

**MARCH 11, 2021**

**5872 HIGHWAY 1389**

**ZONE CHANGE**

<b>From:</b>	R-1A Single Family Residential & A-R Rural Agriculture
<b>To:</b>	<b>P-1 Professional/Service</b>
<b>Proposed Use:</b>	Professional Office/Lodging
<b>Acreage:</b>	3.650
<b>Applicant:</b>	AVSG Properties, LLC c/o Tid Griffin (2103.2158)
<b>Surrounding Zoning Classifications:</b>	
<b>North: A-R, R-1A</b>	<b>South: A-R</b>
<b>East: A-R</b>	<b>West: A-R, R-1A</b>

**Proposed Zone & Land Use Plan**

The applicant is seeking a P-1 Professional/Service zone. The subject property is located in a Rural Community Plan Area, where professional/service uses are appropriate in limited locations.

**SPECIFIC LAND USE CRITERIA**

**(a) Building and lot patterns** - Building and lot patterns should conform to the criteria for “**Nonresidential Development**” (D7).

**(b) Logical expansions** - Existing areas of Professional/Service use may be expanded onto contiguous land that abuts the same street(s). An existing area of general business zone may be used as criteria to support a Professional/Service use as a logical expansion since the general business zone permits all the uses within the Professional/Service use category. If the contiguous land is located across an intervening street, the expansion should be at least one (1) acre in size, unless it would serve as a “**buffer-use**” (D1). An expansion of this use should not overburden the capacity of roadways and other necessary urban services that are available in the affected area.

**(d) New Locations** - New locations of Professional/Service use should be “**major street oriented**” (D2). Also, other than in Rural Community plan areas, a new location should be at least one (1) acre in size unless it would serve as a “**buffer-use**” (D7).

**Planning Staff Review**

**GENERAL LAND USE CRITERIA**

**Environment**

- It appears that the subject property is not located in a wetlands area per the US Department of Agriculture Soil Conservation Service dated March 6, 1990.
- The subject property is not located in a special flood hazard area per FIRM Map 21059CO145 D.
- It does not appear that the subject property is designated as prime agricultural farmland per the US Department of Agriculture Soil Conservation Service map dated March 1980.

- The developer is responsible for obtaining permits from the Division of Water, The Army Corp of Engineers, FEMA, the EPA, the OMPC building/electrical/HVAC division or other state and federal agencies as may be applicable.

**Urban Services**

Electricity and water are available to subject property. Sanitary sewage disposal shall be accomplished by an existing on-site septic system.

**Development Patterns**

The subject property is a 3.650 acre parcel of land that is split zoned R-1A Single Family Residential and A-R Rural Agriculture. The property is uniquely shaped as a flag-lot with a 20-foot wide stem that provides access from Highway 1389 leading back to the bulk of the property. The access drive is zoned R-1A while the large remainder is zoned A-R.

All adjoining properties (and all other properties in the general vicinity) are zoned R-1A Single Family Residential and/or A-R Rural Agriculture. The 20-foot wide access point and driveway is located between two single family residences along Highway 1389; each mostly zoned R-1A Single Family Residential. The access drive leads back to the remainder of the property, which is surrounded on three sides by wooded lands that are currently undeveloped and zoned A-R Rural Agriculture. On the fourth side (to the north) is a series of single family residential homes that front along Highway 1389 and are split-zoned R-1A in the front and A-R in the rear. The development on the subject property is located to the rear of all adjoining single family residences.

Highway 1389 is not a major street, but rather is classified as a local roadway, in which access management is not regulated nor is a roadway buffer enforced. The site does, however, have a 25-foot front yard building setback. Due to the unique shape of the lot, the building setback shall be measured from where the 20-foot wide stem reaches the bulk of the property.

The applicant proposes to utilize the existing facilities on the subject property in order to operate a professional office use with accessory lodging. Professional offices are not permitted in the existing agricultural zone, so the applicant is requesting that the subject property be rezoned to P-1 Professional/Service. It should be noted that lodging is not a principally permitted use in the P-1 zone, but can take place as an accessory use as long as the dwelling unit is located within the same structure and to the rear or above the office use.

The subject property was originally utilized for residential purposes; however, in 1986, the Owensboro Metropolitan Board of Adjustment approved a request for a Conditional Use Permit submitted by The Field House.

This Conditional Use Permit allowed the site to be utilized as a philanthropic institution which was intended for overnight retreats and for occasional public classes with educational benefits. Testimony at the meeting indicated that this property would be used residentially as well, as the property would be cared for by full time residents.

Due to the residential nature of the area and the concerns of the neighbors, the Conditional Use Permit was approved with the following conditions:

1. The access drive shall be paved;
2. Signage shall be limited to an identification sign placed on the mailbox; and,
3. The development shall be screened from the adjoining residential properties to the north of the development.

Recent site inspections have documented that, at some point in time, the site's signage along Highway 1389 has expanded beyond the confines of the mailbox, and also noted that the existing screening elements separating the development from the neighboring residential properties to the north are not very effective. In any event, The Field House operation has ceased activity for more than the one-year time allowance for Conditional Use Permits and, as a result, the previously issued permit is no longer active; thus, utilization of the property shall revert back to the property's underlying zoning classification.

Regardless of whether or not the philanthropic use is still active or not, such a previously issued Conditional Use Permit does not create justification for a zone change at the subject property. The intent behind a Conditional Use Permit is to ensure that the proposed use will not alter the essential character of the area. The zoning ordinance states that conditionally permitted philanthropic activities shall not conduct a business as part of the use. As a result, the previously approved Conditional Use Permit did not introduce a commercial environment into the area like the proposed professional office use would do.

It should be noted that instead of obtaining a Conditional Use Permit to operate the philanthropic use in the existing agricultural zone, The Field House could have attempted to rezone the subject property to P-1 Professional/Service where philanthropic uses are principally permitted and would not have required a Conditional Use Permit. It is assumed that The Field House went their chosen route with a Conditional Use Permit instead of a rezoning because it was understood that while the philanthropic use may be appropriate in the area, the P-1 Professional/Service zone is not.

The P-1 Professional/Service zone is not deemed appropriate because the subject property is not major street oriented, nor is it a logical expansion of existing P-1 zoning in the area. As a result, the proposed P-1 zone would be a spot-zoning in which the area would have a single commercial use in the middle of many single family residential uses.

Additionally, the subject property's site configuration raises concerns regarding the site's ability to function as a commercial property. There is only one access point leading back to the subject property: a 20-foot wide strip of land containing a driveway that is roughly 11-feet wide (per GIS measurements). The zoning ordinance states that drive aisles for two-way traffic shall be a minimum of 24-feet wide. Due to the lot's existing configuration, compliance with such a requirement is not possible.

Should the request be approved, prior to any construction activity on the property the applicant must obtain approval of a site plan or final development plan to demonstrate compliance with zoning ordinance requirements including, but not limited to, parking, landscaping, building setbacks, access management and signage.

Also, if approved, the OMPC Planning Staff recommends including and elaborating on the conditions that were attached to the previously approved Conditional Use Permit. In doing so, more specific screening elements should be required and the paved driveway should be a minimum of 18-feet wide in order to bring the property closer to compliance with the zoning ordinance. Additionally, any motion for approval of this request should include a condition requiring a variance to reduce the required width of a two-way drive aisle from 24-feet wide to a minimum of 18-feet wide. The condition should require the variance be obtained prior to the approval of a site plan or development plan.

#### **SPECIFIC LAND USE CRITERIA**

The applicant's proposal is not in compliance with the community's adopted Comprehensive Plan. Although the proposal is nonresidential in nature, the proposed P-1 Professional/Service zone is not a logical expansion of existing P-1 zoning in the area, nor does the subject property conform to the criteria for major street oriented uses. Additionally, at only 20-feet in width, the narrow access point along Highway 1389 is not wide enough to support commercial two-way traffic.

#### **Planning Staff Recommendations**

The planning staff recommends denial subject to the findings of fact that follow:

##### **Findings of Fact:**

1. Staff recommends denial because the proposal is not in compliance with the community's adopted Comprehensive Plan;
2. The subject property is located in a Rural Community Plan Area, where professional/service uses are appropriate in limited locations;
3. The proposed P-1 Professional/Service zone is not a logical expansion of existing P-1 zoning;
4. The proposal does not conform to the criteria for major street oriented uses; and,
5. At only 20-feet wide, the subject property's access point along Highway 1389 cannot comply with the zoning ordinance requirement for 24-foot wide drive aisles when serving two-way traffic.