

November 25, 2020

The Hon. George Lucier, Chairman
Chatham County Planning Board
Post Office Box 1809
Pittsboro, North Carolina 27312

Re: Rezoning Request by 919 Storage, LLC, 72 Marvin Edwards Lane,
From R-2 Residential to CD-RB Conditional Regional Business District

Dear Mr. Lucier:

This Firm has been retained by clients in connection with the pending rezoning request (the “Application”) made by 919 Storage, LLC (the “Applicant”) referred to above. Please accept this letter on behalf of my clients submitted in opposition to the rezoning request, for the reasons stated below.

The Applicant submitted the Application dated March 6, 2020, in which it proposed to have a 7.93 acre portion of a larger tract (the “Property”) rezoned from the R-2 Residential District to the CD-NB District (Conditional District - Neighborhood Business).¹ The purpose of the proposed rezoning is to allow the development on the Property of an indoor self-storage facility consisting of approximately 100,000 square feet of indoor storage space in three structures, the largest of which is proposed to be approximately 78,000 square feet of conditioned storage space and two subordinate structures of approximately 10,000 square feet each. The Property is currently vacant, surrounded on three sides by R-2 Residential zoned properties and the fourth side fronting on US Highway 15-501, near the Orange County border.

According to the Chatham County Zoning Ordinance, property zoned R-2 is intended for “low density residential development to protect water supply watersheds.” The completed Application form submitted to Chatham County indicates at first reading that the Applicant seeks to rezone the Property to the CD — Neighborhood Business District. The base district, the Neighborhood Business District, is described as follows in Zoning Ordinance Section 4:

¹ The Application form itself has a “check” in this box for the CD-NB district, but the narrative text discusses the CD-RB (Conditional District Regional Business).

This district is meant to serve a small retail market, roughly equivalent to the trade area of a small (40,000 square foot) grocery store and limited ancillary services. No building within this district shall exceed 40,000 square feet and the cumulative building square footage shall not exceed 160,000.

Although the Applicant selected the “CD-NB” district on the Application form as the district to which it seeks to have the Property rezoned, some of the written narrative in the Application indicates that the request is to rezone the property to the CD — Regional Business District. According to the Section 4 of the Zoning Ordinance, the RB Regional Business District is described as follows:

This district is similar to the old General Business District in that a wider array of uses is allowed and there are not limitations on single-occupant, single-use structure sizes or outdoor storage and display of merchandise.

According to Section 5 of the Zoning Ordinance, which authorizes conditional zoning districts, the commercial districts authorized by a conditional zoning district “are identical to the corresponding commercial districts [general districts] such that approval of a conditional zoning district is required as a prerequisite to any use or development. . .” Basically, a use must be allowed in the underlying general district in order to be permissible in a conditional district.

My clients contend that the Application contains critical errors, and that the proposed rezoning is inconsistent with the character of the area and is inconsistent with the Future Land Use and Conservation Plan map, a copy of which is enclosed with this letter.

First, as noted above, the Application itself is inconsistent about the zoning district to which the Applicant wishes to have the property rezoned. This inconsistency is noteworthy because the Applicant’s proposed storage facility use is not permitted in the Neighborhood Business District and, therefore, could not be allowed in a CD — Neighborhood Business District. Moreover, it appears that the Applicant submitted the Application on March 6, 2020. Zoning Ordinance Section 5.7.A. requires that the community meeting be held “prior to the application deadline,” and requires that a written report of the meeting be included with the Application; the Applicant cannot possibly have complied with this procedural requirement because the Application was submitted 3 months before the community meeting was conducted (on June 24, 2020, according to the Application form).

Furthermore, the proposed use is inconsistent with the surrounding R-2 residential district. That is, except for the Walmart built across the US Highway 15-501 from the Property, nearly the entire surrounding area is zoned and used for residential purposes. It is apparent that the reason that the Future Land Use map shows a “Neighborhood Center” node in the area is to acknowledge the existence of the Walmart store; that store existed on its site since well before the Future Land Use map was approved in 2017. The Walmart store already fills the “neighborhood commercial” space in the area. (See, Plan Chatham — 15-501 Corridor Market Profile and Analysis, dated January 4, 2017, Figure 1 — Commercial Centers along 15-501 Corridor, which identifies the same, exact “node” as is identified on the Future Land Use Map as a “neighborhood commercial” node and labels it “**Walmart** — strip/convenience; 148,000 sf”; see also Future land Use and

Conservation Plan, p. 47, which identifies “Walmart on 15/501” as the “neighborhood center” node). Allowing the development of nearly 100,000 square feet of building space on the Property will double the commercial use allowed in the area when one considers the limitation established by the description of the “Neighborhood Business District” in Zoning Ordinance Section 4 – the proposed storage facility would be two and one half times the size of the “small retail market” anticipated in that district and the huge storage facility cannot be considered a “limited ancillary service” use of the type described. The storage facility proposed is inconsistent with the “Neighborhood Center” node depicted on the Future Land Use map.

I understand that some Planning Board members may have reasoned that the Future Land Use Plan and map should be amended, and that the Planning Board need not make any recommendation addressing the sufficiency of the manner in which the 5 criteria stated in Zoning Ordinance Section 5.3.A are addressed. However, the Planning Board’s function with respect to reviewing this rezoning request is to consider the consistency of the proposal with the current plan, not with some non-existent plan that some Planning Board members may wish existed, or hope to create. North Carolina General Statutes Section 153A-341 requires that zoning regulations “be made in accordance with a comprehensive plan”, and requires the Planning Board to make a recommendation to the Board of Commissioners regarding the consistency of the requested rezoning with the comprehensive plan. The Planning Board’s recommendation must also address whether and how the Applicant has addressed the each of the requirements of Section 5.3.A., which provides standards that the Application must address. Here, based on the current Future Land Use and Conservation Plan adopted in November 2017 and amended in March 2020, the requested rezoning simply is NOT consistent with the plan.

The requested rezoning is also inconsistent with several factors identified in Zoning Ordinance Section 5.3.A as information which rezoning requests must address. For example, pursuant to Section 5.3.A.1 the Application must state the alleged error in the Zoning Ordinance which would be remedied by the proposed rezoning. No such error has been identified by the Applicant because there is no error in the Zoning Map in the area.

Subparagraph (2) of Section 5.3.A instructs the Applicant to demonstrate the “changed or changing conditions, if any, of the area or in the County generally, which make the proposed amendment reasonably necessary to promote the public health, safety and general welfare.” While the Applicant has submitted a report purporting to satisfy this requirement, the facts demonstrates that, in fact, there is a glut of vacancies, or an “oversupply” of indoor storage facilities, within a one (1) mile radius of the Property in northeast Chatham County/Southern Orange County. And the Applicant has not demonstrated that there are any changed conditions in the area which the existing storage facilities in the area cannot adequately supply, which would make the requested rezoning “reasonably necessary to the promotion of the public health, safety, and general welfare.” The whole of the information before the Planning Board demonstrates that there is sufficient oversupply in the area to last for years without the addition of the proposed storage facility on the Property. Finally, the real “target market” for the proposed facility is Southern Orange County. There is no need for, nor will there be any significant benefit from, another indoor storage facility in Northeast Chatham County, and little benefit from it, in Chatham County.

Subparagraph (3) of Section 5.3.A requires the Applicant to demonstrate how the proposed rezoning “will carry out the intent and purpose of any adopted plans or part thereof.” There simply does not appear to be any discussion of this factor in the records before the Planning Board. The requested rezoning does NOT advance the intent or purpose of the Future Land Use and Conservation Plan. In fact, there is no reference whatsoever to self-storage facilities in the Future Land Use and Conservation Plan and no demonstration by the Applicant that such a use at the Property is, or would be, consistent with the intent or purpose of any approved plan.

Similarly, there is no demonstration in the materials submitted to the Planning Board that the proposed use is “either essential or desirable for the public convenience or welfare,” as required by Section 5.3.A.4. In fact, there is no need for this proposed facility at this location, or in the area generally, for the foreseeable future. To the contrary, my clients have provided factual data which demonstrates that there is no need for additional storage facilities in the area at present or for the foreseeable future. The proposed facility is certainly not essential nor is it, based on the facts presented to the Planning Board, desirable for the public convenience or welfare.

Even given a generous interpretation of the Future Land Use and Conservation Plan map, the requested rezoning should be denied. The Property borders on the edge of what has been designated as a “neighborhood center.” Based on that information, the Property might be suitable for rezoning to a neighborhood business district, but not to a regional business district. The proposed rezoning does nothing to preserve the rural character and lifestyle of Chatham County, the first objective identified in Chapter 3 of the Chatham County Comprehensive Plan. Likewise, the proposed development does not create any significant job opportunities for County residents, nor does it provide any recreational opportunities or access to open space.

Thus, there is a significant difference between a Neighborhood Business District and a Regional Business District in terms of purpose and intensity of uses allowed. And, most significantly, the Applicant’s proposal would not be allowed in a Neighborhood Business District and, therefore a rezoning to the CD-NB district would not make such use allowable.

Chatham County’s Future Land Use and Conservation Plan describes the “neighborhood center” designation on the future land use map as a “grocery anchored center with complimentary retail and service uses, small restaurant” with “a mix of uses including grocery anchored retail use with some restaurants, services and office uses” between 30,000 square feet and 125,000 square feet. A self-storage facility is not the kind of “service” that is intended for a “neighborhood center”; rather, personal service businesses like real estate offices, banks, and medical offices are the type of service intended for such areas as stated in the Plan Chatham Corridor Market Study. The “neighborhood center” designation near the Property already consists of the Wal-Mart Center. The proposed creation of a 100,000 square foot storage facility across the street from the existing Wal-Mart shopping center is not consistent with the County’s Comprehensive Plan nor with the Zoning Ordinance.

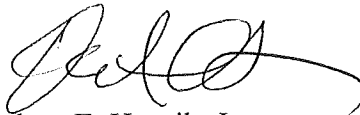
Finally, Zoning Ordinance Section 19.1, the “statement of intent” with respect to Zoning Ordinance amendments, generally, provides that the Zoning Ordinance “shall not be amended except to correct an error in the Ordinance or, because of changed or changing conditions in a particular area or in the County generally, or to extend the boundary of an existing zoning district

or to rezone an area to a different zoning district. . .”, and even then only as is “reasonably necessary to promote the public health, safety and general welfare and to achieve the purposes of the adopted Land Use Plan.” Here, the rezoning request and information submitted in support of, and in opposition to, it, show that the standards established in the Zoning Ordinance have not been met. The County is duty-bound to follow its own rules and ordinances. The only way for the Planning Board to help the Board of Commissioners satisfy this obligation would be to recommend that the rezoning request be denied because the standards in the Zoning ordinance have not been satisfied.

For the foregoing reasons, the Planning Board should recommend denial of the Application to the Chatham County Board of County Commissioners, and the Chatham County Board of County Commissioners should deny the rezoning request. If you have any further questions, or seek any additional information, please do not hesitate to contact me.

Sincerely,

THE BROUGH LAW FIRM, PLLC



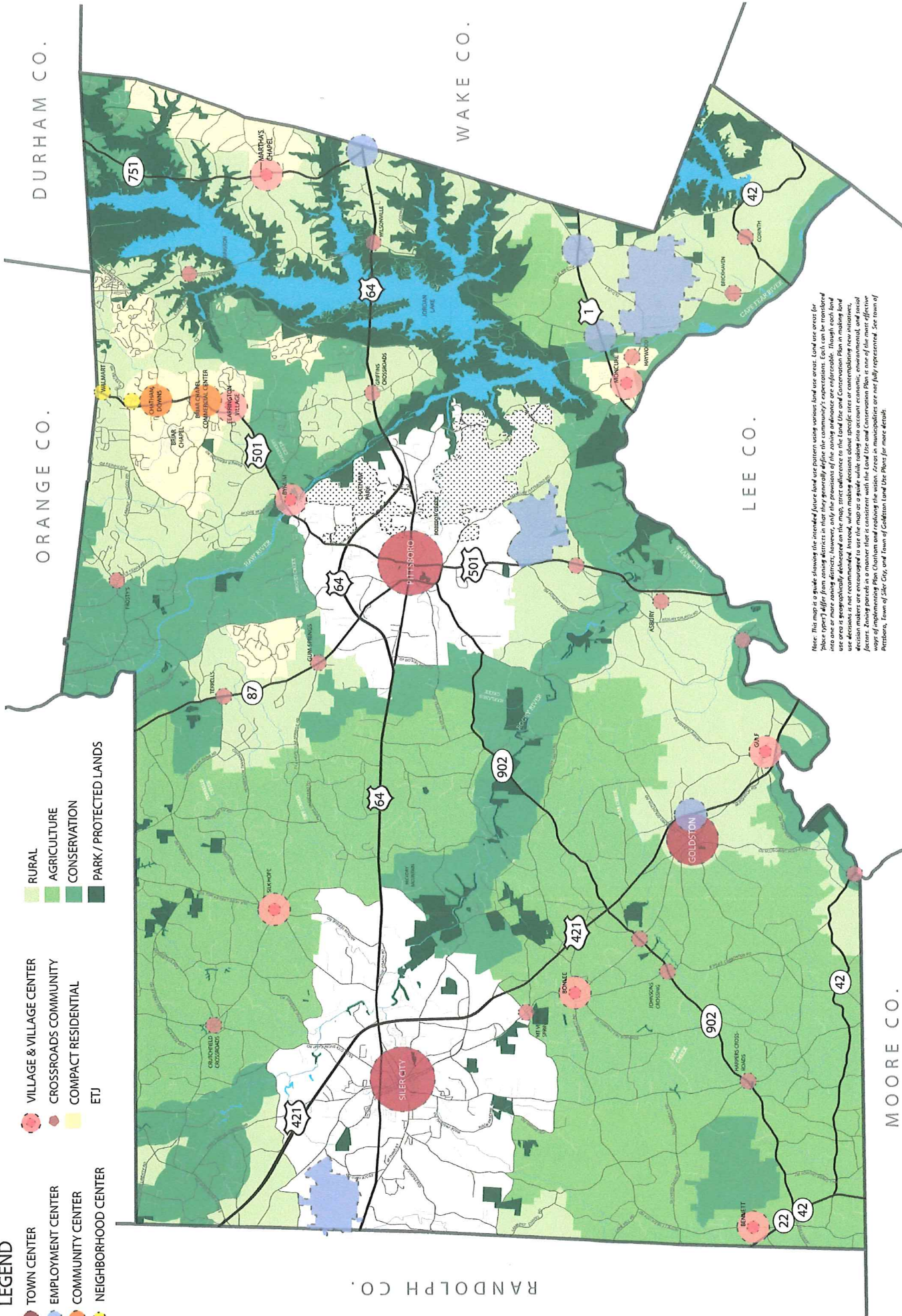
Robert E. Hornik, Jr.

REHjr:las

cc: The Hon. Karen Howard, Chairperson, Chatham County Board of County Commissioners
Mr. Robert Hageman, County Attorney
Mr. Michael Mansson

LEGEND

- TOWN CENTER
- EMPLOYMENT CENTER
- COMMUNITY CENTER
- NEIGHBORHOOD CENTER
- VILLAGE & VILLAGE CENTER
- CROSSROADS COMMUNITY
- COMPACT RESIDENTIAL
- ETJ
- RURAL
- AGRICULTURE
- CONSERVATION
- PARK / PROTECTED LANDS



Note: This map is a guide showing the intended future land use pattern using various land use areas. Land use areas for future types of zoning districts that they generally define the community's expectations. Each can be transitioned into one or more zoning districts; however, only the positions of the zoning districts are enforceable. Though each land use area is shown on the map, not all areas are shown. The map is intended to provide a general overview of the future land use pattern. Decision makers are encouraged to use the map as a guide while taking into account economic, environmental, and social factors. Zoning districts in a manner that is consistent with the Land Use and Conservation Plan is one of the most effective ways of implementing Plan Chatham and realizing the vision. Areas in municipalities are not fully represented. See town of Pittsboro, Town of Siler City, and Town of Goldston Land Use Plans for more details.

FUTURE LAND USE AND CONSERVATION PLAN