

**City of Fayetteville Staff Review Form**

**2020-0609**

**Legistar File ID**

**8/4/2020**

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

Garner Stoll

7/17/2020

CITY PLANNING (630)

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

VAC 20-7136: Vacation (NORTH OF 310 S. WILLOW AVE./NWA CUSTOM HOMES, 524): Submitted by ENGINEERING SERVICES, INC. for property located NORTH OF 310 S. WILLOW AVE. The property is zoned DG, DOWNTOWN GENERAL & NC, NEIGHBORHOOD CONSERVATION and contains approximately 0.08 acres. The request is to vacate a portion of a street right-of-way.

**Budget Impact:**

Account Number	Fund
Project Number	Project Title
<b>Budgeted Item?</b> <u>NA</u>	<b>Current Budget</b> \$                    -
	<b>Funds Obligated</b> \$                    -
	<b>Current Balance</b> <span style="border: 1px solid black; padding: 2px;">\$                    -</span>
<b>Does item have a cost?</b> <u>No</u>	<b>Item Cost</b>
<b>Budget Adjustment Attached?</b> <u>NA</u>	<b>Budget Adjustment</b>
	<b>Remaining Budget</b> <span style="border: 1px solid black; padding: 2px;">\$                    -</span>

*V20180321*

**Purchase Order Number:** \_\_\_\_\_

**Previous Ordinance or Resolution #** \_\_\_\_\_

**Change Order Number:** \_\_\_\_\_

**Approval Date:** \_\_\_\_\_

**Original Contract Number:** \_\_\_\_\_

**Comments:**



**MEETING OF AUGUST 4, 2020**

**TO:** Mayor; Fayetteville City Council

**THRU:** Susan Norton, Chief of Staff  
Garner Stoll, Development Services Director  
Jonathan Curth, Development Review Manager

**FROM:** Jessie Masters, Senior Planner

**DATE:** July 17, 2020

**SUBJECT:** **VAC 20-7136: Vacation (NORTH OF 310 S. WILLOW AVE./NWA CUSTOM HOMES, 524):** Submitted by ENGINEERING SERVICES, INC. for property located NORTH OF 310 S. WILLOW AVE. The property is zoned DG, DOWNTOWN GENERAL & NC, NEIGHBORHOOD CONSERVATION and contains approximately 0.08 acres. The request is to vacate a portion of a street right-of-way.

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**RECOMMENDATION:**

Staff and Planning Commission recommend approval of VAC 20-7136, though differ in opinion as far as the amount of right-of-way to remain. Staff recommends the vacation align with the Master Street Plan maximum for a Neighborhood Link Street of 33.5 feet from centerline, and Planning Commission recommends the minimum of 27.5 feet from centerline as shown in the attached Exhibits 'A' and 'B' and with the following conditions of approval:

1. Any damage or relocation of existing utilities or facilities will be at the applicant's expense.
2. SWEPCO requests a 20' general utility easement from middle phase to the south running the length of the property.

Condition #2 was not originally listed as a condition of approval before Planning Commission, but staff finds that it should be included given the presence of the existing overhead power lines along E. Martin Luther King Jr. Blvd.

**BACKGROUND:**

The subject property includes approximately 0.08 acres of existing City of Fayetteville right-of-way on the south side of E. Martin Luther King Jr. Boulevard at the corner of S. Willow Avenue. The land was dedicated as right-of-way in 1944.

Request: The applicant proposes to vacate a portion of the existing Right-of-Way which is currently exceeding the Master Street Plan (MSP) requirement for Neighborhood Link Streets. The Neighborhood Link Street classification has a minimum right-of-way of 55 feet, or 27.5 feet from centerline, and a maximum right-of-way of 67 feet, or 33.5 feet from centerline. The applicant

is proposing to vacate the existing right-of-way to the minimum dimensional requirement of 27.5 feet from centerline in order to line up a proposed sidewalk to the adjacent property to the east.

**DISCUSSION:**

On July 13, 2020, the Planning Commission unanimously forwarded the requested right-of-way vacation, recommending the applicant's preferred dimension of 27.5 feet from centerline, or the minimum allowable dimension according to the MSP for the Neighborhood Link Street designation. The motion was made by Commissioner Winston, with a second from Commissioner Belden, with a final vote of 9-0-0. The Commission's discussion centered around the possibility of a three-lane road at this location, generally inconsistent right-of-way dedication along this portion of E. Martin Luther King Jr. Boulevard, and an expressed desire for the right-of-way to align with the adjacent property to the east.

Staff does note that right-of-way dedication is typically brought into compliance with the MSP to the maximum requirements when development occurs on-site. Lesser dedication may be recommended in the event of an undue hardship or practical difficulties. Staff recognizes the desire for continuity with the existing sidewalk and right-of-way to the east, but believes that a right-of-way dedication to the minimum standards is not warranted, especially since the rest of the street does not yet have existing sidewalk. Staff finds that the applicant should vacate the right-of-way to align with the maximum MSP requirement, since this would still allow the developer to construct a sidewalk that aligns with the property to the east, but does not prohibit any future greater street improvements the city would desire to make in the long-term future. The typical Neighborhood Link Street section includes 8-foot sidewalk, 10-foot greenspace, and a 10-foot parking lane, which were given careful consideration with the development of the typical street section to provide for pedestrian comfort and cyclist safety; should the additional vacation be permitted, this could have negative implications for active transportation and the inherent traffic calming of on-street parking in a neighborhood which is seeing an increasing amount of infill development.

Additionally, \$1 million in the bond program has been allocated for pedestrian improvements in the area. While actual projects have not yet been identified, there is potential for a City project that would construct sidewalk along this street frontage, and staff does not find that it would be advisable to give up right-of-way that allows for future infrastructure upgrades.

**BUDGET/STAFF IMPACT:**

N/A

**Attachments:**

- Exhibit A
- Exhibit B
- Planning Commission Staff Report

VAC20-7136

# NWA CUSTOM HOMES

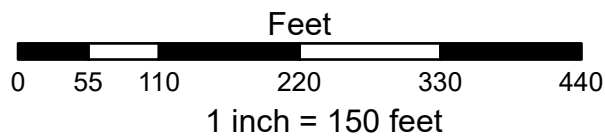
**EXHIBIT 'A'**  
**20-7136**

Close Up View



## Legend

- Planning Area
- Fayetteville City Limits
- Building Footprint



- RI-U
- RMF-12
- Downtown General
- Neighborhood Conservation

## **EXHIBIT 'B'**

**20-7136**

### **LEGAL DESCRIPTION OF RIGHT-OF-WAY TO BE VACATED:**

A PART OF THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION FIFTEEN (15) IN TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY (30) WEST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; BEGINNING AT THE NORTHEAST CORNER OF LOT 10C OF THE LYONS ADDITION TO THE CITY OF FAYETTEVILLE AS SHOWN IN A LOT SPLIT RECORDED AS FILE 2020-9426 IN THE RECORDS OF THE WASHINGTON COUNTY CIRCUIT CLERK AND EX-OFFICIO RECORDER; THENCE ALONG THE NORTH LINE OF SAID LOT 10C, N87°09'38"W A DISTANCE OF 89.19 FEET TO THE NORTHWEST CORNER OF SAID LOT 10C, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 10A OF LYONS ADDITION AS SHOWN IN SAID LOT SPLIT; THENCE ALONG THE NORTH LINE OF SAID LOT 10A, N87°09'38"W A DISTANCE OF 78.01 FEET TO A POINT ON THE EAST RIGHT-OF-WAY OF SOUTH WILLOW AVENUE; THENCE N2°09'08"E A DISTANCE OF 4.19 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 15.00 FEET, AN ARC LENGTH OF 23.73 FEET, AND A CHORD BEARING AND DISTANCE OF N47°27'56"E - 21.33 FEET; THENCE S87°13'16"E A DISTANCE OF 152.18 FEET; THENCE S2°34'06"W A DISTANCE OF 19.53 FEET TO THE POINT OF BEGINNING, CONTAINING 3,203 SQUARE FEET, MORE OR LESS.



**TO:** Fayetteville Planning Commission

**THRU:** Jonathan Curth, Development Review Manager

**FROM:** Jessie Masters, Senior Planner

**MEETING DATE:** July 13, 2020 **Updated to include 7/13 PC Hearing Results**

**SUBJECT:** **VAC 20-7136: Vacation (NORTH OF 310 S. WILLOW AVE./NWA CUSTOM HOMES, 524):** Submitted by ENGINEERING SERVICES, INC. for property located NORTH OF 310 S. WILLOW AVE. The property is zoned DG, DOWNTOWN GENERAL & NC, NEIGHBORHOOD CONSERVATION and contains approximately 0.15 acres. The request is to vacate a portion of a street right-of-way.

**RECOMMENDATION:**

Staff recommends forwarding **VAC 20-7136** to the City Council with a recommendation of approval and a condition based on the findings contained in this report.

**RECOMMENDED MOTION:**

"I move to forward **VAC 20-7136** to the City Council with a recommendation for approval with the conditions recommended by staff."

**BACKGROUND:**

The subject property includes approximately 0.15 acres of existing City of Fayetteville right-of-way on the south side of E. Martin Luther King Jr. Boulevard at the corner of S. Willow Avenue. The land was dedicated as right-of-way in 1944. 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	Mixed-Density Residential	DG, Downtown General
South	Undeveloped, Proposed Residential	DG, Downtown General; NC, Neighborhood Conservation
West	Jefferson Park	DG, Downtown General
East	Single-family Residential	NC, Neighborhood Conservation

*Proposal:* The applicant proposes to vacate a portion of the existing Right-of-Way which is currently exceeding the Master Street Plan requirement for Neighborhood Link Streets. The Neighborhood Link Street classification has a minimum right-of-way of 55-feet, or 27.5-feet from centerline, and a maximum right-of-way of 67-feet, or 33.5-feet from centerline. The applicant is proposing to vacate the existing right-of-way to the minimum dimensional requirement of 27.5-feet from centerline in order to line up a proposed sidewalk to the adjacent property to the east.

**DISCUSSION:**

*Vacation Approval:* Staff is in support of the right-of-way vacation, since it will bring the street into compliance and continuity with the Master Street Plan (MSP). However, right-of-way dedication is typically brought into compliance with the MSP to the maximum requirements. Lesser dedication may be recommended in the event of an undue hardship or practical difficulties. Staff recognizes the desire for continuity with the existing sidewalk to the east, but believes that a right-of-way dedication to the minimum standards is not warranted, especially since the rest of the street does not yet have existing sidewalk. Staff finds that the applicant should vacate the right-of-way to align with the maximum MSP requirement, since this would still allow the developer to construct a sidewalk that aligns with the property to the east, but does not prohibit any future greater street improvements the city would desire to make in the long-term future. The typical Neighborhood Link Street section includes 8-foot sidewalk, 10-foot greenspace, and a 10-foot parking lane, which were given careful consideration with the development of the typical street section to provide for pedestrian comfort and cyclist safety; should the additional vacation be permitted, this could have negative implications for a neighborhood which is seeing an increasing amount of infill development.

The applicant has submitted the required vacation forms to the relevant City departments and franchise utility companies with the following responses:

<u>Utility</u>	<u>Response</u>
Cox Communications	No objections and no comment.
AEP/SWEPCO	No objections, but commented that to achieve 15' radial clearance, SWEPCO requires a 20' utility easement from middle phase to the south running the length of the property.
BlackHills Energy AR	No objections and no comment.
AT&T	No objections and no comment.
Ozarks Electric	No objections and no comment.
<u>City of Fayetteville</u>	<u>Response</u>
Water/Sewer	No objections and no comment.
Solid Waste & Recycling	No objections and no comment.
Transportation	No objections and no comment.

**Public Comment:**

One public comment from a neighbor in support of the request has been received by staff and is attached to this report.

**RECOMMENDATION:** Staff recommends forwarding **VAC 20-7136** to the City Council with a recommendation for approval subject to the following condition:

**Conditions of Approval:**

1. Planning Commission determination of amount of right-of-way to be vacated. *Staff recommends right-of-way should be vacated to maximum Neighborhood Link Street classification of 67-feet, or 33.5-feet from centerline.*
2. Any relocation of or damage to existing utilities or existing facilities shall be at the owner/developer's expense.

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<b>PLANNING COMMISSION ACTION:</b>	<b>Required</b>	<b><u>YES</u></b>	
Date: <u>July 13, 2020</u>	<input type="checkbox"/> Tabled	<input checked="" type="checkbox"/> Forwarded	<input type="checkbox"/> Denied
Motion: <b>Winston</b>	Recommending 27.5' (master street plan minimum for neighborhood link streets) from centerline to be retained		
Second: <b>Belden</b>			
Vote: <b>9-0-0</b>			

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**BUDGET/STAFF IMPACT:**

None

**Attachments:**

- Petition to Vacate
- Applicant Letter
- Vacation Exhibit
- Public Comment
- One Mile Map
- Close-up Map
- Current Land Use Map



**PETITION TO VACATE A RIGHT-OF-WAY ALONG LOTS 10A AND 10C IN  
LYONS ADDITION, CITY OF FAYETTEVILLE, ARKANSAS**

TO: The Fayetteville City Planning Commission and  
The Fayetteville City Council

We, the undersigned, being all the owners of the real estate abutting the right-of-way hereinafter sought to be abandoned and vacated, lying along the north line of lots 10A and 10C in the Lyons Addition to the City of Fayetteville, Arkansas, a municipal corporation, petition to vacate a street right-of-way which is described as follows:

**LEGAL DESCRIPTION OF RIGHT-OF-WAY TO BE VACATED:**

A PART OF THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION FIFTEEN (15) IN TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY (30) WEST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; BEGINNING AT THE NORTHEAST CORNER OF LOT 10C OF THE LYONS ADDITION TO THE CITY OF FAYETTEVILLE AS SHOWN IN A LOT SPLIT RECORDED AS FILE 2020-9426 IN THE RECORDS OF THE WASHINGTON COUNTY CIRCUIT CLERK AND EX-OFFICIO RECORDER; THENCE ALONG THE NORTH LINE OF SAID LOT 10C, N87°09'38"W A DISTANCE OF 89.19 FEET TO THE NORTHWEST CORNER OF SAID LOT 10C, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 10A OF LYONS ADDITION AS SHOWN IN SAID LOT SPLIT; THENCE ALONG THE NORTH LINE OF SAID LOT 10A, N87°09'38"W A DISTANCE OF 78.01 FEET TO A POINT ON THE EAST RIGHT-OF-WAY OF SOUTH WILLOW AVENUE; THENCE N2°09'08"E A DISTANCE OF 4.19 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 15.00 FEET, AN ARC LENGTH OF 23.73 FEET, AND A CHORD BEARING AND DISTANCE OF N47°27'56"E - 21.33 FEET; THENCE S87°13'16"E A DISTANCE OF 152.18 FEET; THENCE S2°34'06"W A DISTANCE OF 19.53 FEET TO THE POINT OF BEGINNING, CONTAINING 3,203 SQUARE FEET, MORE OR LESS.

That the abutting real estate affected by said abandonment of the right-of-way are Lots 10A and 10C in the Lyons Addition to the City of Fayetteville as shown on a lot split at file number 2020-9426, that the right-of-way to be vacated has not been used by the public for a period of many years, and that the public interest and welfare would not be adversely affected by the abandonment of the above described right-of-way.

The petitioners pray that the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject, however, to the existing utility easements as required, and that the above described real estate be used for their respective benefit and purpose as now approved by law.

The petitioners further pray that the above described real estate be vested in the abutting property owners as provided by law.

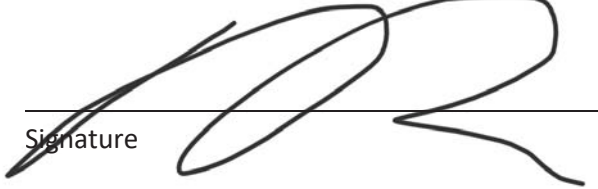
WHEREFORE, the undersigned petitioners respectfully pray that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject to said utility easements, and that title to said real estate sought to be abandoned be vested in the abutting property

owners as provided by law, and as to that particular land the owners of the above described real estate be free from the easements of the public for the use of said right-of-way.

Dated this 10th day of April, 2020.

NWA Custom Homes, LLC

Printed Name (Owner of Lots 10A and 10C in Lyons Addition)

A handwritten signature in black ink, consisting of a series of loops and strokes, positioned over a horizontal line.

Signature

April 9, 2020

City Council & Planning Commission  
City of Fayetteville, Arkansas  
125 West Mountain Street  
Fayetteville, AR 72701

Transmitted Via Electronic Mail to:  
**aharrison@fayetteville-ar.gov**

RE: ROW Vacation  
E. Martin Luther King Jr. Boulevard

City Council and Planning Commission Members,

On behalf of our client, NWA Custom Homes, LLC, we hereby request vacation of a portion of the existing street right-of-way along the south side of E. Martin Luther King, Jr. Boulevard. The 3,203 square feet of right-of-way to be vacated is approximately 19.5 feet deep and 167 feet long and is illustrated in detail on the exhibits included with the application.

During previous correspondence with planning department staff and one of the City's land agents during review of the lot split, it was determined the large vacant area between the street and these lots was dedicated as right-of-way at some point. However, the current right-of-way is well in excess of the minimum and maximum right-of-way for this street classification and also appears to exceed the practical needs of the City for this area. If the requested vacation is approved, it will allow for construction of a sidewalk along the south side of MLK which is in line with the existing sidewalk to the east when applicant builds on these lots and allow applicant to own, enjoy, and (of benefit to the City) maintain the area between the street and applicant's property.

The requested vacation will not impact any existing street or sidewalk improvements or any known plans to install such improvements.

Thank you for your consideration of this request.

Sincerely,



Daniel Lazenby



**From:** [Alan Ostner](#)  
**To:** [Harrison, Andy](#)  
**Subject:** VAC 20-7136  
**Date:** Friday, June 19, 2020 7:31:37 AM

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**CAUTION:** This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello planning staff, planning commission, and city council:

I am a nearby neighbor and I support this vacation request. I live 4 -5 blocks away at 312 South Block. Downtown properties are so small and often on steep terrain that excessive rights-of-way make things really difficult for folks to move to our neighborhood. I have lived in SoFay over 25 years. I appreciate folks willing to invest in this incredible neighborhood. Thanks for your time.

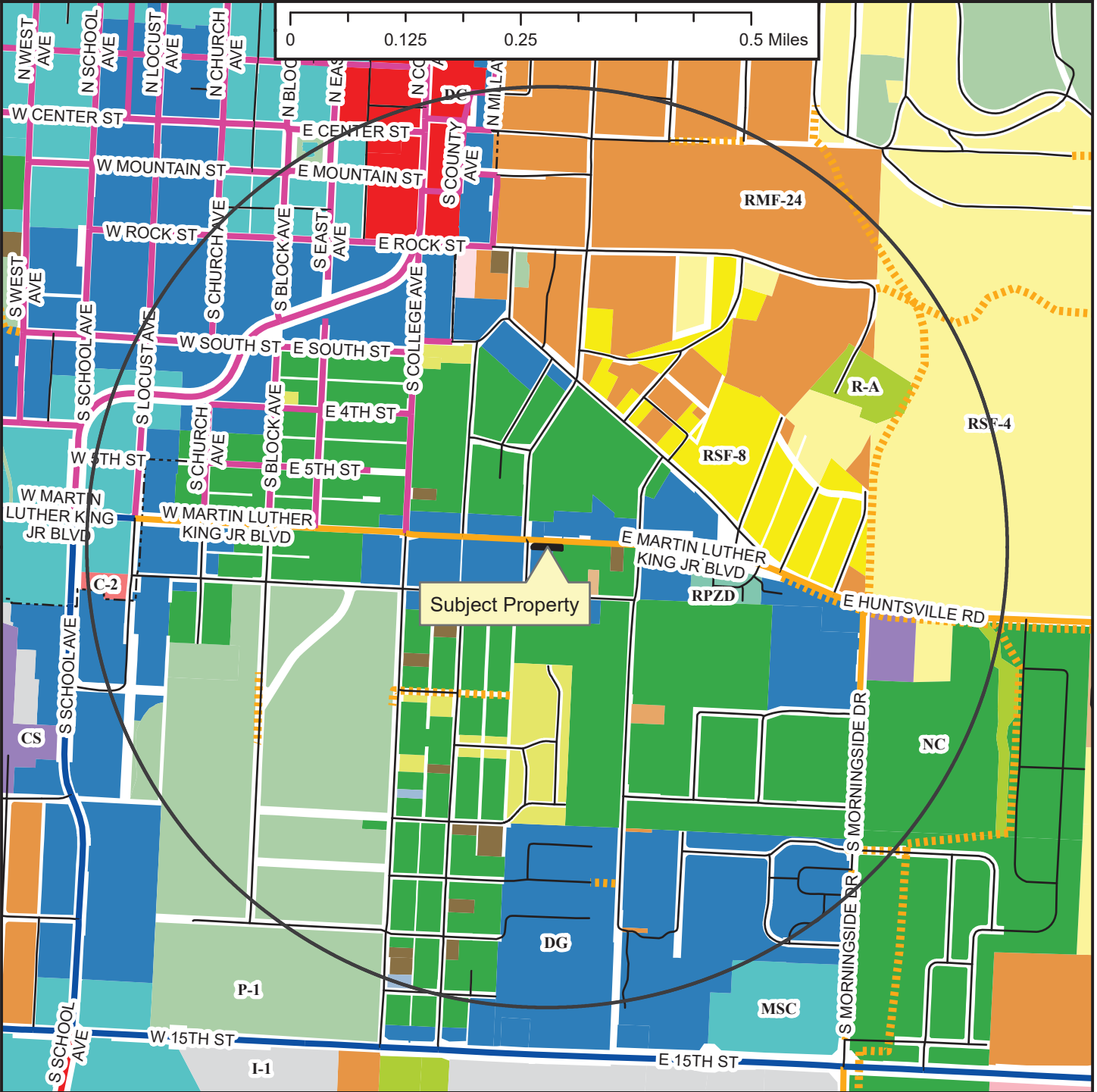
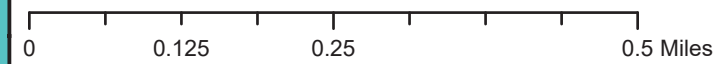
Best,

**Alan Ostner**, ASLA, PLA  
DRAINAGE DOCTOR NWA, PLLC  
Licensed Landscape Architect  
Ark. LA License #5204  
Ark. Contractor's Lic. #0330990619  
Board Member: Fayetteville Urban Forestry Advisory Board  
Board Member: Keep Fayetteville Beautiful Commission  
Member: Ark Master Gardeners  
C: 479.387.7900  
E: [alan.72701@gmail.com](mailto:alan.72701@gmail.com)

VAC20-7136

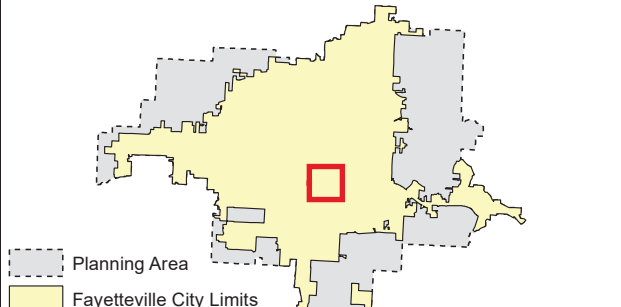
# NWA CUSTOM HOMES

One Mile View



## Legend

- Planning Area
- Fayetteville City Limits
- Trail (Proposed)
- Design Overlay District



- Zoning**
- RESIDENTIAL SINGLE-FAMILY**
  - NS-G
  - RH-U
  - RH-12
  - NS-L
  - Residential-Agricultural
  - RSF-5
  - RSF-1
  - RSF-2
  - RSF-4
  - RSF-7
  - RSF-8
  - RSF-18
- RESIDENTIAL MULTI-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

VAC20-7136

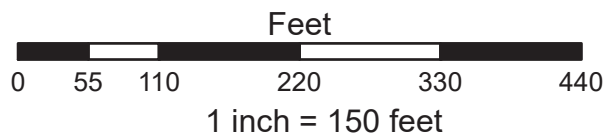
# NWA CUSTOM HOMES

Close Up View



### Legend

- Planning Area
- Fayetteville City Limits
- Building Footprint



- RI-U
- RMF-12
- Downtown General
- Neighborhood Conservation

VAC20-7136

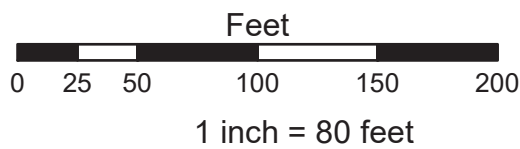
# NWA CUSTOM HOMES





Current Land Use



-  Planning Area
-  Fayetteville City Limits



### FEMA Flood Hazard Data

-  100-Year Floodplain
-  Floodway