

City of Fayetteville Staff Review Form

2019-0267

Legistar File ID

5/21/2019

City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Garner Stoll

5/3/2019

CITY PLANNING (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN 19-6618: Rezone (1372 S. COLLEGE AVE./MILLWEE, 563): Submitted by JESSE MILLWEE for property located at 1372 S. COLLEGE AVE. The property is zoned NC, NEIGHBORHOOD CONSERVATION and contains approximately 0.24 acres. The request is to rezone the property to NS-L, NEIGHBORHOOD SERVICES-LIMITED.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? NA

Current Budget \$ -

Funds Obligated \$ -

Current Balance \$ -

Does item have a cost? No

Item Cost

Budget Adjustment Attached? NA

Budget Adjustment

Remaining Budget \$ -

V20180321

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



**MEETING OF MAY 21, 2019**

**TO:** Mayor, Fayetteville City Council

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

**FROM:** Jonathan Curth, Senior Planner

**DATE:** May 3, 2019

**SUBJECT:** **RZN 19-6618: Rezone (1372 S. COLLEGE AVE./MILLWEE, 563):** Submitted by JESSE MILLWEE for property located at 1372 S. COLLEGE AVE. The property is zoned NC, NEIGHBORHOOD CONSERVATION and contains approximately 0.24 acres. The request is to rezone the property to NS-L, NEIGHBORHOOD SERVICES-LIMITED.

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**RECOMMENDATION:**

The Planning Commission and staff recommend approval of an ordinance to rezone the subject property to NS-L, Neighborhood Services, Limited, as shown in the attached Exhibits 'A' and 'B'.

**BACKGROUND:**

The subject property is located on the northeast corner of South College Avenue/Ella Street, across from the main pavilion and tennis court area of Walker Park. Developed in 1949 with an approximately 754 square foot single-family dwelling, the property includes Lot 5 and a portion of Lot 4 of Block 5 of the Berl Dodd Addition subdivision. In 2008, the property was rezoned to NC, Neighborhood Conservation, as a part of the Walker Park Neighborhood Plan.

*Request:* The request is to rezone the subject property from NC, Neighborhood Conservation, to NS-L, Neighborhood Services, Limited. The applicant has stated in their request letter that this rezoning is necessary to facilitate the use of the property for a mobile food vendor. Mobile vendors are only permitted in zoning districts where the vendor's use is a permitted use-by-right. The NC zoning district does allow UU-12a, Limited Business, which includes small restaurants and retail, but only as a conditional use.

*Land Use Compatibility:* A rezoning to NS-L will allow for residential development that is generally comparable to other housing in the area, including narrow-lot, single-family residential to the north and a two-family dwelling to the south. Although not currently represented in this portion of the Walker Park neighborhood, the limited nonresidential uses permitted under the NS-L zoning district are required to be developed with comparable setbacks, lot width, lot area, and building height limitations as found in the ubiquitous NC zoning in the immediate vicinity. While a conditional use permit under the existing NC zoning district may be a more appropriate means of

ensuring compatibility for a mid-block location, staff contends that rezoning the applicant's corner location is compatible with surrounding residential uses and Walker Park.

*Land Use Plan Analysis:* The Walker Park Neighborhood Plan encourages a variety of housing types while conserving the existing single-family fabric where it is intact. Additionally, the Plan acknowledges the neighborhood's current mix of residential and nonresidential uses, including some neighborhood commercial, and that this diversity of uses be reflected throughout the neighborhood to ensure a traditional pattern of growth. As the lowest intensity zoning district in Fayetteville to permit nonresidential uses by right, staff supports the application of NS-L to a corner lot along a Collector Street with direct access to a major City park.

Further, the Walker Park Neighborhood Plan calls for an increased presence of residents and pedestrians in the eponymous park itself as a means of addressing safety concerns. Rezoning this property would make low-intensity nonresidential development more feasible, possibly contributing to greater activity in this portion of Walker Park. A greater degree of activity in public spaces has been associated with higher degrees of safety as residents take ownership and pride in an area.

Lastly, and as stated earlier in this report, the City Council has approved multiple rezonings over the last two years allowing 2-, 3-, and 4-family dwellings and nonresidential uses in mid-block locations amidst single-family dwellings. These recent decisions are viewed by staff as a shift in the Walker Park Neighborhood Plan policies guiding staff to recommend that the current rezoning request is in-line with land use policies of the City Council.

**DISCUSSION:**

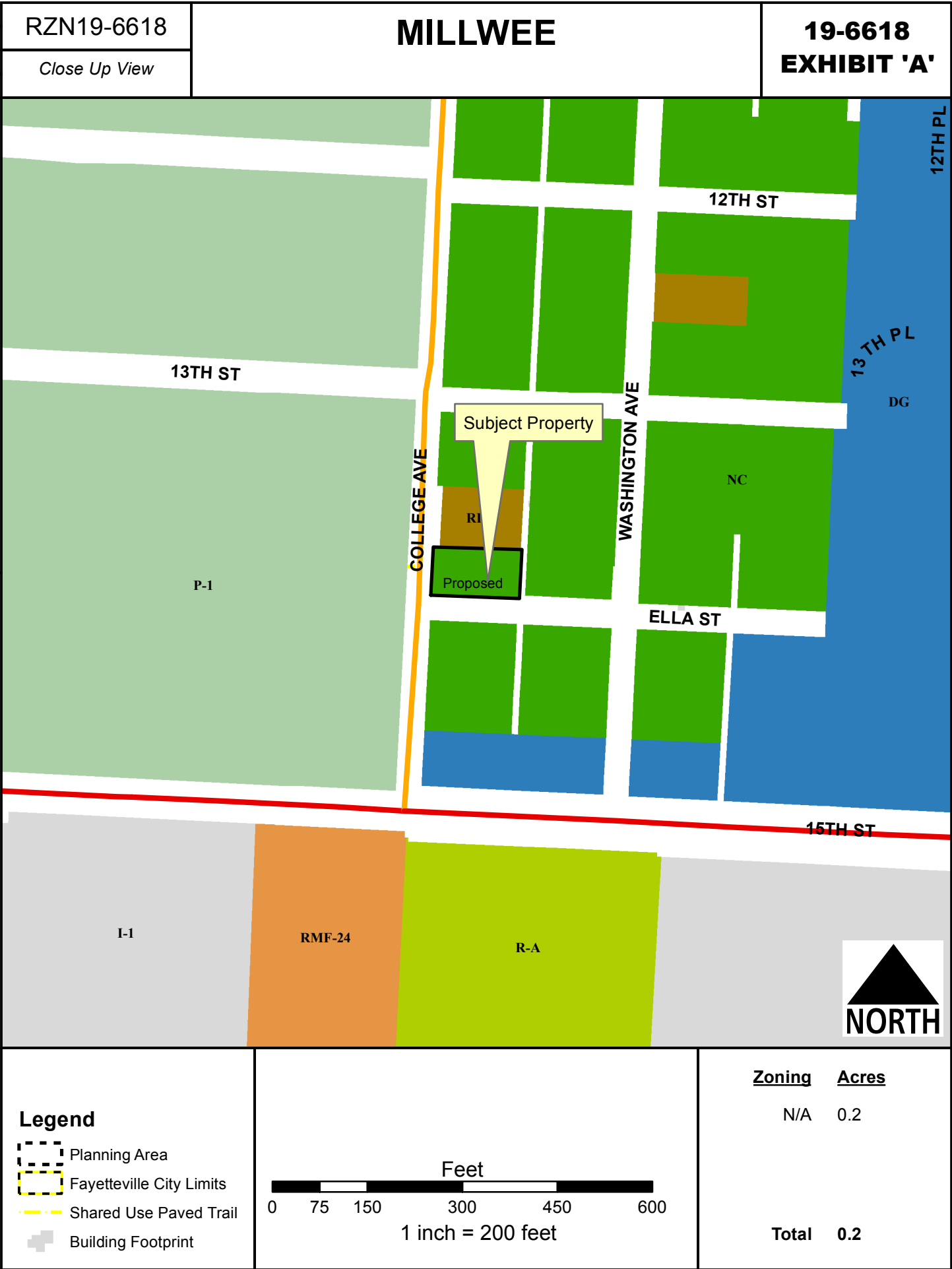
On April 22, 2019, the Planning Commission forwarded the proposal to City Council with a recommendation for approval by a vote of 7-0-0. No public comment was made.

**BUDGET/STAFF IMPACT:**

N/A

**Attachments:**

- Exhibit A
- Exhibit B
- Planning Commission Staff Report



**19-6618**  
**EXHIBIT 'B'**

**RE: Legal Description for 1372 S. College Ave. (765-03359-001)**

A part of Lots 4 & 5 all in Block 5, Berl Dodd Addition to the City of Fayetteville, Arkansas, as shown on plat of record in plat record book 4, at page 219, plat records of Washington County, Arkansas; being more particularly described as follows: Beginning at the SW corner of said Lot 5, said point being a 1/2 " iron rebar; thence N 00°03'17" E, 76.1 feet along the East line of said Lots 4 & 5, to a set 1/2" Iron rebar; thence N 89°05'32" E, 140.02 feet to a set 1/2" Iron rebar on the East line of said Lot 4; thence S 00°03'17" W, 77.68 feet to a set 1/2" Iron rebar at the SE corner of said Lot 5; thence S 89°44'16" W, 140.00 feet to the Point of Beginning, and containing 0.25 acres, more or less.



**TO:** Fayetteville Planning Commission

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

**FROM:** Jonathan Curth, Senior Planner

**MEETING DATE:** April 22, 2019 (Updated with Planning Commission Results)

**SUBJECT:** **RZN 19-6618: Rezone (1372 S. COLLEGE AVE./MILLWEE, 563):**  
Submitted by JESSE MILLWEE for property located at 1372 S. COLLEGE AVE. The property is zoned NC, NEIGHBORHOOD CONSERVATION and contains approximately 0.24 acres. The request is to rezone the property to NS-L, NEIGHBORHOOD SERVICES-LIMITED.

**RECOMMENDATION:**

Staff recommends forwarding **RZN 19-6618** to City Council with a recommendation of approval based on the findings contained in this report.

**RECOMMENDED MOTION:**

"I move to forward **RZN 19-6618** to City Council with a recommendation for approval."

**BACKGROUND:**

The subject property is located on the east side of South College Avenue, between 13<sup>th</sup> Street to the north and Ella Street to the south. Developed in 1949 with an approximately 754 square foot single-family dwelling, the property includes Lot 5 and a portion of Lot 4 of Block 5 of the Berl Dodd Addition subdivision. In 2008, the property was rezoned to NC, Neighborhood Conservation, as a part of the Walker Park Neighborhood Plan. Surrounding land use and zoning is depicted in Table 1.

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

| <b>Direction</b> | <b>Land Use</b>           | <b>Zoning</b>                         |
|------------------|---------------------------|---------------------------------------|
| North            | Single-family Residential | RI-U, Residential Intermediate, Urban |
| South            | 2-family Residential      | NC, Neighborhood Conservation         |
| East             | Single-family Residential | NC, Neighborhood Conservation         |
| West             | Walker Park               | P-1, Institutional                    |

*Request:* The request is to rezone the subject property from NC, Neighborhood Conservation, to NS-L, Neighborhood Services, Limited. The applicant has stated in their request letter that this rezoning is necessary to facilitate the use of the property for a mobile food vendor. Mobile vendors are only permitted in zoning districts where the vendor's use is a permitted use-by-right. The NC zoning district does allow UU-12a, Limited Business, which includes small restaurants and retail, but only as a conditional use.

*Public Comment:* Staff has received no public comment regarding the request.

## INFRASTRUCTURE:

- Streets:** The subject property has access to both South College Avenue and East Ella Street, Master Street Plan-designated Collector and Local streets respectively. College Avenue is partially-improved with asphalt paving and curb and gutter on the property's frontage. Ella Street is unimproved with asphalt paving and an open ditch on the property's frontage. Any street improvements required in this area will be determined at the time of development proposal.
- Water:** Public water is available to the site. A 6-inch water main runs along the College Avenue right-of-way.
- Sewer:** Public sanitary sewer is available to the site. A 6-inch sanitary sewer main runs along the College Avenue right-of-way.
- Drainage:** Any additional improvements or requirements for drainage would be determined at the time of development. No portion of the subject property lies within a FEMA designated 100-year floodplain, a Streamside Protection Zone, or the Hillside-Hilltop Overlay District (HHOD). Hydric soils are present on this site and a wetland evaluation may be required at the time of development proposal to ensure compliance with state and federal guidelines.
- Fire:** The Fire Department did not express any concerns with this request.
- Police:** The Police Department did not express any concerns with this request.

CITY PLAN 2030 FUTURE LAND USE PLAN: City Plan 2030 Future Land Use Plan designates the property within the proposed rezone as **Complete Neighborhood Plan** in association with the Walker Park Neighborhood Plan. A central goal of this plan was to preserve single-family neighborhoods while encouraging additional housing types and a mixture of uses. The plan states that the neighborhood should have a balance of non-residential uses and housing for different income levels. A major emphasis of the plan is connectivity and walkability, with a connection of the street grid and improved mobility that will unify the neighborhood over time.

Since 2016, the City Council has approved multiple rezonings in the Walker Park neighborhood that permit construction of 2-, 3-, and 4-family dwellings and nonresidential uses in mid-block locations and adjacent to single-family dwellings. Staff interprets these decisions as policy direction from the Council for the Walker Park Neighborhood and has incorporated this direction into this rezoning recommendation.

## 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:** A rezoning to NS-L will allow for residential development that is generally comparable to other housing in the area, including narrow-lot, single-family residential to the north and a two-family dwelling to the south. Although not currently represented in this portion of the Walker Park neighborhood, the limited nonresidential uses permitted under the NS-L zoning district are required to be developed with comparable*

lot width, lot area, and building height limitations as found in the ubiquitous NC zoning in the immediate vicinity. While a conditional use permit under the existing NC zoning district may be a more appropriate means of ensuring compatibility for a mid-block location, staff contends that rezoning the applicant's corner location is compatible with surrounding residential uses and Walker Park.

**Land Use Plan Analysis:** The Walker Park Neighborhood Plan encourages a variety of housing types while conserving the existing single-family fabric where it is intact. Additionally, the Plan acknowledges the neighborhood's current mix of residential and nonresidential uses, including some neighborhood commercial, and that this diversity of uses be reflected throughout the neighborhood to ensure a traditional pattern of growth. As the lowest intensity zoning district in Fayetteville to permit nonresidential uses by right, staff supports the application of NS-L to a corner lot along a Collector Street with direct access to a major City park.

Further, the Walker Park Neighborhood Plan calls for an increased presence of residents and pedestrians in the eponymous park itself as a means of addressing safety concerns. Rezoning this property would make low-intensity nonresidential development more feasible, possibly contributing to greater activity in this portion of Walker Park. A greater degree of activity in public spaces has been associated with higher degrees of safety as residents take ownership and pride in an area.

Lastly, and as stated earlier in this report, the City Council has approved multiple rezonings over the last two years allowing 2-, 3-, and 4-family dwellings and nonresidential uses in mid-block locations amidst single-family dwellings. These recent decisions are viewed by staff as a shift in the Walker Park Neighborhood Plan policies guiding staff to recommend that the current rezoning request is in-line with land use policies of the City Council.

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

**Finding:** The applicant has requested the zoning change to allow for development of the property that is compatible with adjacent land uses. Staff generally agrees with this assertion, recognizing that this portion of the Walker Park Neighborhood Plan is distinct given its immediate access to Walker Park itself and the College Avenue transportation corridor. Rezoning the property to NS-L will permit land uses that are limited in intensity and complementary to the area's existing development pattern.

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

**Finding:** This proposal is not expected to increase traffic danger or congestion to a significant degree over the existing zoning. Future development will be subject to City street design and access management standards. The property's location on a Collector Street will direct vehicular traffic towards major corridors rather than in to nearby established neighborhoods.



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:**      **The NS-L zoning district includes a density limitation of 10 units per acre, which is identical to the existing NC zoning district. As such, staff does not anticipate an undesirable increase in potential impact on City or Fayetteville Public Schools facilities.**

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 19-6618 to the City Council with a recommendation for approval.**

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|  |                                 |   |                                 |                 |                   |
|--|---------------------------------|---|---------------------------------|-----------------|-------------------|
| <b>PLANNING COMMISSION ACTION:</b>                       |                                 |   |                                 | <b>Required</b> | <b><u>YES</u></b> |
| <b>Date:</b> <u>April 22, 2019</u>                       | <input type="checkbox"/> Tabled | <input checked="" type="checkbox"/> Forwarded | <input type="checkbox"/> Denied |                 |                   |
| <b>Motion:</b> Canada, with a recommendation of approval |                                 |   |                                 |                 |                   |
| <b>Second:</b> Niederman                                 |                                 |   |                                 |                 |                   |
| <b>Vote:</b> 7-0-0                                       |                                 |   |                                 |                 |                   |

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**BUDGET/STAFF IMPACT:**

None

**Attachments:**

- Unified Development Code:
  - §161.18 – NS-L, Neighborhood Services, Limited
  - §161.29 - NC, Neighborhood Conservation
- Request letter
- Walker Park Neighborhood Illustrated Plan Exhibit
- One Mile Map
- Close-up Map
- Current Land Use Map
- Future Land Use Map

### 161.18 - NS-L, Neighborhood Services - Limited

(A) *Purpose.* The NS-L Neighborhood Services - Limited district is designed to serve as a mixed use area of low intensity. Neighborhood Services promotes a walkable, pedestrian-oriented neighborhood development form with sustainable and complementary neighborhood businesses that are compatible in scale, aesthetics, and use with surrounding land uses. For the purpose of Chapter 96: Noise Control, the Neighborhood Services district is a residential zone.

(B) *Uses.*

(1) *Permitted Uses.*

|          |   |
|----------|---|
| Unit 1   | City-wide uses by right                 |
| Unit 8   | Single-family dwellings                 |
| Unit 9   | Two (2) family dwellings                |
| Unit 10  | Three (3) and four (4) family dwellings |
| Unit 12a | Limited Business                        |
| Unit 24  | Home occupations                        |
| Unit 41  | Accessory dwelling units                |
| Unit 44  | Cluster housing development             |

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

(2) *Conditional Uses.*

|         |  |
|---------|--|
| Unit 2  | City-wide uses by conditional use        |
| Unit 3  | Public protection and utility facilities |
| Unit 4  | Cultural and recreational facilities     |
| Unit 5  | Government facilities                    |
| Unit 13 | Eating places                            |
| Unit 15 | Neighborhood shopping goods              |
| Unit 19 | Commercial recreation, small sites       |
| Unit 25 | Offices, studios and related services    |
| Unit 26 | Multi-family dwellings                   |
| Unit 36 | Wireless communication facilities*       |
| Unit 40 | Sidewalk cafes                           |
| Unit 45 | Small scale production                   |

(C) *Density.*

|                |                  |
|----------------|------------------|
| Units per acre | Ten (10) or less |
|----------------|------------------|

(D) *Bulk and Area.*

(1) *Lot Width Minimum.*

|               |         |
|---------------|---------|
| Single-family | 35 feet |
| Two (2)family | 35 feet |
| Three or more | 35 feet |

|                |      |
|----------------|------|
| All other uses | None |
|----------------|------|

(2) *Lot Area Minimum.*

|  |   |
|--|---|
| Single-family                            | 4,000 square feet                               |
| Two (2) family or more                   | 3,000 square feet of lot area per dwelling unit |
| All other permitted and conditional uses | None  |

(E) *Setback Regulations.*

|        |  |
|--------|--|
| Front: | A build-to zone that is located between 10 and 25 feet from the front property line. |
| Side   | 5 feet   |
| Rear   | 15 feet  |

(F) *Building Height Regulations.*

|                         |           |
|-------------------------|-----------|
| Building Height Maximum | 3 stories |
|-------------------------|-----------|

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

## 161.29 - Neighborhood Conservation

(A) *Purpose.* The Neighborhood Conservation zone has the least activity and a lower density than the other zones. Although Neighborhood Conservation is the most purely residential zone, it can have some mix of uses, such as civic buildings. Neighborhood Conservation serves to promote and protect neighborhood character. For the purposes of Chapter 96: Noise Control, the Neighborhood Conservation district is a residential zone.

(B) *Uses.*

(1) *Permitted Uses.*

|         |                         |
|---------|-------------------------|
| Unit 1  | City-wide uses by right |
| Unit 8  | Single-family dwellings |
| Unit 41 | Accessory dwellings     |

(2) *Conditional Uses.*

|          |  |
|----------|--|
| Unit 2   | City-wide uses by conditional use permit   |
| Unit 3   | Public protection and utility facilities   |
| Unit 4   | Cultural and recreational facilities       |
| Unit 9   | Two (2) family dwellings                   |
| Unit 10  | Three (3) and four (4) family dwellings    |
| Unit 12a | Limited business*                          |
| Unit 24  | Home occupations                           |
| Unit 25  | Offices, studios, and related services     |
| Unit 28  | Center for collecting recyclable materials |
| Unit 36  | Wireless communication facilities          |
| Unit 44  | Cluster Housing Development                |

(C) *Density.* Ten (10) Units Per Acre.

(D) *Bulk and Area Regulations.*

(1) *Lot Width Minimum.*

|               |         |
|---------------|---------|
| Single Family | 40 feet |
| Two Family    | 80 feet |
| Three Family  | 90 feet |

(2) *Lot Area Minimum.* 4,000 square feet

(E) *Setback Regulations.*

|                                    |  |
|------------------------------------|--|
| Front                              | A build-to zone that is located between the front property line and a line 25 feet from the front property line. |
| Side                               | 5 feet   |
| Rear                               | 5 feet   |
| Rear, from center line of an alley | 12 feet  |

(F) *Building Height Regulations.*

|                         |           |
|-------------------------|-----------|
| Building Height Maximum | 3 stories |
|-------------------------|-----------|

March 4, 2018

**City of Fayetteville**

113 W. Mountain St.  
Fayetteville, AR 72701

Attn: Planning Department

**RE: 1372 S. College Ave. Rezoning Request**

**Dear Staff,**

I, Jesse Millwee, on behalf of the owner am requesting a rezoning to allow for a mobile vendor/ food truck at 1372 S. College. The current NC zoning doesn't allow for this particular CUP. The site is approximately 0.25 acres and has two curb cuts. One curb cut is off of S. College Ave. and would be utilized for a food truck or two. The other curb cut is off E. Ella St. and would serve the existing residence or a second food truck. Below, is additional information regarding the request. I am formally requesting 1372 S. College, Fayetteville, AR to be rezoned from NC, Neighborhood Conservation, to NS-L Neighborhood Services Limited.

- A. We are not anticipating any sales outside of the current family ownership.
- B. As mentioned above we are requesting the zoning change because the current zoning, Neighborhood Conservation, doesn't allow for eating places or food trucks as a Conditional Use Permit or otherwise.
- C. The intent is for the mobile vendor to serve park users that would otherwise already be at Walker Park for ballgames, neighbors, events or everyday park visitors. This property is near the intersection of 15<sup>th</sup> and S. College, less than one block. North of this property is RI-U. As a corner property between a somewhat dense residential zoning and a much larger corridor intersection, Downtown – General, is the perfect zoning.
- D. Both water and sewer exist along S. College Ave.
- E. This property would fulfill a need for both affordable housing, a guiding principle for the City Council by allowing for smaller residential rent since other income would offset the reduction in rent due to inconvenience. This is infill at its finest utilizing already established parking, paving and infrastructure.
- F. Without the rezoning we won't be able to have model eating places.
- G. The intent of the project is to serve the residence of the Walker Park neighborhood, and park visitors that would otherwise already be at Walker Park for ballgames, neighbors, events or everyday passersby that would already be there so we don't foresee any increase in traffic.
- H. We are not proposing any new residences. A miniscule increase would occur in water and sewer demand. However, it has been proven and pointed out that downtown infill has an exponentially smaller increase on City infrastructure than development that would occur outside of old, established neighborhoods and city centers.
- I. As the land sits today, it's relatively undevelopable without tearing down the house. I believe the neighborhood would be better served by keeping the house and expanding its use in an urban fabric. Organic infill while keeping existing homes and infrastructure, I believe, is one of the ultimate goals to making a vibrant, electric and expanding neighborhood.

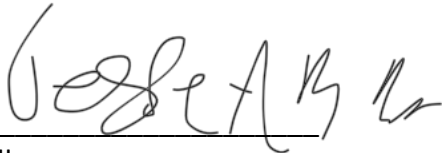
There are several reasons the rezoning would not adversely affect or conflict with surrounding properties and zoning and is actually very compatible with and an amenity to surrounding land uses. To the north is RI-U where 3 homes are being built on small lots with relatively no yards. Essentially, they're using the park across the street as their green space like many of the homes. The park is the anchor to this corner of the neighborhood. This zoning would help anchor the corner of the neighborhood and offer some much-needed amenities.

There is DG zoning 3 properties to the south, 200 feet away. If that's not negatively impacting the surrounding area I don't see how this can. In addition, there are massive swaths of downtown general and main street center 1 to 2 blocks to the east, encompassing nearly 60 acres. Those areas don't seem to be negatively impacting the neighborhood. So, we really don't see this being an issue and actually will be an improvement.

The Walker Park Neighborhood has always been an eclectic area with a variety of ages, income groups and ethnicities. Food trucks and parks have been synonymous with inner city neighborhoods for as long as food trucks have existed. A few Philly Cheesesteaks, a slice of pizza or a couple street tacos would make a great addition to an already great neighborhood.

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

Thank you, sincerely;

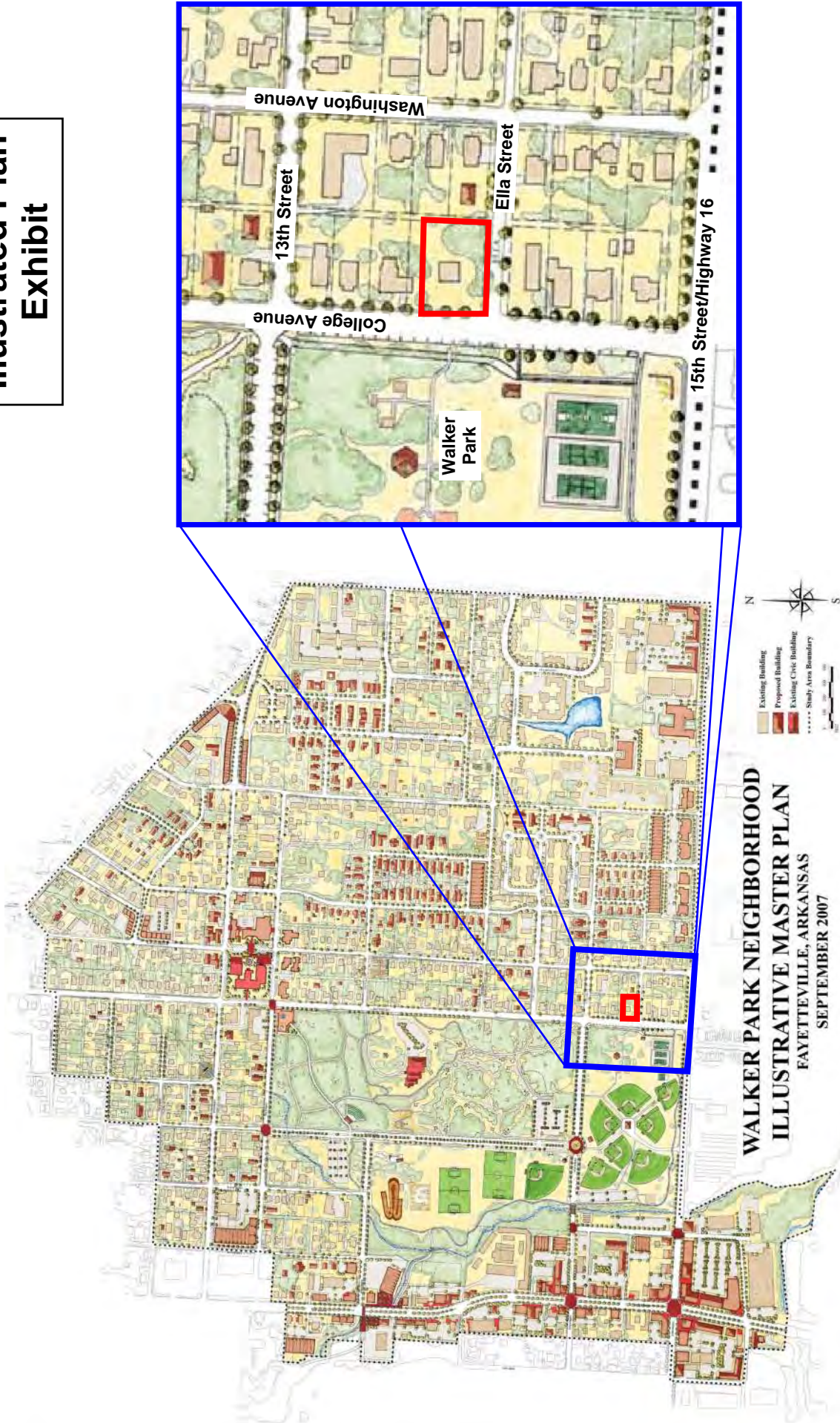
A handwritten signature in black ink, appearing to read "Jesse Millwee", written over a horizontal line.

Jesse Millwee  
(479) 530-1328



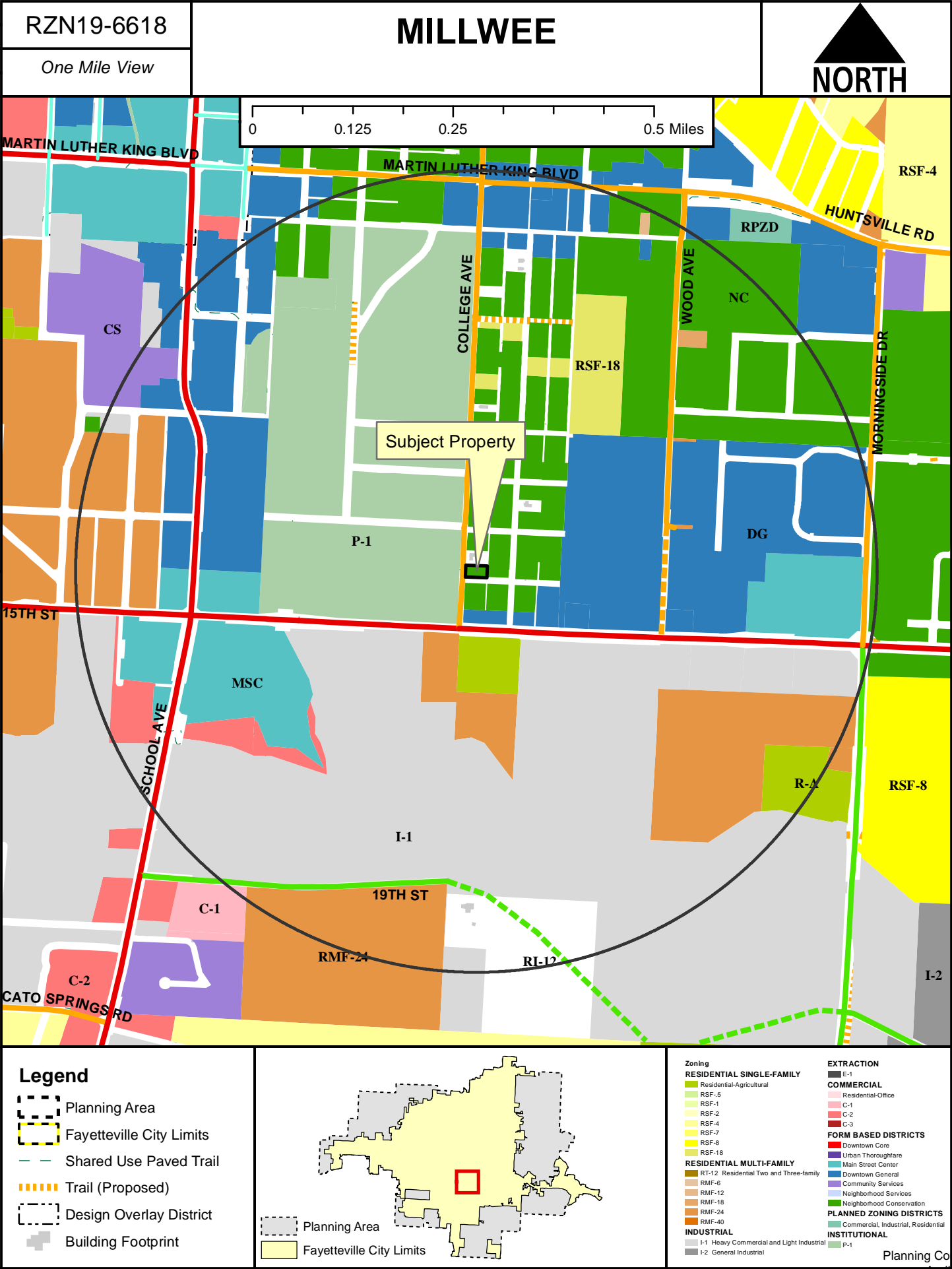
RZN 19-6618

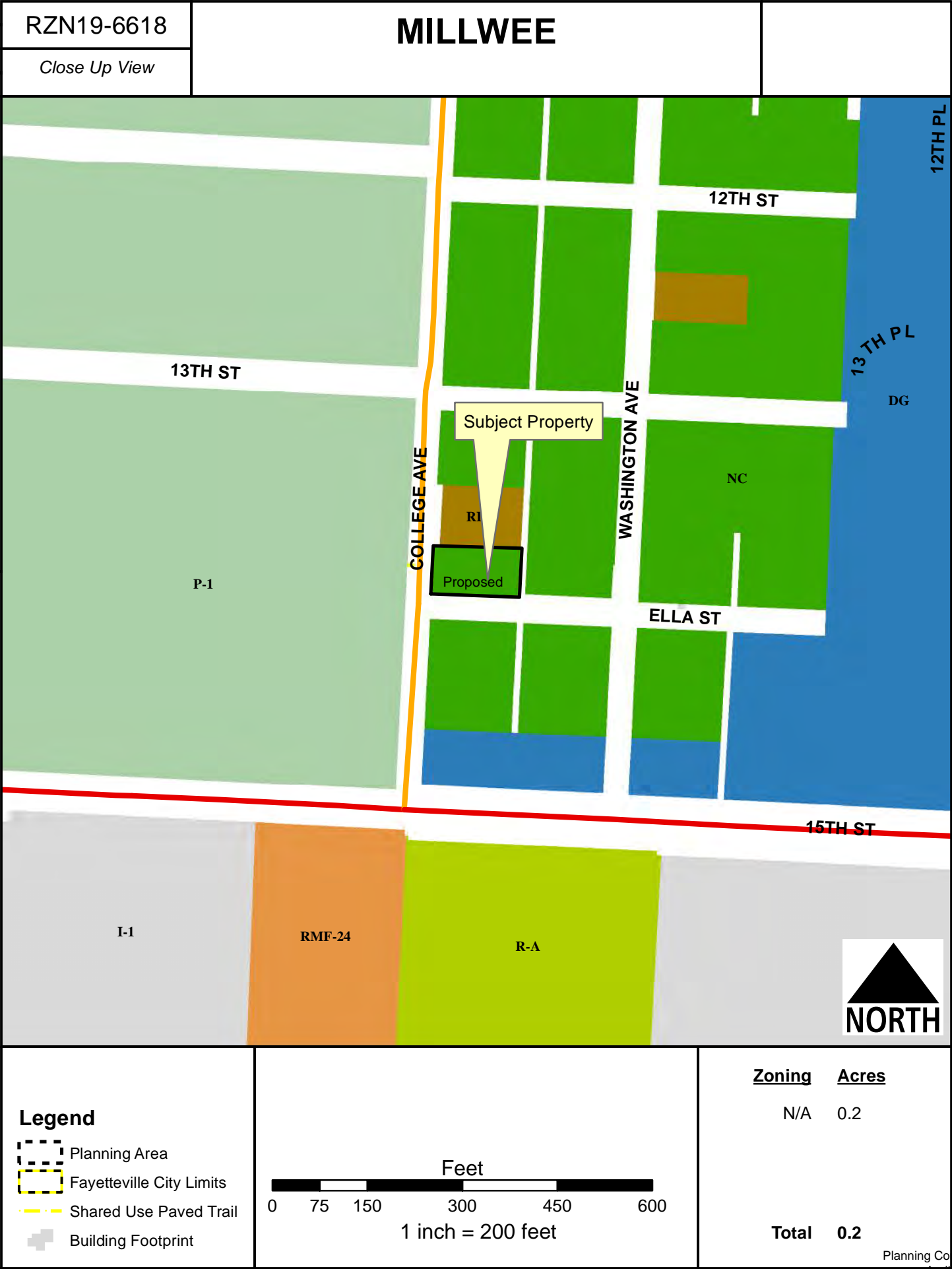
# Walker Park Illustrated Plan Exhibit



Subject Property



Planning Commission  
April 22, 2019  
Agenda Item 15  
19-6618 Millwee  
Page 13 of 16





RZN19-6618

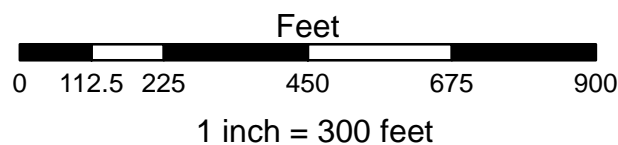
Current Land Use

# MILLWEE



## Streets Existing MSP Class

- COLLECTOR
- PRINCIPAL ARTERIAL
- Planning Area
- Fayetteville City Limits



## FEMA Flood Hazard Data

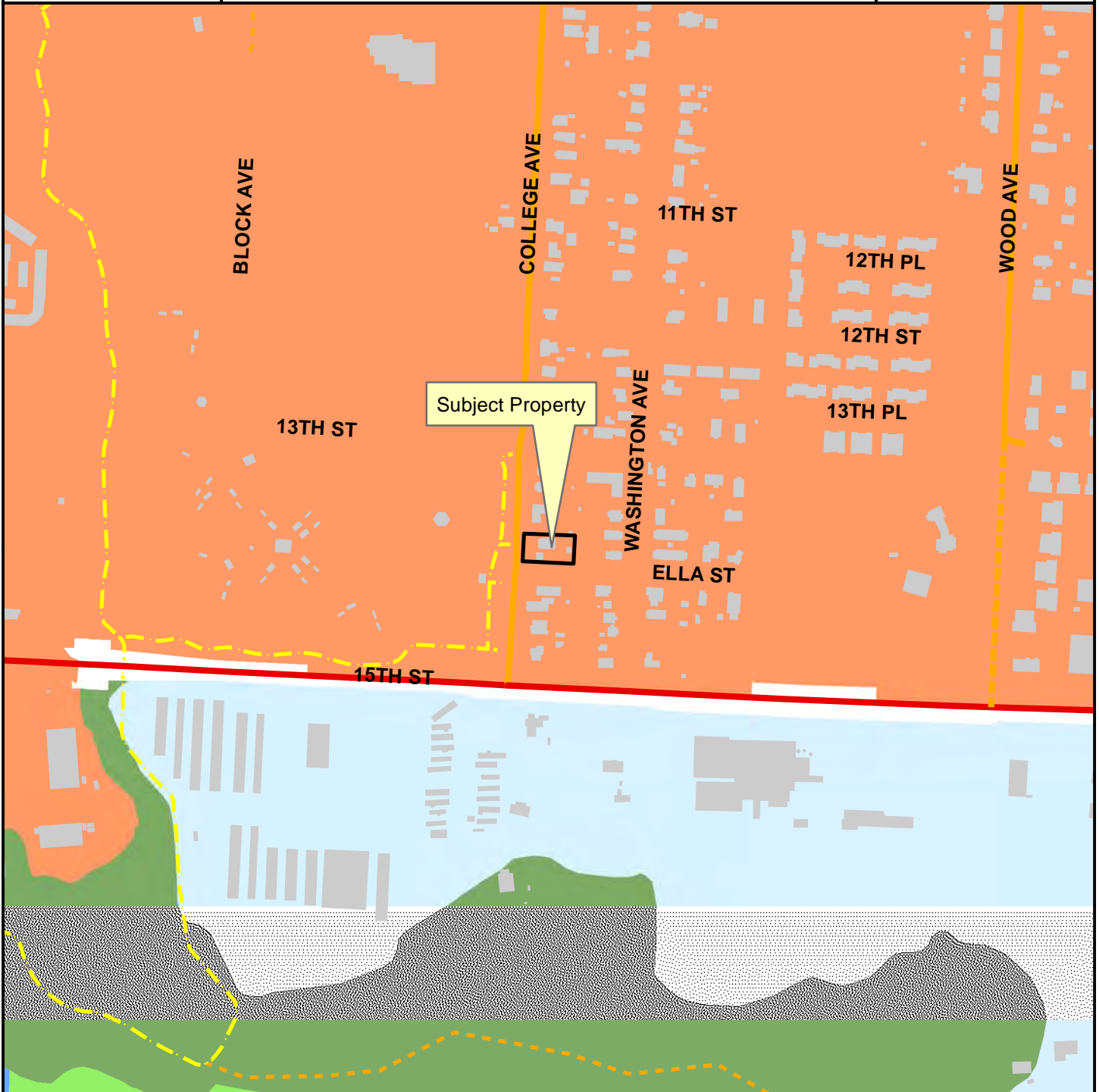
- 100-Year Floodplain
- Floodway

RZN19-6618

# MILLWEE

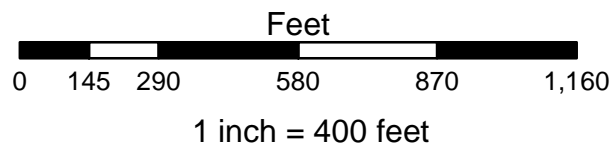


Future Land Use



## Legend

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



## FUTURE LAND USE 2030

- Natural Area
- Rural Area
- City Neighborhood Area
- Industrial
- Complete Neighborhood Plan