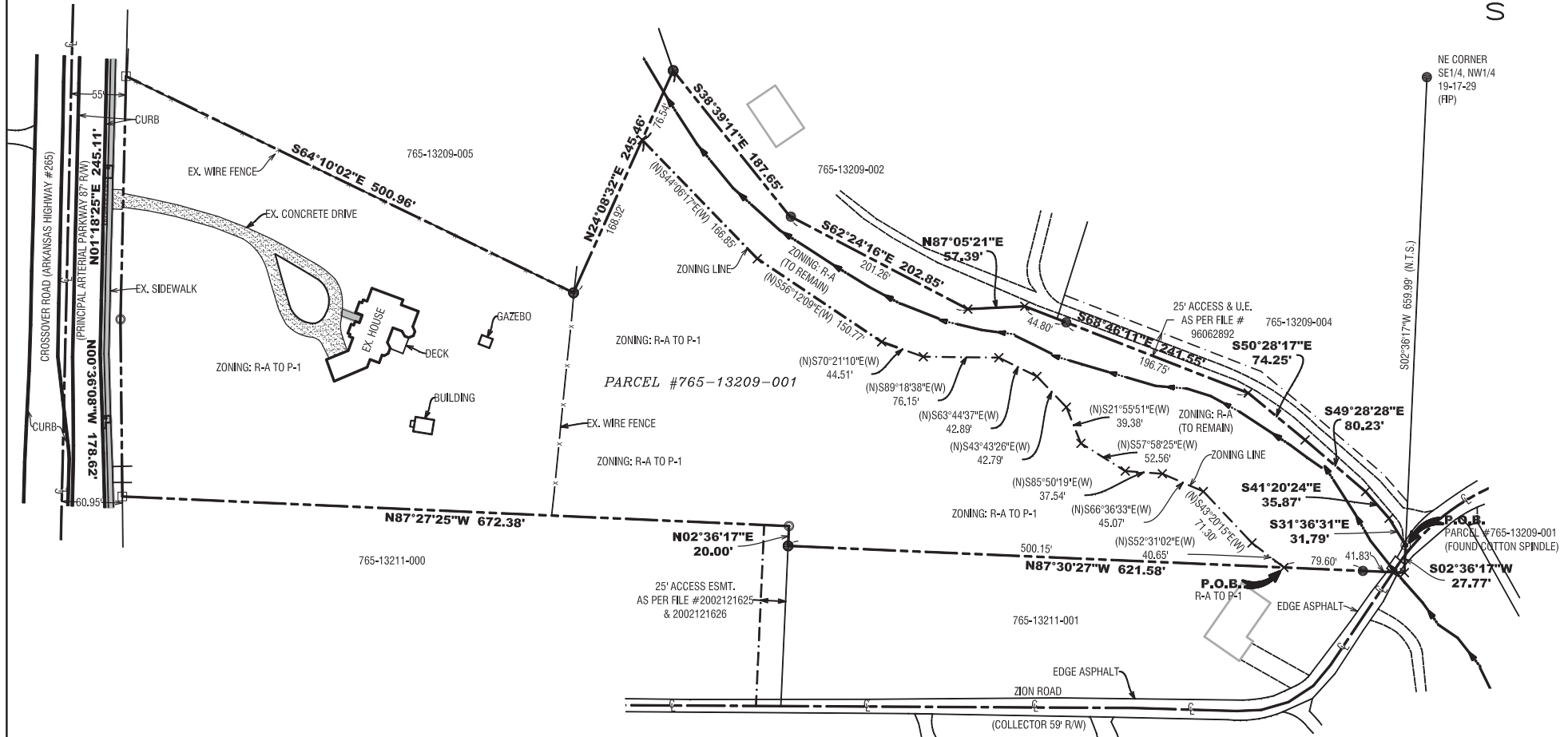
David L. Jorgensen, P.E.

# LEGAL DESCRIPTION: (PARCEL #765-13209-001)

A part of the SE1/4 of the NW1/4 of Section 19, T17N, R29W in Washington County, Arkansas, and being described as follows: Commencing at the NE Corner of said SE1/4, NW1/4, thence S02°36'17"W 659.99 feet to the POINT OF BEGINNING; thence S02°36'17"W 27.77 feet, thence N87°30'27"W 621.58 feet, thence N02°36'17"E 20.00 feet, thence N87°27'25"W 672.38 feet, thence N00°36'08"W 178.62 feet, thence N01°18'25"E 245.11 feet, thence S64°10'02"E 500.96 feet, thence N24°08'32"E 245.46 feet, thence S38°39'11"E 187.65 feet, thence S62°24'16"E 202.85 feet, thence N87°05'21"E 57.39 feet, thence S68°46'11"E 241.55 feet, thence S50°28'17"E 74.25 feet, thence S49°28'28"E 80.23 feet, thence S41°20'24"E 35.87 feet, thence S31°36'31"E 31.79 feet to the POINT OF BEGINNING; Containing 8.2337 acres more or less subject to easements and right of way of record.

# LEGAL DESCRIPTION: (R-A TO P-1)

A part of the SE1/4 of the NW1/4 of Section 19, T17N, R29W in Washington County, Arkansas, and being described as follows: Commencing at the NE Corner of said SE1/4, NW1/4, thence S02°36'17"W 687.76 feet, thence N87°30'27"W 121.43 feet to the POINT OF BEGINNING; thence N87°30'27"W 500.15 feet, thence N02°36'17"E 20.00 feet, thence N87°27'25"W 672.38 feet, thence S44°06'17"E 166.85 feet, thence S56°12'09"E 150.77 feet, thence S70°21'10"E 44.51 feet, thence S89°18'38"E 76.15 feet, thence S63°44'37"E 42.89 feet, thence S43°43'26"E 42.79 feet, thence S21°55'51"E 39.38 feet, thence S57°58'25"E 52.56 feet, thence S85°50'19"E 37.54 feet, thence S66°36'33"E 45.07 feet, thence S43°20'15"E 71.30 feet, thence S52°31'02"E 40.65 feet to the POINT OF BEGINNING; Containing 6.6378 acres more or less subject to easements and right of way of record.



×	CALCULATED POINT	—	FLOWLINE CREEK	—	ACCESS EASEMENT
●	FOUND IRON PIN	—	BOUNDARY LINE	—	EXISTING WIRE FENCE
○	FOUND COTTON SPINDLE	—	ZONING LINE	—	
□	FOUND ALUMINUM MONUMENT	—	CENTERLINE STREET	—	
○	SET IRON PIN & CAP				



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PROJECT TITLE: KESSNER REZONE  
LOCATION: FAYETTEVILLE, AR.  
SHEET TITLE: EXHIBIT "A"  
DRAWN BY: BJR  
SHEET SCALE: 1"=100'  
DATE: MARCH 28, 2018  
PROJECT FILE: Z/LSO/2018019/REZONE

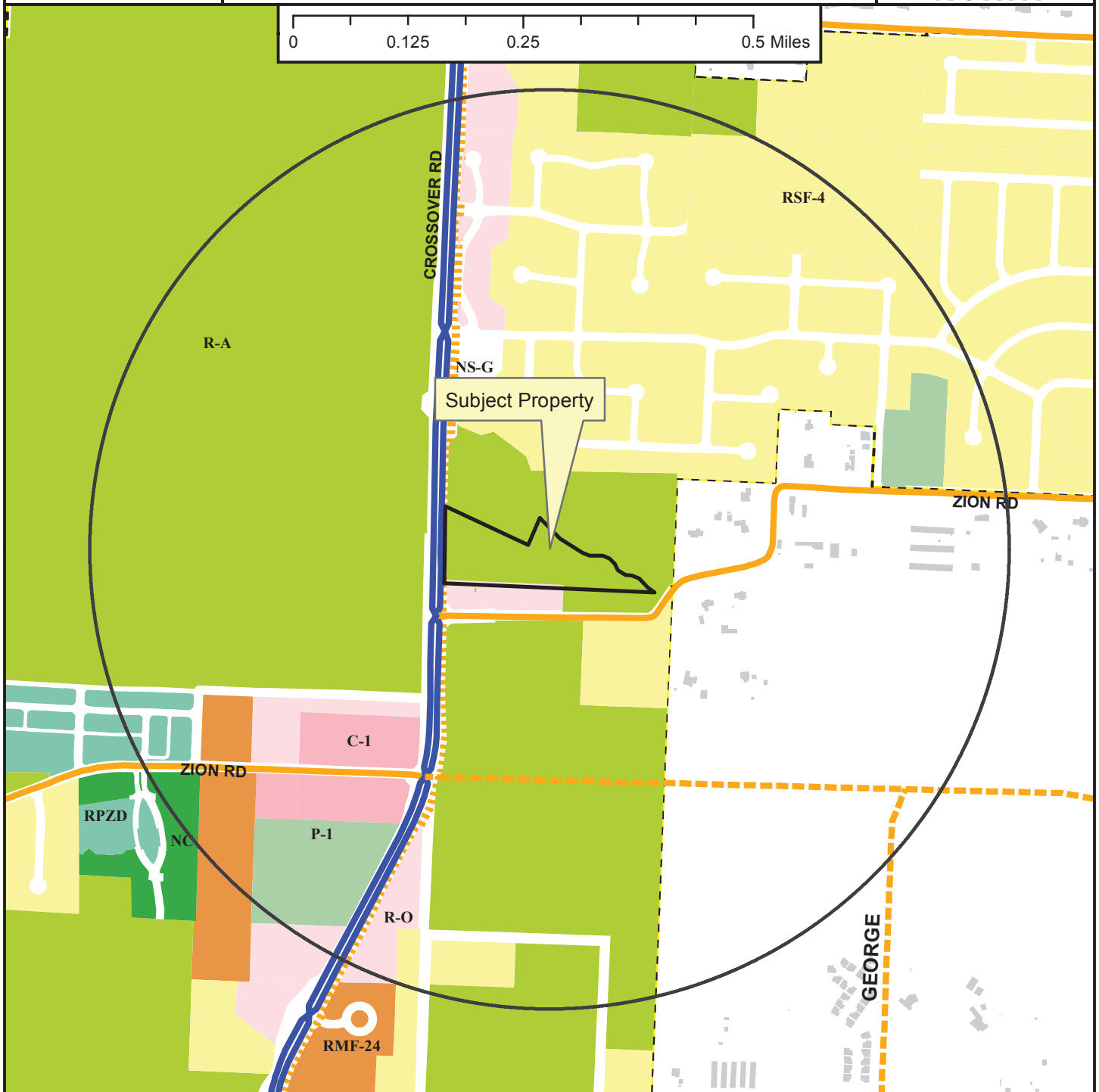
RZN18-6125

# JOHNNY KESSNER

One Mile View

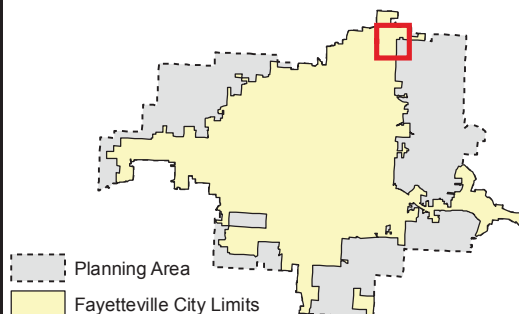


0 0.125 0.25 0.5 Miles



## Legend

- Planning Area
- Fayetteville City Limits
- Shared Use Paved Trail
- Trail (Proposed)
- Building Footprint

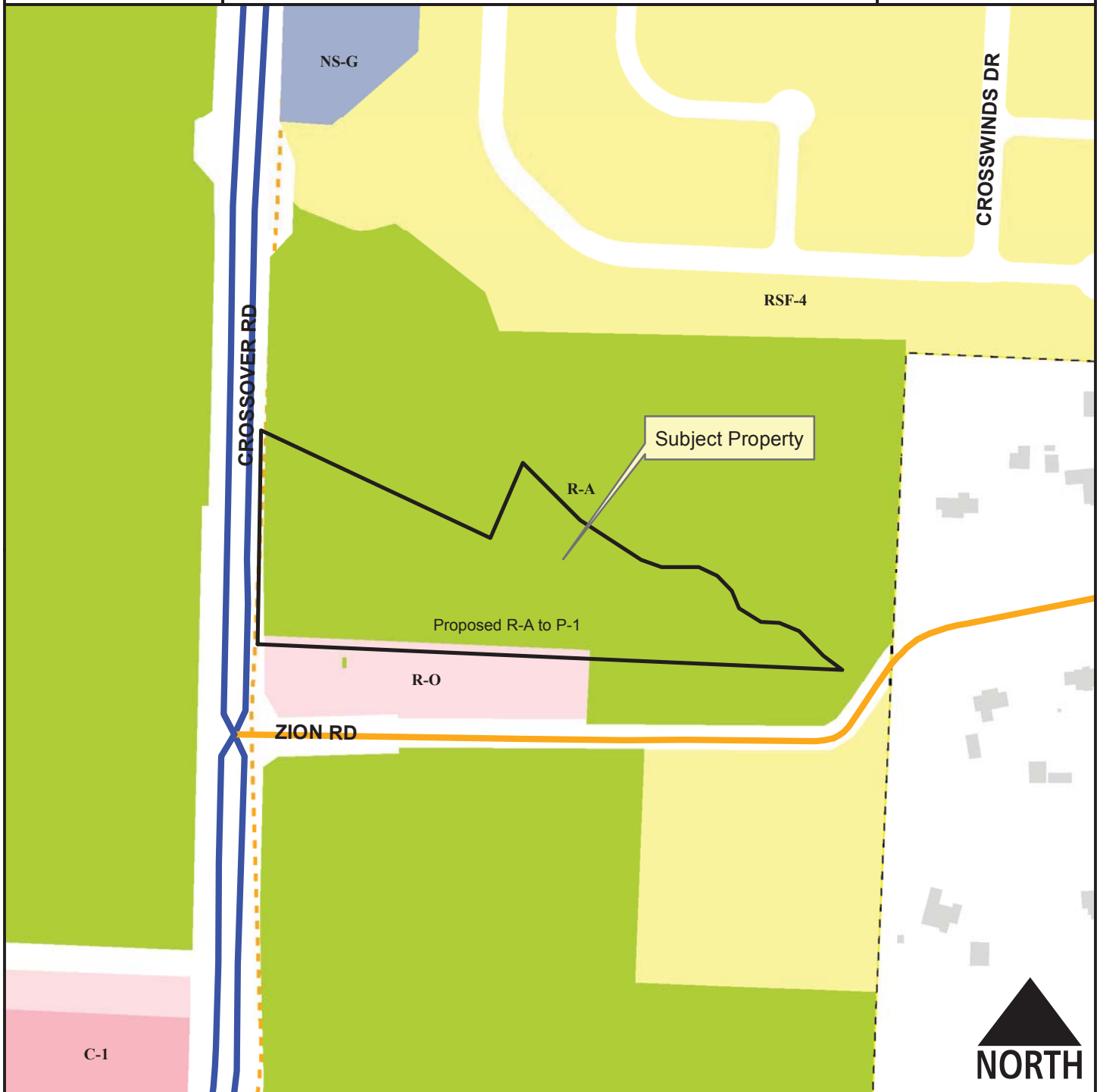


- Zoning**
- RESIDENTIAL SINGLE-FAMILY**
    - Residential-Agricultural
    - RSF-5
    - RSF-1
    - RSF-2
    - RSF-4
    - RSF-7
    - RSF-8
    - RSF-18
  - RESIDENTIAL MULTI-FAMILY**
    - RT-12 Residential Two and Three-family
    - RMF-6
    - RMF-12
    - RMF-18
    - RMF-24
    - RMF-40
  - INDUSTRIAL**
    - I-1 Heavy Commercial and Light Industrial
    - I-2 General Industrial
- EXTRACTION**
- E-1
- COMMERCIAL**
- Residential-Office
  - C-1
  - C-2
  - C-3
- FORM BASED DISTRICTS**
- Downtown Core
  - Urban Thoroughfare
  - Main Street Center
  - Downtown General
  - Community Services
  - Neighborhood Services
  - Neighborhood Conservation
- PLANNED ZONING DISTRICTS**
- Commercial, Industrial, Residential
- INSTITUTIONAL**
- P-1

RZN18-6125

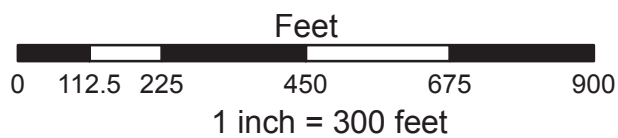
# JOHNNY KESSNER

Close Up View



## Legend

- Planning Area
- Fayetteville City Limits
- Shared Use Paved Trail
- Trail (Proposed)
- Building Footprint



Zoning	Acres
R-A to P-1	7.1
Total	7.1






RZN18-6125

Current Land Use

JOHNNY KESSNER



**Streets Existing  
MSP Class**



-  COLLECTOR
-  PRIN ARTERIAL PKWY
-  Trail (Proposed)
-  Planning Area
-  Fayetteville City Limits

Feet



1 inch = 300 feet

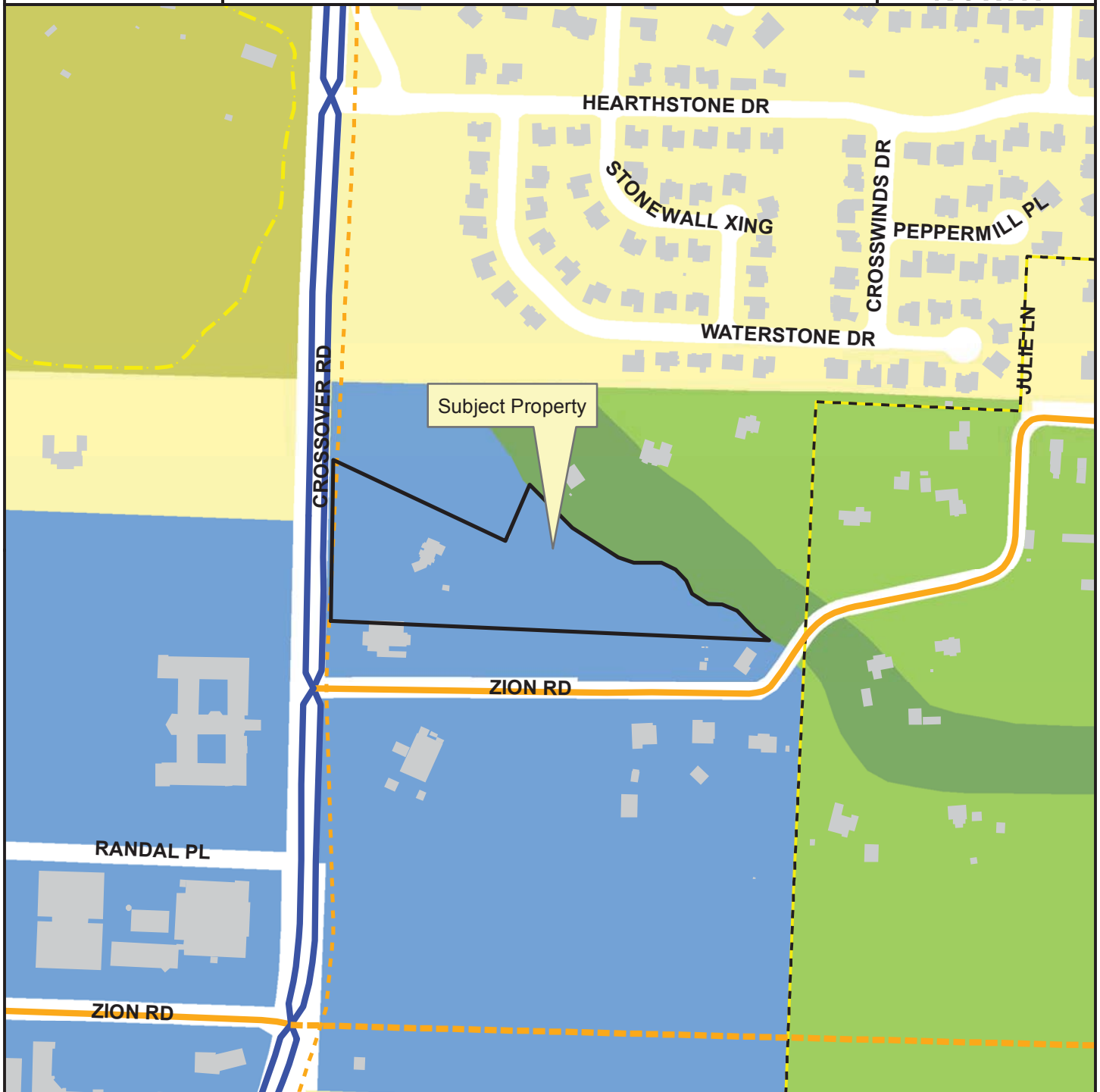
**FEMA Flood Hazard Data**

-  100-Year Floodplain
-  Floodway

RZN18-6125

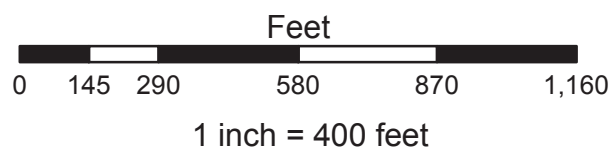
Future Land Use

# JOHNNY KESSNER



## Legend

- Planning Area
- Fayetteville City Limits
- Shared Use Paved Trail
- Trail (Proposed)
- Building Footprint



## FUTURE LAND USE 2030

- Natural Area
- Rural Area
- Residential Neighborhood Area
- City Neighborhood Area
- Civic and Private Open Space/Parks