

**TO:** Knoxville-Knox County Planning Commission  
**FROM:** Lindsay Crockett, AICP | Principal Planner/Design Review Program Manager  
**DATE:** September 28, 2023  
**SUBJECT:** 8-E-23-OA      Agenda Item #26

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### **STAFF RECOMMENDATION**

Staff recommends a thirty-day postponement, until the November 9, 2023 meeting, as requested by the applicant.

### **BACKGROUND**

The attached amendment (Exhibit A) to the City of Knoxville Zoning Code, Article 12 - Landscape was proposed by Mr. R. Bentley Marlow and postponed for thirty days by the Planning Commission in August 2023 and for an additional thirty days in September 2023. A Planning Commissioner provided the applicant with a revised proposal and the applicant notified staff of the intent to substitute the Planning Commissioner's version in place of the original proposal (Exhibit B). See attached text for the revised proposed amendments, which relate to landscape plans and required buffer yards.



Dori Caron <dori.caron@knoxplanning.org>

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## Fwd: 8-A-23-OA & 8-E-23-OA

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**Dori Caron** <dori.caron@knoxplanning.org>  
To: Amy Brooks <amy.brooks@knoxplanning.org>

Wed, Sep 27, 2023 at 4:01 PM

From: **R Bentley Marlow** <rbentleymarlow@gmail.com>  
Date: Mon, Sep 25, 2023 at 4:15 PM  
Subject: Re: 8-A-23-OA & 8-E-23-OA  
To: Amy Brooks <amy.brooks@knoxplanning.org>  
Cc: Cheryl Ball <CBall@knoxvilletn.gov>, Tommy Smith <tsmith@knoxvilletn.gov>, Andrew Roberto <aroberto@knoxvilletn.gov>, Seema Singh Perez <knoxseema@gmail.com>, Lauren Rider <LaurenETrider@gmail.com>, Charles Thomas <cathomas@knoxvilletn.gov>, Gwen McKenzie <gmckenzie@knoxvilletn.gov>, Lynne Fugate <lfugate@knoxvilletn.gov>, Janet Testerman <Testerman.janet@gmail.com>, Amelia Parker <amparker@knoxvilletn.gov>

Amy,

Thanks for that clarification. Please table 8-A-23-OA and postpone 8-E-23-OA for 30 days. We can circle back and see how Planning Staff has progressed on 8-E-23-OA before the November meeting.

Please go ahead and upload the my redline version to 10-B-23-OA.

Thank you,

Bentley

R. Bentley Marlow, J.D., M.A.  
322 Douglas Avenue  
Knoxville, Tennessee 37921-4813  
Cellular: (865) 607-4357  
[rbentleymarlow@gmail.com](mailto:rbentleymarlow@gmail.com)

## 8-E-23-OA

### ARTICLE 12.2A

A. Landscape Plan Required A landscape plan is required as part of a site plan review application for multi-family and townhouse development, nonresidential (including mixed-use) development, parking lots, and planned developments. The landscape plan must be approved prior to the issuance of ~~a building permit~~ the Certificate of Occupancy/Completion.

### ARTICLE 12.8 Buffer Yards

C. Where the buffer yard incorporates a wall or solid fence, or a combination of such, the buffer yard width may be reduced by ~~30%~~ SEVENTY PERCENT (70%).

E. Buffer yards are required as described in ~~the~~ TABLE 12-2: Buffer Yard Requirements.

[ADD THE FOLLOWING LINE TO TABLE 12-2]

RESIDENTIAL USES (1F, 2F, Townhomes & Detached MF) WITHIN C-N ABUTS  
RESIDENTIAL DISTRICT – NO BUFFER YARD REQUIRED.

----- Forwarded message -----

From: **R Bentley Marlow** <[rbentleymarlow@gmail.com](mailto:rbentleymarlow@gmail.com)>

Date: Mon, Sep 18, 2023 at 2:51 PM

Subject: 8-E-23-OA

To: Amy Brooks <[amy.brooks@knoxplanning.org](mailto:amy.brooks@knoxplanning.org)>

Amy,

I wish to substitute Logan Higgins' version in place of my own for consideration.

Thanks,

Bentley

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R. Bentley Marlow, J.D., M.A.

[322 Douglas Avenue](#)

[Knoxville, Tennessee 37921-4813](#)

Cellular: (865) 607-4357

[rbentleymarlow@gmail.com](mailto:rbentleymarlow@gmail.com)



**Proposed modifications to the City of Knoxville's Zoning Ordinance - Article 12 (2).pdf**

1159K

**Proposed changes to the City of Knoxville Zoning Code Article 12 by Knoxville  
Knox County Planning case 8-E-23-OA, Modified by Planning Commissioner  
Logan Higgins.**

Fellow Commissioners,

As a principal architect, I have extensive experience in planning, drafting, and reviewing landscape plans for various projects within the City of Knoxville. This experience has allowed me to become intimately acquainted with the implementation and purpose of zoning Article 12. Consequently, I am well-positioned to grasp the concerns associated with the current requirements and propose adjustments that can alleviate the compliance burden without compromising the requirement's intent.

The landscape buffer yard requirement serves as a valuable tool for delineating separations between different land uses. When required by Article 12.8, it primarily aims to establish buffers between commercial and residential uses or between parking lots and low-density residential areas.

However, I have observed instances in my practice as well as with cases brought to this body and the BZA where residential developments and development on small lots have faced an undue burden due to the incongruity or impracticality of the buffer yard requirements. Hence, I strongly advocate for minor modifications to Article 12, and willingly volunteered to refine the applicant's proposal for the consideration of the Planning Commission and City Council.

In the following pages, I have provided commentary on the applicant's requests, proposed changes to those requests, rationale for why I believe these changes are warranted and appropriate, and excerpts from the code with these changes written in.

Thank you for your consideration,

Logan Higgins, AIA

Applicable Definitions referenced in this proposal:

- From City of Knoxville Ordinance Chapter 22.5 - STORMWATER
  - Development, large residential and commercial. Any development, commercial, office, industrial, multiple single-family lots, any nonresidential use, or any development of a single residential lot with a disturbed area of ten thousand (10,000) square feet or more.
  - Development, small single-family residential. Development of a single recorded residential lot with less than ten thousand (10,000) square feet of disturbed area.

## Proposed modification #1 - Landscape Plan Approval

### Original proposed modification by applicant:

*"ARTICLE 12.2A A. Landscape Plan Required A landscape plan is required as part of a site plan review application for multi-family and townhouse development, nonresidential (including mixeduse) development, parking lots, and planned developments. The landscape plan must be approved prior to the issuance of a building permit the Certificate of Occupancy/Completion. "*

### Commentary by LH:

While I am sympathetic of the additional work and potential delays from planning compliance of this Article prior to attaining a building permit, doing so after the fact would be far worse.

Specifically in regards buffer yards; it is essential that this element is planned out early to ensure there will be no conflicts with the overall. Therefore, I reject this proposed modification as it is written. However, I do have a recommendations for how this could be made more simple for smaller residential projects that may not have the resources to go through this effort.

If agreeable with the City of Knoxville's Plans Review & Inspections Division, I am proposing the following modification to Article 12.2:

#### **12.2.A. Landscape Plan Required**

A landscape plan is required as part of a site plan review application for multi-family and townhouse developments that exceed 10,000 sf of disturbed area or when landscaping is required by this article, nonresidential (including mixed-use) development, parking lots, and planned developments. The landscape plan must be approved prior to the issuance of a building permit.

#### **12.2.B. Content of Landscape Plan**

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3.The location, quantity, size, and name, both botanical and common, of all proposed plant material. This includes lawn and turf applications.

- a. When a landscape plan is required for residential lots with a disturbed area of less than 10,000 sf, the landscape plan is not required to specify the exact species or name of the plantings when the location, quantity, size, and criteria of Section 12.4 *Landscape Design Standards* are provided on the landscape plan. A list of the names for plants to be used and evidence of compliance with this Article is required to be kept on site for inspection approval.

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### Rationale:

- Both modifications use language inline with the City of Knoxville's Ordinance Chapter 25.5 - Stormwater:

*A stormwater plan is required for "Any development, commercial, office, industrial, multiple single-family lots, any nonresidential use, or any development of a single residential lot with a disturbed area of ten thousand (10,000) square feet or more."*

This does not require a stormwater plan for multi-family and townhouse developments when the “disturbed area” is less than 10,000 SF. Typically, developments that do not pass the stormwater threshold do not have civil engineers or landscape architects and will have a more difficult time navigating the landscape plan requirements.

- Furthermore, landscape plan review will still be required when landscaping is required by Article 12, (in instances of buffer yards and multifamily landscaping) even if the development does not exceed the disturbed area threshold.
- The modification to 12.2.B.3 creates an exception for small developments that removes the hardship of planning out the botanical makeup of the landscaping early in the process and instead allows the landscape provider to make a list that is appropriate for the site and meets the requirements.

### Proposed Modification #2 - Buffer Yards: Width Reduction.

Original proposed modification by applicant:

*“ARTICLE 12.8.C. Where the buffer yard incorporates a wall or solid fence, or a combination of such, the buffer yard width may be reduced by ~~30%~~ SEVENTY PERCENT (70%).”*

Commentary by LH:

If the landscape buffer is meant to create a screen or buffer between uses, the application of a wall should (in theory) accomplish this entirely. However, a 6’- 8’ wall does not grow, and brings no biodiversity. Therefore, it is logical that we still require landscaping even with the implementation of a fence.

Proposed Change by LH:

The modification I am proposing to this is that a wall or fence may reduce the buffer yard width by 40% instead of 30%.

Allowing the two buffer types to be as follows:

Buffer Yard Type	Min. width	Mid. width with fence or wall
Class A	10ft	6ft
Class B	20ft	12ft

\*note, this does not apply to the parking lot landscape requirements of Section 12.5, only buffer yards.

Rationale:

The elements of a buffer yard are still fully required even with a fence or wall. Typically, when a fence or wall is used to reduce the width, it is due to lot restrictions and not cost or a desire for

less landscaping (since a fence costs more than additional groundcover). This is a helpful allowance on smaller lots. However, in my opinion a reduction greater than 40% would limit the ability for the plants to grow in Class A and negate the intent of a Class B buffer.

### Proposed modification #3 - Buffer Yards: When Required

Original proposed modification by applicant:

Table 12-2: Buffer Yard Requirements	
Development	Buffer Yard Class
Nonresidential use located within residential district	Class A Buffer
Nonresidential district abuts a residential district	Class B Buffer
Parking lot of a multi-family dwelling abutting a RN-3, RN-2, RN-1 or EN residential district except as follows:	Class A Buffer
<i>RESIDENTIAL USES (1F, 2F, Townhomes &amp; Detached MF) WITHIN C-N ABUTS RESIDENTIAL DISTRICT</i>	<i>No Buffer Yard required</i>
Per use standards (Article 9)	As determined in the standards of Article 9

#### Commentary by LH:

This proposed modification hints to a problem in the buffer yard requirements, but does not fully resolve it.

#### Proposed Change by LH:

My modification to this proposal acknowledge the concerns behind the request, but with broader applicability. I have propose two modifications to Table 12-2:

Table 12-2: Buffer Yard Requirements	
Development	Buffer Yard Class
Nonresidential use located within residential district	Class A Buffer
Nonresidential <i>use in a nonresidential</i> district abuts a residential district	Class B Buffer
Parking lot of a multi-family dwelling abutting a RN-3, RN-2, RN-1 or EN residential district except as follows: <i>When a parking lot is serving fewer than 5 du and a fence or wall per 12.8.D is installed, no buffer yard is required.</i>	Class A Buffer
Per use standards (Article 9)	As determined in the standards of Article 9

#### Rationale:

It is important to point out that the locations where buffer yards are required *in this section* are meant to provide a separation in two instances: 1. Residential and Nonresidential. 2. Parking lots and low density residential. The intent is **not** meant to require a buffer between residential **uses** of differing density.



#1 Zoning Districts - As currently written, a 20ft wide buffer is required in any instance where **any** development in a **non-residential zoning** is adjacent to a **residential zoning**. However, there are multiple instances across the city where **residential uses** are built in **non-residential zonings**.

Case Study:

As written, if a single family house is built in a C-N zone next to an apartment complex with a RN-7 zoning, the the single family home would technically be required to install a 20' wide buffer yard to buffer **their** presence from the apartment complex in the RN district.

Although this is an extreme example, it is representative of a common occurrence.

#2 Multifamily parking - The second modification is in response to a scenario that creates a challenging requirement to the pursuit of missing middle type housing. As written, the parking for any multifamily development must have a Class A buffer if next to RN-3, RN-2, RN-1, or EN zoning. This seems appropriate when there is a high number of units, but doesn't consider that often times parking is placed adjacent to other parking.

However, the proposed modification only removes the requirement for 5 or fewer units to allow for smoother application of missing middle principles, and maintains the requirement for anything greater.

Proposed modification #4 - *Walking Paths within Buffer Yards*

Proposed Change by LH:

In addition to the original changes proposed by the applicant, I would like to proposed one other modification to Section 12.8 regarding impervious surface within a buffer yard as written below:

12.8 - Buffer Yards

- A. Buffer yards may be located within required setbacks but must be reserved for the planting of material and installation of screening as required by this section. No parking, driveways, sidewalks, accessory structures, or any impervious surfaces are permitted within the buffer yard area.
  - 1. Exception: A walking path may be placed within a buffer yard under the following conditions: no reduction of buffer yard width is utilized, the walking path does not abut other impervious area, and the the width of the path is not greater than 30% of a Class A buffer or 25% of a Class B buffer.

Rationale:

Rightfully so, the buffer yard is not allowed to have buildings or parking in it (not much of a landscape buffer if it does!) However, when installing landscaping on a site, allowing users to walk through the landscaped area can be of benefit to the users and the community. Therefore, I recommend that we allow for accessible pathways of up to 3 ft wide in a Class A buffer and 5 ft wide in a Class B buffer if the buffer width is not being reduced with a fence.

This modification also prohibits the walking path from abutting other impervious area so to prevent the exception from being used to essentially expand a parking lot with a sidewalk.

## Article 12, Modified

### 12.2 - LANDSCAPE PLAN

#### A. Landscape Plan Required

A landscape plan is required as part of a site plan review application for multi-family and townhouse developments [that exceed 10,000 sf of disturbed area or when landscaping is required by this article](#), nonresidential (including mixed-use) development, parking lots, and planned developments. The landscape plan must be approved prior to the issuance of a building permit.

#### B. Content of Landscape Plan

1. North arrow and graphic scale, the location and dimensions of all existing and proposed structures, property lines, easements, parking lots and drives, rights-of-way, refuse disposal and recycling areas, pedestrian and bicycle paths, fences, mechanical equipment, overhead utility wires, underground utilities, retention/detention facilities, and other drainage facilities, such as drainage swales. Identify lines of sight at all access points and at locations adjacent to intersections.
2. The location, quantity, size, name, and condition, both botanical and common, of all existing trees equal to or greater than 2.5 inches in caliper, indicating trees to be retained and to be removed.
3. The location, quantity, size, and name, both botanical and common, of all proposed plant material. This includes lawn and turf applications.
  - a. [When a landscape plan is required for residential lots with disturbed area of less than 10,000 sf, the landscape plan is not required to specify the exact species or name of the plantings when the location, quantity, size, and criteria of Section 12.4 \*Landscape Design Standards\* are provided on the landscape plan. A list of the names for plants to be used and evidence of compliance with this Article is required to be kept on site for inspection approval.](#)
4. The existing and proposed grading of the site indicating contours at two-foot intervals. Any proposed berming, earthwork, or stormwater management basins must also be indicated using two-foot contour intervals.
5. Elevations of all existing and proposed fences, stairs, and retaining walls.
6. Existing and proposed plantings in the right-of-way.
7. Any proposed irrigation plan, if irrigation is provided.
8. Any other details as determined necessary by the review body.

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### 12.8 BUFFER YARDS

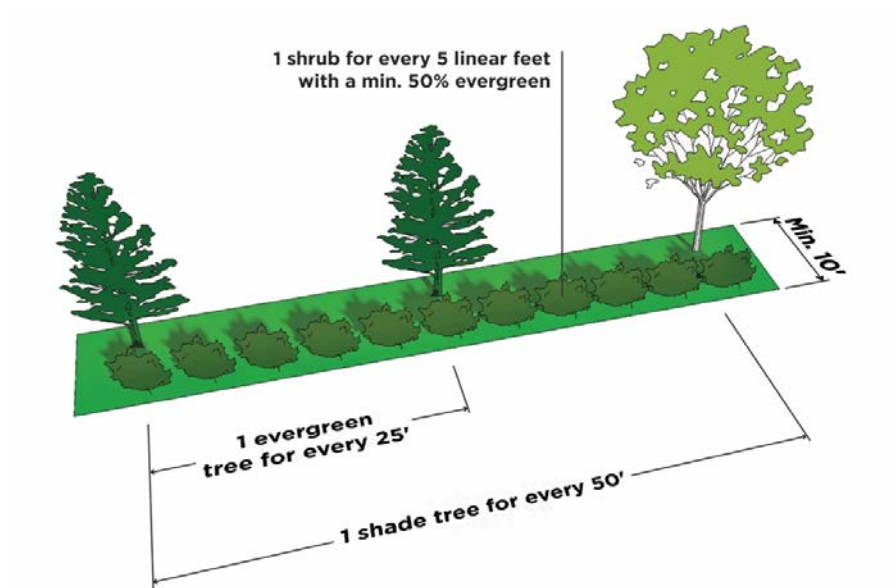
This section establishes standards for the dimension and required landscape for buffer yards between land uses and/or zoning districts within the rear and/or side yards. Nothing in this section prevents the applicant's voluntary installation of buffer yards where they are not required. Buffer yard requirements apply to new construction and to any additions to a structure existing as of the effective date of this Code of 30% or more in square footage.

- A. Buffer yards may be located within required setbacks but must be reserved for the planting of material and installation of screening as required by this section. No parking, driveways, sidewalks, accessory structures, or any impervious surfaces are permitted within the buffer yard area.

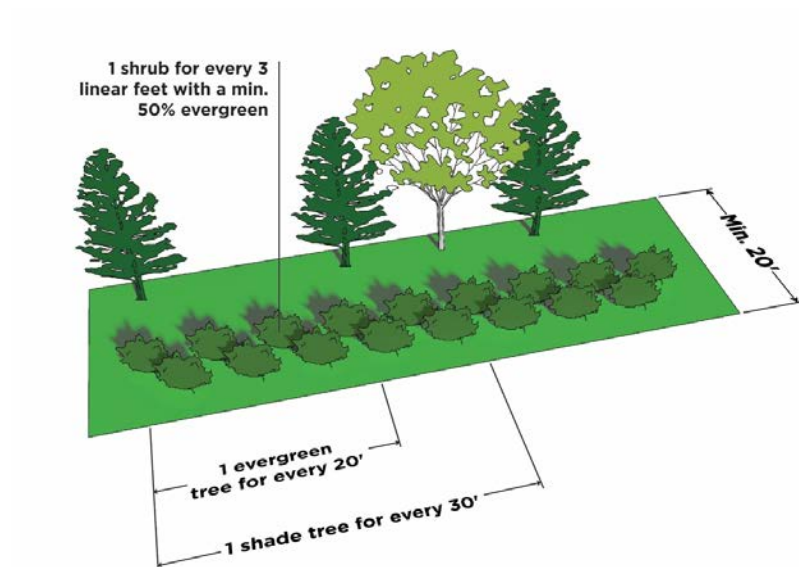
1. Exception: A walking path may be placed within a buffer yard under the following conditions: no reduction of buffer yard width is utilized, the walking path does not abut other impervious area, and the the width of the path is not greater than 30% of a Class A buffer or 25% of a Class B buffer.
- B. The two types of buffer yards are as follows:
1. **Class A Buffer**
    - a. Minimum Width: Ten feet.
    - b. Minimum Required Shrubs: One shrub every five feet. A minimum of 50% of the shrubs must be evergreen.
    - c. Minimum Required Trees: One evergreen tree for every 25 feet and one shade tree for every 50 feet.
    - d. Planting locations may be varied, but the total number of trees must be no less than as required in this section.
    - e. 60% of the landscape area outside of shrub and tree masses must be planted in live groundcover, perennials, or ornamental grasses. Stone, mulch, or other permeable landscape materials may be used for the remaining area.
  2. **Class B Buffer**
    - a. Minimum Width: Twenty feet.
    - b. Minimum Required Shrubs: One shrub every three feet. A minimum of 50% of the shrubs must be evergreen.
    - c. Minimum Required Trees: One evergreen tree for every 20 feet and one shade tree for every 30 feet.
    - d. Planting locations may be varied, but the total number of trees must be no less than as required in this section.
    - e. 60% of the landscape area outside of shrub and tree masses must be planted in live groundcover, perennials, or ornamental grasses. Stone, mulch, or other permeable landscape materials may be used for the remaining area.
- C. Where the buffer yard incorporates a wall or solid fence, or a combination of such, the buffer yard width may be reduced by ~~30%~~ 40%.
- D. When a wall or solid fence is incorporated into a buffer yard, it must be a minimum of six feet up to a maximum of eight feet. When a wall or solid fence is combined with a berm, the combined height of the wall or solid fence and any berm cannot be less than six feet or exceed eight feet.
- E. Parking lots located on properties developed under a common or unified development plan and/or which have a shared access agreement are not required to provide the buffer yard screening area along common property lines where parking areas abut.
- F. Buffer yards are required as described in Table 12-2: Buffer Yard Requirements:

Table 12-2: Buffer Yard Requirements	
Development	Buffer Yard Class
Nonresidential use located within residential district	Class A Buffer
Nonresidential use in a nonresidential district abuts a residential district	Class B Buffer
Parking lot of a multi-family dwelling abutting a RN-3, RN-2, RN-1 or EN residential district except as follows: When a parking lot is serving fewer than 5 du and a fence or wall per 12.8.D is installed, no buffer yard is required.	Class A Buffer
Per use standards (Article 9)	As determined in the standards of Article 9

## CLASS A BUFFER YARD



## CLASS B BUFFER YARD



(Ord. No. O-88-2020 , § 1, 5-19-20)

(Supp. No. 75)



## 8-E-23-OA

### Article 12.2A and Article 12.8

- Proposed language moves the approval of a landscape plan to prior to the issuance of a Certificate of Occupancy (CO). This creates issues with sites not having enough space to implement the required landscaping if it is just before construction is complete. What will be the consequences of not being able to meet the landscape requirements? Tear down of a brand new building or other site features? What would the hardship be to not meet the landscape requirements?
- Landscaping is often an afterthought during the civil design phase, coming in at the end of the design process. This results in leaving little to no room for landscape requirements and is a significant driver in the use of alternative landscape design application. If this language were adopted moving the requirement to before CO it will dramatically increase the number of Alternative Landscape Design applications.



# Development Request

## DEVELOPMENT

- ☐ Development Plan  
☐ Planned Development  
☐ Use on Review / Special Use  
☐ Hillside Protection COA

## SUBDIVISION

- ☐ Concept Plan  
☐ Final Plat

## ZONING

- ☐ Plan Amendment  
☐ SP ☐ OYP  
☐ Rezoning

R. Bentley Marlow

Applicant Name

Affiliation

22 June 2023

10 August 2023

Date Filed

Meeting Date (if applicable)

File Number(s)

8-A-23-OA,  
8-B-23-OA,  
8-C-23-OA,  
8-D-23-OA,  
8-E-23-OA

## CORRESPONDENCE

All correspondence related to this application should be directed to the approved contact listed below.

☒ Applicant ☒ Property Owner ☐ Option Holder ☐ Project Surveyor ☐ Engineer ☐ Architect/Landscape Architect

R. Bentley Marlow

Name

Company

322 Douglas Avenue

Knoxville

Tenn.

37921

Address

City

State

ZIP

865-607-4357

rbentleymarlow@gmail.com

Phone

Email

## CURRENT PROPERTY INFO

Marlow Properties, LLC

322 Douglas Avenue

865-607-4357

Property Owner Name (if different)

Property Owner Address

Property Owner Phone

Property Address

Parcel ID

KUB

KUB

N

Sewer Provider

Water Provider

Septic (Y/N)

## STAFF USE ONLY

General Location

Tract Size

☒ City ☐ County

District

Zoning District

Existing Land Use

Planning Sector

Sector Plan Land Use Classification

Growth Policy Plan Designation

May 1, 2023

**DEVELOPMENT REQUEST**

- ☐ Development Plan    ☐ Use on Review / Special Use    ☐ Hillside Protection COA  
☐ Residential    ☐ Non-Residential

Home Occupation (specify) \_\_\_\_\_

Other (specify) \_\_\_\_\_

Related City Permit Number(s)

**SUBDIVISION REQUEST**

Proposed Subdivision Name \_\_\_\_\_

Unit / Phase Number \_\_\_\_\_

☐ Combine Parcels☐ Divide Parcel

Total Number of Lots Created \_\_\_\_\_

☐ Other (specify) \_\_\_\_\_☐ Attachments / Additional Requirements

Related Rezoning File Number

**ZONING REQUEST**☐ Zoning Change

Proposed Zoning \_\_\_\_\_

☐ Plan Amendment Change

Proposed Plan Designation(s) \_\_\_\_\_

Pending Plat File Number

Proposed Density (units/acre) \_\_\_\_\_

Previous Rezoning Requests \_\_\_\_\_

☒ Other (specify) Ordinance Amendment (change zoning text) - Proposed changes attached.**STAFF USE ONLY****PLAT TYPE**
☒ Staff Review    ☐ Planning Commission
**ATTACHMENTS**
☐ Property Owners / Option Holders    ☐ Variance Request
**ADDITIONAL REQUIREMENTS**

- ☐ Design Plan Certification (*Final Plat*)  
☐ Use on Review / Special Use (*Concept Plan*)  
☐ Traffic Impact Study  
☐ COA Checklist (*Hillside Protection*)

Fee 1		Total  \$5,000.00
1203	\$5,000.00	
Fee 2		
Fee 3		

**AUTHORIZATION**☒ I declare under penalty of perjury the foregoing is true and correct:

1) He/she/it is the owner of the property AND 2) The application and all associated materials are being submitted with his/her/its consent



Applicant Signature

R. Bentley Marlow

Please Print

26 June 2023

Date

865-607-4357

Phone Number

rbentleymarlow@gmail.com

Email



Property Owner Signature

R. Bentley Marlow / Marlow Properties, LLC

Please Print

SG,07/07/2023

Date Paid