

STAFF REPORT

Planning Commission Meeting: January 8, 2024

Application	PR23-0022: Request for an exception to the NC (Neighborhood Center) District for the maximum tenant size of Arbor Creek Building H	
Location	16509 -16529 W. 159 th Terrace	
Owner/Applicant	Gavin Barmby, Murlen 159, LLC	
Staff Contact	Andrea Fair, AICP, Planner II	

Site Area:	<u>0.45 ± acres</u>	Original Tenant Sizes: <u>3,475 SF restaurant / 4,000 SF liquor store</u>
Zoning:	<u>NC (Neighborhood Center)</u>	Expanded Tenant Sizes: <u>6,019 SF restaurant / 6,364 SF liquor store</u>
Current Use:	<u>Liquor Store & Restaurant</u>	Plat: <u>Arbor Creek Village, First Plat</u>

1. Introduction

The applicant is requesting approval of a revised preliminary site development plan for an exception to the NC (Neighborhood Center) District for the maximum tenant size of Building H within the Arbor Creek Neighborhood Center development (Arbor Creek). Located southeast of 159th Street and Mur-Len Road, Arbor Creek has retained the NC District zoning designation since 1999. The NC District has a maximum tenant size of 5,000 square feet. Kinsale Wine & Spirits and Casa Amigos, existing businesses, have both expanded into adjacent tenant spaces and now exceed the maximum allowable tenant size.

The existing multi-tenant building, Building H, was constructed in 2003 and was originally planned for approximately six (6) tenant spaces. Over the past 20 years, the number of tenants has decreased, and the size occupied by each tenant has increased. The alterations have resulted in only two (2) tenants occupying the building today. The applicant's request is to permit a tenant space of 6,019 square feet for Casa Amigos located within the southwest portion of Building H. Additionally, a 6,364 square foot space is requested for Kinsale Wine & Spirits which includes approximately 5,364 square feet for liquor sales and, the applicant has stated, approximately 1,000 square feet for retail sales of barbeque equipment and products. The liquor and retail entities operate within the same tenant space under one business name and ownership (see Diagram 1).



Diagram 1 – Building H

The NC District is a planned zoning district, and as such, the standards set forth in any planned zoning district may only be altered as part of the preliminary site development plan. Substantial or significant changes may only be approved after rehearing by the Planning Commission (UDO 18.12.200). The removal of the maximum tenant size requirement is considered a significant change as it alters the character of the development and the intent of providing small-scale multitenant retail spaces.

2. Existing Conditions

Highlighted below is the existing Building H located within Arbor Creek, at the southwest corner of Wyandotte Drive and W. 159th Terrace. The entire building is under a single ownership and currently contains two tenants – Casa Amigos and Kinsale Wine & Spirits. The primary entrance of Casa Amigos faces northwest, and the primary entrance for Kinsale Wine & Spirits faces north. The exterior façade contains brick and stucco in red and tan, with black awnings and decorative black goose neck lighting.



Aerial view of the subject property outlined in yellow.



View of subject property looking southeast.

3. History

The subject property was annexed into the City on January 5, 1999 (ANX-09-98) and zoned from the County Rural (CTY RUR) District to the R-1 (Residential Single Family) District in 1999 (RZ-07-99) along with a preliminary plat (P-09-99). The subject property was then rezoned from the R-1 District to the NC (Neighborhood Center) District in 1999 (RZ-37-99) for the Arbor Creek Neighborhood Center. In 2001, a final site development plan (PR-12-01) was approved for the construction of the first two multi-tenant buildings within Arbor Creek, Buildings G and H (see Diagram 1 above).

In 2022, a building permit (BC22-0134) was approved for the expansion of Casa Amigos restaurant. The building permit was for the 1,675 square feet of additional dining area and 887 square feet for storage. In 2023, a building permit (BC23-0226) was approved for the expansion of Kinsale Wine & Spirits, consisting of 2,364 square feet of additional retail space. A full certificate of occupancy has not been issued as it is contingent on approval this application.

4. Neighborhood Center District Standards

The NC District was incorporated into the UDO in 1998 (UDO 18.31). The intent of the NC District is to provide for the development of small-scale neighborhood office, low intensity retail, and civic uses, as well as accessory residential uses. Neighborhood Centers are intended to be pedestrian oriented and designed to encourage pedestrian movement between residential and non-residential areas. Businesses are required to be small-scale in nature with low traffic volumes in order to support uses that serve as neighborhood conveniences and create a sense of community. The NC District establishes a maximum tenant size of 5,000 square feet of gross floor area per tenant, except for food stores and hardware stores, which have a maximum tenant size of 15,000 square feet.

During the 1999 public hearing for the establishment of the NC District at Arbor Creek, the applicant and Planning Commission reiterated the importance of establishing this maximum tenant size as a method of preserving the character of the development and regulating the types of businesses able to locate here. The intent of the development is characteristic of “first suburb” neighborhoods where specialty shops and restaurants are carefully sited in appealing neighborhoods with quality architecture and community spaces.

The standards of the NC District within the Arbor Creek subdivision have changed over time to accommodate the evolving needs of retailers and market conditions. Changes to the Arbor Creek development standards were approved in 2008 and 2013 respectively, including signage amendments allowing larger signage for retailers, and the allowance of outdoor sales for hardware stores.

The NC District was retired from the UDO in 2014; however, the property still retains the rights and regulations for this district. Currently, there are six (6) locations within the City that have retained this zoning designation; three (3) properties are undeveloped, one (1) is residential, and two (2) contain commercial uses. Arbor Creek Neighborhood Center most closely aligns with the intent of the NC District, even though it has evolved over time through various zoning amendments.

5. Zoning Standards

The restaurant and liquor store uses are permitted in the existing NC District. The proposed changes to the development are to an internal demising wall between tenant spaces, which will have no impact on the building height, setbacks, and open space requirements.

6. Development Standards

The proposed changes to the tenant spaces will have no impact on the existing site access, parking, landscaping/screening, public utilities, and stormwater/detention.

The first phase of the Arbor Creek Neighborhood Center approved 221 parking spaces for buildings G and H. A total of 99 parking spaces are required for Building H with the expansion of the restaurant and liquor store uses. A total of 68 parking spaces are required for building G, with the existing Minsky's restaurant and other retailers. Buildings G and H require 167 parking spaces, which is less than the 221 existing parking spaces.

7. Building Design Standards

There are no proposed changes to the exterior building façade, and staff has stipulated that all features of a multi-tenant retail building, including storefront glass, doorways and architectural elements, will remain. Requirements of the NC District include provisions that no building façade will have the appearance of a rear façade and that entrances, display windows and storefronts will face the street to create a desirable pedestrian environment. The expanded Kinsale Wine & Spirits has reoriented interior shelving in a manner that places the back of shelving against storefront windows and doors. To comply with UDO 18.31.040 requirements, staff will work with the applicant to ensure that shelving is moved away from the windows to provide views into the interior of the building as required.

8. Exception Request Analysis

Staff is supportive of the revised configuration for Building H, allowing the continuation of two expanded tenant spaces, as the maximum tenant size requirement was not previously captured at the time of building permit. However, staff recommends stipulations be included ensuring that, should either Casa Amigos or Kinsale Wine & Spirits, cease operations, each tenant space will be divided back into two tenant spaces each, for a minimum of four (4) tenant spaces within Building H. This is to ensure that the scale, form and integrity of Arbor Creek will revert back to the original approved design and continue to provide commercial space for small-scale business.

Staff will utilize new internal software capabilities to document the tenant space requirements for the Arbor Creek development, to ensure that future expansions do not occur beyond which is permitted under the NC District.

9. Criteria for Considering Applications

Substantial changes to an approved site development plan in the NC District (planned district) may be approved after rehearing and are subject to provisions of UDO Section 18.12.140, a previous version of the UDO (Ord. 11-53) as listed below:

A. The conformance of the proposed use to the Comprehensive Plan and other adopted planning policies.

The future land use map of the PlanOlathe Comprehensive Plan identifies the subject property as "Community Commercial Center." The property is zoned to the NC District which aligns with the Comprehensive Plan, and the existing uses are compatible with the Community Commercial Center designation.

B. The character of the neighborhood including but not limited to: land use, zoning, density (residential), architectural style, building materials, height, structural mass, siting, open space and floor-to-area ratio (commercial and industrial).

Arbor Creek was designed and constructed as a neighborhood center, with an emphasis on walkability, on-street parking, common architectural themes, and small shops and businesses. Residential development includes one and two-story row-houses, townhomes and single-family homes.

C. The zoning and uses of nearby properties, and the extent to which the proposed use would be in harmony with such zoning and uses.

The area surrounding the site is also zoned to the NC District and is part of the larger Arbor Creek development, consisting of small shops, restaurants and businesses and a mix of housing types. The existing restaurant and liquor store uses are in harmony with the surrounding area.

D. The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations.

The NC District is focused on small-scale retail, restaurant and office uses which serve the surrounding neighborhood. The property is suitable for the use restrictions of the existing NC District.

E. The length of time the property has remained vacant as zoned.

The property was zoned to the NC District in 1999 and the existing building was constructed in 2003. The building is currently occupied by two tenants.

F. The extent to which approval of the application would detrimentally affect nearby properties.

The proposed changes will have no detrimental effect on surrounding properties.

G. The extent to which the proposed use would substantially harm the values of nearby properties.

Staff has not received any information indicating that the changes will have an adverse impact on property values in Arbor Creek. The requested changes effect two existing tenants in the development which have been operational for multiple years.

H. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property.

The existing development provides adequate parking meeting UDO requirements. The proposed exception to the NC District will not adversely affect the capacity or safety of the road network or create any parking problems in the vicinity of the property.

I. The extent to which the proposed use would create excessive air pollution, water pollution, noise pollution or other environmental harm.

Staff is not aware of any potential for unlawful levels of air, water, or noise pollution with the proposed uses.

J. The economic impact of the proposed use on the community.

The changes proposed with this application will support private investment in the Arbor Creek development.

K. The gain, if any, to the public health, safety and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.

There is no gain or detriment to the public health, safety, or welfare if the application were denied. The use does not negatively impact public health, safety, or welfare as presented.

10. Public Notification and Neighborhood Meeting

The applicant mailed the required public notification letters to the surrounding property owners within 200 feet and posted a sign in accordance with the UDO requirements. Neighborhood notice was provided to property owners within 500' of the subject property and a neighborhood meeting was held on December 14th, 2023 with six (6) property owners in attendance. The neighbors asked questions regarding the expansion details, building upgrades and repairs and operation of the business, and expressed support of the project. Staff has received phone calls from a neighboring resident with concerns about parking in the Arbor Creek development, to which staff has responded with parking counts and requirements.

11. Staff Recommendation

Staff recommends approval of the preliminary site development plan (PR23-0022) with the following stipulations:

1. An exception is granted from UDO 18.31.030 permitting the two existing tenants (Casa Amigos and Kinsale Wine & Spirits) within Building H to expand beyond the maximum tenant size of 5,000 square feet as shown on the floorplans provided as Attachment A.
2. Should either the existing tenants (Casa Amigos or Kinsale Wine & Spirits) cease to exist within Building H, each respective tenant space must be divided into a minimum of two separate tenant spaces of 5,000 square feet or less.