

**FORSYTHCOUNTY  
BOARD OF COMMISSIONERS**

**MEETING DATE:** DECEMBER 20, 2018 **AGENDA ITEM NUMBER:** 1A-C

**SUBJECT:-**

- A. Public Hearing on Special Use District - No Site Plan Zoning Petition of Tyler Leinbach and Todd Leinbach for Property Owned by Gerald Byerly and William Byerly from RS9 to GB-L (Storage Services, Retail): Property is Located on the Southeast Side of Ebert Road, North of Evans Road (Zoning Docket F-1582)
- B. Ordinance Amending the Forsyth County Zoning Ordinance and Official Zoning Map of the County of Forsyth, N.C.
- C. Approval of Special Use District - No Site Plan Permit

**COUNTYMANAGER'S RECOMMENDATION OR COMMENTS:-**

**SUMMARY OF INFORMATION:-**

See attached staff report.

After consideration, the Planning Board unanimously recommended denial of the special use district - no site plan request.

**ATTACHMENTS:-**  X  YES      NO

**SIGNATURE:** \_\_\_\_\_  
County Manager

**DATE:** \_\_\_\_\_

COUNTY ORDINANCE -  
SPECIAL USE DISTRICT - NO SITE PLAN

Zoning Petition of Tyler Leinbach and Todd Leinbach for property owned by Gerald Byerly and William Byerly, Docket F-1582

AN ORDINANCE AMENDING THE  
FORSYTH COUNTY ZONING ORDINANCE  
AND THE OFFICIAL ZONING MAP OF  
FORSYTH COUNTY, N.C.

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BE IT ORDAINED by the Board of Commissioners of Forsyth County as follows:

Section 1. The Forsyth County Zoning Ordinance and the Official Zoning Map of the County of Forsyth, N.C. are hereby amended by changing from RS9 to GB-L(Storage Services, Retail) the zoning classification of the following described property:

PIN # 6812-69-6922

Section 2. This Ordinance is adopted after approval of the Special Use District - No Site Plan Permit issued by the Board of Commissioners the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ to Tyler Leinbach and Todd Leinbach for property owned by Gerald Byerly and William Byerly.

Section 3. The Board of Commissioners hereby directs the issuance of a Special Use District - No Site Plan Permit pursuant to the Zoning Ordinance of the *Unified Development Ordinances* for a development to be located on the property described in section one above. Said Special Use District - No Site Plan Permit with conditions is attached hereto and incorporated herein.

Section 4. This Ordinance shall be effective from and after its adoption.

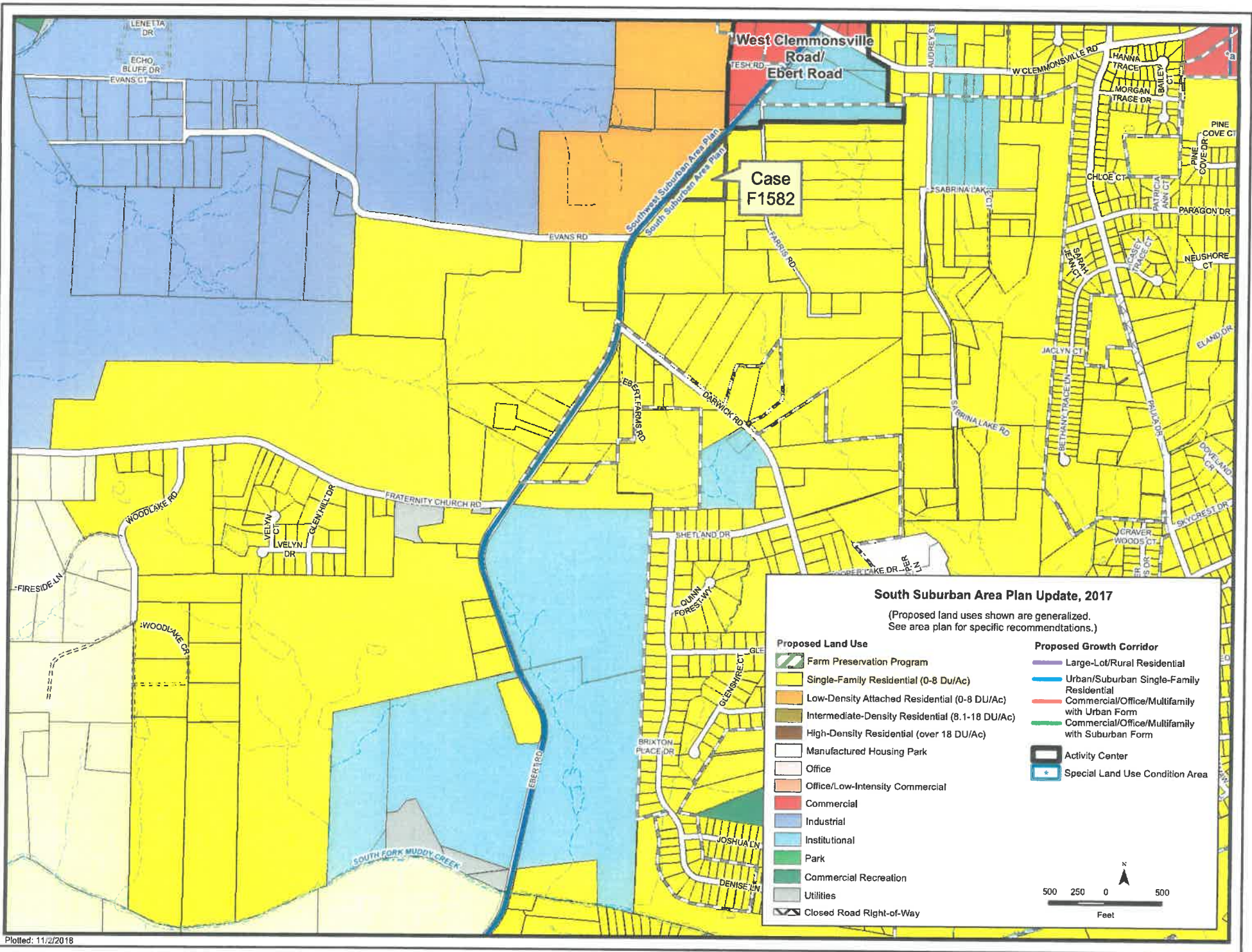
COUNTY

SPECIAL USE DISTRICT - NO SITE PLAN PERMIT

Issued by the Board of Commissioners

of Forsyth County, NC


The Board of Commissioners of Forsyth County, NC issues a Special Use District - No Site Plan Permit for the zoning petition of Tyler Leinbach and Todd Leinbach for property owned by Gerald Byerly and William Byerly, (Zoning Docket F-1582). The site shall be developed in accordance with the conditions approved by the Board and the following uses: Storage Services, Retail, approved by the Forsyth County Board of Commissioners the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_" and signed, provided the property is developed in accordance with requirements of the GB-L zoning district of the Zoning Ordinance of the *Unified Development Ordinances*, the Erosion Control Ordinance, and other applicable laws.









### South Suburban Area Plan Update, 2017

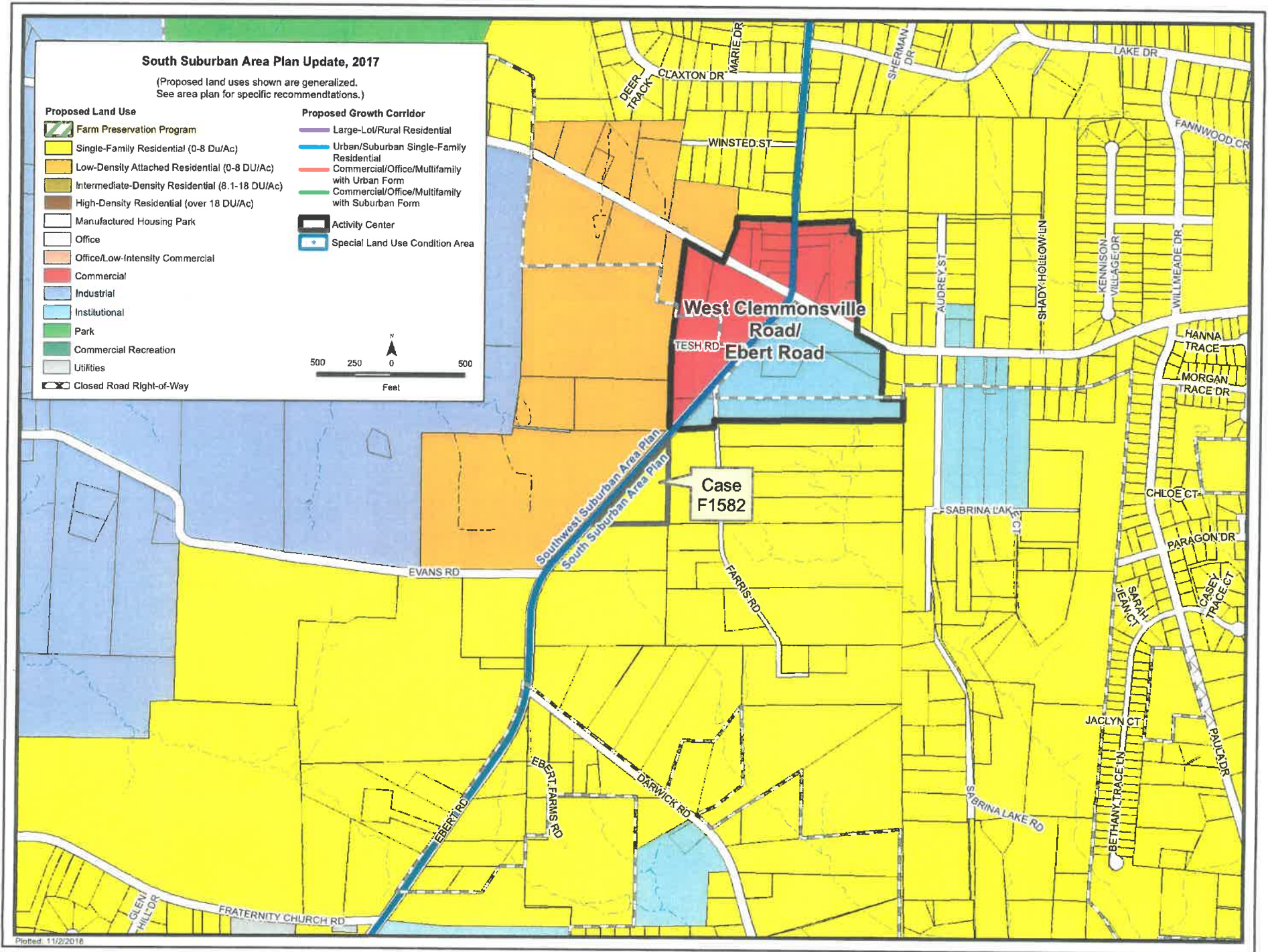
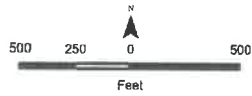
(Proposed land uses shown are generalized.  
See area plan for specific recommendations.)

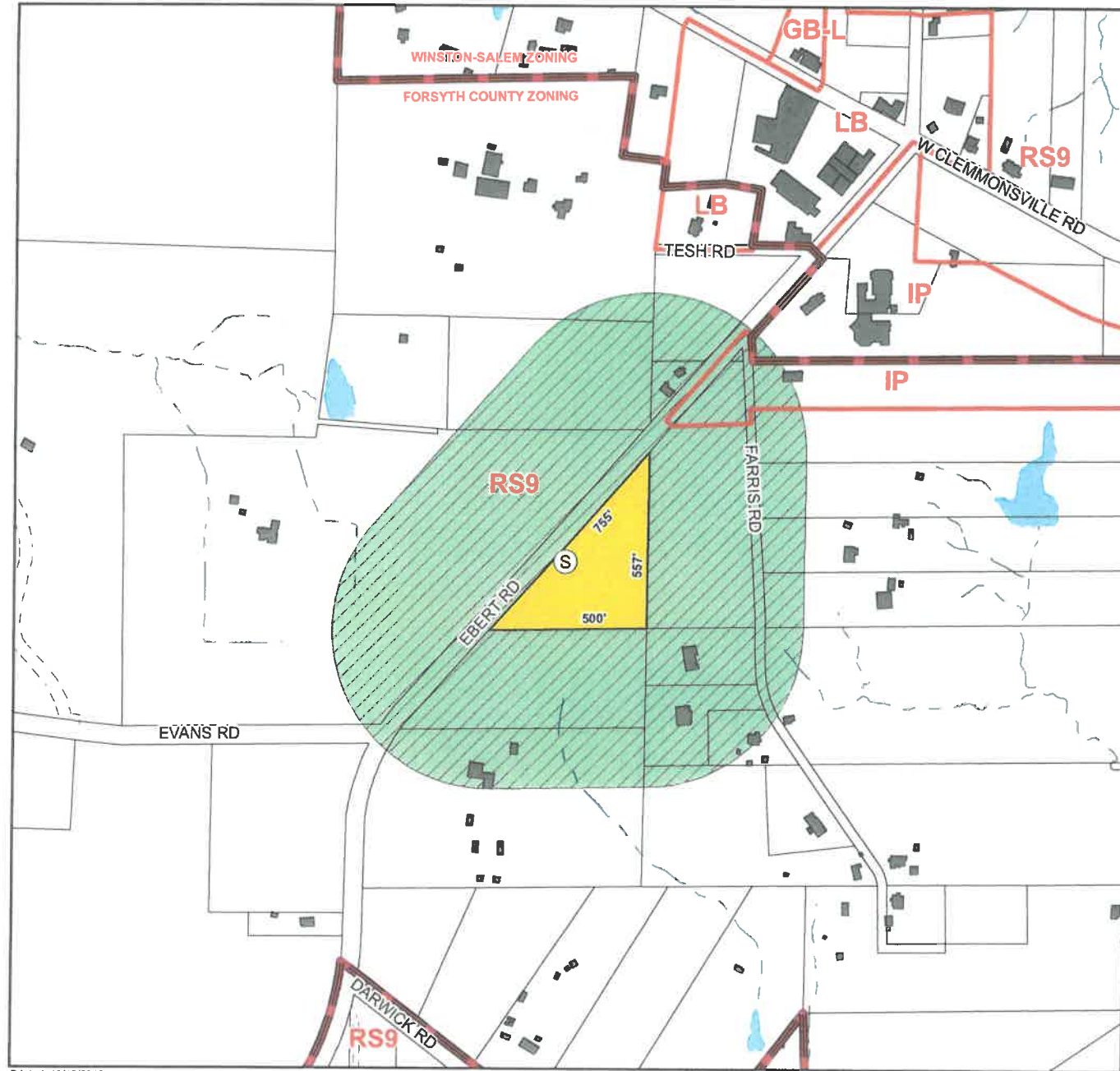
#### Proposed Land Use

-  Farm Preservation Program
-  Single-Family Residential (0-8 DU/Ac)
-  Low-Density Attached Residential (0-8 DU/Ac)
-  Intermediate-Density Residential (8.1-18 DU/Ac)
-  High-Density Residential (over 18 DU/Ac)
-  Manufactured Housing Park
-  Office
-  Office/Low-Intensity Commercial
-  Commercial
-  Industrial
-  Institutional
-  Park
-  Commercial Recreation
-  Utilities
-  Closed Road Right-of-Way

#### Proposed Growth Corridor

-  Large-Lot/Rural Residential
-  Urban/Suburban Single-Family Residential
-  Commercial/Office/Multifamily with Urban Form
-  Commercial/Office/Multifamily with Suburban Form
-  Activity Center
-  Special Land Use Condition Area





Printed: 10/10/2018


**DOCKET #:** F1582

**PROPOSED ZONING:**  
GB-L

**EXISTING ZONING:**  
RS9

**PETITIONER:**  
Tyler Leinbach and  
Todd Leinbach

 Property included  
in zoning request.

 500' mail notification  
radius. Property not  
in zoning request.

**SCALE:** 1" represents 500'

**STAFF:** Roberts

**GMA:** 3

**ACRES:** 3.17

**NEAREST  
BLDG:** 130' south

**MAP(S):** 6812.02, 6813.04



**F-1582 ATTACHMENT A**  
**EXISTING USES ALLOWED IN THE RS9ZONING DISTRICT**  
**Forsyth County Jurisdiction Only**

**USES ALLOWED WITH A PERMIT FROM THE ZONING OFFICER (Z)**

Adult Day Care Home  
Agricultural Production, Crops  
Agricultural Production, Livestock  
Child Day Care, Small Home  
Church or Religious Institution, Neighborhood  
Family Group Home A  
Police or Fire Station  
Recreation Facility, Public  
Residential Building, Single Family  
Swimming Pool, Private  
Transmission Tower (see UDO)

**USES ALLOWED WITH REVIEW BY THE PLANNING BOARD (P)**

Church or Religious Institution, Community  
Golf Course  
Library, Public  
Limited Campus Uses  
Planned Residential Development  
School, Private  
School, Public  
Utilities

**USES ALLOWED WITH SPECIAL USE PERMIT FROM ZONING BOARD OF ADJUSTMENT (A)**

Bed and Breakfast  
Child Day Care, Large Home  
Habilitation Facility A  
Manufactured Home, Class A  
Park and Shuttle Lot  
Transmission Tower

**USES ALLOWED WITH SPECIAL USE PERMIT FROM ELECTED BODY (E)**

Access Easement, Private Off-Site<sup>5</sup>  
Parking, Off-Site, for Multifamily or Institutional Uses

<sup>5</sup>SUP not required if requirements of Section [B.2-5.2\(A\)](#) are met

Summary of Neighborhood Meeting for Case Number F-1582

A banner was placed on the property for two (2) weeks that gave a contact email and phone number for questions/comments and advertised a meeting on October 24<sup>th</sup> at 7pm. However, the banner fell at some point and this was not immediately discovered. No one called, emailed, or came to the meeting.

Another banner was printed and placed on the property with contact information and advertised a meeting for Tuesday, October 30<sup>th</sup>, at 7pm. The banner did not fall this time and one person emailed, but no one called or came to the meeting. A picture of the double-sided banner is below.

The one person that emailed asked what our intentions were, but did not reply when we simply stated that we intend to rezone for storage units.



F-1582 Attachment B



MEMORANDUM

TO: Gary Roberts, City-County Planning Department

FROM: B. Gordon Watkins III, Forsyth County Attorney

DATE: October 19, 2018

RE: Spot Zoning Opinion on F-1582

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This is in response to your request for a spot zoning opinion in the above referenced case. Based upon the information provided regarding the proposed rezoning, the surrounding properties, and map and comprehensive plan information as well as the applicable ordinances and law, I conclude that the proposed zoning petition for the subject property ("Property") does not fit the definition of a spot zoning.

Spot zoning exists when there is a zoning ordinance or amendment which "singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to ... relieve the small tract from restrictions to which the rest of the area is subjected." Good Neighbors of South Davidson v. Town of Denton, 355 N.C. 254, 559 S.E.2d 768, 771 (2002).

The larger area around the Property is not uniformly zoned. The Property is across the street from Simpco Auto Sales. While Simpco is zoned RS-9, it operates as a commercial property, and the Southwest Suburban Area Plan recommends that it remain commercial property and become part of an enlarged West Clemmons Road/Ebert Road Activity Center. The Plan also recommends more intensive attached family housing, up to 8 units per acre, be developed adjacent to Simpco and across the street from the Property.

The Property is approximately 100 feet from property zoned IP, containing Mt. Carmel Methodist Church and its outbuildings. The Property is approximately 800 feet from the present location of the West Clemmons Road/Ebert Road Activity Center, which contains several commercial and retail businesses. The South Area Suburban Plan recommends that the church property become part of the Activity Center. As noted above, the Southwest Plan recommends that the Activity Center grow to the border of the Property. Thus, the Plans recommend that the Property will be adjacent to the Activity Center on the north side of Ebert Road and approximately 100 feet away on the south side.

Approximately 1200 feet to the northwest of the Property, there is a large solar farm.

Because of the many different, non-residential uses in the area surrounding the Property, it does not appear that the requested rezoning would be spot zoning.

It is important to note that this Memorandum expresses no opinion as to the whether such zoning petition should be granted.

**CITY-COUNTY PLANNING BOARD  
STAFF REPORT**

PETITION INFORMATION			
<b>Docket #</b>	F-1582		
<b>Staff</b>	<a href="#">Gary Roberts, Jr. AICP</a>		
<b>Petitioner(s)</b>	Tyler Leinbach and Todd Leinbach		
<b>Owner(s)</b>	Gerald Byerly and William Byerly		
<b>Subject Property</b>	PIN # 6812-69-6922		
<b>Address</b>	The undeveloped site does not currently have an address assignment.		
<b>Type of Request</b>	Special use limited rezoning from RS9 to GB-L		
<b>Proposal</b>	<p>The petitioner is requesting to amend the Official Zoning Maps for the subject property <b>from</b> RS9 (Residential, Single Family – 9,000 sf minimum lot size) <b>to</b> GB-L (General Business – special use limited - no site plan). The petitioner is requesting the following uses:</p> <ul style="list-style-type: none"> <li>• Storage Services, Retail</li> </ul> <p><b>NOTE:</b>General, special use limited, and special use district zoning were discussed with the petitioner(s) who decided to pursue the rezoning as presented.</p>		
<b>Neighborhood Contact/Meeting</b>	See Attachment B for a summary of the petitioner’s neighborhood outreach.		
<b>Zoning District Purpose Statement</b>	The GB District is primarily intended to accommodate a wide range of retail, service, and office uses located along thoroughfares in areas which have developed with minimal front setbacks. However, the district is not intended to encourage or accommodate strip commercial development. The district would accommodate destination retail and service uses, characterized by either a larger single business use or the consolidation of numerous uses in a building or planned development, with consolidated access. This district is intended for application in GMAs 1, 2 and 3 and Metro Activity Centers.		
<b>Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(R)</b>	<b>(R)(1) - Is the proposal consistent with the purpose statement(s) of the requested zoning district(s)?</b>		
	No, as the subject property is not recommended to become a destination retail location and the request would promote strip commercial development.		
GENERAL SITE INFORMATION			
<b>Location</b>	Southeast side of Ebert Road, north of Evans Road		
<b>Jurisdiction</b>	Forsyth County		
<b>Site Acreage</b>	± 3.17 acres		
<b>Current Land Use</b>	The site is currently undeveloped.		
<b>Surrounding Property Zoning and Use</b>	<b>Direction</b>	<b>Zoning District</b>	<b>Use</b>
	North	RS9	Undeveloped property and a nonconforming motor vehicle sales and repair

					business.	
	East	RS9			Undeveloped property	
	South	RS9			Undeveloped property and single family homes.	
	West	RS9			Undeveloped property	
<b>Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(R)</b>	<b>(R)(2) - Is/are the use(s) permitted under the proposed classification/request compatible with uses permitted on other properties in the vicinity?</b>					
	The proposed use of Storage Services, Retail is generally not a high traffic generating use. However, it is typically not a use that is visually compatible with single family homes.					
<b>Physical Characteristics</b>	The undeveloped site is partially wooded and has a gentle to moderate slope downward toward the east.					
<b>Proximity to Water and Sewer</b>	The 30" sewer line within Ebert Road is a force main; therefore, it cannot be accessed. There is also no public water service available to the site.					
<b>Stormwater/ Drainage</b>	No known issues.					
<b>Watershed and Overlay Districts</b>	The site is not located within a water supply watershed.					
<b>Analysis of General Site Information</b>	The undeveloped site is limited in regard to its access to public water and sewer service.					
<b>RELEVANT ZONING HISTORIES</b>						
Case	Request	Decision & Date	Direction from Site	Acreage	Recommendation	
					Staff	CCPB
W-3299	LB to GB-L	Approved 8-1-2016	1,400' north	.70	Denial	Approval
<b>SITE ACCESS AND TRANSPORTATION INFORMATION</b>						
Street Name	Classification	Frontage	Average Daily Trip Count	Capacity at Level of Service D		
Ebert Road	Major Thoroughfare	755'	4,000	13,800		
<b>Proposed Access Point(s)</b>	Because this is a special use limited request with no site plan or access conditions, the exact location of access points is unknown.					
<b>Planned Road Improvements</b>	The 2012 <i>Comprehensive Transportation Plan</i> recommends a three lane cross section for this section of Ebert Road with wide outside lanes, curb and gutter, and sidewalks.					
<b>Trip Generation - Existing/Proposed</b>	<p><u>Existing Zoning: RS9</u>  <math>3.17 \times 43,560 \text{ sf} / 9,000 = 15 \text{ lots} \times 9.57 \text{ (SFR Trip Rate)} = 143 \text{ Trips per Day}</math></p> <p><u>Proposed Zoning: GB-L</u>  Staff is unable to provide an accurate trip generation for the proposed special use limited zoning because there is no site plan.</p>					
<b>Sidewalks</b>	There are no sidewalks located in the general area.					

<b>Analysis of Site Access and Transportation Information</b>	The site is located along a major thoroughfare which (at this time) has ample capacity.
<b>CONFORMITY TO PLANS AND PLANNING ISSUES</b>	
<b>Legacy 2030 Growth Management Area</b>	Growth Management Area 3 – Suburban Neighborhoods
<b>Relevant Legacy 2030 Recommendations</b>	<ul style="list-style-type: none"> <li>• New commercial rezonings can hurt older commercial areas.</li> <li>• Increase density at activity centers and growth corridors at planned locations.</li> </ul>
<b>Relevant Area Plan(s)</b>	<i>South Suburban Area Plan Update (2017)</i>
<b>Area Plan Recommendations</b>	<ul style="list-style-type: none"> <li>• The Area Plan recommends single family residential for the subject property.</li> <li>• Commercial areas should not promote strip development (p. 21).</li> <li>• This plan recommends the consolidation of commercial uses at existing commercial locations, in designated activity centers, and in certain Special Land Use Condition Areas.</li> </ul>
<b>Site Located Along Growth Corridor?</b>	The site is not located along a growth corridor.
<b>Site Located within Activity Center?</b>	The site is not located within an activity center.
<b>Other Applicable Plans and Planning Issues</b>	The County Attorney was contacted by Planning staff to analyze whether or not this request could be considered illegal spot zoning if this petition was to be approved and then challenged. It was their opinion that it would not constitute illegal spot zoning (see attachment C).
<b>Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(R)</b>	<b>(R)(3) - Have changing conditions substantially affected the area in the petition?</b>
	No
	<b>(R)(4) - Is the requested action in conformance with Legacy 2030?</b>
No	
<b>Analysis of Conformity to Plans and Planning Issues</b>	<p>The request is to rezone a 3.17 acre undeveloped parcel from RS9 to GB-L for the uses of Storage Services, Retail. The site is located in a residentially zoned suburban area between a commercial node to the north at the Ebert Road/West Clemmons Road intersection and the Kimmel Farm Elementary and Flat Rock Middle Schools located further to the south.</p> <p>The recently adopted <i>South Suburban Area Plan Update</i> recommends the subject property remain single family residential. The plan does however, recommend a significant expansion (± 6.5 acres) of said activity center located to the north, rather than promoting strip commercial development</p>

along Ebert Road. Because this expansion has yet to be fulfilled, staff does not see the need to deviate from the plan and establish a new commercial area zoning further down Ebert Road. Similarly, *Legacy 2030* recommends the consolidation of commercial uses at existing commercial locations and in designated activity centers.

Contrary to these recommendations, staff sees the subject request as representing a catalyst for future strip commercial rezonings and development along this otherwise primarily residential section of Ebert Road. Staff is further concerned that such a future scenario could prove problematic for safe and convenient access to both said existing schools and the planned future high school located to the south. Staff recommends denial of the request.

**CONCLUSIONS TO ASSIST WITH RECOMMENDATION**

<b>Positive Aspects of Proposal</b>	<b>Negative Aspects of Proposal</b>
The request would provide additional storage services to the residents in this general area.	The request is not consistent with the low density residential land use recommendation of the area plan.
	The request would establish commercial zoning onto a site which is surrounded by residential zoning.
	The request could discourage new investment and redevelopment of the nearby West Clemmons Road/Ebert Road Activity Center.
	The request may lead to additional strip commercial rezonings along this portion of Ebert Road. This in turn could have a detrimental, long term transportation impact regarding access to the existing and future schools located further south on Ebert Road.
	There is currently no public water or sewer service available to the site.

**STAFF RECOMMENDATION: Denial**

**NOTE:** These are **staff comments** only; **final recommendations** on projects are made by the City-County Planning Board, with **final decisions** being made by the appropriate Elected Body, who may approve, deny, table or request modification for any project. **THE APPLICANT OR REPRESENTATIVE IS STRONGLY ENCOURAGED TO ATTEND THE PUBLIC HEARINGS WHERE THE CASE WILL BE CONSIDERED BY THE PLANNING BOARD AND THE ELECTED BODY.**

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**CITY-COUNTY PLANNING BOARD  
PUBLIC HEARING  
MINUTES FOR F-1582  
NOVEMBER 8, 2018**

Gary Roberts presented the staff report.

**PUBLIC HEARING**

FOR:

Tyler Leinbach, 6130 Stadium Drive, Clemmons, NC 27012

- Mr. Leinbach indicated they anticipate developing only the first half of the 3.17 acres immediately, in order to put mobile shipping containers on the property to serve as a storage facility. No permanent buildings will be erected.
- Shipping containers are mobile and can be moved should the need arise. The containers provide more space and are more affordable than the traditional facility.
- Storage facilities are in high demand.

AGAINST:

Lee Hege, 4360 Farris Road, Winston-Salem, NC 27127

- We live in a residential area and we want to keep it residential. That is the reason we bought where we are.
- From what is being said, I envision a bunch of tractor-trailers stacked up, like on Hickory Tree Road and U.S. 52.
- I am a businessman, I appreciate he wants to make money, but if business goes well, he would be a fool not to expand it, and expanding it would end up in our backyards.

Jorge Abrego, 4340 Farris Road, Winston-Salem, NC 27127

- Our concern is we live on well water. We bought a home away from everything so we do not have to be concerned about contamination.
- That property sits on the corner of my backyard, and we don't know what kind of product will be put in those containers.

## WORK SESSION

Mr. Leinbach was asked if there were any plans to move the containers at any point. He indicated that they would not be moving any containers unless required to do so for reasons such as expansion of Ebert Road.

Mr. Leinbach also indicated that the facility would be gated 24 hours a day and would require a code from anyone wanting to enter the premises.

Gary Roberts noted that Type 3 bufferyards would be required adjacent to residential zoning. Building codes were discussed and it was stated that further questions regarding building codes should be directed to Dan Dockery with the City. Setbacks were also discussed.

It was also noted that since this is not a special use zoning site plan that the current owners, or any future owners, could not be held to this particular business model.

A comment was made by Aaron King that the only restriction on this property is the use of storage services retail. If the minimum UDO requirements and minimum building code requirements are met, then a permit would be issued.

MOTION: Melynda Dunigan moved denial of the zoning petition.

SECOND: Chris Leak

FOR: George Bryan, Melynda Dunigan, Jason Grubbs, Tommy Hicks, Arnold King, Clarence Lambe, Chris Leak, Brenda Smith

AGAINST: None

EXCUSED: None

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Aaron King  
Director of Planning and Development Services



November 21, 2018

Tyler Leinbach & Todd Leinbach  
6130 Stadium Drive  
Clemmons, NC 27012

Re: Zoning Petition F-1582

Bryce A. Stuart Municipal Building  
100 E. First Street  
P.O. Box 2511  
Winston-Salem, NC 27102  
CityLink 311 (336.727.8000)  
Fax 336.748.3163  
[www.cityofws.org/planning](http://www.cityofws.org/planning)

Dear Petitioner:

The attached report of the Planning Board to the Forsyth County Board of Commissioners is sent to you at the request of the Commissioners. You will be notified by the Board of Commissioner's Office of the date on which the Commissioners will hear this petition.

Sincerely,

Aaron King  
Director of Planning and Development Services

pc: Clerk to the Board of Commissioners Forsyth County Government Center, 5<sup>th</sup> Floor, 201 N. Chestnut Street, Winston-Salem, NC 27101  
Lee Hege, 4360 Farris Road, Winston-Salem, NC 27127  
Jorge Abrego, 4340 Farris Road, Winston-Salem, NC 27127  
Gerald Byerly & William Byerly, 1672 Buffalo Rd, Sandy Ridge, NC 27046

**City Council:** Mayor Allen Joines, Vivian H. Burke, Mayor Pro Tempore, Northeast Ward; Denise D. Adams, North Ward; Dan Besse, Southwest Ward; Robert C. Clark, West Ward; John C. Larson, South Ward; Jeff MacIntosh, Northwest Ward; Derwin L. Montgomery, East Ward; James Taylor, Jr., Southeast Ward; City Manager: Lee D. Garrity

**County Commissioners:** David R. Plyler, Chairman; Don Martin, Vice Chair, Fleming El-Amin, Ted Kaplan; Richard V. Linville; Gloria D. Whisenhunt; Everette Witherspoon; County Manager: Dudley Watts, Jr.

**City-County Planning Board:** Arnold G. King, Chair; Chris Leak, Vice-Chair; George M. Bryan, Jr.; Melynda Dunigan; Jason Grubbs; Tommy Hicks; Clarence R. Lambe, Jr.; Johnny Sigers; Brenda J. Smith



Call 311 or 336-727-8000

[citylink@cityofws.org](mailto:citylink@cityofws.org)



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SANDY RIDGE NC27046

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ABREGO JORGE MABREGO CLYNETHIA D  
4340 FARISS RD  
WINSTON SALEM NC27127

F1582(N)6813-60-8581.000  
BEE DAVID WAYNE  
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LEXINGTON NC27295

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SOFORTH ROBERT E  
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F1582(N)6812-79-1319.000  
HEGE COLE  
4410 HANOVER RD  
WINSTON SALEM NC27127

F1582(N)6812-69-4104.000  
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4365 EBERT RD  
WINSTON SALEM NC27127

F1582(N)6813-70-7188.000  
LAYELL EZRA WLAYELL MARTHA  
1810 VIRGIL RD  
DURHAM NC27703

F1582(N)6813-70-7083.000  
BLAYELL JOHN BLAYELL SUSAN D  
390 S NC 801 HWY  
ADVANCE NC27006

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MCKENZIE CHARLES FMCKENZIE MARGIE O  
1833 HUNTERS FOREST DR  
WINSTON SALEM NC27103

F1582(N)6813-70-7609.000  
MOUNT CARMEL UNITED METHODIST  
1265 EBERT RD  
WINSTON-SALEM NC27127

F1582(N)6813-61-3121.000  
SMITH JERRY PSMITH JANE C  
2225 TESH RD  
WINSTON SALEM NC27127

F1582(N)6812-79-5585.000  
FRESH ETHEL F  
5070 SALEM TOWNE DR  
WINSTON SALEM NC27106